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

September 24-25, 1980

Washington, D.C.
1980

**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 circuit 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 24-25, 1980

The Judicial Conference of the United States convened on September 24, 1980, 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 25. 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 Wilfred Feinberg
Chief Judge Lloyd F. MacMahon, Southern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Judge Alfred L. Luongo, Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge Clement F. Haynsworth, Jr.
Judge Robert R. Merhige, Jr., Eastern District of Virginia

Fifth Circuit:

Chief Judge James P. Coleman
Chief Judge John V. Singleton, Southern District of Texas

Sixth Circuit:

Chief Judge George C. Edwards, Jr.
Chief Judge Charles M. Allen, Western District of Kentucky

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

Chief Judge James R. Browning
 Chief Judge Ray McNichols, District of Idaho*

Tenth Circuit:

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

District of Columbia Circuit:

Chief Judge J. Skelly Wright
 Judge John Lewis Smith, Jr., District of Columbia**

Court of Claims:

Chief Judge Daniel M. Friedman

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Circuit Judges Irving R. Kaufman, Edward A. Tamm and Gerald B. Tjoflat; Senior District Judges Thomas J. MacBride, Charles M. Metzner, George L. Hart, Jr. and Roszel C. Thomsen; and District Judges C. Clyde Atkins, Robert E. DeMascio, Alexander Harvey II, Elmo B. Hunter, and Robert E. Maxwell attended all or some of the sessions of the Conference.

The Attorney General of the United States, Honorable Benjamin R. Civiletti, accompanied by the Deputy Attorney General, Honorable Charles B. Renfrew, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

Stephen Breyer, Chief Counsel to the Senate Judiciary Committee, and Kenneth Feinberg, Special Counsel, addressed the Conference on behalf of Senator Edward M. Kennedy, Chairman of the Senate Committee on the Judiciary. Joseph Nellis, General Counsel of the House Judiciary Committee appeared before the Conference to convey the statement of Congressman Peter W. Rodino, Jr., Chairman of the House Committee on the Judiciary.

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; William

*Designated by the Chief Justice in place of Judge Morell E. Sharp who was unable to attend.

**Designated by the Chief Justice in place of Chief Judge William B. Bryant who was unable to attend.

James Weller, Legislative Affairs Officer; Deborah Kirk, Deputy Legislative Affairs Officer; 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, William E. Foley, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1980. 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

The Director's report indicated that appeals docketed in the United States courts of appeals during the year ended June 30, 1980 increased 14.7 percent to a record 23,200 appeals filed. This is almost twice the number of appeals filed ten years ago and almost six times the number of appeals filed in 1960. During the year the courts of appeals terminated a record 20,887 appeals, 10.3 percent more than the number terminated in the previous year, but 2,313 appeals less than the number filed. As a result, the number of appeals pending on June 30, 1980 increased almost 13 percent to a record 20,252 appeals.

Civil cases filed in the United States district courts in the year ended June 30, 1980 were 168,789, an increase of 9.1 percent over the 154,666 civil cases filed during the previous year. There were 160,481 civil cases terminated during the year compared with 143,323 cases terminated during the previous year. On June 30, 1980 there were 186,113 civil cases pending on the dockets of the district courts, an increase of 4.7 percent over the 177,805 civil actions pending a year earlier.

Criminal cases filed in the district courts in 1980 declined for the third successive year to 28,921, a decrease of 11.5 percent compared with the 32,688 criminal cases filed during the previous year. There were 29,297 criminal cases terminated, a 12.4 percent decrease from the previous year, but 376 cases more than the number filed. As a result, the number of criminal cases pending on June 30, 1980 fell to an eleven-year low of 14,759.

During the year there were 277,804 bankruptcy cases, involving 360,960 separate estates, filed in the United States bankruptcy courts. The total number of estates constitutes a numerical increase of 134,484, or 59.4 percent more than the previous year total, and an increase of 106,476 estates, or 41.8 percent, over the previous record number of bankruptcy filings in 1975. During the year there were 189,667 estates closed and on June 30, 1980 there were 429,461 estates to be administered in 346,385 pending cases.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In its written statement filed with the Conference the Judicial Panel on Multidistrict Litigation reported that during the year ending June 30, 1980 the Panel had acted upon 1,386 civil actions pursuant to 28 U.S.C. 1407 and that 1,260 actions were centralized for coordinated or consolidated pre-trial proceedings. The Panel denied transfer of 126 actions. Since the creation of the Panel 9,164 civil actions have been centralized in pretrial proceedings in carrying out the Panel's responsibilities. As of June 30, 1980, almost 6,500 of those actions had been remanded for trial or terminated by settlement or dismissal in the transferee courts.

REPORT OF THE COMMITTEE ON THE JUDICIAL BRANCH

Judge Irving R. Kaufman, Chairman of the Committee on the Judicial Branch, reported on the activities of the Committee since its appointment last January.

Judge Kaufman stated that the Committee's charter is broadly based and reaches to problems of the Federal bench not directly addressed by other Conference committees. Specifically, the Committee is charged with the responsibility of devising methods for informing the other branches of the Federal government, news media, members of the bar, and citizens in general, of the role of the Federal Judiciary in American society; bringing to public attention the needs of the Federal courts and the problems they face in discharging their obligations; and encouraging and promoting such reforms in court administration and procedure, and in the nature and the challenge of Federal judicial service, as may tend to improve the administration of justice throughout the judiciary.

The Committee is currently focusing its attention on the problem of inadequate compensation, anticipating the creation, on October 1, 1980, of the Quadrennial Commission on Executive, Legislative, and Judicial Salaries, 2 U.S.C. 351 *et seq.* The Committee has begun to compile extensive information on the need for increasing judicial compensation for presentation to the Commission. Committees of the American Bar Association and the American College of Trial Lawyers have been appointed and will independently assist in this work. The Committee will also explore the adequacy of currently authorized survivor's annuities, per diem, and life and health insurance benefits.

At the suggestion of Judge Kaufman, the Conference authorized the distribution of the Committee's report to all Federal judges for their information.

COMMITTEE ON COURT ADMINISTRATION

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

ADDITIONAL JUDGESHIPS

The Conference received the comprehensive survey report on the need for additional judgeships in the United States courts of appeals and the United States district courts

prepared by the Subcommittee on Judicial Statistics. As a result of the survey and upon recommendation of the Committee, the Conference voted to recommend to Congress the creation of the following additional judgeship positions in the United States courts of appeals:

<i>Circuit</i>	
District of Columbia	1
First	1
Second	2
Third	2
Sixth	2
Seventh	2
Ninth	3 temporary
Tenth	1

The Conference also recommended the creation of the following additional judgeships in the United States district courts:

<i>First Circuit:</i>	
Rhode Island	1
<i>Second Circuit:</i>	
Connecticut	1
New York, Eastern	1
New York, Western	1 temporary
<i>Third Circuit:</i>	
New Jersey	2
<i>Fourth Circuit:</i>	
North Carolina, Eastern	1 temporary
Virginia, Eastern	1
<i>Fifth Circuit:</i>	
Florida, Southern	1 + 1 temporary
Georgia, Middle	1
Mississippi, Northern	1
Mississippi, Southern	1
Texas, Eastern	1
<i>Sixth Circuit:</i>	
Michigan, Eastern	1
Ohio, Northern	t/p*
Tennessee, Western	1

*Existing temporary position to be converted to permanent.

Seventh Circuit:

Illinois, Northern.....	2
Illinois, Southern.....	1
Indiana, Northern.....	1 temporary

Eighth Circuit:

Arkansas, Western.....	1 temporary
Missouri, Eastern.....	1

Ninth Circuit:

Alaska.....	1
California, Central.....	2
Hawaii.....	1
Washington, Western.....	1 + 1 temporary

Tenth Circuit:

Oklahoma, Western.....	1
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The Director of the Administrative Office was authorized to transmit the recommendations of the Conference to the 97th Congress together with reasons and justifications. The statement of justification is to be developed with the Chairman of the Committee.

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

The Director of the Administrative Office of the United States Courts had previously submitted to the Committee proposed new travel regulations for justices and judges of the United States, which are required to be approved by the Conference pursuant to 28 U.S.C. 456. Judge Hunter informed the Conference that the Committee had conducted a detailed review of the regulations, made several changes therein and recommended that the regulations, as amended, be approved by the Conference. The Conference thereupon approved the draft regulations and authorized the Director of the Administrative Office to issue them immediately.

SPACE ACQUISITION

In view of the need to have adequate space in court buildings upon the arrival of additional personnel, particularly judges who replace senior judges, the Conference adopted the following resolution:

That all judges are encouraged to notify the Administrative Office as early as possible, as to when they intend to take senior status in order to enable the Administrative Office to commence the process of obtaining sufficient space to accommodate both the senior judge and his or her successor. If desired, notification may be on a confidential basis.

