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

March 12-13, 1981

Washington, D.C.
1981

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**William E. Foley
Director**

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**REPORT OF THE PROCEEDINGS
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March 12-13, 1981

The Judicial Conference of the United States convened on March 12, 1981, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on March 13th. 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 John C. Godbold
Chief Judge John V. Singleton, Jr., 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 Carl McGowan
Chief Judge William B. Bryant, District of Columbia

Court of Claims:

Chief Judge Daniel M. Friedman

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

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

The Attorney General of the United States, Honorable William French Smith, addressed the Conference briefly on

*Designated by the Chief Justice

matters of mutual interest to the Department of Justice and the Conference.

Senator Strom Thurmond, Chairman of the Senate Judiciary Committee, addressed the Conference briefly on matters pending before the Senate Committee of interest to the Judiciary. Senator Lowell P. Weicker of the Senate Appropriations Committee visited briefly and was introduced to the members of the Conference. Various staff members of congressional offices attended portions of the Conference including Claudia T. Ingram of the staff of Senator Robert Dole; Mr. Richard W. Velde of the staff of the Senate Judiciary Committee; and Mr. Michael J. Remington of the staff of the House Judiciary Committee.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr., Deputy Director; James E. Macklin, Assistant Director; William J. 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, Mr. William E. Foley, submitted to the Conference a brief report on the caseloads of the United States courts during the calendar year 1980.

Mr. Foley reported that appeals docketed in the United States courts of appeals increased from 21,680 in 1979 to 24,122 in 1980, an increase of 11.3 percent. During the year there were 22,886 appeals terminated, an increase of 20.1 percent over the number terminated in 1979, but 1,236 cases less than the number filed. As a result appeals pending on the dockets of the courts of appeals climbed to a new all-time high of 21,501 on December 31, 1980, an increase of 6.1 percent.

During the calendar year 1980 there were 174,370 new civil cases docketed in the United States district courts, a 7.2 percent increase over the previous year. Civil cases disposed of during the year were 171,037, 12.4 percent more than the number terminated in 1979, but 3,333 less than the number filed. As a result civil cases pending in the district courts increased 1.8 percent to a record 186,958 on December 31, 1980.

Criminal cases filed in the district courts in 1980 continued the downward trend of the last few years but at a lesser rate. During the year there were 29,856 criminal cases filed, a decrease of 0.8 percent from the 30,106 cases filed during 1979. During the year there were 28,807 criminal cases disposed of, 6.4 percent less than last year. Thus the number of criminal cases pending on the dockets of the district courts increased 7.3 percent to 15,398.

In 1980 there were 472,400 bankruptcy estate filings in the United States bankruptcy courts, an 80.4 percent increase over the 261,818 estate filings in 1979. During the year 233,442 estates were closed, a new record number of dispositions, but the number of pending bankruptcy estates increased 78.1 percent as of December 31, 1980 to a record 544,737 estates.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A report submitted on behalf of the Judicial Panel on Multidistrict Litigation indicated that during the six month period ending December 31, 1980, the Panel, in carrying out its functions under 28 U.S.C. 1407, had conducted two regularly scheduled hearings and had entered 33 major decisions. The Panel considered 16 new groups of multidistrict litigation and ordered transfer in seven. These seven groups encompassed 56 civil actions of which 39 were transferred for pretrial proceedings in conjunction with 17 actions originally filed in the transferee districts. The Panel denied transfer in nine new groups of cases consisting of a total of 264 separate actions. During this period 520 actions were transferred by the Panel for inclusion in ongoing centralized pretrial proceedings with previously transferred actions. In the last six months 413 actions have been remanded by the Panel to the transferee forums from which they had been originally transferred.

COMMITTEE ON THE JUDICIAL BRANCH

Judge Irving R. Kaufman, Chairman of the Committee on the Judicial Branch, submitted the Committee's report.

Salary Commission Recommendations

Judge Kaufman stated that the quadrennial Salary Commission in its report to the President on December 19, 1980 had recommended that the salary of a district judge be fixed at \$85,000 per annum; the salary of a circuit judge at \$90,000 per annum; the salary of an associate justice of the Supreme Court at \$115,000 per annum; and the salary of the Chief Justice at \$120,000 per annum. Judge Kaufman further pointed out that the Commission had made several other very important nonsalary recommendations including:

- 1) That Congress no longer block annual adjustments of judicial salaries under the Executive Salary Cost-of-Living Adjustment Act of 1975;
- 2) That the quadrennial Commission become a biennial Commission; and
- 3) That a special, one-time federal pay commission be convened to investigate all aspects of federal pay including survivors' annuities.

Although President Carter's salary recommendations to the Congress were less than those of the Commission, the President did endorse the Commission's nonsalary recommendations. Judge Kaufman explained these recommendations and the potential good they may accomplish.

Upon the recommendation of the Committee, the Conference adopted the following resolutions:

1. The Judicial Conference approves the report of the quadrennial Commission on Executive, Legislative and Judicial Salaries.
2. The Judicial Conference supports Congressional passage of the salary levels recommended by President Carter, but considers them inadequate to remedy the deep problems afflicting the federal judiciary. The Judicial Conference affirms President Carter's support of the quadrennial commission's non-salary recommendations, including a biennial commission; a special commission to review all aspects of federal pay including the survivors' annuities plan; and an end to blockage of annual adjustments under the Executive Salary Cost-of-Living Adjustment Act.
3. The Judicial Conference finds existing legislation to be an unsatisfactory mechanism for the determination of judicial compensation, and recommends amendments creating a separate, biennial commission, with jurisdiction to set the salaries of judges only.
4. The Judicial Conference recommends the submission of appropriate legislation to carry out the proposals in paragraphs 2 and 3.

