REPORT

of the

PROCEEDINGS OF THE

JUDICIAL CONFERENCE OF THE

UNITED STATES

September 17-18, 1985

Washington, D. C.
1985

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

L. Ralph Mecham
Director

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

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

September 17-18, 1985

The Judicial Conference of the United States convened on September 17, 1985, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on September 18. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

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

Second Circuit:

Chief Judge Wilfred Feinberg
Chief Judge Jack B. Weinstein, Eastern District of New York

Third Circuit:

Judge James Hunter, III*
Chief Judge Murray M. Schwartz, District of Delaware

Fourth Circuit:

Chief Judge Harrison L. Winter
Chief Judge Frank A. Kaufman, District of Maryland

Fifth Circuit:

Chief Judge Charles Clark
Judge Adrian G. Duplantier, Eastern District of Louisiana

* Designated by the Chief Justice in place of Chief Judge Ruggero J. Aldisert, who was unable to attend.

Sixth Circuit:

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

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

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

Tenth Circuit:

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

Eleventh Circuit:

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

District of Columbia Circuit:

Chief Judge Spottswood Robinson, III
Chief Judge Aubrey Robinson, District of Columbia

Federal Circuit:

Chief Judge Howard T. Markey

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

The Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Honorable Robert W. Kastenmeier, and the Chief Counsel of the Senate Judiciary Committee, Dennis W. Shedd, attended the Conference briefly and spoke on matters pending in the Congress of interest to the judiciary.

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

L. Ralph Mecham, Director of the Administrative Office of the United States Courts; James E. Macklin, Jr., Executive Assistant Director; Karen K. Siegel, Attorney Advisor to the Executive Assistant Director; William J. Weller, Legislative Affairs Officer; Daniel R. Cavan, Deputy Legislative Affairs Officer; William R. Burchill, Jr., General Counsel; Deborah H. Kirk, Inspector General; Professor A. Leo Levin, Director of the Federal Judicial Center and Charles W. Nihan, Deputy Director, attended the sessions of the Conference. Douglas D. McFarland, Deputy Administrative Assistant to the Chief Justice, also attended the sessions of the Conference.

Senator Giovanni Coco of Italy attended the Conference briefly on the first day.

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

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

The Chief Justice introduced to the Conference the new Director of the Administrative Office of the United States Courts, L. Ralph Mecham, who submitted the Annual Report of the Director for the year ended June 30, 1985. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during the year ended June 30, 1985, there were 2,472 appeals filed in the United States Court of Appeals for the Federal Circuit. During the year, the court disposed of 1,472 appeals, and 1,690 appeals were pending as of June 30, 1985. In the other twelve courts of appeals, there were 33,360 appeals filed, an increase of six percent over the 31,490 appeals filed the previous year. The courts of appeals disposed of 31,387 appeals, one percent more than the number disposed of the previous year, but 1,973 fewer appeals than the number filed. As a result, the number of appeals pending in the courts of appeals on June 30, 1985 increased nine percent to 24,758.

In the United States district courts, there were 273,670 civil cases docketed during the year, a five percent increase over the previous year and almost twice the number of civil cases filed in 1978. There were 269,848 civil cases terminated, an increase of 11 percent over the previous year, but 3,822 fewer cases than the number filed. On June 30, 1985, the number of civil cases pending increased by almost two percent to a record 254,114 cases.

Criminal cases filed in the district courts in 1985 rose to 39,500, an increase of seven percent over 1984. There were 37,139 criminal cases terminated, five percent more than the previous year, but 2,361 fewer than the number filed. As a result, the number of criminal cases pending on the dockets of the district courts increased to 22,299, an increase of 12 percent.

During the year ended June 30, 1985, there were 364,536 bankruptcy petitions filed in the district courts, an increase of six percent from the previous year. There were 333,158 petitions terminated and the pending caseload on June 30, 1985 increased to a record 608,945 bankruptcy petitions.

Mr. Mecham also reported that on September 16, 1985, there were 20 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 66 vacancies among the 575 authorized judgeship positions in the United States district courts, and one vacancy on the United States Court of International Trade.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ended June 30, 1985, the Panel had acted on 1,215 civil actions pursuant to 28 U.S.C. 1407. Of that number, 687 were centralized for consolidated pretrial proceedings with 528 actions already pending in the various transferee districts at the time of transfer. The Panel denied transfer of 1,800 actions.

Since its creation in 1968, the Panel has transferred 14,489 civil actions for centralized pretrial proceedings in carrying out its statutory responsibilities. As of June 30, 1985, 12,482 cases have been remanded for trial, reassigned within the transferee district, or terminated in the transferee court.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Frank M. Coffin, Chairman of the Committee on the Judicial Branch, presented the report of the Committee. At the Committee's request, the Conference authorized the release and dissemination of the report to all federal judges.

ACTUAL TRAVEL EXPENSES FOR JUDGES

H.R. 2561, 99th Congress, would amend 28 U.S.C. 456(a) to provide for the payment to justices and judges of their actual and necessary expenses of subsistence while traveling on official business, subject to a reasonable ceiling established by

the Judicial Conference. Upon the recommendation of the Committee, the Conference recommended enactment of the bill.

COMMUTING EXPENSES OF JUDGES

H.R. 2187, 99th Congress, would authorize payment of commuting expenses between residences and official duty stations for judges who reside not more than 300 miles from their official duty stations. Judge Coffin reported that the Committee, noting that commuting expenses of federal officials have traditionally been considered as inherently personal expenses, could not support singling out the judiciary for preferential treatment in this manner. The Conference thereupon recommended against enactment of the bill.

RECEIPT OF MILITARY RETIRED PAY FOR JUDGES

Since federal judges appointed to hold office during good behavior continue to occupy the office in the legal sense after retirement from regular active service under 28 U.S.C. 371(b), 5 U.S.C. 5532(c) precludes senior judges from receiving any military retired pay to which they would otherwise be entitled. The Committee pointed out that section 5532 is inconsistent with 5 U.S.C. 8344(f) (which requires the suspension of civil service retirement annuities to active judges but authorizes their resumption upon judicial retirement), and could provide an incentive for retirement from the judicial office under 28 U.S.C. 371(a) rather than to senior status under 371(b), thereby depriving the judiciary of the invaluable services of senior judges.

The Conference approved the Committee's recommendation that 5 U.S.C. 5532(c) should be amended to permit federal judges in senior status pursuant to 28 U.S.C. 371(b) to draw military retired pay to which they would be entitled on the basis of regular or reserve military service.

COMMITTEE ON COURT ADMINISTRATION

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

AUTOMATION

Judge Hunter informed the Conference that the Subcommittee on Judicial Improvements had received a status report on the 1985 revision of the Five-Year Plan for automation in the United States courts and, at its next meeting in December, 1985, will consider the 1986 update of the Plan. The next version of the Five-Year Plan will include plans for the judiciary in the following areas: office automation, telecommunications, computer assisted legal research (CALR), personnel for automation support, and training.

In September, 1983 (Conf. Rept., p. 53), the Judicial Conference assigned to the Subcommittee on Judicial Improvements, on an experimental basis, the responsibility for oversight of automation, and requested a recommendation within two years as to whether the special oversight function should continue. Upon the recommendation of the Committee, the Conference approved the continued oversight of automation by the Committee on Court Administration and its Subcommittee on Judicial Improvements through September, 1987.

COURT SECURITY

In 1982, the Attorney General's Task Force on Court Security developed, and the Conference adopted (March 1982 session, Conf. Rept., p. 49; September 1984 session, Conf. Rept., pp. 48-49), criteria for the presence of a deputy U.S. marshal in court for security purposes based on four levels of anticipated risk. While a marshal would not be present at low risk proceedings, higher risk levels could dictate the presence of one or more marshals. Implementation of these criteria virtually eliminated the presence of marshals during civil trials.

In response to expressions of concern by district judges, the United States Marshals Service initiated a pilot project in three judicial districts to test the use of contract court security officers in low risk proceedings. When judicial officers in the pilot districts were asked whether court security officers should continue to provide a security presence in low risk proceedings in their courts, 98 percent of those responding favored continuation of the practice.

