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Report to Congressional Committees

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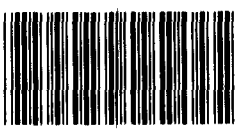
How the Judicial Conference Assesses the Need for More Judges



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General Government Division

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January 29, 1993

The Honorable Joseph R. Biden
Chairman, Committee on the Judiciary
United States Senate

The Honorable Strom Thurmond
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Hamilton Fish, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Title II of the Judicial Improvements Act of 1990 (28 U.S.C. 1 note, 331 note) directed us to review the policies, procedures, and methodologies the Judicial Conference of the United States used in recommending the creation of additional federal judgeships and report our results, including any recommended revisions, to the Committees on the Judiciary of the House of Representatives and the Senate.

This report includes the results of our assessment of the policies, procedures, and methodologies the Conference used to prepare its 1990 recommendations for 87 district judgeships (76 additional judgeships and the reclassification of 11 existing judgeship positions) and 20 circuit courts of appeals judgeships. We also describe (1) efforts under way to improve the case weights used to measure district judges' workload and (2) preliminary efforts to develop a more accurate measure of appellate court workload.

Results in Brief

In 1990, the Conference considered judgeship requests for 55 district courts and 7 courts of appeals. Given the limitations of current workload measures and the judgmental nature of much of the Conference's decisionmaking, we were unable to determine whether the Conference's 1990 recommendations accurately reflected the need for additional judges. However, within these limitations, we found the Conference's method of

determining the need for more judges to be reasonable. In developing its 1990 judgeship recommendations, the Conference judgmentally applied both written and unwritten policies, procedures, and methodologies and was generally consistent in applying them to each court. But the Conference's official transmittal to Congress did not include an explanation of the unwritten policies, procedures, and methodologies it used.

The district judge workload measures, or case weights, are 13 years old and being revised. New case weights should result in a more accurate measure of judicial workload than the current ones. Nevertheless, even after new weights are established, ancillary data on workload demands not captured by either the current or revised weights, such as extensive travel among locations for holding court, will probably still be needed and used in assessing district court requests for additional judges.

The current appellate court workload measure does not reflect the varying time demands that different types of cases may impose on appellate judges. Instead, it lumps together into a single category most cases decided by appellate judges and excludes the rest. The Federal Judicial Center, in conjunction with the Conference's Committee on Judicial Resources and its Subcommittee on Judicial Statistics, has begun examining options for developing a better measure of appellate court workload.

The Conference's use of the supplemental data each court provided in response to the Conference's biennial survey was largely undocumented. We were unable to determine how the Conference used this data in developing its recommendations or why the Conference accepted similar justifications—such as unusual travel conditions—for some courts but not others.

Background

The United States federal court system is divided into 94 judicial districts, which are, in turn, grouped into 12 geographic circuits. There is a court of appeals for each circuit, which hears appeals from the district courts within that circuit. In addition, there is a court of appeals for the federal circuit that has nationwide jurisdiction over certain subject matter. Prior to the enactment of additional judgeships in 1990, there were a total of 575 authorized district court judgeships and 168 court of appeals judgeships. Title II of the Judicial Improvements Act of 1990 raised the total number of

authorized positions to 649 district court judgeships and 179 appellate court judgeships.[1]

The work of assessing the need for additional judgeships is conducted by the Judicial Conference's Committee on Judicial Resources and its Subcommittee on Judicial Statistics, with advice from the Circuit Councils and the support of the Administrative Office of the U.S. Courts and the Federal Judicial Center.

The Conference is the policymaking body of the federal courts. It is composed of the Chief Justice of the United States, the chief judge of each of the 12 regional courts of appeals, the Chief Judge of the Court of Appeals for the Federal Circuit, the Chief Judge of the Court of International Trade, and 12 district judges, one from each of the regional circuits. The Conference is required by law (28 U.S.C. 331) to "make a comprehensive survey of the condition of business in the courts" and make recommendations to Congress. Since 1980, the Conference has surveyed the district and appeals courts every 2 years to determine the number of judges needed to handle the courts' workload.[2] The Conference's Committee on Judicial Resources has representation from at least one judge from each circuit and from both district and appellate court judges. The judges from each circuit can provide helpful information about their circuit's courts' workload based on firsthand knowledge. Likewise, the mixture of district and court of appeals judgeships assures that decisions are made on the basis of full and complete knowledge of the nature of the workload of the two court levels.

Each of the 12 circuits has a circuit council consisting of the chief judge of the circuit and an equal number of court of appeals and district court judges from the circuit. The councils make all necessary and appropriate orders for the effective and expeditious administration of the judicial business in their circuit. The Administrative Office of the United States Courts, under the supervision and direction of the Conference, is responsible for, among other things, (1) preparing and submitting reports on the volume and distribution of the courts' workload to Congress, the circuits, and the Conference and (2) providing legal and statistical services to committees of the Conference.

[1]The district judgeship total includes four judges in the three territorial courts—the Virgin Islands, Guam, and the Northern Mariana Islands. These judges are appointed for 10-year terms, not life.

[2]From 1964 to 1980, the survey was conducted every 4 years.

The Federal Judicial Center is the research and training arm of the federal judiciary and conducts the studies used to develop the workload measures for assessing judicial workload. The Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office and six judges elected by the Judicial Conference.

Every 2 years the chairman of the Subcommittee on Judicial Statistics, on behalf of the Conference, mails a judgeship survey to each district court and circuit court of appeals.[3] This questionnaire provides each court with an opportunity to justify a request for additional judgeship positions. The survey's questions address workload and nonworkload factors (such as geographical problems concerning travel within a district) that may affect a court's need for more judges. For example, the questionnaire for the 1990 requests asked each court to "explain all caseload factors [shown in the statistical profile] of your court that justify your request for additional judgeships" and "explain any factors not included in the statistical profile that justify a request for additional judgeships."

The Subcommittee on Judicial Statistics of the Conference's Committee on Judicial Resources analyzed each court's current workload, past workload trends, and unique or unusual circumstances that may affect a court's need for additional judges, as outlined in each court's response to the Conference's questionnaire.[4] By informal agreement with Congress, the Subcommittee and Conference did not attempt to project future workload and generally rejected individual court requests supported primarily by workload projections. The Subcommittee basically limited its work to those districts or courts of appeals that requested one or more additional judges.

After assessing both the responses to the questionnaires and workload statistics, the Subcommittee made its initial judgeship recommendations. The Subcommittee used a basic workload benchmark for recommending additional permanent judgeships of 400 weighted filings per authorized judgeship for district courts and 255 merit dispositions per judge for

[3]The survey is conducted in the fall of the year (e.g., 1989) preceding the Conference's biennial recommendations to Congress (e.g., 1990).

[4]The annual reports of the Administrative Office report workload for a July 1 to June 30 year.

circuit courts.[5] The supplemental information provided by each court was, in some instances, used to make exceptions to the workload benchmark for specific district courts. Each court then had a chance to comment on the Subcommittee's initial recommendations and provide additional information to support its judgeship request. Each circuit council was also asked to comment on the Subcommittee's preliminary recommendations.

After considering this additional information, the Subcommittee made its final recommendations to the Committee on Judicial Resources, which could adopt or alter them. In all cases, it adopted the Subcommittee's 1990 recommendations and forwarded them to the Judicial Conference, which approved them and forwarded them to Congress for consideration. Congress could authorize all of the Conference's final judgeship recommendations, modify the number and types of judgeships recommended, and/or authorize judgeships for districts and circuits that did not request additional judgeships.[6]

During the 1990 judgeship survey, 54 of the 94 district courts and 7 of the 12 regional courts of appeals requested additional judgeships.[7] As shown in table 1, these requests were, in many instances, modified by the Circuit Council, the Conference, and, ultimately, the Congress (see app. IV). For instance, the Conference recommended to Congress judgeships for 50 of the 54 districts requesting judgeships and rejected the requests of the remaining 4 districts. For two districts that requested additional judgeships, the Conference recommended reassigning an existing roving judgeship—one shared between two or more districts—exclusively to the district requesting the additional judgeship. For 1 of the 40 districts that did not request additional judgeships, the Conference recommended reassigning two roving judgeships permanently to that district because the judges already spent the majority of their time in that district. Thus, the

[5]When a case is filed in district court, it is assigned a case weight based on a 1979 study determining the average amount of judicial time the case is expected to require for disposition. The average weighted filings (workload) per authorized judgeship is calculated by multiplying the case weights by the number of cases of that type filed in a district court each year, adding all weights and dividing by the number of authorized judgeships for the district court.

A merit disposition is a case decided on the legal rights of the parties in the case—such as a lower court finding of racial discrimination that is affirmed or reversed—rather than on technical issues, such as the lack of federal jurisdiction. Both these measures are discussed in further detail in appendix II.

[6]A chronology of action on the requests of each court for which the Conference made a recommendation in 1990 is found in appendix IV.

[7]Requests for some district judgeships included types of positions that did not add judgeships to a court. See pages 12 through 13 for a description of the types of judgeships districts can request.

Conference rejected the requests of 4 districts and recommended adding, reassigning, or reclassifying judgeships in 51 districts.[8]

Table 1: Chronology of 1990 District and Circuit Judgeship Requests, Recommendations, and Final Congressional Authorizations

	Courts that requested additional judgeships		Courts that did not request additional judgeships		Total requested, recommended,or authorized	
Chronology of actions	Number of courts	Number of judgeships	Number of courts	Number of judgeships	Number of courts	Number of judgeships
District courts						
Initial district request	54	91	40	0	54	91
Circuit council's recommendation	51	90	1	2	52	92
Conference's final recommendation	50	85	1	2	51	87
Congressional authorization	48	75	10	11	58	86
Circuit courts						
Initial request	7	19-21	5	0	7	19-21
Circuit council's recommendation	7	20	0	0	7	20
Conference's recommendation	7	20	0	0	7	20
Congressional authorization	6	11	0	0	6	11

Source: GAO, derived from Judicial Conference data.

Objectives, Scope, and Methodology

Our statutory objectives were to determine whether the policies, procedures, and methodologies used by the Conference in recommending the creation of additional judgeships to Congress

- accurately measured the workload of existing federal judges,
- were applied consistently to each district court and court of appeals, and
- provided accurate indicators of the need for additional judgeships for each district and appellate court.

To determine the extent to which the Conference's judgeship criteria accurately measured the workload of existing federal judges, we reviewed the district court case weights the Conference used to measure district

[8]We excluded the Eastern Oklahoma District from our analysis of roving judgeships. The Conference's roving judgeship recommendations for the Northern and Western Oklahoma districts affected the Eastern Oklahoma District by adjusting the number of its judgeships from 1.33 to 1.5. The Eastern District did not request additional judgeships and the Conference's roving judgeship decision did not add judgeships to this court.

judge workload. Because there is an effort under way to update the district court case weights, we did not evaluate how accurate the current case weights may be. Instead, we reviewed the methodology being used to revise the current court case weights, which were last updated in 1979, and met with the project director of the new district court time study to discuss the project.

In addition, we reviewed the Conference's workload standard for considering appellate court requests for additional judgeships. We examined the study that established the 255 merit disposition workload benchmark of appellate court workload. Because the appellate courts do not have a method for weighting their cases, the Conference, working with the Federal Judicial Center, has begun exploring options for developing a more accurate workload measure for the courts of appeals. The Ninth Circuit is the only court of appeals that has developed a system that attempts to provide a more detailed weighting of appellate cases by case type. Our analyses included reviewing the Ninth Circuit Court of Appeals case weighting system.

To determine if the Conference's criteria for recommending additional judgeships were applied consistently to each district court and court of appeals, we analyzed the Conference's justifications for departing from its own written workload standards for recommending new judgeships for specific courts. We did so by first applying the Conference's written criteria to determine if they supported the Conference's recommendation for each of the 55 district and 7 appellate courts for which the Conference considered judgeships. As written workload standards for recommending temporary judgeships, we used the more specific workload standard described in a Ninth Circuit Court of Appeals memorandum which outlined the procedure the Subcommittee on Statistics used. The Subcommittee's own written workload standard was too vague to form the basis for analysis.

Using the written standards and policies, we were unable to account for the recommendations for 26 district courts. We analyzed the workload of these 26 courts and met with the Administrative Office to discuss our findings. The Administrative Office identified four unwritten policies the Subcommittee and Conference also used, and we then applied these to each of the 26 courts to determine if they supported recommendations for these courts.

We also analyzed the 1990 judgeship survey questionnaires submitted to the Conference from the 94 district courts and 12 appellate courts and compared them with the Conference's written justifications for its recommendations for each court.

To determine the extent to which the Conference provided an accurate indicator of the need for additional judgeships for each district and appellate court, we assessed the 1990[9] judicial requests on the basis of the work we did to address the above objectives.

The Administrative Office and the Federal Judicial Center provided written comments on a draft of this report. Their comments and our response are presented at the end of this letter. The text of their complete comments appear in appendixes V and VI. They also provided some technical comments which were incorporated as appropriate.

We did our review from May 1991 through May 1992 in accordance with generally accepted government auditing standards.

Process of Developing District Court Judgeship Recommendations Is Detailed and Judgmental

The process of developing recommendations for district court judgeships is more complicated than that for courts of appeals, reflecting the greater number of options the Conference used for recommending additional district court judgeships. The Conference used different policies and workload standards for these various options.

The Conference Used Several Types of District Court Judgeship Recommendations

In recommending additional district court judgeships to Congress, the Conference may recommend

- adding one or more permanent judgeships;

[9]The Conference's most recent biennial survey was started in 1989. The survey's judgeship profile pages covered statistical years 1985 through 1989 (July 1, 1984, through June 30, 1989) workload data. The final statistical data sent to Congress included workload through December 1989.

- adding a temporary judgeship;[10]
- converting a temporary judgeship to a permanent judgeship (conversions do not add judgeship positions to a court but merely reclassify existing positions);
- extending a court's temporary judgeship for another 5-year term;
- reassigning a roving judgeship (a judge that is shared between or among two or more district courts within a particular circuit) to one serving only one district court;
- adding any combination of the above, such as one permanent judgeship and one temporary judgeship, to a district; and
- rejecting a court's request and refusing to recommend any or all of the judgeships the district or appellate court requested.

Table 2 provides a breakdown of the type of district judgeships requested, recommended, and authorized in 1990.

Table 2: Chronology of Action on 1990 District Court Judgeship Requests by Type of Position

Chronology of action	Permanent judgeships	Temporary judgeships	Convert temporary judgeship to permanent position	Convert roving judgeship to position serving only 1 district	Total number of judgeships	No additional judgeships
Initial request for judgeships	74	10	7	0	91	0
Circuit council's recommendations	61	20	7	4	92	3
Judicial Conference's recommendations	47	30[a]	6	4	87	4
Congressional authorizations	61	13	8	4	86	6

Note: 54 of 94 district courts requested additional judgeships.

[a]Includes 29 new temporary positions and recommendation to extend 1 existing temporary judgeship for another 5 years.

Source: History of the Authorization of Federal Judgeships Including Procedures and Standards Used in Conducting Judgeship Surveys (Administrative Office of the U.S. Courts), pp.23, 32-35.

[10]Temporary judgeship positions are recommended for district courts whose workload may be temporarily burdening that court (for example, a large number of asbestos filings). Temporary judgeships refer to positions having a 5-year term. Judges appointed to both temporary and permanent positions hold lifetime appointments. When the temporary position expires, the judge appointed to that position does not leave the bench, but the next judicial vacancy to occur in the district is not filled, thus reducing the number of authorized judgeships for the district to the number of permanent positions. However, until the next vacancy occurs, a court would have more judges than its number of authorized permanent positions.

District Judgeship Recommendations Were Based Primarily on Assessment of Current Workloads

The Subcommittee and the Conference based their 1990 judgeship recommendations on workload benchmarks or thresholds to determine (1) if a court justified a need for an additional judgeship or judgeships, and (2) if the added judgeship(s) should be permanent or temporary. These thresholds were not applied inflexibly; rather, they were used as a starting point for consideration of any other factors noted in the individual court and circuit council responses to the judgeship survey questionnaires and each court's caseload statistics. The baseline standards used to make the Conference's 1990 district court judgeship recommendations to Congress varied by the type of position recommended.

The Conference's written guidelines established a district court's current weighted workload as the basic measure of a court's need for additional judgeships. When a case is filed in district court, it is coded by type of case, such as antitrust, products liability, or drug distribution. Each type of case has an assigned case weight based on a 1979 study of the time it took judges to dispose of such cases. The weights of all cases filed in a district in a year are totaled and divided by the number of authorized judgeships to determine the weighted filings per authorized judgeship.

If a court's weighted filings were below 400 per authorized judgeship, the Conference generally would not recommend any additional positions unless there were unique circumstances that justified departure from its written guidelines. The Conference generally rejected requests based on a district's anticipated growth in weighted filings.

The Conference had written guidelines for the following types of judgeship recommendations:

- Permanent Judgeships. The Conference's threshold requirement for a permanent judgeship was that (1) the court had weighted filings of at least 400 cases per authorized judgeship and (2) adding a judgeship would not result in the court's weighted filings falling below 400 per judgeship.
- Temporary Judgeships. A temporary judgeship could be recommended if weighted filings were at least 400 per authorized judgeship but adding a judgeship would result in weighted filings slightly below 400. The Conference's written guidelines did not quantify how far below 400 a court's weighted filings could be and still qualify for a temporary

judgeship.[11] The Conference would recommend extending a temporary judgeship for another 5 years if the continuing workload justifying the position was deemed to be "temporary," such as a continuing high level of asbestos filings.

- Roving Judgeships. The Conference had no written policy on roving judgeships shared between two or more districts, but with one exception recommended that four roving judgeships be assigned full-time to a single district in the cases of three districts (two districts and one district's circuit council) that requested additional judgeships.[12]

District Case Weights Outdated

In developing its 1990 recommendations, the Conference used case weights that were last revised in 1979. New types of cases, such as asbestos, have become a major part of district court workload since the 1979 weights were developed.[13] Some other types of cases that did exist in 1979 may now take more or less judicial time than the weights assigned to them. For example, the 1979 case weights assign a weight of one—the average weight—to most drug cases. However, a 1989 Judicial Conference report on the impact of drug cases on the judiciary and the Administrative Office's 1990 annual report together indicate that drug cases take more judicial and budgetary resources than other types of criminal cases because they more frequently involve multiple defendants and more frequently go to trial. The Judiciary's fiscal year 1992 and 1993 budget justifications note that drug and savings and loan cases place unusual demands on court resources.

The Conference recognized that the 1979 case weights were probably outdated so a new study began in 1987. Conference officials said they will adopt new case weights that are based on the findings of the new study. The new case weights will probably not be available until 1994, though

[11]A Ninth Circuit memo indicated the Subcommittee on Statistics was in practice recommending a temporary judgeship where a court's workload fell between 350 and 399 weighted filings per authorized judgeship. We discussed this memo with the Administrative Office, who did not endorse the standard, but had no objection if we used it for our analysis. We did use the Ninth Circuit workload standard when assessing whether the Subcommittee and Conference were following their own written policies in recommending new temporary judgeships.

[12]The exception was the Conference retained one roving judgeship shared by three Oklahoma districts to serve two of those districts (see footnote 8).

[13]Asbestos cases are assigned the same weight as products liability cases.

