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

September 23-24, 1976

Washington, D.C.
1976

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Rowland F. Kirks
Director

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, 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.

(IV)

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

September 23-24, 1976

The Judicial Conference of the United States convened on September 23, 1976, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge William B. Jones, 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 Jacob Mishler, Eastern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Lawrence A. Whipple*, District of New Jersey

Fourth Circuit:

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

Fifth Circuit:

Chief Judge John R. Brown
Chief Judge Alexander A. Lawrence, Southern District of Georgia

Sixth Circuit:

Chief Judge Harry Phillips
Chief Judge Damon J. Keith, Eastern District of Michigan

Seventh Circuit:

Chief Judge Thomas E. Fairchild
Chief Judge James B. Parsons, Northern District of Illinois

Eighth Circuit:

Chief Judge Floyd R. Gibson
Chief Judge James H. Meredith, Eastern District of Missouri

Ninth Circuit:

Chief Judge James R. Browning
Chief Judge Thomas J. MacBride, Eastern District of Calif.

* Chief Judge Whipple was unable to attend the Conference because of illness.

Tenth Circuit:

Chief Judge David T. Lewis
 Chief Judge Wesley E. Brown, District of Kansas

Court of Claims:

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Senior Circuit Judge Elbert P. Tuttle; Circuit Judges Robert A. Ainsworth, Jr., Richard H. Chambers and Edward A. Tamm; Senior District Judges Roy W. Harper, Arthur J. Stanley, Jr., Roszel C. Thomsen, Carl A. Weinman, Albert C. Wollenberg and Alfonso J. Zirpoli; and District Judges Dudley B. Bonsal, Edward J. Devitt, Charles M. Metzner and Edward Weinfeld attended all or some of the sessions of the Conference.

At the opening of the first session Deputy Attorney General Harold R. Tyler and Solicitor General Robert H. Bork addressed the Conference on matters of mutual interest to the Department of Justice and the judiciary.

The Honorable Walter E. Hoffman, Director of the Federal Judicial Center, presented the year-end report of the activities of the Center and commented thereon.

A written report of the activities of the Panel on Multidistrict Litigation was submitted by the Honorable John Minor Wisdom, Chairman.

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

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

The Director of the Administrative Office, Mr. Rowland F. Kirks, presented to the Conference the report on the business of the United States courts for the twelve-month period, ending June 30, 1976. The Conference agreed to the release of this report.

The Annual Report of the Director showed that the workload

of the courts continued to increase in 1976. Filings in the courts of appeals rose almost 11 percent over a year ago to a new all-time high of 18,408. Terminations also increased but were almost 2,000 less than the number filed. As a result the pending caseload increased more than 16 percent to a new all-time high of 14,110 appeals. The backlog of pending cases is now more than double what it was in 1968 when the last increase in the number of judgeships occurred.

In the district courts civil case filings increased more than 11 percent; terminations rose by approximately 5,400 cases over a year ago, but the pending caseload continued to increase to a record 140,189 as of June 30th. This was a record increase of 17 percent over the 119,767 civil cases pending a year ago. From 1960 to 1976 the pending caseload increased 129 percent.

Criminal case filings in the district courts declined more than five percent to 41,020. The comparison of this year's filings with last year's, however, is not entirely appropriate because of a change in the method of statistical case accounting required as a result of the Speedy Trial Act of 1974. Superseding indictments are no longer being counted as separate cases, which tends to reduce the number of filings. On the other hand, certain misdemeanor cases, falling within the minor offense trial jurisdiction of United States magistrates and carried on their dockets, are now being carried on the criminal dockets of the district courts so that they may be accounted for under the requirements of speedy trial.

Bankruptcy case filings were 246,549, a decrease of almost 8,000 from the record number of filings last year - constituting a decrease of three percent.

The Director also submitted and the Conference approved the release to the Congress of the first annual report required to be submitted pursuant to the provisions of the Speedy Trial Act of 1974.

The report, in two parts, summarized in general terms the speedy trial plans submitted by the district courts pursuant to Title I of the Act and the accomplishments of the pretrial service agencies established during the year in ten district courts on a demonstration basis pursuant to Title II of the Act. The report contained very little statistical information inasmuch as the time limitations imposed by speedy trial were for the most part not in effect during the year and the pretrial service agencies were in operation only during the last six months of the statistical year.

COMMITTEE ON THE BUDGET

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

The Conference approved the proposed budget estimates for the fiscal year 1978 which, exclusive of the Supreme Court, the Customs Court and the Federal Judicial Center, were in the aggregate amount of \$411,670,000. This represents a proposed increase in budget authority over fiscal year 1977 of \$41,020,000. The estimates were based on the assumption of a general pay increase average of 4.83 percent, commencing October 1, 1976, and also took into account the recommendations of the respective committees of the Judicial Conference. The Director of the Administrative Office was authorized to submit supplemental requests for 1977 and to amend the budget for 1978 if required as a result of new legislation, actions of the Judicial Conference or for any other purpose he considers necessary and appropriate.

Included in the proposed budget for 1978 under the heading "Salaries of Supporting Personnel," are requests for 595 new positions, as follows:

	<i>Positions</i>
Supporting personnel for circuit executives	12
Deputy clerks for courts of appeals	37
Deputy clerks for district courts	299
Probation officers	108
Probation clerk-stenographers	65
Probation assistants	10
Special Court, Regional Rail Reorganization Act	7
Staff (court) law clerks and secretaries for courts	
of appeals	33
Secretaries and law clerks for senior judges	<u>24</u>
Total	595

The request for 12 new positions for circuit executives is in lieu of the prior request thrice denied by the Congress for deputy circuit executives and carries out a resolution of the chief judges of the courts of appeals for staff assistants for the circuit executives.

Provision has been made for the first time for the payment of the compensation of land commissioners appointed pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure. Previously land commissioners have been paid by the Department of Justice.

The Director also was authorized to submit a draft bill to the Congress to amend the Court Reports Act so as to authorize the

expenditure of appropriated funds for the procurement of equipment and other expenses incident to the implementation of a program for computerized transcripts.

COURT ADMINISTRATION

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

UNIFORM RULES OF DISCIPLINARY ENFORCEMENT

Immediately following the April 1976 session of the Conference, the Committee, through its Subcommittee on Judicial Improvements, undertook consideration of the American Bar Association committee's proposed guidelines for Uniform Rules of Disciplinary Enforcement as to lawyers in the federal courts. The guidelines in the form in which they were proposed to the states were circulated to every federal judge for an expression of views. As a result of the Subcommittee's deliberations, Judge Ainsworth reported to the Conference that it was his Committee's view that the guidelines for the discipline of attorneys are not properly rules of practice and procedure and, accordingly, would recommend that it would be proper for the Judicial Conference to approve proposed guidelines and urge each of the Federal courts in the nation to adopt them. Inasmuch as this subject affects intimately the authority of the courts, the Committee advised the Conference that the guidelines would not be submitted for approval until the Spring 1977 session and that meanwhile the guidelines as approved by the Subcommittee and the Committee would be circulated to all members of the federal judiciary for comment prior to the next meeting of the Conference.

