State–Federal Judicial Observer

NEWS AND COMMENTARY OF INTEREST TO THE STATE AND FEDERAL JUDICIARY

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Courts Struggle with Rising Caseloads; State, Federal Criminal Cases Increase

by Charles Campbell
National Center for State Courts

Increasing numbers of criminal cases are being filed in state and federal trial courts, according to a new statistical report issued by the National Center for State Courts.

Felony filings, which form the largest part of criminal caseloads in general jurisdiction state courts, show the greatest increase—more than 65% since 1985. Juvenile caseloads have risen by 35%, civil caseloads by 30%, and criminal caseloads by 25% since 1985. The figures are for 1992, the most recent year for which nationwide figures are available.

Other findings of the study (using 1985 as the base year) include the following:

• Criminal filings are up substantially in both state and federal courts, although the growth in state courts (39%) is nearly double that in federal courts (22%).

• Civil filings in state courts of general jurisdiction have grown by 21% and have shown steady growth, while civil filings in the U.S. district courts have declined by 16%.

• On average, a judge in a state court of general jurisdiction processes more than three times as many civil and criminal case filings as a U.S. district court judge.

• Domestic relations cases, which form the largest part of the state court civil caseload, are the most rapidly increasing type of civil case. They have increased by more than 43% since 1985.

• General civil cases (tort, contract, and real property rights), the second-largest portion of the state court civil caseload, are at the heart of the debate over reform of the civil justice system. Although filings for these cases declined in 1992, they've shown a mixed trend since 1985.

• The number of new state court tort cases, despite the slight decline in 1992, has remained relatively constant since 1985.

How are the courts keeping up? Three-fourths of state general jurisdiction trial courts could not keep up with the flow of new civil and criminal cases in 1992—these courts received more cases than

See CASELOADS, page 2

Aggregate Caseloads: Federal and State Courts, 1992

(Different ways of classifying cases make precise comparisons impossible.)

All U.S. district courts	Filings	Active Judges	Filings Per Judge
Criminal	48,366	*554	87
Civil	230,509	*554	416
Bankruptcy courts	977,478	294	3,325

(Federal courts also disposed of 93,077 petty offenses and misdemeanors; the 475 magistrate judges handled these cases and provided substantial assistance to district judges with their criminal and civil caseloads.)

All state trial courts	Filings	Judges	Filings Per Judge
Criminal	13,245,543	**27,874	475
Civil	19,707,374	**27,874	707
Juvenile	1,730,721	**27,874	62
Traffic	59,102,861	**27,874	2,120

* U.S. district court judges hear both civil and criminal cases. The 554 figure counts each judge once.
** The figure is total state court trial judges. Not all judges hear all kinds of cases, and thus the per judge filings figure is a composite.

Source: National Center for State Courts, 1994, and 1992 Annual Report of the Director of the Administrative Office of the U.S. Courts.

National State–Federal Council Endorses Resolution Opposing Federal Crime Bill

At its March meeting in Williamsburg, Va., the National Judicial Council of State and Federal Courts endorsed a conference of state chief justices' resolution asserting that federal omnibus crime legislation would "result in the indiscriminate federalization of crimes" and cause "needless disruption of effective state and local [law] enforcement efforts." The resolution, which the chief justices adopted in February, was directed primarily at the Senate version of H.R. 3355, the omnibus crime bill that has passed the Senate and is now in conference committee (to resolve differences with the crime bill passed by the House, H.R. 4092).

The resolution, stating four specific reasons why proposed crime bills in the Congress are "flawed," strongly opposed "federal action which, contrary to the principles of federalism and historical experience, would have the pernicious effect of federalizing state criminal law and procedure."

In other business at the meeting, Cynthia Lebow, senior counsel for policy of the civil division of the U.S. Department of Justice, reported on the Attorney General's initiatives on legal reform. Lebow said that the Attorney General "wants to get state and federal courts to work together." She said one of the four working groups in the Department of Justice deals with federal–state relations.

The council also heard reports on:

• Habeas corpus proceedings in state and federal courts, presented by Victor E. Flango, director of court research at the National Center for State Courts (see related story on p. 3); and

• Opportunities for interstate and state–federal cooperation in the use of court interpreters, presented by William A. Hewitt, senior research associate at the National Center for State Courts.

Hewitt said that his research revealed that problems relating to interpreter services are beyond affordable solutions at the individual trial court level, and that the solution lies in the "establishment of programs and resources that can be shared" on a state and regional level by both state and federal courts.