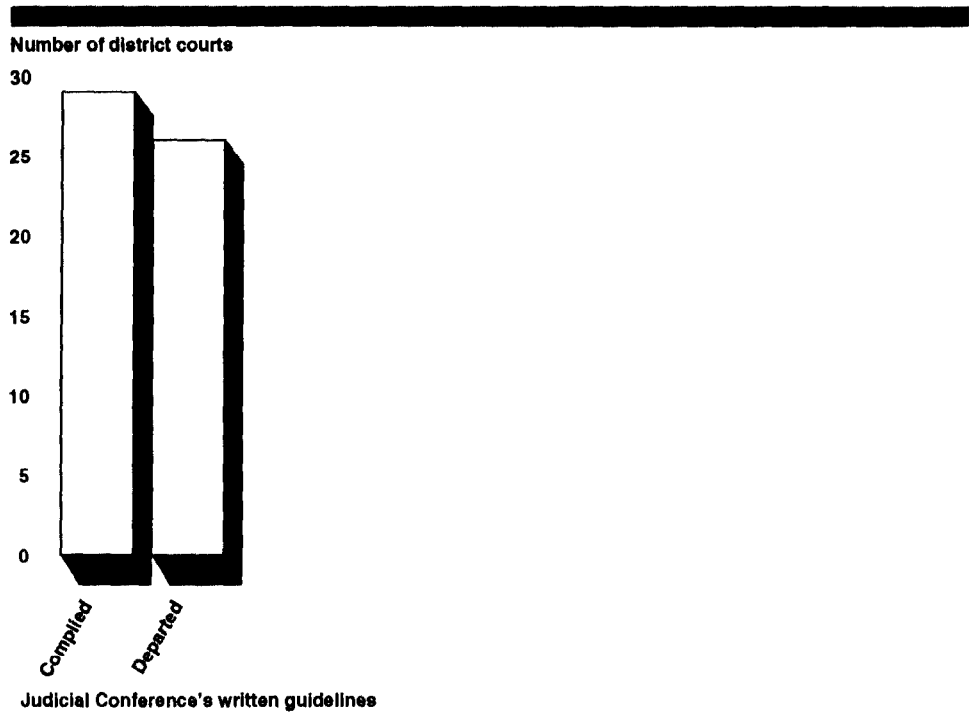
new criminal case weights may be available before that date.[14] We reviewed the study, begun in 1987, to revise the 1979 weights and found it addresses the major limitations of the current weights and will provide additional useful information not available from the 1979 study, such as case weights for magistrate judges.

The Conference Also Based Its Recommendations on Unwritten Guidelines

We found that the Conference applied unwritten, as well as written, guidelines in developing its 1990 judgeship recommendations to Congress. Specifically, we began by applying the Conference's written guidelines to the 54 district courts that requested additional judgeships and the 1 district that did not request any additional judgeships but for which the Conference recommended an additional position. We found that the Conference's recommendations for 29 (53 percent) of the 55 districts could be justified using the written guidelines, while recommendations for the remaining 26 (47 percent) could not (see fig. 1).

[14]Cases included in the new study are tracked until they are completed. Criminal cases usually have priority in district courts because of the requirements of the Speedy Trial Act. However, civil cases may take a number of years before they are decided. Thus, the exact date in which all cases in the study are completed depends on how long it takes to adjudicate the cases in the study. Final weights will not be assigned until all cases in the study have been adjudicated. For more details on the new district court study, see appendix II.

Figure 1: Comparison of District Court Judgeship Recommendations That Complied With or Departed From the Conference's Written Guidelines



Note: Recommendations for 29 (53 percent) of 55 districts complied with the Conference's written guidelines, while recommendations for the remaining 26 (47 percent) districts departed from those guidelines.

Source: GAO, derived from Judicial Conference data.

We discussed with Administrative Office officials why the recommendations for 26 district courts departed from the Conference's written guidelines. Administrative Office officials explained that the Conference used unwritten criteria in conjunction with its written guidelines to develop its judgeship recommendations to Congress. We gave each of these unwritten criteria, or rules, a short name that was based on the principal policy the unwritten rule embodied. These four unwritten "rules" are as follows:

- Ceiling Rule. The Conference would not generally recommend more judgeships than a court requested, even if the court's filings per judgeship

justified more positions than the court requested. The Conference made only one exception to this rule in its 1990 recommendations.[15]

- Asbestos Rule. If a court had heavy asbestos filings and an additional judgeship position were justified by its current weighted filings, the Conference calculated the court's weighted filings after a judgeship was added and its asbestos filings were subtracted from its weighted workload. If a court's workload still met the threshold of 400 weighted filings per judgeship, the Conference would recommend a permanent position. If not, it would generally recommend a temporary position. For example, the Eastern Texas District Court had weighted filings of 428 per judgeship after a position was added—more than justifying an additional permanent judgeship. However, if asbestos cases were excluded, adding another judgeship resulted in weighted filings of 321 per judgeship, considerably below the 400 threshold needed to justify another permanent position. Consequently, the Conference recommended a temporary rather than permanent position.
- Small Court Rule. The Conference recommended a temporary judgeship for a small court (four or fewer existing judgeships) even if the court's resultant weighted filings per judgeship would not normally justify the position. This policy reflected the arithmetic fact that adding a judgeship to a court with few judges would reduce its weighted workload much more than adding one to a court with a larger number of judges.[16] To apply the same workload standard to such small courts would require that they have unusually high workloads to justify an additional judgeship.
- Conversion Rule. The Conference recommended converting a temporary judgeship to a permanent one if a court's weighted filings had remained stable or increased since the creation of the temporary position, regardless of whether the court's current workload met the threshold requirement for new permanent positions of at least 400 weighted filings per judgeship.

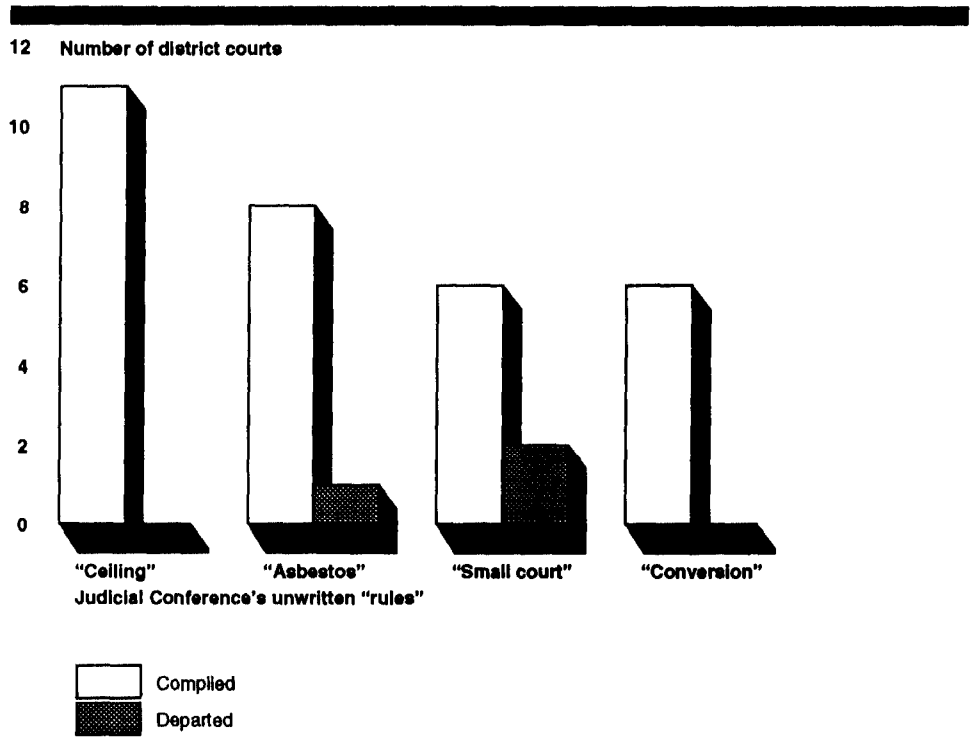
When we applied these unwritten rules we found that 11 of the 26 departures complied with the Conference's "ceiling rule," 8 complied with its "asbestos rule," 6 complied with its "small court rule," and 6 complied with its "conversion rule" (see fig. 2). The Conference's recommendations for 5 of the 26 districts complied with 2 or more of the Conference's rules. Thus, together, the Conference's written and unwritten rules supported

[15]The Conference recommended that two roving judgeships shared between the Eastern and Western Arkansas districts be assigned permanently to the Eastern Arkansas District, because the judges were already spending the majority of their time in that district. The Eastern District had not requested the reassignment or any additional judgeships.

[16]For example, in a court with 3 authorized judgeships and a total of 1,350 weighted filings (450 per judgeship), adding 1 judgeship would reduce the weighted workload per judge to 338. However, in a court with 10 judgeships and 4,500 weighted filings (the same 450 per judgeship), adding 1 judge would reduce the weighted workload per judge to 409 filings.

the Conference's recommendations in all but 4 (7 percent) of the 55 districts for which it made judgeship recommendations (see fig. 3).

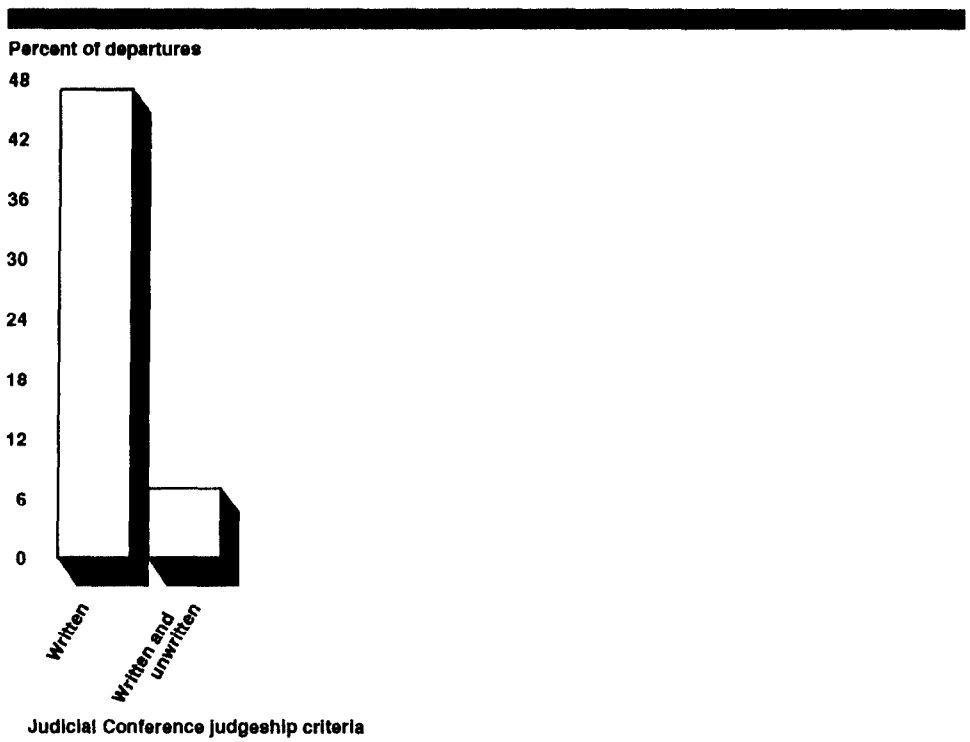
Figure 2: Departures From Written Guidelines That Complied With or Departed From the Conference's Unwritten "Rules"



Note: Recommendations for 22 of the 26 district courts complied with 1 or more of the Conference's unwritten "rules." Recommendations for 4 of the 26 districts departed from or did not apply to these unwritten "rules."

Source: GAO, derived from Judicial Conference data.

Figure 3: Comparison of District Courts With Judgeship Recommendations That Departed From Written Versus Written and Unwritten Criteria



Note: Recommendations for 26 of 55 districts (47 percent) departed from the Conference's written guidelines, while recommendations for only 4 of the 55 (7 percent) departed from its written guidelines and unwritten "rules."

Source: GAO, derived from Judicial Conference data.

Recommendations for Four Courts Departed From Written and Unwritten Guidelines

Recommendations for the remaining four districts did not appear to comply with either the written or unwritten standards used to support additional judgeships. Administrative Office officials provided four explanations for those departures:

- Southern Florida. The recommendation of an additional temporary judgeship was based on that district's large number of drug cases and the Conference's acceptance of the district's argument that the current case weights undervalue such cases.
- Virgin Islands. The Conference recommended a permanent judgeship even though this would reduce its filings to 338.7 per judge. This appears to be a special case. This is a territorial court, which does not have weighted case filings because it has jurisdiction over local matters that are not assigned

weights. Thus, only data on unweighted filings are maintained. Furthermore, territorial judges are appointed for 10-year terms, not life.

- Southern Iowa. The Conference recommended a permanent position for this court, though its weighted filings, after adding the judgeship, were 289.3, low even under the unwritten "small court" rule. The Conference's decision apparently reflected the loss of the part-time services of the roving judgeship that the Conference recommended be assigned permanently to the Northern Iowa District.
- Southern Mississippi. The Conference recommended a permanent judgeship, largely on the basis of the large number of asbestos filings in this district. This is a departure from the Conference's general rule of recommending only temporary judgeships in such cases.

The Conference Used Judgment to Assess Ancillary Data Individual Courts Provided

The Conference used its judgment in addition to its written and unwritten standards for making its judgeship recommendations. For instance, for each requesting district court, it used the court's responses to its 1990 judgeship survey and its workload statistics for the past 5 years. The information from the judgeship survey, which asked if the courts were affected by such factors as travel conditions or sentencing guidelines, provided the Conference broad leeway to apply a variety of judgmental factors in reaching its decisions. We could find no consistent pattern in the Conference's use of this information. See appendix III for an analysis of the Conference's use of the district court questionnaires in its judgeship decisionmaking.

We reviewed the questionnaire responses of the 55 district courts (54 districts and 1 circuit council on behalf of a district) that requested additional judgeships and compared them to the Conference's brief written analysis for each of its 55 district judgeship recommendations to assess how the Conference used the district court questionnaires in its decisionmaking. For reasons that were not clear, the Conference appeared to accept some districts' justifications as reasons to support judgeship requests but reject those same justifications when used by other districts. For example, 30 districts mentioned extensive and/or hazardous travel conditions in justifying their judgeship requests. The Conference accepted that justification for 6 of the 30 courts, rejected it for 4, and made no comment on the remaining 20.

The relative importance of the same justification offered by different courts could depend upon unique circumstances in each court. However, the Conference needs to provide a much better explanation of how it uses

the information it gathers in the survey questionnaires it sends to each district court in assessing the need for more judgeships.

Conference Basically Adopted Courts of Appeals Requests for Additional Judgeships

There are far fewer circuit courts of appeals (12) than district courts (94), and the process of assessing judgeship needs is simpler. In 1990, 7 circuit courts requested a total of 19 to 21 additional judgeships (see table 3). The circuit council of one court modified an initial request of one to three judges to a request for two judges. Unlike the district courts, where the Conference altered over half of the district court requests, the Conference endorsed each circuit council's court of appeals request as submitted, recommending a total of 20 additional judgeships.

Table 3: Chronology of 1990 Circuit Judgeship Requests, Conference Recommendations, and Final Congressional Authorizations

	Courts that requested additional judgeships		Courts that did not request additional judgeships		Total requested, recommended, or authorized	
Chronology of actions	Number of courts	Number of judgeships	Number of courts	Number of judgeships	Number of courts	Number of judgeships
Initial request	7	19-21[a]	5	0	7	19-21
Circuit council recommendation	7	20	0	0	7	20
Conference recommendation	7	20	0	0	7	20
Congressional authorization	6	11	0	0	6	11

[a]The Eighth Circuit initially requested one to three judgeships.

Source: GAO, derived from Judicial Conference data.

Workload Was the Primary Basis for Appellate Judgeship Recommendations

The Conference based its recommendations for appellate court judgeships on each court's workload. The existing workload measure for the circuit courts of appeals is not based on a system of case weights, as in the district courts, but a measure called "merit dispositions." A merit disposition is essentially a case decided on the substantive legal rights of the parties in the case rather than on some procedural point or other technical issues. Thus, the measure excludes all cases not decided on the "merits"—as many as half the cases decided by some courts of appeals. The threshold for adding 1 or more appellate judgeships is 255 merit dispositions per judge. The 255 threshold is based on the average of merit dispositions as a percentage of all case dispositions for the most recent 5

years.[17] For the 1990 recommendations, this would have been the average of the years 1985 through 1989.

As shown in table 4, the merit dispositions workload measure, though it excludes a significant portion of all court of appeals dispositions, supports more new judicial positions than six of the seven appellate courts requested and a total of three times as many additional judgeships as the Conference actually requested. As with district courts, the Conference applied a "ceiling rule" to appellate court judgeship requests. The Conference did not recommend additional judgeships where the court itself requested none but the workload would have supported them. The Fifth and Eleventh circuits, for example, could have requested 11 and 13 judges, respectively, based on their workload. However, the Fifth Circuit requested only one additional judgeship, while the Eleventh Circuit requested none.

Table 4: Appellate Court Judgeships: Circuit Requests and Judicial Conference Judgeship Recommendations Compared to the Number That the Workload Formula Justified

Circuit court of appeals	Circuit request	Conference recommendation	Number workload formula supported
First	1	1	2
Second	0	0	0
Third	4	4	4
Fourth	4	4	8
Fifth	1	1	11
Sixth	5	5	9
Seventh	0	0	3
Eighth	1-3	2	6
Ninth	0	0	6
Tenth	3	3	4
Eleventh	0	0	13
D.C.	0	0	(2)
Total	**21**	**20**	**64**

Source: GAO, derived from Judicial Conference data.

Appellate Court Workload Measure Needs Revision

The appellate court workload measure, merit dispositions, differs in two major ways from the workload measure used for district courts. First, the district court case weights focus on case filings, while merit dispositions focuses on case dispositions. Secondly, the district court case weights represent an estimate of the average amount of judicial time different

[17]See appendix II for more details.

types of cases will take to decide. The merit dispositions measure, on the other hand, does not reflect the varying time demands that different types of cases may impose on appellate judges. Instead, it lumps together into a single category most cases decided by appellate judges. All merit dispositions, except prisoner petitions, are treated as requiring equal judicial time. Prisoner petitions decided on the merits are weighted at one-half that of all other merit dispositions because they seem to take less time—for example, they are not generally granted oral argument but instead decided on the basis of the briefs submitted by each side.

The merit dispositions measure excludes altogether cases not decided on the merits—a third or more of the cases decided by most appellate courts. Even with this exclusion, the workload measure supported far more judges than courts of appeals requested during the 1990 judgeship survey. The appeals courts' own restraint, not the workload formula, seemed to have determined the actual number of appellate judgeships the Conference requested.

Because the merit disposition measure does not reflect the varying time demands different types of cases may require, the Ninth Circuit developed its own case weighting system to distribute workload more evenly among its judges. The Ninth Circuit system weights cases using a 10-point scale. Those rated 1 are the simplest and are the only category decided without oral argument, while those rated 10 are considered to be the most complex and time-consuming.

In its 1990 report, the Federal Courts Study Committee recommended that a new measure of appellate court workload be developed to replace "merit dispositions." We concur. The Federal Judicial Center, in conjunction with the Conference's Committee on Judicial Resources and its Subcommittee on Judicial Statistics, has begun to assess methodological options for developing a better measure of appellate court workload.

Conclusions

Given the limitations of current workload measures and the judgmental nature of much of the Conference's decisionmaking, we were unable to determine whether the Conference's 1990 recommendations accurately reflected the need for additional judges. However, within these limitations, we found the Conference's method of determining the need for more judges to be reasonable.

As the Conference recognizes, the workload measures currently used for both district and appellate courts are outdated and probably do not accurately measure judicial workload. The current district court case weights were developed in 1979 and probably do not reflect the demands that certain cases may place on judges' time, such as multiple defendant drug cases or asbestos products liability cases, which sometimes involve hundreds of plaintiffs and several defendant companies. The study to revise the 1979 weights, begun in 1987, should provide more accurate weights for use in assessing judgeship needs.

The current appeals court workload measure is an aggregate one that does not distinguish between time demands that different types of cases may make on appellate judges. The Conference has recognized the need for a workload measure that more accurately reflects the time demands different types of cases make on appeals court judges by directing the Federal Judicial Center to explore options for developing a better appellate court workload measure.

With four district court exceptions, we found that the Conference's written and unwritten quantitative workload standards for recommending additional judges were consistently applied to each court.

However, it is not possible to assess the accuracy of the Conference's system because it is as much judgmental as quantitative. For example, the questionnaires sent to each district elicit information on special needs or conditions in each district, such as the extent of senior judges' assistance to active judges regarding a court's caseload, that may affect a district's need for additional judgeships. The Conference's use of this information seemed to vary from court to court. The Conference accepted rationales offered by various district courts, such as unusual travel demands on judges, while rejecting the same rationale for other courts.

Though the Conference used both written and unwritten guidelines, or "rules," to develop its 1990 district court judgeship recommendations, it provided Congress with only the written criteria and a short justification for the recommendation for each district and appeals court. The Conference's failure to clearly and completely identify for Congress all of the policies, procedures, methodologies, and rationale it used to develop its 1990 judgeship recommendations made it appear that the Conference was more inconsistent in developing those recommendations than it in fact was.