LAND COMMISSIONERS

The Conference approved the recommendation of the Committee, as well as the proposed budgetary estimates of the Committee on the Budget, for the transfer of the appropriation for fees of land commissioners from the Department of Justice to the federal judiciary. In budget submissions for fiscal year 1977 the Department of Justice did not request an appropriation for the fees of land commissioners. When the matter was brought to the Appropriations Subcommittee of the House of Representatives an appropriation for fees for land commissioners was made to the Department of Justice through the fiscal year 1977. In its report

the Appropriation Subcommittee stated, however, that prior to requesting the appropriation for the fiscal year ending September 30, 1978 it would expect the Judicial Conference of the United States and the Department of Justice to come to an agreement concerning this appropriation. Judge Ainsworth reported that his Committee had explored the possibility of imposing upon the condemning agency the payment of the fees of land commissioners but the legality of this procedure appeared questionable.

PLACES OF HOLDING COURT

The Conference disapproved H. R. 11003, a bill which would authorize the holding of court in Houma in the Eastern District of Louisiana. The Conference noted that the judges of the district court involved and of the judicial council of the circuit all recommended against approval of the proposed legislation.

REGISTRY FUNDS

The Conference noted that there are four options open to the courts with regard to the deposit of registry funds: (1) to deposit in Treasury accounts pursuant to 31 USC 725V; (2) to deposit in private banks in checking accounts at no interest by specific order of the courts; (3) to deposit in private banks or savings and loan associations in interest-bearing accounts by specific order of the courts and (4) to order the parties themselves to make arrangements for the purchase of securities or bonds which are then placed in the custody of the courts.

Depositing these funds in Treasury accounts has presented difficulties because of the problem of obtaining prompt and easy withdrawals of portions of the deposited funds as needed by the courts and because of the difficulty in obtaining a government record which adequately reflects the current status of the account.

The Conference was in agreement that since the situations involving the deposit of funds in the registry of the court are diverse, no hard and fast rule can be established. The Conference did, however, approve a general policy statement and broad guidelines to aid particular district courts, as follows:

1. Where it is reasonably predictable that the particular registry funds or substantially all of them will remain with the United States, or that the United States has the substantial beneficial interest therein, or that the interest of justice so requires, such funds should be deposited in Treasury accounts pursuant to Title 31, United States Code, §725V.

2. Whenever practical and feasible all substantial sums of registry funds not

deposited in Treasury accounts pursuant to Title 31, United States Code, §725V should be placed in some form of (substantial) interest-bearing accounts (which will earn interest at approximately the existing market rate).

3. Courts should avoid the unnecessary placing of substantial sums, interest-free, in private banks.

QUADRENNIAL SURVEY

The quadrennial survey of judgeship needs in the district courts was conducted during 1976 by the Subcommittee on Judicial Statistics with assistance and support from the staff of the Administrative Office. In conducting this survey the Subcommittee considered the recommendations of the district courts and the judicial councils of the circuits, as well as the statistical information available in the Administrative Office.

Upon completion of this survey, the recommendations resulting therefrom were again submitted to the courts concerned for further comment. Upon the basis of the work of the Subcommittee, the Committee recommended and the Judicial Conference approved a recommendation to the Congress for the creation of 106 additional United States district judgeships, as follows:

<i>Court</i>	<i>Number of Judgeships</i>
First Circuit:	
Massachusetts	4
New Hampshire	1
Puerto Rico	4
Second Circuit:	
Connecticut	1
New York:	
Northern	1
Eastern	1
Third Circuit:	
New Jersey	1
Pennsylvania:	
Middle	2
Fourth Circuit:	
Maryland	2
North Carolina:	
Eastern	1
Middle	1
South Carolina	3
Virginia:	
Eastern	2
Western	2
West Virginia:	
Southern	1
Fifth Circuit:	
Alabama:	
Northern	2
Middle	1

<i>Court</i>	<i>Number of Judgeships</i>
Florida:	
Northern	1
Middle	3
Southern	6
Georgia:	
Northern	5
Southern	1
Louisiana:	
Eastern	4
Middle	1
Western	1
Texas:	
Northern	3
Eastern	1
Southern	5
Western	1
Sixth Circuit:	
Kentucky:	
Eastern	2
Michigan:	
Eastern	3
Western	2
Ohio:	
Northern	1
Southern	1
Tennessee:	
Middle	1
Seventh Circuit:	
Illinois:	
Northern	2
Eastern	1
Indiana:	
Northern	1
Southern	1
Wisconsin:	
Western	1
Eighth Circuit:	
Arkansas:	
Eastern	2
Iowa:	
Southern	1
Minnesota	1
Missouri:	
Eastern	1
Western	2
South Dakota	1
Ninth Circuit:	
Arizona	3
California:	
Eastern	3
Central	1
Southern	2
Nevada	1

<i>Court</i>	<i>Number of Judgeships</i>
Oregon	2
Washington:	
Eastern	½
Western	1½
Tenth Circuit:	
Colorado	2
Kansas	1
New Mexico	1
Oklahoma:	
Eastern	2

The Conference further approved as an emergency measure the recommendation to the Congress for the creation of three additional circuit judgeships in the District of Columbia Circuit. In so doing, the Conference noted the sharp rise in the number of appeals filed per judgeship in the first six months of fiscal year 1976, with the largest increase occurring in the number of appeals from administrative agencies which rose by more than 100 percent.

SUPPORTING PERSONNEL

Court Reporters for Senior Judges

The Conference approved the following policy statement with regard to court reporters for senior judges:

Any time an active district judge takes senior status and expects to continue to render substantial service to his court and a request is made on his behalf by the court that he will continue to need the service of a reporter, such a request will be granted for whatever type of service is appropriate under title 28, United States Code, §753, on a temporary rather than a permanent basis.

When a request is made by the court for the pretrial reportorial service for a senior judge who requires a reporter only on an intermittent basis, such a request will be granted.

Regular review of the continued need for reportorial service is expected to be made.

Quality Step Increases for Court Personnel

In order to adopt a plan such as all government departments and agencies have to award superior performance, the Conference approved the following resolution:

The Conference notes that the federal judiciary is the only branch of the federal government which does not provide for rewarding superior performance by its graded employees through a quality within-grade step increase plan or similar administrative mechanism. Therefore, it is the feeling of the Conference that such a plan should be budgeted for and implemented and that the plan should, initially, take the form of the plan submitted for its consideration by the

Committee on Court Administration. This plan supersedes the provisions in effect heretofore for career law clerks.

It is the sense of the Conference that the provisions in future amendments to the plan may be implemented by the authority of the Director of the Administrative Office under Title 28, United States Code, §604, and that, therefore, any further changes in the plan need not be passed upon by the Conference unless the Committee on Court Administration feels that such Conference action would be necessary.

Judiciary Salary Plan

In 1960 the Judicial Conference approved the Judiciary Salary Plan covering positions in clerks' offices, probation offices and bankruptcy offices. Technically, the qualification and classification standards for other positions such as the judge's personal staff, other court staff and magistrate's staff are not part of the plan. In order that all supporting personnel positions in the judiciary may be known as and be part of the judiciary salary plan the Conference approved the following resolution:

That the entire compensation system for positions in the judicial branch of the federal government, established by the Director of the Administrative Office, under the supervision and guidance of the Judicial Conference of the United States under title 28, United States Code §604(a)(5) and any future similar statutes shall be known as and part of the Judiciary Salary Plan.

