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

March 10-11, 1977

Washington, D.C.  
1977

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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.

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

March 10-11, 1977

The Judicial Conference of the United States convened on March 10, 1977, 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. Caffery, 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  
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 California

*Tenth Circuit:*

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

*Court of Claims:*

Judge Oscar H. Davis

*Court of Customs and Patent Appeals:*

Chief Judge Howard T. Markey

Circuit Judges Robert A. Ainsworth, Jr., and Edward A. Tamm; Senior District Judges Dudley B. Bonsal, Arthur J. Stanley, Jr., Roszel C. Thomsen, Carl A. Weinman, Albert C. Wollenberg and Alfonso J. Zirpoli; and District Judges Edward J. Devitt, George L. Hart, Jr., William B. Jones, Charles M. Metzner and Edward Weinfeld attended all or some of the sessions of the Conference.

The Honorable Walter E. Hoffman, Director of the Federal Judicial Center, reported orally on the activities of the Center since the last session of the Conference.

A written report of the activities of the Panel on Multi-district Litigation was submitted on behalf of the Panel.

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 sessions of the Conference, as did the Administrative Assistant to the Chief Justice, Mark W. Cannon.

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

The Director of the Administrative Office, Mr. Rowland F. Kirks, reported to the Conference on the state of the business of the federal courts for the six-month period ending December 31, 1976.

\* On designation of the Chief Justice, Judge Richard H. Chambers attended in place of Chief Judge James R. Browning who was unavoidably absent.

\*\* On designation of the Chief Justice, Judge Oliver Seth attended in place of Chief Judge David T. Lewis who was ill.

The incoming workload of the courts of appeals continues to increase unabated, Mr. Kirks stated. During the period from July 1 through December 31, 1976, filings rose by more than 4%. While these courts also managed to increase their terminations by 6%, they were not able to prevent a continuing rise in the pending backlog. The 15,391 cases pending on December 31, 1976, was 14% higher than the backlog of only six months earlier.

Civil filings in the district courts fell 4.1% compared to the same six-month period from last year while terminations increased by approximately 6%. This combination of decreased filings and increased terminations, however, did not result in a reduction in the pending backlog. At the end of December 1976, Mr. Kirks said that there was a record high 148,369 civil cases pending in the district courts, almost 11% more than at the close of calendar year 1975.

There were several areas which contributed to the overall declines in civil filings during the six-month period. Marine contract cases dropped 24%; land condemnation cases were down 43%; and Interstate Commerce Commission cases, mostly those involving freight damage, experienced a decline of 46%. Social Security case filings overall continued to climb and were 9.3% higher than the six-month period from last year; however, the dramatic rise in "black lung" litigation (which is included in the Social Security category) noted in previous years has reversed, as 32% fewer cases were filed during the half-year period.

Criminal case filings continued to drop during the half-year period as 3% fewer cases were filed. Case terminations were also lower than last year by more than 10%. The decline in both filings and terminations resulted in a December 31 pending figure of 20,483, 5% lower than a year ago.

Apart from the fact that the Administrative office is no longer counting superseding criminal indictments as new cases and is now counting minor offenses as part of the criminal caseload, Mr. Kirks said there is reason to believe that the criminal case filings will increase again. There were several areas which experienced significant increases during the six-month period. For example, burglary cases increased by 47% over the same six-month period from last year. Postal larceny and stolen property increased 15% and 64% respectively. Income tax

prosecutions rose by 55% and other fraud prosecutions rose by 23%.

Bankruptcy cases filed continue to spiral downward. Compared to the same six-month period a year ago, the decrease was more than 15%. The pending caseload continues to be staggering, but it has dropped more than 16,000 compared to a year ago.

The 41% increase in additional duties in civil proceedings on the part of U. S. magistrates was accompanied by a 10% increase in both trial jurisdiction cases and in additional duties connected with criminal cases. Altogether the U. S. magistrates handled 6% more matters than the same period from a year ago.

The Federal Probation Service has experienced a decline in persons received for supervision due almost totally to the downturn in criminal prosecutions. The 64,432 persons under supervision represented a 39 person caseload per officer for the 1,669 authorized probation officer positions.

Juror utilization improved with the percentage of jurors selected or serving up to 60.4 percent, compared to 59.6 percent last year. Mr. Kirks pointed out that the percentage of jurors not selected, serving or challenged which dropped to 23.9 percent, is most gratifying.

#### COMMITTEE ON THE BUDGET

Judge Carl A. Weinman, Chairman of the Budget Committee, reported to the Conference on the recently concluded hearings before the Subcommittee on Appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies, of the House of Representatives. He informed the Conference of some concessions that were made with respect to the staffing requirements of the district courts in view of a reduction in civil, criminal, and bankruptcy case filings and a reduction in the supervision caseload of probation officers.

Judge Weinman stated that a net increase of 319 positions had been requested for the courts of appeals and district courts for fiscal year 1978 which is a modest increase compared to prior years. He stated that the revised estimate for the courts of appeals and district courts for 1978 was \$300,813,000, repre-

senting an increase of \$22,361,000, or 8 percent over the adjusted appropriations for 1977. He explained that two-thirds of the increase, or \$14,830,000 represented pay costs and other statutory or uncontrollable items of expense.

Judge Weinman distributed to the members of the Conference copies of a listing of statutes enacted by Congress since 1969 which have resulted in an increased workload for the courts and a corresponding increase in budgetary requirements.

## COMMITTEE ON COURT ADMINISTRATION

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

### ADDITIONAL JUDGESHIPS

#### *District Courts*

At the September 1976 session, the Conference approved (Conf. Rept., p. 37) a recommendation to the Congress for 106 additional district judgeships. This recommendation emanated from the quadrennial survey of the needs of the district courts made by the Subcommittee on Judicial Statistics in collaboration with the Administrative Office. At the September session, Chief Judge Browning requested that the committee be permitted to inquire further into the needs of the Northern District of California. As a result of a further survey of the Northern District of California, the Conference approved the recommendation of the committee for an additional judgeship for this district, bringing to a total of 107 the number of district judgeships recommended at the September and March sessions.

#### *Courts of Appeals*

As a result of the last quadrennial survey of the judgeship needs of the courts of appeals in 1974, the Conference approved a request to the Congress for 13 additional circuit judgeships. At the September 1976 session, the Conference approved as an emergency measure the establishment of three additional circuit judgeships for the District of Columbia Circuit. The Congress has taken no action on either of these recommendations. The committee noting that nine years have passed since additional circuit judgeships have been increased and noting

the vast growth in filings in the two years since the last quadrennial survey requested the Subcommittee on Judicial Statistics and the Administrative Office to make an in-depth analysis of the workloads of the circuit courts of appeals. As a result of this survey and analysis the committee recommended and the Conference approved nine additional judgeships: two in the Second Circuit, one in the Fourth Circuit, one in the Sixth Circuit and five in the Ninth Circuit, thus bringing the total of Conference recommendations for new circuit judgeships to twenty-five, as follows:

First Circuit .....	1
Second Circuit .....	2
Third Circuit .....	1
Fourth Circuit .....	3
Fifth Circuit .....	0
Sixth Circuit .....	2
Seventh Circuit .....	1
Eighth Circuit .....	1
Ninth Circuit .....	10
Tenth Circuit .....	1
District of Columbia Circuit .....	3

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Because of the urgent need of presenting these additional recommendations to the Congress early in its session, the recommendations for circuit judgeships and for an additional district judgeship in the Northern District of California were approved by the Executive Committee for the Conference on February 8, 1977.

#### *Biennial Survey of Judgeship Needs*

Upon recommendation of the Subcommittee on Judicial Statistics made necessary if the courts are to cope with their civil dockets as well as comply with the requirements of the Speedy Trial Act, the Conference approved a recommendation that the committee be authorized to make biennial surveys of the needs of the district courts and of the courts of appeals, commencing in 1978.