Recommendations

The Conference should provide to Congress all the policies and criteria it uses in making its judgeship recommendations. Where it finds that special circumstances in an individual court warrant departure from its general policies and criteria, the Conference should clearly explain the basis for its departure. Until the new district court case weights are available, the Conference should also indicate where its recommendations reflect its judgment that the 1979 case weights do not reflect the demands that particular types of cases, such as multiple defendant drug cases, place on district judges. The district court case weights should also be revised more regularly. In addition, the Conference and the Federal Judicial Center should move to develop a better workload measure for the courts of appeals.

Agency Comments and GAO'S Response

We provided a draft of this report for comment to the Administrative Office of the U.S. Courts and the Federal Judicial Center. Their comments and our responses are summarized below. The full text of the comments of each are found in appendixes V and VI.

Administrative Office of the U.S. Courts

In general, the Administrative Office agreed that our report accurately described the Judicial Conference's process for developing judgeship recommendations, identified all of the factors included in the decisionmaking process, and appropriately concluded that the Conference's process of assessing the need for additional judgeships is a reasonable one. The Administrative Office raised specific points regarding our (1) reference to "written" guidelines and "unwritten" rules, (2) definition of temporary judgeships, (3) use of a Ninth Circuit memorandum as part of the written criteria for recommending temporary judgeships, and (4) finding that the Conference's use of supplemental data was ambiguous. The Administrative Office also confirmed that the Conference's recommendation for Southern Iowa was affected by the recommendation to convert a roving judgeship to serve the Northern Iowa district only. Two of the remaining Administrative Office comments were incorporated into our report.

The Administrative Office stated that all of the information in the report was made available to Congressional staff in 1990, especially that of the House Judiciary Committee, and that the same information would have been made available to the Senate staff as well had they requested further clarification. The Administrative Office also suggested that the report clearly note that the "written" rules to which we refer were those

specifically contained in the materials transmitted to Congress in 1990. It stated that although the "unwritten" rules were not contained in those materials, the rules are well established in the Conference process and have been in use since at least 1980. Consequently, the Administrative Office suggested that it would be more appropriate to refer to the "unwritten" rules as "informal application guidelines."

The Administrative Office's comment confirms our recommendation that the Conference should include in its transmittal to Congress all the major criteria—formal and informal—used in developing its judgeship recommendations, without Congress specifically having to ask for "clarification" before it receives such information. In distinguishing between the Conference's "written" and "unwritten" rules, we noted that only the "written" rules were initially provided to Congress. Unless Congress has specifically asked for additional information, the Conference has not provided information on its well-established "informal application guidelines."

The Administrative Office suggested that the last sentence of our footnote defining temporary judgeship positions be deleted. That sentence said that a court which had a temporary judgeship position that expired would have more judges than authorized until the next vacancy occurred.

We amended the footnote's last sentence (see p. 9) as follows: "However, until the next vacancy occurs, a court would have more judges than its number of authorized permanent positions."

The Administrative Office objected to our use of a Ninth Circuit memorandum that stated in part that the Conference recommended a temporary judgeship in courts where an additional judgeship results in weighted filings slightly below (350-399) the standard of 400 per judgeship. The Administrative Office noted that this standard did not represent Judicial Conference policy nor was it endorsed by Administrative Office staff. "The Judicial Conference has not adopted a precise range for making the decision on temporary judgeships, primarily because of small courts which would have difficulty in meeting such a standard."

As stated in the report, we adopted the Ninth Circuit memorandum's range as criteria for recommending additional temporary positions because it quantified the Judicial Conference's less precise written criteria that a temporary judgeship would be recommended when "adding a position would result in weighted filings slightly below the 400 per judgeship

threshold." We concluded that recommendations for additional temporary positions that resulted in weighted filings per judgeship below 350 or above 399 departed from the Conference's written criteria.

While the Conference's formal criteria for recommending temporary judgeships does not specify a range of 350-399 weighted filings per judgeship, the data suggest that the Conference did generally use such a range for making temporary judgeship recommendations. In 1990 the Conference recommended temporary judgeships in 29 districts. After adding a temporary judgeship, weighted filings in 18 of those 29 districts (62 percent) fell within the 350-399 range. Excluding the 6 districts that qualified for a temporary judgeship under the "small court rule," the workload of 78 percent of the districts (18 of 23) fell within the 350-399 range. The remaining 5 districts had weighted filings that fell outside the 350-399 range after adding a temporary judgeship. Four of those five districts qualified for a temporary judgeship under the Conference's "ceiling" and/or "asbestos" rules while one of the five did not qualify for a temporary judgeship under the Conference's written guidelines and unwritten "rules."

In appendix III, we review the Conference's use of the questionnaires completed by each court and conclude that the Conference's use of the information in these questionnaires appears ambiguous and at times inconsistent. The Administrative Office stated that our use of criminal filings (on p. 24 of our draft report) to illustrate such apparent inconsistencies is inappropriate because the Conference did in fact have a consistent method of assessing the criminal filings data offered by individual courts in support of their judgeship requests.

We accept the Conference's explanation of how it used criminal data filings, but we could have chosen a number of other examples (such as the one now used on p. 17 of this report) to illustrate our basic point that it is not clear how the Conference used the wide variety of judgeship questionnaire information provided by all district and appellate courts when making its judgeship recommendations. For example, in 1989 the Conference specifically asked each court two questions on the impact, if any, the federal sentencing guidelines had on their workload and whether that impact affected each court's request for additional judgeships. While 32 district courts cited the impact of the guidelines as additional justification for adding judgeships to their court, the Conference did not mention the guidelines at all in the explanations for its individual district court recommendations.

Federal Judicial Center

The Federal Judicial Center stated that determining when to update the district court case weights is a much more complex determination than implied by our recommendation that they be updated more frequently than every 10 years. The Center noted that determining when to revise the district court case weights is a complex issue, requiring a careful balance of costs and benefits. Specifically, it pointed out that events that create a clear need for case weight revisions tend to be quite irregular. For example, major changes in the demands imposed by dominant types of cases may not change for 5 or 10 years, or may change quickly, necessitating a new time study and case weight revisions much sooner than 5 years. Thus, according to the Center, regular revision of the case weights at intervals more frequent than every 10 years may not be necessary.

The Center's comments do not reflect several additional factors that suggest the need for some type of regular reassessment of the district court case weights. The 1979 case weights were not designed to last a decade but to be an interim solution until the Judicial Center could develop a permanent case-weighting system.[18] The time and effort it takes to conduct a time study means that new case weights are likely to be somewhat dated when issued. The current study is already 2 years old, and the final civil case weights may not be ready for several more years. The 1990 Civil Justice Reform Act requires each district court to analyze its docket and case-processing procedures and develop plans for reducing both the time and costs of processing civil cases. Thus, the time judges are spending on the civil cases in the current time study may not necessarily be an accurate indicator of the time such cases will require in the future.

There is currently no mechanism for adjusting the case weights short of another time study. The courts' automation efforts plus the docket and case-processing analyses and resulting case management plans developed under the Civil Justice Reform Act provide sources of data that can potentially be used to assess the accuracy of the case weights, the need to revise them, and perhaps assist in revising them.

The Center also noted that we seem to misunderstand the purpose of the courts of appeals workload measure, merit dispositions. The Center stated that the measure's purpose is not to balance workload among the judges of a particular court but to assess the total workload of a court and thus its

[18]According to the 1979 Federal District Court Time Study, "the [1979] survey was intended to be an interim solution to the problem of revising case weights. . . . The [Judicial] Center is now working on the development of a permanent case-weighing system. The ideal system would permit routine updating of case weights without undertaking a new burdensome survey of district judges each time."

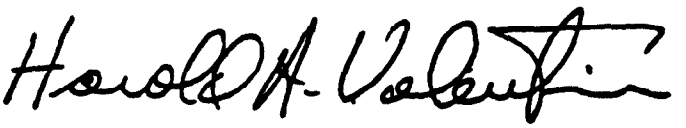
need for more judges. Nor, according to the Center, is the Ninth Circuit's system, which is designed to balance workload among its judges, appropriate for measuring the need for additional judgeships.

The Center may have misunderstood our position on the merit dispositions workload measure. It is useful to note that it is not necessarily true that a single workload measure could not be used to both assess the need for additional judges and balance workload among judges. The key is a workload measure that, like the district court case weights, reflects the varying time demands that different types of cases are likely to impose on judges. A separate case weight is assigned to each type of case on the basis of the average estimated amount of judicial time the case will require to decide. Thus, the district court case weights, if accurate and up-to-date, could be used to distribute and balance a district's workload among its judges by assigning cases with the goal of equalizing the total case-weight value of the cases assigned to each judge.

We are aware of the limitations of the Ninth Circuit case-weighting system, and we note some of its key limitations in appendix II. We agree that the Ninth Circuit's system is not an appropriate replacement for merit dispositions as a measure of the need for more judges. But we believe that our criticism of the merit dispositions measure is valid. It is a gross aggregate measure of appellate workload. Unlike the district court case weights, the merit dispositions measure does not reflect the varying time demands that different types of cases may impose on appellate judges. We simply used the Ninth Circuit system, which does attempt to consider the varying time demands of different types of cases, as an illustration of this shortcoming.

We are sending copies of this report to the Director, Administrative Office of the U.S. Courts, the Judicial Conference of the United States, and the Director, the Federal Judicial Center, and to other interested parties. Copies will be made available to others upon request.

Major contributors to this report are listed in appendix VII. If you have questions about this report, please call me or William Jenkins at (202) 566-0026.



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Analysis of District Court Judgeship Recommendations

Title II of the Judicial Improvements Act of 1990 created 74 additional federal district court and 11 court of appeals judgeships, for a total of 649 district court judgeships and 179 court of appeals judgeships.[1] The act directed us to determine whether the methods used by the Judicial Conference in recommending the creation of additional judgeships to Congress

- accurately measured the workload of existing federal judges,
- were applied consistently to each district court and court of appeals, and
- provided an accurate indicator of the need for additional judgeships for each district and appellate court.

In this appendix we discuss the results of our analysis of the Conference's recommendations for district courts.

An Overview of the Judicial Conference's Biennial Needs Assessment Process

Prior to 1980, judgeship surveys were held every 4 years and the Conference relied on projections of future court workload. Beginning in 1980, the district court judgeship surveys have been conducted every 2 years rather than every 4, eliminating the need for projections. Since 1980 the Conference has generally not used workload projections when recommending additional judgeships except when accounting for diversity cases' effect on the courts' filings. The Conference and Congress agreed that all judgeship recommendations should be based on current need because using projections as a basis for creating lifetime judgeship positions created a risk of overestimating future workload for individual courts and, thus, the need for additional judgeships.

Every 2 years, the Chairman of the Subcommittee on Judicial Statistics, on behalf of the Conference, sends to the chief judges of each district and circuit court a questionnaire surveying their judgeship needs. The 1989 survey asked a variety of workload questions.[2] Some focused on a court's caseload, for example, "Explain all caseload factors (shown in the statistical profile) of your court that justify your request for additional judgeships." Others focused on nonworkload factors that may affect a court's ability to handle its caseload, for example, "Discuss geographical problems within your district that affect your need for additional

[1]The district court total includes 632 permanent positions, 32 temporary positions, and 4 judgeships in the territorial courts of Guam, the Northern Mariana Islands, and the Virgin Islands. Territorial court judges are appointed for 10-year terms while all other district court judges are appointed for life.

[2]The questionnaire is usually sent out in the fall of the year preceding the one in which the Conference forwards its recommendations to Congress. Thus, the questionnaire for the Conference's 1990 recommendations was sent out in the fall of 1989.

judgeships." The questionnaire requested data from the courts' most recent statistical year, which, for the 1990 survey, was statistical year 1989—July 1, 1988, through June 30, 1989. The Administrative Office's Statistics Division provided each court with a variety of statistics on its workload.

The Conference's Committee on Judicial Resources is responsible for coordinating the biennial judgeship surveys. Its Subcommittee on Judicial Statistics established the criteria for evaluating the judgeship requests resulting from the 1989 survey. It evaluated the survey responses and a variety of workload statistics for each court, such as weighted filings, pending caseload, and criminal felony cases for statistical year 1989 (year ending June 30) and the 5 preceding statistical years. The Subcommittee then made initial judgeship recommendations to which each court and each circuit council could respond and, if they chose, provide additional data for the Subcommittee to consider.[3]

After reviewing any additional data, the Subcommittee made its final recommendations to the Committee on Judicial Resources, which reviewed them and developed final recommendations for the Conference to consider. The Committee and Subcommittee functioned as the Conference's support staff. After approving its final set of recommendations, the Conference, on behalf of the Judiciary, officially transmitted the district and appellate court judgeship recommendations to Congress.

The Conference reviewed the Committee's final judgeship recommendations and workload/questionnaire data and made its own recommendations to Congress in a June 22, 1990, letter with attachments to the Speaker of the House of Representatives. For each district court the official request included (1) a worksheet showing a variety of statistics on each court's workload, such as the number of weighted filings per judgeship, and (2) a very brief statement explaining the basis for the Conference's recommendation for additional judgeships, including why it supported or altered a particular court's request for additional judgeships. The Conference's report included those courts that requested additional judgeships and any other courts for which the Conference made judgeship recommendations. Thus, its report excluded those courts for which neither the court requested nor the Conference recommended any changes in judgeships.

[3]Only rarely has a recommendation been made to reduce a court's existing number of judges.

The Conference recommendations for additional judicial positions were based on the premise that it would recommend only judgeships that were needed. This position is outlined in a letter the Director of the Administrative Office of the United States Courts sent to the Speaker of the House of Representatives on June 22, 1990:

"Although individual courts often perceive a need for an additional judgeship which is not reflected in final Conference recommendations, that is not a condemnation of individual court requests; it is a reflection of the Conference's efforts to respond to repeated Congressional admonitions urging restraint in the growth of the number of authorized judgeships. The 1990 Judicial Conference recommendations were deliberately held to the 'bare bones minimum' necessary to avoid identifiable serious case processing congestion in individual courts. While minimum recommendations may require individual judges to continue to carry unreasonably heavy caseload burdens, and may also severely restrict a court's management flexibility, the Conference has nevertheless tried to avoid recommending additional positions unless a court's ability to serve the public adequately and responsibly would be clearly reduced to an unacceptable level."

In keeping with this policy, the Conference primarily limits its biennial analysis of judgeship needs to those districts that request additional judges. In 1990, the Conference made a judgeship recommendation for only 1 of the 40 districts that did not request additional judgeships.[4]

Types of Judgeship Recommendations the Conference Made

In 1990, the Conference made seven different types of judgeship recommendations to Congress. They were as follows:

- adding one or more permanent judgeships to a district court;
- adding a temporary judgeship;[5]

[4]The Conference accepted the recommendation of the Eighth Circuit Council that two roving judgeships shared between the Eastern and Western Arkansas districts be administratively assigned full time to the Eastern District. With the first vacancy in each roving position, the judgeships would be designated as positions for the Eastern District only.

[5]Temporary judgeships refer to positions having a 5-year term. Judges appointed to both temporary and permanent positions hold lifetime appointments. When the temporary position expires, the judge appointed to that position does not leave the bench, but the next judicial vacancy to occur in the district (permanent or temporary) is not filled. This reduces the number of authorized judgeships for the district to the number of permanent positions. However, until the next vacancy occurs, a court would have more judges than its number of authorized permanent positions.

Temporary judgeship positions are recommended for district courts that have a workload that may be temporarily burdening that court (e.g., a large number of asbestos filings). The Judgeship Act of 1990 converted all of the temporary judgeships created in 1984 to permanent positions and created 13 new temporary judgeships using the following language: "The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this title, shall not be filled."

- converting an expiring temporary judgeship to a permanent judgeship (these conversions do not add judgeship positions to a court, but merely reclassify existing positions);
- extending a court's temporary judgeship for another 5-year term;
- converting a roving judgeship (a judge that is shared between or among two or more district courts within a particular circuit) to a permanent one serving only one district court;
- adding any combination of the above, such as one permanent judgeship and one temporary judgeship, to a district court; and
- rejecting a court's request and refusing to recommend any or all of the judgeships the district court requested.

Baseline Workload Standards Used to Evaluate Requests for Judgeships

The Subcommittee on Judicial Statistics, Committee on Judicial Resources, and the Conference based their 1990 judgeship recommendations on workload thresholds (benchmarks) to determine (1) if a court justified a need for an additional judgeship or judgeships and (2) if the added judgeship(s) should be permanent or temporary. None applied these thresholds inflexibly; rather, they were used as a starting point for consideration of any other factors noted in the individual court and circuit council responses to the judgeship survey questionnaires and each court's caseload statistics. The baseline standards used to make the Conference's 1990 district court judgeship recommendations to Congress varied by the type of position recommended.

The beginning point of the assessment was each court's weighted case filings. When a case is filed in district court, it is coded by type, such as drug distribution or products liability. Each type of case has an assigned weight. The case weight is an estimate of the relative amount of judicial time the case is expected to take. The weights were established in 1979.

The weight of the "average" case is 1.0. A civil products liability case filed under a court's diversity jurisdiction (involving parties from two different states and meeting a monetary threshold) has a weight of 1.5119, while a criminal postal larceny and theft case has a weight of 0.4191. Thus, a postal larceny and theft case would be expected to take about one-third as much judicial time to decide as a products liability case. Based on the weights assigned to each case, a court with 400 case filings per judge could, for example, have weighted filings of 350 or 450 per judge, depending upon the mix of cases that were filed and their individual weights. Appendix II discusses in more detail the current case weights and a study now under way to revise them.

Permanent Judgeships

The Conference's 1990 written guidelines provided a two-step formula to justify adding a permanent judgeship or judgeships for a district court. The Conference could justify recommending an additional permanent judgeship, if (1) the court's current weighted filings per judgeship met a benchmark of 400 (indicating a need for additional judgeships) and (2) the court's current weighted filings were sufficiently in excess of 400 per authorized judgeship that adding a judgeship would not result in the court's weighted filings falling below 400 per judgeship.

Temporary Judgeships

The Conference's 1990 judgeship survey established a similar two-pronged approach for temporary judgeships, but the basic difference was the resulting weighted filings after a judgeship was added. A temporary judgeship could be justified if (1) the court's current weighted filings per judgeship were at least 400 weighted filings per judgeship and (2) adding a judgeship would result in weighted filings slightly below the 400 threshold.

The Conference's written guidelines did not quantify "slightly below 400" for recommending additional temporary judgeships. However, a Ninth Circuit document indicated that the Subcommittee recommended a temporary judgeship where an additional judgeship would result in weighted filings of 350 to 399 per judgeship. We used this standard in assessing whether the Conference consistently applied its own policies in recommending temporary judgeships.

No Additional Judgeships

The Conference also had written criteria for rejecting district court requests for additional positions. The Conference would not recommend an additional judgeship if a court's current weighted filings were below 400 per judgeship unless there were unique circumstances that justified departure from these written guidelines. This guideline was used as a point of departure for considering other pertinent factors, such as a large and continuing complement of senior judges, an unusual mix of cases, and/or a district's geography.

Roving Judgeships

The Conference had no written policy on roving judgeships shared between two or more districts. However, with one exception, the Conference recommended that four roving judgeships be assigned

full-time to one district for the three districts (two districts and one district's circuit council) that requested additional judgeships.[6]

Asbestos Filings, a Special Case

Thirty district court requests for additional judgeships were based, in part, on a large number of asbestos filings or pending asbestos cases. Asbestos cases are assigned the same weight as other products liability cases (1.5119). They are the only individual case type for which the Conference developed a special "rule" in developing its 1990 judgeship recommendations (see the section below on "unwritten rules"). The Conference's 1990 written guidelines stated that because the future of asbestos litigation remained unclear, the Conference could justify recommending only temporary judgeships for those district courts.

Impact of Pending Caseloads

The Conference's 1990 written guidelines stated that no recommendations for temporary judgeships could be justified solely on the basis of a court's backlog. The complexity of a court's workload and the time expected to handle those cases were included in the weights assigned to cases at the time they were filed.

Overview of the Results of the 1990 District Court Recommendations

During the 1990 judgeship survey, 54 district courts requested 91 judgeships—74 additional permanent judgeships, 10 additional temporary judgeships, and the conversion of 7 existing temporary judgeships to permanent ones (see tables I.1 and I.2).

