

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

March 17, 1987

The Judicial Conference of the United States convened on March 17, 1987, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Levin H. Campbell
Chief Judge Juan M. Perez-Gimenez, District of
Puerto Rico

Second Circuit:

Chief Judge Wilfred Feinberg
Chief Judge John T. Curtin, Western District of
New York

Third Circuit:

Chief Judge John J. Gibbons
Chief Judge Murray M. Schwartz, District of Delaware

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Frank A. Kaufman, District of Maryland

Fifth Circuit:

Chief Judge Charles Clark
Chief Judge L. T. Senter, Jr., Northern District of
Mississippi

Sixth Circuit:

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

Seventh Circuit:

**Chief Judge William J. Bauer
Judge Frank J. McGarr, Northern District of Illinois**

Eighth Circuit:

**Chief Judge Donald P. Lay
Chief Judge John F. Nangle, Eastern District of
Missouri**

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 Sherman G. Finesilver, District of Colorado**

Eleventh Circuit:

**Chief Judge Paul H. Roney
Chief Judge James Lawrence King, Southern District of
Florida**

District of Columbia Circuit:

**Chief Judge Patricia M. Wald
Chief Judge Aubrey E. Robinson, Jr., District of
Columbia**

Federal Circuit:

Chief Judge Howard T. Markey

Court of International Trade:

Chief Judge Edward D. Re

Circuit Judges Frank M. Coffin and Gerald B. Tjoflat; Senior Circuit Judges John D. Butzner, Jr. and Otto R. Skopil, Jr.; District Judges Barbara B. Crabb and Morey L. Sear; Senior District Judge Elmo B. Hunter; and Circuit Executive James A. Higgins attended all or some of the sessions of the Conference.

Congressman Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 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 Edwin Meese III, and Solicitor General Charles Fried, addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; Karen K. Siegel, Special Assistant to the Deputy Director; William R. Burchill, Jr., General Counsel; and Robert E. Feidler, Legislative and Public Affairs Officer. A. Leo Levin and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, also attended the sessions of the Conference. Noel Augustyn, Administrative Assistant to the Chief Justice, and Richard Schickele, Staff Counsel to the United States Supreme Court, were also present.

The Director of the Federal Judicial Center, Professor 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, L. Ralph Mecham, submitted to the Conference a brief report on the judicial business of the courts during the calendar year 1986. The Conference authorized its immediate distribution.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during 1986, a total of 1,187 new appeals were filed in the United States Court of Appeals for the Federal Circuit, a 47 percent drop from 1985. Dispositions in the Federal Circuit rose six percent to 1,942. Since dispositions exceeded filings substantially, the pending caseload fell 54 percent to 631 on December 31, 1986. The rate of increase in the number of appeals filed in the twelve regional courts of appeals slowed during 1986. Filings totalled 34,724, an increase of nearly three percent over 1985. Terminations rose four percent to 33,923, but remained below the level of filings. As a result, the number of cases pending in the regional courts of appeals rose three percent to 26,454.

In the United States district courts, civil filings declined nearly 13 percent during 1986 to 243,495, the lowest total since 1982. The district courts terminated 248,965 civil cases, a decrease of nine percent from the previous year. Since terminations outnumbered filings, the number of civil cases pending declined more than two percent to 245,682 on December 31, 1986.

During 1986, there were 42,549 criminal cases docketed, an increase of four percent over 1985. The district courts disposed of five percent more criminal cases, but the 40,661 terminations fell below the level of new case filings, resulting in an eight percent increase in the pending caseload. On December 31, 1986, there were 25,546 criminal cases pending on United States district court dockets.

The number of bankruptcy petitions filed during 1986 rose to 530,008, an increase of 28 percent over the previous year. Bankruptcy terminations numbered 414,126, an increase of 18 percent over 1985. Since filings outnumbered terminations, the number of bankruptcy petitions pending rose nearly 18 percent to 777,008 on December 31, 1986.

Mr. Mecham also reported that on March 17, 1987, there were 15 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 46 vacancies among the 575 authorized United States district court judgeship positions, and one vacancy on the United States Court of International Trade.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the six-month period ended December 31, 1986, the Panel centralized 274 civil actions pursuant to 28 U.S.C. 1407. Of that number, 119 were transferred for coordinated or consolidated pretrial proceedings with 155 actions originally filed in the transferee districts. The Panel denied transfer of 37 actions.

Since its creation in 1968, the Panel has transferred 15,300 civil actions for centralized pretrial proceedings in carrying out its statutory responsibilities.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Frank M. Coffin, Chairman of the Committee on the Judicial Branch, orally briefed the Conference on the recent actions of the Commission on Executive, Legislative and Judicial Salaries, the President, and the Congress to increase judicial salaries. At the Conference's request, the Committee will transmit a report on these activities to all members of the judiciary.

COMMITTEE ON COURT ADMINISTRATION

CLASSIFICATION OF CVB CLERICAL POSITIONS

There are currently eight automated Central Violations Bureau (CVB) offices, in Eastern New York, Maryland, Eastern Virginia, Western Texas, Western Kentucky, Northern and Central California, and Colorado. The automated centers process misdemeanor violation notices for almost 90 percent of the district courts.

The Conference approved an amendment to the Judiciary Salary Plan to establish a target grade level of JSP-7 for positions performing full-range CVB duties in the eight automated CVBs.

ALLOCATION OF PRO SE LAW CLERK POSITIONS

The Conference approved the following statement on pro se law clerks:

The pro se law clerk program has been a valuable and cost-effective legal resource which works in a centralized manner for a district court as a whole, not for any single judicial officer. Pro se law clerks provide services which do not duplicate, but rather complement, the assistance provided by personal law clerks or legal assistants.

Initial requests for pro se law clerk positions should be fully justified with appropriate supporting documentation and evaluated by comparison against more definitive criteria than exist presently. These new criteria should be developed with a view toward adopting factors similar to those utilized for magistrate positions, e.g., comparative district court workloads, current utilization of judicial officer and subordinate resources, geography, etc. They could well include a standard report from pro se law clerks, detailing the number and types of duties performed.

The Subcommittee on Supporting Personnel of the Court Administration Committee should continue to exercise its traditional role of determining whether the criteria for the authorization of pro se law clerks are suitable, the content thereof, and with what frequency the criteria should be reviewed and modified; as appropriate, should conduct post-allocation review of positions authorized by the Administrative Office; and should determine whether any authorized positions should be transferred to a court with greater need, as demonstrated by comparison with the authorization criteria and in light of limited pro se law clerk resources and competing demands for them.

In view of Congressional interest in attorney positions generally, further study should be made by the Subcommittee on Supporting Personnel as to whether pro se law clerk positions should continue to be funded as deputy clerk positions under 28 U.S.C. 751 or some other statutory provision.

CLASSIFICATION OF DISTRICT COURT EXECUTIVES,
CLERKS OF COURT, CHIEF PROBATION OFFICERS,
AND CHIEF PRETRIAL SERVICES OFFICERS

In order to categorize offices of the courts and thereby determine appropriate salaries for clerks of court, the Subcommittee on Supporting Personnel recommended that the number of judges, magistrates, and staff be combined into the following formulas, which yield numerical indices for district and bankruptcy courts:

District Court Formula: (number of judges x 500) plus (number of magistrates x 200) plus (number of staff x 100)

Bankruptcy Court Formula: (number of judges x 200) plus (number of staff x 100)

Courts would then be ranked on the indices and the following breakpoints established:

District Courts

Category 1	18,000 points and above	JSP-17
Category 2	6,000 to 17,999 points	JSP-16
Category 3	2,300 to 5,999 points	JSP-15
Category 4	Below 2,300 points	JSP-14

Bankruptcy Courts

Category 1	20,000 points and above	JSP-17
Category 2	5,200 to 19,999 points	JSP-16
Category 3	1,800 to 5,199 points	JSP-15
Category 4	Below 1,800 points	JSP-14

The Subcommittee proposed that no chief deputy clerk be graded higher than JSP-15, and that the indices be refigured every two years.

