State–Federal Judicial Observer

NEWS AND COMMENTARY OF INTEREST TO THE STATE AND FEDERAL JUDICIARY

A joint publication of the Federal Judicial Center and the National Center for State Courts • Number 3 • July 1993

Western States Commit to Improving State–Federal Judicial Relations

Nine States Set S–F Priorities at First Regional Conference in Skamania in June

Judges and court administrators of nine western states committed themselves to promoting state–federal relations in their respective court systems at a first-ever regional conference on state–federal judicial relationships.

The commitments were made this June at the Western Regional Conference on State–Federal Judicial Relationships, held at the new conference center in Skamania, Wash. The conference was funded by a grant from the State Justice Institute. Participants represented the nine states composing the U.S. Ninth Circuit Court of Appeals.

The priorities of each state, as developed in break-out discussion sessions at the day-and-a-half meeting, were as follows:

Alaska—revive and restructure the state–federal judicial council; work on gender bias study and civility rules.

Arizona—revive the state–federal judicial council as an institution.

California—increase education on habeas corpus process; consider the formation of regional state–federal judicial councils.

Hawaii—develop a system for allocating resources between the state and federal systems; establish coordination between federal and state systems in connection with the handling of bankruptcy claims.

Idaho—formalize periodic state–federal judicial meetings; improve communication between the two systems on case scheduling.

Montana—invigorate the existing state–federal judicial council and expand participation in it.

Nevada—expand participation of state–federal judicial council; increase the role of the council in its "clearinghouse role" for communications between the two systems.

Oregon—restructure the existing state–federal judicial council and expand membership to include tribal courts representation.

Washington—formalize state–federal judicial council meetings and expand participation in it; consider the formation of regional state–federal judicial councils.

Follow-up contacts will be made by the conference planners in six and twelve months to assess the progress toward these individual goals.

The summary of a preconference survey of participants noted "a high degree of agreement" between state and federal judges on 10 main areas of involvement and interest:

- federal review of state court cases;
- coordinating schedules of state and federal courts;
- bench/bar committees;
- media relations;
- coordinating bankruptcy procedures;
- certification of state law questions;
- joint education programs for judges and staff;
- inmate grievance procedures;
- sharing of space and facilities; and
- attorney bar admission.

The plenary session presentations centered on these ten topics. Another plenary session included a panel discussion on "Public Confidence in the Judiciary," featuring Charles T. Royer, Director of the Institute of Politics at the John F. Kennedy School of Government, Harvard University, and Philip D. Hager of the *San Francisco Daily Journal*.

Judges measure the "temperature" of state–federal judicial relations in each of the nine states making up the U.S. Ninth Circuit at the first Western Regional Conference of State–Federal Judicial Relationships. The conference was held in Skamania, Wash., in June.

The conference opened with a videotaped address by U.S. Supreme Court Justice Sandra Day O'Connor.

Chief Court of Appeals Judge J. Clifford Wallace (U.S. 9th Cir.) gave the keynote address in which he announced, with respect to the two court systems, that "it is time to focus on one judicial resource with two roles."

He listed five priorities for joint efforts: long-range planning, regulating the volume of cases coming into the court systems, establishing the highest degree of cooperation between the two systems, developing alternative means of resolving disputes, and channeling the best thinking (including the faculties in law schools) in finding new ways of achieving these goals and in determining what further structural and procedural changes should be made.

The conference was chaired by District Judge Alicemarie Stotler (U.S. C.D. Cal.) and Justice Susan P. Graber (Wash. Sup. Ct.).

Copies of papers presented at the conference and transcripts of the plenary sessions can be obtained from Mark Mendenhall, Assistant Circuit Executive, U.S. Courts for the Ninth Circuit, P.O. Box 193846, San Francisco, CA 94119-3846, telephone (415) 744-6150, fax (415) 744-6179.

NCSC Offers Technology Services to Federal Courts

The National Center for State Courts, created primarily to assist state judges and court administrators, is making its technology services available to federal judges and court administrators, according to Barbara Kelly of the National Center's Technology Programs office.

"We are trying to improve relations with the federal court system," said Kelly. "Thus we are eager to respond to inquiries from federal judges and clerks and other administrative personnel in the federal system about technology products and services, and assistance in project planning and technology acquisition, implementation, and evaluation."

