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

OCTOBER 28–29, 1971

WASHINGTON, D.C.
1971

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Rowland F. Kirks
Director

REPORT

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

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

OCTOBER 28–29, 1971

The Judicial Conference of the United States convened on October 28, 1971, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Conference continued in session on October 29. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:
Judge Edward A. Tamm, District of Columbia*
Chief Judge John J. Sirica, District of Columbia
First Circuit:
Chief Judge Bailey Aldrich
Judge Edward T. Gignoux, District of Maine
Second Circuit:
Chief Judge Henry J. Friendly
Chief Judge David N. Edelstein, Southern District of New York
Third Circuit:
Chief Judge Collins P. Seitz
Chief Judge Caleb M. Wright, District of Delaware
Fourth Circuit:
Chief Judge Clement F. Haynsworth, Jr.
Judge Oren R. Lewis, Eastern District of Virginia
Fifth Circuit:
Chief Judge John R. Brown
Chief Judge E. Gordon West, Eastern District of Louisiana
Sixth Circuit:
Chief Judge Harry Phillips
Chief Judge Carl A. Weinman, Southern District of Ohio
Seventh Circuit:
Chief Judge Luther M. Swygert
Chief Judge Robert A. Grant, Northern District of Indiana
Eighth Circuit:
Chief Judge M. C. Matthes
Chief Judge Oren Harris, Western District of Arkansas
Ninth Circuit:
Chief Judge Richard H. Chambers
Judge Fred M. Taylor, District of Idaho

*Designated by the Chief Justice, vice Chief Judge David L. Bazelon who was unavoidably absent.

Tenth Circuit:
Chief Judge David T. Lewis
Judge Hatfield Chilson, District of Colorado
Court of Claims:
Chief Judge Wilson Cowen
Court of Customs and Patent Appeals:
Chief Judge Eugene Worley

Senior Circuit Judges William H. Hastie, John S. Hastings, Albert B. Maris and Elbert P. Tuttle, Circuit Judges Robert A. Ainsworth, Jr., Irving R. Kaufman and Francis L. Van Dusen, Senior District Judge Roy L. Harper, District Judges Edward J. Devitt, Charles M. Metzner, Edward Weinfeld and Alfonso J. Zirpoli attended all or some of the Conference.

The Honorable Richard G. Kleindienst, Deputy Attorney General of the United States, and the Honorable Erwin N. Griswold, Solicitor General of the United States, attended a portion of the first session of the Conference and addressed the Conference on matters of concern to their office and the federal judiciary.

Senior Judge Alfred P. Murrah, Director of the Federal Judicial Center and Chairman of the Panel on Multidistrict Litigation, submitted to the Conference the reports of the Center and the Panel, each of which has subsequently been circulated. Judge Murrah also presented to the Conference the Deputy Director of the Federal Judicial Center, Mr. Richard Green.

Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, and Mr. William E. Foley, Deputy Director, attended all of the sessions of the Conference.

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

Mr. Kirks, Director of the Administrative Office of the United States Courts, reported to the Conference on the judicial business of the United States courts in fiscal year 1971.

The annual report of the Director shows a large increase during the year in the caseloads of the United States courts of appeals and the United States district courts across the country. Appeals to the courts of appeals increased 10 percent in the year ending June 30, 1971, thus reaching an all-time high of 12,718. Civil and criminal cases filed in the United States district courts increased in the same year nine percent to an all-time high of 136,553. Mr. Kirks emphasized that the backlog of civil and criminal cases in the dis-

trict courts now exceeds 124,000, an increase of nine percent over the prior year, although civil cases on the average reached trial in the district courts in 11 months in 1971 as compared with an interval of 12 months in 1970 and 13 months in 1969.

The report shows that appeals in the United States courts of appeals are on the increase in civil rights cases, in suits by state and federal prisoners and in narcotics and bank robbery cases. A large part of the increase in criminal cases in the district courts is attributable to embezzlement, bank robberies and theft, violations of the narcotics laws and violations of the Selective Service Act.

The Conference authorized the Director to release immediately the preliminary edition of the annual report and to revise and supplement the final printed edition.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

Speedy Trial Legislation

The Conference considered two bills referred by the House Judiciary Committee, H.R. 6045 and H.R. 7108. The Conference had considered the substance of these bills at the March 1970 session (Conf. Rept., p. 17), and at that time disapproved the portions of the bills requiring trial within 120 days or in cases of crimes of violence within 60 days and the portion of the bill relating to amendments to the Bail Reform Act having to do with pretrial service agencies. The Conference adhered to its previous position and disapproved Title I of H.R. 6045 and Titles I and II of H.R. 7108. While the Conference approved the objectives of Title II of H.R. 6045 and Title III of H.R. 7108, it took the position that the services which should be performed through pretrial agencies as provided in the bills could be more effectively performed and administered through the probation officers of each court provided Congress furnishes the necessary funding for the additional probation officers needed to render these services and also provided that the operation and contracting for the operation of such facilities as halfway houses or community treatment centers are made executive functions to be performed by an executive branch agency.

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Setting Aside of Convictions

The Conference next considered an amendment to the probation law to extend the present setting aside of convictions as outlined in 18 U.S.C. 5021(b) to all probationers regardless of age at the time of conviction. This extension would be available at the discretion of the court without any special finding of eligibility at the time of sentence. While the Conference agreed as to the rehabilitation benefits that might accrue to some probationers, it took the position that it would not be appropriate to recommend such legislation of general application at this time.

Bail Reform Act

In considering H.R. 8550, 92d Congress, which would amend the Bail Reform Act to authorize consideration of danger to other persons or the community in setting conditions of release, to authorize revocation of pretrial release for persons who violate their release conditions, intimidate witnesses or jurors or commit new offenses, the Conference approved the bill provided the proposed mandatory minimum sentencing provisions contained in Section 3150 and Section 3150D are deleted. The Conference reaffirmed its disapproval of mandatory minimum sentences, particularly when applied to defendants who may be in default of appearance for a myriad of reasons requiring some flexibility in applying penalties therefor.

Habeas Corpus

The Conference noted S. 2090, 92d Congress, which would amend 28 U.S.C. 2241(d) so that a district court may not transfer an application for a writ of habeas corpus to another district having concurrent jurisdiction. The Conference in disapproving this legislative proposal pointed to the value of permitting transfers as provided in Section 2241(d) which has been clearly demonstrated in states having multiple federal districts.

Commitment of Persons Acquitted on the Grounds of Insanity

The Conference noted that at its October 1969 session it had approved and recommended to the Congress enactment of legislation prepared by an interdepartmental group which constituted an entire revision of Chapter 313 of Title 18, United States Code (Conf. Rept., p. 61). The Conference noted that federal power to

commit persons acquitted on the grounds of insanity through civil process is urgently needed and reaffirmed its approval of the proposed revision of Chapter 313.

Appeal by a Defendant Following Entry of a Guilty Plea

The Conference at its October 1970 session (Conf. Rept., p. 57) approved proposed legislation to provide that a defendant who has pleaded guilty to an offense may appeal from a denial of his motion made before entry of such plea of guilty for the return of seized property or for the suppression of evidence, with a proviso that a judge continuing the motion must certify that the appeal raises a substantial question. The proposed bill would require that the appeal be taken within ten day days of the entry of judgment. The Conference reaffirmed its approval of this legislative proposal.

Other Legislation

The Conference noted two bills which in its opinion involved matters of legislative policy and, accordingly, took no action: (1) H.R. 191, entitled Criminal Injuries Compensation Act and (2) S. 1121, a bill calling for reform of the Federal Elective Process.

Committee on the Operation of the Jury System

The Committee's report to the Conference was presented by its Chairman, Judge Irving R. Kaufman.

Size of Juries

The Conference first considered H.R. 7800 which would reduce the size of juries in civil and criminal cases. The Conference decided to reaffirm the resolution adopted at its March 1971 session approving in principle a reduction in the size of juries in civil trials in United States district courts. The Conference took no action with respect to the portion of the bill relating to the size of juries in criminal cases since this is a matter which will require the study of the Advisory Committee on Criminal Rules and other appropriate committees of the Conference.

Peremptory Challenges

The Conference agreed to the proposal of the Committee to refer to the Committee on the Rules of Practice and Procedure for appropriate study the proposition that the number of peremp-

tory challenges in capital cases be fixed at twelve for each side, in other felony cases at five and in misdemeanors at two and for good cause shown to grant such additional challenges as the court in its discretion shall permit.

Reduction of Eligibility Age for Federal Jury Service

The Conference next considered S. 1975 and H.R. 8829, both of which would result in the reduction of the eligibility age for federal jury service from 21 years to 18 years. The Conference agreed to ask for an expression of the views of the Committee on Court Administration on this matter and also ask for an expression from the Administrative Office as to how this proposed legislation would affect the administrative mechanism currently in operation in connection with the Jury Selection and Service Act of 1968.

Utilization of Jurors

The Committee noted that a four-month in depth study of juror utilization in the Southern District of New York had been undertaken under the joint auspices of the Institute of Judicial Administration and the Federal Judicial Center. The Conference agreed that the suggestion contained in the report of this survey should be implemented in any judicial district where, in the opinion of the judges, the suggestion would improve juror usage efficiency, thus tending to eliminate the frustrating experience of citizens summoned to civic duty who must wait long hours in the court house, often in vain.

Legislation

The Conference noted and voted its disapproval of H.R. 1615 which would, in effect, call for federal supervision of state jury selection. The Conference noted the Committee report which pointed to the fact that this legislation would establish a tremendously costly bureaucratic supervisory structure and add to the responsibilities of federal courts substantially as well as increase the per diem cost of jurors.

The Conference voted its approval of H.R. 2589 which would make an answer to the race question on the federal juror questionnaire form mandatory. This is in furtherance of Conference action at the September 1969 session (Conf. Rept., p. 66).

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Judge Edward Weinfeld, Chairman, presented the Committee's report to the Conference.

SALARIES AND ARRANGEMENTS FOR REFEREES

The Committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated September 2, 1971, as well as the recommendations of the circuit councils and district judges concerned for the authorization of new six-year terms for seven referee positions to become vacant by expiration of term, for increases in salaries of one part-time and five full-time referee positions, to increase one part-time referee position to full-time service, to authorize one additional part-time referee position, to establish district-wide concurrent jurisdiction for the referees of the Middle District of Florida and for the referees of the Eastern District of Missouri in the Western District of Missouri and to authorize changes in the regular places of office of referees in two districts. The Conference approved the Committee report and recommendations, all to be effective November 1, 1971, unless otherwise indicated, subject to the availability of funds.