The Administrative Office is authorized to currently requisition from the General Services Administration reasonably anticipated space needs for the courts, even though the occupancy may not occur immediately.

COURTHOUSE CONSTRUCTION

The Judicial Council of the Third Circuit had requested a waiver of the space limitations for the design of a new courthouse in Newark, New Jersey. The Committee concluded that the present space guidelines for courtrooms and chambers are sufficient to provide the court with its needs and that to deviate from the guidelines would set an undesirable precedent. Further, the Committee was of the view that additional space should not be provided for law student interns. Upon recommendation of the Committee, the Conference denied the request for a waiver.

MISCELLANEOUS FEE SCHEDULES

The Conference, pursuant to 28 U.S.C. Secs. 1913, 1914, and 1930(b) and Sec. 40c(3) of the Bankruptcy Act approved the changes in the miscellaneous fee schedules for the courts of appeals, district courts, and bankruptcy courts, previously approved by the Conference, to provide that the fee for the reproduction of an audio tape recording also apply to a video tape recording. The items in the various fee schedules pertaining to the reproduction of magnetic tape recordings were amended to read as follows:

For reproduction of magnetic tape recordings, either cassette or reel to reel, \$2.00 plus the cost of materials, minimum charge of \$5.00.

The Conference, pursuant to Section 40c(3) of the Bankruptcy Act, also amended the schedule of miscellaneous fees to reduce the fee for filing a notice of appeal in a case arising under the Bankruptcy Act from \$10 to \$5, so that it will coin-

side with the fee required for filing a notice of appeal in a case arising under the new Bankruptcy Code 28 U.S.C. 1930(c). The following item was added to the fee schedule:

10. Upon the filing of a notice of appeal with the bankruptcy court in a proceeding arising under the Bankruptcy Act, \$5.00 should be paid to the clerk of the bankruptcy court by the appellant.

In order that all charges and fees promulgated by the Conference pursuant to 28 U.S.C. 1930(b) and Sec. 40c(3) of the Bankruptcy Act be made uniform, the Conference, upon recommendation of the Committee, directed that the claims processing fee previously prescribed for cases under the Bankruptcy Act be added, with some minor modification, to the bankruptcy court schedule of fees as follows:

11. For clerical processing of each claim filed in excess of 10, \$.25 each in asset cases filed under Chapters I-VII of the Bankruptcy Act and in cases filed under the relief chapters of the Bankruptcy Act.

The Conference directed that the foregoing amendments of the various miscellaneous fee schedules become effective October 15, 1980.

The Conference also ratified the action taken by the Executive Committee of the Conference in changing Item 7 of the schedule of fees in bankruptcy cases, making the fee for filing a complaint in a pending bankruptcy case the same as the fee for filing a civil proceeding in a district court, and eliminating the requirement that a debtor pay a fee for filing a separate complaint in a pending bankruptcy case in addition to the fee already paid for filing the bankruptcy petition. The change in Item 7 of the fee schedule, which became effective July 1, 1980 by action of the Executive Committee, is as follows:

7. For filing a complaint, a fee should be collected in the same amount as the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under Title 11, or a debtor is the plaintiff, no fee is required. If a trustee in a case under Title 11 is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. The exemption granted herein to a debtor is not granted to a debtor in possession.

ASSISTANTS TO CIRCUIT EXECUTIVES

The Conference, in September 1979, approved an item in the budget for the Judiciary for the fiscal year 1981 to provide for 15 assistants to circuit executives to serve as court executives for metropolitan district courts having 10 or more judges. In March 1980 (Conf. Rept., p. 23) the Conference adopted a resolution specifying that these court executives would be "selected by and be subject to the direction of the judges of the district court for the relevant district in accordance with the selection procedures provided in 28 U.S.C. 332." In considering this request the Appropriations Committees of the Congress expressed some concern with regard to the authority for these positions and suggested the need for specific authorizing legislation. Upon recommendation of the Committee, the Conference authorized the Director of the Administrative Office to transmit to the 97th Congress proposed legislation, submitted by the Committee, which would expressly authorize these positions to serve the district courts.

PLACES OF HOLDING COURT

S.2432 and H.R.6971, 96th Congress, would transfer two counties from one division to another within the Eastern District of Missouri. The legislation had previously been recommended by both the district court and the Judicial Council of the Eighth Circuit. The Conference thereupon recommended the enactment of this legislation.

JUDICIARY SALARY PLAN

The Administrative Office of the United States Courts had recommended amending the Judicial Salary Plan to eliminate the "journeyman level rule", requiring one year of service at the next lower grade in a position in order to qualify for the top grade of that position, and the substitution of specialized experience requirements appropriate to the work involved. The Committee recommended approval of the concept of specialized experience requirements in lieu of the "journeyman level rule" and further recommended that the Conference approve the use of the primary qualification standards set forth in the new standards to eliminate the need for sub-

mitting qualification standards for specific positions to the Conference each time new standards are developed. The Conference approved the recommendation of the Committee.

SECRETARIES TO JUDGES

Judge Hunter informed the Conference that the salary limits and qualification standards for secretaries to all court officers, which were recently revised, should be further revised to make them consistent with standards for other positions. The Committee specifically recommended that the standards for judges' secretaries be amended to increase the requirement of quantity of experience for each grade level by one additional year of general experience and to eliminate the "journeyman level rule" as a criterion at grade JSP-10. The qualification requirements for grade JSP-11 would not be changed. This recommendation was approved by the Conference.

PROBATION OFFICER TREATMENT SPECIALIST

Beginning with the Narcotic Addict Rehabilitation Act of 1966 and culminating with the recent transfer of responsibility for contract drug treatment services from the Bureau of Prisons to the probation service, the work of probation officers in the treatment of drug and alcohol dependent offenders has developed into a sophisticated and specialized form of work requiring specialized training. Upon recommendation of the Committee, the Conference adopted new classification and qualification standards for a probation officer position (Drug and Alcohol Treatment Specialist) at grade JSP-13.

SENIOR PROBATION OFFICERS

In view of the changes that have occurred in the Federal Probation Service in recent years and recognizing that some nonsupervisory probation officers are performing service at a high level, the Committee recommended the creation of a new Senior Probation Officer position at grade JSP-13. A probation officer at this level would typically serve as a senior

officer, handling the most difficult cases, developing district-wide programs, or serving as a leader of a team of line probation officers. The Committee indicated that the volume of this high level, nonsupervisory work available in a probation office would preclude more than approximately 25 percent of the line probation officers from being considered as senior officers. Upon recommendation of the Committee, the Conference approved the classification and qualification standards for a Senior Probation Officer at grade JSP-13.

DEPUTY CLERKS—FINANCIAL

The Administrative Office has recently delegated additional responsibility to financial deputy clerks in district courts, including the responsibility for fiduciary control over funds deposited with the court and responsibility for disbursement of appropriated funds. Because these functions impose additional responsibilities and personal liability on financial deputies, the Committee recommended that the grade range of financial deputies, who have actually been delegated and perform the full range of financial functions in district courts, be raised from JSP-8-9-10 to JSP-9-10-11. The Committee also recommended that the Director of the Administrative Office be required to develop and promulgate standards based on the scope of financial functions handled and the degree of independent judgment to be exercised, and further to determine whether this increase in grade range should apply to any financial deputies in bankruptcy courts. This recommendation was approved by the Conference.

DEPUTY CLERKS—JURY ADMINISTRATION

Changes in the duties and responsibilities of deputy clerks in charge of jury administration, including those imposed by the Jury Selection and Service Act of 1968, have increased the complexity of the work involved. The Committee accordingly recommended that the grade range for deputy clerks, who are in fact acting as jury administrators and managing all aspects of the jury system, be increased to JSP-8-9-10 and that the Director of the Administrative Office develop and promulgate standards for distinguishing those

positions to be increased to the new grade range from those which will remain at the JSP-6-7-8 level. This recommendation was also approved by the Conference.

All recommendations approved by the Conference at this session for changes in grade structure and the creation of new types of positions were made subject to the availability of funds.

INCENTIVE AWARDS

The Conference, upon recommendation of the Committee, approved the transmission to Congress of draft legislation authorizing the granting of incentive awards to employees in the Judicial Branch of the Government.

QUALIFICATION STANDARDS FOR CLERKS OF COURT

Judge Hunter submitted to the Conference proposed standards and procedures for the selection of clerks of courts of appeals, district courts, and bankruptcy courts, together with standard job announcements to be used by courts of appeals and district courts in publicizing a search for candidates. The bankruptcy courts would use the district court announcement as a guide. Upon recommendation of the Committee the Conference approved the qualification standards and selection procedures and the job announcements submitted by the Committee.

COMMITTEE ON THE BUDGET

Chief Judge Robert E. Maxwell, Chairman of the Committee on the Budget, presented the report of the Committee.