Kelly specifically referred to five core projects within the National Center, known as the Technology Information Exchange Service (TIES), which might assist federal court personnel. The five core projects are the Technology Information Service (TIS), the Court Technology Laboratory (CTL), the Court Technology Database (CTD), *Court Technology Reports (CTR)*, and the *Court Technology Bulletin (CTB)*.

TIS responds to inquiries relating to a host of technology topics in three specific areas: judge's chambers, clerk's offices, and courtrooms. Specific inquiries most often relate to case-management software, computer hardware, court security video application, multimedia uses for courtrooms, office automation, and court report-

See TECHNOLOGY, page 4

Brookings Holds Seminar on Issues of Federalism in the Courts

Hughes Addresses Conference on Increasing Federalization of Crime

State and federal judges, legislators, executive branch representatives, and legal scholars, primarily from the Washington, D.C. area, gathered in the historic town of Easton on Maryland's Eastern Shore in mid-May for a special administration-of-justice seminar on "Federal–State Challenges."

Sixty participants, including staff members of the Federal Judicial Center and the National Center for State Courts, engaged in the discussions on federalism at the one-and-a-half day seminar, sponsored by the Brookings Institution.

Three plenary sessions focused on the separate issues of "The Federal Role in Criminal Justice: When Does a Necessary Responsibility Become An Unwarranted Intrusion?"; "Can Federalism Survive the Federalization of Crime?"; and "If There Is a Problem, How Can We Fix It?"

Congressman William J. Hughes (D-N.J.) reviewed the increasing federalization of crime at the recent Brookings Institution conference on federalism and the administration of justice.

Congressman William J. Hughes (D-N.J.), Chairman of the U.S. House of Representatives Subcommittee on Intellectual Property and Judicial Administration, in a keynote address on "the expansion of federal jurisdiction," centered his remarks on criminal justice.

He noted that since passage of federal criminal legislation to protect individuals from the violation of their rights by other individuals after the Civil War, "there has been a slow but inexorable expansion of federal law enforcement jurisdiction."

Hughes cited two phenomena that have generated "huge increases" in the federal prison population:

- "Decisions by federal prosecutors to 'federalize' prosecution of cases subject to both federal and state jurisdiction, which were previously left to state prosecution."
- Revision of federal sentencing laws, "particularly the addition of numerous mandatory minimums and the implementation of sentencing guidelines."

He also cited one particular policy decision by the federal government affecting the increase of federal criminal prosecutions: substantial increases in resources available for federal criminal investigations and prosecutions.

In commenting on the prosecution of drug offenses, especially those involving relatively small amounts of narcotics, Hughes observed that "if we overload federal courts with the trials of what are essentially county court criminal cases, we have, arguably, fundamentally changed the institutional nature of the federal courts." He concluded by lauding the seminar as an opportunity to discuss the issue of the mission of the federal courts and "finding the proper balance between federal and state responsibility."

Other major speakers at the seminar were Chief Justice Lyle Reid of the Tennessee Supreme Court, Robert J. Del Tufo, Attorney General of New Jersey, Judge William W Schwarzer, Director of the Federal Judicial Center, Jay Stephens, former United States Attorney for the District of Columbia, and District Court Judge Stanley Marcus (U.S. S.D. Fla.), Chairman of the U.S. Judicial Conference Committee on Federal–State Jurisdiction.

Professor Daniel J. Meador, of the University of Virginia Law School, concluded the conference by suggesting the formation of a high-level government council to monitor issues of federalism within the justice system.

The seminar was funded by a grant from the State Justice Institute. Further information about the contents of the seminar can be obtained from David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, telephone (703) 684-6100.

Inside . . .

National Center for State Courts Publishes Caseload Statistics Report

Ninety-three million new cases were filed in state courts in 1991. This is one of the many statistics included in the National Center for State Courts' recent publication, *State Court Caseload Statistics: Annual Report 1991*. The report provides answers to such questions as:

- How do state court caseloads compare to federal court caseloads?
- How have state and federal court caseloads changed over time?
- What is the average caseload handled by state and federal judges?
- Were more new cases filed in state courts than disposed of during 1991?
- Are the state courts in the midst of a tort litigation explosion?
- What is the national trend in felony, civil, and domestic relations caseload growth for state courts during the 1980s and the beginning of the 1990s?