Court Reporters

The Conference approved a recommendation made in the course of the presentation of the Budget Committee report that the Court Administration Committee study the broad question of court reporter needs in the district courts, including the current limitation of one reporter for each judge regardless of certain situations created by exceptionally long trials.

LEGISLATION

S. 3153 - Jurisdictional Amount in Federal Question and Diversity Cases

The Conference noted that the Senate Judiciary Committee had requested its views on S. 3153, a bill "to amend Sections 1331 and 1332 of title 28, United States Code, to increase the jurisdictional amount in federal question and diversity cases from \$10,000 to \$25,000." The Conference approved the proposal to increase the jurisdictional amount in diversity cases to \$25,000 and, if the jurisdictional amount in federal question cases is to be retained, that the amount should also be increased to \$25,000 as a matter of consistency.

S. 2255 - Patent Law Revision

The Conference noted that a Senate-passed bill, S. 2255, relating to the revision of the patent laws, would affect the jurisdiction of the United States Court of Customs and Patent Appeals and the United States District Court for the District of Columbia. The Conference is of the view that passage of such legislation would not only increase the volume of litigation regarding the decisions of the Patent Office but would transfer cases from the docket of the Court of Customs and Patent Appeals, a court which is current and fully qualified to process this type of litigation, to the District Court and the Court of Appeals in the District of Columbia which are already burdened with other litigation. The Conference, therefore, agreed to recommend to the Congress that the legislation be amended to assure that the Court of Customs and Patent Appeals will continue to handle most patent appeal cases. Should the bill not be so amended, the Conference agreed to recommend to the Congress that the appropriate judicial and supporting resources to process this litigation be provided forthwith to the United States District Court and the United States Court of Appeals in the District of Columbia.

H.R. 11315 - Foreign Sovereign Immunities Act

The Conference noted that H.R. 11315, a bill to define the jurisdiction of the United States courts in suits against foreign states, in Section 2 would amend Chapter 85 of title 28, United States Code, by adding at the beginning thereof a new section 1330 pertaining to the jurisdiction of the district courts in actions against foreign states. The Conference agreed that this section might more appropriately be placed at the end of the chapter so that it would not precede the general grant of jurisdiction in federal question and diversity cases. The Conference was further of the view that the proposed new subsection (f) of Section 1391 should be similar to the language contained in Section 1391(a).

Foreign Service Act of 1946

The Office of Management and Budget requested the views of the Conference on a draft bill to amend the Foreign Service Act to provide protection to medical personnel of the State Department against certain malpractice suits. After reviewing the proposed legislation, the Conference agreed with the view of its Committee that the bill would have no impact on the federal judiciary.

S. 3392 and H.R. 14016 - Judicial Review of Veterans' Claims

The Conference voted its disapproval of S. 3392 and H.R. 14016, identical bills to provide for the judicial review of administrative determinations of the Veterans Administration. The Conference noted that in the period from 1962 to 1967 it had considered various proposals to provide judicial review of decisions involving the claims of veterans and had consistently disapproved such legislation. The Conference was advised that approximately 45,000 notices of disagreement with awards of veterans' benefits are now filed annually with the Veterans Administration and that the Board of Veterans Appeals processes 26,000 cases each year. The Conference agreed that this legislation would have a substantial impact on the workload of the federal courts.

S. 2387 - Petroleum Industry Competition Act

The Conference expressed no view on the substantive provisions of this legislation but was in agreement in opposing the creation of a new court to be known as the Temporary Petroleum Industry Divestiture Court composed of three or more judges to be designated by the Chief Justice from the courts of appeals and the district courts. The Conference was of the view that it would be preferable to provide adequate resources for the district courts and courts of appeals so that litigation arising under legislation of this type may be processed in the normal way. Experience in the assignment of judges to serve on special courts has shown how disruptive and time-consuming this procedure can be. The Conference suggested that the Congress undertake to ascertain the impact of this legislation on the courts from persons familiar with the scope of the bill and to provide the necessary resources to the judiciary to cope with the anticipated caseload in advance of its effective date.

S. 12 - Judicial Survivors Annuity Act

Subsequent to the last session of the Conference which had endorsed amendments to the Judicial Survivors Annuity Act as reported by the Senate Subcommittee, several provisions of the bill were amended, one of which would require an increase in the contribution of judges from three percent to 4.5 percent of their salaries. As so amended, the bill passed the Senate on June 22, 1976. The Conference agreed that the bill as passed would materially strengthen the Judicial Survivors Annuity System by

placing the fund on a sound actuarial basis and would substantially increase the benefits accruing to widows and surviving dependent children of judges. Through its Executive Committee the Conference approved several amendments proposed by the House Judiciary Committee. The Conference endorsed this action and requested the Chief Justice to urge upon the Judiciary Committee prompt action in the House of Representatives to assure passage of this legislation in the 94th Congress.

S. 2408 - Judicial Review of Agency Proceedings

The Conference noted a request by Senator Kennedy for an early expression of its views on S. 2408, a bill "to improve the administrative process by making federal agencies more responsive to the will of the people as expressed by their elected representatives in Congress." The Conference noted that the bill would provide *de novo* review by the court of all relevant questions of law and would provide that the court in review shall interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of agency action. The Conference agreed that this legislation would have a serious impact upon the workload of the federal courts and voted its disapproval thereof.

REVIEW COMMITTEE

Judge Edward A. Tamm, Chairman, presented the report of the Review Committee.

Judge Tamm gave the Conference a summary of the Committee's review of the reports of circuit and district judges, bankruptcy judges and United States magistrates. Pursuant to the Conference resolution at its March 1976 session (Conf. Rept., p. 24), as subsequently amended, Judge Tamm advised the Conference that ten district judges have not filed reports of extrajudicial income for the period January 1 through June 30, 1976, as follows:

Listing, by Circuit, of Judicial Officers Who Have Not, as of August 30, 1976, Filed Reports of Extra-Judicial Income for the Reporting Period Ending June 30, 1976:

Second Circuit:

**Edmund L. Palmieri
U.S. District Judge
**Sylvester J. Ryan
U.S. District Judge

**Edward Weinfeld
U.S. District Judge
**Inzer B. Wyatt
U.S. District Judge

**Judges declining to file as a matter of conscience

Sixth Circuit:

**Frank J. Battisti
U.S. District Judge

Ninth Circuit:

**Warren J. Ferguson
U.S. District Judge

**Peirson M. Hall
U.S. District Judge

**Manuel L. Real
U.S. District Judge

Tenth Circuit:

Stephen S. Chandler, Jr.

U.S. District Judge

**Willis W. Ritter
U.S. District Judge

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The Report of the Joint Committee was presented by Judge Edward A. Tamm, who with Judge Elbert P. Tuttle is co-Chairman of the Committee.

The Conference considered the request of the Radio Television News Directors Association that the photographing and broadcasting of ceremonial matters and naturalization proceedings be permitted in federal courtrooms and voted against a change in Canons of Judicial Ethics to permit such photographing and broadcasting.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman, reported that in the last six months the Committee had received eighteen formal inquiries compared with seventeen in the prior six-month period. At its summer meeting the Committee considered eleven inquiries which could not be resolved through correspondence or which were received just prior to the meeting. Judge Tuttle also reported that, pursuant to an earlier resolution of the Conference, the Federal Judicial Center has included the subject of judicial ethics in its seminars for newly-appointed judges.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

The report of the Committee on the Operation of the Jury System was presented by the Chairman, Judge Arthur J. Stanley, Jr.