Upon the recommendation of the Committee, the Conference approved the following policy:

> Subject to the policy approval of the Court Security Committee, at the request of a judicial officer, court security officers may be used as a security presence in low-risk courtroom proceedings which do not warrant the presence of a deputy U.S. marshal under the risk criteria established by the Attorney General's Task Force on Court Security, where such assignments will not detract from judicial area or perimeter security.
>
> This policy does not authorize the addition of extra court security officers beyond the number needed for courthouse security.

FRIVOLOUS LITIGATION

At its session in September, 1983 (Conf. Rept., p. 56), the Conference approved the concept of the exhaustion of state administrative remedies in cases brought under 42 U.S.C. 1983 and tasked the Committee with developing appropriate legislative language for further consideration by the Conference. Draft legislation prepared by the Subcommittee on Judicial Improvements was returned to the Committee for an assessment of the draft's impact on the caseload of the federal courts.

RECORDS DISPOSITION PROGRAM AND SCHEDULES

Upon the recommendation of the Committee, the Conference approved a revised records disposition program and revised schedules for the disposition of federal court records.

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

The Administrative Office had proposed that all judicial officers, including judges of the United States Claims Court, bankruptcy judges, and United States magistrates, be included within the Travel Regulations for Justices and Judges as approved by the Conference in September, 1980 (Conf. Rept., p. 67), and amended in March, 1985 (Conf. Rept., p. 8). The Committee supported the concept in principle and requested an

opinion on the legality of the proposal. Judge Hunter informed the Conference that the General Counsel had concluded that there was no legal impediment to including these judicial officers within the travel regulations applicable to justices and judges (except that Claims Court judges, bankruptcy judges and magistrates may not receive actual expenses of subsistence for extended travel assignments, and bankruptcy judges and magistrates may not recover relocation expenses upon their initial appointment in the manner of Presidential appointees), and that the Bankruptcy and Magistrates Committees of the Conference supported their inclusion as a matter of policy, provided that clerks of court and deputy clerks of court who are authorized to perform magistrate duties are not included. The Conference, upon the recommendation of the Committees, accordingly approved an amendment to the judges' travel regulations to include Claims Court judges, bankruptcy judges, and magistrates, with the exception of clerk-magistrates and those subject matter exceptions noted above.

SENIOR DISTRICT JUDGE CHAMBERS

In March, 1984 (Conf. Rept., p. 8), the Conference adopted the United States Courts Design Guide. The Guide sets the size of an active district judge's suite at up to 1,600 square feet and the size of a senior district judge's suite at up to 1,200 square feet, although a suite of up to 1,600 square feet may be provided if proper justification is presented. The Administrative Office advised the Committee that excessive relocation is occurring as the result of this slight difference in size.

Upon the recommendation of the Committee, the Conference approved an amendment to the Guide to standardize the size of new chambers for both active and senior district judges at up to 1,600 square feet. The modest increased rental costs resulting from larger suites for senior judges would be offset by the avoidance of demolition and construction costs should the space ultimately need to be converted to active judge use.

COURT REPORTERS

Judge Hunter reported that 32 district courts had requested 51 reporters in addition to the complement authorized by the ratio of one reporter per active judge. Upon the recommendation of the Committee, the Conference

approved 31 additional positions, representing a reduction of five from the number of full-time reporters presently authorized, with any reduction of personnel to be accomplished through attrition only. The positions were approved contingent upon the courts' adoption of appropriate management techniques, including full utilization of each reporter and a substantially equal distribution of the in-court/chambers workload, through sharing of resources wherever possible.

The Conference did not address the question of whether electronic court recorder operators should be considered equivalent to court reporters in determining a court's total reporting needs.

CAREER LAW CLERKS

In September, 1978 (Conf. Rept., p. 49), the Conference authorized the promotion of career law clerks from JSP-12 to JSP-13 after five years of experience as a law clerk to a federal judge. The Committee concluded that four years as a personal law clerk was sufficient to indicate a career commitment and recommended that the Conference's resolution of September, 1978 be amended to permit promotion of career law clerks to JSP-13 after four years of experience (including three at the JSP-12 level) as a law clerk to a federal judge. The Conference agreed to the amendment.

QUALIFICATION STANDARDS FOR SECRETARIES

In reviewing the qualification standards for secretaries under the Judiciary Salary Plan, the Administrative Office discovered a number of inconsistencies.

In order to qualify for a position as secretary to a federal judge (JSP-11) or assistant secretary to a federal judge (JSP-10), four years of service "to a federal judge" are required, including three years at the JSP-10 or JSP-9 level, respectively; on the other hand, secretaries to United States magistrates and circuit executives need spend only one year at the grade JSP-9 level to qualify for grade JSP-10. Moreover, although experience as secretary to a bankruptcy judge qualifies as service "to a federal judge", secretarial experience on the staff of a United States magistrate or other court official does not so qualify.

Upon the recommendation of the Committee, the Conference approved amendments to the Judiciary Salary Plan (1) to conform the qualification standards for assistant secretaries to federal judges to other secretarial positions at the JSP-10 level and (2) to replace "four years as a secretary to a federal judge" with "four years as a secretary in a federal court" in the qualification standards for principal secretaries to federal judges.

DIVERSITY IN WRONGFUL DEATH CASES

The citizenship of a representative party in a civil action is the citizenship of the representative rather than the citizenship of the person represented. In some jurisdictions, attorneys have sought the appointment of out-of-state representatives in order to create diversity of citizenship so that civil actions involving the interest represented may be brought either in federal or in state courts.

The Committee was of the view that the citizenship of a representative party should be deemed to be the same as the citizenship of the party represented in an action involving an infant, an incompetent person, or an estate, and the Conference agreed. Without disturbing the previous Conference action recommending the abolition of diversity jurisdiction (March 1977 session, Conf. Rept., p. 8), the Conference approved the Committee's recommendation that 28 U.S.C. 1332(c) be amended to read as follows:

> (c) For the purpose of this section and section 1441 of this title --
>
> (1) [The present text of section 1332(c)]; and
>
> (2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same state as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same state as the infant or incompetent.

REGISTRATION OF FOREIGN JUDGMENTS

28 U.S.C. 1963 currently authorizes the registration of a judgment in a foreign jurisdiction only when the judgment has become final by appeal or upon the expiration of the time for filing an appeal. The judgment is a lien on the property of the judgment debtor which is located within the district. If the property of the judgment debtor is located outside the district or is removed to another jurisdiction pending appeal, the judgment creditor cannot obtain a lien in the foreign jurisdiction until after the appeal process is completed and thus may be unable to enforce the judgment if assets have been dissipated.

The Committee determined that a judgment debtor should not be permitted to hide his assets in a foreign jurisdiction and that the district court entering the judgment should be given discretion to permit registration in a foreign jurisdiction pending appeal, but only upon a showing of good cause. The Conference concurred and approved the Committee's recommendation that the first sentence of 28 U.S.C. 1963 be amended to read as follows:

> A judgment in an action for the recovery of money or property entered in any district court may be registered by filing a certified copy of such judgment in any other district when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown.

REMOVAL JURISDICTION

H.R. 2446, 99th Congress, would add a new subsection (e) to 28 U.S.C. 1441 to overturn case law holding that a civil action within the exclusive jurisdiction of a federal district court is not removable from a state court in which it was improvidently brought. The Committee agreed that the law should be changed to permit removal in these circumstances, but favored a more concise drafting approach consisting of inserting the words "exclusive or concurrent" in 28 U.S.C. 1441(a), rather than adding a new subparagraph. Section 1441(a) would then read as follows:

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, exclusive or concurrent, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending. [Emphasis added.]

Upon the recommendation of the Committee, the Conference voted to support the Committee's proposed amendment to 28 U.S.C. 1441(a), in lieu of enactment of H.R. 2446.

JUDICIAL REVIEW OF FEDERAL MARITIME ORDERS

Although all orders of the Federal Maritime Commission and the Maritime Administration, except orders issued under section 19 of the Merchant Marine Act of 1920 (46 U.S.C. 876), were historically reviewable only in the courts of appeals, Congress in enacting the Shipping Act of 1984 (46 U.S.C. 1701 et seq.) inadvertently failed to make conforming amendments to title 28 of the United States Code necessary to continue court of appeals review of such orders. H.R. 3049, 99th Congress, would reinstate direct court of appeals review of Maritime Commission and Maritime Administration orders, and also extend court of appeals review to orders issued under section 19 of the Merchant Marine Act of 1920, the only category of Commission orders not subject to direct court of appeals review prior to the 1984 Act.

