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

SEPTEMBER 25-26, 1975

WASHINGTON, D.C.

1975

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.

(IV)

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

September 25-26, 1975

The Judicial Conference of the United States convened on September 25, 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 William B. Jones, 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 Lawrence A. Whipple*

Fourth Circuit:

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 Damon J. Keith, Eastern District of Michigan

Seventh Circuit:

Chief Judge Thomas E. Fairchild
Chief Judge James B. Parsons, Northern District of Illinois

Eighth Circuit:

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

*On designation of the Chief Justice, Judge George H. Barlow attended the Conference in place of Chief Judge Lawrence A. Whipple.

Ninth Circuit:

Chief Judge Richard H. Chambers
 Chief Judge Thomas J. MacBride, Eastern 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 Albert C. Wollenberg; and District Judges Dudley B. Bonsal, Edward J. Devitt, Charles M. Metzner, Edward Weinfeld and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

The Honorable Harold R. Tyler, Jr., Deputy Attorney General of the United States, and the Honorable Robert H. Bork, Solicitor General of the United States, addressed the Conference on the first morning of the Conference 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 the annual report of the Center for fiscal year 1975.

A written report was submitted on the activities of the Panel on Multidistrict Litigation.

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. Mr. Mark Cannon, Administrative Assistant to the Chief Justice, was in attendance for some of the sessions of the Conference.

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

The Director of the Administrative Office, Mr. Rowland F. Kirks, presented to the Conference his annual report on the activities of the administration and the state of business of the courts for the year ending June 30, 1975.

**On designation of the Chief Justice, Judge Delmas C. Hill attended the Conference in place of Chief Judge Lewis.

The Conference authorized the Director to release immediately the preliminary edition in mimeographed form and to revise and supplement the final printed edition.

Mr. Kirks reported that there was a continued upward spiral in the caseloads of the United States courts of appeals and the United States district courts during fiscal year 1975.

Civil cases filed in the United States district courts increased 13 percent and criminal filings increased nine percent despite a sharp decline in prosecutions from violations of the Selective Service Act. Bankruptcy cases increased 34 percent to an all-time high of 254,484. Consumer or non-business bankruptcy cases accounted for 88 percent of the total filings whereas business bankruptcy cases totaled 30,130, an all-time high.

The 15-year upward trend in appeals continued through 1975 but slowed appreciatively. The 16,658 appeals docketed were only 1.4 percent above the prior year.

Case dispositions continued to rise in all types of cases. Civil case terminations were up seven percent, criminal case terminations five percent, bankruptcy terminations eight percent and appeals disposed of in the courts of appeals were up four percent.

The report showed a nine percent increase in persons received for probation by the United States probation service. United States magistrates handled and disposed of 255,061 separate items of judicial business, including the trial and disposition of 84,505 minor offense cases.

COMMITTEE ON THE BUDGET

The report of the Committee on the Budget was presented by Judge Carl A. Weinman, Chairman.

The committee report showed that during 1975 a total of \$304,159,000 was appropriated for the federal judiciary through the original and supplemental appropriation acts. The actual cost of operations was \$283,354,017. Excluding the funds for speedy trial planning and pre-trial service agencies which are available until expended, the sum of approximately eight million dollars is to be returned to the Treasury. More than one-half of this amount is from the appropriation for space and facilities due to the fact that the General Services Administration reduced the standard level user charges for space occupied by the courts as a result of a review and reclassification of such space.

The budget estimates submitted to the Congress for fiscal year

1976, exclusive of the Supreme Court, initially were in the amount of \$334,252,000. The budget was subsequently amended to include a request for three million to finance the observance of the Bicentennial of the American Revolution by the judiciary and subsequent additional sums were sought for additional magistrates and for temporary clerks to cope with the heavy increase in bankruptcy case filings. At the time of the Conference the 1976 appropriations bill was still before the Congress. It was noted, however, that the House of Representatives had once again denied funds for the conversion of crier-law clerks to second law clerks for district judges. The additional funds requested for longevity and meritorious increases in court reporters' salaries were also denied.

The pending appropriation bill also contains the appropriation for the transition period of July 1 to September 30, 1976 since the new fiscal year, pursuant to Public Law 93-344, will commence on October 1, 1976.

The Conference next considered the budget request to be submitted for fiscal year 1977 which takes into account the recommendations of the committees of the Conference as well as the cost-of-living increase as approved by the President.

FEEES OF LAND COMMISSIONERS

On recommendation of the Budget Committee the Conference agreed that the request for funds for the payment of fees and expenses of land commissioners should continue to be made by the Department of Justice until such time as the Conference receives and has an opportunity to study the recommendations to be made by the Committee on Court Administration as a result of its current study to determine whether the fees and expenses of land commissioners can be borne by the condemning agency.

SALARIES OF SUPPORTING PERSONNEL

The Conference authorized a change in the text of the appropriation for salaries of supporting personnel to provide for the payment of post differentials and allowances for secretaries and law clerks to judges outside the continental United States and in Alaska, without regard to the limitations on the aggregate salaries of such secretaries and law clerks.

UNDER-UTILIZED FACILITIES

The Conference also authorized the Director of the Administrative Office to furnish to the Appropriations Committee an updated

inventory of under-utilized facilities. The Director was further requested to inform the committees of the Congress that abolishing excess courtrooms is properly a matter within the jurisdiction of the Congress.

COURT ADMINISTRATION

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

JUDICIAL SURVIVORS ANNUITY ACT

Judge Ainsworth reported to the Conference that in June the Senate Subcommittee on Improvements in Judicial Machinery reported out a bill (S. 12) containing many of the amendments to the Judicial Survivors Annuity Act previously proposed by the Judicial Conference, together with certain additional amendments. The Committee on Court Administration, at its meeting in early July, endorsed this bill, as amended, and because the Director of the Administrative Office was about to testify before the subcommittee, the committee requested the approval of the Executive Committee of the Conference. The Executive Committee approved the text and Mr. Kirks so informed the Senate subcommittee. Since that time certain additional amendments along the lines requested by the Conference have been made and a revised Committee Print was presented to the Conference. The Conference agreed to ratify the action taken in July by its Executive Committee and endorsed the further amendments incorporated in the text presented to it.

SERVICE OF SENIOR JUDGES

At the request of the chief judge of one circuit, the committee undertook a review of its 1950 resolution (Conf. Rept., p. 21) which provided for personnel, office space and equipment for retired judges upon a determination by the judicial council of the respective circuits as to whether such retired judges were performing "substantial service to the judiciary." The committee was requested to develop minimum standards to assist the judicial councils in making such determinations. The committee, however, decided that it was not possible to devise a meaningful formula whereby the service to the judiciary of a retired judge could be measured with any mathematical nicety. The committee noted that many judges continue to sit in court with great frequency after retirement

while others render valuable service to the judiciary by serving as masters by appointment of the Supreme Court, by service on Judicial Conference committees, and the like. The Conference expressed agreement with this point of view and reaffirmed its 1950 resolution.

STATISTICS ON FUGITIVE CRIMINAL CASES

At the September 1974 session (Conf. Rept. p. 49) the Conference approved a recommendation of the committee to standardize procedures to provide a better means of managing the active docket and of compiling statistics that accurately reflect a court's work while meeting the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure. Because the Speedy Trial Act of 1974 now prescribes a different method of accounting for all defendants, the Conference agreed to rescind the action taken at the September 1974 meeting so that the Administrative Office of the Courts may comply with the requirements of the Speedy Trial Act.

ESTABLISHMENT OF NEW DISTRICTS

At the October 1972 session of the Judicial Conference (Conf. Rept., p. 33) the Conference approved a policy position regarding places of holding court to provide that when a Congressional or other request is received relating to the establishment of an additional place of holding court, and before referral to a committee of the Conference, the Administrative Office shall first seek the views of the chief judge of the district involved and the judicial council of the circuit as to the merits of the proposal. Only after the proposal meets with the approval of both and supporting data are provided shall the proposal be referred to a Conference committee. The Conference approved the recommendation that this policy be expanded to include proposals for the establishment of new districts or new divisions within existing districts.