#### WEIGHTED FILING INDEX

The last revision of the weighted filing index for the district courts used by the Administrative Office and by the Subcom-

mittee on Judicial Statistics was made in 1970. Since that time many changes have occurred in the judicial system and in the nature of the workload of the district courts. As a result, the committee believes that the present weighted filing index no longer serves as a reasonably accurate measure of the work of a district court. The last revision was prepared under the supervision of the Federal Judicial Center and the Conference approved a recommendation that the Center be requested to study and revise the index, or if need be, to fashion an entirely new system for assessing the workload of each district court. In carrying out this urgent study, the Center was requested to consult with the Subcommittee on Judicial Statistics of the Judicial Conference.

#### UNIFORM RULES OF DISCIPLINARY ENFORCEMENT

At the September 1976 session the Conference was advised (Conf. Rept., p. 35) that proposed guidelines for Uniform Rules of Disciplinary Enforcement were again being circulated to all federal judges for comment prior to making a recommendation to the Judicial Conference. This has now been accomplished. As a result of a motion from the floor of the Conference the guidelines were also sent to the presidents of the state bar associations. The Chairman of the American Bar Association Standing Committee on Professional Discipline, Mr. John McNulty, in December 1976, advised the Subcommittee on Judicial Improvements that there is a substantial need for additional time to brief the state bar presidents as to the background and need for national rules. At the request of Mr. McNulty the subcommittee agreed, with the consent of the committee, to defer further presentation to the Judicial Conference of this subject matter until there has been an opportunity to present it fully to the mid-year meeting of the House of Delegates of the American Bar Association and to the annual meeting of the Association in August.

#### SUPPORTING PERSONNEL

##### *Crier Law Clerks*

At the present time a law clerk for a district judge normally receives the salary of JSP 11 and a crier law clerk the salary of JSP 9. It has been ascertained that within the current aggre-

gate salary limitations of a district judge, it would be possible to appoint both crier law clerks and law clerks at JSP 11, thus equalizing the salary throughout their terms of service. There is in most instances little or any differential in the assigning of duties and responsibilities of these two individuals and as a result district judges frequently change the individuals from one position to the other at mid-point in their terms of service, causing some 400 personnel actions to be effected and distributed annually by the Administrative Office. The Conference agreed that so long as the aggregate salary limitations permit both law clerks to be assigned to Grade JSP 11 the qualification standards and classification standards for the position of crier law clerk are approved for Grades JSP 10 and JSP 11.

#### COURTROOM DEPUTIES TO SENIOR JUDGES

The Conference approved the following resolution concerning the furnishing of courtroom deputies to 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 courtroom deputy service, the necessary personnel shall be provided to the clerk of court by the Administrative Office in an appropriate manner. Regular review of the continued need for such service is expected to be made.

The Conference approved a further resolution requesting a full study by the committee of all questions relating to senior judges and services rendered to senior judges.

#### LEGISLATION

##### *Western District of Louisiana*

The Conference approved H.R. 1916, a bill to amend 28 U.S.C. 98 (c) to eliminate the statutory designations of divisions in the Western District of Louisiana. This proposal had previously been approved by the judges of the district and by the Judicial Council of the Fifth Circuit.

##### *Diversity Jurisdiction*

The Conference approved H.R. 761, 95th Congress, a bill which would abolish diversity of citizenship as a basis of jurisdiction in the United States courts, except as it might apply to the courts in the Pacific Trust Territories. The Conference

further agreed that should the Congress fail to respond to this request, the Conference reaffirmed its approval of a bill to prohibit a plaintiff from filing a diversity case in the state of his residence, as well as reaffirmed its support of S. 3153, 94th Congress, approved at the September 1976 session (Conf. Rept., p. 40), which would increase the jurisdictional amount in diversity cases to \$25,000. In view of the trend toward the elimination of jurisdictional amount requirements in federal cases, the Conference in regard to S. 3153, 94th Congress, amended its previous action to reaffirm the proposal to increase the jurisdictional amount in diversity cases to \$25,000 but recommended that the Congress eliminate entirely the general amount in controversy requirement for federal question cases in 28 U.S.C. 1331.

*H.R. 15640, 94th Congress*

The Conference approved this bill which would authorize suits against the United States upon a contract of guarantee made by the United States under Section 2(b) of the Emergency Livestock Credit Act to be filed in United States district courts but the Conference urged that the bill be redrafted as an amendment to the Emergency Livestock Credit Act rather than as an amendment to Title 28, United States Code, Section 1346, the general jurisdiction provision with respect to suits against the United States.

*Jurisdiction of the Customs Court*

The Conference approved S. 3871, 94th Congress, which would amend the jurisdiction of the United States Customs Court to provide that it shall possess all powers in law and equity of a district court. The Conference further took no position with respect to the proviso relating to the appointment of judges from the same political party. The Conference further urged that the bill be redrafted to make the provision for equitable powers a part of Section 1581 of Title 28 rather than Section 251.

#### JUDICIAL REVIEW

The Conference agreed to a proposal of the Administrative Conference of the United States to harmonize the provision for judicial review under the Clean Air Act and the Federal Water Pollution Control Act, to grant exclusive jurisdiction to the

United States Court of Appeals for the District of Columbia Circuit to review nationwide environmental standards administratively determined under both acts, to authorize the transfer of suits by the courts of appeals and the district courts and to require suits involving state implementation plans to be brought in the appropriate circuit in which the state is located.

#### SALARIES FOR UNGRADED JUDICIAL PERSONNEL

Subsequent to the meeting of the Committee on Court Administration and the submission of its report, recommendations contained in the President's budget message of January 17, 1977 which, among other things, increased the salaries of federal judges, became effective February 21, 1977. The Conference at its October 1971 session (Conf. Rept., p. 65) adopted a report of an ad hoc Committee on Salaries, chaired by Judge William H. Hastie, and at the April 1976 session (Conf. Rept., p. 4) the Conference reaffirmed but temporarily suspended the report of the Committee on Salaries to authorize an increase in salaries of clerks of court. As a result of a reexamination of these two actions of the Conference in the light of the changes in the salaries of federal judges which have now become effective, the committee recommended and the Conference approved the following:

##### *Circuit Executives*

By statute, the salary of circuit executives shall not exceed Level V of the Executive Service which has now become \$47,500. The Conference approved that this sum be fixed as the maximum salary which a circuit executive is permitted, with the actual amount of compensation to be determined within that limit by the judicial councils of the respective circuits. Each salary increase will become effective at the beginning of the first pay period following receipt by the Director of the Administrative Office of the official recommendation of the judicial council of the circuit.

On motion of Chief Judge Kaufman it was agreed that the Committee on Court Administration should study the feasibility of legislation which would permit the salary of circuit executives to be raised to a level \$500 higher than the top salaries of referees in bankruptcy and full-time magistrates.

On motion of Chief Judge Brown it was agreed that the

Committee on Court Administration should also study the feasibility and desirability of legislation to provide court executives for the chief judges of the larger multi-judge district courts.

*Clerks of Court*

The Conference approved a recommendation that the salary structure for clerks of court shall be the same as was approved at the October 1971 session of the Conference so that clerks of the larger courts and of the appellate courts and of the Customs Court would receive up to 75 percent of the salary of a district judge, the clerks of the medium courts would receive 70 percent of the salary of a district judge and the clerks of the smaller courts, including the territorial courts, would receive up to 60 percent of the salary of a district judge. Since all clerks' salary changes are subject to the approval of the judges of the circuit or district involved, the Conference agreed that such changes would become effective at the beginning of the first pay period following the receipt by the Director of the Administrative Office of the official recommendation of the court involved.

