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

September 19, 20, 1979

Washington, D.C.
1979

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, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other ciruit or district judge from such circuit. If the chief judge of the Court of Claims or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

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

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

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

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

September 19-20, 1979

The Judicial Conference of the United States convened on September 19, 1979, 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 Frank M. Coffin
Chief Judge Raymond J. Pettine, District of Rhode Island

Second Circuit:
Chief Judge Irving R. Kaufman
Chief Judge T. Emmet Clarie, District of Connecticut

Third Circuit:
Chief Judge Collins J. Seitz
Judge Alfred L. Luongo, Eastern District of Pennyslvania

Fourth Circuit:
Chief Judge Clement F. Haynsworth, Jr.
Judge Charles E. Simons, Jr., District of South Carolina*

Fifth Circuit:
Chief Judge John R. Brown
Chief Judge William C. Keady, Northern District of Mississippi

Sixth Circuit:
Chief Judge George C. Edwards, Jr.
Chief Judge Charles M. Allan, Western District of Kentucky

Seventh Circuit:
Chief Judge Thomas E. Fairchild
Judge S. Hugh Dillin, Southern District of Indiana

*Designated by the Chief Justice in place of Judge Robert R. Merhige, Jr., who was unable to attend.

Eighth Circuit:
Chief Judge Floyd R. Gibson
Judge Albert G. Schatz, District of Nebraska

Ninth Circuit:
Chief Judge James R. Browning
Judge Morell E. Sharp, Western District of Washington

Tenth Circuit:
Chief Judge Oliver Seth
Chief Judge Howard C. Bratton, District of New Mexico

District of Columbia Circuit:
Chief Judge J. Skelly Wright
Chief Judge William B. Bryant, District of Columbia

Court of Claims:
Chief Judge Daniel M. Friedman

Court of Customs and Patent Appeals:
Chief Judge Howard T. Markey

Circuit Judges Walter J. Cummings, Edward A. Tamm, Gerald B. Tjoflat and Harrison L. Winter; Senior District Judges Dudley B. Bonsal, Charles M. Metzner, George L. Hart, Jr., and Roszel C. Thomsen; and District Judges C. Clyde Atkins, Edward J. Devitt, Alexander Harvey II, Elmo B. Hunter, Robert E. Maxwell, and Edward Weinfeld attended all or some of the sessions of the Conference.

The Attorney General of the United States, Honorable Benjamin R. Civiletti, and the Solicitor General, Honorable Wade H. McCree, 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, Jr., Assistant Director; and Mark W. Cannon, Administrative Assistant to the Chief Justice, attended all sessions of the Conference. The Director of the Federal Judicial Center, A. Leo Levin, reported on the activities of the Center since the last session of the Conference.

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

The Director of the Administrative Office of the United States Courts, Mr. William E. Foley, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1979. The Conference authorized the Director to release the annual report immediately in preliminary form and to revise and supplement the final printed edition.

JUDICIAL BUSINESS OF THE COURTS

Mr. Foley reported that appeals docketed in the United States courts of appeals in the year ending June 30, 1979, climbed almost 7 percent to a record 20,219 new appeals. During the year the courts of appeals terminated a record 18,928 appeals, 1,291 fewer than the number filed, and the number of appeals pending on June 30, 1979 increased to a record 17,939 cases. Appeals from decisions of administrative agencies increased almost 23 percent. The number of appeals from decisions of district courts in criminal cases declined almost 9 percent during the year.

Civil cases filed in the United States district courts in the year ending June 30, 1979, were 154,666, an increase of 11.5 percent over the 138,770 civil cases filed during the previous year. During the year there were 143,323 civil cases terminated, compared with 125,914 terminated during the previous year. On June 30, 1979, there were 177,805 civil actions pending on the dockets of the district courts, compared with 166,462 pending a year earlier.

Criminal cases filed in the United States district courts in 1979 again declined to 32,688, a decrease of 9.2 percent compared with the 35,983 criminal cases filed during the previous year. There were 33,411 criminal cases terminated, a 10.4 percent decrease from the previous year, but 723 more than the number filed. As a result the number of criminal cases pending on June 30, 1979 fell to a ten-year low of 15,124.

Bankruptcy cases commenced in the United States district courts during the year ending June 30, 1979, were 226,476, an 11.6 percent increase over the number of bankruptcy cases filed during the previous year. This increase reverses

a three-year downward trend in the filing of bankruptcy cases. During the year there were 209,316 bankruptcy cases closed, an on June 30, 1979, there were 258,168 bankruptcy cases pending on the dockets.

REPORT OF THE FEDERAL JUDICIAL CENTER

The Director of the Federal Judicial Center, Professor A. Leo Levin, reported that during 1979 the Center has been engaged in the task of providing orientation to new judges appointed under the 1978 Omnibus Judgeship Act and to supporting personnel who have entered on duty in the judiciary as a consequence of the increase in judgeship positions. The Center is continuing its development of COURTRAN and has made available to a number of district courts programs to assist them in meeting the requirements of the Speedy Trial Act of 1974. The Center has also been working on problems of complex civil litigation, aspects of the jury system and services needed by probationers.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A report submitted on behalf of the Judicial Panel on Multidistrict Litigation indicated that during the year ending June 30, 1979 the Panel had acted upon 1,064 civil actions pursuant to 28 U.S.C. 1407 and that 936 civil actions were centralized for coordinated pretrial proceedings. The Panel denied transfer of 128 actions. Since the creation of the Panel in 1968 over 7,700 civil actions have been centralized in pretrial proceedings in carrying out the Panel's responsibilities. As of June 30, 1979, almost 5,000 of those actions had been remanded for trial or terminated by settlement or dismissal in the transferee courts.

COMMITTEE ON COURT ADMINISTRATION

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

JUDICIAL TENURE

The Conference in March 1979 (Conf. Rept., p. 4) after reviewing a draft of proposed amendments to 28 U.S.C. 332 to clarify the powers of the judicial councils of the circuits to adopt procedures for the examination of judicial conduct in cases where it is warranted and to take appropriate action in such instances, adopted a resolution setting forth the principles to be embodied in any proposed amendment to the statute. The Chairman of the Committee on Court Administration and the members of the Executive Committee were directed to revise the proposal in accordance with the principles stated in the resolution and to submit a revised draft for Conference approval.

Judge Hunter informed the Conference that a new draft bill to amend 28 U.S.C. 372 rather than 28 U.S.C. 332 had been prepared and approved by the Executive Committee. After full discussion, the Conference, consistent with its previous resolution, voted to recommend that, if legislative action is to be taken, the proposed amendment to 28 U.S.C. 372, set out in the draft bill submitted by the Committee, be enacted into law.

TRIAL OF PROTRACTED CASES

Judge Hunter informed the Conference that the Committee had considered a suggestion for the creation of a special panel of judges to be available to undertake the trial of protracted cases on special assignment. Judge Hunter pointed out that in a small district the assignment of a local judge to a lengthy trial can completely disrupt the entire calender of the court.

The Committee recommended that the Chief Justice be requested to designate such a panel, to include highly experienced senior judges. The chief judge of a district court would request the chief judge of the circuit to arrange the assignment of one of the panel judges if an intercircuit assignment were involved. This recommendation was approved by the Conference.

EQUAL EEMPLOYMENT OPPORTUNITY

On June 5, 1979, a "Petition Seeking the Adoption of Equal Employment Opportunity Plans by the Federal Judiciary" was filed with the Judicial Conference on behalf of twelve organizations representing minorities. The petition, based upon a survey by the Southern Regional Council, states that "equal employment opportunity has been and continues to be denied to both women and blacks by federal courts in the South. There is every reason to believe that those discriminatory patterns exist in federal courts in other areas of our nation." Without conceding that there has been discrimination, the Committee unanimously recommended, and the Conference adopted, the following resolution:

> The Judicial Conference of the United States reaffirms its resolution of 1966, endorsing a national policy of a positive program for equal opportunity of employment. In furtherance of that endorsement, the Committee on Court Administration, with the assistance of the Adminsitrative Office, is directed to prepare a model affirmative action plan, for adoption by each federal court, with regard to the selection and promotion of employees, and is further directed to present that model plan to the Conference for approval at the March 1980 session. Upon such approval, each federal court shall adopt and implement a plan based thereon. Any modification of the model plan by a court must first be approved in its circuit by the Circuit Council thereof. A copy of each plan and any subsequent modifications shall be filed with the Administrative Office. Each court shall annually submit a report on the implementation of its affirmative action plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

RENTAL OF SPACE AND FACILITIES

The annual Appropriation Act for the Federal Judiciary contains an item for "Space and Facilities" which is available for the rental of space required for the operation of the courts. Appropriated funds are paid over to the Administrator of General Services for the space occupied by the Judicial Branch and these funds are, in turn, deposited by the Administrator into the Federal Buildings Fund. The Fund is used to

cover the expenses of operating federally-owned buildings and the cost of renting space in privately-owned buildings.

The Fund, however, is not a revolving account. Congress must appropriate the money to be spent from the Fund and usually imposes limits on the amount the Administrator can obligate and disburse for the rental of space. The Office of Management and Budget apportions the limitation of expenditures among all government agencies on a quarterly basis. Even though there is adequate funding to pay for all space required by the Federal Judiciary, the Administrator of General Services may be unable to provide space because of a "freeze" on the availability of funds to rent space in privately-owned buildings.

Judge Hunter informed the Conference that in an attempt to obtain relief from any limitation imposed on the Judiciary by the Executive Branch of the Government, the Director of the Administrative Office of the United States Courts had requested the Chairman of the Senate Appropriations Subcommittee for the Treasury, Postal Service and General Government to include a statement in the 1980 appropriations bill that the Judicial Branch shall be provided space and facilities to the extent of funds appropriated for that purpose in Judiciary Appropriation Acts. Upon recommendation of the Committee, the Conference endorsed the action taken by the Director and authorized him to continue to seek this legislation.

SPACE UTILIZATION

Judge Hunter informed the Conference that the House Appropriations Subcommittee for the Treasury, Postal Service and General Government had expressed concern over the utilization of space by the Judiciary and that the House Subcommittee on Appropriations for the Judiciary had also stated its belief that bankruptcy judges and magistrates do not require facilities comparable to those being provided to circuit and district judges. In this regard the Committee had reviewed space guidelines for bankruptcy judges and magistrates prepared by the Administrative Office in coordination with the General Services Administration and the Director's Advisory Committee of Bankruptcy Judges. Although the guide-

lines called for less space for both bankruptcy judges and magistrates than for circuit and district judges, it was the view of the Committee that experience under the new Bankruptcy Code and the new Magistrates Act may require changes in the guidelines. Upon recommendation of the Committee, the Conference approved the guidelines as interim guidelines, subject to later evaluation.

