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

March 9-10, 1978

Washington, D.C.
1978

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**William E. Foley
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 9 and 10, 1978

The Judicial Conference of the United States convened on March 9th, 1978, pursuant to the call of the Chief Justice of the United States, issued under 28 USC 331, and continued in session on March 10th. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Judge Edward A. Tamm*
Chief Judge William B. Bryant, 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 T. Emmet Clarie, District of Connecticut

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 William C. Keady, Northern District of Mississippi

Sixth Circuit:

Chief Judge Harry Phillips
Chief Judge Cornelia G. Kennedy*, 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

*On designation of the Chief Justice

Ninth Circuit:

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

Tenth Circuit:

Chief Judge Oliver Seth
 Judge Wesley E. Brown, District of Kansas

Court of Claims:

Acting Chief Judge Oscar H. Davis

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Circuit Judge Robert A. Ainsworth, Jr.; Senior Circuit Judge Richard H. Chambers; District Judges C. Clyde Atkins, Edward J. Devitt, Robert E. Maxwell, and Edward Weinfeld; and Senior District Judges Charles M. Metzner, Roszel C. Thomsen, Albert C. Wollenberg, and Alfonso J. Zirpoli, attended all or some of the sessions of the Conference.

The Attorney General of the United States, Honorable Griffin B. Bell, accompanied by the Solicitor General, Honorable Wade H. McCree, attended the morning session of the first day of the Conference and addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr.; Deputy Director; James E. Macklin, Assistant Director; and Mark W. Cannon, Administrative Assistant to the Chief Justice; attended the sessions of the Conference.

The Director of the Federal Judicial Center, A. Leo Levin, reported on the activities of the Center since the last session of the Conference.

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

The Director of the Administrative Office, Mr. William E. Foley, reported to the Conference on the state of the business of the United States courts for the calendar year 1977.

Mr. Foley's report indicated that the pending caseload in the United States courts of appeals rose 5.1 percent during 1977, despite a substantial increase of 7.4 percent in cases terminated. Although newly docketed cases increased by only 61, the 18,916 appeals filed exceeded the 18,128 appeals terminated by 788, raising the current pending caseload in the courts of appeals to a new all-time high of 16,276 as of December 31, 1977.

Civil cases filed in the United States district courts rose to 135,628 during 1977, 5.3 percent above the number filed during 1976. Terminations increased 7.4 percent, but fell short of filings by 14,180 cases. The result was a record high of 163,798 pending civil cases on December 31.

The increase in civil filings during 1977 was due in large part to a 52 percent increase in real property actions, mostly land condemnation cases filed in the Southern District of Florida. Social Security reviews, other than "black lung", increased almost one-third, but "black lung" cases declined more than 66 percent. Prisoner petitions increased almost 10 percent.

Criminal cases filed in the district courts during 1977 dropped to 38,397, a decline of 8.4 percent from the previous year. Case dispositions increased 7.6 percent and exceeded the number of cases filed by 2,371. As a result, criminal cases pending on December 31, 1977 decreased to 16,960, a decline of 12 percent in the last year.

In 1977 there were 208,433 bankruptcy cases filed in the district courts, a decline of 8.1 percent compared to 1976. Terminations dropped 7 percent, but exceeded case filings by 17,587. This resulted in a pending caseload of 245,557 bankruptcy cases on December 31st, which is 6.7 percent less than a year ago.

The Federal Probation system experienced an increase both in the number of persons received for supervision during 1977 and in the number of persons removed from supervision. There were 46,990 persons received for supervision in 1977 and 46,164 persons removed. On December 31 there were 65,105 persons under the supervision of federal probation officers.

United States magistrates handled almost 300,000 separate items of judicial business in 1977, an increase of 15 percent. It is evident that the increased work of magistrates reflects the growing trend in the district courts of using magistrates to assist in the disposition of backlogged dockets.

The number of criminal cases assigned to federal public defenders increased 6 percent in 1977. At the same time the number of cases closed increased 11.3 percent, resulting in a decrease of 10.6 percent in the pending caseload for these officers. Criminal cases assigned to community defender organizations increased 5.2 percent, cases closed increased 7.5 percent, and the number of pending cases declined 9.7 percent.

REPORT OF THE FEDERAL JUDICIAL CENTER

The Director of the Federal Judicial Center, A. Leo Levin, presented to the Conference the report and recommendations of the Board of the Federal Judicial Center for improving libraries and research services in the courts of appeals and district courts. The report is based upon a library study conducted under the auspices of the Center. The Conference approved the recommendations submitted and referred the report of the Center to the Director of the Administrative Office of the United States Courts.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The report submitted on behalf of the Judicial Panel on Multidistrict Litigation indicated that the Panel had conducted three hearings during the six-month period ending December 31, 1977 and had issued 44 main orders. The Panel acted on 25 new groups of multidistrict litigation cases and ordered transfers in 16 groups encompassing 229 separate civil actions of which 134 were transferred and 95 had been filed directly in the transferee districts. The Panel denied transfer in nine groups of cases consisting of 36 actions. In addition, 183 other cases were transferred by the Panel as tag-along cases for inclusion in on-going centralized pretrial proceedings. Since the establishment of the Panel in 1968 there have been 5,995 civil actions centralized in pretrial proceedings under 28 U.S.C. 1407.

COMMITTEE ON COURT ADMINISTRATION

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

Uniform Rules of Disciplinary Enforcement

At the March 1977 session (Conf. Rept., p. 7) the Conference was advised that proposed Guidelines for Uniform Rules of Disciplinary Enforcement would be presented 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 1977. Presentation of the rules, however, was delayed and a fifth version was presented to the mid-winter meeting of the House of Delegates in February 1978. A further report will be made to the September session of the Conference.

Depositions in Foreign Countries

The Conference, upon consideration of the report of the Committee, disapproved, as a matter of policy, the practice of Federal judges trav-

eling abroad to take testimony or depositions in cases pending before them.

Outside Employment of Law Clerks and Secretaries

A survey of all Federal judges as to the practice in their courts governing the outside employment of law clerks and secretaries disclosed a need to modify the 1940 resolution of the Judicial Conference to prevent inequities. Upon recommendation of the Committee the Conference adopted the following resolution:

A law clerk or a secretary to any judge of the United States, as defined by section 451 of title 28, United States Code, shall not engage in any employment outside of his or her official position which would be incompatible with the full and proper discharge of the duties of that position.

No such law clerk, during his or her tenure in that capacity, shall practice law in any federal, state, or local court or undertake to perform legal services for any private client in return for remuneration. This prohibition, however, shall not be construed to preclude the performance of routine legal work necessary to the management of the personal affairs of the law clerk or a member of his or her family, so long as (1) such work is done without compensation; (2) it does not require the entry of an appearance in a court of the United States or any other act which would suggest that the position of law clerk is being misused, that preferential treatment is being sought by virtue of the holding of that position, or which would otherwise be inconsistent with the law clerk's primary responsibility to the employing judge and court; and (3) so long as such activity does not have actual conflict or appear in conflict with court duties or will not reflect discreditably on the court or create the appearance of impropriety.

Such law clerk or secretary shall not be prohibited from performing and receiving compensation for such activities as teaching, lecturing, authoring or editing articles, publications and books. Nor shall such law clerk be prohibited from performing any activity related to the judicial process which tends toward the improvement of the law, the legal system, or the administration of justice; or which is unrelated to the judicial process. Regardless of any other provisions set out above, any such otherwise permitted activity may be undertaken only after notice to the employing judge and upon his or her finding that it poses no inconsistency with the function of law clerk or secretary including the responsibility to maintain the confidentiality of the judicial process and that it will not inhibit the devotion of the full business day to that position during the tenure of the incumbent in such capacity.