The Subcommittee also recommended that the grade of a chief probation officer or chief pretrial services officer be based upon the number of officers in the respective probation or pretrial services office as is warranted under the applicable work-measurement formula, with the index and cutoff points as follows:

Category 1	80 officers and above	JSP-17
Category 2	25 through 79 officers	JSP-16
Category 3	7 through 24 officers	JSP-15
Category 4	6 or fewer officers	JSP-14

Deputy chief probation officers, currently provided to the larger offices, would remain at the JSP-14 level for Category 2 offices, and would be upgraded to the JSP-15 level in Category 1 offices.

The Committee approved the recommendations, provided (1) that in any individual district court, no bankruptcy clerk, chief probation officer, or chief pretrial services officer shall be classified at a level higher than the clerk of the district court; and (2) that incumbents be "grandfathered" to protect their current grades, but not their ultimate promotion potentials. The Conference agreed to the recommendations, including the two provisos, and also agreed that, in the courts which are participating in the district court executive pilot program, the grade level of the district court executive shall be equal to the grade level of the district court clerk in that district.

LAW CLERK SALARIES

In many areas of the country, top law school graduates are being offered salaries far beyond those of the federal government. In order to reduce this disparity, and subject to the availability of funds, the Conference voted to remove the present JSP-11 and JSP-12 salaries for law clerks and legal assistants to judicial officers from the graded Judiciary Salary Plan schedule, with the qualification criteria of the positions to remain unchanged. New appointees would be paid \$33,000 and \$36,500, in lieu of grades JSP-11 and JSP-12, respectively, subject automatically to any future comparability increases.

COURT REPORTERS' TRANSCRIPT RATES

Pursuant to 28 U.S.C. 753(f), each court reporter may charge and collect fees for transcripts requested by the parties, at rates prescribed by the courts subject to the approval of the Judicial Conference. At its last session (Conf. Rpt., p. 61), and effective October 1, 1986, the Conference authorized the following temporary increases in the maximum allowable transcript rates:

Maximum Transcript Rates (10/86)

	<u>Original</u>	<u>First Copy to Each Party</u>	<u>Each Add'l Copy to the Same Party</u>
Ordinary Transcript	\$3.00	\$.75	.50
Expedited Transcript	\$4.00	\$.75	\$.50
Daily Transcript	\$5.00	\$ 1.00	\$.75
Hourly Transcript	\$6.00	\$ 1.00	\$.75

In September, the new maximums were approved "subject to further action of the Conference following committee reports, and provided that these maximum rates will not apply to any transcripts paid for by the government, to include payments under the Criminal Justice Act, as long as 'Gramm-Rudman-Hollings' (P.L. 99-177) is in effect."

The Committee on Court Administration recommended that the Conference set aside its September, 1986 action temporarily increasing maximum transcript fees; increase maximum transcript fees by ten percent over pre-October, 1986 levels, for original copies only; and authorize the Director of the Administrative Office to increase transcript fees by up to 25 percent, for original copies only. However, after being advised that 49 district courts had adopted orders raising transcript fees to the levels permitted at its September, 1986 session, the Conference deferred action on the Committee's recommendations until its next meeting in September, 1987. In the interim, the Director of the Administrative Office will give notice to the 49 courts, and invite them to submit a report to the Conference of their views on transcript rates.

AD HOC COMMITTEE ON COURT REPORTERS

In 1984, Chairman Elmo Hunter created the Ad Hoc Committee on Court Reporters in response to the request of the Judicial Conference to study (1) the advisability of placing court reporters on a full-time salary without the right to retain the proceeds from transcript production; and (2) the advisability of making court reporters employees of the courts of appeals, rather than the district courts.

Consistent with its determination to review these questions in an impartial manner, the Ad Hoc Committee contracted for a management study through the competitive process with a private firm, Price Waterhouse. After reviewing the Price Waterhouse analysis, the Ad Hoc Committee concluded that it was neither wise nor necessary at this time to change the court reporter employment relationship with regard to retention of transcript fees or affiliation with and supervision by district courts. The Ad Hoc Committee determined that the problems giving rise to the Conference's request to study this matter can and must be resolved within the present employment framework through improved management and control of the services of court reporters. The Ad Hoc Committee suggested that specific reforms to enhance effective management be proposed by the Subcommittee on Supporting Personnel for submission to the parent committee and the Conference.

The Ad Hoc Committee did note that the lack of credible data relating to their workload and earnings, self-reported by court reporters, has hampered the work of the Conference in resolving court reporter management problems. The Ad Hoc Committee urged the Conference to require the district courts, consistent with guidelines of the Administrative Office, to review for completeness and accuracy the reports submitted by court reporters. These reports are used both by the Administrative Office and by committees of the Conference in the allocation of additional personnel and in setting transcript fees and salaries. The Committee also recommended that court reporters be required to maintain and certify, under penalty of perjury, proper records of time, attendance, transcript production, and earnings.

The Conference adopted the findings and conclusions of the Ad Hoc Committee on Court Reporters, and directed that the Ad Hoc Committee continue to monitor the situation and propose appropriate management reforms until discharged by the Judicial Conference.

RETIREMENT AND RECALL OF JUDICIAL OFFICERS

In March, 1982, the Conference adopted a retirement proposal for fixed-term judicial officers (Conf. Rpt., p. 17). The proposal would provide for a full annuity equal to the salary of office after 14 years of service, payable at age 65, with the annuity payable for eight or more, but fewer than 14 years of service to be a percentage of the full annuity amount determined by dividing the years of actual service by 14. A disability annuity after five years of service would also be provided.

The Conference voted to reaffirm support for its March, 1982 retirement proposal, with three minor modifications: (1) judges of the United States Claims Court would not be included; (2) October 1, 1979 would be applied uniformly as the date on which to begin crediting service; and (3) a floor of 40 percent of salary for disability annuities would be imposed.

The Conference's draft bill permits fixed-term judicial officers to elect to remain under a general government retirement system in lieu of the new retirement format. The Conference also voted to recommend that Congress provide for parity of treatment for territorial judges and United States magistrates under the Civil Service Retirement System provisions presently applicable to bankruptcy judges.

RETIREMENT COVERAGE FOR LAW CLERKS AND STAFF ATTORNEYS

In 1983 and 1984 (September 1983 Session, Conf. Rpt., pp. 53-54; September 1984 Session, Conf. Rpt., pp. 57-58), the Judicial Conference authorized law clerks, legal assistants, and staff attorneys to elect temporary "term" appointments or permanent "career" appointments. The Conference agreed to modify the 1983 and 1984 resolutions to provide that an individual hired in one of these positions for a period understood to be less than four years shall be appointed as a "term" employee and subject only to social security, not federal retirement.