EXCUSE BECAUSE OF DISTANCE

The Conference approved draft legislation for transmittal to the 95th Congress which would repeal 28 U.S.C. 1863 (b) (7), removing the authority to excuse prospective jurors from service automatically on the basis of a given distance from their residence

to the court and thus requiring the determination of requests for excuse based upon distance to be made on an individual case-by-case basis. The Conference agreed with the view of the Committee that the district courts should not single out residents of certain portions of the district for prospective avoidance of jury service by establishing in their jury selection plans specific mileage or travel distances as a basis for automatic excuse from service. While the Conference agreed that the adoption of this proposal might cause some increase in cost, it was not believed that this increase would have more than a minor impact upon the over-all annual financial outlay for fees and expenses of jurors.

JUROR FEE INCREASE AND EMPLOYMENT PROTECTION

The Conference reaffirmed its support of legislation which would raise the daily jury attendance fee from \$20 to \$30 and which would equate the allowable travel and necessary subsistence expenses of jurors to the rates established by the Director of the Administrative Office for supporting court personnel in travel status. The Conference further reaffirmed its support of legislation to provide statutory protection for the employment rights of federal jurors against termination because of their jury service. The Director of the Administrative Office was authorized to retransmit these proposals to the 95th Congress.

OTHER LEGISLATIVE PROPOSALS

The Conference further noted that several bills which it had previously endorsed relating to jury administration had failed of action in the 94th Congress, and the Director of the Administrative Office was authorized to transmit these proposals to the 95th Congress in the form of an omnibus bill encompassing the following proposals.

- (1) A bill to establish a presumption that the use of voter registration lists as the source of juror names is consistent with the policies of community cross-sectionality and nondiscrimination in the selection of federal juries (transmitted in draft form on May 21, 1976);
- (2) A bill to provide in civil cases for juries of six persons and to reduce the allowable peremptory challenges from three to two (pending as H.R. 6039 and S. 237);
- (3) A bill to amend the Federal Employees' Compensation Act by adding a new section providing for work injury coverage of federal petit and grand jurors in the performance of their duties (transmitted in draft form on March 24, 1975);
- (4) A bill to clarify the qualification section of the Jury Selection and Service Act, 28 U.S.C. §1865(b) (5), with regard to service by persons whose civil rights

- have been restored, by deleting the phrase "by pardon or amnesty" (pending as H.R. 6050);
- (5) A bill to add to the Jury Selection and Service Act further definitions relating to jury selection by electronic data processing (pending as H.R. 6051).

FREE PRESS - FAIR TRIAL

The Conference agreed that the subject of guidelines is properly within the cognizance of the Jury Committee and authorized the Committee to continue its study of the existing guidelines with a view to determining whether there is a need for further revision in light of their differences from the recommendations of the American Bar Association, as well as the decision of the Court of Appeals for the Seventh Circuit in *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, which invalidated certain district court local rules limiting attorney comment.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge Alfonso J. Zirpoli, Chairman, presented the report of the Committee on the Administration of the Criminal Law.

REGISTRATION OF FINES

The Conference approved a draft bill to amend Section 1963 of title 28, United States Code, to make it clear that a judgment of fine in a sum certain entered in any district may be registered in any other district. The Conference was advised that at present there is a conflict in the district courts as to the applicability of Section 1963 - some district courts view the statute as applying to only civil judgments and others apply it to both civil and criminal judgments.

DISCLOSURE OF PRIOR STATEMENTS OF DEFENSE WITNESSES

The Conference approved proposed legislation transmitted by the Office of Management and Budget which would amend title 18, United States Code, to provide for disclosure at trial of prior statements of defense witnesses in the hands of the defense. The Conference agreed with the members of the Committee who regarded the disclosure of prior statements of defense witnesses as promoting the concept of the trial as a search for the truth and thus better serve the ends of justice.

REVISION OF THE FEDERAL CRIMINAL CODE

Since it is expected that proposals for the revision of the Federal Criminal Code such as was embodied in S. 1 and substantially similar bills in the House of Representatives in the 94th Congress will be reintroduced in the 95th Congress, the Conference agreed to empower the Chairman of the Committee and such members as he may designate with full authority to speak for the Committee and the Conference at any Congressional committee hearings which may be heard on this subject matter in the 95th Congress.

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

The Conference considered the Committee's report, as well as the recommendations of the Director of the Administrative Office, the judicial councils and the district judges, and took the following actions relating to bankruptcy judge positions and changes in salaries and arrangements in the several districts concerned. The Conference agreed that its actions would be effective October 1, 1976, unless otherwise indicated in the report and subject to the availability of funds.

FIRST CIRCUIT

District of Massachusetts

- (1) Authorized the establishment of a fourth full-time referee position for the district with headquarters at Boston at an annual salary of \$37,800;
- (2) Designated Boston, Worcester, Springfield, Pittsfield and Taunton as places of holding court for the referees of the district;
- (3) Authorized the discontinuance of Fall River, Northampton, Salem, Brockton and Greenfield as places of holding court for the referees of the district;
- (4) Transferred the headquarters of the referee position now occupied by Paul W. Glennon from Boston to Worcester concurrent with the effective date of the new referee position; and
- (5) Established district-wide jurisdiction for the new position with the other full-time referees of the district.

SECOND CIRCUIT

Southern District of New York

- (1) Authorized the continuance of the full-time referee position at New York City to become vacant by expiration of term on December 20, 1976, for a term of six years, effective December 21, 1976, 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 White Plains to become vacant by expiration of term on April 18, 1977, for a term of six years, effective April 19, 1977, 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 establishment of a third full-time referee position for the district with headquarters at Buffalo, at an annual salary of \$37,800;
- (2) Established concurrent district-wide jurisdiction for the new position with the other full-time referees of the district;
- (3) Authorized the discontinuance of Geneva and Lockport as places of holding court for the referees of the district;
- (4) Designated Buffalo, Rochester, Batavia, Niagara Falls, Dunkirk, Olean, Jamestown and Elmira as places of holding court for all referees of the district.

FOURTH CIRCUIT

Middle District of North Carolina

- (1) Authorized the establishment of a second full-time referee position for the district with headquarters at Greensboro, at an annual salary of \$37,800;
- (2) Designated the places of holding court away from the Greensboro headquarters as Winston-Salem and Durham, and eliminated Salisbury as a designated place of holding bankruptcy court, effective October 1, 1976;
- (3) Established concurrent district-wide jurisdiction for the new position with the established position in the district.

Eastern District of Virginia

- (1) Authorized the continuance of the full-time referee position at Norfolk to become vacant by expiration of term on December 31, 1976, for a term of six years, effective January 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Virginia

- (1) Increased the salary of the part-time referee position at Harrisonburg from \$16,300 to \$18,900 per annum.

Southern District of West Virginia

- (1) Designated Beckley as an additional place of holding court for the full-time referee for the district, effective October 1, 1976, all other arrangements in the district to remain as at present.