The *Annual Report* offers judges, court managers, and policy makers an authoritative guide to the demands that increasing caseload volume places on state trial and appellate courts.

Part I of the *Annual Report* examines state trial court caseloads in 1991 and how the 1991 experience fits with recent trends. Part II describes the volume and trends in state appellate court caseloads. The *Annual Report* also contains detailed, state-by-state caseload statistics, displays the overall structure of each state court system on a one-page chart, and lists jurisdiction and state court reporting practices that may affect the comparability of caseload information reported by the courts.

Copies of the report are available from the Publications Coordinator, National Center for State Courts, 300 Newport Ave., Williamsburg, VA 23187-8798, telephone (804) 253-2000, ext. 390.

Civil and Criminal Filings in U.S. District Courts and State Trial Courts of General Jurisdiction, 1991

	Filings	Judges	Filings per Judge
All U.S. District Courts:			
Criminal	45,735	649	70
Civil	207,742	649	320
Total	**253,477**	**649**	**390**
All General Jurisdiction State Courts:			
Criminal	3,843,902	9,502	405
Civil	9,366,543	9,502	986
Total	**13,210,445**	**9,502**	**1,391**

Source: National Center for State Courts, 1993.

One of several statistical summaries found in the new NCSC publication, State Court Caseload Statistics: Annual Report 1991.

State–Federal Judicial Observer

a joint publication of the
Federal Judicial Center and the National Center for State Courts

Published in the Interjudicial Affairs Office, Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002-8003

A note to our readers

The *State–Federal Judicial Observer* welcomes comments on articles appearing in it and ideas for topics for future issues. Edited versions of letters may be printed by the *Observer* with the permission of the author.

The *Observer* will consider for publication short articles and manuscripts on subjects of interest to state and federal judges. Decisions concerning publication of a submitted article will be made by the editorial staff.

Letters, comments, and articles should be submitted to Interjudicial Affairs Office, Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002-8003, or to National Center for State Courts, Washington Office, 1110 N. Glebe Rd., Suite 1090, Arlington, VA 22201.

OBITER DICTUM

Federalism in the Administration of Criminal Justice

by William W Schwarzer
(Director, Federal Judicial Center)

(The Observer *will feature in each issue a guest columnist's view on a particular issue or matter relating to judicial federalism. This column was adapted from remarks by Judge Schwarzer at a recent conference on issues of federalism in the courts.)*

Federalism is a many-splendored thing. Everyone is for it, but it has meant different things to different people at different times. In the early years of the Republic, federalism was the watchword for those who sought a strong national government. Following the Civil War, federalism was the issue in the debate over federal power to enforce and protect federal rights and interests. Throughout our history the concept of federalism has been suspended like a banner over a pendulum swinging between centralization and dispersion of power and authority. Its utility has been more as a convenient slogan for political views changing over time than as an intelligible definition of a consistent policy.

In recent years a narrower concept has evolved: judicial federalism, focusing on the interplay of state and federal court jurisdiction. Judicial federalism has two sides. One side concerns the appropriate scope of federal jurisdiction—how far should federal power reach. The other side concerns the restraints on the exercise of federal jurisdiction—when should that power be exercised.

No Clear Dividing Line Between State and Federal Criminal Jurisdiction

State and federal criminal jurisdiction are inextricably intertwined. There are no obvious principles that mark a bright line dividing state and federal jurisdiction; certainly abstract notions of "federalism" do not do so. That is so for at least three related reasons:

- there are few if any subjects that clearly belong on one side or the other of the state–federal dividing line, i.e., subjects that concern exclusively "federal interests" or exclusively "state interests" (however those terms may be defined);
- there are few if any subjects that by the nature of the offense (as opposed to its impact) should be excluded from state jurisdiction (areas of special concern to the national government such as counterfeiting, internal revenue, federal property, and national security are examples), and even fewer that should be excluded from federal jurisdiction (perhaps crimes touching family relations are an example); and
- there are few offenses that, depending on the particular circumstances, may not implicate—to some degree at least—what could be considered national as well as local interests.

