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

March 8-9, 1984

Washington, D. C.  
1984

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**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

**William E. Foley  
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, 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 8-9, 1984**

The Judicial Conference of the United States convened on March 8, 1984, 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 9. The Chief Justice presided and the following members of the Conference were present:

**First Circuit:**

Chief Judge Levin H. Campbell  
Judge W. Arthur Garrity, Jr., District of Massachusetts

**Second Circuit:**

Chief Judge Wilfred Feinberg  
Chief Judge Jack B. Weinstein, Eastern 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  
Judge Adrian G. Duplantier, Eastern District of Louisiana

**Sixth Circuit:**

Chief Judge Pierce Lively  
Judge Carl B. Rubin, Southern District of Ohio\*

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

**Seventh Circuit:**

Chief Judge Walter J. Cummings  
Chief Judge John W. Reynolds, Eastern District of  
Wisconsin

**Eighth Circuit:**

Judge Gerald P. Heaney\*\*  
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:**

Judge William J. Holloway\*\*\*  
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  
Donald P. Lay who was unable to attend.

\*\*\* Designated by the Chief Justice in place of Chief Judge  
Oliver Seth who was unable to attend.

Circuit Judges Arlin M. Adams, Otto R. Skopil, Jr., Edward A. Tamm, and Gerald B. Tjoflat; Senior Circuit Judges John D. Butzner, Jr., and Carl McGowan; Senior District Judges A. Sherman Christensen, Elmo B. Hunter, and Thomas J. MacBride; and District Judges T. Emmet Clarie, Robert E. DeMascio, and James Lawrence King, attended all or some of the sessions of the Conference.

The Acting Deputy Attorney General of the United States, Honorable D. Lowell Jensen and the Director of the United States Marshals Service, Stanley E. Morris, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

The President of the American Bar Association, Wallace D. Riley, attended the Conference briefly on the second day and addressed the Conference on the activities of the Association relating to improvements in the administration of justice.

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 of the Federal Judicial Center; Charles W. Nihan, Deputy Director, attended the sessions of the Conference. Mark W. Cannon, Administrative Assistant to the Chief Justice, also attended the sessions of the Conference.

The Director of the Federal Judicial Center, A. Leo Levin, presented a 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, submitted to the Conference a brief report on the judicial business of the courts during the calendar year 1983.

## JUDICIAL BUSINESS OF THE COURTS

Mr. Foley stated that appeals filed in the United States courts of appeals during the calendar year 1983 totalled 31,800, including 1,014 appeals filed in the Court of Appeals for the Federal Circuit. There were 30,528 appeals terminated, including 748 in the Federal Circuit, and on December 31, 1983 there were 23,713 appeals pending including 557 in the Federal Circuit. Excluding that circuit, the number of appeals filed in 1983 increased 9.4 percent.

Civil cases filed in the United States district courts in 1983 increased to a record 255,546 cases, 14.3 percent more than in 1982 and 34.2 percent more than the number filed in 1981. There were 226,307 civil cases closed, 11.7 percent more than the previous year, but 29,239 cases less than the number filed. As a result, civil cases pending rose to a record 246,863 cases as of December 31, 1983.

During the year there were 36,636 criminal cases filed in the district courts, up 11.6 percent from the previous year. There were 33,852 criminal cases closed, and the pending caseload increased approximately 16 percent to 20,276 as of December 31, 1983.

In 1983 there were 349,148 bankruptcy petitions filed in the bankruptcy courts, a decrease of 8.3 percent from the previous year. There were 312,226 bankruptcy cases closed and the number of pending petitions rose to a record 596,735 as of December 31, 1983.

### JOINT FACILITIES FOR THE ADMINISTRATIVE OFFICE AND THE FEDERAL JUDICIAL CENTER

Mr. Foley informed the Conference that the Architect of the Capitol was considering the prospects of constructing a building on Capital Hill to be occupied jointly by the Administrative Office and the Federal Judicial Center. The Conference thereupon adopted the following resolution:

The Administrative Office of the United States Courts, established by the Congress in 1939, operates under the policy guidance of the Judicial Conference of the United States. Initially located in the Supreme Court Building, the growth and size

of the Administrative Office required it to acquire additional space as early as 1954 and currently, the Administrative Office is located in five different buildings in downtown Washington and an adjacent Maryland community.

The Federal Judicial Center, established fifteen years ago as the research, training and development arm of the Judiciary, which works in close coordination with the Administrative Office, now occupies three different sites in downtown Washington.

The Judicial Conference of the United States takes note of the fact that having these separate offices creates a major obstacle to the achievement of efficiency and productivity and an undesirable hindrance to the necessary oversight of the Chief Justice. The Judicial Conference also notes that the Master Plan for the United States Capitol envisages a single office building for these purposes to be located immediately to the east of Union Station on land now owned by the Government.

Therefore the Judicial Conference hereby urges the Congress to consider favorably a proposal to design and construct a new office building on the above mentioned site in order to bring together the offices of the Administrative Office of the United States Courts, the Federal Judicial Center, the headquarters of the Judicial Conference of the United States and satellite groups such as the offices of the Clerk of the Judicial Panel on Multidistrict Litigation and the Board of Certification for Circuit Executives.

Given the current rental scales in the District of Columbia, it appears that the aggregate current payments for rent would amortize the cost of a building in a little over 7 years.

## **JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ended December 31, 1983, the Panel had acted on 17 new groups of multidistrict litigation and had ordered transfer in 10. These 10 groups encompass 162 separate civil actions of which 73 were centralized for consolidated pretrial proceedings with 89 actions already pending in the various transferee districts at the time of transfer. The Panel denied transfer of 39 actions.

Since its creation in 1968 the Panel has transferred 11,186 civil actions for centralized pretrial proceedings in carrying out its responsibilities.

## **COMMITTEE ON THE JUDICIAL BRANCH**

In the absence of Judge Frank M. Coffin, Chairman of the Committee on the Judicial Branch, Judge Arlin M. Adams, a Committee member, presented a brief oral report.

Judge Adams stated that the Committee had recently met to formulate plans for a presentation to be made to the quadrennial Commission on Executive, Legislative and Judicial Salaries to be appointed this year. He requested permission to submit the presentation in the name of the Conference, to which there was no objection. Judge Adams also stated that the Committee would consider the Administrative Office study of the effects on judges and the judicial system of the imposition of Social Security coverage of judges who entered on duty prior to the enactment of the 1983 amendments. Congress requested the study and the Administrative Office has retained the services of a qualified actuary.

