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

MARCH 7-8, 1974

WASHINGTON, D.C.

1974

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**Rowland F. Kirks
Director**

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

TABLE OF CONTENTS

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, MARCH 7-8, 1974

	Page
Call of the Conference.....	1
Elections.....	2
Report of the Director of the Administrative Office of the United States Courts.....	3
Committee on the Budget.....	3
Court Administration.....	3
Additional Judgeships.....	3
Puerto Rico.....	4
Ninth Circuit.....	5
Quadrennial Survey.....	5
Bilingual Court Proceedings.....	5
Efficiency and Management Studies.....	6
Judicial Councils of the Circuits.....	7
Powers, Functions and Duties of Circuit Councils.....	8
Duties which may be Delegated to the Circuit Executive.....	10
Legislative Responsibilities of the Circuit Councils.....	10
Court of Appeals Opinions.....	12
Supergrade Classifications in the Administrative Office.....	13
Legislation.....	13
Clerk's Office—Canal Zone.....	13
Territorial Judges.....	13
Tort Claims.....	14
Franchise Act.....	14
Environmental Court System.....	14
Chief Judgeships.....	14
Review Committee.....	15
Joint Committee on the Code of Judicial Conduct.....	17
Advisory Committee on Judicial Activities.....	18
Committee on the Operation of the Jury System.....	18
Energy Crisis.....	18
Fees of Jurors.....	18
Petit Juror Utilization.....	19
Sequestration of Jurors.....	20
Jurors Injured in Performance of Their Duties.....	20
Analysis of Periodic Reports.....	21
Automation of Selection Process.....	21
Committee on the Administration of the Criminal Law.....	21
The Exclusionary Rule.....	21
Selection of Counsel under the Criminal Justice Act.....	21
New Federal Criminal Code.....	22
Committee on Habeas Corpus.....	22

VI

	Page
Committee on the Administration of the Bankruptcy System	23
Salaries and Arrangements for Referees	23
Charges for Special Services	25
Case Filings and Costs	26
Reports by Designated Bankruptcy Depositories	27
Committee on the Administration of the Magistrates System	27
Salary Increases	28
Magistrate Positions	28
Administrative Regulations	29
Legislation	29
Committee on the Administration of the Probation System	30
Sentencing Institutes	30
Carrying of Firearms	30
Monograph on Selective Presentence Investigation Reports	31
Voluntary Surrender Procedures	31
Committee on Intercircuit Assignments	31
Committee To Implement the Criminal Justice Act	32
Appointments and Payments	32
Quality of Representation	33
Excess Payments	34
Federal Public Defenders	34
Community Defender Organizations	34
Guidelines	35
Committee on Rules of Practice and Procedure	35
Bankruptcy Rules	35
Criminal Rules	36
Civil Rules	36
Appellate Rules	36
Special Reports	36
Pretermission of Terms of Courts of Appeals	37
Release of Conference Action	37

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

March 7-8, 1974

The Judicial Conference of the United States convened on March 7, 1974, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge John J. Sirica, District of Columbia*

First Circuit:

Chief Judge Frank M. Coffin
Chief Judge Andrew A. Caffrey, District of Massachusetts

Second Circuit:

Chief Judge Irving R. Kaufman
Chief Judge David N. Edelstein, Southern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Michael H. Sheridan, Middle District of Pennsylvania

Fourth Circuit:

Chief Judge Clement F. Haynsworth, Jr.
Judge Charles E. Simons, Jr., District of South Carolina

Fifth Circuit:

Chief Judge John R. Brown
Judge E. Gordon West, Middle District of Louisiana

Sixth Circuit:

Chief Judge Harry Phillips
Judge Robert L. Taylor, Eastern District of Tennessee

Seventh Circuit:

Chief Judge Luther M. Swygert
Judge James E. Doyle, Western District of Wisconsin

Eighth Circuit:

Chief Judge Pat Mehaffy
Chief Judge Oren Harris, Western District of Arkansas

*On designation of the Chief Justice, Judge George L. Hart, Jr., attended the Conference in place of Chief Judge John J. Sirica.

Ninth Circuit:

Chief Judge Richard H. Chambers
 Judge Jesse W. Curtis, Central District of California

Tenth Circuit:

Chief Judge David T. Lewis
 Chief Judge Frederick A. Daugherty, Western District of Oklahoma

Court of Claims:

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Senior Circuit Judge Elbert P. Tuttle; Circuit Judges Robert A. Ainsworth, Jr., Edward A. Tamm; Senior District Judges Roy W. Harper, Arthur J. Stanley, Jr., Roszel C. Thomsen, Carl A. Weinman; and District Judges Walter E. Hoffman, Charles M. Metzner, Edward Weinfeld, Albert C. Wollenberg and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

The Honorable William B. Saxbe, Attorney General of the United States, and the Honorable Robert H. Bork, Solicitor General of the United States, addressed the Conference on the morning of the first day of the Conference on matters of mutual concern to the judiciary and the Department of Justice.

In the absence of the Honorable Alfred P. Murrah, Director of the Federal Judicial Center and Chairman of the Panel on Multidistrict Litigation, Mr. Richard Green, Deputy Director of the Center, gave an oral report on the activities of the former, while a written report was submitted on behalf of the Panel.

Mr. Mark Cannon, Administrative Assistant to the Chief Justice, Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, Mr. William E. Foley, Deputy Director, and Mr. Joseph F. Spaniol, Executive Assistant to the Director, attended all of the sessions of the Conference.

ELECTIONS

Upon nomination of the Executive Committee, the Judicial Conference approved for membership on the Board of the Federal Judicial Center Judge Marvin E. Frankel of the United States District Court for the Southern District of New York. Judge Frankel had been serving as a member of the Board to fill the unexpired term of Judge Gerhard Gesell who had resigned and was thus eligible to serve a full four-year term under the provisions of Title 28, United States Code, Section 621.

Upon nomination of the Executive Committee, the Judicial Conference approved the nomination of Mr. John W. Macy for a second term as a member of the Board of Certification for Circuit Executives, commencing July 1, 1974.

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

The Director of the Administrative Office, Mr. Kirks, advised the Conference concerning the trends in case filings during the first half of fiscal year 1974. In this period filings in the courts of appeals have increased 11 percent. In the district courts the civil filings have increased 2.9 percent and criminal filings have decreased by 7.8 percent.

Mr. Kirks also advised the Conference on the steps which the Administrative Office has been taking in collaboration with other governmental agencies concerning the fuel crisis, especially as it affects probation officers who are dependent on automobile transportation to fulfill their missions and upon jurors.

COMMITTEE ON THE BUDGET

Judge Carl A. Weinman, Chairman of the Budget Committee, briefed the Conference concerning the recently concluded hearings before the Subcommittee on Appropriations of the House of Representatives. He noted that the two large increases requested of the Congress in this budget are for additional probation officers and for deputy clerks, especially in the district courts. He said that the budget for the first time contains a request for rental of space for the judiciary, in accordance with the requirements of Public Law 92-313.

COURT ADMINISTRATION

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

ADDITIONAL JUDGESHIPS

The Conference agreed with the recommendation of the Committee to approve on an emergency basis legislation (1) to create an additional district judgeship for the District of Puerto Rico and (2) to create two additional judgeships for the Court of Appeals for the Ninth Circuit. The Administrative Office was instructed

to submit appropriate legislation and recommendation to the Congress on behalf of the Conference.

Puerto Rico

The district is at present served by three judges. In the past six years the district's filings have increased 65.7 percent. The workload per judgeship of 484 cases remains considerably above the national average of 352, and the weighted filings of 451 are greatly in excess of the national average of 343. In fiscal year 1973 the district terminated 423 cases per judgeship, a figure considerably higher than the national average of 354. Nevertheless, pending cases per judgeship increased from 627 in fiscal year 1972 to 688 in fiscal year 1973. The median time from issue to trial of civil cases is 21 months. Three years ago it was only 12 months. The number of three-year old civil cases has risen from 36 in 1967 to 272 at the end of fiscal year 1973. Triable defendants in cases over one year old number 70. In contrast, there is a total of only 50 such defendants in the four other districts of the First Circuit.

The district received 109 days assistance from visiting judges in fiscal year 1973. This was offset, however, by a five-month vacancy that was filled in December 1972. Whether the relatively large contribution from visiting judges can, or should be, maintained is problematical, but it is obvious that without this help in the past year the backlog would have been measurably larger.

Chief Judge Toledo has explained that among the problems peculiar to Puerto Rico is a local anti-injunction statute, which has the effect of attracting petitions for this relief to the federal court. He recently advised that as of early December 1973, 98 applications for injunctions had been filed during the calendar year. Cases of this type, he explained, are usually complicated, requiring from three to four days of a judge's time for each case.

The Conference agreed with the Committee that consideration of Puerto Rico's needs cannot be based on bare statistics alone. Puerto Rico occupies a sensitive position in the federal judicial system. The importance of this fact is emphasized by the comments of Chief Judge Frank M. Coffin:

The unique importance of not shortchanging this district lies in the special relationship of the Commonwealth of Puerto Rico, the continuing tensions revolving about that relationship, and the need for providing to that important, complex, and growing jurisdiction prompt access to an effective and responsive federal court.