SECOND CIRCUIT

Eastern District of New York

(1) Changed the regular place of office of the referees in bankruptcy at Mineola in the Eastern District of New York to Westbury.

THIRD CIRCUIT

Middle District of Pennsylvania

(1) Increased the salary of the full-time referee at Wilkes-Barre from $25,000 to $30,000 per annum.

FOURTH CIRCUIT

District of South Carolina

(1) Increased the salary of the full-time referee at Columbia from $25,000 to $30,000 per annum.

Northern District of West Virginia

(1) Increased the salary of the full-time referee at Wheeling from $25,000 to $30,000 per annum.

FIFTH CIRCUIT

Middle District of Florida

(1) Changed the part-time referee position at Jacksonville to a full-time referee position, at a salary of $30,000 per annum;

(2) Designated Orlando as a regular place of holding court for the full-time referee at Jacksonville, the regular place of office and other places of holding court to remain as at present; and

(3) Established concurrent district-wide jurisdiction for the referees in the district.

Southern District of Florida

(1) Authorized the continuance of the full-time position at Miami, to become vacant by expiration of term on December 17, 1971, for a term of six years, effective December 18, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Georgia

(1) Increased the salary of the full-time referee at Rome from $25,000 to to $30,000 per annum.

Western District of Louisiana

(1) Increased the salary of the part-time referee at Opelousas from $15,000 to $18,000 per annum.

SIXTH CIRCUIT

Eastern District of Michigan

(1) Authorized the continuance of the full-time referee position at Detroit, to become vacant by expiration of term on April 13, 1972, for a term of six years, effective April 14, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Ohio

(1) Authorized the continuance of the full-time referee position at Cincinnati, to become vacant by expiration of term on December 8, 1971, for a term of six years, effective December 9, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Middle District of Tennessee

(1) Authorized the continuance of the full-time referee position at Nashville, to become vacant by expiration of term on January 6, 1972, for a term of six years, effective January 7, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Illinois

(1) Changed the regular place of office of the referee at Dixon to Rockford.

EIGHTH CIRCUIT

Eastern and Western Districts of Arkansas

(1) Authorized an additional part-time referee position at a salary of $15,000 per annum, with the regular place of office at Little Rock, the territory and places of holding court to be the same as that of the full-time referee.

Eastern and Western Districts of Missouri

(1) Established concurrent jurisdiction for the full-time referees in the Eastern District of Missouri with the full-time referees in the Western District of Missouri.

District of North Dakota

(1) Increased the salary of the full-time referee at Fargo from $25,000 to $30,000 per annum.

NINTH CIRCUIT

Central District of California

(1) Authorized the continuance of the full-time referee position at Los Angeles, to become vacant by expiration of term on February 15, 1972, for a term of six years, effective February 16, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Washington

(1) Authorized the continuance of the full-time referee position at Spokane, to become vacant by expiration of term on March 16, 1972, for a term of six years, effective March 17, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Washington

(1) Authorized the continuance of the full-time referee position at Seattle, to become vacant by expiration of term on March 13, 1972, for a term of six years, effective March 14, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

APPROPRIATIONS

The Conference noted that the receipts into the Referees' Salary and Expense Fund in 1973 are estimated at $13,000,000 or about $6,000,000 less than the anticipated expenditures. This latter amount will have to be appropriated out of general funds of the Treasury as provided in 40c(4) of the Bankruptcy Act. The 1973 estimate for salaries of referees, as approved by the Conference, contains an item of increase totaling $234,000 to provide for additional referee positions and salary increases approved by the Judicial Conference during calendar year 1971.

Audit of Statistical Reports

The audit of statistical reports of closed bankruptcy cases for the previous six months disclosed 183 possible errors. Letters have been written to make the necessary adjustment of payments to and from the Referees' Salary and Expense Fund or to secure the recovery of excess trustee commissions for the benefit of creditors and for the correction of other errors.

Matters Under Submission

Of 206 referees reporting to the Bankruptcy Division, 175 had no matters under advisement for longer than 60 days. The remaining 31 referees had a total of 65 matters which had been pending with all briefs filed for 60 days or longer.

Petitions for Review

Pursuant to previous Conference action, the Bankruptcy Division obtains reports semi-annually from the referees on the number of petitions to review orders of referees pending before district judges. The first reports, made as of June 30, 1971, listed 114 petitions for review pending before district judges 60 days or longer.

Chapter XIII Cases

The Conference noted the report of the Administrative Office that in fiscal year 1971 a total of 30,904 cases were filed under Chapter XIII, an increase of 1.3 percent over the total filed in fiscal year 1970. Substantial increases in the use of the wage-earner's plan were noted in the Southern District of California, Northern District of Illinois, Western District of New York and the Middle District of North Carolina. Decreases were noted in the Eastern District of Michigan and in all Districts of Tennessee.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

The report of the Probation Committee was presented by its Chairman, Judge Francis L. Van Dusen.

Number of Probation Officers

The Conference agreed with the recommendation of the Probation Committee that the 1973 budget seek funds for 348 addi-

tional probation officer positions. This includes the 320 positions approved for fiscal year 1973 and 28 positions disallowed by the Congress for fiscal year 1972. In so doing, the Conference noted that in the last fiscal year the number of cases under supervision of the probation service increased by more than 4,000. Based on the filings of new criminal cases projected by the Department of Justice for the current year the number of persons granted probation this year may exceed last year's by as much as 60 percent. In addition, the Board of Parole has established new standards, compliance with which will require additional probation officers. Further, both the Bureau of Prisons and the Board of Parole have recommended that a probation officer supervise no more than 25 releasees under Title II of the Narcotic Addict Rehabilitation Act of 1966. This constitutes a further drain on the present staff.

The Conference took note of the fact that in 1967 the President's Commission on Law Enforcement and Administration of Justice recommended that the number of probation and parole cases should not exceed 35 per officer. The average in the probation system at the end of the last fiscal year was 69, in addition to the investigative duties placed upon the federal probation service.

Legislation

In light of Committee recommendations, the Conference took the following action with regard to H.R. 7105, a bill styled as the Correctional Service Improvement Act:

Title I: The Conference approved in principle the provisions of this title concerning establishment of correctional centers for federal offenders insofar as the provisions of this title affect the federal judiciary.

Title II: The Conference disapproved section 201 of this title because of the mandated, as opposed to the advisory, powers granted to the proposed council. The Conference believes that the present law is adequate in this regard.

Title III: The Conference disapproved this title insofar as it affects the federal judiciary and supporting personnel since it contains an unwise duplication of functions granted to the Federal Judicial Center and since it is deemed unwise that the Executive Branch should train federal judges and judicial personnel.

Title IV: The Conference noted no objection to this title.

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Title V: The Conference believes that this recommendation relating to a redraft of Chapter 313, as reflected in the report of the Criminal Law Committee, is preferable to the provisions of title V.

The Conference did not recommend H.R. 4135, a bill relating to the killing or assaulting of law enforcement officers inasmuch as it believes that H.R. 8194 and S. 2293 offer broader protection for probation officers. The two latter bills are substantially identical to H.R. 17081 of the 91st Congress, previously approved by the Conference (see Conf. Rept., March 1970, p. 28).

The Conference next examined a draft bill offered by the Office of Management and Budget to amend Title 18 to authorize the Attorney General to provide care for narcotic addicts who are placed on probation, released on parole or mandatorily released. The Conference expressed its approval of this draft bill.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The report of the Intercircuit Assignment Committee was presented by its Chairman, Judge Roy L. Harper.

The Conference noted that during the period from February 1, 1971 to September 1, 1971 the Intercircuit Assignment Committee recommended 47 assignments to be undertaken by 34 judges—four circuit judges in active status, four senior circuit judges, seven district judges in active status and 11 senior district judges. Two active judges of the Court of Claims and two active judges of the Customs Court each carried out one assignment while one assignment each was carried out by two senior judges of the Court of Claims and one senior judge of the Customs Court. A retired Supreme Court Justice participated in three assignments.

During the reporting period in question there were 17 assignments to the circuit courts of appeals, two assignments to the Court of Customs and Patent Appeals and 28 assignments to the district courts.

COMMITTEE TO IMPLEMENT THE FEDERAL MAGISTRATES ACT

Judge Charles M. Metzner, Chairman of the Committee to Implement the Federal Magistrates Act, presented the report of the Committee.

MAGISTRATE POSITIONS

The Conference at its March 1971 session (Conf. Rept., p. 16) authorized its Executive Committee to "act for the Conference between sessions on any such matters which in the view of the Magistrates Committee require immediate action." Upon recommendation of the Committee the Conference ratified the following action regarding magistrate positions taken by the Executive Committee since the last session of the Conference:

Alaska

(1) Authorized the appointment of non-members of the bar to part-time magistrate positions at Juneau and Nome.

California, Eastern

(1) Authorized the appointment of a non-member of the bar to a part-time magistrate position at Lassen Volcanic National Park.

California, Central

(1) Authorized the appointment of a non-member of the bar to a part-time magistrate position at Twentynine Palms.

Nevada

(1) Increased the salary of the part-time magistrate at Las Vegas from $6,500 to $11,000 per annum.

Washington, Western

(1) Authorized jurisdiction over the entire area of the Gifford Pinchot National Forest for the part-time magistrate at Vancouver, including that portion lying within the Eastern District of Washington.

The Committee reported that it had considered various requests for additional magistrate positions, changes in salaries and arrangements, and a change in the official location of one magistrate position. These requests had also been considered by the judicial councils of the circuits. In accordance with the recommendations of the Committee the Conference approved the following changes in the numbers, locations, arrangements, and salaries of magistrates and directed that these changes be made effective at such time as appropriated funds are available.

FIRST CIRCUIT

Maine

(1) Increased the additional compensation payable to the clerk of court for the performance of magistrate duties from $1,200 to $3,000 per annum.

(2) Authorized an additional part-time magistrate position at Portland at a salary of $500 per annum.

SECOND CIRCUIT

New York, Northern

(1) Increased the salary of the part-time magistrate at Albany from $6,500 to $11,000 per annum.

(2) Increased the salary of the part-time magistrate at Auburn from $5,500 to $10,500 per annum.

(3) Increased the salary of the part-time magistrate at Plattsburgh from $1,250 to $3,600 per annum.

(4) Increased the salary of the part-time magistrate at Watertown from $200 to $600 per annum.

THIRD CIRCUIT

Pennsylvania, Middle

(1) Authorized an additional part-time magistrate at Stroudsburg at a salary of $1,200 per annum.