SUPPORTING PERSONNEL

Clerk's Offices—Courts of Appeals

The Conference approved the recommendation that the Director of the Administrative Office be authorized to include in the fiscal year 1977 budget a sufficient number of deputy clerks for the courts of appeals to achieve a ratio of deputy clerks to the filings projected of 1:75.

Clerks' Offices—District Courts

The Conference also agreed that the Director of the Administrative Office be authorized to include in the 1977 budget a sufficient number of deputy clerks to achieve a ratio of deputy clerks to the civil and criminal filings projected for the district courts of 1:100, plus "filing equivalence for bankruptcy cases, naturalization petitions, violation notices and other functions."

Probation Officers

The Conference agreed that the fiscal year 1977 requirements for probation officers and clerk-stenographers be the total of the unfulfilled requests for fiscal year 1976 and the new requirements for fiscal year 1977 as established by the Budget Committee.

Miscellaneous Positions—Courts of Appeals

The Conference approved the following additional positions in the courts of appeals:

<i>Circuit:</i>	<i>Positions</i>
Second.....	1 court law clerk
Third.....	1 court law clerk
	1 court (pool) secretary
Fourth.....	1 library assistant
Sixth.....	1 court law clerk
Seventh.....	2 court law clerks
Eighth.....	1 library assistant
Tenth.....	2 court law clerks,
	1 library assistant

Court Reporters' Transcript Rates

The Conference approved, effective November 1, 1975, charges for original transcripts (ordinary delivery) of \$1.50 per page, with the first copy to cost \$.50 per page and the remaining copies \$.25 per page; with respect to daily copy the original and first copy are to remain at \$2.50 and \$.50 per page, respectively, and the remaining copies \$.25 per page. This approval goes to government and private suits.

Clerical Assistants to Full-Time United States Magistrates

With respect to full-time United States magistrates, the Conference approved for the position of clerical assistant who is primarily responsible for the magistrate's courtroom function, and when that function consumes a preponderant portion of the clerical assistant's

time, an additional grade (JSP 7) to be added to the authorized grade range (JSP 4-5-6) and that the position be entitled "Courtroom Assistant." The Director of the Administrative Office was requested to draft suitable standards of qualifications for this position.

Policy on Assignment of Court Reporters

Chief Judge Seitz advised the Conference that the judges of the Third Circuit had unanimously passed a resolution expressing extreme concern at the lack of sufficient court reporters to permit the active judges to try more cases because their reporters need out-of-court time to dictate their notes and to permit the senior district judges to try more cases. The consequence is a growing and serious delay in the trial of cases and in making the transcripts available for appeal purposes. This is particularly serious in criminal cases.

At the direction of his Third Circuit Conference, Judge Seitz moved and the Conference agreed that the basic policy of one reporter for each active judge established in April 1944 be reexamined in the light of the current needs of the active and senior judges. The Chief Justice was authorized to refer this subject to the appropriate Conference committee for an in-depth examination and report to the Conference.

SALARIES OF UNGRADED EMPLOYEES

At the October 1971 Conference (Conf. Rept. p. 65) the Conference approved the report of its Committee on Salaries for ungraded court officers. Included was a provision relating to circuit court executives, full-time referees in bankruptcy, full-time United States magistrates and clerks of court. Noting that for the first time since the approval of this report a cost-of-living increase has been authorized by the President and the Congress for federal judges, the Conference authorized the Director of the Administrative Office that at such time as any increase in the salaries of federal judges becomes effective, he is to grant increases to the clerks of court and such other ungraded court officers as may be affected whose salaries are controlled by the adoption of the Salary Committee's report in October 1971, retaining the same percentage maximum limitation as prescribed in that report. The Conference also requested the committee to study further the maximum limitations imposed on salaries of clerks of court and report to the next session of the Conference.

LEGISLATION

(1) The Conference reendorsed its approval of S. 1175, 93rd Congress, relating to the furnishing of accommodations to the judges of the courts of appeals and it requested the Director of the Administrative Office to transmit such legislative proposal to the 94th Congress.

(2) The Conference disapproved S. 932 designed to increase the retirement benefits accruing to certain territorial judges for their services as territorial judges in prior years. The Conference was of the view that the bill as framed would apply to only one territorial judge now living and, therefore, if the Congress desired to enact such legislation, it would better be accomplished by a private bill.

(3) The Conference considered H.R. 4580, a bill to provide for the reorganization of the judicial system of Guam, and agreed that the proposal was basically one involving legislative policy. The Conference authorized the Director of the Administrative Office, however, to transmit to the Congress the views expressed on the proposal, at the request of the Committee on Court Administration, by Judge Cristobal C. Duenas of Guam. The Conference also requested the Director to make known to the Congress its view that consideration should be given to the potential substantial drain on the caseload of the district court of Guam and also in the event the bill is passed that Section 23(c)(1) be amended to make it clear that the district court of Guam will have general diversity jurisdiction as well as the federal question jurisdiction. The Conference also agreed that the Congress be requested to consider whether jurisdiction to review the decisions of the Supreme Court of Guam should be given to the Supreme Court of the United States under its certiorari jurisdiction or to the Court of Appeals for the Ninth Circuit under its appellate jurisdiction or by certiorari.

(4) The Conference disapproved H.R. 1279, a bill to provide for the garnishment of wages of federal employees.

(5) The Conference agreed that it was not within its purview to express any views on H. J. Res. 3 providing for the joint election of the President and the Vice President.

(6) The Conference agreed to express no views on S. 642, a bill which would amend the Federal Trade Commission Act to authorize certain state and local officials to enforce certain rules promulgated by the Commission.

(7) The Conference disapproved in its present form S. 670, a bill to prohibit unfair or deceptive acts or practices in commerce, including unfair consumer practices. The Conference agreed that the Congress should be advised that this legislation would alter the fundamental character of the federal courts as courts of limited jurisdiction and that the Conference does not regard the United States district courts as the proper forum for action under such legislation.

(8) The Conference voted to reiterate its position on H.R. 673, a bill to extend protection against fraudulent and deceptive practices to consumers through civil and class actions. The Conference agreed to request the Congress to consider other procedural devices to achieve the objectives of the legislation inasmuch as this bill, if enacted, would alter the fundamental character of the federal courts as courts of limited jurisdiction.

(9) The conference took no position with respect to H.R. 1044 relating to the marketing of petroleum products but did request that the Congress be advised that the Conference sees no need to repeat the venue provisions of 28 U.S.C. 391 in the bill.

(10) The Conference agreed that the proposal contained in H.R. 612, a bill to provide for protection of franchised dealers in petroleum products, involved a matter of legislative policy but agreed that the Congress should be advised that the provision in Section 2(b)(3) in the bill should be stricken since the venue is already covered by Section 1391 of Title 28 U.S.C.

(11) The Conference agreed that H.R. 39, a bill to increase the effectiveness of discovery in civil antitrust investigations, involved a matter of legislative policy on which the Conference should not properly comment.

(12) The Conference agreed that H.R. 1043, a bill to regulate and prevent multiple taxation of certain kinds of income, involved a matter of legislative policy.

(13) The Conference took no position on the policy involved in H.R. 1272 and S. 354 relating to no-fault motor vehicle insurance.

(14) The Conference agreed that the draft of the Department of Justice relating to the reform of the Robinson-Patman Act in regard to price discrimination and predatory pricing involved a question of legislative policy.

(15) With respect to H.R. 1330, a bill which would require federal employees to file statements with regard to the receipt of certain gifts, the Conference agreed that the substance of the bill

involves a policy matter but that as far as the judicial establishment was concerned, in view of the existing ethical standards and conflict of interest statutes, the bill would add little to improve the judicial establishment and would impose significant burdens upon employees.

REVIEW COMMITTEE

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

The committee report advised that it is of the view that judicial council approval should no longer be required of judges serving in fiduciary capacities in family estates and, accordingly, recommended and the Conference approved a resolution to eliminate the necessity for judges or other judicial officers having to obtain judicial council approval for service as fiduciaries in estates or trusts which are of a family nature and within the third degree of relationship as calculated according to the civil law system. After approving the recommendation in principle it was returned for further study of the meaning of "family related." The Conference also agreed in view of the limitation contained in 28 U.S.C. 455 to eliminate from the semi-annual report form Section IV entitled "Participation in Cases."