FIFTH CIRCUIT

Southern District of Florida

- (1) Authorized the continuance of the full-time referee position at Miami to become vacant by expiration of term on January 11, 1977, for a term of six years, effective January 12, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present;
- (2) Authorized the establishment of a third full-time referee position for the district, with headquarters at Miami, at an annual salary of \$37,800;
- (3) Designated the territory and places of holding court to be the same as for the other full-time referees now headquartered at Miami;
- (4) Established concurrent district-wide jurisdiction for the new position with the other full-time referees of the district.

Northern District of Georgia

- (1) Designated Rome as an additional place of holding court for the referees of the district.

Western District of Louisiana

- (1) Changed the part-time position at Opelousas to a full-time referee position, at a salary of \$37,800 per annum, to be effective as soon as funds become available;
- (2) Designated Shreveport, Opelousas, Monroe, Alexandria, Lake Charles and Lafayette as places of holding court for the referees of the district;
- (3) Established concurrent district-wide jurisdiction for the full-time referees of the district.

Northern District of Mississippi

- (1) Increased the salary for the part-time referee position at Greenville from \$17,400 to \$18,900 per annum.

Eastern District of Texas

- (1) Authorized the continuance of the part-time referee position at Tyler to become vacant by expiration of term on December 31, 1976, for a term of six years, effective January 16, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Texas

- (1) Authorized the continuance of the full-time referee position at San Antonio to become vacant by expiration of term on February 8, 1977, for a term of six years, effective February 9, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present;
- (2) Changed the part-time referee position at San Antonio to a full-time referee position, at a salary of \$37,800 per annum;
- (3) Designated the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Western District of Kentucky

- (1) Authorized the continuance of the full-time referee position at Louisville to become vacant by expiration of term on January 15, 1977, for a term of six years, effective January 16, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Michigan

- (1) Authorized the continuance of the full-time referee position at Detroit to become vacant by expiration of term on March 25, 1977, for a term of six years, effective March 26, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present;
- (2) Established a combination referee/federal magistrate position for the district pursuant to Sections 34a and b of the Bankruptcy Act;
- (3) Established the salary for the bankruptcy service of the combination position at \$16,300 per annum;
- (4) Established Bay City as the headquarters for the combined referee/federal magistrate position, designating Bay City as the only place of holding court for the part-time referee position;
- (5) Designated the territory for the new part-time referee position to be comprised of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogenaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw and Tuscola Counties.

Northern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Youngstown to become vacant by expiration of term on January 21, 1977, for a term of six years, effective January 22, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Tennessee

- (1) Authorized the continuance of the full-time referee position at Memphis to become vacant by expiration of term on March 18, 1977, for a term of six years, effective March 19, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Eastern District of Illinois

- (1) Increased the salary of the part-time referee position at Danville from \$18,800 to \$18,900 per annum.

EIGHTH CIRCUIT

Eastern and Western Districts of Arkansas

- (1) Changed the part-time referee position at Little Rock to a full-time referee position, at a salary of \$37,800 per annum;
- (2) Designated the regular place of office in the Eastern District of Arkansas and the territories and places of holding court in the Eastern and Western Districts of Arkansas to remain as at present.

Northern District of Iowa

- (1) Authorized the continuance of the full-time referee position at Cedar Rapids to become vacant by expiration of term on March 26, 1977, for a term of six years, effective March 27, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Minnesota

- (1) Authorized the continuance of the full-time referee position at Minneapolis to become vacant by expiration of term on November 30, 1976, for a term of six years, effective December 1, 1976, the regular place of office, territory and places of holding court to remain as at present;
- (2) Designated Minneapolis, St. Paul, Duluth, Fergus Falls, Mankato, St. Cloud and Rochester as places of holding court for all full-time referees of the district;
- (3) Established concurrent district-wide jurisdiction for all full-time referees of the district.

District of South Dakota

- (1) Increased the salary of the part-time referee position at Sioux Falls from \$17,400 to \$18,900 per annum

NINTH CIRCUIT

District of Arizona

- (1) Authorized the continuance of the full-time referee position at Phoenix to become vacant by expiration of term on November 30, 1976, for a term of six years, effective December 1, 1976, the regular place of office, territory and places of holding court to remain as at present.

- (2) Authorized the establishment of a fourth full-time referee position for the district with headquarters at Phoenix, at an annual salary of \$37,800;
- (3) Designated Tucson, Yuma and Prescott as the territory and places of holding court away from the headquarters office;
- (4) Established concurrent district-wide jurisdiction for the new position with the other full-time referees of the district.

Northern District of California

- (1) Authorized the continuance of the full-time referee position at Eureka to become vacant by expiration of term on December 31, 1976, for a term of six years, effective January 1, 1977, the regular place of office, territory and places of holding court to remain as at present.

Central District of California

- (1) Authorized the continuance of the full-time referee position at Santa Ana to become vacant by expiration of term on December 31, 1976, for a term of six years, effective January 1, 1977, the regular place of office, territory and places of holding court to remain as at present.

District of Hawaii

- (1) Changed the part-time referee position at Honolulu to a full-time referee position, at a salary of \$37,800 per annum;
- (2) Established the regular place of office at Honolulu, the territory to include the District of Hawaii, with places of holding court at Honolulu, Wailuku, Hilo, and Lihue (Kauai), and the District Court of Guam, with the place of holding court at Agana.

TENTH CIRCUIT

District of Utah

- (1) Authorized the continuance of the full-time referee position at Salt Lake City to become vacant by expiration of term on March 16, 1977, for a term of six years, effective March 17, 1977, the regular place of office, territory and places of holding court to remain as at present.

District of Wyoming

- (1) Authorized the continuance of the part-time referee position at Cheyenne to become vacant by expiration of term on February 2, 1977, for a term of six years, effective February 3, 1977, the regular place of office and territory to remain as at present;
- (2) Designated Worland as a place of holding court for the district in addition to Cheyenne and Casper;
- (3) Changed the part-time referee position at Cheyenne to a full-time referee position, at a salary of \$37,800 per annum, to become effective as soon as funds become available;
- (4) The regular place of office and territory to remain as at present;
- (5) Designated Sheridan and Green River as places of holding court for the district in addition to Cheyenne, Casper and Worland.

APPROPRIATIONS

The Conference was advised that in the last half of fiscal year 1976 bankruptcy filings began to drop. As a result of this decline 72 additional clerical positions to perform bankruptcy work were

eliminated from the Administrative Office budget. As a result of Conference approval of new positions there will be 210 full-time and 25 part-time referees or a total of 235 positions.

STUDIES OF THE PROCEDURES FOLLOWED IN PROCESSING BANKRUPTCY APPEALS

The Conference was advised that at the request of the Committee, the Bankruptcy Division of the Administrative Office had inquired into the manner in which district courts scheduled hearings of appeals from Judgments or Orders from bankruptcy judges. The majority of replies explained specific procedures such as whether appeals were assigned to the district judges by lot, alternately between judges or by sealed packet. The only variations were:

(1) Bankruptcy appeals assigned first to motion judge, who determines whether greater judicial effort is required; if so, under local rule he assigns the matter to a district judge and, if not, decides the appeal as a motion.

(2) In four districts, all bankruptcy cases are assigned to a United States district judge when filed. That judge then gets the appeal. This practice is contrary to the intent of Bankruptcy Rule of Procedure 102, which provides that, on the filing of a bankruptcy case, the district court clerk should refer the case forthwith to a referee, and thereafter all procedures shall be before the referee. The second paragraph of this rule provides that a district judge may, for the convenience of the parties or for cause, withdraw a case or part of a case from the referee.

