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

**March 16-17, 1983**

**Washington, D.C.**

**1983**

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**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

**William E. Foley  
Director**

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

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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, 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. 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. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372(c) of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372(c) of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

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

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

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

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JUDICIAL CONFERENCE OF THE UNITED STATES**

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**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

**March 16-17, 1983**

The Judicial Conference of the United States convened on March 16, 1983, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on March 17. The Chief Justice presided and the following members of the Conference were present:

**First Circuit:**

Chief Judge Frank M. Coffin  
Judge W. Arthur Garrity, Jr., District of Massachusetts

**Second Circuit:**

Chief Judge Wilfred Feinberg  
Chief Judge Constance B. Motley, Southern District of  
New York

**Third Circuit:**

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

**Fourth Circuit:**

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

**Fifth Circuit:**

Chief Judge Charles Clark  
Chief Judge John V. Singleton, Jr., Southern District of  
Texas

**Sixth Circuit:**

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

**Seventh Circuit:**

Judge Richard D. Cudahy\*  
Chief Judge John W. Reynolds, Eastern District of  
Wisconsin

**Eighth Circuit:**

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

**Ninth Circuit:**

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

**Tenth Circuit:**

Chief Judge Oliver Seth  
Chief Judge Luther B. Eubanks, Western District of  
Oklahoma

**Eleventh Circuit:**

Chief Judge John C. Godbold  
Judge William C. O'Kelley, Northern District of  
Georgia

**District of Columbia Circuit:**

Chief Judge Spottswood W. Robinson III  
Chief Judge Aubrey E. Robinson, Jr., District of  
Columbia

**Federal Circuit:**

Chief Judge Howard T. Markey

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\*Designated by the Chief Justice in place of Chief Judge  
Walter J. Cummings who was unable to attend.

Circuit Judges Irving R. Kaufman, Anthony M. Kennedy, Otto R. Skopil Jr., Edward A. Tamm, and Gerald B. Tjoflat; Senior Circuit Judge Carl McGowan; Senior District Judges George L. Hart, Elmo B. Hunter and Thomas J. MacBride; and District Judges T. Emmet Clarie, Robert E. DeMascio and Alexander Harvey II, attended all or some of the sessions of the Conference.

The Deputy Attorney General of the United States, Honorable Edward C. Schmults, and the Solicitor General of the United States, Honorable Rex E. Lee, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

Senator Paul Laxalt, Chairman of the Senate Appropriations Subcommittee on the Departments of State, Commerce, Justice, and the Judiciary, and Congressman Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, addressed the Conference briefly. Alan A. Parker, Counsel to the House Judiciary Committee, presented a message from the Chairman, Peter W. Rodino, Jr. Vinton D. Lide, Chief Counsel, Senate Judiciary Committee; David W. Beier III of Mr. Kastenmeier's subcommittee staff, and John F. Nash, Jr., of Senator Laxalt's staff were introduced to the Conference.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr., Deputy Director; James E. Macklin, Executive Assistant Director; William J. Weller, Legislative Affairs Officer; Daniel R. Cavan, Deputy Legislative Affairs Officer; Deborah H. Kirk, Chief, Office of Management Review; Professor A. Leo Levin, Director, and Charles W. Nihan, Deputy Director of the Federal Judicial Center, attended the sessions of the Conference. Mark W. Cannon, Administrative Assistant to the Chief Justice, and David M. O'Brien, Judicial Fellow, also attended sessions of the Conference.

The Director of the Federal Judicial Center, A. Leo Levin, presented his semiannual report on the activities of the Center.

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

The Director of the Administrative Office of the United States Courts, William E. Foley, presented to the Conference a brief report on the caseloads of the United States courts during the calendar year 1982.

Mr. Foley stated that appeals filed in the United States courts of appeals in 1982 increased to 28,161, exclusive of 140 appeals filed in the new Court of Appeals for the Federal Circuit during its first three months of operation. There were 28,151 appeals terminated, 10 less than the number filed, and the pending caseload rose slightly to 22,149 as of December 31, 1982. In addition there were 291 appeals pending on that date in the Court of Appeals for the Federal Circuit.

Civil cases filed in the United States district courts in 1982 increased 17 percent to a record 223,581. Cases terminated were 202,766, or 12 percent more than the previous year, but 20,815 cases fewer than the number filed. As a result pending civil cases increased to a record 217,623 as of December 31, 1982.

During the year there were 32,819 criminal cases filed in the district courts, a 4 percent increase over the previous year. There were 31,401 criminal cases terminated and 17,594 criminal cases were pending on the dockets as of December 31, 1982.

In 1982 a record 545,408 separate estates were involved in bankruptcy cases filed in the United States bankruptcy courts, a 4 percent increase over 1981. There were 445,573 estates closed during the year, a 16 percent increase over the previous year, but the number of estates awaiting adjudication and closing increased 15 percent to a record 786,387 as of December 31, 1982. Mr. Foley noted that he had filed a report with Congress in accordance with provisions in the 1978 Bankruptcy Reform Act advising Congress that 304 bankruptcy judgeships are currently needed to administer existing bankruptcy court caseloads expeditiously.

## **JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the six-month period ended December 31, 1982 the Panel had conducted two regularly scheduled sessions and had entered 30 major decisions. Of the 21 new groups of multidistrict litigation considered the Panel ordered transfer in 13, encompassing 272 civil actions of which 119 were centralized for consolidated pretrial proceedings with 153 actions originally filed in the transferee districts. The Panel denied transfer in 8 new groups of multidistrict cases comprising a total of 39 civil actions. During this same period there were 134 additional civil actions transferred by the Panel as tag-along cases for inclusion in ongoing centralized pretrial proceedings with previously transferred cases. During this period there were 110 civil actions remanded by the Panel to the transferee forums from which they had been transferred.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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

Judge Kaufman reported that the Committee had recently met to discuss a number of matters including preliminary plans for a presentation to be made to the Quadrennial Commission on Executive, Legislative and Judicial Salaries which is to be appointed next year. At the same time the Committee is exploring the prospects of developing other methods for the setting of judicial salaries. Judge Kaufman also informed the Conference that the bill to amend the Judicial Survivors' Annuity Act, previously recommended by the Committee and approved by the Conference, had been introduced in the 98th Congress. The Committee hopes that action can be taken by the Congress on this important legislation during its current session.