At Judge Kaufman's request the Conference authorized the distribution of the Committee report to all judges.

Judicial Survivors' Annuities

Judge Kaufman informed the members of the Conference that the Committee has secured the aid of a prominent pension expert who has agreed to conduct an in-depth analysis of the Judicial Survivors' Annuity System. The Committee anticipates that significant legislative proposals will result from this study.

COMMITTEE ON COURT ADMINISTRATION

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

Disposition of Civil Cases Pending Over Three Years

In September 1961 (Conf. Rept., p. 62) the Conference adopted a resolution declaring it "to be the policy of the judiciary that every civil case pending three years or more and appropriate for trial be regarded as a judicial emergency by all judges of any circuit where such cases are to be found" and in March 1963 (Conf. Rept., p. 46) the Conference requested that each district court deal with these cases "on a continuing regular programmed effort." Judge Hunter pointed out that, exclusive of ICC cases, most of which are pending in the District of Massachusetts, civil cases pending at least three years on the dockets of the district courts on June 30, 1980 were 11.7 percent of the total pending civil caseload, compared with only 6.5 percent as of June 30, 1976. Upon the recommendation of the Committee, the Conference adopted the following resolution:

Each district judge should periodically review his docket to determine the status of all cases which have been pending three years or more. At the end of June each year, each district judge should review his docket and report in writing to the chief judges of the district and the circuit, with a copy to the Administrative Office, the reason each such case has been pending for more than three years, its current status, and the prospects for closing it.

Court Reporters' Transcript Rates

At the request of the district judge representatives to the Judicial Conference the Committee again considered the court reporters' transcript rates adopted by the Conference in March 1980 (Conf. Rept., p. 17). As a result the Committee determined that some district courts were experiencing difficulties with the limitations on maximum transcript rates, but decided to defer recommending any change in these rates pending further study. At the same time the Committee recognized that situations may exist in some specific districts justifying higher rates for those districts alone. Upon the recommendation of the Committee, the Conference authorized

the Director of the Administrative Office to increase transcript rates for original copies only by no more than 20 percent of the existing maximum rate when, in the Director's judgment, a district court justifies such an increase.

The Committee also noted that there are rare instances in which reporters, notereaders, or transcribers are not available locally thus requiring a reporter to reimburse these assistants for the expenses of travel in situations in which daily or hourly transcripts are required. In these circumstances the Committee recommended that court reporters be authorized to claim reimbursement from the parties for the expenses of travel and subsistence of these assistants in addition to the prescribed fees for daily or hourly transcript, subject to the prior written approval of the presiding judge and in amounts consistent with the travel and per diem allowances prescribed for regular employees. This recommendation was approved by the Conference.

The Conference, however, directed the Committee to review the entire matter of transcript rates in the light of the discussions in the Conference and to report at a later date. Judge Hunter informed the Conference that the Administrative Office had already been requested to conduct an extensive survey of the entire court reporter system.

Salaries of Clerks of Court and Chief Probation Officers

In recent years the Congress has prohibited the expenditure of appropriated funds to pay cost-of-living allowances to Federal managers and executives above the salary authorized for Level V of the Executive Schedule. As a result, executives at several levels of responsibility now receive the same salary. While this "pay compression" applies to many positions throughout the Government, the Conference in September 1978 (Conf. Rept., p. 47) and in March 1980 (Conf. Rept., p. 21) adopted an additional rule limiting the pay in certain senior graded positions in the Judiciary to \$2,000 less than Level V. Inequities have developed because the differential applies to certain positions and not to others. In view of the continually recurring problem of "pay compression" the Committee recommended that the \$2,000 differential in salary for clerks of court and probation officers embodied in the previous resolutions of the Conference be rescinded. This recommendation was approved by the Conference. The Committee was further requested to consider the adequacy of the salaries of circuit executives and to report thereon at the next session.

Space Utilization Survey

Judge Hunter informed the Conference that, as directed by the Committee and in response to concerns expressed by the House Appropriations Committee, the Administrative Office had conducted a space utilization survey and had submitted to the district courts concerned and to the circuit judicial councils tentative recommendations for closing certain court facilities. As anticipated, many courts provided information not revealed by the survey and unknown to the Administrative Office on the need to retain facilities. Judge Hunter reported that the Committee had reviewed all material obtained during the course of the survey including correspondence from interested parties such as members of Congress, local governments, bar associations and attorneys. The survey and study indicated that both the courts and the circuit councils concerned had approved the closing of certain facilities at certain district court locations. The Conference thereupon approved of releasing to the General Services Administration various facilities located in eighteen communities in the following fifteen districts:

1. Northern District of Alabama

Tuscaloosa - Magistrate's courtroom

2. Alaska

Fairbanks - Conference/meeting room, provided such a room is available when needed

3. Northern District of Florida

Gainesville - Magistrate's courtroom and chambers

4. Idaho

Moscow and Pocatello - Probation office space

5. Northern District of Illinois

Rockford - Reduce probation and storage, release court reporter and attorney consultation rooms

6. Southern District of Iowa

Council Bluffs - Grand jury room and clerk's private office

Davenport - Court reporter office

7. Western District of Kentucky

Louisville - One petit jury room

8. Minnesota

Fergus Falls - Release 4,060 square feet

9. Northern District of Mississippi

Clarksdale - Court reporter's room, grand jury room, and probation office on third floor

10. Southern District of Mississippi

Meridian - Grand jury room

Vicksburg - Release all but one courtroom, jury room, chambers and district clerk space