(3) The clerk assigns a civil number to the bankruptcy appeal and processes the case accordingly. This also is contrary to instructions issued by the Administrative Office.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

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

AMENDMENT TO THE FEDERAL TORT CLAIMS ACT

The Conference approved a draft bill to amend the Federal Tort Claims Act to include pretrial services officers with the definition of law enforcement officer, thereby providing an administrative route for resolution of claims against such officers in the areas of assault, false imprisonment, and the like. Judge Wollenberg reported that the 10 pretrial service agencies have processed approximately 5,000 cases, and that the staffs of the 10 agencies now include 94 professional and 37 clerical positions. The

Committee has endorsed the establishment of a petty cash fund of \$150 to \$300 depending on the size of the agency to cover minor cash expenses of released defendants.

At its March 1975 meeting the Conference approved guidelines for the carrying of firearms by probation officers. The Committee has advised the Director of the Administrative Office he should not be required to purchase ammunition necessary for required training.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge Roy W. Harper, Chairman of the Committee on Intercircuit Assignments, reported to the Conference on assignments covering the period from February 15 to August 15, 1976.

During this period the Committee recommended 47 assignments to be undertaken by 39 judges. Of this number, four are senior circuit judges, seven are active circuit judges, six are district judges in active status and 16 are senior district judges. One retired Supreme Court Justice participated in four assignments. Eight assignments involved one active judge from the Court of Claims, two active judges from the Court of Customs and Patent Appeals and two active judges of the Customs Court.

Four senior circuit judges, seven senior district judges, and one retired Supreme Court Justice carried out 16 of the 30 assignments to the circuit courts of appeals which were recommended during this period. Seven active circuit judges, two active district judges, two active judges of the Court of Customs and Patent Appeals and one active judge of the Court of Claims participated in the other 14 assignments to the courts of appeals.

Of the 17 assignments to the district courts, nine senior district judges participated in ten assignments, the remaining seven being carried out by four active district judges and two active judges of the United States Customs Court.

In addition to the foregoing, the Committee recommended and the Chief Justice approved an interchange of assignments between the seven active judges of the United States Court of Claims and the five active judges of the United States Court of Customs and Patent Appeals to cover any emergency which might arise during the period April 1, 1976 and March 31, 1977.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

The report of the Committee on the Administration of the Federal Magistrates System was presented by its Chairman, Judge Charles M. Metzner.

SALARIES OF MAGISTRATES

The Conference reaffirmed its support of S. 2923, a bill to amend the statutory ceiling on the salaries of magistrates, and authorized, subject to the enactment of S. 2923, an increase in the salaries of those full-time magistrate positions now fixed at \$31,500 to \$37,800.

STANDARD SALARY LEVELS FOR PART-TIME MAGISTRATES

In order to achieve consistency among magistrates having similar caseloads both within a district and nationally, the Conference in March 1975 (Conf. Rept., p. 31) approved a schedule of standard salary levels for part-time magistrates. The Conference agreed to the recommendations of the Committee to adopt the following changes in the existing schedule of salary levels, as follows:

1. Eliminate the present levels of \$387, \$996, \$1,661 and \$2,325 and adjust the salaries of the part-time magistrates who are now at those levels to the next higher respective levels, effective December 1, 1976;
2. Add a new level of \$12,500 to fill the gap between the present \$11,079 and \$13,959 levels;
3. Add new levels at \$17,300 and \$18,900, subject to the enactment of S. 2923.

CHANGES IN MAGISTRATE POSITIONS

The Conference approved the recommendations of the Committee for the authorization of five new full-time positions, the conversion of four part-time positions to full-time positions, authorization of one new combination position, conversion of one part-time position to a combination position, discontinuance of five part-time positions, the increase in salaries of 12 part-time positions and one combination position and continuation of two full-time positions, two combination positions and 25 part-time positions for new terms of office.

The Conference approved the following changes in magistrate positions and salaries after receiving the recommendations of the Administrative Office, the district courts, the judicial councils of the circuits, as well as the Committee, to be made effective when appropriated funds are available:

FIRST CIRCUIT

District of Massachusetts

- (1) Continued the part-time magistrate position at Pittsfield for an additional four-year term at the currently authorized salary of \$387 per annum.

SECOND CIRCUIT

Northern District of New York

- (1) Continued the part-time magistrate position at Troy for an additional four-year term at the currently authorized salary of \$387 per annum;
- (2) Authorized the clerk of court at Albany to perform the duties of a part-time magistrate for a four-year period at no additional compensation.

Eastern District of New York

- (1) Authorized a third full-time magistrate position for appointment at Brooklyn at a salary of \$31,500 per annum.

THIRD CIRCUIT

District of New Jersey

- (1) Continued the part-time magistrate position at Atlantic City for an additional four-year term at the currently authorized salary of \$1,329 per annum.

Western District of Pennsylvania

- (1) Continued the part-time magistrate position at Johnstown for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Johnstown from \$664 to \$1,329 per annum.

FOURTH CIRCUIT

Eastern District of North Carolina

- (1) Continued the part-time magistrate position at Fayetteville for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Fayetteville from \$13,959 to \$15,750 per annum;
- (3) Continued the part-time magistrate position at New Bern for an additional four-year term at the currently authorized salary of \$5,539 per annum.

Eastern District of Virginia

- (1) Continued the full-time magistrate position at Norfolk for an additional eight-year term at the current authorized salary of \$31,500 per annum.

Western District of Virginia

- (1) Continued the part-time magistrate position at Winchester for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Winchester from \$996 to \$1,329 per annum.

FIFTH CIRCUIT

Southern District of Florida

- (1) Converted the part-time magistrate position at West Palm Beach to a full-time position at a salary of \$31,500 per annum;

- (2) Discontinued the part-time magistrate position at Fort Pierce, effective upon the appointment of a full-time magistrate at West Palm Beach.

Middle District of Georgia

- (1) Continued the part-time magistrate position at Athens for an additional four-year term at the currently authorized salary of \$2,658 per annum.

Eastern District of Louisiana

- (1) Authorized two additional full-time magistrate positions for appointment at New Orleans, each at a salary of \$31,500 per annum.

Eastern District of Texas

- (1) Increased the salary of the part-time magistrate position at Sherman from \$1,993 to \$6,647 per annum.

SIXTH CIRCUIT

Western District of Kentucky

- (1) Continued the part-time magistrate position at Paducah for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Paducah from \$2,325 to \$3,323 per annum.

Eastern District of Michigan

- (1) Converted the part-time magistrate position at Bay City to a combination bankruptcy judge-magistrate position at a salary of \$15,750 for the performance of magistrate duties;
- (2) Discontinued the part-time magistrate position at Flint, effective upon the appointment of a bankruptcy judge-magistrate at Bay City.

Northern District of Ohio

- (1) Converted the part-time magistrate position at Akron to a full-time position at a salary of \$31,500 per annum;
- (2) Discontinued the part-time magistrate position at Youngstown, effective upon the appointment of a full-time magistrate at Akron.

Southern District of Ohio

- (1) Converted the part-time magistrate position at Dayton to a full-time position at a salary of \$31,500 per annum.