## **COMMITTEE ON COURT ADMINISTRATION**

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

## ADDITIONAL JUDGESHIPS

At its session in September, 1982 (Conf. Rept. p. 63) the Conference authorized the Committee to consider further the need for additional judgeship positions in the Court of Appeals for the Fifth Circuit, and any emergency requests from individual courts, and to report thereon at the next session of the Conference. Judge Hunter informed the Conference that because of the timing of the recent biennial judgeship survey in relation to the creation of the new Fifth Circuit, the Committee considered the need for additional judgeships in the Fifth Circuit as a delayed part of the biennial survey rather than as an emergency request. It was the view of the Committee, based on current workload statistics, that two additional judgeships for the Court of Appeals for the Fifth Circuit were justified. The Conference approved this recommendation of the Committee and authorized transmission of the request to the Congress.

The Conference also approved the recommendation of the Committee that no additional judgeships for the Eastern District of Arkansas be requested of the Congress at this time.

## ADMINISTRATIVE OFFICE STATISTICAL RECORDS

Judge Hunter informed the Conference that the Administrative Office had been working with the National Archives and Records Service to schedule the transfer of machine-readable statistical records to Federal Records Centers for storage, retention and disposition. The Administrative Office requested that a restriction be placed on access to these records to prevent them from being used, sold, loaned, destroyed, donated, or otherwise disposed of in any manner without the consent of the Administrative Office until the expiration of 30 years after the creation of the record. The Committee believed that some restriction was necessary but that the 30-year period may be excessive. Accordingly, the Committee submitted the following resolution which was approved by the Conference:

The statistical files of the Administrative Office should be transferred to the National Archives and Records Service for retention as permanent records 10 years after the date of creation of the computer files. Upon receipt by NARS, access to

these files shall be restricted for a period of 10 additional years. The files shall not be used, sold, loaned, destroyed, donated, or otherwise disposed of in any manner without the consent of the Administrative Office until 20 years after the date of the creation of the file.

#### ADVISORY COMMISSION ON INTERGOVERNMENT RELATIONS

H.R. 7173, 97th Congress, is a bill to authorize representatives of the Federal and State judiciaries, elected school boards, and towns or other small communities to serve on the Advisory Commission on Intergovernment Relations. The Commission was established in 1959 to monitor the operation of the American Federal system and to recommend ways to improve its functioning, efficiency and effectiveness. Upon the advice of the Committee the Conference recommended the inclusion of representatives of State and Federal judicial systems on the Advisory Commission.

#### HABEAS CORPUS REFORM

The Conference reviewed recommendations formulated in response to several bills introduced in both the Senate and House of Representatives during the 97th Congress to reform habeas corpus procedures. After full discussion the Conference returned these recommendations to the Committee for further study.

#### JUDICIAL REFORM ACT OF 1982

S. 3018, 97th Congress, is a bill to reform the Federal judiciary and promote the separation of powers. Part A of Title I of the bill would withdraw jurisdiction from all Federal courts to consider cases alleging state abridgment of rights secured by the first eight amendments to the Constitution of the United States, presumably on the theory that these amendments were intended to bind only the Federal government and not the states. As a consequence all such claims would have to be brought in state courts.

Part D of Title I of the bill would amend 42 U.S.C. 1983 and 28 U.S.C. 1343(a)(3) and (4) in several respects. Amended Section 1983 could be used as a basis for seeking the

vindication of Constitutional rights, but not statutory rights, unless the statute provided for equal rights. Thus the Supreme Court decision in Maine v. Thiboutot, 448 U.S. 1(1980) would be overruled. Immunity from Section 1983 civil actions would be restored to local governments, municipal corporations and other state political subdivisions, thereby overruling the Supreme Court decision in Owen v. City of Independence, 445 U.S. 622 (1980). Further, the anti-injunction statute would be made applicable to civil actions under Section 1983 thereby reversing the Supreme Court decision in Mitchum v. Foster, 407 U.S. 225 (1972). Finally, the exhaustion of state remedies would be required as a condition precedent to bringing a suit in Federal court under Section 1983.

Part F of Title I of the bill would repeal the general statutory grant of Federal question jurisdiction, 28 U.S.C. 1331, thus effectively abolishing the jurisdiction established by Congress in 1875. This section of the bill would also invalidate recently enacted legislation to eliminate the \$10,000 amount-in-controversy requirement for Federal question cases which was supported by the Conference. (Conf. Rept. March 1977, p. 8).

Part H of Title I of the bill would require that an injunction directed against a state or any officer, commission, political subdivision, or other agency of a state be heard by a three-judge district court under the provisions of 28 U.S.C. 2284. The Conference has repeatedly recommended the elimination of three-judge district courts. (Conf. Rept., Oct. 1970, p. 78).

The Committee pointed out that Parts A, D and F of Title I of the bill, considered collectively, involve a radical realignment of jurisdiction between Federal and state courts. Part H of Title I of the bill would result in an inefficient utilization of presently busy judges.

These sections so seriously taint S. 3018, 97th Congress, that the Committee recommended strong opposition to any duplicate or successor bill in its entirety, viewing such legislation as a hazardous experiment with the vulnerable fabric of the nation's judicial systems. This recommendation was approved by the Conference.

## DEPOSITORY LIBRARIES

Since 1971 the library of the Supreme Court and the libraries of the courts of appeals in 13 separate locations have been designated as depository libraries pursuant to 44 U.S.C. 1901-16. In 1971 the Public Printer specifically approved the courts' participation in this program, but the Superintendent of Documents recently expressed concern over the absence of any statutory language explicitly authorizing this participation. He thus feels it necessary to terminate the program at the close of the current fiscal year. Judge Hunter informed the Conference that the continued designation of Federal court libraries as depositories is extremely valuable and that the program provides a speedy and reliable source of much Congressional material.

The Committee therefore recommended that the Conference authorize the Administrative Office to draft and transmit to Congress an amendment to Title 44 of the United States Code to designate specifically the libraries of the Supreme Court and of the courts of appeals as depository libraries. This recommendation was approved by the Conference.

