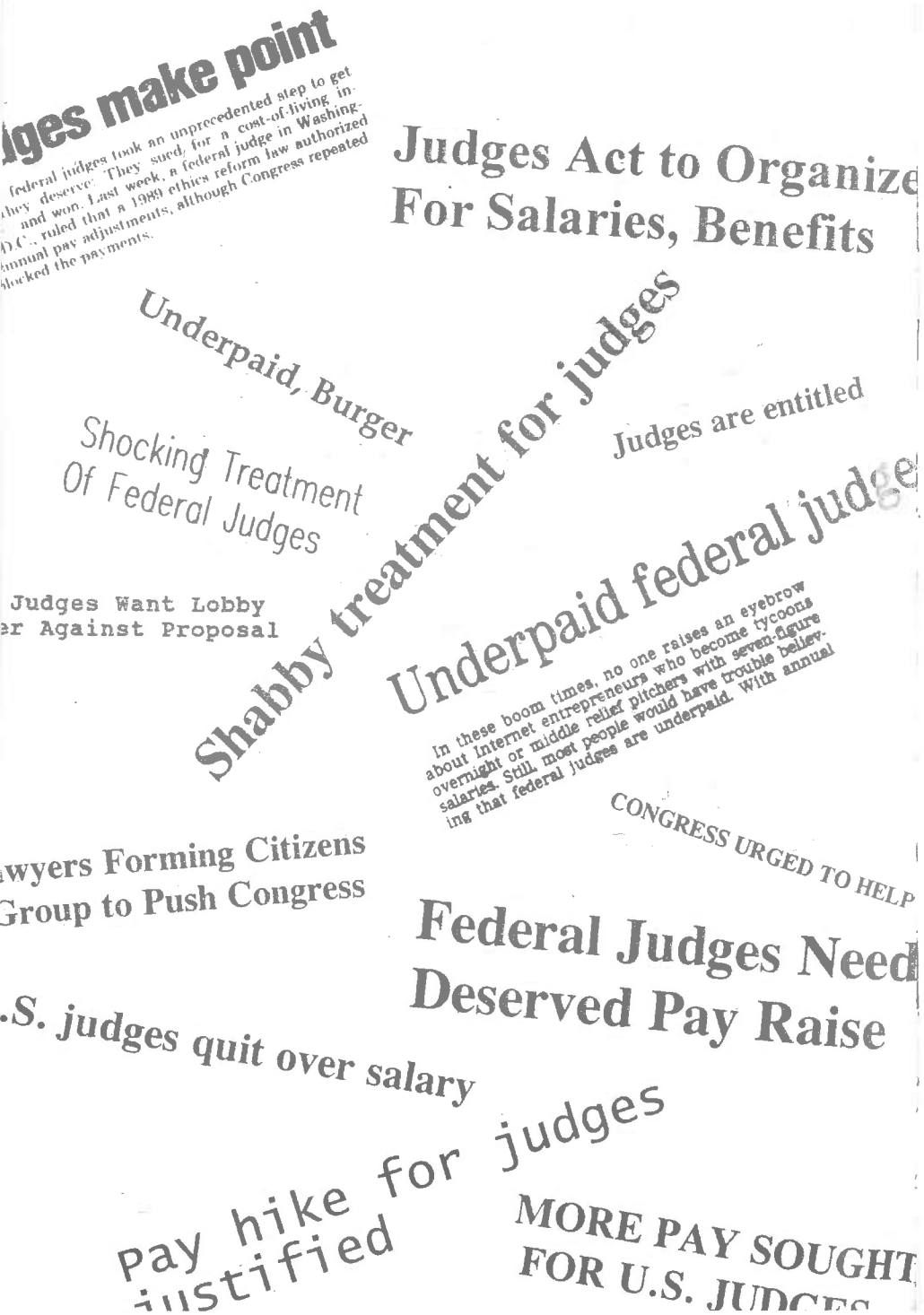


Carole Hicke

THE FEDERAL JUDGES ASSOCIATION IN THE TWENTIETH CENTURY

Contents

Foreword

It is the true office of history to represent the events themselves, together with the counsels, and to leave the observations and conclusions thereupon to the liberty and faculty of everyman's judgment.

— SIR FRANCIS BACON

The Federal Judges Association has completed seventeen years and ten months of very "active" duty when, on January 1, 2000, it entered the twenty-first century. While this is a mere heartbeat in history, it amounts to a significant period when measured against a human life, its passage often eroding the memory of even the recent past's most important events.

The philosopher George Santayana once said that "Those who cannot remember the past are condemned to repeat it." With this warning that ignorance of the past deprives successive generations of ways to deal with their own, often similar problems, the Board of Directors of the Federal Judges Association has funded its second history, *THE FJA IN THE TWENTIETH CENTURY*.[1]

From the early 1970s through the mid-1980s, this nation experienced the greatest threat in its history to the quality and independence of the federal judiciary as uncontrolled inflation reduced the compensation of federal judges. Congress refused to make adjustments for these losses, even though other federal employees received offsetting salary increases, as did most other public and private employees, including union members, members of the legal and medical professions, and even state court judges. This obstinacy caused an unprecedented increase in resignations from the federal bench and seriously prejudiced the judiciary's ability to attract and retain highly qualified men and women for

[1] This history incorporates, extends and thus supersedes the FJA's previous publication, *A DECADE OF ACHIEVEMENT, 1982-1992.*

judicial service. The failure to remedy this problem inevitably raised a more serious question: could a weakened and subservient federal judiciary fulfill its critical role as a co-equal branch of our government?

Although many government officials, judges, attorneys, and members of the media and the public were concerned about this growing threat, little progress was made in reversing the trend until a group of federal judges, ignoring the disapproval of some of their peers and resistance from within the official structure of the judiciary, decided to take action. Their efforts began in 1976 with the filing of the first in a series of lawsuits that ultimately resulted in the United States Supreme Court's holding in 1980 that Congress's rescission of judicial pay increases had been unconstitutional. Shortly thereafter, a nucleus of these litigators decided to explore the feasibility of forming an association of federal judges. This endeavor led to the formation of the Federal Judges Association as a volunteer, grass-roots organization of Article III judges devoted to warding off future threats, from whatever source, to the quality and independence of the federal judiciary.

The board is aware that the quality and independence of the federal judiciary might at some future time again be placed in jeopardy, either by design or by a neglect of sources within or without the government. The board intends that this history will inspire the judges serving at that future time to also take whatever steps are necessary and appropriate to protect and, if necessary, to restore the federal judiciary to its rightful position as a highly qualified, independent, co-equal branch of government, not for the sake of the judiciary, but for the preservation of our nation.

Spencer Williams
Judge, Federal District Court,
Northern District of California

Acknowledgments

For the early part of this history—the first decade—most of the source material is in unpublished documents such as letters and memoranda. Judge Irving Hill's thoroughly researched work, "A Narrative History of the Ninth Circuit Committee on Judicial Salaries and Benefits and a Summary of Its Accomplishments" (1990, unpublished) provided much information, as did some documents furnished by Kevin Forde. I relied on oral-history interviews with Judge Spencer Williams and Judge A. Clifford Wallace, as well as on the collected files pertaining to the Federal Judges Association in Judge Williams's office. I conducted telephone interviews with Judge Hubert Will, Kevin Forde, and William Weller. The manuscript was carefully reviewed—under pressure of deadline—by Judge Williams, Judge Will, Judge Hill, and Judge Hall, and by Kevin Forde and Bill Weller. Bradley B. Williams reviewed and Philippa Brunsman edited this part of the manuscript.

Much of the material for the second part of the history—1992-2000—was gleaned from the association's newsletter, *In Camera*, edited by Spencer Williams. Judges W. Earl Britt, Diana Murphy, Alan H. Nevas, John M. Walker, Ann Claire Williams, and Stanley Brotman contributed information by letter and in telephone conversations.

Thanks are due to all these and to others who graciously offered their knowledge and help.

1.
The Decline of the Dollar

The Federal Judges Association was incorporated May 15, 1982, the culmination of a long struggle over judicial compensation.

—The Honorable Spencer Williams

For the federal judiciary in the 1970s, it was the worst of times. While the United States struggled to extricate itself from the Vietnam War and the government's executive branch became mired in the Watergate scandal, the enormous rise in inflation throughout the decade brought consistently lower real income to those with fixed salaries. Among them were the federal judges.

Reduced purchasing power was not the only difficulty for judges; survivors' benefits were so low as to be insignificant, and communications, especially on salaries and working conditions, between Congress and the judiciary were waning visibly in the early 1970s. (Relationships between individual judges and their representatives usually remained friendly, but there was little perception on the part of Congress, as an institution, of the judiciary's difficulties.)

The inflationary spiral that began in the early 1970s affected salaries insidiously. By 1980 the Consumer Price Index had risen to almost two and a half times the level of 1967 dollars—the base point for the index. This meant that by 1975, for example, judges' salaries, which had remained stationary, represented just a little more than half—before taxes—of their 1970 purchasing power.

Inevitably, judges, few of whom had ever before resigned, began leaving the bench in record numbers—an unheard-of twenty-four in the 1970s. Concern escalated with the fear that, as the

A.B.A Chief Backs Judges' Suit On Pay; Calls Congress Unfair'

PHILADELPHIA, Feb 13: The president of the American Bar Association expressed strong support today for the 44 Federal judges who sued the United States this week for a pay increase, saying that "Congress has been so unfair it invites this test."

The bar president, Lawrence E. Walsh, once a Federal judge, said that the judges were justified because it would focus public attention on their plight.

"The courts aren't that tender," he said. "They're (sic) been used many times for attention." . . .

Mr. Walsh made his comments in and after a news conference here as the A.B.A.'s annual business meeting began.

The judges, represented by former Supreme Court Justice Arthur J. Goldberg, filed their suit Wednesday in the United States Court of Claims in Washington.

Federal District Court judges are now paid $42,000 and Federal Court of Appeals judges $44,625, as a result of a pay increase granted last Oct. 1 to raise their salaries 5 percent from 1969 levels.

Essentially, the judges contend that Congress and the President were constitutionally obligated to increase the salaries by a much higher percentage to offset the impact of inflation over the last few years.

They based this contention on the Constitution, which says that compensation of Federal judges gap widened between the income of lawyers and that of judges, fewer top legal practitioners would be attracted to the bench.

For one thing, judges found themselves caught in a peculiar bind: because members of Congress had traditionally linked judicial salaries to their own, the judges suffered when legislators failed to act for fear of the public outcry that might arise if they boosted their own pay.

Senators and representatives were certainly aware of the decrease in purchasing power—their salaries had also remained stable. Congress had attempted to deal with the problem in 1967, when it passed the Federal Salary Act. This provided for a nine-member Commission on Executive, Legislative, and Judicial Salaries to be appointed every four years, thus becoming known as the Quadrennial Commission. Beginning in 1968, the commission routinely found that top federal officials were underpaid. "Present salary levels are not commensurate with the importance of the positions held," stated the commission report that year. "They are not sufficient to support a standard of living that individuals qualified for such posts can fairly expect to enjoy. . . .We should expect the compensation of those to whom we entrust high responsibilities and authority in government to bear some reasonable relationship to that received by their peers in private life."

According to the Federal Salary Act, the Quadrennial Commission was to submit its salary recommendations to the president, who would then accept, reject, or modify them and send his findings to Congress. These recommendations would become law, unless either house of Congress disapproved them (until 1985, when a joint resolution became necessary). The Quadrennial Commission, finding federal officials to be underpaid, regularly recommended increases. After 1968 the increases were just as regularly disapproved.

Although the 1968 commission's recommended increases were cut by President Lyndon B. Johnson, his reduced figures were accepted by Congress. But in succeeding years, proposals by the commission for salary increases achieved little success. In 1973 they were rejected outright by Congress; in 1976 increases became law by default when neither house brought the recommendations to a vote. The subsequent outcry, however, criticizing Congress for obtaining a pay raise "through the back door," resulted in an amendment to the Federal Salary Act to require a recorded vote of approval in both houses. House and Senate refused approval in 1980.

Judges did receive a nominal 5 percent increase in 1975, when the Executive Salary Cost-of-Living Adjustment Act was passed; yet problems remained with even these inflation-fighting adjustments, known as COLAs. Sensitive in the extreme to its constituents' criticisms, Congress balked at raising its own pay, even on a COLA basis, thus denying a raise to judges because of linkage. In fact, this insistent linkage brought into question the independence of the judiciary. As James Madison wrote in *The Federalist, No. 51*, 1788: "The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."

The judges found the congressional recalcitrance particularly galling, since members of Congress were much less restricted than the judges were in using outside sources of income to offset the ravages of double-digit inflation.

Support for the judges came from other segments of society, including journalists and members of the bar. Editorials proclaimed that federal judges were highly trained professionals, generally in the prime of their lives; many had made substantial financial sacrifices when they were appointed to the judgeship; most had family responsibilities that dictated a certain amount of financial security. "The spate of resignations from the federal bench for economic reasons—and the inability of recent presidents to find qualified replacements—is a forceful argument for giving federal jurists a raise that compensates for the six years without one," wrote the *Los Angeles Times* on June 9, 1976.

The American Bar Association added its voice to

"shall not be diminished" during their term in office. By not erasing the effects of inflation, they said, the government was in effect "diminishing" their salaries.

— Lesley Oelsner,
New York Times,
February 13, 1976

those advocating salary increases. Lawrence E. Walsh, president-elect of the association in 1974, noted that the sacrifice required to take a judgeship would discourage the best candidates for the bench. "I can't think of anything more important, if we want to improve the system of justice in this country, than good judges," he emphasized.

Inflation bred disillusionment among the judges, and discouragement degenerated into outrage.

Where could they turn? they asked themselves. Wasn't the excellence of the judicial system at risk? Wouldn't some meritorious members of the bar refuse to accept appointment to the bench? To some, the quality of justice itself seemed threatened.