Ninth Circuit

As a result of the last quadrennial survey of the courts of appeals, the Judicial Conference in 1971 recommended to the Congress the creation of two additional judgeships in the Ninth Circuit, bringing the total of judgeship positions in the court of appeals to 15. (Conf. Rept., p. 81). Since 1971 new filings in this circuit have increased from 1,585 in fiscal year 1970 to 2,316 in fiscal year 1973, or 46.1 percent. Filings in the calendar year 1973 totaled 2,712. The appeals filed per judgeship were 178 and the appeals terminated 165, as compared with 122 and 117, respectively, in fiscal year 1970. The judges of the court of appeals have urged that separate legislation be sponsored on an emergency basis to meet what they regard as a crisis situation.

QUADRENNIAL SURVEY

Under Conference policy of conducting a survey each four years of the courts of appeals, such a survey would normally be conducted in 1974. Although the Congress has taken no action on the recommendations made after the last such survey in 1970, partially because Congress is awaiting the results of the report of the Commission on Revision of the Federal Court Appellate System, the Conference agreed with the Committee that a survey should be undertaken in 1974 and that the results of such a survey might be helpful in connection with Congressional consideration of the Commission report, as well as the earlier Conference recommendations (Conf. Rept. 1971, p. 81).

BILINGUAL COURT PROCEEDINGS

The Conference next considered the provisions of S. 1724, introduced September 28, 1973, and referred to the Conference for comment by the Chairman of the Senate Judiciary Committee. This legislative proposal, which is a rather drastic amendment to a bill previously introduced on the same subject which would have required the designation of several district courts as "bilingual" and which would have provided for use of extensive audio electronic equipment to provide simultaneous translations, provides that in criminal cases the judge shall order an oral simultaneous translation of the proceedings or the testimony and that in civil actions the courts shall order an oral translation of the proceedings, either simultaneous, consecutive or summary in nature. The bill further provides that the judge in any proceeding may order all or part of

the non-English testimony and translations thereof to be recorded electronically for use in verification of the official transcript of the proceedings.

The Director of the Administrative Office is required to maintain lists of certified interpreters who shall be called upon by the court when available. The Director is likewise required to determine and certify the qualifications of persons who may serve as certified interpreters and make lists of such persons available to the district courts.

The Conference noted that the Committee's survey of present requirements of the courts found little, if any, objection to the present system or need for change. The Conference was advised, however, that the legislative history, being made through hearings conducted since the Committee meeting, demonstrated that the requirement of "oral simultaneous translation of the proceedings in criminal cases does not necessarily require the use of any equipment if the defendant is afforded a continuous uninterrupted translation." Subsequent Senate hearings have likewise demonstrated that a court under the proposed bill may make its own selection of an interpreter if an interpreter certified by the Administrative Office is not readily available.

The Conference agreed with the Committee as to a proposed amendment to S. 1724 that permission to use the Spanish language in the District Court of Puerto Rico is a decision involving Congressional policy but the Conference was agreed that under such circumstances the use of Spanish must remain discretionary with the district judge.

The Conference agreed that the Congress should be advised of the foregoing and also advised that no demonstrated need for legislation such as S. 1724 has been found in the federal system although no one questions the need for accurate translation of court proceedings for those not fluent in the English language.

EFFICIENCY AND MANAGEMENT STUDIES

The Conference was advised that the Director of the Administrative Office had invited the attention of the Committee to a practice which has developed in recent years whereby various courts have secured outside consultant services with respect to office management, filing, data processing and other office routines. As a result of recommendations made by such consulting services, in some instances courts have modified the forms then in use which were

forms specifically approved by the Judicial Conference or the Administrative Office and substituted other forms which have not been approved. Likewise, in one or more instances courts have modified reporting procedures to the Administrative Office as a result of recommendations by such consulting services. Because of the duplication of effort in some instances and because of the need of uniformity in reporting forms, the Conference agreed as a matter of policy (1) that prior coordination should be had with the Administrative Office before any commitment for a management study is made, (2) that no government funds should be obligated without prior authority of the Administrative Office, and (3) that no changes should be made in any forms approved by the Judicial Conference without prior Conference approval.

JUDICIAL COUNCILS OF THE CIRCUITS

Through the Subcommittee on Federal Jurisdiction the Committee on Court Administration reviewed the operation of the provisions of Section 332 of Title 28, United States Code, relating to the powers and responsibilities of the judicial councils of the circuits. Through a questionnaire the Subcommittee obtained the views of circuit judges and chief judges of district courts concerning methods of improving the operation of the judicial councils. The results of the questionnaire indicated that judges generally saw no need for additional legislation further expanding or identifying the functions and duties of the circuit councils. The great majority of the responses indicated that the present statute gives the circuit councils all the authority they need to "make all necessary orders for the effective and expeditious administration of the business of the courts within [their] circuit[s]" and that further clarification of the statute concerning council functions is a judicial rather than a legislative responsibility. The Subcommittee of the Committee therefore recommended to the Committee a proposed statement of the powers, functions and duties of councils. This proposed statement was again circulated for comment and revisions were made in the light of those comments. This statement as submitted by the Committee was approved by the Judicial Conference and the Director of the Administrative Office was ordered to distribute copies thereof to all circuit judges and all judges of the district courts and the Administrative Office was also requested to incorporate the statement in any administrative handbook which may

be issued as well as any reissue of the judges' Bench Book. The statement of the powers, duties and functions of circuit councils is as follows:

POWERS, FUNCTIONS AND DUTIES OF CIRCUIT COUNCILS

1. Section 332(d) of Title 28, United States Code, reads:

"Each judicial council shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit. The district judges shall promptly carry into effect all orders of the judicial council."

2. The purpose of 28 USC § 332 is to create a "system of decentralization" by recognizing in each circuit the judicial council as "the operating unit in bringing about the proper administration of justice." Hearings before a Subcommittee of the Senate Judiciary Committee, 76th Congress, 1st Sess., on S. 188, April 4-5, 1939, at p. 20.

3. The judicial council "shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit." 28 USC § 332. *It is vital that the independence of individual members of the judiciary to decide cases before them and to articulate their views freely be not infringed by action of a judicial council.*

4. "The responsibility of the councils 'for the effective and expeditious administration of the business of the courts within its circuit' extends not merely to the business of the courts in its technical sense (judicial administration), such as the handling and dispatching of cases, but also to the business of the judiciary in its institutional sense (administration of justice), such as the avoiding of any stigma, disrepute, or other element of loss of public esteem and confidence in respect to the court system, from the actions of a judge or other person attached to the courts." Report of the Judicial Conference of the United States on the Powers and Responsibilities of the Judicial Councils (June 1961).

5. The chief judge of a district court should be informed when matters concerning his district are under consideration and shall pass the information promptly to the judges of the district.

6. Before any action is taken with respect to a particular judge or other person attached to the courts in the circuit, that judge or other person should be invited to present his views to the council after being advised of the nature of the action which may be taken together with the reasons. Monitoring the substance of judicial decisions is not a function of the judicial council.

7. The chief judge of the circuit, as a representative of the council, should periodically call a meeting of all the chief judges of the district courts to discuss with them matters of mutual concern. It is suggested that copies of the minutes of these meetings be furnished all active court of appeals and district court judges in the circuit. The judges of the district courts should be encouraged to recommend matters for consideration by the circuit council and, where appropriate, they should be advised what action, if any, is taken on the recommendations.

8. With respect to the district courts, the circuit council should keep itself informed on a regular basis as to the following:

(a) The condition of its docket in terms of the number of cases filed, cases terminated, and cases remaining on its docket; cases under decision unduly delayed.

(b) List of prisoners in jail awaiting trial, showing date of imprisonment.

(c) The operation of the Rule 50(b), Federal Rules of Criminal Procedure, plans for expediting the trial and disposition of criminal cases in the district courts of the circuits.

(d) The operation of Criminal Justice Act plans. See 18 USC § 3006A (i).

(e) The operation of the jury selection plan in the district courts. See 28 USC § 1863(a).

(f) The degree to which the district courts are undertaking to make the best utilization of jurors. See Guidelines for Improving Juror Utilization in the United States District Courts issued by the Federal Judicial Center.

Although the circuit council should rely when possible on statistics available from the Administrative Office, it may require the district courts to supply this information by filing reports with the council.

9. Where it appears that the court of appeals or any district court in the circuit has a large backlog of cases, the circuit council should take such steps as may be necessary to relieve the situation, including working with the court in question in procuring the assignment of judges from other districts and circuits to that court.

10. Where it appears that a circuit or district judge has a large backlog of cases or decisions to be made, the circuit council should take such steps as may be necessary to relieve the situation after first giving an opportunity to the circuit judge or the district court to take appropriate action in the case of a district judge.

11. When the district judges are encountering difficulty in agreeing upon the adoption of rules and orders dividing the business of the court, the circuit council should lend its assistance in resolving the problem. When the district judges are unable to agree upon the adoption of rules or orders dividing the business of the court, the circuit council shall make the necessary orders. 28 USC § 137.

