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

September 19-20, 1984

Washington, D. C.
1984

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

September 19-20, 1984

The Judicial Conference of the United States convened on September 19, 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 September 20. 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 Ruggero J. Aldisert
Chief Judge Walter K. Stapleton, District of Delaware

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
Chief Judge Robert M. McRae, Jr., Western District
of Tennessee

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 Robert J. McNichols, Eastern District
of Washington

Tenth Circuit:

Chief Judge William J. Holloway
Chief Judge Luther B. Eubanks, Western District
of Oklahoma

Eleventh Circuit:

Chief Judge John C. Godbold
Chief Judge James Lawrence King, Southern District
of Florida

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

* Designated by the Chief Justice in place of Chief Judge
Donald P. Lay who was unable to attend.

Circuit Judges Frank M. Coffin, Edward A. Tamm, and Gerald B. Tjoflat; Senior Circuit Judge John D. Butzner, Jr.; Senior District Judges T. Emmet Clarie, Edward T. Gignoux, Elmo B. Hunter, and Thomas J. MacBride; and District Judges Aldon J. Anderson, Robert E. DeMascio, and Garnett Thomas Eisele, attended all or some of the sessions of the Conference.

The Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, Honorable Robert W. Kastenmeier; the Chairman of the House Appropriations Subcommittee, Honorable Neal Smith; and the Chief Counsel of the Senate Judiciary Committee, Vinton DeVane Lide, attended the Conference briefly and spoke on matters pending in the Congress of interest to the Judiciary.

The Attorney General of the United States, Honorable William French Smith, Jr., the Solicitor General, Honorable Rex E. Lee, 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.

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 and 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 the Annual Report of the Director for the year ended June 30, 1984. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

A separate report on the operation of the Equal Employment Opportunity Plans of the Courts of Appeals and District Courts was also received by the Conference and authorized to be released.

JUDICIAL BUSINESS OF THE COURTS

Mr. Foley reported that during the year ended June 30, 1984 there were 1,126 appeals filed in the United States Court of Appeals for the Federal Circuit. During the year the court disposed of 964 appeals and there were 690 appeals pending as of June 30, 1984. In the other twelve courts of appeals there were 31,490 appeals filed, an increase of 6.3 percent over the 29,630 appeals filed the previous year. The courts of appeals disposed of 31,185 appeals, 8.8 percent more than the number disposed of the previous year, but 305 appeals less than the number of filed. As a result the number of appeals pending in the courts of appeals on June 30, 1984 increased 1.4 percent to 22,785.

In the United States district courts there were 261,485 civil cases docketed during the year, an 8.1 percent increase over the previous year and more than twice the number of civil cases filed in 1977. There were 243,113 civil cases terminated, an increase of 12.9 percent over the previous year, but 18,372 cases less than the number filed. On June 30, 1984 the number of pending civil cases increased by 7.9 percent to a record 250,292 pending civil actions.

Criminal cases filed in the district courts in 1984 were 36,845, an increase of 2.6 percent. There were 35,494 criminal cases terminated, 4.4 percent more than the previous year, but 1,351 less than the number filed. As a result the number of criminal cases pending on the dockets of the district courts increased to 19,938, an increase of 7.3 percent.

During the year ended June 30, 1984 there were 344,275 bankruptcy petitions filed in the district courts, a decrease of 8.1 percent from the previous year. There were 304,014 petitions terminated and the pending caseload on June 30, 1984 increased to a record 577,567 pending bankruptcy petitions.

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 June 30, 1984, the Panel had acted on 1,120 civil actions pursuant to 28 U.S.C. 1407. Of that number, 544 actions were centralized for consolidated pretrial proceedings with 576 actions already pending in the various transferee districts at the time of transfer. The Panel denied transfer of 88 actions.

Since its creation in 1968 the Panel has transferred 13,274 civil actions for centralized pretrial proceedings in carrying out its responsibilities. As of June 30, 1984, approximately 10,213 cases had been remanded for trial, reassigned within the transferee district, or terminated in the transferee court.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Frank M. Coffin, Chairman of the Committee on the Judicial Branch, informed the Conference that the Committee had prepared two statements on the need for increases in the salaries of judges and other judicial personnel for submission to the Commission on Executive, Legislative and Judicial Salaries which will be appointed for the fiscal year beginning October 1, 1984. Upon the recommendation of the Committee the Conference authorized the distribution of these two statements to all Article III judges, United States Claims Court judges, bankruptcy judges, and United States magistrates for their information.

COMMITTEE ON COURT ADMINISTRATION

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

AUTOMATION

Judge Hunter informed the Conference that the Committee had reviewed the progress made by the Administrative Office of the United States Courts and the Federal Judicial Center in providing automation support to the courts under the five-year plan and concluded that the present pace of implementation is not rapid enough to meet the desires and needs of the courts. The Committee was of the view that

the development of software programs, particularly for full electronic civil and bankruptcy docketing in the district courts, should be accelerated and that the current docketing practices of the district courts should be reviewed to determine their adaptability to automation so that inefficient operations in clerks offices will not become magnified by tomorrow's technological developments. Furthermore, the Committee concluded that more attention is needed in the area of personnel preparation and training for the increased demands of the automation process.

The Committee recognized, however, that the need for speedier implementation can be met only by more adequate funding and that resources should also be devoted to the personnel needs of clerks offices in the automated future. The Committee also concluded that because of the high volume and the repetitive nature of their work, the bankruptcy clerks offices appear to be the entities most likely to benefit from automation. As a result, separate attention should be given to their needs. The Committee also concluded that further work on the bankruptcy noticing system, not inconsistent with the recent "Dole amendment" requiring the use of contract services when possible, should be continued and that the calendaring function should be pursued. The Committee also believed that because of the strain on currently available resources implementation of the Probation Information Management System should be assigned a lower priority than that of bankruptcy automation.

Upon the recommendation of the Committee the Conference directed the Administrative Office and the Federal Judicial Center to seek additional resources, both money and personnel, to enable both the Administrative Office and the Federal Judicial Center to provide full automation to all courts more expeditiously. The Conference further directed that a higher priority be given to the bankruptcy court automation project than to the Probation Information Management System.

COURT SECURITY

The Conference in March, 1982 (Conf. Rept., p. 49) resolved that the judicial councils of the circuits maintain oversight of the implementation of the recent Attorney General's Task Force Report on Court Security. Recently some individual judges, and at least one district judges'

association, have expressed concern about court security and indicated their disagreement with the limitations imposed on the use of United States marshals under the procedures outlined in the Attorney General's report.

Judge Hunter informed the Conference that the Committee had reviewed the task force report and the issues raised and had concluded that under present budgetary limitations it is not possible to provide a law enforcement officer in each courtroom in every case without regard to the real need for security. If bailiff-type, nonsecurity related services are needed in a courtroom, the Committee believed there are less costly ways to provide these services, such as the use of criers or courtroom attendants. Accordingly, the Committee has asked the Subcommittee on Supporting Personnel to study the matter and provide the Committee with its recommendations. Meanwhile, the Committee has asked the Administrative Office to recirculate the Attorney General's task force report to all judges.

Upon the recommendation of the Committee the Conference approved the following resolution:

That the Judicial Conference approve the position that no United States Marshal shall be required to be in a courtroom except for security purposes, in accordance with the joint statement of the Chief Justice and the Attorney General and the report of the Attorney General's Task Force on Court Security which the joint statement adopts.

COURT-ANNEXED ARBITRATION

Beginning in the fiscal year 1978 Congress authorized the establishment of an experimental court-annexed arbitration program in three district courts and in the fiscal year 1985 authorized the expenditure of additional funds in the amount of \$400,000 to expand the pilot program to eight other districts. Several courts have already expressed interest in participating.

In the 98th Congress Senator Arlen Specter introduced a bill, S. 2259, which would require each district to establish an arbitration program by local rule. The bill would set rigorous jurisdictional requirements for referral of cases to arbitration and provide for sanctions in the event of an unsuccessful

appeal to a district court. It was the view of the Committee that in light of the limited experience with arbitration in the district courts it would be premature for Congress to enact legislation with specific statutory requirements at the present time. Upon the suggestion of the Committee the Conference voted to recommend that Congress defer action on S. 2259 until after the expansion of the arbitration pilot program and the completion of an analysis of its operation.