11. Montana

Butte - Petit jury room

12. Nebraska

North Platte - All bankruptcy court space and areas designated as grand jury

13. Northern District of New York

Plattsburgh - entire facility

14. Eastern District of Oklahoma

Ada - 869 square feet and a witness room

Ardmore - 1,195 square feet

15. Western District of Oklahoma

Enid - Release all except one courtroom, a judge's chambers, reception room, jury deliberation room and probation office space

In view of the provisions of 28 U.S.C. 1393 relating to venue, the Committee recommended against the complete closing of a facility in a statutory division of a district court where that facility is the only place of holding court in that division, but suggested further study and close scrutiny in the event Congress decides to change the venue statute. As to certain places of holding court in districts which do not have statutory divisions, the Committee has directed the Administrative Office to restudy possible closure taking into consideration the following factors:

1. Distances to be traveled and the availability of transportation for lawyers, parties, witnesses and jury members.
2. Actual annual usage by judges, court personnel and other government agencies.
3. Effect of closure on other trial costs.
4. Projected increase or decrease of usage.
5. Importance of federal court presence.

Places of Holding Court

The Chief Judge of the Southern District of Georgia had requested that the headquarters of the Swainsboro Division be changed from Swainsboro to Statesboro, that the division be renamed the "Statesboro" Division, and that the facility at Swainsboro be closed. This would enable the court to use the new state court facilities at Statesboro without charge to the government. The Conference was advised that the proposal had been approved by the Judicial Council of the Fifth Circuit and accordingly approved the proposal, which will require statutory change.

Space Guidelines

The Committee submitted a proposed revision of Chapter 9 of the United States Courts Design Guide relating to the facilities of a bankruptcy court. The Committee had determined that there should be three sizes of bankruptcy courts, the standard size being 1,496 square feet and the others 1,120 and 1,820 square feet. Upon the recommendation of the Committee, the Conference approved the revisions of Chapter 9 of the Guide, as submitted by the Committee, and adopted the following resolution:

It is the sense of the Conference that courtrooms hereinafter constructed for United States bankruptcy courts should range from 1,120 square feet (28 x 40) with a permissible allowance to 1,820 square feet (35 x 52) in exceptional cases and that the number and size of each such court room shall be determined by the judicial council of the circuit after consultation with the bankruptcy judge.

The Committee also submitted a proposal to amend Chapter 13 of the United States Courts Design Guide regarding the space for court reporters. The changes were recommended because of the prohibition against providing space for court reporters' employees. If all excess space were released, a saving of \$450,000 to \$500,000 would result. The Committee, however, doubted the practicality of releasing all such excess space because the overage in some instances is so small that it would not be cost effective to make necessary alterations.

Upon the recommendation of the Committee, the Conference amended the provisions of Chapter 13 of the Guide to prescribe 200 square feet for a court reporter's office and 50 square feet for storage space. These guidelines are to be used for future planning and construction and the Administrative Office was authorized, where feasible, to recoup, release, or obtain reimbursement for space presently occupied in excess of the standard.

Records Disposition

The Conference in March 1980 (Conf. Rept., p. 55) approved schedules for the disposition of records of the various United States courts submitted by the Ad Hoc Committee on the Disposition of Court Records, discharged the Committee

and authorized the Committee on Court Administration to consider any further modifications in the schedules. Judge Hunter informed the Conference that since that time various problems have arisen with regard to implementing the new schedules and establishing schedules for disposing of records not already covered. It was the view of the Committee that these problems require the expertise of the Ad Hoc Committee which originally developed the existing schedules. Upon the recommendation of the Committee the Conference authorized the Chief Justice to reactivate the Ad Hoc Committee on the Disposition of Court Records for the purpose of considering modifications to existing records disposition schedules and other problems.

Judge Hunter also advised the Conference that civil judgments in at least one state are valid for a period of 12 years and are thereafter renewable. The schedule now authorizes the disposition of civil case records in 10 years. Pending the reconstitution of the Ad Hoc Committee the Conference amended item A.4.b(4) of the existing schedule to authorize the disposition of civil case files "20 years after date of final action or a longer period as the court may direct." Judge Hunter also stated that several circuit archives-history committees and the American Society for Legal History had expressed concern about the destruction of any court case files. Since the Committee is convinced that the ultimate responsibility for the selection and preservation of permanent federal records lies with the National Archives and Records Service, it recommended that the Ad Hoc Committee consider communicating these concerns to NARS and obtaining a statement of the means by which NARS plans to minimize the likelihood of the destruction of historically significant court records. The Conference approved these recommendations.

In Banc Hearings in Courts of Appeals

The Committee had considered a recommendation to amend 28 U.S.C. 46(c) to allow a judge who takes senior status to sit during an in banc hearing of a case in which he participated. It was the view of the Committee that the statute should be amended to permit a judge in senior status to participate in the proceeding in banc if he participated in a three-judge panel deciding a case on appeal. The Conference thereupon recommended that 28 U.S.C. 46(c) be amended by adding the following sentence:

Any circuit judge in regular active or senior service sitting on a panel hearing a case shall remain eligible to participate as a member of the in banc court reviewing that panel's decision.

Delegation of Authority to Circuit Executives
to Approve Criminal Justice Act Vouchers

At the request of the Chairman of the Committee to Implement the Criminal Justice Act the Committee reviewed the provision in Volume III of the Guide to Judiciary Policies and Procedures which would authorize circuit councils to delegate authority to a circuit executive to approve payment of appointment vouchers and vouchers for expenses and other services submitted by counsel appointed under the Criminal Justice Act. It was the view of the Committee that circuit councils have no authority or responsibility in regard to vouchers for expenses under the Criminal Justice Act, and thus have no authority or responsibility that may be delegated. Further the fixing of compensation and approval of reasonable expenses appears to be a non-delegable judicial function rather than an administrative function. The Conference agreed and directed that the statement in the Guide be deleted.

