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**Report  
of the  
Proceedings of the  
Judicial Conference of the  
United States**

**September 18-19, 1986**

**Washington, D.C.  
1986**

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**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

L. Ralph Mecham  
Director

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## THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

### § 331. JUDICIAL CONFERENCE OF THE UNITED STATES

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372(c) of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372(c) of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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JUDICIAL CONFERENCE OF THE UNITED STATES**

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**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

September 18-19, 1986

The Judicial Conference of the United States convened on September 18, 1986, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on September 19. Chief Justice Warren E. Burger presided, and the following members of the Conference were present:

**First Circuit:**

Chief Judge Levin H. Campbell  
Chief Judge Juan M. Perez-Gimenez, District of  
Puerto Rico

**Second Circuit:**

Chief Judge Wilfred Feinberg  
Chief Judge John T. Curtin, Western District of  
New York

**Third Circuit:**

Chief Judge Ruggero J. Aldisert  
Chief Judge Murray M. Schwartz, District of Delaware

**Fourth Circuit:**

Judge H. Emory Widener, Jr.\*  
Judge Frank A. Kaufman, District of Maryland

\*Designated by the Chief Justice in place of Chief Judge Harrison L. Winter, who was out of the country.

**Fifth Circuit:**

Chief Judge Charles Clark  
Chief Judge L. T. Senter, Jr., Northern District of  
Mississippi

**Sixth Circuit:**

Chief Judge Pierce Lively  
Chief Judge Robert M. McRae, Jr., Eastern District of  
Tennessee

**Seventh Circuit:**

Chief Judge Walter J. Cummings  
Judge Frank J. McGarr, Northern District of Illinois

**Eighth Circuit:**

Chief Judge Donald P. Lay  
Chief Judge John F. Nangle, Eastern District of  
Missouri

**Ninth Circuit:**

Chief Judge James R. Browning  
Chief Judge Robert J. McNichols, Eastern District of  
Washington

**Tenth Circuit:**

Chief Judge William J. Holloway  
Chief Judge Sherman G. Finesilver, District of Colorado

Eleventh Circuit:

Judge John C. Godbold\*  
Chief Judge James Lawrence King, Southern District of  
Florida

District of Columbia Circuit:

Chief Judge Patricia M. Wald  
Chief Judge Aubrey E. Robinson, Jr., District of  
Columbia

Federal Circuit:

Chief Judge Howard T. Markey

Circuit Judges Frank M. Coffin, Otto R. Skopil, Jr., and Gerald B. Tjoflat; Senior Circuit Judge John D. Butzner, Jr.; District Judges Robert E. DeMascio and John H. Pratt; and Senior District Judges T. Emmet Clarie, Edward T. Gignoux, Elmo B. Hunter, and Thomas J. MacBride attended all or some sessions of the Conference.

Congressman Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and Congressman Neal Smith, Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, attended the Conference briefly and spoke on matters pending in the Congress of interest to the judiciary.

The Attorney General of the United States, Honorable Edwin Meese 3rd, and Solicitor General Charles Fried, addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

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\*Designated by the Chief Justice in place of Chief Judge Paul H. Roney, who was out of the country.

Chief Justice LaPergola and Justices Gallo, Corasaniti and Nevola of the Constitutional Court of Italy visited the Conference briefly.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; Karen K. Siegel, Special Assistant to the Deputy Director; William R. Burchill, Jr., General Counsel; William J. Weller, Legislative Affairs Officer; Daniel R. Cavan, Deputy Legislative Affairs Officer; and Deborah H. Kirk, Chief, Office of Audit and Review. A. Leo Levin and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference.

The Director of the Federal Judicial Center, Professor A. Leo Levin, presented a report on the activities of the Center.

**REPORT OF THE DIRECTOR  
OF THE ADMINISTRATIVE OFFICE  
OF THE UNITED STATES COURTS**

The Director of the Administrative Office of the United States Courts, L. Ralph Mecham, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1986. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

**JUDICIAL BUSINESS OF THE COURTS**

Mr. Mecham reported that during the year ended June 30, 1986, the number of cases appealed to the 12 regional courts of appeals rose three percent to 34,292, due to increases in appeals of criminal cases and private civil cases. Despite an eight percent increase in the rate of dispositions, the number of filings still outpaced terminations, resulting in a two percent increase in the pending caseload. On June 30, 1986, there were 25,276 cases pending in the courts of appeals. In contrast, the filings in the United States Court of Appeals for the Federal Circuit dropped 53 percent to 1,163 cases, primarily because of a reduction in the number of Merit Systems Protection Board appeals. Dispositions, however, increased 32 percent, resulting in a reduction of 46 percent in the pending caseload.

In the United States district courts, the number of civil filings dropped for the first time in nine years. The seven percent decrease, which resulted in 254,828 civil cases filed, was centered in cases involving the United States government, particularly in social security disability cases and recovery of overpayments of veterans' benefits and defaulted student loans. The number of civil cases disposed of exceeded filings this year, resulting in a five percent reduction in the pending caseload. On June 30, 1986, there were 242,177 civil cases pending in the district courts.

Criminal case filings, on the other hand, increased by five percent over 1985 levels, to 41,490. On the average, there were 72 new criminal cases for each district court judgeship position. Although dispositions increased in 1986, they failed to keep up with filings, with the result that the pending

caseload increased for the sixth straight year. On June 30, 1986, the pending caseload stood at 24,456, almost ten percent more than the year before.

Bankruptcy petitions filed rose 31 percent in 1986 to 477,856. Business bankruptcies were up over 14 percent to 76,281 petitions; non-business bankruptcies rose 35 percent to 401,575 petitions. Terminations increased over seven percent but were below the level of new filings. On June 30, 1986, the pending bankruptcy caseload increased almost 20 percent over the previous year, to 728,577 petitions.

Mr. Mecham also reported that as of September 15, 1986, there were 13 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 36 vacancies among the 575 authorized judgeship positions in the United States district courts, and one vacancy on the United States Court of International Trade.

### **JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ended June 30, 1986, the Panel centralized 537 civil actions pursuant to 28 U.S.C. 1407. Of that number, 351 were transferred for coordinated or consolidated pretrial proceedings with 186 actions originally filed in the transferee districts. The Panel denied transfer of 130 actions.

Since its creation in 1968, the Panel has transferred 15,026 civil actions for centralized pretrial proceedings in carrying out its statutory responsibilities.

### **COMMITTEE ON THE JUDICIAL BRANCH**

Judge Frank M. Coffin, Chairman of the Committee on the Judicial Branch, presented the report of the Committee.

### **JUDICIAL SURVIVORS' ANNUITIES**

On June 19, 1986, the President signed into law Public Law 99-336, the Judicial Improvements Act of 1985. The new law significantly reforms the judicial survivors' annuities

system, essentially as recommended by the Conference in 1981 (see September 1981 Session, Conf. Rpt., p. 59). For a six-month period commencing October 1, 1986, judges who have previously waived the right to judicial survivors' annuities may elect such coverage, and those presently participating may revoke their election of coverage, which is otherwise irrevocable. At the request of the Committee, the Administrative Office is compiling illustrative case profiles to assist judges in reaching these important decisions.

#### **COST-OF-LIVING ADJUSTMENT OF JUDICIAL SALARIES**

Section 140 of Public Law 97-92, a rider to a continuing appropriations resolution for the fiscal year 1982, prohibits implementation of judicial salary increases except as specifically authorized by act of Congress. Although the reach of section 140 appeared to be confined to the fiscal year 1982, the Comptroller General has consistently interpreted this provision as permanent law. Earlier this year, despite reaffirming his prior construction of permanency, the Comptroller General recommended that Congress repeal section 140. While Congress has not yet acted on the Comptroller General's recommendation, efforts to achieve the repeal will continue.