SEVENTH CIRCUIT

Eastern District of Illinois

- (1) Authorized the bankruptcy judge-magistrate at Danville to perform the duties of a part-time magistrate for an additional four-year term;
- (2) Increased the compensation of the bankruptcy judge at Danville for the performance of magistrate duties from \$1,993 to \$2,658 per annum.

EIGHTH CIRCUIT

Northern District of Iowa

- (1) Continued the part-time magistrate position at Sioux City for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Sioux City from \$387 to \$1,329 per annum.

District of Minnesota

- (1) Authorized a new full-time magistrate position for appointment at St. Paul or Minneapolis at a salary of \$31,500 per annum.

District of North Dakota

- (1) Increased the salary of the part-time magistrate position at Rolla from \$664 to \$1,329 per annum, effective December 1, 1976.

NINTH CIRCUIT

District of Alaska

- (1) Converted the part-time magistrate position at Anchorage to a full-time position at a salary of \$31,500 per annum;
- (2) Increased the salary of the part-time magistrate position at Fairbanks from \$6,647 to \$13,959 per annum.

Eastern District of California

- (1) Continued the part-time magistrate position at Redding for an additional four-year term at the currently authorized salary of \$7,976 per annum;
- (2) Continued the part-time magistrate position at Susanville for an additional four-year term at the currently authorized salary of \$1,394 per annum.

Central District of California

- (1) Continued the part-time magistrate position at Santa Barbara for an additional four-year term;
- (2) Increased the salary of the part-time magistrate position at Santa Barbara from \$5,539 to \$6,647 per annum;
- (3) Continued the part-time magistrate position at Oxnard/Ventura for an additional four-year term at the currently authorized salary of \$3,987 per annum.

District of Montana

- (1) Continued the part-time magistrate position at Billings for an additional four-year term at the currently authorized salary of \$1,661 per annum;
- (2) Continued the part-time magistrate position at Bozeman for an additional four-year term;
- (3) Increased the salary of the part-time magistrate position at Bozeman from \$387 to \$664 per annum.

District of Oregon

- (1) Authorized the bankruptcy judge at Eugene to perform magistrate duties for an additional four-year term at the currently authorized salary of \$15,750 per annum;
- (2) Continued the part-time magistrate position at Klamath Falls for an additional four-year term;
- (3) Increased the salary of the part-time magistrate position at Klamath Falls from \$733 to \$1,329.

Western District of Washington

- (1) Authorized an additional full-time magistrate position for appointment at Seattle at a salary of \$31,500 per annum.

TENTH CIRCUIT

District of Kansas

- (1) Continued the full-time magistrate position at Wichita for an additional eight-year term at the currently authorized salary of \$31,500 per annum;
- (2) Continued the part-time magistrate positions at Parsons, Colby and Leavenworth for additional four-year terms, each at the currently authorized salary of \$387 per annum;
- (3) Continued the part-time magistrate position at Junction City for an additional four-year term at the currently authorized salary of \$996 per annum;
- (4) Continued the part-time magistrate position at Garden City for an additional four-year term at the currently authorized salary of \$400 per annum;
- (5) Discontinued the part-time magistrate position at Salina upon the expiration of the current term of office.

District of New Mexico

- (1) Continued the part-time magistrate position at Farmington for an additional four-year term at the currently authorized salary of \$696 per annum.

Western District of Oklahoma

- (1) Continued the part-time magistrate position at Altus for an additional four-year term at the currently authorized salary of \$442 per annum.

District of Wyoming

- (1) Continued the part-time magistrate position at Sheridan for an additional four-year term at the currently authorized salary of \$387 per annum;
- (2) Discontinued the part-time magistrate position at Torrington upon the expiration of the current term of office;
- (3) Increased the salary of the part-time magistrate position at Cheyenne from \$6,647 to \$7,976 per annum.

**COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE
ACT**

The report of the Committee to Implement the Criminal Justice Act was presented by the Chairman, Judge Dudley B. Bonsal.

APPOINTMENTS AND PAYMENTS

The Conference received and authorized the release by the Administrative Office of the report on appointments and payments made under the Criminal Justice Act. The report shows that during fiscal year 1976 approximately 48,000 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. The sum of \$19,046,000 was appropriated for implementation of the Act in fiscal year 1976.

During the year the chief judges of the courts of appeals approved 196 claims for compensation in excess of the statutory limitation of \$1,000 in felony cases. The largest single factor in

the costs of transcripts, expert and other services has been in the cost of transcripts. The cost of operating the 22 federal defender offices during fiscal year 1976 was approximately 4.8 million dollars. In that period the federal public defenders were assigned to 11,751 cases at an overall average cost of \$407 per case, including appeals, as compared with an average cost of \$385 per case for services rendered by private panel attorneys and \$417 per case for community defenders.

BUDGET REQUESTS FOR FEDERAL PUBLIC DEFENDERS

The Conference approved requests for supplemental appropriations for fiscal year 1977, as follows:

<i>Federal Public Defender Office</i>	<i>Amount Approved</i>
Arizona	\$28,484
California, Eastern	3,000
California, Central	40,000
Connecticut	29,000
Maryland	12,283
Missouri	2,427
New Mexico	22,232
Virgin Islands	17,510
Washington, Western	22,032

For fiscal year 1978 the Conference approved the following budget requests:

<i>Federal Public Defender Office</i>	<i>Amount Approved</i>
Arizona	\$517,000
California, Northern	382,904
California, Eastern	254,177
California, Central	927,000
Colorado	157,000
Connecticut	172,000
Florida, Southern	348,000
Kansas	204,000
Kentucky, Eastern	154,374
Louisiana, Eastern	220,761
Maryland	336,672
Missouri	356,413
Nevada	193,000
New Jersey	347,000
New Mexico	147,586
Ohio, Northern	214,727
Pennsylvania, Western	194,942
Tennessee, Western	85,737
Texas, Southern	333,461
Texas, Western	315,830
Virgin Islands	206,500
Washington, Western	224,788

COMMUNITY DEFENDER ORGANIZATIONS

The Conference approved a supplemental grant to the Community Defender Organization for the Eastern District of Pennsylvania for fiscal year 1977 in the amount of \$4,000 to cover additional unanticipated rental expenses.

PAROLE COMMISSION AND REORGANIZATION ACT

The Conference was advised that it was the Committee's opinion that financially eligible parolees in parole revocation proceedings are entitled to counsel under the Criminal Justice Act. As to counsel appointed in parole termination proceedings under 18 U.S.C. 4211(c) an opinion has been sought from the Comptroller General to resolve the existing doubt as to the applicability of the Act.

GUIDELINES

The Conference approved an addition to Chapter II, A, 1, d, of the Guidelines for the Administration of the Criminal Justice Act in order to provide clearly for the appointment of counsel for persons proposed by the United States Attorney for placement in a pretrial diversion program, as follows:

- (3) Counsel may be appointed for financially eligible persons proposed by the U.S. Attorney for processing under a "pretrial diversion" program. Such an appointment is deemed to be under the general terms of the Act rather than subsection (g), and should be considered an appointment in a felony or misdemeanor case in accordance with the offense alleged by the U.S. Attorney to have been violated.

