REPORT

of the

PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 24-25, 1981

Washington, D.C.
1981

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

William E. Foley
Director

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

§331. Judicial Conference of the United States

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

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

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

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

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

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

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

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The Judicial Conference of the United States convened on September 24, 1981, 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 25th. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Frank M. Coffin
Chief Judge Raymond J. Pettine, District of Rhode Island

Second Circuit:

Chief Judge Wilfred Feinberg
Chief Judge Lloyd F. MacMahon, Southern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Gerald J. Weber, Western District of Pennsylvania

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Robert R. Merhige, Jr., Eastern District of Virginia

Fifth Circuit:

Chief Judge John C. Godbold
Chief Judge John V. Singleton, Jr., Southern District of Texas

Sixth Circuit:

Chief Judge George C. Edwards, Jr.
Chief Judge Frank J. Battisti, Northern District of Ohio

Seventh Circuit:

Chief Judge Walter J. Cummings
Judge S. Hugh Dillin, Southern District of Indiana

Eighth Circuit:

Chief Judge Donald P. Lay
Judge Albert G. Shatz, District of Nebraska

Ninth Circuit:

Chief Judge James R. Browning
Judge Manuel L. Real, Central District of California

Tenth Circuit:

Chief Judge Oliver Seth
Chief Judge Howard C. Bratton, District of New Mexico

District of Columbia Circuit:

Chief Judge Spottswood W. Robinson, III
Chief Judge John Lewis Smith, District of Columbia

Court of Claims:

Chief Judge Daniel M. Friedman

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

On invitation of the Chief Justice, Circuit Judge Charles Clark, who will be the Chief Judge of the Fifth Circuit on October 1, 1981, and Judge William C. O'Kelly, Jr., who will become the District Judge Representative to the Conference from the new Eleventh Circuit, commencing October 1, 1981, also attended the Conference.

Circuit Judges Irving R. Kaufman, Otto R. Skopil, Edward A. Tamm, Gerald B. Tjoflat and J. Clifford Wallace; Senior District Judges Elmo B. Hunter, Thomas J. MacBride, George L. Hart, Jr., and Roszel C. Thomsen; and District Judges C. Clyde Atkins, Edward T. Gignoux, Alexander Harvey II, and James L. King, attended all or some of the sessions of the Conference.

The Attorney General of the United States, Honorable William French Smith, and the Solicitor General of the United States, Rex E. Lee, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

Senator Strom Thurmond, Chairman of the Senate Judiciary Committee; Congressman Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice; and Congressman Neal Smith, Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, addressed the Conference briefly on matters pending in the Congress of interest to the Judiciary.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr., Deputy Director; James E. Macklin, Assistant Director; William J. Weller, Legislative Affairs Officer; Deborah Kirk, Chief of the Management Review Division; and Charles W. Nihan, Deputy Director of the Federal Judicial Center, attended all sessions of the Conference. The Director of the Federal Judicial Center, A. Leo Levin, presented the Center's Annual Report. John Yoder of the Supreme Court staff was also in attendance.

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

The Director of the Administrative Office of the United States Courts, William E. Foley, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1981. Accompanying the Annual Report was a special report on The Equal Employment Opportunity programs adopted in the various courts. 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. Foley reported that appeals docketed in the United States courts of appeals during the year ended June 30, 1981 increased 13.6 percent to a record 26,362 appeals filed. During the year the courts of appeals terminated a record 25,066

appeals, an increase of 20 percent over the previous year but 4.9 percent less than the number filed. As a result, the number of appeals pending on June 30, 1981 increased 6.4 percent to a record 21,548 pending appeals.

Civil cases filed in the United States district courts during the year ended June 30, 1981 were 180,576, an increase of 7 percent over the 168,789 civil cases filed the previous year. There were 177,975 civil cases closed, 10.9 percent more than the previous year, and the pending civil caseload increased 1.4 percent to 188,714 as of June 30, 1981.

Reversing a three-year downward trend, criminal cases filed in the district courts in 1981 climbed to 31,287, an 8.2 percent increase over 1980. There were 30,221 criminal cases closed during the year, and on June 30, 1981 there were 15,850 pending criminal cases. During the year weapons and firearms prosecutions increased 40 percent, embezzlement cases increased 16 percent and prosecutions for drug-related offenses increased 18 percent.

During the year ending June 30, 1981, there were 360,329 bankruptcy cases, representing 518,152 separate estates, filed in the United States bankruptcy courts. An additional 911 estates in cases originally filed under the Bankruptcy Act prior to October 1, 1979 were reopened. This constitutes an increase of 158,106 estates, or 43.8 percent more than last year's record high of 360,957 estate filings. There were 321,749 estates closed during the year, an increase of 62.1 percent over the previous year, but 197,314 less than the number filed. As a result, the number of estates pending on the dockets of the bankruptcy courts on June 30, 1981 increased 46.9 percent to a record 617,896 pending estates.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ending June 30, 1981 the Panel had acted on 1,481 civil actions pursuant to 28 U.S.C. 1407. Of that number 960 actions were centralized for consolidated pretrial proceedings with 287 civil actions already pending in the transferee districts. The Panel denied the transfer of 234 civil actions. Since its creation in 1968 the Panel has transferred 10,410 civil actions for centralized pretrial proceedings in carrying out its responsibilities. As of June 30, 1981, approximately 7,800 cases had been remanded for trial or terminated in the transferee courts.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Irving R. Kaufman, Chairman of the Committee on the Judicial Branch, submitted the Committee's report.

Judicial Survivors Annuities

Judge Kaufman informed the Conference that the Committee had prepared draft legislation to amend the Judicial Survivors Annuity Act, 28 U.S.C. 376, to adjust the benefits payable to widows and surviving dependent children of justices and judges. Thereafter the bill, with the approval of the Chief Justice, was submitted to and approved by the Executive Committee of the Conference and transmitted to the Congress. The draft bill would provide a minimum annuity for the widow or widower of a Federal judge equal to 30 percent of the judge's highest three-year average salary, increase the maximum annuity from 40 percent to 55 percent of salary, and increase substantially the annuities payable to surviving dependent children of Federal judges. The bill would also increase a judge's contribution to the Judicial Survivors Annuity Fund from 4.5 percent of salary to 5 percent of salary. Upon the recommendation of the Committee the Conference endorsed the action of the Executive Committee.

Judicial Compensation

Judge Kaufman also informed the Conference that the Executive Committee had approved draft legislation, prepared by the Committee, to create a separate biennial Commission on Judicial Salaries as recommended by the last Quadrennial Salary Commission and that the draft legislation had been transmitted to the Congress. Upon the recommendation of the Committee the Conference endorsed the action of the Executive Committee.

Government Life Insurance

S. 820, 97th Congress, is a bill to authorize government officers and employees to assign the ownership of government life insurance policies to spouses and other family members. Upon the recommendation of the Committee the Conference adopted the following resolution:

At the present time, government life insurance policies owned by members of the Federal judiciary are not assignable to spouses or other members of the family of the judge. As a result, the policies are not as valuable as non-government policies which ordinarily are assignable, and therefore enable the insured to place the proceeds of such policies outside the estate of the insured in the event of death. Legislation has now been introduced by Senator J. Bennett Johnston of Louisiana, S.820, that would enable judges, as well as other persons insured under government insurance policies to assign such policies. Since such a provision would greatly assist insured Federal employees and would give to government policies the same attributes as those purchased from non-government sources, it is resolved that the Judicial Conference of the United States endorse S. 820 and any other legislation that may be introduced in Congress that is designed to make government life insurance policies assignable.

AD HOC COMMITTEE ON JUDICIAL REVIEW PROVISIONS IN REGULATORY REFORM LEGISLATION

In the absence of Judge Robert A. Ainsworth, Jr., Chairman of the Ad Hoc Committee on Judicial Review Provisions in Regulatory Reform Legislation, a written report on the activities of the Committee was presented to the Conference.

S. 1080 and H.R. 746, 97th Congress, are bills pertaining to regulatory reform. On May 11, 1981, Congressman Danielson, Chairman of the House Judiciar Subcommittee on Administrative Law and Governmental Relations, notified the Administrative Office that legislative developments in relation to regulatory reform legislation were proceeding expeditiously in both Houses of Congress. He requested that, if possible, Conference views on this legislation be submitted prior to the end of July. Early in July the Committee met and approved a series of specific recommendations in relation to these bills which were thereafter submitted to and approved by the Executive Committee. On July 20th the Director of the Administrative Office formally transmitted the approved recommendations to Congressman Danielson. Shortly thereafter, the Chief Justice, in response to an inquiry,

transmitted copies of the Director's letter to Senators Thurmond, Laxalt, and Grassley.

The Conference was advised that the Ad Hoc Committee had addressed itself to three areas of concern: (1) the scope of judicial review of administrative agency action and the standards for such review; (2) the level of judicial review in the first instance in the federal court system (whether in a court of appeals or in a district court); and (3) the proposed solution to eliminating the unseemly "race to the courthouse" in administrative agency cases. The Committee recommended amendatory language clarifying the role of the Judiciary in reviewing agency determinations of questions of law, so as not to overburden federal appellate courts; recommended, as an alternative to the direct review of agency cases, the creation of an Article I executive branch court or courts with certiorari review by Article III courts; proposed certain changes in language in the proposed standard for judicial review of informal rulemaking under Section 553 of the Administrative Procedure Act; opposed the judicial review of certain agency decisions and agency regulatory analyses supporting informal rulemaking decisions, which would require judicial review of the entire rulemaking file, analyses and supporting data; and opposed efforts to create a right of judicial review for preliminary agency decisions in the course of rulemaking.

The Committee approved a provision contained in S. 1080 to provide for random selection by the Administrative Office of the United States Courts when multiple proceedings for the review of agency action have been instituted in various circuits, with the understanding that the random selection is to be considered a ministerial act and does not impose any judicial function on the Administrative Office of the United States Courts. The Committee suggested, however, that the Judicial Panel on Multidistrict Litigation with its staff may be an alternative to the Administrative Office as the agent administering the random selection process.