#### **COMMITTEE ON COURT ADMINISTRATION**

Judge Elmo B. Hunter, Chairman of the Committee on Court Administration, presented the report of the Committee.

#### **ADDITIONAL JUDGESHIPS**

The Committee reviewed the results of the 1986 biennial survey of judgeship needs conducted by the Subcommittee on Judicial Statistics and voted to recommend the creation of additional judgeships in the United States courts of appeals and in the United States district courts. Since the Congress has not as yet acted on the Conference recommendations for additional judgeships resulting from the 1984 biennial survey, the current recommendations include those previously made by the Conference.

The Conference voted to recommend the creation of additional judgeship positions in the following United States courts of appeals:

Third Circuit . . . . .	2
Fourth Circuit . . . . .	4
Fifth Circuit . . . . .	1
Eighth Circuit . . . . .	1
Tenth Circuit . . . . .	2
Eleventh Circuit . . . . .	<u>3</u>
TOTAL . . . . .	13

The Conference also voted to recommend the creation of additional permanent and temporary judgeships in the following United States district courts:

First Circuit:

Massachusetts . . . . .	1 + 1 temp.
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Second Circuit:

Connecticut . . . . .	1
New York (N) . . . . .	1 temp.
New York (E) . . . . .	1
New York (S) . . . . .	1

Third Circuit:

New Jersey . . . . .	3 + 1 temp.
Virgin Islands . . . . .	1

Fourth Circuit:

Maryland . . . . .	1 + 1 temp.
South Carolina . . . . .	1
Virginia (E) . . . . .	1 temp.

Fifth Circuit:

Louisiana (M) . . . . .	1 temp.
Louisiana (W) . . . . .	1
Mississippi (S) . . . . .	1 temp.



Texas (E) .....	1 temp.
Texas (S) .....	3
Texas (W) .....	1

Sixth Circuit:

Michigan (W) .....	1 temp.
Ohio (N) .....	1
Ohio (S) .....	2
Tennessee (E) .....	1
Tennessee (M) .....	1 temp.

Seventh Circuit:

Illinois (N) .....	1 + t/p*
Illinois (C) .....	1 temp.
Indiana (S) .....	1 temp.

Eighth Circuit:

Arkansas (W) .....	1
Iowa (S) .....	1
Missouri (E) .....	1
Nebraska .....	1

Ninth Circuit:

California (N) .....	2
California (E) .....	1 temp.
California (C) .....	5
Hawaii .....	1 temp.
Idaho .....	1 temp.
Nevada .....	1 temp.
Oregon .....	1

Tenth Circuit:

Colorado .....	1
Kansas .....	1

\* Existing temporary position to be made permanent.

Oklahoma (N).....	1
Oklahoma (W).....	3

Eleventh Circuit:

Alabama (N).....	1
Florida (M).....	1

TOTAL .....	40 + 16
	temporary +
	1 temporary
	to be made
	permanent

The Conference also recommended that a roving judgeship in the State of Kentucky be made a permanent judgeship for the Eastern District of Kentucky; that the two roving judgeships for the State of Arkansas be made permanent judgeships for the Eastern District of Arkansas; and that the roving judgeship for the State of Iowa be made a permanent judgeship for the Northern District of Iowa.

On several occasions, most recently in March, 1986 (Conf. Rpt., p. 17), the Judicial Conference has recommended that diversity of citizenship jurisdiction in the federal courts be abolished. Were diversity jurisdiction to be eliminated, the necessary number of new district court judgeships would be reduced from 56 to 15, resulting in a recurring appropriations expenditure avoidance of many millions of dollars. The Conference directed that, until such time as Congress eliminates diversity jurisdiction, future transmittals of Judicial Conference judgeship recommendations include detailed figures showing the impact of the elimination of diversity jurisdiction on judgeship requirements.

**LIBRARIAN QUALIFICATION STANDARDS;  
QUALIFICATION STANDARDS FOR  
PROBATION AND PRETRIAL SERVICES OFFICERS**

The Conference approved amendments to the Judiciary Salary Plan qualification requirements for circuit librarians, deputy circuit librarians, and assistant librarians, to include a master's degree in library or information science, or a law degree if there is law library experience (where experience is

required) at the next lower level to that at which the appointment is sought. Personnel employed five years or more as of September 18, 1986, may qualify for advancement to deputy librarian and assistant librarian positions notwithstanding approval of the amendments, if their training and experience would have qualified them for advancement prior to the revisions.

The Conference also approved qualification criteria for probation and pretrial services officers.

#### LAW CLERKS AND THE LEAVE ACT

From 1949 to 1983, regulations promulgated on behalf of the Judicial Conference by the Director of the Administrative Office authorized each Article III judge to elect whether his or her personal staff would be covered by the leave provisions of 5 U.S.C. 6301-6323. The September 1983 Judicial Conference, noting the conclusion by the Committee on Court Administration that "all employees of the Judiciary, except judges, are entitled to both annual and sick leave benefits under the provisions of Chapter 63 of Title 5", adopted the Committee's recommendation that all new secretaries to judicial officers be placed under the Leave Act (Conf. Rpt., pp. 49-50). The Committee held for further evaluation any application of the Leave Act to law clerks.

After additional study, the Committee has determined that current practice permitting discretionary application of the Leave Act to law clerks cannot be supported under present law. The Committee was likewise persuaded, however, that mandatory coverage of law clerks under the Leave Act is inappropriate. The Committee therefore recommended that the Leave Act, 5 U.S.C. 6301, be amended to exclude law clerks, unless specifically included by the judge or by local rule of court. The Conference voted to support this legislative change.

#### JUDICIARY EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Upon the recommendation of the Committee, the Conference approved revisions to the Judiciary's Model Equal Employment Opportunity Plan (formerly "Model Affirmative

Action Plan") and Discrimination Complaint Procedures. Among other things, the revisions prohibit age discrimination in the courts to the same extent prohibited in the executive branch under the Age Discrimination in Employment Act, as amended; specify grounds upon which a complaint may be rejected or cancelled; set forth the relief that may be granted to complainants; and reduce the EEO reporting burden on the courts.

The Conference also amended the last sentence of its March 1980 resolution on equal employment opportunity (Conf. Rpt., p. 5) to eliminate the requirement that all equal employment opportunity annual reports be reprinted in a costly annual volume, and to change the date for submission of the Administrative Office's annual report on EEO implementation to that of the March Judicial Conference.

#### ADDITIONAL COURT REPORTERS

The Conference approved the addition of a combination court reporter/courtroom deputy clerk position in the Middle District of Tennessee and an additional court reporter position in the Northern District of New York, and declined to approve additional court reporter positions in the Northern District of Illinois, the Southern District of Iowa, the District of Massachusetts, and the Eastern District of New York.

#### COURT SECURITY

Three similar bills pending in the 99th Congress at the request of the Department of Justice (H.R. 4001, S. 2044, and Title III of S. 2376, 99th Congress) would "establish a United States Marshals Service". Among other things, the bills would repeal 28 U.S.C. 569, which provides that the United States marshals "may, in the discretion of the respective courts, be required to attend any session of court."

The Conference voted to oppose any change in 28 U.S.C. 569. It was suggested that abuses in the use of marshals should be handled through the mechanism of the Judicial Conduct and Disability Act, 28 U.S.C. 372(c), rather than by stripping judicial officers of the power to require the attendance of marshals in court.

## TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

The Conference reaffirmed the approval by its Executive Committee in July, 1986, of new travel regulations for justices and judges.

## PLACE OF HOLDING COURT

Upon the recommendations of the Southern District of Georgia, the Judicial Council of the Eleventh Circuit, and the Committee, the Conference voted to support enactment of H.R. 3284 and 4095, bills to amend 28 U.S.C. 90(c) by changing the county makeup of the divisions within the Southern District of Georgia.