(2) Authorized jurisdiction over the entire Delaware Water Gap National Recreation Area for the magistrate at Stroudsburg, including that portion lying within the District of New Jersey.

FOURTH CIRCUIT

Maryland

(1) Changed the official location for the full-time magistrate at District Heights from District Heights to Prince Georges Plaza.

(2) Increased the salary of the part-time magistrate at Hagerstown from $200 to $1,200 per annum.

South Carolina

(1) Authorized an additional part-time magistrate position at Columbia at a salary of $500 per annum.

Virginia, Eastern

(1) Authorized an additional part-time magistrate position at Williamsburg at a salary of $10,000 per annum.

FIFTH CIRCUIT

Georgia, Northern

(1) Authorized an additional full-time magistrate position at Atlanta at a salary of $22,500 per annum.

Georgia, Southern

(1) Increased the salary of the part-time magistrate at Hinesville from $1,500 to $7,200 per annum.

Louisiana, Eastern

(1) Authorized an additional part-time magistrate position at Baton Rouge at a salary of $500 per annum.

Texas, Eastern

(1) Increased the salary of the part-time magistrate position at Sherman from $200 to $900 per annum.

Texas, Western

(1) Increased the salary of the part-time magistrate at Pecos from $900 to $6,000 per annum.

SIXTH CIRCUIT

Michigan, Western

(1) Increased the salary of the part-time magistrate at Grand Rapids from $1,200 to $11,000 per annum.

Ohio, Northern

(1) Authorized an additional part-time magistrate position at Canton at a salary of $600 per annum.

Ohio, Southern

(1) Increased the salary of the part-time magistrate at Dayton from $3,400 to $8,500 per annum.

SEVENTH CIRCUIT

Illinois, Eastern

(1) Increased the salary of the part-time magistrate at Carbondale from $1,200 to $1,800 per annum.

Illinois, Southern

(1) Increased the salary of the part-time magistrate at Springfield from $1,200 to $3,600 per annum.

(2) Increased the salary of the part-time magistrate at Peoria from $800 to $1,800 per annum.

Wisconsin, Eastern

(1) Authorized the clerk of court at Milwaukee to perform the duties of a United States magistrate at no increase in salary.

EIGHTH CIRCUIT

Arkansas, Eastern

(1) Authorized the clerk of court at Little Rock to perform the duties of a United States magistrate at no increase in salary.

Minnesota

(1) Increased the salary payable to the part-time referee in bankruptcy at Duluth for performing the duties of a United States magistrate from $1,000 to $1,500 per annum.

North Dakota

(1) Increased the salary of the part-time magistrate at Rolla from $100 to $300 per annum.

South Dakota

(1) Increased the salary of the part-time magistrate at Rapid City from $2,400 to $3,600 per annum.

NINTH CIRCUIT

Arizona

(1) Increased the salary of the part-time magistrate at Grand Canyon National Park from $8,450 to $11,000 per annum.

California, Northern

(1) Increased the salary of the part-time magistrate at Salinas/Monterey from $7,200 to $11,000 per annum.

California, Eastern

(1) Changed the part-time magistrate position at Yosemite National Park from part-time to full-time.
(2) Fixed the salary of the full-time magistrate at Yosemite National Park at $14,000 per annum.
(3) Increased the salary of the part-time magistrate at Fresno from $2,000 to $5,000 per annum.
(4) Increased the salary of the part-time magistrate at Bakersfield from $1,200 to $2,400 per annum.
(5) Increased the salary of the part-time magistrate at Edwards Air Force Base from $1,200 to $2,400 per annum.
(6) Increased the salary of the part-time magistrate at South Lake Tahoe from $400 to $1,600 per annum.
(7) Increased the salary of the part-time magistrate at Susanville from $600 to $1,200 per annum.
(8) Increased the salary of the part-time magistrate at Merced from $300 to $600 per annum.
(9) Increased the salary of the part-time magistrate at Redding from $400 to $500 per annum.

California, Central

(1) Authorized an additional full-time magistrate position at Los Angeles at a salary of $22,500 per annum.
(2) Increased the salary of the part-time magistrate at San Luis Obispo from $7,200 to $11,000 per annum.
(3) Increased the salary of the part-time magistrate at Santa Ana from $2,000 to $4,000 per annum.
(4) Increased th salary of the part-time magistrate at San Bernardino from $1,500 to $3,000 per annum.
(5) Increased the salary of the part-time magistrate at Santa Barbara/ Oxnard from $1,800 to $2,400 per annum.
(6) Increased the salary of the part-time magistrate at Long Beach from $1,200 to $2,400 per annum.
(7) Increased the salary of the part-time magistrate at Barstow/Victorville from $1,200 to $2,000 per annum.
(8) Increased the salary of the part-time magistrate at Twentynine Palms from $300 to $1,000 per annum.

California, Southern

(1) Authorized an additional full-time magistrate at San Diego at a salary of $22,500 per annum.

Nevada

(1) Changed the part-time magistrate position at Las Vegas from part-time to full-time.
(2) Fixed a salary of $22,500 per annum for the full-time magistrate at Las Vegas.

Washington, Western

(1) Increased the salary of the part-time magistrate at Olympic National Park from $6,526 to $8,450 per annum.

TENTH CIRCUIT

New Mexico

(1) Authorized an additional part-time magistrate position at Albuquerque at a salary of $500 per annum.

Wyoming

(1) Authorized an increase in the salary of the part-time magistrate at Yellowstone National Park from $8,450 to $11,000 per annum.

Assignment of Magistrates

H.R. 9180, 92d Congress, would authorize the temporary assignment of a United States magistrate from one jurisdiction to another in an emergency situation upon the approval of the chief judges of the district courts concerned. The assignment would become effective upon the entry of an order in the transferee district specifying the emergency, the duration of the assignment and the duties to be performed. Upon recommendation of the Committee, the Conference voted to approve the bill.

Preparation of Documents for Law Enforcement Officers

The Committee reported that in some districts personnel of both full-time and part-time magistrates were preparing and typing complaints, affidavits, applications for search warrants, etc. for law enforcement officers. It was the view of the Committee that law enforcement officers should prepare their own complaints and affidavits and appear before United States magistrates with completed documents, and further that neither the magistrate nor his staff should engage in the preparation of these materials. Accordingly, the Committee recommended and the Conference approved this procedure as a matter of policy.

Employees of Magistrates

Several United States magistrates have requested authority to appoint special employees, including law clerks, interpreters, and court reporters. It was the view of the Committee that law clerks should not be provided for magistrates and that interpreters should be furnished by the agencies involved in the proceedings before the magistrates. Upon recommendation of the Committee the Conference directed that law clerks and interpreters not be authorized for magistrates.

The Committee reported that it had reserved for further study the question whether court reporters should be furnished to magistrates inasmuch as sound recording equipment seems to be working well.

Revision of Forms

The Committee submitted to the Conference a revised docket sheet for United States magistrates, developed in the Administrative Office, which is intended to replace the three docket sheets, or record of proceedings, formerly used by United States commissioners. The docket sheet would be printed in three parts with carbon interleaves, including one copy to be provided to the United States attorney in lieu of a separate report now prepared on a Department of Justice form.

Upon recommendation of the Committee, the Administrative Office was authorized to circulate this new form among the full-time United States magistrates for their suggestions, to make revisions in the form as may be deemed appropriate in the light of the suggestions received, and to issue the revised form as a standard docket sheet in accordance with the authority contained in Rule 55, Federal Rules of Criminal Procedure.

Jurisdiction

Several district courts have authorized magistrates to conduct post-indictment arraignments of defendants and in some instances to take not guilty pleas. Inquiry was also received concerning the views of the Committee as to the propriety of United States magistrates accepting guilty pleas in felony cases and in misdemeanor cases beyond their trial jurisdiction. The Committee reported its firm opposition to the acceptance of guilty pleas in these cases by United States magistrates, since the plea occurs at a critical stage of criminal proceedings. However, the Committee found no substantive objection to the acceptance of a not guilty plea by a United States magistrate in any case.

The Committee further reported that it had requested the Administrative Office to undertake a study of the trial jurisdiction of United States magistrates under 18 U.S.C. 3401, particularly with respect to increasing trial jurisdiction of misdemeanors where the fine does not exceed $5,000, or in the alternative, that magistrates be authorized to try all misdemeanor cases with specific exceptions based on policy considerations which might be noted in the statute. A report will be made to the next session of the Conference.

Attendance at Circuit Conferences

Several magistrates had inquired about the possibility of their attendance at Judicial Conferences of the Circuits in an official capacity, with expenses paid. Under existing provisions of law, 28 U.S.C. 333, attendance at circuit conferences is limited to circuit and district judges of the circuit. The court of appeals for each circuit may also provide by its rules for representation and active participation at the circuit conference by members of the bar of the circuit to attend at their own expense. At the present time referees in bankruptcy, probation officers, and clerks of court are not authorized to attend circuit conferences in an official capacity. The Committee reported its unanimous view that magistrates should not be made official members of the circuit conferences.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Judge John S. Hastings, Chairman, presented the report of the Committee to Implement the Criminal Justice Act.

The Conference noted and approved for distribution the report of the Director of the Administrative Office on appointments and payments made under the Criminal Justice Act through June 30, 1971. In presenting this report to the Conference Judge Hastings pointed out that because of the time lag—often more than a year if a trial is involved—between the filing of the notice of appointment and the submission of a voucher to the Administrative Office, the statistics for the last two years are never a complete reflection of the activities under the Criminal Justice Act in those years. Judge Hastings pointed out further that the current statistical report does not reflect activities under the amendments to the Criminal Justice Act which became effective on February 11, 1971. The Director's report on this subject is attached to the final printed report of the proceedings of the Judicial Conference in 1971 and the annual report of the Director for that year.

Federal Public Defenders

The Conference noted that the first federal public defender organization authorized by the amendments to the Criminal Justice Act was established in the District of Arizona on April 30, 1971. Since that time six additional public defender organizations have been established in the Northern District of California, Central District of California, Eastern District of California, District of

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New Mexico, Southern District of Florida and the Western District of Missouri.

Community Defender Organizations

The Conference was advised that three community defender organizations have applied for and received grants under the Criminal Justice Act. The Act provides that upon application an organization may, to the extent approved by the Judicial Conference of the United States,

(i) receive an initial grant for expenses necessary to establish the organization; and

(ii) in lieu of payments under subsection (d) or (e) receive periodic sustaining grants to provide for representation and other expenses pursuant to this section.