The absence of a bright line, however, does not end the matter, for as long as the United States maintains separate state and federal court systems (a choice that the Constitution leaves to Congress to make), deriving their powers from different sources and serving different—even if overlapping—missions, there is reason for making allocations of judicial business between them. The principal reason for making allocations is to protect and advance the range of interests of each of the respective sovereigns, the state and federal governments. Or to put it more directly, as long as Congress chooses to maintain a federal court system, it needs to define the business it wants the federal courts to do to carry out federal laws and policies.

Reliance on a broad concept of federalism is not helpful in arriving at a working allocation of judicial business, nor does it help the decision-making process much to rely on generalized definitions of federal interests.

Guidelines for a Principled Approach to Federalism

Given that, historically and practically, state and federal interests are inseparably intertwined, how can one arrive at what Senator Joseph Biden (D-Del.), for one, recently called for: a principled approach to federal jurisdiction? Here are some guidelines for consideration, offered with the reservation that they are not capable of mechanical application and will still require a balancing of interests.

First, don't assert national power without a demonstrated need. This presumption is grounded on the traditional notion that criminal law enforcement is primarily a responsibility of the states, evidenced for example by our historic aversion to a national police force. But the presumption can be overcome by a convincing demonstration that the perceived evil—because of its seriousness, cost, or impact on national interests—requires a national solution.

Second, don't expand federal jurisdiction if the resources are not provided to make it effective. Resource limitations, of course, affect both state and federal systems. But though federal policy makers may believe that decisions about judicial federalism should not be driven by considerations of court burdens or other cost considerations, the fact remains that the capacity of federal courts is controlled by the resources appropriated for them. Even if that capacity is elastic in the short run, eventually choices must be made, if not at the legislative level then at the judicial level.

Third, realize that criminal laws are like shotguns, no matter how carefully drafted. For every pellet that hits the bull's-eye, many spray the periphery. Put differently, criminal laws are subject to the law of unintended consequences. Mandatory minimum sentencing laws illustrate the point; though intended to impose severe punishment on major drug offenders, their principal impact has been on minor offenders such as the mules and the lookouts. As a result, federal courts are trying many cases involving minute quantities of drugs (and, incidentally, convicted small-time offenders are straining the capacity of federal prisons), consequences that Congress did not intend and of which many members are not even aware.

The gap between the words of a statute and its impact in the real world counsels consideration in every case of two safeguards: (1) using automatic sunset clauses that require congressional action to renew a statute, and (2) conducting regular oversight hearings to gather information about the actual operation of legislation, how it is enforced by the executive branch, and how it impacts the federal courts.

Fourth, don't create federal jurisdiction unless the states' unwillingness or inability to protect federal interests is clearly demonstrated. A perception of inadequacy of state law enforcement may rest on anecdotal or local evidence. Although there may be anecdotal evidence of some apparently severe inadequacies of state criminal law and enforcement—rape statutes, for example—a determination that a federal interest exists sufficient to justify national legislation should be supported by a well-

See FEDERALISM, page 4

California State–Federal Judicial Council Sponsors Capital Case Symposium; Issues Are Identified for Dialogue, Solutions

A number of issues affecting both state and federal courts were explored in depth at the first California State–Federal Capital Case Symposium in San Francisco last October.

While some issues were discussed only in the context of state or federal judges, all of the issues pose significant challenges to both systems.

The day-and-a-half symposium, attended by 12 state judges and 38 federal judges, was organized by Chief Justice Malcolm Lucas (Cal. Sup. Ct.) and Chief Judge Clifford Wallace (U.S. 9th Cir.).

Issues, and the significant points made about them, relating primarily to state judges included the following:

• Voir dire—trial judges need to be more aware, through education, of the importance of proper voir dire to ensure fair trials and minimize challenges on appeal or by habeas corpus proceedings, particularly when qualifying jurors to make capital case decisions.

• Ineffective assistance of counsel—"inadequate representation" as a trial strategy to set up Sixth Amendment issues in habeas corpus proceedings has become a matter of concern to judges. It poses questions of the proper role of the trial judge when faced with this possibility and the correct manner of addressing the issue while conducting an independent sentencing review.

• Delays in certification of trial record—certification delays affect all levels of review and seem avoidable because daily transcripts are prepared. One central question was whether trial counsel should be responsible for certifying the record in order to avoid delay while waiting for appointment and review by appellate counsel.

• Longer warrants of execution—a longer time for carrying out executions (instead of the current 24-hour period) would allow for a more careful review of the particular case.