INCREASES IN FEE SCHEDULES

At its March, 1986 session (Conf. Rpt., p. 17), the Conference "request[ed] the appropriate committees of the Judicial Conference to study the possibility of increasing the entire range of miscellaneous fees prescribed by the Judicial Conference" pursuant to 28 U.S.C. 1913

("Courts of appeals"), 1914 ("District court; filing and miscellaneous fees; rules of court"), 1926 ("Claims Court"), and 1930 ("Bankruptcy fees"). After consulting with the Committee on the Administration of the Bankruptcy System and reviewing comments received from chief judges and clerks of court on the proposed increases, the Committee on Court Administration recommended the following fee schedules, which were approved by the Conference effective May 1, 1987:

**Judicial Conference Schedule of Fees
for the United States Courts of Appeals**

Fees to be paid to clerks of the courts of appeals (except that no fees are to be charged for services rendered on behalf of the United States):

1. For docketing a case on appeal or review, or docketing any other proceeding, \$100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. 1292(b), unless the appeal is allowed.
2. For every search of the records of the court and certifying the results thereof, \$15.
3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$5.
4. For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either (1) original documents; or (2) microfiche or microfilm reproductions of the original records.
5. For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.
6. For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), F.R.A.P., \$25.
7. For each microfiche or microfilm copy of any court record, where available, \$3.
8. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.

9. For a check paid into the court which is returned for lack of funds, \$25.
10. Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

Judicial Conference Schedule of
Additional Fees for the United States District Courts

Fees to be charged for services performed by clerks of the district courts (except that no fees are to be charged for services rendered on behalf of the United States):

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, \$20. This fee is applicable to the filing of a petition to perpetuate testimony, Rule 27(a), Federal Rules of Civil Procedure, the filing of papers by trustees under 28 U.S.C. 754, the filing of letters rogatory or letters of request, and the registering of a judgment from another district pursuant to 28 U.S.C. 1963.
2. For filing a requisition for and certifying the results of a search of the records of the court for judgments, decrees, other instruments, suits pending, and bankruptcy proceedings, \$15 for each name searched.
3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$5.
4. For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.
5. For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.
6. For transcribing a record of any proceeding by a regularly employed member of the court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters.
7. For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$3.

8. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.
9. For a check paid into the court which is returned for lack of funds, \$25.
10. For an appeal to a district judge from a judgment of conviction by a magistrate in a misdemeanor case, \$25.
11. For admission of attorneys to practice, \$20 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$5.

**Judicial Conference Schedule of Additional Fees
for the United States Bankruptcy Courts**

Fees to be charged for services performed by clerks of the bankruptcy courts (except that no fees are to be charged for services rendered on behalf of the United States):

1. For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.
2. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$5.
3. For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.
4. For amendments to a debtor's schedules or lists of creditors after notice to creditors, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.
5. For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, \$15 per name or item searched.
6. For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under Title 11, or a debtor is the plaintiff, no fee is required. If a trustee in a case under Title 11 is the plaintiff, the fee shall be payable only from the estate and to the extent there is any estate realized. The exemption is not granted to a debtor in possession.

7. For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, including registering a judgment from another district, \$20.
8. For all notices generated in cases filed under Title 11 of the United States Code, 50 cents per notice.* The fee shall be payable only from the estate and only to the extent there is an estate.
9. Upon the filing of a notice of appeal with the bankruptcy court in a proceeding arising under the Bankruptcy Act, \$5 shall be paid to the clerk of the bankruptcy court by the appellant.
10. For clerical processing of each claim filed in excess of 10, 25 cents each in asset cases filed under Chapters I-VII of the Bankruptcy Act, in cases filed under the relief chapters of the Bankruptcy Act, and in asset cases filed under the Bankruptcy Code.
11. For transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters. The party requesting the transcript shall pay the charge to the clerk of the bankruptcy court for deposit to the credit of the referees' salary and expense fund if the proceeding is related to a case commenced prior to October 1, 1979, and to the credit of the Treasury if the proceeding is related to a case commenced on or after October 1, 1979. If the trustee in bankruptcy or the debtor in possession requests a transcript in the performance of his official duties, the charge shall be paid from the estate to the extent there is any estate realized.
12. For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$3.
13. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.
14. For a check paid into the court which is returned for lack of funds, \$25.
15. For providing mailing labels, \$5 per page or portion thereof.

*Effective January 1, 1987, by action of the Executive Committee.

16. For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. 158(a) and (b), \$100. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

Language to clarify reopened and converted Bankruptcy Code cases.

- a. Filing fees prescribed by 28 U.S.C. 1930(b) must be collected when a Bankruptcy Code case is reopened, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. If a Bankruptcy Code case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening.
- b. If a Bankruptcy Code case (or estate in the instance of a joint petition) is converted to another chapter, the amount of the fee due upon conversion shall be the filing fee prescribed for the new chapter, less any credit for filing fees previously paid. This requirement shall not apply to the fee which must be paid when a chapter 7 or 13 case converts at the request of the debtor to chapter 11 on or after November 26, 1986.

Judicial Conference Schedule of Fees
for the United States Claims Court

Services to be performed by the clerk of the United States Claims Court (except that no fees are to be charged for services rendered on behalf of the United States):

1. For filing a civil action or proceeding, \$60.
2. For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (a) original documents; or (b) microfiche or microfilm reproductions of the original records.
3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, \$5.
4. For admission of attorneys to practice, \$20 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$5.

5. For receipt of a monthly listing of court orders and opinions, \$10 per year.

The Conference also noted that Public Law 99-500, the Judiciary's Appropriation Act for the Fiscal Year 1987, increased the fee for filing a civil action pursuant to 28 U.S.C. 1914(a) from \$60 to \$120, but failed to impose a comparable increase for cases filed in the United States Claims Court pursuant to 28 U.S.C. 2520. The Conference voted to recommend that 28 U.S.C. 2520 be amended to effect a comparable increase, i.e., from \$60 to \$120, in the Claims Court filing fee.

CLOSING OF COURT FACILITIES

Under 28 U.S.C. 462(f), the Administrator of General Services is "authorized and directed" to close court accommodations "which the Director recommends for closure with the approval of the Judicial Conference of the United States." The Conference approved the recommendation of the Fourth Circuit Judicial Council and the Director of the Administrative Office that the court facility at Rock Hill, South Carolina (fiscal year 1986 rental cost, approximately \$40,000) be closed.

PARKING IN "HIGH-RISK CRIME AREAS"

Under parking guidelines (Chapter 20 of the United States Courts Design Guide) adopted by the Conference last September (Conf. Rpt., p. 59), the determination of a "High-Risk Crime Area" was to be made by the Administrative Office. Recognizing that the 1982 Report of the Attorney General's Task Force on Court Security places responsibility for decisions affecting security with the district courts, the Administrative Office and the Committee recommended that the Design Guide be amended to give local district court security committees, rather than the agency, the responsibility of designating "High-Risk Crime Areas". The Conference approved the amendment.

TRAVEL

At its last session (Conf. Rpt., p. 59), the Conference approved new Travel Regulations for Justices and Judges. Under the new regulations, justices and judges traveling within the continental United States may claim a per diem allowance without itemizing expenses or, by itemizing, actual expenses of subsistence not to exceed 150 percent of the per diem allowance. The General Services Administration has established a standard per diem allowance of \$50 and a lengthy schedule

of enhanced per diem rates by geographic location which, except as set forth below, seem sufficient. However, recognizing that some locations frequented by the judiciary are absent from the enhanced per diem list -- and thus maximum reimbursement in these locations would be limited to 150 percent of the standard per diem allowance, or \$75 -- the travel regulations also permit justices and judges the alternative of claiming actual expenses of subsistence not to exceed \$150 per day.