2.
LITIGATION

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

— ARTICLE III, SECTION 1, UNITED STATES CONSTITUTION

"Well, sue them!" said District Judge Spencer Williams of California. After hearing judges' concern about salaries ever since coming onto the bench in 1971—"They were all talking about it"—he finally asked, why not litigate? That idea had occurred to other judges, some of whom began seriously to consider it. In 1974 Williams mentioned it to Judge William Campbell of Illinois, who agreed to look over the complaint Williams drafted. Campbell also had the draft vetted by a professor at Harvard Law School, who agreed: "It has a lot of merit."

The draft complaint alleged that Congress, by failing to increase judicial salaries since 1969 despite record inflation, violated Article III, Section 1, of the Constitution, which requires that judges receive "a compensation, which shall not be diminished during their continuance in office." The question was whether the Constitution—and the Founding Fathers who wrote it—referred to an actual salary figure or to purchasing power measured in terms of real income.

Williams talked to Joseph Cotchett, then on the Board of Governors of the California State Bar, about whether the bar should bring a lawsuit. But there was a question about the bar's having the standing to sue, and Williams decided to file the suit himself and bring in other judges as plaintiffs.

The next problem: where to file the suit. If Williams filed in state court, the suit would be moved to federal court, where all the judges might be disqualified because any federal judge would be affected by the suit. But California State

Spencer Williams, Organizer and First President of the Federal Judges Association, 1982-1987

"Spencer Williams, enthusiast, evangelist, organizer, led us from idea to reality," wrote then-FJA President Betty Fletcher in 1991. Williams took the lead in founding the Federal Judges Association and became its first president in 1982. It was only one of many activities in a productive and successful career.

A graduate of the University of California at Los Angeles, Williams served in the Pacific with the United States Navy during the Second World War as a main-battery fire-control officer on the heavy cruiser USS Chester. After the war he attended Boalt School of Law, from which he graduated in 1948, and entered private practice in San Jose, California. In 1950 he volunteered for active duty with the navy Judge Adjutant General's office during the Korean conflict.

Williams served for three years as deputy county counsel of Santa Clara County, California, and for twelve years as county counsel. In 1967 Governor Ronald Reagan appointed him secretary of California's Human Relations Agency; he served in that position from 1967 to 1970. He re-entered private practice in Sacramento and San Jose and in 1971 was appointed district judge for the Northern District of California. He is married to the former Kathryn Bramlage of Santa Barbara, California.

Judge Irving Hill paid tribute to Williams as head of the newly formed Federal Judges Association in 1982, citing his abundant energy and administrative skills. "In every respect Judge Williams did the job superbly," Hill wrote. Certainly Williams made the needs of the judges well known in Washington, to such a point that a fellow judge from the Northern District, returning from Washington, told him, "Back there they refer to you as Spencer Hoffa!" But this allusion to the Teamsters' Jimmy Hoffa did nothing to deter Williams from pursuing first the formation, then the avowed goals of the FJA.

Although he has had many successes in his long career, Williams considers the highlight of his professional life to have been the award given him at the First National Conference of Article III Judges in 1986—a hand-printed scroll recognizing his leadership in the formation of the Federal Judges Association.

Supreme Court Justice Stanley Mosk provided the solution. "In those days," Williams remembers, "Stanley Mosk used to come over and have lunch at the dining room in the Federal Building in San Francisco. I talked to him about it, and he told me about the Rule of Necessity: If every judge is disqualified, then no judge is disqualified, because it is more important that an issue be litigated than abandoned. My research proved Mosk to be correct, and so we decided we would file our suit in the Court of Claims."

This decision provoked a fierce debate within the federal judiciary, ranging from the propriety of one branch of government's suing another to the fear that plaintiffs in the case might be disqualified in all government litigation. The Chief Justice was heard to say the suit would embarrass the judiciary and the Supreme Court. Members of Congress took umbrage. All in all, it was an act of some courage for a sitting judge to be a plaintiff.

Nevertheless, Campbell and Williams persuaded numerous judges to sign on as plaintiffs. Williams agreed to be the "flak catcher" as the first-named plaintiff, but, as it turned out, he wasn't. "I was talking to Clyde Atkins," Williams recalls, "whom I had met during a seminar in Florida—he was from there. I asked him to join in the suit. He didn't want to, saying his name would be in the paper and the publicity would be disastrous for him. But I said he'd be at the bottom—that my name would go first, then the other judges would be listed by seniority. I'd take the flak." Atkins finally agreed, but the Court of Claims demurred. In a case with multiple plaintiffs, it said, the plaintiffs have to be listed in alphabetical order. The case was named *C. Clyde Atkins, et al.* v. *The United States of America,* and Atkins went down in history.

Next came the question of finding counsel. The judges knew that former U.S. Supreme Court Justice Arthur Goldberg, who by then was retired, was committed to protecting the best interests of the federal judiciary. "Would you represent us?" Williams asked. Goldberg agreed to take a look at the complaint. Over lunch with Williams in California, he studied the papers. "Hit the bricks!" he said, recalling his days as an attorney for organized labor. "That's a good suit. I'll do it, pro bono." He recruited Harvard Professor Stephen Breyer to join the team, and Kevin Forde, former law clerk of Judge Campbell and past president of the Chicago Bar Association. Both assisted Goldberg as Of Counsel. It was to be the last time Goldberg argued a case in court. "He was superb . . . brilliant!" remembers Forde.

Forty-two judges joined Atkins and Williams in the suit, which was filed on February 11, 1976. Thirty-seven others filed suit in *Louis C. Bechtle, et al.* vs. *United States of America* with the same complaint, and the two suits were consolidated. Both alleged that between 1969 and 1975, the real income of federal district judges fell from $40,000 to $27,510 because of inflation, and that the continuing failure of the president and Congress to provide appropriate salary adjustments to offset inflation violated Article III of the Constitution and seriously threatened the independence and quality of the federal bench.

A second count was added in March 1976, stating that the action by the U.S. Senate (without the concurrence of the House of Representatives) in disapproving a pay raise requested by President Richard M. Nixon in 1974 was an illegal, one-house veto, and was thus unconstitutional. Plaintiffs contended that it was an attempt by the Senate to exercise power reserved to the president in Article II of the Constitution. Nor did the passage of a resolution by one house constitute the enactment of legislation. This count was added at Goldberg's insistence. "This has happened so many times," he explained, "and it has never been challenged." The issue had been raised in previous immigration and agricultural benefits matters. It was worth the try.

Senator Charles Percy of Illinois filed an affidavit with the Court of Claims in support of redress for what he called "the serious problem of low judicial salaries." He had lost hope that Congress would provide relief, but he stated clearly the difficulty he was having in persuading successful attorneys to leave their private practice for the bench. "During the past seven years," he wrote, "twelve individuals who were my first

Judges Are Entitled to Their Day in Court

Early vocal critics of a group of federal judges suing the government for a pay raise are beginning to hedge on their initial statements.

The Washington Star, which first characterized the suit as a "bizarre manifestation of official fatheadedness," has now admitted to overreaction.

In an editorial on March 11, the Star concluded: "But if the judges' suit be thought mischievous, even subversive of the dignity of their high office, the greater mischief is congressional. Congress has condoned an unacceptable depreciation of judicial pay; indeed it has permitted the pay of federal trial judges to fall below that of many state judges. . . .

The suit, originally brought by 44 U.S. District and U.S. Appeals Court judges, has now been joined by an additional 37 judges.

Their contention is simply that inflation has diminished the income of federal district judges from $40,000 a year to about $27,510 and from $42,299 to $29,230 for appeals court judges.

Adrian A. Spears, chief judge of the U.S. Western District of Texas in San Antonio, is one of the original group of judges in the suit.

The judges base their claim on Article III, Section I of the Constitution that provides Judges of the United States Courts "shall. . . at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

Congressional opponents of the suit, one of whom went so far as to suggest the judges be impeached for their action, claim the framers of the Constitution made no mention or provisions for inflation.

Not so.

U.S. Dist. Judge Thomas D. Lambros of Cleveland has done some homework.

He found in excerpts from "The Debates in the Federal Convention of 1787," which formed the Constitution, quotes to support the contention that the authors of the document were very aware of inflation.

No less a figure than Constitution grammarian Gouverneur Morris said: "The value of money may not only alter but the state of society may alter. The amount of salaries must always be regulated by the manners and the style of living in a country."

. . . If constitutional evidence is, in fact, against the judges in their fight against inflation, there are other facts that should support their claims in the arena of reason.

The Senate Judiciary Committee, late last year, recommended the creation of 52 new federal judgeships.

Their recommendation is supported [by] the ever-increasing case load upon existing judges, compounded by the Speedy Trials Act.

So, at some future date, there will be new federal judgeships to be filled.

But what about the more than 40 vacancies that now exist?

Over 40 federal judgeships are unfilled because enough qualified attorneys can't be found to take the posts. . . .

— Dick Merkel,
San Antonio Express-News

choice as candidates for federal District Court and Court of Appeals judgeships decided that while they were extremely desirous of serving on the federal bench, they could not accept such a position at the current salary level."

The judges took careful cognizance both of public response and of reaction in the legal community. In a letter to the plaintiffs, Campbell noted that editorial comment had been mostly favorable or neutral—neutrality being the agreement that there was need for a salary increase but taking no position on the judges' suit. *The New York Times*, for example, "wrote two well-researched stories which appeared in papers around the country courtesy of the *Times*'s wire service, then followed with a favorable editorial."

The American Bar Association strongly urged Congress to enact a salary increase for judges. "Today attorneys are making substantially more than the salary of federal judges," noted John A. Sutro, Sr., chairman of the American Bar Association's Standing Committee on Judicial Selection, Tenure, and Compensation in 1976. "Judges won't—or generally can't—accept a federal appointment unless they have other sources of income."

Local bar associations joined in the chorus of support. Four New York Bar groups held a press conference asserting that judges were not paid enough.

Williams sent a number of questionnaires to judges all over the country asking for information about their general financial circumstances: in order to support their families, did they rely on outside income, such as having another job or a spouse who worked? Or were they dipping into savings? Many replied affirmatively.

But in 1977 the Court of Claims rejected the case, and a petition for certiorari was denied by the Supreme Court. This was not the last the Court was to hear of the one-house-veto issue. Several years later the Court, in *I.N.S.* v. *Chada* [462 U.S. 919 (1983)] ruled that the one-house-veto device was illegal. The *Atkins* plaintiffs were ahead of their time on that question.

The *Atkins* case failed in 1978. But the judges weren't ready to give up; instead they tried another tack.

As mentioned earlier, in 1975 Congress had authorized COLAs. But a funny thing kept happening on the way to the pay raises that should have resulted—Congress would attempt to prevent the adjustments from taking place by rescinding them after the commencement of the succeeding fiscal year. In fiscal years 1976, 1977, 1978, and 1979, it was the same story: Congress was afraid of the heat that would be turned on if it raised its own salaries, and judicial salaries, of course, were linked to those of Congress.

"Wait a minute," Judge Thomas Platt thought to himself in his library in New York. "You can't rescind these raises; they have become law by virtue of their having been linked to the general schedule providing COLAs for all federal employees." So the judges sued again.

Platt talked to Campbell, who brought in Judge Hubert Will of Chicago, a plaintiff in *Atkins*. Will agreed to spearhead the efforts, and the two decided to enlist the support of four other judges in different parts of the country. Kevin Forde signed on as counsel, and Richard Prendergast, an experienced member of the *Atkins* team, joined him. Demonstrating the national scope of the case, separate complaints were filed in four cities around the country: Spencer Williams led off in San Francisco, Jack Gordon and Fred Cassibry in New Orleans, Hu Will and Bill Campbell in Chicago, and Tom Platt in New York. Since the cases were all the same, the Department of Justice wanted them all in one place. After New York attorneys declined to handle the case because they feared conflict claims, Chicago seemed the logical choice, being the home of plaintiffs Will and Campbell and of lawyers Forde and Prendergast. So in February 1978, thirteen district judges joined with Hu Will in Chicago in *Will* v. *United States*. See Appendix 1 for the list of plaintiffs.

This action challenged the constitutional validity of statutes passed in 1976 and 1977 rescinding the cost-of-living raises. Forde drew up pleadings, motions, and briefs, "every one of which was reviewed by Bill Campbell and myself," recalls Will. "Some were also looked at by Spencer Williams, Tom Platt, Jack Gordon, and others." It

Hubert Will of *Will*

Senior District Judge Hubert L. Will, Northern District of Illinois, received the 1992 Edward J. Devitt Distinguished Service to Justice Award in May 1992. The award recognized his long fight for an independent judiciary and capped a notable career that included service with the Securities Exchange Commission and the Department of Justice, military service with the Office of Strategic Services in the European theater during the Second World War, private practice in Chicago, and thirty years of illustrious judicial service.

His concern for judicial independence, which finally took the form of participation in the *Atkins* and *Will* suits and the formation of the Federal Judges Association, began when he went on the bench in 1961. The two-thirds cut in pay he would have to take as a judge, compared with his pay as a lawyer in private practice, gave him pause. With a wife and four children who wanted to go to college, was he making a mistake? His former law partners thought so.

proved to be worth the trouble—the district court granted summary judgment for plaintiffs on August 29, 1979.

When the judges filed another action in 1979 pertaining to the validity of similar statutes passed in 1978 and 1979, the district court granted summary judgment for plaintiffs January 31, 1980.

From the government's point of view, a great deal of money was involved and a broad precedent was being established; the United States petitioned the Supreme Court for a hearing. The Court considered the problem of disqualification of itself due to self-interest, and cited Pollack: "Although a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but must do so if the case cannot be heard otherwise." It was the same, now-familiar Rule of Necessity on which the *Atkins* plaintiffs had relied.

The Court decided that Article III, Section 1, promotes an independent judiciary free from control by the executive and legislative branches. It affirmed in part and reversed in part, holding that in two of the years the statute became law after the scheduled increases had taken effect and therefore diminished the judges' compensation. In the other two years, the law became effective before the beginning of the fiscal year and did not diminish the compensation. It was, perhaps, only a partial victory, but it was an auspicious one. On January 14, 1981, judgments were entered, totaling, with interest, $7,331,700.15.

A third suit challenged the fiscal 1981 limitation; judgment was entered on January 28, 1981, for $1,186,503.80. Judgments for all the *Will* cases added up to nearly $8.5 million. In fact, *Will* actions produced the greatest increase in judges' salaries in decades.