Judge Tamm pointed out that a number of judicial officers were late in filing their reports. He stated that the judicial officers who had not filed reports of extrajudicial income for the period January 1 through June 30, 1975 are:

Listing, by Circuit, of Judicial Officers who have not filed reports of extrajudicial income for the period January 1-June 30, 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

Fifth Circuit:

****William O. Mehrtens**
U.S. District Judge
Robert O'Connor, Jr.
U.S. District Judge

Sixth Circuit:

****Frank J. Battisti**
U.S. District Chief Judge

Ninth Circuit:

****Warren J. Ferguson**
U.S. District Judge
****Pierson M. Hall**
U.S. District Judge
****Harry Pregerson**
U.S. District Judge
****Manuel L. Real**
U.S. District 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 on the Code of Judicial Conduct of which Judges Elbert P. Tuttle and Edward A. Tamm are co-chairmen was presented to the Conference by Judge Tamm.

LEGISLATION

The committee reported that the House Judiciary Committee had requested the Conference's views on H.R. 110 and H.R. 3249, bills which would require every officer and employee of the federal government who earns more than \$18,000 per annum (H.R. 110) or \$25,000 (H.R. 3249) to file annual reports of income and financial transactions with the Comptroller General as well as to report the amount and source of gifts received, the identity of each asset having a value in excess of \$1,000, each liability in excess of \$1,000, transactions in securities and commodities and any purchase and sale of real property. Similar information would be required concerning the spouse and members of the immediate family. The Conference agreed with the committee that the provisions of these bills insofar as they affect judicial officers are neither necessary nor desirable since the federal judiciary has already adopted its own reporting system.

DISQUALIFICATION OF BANKRUPTCY JUDGES

In adopting the Code of Judicial Conduct for United States Judges and making it applicable to full-time bankruptcy judges in 1973, the Conference expressed the view that bankruptcy judges should not be required by any provisions of the Code to disqualify themselves because of any financial interest in any uncontested matter (Conf. Rept., April 1973, p. 10). Recently the Congress has amended Section 455 of Title 28, United States Code, to provide that any justice, judge, magistrate or referee in bankruptcy must disqualify himself if he knows that he or a member of his household has a financial interest in the subject matter of the controversy. The Conference was in agreement with the committee rec-

ommendation that the language of this revised statute nullifies the action of the Conference in 1973 even as to full-time or part-time referees in bankruptcy who have any financial interest in any uncontested matter. The Committee on the Administration of the Bankruptcy System was authorized to consider any amendment to Section 455 that may seem desirable.

ACTIVITIES OF THE COMMITTEES

The Conference approved the recommendation that the committee prepare for the members of the federal judiciary a document in the nature of an overview of the origin and work of the Review Committee, the Joint Committee and the Advisory Committee on Judicial Activities, the problems encountered, actions taken and the institutional questions which must yet be resolved.

ALLEGATIONS OF IRREGULARITY

The Conference agreed that the committee through its co-chairmen be authorized to refer to the chief judge of the appropriate circuit for consideration by the circuit council any communication received by the committee alleging an irregularity by a judge.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman, reported to the Conference on the activities of the Advisory Committee on Judicial Activities.

Judge Tuttle stated that in the last six months twenty formal inquiries were presented for consideration and that to date the committee has considered and acted upon 81 formal submissions. Three formal opinions have been issued since the last report to the Conference, namely, Opinion No. 43 relating to service by a judge as a statutory member of a citizen supervisory commission of the personnel board of the county of his residence; Opinion No. 44—trustee of a state supported college or university and Opinion No. 45—disqualification in litigation involving health insurance companies underwriting government group health plans of which the judges are members.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

TRANSPORTATION OF JURORS

The committee pointed out that under the provisions of 28 U.S.C. 1871 payment of travel costs to jurors is at the rate of ten cents a mile, plus the amount expended for tolls, whereas in urban areas the fare for public transportation normally exceeds this rate on a per mile basis. The committee recommended and the Conference approved a draft bill and authorized its transmittal to the Congress to provide that jurors receive the actual fare in its entirety for public transportation to and from the federal courts for each day of jury service. The Conference further approved that the bill authorize the clerk of court to arrange transportation at public expense when jurors are required to leave the courthouse after deliberation beyond the normal business closing hours. At the present time there is no authority for the arrangement of safe and prompt transportation for jurors in these circumstances.

EXCUSE FROM JURY SERVICE

In hearings on legislation proposed by the Conference to provide a civil penalty and injunctive relief for the discharge of an employee by reason of his federal jury service, it has been pointed out that in certain situations such legislation might have an unfair impact when applied to the small business man who is faced with the loss of a key or indispensable employee. In view of this concern, the Conference approved a committee recommendation that legislation be drafted to clarify the grounds for the temporary excuse of summoned jurors from service under 28 U.S.C. 1866 (c) (1), which provides that courts may excuse persons upon a showing of undue hardship or extreme inconvenience. The draft bill would add a new definitional subsection to Section 1869 of Title 28 to establish severe economic hardship to an employer stemming from the summoning of a key employee to jury duty as a basis for the employee's temporary excuse from service and to provide a statutory definition of "undue hardship or extreme inconvenience" as applied to the prospective juror himself. The Conference authorized the Director of the Administrative Office to transmit this draft bill to the Congress.

FEDERAL CRIMINAL CODE

Because the pending bill in Congress (S. 1) to codify and revise Title 18, United States Code, will have a major impact on the

foundations of the criminal law upon which existing jury instruction manuals are based, the committee recommended that the Chief Justice assign to a special committee of the Conference, or to such committee as he deems appropriate, a study of pattern jury instructions to reflect the changes in the criminal law which would result from the proposed recodification.

SPEEDY TRIAL ACT AND GRAND JURIES

The Conference authorized the Director of the Administrative Office of the United States Courts to distribute to the chief judge of each district court for guidance on the implementation of the Speedy Trial Act a report prepared by a member of the committee discussing the various options available to the courts for the summoning of grand juries at sufficiently frequent intervals to achieve eventual compliance with Section 3161(b) of Title 18, United States Code, and more immediate compliance with the graduated interim time limitations between arrest and indictment which are imposed by section 3161(f).

PERIODIC REPORTING

The Conference approved a committee recommendation requesting that the judicial councils of the circuits and the working jury committees of the circuits review the sampling reports for their districts relating to jury representative data by race and sex, and take such action thereon as may be required to comply with the randomness and nondiscrimination requirements of 28 U.S.C. 1861 and 1862, reporting such action to the Administrative Office.

FUTURE SAMPLING OF MASTER JURY WHEELS

The Conference approved a form and data collection instructions for the future reporting of jury sampling data by race and sex. The committee suggested that this reporting system would be the most thorough and least burdensome method of obtaining data as to the race and sex balance of juries serving in the district courts.

GRAND JURY STATISTICAL FORM

The Conference approved a revised form for the reporting by the district courts of grand jury utilization data.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

LEGISLATION REGARDING THE GRAND JURY

The Committee reported that the Conference's views had been requested on two bills pending in the Congress, H.R. 1277 and H.R. 2986. These bills would effect radical changes in grand jury practices and procedures permitting any grand jury to turn itself into an independent grand jury operating independently of the Department of Justice and would permit witnesses the right to assistance of counsel while testifying before grand juries. The Conference agreed with the committee recommendation in disapproving each of the two pending bills.

FEDERAL CRIMINAL CODE

The views expressed on S. 1, as previously reported, reflected opposition to this legislation on the ground that it contemplates unnecessarily sweeping redefinition of all federal crimes and will require, among other things, (a) that every district judge will be required to restructure and formulate new jury instructions to replace those which have evolved on a literal "trial and error" basis for well over 100 years; (b) that new instructions for newly defined crimes must then literally "run the gauntlet" of courts of appeals; and (c) that ultimately the Supreme Court will be obliged to review numerous cases to pass finally on the adequacy of the instructions required by the new code. In the present state of overcrowded dockets at every level, the new and complex burdens that S. 1 will impose on the federal courts are incalculable. The Conference nevertheless continues to comply with congressional requests for comments on specific parts of S. 1.