Disposition of Federal Court Records

The Archivist of the United States has advised that it has become

almost impossible to apply the schedules for the disposition of court records, adopted by the Conference in 1946, since these schedules are incomplete and have resulted in overcrowding at record centers. The Archivist suggested that a study be undertaken by the Conference with a view to adopting meaningful record disposition schedules for the guidance of the Archivist. Upon the recommendation of the Committee the Conference authorized the establishment of an ad hoc Committee to review the schedules and guidelines for the disposition of Federal court records.

Civil Arbitration Pilot Program

At the September 1977 session (Conf. Rept., p. 59) the Conference, upon recommendation of the Budget Committee, authorized the Director of the Administrative Office to expend appropriated funds for the conduct of a pilot civil arbitration program consistent with guidelines and procedures to be established by the Committee on Court Administration in consultation with the Department of Justice. The Committee has now approved the rules adopted for a pilot program to be conducted in three district courts and will report on the progress of the program at a later date. In the light of this experience the Committee will also review the provisions of H.R. 9778, 95th Congress, which would provide for arbitration in civil cases on a nationwide basis.

Judicial Disability

The Conference in March 1975 (Conf. Rept., p. 4) approved in principle S. 4153, 93rd Congress, which would have provided for a Council on Judicial Tenure within the judicial branch charged with the duty of receiving and investigating complaints against justices or judges of the United States and authorized to determine whether a complaint alleges grounds which would warrant removal, censure, or involuntary retirement.

At the request of the Congress, the Conference considered three currently pending proposals for establishing methods for evaluating and resolving complaints concerning judicial conduct and disability (H.R. 9042, H.R. 9451, and S. 1423, as amended in a "committee print" of February 3, 1978), and approved the following statement of views for transmission to the Congress:

Among the proposals currently pending in Congress, establishing methods for dealing with judicial conduct and disability, the Judicial Conference approved in principle the objectives of S. 1423, as embodied in the "committee print" of February 3, 1978.

While fully cognizant of the Constitutional powers vested in the Congress and the Conference's obligation to respect those powers, in

responding to Congressional requests for views on those bills, the Conference also believes it is obligated to express its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

Aside from the reservation expressed on the constitutionality of the removal feature, the Conference concludes that legislation placing authority in the Judicial Branch itself is both compatible with long-standing concepts of separation of powers and desirable in terms of maintaining the ultimate objective of an independent judiciary worthy of public confidence.

We believe that S. 1423 should be altered in some respects. For example, we would recommend that subsection (c) (1) of proposed section 383 be amended to provide authority for a panel established by proposed section 382 to itself dismiss a complaint, in addition to recommending dismissal or further investigation. Further, we believe that S. 1423 should expressly reaffirm the authority of the judicial councils of the circuits to deal with inappropriate judicial conduct by formal or informal action, and suggest that this might be accomplished by allowing the circuit a reasonable period of time to act with respect to any complaint before that complaint is referred to the circuit panel pursuant to section 382 of S. 1423. Other changes not incompatible with the objectives of S. 1423 may be proposed.

Because such legislation is a matter of great import to every federal judge, the Conference directs that:

- (1) Copies of the February 3, 1978 committee print and accompanying report be transmitted to all judges with a request that their views be filed with the Administrative Office by April 10, 1978; and
- (2) Those views be reviewed and an appropriate report prepared and transmitted to the Senate Judiciary Committee by May 1, 1978; and
- (3) The Committee on Court Administration is instructed to continue its evaluation of the legislation, taking the responses of the judges into consideration, and to report its recommendations to the Congress as promptly as possible.

Diversity Jurisdiction

H.R. 9622, 95th Congress, would abolish general diversity of citizenship jurisdiction in the district courts, retaining, however, jurisdiction in suits to which aliens are parties; increase the jurisdictional amount in controversy requirement for alienage cases from \$10,000 to \$25,000; and abolish the jurisdictional amount in controversy requirement in federal question cases, except where required by specific legislation. The bill would retain the federal interpleader statute, 28 U.S.C. 1335. The bill is

consistent with the recommendation of the Conference in March and September 1977 (Conf. Repts., pp. 8 and 52) favoring a complete abolition of general diversity jurisdiction. Upon recommendation of the Committee the Conference approved the bill, as drafted, and urged its immediate passage.

The Conference, however, reaffirmed its previous recommendation that appropriate legislation be enacted to permit diversity jurisdiction in certain territorial district courts (Conf. Rept., Mar. 1977, p. 38).

Civil Rights Improvements Act

S. 35, 95th Congress, as amended by Amendment No. 1426, is entitled the Civil Rights Improvement Act of 1977. The bill would change the result in certain Supreme Court cases interpreting 42 U.S.C. 1983 including *Monroe v. Pape*, 365 U.S. 167 (1961), holding that the term "person" as used in the Civil Rights Act is limited to a natural person, and *Paul v. Davis*, 424 U.S. 693 (1976), holding that the right to enjoy one's reputation is not a right secured under the due process clause of Section 1 of the 14th Amendment to the Constitution. It would also limit the power of federal courts to abstain in civil rights cases pending authoritative determinations of state law, would compel injunctions against certain on-going state actions, would require federal courts to refuse to give *res judicata* effect to certain state judgments between the same parties on the same issues, and would make state prosecutors liable for unconstitutionally withholding or suppressing exculpatory evidence.

It was the view of the Committee that the expansion and further definition of civil rights is a matter of public policy for legislative determination. At the same time the Committee pointed out that the language used in the bill is so sweeping, and at times so vague, as to make it difficult to ascertain its scope. Furthermore, the bill reaches into matters which may adversely affect the delicate balance of federal/state relationships and poses serious questions of statutory and constitutional interpretation.

The Committee accordingly recommended that the Judiciary express no views on the extension of coverage under Sec. 1983 since this is a policy matter for the determination of the Congress, but that the Conference indicate to Congress the serious problems it perceives with regard to some of the substantive and procedural provisions of S. 35, as amended, and recommend against enactment of the bill in its present form. This recommendation was approved by the Conference.

Attorneys' Fees

At the last session of the Conference the Committee was requested to reconsider both H.R. 4814, 95th Congress, a bill to authorize an award of

a reasonable attorney's fee and other costs to a prevailing defendant in a civil action brought by the United States, and H.R. 3361, 95th Congress, to amend the Administrative Procedure Act to permit awards of attorneys' fees and other expenses of litigation for public participation in federal agency proceedings and the judicial review thereof. The Committee continues to be of the view that the question of awarding attorneys' fees in agency and court proceedings is a matter of public policy for the determination of the Congress, but pointed out that a piece-meal approach to this issue is eroding the "prevailing American rule", requiring parties to civil litigation to pay their own attorneys' fees, without thorough study of the potential consequences. The Committee counted 60 bills pending before nine separate committees in the 95th Congress which would authorize an award of attorneys' fees to a prevailing party in either agency or court proceedings. The Conference thereupon approved the Committee's suggestion that the Congress be requested to conduct general hearings on the desirability of further modifying the "prevailing American rule" so that the views of the bar and the public generally can be elicited.

The Committee also noted that several bills, including H.R. 3361, would provide standards for determining attorneys' fees which may require courts to conduct separate fact-finding proceedings, thus prolonging litigation and adding expense. The Conference voted to recommend to the Congress that, in the event separate bills are to be considered, these provisions be modified so that the award of a reasonable attorney's fee may be left to the sound discretion of the court.