Under present law, the \$150 per day option cannot be extended to judicial branch employees other than Article III judges, Claims Court judges, and judges of the territorial district courts. Consequently, to the extent they must attend meetings or conferences in "non-listed" locations, bankruptcy judges, United States magistrates, and other judicial branch personnel must absorb that portion of their lodging, meals, and incidental expenses in excess of 150 percent of the prescribed per diem rate for the area.

The Conference approved the Committee's recommendation that Congress should be requested to amend 28 U.S.C. 604(a) to authorize the Director of the Administrative Office, under the supervision and direction of the Judicial Conference, to reimburse official travel expenses incurred by judicial officers and employees at rates equal to those applicable to justices and judges.

ARBITRATION

The Conference voted to reaffirm support for the proposed "Court-Annexed Arbitration Act of 1985" (March 1986 Session, Conf. Rpt., pp. 6-7), in lieu of enactment of H.R. 4341, 99th Congress, an alternative arbitration bill.

NATIONAL CHILDHOOD VACCINE INJURY ACT OF 1986

Although enacted, the National Childhood Vaccine Injury Act of 1986 (Public Law 99-660) will not become effective until "the effective date of a tax enacted after the date of enactment of this Act to provide funds for compensation." The Act provides a compensation scheme, administered by the federal courts, that must be exhausted prior to the award of more than \$1,000 in damages for injuries caused by a vaccine.

The issues of substantive policy addressed by the Act are matters for the Congress. However, the Committee noted that the Act as passed raises substantial constitutional questions and contains numerous and severe procedural defects relating to both federal and state courts. The Conference voted to urge the Congress not to fund the National Childhood Vaccine Injury Act, and to amend or reconsider the Act to avoid substantial constitutional questions and to correct procedural defects raised by the legislation in its present form.

CIVIL RICO SUITS

In March, 1986 (Conf. Rpt., pp. 11-12), the Judicial Conference approved a resolution suggesting that Congress seriously consider narrowing the reach of 18 U.S.C. 1964(c) (civil suits under the Racketeer Influenced Corrupt Organizations Act (RICO)). Because the impact on the federal courts of suits brought under this provision grows daily more acute, the Conference concurred in the Committee's recommendation that the Congress promptly take steps to narrow significantly the scope of the civil RICO provisions in 18 U.S.C. 1964(c).

STATE JUSTICE INSTITUTE

The Conference reiterated its strong support for the recently created State Justice Institute, including reasonable funding for its operation.

JUDICIAL CONDUCT AND DISABILITY

The Ad Hoc Subcommittee on Judicial Conduct and Disability was formed in July, 1983, in response to the Conference's charge that the Committee on Court Administration consider the reconciliation of the disparate circuit rules for handling complaints of judicial misconduct or disability under the Judicial Conduct and Disability Act, 28 U.S.C. 372(c). Among other things, the Act provides that each judicial council may prescribe such rules for the conduct of disciplinary proceedings as it considers appropriate and that these rules may be modified by the Judicial Conference.

Section 372(c) was enacted into law by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (Public Law 96-458), and became effective on October 1, 1981. Effective on that date, each circuit council issued a rule governing its handling of complaints under the Act. It was generally understood that a considerable period of

experimentation would be necessary before the Conference could exert meaningful review authority over the disparate rules adopted by the judicial councils.

Contemporaneously with the formation of the Ad Hoc Committee, the circuit chief judges embarked on an effort to draft model rules that might be proposed for adoption by the judicial councils. In 1986, a special committee of circuit chief judges completed Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, published with commentary by the Federal Judicial Center.

The Conference voted to ask that each judicial council and national court substantially adopt the Illustrative Rules as soon as possible following the March, 1987 Judicial Conference. The Conference also urged each judicial council and national court to inform the Conference by September 30, 1987, through the Committee on Court Administration, of its experience with local judicial discipline rules.

TEMPORARY EMERGENCY COURT OF APPEALS

In response to a request from three senators to consider the need for continuation of the Temporary Emergency Court of Appeals (TECA), the Conference concurred in the Committee's recommendation that TECA be abolished by the Congress, on condition that the court be permitted to complete its pending caseload during a transition period. The appropriate forum for future appellate review of petroleum allocation and price support cases, some 350 of which are pending in the district courts, was determined to be a matter better left to the Congress.

PLACES OF HOLDING COURT

The Southern and Middle Districts of Florida, the Judicial Council of the Eleventh Circuit, and the Committee recommended that the Counties of Collier, Hendry, Glades, and Highlands in the Southern District of Florida, and the Counties of DeSoto, Charlotte, and Lee in the Middle District, all be placed in the same district, either Southern or Middle. This would enable Ft. Myers, which is already designated as a place of holding court and which has adequate court facilities, to be utilized by these counties. The Conference agreed to support the enactment of suitable legislation to place all seven counties within the Southern or the Middle District of Florida.

ADDITIONAL COURT REPORTERS

The Committee declined to approve an additional court reporter position in the Southern District of Florida.

AUTOMATION

The Committee on Court Administration considered, and unanimously approved, the Five-Year Plan for Automation in the United States Courts (1987 Update). In addition to automatic data processing, the 1987 version of the Plan includes an office automation project and programs for data and voice communications.

The Subcommittee on Judicial Improvements reported to the parent committee and the Conference that, in recognition of the fact that the Bankruptcy Court Automation Project (BANCAP) will be of inestimable value to the overburdened bankruptcy courts, the Subcommittee had unanimously requested the Federal Judicial Center to focus its development resources to insure that BANCAP is completed according to the schedule set forth in the current version of the Five-Year Plan. This will require other bankruptcy automation efforts, including Judicial Center support for a Department of Justice-managed demonstration project (see section 310 of Public Law 99-554, the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986), and any modification of BANCAP to satisfy new U.S. Trustee needs, to be deferred indefinitely. The Subcommittee also directed the Administrative Office to reexamine the Five-Year Plan implementation schedules of non-case management systems such as the Financial and Jury Systems, in order to accelerate implementation of BANCAP, if possible.

COMMITTEE ON THE BUDGET

APPROPRIATIONS FOR THE FISCAL YEAR 1987

The Committee on the Budget reported that the fiscal year 1987 appropriation for the judiciary, signed into law as part of the government-wide "continuing resolution" (Public Law 99-500), provided a total of \$1,192,592,000. This represents an increase in budget authority of \$161,435,000, or 16 percent over the amount appropriated for the fiscal year 1986.

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1987

The Conference was advised that a fiscal year 1987 supplemental appropriations request of \$40.2 million had been submitted for "Salaries and Expenses", to fund the appointment of an additional 400 deputy clerks in the bankruptcy courts; increases in travel costs resulting from higher subsistence allowances; funds for the purchase of telephone systems and increases in telecommunications system charges; higher office space rental charges assessed by the General Services Administration; expenses resulting from Public Law 99-554, which established 52 new bankruptcy judgeships and a pilot bankruptcy administrator program in two states; and 386 positions, primarily in probation and pretrial services, necessary to handle increased drug enforcement activity. A supplemental request of \$2.5 million for the "Defender Services" appropriation has been submitted to fund the revised Criminal Justice Act compensation limitations. The judiciary is also seeking \$18,000,000 for the planning, design, and construction of chambers, courtrooms, and adjunct facilities for the new bankruptcy judgeships authorized by Public Law 99-554.

DECENTRALIZATION PROPOSALS

The Committee reported that it had considered two proposals advanced by the circuit executives that would decentralize functions performed by the Administrative Office, and had deferred action on both proposals.

JUDICIAL ETHICS COMMITTEE

The Judicial Ethics Committee reported that as of March, 1987, the Committee had received 1,980 financial disclosure reports for the calendar year 1985, including 1,007 reports from judicial officers and 973 reports from judicial employees, and had addressed 564 letters of inquiry to reporting individuals.