The Conference was informed that the Executive Committee had approved the recommendations and proposals of the Ad Hoc Committee and that members of the Committee had appeared as supporting witnesses in hearings before various Congressional Committees.

COMMITTEE ON COURT ADMINISTRATION

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

Nonappropriated Funds

The Conference in March 1981 (Conf. Rept., p. 14) authorized the Committee to prepare guidelines on the sources and uses to which nonappropriated funds (formerly called library funds) may be put and how they should be managed, invested and audited. Judge Hunter informed the Conference that the Committee had amended the draft guidelines prepared by the staff of the Administrative Office to make them general in nature, leaving responsibility for detailed operation to the various courts. Since the money in the funds is obtained from private attorneys, the Committee was of the view that members of the bar might be utilized as members of an Advisory Committee, along with judges and other judicial officers, to provide advice concerning the administration of the funds. The Committee was also of the view that nonappropriated funds may be used to purchase books and periodicals even though the publications may be of the type for which funds have been appropriated in the past, if appropriated funds are not available at the time of purchase.

Upon the recommendation of the Committee the Conference approved the guidelines as amended by the Committee and authorized their transmission to all courts.

United States Marshals Service

Judge Hunter informed the Conference that the Office of Management and Budget had severely reduced the budget for the United States Marshals Service for the fiscal year 1982 and that consequently no funds were requested for the service of process in private civil litigation. As a result, the Advisory Committee on the Federal Rules of Civil Procedure now has under consideration an amendment to Rule 4(c) to provide for and encourage the use of alternative means of serving civil process. In addition, the district courts have been asked to adopt local rules to create alternative mechanisms for service of process where authorized by state law and to encourage their use by the bar. An amendment to 28 U.S.C. 569(b) is being considered by the Congress which would continue the responsibility of United States marshals to execute all lawful

writs, process and orders issued under authority of the United States and command all necessary assistance to execute their duties, but at the same time would relieve the Marshals Service of the obligation to serve complaints, summonses and subpoenas on behalf of any party other than the United States except in pauper cases under 28 U.S.C. 1915, or on special order of the district court after a determination that service by a marshal is required to effect proper service.

Reductions in funds available to the Marshals Service may also affect court security. As a result the Attorney General has agreed to ask the Director of the Federal Bureau of Investigation to prepare a proposal for assessing the security needs of the courts and for establishing appropriate standards.

In view of the fiscal constraints being imposed which have affected the ability of the United States Marshals Service to serve civil process adequately and to provide security at an acceptable level, and because of a perception that some judges are using members of the Marshals Service for inappropriate purposes, the Committee recommended that the Conference place the matter of such alleged misuse before the Conference of Chief Judges of the Courts of Appeals for appropriate action.

Legal Size Paper

The Association of Records Managers and Administrators has initiated a nation-wide campaign to eliminate totally the use of legal size files, a proposal strongly supported by the National Archives and Records Service of the General Services Administration. The Chief Justice, at the request of the Archivist of the United States, directed the Administrative Office of the United States Courts to review the recommendations and to submit a proposal to the Committee. Judge Hunter informed the Conference that, after full review of the recommendations of the Administrative Office, the Committee had voted to recommend that they be approved with the understanding that no requirement will be imposed to use both sides of a sheet of paper and that the full implementation of the recommendations not take effect until January 1, 1983. After full discussion the Conference approved the following recommendations submitted by the Committee:

A. That the Judicial Conference adopt the 8-1/2 x 11 inch paper size standard for use throughout the Federal Judiciary and eliminate the use of legal size paper measuring 8-1/2 x 14 inches.

B. That a transition period through December 31, 1982, be established to enable courts and attorneys to exhaust their supplies of legal size paper and forms. During this transition period, both the 8-1/2 x 11 inch size and the 8-1/2 x 14 inch size will be accepted (unless previously adopted local court rules prohibit filing on 8-1/2 x 14 inch size paper).

C. That effective October 1, 1981, all new, revised, or reprinted forms stocked at Administrative Office warehouse facilities are to be printed on the 8-1/2 x 11 inch size.

D. That effective January 1, 1983, the 8-1/2 x 11 inch paper size is to be implemented fully in all Federal courts.

Additional Judgeships

Judge Hunter stated that the Subcommittee on Judicial Statistics had formulated plans for conducting the 1982 biennial survey. At the request of the Subcommittee, the Administrative Office had developed a summary of the "Procedures and Standards Used in Conducting United States Courts Judgeship Surveys, 1964-1980" which will be circulated to all courts to assist them in responding to a questionnaire on the need for additional judgeships. A request for an additional judgeship in the District of Wyoming and a request for three additional judgeships in the Southern District of Florida, in lieu of the September 1980 Conference recommendation for one additional permanent judgeship and one temporary judgeship in that district, were deferred by the Committee for consideration during the 1982 biennial judgeship survey.

Enforcement of State Custody Orders

The Chairman of the House Judiciary Committee had requested the views of the Conference on H.R. 223, 97th Congress, a bill to grant jurisdiction to the district courts to enforce any custody order of a state court against a parent,

who in contravention of such order, takes a child to another state. While the bill embodies a matter of policy for Congressional determination, the Committee concluded that Section 2 of Article III of the Constitution may not support such a grant of jurisdiction to a Federal court; historically jurisdiction in domestic relations cases has been reserved to state courts. Further, the bill is unclear as to questions of venue, what law is to be applied, and the nature of relief that may be granted. The Conference in March 1978 (Conf. Rept., p. 11) took no position on the merits of a similar bill, but authorized the communication of the Committee's views to the Congress. The Conference therefore approved transmission of the Committee's views on H. R. 223 to Congress.

Judicial Review of the Denial of Veterans Claims

S. 349, 97th Congress, is a bill to provide for the judicial review of denials of veterans claims. The bill establishes procedures within the Veterans Administration for the adjudication of veterans claims, requires the Veterans Administration to conform to the rulemaking procedures of Section 553 of the Administrative Procedure Act, and provides for the judicial review of final decisions of the Board of Veterans Appeals in the district courts. The Conference in March 1963 (Conf. Rept., p. 18) disapproved legislation to provide for the review of decisions of the Administrator of Veterans Affairs in the district courts and recommended that jurisdiction be vested in a special Executive Branch Court of Veterans Appeals. This position was reaffirmed by the Conference in March 1978 (Conf. Rept., p. 9). Testimony submitted to the 96th Congress indicated that the enactment of a similar bill would result in an estimated increase of 4,600 cases annually in the district courts.

Because of the overburdened caseloads of the district courts, the Committee believed that it was not practical or desirable to impose additional caseloads involving veterans claims. The Committee felt that the review of these claims should be conferred exclusively upon the Board of Veterans Appeals, or upon a new Executive Branch Article I court, and that the appellate review of the decisions of the Board of Veterans Appeals, or a new Executive Branch court, by the district courts, courts of appeals and the Supreme Court, is most undesirable in view of the potential impact on the caseloads of these courts. If, however, judicial review is deemed to be appropriate, it should be limited to the review of constitutional issues and questions of statutory interpretation.

Upon the Committee's recommendation the Conference voted to recommend to the Congress that any initial review of a decision denying a veteran's claim should be made by the Board of Veterans Appeals or a new executive branch court of Veterans Appeals, and that any appellate review thereafter by district courts be limited to constitutional issues and questions of statutory interpretation.

Interlocutory Appeals

Judge Hunter informed the Conference that the Committee had reviewed various proposals to amend the interlocutory appeals statute, 28 U.S.C. 1292, to incorporate therein various judicial decisions relating to exceptions to the finality rule and to allow a party held in civil contempt to apply for an interlocutory appeal. The Committee concluded, however, that the existing statutory language was preferable to any of the proposed changes which, in the view of the Committee, may invite additional appeals to already overburdened appellate courts. The Committee therefore submitted no proposal.

Child's Right to Parental Support

The Chairman of the House Judiciary Committee had requested the views of the Conference on H.R. 881, 97th Congress, to establish a federal right of every unemancipated child to be supported by such child's parent or parents, and to confer upon certain local courts of the District of Columbia, and every state and territory, necessary jurisdiction to enforce such right regardless of such child's residence.

The bill would add a new Chapter 177 to Title 28, United States Code, entitled "Enforcement of State Court Support Orders". Section 3102 would authorize the registration of a support order of any state court "in any court of any state in which an obligor of an order resides" and which "has jurisdiction to issue support orders". Section 3103 would authorize the court in which a support order is registered to "entertain contempt proceedings, in the same manner as if the order were an order of such court, against an obligor who fails to comply with the order within 30 days after being served notice that it has been registered." The cost of enforcement proceedings would be "taxed against the party against whom the issues are resolved, including a reasonable attorney's fee for the obligee." Section 3104 would require notice of the

proceedings to the original court. The bill would further amend 28 U.S.C. 1332 (diversity statute) by adding a new subdivision conferring jurisdiction of these proceedings on state courts.

The provisions of the bill are drafted as amendments to Title 28, United States Code, but the bill does not in any way deal with the organization or jurisdiction of United States courts. Furthermore, the power of Congress to enact laws confering original jurisdiction upon state courts in matters involving domestic relations may be open to question. The Committee recommended that the Conference express no view on the merits of the bill, but point out that the power of Congress to confer exclusive jurisdiction on state courts to hear and determine these issues is open to question and that amending Title 28, United States Code, is an inappropriate means of accomplishing the bill's stated objective. This recommendation was approved by the Conference.

Social Security Court

H.R. 3865, 97th Congress, would establish a Social Security Court under Article I of the Constitution to serve as the initial reviewing court with respect to: (1) all decisions rendered under the old-age, survivors, and disability insurance programs and (2) all final determinations made under the supplemental security income program. It would also make other improvements in the appeals process under these programs.