*United States Magistrates*

The Conference requested that the Magistrates Division and the Chairman of the Magistrates Committee reexamine the salary structure of full-time magistrates and make a recommendation within thirty days, through the Chairman of the Committee on Court Administration, to the Conference regarding the salary structure for full-time magistrates commensurate with the duties, responsibilities and qualifications of such magistrates. The Conference, upon receipt of the recommendations from the Chairman of the Committee on Court Administration, will respond by mail vote.

REVIEW COMMITTEE

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

In his report Judge Tamm reviewed briefly for the benefit of the Conference the examination conducted of reports of extra-judicial income by judges, magistrates and bankruptcy judges for the six-month period ending December 31, 1976.

Judge Tamm stated that his committee has again considered whether other non-adjudicatory judicial employees should be required to file public reports of outside income. Upon examination of this question and the recommendation of the committee, the Conference approved a recommendation that executives of the Administrative Office of the United States Courts, executives of the Federal Judicial Center, including committee chairmen and division chiefs of both groups, all court executives, all clerks of court, financial clerks of court, chief deputy clerks and deputy clerks in charge of divisional offices, chief probation officers and other supervising probation officers, and other employees in or above Grade 15 or JSP 15 be required to file a semiannual report of non-governmental income.

Judge Tamm reported further that the committee has determined that there are wide variations in the interpretations being placed upon the meaning of "close familial relationship" as expressed in Canon 5D. To insure that certifications authorizing the performance of fiduciary responsibilities in non-family estates and trusts are predicated upon fixed and defined principles the committee recommended and the Conference approved the recommendation that the Judicial Conference establish and distribute to all judicial officers criteria for guidance of judicial councils in approving services in non-family estates. It was agreed that these criteria and guidelines be studied by the Advisory Committee on Judicial Activities which will report further to the Conference.

Judge Tamm advised that Congress undoubtedly will enact legislation to inaugurate a reporting system for all high echelon government employees in all three branches of the government. He said that the Review Committee feels that consideration should be given to some type of review within the judiciary of reports filed concerning its personnel regardless of whether such are also to be reviewed by executive or legislative personnel. To insure that the accumulated experience of the Review Committee may be offered to the Judicial Conference, the committee contemplates holding a special meeting in the event legislation is enacted prior to the July meeting of the Review Committee to prepare recommendations. He noted that the legislation before the House of Representatives would place a 15 percent limitation on all outside earned income and recommend prompt establishment of an ad hoc committee to

decide whether such a 15 percent limitation should be applied to the judiciary on all earned income. The Conference agreed and it was further suggested that the membership of the ad hoc committee should include someone from the Joint Committee on the Code of Judicial Conduct.

Pursuant to the Conference resolution at its March 1971 session (Conf. Rept., p. 24), as subsequently amended, Judge Tamm advised the Conference that fourteen district judges have not filed reports of extra-judicial income for the period July 1 through December 31, 1976, as follows:

Listing, by Circuit, of Judicial Officers Who Have Not, as of March 10, 1977, Filed Reports of Extra-Judicial Income for the Reporting Period Ending December 31, 1976:

*Second Circuit:*

\*\*Edward 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

\*\*Peirson M. Hall  
U.S. District Judge  
\*\*Harry Pregerson  
U.S. District Judge  
\*\*Manuel L. Real  
U.S. District Judge  
\*\*Stanley A. Weigel  
U.S. District Judge

*Sixth Circuit:*

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

*Tenth Circuit:*

Stephen S. Chandler, Jr.  
U.S. District Judge

*Ninth Circuit:*

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

\*\*William W. Ritter  
U.S. District Judge

\*\* Judges declining to file as a matter of conscience.

## JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee, which is chaired by Judges Edward A. Tamm and William B. Jones, was presented by Judge Tamm.

## EFFECTIVE DATE OF COMPLIANCE

The "effective date of compliance" provision of the Code of Judicial Conduct permits a person "who holds judicial office on the date this Code becomes effective" to continue to act without compensation as an executor, administrator, trustee or other fiduciary for the estate or person of one who is not a member of his family if termination of such relationship would unnecessarily jeopardize any substantial interest of the estate or person. Judge Tamm stated that it has been suggested to the Joint Committee that the Code be amended to extend this exception to cover situations in which a newly appointed judge is at the time of appointment serving as a fiduciary for a person or estate, not family related, and the termination of his service may work a hardship on the person or estate. Accordingly, the Conference amended the "Effective Date of Compliance" provision of the Code to read as follows:

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it and should do so in any event within the period of one year. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, ~~a person who holds judicial office on the date this Code becomes effective~~ such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family, if terminating such relationship would unnecessarily jeopardize any substantial interest of the estate or person and the judicial council of the circuit approves. (New wording underscored, old wording deleted.)

## OUTSIDE EMPLOYMENT OF LAW CLERKS AND SECRETARIES

In October 1940 the Judicial Conference adopted a resolution that no secretary or law clerk should do any work or receive any compensation for work outside of the salary paid to him in the capacity of secretary or law clerk, or occupy or be appointed to any office in any federal or state court. The Conference was advised that this 1940 resolution may be too restrictive and the Conference approved a recommendation of the committee that the resolution be restudied by the Committee on Court Administration, including the possible promulgation of guidelines governing outside employment by law clerks and secretaries.

### TRAVEL OF JUDGES TO TAKE DEPOSITIONS

The Conference was advised that on two occasions the Advisory Committee has received inquiries concerning the propriety of district judges traveling abroad to take depositions at the expense of the parties. This is a problem not specifically dealt with in the Code of Judicial Conduct and since it appears to involve policy rather than ethical questions it was agreed that the matter should be studied by the Committee on Court Administration.

### ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

The report of the Advisory Committee on Judicial Activities was presented by the Chairman, Judge William B. Jones.

Judge Jones reported that at its recent meeting the Advisory Committee unanimously expressed its appreciation to Judge Elbert P. Tuttle, the committee's first chairman, for the outstanding service he has rendered to the work of the committee and to the federal judiciary. Judge Tuttle organized the committee in 1969, gave it direction and purpose and for more than seven years shouldered most of the burden of the committee's work. On motion of Judge Jones, the Conference joined in this tribute to Judge Tuttle.

Judge Jones stated that the committee continues to adhere to its practice of requiring a submission in writing on all questions involving an interpretation of the Code of Judicial Conduct. The committee declines to render informal oral opinions on any matters not previously decided. As of the reporting date, the committee had considered and acted upon 144 formal docketed inquiries, not including approximately 35 matters prior to the installation of the docketing system.

The Conference approved the proposal of the Advisory Committee to bring to the attention of the American Bar Association the fact that the Code contains no guidelines or rules that deal directly with some of the problems connected with writings by members of the judiciary that are permitted by Canons 4A and 5A of the Code. The submission to the A.B.A. will be with the request that the committee review the problems presented by writings of judges, as well as any other possible amendments to the Code.

## COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

### REVISION OF JUROR QUALIFICATION FORM

The Conference approved a recommendation of the committee endorsing a proposed amendment to the excuse section of the juror qualification form. Currently an ambiguity results from the statutory distinction between excuses and exemptions for prospective jurors. Members of excused groups are permitted to serve if they so desire, whereas exempt persons do not have the option of serving. The proposed amendment to the juror qualification form would clarify for the prospective juror that any available excuses from service are optional and are not required to be claimed by those eligible therefor. The Conference approved the two changes in the wording of the juror qualification form recommended by the committee for the purpose of this clarification.

### JUROR UTILIZATION

On recommendation of the committee, the Conference reaffirmed its prior resolution that continued training in juror administration and utilization matters should be provided in the interest of improved efficiency in this area and that judges and other court personnel should be encouraged to participate in such training.