ADVISORY COMMITTEE ON CODES OF CONDUCT

The Advisory Committee on Codes of Conduct reported that since its last report, the Committee had received nine inquiries and issued nine advisory opinions. The Chairman also responded to 17 telephone inquiries that did not require reference to the Committee.

CODE OF CONDUCT FOR UNITED STATES JUDGES

The Conference agreed to delete the word "JUDICIAL" from the title of the volume containing the Code of Conduct for United States Judges, at the earliest opportunity consistent with the availability of funds.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments reported that during the period August 15, 1986, through February 15, 1987, the Committee had recommended 72 intercircuit assignments to be undertaken by 50 judges. Of this number, 12 were senior circuit judges, six were active circuit judges, 21 were senior district judges, five were active district judges, two were senior judges of the Court of International Trade, and four were active judges of the Court of International Trade.

Of the 72 assignments approved, 31 judges undertook 48 assignments to the courts of appeals, and 21 judges undertook 24 assignments to the district courts.

GUIDELINES

The Chief Justice and the Committee approved the following guidelines and procedures for the intercircuit assignment of United States judges, effective November 21, 1986:

1. A federal judge has responsibility: first, to the particular court of which he or she is a member; second, to the other courts within his or her own circuit; and third, to the courts outside his or her circuit.
2. The chief of the borrowing circuit will certify the need for a judge to be assigned from another circuit. Assignment of judges from their statutory base will be on the basis of the need of the borrowing circuit. This standard will govern the assignments of both active and senior judges.

3. Except for emergency situations, circuits in need of help should forecast their need as much as possible and advise the committee of the type of help, times and places where the help is needed and the number of judges that may be required.
4. Except in emergency situations, a circuit which lends active judges may not borrow from another circuit; a circuit which borrows active judges may not lend.
5. When an active judge is borrowed or lent for a particular case or cases, for example, due to the disqualification of all judges in the borrowing circuit, the lender/borrower rule will not apply.
6. The lender/borrower rule may be relaxed in appropriate situations with respect to senior judges, provided the chief judge of the lending circuit is consulted to assure the needs of that circuit are met first.
7. In the event all judges of a given circuit disqualify themselves, the chief judge shall notify the Chairman of the Intercircuit Assignment Committee who, in consultation with the Director of the Administrative Office and the Chief Justice, will select a judge or panel of judges as the case may be. To avoid the appearance of impropriety or conflict of interest, judges of the borrowing circuit, once disqualified, should not participate in the selection of the visiting judge or judges.
8. Except in emergency situations, a judge assigned to work on the general calendar of a district court should serve at least two weeks if the travel is less than 750 miles, and for at least one month if the travel exceeds 750 miles. This 750-mile travel limitation does not apply to senior judges assigned to work in an appellate court.
9. If deemed necessary, a visiting judge may be accompanied by up to two members of his or her staff. The borrowing court will be expected to furnish additional supporting personnel as required.

OPERATING PROCEDURES

Certificate of Need (AO Form 23) The chief circuit judge certifies that there is a need within his or her circuit for a judge to be assigned from another circuit. The certificate is sent to the Chairman of the Committee, as noted at the bottom of the form.

Certificate of Consent (AO Forms 24 and 24B) An active judge needs the consent of his or her circuit chief judge; a senior judge can consent to his/her own assignments. In both cases, the chief judge of the lending circuit should be consulted to assure that the needs within that circuit are satisfied first.

Intercircuit Assignment When the visiting judge is chosen and the applicable consent is received the Chairman will submit the committee's recommendation to the Director of the Administrative Office who will prepare the designation and forward it with all supporting material to the Chief Justice for signature.

Upon approval by the Chief Justice, all documents will be returned to the Director for distribution to the clerks of the lending and borrowing courts, as provided by 28 U.S.C. 295. Notice of the approval will be sent to the chief judges of the lending and borrowing circuits, the chief judges of the lending and borrowing districts (if applicable), and the visiting judge. The permanent records of the assignments will be maintained by the Administrative Office.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure reported that the Chief Justice had appointed Judge Lloyd D. George as chairman of the Advisory Committee on Bankruptcy Rules, and Judge Joseph F. Weis, Jr. as chairman of the Advisory Committee on Civil Rules. No rules amendments were submitted to the Conference, although a number are under consideration by the advisory committees.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

SENTENCING GUIDELINES

The Committee reported that it had considered revised draft sentencing guidelines and concurred in the recommendation of the Ad Hoc Committee on Sentencing Guidelines (*infra*, pp. 40-41) that the Conference take no formal position on the guidelines until their promulgation in April, 1987.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

At its September, 1985 session (Conf. Rpt., pp. 60-61), the Conference endorsed several amendments to the Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984, Public Law 98-473) proposed by the Probation Committee. While some of the proposed amendments have been enacted, numerous others have not. The Conference reaffirmed support for the Committee's proposed amendments and authorized their resubmission to the Congress.

MEMORIAL RESOLUTION

The Conference adopted the following resolution:

The Judicial Conference of the United States notes with sadness the death of United States Probation Officer Thomas E. Gahl on September 22, 1986. Tom was a fine and dedicated federal probation officer for twelve years and gave his life serving the District Court for the Southern District of Indiana. We, the members of the Conference, convey our sympathy to his widow, Nancy, and to their two children, Christopher and Nicholas. We ask that this resolution be sent to them as a mark of our respect and high esteem for Tom.

QUALIFICATION STANDARDS FOR PROBATION AND PRETRIAL SERVICES OFFICERS

Under the Civil Service Retirement System, law enforcement personnel may retire at age 50 after completing 20 years of law enforcement service. Retirement under this system results in a higher rate of annuity computation.

Under the new Federal Employees' Retirement System (FERS), applicable to all probation employees hired after January 1, 1984 and any others who opt into the system, the treatment of law enforcement officers for retirement purposes is altered. In the definition of "law enforcement officer", FERS adds a provision requiring that the duties of a law enforcement officer must be "sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals." See 5 U.S.C. 8401(17). The authority to determine which positions in the judicial branch are to be treated as law enforcement positions has been delegated by the Office of Personnel Management to the Director of the Administrative Office.

After reviewing the job requirements of probation officers, probation officer assistants, and pretrial services officers, the Committee recommended that, effective July 1, 1987, first-time applicants for these positions must not have reached their thirty-fifth birthday at the time of appointment. The Conference approved this recommendation, and also approved the establishment of other physical standards consistent with the necessity of these officers to deal effectively with physical attacks and moderate to arduous physical exertion.

IMPLEMENTATION OF THE PRETRIAL SERVICES ACT

The Conference adopted the following resolution concerning implementation of the Pretrial Services Act of 1982 (Public Law 97-267):

The Conference has studied implementation of the Pretrial Services Act of 1982 and observes that some courts have experienced difficulty in implementing this Act. The Conference concludes that where a high volume of bail hearings is concentrated in one or more locations and the criminal caseload is substantial, it is more efficient to deliver pretrial services through a separate office. The Conference recommends, therefore, that districts with a high concentration of bail activity and a substantial criminal caseload review their provision of pretrial services and consider establishing a separate office.