The purposes of the bill in establishing a Social Security Court are (1) to provide uniform case law precedent which would be binding on all levels of adjudication and (2) to help lessen the congestion in the Federal courts. The Social Security Court would be structured on the pattern of the United States Tax Court, and appeals from decisions of the Court would be made to the Court of Appeals for the District of Columbia Circuit on the basis of constitutionality or statutory interpretation only. The Court would consider both disability and nondisability cases, thus avoiding a split in a case with both insured status and disability issues.

Although the bill would dramatically decrease the workload of most of the courts of appeals, it would increase the workload of the District of Columbia Circuit. The Committee therefore recommended that the bill be amended

to provide for appellate review in the same manner as appeals from the Tax Court are handled, but that the bill otherwise be approved. The recommendation of the Committee was approved by the Conference.

Priorities on Appeal

H.R. 4396, 97th Congress, introduced by Congressman Robert W. Kastenmeier, would repeal all statutory provisions granting a priority basis for the hearing of any class or category of civil case, (other than habeas corpus) in both the courts of appeals and district courts. The Congressman has noted that because of the large caseloads in the Federal courts, the number of priority cases has increased to the extent that many non-priority civil cases cannot be docketed for hearings at all, or must suffer inordinate delay. The American Bar Association has endorsed the legislation. The bill, if enacted, would leave to the courts themselves the determination of the priority of cases. Upon the recommendation of the Committee the Conference approved the bill.

Position Description for District Court Executives

The Committee submitted for Conference approval a proposed position description for a district court executive to assist the five district courts participating in the pilot district court executive program. The position description, together with the experience being gained from the five pilot programs, will be useful in clarifying to Congress the role and contemplated duties of a district court executive when pending legislation to create this position is considered. The description will also assist courts having such a position by clarifying lines of authority. It has been drafted to leave the ultimate authority to increase or decrease the assignment of specific responsibilities to the chief judge of the court. The Conference approved the guideline position description.

Staffs of Judges

The Conference in September 1979 (Conf. Rept., p. 75) adopted guidelines for the employment of secretaries and law clerks by circuit, district and bankruptcy judges. Item 3 of the guidelines provides that the chief judge of each circuit and of each district court having five or more district judges may employ an additional secretary or law clerk. The Committee

was of the view that a similar flexibility should be permitted by the guidelines for the employment of staff by other circuit and district judges, pointing out that a judge who substitutes a secretary for a law clerk would incur a lower obligation of Federal funds. Upon the recommendation of the Committee the Conference amended Items 1 and 2 of the guidelines to read as follows:

1. A district judge may employ a law clerk and a secretary and one additional employee as a law clerk or as an assistant secretary or a crier, subject to the JSP grade levels and qualification standards adopted by the Judicial Conference.

2. A circuit judge may employ a secretary, an assistant secretary, and up to three other such personnel as law clerks or assistant secretaries, subject to the JSP grade levels and qualification standards adopted by the Judicial Conference.

Staff Attorneys

Judge Hunter informed the Conference that the Committee has been faced with a determination of what limits, if any, are to be placed on requests for additional staff attorneys and related secretarial or clerical support positions in the courts of appeals. When circuit judges were recently provided with a third law clerk, the expectation that requests for staff attorney positions would diminish did not occur. After full discussion the Conference adopted the following guidelines:

It is the policy of the Conference that the number of staff attorneys in each circuit court, including the senior staff attorney, should not exceed the number of active judgeships authorized for that court. This ratio should be considered to be a standard norm which may be exceeded only upon submission of specific and well-documented justification to the Administrative Office. Similarly, nonattorney secretarial or clerical support to the staff attorneys in the circuit courts should not exceed a ratio of one such support individual for every two attorneys, not including the private secretary to the senior staff attorney. Also similarly, this ratio should be approached through well-documented justification.

> If the number of staff attorneys presently employed by a court exceeds the number of authorized active judges, the number of staff attorney positions now authorized should be retained for a period of two years or until expressly approved by the Judicial Conference following a showing of specific and well-documented justification, which ever shall occur first.

In determining the number of staff attorney positions to be authorized in each court of appeals the Director of the Administrative Office may consult with the appropriate Committees of the Conference.

Bankruptcy Deputy Clerk, Estate Administration

The classification and qualification standards for a deputy clerk, estate administration, provide for salary levels ranging from JSP-9 to JSP-13. The clerk of the bankruptcy court is the appointing official and supervises the work to be performed. Good personnel practice would normally indicate that a supervisor be classified at a higher grade than any subordinates or, at a minimum, at the same grade. Under the current system of grade allocations for clerks of bankruptcy courts there are, however, 14 districts in which the maximum grade for the clerk is JSP-12 and in 8 other districts the maximum grade is JSP-13. These circumstances create potential difficulties for the 22 courts in which an individual serving as a deputy clerk, estate administration, may be qualified for a grade level at the same or higher level than the maximum grade of the clerk of court.

In view of these difficulties, the Conference, upon the recommendation of the Committee, adopted the following resolution:

> In United States Bankruptcy Courts, positions as deputy clerk, estate administration, should be administratively limited to a maximum classification of at least one grade lower than the maximum grade for the clerk of court. On an exception basis, with the concurrence of the court and the Director of the Administrative Office, estate administration positions may be classified at the same grade level as the maximum grade of the clerk of court position in that court. Under no circumstances shall any estate administration deputy position be classified at a higher grade than the maximum classifiable for the clerk of court.

Law Clerks for Bankruptcy Judges

The Bankruptcy Reform Act authorized circuit councils to establish panels of bankruptcy judges to hear appeals from bankruptcy courts. To date, panels have been established in the First and Ninth Circuits. The bankruptcy judges assigned to these panels continue to receive trial court cases in the same numbers as their fellow judges who are not on appellate panels. As a consequence, many of the panel judges are carrying an extremely heavy workload. The Committee concluded that a partial solution to the problem would be to provide a second law clerk to bankruptcy judges serving on appellate panels who participate in 50 or more appeals per year in addition to that of their trial caseload. Upon the recommendation of the Committee the Conference approved this recommendation.

Pro Se Law Clerks

Judge Hunter informed the Conference that the experimental program of using an attorney to process prisoner petitions in selected district courts, initiated by the Federal Judicial Center in 1975, had met with overwhelming acceptance by district judges and clerks of court. A study undertaken by the Administrative Office revealed that under this program cases were expedited, the time of judicial officers was conserved, a consistency in decisions was obtained, and the program was cost-effective. The Committee accordingly recommended that the concept of a Pro Se Law Clerk in district courts be recognized, that the classification and qualification criteria used for these positions be the same as those used for other law clerks to judges and staff law clerks through JSP-12, and that allocation of these positions to district courts rest primarily on an evaluation of each district's particular caseload in the light of the duties that will actually be performed. The Committee further recommended: (1) that case assignments to Pro Se Law Clerks not be limited to cases brought under 42 U.S.C. 1983, but should include all prisoner and other inmate litigation, and (2) that initially a minimum of 300 petitions be required for inclusion of a particular district in the program with the understanding that this requirement be evaluated on a continuing basis as further experience is gained. These recommendations were approved by the Conference.

Court Reporters

Judge Hunter submitted to the Conference the various recommendations of the Committee pertaining to United States court reporters. After full discussion these recommendations were returned to the Committee for further study. Judge Hunter requested that the chief judges of the circuits bring these recommendations to the attention of their respective circuit councils and provide the Committee with each council's recommendations at an early date but not later than December 20, 1981. A further report will be made to the Conference at its next session.

Staffing of Probation Offices

Judge Hunter submitted to the Conference a proposed revision in the staffing formula for probation offices in the district courts. The new formula is based on a study conducted by the staff of the Administrative Office which included on-site work measurements performed in 24 probation offices. Upon the recommendation of the Committee, and the Committee on the Administration of the Probation System, the proposed staffing formula was approved by the Conference.

Depositions in Foreign Countries

The Conference in March 1978 (Conf. Rept., p. 4) disapproved as a matter of policy the practice of federal judges traveling abroad to take testimony or depositions in cases pending before them. Judge Hunter informed the Conference that the Committee had reviewed this policy and recommended that it be reaffirmed. This recommendation was approved by the Conference.

Judiciary Salaries and Retirement Benefits

Judge Hunter informed the Conference that at the request of the Chairman of the House Judiciary's Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the Committee had considered the desirability of undertaking a comprehensive evaluation of salary levels and retirement benefits available to all judicial branch Article I judges and "supporting judicial officer" personnel. Specifically the Committee was asked to consider the desirability of vesting authority in the Judicial Conference for (1) establishing and managing a range of salaries for all "supporting judicial officers" up to a ceiling established by the Congress, and (2) correlating retirement benefits among different groups of "supporting officers". Judge Hunter stated

that the Committee had considered this request in three parts: (1) the Conference authority to set salaries for those supporting judicial officers who are not Article I judges; (2) the desirability of Conference authority to set salaries for judicial branch Article I judges; and (3) the desirability of formal Conference recommendations, in a comprehensive context, to the Congress concerning retirement benefits for all judicial personnel.

After full consideration the Committee determined that, notwithstanding some difficulties, it would be desirable for the Conference to establish a comprehensive arrangement of basic salary levels for "supporting judicial officers" and to set the basic salaries of Article I judges in the Judiciary. Upon the recommendation of the Committee the Administrative Office was directed to draft appropriate legislation in accordance with the standards set out in the Committee's report and to submit the proposed legislation to the Committee for consideration at its next meeting.

In regard to retirement benefits the Committee concluded that further study was required. The Committee was therefore authorized to review the matter further and if necessary, to prepare proposed legislation which would establish the correlation of retirement benefits among all judicial branch personnel, other than Article III judges.

In view of these recommendations the Conference, upon the recommendation of the Committee, disapproved at this time various proposals to change the salaries of circuit executives.