ADDITIONAL JUDGESHIPS

The Omnibus Judgeship Act of 1978, P.L. 95-486, created only two of the three additional judgeships recommended by the Judicial Conference for the United States Court of Appeals for the District of Columbia Circuit. Since the recommendation for three additional judgeships was originally made, the caseload of the court has increased and has grown more complex. The Conference thereupon recommended the creation of one additional judgeship for the United States Court of Appeals for the District of Columbia Circuit.

NATIONAL BUREAU OF JUSTICE STATISTICS

H.R. 2061 and H.R. 2108, 96th Congress, are bills to establish a National Bureau of Justice Statistics. It was the view of the Committee that the statistical programs operated by the Administrative Office adequately serve the needs of the Federal Judiciary and that the Administrative Office is the appropriate agency to collect information on the operation of the courts. Statistical information compiled in the Administrative Office is readily available to the Department of Justice, to the Congress and to any Government agency. The Committee therefore recommended disapproval of any legislation which would duplicate in another governmental unit the statistical authority now assigned to the Administrative Office under Title 28, United States Code. The Committee further recommended that in the event a Bureau of Justice Statistics is established, the Bureau's board include a member of the Judicial Branch of the Government, either a Federal judge or a representative of the Administrative Office. These recommendations were approved by the Conference.

FEDERAL COURTS IMPROVEMENT ACT OF 1979

S. 1477, 96th Congress, is a bill to provide for improvements in the structure and administration of the Federal courts and for other purposes. It has been favorably reported by the Senate Judiciary Committee. Judge Hunter informed the Conference that the bill contains several titles and subparts which the Committee had separately considered.

A. *Selection and Tenure of Chief Judges:* Part A of Title I of S. 1477 would provide that the judge who is senior in commission, age 64 or under, and who has served one year or more on the court shall be the chief judge. A chief judge would serve for a term of seven years or until attaining 70 years of age. The Committee recommended and the Conference approved these provisions of the bill.

B. *Appellate Panels:* Part B of Title I of S. 1477 would amend Sections 45(b) and 46(b) and (c) of Title 28, United States Code. The amendment to Section 45(b) would give active judges precedence over senior circuit judges. The amendment to Section 46(b) would require at least three judges on an appellate panel, two of whom must be judges of the court, unless such judges are disqualified. The amendment does not distinguish between active and senior judges of the court. The amendment to Section 46(c) also requires a panel of at least three judges.

The Committee perceived a potential problem arising in the event of illness, death, or vacancy, or in a situation in which the caseload is so heavy as to prevent active circuit judges from handling appeals in timely fashion. This is especially pertinent in a court of appeals with a small number of judges, such as the First Circuit, which may not be able to sit because of the availability of only one active circuit judge. Otherwise, the Committee saw no objection to these proposals and they were approved by the Conference.

C. *Membership of Judicial Councils:* Part C of Title I of S.1477 would restructure the judicial councils of the circuits and provide for district judge membership. The circuit council would consist of the chief judge of the circuit, a number of circuit judges to be fixed by majority vote of all active circuit judges of the circuit, and a number of district judges also to be fixed by majority vote of all active circuit judges. Terms of

members of the council would be established by majority vote of all active judges of the circuit. The circuit council would be authorized to conduct hearings, take sworn testimony and issue subpoenas. Upon recommendation of the Committee, the provisions of Part C of Title I were approved by the Conference.

D. *Retirement and Resignation:* Part D of Title I of S. 1477 would amend 28 U.S.C. 371 to permit a judge who resigns his office at age 65 with 15 years of service to continue to receive an annuity equal to the salary which he was receiving when he resigned. This provision of the bill was approved by the Conference. The Conference also reaffirmed its approval of a proposal to permit a judge to retain his office but retire from regular active service whenever the combination of his age and years of service as a judge equal eighty.

E. *Assignments of Judges to Managerial Positions:* Part E of title I of S. 1477 would authorize the temporary assignment of an Article III judge to a limited number of managerial positions in the Judicial Branch of the Government. Upon recommendation of the Committee this provision was approved by the Conference.

F. Interlocutory Appeals: Part A of Title II of S. 1477 would amend 28 U.S.C. 1292(b) to permit an appeal from a decision of a district court, not otherwise appealable, "if the court of appeals determines in its discretion that an appeal is required in the interests of justice and because of the extraordinary importance of the case." In these circumstnces the certificate of a district judge would not be required.

It was the view of the Committee that this provision was quite unnecessary. The Committee knew of no case in which the interests of justice were irreparably damaged because a district court has refused to certify an interlocutory order or appeal. To add this language to the statute would encourage lawyers to seek leave from the court of appeals for review of interlocutory orders when the district court has refused a Section 1292(b) certificate. This proposal was disapproved by the Conference.

G. *Transfer to Cure Want of Jurisdiction:*Part B of Title II of S. 1477 would add a new Section 1631 to Title 28, United States Code, to authorize the transfer of an improperly filed case from one court to another. A similar proposal had pre-

viously been approved by the Conference (Conf. Rept., Mar. 1978, p. 11). Upon recommendation of the Committee, the Conference reaffirmed its approval of this proposal.

H. *Interest on Judgements and Prejudgement Interest:* Part C of Title II of S. 1477 would amend 28 U.S.C. 1961 with respect to interest on civil money judgements. First, the interest rate would be "the rate established pursuant to Section 6621 of the Internal Revenue Code" rather than the "rate allowed by State law." Secondly, the court would be authorized to award interest measured "from the time that the party against whom damages have been awarded became aware of his potential liability or from the time that he should have become aware of such liability, but, in any case, not to exceed a period of five years." The Conference approved these provisions of the bill, except the provision that would link the interest rate to Section 6621 of the Internal Revenue Code. The Committee was directed to consider other possible methods of fixing interest rates and to report theron to the Conference.

I. *Court of Appeals for the Federal Circuit and the United States Claims Court:* Title III of S. 1477 would merge the United States Court of Claims and the United States Court of Customs and Patent Appeals into a new court to be named the "United States Court of Appeals for the Federal Circuit." Jurisdiction of the new court would be substantially the same as that of the two courts to be merged, except that the new court would not have any jurisdiction in tax cases. In addition, the new court would have jurisdiction of all appeals from decisions of district courts in patent cases, jurisdiction to review decisions of the district courts under the Tucker Act (except tax cases), and jurisdiction of any appeal from a final order or decision of the Merit Systems Protection Board and of agency boards of contract appeals.

The trial division of the existing United States Court of Claims would be converted into a new Article I court to be named the "United States Claims Court." This new court would have the same jurisdiction as the existing Court of Claims, except that it would no longer have jurisdiction of civil tax refund or Federal Tort Claims Act cases. The new United States Court of Appeals for the Federal Circuit would have appellate jurisdiction over decisions of the United States Claims Court.

Judge Hunter reported that the Committee favorbly views certain aspects of the proposal including the centralization of appellate jurisdiction over patent cases and Tucker Act cases in one court. The Committee, however, expressed no view on the appellate court structure.

Upon recommendation of the Committee, the Conference approved the general purposes of the proposals contained in Title III of S. 1477, but expressed no view on court structure.

J. *United States Court of Tax Appeals:* Title IV of S. 1477 would create a new "United States court of Tax Appeals" having jurisdiction over appeals from the United States Tax Court and the United States district courts. The new court would consist of eleven judges designated by the Chief Justice from the existing United States courts of appeals. Initially, the judges so designated would serve staggered terms up to three years and vacancies would be filled by the designation of additional judges for terms of three years. Terms or sessions of the court would be held at least once per year in each circuit and at such other times and places as the court may direct. The court would sit in panels of three judges, or might sit in panels of more then three judges. Its decisions would be reviewable by the Supreme Court on writ of *certiorari.*

Judge Hunter informed the Conference that the Committee believes that the concept of a separate court of tax appeals is sound, but questions whether the assignment of judges from the courts of appeals to serve on the court is practical. The Committee believes that consideration should be given to a separate court having an appropriate number of full-time judges. Upon recommendation of the Committee, the Conference aproved in principle the creation of a separate court of tax appeals, but voted to advise the Congress of its view that the regular mandatory assignment of circuit or district judges as members of the court is impractical.

AIR DISASTER LITIGATION

H.R. 231, 96th Congress, is a bill to amend title 28, United States Code, to establish a federal cause of action for and federal court procedures with respect to aviation activities and for other purposes. The Judicial Conference in March 1979 (Conf. Rept., p. 13) endorsed the two principal objectives of a

similar bill, H. R. 10917, 95th Congress, and authorized the Committee to communciate its views regarding particular provsions of the bill to the appropriate committees of the Congress and to work with Congressional committees on the bill.

Upon the recommendation of the Committee, the Conference reaffirmed its previous action with respect to those proposals now contained in H. R. 231, 96th Congress.

ATTORNEYS' FEES

S. 265, 96th Congress, entitled the "Equal Access to Justice Act," would provide for an award of attorneys' fees to prevailing parties in proceedings before administrative agencies that are subject to section 554 of Title 5, United States Code, and would provide for an award of costs and attorneys' fees to the "prevailing party in any civil action brought by or against the United States" in any court having jurisdiction of such action. In awarding attorneys' fees and other expenses to a "prevailing party in any action for judicial review of any agency adjudication . . . the court shall include in that award the fees and other expenses for services performed during the agency adjudication unless the court finds that during such adjudication the position of the United States was substantially justified, or that special circumstances made an award unjust." The bill would also require the Director of the Administrative Office of the United States Courts to include in his annual report "the amount of fees and other expenses awarded during the preceding fiscal year" and "describe the number, nature, and amount of awards, the claims involved in the controversy and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards."

In March 1978 (Conf. Rept., p. 8) the Conference considered similar bills which would provide for an award of reasonable attorneys' fees. At that time the Committee reported that it continued to be of the view that the question of awarding attorneys' fees in agency and court proceedings is a matter of public policy for the determination of the Congress, but pointed out that a piecemeal approach to this issue is eroding the "prevailing American Rule" requiring parties in civil litigation to pay their own attorneys' fees, without

thorough study of the potential consequences. The Conference, at that time approved the Committee's suggestion that before any new authority to award attorneys' fees is enacted, the Congress be requested to conduct general hearings on the desirability of further modifying the "prevailing American Rule" so that the views of the bar and the public generally can be elicited.

Judge Hunter reported that the Committee is also concerned about the provisions of the bill requiring the Director of the Administrative Office to report on fee awards to be paid by other agencies of the Federal Government. It seemed to the Committee that the duty of reporting such information to the Congress should be placed on agencies familiar with the proceedings who will be required to pay any fees that are awarded.

Upon recommendation of the Committee the Conference reaffirmed its action of March 1978 with respect to the question of awarding attorneys' fees and voted to recommend to the Congress that those government agencies paying attorneys' fees be required to report those payments to Congress on their own, rather than requiring the Director of the Administrative Office to do so.