Judicial Review of Veterans' Claims

S. 364, 95th Congress, would provide for the judicial review of administrative determinations made by the Veterans Administration, would make the provisions of the Administrative Procedure Act applicable to these proceedings, and would authorize a reasonable fee for an attorney who renders legal assistance to a veteran. The Conference noted that the Board of Veterans' Appeals annually processes 32,000 separate cases and that the Department of Justice estimates that the enactment of the bill would result in approximately 4,600 new appeals to the district courts each year. Upon the Committee's recommendation the Conference reaffirmed the following resolution adopted by the Conference in March 1963:

The Conference was of the view that the question whether judicial review of the denial of veterans' claims should be accorded is a matter of public policy which is solely within the province of Congress to decide and that the judiciary should take no position thereon. If

Congress should decide to grant such review, the Conference believed that review by a Court of Veterans Appeals, with local hearings by commissioners of the court, would provide a more suitable form of review than by the district courts, the courts of appeals or the Court of Claims.

Appellate Jurisdiction of the Supreme Court

The Committee's report recommending approval of S. 83, 95th Congress, a bill to simplify the jurisdiction of the Supreme Court of the United States by curtailing direct appeals from certain decisions of state and federal courts was referred to the Supreme Court for its consideration.

National Court of Appeals

H.R. 3969, 95th Congress, would create a National Court of Appeals composed of a chief judge and six associate judges appointed by the President which would have jurisdiction of cases referred to it by the Supreme Court and cases transferred to it by other federal appellate courts. This proposal has been widely discussed in legal circles and strong opinions both in favor of and against the creation of such a court have been expressed. Discussion of this proposal and alternative methods of dealing with the ever-increasing caseload of the Supreme Court should, in the view of the Committee, be encouraged. The Conference agreed and urged the Congress to continue its study of appropriate methods to relieve the Supreme Court of the overwhelming burdens of its present expanding caseload but took no position on the merits of this particular proposal.

Transportation of Students

The Conference voted to take no position on H.R. 8645, 95th Congress, relating to the busing of students, since the bill embodies a matter of public policy for the determination of the Congress.

Class Actions

H.R. 7683, 95th Congress, a bill dealing with jurisdiction and procedure in class actions, was withdrawn from consideration and returned to the Committee for further study in the light of other action of the Conference.

Collateral Estoppel in Antitrust Cases

H.R. 7647, 95th Congress, would repeal Section 5(a) of the Clayton Act, 15 U.S.C. 16(a). That section makes a final judgment or decree in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws *prima facie* evidence against a defendant in any subsequent action against such defendant if the decree or judgment creates an estoppel between the parties. While the effect to be given to a

prior antitrust judgment in subsequent proceedings under the antitrust laws is clearly a matter for Congressional determination, the Committee had serious doubts that the bill will accomplish its intended purpose of making things easier for private plaintiffs in treble damage actions. It was of the view that a simple repeal Section 5(a) of the Clayton Act, as proposed, may create uncertainty as to the effect of the repeal and that it would be better to set forth the rules that are to be substituted. The Conference agreed and directed that these views be communicated to the Chairman of the House Judiciary Committee.

Enforcement of State Custody Orders

H.R. 9913, 95th Congress, would permit federal courts to enforce state custody orders in situations in which persons are transported across state lines. While the bill embodies a matter of policy for Congressional determination, the Committee doubted that Section 2 of Article III of the Constitution supports this type of grant of jurisdiction to a federal court. Further, the bill is unclear on questions of venue, what law is to be applied, and the nature of relief that may be granted. The Conference took no position on the merits of the bill, but authorized the communication of the Committee's reservations to the Congress.

Transfer of Cases to Other Courts

The Conference approved a recommendation of the Committee that provision be made by statute for the transfer of a case from one federal court to another in the event the case was not properly filed in the first court and authorized the Director of the Administrative Office to draft a suitable bill for transmittal to the Congress.

Resignation of Judges

The Conference voted to recommend passage of H.R. 8327, 95th Congress, which would permit a judge who has reached 65 years of age to resign after 15 years of service at the salary he received at the time of resignation.

Territorial Judges

The Conference voted to oppose enactment of H.R. 3566, a bill to extend life tenure to territorial judges.

Appellate Court Revision

H.R. 3971, 95th Congress, incorporates several recommendations of the Hruska Commission on Revision of the Federal Court Appellate System. After full discussion, the Conference voted to approve Sec. 103 of the bill which would permit a judge who has reached the age of 60 to retire from regular active service if the number of years of his service

when added to his age equals 80. The other provisions of the bill were returned to the Committee for further study in the light of the discussions in the Conference.

Law Clerks and Secretaries

The Committee recommended that those secretaries who have had substantial service in the employment of federal judges should have some further promotion potential than is now available. The Conference agreed and voted to establish qualification standards for a secretary to a federal judge at Grade JSP-11, with a requirement of eight years of experience as a secretary to a federal judge of which seven years must be in Grade JSP-10. A change in the language of the Appropriations Act, both as to grade and dollar limitation, is required before this authorization can become effective. The Committee on the Budget was authorized to submit language changes to the Congress.

A proposal to authorize increased salary levels for career law clerks was returned to the Committee for further study.

Upon recommendation of the Committee the Conference approved requests for appropriations for 52 additional staff attorneys in the courts of appeals and 37 additional secretaries with the understanding that the Congress would be informed that the staff attorney positions would be reduced upon authorization of a third law clerk for a circuit judge.

COMMITTEE ON THE BUDGET

The report of the Committee on the Budget was submitted by Chief Judge Robert E. Maxwell, a member of the Committee, in the absence of the Chairman, Judge Carl Weinman.

Judge Maxwell informed the Conference that hearings had recently been conducted in the House of Representatives on the appropriation requests for the fiscal year 1979. At that time a request for certain additional deputy clerk positions in the district courts had been withdrawn pending completion of a work measurement study being conducted by the Administrative Office to determine the validity of the current staffing formula. The Conference was also advised concerning the status of judgeship bills pending in the Congress and the anticipated need of additional supplemental appropriations for the fiscal year 1978 and an amendment to the appropriation request for the fiscal year 1979.

Upon the recommendation of the Committee, the Director of the Administrative Office was authorized to submit to the Congress a request for a supplemental appropriation for the fiscal year 1978 in the amount of \$7,897,000, as soon as the judgeship bill is signed into law, subject to any adjustments he may consider necessary and appropriate. The Director

was also authorized to submit to the Congress an increase in the budget request for the fiscal year 1979 in the amount of \$28,998,000 for increased costs under a new judgeship bill, subject to changes required as a result of any other actions of the Conference at this session or for any other reason the Director considers necessary and appropriate.

The Conference further approved a request of the Committee that the Director of the Administrative Office be authorized to conduct a survey to determine how courtroom deputies are being utilized in the respective district courts and whether or not it is appropriate to include such deputies in the application of case filing ratios for staffing purposes.

REVIEW COMMITTEE

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

Judge Tamm reviewed briefly the examination conducted by the Committee of the Reports of Extra Judicial Income submitted by judges, magistrates, bankruptcy judges, and other personnel required to file such reports for the six-month period ending December 31, 1977. He indicated that the Committee was continuing to experience difficulty in receiving reports of extra judicial income in time for the Committee meeting. At Judge Tamm's request the Conference changed the dates for filing semi-annual reports of extra judicial income from January 15 and July 15 of each year to January 10 and July 10, respectively.

Judge Tamm stated that heretofore it has been the practice of the Committee to identify some judges who have failed to file reports as declining to do so "for reasons of conscience". The Committee, however, does not believe that this practice should be continued and accordingly recommended, and the Conference concurred, that all characterizations of non-filing judges be eliminated from the list to be included in the Conference report pursuant to the Conference resolution adopted in March 1971 (Conf. Rept., p. 24).

