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REPORT  
of the  
PROCEEDINGS OF THE  
JUDICIAL CONFERENCE OF THE  
UNITED STATES

SEPTEMBER 13, 14, 1973

WASHINGTON, D.C.

1973

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REGULAR SESSION  
SEPT. 1973

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

Rowland F. Kirks  
Director

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of the  
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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, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, 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. If the chief judge of the Court of Claims or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. 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, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

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

September 13-14, 1973

The Judicial Conference of the United States convened on September 13, 1973, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Conference continued in session on September 14, 1973. Although in attendance at most of the Conference, the Chief Justice designated Chief Judge Richard H. Chambers to preside. The following members of the Conference were present:

**District of Columbia Circuit :**

Chief Judge David L. Bazelon\*  
Chief Judge John J. Sirica, District of Columbia

**First Circuit :**

Chief Judge Frank M. Coffin  
Chief Judge Andrew A. Caffrey, District of Massachusetts

**Second Circuit :**

Chief Judge Irving R. Kaufman  
Chief Judge David N. Edelstein, Southern District of New York

**Third Circuit :**

Chief Judge Collins J. Seitz  
Chief Judge Michael H. Sheridan, Middle District of Pennsylvania

**Fourth Circuit :**

Chief Judge Clement F. Haynsworth, Jr.\*\*  
Judge Charles E. Simons, Jr., District of South Carolina

**Fifth Circuit :**

Chief Judge John R. Brown  
Judge E. Gordon West, Middle District of Louisiana

**Sixth Circuit :**

Chief Judge Harry Phillips  
Judge Robert L. Taylor, Eastern District of Tennessee

**Seventh Circuit :**

Chief Judge Luther M. Swygert  
Judge James E. Doyle, Western District of Wisconsin

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\*On designation of the Chief Justice, Judge Edward A. Tamm attended the Conference in place of Chief Judge Bazelon.

\*\*On designation of the Chief Justice, Judge Harrison L. Winter attended the Conference in place of Chief Judge Haynsworth.

## Eighth Circuit :

Chief Judge Pat Mehaffy

Chief Judge Oren Harris, Western District of Arkansas

## Ninth Circuit :

Chief Judge Richard H. Chambers

Judge Jesse W. Curtis, Central District of California

## Tenth Circuit :

Chief Judge David T. Lewis

Chief Judge Frederick A. Daugherty, Western District of Oklahoma

## Court of Claims :

Chief Judge Wilson Cowen

## Court of Customs and Patent Appeals :

Chief Judge Howard T. Markey

Senior Circuit Judges Albert B. Maris, Elbert P. Tuttle; Circuit Judges Robert A. Ainsworth, Jr., Ruggero J. Aldisert, Edward A. Tamm; Senior District Judges Roy W. Harper, Arthur J. Stanley, Jr., Roszel C. Thomsen, Carl A. Weinman; and District Judges Walter E. Hoffman, Charles M. Metzner, Edward Weinfeld, Albert C. Wollenberg and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

The Honorable Elliot L. Richardson, Attorney General of the United States, addressed the Conference on matters of mutual concern to the judiciary and the Department of Justice.

Senator Roman L. Hruska, Chairman, and Professor A. Leo Levin, Executive Director of the Commission on Revision of the Federal Court Appellate System, addressed the Conference and reported on the progress of the work of the Commission.

The Honorable Alfred P. Murrah, Director of the Federal Judicial Center and Chairman of the Panel on Multidistrict Litigation, reported to the Conference and submitted written reports on the activities of the Center and of the Panel.

Mr. Mark Cannon, Administrative Assistant to the Chief Justice, Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, and Mr. William E. Foley, Deputy Director, attended all of the sessions of the Conference.

## RESOLUTIONS

The Conference noted the one hundredth anniversary of the birth of Senior Judge Joseph W. Woodrough who was appointed a United States district judge on April 3, 1916, and a judge of the Court of Appeals for the Eighth Circuit on April 12, 1933.

The Conference also noted that Judge Albert B. Maris had requested the Chief Justice to relieve him of his duties as Chairman of the Committee on Rules of Practice and Procedure on October 1, 1973, and adopted the following resolution commending Judge Maris for his service to the Judicial Conference:

The Judicial Conference of the United States takes note of the retirement of Senior Judge Albert B. Maris as Chairman of the standing Committee of the Conference on Rules of Practice and Procedure after fifteen years of dedicated service. Judge Maris has been Chairman of the Committee since its inception in 1958. Under his wise leadership the Committee has modernized all aspects of practice and procedure in civil, criminal, admiralty and bankruptcy cases and has standardized appellate practice and procedure and developed a comprehensive set of Rules of Evidence governing the trial of cases in the district courts.

Judge Maris has not only presided over the deliberations of the standing Committee but has participated extensively in the discussions at advisory committee meetings which he has faithfully attended. His wise counsel on difficult problems has exerted a wholesome influence on the development of rules and he has never ceased to support affirmative action to provide rules to make the judicial system operate more effectively. Further, he has been a dedicated and effective spokesman for the cause of improved procedures for the administration of justice. No man has given more of his magnificent abilities to this important work nor has anyone accomplished as much.

The Conference desires to honor Judge Maris, not only for his outstanding contribution to the field of practice and procedure, but also for his dedication to the work of the Conference for more than three decades. He has assisted in the work of numerous committees of the Conference and from 1944 until 1967 he served as Chairman of the Conference Committee on Revision of the Laws, including the revision of the Judicial Code. He assisted in the formulation of the Codes of the Virgin Islands and was an advisor to the Governments of Guam, American Samoa and the Trust Territory of the Pacific Islands in the reorganization of its judiciary. He was a member of the United States Advisory Committee on International Rules of Judicial Procedure, 1959-1963, and a member of the Advisory Committee to the Secretary of State on Private International Law, 1964-1967.

The United States Supreme Court appointed Judge Maris Special Master to determine a dispute between Illinois and the other Lake states as to the diversion of water by Chicago from Lake Michigan. Judge Maris filed a massive report which was approved by the Supreme Court. Judge Maris is presently acting as Special Master by Supreme Court appointment to determine whether the federal government or the states have proprietary right to exploit the seabed and the subsoil of the continental shelf beyond the three-mile limit on the Atlantic Coast.

Beyond his skilled leadership on behalf of the Conference and its committees, his never-failing kindness, friendliness, gentleness and tact are well known to all of us. He epitomizes the wise judge. We wish him many more years of good health and service as he approaches his eightieth birthday.

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

The Director of the Administrative Office, Mr. Kirks, advised the Conference that while the filings in the courts of appeals maintained the upward trend which began in 1958, there was for the first time since 1960 a drop in the total civil and criminal case filings in the district courts. Elaborating on the courts of appeals Mr. Kirks said that filings increased eight percent while terminations rose over nine percent in 1973. The pending caseload at the end of the year in all of the courts of appeals reached 10,456, the highest ever reported.

Civil case filings in the district courts actually increased 2.5 percent but the substantial decrease was in criminal filings, especially in immigration cases and Selective Service Act violations.

Mr. Kirks also noted a decline in bankruptcy cases but a continued increase in the caseloads of the probation service. In the second full year of the operation of the magistrates system more than 250,000 separate items of judicial business were disposed of.

Mr. Kirks also submitted to the Conference his first report on progress made in the operation of district court plans under Rule 50(b) of the Federal Rules of Criminal Procedure. Since the rule was implemented fully only in January 1973, the report was substantially confined to a six-month period. He noted that 28 of the 94 district court plans had adopted time limits suggested in the model plan disseminated at the direction of the Conference virtually without change, whereas other district plans evidence considerable variations in time lag limits. The time limits for trial for defendants in custody range from 45 days to 120 days.

COMMITTEE ON THE BUDGET

Judge Carl A. Weinman, Chairman, presented the report of the Committee on the Budget.

Judge Weinman stated that for fiscal year 1973 the sum of \$186,010,000 was available for the operation of the courts, the Administrative Office and the Federal Judicial Center. The actual cost of operations was \$183,152,000. Judge Weinman noted that the appropriation for salaries and expenses of United States magistrates was not fully utilized due in part to delays in the recruitment and appointment of magistrates and their supporting personnel.

The budget estimates submitted to the Congress for fiscal year 1974, exclusive of the Supreme Court, were in the amount of \$199,243,000. Judge Weinman advised the Conference that the 1974 appropriation bill was at the time still before the Senate Appropriations Committee. He said that supplemental appropriations for fiscal year 1974 were being requested to take care of salary increases granted in January 1973 and projected for the fall of 1973. The Conference authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations for fiscal year 1974 as may be necessary.

The Committee requested and the Conference approved estimates for fiscal year 1975 in the sum of \$213,031,000. In addition, the Conference directed the Committee to seek funds for the establishment of ten positions of deputy circuit executive in ten of the eleven circuits at a salary of \$30,000 per year and directed the Committee to seek such funds as may be necessary to implement the Conference action transferring to the Administrative Office the inspection function of the federal courts now performed by the Department of Justice (see report of the Committee on Court Administration, p. 50).

The following is a summary of the requests for additional personnel and major items of expense included in the budget for fiscal year 1975:

*Court of Customs and Patent Appeals (\$793,000)*

Provision has been made for the employment of assistant technical advisors for the judges.

*Court of Claims (\$2,252,000)*

Includes a request for a secretary for senior (retired) commissioners recalled to serve the court pursuant to Public Law 92-375.

On Motion the Conference authorized an amendment to the budget for the Court of Claims to include funds for expenses to be incurred in the disposition of claims under Section 20, Public Law 92-203, the Alaskan Native Claims Settlement Act.

*Salaries of Judges (\$27,975,000)*

Provides for an anticipated increase in senior judges.

*Salaries of Supporting Personnel (\$9,908,300)*

Provision has been made for 742 new positions, including 12 deputy clerks for the courts of appeals, 118 deputy clerks for the district courts, 320 probation officers, and 199 clerk-stenographers for the Probation Service. The estimate also includes funds for salary adjustments for court reporters based on new classification standards approved by the Judicial Conference in March 1971.