The committee report to the Conference stated that culpability is central to the entire legislative schema of the proposed new code. The committee reported on the position that the Judicial Conference took at its April 1973 meeting on this subject (Conf. Rept. p. 15) but suggested a minor modification of the definition of "knowingly." The committee recommended and the Conference approved that the following definitions of "culpability" be proposed to the Congress:

"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, and with knowledge of existing circumstances to the extent that such knowledge is an element of the offense ;

"(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 fails to be aware of a risk that the 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."

In considering the provisions of S. 1 the Conference agreed that Judge Zirpoli, as chairman of the Committee on the Administration of the Criminal Law, should coordinate all of the activities of the several committees of the Judicial Conference relating to the proposed new criminal code and should appear before the Congress whenever requested in connection with the view of the Conference relating to S. 1.

DENIAL OF THE RIGHT OF FORMER CRIMINAL OFFENDERS To Vote

The views of the Conference were requested on H.R. 2386 which would prohibit the denial or abridgement of the right of former criminal offenders to vote in elections to federal office. The Conference was agreed that the proposed bill does not directly affect the administration of justice as it relates to the courts and is primarily one of legislative policy regarding the voting rights of citizens and, accordingly, the Conference agreed to express no views on the policy question involved.

SPEEDY TRIAL ACT OF 1974

Pursuant to Conference request, the committee reviewed and approved guidelines to the administration of the Speedy Trial Act prepared jointly by the Administrative Office and the Federal Judicial Center. These guidelines undertook to state available tentative advisory interpretations of the act so that the courts may have a uniform approach to the gathering of statistics, the measuring of time intervals and in carrying out other administrative duties. As

experience is gained in the administration of the act, the guidelines may necessarily have to be revised or amended. They are designed, Judge Zirpoli stated, to aid in achieving the optimum degree of uniformity in the administration of the act.

Judge Zirpoli advised that as to reporters, the Department of Justice has interpreted the position to be affected by the conflict-of-interest laws and the dual compensation laws. Accordingly, the Administrative Office has proposed to the Congress legislation which would provide that reporters are not government employees and are not subject to conflict-of-interest legislation. The Conference endorsed this position and urged that enactment of such legislation be regarded as a high priority matter.

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 considered the Committee's report and the recommendations of the Director, the judicial councils and the district judges and took the following actions relating to bankruptcy judge positions and changes in salaries and arrangements in the several districts concerned. The Conference action is to be effective October 1, 1975 unless otherwise indicated, subject to the availability of funds.

FIRST CIRCUIT

District of Puerto Rico

- (1) Authorized the continuance of the full-time referee position at San Juan to become vacant by expiration of term on January 1, 1976, for a term of six years, effective January 2, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

Eastern District of New York

- (1) Authorized the continuance of the full-time referee position at Brooklyn to become vacant by expiration of term on February 29, 1976, for a term of six years, effective March 1, 1976, at the present salary the regular place of office, territory (concurrent district-wide jurisdiction), and places of holding court to remain as at present.
- (2) Changed the regular place of office of the full-time referee at Jamaica to Westbury, effective upon approval by the Judicial Conference of the United States, and discontinued Jamaica as a place of holding bankruptcy court.

- (3) Authorized an additional full-time referee position with concurrent district-wide jurisdiction, the regular place of office to be at Brooklyn, at a salary of \$31,650 per annum, to become effective when funds become available.

Southern District of New York

- (1) Authorized a fifth full-time referee position, at a salary of \$31,650 per annum ;
- (2) Established the regular place of office and territory to be the same as for the other full-time referees presently headquartered at New York City ;
- (3) Established concurrent district-wide jurisdiction for the full-time referees of the district.

THIRD CIRCUIT

District of Delaware

- (1) Increased the salary of the part-time referee position at Wilmington from \$15,715 to \$18,000 per annum, to be effective when funds become available.

FOURTH CIRCUIT

District of Maryland

- (1) Increased the salary of the part-time referee position at Hyattsville from \$16,580 to \$18,000 per annum, to be effective when funds become available.

Western District of Virginia

- (1) Authorized the continuance of the full-time referee position at Roanoke to become vacant by expiration of term on March 15, 1976, for a term of six years, effective March 16, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Southern District of Alabama

- (1) Authorized the continuance of the full-time referee position at Mobile to become vacant by expiration of term on January 15, 1976, for a term of six years, effective January 16, 1976, at the present salary, the regular places of office, territory and places of holding court to remain as at present.

Northern District of Florida

- (1) Increased the salary of the part-time referee position at Tallahassee from \$15,480 to \$18,000 per annum, to be effective when funds become available.

Northern District of Georgia

- (1) Activated the full-time referee position at Rome for a new six-year term, at a salary of \$31,650 per annum ;
- (2) Transferred the full-time referee position at Rome to Atlanta ;
- (3) Established Atlanta, Gainesville, Newnan, and Carrollton as places of holding court for all referees of the district ;
- (4) Established concurrent district-wide jurisdiction for all full-time referees of the district.

Western District of Louisiana

- (1) Authorized the continuance of the part-time referee position at Opelousas to become vacant by expiration of term on March 8, 1976, for a term of six years, effective March 9, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Mississippi

- (1) Authorized the continuance of the part-time referee position at Greenville to become vacant by expiration of term on January 15, 1976, for a term of six years, effective January 16, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Texas

- (1) Authorized a combined referee-federal magistrate position at Lubbock, to be effective sixty days after Conference approval or as soon thereafter as the court can complete arrangements.

SIXTH CIRCUIT

Northern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Akron to become vacant by expiration of term on April 30, 1976, for a term of six years, effective May 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Tennessee

- (1) Authorized the continuance of the full-time referee position at Memphis to become vacant by expiration of term on March 31, 1976, for a term of six years, effective April 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Southern District of Indiana

- (1) Authorized a third full-time referee position at Indianapolis, at a salary of \$31,650 per annum;
- (2) Established the territory and places of holding court to be the same as those of the full-time referee positions presently established at Indianapolis;
- (3) Established concurrent district-wide jurisdiction for the referees of the district.

EIGHTH DISTRICT

District of Minnesota

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

NINTH CIRCUIT

Central District of California

- (1) Authorized the continuance of the full-time referee position at San Ber-

nardino to become vacant by expiration of term on February 14, 1976, for a term of six years, effective February 15, 1976, at the present salary the regular place of office, territory and places of holding court to remain as at present ;

- (2) Authorized the filling of the full-time referee position at Los Angeles vacant since the retirement of Joseph J. Rifkind, for a term of six years, effective immediately, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Idaho

- (1) Authorized the continuance of the full-time referee position at Boise to become vacant by expiration of term on February 29, 1976, for a term of six years, effective March 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Nevada

- (1) Changed the part-time referee position at Reno to a full-time referee position, at a salary of \$31,650 per annum ;
- (2) Established that the regular place of office, territory and places of holding court are to remain as at present ;
- (3) Established concurrent district-wide jurisdiction for the referees of the district ;
- (4) Authorized the above changes to be effective when funds are available but not sooner than October 1, 1976.

Western District of Washington

- (1) Authorized the continuance of the full-time referee position at Seattle to become vacant by expiration of term on February 29, 1976, for a term of six years, effective March 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

CASE FILINGS

Bankruptcy case filings for fiscal year 1975 reached an all-time high of 254,484 cases, an increase of 34.3 percent over the prior fiscal year and exceeded the previous all-time high of 1967 by 22.2 percent. Of the total filings, 30,130 were business cases, which is an all-time high. These cases account for 11.8 percent of the total filings in fiscal year 1975. There was also an increase of 61.5 percent over the prior year in the number of business arrangements filed under Chapter XI of the Bankruptcy Act.

REFERENCE OF NON-BANKRUPTCY RELATED MATTERS TO REFEREES

Resolved, That United States district judges shall not appoint full-time referees in bankruptcy to serve as special masters in non-bankruptcy related cases and that the Director of the Administrative Office be authorized and directed to notify all United States district courts of this Resolution.