In the aftermath of the case, the disposition of the attorneys' fees caused something of a ripple. Forde and Prendergast set their fees so low that the plaintiff judges protested. "That verdict is worth millions," Williams told Forde. "Forde and Prendergast have simply been superb," wrote Will to his fellow judges, "and we are deeply in their debt." There was negotiation. Forde finally, reluctantly, agreed to accept an increase, although the figure remained substantially lower than the fee that would normally go to attorneys in cases of such magnitude.

And besides, Forde and Prendergast had arranged to have the money deposited to the plaintiffs' account while the federal government determined how it should be allocated among the judges. During that time, it earned enough money at the then interest rate of 16.9 percent to pay the attorneys' fees.

Success in the *Will* cases did more than add dollars to paychecks; the litigation provided a strong and visible rallying point on which judges of different philosophical persuasions could come together nationwide, and it produced a grand victory that boosted morale all around.

Still, he did not think this disparity could last forever.

He attempted to change the situation by approaching first Chief Justice Earl Warren, then Chief Justice Warren Burger. Both justices made little progress in persuading Congress.

Will particularly remembers going to see the then Speaker of the House, Thomas P. "Tip" O'Neill, as part of a group who wanted to see judicial salaries increased. "I can't do anything for you," said O'Neill. And added, "But you ought to remember that God helps those who help themselves. And if you help yourselves, you'll help us." "I read you loud and clear," replied Will. He was ready for action.

But Chief Justice Burger wanted to try again to work with Congress. The judges waited another year, then filed the *Atkins* case. When that was rejected, several judges filed suit in various cities; the suits were eventually combined into *Will v. United States*. At last Judge Will had some action.

The favorable result of the suit, the formation of the Federal Judges Association, and the many successes that the association orchestrated rewarded Will's efforts to improve the quality of life of the federal judiciary, thus attracting and retaining some of the most competent men and women.

Will liked to remember Winston Churchill's adage: The best test of the quality of a society is the quality of its justice. And Will's addendum: The quality of justice depends upon the quality of the judges.

On December 9, 1995, Hubert L. Will lost a six-month battle with cancer. He stayed in touch with the FJA struggle over judicial compensation until the end.

3.
Ninth Circuit Committee on Judicial Salaries and Benefits

There is, however, a limit at which forbearance ceases to be a virtue.

— Edmund Burke, 1769

Judicial despair," District Judge Irving Hill called it. By 1978 he believed that the morale of federal judges was at an all-time low. Beyond the financial problems, judges were facing increasing public and congressional hostility, largely because various Supreme Court and lower court decisions had alienated different segments of the population. Hill cites "the cases on school desegregation, expansion of the rights of criminal defendants, one-man, one-vote, and separation of church and state."

Moreover, judges felt that the Judicial Survivors Annuity System was entirely inadequate, and this was a cause of great dissatisfaction. "You can live on a judge's salary, but you can't afford to die on one," said Judge William H. Mulligan of the Second Circuit Court of Appeals when he resigned from the bench, referring to the plight of Terry West, the widow of Judge R. Blake West of New Orleans. When Judge West died at the age of forty-seven after six years on the bench, Mrs. West found the monthly $550 she was receiving from the Judicial Survivors' Fund to be altogether insufficient for herself and her four children. "I went to work as a saleswoman in a local store," she wrote in a letter in 1982. "The children worked both part and full time, we used the entire proceeds from Blake's life insurance, and after two years sold the family home. I hope the judicial survivors' plight will be remedied so that no able attorneys, which the federal bench needs so much

now, would ever be deterred from accepting one of the nation's most honored positions."

Added to that problem was the perception by the judges that they were voiceless, even powerless, in their own defense. It was time, thought Hill, to take action. Having been a plaintiff in the rejected *Atkins* case, he decided to try something other than litigation.

First he wrote to the Administrative Office of the United States Courts (AO), which was charged with various administrative duties pertaining to the judiciary. The AO was created in 1939 to act as secretariat for the Judicial Conference of the United States, a policy-making body of the federal judiciary. Its duties included performing fiscal and business services; gathering statistics and preparing reports on administration of the courts; and acting as liaison between the judicial system and Congress, individual judges, professional organizations, and other government agencies. It advised on legislative strategies, received proposals directed to the Judicial Conference, and offered testimony to congressional hearings.

Thus it was to the director of the Administrative Office, William Foley, that Hill directed his letter in April 1978 proposing consideration of group insurance coverage for annuities for spouses as well as group dental insurance. A few days later he wrote again, suggesting a voluntary deferred taxation plan like the IRA and Keogh plans available to the private sector. When these efforts produced no apparent enthusiasm—the AO replied that new legislation would be required and suggested that Hill consider obtaining insurance from a private organization—Hill realized no immediate help would be forthcoming from the Judicial Conference.

"Why not organize ourselves?" was his reaction.

His next step was to call on the chief judge of his own circuit, James Browning. He dispatched a letter in June. Unbeknownst to Hill, Ninth Circuit Judge Clifford Wallace had written to Browning at about the same time on the same subject. Both proposed that Browning appoint a new Ninth Circuit committee to study the problems of salaries and benefits, emphasizing that an improvement in benefits might have the better prospects of the two and should therefore be undertaken first.

Within a month, Browning had put the suggestion before the Ninth Circuit Judicial Council, obtained its approval, and appointed a committee: Hill, Wallace, and Judge Samuel Conti. The Ninth Circuit Committee on Salaries and Benefits, as it was called, devised a list of benefits to be sought and set up goals for itself: to find which committee of the Judicial Conference of the United States—if there *were* such a committee—handled such matters, so as to bring about a national effort or create a national forum; to ask the AO for a list of congressional benefits, with the idea that members of Congress might like to add to their own benefits; to ask the AO for staff help for the committee; and to initiate discussion with Chief Justice Warren Burger.

Hill quickly determined that no Judicial Conference committee was considering salary or benefits for the judiciary. The AO, on request, designated a young staff lawyer, Stafford Ritchie, as support and liaison for the Ninth Circuit committee. He provided invaluable help. But the AO declined to fund a consultant on self-insurance, as the Ninth Circuit committee had requested.

In 1979 the AO also disseminated the summary of compensation and benefits for federal judges Ritchie had prepared at the request of the Ninth Circuit committee and submitted to Hill for suggestions and expansions. This brought the paucity of benefits to the startled notice of those judges who had been too busy to pay attention. The contrast between the benefits shown on the books and the program proposed by the committee focused the interest of many judges on the need for a national organization.

The three Ninth Circuit judges agreed that a major effort should be put forth to ask for help from the Judicial Conference of the United States. Initially they tried for a subcommittee, but the

request was turned down because a subcommittee did not fit within the existing committee system. They realized that the goal would have to be the creation of a new JCUS committee, which would work solely for improved salaries and benefits. In this they expected to encounter few problems. They were mistaken.

4.
Two Objectives

Eventually we came to the conclusion that we needed to have an organization at the national level within the Judicial Conference structure, and an organization outside of the Judicial Conference structure that would make an effort to collect the political power necessary to accomplish our objectives.

— The Honorable James R. Browning

Meanwhile, the Ninth Circuit Committee on Salaries and Benefits, at its second meeting in November 1978, formulated a second goal: a national judges' association. Irving Hill, Clifford Wallace, and Samuel Conti had already discussed the implications of having two groups—the Judicial Conference of the United States committee and a national judges' association—devoted to the same objectives. The two groups, they decided, would have the same goal but different functions. The JCUS committee would collect information, study proposals, and formulate legislation. The judges' association would then relay the message to individual members of Congress.

"We must organize ourselves," Hill told a meeting of federal judges at the Palm Springs seminar, provoking a lively discussion and eliciting much support. Further backing for both the committee's goals came at another seminar, this one held at Key Biscayne early in 1979. Hill and Ninth Circuit Judge Eugene Wright of Washington talked about the work of the Ninth Circuit committee, specifically about the proposed JCUS committee and the possibility of a judges' association. Most of the judges at the meeting indicated their approval of both.

Out of that meeting came additional encouragement: Chief Judge Clement Haynsworth of the Fourth Circuit rallied aid from other circuit chief judges: Judge Damon Keith of the Sixth

U.S. Judges Want Lobby; Burger Against Proposal

WASHINGTON—A group of federal judges wants the judiciary to set up its own private lobby to work for higher salaries and fringe benefits—and is proceeding with the plan despite the "strong disapproval" of Chief Justice Warren E. Burger.

The judges are frustrated by the seeming inability of their officially sanctioned organization, the Judicial Conference of the United States, to convince Congress of judges' plights. And they are proposing a more hardsell group, to be called the Federal Judges Association, which would be modeled on a successful group of California state judges.

U.S. District Judges Spencer Williams and Samuel Conti of California launched the idea in a May 29 letter to all federal judges. The [*sic*] request that interested judges contribute $200 and list those congressmen they would "feel comfortable in contacting" about judicial benefits and "other judicial matters."

Informed of the plan in a June 5 letter from Judge Williams, Chief Justice Burger expressed his "strong disapproval." The chief justice "emphasized that the Judicial Conference of the United States is the statutory body authorized to express the views of the federal judiciary and that ad hoc programs of the kind proposed are neither appropriate nor useful," according to a statement from the Supreme Court's public information office.

The chief justice, who had been aware of the idea, but was reportedly "flabbergasted" at the mass mailing, expressed similar sentiments in a letter last week to all federal judges. Though "well-intentioned," he said, a Federal Judges Association would "in the long run . . . obstruct, rather than advance" judges' interests.

But Judge Williams said last week that the group was moving ahead with its plan. "A whole bunch of checks" had already arrived from enthusiastic judges, he said.

"We feel we should be involved because we have wives and children who are going to suffer" if benefits aren't improved, Judge Williams said. He emphasized, however, that his group was attempting to buttress the role of the Judicial Conference, not usurp it. "We're not at cross purposes with anyone," Judge Williams said. "We think the chief justice is doing a terrific job."

Other judges organizing the group are Fred J. Cassibry and Jack N. Gordon of Louisiana; Thomas C. Platt Jr., of New York; Laughlin E. Waters and Irving Hill of California; and William J. Campbell and Hubert L. Will of Illinois.

Though the group has been on the drawing board for several years, its official launching was postponed until after the Supreme Court's December decision in a pay case brought on behalf of federal judges by Judge Will. In that case, the Supreme Court awarded the judges a raise but said that Congress could withhold scheduled cost-of-living increases for judges if it acted before the boosts took effect at the start of the fiscal year. . . .

— Ruth Marcus,
National Law Journal,
June 29, 1981

Circuit committed himself to the idea of a judges' association, and District Judge Harry Wellford, president of the Sixth Circuit District Judges Association, brought along that body in support. Other judges went home from the meeting and spread the word among their colleagues. District judges' associations in the Fourth, Fifth, and Sixth circuits passed resolutions aligning themselves with the Ninth Circuit proposals, especially with the idea of forming a national judges' association and taxing themselves for a legislative representative.

On the other front, progress toward formation of a new JCUS committee was so slow as to be nearly undetectable. Hill, Wallace, and Conti decided that formation of a judges' association should await the appointment of the new JCUS committee by the Chief Justice, so that the JCUS would be fully informed at all stages about the association's activities. By the summer of 1979, with no word from the JCUS—Chief Justice Warren Burger was still saying informally that he did not want a "union" that would discredit the judiciary—the three Ninth Circuit committee judges had mapped a strategy to dramatize the merits of both bodies to the Chief.

Burger promised to attend the Ninth Circuit conference in Sun Valley in July, and he agreed to an informal meeting with the wives of the judges just before a meeting of the judges themselves. At the meeting, Voula Waters, wife of Judge Laughlin (Lock) Waters of California, and a number of other judges' wives told the Chief Justice of the tremendous effects of inflation on their lives. Some of them talked about having to sell their homes in order to have enough money to live on and send their children to college.

Burger then met with the judges; although the comments from the wives had clearly moved him deeply, he was dubious. He indicated his doubts about both a new JCUS committee and about a group of judges that would raise funds and hire a lobbyist. He proposed creating a commission of outsiders to promote the judges' interests as a substitute for both the committee and the association. The judges found this idea unsatisfactory.

Before he could overcome his reservations and agree with the judges, Burger had a long tradition to consider. Historically, it had always been the Chief Justice who had spoken for the judiciary. In the 1920s, under Chief Justice William Howard Taft, the Judicial Conference took on something of the role of an instrument of legislative clearance. Taft regarded lobbying—making "recommendations for the betterment of the general system of the federal judiciary"—as a power of the judiciary provided for by the "separation of powers" doctrine. Early Judicial Conferences had contacted Congress to request new salary appropriations, among other things. Thus, historical precedent had long provided that the Chief Justice and the Judicial Conference would represent the judges as a group.

And, in truth, Burger himself had publicly called for higher pay and benefits for judges. In his 1976 annual report, he had written, "The gross inequity toward salaries of federal judges, in common with 12,000 other high-level federal officials, continues . . . . At the same time, retired federal judges have received only a 5 percent increase since 1969, in common with active judges. By contrast, all other retired federal employees have received a 69 percent increase in their retirement pensions." He began to speak openly to circuit judicial conferences about the difficulties.

This voice in the wilderness went unheard. Whatever efforts were undertaken by the Judicial Conference were ignored by Congress. "The system," maintained Peter Graham Fish, referring to congressional liaison by the Judicial Conference, "remains eminently porous."

The "porosity" of the system, the inability of the Chief Justice and the JCUS to persuade Congress, and the clear need for change began to have their effect on Burger. Meeting with

Judges Proposing To Organize for Salaries, Benefits

A group of federal judges, much to the dismay of Chief Justice Warren E. Burger, has proposed organizing the federal judiciary into a Federal Judges Association to lobby for higher salaries and fringe benefits.

The judges are not calling their proposed organization a union. Nevertheless, the effort is controversial because it represents the first time judges have gone outside their officially sanctioned organizational structure, the Judicial Conference. . . .

The call to organize was made in a letter May 29 to all federal judges from two U.S. District Court judges in California, Samuel Conti and Spencer Williams. Eight other judges from around the country are part of the organizing group.