The Committee observed that this legislation would, with one limited exception, simply reinstate prior court of appeals direct review, and thus would not substantially increase the workload of the courts of appeals. Upon the recommendation of the Committee, the Conference therefore voted to support enactment of H.R. 3049.

PRODUCT LIABILITY

Judge Hunter informed the Conference that the Subcommittee on Federal-State Relations had for some time studied proposals to create a national, uniform product liability law. The primary bill under consideration in the 99th Congress is S. 100.

The basic issues involved -- whether state product liability law should be preempted in favor of a uniform national law and, if so, what the substantive law should be — are questions of public policy for Congress to determine. However, section 17 of S. 100 would create a Product Liability Review Panel to be established by the Conference and consisting of "three individuals selected on the basis of their expertise regarding civil actions and recovery for loss or damage caused by a product". The Panel would, among other things, study the need for federal legislation by reviewing the adequacy of existing remedies in providing recovery for loss or damage caused by products. Since section 17 would inappropriately interject the Conference into policy formulation and legislative recommendation in areas traditionally considered to be matters for the Congress, the Conference approved the Committee's recommendation that section 17 of S. 100, the "Product Liability Act", be opposed.

STATE COURT LIAISON IN FEDERAL RULEMAKING PROCESS

Rules of practice and evidence adopted in the federal system are of significant import for state court systems because of the state use of federal rules as models. In order to enhance both federal and state judicial interests, the Chief Justice agreed to the Committee's recommendation that a representative of the Conference of Chief Justices be named to the Standing Committee on Rules of Practice and Procedure and each of its advisory committees, except the Advisory Committee on Bankruptcy Rules.

REPORT OF MATTERS HELD UNDER ADVISEMENT

At its session in March, 1985 (Conf. Rept., p. 12), the Conference requested the Committee to consider combining the report on pending three-year-old civil cases with the report on matters held under advisement in the district courts. Judge Hunter informed the Conference that the Subcommittee on

Judicial Statistics had declined to combine the two reports after being informed by the Administrative Office that a combination report could result in duplicative effort by judges, magistrates, and circuit executives, and would surely delay the distribution of the information contained in the report on matters held under advisement.

ARBITRATION

Judge Hunter advised the Conference that ten courts are now participating in the court-ordered arbitration pilot program in the federal courts. Programs are underway in Eastern Pennsylvania, Northern California, Middle Florida, Middle North Carolina, New Jersey, Western Oklahoma, Western Michigan, and Western Texas. Eastern New York plans to implement its arbitration program by the end of the calendar year.

COMMITTEE ON THE BUDGET

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

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1986

Judge Clark reported that no program supplementals for the fiscal year 1986 were currently anticipated.

Upon the recommendation of the Committee, the Conference authorized the Director of the Administrative Office to submit to the Congress any requests for supplemental appropriations for the fiscal year 1986 due to new legislation, action taken by the Judicial Conference, or for any other reason the Director and the Budget Committee consider necessary and appropriate.

APPROPRIATIONS FOR THE FISCAL YEAR 1987

The Conference approved the budget estimates for the fiscal year 1987, prepared by the Director of the Administrative Office and submitted by the Committee. The estimates, exclusive of the Supreme Court, the United States Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center, total $1,169,729,000, an increase of $123,729,000, or 12 percent over

the amount approved by the House for the fiscal year 1986. Provision has been made in the budget estimates for an additional 1,273 permanent positions. Approximately 64 percent of the increases in the budget are for mandatory or uncontrollable costs such as within-grade salary advancements and promotions; the restoration of base budget authority resulting from the carrying forward of fiscal year 1985 unobligated balances; increases in contract rates and charges for equipment, services, and supplies; and rental increases for space occupied by the courts. The remaining increases are necessary to maintain the same level of support and services required by the rapid and continuing growth in the workload of the judiciary.

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

COURT SECURITY BUDGET ESTIMATES

The court security budget for the fiscal year 1987, as submitted to the Budget Committee based on requests from the district court security committees which were reviewed and revised by the U.S. Marshals Service, amounted to $50,212,000. These funds would have provided for 1,282 court security officers, or an increase of 282 positions over the number requested for 1986.

Judge Clark reported that the Budget Committee was concerned with the increased court security request, which is 56 percent over the $32,000,000 approved by the House for 1986 and almost twice the level of funding authorized for the fiscal year 1985. The Committee also observed significant variances in the numbers of court security officers requested by districts with similar characteristics. Accordingly, the Committee approved for inclusion in the budget estimates for the fiscal year 1987 only the sum of $37,844,000 for court security, an amount which will provide the level of security equipment and services requested for the fiscal year 1986, adjusted to reflect inflation and nonrecurring expenses, subject to amendment based upon a reevaluation of fiscal year 1987 court security needs.

The Conference approved the Committee's recommendation that each court security committee and district court chief judge (or designee) reevaluate the request for security services and equipment for the fiscal year 1987 and submit a revised estimate providing the minimum personnel and equipment necessary for the security of the court.

JUDICIAL ETHICS COMMITTEE

Judge John H. Pratt, a member of the Judicial Ethics Committee, presented the report of the Committee on behalf of the Chairman, Judge Edward A. Tamm.

ACTIVITIES OF THE COMMITTEE

Judge Pratt reported that the Committee had received 1,919 financial disclosure reports for the calendar year 1984, including 983 reports from judicial officers and 936 reports from judicial employees. Since January 1, 1985, the Committee had also received 60 reports from nominees to judgeship positions. All reports submitted to the Committee are being reviewed by at least one Committee member to determine whether they comply with section 302 of the Ethics in Government Act.

REPORTING FORM AND INSTRUCTIONS

Upon the recommendation of the Committee, the Conference approved a "Checklist" to be included with financial disclosure report forms. The Conference also approved a Committee recommendation that official court reporters be requested to file an original and two copies of the financial disclosure report form.

ADVISORY COMMITTEE ON CODES OF CONDUCT

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

ACTIVITIES OF THE COMMITTEE

Judge Markey informed the Conference that since its last report, the Committee had received 24 inquiries and had issued 17 advisory responses. The Chairman also responded to 26 telephone inquiries that did not require reference to the

Committee. The Committee is publishing opinions dealing with disqualification when (1) a former judge appears as counsel; (2) a judge's relative is the spouse of a law firm partner; and (3) a judge is a utility ratepayer or taxpayer.

DISQUALIFICATION IN PROTRACTED LITIGATION

In September, 1980 (Conf. Rept., p. 81), the Conference approved a proposed amendment to 28 U.S.C. 455 and forwarded it to the Congress:

> (f) Notwithstanding the foregoing provisions, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance, after the matter was assigned to him, of a party in which he individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest (other than an interest that could be substantially affected by the outcome), a waiver of disqualification may be accepted from the parties; in the absence of waiver, disqualification is not required if the judge determines that the public interest in avoiding the cost of delay or reassignment outweighs any appearance of impropriety arising from his continuing with the matter to completion.

H.R. 3044, 99th Congress, would also amend 28 U.S.C. 455, but only with respect to class actions.

Upon the recommendation of the Committee, the Conference reaffirmed support for its own amendment to section 455, and voted to oppose enactment of H.R. 3044 in its present form.

CODE OF CONDUCT FOR STAFF ATTORNEYS

The present Code of Conduct for Staff Attorneys does not address the question of service as an arbitrator or mediator in a dispute not pending in the court employing the staff

attorney. Upon the recommendation of the Committee, the Conference approved an amendment to Canon 5 of the Code for Staff Attorneys, adding the following subdivision:

> e. Service as Arbitrator or Mediator. A staff attorney shall not serve as arbitrator or mediator of disputes except in the performance of prescribed duties with respect to cases pending before the court by which he is employed.

APPLICABILITY OF CODES OF CONDUCT

In March, 1978 (Conf. Rept., p. 14), the Conference made the Code of Conduct for United States Judges applicable to Administrative Office employees in salary grades GS-15 and above. The Conference subsequently approved and promulgated specific codes for particular judicial officers and, in September, 1982 (Conf. Rept., p. 83), applied the Code of Conduct for Circuit Executives to the Directors of the Administrative Office and the Federal Judicial Center and to the Administrative Assistant to the Chief Justice.