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1981

The Conference, upon recommendation of the Committee, authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations for the fiscal year ending September 30, 1981, for "pay costs" and for the implementation of any new legislation, actions of

the Judicial Conference, or for any other reason he considers necessary and appropriate.

BUDGET ESTIMATES FOR THE FISCAL YEAR 1982

The Conference approved the budget estimates for the fiscal year 1982, prepared by the Director of the Administrative Office and submitted by the Committee. The budget estimates, exclusive of the Supreme Court, the Customs Court, and the Federal Judicial Center, aggregate \$706,289,000, an increase of approximately \$72,969,000 over the appropriations for the fiscal year 1981. The Director was authorized 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.

The budget estimates for the bankruptcy courts were approved subject to any adjustments that may be appropriate with respect to the staffing requirements of the clerks' offices based on the work measurement study currently underway in the bankruptcy courts. In addition, the Director was authorized to approve, on an ad hoc basis, the appointment of full-time salaried court reporters for multi-judge bankruptcy courts in lieu of contractual services if, in his judgment, a full-time reporter can be fully utilized.

Judge Maxwell informed the Conference of the necessity to absorb the additional expenditures resulting from the increased subsistence and mileage allowances, now authorized by the Travel Expense Act. The Director of the Administrative Office has been asked to reprogram resources to the extent possible to cover the additional travel costs during the fiscal year 1981. The Director has also been asked to inform the Judiciary of the mandate imposed by the Congress to absorb the additional costs of the increased per diem and other travel costs.

JUDICIAL SURVIVORS ANNUITY SYSTEM

The Committee recommended the appointment of a new committee, or an assignment to an existing committee, to make a continuous study of the Judicial Survivors Annuity System and to make recommendations for changes in the

law. This function was assigned to the Committee on the Judicial Branch.

JUDICIAL ETHICS COMMITTEE

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

ACTIVITIES OF THE COMMITTEE

Judge Tamm informed the Conference that the Committee had received and reviewed 1,431 financial disclosure reports covering the calendar year 1979 and that in addition the Committee had received and reviewed 40 reports required to be filed by nominees to judgeship positions. All reports submitted to the Committee were reviewed by at least one Committee member to determine whether they were filed in a timely manner, were complete, and were in proper form, as required by 28 U.S.C.A. App. I, 306(a). In discharging its responsibilities, the Committee writes letters to reporting individuals concerning errors appearing on the face of the reporting form, sends followup letters to individuals who have failed to file their reports within the time specified in the statute, replies to all requests for extensions of time to file reports, and sends letters to nominees to judicial positions acknowledging receipt of their financial disclosure statements. Since its last report to the Conference the Committee has sent a total of 395 letters.

As previously reported to the Conference, in May 1979 a United States district judge in New Orleans enjoined the public disclosure of financial disclosure forms. Subsequently the decision of the district court was reversed on appeal, but the issuance of the mandate of the court of appeals was stayed pending disposition of an application for a writ of certiorari filed in the Supreme Court. Accordingly, the order of the district court remains in effect and the Committee is currently not making any reports available to the public.

The Conference was informed that 11 judicial officers and employees had failed to file their reports for the calendar year 1979. Two district judges have also failed to file their

reports for the calendar year 1978. Because of litigation now pending before the Supreme Court regarding the public disclosure of financial statements, the Committee has not made any reference to the Attorney General because of the failure to file a report.

REFERENCES TO THE ATTORNEY GENERAL

Judge Tamm stated that the Committee is required by 28 U.S.C.A. App. I, 304(b) to "refer to the Attorney General the name of any individual the Committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or failed to file information required to be reported." Upon receipt of the reference the Attorney General is authorized to bring a civil action against any such individual and the court may assess a civil penalty in an amount not to exceed \$5,000.

Judge Tamm informed the Conference that the Committee had adopted the following procedure for referring a matter to the Attorney General and requested that it be included in this report of Conference proceedings for the information of those who are required to file financial disclosure statements.

Upon failure to file a report, or upon failure to file a complete report, the Chairman on behalf of the Committee, will write a letter to the individual, requesting that a report be filed or that additional information be furnished to the Committee and request a response within 30 days. If the individual fails to respond, the Committee will send a letter by certified mail, return receipt requested, asking whether or not the individual will file the report or furnish the additional information requested. Upon failure to respond to the written inquiry, or refusal to furnish the information requested, copies of all correspondence will be sent to the Committee members. A reference to the Attorney General will be made only upon an affirmative vote of the entire Committee. The letter to the Attorney General will indicate that the reference has been made "at the direction of the Committee" and a copy of the reference will be sent to the individual.

The Conference directed that when the Committee initiates steps leading to a possible reference of a matter to the Attorney General, the chief judge of the circuit and the chief judge of

the appropriate district court receive copies of all correspondence.

REQUESTS TO INSPECT OR OBTAIN COPIES OF FINANCIAL DISCLOSURE STATEMENTS

A recent amendment to the Judicial Ethics Act of 1979, 28 U.S.C.A. App. I, 305(2), specifies that "a report may not be made available under this section to any person or any copy be provided under this section to any person except upon written application. . ." The Conference, on recommendation of the Committee, authorized the Director of the Administrative Office to develop a standard form for such a written application and distribute the form to all clerks of court who desire to use it.

POSITIONS HELD IN POLITICAL ENTITIES

The Ethics in Government Act requires reporting individuals to identify certain positions held in business enterprises, non-profit organizations, labor organizations, and educational institutions. Specifically excluded from the reporting requirements are positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

Applicable codes of conduct prohibit judges and judicial employees from engaging in any political activity. In order that it may discharge its responsibility of examining financial disclosure reports to determine whether they reveal possible violations of applicable conflict of interest laws and regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such a review, the Committee recommended that the statute be amended to require the disclosure of positions held in "political entities." The Conference approved this recommendation and authorized the Director of the Administrative Office to transmit to the Congress legislation to amend section 302(a)(6) of the Ethics in Government Act by deleting the reference to "political entity."

REPORTS OF PART-TIME UNITED STATES MAGISTRATES

The March 1980 report of the Judicial Conference (Conf. Rept., p. 23) indicates that part-time United States magistrates

in salary levels 1 through 7 are not required to file financial disclosure statements since “they are not reasonably expected to perform the duties of [their] office or position for more than 60 days in a calendar year.” It was the original intention of the Committee that only those magistrates in salary levels 1 through 6 should not be required to file financial disclosure statements. The Conference thereupon amended its previous action to conform to the intentions of the Committee.

CONFIDENTIALITY OF REPORTED ITEMS

Judge Tamm requested that the Committee be authorized to develop a system to enable a reporting individual to request of the Judicial Ethics Committee that certain listed items of a highly personal nature, unrelated to the duties of the position held, and not involving an actual or potential conflict of interest, not be publicly disclosed. A statutory change may be required. The Conference authorized the Committee to study the matter further and to submit a proposal at a future date.

POLICY DETERMINATIONS

The Committee reported that it has adopted the following procedures governing reporting requirements.

Requests to Inspect Reports. As a matter of policy, the Committee will not automatically notify a reporting individual of a request to inspect a financial disclosure report. Information will be furnished upon individual application.

Federal Income Tax Returns. A federal income tax return does not contain all the information required to be disclosed by the Act. The Committee has rejected a request that an income tax return be filed in lieu of a financial disclosure statement.

Other Substitute Report. The Committee has also rejected a suggestion that the statement “same as the report for the previous year” be considered an adequate substitute for filing a current statement.

Bankruptcy Judges. A bankruptcy judge should file a copy of the financial disclosure statement with the clerk of the bankruptcy court and not with the clerk of the district court.

Tort Recoveries. The Committee, as a matter of policy, adopted the position that tort recoveries, disability compensation, and veterans benefits are not income within the meaning of the Act and need not be reported on disclosure statements.

Employees in Grade JSP-16. All employees in grade JSP-16 must file disclosure statements regardless of whether they are receiving the full salary authorized for that position.

Conditional Filings. The filing of a statement on condition that an item appearing thereon not be disclosed is a failure to comply with the statute and is equivalent to nonfiling. Accordingly, statements so filed will be returned to the reporting individuals.

ADVISORY COMMITTEE ON CODES OF CONDUCT

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

ACTIVITIES OF THE COMMITTEE

Judge Markey reported that since its last report to the Conference the Committee has received 31 inquiries from persons subject to the various codes of conduct. The Committee has completed action on 21 inquiries and is currently processing the remainder. In the last six months the Committee has published one advisory opinion relating to disqualification and has approved four other advisory opinions for publication. These four opinions relate to children of judges serving as law clerks to other judges, making recommendations for pardon, disqualification, and attendance at seminars.