The Williams-Conti letter called for creation of the Federal Judges Association, complete with $200 dues and a possible "Washington coordinator." Judges would be asked to contact their "friends" in Congress to seek "such friends' support" for legislation benefiting the judges.

The letter said judges appreciate the work of the chief justice and others to improve salaries. But it said that not enough has been achieved and that judges now must pursue "their own solution."

A spokesman for Burger said yesterday that the chief justice had received the letter and responded by communicating "his strong disapproval" of the proposed program.

"The chief justice emphasized that the Judicial Conference of the United States is the statutory body authorized to express the views of the federal judiciary," a statement from Burger said. . . .

Burger's spokesman said the chief justice was "well aware that the purchasing power of federal judges is one-third less than in 1969 and that the frustration of judges is understandable. . . ."

— Fred Barbash,
Washing Post,
June 13, 1981

Browning and the Ninth Circuit committee at Sun Valley on the day following his expression of doubt, he acceded to the need for a JCUS committee. But he warned them that a judges' association, if it were formed, should maintain low visibility—he was unhappy that the bankruptcy judges were raising money from lawyers and the collection industry to improve their salaries.

Although the Chief Justice staunchly deplored the inadequate salaries and benefits, he never conceded that the judges themselves should do anything about the situation. Instead, he held tenaciously to the position that only the Judicial Conference of the United States should communicate as an institution with Congress on issues of wages and working conditions, and that only discreetly. Judges, he believed, should not risk losing their reputations as even-handed arbiters in jurisprudential matters by personally lobbying members of Congress.

Finally, on November 21, 1979, the new JCUS Committee was created, with Judge Irving Kaufman of New York named as chairman. Hill was appointed as a member and therefore, according to a previously agreed-upon policy, gave up participation in the subsequent formation of the judges' association. The JCUS Committee on the Judicial Branch, however, was apparently not to address exclusively or even primarily the questions of salary and benefits, as suggested by the Ninth Circuit committee, but would study "all matters that potentially threaten the independence, dignity, and welfare of federal judges." This was Kaufman's agenda.

As for the judges' association, Hill kept urging—if only from the sidelines—that the judges should unite.

Surprisingly, a precedent for individual judges' taking action already existed, judges having solicited Congress directly and through friendly intermediaries such as the attorney general. "Judges and judicial employees who have lost or fear the loss of their cause in the Conference arena continue to carry their case to Congress without Conference authorization," Fish had written in 1973. Local judges had even carried the day against Conference policy, as when three Texas judges successfully lobbied against an indeterminate sentencing bill, approved by the Conference, which was ready for enactment by the Seventy-Eighth Congress in 1944.

If the Conference itself could not solve the dilemma, why should the judges not try?

5.
The Federal Judges Association is Formed

It is always difficult to convince federal judges who are scattered all over the country and are not used to joint and collective action to stir themselves, but we did.

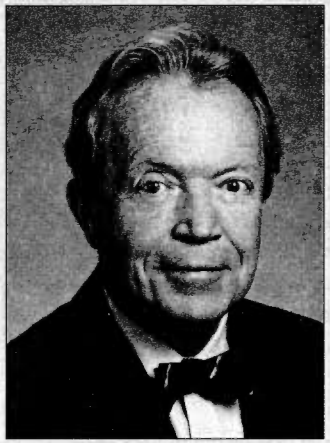
— The Honorable Irving Hill, 1990

While the quest for a JCUS committee was under way, the judges had not forgotten their other goal: the formation of a national association. Throughout 1979 and 1980, interest in such an association broadened. Irving Hill found three judges—Walter Hoffman and John Butzner (both of Virginia) and Damon Keith (of Michigan)—to form an organizing committee, but difficulties kept appearing, and obstacles waylaid them.

For example, before forming a judges' organization, the committee wanted the Chief Justice's approval and the formation of the JCUS committee; but the first was not forthcoming and the second was a long time in the making. When the new JCUS committee at last came into being in November 1979, the organizers decided they also needed its blessing. That never happened—Chairman Kaufman remained adamantly opposed. And finally, concerned that news of a judges' lobby being organized might influence the Court in the *Will* case, the organizers decided to wait for that decision.

Meanwhile, in April 1980, Sam Conti circulated at his own expense a questionnaire to all Article III judges, asking if they were prepared to pay organization dues of $150 annually. Three hundred judges said they were, and some even sent money.

In December 1980—the month the *Will* decision came down—the Sixth Circuit proposed a Federal Judges Alliance. Although this never went



Robert H. Hall, Second President of the Federal Judges Association, 1987-1989

Robert H. Hall, United States District Judge, Northern District of Georgia, took over as second president of the Federal Judges Association in 1987 and served until 1989. As one of the founding directors of the association, he had worked hard for its establishment, then its viability. There was still much to be done.

Hall was born in Georgia and grew up there, obtaining a B.S. degree from the University of Georgia and an LL.B. from the University of Virginia. He had spent his working life in his home state with the exception of military service during the Second World War—moving from positions in the Georgia Attorney General's Office to the Court of Appeals of Georgia in 1961, then to the Georgia Supreme Court in 1974, before being appointed to the federal bench in 1979. But his activities gave him a nationwide outlook and experience in court administration, activities that included being chairman of Governor Jimmy Carter's Commission on Judicial Processes; trustee of the Institute for Court Management; director of the National Center for State Courts; chairman of the American Bar Association Commission on a National Institute of Justice; and president of the American Judicature Society.

Hall was thus well prepared to rationalize and streamline the work of the FJA, setting up committees and establishing the network system that was to be so effective in getting information to Congress. He received awards for his significant contributions as lawyer, professor, judge, author, and supreme court justice, and as a national leader in court modernization efforts.

His achievements for the Federal Judges Association capped the notable accomplishments of his career. On his death in 1995, the FJA passed a resolution honoring his outstanding contribution to the federal judiciary.

far, it served to add further pressure and indicate support.

The stage was now set for all these activities to come together, and the curtain rose on the actual formation of the Federal Judges Association.

At Spencer Williams's suggestion, a meeting of the *Will* plaintiffs was held on January 22, 1981, in conjunction with a Ninth Circuit Judicial Workshop. Its purpose was to discuss attorneys' fees to be recommended for the *Will* case and to determine what steps should be taken to forestall any future recurrences of the problem of judicial salaries. Several judges who were not *Will* plaintiffs, including Jim Browning, were also invited to attend.

The need for a national judges' organization loomed overwhelmingly. After the Will decision, Congress seemed even more recalcitrant although, ironically, the senators and representatives eventually received an increase in their own salaries as an indirect result of the judges' litigation. The Chief Justice was not making progress, either. As Hu Will wrote, "No chief justice in our history has been more zealous in this regard [communication with Congress] than Chief Justice Burger. But it is beyond the capacity of one person or even a handful of judges or AO staff to communicate effectively with over five hundred Senators and Representatives."

Judges were still pointing out that "if we are not able to recruit and retain the best qualified men and women, the quality of the federal bench will suffer." But Congress wasn't listening.

"I see no recourse," wrote Lock Waters, "other than to form an organization, hire our own lobbyist, as thousands of other reputable entities do—both public and private—and develop a rational program."

Apparently, it was up to the *Will* litigants to launch the enterprise. During the meeting in San Diego, the suggestion of forming an independent association of federal judges to monitor judicial salaries came up. When general agreement of the concept seemed apparent, Hill suggested that, since Williams had with others spearheaded the successful salary litigation, why should he not chair a committee to study the feasibility of an association? Williams readily agreed.

Williams rolled up his sleeves and promptly secured the cooperation of Dan Huyett of Pennsylvania, Patrick Kelly of Wichita, Diana Murphy of Minnesota, and Waters, among others, to serve on the organizing committee. To generate further support, Williams wrote letters, talked to members of the bar, accepted Hill's suggestion that they meet with the officers of the California Judges Association to learn from their successful operation, and pinpointed an antitrust seminar in August 1981 for federal judges at the University of Michigan School of Law as the place for rallying support.

The Chief Justice, still strongly opposed to the formation of a judges' association, set out to squelch the proposed "rallying" effort. Mark Cannon, Warren Burger's administrative assistant, indicated to Williams that the entire seminar might be canceled if he persisted with his efforts, and Judge Milton Pollack of New York, chairman of the seminar, was advised of the Chief Justice's displeasure. In addition, some judges were told that Burger might withhold reimbursement for their travel expenses if they attended a judges' association organization meeting. (As it turned out, however, he did not do so.)

Williams and his committee nevertheless pressed on with their plans, believing that an after-hours meeting would be constitutionally protected and could not be considered by Congress as a prohibited use of tax funds for political purposes, which reportedly was one of the Chief Justice's concerns. "We were told we could not use the law school facilities for our after-hours meeting," Williams recalls, "but Judge Charles Joiner, a member of the school faculty, arranged for a large lecture hall for our use. We were also told we could not pass out notices of our proposed meeting during seminar hours; so Sam Conti and I had notices printed and passed them out during the luncheon break, off the law school property. We really felt like full-fledged union organizers!"

At the after-hours meeting, which was attended by eighty-four judges, Williams discussed the concepts behind the proposed Federal Judges

Diana Murphy, Third President of the Federal Judges Association, 1989-1991

Diana Murphy, United States District Judge, District of Minnesota, picked up the reins of the FJA presidency in 1989 after being one of its founding members and continuing supporters. She had headed the Network Committee, which had been set up to enable judges throughout the country to contact their members of Congress regarding legislation vital to the interests of the judiciary. "The mission of the FJA is to carry our message to the other two branches of government," she wrote in 1988. "The judges network is the primary vehicle through which to carry our message." As president, she strengthened and expanded this effective system of communication.

Murphy was educated in Minnesota, obtaining a B.A. degree from the University of Minnesota and a J.D. from the University of Minnesota Law School. She also attended the Johannes Gutenberg University in Mainz, Germany, as a Fulbright scholar. She served on the Minnesota Constitutional Study Commission and was a municipal judge in Hennepin County before being appointed to the federal bench in 1978.

During her term as FJA president, the newsletter *In Camera* came into being, the association worked hard to address problems of cost-of-living pay increases and improvements in survivors' benefits and insurance, and Murphy testified before Congress. She was particularly insistent that more FJA members should become involved with the association's work, and that communications be improved. Throughout her efforts on behalf of the FJA, she herself has been the best example of how these goals can be achieved.

Association, while Joiner brought those of the Sixth Circuit's Alliance. The Alliance had included lawyers; the Federal Judges Association would not. (The Alliance subsequently voted its full support for the FJA.) A long discussion—punctuated by Hill's statement that "I don't want you to think that Judge Williams is some kind of radical; he served on Ronald Reagan's cabinet when he was governor of California!"—resulted in an overwhelming vote to proceed.

Williams remembers that several people later gathered in his recreational vehicle, having fortified themselves with takeout food from Denny's. "Sam Conti and Betty Fletcher were there," he recalls, "and Diana Murphy and Jack Gordon and some others. We sat and talked about how we were going to approach the thing."

"We were regarded as something like revolutionary heroes," admits Diana Murphy, "to be admired but not to be emulated."

Williams and Joiner subsequently met with Burger in his chambers at the Supreme Court in Washington, D.C., and, while the Chief politely heard them out, he did not relent in his opposition to the formation of a judges' association. Williams took advantage of the trip to meet with William (Bill) Weller, head of the Administrative Office's Legislative Affairs Office. When he told Weller his committee would abandon the effort if it proved impossible to sign up 190 judges, Weller said that, while he did not disagree with the Chief's policy decision, the presence of an association of federal judges independent of "the establishment" could be helpful to the success of the judiciary's legislative program. "I was greatly encouraged by these comments," explains Williams, "and resolved to hang in there until we reached our goal." In fact, the goal was reached just a few months later, when over two hundred judges had joined.

The final event that convinced the committee to proceed was Williams's meeting on January 22, 1982, with the Board of Directors of the American Bar Association's Conference of Federal Trial Judges, which was held in Chicago in conjunction with the midwinter meeting of the ABA. Apprehensive that the group might regard the FJA as competition, Williams drew on his naval experience in the Second World War. In the war in the Pacific, the navy had two fleets—the Third and the Fifth. The Third, under Admiral William F. "Bull" Halsey, was the high-speed carrier task force that made lightning strikes against the enemy. The Fifth Fleet, under Admiral Raymond A. Spruance, acted as support arm for the bombardment and seizure of Japanese-held islands as American forces leapfrogged across the Pacific. The two fleets were made up of the same ships manned by the same personnel; only the missions and the commanders were different.

Similarly, the Federal Judges Association and the Federal Trial Judges were two separate bodies that had basically the same membership but would carry out different functions by "putting on different hats." The FJA would act as the high-speed task force concentrating narrowly on compensation and benefits, unhindered by having to seek approval of any third party. The Conference of Federal Trial Judges, on the other hand, would work on a broad spectrum of judicial concerns in concert with the ABA.

The board of the Federal Trial Judges, encouraged by this similarity as well as by the enthusiastic backing of judges Robert Hall of Georgia, Shane Devine of New Hampshire, and Jim Noland of Indiana, unanimously endorsed the formation of the proposed Federal Judges Association. Another mark in the win column.

Since enough judges had now indicated their willingness to join, sixteen of them—the organizing committee and some volunteers—met at Chicago's O'Hare Hilton in May 1982 and adopted Articles of Incorporation, drafted by Kevin Forde and Rich Prendergast, which had been filed in Illinois by Williams, Hu Will, and the two lawyers. The official date of the formation of the association is May 15, 1982. The sixteen attending judges became directors; Williams was elected president, and Solomon Blatt, Jr., Thomas C. Platt, and Betty B. Fletcher became vice-president, secretary, and treasurer respectively. The other directors were judges Henry Bramwell, Fred J. Cassibry, Walter J. Cummings, Ralph B. Guy, Jr., Charles S. Haight, Jr., Robert H. Hall,

Grass-Roots Judges Incorporate Their Group

A "grass-roots" group of judges formed last year has incorporated as the Federal Judges Association.

Originally begun so that judges could discuss issues that concern them and then reach out personally to congressmen about those issues, the association now intends to "work in coordination and cooperation" with the Chief Justice of the United States, the Judicial Conference, the American Bar Association, and other legal organizations, says its new president, Judge Spencer Williams of the Northern District of California.