NONAPPROPRIATED FUNDS

At its session in September, 1981 (Conf. Rept., p. 62) the Conference approved guidelines for the expenditure of nonappropriated funds which were later published in the Guide to Judiciary Policies and Procedures. Judge Hunter stated that in order to reduce questionable expenditures and decrease the number of inquiries received as to appropriate expenditures, the Administrative Office had recommended to the Committee certain modifications to the guidelines. It was the view of the Conference, however, that the guidelines established under the previous resolution were sufficient and accordingly voted to reaffirm the previous Conference resolution.

RETIREMENT OF TERRITORIAL JUDGES

The Chairman of the Senate Judiciary Committee had requested the views of the Conference on S. 1997, 98th Congress, a bill to amend Section 373 of title 28, United States Code, relating to the retirement of territorial judges. The bill would decrease from 10 to 8 years the period of service required for retirement and would authorize retirement annuities to be paid at age 62 rather than at age 65.

At its session in March, 1982 (Conf. Rept., p. 17) the Conference recommended comprehensive legislation providing annuities for judicial officers other than Article III judges. Upon the recommendation of the Committee the Conference reaffirmed support for the language contained in a draft bill submitted by the Committee and recommended that Congress enact this proposed legislation in lieu of S. 1997.

DISTRIBUTION OF LOCAL RULES OF COURTS OF APPEALS

Section 2077 of title 28, United States Code, requires the Judicial Conference to prescribe a fee for the sale of copies of the local rules of the courts of appeals, but authorizes the

Conference to provide for the free distribution of copies to members of the bar of each court and other interested persons. Judge Hunter stated that the courts of appeals in all circuits currently distribute copies of their local rules free of charge and that the clerks of the courts of appeals in all circuits, except one, recommended a practice of free distribution. Upon the recommendation of the Committee the Conference revised the schedule of fees promulgated pursuant to 28 U.S.C. 1913 to authorize the free distribution of the local rules of the courts of appeals. Judge Hunter advised the Conference that the Committee would consider the question of providing for the free distribution of the local rules of the district courts.

PLACES OF HOLDING COURT

H.R. 5619, 98th Congress, would add Hauppauge as an additional place of holding court for the United States District Court for the Eastern District of New York. Judge Hunter advised the Conference that the district court and the Judicial Council of the Second Circuit had approved this proposal. Upon the recommendation of the Committee the Conference approved the bill.

REPORTS OF MATTERS HELD UNDER SUBMISSION OR ADVISEMENT

A proposal to revise the procedure for filing reports of cases held under submission for more than 90 days in the courts of appeals and cases and motions held under advisement more than 60 days in the district courts was withdrawn by the Chairman of the Committee for further study.

UNIFORM RULES OF DISCIPLINARY ENFORCEMENT

At its session in September, 1978 (Conf. Rept., 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. Judge Hunter informed the Conference that the Committee had consulted with a representative of the American Bar Association concerning a need for amendments to the model rules and concluded that several amendments should be made. First, the Committee determined that a technical amendment to the model rules would be advisable to

insure that if a state altered its code of professional responsibility, the substantive disciplinary requirements applicable in a district court located in that state would not be different. The Committee also concluded that an attorney subject to disciplinary action should be required to certify as to all courts before which the attorney has been admitted to practice, so that all other courts may be informed of any disciplinary action.

The Committee therefore proposed the following amendments to the Model Federal Rules of Disciplinary Enforcement:

(1) That Rule IV.B be amended by inserting the words "or Rules of Professional Conduct" after the words "Code of Professional Responsibility" in each place in which they appear.

(2) That Rule V.C be amended by inserting at the end thereof the following:

The order to show cause shall include a certification of all courts before which the attorney-respondent is admitted to practice, as specified in the form appended to these rules.

(3) That Rule V.D be amended by inserting at the end thereof the following:

The attorney-respondent shall execute the certification of all courts before which that attorney-respondent is admitted to practice, in the form specified, and file the certification with the answer.

The Conference approved these recommendations and also approved a form of certification to be appended to Rule XV.

ADDITIONAL JUDGESHIPS

Judge Hunter informed the Conference that the Committee had reviewed the results of the 1984 biennial survey of judgeship needs conducted by the Subcommittee on Judicial Statistics and voted to recommend the creation of additional judgeships in the United States courts of appeals and in the United States district courts.

Upon the recommendation of the Committee, the Conference recommended the creation of additional judgeship positions in the United States courts of appeals as follows:

Fourth Circuit	1
Tenth Circuit	1
Eleventh Circuit	<u>3</u>
Total	5

Upon the recommendation of the Committee the Conference also recommended the creation of the following additional permanent and temporary judgeships in the United States district courts, including the conversion of certain temporary judgeship positions to permanent status:

First Circuit:

Massachusetts	1
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Second Circuit:

Connecticut	1
New York, Northern	1
New York, Eastern	1
New York, Southern	1
New York, Western	1 t/p*

Third Circuit:

New Jersey	1 temp.
Virgin Islands	1 temp.

Fourth Circuit:

Maryland	1 temp.
North Carolina, Eastern	1 t/p*
Virginia, Eastern	1

Fifth Circuit:

Louisiana, Middle	1 temp.
Mississippi, Southern	1 temp.
Texas, Eastern	1 temp.
Texas, Southern	3
Texas, Western	1

Sixth Circuit:

Michigan, Eastern	2
Ohio, Northern	1
Ohio, Southern	1

Seventh Circuit:

Illinois, Northern	1 + 1 t/p*
Illinois, Central	1 temp.
Indiana, Northern	1 t/p*
Indiana, Southern	1
Wisconsin, Western	1

Eighth Circuit:

Arkansas, Western	1
Iowa, Southern	1
Missouri, Eastern	1
Nebraska	1 temp.

Ninth Circuit:

California, Northern	1 + 1 temp.
California, Central	3 temp.
Idaho	1 temp.
Oregon	1

Tenth Circuit:

Colorado	1
Kansas	1
Oklahoma, Western	1 + 2 temp.

Eleventh Circuit:

Alabama, Northern	1
Florida, Middle	1 temp.

*Existing temporary position to be made permanent.

In addition, the Conference recommended that the two roving judgeship positions in the State of Arkansas be made permanent judgeships for the Eastern District of Arkansas and that the roving judgeship position for the Northern and Southern Districts of Iowa be made a permanent judgeship for the Northern District of Iowa.

The Committee further submitted information indicating that if the diversity of citizenship jurisdiction of the Federal courts were abolished, the number of recommended additional judgeship positions (both permanent and temporary) would be reduced from 42 to 9. The recommended additional judgeships for the courts of appeals, however, would not change because the elimination of diversity cases would not lower workload enough to change the recommendations. The Conference thereupon directed that the next transmittal of Judicial Conference judgeship recommendations to the Congress include a detailed table showing the impact of the elimination of diversity of citizenship jurisdiction on judgeship requirements for the district courts.

EN BANC HEARINGS

Judge Hunter informed the Conference that the Committee had reconsidered the previous Conference recommendation that the Congress amend 28 U.S.C. 46(c) to make clear that a majority of the judges who are qualified to hear and determine a case be sufficient to order a hearing or rehearing en banc. (Conf. Rept., Sept. 1973, p. 47). Based on an analysis of the Supreme Court opinion in Western Pacific Railroad Corp. v. Western Pacific Railroad Co., 345 U.S. 247 (1953), and other decisions, a member of the Subcommittee on Federal Jurisdiction concluded that each court of appeals may

regulate its procedure for the consideration of a petition to hear or rehear a case en banc by local rule. The adoption of a local rule must be by a majority vote of the judges in regular active service, but the rule itself may authorize the granting of the petition by a vote of a majority of active judges who are not disqualified.