The applications, as recommended by the Conference committee, were previously approved by the Executive Committee of the Conference and are paid or being paid as follows:

(1) Application for sustaining grant in the sum of $135,000 to the Federal Defender Program, Inc., Northern District of Illinois, for the fiscal year 1972;

(2) Application for an initial grant in the sum of $18,000 for a two-month period and a sustaining grant of $91,000 for the period October 1, 1971 to June 30, 1972 to Legal Aid and Defender Association of Detroit, Eastern District of Michigan;

(3) Application for a non-renewable grant in the sum of $66,649 to Federal Defenders of San Diego, Inc., covering a three-month period commencing July 1, 1971, and ending September 30, 1971.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Albert B. Maris, Chairman of the Committee on the Rules of Practice and Procedure, presented the Committee's report.

Legislation to Modify Rule-Making Power

The Conference was advised that the Committee on the Judiciary of the Senate has requested its views on S. 2432, 92nd Congress, introduced by Senator McClellan and six other senators, which would modify sections 3771 and 3772 of title 18 and sections 2072 and 2075 of title 28, United States Code. The principal modifications proposed are three:

(1) to provide that rules when promulgated by the Court and reported to the Congress at or after the beginning of a regular session, but not later than the first of May, shall not take effect until the close of the session or such later date as the Court may fix;

(2) to authorize either House of Congress to disapprove, in whole or in part, a rule promulgated by the Court and reported to the Congress, provided only that the rejection takes place during the session at which the rule is reported; and

(3) to introduce into section 3772 of title 18 for the first time the requirement that rules drafted by the Supreme Court under the authority of that section must be reported to the Congress and may not take effect until a specified time after such reporting.

The Conference agreed that the bill, if enacted, would seriously restrict the rule-making power of the Supreme Court. The prohibition against making a rule effective prior to the adjournment of the Congressional session at which it is reported, together with the retention of the requirement that the rule must be reported to Congress on or before May 1, would render it virtually impossible for the Court to deal with an emergency situation requiring prompt adoption or amendment of a rule. While Congress in theory has set August 1 as its adjournment date, it is the fact that it is seldom able to adjourn until very near the commencement of its new session in January. Moreover, if the rules adopted are of a novel or controversial character the Court often has delayed the effective date for substantially more than ninety days, so as to give Congress more time to consider them before they become effective, and doubtless it will continue this practice. Finally, the Conference agreed that Congress may now at any time, after as well as before the effective date, repeal or modify in whole or in part any rule promulgated by the Court which it disapproves.

The Conference is of the view that the provision authorizing a single House of Congress to reject a rule, in whole or in part, without the concurrence of the other House, would make it possible for one House to reject a rule of which the other House approves, thus placing the Court in the difficult position of not being able to meet what might be an important or, indeed, urgent problem except by a rule which would likely be rejected by one House or the other. It was agreed that in a matter as vital to the proper operation of the courts as procedural rule-making, the Supreme Court, which has been properly given primary responsibility, is entitled to have any action by Congress in this field take the form of binding law and not mere negative reaction from a single House. Judicial rule-making is quite different in character from a proposal to reorganize an executive department, since the latter involves, essentially, statutory amendments.

The proposal to subject rules of criminal procedure after verdict and on appeal to the reporting procedure is of lesser significance, but the Conference perceived no reason for imposing these requirements at this time. It was therefore voted to disapprove S. 2432.

Appropriation Proviso

Ever since the inception of the rules study program of the Judicial Conference the annual appropriation acts for the judiciary which provide the funds for the study in the appropriation item to the Administrative Office have contained the following proviso to that particular item:

> *Provided,* That not to exceed $90,000 of the appropriations contained in this title shall be available for the study of rules of practice and procedure.

Since the "title" referred to in this proviso can only be "Title IV—The Judiciary" of the appropriation act, which title includes the Administrative Office item, the effect of the proviso is to limit to $90,000 the total amount expended on the rules program, not only for the expenses paid out of the Administrative Office appropriation but also for the travel expenses of judges and referees in bankruptcy to committee meetings which are paid out of appropriations contained in other items of the title.

Although the $90,000 limitation has remained constant, the cost of carrying on the program has increased over the years and in recent years it has only been by the most rigid economy and some curtailment of the programs in the latter part of each fiscal year that the work has been carried on.

It has never been possible to make any general increases in the all too modest compensation paid to the reporters to the advisory committees whose distinguished work has been to so great a degree responsible for the excellence of the rules which have been formulated and adopted.

During the fiscal year ended June 30, 1970 the amount spent for the travel of judges and referees in connection with the program was $10,242. If the appropriation proviso were to be modified so as to apply only to the Administrative Office appropriation item, and accordingly did not include judges' and referees' travel, the additional sum of $10,000 would be made available for the work of the program, an increase very badly needed as we look forward to greater activity by the Advisory Committees on Civil and Criminal Rules. This limitation on the travel of judges and referees is

in practice difficult for the Administrative Office to administer, since both judges and referees when in Washington for rules committee meetings very frequently transact other necessary official business there, thus saving time and money.

Accordingly, the Conference agreed that in the forthcoming budget for the judiciary Congress be requested to change the proviso language so as to read:

Provided, That not to exceed $90,000 of the appropriation contained in this item shall be available for the study of rules of practice and procedure.

Appellate Rules

It has now been more than three years since the Federal Rules of Appellate Procedure went into effect to govern the procedure in the United States courts of appeals. A body of experience under the rules has been built up, the various courts of appeals are experimenting with various ways of further improving and expediting their procedure and suggestions in this regard are coming to the standing committee from various sources. The Conference agreed, therefore, that the Chief Justice be authorized to appoint a new Advisory Committee on Appellate Rules and a reporter to the committee.

Admiralty Rules

Judge Maris stated that the Advisory Committee on Admiralty Rules has informally decided not to proceed with a revision of the Supplemental Admiralty Rules at this time. There is apparently no serious complaint from the bench or bar with respect to the operation of the Federal Rules of Civil Procedure and the Supplemental Admiralty Rules in maritime cases.

Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules held three meetings during the year, the Conference was advised. In March 1971 the standing committee published and circulated to the bench and bar for comments the Advisory Committee's preliminary draft of rules and official forms under Chapters I to VII of the Bankruptcy Act (ordinary bankruptcy). All comments with respect to the draft are to be in the committee's hands by April 1, 1972 so that a final definitive draft may be prepared and submitted to the Conference next fall.

The Conference noted that the Advisory Committee has also completed a preliminary draft of rules and forms under Chapter XIII of the Bankruptcy Act and this draft is now in the hands of the Government Printing Office for printing. The Committee is continuing its work on rules under Chapters X and XI of the Act and plans to prepare rules for all the remaining debtor relief and rehabilitation chapters as soon as practicable.

Civil Rules

The newly reconstituted Advisory Committee on Civil Rules met under the chairmanship of Judge Elbert P. Tuttle on September 21, 1971. The Chief Justice has appointed Professor Bernard J. Ward as reporter to the Committee. The Committee reports that it is beginning the study of the operation of Rule 23, Class Actions, Rule 16, Pretrial Procedure, and methods of accelerating judgments. Pursuant to the request of the Conference at its session in March 1971 (Conf. Rept., pp. 5–6) the Committee considered whether a reduction in the size of civil juries and an accompanying diminution in the number of peremptory challenges should be accomplished by procedural rule or by statute. Judge Maris stated that the Advisory Committee adopted the following resolution on the subject, with which the Conference concurred:

WHEREAS, the Judicial Conference has approved in principal a reduction in the size of juries in civil trials in the District Courts of the United States and an accompanying diminution in the number of peremptory challenges to be allowed; and

WHEREAS, the Conference has referred to the Committee on the Operation of the Jury System and this Committee the means of effectuating those objectives, i.e., whether by procedural rule or statute;

Therefore, BE IT RESOLVED, That in the opinion of the Advisory Committee on Civil Rules the better method of effectuating the proposals would be by statute, and that the Judicial Conference be so informed.

Criminal Rules

The Advisory Committee on Criminal Rules met during the year in June 1970 and January 1971 and, under the chairmanship of its newly appointed chairman, Judge J. Edward Lumbard, in September 1971. It was noted that in January 1970 the standing committee published to the bench and bar the Advisory Committee's preliminary draft of proposed amendments to a number of the criminal rules and in April 1971 a draft of additional amend-

ments approved by the Advisory Committee at its January 1971 meeting was also published. At the same meeting two alternative drafts of a proposed amendment to Criminal Rule 45, imposing time limits for the disposition of criminal cases, were prepared and were published to the bench and bar in March 1971 with the request, in view of the urgency of the problem, that comments be sent in prior to July 1, 1971.

The Advisory Committee at its meeting in September 1971, after considering the comments received from the bench and bar, approved Alternative Draft No. 1 and the standing committee concurred in this proposal to require each district court to adopt a plan, with the approval of a reviewing panel consisting of the members of the judicial council of the circuit and the chief judge of the district court.

The Conference approved for transmittal to the Supreme Court the amendment proposed by Alternative No. 1 and agreed that it be added to Criminal Rule 50 as subdivision (b) rather than to Rule 45 as subdivision (f). The Conference agreed that the time for filing the plans should be changed from 30 to 90 days and agreed to recommend to the Supreme Court that the order promulgating the rule providing that the effective date be October 1, 1972.

Resolution of Expediting Appeals

The Conference expressed the view that the causes of delay in the final disposition of cases should be treated at all levels, and so it was agreed to recommend that each judicial council should urge that appeals be expedited and that each circuit should develop plans to perfect appeals with less than a full transcript where possible, consistent with the interests of justice. Likewise, it was agreed that the counsel who tried the case should normally handle the appeal. After considerable discussion, the following resolution was approved for transmittal to all federal judges:

The Conference believes the causes of delay in the final disposition of criminal cases should be treated simultaneously at all levels and that rules or procedures to expedite trials without expediting disposition of appeals will not alone afford satisfactory solutions. The Conference is aware of the multiple causes of delay in the disposition of appeals including the increasing volume of appeals under the Criminal Justice Act, the tendency to demand full transcripts of trials, especially when new counsel is appointed on appeal, the difficulty of promptly securing transcripts from court reporters, and other factors.

It is the sense of the Conference that a substantial number of criminal appeals can be fairly conducted without a full transcript of all testimony and proceedings.

The Conference is particularly concerned about (a) delay in disposition of cases in which an accused is in custody pending trial, and in which a convicted person is in custody pending appeal; and (b) delays in disposition of trials and appeals in which an accused or convicted person is at large pending trial or appeal, where there is a risk of repeated criminal conduct, the probability of flight, or other danger to the community.