## **COMMITTEE ON COURT ADMINISTRATION**

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

## AUTOMATION

Judge Hunter informed the Conference that the Subcommittee on Judicial Improvements had received a detailed briefing on the elements of automation and the development and operation of automated systems within the Judiciary. The Subcommittee hopes to complete its review of the five-year plan for automation and to file its recommendations in time for the next session of the Conference.

Judge Hunter further stated that the Committee had considered whether to authorize automated appellate, civil, and bankruptcy dockets in lieu of hard copy dockets as already approved by the Conference for criminal dockets. The Conference was advised that the Advisory Committees on Civil and Appellate Rules were considering rules changes to permit the use of automated dockets. Upon the recommendation of the Committee, the Conference approved the following recommendation:

That the Judicial Conference approve substitutions of automated courts of appeals, civil, and bankruptcy dockets for the present manually prepared dockets, provided that, at the conclusion of the case, a printout of the entire record is made and bound in the regular docket books of the court.

## RECORDS DISPOSITION

The Conference at its September, 1982 session (Conf. Rpt., p. 119) approved a schedule for the disposition of the records of the United States courts. The Committee reported that the transition to the revised records schedule has proceeded smoothly in all courts except the bankruptcy courts. Changes in the Rules of Bankruptcy Procedure and a further analysis of the records retention requirements require a revision to the schedule for bankruptcy records in order to correct deficiencies and reduce the amount of time necessary to sort, transfer, or dispose of bankruptcy records. The National Archives and Records Service has given preliminary approval to a revised schedule for bankruptcy records. Upon the recommendation of the Committee the Conference approved the revisions to the records disposition schedule for bankruptcy cases.

## UNITED STATES COURTS DESIGN GUIDE

Judge Hunter informed the Conference that since May, 1979 the Subcommittee on Judicial Improvements had been working with the staff of the Administrative Office to revise the United States Courts Design Guide. In January, 1982 the Committee referred the Guide to the various circuit judicial councils for comment, thereafter revised the Guide in the light of the comments received, and distributed the Guide to each member of the Conference in September, 1983. Thereafter the judicial councils in two circuits submitted additional recommendations for changes in the Guide and further changes were adopted by the Subcommittee.

The Conference approved the recommendations for changes in the Guide submitted by the Committee, and approved the Guide as modified.

### PLACES OF HOLDING COURT

Judge Hunter informed the Conference that the United States District Court in Vermont and the Judicial Council of the Second Circuit had recommended that Bennington be statutorily designated as a place of holding court in that district. Upon the recommendation of the Committee the Conference approved the designation of Bennington, Vermont as an additional place of holding court and authorized the transmission of an appropriate request to the Congress.

H.R. 4662, 98th Congress, would create a seventh division in the Southern District of Texas by splitting the Brownsville Division and designating McAllen as a place of holding court in the new division. Judge Hunter informed the Conference that both the district court and the Judicial Council of the Fifth Circuit had recommended approval. The Conference thereupon recommended the enactment of H.R. 4662.

### DISTRIBUTION OF REPORTS

The Conference in March, 1983 (Conf. Rpt., p. 12), authorized the Committee to consider whether the circulation of Conference reports or other reports to all judges might be curtailed. Judge Hunter informed the Conference that each

member of the Subcommittee on Judicial Improvements had reviewed the materials received in his own office over a period of time to determine if any unnecessary materials could have been eliminated. After full consideration the Subcommittee concluded that no action could be taken that would satisfy all judges or provide worthwhile guidance to the Administrative Office and the Federal Judicial Center. Accordingly, the Committee made no recommendation for procedural changes.

#### UNIFORM RULES OF DISCIPLINARY ENFORCEMENT

At its session in September, 1978 (Conf. Rpt., p. 42) the Conference approved the Model Rules of Disciplinary Enforcement promulgated by the American Bar Association and recommended their adoption by all federal district and appellate courts. Thereafter the Conference approved an amendment to the model rules regarding the collection of fees to defray the cost of operation of the rules. (Conf. Rpt., Mar., 1979, p. 7). Since that time many courts have adopted the disciplinary enforcement rules, but some have not, contending that their procedures are superior to the model rules.

The Committee pointed out that the model rules require that disciplinary actions taken by a court be reported to all courts where the attorney is admitted to practice and to the American Bar Association National Discipline Data Bank. The federal trial and appellate courts which have not adopted the Model Rules do not follow this procedure. The Committee believes that unless disciplinary actions are reported to all licensing authorities they will have little effect on the practice before other courts of unscrupulous individuals. The lack of continuous communication of disciplinary actions depletes the deterrent value of the disciplinary process. The problem is growing because of the nationwide character of law firms and individual practices. The Committee, therefore, recommended that the Conference take the following action:

- (1) impress upon the courts of appeals and the district courts the necessity of adopting the Model Rules of Disciplinary Enforcement unless current rules for disciplinary proceedings are objectively more effective and efficient for the implementation of attorney discipline;

- (2) impress upon the courts of appeals, the Judicial Councils of each Circuit and the district courts the importance of reporting all private and public discipline of attorneys to all licensing authorities with jurisdiction over the attorney or attorneys disciplined;
- (3) request that state courts report all disciplinary actions taken against attorneys who are members of the bar of federal courts to the respective federal courts; and
- (4) recommend that all public discipline imposed by all state and federal courts be reported to the American Bar Association National Discipline Data Bank, including public discipline imposed over the last five years unless previously submitted.

These recommendations of the Committee were approved by the Conference.

#### JUDICIAL IMMUNITY

The Conference requested that the Committee give further study to various proposals to amend federal law to preclude suits for damages or the imposition of attorney's fees against judges or judicial officers for actions arising out of the performance of their official duties.

#### LAW CLERKS AND SECRETARIES

The Conference in March, 1978 (Conf. Rpt., p. 12) approved qualification standards for a secretary to a federal judge at grade JSP-11 requiring eight years of experience as a secretary to a federal judge of which seven were to be in grade JSP-10. The requirement of seven years of experience in grade JSP-10, when added to the seven years of total experience necessary for that grade, results in a total of fourteen years of experience for a secretary to be eligible for grade JSP-11. The Committee pointed out that secretaries in private law firms reach the top level after only nine to ten years of experience and that secretaries in the Executive Branch of Government qualify for grade GS-10 after seven years of experience but are

eligible to be promoted to grade GS-11 after only one year of experience.

