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

MARCH 6–7, 1975

WASHINGTON, D.C.
1975

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Rowland F. Kirks
Director

REPORT

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

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REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, MARCH 6–7, 1975

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

March 6–7, 1975

The Judicial Conference of the United States convened on March 6, 1975, 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 George L. Hart, Jr., 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 Jacob Mishler, Eastern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Michael H. Sheridan

Fourth Cricuit:

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

Fifth Circuit:

Chief Judge John R. Brown
Chief Judge Alexander A. Lawrence, Southern District of Georgia

Sixth Circuit:

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

Seventh Circuit:

Chief Judge Thomas E. Fairchild
Judge James E. Doyle, Western District of Wisconsin

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*On designation of the Chief Justice, Judge J. Skelly Wright attended the Conference in place of Chief Judge David L. Bazelon.

**On designation of the Chief Justice, Judge Wilfred Feinberg attended the Conference in place of Chief Judge Irving R. Kaufman.

Eighth Circuit:

Chief Judge Floyd R. Gibson
Chief Judge James H. Meredith, Eastern District of Missouri

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 Dudley B. Bonsal, Charles M. Metzner, Edward Weinfeld, Albert C. Wollenberg, and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

The Honorable Edward H. Levi, Attorney General of the United States, and the Honorable Robert H. Bork, Solicitor General of the United States, addressed the Conference during the proceedings on matters of concern to the Department of Justice and the federal judiciary.

The Honorable Walter E. Hoffman, Director of the Federal Judicial Center, presented an oral report on the activities of the Center since the last written report which was submitted to the September 1974 session of the Conference.

A written report on the activities of the Panel on Multidistrict Litigation was submitted by the Honorable Alfred P. Murrah who did not make an oral report to the Conference.

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, Jr., Executive Assistant to the Director, attended all of the sessions of the Conference.

***On designation of the Chief Justice, Chief Judge Wesley E. Brown of the District of Kansas attended the Conference in place of Chief Judge Daugherty.

ELECTIONS

Upon nominations of the Executive Committee the Judicial Conference approved for membership on the Board of the Federal Judicial Center for full four-year terms the Honorable Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit and the Honorable Robert H. Schnacke, a Judge of the Northern District of California. Judge Aldisert had been serving as a member of the board to fill the unexpired term of Judge Frank M. Coffin who under the provisions of the statute became ineligible to serve on the board of the Center upon becoming Chief Judge of the First Circuit.

Upon nomination of the Executive Committee the Judicial Conference approved the nomination of the Honorable George E. MacKinnon, Judge of the United States Court of Appeals for the District of Columbia Circuit, for a second term as a member of the Board of Certification for Circuit Executives, commencing July 1, 1975.

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

The Director of the Administrative Office, Mr. Rowland F. Kirks, presented a short written report to the Conference covering the highlights of the status of judicial business of the federal courts during the six-month period ending on December 31, 1974.

During the six-month period Mr. Kirks advised that the number of appeals filed was 7,959 as compared to 8,044 filed in the comparable period for fiscal year 1974. Appeals terminated rose by approximately seven percent during the first half of the fiscal year but even with the rise of the termination rate the appeals backlog rose to 11,778 as of December 31, 1974, or 3.6 percent over the number pending a year prior.

The civil case filings rose in the first half of 1975 by 14 percent. Although the rate of terminations also rose by 7.5 percent, the backlog of civil cases grew to 113,432, six percent higher than the pending caseload on June 30, 1974.

Mr. Kirks advised that the downward trend marked in the last two years in criminal cases appears to be reversing during the first six months of 1975. Criminal filings numbered 20,354, nearly nine

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percent higher than the comparable period of the prior year. In the criminal case area the district courts were able to keep pace with the increased filing rate. There were 20,546 cases terminated and, thus, the pending caseload dropped by nearly one percent during the first half of the year and was down more than four percent below the backlog of one year ago.

Bankruptcy filings reflected a 33 percent increase over the comparable period of the prior year. The number of new filings were 116,644 and approximately 92,000 cases were terminated during the first six months of fiscal year 1975 as compared to less than 84,000 during the same period of 1974.

COMMITTEE ON THE BUDGET

Judge Carl A. Weinman, Chairman of the Budget Committee, reported to the Conference on the recently concluded hearings before the Subcommittee on Appropriations of the House of Representatives. Judge Weinman also circulated to the Conference copies of his statement to the Appropriations Committee.

Judge Weinman stated that the total requested for fiscal year 1976 for the courts of appeals and district courts was $235,588,000, representing a ten percent increase over the adjusted appropriations for 1975. Of the total increase of $21,260,000, approximately half or $10.6 millon represented mandatory increases, such as pay costs and other statutory or uncontrollable items of expense.

COURT ADMINISTRATION

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

Judicial Disability

The Conference considered the recommendations of the Committee relating to S. 4153, 93rd Congress, a bill referred by the Senate Judiciary Committee for comment. The proposed bill provides for the establishment of a Council on Judicial Tenure to be composed of 14 judges elected for three-year terms. The Council is charged with the duty to receive and investigate complaints against a justice or judge of the United States and to determine whether the complaint alleges grounds which would warrant removal, censure or involuntary retirement. The bill provides for investigation, hear-

ing and appeal to the Judicial Conference and, ultimately, to the Supreme Court. After consideration of this legislation and prior bills of a similar import which have been considered by the Conference over a period of years, the Conference agreed that, with the suggestions expressed in paragraphs 1–5, it would approve in principle the legislation proposed by S. 4153, without approving the specific provisions of the bill. The suggestions expressed by the Conference are:

1. That any reference to Justices of the Supreme Court be eliminated inasmuch as sufficient means exist through the impeachment process and further that it would be inappropriate for judges of the inferior courts to pass judgment on the action of a Justice of the Supreme Court. Moreover, the Judicial Conference has no jurisdiction over the Supreme Court;

2. That neither a judge nor a Justice of the United States may be removed from office except by the impeachment process;

3. That following a hearing before a commission of the type proposed in S. 4153, following review by the Judicial Conference of the United States and further review by the Supreme Court of the United States, mandatory or involuntary retirement of a judge for physical or mental disability (including habitual intemperance) may be ordered, with the judge so charged being relieved of his judicial duties;

4. That a judge similarly may be mandatorily (or involuntarily) retired for serious misconduct and he may be relieved of any further judicial duties; and

5. That the censure of a judge following a hearing before such a commission with review and appeal may be imposed as a less severe sentence than mandatory or involuntary retirement.

Mandatory Retirement of Judges

The Conference voted to disapprove S.J. Res. 226, 93d Congress, which would amend the Constitution to provide that no person seventy years of age or over be appointed a judge of the United States and that upon reaching seventy-five years of age any judge shall retire from regular active service, with the exception of a judge who has not yet qualified for retirement. The Conference was of the view that the provision relating to appointment was unnecessary inasmuch as the Senate, through its confirmation process, has complete control over the question of the age of a judge upon appointment. Insofar as retirement is concerned, the Conference has previously expressed the view that a Constitutional amendment is unnecessary. At the October 1970 session (Conf. Rept., p. 76) and at the October 1971 session (Conf. Rept., p. 77), the Conference had endorsed the concept of the mandatory retirement of a judge at the age of seventy, provided that a judge who

has not served ten years continuously or otherwise when he attains the age of seventy shall be retired upon his completion of ten years of active service.