Upon the recommendation of the Committee the Conference voted to rescind its 1973 resolution calling for an amendment to 28 U.S.C. 46(c) and to recommend that each court of appeals consider adopting a local rule under 28 U.S.C. 2071 and 2077 and Rule 47 of the Federal Rules of Appellate Procedure establishing a process for determining when a case is to be heard or reheard en banc, including whether an absolute majority or a qualified majority of judges is required to vote to hear or rehear a case en banc.

MULTIDISTRICT LITIGATION

H.R. 5159, 98th Congress, is a bill to permit a transferee judge to consolidate multidistrict cases for the trial of liability and, if certain requirements are met, for the determination of damages. The bill would also provide for nationwide subpoena power and for a single judge determination of the substantive, controlling state law for all actions consolidated. S. 2260, 98th Congress, would permit the Judicial Panel on Multidistrict Litigation to consolidate Clayton antitrust actions for trial whether private or United States cases. S. 2454, 98th Congress, would permit the Panel on Multidistrict Litigation to consolidate private Clayton antitrust actions for trial.

Since 1977 it has been the consistent view of the Multidistrict Litigation Panel that it should not be given the power to consolidate cases for trial. Although the bar perceives a need for a consolidation power, it was the view of the Committee that sections 1404 and 1406 of title 28, United States Code, in conjunction with the powers granted to the Multidistrict Litigation Panel under section 1407, currently provide sufficient authority for the consolidation of cases for trial.

Upon the recommendation of the Committee the Conference voted to advise Congress that there is no need for further legislation authorizing the consolidation of cases for trial in the light of 28 U.S.C. 1404, 1406 and 1407; that it recommends against enactment of the proposal contained in

H.R. 4159 to amend 28 U.S.C. 1407 to require the transferee judge to determine controlling state law for all actions consolidated; and that the enactment of S. 2260 and S. 2454 is unnecessary and an erosion of general policy through special provisions affecting only limited types of litigation.

INTERSTATE COMMERCE

H.R. 3919, 98th Congress, would reverse the Congressional action of 1978 creating a \$10,000 jurisdictional amount for shippers' damage cases. Prior to 1978 many metropolitan district courts, particularly the District of Massachusetts, were inundated with large numbers of claims for damages to perishable commodities, such as fruit and vegetables, in which the damages alleged rarely exceeded \$200 per case. Although some states will not admit into evidence an agricultural inspector's certificate that is generally admissible in a district court, the Committee believed that this is a problem of state law and one that does not require federal involvement. Upon the recommendation of the Committee the Conference recommended against the enactment of H.R. 3919.

STAFF ATTORNEY RETIREMENT COVERAGE

The Conference in September, 1983 (Conf. Rept., p. 53) authorized law clerks and legal assistants appointed on or after January 1, 1984 to elect a temporary "term" appointment or a permanent "career" appointment. Law clerks and legal assistants electing a term appointment would not be included in the Civil Service Retirement System, but would come under the Social Security System and be required to pay social security taxes. Those who elected to have a permanent career appointment would be subject to both civil service retirement deductions and social security taxes. Previous Conference action, however, did not cover staff attorney positions in central legal offices.

Judge Hunter informed the Conference that several staff attorneys have expressed an interest in being offered the same option given to law clerks and legal assistants. It was the view of the Committee that staff attorneys should be given this opportunity. The election to be appointed under a term or career appointment, however, should be made at the time of

appointment and the election should be submitted in writing to the Administrative Office. Upon the recommendation of the Committee the Conference adopted the following resolution:

That the resolution approved by the Judicial Conference at its September, 1983 session for appointments of law clerks and legal assistants be amended to include staff attorney offices where appointments of over one and up to three years are established as a condition of employment.

SECRETARIES TO FEDERAL JUDGES AND MAGISTRATES

It has been the practice within the Judiciary to retain the secretary of a deceased judge or magistrate on the payroll for a period of 30 to 90 days to wind up the affairs of the judicial officer. Thereafter the secretary may accept another position in the court system, but at the lower grade level authorized for that position. Judge Hunter informed the Conference that the regulations in the Executive Branch authorize the retention of a secretary at the same grade level for a period of two years even though the secretary has accepted a lower-graded position. The secretary, however, must have served a period of two years and a minimum of 52 consecutive weeks at the grade higher than that of the position in which placed.

It was the view of the Committee that the use of a similar system would benefit the courts by maintaining trained and knowledgeable individuals who could be called upon to assist visiting judges or magistrates or, if selected, provide a trained secretary for a newly appointed judge or magistrate, but that the retention period for a secretary to a deceased judge or magistrate should be only one year. Under these procedures a secretary must be selected for appointment to a vacant position in the court which is graded lower than the secretary's current grade without a break in service. At the end of the one year retention period the secretary's grade would revert to the highest grade authorized for the position held.

Upon the recommendation of the Committee the Conference adopted the following resolution:

Any secretary to a deceased judge or magistrate who has 52 weeks or more of service as a secretary to the judge or magistrate, and is appointed, at the discretion of the appointing officer, to an available vacant position for which qualified within the court, without a break in service, will retain his or her current grade and pay for a one year period.

COURT REPORTERS

Judge Hunter informed the Conference that 28 United States district courts had requested authority for a total of 43 court reporter positions in addition to the complement authorized by the ratio of one court reporter per active judge. These requests include the continuance of 38 positions currently authorized and five new positions. At its session in September, 1983 (Conf. Rept., p. 52) the Conference considered similar requests for the continuation of existing positions or for new positions and submitted them to the Subcommittee on Supporting Personnel for review. At that time the Conference also concluded that "in the interim, swing court reporter positions that become vacant should be abolished, unless the Director of the Administrative Office determines the position is necessary and approves a temporary appointment pursuant 28 U.S.C. 753(a)."

At the suggestion of Judge Hunter the Conference authorized three additional swing court reporter positions on a temporary basis, one each in the Southern District of Florida, the Eastern District of Missouri and the Eastern District of Texas; continued the existing positions approved under the previous Conference resolution for a period of six months; and asked the Committee to report further at the next Conference session.

Judge Hunter also stated that the Committee would consider further the policy question of whether a district court in establishing a regular tour of duty for court reporters must do so for all reporters at the same geographic location.

COMMITTEE ON THE BUDGET

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

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1985

The Conference, upon the recommendation of the Committee, authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations in the amount of \$51,029,000 for the fiscal year 1985. The request will include funds for an anticipated 3.5 percent increase in salaries to become effective October 1, 1984; an increase of 15 percent in the cost of health benefits effective in January, 1985; additional funds required because of the 85 additional Article III judgeship positions created by Public Law 98-353; the cost of increased staff resulting from its passage; costs associated with the liberalization of the age and service requirements for retirement purposes authorized by the new public law; and additional funds for the Administrative Office of the United States Courts required to service the new judgeship positions.

The Director of the Administrative Office was further authorized to amend the supplemental appropriation request because of any new legislation, action taken by the Judicial Conference, or for any other reason the Director and the Budget Committee consider necessary and appropriate.

APPROPRIATIONS FOR THE FISCAL YEAR 1986

The Conference approved the budget estimates for the fiscal year 1986, prepared by the Director of the Administrative Office and submitted by the Committee. The estimates, exclusive of the Supreme Court, United States Court of Appeals for the Federal Circuit, the Court of International Trade and the Federal Judicial Center total \$1,098,846,000, an increase of \$106,849,000 or 10 percent over the amount appropriated by the Congress for the fiscal year 1985, adjusted to reflect proposed supplemental appropriation requests for pay adjustments and new program costs. Provision has been made in the budget estimates for an additional 1,327 permanent positions. Approximately 44 percent of the increases in the budget are for mandatory or uncontrollable costs such as within grade salary advancements, promotions,

increases in contract rates, and charges for equipment, services and supplies, as well as rental increases for space occupied by the courts. The remaining increases are necessary in order to staff and support the new judgeship positions and to maintain the same level of support and services required by the rapidly growing workload of the judiciary.

The Director of the Administrative Office was authorized to amend the budget estimates because of new legislation, action taken by the Judicial Conference, or for any other reason the Director and the Budget Committee consider necessary and appropriate.