"The Judicial Conference is the official voice" for federal judges, Williams said. "But we feel we can be very helpful."

Officers elected in addition to Williams are Judges Solomon Blatt, Jr. of the District of South Carolina, vice president; Thomas Platt, Jr. of the Eastern District of New York, secretary; and Betty Fletcher of the Court of Appeals for the Ninth Circuit, treasurer.

— Martha Middleton,
American Bar Association Journal,
September 1982

Daniel H. Huyett, Charles W. Joiner, Diana Murphy, John F. Nangle, Laughlin Waters, and Hubert Will.

The directors hailed from all across the United States—from Michigan to Louisiana and from New York to California. They also spread all along the political continuum from liberal to conservative. "It reminded me of the American Revolution," muses Forde. "Many of them had few viewpoints in common, but they had a cause."

The FJA Constitution stated specifically that before any position contrary to that of the Judicial Conference would be taken by the FJA, every effort would be made to reconcile the two. This, it was hoped, would persuade the still-reluctant Chief Justice to offer some approval of the new organization, or at least to maintain a benign neutrality. While some thawing of his position was noticed, and Justice Lewis F. Powell wrote a gratified Judge Williams that the Chief Justice did not speak for a unanimous court, the Chief did not express final tacit approval until he himself attended the FJA's Congressional reception on Capitol Hill on May 17, 1984.

6.
A Decade of Achievement: 1982-1992

As I move about among my brothers and sisters across this broad land, I am constantly impressed with the quality of mind and character that the political process has brought to the federal bench.

— The Honorable Betty B. Fletcher

The purpose of the Federal Judges Association, as stated in its Constitution, is "to seek the highest quality of justice for the people of the United States." It would do this in two major ways: by preserving the ability of the federal judiciary to attract and retain the best qualified people for the judicial service, and by preserving the independence of the judiciary from intrusion, intimidation, coercion, or domination from any source.

Initially, the overriding need was that of adequate compensation. But salary was only one problem: survivors' benefits, fair travel reimbursements, health coverage, and sabbatical leaves were also crucial.

Lock Waters explored the possibilities and costs of hiring a legislative representative in Washington, and, after the board had considered several possibilities, Hu Will suggested the name of Herbert Hoffman of Virginia. Having just retired as director of the Washington Office of the American Bar Association, Hoffman had outstanding qualifications and many contacts within the Beltway. Mindful of his charge to maintain a low-key approach, Hoffman took on the job for a year, then retired. Former Congressman Charles Wiggins, then practicing law in Washington D.C., agreed to come on board as Hoffman's replacement.

Wiggins proved an effective representative, but was appointed to the bench in 1983. He recommended as his replacement Thomas Railsback, a former Illinois congressman who had

Betty B. Fletcher, Fourth President of the FJA, 1991-1993

Testifying before the Kastenmeier Commission on Judicial Discipline and Removal, Betty Fletcher, United States circuit judge of the Ninth Circuit and third president of the Federal Judges Association, declared that the independence of the judicial branch is a fundamental concept insured by the United States Constitution. It was a concept that was basic to the formation of the association in 1982; it has been a guiding principle ever since; and Fletcher devoted time and effort to see that the message was being heard.

Fletcher graduated from Stanford University and obtained a J.D. from the University of Washington. She was appointed to the Ninth Circuit in 1979 after twenty-three years of private practice in Seattle. She has served as president of the Seattle-King County Bar Association, and in 1990 was selected as the Bar Association's Outstanding Judge.

been the leading Republican on the House Judiciary Committee. Railsback was been a source of significant successes for the FJA for many years along with his assistant, Michael Herman. The Constitution of the Federal Judges Association decreed that the Executive Committee, consisting of the officers and certain elected directors, would transact most of the association's business. As the procedures have evolved, this has usually been accomplished by way of telephone conferences. The board of directors, now made up of representatives from each circuit, meets every two years to establish policy. And every four years, the association sponsors a meeting of all Article III judges, both members and nonmembers.

An important aspect of the FJA's success had to be growth of its membership—getting nationwide support was critical. Among the many who actively sought new members, the efforts of Walter Cummings, chief judge of the Seventh Circuit, stand out. Showing both leadership and courage in the face of the opposition of the Chief Justice and others, Cummings repeatedly and publicly urged the judges in his circuit to join the association. At annual judicial conferences he would frequently stand up and say, "You ought to join the FJA!"

Also making a strong bid, Bill Campbell sent a letter in 1981 urging membership in the FJA to all judges of the U.S. Court of Appeals, Court of Claims, Court of Customs and Patent Appeals, U.S. District Courts, and U.S. Court of International Trade. Hu Will circulated another persuasive letter to all Article III judges. By 1983, more than three hundred judges had signed up.

On another front, the opposition was being brought around, as strong efforts to communicate with Chief Justice Warren Burger continued to be made, efforts that had begun with James Browning and Clifford Wallace and were continued by Spencer Williams, Charles Joiner, and others. By 1984 the Chief was sending—through Bill Weller—expressions of appreciation for the support of the Federal Judges Association. "I express not only my gratitude and appreciation," Weller wrote after the FJA had supported and contributed mightily to the Judicial Conference's position on a bankruptcy court structure issue, "but also that of the Chief Justice. Your association's responsible and tactful efforts to help Members of Congress better understand this issue certainly were effective; indeed they may well have been the most important factor."

Since talking to people in Congress continued to be a fundamental method of finding solutions, the FJA Committee on Network was established in 1987 by the FJA's president, Robert Hall, and chaired by Diana Murphy. At least one judge in each state was on the Network Committee. The association assembled a card file listing the members of essential committees of Congress and which federal judges knew them and could talk to them. "We had more match-ups than we imagined!" wrote Judge Owen Panner of Oregon. The information thus acquired was held by the Network judges, who passed the word when Congress was contemplating some action in which it might be of help for judges to talk to the member concerned. "We don't have the money to finance or contribute to campaigns," explains Williams. "We don't have the numbers to be an important vote. All we can do is give information to a member that may persuade them on a vote. And it's been working very successfully."

The Network developed the means to reach every senator and member of the House. "It's been one of our most valuable resources," declared Murphy, who was president of the FJA from 1989 to 1991, "the aspect of our work which involves the largest number of members."

Wallace considers the Network to have been the association's most effective tool. "Williams told me that the FJA was the mailbox," he recalls. "He had the people who could get the information to the legislators and educate them on the issues. If the legislator knows the judge and has confidence in him or her, there is more likelihood of having a listening ear."

By the end of its first decade since its founding, the Federal Judges Association had made considerable gains, mainly thanks to the work of its officers and the spreading of information by its members. Improvements in survivors' benefits, health insurance, travel allowances, tax-deferred

She has also been actively involved in the American Bar Association's work on ethics.

First as treasurer, and as a member of the Executive Committee of the Federal Judges Association beginning with its founding, Fletcher's loyal support has been decisive, and her accomplishments as president continued the success of the association in obtaining justice for the judiciary.

Expert Witnesses

"Chief Justice William Rehnquist has been very supportive of judges generally and of our association," observes former president W. Earl Britt. "He has spoken out about salaries and has appeared at our Washington conferences." The FJA's Quadrennial Conferences brought the chief justice to the White House receptions, and his opinion heartened everyone.

The officers of the FJA understood from the beginning the necessity of forging close ties with the Judicial Branch Committee of the Judicial Conference, the Administrative Office, and other public organizations. "We worked closely with the associations of the magistrate judges, former high-ranking officials in the Executive Branch, Common Cause, national and state bar associations," reports Diana Murphy, third FJA president. "We made ourselves available to the media and helped generate editorials. I even appeared on the Today Show and participated in national cable television discussions."

Some influential voices heard the message and spoke up in their turn. In 1997, for example, American Bar Association President Lee Cooper revisited the independence-of-judges issue in a speech that also appeared on the Internet. "Alexander Hamilton," he said, "knew the importance of an independent judiciary. He noted that the courts are the bulwarks of a limited constitution against legislative encroachment, and that independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humors designed by men. Now our independent judiciary is the subject of ill humor.'"

More specifically, the Judicial Conference endorsed recommendations for a catch-up pay adjustment of 9.6 percent and de-linkage from Congress. Senate Judiciary Committee Chair Orrin G. Hatch supported the pay raise and de-linkage. House Judiciary Committee Chair Henry Hyde also supported the pay raise and de-linkage. Each introduced legislation to underscore words with actions. On the other hand, Senator Howell T. Heflin underscored his supporting legislative actions with words: "They make a lifetime commitment to public service as federal judges. They should be able to plan their financial futures based on the reasonable expectation that their compensation will at least keep even with annual cost-of-living increases."

Who could not agree with that?

plans, and increased deductions all on the FJA's program were among the steps taken on behalf of federal judges. In 1984 a salary increase was given to all Article III judges (Section 2207 of Public Law 98-369), and in 1989 the ethics pay legislation finally or so it was thought at the time secured fair compensation for them.

When Frank Coffin took over as head of the JCUS committee in 1983, "The first thing he did," recalls Williams, "was to give me a call and ask me to sit on the committee, ex officio." Since then, the president of the FJA has sat on the committee, maintaining a close relationship and good communication.

As it turned out, Chief Justice William Rehnquist, who succeeded Chief Justice Burger, began to work closely with the FJA, understanding that the association, acting independently of the Judicial Conference and the Chief Justice, can take more risks than can the officials of the third branch of government.

Still, by the end of its first decade, the association had not cleared all the hurdles. An article in the *Los Angeles Times* (November 3 and 4, 1983) raised issues about the appropriateness of judges communicating with members of Congress and forming a grass-roots organization to increase their influence. This prompted two senators to request a determination from the comptroller general as to whether the judiciary were improperly using federal funds for its purposes. In its reply, the Office of the Comptroller General quoted an opinion from the attorney general in 1978 concluding that the relevant anti-lobbying act barred the "use of official funds to underwrite agency public relations campaigns urging the public to pressure Congress in support of agency views." The right of officers and employees to petition Congress in their individual capacities was preserved. The comptroller general noted that the FJA did not attempt to organize public campaigns to influence legislation and had no access to federal funds. In summary, the comptroller general found no evidence that federal judges had been violating applicable anti-lobbying appropriation restrictions.

Throughout the early years of the litigation and the attempts to form the FJA, the aid of Bill Weller in the Administrative Office proved invaluable, providing both encouragement and mailing lists. The encouragement helped keep the organizers on the track, while the lists kept judges around the country informed and optimistic.

After the association's formation, President Spencer Williams continued to use the lists to send out periodic reports. Although he stepped down in 1984, Williams remains a member of the board of directors and in September 1990 accepted the job of editing a new FJA newsletter called *In Camera*. In 1990, Betty Fletcher had called for "a professional quality newsletter going to our membership on a regular basis." Williams took up the challenge, creating a communication that keeps the membership informed and in touch, which he describes as a "quarterly that comes out three to four times a year." He keeps it short and light—even preparing a humor column—but every issue addresses the concerns of the judiciary. The issue for June 1992, for example, contains the testimony President Betty Fletcher gave to the Kastenmeier Commission on Judicial Discipline and Removal in Washington, D.C. Such testimony itself is evidence of the prominence Congress now gives to the judges' viewpoint—a prominence greatly augmented by the FJA. Ever since its formation, the FJA has responded to requests from Congress to testify on important bills of interest to the judiciary, thereby offering a perspective backed by hundreds of judges. Such testimony has elevated the perception of their concerns and an understanding of their situation.

A notable triumph of the association has been its national conferences, at which federal judges gather from around the country. The first took place in Washington, D.C., in 1986, and was attended by 181 judges, many of whom brought their spouses. It was the first ever national gathering of federal judges and proved to be an inspiring milestone. "Perhaps the most thrilling aspect of the conference," wrote Daniel Huyett, the general chairman for the event, "was the enthusiastic spirit among those who attended, and this was most evident at the reception given for the United States Supreme Court."

Network: How It Works

An idea for action, the means to accomplish it, the benefit resulting: that is what the Federal Judges Association is about. Take the Federal Thrift Savings Plan, for example. When in 1987 judges were declared ineligible for IRAs, the thrift plan appeared to be an alternative way for them to accumulate retirement funds. But judges, observed the FJA president, Robert H. Hall, were excluded from the plan.

Hall discussed with Tom Railsback, the FJA coordinator, how judges could be included, and they decided to get a rider attached to a plan amendment in Congress. Bill Burchill, general counsel of the Administrative Office, drafted the rider. Senator Jim Sasser agreed to sponsor it, and, contacted through the FJA network, judges persuaded other senators to pledge support. The rider was attached to H.R. 5102 (Federal Employees Health Benefit Act of 1988), which passed both houses. Sixty days after the president signed the legislation, federal judges came into the Plan.

Working with its Washington coordinator, the Administrative Office, and with Congress through its Network of judges, the FJA achieved one small step for the judiciary small, but significant.

The highlight of the second conference, in 1989, came at the White House reception. "Never before in the history of our country has a reception been held at the White House for Article III judges," asserts Huyett. It was "a gorgeous spring day and most of the doors and windows of the first floor were open." The Air Force Band provided music, and wine and hors d'oeuvres were served. Their evident success vindicated the stand first taken years before by men and women who had found the courage to assert the rights of judges against what seemed at times like overwhelming forces for inertia. Now achievement had replaced inertia, and the next few years would further underscore the headway made by the Federal Judges Association.

7.
Next on the Agenda: Issues, Deliberations, Solutions

The judicial power ought to be distinct from both the legislative and executive, and independent upon both, so that it may be a check upon both, as both should be checks upon that.

— THOMAS JEFFERSON, 1776

Any threat to the independence of the judiciary commands our attention," wrote President Betty B. Fletcher in her last newsletter column before turning the gavel over to John M. Walker. And judicial independence could not be left entirely to others. "We must speak for ourselves"— that was the concept that sparked the formation of the Federal Judges Association and fueled its continuing efforts.