Judicial Survivors Annuity Act

At the September 1974 session, the Conference referred for further study a recommendation of the Judicial Council of the Sixth Circuit which would permit a widow of a judge who is receiving benefits under the Act to continue to receive such benefits in the event of remarriage (Conf. Rept., p. 48). The Committee submitted to the Conference a detailed report as to the reasons for its recommendation that the proposal be disapproved. The report pointed out that the Judicial Survivors Annuity fund has for many years been in financial distress and that increasing the class of beneficiaries would render previous actuarial studies unreliable and inaccurate and, further, that the Act at present provides that any beneficiary, whether it be a widow who has remarried or otherwise, is entitled to receive an annuity during the years following the judge's death in an amount equal to the sum paid in by such judge, with interest. Consequently, a widow who remarries is not necessarily completely excluded from benefits under the Act. The Conference agreed with the Committee report disapproving the recommendation of the Judicial Council of the Sixth Circuit.

The Conference also received a report from Judge Oren Harris who has been previously designated by the Conference to work with the Administrative Office and the Conference in connection with proposed amendments to the Judicial Survivors Annuity Act.

Opinions of Bankruptcy Judges

The Conference approved in principle a proposal to provide bankruptcy judges with complimentary copies of a publication in return for receiving copies of opinions of bankruptcy judges, thus, eliminating the requirement in such instances of charging for such opinions.

Supporting Personnel

Supervisory Clerical Position in Probation Offices

The Conference approved an amendment to the Judicial Salary Plan to provide the establishment of a separate formula for determining the grades of supervisory clerical positions in probation

offices, gauged primarily to the number of positions supervised; the establishment of two new compensation categories—(1) probation clerk, grades JSP 3–4–5 and (2) senior probation clerk, grades JSP 4–5–6 in lieu of probation clerk-stenographer, grades JSP 4–5, which is abolished, and the establishment of a position of secretary to the chief probation officer, grades JSP 6–7–8 which is authorized for the largest probation offices upon demonstration of need.

Satellite Libraries—Courts of Appeals

The Conference approved a pilot project for satellite libraries in the Third Circuit Court of Appeals in those cities other than where the central library is located. The positions in the satellite libraries shall not be higher than grade JSP 7 and the normal qualifications and standards approved by the Conference for library personnel at the appropriate level shall control minimum requirements. There shall be no more than one library position at each location. Personnel shall operate under the guidance of the chief circuit librarian under a plan formulated by the court of appeals for coordination of and overall responsibility for total circuit satellite effort. The judicial council of the circuit and the Administrative Office, as well as the Conference committee, are to submit a full report of the operation of the satellite plan at the fall meeting of the Conference in 1977.

The Conference also agreed to ask the Federal Judicial Center to conduct a study designed to eliminate the artificial distinction between the courts of appeals and district court libraries and to avoid duplication of libraries and duplication in the separate offices of judges.

Salaries of Secretaries of Judges

On request of the Federal Judicial Secretaries Association the Committee, through the Subcommittee on Supporting Personnel, conducted a study of the grades of secretaries considering a wide variety of data, a review of comparative salaries in various localities, as well as prior studies of this subject matter. The Conference agreed with the Committee's conclusion that no grade changes in the secretarial field are warranted at this time. The Conference did, however, reaffirm its support of legislation to provide accelerated within-grade salary increases for secretaries to judges (Conf. Rept., April 1973, p. 6).

Senior Law Clerks—Courts of Appeals

In accordance with a directive of the Conference at its September 1974 session (Conf. Rept., p. 50) approving the concept of a senior law clerk in every court of appeals, the Conference approved the following qualification standard for such position.

In addition to the qualifications required of a law clerk, grade JSP 12, to a federal judge, candidates must possess an additional five years of progressively responsible experience in legal research, administration of a body of law or as a practicing attorney.

The incumbent performs under the general supervision of the chief judge of a court of appeals.

The Conference agreed that a salary of up to $30,000 per annum be fixed by each court for the position of senior law clerk, for which statutory authority now exists and for which funds have been requested so that each court of appeals may be able to appoint a senior law clerk during fiscal year 1976.

Substitute Court Reporters

Because of the inordinate delays that have taken place throughout the system in the preparation of transcripts by court reporters in cases that are being appealed, the Conference agreed that substitute reporters should be employed to service the requirements of the district judge where the official court reporter is unable to complete his transcripts in a timely fashion and that the salary of the official reporter be subject to withholdings not to exceed the sum necessary to compensate the substitute reporter until the transcripts are current. The need for substitute reporter service is to be determined by the district judge affected or by the chief judge of the circuit, at his option, acting through the circuit executive.

Court Criers

The Conference agreed with a proposal that a line item appropriation in the budget be sought to implement the action of the Conference at the March 1970 session providing a new classification of crier/clerk at one step higher than the present classification of court crier (JSP 5) provided that the judge certifies that the crier/clerk is performing clerical duties in addition to those of court crier.

Additional Judgeships

The Conference voted its disapproval of S. 3712, 93rd Congress, to provide an additional permanent district judgeship for

the District of Connecticut. The Conference noted that while there has been a rapid increase in total filings in the district over the past five years, nevertheless, 45 other districts had greater filings per judgeship than Connecticut's 374. Further, it has been the policy of the Conference to recommend additional judgeships on a quadrennial basis unless an emergency exists. Inasmuch as there is no emergency situation in the District of Connecticut and since the district's needs for an additional judgeship will be reviewed, in depth, in the 1976 quadrennial survey, the Conference disapproved S. 3712.

Land Condemnation

The Judicial Conference at the September 1972 (Conf. Rept., p. 39) session authorized a two-year trial period for proposed standard guidelines relating to land condemnation cases for use in at least six district courts on a voluntary basis. Eleven district courts responded and all but one expressed the opinion that the proposed standard guidelines were a substantial improvement over the former practices and resulted in definite benefits in management and administration of condemnation proceedings and assured a finality of judgment at a much earlier time. In addition, the statistics are regarded as more realistic and record-keeping is simplified. Accordingly, the Conference approved the following proposed standard guidelines and recommended them to the federal district courts for use on an optional basis:

(1) For each tract, economic unit or ownership for which the just compensation is required to be separately determined in a total lump sum, there shall be a separate civil action file opened by the clerk, which shall be given a serial number, as given all other civil actions. For each such civil action a separate J.S. 5 card shall be prepared on filing and a separate J.S. 6 card prepared on closing of each such separate civil action. The condemnor's counsel shall make the initial determination of each tract, economic unit or ownership for which just compensation is required to be separately determined in a lump sum, subject to review by the court after filing.

(2) The file in the civil action containing the first complaint filed under a single declaration of taking shall be designated as the Master File for all the civil actions based upon the single declaration of taking. The numerical designation as the Master File shall be shown by adding as a suffix to the civil action serial number the symbol MF ———. (In the blank shall be inserted a code number or numbers, selected by the condemnor, designating the project or projects and the number assigned the declaration of taking with which the property concerned is connected.) The single declaration of taking shall be filed in the Master File only. In all other civil actions for condemnation of property which is the subject of the declaration of taking, an appropriate reference to the

Master File number in a standard form of complaint shall be deemed to incorporate in the cause the declaration of taking by reference, and shall be a sufficient filing of the declaration of taking referred to.

For example, assuming that the civil action serial number assigned to the first complaint under a single declaration of taking is C.A. 72–20,000, that the project number selected by the condemnor is 500 and the declaration of taking is the first in the project, the Master File Number would be C.A. 72–20,000–MF 500–1.