MEMBERSHIP IN CLUBS

The Conference, in March 1980, (Conf. Rept. p. 28) endorsed the principle "that it is inappropriate for a judge to hold membership in an organization that practices invidious discrimination" and authorized the Committee to consider whether the Conference should adopt a canon of judicial

ethics or take other action to further this principle. In view of the desirability of parallel provisions in the Code of Judicial Conduct for United States Judges and the American Bar Association's Code of Judicial Conduct, the Committee was requested to consult with the appropriate committee of the American Bar Association.

Judge Markey reported that pursuant to these instructions the Committee had corresponded with the American Bar Association's Committee on Professional Responsibility and with its Judges Advisory Group and that a representative of the Committee met with the American Bar Association Committee and, in turn, a representative of that Committee met with the members of the Advisory Committee. The subject has also been brought to the attention of the Judicial Administration Division by the American Bar Association's National Center for Professional Ethics. Numerous communications from various groups expressing views pro and con have been received and transmitted to the three American Bar Association groups involved.

Because of the time required to complete its work and because of changes in the membership of the American Bar Committee, Judge Markey indicated that joint action with the American Bar Association cannot be completed before February 1982 at the earliest. Judge Markey further indicated that a fundamental difference exists with respect to the effect of the codes on Federal and State judges, in that a code violation by a State judge in some states may result in severe formal sanctions by an enforcement body. This may indicate that the desirable "parallelism" envisioned in the March 1980 resolution of the Conference may be either impossible of total achievement or inadvisable in this particular instance.

The Committee reported that it would continue to pursue the matter with the American Bar Association but is concerned about the delay inherent in the procedures of the American Bar Association. Upon recommendation of the Committee the Conference took the following action:

- (1) Granted additional time to the Committee to complete action and to report on its compliance with the instructions contained in the March 1980 resolution;

(2) Instructed the Committee to render an interim report at its March and September 1981 meetings;

(3) Instructed the Committee to submit to the Conference at its March 1981 session a proposed addition to the commentary accompanying Canon 2 of the Code of Judicial Conduct to assist Federal judges in their efforts to comply with the principle pertaining to club membership adopted by the Conference. The draft commentary should be first circulated to all Federal judges for comment prior to its submission to the Conference.

DISQUALIFICATION IN PROTRACTED LITIGATION

The Committee expressed concern that the disqualification statute, 28 U.S.C. 455, may be unduly restrictive and operate contrary to the public interest in those occasional situations in which an appearance is entered for a third party long after protracted litigation has begun. While some grounds of disqualification must occasion the recusal of a judge, even at the cost of retrying major litigation, it was the Committee's view that automatic disqualification may not be justified. The Committee, therefore submitted draft legislation to add a new subsection (f) to 28 U.S.C. 455 to read as follows:

(f) Notwithstanding the foregoing provisions, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance, after the matter was assigned to him, of a party in which he individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest (other than an interest that could be substantially affected by the outcome), a waiver of disqualification may be accepted from the parties; in the absence of waiver, disqualification is not required if the judge determines that the public interest in avoiding the cost of delay of reassignment outweighs any appearance of impropriety arising from his continuing with the matter to completion.

The Conference approved the draft legislation and authorized its transmission to the Congress.

CODE OF CONDUCT FOR LAW CLERKS

The Conference instructed the Committee to prepare a code of conduct for law clerks and to submit such a code for approval at the next session of the Conference.

ATTENDANCE AT SEMINARS

The question of judges accepting invitations to attend seminars sponsored by private organizations was referred to the Committee for further study and subsequent report to the Conference.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

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

During the period February 16, 1980 through August 15, 1980 the Committee recommended 89 assignments to be undertaken by 55 judges. Of this number seven were senior circuit judges, three were active circuit judges, one was a senior judge of the Court of Claims, seven were active judges of the Court of Claims, four were active judges of the Court of Customs and Patent Appeals, 25 were senior district judges, six were active district judges and two were active judges of the Customs Court.

Thirty-two judges undertook 50 assignments to the courts of appeals and 24 judges undertook 27 assignments to the district courts. In addition one active district judge was assigned to the Court of Customs and Patent Appeals, four active judges of the Court of Customs and Patent Appeals were assigned to the Court of Claims, and seven active judges of the Court of Claims were assigned to the Court of Customs and Patent Appeals.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

A report on the activities of the Committee on Rules of Practice and Procedure and the various advisory committees was presented by Senior Judge Roszel C. Thomsen.

CRIMINAL RULES

The Advisory Committee on Criminal Rules met in July 1980 to consider the comments received on the proposed amendments transmitted to the bench and bar for comment in November 1979. The Committee, however, decided not to forward any amendments to the Standing Committee at this time. If the new Criminal Code now under consideration in the Congress is approved, the Advisory Committee will review the new Code to determine whether any other changes in the rules may be required.

Judge Thomsen reported that as of the date of the Conference no final legislative action had been taken on the amendments to the Federal Rules of Criminal Procedure and to the amendment to Rule 410 of the Evidence Rules, the effective date of which was postponed by Congress until December 1, 1980.

BANKRUPTCY RULES

The Advisory Committee on Bankruptcy Rules is continuing the difficult task of preparing new rules under the new Bankruptcy Code and has held two meetings since the last session of the Conference. Proposed new rules will be circulated to the bench and bar for comment as soon as practicable.

CIVIL RULES

The Advisory Committee on Civil Rules met in April 1980 and is scheduled to meet again in October. The Committee is currently considering various drafts of amendments to the civil rules, particularly those relating to pretrial procedure.

COMMITTEE CHAIRMAN

The Chief Justice informed the Conference that Judge Thomsen had voluntarily retired as Chairman of the Committee on Rules of Practice and Procedure, after seven years of service in that position. Chief Judge Edward T. Gignoux of the District of Maine has been designated as the new Committee Chairman.

The Chief Justice expressed his sincere appreciation to Judge Thomsen for his dedicated service to the Conference and to the Judiciary during these last seven years. The Conference recognized Judge Thomsen by adopting the following resolution:

The Judicial Conference of the United States takes special note of the retirement on July 1, 1980, of Judge Roszel C. Thomsen as Chairman of the Standing Committee of the Conference on Rules of Practice and Procedure. Appointed in 1973, Judge Thomsen served as the second Chairman of this most important committee and guided its work wisely and effectively for seven years. For this service the Conference expresses its sincere and profound appreciation.

The Conference also desires to recognize Judge Thomsen's other contributions to the work of the Conference and to express its gratitude for dedicated service for the last twenty-five years. Few judges in the history of the Conference have been members of so many Conference committees.

Judge Thomsen was the first district judge representative from the Fourth Circuit to serve as a Conference member and served consecutive three-year terms from 1958 to 1964. From 1959 to 1973 he served as a member of the Advisory Committee on Civil Rules; he was a member of the Coordinating Committee on Multiple Litigation from 1962 to 1968; the Committee on the Administration of the Criminal Law from 1971 to 1973; the Committee to Implement the Criminal Justice Act from 1964 to 1974 (and served as its Chairman from 1972 to 1974); and the Advisory Committee on Judicial Activities from 1969 to 1974. In 1974, Judge Thomsen was selected by the Chief Justice to serve as a Judge of the Special Court established under the Regional Rail Reorganization Act of 1973, a task to which he is now dedicated.

On the occasion of this retirement from active participation in the work of its committees, the Conference expresses warm wishes to Judge Thomsen for many years of continued judicial service in good health and vigor.

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 Conference in March 1980 (Conf. Rept., p. 29) approved the convening of a Joint Institute on Sentencing for the judges of the Seventh and Ninth Circuits in November 1980, subject to the selection of a date and location which were to be reported to the Conference at this session. Judge Tjoflat informed the Conference that the tentative agenda for this Sentencing Institute has been amended in light of the experience gained from the Joint Institute on Sentencing for the Third and Sixth Circuits, conducted in May 1980, and that this next Sentencing Institute would be held November 17-19, 1980 at Oakland, California. Upon recommendation of the Committee the Conference approved the time, place, participants, and agenda for the Joint Institute, as submitted by the Committee.

VOLUNTARY SURRENDER

In March 1974 (Conf. Rept., p. 31) the Conference endorsed a procedure for the voluntary surrender of selected sentenced offenders to Bureau of Prisons institutions and in May 1980 the Director of the Administrative Office transmitted to all judges and chief probation officers a letter from the Deputy Attorney General urging increased use of voluntary surrender procedures.

Judge Tjoflat informed the Conference that between 50 and 55 percent of all persons now being committed to Federal institutions are considered to be minimum security cases suitable in most instances for voluntary surrender. The Bureau of Prisons has reported, however, that less than one-third of these offenders are permitted to surrender voluntarily. The Committee recommended that the Conference urge district judges to make more use of voluntary surrender after considering the factors found by the Bureau of Prisons to be appropriate criteria for security classification. This recommendation was approved by the Conference.