JUDICIAL ETHICS COMMITTEE

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

ACTIVITIES OF THE COMMITTEE

Judge Tamm informed the Conference that the Committee has received 1,875 financial disclosure reports for the calendar year 1983, including 964 reports from judicial officers and 911 reports from judicial employees. Since January 1, 1984, the Committee has also received 31 reports from nominees to judgeship positions. All reports submitted to the Committee are being reviewed by at least one Committee member to determine whether they comply with 28 U.S.C. App. I 306(a).

The Conference was informed that one judicial officer and 10 judicial employees had failed to file reports covering the calendar year 1983. In the absence of filing, the Committee, acting in accordance with the procedures previously adopted by the Committee and reported to the Conference in September, 1980 (Conf. Rept., p. 76), will consider a reference to the Attorney General under 28 U.S.C. App. I 304(b).

REPORTING FORM AND INSTRUCTIONS

Judge Tamm stated that the Committee has endeavored to limit changes in the reporting form and instructions in order to facilitate compatibility of reports with those submitted in prior years, and to ease the burden on reporting individuals in preparing their reports. The Committee recommended,

however, that the note at the beginning of the approved reporting form be amended by adding the words "Compare and reconcile this year's report with last year's" and that the certification appearing at the end of the report be clarified. The Conference approved these recommendations and further directed that a reference to Canon 3C(3)(c) of the Code of Judicial Conduct be added to the certification at the end of the form.

The Committee also recommended a change in the instructions to clarify the requirement for reporting assets held as a trustee or other fiduciary for the benefit of any other person. This recommendation was also approved by the Conference.

ETHICS IN GOVERNMENT ACT AMENDMENTS

The Chairman of the House Judiciary Committee had requested the views of the Conference on H.R. 5573, 98th Congress, a bill to provide a method for changing the values specified for reporting gifts and assets to account for inflation. It was the view of the Committee that no change in the law is necessary. The Conference thereupon recommended against the enactment of the bill.

DISPOSITION OF DISCLOSURE REPORTS

The Ethics in Government Act, Section 305(d), provides in part that "any report received (by the Judicial Ethics Committee) shall be held in its custody and be made available to the public for a period of six years after receipt of the report. After such six year period the report shall be destroyed unless needed in an ongoing investigation. . ." The Act does not make provision for the disposition of copies of financial disclosure reports filed with the clerks of court. Upon the recommendation of the Committee the Conference authorized the clerks of court to destroy copies of disclosure reports in their possession after a period of six years in accordance with the statutory provisions applicable to the disposition of the records of the Judicial Ethics Committee.

ADVISORY COMMITTEE ON CODES OF CONDUCT

Chief Judge Howard T. Markey, Chairman of the Advisory Committee on Codes of Conduct, presented the report of the Committee.

ACTIVITIES OF THE COMMITTEE

Judge Markey informed the Conference that since its last report the Committee had received 19 inquiries from persons subject to the various codes of conduct and had issued 16 advisory responses. The Committee is also publishing Advisory Opinion No. 74 pertaining to the situation in which a lawyer or law firm in a case has agreed to employ the judge's present law clerk; Advisory Opinion No. 75 covering the situation in which a judge receives a governmental or military pension and a military or governmental service is a party in a case; and a revision of Advisory Opinion No. 17 pertaining to the receipt or reimbursement of travel expenses by a judge and spouse.

CODE OF JUDICIAL CONDUCT

The Committee submitted the following amendments to the Code of Conduct for United States Judges which were approved by the Conference:

- (1) That the "Compliance" section of the Code be amended by adding the words "or as special master" to the end of subsection B.
- (2) That the title "Effective Date of Compliance" be amended to clarify the Code's applicability to new judges by substituting "Applicable" for "Effective" and by adding at the end of the first sentence the words "following appointment."
- (3) That the following paragraph be added to the commentary following Canon 3C(1)(d)(ii) "That a judge's law clerk may have a prospective employment relation with a law firm in a case does not disqualify the judge when the law clerk has been excluded from all contact with the case. Judges may elect to notify counsel of the potential relation and the exclusion."

CODE OF CONDUCT FOR LAW CLERKS

Upon the recommendation of the Committee, the Conference amended Canon 3 of the Code of Conduct for Law Clerks by adding the following subdivision:

D. A law clerk should inform the appointing judge of any circumstance or activity of the law clerk which might serve as a basis for disqualification of the judge, e.g., a prospective employment relationship with a law firm, association of the clerk's spouse with a law firm or litigant, etc.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The written report of the Committee on Intercircuit Assignments, submitted by the Chairman, Judge Thomas A. Flannery, was received by the Conference.

The report indicated that during the period February 15, 1984 through August 15, 1984 the Committee recommended 61 assignments to be undertaken by 40 judges. Of this number, 15 were senior circuit judges, 5 were active circuit judges, 13 were senior district judges, 3 were active district judges, 1 was a senior judge of the Court of International Trade, 2 were active judges of the Court of International Trade, and 1 was an active judge of a bankruptcy court.

Of the 61 assignments approved, 29 judges undertook 41 assignments to the courts of appeals and 13 judges undertook 16 assignments to the district courts. In addition 1 active bankruptcy judge undertook 4 assignments to a bankruptcy court outside of the circuit.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Edward T. Gignoux, Chairman of the Standing Committee on Rules of Practice and Procedure, presented the report of the Committee.

CIVIL RULES

The Committee submitted to the Conference proposed amendments to Rules 6(a), 45(d)(2), 52(a), 71A(h), and 83; Supplemental Admiralty Rules B(1), C(3), and E(4)(f); and

Official Form 18-A. The proposed amendments were accompanied by a report from the Advisory Committee Chairman summarizing the work of the Advisory Committee and "Committee Notes" explaining the purpose and intent of the proposed amendments. The Committee recommended that these proposed amendments be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. This recommendation was approved by the Conference.

CRIMINAL RULES

The Committee also submitted proposed amendments to Rules 6(e)(3)(A)(ii), 6(e)(3)(B) and (C), 11(c)(1), 12.1(f), 12.2(e), 35(b), 45(a), 49(e) and 57 of the Federal Rules of Criminal Procedure. The proposed amendments were accompanied by a report from the Advisory Committee Chairman summarizing the work of the Advisory Committee and "Committee Notes" explaining the purpose and intent of the proposed amendments. The Committee recommended that these proposed amendments be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. The Conference approved the recommendation with the understanding that the committee note accompanying the amendment to Rule 35 will be amended to indicate that a defendant is not precluded from filing a motion to reduce a sentence even though the court reduces sentence on its own motion.

BANKRUPTCY RULES

Judge Gignoux informed the Conference that the Committee had approved the circulation of a preliminary draft of proposed amendments to Bankruptcy Rules 5002 and 5004 for comment by the bench and bar. These rules pertain to prohibited appointments by bankruptcy judges. The Advisory Committee on Bankruptcy Rules advised of a need to proceed with the consideration of these proposed amendments on an expedited basis. Accordingly written comments have been requested by December 31, 1984 and a public hearing will be held in Washington, D.C. on January 17, 1985. The Committee plans to present these proposed amendments to the Conference

at its session in March 1985 with a recommendation that they be transmitted immediately to the Supreme Court for its consideration and possible report to the Congress by the Chief Justice prior to May 1, 1985.

The Conference thereupon authorized the Committee to present its final recommendations on these proposed amendments to the Executive Committee of the Conference for its consideration, so that they may be presented to the Supreme Court at the earliest possible date. Executive Committee action will be reported to the Conference at its next session in March, 1985.

ADDITIONAL RULES AMENDMENTS

Judge Gignoux also advised the Conference that at the request of the Advisory Committees on Appellate, Civil and Criminal Rules, additional proposed rules amendments are being circulated to the bench and bar and public for comment. Public hearings on these proposals have been scheduled. The Committee anticipates that, if approved by the Advisory Committees and the Standing Committee, they will be submitted to the Conference for consideration at its September, 1985 session. In addition, the Advisory Committee on the Federal Rules of Appellate Procedure has completed a study of the operation of Appellate Rule 30, Appendix to the Briefs, which will soon be published.