(3) For the civil action designated as the Master File there shall be a separate complaint. At the option of the condemnor this complaint and exhibits shall (1) describe all owners, and other parties affected and all properties that are the subject of the declaration of taking, or (2) describe only the owner or owners of the first property or properties in the declaration of taking for which the issue of just compensation is separately determinable;

(4) In order to reduce administrative, clerical and secretarial work a standard form of complaint (printed, photocopies, mimeographed or otherwise produced in numbers) may be used for each civil action filed to condemn a tract, economic unit or ownership for which the issue of just compensation is required to be determined in a single lump sum. In the body of the complaint it shall not be necessary to designate the owner or owners of the property concerned, other parties affected by the civil action, or to describe the property concerned in the civil action. The names of the owners, and other parties affected, and the description of the property concerned in the civil action may be set forth in an exhibit or exhibits incorporated by reference in the standard form of complaint and attached thereto;

(5) In any notice or process required or permitted by law or by the Rules of Civil Procedure (including but not limited to process under Rule 71A(d), F.R.Civ.P.) the condemnor, at its option, may combine in a single notice or process, notice or process in as many separate civil actions as it may choose in the interests of economy and efficiency.

*(6) A district court should adopt a local rule or general order to the effect that the filing of a declaration of taking in the Master File constitutes a filing of the same in each of the actions to which it relates.**

LEGISLATION

(1) The Conference considered H.R. 16152, 93rd Congress, which was referred for comment by the House Judiciary Committee. This

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*An essential element of the Master File System is that the filing of the declaration of taking in the Master File shall constitute a filing of the same in each of the separate actions to which the Master File relates. This is of particular significance because the Declaration of Taking Act, 40 U.S.C. § 258a, specifies filing of the declaration of taking "in the cause." If the filing of the declaration of taking is defective, the vesting of the title to the subject property in the United States under the Act is jeopardized. To ensure that the filing of a pleading in the Master File will legally constitute a filing in the several related actions, it is considered necessary that each district court as part of the implementation of this system, adopt a local rule of procedure giving the desired effect to the filing of pleadings in the Master File. The following language for such a rule is suggested: "Where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the clerk is authorized to establish a Master File in which the declaration of taking may be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it

bill would amend Title 28 of the United States Code to permit the cumulation of amounts in controversy as between the members of a class in class actions. The bill, in effect, would reverse legislatively the Supreme Court opinions in *Snyder* v. *Harris*, 394 U.S. 332 (1969), and *Zahn* v. *International Paper Company*, 414 U.S. 291 (1973). On considering the provisions of this bill the Conference was agreed in opposing legislation of this type insofar as it affects diversity cases. As to cases involving federal question jurisdiction, the Conference agreed that such legislation involved a matter of policy for the determination of Congress.

The Conference also suggested that the Congress might wish to consider other procedural devices to achieve the objectives of the legislation and further suggested that the Congress consider the impact of legislation of this nature upon the judicial process.

(2) H.R. 14227, 93d Congress, would establish an Antitrust Revision Commission to study the operation of the existing antitrust statutes, including the enforcement procedures of the Department of Justice, the Federal Trade Commission and other agencies, and make recommendations for improvement. The Conference was agreed that this legislation involved a policy judgment on the part of the Congress and, accordingly, took no position with respect to it.

REVIEW COMMITTEE

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

Judge Tamm's report was largely informational. It did point out that several judicial officers were late in filing their reports. He said that the judicial officers who had not as of the convening of the Conference on March 6 filed reports of extrajudicial income for the period July 1 through December 31, 1974 are:

Listing, by Circuit, of Judicial Officers who have not, as of March 6, 1975, filed reports of extrajudicial income for the period July 1 to December 31, 1975.

Second Circuit:
**Edmund L. Palmieri
U.S. District Judge
**Sylvester J. Ryan
U.S. District Judge
**Edward Weinfeld
U.S. District Judge
**Inzer B. Wyatt
U.S. District Judge

Third Circuit:
Peter B. Scuderi
U.S. Magistrate

Fourth Circuit:
Alex Akerman, Jr.
U.S. Magistrate

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Fifth Circuit:
**William O. Mehrtens
U.S. District Judge
Sixth Circuit:
**Frank J. Battisti
U.S. District Chief Judge
Seventh Circuit:
Max J. Lipkin
U.S. Bankruptcy Judge
Ninth Circuit:
**Warren J. Ferguson
U.S. District Judge
**Pierson M. Hall
U.S. District Judge
Robert F. Peckham
U.S. District Judge
Charles L. Powell
U.S. District Judge
**Harry Pregerson
U.S. District Judge
**Manuel L. Real
U.S. District Judge
William B. Cobb
U.S. Bankruptcy Judge
Keith E. McWilliams
U.S. Bankruptcy Judge
Tenth Circuit:
Stephen S. Chandler
U.S. District Judge

**Judges declining to file as a matter of conscience.

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 bankruptcy judges and magistrates.

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee was presented by Judge Elbert P. Tuttle, who with Judge Tamm is co-chairman of the Committee.

The Conference on recommendation of the Committee approved the following amendments to the Code of Judicial Conduct for United States Judges adopted by the Conference at the April 1973 session (Conf. Rept., p. 9) to bring it into conformity with the new Judicial Disqualification Statute, 28 U.S.C. 455.

1. That the first sentence of Canon 3C(1) is amended to read as follows:

"(1) A judge ~~should~~ *shall* disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where; * * * *"

2. That Canon 3C(1)(b) is amended to read:

"(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, *or the judge* or such lawyer has been a material witness concerning it;" (new language italic).

3. That the commentary following Canon 3C(1)(b) is stricken from the Code.

4. That a new subsection (e) is added to Canon 3C(1) as follows:

"(e) he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;"

5. That Canon 3C(3) is amended by adding the following subdivision (d) relating to the definition of the word "proceeding":

"(d) 'proceeding' includes pretrial, trial, appellate review, or other stages of litigation."

6. That Canon 3D relating to a remittal of disqualification is stricken from the Code.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman of the Advisory Committee, presented the report to the Conference.

Judge Tuttle advised that since the last report to the Conference four formal opinons have been issued, bringing to 42 the total number of such opinions released by the Committee. Since the last session of the Conference 17 new requests for formal opinions were received, of which seven were initiated by the Review Committee. The Committee is current in its work of processing requests for opinions.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

The report of the Committee on the Operation of the Jury System was presented by its Chairman, Judge Arthur J. Stanley.

Federal Employees Compensation Act

The Conference approved draft legislation for transmittal to the Congress which will bring within the coverage of the Federal Employees Compensation Act any injury or disability to a juror arising from service as a federal juror. The Conference recognized that Public Law 93–416 generally amended the federal injury compensation laws to blanket any federal employees serving as federal jurors. The Conference is of the view, however, that since a vast number of jurors are not federal employees and yet perform a vital public service, they should be included within the terms of the Compensation Act.

Federal Jury Fees

Judge Stanley reported that at the time hearings were held in the 93rd Congress on S. 3265, the jury fee bill, and prior to passage of that bill by the Senate in essentially the form recommended by the Judicial Conference, proposals were made to amend that legislation to require the Judicial Conference to report to the Congress periodically on factors such as the economic hardship which jury service imposes upon citizens, the frequency with which citizens are excused because of economic hardship and the impact of such excuses upon representation on juries of a fair cross-section of the community, as well as any recommendation that the Conference would have. In studying these recommendations, the Committee appointed a special committee to study the problems and in so doing the Committee availed itself of a study made under L.E.A.A. auspices relating primarily to state jury service. Five federal courts have been designated for comparative study by the L.E.A.A. team and the Conference agreed to allow them to do reasonable research on the economics of jury service in the four district courts within the scope of existing statutory authority.