12. Circuit council meetings should be held at least four times a year. Standing and ad hoc committees may be utilized to reduce the burden on the council as a whole and persons not members of the council, including district judges, members of the bar, law professors and laymen, may be appointed to such committees.

13. Before the circuit council adopts any general order affecting the operation of the courts within its circuit, the judges of the district courts should be afforded an opportunity to comment. In appropriate cases it will also be desirable to afford an opportunity for comment to the bar and public groups known to be concerned.

14. A circuit council may delegate limited power to the chief judge of the court of appeals to act on its behalf, but such power shall not extend to the adoption of general rules or to the taking of final action with respect to a particular judge or other person.

15. All duties delegated to the circuit executive by the circuit council shall be subject to the general supervision of the chief judge of the circuit. When authorized by the circuit council, the chief judge may also delegate specified portions of his powers to the circuit executive.

16. Where any formal order of the circuit council is not complied with, the matter may be referred to the Judicial Conference of the United States, or the circuit council may take other appropriate action.

Duties Which May Be Delegated to the Circuit Executive

The circuit executive shall act as secretary of the circuit council. The circuit council may delegate power to the circuit executive. The duties delegated to the circuit executive of each circuit may include but need not be limited to:

- (a) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.
- (b) Administering the personnel system of the court of appeals of the circuit.
- (c) Administering the budget of the court of appeals of the circuit.
- (d) Maintaining a modern accounting system.
- (e) Establishing and maintaining property control records and undertaking a space management program.
- (f) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council and the Judicial Conference.
- (g) Collecting, compiling and analyzing statistical data with a view toward preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council and the Administrative Office of the United States Courts.
- (h) Representing the circuit as its liaison to the courts of the various states in which the circuit is located, the marshal's office, state and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.
- (i) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.
- (j) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

Legislative Responsibilities of the Circuit Councils

The responsibilities of the circuit councils under 28 U.S.C. § 332 and other legislation are:

- (a) The circuit council must meet at least twice each year to provide for the effective and expeditious administration of the business of the courts within its circuit. 28 U.S.C. § 332(a) (d).
- (b) The United States district courts are required to devise plans for random jury selection, for the appointment of counsel under the Criminal Justice Act, and for achieving prompt disposition of criminal cases under Rule 50(b), Federal Rules of Criminal Procedure. The circuit councils are required to approve these plans and to direct appropriate modifications. 28 U.S.C. § 1863; 18 USC § 3006A.
- (c) Where the need arises for a circuit judge to be temporarily assigned to another circuit, the Chief Justice of the United States may make the assignment with the consent of the chief judge or the circuit council of the circuit furnishing the assigned judge, 28 U.S.C. §§ 291(a), 295.

(d) A retired circuit or district judge may be designated and assigned by the chief judge or the circuit council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. 28 U.S.C. § 294(c)

(e) The circuit council may designate the place for keeping the records of the district courts and the court of appeals within the circuit. 28 U.S.C. § 457.

(f) The circuit council may find that court quarters and accommodations are necessary and, upon that determination, the Administrator of General Services, at the request of the Director of the Administrative Office, may establish such accommodations. 28 U.S.C. §§ 142, 635(a).

(g) Upon a certificate of physical or mental disability signed by a majority of the members of the circuit council of the circuit, the President, with the advice and consent of the Senate, may appoint an additional judge for any judge of a circuit who is eligible to, but who does not, retire, 28 U.S.C. § 372(b).

(h) The circuit council may by order designate the residence of a district judge at or near a particular place within a district if the public interest and the nature of the business of a district so require. 28 U.S.C. § 134(c).

(i) When the district judges are unable to agree upon the adoption of rules or orders dividing the business of the court, the circuit council shall make the necessary orders. 28 U.S.C. § 137.

(j) Any district court may, with the consent of the circuit council, pretermitt any regular session of court for insufficient business or other good cause. 28 U.S.C. § 140(a).

(k) A district court may, by the concurrence of a majority of the judges, remove a referee in bankruptcy for cause. Where there is no concurrence, the referee may be removed by the circuit council. 11 U.S.C. § 62(b).

(l) The circuit council shall advise the Judicial Conference of the United States of their recommendations and reasons concerning the number of referees and their respective territories, salaries and schedules of fees. 11 U.S.C. § 65(b); see also 11 U.S.C. §§ 68, 71(b)(c)

(m) A district court may, by the concurrence of a majority of the district judges, remove a magistrate for cause. Where there is no concurrence, the magistrate may be removed by the circuit council. 28 U.S.C. § 631(h).

(n) The circuit councils shall advise the Judicial Conference of the United States of their recommendations and reasons concerning the number of magistrates and their respective locations and salaries. 28 U.S.C. § 633(b)

(o) The circuit councils may appoint a circuit executive. 28 U.S.C. § 332(e).

(p) The circuit council approves or disapproves the supporting personnel of the senior circuit and district judges each year. Resolution of the Judicial Conference of the United States.

(q) The circuit councils develop plans for limiting publication of judicial opinions. Resolution of the Judicial Conference of the United States.

(r) The circuit councils may delegate authority to the circuit executive to approve for payment appointment vouchers and vouchers for expenses or other services (CJA Forms 20 and 21). Resolution of Circuit Council, 4th Circuit, October 4, 1972.

(s) Where the chief judge of any district court advises that the number of court reporters in the district is insufficient to meet temporary demands and that services of additional court reporters should be provided, the circuit council may notify the Director of the Administrative Office, who shall arrange for additional reporters on a contract basis. 28 U.S.C. § 753(g)

COURT OF APPEALS OPINIONS

At the October 1972 session of the Conference (Conf. Rept., p. 33) the Conference requested each circuit to develop an opinion publication plan by January 1, 1973. At the April 1973 session (Conf. Rept., p. 5) the Conference required each circuit to file a report on the operation of its plan during calendar year 1973. This report shows that during the 11 months ending November 30, 1973 a total of 4,563 cases was disposed of in the 11 circuits by published opinions, 1,478 by unpublished opinions and 2,408 without opinion. The Conference was advised that these figures indicate that each circuit in its own way has definitely embraced the concept of eliminating publication and circulation of circuit court opinions. While the plans of each circuit generally follow the basic recommendations of the report of the Federal Judicial Center to the April 1972 meeting of the Judicial Conference, each circuit, to a limited extent, is experimenting with respect to some phases of its plan. There are in effect 11 legal laboratories accumulating experience and amending their publication plans on the basis of that experience. Because the possible rewards of such experimentation are so rich, the Conference agreed that it should not be discontinued until there is considerably more experience under the diverse circuit plans. The Conference noted the view of its Committee and its Subcommittee that further experimentation may well lead to the amendment of the diverse circuit plans and that eventually a somewhat more or less common plan might evolve.

The Conference agreed with the recommendation that so long as the experimentation period continues, each circuit should file with the Administrative Office on January 1 of each year a copy of its current publication plan, together with a narrative report on the operation of the plan, particularly in those areas where the plan differs from the plans of some of the other circuits. Included also should be a statistical summary indicating the operation of the plan. This information should be made available to the bench, the bar and the law schools to encourage them to make their contribution to the resolution of this difficult and persistent problem. The Conference further agreed that the detailed report on the operation of the circuit opinion publication plans during the first 11 months of 1973, together with copies of the plans themselves, should be made available by the Administrative Office to all circuit judges, law book and periodical publishers, law reviews and to the Com-

mission on the Revision of the Federal Court Appellate System. Meanwhile, the Committee was instructed that, through its Subcommittee on Federal Jurisdiction, it should continue its study of the problem.

SUPERGRADE CLASSIFICATIONS IN THE ADMINISTRATIVE OFFICE

In October 1973 the Subcommittee on Supporting Personnel approved the suggestion of the Director of the Administrative Office for the creation within his office of 15 supergrade classifications (9 in addition to the 6 already authorized) and other executive level changes. The effect would be to upgrade executive levels in order to retain and to attract the highest type of personnel which the functions and responsibilities of the office require. There have been no upgradings in the executive levels of the Administrative Office personnel since 1958. On the other hand, since that time a massive number of additional tasks have been imposed upon the office. A legislative proposal designed to achieve the desired objective was prepared and submitted to the House Post Office and Civil Service Committee. On December 13, 1973, the Director of the Administrative Office appeared before that committee in support of the proposed legislation.

The Conference agreed with Committee ratification and support of this legislation and the action of the Director and authorized the Administrative Office to continue its efforts in support of the requisite legislation.

LEGISLATION

Clerk's Office—Canal Zone

The Conference approved S. 2348 which would amend the Canal Zone Code to transfer the functions of the clerk of the United States District Court for the District of the Canal Zone with respect to the issuance and recording of marriage licenses and related activities to the Civil Affairs Director of the Canal Zone government. In so doing the Conference recommended that the bill be amended to provide for the transfer to the Civil Affairs Director of all the records of marriages previously accumulated and now in the custody of the clerk of the United States District Court.

Territorial Judges

The Conference disapproved H.R. 10872 which would appear to increase the retirement benefits accruing to certain territorial judges for their services as territorial judges in prior years when

the salary of that position was less than \$20,000 per year. The Conference agreed that there was an absence of supporting data on the bill and that it would appear to be primarily a private bill.