Additional Supporting Personnel

Judge Hunter stated that the Committee had approved the following requests for additional supporting personnel in the various courts which were submitted to the Committee on the Budget for inclusion in the fiscal year 1983 budget requests:

1. One additional secretary for the staff of the Circuit Executive in the Eighth Circuit.

2. One additional staff attorney and one secretary for the courts of appeals of the Sixth and Eighth Circuits.

3. Thirty-eight new librarian or assistant librarian positions. The Budget Committee was authorized to adjust the number of positions in accordance with its experience with the fiscal year 1982 appropriations.

4. Twelve additional secretarial positions for secretarial pools and 4-1/2 additional clerical positions.

5. One permanent swing court reporter position for the Central District of California.

Judge Hunter informed the Conference that the Committee was not at this time recommending any full-time official employee court reporters or deputy clerk-reporters for bankruptcy courts. These recommendations were approved by the Conference.

COMMITTEE ON THE BUDGET

Judge Charles E. Clark, Chairman of the Committee on the Budget, submitted the Committee's report.

Appropriations for the Fiscal Year 1983

The Conference approved the budget estimates for the fiscal year 1983 prepared by the Director of the Administrative Office and submitted by the Committee. The budget estimates, exclusive of the Supreme Court, the Court of International Trade, and the Federal Judicial Center, aggregate $808,850,000, an increase of approximately $98,347,000 over the appropriations for the fiscal year 1982, adjusted to take into account proposed supplementals for "pay costs". Of this sum, $58,521,000 is for mandatory or uncontrollable increases such as within-grade salary advancements, fees and allowances of jurors, increases in contract rates and charges for services and supplies, higher postal rates, and the escalation in charges for the rental of space from the General Services Administration. The Director was authorized to amend the budget estimates because of new legislation, actions of the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

Supplemental Appropriations for the Fiscal Year 1982

The Conference, upon the recommendation of the Committee, authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations for the fiscal years ending September 30, 1982 and September 30, 1983 for "pay costs" and for the implementation of any new legislation, actions of the Judicial Conference, or for any other reason he considers necessary and appropriate.

Standard Level User Charges

Judge Clark informed the Conference that the Space Survey requested by the Budget Committee and performed by the Administrative Office, demonstrated that the General Services Administration rates were, on the whole, comparable with similar rates charged commercially. He cautioned, however, that in the past, the General Services Administration has reviewed and adjusted rates annually on only one-third of the space occupied by the Judiciary. The result is that rates on some space were three years old at the time of the survey and only now are being adjusted upward. The Committee was advised that, henceforth, GSA plans to adjust all rates annually. Rental charges are therefore expected to increase approximately 19 percent in the fiscal year 1983.

Judge Clark stated that the rates for the space occupied by the Court of Customs and Patent Appeals will increase approximately 121 percent during the fiscal year 1983, the rates for the Court of Claims will increase 113 percent, and the rental rates for the space occupied by the Administrative Office will increase by 77 percent. In response to an appeal from the chief judges of the two respective courts, the General Services Administration stated that the rates for these courts had not been increased for some time and that the change in rates from $13.50 per square foot to $31.09 per square foot reflected the inflation in commercial space costs in the Washington, D. C. area over the past three years. The Committee pointed out, however, that these actions unfairly distort the budget of the Judiciary and impair the Committee's ability to secure adequate funding for necessary programs. The Director of the Administrative Office has been advised by the Committee to protest the action of the General Services Administration in assessing the Judiciary with inflated, artificial rental costs and "special use" space charges and, if necessary, to seek remedial legislation.

Work Measurement Studies

At the request of Judge Clark the Director of the Administrative Office was authorized to obtain outside assistance in support of the work measurement studies being conducted by the Administrative Office.

Salaries of Magistrates

The Administrative Office had reported to the Committee that the Judiciary may be operating under a continuing resolution during the fiscal year 1982 until an appropriations bill is enacted. Limitations contained in this resolution, or in the Legislative Branch Appropriations Bill, would limit expenditures to the rate authorized during the fiscal year 1981 and may therefore preclude the adjustment of the salaries of magistrates beginning on October 1, 1981 as authorized by the Conference in March 1981. The Committee reported that funds are available in the 1981 Appropriations Act to pay magistrates the salary increases previously approved. Upon the recommendation of the Committee the Conference authorized the implementation of the salary increases previously approved for magistrates, effective immediately.

JUDICIAL ETHICS COMMITTEE

Judge Edward A. Tamm, Chairman of the statutory Judicial Ethics Committee, presented the report of the Committee.

Activities of the Committee

Judge Tamm informed the Conference that the Committee had received approximately 1,557 financial disclosure reports for the calendar year 1980 including 906 reports from judicial officers and 651 reports from judicial employees. In addition, the Committee has received 20 reports required to be filed by nominees to judgeship positions within five days of nomination. All reports submitted to the Committee were reviewed by at least one Committee member to determine whether they were "filed in a timely manner, are complete and are in proper form," as required by 28 U.S.C.A. App. I 306(a). In discharging its responsibilities, the Committee writes to reporting individuals concerning errors

appearing on the face of the reporting form, sends letters to those failing to file in a timely manner, replies to requests for extensions of time to file and acknowledges receipt of reports filed by nominees to judicial positions. Since its last report of March 1981 the Committee has written a total of 547 letters to reporting individuals, most of which involve minor omissions on the reporting form, such as the failure to check a "none" box for one or more reportable items. The Committee has taken the position that all items on the form must be completed.

The Conference was informed that two judges and one part-time magistrate had not yet filed reports for the calendar year 1980, but that the Committee had been assured that these reports would be filed very soon. In the absence of filing the Committee, acting in accordance with the procedures previously adopted by the Committee and reported to the Conference in September 1980 (Conf. Rept., p. 76), will consider a reference to the Attorney General under 28 U.S.C.A. App. I 304(b).

Disqualification of Judges

Judge Tamm stated that reports have recently appeared in the public press concerning judges who have allegedly sat in cases in which they held a financial interest in one of the parties to the litigation. In most, if not all, situations a controlled subsidiary of a corporation in which the judicial officer held a financial interest was a party and the judge was unaware of this fact. To avoid this potential pitfall the Temporary Emergency Court of Appeals and several courts of appeals have adopted local rules requiring corporate parties to litigation to furnish to the Court lists of controlled subsidiaries and parent corporations. At the suggestion of the Committee, the Conference recommended to all courts that they adopt local corporate financial disclosure rules comparable to those of the Temporary Emergency Court of Appeals, or those courts of appeals which have adopted similar rules.

Reporting Form and Instructions

In order that judges may be fully aware of the problem of disqualification and that the public generally will know that a judge having a financial interest in a corporation is not sitting in a case involving either a parent corporation or a controlled subsidiary, the Conference, upon the

recommendation of the Committee, amended the reporting form by adding the following statement:

> "In accordance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not participate in any litigation during the period covered by this report in which I, my spouse, or dependent child or children had a financial interest in the outcome of such litigation."

Reports to Chief Circuit Judges

The Conference in March 1981 (Conf. Rept. p. 26) expressed the view that the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 should not be used by the Committee for the reference of questions involving the nonfiling of reports. Judge Tamm pointed out that the Committee has no enforcement powers. These powers are given to the chief judges and judicial councils of the circuits which are responsible for the administration of the courts in each circuit. He stated that the Committee believes that it should report any problems arising in its review of disclosure statements to a responsible officer or body.

It was the view of the Conference that it would be inappropriate for the Committee to make use of the formal procedures of the Judicial Conduct and Disability Act. The Committee, however, was authorized, as one of its enforcement procedures, to make reports concerning judges who may appear to the Committee to be acting in violation of the Ethics in Government Act to the appropriate chief circuit judges.

Financial Disclosure Reports by Court Reporters

Court reporters employed in the United States district courts receive salaries from the government, derive compensation from the sale of official transcripts, and, in some instances, receive income from free-lance reporting. Section 308(10) of the Ethics in Government Act defines a judicial employee as "any employee of the judicial branch of the Government who ... receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule..." It was the view of the Committee that

while income from free-lance reporting is not "compensation" within the meaning of the Act, income from the sale of official transcripts is "compensation" under the Act. The Committee therefore recommended that financial disclosure reports be filed by official United States court reporters when gross receipts from the sale of official transcripts, plus regular salary, equal or exceed compensation at the level of Grade 16 of the General Schedule. This recommendation was approved by the Conference.

ADVISORY COMMITTEE ON CODES OF CONDUCT

Chief Judge Howard T. Markey, Chairman of the Advisory Committee on Codes of Conduct, presented the Committee's report.

Activities of the Committee

Judge Markey informed the Conference that since its last report the Committee has received 15 inquiries from persons subject to the various codes of conduct and has issued 14 advisory responses. The Committee will soon publish opinions relating to the removal of a disqualification through a divestiture of an impeding interest, political activity of spouses, and disqualification when a former judge of a court appears as counsel in a case before that court.

Membership in Clubs

Judge Markey also informed the Conference that an Ad Hoc Committee of the American Bar Association Division of Judicial Administration had considered the commentary to Canon 2 of the Code of Judicial Conduct for United States Judges relating to club memberships, which was approved by the Conference in March 1981 (Conf., Rept., p. 27). The report of that Committee is now under consideration by the Division of Judicial Administration, but a report to the ABA House of Delegates is not expected until February 1982 at the earliest.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

Report on the Federal Magistrates System

Judge Skopil presented to the Conference a comprehensive study of the Federal magistrates system which had been prepared by the Division of Magistrates of the Administrative Office of the United States Courts under the direction and guidance of the Committee. The Federal Magistrate Act of 1979 requires the Conference to submit such a report to the Congress by January 1982. Upon the recommendation of the Committee the Conference approved the report and authorized the Committee to make stylistic and editorial corrections and refinements of a nonsubstantive nature prior to the submission of the report to the Congress in December 1981.