Against this background and having in mind the action of the Conference today in requesting the Supreme Court to approve the proposed rule 50(b) of Federal Criminal Procedure, requiring District Courts to develop plans for speedy trials in criminal cases, it is resolved and recommended:

1. that each Court of Appeals should forthwith develop a plan to expedite the processing of criminal appeals to the end that such appeals shall be speedily heard and that, if the conviction is affirmed, the sentence will be speedily carried out;

2. that among other methods, the processing of appeals should be expedited by such steps as the following:

(a) Except in unusual circumstances and for good cause shown, trial counsel should be appointed to conduct all appeals falling under the Criminal Justice Act;

(b) All counsel should be required to exhaust all efforts to perfect appeals without full trial transcripts, by use of such traditional devices as preparation of an agreed statement or other summary of the evidence;

(c) Courts should encourage counsel to utilize the provision of the Federal Rules of Appellate Procedure dispensing with printed briefs;

(d) Courts should study methods designed to limit oral arguments to cases where this would assist the court and the writing of opinions to cases involving serious issues of law.

Adopted by the Judicial Conference of the United States this 29th day of October, 1971.

The Director of the Administrative Office is instructed to furnish copies of this Resolution to all federal judges without awaiting publication of the proceedings of the Conference.

Rules of Evidence

The draft of Rules of Evidence for the United States Courts and Magistrates which was approved by the Conference at the October 1970 session (Conf. Rept., p. 72) and forwarded to the Supreme Court, was subsequently returned by the Court for republication in its final form and further study by the Advisory Committee and the standing Committee in the light of comments which might be received thereon.

Comments with respect to the final draft were received from a number of individuals and organizations including the Department of Justice and the chairman of the subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary. These suggestions were fully considered by both committees and a number of changes were made in the draft in response to them. The revised definitive draft incorporating these changes was con-

sidered by the Conference and approved for transmittal to the Supreme Court with the recommendation that the rules be promulgated, to be effective October 1, 1972.

COMMITTEE ON COURT FACILITIES AND DESIGN

Judge Edward J. Devitt, Chairman, presented the report of the Committee on Court Facilities and Design.

The Conference was advised that the Committee, which was created as a result of Conference action at the March 1971 session (Conf. Rept., p. 3), had visited court facilities in the United States and abroad and had worked closely with Mr. Robert L. Kunzig, Administrator of General Services, and his staff.

The Conference was advised that, after extended discussion at the first meeting, the Committee arrived at three basic conclusions which would govern the deliberations of the Committee. First, better efficiency must be built into new facilities embracing the latest developments in science and technology so as to satisfy both operational and aesthetic needs compatible with the best traditions of our judicial system. Second, the size of courtrooms should be reduced to achieve greater efficiency and curtail the cost of construction. Thirdly, more attention must be given to the security of court facilities.

The GSA presented a series of plans and several models of courtrooms for the consideration of the Committee. These fell into two general schemes: a courtroom in the round and a rectangular courtroom. These were a distillation of all the material in their hands and their best judgment as to what appeared to embrace the latest and best thinking on the subject.

The GSA constructed two full-scale models for the examination and consideration of the Committee, one in the round and one rectangular, thereby affording a real life opportunity to evaluate new designs and concepts. After careful consideration the Committee concluded that the rectangular design was preferable to the courtroom in the round.

The Committee decided that in all new courtroom construction each court facility shall be equipped with one large (40′ x 60′) courtroom and such additional standard (28′ x 40′) courtrooms as may be required. Where the need is shown, the Director of the Administrative Office may authorize additional large (40′ by 60′) courtrooms in such number as may be required.

The Conference, after visiting a model facility of a standard courtroom constructed by GSA and conferring with Administrator Kunzig and Chief Architect Walter Meissen, voted its agreement with these conclusions. The Conference further agreed that each courtroom must be available on a case assignment basis to any judge. No judge of a multiple judge court should have the exclusive use of any particular courtroom. The availability of courtrooms, when not otherwise committeed, should also be open to other appropriate government usage.

The Conference further agreed to the following conclusions prepared by the Committee:

1. The module of a standard courtroom should be 28′ by 40′.
2. The module of a large courtroom should be 40′ by 60′.
3. The ceiling of the standard courtroom should be approximately 12′ high over the activity area with dropped area approximately 10′ high.
4. The ceiling of the large courtroom should be approximately 16′ high.
5. The principal participants in a trial should be on different floor levels. Court personnel on the lower level; counsel, the witness, jury and spectators on the next level; and the judge should be on a higher level.
6. Movability should be built into the fixtures so that there may be maximum flexibility in arrangement of the furniture consistent with the needs in a particular case. Selected fixed positions to facilitate use of electronic recording will be a limiting factor on complete freedom of movement of fixtures. By way of example—the witness box should be movable so that it can be easily relocated and locked next to the judge or opposite the jury as required.
7. All rails should be movable so as to accommodate varying requirements.
8. Attention has been given to color, light, sound and communication facilities in the courtroom so that the end result will embrace the latest in esthetic and technological features.
9. Access to the courtroom should be provided the participants so as to maintain appropriate separation. By way of example—a separate entrance for the judge, for the jury, for the witness, for the public, counsel and supporting personnel.
10. Approval of the Administrative Office and GSA must be obtained prior to permitting variations from these basic floor plans and dimensions.

The Conference was agreed that the ad hoc committee should continue in existence to work further with GSA on the design of auxiliary facilities.

COMMITTEE ON SALARIES

Judge William H. Hastie, Chairman, reported to the Conference for the Committee on Salaries.

This Committee was established as a result of the action of the Conference at its March 1971 session (Conf. Rept., p. 3), at which time it was resolved that there should be created a committee to study the salary structure of positions in the federal judiciary, such as referees in bankruptcy, magistrates, clerks of court, pretrial examiners, secretaries to judges and ungraded positions.

After reviewing the recommendations of the committee, the Conference agreed to the following salary structure for ungraded officers of the court, subject where necessary to authorization and the appropriation of funds:

(1) Circuit Court Executive—
80 to 85% of a circuit judge's salary (but not to exceed 90% of a district judge's salary).

(2) Full-time Referee in Bankruptcy*
75 to 80% of a district judge's salary.

(3) Full-time United States Magistrate*
75 to 80% of a district judge's salary.

(4) Clerks of Court—
At least 50 but no more than 75% of a district judge's salary, the salaries to be proportioned as follows:
(a) Clerk, Courts of Appeals and Court of Customs and Patent Appeals—70 to 75%
(b) Clerk, Large District and Court of Claims, 70 to 75%
(c) Clerk, Medium District—65 to 70%
(d) Clerk, Small District, including Territorial Court—50 to 60%

All salaries, unless otherwise fixed by law, are to be fixed pursuant to 28 U.S.C. 604(a)(5) after receiving the individual court's recommendation. The report refers to the present salary structure of the judiciary and the recommendations will be reexamined when there is again an increase in the salaries of judges.

The Conference then approved the following as the maximum salaries that may be paid at this time based on this structure and

*Part-time Referees' and Magistrates' salaries would have a maximum of 60% of the full-time positions and would be scaled down as at present. The matter of recommending full-time and part-time salaries within the range would continue to rest with the individual district courts.

subject where necessary to authorization and the appropriation of funds:

	Maximum salary
Circuit court executive	$36,000
Full-time referee in bankruptcy	32,000
Full-time U.S. magistrate	32,000
Clerk, courts of appeals and court of customs and patent appeals	30,000
Clerk, large district and court of claims	30,000
Clerk, medium district	27,000
Clerk, small district, including territorial	24,000

The Conference reaffirmed its prior position that the salaries of full-time magistrates and full-time referees in bankruptcy should be on a parity.

Select Committee

The Conference agreed with the recommendation of the Salary Committee that there should be created a Select Committee, to be appointed by the Chief Justice, which would recommend to the Judicial Conference what should be done about top salaries in the Judicial Branch when the Presidential Commission and the President consider salary increases in 1972 or 1973. Such a committee would present its recommendations to the Judicial Conference which, in turn, would take a position and authorize the committee to represent the Judicial Branch before the Presidential Commission.

Judges' Secretaries

The Conference reaffirmed it support of the Bow bill, H.R. 8726, 92d Congress, which provides for computation of retirement benefits for secretaries on a basis similar to that of Congressional employees. The Conference also agreed that legislative authorization should be sought for accelerated step-increases for secretaries. The Conference agreed that as long as the appropriations committee imposes a limitation of JSP 10 on judicial secretarial salaries, it is without authorization to exceed this limitation.

Further Activity of the Committee

The Committee had recommended to the Conference that it be discharged. The Conference was of the view, however, that there were graded positions which also needed consideration and, accordingly, on recommendation of the Chairman of the Committee it was agreed that for the purposes of this further study the Committee

would meet jointly with the Subcommittee on Supporting Personnel and present a joint report on this subject matter.

REVIEW COMMITTEE

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

At the March 1971 session of the Conference (Conf. Rept., p. 24) the Conference adopted the following resolution relative to the review of reports of extrajudicial income filed semi-annually by federal judges pursuant to Conference resolution (Conf. Rept., Oct. 1969 session, p. 50):

(a) The Review Committee shall notify such judge, and the chief judge of the circuit or the chief judge of other courts who are members of the Conference of such fact who shall then request such judge to advise within 30 days that he is in compliance;

(b) In the event such judge fails or refuses to advise that he has complied as in paragraph (a), the chief judge shall inform such judge that unless the judge advises within 60 days that he is in compliance, this fact will be published in the next report of the Judicial Conference;

(c) If at the expiration of the 60-day period, the judge fails or declines to file the semi-annual report, the chief judge shall also request the judge to state whether he is or is not in compliance with the 1963 resolution; a failure or refusal so to state will likewise be published;

(d) In the event the judge declines to make a report on grounds of conscience, he shall be advised that if desired such fact will be noted in the published report.

Pursuant to this resolution, Judge Tamm reported that 14 judges, not including eight judges of the United States Customs Court, have not filed reports for the period January 1–June 30, 1971, as follows:

LISTING, BY CIRCUIT, OF JUDGES WHO HAVE NOT FILED REPORTS FOR PERIOD JANUARY 1–JUNE 30, 1971—(14)

Second Circuit:

*Hon. Edmund L. Palmieri
U.S. District Judge
*Hon. Edward Weinfeld
U.S. District Judge
*Hon. Inzer B. Wyatt
U.S. District Judge

Ninth Circuit:

*Hon. William M. Byrne
U.S. Senior District Judge

*Judges heretofore declining to file "as a matter of principle".