*Representation by Court-Appointed Counsel and Operation of Defender Organizations (\$15,500,000)*

The Conference approved the budget estimates for the operation of the respective Federal public defender offices. Funds otherwise available for panel attorneys are to be diverted to the operation of defender organizations and, therefore, no increase in budgetary requirements is anticipated.

*Fees of Jurors (\$18,500,000)*

No increase requested. Any increase in petit jury trials and trial days is expected to be offset by savings resulting from the use of six-man juries in civil trials and improvements in the utilization of jurors.

*Travel and Miscellaneous Expenses (\$15,091,000)*

The sum of \$1,677,000 was included to cover expenses relating to requests for new personnel. Provisions also have been made for improvements in telephone services, increases in the rental of photocopy equipment, the procurement of lawbooks, and other miscellaneous expenses.

*Salaries and Expenses, U.S. Magistrates (\$8,565,000)*

Provisions have been made for the additional magistrates, conversion of some part-time magistrates to full-time, and salary adjustments approved by the Judicial Conference in April 1973 and September 1973.

*Salaries of Referees (\$6,975,000)*

The amount approved is \$16,000 below the amount available in fiscal year 1974 to take into account the discontinuance of a part-time referee position at Johnstown, Pa.

*Expenses of Referees (\$13,353,000)*

The estimate does not provide for any additional clerical personnel for referees in view of the sharp decline in bankruptcy case

filings. Provisions, however, have been made for increases in the cost of telephone services and for the procurement of furniture and equipment.

#### *Rental of Space*

The Conference also authorized the inclusion of a separate line item in the budget of approximately \$78,000,000 to reimburse the General Services Administration for the rental of office space, alterations, and other related services for the courts (including the Customs Court), the Federal Judicial Center, and the Administrative Office as required by Public Law 92-313. It was noted that the Congress has under consideration a bill which would exempt the judiciary from payment of these charges.

### COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Judge Robert A. Ainsworth, Jr., presented the Committee's report.

#### UNIFORM ADMISSIONS AND DISCIPLINE OF ATTORNEYS

Judge Ainsworth advised that there is at present no great disparity in the requirements for admission to practice in the several district courts, either for permanent admission or by way of pro hac vice admission, nor is there general dissatisfaction with the present practice and procedure and, accordingly, the Committee recommended against the promulgation of any uniform rule for admission to the bar of the courts of the United States.

With respect to discipline, however, there is no uniformity of practice. A survey among the district courts shows that only three avail themselves of the services of the United States Attorneys in their districts to investigate unethical conduct or other conduct unbecoming a member of the bar who is subject to disciplinary action. In a majority of instances state bar grievance committees and procedures are utilized. In other instances, special committees of the bar are appointed. These committees normally lack adequate funding or personnel to make proper inquiry. The Conference, therefore, on recommendation of the Committee approved for transmittal to the Congress a draft bill which would result in regularizing disciplinary procedures in all federal courts by permitting a court to request the Department of Justice, through the Federal

Bureau of Investigation, to investigate charges that a member of the bar of a court of the United States has been guilty of unethical conduct or other conduct unbecoming a member of the bar and is subject to disciplinary action. The bill would further authorize the Attorney General to prosecute on request of the court formal disciplinary proceedings against a member of the bar of a court of the United States. If the court is of the view that it would be improper for the Attorney General to prosecute these proceedings, the court may appoint a special prosecutor for this purpose.

#### CASES

##### ARBITRATION IN EQUAL EMPLOYMENT OPPORTUNITY COMMISSION CASES

The American Arbitration Association requested endorsement by the Conference of a proposal under the terms of which some 30 persons would be trained periodically by the National Center for Dispute Settlements, hopefully thereafter to be appointed by district judges, to serve as masters under Rule 53 FRCP in E.E.O.C. discrimination cases. The Conference was advised that such endorsement was being sought to permit the Association to solicit funds for the proposed training program. The Equal Employment Opportunity Commission which originally endorsed the Association's proposal has now expressed serious misgivings, stating that the appointment of masters would be calculated to cause delay in the disposition of discrimination cases and that there was no ready solution to the question of payment of masters' fees. In view of this fact, the Conference disapproved the proposal of the American Arbitration Association.

##### FILING FEES IN FEDERAL COURTS

At the April 1973 session (Conf. Rept., p. 4) the Conference approved the recommendation of the Congress which will place authority to fix all fees in the federal courts in the Judicial Conference. Because of the long period of years in which no changes have been made in any fees in the federal courts, the Conference decided to exercise the authority it now has and adopted the following fee changes to be effective November 1, 1973:

A. *Fees to be Paid to Clerks of the Courts of Appeals* (except that no fees are to be charged on behalf of the United States)

1. For docketing a case on appeal or review, or docketing any other proceeding, \$50.00. A separate fee shall be paid by each party filing a notice of appeal in the

district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. 1292(b), unless the appeal is allowed.

2. For every search of the records of the court and certifying the results of the same, \$2.00.

3. For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, \$1.00.

4. For making a typed copy of any record or paper, \$1.00 per page of 250 words or fraction thereof. For reproducing any record or paper (by any means other than retyping), 50 cents per page. These fees do not include certification.

5. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, \$1.00 per page or fraction thereof. This fee is in addition to the fee for certification.

The Conference agreed that nothing in the foregoing shall be construed to prevent the clerk of any court of appeals with the approval of the court from charging and collecting a fee for each copy of an opinion as shall be fixed by the court.

*B. Fees to be Charged for Service Performed by Clerks of the District Courts*  
(except that no fees are to be charged for services rendered on behalf of the United States)

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, \$1.00. This fee is applicable to the registration of a judgment, 28 U.S.C. 1963; the filing of a petition to perpetuate testimony, Rule 27(a), F.R. Civ. P.; the filing of papers by trustees under 28 U.S.C. 754; and the filing of letters rogatory or letters of request.

2. For filing a requisition for and certifying the results of a search of the records of the court for judgments, decrees, other instruments, suits pending, and bankruptcy proceedings, \$2.00 for each name searched.

3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$1.00.

4. For making a typed copy of any record or paper, except a copy of a writ for service on a party in a suit or action covered in 28 U.S.C. 1914(a), \$1.00 per page of 250 words or fraction thereof. For reproducing any record or paper (by any means other than retyping), 50 cents per page. These fees do not include certification. With respect to copies of opinions of the district courts, the price is to be fixed by the court by local rule or order at 25 cents a page but not less than \$1.00 per opinion.

5. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, \$1.00 per page or fraction thereof. This fee is in addition to the fee for certification.

6. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Bankruptcy Act, in excess of 30 notices per set, 25 cents for each additional notice on the first 10,000 and 15 cents per notice on the balance, provided that in no event shall this charge exceed 25 percent of the net proceeds realized in asset cases.

7. For admission of attorneys to practice, \$10.00 each including a certificate of admission. For a duplicate certificate of admission, \$2.00.

## TERRITORIAL JUDGES

The Conference approved H.R. 6963, 93rd Congress, providing a formula under the terms of which the total per annum rate of salary or proportion of salary payable to a judge of a territory or possession of the United States under Section 373 of Title 28, United States Code, shall be increased periodically by one percent, plus the present percent rise in the Consumer Price Index. The proposed bill includes judges who retired under the provisions of Section 371(a) of Title 28, United States Code, and provides that in no case shall the salary increased by this bill exceed the salary such justice or judge would receive were he still in active service. These two latter provisions meet the objections made by the Conference to similar legislation in the 92nd Congress (Conf. Rept., October 1972, p. 34).

## STATE COURT ASSISTANCE

The Conference voted its disapproval of S. 1629 which provides for the creation within the Federal Judicial Center of a Division of State Court Assistance, the purpose of which is to assist state and local governments in studying improvements in the administration of state courts. The Conference noted that the Board of the Federal Judicial Center had likewise disapproved such legislation in principle.

## PLACES OF HOLDING COURT

The Conference voted its disapproval of S. 1504, a bill to provide for the holding of court at Muskegon in the Western District of Michigan, although it had the approval of the District Court and of the Judicial Council of the Sixth Circuit (when court facilities are made available at no expense to the government). The Conference was of the view, however, that no information as to the reasons for the proposal or the need for designating Muskegon had been received and further that Muskegon was a relatively short distance from Grand Rapids, an authorized place of holding court.

## ADDITIONAL JUDGESHIPS

The Conference noted that requests for comment had been received on a number of bills to provide for additional district judge-

ships since the submission of the 1972 quadrennial survey. The Conference reaffirmed its previous policy to recommend additional district judgeships to the Congress on a quadrennial basis and in the interim period to make recommendations for new judgeships only when these can be justified on an emergency basis.

#### SUPPORTING PERSONNEL

The Conference approved the following recommendations relating to supporting personnel:

1. That 32 additional positions be approved for the clerks' offices of the courts of appeals. This will permit sufficient deputy clerks for the courts of appeals to adjust the ratio of deputy clerks to the filings projected for fiscal year 1975 to 1 to 75.
2. That sufficient additional positions be approved for the clerks' office of the district courts to adjust the ratio of deputy clerks to civil and criminal filings projected for the various courts for fiscal year 1975 to 1 to 100 for the district courts.
3. That the fiscal year 1975 requirements for probation officers and clerk-stenographers be the total of the unfulfilled requests for fiscal year 1974 and the new requirements established for fiscal year 1975.
4. That there be approved one assistant librarian for the Third Circuit (in lieu of the present part-time assistant librarian).
5. That there be approved seven pool law clerks and six pool secretaries for the Ninth Circuit Court of Appeals.
6. That there be approved two supervisory positions, classifications not to exceed grade JSP-13 and JSP-12, respectively, for middle managers in clerks' offices of the courts of appeals based upon standards which shall be promulgated by the Director of the Administrative Office.

#### EN BANC HEARINGS

The Conference approved a proposal for legislation to amend Section 46(c) of Title 28, United States Code, and authorized the transmittal thereof to the Congress. The amendment would make clear that a majority of the judges in regular active service who are entitled to vote should be sufficient to *en banc* a case. Under the present statute, there must be a vote of a majority of the circuit judges in regular active service which has been construed to mean that if there is a vacancy a majority of the judges actually on the court will suffice but if a judge disqualified himself there must still be a majority of the entire membership voting for an *en banc* sitting.

## DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS

The Conference reaffirmed in principle its support of S. 1876, 93rd Congress, an updated version of the same numbered bill in the previous Congress embodying the recommendations of the American Law Institute on the division of jurisdiction between state and federal courts. The Conference believes that the changes which have been made do not deviate from the principal recommendations of the original bill and the American Law Institute's proposals and on the whole reaffirmed the position that these proposals are well conceived, workable and based upon acceptable compromise of variant views of the bench and bar.

## LEGISLATION

The Conference considered three bills relating in large measure to consumer matters and agreed that they involved primarily legislative policy upon which the Judicial Conference should not comment, except to urge the Congress to consider the impact upon the federal courts which such legislation would have:

1. H.R. 839, to amend the Federal Trade Commission Act to extend protection against fraudulent or deceptive practices, condemned by the Act, to consumers through civil actions, and to provide for class actions for acts in defraud of consumers;
2. H.R. 1848, and H.R. 1652, to require that certain processed or packaged consumer products be labeled with certain information; and
3. S. 770, to establish an independent agency to be known as the Intergovernmental Office of Consumers' Counsel to represent the consumers of the nation before federal and state regulatory agencies; provides grants and other federal assistance to state and local governments to establish and operate consumers' counsel; and to improve methods of obtaining and disseminating information with respect to the operations of regulated companies of interest to the federal government and to other consumers.

The Conference also considered and disapproved in its entirety H.R. 4900 which would amend Title 28 of the United States Code to provide for aggregation of claims in determining jurisdictional amount in controversy.

## EXAMINATION OF COURT OFFICES

The Conference examined a thorough study which had been conducted by an ad hoc group with the Committee on Court Administration of the operations of the Office of Judicial Examinations of

the Department of Justice insofar as these examinations include offices of clerks of court, magistrates, probation officers, referees and trustees in bankruptcy, court reporters and judicial personnel. The report noted that examinations of court offices varied from 3.8 to 6 years; that when a report is completed it is submitted to the Administrative Office which in turn forwards the report to the chief judge of the circuit or district involved and that there is no follow-up system to determine whether effective corrective action is taken.

The Committee report further noted that there would be distinct advantages to transferring these examinations to the Administrative Office which already devotes a substantial amount of time and personnel in day-to-day dealings with the clerks' offices and other judicial offices. These contacts relate to the amount and training of personnel, salaries, volume and flow of work, ratio of personnel to filings, budget estimates, improvement and adoption of uniform forms, dockets, administrative procedures, purchase and use of business machines and similar equipment, as well as the periodic review of clerks' records for the purpose of reporting status concerning filings, determinations and types of cases, trials per judgeship, length of trials, interim between issue and trial, juror utilization and juror management and usage.

The Administrative Office works closely with the clerks with reference to court-appointed counsel, with the federal public defenders, probation officers, bankruptcy courts and the magistrates, as well as the Federal Judicial Center in undertaking surveys and studies in all of these areas and in the training of personnel.

The Conference agrees with the Committee's conclusion that if inspections and examinations were made by inspectors from the Administrative Office, they would be more accurately attuned to the day-to-day problems and requirements of the federal judiciary; also implementation of recommendations could be more closely coordinated and achieved. This would result in building up a reservoir of experience, information and insight concerning the functions of the courts that could be drawn upon in many other ways and could strengthen the capability and understanding of that office. The Conference sees no validity in the argument that it would be undesirable for the Administrative Office to inspect and audit individual courts inasmuch as the Administrative Office does not act as

the agent of a particular court but as the representative of the Judicial Conference. The Conference further believes that the cost of the transfer of such functions to the Administrative Office would not be higher than the present costs. The Committee on the Budget was, therefore, requested to secure appropriations to enable the Administrative Office to commence and discharge this examination and inspection function for fiscal year 1975.

#### DEPUTY CIRCUIT EXECUTIVE

The Committee, by mail vote, approved a motion on the floor of the Conference to provide for an assistant for each of the circuit executives at rates of compensation to be determined by the respective circuit councils, not to exceed \$30,000 per annum. The Subcommittee on Supporting Personnel had likewise approved the motion.

The Budget Committee was instructed to seek funds for this purpose in the 1975 appropriation (see p. 41).

#### RETIREMENT OF CHIEF JUDGES

At the October 1971 session of the Judicial Conference (Conf. Rept., p. 77), the Conference noted that Section 3 of Public Law 85-593 provided in part that the amendment of Section 136, Title 28, United States Code, relating to the office of chief judge of the district would not be effective with respect to any district having two judges in regular active service so long as the district judge holding the office of chief judge of any such district on August 6, 1958, continued to hold such a position.

The Conference reiterated the view expressed in 1971 that this legislative proviso had outlived its usefulness and directed the Administrative Office to forward to the Congress a proposed bill to carry out the views of the Conference.

#### REVIEW COMMITTEE

Judge Tamm advised the Conference that as of its meeting on August 13, 1973, the Committee had reviewed the reports of 592 judges, 168 referees in bankruptcy and 87 magistrates. He said that at that time 30 judges, 14 referees in bankruptcy and one magistrate had not filed. At the time of the Conference, September 13, 1973, there were still 17 judges, four referees in bankruptcy and one magistrate who had not filed reports for the six-

month period ending June 30, 1973, and, therefore, pursuant to the resolution of the Conference at its March 1971 session (Conf. Rept., p. 24), and subsequently amended to include full-time referees in bankruptcy and magistrates, they are as follows:

Judges who have not, as of the convening of the Judicial Conference on September 13, 1973, filed Reports of Extra-Judicial Income for the Period January 1 to June 30, 1973:\*

*Second Circuit:*

\*\*Edmund L. Palmieri  
U.S. Senior District Judge  
Sylvester J. Ryan  
U.S. Senior District Judge  
\*\*Edward Weinfeld  
U.S. District Judge  
\*\*Inzer B. Wyatt  
U.S. District Judge

*Fifth Circuit:*

Gerald B. Tjoflat  
U.S. District Judge

*Sixth Circuit:*

\*\*Don J. Young  
U.S. District Judge  
\*\*Frank J. Battisti  
U.S. District Chief Judge

*Ninth Circuit:*

Roger T. Foley  
U.S. Senior District Judge

*Ninth Circuit—Continued*

Robert F. Peckham  
U.S. District Judge  
\*\*William M. Byrne  
U.S. Senior District Judge  
\*\*Walter Early Craig  
U.S. District Chief Judge  
\*\*Warren J. Ferguson  
U.S. District Judge  
\*\*Peirson M. Hall  
U.S. Senior District Judge  
\*\*William D. Murray  
U.S. Senior District Judge  
\*\*Harry Pregerson  
U.S. District Judge  
\*\*Manuel L. Real  
U.S. District Judge

*Tenth Circuit:*

Stephen S. Chandler  
U.S. District Judge

Referees in Bankruptcy who have not, as of the convening of the Judicial Conference on September 13, 1973, filed Reports of Extra-Judicial Income for the Period January 1 to June 30, 1973:

*First Circuit:*

Thomas J. Lawless  
Boston, Massachusetts

*Sixth Circuit:*

David H. Patton  
Detroit, Michigan

*Seventh Circuit:*

Russell H. Nehrig  
Gary, Indiana

*Eighth Circuit:*

John J. Connelly  
St. Paul, Minnesota

Magistrate who has not as of the convening of the Judicial Conference on September 13, 1973, filed a Report of Extra-Judicial Income for the Period January 1 to June 30, 1973:

*Second Circuit:*

Charles J. Hartenstine, Jr.  
New York City, New York

\*Although most of the judges of the United States Customs Court have not filed copies of the Extra-Judicial Income Report form with the Committee, Chief Judge Boe of that court has advised the Director of the Administrative Office that all judges of that court have filed report forms with him and with the clerk of that court, where they "will be open to public inspection."

\*\*Judges declining to file as a "matter of principle."

Judge Tamm advised the Conference that the adoption at the April 1973 session of the Code of Judicial Conduct with some modifications created new problems of interpretation on which the views of the Advisory Committee on Judicial Activities should be solicited. After some discussion, it was agreed that the Review Committee should present these problems directly to the Advisory Committee.

#### JOINT COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT

Judge Elbert P. Tuttle, Co-Chairman with Judge Edward A. Tamm of the Joint Committee on Standards of Judicial Conduct, presented the Committee's report.

The Joint Committee was authorized by the Judicial Conference at the April 1972 session (Conf. Rept., pp. 23-24). The Committee reported to the April 1973 session of the Conference (Conf., Rept. pp. 9-11). At that time the Committee was directed by the Conference to give further study to Canon 7 of the American Bar Association's Code of Judicial Conduct insofar as Canon 7 relates uniquely to federal judges. In response to this mandate, the Joint Committee recommended and the Conference approved Canon 7, to read as follows:

##### Canon 7

#### A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

##### A. Political conduct in general

- (1) A judge should not:
  - (a) Act as a leader or hold any office in a political organization;
  - (b) Make speeches for a political organization or candidate, or publicly endorse a candidate for public office;
  - (c) Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings or purchase tickets for political party dinners or other functions;
- (2) A judge should resign his office when he becomes a candidate either in a primary or in a general election for any office;
- (3) A judge should not engage in any other political activity; provided, however, this should not prevent a judge from engaging in the activities described in Canon 4.

Judge Tuttle advised the Conference that its views had been sought by appropriate committees of the Congress on four bills dealing generally with judicial ethics, as follows:

H.R. 95, a bill "to provide a code of ethics for federal judges, including Supreme Court Justices, by amending chapter 11 of title 18, United States Code";

H.R. 4721, a bill "to amend title 28, United States Code, to prohibit federal judges from receiving compensation other than for the performance of their judicial duties, except in certain instances, and to provide for the disclosure of certain financial information";

H.R. 1868, a bill "requiring personal financial disclosure, and promoting public confidence in the legislative, executive, and judicial branches of the Government of the United States";

H.R. 606, a bill "to require judges of courts of the United States to file confidential financial statements with the Comptroller General of the United States, and for other purposes."