## SALARIES OF ARTICLE I JUDGES AND SUPPORTING JUDICIAL OFFICERS

The Conference in March, 1982 (Conf. Rept. p. 16) authorized the Director of the Administrative Office to prepare and transmit to Congress legislation to authorize the Director to fix the salaries of all Article I judges and other supporting judicial officers, subject to the supervision and direction of the Conference. The Committee then recommended that the salaries of these judicial officers not exceed the salary fixed for Level II of the Executive Schedule, but the Conference in lieu thereof approved a ceiling of 85 percent of the salary of a district judge. S. 443, 98th Congress, a bill to provide for the reorganization of the bankruptcy courts, contains language to accomplish the Judicial Conference's directive. The Committee pointed out, however, that Congress had recently increased the salaries of various officers to a level which now exceeds 85 percent of the salary of a district judge. Consequently, the enactment of S. 443, as introduced, would result in a pay reduction for some officers in the Federal Judiciary.

The Committee pointed out that regardless of the ceiling fixed in any statute the salaries fixed by the Director of the Administrative Office will have to be approved by the Judicial Conference before they become effective. In view of this, and in order to prevent the reduction of anyone's salary, the Committee recommended that the Conference revise its original action, approve the salary ceiling originally recommended, i.e., Executive Level II, and authorize the Director to notify Congress formally of the revision. This recommendation was approved by the Conference.

#### PLACES OF HOLDING COURT

H.R. 6972, 97th Congress, is a bill to establish Boulder, Colorado as a place of holding court. The bill has been approved by both the Judicial Council of the Tenth Circuit and the district court. Upon the recommendation of the Committee the Conference approved the purpose to be served by any successor bill.

The United States District Court for the Central District of Illinois has requested that Champaign/Urbana be statutorily designated as a place of holding court because of its central location. The Judicial Council of the Seventh Circuit has recommended approval of this request. Upon the recommendation of the Committee the Conference approved the request and authorized the Director of the Administrative Office to transmit it to the Congress.

The Conference was informed that the district court and the Judicial Council of the Eleventh Circuit have recently recommended the closing of court facilities at Americus in the Middle District of Georgia. The Conference approved this action.

#### SUPERVISORY STAFF ATTORNEYS

Judge Hunter informed the Conference that the Committee had reviewed its past practices with regard to the review of the classification of each supervisory staff attorney position on a case-by-case basis and had concluded that it would be advantageous to adopt general guidelines for the control of the number of such positions to be classified at grades JSP-13 or 14. Upon the recommendation of the

Committee the Conference thereupon adopted the following guideline:

The Director may authorize the classification of staff attorney positions at JSP-13 and/or JSP-14 based upon appropriate criteria contained in the Judiciary Salary Plan, subject to the proviso that the number of such positions in each court does not exceed one for every six attorney positions grade JSP-12 or lower. Requests for the reclassification of staff attorney positions to grades JSP-13 or 14 that would result in a ratio of more than one such position for each six positions at grade JSP-12 or lower, shall be subject to Judicial Conference or Committee review and approval.

### COURT REPORTERS

Judge Hunter informed the Conference that the Committee had reviewed and approved a draft of a Court Reporters' Manual prepared by a member of the Subcommittee on Supporting Personnel with the assistance of a United States Magistrate, two clerks of district courts, a representative of the United States Court Reporters' Association, a member of the staff of the Federal Judicial Center, and two members of the staff of the Administrative Office. The Manual is the first comprehensive compilation of existing law and Conference policies and procedures. It does not establish new policy.

Judge Hunter pointed out, however, that the Judicial Conference policy concerning transcript format, adopted in 1946, had not been uniformly interpreted so that indentations and special headings sometimes substantially reduce the volume of text on the page. As a consequence a separate Chapter XVIII was included in the Manual to specify how indentations should be spaced and to provide detailed answers to other concerns. Upon the recommendation of the Committee the Conference specifically approved the contents of this Chapter.

The Conference in March, 1982 (Conf. Rept. p. 12) requested the Committee to reconsider the question of whether the Conference should forbid reporters to engage in outside reporting work. Judge Hunter pointed out that

although 28 U.S.C. 753 clearly contemplates that reporters may engage in outside reporting activities, some courts have found it necessary to limit or prohibit outside activity so that reporters would have the time and energy to produce transcript in a timely manner for the parties and the courts of appeals. Other courts have derived benefits from their reporters' participation in outside firms, finding that they have been furnished qualified substitutes and that the problems of obtaining transcripts in a timely manner had been eliminated by virtue of additional resources. Of the 220 district judges who responded to a survey conducted by the Committee, 60 percent were not in favor of a blanket prohibition of outside reporting work by the Conference. Furthermore, district courts are now developing court reporter management plans which, if properly implemented, should prevent abuse in the use of substitutes as well as avoid transcript backlog caused by outside reporting. Proper management of reporting services and the recently adopted disincentives to late transcript production should eliminate any problems that remain. The Committee therefore recommended that the Conference reaffirm its policy adopted in March, 1980 (Conf. Rept. p. 19) that the matter of outside reporting continue to be left to the discretion of each individual court; however, where there is a conflict between official and private reporting, the reporter should be required to postpone any outside work.

#### ADDITIONAL SUPPORTING PERSONNEL

Judge Hunter informed the Conference that a request of the judges of the Southern District of New York for two pool secretarial positions in order to provide backup secretarial assistance in the event of illness or overflow of work to be done has been approved by the Committee for inclusion by the Committee on the Budget in the budget request for the fiscal year 1985.

#### DISTRIBUTION OF REPORTS

At the request of Chief Judge Manuel L. Real the Committee was authorized to consider whether the circulation of Conference reports or other reports to all judges might be curtailed.

## **COMMITTEE ON THE BUDGET**

Chief Judge Charles Clark, Chairman of the Committee on the Budget, submitted the report of the Committee.

Judge Clark advised the Conference that hearings on the appropriation requests for the Judiciary for the fiscal year 1984 and requests for supplemental appropriations for the fiscal year 1983 were held before the House Appropriations subcommittee on March 14 and 15, 1983. The requested funds for the fiscal year 1984 were in the amount of \$852,650,000, an increase of \$84,663,000 over the authorized expenditures for the fiscal year 1983 including supplemental requests in the amount of \$32,350,000, of which \$24,100,000 is to cover the costs of recent pay increases. Judge Clark stated that hearings will be held in the Senate during the month of April.