Upon the recommendation of the Committee the Conference modified the qualification standards for a secretary to a federal judge to require four years of experience as a secretary to a federal judge, of which three years must be in grade JSP-10, in order to qualify for grade JSP-11. This change in the qualification standards is subject to the availability of funds.

#### ADMINISTRATIVE ASSISTANTS TO CHIEF JUDGES

Judge Hunter reported that the Committee had considered a proposal that a secretarial position on the personal staff of the Chief Judge of a district court with five to ten judges be reclassified as an administrative aide at grade JSP-13. The Committee pointed out that many of the duties suggested for the position are those currently set forth in the "Mission Statement for the Office of the Clerk" which was presented at the October, 1974 meeting of the Conference of Metropolitan Chief Judges. Further, the Federal Judicial Center will soon be conducting an evaluation of the district court executive program. While smaller metropolitan courts may not qualify to have a district court executive, the Committee felt that it was premature to consider an administrative position at this time. Upon the recommendation of the Committee the Conference rejected the proposal for an administrative position in district courts with five to ten judgeship positions.

#### COURT REPORTERS' SICK LEAVE

At its session in March, 1982 (Conf. Rpt., p. 12) the Conference approved the use of a substitute reporter on a contractual basis when an official court reporter becomes ill, limited, however, to not more than 30 days in any calendar year. Subsequently the Conference approved the recommendation of the Committee that court reporters who are assigned a "regular tour of duty" must come under the Leave Act for purposes of annual leave. (Conf. Rpt., Sept., 1983, p. 49). The Committee was further authorized to give consideration to the need to change the current sick leave policy.

Judge Hunter reported that the Committee is now convinced that having court reporters covered by one portion of the Leave Act and not the other is contrary to the purposes of the Act. The Committee therefore recommended and the Conference adopted the following policy:

Court reporters who are assigned regular tours of duty are to earn sick leave according to the Leave Act. Thus, the Conference's policy on sick leave adopted at its March 1982 meeting is rescinded. Sick leave will be authorized only in accordance with the Leave Act, i.e., reporters who have no regular tours of duty may not remain in a pay status if they cannot record the proceedings because they are ill, unless they provide their own substitutes.

### COURT REPORTERS' TRANSCRIPTS

The United States Court Reporters Association requested that the Judicial Conference amend the transcript format standards adopted in March, 1983 (Conf. Rpt., p. 11) and subsequently set out in Chapter XVIII of the Court Reporter's Manual. Judge Hunter stated that the Committee had thoroughly considered all of the proposals and recommended the adoption of the following:

- (1) On the title page, designate "civil" or "criminal" docket number; identify the judge; delete "transcript ordered by";
- (2) On the index, indicate "further redirect examination"; list exhibits as "exhibits" rather than as "evidence";
- (3) Change the format so that when transcribing testimony through an interpreter it will be assumed that answers are made in a foreign language and interpreted unless a parenthetical (in English) is inserted.

These changes were approved by the Conference.

## **AMENDED DISCOVERY RULES**

The Conference discussed the recent amendments to the Federal Rules of Civil Procedure which are designed to require a greater level of judicial management of litigation by district judges. The Chief Justice requested that the district courts conduct meetings with members of their bar to acquaint them with these new rules and that programs of this type also be conducted at the circuit level.

## **JUDICIAL ETHICS COMMITTEE**

The written report of the Judicial Ethics Committee, chaired by Judge Edward A. Tamm, was received by the Conference. The report indicated that the Committee had received 1,871 financial disclosure reports for the calendar year 1982 and that the Committee had addressed 839 letters of inquiry to judicial officers and employees concerning omissions or commissions in their 1982 filings.

## **ADVISORY COMMITTEE ON CODES OF CONDUCT**

The written report of the Advisory Committee on Codes of Conduct, under the chairmanship of Judge Howard T. Markey, indicated that since its last report the Committee had received 19 inquiries and had issued 18 advisory responses. The Committee has also responded to 12 telephone inquiries that did not require reference to the Committee.

## **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 from August 20, 1983 through February 15, 1984, the Committee had recommended 84 assignments to be undertaken by 62 judges. Of this number, 12 were senior circuit judges, 11 were active circuit judges, 2 were active district judges, 3 were active judges of the Court of International Trade, 2 were active judges of Bankruptcy Courts and 1 was a retired Supreme Court Justice.

A retired Justice of the Supreme Court, 12 senior circuit judges, 11 active circuit judges, 15 senior district judges, and 2 active judges of the Court of International Trade undertook 57 assignments to courts of appeals. One senior circuit judge, 17 senior district judges, 2 active district judges and 1 active judge of the Court of International Trade undertook 25 assignments to the United States district courts. In addition, two active bankruptcy judges were assigned to bankruptcy courts outside their respective circuits.

### **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 Committee's report.

### **SENTENCING INSTITUTES**

The Conference in September, 1983 (Conf. Rpt., p. 69) approved tentative plans for the convening of an Institute on Sentencing for the judges of the First, Third, and District of Columbia Circuits to be held at the Federal Correctional Institution at Otisville, New York, April 30 to May 2, 1984. The Committee submitted the final agenda for the Sentencing Institute which the Conference approved.

The Conference, upon the recommendation of the Committee, also authorized the convening of a Joint Institute on Sentencing for the judges of the Fifth and Seventh Circuits to be held some time in July, 1985 and a Joint Institute on Sentencing for the judges of the Ninth Circuit to be held during the fiscal year 1985. The convening of these Institutes on Sentencing is subject to the approval of an agenda to be presented at a future session of the Conference.

### **APPELLATE REVIEW OF SENTENCES**

Judge Tjoflat reviewed the history of sentencing reform legislation as reported to the Conference in September, 1982 (Conf. Rpt., p. 88), March, 1983 (Conf. Rpt., p. 28), and September, 1983 (Conf. Rpt., p. 68). He stated that on February 2, 1984 the Senate approved for the fourth time a determinate sentencing model providing for sentencing pursuant to guidelines promulgated by a sentencing commission

and appellate review of sentences in the courts of appeals. This sentencing model, which embodies the Senate versions of sentencing reform proposals previously considered and rejected by the Conference, is contained in the comprehensive Crime Control Act, S. 1762 and the Sentencing Reform Act, S. 668. The Senate adopted these respective measures by votes of 91 to 1 and 85 to 3. The Senate rejected the Conference's compromise measure, S. 1182, approved in March, 1983 (Conf. Rpt., p. 28). That measure is now pending in the House as H.R. 3128 along with several other proposals, including H.R. 4554, the Sentencing Reform Act of 1983, which contain provisions previously considered and rejected by the Conference.