## FREEDOM OF INFORMATION ACT

The Conference endorsed the position of the Director of the Administrative Office opposing coverage of the Administrative Office under the Freedom of Information Act.

## UNITED STATES COURTS DESIGN GUIDE AMENDMENTS

The Conference adopted the United States Courts Design Guide in March, 1984 (Conf. Rpt., p. 8). In view of subsequent developments, e.g., the Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353), the Conference approved a revised Chapter 9 of the Guide ("The Bankruptcy Court"), reflecting changes in bankruptcy jurisdiction but making no changes in space allocations for bankruptcy judge chambers, courtrooms, and/or support staffs.

The Conference also approved a new Chapter 20 dealing with "Parking". The new parking policy creates categories of parking, in descending priority order. In the event the Judicial Conference were to determine that parking savings were necessary, the guidelines permit each circuit council to be given a target savings figure to meet by applying the priorities.

## ARBITRATION APPEALS

H.R. 4975, 99th Congress, would amend the United States Arbitration Act (9 U.S.C. 1 et. seq) (1) to clarify the appeals doctrine in this area, which is confused and irrational;

and (2) to respond to the needs of arbitration as a system of dispute resolution by generally denying immediate appeals from orders giving arbitration precedence over litigation and permitting immediate appeals from orders giving litigation precedence over arbitration. The Conference considered this a sensible approach and voted to support the legislation.

#### INTERNATIONAL ARBITRATION ACT

S. 1395 and H.R. 4342, 99th Congress, are substantively identical bills to amend the statutory provisions implementing the Convention on Recognition and Enforcement of Foreign Arbitration Awards. The Conference found the issues posed by the legislation to be matters for the Congress that would not appreciably affect the workload of the federal courts.

#### SOCIAL SECURITY COURT

In 1981 and 1982, the Judicial Conference approved legislation to create an Article I executive branch Social Security Court with judicial review by Article III courts. However, the Conference objected to concentrating all appeals in one court of appeals (in that case, the Court of Appeals for the District of Columbia Circuit), recommending instead that appellate review be provided in the same manner as appeals from the Tax Court, i.e., to the appropriate geographic court of appeals (September 1981 Session, Conf. Rpt., pp. 67-68; September 1982 Session, Conf. Rpt., pp. 64-65).

A new proposal drafted by the Department of Justice would establish an Article I Social Security Court in the judicial branch rather than the executive branch, with discretionary review in the United States Court of Appeals for the Federal Circuit. The effect of the draft bill would be to shift about 30,000 cases from federal district courts to the new judicial branch Article I court. Over 1,200 social security appeals would be concentrated in the Court of Appeals for the Federal Circuit, nearly doubling that court's caseload.

The Judicial Conference has consistently opposed the establishment of specialized courts in the judicial branch (e.g., September 1962 Session, Conf. Rpt., p. 54). Moreover, the Conference adheres to the view that the convenience of the litigants and the problems inherent in placing the entire burden

of social security review on a single Article III appellate court outweigh the goal of uniformity sought by review in a single forum. The Conference therefore voted to recommend that, in the event of creation of an executive branch Article I Social Security Court, appeals should lie to the geographic courts of appeals rather than to a single court of appeals.

#### JUDICIAL IMPACT STATEMENTS

The Conference endorsed the proposition that any federal legislation having a potential for increasing appreciably federal judicial workloads be accompanied at the time of House or Senate consideration by an evaluation of the prospective quantitative impact on the courts.

#### COURT REPORTERS' TRANSCRIPT RATES

Pursuant to 28 U.S.C. 753(f), each court reporter may charge and collect fees for transcripts requested by the parties, at rates prescribed by the courts subject to the approval of the Judicial Conference. Effective October 1, 1986, the Conference authorized the following temporary increases in the maximum allowable transcript rates, subject to further action of the Conference following committee reports, and provided that these maximum rates will not apply to any transcripts paid for by the government, to include payments under the Criminal Justice Act, as long as "Gramm-Rudman-Hollings" (P.L. 99-177) is in effect:

#### Maximum Transcript Rates

	Original	First Copy to Each Party	Each Addtl Copy to the Same Party
Ordinary Transcript	\$3.00	\$ .75	\$ .50
Expedited Transcript	\$4.00	\$ .75	\$ .50
Daily Transcript	\$5.00	\$1.00	\$ .75
Hourly Transcript	\$6.00	\$1.00	\$ .75

It is expected that the Ad Hoc Committee on Court Reporters of the Court Administration Subcommittee on Supporting Personnel, appointed to study the subject of court reporters, will (through the Court Administration Committee) report on the temporary rate increases at the next Judicial Conference session in March, 1987.

#### LITIGATION REFORM ACT

S. 2046, 99th Congress, would curb alleged abuse in civil liability litigation. The bill would create a new chapter in title 28 of the United States Code entitled "Limitations and Procedures Regarding Civil Damages" covering, inter alia, limitations on lump sum payments, exclusion of collateral source benefits, damages for economic losses, contingency fees, and punitive damages.

S. 2046 basically involves policy matters primarily for the Congress. However, the Conference agreed (1) to express disapproval of a provision (proposed 28 U.S.C. 2126(c)(2)) requiring payment of punitive damages awards to the United States Treasury "for the use of the Administrative Office of the United States Courts or the Federal Judicial Center"; (2) to point out that the legislation would, in effect, overrule Erie v. Tompkins, 304 U.S. 64 (1938), in cases covered by the bill; and (3) to urge Congress to assess carefully the potential impact of tort liability legislation on the workload of the federal courts.

#### PRODUCT LIABILITY

In September, 1985, the Conference voted to oppose section 17 of S. 100, the proposed "Product Liability Act". That section, which would have required the Conference to establish a Product Liability Review Panel to review the adequacy of existing remedies for loss or damages caused by products, would have "inappropriately interject[ed] the Conference into policy formulation and legislative recommendation in areas traditionally considered to be matters for the Congress" (September 1985 Session, Conf. Rpt., p. 52).

As was the case with S. 100, the basic issues involved in a new product liability bill (S. 1999, 99th Congress) raise questions of policy better left to Congressional resolution.



However, concern was raised in the Conference about two sections of this new legislation. Section 111 would create an independent Product Liability Review Board, with three members selected by the Conference and four by the National Academy of Sciences, to assess the expedited procedures and remedies provided by the Act. The Conference found that reposing in the Judicial Conference the power to appoint nearly half of the members of this Panel would still "inappropriately interject the Conference into policy formulation and legislative recommendation in areas traditionally considered to be matters for the Congress". In addition, section 208 would permit a product liability suit to be removed from federal to state court based exclusively on a lapse of time without trial in state court. The Conference did not consider mere lapse of time to be an appropriate basis for removal, and voted to oppose this section as well.

### **COMMITTEE ON THE BUDGET**

Chief Judge Charles Clark, Chairman of the Committee on the Budget, presented the report of the Committee.

### **SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1987**

Judge Clark reported that, beginning in the fiscal year 1987, Congress has approved the consolidation of the appropriations for "Salaries of Judges", "Salaries of Supporting Personnel", "Expenses of Operation and Maintenance of the Courts", and "Space and Facilities" into a single account entitled "Salaries and Expenses". This merger should promote much greater flexibility and facilitate the transfer of funds between the various programs and activities of the courts of appeals and district courts. The appropriations for "Defender Services", "Fees of Jurors and Commissioners", and "Court Security" remain separate.