## **JUDICIAL ETHICS COMMITTEE**

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

## **DISTRIBUTION OF REPORTING FORMS**

Judge Tamm informed the Conference that the Financial Disclosure Reporting Forms and Instructions for the calendar year 1982 were distributed to judicial officers and judicial employees early in January, 1983. The Committee hopes that this early availability of the forms will make it possible for reporting individuals to complete their reports at the same time income tax returns are prepared. This year the Committee requested that disclosure reports be filed with the Committee at an early date to avoid the crunch of last minute filings which in previous years has overburdened the staff of the Chairman.

## **REFERENCES TO THE ATTORNEY GENERAL**

The Committee had previously adopted a procedure requiring the unanimous affirmative approval of all Committee members before a reference would be made to the Attorney General for failure to file a disclosure report or failure to file

a complete report. Realizing that the illness or unavailability of one Committee member would make this procedure unworkable, the Committee adopted the following amendment to its procedures:

A reference to the Attorney General requires the affirmative vote of at least 10 members of the Committee in attendance at a duly noticed regular or specially held meeting of the Committee.

Upon the recommendation of the Committee the Conference authorized the inclusion of the above change in this report of Conference proceedings for the information of those who are required to file disclosure statements.

### REVIEW OF REPORTS

Last year the Director of the Administrative Office provided professional assistance to the Committee on a pilot basis for the purpose of conducting a preliminary audit of all financial disclosure reports for the calendar year 1981. Judge Tamm advised the Conference that the Committee has requested the Director to provide this same type of assistance to the Committee to conduct a preliminary audit for one more year on a continuing pilot basis.

### ADVISORY COMMITTEE ON CODES OF CONDUCT

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

### ACTIVITIES OF THE COMMITTEE

Chief Judge Markey informed the Conference that since its last report the Committee had received 21 inquiries from persons subject to the various Codes of Conduct and had issued 18 advisory responses. Chief Judge Markey also informed the Conference that the Committee had approved the issuance of a revised Opinion No. 53 pertaining to the political involvement of a judge's spouse and had determined to publish an Advisory Opinion dealing with requests received by judges for

recommendations of individuals. The Conference was also advised that the proposed amendment to 28 U.S.C. 455 to enable a judge to consider the effect of disqualification on the public interest in certain limited circumstances, previously approved by the Conference, had been scheduled for hearings in the Congress.

#### **CODES OF CONDUCT FOR CLERKS OF COURT AND PROBATION OFFICERS**

The Conference, upon the recommendation of the Committee, approved a change in Canon 5B of the Codes of Conduct for clerks of court and probation officers to eliminate the uncertainty arising from a difference in language in similar provisions of the Codes of Conduct for Staff Attorneys, Circuit Executives, and Law Clerks.

#### **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 the Chairman, Judge Otto R. Skopil, Jr.

#### **JUDICIAL REFORM ACT OF 1982**

Judge Skopil stated that, at the request of the Committee on Court Administration, the Committee had reviewed two provisions of S. 3018, 97th Congress, the proposed Judicial Reform Act of 1982.

Section 132 of the bill would restrict the authority of district judges to refer habeas corpus petitions filed by state prisoners to magistrates for report and recommendation if an evidentiary hearing would be required. The bill would permit magistrates to be empowered to hear these matters only upon the consent of all the parties. The Conference had previously expressed its opposition to legislative proposals either prohibiting or mandating the reference of specific classes of cases to magistrates. The Conference reaffirmed its previous action and expressed its opposition to Section 132 of the bill.

Part C of Title II of the bill would remove the power of district courts to appoint magistrates and would vest that authority in the President. The Committee pointed out that district judges have the most familiarity with the qualifications of the candidates and the most direct self-interest in the selection of competent magistrates. Furthermore, the Supreme Court's decision in the case of Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 102 Sup. Ct. 2858 (1982), has raised the possibility that such a change in the appointment process may have adverse implications on the constitutionality of the magistrates system. Upon the recommendation of the Committee the Conference expressed its opposition to this provision of the bill.

### SALARIES OF PART-TIME MAGISTRATES

Judge Skopil stated that the government-wide comparability or cost-of-living salary adjustments are not applied automatically to the salaries of part-time magistrates, but require the affirmative action of the Conference. The salary levels for part-time magistrates (except those at the maximum salary level) have not been adjusted since October 1, 1979. Upon the recommendation of the Committee the Conference granted the most recent 4 percent comparability increase to all part-time magistrates.

In the light of the recent increase in the salaries of full-time United States magistrates to \$63,600 per annum and the recent surveys of each of the part-time positions involved, the Conference, upon the recommendation of the Committee, further increased the maximum salary level now paid to part-time magistrates to the new statutory maximum of \$31,800 per annum. In addition the Conference granted this same salary increase to the three part-time bankruptcy judges who also serve as part-time magistrates and directed that future salary increases for full-time magistrates and bankruptcy judges be applied automatically to these combination positions in order to maintain the existing parity of their aggregate compensation with that of a full-time magistrate or bankruptcy judge.

The new salary levels authorized for part-time magistrates are as follows:

Level 16 .....	\$	31,800
Level 15 .....	\$	27,820
Level 14 .....	\$	24,024
Level 13 .....	\$	21,112
Level 12 .....	\$	18,616
Level 11 .....	\$	16,120
Level 10 .....	\$	14,144
Level 9 .....	\$	12,272
Level 8 .....	\$	10,400
Level 7 .....	\$	8,528
Level 6 .....	\$	6,656
Level 5 .....	\$	4,680
Level 4 .....	\$	3,744
Level 3 .....	\$	2,808
Level 2 .....	\$	1,872
Level 1 .....	\$	936

### TRAVEL REGULATIONS

Under existing law the travel expenses of Article III judges and bankruptcy judges are reimbursable according to regulations promulgated by the Director of the Administrative Office under 28 U.S.C. 456, but the travel expenses of magistrates are reimbursed under regulations governing other court officers and employees. Judge Skopil pointed out that the Conference had previously established a policy of according parity of treatment to United States magistrates and bankruptcy judges. Upon the recommendation of the Committee the Conference recommended the enactment of appropriate legislation to permit the Director of the Administrative Office and the Conference to establish travel regulations for magistrates in a manner similar to that now provided for bankruptcy judges.

### CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to become effective when appropriated funds are available. The salaries of full-time magistrate positions are to

be determined in accordance with the salary plan previously adopted by the Conference. The salaries for part-time magistrate positions include the comparability adjustments authorized by the Conference at this session.

#### SECOND CIRCUIT

##### Connecticut:

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

##### New York, Southern:

- (1) Continued the three full-time magistrate positions at New York City (which are due to expire on November 30, 1983, August 2, 1984, and December 29, 1984 respectively) for additional eight-year terms.
- (2) Authorized the appointment of an eighth full-time magistrate position at New York City.

##### New York, Western:

- (1) Increased the salary of the part-time magistrate position at Rochester from \$2,700 per annum to \$31,800 per annum.
- (2) Discontinued the part-time magistrate positions at Elmira, Niagara Falls, and Olean, upon the increase in salary of the part-time magistrate position at Rochester.

#### THIRD CIRCUIT

##### New Jersey:

- (1) Continued the full-time magistrate position at Newark, which is due to expire on February 1, 1984, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Atlantic City for an additional four-year term at the currently authorized salary of \$1,872 per annum.

Pennsylvania, Eastern:

- (1) Increased the salary of the part-time magistrate position at Allentown from \$3,600 per annum to \$6,656 per annum.
- (2) Discontinued the part-time magistrate position at Reading effective upon the implementation of the increase in salary of the part-time magistrate position at Allentown.

FOURTH CIRCUIT

South Carolina:

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

West Virginia, Southern:

- (1) Designated the existing part-time magistrate position at Parkersburg, formerly in the Northern District of West Virginia, to serve in the Southern District of West Virginia.

FIFTH CIRCUIT

Mississippi, Northern:

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

Texas, Northern:

- (1) Converted the combination bankruptcy judge-magistrate position at Lubbock to a full-time magistrate position.
- (2) Authorized the court to split the combination bankruptcy judge-magistrate position at Lubbock and establish a part-time magistrate position at Lubbock at a salary of \$31,800, to serve until the appointment of a full-time magistrate at that location.

- (3) Continued the part-time magistrate position at Wichita Falls for an additional four-year term.
- (4) Reduced the salary of the part-time magistrate position at Wichita Falls from \$8,200 per annum to \$6,656 per annum.
- (5) Continued the part-time magistrate position at Abilene for an additional four-year term at the currently authorized salary of \$936 per annum.

Texas, Eastern:

- (1) Authorized the appointment of a second full-time magistrate position at Beaumont.
- (2) Increased the salary of the part-time magistrate position at Sherman from \$10,000 per annum to \$31,800 per annum.

Texas, Southern:

- (1) Converted the part-time magistrate position at Brownsville to a full-time magistrate position.

Texas, Western:

- (1) Converted the part-time magistrate position at Del Rio to a full-time magistrate position to serve at Del Rio (or Eagle Pass).
- (2) Authorized a salary of \$43,600 per annum for the full-time magistrate position at Del Rio (or Eagle Pass).
- (3) Discontinued the part-time magistrate position at Eagle Pass, upon the appointment of a full-time magistrate at Del Rio (or Eagle Pass).

SIXTH CIRCUIT

Kentucky, Eastern:

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

Michigan, Eastern:

- (1) Authorized the appointment of a seventh full-time magistrate at Detroit.

Ohio, Southern:

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

SEVENTH CIRCUIT

Illinois, Northern:

- (1) Continued the part-time magistrate position at Freeport (or Rockford) for an additional four-year term.
- (2) Increased the salary of the part-time magistrate at Freeport (or Rockford) from \$26,750 per annum to \$31,800 per annum.

Illinois, Central:

- (1) Increased the salary of the part-time magistrate position at Peoria from \$6,400 per annum to \$31,800 per annum.

Indiana, Northern:

- (1) Continued the part-time magistrate position at Fort Wayne for an additional four-year term at the currently authorized salary of \$3,744 per annum.

Wisconsin, Eastern:

- (1) Converted the part-time magistrate position at Milwaukee to a full-time magistrate position.
- (2) Authorized the clerk of court to serve as a back-up, part-time magistrate, at no additional compensation until the appointment of a new full-time magistrate at Milwaukee.
- (3) Discontinued the part-time magistrate position at Fond du Lac.

## EIGHTH CIRCUIT

### Minnesota:

- (1) Converted the combination bankruptcy judge-magistrate position at Duluth to a full-time magistrate position.

### Nebraska:

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

### North Dakota:

- (1) Continued the part-time magistrate position at Fargo for an additional four-year term at the currently authorized salary of \$4,680 per annum.
- (2) Increased the salary of the part-time magistrate position at Minot from \$2,700 per annum to \$4,680 per annum.

## NINTH CIRCUIT

### California, Northern:

- (1) Converted the part-time magistrate position at Oakland to a full-time magistrate position at Oakland or San Francisco.

### California, Southern:

- (1) Continued the part-time magistrate position at El Centro for an additional four-year term at the currently authorized salary of \$27,820 per annum.

### Idaho:

- (1) Converted the part-time magistrate position at Boise to a full-time magistrate position.
- (2) Continued the part-time magistrate position at Boise for an additional four-year term or until the appointment of a full-time magistrate, at the currently authorized salary of \$27,820 per annum.

- (3) Increased the salary of the part-time magistrate position at Pocatello from \$3,600 per annum to \$8,528 per annum.
- (4) Increased the salary of the part-time magistrate position at Coeur d'Alene from \$2,700 per annum to \$8,528 per annum.
- (5) Changed the location of the part-time magistrate position at Coeur d'Alene to "Coeur d'Alene or Moscow."
- (6) Discontinued the part-time magistrate position at Lewiston effective upon implementation of the increase in salary of the part-time magistrate position at Coeur d'Alene.
- (7) Discontinued the part-time magistrate position at Twin Falls effective upon implementation of the increase in salary of the part-time magistrate position at Pocatello.

Nevada:

- (1) Increased the salary of the part-time magistrate position at Las Vegas from \$900 per annum to \$24,024 per annum.

TENTH CIRCUIT

Colorado:

- (1) Continued the full-time magistrate position at Denver, which is due to expire on October 5, 1983, for an additional eight-year term.