Accordingly, they had spoken, and they celebrated some triumphs. A medium leap in salary had come with the understanding that COLAs would keep up with inflation over the years. The 1993 passage of amendments to the Judicial Survivors Annuities System (JSAS) addressed the need to offer survivors' annuities that judges could afford to purchase. Fletcher and the other FJA officers had spent most of the year assisting in its passage. Article III judges breathed a collective sigh of relief.

Besides heading off adverse legislation in the bankruptcy field, the FJA helped obtain more reasonable business travel allowances for judges on assignment. The smooth operation of the Washington representatives facilitated progress, as did the keen cooperation with the Administrative Office, the Judicial Conference Committee, and key members of Congress. These connections provided crucial support in the passage of the JSAS bill and would continue to build on their present strength.

Furthermore, membership had grown to more

John M. Walker, Jr., Fifth President of the FJA, 1993-1995

When John M. Walker, Jr., United States circuit judge of the Second Circuit, was elected fourth president of the FJA in 1993, his goal was to involve as many members as possible in strengthening relationships between judges and members of Congress. This, he believed, would be the key to continuing the achievements of the FJA.

Graduating from Yale University in 1962, Walker enlisted in the U.S. Marine Corps Reserves, and subsequently obtained the J.D. from the University of Michigan Law School. He began his law career serving as a state counsel to the Republic of Botswana under an Africa-Asia Public Service Fellowship. Then, following a period of private law practice in New York City and a stint as an assistant U.S. Attorney for the Southern District of New York, he became a litigating partner in the firm of Carter, Ledyard & Milburn.

than 70 percent of the country's Article III judges, and the quadrennial conferences flourished fruitfully—the latest one had taken place in May of 1993. In addition, they had rationalized finances with the annual collection of dues.

Yet much remained to do. For one thing, there was the problem of Section 140 of the 1981 Continuing Resolution, a routine appropriations resolution. Section 140 provided that the salaries of judges may not be increased without a separate act of Congress. Although the measure expired in 1982, the Comptroller General had issued opinions interpreting Section 140 as permanent legislation, which prevented the payment of any adjustments to judges, even COLAs, which had been specifically authorized by the Ethics Reform Act of 1989. FJA was determined to eliminate any ambiguity by either (1) obtaining a repeal of Section 140 or some other expression of congressional disapproval of the Comptroller General's opinions, or (2) obtaining a judicial determination that Section 140 did not prevent payment of COLAs. There were other challenges: the shift in sentencing discretion from courts to prosecutors, the effect of mandatory minimum sentences, seemed ominous. The passing of jurisdiction from state to federal courts continued, worsening the persistent, relentless overload of work burdening the federal courtroom. Some judges felt the effects of unwarranted discipline for dissenting opinions.

When John M. Walker, Jr., became president in 1993, he faced a formidable agenda.

An immediate goal for Walker was to strengthen the association by drawing on the considerable talents and energies of its members. More committees, he thought, would involve more members as well as enhancing the work of the FJA, and so he formed additional groups to deal with present and future pressing issues. For example, the Long-Range Planning Committee, chaired by Diana Murphy, worked diligently on guidelines for the future, and their report is still guiding the FJA.

Walker spent time on Capitol Hill—testifying before Congress would be one of his major strategies. The 1994 crime bill offered some relief on mandatory minimum sentences, restoring to judges the sentencing of the nonviolent, remorseful offender with little or no criminal history. Walker helped passage of this "safety valve" provision with his testimony before the House Judiciary Committee's Subcommittee on Crime, chaired by Representative Charles J. Schumer.

The FJA president also testified before the Committee on Judicial Discipline and Removal, chaired by Representative Robert Kastenmeier. Here the FJA supported the system then in place that kept matters of judicial discipline, short of impeachment, exclusively within the judiciary itself.

FJA officers strove valiantly to persuade Congress not to interfere with the payment of the COLAs. In 1994, they wrote letters to Senate and House leadership, followed by meetings and offers of support. The White House agreed that a raise was needed. A COLA for that year appeared promising, until a lone Congressman attacked the COLA for members of Congress. When, therefore, Congress decided it would not accept the COLA, it prevented payment to judges also. By 1995, judges had suffered a loss in real pay of 25 percent since 1969. De-linkage of judges' pay from that of Congress became a priority.

Vice President E. Grady Jolly stepped up to the plate for another turn at bat. He persuaded Senator Thad Cochran to sponsor a bill that would sever the tie of judges' pay to Congress's pay, would repeal Section 140 to clarify that judges are entitled to the same automatic adjustments as other federal employees, and would provide for a catch-up COLA. Senator Howell Heflin introduced this bill, S.1344, in October 1995. An identical bill, H.R.2701, was scheduled for action in the House. Other FJA officers drummed up support from the Judicial Conference's Executive Committee and Judicial Branch Committee, and from the White House Counsel. The FJA Network spread the word for judges to contact all members of Congress on this issue.

Nothing, despite heroic efforts, came of it all.

At the May 1995 annual meeting, Walker

In 1981, Walker joined the U.S. Treasury Department as assistant secretary, with responsibility for Treasury policy in law enforcement, regulatory and trade, and for management of the Customs Service, Secret Service, Federal Law Enforcement Training Center, Bureau of Alcohol, Tobacco and Firearms, and the Office of Foreign Assets Control.

Walker was confirmed a U.S. District Judge for the Southern District of New York in 1985, and in 1989, was elevated to the Court of Appeals. His interest in judicial administration is demonstrated by his service as special counsel to the Administrative Conference of the United States, as a member of the Budget Committee of the Judicial Conference of the United States, and as a director of the Institute of Judicial Administration of the United States.

During his tenure as FJA president, Walker worked tirelessly for the association's major goals, testifying before Congressional committees on issues important to Article III judges, such as procedures for judicial discipline and removal and mandatory minimum sentencing.

passed the gavel to W. Earl Britt. When Walker stepped down from the presidency, he was named to coordinate Congressional relations for the association. "The FJA will continue to address the pay problem with every fiber of its being," he vowed. "We plan to visit every key leader and ranking minority member of the new Congress, the White House, the Justice Department and anyone else who will listen. We will continue to press for every COLA as well as catch-up pay." But the FJA's relentless determination came up against the linkage problem at every turn: Congress members feared adverse reaction to a pay raise for themselves, even if it were only a COLA, and Congress was determined to link judges' COLAs to their own.

8.
Administrative Matters

Clearly, this disparity between the salaries of the judicial and legal professions cannot continue indefinitely without compromising the morale of the federal judiciary and eventually its quality.

— Chief Justice William Rehnquist, 1996

Newly elected President Britt took over the agenda with its continuing challenges. Should they litigate—again? He called a special meeting of the Board of Directors in October 1995 to consider the question, after Congress once more prevented payment of the COLAs. Following a spirited debate, the board decided to devote all its efforts to supporting passage of S.1344, the Heflin-Cochran bill that was still hanging fire in the Senate.

On another front, Judge Barefoot Sanders, Chairman of the Judicial Conference Committee on the Judicial Branch, wrote the Comptroller General in 1995 requesting that he reconsider his opinion that Section 140 prevented payment of COLAs. But the Comptroller adhered to his original position, even thought he acknowledged that interpretation produced the unintended consequence of denying federal judges annual COLAs provided for by the Ethics Reform Act of 1989. Relief denied.

Relationships with Congress remained crucial. "Judges get a cordial reception from members of Congress, both individually and when testifying before committees," declares Britt. "However, when voting time comes we don't fare well, especially on the compensation issue." On that same issue, though, the Administrative Office and

W. Earl Britt, Sixth FJA President, 1995-1997

"The results of the efforts of the FJA are dramatic and well documented," wrote incoming President W. Earl Britt in July 1995. But, he noted, challenges for the FJA remained, challenges that threatened the independence of the federal judiciary and made it "more difficult to attract the best-qualified candidates for judicial service." He was himself highly qualified to guide the association's work.

Born in North Carolina, graduated from Wake Forest University, and awarded the LLB in 1958—after time out for army service from 1953 to 1955—Britt worked first as research assistant for Associate Justice Emery B. Denny of the North Carolina Supreme Court. He went on to a distinguished career in private practice, including probate and real estate, as well as trial activity. He engaged in both civil and criminal work on the trial and appellate levels, representing defendants accused of capital crimes as well as plaintiffs and insurance companies on the civil side. Appointed a district judge for the Eastern District of North Carolina in 1980, he became chief judge three years later.

Britt's administrative experiences include Chairman of the State/Federal Judicial Council of North Carolina; Judicial Conference Committee on Automation and Technology; Fourth Circuit District Judge Representative to the Judicial Conference of the U.S.

He has also been active in many civic organizations: Fairmont Rotary Club and Jaycees; Board of Trustees of Southeastern General Hospital; Trustee of Southeastern College 1965-70 and Pembroke State University 1967-1972; Board of Governors of the University of North Carolina 1972-75. He has been a member of the Federal Judges Association since its beginning.

* * *

The 1997 Quadrennial Conference

"The most significant event of my tenure as president was the Fourth National Conference in May 1997," reflects Earl Britt. Communication was well served with some 250 judges in attendance, and connections were strengthened with the White House, Congress, and other parts of the judiciary, as members of all three branches participated in the programs and receptions. More than 600 people gathered at Washington, D.C.'s Mayflower Hotel for the three-day meeting, including spouses, special guests, and friends,. The FJA hosted two special guests representing the International Association of Judges: the Honorable Ramon Rodriguez of Madrid, Spain, IAJ president, and

the Judicial Branch Committee joined forces with the FJA. "Chief Justice Rehnquist was very helpful and quite willing to lend his influence when it could be of help."

The FJA's Washington representatives played a significant role in the relationships with Congress. Keeping a high profile for the concerns of the judges meant frequent communication with members and staff. In turn, the FJA representatives kept the judges abreast of relevant bills going through the legislative process, reporting on developments in the newsletter. "All of our Washington representatives did quality work in representing our interests," Britt reflects. While this high standard of information and communication continued, the representatives themselves changed: Tom Railsback retired and W. Lee Rawls replaced him. J. Keith Kennedy took over when Rawls left to work in Congress, and eventually, in 1998, the Winston & Strawn law firm assumed the responsibilities. Rapport with Congress had begun early and was reestablished often.

Meanwhile, the FJA continued to strengthen and organize itself for maximum efficiency. Creation of the new office of President Elect assured continuity of leadership and a smooth transition between administrations. The importance of committees and their work grew along with their numbers. The Compensation Committee, co-chaired by Grady Jolly and John Walker, soldiered on, and Britt appointed special subcommittees to keep open the channels to the Senate, the House, and the White House. As ever, the Network functioned on all fronts.

In 1991, the association established a home office in Chicago in the offices of its counsel, Kevin Forde, knowing that FJA offices must be kept separate from judges' chambers. Don Casper and his wife, Reggie, handled administrative and business functions, computerizing the necessary paperwork.

Major decisions came from the Board of Directors—thirty-five judges elected at large, plus the seven officers and the Chairman of the Advisory Council. Every circuit elected from one to four directors, who may serve up to two consecutive, two-year terms. Britt found the board members and the officers to be hard working and cooperative, in spite of busy schedules.

Being a director has always required strong commitment and a sense of mission. The board takes primary responsibility for determining the FJA stance on issues. While it meets regularly every year, as does the Executive Committee, the board can be polled in an emergency, and it can hold special meetings. All points of view are considered carefully. If necessary, the board invites the membership to respond on a question, either by placing a notice in *In Camera* or by canvassing members directly.

The board takes public action when warranted. In April 1996, for example, the board issued a strong statement on the question of criticism of a judge's ruling that results in calls for impeachment or resignation. "There is an appropriate place for criticism of judicial decisions," wrote the board, but it noted that appropriate criticism is quite different from a call for impeachment. An independent judiciary, the board affirmed, is essential to the proper functioning of the three branches of government under the Constitution.

Kevin Forde and Richard Prendergast, as legal counsel, continued to provide invaluable assistance, as they had throughout the association's history. They filed *amicus* briefs and monitored cases in which Article III judges had a significant interest. Reporting in *In Camera* one such case, *Hatter* v. *United States*, 64F.3d 647 (1965), Forde noted that the decision held that "compensation" means all forms of salary, and

the Honorable Louise Mailhot of Montreal, Canada, vice president.

Beginning with a talk on the history of the Supreme Court and a reception in the Supreme Court Building, the conference continued with regular sessions of speeches and panels. C-Span underscored the interest of the public when it aired the lively debate on "Judicial Appointment and Confirmation." Speakers featured at the conference included Chief Justice William Rehnquist at the Supreme Court reception, Representative Henry J. Hyde at a luncheon in honor of the House Judiciary Committee, Senator Orrin G. Hatch at a luncheon in honor of the Senate Judiciary Committee, and Alexander M. Sanders, Jr., former Chief Judge of the South Carolina Court of Appeals, who spoke on "Political Correctness."

The Directors of the Administrative Office, the Federal Judicial Center, and the F.B.I., plus the U.S. Attorney General also made presentations. Panel discussions included topics such as recusal, benefits, pay raises and COLAs, and bias in open court. On the second evening, the Brookings Institute honored the FJA with a reception.

In the concluding festivities, President Bill Clinton attended a sparkling reception at the White House, speaking and shaking all available hands, in spite of being on crutches because of an injury suffered in a fall. "And the president said he favored our COLAs," reported Conference Chairman Lee Sarokin enthusiastically. No one had minded standing in the rain in the line to enter the White House.

This fourth conference carried forward the tradition of excellence established by the previous three, held in 1986, 1989, and 1993.

"diminished" includes all decreases. "Thus the Constitution protects judicial compensation against all forms of diminishment." It was an eloquent grist to their mill.

In 1997, legislation was again introduced in the House and Senate to repeal Section 140, to de-link judges' pay from that of Congress, and to provide for a one-time, catch-up pay increase. It proved to be no more successful than previous attempts, although the judges did receive a 2.3 percent COLA effective January 1, 1998. More relief was needed, but the next round of effort would be led by the new president, Alan Nevas, elected in May 1997, and his slate of officers.

9.
Communication and Connection

I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.