RULES ENABLING ACTS

The Chairman of the House Judiciary Committee had requested the views of the Conference on H.R. 5061, 98th Congress, a bill to terminate certain authority of the judicial branch of the government which is subject to congressional review unless the authority is approved by an enactment of the Congress. The apparent purpose of the bill is to eliminate from the Evidence Rules Enabling Act, 28 U.S.C. 2076, a "legislative veto" provision similar to that held unconstitutional by the Supreme Court in Immigration and Naturalization Service v. Chadha, ____ U.S. ____, 103 Sup. Ct. 2764 (1983).

The Committee recommended that the Conference advise the Chairman of the House Judiciary Committee that it approves eliminating the "legislative veto" provision from 28 U.S.C. 2076, but that the bill is unclear and does not appear to

accomplish its intended purpose. Upon the recommendation of the Committee the Conference voted to disapprove the bill in its present form.

LOCAL RULES OF COURT

For several years the Committee has considered the problem posed by local circuit and district court rules which have proliferated in recent years and many of which appear to be inconsistent with the general rules of practice and procedure. Judge Gignoux stated that the Committee had reviewed a comprehensive local district court rules index prepared by the Administrative Office which indicates a need for a thorough study. Because such a study would transcend the work of any one advisory committee, the Standing Committee has assumed responsibility for this study and requested that the Chief Justice be authorized to appoint a reporter to the Standing Committee to prepare a plan for the study of local district court rules and perhaps to conduct any study approved by the Committee. The Advisory Committee on the Federal Rules of Appellate Procedure is currently studying the local rules of the courts of appeals. Both studies will be coordinated. The Conference thereupon authorized the Chief Justice to appoint a reporter to the Standing Committee for this purpose.

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 March, 1984 (Conf. Rept., p. 14) approved plans for a Joint Institute on Sentencing for the judges of the Fifth and Seventh Circuits to be held at the Federal Correctional Institution at Butner, North Carolina, April 1-3, 1985. Upon the recommendation of the Committee the Conference approved the time, place, participants and tentative agenda for this sentencing institute. The final agenda will be submitted to the March, 1985 meeting of the Conference.

The Conference also authorized the Committee to develop plans for a Joint Institute on Sentencing for the judges of the Eighth and Tenth Circuits to be held sometime in 1985, and a Joint Institute on Sentencing for the judges of the Second and Sixth Circuits to be held at Butner, North Carolina during the fiscal year 1986. Planning continues for the Institute on Sentencing for the judges of the Ninth Circuit which was authorized by the Conference in March, 1984 (Conf. Rept., p. 14).

PROBATION AND PRETRIAL SERVICES OFFICERS

Judge Tjoflat informed the Conference that Congress has appropriated funds for 248 of the 330 positions requested for the probation service for the fiscal year 1985, including 168 of the 224 requested probation officer positions and 80 of the 106 requested probation clerks. The Appropriation Act, however, provides only 153 of the 373 positions requested for pretrial services. In explaining this reduction the report of the House Appropriations Committee stated:

The remaining positions in the budget base will allow for the continuation of pretrial services in the demonstration districts . . . as well as provide staffing for those districts where the courts have elected to establish separate agencies. There would appear to be a question as to whether the Pretrial Services Act authorizes the appointment of additional personnel in probation offices to perform pretrial services. Although the Committee is not questioning the merits of the Pretrial Services program, the Committee has not provided any funds or positions for additional personnel in probation offices to perform the pretrial services function until this ambiguity is resolved. In addition, the Committee believes the courts should utilize contract services as provided for in the Pretrial Services Act, especially in those areas where the workload is minimal. H. Rept. 98-802, p.50.

The Congressional conferees on the appropriations bill adopted the House position stating:

The conferees are agreed that base funding for the pretrial services program will be restored when the issue concerning the authorization for this program is resolved by the House and Senate Judiciary Committees. H. Rept. 98-952.

Upon the recommendation of the Committee the Conference authorized the allocation of the 153 available pretrial services positions to the demonstration districts and to those districts which have elected to establish separate pretrial services offices. The Committee further noted that when the positions now available have been allocated, the remaining 79 courts will have to provide pretrial services with existing staff. If one of these courts subsequently elects to establish a separate office there will be no funds to provide staff until appropriations are made available.

Judge Tjoflat stated that the Committee has approved a request for 447 additional positions to be included in the appropriation request for the fiscal year 1986, based on the application of the approved staffing formula to the projected workload. If the request is approved, the Committee plans to allocate 307 of the 447 positions to probation offices to perform pretrial services work.

SENTENCING REFORM LEGISLATION

Judge Tjoflat reported to the Conference in detail on the status of sentencing reform legislation. On August 8, 1984, the Judiciary Committee of the House of Representatives ordered reported H.R. 6012, the "Sentencing Revision Act of 1984." Judge Tjoflat said that it was probable that the House would consider the bill before adjournment. The Senate had previously passed a similar bill on February 2, 1984.

The sentencing bill endorsed by the Conference in 1983 continues to provide the basis for the Probation Committee's efforts to ensure that any guideline legislation ultimately enacted will be capable of being implemented with a minimum of disruption for both district and appellate courts. At the March, 1984 meeting of the Conference (Conf. Rept., p. 15) concern was expressed about the impact of sentence review on the workload of the courts of appeals. The Conference resolved "that the subject of appellate review of sentencing be recommitted to the Committee for further study and report."

Judge Tjoflat reported that, upon reconsideration, the Committee had again endorsed the appellate review provisions of the bill that was approved by the Conference in March, 1983. The Committee recognized that there is an overwhelming consensus in the political branches of the government in favor of a system of sentencing guidelines whose binding nature is enforced through appellate review. The appellate review provisions of the Judicial Conference bill seem to the Committee to impose the minimum burden on the appellate courts that is consistent with the fundamental purpose of a guideline sentencing system - to reduce disparity by producing enforceable standards to guide trial judges' sentencing decisions. The Committee believes that the 1983 Conference bill would generate fewer appeals than the appellate review legislation submitted to the Congress by the Judicial Conference in 1977.

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 report of the Committee.

SELECTION AND APPOINTMENT OF BANKRUPTCY JUDGES

The Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353, gives jurisdiction over bankruptcy matters to the respective United States district courts and authorizes the district courts to refer any or all bankruptcy cases or proceedings to bankruptcy judges. Under the new statute bankruptcy judges are judicial officers of the United States district courts and are to be appointed by the respective courts of appeals for terms of 14 years. Section 120 of the Act requires the judicial councils of the circuits to assist the courts of appeals in evaluating potential nominees and to recommend qualified persons for appointment as bankruptcy judges "under regulations prescribed by the Judicial Conference."

Upon the recommendation of the Committee, the Executive Committee of the Conference had previously approved regulations for the selection and appointment of bankruptcy judges which are similar to the Conference's regulations governing the selection and appointment of United States magistrates. The Conference thereupon ratified the

action taken by the Executive Committee and authorized the Bankruptcy Committee to review the regulations, and any comments thereon which may be received, and to report to the Conference at its next session.

ARRANGEMENTS FOR BANKRUPTCY JUDGES

The Conference, upon the recommendation of the Committee, changed the official duty station of the bankruptcy judge for the Northern District of Mississippi from Greenville to Aberdeen.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

Judge Garnett Thomas Eisele, a member of the the Committee on the Administration of the Federal Magistrates System, presented the Committee's report on behalf of the Chairman, Judge Otto R. Skopil, Jr.

SALARIES OF CLERKS OF COURT SERVING AS PART-TIME MAGISTRATES

At its session in September, 1974 (Conf. Rept., p. 69) the Conference resolved that "the aggregate compensation of an individual who holds a combination position of part-time magistrate and clerk of a district court shall not exceed the salary payable to either a full-time magistrate or a clerk of court of a large district court, whichever is lesser." Judge Eisele stated that at the present time the salary of a clerk of court in a large district exceeds the salary of a full-time magistrate by \$300. As a result, a clerk of a large district court who also performs magistrate duties would, under the previous resolution of the Conference, be required to accept a lesser salary for the performance of additional magistrate duties. Upon the recommendation of the Committee, the Conference resolved that the special limitation on the aggregate compensation of an individual who holds a combination position of part-time magistrate and clerk of a district court shall not apply to a clerk of a district court who receives no additional compensation or increase in grade for the performance of part-time magistrate duties.