LEGISLATION

The Conference strongly disapproved S. 582 which would amend the Bankruptcy Act to fix the salaries of full-time referees by statute at \$36,000 per annum as not being consistent with the alignment of salaries of court officials as determined by the Judicial Conference at its October 1971 session (Conf. Rept. p. 65).

The Conference approved H.R. 5951 which in addition to providing increased retirement benefits for referees would also require mandatory retirement at age seventy. Conference approval was conditioned on the proviso that the bill be amended to include a provision for twelve-year tenure for referees in bankruptcy.

COMMITTEE ON THE ADMINISTRATION
OF THE PROBATION SYSTEM

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

SENTENCING INSTITUTE

At the March 1975 session of the Conference (Conf. Rept., p. 20), the Conference approved the agenda for a sentencing institute for the judges of the Ninth Circuit to be held at Long Beach, California, in October or November 1975. The Sentencing Institute has now been definitely set for November 12-14. On request of the judges of the Sixth Circuit the Conference approved participation in the Sentencing Institute by the judges of that circuit.

SPEEDY TRIAL ACT OF 1974

The Conference at the March 1975 session (Conf. Rept., p. 22) instructed the Probation Committee to exercise oversight in the implementation of Title II of the Speedy Trial Act of 1974 which provides that the Director of the Administrative Office shall establish on a demonstration basis a pretrial services agency in ten judicial districts; five to be administered by the Division of Probation and five to be administered by boards of trustees appointed by the chief judges of each of the five districts.

The five districts designated by the Chief Justice, in consultation with the Attorney General, to be administered by the Division of Probation are the Central District of California, the Northern District of Georgia, the Northern District of Illinois, the Southern

District of New York, and the Northern District of Texas; and the five pretrial services agencies to be administered by boards of trustees are the District of Maryland, the Eastern District of Michigan, the Western District of Missouri, the Eastern District of New York, and the Eastern District of Pennsylvania.

The committee proposed and the Conference approved the following guidelines for implementation of Title II of the Speedy Trial Act of 1974:

A. Salaries

18 U.S.C. 3153(d) (1) states that, "In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS-16 by section 5332 of title 5, United States Code."

18 U.S.C. 3153(d) (2) states that, "In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b) (1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS-15 by section 5332 of Title 5, United States Code."

The committee recommended and the Conference approved the following guidelines for the setting of salaries for a chief pretrial service officer :

- (1) In those districts where a chief probation officer classified in grade JSP-15 is designated chief pretrial service officer his salary shall be set at \$36,000 per annum, plus any comparability salary increase.
- (2) In those districts where a chief probation officer classified in grade JSP-14 is designated chief pretrial service officer his salary shall be set at grade JSP-15.
- (3) The salary of a chief pretrial service officer in a board of trustees administered agency shall be set no higher than one grade below the salary authorized by the Judiciary Salary Plan for the chief probation officer of that district.

B. Qualifications for Appointment

The committee recommended and the Conference established the following minimum qualification requirements for initial appointment as a pretrial service officer which are identical to those required by the Judiciary Salary Plan for appointment as a probation officer.

- (1) For appointment at grade JSP-7 the appointee must possess a bachelor's degree.
- (2) For appointment at grade JSP-9 the appointee must possess a bachelor's degree and have not less than 2 years' related experience or a 2-year master's degree or a 1-year master's degree and 1 year of related experience.

C. Background Investigation

The Conference instructed the Director of the Administrative Office to arrange for a full-field investigation by the F.B.I. of the background of each

person selected as a pretrial service officer just as each person selected for appointment as a probation officer is the subject of a full background investigation by the Federal Bureau of Investigation (See Conf. Repts., Sept., 1968, pp. 68, 69 and April 1973, p. 24).

The Conference further instructed the Director not to place on the payroll any person appointed to the position of pretrial service officer until the F.B.I. investigation was completed and the report of the investigation forwarded to the appointing authority except when the Director determines that an emergency situation requires immediate appointment.

The final report of the Director of the Administrative Office to the Congress which is required on July 1, 1979 must compare the accomplishments of the two types of pretrial service agencies as well as make a comparison with monetary bail or other programs used to insure presence at trial. The committee has endorsed the evaluation design developed by the Probation Division to permit these comparisons.

The committee reported that it has also considered the extent to which supportive services should be made available to persons released pending trial, including those who are not released specifically to the custody or supervision of a pretrial service agency. The committee has concluded that the supportive services provided by pretrial service agencies shall be available on request to all persons released under Chapter 207 of Title 18, United States Code.

REMOVAL OF PROBATION OFFICERS

In view of recent litigation, the Probation Committee advised the Conference that it believes there is a need for uniform procedures for the removal of a probation officer which would include as a minimum a notice of removal, a hearing on request, and an explanation of the basis for final action. The Chairman reported that a special subcommittee has been appointed to develop appropriate procedures and with Conference approval the committee will coordinate with the Subcommittee on Supporting Personnel of the Committee on Court Administration in view of the implications of its recommendations to other court employees.

PROBATION PERSONNEL

The Chairman reported that the committee has reviewed the projection of probation personnel needs for fiscal year 1977 and has recommended to the Budget Committee that the budget request for fiscal year 1977 include funds for 379 probation officers, 234 clerk-stenographers, and 20 probation officer assistants.

YOUTH CORRECTIONS ACT

The committee reported that it has approved and transmitted for consideration to the Committee on the Administration of the Criminal Law a proposed amendment to the Youth Corrections Act which would authorize a court to place a youth offender on probation or to commit him without entering a judgment of guilty. In the event of an early termination of probation or the period of supervision following commitment, the proceedings against the defendant would be dismissed without adjudication of guilt and all records pertaining to the arrest, information or indictment, plea or trial, finding of guilty, probation or commitment would be sealed. Such discharge and dismissal would not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law upon conviction of crime or for any other purpose. A further amendment would allow the court to impose a fine or require payment of restitution as a condition of probation or as a condition of commitment. Independent imposition of a fine would not be authorized.

DRUG ABUSE PROGRAMS

The committee advised that the Bureau of Prisons has found it necessary to limit funds available for drug abuse programs for persons participating in such programs as a condition for probation or parole. The committee has previously endorsed in principle the concept of providing supportive services to persons on probation or parole through contract arrangements and the Congress has expressed policy in this area through Title II of the Speedy Trial Act extending limited contract authority to the probation system for drug treatment programs for persons on pretrial release. The committee has expressed concern that there is little assurance that a person participating in a drug treatment program as a condition of pretrial release could continue the treatment program once placed on probation. It has instructed the Probation Division to explore this problem further.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Chairman, Judge Roy W. Harper, presented the report of the Committee on Intercircuit Assignments, which covered the period from February 1, 1975 to August 15, 1975.

During this period the Committee recommended 88 assignments to be undertaken by 57 judges. Of this number, 10 are senior circuit judges, two are active circuit judges, 13 are district judges

in active status and 18 are senior district judges. One retired Supreme Court Justice participated in 11 assignments. Seventeen assignments involved seven active judges from the Court of Claims, five active judges from the Court of Customs and Patent Appeals and one active judge of the Customs Court. These included an interchange of assignments between the seven active judges of the Court of Claims and the five active judges of the Court of Customs and Patent Appeals for the period April 2, 1975 through April 1, 1976 to cover any emergency situations which might arise in those courts.

Ten senior circuit judges, seven senior district judges, one senior Court of Claims judge and one retired Supreme Court Justice carried out 32 of the 43 assignments to the circuit courts of appeals which were recommended during this period. Of the 33 assignments to the district courts, 12 senior district judges participated in 20 assignments, the remaining 13 being carried out by ten active district judges and one active judge of the United States Customs Court.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

MAGISTRATES FOR THE VIRGIN ISLANDS

The Conference approved appropriate legislation amending the Federal Magistrates Act to permit the Conference to authorize United States magistrate positions for the Virgin Islands whenever it deems such positions to be warranted.