Tort Claims

The Conference agreed that S. 2427, 93rd Congress, which would provide for civil suits against the United States on tort claims arising out of the loss, miscarriage or negligent transmission of letters or postal matter was primarily a matter involving Congressional policy but it urged that the Congress give consideration to its impact on the federal courts.

Franchise Act

The Conference agreed that S. 2467, 93rd Congress, to provide for the regulation of business franchises, to require full disclosure of the nature of interests in business franchises, to provide for increased protection in the public interest in the sale and operation of business franchises and to provide for fair competition in negotiations in franchise agreements, was primarily legislation involving Congressional policy. The Conference agreed, however, with the expression of view that the Congress should give consideration to the impact of this legislative proposal on the judiciary.

Environmental Court System

The Conference agreed with the view of the Department of Justice in its report prepared pursuant to the Congressional mandate in Section 9 of the Federal Water Pollution Control Act Amendments of October 18, 1972 in strongly recommending that a separate environmental court system not be established at this time.

Chief Judgeships

At the October 1971 session of the Conference (Conf. Rept., p. 77) 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 5, 1958 continued to hold such a position and agreed that this legislative proviso had outlived its usefulness. At the September 1973 session the Conference reaffirmed this view (Conf. Rept., p. 50).

The Conference once again reexamined this recommendation and reaffirmed the position taken at the two prior sessions of the Conference.

REVIEW COMMITTEE

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

The report covered the period July 1 through December 31, 1973. Judge Tamm advised that his Committee had reviewed the Reports of Extra-Judicial Income of 498 judges from a total of 615, the reports of 160 bankruptcy judges from a total of 176 and the reports of 97 United States magistrates from a total of 102 required to file. Several reports were received subsequent to the time of the Committee meeting and will be examined at the next meeting of the Committee.

Judge Tamm pointed out that because of the present schedule of sessions of the Judicial Conference which have been set to accommodate the budget cycle, his Committee feels it important to require that the report forms be filed by the fifteenth day of the month next following the reporting period. The Conference agreed to amend the present filing requirements to provide that the report forms for the first six months of each calendar year shall be filed with the Review Committee no later than July 15 and the reports for the second six months no later than January 15 immediately following the close of the reporting period.

In accordance with Conference authorization the Review Committee referred directly to the Advisory Committee on Judicial Activities a number of questions which have arisen since the prior reporting period because of the Conference adoption, with amendments, of the canons of judicial ethics prepared by the American Bar Association.

The most frequent problem encountered concerns the definition of "fiduciary activities" and the adoption by the Conference at the April 1973 session (Conf. Rept., p. 10) of a modification of the provisions of the Canons relating to the effective date of compliance in regard to fiduciary relationships. On recommendation of the Committee the Conference agreed to instruct all judicial councils to obtain from each judicial officer in its circuit the complete details of each and every estate and trust in which that officer is serving in a fiduciary capacity and to rule affirmatively upon the propriety of the continuance of this service. Hereafter,

a judge reporting services of a fiduciary in non-family-related matters shall in his report form affirmatively set forth that the judicial council of his circuit has approved the continuation of this relationship. Similar recommendations relating to bankruptcy judges and magistrates were also approved.

The Conference was advised that one of the opinions requested of the Advisory Committee, identified as Inquiry No. 3, relates to the ethical propriety of the conduct of federal judges who decline for reasons of conscience or otherwise to file public reports of extra-judicial income. The Conference agreed to instruct the Review Committee to furnish a copy of the answer to Inquiry No. 3 to each non-reporting judge in each required period, together with an appropriate accompanying letter.

The judicial officers who have not, as of the convening of the Judicial Conference on March 7, 1974, filed reports of extra-judicial income for the period June 1 to December 31, 1973, are as follows:

Listing, by Circuit, of Judges who have not, as of March 7, 1974, filed Reports of Extra-Judicial Income for the Period July 1, 1973 to December 31, 1973*

<i>Second Circuit:</i>	<i>Ninth Circuit (continued)</i>
**Edmund L. Palmieri U.S. District Judge	Cristobal C. Duenas U.S. District Judge
**Sylvester J. Ryan U.S. District Judge	**Warren J. Ferguson U.S. District Judge
**Edward Weinfeld U.S. District Judge	**Peirson M. Hall U.S. District Judge
**Inzer B. Wyatt U.S. District Judge	**William D. Murray U.S. District Judge
<i>Sixth Circuit:</i>	**Harry Pregerson U.S. District Judge
**Frank J. Battisti U.S. District Chief Judge	**Manuel L. Real U.S. District Judge
Frank L. Kloeb U.S. District Judge	Francis C. Whelan U.S. District Judge
<i>Ninth Circuit:</i>	<i>Tenth Circuit:</i>
**William M. Byrne U.S. District Judge	Stephen S. Chandler, Jr. U.S. District Judge

Referees in Bankruptcy who have not, as of March 7, 1974 filed Reports of Extra-Judicial Income for the Period July 1, 1973 to December 31, 1973

Honorable John J. Connelly
Room 629, Federal Building-U.S. Courthouse
316 Robert Street
St. Paul, Minnesota 55101

*Although the 12 judges of the U.S. Customs Court have not filed copies of their Extra-Judicial Income Report forms with the Committee, Chief Judge Boe of that court has advised the Director of the Administrative Office that all judges of that court have filed report forms with him and with the clerk of that court, where they "will be open to public inspection."

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

Honorable Joseph O. Kaiser
 Court Square Building
 200 East Lexington Street
 Baltimore, Maryland 21202
 Honorable Robert L. Ordin (Appt. eff. 12/3/73)
 United States District Court
 Los Angeles, California 90012

Magistrate who has not, as of March 7, 1974, filed a Report of Extra-Judicial Income for the Period July 1, 1973 to December 31, 1973

Honorable Edward A. Infante
 United States Courthouse
 325 West F Street
 San Diego, California 92101

The foregoing is set forth pursuant to the resolution of the Judicial Conference at its March 1971 session (Conf. Rept., p. 24), as subsequently amended to include full-time referees in bankruptcy and magistrates.

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee on the Code of Judicial Conduct was presented by Judge Elbert P. Tuttle who with Judge Edward A. Tamm is co-Chairman of the Committee.

The Joint Committee presented to the Conference for approval a Manual on the Code of Judicial Conduct as approved by the Conference at its April and September 1973 sessions. The Conference agreed to the release of the manual as a Conference document and authorized the Director of the Administrative Office to circulate the manual in mimeograph form to all judges, including bankruptcy judges and magistrates, as soon as possible. The Director was also authorized to arrange for the printing of the manual in permanent looseleaf form and to keep the manual current through periodic changes.

In approving the manual, the Conference also approved the following editorial changes in the Code as previously approved:

1. That the commentary following Canon 5C(4)(c) relating to campaign contributions for election to judicial office be deleted;
2. That the designation of subdivision A, in Canon 7, as approved by the Conference, be deleted. The catchline, however, should be retained;
3. That any reference in the Code to a referee in bankruptcy be amended to read "bankruptcy judge";
4. That Canon 3(7) be amended to read "a judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediate adjacent thereto during sessions of court or recesses between sessions. A judge

may authorize the use of electronic or photographic means for the presentation of evidence or for the perpetuation of a record." The matter stricken from Canon 3(7), including the Commentary, was referred back to the Committee for further study.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Tuttle, Chairman, reported that the Advisory Committee on Judicial Activities had considered nineteen inquiries submitted by the Review Committee on questions relating to the propriety of activities which reporting judges have disclosed. Four formal opinions have been published as a result and are numbered 28, 29, 30 and 31. In addition to formal opinions the Committee answered informally some twenty inquiries by judges merely by referring the inquiring judge to the appropriate canon, statute, Conference resolution or formal opinion.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge Arthur J. Stanley, Jr., Chairman, presented the report of the Committee on the operation of the Jury System.

ENERGY CRISIS

The Conference was advised that the Committee had given considerable attention to the problems of the energy shortage in relation to the selection and summoning of jurors for jury trials. It was agreed that should the Chief Justice deem it necessary and desirable, he is authorized to appoint an appropriate committee or committees of the Conference to consider any problems arising from the energy crisis which affect the administration of justice.

FEEES OF JURORS

Judge Stanley reported to the Conference on a study which his Committee had made of the present fee section of the Jury Selection and Service Act of 1968, as amended. Based on an analysis of this study, the Conference agreed to recommend to the Congress legislation which basically will accomplish the following changes in the fee section:

- (1) The revision of Section 1871(a) to eliminate the reference to United States commissioners since this office has been abolished;

(2) Increase in the attendance fee for grand and petit jurors from \$20 to \$30 per day based upon the cost of living increase since December 1968;

(3) A provision for certification of enhanced attendance fees for extended service of both grand and petit jurors. The proposal would permit the certifying judge to grant increases back to the time when he could first have certified an increase;

(4) Change the present ten cents per mile provision of the statute to permit the Director of the Administrative Office to increase travel rates for jurors to parallel any increase in the government rate;

(5) To incorporate a parking allowance subject to the discretionary control of the local court;

(6) A provision to permit the Director of the Administrative Office to promulgate new regulations governing interim travel of jurors so as to make their travel between service days less disadvantageous than under present regulations;

(7) Permission for enhanced travel allowances in Alaska and Hawaii where higher costs are frequently incurred by jurors;

(8) Permission to establish a fixed subsistence allowance without the necessity of itemization. The Director of the Administrative Office would be given permission to authorize an allowance similar to that permitted for supporting court personnel. Subsistence for overnight stay would be increased initially from \$16 to \$20;

(9) Permission for higher subsistence rates in Alaska and Hawaii;

(10) Permission for higher expenditures for the convenience and comfort of sequestered jurors;

(11) The Director is authorized to promulgate regulations to administer the proposed statute.