• Shifting of investigation fees—when a federal court returns to a state court a habeas corpus petition that was filed in federal court and contains unexhausted claims for further proceedings, the investigation fees should be borne by the state system.

• Exhaustion—federal courts return state cases to the California Supreme Court as a result of the petitioner's failure to exhaust state remedies, creating congestion and delay in the California Supreme Court. One solution would be to modify state procedures so that exhaustion cases can be sent directly to the state trial court.

The following federal issues were identified and discussed:

• Active case management during stays—further education and training in active case management techniques is needed when stays of execution are in place to instill public confidence that cases are being efficiently and properly scheduled and handled.

• Priority to capital habeas corpus writs—district courts should consider a rule, similar to the rule now in place in the Southern District of Florida, giving priority to capital cases to avoid habeas cases being placed low on calendar dockets once a stay has been issued.

• Pre-petition investigation fees—standards are needed to determine what justification or preliminary showing is required to obtain investigation fees and to determine their amount.

• First petition amendments—further guidance and education is desirable for dealing with the difficulties associated with handling requested "amendments" to the first petition both before and after the ruling on it and in handling motions to reconsider or reopen after the ruling.

• Mixed petitions with exhausted and unexhausted claims—further education is desirable for the efficient handling of mixed petitions.

• The appropriateness of an evidentiary hearing—instructions and development of guidelines to assist courts in determining when to grant an evidentiary hearing are needed to deal with issues such as cause and prejudice, "new rules" of law, mixed petitions, and the funding of investigators.

• Successive petitions—education and discussion are needed on the post-McClesky test for handling successive petitions, including the concepts of cause and prejudice, actual innocence, and application of a "new rule" of law.

The three issues identified for joint exploration by judges of both systems were (1) retention and compensation of counsel; (2) the creation of an appellate defender system; and (3) follow-up joint educational programs.

Problems common to both systems include difficulties in obtaining counsel at trial and on appeal in habeas corpus proceedings, inadequate compensation and disparities in compensation between the two systems, and the lack of standards or "benchmarks" for compensation of counsel. Cooperation and coordination would help ease the strain created by the competition for scarce legal resources.

A suggestion for establishing continuity in the handling of capital cases to assure quality of representation and efficiency of case management was the establishment of an appellate defender organization, one that would mirror the state attorney general's office and handle appeals through both court systems.

State and federal judges agreed at the symposium that when education programs are planned in their respective systems, each system should consider involving judges from the other system to provide opportunities for continuing dialogue on capital habeas corpus issues.

The California State–Federal Judicial Council, through the planning committee of the State–Federal Capital Case Symposium, is willing to assist the state–federal judicial councils of other states in planning similar symposia. Members of the planning committee were Judge William B. Enright (U.S. S.D. Cal.), Chair; Judge Alexander H. Williams III (Cal. Sup. Ct.); Judge Herbert B. Hoffman (Cal. Sup. Ct.); and Mark Mendenhall, Assistant Circuit Executive of the U.S. Ninth Circuit Court of Appeals.

Requests for further information about the California symposium and assistance should be directed to Mark Mendenhall, Assistant Circuit Executive, Office of the Circuit Executive, U.S. Courts for the Ninth Circuit, 121 Spear Street, Suite 204, P.O. Box 193846, San Francisco, CA 94119-3846, telephone (415) 744-6150; fax (415) 744-6179.

Ensuring Gender Fairness Is Issue at State–Federal Courts Bias Conference

by Marilyn Roberts
(National Center for State Courts)

State courts have made a substantial effort to identify and address gender bias over the past 10 years. Federal courts have begun the examination process.

Work yet to be done was the central theme of the Second National Conference on Gender Bias in the Courts, held March 18–21 in Williamsburg, Va. The Conference was attended by more than 150 state and federal court judges, administrators, and educators, representing 44 states, the District of Columbia, Puerto Rico, and two federal circuits. The wide representation at this conference demonstrated a growing recognition of gender bias in the courts and the need to address it.

The main purpose of the conference was to address issues that arise after gender bias task force recommendations are made. Gender bias task forces appointed by a court or the bar are the primary vehicles for examining courts and legal systems for the existence of gender bias. State judicial leaders, the Conference of Chief Justices, and the Conference of State Court Administrators have recognized the need to uncover and address bias in the courts and have passed resolutions urging state chief justices to appoint task forces on gender and minority issues.