Juror Qualification Questionnaire

The Committee recommended and the Conference approved a revised juror qualification questionnaire designed with the aid of the Administrative Office and field personnel.

Periodic Reports

The Conference was advised that the Committee had received a compilation of data reflecting the race and sex constituency of master jury wheels and jurors actually reporting for service from several district courts. The Conference authorized that copies of the analysis and summary be made available to the pertinent courts involved and requested that the chief judges of the respective districts, after careful examination of the results, consult with the Federal Judicial Center which, in turn, will report to the Committee prior to the next regular session of the Conference.

The Conference, pursuant to the requirements of the Jury Selection and Service Act, has issued regulations and approved forms to monitor the race and sex balance of all master jury wheels in the district courts. In implementation of these regulations, the Con-

ference agreed to the three recommendations of the Committee and directed their implementation by the Administrative Office:

(1) Each time juror qualification questionnaires are sent out, the clerk will make a random sample of returned questionnaires and report the results on a modified JS–12 form. The sampling method and sample size will be prescribed by the Administrative Office. It is not necessary that all samples be drawn at the same time. It is better that they be drawn at the time of wheel-filling for each district, whenever that may be.

(2) After the questionnaires have been processed and qualifications determined, the clerk will draw a random sample of qualified questionnaires and report the results on the modified JS–12 form.

(3) Sampling of qualified questionnaires should supplant the collection of data on jurors reporting for duty, which is presently reported on Part III of the JS–12. Much more can be learned about the effect of excuses and exemptions by sampling the qualified questionnaires than by recording race and sex of jurors reporting for duty. Nothing significant will be lost, and the burdens on clerks will be reduced.

Petit Jury Handbook

The Conference approved a revised handbook for jurors and requested the Committee to study a preparation of a handbook in the future which might be both more readable and useful for federal jurors.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

Speedy Trial Act of 1974

Judge Zirpoli advised the Conference that the Speedy Trial Act of 1974 will have a profound impact upon both the district courts and the courts of appeals. He stated that the Administrative Office and the Federal Judicial Center have appointed coordinators to work together with a representative of the Department of Justice in order to assist the courts in discharging their obligations under the statute, commencing July 1, 1975. The Conference in discussing the impact of the Speedy Trial Act on the court system directed that the Committee on the Administration of the Criminal Law would have general authority on behalf of the Conference to supervise the administration and implementation of Title I of the Speedy Trial Act. The Conference voted authority to the Committee in conjunction, where necessary, with the Advisory Committee on

Criminal Rules to amend the plans adopted under Rule 50(b) of the Federal Rules of Criminal Procedure, to suggest model district plans and guidelines in implementation of both the first phase of the Speedy Trial Act, which must be completed by September 29, 1975, and to continue work on the further implementation of the Act thereafter.

Revision of the Federal Criminal Code

At the four previous sessions of the Conference held in 1973 and 1974 the Committee reported on phases of three proposals for the revision of the Federal Criminal Code; one submitted by the Brown Commission, one submitted by the Senate as S. 1, 93rd Congress, and a third containing the views of the Department of Justice, introduced as S. 1400, 93rd Congress. Judge Zirpoli stated that S. 1 as introduced in the 94th Congress takes into account the opinions received from all sources on the three prior proposals, including an acceptance of several of the recommendations made by the Committee and previously approved by the Judicial Conference. The Committee, however, made certain specific proposals and comments relating to the new S. 1, 94th Congress, which the Conference approved and requested Judge Zirpoli to present to the Congress at the time hearings are held on S. 1, as follows:

Matters Relating to Construction

Section 112(a) of the new S. 1 would abrogate the rule of strict construction. The Committee expressed its objections to this provision, and the Conference concurred in this view at the April 1973 session (Conf. Rept., p. 15). The Conference agreed that the abrogation of the rule will introduce a litigable issue at the trial and appellate levels without corresponding benefits to the litigants. The Conference agreed that introducing the words "fair import of their terms to effectuate the general purpose of this title" as a rule of construction might result in an undesirable imprecision in drafting criminal legislation and in unnecessary constitutional confrontations.

Jurisdiction

Judge Zirpoli reported that S. 1, 93rd Congress, and S. 1400, 93rd Congress, would generate the least expansion of federal jurisdiction and were, therefore, preferable to the National Commission approach. He advised that this preference had been accepted in

the draft of S. 1, 94th Congress. The new bill recognizes the concern for the efficient administration of court calendars which are dependent upon a wise and sensitive exercise of prosecutorial discretion by requiring in an amendment to 28 U.S.C. 522 that the Attorney General submit annual reports to the Congress, setting forth the number of prosecutions commenced during the preceding fiscal year under each section of Title 18, identifying the number of such prosecutions commenced under each jurisdictional base applicable to each such section.

Culpable States of Mind

S. 1, 94th Congress, classifies the offense elements into (1) conduct, (2) circumstances surrounding the conduct, and (3) the results of the conduct, and then defines the state of mind with relation to each. The Conference agreed that this complex procedure is a matter of concern; that it will undoubtedly be productive of unnecessary litigation; that it will confuse judges and juries and that it may perhaps cause injustice. The Conference agreed with the Committee recommendation that the preferred definitions are:

A person engages in conduct:

(1) "knowingly" if, when he engages in the conduct, he does so voluntarily and not by mistake, accident or other innocent reason;

(2) "intentionally" if, when he engages in the conduct, he does so knowingly and with the purpose of doing that which the law prohibits or failing to do that which the law requires;

(3) "recklessly" if, when he engages in conduct with respect to a material element of an offense, he disregards a risk of which he is aware that the material element exists or will result from his conduct. His disregard of that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation; except that awareness of the risk is not required where its absence is due to voluntary intoxication;

(4) "negligently" if, when he engages in conduct with respect to a material element of an offense, he fails to be aware of a risk that the material element exists or will result from his conduct. His failure to perceive that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation.

Bars to Prosecution

Section 511 provides that a prosecution for an offense necessarily include in the offense charged shall be considered to be timely commenced even though the period of limitation for such included offense has expired, if the period for limitation for the offense charged has not expired and there is, after the close of evidence

at the trial, sufficient evidence to sustain a conviction for the offense charged. This is contrary to existing law and the Conference agreed with the Committee that the rationale for a lesser period of time for a lesser offense applies whether it is the offense charged or a lesser included offense.

Section 512 provides that immaturity prevents prosecution, other than for murder, of any person under sixteen years of age but does not bar a juvenile delinquency proceeding under Chapter 36, Subchapter A (Sections 3601–3606). The Conference expressed concern that the formulation of Section 512 does not treat the problem of persons less than sixteen years old committing minor offenses in areas under exclusive control of the United States and urged that specific authority be granted magistrates to deal with such cases.

Defenses

Under this heading appear the following defenses: Section 521. Mistake of Fact or Law; Section 522. Insanity; Section 523. Intoxication; Section 531. Duress; Section 541. Exercise of Public Authority; Section 542. Protection of Persons; Section 543. Protection of Property; Section 551. Unlawful Entrapment; and Section 552. Official Misstatement of Law.