Judge Clark also reported that supplemental requirements for the fiscal year 1987 include a pay cost supplemental in the amount of \$26,024,000, to fund pay increases, increases for health benefits, and a new retirement system for employees hired on or after January 1, 1984, and program supplementals in the amount of \$25,445,000, as follows: \$6,600,000 to fund higher travel rates, a higher

Federal Telecommunications Service (FTS) rate, and telephone acquisitions; \$7,200,000 for rental of space; \$4,500,000 for an additional 400 deputy clerks in the bankruptcy courts, due to a huge increase in bankruptcy filings predicted for the fiscal year 1987; and \$7,145,000 for the appropriation "Defender Services". An additional program supplemental will probably be required to fund the liberalized benefits under the judicial survivors' annuities system resulting from enactment of the Judicial Improvements Act of 1985 (see pp. 52-53, supra). Additional program supplementals likely to result from passage of pending legislation include bills approved by both Houses for 52 additional bankruptcy judgeships (estimated cost \$18,000,000), amendments to the Criminal Justice Act (estimated cost \$10,000,000), and expansion of the drug dependent offenders provisions to include persons who are alcohol-dependent (estimated cost \$3,000,000).

The Conference authorized the Director of the Administrative Office to submit to the Congress all of the foregoing supplemental appropriations requests for the fiscal year 1987, and also authorized the Director to amend the requests because of any new legislation, action taken by the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

#### "GRAMM-RUDMAN-HOLLINGS" COST REDUCTION MEASURES

In view of limited resources available in the fiscal year 1987 resulting from Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings"), the Conference agreed to the following cost reduction measures: restricting temporary employment of secretaries, law clerks, legal assistants, and clerical personnel for judges and magistrates to emergency situations or extraordinary circumstances, except for extended absences due to illness or maternity leave; restricting overlapping appointments to those judicial officers who have only a single secretary or law clerk/legal assistant, or where the cost is offset by a vacancy during the transition period; staffing clerks' offices, probation, and pretrial services at a level not to exceed 94 percent of the established formula allowances; reevaluating the need for resident deputy clerks, or probation or pretrial services personnel, in divisional offices where the

filings or workload does not justify a divisional office; restricting first-class travel to those judges who must travel first-class due to physical disabilities; restricting to two persons the staff that may accompany a judge sitting outside that judge's district or circuit, and to three persons the staff that may accompany a circuit judge sitting within the circuit; restricting the use of express mail to those items for which delivery within 24 hours is essential; and requiring circuit librarians to evaluate the proper content of chambers libraries to control lawbook acquisition expenses. The Conference voted to grant the circuit judicial councils the power to make exceptions to the reduction measures, in accordance with guidelines to be developed by the Administrative Office. The Administrative Office also was assigned the responsibility of monitoring the exceptions granted by the circuit councils and advising if budgetary ceilings are being approached.

#### APPROPRIATIONS FOR THE FISCAL YEAR 1988

The Conference approved the budget estimates for the fiscal year 1988. The estimates, exclusive of the Supreme Court, the United States Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center, total \$1,335,280,000, an increase of \$160,511,000 or 14 percent above the amount allowed by the Senate Appropriations Committee for the fiscal year 1987, adjusted to reflect proposed pay cost and program supplemental appropriations requests. Provision has been made in the budget estimates for an additional 1,785 permanent positions. Approximately 48 percent of the increases in the budget are for mandatory or uncontrollable costs such as within-grade salary advancements and promotions, increases in contract rates and charges for equipment, services, and supplies, and rental increases for space occupied by the courts. The remaining increases are for workload increases, new legislation, and new program initiatives necessary to maintain the same level of support and services required by the rapidly growing workload of the judiciary.

The Conference also reaffirmed its prior policies (September 1973 Session, Conf. Rpt., p. 73; March 1975 Session, Conf. Rpt., pp. 20-21; September 1985 Session, Conf. Rpt., p. 64) governing the use of firearms by probation and

pretrial services officers, and directed that funding for firearms training be added to the fiscal year 1988 budget estimates.

The Director of the Administrative Office was authorized to amend the budget estimates because of new legislation, action taken by the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

#### **MISCELLANEOUS BUDGET RESOLUTION**

Upon the recommendation of the Committee, the Conference directed the Administrative Office to study the possibility of the judiciary undertaking its own buildings design, leasing, construction, and maintenance.

#### **JUDICIAL ETHICS COMMITTEE**

Judge John H. Pratt, Chairman of the Judicial Ethics Committee, presented the report of the Committee.

As of September, 1986, the Committee had received 1,951 financial disclosure reports for the calendar year 1986, including 999 reports from judicial officers and 952 reports from judicial employees, and had addressed 442 letters of inquiry to reporting individuals.

#### **ADVISORY COMMITTEE ON CODES OF CONDUCT**

Chief Judge Howard T. Markey, Chairman of the Advisory Committee on Codes of Conduct, presented the report of the Committee.

Since its last report, the Committee received 20 inquiries and issued 18 advisory responses. The Chairman also responded to 34 telephone inquiries that did not require reference to the Committee. The Committee is publishing opinions dealing with the use of chambers, resources, and staff for activities permitted by Canons 4 and 5.

#### **CODE OF CONDUCT FOR UNITED STATES JUDGES**

The Conference adopted and promulgated a revised Code of Judicial Conduct for United States Judges. Among

other things, the revised Code eliminates gender-specific language and adds new subparagraphs to Canons 4 and 5 regarding the use of judicial chambers, resources, and staff for engaging in law-related or extra-judicial activities.

#### **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The Committee on Intercircuit Assignments filed a report indicating that during the period February 16, 1986, through August 15, 1986, the Committee had recommended 35 intercircuit assignments to be undertaken by 24 judges. Of this number, three were senior circuit judges, four were active circuit judges, 11 were senior district judges, two were active district judges, two were senior judges of the Court of International Trade, and two were active judges of the Court of International Trade.

Of the 35 assignments approved, 13 judges undertook 18 assignments to the courts of appeals, and 13 judges undertook 17 assignments to the district courts.

#### **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

Judge Edward T. Gignoux, Chairman of the Standing Committee on Rules of Practice and Procedure, presented the report of the Committee.

#### **BANKRUPTCY RULES**

The Committee submitted to the Conference proposed amendments to the Bankruptcy Rules to conform them to the substantive and procedural changes in the Bankruptcy Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353), and to eliminate gender-specific language. The proposed amendments were accompanied by Committee Notes explaining their purpose and intent, and by a separate report from the Chairman of the Advisory Committee on Bankruptcy Rules summarizing the Advisory Committee's work. The Conference approved the amendments, and transmitted them to the Supreme Court for consideration, with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

The Conference also approved conforming amendments to the Bankruptcy Official Forms.

#### CIVIL RULES

The Committee submitted to the Conference a proposed amendment to Civil Rule 51 ("Instructions to Jury: Objection"), together with Committee Notes explaining the purpose and intent of the amendment, and a separate report from the Chairman of the Advisory Committee on Civil Rules summarizing the Advisory Committee's work. The Conference approved the amendment, and transmitted it to the Supreme Court for consideration, with a recommendation that it be approved by the Court and transmitted to the Congress pursuant to law.

#### CRIMINAL RULES

The Committee submitted to the Conference proposed amendments to Criminal Rules 6(a) ("The Grand Jury") and 30 ("Instructions"), together with Committee Notes explaining the purpose and intent of the amendments, and a separate report from the Chairman of the Advisory Committee on Criminal Rules summarizing the Advisory Committee's work. The Conference, after making a minor change to proposed Rule 6(a)(2), approved the amendments, and transmitted them to the Supreme Court for consideration, with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

#### GENDER-NEUTRALIZING RULES AMENDMENTS

The Committee submitted to the Conference proposed amendments to the Civil, Criminal, and Evidence Rules to eliminate gender-specific language. The amendments were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments and transmitted them to the Supreme Court for consideration, with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

**COMMITTEE ON THE ADMINISTRATION OF THE  
PROBATION SYSTEM**

Judge Gerald B. Tjoflat, Chairman of the Committee on the Administration of the Probation System, presented the report of the Committee.