Each of the pending sentencing reform proposals may, if enacted, have a substantial impact on the workload of the courts of appeals and, therefore, should receive continuous study and re-evaluation. Accordingly, the Conference resolved that the subject of appellate review of sentencing be recommitted to the Committee for further study and report.

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

Judge Robert E. DeMascio, Chairman of the Committee on 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.

#### **EIGHTH CIRCUIT**

North Dakota:

- (1) Ratified the action taken by the Executive Committee to convert the combination part-time bankruptcy judge-magistrate position at Fargo to full-time status at an aggregate salary of \$65,800 per annum until the vacant full-time bankruptcy judge position at Fargo is filled. At that time the salary of the part-time magistrate position at Fargo will be reinstated at \$32,900 per annum and the incumbent will be authorized to perform the

the duties of a part-time bankruptcy judge at no additional compensation.

#### NINTH CIRCUIT

##### Arizona:

- (1) Designated Safford as an additional place of holding bankruptcy court in this district.

#### BANKRUPTCY STATISTICS

Judge DeMascio stated that the Committee had conducted a comprehensive review of the bankruptcy statistical reporting system and had recommended to the Administrative Office various changes designed to provide a better measure of the judicial and administrative workloads involved in processing bankruptcy petitions. The recommendations are currently being put into effect.

#### UNITED STATES TRUSTEES

Judge DeMascio also informed the Conference that the Committee had reviewed the report of the Attorney General of the United States on the United States trustee system, submitted pursuant to Section 408(b) of the Bankruptcy Reform Act of 1978. The Attorney General recommended the continuation of the basic concept of the United States trustee program to oversee case administration under the Bankruptcy Code. He further suggested that the program could be placed in the Judicial Branch, in an Executive Branch agency other than the Department of Justice, or continued in the Department of Justice.

Judge DeMascio pointed out that since 1977 the Conference had consistently taken the position that placing the current statutory scheme for bankruptcy estate administration under the Attorney General creates inherent conflicts of interest and involves excessive administrative costs. The Attorney General's report acknowledges that a conflict of interest is certain to arise when two government lawyers appear to assert different and conflicting interests and estimates the annual cost of maintaining a national United States Trustee Program would be \$29,325,000. The report further acknowledges that the efficient and general administration of the bankruptcy court and its case management system are the primary concerns of the Judiciary,

and that the performance of this function is quite divergent from the primary mission of the Department of Justice. The Committee was of the view that these administrative functions could be performed more effectively and at substantial savings if housed within the Judiciary. The Committee found no reason for the Conference to alter or modify its long-standing position on this issue.

**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.

**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, as they are to bankruptcy judges by operation of law and to full-time magistrates by resolution of the Conference, but require the affirmative action of the Conference. He pointed out that the salaries of part-time magistrates have been adjusted only once since 1979, a 4 percent increase granted in March, 1983, retroactive to October, 1982.

Upon the recommendation of the Committee the Conference granted part-time magistrates, including those in combination positions who perform part-time magistrate duties for specific additional compensation, the 3.5 percent increase in salary that was granted to other federal employees retroactive to the beginning of the first pay period commencing on or after January 1, 1984.

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

Level 16	.....\$	32,900
Level 15	.....\$	28,794
Level 14	.....\$	24,865
Level 13	.....\$	21,851
Level 12	.....\$	19,268
Level 11	.....\$	16,684
Level 10	.....\$	14,639
Level 9	.....\$	12,702

Level 8 .....	\$	10,764
Level 7 .....	\$	8,826
Level 6 .....	\$	6,889
Level 5 .....	\$	4,844
Level 4 .....	\$	3,875
Level 3 .....	\$	2,906
Level 2 .....	\$	1,938
Level 1 .....	\$	969

#### EXPENSES OF PART-TIME MAGISTRATES

The Director of the Administrative Office is authorized to reimburse part-time magistrates for expenses incurred for clerical and secretarial assistance pursuant to 28 U.S.C. 635(b) in accordance with regulations issued with Judicial Conference approval. These regulations currently limit the annual reimbursement to 100 percent of the part-time magistrate's annual salary, with provision for adjustment upon a showing of exceptional circumstances. The Committee proposed a change in the regulations to limit the total reimbursement for a part-time magistrate's clerical and secretarial expenses to a percentage of a full-time magistrate's clerical and secretarial expenses. The percentage would be determined by a ratio of the part-time magistrate's salary to a full-time magistrate's salary. The provision for increasing the amount upon a showing of exceptional circumstances would be continued.

Upon the recommendation of the Committee, the Conference approved changes in the Director's regulations governing reimbursement of expenses of part-time magistrates for salaries and related benefits of secretarial and clerical employees to provide for a ceiling on reimbursement based upon proportionality between a part-time magistrate's salary and a full-time magistrate's salary, rather than a ceiling based upon 100 percent of the salary of a part-time magistrate. The ceiling could be exceeded, as at present, upon a showing of exceptional circumstances.

#### FULL-TIME MAGISTRATE POSITIONS COMPENSATED AT LESS THAN THE STATUTORY MAXIMUM

Judge Skopil stated that the Chief Judge of the Eastern District of California had requested an increase in the salary of the full-time magistrate position at Yosemite National Park

to the maximum currently authorized salary for a full-time magistrate. Since the magistrate's presence is required full-time, the Chief Judge thought he should be paid at the full-time rate regardless of the workload. The Committee pointed out that if workload alone were considered, the full-time magistrate positions at Yosemite and Yellowstone National Parks, and Del Rio, Texas, would have remained part-time positions. The need for a year-round presence despite the seasonal nature of the work, however, has required more than part-time positions. The Committee has consistently reconciled these concerns by establishing full-time positions at less than the maximum salary, thus giving the flexibility needed to provide the necessary services to the courts.

Upon the recommendation of the Committee the Conference continued the policy of maintaining the special full-time magistrate positions at Yosemite National Park, Yellowstone National Park, and Del Rio (or Eagle Pass) at salaries less than the maximum payable to full-time magistrates in general.