The Conference agreed with the Committee's criticisms, which are generally applicable to all of these defenses: that codification is not necessary or desirable. The Conference noted particularly that Section 522 on insanity contains a formulation not previously considered by the Committee or the Conference. It treats mental disease or defect as a defense only when the state of mind required as an element of the offense is lacking as a result of mental disease or defect. The Conference agreed with the Committee recommendation that this section should not be codified but if a section on mental disease or defect be included, it favors the adoption of the National Commission's version. This follows the formulation of the American Law Institute.

It is believed that Section 522, as drafted, would freeze the insanity defense and not permit changing concepts and knowledge to work their way into the law. This would only serve to increase litigation and confuse juries. The Conference agreed with the need of an alternative verdict "not guilty by reason of insanity" but expressed the view that such a verdict should be incorporated in the Federal Rules of Criminal Procedure.

Section 551 relating to unlawful entrapment also involves codification of an offense which the Conference believes should not be codified because of the intricacies inherent in evolving legal concepts. Further, important procedural issues, such as the type of proof needed to raise the issue of entrapment, whether the defense may be pleaded inconsistently and the kinds of evidence admissible to show predisposition, are not codified.

Offenses of General Applicability

The Conference favors substitution in Section 1001, criminal attempt, of the phrase "intent to commit" in place of "state of mind required for the commission of a crime" and the substitution of "substantial step" for "amounts to more than mere preparation for, and indicates his intent to complete." The Conference agreed with the Committee recommendation that a clearer formulation would read "A person is guilty of an offense, if acting with intent to commit a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime."

As to Section 1002, criminal conspiracy, the Conference prefers the present language "do any act to effect the object of the conspiracy" to the language in S. 1 "engages in any conduct with intent to effect any objective of the agreement."

Section 1003, criminal solicitation, previously criticized by the Conference, was again regarded as defective in that there is no demonstrated need for a general provision on solicitation; the provision is fraught with the potential for abuse as a prosecutorial tool; and the substance of the proposal is already covered by the provisions on complicity—accomplices. The Conference reaffirmed the view that the defense of renunciation is too closely circumscribed.

In discussing S. 1 members of the Conference again expressed great concern that if this legislation is enacted, new forms of jury instructions will be required and appellate courts will be called upon to review the correctness of new instructions and that all of these factors will have a serious impact on the work of all federal courts.

Members of the Conference continued to express the view that a traditional recodification of the existing statutes would serve all the purposes of a completely new code redefining federal crimes. Some expressed the view that if such a comprehensive code is to

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replace all present federal criminal statutes, the present time was most inappropriate in view of the rising caseloads, new classes of litigation and the adjustments necessary to meet the Speedy Trial Act over the next five years.

Review of Sentencing

Judge Zirpoli advised the Conference that his Committee did not make any further recommendation on the provision of S. 1 relating to appellate review of sentencing inasmuch as the Conference has already firmly expressed itself in opposition to this concept. He reiterated the view of his Committee presented to the September 1974 session of the Judicial Conference (Conf. Rept., p. 58) that the Committee favors the alternative to appellate review of sentences provided by the proposed amendment to Rule 35 of the Federal Rules of Criminal Procedure with certain modifications, as follows: (1) that the panel of review judges consist of one circuit and two district judges, (2) that membership on the panel be rotated as far as is practicable in the discretion of the assigning judge and (3) that the motion to review such sentences shall apply to any sentence which may result in imprisonment regardless of the period thereof.

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 Institute

The Conference considered and approved a tentative agenda for a sentencing institute for the Ninth Circuit. The institute was originally scheduled to be held at Long Beach, California, on April 29–May 2, 1975. The Conference approved an alternative date of October or November, 1975, for the institute, as well as the place, participants and agenda.

Carrying of Firearms

At the September 1973 session (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 time the Conference instructed the Committee to study the desirability of a federal statute to permit probation officers to carry firearms. Although the Committee at the March 1974 session (Conf. Rept., p. 30) recommended such a statute, the Committee has, after further study, recommended to the Conference that in lieu of a statute a policy statement on the subject be adopted. The Conference agreed to the following statement of policy:

It is the policy of the Judicial Conference of the United States that probation officers should not be permitted to carry firearms in the performance of their official duties unless an assignment, in the judgment of the chief probation officer or the district judge, subjects a probation officer to serious risk of physical harm and the services of a law enforcement officer in accompanying the probation officer would not be appropriate in the opinion of the chief probation officer. Such probation officer may be permitted to carry a firearm under these conditions:

I. A. The law of the state permits the carrying of a firearm by a probation officer.

B. The probation officer has obtained all necessary licenses or permits required for the carrying of firearms.

C. The probation officer has presented to the chief probation officer sufficient reasons in writing why the carrying of a firearm is reasonably necessary:

(1) in the performance of his duties generally, or

(2) in the performance of duty in a specified assignment.

D. The permission of the chief probation officer has been granted in writing.

E. The chief judge of the court has been given actual notice in writing of the permission granted to carry a firearm and he has not objected within 48 hours of the notice.

II. No probation officer shall be granted permission to carry a firearm in the performance of his duties unless he has completed an approved firearms training program and has qualified thereunder to carry a firearm.

III. A probation officer who has been granted permission to carry a firearm in the performance of his duties shall use the same only in the exercise of his rights of self-defense in accordance with law.

IV. A probation officer who discharges a firearm while in the performance of his duties shall file a report in writing with the chief probation officer within twenty-four (24) hours describing in detail the occasion on which, and the reason, he discharged the firearm.

V. The chief probation officer shall forthwith send copies of the report required under paragraph IV to the chief judge and the Administrative Office.

Retirement of Probation Officers

The Conference was advised that Public Law 93–350, enacted July 12, 1974, amends certain sections of the Civil Service Retirement Act relating to law enforcement personnel. One amendment which becomes effective Jauary 1, 1978, provides for the mandatory

retirement of a person eligible for immediate retirement on the last day of the month on which he becomes 55 years of age, or if over that age the last day of the month in which he completes 20 years of service. There is an exception to the mandatory retirement provision—when the head of an agency finds that in his judgment the public interest requires an exemption of an employee from automatic separation until the employee becomes 60 years of age. For the purpose of implementing this law, the Conference adopted the following resolution:

The Director of the Administrative Office, when in his judgment and after receiving the findings and recommendation of the chief judge of the district finds that the public interest so requires, may exempt a probation officer from separation until the probation officer becomes 60 years of age.

Speedy Trial Act of 1974

Title II of the Speedy Trial Act provides that the Director of the Administrative Office shall establish a pretrial services agency in ten judicial districts. Five of these agencies will be administered by the Division of Probation of the Administrative Office and the remaining five by Boards of Trustees appointed by the chief judges of the respective districts. The Conference assigned to the Committee on the Administration of the Probation System oversight of the implementation of Title II of the Speedy Trial Act, with reports to the Conference as appropriate.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

Salaries and Arrangements for Referees

The Conference received the report of the Committee, together with the recommendations of the Director of the Administrative Office based on the November 1974 survey reports, as well as the recommendations of the circuit councils and the district courts concerned, for the continuation of 18 referee positions, for increase in jurisdiction of the full-time referee position in the Western District of Missouri, and to increase to full-time service the part-time ref-

eree position in the Western District of North Carolina. The Conference approved the recommendations, to be effective April 1, 1975 unless otherwise indicated, subject to the availability of funds as follows:

SECOND CIRCUIT

Northern District of New York

(1) Authorized the continuance of the full-time referee position at Utica to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

(2) Authorized the continuance of the full-time referee position at Albany to become vacant by expiration of term on July 13, 1975, for a term of six years, effective July 14, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of New York

(1) Authorized the continuance of the full-time referee position at Poughkeepsie to become vacant by expiration of term on July 7, 1975, for a term of six years, effective July 8, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

(2) Authorized the continuance of the full-time referee position at New York City to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

District of New Jersey

(1) Authorized the continuance of the full-time referee position at Trenton to become vacant by expiration of term on August 31, 1975, for a term of six years, effective September 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Middle District of Pennsylvania

(1) Authorized the continuance of the full-time referee position at Wilkes-Barre to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, 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) Changed the part-time referee position at Charlotte to a full-time position at an annual salary of $31,650, to become effective as soon as appropriated funds become available, the regular place of office, territory and places of holding court to remain as at present.