Judge Tjoflat reported on pending legislation of interest to the Conference, including amendments to the Comprehensive Crime Control Act of 1984 (P.L. 98-473), to the Criminal Fine Enforcement Act of 1984 (P.L. 98-596), and to the drug aftercare program.

**COMMITTEE ON THE ADMINISTRATION OF THE  
BANKRUPTCY SYSTEM**

Judge Robert E. DeMascio, Chairman of the Committee on the Administration of the Bankruptcy System, presented the report of the Committee.

**OFFICIAL DUTY STATIONS AND  
PLACES OF HOLDING COURT  
FOR BANKRUPTCY JUDGES**

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353) re-enacted the authority of the Judicial Conference to determine the official duty stations and places of holding court for bankruptcy judges in each judicial district. 28 U.S.C. 152(b)(1). Judge DeMascio reported that the Committee had adopted guidelines for designating places of holding court. The Committee thereafter conducted a district-by-district review and recommended changes in the places of holding court for bankruptcy purposes. The Conference agreed to the following recommended changes:

**FIRST CIRCUIT**

**Maine:**

Eliminate Augusta, Auburn, Caribou, and Waterville as places of holding court; Add Presque Isle as a place of holding court

**Massachusetts:**

Eliminate Pittsfield and Taunton as places of holding court

**New Hampshire:**

Eliminate Concord as a place of holding court

**SECOND CIRCUIT**

**Connecticut:**

Eliminate New Haven as a place of holding court

**New York (N):**

Eliminate Malone as a place of holding court

**New York (S):**

Eliminate Kingston, Newburg, and Suffern as places of holding court

**Vermont:**

Eliminate Bennington, Brattleboro, and St. Johnsbury as places of holding court

**THIRD CIRCUIT**

**Delaware:**

Eliminate Dover and Georgetown as places of holding court

**Pennsylvania (E):**

Eliminate Easton as a place of holding court

**Pennsylvania (M):**

Eliminate Lewisburg as a place of holding court



Pennsylvania (W):

Eliminate Greensburg, Mercer, and Warren as places of holding court

FOURTH CIRCUIT

Maryland:

Eliminate Easton and Hagerstown as places of holding court

North Carolina (E):

Eliminate Raleigh as a place of holding court; Add Wilmington and Elizabeth City as places of holding court

Designate Raleigh as an official duty station

North Carolina (W):

Add Statesville as a place of holding court

South Carolina:

Eliminate Greenville as a place of holding court; Add Spartanburg as a place of holding court

Virginia (W):

Eliminate Bristol, Covington, and Winchester as places of holding court; Add Big Stone Gap and Woodstock as places of holding court

West Virginia (N):

Eliminate Fairmont as a place of holding court

FIFTH CIRCUIT

Mississippi (N):

Eliminate Clarksdale as a place of holding court

Mississippi (S):

Eliminate Vicksburg as a place of holding court

SIXTH CIRCUIT

Kentucky (E):

Eliminate Catlettsburg and Jackson as places of holding court; Add Ashland as a place of holding court

Michigan (E):

Eliminate Pontiac as a place of holding court; Add Flint as a place of holding court

Eliminate Flint as an official duty station

Ohio (N):

Eliminate Freemont, Jefferson, Lima, and Marion as places of holding court

Tennessee (E):

Eliminate Athens as a place of holding court

SEVENTH CIRCUIT

Illinois (N):

Eliminate Dixon, Freeport, Ottawa, and Sterling as places of holding court

Illinois (C):

Eliminate Mattoon as a place of holding court

Illinois (S):

Eliminate Cairo as a place of holding court

Indiana (N):

Eliminate Hammond and Peru as places of holding court;  
Add Lafayette as a place of holding court

Wisconsin (W):

Eliminate Superior as a place of holding court

EIGHTH CIRCUIT

Arkansas (E & W):

Add Pine Bluff as a place of holding court

Iowa (N):

Add Mason City as a place of holding court

Minnesota:

Eliminate Rochester and St. Cloud as places of holding court;  
Add Duluth as a place of holding court

Eliminate Duluth as an official duty station

Missouri (W):

Eliminate Cape Girardeau, Hannibal, St. Joseph, and St. Louis as places of holding court

Nebraska:

Eliminate Grand Island as a place of holding court

North Dakota:

Add Grand Forks as a place of holding court

South Dakota:

Eliminate Deadwood as a place of holding court

## NINTH CIRCUIT

### Arizona:

Eliminate Safford as a place of holding court; Add Sierra Vista as a place of holding court

### California (N):

Eliminate Salinas and Santa Rosa\* as places of holding court; Add Eureka\* and Monterey as places of holding court

Eliminate Eureka\* as an official duty station; Designate Santa Rosa\* as an official duty station

### California (E):

Eliminate Ceres, Chico, Marysville, and Merced as places of holding court

### California (C):

Eliminate Riverside, San Luis Obispo, and Ventura as places of holding court

### California (S):

Eliminate El Centro as a place of holding court

### Hawaii:

Eliminate Agana and Saipan as places of holding court; Add Kailua-Kona as a place of holding court

### Idaho:

Add Jerome and Moscow as places of holding court

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\*To become effective upon the retirement of the incumbent at Eureka sometime late in 1986 or in 1987.

Montana:

Add Great Falls as a place of holding court

Eliminate Great Falls as an official duty station

Nevada:

Eliminate Carson City, Elko, and Ely as places of holding court

Oregon:

Eliminate Astoria, La Grande, Lincoln City, The Dalles, and Tillamook as places of holding court

Washington (E):

Eliminate Walla Walla as a place of holding court

Washington (W):

Eliminate Bellingham as a place of holding court; Add Kelso as a place of holding court

TENTH CIRCUIT

Kansas:

Eliminate Fort Scott and Salina as places of holding court

New Mexico:

Eliminate Clovis, Las Vegas, Santa Fe, and Silver City as places of holding court

Oklahoma (E):

Eliminate Ardmore as a place of holding court

Oklahoma (W):

Eliminate Woodward as a place of holding court; Add Enid and Lawton as places of holding court

Wyoming:

Eliminate Green River, Sheridan, and Worland as places of holding court

ELEVENTH CIRCUIT

Alabama (N):

Add Talladega as a place of holding court

Florida (M):

Add Ft. Myers as a place of holding court

Florida (S):

Eliminate Key West as a place of holding court

Georgia (N):

Eliminate Carrollton as a place of holding court

Georgia (M):

Add Valdosta as a place of holding court

Georgia (S):

Add Dublin and Statesboro as places of holding court

**COMMITTEE ON THE ADMINISTRATION OF THE  
FEDERAL MAGISTRATES SYSTEM**

Judge Otto R. Skopil, Jr., Chairman of the Committee on the Administration of the Federal Magistrates System, presented the report of the Committee.

## MAGISTRATE SELECTION REGULATIONS

Section 631(b)(5) of title 28 requires a merit selection panel to be appointed by the court to assist the judges in identifying and recommending the best qualified applicants to serve as United States magistrates. The implementing Conference regulations specify that "The panel shall consist of lawyers and other members of the community." (Sec. 3.02(c)).

The Committee has been of the view that the spirit of the statute and the Conference regulations is violated when federal judges and other officers and employees of the court are appointed as members of panels, except for those panels dealing with the appointments of part-time magistrates whose salaries are less than one-third of the salary of full-time magistrates. The Conference approved amendments to sections 3.02(c) and 5.01(a) of the selection regulations to make the prohibition on the service of court officers and employees on panels explicit.

### LEGAL ASSISTANT POSITION IN EUGENE, OREGON

In March, 1980 (Conf. Rpt., p. 33), the Conference established the principle that "The number of legal assistant positions authorized in any district may not exceed a ratio of one assistant per full-time magistrate position." At the Committee's request, the Conference granted a one-year exception to the general rule for an additional legal assistant position for the magistrate at Eugene, Oregon, in lieu of authorizing additional magistrate resources for the district.

### CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available.

## FIRST CIRCUIT

### Maine:

Continued the part-time magistrate position at Bangor for an additional four-year term at the currently authorized salary of \$34,200 per annum.

### Massachusetts:

Continued the full-time magistrate position at Boston which is due to expire on August 5, 1987, for an additional eight-year term.

## SECOND CIRCUIT

### New York (E):

Continued the part-time magistrate position at Patchogue for an additional four-year term at the currently authorized salary of \$5,037 per annum.

### New York (S):

- (1) Continued the two full-time magistrate positions at New York City which are due to expire on August 5, 1987, and April 2, 1988, respectively, for additional eight-year terms.
- (2) Continued the full-time magistrate position at White Plains or New York City which is due to expire on August 5, 1987, for an additional eight-year term.
- (3) Continued the part-time magistrate position at Poughkeepsie for an additional four-year term, but reduced the salary from \$11,195 to \$7,164 per annum.



## THIRD CIRCUIT

### New Jersey:

- (1) Authorized an additional full-time magistrate position at Camden.
- (2) Continued the full-time magistrate position at Trenton which is due to expire on March 21, 1987, for an additional eight-year term.
- (3) Continued the part-time magistrate position at Trenton which is due to expire on June 14, 1987, for an additional four-year term at the currently authorized salary of \$15,225 per annum, but discontinued the position upon the appointment of a second full-time magistrate at Camden.

### Pennsylvania (E):

- (1) Continued the four full-time magistrate positions at Philadelphia which are due to expire in 1987 for additional eight-year terms.
- (2) Continued the part-time magistrate position at Allentown for an additional four-year term, but reduced the salary from \$7,164 to \$4,030 per annum, effective at the start of the new term.

### Pennsylvania (M):

- (1) Continued the part-time magistrate position at Williamsport for an additional four-year term at the currently authorized salary of \$4,030 per annum.
- (2) Continued the part-time magistrate position at Stroudsburg for an additional four-year term at the currently authorized salary of \$15,225 per annum.

## FOURTH CIRCUIT

### North Carolina (E):

Continued the full-time magistrate position at New Bern for an additional eight-year term.

### Virginia (E):

- (1) Continued the full-time magistrate position at Alexandria which is due to expire on December 31, 1987, for an additional eight-year term.
- (2) Continued the full-time magistrate position at Norfolk which is due to expire on June 30, 1987, for an additional eight-year term.
- (3) Changed the location of the full-time magistrate position at Williamsburg to Newport News.

### West Virginia (N):

Continued the full-time magistrate position at Elkins for an additional eight-year term.

## FIFTH CIRCUIT

### Louisiana (M):

Converted the part-time magistrate position at Baton Rouge to a full-time position.

### Louisiana (W):

- (1) Authorized a new full-time magistrate position to serve the district at Alexandria/Monroe.
- (2) Discontinued the part-time magistrate positions at Alexandria and Monroe upon the filling of the new full-time magistrate position.

- (3) Continued the part-time magistrate positions at Alexandria and Monroe in the interim for additional four-year terms at their current salary levels of \$34,200 and \$2,015 per annum, respectively.

Texas (W):

- (1) Continued the part-time magistrate position at Pecos for an additional four-year term at the currently authorized salary of \$29,946 per annum.
- (2) Continued the part-time magistrate position at Midland/Odessa for an additional four-year term, and increased the salary from \$9,179 to \$20,039 per annum.

SIXTH CIRCUIT

Michigan (W):

- (1) Continued the full-time magistrate position at Grand Rapids which is due to expire on March 31, 1988, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Marquette for an additional four-year term, and increased the salary from \$2,015 to \$34,200 per annum.

Ohio (N):

- (1) Continued the full-time magistrate position at Cleveland which is due to expire on September 13, 1987, for an additional eight-year term.
- (2) Continued the full-time magistrate position at Toledo for an additional eight-year term.

## SEVENTH CIRCUIT

### Illinois (N):

Continued the full-time magistrate position at Chicago which is due to expire on March 11, 1987, for an additional eight-year term.

### Wisconsin (E):

- (1) Continued the full-time magistrate position at Milwaukee which is due to expire on October 31, 1987, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Green Bay for an additional four-year term at the currently authorized salary of \$4,030 per annum.

### Wisconsin (W):

Continued the part-time magistrate position at Eau Claire for an additional four-year term, but reduced the salary from \$4,030 to \$2,015 per annum.

## EIGHTH CIRCUIT

### Arkansas (W):

- (1) Continued the full-time magistrate position at Fort Smith for an additional eight-year term.
- (2) Continued the part-time magistrate position at Harrison for an additional four-year term at the currently authorized salary of \$4,030 per annum.
- (3) Continued the part-time magistrate position at El Dorado for an additional four-year term, but reduced the salary from \$3,022 to \$2,015 per annum.

Missouri (W):

Continued the full-time magistrate position at Kansas City which is due to expire on May 2, 1987, for an additional eight-year term.

South Dakota:

Continued the part-time magistrate position at Aberdeen for an additional four-year term at the currently authorized salary of \$3,022 per annum.

NINTH CIRCUIT

California (E):

- (1) Continued the full-time magistrate position at Sacramento which is due to expire on April 30, 1987, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Bishop for an additional four-year term at the currently authorized salary of \$7,164 per annum.
- (3) Continued the part-time magistrate position at South Lake Tahoe for an additional four-year term at the currently authorized salary of \$7,164 per annum.
- (4) Continued the part-time magistrate position at Yreka for an additional four-year term at the currently authorized salary of \$3,022 per annum.
- (5) Continued the part-time magistrate position at Sequoia and Kings Canyon National Parks for an additional four-year term, but reduced the salary from \$17,352 to \$11,195 per annum.

Hawaii:

- (1) Continued the part-time magistrate position at Hilo for an additional four-year term, and increased the salary from \$4,030 to \$5,037 per annum.

- (2) Continued the part-time magistrate position at Wailuku for an additional four-year term at the currently authorized salary of \$2,015 per annum.

Nevada:

- (1) Continued the full-time magistrate position at Las Vegas for an additional eight-year term.
- (2) Converted the part-time magistrate position at Las Vegas to a full-time position.
- (3) Continued the part-time magistrate position at Las Vegas in the interim for an additional four-year term, increased the salary from \$25,859 to \$34,200 per annum, and discontinued the position upon the appointment of the second full-time magistrate at Las Vegas.

Oregon:

- (1) Continued the full-time magistrate position at Portland which is due to expire on January 13, 1987, for an additional eight-year term.
- (2) Continued the full-time magistrate position at Eugene for an additional eight-year term.
- (3) Continued the part-time magistrate position at Pendleton for an additional four-year term at the currently authorized salary of \$3,022 per annum.
- (4) Discontinued the part-time magistrate position at Coquille effective September 30, 1986.

TENTH CIRCUIT

Utah:

- (1) Continued the part-time magistrate positions at Salt Lake City and Monticello (or Moab) for

additional four-year terms at the currently authorized salaries of \$34,200 and \$2,015 per annum, respectively.

- (2) Continued the part-time magistrate positions at Cedar City and Vernal (or Roosevelt) for additional four-year terms, and increased the salaries from \$2,015 to \$3,022 per annum for each position.

#### ELEVENTH CIRCUIT

##### Alabama (N):

- (1) Continued the full-time magistrate position at Birmingham which is due to expire in February, 1987, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Huntsville (or Decatur) for an additional four-year term, and increased the salary from \$5,037 to \$11,195 per annum.

##### Georgia (N):

- (1) Continued the part-time magistrate position at Rome for an additional four-year term at the currently authorized salary of \$34,200 per annum.
- (2) Continued the part-time magistrate position at Gainesville for an additional four-year term at the currently authorized salary of \$9,179 per annum.