PETIT JUROR UTILIZATION

The Conference was advised of various workshop programs in the Fifth Circuit which were conducted in seminar format with participation and presentations by the circuit court executive, district judges, clerks of court, representatives of the Administrative Office and the Federal Judicial Center, and a consultant from the Institute of Judicial Administration. Successful workshops were also held in the Third Circuit. The Conference was advised that

the 1973 report of the Administrative Office on juror utilization showed steady improvement in the category of "percentage not used" and a steady increase in the "percentage served" category. The Conference reaffirmed the need for holding workshop programs with participation, as possible, by the circuit executives and representatives of the Administrative Office, the Federal Judicial Center and other consultants. The Conference also agreed that the use of the telephonic answering device in calling off dispensable jurors be studied closely by each district court in order that the courts needing the units may be able to implement their use and may include them in their budget equipment costs.

SEQUESTRATION OF JURORS

The Conference noted the views of the Committee on the need of advance planning to deal with the problems of the sequestered jury, especially those which arise during extended trials. The Conference noted a letter and orders from Chief Judge Winston E. Arnow of the Northern District of Florida detailing his experience in a recent extended trial, as well as an article published by the forelady of the jury involved, on the subject of sequestration from the juror's point of view. The Conference authorized the distribution by the Administrative Office to all district judges of these materials as well as a subcommittee report by Chief Judge Ray McNichols on the subject of sequestration.

JURORS INJURED IN PERFORMANCE OF THEIR DUTIES

The Committee recommended to the Conference a draft bill which would bring federal grand and petit jurors within the coverage of the Federal Employees Compensation Act, by adding a new section to Title 5 of the United States Code. The Conference agreed with this recommendation and authorized the Director to transmit the draft bill to the Congress. In so doing, the Conference noted that on several occasions the United States Department of Labor has in the past rejected claims by federal jurors for injury on the basis that jurors are not defined as employees. Inasmuch as jurors are performing valuable public service and cannot recover for injury under the Federal Tort Claims Act, except by proving negligence in a government agent, the Conference agreed that further protection for a juror was necessary.

ANALYSIS OF PERIODIC REPORTS

The Conference approved a report of a subcommittee of the Jury Committee for distribution to all district judges, together with a complete analysis of jury selection decisions. Included in this study of master wheels of all district courts is an analysis of the constituency by race and sex.

AUTOMATION OF SELECTION PROCESS

The Conference resolved that those districts not now automated confer with the Administrative Office to determine from appropriate state authorities the availability of machine-readable voter lists and that those districts finding a substantial or feasible amount of names in machine-readable form consider the benefits of implementing an automated system, either partial or full. It was agreed that the Administrative Office would aid these courts in every appropriate way to implement their programs.

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.

THE EXCLUSIONARY RULE

The Conference noted that H.R. 10275, 93rd Congress, would eliminate the exclusionary rule as to evidence obtained in violation of the Fourth Article of the Amendments to the Constitution of the United States and substitute a civil remedy for any person aggrieved by reason of such violation in the form of damages suffered and punitive damage. The Conference agreed that this legislative proposal on which its views were sought by the Congress relates primarily to policy consideration which should be determined by the Congress and, accordingly, agreed to make no recommendation.

SELECTION OF COUNSEL UNDER THE CRIMINAL JUSTICE ACT

Judge Zirpoli told the Conference that his Committee had been requested to examine the question of adequacy of representation in criminal cases and had suggested that each district court reeval-

uate its plan for the representation of persons financially unable to obtain counsel under the Criminal Justice Act. The Committee considered various plans for the selection and rotation of lists of approved counsel and suggested to the Conference that the Administrative Office be authorized to distribute to all district courts the plan adopted in the Northern District of California. It was agreed that this plan should be distributed for purposes of illustration and that the entire subject matter be the subject of continuing study by the appropriate committee of the Conference.

NEW FEDERAL CRIMINAL CODE

The Committee presented to the Conference a detailed analysis and comparison of the texts of the substantive law provisions of the present Title 18 and H.R. 10047 (the Brown Commission report), S. 1 (Senator McClellan's bill) and S. 1400 (the Department of Justice bill). Because the provisions define substantive offenses, no recommendations of definitions were made by the Committee. The Conference authorized the transmittal of the comparison of the texts of these substantive law provisions to the Congress and in so doing expressed its appreciation to the Committee for the detailed work it had accomplished over the past three sessions of the Conference in relation to the proposals relating to the revision of the Criminal Code.

COMMITTEE ON HABEAS CORPUS

The report of the Committee on Habeas Corpus was submitted to the Conference by its Chairman, Judge Walter E. Hoffman.

At the September 1973 session of the Conference the Committee had presented four alternative drafts of proposed legislation for the consideration of the Conference. These proposals were designed to eliminate some of the abuses which are prevalent under existing statutes and judicial decisions. The Conference at that time instructed the Committee (Conf. Rept. p. 75) to consider the matter further and make a specific recommendation in the form of a single draft bill. Such a recommendation was presented to the Conference by Judge Hoffman and approved for transmittal to the Congress. The draft bill is designed to eliminate repetitive petitions, to avoid piecemeal applications by requiring that all grounds for relief, subject to certain exceptions, be included in one petition, to

achieve a reasonable degree of finality to criminal sentences, to stimulate early filings and resolutions of matters, and bring about a reduction in the number of filings which are wholly frivolous.

Judge Hoffman advised that his Committee was cooperating with a committee from the Federal Judicial Center in the study of problems arising under 42 United States Code 1983 and related statutes. This is a continuing study which will be made the subject of a report to a later session of the Conference.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

SALARIES AND ARRANGEMENTS FOR REFEREES

The Conference received the Committee report, together with the recommendations contained in the survey report of the Director of the Administrative Office, dated January 14, 1974, as well as the recommendations of the circuit councils and the district courts concerned, for continuation of nine referee positions to become vacant by expiration of term; for filling of one full-time referee position at Mobile in the Southern District of Alabama which has been vacant since June 30, 1973; for continuation of the referee position in the District of Puerto Rico on a permanent full-time basis; and for an increase in salary from \$12,000 to \$14,000 per annum for the part-time referee position at Charlotte in the Western District of North Carolina. The Conference agreed to the Committee's recommendations and approved the effective date of April 1, 1974, except as otherwise indicated and subject to the availability of funds:

FIRST CIRCUIT

District of Puerto Rico

- (1) Authorized that the full-time referee position at San Juan be made permanent, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Rhode Island

- (1) Authorized the continuance of the full-time referee position at Providence to become vacant by expiration of term on June 24, 1974, for a term of six years, effective June 25, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

Western District of New York

- (1) Authorized the continuance of the full-time referee position at Rochester to become vacant by expiration of term on September 3, 1974, for a term of six years, effective September 4, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FOURTH CIRCUIT

Western District of North Carolina

- (1) Authorized an increase in salary for the part-time referee position at Charlotte from \$12,000 to \$14,000 per annum when funds become available.

FIFTH CIRCUIT

Southern District of Alabama

- (1) Authorized the filling of the full-time referee position at Mobile which has been vacant since June 30, 1973, for a six-year term, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Southern District of Texas

- (1) Authorized the continuance of the full-time referee position at Houston to become vacant by expiration of term on June 15, 1974, for a term of six years, effective June 16, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Western District of Kentucky

- (1) Authorized the continuance of the full-time referee position at Louisville to become vacant by expiration of term on July 8, 1974, for a term of six years, effective July 9, 1974, 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 July 1, 1974, for a term of six years, effective July 2, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Illinois

- (1) Authorized the continuance of the full-time referee position at Chicago to become vacant by expiration of term on July 1, 1974, for a term of six years, effective July 2, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Wisconsin

- (1) Authorized the continuance of the part-time referee position at Eau Claire to become vacant by expiration of term on August 31, 1974, for

a term of six years, effective September 1, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

Southern District of Iowa

- (1) Authorized the continuance of the full-time referee position at Des Moines to become vacant by expiration of term on May 14, 1974, for a term of six years, effective May 15, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

TENTH CIRCUIT

District of New Mexico

- (1) Authorized the continuance of the full-time referee position at Albuquerque to become vacant by expiration of term on August 31, 1974, for a term of six years, effective September 1, 1974, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

CHARGES FOR SPECIAL SERVICES

The Conference approved an amendment to the schedule of charges for special services previously promulgated by the Conference pursuant to Section 40c(3) of the Bankruptcy Act for deposit to the Referees' Salary and Expense Fund. The amended schedule, as approved, reads:

1. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act in excess of 30 notices per set, 25¢ for each additional notice on the first 10,000 and 15¢ per notice on the balance, provided, that in no case administered in straight bankruptcy shall the total charge for this special service exceed 25 percent of the net proceeds realized, and provided further that when the preparation and mailing are not performed by the staff of the bankruptcy office, the charge for excess notices shall be excused up to the cost paid to the mailing service from the estate;
2. For making a typed copy of any record or paper, \$1.00 per page of 250 words or a fraction thereof. For reproducing any record or paper by any means other than typing, 50¢ per page. These fees do not include certification;
3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$1.00;
4. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, \$1.00 per page or fraction thereof. This fee is in addition to the fee for certification;
5. For clerical aid on all claims filed in excess of 10, for filing, recording, computing and distributing dividend, 25¢ each in asset cases and cases filed under the relief chapters of the Act;
6. For transcribing of the record performed by a regularly employed member of the bankruptcy judge's staff, a charge may be made for transcripts not exceeding the rates charged by a district court reporter. The charge shall be paid by the party requesting the transcript and the proceeds shall be transmitted to the

Clerk for deposit to the credit of the Referees' Salary and Expense Fund. The cost of transcription shall be a charge against the estate only when approved by the court ;

For furnishing a certified sound recording in lieu of a written transcript, a charge of \$2.00 plus the cost of materials. This fee shall include the certification ;

7. For amendments to bankrupt's schedules of creditors after notice to creditors, \$10.00 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case ;

8. For searching the records of the bankruptcy judge's office and furnishing information regarding any bankrupt or debtor, \$1.00 ;

9. For filing the following complaints, except when they are filed by or on behalf of the United States and provided that the charge shall be paid from the estate of the bankrupt unless waived by the court when filed by the trustee or receiver in bankruptcy, \$15.00 for each complaint filed to be paid at the time of filing :

(a) complaint objecting to a discharge or to confirmation of an arrangement ;

(b) complaint to revoke a discharge or to revoke confirmation of an arrangement ;

(c) complaint to recover money or property ;

(d) complaint to obtain relief from a stay as provided in Rules 401, 601, or 13-401 of the Rules of Bankruptcy Procedure ;

(e) complaint to obtain an injunction, and

(f) complaint for determination of non-dischargeability of a debt filed by a creditor.

Note : A complaint to obtain relief from a stay as provided in Rules 401, 601, or 13-401 would include a complaint seeking leave to foreclose a mortgage.

10. For filing a notice of appeal, \$10.00 to be paid at the time of filing provided that no charge shall be made for a notice of appeal filed on behalf of the United States. Where the notice of appeal is filed by the trustee (or receiver) in bankruptcy the charge shall be paid from the estate unless the court waives the charge.

CASE FILINGS AND COSTS

The Conference was advised that a total of 173,197 cases was filed in fiscal year 1973, the second consecutive year in which bankruptcy case filings have declined. It was also noted that consistent with the two-year cycle in fluctuation of bankruptcy case filings there has been a six percent increase in filings in the first seven months of fiscal year 1974. Despite this decrease in filings in fiscal year 1973, there was an increase of over a million dollars in the amount paid into the Referees' Salary and Expense Fund over payments for the prior year. Receipts to the Fund, however, covered only 73 percent of the total costs of the bankruptcy system. The estimated total for fiscal year 1974 is \$20,506,000.

The Conference was advised of efforts to reduce costs by eliminating unneeded personnel from the staffs of referees' offices and offices of the clerks of court with consolidated staffs. The Conference noted the Committee resolution that it was the responsibility

of the Director to enforce the statute and control the number of bankruptcy clerical personnel in these offices so that they will be commensurate with the bankruptcy workload of each district.

The Conference was also informed of the growing tendency of the courts to appoint referees in bankruptcy as special masters in non-bankruptcy related cases and was advised of the legislative history of the Bankruptcy Act which shows the statutory intent that referees should not serve in any other capacity other than conciliation commissioner or special master under the Act. The Conference was informed that the Committee is of the view that the courts might well consider using United States magistrates as special masters in these non-bankruptcy matters instead of referees.

The Conference also noted that the Committee supports the position of the Bankruptcy Division of the Administrative Office that procedural changes which materially affect the staffing requirements of bankruptcy offices or require substantial expenditures from appropriated funds should not be implemented without prior consultation with the Bankruptcy Division on the financial implications of such changes.

REPORTS BY DESIGNATED BANKRUPTCY DEPOSITORIES

Rule 512(h) of the Rules of Bankruptcy Procedure requires the Director of the Administrative Office, with the approval of the Judicial Conference, to prescribe by regulations the reports to be made by designated depositories for estate funds. Pursuant to this authority, the Conference approved the following regulations:

1. Banking institutions designated as depositories pursuant to Bankruptcy Rule 512(a) shall file with the bankruptcy court on a quarterly basis a report showing the balance on deposit in each bankruptcy estate account as of the date of the report. The report shall identify each account as follows:

John Doe as trustee (or receiver, or disbursing officer, etc.) for the bankruptcy estate of A.B.C. Company, Case No. 74-222.

2. Whenever the total of the bankruptcy deposits not covered by FDIC insurance reaches 95 percent of the amount of the bond required by Bankruptcy Rule 512(b), it shall be the duty of the depository to file a written statement with the court setting forth the total amount of such deposits not covered and the amount of the bond.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATES SYSTEM

Judge Charles M. Metzner, Chairman of the Committee on the Administration of the Federal Magistrates System, presented the report of the Committee.

SALARY INCREASES

The Executive Committee in October 1973 authorized payment to all part-time magistrates of the 4.77 percent comparability salary increase recently granted to federal employees generally (other than those magistrates whose salary is already fixed at the statutory limit). The increase was put into effect on January 1, 1974. Upon recommendation of the Committee, the Conference ratified the action taken by the Executive Committee.

MAGISTRATE POSITIONS

The Committee reported that it had considered the recommendations of the Director of the Administrative Office and of the district courts and judicial councils concerned regarding requests for the creation of additional magistrate positions, changes in salaries of magistrates and changes in arrangements. In accordance with the recommendations of the Committee, the Conference approved the following changes in the numbers, locations, arrangements, and salaries of magistrates, effective 60 days from the date of Conference action:

FIRST CIRCUIT

District of Rhode Island

- (1) Authorized the clerk of court at Providence to perform the duties of a United States magistrate;
- (2) Fixed the aggregate compensation of the clerk-magistrate position at Providence at the same salary paid to the clerk of court of a medium-size district;
- (3) Discontinued the \$12,572 per annum part-time magistrate position presently authorized at Providence.

THIRD CIRCUIT

District of Delaware

- (1) Authorized the referee in bankruptcy at Wilmington to perform the duties of a United States magistrate at an increase of \$3,704 per annum in salary;
- (2) Discontinued the part-time magistrate positions at Wilmington and Dover.

SIXTH CIRCUIT

Western District of Kentucky

- (1) Authorized a part-time magistrate position at Mammoth Cave National Park at a salary of \$2,459 per annum;
- (2) Reduced the salary of the part-time magistrate position at Bowling Green from \$5,763 to \$3,304 per annum.

NINTH CIRCUIT

Eastern District of California

- (1) Increased the salary of the part-time magistrate position at Redding from \$523 to \$5,000 per annum.

Central District of California

- (1) Changed the official location of the part-time magistrate position at Twentynine Palms to "Palm Springs or Twentynine Palms."

TENTH CIRCUIT

Western District of Oklahoma

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

ADMINISTRATIVE REGULATIONS

The Conference, upon recommendation of the Committee, approved a change in Section 1.12 of the Regulations of the Director of the Administrative Office to permit part-time magistrates to submit their claims for reimbursement of actual and necessary office expenses to the United States marshals for payment.

LEGISLATION

The Conference authorized the Director of the Administrative Office to prepare and transmit to the Congress appropriate legislation that would consolidate the following four pending bills which had previously been approved by the Conference:

- (1) H.R. 7661, to make the Juvenile Delinquency Act inapplicable in petty offense cases;
- (2) H.R. 10476, to permit the payment of transcript costs for indigent litigants in civil cases where a magistrate serves as special master;
- (3) H.R. 10616, to permit pretrial diversion in minor offense cases before magistrates; and
- (4) H.R. 11844, to enlarge the trial jurisdiction of magistrates by raising the fine limitation from \$1,000 to \$5,000.

The Conference also authorized the Director to include the following two measures as part of the consolidated bill:

- (1) a provision, previously approved by the Conference, to permit a full-time referee in bankruptcy to perform magistrate duties; and
 - (a) a provision to eliminate the requirement in 28 U.S.C. 633(c) that the determinations of the Conference affecting changes in magistrate positions take effect 60 days after they are promulgated.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

The report of the Committee on the Administration of the Probation System was presented by the Chairman, Judge Albert C. Wollenberg.