Each circuit council supported most of the requests in its circuit. The councils supported the requests of 39 of the 54 districts that requested judgeships. Of the remaining 15 districts, the councils modified the requests of 12 and rejected the requests of 3. One council also concurred in the Subcommittee's recommendation to convert the two roving judgeships to permanent positions serving only one district for a district that did not request additional judgeships. Thus, the councils recommended positions for 51 of the 54 requesting district courts, no additional judgeships for the remaining 3 districts, and the assignment of

[6]The one exception was that the Conference retained one roving judgeship shared by three Oklahoma districts to serve two of those districts.

We excluded the Eastern Oklahoma District from our analysis of roving judgeships. The Conference's roving judgeship recommendations for the Northern and Western Oklahoma districts affected the Eastern Oklahoma District by adjusting the number of its judgeships from 1.33 to 1.5. The Eastern District did not request additional judgeships and the Conference's roving judgeship decision did not add judgeships to this court.

roving judges permanently to 1 district court that requested no additional judges or the reassignment of the roving judges. The councils recommended a total of 92 district judgeships—61 additional permanent judgeships, 20 additional temporary judgeships, the conversion of 7 temporary judgeships to permanent ones, and the conversion of 4 roving judgeships to permanent ones for a total of 52 district courts.

The Conference's final judgeship recommendations greatly modified the districts' requests. The Conference fully supported the requests of less than half (25) of the 54 districts that requested judgeships, modified the requests of 25 districts, and rejected the requests of 4. The Conference recommended a total of 87 judgeships for 51 districts, including the assignment of 2 roving judgeships full-time to one district that had not requested any changes in its current judgeships.

When comparing the Conference's recommendations to the districts' requests, the Conference, following its stated policy, tended to be more conservative than the individual courts in recommending additional judgeships. While the Conference supported about the same aggregate number of judgeships as the districts requested—85 rather than the 91 initially requested—it preferred to recommend temporary judgeships rather than the permanent ones the districts requested. For example, the districts requested 74 additional permanent judgeships and 10 additional temporary judgeships, while the Conference recommended 47 permanent and 29 temporary judgeships. Recommending a temporary rather than a permanent judgeship allows the Conference (and Congress) the option of reassessing the court's workload when the 5-year temporary position expires to determine whether the workload justifies making the temporary position a permanent one. As previously noted, the Conference also recommended converting two roving judgeships to permanent ones serving only one district in the case of a district that did not request additional judgeships.

Congress authorized 75 judgeships for 48 of the 54 districts requesting judges and no additional judgeships for the remaining 6 districts. Congress' aggregate number of additional judgeships authorized for those 48 districts was similar to that requested by the 54 districts—53 additional permanent and 12 additional temporary judgeships compared to the requested 74 permanent and 10 temporary judgeships. However, its authorizations for those individual districts were closer to the Conference's recommendations; Congress fully supported 26 of the 54 districts' requests, while modifying or rejecting the requests of the

remaining 28. Congress also authorized 11 additional judgeships (8 additional permanent, 1 additional temporary, and 2 roving judgeships converted to permanent positions) for 10 districts that did not request any judgeships. Therefore, Congress' 1990 authorizations were for a total of 86 judgeships—61 additional permanent judgeships, 13 additional temporary judgeships, 8 conversions of temporary judgeships to permanent ones, and 4 conversions of roving judgeships to permanent ones. Table I.1 summarizes the results of the 1990 assessment process. Table I.2 shows a breakdown of the types of district judgeships requested, recommended, and authorized.

Table I.1: Results of the 1990 District Judgeship Needs Assessment

	Districts requesting additional judges		Districts not requesting additional judges		Total requested, recommended, or authorized	
Initial district requests and subsequent decisions	**Number of district courts**	**Number of judges**	**Number of district courts**	**Number of judges**	**Number of district courts**	**Number of judges**
Initial district request for additional judges	54	91	40	0	54	91
Circuit councils' recommendations	51	90	1	2	52	92
Judicial Conference's recommendation	50	85	1	2	51	87
Congressional authorization	48	75	10	11	58	86

Note: "Judges" refers to total "judgeship" positions of all types.

Source: GAO, derived from Judicial Conference data.

Table I.2: Types of District Judgeships Requested, Recommended, and Authorized in 1990

Initial district requests and subsequent decisions	Permanent judgeships	Temporary judgeships	Convert temporary judgeship to permanent position	Reassign roving judgeship to only 1 district[a]	Total judgeships
District requests	74	10	7	0	91
Circuit council recommendations	61	20	7	4	92
Judicial Conference recommendations	47	30[b]	6	4	87
Congressional authorizations	61	13	8	4	86

[a]A roving judge whose services were previously shared between two or more districts is reassigned full-time to only one district. Such a recommendation affects all districts—the one gaining the full-time services of the roving judge and the one or two districts losing that judge's services.

[b]Includes recommendation to extend one existing temporary judgeship for another 5 years.

Source: History of the Authorization of Federal Judgeships Including Procedures and Standards Used in Conducting Judgeship Surveys (Administrative Office of the U.S. Courts), pp.32-35.

Analysis of Conference's 1990 Assessment of District Court Judgeship Needs

The Conference used both written guidelines and unwritten criteria in developing its 1990 recommendations for additional district court judgeships. Our analysis illustrates why it would be difficult for Congress to understand those recommendations using only the written guidelines and policies the Conference provided to Congress.

In 1990, the Conference assessed the needs of the 54 districts that requested additional judgeships as well as a circuit council request for 1 district that did not itself request additional judgeships. The Conference's written guidelines and policies could be used to support recommendations in 29 (53 percent) of the 55 districts. Recommendations, however, in 26 districts (47 percent of the 55 districts) could not be supported on the basis of the written guidelines alone.

Departures for those 26 districts constituted recommendations for a greater number of judgeship positions than the written guidelines justified in 13 districts and for fewer positions than the criteria would have justified in the remaining 13 districts.

When we asked for an explanation of these 26 departures from the written standards, the Administrative Office officials said that the Conference also applied several unwritten criteria to its judgeship recommendations.

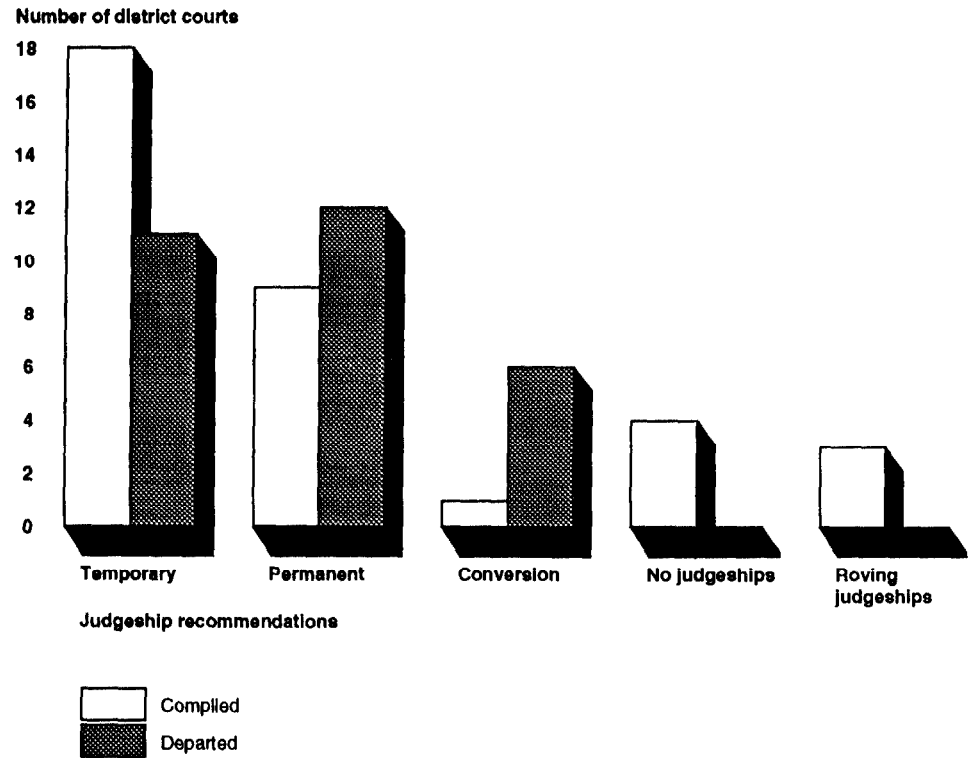
Applying these unwritten "rules" as well, we could support recommendations for 22 of the 26 districts. The remaining 4 districts (7 percent of the 55 districts), however, did not appear to comply with either the written or unwritten standards used to support additional judgeships. In the remainder of this section, we describe our analysis of the Conference's assessment of district court judgeship needs.

Step 1: Applying the Conference's Written Criteria/Policies

The Conference developed written criteria and policies for recommending additional permanent or temporary judgeships, converting temporary judgeships to permanent ones, extending temporary judgeships for another 5 years, and not recommending additional judgeships. These criteria were used to adopt, alter, or reject the requests of specific district courts. The Conference also applied a general policy of reassigning roving judgeships—those shared between two or more districts—full time to only one district. In 1990, the Conference made recommendations for 87 judgeships in 51 districts (including some conversions that did not add positions to the courts) and rejected 4 districts' requests for additional judges.

In analyzing the Conference's approach, we first broke down the Conference's recommendations for district courts by types of judgeships, because different standards applied to different types of judgeships. We then determined whether the Conference complied with or departed from its written guidelines for each type of judgeship (see fig. I.1).

Figure I.1: Breakdown of District Court Judgeship Recommendations That Complied With or Departed From the Conference's Written Guidelines



Note: Judgeship recommendations were for 64 districts rather than 55 because recommendations for 9 of those 55 were for more than 1 type of judgeship.

Source: GAO, derived from Judicial Conference data.

The Conference's recommendations departed from its written criteria for (1) adding temporary judgeships in 11 of 29 districts, (2) adding permanent judgeships in 12 of 21 districts, and (3) converting temporary judgeships to permanent ones or extending a temporary judgeship in 6 of 7 districts.[7] The Conference complied with its written guidelines in all of its recommendations for adding no judgeships and for reassigning roving judgeships to positions serving only one district.

[7]These figures add up to 29 departing districts rather than 26 because 3 of the 26 districts departed from written guidelines for 2 types of judgeships, thus creating 2 departures for each of those 3 districts.

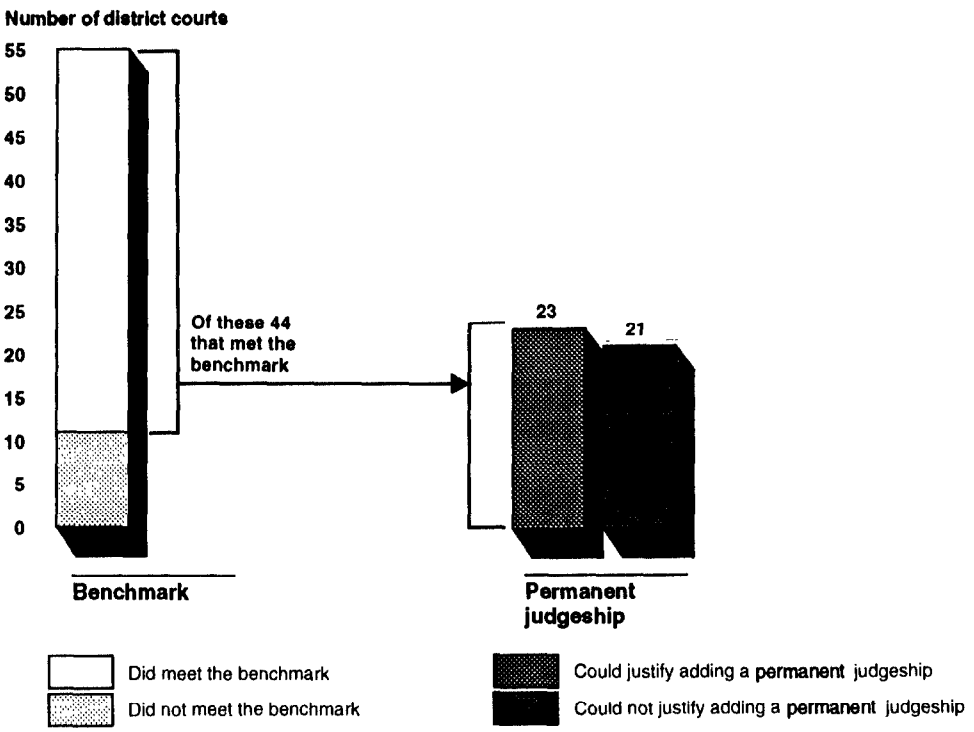
The Conference's written criteria and our analysis of its 1990 recommendations by type of judgeship are provided below.

Permanent Judgeships

The Conference first determined if a court's request for an additional permanent judgeship or judgeships was justified by applying a threshold indicator of need—a district's weighted filings had to be at least 400 per judgeship. If this benchmark was met, the Conference could then recommend 1 or more additional permanent judgeships if that court's current weighted filings were sufficiently in excess of 400 per judgeship that adding the judgeship(s) would not result in the court's weighted filings falling below 400 per judgeship.

Our results show that of the 55 district courts for which the Conference made any judgeship recommendations (including 4 districts whose requests the Conference rejected), 44 (80 percent) met the benchmark of 400 weighted filings per judgeship. At that point the Conference could consider recommending an additional judgeship. Eleven of the 55 (20 percent) did not meet the benchmark. We then found that 23 of the 44 districts that met the benchmark had weighted filings that could have justified adding at least 1 permanent judgeship to their courts, while the other 21 could not justify adding a permanent judgeship (see fig. I.2).

Figure I.2: Transition From Meeting the Benchmark to Adding a Permanent Judgeship



Source: GAO, derived from Judicial Conference data.

The Conference recommended that 21 districts receive a total of 47 additional permanent judgeships. Our results show that all 21 districts' weighted caseloads met the 400 per judgeship benchmark. We also found, however, that recommendations for additional permanent judgeships in 12 districts departed from the Conference's written guidelines. Those departures consisted of recommendations for fewer permanent judgeships in 10 districts and more judgeships in 2 districts (see table I.3).[8] Thus, the Conference's departures were more likely to be for fewer permanent judgeships than the courts' weighted caseloads justified. For example, the Conference recommended adding 1 permanent and 1 temporary judgeship

[8]Specifically, we concluded that the Conference's recommendation for permanent judgeships met its written workload standard if after adding one or more permanent positions a court's weighted filings fell between 390 and 410 per judgeship. We judgmentally chose this narrow range (2.5 percent above or below the stated standard of 400 weighted filings) because it was improbable that a court's weighted filings would fall precisely at the 400 standard after adding a position. Administrative Office officials agreed that the use of this range was reasonable.

to the Northern Ohio District Court, though the court's weighted caseload justified adding 10 permanent positions.[9]

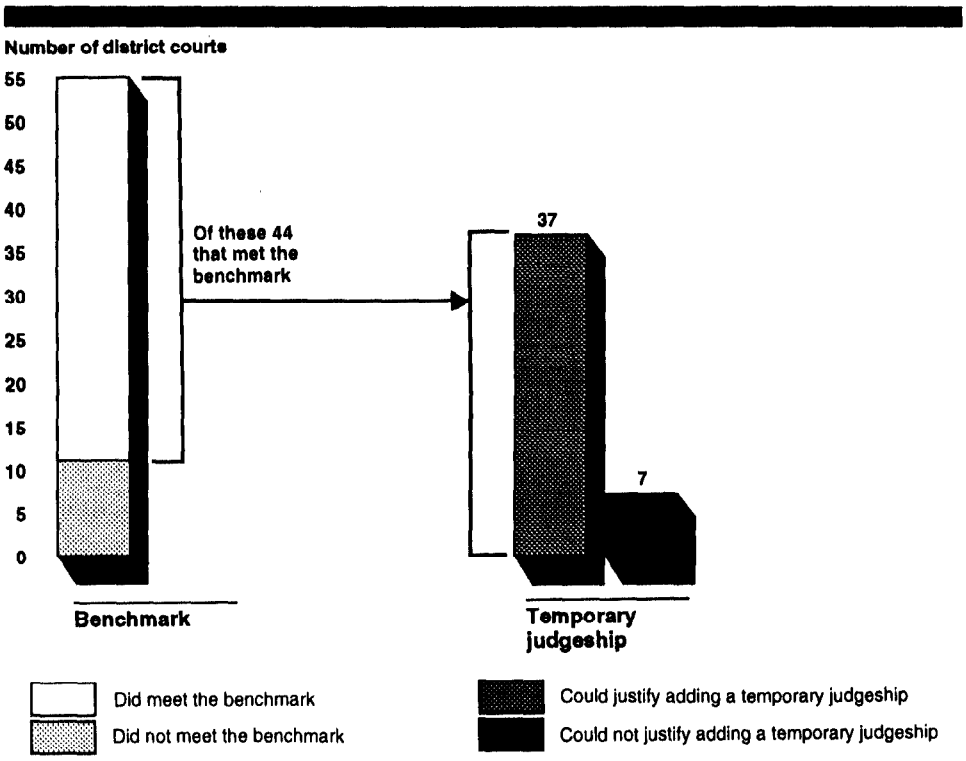
Temporary Judgeships

To determine whether to accept a district's request for an additional temporary judgeship, the Conference's written guidelines also applied a threshold indicator of need. The Conference recommended an additional temporary judgeship if (1) the district's current weighted filings were above 400 per judgeship and (2) adding a judgeship would result in weighted filings slightly below the 400 threshold.

Once again, our results show that 44 of the 55 districts met the benchmark of 400 weighted filings per judgeship. At that point the Conference could consider adding an additional judgeship to a court. We then determined that 37 of the 44 districts had weighted caseloads that could justify adding at least 1 temporary judgeship to those courts, while 7 of the 44 districts could not justify adding a temporary judgeship (see fig. I.3).

[9]As discussed below, the Conference's unwritten "ceiling" rule accounts for most of the districts in which the Conference recommended fewer judgeships than its workload standard would have justified.

Figure I.3: Transition From Meeting the Benchmark to Adding a Temporary Judgeship



Source: GAO, derived from Judicial Conference data.

Table I.3: District Court Judgeship Recommendations That Complied With or Departed From the Conference's Written Workload Standards for Adding Permanent Positions

District	Weighted filings after Conference action	Conference recommendation	Number of new judgeships that written standard justified	Conference's written guidelines		
				Number of districts complied	Number of districts that departed	
					Fewer	Greater
CT	399.8	2P	2P	•		
NY, Eastern	395.2	3P	3P	•		
NY, Southern	426.2	1P	3P		•	
NJ	421.6	4P	5P		•	
PA, Eastern	526.5	5P	12P		•	
VI	338.7[a]	1P	0			•
MS, Southern	428.3	1P	1P, 1T		•	
TX, Northern	480.0	2P	4P, 1T		•	
TX, Southern	393.3	7P	7P	•		
TX, Western	434.7	3P	4P		•	
OH, Northern	712.3	1P, 1T	10P		•	
OH, Southern	364.0	1P, 1T	1P, 1T	•		
TN, Eastern	453.6	1P	1P, 1T		•	
IL, Northern	518.3	1P, 1T/P	7P, 1T/P		•	
IA, Southern	289.3	1P	0			•
MO, Eastern	360.0	1P, 1T	1P, 1T	•		
CA, Northern	412.3	2P	2P, 1T		•	
CA, Central	400.7	6P	6P	•		
OR	362.1	1P, 1T	1P, 1T	•		
OK, Western	392.5	1P, 1R/P	1P, 1R/P	•		
FL, Middle	382.5	2P, 1T	2P, 1T	•		
Total for 21 districts		**47P, 5T, 1T/P 1R/P**	**73P, 8T, 1T/P, 1R/P, 2/no new judgeships**	**9**	**10**	**2**

Legend:

P = permanent judgeship.
T = temporary judgeship.
R/P = convert roving judgeship to a full-time position in a single district.
T/P = convert temporary judgeship to a permanent one.
0 = no new judgeships justified.

Note: In this table, the number of judgeships justified is the minimum number the written guidelines could justify.

[a]Represents total filings; Administrative Office does not calculate weighted filings for territorial courts.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

The Conference recommended temporary judgeships for 29 districts and extending 1 existing temporary judgeship for another 5 years.[10] As table I.4 shows, the Conference recommended that some of these districts also receive permanent judgeships. We found that 25 of the 29 districts met the Conference's 400 weighted filings per judgeship benchmark for consideration of an additional position while 4 of the 29 districts did not. Those 4 districts—South Carolina, Southern Florida, Northern West Virginia, and Western Arkansas—had current weighted filings per judgeship of 384, 373, 368, and 305, respectively.