Diversity Jurisdiction

S. 679 and H.R. 2202, 96th Congress, are bills to eliminate the amount in controversy requirement for federal question jurisdiction and to abolish diversity of citizenship as a basis of jurisdiction in the United States district courts. These bills are virtually identical to H.R. 9622, 95th Congress, which was approved by the Conference in March 1978 (Conf. Rept., p. 7). Upon recommendation of the Committee, the Conference reaffirmed its approval of this legislation.

Judicial Review of Veterans' Claims

S. 330, 96th Congress, would establish procedures for the adjudication of claims for benefits administered by the Veterans Administration; make the provisions of the Administrative Procedure Act applicable to the rulemaking procedures of the Veterans Administration; provide for the

judicial review of decisions of the Administrator of Veterans Affairs; and provide for the payment of reasonable attorneys' fees to individuals claiming veterans' benefits. The Conference had previously expressed the view (Conf. Repts., Mar. 1963, p. 18 and Mar. 1978, p. 9) that the question of whether judicial review of the denial of veterans' claims should be accorded as a matter of public policy for decision by the Congress but stated that if Congress should decide to grant such review, a review by a Court of Veterans Appeals, with local hearings by commissioners of the court, would provide a more suitable form of review than by the district courts, the courts of appeals, or the Court of Claims.

Judge Hunter reported that the Committee had been informed of a current proposal to limit the judicial review of decisions of the Social Security Administration to questions of law, thus making agency factual determinations final. Whether or not this concept is adopted for social security cases, the Committee believed that it should be applied to the judicial review of veterans' claims. Upon recommendation of the Committee, the Conference modified its previous resolution to provide that if Congress decides that judicial review of veterans' claims in the district courts is appropriate, these courts should be authorized to review only constitutional issues involving substantive and procedural due process and questions of statutory interpretation. The Conference also recommended that an administrative tribunal, modeled after the Tax Court, be established in the Veterans Administration.

Court of Labor-Management Relations

H. R. 2353, 96th Congress, would provide for the establishment of a Court of Labor-Management Relations having jurisdiction over certain labor disputes in industries substantially affecting commerce. The Conference in September 1977 (Conf. Rept., p. 52) voted to recommend against the enactment of a similar bill, stating that the disputes which are the subject of the pending legislation can be adequately handled through the existing Federal court structure. Upon recommendation of the Committee, the Conference reaffirmed its disapproval of this legislation.

Class Actions

The Office for Improvements in the Administration of Justice of the Department of Justice had submitted to the Committee a draft bill to repeal Rule 23(b)(3), Federal Rules of Civil Procedure, and to add a new chapter 176 to Title 28, United States Code, to create two new types of action—a "public action" and a "class compensatory action."

The "public action" is intended to embrace small claims for damages as a result of a violation of an Act of Congress relating to commercial conduct. In order for the action to be brought, at least 200 persons must be alleged to have sustained injury not exceeding $300 each and the aggregate of the claims must exceed $60,000. The injury must arise out of the same transaction and the action must present a substantial question of law or fact common to the injured persons. The action may be brought directly by the Attorney General; by a State attorney general pursuant to Section 4C of the Clayton Act, as amended; or may be brought in the name of the United States by an injured person referred to as a "relator." Damages could be determined on a sampling basis and the money recovered would be placed in a "public recovery fund" to be administered by the Director of the Administrative Office of the United States Courts, or, if the court so directs, by the clerk of the district court. Those persons sustaining injuries of $300 or less would file claims with the Administrative Office, or the clerk of court, and receive payment. An earlier version of the bill provided that claims under $15 would not be paid because of the costs of administration. Claims exceeding $300 would be paid only after all smaller claims were paid and any person receiving payment exceeding $300 would be required to execute a release of any further rights arising out of the same transaction. Money remaining in the fund would be paid to the United States to offset the costs of administration. Special discovery procedures would apply. Parties would initially be limited to 30 interrogatories and the taking of depositions of 10 persons, or 10 deposition days. The "opt out" provision of Rule 23(b)(3) would not apply in a public action.

The "class compensatory action" is designed to provide relief to persons sustaining damages in excess of $300 each for violation of any federal law. It would require a "class" of at

least 40 persons, one of whom must be a representative party who adequately represents the class interest. It is similar in many respects to the procedure under Rule 23(b)(3), Federal Rules of Civil Procedure.

The Committee was of the view that the provisions of the draft bill would simplify the work of the trial judge in both the "public action" and the "compensatory class action." The Committee, however, recommended disapproval of the compensation provisions of the "public action" through a public recovery fund, as inappropriate for administration by any public agency, including the Administrative Office of the United States Courts or the office of the clerk of a district court. As an alternative the Committee suggested that a penalty provision, depriving a person of the fruits of unlawful conduct, may be an appropriate deterrent to illegal activity. Alternatively the Committee believed that consideration should be given to the use of a "fluid recovery" as an alternative to the payment of damages. The Committee also recommended that claims of less than $15 not be paid because of the costs of administration. The Conference endorsed the views of the Committee and authorized their transmission to the Department of Justice.

Appellate Jurisdiction of the Supreme Court

S. 450 and H. R. 2700, 96th Congress, are bills to eliminate direct appeals to the Supreme Court, except in three-judge district court cases. These bills, as introduced, are similar to S. 3100, 95th Congress, which was approved by the Conference in March 1979 (Conf. Rept., p. 13). Upon recommendation of the Committee, the Conference reaffirmed its endorsement of the provisions in these bills as originally introduced.

Enforcement of State Custody Orders

H. R. 325 and H. R. 772, 96th Congress, would amend 28 U.S.C. 1332 to grant jurisdiction to a district court to enforce any custody order of a state court against a parent who, in contravention of such order, takes a child to another state. The Judicial Conference in March 1978 (Conf. Rept., p. 11)

considered an identical bill, H. R. 9913, 95th Congress, and took the following action:

> While the bill embodies a matter of policy for Congressional determination, the Committee doubted that Section 2 of Article III of the Constitution supports this type of grant of jurisdiction to a federal court. Further, the bill is unclear on questions of venue, what law is to be applied, and the nature of relief that may be granted. The Conference took no position on the merits of the bill, but authorized the communication of the Committee's reservations to the Congress.

Upon recommendation of the Committee, the Conference reaffirmed its previous action with respect to the proposals contained in these bills.

Standing to Sue

S. 680 and H. R. 1047, 96th Congress, would alter certain recent decisions of the Supreme Court of the United States relating to standing to sue. The bills provide, in general, that in actions against the United States or any state or local government, its agencies or its officials, alleging violations of the Federal Constitution or Federal law, standing to sue shall not be denied on any of four grounds:

1. That the suit raises a generalized grievance shared by all or a large class of persons;
2. That causation is not shown since the defendant's conduct may not be the primary cause of the plaintiff's injury;
3. That the remedy would be ineffective because a judgment for the plaintiff is unlikely to cure the plaintiff's injury; and
4. That the alleged injury is not within the zone of interest to be protected or regulated by the applicable statutes or constitutional provision.

The bill would not affect the lack of standing of persons to sue as taxpayers nor the lack of standing of persons to challenge agency action which affects the liability or status of another person under the revenue laws.

Judge Hunter stated that the doctrine of standing under Supreme Court decisions "has become a blend of constitutional requirements and policy considerations." The constitutional requirements arise out of the Article III mandate that the federal courts decide only cases and controversies. Some of the rules of standing, usually termed the "prudential"

limitations, are not constitutionally based. "Congress can, of course, resolve the question, one way or the other, save as the requirements of Article III dictate otherwise." The matter is complicated because a prudential limitation is not "always clearly distinguished from the constitutional limitation."

It appears that the sponsors of the bill believe that it would affect only "prudential limitations" on standing and that Congress is free to make changes in these rules and that the only constitutional requirement is "a personal stake in the outcome." In the recent case of *Duke Power Company v. Carolina Environmental Study Group, Inc.*, 98 S. Ct. 2620, 2630-2631 (1978), the Supreme Court said that the constitutional requirement of a "personal stake" means not only "a distinct and palpable injury to the plaintiff," but also "a 'fairly traceable' causal connection between the claimed injury and the challenged conduct," and that the causal connection element can be put otherwise as meaning "that the exercise of the Court's remedial powers would redress the claimed injuries."

Judge Hunter informed the Conference that the Committee believes the bill will have to be amended in the light of the *Duke Power* case and two other recent Supreme Court cases: *Orr v. Orr*, 99 S. Ct. 1102, 1107-1108 (1979); and *Gladstone Realtors v. Village of Bellwood*, 47 L. Wk. 4377 (April 17, 1979).

Upon recommendation of the Committee, the Conference voted to inform the Congress that it:

1. Opposes enactment of S. 680 in its present form;
2. Notes that there are questions as to the constitutionality of several provisions;
3. In any event, recommends that the bill be reconsidered in light of recent Supreme Court decisions;
4. Believes that prudential standing rules should not be treated in an "omnibus" approach such as S. 680, but individual problems should be resolved by amendments to individual statutes or by incorporating standing provisions in the enactment of new substantive statutes; and
5. Believes that complete elimination of prudential rules could require courts to decide questions which could be more appropriately decided in a constitutional democracy by the national legislature.

Declaratory Judgment in Cases Involving Public Utilities

H. R. 229, 96th Congress, would amend the Judicial Code to permit any Federal court to issue a declaratory judgment in a case of actual controversy between a utility and either the Secretary of the Treasury or a rate-making body with respect to certain provisions of the Internal Revenue Code of 1954. The purpose of the legislation is to provide more timely judicial resolution of tax issues. Under present law, United States district courts do not have jurisdiction to issue declaratory judgments with respect to tax disputes.

As now drafted, the bill would permit regulatory agencies to place new utility rates into effect without waiting for the court to issue a declaratory judgment. The issuance of a stay by a Federal court pending conclusion of a declaratory judgment action would result in a violation of the established policy against federal interference in state proceedings, as contained in the Johnson Act, 28 U.S.C. 1342.

Judge Hunter reported that the Committee is opposed as a matter of principle to any unwarranted extension of federal jurisdiction over matters which traditionally have been left to the states and does not believe that the policy against federal intervention in local rate cases, as expressed in the Johnson Act, should be changed. Upon recommendation of the Committee, the Conference approved the transmission of the Committee's conclusions to the Chairman of the House Judiciary Committee who had requested the views of the Conference on this bill.

Judicial Survivors Annuity Act

H. R. 2974, 96th Congress, would amend the Judicial Survivors Annuity Act to provide that an annuity under the Act would not terminate by remarriage of an annuitant after attaining age sixty. The Committee, upon recommendation of the Conference, approved the bill.

The Conference further authorized the appointment of an ad hoc committee to give consideration to the adequacy of annuities payable to the survivors of judges who have served on the bench for a comparatively short period of time.