Miscellaneous Fee Schedules

Upon the recommendation of the Committee the Conference, pursuant to 28 U.S.C. 1930, amended the miscellaneous fee schedule for United States bankruptcy courts to authorize the payment to the government of fees for the transcription of proceedings in bankruptcy cases when the transcription service is performed by a regularly employed member of the bankruptcy court staff who is not permitted by law to retain the transcript fees, whether the proceeding is related to a case filed under the Bankruptcy Act or the Bankruptcy Code. The amendment reads as follows:

12. For transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters. The party requesting the transcript shall pay the charge to the clerk of the bankruptcy court for deposit to the credit of the referees' salary and expense fund if the proceeding is related to a case commenced prior to October 1, 1979, and to the credit of the Treasury if the proceeding is

related to a case commenced on or after October 1, 1979. If the trustee in bankruptcy or the debtor in possession requests a transcript in the performance of his official duties, the charge shall be paid from the estate to the extent there is any estate realized.

The Conference directed that this change become effective on May 1, 1981.

Library Funds

Senator DeConcini and Congressman Kastenmeier recently conducted a survey among clerks of court concerning the practice of charging fees for the admission of attorneys that are in excess of the amount prescribed by the Judicial Conference pursuant to 28 U.S.C. 1914, which are then placed in a library or other fund. A major study of library funds was last conducted by a special Committee of the Judicial Conference in March 1951 (Conf. Rept., p. 209). At that time the Conference adopted the following resolution:

Resolved, That it is the sense of the Conference that the amounts received by clerks, librarians, or other persons as Trustees for Library, or other Special Funds under rules or orders of the Courts of Appeals from attorneys on admission to a Court of Appeals are not monies received for the use of the United States, and are not coverable into the Treasury of the United States.

In reviewing the information obtained from the survey the Committee was impressed by the variety of uses to which these funds were being put, and further, that there is a real need for such funds. Historically, these have been considered private trust funds that need not be placed in the Treasury. However, courts must be careful to restrict any outlay of monies from these trust funds to projects or purposes which clearly redound to the benefit of the members of the class who have contributed to the funds. At the present time there are no Conference guidelines to aid the courts in the management of these funds. The Conference thereupon authorized the Committee to conduct further research and to prepare guidelines on the sources and uses to which such trust funds may be put and how they should be managed, invested and audited.

Open Meetings of the Conference

Judge Hunter informed the Conference that the Committee had reviewed the request of Senator DeConcini that the Conference "consider taking appropriate steps to voluntarily open its meetings to public observation." The Committee noted that the Congress in recent years has demonstrated an increasing interest in working with the Judiciary in addressing problems which can only be resolved by Congressional action. The Conference has responded to this increasing interest through programs such as the Brookings Institution Seminar on the Administration of Justice and by inviting members of Congress and Congressional staff personnel to Conference committee meetings. Recently the Chief Justice formalized the tradition of inviting the Chairmen of both Congressional Judiciary Committees, or their representatives, to attend the Judicial Conference for the purpose of exchanging views on issues of mutual concern. The Committee recommended that the Conference continue to rely upon this appropriate method of communication with the public by working with its elected representatives. The Committee also recommended continuation of press briefings at the conclusion of each Conference and the wide distribution of the Reports of the Proceedings of the Judicial Conference, methods of publicizing the Conference's work which have proven their effectiveness, helping rather than hindering the Conference's ability to perform its responsibilities efficiently. These recommendations were approved by the Conference.

Court of Appeals for the Federal Circuit and the United States Claims Court

The Conference in September 1979 (Conf. Rept., p. 63) approved in general the proposals contained in S. 1477, 96th Congress, which would merge the United States Court of Claims and the United States Court of Customs and Patent Appeals into a new court to be named the "United States Court of Appeals for the Federal Circuit" and create a new Article I court to be named the "United States Claims Court." Subsequently, a slightly modified version of the proposal was passed by the Senate as part of S.1477 and a separate bill, H.R. 3806, was passed by the House of Representatives. In the closing days of the 96th Congress conferees from both Houses agreed to reconcile minor differences, but the bill could not be reached for final action.

The Committee submitted for Conference consideration a draft bill, which is virtually identical to the text of the bill previously agreed upon by the Senate and House conferees to the extent that the text would create a new Court of Appeals for the Federal Circuit and a new Article I United States Claims Court. The draft bill does not incorporate items contained in Titles I and II of S. 1477, 96th Congress, which are being incorporated in separate legislation for Congressional consideration. It is the view of the Committee that the draft court consolidation bill would eliminate unnecessary conflicts among circuits in a narrowly prescribed area of federal practice and would directly contribute to appropriation savings, reduced costs to litigants, and significant reductions in time needed to terminate cases. Upon the recommendation of the Committee the Conference approved the draft bill and authorized the Director of the Administrative Office to transmit it to the Congress as a Judicial Conference proposal.

Judicial Administration Reform Act

The Conference had previously approved many of the proposals contained in S. 1477, 96th Congress, to reform certain provisions of the Judicial Code relating to the administration of the courts (see Conf. Repts., Sept. 1979, p. 61 and Mar. 1980, p. 8). Upon the recommendation of the Committee the Conference authorized the Director of the Administrative Office to prepare and transmit to Congress a draft Judicial Administration Reform Act containing the following proposals, taken from S. 1477, which have already been approved by the Conference:

- (1) An amendment to 28 U.S.C. §§ 45 and 136 pertaining to the selection and tenure of chief judges.
- (2) An amendment to 28 U.S.C. §§ 45 and 46 concerning the composition of panels of the courts of appeals.
- (3) An amendment to 28 U.S.C. § 371 concerning the retirement of federal judges.