Hon. William Matthew Byrne, Jr.
U.S. District Judge
*Hon. Walter Early Craig
U.S. District Judge
*Hon. Walter Ely
U.S. District Judge
*Hon. Warren J. Ferguson
U.S. District Judge
*Hon. Peirson M. Hall
U.S. Senior District Judge
*Hon. Oliver D. Hamilton, Jr.
U.S. Senior Circuit Judge
*Hon. William D. Murray
U.S. Senior District Judge
Hon. Harry Pregerson
U.S. District Judge
*Hon. Manuel L. Real
U.S. District Judge

Tenth Circuit:

Hon. Stephen S. Chandler
U.S. District Judge

Judge Tamm then made the following recommendations, all of which were agreed to by the Conference:

1. The number of positions held by federal judges as officers or directors of educational, religious, civic and charitable organizations should not be so great in number as to jeopardize the particular performance of judicial duties. Judges' participation as officers in such groups and organizations should not numerically exceed a quantity which would necessitate undue absence from the performance of judicial duties and responsibilities.

2. Federal judges should not serve as officers or directors of organizations, national, regional or local, which are present or potential litigants in the federal courts or are the promoters, sponsors or financiers of organizations sponsoring litigation in the federal courts.

3. In all cases involving actual, potential, probable or possible conflicts of interest, a federal judge should reach his own determination as to whether he should recuse himself from a particular case, without calling upon counsel to express their views as to the desirability of his remaining in the case. The too-frequent practice of advising counsel of a possible conflict and asking counsel to indicate their approval of a judge's remaining in a particular case is fraught with potential coercive elements which make this practice undesir-

*Judges heretofore declining to file "as a matter of principle".

able. The Committee approves the procedure suggested by the Interim Advisory Committee in its Opinion No. 20.

4. Upon the ultimate adoption by the American Bar Association of a new set of Canons of Judicial Ethics, the Judicial Conference of the United States should establish some guiding criteria as to the propriety, in nature and amount, of honoraria accepted by federal judges for commencement addresses, lectures, speeches, etc. Your Committee suggests that the amount accepted by federal judges, if honoraria per se are approved, should never exceed the amount which would be paid to a non-judge for the same or similar services.

5. The chief circuit judge of each circuit should exercise close supervision over the extra-judicial teaching and lecturing commitments of the judges within his circuit to such an extent that these and other extra-judicial activities will be held to such a minimum as to insure that those activities are not being carried on to the detriment of the performance of official judicial duties. Each chief circuit judge should be especially alert to carefully check all extra-judicial activities in those districts where the judicial work is not current.

INTERIM ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman, presented the report of the Interim Advisory Committee on Judicial Activities.

The Conference noted that since the last session of the Conference two additional formal opinions have been published, namely, Opinions Nos. 22 and 23. Copies of the formal opinions are circulated to all federal judges as soon as they are published. In addition, the Committee has responded by letter to several inquiries of judges where the Committee considered that either the judicial canons of the American Bar Association or the canons as previously interpreted by the Committee had given clear guidance as to the proper answer to be made.

The Conference also noted the following statement submitted by the Committee:

From information coming direct to the Committee, and by way of inquiry from the Review Committee chaired by Judge Tamm, it became apparent that there is a substantial number of judges who have continued, since their appointment, to serve for compensation in fiduciary capacities, either as sole or joint

executor, administrator or conservator of an estate or as sole or joint trustee for an inter vivos or testamentary trust. Several judges serve in several different fiduciary capacities. The Committee received no information indicating that any compensation paid for such services exceeded that which would ordinarily attach to the office.

The latest tentative draft of the ABA Committee report, dated May 1971, prohibits the performance of such fiduciary duties for compensation for non-family estates or trusts. However, it contains a "grandfather clause" that makes the prohibition effective only after the date on which the new rules become effective.

The Committee has hesitated to reply by published opinion to the inquiries of this nature, because the Committee perceives a substantial distinction between the strict immediate prohibition against performing services as officer, director or employee of a corporation (even a family corporation) enacted by the Judicial Conference in 1963 and the present and proposed future canon of the American Bar Association relating to the "business-like" performance of a fiduciary for a non-family trust or estate.

The Committee considered that the proper way to handle this matter was for this statement to be embodied in the report of the Committee to the Judicial Conference.

COMMITTEE ON COURT ADMINISTRATION

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

Prompt Disposition of Certain Cases

The Conference was advised that the records of the Administrative Office of the United States Courts show that 57% of the criminal cases filed in the Federal District Courts are disposed of in the median time of three months and 98% of the criminal cases filed in the Federal System are disposed of in the median time of six months. The remaining two percent of the cases are of types which deserve and require as nearly as possible a comparable chronological time table despite the fact that they may present difficult and time-consuming problems both of fact and law. The Conference recognized that some civil cases also present similar complexities and many districts have by rule or established practice taken steps to avoid delays in what are designated "protracted" cases.

Independent of statutory and constitutional provisions designed to guarantee speedy disposition of cases, the Conference agreed that considerations of sound judicial administration dictate first that rules, procedure or administrative practices be developed forthwith to identify at the earliest possible stage those cases which appear likely to be subject to delays and second to assure that no avoidable delays are tolerated.

Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases

The following proposals were submitted to the Conference by the Committee on Court Administration and were adopted by the Conference for the purpose of assuring that cases likely to be protracted, difficult, or unusual are not allowed to pend for periods more lengthy than that required for so-called routine cases. Without amending existing programs for the assignment and calendaring of cases in individual circuits or districts this program requires the screening promptly upon the return of the indictment or filing of the complaint and before assignment to individual judges of such cases, and the assignment of such cases to judges most available to assure orderly and prompt disposition under existing statutes and rules of procedure. These proposals, while basically addresesd to multi-judge district courts should, nevertheless, be followed wherever practicable, feasible and applicable by all district courts. Similarly, circuit courts of appeals should utilize these requirements to assure prompt disposition of the appeals in these types of cases. While statutory precedence must be given to criminal cases the procedures outlined hereafter are recommended for the handling of civil cases within the categories enumerated above, especially those cases presenting extraordinary potential for complication or delay.

I

There shall be established within each multi-judge court a screening system whereby all cases potentially presenting unusually difficult questions of law or procedure and which may require longer periods of time for disposition than so-called routine cases, or which by their inherent nature will require exceptional supervision, will be identified and assigned in accordance with the procedures herein set forth. The ultimate responsibility for proper assignment of these cases remains with the chief judge of each district court, but in multi-judge courts some courts have utilized an executive or assignment committee, not to exceed three judges, to advise and consult with him in determining the judge or judges best available to promptly and properly dispose of each case within the categories enumerated herein. To insure efficient screening it is recommended that the chief judge, or the committee, where practical, hold a daily conference with the clerk of court to review the cases filed in the prior day's business. If such a conference is impractical, the chief

judge shall perfect such other arrangements as are required to bring these cases immediately to his attention. Judges presiding at the reporting of indictments by grand juries should be alert to identify cases within the categories enumerated, including but not limited to defendants unable to post bond, aggravated criminal offenses and defendants with extensive criminal records who are released on bail.

II

When the screening process identifies cases within the categories enumerated they shall be assigned by the chief judge or the assignment committee to the judge best available to assure their continuous and close supervision and prompt disposition. In making this assignment the chief judge shall consult with and seek the advice of any executive or assignment committee which he has established for the screening process. An appropriate alternative would be for the chief judge to draw at random a judge from among those designated as most available. The assignment of the district judge to handle the cases identified through the screening process will be made promptly after the identification of the case.

III

Immediately upon notification of the assignment to try a case the district judge shall take all proper and required steps to assure the prompt disposition of the case. Pre-trial conferences should be scheduled with trial counsel, stated periods established for filing and disposition of motions, discovery procedures scheduled, and early trial date fixed and maintained. The district court shall maintain constant supervision over all phases of the case, by frequent record conferences with counsel. After a verdict and judgment, if an appeal is noted, the trial judge shall issue such orders as are necessary to assure immediate filing of such parts of the transcript as may be needed.

IV

The chief judge on his own motion, or on the request of a specially assigned judge, should have power to relieve the trial judge of so much of his regular case assignment as may be necessary to insure prompt disposition of any specially assigned case or cases. In providing for such relief the chief judge may, of course, use the services of other judges of his own court or may, if necessary, request the circuit chief judge to seek the temporary assignment of

outside judges under the provisions of the intercircuit assignment statutes and procedures.

V

In district courts having one, two or three judges the chief judge thereof should observe the underlying principles set forth herein to identify cases requiring and justifying immediate assignment and close supervision. In the event the chief judge of a district believes a case requires priority assignment and his commitments and that of his associates on that court are such as to make impossible such assignment, he shall promptly, after the identification of such a case, consult the chief circuit judge of his circuit and request the immediate assignment of a judge from within or without the circuit to handle the identified case. Upon receipt of such request the chief circuit judge shall forthwith designate a judge to hear the case. If a judge is not available within the circuit for such assignment he will under existing procedures effect the assignment to the case of the most available judge on an inter-circuit basis. In designating a judge for assignment a chief circuit judge will give appropriate consideration to matters of geographical convenience to court and supporting personnel, counsel, litigants, witnesses, as well as physical court facilities.

VI

After disposition in the district court of a case specially assigned under this resolution and its appeal to the circuit court, the appropriate court of appeals shall take all necessary and proper steps to avoid any delay in its disposition of the case. It shall be the responsibility of the trial judge to file with the clerk of the court of appeals a notice that the case was handled and disposed of on a priority basis. Upon receipt of such certification the clerk of the circuit court will immediately notify the chief judge of the circuit of such filing, and that chief judge will arrange, after consultation with counsel, an expedited briefing schedule, and an argument date at the earliest possible time after closing of the briefing schedule. Necessary orders for the expedited filing of trial and other transcripts should be issued and enforced. If necessary the chief circuit judge shall arrange for the trial court reporter to give priority to preparation of such portions of the transcript as may be required. If practicable and agreeable to counsel, the court of appeals may waive written briefs, permit submission without argument,

permit appeal on typed briefs, or take such other procedural steps as are practical and legal to expedite hearing and disposition. The court of appeals may, after hearing, announce its ruling orally from the bench, with or without opinion to follow such orders.