### ATTORNEY PARTICIPATION IN THE VOIR DIRE

Judge Stanley advised that the American Bar Association's House of Delegates at its meeting in August, 1976, adopted a resolution urging the amendment of the federal rules to permit the parties or their attorneys to conduct the voir dire examination of prospective jurors. The Conference reaffirmed unanimously its prior position that the voir dire examination should be conducted by the district judges rather than by attorneys or litigants. Discussion among the judges took note of the extended nature of the juror selection process which

tends to result in those state courts where the judges allow lawyers to participate in the actual conduct of the voir dire examination. The Conference directed the committee to make an updated and more detailed study of this subject matter.

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

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

#### BAIL REFORM ACT

Judge Zirpoli advised the Conference that his committee was unanimously of the view that an amendment to the Bail Reform Act of 1966 is necessary to authorize judicial officers to consider "the safety of any other person or the community in setting conditions of release." The necessity is highlighted by conflicting circuit court decisions as to whether a judicial officer may consider evidence that a defendant, if released, presents a danger to the safety of any other person or the community. The Conference which approved a similar legislative proposal in 1971 (Conf. Rept., p. 40) agreed with the recommendation of the committee and directed the Director of the Administrative Office to transmit the proposed amendment to the Congress.

#### SENATE RESOLUTION 578

Judge Zirpoli advised the Conference that Senators Nunn and Percy had communicated with the Conference regarding Senate Resolution 578, 94th Congress, wherein the Senate found that the amounts of bail set for drug law defendants are often too low to insure their presence for trial, and upon conviction, for sentencing and incarceration. The resolution urges federal judges to set more realistic bail for such offenders. The copies of the resolution have been mailed by the Administrative Office to all district judges and the committee has requested the Administrative Office to secure, if possible, such statistics as will truly reflect the number of instances in which major drug offenders who have been released on bail have failed to appear for trial or sentencing. Judge Zirpoli stated that his committee was of the view that the amendment to the

Bail Reform Act mentioned above would be one way of combating the problem and further recommended and the Conference approved a proposal for amendment to the Speedy Trial Act. Because of conflicting opinions on the applicability of the exclusions of Section 3161 (h) of Title 18, United States Code, to the interim limits specified in Section 3164 of Title 18, it would be advisable to amend the Speedy Trial Act by specifically providing that the exclusions of Section 3161 (h) shall apply to the interim limitations specified in Section 3164.

AMENDMENT TO CHAPTER 313 OF TITLE 18,  
UNITED STATES CODE

At the April 1976 session of the Conference (Conf. Rept., p. 11) the Conference reaffirmed a previous recommendation to provide for an amendment to Title 18, United States Code, which would permit a hearing to determine whether or not an accused is mentally competent to stand trial and to provide for civil commitment after hearing with appropriate due process safeguards of a defendant who having been charged with an offense against the United States if found "not guilty by reason of insanity" after raising the defense of lack of criminal responsibility and who is further found by reason of mental disease or defect to be a danger to himself or the person or property of others. Judge Zirpoli said that his committee had subsequently received from the Committee to Implement the Criminal Justice Act recommendations relating to the appointment of counsel and psychiatrists and the sources from which they will be paid for their services. On recommendation of the committee the Conference approved these suggested amendments and directed the Director of the Administrative Office to advise Congress thereof. Chief Judge Bazelon expressed concern with all current legislative proposals insofar as they do not deal with the problem of the retarded.

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 Conference considered the committee's report and 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 these actions would be effective April 1, 1977 unless otherwise indicated and subject to the availability of funds.

## FIRST CIRCUIT

*District of New Hampshire*

- (1) Authorized the continuance of the part-time referee position at Manchester to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## SECOND CIRCUIT

*Eastern District of New York*

- (1) Authorized the continuance of the full-time referee position at Brooklyn to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the discontinuance of Riverhead as a place of holding court for the full-time referee position transferred from Jamaica to Westbury by the Judicial Conference at its September 1975 session.

## THIRD CIRCUIT

*District Court of the Virgin Islands*

- (1) Established a part-time referee position for the District Court of the Virgin Islands, for a term of six years, such position to be a combined referee/federal magistrate position;
- (2) Established the salary for bankruptcy service at \$3,500 per annum; and
- (3) Designated the places of holding court to be at Charlotte Amalie on St. Thomas Island and Christiansted on St. Croix Island, and that the headquarters for the referee be established by the district court and subsequently approved by the Judicial Conference.

*District of New Jersey*

- (1) Authorized the continuance of the full-time referee position at Camden to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Middle District of Pennsylvania*

- (1) Established a second full-time referee position with headquarters at Harrisburg, at an annual salary of \$48,500;
- (2) Designated Harrisburg, Wilkes-Barre, Scranton, Williamsport and Lewisburg as places of holding Court for the two full-time referees of the district; and
- (3) Established concurrent district-wide jurisdiction with the other full-time referee of the district.

*Western District of Pennsylvania*

- (1) Authorized the continuance of the full-time referee position at Erie to become vacant by expiration of term on July 19, 1977, for a term of six years, effective July 20, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FOURTH CIRCUIT

*Eastern District of Virginia*

- (1) Authorized the continuance of the part-time referee position at Alexandria to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 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) Authorized the continuance of the part-time referee position at Harrisonburg to become vacant by expiration of term on August 31, 1977, for a term of six years, effective September 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FIFTH CIRCUIT

*Eastern District of Louisiana*

- (1) Authorized the continuance of the full-time referee position at New Orleans to become vacant by expiration of term on September 6, 1977, for a term of six years, effective September 7, 1977, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

- (2) Established concurrent district-wide jurisdiction for the two full-time referees of the district.

#### SIXTH CIRCUIT

##### *Northern District of Ohio*

- (1) Authorized the continuance of the full-time referee position at Cleveland to become vacant by expiration of term on October 21, 1977, for a term of six years, effective October 22, 1977, 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 Toledo to become vacant by expiration of term on August 31, 1977, for a term of six years, effective September 1, 1977, 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 Illinois*

- (1) Authorized the continuance of the full-time referee position at Rockford to become vacant by expiration of term on July 25, 1977, for a term of six years, effective July 26, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

##### *Eastern District of Wisconsin*

- (1) Authorized the continuance of the full-time referee position at Milwaukee to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 1, 1977, 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 second full-time referee position at Milwaukee to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 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 Wisconsin*

- (1) Authorized the continuance of the full-time referee position at Madison to become vacant by expiration of term on July 31, 1977, for a term of six years, effective August 1, 1977, at the present salary, the regular place of office and territory to remain as at present;
- (2) Retained Madison and LaCrosse as designated places of holding court for the full-time referee position;

- (3) Discontinued Beloit, effective immediately, as a place of holding court for the referee position at Madison.

#### EIGHTH CIRCUIT

##### *District of Minnesota*

- (1) Authorized the continuance of the full-time referee position at St. Paul to become vacant by expiration of term on October 31, 1977, for a term of six years, effective November 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 Missouri*

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

#### NINTH CIRCUIT

##### *Northern District of California*

- (1) Authorized the continuance of the full-time referee position at San Jose to become vacant by expiration of term on October 17, 1977, for a term of six years, effective October 18, 1977, at the present salary, 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 October 14, 1977, for a term of six years, effective October 15, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

##### *District of Oregon*

- (1) Increased the salary for the bankruptcy service of the part-time referee/federal magistrate position at Eugene from \$16,500 to \$18,900 per annum.

#### TENTH CIRCUIT

##### *Eastern District of Oklahoma*

- (1) Authorized the continuance of the part-time referee position at Okmulgee to become vacant by expiration of term on June 30, 1977, for a term of six years, effective July 1, 1977, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## APPROPRIATIONS

Judge Weinfeld reported that a budget for the bankruptcy system of approximately \$31,000,000 was being requested for fiscal year 1978 for the payment of salaries of 211 full-time and 26 part-time bankruptcy judges, plus the salaries of supporting personnel and expenses of operating their offices. Receipts to the Referees' Salary and Expense Fund in 1976 provided 83 percent of the total costs of the system.