District of South Carolina

(1) Authorized the continuance of the full-time referee position at Columbia to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Virginia

(1) Authorized the continuance of the full-time referee position at Lynchburg to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of West Virginia

(1) Authorized the continuance of the full-time referee position at Wheeling to become vacant by expiration of term on October 15, 1975, for a term of six years, effective October 16, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Alabama

(1) Authorized the continuance of th full-time referee position at Birmingham to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Middle District of Florida

(1) Authorized the continuance of the full-time referee position at Tampa to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Middle District of Georgia

(1) Authorized the continuance of the full-time referee position at Columbus to become vacant by expiration of term on October 15, 1975, for a term of six years, effective October 16, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Louisiana

(1) Authorized the continuance of the full-time referee position at New Orleans to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Eastern District of Michigan

(1) Authorized the continuance of the full-time referee position at Detroit to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Tennessee

(1) Authorized the continuance of the full-time referee position at Knoxville to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

Western District of Missouri

(1) Established concurrent district-wide jurisdiction for the full-time referee at Kansas City with the other full-time referee for the Western District of Missouri, as now provided, and with the full-time referees in the Eastern District of Missouri in cases arising in that district.

(2) Authorized the continuance of the part-time referee position at Sioux Falls to become vacant by expiration of term on June 30, 1975, for a term of six years, effective July 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

District of Arizona

(1) Authorized the continuance of the full-time referee position at Phoenix to become vacant by expiration of term on September 11, 1975, for a term of six years, effective September 12, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Oregon

(1) Authorized the continuance of the full-time referee position at Portland to become vacant by expiration of term on September 30, 1975, for a term of six years, effective October 1, 1975, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Case Filings

The Committee report noted that since March 1974 there has been an unparalleled increase in the number of bankruptcy cases filed. In the first six months of fiscal year 1975, there was an increase of 33.2 percent over the same period of the prior fiscal year. Projection of this increase would indicate filings totaling between 232,000 and 250,000 in fiscal year 1975. The previous high filing

year was 1967, in which 208,329 cases were filed. In October 1974, a total of 22,132 cases was filed, which is an all-time record for any one month since the start of the Referees' Salary System.

The business bankruptcies filed in fiscal year 1974 totaled 20,746, which is a record number of these cases. This figure represents 10.9 percent of the total cases filed in fiscal year 1974. Current trends during the first half of fiscal year 1975 show that the proportion of business cases may increase to 12 percent of the total.

Referees' Salary and Expense Fund

In fiscal year 1974 it was reported that receipts to the Referees' Salary and Expense Fund were slightly below fifteen million dollars, which was a record high. The costs of the system were approximately $20,500,000, resulting in a deficiency to the special Fund of over five and a half million dollars. This is the ninth straight year in which there has been a deficit, which is made up by appropriations from the general funds of the Treasury. The cumulative deficit is approximately eighteen million dollars.

The Fund is now supporting approximately 73 percent of the system's cost. The Conference on two occasions has taken the position that increasing the percentage charges to be assessed against estates would place an undue burden on debtors and bankrupt estates.

Clerical Personnel

The Conference was advised that the significant increase in bankruptcy cases filed in the past year has placed a severe strain on the appropriations, the personnel and the equipment. In October 1974 the Bankruptcy Division was authorized to seek funds for 34 additional permanent clerical positions. With the continued rise in filings, however, the Conference now approved a request for 100 additional temporary employees for the bankruptcy system.

Guidelines

The Conference approved the elimination of Chapter XIII Guidelines Numbers 2 and 3 as inconsistent with the Rules of Bankruptcy Procedure and as unnecessary inasmuch as they merely establish a procedure to effectuate Guideline Number 1 which is monitored by the Bankruptcy Division of the Administrative Of-

fice by a review of the reports submitted by the Standing Chapter XIII Trustee.

The Conference also approved the modification of Chapter XIII Guideline Number 4 to conform to the Rules of Bankruptcy Procedure so as to place the responsibility for determining integral commercial areas on the referee in bankruptcy rather than on the district judge. The Conference was advised that it was the consensus of the Committee that if the referees in multiple offices cannot come to an agreement, the matter could then be decided by the district court.

Legislation

The Conference reaffirmed its approval of four bankruptcy bills which had been introduced in, but not enacted by, the 93rd Congress. The only modification of substance in a bill previously approved by the Conference was an increase in the maximum amounts of commissions allowable to receivers and trustees under Section 48 of the Bankruptcy Act.

The four bills listed under their numbers in the 93rd Congress are as follows:

(1) H.R. 3489 was a bill to abolish the Referees' Salary and Expense Fund as a special fund in the Treasury of the United States and to eliminate the criteria for establishing salaries of full-time referees in bankruptcy. This bill would not eliminate the charges against estates but would cause the payment of fees and charges to be placed directly in the general funds of the United States Treasury and thus eliminate additional bookkeeping required in maintaining a separate account.

(2) H.R. 3488 was a bill to increase the maximum amounts allowable to receivers and trustees under Section 48 of the Bankruptcy Act. The bill has been modified to permit a 30 percent increase in compensation for receivers and trustees to reflect inflationary trends.

(3) H.R. 3491 was a bill to increase the retirement annuity of the referee in bankruptcy by increasing the amount of deductions from the referee's salary from seven to ten percent and increasing the basis for computing his annuity from the present rate of 1½ percent on the first five years of service, 1¾ percent on the next five years of service and two percent on all years of service over

ten, times the average high three-year salary average, to 2½ percent of his average high three-year salary.

(4) H.R. 3487 was a bill to increase the term of the referee in bankruptcy from six to twelve years and to make retirement mandatory at age 70, except that the referee who is in office when he reaches age 70 may serve out the balance of his term.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

CHANGES IN MAGISTRATES POSITIONS

The Conference was advised that if the funds requested are appropriated by the Congress for fiscal year 1976 there will be 130 full-time magistrate positions, 336 part-time magistrate positions and 16 combination clerk/magistrate or referee/magistrate positions. After consideration of the survey reports of the Director of the Administrative Office, the views of the district courts and circuit councils concerned, the Committee recommended and the Conference approved changes, to be effective when appropriated funds are available, which would increase the number of full-time positions to 133, the part-time positions to 337 and the combination positions to 17. The recommendations as approved by the Conference are:

FIRST CIRCUIT

District of Maine

(1) Continued the part-time magistrate position at Portland at a salary of $633 per annum.

Puerto Rico

(1) Authorized an additional full-time magistrate position at San Juan at a salary of $30,000 per annum.