Our results also show that 18 of the 29 recommendations complied with the Conference's written guidelines for adding at least a temporary judgeship, while 11 of the 29 departed from those guidelines (see table I.4). Those departures occurred because the Conference recommended fewer temporary judgeships in 3 districts and more temporary judgeships in 8 districts than justified by its written guidelines.[11] The effect of the Conference departures from its written guidelines for adding a temporary judgeship was that it generally recommended adding temporary judgeships to courts with weighted caseloads that did not justify additional temporary judgeships. The Conference, for example, recommended that the Northern West Virginia District Court receive an additional temporary judgeship, while the court's weighted filings did not justify an additional temporary position.

[10]The Conference recommended an additional permanent and a replacement temporary judgeship (whose term had apparently expired) for the Northern Ohio District. We used the Conference's guidelines for adding permanent and temporary judgeships in analyzing the Conference's recommendations for this district. Congress did not treat the existing temporary position as having expired. It converted the existing temporary position to a permanent judgeship and added a temporary position.

[11]We adopted the Ninth Circuit memorandum's range as criteria for recommending additional temporary positions because it quantified the Judicial Conference's less precise written criteria that a temporary judgeship would be recommended when "adding a position would result in weighted filings slightly below the 400 per judgeship threshold." The Ninth Circuit's memorandum stated that if adding a judgeship to a district court left the court's weighted filings within a range of 350 to 399, then the Subcommittee recommended that a temporary judgeship could be added. We concluded that recommendations for additional temporary positions that resulted in weighted filings per judgeship below 350 or above 399 departed from the Conference's written criteria.

Table I.4: District Court Judgeship Recommendations That Complied With and Departed From the Conference's Written Workload Standards for Adding Temporary Positions

				Conference's written guidelines		
					Number of districts that departed	
District	Weighted filings after Conference action	Conference recommendation	Number of new judges written standard justified	Number of districts complied	Fewer	Greater
MA	386.8	1T, 1T/P	1T, 1T/P	•		
NY, Northern	371.2	1T	1T	•		
MD	382.7	1T	1T	•		
SC	341.3	1T	0			•
VA, Eastern	440.1	1T	2P		•	
WV Northern	245.3	1T	0			•
WV Southern	388.8	1T	1T	•		
LA, Middle	310.0	1T	0			•
LA, Western	357.4	1T	1T	•		
TX, Eastern	427.7	1T	1P, 1T		•	
MI, Western	357.6	1T	1T	•		
OH, Northern	712.3	1P, 1T	10P		•	
OH, Southern	364.0	1P, 1T	1P, 1T	•		
TN, Middle	390.8	1T	1T	•		
IL, Central	312.0	1T	0			•
IL, Southern	305.3	1T	0			•
AR, Western	228.8	1T, 1T/P	0			•
MO, Eastern	360.0	1P, 1T	1P, 1T	•		
NE	375.0	1T	1T	•		
CA, Eastern	384.9	1T	1T	•		
CA, Southern	352.6	1T	1T	•		
NV	384.0	1T	1T	•		
OR	362.1	1P, 1T	1P, 1T	•		
KS	360.8	1T	1T	•		
NM	376.8	1T	1T	•		
OK, Northern	344.1	1T	0			•
AL, Northern	373.6	1T	1T	•		
FL, Middle	382.5	2P, 1T	2P, 1T	•		
FL, Southern	349.7	1T	0			•
Total for 29 districts		**29T, 6P, 2T/P**	**19T, 18P, 1T/P, 8/no additional judges**	**18**	**3**	**8**

(Table notes on next page)

Legend:

T = temporary judgeship.
P = permanent judgeship.
T/P = convert temporary judgeship to a permanent one.
0 = no new judgeships.

Note: In this table, the number of judgeships justified is the minimum number the written guidelines could justify.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

Four Conference Recommendations Fell Within the 390 to 399 Overlap Range for Adding a Permanent or Temporary Judgeship

Judgeship recommendations for 4 of the 55 district courts fell within the 390 to 399 overlap range for which the Conference could have met its written workload standard by recommending either an additional permanent or temporary judgeship. This 390 to 399 overlap range was the result of the written guidelines (as modified by GAO and the Ninth Circuit memorandum) for adding permanent and temporary judgeships—the Conference's recommendation for permanent judgeships met its written workload standard if after adding one or more permanent positions a court's weighted filings fell between 390 and 410 per judgeship[12]; the Conference's recommendation for an additional temporary judgeship met its written workload standard if after adding a temporary position a court's weighted filings fell between 350 and 399.[13]

Table I.3 shows that the Conference recommended additional permanent judgeships for the Eastern New York, Southern Texas, and Western Oklahoma district courts while their weighted filings after adding the permanent positions were 395.2, 393.3, and 392.5 per judgeship—within the 390 to 399 overlap range justifying a recommendation for either an additional permanent or temporary judgeship. Table I.4 shows that the Conference recommended an additional temporary judgeship for the

[12]Specifically, we concluded that the Conference's recommendation for permanent judgeships met its written workload standard if after adding one or more permanent positions a court's weighted filings fell between 390 and 410 per judgeship. We judgmentally chose this narrow range (2.5 percent above or below the stated standard of 400 weighted filings) because it was improbable that a court's weighted filings would fall precisely at the 400 standard after adding a position. Administrative Office officials agreed that the use of this range was reasonable.

[13]We adopted the Ninth Circuit memorandum's range as criteria for recommending additional temporary positions because it quantified the Judicial Conference's less precise written criteria that a temporary judgeship would be recommended when "adding a position would result in weighted filings slightly below the 400 per judgeship threshold." The Ninth Circuit's memorandum stated that if adding a judgeship to a district court left the court's weighted filings within a range of 350 to 399, then the Subcommittee recommended that a temporary judgeship could be added. We concluded that recommendations for additional temporary positions that resulted in weighted filings per judgeship below 350 or above 399 departed from the Conference's written criteria.

Middle Tennessee District Court while its weighted filings after the temporary position was added were 390.8 per judgeship—within the 390 to 399 overlap range to justify adding either a permanent or temporary judgeship. Because these recommendations were not inconsistent with the modified written guidelines for adding either permanent or temporary judgeships, we concluded that the Conference's judgeship decisions for these four districts were in compliance with these modified guidelines.

Table I.5 compares the Conference's 1990 judgeship results for those four district courts to the types of judgeships the Conference could have recommended while continuing to be in compliance with the written guidelines, as modified, for adding permanent and temporary judgeships. The Judicial Conference's rationale for recommending a permanent or temporary judgeship for each of those four district courts is described below.

Table I.5: Comparison of 1990 District Court Judgeship Recommendations to Judgeships the Conference Could Have Recommended

District court	1990 Conference recommendation	Weighted filings after Conference recommendation (within 390-399 overlap range)	Complied with written guidelines for adding a permanent judgeship(s)—within 390-410 range	Complied with written guidelines for adding at least a temporary judgeship—within 350-399 range
NY, Eastern	3P	395.2	•	
TX, Southern	7P	393.3	•	
OK, Western	1P, 1R/P	392.5	•	
TN, Middle	1T	390.8		•

District court	Type of judgeship(s) Conference could have recommended	Weighted filings after recommendation would have been within 390-399 overlap range	Would have complied with written guidelines for adding a permanent judgeship(s)—within 390-410 range	Would have complied with written guidelines for adding at least a temporary judgeship—within 350-399 range
NY, Eastern	2P, 1T	395.2		•
TX, Southern	6P, 1T	393.3		•
OK, Western	1T, 1R/P	392.5		•
TN, Middle	1P	390.8	•	

(Table notes on next page)

Legend:

P = permanent judgeship.
T = temporary judgeship.
R/P = convert a roving judgeship to a full-time position in a single district.

Source: GAO, derived from the Judicial Conference's 1990 judgeship criteria and recommendations.

Eastern New York District Court. The Judicial Conference's analysis of its recommendation for three additional permanent judgeships for this district stated in part that this is one of several courts that has seen a dramatic increase in its criminal workload in recent years and the demands of the court's many complex cases, long trials, and heavy drug workload provide additional support for this recommendation.

Southern Texas District Court. The Conference's analysis of its recommendation for seven additional permanent judgeships for this district stated, in part, that although the court's weighted caseload has declined to the point where seven additional judgeships slightly reduces weighted filings, much of the decline in weighted filings is attributable to the change in the jurisdictional amount needed to file diversity cases in the U.S. district courts from $10,000 to $50,000. The Conference believed this change would have a short-term impact on both filings and weighted filings that was not likely to last more than 1 year. With the drug-related workload continuing to rise rapidly, the Conference believed that the court was in need of substantial additional resources and therefore recommended seven additional permanent judgeships.

Western Oklahoma District Court. The Conference Subcommittee's preliminary recommendation was for one additional permanent judgeship, one additional temporary judgeship, and the conversion of one roving judgeship to this district only. Weighted filings (using calendar year data available after the preliminary recommendation was made) after these judgeships were added would be reduced to 336 per judgeship—too low to justify the preliminary recommendation. The Conference then recommended one additional permanent judgeship and the conversion of the roving judgeship. The Conference believed a permanent judgeship was warranted because of the special situation presented by the state's roving judgeships—two roving judges served three Oklahoma districts. The Conference also cited the court's drop in diversity cases as a temporary adjustment due to the jurisdictional change.

Middle Tennessee District Court. The Conference's analysis of its recommendation for one additional temporary judgeship for this court stated, in part, that weighted filings were somewhat lower than raw filings per judgeship due primarily to the large number of state prisoner petitions and the fact that criminal filings remained high compared to the national average. The Conference also made reference to the assistance provided to the court from its one senior judge and two full-time magistrate judges. The district court requested and the circuit council recommended one additional temporary judgeship and the Conference supported the court's request.

Conversions/Extensions of Temporary Judgeships

The Conference's written guidelines for converting a temporary judgeship to a permanent one were vague. The standards simply stated that the Conference recognized that the temporary judgeships created by the 1984 Judgeship Act could expire any time after July 1989; therefore, if the court's workload remained high, the Conference recommended that the temporary position be converted to a permanent one. The Conference's written guidelines did not include anything about the standards used to recommend extending a district's temporary judgeship for an additional 5 years. The Ninth Circuit's memo explaining the Conference's 1990 district court judgeship recommendations stated that the Conference recommended either a conversion of the temporary judgeship to a permanent one or extended the temporary judgeship for another 5 years if (1) the district's current weighted filings remained high and (2) the district's response to the judgeship questionnaire justified retention of the temporary judgeship.

The Conference's written guidelines and the Ninth Circuit memo did not provide a quantitative measure of the workload necessary for the Conference to conclude that a court's current weighted filings had remained "high." In our analysis we used the Conference's written guidelines for adding permanent judgeships to determine if conversions of temporary judgeships to permanent ones were in compliance with its written guidelines. This provided a consistent standard for establishing permanent judgeships in all districts, regardless of whether or not a district had a temporary judgeship it wished converted to a permanent one.

We also used the Conference's standard for recommending new temporary judgeships to determine if recommendations for extensions of temporary judgeships complied with the Conference's written guidelines. Conversions and extensions of temporary judgeships do not add

judgeships to a court but either reclassify or extend existing temporary judgeships for another 5 years. Consequently, in applying the written workload standards for such recommendations, we considered only the weighted workload per existing authorized judgeship.[14] The workload standards we applied were as follows:

- To justify converting a temporary judgeship to a permanent one, a court's current weighted filings must be between 390 and 410 per judgeship.[15]
- To justify extending a temporary judgeship for another 5-year term, a court's weighted filings must be between 350 and 399 per judgeship.[16]

The Conference's lack of clear written guidelines caused difficulty in determining how such judgeship recommendations were made. Our results show that the Conference's recommendations for converting temporary judgeships to permanent ones conformed to these workload standards in one district but departed in five districts. The effect of the Conference's departures was that the Conference generally recommended conversions for courts with weighted caseloads that would not have otherwise been sufficient to justify a permanent position. For example, the Conference recommended the conversion of a temporary judgeship to a permanent in the Northern Indiana District, though the district's current weighted filings per judgeship were 341—below the 400 level the Conference normally required for consideration of a permanent position.

This district illustrates the problem of applying the quantitative workload standards rigidly in assessing the need for new judgeships. The weighted workload of 341 per judgeship represents a drop from the previous 5 years when the weighted workload was consistently above 400 per judgeship. The Conference noted that the drop was primarily the result of a decline in diversity cases—a decline it expected to be temporary. Thus, the recommendation to convert the temporary position to permanent was

[14]For districts where the Conference recommended both a conversion of a temporary position to permanent and an additional judgeship—permanent or temporary—we applied the same workload standards after the new position was added.

[15]The Conference's written standards indicated that a court's weighted workload had to be at least 400 per judgeship after adding a judge. Because it was unlikely that a court would hit the 400 benchmark exactly, we concluded that the benchmark had been met when weighted filings fell between 390 and 410 per judgeship. For consistency, we applied this same range when evaluating recommendations to convert temporary judgeships to permanent positions. Thus, we concluded that such recommendations departed from the Conference's written workload standards when a district's current weighted filings per judgeship fell below 390 or above 410.

[16]Thus, we concluded that recommendations to extend a temporary judgeship for another 5 years departed from the Conference's written guidelines when a district's current weighted filings per judgeship fell below 350 or above 399.

based more on the workload pattern over the previous 5 years than the workload for the latest period.

The Conference also recommended an extension of a temporary judgeship in the Eastern North Carolina District, though its current weighted filings per judgeship were only 313—substantially below the 350 the Ninth Circuit memo said the Conference used for justifying new temporary positions (see table I.6).

Table I.6: District Court Recommendations That Complied With or Departed From the Conference's Written Workload Standards for Conversions and Extensions of Temporary Positions

				Conference's written guidelines		
	Current weighted filings & weighted filings after 1 judge is added	1990 Judicial Conference recommendations	Number of additional judges justified	Number of districts that complied	Number of districts that departed	
District court					Fewer	Greater
MA	419.0 & 386.8	1T, 1T/P	1T/P, 1T	•		
NY, Western	466.0 & 372.8	1T/P	1T/P, 1T		•	
IL, Northern	543.0 & 518.3	1P, 1T/P	1T/P, 7P		•	
IN, Northern	341.0 & 284.2	1T/P	0			•
AR, Western	305.0 & 228.8	1T, 1T/P	0			•
WA, Western	355.0 & 310.6	1T/P	Extension of 1T			•
NC, Eastern	313.0 & 250.4	Extension of 1T	0			•
7 Districts		**6T/P, 2T, 1Ext., 1P**	**3T/P, 2T, 1Ext., 7P, 3/no conversions or extensions**	**1**	**2**	**4**

Legend:

T = temporary judgeship.
T/P = convert a temporary judgeship to a permanent one.
P = permanent judgeship.
Extension = extend a temporary judgeship for another 5 years.
0 = no conversions or extensions justified.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

No Additional Judgeships

The Conference recommended no additional judgeship positions if a court's current weighted filings were below the 400 per judgeship

benchmark and if no unique circumstances justified a departure from the standards.[17]

Our results show that the Conference complied with its written guidelines in recommending no additional judgeships for four districts that had requested them (see table I.7). One of those districts, Middle Alabama, had current weighted filings that met the Conference's benchmark. The Subcommittee and Conference followed the Eleventh Circuit Council's recommendation and did not recommend any additional judgeships for that court. Adding a judgeship would have reduced the court's weighted filings per judgeship to 330, 70 below the written guideline threshold of 400 used as a basis for adding permanent judgeships.

Table I.7: District Court Judgeship Recommendations That Complied With the Conference's Written Guidelines for Adding No New Judgeships

District Court	Current weighted filings per judgeship	Weighted filings if 1 judgeship is added	Complied with the written guidelines	
			Before[a]	After[b]
NC, Western	393	294.8	•	•
TN, Western	380	304.0	•	•
AL, Middle	440	330.0		•
FL, Northern	363	272.3	•	•

[a]To be considered for an additional permanent judgeship, a court needed a workload of at least 400 weighted filings per judgeship.

[b]After adding a permanent position, the court should still have 400 weighted filings per judgeship. After adding a temporary position, the court's weighted workload should be between 350 and 399 filings per judgeship.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

Judgeship Recommendations Based on Large Numbers of Asbestos Filings

The Conference has a written policy recognizing that many requests for additional judgeships are based, in part, on a large number of asbestos filings or pending asbestos cases. Because the future of asbestos litigation remained unclear during the 1990 judgeship survey, the Conference's written policy was to recommend only temporary judgeships in those districts.

[17]Where the Conference recommended that a district's request for additional positions be rejected, we reviewed both the district's workload and questionnaire responses to determine if those courts had unique circumstances justifying departures from these guidelines. The Conference's guidelines were vague on defining "unique circumstances." We compared the results to the Conference's written explanation for its recommendation.

Our results show that the Conference departed from its written guidelines regarding recommendations based on large numbers of asbestos filings in only one district—Southern Mississippi.

No Temporary Judgeships Were Recommended Solely on the Basis of a Court's Backlog

Our results show that the Conference did not recommend a temporary judgeship solely on the basis of a court's backlog of cases.

Roving Judgeships

Roving judges split their time between two or more adjacent districts. The Conference's written policy on roving judgeships is as follows:

"In the absence of specific allocation of a roving judge's duties by statute or by the circuit council, the subcommittee recommends that the Administrative Office continue to compile and report the statistics of the districts served by a roving judge on the premise that his services are divided equally among the districts to which he is assigned. Where the time of a roving judge is allocated in some other manner on an annual basis by statute or by action of the circuit council, the statistics should reflect this allocation."

The Conference's unwritten policy is to eliminate roving judgeships because the Conference believes they do not work—roving judges do not spend their time equally between or among their assigned district courts.

Our results show that the Conference complied with its unwritten policy for recommending the conversion of roving judgeships to permanent ones assigned full-time to a specific district. The Conference recommended such conversions for three district courts; one of the three recommendations converted two roving judgeships to permanent positions serving only one district. The conversion of roving judgeships to permanent positions in a single district does not add to the total number of authorized judgeships but merely redistributes existing judgeships among the districts.

Application of the Conference's Unwritten Rules

The Conference uses unwritten "rules" in conjunction with its written guidelines for recommending additional judgeships for the district courts. We were told of the Conference's unwritten "rules" when we met with Administrative Office officials to discuss the recommendations for 26 district courts that we determined departed from the Conference's written guidelines. When we applied these unwritten "rules" to the 26 departures, we found that 22 of the 26 complied with one or more of the Conference's unwritten "rules."

We discussed with Administrative Office officials why the recommendations for 26 district courts departed from the Conference's written guidelines. In that discussion, we did not address each of the 26 departures. Instead, we discussed the patterns in district courts' workloads we had noted in the districts we had classified as departures.

Administrative Office officials described four unwritten "rules" (which we labelled and defined) that the Conference applied to the 26 district court recommendations that departed from the written criteria. They told us that we would find that the recommendations for these 26 district courts could be explained/justified by applying the unwritten "rules." We subsequently found that 22 of the 26 departures were justified by one or more of the Conference's unwritten "rules"; however, 4 of the 26 did not comply with the written guidelines and unwritten "rules."

The Conference's 4 unwritten "rules"—ceiling, asbestos, small court, and conversion—and our results, after applying those "rules" to the 26 departures from the Conference's written guidelines, are provided below.

"Ceiling Rule"

"Ceiling rule": The Conference would not recommend more judgeships than the court requested, even if the court's weighted filings per judgeship justified more positions than the court requested.

The premise of this unwritten "rule" is based on the Conference's belief that the courts themselves know if they can handle a workload with fewer judgeships than their workload could justify. This "rule" embodies the Conference's unwritten policy that district courts that did not request any additional judgeships were generally not reviewed by the Conference for judgeship recommendations even if their weighted filings justified additional judgeships. Administrative Office officials commented that the Judicial Conference was not going to recommend creating one-million-dollar judgeships in courts that can handle the workload without additional judges.