PRETRIAL SERVICES AGENCIES

Judge Tjoflat informed the Conference that Congress had approved the reprogramming of \$900,000 in the Judiciary

appropriations for the fiscal year 1980 to provide for the continuation of the 10 demonstration pretrial services agencies through September 30, 1980. An amendment to continue funding for these 10 demonstration agencies through the fiscal year 1981 has been offered to the appropriations bill which is still pending before the Senate.

PROBATION PERSONNEL

The Conference was informed that the House Committee on Appropriations had denied a request for 175 additional deputy clerks for the fiscal year 1981 and had suggested that "the needs of the respective clerks' offices can be met through a reprogramming of resources and the transfer of positions from probation offices to clerks' offices." The Director of the Administrative Office, with the approval of the Budget Committee, has asked the Senate Appropriations Committee for authority to establish the 175 deputy clerk positions requested and to offset the loss by abolishing 70 probation officer and 45 probation clerk positions through attrition over the next two years. This will require the Probation Division to continue an aggressive position in withdrawing authorization and reallocating positions as they become vacant.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

SALARIES AND ARRANGEMENTS FOR BANKRUPTCY JUDGES

The Conference considered the Committee's report, together with the recommendations of the Director of the Administrative Office and the recommendations of the circuit councils concerned, and took the following action relating to bankruptcy judge positions and changes in salaries and arrangements. The Conference further directed that these actions become effective when appropriated funds are available.

FIFTH CIRCUIT

Northern District of Alabama

- (1) Increased the salary of the part-time bankruptcy judge position at Tuscaloosa from \$23,500 to \$26,800 per annum.

Northern District of Mississippi

- (1) Changed the bankruptcy judge position at Greenville from part-time to full-time status at the currently authorized statutory salary for a full-time bankruptcy judge.
- (2) Continued Greenville as the headquarters of the full-time bankruptcy judge.
- (3) Designated Aberdeen as a place of holding bankruptcy court in lieu of Houston and continued Oxford and Clarksdale as places of holding court.

SIXTH CIRCUIT

Eastern District of Michigan

- (1) Increased the salary of the part-time bankruptcy judge position at Bay City from \$23,500 to \$26,800 per annum. This increase is subject to the limitation on the maximum salary of a combined part-time bankruptcy judge and part-time magistrate position adopted by resolution of the Conference in September 1974.

Western District of Michigan

- (1) Increased the salary of the part-time bankruptcy judge position at Marquette from \$20,000 to \$22,000 per annum.

EIGHTH CIRCUIT

Minnesota

- (1) Increased the salary of the part-time bankruptcy judge position at Duluth from \$25,900 to \$26,800 per annum. This increase is subject to the limitation on the maximum salary of a combined part-time bankruptcy judge and part-time magistrate position adopted by resolution of the Conference in September 1974.

NINTH CIRCUIT

Montana

- (1) Increased the salary of the part-time bankruptcy judge position at Butte from \$25,200 to \$26,800 per annum.
- (2) Increased the salary of the part-time bankruptcy judge position at Great Falls from \$25,200 to \$26,800 per annum.

TENTH CIRCUIT

Eastern District of Oklahoma

- (1) Increased the salary of the part-time bankruptcy judge position at Okmulgee from \$23,800 to \$26,800 per annum.

ADDITIONAL POSITIONS IN BANKRUPTCY COURTS

Judge Demascio informed the Conference that the Committee had recommended and supported immediate action by the Administrative Office in securing funds from the Congress for 396 additional temporary clerical employees during the fiscal year 1981 based upon the existing staffing formula. The need for these positions is occasioned by the unprecedented rise in bankruptcy case filings beginning in November 1979. The Committee is projecting the filing of 374,000 new bankruptcy estates in the year ending September 30, 1980.

The Committee also approved a request for 396 additional clerical positions in bankruptcy clerks' offices to be included in the appropriation request for fiscal year 1982. The number of positions may be modified by the recommendations to be made by the work measurement experts now engaged in a study of staffing requirements in the bankruptcy courts.

TRUSTEE COORDINATORS

The Committee expressed its concern over the void left by the Bankruptcy Reform Act in providing for the supervision of the day-to-day activities of panel trustees in the 74 United States bankruptcy courts in which trustee panels have been established by the Director of the Administrative Office.

Judge DeMascio reported that the Committee, in cooperation with the Bankruptcy Division of the Administrative Office, had developed a list of duties to be performed by the bankruptcy courts which would be helpful or essential to the efficient and scandal-free operation of the bankruptcy system. The Committee believed that these duties could be performed by a highly competent official with legal training who is on the staff of the clerk of the bankruptcy court to be designated as the trustee coordinator.

Upon recommendation of the Committee the Conference approved the concept of the position of trustee coordinator in districts in which trustees are qualified by the Director and approved the description of the duties of the trustee coordinator submitted by the Committee.

FUTURE JUDGESHIP SURVEYS

Judge DeMascio informed the Conference that the statistical studies formerly used for surveys of judgeship positions in bankruptcy courts are no longer reliable and cannot be used as a basis for recommending additional positions between now and 1984 when the Bankruptcy Reform Act becomes fully effective. The Bankruptcy Division, however, is developing a new statistical base to project the number of bankruptcy judges needed in 1984 through a reporting system which will reflect changes in the responsibilities of bankruptcy judges mandated by the Bankruptcy Reform Act. This new reporting system includes for the first time data on trials conducted by bankruptcy judges.

Until sufficient data is accumulated under the new reporting system it will not be possible for the Committee to make recommendations for additional bankruptcy judge positions. Furthermore, any new positions recommended in 1981 could not be funded until the fiscal year 1983, shortly before the final recommendations for bankruptcy judgeship positions to be created under the new Act are to be acted upon by the Conference. In addition, any new bankruptcy judge positions authorized would automatically terminate on March 31, 1984. District courts would undoubtedly find it increasingly difficult to find qualified persons to fill the positions as the April 1, 1984 date approaches.

Upon the recommendation of the Committee the Conference instructed the Director of the Administrative Office to conduct no more studies of the need for increased bankruptcy judge positions until the Bankruptcy Committee can determine that an adequate statistical base is available for measuring the judicial workload of bankruptcy judges to be appointed during the transition period and beginning on April 1, 1984.

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.

SPECIAL MAGISTRATES FOR INDIAN RESERVATIONS

S. 2832, 96th Congress, would provide for Presidentially appointed "special magistrates" to serve on Indian reservations. A special magistrate would have jurisdiction within the boundaries of a designated Indian reservation to conduct preliminary proceedings in criminal cases and to try misdemeanors. In addition, the special magistrate could be authorized by a district court to exercise the powers and duties of a United States magistrate. The bill also contains provisions concerning the law enforcement powers of tribal police, representation of defendants and the selection of juries in trials conducted by a special magistrate.

It was the view of the Committee that the creation of a separate parallel system of special magistrates having limited jurisdiction concurrent with that of a United States magistrate is unnecessary. The question of the appropriate level of law enforcement on Indian reservations, however, is a policy matter for congressional and executive determination.

The Committee was further of the view that the provisions in the bill creating separate procedures for selecting juries in cases to be tried before special magistrates should also be opposed. Maintenance of separate jury pools by a special magistrate would be costly and duplicative of the work of the

district court jury commissioner. Restricting the composition of juries to "persons who actually reside within the reservation on which the offense is alleged to have been committed" departs sharply from the philosophy of the Jury Selection and Service Act of 1968 which establishes a right to a jury randomly selected "from a fair cross section of the community." Requiring a special magistrate to compile an independent list of persons "eligible or registered" to vote in state, local, or tribal elections is inconsistent with 28 U.S.C. 1863 which prescribes the use of local voter registration lists or lists of actual voters. Furthermore, limiting the size of a jury to six persons is an unprecedented departure from the traditional practice of having twelve jurors for the trial of a criminal case.

On recommendation of the Committee the Conference authorized the transmission of these views to the Congress.

LEGAL ASSISTANT POSITIONS

The Federal Magistrate Act of 1979 authorized the Conference to provide legal assistant positions for full-time United States magistrates. In March 1980 (Conf. Rept., p. 32), the Conference adopted standards for legal assistant positions for magistrates. Judge Metzner informed the Conference that the Committee had received requests for 84 legal assistant positions from the district courts, all of which have been approved by the judicial councils of their respective circuits, and had received another 30 requests from courts which are awaiting circuit council approval. In addition, further requests are anticipated. The Conference, on recommendation of the Committee, voted to include in the 1982 budget the funds necessary to establish 125 legal assistant positions for the 204 full-time magistrates. The Committee was further authorized to consider the appropriate allocation of these positions in accordance with the standards previously approved by the Conference.