A total of 220,000 cases is expected for fiscal year 1977, a decline of 26,549 cases from 1976. This is the second year of decline in case filings which since 1967 have declined and increased on a two-year cycle. The percentage of business cases has increased regularly since 1970, from 8.3 percent in 1970 to 14.3 percent in 1976.

## CHAPTER XIII GUIDELINE

The Conference approved modification of Chapter XIII, Guideline No. 3, to eliminate the requirement that the referee submit a copy of Chapter XIII trustee's semiannual report to the judge concerning the operations of the trustee, with a copy to the Administrative Office.

## SALARY INCREASES

The Conference approved a salary increase for all part-time referees in bankruptcy in the percentage of 28.04 percent of their current salaries, rounded to the nearest \$100 and in no event to exceed the statutory limitation of \$24,200 per annum and subject also to the limitation on salaries of combined referee/federal magistrate positions, as promulgated by the Judicial Conference. The recommendation includes all recommendations affecting part-time referee in bankruptcy positions approved by the Conference at the current session and is to be effective at the beginning of the pay period next following the session of the Conference.

## LEGISLATION

Judge Weinfeld called to the attention of the Conference H.R. 6, 95th Congress, which would make major changes in the bankruptcy system, the principal change being the separation

of the bankruptcy courts from the United States district courts and establishing them as an independent court system under Article III of the Constitution. Inasmuch as hearings have been completed on H.R. 6 and the bill is currently being marked up in the Subcommittee of the House Judiciary Committee, the Conference approved the following resolution:

RESOLVED that the Judicial Conference of the United States opposes legislation pending in the Congress which would convert bankruptcy courts into separate Article I or Article III courts, and giving Article III tenure to referees in bankruptcy.

The Chief Justice is authorized to designate an ad hoc committee to draft a supporting memorandum in implementation of this resolution.

The Conference especially requests that at an appropriate time it be given an opportunity to present its views on this subject matter to the Congress.

#### COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The report of the Committee on Intercircuit Assignments was presented by the Chairman, Judge George L. Hart, Jr.

Judge Hart reported that during the period from August 15, 1976 to February 15, 1977 the Committee had recommended 91 assignments which were undertaken by 61 judges. Of this number, seven were senior circuit judges, seven were active circuit judges, seventeen district judges in active status and twenty-three senior district judges. One retired Supreme Court Justice participated in eleven assignments. Ten assignments involved two active judges from the Court of Claims, two active judges from the Court of Customs and Patent Appeals and two active judges of the Customs Court.

Seven senior circuit judges, eleven senior district judges, and one retired Supreme Court Justice carried out thirty-seven of the fifty-six 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 two active judges of the Court of Claims participated in the other nineteen assignments to the courts of appeals.

Of the thirty-five assignments to the district courts, fifteen senior district judges participated in seventeen assignments, the remaining eighteen being carried out by fifteen active district

judges and two active judges of the United States Customs Court.

### 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.

### SENTENCING INSTITUTES

The Conference approved a joint sentencing institute for the Second and Seventh Judicial Circuits to be held at the Federal Correction Institution at Morgantown, West Virginia, October 16-19, 1977. The institute will focus on sentencing the youthful offender. In addition to approving the tentative agenda the Conference approved the time, place, and participants for the institute.

### ADVISORY CORRECTIONS COUNCIL

Judge Wollenberg advised that the Advisory Corrections Council, authorized by 18 U.S.C. 5002, was reinstated by action of the Chief Justice and the Attorney General in December 1976. The Chief Justice has designated for the three judicial positions on the council, Judges Gerald B. Tjoflat, Edward S. Northrop and Albert C. Wollenberg. The Chief of the Division of Probation of the Administrative Office serves as an ex-officio member. The Council met in January and is scheduled to meet again in April when its agenda will include the need for a Bureau of Criminal Justice Information and Statistics, a proposed federal sentencing model, a prognosis for federal corrections in the next ten years, including institution and program needs, and the Youth Corrections Act and whether it is in conformity with needs and objectives of the federal judicial system.

### PROBATION SYSTEM FOR THE CANAL ZONE

The Conference approved and authorized the Director of the Administrative Office to transmit to the Congress proposed legislation which would transfer the probation personnel of the United States District Court for the District of the Canal

Zone from the Canal Zone Government to the federal probation system. Judge Wollenberg pointed out that such transfer would save the Canal Zone Government the expense of administering the office and would ally the probation personnel more closely with the United States District Court. It would have the further effect of permitting the Canal Zone office to be fully integrated into the federal probation system and would afford its personnel the benefits of training programs and administrative support that other personnel of the federal probation system currently enjoy.

#### 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 the Chairman, Judge Charles M. Metzner.

#### JURISDICTION CHECKLIST AND MODEL RULES

Immediately following the enactment of Public Law 94-577, the bill to clarify and broaden the jurisdiction of United States magistrates, the committee distributed to all federal judges and magistrates a draft revision of the jurisdiction checklist of the duties that might be assigned to magistrates by the district courts. Because of the need to make the document available to the courts as soon as the bill became law, the committee distributed it in preliminary form and solicited suggestions for improvement from judges and magistrates. The committee considered the comments submitted, made appropriate changes based on those comments, and approved the checklist in final form.

Section 636 (b) (4) of the newly amended jurisdiction law provides that:

Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.

To assist the district courts in updating their local rules, to take account of changes in court procedures mandated by the new law, and to encourage uniformity among the courts, the committee has prepared some suggested model rules to implement Public Law 94-577.

The Conference authorized the Administrative Office to distribute the committee's jurisdiction checklist and model rules to all judges and magistrates for their assistance in implementing the new jurisdiction legislation.

#### AMENDMENT OF CONFLICT-OF-INTEREST RULE 7

The Judicial Conference adopted Conflict-of-Interest Rule 7 at its October 1969 session (see Conf. Rept. pp. 79-80), which prohibits a part-time magistrate who performs any "additional duties" other than the handling of prisoner petitions and special master references, from all practice (civil and criminal) in the district court of his appointment. The rule reads as follows:

A part-time magistrate who is assigned additional duties under Section 636 (b) of Title 28, United States Code, may not appear as counsel in any case, civil or criminal, in the district court for which he is appointed. This prohibition shall not extend to a part-time magistrate whose additional assignments are limited to the review of prisoner petitions or service as a special master in a specified case.

The rule was adopted in recognition of expressed concerns that it would be inappropriate to assign substantial "additional duties" to a lawyer practicing before the court which he serves. The Conference considered the possible appearance of favoritism, as well as the potential discomfort that a private attorney might feel, when opposing counsel in one case is the same individual who will prepare an important ruling or conduct a pretrial conference in another case in which the attorney has an interest.

Technically, any duty which could not be performed by a United States commissioner or is not listed in 28 U.S.C. §636 (a) may be denominated an "additional duty," and thus fall within the scope of Conflict-of-Interest Rule 7.

The committee advised that it has received requests from the courts that the exceptions to the rule be expanded to include the conduct of post-indictment arraignments under Rules 10 and 11 and the receipt of grand jury returns under Rule 6 of the Federal Rules of Criminal Procedure. Briefly, the principal arguments cited in favor of extending the exceptions are that:

- (1) The time limits of the Speedy Trial Act require many district courts to rely more heavily on the assistance of magistrates during the initial proceedings in criminal cases;
- (2) The conduct of arraignments and the receipt of grand jury returns are preliminary criminal matters very much akin to commissioner-type duties performed under §636 (a) of the Magistrates Act; and
- (3) Judges have reported substantial difficulties in obtaining competent attorneys who are willing to forgo their civil practice in the district court to perform duties for the court.