**COMMITTEE ON ADMINISTRATION OF THE
BANKRUPTCY SYSTEM**

**RECALL TO SERVICE OF RETIRED
BANKRUPTCY JUDGES**

At its March, 1985 session (Conf. Rpt., p. 22), the Conference adopted regulations governing the recall to service of retired bankruptcy judges. In order to provide uniform regulations governing the authorization of space, facilities, and equipment for bankruptcy judges recalled to service, the Conference approved the following amendment to the regulations:

Section 12. Space, Facilities and Equipment

Upon certification of a Judicial Council recalling a retired bankruptcy judge to active service that adequate support cannot be provided by existing resources, the Director of the Administrative Office may provide space, facilities and equipment including law books and other supplies necessary for the performance of the duties of the recalled bankruptcy judge.

**GUIDELINES FOR THE ADMINISTRATION OF
CHAPTER 13 CASES**

Since 1963, the Judicial Conference has promulgated guidelines for the administration of Chapter 13 cases to promote uniform supervision of trustee practices in the various districts. On the recommendation of the Committee, the Conference approved amendments to Guideline 17 (to delete the requirement that interest earned on estate funds be included in the ten percent of payments limitation which a standing trustee is allowed for compensation and expenses) and Guideline 11 (to incorporate a technical change in accounting terminology).

**ADDITIONAL DUTY STATIONS AND
PLACES OF HOLDING COURT
FOR BANKRUPTCY JUDGES**

In order to accommodate the 52 new judgeships created by the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554), the Conference approved the following designations of official duty stations and deletions of additional places of holding court:

<u>CIRCUIT/DISTRICT</u>	<u>Additional Positions (P.L.99-554)</u>	<u>Official Duty Station</u>
THIRD		
New Jersey	2	Camden Newark
Pennsylvania, Western	1	Pittsburgh
FOURTH		
Maryland	1	Baltimore
North Carolina, Western	1	Charlotte
South Carolina	1	Columbia
Virginia, Eastern	1	Richmond
FIFTH		
Louisiana, Western	1	Alexandria*
Texas, Northern	1	Dallas
Texas, Southern	3	Houston (2) Corpus Christi*
Texas, Western	1	Austin*
SIXTH		
Kentucky, Western	1	Louisville
Michigan, Western	1	Grand Rapids
Tennessee, Eastern	1	Chattanooga or Knoxville
Tennessee, Western	1	Memphis

*Delete as additional places of holding court: Alexandria, Louisiana; Corpus Christi, Texas; and Austin, Texas.

<u>CIRCUIT/DISTRICT</u>	<u>Additional Positions (P.L.99-554)</u>	<u>Official Duty Station</u>
SEVENTH		
Illinois, Northern	2	Chicago
Illinois, Central	1	Danville
Indiana, Northern	1	Fort Wayne*
Wisconsin, Eastern	1	Milwaukee
EIGHTH		
Arkansas, Eastern and Western	1	Little Rock
Iowa, Northern	1	Sioux City*
Iowa, Southern	1	Des Moines
Nebraska	1	Lincoln*
South Dakota	1	Pierre*
NINTH		
California, Northern	2	Oakland San Jose
California, Eastern	2	Fresno Sacramento
California, Central	7	Los Angeles (5) San Bernardino Santa Ana
California, Southern	1	San Diego
Idaho	1	Boise
Nevada	1	Las Vegas
Oregon	1	Eugene
Washington, Eastern	1	Spokane
Washington, Western	1	Tacoma
TENTH		
Oklahoma, Northern	1	Tulsa
Oklahoma, Western	1	Oklahoma City
Utah	1	Salt Lake City
ELEVENTH		
Florida, Middle	2	Orlando* Tampa
Georgia, Northern	2	Atlanta
Georgia, Southern	1	Augusta*

*Delete as additional places of holding court: Fort Wayne, Indiana; Sioux City, Iowa; Lincoln, Nebraska; Pierre, South Dakota; Orlando, Florida; and Augusta, Georgia.

ADDITIONAL JUDGESHIPS

Due to an unusual increase in bankruptcy filings, the Conference voted to recommend that Congress authorize one additional bankruptcy judgeship for the District of Colorado.

SALARIES OF BANKRUPTCY JUDGES AND UNITED STATES MAGISTRATES

On February 4, 1987, the President's recommendations for adjusted executive, legislative, and judicial salaries became law. Under these recommendations, bankruptcy judges and United States magistrates received increases only from \$70,500 to \$72,500, or about 2.8 percent.

The ability of the judiciary to continue to attract and retain qualified individuals to serve as bankruptcy judges and United States magistrates will be seriously impaired unless Congress acts quickly to raise the salaries of these judicial officers. Accordingly, on the recommendations of the Committees on the Administration of the Bankruptcy and Federal Magistrates Systems, the Conference endorsed an immediate resolution of the problem through Congressional enactment of pay increases for bankruptcy judges and magistrates.

The Conference has previously recommended (March 1982 Session, Conf. Rpt., p. 16; March 1983 Session, Conf. Rpt., pp. 9-10) that a mechanism be established whereby the Director of the Administrative Office, under the direction and supervision of the Judicial Conference, be authorized to establish and maintain a salary system for officers of the judiciary other than Article III judges. Salary levels established as of March 1, 1987, require a reexamination of the salary ceiling element in the Conference-proposed mechanism. At the request of the Chairmen of the Bankruptcy and Magistrates Committees, the Court Administration Committee will undertake to review the appropriateness of that element and report any recommended revision thereof to the Conference. No legislative proposal embodying the mechanism will be filed with the Congress until after the Conference has acted upon the Committee's recommendation.

**COMMITTEE ON THE ADMINISTRATION OF THE
FEDERAL MAGISTRATES SYSTEM**

SALARIES OF MAGISTRATES

The Judicial Conference has consistently endorsed the principle of parity in the salaries of full-time United States magistrates and bankruptcy judges. E.g., March 1981 Session, Conf. Rpt., p. 28. The Conference reaffirmed this principle as a standing resolution of continuing effect, and authorized the Director of the Administrative Office to implement future adjustments in the salaries of full-time magistrates consistent with this principle.

The Conference also approved the Committee's recommendations (1) that part-time magistrates be granted the three percent cost-of-living salary adjustment granted generally to other federal employees, retroactive to January 1, 1987; and (2) that effective March 18, 1987, part-time magistrates be authorized the further 2.836 percent salary increases which are proportionate to the increased maximum rate for full-time magistrates established by the recent Presidential recommendations under the Federal Salary Act of 1967, as amended. The new salary levels, incorporating both increases authorized for part-time magistrates, are as follows:

<u>Level</u>	<u>1987 Salary Jan 1-Mar. 17</u>	<u>1987 Salary Eff. Mar. 18</u>
2.....	\$ 2,075	\$ 2,134
3.....	3,113	3,201
4.....	4,151	4,269
5.....	5,188	5,335
6.....	7,379	7,588
7.....	9,454	9,722
8.....	11,531	11,858
9.....	13,606	13,992
10.....	15,682	16,127
11.....	17,873	18,380
12.....	20,640	21,225
13.....	23,406	24,070
14.....	26,635	27,390
15.....	30,844	31,719
16.....	35,250	36,250

RECALL OF RETIRED MAGISTRATES

Title II of the Criminal Justice Act Revision of 1986 (Public Law 99-651) provides, *inter alia*, for the recall to service of retired U.S. magistrates. The Conference approved regulations, effective April 1, 1987, implementing the recall provisions of 28 U.S.C. 636(h). The regulations are patterned upon the regulations promulgated by the Conference in March, 1985 (Conf. Rpt., p. 22) for the recall of retired bankruptcy judges.

CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to be effective when appropriated funds are available. The salary levels listed below include the adjustments by the Conference at this session.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia:

Continued the two full-time magistrate positions which are due to expire in 1988 for additional eight-year terms.