(2) Authorized the clerk of the district court at San Juan to perform magistrate duties at no additional compensation.

SECOND CIRCUIT

Eastern District of New York

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

(2) Increased the salary of the part-time magistrate position at Patchogue from $949 to $1,266 per annum.

FOURTH CIRCUIT

Middle District of North Carolina

(1) Increased the salary of the part-time magistrate position at Laurinburg from $949 to $1,394 per annum.

(2) Changed the official location of the part-time position at Laurinburg to "Laurinburg or Rockingham."

District of South Carolina

(1) Authorized a new part-time magistrate position at Aiken at a salary of $633 per annum, effective 60 days from the date of Conference action.

FIFTH CIRCUIT

Southern District of Texas

(1) Converted the part-time magistrate position at Corpus Christi to a full-time position at a salary of $30,000 per annum.

SIXTH CIRCUIT

Western District of Kentucky and Middle District of Tennessee

(1) Authorized the part-time magistrate at Hopkinsville, Kentucky, to exercise jurisdiction over the entire area of the Land Between the Lakes National Recreation Area, including that portion thereof extending into the Middle District of Tennessee.

SEVENTH CIRCUIT

Eastern District of Illinois

(1) Converted the part-time magistrate position at "Benton or Carbondale" to a full-time position at a salary of $30,000 per annum.

(2) Changed the official location of the position at "Benton or Carbondale" to Benton.

EIGHTH CIRCUIT

District of North Dakota

(1) Increased the salary of the part-time magistrate position at Fargo from $959 to $1,582 per annum.

(2) Increased the salary of the part-time magistrate position at Grand Forks from $949 to $1,582 per annum.

District of South Dakota

(1) Increased the salary of the part-time magistrate position at Pierre from $442 to $2,532 per annum.

(2) Increased the salary of the part-time magistrate position at Aberdeen from $1,000 to $1,266 per annum.

NINTH CIRCUIT

Central District of California

(1) Increased the salary of the part-time magistrate position at San Bernardino from $10,552 to $13,295 per annum.

District of Hawaii

(1) Continued a part-time magistrate position at Honolulu at a salary of $2,532 per annum.

TENTH CIRCUIT

District of Colorado

(1) Changed the official location of the part-time magistrate position at Craig to "Craig or Steamboat Springs."

District of Wyoming

(1) Authorized a new part-time magistrate position at Cody at a salary of $369 per annum, effective 60 days from the date of Conference action.

JURISDICTIONAL CHECKLIST

The Conference was advised that in the view of the Committee many courts are reluctant to utilize fully the services of their magistrates in light of the uncertainty caused by an imperfect statute and conflicting judicial decisions interpreting it. The Conference agreed that expanded use of magistrates should be encouraged and, accordingly, approved the distribution of a jurisdictional checklist calling attention to those duties which may be delegated to magistrates under existing law. The document is intended to highlight those areas in which magistrates can be most helpful in relieving the growing burdens carried by district judges and also suggests some guidelines concerning the appropriate method by which a judge may assign duties to a magistrate.

CHANGES IN ADMINISTRATIVE REGULATIONS

The Conference approved the request of the Administrative Office for changes to Section 2.6 of the regulations of the Director governing the administration of the magistrates system.

The current regulation carries over a vestige of the old commissioner system by requiring a magistrate personally to certify all original and duplicate recordings and transcripts. The Administrative Office, based on comments received from numerous magistrates and clerks of court, determined that this requirement is impracticable since it requires a magistrate to certify tapes and documents which he has not personally prepared. Accordingly, the Conference approved the following revised section 2.6, *Record of Proceedings.*

(a) *Retention of Records.* Original recordings and ribbon copies of transcripts shall become part of a magistrate's record of proceedings in a case and shall be transferred to the control of the clerk of the district court at the conclusion of all proceedings before the magistrate, together with all other records in the case. At the request of the clerk of the court, however, a full-time magistrate may retain physical possession of original recordings in his office for the clerk.

(b) *Certification of Recordings.*

(i) Original recordings of proceedings held before a full-time magistrate need not be certified so long as such recordings remain at all times under the control of the full-time magistrate or the clerk of the district court. Where necessary for evidentiary purposes, original and duplicate recordings of proceedings held before a full-time magistrate may be certified by the magistrate, by a member of the staff of the full-time magistrate, or by a deputy clerk of the district court.

(ii) Original and duplicate recordings of proceedings held before a part-time magistrate shall be certified by the part-time magistrate. Where, however, such recordings are prepared by a deputy clerk of the district court, they may be certified by that deputy clerk.

(c) *Certification of Transcripts.* Ribbon copies and duplicate copies of transcripts of proceedings held before a full-time or a part-time magistrate shall be certified as accurate by the person preparing such transcripts.

Standard Salary Levels for Part-Time Magistrates

The Conference approved 15 standard salary levels for part-time magistrates and directed that all recommendations for changes in part-time magistrate salaries in the future be made to one of these levels. These standard salary levels as developed by the Administrative Office for part-time magistrates range from a minimum of $369 to the statutory maximum of $15,000, as follows:

$369	$3,165	$7,597
633	3,798	8,969
1,266	4,431	10,552
1,899	5,276	13,295
2,532	6,331	15,000

Effective upon the availability of appropriated funds for the fiscal year beginning this July 1st, the salaries of 215 of 343 authorized positions, or 63 percent, will be payable at one of the fifteen proposed standard levels. The remaining 37 percent of the part-time magistrate positions not in standard levels on July 1st will in time be overtaken by the standard levels through the process of applying the annual government-wide cost-of-living increases only to those positions at standard levels.

Legislation

(1) Jurisdiction: The Conference approved a proposed draft bill and directed the Administrative Office to transmit it to the Congress to clarify the present jurisdictional provisions of the Federal Magistrates Act. At present a wide diversity of views has developed among the courts of appeals as to the appropriate scope of duties which may be delegated to magistrates. The dissenting opinion of

the Chief Justice in *Wingo* v. *Wedding*, 418 U.S. 461 (1974), pointed out the urgent need for the Congress to clarify the jurisdictional provision of the Act. This need has now been further emphasized by the passage of the Speedy Trial Act which will require the district courts to make even greater use of their magistrates. The draft bill would authorize a district judge to designate a United States magistrate to hear any pretrial matter pending before the court. The magistrate would also be empowered to conduct evidentiary hearings in prisoner petition cases and to make recommendations to a district judge for the disposition of such cases. Further, the amendment would provide the litigants an opportunity, of right, to appeal a magistrate's findings, conclusions or rulings to a district judge. The bill would broaden the authorization for a magistrate to serve as a special master, to try the issues of a civil case where the parties consent to the reference.

(2) The Conference approved the recommendation for a draft bill to eliminate the requirement now found in subsection 3401(b) of Title 18, United States Code, that a defendant in a federal petty offense case execute a written waiver of his right to be tried by a district judge and consent to be tried before a United States Magistrate. It was the view of the Conference, in light of the fact that United States magistrates in 1974 disposed of 71,000 petty offense cases, that the present requirement of a written consent creates an administrative burden for the magistrate and needlessly places him in a delicate and awkward position. The proposal does not affect misdemeanors other than petty offenses, nor does it restrict any right that a defendant may have to a trial before a jury.