The Conference agreed, aside from what may be a basic violation of the doctrine of the separation of powers, that it had already through the adoption and implementation of various resolutions and the formal adoption of a Code of Judicial Conduct effectively acted in substantially all areas that are the subject matter of the proposed bills and, consequently, voted its disapproval of each bill.

Judge Tuttle requested the Conference and received its authority to have the Director of the Administrative Office of the United States Courts prepare and issue to all judges, referees in bankruptcy and magistrates in looseleaf binder form a volume to be entitled "Code of Judicial Conduct for United States Judges" which will contain the Code as adopted by the Conference at its April 1973 meeting and Canon 7 as approved at this meeting. This volume will contain in a well-indexed and cross-indexed form all of the materials included in the report of the Joint Committee as finally adopted by the Conference, together with such formal numbered opinions as have been promulgated by the Advisory Committee on Judicial Activities as may still be applicable.

#### ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman of the Advisory Committee on Judicial Activities, presented the report of the Committee.

Judge Tuttle reported that no formal opinions had been issued since the April session of the Conference. He advised, however, that the Committee had authorized him to call to the attention of all judges the modifications which Canon 3-D of the Code of Judicial Conduct adopted by the Conference in April 1973 had made in the procedure recommended by Opinion No. 20 of the Advisory Committee.

Opinion No. 20 as originally written required that if a judge or a member of his family residing in his household owned any stock in

a corporation which is a party to a case before him, he should notify all counsel promptly and refuse to participate in the case unless counsel for all the parties willingly consent that he do so. The adoption of Canon 3-D requires a change in this procedure, namely, that a judge in a situation such as that set forth in Opinion No. 20 shall obtain the written consent of the parties as well as of the lawyers. The Committee construes this to require a written notice to the clerk for each party and counsel.

#### COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge Roy W. Harper, Chairman, presented the report of the Committee on Intercircuit Assignments covering the period from March 1, 1973, to August 1, 1973.

During this period the Committee recommended 30 assignments to be undertaken by 25 judges. Of this number, seven are senior circuit judges, two are active circuit judges, three are district judges in active status and ten are senior district judges. One retired Supreme Court Justice, and one active and one senior judge of the Customs Court participated in five assignments.

Seven senior circuit judges, two senior district judges and one retired Supreme Court Justice carried out 12 of the 14 assignments to the circuit courts of appeals which were recommended during this period. Of the 16 assignments to the district courts, nine senior district judges each carried out one assignment, three active district judges carried out four assignments, one active judge of the Customs Court carried out one assignment while a senior judge of the Customs Court carried out the remaining two assignments.

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

Judge Arthur J. Stanley, Jr., Chairman, presented the Committee's report.

##### SIZE OF JURIES

The Judicial Conference on two prior occasions has recommended legislation to provide for six-person juries in civil trials and to reduce the number of peremptory challenges from three to two (Conf. Rept., April 1972, p. 5; Conf. Rept., April 1973, p. 13). H.R. 8285, 93rd Congress, carries out the recommendation of the Conference as

does S. 2057, 93rd Congress. The Conference after studying both legislative proposals expressed its preference for S. 2057 because it included two features not contained in H.R. 8285, namely—(a) a provision preserving the principle of unanimity unless the parties stipulate otherwise and (b) a provision authorizing the court to direct that several parties with similar interests exercise only the peremptory challenges of a single party.

The Conference also considered S. 288, 93rd Congress, which provides for juries of six persons in criminal as well as civil trials and again expressed the view that reduction in jury size be made only in the civil area.

#### AUTOMATED JURY SELECTION

Twenty-eight districts are now or soon will be using automated systems for selecting jurors in accordance with prior recommendations of the Conference. The Conference noted that two areas of concern have arisen in relation to the defining of the automated system—(a) the public drawing requirements of 28 U.S.C. 1864(a) and 1866(a), and (b) the juror summons form. The Conference adopted a recommendation of the Committee to propose legislation to amend the definition section of the Jury Selection and Service Act to insure the continued proper functioning of the automated system. The proposed bill would add a new subsection (j) to the Act so as to define the meaning of the term “publicly draw” to mean a drawing in a nonsecretive manner. This is necessary because computer operations of the General Services Administration are established on a regional basis and the public drawing of names for jury service must be made at those regional headquarters which in many cases are outside of the affected district. The proposed definition would clarify that reasonable public notice of the drawing must be given in the district whose names are being drawn but the actual drawing does not have to occur in the district. The proposed definition would give flexibility so that the Conference can issue governing regulations.

The proposed bill would also add a new subsection (k) defining the juror summons to meet the requirements necessitated by automated processing. At present juror summonses are commonly sent without the seal of the court or the clerk's or the jury commissioner's signature on the form because there is no way to add

these features manually without defeating the work-saving advantages of automation. The proposed new definition would permit the summons to have a seal affixed by some mechanical method and to have the clerk's name affixed automatically by some facsimile or printed method. The Conference authorized the transmission of these proposals to the Congress.

#### PROTECTION OF JUROR'S EMPLOYMENT

H.R. 10689, 92nd Congress, introduced at the recommendation of the Judicial Conference, would have provided a criminal penalty for discharging an employee by reason of his jury service or attendance in connection with such service. At a committee hearing on this bill several members of the Congress indicated that the legislation should be drafted with a civil rather than a criminal penalty. Since the one purpose of the Act is that all citizens have an unfettered opportunity to be considered for and to perform jury service when selected, the Conference approved a recommendation of a draft bill which would provide for injunctive relief and a civil penalty and directed the Administrative Office to transmit this proposed legislation to the Congress.

#### JUROR UTILIZATION

The Conference was advised that overall juror utilization efficiency has been made. The Committee reported to the Conference that three Florida districts have conducted workshops in recent months which were highly successful in creating an awareness of the means of improving juror utilization. The Western District of Pennsylvania has also conducted a successful workshop and others are contemplated.

#### RESOLUTION

The Committee noted that Judge Irving R. Kaufman who had served as its Chairman since 1966 had at his own request relinquished the chairmanship of the Committee by reason of added duties since elevation to the position of Chief Judge of the Second Circuit. The Committee reported to the Conference the following resolution which it had adopted:

On this, the occasion of the first meeting of the Committee on the Operation of the Jury System since Judge Irving R. Kaufman relinquished the chairman-

ship of the Committee, the Committee expresses its high esteem and thanks for the effective manner in which Judge Kaufman conducted the affairs of the Committee during his chairmanship.

During Judge Kaufman's incumbency, and due primarily to his effective leadership, the Committee exerted a major impact on the improvement of the federal jury system. The principle of random selection of jurors in a manner that would produce a fair cross section of the community in the district or division in which court is held was endorsed by the Judicial Conference. The "key man" system of federal juror selection with its wide-spread criticism was brought to an end. Under Judge Kaufman's guidance, the Committee drafted the landmark law on the federal jury system, which was thereafter enacted by the Congress as the Jury Selection and Service Act of 1968.

In the wake of *Sheppard v. Maxwell*, 384 U.S. 333 (1966), studies of the Committee led to the adoption of the Judicial Conference's Free Press—Fair Trial Guidelines. Other studies under Judge Kaufman's leadership resulted in the automation of jury selection processes in the larger court centers, guidelines for the more effective utilization of jurors, but more importantly, an awakening to the need for more efficient utilization of jurors.

We, the members of the Committee on the Operation of the Jury System, take pride in having had a part with Judge Kaufman in the reformation of the federal jury system and its preservation as a fundamental institution of democracy.

The Committee gratefully thanks Judge Kaufman for his dedicated leadership and the inspiration he has imparted to each of us in our endeavors to continue to improve the federal jury system.

This Resolution shall be incorporated in the Minutes of this Committee and in its report to the Judicial Conference and also shall be transmitted to Judge Kaufman.

### COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

The report of the Committee to Implement the Criminal Justice Act was presented by Judge Roszel C. Thomsen, Chairman.

### APPOINTMENTS AND PAYMENTS

The Conference received and authorized the release of the report of the Director of the Administrative Office and noted that for fiscal year ending June 30, 1973, 56,000 defendants had been assigned counsel under the Criminal Justice Act. In the same period \$3,893,000 was paid to counsel. The report showed that for the first time the average cost per case handled by a federal public defender is less than that of a case assigned to private counsel. The report of the Administrative Office shows that the average cost of a case assigned to a federal public defender in fiscal year 1973 was \$274, the average cost of an assigned-counsel case was projected at \$300 and the average cost of a case handled by a community defender

organization \$323. The report also pointed out that in addition to the cost factor, federal public defenders are performing valuable services for and on behalf of the courts in coordinating appointments, in advising and counselling private attorneys and in other ways not reflected in the statistics. The sum of \$17,472,000 was appropriated by the Congress for fiscal year 1973 of which \$1,500,000 was for the liquidation of obligations incurred in prior years.

#### FEDERAL PUBLIC DEFENDERS

Judge Thomsen reported that in addition to the eight federal public defender offices which were operational during fiscal year 1973, three additional public defender offices were opened in August 1973, at Cleveland in the Northern District of Ohio, Newark in the District of New Jersey and Wichita in the District of Kansas.

#### COMMUNITY DEFENDER ORGANIZATIONS

The Conference received and approved a request from the Federal Defender Program, Inc., a nonprofit defense counselling service in Atlanta, Ga., designated as a Community Defender Organization by the United States District Court for the Northern District of Georgia. This organization which expects to commence operations on January 1, 1974, was awarded an initial grant of \$25,000 and a sustaining grant for the six-month period commencing January 1, 1974, in the amount of \$74,290, with the proviso that any monies thus granted shall be used only for the purpose stated in the Criminal Justice Act and for no other purposes and that any unexpended funds or other assets which may remain in the event of the dissolution of the corporation shall revert to the United States government.