The use of court interpreters has become a major issue because of trends in immigration and cultural diversity. Hewitt reported that 12% of the total population of the United States in 1990 consisted of persons who do not speak English at home, and that the numbers are increasing. ❑

New State–Federal Judicial Councils Formed in Arizona, Northern Marianas

Members of the new state–federal judicial council of the Commonwealth of the Northern Mariana Islands. Seated, from left: CNMI Supreme Ct. Assoc. Justice Ramon G. Villagomez; CNMI Chief Justice Jose S. Dela Cruz; Chief Judge Alex R. Munson (U.S. D. N.M.I.). Standing, from left: CNMI Judges and Justices Alexandro C. Castro, Miguel S. Demapan, Marty W. K. Taylor, Pedro M. Atalig, and Edward Manibusan; and Judge William C. Canby, Jr. (U.S. 9th Cir.).

The creation of two new state–federal judicial councils—one in Arizona, the other in the Commonwealth of the Northern Mariana Islands—highlighted state–federal judicial council activity during the first part of the year.

At an organizational meeting held in Phoenix in February, state and federal judges from Arizona followed up on orders signed last October in both the Supreme Court of Arizona and the U.S. District Court for the District of Arizona. The orders committed both systems to the formation of a council. Arizona Chief Justice Stanley G. Feldman and U.S. District Judge Paul G. Rosenblatt (D. Ariz.) were instrumental in the formation of the new council, which consists of four state judges and five federal judges.

The first state–federal judicial council in the U.S. territories was formed in the Commonwealth of the Northern Mariana Islands at a historic gathering in Saipan on January 24, 1994, when seven commonwealth judges and two federal judges adopted a formal council charter. Chief Justice Jose Dela Cruz (CNMI Sup. Ct.) was elected chairman of the new council. The charter was drafted by Chief Justice Dela Cruz and Chief Judge Alex R. Munson (U.S. D. N.M.I.).

Judge Munson discussed possible computer assistance and other education programs for commonwealth judges.

At the organizational meeting of the new Arizona council, the members voted to invite a federal appellate judge to be a member. Prospective agenda items for the next meeting included prisoner litigation, scheduling conflicts, bankruptcy stays, state–federal cooperation in drug enforcement cases, and consistency between state and federal rules of procedure. ❑

National Roundup of State–Federal Judicial Council Meetings and Activities

State Councils

CALIFORNIA—The California State–Federal Judicial Council, at its meeting on April 7, 1994, in Los Angeles, formally recommended adoption of a process for certification of state law questions by the federal courts. Catherine Lowe, executive director of the California Center for Judicial Education and Research, reported on opportunities for state–federal cooperation in judicial education. Other reports received by the council included the following: capital case habeas corpus, by Judge Alexander H. Williams III (Cal. Super. Ct.); the structure of state–federal councils, including regional and metropolitan councils, by Judge Alicemarie H. Stotler (U.S. C.D. Cal.); coordination of large cases and resources, by Judge Fern M. Smith (U.S. N.D. Cal.); public confidence in the judiciary, by Justice William D. Stein (Cal. Ct. App.); and long-range planning by Judge William R. Ridgeway (Cal. Super. Ct.). Chief Judge J. Clifford Wallace (U.S. 9th Cir.) gave a special report on the mission of the federal courts.

The council previously met in San Diego on October 7, 1993. Judge Herbert B. Hoffman (Cal. Super. Ct.) and Judge Fern M. Smith (U.S. N.D. Cal.) proposed that both state and federal courts adopt rules requiring attorneys to disclose to judges the existence of all related or parallel cases filed in both systems. They also proposed the preparation of guidelines for state and federal judges to contact each other for cooperation and coordination on administrative and adjudicative matters. David Halperin (Cal. Admin. Office of Courts) was assigned responsibility for communication with the National Judicial Council of State and Federal Courts to suggest the development of a national registry of court interpreters.

HAWAII—The Hawaii State–Federal Judicial Council considered the issue of certification of state law questions by federal courts at its meeting on May 19, 1994, in Honolulu. Other items on the agenda were public access to the clerks' offices, video conferencing between courts, the sharing of courtroom facilities and other space sharing ideas, cooperative use of state and federal court libraries, and joint use and certification of interpreters.

IOWA—Des Moines was the site of the annual meeting of the Iowa State–Federal Judicial Council on September 14, 1993. Members of the council are Judge David R. Hansen (U.S. 8th Cir.), Chief Judge Charles R. Wolle (U.S. S.D. Iowa), Chief Judge Michael J. Melloy (U.S. N.D. Iowa), Chief Justice Arthur A. McGiverin (Iowa Sup. Ct.), Justice Louis A. Lavorato (Iowa Sup. Ct.), and Judge Richard J. Vogel (Iowa 8th Jud. Dist.). The council discussed the following topics: scheduling conflicts, the Iowa Supreme Court study on gender and race

See ROUNDUP, page 4

Inside . . .