Judge Tamm advised the Conference that 11 district judges, one circuit judge and two bankruptcy judges have not filed reports of extra judicial income for the period July 1 to December 31, 1977, as follows:

ADJUDICATORY OFFICIALS WHO HAVE NOT FILED AS OF MARCH 24 FOR THE PERIOD ENDING DECEMBER 31, 1978

Second Circuit

Edmund L. Palmieri
Sr. District Judge

Sylvester J. Ryan
Sr. District Judge

Edward Weinfeld
District Judge

Inzer B. Wyatt
Sr. District Judge

Sixth Circuit

Frank J. Battisti
District Judge

Frank Gray
Sr. District Judge

Ninth Circuit

Warren J. Ferguson
District Judge

Stanley A. Weigel
District Judge

Harry Pregerson
District Judge

Warren C. Moore
Bankruptcy Judge

Manuel L. Real
District Judge

Tenth Circuit

John C. Pickett
Sr. Circuit Judge

Patricia A. Clark
Bankruptcy Judge

D.C. Circuit

Matthew F. McGuire
Sr. District Judge

The Conference previously approved the recommendation of the Committee that the officers of the Administrative Office of the United States Courts and the Federal Judicial Center, employed in grades GS-15 or above, be required to file reports with the Committee. Although these reports are currently being filed, the review is inadequate because of the lack of established standards regarding outside employment and non-judicial affiliations. In an effort to insure that proper standards are established and recognized by officers of these two judicial agencies, the Committee recommended that the CODE OF JUDICIAL CONDUCT FOR UNITED STATES JUDGES be made applicable to those employees of the Administrative Office and the Federal Judicial Center in salary grades GS-15 and above and that the Conference resolutions defining applicable standards of conduct for judicial officers likewise be made applicable to these non-adjudicatory officers. The Conference approved the recommendation.

At the suggestion of Judge Tamm the Conference requested the Advisory Committee to consider issuing an appropriate advisory opinion regarding the participation of a judicial officer in a case involving a former law firm from which he is continuing to draw compensation for services rendered prior to the time he became a judge.

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee on the Code of Judicial Conduct, chaired by Judges Edward A. Tamm and William B. Jones, was presented by Judge Tamm.

Familial Relationships

The Conference in September 1977 (Conf. Rept., p. 60) amended Canon 5D of the CODE OF JUDICIAL CONDUCT FOR UNITED STATES JUDGES to redefine the term "member of his family", but requested the Committee to give further consideration to "the question of a grandfather clause as to judges in a fourth degree of familial relationship whose status has previously been approved by his judicial council." Upon further consideration the Committee concluded that the definition of "member of his family", previously recommended by the Committee, may have been too narrowly formulated. On recommendation of the Committee the Conference again amended the definition of "member of his family" in Canon 5D to read as follows:

"Member of his family" means any relative of a judge by blood, adoption, or marriage, or any other person treated by a judge as a member of his family who resides, or has resided, in his household.

The Conference also approved the addition of the following commentary to Canon 5D:

Commentary

Mere residence in the household of a judge is insufficient for a person to be considered a member of the judge's family for purposes of this canon. The person must not only be treated by a judge as a member of his family but must have resided in the judge's household for a sufficient length of time and under such circumstances as to make it apparent that it was his principal abode.

Judicial Disqualification

Judge Tamm requested and the Conference authorized distribution of the Federal Judicial Center staff paper entitled "Decisions Construing the Judicial Disqualification Statute" to all judicial officers.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

The report of the Advisory Committee on Judicial Activities, chaired by Judge William B. Jones, was made by Chief Judge Frank M. Coffin, a member of the Committee.

Judge Coffin reported that in the past six months sixteen new inquiries were received by the Committee and that six new published opinions had been issued, as follows:

Advisory Opinion 50 — Appearance of a judge before a legislative or executive body or official.

Advisory Opinion 51 — Propriety of a law clerk to a judge working on a case involving a party which is represented by his spouse's law firm.

Advisory Opinion 52 — Participation of a judge in a case in which an open-member bar association is a party.

Advisory Opinion 53 — Participation of a judge's spouse in a political campaign.

Advisory Opinion 54 — Propriety of a judge writing a letter of approbation or recommendation to an appointing officer.

Advisory Opinion 55 — Judicial writings and publications.

As of the date of its report the Committee had considered and acted upon 165 formal docketed inquiries, not including approximately 35 matters acted upon prior to the installation of the docketing system. The Committee again called attention to its practice of requiring a submission in writing of all questions involving an interpretation of the CODE OF JUDICIAL CONDUCT FOR UNITED STATES JUDGES.

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.

Amendments to the Magistrates Act

Judge Metzner advised the Conference that the Department of Justice sponsored legislation, S. 1613, to improve access to the federal courts by enlarging the civil and criminal jurisdiction of United States magistrates, had passed the Senate and was now under consideration in the House Judiciary Committee. The bill would provide authority for the conduct of civil jury and non-jury trials by full-time magistrates upon the mutual consent of the parties, establish procedures for taking appeals from decisions of magistrates, expand the trial jurisdiction of magistrates in criminal cases to include all misdemeanors, and prescribe procedures for the district courts to follow in selecting magistrates.

At its last session the Conference endorsed most of the provisions of the bill (Conf. Rept., p. 62), but reserved for further consideration the provisions in S. 1613 for jury trials before magistrates and for direct appeals to the courts of appeals. After further consideration of these problems the Committee reported, and the Conference agreed, that there is no policy or constitutional problem in delegating trial jurisdiction to

magistrates, provided that it is done with the consent of the parties. The Conference further voted to recommend that the appeal in a trial conducted by a magistrate should be to the district court and voted specifically to oppose any provision for the appeal of a case tried by a magistrate directly to a court of appeals.

The Committee was further authorized to suggest to the Congress that the provision in the bill pertaining to court reporter services for magistrates involves a matter of administration which should remain flexible and which should not be included in the legislation.

Qualification Standards and Selection Procedures

Last September the Committee submitted for consideration draft qualification standards and selection procedures for magistrates and requested that they be reviewed by the members of the Conference and other judges prior to being submitted for final action at this session. Judge Metzner informed the Conference that certain changes were made in the draft as a result of suggestions made by Conference members. After full discussion the Conference approved the proposals submitted by the Committee as *guidelines* rather than requirements, since the authority of the Conference to adopt binding standards is unclear. One amendment was adopted making the procedure of a nominating commission optional with each district court rather than mandatory.

Salaries of Full-Time Magistrates

The salary plan adopted by the Conference and currently in effect fixes the salaries of full-time magistrates at two levels — \$42,500 and \$46,500 per annum. The higher salary may be paid to a full-time magistrate admitted to the bar of the highest court of a state for a period of at least ten years, provided that the higher salary is recommended by a majority of the judges of the district court concerned. As a result of the 1976 jurisdictional amendments to the Federal Magistrates Act, Public Law 94-577, the district courts are now selecting full-time magistrates with a view to the performance of a full range of duties. The Committee accordingly recommended and the Conference approved a revision in the salary plan to increase the higher salary of \$46,500 for full-time magistrates to \$48,500, subject to the availability of funds.

Changes in Magistrate Positions

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrates. These changes are to be effective April 1, 1978,

unless otherwise indicated, subject to the availability of appropriated funds. The salaries of full-time United States magistrates, other than the position at Yosemite National Park, are to be determined in accordance with the salary plan previously adopted by the Conference.

FIRST CIRCUIT

District of New Hampshire

- (1) Discontinued the part-time magistrate position at Lancaster upon the expiration of the current term of the incumbent.