Retirement of Territorial Judges

H. R. 3452, 96th Congress would amend 28 U.S.C. 373 to provide a minimum level for retirement salaries of territorial judges. Similar legislation has been disapproved by the Judicial Conference in the past on the basis that the matter should more properly be the subject of a private relief bill. The Conference reaffirmed its disapproval of this legislation.

Tenure of Chief Judges of Circuit and District Courts

S. 862, 96th Congress, would permit the chief judges of circuit and district courts to serve beyond 70 years of age. Since the bill is inconsistent with the recommendation of the Conference with regard to Part A of Title I of S. 1477, 96th Congress, as shown above, the Conference disapproved the bill.

Delay of Proceedings by Attorneys

H. R. 4047, 96th Congress, would require any attorney admitted to practice in the Federal Courts personally to satisfy the costs, expenses, and attorneys' fees related to any case unnecessarily or primarily delayed by that attorney's personal conduct. It was the view of the Committee that a judge already has sufficient power to control attorneys in situations such as this and that no additional sanctions are needed. Upon recommendation of the Committee, the Conference disapproved this legislation.

Cost-of-Living Allowances for Judicial Officers and Employees Serving Outside the Continental United States or in Alaska

At its March 1979 session (Conf. Rept., p. 12) the Conference recommended that, as a matter of equity, officers and employees in the Judicial Branch of Government should receive the same cost-of-living allowances provided in the Executive Branch to officers and employees serving outside the continental United States or in Alaska. Upon recommendation of the Committee, the Conference reaffirmed its resolution of March 1979.

Transfer of the United States Parole Commission to the Judicial Branch of Government

Last June the Director of the Administrative Office received an urgent request from the Office of Management and Budget for the views of the Judiciary on a draft bill, proposed by the Attorney General, to transfer the United States Parole Commission to the Judicial Branch of Government. The Director expressed opposition to the proposal pointing out that this was a matter that should be addressed by the Judicial Conference and that he could not speak for the Judiciary. These views were subsequently confirmed in a letter to the Office of Management and Budget in which it was pointed out that the functions of the Parole Commission were executive in nature, not judicial; that it would be inappropriate to make such a transfer if the Commission is to be abolished—a proposition supported by the Administration with regard to the proposed revision of the Federal Criminal Code; and that the bill would create many problems for employees of the Commission, such as civil service status.

The bill would establish the Parole Commission as an independent and separate agency within the Judiciary not subject to the control of the Judicial Conference of the United States, but apparently intended to be supported administratively by the Administrative Office of the United States Courts.

The Committee recommended that the Judicial Conference strongly disapprove this proposed legislation and endorse the comments of the Director of the Administrative Office contained in his letter to the Office of Management and Budget. This recommendation was approved by the Conference.

Libraries

Judge Hunter reported that the Committee had reviewed a report, prepared in the Administrative Office, recommending the creation of a national court library system based on the existing circuit central libraries. Satellite or branch libraries with professional staff would be located in those cities with a demonstrated need for such service where a circuit judge is also in residence. Eventully this library system would be expanded by establishing satellite libraries with professional

staff in courts where there is no resident circuit judge. Since there is statutory authority for the appointment of librarians only by the courts of appeals, it is necessary to seek legislative authority for the appointment of librarians at places where there is no resident circuit judge.

The central library in each circuit would be the center of legal research and services having primary responsiblity to all judicial officers within its circuit and secondary responsibility to the entire Federal Judiciary. It will exchange materials with other circuit libraries and other sources outside the Federal judicial system. Satellite libraries would have the advantage of the services and facilities of the parent library, the services of the circuit head librarian, and the services of a unified, national library system.

Judge Hunter pointed out that this concept will place some limitation on the size of chambers libraries, but that the resultant monetary savings and increase in professional services had caused the Committee to conclude unanimously that the concept as presented in the report of the Administrative Office should be adopted. Upon recommendation of the Committee, the Conference approved the concept of a central court library system and authorized the transmittal to Congress of the draft legislation recommended by the Committee to authorize the establishment of such a library system.

Limitations on Salaries of a Judge's Personal Staff

At the Conference session in March 1979 (Conf. Rept., p. 18), the Budget Committee reported that the limitation on the aggregate salaries payable to the personal staff of a circuit or district judge had been discussed at recent Congressional hearings and that the Budget Committee had suggested that the limitation language be striken from the Appropriations Act. In this event, the Conference would prescribe the criteria and exercise control over the number of secretaries and law clerks to be employed by circuit and district judges, in addition to controlling classification and qualification standards. The Conference thereupon authorized the Subcommittee on Supporting Personnel to consider the criteria governing the number of law clerks and secretaries that may be employed

by circuit and district judges in addition to determining the classification and qualification standards to be applied under the Judiciary Salary Plan.

Subsequently, the Committee on Appropriations of the House of Representatives, in commenting on the proposal, stated that "while the Committee feels that the ceilings would be more appropriately imposed by the Judicial Conference, it is reluctant to delete the language without a specific plan for imposing limits on these items. The matter will be reconsidered by the Committee upon submission of a plan and specific rules or regulations to be adopted by the Judicial Conference of the United States which should govern the number of secretaries and law clerks to be appointed by district judges, as well as the rates of compensation to be paid."

Judge Hunter reported that the Committee had developed the following plan which, upon recommendation of the Committee, was approved by the Conference.

Guidelines for the Employment of Secretaries
and Law Clerks by Circuit Judges, District Judges,
and Bankruptcy Judges

1. A district judge may employ a secretary and two law clerks, or a secretary, a law clerk and a crier, subject to the JSP grade levels and qualification standards adopted by the Judicial Conference.
2. A circuit judge may employ a secretary, an assistant secretary, and three law clerks, subject to the JSP grade levels and qualification standards adopted by the Judicial Conference.
3. The chief judge of each circuit and the chief judge of each district court having five or more district judges may employ an additional secretary or law clerk subject to the JSP grade level and qualification standards adopted by the Judicial Conference.
4. A bankruptcy judge may employe a secretary and a law clerk subject to the JSP grade levels and qualification standards adopted by the Judicial Conference.
5. With the provisio that no incumbent will be separated or reduced in grade, the maximum grade levels authorized by the Judicial Conference for law clerks, secretaries and criers are as follows:

Law Clerk, JSP-12*
Secretary, JSP-10**
Assistant Secretary, JSP-9
Crier, JSP-6

* A law clerk who has served a Federal judge for five years or more will be eligible for JSP-13.

** A secretary who has served a Federal judge for eight years or more, seven years at the JSP-10 level, will be eligible for grade JSP-11.

6. The Director of the Administrative Office may approve overlapping appointments of secretaries and law clerks of up to 30 days where the turnover of personnel would hinder the continuity of staff support for the judge.

COMMITTEE ON THE BUDGET

The report of the Committee on the Budget was submitted by the Chairman of the Committee, Chief Judge Robert E. Maxwell.

APPROPRIATIONS FOR FISCAL YEAR 1980

Judge Maxwell reported that the budget estimates submitted to the Congress for the fiscal year 1980 (exclusive of the Supreme Court) were initially in the amount of $606,354,000. The budget was subsequently amended to include an additional $1,008,000 for additional full-time magistrates and staff authorized by the Conference in March 1979. The sum of $578,899,000 was approved by Congress (P.L. 96-68—Sept. 24, 1979), which was $28,463,000 less than the amount requested, but an increase of $75,719,000 over appropriations for the fiscal year 1979.

With respect to the bankruptcy courts, the House Appropriations Committee approved $57,000,000, an increase of $20,342,000 over the amount appropriated for 1979 but $10,818,000 less than the amount requested. Subsequently, the Senate Appropriations Committee restored $3,000,000. In a conference between the House and the Senate the increase was reduced to $1,500,000, for a total appropriation of $58,500,000.

The Appropriations Committees reduced the "Space and Facilities" appropriation by $7,000,000 with the under-

standing that the United States Marshals Service would assume responsibility for court security in the fiscal year 1980. The Committees also denied requests for increases in the central legal staffs in the courts of appeals and requested that a study be made to determine the need for such central staffs.

The Conference authorized the Director of the Administrative Office to submit to Congress requests for supplemental appropriations for the fiscal year 1980 for "pay costs," and for the implementation of new legislation and actions of the Conference, and for any other reason he considers necessary and appropriate.

BUDGET ESTIMATES FOR FISCAL YEAR 1981

The Conference approved the budget estimates for the fiscal year 1981, which (exlusive of the Supreme Court, the Customs Court, and the Federal Judicial Center) aggregated $618,734,000, an increase of approximately $28,163,000 over appropriations for the fiscal year 1980. The Conference also approved proposed changes in the text of the Appropriation Act and authorized the Director of the Administrative Office to amend the budget estimates because of new legislation, actions of the Judicial Conference, or for any other reason the Director considers necessary and appropriate.

JUDICIAL ETHICS COMMITTEE

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

Judge Tamm informed the Conference that as of July 31, 1979 the Judicial Ethics Committee had received 1,541 reports from judges and judicial employees that were filed pursuant to the financial disclosure provisions of the Ethics in Government Act of 1978. As of that date reports had not been received from 28 individuals who, according to the records of the Committee, were required to file reports. In addition, four individuals had received extensions of time to file their reports.

Judge Tamm reported that most of the reports filed with the Committee have been reviewed by individual Committee members. Errors appearing in the reports have resulted in the writing of 364 letters to judicial officers and employees requesting additional information. In addition the Committee has sent 140 letters to individuals who failed to file reports as of May 15th. These letters have resulted in most cases in the filing of the disclosure forms. Letters requesting extensions of time have been received from 87 judicial officers and employees. Extensions were granted where the record disclosed a substantial and meaningful basis for the request. Judge Tamm also indicated that 8 inquiries concerning the interpretation of the statute had been referred to the Advisory Panel on Financial Disclosure Reports and Judicial Activities.

The Committee has also received, reviewed, and acknowledged the receipt of financial disclosure reports from 108 Presidential nominees for Federal judgeship positions.

Judge Tamm informed the Conference that on May 15th he was advised that a United States district judge in New Orleans had enjoined the public disclosure of financial disclosure forms. Because of this action the Committee has not made any financial disclosure statement available to the public since receiving notice of the order, nor has the Committee referred to the Attorney General any case involving the nonfiling of a financial disclosure report. Further action by the Committee awaits the final disposition of the civil proceedings instituted in New Orleans.

Because of the restraints imposed on the Committee's operation, and in the interest of efficiency, Judge Tamm stated that the Committee has not yet held a meeting to appraise and make appropriate recommendations to the Conference. A number of problems have already appeared that will require changes in the form, instructions, policies and programs of the Committee. A January meeting of the Committee is planned to consider these matters. At the same time the Committee will meet jointly with the Advisory Panel to consider problems affecting both Committees.

The report of the Committee was accepted by the Conference and the Committee was commended for its discharge of a difficult responsibility.