CHANGES IN MAGISTRATE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the

circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated, these changes are to become effective when appropriate funds are available. The salaries of full-time magistrate positions are to be determined in accordance with the salary plan previously adopted by the Conference.

SECOND CIRCUIT

Eastern District of New York

- (1) Authorized an additional full-time magistrate position at Brooklyn.

THIRD CIRCUIT

Western District of Pennsylvania

- (1) Continued the part-time magistrate position at Johnstown for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at Johnstown from \$1,800 to \$2,700 per annum.

FOURTH CIRCUIT

Eastern District of North Carolina

- (1) Authorized the clerk of court at Raleigh to perform the duties of a part-time magistrate.
- (2) Fixed the aggregate compensation for the clerk of court at Raleigh for the performance of clerk and magistrate duties at the salary payable to the clerk of a large district court.
- (3) Continued the part-time magistrate position at Fayetteville for an additional four-year term at the currently authorized salary of \$24,250 per annum.
- (4) Continued the part-time magistrate position at Wilmington for an additional four-year term at the currently authorized salary of \$4,500 per annum.
- (5) Discontinued the part-time magistrate position at Elizabeth City.
- (6) Authorized the full-time magistrate and the clerk-magistrate at Raleigh to serve in the adjoining Middle District of North Carolina.

- (7) Authorized the part-time magistrate at Fayetteville to serve in the adjoining Middle District of North Carolina.

Middle District of North Carolina

- (1) Authorized the full-time magistrate at Greensboro to serve in the adjoining Eastern District of North Carolina.
- (2) Authorized the full-time magistrate at Winston-Salem to serve in the adjoining Eastern District of North Carolina.

Western District of North Carolina

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

Eastern District of Virginia

- (1) Authorized the full-time magistrates at Norfolk to serve in the adjoining Eastern District of North Carolina.

Western District of Virginia

- (1) Continued the part-time magistrate position at Winchester for an additional four-year term at the currently authorized salary of \$1,800 per annum.

Northern District of West Virginia

- (1) Continued the part-time magistrate position at Morgantown (or Fairmont or Clarksburg) for an additional four-year term at the currently authorized salary of \$2,700 per annum.
- (2) Continued the part-time magistrate position at Parkersburg for an additional four-year term at the currently authorized salary of \$900 per annum.

FIFTH CIRCUIT

Middle District of Georgia

- (1) Continued the part-time magistrate position at Valdosta for an additional four-year term at the currently authorized salary of \$4,500 per annum.
- (2) Continued the part-time magistrate position at Athens for an additional four-year term at the currently authorized salary of \$3,600 per annum.

Western District of Louisiana

- (1) Increased the salary of the part-time magistrate position at Lake Charles from \$20,300 to \$24,250 per annum.

Southern District of Texas

- (1) Authorized an additional full-time magistrate position at Houston.
- (2) Continued the full-time magistrate position at Laredo for an additional eight-year term.
- (3) Authorized a new part-time magistrate position at Brownsville at a salary of \$24,250 per annum.

SIXTH CIRCUIT

Eastern District of Michigan

- (1) Authorized an additional full-time magistrate position at Detroit.

Northern District of Ohio

- (1) Continued the full-time magistrate position at Cleveland, which is due to expire on February 4, 1981, for an additional eight-year term.

Southern District of Ohio

- (1) Authorized an additional full-time magistrate position at Columbus.

SEVENTH CIRCUIT

Central District of Illinois

- (1) Authorized the bankruptcy judge at Danville to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary of \$3,600 per annum for magistrate duties.
- (2) Continued the designation of the combination bankruptcy judge-magistrate position at Danville as a part-time position, notwithstanding the Conference's 1977 resolution establishing a ceiling of \$30,000 for part-time positions.
- (3) Continued the part-time magistrate position at Rock Island for an additional four-year term at the currently authorized salary of \$8,200 per annum.

Eastern District of Wisconsin

- (1) Converted the combination clerk-magistrate position at Milwaukee to a part-time magistrate position.
- (2) Authorized a salary of \$24,250 for the part-time magistrate position at Milwaukee.

- (3) Authorized the full-time magistrate at Milwaukee to serve in the adjoining Western District of Wisconsin.

Western District of Wisconsin

- (1) Authorized the full-time magistrate at Madison to serve in the adjoining Eastern District of Wisconsin.

EIGHTH CIRCUIT

Eastern District of Arkansas

- (1) Continued the full-time magistrate position at Little Rock, which is due to expire on September 23, 1981, for an additional eight-year term.
- (2) Authorized the full-time magistrates at Little Rock to serve in the adjoining Western District of Arkansas.

Western District of Arkansas

- (1) Authorized the full-time magistrate at Fort Smith to serve in the adjoining Eastern District of Arkansas.

Southern District of Iowa

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

Minnesota

- (1) Continued the full-time magistrate position at Minneapolis, which is due to expire on September 30, 1981, for an additional eight-year term.
- (2) Continued the full-time magistrate position at St. Paul for an additional eight-year term.

Eastern District of Missouri

- (1) Continued the full-time magistrate position at St. Louis, which is due to expire on September 30, 1981, for an additional eight-year term.
- (2) Authorized an additional full-time magistrate position at St. Louis.

South Dakota

- (1) Increased the salary of the part-time magistrate position at Aberdeen from \$1,800 to \$2,700 per annum.

NINTH CIRCUIT

Northern District of California

- (1) Continued the part-time magistrate position at Monterey/Salinas for an additional four-year term at the currently authorized salary of \$24,250 per annum.

Eastern District of California

- (1) Continued the part-time magistrate position at Redding for an additional four-year term at the currently authorized salary of \$11,800 per annum.
- (2) Continued the part-time magistrate position at Susanville for an additional four-year term.
- (3) Increased the salary of the part-time magistrate position at Susanville from \$1,800 to \$2,700 per annum.
- (4) Discontinued the part-time magistrate position at Lassen Volcanic National Park.

Central District of California

- (1) Continued the full-time magistrate position at Los Angeles, which is due to expire on April 22, 1981, for an additional eight-year term.
- (2) Authorized an additional full-time magistrate position at Los Angeles.
- (3) Continued the part-time magistrate position at Santa Barbara for an additional four-year term at the currently authorized salary of \$10,000 per annum.
- (4) Continued the part-time magistrate position at Oxnard/Ventura for an additional four-year term at the currently authorized salary of \$6,400 per annum.

Idaho

- (1) Increased the salary of the part-time magistrate position at Boise from \$15,500 to \$24,250 per annum.
- (2) Continued the part-time magistrate position at Coeur d'Alene for an additional four-year term at the currently authorized salary of \$2,700 per annum.

Montana

- (1) Continued the part-time magistrate position at Billings for an additional four-year term at the currently authorized salary of \$15,500 per annum.
- (2) Continued the part-time magistrate position at Glasgow for an additional four-year term.
- (3) Increased the salary of the part-time magistrate at Glasgow from \$900 to \$1,800 per annum.
- (4) Authorized the part-time magistrate at Bozeman to serve in the adjoining District of Wyoming.

Nevada

- (1) Authorized an additional part-time magistrate position at Reno at a salary of \$900 per annum.

TENTH CIRCUIT

Colorado

- (1) Increased the salary of the part-time magistrate position at Grand Junction from \$2,700 to \$24,250 per annum.

Kansas

- (1) Increased the salary of the part-time magistrate position at Leavenworth from \$900 to \$6,400 per annum.
- (2) Continued the part-time magistrate position at Junction City for an additional four-year term at the currently authorized salary of \$10,000 per annum.
- (3) Continued the part-time magistrate position at Colby for an additional four-year term at the currently authorized salary of \$900 per annum.
- (4) Continued the part-time magistrate position at Garden City for an additional four-year term at the currently authorized salary of \$900 per annum.
- (5) Continued the part-time magistrate position at Parsons for an additional four-year term at the currently authorized salary of \$900 per annum.

New Mexico

- (1) Continued the part-time magistrate position at Santa Fe for an additional four-year term at the currently authorized salary of \$1,800 per annum.
- (2) Continued the part-time magistrate position at Farmington for an additional four-year term at the currently authorized salary of \$900 per annum.
- (3) Changed the official location of the part-time magistrate position at Clovis to "Clovis or Portales."

COMMITTEE TO IMPLEMENT THE
CRIMINAL JUSTICE ACT

Senior Judge Thomas J. MacBride, 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 1980, October 1, 1979 to March 31, 1980, to all chief judges, all Federal defender organizations and others who may request copies. The report stated that \$26,000,000 was appropriated for the defense services during the fiscal year 1980 and that the projected obligations during the year are \$24,750,000. During the period covered by the report approximately 20,671 persons were represented under the Criminal Justice Act as compared to 19,084 during a similar period of the fiscal year 1979, and 20,238 during the first half of the fiscal year 1978. The Committee anticipates that the total number of appointments during the fiscal year 1980 will be 42,000, a decrease of 1.2 percent from the 42,519 appointments currently reported for the fiscal year 1979.