NCSC Technology Conference Expects 2,500 Judges, Court Administrators

The National Center for State Courts will present the Fourth National Court Technology Conference (CTC4) at the Opryland Hotel in Nashville, Tenn., from October 12–15, 1994.

More than 2,500 judges, court administrators, court managers, and court technologists are expected to attend the conference's education programs, state-of-the-art demonstrations, and court technology exhibitions.

Topics to be covered in the various sessions will include:

• new technology for bench and chambers—tools to help judges manage case notes and prior rulings, communicate with colleagues, and ensure consistent decisions;

• validity of scientific evidence—exploration of the effects of recent Supreme Court and other court decisions and evidentiary principles judges can apply during trials;

• court rules related to technology—identification and transformation of restrictive rules to promote the use of new technologies in the court; and

• legal implications of courtroom technology—how courts have addressed the broad implications of video court records, remote appearances, and electronic evidence.

At the CTC4 exhibition, participants can also interact with representatives from over 100 companies who will demonstrate a full range of court technologies—imaging, video, multimedia, information systems, legal research, security, and products to assist individuals with disabilities. The exhibition will be the largest one of its kind ever assembled.

For further information, interested persons should call the CTC4 information line, (804) 259-1850. ❑

"Why Judges Resign" Is Subject of Study by Federal Judicial Center History Office

A study issued late last year by the Federal Judicial History Office of the Federal Judicial Center reports that only 7% (a total of 189) of all federal life-tenured judges who served between 1789 and 1992 resigned for reasons other than health or age.

Another 4% (101) resigned for reasons of health or age.

Why Judges Resign: Influences on Federal Judicial Service, 1789 to 1992 examines resignations among the 2,627 men and women who have served as federal judges during the 203-year history of the federal courts. The study, undertaken at the request of the National Commission on Judicial Discipline and Removal, was prepared by Emily Field Van Tassel, former FJC Associate Historian.

The two most frequent reasons cited for judicial resignation (other than health or age) were return to private practice of law and appointment to other office. Other categories of resignations include inadequate salary, allegations of misconduct or misbehavior, dissatisfaction, loyalty to the Confederacy, seeking elected office, other employment, impeachment, impeachment and conviction, military service, and one oddity (relinquishment of court appointment to a brother).

Of particular significance is the low number of judges who resigned after public allegations of misbehavior: only 20. In addition, only seven federal judges have been impeached and convicted, and two resigned following impeachment.

Copies of the study may be obtained by writing to Information Services, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003, or calling (202) 273-4153. ❑

CASELOADS, from page 1

they cleared from their dockets.

State appeals courts are also feeling the strain: The number of appeals filed in state courts reached a new high in 1992, with 259,000 filings, a 6% increase over 1991. Four-fifths of intermediate appellate courts and two-thirds of courts of last resort were unable to keep pace with the new filings.

These and other findings are reported in *State Court Caseload Statistics: Annual Report 1992*, published by the Court Statistics Project, a joint project of the National Center for State Courts (NCSC) and the Conference of State Court Administrators (COSCA). The Court Statistics Project tracks national trends in state court caseloads by gathering and analyzing comparable information from all 50 states and the District of Columbia. The project is funded by the State Justice Institute.

For more information on these findings, contact Brian J. Ostrom, director, Court Statistics Project, NCSC, phone (804) 253-2000, or Kriss K. Winchester, manager, Communications Services, NCSC, phone (804) 259-1840. The report (R-154) is available for $6.95 plus $2.25 shipping and handling from Carrie Clay, National Center for State Courts, P.O. Box 8798, Williamsburg, VA, 23187-8798, phone (804) 259-1812, fax (804) 220-0449. ❑

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OBITER DICTUM

Complex Litigation Is Issue for Principled Federalism

by Thomas M. Reavley
Senior Judge (U.S. 5th Cir.)

The allocation of jurisdiction between state and federal courts is a policy question for Congress. Traditionally, the jurisdiction of federal courts has largely been concerned with national interests. It is consistent with that policy to consolidate in federal courts complex litigation consisting of multiple cases in multiple states by multiple parties. By consolidating such cases for final disposition in one federal court, costs and delay would be lessened, and the best interests of all parties would be served.

Congress has considered such a jurisdictional change for more than 20 years. The successive chairs of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration—Robert W. Kastenmeier and then William J. Hughes—both introduced legislation that passed the House in 1990 and 1991. Unfortunately, the legislation failed to get much Senate interest and has not been revised in the current Congress.