District of Rhode Island

- (1) Authorized the clerk of court at Providence to perform the duties of a part-time magistrate, without additional compensation, effective upon the discontinuance of the part-time magistrate position currently authorized at Providence.

THIRD CIRCUIT

District of New Jersey

- (1) Authorized a third full-time magistrate position at Newark.

Eastern District of Pennsylvania

- (1) Continued each of the three full-time magistrate positions at Philadelphia, which are due to expire in 1979, for additional eight-year terms of office;
- (2) Authorized a fifth full-time magistrate position at Philadelphia;
- (3) Continued the part-time magistrate positions at Allentown and Reading for additional four-year terms of office;
- (4) Increased the salary of the part-time magistrate position at Allentown from \$1,700 to \$3,400 per annum;
- (5) Increased the salary of the part-time magistrate position at Reading from \$850 to \$4,250 per annum.

Middle District of Pennsylvania

- (1) Continued the part-time magistrate position at Stroudsburg for an additional four-year term of office at the currently authorized salary of \$1,700 per annum.

District of the Virgin Islands

- (1) Converted the part-time magistrate position at Charlotte Amalie to a combination clerk of court-magistrate position, at an aggregate compensation equivalent to the salary authorized by the Conference for the clerk of a large district court.

FOURTH CIRCUIT

District of Maryland

- (1) Continued the full-time magistrate position at Hyattsville and the full-time magistrate position at Baltimore which is due to expire on December 21, 1978, for additional eight-year terms of office;

- (2) Converted the part-time magistrate position at Bethesda to full-time status and changed the official location of the position to Baltimore;
- (3) Continued the part-time magistrate position at Hagerstown for an additional four-year term of office;
- (4) Increased the salary of the part-time magistrate position at Hagerstown from \$4,250 to \$5,950 per annum;
- (5) Continued the part-time magistrate position at Salisbury for an additional four-year term of office at the currently authorized salary of \$1,700 per annum.

District of South Carolina

- (1) Converted the part-time magistrate position at Greenville to full-time status;
- (2) Continued the part-time magistrate position at Greenville at the currently authorized salary of \$9,350 per annum until the appointment of the full-time magistrate;
- (3) Continued the part-time magistrate positions at Florence and Aiken for additional four-year terms of office at the currently authorized salaries of \$3,400 and \$850 per annum, respectively.

Eastern District of Virginia

- (1) Authorized a third full-time magistrate position at Alexandria.

Western District of Virginia

- (1) Changed the official location of the full-time magistrate position at Abingdon to Charlottesville;
- (2) Changed the official location of the part-time magistrate position at Charlottesville to Abingdon.

Southern District of West Virginia

- (1) Continued the part-time magistrate position at Bluefield for an additional four-year term of office at the currently authorized salary of \$1,700 per annum.

FIFTH CIRCUIT

Middle District of Florida

- (1) Continued the full-time magistrate position at Tampa for an additional eight-year term of office;
- (2) Authorized a second full-time magistrate position at Tampa;
- (3) Continued the part-time magistrate position at Ft. Myers for an additional four-year term of office at the currently authorized salary of \$850 per annum.

Southern District of Georgia

- (1) Continued the part-time magistrate positions at Savannah, Brunswick and Swainsboro for additional four-year terms of office at the currently authorized salaries of \$24,200, \$5,950 and \$3,400 per annum, respectively.

Western District of Louisiana

- (1) Increased the salary of the part-time magistrate position at Lafayette from \$19,000 to \$24,200 per annum.

SIXTH CIRCUIT

Eastern District of Tennessee

- (1) Converted the part-time magistrate position at Chattanooga to full-time status;
- (2) Continued the part-time magistrate position at Chattanooga at the currently authorized salary of \$14,450 per annum until the appointment of the full-time magistrate;
- (3) Continued the part-time magistrate position at Greenville for an additional four-year term of office;
- (4) Increased the salary of the part-time magistrate position at Greenville from \$2,550 to \$4,250 per annum;
- (5) Continued the part-time magistrate position at Winchester for an additional four-year term of office at the currently authorized salary of \$1,700 per annum;
- (6) Discontinued the part-time magistrate position at Newport upon the expiration of the current term of the incumbent.

Western District of Tennessee

- (1) Continued the full-time magistrate position at Memphis for an additional eight-year term of office;
- (2) Authorized a second full-time magistrate position at Memphis;
- (3) Continued the part-time magistrate positions at Jackson and Savannah at the currently authorized salaries of \$3,400 and \$850 per annum, respectively, until the appointment of the second full-time magistrate at Memphis.

SEVENTH CIRCUIT

Southern District of Indiana

- (1) Authorized a third full-time magistrate position at Indianapolis.

EIGHTH CIRCUIT

Western District of Arkansas

- (1) Increased the salary of the part-time magistrate position at Harrison from \$2,550 to \$14,064 per annum, effective June 1, for the remainder of the incumbent's current term of office;
- (2) Increased the salary of the part-time magistrate position at Texarkana from \$1,700 to \$13,918 per annum, effective June 1, for the remainder of the incumbent's current term of office.

Northern District of Iowa

- (1) Continued the part-time magistrate positions at Waterloo and Dubuque for additional four-year terms of office at the currently authorized salaries of \$1,700 and \$850 per annum, respectively.

Southern District of Iowa

- (1) Increased the salary of the part-time magistrate position at Council Bluffs from \$1,700 to \$8,970 per annum, effective June 1, for the remainder of the incumbent's current term of office.

NINTH CIRCUIT

Eastern District of California

- (1) Increased the salary of the full-time magistrate position at Yosemite National Park from \$27,200 to \$32,000 per annum, subject to approval of the higher salary by the Judicial Council of the Ninth Circuit.

Central District of California

- (1) Continued the three full-time magistrate positions at Los Angeles which are due to expire on January 17, 1979, for additional eight-year terms of office;
- (2) Authorized a sixth full-time magistrate position at Los Angeles;
- (3) Continued the part-time magistrate positions at San Bernardino, "Barstow or Victorville" and Lancaster for additional four-year terms of office at the currently authorized salaries of \$19,000, \$4,250 and \$3,400 per annum, respectively;
- (4) Continued the part-time magistrate positions at Santa Ana and Long Beach for additional four-year terms of office;
- (5) Increased the salary of the part-time magistrate position at Santa Ana from \$12,750 to \$14,450 per annum;
- (6) Increased the salary of the part-time magistrate position at Long Beach from \$4,250 to \$12,750 per annum.

Southern District of California

- (1) Continued the full-time magistrate position at San Diego, which is due to expire on September 14, 1978, for an additional eight-year term of office.

Western District of Washington

- (1) Continued the part-time magistrate positions at Mt. Ranier National Park and Bellingham for additional four-year terms of office at the currently authorized salaries of \$14,450 and \$5,950 per annum, respectively;
- (2) Continued the part-time magistrate positions at Olympic National Park and Vancouver for additional four-year terms of office;
- (3) Increased the salary of the part-time magistrate position at Vancouver from \$1,700 to \$3,400 per annum;
- (4) Decreased the salary of the part-time magistrate position at Olympic National Park from \$12,750 to \$9,350 per annum effective upon the new term of office.

TENTH CIRCUIT

District of Kansas

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

District of Wyoming

- (1) Converted the part-time magistrate position at Cheyenne to a combination clerk of court-magistrate position, at an aggregate compensation fixed at the salary authorized for the clerk of a large district court.

Investigations of Misconduct

The Committee was requested at the last session of the Conference (Conf. Rept., p. 64) to study what investigative services might be available to a district court when charges of misconduct are leveled at a magistrate. The Conference again considered this matter and authorized the Committee to give it further consideration.