Utah:

- (1) Authorized a part-time magistrate position at Salt Lake City, at a salary of \$31,800 per annum.
- (2) Discontinued the authority of the clerk of court at Salt Lake City to perform magistrate duties upon the appointment of a part-time magistrate at that location.

Wyoming:

- (1) Continued the part-time magistrate position at Jackson for an additional four-year term at the currently authorized salary of \$4,680 per annum.
- (2) Continued the part-time magistrate position at Rawlins for an additional four-year term at the currently authorized salary of \$936 per annum.

ELEVENTH CIRCUIT

Alabama, Northern:

- (1) Continued the part-time magistrate position at Decatur (or Huntsville) for an additional four-year term at the currently authorized salary of \$4,680 per annum.

Florida, Southern:

- (1) Increased the salary of the part-time magistrate position at Key West from \$6,400 per annum to \$21,112 per annum.

Georgia, Northern:

- (1) Increased the salary of the part-time magistrate position at Gainesville from \$6,400 per annum to \$8,528 per annum.
- (2) Authorized the part-time magistrate at Gainesville to exercise jurisdiction in the adjoining Middle District of Georgia.

Georgia, Middle:

- (1) Continued the part-time magistrate position at Columbus for an additional four-year term at the currently authorized salary of \$16,120 per annum.
- (2) Continued the part-time magistrate position at Macon for an additional four-year term.
- (3) Reduced the salary of the part-time magistrate position at Macon from \$15,500 per annum to \$10,400 per annum.

- (4) Continued the part-time magistrate position at Albany for an additional four-year term at the currently authorized salary of \$4,680 per annum.
- (5) Discontinued the part-time magistrate position at Athens.

Georgia, Southern:

- (1) Continued the part-time magistrate position at Brunswick (or Waycross) for an additional four-year term at the currently authorized salary of \$6,656 per annum.

At the request of Chief Judge Godbold, the Executive Committee of the Conference was authorized to consider promptly any recommendation emanating from the next meeting of the Magistrates Committee for an additional full-time magistrate position at Montgomery in the Middle District of Alabama.

#### **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

Judge Robert E. DeMascio, Chairman of the Committee on the Administration of the Bankruptcy System, presented the Committee's report.

#### **ARRANGEMENTS FOR BANKRUPTCY JUDGES**

The Conference upon the recommendation of the Committee took the following action with respect to changes in arrangements for bankruptcy judges. These changes are to become effective when appropriated funds are available.

#### **FOURTH CIRCUIT**

Northern and Southern Districts of West Virginia:

- (1) Authorized concurrent State-wide jurisdiction for the bankruptcy judges of the Northern and Southern Districts of West Virginia.

## NINTH CIRCUIT

District of Oregon:

- (1) Increased the salary of the part-time bankruptcy judge at Eugene from \$28,800 per annum to \$31,800 per annum.

### GUIDELINES FOR CHAPTER 13 ADMINISTRATION

The Guidelines for the administration of Chapter 13 cases, previously adopted by the Conference, require Standing Chapter 13 Trustees with receipts in excess of \$100,000 per annum to have an annual audit of their accounts by an independent auditor. The Committee pointed out that the cost of such an audit has risen substantially over the past ten years and, as a consequence, a trustee whose receipts are in the range of \$100,000 is unable to pay for an audit and remain within the five percent limit on costs imposed by the Bankruptcy Code. It was the view of the Committee that the Guidelines should be modified to require an annual audit only when the receipts of the Standing Trustee for a 12-month period exceed \$200,000. Upon the recommendation of the Committee the Conference amended Guideline No. 2 to read as follows:

Where the annual receipts of the Standing Chapter 13 trustee are equal to or exceed \$200,000, there should be an annual audit by an independent auditor.

### BANKRUPTCY WORKLOAD

Judge DeMascio informed the Conference that the Committee had requested the Administrative Office to develop statistical information on bankruptcy case filings and workload on a county-by-county basis. The Committee believes this information will be useful in determining whether to expand or reduce the number of places of holding bankruptcy court. This information is scheduled to be reviewed at the next meeting and the Committee hopes to present an analysis at the next session of the Conference.

## BANKRUPTCY LEGISLATION

The Conference reviewed the various proposals pending in the 98th Congress which address the issue of bankruptcy jurisdiction arising out of the Supreme Court decision in the Northern Pipeline case. After full discussion the Conference adopted the following statement:

There is no present crisis in the operation of the bankruptcy court system. Members of the Judicial Conference of the United States unanimously agree that the Model Rule for the Continued Operation of the Bankruptcy Court System is working well. The district and bankruptcy judges are administering the business of the bankruptcy courts effectively.

Since March of 1977 the Judicial Conference has strongly opposed the creation of a separate court for bankruptcy proceedings whether constituted under Article I or Article III of the Constitution. The Conference recommends that the Congress not enact H.R. 3, 98th Congress, or any bill, that creates separate Article III bankruptcy courts.

The Supreme Court in Northern Pipeline invalidated part of the jurisdiction conferred upon existing departmental bankruptcy courts in the 1978 Bankruptcy Reform Act. Congress must decide whether to clarify bankruptcy jurisdiction or restructure bankruptcy courts.

If Congress decides to clarify jurisdiction the Judicial Conference recommends legislation that will statutorily authorize those procedures now employed under the Model Rule for the Continued Operation of the Bankruptcy Court System.

If Congress decides to restructure the bankruptcy courts, the Judicial Conference supports the concepts embodied in S. 443, 98th Congress, and opposes those embodied in H.R. 3.

The Judicial Conference reaffirms its September 1982 recommendation for 24 additional appellate and 51 district court judgeships previously requested by this Conference independent of any bankruptcy amendments.