- (4) A proposed new Chapter 14 to Title 28, United States Code, to authorize the temporary assignment of Article III judges to the positions of Director of the Administrative Office, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice, without loss of seniority.
- (5) An amendment to 28 U.S.C. § 1631 to clarify authority for the transfer of an improperly filed case from one court to another.
- (6) An amendment to 28 U.S.C. §1861 pertaining to interest rates on judgments and prejudgment interest.

This bill is to be kept separate and distinct from the bill to consolidate the Court of Claims and the Court of Customs and Patent Appeals.

Limitation on the Exercise of the Contempt Power

The views of the Conference had been requested on H.R. 547, 96th Congress, which would amend Chapter 21 of Title 18, United States Code, by adding a new Section 403 to read as follows:

The criminal and civil contempt powers of the courts of the United States shall not extend to disputes involving an officer or employee of a State, municipality, agency or unit of local government, where the officer or employee is exercising good faith discretion, within the scope of his office or employment.

It was the view of the Committee that the bill is too broadly drafted, is constitutionally questionable and would make enforcement of court orders against local officials extremely difficult. Further the Committee perceives that a special provision applicable only to officers or employees of a state, municipality, agency or unit of local government, would raise questions concerning the applicability of the rule to other individuals not specifically mentioned in the statute and would encourage others to seek a limitation on contempt powers. An individual should not have "discretion" to obey or refuse to obey a court order, but should only have the right to challenge it on the merits. Upon the recommendation of the Committee, the Conference recommended against the enactment of the bill.

Taxpayers' Bill of Rights

S. 955, 96th Congress, is a bill to provide for the safeguarding of taxpayer rights and for other purposes. The bill would accomplish several objectives. It would, for example, require the Internal Revenue Service to provide additional assistance to taxpayers through the creation of a new position of Assistant Commissioner, establish new causes of action for the violation of taxpayer rights, and authorize the United States Tax Court to tax costs.

It was the view of the Committee that the bill deals generally with matters of public policy for the consideration of the Congress and that the Judiciary should take no position thereon. Certain provisions of the bill, however, deserve comment. First, the provision creating a new cause of action against an IRS employee for the violation of a constitutional right would, in the Committee's view, generate many new cases and have a substantial impact on the work of the courts. Second, the Committee saw no need for the special venue provision in Section 7403(b) which tracks the general venue statute and provides for alternate venue in the district court for the District of Columbia. Third, the provision in Section 7403(c) pertaining to jurisdictional amount is unnecessary since the requirement of a jurisdictional amount in federal question cases was abolished in the 96th Congress. In the event the Congress requests comments from the Judiciary on this proposal the Conference authorized the transmission of these views to the Congress.

United States Marshals Service

The Conference in March 1980 (Conf. Rept., p. 23), authorized the Administrative Office to pursue with the Congress ways to improve court security. Although the Congress has been receptive to improving services provided to the courts by the United States Marshals Service in the area of court security and service of civil process, the Committee perceives that during the current fiscal year, and in the next fiscal year, there will be a serious crisis created by a lack of funds. Despite language in the legislative history of Appropriation Acts directing the Department of Justice to seek necessary funds for court security and service of process, the Office of Management and Budget has not permitted additional funding requests. Since October 1, 1980 the marshals have been serving civil process without appropriated funds by using funds available in the area of court security.

Upon the recommendation of the Committee the Conference authorized the Director of the Administrative Office to work with the United States Marshals Service, the Department of Justice, the Office of Management and Budget and the new Administration to avert a potential crisis wherein the United States Marshals cease serving civil process and wherein court security declines to an unacceptable level.

The Committee further recommended that the Conference support the Department of Justice efforts to have the fee statute amended so that the Marshals Service, and other process servers, may be adequately compensated for their service to private litigants. The Committee further recommended that the United States Marshals Service continue to serve process in private civil litigation until satisfactory alternate methods of service exist in all jurisdictions. These recommendations were approved by the Conference.

Jurisdiction of Claims by the Cherokee Nation

H.R. 6881 and H.R. 7567, 96th Congress, are bills to confer jurisdiction on certain courts of the United States to hear and render judgment in connection with specified claims against the United States by the Cherokee Nation of Oklahoma. H.R. 6881 would confer jurisdiction upon the United States District Court for the Eastern District of Oklahoma, to hear, determine, and render judgment, under the jurisdictional provisions of Section 2 of the Indian Claims Commission Act of August 13, 1946, on any and all claims which the Cherokee Nation of Oklahoma has against the United States with regard to any lands or interests therein, which were held, or by treaty granted to such Cherokee Nation of Oklahoma in fee simple, or otherwise. H.R. 7567 would confer jurisdiction upon the United States Court of Claims or upon the United States District Court for the Eastern District of Oklahoma under the same section of the Indian Claims Commission Act with respect to any claim which the Cherokee Nation may have against the United States for any and all damages to Cherokee tribal assets related to and arising from construction of the Arkansas River Navigation System.

These bills would in effect eliminate the statute of limitations for filing claims by the Cherokee Nation against the United States which the Indian Claims Commission Act had authorized to be filed up to August 13, 1951. The Indian Claims Commission has now been abolished and all remaining

litigation is being processed through the United States Court of Claims. Permitting the filing of additional claims would, in the view of the Committee, impact heavily on the caseload of the Eastern District of Oklahoma. If these bills are to be further considered by the Congress, the Committee recommended that exclusive jurisdiction to hear these claims be vested in the United States Court of Claims which has experience in these matters. Since the bills would provide for equitable relief, the Court of Claims should be given jurisdiction to grant such equitable relief in these cases. The Conference approved the Committee's recommendation.