ADVISORY PANEL ON FINANCIAL DISCLOSURE REPORTS AND JUDICIAL ACTIVITIES

Judge Markey informed the Conference that the Advisory Panel was organized in April 1979. In June 1979, pursuant to a mail vote of the Conference, the Panel was assigned the responsibility of rendering advisory opinions on the various codes of conduct, a function previously performed by the predecessor Committee on Judicial Activities. At its initial meeting the Panel adopted the following methods for considering inquiries pertaining to financial disclosure reports:

(a) The Panel will consider only written financial disclosure inquiries and will tender its advice only in writing. The Chairman is authorized informal discussions with callers concerning potential inquiries.

(b) Disclosure inquiries are numbered (Inquiry No. 79-1, 79-2, etc.).

(c) To speed its work, the Panel divided into Division A and Division B, each now composed of 6 judges. The Chairman is not assigned to a division.

(d) On receipt of a disclosure inquiry, the Chairman assigns its number, prepares a proposed response, and forwards the inquiry and proposed response to all judges of a division. Odd-numbered inquiries are sent to Division A, even-numbered to Division B.

(e) Division members communicate their views to the Chairman. If there be differences, a conference call is arranged by the Chairman.

(f) If the division is unanimous, its advice is forwarded to the inquirer by the Chairman without comment.

(g) If a division be divided, the inquiry file is sent to the other division. The advice approved by the majority of the Panel is forwarded to the inquirer. If the Panel divides evenly, then and only then does the Chairman vote.

The Panel has modified its procedure to the extent of using docket numbers in place of inquiry numbers and is considering a new procedure for handling inquiries pertaining to the various codes of conduct.

As of the date of its report the Panel had considered and responded to inquiries concerning financial disclosure reports submitted by 33 persons and had 5 inquiries under consideration. The Panel has also considered and responded to

inquiries pertaining to the codes of conduct from 5 persons and had inquiries from 7 persons under consideration.

Codes of Conduct for Staff Attorneys, Circuit Executives and Public Defenders

The Panel submitted for Conference consideration proposed Codes of Conduct for Staff Attorneys, Circuit Executives and Public Defenders. All three codes prohibit the private practice of law, with the exception that a staff attorney would be permitted, within limitations, to perform "routine legal work necessary to the management of the personal affairs of the staff attorney or a member of his family."

It was the view of the Conference that the provisions of the Code with respect to the practice of law should be consistent and that the exception provided in the code of conduct for staff attorneys should also be included in the codes of conduct for circuit executives and public defenders. With these amendments the codes were approved by the Conference.

The Conference also directed the Panel to review the provisions pertaining to the practice of law in the codes of conduct for clerks of court, probation officers, and officers and employees in the Administrative Office of the United States Courts and the Federal Judicial Center and to report any changes necessary in these codes.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

Qualification Standards and Selection Procedures

Judge Metzner reported that the amendments to the Federal Magistrates act contained in S. 237, 96th Congress, would require the Conference at its first meeting following enactment of the legislation to issue binding regulations governing the appointment and reappointment of United States magistrates by the district courts. Anticipating passage of the Act before the current session of the Conference, the Committee had

prepared draft regulations setting forth standards and procedures for the appointment of magistrates. Since legislative action on the bill had not been completed, Judge Metzner stated that the Committee would give further consideration to these regulations and report to the Conference thereon at its next session.

Salaries of Full-time Magistrates

The salary schedule for full-time magistrates, approved by the Conference in September 1977 (Conf. Rept., p. 63) provided a two-tier salary structure. With the approval of the appointing court a full-time magistrate admitted to the bar for 10 years or more may be paid a salary of $48,500 per annum, except the full-time magistrate at Yosemite National Park. Other full-time magistrates are paid salaries of $42,500 per annum. After review of the current salary plan and in view of the qualification standards and selection procedures required by the currently pending amendments to the Federal Magistrates Act, the Committee recommended that there be a single salary level of $48,500 per annum for full-time magistrates who have been members of the bar of the highest court of a state for a period of five years or more, except the full-time magistrate at Yosemite National Park. This recommendation was approved by the Conference.

Salaries of Part-time Magistrates

The Conference had previously established a system of 15 salary levels for part-time magistrates. The part-time magistrates, however, do not automatically receive comparability pay adjustments applicable to federal employees generally.

Judge Metzner informed the Conference that the Committee had reviewed the current salary levels, which have not been changed since May 1977, and concluded that the schedule should be adjusted to grant salary increases of approximately 7 percent to all part-time magistrates. Upon recommendation of the Committee the Conference adopted the following salary levels for part-time magistrates effective October 1, 1979, subject to the availability of funds:

Level 15	$24,250*	Level 7	$8,200
Level 14	23,100	Level 6	6,400
Level 13	20,300	Level 5	4,500
Level 12	17,900	Level 4	3,600
Level 11	15,500	Level 3	2,700
Level 10	13,600	Level 2	1,800
Level 9	11,800	Level 1	900
Level 8	10,000		

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 magistrates. Unless otherwise indicated these changes are to become effective when appropriated funds are available. The salaries for full-time magistrates are to be determined in accordance with the salary plan previously adopted by the Conference.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

(1) Continued the full-time magistrate position at Washington, D.C., which is due to expire on June 21, 1980, for an additional eight-year term.

FOURTH CIRCUIT

North Carolina, Western

(1) Continued the deputy clerk-magistrate position at Charlotte for an additional four-year term.
(2) Increased the salary of the magistrate portion of the deputy clerk-magistrate combination position at Charlotte from $12,240 to $13,600 per annum in order to fit the salary of the position into one of the standard salary levels for part-time magistrates.

South Carolina

(1) Authorized a new part-time magistrate position at Columbia at a salary of $11,800 per annum.

*The maximum salary to be paid a part-time magistrate is one half of the $48,500 salary of a full-time magistrate.

Virginia, Eastern

(1) Continued the full-time magistrate position at Alexandria, which is due to expire on December 31, 1979, for an additional eight-year term.

FIFTH CIRCUIT

Florida, Northern

(1) Increased the salary of the part-time magistrate position at Tallahassee from $5,950 to $17,900 per annum.

Florida, Middle

(1) Authorized a second full-time magistrate position to be located at Jacksonville.

Georgia, Southern

(1) Converted the part-time magistrate position at Savannah to full-time status.

Texas, Western

(1) Discontinued the part-time magistrate positions at Marfa and Kerrville.
(2) Increased the salary of the part-time magistrate position at Pecos from $16,750 to $24,250 per annum.
(3) Increased the salary of the part-time magistrate position at Midland/Odessa from $3,400 to $6,400 per annum.
(4) Continued the part-time magistrate position at El Paso for an additional four-year term at the currently authorized salary of $24,250.

SIXTH CIRCUIT

Michigan, Western

(1) Continued the part-time magistrate position at Marquette for an additional four-year term at a salary of $900 per annum.

SEVENTH CIRCUIT

Illinois, Northern

(1) Continued the part-time magistrate position at Rockford/Freeport for an additional four-year term at a salary of $24,250 per annum.

Illinois, Southern

(1) Converted the part-time magistrate position at Belleville to full-time status at East Saint Louis.

Indiana, Southern

(1) Continued the part-time magistrate position at Evansville for an additional four-year term.
(2) Increased the salary of the part-time magistrate position at Evansville from $2,550 to $4,500 per annum.

EIGHTH CIRCUIT

Iowa, Northern

(1) Converted the deputy clerk-magistrate position at Cedar Rapids to full-time status.
(2) Discontinued the part-time magistrate positions at Waterloo and Fort Dodge, effective upon the appointment of a full-time magistrate at Cedar Rapids.
(3) Redesignated the deputy clerk-magistrate position at Cedar Rapids as a "deputy clerk-magistrate or clerk-magistrate" position until the appointment of a full-time magistrate at Cedar Rapids.

Iowa, Southern

(1) Continued the part-time magistrate position at Burlington for an additional four-year term at a salary of $2,700 per annum.
(2) Discontinued the part-time magistrate position at Davenport at the expiration of the current term.

NINTH CIRCUIT

Montana

(1) Increased the salaries of the part-time magistrate positions at Billings and Great Falls from $2,550 to $15,500 per annum each.
(2) Discontinued the part-time magistrate position at Hardin.

Nevada

(1) Continued the part-time magistrate position at Reno for an additional four-year term at a salary of $24,250 per annum.
(2) Continued the part-time magistrate position at Elko for an additional four-year term at a salary of $900 per annum.

Oregon

(1) Continued the part-time magistrate position at Pendleton for an additional four-year term at a salary of $900 per annum.
(2) Continued the part-time magistrate position at Coquille for an additional four-year term at a salary of $900 per annum.

TENTH CIRCUIT

Oklahoma, Eastern

(1) Continued the part-time magistrate position at Muskogee for an additional four-year term at a salary of $20,300 per annum.
(2) Continued the part-time magistrate position at McAlester for an additional four-year term at a salary of $1,800 per annum.
(3) Continued the part-time magistrate position at Sulphur for an additional four-year term at a salary of $3,600 per annum.

Colorado

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

The Conference also ratified the action taken by the Executive Committee of the Conference to continue the part-time magistrate position at Albany in the Middle District of Georgia, which would have expired on June 30, 1979, at a salary of $4,250 per annum. The position was continued for a new four-year term and the salary will be $4,500 per annum under the new salary structure.

LEGAL MANUAL FOR UNITED STATES MAGISTRATES

Judge Metzner informed the Conference that a new *Legal Manual for United States Magistrates* had been published and distributed to all magistrates and district judges. The manual, prepared in the Magistrates Division of the Administrative Office, was reviewed prior to publication by experienced magistrates and by members of the Committee. It currently includes six chapters covering the jurisdiction of magistrates and the conduct of preliminary proceedings in criminal cases.

Additional chapters are being prepared so that the manual, when completed, will cover the full range of duties performed by United States magistrates for the district courts.

Study of the Magistrates System

Judge Metzner also informed the Conference that the pending amendments to the Federal Magistrates Act would require the Judicial Conference to undertake a two-year study "concerning the future of the magistrate system, the precise scope of such study to be suggested by the Chairmen of the Judiciary Committees of each House of Congress." The Committee is planning to undertake such a study.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

The report of the Committee on the Administration of the Bankruptcy System was presented by the Chairman, Judge Edward Weinfeld.

Salaries and Arrangements for Bankruptcy Judges

The Conference considered the Committee's report, together with the recommendations of the Director of the Administrative Office, the judicial councils of the circuits, and the district courts concerned, and took the following action relating to bankruptcy judge positions and changes in salaries and arrangements. The Conference directed that, subject to the availability of funds, these actions become effective on October 1, 1979:

FIFTH CIRCUIT

Mississippi, Southern

(1) Established a second full-time bankruptcy judge position with headquarters at Biloxi at the salary authorized by Congress for a full-time bankruptcy judge.
(2) Authorized concurrent district-wide jurisdiction for the two full-time bankruptcy judges in the district.