VII

The following definitions are applicable to the Resolution:

"Best Available Judge" means that judge whose current commitments, health, judicial experience, experience in the fields of legal activity and facts involved in the particular case, qualify him as being one of those suited to handle the category of case under consideration.

"Prompt Disposition" means ordinarily not more than sixty days total elapsed time from date of filing to date of trial, oral argument or appeal.

VIII

The Handbook for the handling of protracted cases is recommended as a source of data designed to expedite the disposition of cases embraced within this resolution.

IX

Adopted by the Judicial Conference of the United States this 29th day of October 1971.

MATTERS RELATING TO DIVISIONS AND PLACES OF HOLDING COURT

The Conference next considered a series of proposed bills on which the views of the Conference had been sought by the appropriate committees of the Congress.

The Conference approved H.R. 6745, a bill which would remove Gregory County from the Southern Division and would remove Mellett, Todd and Tripp Counties from the Western Division of South Dakota and place these counties in the Central Division of that court. This proposal has been approved by the judges of the District Court and the Judicial Council of the Eighth Circuit.

The Conference voted its disapproval of the following bills:

1. S. 1137 and H.R. 4563 which would transfer Obion and Lake Counties from the Eastern to the Western Division of the District Court for Western Tennessee;

2. S. 230 providing for the holding of court at Morgantown, West Virginia;

3. H.R. 4775 providing for the holding of court at Santa Ana in the Central District of California;

4. S. 1296 and S. 1668, creating the Lufkin Division for the Eastern District of Texas.

All of these bills, disapproved by the Conference, were disapproved by the Judicial Councils of the respective circuits.

Financial Disclosure

The Conference next considered a series of bills relating to the subject of financial disclosure or reporting by federal judges and Justices, as follows:

1. S. 1885, known as the omnibus disclosure act, applying to reporting of income by all federal employees whose salaries exceed $18,000 per year;

2. H.R. 7830, known as the Federal financial disclosure act, and calling for the reporting of gross income of federal employees, spouses and dependent children;

3. H.R. 588 and H.R. 1347, prohibiting compensation to any judge or Justice for any service other than salary, except where approved by the Judicial Council. These bills also require annual reports of investments, assets and income;

4. H.R. 6182 prohibits a judge or Justice from accepting compensation for services performed without prior approval of his circuit council or his Court and provides that such compensation, when permitted, shall be made a matter of public record;

5. H.R. 372 and H.R. 1319 applies to Justices and judges and provides for annual filing of a sealed report of financial interests, assets and liabilities.

The Conference noted each of these bills and agreed that Congressional committees should be advised that the Conference would recommend that action on each of these bills be withheld pending consideration by the American Bar Association and by the Judicial Conference of the proposed Code of Judicial Ethics prepared by the Traynor Committee and now awaiting action by the American Bar Association.

The Conference pointed out, further, that at the present time each federal judge makes a semi-annual report of extrajudicial in-

come which discloses not only any income for extrajudicial services but as well any gifts received by him or his immediate family, as well as knowing participation by the judge in cases in which he or a member of his immediate family might have had any financial interest.

Insofar as any of these bills applies outside the judicial branch, the Conference made no recommendation.

Establishment of a Court of Ethics

H.J. Res. 32 would create a three-judge bipartisan court of ethics to hear complaints of unethical conduct by federal officers and employees. Insofar as this bill would apply to the judiciary, the Conference expressed its disapproval as unnecessary and undesirable.

Disqualification of Justices and Judges

The Conference voted its disapproval of S. 1553, a bill which would completely revise the present section 455 of title 28, United States Code. The Conference expressed the view that the present section 455 has served its purpose exceptionally well and that no instances have been called to its attention of the inadequacy or abuse of the present statute.

The Conference also voted to disapprove S. 1886, entitled the Judicial Disqualification Act of 1971, which would drastically amend both Section 455 and Section 144 of Title 28, United States Code. The Conference expressed the view that the proposed amendment to Section 455 dealt largely with matters covered in the proposed new Code of Judicial Ethics of the American Bar Association and the Conference believes that any action regarding Section 455 should await final action by the American Bar Association as well as by the Judicial Conference relating to the new Code of Judicial Ethics.

As to the amendment of Section 144, the Conference agreed with the views of its Committee on Court Administration that in large measure that statute has been utilized to disqualify a judge not because of actual bias or prejudice against one party or in favor of the other but because the moving party believes the presiding judge may not look with favor upon his position. The Conference believes it is unwise to remove the safeguards written into the present statute.

The Conference also considered an amendment to Section 144 proposed by Senator Bennett which would permit the filing of an affidavit of bias or prejudice against counsel in the case as well. The Conference voted to disapprove this suggestion.

Mandatory Retirement of Judges

The Conference next considered and voted to disapprove S.J. Res. 57 relating to the mandatory retirement of Justices and judges upon reaching the age of seventy and S.J. Res. 113 proposing a Constitutional amendment for mandatory retirement at the age of 72. In taking this action the Conference agreed to adhere to the position taken at its October 1970 session (Conf. Rept., p. 76) favoring mandatory retirement of Justices and judges at age seventy, with a proviso that those not eligible to retire on attaining age seventy shall continue in office until becoming eligible. The Conference did not then and does not now propose that a Constitutional amendment is necessary to accomplish these objectives.

The Conference further reiterated the position taken at its October 1970 session (Conf. Rept., p. 77) which would endorse legislation then pending in the 91st Congress providing that a judge who has reached the age of 70 may retire after 10 years of service, at the age of 69 after 11 years of service, at the age of 68 after 12 years of service, at the age of 67 after 13 years of service, at the age of 66 after 14 years of service and at the age of 65 after 15 years of service.

The Conference noted that Section 3 of Public Law 85–593 provided in part that the amendment of Section 136, Title 28, United States Code, relating to the office of chief judge of the district would not be effective with respect to any district having two judges in regular active service so long as the district judge holding the office of chief judge of any such district on August 6, 1958 continued to hold such a position. The Conference agreed that this legislative proviso had outlived its usefulness and agreed to recommend to the Congress a draft bill to carry out the views of the Conference.

Retirement Benefits

The Conference had for consideration two bills affecting annuities to widows of Justices and judges, namely, S. 1479 and S. 1480. The Conference was in agreement in approving S. 1479 which would increase the annuity of present widows of Supreme Court Justices

from $5,000 to $10,000 per year. In lieu of S. 1480 which would permit Justices of the Supreme Court to come within the terms of the Judicial Survivors' Annuity Act, the Conference approved a complete revision of the Judicial Survivors' Annuity Act not only to permit Justices to come within the benefits of that legislation but also would include the Judicial Survivors' Annuity Fund in the Civil Service Retirement Fund, thus avoiding the anticipated early exhaustion of the existing Judicial Survivors' Annuity Fund. The Conference authorized the transmission to the Congress of the proposed revision of the Judicial Survivors' Annuity Act.

The Conference next considered a proposal by Congressman Udall to amend 28 U.S.C. 371 to provide for the reduction in the salary paid to a Justice or judge who does not resign or retire upon reaching the age of seventy. The Conference was in agreement that this proposal presented serious Constitutional problems and should be disapproved.

The Conference voted to disapprove S. 1976 which would provide that a retired Justice or judge shall not perform judicial duties at any time after he has been retired from regular active service for more than five years.

The Conference voted to disapprove S.J. Res. 106 limiting by Constitutional amendment the terms of judges to eight years.

The Conference voted to disapprove S. 1967 which would provide that Justices and judges not reaffirmed after an eight-year term, as provided in S.J. Res. 106, would continue to receive the salary of their office for the remainder of their lifetime.

Fees in the Courts of Appeals

The Conference approved a resolution recommended by the Ninth Circuit Judicial Council, with the proviso that its application to any court of appeals should be at the election of each such court. The resolution reads:

For sometime it has been the practice in the Ninth Circuit Court of Appeals to dispense with an appendix in an appellate record and to hear the appeal on the original record, with a number of copies thereof being supplied (Rule 30f, Federal Rules of Appellate Procedure). It has been the practice of the Court to tax a fee of $5 in small records and $10 in large records for the time of the clerk involved in preparing such appeals and by way of reimbursement for postage expense. Judicial Conference approval heretofore has not been secured and the Judicial Council of the Ninth Circuit now seeks to fix a flat fee of $15 to be charged as fees for costs to be charged by *any* court of appeals "in any appeal in which the requirement of an appendix is dispensed with pursuant to Rule 30f, Federal Rules of Appellate Procedure."

Consumer Protection Legislation

The Conference considered several legislative proposals which had been referred to it dealing with various aspects of consumer protection and consumer remedies. As to each of these bills the Conference took the position that they involve basically a matter of legislative policy on which the Conference should not express an opinion. The bills involved are:

1. H.R. 260 to protect consumers against unreasonable risk of injury from hazardous products;
2. H.R. 261 to authorize the Federal Trade Commission to set standards to guarantee comprehensive warranty protection to purchasers of merchandise shipped in interstate commerce;
3. H.R. 262 to amend the Federal Trade Commission Act to extend protection against fraudulent or deceptive practices condemned by that Act to consumers through civil actions, and to provide for class actions by defrauded consumers;
4. A draft bill to provide for testing of consumer products and penalties for misrepresentation of the results of such testing;
5. A draft bill to create the National Institute for Consumer Justice;
6. A draft bill to provide increased protection for consumers and for other purposes;
7. A draft bill to provide warranty protection for consumers and for other purposes;
8. H.R. 667 to amend the Federal Trade Commission Act by providing for temporary injunctions or restraining orders for certain violations of that Act;
9. H.R. 5630 to provide implementation of the Federal Trade Commission Act to give increased protection to consumers, and for other purposes;
10. A draft bill to provide for the development, adoption and promulgation of product safety standards.

Division of Jurisdiction Between State and Federal Courts

The Senate Judiciary Committee had referred to the Conference for comment S. 1876, a bill to provide for the division of jurisdiction between state and federal courts in implementation of the recommendations of the American Law Institute. The Conference took the position that the proposals contained in S. 1876 are well conceived, workable and based upon acceptable compromise of variant views of the bench and bar. The Conference reiterated, however, its preference for the bills approved by the October 1970 session of the Conference (Conf. Rept., p. 78) designed to eliminate the requirement of a three-judge district court in cases seeking to restrain the enforcement of state or federal statutes for repugnance to the Constitution and to provide for direct appeal to the Supreme Court in certain cases.