FIRST CIRCUIT

Maine:

Continued the authority of the clerk of court to perform magistrate duties for an additional four-year term at the currently authorized additional compensation of \$2,134 per annum.

FIFTH CIRCUIT

Louisiana, Western:

Authorized a part-time magistrate position at Lafayette (or Opelousas) at a salary of \$36,250 per annum.

Texas, Western:

1. Continued the full-time magistrate position at San Antonio which is due to expire on October 8, 1987, for an additional eight-year term.
2. Continued the full-time magistrate position at El Paso which is due to expire on December 18, 1987, for an additional eight-year term.
3. Continued the full-time magistrate position at Austin for an additional eight-year term.

SIXTH CIRCUIT

Kentucky, Western:

Continued the full-time magistrate position at Paducah for an additional eight-year term.

Tennessee, Eastern:

Authorized the full-time magistrate at Knoxville to exercise jurisdiction over the Big South Fork National River and Recreation Area in the adjoining Eastern District of Kentucky and Middle District of Tennessee.

SEVENTH CIRCUIT

Indiana, Southern:

Converted the part-time magistrate position at Evansville to a full-time magistrate position.

EIGHTH CIRCUIT

North Dakota:

Increased the salary of the part-time magistrate position at Grand Forks (or Devils Lake or Minnewaukan) from \$4,269 to \$11,858 per annum.

NINTH CIRCUIT

Arizona:

1. Converted the part-time magistrate position at Tucson to a full-time magistrate position.
2. Directed the court not to fill a vacancy in a full-time magistrate position at Tucson occurring two years or more after the appointment of the new full-time magistrate without approval of the Judicial Conference.

California, Central:

Authorized one new full-time magistrate position for the district, to be located at Los Angeles.

Hawaii:

Authorized a part-time magistrate position at Kwajalein Missile Range at a salary of \$2,134 per annum.

Montana:

Converted the part-time magistrate position at Great Falls to a full-time magistrate position.

TENTH CIRCUIT

Kansas:

1. Converted the part-time magistrate position at Wichita to a full-time magistrate position.
2. Discontinued the part-time magistrate position at Junction City upon the appointment of the new full-time magistrate at Wichita.

ELEVENTH CIRCUIT

Alabama, Northern:

Converted the part-time magistrate position at Huntsville (or Decatur) to a full-time magistrate position.

Florida, Northern:

Converted the part-time magistrate position at Tallahassee to a full-time magistrate position.

Florida, Southern:

Converted the part-time magistrate position at West Palm Beach to a full-time magistrate position.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

APPOINTMENTS AND PAYMENTS

The Committee to Implement the Criminal Justice Act submitted to the Conference a report on appointments and payments under the Criminal Justice Act during the fiscal year 1986. The report indicated that \$70,074,000 originally was appropriated for the fiscal year 1986 for implementation of the CJA. Of this amount, \$2,657,000 was sequestered in accordance with "Gramm-Rudman-Hollings" (Public Law 99-177), leaving a balance of \$67,417,000 available. It is estimated that this entire amount will be required to meet projected fiscal year 1986 obligations.

During the fiscal year 1986, approximately 59,570 persons were represented under the CJA, compared to 54,564 persons during the fiscal year 1985, an increase of 9.2 percent. Of these 59,570 persons represented, 31,500, or 52.9 percent, were represented by federal public and community defender organizations, compared to 52.6 percent in the fiscal year 1985 and 53.5 percent in the fiscal year 1984.

The Conference authorized the Director of the Administrative Office to transmit the report to all chief judges, to all federal defender organizations, and to others who may request copies.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Conference approved supplemental budget requests for federal public defender organizations for the fiscal years 1987 and 1988 as follows:

Maryland:
 FY 1987 \$ 43,642
 FY 1988 \$ 79,681

Oregon:
 FY 1987 \$115,906
 FY 1988 \$ 60,206

Colorado:
 FY 1987 \$ 69,916
 FY 1988 \$115,800

Western Washington and Alaska:
 FY 1987 \$ 82,831
 FY 1988 \$108,867

GRANT REQUESTS -
 COMMUNITY DEFENDER ORGANIZATIONS

The Conference approved supplemental sustaining grants for the fiscal years 1987 and 1988 for the Defender Association of Philadelphia, Federal Court Division, Eastern District of Pennsylvania, in the following amounts:

FY 1987 \$ 66,493
 FY 1988 \$ 77,087

GUIDELINES

The Conference approved the following amendments to the Guidelines for the Administration of the Criminal Justice Act:

1. Numerous technical amendments to incorporate the provisions of the Criminal Justice Act Revision of 1986, Title I, Public Law 99-651.
2. Amendments to paragraphs 2.14 and 3.16, relating to death penalty federal habeas corpus cases.
3. Amendments to paragraph 2.18, relating to the appointment and compensation of standby counsel.

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

The Committee on the Administration of the Criminal Law reported that, at its most recent meeting, the Committee considered revised draft sentencing guidelines and referred its comments to the Committee on the Administration of the Probation System. See also "Sentencing Guidelines", infra, p. 40-41.

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

MACHINE READABLE QUALIFICATION QUESTIONNAIRE

The Conference authorized the District Court for the District of New Mexico to use a machine readable form of the juror qualification questionnaire previously approved by the Conference under 28 U.S.C. 1869(h).

COMMITTEE ON PACIFIC TERRITORIES

**SERVICE OF ARTICLE III JUDGES ON COURTS OF
MICRONESIA, MARSHALL ISLANDS, AND PALAU**

With the gradual termination of the trust known as Trust Territories of the Pacific Islands, the United States has entered into compacts of free association with the governments of the Federated States of Micronesia, the Marshall Islands, and Republic of Palau. The three compact states do not have enough full-time judges to staff their entire court structure. In order to permit Ninth Circuit judges to sit by designation on such courts, as was done when the islands were administered by the United States under the Trust Territory Government, the Conference agreed to the following resolution:

RESOLVED, that the Conference endorses enactment by the Congress of the United States of legislation which would permit judges of the Ninth Circuit, with the permission of the Chief Judge of the Circuit, to serve on the courts of the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau, if so requested by an authorized official of the compact state.

COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION

The Committee on the Bicentennial of the Constitution reported on its participation in the Bicentennial effort.

AD HOC COMMITTEE ON SENTENCING GUIDELINES

SENTENCING GUIDELINES

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984, Public Law 98-473) created a determinate sentencing system and a United States Sentencing Commission to monitor it. The Sentencing Commission is charged with drafting sentencing guidelines which, if not disapproved by Congress, will control the exercise of sentencing discretion in the federal courts. The guidelines must be submitted to Congress by April 16, 1987, and absent further Congressional action, guideline sentencing will commence November 1, 1987.

In September, 1986, the Sentencing Commission published for comment draft guidelines and policy statements. At its last session (Conf. Rpt., p. 93), the Conference authorized the chief judge of each circuit to designate a circuit judge and a district judge to participate at government expense in a series of regional Commission hearings on the draft. Many of the witnesses, including the federal judiciary representatives, were highly critical of the proposed guidelines and policy statements. In February, 1987, the Sentencing Commission circulated a second draft of tentative guidelines. The Criminal Law and Probation Committees, as well as the Ad Hoc Committee on Sentencing Guidelines, reviewed this second draft at their most recent meetings. As noted, the final guidelines will be promulgated in April.