### **COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM**

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

### **SENTENCING REFORM**

The Conference in September, 1982 (Conf. Rept. p. 88) authorized the Committee to draft legislative alternatives to the creation of an independent commission on sentencing, the appellate review of sentences and the creation of comprehensive statutory sentencing procedures contained in various bills introduced in the Congress in recent years. Judge Tjoflat reviewed the history of the proposals relating to sentencing reform and submitted to the Conference a Committee-approved draft bill which would, in the view of the Committee, prescribe a more workable sentencing model at far less cost than any of the bills now being considered in the Congress. The proposed bill has three major features:

1. A requirement that the court at the time of sentencing state how long a defendant will serve if the rules of the institution on confinement are observed.
2. The promulgation of sentencing guidelines by the Judicial Conference upon the advice of a Committee on Sentencing Guidelines with authority in the sentencing judge to depart from the guidelines if the purposes of sentencing are best served by departure.
3. Authority for either the Government or the defendant to appeal a sentence on the ground it was imposed as a result of incorrect

application of the guidelines, or in violation of prescribed procedures, or otherwise in violation of the laws or Constitution. A sentence imposed outside the guidelines would be reviewable only if "plainly inappropriate." An appeal by the government would require the personal approval of the Attorney General or the Solicitor General.

The Conference approved the draft bill submitted by the Committee and authorized its transmission to the Congress.

#### SENTENCING INSTITUTES

The Conference in September, 1982 (Conf. Rept. p. 87) approved the time, place, participants, and tentative agenda for a Joint Institute on Sentencing for the judges of the Fourth and Eleventh Circuits to be held at a location near the Federal Correctional Institution at Butner, North Carolina, April 18-20, 1983. The Committee submitted the final agenda for the Sentencing Institute which the Conference approved.

Judge Tjoflat informed the Conference that the Committee is also considering plans for an Institute for the First, Third and District of Columbia Circuits to be held at the Federal Correctional Institution at Otisville, New York, in the Spring of 1984. The Committee has asked the chief judges in all three circuits to appoint judges to a planning committee.

#### COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

#### BAIL REFORM LEGISLATION

Judge Harvey informed the Conference that the Committee had reviewed a draft bill, submitted for its consideration by the Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, which would amend the Bail Reform

Act of 1966. The draft bill would authorize a judicial officer in setting bail to consider "danger to other persons or the community" in the setting of conditions of pretrial release, as previously recommended by the Conference. (Conf. Rept. September 1971, p. 80; March 1977, p. 17; and September 1981, p. 92). The Committee suggested the following amendments to the draft bill:

- (1) That the judicial officer be permitted to state his reasons for imposing any special conditions of release orally on the record as well as in writing.
- (2) That a hearing upon a government motion that a person be detained for violation of a condition of release imposed to assure the safety of other persons and the community be held promptly rather than within a specific time period and that the order following the hearing also be entered promptly.
- (3) That a judicial officer not be required to find that there was "substantial probability that the accused committed the original offense with respect to which release was originally granted" before ordering the pretrial detention of a person found to have violated a condition of his release.
- (4) That the provision of the bill requiring a pretrial detainee to be brought to trial within a specified number of days be eliminated as duplicative of provisions of the Speedy Trial Act.
- (5) That the bill not include a requirement that discovery before a pretrial detention hearing be "as full and free as possible, consistent with the defendant's rights under the Fifth Amendment to the United States Constitution."
- (6) That specific provisions for the place and conditions of confinement of a person ordered detained pending trial not be included in the bill.

- (7) That the provision making disclosure of pretrial detention to the jury grounds for a mistrial in all cases not be included in the bill.
- (8) That the provision that a defendant convicted of an offense be given credit against any term of imprisonment for time spent in custody pursuant to an order of pretrial detention be stricken as duplicative of existing law.

The Conference thereupon approved the Committee's report.

### **COMMITTEE ON THE OPERATION OF THE JURY SYSTEM**

Judge T. Emmet Clarie, Chairman of the Committee on the Operation of the Jury System, presented the Committee's report.

### **GRAND JURY REFORM LEGISLATION**

Judge Clarie informed the Conference that the House of Delegates of the American Bar Association, at its meeting in January 1982, approved a Model Grand Jury Act which incorporates many of the reforms in grand jury procedures recently proposed in Congress and elsewhere. Judge Clarie stated that a subcommittee of the Jury Committee had concluded, after a thorough review of the Model Act, that although certain provisions were desirable, many others were undesirable and were in conflict with positions previously taken by the Conference. The Committee therefore recommended that the Model Act be disapproved by the Conference.

After full discussion the Conference accepted the Subcommittee's report on the Model Grand Jury Act and voted to recommend that the Model Act not be enacted into law. The Subcommittee's report should be a valuable resource to those considering Grand Jury Reform and is available to Congress or others who wish to address the issue.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

The written report of the Committee on Intercircuit Assignments, submitted by the Chairman, Judge George L. Hart, Jr., was received by the Conference.

The report indicated that during the period August 15, 1982 to February 15, 1983, the Committee recommended 83 intercircuit assignments to be undertaken by 64 judges. Of this number 14 were senior circuit judges, 6 were active circuit judges, 30 were senior district judges, 10 were active district judges, 3 were active judges of the Court of International Trade and 1 was an active bankruptcy judge.

Thirty-six judges undertook 46 assignments to the courts of appeals and 31 judges undertook 36 assignments to district courts. In addition, one active bankruptcy judge was assigned to assist a bankruptcy court outside the circuit.

## **COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT**

Judge Thomas J. MacBride, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of the Committee.

## **APPOINTMENTS AND PAYMENTS**

Judge MacBride submitted to the Conference a report on appointments and payments under the Criminal Justice Act for the fiscal year ending September 30, 1982. The report indicated that Congress appropriated \$28,670,000 for "Defender Services" for the fiscal year 1982 and that an unobligated balance of approximately \$2,000,000 had been carried forward from the fiscal year 1981 making a total of \$30,670,000 available for obligations during the year. The Committee estimated that the entire amount available for the fiscal year 1982 will be expended.

During the year approximately 46,000 persons were represented under the Criminal Justice Act, compared to 44,410 persons represented during the fiscal year 1981, an increase of 3.6 percent. Of these persons Federal Public and Community Defender Organizations represented 22,677 or 49.3

percent of the total representations, compared to 50.7 percent in the fiscal year 1981, and 49.5 percent in the fiscal year 1980.

The Conference authorized the Director of the Administrative Office to distribute copies of the report to all chief judges, to all Federal Defender Organizations, and to others who may request copies.

#### BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Conference, upon the recommendation of the Committee, approved supplemental funding for the Federal Public Defender Organization for the Eastern District of California for the fiscal year 1983 in the amount of \$25,343 for the purpose of adding one attorney position to the staff of the branch office located in Fresno.