#### LEGISLATION CONCERNING DISTRICT OF COLUMBIA COURTS

At the October 1972 session of the Conference, and again at the April 1973 session, the Conference approved a recommendation of the Budget Committee that future appropriations for the appointment of counsel in the local courts of the District of Columbia should be requested through the District of Columbia appropriations. The same view was expressed by the House of Representatives in 1972 and again in 1973 and the report of the Senate Appropriations Committee released September 12, 1973, stated that the

committee strongly concurred with the House that the appropriations for the assigned-counsel program should be provided for in the District of Columbia budget. In order to complete the intent expressed by both the appropriations committees and by the Conference, the Conference approved a legislative proposal for transmittal to the Congress designed to divorce the local courts of the District of Columbia from the operation of the Criminal Justice Act and to establish a separate assigned-counsel system for those courts patterned on the Criminal Justice Act.

The legislative proposal further recommends that the Public Defender Agency of the District of Columbia should be assigned solely to the local courts and should operate under the direction of the Joint Committee on Judicial Administration in the District of Columbia established by the District of Columbia Court Reorganization Act of 1970. This legislation would place the federal courts in the District of Columbia Circuit in the same position under the Criminal Justice Act as are all other federal courts throughout the country and would thus permit the federal courts to operate solely on the assigned-counsel system or adopt for themselves one of the public defender options provided by subsection (h) of the Criminal Justice Act, as amended.

#### GUIDELINES

In order to deal with the question of the proper statutory maximum applicable to appointment of counsel for witnesses summoned to appear before a grand jury, the Conference adopted the following guideline:

When a judge appoints counsel for a witness before a grand jury under the terms of the Criminal Justice Act in cases in which the witness faces loss of liberty, such appointment shall be deemed to be an appointment under the general terms of the Act rather than under the terms of subsection (g) and that ordinarily such appointment should be considered to be an appointment in a misdemeanor case.

The Conference further directed that in each circuit and district counsel claiming in excess of \$300 for out-of-court work be required to submit a memorandum detailing how that time was spent.

#### EXCESS PAYMENT CASES

While chief judges of the circuits have normally required a memorandum in support of a recommendation by a district judge

for the payment of sums in excess of the statutory maximum, the Conference agreed with a recommendation of the Committee that in every excess payment case the district judge should furnish to the chief judge of the circuit a memorandum containing his recommendation and a statement of any facts which he believes would justify approval of the claim in whole or in part.

### COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Judge Edward Weinfeld, Chairman, presented the report of the Committee on the Administration of the Bankruptcy System.

#### SALARIES AND ARRANGEMENTS FOR REFEREES

The Committee reported that it has considered the recommendations contained in the survey report of the Director of the Administrative Office, dated June 22, 1973, and the recommendations of the circuit councils and district judges concerned for the creation of one additional full-time referee position, for the continuation of 24 referee positions to become vacant by expiration of term, and for changes in arrangements in referee service in one district. The Conference, upon consideration of the Committee's report and recommendations, approved the following:

#### FIRST CIRCUIT

##### *District of Massachusetts*

- (1) Authorized the continuance of the full-time referee position at Boston to become vacant by expiration of term on February 28, 1974, for a term of six years, effective March 1, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

#### SECOND CIRCUIT

##### *District of Connecticut*

- (1) Authorized the continuance of the full-time referee position at Westbury to become vacant by expiration of term on November 27, 1973, for a term of six years, effective November 28, 1973, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

##### *Western District of New York*

- (1) Authorized the continuance of the full-time referee position at Buffalo to become vacant by expiration of term on March 31, 1974, for a term of six years, effective April 1, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## THIRD CIRCUIT

*District of New Jersey*

- (1) Authorized the continuance of the full-time referee position at Newark to become vacant by expiration of term on November 30, 1973, for a term of six years, effective December 1, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Authorized an additional full-time referee position at Trenton, at a salary of \$31,650 per annum, subject to the availability of funds.
- (3) Established concurrent district-wide jurisdiction for the full-time referee at Trenton with the other full-time referees of the district, with places of holding court at Newark and Camden in addition to Trenton.

## FOURTH CIRCUIT

*District of Maryland*

- (1) Authorized the continuance of the full-time referee position at Baltimore to become vacant by expiration of term on December 31, 1973, for a term of six years, effective January 1, 1974, at the present salary, the regular place of office to remain as at present.
- (2) Established concurrent district-wide jurisdiction for the two referees of the district, with places of holding court at Baltimore, Salisbury, Easton, Hagerstown, and Hyattsville, effective October 1, 1973.

## FIFTH CIRCUIT

*Northern District of Alabama*

- (1) Authorized the continuance of the full-time referee position at Birmingham to become vacant by expiration of term on February 6, 1974, for a term of six years, effective February 7, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of the full-time referee position at Anniston to become vacant by expiration of term on November 8, 1973, for a term of six years, effective November 9, 1973, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (3) Authorized the continuance of the part-time referee position at Tuscaloosa to become vacant by expiration of term on October 31, 1973, for a term of six years, effective November 1, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Georgia*

- (1) Authorized the continuance of the full-time referee position at Atlanta to become vacant by expiration of term on December 31, 1973, for a term of six years, effective January 1, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Middle District of Louisiana*

- (1) Authorized the continuance of the part-time referee position at Baton Rouge to become vacant by expiration of term on November 15, 1973, for a term of six years, effective November 16, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Texas*

- (1) Authorized the continuance of the part-time referee position at Lubbock to become vacant by expiration of term on December 14, 1973, for a term of six years, effective December 15, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## SIXTH CIRCUIT

*Northern District of Ohio*

- (1) Authorized the continuance of the full-time referee position at Toledo to become vacant by expiration of term on November 15, 1973, for a term of six years, effective November 16, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Southern District of Ohio*

- (1) Authorized the continuance of the full-time referee position at Dayton to become vacant by expiration of term on November 15, 1973, for a term of six years, effective November 16, 1973, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## SEVENTH CIRCUIT

*Northern District of Indiana*

- (1) Authorized the continuance of the full-time referee position at Gary to become vacant by expiration of term on October 31, 1973, for a six year term, effective November 1, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Southern District of Indiana*

- (1) Authorized the continuance of the full-time referee position at Evansville to become vacant by expiration of term on February 28, 1974, for a six year term, effective March 1, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## EIGHTH CIRCUIT

*Eastern and Western Districts of Arkansas*

- (1) Authorized the continuance of the full-time referee position at Little Rock to become vacant by expiration of term on January 1, 1974, for a six year term, effective January 2, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of Missouri*

- (1) Authorized the continuance of the full-time referee position at St. Louis to become vacant by expiration of term on December 14, 1973, for a six year term, effective December 15, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## NINTH CIRCUIT

*District of Alaska*

- (1) Authorized the continuance of the part-time referee position at Anchorage to become vacant by expiration of term on January 1, 1974, for a six year term, effective January 2, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of California*

- (1) Authorized the continuance of the full-time referee position at Oakland to become vacant by expiration of term on November 15, 1973, for a six year term, effective November 16, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of California*

- (1) Authorized the continuance of the full-time referee position at Sacramento to become vacant by expiration of term on November 27, 1973, for a six year term, effective November 28, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Authorized the continuance of the full-time referee position at Modesto to become vacant by expiration of term on November 7, 1973, for a six year term, effective November 8, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## TENTH CIRCUIT

*District of Colorado*

- (1) Authorized the continuance of the full-time referee position at Denver to become vacant by expiration of term on October 31, 1973, for a six year term, effective November 1, 1973, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*District of Kansas*

- (1) Authorized the continuance of the full-time referee position at Wichita to become vacant by expiration of term on April 26, 1974, for a six year term, effective April 27, 1974, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## AMENDMENT OF SCHEDULE OF SPECIAL CHARGES

The Conference considered the recommendations of the Bankruptcy Committee to amend certain of the charges for special serv-

ices to be performed by referees pursuant to Section 40c(3) of the Bankruptcy Act and approved the following amendments to the schedule, effective November 1, 1973, so that the charges would be the same as those charged in the offices of the clerks of district courts.

1. The excess notice charge was amended to read as follows:

For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act, in excess of 30 notices per set, 25 cents for each additional notice on the first 10,000 and 15 cents per notice on the balance, provided that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed twenty-five percent of the net proceeds realized.

2. The charge for making copies of documents was amended to read as follows:

For making a typed copy of any record or paper, \$1.00 per page of 250 words or a fraction thereof. For reproducing any record or paper by any means other than typing, 50 cents per page. These fees do not include certification.

3. A charge for certification of documents was adopted as follows:

For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$1.00

AUTHORIZATION FOR THE DIRECTOR UNDER BANKRUPTCY  
RULES OF PROCEDURE

The Conference was informed that under the Rules of Bankruptcy Procedure, to become effective October 1, 1973, the Director of the Administrative Office is authorized, with the approval of the Judicial Conference, to prescribe the books and records to be maintained and the reports to be submitted by referees in bankruptcy.

Upon recommendation of the Committee, the Conference authorized the Director to require referees in bankruptcy, or bankruptcy judges, to maintain books and records and to submit reports pertaining to:

1. Statistical data of bankruptcy cases filed and terminated in such detail as may be requested.
2. The number of cases pending over eighteen months and the reasons for their pendency.
3. Matters held under advisement by referees in bankruptcy.
4. Matters on appeal to the United States district judge.

5. Studies and control programs deemed advantageous by the Director or the Judicial Conference for the proper administration of the Act, and

6. Administration of the bankruptcy courts and its personnel.

### COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATES SYSTEM

Judge Charles M. Metzner, Chairman of the Committee on the Administration of the Magistrates System, presented the report of the Committee.

#### MAGISTRATE POSITIONS

The Committee reported that it had considered the recommendation of the Director of the Administrative Office regarding the creation of additional magistrate positions, changes in salaries of magistrates and changes in arrangements. These recommendations were also considered by the judicial councils of the circuits and the district courts. In accordance with the recommendations of the Committee the Conference approved the following changes in the number, location, arrangements, and salaries of magistrates and directed that, unless otherwise noted, these changes be made effective at such time as appropriated funds are available.

#### FIRST CIRCUIT

##### *District of Maine*

- (1) Discontinued the part-time magistrate position at Presque Isle.