Federal public defender organizations represented 6,784 persons during the reporting period, and community defender organizations represented 3,300 persons. Collectively these defender organizations accounted for 48.8 percent of the total representations under the Criminal Justice Act during the first half of the fiscal year 1980.

The report anticipates that the average cost of representation by Federal public defenders under the Criminal Justice Act during the fiscal year 1980 will be \$704 per case; \$499 per case for representation by private panel attorneys; and \$501 per case for representation by community defender organizations. The average cost per case for community defender organizations is unusually low due to the inclusion of a large number of petty offense and immigration law representations from the Southern District of California. If these representations are eliminated, the estimated cost per case for representation by community defender organizations would be \$675.

BUDGET REQUESTS—FEDERAL PUBLIC DEFENDERS

The Criminal Justice Act as amended, requires each Federal public defender organization, established pursuant to 18 U.S.C. 3006A(h)(2)(A), to submit a proposed budget to be approved by the Judicial Conference in accordance with 28 U.S.C. 605. The Conference approved the following supplemental and annual budgetary requests for these offices:

<u>Public Defender Organization</u>	<u>Supplemental Requests Approved for F.Y. 1981</u>	<u>Budget Requests Approved for F.Y. 1982</u>
Arizona	—————	\$ 775,184
California, Northern	—————	617,195
California, Eastern	\$ 54,143	589,786
California, Central	15,618	1,198,313
Colorado	35,315	273,320
Connecticut	8,144	252,900
Florida, Northern	—————	167,138
Florida, Middle	—————	416,942
Florida, Southern	—————	497,499
Georgia, Southern	2,282	191,871
Illinois, Central and Southern	—————	136,625
Kansas	—————	302,750
Kentucky, Eastern	—————	220,855
Louisiana, Eastern	—————	278,222
Maryland	6,024	472,563
Massachusetts	—————	288,546
Minnesota	—————	161,461
Missouri, Western	21,636	414,671
Nevada	37,913	306,845
New Jersey	—————	533,743
New Mexico	—————	232,326
Ohio, Northern	—————	280,948
Pennsylvania, Western	—————	242,301
Puerto Rico	7,251	246,801
South Carolina	—————	202,953
Tennessee, Middle	26,207	195,111
Tennessee, Western	—————	130,803
Texas, Southern	—————	500,998
Texas, Western	—————	503,576
Virgin Islands	34,578	327,826
Washington, Western	3,653	348,796
West Virginia, Southern	=====	149,181
Total	\$252,764	\$11,458,049

GRANT REQUESTS—COMMUNITY DEFENDER ORGANIZATIONS

The Conference approved supplemental funding for the fiscal year 1981 for the Federal Defender, Inc. of the District of Oregon in the amount of \$90,000 to establish a branch

office in Eugene, and approved sustaining grants for the fiscal year ending September 30, 1982 for all seven community defender organizations as follows:

Federal Defender of San Diego, Inc.	\$ 896,500
Federal Defender Program, Inc. — Atlanta, Georgia	246,000
Federal Defender Program, Inc. — Chicago, Illinois	539,500
Legal Aid and Defender Assn. of Detroit, Michigan, Federal Defender Division	638,500
Federal Defender Services Unit of the Legal Aid Society of New York	1,335,000
Federal Defender, Inc. — Portland, Oregon	353,000
Federal Court Division of the Defender Assn. of Philadelphia	<u>419,000</u>
Total	\$4,427,500

COMMUNITY DEFENDER ORGANIZATIONS—
CONDITIONS OF GRANT

Judge MacBride informed the Conference that it was necessary to amend Clause 5 of the Conditions of Grant to a Community Defender Organization to require that a certified annual audit be submitted to the Administrative Office along with the return of unexpended grant funds and other funds remaining at the end of the fiscal year and to amend Clause 8 of the Conditions of Grant to require the submission of the audit within 75 days of the end of each fiscal year. The Conference, upon recommendation of the Committee, thereupon amended Clauses 5 and 8 to read as follows:

5. UNOBLIGATED OR UNEXPENDED BALANCE: The Grantee shall return unobligated or unexpended grant funds, grant interest, and grant-related income remaining at the end of the fiscal year to the Administrative Office, together with a copy of the certified annual audit, within 75 days of the end of the fiscal year for which the grant was awarded, unless otherwise authorized by the A.O. The Grantee shall include a statement identifying which portion of the funds returned represents grant funds, grant interest, and grant-related income.

8. AUDITS: The Grantee shall submit, within 75 days of the end of each fiscal year, a certified audit of the statement of financial position to be included in the annual report of Grantee operations for the fiscal year for which the grant was awarded. The audit must be performed in accordance with generally accepted accounting principles and auditing standards by a Certified Public Accountant of the Grantee's choosing. The audit should be a systematic review to determine whether financial operations have been properly conducted. The audit must set forth expenditures in accordance with the designated object classifications contained in the approved grant, and must verify that grant funds, and grant-related income, were in fact properly expended in accordance with those object classifications. Unless waived by the A.O., Grantee audits must be performed according to the federal fiscal year.

The Conference also approved an amendment to Clause 14 of the Conditions of Grant to require advance approval of the Administrative Office for case-related travel outside the continental United States and administrative travel out of the district. The amendment parallels the existing policy with respect to travel by persons in Federal Public Defender Organizations. The amended condition is as follows:

14. TRAVEL, MEALS AND LODGING: The Grantee's reimbursement policy regarding expenses for travel, meals, and lodging should ordinarily not exceed the maximum allowances to be paid for per diem, actual expenses, and travel prescribed for federal employees. Authorization for case-related travel outside the continental United States and administrative travel out of the district in which defense services are provided should be requested in advance, in writing, from the Chief of the Criminal Justice Act Division of the Administrative Office. In an emergency, telephonic requests will be accepted, but must later be confirmed in writing.

The Conference further amended clause 6 of the Conditions of Grant to require that the annual report of each Community Defender Organization include a list of changes in the list of officers and directors of the organization and a list of changes in the roster of attorneys and other personnel employed by or associated with the organization. The amended condition reads 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, the anticipated caseload and expenses for the coming fiscal year, and any revisions to the list of officers and directors of the organization, including changes of addresses, and any additions or deletions to the roster of attorneys and other personnel employed by or associated with the Grantee, including addresses and data as to bar membership, qualifications and experience. 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 addition to paragraph 2.01 to clarify the obligation of appointed counsel to disclose clients' financial assets.
2. An addition to paragraph 2.01 to provide guidance and policy clarification with regard to the composition and management of Criminal Justice Act panels of private attorneys.

ATTORNEY COMPENSATION

The Committee pointed out that the existing rates and maximum limits of compensation payable to attorneys appointed under the Criminal Justice Act had not been increased since 1970. In the last ten years the cumulative effects of inflation have given rise to two problems: (1) difficulties in obtaining attorneys willing to accept appointments; and (2) increased burdens placed upon the chief judges of the circuits resulting from constantly increasing claims for excess compensation. Convinced that the existing rates and limits of compensation are inadequate, the Committee recommended, and the Conference approved, the following resolution:

The Judicial Conference agrees with the views of its Committee to Implement the Criminal Justice Act, and shares the concern of that Committee over the inadequacy of the existing rates of compensation and maximum limits under the Criminal Justice Act, and the adverse impact these inadequacies

are having, and will continue to have, on the implementation and operation of the Criminal Justice Act.

The Judicial Conference recommends that the Congress address these issues as soon as possible to insure that the purposes of the Criminal Justice Act are fully achieved.

The Director of the Administrative Office of the United States Courts is authorized to transmit to the appropriate congressional committees the views of the Conference, as expressed in this Resolution.

DEFENDER MALPRACTICE LEGISLATION

In April 1980, S. 2617 was introduced by Senator DeConcini in the 96th Congress to amend the Criminal Justice Act to provide protection for the officers and employees of Federal Defender Organizations against personal liability for malpractice. The bill would not grant a public defender immunity from suit, nor would it take away the rights of plaintiffs claiming malpractice, but would insulate defenders from personal liability by authorizing the Director of the Administrative Office to be a self-insurer or to obtain liability insurance. Judge MacBride reported that Senator DeConcini's request for Conference views had previously been acted upon by the Executive Committee of the Conference and that the Executive Committee had endorsed the legislation on behalf of the Conference.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

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

WIRETAP LEGISLATION

H.R. 6710, 96th Congress, would repeal Chapter 119, of Title 18 U.S. Code, relating to the interception of wire and oral communications and would substitute a new Title 7 to the Communications Act of 1934 dealing with the interception of protected communications by common carriers

and other persons. Several important changes would be made. A court order authorizing an interception would have to be obtained even though one party to the communication had consented to the intercept. Under existing law an interception order may be issued during an investigation to determine if a crime has been committed, but under H.R. 6710 the crime must have already been committed at the time the order was issued. A prior court order would be necessary before an interception could be made by means of a pen register. Only Federal courts could issue interception orders. Finally, persons unlawfully intercepting communications could be prosecuted on the basis of a "knowing" interception rather than a "willful" interception.