SECURITY FOR MAGISTRATES

The Conference approved and authorized the Director of the Administrative Office to transmit to the Congress an appropriate legislative proposal to include United States magistrates within the protection of Section 1114 of Title 18, United States Code, which makes it a federal crime to kill any judge, United States Attorney, marshal or other officer engaged in the performance of his official duties.

This action would also include United States magistrates within the coverage of 18 U.S.C. 111 which makes it a federal crime to

assault, resist or impede a designated officer or employee in the performance of his official duties.

CHANGES IN ADMINISTRATIVE REGULATIONS

The current administrative regulations permit a part-time magistrate to claim up to 85 percent of his own salary for reimbursement of secretarial and clerical salary expenses, up to ten percent more for related employee benefit costs, and up to an additional ten percent for miscellaneous office expenses. To simplify accounting procedures, the Conference on recommendation of the committee approved merging the first two categories into a single category and authorizing a part-time magistrate to claim up to 100 percent of his salary for such expenses, as follows:

*Sec. 1.4 Appointment and Compensation of Secretarial and Clerical Assistants.—(b) (iii) Reimbursement Ceiling.—*The aggregate amount to be reimbursed in a fiscal year to a part-time magistrate for salaries of secretarial and clerical assistants and expenses authorized in section 1.5(b) may not exceed 100 percent of the annual salary authorized for his position by the Judicial Conference, unless the Director waives this limitation for good cause shown.

*Sec. 1.5 Related Benefits of Secretarial and Clerical Assistants.—(b) Part-time Magistrate.—*A part-time magistrate will be reimbursed on a monthly basis for the cost of unemployment insurance, life insurance, health insurance, Social Security tax payments, and related benefits actually incurred by him on behalf of his secretarial and clerical assistants. The aggregate amount to be reimbursed in a fiscal year to a part-time magistrate for such costs is subject to the limitations set forth in section 1.4(b) (iii) of these regulations.

CHANGES IN MAGISTRATE POSITIONS

At the request of the committee, the Conference ratified the actions of its Executive Committee continuing the part-time magistrate position at El Centro, California, for an additional four-year term, at the currently authorized salary, and expanding the jurisdiction of the part-time magistrate at Stroudsburg, Pennsylvania, to include that portion of the Delaware Water Gap National Recreation Area lying within the Eastern District of Pennsylvania.

The Conference announced that each of its authorizations under 28 U.S.C. 631(b) to appoint a non-attorney to a specific part-time magistrate position shall be deemed to continue until such time as the pertinent district court finds that a qualified attorney is available to fill the position.

The Conference approved recommendations of the committee to increase the number of full-time magistrate positions from 133 to 143 and to decrease the number of part-time positions from 337 to 322. Pursuant to the recommendations of the Administrative

Office, the district courts, the judicial councils of the circuits and the committee, the Conference approved the changes set forth below, to be effective when appropriated funds are available:

FIRST CIRCUIT

District of Massachusetts

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

District of New Hampshire

- (1) Authorized the clerk of court at Concord to perform the duties of a part-time magistrate for an additional four-year term.
- (2) Fixed the aggregate compensation of the clerk-magistrate position at Concord at the same salary paid to the clerk of court of a large district court (currently \$30,000 or \$24,000 for clerk duties and \$6,000 for magistrate duties).

District of Rhode Island

- (1) Fixed the aggregate compensation of the clerk-magistrate position at Providence at the same salary paid to the clerk of court of a large district court (currently \$30,000 or \$24,000 for clerk duties and \$6,000 for magistrate duties).

THIRD CIRCUIT

District of Delaware

- (1) Increased the compensation paid to the referee in bankruptcy at Wilmington for the performance of magistrate duties from \$6,704 to \$7,597 per annum.

District of New Jersey

- (1) Converted the part-time magistrate position at Camden to a full-time position at a salary of \$30,000 per annum.
- (2) Increased the salary of the part-time magistrate position at Asbury Park from \$8,969 to \$10,552 per annum.
- (3) Discontinued the part-time magistrate position at Newton.

Middle District of Pennsylvania

- (1) Authorized a new part-time magistrate position at Scranton at a salary of \$13,295 per annum.

FOURTH CIRCUIT

Middle District of North Carolina

- (1) Authorized a new full-time magistrate position at Winston-Salem at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Wilkesboro, effective upon the appointment of the full-time magistrate at Winston-Salem.
- (3) Discontinued the part-time magistrate position at Salisbury, effective upon the appointment of the full-time magistrate at Winston-Salem.
- (4) Discontinued the part-time magistrate position at Durham, effective upon the appointment of the full-time magistrate at Winston-Salem.

Western District of North Carolina

- (1) Converted the combination referee/magistrate position at Charlotte to a part-time magistrate position at a salary of \$8,000 per annum.

Eastern District of Virginia

- (1) Continued the part-time magistrate position at Williamsburg for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at Williamsburg from \$13,295 to \$15,000 per annum.

Western District of Virginia

- (1) Authorized a new full-time magistrate position at Abingdon at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Bristol, effective upon the appointment of the full-time magistrate at Abingdon.
- (3) Discontinued the part-time magistrate position at Galax, effective upon the appointment of the full-time magistrate at Abingdon.
- (4) Discontinued the part-time magistrate position at Wise, effective upon the appointment of the full-time magistrate at Abingdon.

Southern District of West Virginia

- (1) Continued the part-time magistrate position at Lewisburg for an additional four-year term at the currently authorized salary.

FIFTH CIRCUIT

Northern District of Florida

- (1) Converted the part-time magistrate position at Pensacola to a full-time position at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Fort Walton Beach, effective upon the appointment of the full-time magistrate at Pensacola.
- (3) Discontinued the part-time magistrate position at Marianna, effective upon the appointment of the full-time magistrate at Pensacola.
- (4) Decreased the salary of the part-time magistrate position at Tallahassee from \$13,295 to \$3,798 per annum, effective upon the appointment of the full-time magistrate at Pensacola.
- (5) Increased the salary of the part-time magistrate position at Panama City from \$949 to \$1,266 per annum.

Southern District of Florida

- (1) Continued the part-time magistrate position at West Palm Beach for an additional four-year term at the currently authorized salary.
- (2) Continued the part-time magistrate position at Fort Pierce for an additional four-year term at the currently authorized salary.

Northern District of Georgia

- (1) Authorized an additional full-time magistrate position at Atlanta at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Newnan, effective upon the appointment of the new full-time magistrate at Atlanta.
- (3) Increased the salary of the part-time magistrate position at Rome from \$6,331 to \$7,597 per annum.
- (4) Increased the salary of the part-time magistrate position at Gainesville from \$3,798 to \$4,431 per annum.

Western District of Louisiana

- (1) Increased the salary of the part-time magistrate position at Leesville from \$4,431 to \$7,597 per annum.
- (2) Increased the salary of the part-time magistrate position at Monroe from \$2,215 to \$2,532 per annum.

Northern District of Mississippi

- (1) Continued the part-time magistrate position at Oxford for an additional four-year term at the currently authorized salary.

Southern District of Mississippi

- (1) Converted the part-time magistrate position at Jackson to a full-time position at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Meridian, effective upon the appointment of the full-time magistrate at Jackson.

Northern District of Texas

- (1) Converted the part-time magistrate position at Lubbock to a combination referee/magistrate position at a salary of \$12,000 per annum for the performance of magistrate duties.

Southern District of Texas

- (1) Authorized an additional full-time magistrate position at Houston at a salary of \$30,000 per annum.
- (2) Increased the salary of the part-time magistrate position at Edinburg from \$8,331 to \$10,552 per annum.
- (3) Changed the official location of the part-time magistrate position from Edinburg to McAllen or Edinburg.

Western District of Texas

- (1) Authorized a new part-time magistrate position at San Antonio at a salary of \$15,000 per annum.

SIXTH CIRCUIT

Eastern District of Kentucky

- (1) Converted the part-time magistrate position at Ashland to a full-time position at a salary of \$30,000 per annum.
- (2) Changed the official location of the magistrate position from Ashland to Ashland or Catlettsburg.
- (3) Continued the part-time magistrate position at Ashland, pending the appointment of the full-time magistrate.
- (4) Increased the salary of the part-time magistrate position at Ashland from \$5,276 to \$6,858 per annum, effective December 1, 1975.
- (5) Discontinued the part-time magistrate position at Pikeville.
- (6) Discontinued the part-time magistrate position at Richmond, effective upon the appointment of the full-time magistrate at Ashland.