After reviewing the various Codes of Conduct, the Committee determined that the Code for Circuit Executives is more appropriately applicable to Administrative Office employees in grades GS-15 and above than is the Code of Conduct for Judges. Upon the recommendation of the Committee, the Conference therefore amended its March, 1978 resolution to make the Code for Circuit Executives, rather than the Code for Judges, applicable to Administrative Office employees at or above the GS-15 level.

FORM FOR NOTICE OF DISQUALIFICATION

The Committee developed a form entitled "Notice Concerning Waiver of Judicial Disqualification", and the Conference authorized its distribution for consideration and possible adoption by the courts.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

A written statement filed with the Conference by the Committee on Intercircuit Assignments indicated that, during the period February 1, 1985 through August 15, 1985, the Committee had recommended 47 intercircuit assignments to be

undertaken by 39 judges. Of this number, nine were senior circuit judges, 11 were active circuit judges, 11 were senior district judges, four were active district judges, one was a senior judge of the Court of International Trade, and three were active judges of the Court of International Trade.

Of the 47 assignments approved, 25 judges undertook 30 assignments to the courts of appeals, and 14 judges undertook 17 assignments to the district courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

APPELLATE RULES

The Committee submitted to the Conference proposed new Appellate Rules 3.1, 5.1 and 15.1, and proposed amendments to Appellate Rules 19, 28(c), 30(a) and (b), 39(c), and 45(b). The Committee also submitted additional proposed amendments to Appellate Rules 3(d), 8(b), 10(b) and (c), 11(b), 12(a), 23(b) and (c), 24(a), 25(a) and (b), 26(a) and (c), 28(j), 31(a) and (c), 34(a) and (e), 43(a) and (c), 45(a) and (d), and 46(a) and (b), to eliminate gender-specific language. The proposed amendments were accompanied by a report from the Advisory Committee Chairman summarizing the work of the Advisory Committee, and "Committee Notes" explaining the purpose and intent of the proposed amendments. The Committee recommended that these proposed amendments be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. This recommendation was approved by the Conference.

RULES ENABLING ACTS

In September, 1983 (Conf. Rept., pp. 65-66), the Conference expressed views on H.R. 4144, 98th Congress, a bill to amend the Rules Enabling Acts. H.R. 2633, 99th Congress, the successor to H.R. 4144, incorporates many of the Conference's previous recommendations but also contains new provisions which are a matter of concern. At Congressman Kastenmeier's request, Judge Gignoux filed a statement on H.R. 2633 with the House Judiciary Subcommittee on Courts,

Civil Liberties, and the Administration of Justice in connection with a July 15, 1985, hearing in the Subcommittee. Chairman Gignoux supported certain portions of the legislation but noted four matters of significant concern:

1. The failure of the proposed legislation to continue current Rules Enabling Act language permitting promulgated rules to supersede conflicting procedural statutes creates the potential for fruitless satellite litigation.

2. A provision that rules "shall not . . . supersede any provision of a law of the United States" could destroy the rulemaking process because rules once in effect are "laws of the United States".

3. A requirement that the Supreme Court transmit with a proposed rule proposed amendments to any law "to the extent such amendments are necessary to implement such proposed rule" could task the Court with rendering advisory opinions prohibited by Article III of the Constitution.

4. A requirement that committee meetings be open would seriously impair the efficient functioning of the rulemaking process without significant public benefit.

Upon the recommendation of the Committee, the Conference endorsed the views expressed by Judge Gignoux in his July, 1985 statement, with two modifications suggested by Judge Gignoux: first, the Conference declined to object further to elimination of the "supersession" clause; and second, the Conference declined to object to the requirement that proposed rules be accompanied by proposed statutory changes necessary to implement the rules, provided that the Judicial Conference rather than the Supreme Court is charged with the responsibility of forwarding the statutory changes.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

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

SENTENCING INSTITUTES

At the request of the Committee, the Conference approved the time, place, participants, and tentative agenda for a Joint Institute on Sentencing for the judges of the Second and Sixth Circuits at Butner, North Carolina, March 17-19, 1986, and for an Institute on Sentencing for the judges of the Ninth Circuit at Phoenix, Arizona, April 21-23, 1986. The final agenda for each institute will be available for Conference approval at its next session.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

In March, 1985 (Conf. Rept., p. 21), the Conference authorized the Committee to work with the Administrative Office and the Federal Judicial Center in drafting technical and conforming amendments to improve the operation of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). Judge Tjoflat subsequently addressed the problems identified by the Committee in a March 27, 1985, hearing before the House Judiciary Subcommittee on Criminal Justice. P.L. 99-22, signed into law on April 15, 1985, corrected two of the problems by allowing the President to appoint senior judges as members of the United States Sentencing Commission and by authorizing the Administrative Office to request appropriations for the Commission until its first chairman is appointed.

On April 10, 1985, the Executive Committee, on behalf of the Conference, approved recommendations for judicial members of the Sentencing Commission and forwarded them to the President. The Administrative Office also requested, and obtained, appropriations as "start-up" funds for the Commission.

Judge Tjoflat advised the Conference that, at the request of the Department of Justice for assistance in implementation of the Comprehensive Crime Control Act, the Committee had shared with the Department the judiciary's proposed amendments to the Act. Legislation introduced at the Department's behest, S. 1236 and H.R. 2774, 99th Congress, adopts many — but not all -- of the judiciary's suggestions. The Committee recommended that section 4 of the Department's technical bill, which would amend 18 U.S.C. 3573 to provide for modification or remission of a fine, be opposed. The Committee also recommended that section 10 of the bill

be amended to permit federal judges to serve on the Sentencing Commission part-time, an amendment also proposed by the Conference's Criminal Law Committee. Finally, the Committee recommended three amendments to section 11 of the technical bill: (a) to address the Committee's concern that the guideline range established by 28 U.S.C. 994(b) may be too restrictive for short sentences; (b) to modify the same section of the Code to delete the words "socioeconomic status"; and (c) to provide for emergency adoption of temporary guidelines. The Conference approved all the Committee's recommendations.

CRIMINAL FINE COLLECTION

Section 6 of the Department of Justice's proposed technical amendments to the Comprehensive Crime Control Act of 1984, S. 1236 and H.R. 2774, would require clerks of court to be responsible for the receipt and accounting of all criminal fines. In addition, the Department has transmitted to the Congress proposed legislation (not yet introduced) requiring clerks of court to collect all United States magistrate-imposed criminal fines and providing that the Attorney General and the Director of the Administrative Office may agree on other specified categories of offenses resulting in fines to be collected by the clerks.

Prior to enactment of the Criminal Fine Enforcement Act of 1984 (P.L. 98-596), clerks of court, as a convenience to all parties, physically received and accounted for fine payments. Under the Fine Enforcement Act, responsibility for the collection of fines was placed squarely on the Department of Justice, subject only to an agreement, contemplated in 18 U.S.C. 3565(d)(2), whereby the Attorney General and the Director of the Administrative Office may define the limited circumstances in which fines may be received by the clerks. Absent that agreement, judicial personnel have no authority to continue to receive fine payments.

Judge Tjoflat noted that the Probation, Magistrates, and Criminal Law Committees had each considered this subject in detail and had uniformly concluded that the law currently requires the United States Attorneys to collect criminal fines and that it is entirely proper for these officials to be charged with that responsibility.

Upon the recommendation of all three Committees, the Conference affirmed that, as a matter of policy, it is inappropriate for the judiciary to collect criminal fines, except in limited circumstances where it is in the public interest for the courts to perform this executive branch function. The Conference also voted to oppose any proposed changes in the law, such as section 6 of S. 1236 and H.R. 2774, that would transfer this responsibility to the courts in general or to United States magistrates in particular.

DRUG AFTERCARE

Public Law 95-537 established the drug aftercare program within the federal judiciary. The legislation also authorized funds to be appropriated to carry out the program in the fiscal years 1980-1982. Public Law 98-236 authorized additional funding through the fiscal year 1986.

In enacting the Comprehensive Crime Control Act of 1984, Congress inadvertently eliminated the Director's contracting authority for the drug aftercare program. In recognition of this problem, the Department of Justice included as section 26 of its bill to make technical amendments in the Crime Control Act (S. 1236 and H.R. 2774) the reestablishment of the Director's authority for drug aftercare.