LOCATIONS OF MAGISTRATES

Three United States district courts have expressed a desire to move an incumbent full-time magistrate from a currently specified location to the location fixed for a recently authorized full-time magistrate position established elsewhere in the district. It was the view of the Committee that the district courts should have the flexibility to reassign magistrates with the concurrence of the judicial council of the circuit. A reassignment would not amount to a reappointment, but would be a continuation of the existing term. To ensure that the judicial council of the circuit has the views of all concerned, the district courts should give advance notice of a proposed reassignment to the magistrate involved and to the Director of the Administrative Office and afford an opportunity for them to offer pertinent information.

Upon the recommendation of the Committee the Conference authorized the district courts to reassign a magistrate from one authorized location within a district to another at the same salary level, but only with the prior specific approval of the judicial council of the circuit, provided that the court has advised the magistrate concerned and the Director of the Administrative Office of the proposed reassignment and given them the opportunity to submit comments to the council for its consideration in determining whether to grant approval.

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.

FIRST CIRCUIT

Massachusetts:

- (1) Continued the part-time magistrate position at Worcester (or Ayer) for an additional four-year term at the currently authorized salary of \$14,710 per annum.

Puerto Rico:

- (1) Continued the full-time magistrate position at San Juan which is due to expire on May 31, 1985, for an additional eight-year term.

SECOND CIRCUIT

New York, Eastern:

- (1) Continued the full-time magistrate position at Brooklyn which is due to expire on June 19, 1985, for an additional eight-year term.
- (2) Continued the full-time magistrate position at Hempstead for an additional eight-year term.
- (3) Authorized a fourth full-time magistrate position at Brooklyn.

THIRD CIRCUIT

Pennsylvania, Middle:

- (1) Continued the part-time magistrate position at Scranton for an additional four-year term and increased the salary of the position from \$21,956 per annum to \$28,933 per annum.
- (2) Increased the salary of the part-time magistrate position at Stroudsburg from \$2,920 per annum to \$14,710 per annum.

Pennsylvania, Western:

(1) Continued the part-time magistrate position at Johnstown for an additional four-year term and reduced the salary of the position from \$2,920 per annum to \$1,947 per annum.

Virgin Islands:

(1) Converted either the part-time magistrate position at Christiansted, or the clerk-magistrate position at Charlotte Amalie, at the discretion of the court, to a full-time magistrate position.

(2) Continued the part-time magistrate position at Christiansted and the authorization of the clerk of court at Charlotte Amalie to perform part-time magistrate duties for additional four-year terms at the currently authorized salaries.

FOURTH CIRCUIT

North Carolina, Eastern:

(1) Continued the authorization of the clerk of court at Raleigh to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary payable to the clerk of a large district court.

(2) Continued the part-time magistrate position at Wilmington for an additional four-year term at the currently authorized salary of \$4,867 per annum.

Virginia, Eastern:

(1) Continued the full-time magistrate position at Alexandria which is due to expire on September 30, 1985, for an additional eight-year term.

(2) Continued the full-time magistrate position at Norfolk which is due to expire on April 30, 1985, for an additional eight-year term.

(3) Continued the part-time magistrate position at Richmond for an additional four-year term and increased the salary from \$28,933 per annum to \$33,050 per annum.

West Virginia, Northern:

(1) Continued the part-time magistrate position at Morgantown (or Fairmount or Clarksburg) for an additional four-year term at the currently authorized salary of \$2,920 per annum.

FIFTH CIRCUIT

Texas, Southern:

(1) Authorized a new part-time magistrate position at Galveston at a salary of \$33,050 per annum.

Texas, Eastern:

(1) Authorized the part-time magistrate at Texarkana to exercise jurisdiction in the adjoining Western District of Arkansas.

(2) Increased the salary of the part-time magistrate position at Texarkana from \$2,920 per annum to \$3,894 per annum upon implementation of the adjoining district jurisdiction.

Texas, Western:

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

SIXTH CIRCUIT

Ohio, Northern:

(1) Authorized a third full-time magistrate position at Cleveland.

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

(3) Discontinued the part-time magistrate position at Lima upon the expiration of the current term.

Ohio, Southern:

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

Tennessee, Eastern:

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

SEVENTH CIRCUIT

Illinois, Central:

- (1) Continued the full-time magistrate position at Springfield for an additional eight-year term.
- (2) Continued the part-time magistrate position at Rock Island for an additional four-year term at the currently authorized salary of \$8,869 per annum.

EIGHTH CIRCUIT

Arkansas, Eastern:

- (1) Authorized a third full-time magistrate position at Little Rock.

Arkansas, Western:

- (1) Discontinued the part-time magistrate position at Texarkana, effective November 30, 1984, or upon the designation of the part-time magistrate at Texarkana, Texas to exercise jurisdiction in the adjoining Western District of Arkansas, whichever is earlier.

Missouri, Western:

- (1) Authorized a full-time magistrate position at Jefferson City.
- (2) Authorized the full-time magistrate at Jefferson City to exercise jurisdiction in the adjoining Eastern District of Missouri.

North Dakota:

- (1) Increased the salary of the part-time magistrate position at Grand Forks from \$2,920 per annum to \$3,894 per annum.

South Dakota:

- (1) Increased the salary of the part-time magistrate position at Rapid City from \$14,710 per annum to \$33,050 per annum.
- (2) Continued the part-time magistrate position at Sioux Falls at the currently authorized salary of \$8,869 per annum.

NINTH CIRCUIT

Alaska:

- (1) Continued the full-time magistrate position at Anchorage for an additional eight-year term.
- (2) Waived the statutory 5-year bar membership requirement for the part-time magistrate position at Nome upon a finding that no individual meeting the 5-year requirement is available to serve at that location.

California, Northern:

- (1) Continued the full-time magistrate position at San Francisco which is due to expire on December 19, 1985, for an additional eight-year term.
- (2) Continued the part-time magistrate position at Monterey (or Salinas) for an additional four-year term at the currently authorized salary of \$28,933 per annum.

California, Central:

- (1) Redesignated the official location of the newly authorized full-time magistrate position at Santa Ana as Santa Ana or Los Angeles and removed the condition on filling the position.

Hawaii:

- (1) Continued the part-time magistrate position at Honolulu for an additional four-year term at the currently authorized salary of \$33,050 per annum.
- (2) Authorized a part-time magistrate position at Johnston Island at a salary of \$1,947 per annum. The position had been scheduled for discontinuance effective September 30, 1984.

Idaho:

- (1) Continued the part-time magistrate position at Pocatello for an additional four-year term and increased the salary from \$8,869 per annum to \$14,710 per annum.
- (2) Continued the part-time magistrate position at Coeur d'Alene (or Moscow) for an additional four-year term at the currently authorized salary of \$8,869 per annum.

Washington, Western:

- (1) Continued the full-time magistrate position at Seattle which is due to expire on July 31, 1985, for an additional eight-year term.

TENTH CIRCUIT

Colorado:

- (1) Increased the salary of the part-time magistrate position at Rocky Mountain National Park from \$8,869 per annum to \$12,763 per annum.

Kansas:

- (1) Continued the part-time magistrate position at Junction City for an additional four-year term and increased the salary from \$10,816 per annum to \$16,765 per annum.
- (2) Continued the part-time magistrate position at Leavenworth for an additional four-year term and increased the salary from \$6,922 per annum to \$10,816 per annum.

New Mexico:

- (1) Converted the part-time magistrate position at Albuquerque to a full-time position.
- (2) Continued the part-time magistrate position at Farmington for an additional four-year term at the currently authorized salary of \$1,947 per annum.

Oklahoma, Northern:

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

Oklahoma, Eastern:

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

Oklahoma, Western:

- (1) Continued the part-time magistrate position at Oklahoma City for an additional four-year term and increased the salary from \$16,765 per annum to \$19,361 per annum.
- (2) Continued the part-time magistrate position at Enid for an additional four-year term at the currently authorized salary of \$2,920 per annum, subject to review in one year.