Western District of Michigan

- (1) Continued the part-time magistrate position at Marquette for an additional four-year term.
- (2) Increased the salary of the part-time magistrate at Marquette from \$369 to \$633 per annum.

Northern District of Ohio

- (1) Discontinued the part-time magistrate position at Canton at the expiration of the current term.
- (2) Increased the salary of the part-time magistrate position at Akron from \$4,431 to \$6,331 per annum, effective upon the discontinuance of the Canton position.

SEVENTH CIRCUIT

Eastern District of Wisconsin

- (1) Authorized the clerk of court at Milwaukee to perform the duties of a part-time magistrate for an additional four-year term at no additional compensation.

Western District of Wisconsin

- (1) Authorized the clerk of court at Madison to perform the duties of a part-time magistrate for an additional four-year term at no additional compensation.
- (2) Continued the part-time magistrate position at Tomah for an additional four-year term at the currently authorized salary.
- (3) Changed the official location of the part-time magistrate position at Superior to Ashland.

EIGHTH CIRCUIT

Southern District of Iowa

- (1) Converted the combination clerk-magistrate at Des Moines to a full-time position at a salary of \$30,000 per annum.
- (2) Discontinued the part-time magistrate position at Iowa City, effective upon the appointment of the full-time magistrate at Des Moines.
- (3) Continued the part-time magistrate position at Burlington for an additional four-year term.
- (4) Decreased the salary of the part-time magistrate position at Burlington from \$2,788 to \$1,899 per annum, effective upon the expiration of the current term.
- (5) Continued the part-time magistrate position at Davenport for an additional four-year term.
- (6) Increased the salary of the part-time magistrate position at Davenport from \$442 to \$633 per annum.

District of Minnesota

- (1) Increased the compensation paid to the referee in bankruptcy at Duluth for the performance of magistrate duties from \$1,582 to \$3,798 per annum.
- (2) Continued the part-time magistrate position at Rochester for an additional four-year term at the currently authorized salary.

Eastern District of Missouri

- (1) Authorized the clerk of court at St. Louis to perform the duties of a part-time magistrate for an additional four-year term at no additional compensation.

District of North Dakota

- (1) Increased the salary of the part-time magistrate position at Rolla from \$369 to \$633 per annum.

District of South Dakota

- (1) Continued the part-time magistrate position at Rapid City for an additional four-year term at the currently authorized salary.
- (2) Continued the part-time magistrate position at Pierre for an additional four-year term.
- (3) Increased the salary of the part-time magistrate position at Pierre from \$2,532 to \$3,165 per annum.

NINTH CIRCUIT

District of Alaska

- (1) Increased the salary of the part-time magistrate position at Fairbanks from \$5,526 to \$6,331 per annum.

District of Arizona

- (1) Increased the salary of the part-time magistrate position at Yuma from \$9,761 to \$10,552 per annum.

Northern District of California

- (1) Increased the salary of the full-time magistrate position at Monterey from \$21,104 to \$30,000 per annum, effective upon the availability of appropriated funds and the approval of the Judicial Council of the Ninth Circuit.
- (2) Increased the salary of the part-time magistrate position at San Jose from \$6,972 to \$10,552 per annum.

Eastern District of California

- (1) Increased the salary of the part-time magistrate position at Redding from \$6,331 to \$7,597 per annum.
- (2) Continued the second part-time magistrate position at Fresno for an additional four-year term at the currently authorized salary.

Central District of California

- (1) Continued the part-time magistrate position at San Luis Obispo for an additional four-year term.
- (2) Decreased the salary of the part-time magistrate position at San Luis Obispo from \$13,295 to \$10,552 per annum, effective upon the expiration of the current term.

District of Hawaii

- (1) Authorized a new part-time magistrate position at Johnston Island at a salary of \$369 per annum.

District of Idaho

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

District of Montana

- (1) Authorized a new part-time magistrate position at Hardin at a salary of \$633 per annum.

District of Nevada

- (1) Authorized the clerk of court at Las Vegas to perform the duties of a part-time magistrate at no additional compensation.
- (2) Continued the part-time magistrate position at Elko for an additional four-year term at the currently authorized salary.

TENTH CIRCUIT

District of New Mexico

- (1) Continued the part-time magistrate position at Albuquerque for an additional four-year term at the currently authorized salary.

Northern District of Oklahoma

- (1) Authorized the deputy-clerk of court at Tulsa to perform the duties of a part-time magistrate for an additional four-year term at no additional compensation.

Eastern District of Oklahoma

- (1) Continued the part-time magistrate position at Sulphur for an additional four-year term at the currently authorized salary.

District of Wyoming

- (1) Increased the salary of the part-time magistrate position at Jackson from \$1,266 to \$3,165 per annum.

The Conference agreed with the committee to defer action on requests for full-time magistrate positions at Baltimore in the District of Maryland, Huntington in the Southern District of West Virginia and Houston in the Southern District of Texas.

COST-OF-LIVING INCREASES

At its September 1974 meeting the Conference authorized the payment of all future government-wide cost-of-living increases (1) to those full-time magistrates whose salaries are below the maximum amount authorized by law, and (2) to those part-time magistrates whose salaries had been fixed at one of 18 proposed, interim salary levels. The general cost-of-living increase provided last October to government employees was paid to eligible magistrates in accordance with this authorization.

In working toward a system of standard salary levels for all part-time magistrates, the Conference has sought to minimize disruption to existing arrangements by withholding comparability increases from part-time magistrate positions where the current annual salary is moderately higher than the pertinent workload would justify. This procedure will eventually place such positions into standard salary levels by allowing the levels to "catch up" with the positions without the necessity of making small salary cuts.

As soon as appropriated funds are available for the fiscal year 1976, the salaries of approximately 270 of the 350 part-time and combination magistrate positions will be payable at one of the 18 salary levels proposed last September. The salaries of the remaining 80 part-time magistrates are, in the view of the Committee, moderately above the appropriate amount.

At its March 1975 meeting the Conference consolidated three of the 18 interim salary levels, approved a final, reduced list of 15 salary levels, and directed that all recommendations for substantive changes in part-time magistrate salaries in the future be made to one of these levels. The committee believes that in fairness those magistrates whose salaries had been fixed at one of the levels subsequently consolidated should continue to receive annual cost-of-living adjustments, even though their pertinent salary levels will eventually be phased out.

On committee recommendation the Conference reaffirmed its authorization of September 1974 for the payment of cost-of-living increases to part-time magistrates only where the authorized salaries are set at the 15 standard levels. The Conference also authorized that the scheduled increases be given to those part-time magistrates whose salaries have been set at the three levels proposed last September, but subsequently consolidated.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

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

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 under the Criminal Justice Act for the period ending June 30, 1975.

This report showed that during fiscal year 1975 approximately 46,000 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. The number of persons represented in 1975 increased approximately nine percent over the number represented in the prior fiscal year.

Congress appropriated \$15,826,000 for the implementation of the act and the Administrative Office has estimated a deficit of \$1,500,000 for fiscal year 1975 for which a supplemental appropriation has been requested. The two factors for this deficiency were the increase in the number of persons represented and the increase in transcript rates authorized by the Judicial Conference in September 1974. The chief judges of the circuits approved 137 claims for compensation in excess of the statutory limitation in felony cases. The sum of \$1,728,424 was paid out of the 1974 appropriation for transcripts, expert and other services, with the cost of transcripts being the largest single factor.

DEFENDER OFFICES

The cost of operating twenty federal public defender offices was approximately \$3.6 million in 1975. Federal public defenders were

assigned 10,337 cases. The overall cost of representation by federal public defenders, including appeals, was \$360 compared to approximately \$350 per case for services rendered by panel attorneys and \$374 per case for community defenders.