Habeas Corpus Legislation

S. 653 and H.R. 3416, 97th Congress, are bills to limit the jurisdiction of the Federal courts and the role of United States magistrates in habeas corpus proceedings challenging convictions in state courts. The bills would repeal the statutory authority of a district judge to designate a magistrate to conduct hearings in a state habeas corpus case under 28 U.S.C. 2254. The Senate bill would further eliminate the authority of a magistrate to conduct an evidentiary hearing on any prisoner petition, state or federal, challenging conditions of confinement. In addition to these provisions the bills would also (1) codify the "contemporaneous objection" rule of Wainwright v. Sykes, 433 U.S. 72 (1977); (2) create a three-year statue of limitations on habeas corpus petitions from state court convictions; and (3) prohibit relitigation in Federal courts of factual determinations made by state judges unless specific, strict criteria are met.

Judge Skopil stated that the Committee had considered only those provisions of the bill relating to restrictions on the jurisdiction of magistrates and was of the view that they are undesirable. The 1976 amendments to the Federal Magistrates Act specifically authorized a magistrate to conduct an evidentiary hearing in any case filed in the court. The Committee was of the view that the paring away of the authority of the court to use magistrates in specific categories of cases would unduly limit the flexibility that has been one of the major reasons for the system's success to date. The Committee accordingly recommended, as a matter of policy, that the Conference oppose the provisions of these bills relating to the jurisdiction of magistrates. This recommendation was approved by the Conference.

Salaries of Part-Time Magistrates

Judge Skopil informed the Conference that some confusion has resulted from the misnumbering in the Federal Register of the 15 standard salary levels for part-time magistrates approved by the Conference in September 1979 (Conf. Rept., p. 83). While the amounts of the salaries shown in the Conference report and in the Federal Register are identical, the Conference report designates the highest salary as "Level 15" and the Federal Register shows the same salary as "Level 1". Upon the recommendation of the Committee, the Conference authorized the republication of the The Salary Schedule for Part-Time Magistrates in this report, as follows:

Level 15.....	$24,250
Level 14.....	23,100
Level 13.....	20,300
Level 12.....	17,900
Level 11.....	15,500
Level 10.....	13,600
Level 9.....	11,800
Level 8.....	10,000
Level 7.....	8,200
Level 6.....	6,400
Level 5.....	4,500
Level 4.....	3,600
Level 3.....	2,700
Level 2.....	1,800
Level 1.....	900

Changes in Magistrates 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. The salaries of full-time magistrate positions are to be determined in accordance with the salary plan previously adopted by the Conference.

FIRST CIRCUIT

Maine

(1) Increased the salary of the part-time magistrate position at Portland from $15,500 to $17,900 per annum.

Massachusetts

(1) Continued the part-time magistrate position at Worcester/Ayer for an additional four-year term.

(2) Reduced the salary of the part-time magistrate position at Worcester/Ayer from $20,300 to $13,600 per annum.

SECOND CIRCUIT

Southern District of New York

(1) Increased the salary of the part-time magistrate position at Poughkeepsie from $8,200 to $10,000 per annum.

THIRD CIRCUIT

New Jersey

(1) Authorized a new part-time magistrate position at Trenton at a salary of $13,600 per annum.

FOURTH CIRCUIT

Southern District of West Virginia

(1) Continued the part-time magistrate position at Bluefield for an additional four-year term.

(2) Decreased the salary of the part-time magistrate position at Bluefield from $1,800 to $900 per annum.

FIFTH CIRCUIT

Northern District of Florida

(1) Increased the salary of the part-time magistrate position at Panama City from $4,500 to $10,000 per annum.

(2) Continued the part-time magistrate position at Gainesville for an additional four-year term at the currently authorized salary of $2,700 per annum.

Southern District of Florida

(1) Changed the official location of the full-time magistrate position at West Palm Beach to Fort Lauderdale.

(2) Increased the salary of the part-time magistrate position at Key West from $2,700 to $6,400 per annum.

Northern District of Georgia

(1) Continued the full-time magistrate position at Atlanta which is due to expire on October 22, 1982 for an additional eight-year term.

Western District of Louisiana

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

Western District of Texas

(1) Increased the salary of the part-time magistrate position at Eagle Pass from $15,500 to $17,900 per annum.

SIXTH CIRCUIT

Eastern District of Kentucky

(1) Continued the part-time magistrate position at London for an additional four-year term.

(2) Decreased the salary of the part-time magistrate position at London from $10,000 to $6,400 per annum.

Western District of Kentucky

(1) Increased the salary of the part-time magistrate position at Hopkinsville from $23,100 to $25,950 per annum.

Northern District of Ohio

(1) Continued the part-time magistrate position at Lima for an additional four-year term.

(2) Decreased the salary of the part-time magistrate position at Lima from $1,800 to $900 per annum.

SEVENTH CIRCUIT

Central District of Illinois

(1) Authorized the part-time magistrate at Rock Island to exercise jurisdiction in the Southern District of Iowa.

(2) Continued the part-time magistrate position at Peoria for an additional four-year term at the currently authorized salary of $6,400 per annum.

Southern District of Indiana

(1) Continued the part-time magistrate position at Muncie for an additional four-year term at the currently authorized salary of $900 per annum.

EIGHTH CIRCUIT

Eastern District of Missouri

(1) Continued the part-time magistrate position at Ozark National Scenic Riverways for an additional four-year term.

(2) Decreased the salary of the part-time magistrate position at Ozark National Scenic Riverways from $6,400 to $1,800 per annum.

NINTH CIRCUIT

Arizona

(1) Continued the part-time magistrate position at Douglas (or Bisbee) for an additional four-year term at the currently authorized salary of $10,000 per annum.

(2) Authorized the part-time magistrate at Yuma to exercise jurisdiction in the Central and Southern Districts of California.

Southern District of California

(1) Converted the part-time magistrate position at San Diego to full-time status.

(2) Continued the part-time magistrate position at San Diego at the currently authorized salary of $25,950, until the appointment of the full-time magistrate.

Montana

(1) Continued the part-time magistrate position at Bozeman for an additional four-year term at the currently authorized salary of $900 per annum.

Nevada

(1) Converted the primary part-time magistrate position at Reno to full-time status.

(2) Continued the part-time magistrate position at Las Vegas for an additional four-year term at the currently authorized salary of $900 per annum.

(3) Discontinued the "back-up" part-time magistrate position at Reno and the part-time magistrate position at Elko upon the appointment of the full-time magistrate.

Western District of Washington

(1) Continued the part-time magistrate position at Mt. Rainier National Park for an additional four-year term at the currently authorized salary of $15,500 per annum.

TENTH CIRCUIT

Wyoming

(1) Authorized the clerk-magistrate at Cheyenne to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary of $11,350 per annum for magistrate duties.

(2) Continued the part-time magistrate positions at Lander, Casper and Green River for additional four-year terms at the currently authorized salaries of $2,700, $900 and $900 per annum, respectively.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Judge Robert E. Merhige, Jr., presented the report of the Committee in the absence of the Chairman, Judge Robert E. DeMascio.

Arrangements for Bankruptcy Judges

The Conference considered the Committee's report, together with the recommendations of the Director of the Administrative Office, and the recommendations of the circuit councils concerned, and took the following action relating to bankruptcy judge positions and changes in salaries and arrangements. The Conference further directed that these actions become effective when appropriated funds become available.

FOURTH CIRCUIT

Eastern District of North Carolina

(1) Authorized an additional full-time bankruptcy judge position at Wilson at the currently authorized statutory salary;

(2) Designated Wilson as the headquarters for the full-time position;

(3) Established concurrent district-wide jurisdiction with the existing full-time bankruptcy judge position for the district.

FIFTH CIRCUIT

Northern District of Alabama

(1) Authorized the transfer of the headquarters of the full-time bankruptcy judge position from Birmingham to Tuscaloosa and the transfer of the headquarters of the part-time position from Tuscaloosa to Birmingham subject to the approval of the Judicial Council of the Eleventh Circuit.

SIXTH CIRCUIT

Eastern District of Tennessee

(1) Designated Athens as a place of holding bankruptcy court for the Southern Division in addition to Chattanooga and Winchester.

TENTH CIRCUIT

Utah

(1) Authorized an additional full-time bankruptcy judge position at the currently authorized statutory salary;

(2) Designated Salt Lake City as the headquarters for the full-time position;

(3) Established concurrent district-wide jurisdiction with the existing full-time bankruptcy judge position for the district.

Study of Bankruptcy Judge Positions

Judge Merhige informed the Conference that the Committee had reviewed the status of the study being conducted by the Bankruptcy Division of the Administrative Office to determine the number of bankruptcy judges required in 1984. Approximately 100 bankruptcy judges have participated in a 12-week time study, the results of which will be coordinated with other available data to develop a series of case weights to be applied to the projected workload in each district. The time study was conducted under the auspices of the Federal Judicial Center.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

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

Sentencing Institutes

The Conference in March 1981 (Conf. Rept., p. 35) had approved a tentative agenda for a Joint Institute on Sentencing for the judges of the Second Circuit to be held November 12-13, 1981 in the vicinity of the Federal Correctional Institution at Otisville, New York. Upon the recommendation of the Committee the Conference approved the final agenda submitted by the Committee and, subject to the availability of funds, authorized the attendance of newly-appointed district judges from the First, Third, Fourth, and District of Columbia Circuits at this Institute. The Conference further authorized the attendance of full-time magistrates from the Second Circuit who have sentencing responsibilities.

The Conference also authorized the convening of a Joint Institute on Sentencing for the judges of the Eighth and Tenth Circuits to be held in Springfield, Missouri in April, 1982. A final agenda will be presented by the Committee to the Conference at its next session.

Judge Tjoflat informed the Conference that the Committee in the exercise of its oversight responsibility for the planning and conduct of Sentencing Institutes had developed a format for federal sentencing institutes that will focus more closely on the problems of a sentencing judge in

framing a sentence. The new format will be made available to all planning groups for their use in devising programs for sentencing institutes.