AD HOC COMMITTEE ON BANKRUPTCY LEGISLATION

The report of the Ad Hoc Committee on Bankruptcy Legislation was presented by its Chairman, Judge Wesley E. Brown.

The Conference, by mail vote, had previously approved the November 15, 1977 report of the Committee recommending that certain amendments to Titles II and IV of S. 2266, 95th Congress, be approved in principle by the Conference; that the Committee be authorized, consistent with its report, to make other suggestions to the Congress of any needed changes in the bill; and that the Committee be authorized to release its report to the Congress. The report was subsequently submitted at hearings held before the Senate Judiciary Subcommittee on Improvements in Judicial Machinery on November 28 and to the House Judiciary Committee at hearings held on December 13.

Judge Brown informed the Conference that H.R. 8200, 95th Congress, passed the House of Representatives on February 1, 1978 in substantially the same form in which it was reported by the House Judiciary Committee. The bill contains provisions, previously opposed by the Conference, to create a separate court system for bankruptcy cases under Article III of the Constitution and a separate office of United States Trustee under the Attorney General. The Conference thereupon reaffirmed its disapproval of H.R. 8200 and concurred in the following resolution recommended by the Committee:

Resolved, That the Judicial Conference of the United States hereby reaffirms its endorsement of S. 2266 as the bill which best achieves the objective of constructively reforming the substantive law of bankruptcy and a desirable structural arrangement for the resolution of

bankruptcy disputes. Accordingly, the Judicial Conference recommends the enactment of S. 2266.

The Conference adheres, however, to its prior suggestion for the creation of a bankruptcy administrator, believing that the creation of such an office will accomplish a desirable separation of judicial and administrative bankruptcy functions.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

Salaries and Arrangements for Referees

The Conference considered the Committee report, together with the recommendations of the Director of the Administrative Office, the Judicial Councils of the Circuits, and the District Courts concerned, and took the following action relating to referee positions and changes in salaries and arrangements. The Conference directed that, subject to the availability of funds, these actions become effective on April 1, 1978, unless otherwise indicated.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

- (1) Authorized the continuance of the full-time referee position in the City of Washington to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, the regular place of office, territory and place of holding court to remain as at present.

FIRST CIRCUIT

District of Massachusetts

- (1) Authorized the continuance of the full-time referee position at Boston to become vacant by expiration of term on July 14, 1978, for a term of six years, effective July 15, 1978, at the authorized salary, with 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 Boston to become vacant by expiration of term on August 21, 1978, for a term of six years, effective August 22, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

District of Connecticut

- (1) Authorized the continuance of the full-time referee position at Hartford to become vacant by expiration of term on October 31, 1978, for a term of six years, effective November 1, 1978, at the authorized salary, the regular place of office, territory and place of holding court to remain as at present.

Eastern District of New York

- (1) Authorized the continuance of the full-time referee position at Westbury to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

Western District of New York

- (1) Designated Watkins Glen as an additional place of holding court for the full-time referees in the district in addition to Buffalo, Rochester, Batavia, Jamestown, Niagara Falls, Dunkirk, and Olean;
- (2) Discontinued Elmira as a place of holding bankruptcy court in this district effective when the arrangements for accommodations of the bankruptcy court at Watkins Glen are completed.

THIRD CIRCUIT

Eastern District of Pennsylvania

- (1) Authorized the continuance of the full-time referee position at Philadelphia to become vacant by expiration of term on June 28, 1978, for a term of six years, effective June 29, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

Western District of Pennsylvania

- (1) Authorized the continuance of the full-time referee position at Pittsburgh to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, with the regular place of office and places of holding court to remain as at present;
- (2) Eliminated the specification of territories for the referees at Pittsburgh and Erie and established concurrent district-wide jurisdiction for the referees of the district.

District of the Virgin Islands

- (1) Designated Christiansted as the headquarters for the part-time referee/magistrate position established for this district.

FOURTH CIRCUIT

Eastern District of North Carolina

- (1) Authorized the continuance of the full-time referee position at Wilson to become vacant by expiration of term on October 31, 1978, for a term of six

years, effective November 1, 1978, at the authorized salary, with the regular place of office and territory to remain as at present;

- (2) Continued Raleigh, New Bern, and Fayetteville as places of holding bankruptcy court, but discontinued Washington as a designated place of holding court for the district.

FIFTH CIRCUIT

Northern District of Texas

- (1) Authorized the continuance of the full-time referee position at Dallas to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, with 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 Fort Worth to become vacant by expiration of term on August 31, 1978, for a term of six years, effective September 1, 1978, at the authorized salary, with the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Western District of Michigan

- (1) Designated Traverse City, in addition to Grand Rapids, Lansing, and Kalamazoo, as a place of holding court for the full-time referee in the district.

Northern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Canton to become vacant by expiration of term on June 4, 1978, for a term of six years, effective June 5, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

Southern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Columbus to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

Middle District of Tennessee

- (1) Authorized the continuance of the full-time referee position at Nashville to become vacant by expiration of term on August 20, 1978, for a term of six years, effective August 21, 1978, at the authorized salary, with 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 Nashville to become vacant by expiration of term on August 31, 1978, for a term of six years, effective September 1, 1978, at the authorized salary, with 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 Chicago to become vacant by expiration of term on July 4, 1978, for a term of six years, effective July 5, 1978, at the authorized salary, with 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 Chicago to become vacant by expiration of term on July 31, 1978, for a term of six years, effective August 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present;
- (3) Authorized the continuance of the full-time referee position at Chicago to become vacant by expiration of term on October 13, 1978, for a term of six years, effective October 14, 1978, at the authorized salary, with 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 October 31, 1978, for a term of six years, effective November 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

- (1) Authorized the continuance of the full-time referee position at Minneapolis to become vacant by expiration of term on June 30, 1978, for a term of six years, effective July 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Missouri

- (1) Authorized the continuance of the full-time referee position at St. Louis to become vacant by expiration of term on August 31, 1978, for a term of six years, effective September 1, 1978, at the authorized salary, with the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

Southern District of California

- (1) Authorized the continuance of the full-time referee position at San Diego to become vacant by expiration of term on May 7, 1978, for a term of six years, effective May 8, 1978, at the authorized salary, with the regular place of office, territory, and places of holding court to remain as at present.

District of Hawaii

- (1) Extended the jurisdiction of the referee in Hawaii, who now has jurisdiction in Hawaii and Guam, to include the territory of the district court in the Northern Mariana Islands with headquarters on the island of Saipan.

TENTH CIRCUIT

District of New Mexico

- (1) Authorized an additional part-time referee position at a salary of \$24,200 per year, for a term of six years;
- (2) Designated Albuquerque as the headquarters for the part-time position;
- (3) Established concurrent district-wide jurisdiction for the part-time position with the existing full-time positions for the district with designated places of holding bankruptcy court at Albuquerque, Santa Fe, Roswell, Silver City, Las Vegas, Clovis, and Las Cruces.

Northern District of Oklahoma

- (1) Authorized the continuance of the full-time referee position at Tulsa to become vacant by expiration of term on October 26, 1978, for a term of six years, effective October 27, 1978, at the authorized salary, with the regular place of office, territory, and places of holding court to remain as at present.

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 Committee submitted to the Conference a plan for an Institute on Sentencing for the Ninth Circuit to be held in September 1978 at Santa Barbara, California, with one day at the Federal Correctional Institution at Lompoc, California, and a plan for a Joint Institute on Sentencing for the Eighth and Tenth Judicial Circuits to be held in October 1978 at Denver, Colorado, with one day at the Federal Correctional Institution at

Englewood, Colorado. The Conference approved the time, place, participants and agenda for these two institutes.