We applied the Conference's "ceiling rule" to the 26 departures and found that 11 of these 26 were explained by the Conference's compliance with its unwritten "ceiling rule." The effect of the Conference's departure from its written guidelines resulted in recommendations for eight fewer additional permanent judgeships, two fewer additional temporary judgeships, and one conversion for a district court than these courts requested and their weighted filings could have justified (see table I.8).

Table I.8: Effect of Applying the "Ceiling Rule" to the Conference's Recommendations That Departed From Its Written Guidelines

District Court	Number of judgeships justified—written guidelines	1990 Judicial Conference's judgeship recommendations	1990 district court request for additional judgeships: complied with the unwritten "ceiling rule"
NY, Southern[a]	3P	1P	1P
NY, Western[a,b]	1T/P, 1T	1T/P	1T/P
NJ[a]	5P	4P	4P
PA, Eastern[a]	12P	5P	5P
VA, Eastern	2P	1T	1T
TX, Northern	4P, 1T	2P	2P
TX, Eastern[a]	1P, 1T	1T	1T
TX, Western	4P	3P	3P
TN, Eastern	1P, 1T	1P	1P
IL, Northern[b]	7P, 1T/P	1P, 1T/P	1P, 1T/P
CA, Northern	2P, 1T	2P	2P

Legend:

P= permanent judgeship
T/P=convert a temporary Judgeship to a permanent one
T=temporary judgeship.

Note: The number of judgeships justified is the minimum number the written guidelines could justify.

[a]Also complied with the Conference's "asbestos rule."

[b]Also complied with the Conference's "conversion rule."

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

"Asbestos Rule"

"Asbestos rule": The Conference's unwritten "asbestos rule" clarifies and quantifies its general written policy of recommending no additional permanent judgeships on the basis of a court's asbestos workload. If a court had heavy asbestos filings and an additional judgeship position were justified by its current weighted filings, the Conference calculated the court's weighted filings after (1) a judgeship was added and (2) its asbestos filings were "eliminated." If the adjusted weighted filings still met the benchmark of 400 weighted filings per judgeship, the Conference recommended an additional permanent judgeship. If the adjusted weighted filings were below 400 per judgeship, then the Conference generally recommended an additional temporary position.

For example, the Eastern Texas District had weighted filings of 428 per judgeship after a position was added—more than justifying an additional judgeship. However, after asbestos cases were excluded, the weighted filings fell to 321 per judgeship, below the 400 benchmark for adding another permanent position. Consequently, the Conference recommended a temporary rather than permanent position for this district.

The basis for this rule is the Conference's belief that asbestos filings were a temporary phenomena that would eventually decline and then disappear. Our results show that 8 of the 26 departures were justified by the Conference's compliance with its "asbestos rule."[18] One of the 26, however, departed from the Conference's "asbestos rule" (see table I.9).

[18]The Conference's recommendation for the South Carolina District Court complied with its unwritten "asbestos rule," in part, because of the impact of Hurricane Hugo on the court's weighted filings. The hurricane resulted in lower filings with the court during the months immediately following it, thereby artificially reducing the court's normal amount of filings. The Conference stated in its justification, which we verified, that absent Hurricane Hugo, the court's current weighted filings would have been about 405.5 per judgeship—meeting the 400 benchmark—instead of 384 per judgeship. And the court's weighted filings after adding one additional judgeship would have been 370.0 per judgeship, rather than 341.3 (including asbestos filings). Eliminating asbestos filings from the weighted workload reduced the court's weighted filings to 325 per judgeship. Consequently, the Conference recommended that the added judgeship be temporary rather than permanent.

Table I.9: Effect of Applying the "Asbestos Rule" to District Court Recommendations That Departed From the Conference's Written Guidelines

District court	Weighted filings after Conference's recommendation	Weighted filings after asbestos filings are "eliminated"	Number of additional judges recommended	Number of districts whose Conference recommendations complied with or departed from the "asbestos rule"	
				Complied	Departed
NY, Southern[a]	426.2	399.0	1P	•	
NY, Western[a,b]	466.0	415.0	1T/P	•	
NJ[a]	421.6	406.0	4P	•	
PA, Eastern[a]	526.5	401.0	5P	•	
SC	341.3	325.0	1T	•	
MS, Southern	428.3	355.0	1		•
TX, Eastern[a]	427.7	321.0	1T	•	
OH, Northern	712.3	342.0	1P, 1T	•	
OK, Northern[c]	344.1	345.0	1T	•	
Total				**8**	**1**

Legend:

P= permanent judgeship
T/P=convert a temporary Judgeship to a permanent one
T=temporary judgeship.

[a]Also complied with the Conference's unwritten "ceiling rule."

[b]Also complied with the Conference's unwritten "conversion rule."

[c]Also complied with the Conference's unwritten "small court rule."

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

"Small Court Rule"

"Small court rule": The Conference will add a temporary position to a small court even if the court's weighted filings per judgeship do not justify the position under the Conference's written guidelines.[19] This "rule," as explained in the Ninth Circuit's judgeship recommendations documentation reflects the fact that the Conference's workload standard, which required weighted filings of at least 400 per judgeship after a position is added, made it difficult for smaller districts to justify additional positions. Using this standard, a district with 2 judgeships would need to

[19]We used the Administrative Office's definition of a "small" court as having four or fewer existing authorized judgeships.

demonstrate weighted filings approaching 600 per judgeship in order to "qualify" for a new permanent position.

It is a simple arithmetic fact that the workload per judgeship of small courts (those with four or fewer authorized judgeships) drops much more when a judge is added than does the workload of a larger court. For example, in a court with 3 authorized judgeships and a total of 1,350 weighted filings (450 per judgeship), adding one judgeship would reduce the weighted workload per judgeship to 337.5. However, in a court with 10 judgeships and 4,500 weighted filings (the same 450 per judgeship), adding another judge would reduce the weighted workload to only 409 per judgeship. Moreover, applying staffing levels to present caseloads biases recommendations in favor of recommending temporary rather than permanent judgeships or fewer judgeships overall than a district with increasing workload trends may require.

Small courts are also disproportionately affected by certain factors, such as a high proportion of criminal cases, which require expeditious attention under the terms of the Speedy Trial Act. The Chief of the Administrative Office's Statistics Division said that the problem with a small court like Northern West Virginia is that adding one judgeship increased the court by 50 percent (from two judges to three), and the court's weighted filings per judge decreased significantly. The Conference's rationale was that it would rather add a temporary position, even though it would decrease weighted filings substantially, than allow a small court to be overburdened with complex cases and/or excessively high weighted caseloads. The Conference would recommend an additional temporary position to such a small court, even if its filings after the position is added were below the 350 lower threshold it used to recommend adding a temporary position.

We applied the Conference's "small court rule" to the 26 departures and found that 6 of the 26 departures were explained by the Conference's "small court rule," while 2 did not comply with the "rule" (see table I.10).

Table I.10: Effect of Applying the "Small Court Rule" to District Court Recommendations That Departed From the Conference's Written Guidelines

	Departed from written guidelines for one or both of the following reasons				
District court and number of judges	Initially, current weighted filings did not meet 400 benchmark	After adding new judgeships weighted filings were below 350 threshold	Judicial Conference recommendation	Complied with rule	Departed from rule
WVA Northern, 2 judges	368	245	— 1T		
LA, Middle, 2 judges		310	1T	•	
IL, Central, 3 judges		312	1T	•	
IL, Southern, 3 judges		305	1T	•	
AR, Western,[a] 3 judges	305	229	1T, 1T/P	•	
OK, Northern,[b] 2.67 judges		344.1	1T	•	
VI, 2 judges		338.7[c]	1P		•
IA, Southern, 2.5 judges		289.3	1P		•
Total				**6**	**2**

Legend:

T=temporary judgeship.
T/P=convert a temporary Judgeship to a permanent one
P= permanent judgeship

[a]Also complied with the Conference's "conversion rule."

[b]Also complied with the Conference's "asbestos rule."

[c]The Virgin Islands is a territorial court for which only unweighted filings are maintained.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

"Conversion Rule"

"Conversion rule": The Conference generally recommended converting a temporary judgeship to a permanent one if a court's weighted filings had remained the same or increased over the past 5 years. Thus, to qualify for such a conversion, these courts did not have to meet the normally required threshold of 400 weighted filings per judgeship to be considered for a permanent position. The Conference would recommend an extension of a temporary judgeship for another 5-year term if a court's weighted filings had decreased over the past 5 years.

We applied the Conference's "conversion rule" to the 26 departures and found that 6 (5 conversions and 1 extension) of the 26 departures were

explained by the Conference's compliance with its "conversion rule" (see table I.11).

Table I.11: Effect of Applying the "Conversion Rule" to District Court Recommendations That Departed From the Conference's Written Guidelines

		Recommendation departed from the written guidelines				Recommendation complied with the unwritten"conversion rule"—weighted filings over past 5years		
	1990 Judicial Conference's judgeship	390-410 range for conversions		350-399 range for extensions				
District court	recommendation	Above	Below	Above	Below	Increased	Remained about the same	Decreased
NY, Western	1T/P	•				•		
IL, Northern	1P, 1T/P	•				•		
IN, Northern	1T/P		•			•		
AR, Western	1T, 1T/P		•			•		
WA, Western	1T/P		•				•	
NC, Eastern	1T[a]				•			•

Legend:

T/P=convert a temporary Judgeship to a permanent one
P= permanent judgeship
T=temporary judgeship.

[a]Temporary judgeship extended for another 5 years.

Source: GAO, derived from the Judicial Conference's 1990 district court judgeship criteria and recommendations.

This "rule" is based on the premise that the temporary judgeship position's 5-year term will be expiring and if the court loses this position, weighted filings per authorized judgeship will rise. Therefore, the Conference has to decide whether to convert the temporary judgeship to a permanent one or to extend the temporary position for another 5 years.

The Conference used the workload trend over the past 5 years, not the absolute current level of weighted filings per judgeship, as the basis for its decision using this unwritten rule. Thus, it recommended the conversion of temporary judgeships to permanent positions in districts with widely varying weighted workloads. The Conference, for example, recommended conversions of temporary judgeships to permanent positions for the Illinois Northern, Indiana Northern, New York Western, and Washington Western district courts that had average weighted workloads of 596, 442, 415, and 367 per judgeship over the 5-year period of 1985 through 1989.

These four districts' average weighted workload either increased or remained about the same over the given 5-year period; thus, the Conference's recommendation to convert these temporary judgeships to permanent positions complied with its unwritten "conversion rule."

The Conference's use of judgment in reaching its recommendations is illustrated by the two remaining districts, which each had 5-year average weighted workloads less than 350 per judgeship. The Conference recommended that the Eastern North Carolina District Court's temporary judgeship be extended for another 5-year term rather than converted as requested by the court because the court's average weighted workload over the 5-year period declined slightly. As stated in the Conference's documentation, the court's workload did not justify a conversion because the court based its request on expected increases in business litigation and drug prosecutions, contrary to the Conference's written policy of basing its recommendations on current, not projected, workload.

On the other hand, while the Western Arkansas District's average 5-year weighted workload was lower than Eastern North Carolina's (328 versus 334 per judgeship), the Conference recommended a conversion for this court because its weighted workload had risen over the past 5 years.

Given the slight 5-year decline in Eastern North Carolina's workload and the rise in Western Arkansas' weighted workload, we concluded that the Conference had complied with its unwritten "conversion" rule. However, we recognize that both our conclusion and that of the Conference are judgment calls. In the case of both courts, had the Conference not recommended either the extension or conversion of the temporary judgeship, weighted filings per judgeship would have risen above the 400 threshold used to justify consideration of another permanent position (417 for Eastern North Carolina and 458 for Western Arkansas).

In 1987 we reported that results from the Conference's 1982 judgeship survey showed that the Conference did not support a request for a court's temporary position, which would expire in 1984, to be converted to a permanent position.[20] The position expired in 1984, thereby reducing that court's number of existing judges. The Conference, however, has no quantitative criteria for recommending such a reduction in the number of judges for a court. Generally, the loss of the temporary positions should not increase a court's weighted workload to more than the minimum 350

[20]Federal Courts: Determining the Need for Additional Judges (GAO/GGD-87-26BR, Jan. 8, 1987).

weighted filings per judgeship needed to justify an additional temporary position.

Explanations for the Four "Exceptions"

The Conference's recommendations for the Virgin Islands, Southern Iowa, Southern Florida, and Southern Mississippi district courts departed from its written guidelines and unwritten "rules." Administrative Office officials provided four explanations for those departures, as discussed below.

Virgin Islands. The Virgin Islands is a territorial court that does not have a weighted workload because it has jurisdiction over local matters that are not assigned weights under the Conference's weighted filings formula.[21] Thus, only unweighted filings are available for this and the other two territorial courts.[22] The Conference recommended one additional judgeship even though this resulted in filings per judgeship of 338.7—considerably below the 390 to 410 range of weighted filings for additional permanent judgeships under the Conference's written guidelines. However, because weighted filings are unavailable for this court, it is not possible to know how the 338.7 unweighted filings would translate into weighted workload.

Because the Virgin Islands District Court had only two authorized judges, we applied the Conference's "small court rule" and found the recommendation departed from this rule because the Conference recommended an additional permanent instead of temporary judgeship. It was not clear why a permanent instead of temporary judgeship was recommended.

The Conference stated in the explanation of its recommendation that the court had no active judges as of December 31, 1989. A total of 9 visiting judges were assigned to handle the workload and presided over the equivalent of 45 trials per judgeship. Therefore, the Conference believed that one additional judgeship was needed.

Explanation: The Conference departed from its "small court rule" by recommending an additional permanent rather than temporary judgeship because the court does not have Article III judges that are appointed to the court for life. Their judges have tenured appointments for 10-year terms. Thus, like temporary judges, the Conference can revisit the court's workload at the end of the term and determine whether another 10-year appointment is warranted.

[21]Territorial court judges are appointed for 10-year terms, not life.

[22]The other two territorial courts are Guam and the Northern Mariana Islands.

Southern Iowa. The Conference recommended a permanent rather than temporary judgeship even though, after adding a position, the court's weighted filings were 289.3 per judgeship, below the 400 normally required. This court also had only two and one-half judgeships (the court shared one roving judgeship with the Northern Iowa District), so we applied the Conference's "small court rule" to its recommendation. The Conference departed from its "rule" by recommending an additional permanent rather than temporary judgeship. It was not clear why a permanent judgeship was recommended.

Explanation: Administrative Office officials did not know why the Conference departed from its "small court rule" and recommended an additional permanent rather than temporary judgeship. The officials speculated that the court's roving judgeship status probably affected the Conference's decision. In its written comments, the Administrative Office confirmed that the Conference's decision was affected by the roving judgeship.

Southern Florida. The Conference recommended an additional temporary position when its current weighted filings per judgeship were only 373—below the 400 benchmark needed to qualify for consideration of an additional position. The Conference based its recommendation on the court's heavy criminal caseload involving complex multiple defendant trials, mostly drug cases. This decision seems to implicitly recognize the inadequacy of the current weights for drug cases, which constitute the bulk of this district's criminal filings.

Explanation: The Conference recommended an additional temporary judgeship when the court's weighted filings did not justify one because it took into consideration the effects of criminal cases on this court's (and other similarly affected courts) workload and need for additional positions.

The Conference considers criminal cases, especially the number of complex cases with multiple defendants, in assessing the need for additional judgeships. There is no hard and fast rule on how this information is used. According to Administrative Office officials, since the advent of the sentencing guidelines, members of the Conference have become more sympathetic to requests based on complex, criminal case filings. Many of them have seen the impact of the Speedy Trial Act on courts with such workloads. The Conference is particularly sensitive to the impact of such cases on courts with few judges.

Southern Mississippi. This court was heavily impacted by asbestos filings; therefore, we applied the Conference's unwritten "asbestos rule" to its judgeship recommendation. The Conference departed from its "asbestos rule" because it recommended an additional permanent rather than temporary judgeship, even though the court's weighted filings (after adjusted for asbestos filings) would be 355 per judge, below the 400 benchmark normally required for courts with heavy asbestos filings. It was not clear why a permanent judgeship was recommended.

Explanation: Administrative Office officials could not explain why the Conference departed from its "asbestos rule" by recommending an additional permanent rather than temporary judgeship for this court. One Administrative Office official explained that the Conference bases such asbestos-impacted court recommendations on trends within that court. The Chief of the Administrative Office's Statistics Division looked at the court's asbestos filings from 1985 to 1989 and said that on the basis of this court's asbestos filings trend, the Conference would possibly now recommend an additional temporary rather than permanent judgeship.

Summary

The Conference's written and unwritten policies, procedures, and methodologies provide broad discretion to apply a wide variety of judgmental factors in reaching its decisions. The Conference's judgeship standards are sufficiently flexible to enable the Conference to accommodate whatever special needs or considerations of individual courts it deems appropriate. The Conference's documentation of the basis for its judgeship recommendation decisions does not mention four of the unwritten rules that were applied—"asbestos," "ceiling," "conversion," and "small court."

Once all of the written guidelines and unwritten "rules" were applied, the Conference was generally consistent in its treatment of individual court requests for additional judgeships. Exceptions to the applications of the guidelines and rules were found in 4 of the 55 district courts (7 percent) for which the Conference made recommendations.

- On the basis of our review, we did not find the Conference's written and unwritten criteria for making recommendation decisions to be an unreasonable method of measuring the need for additional judges. It is, however, not possible to assess just how accurate the Conference's system is. The system is as much judgmental as quantitative.

- The Conference's standard for recommending the conversion of temporary judgeships to permanent ones uses a less stringent workload standard than the one the Conference uses to assess requests for new permanent positions. Consequently, courts with existing temporary positions could justify the conversion of such positions to permanent ones with weighted workloads that would not otherwise generally be sufficient to justify a permanent position.

Accuracy of Workload Measures Used to Assess Judgeship Needs

Since 1980 the Judicial Conference has used a benchmark of 400 weighted filings per authorized judgeship as the threshold workload measure for recommending new permanent and temporary district court judgeships. Each case filed in a district court is coded according to its case type, for example, products liability or drug distribution. Each case type has a corresponding case weight, such as 1.5 for a products liability case and 1.0 for a criminal contempt case.

Case weights were developed from a 1979 Federal Judicial Center time study.[1] A weight of 1.0 represents the amount of judicial time the average case would be expected to require. A case with a weight of 0.5 would be expected to require about half the time of the average case, while a case with a weight of 1.5 would be expected to take about 50 percent more time than the average case.

A district court's weighted caseload is calculated by assigning weights to each case filing for the most recent 1-year period and multiplying each case by the weight assigned. The average weighted workload per authorized district judgeship is calculated by totaling the weight of each case filed in a district each year and dividing by the number of authorized judgeships for the district. For example, assume a district court has 10 judges and 3,000 cases were filed in a year with a total case weight of 4,000. The average weighted workload per authorized judge would be 4,000 (total case weights) divided by 10 (the number of authorized judges) or 400 weighted cases. In 1990, the national average was in fact 450 weighted cases per judgeship.

The 1979 District Court Case Weights

Prior to 1980, the Conference used a threshold of 400 unweighted filings per judgeship to decide if a district court needed additional positions. For example, in the 1976 judgeship survey, the Conference's standard to recommend additional judgeships was an annual rate of filings or projected filings in excess of 400 per authorized judgeship. Both before and after the 1980 judgeship survey, the Conference considered other factors, such as the district and circuit council responses to the survey questionnaire, and a variety of workload statistical data have been considered in its needs assessment.

In 1979 the Federal Judicial Center conducted a district court time study that updated the case weights developed in 1969.[2] The 1979 study

[1]S. Flanders, The 1979 District Court Time Study, Federal Judicial Center (Oct. 1980).

[2]Federal Courts: Determining the Need for Additional Judges (GAO/GGD-87-26BR, Jan. 8, 1987), p.7.

measured the amount of time judges spent on different types of cases during a 12-week period. The study's results confirmed that all cases are not equally demanding (e.g., veterans benefit overpayment and student loan default cases are relatively simple and do not require much judicial time, while private antitrust cases require a considerable amount of judges' time). Based on the 1979 study, the Conference changed the weights previously assigned to cases. Cases requiring a minimum of judicial time were assigned lower weights than those cases requiring a substantial amount of judges' time. Current case weights are based on this study.