Sentencing Reform Act of 1981

S. 1555, 97th Congress, is a bill to improve the effectiveness of federal crime control in the areas of sentencing and for other purposes. It would establish an independent Sentencing Commission charged with the responsibility of promulgating guidelines for the use of district judges in determining sentences to be imposed upon convicted criminal defendants. The sentencing judge would be required to select the type of sanction (imprisonment, fine or probation) and to sentence the defendant within the maximum-minimum range specified by the Commission's guidelines unless the judge found "that an aggravating or mitigating circumstance exists that was not taken into consideration by the Sentencing Commission in formulating the guidelines." The bill would also provide for appellate review of felony sentences falling outside the guidelines, except those in which the sentences resulted from a Rule 11 plea agreement. Finally, the bill would require the Sentencing Commission to monitor sentencing practices in the district courts and would authorize the Commission to conduct training programs, seminars, and workshops for judges and probation officers to instruct them in the application of the sentencing guidelines. The purpose of the legislation is to eliminate unwarranted sentencing disparity.

The Conference in April 1976 (Conf. Rept., p. 10) considered a similar bill, S.2699, 94th Congress, and agreed with the views of the Committee on the Administration of the Probation System and the Committee on the Administration of the Criminal Law that there is no need for the creation of a separate Sentencing Commission and that a straight-forward review of sentences, whether by appellate review or by a panel of three judges, is to be preferred over the proposed legislation. The Committee pointed out that a Sentencing Commission would needlessly duplicate much of the work already being performed within the Judicial Branch in the conduct of Sentencing Institutes and in the compilation of sentencing data by the Administrative Office of the United States Courts and the Federal Judicial Center. Furthermore, a Sentencing Commission would duplicate the cooperative efforts of the Probation Committee, the Administrative Office, and the Federal Judicial Center in developing a

Probation Information Management System (PIMS), a project which is now under way. The Committee was further of the view that a straight-forward appellate review of sentences would be preferable to the piecemeal review provided in the bill. Although some form of review of sentences is necessary to reduce unwarranted disparity, the method of review, whether in the courts of appeals or by a panel of three district judges, as previously recommended by the Conference should be prescribed by legislation. In this regard the Committee is prepared to request the Federal Judicial Center to conduct research on the practical impact of any suggested method of review on the operation of the Federal courts. On recommendation of the Committee the Conference disapproved S. 1555 and the sentencing provisions of S. 1630, 97th Congress, which are practically identical to those of S. 1555. S. 1630 was introduced on September 17, 1981, and was commented upon by Judge Tjoflat in his report to the Conference.

The Conference authorized the Committee to monitor the progress of these bills or any similar legislation in the Congress and to communicate to the appropriate Congressional Committees any modifications in the legislation that would remove the objections specified in the Committee's report.

Mandatory Minimum Sentences

H.R. 27, 97th Congress, would amend Chapter 44 of Title 18, United States Code, to extend and strengthen the mandatory penalty feature for the use of firearms in Federal felonies and for other purposes. It was the view of the Committee that no additional sanctions are necessary and that a change in the long-standing policy of the Conference opposing mandatory minimum sentences is not warranted. The Conference disapproved the bill.

Probation Information Management System

Judge Tjoflat stated that work on the development of a Probation Information Management System (PIMS) is proceeding satisfactorily and that a statement of user information requirements is nearly completed. The Committee recently held a special session to review a Sentence Comparison Report, designed principally by the Federal Judicial Center, which would provide the sentencing judge with a statement of the range of sentences given to defendants

whose offender and offense profiles are similar to those of the person to be sentenced. This Sentence Comparison Report will be included in the PIMS system.

Pretrial Services Agencies

S. 923, 97th Congress, a bill to establish pretrial services agencies on a national basis, passed the Senate on June 18, 1981, and a similar bill, H.R. 3481, has cleared the House Judiciary Committee. H.R. 3481, however, has not been scheduled for full House action because of attempts to join it with proposals to amend the Bail Reform Act. Judge Tjoflat advised the Conference that sufficient funds are available to operate existing pretrial services agencies for approximately three-fourths of the fiscal year 1982. The Committee is hopeful that legislation will be enacted before available funds are exhausted.

Narcotic Aftercare Program

The Conference in March 1981 (Conf. Rept., p. 36) approved a draft bill to continue funding for the Narcotic Aftercare Program in an amount to be determined by the appropriations process. A bill, H.R. 3963, 97th Congress, was thereafter introduced to extend the drug aftercare program beyond September 1982. Following hearings of the bill, the House Subcommittee on Crime reported a clean bill which would extend authorization of the program for three more years.

Probation Office Positions

Judge Tjoflat stated that the Committee had endorsed the recommendation of the Committee on Court Administration that the Conference approve the staffing formula developed through the work measurement study conducted by the Administrative Office. This is a replacement for the current staffing formula for probation offices and the Committee authorized the Administrative Office to use the formula for authorizing and allocating positions. He also stated that the chief judges of the district courts had projected a need for an additional 319 positions in the probation offices for the fiscal year 1983, but that the Committee had endorsed a 1983 request for only 219 positions, including 126 probation officers, 83 clerks and 10 probation officer assistants.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge Alexander Harvey II, Chairman of the Committee on the Administration of the Criminal Law, presented the Committee's report.

Speedy Trial Guidelines

The Conference in March 1981 (Conf. Rept., p. 38), authorized the Committee to continue to issue revisions and amendments to the publication entitled "Guidelines to the Administration of the Speedy Trial Act of 1974." Judge Harvey informed the Conference that the Committee has adopted a number of additional amendments which will soon be distributed to Federal judges, magistrates, clerks of court and other court officials.

Bail Reform

The Committee reported that various bills have been introduced in the United States Senate to amend the Bail Reform Act of 1966, including S. 440, S. 482, S. 954, S. 439, and S. 1253, 97th Congress. The primary purpose of each of these bills is to impose greater restrictions on the release of defendants prior to trial and to enable federal judicial officers to consider "dangerousness" as a factor in determining the appropriateness of a defendant's pretrial release.

The Conference in October 1971 (Conf. Rept., p. 40) endorsed an amendment to the Bail Reform Act to authorize consideration of "danger to other persons or the community" in the setting of conditions of pretrial release. A similar recommendation was reaffirmed by the Conference at its session in March 1977 (Conf. Rept., p. 17).

Judge Harvey informed the Conference that, after consideration of the various bills now pending in Congress, the Committee voted to recommend that the Conference reaffirm its previous position and once again urge Congress to adopt a relatively uncomplicated amendment to the Act by adding as one of the factors to be considered by a judicial officer in determining conditions of release pending trial "the safety of any other person or the community." This recommendation was approved by the Conference.

Mandatory Minimum Sentences

Judge Harvey stated that numerous bills have been introduced in the 97th Congress to provide for mandatory minimum sentences in certain types of criminal cases. In addition to requiring the imposition of a mandatory minimum sentence in particular cases and prohibiting the granting of probation, several bills provide that the defendant shall not be eligible for parole. Judge Harvey pointed out that the Judicial Conference has consistently opposed legislation of this sort. Statutes of this type limit judicial discretion in the sentencing function and tend to increase the number of criminal trials and the number of appeals in criminal cases. Upon the recommendation of the Committee the Conference reaffirmed its opposition to legislation requiring the imposition of mandatory minimum sentences.

Commitment of Mentally Incompetent Persons

S. 1106 and H.R. 112, 97th Congress, would amend Title 18, United States Code, to improve the system dealing with mentally incompetent persons charged with offenses against the United States. In April 1976 (Conf. Rept., p. 11) the Conference endorsed a proposal of the Committee to amend Title 18, United States Code, by adding a new Chapter 313 which would provide, inter alia, for the civil commitment, after hearing with due process safeguards, of a defendant who, having been charged with an offense against the United States, is acquitted after raising the defense of lack of criminal responsibility and who is further found by reason of mental disease or defect to be a danger to himself or others. In March 1977 (Conf. Rept., p. 18) the Conference approved various amendments to the proposed legislation previously recommended by the Committee.

Judge Harvey stated that it was the view of the Committee that there is a genuine need for legislation of this sort providing for the Federal commitment of mentally incompetent persons. It was the view of the Committee that the bill previously endorsed by the Conference is superior to either S. 1106 or H.R. 112. The Conference, upon the recommendation of the Committee, reaffirmed its approval of the draft bill submitted by the Committee and authorized its transmission to the Congress.

Speedy Trial Act

The Conference in March 1981 (Conf. Rept., p. 39) directed the Committee to consider whether the provisions of the Speedy Trial Act which set a minimum 30-day period for the setting of a criminal trial should be repealed and to report its recommendations to the Conference at its next session. Judge Harvey stated that this provision of the Speedy Trial Act had originally been recommended by a special Ad Hoc Subcommittee of the Committee on Court Administration and that the proposal had been approved by the Conference in September 1977 (Conf. Rept., p. 53) and again in March 1978 (Conf. Rept., p. 29). At the Senate hearings on the Speedy Trial Act Amendments Act of 1979, the Department of Justice, along with representatives of the Judicial Conference, supported a 30-day minimum period of time before trial.

Judge Harvey pointed out that the 30-day minimum period before trial assures the defendant a reasonable length of time to prepare his case and that with the consent of the defendant a trial may be scheduled at an earlier date. In view of the history of this amendment to the Act, the Committee reported that it would not recommend that the 30-day minimum period be eliminated from the Act.

Protection of Federal Officers

S. 814, H.R. 3303 and H.R. 3648, 97th Congress, are bills to amend 18 U.S.C. 1114 to provide criminal penalties for killings or assaults against officers or employees of the United States. S. 814 would include members of the families of federal officers within the scope of the legislation.