ELEVENTH CIRCUIT

Alabama, Southern:

- (1) Retained the part-time magistrate position at Selma at the currently authorized salary of \$1,947 per annum.

Florida, Middle:

- (1) Authorized a third full-time magistrate position at Tampa.

Florida, Southern:

- (1) Continued the full-time magistrate position at Miami, which is due to expire on December 11, 1985, for an additional eight-year term.
- (2) Continued the full-time magistrate position at Fort Lauderdale for an additional eight-year term.
- (3) Continued the part-time magistrate position at Key West for an additional four-year term at the currently authorized salary of \$21,956 per annum.

Georgia Southern:

- (1) Continued the part-time magistrate position at Swainsboro for an additional four-year term at the currently authorized salary of \$3,894 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 Committee's report.

APPOINTMENTS AND PAYMENTS

Judge MacBride submitted to the Conference a report on appointments and payments under the Criminal Justice Act for the first half of the fiscal year 1984. The report indicated that \$37,000,000 was available for the implementation of the Criminal Justice Act at the beginning of the fiscal year and that projected obligations for the year are \$39,265,000. A supplemental appropriations request in the amount of \$2,265,000 to cover pay costs and additional program requirements has been approved by the Congress. The supplemental request also provides funding for the establishment of a Federal Public Defender Organization to serve the Northern, Eastern and Western Districts of Oklahoma.

During the first half of the fiscal year 1984 approximately 21,700 persons were represented under the Criminal Justice Act, compared to 20,700 in the first half of the fiscal year 1983, an increase of 4.8 percent. This increase parallels the

rise of 4.3 percent in the number of criminal cases commenced in the United States district courts during the twelve month period ended March 31, 1984. Of the 21,700 persons represented during the first half of the fiscal year, 13,040, or 60 percent, were represented by Federal Public and Community Defender Organizations, an increase of 3.7 percent from the number of appointments made during the first half of the fiscal year 1983.

**BUDGET REQUESTS -
FEDERAL PUBLIC DEFENDERS**

The Criminal Justice Act, as amended, requires each Federal Public Defender Organization, established pursuant to 18 U.S.C. 3006A(h)(2)(A), to submit a proposed budget to be approved by the Judicial Conference in accordance with 28 U.S.C. 605. Judge MacBride stated that the Committee had reviewed four requests for supplemental funding for the fiscal year 1985 and had reviewed requests from the 35 Federal Public Defender Organizations for funding for the fiscal year 1986.

The Conference, upon the recommendation of the Committee, approved supplemental budget requests for the fiscal year 1985 for Federal Defender Organizations as follows:

Louisiana, Eastern	\$ 7,072
Maryland	27,750
Texas, Southern	63,479
Texas, Western	<u>59,487</u>
 TOTAL	 \$ 157,788

The Conference, also upon the recommendation of the Committee, approved budget requests for the fiscal year 1986 for the Federal Public Defender Organizations as follows:

Arizona	\$ 916,883
California, Northern	1,021,465
California, Eastern	905,896
California, Central	1,808,801
Colorado	464,307
Connecticut	433,688
Florida, Northern	270,252
Florida, Middle	636,562
Florida, Southern	1,217,485

Georgia, Southern.....	328,351
Hawaii.....	611,286
Illinois, Central & Southern, & Missouri, Eastern	412,900
Kansas.....	383,746
Kentucky, Eastern	297,412
Louisiana, Eastern	431,145
Maryland.....	843,013
Massachusetts	336,368
Minnesota	276,043
Missouri, Western.....	580,684
Nevada	527,157
New Jersey	790,012
New Mexico.....	356,040
Ohio, Northern.....	339,657
Oklahoma, Northern, Eastern & Western	421,992
Oregon	583,497
Pennsylvania, Western	349,003
Puerto Rico	393,657
South Carolina	337,775
Tennessee, Middle	373,434
Tennessee, Western	213,778
Texas, Southern	783,765
Texas, Western.....	788,659
Virgin Islands	475,689
Washington, Western.....	497,633
West Virginia, Southern.....	<u>222,314</u>
TOTAL	\$19,630,349

Judge MacBride informed the Conference that the above budgets for the fiscal year 1986 were based on projected caseloads and that the Committee will entertain requests for supplemental funding if workloads or other factors warrant reconsideration of funding needs. Judge MacBride also stated that the Court of Appeals for the Third Circuit had approved amendments to the Criminal Justice Act Plan for the Middle District of Pennsylvania to provide for the establishment of a Federal Public Defender Organization in that district and that the Court of Appeals for the Fourth Circuit had similarly approved the establishment of a Federal Public Defender Organization for the Eastern District of North Carolina.

Upon the recommendation of the Committee the Conference approved funding for the Federal Public Defender Organizations in these two districts for the fiscal years 1985 and 1986 in the following amounts:

Middle District of Pennsylvania:

Fiscal year 1985	\$447,636
Fiscal year 1986	\$355,445

Eastern District of North Carolina:

Fiscal year 1985	\$359,660
Fiscal year 1986	\$366,355

GRANT REQUESTS -
COMMUNITY DEFENDER ORGANIZATIONS

The Conference, upon the recommendation of the Committee, approved supplemental sustaining grants for the fiscal year 1985 for the following Community Defender Organizations:

Federal Defender Program, Inc., Georgia, Northern	\$ 39,406
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern	<u>65,287</u>
TOTAL	\$104,693

The Conference, upon the recommendation of the Committee, also approved sustaining grants for the fiscal year 1986 for the six Community Defender Organizations as follows:

Federal Defenders of San Diego, Inc., California, Southern	\$1,328,910
Federal Defender Program, Inc., Georgia, Northern	475,359
Federal Defender Program, Inc., Illinois, Northern	791,178

Legal Aid & Defender Assn. of Detroit, Federal Defender Division, Michigan, Eastern	800,867
The Legal Aid Society of New York, Federal Defender Services Unit, New York, Eastern & Southern	1,851,334
Defender Assn. of Philadelphia, Federal Court Division, Pennsylvania, Eastern	<u>619,634</u>
TOTAL	\$5,867,282

Judge MacBride stated that the Committee will consider requests for supplemental sustaining grant funds if workload increases or other factors warrant reconsideration of the approved sustaining grants.

ACQUISITION OF WORD PROCESSING OR
PERSONAL COMPUTER EQUIPMENT

It was the view of the Committee that, to the extent warranted by workload, all Federal Defender Organizations should be offered word processing or personal computer capability by the close of the fiscal year 1986. In order to avoid incurring the total cost for providing system-wide capability in one fiscal year, the Committee recommended that supplemental funding be provided in the fiscal year 1985 for those organizations with the most immediate need for the equipment. The Conference thereupon approved supplemental funding for the fiscal year 1985 for the defender organizations listed below. Additionally, the defender organizations in the Northern District of Georgia, the District of Maryland and the Eastern and Southern Districts of New York will use the supplemental funding authorized for the fiscal year 1985 to acquire this equipment.

California, Eastern	\$ 8,500
Florida, Northern	17,000
Florida, Middle	17,000
Kansas	17,000
Kentucky, Eastern	8,500
Missouri, Western	17,000
New Jersey	8,500
Ohio, Northern	8,500

Pennsylvania, Western	8,500
Puerto Rico	8,500
Tennessee, Western	<u>8,500</u>
TOTAL	\$127,500

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 2.22A to eliminate the requirement for counsel to file a memorandum detailing the services provided when the compensation claimed exceeds \$750 and to make the filing of such a memorandum discretionary with the court when the compensation claimed is less than the statutory maximum.
2. The inclusion of a new chapter 5 to the Guidelines entitled "Miscellaneous Procedures" and a new subsection 5.01 setting forth the procedures for the release of information pertaining to Criminal Justice Act activities.