Small group sessions at the conference afforded participants the opportunity to share experiences and solutions to common problems. The major issues discussed were funding; the importance of institutionalizing change; stereotypes, indifference, and hostility; dealing with backlash and special interest groups; evaluation and monitoring; gender, racial, and ethnic issues; and judicial education. There was also a preliminary one-day session for those who were just beginning or had not yet completed the task force process.

Thirty-two states now have or have had task forces or committees on gender bias in the courts, as well as the U.S. Ninth Circuit and the District of Columbia Court of Appeals. Four other state court systems are exploring the issue. Some state court systems have accepted the fact that bias exists based on the studies of other states and are proceeding to frame solutions rather than conduct surveys.

Judge Rosalyn Bell (Md. Ct. of Spec. App.), chair of the conference, noted that at both the state and federal level, every task force or committee that has finished its study has concluded that gender bias exists in the particular court or legal systems under study. All have recommended changes to address the bias found. "Such experience," said Judge Bell, "indicates that gender bias is a reality in the court system of this country and judicial leaders must move to address and eradicate it."

The following were some of the major points developed at the conference:

• Education for judges and court staff about gender bias is critical to any meaningful change in the way courts do business. Many states and national organizations have developed new curricula and teaching tools for addressing this issue, but there are still many more judges and court staff who have not been reached by these programs and tools.

• Court gender bias task force recommendations are not ready solutions that can be implemented in a few weeks, or even in a few months. While some recommendations can be addressed easily, the entire process of instituting reform and effecting permanent change requires a long-term commitment from the state and federal judiciary—a commitment that must be made to eradicate gender bias from the courts.

• Funding is a factor for the task force process and is important for effective implementation of task force recommendations. It is possible, of course, to implement some changes with little or no additional funding. However, without some ongoing structure to monitor the implementation and maintain the momentum, many task force recommendations are likely to go unheeded. For real change to occur, the follow-up effort must rest with some permanent group within the court system, such as an implementation committee or specific staff in the administrative office of the courts. Minimal staffing of such an effort requires a commitment of funds. Other changes such as court rule and form revision and development of educational programs also require the commitment of additional resources.

The National Association of Women Judges, the Women Judges Fund for Justice, and the National Center for State Courts jointly sponsored the Williamsburg conference, which was funded by a grant from the State Justice Institute and the Hunt Alternatives Fund.

Focus On: New Court Complex

Tacoma Saves Historic Rail Station for Use by Judges, Court Administrators

Historic Union Station in Tacoma, Wash., now serves as the centerpiece of a federal court complex that includes 10 courtrooms and chambers for U.S. district, bankruptcy, and magistrate judges. The complex also houses the offices of court clerks, petit and grand jury facilities, a law library, probation and pretrial services offices, a U.S. marshal's office, and U.S. attorney offices.

Tacoma's Union Station was built from 1909–1911 to serve as Tacoma's rail passenger facility for the Northern Pacific, Great Northern, and Oregon–Washington railroads. The Beaux-Arts style terminal opened to much fanfare and acclaim on May 1, 1911. The building was used as a rail passenger terminal until June 14, 1984, when the last Amtrak train left. Abandoned shortly thereafter, it was threatened with destruction.

The Tacoma community sought ways to save the building. One resident suggested in a letter to the editor of the local newspaper that it be used for federal courts. The seed planted by the letter grew into a major project involving the city, state, and U.S. governments, each of which contributed to parts of the restoration project and its transformation to serve the U.S. District Court for the Western District of Washington. The "historic narrative" for the dedication ceremonies on February 12 of this year noted that "this building will serve as a landmark structure for the city, presenting an image of dignity and justice."

National Roundup of Activities of State–Federal Judicial Councils

Georgia—The State–Federal Council of Georgia met in Savannah on June 11. The council discussed plans for indigent defense counsel in criminal cases. Selected state judges presented and explained the three systems used in the state courts: contract, appointment, and public defender. The federal public defender system was also explained. Two particular issues brought up during the discussions were ways in which the defendant could be required to repay some of the costs of counsel and the feasibility of requiring payment of counsel fees as part of the terms of probation.