Federal Jurisdiction for Single Large Accidents

H.R. 2450, the Multiparty, Multiforum Jurisdiction Act of 1991, however, is still a good basis for further efforts. This bill would create federal jurisdiction for litigation arising from a single accident that kills or seriously injures at least 25 people. It would require minimal diversity (i.e., at least one defendant and one plaintiff must be citizens of different states) and defendant/event dispersion (the residences of defendants and the location of the accident must involve in some combination more than one state). The cases would be consolidated by order of the U.S. Judicial Panel on Multidistrict Litigation and transferred to a federal court for resolution of all pretrial matters, determination of liability, and the assessment of any punitive damages. If the transferee court adjudged any defendant liable, the transferee court could return the action to the court where the action was originally filed for any necessary compensatory damage assessments, or the transferee court could retain the actions for final disposition.

Choice of Law a Problem

Choice of law is usually a problem in consolidated diversity cases. H.R. 2450 would have required the transferee court to analyze several factors and designate a single state whose substantive law would govern all aspects of all claims arising from the accident. However, a conflicts conundrum could arise from provisions allowing the court to designate in exceptional cases that different states' laws would govern different parties and different issues. *See, e.g., In Re Air Crash Disaster Near Chicago,* 644 F.2d 594, 610–33 (after meticulous conflicts analysis, the court urged Congress to enact uniform conflicts law for airline disasters). The simple way to eliminate that problem would be for Congress to designate the state law of the place of injury as the controlling substantive law. *See* Thomas M. Reavley & Jerome W. Wesevich, *An Old Rule for New Reasons: Place of Injury as a Federal Solution to Choice of Law in Single-Accident Mass-Tort Cases,* 71 Tex. L. Rev. 1 (1992).

Legislation Is a Workable Solution

Enactment of this legislation, with the designation of the controlling substantive law, would avoid duplicitous litigation, facilitate settlement, control costs, expedite disposition, and promote consistency. It would be a big step toward the development of workable solutions for the problems of complex litigation. It would provide a forum for the occasional airline, bridge, or chemical plant disaster—and it would afford courts the means to cope with a domestic Bhopal or Chernobyl.

"The courts' experiences [with asbestos and other similar types of cases] should encourage the approval of a procedure for a less costly and far more efficient and just resolution of complex litigation. The single accident vehicle is the place to begin that resolution."

The American Law Institute (ALI) has proposed a complex litigation statute under which civil actions involving one or more common questions of fact could be transferred to a federal district court (or to a state court) for pretrial or final disposition. Cases could also be removed from state courts to the consolidated proceeding. The ALI balked at providing for federal substantive law to solve the "choice of law" problem, but it did suggest resort to state law according to a federal statutory choice of law code. Whether that course represents timidity in the face of entrenched defense of expertise, or realistic appraisal of the chances of enactment, will depend on the viewer's vantage point. *See* Linda S. Mullenix, *Federalizing Choice of Law For Mass-Tort Litigation,* 70 Tex. L. Rev. 1623 (1992).

My own view is that the courts' experiences with asbestos, MER/29, Agent Orange, and Dalkon Shield litigation, as well as the single accident cases—such as those arising from the Kansas City skywalk collapse, large commercial airplane crashes, and similar events—should encourage the approval of a procedure for a less costly and far more efficient and just resolution of complex litigation. The single accident vehicle is the place to begin that resolution. ❑

A note to our readers

The *State–Federal Judicial Observer* welcomes comments on articles appearing in it and ideas for topics for future issues. The *Observer* will consider for publication short articles and manuscripts on subjects of interest to state and federal judges. Letters, comments, and articles should be submitted to Interjudicial Affairs Office, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003.

California State, Federal Judges Discuss Errors that Cause Habeas Problems

Twenty-One Issues Identified that Cause Reversals in Habeas Corpus Proceedings

Federal judges are often required to reverse the conviction of a defendant in a state court capital case, or at least conduct a hearing, because the record is insufficient for the resolution of certain issues. Senior Judge Arthur L. Alarcon (U.S. 9th Cir.) has identified the following 21 areas in which the state court record in capital cases is sufficiently deficient to require a federal court evidentiary hearing and possibly a habeas reversal:

- competency of the petitioner to stand trial;
- capacity of the petitioner to make a knowing and intelligent waiver of a relevant constitutional right;
- whether the petitioner has been treated or hospitalized for a psychiatric disorder;
- effect of medication prescribed by jail physicians on petitioner's ability to comprehend trial proceedings or to assist counsel in presenting a defense;
- impact of the denial of medication prescribed by the petitioner's private physician on his or her ability to comprehend trial proceedings, or to assist counsel in presenting the defense;
- alleged failure of counsel to conduct a competent investigation or to call material witnesses;
- impact on the jury of the shackling of the petitioner during trial;
- alleged suppression or destruction of exculpatory evidence;
- unreported rulings on essential instructions, or a lack of clarity in the record as to defense instructions reviewed and rejected by the trial court;
- scope of oral stipulations between counsel affecting constitutional rights, and the defendant's understanding of the stipulations;
- lack of clarity in the record regarding exhibits displayed to a witness in the presence of the jury (e.g., a gruesome photograph) or awareness of the jury of such evidence;
- failure of the record to indicate whether the jury requested and received an exhibit;
- failure of the record to show that the petitioner read and understood a written waiver of his or her presence at certain stages of the proceedings, or of any other constitutional right;
- alleged knowing presentation by the prosecutor of false testimony;
- alleged failure of the prosecutor to disclose the fact that a state witness testified falsely on cross-examination;
- defense lawyer's alleged conflict of interest;
- alleged bias of the trial judge;
- alleged conflicts or misconduct involving court officials, interpreters, bailiffs, and jurors;
- alleged unconstitutionality of the state's method of execution;
- alleged unconstitutional charging practices, such as a denial of equal protection based on race, national origin, age, gender, or religion; and
- alleged unconstitutional procedures in selecting the grand or petit jury. ❑

One of the significant features of a day-long symposium on handling death penalty cases was a review of common errors in state courts requiring reversal of conviction or at least a hearing. Senior Judge Arthur L. Alarcon (U.S. 9th Cir.) reviewed 21 recurring federal constitutional claims by state prisoners that require an evidentiary hearing in federal court because sufficient evidence does not appear in the trial record to resolve the claim by a review of the record (see article at left).

California Chief Justice Malcolm Lucas addressed the second Capital Case Symposium in Los Angeles in April.

More than 40 California state and federal judges participated in the symposium held in Los Angeles in April. They also exchanged ideas for more effective cooperation and coordination between the two court systems in ensuring the fair and efficient management of capital cases. The symposium was the second such conference sponsored by the California State–Federal Judicial Council with financial assistance from the Federal Judicial Center.

The symposium also included discussions of recent legal developments in the area of habeas corpus, a review of procedures for resolving federal constitutional questions in state trial courts, and small group discussions featuring hypothetical cases.

Four panel discussions and one small group breakout session identified the following issues as principal areas for state–federal cooperation or coordination:

- Recruitment, training, and compensation of counsel;
- Cost control of investigations to exhaust state remedies;
- Issuance of written reasoned statements for writ denials;
- Determination of the need for evidentiary hearings in federal court;
- Increased training of state court judges for greater uniformity and consistency in record preparation at the trial level;
- Developing alternative methods for capital case representation, such as a federal defender office devoted exclusively to capital representation; and
- Importance of appropriate deference to state court determinations where reasons are given.

Participants in the symposium included 21 federal judges, principally from the central and eastern districts of California; 19 state superior court judges, principally from Los Angeles and surrounding counties; and 9 court staff and law clerks. Chief Justice Malcolm M. Lucas (Cal. Sup. Ct.) and Chief Judge J. Clifford Wallace (U.S. 9th Cir.) participated as faculty members. ❑

Pro Se Prisoner Cases Dominate Discussions at State–Federal Meeting; Hatch Speaks

Pro se prisoner litigation was a major focus of discussion at the May meeting of the U.S. Judicial Conference Committee on Federal–State Jurisdiction in Washington, D.C.

The committee received a report stating that state prison inmates filed 32,369 suits in federal courts in 1993, compared with 2,030 such suits in 1970. The prisoner cases "amounted to 12.1% of all suits, both civil and criminal, filed in the federal courts" last year.

The report also included an estimate that the number of hours federal judges are spending a year on pro se prisoner cases from state prisons "may amount to the time equivalent of 30 to 50 federal judges and magistrate judges and more than 100 pro se law clerks and other personnel in district and appellate court clerks' offices."

Sen. Orrin G. Hatch (R-Utah), ranking minority member of the Senate Judiciary Committee, discussed federal crime legislation with state and federal judges in Washington in May.

Even More Prisoner Cases

The prospect of even more pro se prisoner cases in the event that national health care legislation is approved by Congress was also raised.

Lisa Wells Harris, civil rights and criminal law counsel at the National Association of Attorneys General, told the committee of the concern of members of her organization about the growing prisoner case problem and the costs involved. The National Association of Attorneys General passed a resolution at its March meeting in Washington, D.C., that stated "legally frivolous lawsuits . . . are choking state courts" and recommended state legislation to remedy the situation, including establishing filing fees for such petitions, requiring exhaustion of administrative remedies, and restoring partial sovereign immunity.

The committee discussed other potential remedies, including mandatory prison grievance procedures for all prisons (possibly involving judges going in person to prisons for hearings), a prison ombudsman, and sanctions for frivolous petitions.