SENTENCING INSTITUTES

The Conference approved the time, place, participants, and tentative agenda for a Joint Sentencing Institute to be held for the Fourth and Fifth Circuits at Atlanta, Georgia, on October 28-30, 1974. Tentative plans for this institute had been discussed at the April and September 1972 sessions (Conf. Rept., pp. 13 and 69).

The Conference approved the time, place, participants, and tentative agenda for a Sentencing Institute for the Third Circuit on September 27 and 28, 1974, to be held at Hershey, Pennsylvania, or in view of the energy crisis at such other place as the Circuit Council shall designate.

CARRYING OF FIREARMS

At the September 1973 meeting (Conf. Rept., p. 73) the Conference approved a revision of the Probation Officers' Manual to provide that firearms may be carried by probation officers only when consistent with state law and with the express approval of the court and after appropriate training. At that session the Conference instructed the Committee to study the desirability of a federal statute to permit probation officers to carry firearms.

In its report to the Conference the Committee pointed out the anomalous situation in which a federal function may depend on the laws of a particular state rather than on consideration of need. The Committee reported to the Conference that it is not in favor of probation officers carrying firearms and would prefer alternate precautionary measures when probation officers by nature of their work are exposed to hazardous situations. The Committee is aware, however, of a limited number of instances where cogent reasons may require a probation officer to carry firearms. In such instances the Committee was of the view that the officer should have the protection of a federal statute against criminal or civil liability. Accordingly, the Committee recommended to the Conference a proposed statute which would permit the carrying of firearms under regulations prescribed by the Judicial Conference.

After considerable discussion of this proposal, during which members of the Conference expressed grave reservations as to arming probation officers, the subject was referred back to the Committee for further consideration including a draft for Conference consideration of such regulations as it believes the Conference should prescribe if such a bill were enacted. The Conference deferred further consideration of the bill itself until it has the benefit of the proposed regulations.

MONOGRAPH ON SELECTIVE PRESENTENCE INVESTIGATION REPORTS

The Conference noted that the Committee had approved for distribution to the judges of the district courts and to all probation officers a monograph on selective presentence investigation reports which includes an outline and format for a shorter form presentence investigation report which will serve jointly the needs of the courts, the probation officers, the Bureau of Prisons and the Board of Parole. The monograph which also contains guidelines for determining types of cases in which such reports are appropriate was prepared under the direction of a study group chaired by Chief Judge Edward S. Northrop.

VOLUNTARY SURRENDER PROCEDURES

The Conference was also advised that the Committee had endorsed a statement of procedures drawn by the Probation Division, the Bureau of Prisons, and the United States Marshals Service that would provide for the voluntary surrender of selected sentenced offenders to the Bureau of Prisons institutions. Since criminal contempt appeared the only sanction available where a prisoner failed to surrender as directed, the Committee requested the Administrative Office to draft a legislative proposal which would provide a penalty in the event of failure to report.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The report of the Intercircuit Assignment Committee which covered the period from August 1, 1973 to February 1, 1974, was submitted by the Chairman, Judge Roy W. Harper.

During the reporting period the Committee recommended eighty assignments to be undertaken by fifty-two judges. Of this number, nine are senior circuit judges, six are active circuit judges,

four are district judges in active status and twenty-seven are senior district judges. One retired Supreme Court Justice, two active and two senior judges of the Court of Claims and one senior Customs Court judge participated in nine assignments.

Nine senior circuit judges, nine senior district judges, two senior Court of Claims judges, one senior Customs Court judge and one retired Supreme Court Justice carried out 36 of the 52 assignments to the circuit courts of appeals which were recommended during this period. Of the 36 assignments to the district courts, twenty senior district judges participated in 31 assignments, the remaining five being carried out by four active district judges and one Supreme Court Justice. Also during this period there was one assignment to the Temporary Emergency Court of Appeals performed by an active circuit judge and one to the Court of Customs and Patent Appeals assigned to an active judge from the Court of Claims.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

The report of the Committee to Implement the Criminal Justice Act was given by the Chairman, Judge Roszel C. Thomsen.

APPOINTMENTS AND PAYMENTS

The Conference received the report of the Director of the Administrative Office for the first half of fiscal year 1974 and authorized its release to all judges. The Conference noted that this report showed that during the six-month period counsel were appointed for 23,089 persons, a decline of 8.3 percent over the same period of the prior year. Private attorneys were appointed to represent 17,698 as compared with 20,272 in the first half of fiscal year 1973. Federal public defenders were assigned to 5,391 as compared with 4,902 in the previous year. The sum of \$16,500,000 was appropriated for the implementation of the act in fiscal year 1974, with a limitation of \$1,000,000 for compensation and reimbursement of expenses of attorneys appointed by the judges of the District of Columbia Court of Appeals and the Superior Court for the District of Columbia.

The Conference was advised that a serious problem has arisen with regard to deficiency financing for fiscal years 1973 and 1974 in respect to the appointments made by the local courts of the District of Columbia. The Senate and House conferees had included

within the appropriation for the federal judiciary for fiscal year 1974 the sum of \$1,000,000 for these courts with the proviso "that any subsequent funding for this purpose shall be by the District of Columbia." The Chief Justice advised the Conference that he had received requests from the Chief Judges of the local District of Columbia courts and a letter from the Mayor requesting the assistance of the Conference. It was the sense of the Conference that the Mayor should be advised of the concern of the Conference over these problems and that failure to provide these funds promptly for the local courts would reflect adversely upon the entire criminal justice system within the jurisdiction of Congress. On motion the Conference resolved that it could take no action to include cost of compliance with the Criminal Justice Act for the local courts in the budget for federal courts in view of the explicit congressional mandate in the Senate-House conference report. The Chief Justice was authorized to advise the Mayor and the Congress that it was unanimously the sense of the Conference that a deficiency appropriation should be enacted to meet the obligation, appropriating such funds in whatever manner the Congress sees fit.

QUALITY OF REPRESENTATION

The Conference was advised that the Committee, cognizant of the criticism made in the recent past of the quality of legal services and adequacy in the courts of the nation, had sent a questionnaire to all chief judges of the federal courts designed to elicit their opinion with respect to the representation being afforded by approved counsel and defenders operating under the Criminal Justice Act. Of the 56 chief judges of the district courts who responded, only one was of the view that counsel operating under the Criminal Justice Act were not at least as competent and able as privately retained counsel. Many expressed the view that assigned counsel under the Act were giving better service than privately retained counsel. Particularly, satisfaction was expressed with the services of the federal public defenders and their staffs. The Committee is continuing its study of the quality of representation and is awaiting the results of a current survey being made by the General Accounting Office and will collaborate further with the Committee on the Administration of the Criminal Law. The Conference noted that the Committee has appointed an advisory committee consisting of experienced public defenders

who will cooperate with the Committee in the revision of guidelines, preparation of manuals and the developing of other methods of improving the administration of the Act in all districts.

EXCESS PAYMENTS

The Conference was informed that while some chief judges of circuits have recommended guidelines for approving requests for compensation above the statutory maximum which a district judge can allow, the Committee does not believe it is either practical or wise to establish a rigid formula applicable to all cases. A report of current practices in the Second and Fifth Circuits has been made available to circuit chief judges for their information.

FEDERAL PUBLIC DEFENDERS

Since the last report of the Conference at the September 1973 session (Conf. Rept., p. 58) two additional public defender agencies have become operational in the Western District of Tennessee and the Districts of Nevada and the Virgin Islands. Judge Thomsen advised the Conference that the respective judicial councils have approved federal public defender offices in the District of Maryland and the Eastern District of Louisiana.

COMMUNITY DEFENDER ORGANIZATIONS

The Conference approved sustaining grants for fiscal year 1975 for the following community defender organizations:

Federal Defender Program, Inc., Atlanta, Georgia.....	\$150,000
Federal Defender Program, Inc., Chicago, Illinois.....	205,000
Legal Aid and Defender Association, Detroit, Michigan.....	288,000
Community Defender Organization, Minneapolis, Minnesota...	31,850
Federal Defender Services Unit of the Legal Aid Society of New York.....	700,000
Defender Association, Philadelphia, Pennsylvania.....	230,000

Since the conclusion of the Conference a request for an initial and a sustaining grant was received from the Metropolitan Public Defender Services, Inc., of Portland, Oregon. An initial grant of \$8,000 and a sustaining grant for fiscal year 1975 of \$96,000 was approved subsequent to the session of the Conference by its Executive Committee upon prior authorization of the Conference.

GUIDELINES

The Conference approved the guideline permitting all defender organizations to be given a general authorization to procure expert and other services as contemplated under subsection (e) of the Criminal Justice Act, as amended, without specific approval of the court, with the exception that any payments by any defender organization in excess of \$300 shall be certified and approved by the court and by the chief judge of the circuit, as required by 18 U.S.C. 3006A(e)(3); providing further that total expenditures for investigative, expert and other services shall not exceed the budget authorizations.

The Conference approved a further guideline to permit appointed counsel to be compensated for the time spent in travel between his office and the place of imprisonment of the defendant where such travel takes one hour or more during office hours.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The report of the Committee on the Rules of Practice and Procedure was submitted by the Chairman, Judge Roszel C. Thomsen.