The Committee found the present statutory approach, which limits to three-year intervals the authorization of appropriations for the drug aftercare program, to be unwieldy and impractical. Accordingly, the Committee recommended the enactment of legislation to extend indefinitely the period for which funds are authorized to be appropriated for drug aftercare. Specific amounts would then be set through the appropriations process.

Another limitation in the drug aftercare legislation is its failure to authorize the Director of the Administrative Office to provide alcoholism treatment services for probationers and parolees. While title II of the Speedy Trial Act and the Pretrial Services Act of 1982 authorize the Director to contract for alcohol abuse treatment services for persons awaiting trial, no comparable provision exists with respect to those on parole and probation. In order for the

probation system to provide comprehensive services to the courts and to the U.S. Parole Commission, the Committee concluded that alcoholism treatment must be provided to those parolees and probationers in need of it.

The Conference thereupon approved the Committee's recommendation that the first paragraph of proposed statutory language in section 26 of S. 1236 and H.R. 2774 be amended to read as follows:

> He [the Director] shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is alcohol dependent or is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing; medical, educational, social, psychological, and vocational services, corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person or addict by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. The Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5). [Emphasis added.]

The Conference also approved the Committee's recommendation that Congress extend indefinitely the appropriations authority for drug aftercare and leave the specific amounts to the appropriations process.

CARRYING OF FIREARMS

In March, 1975 (Conf. Rept., pp. 20-21), the Conference approved guidelines permitting probation officers to carry firearms in certain circumstances. Upon the recommendation of the Committee, the Conference extended the March, 1975 firearms policy to cover pretrial services officers.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

BANKRUPTCY JUDGESHIP RECOMMENDATIONS

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353) established 232 bankruptcy judgeships by law and provided that the Conference "shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed." 28 U.S.C. 157(b)(2).

Upon the recommendation of the Committee, the Conference voted to request that Congress approve the following 47 new bankruptcy judgeships:

Third Circuit	New Jersey	2
Fourth Circuit	Maryland	1
	South Carolina	1
	Virginia, Eastern	1
Fifth Circuit	Texas, Northern	1
	Texas, Southern	3
	Texas, Western	1
Sixth Circuit	Kentucky, Western	1a/
	Michigan, Western	1
	Tennessee, Eastern	1
	Tennessee, Western	1

a/ To have concurrent jurisdiction in the Eastern District of Kentucky.

Circuit	District	Number
Seventh Circuit	Illinois, Northern	2
	Illinois, Central	1b/
	Indiana, Northern	1
	Wisconsin, Eastern	1
Eighth Circuit	Arkansas, Eastern/ Western	1
	Iowa, Northern	1
	Iowa, Southern	1
	Nebraska	1
Ninth Circuit	California, Northern	2
	California, Eastern	2
	California, Central	7
	California, Southern	1
	Idaho	1
	Oregon	1
	Washington, Eastern	1
	Washington, Western	1
Tenth Circuit	Oklahoma, Northern	1
	Oklahoma, Western	1
	Utah	1
Eleventh Circuit	Florida, Middle	2
	Georgia, Northern	2
	Georgia, Southern	1
TOTAL		47

b/ To have concurrent jurisdiction in the Northern and Southern Districts of Illinois.

A small number of additional surveys of judgeship needs remained unfinished. At Judge DeMascio's request, the Conference authorized the Executive Committee to consider any additional positions recommended by the Bankruptcy Committee.

INTERIM MODEL LOCAL RULE

In March, 1985 (Conf. Rept., pp. 21-22), Judge DeMascio advised the Conference that a proposed model local rule for bankruptcy references under the 1984 bankruptcy amendments

required further review. The Conference authorized the Committee to submit the proposed rule to the Executive Committee of the Conference at a later date. In July, 1985, the Executive Committee directed that the proposed rule be circulated for additional comment.

After reviewing the comments on the proposed rule and with the approval of a majority of the Committee, Chairman DeMascio withdrew the rule from further Conference consideration. Judge DeMascio pointed out that, in light of the time which had elapsed since enactment of the 1984 bankruptcy amendments, promulgation of another interim measure rather than permanent amendments to the Bankruptcy Rules would be disruptive. Judge DeMascio also noted that the Advisory Committee on Bankruptcy Rules will soon circulate the first draft of its proposed revision and that circulation of two different rules concurrently would generate confusion among the bar.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

MAGISTRATES 70 YEARS OF AGE OR OLDER

28 U.S.C. 631(d) provides that no U.S. magistrate may serve after reaching the age of 70, except that upon unanimous vote of the judges of the district court, a 70-year-old magistrate may continue to serve and be reappointed to office. Section 4(b) of H.R. 1710, 99th Congress, would delete section 631(d) from the Code, removing any restrictions on service beyond age 70.

The Committee was of the view that complete elimination of the age 70 limitation is not warranted because some alternative to formal removal of a magistrate is desirable. On the other hand, in order to prevent a single judge from frustrating the will of the majority, the Committee considered a majority rather than a unanimous vote of the judges of the appointing court to be more appropriate for continuation in office and reappointment of a 70-year-old magistrate.

Upon the recommendation of the Committee, the Conference voted to oppose section 4(b) of H.R. 1710. The Conference also voted to support a legislative proposal to amend 28 U.S.C. 631(d) to permit a district court by majority vote (rather than unanimous vote) to continue in office and to reappoint a magistrate who attains age 70, and to grant to the court flexibility in determining the period or periods of such service beyond age 70.

USE OF LEGAL ASSISTANTS IN SOCIAL SECURITY CASES

In March, 1980 (Conf. Rept., p. 33), the Conference established the principle that "The number of legal assistant positions authorized in any district may not exceed a ratio of one assistant per full-time magistrate position." The Committee requested a waiver from the general rule for an experimental program to establish a pool of up to five legal assistants for a period of 18 months to assist one district court in handling social security cases. The Conference granted the waiver.

The Committee will monitor the progress of the experiment and report the results and recommendations, if any, to the Committee on Court Administration.

CHANGES IN MAGISTRATE POSITIONS

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

FIRST CIRCUIT

Rhode Island:

> Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term of office at the current aggregate salary of a clerk of a large district court (JSP-16).

SECOND CIRCUIT

Connecticut:

(1) Continued the full-time magistrate positions at New Haven and Bridgeport which are due to expire January 24, 1987, and November 1, 1987, respectively, for additional eight-year terms.

(2) Redesignated the official location of the full-time magistrate position at Bridgeport as Bridgeport or Hartford.

(3) Redesignated the official location of the full-time magistrate position now designated as Hartford or New Haven as New Haven or Bridgeport.

New York, Western:

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

THIRD CIRCUIT

Pennsylvania, Western:

(1) Continued the two full-time magistrate positions at Pittsburgh for additional eight-year terms.

(2) Authorized a third full-time magistrate position for the district to be located at Pittsburgh.

(3) Continued the part-time magistrate position at Erie for an additional four-year term and increased the salary from $11,195 to $20,039 per annum.

FOURTH CIRCUIT

Maryland:

(1) Continued the two full-time magistrate positions at Baltimore which are due to expire on October 17, 1986, and December 21, 1986, for additional eight-year terms.

(2) Authorized a sixth full-time magistrate position for the district, to be located at Baltimore.

South Carolina:

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

FIFTH CIRCUIT

Texas, Northern:

(1) Continued the two full-time magistrate positions at Dallas for additional eight-year terms.

(2) Converted the part-time magistrate position at Amarillo to a full-time magistrate position at Amarillo or Dallas and continued the part-time position until conversion to full-time status.

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

Texas, Eastern:

(1) Continued the full-time magistrate position at Tyler which is due to expire on October 1, 1987, for an additional eight-year term.

(2) Continued the part-time magistrate positions at Sherman and Texarkana for additional four-year terms at the currently authorized salaries of $3,022 and $4,030 per annum, respectively.

SIXTH CIRCUIT

Kentucky, Eastern:

Continued the part-time magistrate positions at London and Covington for additional four-year terms at the currently authorized salary of $7,164 per annum each.

Kentucky, Western:

(1) Continued the full-time magistrate position at Louisville for an additional eight-year term.

(2) Continued the authority of the deputy clerk of court to perform magistrate duties for an additional four-year term at no additional compensation.

(3) Continued the part-time magistrate positions at Hopkinsville and Bowling Green for additional four-year terms at the currently authorized salaries of $34,200 and $4,030 per annum, respectively.