The Conference was also informed that the Committee is working with representatives of the First, Fourth, and the District of Columbia Circuits to formulate plans for a Joint Sentencing Institute to be held in Raleigh, North Carolina, during 1979.

Criminal Code Revision

Judge Wollenberg informed the Conference that the Committee fully anticipates an opportunity to testify on the bill to revise the Criminal Code, now pending before the Subcommittee on Criminal Justice of the House Judiciary Committee. Draft testimony on proposals relating to pretrial diversion, pretrial services agencies, the proposed Sentencing Commission, and discretion to set aside conviction submitted by the Committee was approved by the Conference with one modification.

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.

Criminal Code Revision

S. 1437, 95th Congress, to revise the Federal Criminal Code, has been passed by the Senate and is currently being considered by the Subcommittee on Criminal Justice of the Judiciary Committee of the House of Representatives. Judge Zirpoli informed the Conference that in passing S. 1437 the Senate has removed many of the objections to previous bills that were voiced by the Conference, but that the bill still fails to incorporate many of the prior recommendations of the Conference. In addition to recommending reaffirmation of previous Conference action, the Committee submitted for approval a redraft of Chapter 58 of the bill to place the authority for the creation of a Sentencing Commission in the Judicial Conference. The Conference concurred in these recommendations.

Domestic Surveillance of Foreign Intelligence

Judge Zirpoli brought to the attention of the Conference four bills introduced in the House of Representatives relating to domestic surveillance of foreign intelligence. One of these bills, H.R. 7308, is identical to S. 1556 which was reported by the Senate Judiciary Committee last November. Judge Zirpoli informed the Conference that his Committee had not specifically addressed the question of the desirability or necessity

under the Fourth Amendment of securing prior judicial authorization of electronic surveillance to obtain foreign intelligence. The Committee did recommend that if Congress decides that judicial authorization for such surveillance is necessary that such authority be vested in a special court to be created in the manner set forth in the Committee's suggested redraft of Section 2523 of H.R. 7308 and H.R. 5794. The recommendation was approved.

Amendments to the Speedy Trial Act

The Conference reaffirmed its recommendations of September 1977 (Conf. Rept., p. 53) for amendments to the Speedy Trial Act, drafted by an ad hoc Committee of the Committee on Court Administration, and authorized the Director of the Administrative Office again to transmit them to the Congress.

Access to Financial Records

H.R. 214 and H.R. 1742, 95th Congress, would restrict official access to a person's financial records in banks and other financial institutions; records of individual calls, messages and telegrams in the possession of a common carrier; and credit information assembled by a consumer reporting agency. Because these bills would result in a clear impediment to law enforcement and would delegate to the courts investigative and law enforcement functions, the Conference agreed with the Committee that the proposed legislation should be disapproved.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Chief Judge C. Clyde Atkins, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

Bilingual Courts Legislation

Judge Atkins advised the Conference that the United States Senate had recently passed S. 1315, a bill relating to the use of interpreters in the United States district courts. Sections 3 and 4 of the bill would authorize the use of the Spanish language in proceedings and pleadings in the United States District Court for the District of Puerto Rico, at the direction of the court. Previously the Conference had endorsed a draft bill which did not include a provision for the use of the Spanish language in the district court in Puerto Rico (Conf. Rept., Sept. 1977, p. 50). Judge Atkins pointed out that the bill would appear to require maintenance of two separate master and qualified jury wheels in Puerto Rico, one for English-speaking jurors and one for Spanish-speaking jurors, and that the bill might compel the selection of an exclusively English-speaking jury or Spanish-speaking jury for each trial in order to facilitate communication

among jurors. The Conference agreed that these were further reasons why the Congress should study carefully any proposals relating to the use of the Spanish language in the courts of Puerto Rico.

Reports on the Composition of Juries

Judge Atkins informed the Conference that the information on the number of prospective jurors summoned, and the number actually appearing, required to be reported by the individual district courts has not proved useful and has imposed additional burdens on clerks' offices. The Conference agreed and directed that the clerks of the district courts no longer be required to submit annual reports on the aggregate number of persons summoned for jury service.

The Conference also agreed to exempt the United States District Court for the District of Puerto Rico from the requirement of reporting the number of jurors serving by race, since there is no reliable available information from the Bureau of the Census, or elsewhere, as to the composition of race and sex of the adult population of Puerto Rico on which comparisons can be made.

Juror Orientation Film

The Conference was informed that the juror orientation film, produced by Wayne State University Center for the Administration of Justice and made available to the district courts by the Administrative Office, has been requested for use at only 30 locations. At the Committee's request, the Conference endorsed the use of the film by the district courts and urged that it be shown at the circuit conferences to be conducted this year, and at forthcoming seminars for judges, clerks of court, and other court personnel, to be held at the Federal Judicial Center.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The written report of the Committee on Intercircuit Assignments was submitted by its Chairman, Judge George L. Hart, Jr. The report indicated that during the period from August 16, 1977 to February 15, 1978, the Chief Justice had approved 57 assignments to be undertaken by 45 judges. Of this number four were senior circuit judges, three were active circuit judges, six were district judges in active status, and 25 were senior district judges. Eleven assignments involved two active judges and two senior judges of the Court of Claims, two active judges of the Customs Court, and one active judge of the Court of Customs and Patent Appeals.

Four senior circuit judges, 11 senior district judges and two senior judges from the Court of Claims undertook 19 of the 28 assignments to the courts of appeals. Three active circuit judges, one active district judge,

one active judge of the Court of Customs and Patent Appeals, and two active judges of the Court of Claims participated in the other nine assignments to the courts of appeals. Of the 29 assignments in the district courts, 17 senior district judges participated in 20 assignments and the remaining nine assignments were carried out by five active district judges and two active judges of the Customs Court.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

The report of the Committee to Implement the Criminal Justice Act was presented by Judge Thomas J. MacBride, a member of the Committee, in the absence of 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 1977 to all chief judges, all federal defender organizations and to others who may request copies. The report indicates that Congress initially appropriated \$21,000,000 for implementation of the Act during the year and later made available supplemental funds to cover the total estimated obligations of \$21,893,000.

Approximately 46,500 persons were represented under the Criminal Justice Act in 1977, an increase of about three percent over the fiscal year 1976. Federal Public Defender offices which represented 12,959 persons, and Community Defender Offices, which represented 6,586 persons, collectively accounted for more than 40 percent of the total representations under the Act.

The average cost per case, including appeal, for the twenty-six Federal Public Defender Offices is estimated to be \$453, after deducting non-recurring costs, and the average cost for the eight Community Defender Organizations is estimated to be \$409 per case. The cost for private panel attorney representation is estimated to be \$424 per case.

Grant Requests – Community Defender Organizations

The Conference considered grant requests from seven Community Defender Organizations and approved sustaining grants for the fiscal year ending September 30, 1979, as follows:

Federal Defenders of San Diego, Inc.	\$ 740,000
Federal Defender Program, Inc. Atlanta, Ga.	237,622
Federal Defender Program, Inc. Chicago, Ill.	375,000
Legal Aid and Defender Assn., Detroit, Mich.	600,000

Federal Defender Services Unit of the Legal Aid Society of New York	1,000,000
Federal Defender Services, Inc. Portland, Oreg.	210,000
Federal Court Division of the Defender Association of Philadelphia	379,572

The Conference also approved a supplemental grant of \$27,000 to Federal Defender Services, Inc., Portland, Oregon, for the fiscal year 1978.

The Committee also reported that the Director of the Administrative Office, under authority previously granted by the Conference (Conf. Rept., March 1977, p. 34), had approved additional grants aggregating \$23,554 for Community Defender Organizations for the fiscal year 1977 to cover cost-of-living and other unforeseen expenses.