##### *District of Massachusetts*

- (1) Increased the salary of the part-time magistrate at Ayer from \$8,873 to \$9,500 per annum.
- (2) Increased the salary of the part-time magistrate at Cape Cod Seashore from \$665 to \$3,000 per annum.
- (3) Increased the salary of the part-time magistrate at Springfield from \$665 to \$1,800 per annum.

##### *District of Puerto Rico*

- (1) Discontinued the part-time magistrate position at Aguadilla.
- (2) Discontinued the part-time magistrate position at Ponce.

#### SECOND CIRCUIT

##### *District of Connecticut*

- (1) Increased the salary of the part-time magistrate at Hartford from \$1,774 to \$7,200 per annum.

*Eastern District of New York*

- (1) Increased the salary of the part-time magistrate at Mineola from \$831 to \$2,000 per annum.

*District of Vermont*

- (1) Increased the salary of the part-time magistrate at Burlington from \$633 to \$2,400 per annum.

## THIRD CIRCUIT

*District of New Jersey*

- (1) Authorized an additional full-time magistrate position at Newark.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Newark.
- (3) Discontinued the part-time magistrate position at Hackensack, effective upon the appointment of the additional full-time magistrate at Newark.

*Eastern District of Pennsylvania*

- (1) Authorized an additional full-time magistrate position at Philadelphia.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Philadelphia.
- (3) Increased the salary of the part-time magistrate at Allentown from \$332 to \$1,000 per annum.

*Middle District of Pennsylvania*

- (1) Increased the salary of the part-time magistrate at Williamsport from \$332 to \$1,000 per annum.
- (2) Discontinued the part-time magistrate position at Lewisburg.

*Western District of Pennsylvania*

- (1) Increased the salary of the part-time magistrate at Johnstown from \$211 to \$500 per annum.

## FOURTH CIRCUIT

*District of Maryland*

- (1) Increased the salary of the part-time magistrate at Bethesda from \$8,318 to \$15,000 per annum.

*Western District of North Carolina*

- (1) Increased the additional salary granted to the part-time referee in bankruptcy at Charlotte for the performance of magistrate duties from \$6,000 to \$8,000 per annum.

*District of South Carolina*

- (1) Increased the salary of the part-time magistrate at Charleston from \$2,218 to \$4,000 per annum.

*Eastern District of Virginia*

- (1) Changed the part-time magistrate position at Alexandria from part-time to full-time.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Alexandria.
- (3) Changed the part-time magistrate position at Richmond from part-time to full-time.
- (4) Fixed a salary of \$30,000 per annum for the full-time magistrate at Richmond.

- (5) Authorized a part-time magistrate position at Richmond at a salary of \$500 per annum.
- (6) Discontinued the part-time magistrate position at Chesterfield Courthouse, effective upon the appointment of a full-time magistrate at Richmond.

*Western District of Virginia*

- (1) Increased the salary of the part-time magistrate at Roanoke from \$7,359 to \$12,000 per annum.
- (2) Decreased the salary of the part-time magistrate at Cumberland Gap National Park from \$2,055 to \$1,050 per annum, effective December 1, 1973.
- (3) Increased the salary of the part-time magistrate at Lynchburg from \$1,261 to \$1,600 per annum.
- (4) Increased the salary of the part-time magistrate at Charlottesville from \$665 to \$1,500 per annum.
- (5) Increased the salary of the part-time magistrate at Danville from \$554 to \$1,000 per annum.
- (6) Increased the salary of the part-time magistrate at Martinsville from \$554 to \$1,000 per annum.
- (7) Increased the salary of the part-time magistrate at Wise from \$443 to \$1,500 per annum.
- (8) Increased the salary of the part-time magistrate at Winchester from \$211 to \$554 per annum.

FIFTH CIRCUIT

*Northern District of Alabama*

- (1) Authorized an additional full-time magistrate position at Birmingham.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Birmingham.
- (3) Changed the official location of the part-time magistrate at Anniston to Anniston or Gadsden.
- (4) Decreased the salary of the part-time magistrate at Anniston or Gadsden from \$7,200 to \$3,600 per annum.
- (5) Discontinued the part-time position at Gadsden.
- (6) Discontinued the part-time magistrate position at Tuscaloosa.
- (7) Made these changes effective upon the appointment of the additional full-time magistrate at Birmingham.

*Middle District of Florida*

- (1) Changed the part-time magistrate position at Orlando from part-time to full-time.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Orlando.
- (3) Discontinued the part-time magistrate position at Daytona, effective upon the appointment of a full-time magistrate at Orlando.
- (4) Discontinued the part-time magistrate position at Titusville, effective upon the appointment of a full-time magistrate at Orlando.

*Southern District of Florida*

- (1) Increased the salary of the part-time magistrate at Key West from \$665 to \$1,800 per annum.
- (2) Discontinued the part-time magistrate position at Naples.

*Middle District of Georgia*

- (1) Changed the combination deputy clerk-magistrate position at Athens to a part-time position at no change in salary.

*Western District of Louisiana*

- (1) Changed the part-time magistrate position at Shreveport from part-time to full-time.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Shreveport.
- (3) Increased the salary of the part-time magistrate at Monroe from \$1,100 to \$2,000 per annum.

*Western District of Texas*

- (1) Increased the salary of the part-time magistrate at San Antonio from \$12,000 to \$15,000 per annum.
- (2) Increased the salary of the part-time magistrate at Waco from \$7,885 to \$12,000 per annum.
- (3) Increased the salary of the part-time magistrate at Midland-Odessa from \$1,682 to \$2,110 per annum.
- (4) Discontinued the part-time magistrate position at Killeen.
- (5) Increased the salary of the part-time magistrate at Big Bend National Park from \$6,884 to \$8,000 per annum.

## SIXTH CIRCUIT

*Eastern District of Kentucky*

- (1) Increased the salary of the part-time magistrate at Covington from \$2,772 to \$4,000 per annum.

*Western District of Kentucky*

- (1) Increased the salary of the part-time magistrate at Hopkinsville from \$5,257 to \$15,000 per annum.
- (2) Authorized jurisdiction for the part-time magistrate at Hopkinsville over the entire area of Fort Campbell, including the portions thereof lying within the Middle District of Tennessee.
- (3) Transferred the caseload of the part-time magistrate at Mammoth Cave National Park to the part-time magistrate at Bowling Green and discontinued the part-time magistrate position at Mammoth Cave National Park, effective December 1, 1973.
- (4) Increased the salary of the part-time magistrate at Bowling Green from \$3,154 to \$5,502 per annum, effective December 1, 1973.

*Middle District of Tennessee*

- (1) Discontinued the part-time magistrate at Cookeville.
- (2) Discontinued the part-time magistrate position at Clarksville, effective upon the implementation of the increase in the salary of the part-time magistrate at Hopkinsville, Ky.

## SEVENTH CIRCUIT

*Northern District of Illinois*

- (1) Increased the salary of the part-time magistrate at Rockford from \$2,215 to \$10,000 per annum.

*Eastern District of Illinois*

- (1) Increased the salary of the part-time magistrate at Belleville from \$3,993 to \$6,000 per annum.
- (2) Increased the salary of the part-time magistrate at Carbondale from \$1,996 to \$3,600 per annum.
- (3) Changed the official location of the part-time magistrate position at Carbondale to Carbondale or Benton.
- (4) Discontinued the part-time magistrate position at Benton.
- (5) Discontinued the part-time magistrate position at Lawrenceville.
- (6) Discontinued the part-time magistrate position at Effingham.
- (7) Made these changes effective upon the implementation of the increases in salary of the part-time magistrates at Belleville and Carbondale.

*Southern District of Indiana*

- (1) Increased the salary of the part-time magistrate at New Albany from \$332 to \$1,266 per annum.

*Eastern District of Wisconsin*

- (1) Changed the part-time magistrate position at Milwaukee from part-time to full-time.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Milwaukee.
- (3) Discontinued the part-time magistrate position at Racine, effective upon the appointment of the full-time magistrate at Milwaukee.

*Western District of Wisconsin*

- (1) Changed the part-time magistrate position at Madison from part-time to full-time.
- (2) Fixed a salary of \$30,000 per annum for the full-time magistrate at Madison.

## EIGHTH CIRCUIT

*Eastern District of Arkansas*

- (1) Discontinued the part-time magistrate position at Blytheville.

*District of Minnesota*

- (1) Increased the salary of the part-time magistrate at Bemidji from \$221 to \$527 per annum, effective December 1, 1973.
- (2) Discontinued the part-time magistrate position at Marshall, effective December 1, 1973.
- (3) Discontinued the part-time magistrate position at St. Cloud, effective December 1, 1973.

*District of Nebraska*

- (1) Discontinued the part-time magistrate position at Chadron.

*District of South Dakota*

- (1) Increased the salary of the part-time magistrate at Rapid City from \$3,798 to \$6,000 per annum, effective December 1, 1973.

## NINTH CIRCUIT

*District of Alaska*

- (1) Increased the salary of the part-time magistrate at Anchorage from \$8,318 to \$12,616 per annum.

*Eastern District of California*

- (1) Increased the salary of the part-time magistrate at Lassen Volcanic National Park from \$6,725 to \$8,000 per annum.

*Central District of California*

- (1) Increased the salary of the part-time magistrate at Santa Ana from \$4,436 to \$6,000 per annum.
- (2) Increased the salary of the part-time magistrate at San Bernardino from \$3,327 to \$7,200 per annum.
- (3) Increased the salary of the part-time magistrate at Riverside from \$1,663 to \$2,000 per annum.
- (4) Increased the salary of the part-time magistrate at Twenty-nine Palms from \$1,109 to \$2,000 per annum.

*Southern District of California*

- (1) Increased the salary of the part-time magistrate at San Diego from \$12,616 to \$15,000 per annum.
- (2) Increased the salary of the part-time magistrate at El Centro from \$12,616 to \$15,000 per annum.