#### AUTHORIZATION OF A FULL-TIME MAGISTRATE FOR EACH DISTRICT

Judge Skopil stated that the Committee had considered a resolution of the Judicial Council of the Eighth Circuit requesting that at least one full-time magistrate position be authorized in each district. The Committee was of the view that the authorization for a full-time magistrate position should not be based upon an inflexible statistical workload formula, nor should any other inflexible rule form the basis of such an authorization. The needs of each district court should continue to be judged on an individual basis.

Although the Committee did not favor the Eighth Circuit proposal, Judge Skopil stated that the Magistrates Division of the Administrative Office would make a special review of the four remaining districts which do not have full-time magistrates and report to the Committee. Meanwhile the Committee recommended that the Conference continue the policy of authorizing additional magistrate resources for a district based upon an individual review of the needs of that district for magistrate assistance. This recommendation was approved by the Conference.

## GENERAL ACCOUNTING OFFICE REPORT ON THE FEDERAL MAGISTRATES SYSTEM

A July, 1983 report of the General Accounting Office entitled "Potential Benefits of Federal Magistrates System Can Be Better Realized" contained a number of recommendations addressed to the Judicial Conference designed to increase the use of magistrates. The report also recommended that Congress amend the Magistrates Act, 28 U.S.C. 636(c), to provide that the designation of a magistrate to conduct proceedings does not preclude a judge from exercising jurisdiction over any case even though the parties had consented to a magistrate's disposition and to require a judge to advise the litigants why a case had not been referred to a magistrate for disposition.

Upon the recommendation of the Committee the Conference took the following action:

- (1) Endorsed the actions currently being taken or proposed by the Administrative Office and the Committee to encourage the further use of magistrates and to inform the courts about the magistrates system and the availability of the Division of Magistrates to study a court's utilization of magistrates and to advise the court of plans that have worked well in other courts.
- (2) Expressed a preference for the language to the amendment to 28 U.S.C. 636(c)(2) submitted in the Conference's report to the Congress on the magistrates system in December, 1981, rather than the amendment proposed in the GAO report.

### 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.

#### FIRST CIRCUIT

##### Maine:

- (1) Increased the additional compensation of the clerk of court at Portland for performing magistrate duties from \$936 per annum to \$1,938 per annum.

##### Rhode Island:

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

#### SECOND CIRCUIT

##### Connecticut:

- (1) Authorized a fourth full-time magistrate position for the district to be located at Hartford or New Haven.

##### New York, Western:

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

#### THIRD CIRCUIT

##### New Jersey:

- (1) Retained the part-time magistrate position at Atlantic City at a salary of \$1,938 per annum.

#### FOURTH CIRCUIT

##### North Carolina, Middle:

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

South Carolina:

- (1) Retained the part-time magistrate position at Aiken and increased the salary from \$936 per annum to \$1,938 per annum.

Virginia, Western:

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

West Virginia, Northern:

- (1) Retained the part-time magistrate position at Wheeling at a salary of \$1,938 per annum.
- (2) Authorized the part-time magistrate at Wheeling to exercise jurisdiction in the adjoining Southern District of Ohio.
- (3) Discontinued the part-time magistrate position at Martinsburg, effective September 30, 1984.

West Virginia, Southern:

- (1) Authorized a part-time magistrate position at Beckley or Bluefield at a salary of \$21,851 per annum.
- (2) Discontinued the part-time magistrate positions at Lewisburg, Parkersburg, and Bluefield upon the appointment of the new part-time magistrate at Beckley or Bluefield.

FIFTH CIRCUIT

Louisiana, Western:

- (1) Authorized the clerk of court at Shreveport to serve as a part-time magistrate, as an exception to policy, and at no additional compensation.
- (2) Retained the part-time magistrate position at Monroe at a salary of \$1,938 per annum.

Texas, Northern:

- (1) Retained the part-time magistrate positions at Abilene and San Angelo and increased the salary of each position from \$936 per annum to \$1,938 per annum.

Texas, Western:

- (1) Continued the part-time magistrate position at San Antonio for an additional four-year term and increased the salary from \$24,024 per annum to \$32,900 per annum.
- (2) Increased the salary of the full-time magistrate position at Del Rio (or Eagle Pass) from \$43,600 per annum to \$45,402 per annum, retroactive to January 1, 1984, and fixed the salary permanently at 69% of the maximum salary of a full-time magistrate.

SIXTH CIRCUIT

Michigan, Eastern:

- (1) Converted the part-time magistrate position at Bay City to a full-time magistrate position.
- (2) Discontinued the part-time magistrate position at Flint, effective September 30, 1984.

Michigan, Western:

- (1) Retained the part-time magistrate position at Marquette and increased the salary from \$936 per annum to \$1,938 per annum.
- (2) Discontinued the part-time magistrate position at Traverse City.

Ohio, Northern:

- (1) Retained the part-time magistrate position at Lima, increased the salary from \$936 per annum to \$1,938 per annum, and authorized a review of the position in six months.

Ohio, Southern:

- (1) Retained the part-time magistrate position at Portsmouth and increased the salary from \$936 per annum to \$1,938 per annum.
- (2) Discontinued the part-time magistrate position at Steubenville, effective September 30, 1984.

SEVENTH CIRCUIT

Indiana, Southern:

- (1) Retained the part-time magistrate position at New Albany at a salary of \$1,938 per annum.
- (2) Discontinued the part-time magistrate position at Muncie, effective September 30, 1984.

Wisconsin, Eastern:

- (1) Retained the part-time magistrate position at Green Bay and increased the salary from \$936 per annum to \$3,875 per annum.
- (2) Discontinued the part-time magistrate position at Appleton, effective September 30, 1984.

Wisconsin, Western:

- (1) Continued the authorization of the clerk of court at Madison to perform magistrate duties for an additional four-year term at no additional compensation.
- (2) Continued the part-time magistrate position at Ashland for an additional four-year term, and increased the salary from \$936 per annum to \$1,938 per annum.
- (3) Retained the part-time magistrate position at Eau Claire and increased the salary from \$936 per annum to \$3,875 per annum.
- (4) Discontinued the part-time magistrate positions at Tomah and Wausau, effective September 30, 1984.

## EIGHTH CIRCUIT

### Arkansas, Eastern:

- (1) Continued the part-time magistrate position at Jonesboro for an additional four-year term at a salary of \$1,938 per annum.
- (2) Retained the part-time magistrate position at West Memphis at a salary of \$1,938 per annum.

### Iowa, Northern:

- (1) Continued the part-time magistrate position at Sioux City for an additional four-year term and increased the salary from \$1,872 per annum to \$2,906 per annum.
- (2) Discontinued the part-time magistrate position at Dubuque, effective September 30, 1984.