(3) Designated Natches and Hattiesburg in addition to Jackson, Biloxi, Meridian and Vicksburg as places of holding court for the two full-time bankruptcy judges.

SEVENTH CIRCUIT

Wisconsin, Western

(1) Established concurrent district-wide jurisdiction for the full-time bankruptcy judge at Madison and the part-time bankruptcy judge at Eau Claire with designated places of holding court at Madison, Eau Claire, Wausau, Superior, and LaCrosse.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

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

SENTENCING INSTITUTES

The Committee submitted to the Conference a plan for a joint institute on sentencing for the judges of the Third and Sixth Circuits to be held at Lexington, Kentucky in May 1980, with one day at a nearby correctional institution. The agenda for the sentencing institute is similar to the agenda for the joint sentencing institute for the judges of the First, Fourth, and District of Columbia Circuits held in April 1979. The Conference approved the time, place, participants and agenda for this sentencing institute.

Judge Tjofat informed the Conference that the Chief Judge of the Fifth Circuit had approved the attendance of two faculty members of the Yale Law School at the forthcoming sentencing institute for the judges of the Fifth Circuit to be held in Dallas, Texas on October 3-5, 1979 on an experimental basis. The Yale faculty is presently planning workshops on federal sentencing, parole, and federal prisoners.

DISPARITY IN SENTENCES

Judge Tjoflat reported that the Committee had reviewed the recent Comptroller General's report to the Congress entitled *Reducing Federal Judicial Sentencing and Prosecuting Disparities: A System-wide Approach Needed.* The report recommended that the Judicial Conference (1) in cooperation with the Attorney General, undertake a comprehensive assessment of the nature and extent of undesirable sentencing disparity in the federal criminal justice system; (2) establish appropriate policy guidance for judges to use, at their discretion, in sentencing decisions; (3) establish a reporting and review mechanism to collect sentencing data and periodically study the adequacy of sentencing decisions; and (4) request from the Congress any legislative, statutory, or rule changes needed to improve the sentencing process.

The Committee noted that the probation system is currently cooperating with two major studies on sentencing, one conducted by the Institute for Law and Social Research and the other by Yale University, both of which are being funded by Department of Justice programs. The Committee further noted that with respect to establishing a reporting and review mechanism to collect sentencing data, the Probation Information Management System, reported below, is a long range answer to that problem. With respect to the recommendation that the Judicial Conference establish policy guidance for judges to use discretionarily in sentencing decisions, there presently is no statutory framework for the Conference to set recommended guidelines.

Upon recommendation of the Committee the Conference adopted the following policy statement:

> The Committee has reviewed the report of the General Accounting Office and its recommendations. The Committee has also reviewed the several pieces of legislation pending before Congress that would establish within the judicial branch or elsewhere special bodies to develop procedures and machanisms to guide the exercise of discretion in sentencing.
>
> The GAO report recommends the collection and maintenance of more complete data on the sentencing process to facilitate the formulation of policy to guide judicial discretion in sentencing. The Committee agrees with that recommendation and notes that steps to accomplish it have already been initiated by the Committee, working with the Administrative Office and the Federal Judicial Center. Development

of the Probation Information Management System (PIMS), recommended by the Committee will go a long way toward providing the data suggested by the report.

Three additional recommendations call upon the Judicial Conference to (1) "establish policy guidance for judges," (2) "periodically study the adequacy of sentencing decisions," and (3) "request from the Congress" any authority needed to assure that "sentencing of criminals is consistent and fair among and within districts."

As to these three recommendations, the Committee believes that it would be inappropriate for the Judicial Conference to initiate a program to reduce undesirable sentencing disparity in district courts until Congress resolves certain fundamental issues relating to the sentencing function. Pending bills set forth varying and sometimes conflicting objectives and criteria for reducing disparity in sentencing. The Committee notes that some critical decisions, including the role of parole in the corrections process, are beyond the reach of any determination that might be made by the Judicial Conference.

The Committee shares the general concern that sentencing should operate fairly and equitably for all offenders. We believe that at this time the Judicial Conference should not attempt to establish guidelines to eliminate undesirable disparity until the disposition of the legislative proposals now pending before Congress. Federal judges possess vast experience in sentencing and bear the responsibility for carrying out sentencing policy established by Congress. The Judicial Conference through the Probation Committee should continue to address the problem of undesirable sentencing disparity. If Congress should fail to adopt new measures relating to sentencing, the Judicial Conference should consider recommending guidelines for use at the discretion of district judges to reduce undesirable disparity in sentencing.

PROBATION INFORMATION MANAGEMENT SYSTEM

The Judicial Conference in September 1977 (Conf. Rept., p. 74) endorsed the concept of a new probation information management system that would meet the needs of the users in the field; the judge in his day-to-day sentencing problems; the needs of a national system for budget, planning, and management control purposes; and the needs of researchers seeking to improve understanding of the treatment of offenders.

Judge Tjoflat informed the Conference that the first phase of the program is now complete and that the Administrative Office is now engaged in developing user requirements for a model information system. This effort will require the participation of eight district courts and the staffs of the Administrative Office and the Federal Judicial Center. The Board of the Center has endorsed the project as well as the Center's participation.

Pretrial Services Agencies

Title II of the Speedy Trial Act of 1974 required the Director of the Administrative office to file a comprehensive report with the Congress on or before July 1, 1979 regarding the administration and operation of pretrial services agencies in the ten demonstration districts. In March 1979 (Conf. Rept., p. 35) the Conference authorized the Committee to exercise continued oversight of the completion on the Director's report, and authorize on behalf of the Conference the release of the Director's report to the Congress.

Judge Tjoflat informed the Conference that the Committee had cleared the Director's report and recommendations for transmission to Congress. A copy of the report had previously been provided to the members of the Conference.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

Habeas Corpus

H. R. 2201, 96th Congress, would amend sections 2254 and 2255 of Title 28, United States Code, to require a district court to entertain a habeas corpus application from a state prisoner without regard to whether the State court had afforded the applicant an opportunity for a full and fair litigation of the constitutional claim upon which the application was based. The bill would overrule the decision of the Supreme Court in *Stone v. Powell,* 428 U.S. 465 (1976), which held that

where a State court has afforded an opportunity for the full and fair litigation of a Fourth Amendment claim, a petitioner in a Federal court may not be granted Federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure had been introduced at his trial. While the bill as drafted might appear to eliminate the well-established requirement that a prisoner must exhaust remedies in State courts before seeking Federal habeas corpus relief, the Committee was advised that the sole purpose of the legislation is to overrule *Stone v. Powell* and not to eliminate the exhaustion requirement.

It was the view of the Committee that the desirability or necesity for this legislation is for the Congress to decide and that the Conference should take no position on the policy question involved. The Committee recommended, however, that subsection (2) of section 1 of the bill be modified, as shown below, to reflect more precisely the intent of the drafters.

> (2) by inserting before the period of subsection (a) a comma and the following: "without regard to whether a full and fair litigation of such claim has already been had in state court, so long as such person has fully exhausted his available state remedies concerning the question presented."

The Committee also noted that the passage of the bill would undoubtedly impact on the Federal courts by increasing the caseload. The recommendation was approved by the Conference.

Fees and Expenses of Attorneys Representing Indigent Persons in Civil Rights Actions

Judge Harvey stated that the Committee had considered the problem of paying the fees and expenses of attorneys appointed by district courts to represent indigent persons in civil rights actions. Since this subject is not within the jurisdiction of the Criminal law Committee, the Conference directed that it be referred to another standing committee of the Conference, or to a special committee, for study and report.

In Camera Screening of Classified Information

S. 1482, 96th Congress, is a bill to establish a procedure for the *in camera* screening of classified information by a judge before such information may be introduced in a Federal criminal proceeding. The bill would permit a party to move for a pretrial conference to consider matters relating to classified information expected to arise in the course of a criminal trial. To prevent the release of classified information the court would be authorized to issue protective orders, delete specified items of information, or order substitution of summaries of information contained in classified documents. The bill would also require a defendant who expects to disclose classified information to give advance notice thereof to the Government.

Judge Harvey informed the Conference that while the Committee is not entirely persuaded of the necessity for the legislation, it is not opposed to the bill. He pointed out, however, that the bill would require the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense to prescribe security procedures for protection against the release of classified information submitted to Federal courts. It was the view of the Committee that the promulgation of security procedures should be made the responsibility of the Judicial Conference rather than that of the Chief Justice. The bill also provides for the preservation by "the United States" of the sealed record of undisclosed classified information. It was the view of the Committee that such information should be preserved by the courts.

Upon recommendation of the Committee, the Conference approved the legislation with the modifications suggested.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Chief Judge C. Clyde Atkins, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

USE OF VOTER REGISTRATION LISTS

At its session in April 1976 (Conf. Rept., p. 9) the Conference endorsed legislation authorizing the use of voter registration lists as a presumptively sufficient sole source for the names of prospective Federal jurors. The legislation recommended by the Conference would have established a statutory presumption that juries chosen from voter registration lists or lists of actual voters represent a fair cross-section of the community and would have required an affirmative finding by the district court that this presumption had been rebutted before the court could prescribe other sources of juror names in addition to the voter lists. This proposal was submitted to the 94th Congress and the 95th Congress, but was not included in the enactment of the Jury System Improvements Act of 1978.

It was the view of the Committee that this proposed legislation would be helpful in establishing greater certainty in the jury trial process, thus reducing the number of legal challenges to jury selection. Upon recommendation of the Committee, the Conference approved a new draft bill which would effect this amendment and authorized its transmission to the Congress.

CHILD CARE EXCUSE OF JURORS

The jury selection statute, 28 U.S.C. 1863(b)(5), authorizes district courts to specify in their jury selection plans those groups of persons or occupational classes whose members shall be entitled to be excused from jury service upon individual request to the court. One such category commonly found in the selection plans adopted by the district courts consists of those persons who are needed to care for children under a particular age.

In the recent case of *Duren v. Missouri,* 439 U.S. 357 (1979) the Supreme Court held that a state's automatic exemption of women from jury service upon request denied a criminal defendant's constitutional right to trial by a jury drawn from a fair cross-section of the community. The Civil Rights Division of the Department of Justice has examined the excuse provisions contained in the jury selection plans of the district courts and has noted that many plans authorize the excuse

only of women who have custody of children. The Civil Rights Division has recommended that these provisions should be reworded so as to provide for the excuse of all persons having the daily responsibility of child care, not just women or mothers, and to ensure that they do not have the overbroad effect of excusing parents not actually needed for the care of young children during the business day.

The jury selection plan adopted by the Northern District of Alabama contains a provision making eligible for excuse from jury service

> Persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.