The committee expressed the view that the conduct of arraignments and the receipts of grand jury returns by part-time magistrates would benefit a number of courts. Performance of the suggested initial duties in criminal cases by part-time magistrates, moreover, would not appear to erode the underlying rationale of the rule or increase the "dangers of retaining a part-time employee who was both a confidant of the judge in handling general court business and an advocate at the bar." Accordingly, the Conference agreed to the recommendation that Rule 7 be amended to include the above two duties as exceptions to the prohibition on the performance of additional duties by part-time magistrates.

#### CHANGES IN MAGISTRATE POSITIONS

If sufficient funds are appropriated by the Congress for the fiscal year 1978, to cover the authorizations made by the Conference in September 1976 (see Conf. Rept. pp. 54-58), there will be 159 full-time magistrate positions, 306 part-time magistrate positions, and 18 combination referee-magistrate or clerk-magistrate positions. The committee recommended and the Conference approved the following:

- (1) Authorization of three new full-time positions.
- (2) Conversion of two part-time positions to full-time status.
- (3) Authorization of five new part-time positions.
- (4) Authorization of one new combination position.
- (5) Conversion of one combination position to a part-time position.
- (6) Discontinuance of five part-time positions.
- (7) Increases in the salaries of nine part-time positions.

- (8) Continuation of one full-time position, and one part-time position for new terms of office.
- (9) Continuation of one part-time position through the incumbent's current term of office.
- (10) Changes in the official locations of one full-time position and one part-time position.

This action will result in an increase in the number of full-time positions authorized from 159 to 164, a net decrease in the number of part-time positions from 306 to 305, and no change in the number (18) of combination positions. The recommendations of the Administrative Office, the district courts, the judicial councils of the circuits, and those of the committee, as approved, are set out below to be made effective when appropriated funds are available:

#### FIRST CIRCUIT

##### *District of Rhode Island*

- (1) Extended the time for the discontinuance of the part-time magistrate position at Providence from the date of the appointment of the authorized new full-time magistrate until the normal expiration of the current term of the incumbent.

#### THIRD CIRCUIT

##### *Middle District of Pennsylvania*

- (1) Increased the salary of the part-time magistrate position at Williamsport from \$1,393 to \$2,786 per annum.

##### *District of the Virgin Islands*

- (1) Authorized a new part-time magistrate position for appointment at Charlotte Amalie at a salary of \$14,633 per annum.
- (2) Authorized a new part-time magistrate position for appointment at Christiansted at a salary of \$14,633 per annum.
- (3) Authorized one of the two part-time positions, at the court's option, as a combination bankruptcy judge-magistrate position.

#### FIFTH CIRCUIT

##### *Northern District of Georgia*

- (1) Authorized an additional full-time magistrate position for appointment at Atlanta at a salary of \$39,600 per annum.

*Southern District of Georgia*

- (1) Converted the part-time magistrate position at Augusta to a full-time magistrate position at a salary of \$39,600 per annum.
- (2) Increased the salary of the part-time magistrate position at Augusta from \$16,510 to \$19,800 per annum until conversion to full-time status.
- (3) Increased the salary of the part-time magistrate position at Savannah from \$16,510 to \$19,800 per annum.

*Northern District of Mississippi*

- (1) Authorized a new full-time magistrate position for appointment at Aberdeen or Oxford at a salary of \$39,600 per annum.
- (2) Discontinued the part-time magistrate positions at Aberdeen, Oxford, Tupelo and Kosciusko, effective upon the appointment of the full-time magistrate at either Aberdeen or Oxford.

## SEVENTH CIRCUIT

*Northern District of Illinois*

- (1) Authorized an additional full-time magistrate position for appointment at Chicago at a salary of \$39,600 per annum.
- (2) Increased the salary of the part-time magistrate position at "Rockford/Ottawa" from \$11,164 to \$19,800 per annum.
- (3) Changed the official location of the part-time magistrate position at "Rockford/Ottawa" to "Rockford or Freeport."

*Southern District of Illinois*

- (1) Converted the part-time magistrate position at Springfield to full-time status at a salary of \$39,600 per annum.
- (2) Discontinued the part-time magistrate position at Alton, effective upon the appointment of the full-time magistrate at Springfield.

## EIGHTH CIRCUIT

*District of North Dakota*

- (1) Increased the salary of the part-time magistrate position at Fargo from \$2,089 to \$3,483 per annum.

*District of South Dakota*

- (1) Increased the salary of the part-time magistrate position at Pierre from \$3,483 to \$9,871 per annum.

## NINTH CIRCUIT

*District of Arizona*

- (1) Authorized a new part-time magistrate position for appointment at either Window Rock or Tuba City at a salary of \$3,483 per annum.
- (2) Authorized a new part-time magistrate position for appointment at Nogales at a salary of \$8,361 per annum.
- (3) Authorized a new part-time magistrate position for appointment at Douglas or Bisbee at a salary of \$6,968 per annum.

*Northern District of California*

- (1) Changed the official location of the full-time magistrate position at Monterey to San Francisco.
- (2) Authorized a new part-time magistrate position for appointment at Monterey at a salary of \$19,800 per annum.

*Southern District of California*

- (1) Continued the first full-time magistrate position at San Diego for an additional eight-year term at the currently authorized salary of \$39,600 per annum.

*District of Idaho*

- (1) Continued the part-time magistrate position at Couer d'Alene for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at Coeur d'Alene from \$1,393 to \$2,089 per annum.

*District of Nevada*

- (1) Increased the salary of the part-time magistrate position at Reno from \$8,361 to \$14,633 per annum.
- (2) Converted the combination clerk-magistrate position at Las Vegas to a part-time magistrate position at a salary of \$696 per annum.

## TENTH CIRCUIT

*District of Wyoming*

- (1) Increased the salary of the part-time magistrate position at Cheyenne from \$8,361 to \$16,510 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 authorized the Director of the Administrative Office to distribute copies of the report on appointments and payments under the Criminal Justice Act for the fiscal year 1976 and the transition quarter ending September 30, 1976 to all chief judges, all federal defender organizations and to others who may request copies. This report shows that during fiscal year 1976 approximately 47,000 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. This figure represents no increase over fiscal year 1975, as compared with a 10 percent increase between fiscal years 1974 and 1975.

The sum of \$19,046,000 was appropriated for implementation of the Criminal Justice Act in fiscal year 1976, and the transition quarter was covered by an additional appropriation equal to 25 percent of this amount. As of the present, these appropriations appear to be adequate to meet the costs.

The chief judges of the courts of appeals approved 552 claims for compensation in excess of the statutory limitation of \$1,000 for felony cases in fiscal year 1976 and the transition quarter. The projected cost of providing transcripts, expert and other services during fiscal year 1976 is \$2,450,000 as compared to the \$1,765,697 paid from fiscal year 1975 appropriations. As in the past, the cost of transcripts commands the predominate share of this category, but the increase in the cost of interpreters for fiscal year 1976, does merit concern.

The costs of operating the 22 federal public defender offices in fiscal year 1976 was approximately \$4.8 million, while the seven community defender organizations which received sustaining grants, operated on a total budget of \$2,036,442. The average cost of federal public defender representation, including appeals, was \$411 per case in fiscal year 1976, while community defender representation averaged \$427 per case. The comparable figure for private panel attorneys was \$396 per case.