COMMUNITY DEFENDER ORGANIZATIONS -
CONDITIONS OF GRANT

The Conference, upon the recommendation of the Committee, approved various changes in the "Community Defender Organization Grant Terms and Conditions" as follows:

1. An amendment to clauses 2 and 3 to require that grant funds, and grant-related income, be maintained in federally insured interest bearing accounts and to bar the commingling of grant funds and grant-related income with non-grant funds.
2. An amendment to clause 8 to require that the certified public accountant selected by the grantee to perform the annual audit be approved

by the Administrative Office and that the annual audit be expanded to include an inventory of all property acquired by the grantee with grant funds when specifically requested by the Administrative Office.

3. An amendment to clause 11 to change the threshold amounts for Administrative Office approval of the acquisition or disposition of property and to require that the Administrative Office be advised in advance of contractual undertakings, such as insurance or leases, which have significant potential long term effects or cost implications.

4. An amendment to clause 12 to clarify the procedures relating to the dissolution of the grantee and the discretion of the Judicial Conference to continue or renew grants and to add provisions relating to the safeguarding of and accounting for property and for indemnifying the United States with respect to the grantee's debts.

5. An amendment to clause 14 to require that reimbursement for official travel and subsistence expenses generally not exceed the amounts authorized for Federal employees, that the grantee's policies for reimbursement of these expenses be set forth in writing, and that the records of expenditures for travel and subsistence be maintained in a manner acceptable to the Administrative Office.

6. An amendment to clause 15 to require that written copies of personnel policies and the terms and conditions of employment be provided to the Administrative Office, that leave records be maintained in a manner acceptable to the Administrative Office, and that the Administrative Office approve both the filling of personnel vacancies and the compensation to be paid to employees.

7. An amendment to clause 17 to preclude the use of grant funds for any purpose except the operations of the grantee.

8. An amendment to clause 21 to prohibit employees of the grantee from receiving anything of value from or on behalf of grantee clients.

9. An amendment to clause 23 to provide that failure to deliver representation and other services is a basis for reducing, suspending, disallowing or terminating payments to the grantee and to change the requirement for notice of intent to reduce, suspend or terminate payment from 30 to 10 days.

CRIMINAL JUSTICE ACT AMENDMENTS

Judge MacBride informed the Conference of a bill, H.R. 5757, pending in the 98th Congress, which would establish a comprehensive plan establishing uniform rates among the more than 100 Federal "fee shifting" statutes which authorize attorneys' fees in certain civil, judicial, and administrative proceedings. The bill also provides for an increase in the rates for attorney compensation under the Criminal Justice Act and increases the maximum allowable payments. An identical bill, S. 2802, 98th Congress, was introduced in the Senate.

Upon the recommendation of the Committee, the Conference authorized the transmission of the following views to the Congress:

The Judicial Conference strongly concurs with the assessment underlying H.R. 5757 that the existing levels of attorney compensation under the Criminal Justice Act are inadequate and should be raised. However, the Judicial Conference believes that the problem of the present inadequacy of compensation for counsel appointed to represent defendants in federal criminal cases should be addressed separately from the issue of "fee-shifting" in civil cases, and that a mere doubling of the Criminal Justice Act hourly rates and per case maximums would not be sufficient. The House passed bill, H.R. 4307, and an identical bill, S. 2420, introduced in the Senate by Senator Mathias, would provide a more flexible and durable remedy with respect to the Criminal Justice Act compensation issue. In

addition, it would bring about other needed improvements relating to effective implementation and operation, and thus more nearly ensure the fundamental purpose of the Criminal Justice Act. Accordingly, the Judicial Conference does not support the amendment to the Criminal Justice Act included in H.R. 5757 and again endorses the enactment of H.R. 4307 or S. 2420.

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 report of the Committee.

SUMMARY JURY TRIALS

Judge Clarie informed the Conference that the Committee had completed its analysis of the summary jury trial and had concluded that it is a useful complement to other judicial techniques aimed at promoting the settlement of difficult cases. Although Judge Clarie emphasized that it is not suitable for all cases, it is a valuable tool in many situations. The Conference thereupon adopted the following resolution:

Resolved, that the Judicial Conference endorses the experimental use of summary jury trials as a potentially effective means of promoting the fair and equitable settlement of potentially lengthy civil jury cases.

JUROR UTILIZATION

At its session in March, 1984 (Conf. Rept., p. 34) the Conference established a national goal of limiting the percentage of jurors not selected, serving or challenged on voir dire or orientation day to 30 percent. Judge Clarie informed the Conference that many district courts had made significant progress toward attaining this goal and suggested a formula to be used in calling jurors for civil and criminal trials. It was the view of the Conference that a strict formula would not be advisable. The Conference, however, commended the district

courts for the improvements made in the increased use of jurors called to serve and encouraged all district courts to continue their efforts to improve the utilization of jurors.

AD HOC COMMITTEE ON CAMERAS IN THE COURTROOM

On March 8, 1983, 28 separate radio, TV, newspaper and related organizations filed a petition with the Judicial Conference requesting that Canon 3A(7) of the Code of Conduct for United States Judges and Rule 35 of the Federal Rules of Criminal Procedure be amended to allow radio broadcasting, televising, motion picture and still camera coverage of Federal court proceedings, and further that the Federal Rules of Appellate Procedure and the Federal Rules of Criminal Procedure be amended to include provisions allowing such coverage. The petition was assigned to the Committees on Court Administration, Rules of Practice and Procedure, and the Advisory Committee on Codes of Conduct and the Chairman of these committees each selected four members of their committees to form the Ad Hoc Committee.

The Committee filed a report with the Conference recommending that the petition be denied and the Conference approved. The report of the Committee was authorized to be released and the Committee was discharged. In view of a request pending in a district court of the Second Circuit to televise certain proceedings in that court, Chief Judge Wilfred Feinberg abstained from consideration of and voting on the report of the Committee.

AD HOC COMMITTEE ON AMERICAN INNS OF COURT

Judge Aldon J. Anderson, Chairman of the Ad Hoc Committee on American Inns of Court, presented a brief report on the activities of the Committee.

Judge Anderson informed the Conference that the concept of an American Inn of Court continues to spread. Two additional Inns have been chartered in recent months and numerous inquiries have been received from potential sponsors of new Inns. He informed the Conference of plans to create a permanent national organization separate from any governmental entity to control the operation of the program. The plan calls for the creation of a nonprofit corporation to be

chartered under the District of Columbia Nonprofit Corporation Act. Draft Articles of Incorporation and Bylaws for the new organization have been prepared and will be considered further at the Committee's next meeting.

MEMORIAL RESOLUTION

The Conference, noting the death of Judge George L. Hart, Jr., a former member of the Conference, adopted the following resolution:

With deep regret the Judicial Conference of the United States notes the death of George L. Hart, Jr. on May 21, 1984, after more than twenty years of active service and five years service as a senior judge of the United States District Court for the District of Columbia. Judge Hart served as a member of the Conference in 1974 and 1975 while he was the Chief Judge of his court. He was well known to his colleagues and respected by them. He was a long-time member of the Conference's Committee on Court Administration serving with distinction since 1975. Judge Hart gained the respect and admiration of judges throughout the nation with whom he was in daily contact in his position as Chairman of the Committee on Intercircuit Assignments to which he was appointed in 1977. He was the first Presiding Judge of the United States Foreign Intelligence Surveillance Court, serving a term of three years under an assignment from the Chief Justice.

Judge Hart was widely recognized not only for his scholarly work as a judge but also for his outstanding administrative ability. His assignments, both within his court and elsewhere, were always discharged competently and expeditiously.

We, the members of the Judicial Conference, extend our deepest sympathy to his wife Louise and his son and ask that a copy of this resolution be sent to them.

ELECTIONS

The Conference referred to the Executive Committee of the Conference the task of selecting a bankruptcy judge to serve as a member of the Board of the Federal Judicial Center to fill the unexpired term of Bankruptcy Judge John J. Galgay, recently deceased.

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 courts of appeals during the calendar year 1985 at the following locations: at Asheville, North Carolina in the Fourth Circuit and at Oklahoma City, Oklahoma and Wichita, Kansas in the Tenth Circuit.

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

November 26, 1984

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