*District of Oregon*

- (1) Decreased the salary of the part-time magistrate at Bend from \$1,266 to \$500 per annum.
- (2) Increased the salary of the part-time magistrate at Klamath Falls from \$221 to \$700 per annum.
- (3) Increased the salary of the part-time magistrate at Pendleton from \$316 to \$400 per annum.
- (4) Increased the salary of the part-time magistrate at Coquille from \$221 to \$400 per annum.
- (5) Made these changes effective December 1, 1973.

*Western District of Washington*

- (1) Increased the salary of the part-time magistrate at Bellingham from \$1,996 to \$3,600 per annum.
- (2) Increased the salary of the part-time magistrate at Vancouver from \$554 to \$800 per annum.

## TENTH CIRCUIT

*District of New Mexico*

- (1) Decreased the salary of the part-time magistrate at Las Cruces from \$12,000 to \$7,200 per annum.
- (2) Discontinued the part-time magistrate position at Tucumcari.
- (3) Discontinued the part-time magistrate position at Deming.
- (4) Discontinued the part-time magistrate position at Carlsbad.
- (5) Discontinued the part-time magistrate position at Raton.
- (6) Made these changes effective December 1, 1973.

*District of Utah*

- (1) Discontinued the part-time magistrate position at Cedar City.
- (2) Discontinued the part-time magistrate position at Provo.

## JURISDICTION

United States district courts, under existing law, may designate United States magistrates to try and sentence persons accused of certain minor offenses where the punishment "does not exceed imprisonment for a period of one year, or a fine of not more than \$1,000, or both." It was the view of the Committee that there are a number of misdemeanors in the United States Code not included in the term "minor offense" which could properly be tried by United States magistrates. These include the illegal possession of untaxed alcohol, 26 U.S.C. 5686, and the illegal possession of certain controlled substances, 21 U.S.C. 841(b). These two offenses carry maximum penalties not to exceed one year imprisonment or a fine of not more than \$5,000, or both. Upon recommendation of the Committee the Conference approved a draft bill to amend 18 U.S.C. 3401 to enlarge the trial jurisdiction of United States magistrates to include misdemeanors where the punishment does not exceed one year imprisonment or a fine of \$5,000, or both.

## PROBATION

The Committee reported that it considered and approved a draft bill, referred to it by the Committee on the Administration of the Probation System, which would authorize a United States magistrate, in any case within his jurisdiction, to place a defendant on probation prior to trial or prior to the acceptance of a plea of guilty or *nolo contendere*. The draft bill is similar to S. 798, 93rd Congress, which was approved in principle by the Conference at the April 1973 session (Conf. Rept., p. 25), except that (1) the range of offenses is limited to those arising within the jurisdiction of magistrates; (2) the term of probation is limited to 18 months; and (3) in the event probation is revoked, the defendant must be tried before a judge of the district court or a different magistrate.

The Conference, upon recommendation of the Committee, approved the draft bill submitted by the Committee.

## ADMINISTRATIVE REGULATIONS

The Conference, upon recommendation of the Committee, approved changes in three *Regulations of the Director of the Administrative Office* governing the administration of the magistrates

system. Section 1.21 of the Regulations was amended to eliminate the necessity for surety bonds in accordance with Public Law 92-310 which makes the government a self-insurer of the faithful performance of its employees. Section 2.4(a) of the Regulations was amended to permit the preparation of transcripts of magistrate proceedings outside of the magistrate's office by a qualified individual or transcribing firm and requiring the expense thereof to be paid by the parties to the litigation. Section 2.7 was amended to require parties to pay for the actual cost of duplicate copies of magnetic tapes or recording discs of official proceedings in addition to the previously prescribed fee of 40 cents for each 15 minutes of recording.

#### COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

The report of the Committee on the Administration of the Probation System was presented by Judge Albert C. Wollenberg, Chairman.

#### JOINT SENTENCING INSTITUTE

The Conference considered and approved the tentative agenda, the time, place and participants of the Joint Sentencing Institute to be held under the auspices of the Eighth and Tenth Circuits at Springfield, Mo., on April 22-24, 1974.

#### QUALIFICATION STANDARDS FOR PROBATION OFFICERS

The Judicial Conference at its September 1942 meeting (Conf. Rept., p. 9) recommended to the various district courts certain qualification standards for probation officers, among which was a requirement that the age at the time of appointment should be between 24 and 45 years, inclusive. The Conference was advised that such a qualification standard is contrary to public policy expressed in the Age Discrimination and Employment Act (29 U.S.C. 621-634, and 5 U.S.C. 3307). Accordingly, the Conference agreed to delete this qualification for employment as a probation officer.

#### TRAINING OF PROBATION OFFICERS

Noting the need for the continuing education and training of probation officers, the Conference adopted the following resolution:

Whereas, the Conference notes that one of the statutory responsibilities of the Federal Judicial Center is "to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government"; and

Whereas, the Conference is firmly of the opinion that the attendance of probation officers at training programs sponsored by the Center will improve and enhance the skills and techniques employed in the performance of their official duties; now, therefore, be it

*Resolved*, That the judges of the district courts shall make every effort to insure the attendance of the probation officers of their courts at training programs when invited by the Center unless the court finds that an emergency situation precludes such attendance.

#### CARRYING OF FIREARMS

On recommendation of the Committee the Conference approved revision of the section of the United States Probation Officers Manual concerning the carrying of firearms so as to provide that firearms may be carried by probation officers only when consistent with state law and with the express approval of the court and after appropriate training. The Conference instructed the Committee to study the desirability of a federal statute to permit probation officers to carry firearms.

#### PERSONNEL

Judge Wollenberg stated that the Appropriation Bill for the federal judiciary for fiscal year 1974 then pending in the Senate includes funds for 340 probation officer and 201 clerical positions. He reported that the Committee had reviewed in detail a population census of persons under supervision conducted by the Probation Division of the Administrative Office in January 1973 as well as a time study of the work of probation officers conducted by the Federal Judicial Center in January and February 1973. He said further that after review of these studies and the method of projection of workload and staff requirements, the Committee recommended to the Committee on the Budget that the 1975 budget request include funds for 320 additional probation officer positions and 199 clerk-stenographer positions in addition to any of the 340 officer and 201 clerical positions requested for 1974 which might be disallowed by the Congress. He reported that the Committee accepted as a minimum standard sufficient staff to provide an average of one hour per month face-to-face contact between the probation officer and the person under supervision.

## LEGISLATION

S. 2160, a bill to establish a new Criminal Justice Services Administration in the Department of Justice, was referred to the Conference for study and report. The provisions of the bill fall within the jurisdiction of the Probation Committee, the Committee on the Administration of the Criminal Law and the Habeas Corpus Committee. Judge Wollenberg reported to the Conference on those sections of the bill which would transfer the federal probation system and the functions performed by the system to a new agency, the Criminal Justice Services Administration within the Department of Justice. The Conference agreed to reaffirm its disapproval of any legislative proposal that would place probation officers or any functions now performed by the probation system under the prosecutive agency of the government (Conf. Rept., March 1966, p. 15; March 1967, p. 37; February 1968, p. 30; March 1969, p. 27; March 1970, p. 28).

## COMMITTEE ON HABEAS CORPUS

Judge Walter E. Hoffman, Chairman, presented the report of the Special Committee on Habeas Corpus.

The Conference considered two bills, S. 567 which would amend Sections 2253, 2254 and 2255 of Title 28, United States Code, and H.R. 3329 which seeks to amend only federal habeas corpus rights as applied to state prisoners. While the Conference was agreed that there was a need for an overall revision of all habeas corpus statutes, it voted its disapproval of these two bills in that they would lead to a proliferation of substantial interpretive litigation and would be counter-productive in that they would increasingly overburden the Supreme Court as a petitioner's sole federal relief would essentially rest in an application for a writ of certiorari to the highest court of the state. In voting disapproval of these two bills, the Conference requested the Committee to consider alternative methods and recommend to the Conference a draft bill designed to cure the abuses which the courts now find in the present habeas corpus and related statutes.

Judge Hoffman advised the Conference that his Committee had considered its sections of S. 2160 (see above, p. 74) which purports to establish an Office of Ombudsman headed by a Director

empowered to have referred to him a petition for collateral review of a conviction filed by a federal offender and make recommendations to the Court. The Conference agreed with the Committee that no useful purpose could be served in having still another agency making recommendations in proceedings under 28 U.S.C. 2255 and, accordingly, voted its disapproval of this portion of S. 2160.

The Conference instructed the Committee to study further proceedings under 42 U.S.C. 1983 and related statutes affecting prisoner suits and to make appropriate recommendations to a future session of the Conference.

#### COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

The report of the Committee on the Administration of the Criminal Law was presented by the Committee Chairman, Judge Alfonso J. Zirpoli. The report of the Subcommittee on the Study of the new Criminal Code was presented by Subcommittee Chairman, Judge Ruggero J. Aldisert.

#### BRIBERY OF STATE OFFICIALS

The Conference considered two bills, H.R. 676 and H.R. 6736 which, if enacted, would make the bribery of state and local officials federal crimes. The Conference agreed that the basic issue presented relates to the wisdom of making a federal offense of conduct heretofore traditionally treated as a state responsibility and, accordingly, since this is a policy consideration for the Congress, the Conference made no recommendation.

#### PRIORITY IN TRIAL OF NARCOTIC CASES

The Conference considered S. 1126 which would amend Title 28, United States Code, by adding Section 335 to grant a priority in the trial or other disposition of any case involving a violation of the laws of the United States relating to narcotic drugs, marijuana or depressant or stimulant substances. The Conference voted its disapproval of S. 1126, noting that the courts are already overburdened with priority provisions and that the plans adopted by the district courts pursuant to Rule 50 (b) of the Federal Rules

of Criminal Procedure make adequate provision for priority in the trial of any case, including the narcotic case which because of special circumstances merits an early trial.

#### PAYMENT OF COSTS

H.R. 5148 provides that when an accused is found not guilty or if the prosecution is dismissed with prejudice, the court shall order that the United States pay the costs as taxed under Section 1920 of Title 18, United States Code. The Conference agreed that whether to permit a defendant to recover taxable costs is a policy determination for the Congress but the Conference did agree that the taxing of such costs should be discretionary rather than mandatory since in some cases a defendant is found not guilty or his case is dismissed solely on technical grounds unrelated to his guilt or innocence.