A general guideline of 400 weighted filings per authorized judgeship (instead of 400 unweighted filings per authorized judgeship) was established in 1980 as the threshold indicator of the need for additional judgeships. Other factors, including the number of unweighted filings, the types of cases, pending cases, the number of trials, the assistance provided by magistrate judges, geographic characteristics, and vacancies were also considered. In 1985, the Federal Judicial Center conducted a study to determine if the 400 weighted filings per judgeship criterion was a good cut-off point for deciding that a district needed additional judgeships.[3] The study concluded that the 400 benchmark was better than the other levels (350-500) of filings tested in predicting court burden.

However, the study also concluded that to predict or explain "overburden" more accurately in specific district courts, the weighted case filings criteria must be used in conjunction with other factors, such as case type mix, pattern of caseload fluctuations over time, court size, area population, use of personnel (e.g., magistrate judges and senior judges), and approaches to management. This confirmed existing practice. The study reported that in 1985, factors such as these were considered on a case-by-case basis and that it might be possible to include them in a statistical model for assessing judicial needs.

Major Limitations of the 1979 Case Weights

The Judicial Conference recognized that existing 1979 case weights were probably outdated[4] —for example, asbestos cases hardly existed in 1979,

[3]B.S. Mierhoefer and E.V. Armen, The Caseload Experiences of the District Courts from 1972 to 1983: A Preliminary Analysis, Federal Judicial Center (1985).

[4]The fact that the Judicial Conference recognized the need for a new time study is an implicit recognition that the 1979 case weights probably do not accurately reflect a judge's current workload. This, in turn, provides the Conference a rationale for departing from the weighted workload standards when other information suggests that the weighted workload data do not accurately reflect the demand on judges' time in a specific court.

but they are now a major part of many district courts' workloads—therefore, a new study began in 1987.

Limitations of the 1979 Case Weight Study Methodology

The 1979 survey design had a number of limitations, including the following:

- The survey did not track the time judges spent on noncase responsibilities such as time spent on Judicial Conference business and court committees; nor did the study try to distinguish time devoted to different types of case activities such as pretrial hearings, discovery, and trials.
- The survey included a sample of 100 district judges. This sample excluded senior judges, who generally had discretion in choosing the number and types of cases they would hear,[5] and judges with less than 18 months' experience on the bench, because their caseloads also tended to be unrepresentative. Judges were asked to record their time spent on all docketed cases during the 12-week survey period and send in weekly reports. Thus, the survey included any new cases on which the judges may have spent time, as well as cases in progress when the survey began.
- The survey excluded magistrate judges[6] from its sample of judges. Magistrate judges help district judges manage their litigation workload by performing a wide variety of functions, including issuing arrest and search warrants, setting bail, handling various minor civil matters, and handling all petty misdemeanor criminal cases. With the consent of both parties, magistrate judges may also try civil cases and criminal felony cases. Excluding these magistrate judges' time spent on cases diminishes the actual amount of time spent by Article III judges on individual cases.
- The survey dealt with the few cases that were of a particular type by aggregating them into larger categories of closely related cases. Where there seemed no logical basis for an aggregation, the case type was given an arbitrary weight of 1.0.
- The survey also encountered a problem with outliers—cases that took an extraordinary amount of time. Seven options were developed for dealing with such cases; the one chosen essentially used the average number of hours recorded for the three largest cases in a category.
- The survey did not include confidence bounds for the final case weight calculations.

[5]When a judge takes senior status it creates a judicial vacancy on the court. The workload of federal judges who have taken senior status varies by district. Some continue to carry full caseloads, others much less. According to the Administrative Office, nationally, senior judges carry a caseload about one-quarter that of their nonsenior colleagues.

[6]Magistrate judges are appointed for specific terms of office and have limited powers but generally handle all criminal misdemeanors and may try other cases with the consent of both parties.

- The assumptions used to calculate the 1979 case weights had problems because they compared two essentially nonrelated databases—the cases in the 1979 survey and the universe of cases in Administrative Office database. The key assumption used was that the judicial effort expended in all courts on all cases terminated during a 3-year period were distributed by case type in the same proportion as the judicial time reported in the 1979 survey. The researchers used this assumption to show that the sample was representative of the universe from which it was drawn.
- The survey codes were judgmentally assigned to civil and criminal cases. For instance, the code assigned to a civil case was determined by the person (usually an attorney) filing the case for the plaintiff. The nature of a case may have changed substantially during litigation. In criminal cases, the code was determined by the court clerk whose assignment is based on the most severe charge in the indictment/information filed by the prosecutor. Prosecutors however, may file multiple charges, including the harshest charge they can.

The exclusion of senior judges from the 1979 study was understandable. At the time the study was conducted, a senior judge did not have to hear any cases at all, though most did. Senior judges also had almost total control over the cases they did hear, being able to reject any case assigned to them that they did not want to handle. In the current environment, senior judges still have considerable control over their workload but must carry a minimum workload to be eligible for the pay raises given to active judges.

Current Effort to Revise 1979 Case Weights

The 1979 study's case weights have not been easy to refine or update. During the 10 years since the 1979 case weights were developed, there has been a surge of asbestos litigation (a type of litigation that hardly existed in 1979), a deluge of civil and criminal cases associated with the savings and loan disaster, and an enormous increase in the number and complexity of drug cases. The current (1979) weights reflect none of these factors. Thus, the Judicial Conference has relied on information besides the weighted caseload to determine the need for additional judges in specific districts.

The 1987 district court case-weight study was designed to overcome many of the limitations of the 1979 study. The new study differs from the 1979 case-weight study in the following ways:

- It is more comprehensive than the 1979 study—it includes all district courts, not just a sample of them.
- It includes data not captured in the 1979 study, such as magistrate judges' time and identification of parties in the case.
- It will be possible to assign confidence intervals to each new case weight.[7]
- It includes all cases filed in a court over a 2-week period, and it tracks each case until it is completed, regardless of how long it takes to resolve. Additional 1991 criminal cases were added because of an influx of drug cases—the Conference wanted to capture what was happening in the criminal area as a result of sentencing guidelines, etc. These other cases were in addition to those criminal cases filed during the 2-week period.

The 1987 case-weight study, however, also shares some limitations of the old one. Table II.1 compares the 1979 case-weight study to the 1987 study. The new case weights will probably not be available until 1994. At this point, no new case weights exist to compare with those now used. It is likely that certain types of cases, such as drugs, will have a higher case weight than they do now. We concluded, based on our analysis, that the Conference's overall methodology for developing new case weights seems basically sound.

[7]A confidence interval is the range within which there is 95 percent probability the actual case weight will fall. For example, if the case weight is 1.6, the confidence interval may be 1.2 to 2.0, indicating that there is a 95 percent probability the true case weight will fall within that range.

Table II.1: Comparison of 1979 and 1987 District Court Case-Weight Studies

1979 case-weight study	1987 case-weight study
Sample of 100 judges, excluding senior judges and judges with less than 18 months experience.	Participating judges are determined by cases in the study. The judge to whom a case is assigned becomes the study participant.
Cases included were those on which the participating judges spent time during the 12-week period in early 1979.	Cases included are all cases filed in the district during the designated 2-week period. Last court entered study in 1990.
The study was limited to the 12-week period, so it may or may not have included a case in its entirety.	All cases are tracked from their initial filing to their final disposition.
Excluded noncase-related judge time and court support personnel from the study.	Excluded noncase-related judge time and court support personnel from the study.
Excluded magistrate judges from the study.	Includes magistrate judges, except for magistrate judge time spent prior to the filing of criminal cases. Excludes magistrate judge petty criminal cases but includes petty criminal cases handled by the district judge.
Did not track time separately for different case events.	Does track time for different case events, such as discovery and pretrial motions.
Not possible to calculate confidence bounds for case weights.	Will include confidence bounds for case weights.
Developed rules for dealing with missing cases, outliers, etc.	Rules for dealing with outliers, etc., will be determined once all cases in the study are complete and such cases can be identified.

Limitations of the Court of Appeals Workload Measure

To understand the workload measure used for the courts of appeals, it is useful to contrast it with that used for district courts. In the courts of appeals there are no individual case weights analogous to those used in the district courts, where each individual category, or type of case, is given a case weight when the case is filed. Each district case weight reflects the average amount of time a district judge would be expected to need to decide the case. Thus, a case with a weight of 1.5 would be expected to take about 50 percent more time to decide than a case with a weight of 1.0.

Because no such set of case weights has been developed for the courts of appeals, a less precise workload measure is used to measure appellate court workload. There are two basic differences between the workload measures used for the district and appellate courts.

First, the appellate court workload measure is based on cases decided, not filed, and is called "merit dispositions." A merit disposition is a case

decided on the legal rights of the parties to the case rather than on technical issues, such as the lack of federal jurisdiction. Second, with one exception, prisoner petitions, all merit dispositions are given the same weight—1.0. In other words, it is assumed that a decision on the merits in a sentencing, antitrust, or civil rights appeal requires the same amount of judicial time. Prisoner petitions decided on the merits are weighted at 0.5, or one-half the weight of all other merit dispositions, because such petitions generally take less judicial time than other cases. The Judicial Conference found that discounting prisoner petitions this way eliminated most of the variation among circuits that it found when it weighted them the same as all other cases.

A workload of 255 merit dispositions per judge is used as the benchmark for adding judges in a circuit. The Judicial Conference does not defend merit dispositions as a particularly accurate measure of appellate court workload. Indeed, in 1990, the Federal Courts Study Commission, a body appointed by the Chief Justice of the United States at the direction of Congress, recommended that the Judicial Conference develop a "weighted caseload index," similar to that used for the district courts. However, at this point, work has not yet begun on developing such an index. Consequently, "merit dispositions" is the best appellate court workload measure currently available.

Ninth Circuit Case-Weighting System

A brief description of the Ninth Circuit's system case-weighting system illustrates some of the problems with the "merit dispositions" workload measure. The Ninth Circuit Court of Appeals developed its own case-weighting system as a means of more equitably distributing workload among its judges. The Ninth Circuit found merit dispositions too aggregate a measure for this purpose. For example, the merit dispositions measure treats workload cases decided with and without oral argument as equivalently demanding, even though cases scheduled for oral argument generally raise more difficult legal issues and take more judicial time to decide, including the time to attend the oral argument itself.

The Ninth Circuit created a system that weights cases as 1, 2, 3, 4, 5, 7, or 10. After the first full set of briefs has been submitted, a staff attorney reviews the briefs and assigns a case weight. The case weight is the staff attorney's estimate of the relative amount of judicial time and attention the case will require. All cases, except those weighted 1, are scheduled for oral argument. Cases weighted 2 and 3 are scheduled for 15 minutes per side; cases weighted higher than 3 are scheduled for 30 minutes per side. Cases

weighted 1 or 2 are fairly straightforward, and require the least judicial time. Cases weighted 7 or 10 are the most complex, and require the most time.

The Ninth Circuit weights are inherently subjective and have not been tested for statistical reliability or validity. The weights assigned depend upon the judgment and experience of the reviewing staff attorney, whose decision can be altered by the rotating panel of judges that reviews each case. The primary test of validity is how often the judges exercise this prerogative. Though subjective, the system is an explicit recognition that merit dispositions, as a workload measure, does not provide a sufficiently precise measure of the judicial time required to decide different types of cases.

Ambiguous Use of Judgeship Questionnaire Responses

In developing its 1990 judgeship recommendations to Congress, the Conference considered the district court responses to the 1989 judgeship survey. In its questionnaires to the chief judges of the district courts, the Conference asked for supplementary data that could help the Conference assess a court's need for additional judgeships. This additional information could be used to accommodate a court's special needs not captured by the case weights, such as the loss of senior judges assisting the court, excessive travel for the court's judges, sentencing guidelines, or hazardous travel conditions. The questionnaires included two broad, open-ended questions that gave each court an opportunity to raise any issue it thought would help to justify additional positions:

- "Explain all caseload factors (shown in the statistical profile) of your court that justify your request for additional judgeships."
- "Explain any factors not included in the statistical profile that justify a request for additional judgeships."

The Conference also asked two questions concerning the workload contribution of senior judges and magistrate judges:

- "How many senior judges does your court have, and has the presence of senior judges affected your request for additional judges?"[1]
- "Could your need for additional judicial resources be met by the appointment of additional magistrate judges rather than additional judgeships?"[2]

No district court indicated that their need for additional judgeships was diminished by the contributions of senior judges or magistrate judges.

Conference Use of Questionnaire Data Unclear

As shown in table III.1, the district courts identified a wide variety of issues in support of their judgeship requests. Our review of the districts' questionnaire responses showed that over half of the 55 districts for which the Conference made judgeship recommendations cited the following reasons for requesting additional judgeships:

[1]Senior judges are judges who have elected to take "senior" status. When a judge does so it creates a vacancy on the court, which can be filled by a new appointment. A judge who takes senior status retains his full judicial salary and continues to hear cases, though a senior judge has considerable discretion over the size of his caseload. Some judges continue to take a full complement of cases, others a reduced workload.

[2]Magistrate judges have limited, but important, powers and responsibilities. They handle criminal misdemeanor and traffic cases in most district courts and conduct most pretrial proceedings, such as arraignments and setting of bond, in all criminal cases. They may also try civil cases with the consent of both parties to the case.

- magistrate judges were used to full capacity and additional magistrate judges would not alleviate the need for Article III judges (51 of 55);
- high pending workload (33 of 55);
- sentencing guidelines (32 of 55);
- senior judges' assistance (31 of 55);
- extensive travel/hazardous conditions (30 of 55);
- asbestos cases (30 of 55); and
- the courts' workloads exceeded their 400 per judgeship weighted filings benchmark (29 of 55).[3]

We categorized the Conference's response to each reason the district courts cited as justification for adding judgeships by reviewing the Conference's written explanation for its recommendation for each court. We found that the Conference generally addressed each court's justification by accepting, rejecting, or simply not commenting on it. We also noted that at times the Conference made an additional comment concerning a court's justification or cited another reason not mentioned by the court but similar to that category. We labelled this category "other." Table III.1 provides a comparison of the reasons districts cited in support of their requests with how the Conference addressed those justifications.

Table III.1: Comparison of District and Conference Judgeship Justifications

District courts' justifications	Total number of districts	Conference			
		Accepted	Rejected	No comment	Other
Magistrate judges—still need additional judges	51	1	1	49	0
High pending workload	33	25	6	1	1
Sentencing guidelines	32	0	0	32	0
Senior judges' assistance	31	5	2	23	1
Extensive travel/hazardous conditions	30	6	4	20	0
Asbestos cases[a] 30	7	8	14	1	
Exceeded weighted filings benchmark	29	23	5	0	1
Prior vacancies	25	4	7	13	1
Increase in criminal filings	21	7	10	2	2
Laws affecting courts' workloads	16	0	3	12	1
Anticipated increase in drug cases	15	3	1	11	0
Long, extended trials	14	7	0	6	1
Increase in unweighted filings	14	5	8	0	1

(continued)

[3]The fact that a court's workload exceeded the threshold of 400 weighted filings per authorized judgeship was the starting point of the Conference's analysis. Most districts recognized this and did not rely solely on weighted filings to support their request for additional judgeships.

District courts' justifications	Total number of districts	Conference			
		Accepted	Rejected	No comment	Other
District court location(s)	14	1	0	13	0
Caseload factors to ignore	13	5	6	1	1
Increases in U.S. attorneys	13	2	0	11	0
Multiple defendant criminal cases	12	5	1	5	1
Population increase	12	0	0	12	0
Complexity of cases filed	11	2	2	7	0
Not requesting as many additional judgeships as justified	9	2	4	3	0
Increased median time: filing to disposition (criminal cases)	6	2	1	3	0
Anticipated increase in cases/filings	6	0	0	6	0
Heavy caseload	6	4	2	0	0
Anticipated increases in civil filings	5	0	1	3	1
Anticipated increase in U.S. attorneys	5	0	2	3	0
Burden of prisoner litigation—proximity of prisons	5	0	3	1	1
Increase in filings/caseload	5	2	0	2	1
Proposed prison construction—prisoner litigation increase	4	0	1	3	0
Felonies/defendants per judge	4	0	1	3	0
Caseload projections	4	0	1	2	1
Increased median time: issue to trial (civil cases)	4	3	0	1	0
Threshold of 400 weighted filings per judgeship slightly missed	3	2	0	0	1
Anticipated increase in criminal filings	3	0	0	3	0
Increase in court time per judge—criminal cases	3	1	0	1	1
Increase in death penalty cases	3	0	2	1	0
Use visiting judges—still need additional judgeships	3	2	0	1	0
Excessive weighted filings per judge if conversion is denied	3	3	0	0	0
Terminations per judge	3	3	0	0	0
Plans for new courthouse	2	0	0	2	0
Natural disaster—Hurricane Hugo	2	1	0	1	0
Anticipated increase in Drug Enforcement Agency or Customs agents	2	0	0	2	0
Hours in court per judge—civil and criminal cases	2	0	0	2	0
Loss of active judge	2	1	0	1	0

(continued)

District courts' justifications	Total number of districts	Conference			
		Accepted	Rejected	No comment	Other
Transportation problems—distances between courthouses	1	0	0	1	0
No increase in authorized judges since 1970	1	0	0	1	0
Emergent matters/400-450 temporary restraining orders yearly	0	0	0	0	0
Mass tort case	1	0	0	1	0
Judges assist the Circuit Court of Appeals	1	0	0	1	0
Increase in Federal Bureau of Investigation agents	1	0	1	0	0
State laws—complicated civil cases	1	0	0	1	0
Commitment to Congressman—judge in district	1	1	0	0	0
Border district to Canada—affects caseload	1	1	0	0	0
Economic consideration—available courtroom facilities for additional judges	1	0	0	1	0
Death threats—endured protective custody	1	0	0	1	0
Activist bar association	1	0	0	1	0
Diversity cases—56.9% of civil filings	1	0	0	0	1

[a]The Conference used an unwritten rule for assessing requests based on large numbers of asbestos filings (see app.I).

Source: GAO, derived from the 1990 district court judgeship survey responses and the Conference's assessment.

The Conference's use of the districts' judicial needs questionnaire responses in making judgeship recommendations was unclear. The brief explanations accompanying the recommendations for each district court are the only written indication of whether the Conference accepted, rejected, or simply did not consider the various reasons—other than weighted case filings—district courts offered to support their requests for additional judgeships. Thus, we could not determine how the Conference used this information or the relative importance assigned to these reasons in the Conference's support or rejection of specific court requests for additional judgeships.

Examples of Conference Response Revealed Similar Concerns in Different Courts

As table III.1 shows, the district courts noted a wide range of concerns in requesting additional judgeships. Because the Conference's use of this information was undocumented, except for the brief explanations included with its judgeship recommendations for each court, we could not determine how the Conference used this information or the relative

importance it assigned the information in assessing judgeship requests. The Conference's brief written explanations for its recommendations were inconsistent in their reference to the various reasons district courts offered for needing additional judgeships. As the examples below illustrate, the Conference's written comments in some cases totally or largely ignored the issue and in other cases frequently mentioned the issue but were inconsistent. It is possible that the Conference's different treatment of the same justification offered by different courts could be a function of specific circumstances in each court that were not described in the data available to us.

Pending Caseloads

The Conference's questionnaire did not specifically mention pending caseload, but 33 courts mentioned backlog problems as a reason for needing additional judgeships. The Conference's official written policy was to make no recommendations for additional judgeships solely on the basis of pending workload. The complexity of a court's workload and the time expected to handle those cases were included in the weights assigned to cases at the time they were filed. In justifying its recommendations, the Conference used pending workload to support additional positions for 25 district courts but rejected it as a supporting factor for another 6 courts.

Impact of Federal Sentencing Guidelines

Even where the Conference's questionnaire included questions on specific topics, it is not clear whether or how the Conference used the courts' responses. For example, the Conference specifically asked each court two questions on the federal sentencing guidelines, which officially took effect on November 1, 1987:

- "Explain the impact the sentencing guidelines and procedures implemented by the U.S. Sentencing Commission have had on your workload."
- "Has the impact of the sentencing guidelines affected your request for additional judgeships?"

While 32 district courts cited the impact of the guidelines as additional justification for adding judgeships to their courts, the Conference did not mention the guidelines at all in the explanations for its individual district court recommendations.

Asbestos Cases

The Conference asked five questions about the impact of asbestos cases on court workload and the need for additional judges:

- "What impact have asbestos personal injury product liability cases had on your workload (especially your pending caseload)?"
- "Describe any special procedures your court has initiated to handle asbestos cases."
- "Are asbestos cases proceeding normally or are they being held up because of pending bankruptcy proceedings or other reasons? Explain."
- "If asbestos cases are proceeding normally, are they being consolidated or are they decided individually? Explain."
- "Do you expect large numbers of additional asbestos filings in the future?"