### Iowa, Southern:

- (1) Authorized a part-time magistrate position at Des Moines at a salary of \$32,900 per annum.

### Minnesota:

- (1) Retained the part-time magistrate position at Bemidji and increased the salary from \$936 per annum to \$1,938 per annum.

### Missouri, Eastern:

- (1) Continued the part-time magistrate position at Cape Girardeau for an additional four-year term at a salary of \$1,938 per annum.
- (2) Discontinued the part-time magistrate positions at Ozark National Scenic Riverways and Hannibal.

### Missouri, Western:

- (1) Continued the full-time magistrate position at Springfield, and the full-time magistrate position at Kansas City which is due to expire on December 12, 1984, for additional eight-year terms.

Nebraska:

- (1) Retained the part-time magistrate position at North Platte and increased the salary from \$936 per annum to \$1,938 per annum.
- (2) Discontinued the part-time magistrate position at Gering (or Scottsbluff), effective September 30, 1984.

North Dakota:

- (1) Discontinued the part-time magistrate position at Rolla, effective September 30, 1984.

NINTH CIRCUIT

Alaska:

- (1) Retained the part-time magistrate position at Juneau and increased the salary from \$936 per annum to \$2,906 per annum.
- (2) Retained the part-time magistrate positions at Ketchikan, Kodiak and Nome and increased the salary of each position from \$936 per annum to \$1,938 per annum. The positions at Kodiak and Nome are to be reviewed in one year.

Arizona:

- (1) Continued the part-time magistrate position at Page for an additional four-year term and increased the salary from \$936 per annum to \$1,938 per annum.

California, Northern:

- (1) Retained the part-time magistrate position at Eureka and increased the salary from \$936 per annum to \$1,938 per annum.

California, Eastern:

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

- (2) Increased the salary of the part-time magistrate position at Sacramento from \$18,616 per annum to \$28,794 per annum.
- (3) Continued the part-time magistrate position at Redding for an additional four-year term and increased the salary from \$12,272 per annum to \$16,684 per annum.
- (4) Continued the part-time magistrate position at Susanville for an additional four-year term at a salary of \$2,906 per annum.
- (5) Discontinued the part-time magistrate position at Alturas, effective September 30, 1984.

California, Central:

- (1) Increased the salary of the part-time magistrate position at San Luis Obispo from \$16,120 per annum to \$19,268 per annum.
- (2) Converted the part-time magistrate position at Santa Ana to a full-time magistrate position, subject to the condition that the position may not be filled until an active federal district judge is stationed and serving at that location.
- (3) Continued the part-time magistrate position at Santa Barbara for an additional four-year term, but reduced the salary from \$10,400 per annum to \$8,826 per annum.
- (4) Continued the part-time magistrate position at Oxnard (or Ventura) for an additional four-year term and increased the salary from \$6,656 per annum to \$8,826 per annum.
- (5) Continued the part-time magistrate position at Barstow (or Victorville) for an additional four-year term, but reduced the salary from \$4,680 per annum to \$3,875 per annum.

Hawaii:

- (1) Retained the part-time magistrate position at Hilo and increased the salary from \$1,872 per annum to \$3,875 per annum.
- (2) Discontinued the part-time magistrate position at Johnston Island, effective September 30, 1984.
- (3) Discontinued the part-time magistrate position at Lihue, effective September 30, 1984.
- (4) Retained the part-time magistrate position at Wailuku and increased the salary from \$936 per annum to \$1,938 per annum.

Montana:

- (1) Continued the part-time magistrate position at Glasgow for an additional four-year term at a salary of \$1,938 per annum.
- (2) Retained the part-time magistrate positions at Wolf Point and Helena at a salary of \$1,938 per annum for each position. The salary of the position at Helena is to be reviewed in one year.
- (3) Retained the part-time magistrate position at Cut Bank and increased the salary from \$936 per annum to \$1,938 per annum.
- (4) Discontinued the part-time magistrate positions at Bozeman and Butte, effective September 30, 1984.

Oregon:

- (1) Continued the part-time magistrate position at Bend for an additional four-year term at a salary of \$1,938 per annum.
- (2) Retained the part-time magistrate position at Coquille and increased the salary from \$936 per annum to \$1,938 per annum.

Washington, Western:

- (1) Increased the salary of the part-time magistrate position at Olympic National Park from \$14,144 per annum to \$24,865 per annum.

TENTH CIRCUIT

Colorado:

- (1) Continued the part-time magistrate position at Grand Junction for an additional four-year term at a salary of \$32,900 per annum.
- (2) Continued the part-time magistrate position at Rocky Mountain National Park for an additional four-year term, but decreased the salary from \$12,272 per annum to \$8,826 per annum, effective October 1, 1984.
- (3) Retained the part-time magistrate positions at Steamboat Springs (or Craig) and Monte Vista at a salary of \$1,938 per annum for each position.
- (4) Discontinued the part-time magistrate position at Cortez.

Kansas:

- (1) Continued the full-time magistrate position at Wichita for an additional eight-year term.
- (2) Authorized a part-time magistrate position at Wichita at a salary of \$28,794 per annum.
- (3) Discontinued the part-time magistrate positions at Colby, Parsons, and Garden City, effective September 30, 1984.

New Mexico:

- (1) Continued the part-time magistrate position at Alamogordo for an additional four-year term and increased the salary from \$1,872 per annum to \$2,906 per annum.

- (2) Continued the part-time magistrate positions at Gallup and Santa Fe for additional four-year terms at a salary of \$1,938 per annum for each position.
- (3) Redesignated the part-time magistrate position at Portales (or Clovis) as Portales (or Clovis or Roswell) and increased the salary from \$936 per annum to \$4,844 per annum.
- (4) Discontinued the part-time magistrate position at Roswell.
- (5) Increased the salary of the part-time magistrate position at Farmington from \$936 per annum to \$1,938 per annum.

Oklahoma, Eastern:

- (1) Retained the part-time magistrate position at Hugo at a salary of \$1,938 per annum.

Utah:

- (1) Retained the part-time magistrate positions at Cedar City, Monticello (or Moab), and Vernal (or Roosevelt) at a salary of \$1,938 per annum for each position.