#### PROSECUTION FOR CRIMES COMMITTED ABROAD

The Conference voted its support of H.R. 107, a bill which would subject certain nationals or citizens of the United States to the jurisdiction of the United States district courts for their crimes committed outside the United States and would provide for the apprehension, restraint, removal and delivery of such persons. The Conference had previously endorsed a similar bill, H.R. 18857, 91st Congress (Conf. Rept., March 1971, p. 4).

#### SPEEDY TRIAL

The Conference voted its disapproval of S. 754, a bill relating to speedy trials and providing for the establishment of pretrial service agencies. The Conference again noted the plans for the prompt disposition of criminal cases promulgated under Rule 50(b) of the Federal Rules of Criminal Procedure and expressed the view that the district courts are now operating under time limits which at least for the next three years are more restrictive than those provided in S. 754. The Conference saw no reason for the establishment of a separate system of pretrial service agencies since the services are essentially those now furnished by probation officers who by training and experience are eminently qualified to render such service.

## CRIMINAL JUSTICE INFORMATION SYSTEMS

The Department of Justice submitted for Conference consideration a draft bill cited as the "Criminal Justice Information Systems Security and Privacy Act of 1973." The Conference in considering the terms of the bill agreed that there clearly is a need for a speedy and effective system or systems for the collection, processing and dissemination for criminal justice information but expressed the view that the draft bill should be limited to criminal offender record information as provided in the model state act proposed by Project Search and should not include "criminal intelligence information." The Conference agreed further that such information should be used only for law enforcement purposes or for research related to law enforcement.

## THE GRAND JURY

The Conference considered and voted its disapproval of H.R. 8461, a bill which would effect radical changes in existing grand jury practices and procedures and would provide for independent inquiries by grand juries. In presenting the report on this bill to the Conference, Judge Zirpoli pointed out that the Advisory Committee on Criminal Rules, under the Chairmanship of Judge J. Edward Lumbard, is at present conducting a study of certain grand jury procedures. He said that the two committees have a close working relationship and that the Advisory Committee on Criminal Rules at its meeting on August 2-3, 1973, had likewise voted disapproval of H.R. 8461.

## CRIMINAL JUSTICE REORGANIZATION ACT

Judge Zirpoli stated that the Committee on the Administration of the Criminal Law had considered those sections of S. 2160, a bill cited as the "Federal Criminal Justice Systems Reorganization Act," which had not been considered directly by the Habeas Corpus and Probation Committees. The Committee pointed out that the legislation would put into one agency some of the basic responsibilities of the prosecutor and the judge and add to them custodial and release responsibilities. This, in the view of the Committee and of the Conference, would create more problems than it would resolve. The bill would permit the new agency to control the lives of

people who have not been arrested, let alone indicted or convicted. The Conference agreed that the procedures provided in the bill would be cumbersome and impracticable and would result in interminable delays in the disposition of criminal cases and a substantial increase in appellate interpretive litigation.

The Conference, noting the objections raised by three of its committees to the provisions of S. 2160, voted its disapproval thereof.

#### PROPOSED NEW FEDERAL CRIMINAL CODE

At the April 1973 session the Conference considered the provisions of the first part of the proposed new Federal Criminal Code which outlined the basis of federal jurisdiction and prescribed certain principles of general application (Conf. Rept., p. 15). At its present session the Conference was concerned with the third part of the Code dealing with sentences. As to this part of the proposed Code the Conference took the following action:

1. Voted against the adoption of a mandatory requirement that the imposition of a sentence be accompanied by appropriate findings of fact and statement of reasons. It agreed that such a requirement would complicate the sentencing process and would serve to increase interpretive legislation. The requirement appears only in S. 1 and not in the other proposals for a new Federal Criminal Code;
2. The Conference approved the classification of offenses proposed in the report of the Brown Commission;
3. The Conference voted against the adoption of provisions for Upper Range Imprisonment for Dangerous Felons;
4. The Conference recognizing that the determination of the amount of fines is clearly a matter for Congressional policy agreed that Sections 2201 and 2202 of S. 1400 represent the most practical solutions. Since the present jurisdictional limit for magistrates is \$1,000 and Section 3281(k) of S. 1400 adjusts the jurisdiction for magistrates, it is most important that this section changing the jurisdiction for magistrates be adopted. The Conference also voted in favor of Sections 2203 and 2204 of S. 1400 on modification and response to nonpayment of fines;
5. On the subject of concurrent sentences, the Conference voted in favor of Section 2203 of S. 1400 and Section 3204 of

the Brown Commission report and against adoption of the joint sentence provision of Section 1-4A5 of S. 1;

6. The Conference approved the recommendation also made by the Probation Committee that court review of parole determination be limited to due process questions only;

7. The Conference voted against codification of the law relating to resentencing, expressing the view that this is a Constitutional question which should be left to the courts;

8. As to disqualification to practice a profession or occupation, the Conference agreed with the observation of its Committee that there is a possible Constitutional problem inherent in any federal statute which disqualifies a person from performing a profession or occupation which has been authorized or licensed by a state;

9. On review of sentences the Conference agreed that it would take no action until it receives the report from the Advisory Committee on Criminal Rules which is at present circulating to the bench and bar for comment a proposal for review of sentences by a panel of district court judges in each circuit or district. The Conference agreed to make available to the Advisory Committee on Criminal Rules the observation of the Criminal Law Committee on the subject of sentencing and at the same time voted its disapproval of S. 716 in its present form and agreed to take no further action on the subject matter of review of sentences until it had received the report of the Advisory Committee on Criminal Rules.

#### COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Albert B. Maris, Chairman of the Committee on the Rules of Practice and Procedure, presented the Committee report.

#### RULES OF EVIDENCE

Judge Maris advised the Conference that the proposed Federal Rules of Evidence prescribed by the Supreme Court on November 20, 1972, were transmitted to the Congress on February 5, 1973. On March 30, 1973, Public Law 93-12 was enacted directing that these rules shall have no effect except to the extent and with such amendments as they may be expressly approved by act of Congress

Subsequently, H.R. 5463 has been introduced which consists of a Committee Print amended to incorporate the changes proposed by a subcommittee of the House Judiciary Committee. The Subcommittee requested the views of the Advisory Committee on the Rules of Evidence no later than July 31, 1973. Accordingly, a special session of the Advisory Committee was called and views were prepared for submission to the Subcommittee prior to the requested date. On authorization of the Chief Justice and believing that the Judicial Conference would wish to cooperate, the Committee's views were transmitted to the House Subcommittee with the explicit understanding that they constitute only a working paper which had not received Conference approval.

The Conference considered the views submitted by the Advisory Committee on the Rules of Evidence and approved by the standing Committee and voted its approval thereof.

#### BANKRUPTCY RULES

Judge Maris reported that the Bankruptcy Rules and official forms covering Chapters I-VII and Chapter XIII were approved and prescribed by the Supreme Court by order of April 24, 1973. Since the Congress has taken no adverse action, these rules and forms will become effective October 1, 1973.

Judge Maris then presented for Conference consideration proposed rules and official forms for Chapter XI of the Bankruptcy Act relating to Arrangements. The Conference approved these proposed rules and forms for Chapter XI and approved the transmittal of them to the Supreme Court, with a recommendation that they be approved and prescribed for use in Chapter XI proceedings if possible by July 1, 1974.

Judge Maris advised the Conference that the Advisory Committee hopes by December to complete its consideration of the rules and forms under Chapter X (Corporate Reorganization) and early in 1974 the drafts on Chapter IX (Composition of Indebtedness of Local Taxing Agencies) and Chapter XII (Real Property Arrangements). The latter has already received preliminary consideration and approved for distribution to the bench and bar for comments. Work has also started on the last set of rules required under the Bankruptcy Act, namely, those covering railroad reorganization proceedings under Chapter VIII, section 77 of the Act.

## CRIMINAL RULES

Judge Maris stated that the Advisory Committee on Criminal Rules has circulated, with standing Committee approval, drafts of amendments to Criminal Rules 6, 11, 23, 24, 35, 41 and 43, new Criminal Rule 40.1, rules governing habeas corpus proceedings, rules governing Section 2255 proceedings and an amendment to Appellate Rule 4. Comments are due by February 1, 1974.

The Advisory Committee is also studying suggestions with respect to the operation and use of the grand jury and to the legal problems connected therewith.

## CORRECTIVE AMENDMENTS

On behalf of the Committee, Judge Maris proposed three corrective amendments, as follows:

1. *Official Bankruptcy Form No. 7*

In Official Form No. 7 which was forwarded by the Conference to the Supreme Court with the Bankruptcy Rules and other official forms on January 10, 1973, and which was prescribed by the Court on April 24, 1973, a portion of subdivisions 14 and 15 was inadvertently omitted. The Conference approved the submission to the Supreme Court of an amendment to correct this omission.

2. *Criminal Rule 41(a)*

In the amendment of Subdivision (a) of Rule 41, Federal Rules of Criminal Procedure, prescribed by the Court on April 24, 1972, the words "court of record" were inadvertently omitted and the Conference approved an amendment to restore these words.

3. *Criminal Rule 50*

An amendment of Rule 50 to add Subdivision (b) was prescribed by the Supreme Court on April 24, 1972. Inadvertently the previously existing single paragraph of the rule was not amended to add the designating letter "(a)" and the title "Calendars" to distinguish it from the new Subdivision (b). The Conference approved for transmission to the Supreme Court an amendment to accomplish this result.

## PRETERMISSION OF TERMS OF COURTS OF APPEALS

The Conference approved the pretermission of terms of courts of appeals, pursuant to 28 U.S.C. 48, for those sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans during the court year 1973-1974 and for those sessions of the Court of Appeals for the Eighth Circuit to be held outside of St. Louis, Missouri, during the court year 1973-1974.

## RELEASE OF CONFERENCE ACTION

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

WARREN E. BURGER,  
*Chief Justice of the United States.*

OCTOBER 1, 1973.

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