##### Georgia (S):

- (1) Continued the part-time magistrate position at Brunswick (or Waycross) for an additional four-year term at the currently authorized salary of \$20,039 per annum.

- (2) Changed the official location of the part-time magistrate position at Dublin (or Swainsboro) to Dublin (or Statesboro).

#### **COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT**

Judge Thomas J. MacBride, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of the Committee.

#### **APPOINTMENTS AND PAYMENTS**

Judge MacBride submitted to the Conference a report on appointments and payments under the Criminal Justice Act for the first half of the fiscal year 1986. The report indicated that \$70,074,000 originally was appropriated for the fiscal year 1986 for implementation of the CJA. Of this amount, \$2,657,000 was sequestered in accordance with "Gramm-Rudman-Hollings", leaving a balance of \$67,417,000 available for the implementation of the CJA during the fiscal year 1986. The amount available is expected to be sufficient to meet current projected obligations, taking into account savings anticipated as the result of cost-saving initiatives approved by the Judicial Conference in March, 1986.

During the first half of the fiscal year 1986, approximately 26,000 persons were represented under the Criminal Justice Act, compared to approximately 24,000 in the first half of the fiscal year 1985, an increase of 8.3 percent. Of these 26,000 persons represented, 14,823, or 57 percent, were represented by federal public and community defender organizations. This represents a 7.2 percent increase over the 13,832 appointments received by federal defenders during the same period in the fiscal year 1985.

#### **BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS**

The Criminal Justice Act, as amended, requires that a budget for each federal public defender organization established pursuant to 18 U.S.C. 3006A(h)(2)(A), be approved by the Judicial Conference in accordance with 28 U.S.C. 605. The Committee reviewed 12 requests for supplemental funding for the fiscal year 1987 and reviewed requests from the 34 federal public defender organizations for funding for the fiscal



year 1988. No funding has been sought for the Federal Public Defender Organization for the Southern District of Georgia, which terminated operations on May 31, 1986.

The Conference approved supplemental budget requests for the fiscal year 1987 for federal public defender organizations as follows:

California (N).....	\$ 432,820
California (C).....	29,491
Florida (M).....	61,207
Florida (S) .....	237,570
Kansas.....	17,175
Louisiana (E) .....	44,085
Nevada .....	56,339
New Mexico.....	103,770
Oklahoma (W, N, & E).....	49,356
Oregon .....	8,259
Texas (S) .....	57,090
Virgin Islands .....	81,528
 TOTAL .....	 \$ 1,178,690

The Conference also approved budget requests for the fiscal year 1988 for the federal public defender organizations as follows:

Arizona .....	\$ 1,023,653
California (N).....	1,572,549
California (E).....	976,529
California (C).....	2,026,970
Colorado .....	521,465
Connecticut.....	469,153
Florida (N).....	353,944
Florida (M).....	844,737
Florida (S) .....	2,615,591
Hawaii.....	705,321
Illinois (C & S)/Missouri (E) .....	596,922
Kansas.....	439,314
Louisiana (E) .....	541,692
Maryland .....	930,547
Massachusetts .....	398,629
Minnesota .....	348,184

Missouri (W) . . . . .	615,531
Nevada . . . . .	660,835
New Jersey . . . . .	888,129
New Mexico . . . . .	488,871
North Carolina (E) . . . . .	435,624
Ohio (N) . . . . .	416,713
Oklahoma (W, N, & E) . . . . .	499,744
Oregon . . . . .	654,817
Pennsylvania (M & W) . . . . .	805,984
Puerto Rico . . . . .	515,755
South Carolina . . . . .	372,344
Tennessee (M) . . . . .	436,290
Tennessee (W) . . . . .	249,998
Texas (S) . . . . .	964,983
Texas (W) . . . . .	946,719
Virgin Islands . . . . .	616,857
Washington (W)/Alaska . . . . .	873,449
West Virginia (S) . . . . .	226,093
 TOTAL . . . . .	 \$25,033,936

The Committee will entertain requests for supplemental funding if workload increases or other factors warrant reconsideration of funding needs.

GRANT REQUESTS -  
COMMUNITY DEFENDER ORGANIZATIONS

The Criminal Justice Act authorizes community defender organizations to submit applications to the Judicial Conference for periodic sustaining grants. 18 U.S.C. 3006A(h)(2)(B). The Conference approved supplemental sustaining grants for the fiscal year 1987 for the following community defender organizations:

Federal Defenders of San Diego, Inc., California (S) . . . . .	\$ 27,819
Federal Defender Program, Inc., Georgia (N) . . . . .	12,775
Federal Defender Program, Inc., Illinois (N) . . . . .	129,062

The Legal Aid Society of New York, Federal Defender Services Unit, New York (E & S) . . . . .	101,050
TOTAL . . . . .	\$ 270,706

The Conference also approved sustaining grants for the fiscal year 1988 for the six community defender organizations as follows:

Federal Defenders of San Diego, Inc., California (S) . . . . .	\$ 1,560,581
Federal Defender Program, Inc., Georgia (N) . . . . .	558,862
Federal Defender Program, Inc., Illinois (N) . . . . .	984,337
Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan (E) . . . . .	865,192
The Legal Aid Society of New York, Federal Defender Services Unit, New York (E & S) . . . . .	2,518,300
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania (E) . . . . .	781,343
TOTAL . . . . .	\$ 7,268,615

The Committee will consider requests for supplemental sustaining grant funds if workload increases or other factors warrant reconsideration of the approved sustaining grants.

#### GUIDELINES

The Conference approved the following amendments to the Guidelines for the Administration of the Criminal Justice Act:

1. Amendments to paragraph 3.11 and the accompanying chart, relating to agency responsibility for payment of psychiatric examinations and testimony.
2. The addition of new paragraphs 2.01 F (5) and 2.22 B (3)(vi), relating to the appointment and compensation of counsel in ancillary matters.
3. Amendments to paragraphs 2.01 F (2) and 2.22 B (3)(iii), relating to the appointment and compensation of counsel for witnesses.

#### APPORTIONMENT OF TRANSCRIPT COSTS

The Conference modified its March 1980 resolution on apportionment of transcript costs (Conf. Rpt., p. 19) to clarify that the policy against routine apportionment of transcript rates applies only to accelerated transcript services. The Committee is studying whether the resolution should be further amended affirmatively to encourage the apportionment of ordinary transcript costs.

#### COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge T. Emmet Clarie, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

#### REDUCTION IN JURY EXPENDITURES

In March, 1986 (Conf. Rpt., p. 17), the Conference requested that the Jury Committee consider ways to reduce jury expenditures.

Upon the recommendation of the Committee and after careful consideration, the Conference resolved that:

- The Congress should ensure that appropriated funds are always available to fulfill the constitutionally-created right to a jury trial.

- Any attempt in the future to impose reductions in jurors' pay or allowances (e.g., parking and mileage reimbursements) will be strongly opposed.
- District courts should enact local rules or standing orders authorizing the imposition of sanctions against litigants who fail to provide timely notice of settlement.

The Conference also agreed not to seek legislation to impose a fee for filing a jury demand under Rule 38 of the Federal Rules of Civil Procedure, and not to bill the Department of Justice for the cost of space used by grand juries.

#### TERMS OF JURY SERVICE

District courts pursue a wide range of practices in establishing their terms of petit jury service, ranging from terms of one month or less in some courts, to as long as one to two years in others. The Conference voted to recommend that all district courts adopt a term of petit jury service of no more than two months, with shorter terms if local circumstances permit.

#### REVISIONS TO PETIT AND GRAND JUROR HANDBOOKS

Upon the recommendation of the Committee, the Conference approved revisions to the handbooks for petit and grand jurors.