If the Conference wishes to express views to the Congress on the final guidelines, it will be important to do so prior to the next session of the Conference in September. The Conference authorized the Ad Hoc Committee, in consultation with the Committees on the Administration of the Criminal Law and the Probation System, to recommend Conference positions, as appropriate, to the Executive Committee following promulgation of the sentencing guidelines. The Ad Hoc Committee was also asked to recommend whether, in light of substantial judicial branch opposition to the guidelines, the Judicial

Conference should recommend repeal of the statute creating the Sentencing Commission and requiring sentencing guidelines.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

In order to prevent unnecessary difficulties in the transition from the old sentencing system to the new system under the Sentencing Reform Act, the Sentencing Commission submitted legislation to the Congress that would make the applicability of the Act dependent upon the date of commission of an offense rather than on the date an offender is convicted. The Conference voted to endorse that legislative initiative.

AD HOC COMMITTEE ON ELECTRONIC SOUND RECORDING

The Ad Hoc Committee on Electronic Sound Recording reported on the progress of the electronic sound recording program during the calendar year 1986. The Conference approved the report and discharged the Committee, vesting in the Administrative Office the responsibility for any further implementation of the program and periodic evaluation for Conference review.

COMMITTEE TO STUDY THE JUDICIAL CONFERENCE

The Chief Justice orally briefed the Conference on the activities of the Committee to Study the Judicial Conference. The Committee plans to present comprehensive recommendations at the September, 1987 Conference session.

PROCEEDINGS UNDER JUDICIAL CONDUCT AND DISABILITY ACT

The Conference voted to authorize the Chief Justice to execute and issue to the Speaker of the House of Representatives a certificate providing as follows:

CERTIFICATE

**TO THE SPEAKER, UNITED STATES HOUSE OF
REPRESENTATIVES:**

The Judicial Conference of the United States, acting pursuant to section 331 of title 28, United States Code, does hereby certify as follows:

1. On September 2, 1986, the Judicial Council of the Eleventh Circuit certified to the Judicial Conference, as provided by 28 U.S.C. 372(c)(7)(B), that United States District Judge Alcee L. Hastings of the Southern District of Florida has engaged in conduct which might constitute grounds for impeachment under Article I of the United States Constitution.

2. The Judicial Conference has exercised its authority under 28 U.S.C. 372(c)(8) to consider the certificate of the Judicial Council of the Eleventh Circuit. In so doing, the Judicial Conference had before it the certificate of the Judicial Council of the Eleventh Circuit, filed pursuant to 28 U.S.C. 372(c)(7)(B), the Report of the Investigating Committee appointed by the Chief Judge of the Eleventh Circuit pursuant to 28 U.S.C. 372(c)(4)(A), the record and exhibits compiled by that Committee, and a Statement and Provisional and Preliminary Report prepared by counsel for Judge Hastings and filed with the Judicial Conference in response to the invitation set forth in a Resolution adopted by the Conference on September 17, 1986.

3. The Judicial Conference considers no additional investigation by it to be appropriate.

4. The Judicial Conference concurs in the determination of the Judicial Council of the Eleventh Circuit that consideration of impeachment may be warranted.

MEMORIAL RESOLUTION

Noting the death of Judge Walter Roe Mansfield, the Conference adopted the following resolution:

It is with sadness that the United States Judicial Conference notes the death of Judge Walter Roe Mansfield on January 7, 1987, while he was vacationing in New Zealand. During his five years on the United States District Court for the Southern District of New York and his fifteen years on the United States Court of Appeals for the Second Circuit, Judge Mansfield was admired by bench and bar alike. He maintained a reputation for humanity, scholarship, and integrity second to none.

Judge Mansfield was born in Boston and received his undergraduate and legal degrees at Harvard University. He practiced law in New York City for nearly thirty years. He also served for three years as an Assistant United States Attorney and for four years in the United States Marine Corps during the Second World War in Europe and the Far East, as a member of the Office of Strategic Services parachuting behind enemy lines and fighting with partisans in both the European and Pacific theatres of war. He was appointed a District Judge in the Southern District of New York, in 1966; in 1971, he was elevated to the Court of Appeals. In 1981, Judge Mansfield took senior status, though he continued to serve the court in virtually a fully active capacity until his death.

Judge Mansfield also had a long history of service to the Judicial Conference, as well as to his own courts. He was a member of the Advisory Committee on Criminal Rules from 1969 to 1971 and the Advisory Committee on Civil Rules from 1971 to 1984, serving as Chairman of the latter committee from 1978 to 1984. Thereafter, he was appointed to the Standing Committee on Rules of Practice and Procedure. He was also a member of the Ad Hoc Committee on the Media Petition from 1983 to 1984, dealing with the issue of "cameras in the courtroom." In 1984, Judge Mansfield was appointed to the three-judge judicial panel responsible for the appointment of independent counsel to investigate allegations of wrongdoing by federal agencies and officials. Throughout his career he was active in numerous professional associations and organizations for the improvement of the judicial system and the practice of law.

The members of the Judicial Conference convey their sympathy to his widow, Elizabeth "Tina" Mansfield, his children, Matthew, Trina and Peter Rient, his stepchildren, Daniel, Kristin and Lisa, and his nine grandchildren, and ask that this Resolution be sent to them as a mark of our profound respect and high esteem.

RESOLUTION

Noting the scheduled retirement of A. Leo Levin, Director of the Federal Judicial Center, the Conference adopted the following resolution:

WHEREAS: A. Leo Levin has announced his retirement as Director of the Federal Judicial Center in July of 1987; and

WHEREAS: as the fourth director of the Center, succeeding Justice Tom C. Clark, Judge Alfred P. Murrah, and Judge Walter E. Hoffman, he served as director during more than half the Center's life; and

WHEREAS: Professor Levin brought to the Center a rich understanding of the federal courts and judicial process, drawn not only from his career as one of the country's leading teachers of civil procedure, but drawn also from his service as Executive Director of the Commission on Revision of the Federal Court Appellate System, and, later, as Coordinator of what has come to be known as the Pound Revisited Conference; and

WHEREAS: Professor Levin provided exceptional leadership of the Federal Judicial Center during a period of unprecedented growth in the federal judicial system, while the Center's services to federal judges and their staffs increased dramatically in quantity, quality, and diversity, although the resources available to the Center grew only slightly:

Therefore, be it RESOLVED, That the Judicial Conference of the United States hereby extends sincere appreciation and best wishes to Professor A. Leo Levin and Mrs. Levin as they return to the University of Pennsylvania, with the hope and expectation that they will both maintain their association with the federal judiciary in the years to come.

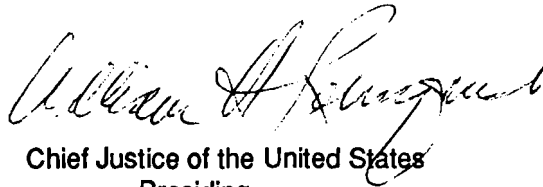
ELECTIONS

The Conference affirmed the Executive Committee's elections to membership on the Board of the Federal Judicial Center of Judge Alvin Rubin of the Fifth Circuit (to fill the unexpired term of Judge Arlin Adams, whose term would have expired March 28, 1989) and of Judge Anthony

Kennedy of the Ninth Circuit (for a term of four years to succeed Judge Daniel Friedman, whose term expires on March 28, 1987). The Conference also elected Judge William C. O'Kelley of the Northern District of Georgia to membership on the Judicial Center Board to fill the unexpired term of Judge Howard Bratton and an additional term of four years to commence March 28, 1987.

RELEASE OF CONFERENCE ACTION

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



Chief Justice of the United States
Presiding

April 10, 1987