Other Legislation

The Conference considered a draft bill to amend the Trade Mark Act to extend the time for filing oppositions, to eliminate the requirement of filing reasons for appeal in the Patent Office and to provide for awarding of attorneys' fees. The Conference noted that this proposed legislation refers only to the Court of Customs and Patent Appeals. In lieu of commenting on the legislation as such, therefore, the Conference decided to send to the Office of Management and Budget a copy of a letter which the Subcommittee on Federal Jurisdiction which originally considered the draft bill had received from Chief Judge Worley of the Court of Customs and Patent Appeals on this subject.

The Conference next considered a series of bills, each of which it was decided involved a matter of legislative policy and on which the Conference should take no position, as follows:

1. A draft bill to expand the jurisdiction of the Federal Trade Commission by substituting the words "affecting commerce" for the words "in commerce," in section 5 of the Federal Trade Commission Act;
2. A draft bill to amend the Federal Aviation Act to provide for representation of the Civil Aeronautics Board in court proceedings through its own counsel and to provide for all review of Board actions in the courts of appeals;
3. A Department of Justice draft bill to amend Title 28, United States Code, by adding a section providing exclusive original jurisdiction in the district courts of civil actions under Section 2409a;
4. A draft bill to extend the life of the Indian Claims Commission;
5. S. 1439 to establish a Judicial Assistance Administration within the Department of Justice.

The Conference also expressed disapproval of two bills, the subject matter of which has been before previous sessions of the Conference at which the Conference took the same action:

1. H.R. 4356 and H.R. 9423 for enforcement of family support orders in certain state and federal courts and making it a crime to move in interstate commerce to avoid compliance with such orders;
2. H.R. 2373 to provide for the establishment of a United States Court of Labor Management Relations.

Representation of Indigents by Certain Law Students

The Conference was advised that many state courts have through rule-making or otherwise provided clinical experience for law students through permitting such students who qualify to represent indigents in civil and criminal proceedings under the supervision of a lawyer admitted to the bar. Most of these states have used the American Bar Association model rule as a guide in determining the

conditions under which law students may practice in their court. The Conference agreed to recommend that all federal courts consider the advisability of adopting a local rule similar to the American Bar Association model rule but tailored to the needs of the particular district or circuit. The Conference was in agreement that the participation of qualified law students in this clinical experiment not only would redound to their benefit as lawyers but would provide much needed legal assistance under appropriate supervision for indigent parties who might otherwise be totally unrepresented.

The Conference further approved H.R. 8084, a bill to provide that the federal government shall assume the risks of its fidelity losses.

Additional Circuit Judgeships

After consideration of the recommendations of the Committee on Court Administration based on the quadrennial survey of the needs of the courts of appeals conducted by the Subcommittee on Judicial Statistics, the Conference agreed to recommend to the Congress the establishment of ten additional circuit judgeships, as follows:

Circuit:	*Number*
First	1
Second	*2
Third	1
Fourth	2
Fifth	0
Sixth	0
Seventh	1
Eighth	0
Ninth	2
Tenth	1
Dist. of Col.	0
Total	10

* Conditional upon certification of need by the Judicial Conference

In making this recommendation the Conference noted that based on statistics alone seven additional judgeships would be warranted in the Fifth Circuit over and above the 15 now authorized and five additional judgeships would be warranted in the Ninth Circuit rather than the two recommended. The Conference agreed further with its Committee on Court Administration that to increase the number of judges in a circuit beyond 15 would create an unworkable situation. In this connection the Conference noted a resolution unanimously adopted by the judges of the Fifth Circuit in October

1971 in which the judges state that the Judicial Council "holds strongly to its prior formal determination that to increase the number of judges beyond 15 would diminish the quality of justice in this circuit and the effectiveness of this court to function as an institutionalized federal appellate court." The Judicial Council of the Fifth Circuit went on to endorse H.R. 7378, a bill to establish a Commission on the Revision of the Judicial Circuits as previously proposed by the Judicial Conference "as an indispensable first step toward improvement in the federal circuit court system."

District Court Judgeships

The Conference noted that bills had been referred for consideration to provide for additional district judgeships in the Districts of Kansas, Massachusetts and Oregon. The Conference was in agreement, however, that inasmuch as the quadrennial survey of district court needs will be undertaken early in 1972, the Conference would not, absent a showing of emergency, recommend any additional district judgeships at this time.

Salary Fixing and Appointing Authority in the Special Courts

The Conference next considered and approved for transmittal to the Congress two bills treating with the salary fixing authority and appointing authority for employees of the Court of Claims, the Customs Court and the Court of Customs and Patent Appeals. The Conference noted the recommendation of the Subcommittee on Supporting Personnel that such legislation was important to achieve desirable uniformity among the federal courts and to lay at rest any questions of interpretation and unnecessary controversy. In approving the recommendation for the uniform treatment of salary fixing and appointing authority in the special courts the Conference noted that there was no intention to affect the grades and special qualifications now existing for the legal assistants of the Court of Customs and Patent Appeals and the Customs Court.

Federalization of Transcribers

The Conference approved and directed the transmission to the Congress of a proposed bill whereby transcribers employed by official court reporters would be appointed as regular federal court employees and paid from appropriated funds on a standard per annum basis with the appropriation being largely reimbursed for the

costs of the salaries by the official court reporters returning to the United States Treasury a fixed percentage of their transcript income. The legislation is permissive for any court and the Conference noted that the Administrative Office had prepared a set of tentative qualification standards for court transcribers should the legislation be enacted.

Projection of Personnel Needs

Based on the responses of the individual courts to the Director of the Administrative Office the Subcommittee on Supporting Personnel made a careful review of the personnel needs of the courts. Based on the result of this study the Conference has approved, subject to the availability of funds and, if necessary in any individual case, subject to the passage of substantive legislation needed to achieve the requests, the following recommendations:

In the Courts of Appeals Clerks' Offices, 24 additional deputy clerks.
In the District Court Clerks' Offices, 210 additional deputy clerks.
In the Referees' Offices, 119 positions.
In the Probation Offices, 320 probation officers, 30 full-time probation officer assistants, 177 clerks.

The Conference also approved that any requested positions which were not granted for fiscal year 1972 be added to the above totals.

The Conference approved the request of Chief Judge Brown of the Fifth Circuit, subject to the availability of funds and the drafting of substantive legislation if deemed needed by the Budget Committee, as follows:

(a) *Judges Staff:* *Position and additional needs:*	*Resulting total*
(1) Secretaries, 1 for each Circuit Judge	2
(2) Secretaries, 2 for Chief Judge	4
(3) Secretaries, Upgrading principal secretary	0
(4) Law Clerk, 1 for each Circuit Judge	3
(5) Clerical Assistant, 1 for each Circuit Judge	1
(b) *For Serving the Whole Court:*	
(1) Chief Staff Attorney, 1 (approx. $30,000)	1
(2) Additional Staff Attorneys, 5	8
(3) Secretaries for Staff Law Clerk's Office, 3	4

COMMITTEE ON THE BUDGET

The Budget Committee report was presented by its Chairman, Judge Carl A. Weinman. Because of the necessity of submitting the budget to the Office of Management and Budget prior to Oc-

tober 15, the report had been previously circulated to the members of the Conference and approved by mail vote.

The appropriation bill, signed into law August 10, 1971, carried out the recommendations of the House Committee, allowing $164,804,000 for the Judiciary, exclusive of the Supreme Court. This included approval of 172 additional positions: 22 deputy clerks for the courts of appeals, 16 law clerks for senior circuit judges, 11 circuit court executives and a clerical assistant for each, 67 deputy clerks for the district courts, 28 probation officers and 18 clerical assistants, a librarian and two interpreters. There were also included funds for salary increases for court reporters. Requests by the Director to the Senate Appropriation Committee for restoration of funds for other personnel were unavailing, however, except as to secretaries for circuit judges; this sum was subsequently deleted in Senate-House Conference Committee. The Conference authorized the Director to submit to the Congress requests for supplemental appropriations for fiscal year 1972 as may be necessary.

Estimates for 1973

The estimates approved for fiscal year 1973 for the judiciary, exclusive of the Supreme Court, the Customs Court and the Federal Judicial Center, aggregate $180,428,000, an increase of $19,234,000 over the amounts appropriated for 1972. The increase includes all funds requested for personnel approved by the Conference (see Report of Committee on Court Administration) but does not include the Fifth Circuit request for $208,000 to establish a staff law office, for which the Budget Committee believed substantive legislation would be required.

Proposed Changes

The Conference approved proposed changes in limitation on the aggregate salaries of secretaries and law clerks to circuit and district judges, so as to provide the aggregate salaries paid to secretaries by each of the circuit and district judges shall not exceed $62,257 and $39,172, respectively, and for chief judges of circuits and districts not to exceed $84,244 and $42,754 per annum, respectively.

The Conference approved also changes in text of the appropriation for Salaries of Referees and Expenses of Referees to provide for payments from monies in the Treasury of any deficiencies in the Referees' Salary and Expense Fund.

Federal Public Defenders

The Conference approved the budget estimates submitted by Federal Public Defenders for fiscal years 1972 and 1973 but with the understanding that any requests for additional full-time attorneys shall be subject to the approval of the respective judicial councils of the circuits and any requests for other personnel shall be subject to the approval of the Director of the Administrative Office.

Land Commissioners

The Conference, at the March 1971 session (Conf. Rept., p. 26), deferred at the request of the Chairman of the Budget Committee consideration of the report relating to responsibility for obtaining funds for compensation and expenses of commissioners appointed under Rule 71(A)(H) of the Federal Rules of Civil Procedure. At the request of the Department of Justice special studies of this subject have been made in 1961 and again in 1970 and each time it was concluded by the ad hoc committees created for this purpose that the responsibility of obtaining these funds should be transferred to the Administrative Office provided the Department of Justice seeks and obtains approval thereof from the appropriating authorities. Should such a transfer take place, the committees were agreed that a study should be made of appropriate guidelines for and possible supervision of the use of the fund by the judges who make such commissioner appointments. The 1961 recommendations were not adopted at the request of the then Chairman of the Budget Committee. The present Budget Committee, after a review of the 1970 recommendations of the ad hoc committee as reported to the March 1971 session of the Conference, again recommended that the request of the Department of Justice be denied. The Conference agreed.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

Pursuant to 28 U.S.C. 48, the Conference approved the pretermission of terms of courts of appeals for those sessions of the Court of Appeals for the Fourth Circuit to be held at Asheville, North Carolina, and those terms of the Court of Appeals for the Eighth Circuit which might be held in places other than St. Louis prior to the next session of the Conference.

RELEASE OF CONFERENCE ACTION

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

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

NOVEMBER 30, 1971.

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