Interstate Compacts

H.R. 7205 and S. 2228, 96th Congress, would grant the consent of the United States to the Caddo Lake Compact between the states of Louisiana and Texas concerning the use of Caddo Lake water, and H.R. 7206, 96th Congress, would grant the consent of the United States to the Red River Compact among the states of Arkansas, Louisiana, Oklahoma, and Texas concerning the use of the water of the Red River and its tributaries. Although the views of the Judiciary were requested on both bills, final action on S. 2227, the Red River Compact, was taken in the 96th Congress, but no final action was taken on the Caddo Lake bills.

It was the view of the Committee that the new litigation authorized by the Caddo Lake Compact could now be brought under other provisions of law, though the bill does permit the United States to be joined in the litigation. The Committee felt that the bill would not have a substantial impact on the caseload of the United States courts, but there may be an increase as a consequence of the permissive joinder of the United States. The Conference expressed no objection to the legislation and authorized the transmission of the views of the Committee to the Chairman of the House Judiciary Committee.

Creation of a Commission on State-Federal Jurisdiction

S. 3123, 96th Congress, is a bill to establish a Federal Jurisdiction Review and Revision Commission to study the jurisdiction of both federal and state courts. The bill was introduced by Senator Thurmond following the remarks contained in the address of the Chief Justice to the American Law Institute in June 1980 suggesting the need for such a study. Upon the recommendation of the Committee the Conference expressed its strong support for this legislation.

Additional Permanent Court Reporters
for the Northern District of California

The chief judge of the United States District Court for the Northern District of California had requested authorization for three additional permanent full-time "swing court reporters" to serve three senior judges and four full-time magistrates in that district. Judge Hunter reported that based on current reports on the productivity of the permanent and temporary reporters now serving the court, there is some question as to whether existing court reporters are being fully utilized and whether the caseload is being equally distributed among the reporters. The court, however, is currently taking steps to increase the level of productivity. Upon the recommendation of the Committee the Conference approved one additional court reporter position for this court on a permanent basis and authorized the reappointment of two temporary court reporters through the end of the current fiscal year. The Administrative Office was instructed to review the matter further and to report to the Committee at its next meeting.

Judicial Panel on Multidistrict Litigation

The Chairman of the Judicial Panel on Multidistrict Litigation requested the incorporation of certain staff attorney positions, presently ungraded, into the graded Judiciary Salary Schedule at stated grade levels and steps therein. The Committee recommended approval of this arrangement with the understanding that these and other positions on the Panel's staff are to be subject to the qualification and classification criteria for similar positions in the Judiciary Salary Plan administered by the Administrative Office. This recommendation was approved by the Conference.

Clerks' Offices in Bankruptcy Courts

The Administrative Office, at the direction of the Committee on the Budget, had conducted a comprehensive work measurement study and had presented to the Committee a proposed method for determining the personnel required for the adequate staffing of the office of a clerk of a bankruptcy court. Judge Hunter reported that the study was extremely thorough and had been coordinated with many bankruptcy courts and bankruptcy judges who ultimately concurred in the use of the staffing formula recommended therein as being

superior to the present method. Everyone agreed, however, that the formula would require reevaluation in the near future. Upon the recommendation of the Committee the Conference approved the staffing formula developed in the study as a basis for determining and allocating positions in the offices of the clerks of the bankruptcy courts with the understanding that the formula will be reevaluated in the fiscal year 1982 or 1983.

COMMITTEE ON THE BUDGET

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

Supplemental Appropriations for Fiscal Year 1981

Judge Clark informed the Conference that requests for supplemental appropriations for the fiscal year 1981 in the amount of \$30,855,000 to cover the general salary increase granted last October, including the salary increase for judges at the rate of 9.11 percent, had been submitted to the Congress. In addition the Administrative Office has submitted to the Congress a proposed program supplemental appropriation for the fiscal year 1981 in the amount of \$616,000 to cover the cost of higher annuities for the widows of Supreme Court Justices authorized by Public Law 96-504. Judge Clark advised the Conference that a funding deficiency for the fiscal year 1981 is being projected in some accounts because of the need to absorb increases in subsistence and mileage allowances and other uncontrollable costs. Judge Clark stated that the Committee has asked the Director of the Administrative Office to send a letter to all judges and supporting personnel of the courts requesting their cooperation in limiting expenditures for travel to what is considered essential to the operation and maintenance of the courts.

The Director of the Administrative Office has also advised the Committee that due to the lack of funding it will be necessary to defer the procurement or rental of additional word processing equipment in the courts until the fiscal year 1982. In order to alleviate this problem the budget for the fiscal year 1982 includes funding in the amount of \$1,200,000 to purchase or rent word processing equipment for the courts of appeals and district courts and \$600,000 to acquire equipment for the bankruptcy courts.

Appropriations for Fiscal Year 1982

Judge Clark stated that the budget for the fiscal year 1982 finally submitted to the Congress contained a number of adjustments from the budget as approved by the Conference last September. Increases in the amount of approximately \$8.1 million were required because of new legislation and the inclusion of the 9.11 percent pay increase for all judges.

Bankruptcy Caseload

The Committee reported that the bankruptcy courts will continue to operate during the fiscal year 1981 with limited resources. The Committee anticipates that the caseload will reach 475,000 filings this year and that it will be necessary to continue to work with as many temporary employees as can be accommodated with available funds. Because of the increase in filings it was necessary to request an amendment to the fiscal year 1981 budget in the amount of \$1,200,000 to fund 120 additional temporary clerks for a nine month period.