The Committee recommended that the Conference take no position on the policy implications of this legislation but recommended disapproval of some of the provisions of the bill which the committee believed would have an adverse impact on the administration of the criminal law in the Federal courts. The Committee was strongly opposed to the provision of the bill which would require the issuance of wiretap orders only by Federal courts, because of the potential impact on workload and the inconvenience to state officials who may reside at great distances from Federal courts. The Committee recommended that state court judges be authorized to issue wiretap orders. The Committee did express approval of the provision in H.R. 6710 which would establish a "knowing" rather than a "willful" standard for the prosecution of a person who violates a wiretapping law. These views of the Committee were endorsed by the Conference. The Conference also expressed disapproval of the provision which would require a court order if one party to the communication consents, a position consistent with the Rules of Evidence.

Judge Harvey also informed the Conference that the Committee had considered S. 1717, 96th Congress, which would make several clarifying amendments to Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968 relating to the interception of communications.

PEREMPTORY CHALLENGES OF JUDGES

H.R. 7473, 96th Congress would amend the Federal Rules of Criminal Procedure to require the transfer of a criminal

case to another judge on motion of a defendant and without a showing of cause. A similar bill, H.R. 7165, 96th Congress would authorize such a challenge in both civil and criminal cases. The Advisory Committee on Criminal Rules had previously addressed H.R. 7473, opposed the legislation, and requested that the Congress await a study being made by the Federal Judicial Center before considering the bill.

Along with both circuit conferences and judges' associations, the Committee unanimously requested the Conference to oppose such legislation strongly. Particularly in criminal cases, such legislation would be extremely disruptive of calendaring, perhaps causing a return to the master calendar system, would delay bringing a trial a very large number of criminal cases, and would cause problems under the Speedy Trial Act. Permitting peremptory recusal of a judge would encourage judge-shopping, would also have the effect of inhibiting judicial independence, and would encourage judges to be passive and refrain from rendering unpopular decisions, even though the judge in his individual conscience might feel that such a decision was the correct one.

The Conference approved the Committee's recommendation, expressing its strong disapproval of any legislation which would permit the peremptory disqualification of judicial officers. The Conference also noted that present provisions dealing with disqualification for cause are themselves not effective or strong enough and should be improved.

THREATS TO JUDICIAL EMPLOYEES

Existing law prohibits threats to certain designated federal officers, including judges, but there is no federal statute which permits prosecution of those making threats of bodily harm to members of judges' staffs or to other court personnel. With the increase of such threats in recent years, the Conference authorized the drafting of such legislation and directed that the proposed legislation be transmitted to each of the Conference members for comment.

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 Committee's report.

FREE PRESS—FAIR TRIAL GUIDELINES

In 1976 the Conference authorized the Committee to undertake a study of the existing Conference guidelines for district courts on the management of highly publicized cases which raise an apparent conflict between freedom of the press and the right to a fair trial. Judge Atkins submitted to the Conference a report entitled "Free Press—Fair Trial, Proposed Revised Guidelines of the Judicial Conference of the United States—1980," which was initially prepared by a subcommittee under the chairmanship of Chief Judge Collins J. Seitz of the Third Circuit. Judge Atkins stated that the new guidelines had been submitted for comment to a wide cross-section of the Federal judiciary, the legal profession, and the news media. Almost 60 individuals and organizations were provided with preliminary copies of the draft report and were invited to comment upon it. The responses, all of which were seriously considered by the subcommittee, reflected substantial agreement with its recommendations.

The report recommends that the standard of "reasonable likelihood" of interference with a fair trial should be retained as the test for regulation of attorney comment in Federal criminal cases. In deference to judicial decisions, however, the report recommends that the guidelines restricting attorney comment should no longer be applied to civil actions, to criminal cases which are not to be tried by a jury, or to that phase of criminal proceedings following the return of a guilty verdict where all that remains to be done by the court is the imposition of sentence. New sections were added to recommendation C in order to recognize in a formal way (1) that no court order or rule should attempt to restrain representatives of the news media from publishing any information already in their possession regarding a pending criminal case, and (2) that all criminal proceedings should be held in open court, except that discretion is reserved to the courts to close certain pretrial hearings to the public where the tests set by the Supreme Court in *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979), have been met. The report contains other minor proposals for adjustments in the guidelines, as enumerated in the Committee comment thereto.

On recommendation of the Committee, the Conference approved the revised report and authorized its dissemination to

all United States district judges and to the public as a policy statement of measures to control prejudicial publicity affecting the right to a fair trial.

EXCUSE AND DISQUALIFICATION OF JURORS

Judge Atkins informed the Conference that the Committee had undertaken a study of the policies of the district courts in excusing prospective jurors from jury service in light of the decision of the Ninth Circuit in *United States v. Goodlow*, 597 F.2d 159 (1979) and in the light of a separate inquiry by the Civil Rights Division of the Department of Justice as to the policies of the Federal courts in permitting handicapped persons, including the blind and the deaf, to serve on juries. It was the view of the Committee that the district courts should be asked to review the excuse provisions of their jury selection plans at reasonable intervals in order to consolidate and minimize the categories of persons who are eligible for permanent excuse from jury service under 28 U.S.C. 1863 (b)(5), and further that the district courts should seriously consider dispensing with all existing excuse categories except such of the following, as in their discretion, they may see fit to retain:

1. Persons over 70 years of age.
2. Persons who have, within the past two years, served on a Federal grand or petit jury panel. See 28 U.S.C. §1866(e).
3. 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 infirmed persons.
4. Any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty.
5. Persons in professional categories and occupations, such as doctors and lawyers.

The report further recommends a shortening of jury terms and increased attention to individual requests for excuse from jury service because of hardship.

Upon the recommendation of the Committee, the Conference approved the report on the excuse and disqualifica-

tion of jurors submitted by the Committee and authorized its distribution to all United States district judges.

SERVICE OF JURY SUMMONS

The Jury Selection and Service Act now requires that a summons addressed to a person selected for Federal jury service shall be served upon the prospective juror personally or by registered or certified mail, 28 U.S.C. §1866(b). In practice, the summons is ordinarily served by mail and not personally. Judge Atkins stated that the Committee had considered a proposal to permit the service of a jury summons by ordinary first class mail, in addition to the methods currently authorized. It had been pointed out to the Committee that serving jury summons by regular mail would reduce the burden on clerks' offices, reduce mailing costs, and perhaps promote a more ready response by recipients, some of whom may hesitate to take delivery of a registered or certified letter.

The Committee submitted a draft bill to permit service of a jury summons by regular mail, pointing out, however, that it is not urging all district courts to adopt this practice. Courts facing a substantial problem in achieving juror compliance with summonses may wish to continue service by registered or certified mail and should retain discretion to do so. Nevertheless, the Committee believed that courts should be permitted to select the particular manner of service which is found to be most appropriate in view of local circumstances. The Conference approved the draft bill and authorized its submission to the Congress.

SECURITY OF GRAND JURY PROCEEDINGS

Judge Atkins informed the Conference that a subcommittee had been appointed to review the recent draft report submitted by the General Accounting Office regarding the security of Federal grand jury proceedings. The subcommittee will develop an appropriate response to the recommendations of the report and will consider any other reforms in Federal grand jury operations which might be useful in meeting some of the objections contained in the report. The Subcommittee will also cooperate with the Advisory Committee on the

Federal Rules of Criminal Procedure in the consideration of those portions of the report concerned with suggestions for changes in the criminal rules.

**REPORT OF THE IMPLEMENTATION COMMITTEE
ON ADMISSION OF ATTORNEYS
TO FEDERAL PRACTICE**

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

The report indicated that 14 United States district courts, geographically representative of the Federal judiciary and having a variety of arrangements in terms of judicial manpower, caseload, and the arrangement of statutory divisions and places of holding court, have agreed to participate in a pilot program. The Committee has been attempting to devise methods to assist the courts in the orderly implementation and conduct of attorney admission programs, has arranged a seminar for the chief judges and other representative judges of the pilot courts, and has participated in the compilation and publication of an implementation manual to be distributed to the judges supervising the pilot program in each participating court. The Committee is also continuing to study the appropriate methods for the evaluation of the pilot program in accordance with the direction of the Conference.

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

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the Court of Appeals for the Tenth Circuit at Oklahoma City, Oklahoma, and Wichita, Kansas during the calendar year 1981.

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 25, 1980

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