Wyoming:

- (1) Continued the part-time magistrate position at Sheridan for an additional four-year term and increased the salary from \$1,872 per annum to \$2,906 per annum.
- (2) Continued the part-time magistrate positions at Cody and Worland for additional four-year terms and increased the salary from \$936 per annum to \$1,938 per annum for each position.
- (3) Retained the part-time magistrate positions at Casper, Green River, and Rawlins and increased the salary from \$936 per annum to \$1,938 per annum for each position.

## ELEVENTH CIRCUIT

### Florida, Northern:

- (1) Increased the salary of the part-time magistrate position at Tallahassee from \$21,112 per annum to \$32,900 per annum.

### Florida, Middle:

- (1) Retained the part-time magistrate position at Fort Myers and increased the salary from \$936 per annum to \$1,938 per annum.

### Florida, Southern:

- (1) Authorized a part-time magistrate position at West Palm Beach at a salary of \$12,702 per annum.

### Georgia, Middle:

- (1) Converted the part-time magistrate position at Macon to a full-time magistrate position.
- (2) Continued the part-time magistrate position at Valdosta for an additional four-year term at a salary of \$4,844 per annum.

## **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, 1983. The report indicated that Congress appropriated \$34,215,000 for "Defender Services" for the fiscal year 1983 and that the entire amount available for the year will be expended.

During the year approximately 50,000 persons were represented under the Criminal Justice Act, compared to 46,105 persons during the fiscal year 1982, an increase of 8.4 percent. Of these persons, Federal Public and Community Defender Organizations represented 26,227 or 52.5 percent of the total representations, compared to 49.2 percent in the fiscal year 1982 and 50.4 percent in the fiscal year 1981.

The Conference authorized the Director of the Administrative Office to transmit this report to all Chief Judges, to all Federal Defender Organizations, and to others who may request copies.

#### GRANT REQUESTS - COMMUNITY DEFENDER ORGANIZATIONS

At its session in September, 1983 (Conf. Rpt., p. 83) the Conference deferred consideration of the funding level for the Community Defender Organization in the Eastern and Southern Districts of New York. Judge MacBride stated that the Committee had reviewed the professional staffing and compensation pattern and other operational aspects of this organization, and had recommended that the Conference approve a sustaining grant for the fiscal year 1985 in the amount of \$1,629,964. This recommendation was approved by the Conference.

#### BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Conference in September, 1983 (Conf. Rpt., p. 81) deferred consideration of a budget request for the recently established Federal Public Defender Organization for the District of Oregon which had been converted from a Community Defender Organization. Upon the recommendation of the Committee, the Conference approved supplemental funding for the defender office in this district for the fiscal year 1984 in the amount of \$32,687 and approved a budget request for the fiscal year 1985 in the amount of \$553,990.

The Conference, upon the recommendation of the Committee, also approved funding in the amount of \$272,195 to establish a Federal Public Defender Organization to serve the Northern, Eastern and Western Districts of Oklahoma for five months of operation during the fiscal year 1984 and approved funding in the amount of \$386,740 for the fiscal year 1985.

The Conference further approved a supplemental budget request for the fiscal year 1984 in the amount of \$39,840 for the Federal Public Defender Organization for the Southern and Central Districts of Illinois and the Eastern District of Missouri and supplemental funding in the amount of \$5,123 for the fiscal year 1985.

The Conference, upon the recommendation of the Committee, approved supplemental funding requests for Federal Public Defender offices for the fiscal years 1984 and 1985 as follows:

<u>District</u>	<u>Fiscal Year 1984</u>	<u>Fiscal Year 1985</u>
California, Eastern	\$ 26,442	\$ 25,817
Colorado	\$ 46,346	\$ 38,377
Hawaii	\$ 61,764	\$ 80,801
Washington, Western	\$ 12,758	\$ 36,060

#### GUIDELINES

The Committee submitted 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 4.02 A to include qualification standards to be used in the selection of Federal Public Defenders.

2. An amendment to Paragraph 2.22 D relating to procedures for the disposition of payments made by persons provided representation under the Criminal Justice Act pursuant to a court reimbursement order.

#### SALARIES OF FEDERAL PUBLIC DEFENDERS

The Conference approved the recommendation of the Committee that Federal Public Defenders be excluded from the Judicial Conference proposal for a comprehensive salary setting plan for Article I judges and other judicial officers. It was the view of the Committee that the salaries of Federal Public Defenders should continue to be set by the respective courts of appeals.

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

Judge John D. Butzner, Jr., Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

### **INSANITY DEFENSE AND CIVIL COMMITMENT LEGISLATION**

Judge Butzner stated that both S. 1762 and H.R. 3336, 98th Congress, contain an amendment to Rule 704 of the Federal Rules of Evidence to prohibit an expert witness who is testifying with respect to the mental state or condition of the defendant from stating an opinion as to whether the defendant had a mental state constituting an element of the offense charged or of a defense thereto. H.R. 3336 would also amend Rule 704 to prohibit an expert witness from giving an opinion in a civil commitment proceeding as to the likelihood that an individual will commit acts of serious bodily injury to another or substantial damage to the property of another. Upon the recommendation of the Committee the Conference voted to disapprove these proposed amendments to Rule 704 of the Federal Rules of Evidence.

## **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.

### **JUROR UTILIZATION**

Since July, 1982 the Administrative Office has been compiling statistical information on the use of jurors called to serve on the first day of trial. Judge Clarie stated that in the year ending September 30, 1983, 37 percent of the jurors called for service on the first day of trial were neither selected to serve on a jury nor were challenged on voir dire. Although this was a slight improvement over a previous report, Judge Clarie pointed out that on the first day of trial more than one out of every three jurors either fails to serve on a jury or to be challenged.

It was the view of the Committee that there was room for continued improvement and that the setting of a national goal regarding the percentage of jurors not selected, serving, or challenged on the first day of trial will contribute to this process. Upon the recommendation of the Committee the Conference adopted as a goal that all district courts limit the percentage of jurors not selected, serving, or challenged on voir dire or orientation day to 30 percent.

#### VOIR DIRE EXAMINATION

S. 386, 98th Congress, would amend Rule 24(a) of the Federal Rules of Criminal Procedure to require, rather than permit, counsel to conduct the voir dire examination of jurors. S. 677, 98th Congress, would similarly amend Rule 47(a) of the Federal Rules of Civil Procedure. The Conference has consistently opposed legislation to require counsel's participation in the voir dire examination. (See Conf. Rpt., Sept., 1982, p. 114). Upon the recommendation of the Committee the Conference reiterated its strong opposition to the proposals contained in these bills.