Senator Hatch Discusses Legislation

In other business, the committee members discussed crime legislation pending in the Congress with U.S. Senator Orrin G. Hatch (R–Utah), ranking minority member of the Senate Judiciary Committee. Hatch said that he was interested in guidelines for principled federalism in the allocation of business between the state and federal courts.

The other primary topic of discussion at the meeting was the potential impact of federal health care legislation on the courts. Dr. Franklin M. Zweig (George Washington University), an adviser to the committee, commented on the issue.

Judge Stanley Marcus (U.S. S.D. Fla.), chair of the committee, appointed a special subcommittee to study the impact on the courts of different proposals for health care reform. Members of the committee are Chief Judge Barbara J. Rothstein (U.S. W.D. Wash.), chair; Chief Justice Harry L. Carrico (Va. Sup. Ct.); Judge Stephen H. Anderson (U.S. D. Utah); and Judge J. Frederick Motz (U.S. D. Md.). ❑

NCSC Study Yields New Findings About Federal Habeas Corpus Review of State Convictions; Most Petitions Not Granted

by Victor Eugene Flango
Research Director,
National Center for State Courts

A recently published National Center for State Courts study sheds light on the long-standing controversy over the scope of federal habeas corpus review of state court convictions. The study was funded by the State Justice Institute.

This intensive four-state inquiry shows that federal courts grant very few petitions from state prisoners. This finding may weaken the argument that federal review is necessary to ensure that state courts protect prisoners' constitutional rights.

"Snapshot" Study

The "snapshot" study of 1,835 state and 1,626 federal petitions terminated in 1990 or 1992 included petitioners raising their first habeas claims as well as those who had previously filed multiple petitions.

Overall, the study shows that a relatively small—and declining—proportion of prisoners are filing habeas petitions, but the ones who do file tend to file multiple petitions in both state and federal courts. The study shows that only prisoners sentenced to relatively long prison terms have the time to complete the procedural steps for filing a habeas corpus petition. Overwhelmingly, these are prisoners who are serving lengthy sentences after being convicted of serious offenses by a jury.

Petitions Require Significant Time

Although petitions do not comprise a large proportion of court caseloads and do not require a disproportionate amount of judicial time according to the study, they do demand significant time from pro se law clerks and staff attorneys.

The study also suggests the following:

- A petitioner stands the best chance of having a habeas petition granted the first time he or she presents the petition to a state court. Subsequent petitions are less likely to be granted, regardless of whether they are filed in state or federal court.
- Efforts to modify habeas procedures should distinguish clearly between capital and noncapital cases. The study notes that analysis of death penalty habeas procedures often creates debate over the death penalty itself and thus clouds analysis of habeas procedures.
- Unlike most habeas petitions, which are filed pro se, virtually all capital prisoners have counsel to prepare their petitions.
- Even though prisoners convicted of capital offenses tend to raise multiple claims in multiple petitions in multiple levels of both state and federal court, they are not much more likely to have their petitions granted. Even counting court acceptance of any one claim in any one petition in any one court as a success, the petitioner success rate is very low.

The National Center for State Courts has published a monograph containing the research results. For more information, contact Victor E. Flango, director of court research, National Center for State Courts, 300 Newport Ave., P.O. Box 8798, Williamsburg, VA 23187-8798; phone (804) 253-2000, fax (804) 220-0449. ❑

ROUNDUP, from page 1

bias in the courts, federal court certification of state law questions to the Iowa Supreme Court; and the compatibility of automation equipment in the federal and state courts. Judge Wolle hosted a reception in his home for the attending judges.

LOUISIANA—Chief Justice Pascal F. Calogero, Jr. (La. Sup. Ct.) and Chief Judge Henry A. Politz (U.S. 5th Cir.) opened the summer meeting of the Louisiana State–Federal Judicial Council, held on June 7, 1993, with a brief history of the council. The success of the council in reducing friction between the two systems over federal reversals of criminal convictions was noted. Judge Politz commented on the pressure in Congress to move more state matters into the federal courts and the need for increased activity of the council if the trend continues. Judge Jacob L. Karno (La. 24th Jud. Dist.) called attention to the friction developing between certain state child support orders and bankruptcy decisions modifying those orders. The council asked for more information and follow-up consultation with the chief bankruptcy judges. Judge Politz and Justice Calogero concluded the meeting by inviting those state judges in attendance to the U.S. Fifth Circuit Judicial Conference in San Antonio, and by inviting federal judges present to attend the Louisiana Judges Conferences in New Orleans in October and in Lafayette in April.