## GRANT REQUESTS—COMMUNITY DEFENDER ORGANIZATIONS

The Conference considered grant applications from the respective community defender organizations for fiscal year 1978 and approved sustaining grants for the fiscal year ending September 30, 1978, as follows:

Federal Defenders of San Diego, Inc. ....	\$677,000	667,0
Federal Defender Program, Inc., Atlanta, Georgia ...	211,000	✓
Federal Defender Program, Inc., Chicago, Illinois ...	336,000	✓
Legal Aid and Defender Assn., Detroit, Michigan ...	584,000	✓
Community Defender Organization, Minneapolis, Minnesota .....	39,630	✓
Federal Defender Services Unit of the Legal Aid Society of New York .....	200,000	930,000
Federal Defender Section of the Metropolitan Public Defender Services, Inc., Portland, Oregon .....	1	—
Federal Court Division of the Defender Association of Philadelphia .....	322,000	200,
		3,289,630

#### BUDGET REQUESTS—FEDERAL PUBLIC DEFENDER OFFICES

The District of South Carolina and the Southern District of West Virginia have established federal public defender offices, raising the total number of such offices to 24. The Criminal Justice Act, as amended, requires each federal public defender organization, established pursuant to subsection (h) (2) (A), to submit a proposed budget to be approved by the Judicial Conference in accordance with section 605 of title 28, United States Code. The Conference approved the amounts shown below:

	FY 1977				FY 1978			
	Staff				Staff			
	Attys.	Inv.	Secys.	Amount	Attys.	Inv.	Secys.	Amount
<i>District of South Carolina</i>								
Requested	3	1	2	\$143,900	3	1	2	\$158,200
Approved	3	1	2	143,900	3	1	2	158,200
<i>Southern District of West Virginia</i>								
Requested	2	—	1	103,250	2	—	1	104,900
Approved	2	—	1	103,250	2	—	1	104,900

In addition, the federal public defender office for the Eastern District of California submitted a supplemental budget request for the remainder of fiscal year 1977 and for fiscal year 1978 in order to establish a branch office in the Fresno Division. The Conference approved the amounts shown below:

	FY 1977				FY 1978			
	Staff			Amount	Staff			Amount
	Attys.	Inv.	Secys.		Attys.	Inv.	Secys.	
<i>Eastern District of California</i>								
Supplement								
Requested	2	1	1	\$ 81,722	2	1	1	\$112,345
Approved	2	1	1	81,722	2	1	1	112,345

#### ADDITIONAL FUNDING FOR DEFENDER OFFICE OPERATIONS

During the past year, unanticipated expenses have had an adverse affect upon the fiscal stability and operational flexibility of defender offices. These expenses arise because of general cost-of-living salary increases, unexpectedly large expenses for expert services in extended and notorious cases, or other unanticipated occurrences such as a requirement to represent a defendant at a retrial held at a location far distant from and out of the district of the defender. The requirement to make these expenditures often occurs when supplemental budget or grant requests cannot be timely considered by your committee and approved by the Judicial Conference.

As a solution to this problem, the Conference approved the following resolution:

That the Director of the Administrative Office be authorized to increase the budget of a federal public defender office and approve supplemental grants for community defender organizations to the extent necessary to cover general (cost-of-living) pay increases and for unforeseen or unanticipated expenses; provided, that such additional funds shall not exceed 15 percent of the amount approved by the Judicial Conference for each such office or organization.

#### LEGISLATION

Bills to provide for the payment to a defendant by the United States, of attorneys' fees and other costs in criminal cases where the ultimate disposition is other than a conviction, have been introduced in both the 94th and 95th Congresses. In view of the partial endorsement by the House of Delegates of the American Bar Association, the committee reviewed the legislation. The bill entitles the defendant to receive reasonable attorneys' fees and costs, as determined by the court, with re-

spect to any federal criminal charge of which the ultimate disposition is other than a conviction, unless the court determines such payment is not in the interest of justice. The court may also determine that payment is in the interest of justice even if the ultimate disposition with regard to a charge is a conviction. In any proceeding to determine an award of fees or other costs, the United States Attorney is entitled to notice and an opportunity to make reports and motions to the court. The bill further requires the making of a record of such proceedings and a statement by the court on the record of the reasons for its determination. There is also a listing of factors to be considered by the court in reaching its determination. Finally, the court's determination is subject to review in the same manner as other judgments. The American Bar Association opposes, in principle, payment of attorney's fees, but supports payment of out-of-pocket expenses. The Conference agreed with the committee recommendation that it should neither endorse nor oppose this legislation, pointing out, however, that enactment will increase the workload of an already overburdened judiciary and that the bill should clearly task the Department of Justice with responsibility for funding.

#### GUIDELINES

The Conference was advised that the committee reviewed the *Guidelines for the Administration of the Criminal Justice Act* and voted approval of the revised version.

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

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

#### APPELLATE REVIEW OF SENTENCES

At the meeting of the Conference in September 1976, the committee reported that because of the changes which had been made in proposed Rule 35.1 of the Federal Rules of Criminal Procedure since the original draft was circulated to bench and bar, the advisory committee planned to circulate an amended draft to bench and bar and to hold public hear-

ings thereon. Some 80 replies were received as a result of that circulation. Public hearings were held at which two appellate judges and representatives of several organizations were heard. At the public hearing, a representative of the staff of Senator Edward Kennedy submitted a letter from the Senator and a copy of S. 181, which he had introduced on January 11, 1977. That bill, *inter alia*, would establish a United States Commission on Sentencing; it also includes specific provisions for appellate review of sentences. A representative of the staff of Chairman Peter Rodino of the House Judiciary Committee submitted a letter from the Chairman and a copy of H.R. 1182, which is generally similar to S. 181. In his letter the Chairman urged that any proposal of the Judicial Conference for appellate review of sentences be achieved by legislation rather than by the normal rule-making process. The Advisory Committee on Criminal Rules and the Advisory Committee on Appellate Rules reconsidered proposed Rule 35.1 and the comments received and made further changes. The Conference noted that in the normal course proposed rules are forwarded by the Conference to the Supreme Court for promulgation by the Court. If promulgated, they are forwarded to the Congress and take effect in due course in the absence of a congressional veto. In the present instance, however, it was agreed that affirmative congressional action is required to provide for a right of appeal by the government. There was also agreement that the details of the procedures are appropriately dealt with by a rule and that review at the instance of either the defendant or the government should be dealt with in integrated fashion in a single rule.

Accordingly the Conference approved the recommendation that the proposed Rule 35.1 be approved and be forwarded by the Director of the Administrative Office to the Congress for enactment except that the Conference agreed appellate review shall be available to a defendant only if the sentence is for one year or longer.

#### OTHER CRIMINAL RULES

Pursuant to Public Law 94-349, the effective date of the following proposed amendments to the Criminal Rules 6 (e), 23, 24, 40.1, and 41 (c) (2), previously approved by the Judicial Conference and promulgated by the Supreme Court on April

26, 1976, was deferred to August 1, 1977. Judge Tomsen reported that the Subcommittee on Criminal Justice of the House Judiciary Committee held hearings on these proposed rules on February 23 and 24 and March 2, 1977 and a new bill is awaited.

### BICENTENNIAL COMMITTEE

Chief Judge Clement F. Haynsworth, Jr., Chairman, presented the report of the Bicentennial Committee.

On recommendation of the committee, in order more accurately to reflect the scope of the committee activities and projects, the Conference approved the change in the name of the committee to "Committee on Bicentennial of Independence and the Constitution."

Judge Haynsworth stated that the several projects of the committee are being carried on under the coordinator, Chief Judge Howard T. Markey. The following are the reports on the individual projects:

#### MOVIES PROJECT

Under the leadership of Mr. Justice White, the five films depicting the role of the Supreme Court in "*Marbury v. Madison*," "*Gibbons v. Ogden*," "*McCulloch v. Maryland*," and two films of "Burr," are nearing completion. The 90-minute videotape compilation to be made from the films is expected by May 1, 1977. Much remains to be done, however, before the films and videotape can be made available for showing. The movies subcommittee is currently considering the number of release prints to be contracted for and produced, the nature, source, and cost of teaching materials to accompany the films in schools, the nature of film distribution, the selection of a distributor, and the nature and cost of promotion, if any.