Iowa—The four members of the State–Federal Judicial Council of Iowa met in Des Moines on December 17, 1992. The council addressed items such as the sharing of judicial education programs, the sharing of courtroom space and facilities in emergency situations, the joint settlement of related state and federal cases (particularly asbestos cases), and the expansion of the membership of the council. Tentative agreement was reached that one federal appellate judge and one state trial judge would be added to the council. The meeting was reported by Chief Judge Charles R. Wolle (U.S. S.D. Iowa).

Kansas—State and federal judges from Kansas met in Vail, Colo., on June 11, to explore the formal creation of a state–federal judicial council for their state. Chief Judge Patrick Kelly (U.S. D. Kan.) presided over the meeting, attended by 6 federal judges and 21 state judges. Judge Chuck Worden (Kan. State), the new president of the Kansas Judges Association, told the conference that he "strongly endorsed" the formation of the judicial council and set a date in September for the formal organization meeting. District Judge Sam A. Crow (U.S. D. Kan.) was appointed the federal coordinating judge for the organizational effort. Other issues taken up at the meeting included the federal court mediation program; state/federal budget problems; sentencing guidelines implemented in state courts; new federal jurisdiction of state crimes, including the proposed Violence Against Women Act now pending in Congress; and the assistance of federal pro se law clerks in finding a uniform way of handling related state matters.

Ohio—Nine state judges and five federal judges, one state court administrator, and a federal court administrator attended the first meeting of the Ohio State–Federal Judicial Council last December in Columbus, Ohio. Chief Justice Thomas J. Moyer (Ohio Sup. Ct.) and Chief Judge Gilbert S. Merritt (U.S. 6th Cir.) presided at the meeting. The first item on the agenda was a brief review of the procedure adopted by the Ohio Supreme Court for certification of state law questions by federal courts. According to comments during the discussion, the system was working satisfactorily. Extensive discussion covered the issue of death penalty habeas corpus cases. Ohio had 125 state prisoners under the death sentence at that time. Because cases relating to these capital convictions were reaching the federal courts, the council members discussed at length procedures used by the state courts to grant stays of execution, particularly as those procedures apply to cases pending in state court under post-conviction review proceedings. The judges agreed that there should be cooperation between the state and federal systems to ensure that a stay of execution is entered properly in all capital cases through the first round of federal habeas corpus review. A communications protocol was adopted in the event of problems concerning a stay or other deadline in a capital case.

Participants in the meeting discussed other issues: the funding and operation of the death penalty resource center and personnel at that center; the availability of bankruptcy judges to conduct a seminar for state judges on bankruptcy law and the effect of automatic stay provisions; and scheduling conflicts and the willingness of federal judges to give precedence to trial dates set in state courts and to communicate with state judges about scheduling problems in particular cases.

The council will meet again in December 1993.

Tennessee—The new Tennessee State–Federal Judicial Council met on June 9 in Chattanooga with six state judges and four federal judges in attendance. Chief Justice Lyle Reid (Tenn. Sup. Ct.) presided. Three justices of the Tennessee Supreme Court and two federal judges were guests at the meeting. Chief Justice Reid announced that the practice of inviting the federal judges to participate in each of the state judicial conferences would continue as a matter of permanent policy. The first item on the agenda related to the advisability and desirability of promoting an objective judicial evaluation survey by an independent agency. The participants agreed that a "properly constructed and administered survey should be an effective tool to aid judges in improving their performance." Chief Justice Reid appointed a three-person committee to work on the project. Other matters taken up at the meeting were certification of state questions of law by federal district judges, calendar conflicts, legislative developments, and joint judicial education programs. Federal judges will be invited to attend the annual update on state law programs to be held in October. The next meeting of the council was set for October 28–29 at Falls Creek Falls State Park.

Virginia—Chief Justice Harry Carrico (Va. Sup. Ct.) welcomed 10 members of the State–Federal Judicial Council of Virginia at a meeting on May 4 in Richmond. Samuel Phillips, Circuit Executive for the U.S. 4th Circuit Court of Appeals, reported that the State Justice Institute had approved the grant for the Fourth Circuit Conference on State–Federal Judicial Relationships, tentatively scheduled for one-and-a-half days in the spring of 1994 in Williamsburg, Va. A planning committee will be set up to make arrangements for the conference. Following an update on the federalization of traditional state crimes, which included discussion of the proposed Violence Against Women Act now pending in Congress, the Council took up the matter of lack of resources for state courts. The council concluded that "there was no ready solution to the problem of resources for the state judiciaries but that others in the legal profession should strive to educate the legislature or legislators so that they will better understand the needs of the judiciary." The council also considered the issue of the repeal of in-state plaintiff diversity jurisdiction. Discussion of proposed trial advocacy training for lawyers and selected judges was postponed until the next meeting. The next meeting was set for late September in Richmond.