Budget Requests – Federal Public Defender Offices

The Northern and the Middle Districts of Florida have established Federal Public Defender Offices, raising the total number of such offices to 28. 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 Conference in accordance with Section 605 of Title 28, United States Code. The Conference approved the amounts as shown below:

	FY 1978				FY 1979			
	Staff			Amount	Staff			Amount
	Attys.	Inv.	Secys.		Attys.	Inv.	Secys.	
Florida (N)	2	—	2	\$172,511	2	—	2	\$130,506
Florida (M)	5	2	3	273,135	5	2	3	293,523

Guidelines

The Conference approved the following addition to paragraph 2.03 of the Guidelines for the Administration of the Criminal Justice Act.

Counsel should be provided to a person as soon as feasible after he is taken into custody, when he appears before a committing magistrate, when he is formally charged, or when he otherwise becomes entitled to counsel under the Act, whichever occurs earliest.

**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.

Civil Rules

Judge Thomsen advised the Conference that the Advisory Committee on Civil Rules on a number of occasions has considered at length proposals that Rule 23 be amended in various ways, including an amendment requiring the members of a proposed class to opt in, rather than permit them to opt out. The 25 circuit judges and 150 district judges who replied to a questionnaire from the Committee favored such a proposal by a vote of two to one, but the Advisory Committee, which is about evenly divided, has been unwilling to adopt the proposed change.

At its meeting in December the Advisory Committee discussed a proposed bill with representatives of the Department of Justice which would amend Rule 23(b)(3) to authorize the Government to bring a class action in certain situations, particularly where there are many people with small claims. As a result of this discussion the Advisory Committee decided to recommend to the Standing Committee that the Judicial Conference be requested to approve in principle the revision of Rule 23(b)(3), Federal Rules of Civil Procedure, by direct legislative enactment, rather than by the rule-making authority, reserving for further consideration the merits of any specific statutory proposals and the appropriateness of dealing with specific aspects of such proposals through the rule-making authority. At the suggestion of Judge Thomsen this recommendation was approved by the Conference.

Criminal Rules

The Standing Committee is now circulating to the bench and bar proposed changes in the Rules of Criminal Procedure which have been recommended by the Advisory Committee to meet certain problems which have arisen as the result of certain court decisions.

Appellate Rules

The Advisory Committee on Appellate Rules has completed its study of proposed amendments and the final proposals will be considered by the Standing Committee this summer and submitted to the Conference in September.

COMMITTEE ON PACIFIC TERRITORIES

Judge Richard H. Chambers, Chairman of the Committee on Pacific Territories, reported on problems currently under consideration by the Committee with respect to the courts in the Pacific Territories.

He indicated that because of the recent decision of the Supreme Court in the case of *Chase Manhattan Bank v. South Acres Development Company*, 434 U.S., interested parties may seek to invest the district

court in Guam with diversity of citizenship jurisdiction. Legislation will also be introduced in the current session of Congress to grant the United States Court of Appeals for the Ninth Circuit appellate jurisdiction to review decisions of the High Court of American Samoa. If decisions of this court are to be reviewed, the Committee hopes that the legislation will provide for review by writ of *certiorari* only.

Judge Chambers reported that the district court for the Northern Mariana Islands became the 95th district court on January 9, 1978. The legislation establishing this court embodied all the recommendations approved by the Conference, except the recommendation that review by the Court of Appeals for the Ninth Circuit of decisions of the appellate division should be by writ of *certiorari*. The Committee is considering this problem and several other problems arising out of the application of the Juror Service and Selection Act to this court.

COMMITTEE ON THE BICENTENNIAL OF INDEPENDENCE AND THE CONSTITUTION

The report of the Committee on the Bicentennial of Independence and the Constitution was submitted by its Chairman, Judge Clement F. Haynsworth, Jr.

The report indicates that the films produced under the auspices of the Committee have been shown three times on Public Broadcasting Service television and have been viewed by students in 211 schools and that 136 requests for the free loan of the films by various sources have been met. Although it is difficult to estimate the number of people who have seen one or more of these films, conservatively the figure would exceed 500,000, and it was probably in the millions.

Judge Haynsworth also informed the Conference that the BIOGRAPHICAL DIRECTORY OF JUDGES is nearing completion and will soon be published; that the manuscript on the "popular book" has been submitted to a number of educators around the country for comment with the initial responses confirming a strong interest in and a wide-spread need for such a book; and that the Fourth Circuit has joined the Third, Fifth, Seventh, Eighth, Ninth and Tenth Circuits in the preparation of the histories of their circuits.

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

Judge Edward J. Devitt, Chairman of the Committee to Consider Standards for Admission to Practice in the Federal Courts, submitted a progress report on the work of the Committee.

Judge Devitt stated that since its appointment in September 1976 the Committee has met five times, has conducted public hearings in four major cities and with the assistance of the Federal Judicial Center has completed an extensive research project to determine the nature of the need for improvement in Federal trial advocacy. The Committee will meet again in April to formulate tentative recommendations to present to the Conference in September 1978. Following that report the Committee again plans to hold public hearings to extend to all interested members of the legal profession an opportunity to express their views on the proposed recommendations. A final report will be made to the Conference in September 1979. The Committee also plans to send to each district judge a copy of the survey conducted by the Federal Judicial Center.

MEMORIAL RESOLUTION

During a ceremony honoring the memory of the former Director of the Administrative Office, Rowland F. Kirks, which was also attended by members of his family as well as friends and associates, the Conference adopted the following resolution:

The Judicial Conference of the United States takes note with deep sorrow the death of Rowland Falconer Kirks, Director of the Administrative Office of the United States Courts, on November 2, 1977.

Soldier, scholar, teacher, lawyer and public servant, Rowland Kirks served his country with distinction in many capacities. A distinguished graduate of the Virginia Military Institute, he was an officer in World War II serving in the European Theatre of Operations. On his appointment as Director he retired from the military reserve in 1970 with the rank of Major General. As a law school dean and college president, as an Assistant Attorney General of the United States, and as a lawyer in private practice, he served the highest ideals of the legal profession.

Rowland Kirks' career in public service was crowned in 1970 when he was asked to be the Director of the Administrative Office of the United States Courts. For more than seven years he contributed directly to the work of the Judicial Conference of the United States. Innovatively he instituted in the Federal courts a program of modernization, and gave a new vigor and spirit of achievement to the entire judicial system.

Rowland Kirks' life was one of challenge, hard work, and the pursuit of excellence in all that he did. In mourning his passing the Conference authorizes that this resolution, which has been joined in by the staff of the Administrative Office, be placed in the permanent records of the Judicial Conference and that a copy be sent to his beloved wife and children.

ELECTIONS

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected United States District Judge Aubrey E. Robinson, Jr., of the District of Columbia as a member of the Board of the Federal Judicial Center for a term of three years, succeeding District Judge Marvin E. Frankel whose term of office expires on March 28, 1978.

The Conference also elected United States Circuit Judge George E. MacKinnon of the District of Columbia for an additional term as a member of the Board of Certification for Circuit Executives, as required by 28 U.S.C. 322(f). His current term expires on July 1, 1978.

STATUS OF JUDICIAL OFFICERS

The Conference authorized the appointment of an ad hoc Committee to consider the status of subordinate judicial officers serving in the United States district courts.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the Court of Appeals for the Fourth Circuit at Asheville, North Carolina, during the calendar year 1978 and approved the pretermission of terms of the Court of Appeals for the Eighth Circuit at Kansas City, Missouri, and Omaha, Nebraska, during the calendar year 1978.

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 24, 1978

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