MINNESOTA—Judges convened for the annual meeting of the Minnesota State–Federal Judicial Council in Minneapolis on October 27, 1993, with the following agenda items: discussion of the study of gender and racial bias in the Minnesota state court system; an examination of the process of certification of state law issues; lawyer discipline; a Civil Justice Reform Act implementation plan; the proposed changes in the Federal Rules of Civil Procedure; and the progress of building projects at the Minnesota Justice Center.

MISSISSIPPI—State and federal judges in Mississippi decided to revive their state's defunct state–federal judicial council at a meeting in Biloxi on July 23, 1993. Chief Judge Henry A. Politz (U.S. 5th Cir.) and Chief Justice Roy N. Lee (Miss. Sup. Ct.) were designated to appoint six members from each system. Topics discussed at the first meeting of the reconstituted council were the loan of federal courtrooms for state proceedings, loans of magnetometers, cooperation of judges from the two systems in handling attorney scheduling conflicts, and resolution of problems resulting from bankruptcy stays.

MISSOURI—The University of Missouri Alumni Center at Columbia was the site of the October 1993 meeting of the State–Federal Judicial Council of Missouri. Four federal judges and two state judges attended. Certification of state law questions to the Missouri Supreme Court was the first item on the agenda, led by Chief Judge Edward L. Filippine (U.S. E.D. Mo.). Other issues discussed were the sharing of state and federal facilities to alleviate space problems in courthouses, a procedure for the resolution of scheduling conflicts, and cameras in the courtroom.

MONTANA—The Montana State–Federal Judicial Council invited all 37 state trial judges to its meeting on June 25, 1993, in Missoula. Among the topics discussed by the state and federal judges present were a bankruptcy education program for state judges, new rules for fax filing, a status report on the U.S. Court of Appeals for the Ninth Circuit, new building projects for the federal court in Montana, and federal–state cooperation in the handling of litigation arising from recent prison riots. The next meeting will be held in the summer of 1994 at the annual convention of the Montana Bar Association.

NEVADA—Judge Melvin Brunetti (U.S. 9th Cir.) presided over the meeting of the Nevada State–Federal Judicial Council on October 1, 1993, in Carson City. Ten members and six guests attended the meeting. Justice Thomas L. Steffen (Nev. Sup. Ct.) reported on current issues in the state judiciary, including the hiring of a press relations assistant to the chief justice, amendment of rules on death penalty procedures, and the concerns of state judges about the proposed Federal Habeas Act of 1993 pending in Congress. Judge Deborah A. Agosti (Nev. Dist. Ct.) reported on the number of capital cases in the state system, the attendant costs, and the need to caution prosecutors about proceeding with death penalty notices only in the few appropriate cases. Judge Brunetti advised the meeting about new 9th Circuit "streamlined interim death penalty" rules. Judge Howard D. McKibben (U.S. D. Nev.) commented on the proliferation of pro se cases in the federal district courts. He told the council that 37% of his 600-plus caseload consisted of pro se cases. He observed that only a small percentage of those cases had merit. Special invitees to the meeting made presentations covering the following: possible legislation to allow liens on a prisoner's prison account for costs of litigation as a method to curb frivolous prisoner filings, video-teleconferencing for prisoner appearances, the Death Penalty Resource Center, and the Western Regional Conference on State–Federal Judicial Relationships.

OKLAHOMA—Twenty state and federal judges approved a council charter at the first formal meeting of the Oklahoma State–Federal Judicial Council on November 3, 1993, in Tulsa. Presiding at the meeting was Judge Robin J. Cauthron (U.S. W.D. Okla.), who was handed the gavel for the meeting by Chief Justice Ralph B. Hodges (Okla. Sup. Ct.). The council was divided into three divisions: eastern, western, and northern. Chairs selected for the respective divisions were Justice Rudolph Hargrave (Okla. Sup. Ct.), Judge Cauthron, and Chief Judge James O. Ellison (U.S. N.D. Okla.). Each division will meet separately at least once a year, and all divisions will meet together during the annual meeting of the Oklahoma State Bar Association. Judge Cauthron reported on her experiences at the National Conference on State–Federal Judicial Relationships in Orlando, Fla., in April 1992. Two topics raised at the council meeting were (1) areas of conflict between state and federal jurisdictions and the means of resolution of those conflicts, and (2) the institution of an administrative prison grievance procedure. One of the council's most important tasks identified at the meeting was "outreach to the public, the bar, and our fellow judges."

Judge Cauthron presided at the May 16, 1994, meeting of the western division of the council at the Oklahoma Bar Center in Oklahoma City. Council Member Judge Charles A. Johnson (Okla. Ct. Crim. App.) reported on a proposed standard form for taking guilty pleas in all state district courts. The proposed form will be reviewed for effects on federal habeas corpus actions. The other central issue for discussion related to the large volume of prisoner litigation. The council appointed a committee to study prison grievance procedures.