Michigan, Eastern:

Continued the two full-time magistrate positions at Detroit which are due to expire February 11, 1987, and October 3, 1987, for additional eight-year terms.

EIGHTH CIRCUIT

Arkansas, Eastern:

(1) Continued the full-time magistrate position at Little Rock which is due to expire on December 21, 1986, for an additional eight-year term.

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

Iowa, Southern:

Continued the part-time magistrate position at Council Bluffs for an additional four-year term at the currently authorized salary of $7,164 per annum.

Minnesota:

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

Nebraska:

Continued the part-time magistrate position at North Platte for an additional four-year term at the currently authorized salary of $2,015.

North Dakota:

Ratified the actions of the Executive Committee which:

(1) Converted the part-time magistrate position at Fargo to a full-time position at that location.

(2) Discontinued either the part-time magistrate position at Grand Forks or the part-time magistrate position at Devil's Lake (or Minnewaukan), in the discretion of the court, and redesignated the other position as Grand Forks, Devil's Lake, or Minnewaukan at a salary of $4,030 per annum, effective upon the appointment of the part-time magistrate or on September 30, 1985, whichever is later.

(3) Continued the part-time magistrate positions at Bismarck and Minot for additional four-year terms at the currently authorized salaries of $7,164 and $5,037 per annum, respectively.

(4) Authorized priority in funding for the new full-time magistrate position at Fargo.

NINTH CIRCUIT

Alaska:

(1) Continued the part-time magistrate position at Fairbanks for an additional four-year term at the currently authorized salary of $22,724 per annum.

(2) Deferred the scheduled review of the part-time magistrate position at Nome for one year after the position has been filled.

Arizona:

(1) Continued the full-time magistrate position at Phoenix which is due to expire December 19, 1987, for an additional eight-year term.

(2) Continued the full-time magistrate position at Tucson for an additional eight-year term.

(3) Continued the part-time magistrate position at Tucson for an additional four-year term and increased the salary of the position from $25,859 per annum to $34,200 per annum.

(4) Continued the part-time magistrate position at Grand Canyon National Park for an additional four-year term at the currently authorized salary of $22,724 per annum.

California, Southern:

(1) Continued the two full-time magistrate positions at San Diego which are due to expire on September 14, 1986, and September 5, 1988, for additional eight-year terms.

(2) Continued the part-time magistrate position at El Centro for an additional four-year term at the currently authorized salary of $29,946 per annum.

Montana:

(1) Authorized a new part-time magistrate position at Butte at a salary of $2,015 per annum.

(2) Continued the part-time magistrate positions at Great Falls ($9,179), Kalispell ($5,037), Helena ($4,030), Missoula ($3,022), and Cut Bank ($2,015) for additional four-year terms at their current respective salary levels.

(3) Continued the part-time magistrate position at Wolf Point for an additional four-year term and increased the salary of the position from $2,015 per annum to $3,022 per annum.

Washington, Western:

(1) Continued the part-time magistrate position at Mt. Ranier National Park for an additional four-year term, increased the salary from $17,352 per annum to $34,200 per annum, and redesignated the position as Tacoma or Mt. Ranier National Park.

(2) Continued the part-time magistrate position at Olympic National Park for an additional four-year term at the currently authorized salary of $25,859 per annum.

(3) Continued the part-time magistrate positions at Vancouver and Bellingham for additional four-year terms at the currently authorized salary of $4,030 per annum each.

TENTH CIRCUIT

Colorado:

(1) Continued the part-time magistrate position at Colorado Springs for an additional four-year term at the currently authorized salary of $34,200 per annum.

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

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

New Mexico:

(1) Continued the full-time magistrate position at Albuquerque for an additional eight-year term.

(2) Continued the part-time magistrate position at Las Cruces for an additional four-year term at the currently authorized salary of $20,039 per annum.

Oklahoma, Western:

(1) Authorized a fourth full-time magistrate position at Oklahoma City and authorized a review of the need for four full-time magistrate positions prior to the filling of the first vacancy to occur two years or more after appointment of the fourth full-time magistrate, or in four years, whichever occurs earlier.

(2) Continued the two full-time magistrate positions at Oklahoma City which are due to expire on November 26, 1986, and August 26, 1987, for additional eight-year terms.

(3) Removed the condition for review in two years of the full-time magistrate position authorized in September, 1983.

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

(5) Reduced the salary of the part-time magistrate position at Enid from $3,022 per annum to $2,015 per annum, effective October 1, 1985.

Wyoming:

(1) Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term at the currently authorized aggregate compensation of a clerk of a large district court (JSP-16).

(2) Continued the part-time magistrate positions at Casper and Green River for additional four-year terms at the currently authorized salary of $2,015 per annum each.

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

(4) Discontinued the part-time magistrate position at Rawlins, effective September 30, 1985.

ELEVENTH CIRCUIT

Alabama, Southern:

Discontinued the part-time magistrate position at Selma, effective November 26, 1986, the expiration of the current term.

Florida, Middle:

(1) Continued the two full-time magistrate positions at Tampa, which are due to expire on January 3, 1987, and April 8, 1987, for additional eight-year terms.

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

Georgia, Middle:

(1) Continued the part-time magistrate position at Columbus for an additional four-year term and increased the salary from $17,352 per annum to $34,200 per annum.

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

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

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

APPOINTMENTS AND PAYMENTS

Judge MacBride submitted to the Conference a report on appointments and payments under the Criminal Justice Act for the first half of the fiscal year 1985. The report indicated that $42,000,000 were available for the implementation of the Criminal Justice Act at the beginning of the fiscal year and that projected obligations for the year are $59,786,000. The

projected deficiency is due primarily to increased panel attorney compensation costs resulting from provisions of the Comprehensive Crime Control Act of 1984 doubling the Criminal Justice Act hourly rates and case compensation maximums, and to additional pay costs for defender personnel. A supplemental appropriation request to cover the projected deficiency was recently approved by the Congress.

During the first half of the fiscal year 1985, approximately 23,000 persons were represented under the Criminal Justice Act, as compared to 21,700 in the first half of the fiscal year 1984, an increase of six percent. This increase parallels the rise of 8.3 percent in the number of criminal cases commenced in the United States district courts during the 12-month period ended March 31, 1985. Of the 23,000 persons represented during the first half of the fiscal year, 13,832, or 60 percent, were represented by federal public defender and community defender organizations, an increase of six percent from the number of appointments made during the first half of the fiscal year 1984.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Criminal Justice Act, as amended, requires that a budget for each federal public defender organization, established pursuant to 18 U.S.C. 3006A(h)(2)(A), be approved by the Judicial Conference in accordance with 28 U.S.C. 605. The Committee reviewed 15 requests for supplemental funding for the fiscal year 1986 and reviewed requests for the 35 federal public defender organizations for funding for the fiscal year 1987.

The Conference, upon the recommendation of the Committee, approved supplemental budget requests for the fiscal year 1986 for federal defender organizations as follows:

California, Northern	$ 40,788
California, Eastern	34,933
California, Central	68,740
Colorado	20,451
Florida, Northern	48,625
Florida, Southern	226,134
Hawaii	162,500

Illinois, Central & Southern, & Missouri, Eastern	22,617
Louisiana, Eastern	23,351
Nevada	34,398
Pennsylvania, Middle & Western	41,557
Puerto Rico	66,013
Tennessee, Middle	7,370
Texas, Southern	127,019
Washington, Western	339,746
TOTAL	$1,264,242

The Conference, also upon the recommendation of the Committee, approved budget requests for the fiscal year 1987 for the federal public defender organizations as follows:

Arizona	$966,314
California, Northern	1,139,562
California, Eastern	954,839
California, Central	1,976,968
Colorado	497,654
Connecticut	445,402
Florida, Northern	341,338
Florida, Middle	758,499
Florida, Southern	1,879,528
Georgia, Southern	313,461
Hawaii	691,980
Illinois, Central & Southern, & Missouri, Eastern	503,388
Kansas	408,743
Louisiana, Eastern	485,195
Maryland	889,352
Massachusetts	365,515
Minnesota	302,369
Missouri, Western	620,577
Nevada	593,917
New Jersey	903,077
New Mexico	374,247
North Carolina, Eastern	402,577
Ohio, Northern	353,630
Oklahoma, Northern, Eastern, & Western	440,052
Oregon	622,859
Pennsylvania, Middle & Western	795,247
Puerto Rico	483,471
South Carolina	356,070

Tennessee, Middle	405,044
Tennessee, Western	232,273
Texas, Southern	918,523
Texas, Western	841,707
Virgin Islands	500,494
Washington, Western	848,595
West Virginia, Southern	222,910
TOTAL	$22,835,377

Judge MacBride informed the Conference that the foregoing budgets for the fiscal year 1987 were based upon projected caseloads and that the Committee will entertain requests for supplemental funding if workloads or other factors warrant reconsideration of funding needs. Judge MacBride also stated that although the Conference in September, 1984 (Conf. Rept., p. 83) had approved funding for the establishment of a federal defender organization for the Middle District of Pennsylvania, a reevaluation of the projected caseload had led the Middle and Western Districts of Pennsylvania to amend their Criminal Justice Act plans to authorize a branch office of the Western District of Pennsylvania in the Middle District. The Court of Appeals for the Third Circuit approved the amendments to both district plans, and the Administrative Office and the Committee agreed to the consolidation of the budgets previously approved by the Conference for the separate organizations.