While each court should be encouraged to arrive at an individual decision on the appropriate maximum age of children that should entitle a parent or guardian to be excused from jury service on account of child care responsibilities, the Committee recommended that the Conference authorize a communication to district courts urging those courts to review the child-care excuse provisions of their jury selection plans in light of the Supreme Court decision, the views of the Civil Rights Division, and the above example in the jury plan of the Northern District of Alabama, which was cited as a model. This recommendation was approved by the Conference.

EMERGENCY ENERGY SHORTAGE PROCEDURES

Judge Atkins reported that the Committee had considered the prospective impact of a severe or prolonged gasoline shortage on the judicial process, particularly the need to insure the presence of a sufficient number of jurors. The Committee believed that each district court should have a contingency plan setting forth the means available to obtain emergency gasoline supplies for the use of the court, its personnel, and jurors. Upon recommendation of the Committee, the Conference took the following action:

1. Requested that each United States district court devise a contingency plan governing its operation in the event of an emergency shortage of gasoline adversely affecting the availability of transportation within that judicial district. Such plan should aim to minimize any disruption of

scheduled trials by implementing all available means to expedite the transportation of judges, court personnel, and jurors.

2. Recommended that any district court which might be faced with a local energy shortage of emergency dimensions should consider making application to the judicial council of its circuit for an emergency suspension of the Speedy Trial Act time limitations, in accordance with 18 U.S.C. 3174.
3. Authorized appointment of an ad hoc committee to monitor the nationwide implications of the energy problem upon the Judiciary and to develop, with the assistance of the Administrative Office, a national plan to assist individual federal courts in gaining access to auxiliary supplies of gasoline in the event of an emergency.
4. Directed the Administrative Office to investigate the feasibility of procuring emergency stocks of gasoline for allocation by affected courts to their personnel and jurors and to obtain from the Department of Energy any necessary allocation authority for this purpose. To this end, the Administrative Office is authorized to establish a pilot district or districts in order to aid the development of such a gasoline supply mechanism and to investigate any alternative means to afford jurors a priority right to purchase gasoline required for their transportation to court.

ORIENTATION FILM FOR GRAND JURORS

The Committee suggested that it would be useful to have available an orientation film for Federal grand jurors, similar to the orientation film for petit jurors which was produced by Wayne State University under a grant from the Law Enforcement Assistance Administration and the Michigan Bar Foundation. At present no private organization has undertaken to finance the production of such a grand jury orientation film. The Conference thereupon approved a request of the Committee that it be authorized to investigate sources of private funding for the development of such a film.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

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

The report indicated that during the period from February 16, 1979 through August 15, 1979, the Committee had recommended 41 intercircuit assignments to be undertaken by 32 judges. Of this number, five were senior circuit judges, one was an active circuit judge, five were district judges in active status and 14 were senior district judges. Eight assignments involved three active judges and two senior judges of the Court of Claims, one active judge of the Customs Court and one active judge of the Court of Customs and Patent Appeals.

Four senior circuit judges, nine senior district judges and two senior judges from the Court of Claims carried out 19 of the 24 assignments to the courts of appeals. One active circuit judge, one active judge of the Court of Customs and Patent Appeals and three active judges of the Court of Claims participated in the other five assignments to the courts of appeals.

Of the 15 assignments to the district courts, seven senior district judges participated in one assignment each, the remaining eight being carried out by four active district judges, one senior circuit judge and one active judge of the Customs Court.

Of the two assignments to the Court of Customs and Patent Appeals, one was carried out by an active district judge and the other by an active circuit judge.

In addition to the above, an interchange of assignments between the active judges of the United States Court of Claims and the active judges of the United States Court of Customs and Patent Appeals has been approved to cover any emergency which may arise from April 1, 1979 to March 31, 1980. Similarly, the active judges of the United States Court of Appeals for the District of Columbia Circuit have been assigned to the Temporary Emergency Court of Appeals from March 20, 1979 to March 20, 1980.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Senior Judge Dudley B. Bonsal, Chairman of the Committee to Implement the Criminal Justice Act, presented the Committee's report.

APPOINTMENTS AND PAYMENTS

The Conference authorized the Director of the Administrative Office to distribute copies of a report on appointments and payments under the Criminal Justice Act for the first half of the fiscal year 1979 to all chief judges, all federal defender organizations and to others who may request copies. The report indicated that the sum of $24,800,000 was appropriated by Congress for the administration of the Act during the fiscal year 1979 and that projected obligations during the year are $23,973,000. During the first half of the fiscal year approximately 19,084 persons were represented under the Criminal Justice Act compared to 20,328 during the first half of the fiscal year 1978, a decrease of 6.1 percent. Federal public defenders represented 6,618 persons during the first half of the fiscal year 1979 and community defender organizations represented 3,583 persons. Collectively, these offices accounted for 53.5 percent of all representations.

The Committee estimated that the average cost of representation under the Criminal Justice Act during the fiscal year 1979, including appeal, will be $469 per case for private panel attorneys, $464 per case for Community Defender Organizations, and $574 per case for Federal Public Defender offices.

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 Section 605 of Title 28, United States Code. The Conference approved the following budgetary requests for these offices:

Public Defender Organization	*Supplemental Requests Approved for F.Y. 1980*	*Budget Requests Approved for F.Y. 1981*
Arizona	———	$ 690,265
California, Northern	———	567,584
California, Eastern	———	513,049

Public Defender Organization	*Supplemental Requests Approved for F.Y. 1980*	*Budget Requests Approved for F.Y. 1981*
California, Central	———	1,118,640
Colorado	———	217,706
Connecticut	———	217,804
Florida, Northern	———	153,771
Florida, Middle	———	367,060
Florida, Southern	———	483,872
Georgia, Southern	———	167,744
Kansas	———	290,666
Kentucky, Eastern	———	208,571
Louisiana, Eastern	———	261,565
Maryland	———	454,765
Minnesota	———	148,651
Missouri, Western	———	395,774
Nevada	$ 6,000	248,144
New Jersey	7,100	509,396
New Mexico	6,870	213,796
Ohio, Northern	———	269,217
Pennsylvania, Western	———	215,969
Puerto Rico	65,666	222,668
South Carolina	———	199,069
Tennessee, Middle	———	153,073
Tennessee, Western	———	120,413
Texas, Southern	———	458,297
Texas, Western	———	477,037
Virgin Islands	———	276,377
Washington, Western	———	354,037
West Virginia, Southern	———	138,727
Illinois, Central & Southern[1]	———	———
Total	$85,636	$10,113,707

[1]No funds are authorized for the Federal Public Defender's Office during the fiscal year 1981.

GRANT REQUESTS—COMMUNITY DEFENDER ORGANIZATIONS

The Conference considered grant requests from seven Community Defender Organizations and approved sustaining grants for the fiscal year ending September 30, 1981 as follows:

Federal Defenders of San Diego, Inc.	$ 802,000
Federal Defender Program, Inc.— Atlanta, Georgia	214,000
Federal Defender Program, Inc.— Chicago, Illinois	506,000
Legal Aid and Defender Assn. of Detroit, Michigan, Federal Defender Division	600,000
Federal Defender Services Unit of the Legal Aid Society of New York	1,146,000
Federal Defender Inc.— Portland, Oregon	256,000
Federal Court Division of the Defender Assn. of Philadelphia	411,000

COMMUNITY DEFENDER—CONDITIONS OF GRANT

In March 1979 (Conf. Rept., p. 39) the Conference adopted terms and conditions governing sustaining grants to Community Defender Organizations commencing with the fiscal year 1980. Clause 6 of the grant conditions, dealing with the submission of annual reports by Community Defender Organizations, was written to apply to the prior practice of the Committee of considering grant requests annually at its January meeting. Judge Bonsal reported that the Committee has resolved to consolidate the consideration of all fiscal matters and funding requests for both Federal Public and Community Defender Organizations annually at its June meeting. In order to conform the grant conditions to the new Committee practice, the Conference, upon recommendation of the Committee, amended Clause 6 of the grant conditions to read as follows:

> 6. ANNUAL REPORTS: As required by subsection (h)(2)(B) of the CJA, the Grantee must submit an annual report setting forth its activities, financial position and the anticipated caseload and expenses for the coming year. Instructions for completing the annual report and its date of submission will be provided to the Grantee by the Administrative Office at least thirty (30) days prior to the submission date.

AMENDMENTS TO CRIMINAL JUSTICE ACT GUIDELINES

The Conference, upon recommendation of the Committee, approved the following amendments to the Guidelines for the Administration of the Criminal Justice Act:

1. An amendment to paragraph 3.03 of the Guidelines to require *ex parte* applications for services other than counsel under subsection (e) to be heard *in camera.*
2. An amendment to paragraph 2.12 of the Guidelines with regard to the appointment of counsel in cases transferred from one judicial district to another to make reference to Rule 20 as well as Rules 40 and 41, Federal Rules of Criminal Procedure.
3. An amendment to paragraph 2.27(C) to make it clear that interim reimbursement procedures are available for the expenses of counsel and to limit the circumstances of interim reimbursement to cases in which expenses are extraordinary and substantial. The existing paragraph 2.27(C) is to become paragraph 2.27(D).
4. Amend paragraph 2.31 to provide guidance and uniformity in the use of and payments to law students and legal interns assisting counsel appointed under the Act.
5. Amend paragraph 4.02(B) of the Guidelines to make clear that the receipt and use of grant funds is subject to the conditions of grant approved by the Conference and replace Appendix D with the conditions of grant so approved.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The report of the Committee on Rules of Practice and Procedure was submitted by the Chairman, Senior Judge Roszel C. Thomsen.

CIVIL RULES

Upon recommendation of the Committee, the Conference approved for transmittal to the Supreme Court of the United States a series of proposed amendments to Rules 4, 5, 26, 28, 30, 32, 33, 34, 37, and 45, Federal Rules of Civil Procedure. Judge Thomsen stated that the proposed rules had twice been circulated to the bench and bar for comment, that public hearings had been held in Washington, D.C. and Los

Angeles, California and that the Advisory Committee had fully considered the many comments received. The proposed amendments were designed primarily to enable the district courts to control abuses in the discovery process, which, in recent years, had been the subject of public criticism. The Conference also authorized the transmission of the Advisory Committee's report to the Supreme Court together with the proposed amendments and the Advisory Committee notes.

BANKRUPTCY RULES

Judge Thomsen advised the Conference that the Chief Justice has appointed a new Advisory Committee on Bankruptcy Rules to consider amendments to the rules of bankruptcy procedure required by the new Bankruptcy Code, which became effective on October 1, 1979. To assist the bankruptcy courts in applying the existing bankruptcy rules to bankruptcy cases commenced under the new Bankruptcy Code, the Advisory Committee recently distributed interim rules or guidelines with the suggestion that they be adopted as local bankruptcy rules pending promulgation of binding amendments to the bankruptcy rules. Copies of the interim rules were made available to the members of the Conference for their information.