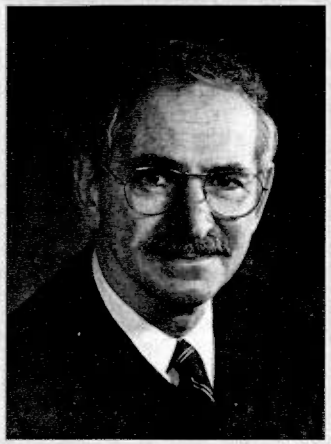
— James Madison, 1788

Every time light appeared at the end of the tunnel, it turned out to be just another train charging down the track toward them. When Alan Nevas assumed the presidency, H.R. 875 and S. 394 were wending their way through Congress, promising COLAs, de-linkage, and repeal of Section 140, to clarify that it did not prevent payment of COLAs to judges. But it was not to be.

Nevas set his sights on these three actions, which he considered to be absolutely crucial. In pursuit of these goals, he went to Washington, D.C. to meet with members of Congress and their staffs, the speaker of the House, and chairs of relevant Congressional committees. He coordinated efforts with the Judicial Conference and the Administrative Office. These heroic efforts resulted in a 2.3 percent COLA for 1998, but the raise was again denied for 1999.

Nevas and the board made two strategic decisions: first, they would consider de-linkage as a long-term goal; for that they would work closely with the associations of the magistrate judges and the bankruptcy judges.

Second, repeal of 140 would be the immediate goal. "It is inconsistent with the Ethics Reform Act of 1989," Nevas insists. "We see that repeal as a very important accomplishment and have been working hard to do that." And while continuing to oppose the linkage, the FJA decided on a flank attack: they would support salary increases for the president and Congress. If those salaries were ratcheted up, the judges' pay—being linked—



Alan H. Nevas, Seventh FJA President, 1997-1999

"I set as my goal the repeal of Section 140 and de-linkage from congressional pay," writes Alan H. Nevas of his election as FJA president in May 1997. In spite of his strenuous pursuit—and his considerable experience in politics—it proved to be an elusive target.

Nevas was born in Norwalk, Connecticut, graduated from Syracuse University, and received his LLB from New York University Law School. After two years in the U.S. Army, he practiced law in Westport, Connecticut as a partner with Nevas, Nevas & Rubin from 1954 to 1981. Then he served as U.S. Attorney for the District of Connecticut until 1985, when he was appointed U.S. District Judge for the District of Connecticut.

As a member of the Connecticut General Assembly 1971 to 1977, Nevas was Deputy House Majority Leader 1973-1975 and Deputy House Minority Leader 1975-1977. That year he was named as one of the Assembly's ten most outstanding members.

His many community services include membership on the Board of Directors, Westport United Fund; Director, Westport National Bank, State Elections Commission, Office and Trustee, Temple Israel, Westport; Board of Trustees, Westport Library; Board of Finance, Westport; Board of Trustees, Norwalk Hospital; Committee on Court Administration and Case Management of the U.S. Judicial Conference.

Beginning in 1993, Nevas served as secretary for the Federal Judges Association, then became vice president, and he chaired the crucially important Network Committee before becoming president. In 1997 he took senior status as a judge.

would be pulled along.

Meanwhile, Nevas decided to leave the political scene for the moment to deal with bread-and-butter issues that affect the membership, such as benefits. Accordingly, he appointed Judge David Ezra to chair the Benefits Committee, with the special charge to determine whether there were ways to improve their present circumstances. If so, should they go to Congress? Should they look for group coverage as an association?

Tightening administrative procedures of the association boosted efficiency. A big change came about when Judge Paul A. Magnuson, FJA treasurer, arranged with the Administrative Office to withhold dues on a monthly basis from the salaries of those judges who agreed to participate. The idea came from Nevas, who had observed similar procedures carried out by the Magistrate Judges Association. It made budgeting easier and assured that membership would not be lost through inadvertence.

Maintaining the membership rolls and the budget was critical, but the pivotal work of the association depended on participation of the individual members, and that required weaving strong threads of communication within the association. To this end, the Network Committee had been established, and the newsletter, *In Camera*, circulated three to four times each year. Each of these two undertakings had its special function; together they nourished the ties among the widely scattered membership.

Back in 1987, President Robert Hall had asked Diana Murphy to form the Network Committee [see Chapter 6], which would have a member judge matched with each member of Congress. The committee encouraged judges to ask their Senators and Representatives to support legislation beneficial to the judges, often on a particular bill under consideration. Members of Congress generally welcomed this evidence of concern, and many agreed to help. In mustering this kind of support, the Network Committee got results. "We were able to call the network into action on short notice," recalls Murphy, "and we also learned what was happening in Washington from our network contacts ."

In Camera, on the other hand, provided the indispensable means of communication among the judges. Throughout the years of the FJA's existence, *In Camera* had beamed to the general membership the goals and accomplishments of the president and the board of directors. Each issue contained a letter from the president, a report from the Washington representative, and sometimes a report from counsel. It also printed articles by experts on subjects of concern to the judiciary. "The idea is to keep in touch," emphasizes Editor Spencer Williams. "*In Camera* makes information available to judges that they might not get elsewhere." For example, Marilyn J. Holmes, Counsel to the Committee on Codes of Conduct, submitted articles on researching ethical questions and recusal. Other columns covered questions about taxes, business expenses, and estate planning. Contributions have always been welcomed: "We accept anything," according to the editor, "and fit it in when we can."

While the Network Committee rallied support for legislation, *In Camera* sometimes did some rallying of its own with regard to the major problems facing its readers. Columns such as "Mandatory Madness" detailed specific examples of harsh sentences required by the sentencing guidelines—such as eighteen years for an eighteen-year-old girl's first offense: driving an aunt to a drug deal meeting. The columns served as forums where concerned judges could comment. An occasional touch of lightheartedness and humor added to the publication's readability, and Associate Editor Joe Kendall, who came on board in August 1997, enhanced this aspect, adding thoughtful editorials as well.

Besides the Network and *In Camera*, a third factor has promoted close communication. The national conferences bring the members face to face in a truly distinguished and historic series of events that take place every four years in Washington. Four meetings have been held since the formation of the FJA [see Chapter 6 for the early ones]. By the fourth conference in May 1997, it was becoming clear that these effectively fostered rapport not only among the membership but also between the association and Congress,

Your Honor, Will You Join?

Membership in the Federal Judges Association doubled in the years 1988-1999—a remarkable testimony both to the need for the association and to its effectiveness. Stanley Brotman, who took over responsibility for membership in 1991, recalls that in that same year, the FJA established a home office in Chicago and staffers Don Kasper and his wife, Reggie, put membership lists and records of dues payment on the computer. This made it possible to review the lists periodically and update them, then contact judges who were not members or were behind in dues.

"When a new judge was appointed," explains Brotman, "I would get the name and send out a letter welcoming that person and inviting them to become a member. I also sent the FJA history and a membership form." He sometimes sent a second and third letter.

A refined system for communicating with judges operated under his management: for each circuit, there was a designated liaison person whom Brotman could contact. Within each circuit, each district had its own liaison person who would then be contacted by the circuit liaison. Sending names to these liaison persons was a continuing process.

Brotman attributes the increase in membership to several factors: significantly, the ability of the association to show progress in areas other than pay increases—improvement in survivors' benefits proved to be a big success—gave Article III judges confidence in the FJA. And the Quadrennial Conferences always drew more members, since members could attend at a reduction in cost. As "General Attendance Chairperson" for the 1993 and 1997 conferences, Brotman tracked registrations, sent out mailings, and contacted weekly those not yet heard from. The Administrative Office helpfully provided mailing labels for all Article III judges. In addition, every director contacted those they knew. The numbers who attended the conferences attest to the success of these strategies—in 1997 attendance totaled 600.

Being vice president and membership chairman required "very active participation in the FJA," he recalls, ruefully mentioning that he also had his regular job as judge to do. "So as we grew, we had to expedite and tighten up procedures." Toward the end of the decade, a new system was put in place: the Administrative Office agreed to withhold dues monthly for those judges who signed up. This assured continuity for budgeting purposes and also made it easy to become a member.

By September 1999, when Edmund Ludwig from the District of Pennsylvania assumed responsibility for membership, 815 members of our nation's 1,168 Article III judges were members of the FJA. "We welcome any ideas that will raise our membership to 98 percent," declares Spencer Williams. "We know that there are always a few loners out there who won't join anything, no matter how much it helps them or the cause. But we should get all the rest, and every member is encouraged to persuade the nonmembers to join."

the White House, and other parts of the Judicial and Executive Branches. The conferences were, in fact, the first opportunity in the nation's history for representatives of the three branches of government to meet together, both formally and informally. [See sidebar]

Widening their range of judicial communications, some FJA judges began participating in meetings of international scope—assemblies of judges and lawyers from around the world, seminars and discussions with small groups of traveling judges. With the fall of the Berlin Wall and the virtual end of the Cold War in the 1990s, emerging nations fermented, bubbling over with hope and their new freedom. Interest in the U.S. legal scene burgeoned, breeding expectations of the possibility to extend the Rule of Law into systems that had been inert under Communism. Sometimes they had to start at ground level. "We do not decide the issue of guilt or innocence," a Chinese judge told a visiting delegation. "In our system, all defendants are guilty as charged. All we do is impose the sentence."

The Department of State, Federal Judicial Center, American Bar Association and other groups began sponsoring the Rule of Law Program, where members of the U.S. legal community traveled abroad to describe and explain U.S. procedures. In 1992 Betty Fletcher and Spencer Williams flew to the Slovak Republic to conduct a seminar for local judges. That same year a group of judges visiting the U.S. requested and got a short essay on the history and activities of the FJA.

FJA judges met—then met with—members of the International Association of Judges [IAJ], an association of judges' associations representing thirty-five nations. "I was impressed," recalls Spencer Williams, "and invited the IAJ President Rainier Voss of Dusseldorf, Germany, and his son to Washington for our board meeting. We took them to the Supreme Court, and at his father's request, took his son to the holocaust museum probably so he would never forget the horror that can be committed by a government out of control. They were interested in our system where that just could not happen."

In 1994 Williams went to Athens as an observer at the IAJ conference. He attended seminars and lectures and noted the exchange of ideas about how countries do things differently. The IAJ, a 41-year-old nonpolitical group, has declared its goals to be safeguarding the independence of the judicial authority as an essential requirement to the guarantee of human rights and freedom. What could be more relevant? Should the FJA join?

The board debated—and applied for membership. As it turned out, the FJA, as the only U.S. national association of judges, was the only organization qualified for admission. Membership was granted in October 1997 at the annual IAJ meeting in San Juan, Puerto Rico, past president Earl Britt in attendance as an observer. In 1998 in Porto, Portugal, the FJA delegation attended its first IAJ meeting as members.

Perhaps not all the information disseminated at meetings was helpful, though. Some years after he had lectured in the Slovak Republic, Williams saw again one of the judges who had attended that meeting seeking information about how to form their own association. She was pleased and thankful to be able to tell him that "now we have our salary tied to the legislative body!"

"It's a great start," replied Williams, smiling, "but in the long run, tying judicial salaries to those of an elected legislative body may turn out to be a mistake."

Linkage could no doubt become a problem for the Slovaks, as it has been for U.S. judges.

Prod, persuade, and persevere they would, trying to get changes through the legislature. But maybe there was another way—litigation had worked before.

10.
Circling the Wagons

"It's déjà vu all over again!"
— Yogi Berra

It's time to circle the wagons," said Spencer Williams. They'd done it before—taken legal action—and successfully. Therefore . . . the complaint was drafted and ready by mid-1994.

Litigation was always a last resort. In an effort to avoid it, Williams proposed in the July 1995 newsletter a contract with Congress: ten years of COLAs for all federal judges costing $432 million in exchange for judicial-deficit-and-debt-reduction policies and programs that would save $15 billion. He went on to outline cost savings that might be effected in the judicial branch—a subject that should have interested Congress in its efforts to reduce the vast national budget deficit. But the suggestion apparently fell into a black hole.

The FJA had considered litigation at its special board meeting in October 1995. But several bills were introduced in Congress that would alleviate the situation, and the board agreed to wait and see. Still, at the suggestion of Counsel Kevin Forde, then-President Britt appointed a committee to coordinate possible litigation and field questions from FJA members.

Some judges thought a lawsuit was liable to undermine the legislative efforts being undertaken by the FJA, the Judicial Conference Committee of the Judicial Branch, and the Administrative Office. How widespread was support for litigation among FJA members?

In an attempt to assess the situation, the November 1996 issue of *In Camera* included a straw ballot in the mailing to its membership of Article lll judges with a request for its early return.

Ann Clair Williams, Eighth FJA President, 1999-2001

Ann Clair Williams prepared for her career in the law with a B.S. in Education from Wayne State University in Detroit, Michigan, an M.A. in Guidance and Counseling from the University of Michigan, and a J.D. from the University of Notre Dame Law School.

She was law clerk to the Honorable Robert A. Sprecher of the U.S. Court of Appeals for the Seventh Circuit 1975 to 1976. She served as Chief of the Crime Drug Enforcement Task Force for the North Central Region and Deputy Chief and Trial Attorney in the U.S. Attorney's Office in Chicago 1976 to 1983. Williams was appointed U.S. District Judge for the Northern District of Illinois in 1985 and was elevated to the Seventh Circuit Court of Appeals in 1999.

Judge Williams has served on the Executive Committee for the Northern District of Illinois, chaired the Court Administration and Case Management Committee of the Judicial Conference, and was the Seventh Circuit Representative for the Judicial Task Force of the U.S. Sentencing Commission in 1992-1993.

Positions as adjunct professor of law at Northwestern University and faculty member for the Federal Judicial Center's Orientation for Newly Appointed U.S. District Judges combine her expertise in law with her interest in education. She has lectured extensively on trial advocacy and case management issues for various law schools and bar associations, and is a member of the National Association of Women Judges, Federal Bar Association, Illinois State Bar Association, Illinois Judicial Council, Cook County Bar Association, and Women's Bar Association of Illinois.

Williams served as FJA Treasurer from 1994 until 1997, when she became President-Elect. She assumed the presidency in 1999. "The FJA has grown tremendously over the years," Williams asserts, "thanks to the tireless efforts of its many past presidents and other leaders. I owe a debt of gratitude to those who have made it possible for the FJA to fulfill its mission, and I look forward to working with everyone in the future to preserve the independence of the federal judiciary. We must remain ever watchful."