Thirty courts cited the impact of asbestos cases on their workload as at least one reason for needing an additional judgeship. Of these 30 courts, the Conference noted the impact of asbestos cases in recommending additional positions for 7, rejected asbestos cases as supporting 8 courts' requests, and made no mention of asbestos cases in its recommendations for 14 (plus 1 "other" mention). The Conference used an unwritten rule for assessing requests for additional judgeships based on a large number of asbestos filings. This is the only one of the justifications listed in table III.1 for which the Conference had such a rule (written or unwritten).

Application of Policy on Diversity Cases Ambiguous

Diversity cases are generally disputes between citizens in different states. Conference officials said they did not use a "diversity rule" per se to make judgeship recommendations. However, for courts with large numbers of diversity cases, the Conference's policy was to explain a court's decline in weighted filings when largely due to a decrease in diversity cases. This was the one area in which the Conference made an exception to its policy of basing its judgeship recommendations on current workload, not projected workload.

Congress increased the dollar threshold for diversity cases in May 1989 from $10,000 to $50,000, and diversity cases filed that year declined considerably. Based on the actual trends in diversity filings the last time Congress increased the dollar threshold for diversity suits, the Conference assumed that the 1989 decline in diversity jurisdiction cases was temporary and diversity filings would gradually increase. Therefore, the Conference's policy was to discount declines in weighted filings for courts with heavy diversity cases because such declines were thought to be temporary. For example, the Conference's analysis of its judgeship recommendation for the Central Illinois District Court stated in part that although weighted filings have fallen 13 percent since July 1, 1988, this

reduction was not indicative of a long-term trend because the primary factor was the decrease in diversity cases.

Our review of the Conference's 55 district judgeship decisions, however, showed that the Conference was generally ambiguous and at times inconsistent in applying its diversity case policy. For example, the Conference referred to the effect of diversity cases on courts' workloads in 25 of the 55 districts for which it made judgeship decisions. The Conference simply mentioned that the decline in diversity cases contributed to a decline in weighted or unweighted filings in 15 of the 25 courts. It is not clear what effect diversity cases had on its judgeship decisions for those courts.

The Conference's use of diversity case filings for the remaining 10 districts was inconsistent. For four of these districts, the Conference recommended additional judgeships despite a decline in filings because the decline resulted from a drop in diversity cases (which the Conference described as a short-term phenomenon). For example, the Conference noted that the Southern Texas District Court stated that it was experiencing a decline in weighted filings

"to the point where the seven additional judgeships reduces weighted filings to 394 per judgeship, slightly below the Subcommittee's 400 per judgeship threshold for additional permanent judgeships (the pending caseload would remain high at 547 per judgeship). Much of the decline in weighted filings is attributable to the recent change (May 1989) in the jurisdictional amount from $10,000 to $50,000 needed to file diversity cases in the U.S. district courts. This change will have a short-term impact on both filings and weighted filings which is not likely to last more than one year. With the drug-related workload continuing to rise rapidly, and despite the recent drop in diversity cases, the Subcommittee agrees that the court is in need of substantial additional resources and, consequently, recommends seven additional judgeships."

However, the Conference did not recommend additional judgeships for the remaining six districts that also had experienced a drop in diversity cases. The Conference either recommended no additional judgeships for those courts or modified their judgeship requests. For example, the Western Louisiana District Court requested an additional permanent judgeship during the 1990 survey. The Conference attributed the court's considerable decline in weighted filings to a decrease in diversity cases. But it also stated: "Although the drop in diversity cases may prove to be a short-lived phenomenon, the court's current workload now supports only a

recommendation for a temporary position. The Subcommittee, therefore, recommends one temporary position."

Comparison of Judgeships Requested, Recommended, and Authorized in 1990 for Each Circuit and District Court for Which Judgeships Recommended in 1988 and 1990

Circuit or district court	1988 Judicial Conference recommendations	1990 Requests	1990 Recommendations		1990 Authorization
		Circuit/ district courts	Judicial circuit council	Judicial Conference	Congress (P.L.100-650)
Circuit					
First	0	1	1	1	0
Third	2	4	4	4	2
Fourth	4	4	4	4	4
Fifth	1	1	1	1	1
Sixth	5	5	5	5	1
Eighth	2	1-3	2	2	1
Tenth	2	3	3	3	2
District court by circuit					
First Circuit					
MA	1T, 1T/P	1T, 1T/P	1T, 1T/P	1T, 1T/P	1, 1T/P
ME	0	0	0	0	1
NH	0	0	0	0	1
Second Circuit					
CT[a]	2	2	2	2	2
NY, Northern	1T	1T	1T	1T	1T
NY, Eastern	1	2	4	3	3
NY, Southern	1	1	1	1	1
NY, Western	1T/P	1T/P	1T/P	1T/P	1T/P
Third Circuit					
NJ	3	4	4	4	3
PA, Eastern	3, 1T	5	5	5	1T, 3
PA, Middle	0	0	0	0	1
VI	1	1	1	1	0
Fourth Circuit					
MD	1T	1	1T	1T	0
NC, Eastern	0	1T/P	1T/P	1T[a]	1T/P
NC, Western	0	1	0	0	0
NC, Middle	0	0	0	0	1
SC	0	1	1T	1T	1
VA, Eastern	1T	1T	1T	1T	1T
WVA Northern	0	2	1T	1T	1
WVA Southern	0	1	1	1T	1
Fifth Circuit					
LA, Middle	1T	1	1T	1T	0

(continued)

Circuit or district court	1988 Judicial Conference recommendations	1990 Requests	1990 Recommendations		1990 Authorization
		Circuit/ district courts	Judicial circuit council	Judicial Conference	Congress (P.L.100-650)
LA, Western	1	1	1	1T	1
MS, Southern	1	1	1	1	1
TX, Northern	1	2	2	2	2
TX, Eastern	1T	1T	1T	1T	1
TX, Southern	3	7	7	7	5
TX, Western	1	3	3	3	3
Sixth Circuit					
MI, Western	1T	1T	1T	1T	1T
OH, Northern	1T, 1T/P	2	1, 1T	1, 1T	1T, 1T/P
OH, Southern	1, 1T	2	1, 1T	1, 1T	1
TN, Eastern	1	1	1	1	1
TN, Middle	1T	1T	1T	1T	1
TN, Western	0	1T	1T	0	1
Seventh Circuit					
IL, Northern	1, 1T/P	1, 1T/P	1, 1T/P	1, 1T/P	1,1T/P
IL, Central	1T	1T	1T	1T	1T
IL, Southern	1T	1T	1T	1T	1T
IN, Northern	1T/P	1T/P	1T/P	1T/P	1T/P
Eighth Circuit					
AR, Eastern	2R/P[b]	0	2R/P	2R/P	2R/P
AR, Western	1	1, 1T/P	1T, 1T/P	1T, 1T/P	1, 1T/P
IA, Northern	1R/P	1	1R/P	1R/P	1R/P
IA, Southern	1	1	1	1	1
MO, Eastern	1, 1T	2	1, 1T	1, 1T	1, 1T
NE	1T	1	1	1T	1T
Ninth Circuit					
CA, Northern	2	2	2	2	2
CA, Eastern	1T	1	1	1T	1T
CA, Central	6	7	7	6	5
CA, Southern	0	2	2	1T	1
HI	1T	0	0	0	1T
NV	1T	1	1	1T	0
OR	1	2	1, 1T	1, 1T	1
WA, Western	1T/P	1T/P	1T/P	1T/P	1T/P
WA, Eastern	0	0	0	0	1

(continued)

Circuit or district court	1988 Judicial Conference recommendations	1990 Requests	1990 Recommendations		1990 Authorization
		Circuit/ district courts	Judicial circuit council	Judicial Conference	Congress (P.L.100-650)
Tenth Circuit					
KS	1T	1	1	1T	1T
NM	1	1	1	1T	1
OK, Northern	1	1	1	1T	1
OK, Western	2, 1T, 1R/P	2	1, 1T, 1R/P	1, 1R/P	1, 1R/P
UT	0	0	0	0	1
WY	0	0	0	0	1
Eleventh Circuit					
AL, Northern	1T	1	1	1T	1T
AL, Middle	0	1	0	0	0
FL, Northern	0	1	0	0	1
FL, Middle	2	2, 1T	2, 1T	2, 1T	2
FL, Southern	0	1	1	1T	1
GA, Middle	0	0	0	0	1

Legend:

T = temporary position.
T/P = convert existing temporary position to permanent one.
R/P = convert existing roving judgeship (position shared between two or more districts) to permanent position for one (specified) district.

[a]Extend existing temporary position for another 5 years.

[b]Administratively assign two existing roving judgeships shared between Eastern and Western districts of Arkansas to the Eastern District only and designate both permanent positions for the Eastern District.

Comments From the Administrative Office of the U.S. Courts

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

October 21, 1992

Mr. Richard L. Fogel
Assistant Comptroller General
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Thank you for the opportunity to comment on the draft report on Federal Judiciary: Assessing the Need for Additional Judges. In addition to Administrative Office staff, the draft report was reviewed by Judge Carolyn Dimmick, Chairman of the Judicial Conference Committee on Judicial Resources and by Judge Lucius Bunton, Chairman of the Committee's Subcommittee on Judicial Statistics. Their comments on the report are incorporated in this response.

The report is generally accurate in describing the Judicial Conference (Conference) process of developing recommendations for additional judgeships. It is also complete in identifying all of the factors which are a part of the decision making process. I also feel that it is appropriate for the report to conclude that the Conference process of assessing the need for additional judgeships is a reasonable one.

With regard to the recommendations contained in the report, we are in agreement that the Congress should have all information necessary to consider fully the recommendations of the Judicial Conference. Conference representatives have always been available to discuss recommendations with members of Congress and their staffs, and they will continue to cooperate fully on any legislative proposal recommended by the Judicial Conference. In fact, all of the information contained in your draft report was made available to Congressional staff in 1990, especially that of the House Judiciary Committee, as a part of their review of the judgeship recommendations. The same information would have been made available to Senate staff as well had they requested further clarification.

See discussion on pp. 22-23.

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

I will not comment on the recommendations related to the revisions to the weighted caseload, other than to say that it is a costly and complex process which requires very careful consideration before commitment of the substantial resources necessary for the revisions. I understand that the Federal Judicial Center will comment in more detail on this issue.

We have the following comments to offer about specific portions of the report.

See discussion on pp. 22-23.

1. Written and Unwritten Rules. The report contains numerous references to "written" and "unwritten" rules which the Conference used to assess the need for additional judgeships. It should be made clear in the report that "written" refers to the materials which were submitted to Congress as a part of the official transmittal of the recommendations, and that "unwritten" refers to guidelines which were not specifically contained in those materials. It would be more appropriate to refer to the "written" rules as formal guidelines and the "unwritten" rules as informal application guidelines. While the official transmittal did not contain the informal application guidelines, those rules are well established in the Conference process and have been in use since at least 1980.

Now p. 9.

2. Temporary Judgeship Definition. At page 12, footnote 10, the explanation of temporary judgeships is not accurate. Beginning at the fourth sentence of the footnote it should read as follows:

> Five years after a temporary position is authorized, the judge appointed to that position does not leave the bench, but the next judicial vacancy (permanent or temporary position) to occur in the district is not filled, thus reducing the number of authorized judgeships for the district to the number of permanent positions.

The last sentence of the footnote should then be deleted.

See discussion on pp. 9 and 23.

Now p. 11.

3. Ninth Circuit Memorandum. Beginning at page 15, footnote 11, there are references to a Ninth Circuit memorandum which describes the practice of the Subcommittee on Judicial Statistics in recommending temporary judgeships. The footnote states that the Subcommittee recommended a temporary judgeship where a court's workload fell between 350 and 399 weighted filings per judgeship. The Judicial Conference has not adopted a precise range for making the decision

See discussion pp. 23-24.

on temporary judgeships, primarily because of small courts which would have difficulty in meeting such a standard. It is because of what your report refers to as the "small court rule" that the Conference has not adopted such a range.

The footnote goes on to state that after conferring with the Administrative Office, GAO used the range to determine if ". . . the Subcommittee and Conference were following their own written policies in recommending new temporary judgeships." The use of the Ninth Circuit memorandum for evaluation purposes was a decision made by GAO staff. It was not endorsed by Administrative Office staff nor does it represent Judicial Conference policy. The report should be amended to reflect these facts.

4. Committee Representation. At page 3 there is mention of the Conference organization and the Committee and Subcommittee which have the primary responsibility for reviewing judgeship needs on behalf of the Judiciary. There is, however, no mention of the representation on the Committee. It would be helpful if the report contained the fact that the Committee has at least one representative from each circuit and that both district courts and courts of appeals are represented. The representatives from each circuit can provide helpful information about the situation in the courts of the circuit based on first hand knowledge. Likewise, the mixture of district and court of appeals judges assures that decisions are made on the basis of full and complete knowledge of the nature of the workload of the two court levels.

See p. 3. New language reflects clarification.

5. Conference Use of Supplemental Data. At pages 2 and 24 and in Appendix III there is reference to the manner in which the Conference used the information from questionnaires completed by the courts. The report states that "The Conference accepted some districts' justifications as reasons to support judgeship requests but rejected those same justifications when used by other districts for reasons that were not clear." It goes on to cite an increase in criminal filings as an example of a justification used in such a manner.

Now pp. 2 and 17. Also see app. III.

The Conference uses the information from the questionnaires in conjunction with the workload statistics provided by the Administrative Office. The fact that a court had experienced an increase in criminal filings was not the critical factor in considering the request, but instead it was to what level filings had increased. In many instances the

See discussion on p. 24.

Conference rejected a particular justification because its impact was not sufficient enough to bring the court up to the Conference standards for recommending additional judgeships. In instances where the Conference accepted a similar justification, the factor did have a significant impact on the level of the workload (either criminal filings per judgeship or weighted filings per judgeship).

6. Number of Judgeships Recommended. At page 1 there is reference to The Conference's ". . . 1990 recommendations for 87 district and 20 circuit court of appeals judgeships." The Conference recommended 76 additional district judgeships, not 87. The 87 refers to the number of judgeships on which the Conference made a recommendation. Eleven of the recommendations related to already existing judgeships (temporary and roving positions) and not creation of new ones.

See p. 1. New language reflects clarification.

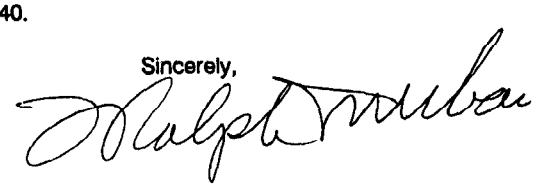
7. Appendix I-Specific Districts. At page 53 of Appendix I the explanation of the recommendation for the Southern District of Iowa states that Administrative Office officials did not know why the Conference departed from its "small court rule" in making the recommendation. The recommendation for this district was affected by the Conference's recommendation to convert a roving judgeship to serve the Northern District of Iowa only. This action would leave the Southern District with only two permanent judgeships where there had been 2.5 permanent judgeships. In order to be fair and equitable to the Southern District, the Conference decided that it should provide at least the complement of judgeships which existed prior to the recommendation.

Now pp. 67.

See discussion on p. 22.

Again, thank you for the opportunity to review the draft report. If you have questions concerning any of our comments, please contact David Cook, Chief of the Statistics Division, at 202-273-2240.

Sincerely,



L. Ralph Mecham
Director

Comments From the Federal Judicial Center

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October 13, 1992

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General Government Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Fogel:

This letter responds to your September 29, 1992, request for official comments on your draft report, Federal Judiciary: Assessing the Need for Additional Judges. My comments concern portions of the report's analysis of the work of the Federal Judicial Center. I have not commented on the report's analysis of actions or policies of the Judicial Conference of the United States or its committees, or of the Administrative Office of United States Courts. I should say that I endorse the report's conclusion that the process for assessing needed judgeships is "reasonable."

1. Criticisms of the 1979 Time Study — The report contains various criticisms of the Center's 1979 Time Study, on which the current case weights are based, and notes that the Center is now conducting a new study that will yield a revised and improved case weighting system. We recommended and the Judicial Conference approved the current study in part because of the limitations in earlier studies that the report notes. Thus I do not address the report's criticisms of the 1979 Time Study.

Now p. 22.

2. Frequency of case weight revisions — The report recommends that "The district court case weights should also be revised more regularly" (p.30), which I take to mean at more regular, and perhaps more frequent, intervals. I note preliminarily that the "weighted filings" statistic (the actual workload measure) is revised annually for each district, based on the most recent year's case filings and the current set of case weights and that since 1970, the weights themselves have been revised roughly every ten years.

See discussion on p. 25.

When to revise the case weights themselves is a much more complex determination than the report's recommendation implies. We undertook the current revision only after a careful balancing of costs and benefits, and a determination that the need for new weights was strong enough to justify the costs. The current study has demanded several millions dollars worth of the time of court personnel; the time and resources of the Judicial Center must also be considered. Measured against the costs of a case weights revision is the likely benefit of a new set of weights. The Judicial Conference, as your report recognizes, has been able to make reasonable judgeship assessments even with a somewhat outdated set of weights by accounting judgmentally for caseload factors that the 1979 case weights do not accurately reflect (e.g., asbestos cases and the increased demands of criminal cases). Finally, the events that create a clear need for case weight revision tend to be quite irregular. Five or ten years may pass without any major changes in the character of the demands impose by dominant types of cases. On the other hand, significant

changes can occur in a very short period, possibly necessitating a new time study much sooner than five years (the Sentencing Reform Act might well have produced such a change, but we were able to account for that event in the course of the current study).

Now p. 20. New language reflects clarification.

3. Merit dispositions as an appellate workload measure — Workload Measures for the Courts of Appeals — The draft report states that "The merits dispositions workload measure... is of little help in distributing workload among judges" (p.28) and that the Ninth Circuit's case weighting system "is an explicit recognition that merit dispositions, as a workload measure, does not provide a sufficiently precise measure of the judicial time required to decide different types of cases" (App. II, p. 12). The Judicial Center helped to devise the current merits dispositions workload measure, and is currently examining options for devising an improved measure of workload in the courts of appeals. The report's analysis of the merits disposition measure, however, apparently misunderstands the purpose of the measure itself, as well as of the Ninth Circuit's system.

Now p. 77.

The purpose of the merits disposition measure is not to "help in distributing workload among judges," and the fact that it may not be suitable for allocating existing or incoming caseload among judges in a court is not a valid criticism. The purpose of this measure, as well as the district court weighted filings measure, is to assess the total case-related workload of the court. These measures were devised for and are used by the Judicial Conference, to assist it in deciding how to respond to a court's request for one or more additional judgeships. These are decisions requiring a long-term view, since a newly created judgeship is likely to take a year or more to fill, and is likely to continue to exist for many years.

See discussion on pp. 25-26.

Similarly, the purpose of the Ninth Circuit system is to balance the workload among judges within the circuit. Its purpose, contrary to what the draft report may be suggesting, is not to help measure the court's need for additional judgeships, and several factors would make it an inappropriate replacement for the merits disposition measure. If implemented for purposes of aiding Judicial Conference decisions on requests for new judgeships, such a system would be open to serious criticism due to its subjective nature. It would be quite impossible to provide any objective explanation of why the workload in one court is deemed to justify an additional judgeship while that in another court is not. The Ninth Circuit system is also quite expensive, since it requires that each case be reviewed on its briefs by a trained staff attorney, who estimates the likely demand of that particular case.

See discussion on pp. 25-26.

Now p. 3. New language reflects clarification.

4. Technical problems — Finally, I note two technical problems, neither of which concern the work of the Center. First, p. 4's assertion that the councils "oversee the administrative operations of the district courts" is inconsistent with 28 U.S.C. § 332, which authorizes each council to make orders "for the effective and expeditious administration of justice within [the] circuit" and directs "All judicial officers and employees of the circuit" to obey council orders. Second, p. 26's explanation of a "merit disposition" may lead some readers to assume that merit dispositions exclude decisions about trial procedures.

Now p. 18. New language reflects clarification.

Thank you for affording us the opportunity to comment on your draft report.

Sincerely yours,

William W Schwarzer

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