(3) The Conference noted that H.R. 14535, 93rd Congress, which the Conference had previously approved, has been resubmitted to the 94th Congress. The bill would expand the trial jurisdiction of magistrates to include misdemeanors punishable by fines of up to $5,000, exempt petty offenses from the application of the Juvenile Delinquency Act, specifically authorize magistrates to place a defendant on probation prior to trial or acceptance of a plea of guilty or *nolo contendere* in a minor offense case, authorize payment of transcript costs for indigent parties in certain civil cases, eliminate the 60-day minimum period before determinations of the Judicial Conference become effective and specifically authorize the combination of full-time magistrate and bankruptcy judge positions.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The report of the Committee on Intercircuit Assignments was presented by the Chairman, Judge Roy W. Harper.

The report covered the period from August 15, 1974 to February 1, 1975. During this period the Committee recommended 80 assignments to be undertaken by 53 judges. Of this number 12 are senior circuit judges, four are active circuit judges, 19 are senior district judges and 11 are district judges in active status. One retired Supreme Court Justice and one senior judge of the Court of Claims participated in six assignments. Fifteen assignments involved three active judges from the Court of Claims, one active judge from the Court of Customs and Patent Appeals and one active judge of the Customs Court.

GUIDELINES

The Conference authorized the Director of the Administrative Office to compile guidelines which have been issued from time to time to assist judges in intercircuit assignments and to issue this compilation of guidelines to all federal judges. The Committee had advised the Conference that many judges, particularly more recently appointed judges, have not been familiar with the guidelines and have sometimes entered into assignments in which the Committee has been unable to concur.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Judge Dudley B. Bonsal, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of the Committee to the Conference.

APPOINTMENTS AND PAYMENTS

The Conference authorized the Director of the Administrative Office to disseminate to the chief judges of all United States district courts and to all defender organizations the report of the Administrative Office on appointments and payments made during the first half of fiscal year 1975. This report showed that private attorneys were appointed to represent 11,861 persons as compared with 12,018 in the first half of fiscal year 1974. Defender organizations were assigned 6,684 cases as compared with 5,391 in

the previous year. Since the last session of the Conference federal public defender organizations have become operational in the Eastern District of Louisiana, the Western District of Pennsylvania and the Southern District of Texas.

The Administrative Office report showed that in the first half of fiscal year 1975, 18,545 persons were represented, an increase of 6.5 percent over the same period of the previous year. It was pointed out that this increase in appointments is consistent with the increase in the number of criminal cases docketed in the district courts.

The Congress appropriated $15,700,000 for implementation of the Criminal Justice Act for fiscal year 1975 and a supplemental appropriation request of $126,000 for mandatory pay increases has been requested. Inasmuch as commencing October 1, 1976, the federal fiscal year for budgetary purposes will commence on October 1 and end on September 30, the Conference approved for the three-month transition period, July 1 through September 30, 1976, a continuing appropriation for defender organizations at the rates approved for fiscal year 1976, or a total of $16,551,000, adjusted to the extent of pay costs resulting from general salary increases.

Community Defender Organizations

Upon recommendation of the Committee and the comment of the Administrative Office, the Conference approved sustaining grants to community defender organizations to cover operating expenses during the fiscal year commencing July 1, 1975, as follows:

Federal Public Defender Program, Inc., Atlanta, Georgia	$130,000
Federal Defender Program, Inc., Chicago, Illinois	272,000
Federal Defender's Office, Detroit, Michigan	335,000
Community Defender Organization, Minneapolis, Minnesota	31,942
Federal Defender Services Unit of the Legal Aid Society of New York	780,000
Federal Defender Section of the Metropolitan Public Defender Services, Inc., Portland, Oregon	105,000
Federal Court Division of the Defender Association of Philadelphia	250,000

Salaries of Federal Public Defenders

The Conference agreed to rescind the action taken at the March 1971 session setting the salary of a federal public defender at approximately 85 percent of the salary of the United States Attorney in the same district and in its place adopted the statutory language which provides that the compensation of the fed-

eral public defender shall be fixed by the judicial council of the circuit, at a rate not to exceed the compensation of the United States Attorney for the district where representation is furnished. In so doing, the Conference agreed that judicial councils, in fixing the salaries of federal public defenders, should consider the relative responsibilities, size of staff and caseloads of the public defender and the United States Attorney, as well as the scale of salaries in the respective offices of the United States Attorneys, and that in any case the salary of the federal public defender shall not exceed the level at which federal executive salaries are currently frozen as long as the present restrictions remain on executive salaries.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

Criminal Rules

As the Conference was advised at its September 1974 session (Conf. Rept., p. 61) Public Law 93–361 postponed the effective date of the amendments to the Federal Rules of Criminal Procedure, approved by the Conference at the October 1972 session and by the Supreme Court on April 22, 1974, to August 1, 1975. Representatives of the Advisory Committee and of the standing Committee have testified before the committee of the Congress studying these rules and are expected to have further opportunity to do so before the hearings are concluded.

Judge Thomsen advised the Conference that the Advisory Committee is already studying the revised version of S. 1, now introduced in the 94th Congress, which contains many amendments to the rules of criminal procedure, as well as a rewrite of Title 18 of the Code. He said that the Advisory Committee is working in close collaboration with the Conference Committee on the Administration of the Criminal Law in connection with this proposed legislation.

Bankruptcy Rules

Pursuant to the Conference action at the September 1974 session (Conf. Rept., p. 60) the proposed rules under Chapter X and

Chapter XII of the Bankruptcy Act have been submitted to the Supreme Court where they were under consideration at the time of the Conference.

Proposed rules under Chapter IX (Composition of Indebtedness of Certain Taxing Agencies) have been circulated to the bench and bar and comments are now under consideration by the Advisory Committee. The remaining rules which are under Chapter VIII (Railroad Reorganizations) have been readied for circulation to the bench and bar in the spring of 1975.

Rules of Evidence

The Federal Rules of Evidence, enacted by the Congress as Public Law 93–595, approved January 2, 1975, become effective at the beginning of July 1975.

Judge Thomsen advised the Conference that substantial changes were made in 17 rules and a number of rules were deleted entirely, notably the rules dealing with privilege. He said that at the suggestion of the Committee the Federal Judicial Center has engaged Professor Edward W. Cleary who was the reporter for the former Advisory Committee on the Rules of Evidence to prepare a document containing the appropriate notes of the Advisory Committee, as well as the materials from the Congressional committee hearings and statements on the floor of the Congress, which will be helpful to judges and lawyers in the interpretation of the Rules of Evidence. Distribution of Professor Cleary's document is expected to be achieved prior to the effective date of Public Law 93–595.

SPECIAL REPORT

Chief Judge Harry Phillips of the Sixth Circuit Court of Appeals advised the Conference that with the death in February 1975 of Judge Mac Swinford the roving judgeship to cover the Eastern and Western Districts of Kentucky had become vacant. He recommended to the Conference that, consistent with the policy of the Conference to eliminate roving judgeships wherever appropriate, legislation be proposed to the Congress to eliminate the roving judgeship and that the roving judgeship heretofore provided for the Eastern and Western Districts of Kentucky be made a judgeship for the Eastern District of Kentucky only.

The Conference noted that this would tend in some measure to equalize the workload of the two Kentucky districts and in approving the proposal directed the Administrative Office to transmit it to the Congress.

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 the June 1975 session of the Fourth Circuit at Asheville, North Carolina, as well as all sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans, Louisiana, and for all sessions of court of the Eighth Circuit Court of Appeals to be held at Kansas City, Missouri, and Omaha, Nebraska, for the balance of 1975.

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.

Chief Justice of the United States.

MAY 2 1975.

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