Contract Court Reporters

Judge Clark informed the Conference that the continued use of contract court reporters at the current rate will make it necessary to terminate or curtail the use of court reporters during the current fiscal year. The Conference, at the request of the Committee, thereupon restated its policy on the utilization of full-time court reporters as follows: (1) that prior to employing contract court reporters a court should make every effort to fully utilize its permanent reporting staff and (2) that the use of pooling systems for court reporters in multi-judge courts is encouraged (Conf. Rept., Mar. 1980, p. 20).

Authority to Request Supplemental Appropriations

At the request of the Committee the Conference authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations or budget amendments for the implementation of any actions of the Judicial Conference, new legislation, or for any reason he considers necessary and appropriate.

JUDICIAL ETHICS COMMITTEE

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

Reporting Form and Instructions

In accordance with section 303(c) of the Ethics in Government Act of 1978, the Conference approved the revised financial disclosure report form and instructions submitted by the Committee. The Director of the Administrative Office was requested to distribute them promptly to those individuals required to file annual reports by May 15, 1981.

Committee Review of Reports

Judge Tamm reported that some judicial officers and employees have apparently been under the impression that financial disclosure reports are being reviewed by law clerks employed by Committee members. Judge Tamm stated that the reports filed with the Committee are reviewed only by the judges who are members of the Committee and not by members of their staffs.

Reports by Judicial Employees

The Ethics in Government Act of 1978 requires a judicial employee "who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule" to file the prescribed financial disclosure reports. Congressionally imposed salary ceilings and administratively granted cost-of-living salary adjustments, however, have created uncertainty about who is required to file reports. The Committee reported that it has adopted the policy that a judicial employee who receives compensation at the minimum rate of pay currently being received by an employee in grade 16 of the General Schedule must file disclosure reports. For this purpose, cost-of-living allowances administratively granted are compensation. Upon the recommendation of the Committee the Conference approved this policy.

Federal Income Tax Returns

In a previous report the Committee informed the Conference that it had rejected a request that an income tax return be filed in lieu of a financial disclosure report, since the income tax return does not contain all the information required to be disclosed by the Act. Judge Tamm informed the Conference that the Committee has further considered this policy and has decided that it should not accept an income tax return, or any part of an income tax return, as a substitute for reporting requirements. Upon the recommendation of the Committee the Conference approved this policy.

Reports to Circuit Councils

The Committee reported that it would in the future consider referring matters concerning the nonfiling of reports to circuit councils under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. It was the view of the Conference that the procedure prescribed by this new Act should not be used for this purpose.

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 15 inquiries from persons subject to the various codes of conduct. The Committee has completed action on 11 inquiries and is currently processing the remainder. In the last six months the Committee has published the four advisory opinions referred to in its last report and has approved the publication of one other advisory opinion clarifying a previous opinion.

Membership in Clubs

In accordance with the previous instructions of the Conference (Conf. Rept., Sept. 1980, p. 79), the Committee had circulated to every federal judge for comment a proposed commentary to Canon 2 pertaining to membership in clubs.

After considering the survey responses, the many valid concerns expressed therein, and various alternative proposed commentaries, the Committee recommended the approval of the following additional commentary to Canon 2 which, after full discussion, was approved by the Conference:

The Judicial Conference of the United States has endorsed the principle that it is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. A judge should carefully consider whether the judge's membership in a particular organization might reasonably raise a question of the judge's impartiality in a case involving issues as to discriminatory treatment of persons on the basis of race, sex, religion, or national origin. The question whether a particular organization practices invidious discrimination is often complex and not capable of being determined from a mere examination of its membership roll. Judges as well as others have rights of privacy and association. Although each judge must always be alert to the question, it must ultimately be determined by the conscience of the individual judge whether membership in a particular organization is incompatible with the duties of the judicial office.

Model Codes of Conduct for Various Judicial Employees

Canon 4 of the Codes of Conduct for Clerks, Probation Officers, Circuit Executives, Staff Attorneys, and Public Defenders permits participation in "quasi-official" activities; Canon 5 permits participation in "extra-official" activities; and Canon 6 permits receipt of reasonable compensation for both "quasi-official" and "extra-official" activities. It was brought to the Committee's attention that the phrase "quasi-official" creates the impression that regular salaries may be supplemented from outside sources for the performance of duties that are already compensated from public funds. Upon the recommendation of the Committee, the Conference amended Canon 4 of these Codes by substituting "law-related" for "quasi-official" and directed that the caption and text of Canon 6 be amended by substituting the phrase "all extra-official activities" for the phrase "quasi-official and extra-official activities." In addition the Conference approved the

addition of the following language to Canon 6 in each of these codes:

Notwithstanding the above, a [clerk, probation officer, etc.] shall not receive any salary, or any supplementation of salary, as compensation for his official services from any source other than the Government of the United States.

Code of Conduct for Law Clerks

The Committee submitted a Code of Conduct for Law Clerks which is modeled after those adopted by the Conference for other officers and employees of the Judiciary. Upon recommendation of the Committee the Conference approved the Code for Law Clerks as submitted.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

The report of the Committee on the Administration of the Federal Magistrates System was presented by the Chairman, Judge Otto R. Skopil, Jr.