Since July 1, 1974 Judge Bonsal advised that new federal public defender offices had been established in the District of Colorado, the Eastern District of Kentucky, the Eastern District of Louisiana, the Western District of Pennsylvania, the Southern District of Texas and the Western District of Texas.

The Conference considered the individual budget requests for each of the federal public defender offices for the fiscal year ending September 30, 1977, for the transition period of July 1 through September 30, 1976 and revised estimates for fiscal year 1976. The results of the Conference action were incorporated in the report of the Budget Committee.

COMMUNITY DEFENDER ORGANIZATIONS

In implementation of the action taken by the Conference in approving grants for fiscal year 1976 to community defender organizations (Conf. Rept., March 1975, p. 34) the Conference approved an additional grant to the Legal Aid and Defender Association of Detroit in the Eastern District of Michigan for space requirements in the sum of \$27,500 and for personnel and other requirements the sum of \$100,000. The request for the additional grant was predicated upon the unexpected higher caseload in one of the major crime areas in the country and the fact that the present office space is hardly adequate to meet the current needs.

GUIDELINES

The Conference approved a revision of the guideline appearing in Chapter 2A(5) which provides that defendants having Criminal Justice Act counsel but who have resources in excess of the amount needed to provide the necessities of life may be directed to pay such excess to the clerk of court. The guideline, as amended, authorizes the judicial officers thereafter to increase or decrease the amount of such payments, depending on the financial condition of the defendant at the time. As approved by the Conference, the guideline reads:

If a person's net financial resources and income anticipated prior to trial are in excess of the amount needed to provide him and his dependents with the necessities of life and to provide the defendant's release on bond, but are insufficient to pay fully for retained counsel, the judicial officer should find the person eligible for the appointment of counsel under the Act and should direct him to

pay the available excess funds to the clerk of the court at the time of such appointment or from time to time thereafter. Such funds shall be held subject to the provisions of subsection (f). The judicial officer may increase or decrease the amount of such payments, and impose such other conditions as from time to time may be appropriate. With respect to the disposition of such funds refer to Chapter II of these Guidelines.

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.

BANKRUPTCY RULES

The Conference reviewed and approved for transmittal to the Supreme Court, with an endorsement for favorable action, proposed rules under Chapter VIII (Railroad Reorganization) and Chapter IX (Composition of Indebtedness of Certain Taxing Agencies).

Judge Tomsen advised the Conference that on August 1, 1975 the rules approved by the Supreme Court under Chapter X of the Bankruptcy Act (Corporate Reorganization) and Chapter XII (Real Property Arrangements) became effective.

The Conference also approved for transmittal to the Supreme Court, with an endorsement for favorable action, certain amendments, largely technical and correctional in nature, to the rules previously adopted by the Supreme Court in implementation of Chapters I—VII and Chapter XIII of the Bankruptcy Act. Judge Thomsen advised the Conference that when these correctional rules and the rules under Chapters VIII and IX are approved and become effective, the work of the Advisory Committee on Bankruptcy Rules will have been completed.

CRIMINAL RULES

On recommendation of the Standing Committee, the Conference approved for transmittal to the Supreme Court of the United States a series of amendments to Rules 6, 23, 24, 40.1, 41 and 50 of the Federal Rules of Criminal Procedure, as well as rules governing Sections 2254 and 2255 cases in the United States district courts.

The Conference considered proposed amendments to Rule 35 of the Federal Rules of Criminal Procedure and in view of the several changes made in the proposed rule since the last circulation for

comment, the Conference directed that the committee transmit Rule 35 in its present form once again to the bench and bar of the country for comment.

BICENTENNIAL COMMITTEE

Judge Edward J. Devitt, co-chairman with Judge Clement F. Haynsworth, Jr., presented the report of the Bicentennial Committee.

Judge Devitt advised that the committee held its organizational meeting in July at which time the Director of the Administrative Office, Mr. Rowland F. Kirks, was named secretary. The committee at that time decided on five projects, including a series of films to commemorate the Bicentennial of American Independence. The other projects include a book dealing with the judicial system with aspects of operation of particular interest to laymen; the preparation of a history of courts within each of the circuits; a preparation of a biography of every federal judge from the beginning to the present; and a Joint Conference of Chief Justices and Governors of the American Bar Association and other interested parties to commemorate the seventieth anniversary of the speech of Roscoe Pound on the popular dissatisfaction with the administration of the courts which was given in St. Paul, Minnesota, in 1906. After discussion, the Conference adopted the following resolution:

RESOLUTION

Resolved, that the Judicial Conference of the United States participate in a celebration honoring Dean Roscoe Pound on the occasion of the 70th Anniversary of his monumental address of 1906 to the American Bar Association on "The Causes of Popular Dissatisfaction with the Administration of Justice" by holding its Annual Spring Meeting in St. Paul, Minnesota, tentatively during the second week of April 1976, provided such project is developed.

The Conference further delegated to the committee authority to commit and expend funds appropriated for the observance by the judiciary of the Bicentennial and to enter into contractual arrangements appropriate for those purposes.

OTHER MATTERS

ADMISSION TO PRACTICE

The Conference took note that the Second Circuit Judicial Council had approved in principle proposed rules for admission in the district courts of the circuit and had adopted rules for admission

to the Court of Appeals. The Conference noted the resolution of the judicial council expressing the view of its committee on the proposed rule of admission that the desirable objective would be to avoid Balkanization of requirements for admission in the federal courts.

On motion of the Chief Judge of the Second Circuit, the Conference approved a resolution to permit the Chief Justice to appoint a special committee or to take such other action as he deems appropriate for the purpose of examining the proposed rules for admission approved by the Judicial Council of the Second Circuit, with a view to using the proposed rules as model drafts for other federal courts.

CONSTRUCTION OF ADDITIONAL QUARTERS

The Conference noted that the Administrative Office of the United States Courts is now housed in four separate buildings, one of which is a considerable distance from downtown Washington, and none of them is near the Supreme Court. The Conference further noted that the Federal Judicial Center has now run out of all available space in its present quarters. Accordingly, the Conference voted the following resolution:

It is the sense of the Judicial Conference that there is a strong need for an appropriate building to be constructed in close proximity to the Supreme Court of the United States at the earliest possible date which will house all supporting facilities of the federal judiciary, including the Administrative Office of the United States Courts, the Federal Judicial Center and the Panel on Multidistrict Litigation, with adequate space for storage before being sent to National Archives.

RESOLUTIONS

Noting the serious illness of Judge Alfred P. Murrah, the Conference requested the Chief Justice to transmit the greetings and good wishes of the members of the Conference by telegram to Judge Murrah.

Observing that the Honorable Harvey M. Johnsen, former Chief Judge of the Eighth Circuit, had died, the Conference approved the following resolution:

The Judicial Conference of the United States, meeting in Washington, D.C. on September 26, 1975, notes with sadness the death of Harvey M. Johnsen on September 15, 1975.

He had completed almost thirty-five years of service as a United States Circuit Judge. Preceding his federal service he was an Associate Justice of the

Nebraska Supreme Court and at an earlier time President of the State Bar of Nebraska.

He loyally served this Conference as a member for six years. From time to time he was a member of five committees (chairman of two) over a period of twenty years.

In all of this service his steady hand was always effective. His report for the Committee on Responsibilities of Judicial Councils has become the standard everywhere for the operation of such councils. The report resulted in the councils becoming effective instruments in the administration of circuit business.

In a time of great growth of the country and a faster growth of the federal judicial system, he brought unusual insight, foresight, and accuracy to the projection of the needs for additional federal judgeships. None of the recommendations was ever discounted by the Judicial Conference of the United States or by the Congress.

Nebraska has lost one of its great citizens. The federal judiciary has lost one of its great judges.

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 1976 session of the Fourth Circuit at Asheville, North Carolina, as well as of sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans, Louisiana, for all sessions of the Eighth Circuit Court of Appeals to be held at Kansas City, Missouri and Omaha, Nebraska, through June 30, 1976, and for all sessions of the Tenth Circuit Court of Appeals to be held at Oklahoma City, Oklahoma, through June 30, 1976.

RELEASE OF CONFERENCE ACTION

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

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

NOVEMBER 17, 1975.

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