It was the view of the Committee that legislation previously endorsed by the Conference (Conf. Rept., Sept. 1980, p. 105) to make it a crime for a person to threaten with bodily harm or seek to intimidate officers and employees of the United States Courts was superior to the currently pending bills in providing protection to judicial officers and staff members of the courts of the United States. Upon the recommendation of the Committee the Conference reaffirmed its support of the previously endorsed legislation and further endorsed the provision of S. 814, 97th Congress, making it a crime to threaten or assault members of the family of a judge or of other court personnel.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

Secrecy of Grand Jury Proceedings

In its report to the Conference in March 1981 (Conf. Rept., p. 39) the Committee submitted various recommendations pertaining to the secrecy of grand jury proceedings, which were then approved by the Conference and transmitted to district judges, the General Accounting Office, the Department of Justice, and Committees of Congress. However, a recommendation that all contested court proceedings arising from or concerning ongoing grand jury operations, except for contempt hearings as to recalcitrant witnesses, should be conducted in a closed courtroom removed from the hearing of the press and the public was referred back to the Committee for further study.

Judge Atkins pointed out that this recommendation was intended to reflect and respond to the concerns of the General Accounting Office that the particulars of pending grand jury proceedings which have yet to culminate in indictments are too often incidentally exposed to public observation and discussion through ancillary hearings on such matters as motions to quash subpoenas, motions for protective orders, and the immunity of witnesses. After independent review and consideration of this issue the Committee reported its agreement that the premature and inadvertent revelation of grand jury business in this manner poses a threat to the integrity of the process and contravenes the policies underlying the traditional role of grand jury secrecy. Furthermore the disclosure of proceedings before the grand jury may threaten the reputations of innocent persons who become involved in an investigation and may also subject witnesses to intimidation and physical danger. The Committee was therefore of the view that the district courts should be advised to treat judicial proceedings relating to grand jury matters as closed hearings, but that each court should remain free to determine its own policies and to vary them if necessary in view of the overall circumstances. Hearings to hold a recalcitrant witness in contempt under 28 U.S.C. 1826, however, should continue to be held in open court. Upon the recommendation of the Committee the Conference adopted the following resolution and authorized its distribution to all United States district judges:

"The Judicial Conference recommends that all district court hearings on motions to quash subpoenas, motions for protective orders, or other contested matters affecting grand jury proceedings prior to the indictment stage should be closed to the public and press. An exception to this practice of closure should be made in the case of contempt trials against recalcitrant witnesses or others, which would appear appropriate to be conducted in open court under the policy of Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980)."

Recording of Grand Jury Proceedings

Judge Atkins stated that the United States District Court for the Northern District of Illinois had requested that one of the official court reporter positions temporarily authorized for that court by the Conference be converted to permanent status for the purpose of serving as the "official reporter to the grand juries of the court." The Court Administration Subcommittee on Supporting Personnel had requested the Committee to consider the policy implications of this request and to recommend to the Conference whether there should be any change in the existing method of recording grand jury sessions. Rule 6, Federal Rules of Criminal Procedure, as amended in 1979, requires that all proceedings of the grand jury, except for its deliberations and voting, shall be recorded stenographically or by an electronic recording device. The rule further provides that the electronic recording or the reporter's notes and any transcript produced shall remain in the custody or control of the attorney for the Government unless otherwise ordered by the court. The rule, however, does not fix the responsibility for producing such a record.

Prior to 1979 the recording of grand jury sessions was optional, although many district courts by local rule or order had required a recording. Such recordings were made by private reporters retained under contract by the Department of Justice and paid from its appropriations. Following the 1979 amendment to require recording, this same procedure continued to be followed in virtually all judicial districts. Thus the recording of grand jury sessions has not been viewed as a function of the courts or a duty properly assignable to their official court reporters.

The Committee therefore recommended that the Conference approve the existing policy whereby the Department of Justice shall continue to provide for the recording of grand jury proceedings, but that judges of the district courts be advised to administer an appropriate oath at the beginning of each grand jury term to the individual retained by the Department of Justice to record grand jury proceedings as a means to assure such reporter's cognizance of his accountability under Rule 6, Federal Rules of Criminal Procedure, to report accurately and to maintain the secrecy of the proceedings. This recommendation was approved by the Conference.

Juror Utilization

A recent report of the General Accounting Office concluded that there has not been much improvement in juror utilization in the district courts over the last five years and attributed the absence of recent improvement to a failure of many district courts to use efficient juror utilization procedures, a failure of circuit judicial councils to assume an active supervisory role, and the lack of adequate statistical and descriptive information on jury practices. The Committee expressed some concern about the practicality of some of the recommendations contained in the report of the General Accounting Office, but concurred in its conclusion that there is room for further improvement in juror utilization. The House Appropriations Committee has requested a report on the results of efforts to comply with the General Accounting Office recommendation to be submitted to the Committee along with the fiscal year 1983 budget requests.

Judge Atkins stated that the Committee has acceded to the General Accounting Office recommendation that the statistics measuring juror usage should be revised to focus on the initial day of jury selection for each trial, eliminating the length and complexity of trials as a factor in the utilization index. The staff of the Administrative Office has been directed to consider a new statistical format to include "first day of trial" efficiency. Upon the recommendation of the Committee the Conference urged each circuit judicial council to exercise increased oversight of the juror utilization patterns in the district courts of the circuit and, particularly, to conduct a training workshop on this subject for district and bankruptcy judges in the near future.

Grand Jury Witnesses

S. 988, 97th Congress, would add a new provision to Chapter 15 of Title 18, United States Code, to allow witnesses the assistance of counsel in the grand jury room, to require certain notices to be given grand jury witnesses as to their rights, and to make available the transcript of grand jury proceedings to indicted defendants. The Committee reported its concern with several provisions of the bill, especially the granting of authority to permit attorneys for witnesses to be present in the grand jury room. The Committee felt that this procedure would impede the investigative process of the grand jury, making it more closely resemble an adversary proceeding contrary to the essential nature and historical traditions of the grand jury system. The presence of attorneys would also make it more difficult to maintain the secrecy of proceedings. Judge Atkins informed the Conference that the Committee would oppose this bill in the event its views are requested.

Complex Criminal Jury Trials

The Conference in March 1981 (Conf. Rept., p. 40) authorized the Committee to study the techniques of managing a jury trial in a complicated criminal case. Judge Atkins reported that a Subcommittee has begun this work and has requested advice and suggestions from approximately 30 district judges who have conducted lengthy criminal trials in the last three years. A compendium of suggested procedures to be used in these trials will be presented to the Conference at its next session.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge George L. Hart, Jr., Chairman of the Committee on Intercircuit Assignments, submitted a written report to the Conference.

Activities of the Committee

During the period February 16, 1981, through August 15, 1981, the Committee recommended 84 assignments to be undertaken by 61 judges. Of this number, 7 were senior judges, 18 were active circuit judges, 7 were active district judges, 5 were active judges of the Court of Customs and Patent Appeals, 2 were senior judges of the Court of Claims, 7 were

active judges of the Court of Claims, 3 were active judges of the Court of International Trade, and 1 was an active bankruptcy judge.

Thirty-nine judges undertook 48 assignments to the courts of appeals, and 9 judges undertook 12 assignments to the district courts. In addition, one active district judge was assigned to the Court of Customs and Patent Appeals, five active judges of the Court of Customs and Patent Appeals were assigned to serve on the Court of Claims, seven active judges of the Court of Claims were assigned to the Court of Customs and Patent Appeals, and the ten active judges of the Court of Appeals for the District of Columbia Circuit were assigned to serve on the Temporary Emergency Court of Appeals. One active bankruptcy judge was assigned to perform duties in a United States Bankruptcy Court outside his circuit.

Guidelines for Intercircuit Assignments

Since its last report to the Conference the Committee, with the approval of the Chief Justice, has revised the guidelines for intercircuit assignments. The new guidelines are as follows:

1. A circuit which lends active judges on intercircuit assignments will not be permitted to borrow judges from another circuit.

2. A circuit which borrows active judges by intercircuit assignment will not be permitted to lend active judges for assignment to another circuit.

3. The lender/borrower rule does not apply to senior judges, circuit or district.

4. When active judges are borrowed or lent for a particular case or cases, for example because of disqualification of judges in the borrowing circuit to hear the case or cases, the lender/borrower rule will not apply.

5. The 750-mile travel limitation does not apply to judges who are assigned to work on circuit courts.

6. A judge assigned to work on the general calendar of a district court must serve at least two weeks if the travel is less than 750 miles and for at least one month if the travel exceeds 750 miles.

7. The borrower/lender rule does not apply to the Court of Claims, the Court of Customs and Patent Appeals, and to the Court of International Trade.

8. On assignments to either a circuit or district court, judges may take either a law clerk or a secretary; reimbursement for additional supporting personnel is not permitted. The court to which a judge is assigned is expected to furnish any additional supporting personnel needed.

9. Until the calendar condition of the Ninth Circuit improves, no judge, circuit or district, active or senior may be assigned outside the circuit.

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 summary report on appointments and payments under the Criminal Justice Act for the six-month period October 1, 1980 through March 31, 1981. The report indicated that $29,500,000 was available at the beginning of the current fiscal year for the implementation of the Criminal Justice Act including an appropriation of $24,000,000 and a surplus carried forward from the fiscal year 1980 of $5,500,000. Projected obligations during the fiscal year 1981 are $27,500,000. During the first half of the fiscal year approximately 21,200 persons were represented under the Criminal Justice Act compared to 20,671 during the first half of the fiscal year 1980, an increase of 2.6 percent. It is anticipated that the total number of appointments during the fiscal year 1981 will be 43,500, an increase of 1.4 percent over the 42,900 appointments made during the fiscal year 1980. Federal Public Defender organizations and Community Defender organizations represented 11,187 persons during the first half of the year, or 52.8 percent of total representations.