APPELLATE RULES

Judge Thomsen stated that the Advisory Committee on Appellate Rules has not met since the last session of the Conference, but that the reporter to the Committee has been preparing materials for Committee consideration, concentrating on problems relating to the use of a printed record on appeal. A meeting of the Advisory Committee will be scheduled as soon as this material is available.

The amendments to the Appellate Rules, approved by the Conference last September, were approved by the Supreme Court and were submitted by the Chief Justice to the Congress on April 30th and became effective August 1st.

Criminal Rules

The amendments to the Federal Rules of Criminal Procedure, approved by the Conference in September 1978, (Conf. Rept., p. 84) were also approved by the Supreme Court and transmitted to the Congress by the Chief Justice on April 30th. The order of the Supreme Court approving the amended rules would have made them effective on August 1, 1979. Congress, however, decided to postpone the effective date of several amendments until December 1980, thus giving the Congress an opportunity to consider those amendments during the second session of the 96th Congress.

The Advisory Committee is presently considering proposed amendments to "Rules for the Trial of Misdemeanors Before United States Magistrates" in the event jurisdiction in misdemeanor cases is given to magistrates by the proposed amendments to the Federal Magistrates Act. The Advisory Committee is also considering other suggested amendments to the Federal Rules of Criminal Procedure.

COMMITTEE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS

Chief Judge Edward J. Devitt, Chairman of the Committee to Consider Standards for Admission to Practice in the Federal Courts, presented the final report of the Committee. Judge Devitt informed the Conference that its final report represents the culmination of three years work during which time the Committee investigated the issue thoroughly, held numerous hearings and meetings throughout the country, made tentative recommendations to the Conference, and solicited and received substantial comment from the bench, bar, and public concerning its recommendations. The Committee was aided in its work by surveys conducted by the Federal Judicial Center which have established that there is a substantial problem relating to the adequacy of trial advocacy in the Federal trial courts.

After full discussion the Conference adopted the following resolution:

> RESOLVED: 1(a). That the Judicial Conference create a special committee of the Conference to oversee and monitor,

on a pilot basis, an examination on federal practice subjects, a trial experience requirement and a peer review procedure, in a selected number of district courts that indicate a desire to cooperate in any or all of the above programs.

1(b). The Conference makes no recommendations at this time on any of the above noted admission standards to any districts other than those participating in the pilot programs.

1(c). The following guidelines, shall, without excluding others that the implementing committee may adopt, constitute a basis for planning, carrying out and assessing the pilot programs:

1. Combinations and permutations of the different remedies should be adopted in different localities so that the relative merits of different proposals might be judged. For example, one district might adopt all of the Committee's proposed requirements, while another might adopt just the trial experience requirement and peer review.

2. Local districts should be able to modify the proposals to meet special needs of their practice. For example, a district with a great number of sole practitioners might establish, with the cooperation of the local bar, a seminar and mock trial program that would satisfy the experience requirement. Another might mandate that the experience requirement could be met by supervision of the fledgling lawyer at his first federal court trial or two by an experienced volunteer litigator. A district could also limit examination to those subjects not tested on the state or multi-state bar exams.

3. The operation of the requirements must be carefully observed to see whether any are effective in raising the quality of trial advocacy and whether any burdens imposed on the bar are compensated by improved lawyering.

4. Because there is so much yet to know about the qualitiy of trial advocacy, it is imperative that sufficient time, money and expertise be available for studying the pilot programs. The knowledge gained may be more valuable than any improvement in trial skills. Experience with the pilot programs should help improve understanding of the general state of lawyering skills, help to formulate workable standards for evaluating courtroom performance, and facilitate prediction of what means are most appropriate for addressing specific failings of advocacy.

5. Finally, as a general proposition, attitudes toward the pilot programs should be inquisitive, empirical and flexible.

2. That the Judicial Conference recommend to the district courts generally that:

a. They adopt a student practice rule;

b. They support continuing legal education programs on trial advocacy and federal practice subjects and encourage the practicing bar to attend.

3. That the Judicial Conference recommend to the American Bar Association that it consider amending its law school accreditation standards to require that all schools provide courses in trial advocacy, including student participation in actual or simulated trials taught by instructors having litigation experience, and that the bench and bar be encouraged to support the law schools in achieving the goal of providing quality trial advocacy training to all students who want it.

AD HOC COMMITTEE ON THE DISPOSITION OF COURT RECORDS

The report of the Ad Hoc Committee on the Disposition of Court Records was presented by the Chairman, Judge Walter J. Cummings.

RECORDS OF DISTRICT COURTS AND BANKRUPTCY COURTS

In March 1979 (Conf. Rept., p. 46) the Conference authorized the circulation of a draft "Records Disposition Program and Schedule" for the disposition of the records of the United States district courts and bankruptcy courts to all district judges and other interested officers in the district courts with a request that comments thereon be submitted to the Committee. Judge Cummings informed the Conference that the Committee had received comments from a number of district judges, bankruptcy judges, clerks of district courts, probation officers, the Administrative Office, the Federal Judicial Center, and the Immigration and Naturalization Service. In addition the Committee had considered the comments of the National Archives and Records Service. As a result the periods for the retention of certain court records, originally proposed, were increased.

Upon recommendation of the Committee the Conference approved the Records Disposition Program and Schedule submitted by the Committee with one amendment increasing the

retention period for bankruptcy case files from 10 to 20 years. The Committee was authorized to make further changes in the disposition schedule that might be called for as a result of an appraisal of the schedule by the National Archives and Records Service.

PRESERVATION OF RECORDS HAVING HISTORICAL VALUE

Judge Cummings stated that several judges and others who commented on the original draft schedule expressed concern that steps be taken to assure the preservation of those records of the district courts and bankruptcy courts having historical value. He stated that the Committee had been assured by the National Archives and Records Service that procedures for making this determination will be developed. The National Archives and Records Service has been requested to submit a plan to determine which temporary court records have such archival value as to warrant permanent retention by the National Archives. In addition the Committee is proposing the creation of an "Archives-History Committee" in each circuit to identify those records having potential historical value, so that they may be segregated at the time they are retired to a records center.

OTHER RECORDS

Judge Cummings informed the Conference that the Committee would consider disposition schedules for the records of the courts of appeals and other courts in the Federal judicial system and will report thereon to the Conference at a future session.

MEMORIAL RESOLUTIONS

Noting the recent death of Judge John Biggs, Jr., a former member of the Conference and former Chairman of several Conference committees, the Conference adopted the following resolution:

HONORABLE JOHN BIGGS, JR.

The Judicial Conference notes with sorrow the death of Judge John Biggs, Jr., on April 15, 1979. Judge Biggs joined the Conference in April 1939 when he became Senior Circuit

Judge of the Third Circuit, later denominated Chief Judge, and served on the Conference for more than 26 years until October 1965. Throughout this period Judge Biggs was a stalwart leader in the work of the Conference, serving as the chairman or member of numerous Conference committees. In 1955 he organized the Committee on Court Administration and served as its chairman for 14 years. He was chairman of the Committee on Supporting Personnel from 1940 to 1969, chairman of the Subcommittee on Judicial Salaries, Annuities and Tenure of the Committee on Court Administration from 1969 to 1970, and a member of the Committee on Judicial Statistics from 1957 to 1969. During his service on the Judicial Conference he also served on numerous ad hoc Conference committees.

His dedication to the work of the Conference brought him to Washington frequently to meet with representatives of the Judiciary Committees of the Congress and to testify before Congress on behalf of the Conference on legislative matters affecting the Judiciary, including the annual Judiciary budget. His voice before the Congress and the Conference was strong and influential. Few judges in the history of the Federal Judiciary have contributed as much to the development of the Federal Judiciary as did Judge John Biggs, Jr.

The members of the Conference mourn the passing of this distinguished and dedicated jurist and colleague.

Noting also the recent death of Judge William B. Jones, a former member of the Conference and Chairman of the Committee on Judicial Activities, the Conference adopted the following resolution:

HONORABLE WILLIAM B. JONES

The Judicial Conference of the United States takes note with deep sorrow of the death of Judge William Blakely Jones on July 31, 1979, in Washington, D.C.

Born in Cedar Rapids, Iowa, on March 20, 1907, Judge Jones spent his boyhood in Denison and Sioux City, Iowa; and then attended the University of Notre Dame for both his undergraduate and legal training. Judge Jones starred as a football player under the fabled Knute Rockne, served as coach of the freshman football team under Rockne while attending Notre Dame Law School, and was a highly successful football coach at Carroll College in Helena, Montana.

After a successful period in private practice in Montana, Judge Jones became a Washington lawyer in the Lands Division

of the Justice Department, served in the Office of Price Administration, and was Secretary of the Joint British-American Patent Interchange Committee during World War II.

Entering private practice in Washington in 1946, he quickly established a brilliant reputation as a lawyer of exceptional ability.

Judge Jones gave up an outstanding law practice to begin his service as a United States district judge on May 14, 1962, and quickly became recognized as one of the nation's most distinguished jurists because of his ability, zeal, and hard work. Judge Jones served as Chief Judge of the United States District Court for the District of Columbia from July 14, 1975, until March 20, 1977 when he accepted senior status.

Despite the great burdens which Judge Jones carried as a judge and chief judge in the District of Columbia, he was active and vigorous in a substantial number of legal associations and organizations. Judge Jones served as Chairman of the Board of the National Institute of Trial Advocacy and as Chairman of the Judicial Conference Advisory Committee on Judicial Activities. He also served as Chairman of the Judicial Administration Division of the American Bar Association, and was a Judicial Fellow in the American College of Trial Lawyers and a member of the American Bar Foundation.

Judge Jones' life was one of challenge, hard work, and the successful pursuit of excellence in all that he did. In every role he won the respect and affection of everyone with whom he worked and was revered as a leader, counselor, and friend. The Judicial Conference of the United States adopts this resolution in memory and appreciation of his life and service. The sympathy of all Conference members is extended to Mrs. Alice Jones and his daughter Barbara.

ELECTIONS

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected Judge Donald S. Voorhees of the United States District Court for the Western District of Washington to membership on the Board of the Federal Judicial Center to fill the unexpired term of Chief Judge Otto R. Skopil, Jr., of the District of Oregon, who has been elevated to the position of circuit judge on the United States Court of Appeals for the Ninth Circuit.

The Conference also elected Bankruptcy Judge Lloyd D. George of the District of Nevada to the Board of the Federal Judicial Center for a term of four years, pursuant to

Section 228 of the Act to establish a uniform law on the subject of bankruptcies, Public Law 95-598, approved November 6, 1978.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the courts of appeals for the Fifth, Eighth and Tenth Circuits during the calendar year 1980 as follows: in the Fifth Circuit at all places except New Orleans; in the Eighth Circuit at Omaha, Nebraska; and in the Tenth Circuit, at Oklahoma City, Oklahoma and Wichita, Kansas.

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 12, 1979

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