CRIMINAL PRACTICE MANUAL

The Conference was advised that an advisory committee consisting of experienced public defenders had completed a basic federal criminal practice manual for use by all who represent defendants under the Criminal Justice Act. The Administrative Office will assume responsibility for the printing and distribution of the manual. It is intended that the manual will be provided at no cost to each federal judge and to all attorneys, including federal defenders, who are subject to appointment under the Criminal Justice Act. Copies will also be made available to others on request at a cost not to exceed \$5.00.

SEMIANNUAL REPORT OF EXCESS PAYMENTS

At the April 1972 session of the Judicial Conference (Conf. Rept., p. 21) a motion was made and carried requiring the

Administrative Office to determine on a quarterly basis the names of attorneys appointed under the Act who during that quarter were paid more than \$1,000 and report such facts to the chief judges of the circuits involved. At the October 1972 session this resolution was modified to require a report to the chief judges of both the circuit and district courts on a semiannual basis of attorneys receiving more than \$6,000 (Conf. Rept., p. 54). This requirement was imposed in order to test the adequate functioning of the rotation system for the appointment of counsel. Experience has indicated that the chief judges of the circuits are aware of the appointments made since they must personally approve excess compensation and that few districts appear to assign a large number of cases to the same attorney. Accordingly, the Conference approved a further modification of the 1972 resolution to provide for an annual report to the chief judges of the circuit and district courts of attorneys appointed under the Act who receive in excess of \$12,000 during the reporting year.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The report of the Committee on Rules of Practice and Procedure was presented by the Chairman, Judge Roszel C. Thomsen.

BANKRUPTCY RULES

The Conference was advised that on April 26, 1976, the Supreme Court, pursuant to the recommendation made at the September 1975 session (Conf. Rept., p. 76), approved the rules and forms governing proceedings under Chapter VIII and IX of the Bankruptcy Act and rules and forms amending certain rules and forms previously prescribed pursuant to Chapters I through VII, XI and XIII of the Bankruptcy Act. These rules became effective on August 1, 1976 and thus completed the work of the Advisory Committee on Bankruptcy Rules which has been discharged with an expression of appreciation by the Conference for the Committee's achievement.

CRIMINAL RULES

On April 26, 1976, the Supreme Court also approved and transmitted to the Congress amendments to certain of the rules of criminal procedure, as well as the rules and forms governing Section 2254 cases in the United States district courts and the rules

and forms governing Section 2255 proceedings in the United States district courts.

Judge Thomsen advised that the Congress subsequently enacted legislation approved by the President on July 8, 1976, as Public Law 94-349, changing the effective date of certain of the rules and amendments as follows:

1. The amendments to Rules 6(e), 23, 24, 40.1 and 41(c)(2) of the Rules of Criminal Procedure shall not take effect until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier;

2. The remaining amendments to Rules of Criminal Procedure, namely amendments to Rules 6(f), 41(a), 41(c)(1), and 50(b) are not changed by Public Law 94-349 and hence shall become effective August 1, 1976, as set forth in the Order of the Supreme Court of April 26, 1976.

On September 28, 1976, the President signed as Public Law 94-426 legislation changing in certain respects rules and forms relating to 2254 and 2255 proceedings as embraced in the Order of the Supreme Court of April 26, 1976, and stipulated that these rules shall become effective on February 1, 1977.

REVIEW OF SENTENCES

Judge Thomsen advised the Conference that the Advisory Committee on Criminal Rules and the Standing Committee had approved a proposed Rule 35.1 of the Federal Rules of Criminal Procedure which is to be circulated to the bench and bar on or about October 1, 1976, for further comment.

The rule proposes, in general, review of sentences in the court of appeals involving (a) the filing of a petition for leave to appeal; (b) the screening of such petitions by a three-judge panel of the court of appeals, which panel may include one or two district judges as each circuit may decide and (c) if the screening panel decides that a showing has been made of a substantial basis for believing that the sentence is clearly unreasonable, the panel shall grant a petition and the court of appeals shall thereafter determine whether the sentence is clearly unreasonable.

BICENTENNIAL COMMITTEE

Judge Clement F. Haynsworth, Jr., Chairman, submitted a written report to the Conference outlining the four ongoing projects of the Bicentennial Committee, as follows:

(1) The Committee has contracted with Metropolitan Pittsburgh Public Broadcasting, Inc., for the production of five 30-minute films and a 90-minute special feature film, focusing on early decisions that were significant in the development of this

country's federal system. The Committee has approved the five scripts for the short films. After some delay, production begins next week and the movies are expected to be available for distribution in the spring of 1977. The special film will be shown during prime time on the Public Broadcasting Stations at approximately the same time;

(2) Professor Sidney Hyman of the University of Illinois is working on a projected popular book intended for use primarily by the lay people and focusing on the roles of the courts in the federal system.

(3) In February the Committee distributed biographical questionnaires to all members of the federal judiciary as one step in the production of a biographical directory of all federal judges, past and present. As of this time, over 400 judges have returned their completed questionnaires and questionnaires continue to arrive daily at the Bicentennial Committee's offices.

(4) The circuits have the option of preparing a history of the courts in their geographic area. The Committee will consider providing up to \$5,000 to each circuit for the writing of its history, upon submission of justification therefor. Thus far, the Committee has authorized varying amounts for preparation of histories of the Third, Fifth, Sixth, Seventh, Eighth, Ninth, and D.C. Circuits. The Bicentennial Committee is also aware that the Second Circuit, the Court of Customs and Patent Appeals, the Court of Claims, and the Customs Court are preparing such histories without requests for funds.

PACIFIC TERRITORIES COMMITTEE

In August 1976 the Chief Justice appointed Judge Richard H. Chambers of the Ninth Circuit Court of Appeals as Chairman of an ad hoc committee to study and make such recommendations as may be appropriate on the question of the court structure in the Pacific Territories, with particular reference to the Territory of American Samoa, the Territory of Guam, the incoming Commonwealth of Northern Mariana and the Trust Territory of the Pacific Islands as it will exist after the establishment of the Commonwealth of Northern Mariana.

Judge Chambers outlined to the Conference the historical background and some of the problems that will be encountered in the judicial systems of these four islands, particularly with relation to the matter of appeal, either to the Supreme Court of the United States or the Court of Appeals for the Ninth Circuit.

Judge Chambers pointed out that H.R. 4580, a bill pending in the 94th Congress relating to the Organic Act of Guam, requires further study insofar as the judiciary is concerned and the Conference agreed to request the Congress to defer consideration of these problems until the 95th Congress so that the Committee will have a further opportunity to report to the Conference at its next session recommendations as to the structure of the judiciary in Guam.

It was agreed that further reports of this Committee will be made through the Committee on Court Administration.

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 all sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans, Louisiana, and for the sessions of the Eighth Circuit Court of Appeals to be held in Omaha, Nebraska, and Kansas City, Missouri.

ELECTIONS

The Conference noted that the Executive Committee, subsequent to the April session of the Conference, exercising the plenary authority given by the Conference approved the election of the Honorable John C. Godbold of the Court of Appeals for the Fifth Circuit to be a member of the Board of the Federal Judicial Center to fill the unexpired term of Griffin Bell who resigned and the election of the Honorable Frank J. McGarr of the Northern District of Illinois for a four-year term as a member of the Board of the Federal Judicial Center, succeeding the Honorable Alfred A. Arraj whose term had expired.

RELEASE OF CONFERENCE ACTION

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

WARREN E. BURGER
Chief Justice of the United States

November 3, 1976

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