BANKRUPTCY RULES

The proposed rules and official forms for Chapter XI of the Bankruptcy Act relating to Arrangements, approved by the Conference at the September 1973 session, have been transmitted to the Supreme Court. The Advisory Committee on Bankruptcy Rules has approved for prompt distribution to the standing Committee the proposed rules and official forms under Chapter X (Corporate Reorganization). The proposed rules and forms under Chapter XII (Real Property Arrangements) have been distributed to the bench and bar for comment with May 1, 1974, set as the deadline. The Advisory Committee, at its February 1974 meeting, completed for distribution to the bench and bar for comment Chapter IX (Composition of Indebtedness of Local Taxing Agencies) and continued its consideration of the draft of Chapter VIII, Section 77 (Railroad Reorganization).

CRIMINAL RULES

Judge Thomsen advised that the Advisory Committee on Criminal Rules was scheduled to meet on March 15 to consider the comments of the bench and bar on proposed amendments to Criminal Rules 6, 11, 23, 24, 35, 41 and 43, new Criminal Rule 40.1, rules governing habeas corpus proceedings, rules governing Section 2255 proceedings and an amendment to Rule 4 of the Federal Rules of Appellate Procedure.

CIVIL RULES

The Advisory Committee on Civil Rules met on March 3 and 4 and has scheduled to meet again on May 20 to discuss matters relating to Rule 23 (class actions) and other proposed amendments to the Civil Rules.

APPELLATE RULES

Since the last session of the Conference, Senior Judge William H. Hastie was made Chairman of the newly constituted Advisory Committee on Appellate Rules and twelve members have been appointed to serve with him. Professor Jo Desha Lucas of the University of Chicago School of Law has been named reporter for this committee. Prior to its first meeting the advisory committee is studying the local rules of the several circuits as well as other materials that have been held awaiting the establishment of this advisory committee.

SPECIAL REPORTS

Judge Oren Harris reported to the Conference on the study he has made of the proposed amendments to the Judicial Survivors Annuity Act. These amendments were last approved by the Conference at the April 1973 session (Conf. Rept., p. 5). He stated that the next actuarial report on the status of the fund was due in April. He stated also that with the passage of time since the Conference first approved amendments to the Act certain changes in the overall approach to amending the Act might be desirable. The Conference was in agreement and authorized Judge Harris to adopt a flexible approach in presenting these proposed amendments so as best to achieve the overall objectives of the amendments.

The matter of judicial compensation was the subject of extended discussion and it was resolved that this matter be referred to the Executive Committee for such action as may be deemed appropriate and to cooperate with the Congress and the committees thereof in supplying information relevant to the issue; it was further resolved that the Chief Justice is authorized to appoint an ad hoc committee to assist the Executive Committee in this undertaking if the formation of such a committee is deemed appropriate.

PRETERMISSION OF TERMS OF COURTS OF APPEALS

The Conference approved the pretermission of terms of courts of appeals, pursuant to 28 U.S.C. 48, for those sessions of the Court of Appeals for the Fourth Circuit at Asheville, North Carolina, in calendar year 1974; for those sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans during the year 1974 and for those sessions of the Court of Appeals for the Eighth Circuit to be held outside of St. Louis, Missouri, and St. Paul, Minnesota, during the calendar year 1974.

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.

MARCH 30, 1974.

INDEX

	Page
Additional judgeships.....	3
Administrative Office of the U.S. Courts:	
Report of the Director.....	3
Supergrade classifications.....	13
Administrative regulations—magistrates.....	29
Analysis of periodic reports—jury.....	21
Appellate rules.....	36
Appointments and payments under the Criminal Justice Act.....	32
Appropriations.....	3
Automation of Jury Selection Process.....	21
Bankruptcy depositories, reports by designated.....	27
Bankruptcy rules.....	35
Bankruptcy system:	
Case filings and costs.....	26
Committee on, report of.....	23
Referees:	
Charges for special services.....	25
Salaries and arrangements for.....	23
Reports by designated bankruptcy depositories.....	27
Bilingual court proceedings.....	5
Budget:	
Committee on, report of.....	3
Canal Zone—clerk's office.....	13
Circuit councils:	
Legislative responsibilities.....	10
Powers, functions and duties.....	8
Circuit executive:	
Duties which may be delegated to.....	10
Election of member of board of certification for.....	3
Civil rules.....	36
Claims, tort.....	14
Clerk's office—Canal Zone.....	13
Code of judicial conduct:	
Joint Committee on, report of.....	17
Community defender organizations.....	34
Conference:	
Call of.....	1
Release of action.....	37
Court administration:	
Additional judgeships:	
Ninth Circuit.....	5
Puerto Rico.....	4
Bilingual proceedings.....	5
Court of appeals opinions.....	12
Efficiency and management studies.....	6
Judicial councils of the circuits:	
Duties which may be delegated to the circuit executive.....	10
Legislative responsibilities of the circuit councils.....	10
Powers, functions and duties of circuit councils.....	8

	Page
Legislation:	
Chief judgeships.....	14
Clerk's office—Canal Zone.....	13
Environmental court system.....	14
Franchise Act.....	14
Territorial judges.....	13
Tort claims.....	14
Quadrennial survey.....	5
Supergrade classifications in the Administrative Office.....	13
Courts:	
Courts of appeals:	
Additional judgeships—Ninth Circuit.....	5
Judicial councils.....	7
Opinions.....	12
Pretermission of terms.....	37
Quadrennial survey.....	5
Statistics.....	3
District courts:	
Additional judgeships—Puerto Rico.....	4
Bilingual court proceedings.....	5
Chief judgeships.....	14
Clerk's office, Canal Zone.....	13
Efficiency and management studies.....	6
Statistics.....	3, 26
Criminal code, new federal.....	22
Criminal Justice Act:	
Appointments and payments.....	32
Committee on, report of.....	32
Community defender organizations.....	34
Excess payments.....	34
Federal public defenders.....	34
Guidelines.....	35
Quality of representation.....	33
Selection of counsel.....	21
Criminal law:	
Committee on, report of.....	21
Exclusionary rule.....	21
New federal criminal code.....	22
Selection of counsel under Criminal Justice Act.....	21
Criminal rules.....	36
Efficiency and management studies.....	6
Elections:	
Member of board of certification for circuit executives.....	3
Member of board of Federal Judicial Center.....	2
Energy crisis.....	18
Environmental court system.....	14
Excess payments under Criminal Justice Act.....	34
Exclusionary rule.....	21
Federal criminal code.....	22
Federal Judicial Center:	
Election of board member.....	2
Report of.....	2

	Page
Federal public defenders.....	34
Fees of jurors.....	18
Firearms, carrying of.....	30
Filings and costs in bankruptcy cases.....	26
Franchise Act.....	14
Guidelines under the Criminal Justice Act.....	35
Habeas corpus:	
Committee on, report of.....	22
Intercircuit assignments:	
Committee on, report of.....	31
Judges:	
Chief judgeships.....	14
Compensation, special report on.....	37
Territorial.....	13
Judicial activities:	
Advisory committee on, report of.....	18
Judicial compensation:	
Special report on.....	37
Judicial conduct:	
Joint committee on, report of.....	17
Judicial Survivors Annuity Act:	
Special report on.....	36
Jurors:	
Fees of.....	18
Injured in performance of duty.....	20
Petit juror utilization.....	19
Sequestration of.....	20
Jury system:	
Analysis of periodic reports.....	21
Automation of selection process.....	21
Committee on, report of.....	18
Energy crisis.....	18
Fees of jurors.....	18
Jurors injured in performance of their duties.....	20
Petit juror utilization.....	19
Sequestration of jurors.....	20
Legislation:	
Chief judgeships.....	14
Clerk's office—Canal Zone.....	13
Environmental court system.....	14
Franchise act.....	14
Magistrates.....	29
Territorial judges.....	13
Tort claims.....	14
Magistrates:	
Positions.....	28
Salary increases.....	28
Magistrates system:	
Administrative regulations.....	29
Committee on, report of.....	27
Legislation.....	29
Magistrate positions.....	28
Salary increases.....	28

	Page
Monograph on selective presentence investigation reports.....	31
Opinions of courts of appeals.....	12
Petit juror utilization.....	19
Presentence investigation reports, monograph on selective.....	31
Pretermission of terms of courts of appeals.....	37
Probation system:	
Carrying of firearms.....	30
Committee on, report of.....	30
Monograph on selective presentence investigation reports.....	31
Sentencing institutes.....	30
Voluntary surrender procedures.....	31
Quadrennial survey of the courts of appeals.....	5
Referees:	
Charge for special services.....	25
Salaries and arrangements for.....	23
Release of conference action.....	37
Representation under Criminal Justice Act, quality of.....	33
Review committee:	
Committee on, report of.....	15
Rules of practice and procedure:	
Appellate rules.....	36
Bankruptcy rules.....	35
Civil rules.....	36
Committee on, report of.....	35
Criminal rules.....	36
Sentencing institutes.....	30
Sequestration of jurors.....	20
Statistics.....	3, 26
Supergrade classifications in the Administrative Office.....	13
Surrender procedures, voluntary.....	31
Territorial judges.....	13
Tort claims.....	14