#### GRANT REQUESTS - COMMUNITY DEFENDER ORGANIZATIONS

At its session in September, 1982 (Conf. Rept. p. 110) the Conference deferred consideration of the funding level for the Community Defender Organization in the District of Oregon. Judge MacBride informed the Conference that since then the Executive Director of the Community Defender Organization has submitted his resignation to be effective May 31, 1983 and that the judges of the District of Oregon have decided to amend their Criminal Justice Act plan to provide for the establishment of a Federal Public Defender Organization to replace the existing Community Defender Organization. The amended plan has been submitted to the Judicial Council of the Ninth Circuit for approval. Because of these developments the Committee recommended that the Conference approve supplemental funds for the fiscal year 1983 in the amount of \$77,766 and funds for the fiscal year 1984 in the amount of \$516,260 for "Federal Defender" Organization activities within the District of Oregon, with the proviso that the Director of the Administrative Office will be authorized to direct or redirect all or any part of available past or future approved funding to any newly established Federal Defender Organization for the district, and to make such adjustments to the funding levels as is necessary or

appropriate to meet the needs of providing for the effective implementation of the Criminal Justice Act in that district, consistent with the Director's authority to approve and modify supplemental funding. This recommendation was approved by the Conference.

## GUIDELINES

The Committee submitted to the Conference the following amendments to the Guidelines for the Administration of the Criminal Justice Act which were approved by the Conference:

1. An amendment to Paragraph 2.01 D., and a new Appendix G to include a reference to and the text of the "Model Plan for the Compensation, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act".
2. Amendments to Paragraphs 2.18 and 4.04 to provide that Criminal Justice Act appointments be made in the name of the Federal Defender Organization, rather than in the name of individual staff attorneys within the Federal Defender Organization.
3. An amendment to Paragraph 4.02 A. to conform this section to a recent statutory change placing the power to appoint Federal Public Defenders in the courts of appeals rather than the judicial councils of the circuits.

## COMMITTEE ON PACIFIC TERRITORIES

Judge Anthony M. Kennedy, Chairman of the Committee on Pacific Territories, presented the Committee's report.

Judge Kennedy informed the Conference that the Committee held public hearings in Guam and Saipan during January, 1982, on court structure and jurisdiction in these territories. Various problems relating to the courts in these

territories and solutions thereto were presented at the hearing and numerous written comments were received from concerned parties. Based upon this study the Committee recommended the enactment of legislation to accomplish the following:

- (1) Authorize the Guam legislature in its discretion to establish a local appellate court.
- (2) Grant diversity-type jurisdiction to the District Court of Guam.
- (3) Authorize appeals from decisions of the District Court of the Northern Mariana Islands directly to the Court of Appeals for the Ninth Circuit without a previous review by the appellate division of the district court.
- (4) Authorize appeals from decisions of the local courts on Guam and the Northern Mariana Islands, as well as the District Court for the Northern Mariana Islands, to the Court of Appeals for the Ninth Circuit.
- (5) Maintain jurisdiction of the District Court for the Northern Mariana Islands over the Trust Territory of the Pacific Islands without statutory alteration until the case law exploring existing jurisdiction is more fully developed.
- (6) Provide for a study of the United States Code as it relates to these territories so that any anomalies in the judicial process may be eliminated or other statutory changes made.

These recommendations of the Committee were approved by the Conference.

**AD HOC COMMITTEE ON THE LAW CLERK  
SELECTION PROCESS**

Judge Carl McGowan, Chairman of the Ad Hoc Committee on the Law Clerk Selection Process, reported that the Committee had met with representatives of law schools and had explored with them, and with other judges, the prospects of coordinating the selection of law clerks by Federal judges to avoid the confusion that now exists. The Committee proposed a resolution establishing a policy with respect to the selection of law clerks by the Federal judiciary which was agreed to by the Conference and authorized to be distributed immediately to all judges together with an appropriate explanation. The resolution adopted by the Conference is as follows:

Applications for law clerkships will neither be received nor considered prior to September 15 in a student's third year of law school. This policy shall be effective immediately for a trial period of two years, at which time it will be reexamined by the Conference at its March 1985 meeting in light of the experience under it and with the benefit of the views of all federal judges formed by reference to that experience.

**COMMITTEE TO REVIEW CIRCUIT COUNCIL  
CONDUCT AND DISABILITY ORDERS**

The written report of the Committee to Review Circuit Council Conduct and Disability Orders, submitted by the Chairman, Judge Clement F. Haynsworth, Jr., was received by the Conference. Since its last report to the Conference the Committee has issued only one opinion which concluded that under 28 U.S.C. 372(c)(10) only the judicial council of the circuit has jurisdiction to review dismissals of complaints by chief circuit judges under 28 U.S.C. 372(c)(3). No further review is provided. Accordingly the Committee advised that all petitions to the Conference to review dismissal orders of chief circuit judges will be dismissed for want of jurisdiction.

## **COURTROOM PHOTOGRAPHS**

The Chief Justice informed the Conference that a group of television and news media organizations had formally petitioned the Conference to review the provisions of the Code of Judicial Conduct and the Federal Rules of Criminal Procedure prohibiting the use of cameras in the courtroom during the conduct of court proceedings. The petition will be referred to an appropriate Committee of the Conference.

## **ELECTIONS**

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected Judge Howard C. Bratton to membership on the Board of the Federal Judicial Center for a term of four years succeeding Judge Theodore Voorhees whose term expires on March 28, 1983. The Conference also elected Judge Daniel M. Friedman to membership on the Board of the Federal Judicial Center to succeed Judge John D. Butzner, Jr., who has become a senior judge.

The Conference, pursuant to 28 U.S.C. 332(f), elected Judge John H. Pratt to membership on the Board of Certification for Circuit Executives to succeed Judge George E. MacKinnon who has resigned effective March 31, 1983, and to serve until July 1, 1986; and reelected Mr. John W. Macy, Jr., for a term of three years, until July 1, 1986.

## **PRETERMISSION OF TERMS OF THE COURTS OF APPEALS**

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the United States Court of Appeals for the Tenth Circuit at Oklahoma City, Oklahoma, and Wichita, Kansas during the calendar year 1983.

**RELEASE OF CONFERENCE ACTION**

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

Warren E. Burger  
Chief Justice of the United States

May 27, 1983

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