#### GRAND JURY ORIENTATION

Judge Clarie informed the Conference that substantial progress had been made toward obtaining a grand jury orientation film. The film will be professionally produced by major motion picture companies as a public service at no expense to the Government. The Committee had reviewed a draft of the script for the film and found it to be of an impressively high caliber. A revised draft incorporating minor changes is being prepared and will be circulated among the bench and bar for comment.

#### **IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE**

Judge James Lawrence King, Chairman of the Implementation Committee on Admission of Attorneys to Federal Practice, presented the Committee's report.

Judge King informed the Conference that during the last 12 months the program of the Committee has considerably

expanded and developed. The programs now in place in 13 pilot courts represent, most probably, the full extent of rule and program implementation. Although two courts are still involved in the final process of rule adoption, and others have only recently implemented their rules, the pilot program now stands ready to move into its evaluation phase.

#### **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 received two suggestions for a modification in the Judicial Conference resolution pertaining to the selection of law clerks to require that no offers of employment be made to law clerks until September 15 at the earliest.

The Conference, after full discussion, voted to continue the two-year experiment with respect to the law clerk selection process, to reaffirm the policy that applications for law clerkships will neither be received nor considered prior to July 15, and directed that this reaffirmation of policy be transmitted in an appropriate way to all federal judges who will be urged to abide by it. The Conference also expressed the hope that the Association of American Law Schools will similarly convey to its members the policy agreed upon and will urge its members to abide by it.

#### **AD HOC COMMITTEE ON AMERICAN INNS OF COURT**

Judge A. Sherman Christensen, Chairman of the Ad Hoc Committee on American Inns of Court, presented a brief report on the activities of the Committee.

Judge Christensen informed the Conference that the Committee was appointed by the Chief Justice in October, 1983, following approval by the Executive Committee, and had been charged with the responsibility of assessing the experience with the American Inns of Court in sowing the seeds for improved trial advocacy and to make recommendations for the guidance of existing as well as future Inns, to promote the creation of more Inns with the

cooperation of judges, trial lawyers and law schools, and to think through the longer-term, overall, national organizational needs and to make appropriate recommendations.

Judge Christensen pointed out that the genesis of the concept of an American Inn of Court was set out in an article by Judge J. Clifford Wallace entitled "American Inns of Court: A Way to Improve Advocacy", 68 A.B.A.J. 282 (1982), and that the concept and experience with American Inns of Court as actually established were described in an article entitled "The Concept and Organization of an American Inn of Court", by Judge Christensen, 93 F.R.D. 807 (1982).

He stated that the Committee had developed a manual on "How to Create and Operate an American Inn of Court" which will be circulated by the Committee to interested inquirers. In addition to the original two Inns in Provo and Salt Lake City, others have since been established in Honolulu, Brooklyn, Mississippi, Washington, D.C., Los Angeles and Kansas City (Missouri). New Inns are in course of planning in Chicago, San Francisco, San Diego and Tacoma and a second and perhaps a third Inn is under consideration in the San Francisco Bay area. Material has recently been supplied by the Committee upon request from possible sponsors in 14 other cities. A quarterly newsletter is being furnished to inquirers and to existing Inns for reproduction and circulation by them among their members concerning the development of the program.

The question of the creation of a national coordinating organization, its sponsor, structure, location, criteria, and functions, remains to be determined. The Committee plans to continue its work and will report its recommendations to the Conference at a later session.

#### **COMMITTEE ON ELECTRONIC SOUND RECORDING**

At its session in September, 1983 (Conf. Rpt., p. 47) the Conference, on recommendation of the Committee on Court Administration, approved regulations governing the use of electronic sound recording equipment to record proceedings in the United States district courts. The Conference at that time further authorized the Chief Justice to appoint an ad hoc Committee of members of the Conference to monitor, on behalf of the Conference between meetings thereof, the

implementation by the Administrative Office of the regulations adopted with respect to the electronic sound recording of court proceedings. The Chief Justice subsequently appointed Chief Judge Collins J. Seitz, Judge Robert R. Merhige, Jr. and Judge Albert G. Schatz as Committee members.

Judge Seitz informed the Conference that the Committee had met and reviewed the guidelines for recording proceedings electronically in the district courts by electronic sound recording prior to their release in January, but since then had received questions concerning Section 6 thereof pertaining to the court reporter staff. The Conference considered the objections to this section and on motion of Judge Merhige directed that Subsections (b) and (c) be deleted from the guidelines and that the words "where feasible" be deleted from Subsection 6(a) of the guidelines.

### **COURT OF INTERNATIONAL TRADE**

The Conference ratified the action previously taken by its Executive Committee opposing the enactment of H.R. 4403, 98th Congress, to change the name of the Court of International Trade to the "Paul P. Rao Court of International Trade", and further recommended against renaming the courthouse after him.

### **MEMORIAL RESOLUTION**

The Conference, noting the death of Judge Mary Anne Richey, formerly Chairwoman of the Judicial Conference Subcommittee on Federal-State Relations, adopted the following Resolution and directed that it be transmitted to her husband and daughter.

Whereas: United States District Judge Mary Anne Richey of the District of Arizona and the Chairwoman of our Subcommittee on Federal-State Relations passed away on November 25, 1983, at Tucson, Arizona.

Judge Richey served with distinction as a member of the Women's Army Service Pilots during World War II, from 1943 to 1945. In 1951, she earned her law degree

from the University of Arizona. Over the next quarter of a century, Judge Richey became a well respected member of the bar, serving as a Deputy County Attorney, an Assistant United States Attorney, the United States Attorney for the District of Arizona, and Special Assistant Attorney General of Arizona.

Judge Richey served as a judge of the Superior Court of the State of Arizona in Pima County from 1964 to 1976. During her term as a State judge, she served on numerous commissions and committees on the administration of justice.

Judge Richey entered on duty on the District Court in Arizona on July 9, 1976 and was immediately recognized for her ability, diligence and kindness. Judge Richey became the first chairwoman of the Judicial Conference's Committee on Federal-State Relations on August 5, 1982. Though her tenure was short, her organizational skills have made a lasting impression on the Subcommittee and the deliberations of this Conference.

Therefore, it is the resolve of the Conference, that we, who have had the honor and privilege of serving with her, wish to express our deepest sympathy to her family and friends for their loss and ours.

#### **ELECTIONS**

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected District Judge A. David Mazzone to membership on the Board of the Federal Judicial Center for a term of four years succeeding District Judge William S. Sessions.

## **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

June 12, 1984

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