West Virginia—An organizational meeting of the West Virginia State–Federal Judicial Council was held by telephone conference call on December 4, 1992. The meeting was inspired by Chief Justice Thomas E. McHugh (W. Va. Sup. Ct. App.) and Chief Judge Charles H. Haden II (U.S. S.D. W. Va.), both of whom attended the National Conference on State–Federal Judicial Relationships in Orlando, Fla., in April 1992. The West Virginia council will be composed of 13 members, including West Virginia Supreme Court of Appeals justices, state court trial judges, federal district judges from each of West Virginia's two federal districts, two state court administrators, and the president of the West Virginia State Bar Association. The council will meet twice a year, one meeting to occur in conjunction with the West Virginia Judicial Association. The next meeting of the council was set for April, 1993.

The council met formally for the first time on April 29 in Wheeling, with the following agenda: resolution of scheduling conflicts, time standards, alternative dispute resolution, tracking habeas corpus cases, standards for appointment of counsel, jury management, probation coordination, joint training of judicial personnel, automation issues, complex litigation, facilities of state and federal courts, interpreter services and other accessibility issues, local court rules, pro bono projects, and pro se litigation.

TECHNOLOGY, from page 1

ing technology.

CTL is located at the headquarters in Williamsburg, Va., and is available to judges and court administrators for viewing and testing of many kinds of technology. The CTL contains an array of hardware, court application software, data and text database systems, imaging components, and network and communications systems, all of which are demonstrated in a non-commercial environment.

Courtroom technology demonstrations are held in the moot court room of the adjacent Marshall-Wythe School of Law of William and Mary College. CTL demonstrations can also be arranged at local court sites.

CTD surveys courts nationwide to collect information on technology applications. As the only centralized depository of its kind, the CTD helps courts locate other judicial systems with similar needs and helps identify solutions to their technology problems.

Four current volumes of *CTR* explore a variety of new technologies in the courts and focus on the process of acquiring, implementing, and managing the technology. A prospective Volume 5 will target electronic imaging and optical disk technology.

The *CTB* is a bimonthly newsletter that highlights current court projects and surveys the court technology landscape.

Requests for further information about any of the above projects, requests for technology assistance, and requests for receipt of the two publications should be made to Court Technology Programs, National Center for State Courts, P.O. Box 8798, Williamsburg, VA 23187-8798, telephone (804) 253-2000, fax (804) 220-0049.

FEDERALISM, from page 2

supported finding that a genuine national problem exists.

Fifth, if legislation is adopted to bring into play the resources of national investigatory agencies, its scope should be limited to those cases where such resources are needed. Effective prosecution of large-scale and complicated multistate criminal activity (for which federal courts are the appropriate forum) requires the resources of national agencies. But statutes are rarely drafted to limit their reach to such large-scale offenses, and doing so is not easy.

Sixth, don't ground national legislation on dissatisfaction with the legislative judgments of states about criminal law enforcement and sentencing policies. Congress should recall the historic role of states as, in Justice Brandeis's words, "laboratories of democracy." A decision to impose more severe sentences for offenses because Congress considers state sentences to be inadequate should be supported by a demonstration of a national need to override the choices made by state policy makers.

Conclusion

Simply relying on the concept of federalism does not advance the cause of arriving at a principled and practical allocation of responsibility for the administration of criminal justice between the state and federal courts. It may be possible, however, to develop guidelines that could contribute significantly to attaining this objective. While guidelines will invariably be imprecise and complex, and may at times seem contradictory, they could nevertheless make a contribution to rational and informed decision making.

State–Federal Judicial Observer

A joint publication of the Federal Judicial Center and the National Center for State Courts

Interjudicial Affairs Office • Federal Judicial Center • One Columbus Circle, N.E. • Washington, DC 20002-8003