Budget Requests — Federal Public Defenders

The Criminal Justice Act, as amended, requires each Federal Public Defender organization, established pursuant to 18 U.S.C. 3006A(h)(2)A, to submit a proposed budget to be approved by the Judicial Conference in accordance with 28 U.S.C. 605. The Conference approved the following supplemental and annual budgetary requests for these offices:

Public Defender Organization	Supplemental Requests Approved for F.Y. 1982	Budget Requests Approved for F.Y. 1983
Arizona	.....	$814,388
California, N.	$50,548	746,492
California, E.	.....	654,428
California, C.	59,893	1,529,959
Colorado	.....	321,599
Connecticut	.....	283,533
Florida, N.	.....	179,734
Florida, M.	.....	460,378
Florida, S.	148,000	701,439
Georgia, S.	64,184	240,303
Illinois, C. & S.	.....	151,610
Kansas	.....	329,141
Kentucky, E.	.....	256,072
Louisiana, E.	.....	302,288
Maryland	31,942	529,957
Massachusetts	.....	302,031
Minnesota	.....	180,985
Missouri, W.	.....	452,099
Nevada	.....	319,124
New Jersey	.....	593,385
New Mexico	.....	257,507
Ohio, N.	.....	259,795
Puerto Rico	37,418	335,224
Pennsylvania, W.	.....	277,644
South Carolina	24,800	265,726
Tennessee, M.	.....	213,299
Tennessee, W.	27,741	166,709
Texas, S.	.....	554,745
Texas, W.	.....	567,219
Virgin Islands	.....	396,360
West Virginia, S.	.....	150,888
Washington, W.	.....	(Deferred)
Total	$444,526	$12,794,061

The Committee was authorized to consider further the budget request for the Federal Public Defender for the Western District of Washington and to report thereon at the next session of the Conference.

Grant Requests — Community Defender Organizations

The Conference approved supplemental funding for the fiscal year 1982 for the Federal Defender Program, Inc. of the Northern District of Georgia in the amount of $21,982 and for the Federal Defender Inc., of the District of Oregon in the amount of $61,535. This additional funding for the Community Defender for the District of Oregon will provide for the continuation of the branch office in Eugene, Oregon previously approved by the Conference, and for other purposes including the acquisition of word processing equipment. This equipment will not be acquired without the prior approval of the Administrative Office.

The Conference approved sustaining grants for the fiscal year ending September 30, 1983, for the seven community defender organizations as follows:

Federal Defenders of San Diego,Inc.	$971,964
Federal Defender Program, Inc. Atlanta, Georgia	290,744
Federal Defender Program, Inc. Chicago, Illinois	545,796
Legal Aid and Defender Association of Detroit, Michigan, Federal Defender Division	648,613
The Legal Aid Society of New York, Federal Defender Services Unit	1,443,903
Federal Defender Inc., Portland, Oregon	442,234
Defender Association of Philadelphia, Federal Court Division	482,324
TOTAL	$4,805,578

Authorization for the Payment of Transcript Costs

Judge MacBride stated that the Administrative Office of the United States Courts has under consideration the delegation of authority to clerks of court to pay vouchers covering the cost of transcripts ordered by counsel appointed under the Criminal Justice Act. The vouchers would be subject to a post-payment audit by the Administrative Office. If the Administrative Office decides to adopt this procedure, a new CJA Form 24, Authorization and Voucher for Payment of Transcript, would be required, and a change to the present CJA Form 21, Authorization and Voucher for Expert and Other Services, would also be required. The Conference, upon the Committee's recommendation, authorized the Director of the Administrative Office to decentralize tne payment of claims for transcript services under the Criminal Justice Act, and approved the new CJA Form 24 and an amended CJA Form 21.

The Conference also amended Paragraph 2.27A of the Guidelines for the Administration of the Criminal Justice Act to read as follows:

A. Reimbursement for Transcripts.

The cost of court authorized transcripts may be claimed as a reimbursable expense, as provided for in Subsection (d)(1) of the Criminal Justice Act (but see paragraph 3.12 of these Guidelines.) Claims for reimbursement for payments for transcripts authorized by the court should be submitted on CJA Form 24. (See Appendix A.)

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Edward T. Gignoux, Chairman of the Committee on Rules of Practice and Procedure, presented the Committee's report.

Amendments to the Criminal Rules and the Rules Governing Procedures in Section 2254 Cases and Section 2255 Proceedings

Upon the recommendation of the Committee the Conference approved proposed amendments to Rules 1, 5(b), 9(a), 9(b)(1), 9(b)(2), 9(c)(1) and 9(c)(2), 9(d)-abrogated, 11(c)(1),

11(c)(4), 11(c)(5), 20(b), 40(d)(1), 40(d)(2), 45(a), 54(a), 54(b)(4), and 54(c) of the Federal Rules of Criminal Procedure; an amendment to Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts; and an amendment to Rule 2(b) of the Rules Governing Section 2255 Proceedings. Included are proposed amendments to the forms for Section 2254 cases and Section 2255 proceedings. These proposed amendments are accompanied by Advisory Committee notes which explain their purpose and intent.

Judge Gignoux stated that the proposed amendments are "technical" in nature and are reported to be noncontroversial. They would update the criminal rules in the light of the 1979 amendments to the Federal Magistrates Act, correct some inaccuracies, and simplify some procedures. The proposed amendment to Rule 20, which does involve a matter of substance, was submitted to the bench and bar for comment in November 1979. The Advisory Committee reported that the amendment had met with unanimous approval. The proposed amendments to the rules governing Section 2254 and Section 2255 proceedings and the corresponding changes in the forms would eliminate the requirement that petitions be "sworn to" and would provide that the signing of the petition is "under penalty of perjury". See 28 U.S.C. 1746.

Upon the recommendation of the Committee the Conference authorized the transmission of these proposed amendments 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.

Federal Rules of Evidence

Recently a small group of judges, practicing attorneys, and academicians convened in Williamsburg, Va. under the auspices of the Federal Judicial Center to review the operation of the Federal Rules of Evidence during the six years the rules have been in effect. The group concluded that the Evidence Rules have been an outstanding success and are working extremely well. Some problems have arisen which should be addressed, but the group concluded that there is no problem serious enough to require any immediate or emergency action. It was the view of the Committee that the time has now arrived to reactivate an Advisory Committee on the Federal Rules of Evidence to review the forthcoming report on the Williamsburg Conference and to consider various proposals

for rules changes recommended in legal literature. Upon the recommendation of the Committee the Chief Justice was requested to reconstitute an Advisory Committee on the Federal Rules of Evidence.

Bankruptcy Rules

Judge Gignoux advised the Conference that the Advisory Committee on Bankruptcy Rules has met on eight separate occasions and has made substantial progress in its work of drafting rules governing cases and proceedings under the new Bankruptcy Code. The Committee has scheduled seven more meetings extending into 1982 and will circulate draft rules to the bench and bar for comment, probably in May 1982. The Advisory Committee hopes to complete its work on these new rules in time for them to become effective on March 1, 1984 when the new Bankruptcy Code becomes fully effective.

Civil Rules

In June 1981 the Advisory Committee on the Federal Rules of Civil Procedure circulated to the bench and bar for comment proposed amendments to various rules of civil procedure. Public hearings on these proposed amendments are scheduled to be held in Washington, D.C. on October 16, 1981, and in Los Angeles, California on November 6, 1981. The Advisory Committee will meet again in January 1982 to consider the comments received.

Judge Gignoux also informed the Conference that the Advisory Committee on Civil Rules is studying a proposed amendment to Rule 4, Federal Rules of Civil Procedure, pertaining to service of process. There is urgency to this endeavor because of the desire of the United States Marshals Service to discontinue the service of process in private civil litigation for lack of funding. A proposed amendment to Rule 4 will be submitted to the Conference for consideration at its next session.

Appellate Rules

The Advisory Committee on the Federal Rules of Appellate Procedure has under consideration proposed amendments to the appellate rules required by the new Bankruptcy Code and the Federal Magistrates Act of 1979, and

Bankruptcy Code and the Federal Magistrates Act of 1979, and in particular is studying the separate appendix requirement of present Rule 30, F.R.A.P. Because of a shortage of appropriated funds the Committee has held only one meeting during the current fiscal year, but plans to meet again after October 1, 1981.

IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE

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

During the past year, five pilot district courts have adopted local rules implementing at least some aspect of the Devitt Committee recommendations on the admission of attorneys. A pilot program is currently in operation in the District of Rhode Island. In addition the Eastern District of Michigan had previously adopted a local rule pertaining to student practice, and the Western District of Texas has adopted a local rule providing for examination and peer review. In all but one of the 14 districts participating in the pilot program, advisory or program committees have been appointed, and in some courts draft rules have been prepared.

As anticipated, various problems have arisen in the implementation program which will require assistance to the participating courts. The Committee has therefore adopted a suggestion that it initiate a service to provide to the pilot districts regular mailings including current developments, sample local rules, examination questions, and other materials of mutual value. The Federal Judicial Center has been asked to provide the pilot courts with copies of its anticipated biannual status reports, as well as to circulate throughout the pilot districts copies of newly-received rules and other program materials. The Committee has under consideration a suggestion for another seminar or meeting of representatives of the pilot courts similar to the one held at the Federal Judicial Center in September 1980. The Committee is also exploring with the Administrative Office a determination of the level of personnel and budgetary assistance required for these programs and the extent to which such assistance can be provided to the pilot courts out of existing appropriations.

FUTURE OF THE JUDICIARY

Judge J. Clifford Wallace reported to the Conference on the status of a study of the future of the Federal Judiciary which he agreed to undertake at the request of the Chief Justice. The purpose of the study is to enable the Federal Judiciary to prepare for changes that may occur in the next twenty years. Judge Wallace called attention to a bill recently introduced by Senator Howell Heflin, S. 1530, 97th Congress, to establish a permanent Federal Court Study Commission. Hearings on the bill are expected to be conducted later this year.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the United States Court of Appeals during the calendar year 1982 at the following locations: at Asheville, North Carolina in the Fourth Circuit; at Kansas City, Missouri and Omaha, Nebraska in the Eighth 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

October 27, 1981

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