#### BIOGRAPHICAL DIRECTORY

The subcommittee chairman, Judge James M. Carter, reports that 462 living judges have completed questionnaires. A third, and last, reminder has gone to the living judges who have not yet forwarded their questionnaires. The circuit com-

mittees have completed questionnaires on deceased judges who served after 1899. Professor Hall will complete his preparation of questionnaires on those who served prior to 1899 (including territorial judges) by March 1, 1978. Well before that time, questionnaires will be filled out, to the extent possible with available public information, on all judges who did not complete a questionnaire. An organization will then be selected to enter the data in a computer and a computer-printed directory will be prepared. Arrangement has been made for newly-appointed judges to complete a questionnaire upon their appointment, so that the directory will be continuously updated.

#### POPULAR BOOK

Judge Henry Friendly expects that his subcommittee will be reviewing the completed manuscript in June. The book is devoted to the judicial system, emphasizing the federal courts but including material on state courts, and is intended for primary use at senior high and junior college levels. The initial versions were rejected by the subcommittee as too complex and pedantic. Arrangements have been made for a second writer to edit the earlier manuscript to meet the project goals and that work is about half finished at this time.

#### CIRCUIT HISTORIES

The Sixth Circuit and the District of Columbia Circuit have completed work on their histories. The Court of Claims has completed Volume I, the larger of two intended volumes. The Third, Fourth and Ninth Circuits are working on their histories. Judge Alexander Lawrence and his subcommittee will be considering plans for printing circuit histories, some of which will not be completed until 1979.

#### COMMITTEE ON PACIFIC TERRITORIES

Judge Richard H. Chambers, Chairman of the Committee on Pacific Territories, outlined the scope of the committee's activities. He pointed out in connection with the action of the Conference to recommend abolishing diversity jurisdiction, that the original reasons for establishing diversity jurisdiction may exist today in the Pacific Territories. In accordance with

his recommendation, the Conference approved an exception to the policy of eliminating diversity jurisdiction for the Pacific Trust Territories (see above, pp. 8, 9).

#### COMMITTEE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS

Chief Judge Edward J. Devitt, Chairman, presented the report of the Committee to Consider Standards for Admission to Practice in the Federal Courts.

Judge Devitt stated that the committee, through the Administrative Office and the Federal Judicial Center, is conducting a systematic research program and is planning a series of public hearings to determine the matter of the need for improvement in federal trial advocacy and the best method of satisfying that need. Judges and lawyers will be asked to express their views on the subject through responses to questionnaires and judges will be asked to rate the presentation of counsel in a limited number of cases. All interested parties, including the law school communities, will be afforded an opportunity to express themselves in writing or at public hearings. The committee estimates that it will take approximately one year to conduct needful research and fact-finding. The committee expects to have its recommendations ready to present to the September 1978 session of the Judicial Conference.

#### PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference approved the pretermission of terms of courts of appeals, pursuant to 28 U.S.C. 48, for 1977 for all sessions of the Court of Appeals of the Fourth Circuit to be held at Ashville, North Carolina; for all sessions of the Court of Appeals of the Fifth Circuit to be held outside New Orleans, Louisiana; for all sessions of the Eighth Circuit Court of Appeals to be held outside St. Paul, Minnesota, and St. Louis, Missouri; and for all sessions of the Tenth Circuit Court of Appeals to be held at Oklahoma City, Oklahoma.

## NEXT CONFERENCE SESSION

The Chief Justice, in reminding the members of the Conference that the next session would be held on September 15 and 16, 1977, advised that the British members of the Anglo American Interchange would be in Washington at that time. The Conference agreed to invite the members of the Interchange to attend any or all of the sessions of the Judicial Conference to be held in September.

## RESOLUTIONS

In addition to expressing its agreement with the resolution in honor of Judge Elbert Parr Tuttle, adopted by the Advisory Committee on Judicial Activities (see above p. 15), the Conference also took note that Judge Walter E. Hoffman would be retiring as Director of the Federal Judicial Center before the next regular session of the Conference and that Judge Roy W. Harper had completed his term as Chairman of the Committee on Intercircuit Assignments and accordingly adopted the following resolutions:

The Judicial Conference of the United States expresses its appreciation to Judge Walter E. Hoffman for the service he has rendered to the Conference and to the Federal Judiciary as Director of the Federal Judicial Center during the last two and one-half years.

Judge Hoffman is the third Director of the Center and the first district judge to occupy this important position, having succeeded two distinguished former directors, Supreme Court Justice Tom C. Clark and Circuit Judge Alfred P. Murrah.

Judge Hoffman brought to the Center a wealth of experience as a federal trial judge and a knowledge of the work of the Center through many years of association in efforts to improve judicial administration. At the time of his selection as Director he had served more than twenty years as a judge of the Eastern District of Virginia and for almost twelve years as its Chief Judge. For six years he represented the Fourth Circuit as a district judge member of this Conference.

We extend to Judge Hoffman our hopes and desires for continued service to the Judiciary.

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The Judicial Conference of the United States expresses its appreciation to Senior Judge Roy W. Harper for his outstand-

ing service to the Conference as Chairman of the Committee on Intercircuit Assignments. As a member of the committee since 1968 and its chairman since 1969, Judge Harper assisted the Chief Justice and the Conference in discharging the statutory duty of making plans for the assignment of judges to and from circuits and districts in the interest of the expedition of judicial business. In carrying out his assignment, a duty he performed so well and so efficiently, Judge Harper displayed a remarkable devotion to the Federal Judiciary. Although his task was most demanding, he succeeded in gaining the respect and admiration of all with whom he worked. The Conference salutes him for his dedicated leadership and service.

The Conference noted with deep regret the death of its former member, the distinguished Chief Judge of the Seventh Circuit Court of Appeals John S. Hastings and adopted the following memorial resolution:

John S. Hastings, a lawyer from Washington, Indiana, was appointed a Circuit Judge for the Seventh Circuit on August 26, 1957. He was Chief Judge of the Circuit and a member of this Conference from 1958 to 1968. In addition to his outstanding work as an active and, later, a senior judge of his court, he made significant contributions as a member of important committees of the Conference, and a judge assigned by the Chief Justice to the Temporary Emergency Court of Appeals.

An historic development of recent years has been the vast increase in appointment of counsel under the Criminal Justice Act. As first Chairman of the Conference Committee implementing the Act, Judge Hastings was a pioneer, and he has left his lasting imprint upon this area of the administration of justice. He also served as a member of the Committee on Court Administration from 1958 to 1968 and the ad hoc committee on committees in 1967; at the time of his death he was a member of the Advisory Committee on Civil Rules, the Advisory Committee on Appellate Rules; and the Bicentennial Committee.

In every role, Judge Hastings won the respect and affection of everyone with whom he worked, and was revered as leader, counselor and friend. His death on February 7, 1977, deprived the Federal Judiciary of a distinguished member. The Judicial Conference of the United States adopts this resolution in memory and appreciation of his life and service. The sympathy of all its members is extended to Mrs. Esther Hastings and their sons, William and James.

## ELECTIONS

The Conference elected Judge John C. Godbold to a full term as a member of the Board of the Federal Judicial Center as required by 28 U.S.C. 621 (b). Judge Godbold is currently serving the unexpired term of Judge Griffin B. Bell which terminates March 28, 1977.

The Conference elected John W. Macy for an additional term as a member of the Board of Certification for Circuit Executive as required by 28 U.S.C. 322 (f). His current term expires July 1, 1977.

## RELEASE OF CONFERENCE ACTION

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

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

MARCH 26, 1977

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