#### COMMITTEE ON PACIFIC TERRITORIES

The Committee on Pacific Territories filed a report indicating that the Committee had met with representatives of American Samoa and is considering whether to recommend that certain decisions of the territory's courts be reviewable in Article III courts.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

The Committee to Review Circuit Council Conduct and Disability Orders filed a report indicating that, since its last report, no petitions for review of judicial council orders had been submitted to the Committee.

### **JUDICIAL CONDUCT AND DISABILITY ACT RULES**

On June 30, 1986, the Judicial Conference for the first time invoked the mechanism of 28 U.S.C. 372(c)(8) and certified to the House of Representatives that the impeachment of a judge, Judge Harry E. Claiborne of Nevada, may be warranted. This proceeding led to the suggestion that the Conference should consider prescribing rules respecting notice to judicial officials charged with misconduct or disability, as it is authorized to do by 28 U.S.C. 372(c)(11). No rules have yet been prescribed because of the paucity of experience to date with such proceedings.

The Committee is considering anew whether there is a need for Conference rules and, if appropriate, will recommend suitable rules for Conference consideration in March, 1987.

## **COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION**

Chief Judge Howard T. Markey, Chairman of the Committee on the Bicentennial of the Constitution, presented the report of the Committee.

Judge Markey reported that the Committee is encouraging the formation of circuit and district committees; will judge the entries in a law school essay contest conducted by the National Commission; and will assist in distributing copies of "Equal Justice Under Law" to schools.

### **AD HOC COMMITTEE ON AMERICAN INNS OF COURT**

Chief Judge Howard T. Markey, Chairman of the Ad Hoc Committee on American Inns of Court, presented the report of the Committee.

The Committee was formed by the Executive Committee of the Judicial Conference on October 17, 1983, to plan, monitor, and facilitate the American Inns of Court program. An American Inns of Court Foundation has been created and, to date, 19 Inns have been formed and 30 applications for charters of additional Inns are pending. With the Inns of Court program successfully established, the Conference discharged the Committee, effective November 5, 1986.

#### **AD HOC COMMITTEE ON SENTENCING GUIDELINES**

Judge John D. Butzner, Jr., Chairman of the Ad Hoc Committee on Sentencing Guidelines, presented the report of the Committee.

The Ad Hoc Committee was created in May, 1986, to enable the Conference to react in timely fashion to the guidelines which will be adopted by the United States Sentencing Commission. Since the guidelines will require district and appellate judges to revise drastically current sentencing concepts and procedures, they are obviously of great concern to the judiciary.

Although the details of the new procedures are still under consideration by the Commission, there is no doubt that they will significantly increase the work of probation officers, district judges, and circuit judges. The Conference agreed that it would be appropriate and useful to alert Congress to that fact and to request that Congress provide the additional judicial branch resources, in personnel and funding, necessary to implement the guidelines properly.

To facilitate exchange of ideas on the guidelines, the Sentencing Commission has scheduled a series of regional hearings. The Conference authorized the chief judge of each circuit to designate a circuit judge and a district judge to participate in the nearest hearing at government expense.

Section 235 of the Comprehensive Crime Control Act of 1984 (Public Law 98-473) provides that the guidelines shall not take effect until the expiration of six months after the Sentencing Commission submits them to the Congress.

Congress may accept, modify, or recommit the guidelines to the Commission for revision, or the guidelines may become law if Congress takes no action during the six-month period. The ultimate formulation of the guidelines will therefore not be known until after the Congress acts on the Commission's proposals or until the expiration of the six-month period.

In order to afford the judiciary and the bar the opportunity to prepare for the proper implementation of the guidelines, the Conference agreed to recommend that Congress extend the effective date of the guidelines until six months after they become law.

### **PROCEEDINGS UNDER JUDICIAL CONDUCT AND DISABILITY ACT**

The Conference reviewed a report of the Judicial Council of the Eleventh Circuit concerning Judge Alcee L. Hastings and invited Judge Hastings to submit such written response to the report as he may wish.

### **RESOLUTION**

Noting the retirement of Chief Justice Warren E. Burger, the Conference adopted the following resolution:

### **R E S O L U T I O N**

of the

### **JUDICIAL CONFERENCE OF THE UNITED STATES**

WHEREAS, the Honorable Warren E. Burger, following a distinguished career as practicing lawyer, teacher of law, Assistant Attorney General of the United States, and judge of the Court of Appeals for the District of Columbia, entered on duty as The Chief Justice of the United States on June 12, 1969; and

WHEREAS, the Honorable Warren E. Burger announced his intention to retire from his great office to devote his time and many talents to his role as Chairman of The National Commission on the Bicentennial of the Constitution; and



WHEREAS, the Honorable Warren E. Burger as The Chief Justice of the United States has for seventeen years diligently and tirelessly, above and beyond the call of duty, devoted virtually every waking hour to his judicial duties and to his efforts to improve the administration of Justice in the United States; and

WHEREAS, during his time as Head of the Third Branch of government, that Branch experienced the greatest growth in size and burden in its history, with its personnel more than doubled and the caseloads in its courts almost trebled; and

WHEREAS, his unprecedented and unflagging efforts to improve the legal system have left an unmatched legacy of efficient administration in the federal judiciary despite the constant growth in demand placed on the judicial system; and

WHEREAS, by virtue of the power of his spoken and written word, and the dignified use of his Office, he has played a major and unceasing role in helping to maintain and enhance the glory of the role and rule of law in a free society; and

WHEREAS, his ability to envision future needs, and to conceive of innovative ways to meet them, have stimulated the creation of The National Center for State Courts, the Institute for Court Management, the State-Federal Judicial Councils, the Supreme Court Historical Society, The National Center for Innovation in Corrections, the National Academy for Corrections, the Annual Conference of Representatives of the Three Branches, and the American Inns of Court; and

WHEREAS, throughout his occupation of the Office of the Chief Justice of the United States, the Honorable Warren E. Burger has preserved intact the dignity, honor, and the stature of that Office for transmission to his successor; and

WHEREAS, he has prepared and presided over thirty-four meetings of this Conference with efficiency and fairness to all; and

WHEREAS, as a result of his integrity, wisdom and perseverance, many of his goals and ideals have been realized to the lasting benefit of the American people;

NOW, THEREFORE, the members of the Judicial Conference of the United States, at its meeting duly convened in the city of Washington, District of Columbia, on the 18th and 19th days of September, 1986, do hereby

R E S O L V E

to record their esteem, respect, and affection for the Honorable Warren E. Burger and their appreciation of his contribution to the administration of Justice and to the Nation, and further

R E S O L V E

to express their warmest and heartfelt best wishes to Chief Justice Warren E. Burger for continued achievement and dedicated service to the Nation in a long and fruitful retirement career, and further

R E S O L V E

that this Resolution be recorded in the Proceedings of this Conference, and copies be forwarded to the President of the United States, the Vice President of the United States, the President Pro Tem of the Senate, and the Speaker of the House of Representatives.


**PRETERMISSION OF TERMS  
OF THE COURTS OF APPEALS**

Pursuant to 28 U.S.C. 48, the Conference approved the pretermission of terms of the following United States Courts of Appeals during the calendar year 1987: the Court of Appeals for the Fourth Circuit at Asheville, North Carolina; the Court of Appeals for the Eighth Circuit at Kansas City, Missouri and

Omaha, Nebraska; the Court of Appeals for the Ninth Circuit at Los Angeles, California; and the Court of Appeals for the Tenth Circuit at Wichita, Kansas and Oklahoma City, Oklahoma.

**RELEASE OF CONFERENCE ACTION**

The Conference authorized the immediate release of matters considered at this session where necessary for legislative or administrative action.



L. Ralph Mecham

October 21, 1986

Secretary to the  
Judicial Conference  
of the United States



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