OREGON—The revitalized Oregon State–Federal Judicial Council met at Gleneden Beach on April 23, 1994. Chief Justice Wallace P. Carson, Jr. (Ore. Sup. Ct.) and Chief Judge James A. Redden (U.S. D. Ore.) opened the meeting. Items on the agenda included a report from the habeas corpus committee, a revision of the process for certification of state law issues, calendar conflicts, conflicting case jurisdiction, bankruptcy stays, racial and ethnic issues in the courts, and justice in the 21st century.

VIRGINIA—Chief Justice Harry L. Carrico (Va. Sup. Ct.) presided over the meeting of the State–Federal Judicial Council of Virginia on September 28, 1993, in Richmond. He welcomed new members Judge Norman K. Moon (Va. Ct. of App.) and Robert N. Baldwin (Ex. Sec. Va. Sup. Ct.). Magistrate Judge B. Waugh Crigler (U.S. W.D. Va.) presented a proposal for Virginia judges to be involved in trial advocacy institutes. The council approved a suggestion that a trial advocacy program be presented at the fall Virginia Judicial Conference, which would reach 80% of the state judges. Other matters discussed at the council meeting were the Uniform Transfer of Litigation Act, court security, and the growing criminal caseloads in both state and federal courts. Justice Carrico reported on his meeting with U.S. Attorney General Janet Reno and the proposal for an ongoing partnership between state and federal judges and the U.S. Justice Department, especially to discuss states' needs for federal funds in connection with criminal justice. The final item of business was a discussion of the violence against women legislation pending in the Congress and the "significant increase" the legislation would create in the workload of state and federal courts.

The major topic on the agenda at the council's May 10, 1994, meeting was the upcoming Fourth Circuit Conference on State–Federal Relationships, scheduled to be held in Williamsburg on November 14–15, 1994. The council also discussed pending crime legislation in the Congress, led by Judge H. Emory Widener, Jr. (U.S. 4th Cir.). The final item on the agenda was a discussion of limits on punitive damage awards, led by Judge William W. Sweeney (Va. Ct. of App.).

WASHINGTON—The Washington State–Federal Judicial Council met in Yakima on April 22, 1994. A major item on the agenda was dealing with attorney misconduct and lack of professionalism. Justice Barbara Durham (Wash. Sup. Ct.) moderated a discussion panel on the issue that included Justice James A. Andersen (Wash. Sup. Ct.) and Judge William L. Dwyer (U.S. W.D. Wash.). Other business included a presentation on habeas corpus and fact-finding requirements by Judge Robert J. Bryan (U.S. E.D. Wash.) and a presentation by Bankruptcy Judge Philip H. Brandt (U.S. W.D. Wash.) on the recent bankruptcy symposium.

Regional and Metropolitan Councils

DETROIT—The organizational meeting of the Eastern District of Michigan State–Federal Judicial Council was held on July 7, 1993, in Detroit, with Chief Judge Julian Cook, Jr. (U.S. E.D. Mich.) presiding. Chief Judges Melinda Morris, Richard C. Kaufman, Peter J. Maceroni, and Richard Kuhn (of the circuit courts of Wayne, Oakland, Macomb, and Washtenaw Counties, respectively), and Chief Court Administrator John P. Mayer (U.S. E.D. Mich.) attended the meeting. A draft charter was presented to the group and discussed, and amendments were received and approved. The officers of the new council elected for two-year terms are Chief Judge Cook (chair) and Judge Kuhn (vice-chair). The meeting included discussions of the remand of state claims by federal judges to state courts; the need for consultation between state and federal judges on matters of common interest or concern; and the desirability of joint pretrial and trial activities, including joint settlement conferences, joint discovery, joint mediation, and joint trials.

The council met again in Detroit on March 16, 1994. Discussion centered on various issues relating to jury pools and juries. The council directed Chief Court Administrator Mayer to convene a special meeting of court administrators and jury specialists in the area from the two systems to discuss jury lists, the problem of "no shows," and concerns about achieving a "fair cross section of the community" for jury pools.

KANSAS CITY—The first joint meeting of state and federal judges in the metropolitan Kansas City area was held on January 19, 1994. Judge Lee E. Wells (Mo. 16th Jud. Dist.) and Chief Judge Joseph E. Stevens, Jr. (U.S. W.D. Mo.) presided over the luncheon gathering at the offices of the Kansas City Metropolitan Bar Association. More than 40 state and federal judges attended. Following the lunch, the group heard remarks from James G. Apple, chief of the Interjudicial Affairs Office of the Federal Judicial Center, about state–federal judicial activities around the country. Maurice E. White, chief of the Federal–State Relations Office of the Administrative Office of the U.S. Courts, also spoke. ❑

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