GRANT REQUESTS - COMMUNITY DEFENDER ORGANIZATIONS

The Conference, upon the recommendation of the Committee, approved supplemental sustaining grants for the fiscal year 1986 for the following community defender organizations:

The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern	$102,600
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania, Eastern	25,377
TOTAL	$127,977

The Conference, upon the recommendation of the Committee, also approved sustaining grants for the fiscal year 1987 for the six community defender organizations as follows:

Federal Defenders of San Diego, Inc., California, Southern	$1,442,393
Federal Defender Program, Inc., Georgia, Northern	507,199
Federal Defender Program, Inc., Illinois, Northern	819,600
Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan, Eastern	850,955
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern	2,306,380
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania, Eastern	670,967
TOTAL	$6,597,494

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

GUIDELINES

The Committee submitted to the Conference the following amendments to the Guidelines for the Administration of the Criminal Justice Act, which were approved by the Conference:

1. An amendment to paragraph 2.01 D and the "Model Plan for the Composition, Administration and Management of the CJA Panel" to permit *pro hac vice* admission of attorneys to the Criminal Justice Act panel in exceptional circumstances.

2. An amendment to paragraph 2.03 restricting the participation of prosecutors and other law enforcement agents in the financial eligibility determination.

3. The addition of a new paragraph 2.18 relating to compensation of standby counsel, and the redesignation of paragraphs 2.18 and 2.19 as 2.19 and 2.19.1, respectively.

4. An amendment to paragraph 2.26 to limit compensable travel time for attorneys to those hours actually spent in or awaiting transit.

5. An amendment to paragraph 3.01 relating to investigative, expert, and other services requested of federal defender organizations by _pro se_ litigants and by defendants with retained counsel.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge John D. Butzner, Jr., Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

HABEAS CORPUS

S. 238, 99th Congress, would reform procedures for collateral review of criminal judgments. Similar legislation passed the Senate in 1984 (S. 1763, 98th Congress) but died in the House.

Upon the recommendation of the Committee, the Conference voted to endorse section 5 of S. 238, which would amend 28 U.S.C. 2254(b) to permit an application for a writ of habeas corpus to be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in state court. Consideration of section 3 (a proposed amendment to 28 U.S.C. 2253 to vest in the judges of the courts of appeals exclusive authority to issue certificates of probable cause for appeal in habeas corpus proceedings) and section 4 (a proposed amendment to Rule 22 of the Federal Rules of Appellate Procedure to create an identical certificate requirement for appeals by federal prisoners in collateral relief proceedings

pursuant to 28 U.S.C. 2255) was deferred by the Conference, pending a Committee solicitation and evaluation of the views of the circuit and district court chief judges on these provisions.

COMPUTER FRAUD

The Comprehensive Crime Control Act of 1984 added a new section 1030 to title 18 of the Code dealing with computer fraud. H.R. 930 and H.R. 1001, 99th Congress, would amend section 1030 to make it an offense to access a computer without authorization or to use a computer lawfully accessed for unauthorized purposes. H.R. 1001, which additionally provides for the separate offense of accessing a computer or using a computer for unauthorized purposes by means of a scheme to defraud, would restrict the offenses it creates by requiring that something of value (other than the computer) aggregating $5,000 or more must be obtained as a result of the unauthorized access or use.

The Conference approved the Committee's recommendation that, in order to take advantage of existing case law and assist in the administration of the computer fraud statute, the pending House bills should be amended so that the new computer fraud offense tracks the language of existing mail and wire fraud statutes. The Conference also agreed with the Committee's observation that, while the decision to impose a $5,000 minimum gain requirement (H.R. 1001) was a legislative judgment for Congress, the inclusion of such a requirement would add to the complexity of proof in the prosecution of a computer fraud offense.

DEATH PENALTY

Numerous bills dealing with capital punishment have been introduced in the 99th Congress. One of the bills, S. 239, is the successor to S. 1765, which passed the Senate in the 98th Congress.

S. 239 attempts to establish a constitutional procedure for imposition of the death penalty in conformity with the decisions of the Supreme Court. During the first stage of a two-stage trial, the jury or judge would determine the issue of guilt. Upon a finding of guilty, if the government had filed a pretrial notice of intent to seek the death penalty specifying the aggravating factors to be proved, the second or sentencing

stage would be activated. Aggravating and mitigating factors for the jury or judge to use as guidance in determining when the death penalty should be imposed would be set out in the statute.

While on the subject matter of capital punishment legislation the Judicial Conference generally defers to the Congress, the Conference did vote to express concern about the language of S. 239 and encouraged the Committee and the Administrative Office to work with the Senate Judiciary Committee on this legislation. The Conference also voted to approve the Committee's recommendation that S. 239 be amended to provide a defendant notice prior to trial of any non-statutory aggravating factors which would be considered at the sentencing stage of the proceedings to the same extent and in the same circumstances as notice of statutory aggravating factors must be provided.

EXCLUSIONARY RULE

S. 237 and H.R. 1126, 99th Congress, would add a new section to title 18 of the Code to permit the use of illegally seized evidence in a criminal trial if the evidence were obtained, with or without a warrant, by a law enforcement officer acting with a reasonable good faith belief that his conduct conformed to the Fourth Amendment. Similar legislation passed the Senate in the 98th Congress, but no action was taken in the House.

The Committee noted that these bills were drafted prior to the Supreme Court's decision in United States v. Leon, 104 S. Ct. 3405 (1984), holding that the exclusionary rule will not bar the use in a criminal trial of evidence obtained by law enforcement officers acting in reasonable reliance on a search warrant subsequently found to be invalid. The Court established an objective standard for determining the reasonableness of the officers' reliance on the validity of the warrant.

The Committee was of the view that the pending legislation, insofar as it applies to searches conducted pursuant to a warrant, is unnecessary in light of Leon and, further, that whether to extend Leon to other situations should be left to the courts. The Committee also observed that, while Leon

adopts an objective standard for determining the reasonableness of an officer's conduct, S. 237 and H.R. 1126 would additionally require the presence of subjective good faith in the lawfulness of a search or seizure.

Upon the recommendation of the Committee, the Conference voted to oppose enactment of S. 237 and H.R. 1126. In the event the Congress were to proceed with legislation on this subject notwithstanding the objections of the federal judiciary, the Conference also approved the Committee's alternative recommendation that the bill be amended to adopt the objective standard set forth in United States v. Leon, 104 S. Ct. 3405 (1984).

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

GRAND JURY ORIENTATION FILM

Judge Clarie reported that the grand jury orientation film, entitled "The People's Panel", had been completed. The Committee recommended its use to all district courts, as did the Conference. Also upon the recommendation of the Committee, the Conference formally acknowledged the contribution of Frank Rothman, Chairman of the Board and Chief Executive Officer of MGM/UA Entertainment Company, and Judge William B. Enright (California, Southern) for their assistance in the development of this informative and professional motion picture, produced at virtually no cost to the federal government.

AMENDMENTS TO THE JURY SELECTION AND SERVICE ACT

Upon the recommendation of the Committee, the Conference proposed the following technical amendments to the Jury Selection and Service Act:

1. An amendment to 28 U.S.C. 1866(c)(1) to provide that courts may delegate to clerks the function of granting temporary excuses from service on the grounds of "undue hardship or extreme inconvenience", and that persons so excused may

either be automatically resummoned at the conclusion of the excuse period or, if the court's jury selection plan so provides, have their names reinserted into the qualified wheel.