The straw ballots came back: 124 to sue (including 104 to sue immediately, 20 to sue if Congress refused to act); 32 not to sue because of adverse publicity and fear of Congressional retaliation; and 15 not to sue because of "lack of merit."

"Enough is enough," proclaimed one respondent, while another wrote: "Our efforts to be understanding, accommodating, and nonconfrontational have gotten us exactly nowhere. Let's try Plan B." On the other hand, "Unseemly and unjustified," wrote another judge, replying in the negative. "It just looks awful," summed up the case against.

Meanwhile nineteen plaintiffs had joined Spencer Williams in planning the lawsuit, representing every circuit, and all approved the complaint.

In the end, the "wait and see" policy proved fruitless, as a recalcitrant Congress again denied a COLA. That made it a loss of purchasing power for the previous five years of $50,000 for district judges, $54,000 for circuit judges, and $62,000 for Supreme Court justices, assuming an inflation rate of 2.5 percent. It began to look like the judiciary was last among equals of the three equal branches of government.

On December 27, 1997, *Williams* v. *United States* was filed in the U.S. District Court for the District of Columbia.

The suit declared that

- The Ethics Reform Act of 1989 provides for annual adjustment of federal judges' salaries;
- Salaries were not adjusted in 1995, 1996, 1997;
- Congressional resolutions withheld payment of COLAs, thus diminishing judges' compensation;
- Section 140 of Public Law 97-92 does not bar COLAs due under the Ethics Reform Act.

Cross motions and responses for summary judgment were filed, along with an amicus brief amici filed by a group of bar associations representing more than 125,000 attorneys. Kevin Forde and Richard Prendergast acted as counsel for plaintiffs.

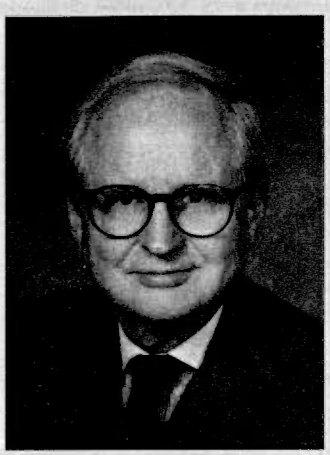
At the request of the plaintiffs, the FJA took no official position on this matter, since it could not appear as a party, and its public support of the case might draw an adverse reaction from the Congress.

Meanwhile, the FJA had a new president—Ann Claire Williams, inaugurated in May 1999. Judge Williams had a clear vision of the work to be done by the association. "The FJA serves a unique function," she wrote. "Although the AO and the Judicial Conference work on all issues pertaining to the federal judiciary, our position as an independent organization provides us with the flexibility needed to bring our message directly to Congress and the public."

Williams immediately focused her attention on increasing judges' compensation in two ways: achieving a COLA for 1999, and seeking legislation to increase presidential salary. This second strategy would take the cap off salaries of all top governmental officials and set the stage for further judicial pay revisions. With these goals in mind, other members of the FJA pitched in to meet with officials of all three branches of government. Efforts initiated by Alan Nevas and followed up by Ann Williams and other judges resulted in positive editorials appearing in the *Washington Post, Chicago Sun-Times, Chicago Tribune, Detroit News, San Francisco Examiner,* and other newspapers.

Both of these compensation goals were accomplished in 1999. Congress approved a 3.4 percent COLA for federal judges and raised the president's salary to $400,000. "Together, the FJA, the Judicial Conference, and the Administrative Office utilized our various strengths to advance the interests of federal judges," declares President Ann Williams.

On the litigation front, on July 15, 1999, Judge John Garrett Penn (District of Columbia) entered a memorandum opinion concluding that COLAs for judges, provided for in the Ethics Reform Act of 1989, were protected compensation and that therefore, the withholding of the 1995, 1996, and 1997 COLAs was unconstitutional [*Williams* v. *United States*, 48 Fed. Supp. 2d at 52 (D.C. Cir. 1999)]. Judge Penn found that plaintiffs and all



E. Grady Jolly, Ninth FJA President, 2001-2003

Grady Jolly received a Bachelor of Arts degree from Ole Miss in 1959 and the J.D. degree from its law school in 1962. He joined the National Labor Relations Board in Winston Salem, North Carolina, where he was involved primarily in the litigation arising from the efforts of the unions to organize the J.P. Stevens textile mills. In 1964, he became an assistant United States Attorney for the Northern District of Mississippi in Oxford, where, among other matters, he was involved in the prosecution of criminal civil rights cases. Joining the Justice Department in Washington, D.C. in 1967, he worked in the General Litigation Section of the Tax Division, litigating matters collateral to tax cases in state and federal courts throughout the country. After two years he returned to Mississippi and began private practice in Jackson. When he was appointed to the Fifth Circuit in 1982, he was the senior partner in Jolly, Miller and Milam, a small firm of twelve or so lawyers engaged primarily in labor employment and related law. He is an honorary member of the College of Labor and Employment Law Lawyers. He and his wife, Bettye, live in Jackson.

Jolly will assume the FJA presidency in 2001. He believes strongly in asserting the presence of the FJA before Congress, the Judicial Conference, and the Administration, considering the organization uniquely qualified to address the individual concerns of judges as judges and to provide practical insights relating to the administration of justice and the federal court system. In his view, "The FJA can speak for federal judges in a way that no other organization can. It can present extremely valuable viewpoints and observations, as well as opinions, that otherwise would not be heard and would be lost from the public discourse." Jolly hopes to see the FJA become a stronger influence in policies that relate directly and indirectly to the independence of the judiciary as an institution, and in policies that affect individual federal judges seeking to maintain the fairest, most ethical, most competent, and most respected judicial system in the world today.

Article III judges were entitled to the adjustments for all three years, "together with all other benefits which should have accrued to them based on those adjustments." (48 Fed. Supp. 2d at 65). The Court also declared that Section 140 was not permanent legislation and did not prevent the payment of COLAs provided for under the Ethics Reform Act of 1989.

The government filed notice of appeal, and at the approach of the Millennium, it looked like another long delay to the denouement. Also pending was a separate action for the withheld 1999 COLA (*Williams II*). While these cases will not be over until the appeal process has been completed, the plaintiffs are confident that it will relieve the problem once and for all and that further difficulties concerning judicial compensation are over. But . . . time will tell.

So now they had circled the wagons, the pioneers had again found protection, which they were confident would be upheld, but the work of the FJA went on. President Williams believes the lines of communication must remain open and active, not just among federal judges but with other officials and the public as well. The FJA board therefore approved establishing a web site on the World Wide Web, and board members provided regular updates at every circuit conference and at Federal Judicial Center Educational programs. Other challenges must be met.

Looking back, it is clear that the massive efforts by FJA judges in 1999 have thus brought further concrete evidence to validate the formation and continuation of the FJA—the evidence being the lawsit win, the new COLA approval, and the increased presidential salary. This was no longer déjà vu—it was the shape of things to come. As Diana Murphy put it, "It is hard to understand now that in the beginning many judges found it unseemly for judges to ask for anything or to organize themselves in an independent way. We proved them wrong."

In May of the year 2001, E. Grady Jolly will assume the FJA presidency, and planning is already under way for the 2001 Quadrennial Conference.

The future for the Third Millennium looks promising; the FJA is ready.

Appendix 1

HONOR ROLL OF PAST PLAINTIFFS

ATKINS
C. Clyde Atkins*
William Becker*
Lloyd H. Burke*
Oliver Carter*
Fred Cassibry*
Samuel Conti
Howard Corcoran*
Walter E. Craig*
Jesse W. Curtis
Peter T. Fay
Warren Ferguson
Robert Fifth*
Roger D. Foley*
Charles B. Fulton*
Floyd R. Gibson
William P. Gray*
George L. Hart*
A. Andrew Hauk
Irving Hill*
James L. King
Samuel King
Thomas Lambros
Joseph S. Lord*
Malcom M. Lucas
William J. Lynch*
Walter R. Mansfield*
Thomas MacBride
Frank J. McGarr
James B. Parsons*
Robert F. Peckham*
Norman C. Roettger
Donald R. Ross
Robert A. Schnacke*
Collins J. Seitz*
John V. Singleton
Adrian A. Spears*
Robert A. Sprechar*
Albert Stephens, Jr.
Francis C. Whelan*
Hubert L. Will*
David Williams
Spencer Williams
Harrison Winter*
Joseph H. Young

BECHTLE
Louis C. Bechtle
Edward Becker
John Biggs*
Luther Bohanon
Ray Broderick
William Campbell*
Thomas Clary*
Ralph Freeman*
Leonard Garth
James Gordon*
Myron Gordon
Peirson Hall*
L. Higginbotham
Julius Hoffman*
Damon J. Keith
Morris Lasker
Alfred Lluongo*
Lawrence Lydick*
Albert B. Maris*
Abraham Marovitz
Wade H. McCree
Edward J. McManus
William Mehrtens*
C.A. Nuecke
Clarence Newcomer
Edmund Palmieri*
John W. Peck*
Martin Pence
Joseph Perry*
John Reynolds
Ed Robson*
Carl Rubin*
Edwin Steel*
Bruce Thompson*
Thomas Thornton*
James von der Heydt

ALDISERT
Ruggero Aldisert
George Barlow*
Allen Barrow*
John Bertels*
Paul Beason
C. Stanley Blair*
George Boldt
John Breitenstein*
Frederick Bryan*
John M. Cannella*
James Carter*
Latham Castle*
Mitchell Cohen*
James Coolahan*
Walter Cummings*
Ronald Davies*
Lohn M. Davis*
Ben C. Dawkins*
J. William Ditter
J. Robert Elliott
John Feikens
Wilfred Feinberg
Clarkson Fisher*
Noet P. Fox*
Wallace Gourley*
Lawrence Gubow*
George B. Harris*
Oren Harris*
John S. Hastings*
Daniel Huyett, III*
Anthony Julian*
Alfred Kirkland
Fredrick Lacey
Fredrick Landis*
James L. Latchum
Caleb Layton, III*
Miles W. Lord
Bernard Maynahan
Malcolm Muir
Edward Neaher*
William Nealon
Bernard Newman*
Paul P. Rao*
Scovel Richardson*
Samuel Rosenstein*
Nauman S. Scott
Woodrow Seals*
Talbot P. Sorg*
Austin L. Staley*
Herbert Stern*
Hubert Teitelbaum*
Thomas Thornton*
E. Mac Troutman
Lawrence Whipple*
Albert Wollenberg*
Caleb M. Wright
George C. Young
Alfonso Zirpoli*

WILL
Hubert L. Will
William J. Campbell*
Fred J. Cassibry*
Irving Hill*
Jack M. Gordon
Thomas C. Platt, Jr.
Spencer Williams
Lloyd H. Burke*
George B. Harris*
John R. Bartels*
Henry Bramwell
Mark A. Costantino*
Edward R. Neaher*
George C. Pratt

WILLIAMS
Spencer Williams
C. Clyde Atkins*
Louis C. Bechtle
Sandra S. Beckwith
Lucius D. Bunton, III
William M. Byrne, Jr.
Adrian G. Duplantier
Irving Hill*
Morris E. Lasker
Thomas Platt, Jr.
Walter H. Rice
John W. Renolds
Aubrey E. Robinson
Marvin H. Shoob
Joseph L. Tauro
Laughlin E. Waters
Lee. R. West
Charles Wiggins
Henry Rupert Wilhoit, Jr.

*Deceased

Appendix 2

FEDERAL JUDGES ASSOCIATION CONSTITUTION

The Federal Judges Association is an independent, voluntary Association of Active, Senior, Retired, and Resigned Judges of United States Federal Courts established under Article III of the Constitution.

The purpose of this Association is to seek the highest quality of justice for the people of the United States, and pursuant thereto, the Association is authorized to do all things reasonable and necessary to:

- Preserve and protect the ability of the federal judiciary to attract and retain the best qualified men and women for judicial service.
- Preserve and protect the independence of the federal judiciary from intrusion, intimidation, coercion, or domination from any source.
- Formulate and carry out such other activities and programs as are deemed necessary and appropriate in furtherance of its stated purpose.

In the conduct of these programs and activities, the Association shall work in coordination and cooperation with the Chief Justice of the United States, the Judicial Conference of the United States, the American Bar Association, the National Bar Association, the various other judges' association, lawyers' associations, and public, quasi-public, and private associations and organizations committed to this same purpose.

In the conduct of its affairs the Association shall take no action or position inconsistent with

any formal action or position of the Judicial Conference of the United States unless and until approved as specified in Article VI B of the bylaws.

The Corporation shall be organized as a not-for-profit organization exclusively. Its activities shall be conducted in such manner that no part of its net earnings shall inure to the benefit of any member, director, officer, or individual, and it shall engage in no business ordinarily carried on for profit. It shall not have the power to issue certificates of stock or declare dividends. In addition, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c) (6) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

In the event of dissolution any assets of the corporation will be donated to the American Judicature Society, an Illinois not-for-profit corporation whose purpose is "to Promote the Effective Administration of Justice."

Notes

Footnotes have not been included in this history because most of the sources are unpublished and are in the files of the Federal Judges Association. Also unpublished is Irving Hill's "A Narrative History of the Ninth Circuit Committee on Judicial Salaries and Benefits and a Summary of Its Accomplishments," 2 volumes (April 1990), which outlines the actions of the subject committee and some of the steps leading to the formation of the FJA, and which includes careful documentation. Much of the information in this history has come from the FJA files of letters, memoranda, minutes, and clippings. Published sources include the *Los Angeles Times*, court opinions, congressional hearings, *The Recorder*, Peter Graham Fish's *The Politics of Federal Judicial Administration* (Princeton,1973), and the FJA newsletter *In Camera*. Interviews were conducted in person with Spencer Williams, Irving Hill, and A. Clifford Wallace, and by telephone with Hubert Will, Kevin Forde, William Weller, John M. Walker, Alan H. Nevas, and Stanley Brotman. Diana Murphy, Ann Claire Williams, and W. Earl Britt, as well as others listed above, contributed written notes.