2. An amendment to 28 U.S.C. 1863(b)(3) specifically to authorize clerks or jury commissioners to delegate jury selection functions to non-judicial branch personnel such as computer technicians.

3. An amendment to 28 U.S.C. 1863(b)(6) to limit the classes of persons exempted or barred from jury service to those in active service in the armed forces, members of fire and police departments, and federal or state public officers.

4. An amendment to 28 U.S.C. 1864(a) to eliminate the requirement that the clerk or jury commissioner prepare an alphabetical list of names drawn from the master wheel, and provide instead only that courts must have the capacity to generate such an alphabetical list.

5. An addition to the Act authorizing temporary, limited experimental use of new selection procedures, notwithstanding their technical inconsistency with existing statutory provisions.

AMENDMENTS TO JUROR QUALIFICATION QUESTIONNAIRE

28 U.S.C. 1869(h) requires Judicial Conference approval of modifications to juror qualification forms. Upon the recommendation of the Committee, the Conference approved a change from "Oriental" to "Asian/Oriental" in question 10, and a revision of the sequence of questions 5, 6, and 7.

IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE

Chief Judge James Lawrence King, Chairman of the Implementation Committee on Admission of Attorneys to Federal Practice, presented the final report of the Committee.

The Committee was appointed pursuant to Conference resolution in September, 1979 (Conf. Rept., pp. 103-105). As

successor to the Committee to Consider Standards for Admission to Practice in the Federal Courts (the Devitt Committee), the Implementation Committee was directed to oversee and monitor, on a pilot basis in a selected number of district courts, programs directed toward improvement of trial advocacy in the federal courts, including but not limited to examinations, trial experience requirements, and peer review. Judge King informed the Conference that the Committee's final report represented the culmination of six years of work and 17 meetings of the Committee. Thirteen district courts participated in the pilot evaluation.

The Committee concluded that examination requirements have contributed significantly to improving the level of knowledge of federal practice subjects; that trial experience requirements will prove to be effective, although the available data are currently insufficient to prove or disprove their effectiveness; that there is little awareness of peer review programs, although the Committee considered them essential in dealing with problems of professional adequacy; and that student practice should continue to be encouraged, although there has been too little contact with student appearances as yet to offer a basis for knowledgeable comment.

After extended discussion, the Conference voted to recommend that federal courts consider programs directed toward improvement of trial advocacy recommended by the Devitt and Implementation Committees and developed by the pilot courts. The Conference discharged the Committee after agreeing to assign to another Committee responsibility for receiving information from the courts on their experiences with admissions and proficiency maintenance programs, for facilitating the exchange and review of that information, and for making recommendations to the Conference, as appropriate, on measures to assist the courts in their efforts. The Conference also authorized the distribution of the Committee's final report to federal judges and to interested persons outside of the judiciary.

COMMITTEE ON PACIFIC TERRITORIES

The Committee on Pacific Territories filed a report indicating that the Committee had met with representatives of the Government of American Samoa and will report in March,

1986 on the question whether certain decisions of the territory's courts should be reviewable in Article III courts and, if so, the best means of achieving that objective.

STANDING COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The Standing Committee to Review Circuit Council Conduct and Disability Orders filed a report indicating that, since the Committee's last report, several petitions for review of council affirmations of dismissals of complaints by chief circuit judges had been dismissed administratively. The Committee also decided one case within the jurisdiction of the Conference, upholding the council's imposition of a private reprimand upon a bankruptcy judge.

AD HOC COMMITTEE ON AMERICAN INNS OF COURT

Judge Aldon J. Anderson, Chairman of the Ad Hoc Committee on American Inns of Court, presented the report of the Committee.

Judge Anderson reported that in April, 1985, a formal charter for the American Inns of Court Foundation was issued by the District of Columbia Government under the District's Nonprofit Corporation Act. Officers of the Foundation and members of the Board of Trustees were elected and by-laws approved. The new president of the Foundation, Georgetown University School of Law Professor Sherman L. Cohn, was introduced to the Conference by Judge Anderson. Judge Anderson will serve as Chairman of the Board of Trustees, which also includes Judges Susan H. Black and William B. Enright, Professor Cohn and Professor Peter W. Murphy (also named Secretary-Treasurer of the Foundation), and Messrs. Albert I. Moon and Harold G. Christensen. New charters were awarded the 14 existing Inns of Court by the Foundation.

In accordance with the Conference's action in March, 1985 (Conf. Rept., p. 34), the Committee will continue to monitor the growth in the Inns of Court movement and encourage the foundation of additional Inns.

AD HOC COMMITTEE ON ELECTRONIC SOUND RECORDING

The Ad Hoc Committee on Electronic Sound Recording filed a report indicating that, to date, 31 district judges and 47 bankruptcy judges have requested the installation of electronic sound recording equipment as the means of taking all or part of the record of proceedings in court and/or chambers. The report also indicated that the Administrative Office is currently preparing a comprehensive cost/benefit analysis and evaluation of the electronic sound recording program for presentation to the Conference in March, 1986.

CHIEF JUDGE OF COURT OF INTERNATIONAL TRADE AS MEMBER OF THE JUDICIAL CONFERENCE

H.R. 2183, 99th Congress, would among other things amend 28 U.S.C. 331 to make the Chief Judge of the Court of International Trade a member of the Judicial Conference. The Conference unanimously supported providing membership for the Chief Judge of the Court of International Trade on the Judicial Conference and expressed no objection to the remainder of the bill.

RESOLUTIONS

Noting the death of Judge Albert G. Schatz, a member of the Conference at the time of his death, the Conference adopted the following resolution:

> We commemorate and memorialize the late Albert G. Schatz (known to his friends as "Duke"), United States District Judge for the District of Nebraska, having been appointed to that position in May of 1973, serving with distinction until his death on April 30, 1985.
>
> Judge Schatz was born in Omaha, Nebraska, on August 4, 1921. He received his BA from the University of Nebraska in 1943 and his JD from Creighton University in 1948. He served as a Combat Officer with the U.S. Marine Corps in the Pacific Theatre.

Judge Schatz served several terms on the Eighth Circuit Judicial Council, and was elected by his fellow judges to be the district court representative to the Judicial Conference of the United States in 1979, and reelected in 1983. In 1980, Chief Justice Burger appointed Judge Schatz to the Executive Committee of the Conference; he also served on the Ad Hoc Committee to Monitor Regulations on Electronic Sound Recording. He remained a member of both the Conference and the Executive Committee until his untimely death.

We all will miss our warm association with him. His colleagues respected him as a lawyer, as a judge, and as a person. The Nation has lost a great colleague. As judges we have all lost a great friend.

Noting the resignation of Joseph F. Spaniol, Jr., as Deputy Director of the Administrative Office of the United States Courts to become Clerk of the United States Supreme Court, the Conference also adopted the following resolution:

The Judicial Conference of the United States expresses its sincere appreciation to Joseph F. Spaniol, Jr., for more than 34 years of dedicated service to the Federal Judiciary. Mr. Spaniol joined the Administrative Office as an attorney with the Procedural Studies and Statistics Division in 1951 and later served as Chief of the Division from 1965 to 1972. Mr. Spaniol was then appointed Assistant Director for Legal, Legislative, and Special Projects prior to his appointment as Deputy Director in 1977.

The Judicial Conference acknowledges Joseph Spaniol's contribution to the work of this body in his capacity as Secretary to the Standing Committee on Rules of Practice and Procedure and Advisory Committees on Appellate, Bankruptcy, Civil and Criminal Rules; his service and attendance at meetings of the Judicial Conference since 1957; and his

many contributions to the Administrative Office of the U.S. Courts where he served six Directors: Henry P. Chandler, Warren Olney, III, Ernest C. Friesen, Jr., Rowland F. Kirks, William E. Foley, and L. Ralph Mecham.

We the members of the Conference extend to him our appreciation for his devotion to the work of the Federal court system. Our best wishes on his new appointment go with him.

PRETERMISSION OF TERMS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the United States courts of appeals during the calendar year 1986 at the following locations: at Asheville, North Carolina in the Fourth Circuit and at Oklahoma City, Oklahoma and Wichita, Kansas in the Tenth Circuit.

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

November 20, 1985

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