Salaries of Magistrates

Judge Skopil pointed out that the Conference has consistently endorsed the principle of parity in the salaries of United States Magistrates and United States Bankruptcy Judges, as authorized by 28 U.S.C. 634(a). A full-time bankruptcy judge now receives a salary of \$53,500 per annum which will be increased to \$58,400 per annum (the "formula rate") if the restriction imposed by Congress on the payment of the October 1980 cost-of-living increase is removed. In order to restore parity in compensation the Committee recommended that the Conference set both the "formula rate" and the actual payable salary of a full-time magistrate now receiving \$51,900 at the same level authorized by law for a full-time bankruptcy judge. This shall not necessarily apply in special situations such as national parks. The Committee further recommended that the maximum salary rate for a part-time magistrate be increased to \$29,200, "formula rate," and to \$26,750 actual payable salary. These recommendations were approved by the Conference subject to the availability of appropriated funds.

Qualification Standards and Selection Procedures

The Committee pointed out that the regulations for the selection and appointment of magistrates promulgated by the Conference in March 1980 (Conf. Rept., p. 32) impose a more stringent age requirement for appointment than required by statute. The Federal Magistrates Act provides that "No individual may serve under this chapter after having attained the age of 70 years." Section 1.01(e) of the regulations, however, requires that "In the case of an initial appointment [nominees] will not reach the age of 70 years before the expiration of the term of appointment." Upon the recommendation of the Committee the Conference deleted § 1.01(e) of the regulations and directed that the statutory requirement be inserted in its place.

Attendance at Circuit Conferences

In September 1978 (Conf. Rept., p. 43) the Conference authorized the payment of the expenses of a "representative group" of magistrates, referees in bankruptcy and public defenders to attend their respective circuit conferences. In some circuits most, or all, full-time magistrates are invited by the chief judge of the circuit to attend the circuit conference. Many magistrates must bear the expense of attendance since under the current authorization only one full-time magistrate from each district may be reimbursed for travel expenses.

Upon the Committee's recommendation the Conference authorized the Director of the Administrative Office to reimburse the travel and per diem expenses of any magistrate who has been invited by the chief judge of the circuit to attend the circuit conference in accordance with the applicable travel regulations.

Changes in Magistrate Positions

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions. Unless otherwise indicated these changes are to become effective when appropriated funds are available. The salaries of full-time magistrate positions are to

be determined in accordance with the salary plan previously adopted by the Conference.

FIRST CIRCUIT

Maine

- (1) Continued the part-time magistrate position at Portland for an additional four-year term at the currently authorized salary of \$15,500 per annum.

SECOND CIRCUIT

Northern District of New York

- (1) Converted the part-time magistrate position at Albany to a full-time magistrate position.
- (2) Discontinued the combination clerk-magistrate position at Albany upon the appointment of a full-time magistrate at Albany.
- (3) Continued the part-time magistrate position at Troy, which is due to expire on October 25, 1981, for an additional term of office at the currently authorized salary of \$900 per annum, or until such time as a full-time magistrate is appointed at Albany.

Vermont

- (1) Converted the part-time magistrate position at Burlington to a full-time magistrate position.
- (2) Discontinued the part-time magistrate positions at St. Albans, Newport and Rutland, effective upon the appointment of a full-time magistrate at Burlington.

THIRD CIRCUIT

New Jersey

- (1) Continued the part-time magistrate position at Asbury Park for an additional four-year term at the currently authorized salary of \$17,900 per annum.

Middle District of Pennsylvania

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

Virgin Islands

- (1) Authorized the bankruptcy judge at Christiansted to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary of \$20,300 per annum for magistrate duties.

FOURTH CIRCUIT

Maryland

- (1) Continued the full-time magistrate position at Baltimore, which is due to expire on October 9, 1981, for an additional eight-year term.

South Carolina

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

Eastern District of Virginia

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

Western District of Virginia

- (1) Converted the part-time magistrate position at Abingdon to a full-time magistrate position.
- (2) Discontinued the part-time magistrate positions at Shenandoah National Park, Lynchburg and Danville, effective upon the appointment of a full-time magistrate at Abingdon.

FIFTH CIRCUIT

Southern District of Alabama

- (1) Authorized a second full-time magistrate position at Mobile.

Southern District of Florida

- (1) Authorized a fourth full-time magistrate position at Miami.

Eastern District of Texas

- (1) Continued the full-time magistrate position at Beaumont for an additional eight-year term.
- (2) Continued the part-time magistrate position at Sherman for an additional four-year term at the currently authorized salary of \$10,000 per annum.

SIXTH CIRCUIT

Eastern District of Michigan

- (1) Authorized the bankruptcy judge at Bay City to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary of \$24,250 per annum for magistrate duties.

Western District of Michigan

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

SEVENTH CIRCUIT

Southern District of Indiana

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

EIGHTH CIRCUIT

South Dakota

- (1) Ratified the action of the Executive Committee last November converting the part-time magistrate position at Sioux Falls to a combination clerk-magistrate position pending further review.

- (2) Converted the combination clerk-magistrate position at Sioux Falls to a part-time magistrate position at a salary of \$8,200 per annum.

NINTH CIRCUIT

Arizona

- (1) Continued the part-time magistrate position at Kingman for an additional four-year term at the currently authorized salary of \$2,700 per annum. Upon the expiration of the current term of the incumbent, the position should not be filled without the approval of the circuit council and the Director of the Administrative Office.
- (2) Increased the salary of the part-time magistrate position at Flagstaff from \$3,600 to \$4,500 per annum.

Hawaii

- (1) Continued the part-time magistrate position at Honolulu for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at Honolulu from \$3,600 to \$8,200 per annum.

Oregon

- (1) Increased the salary of the part-time magistrate position at Bend from \$900 to \$1,800 per annum.
- (2) Increased the salary of the part-time magistrate position at Pendleton from \$900 to \$2,700 per annum.
- (3) Discontinued the part-time magistrate position at Klamath Falls upon the expiration of the current term of the incumbent.

Western District of Washington

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

TENTH CIRCUIT

Western District of Oklahoma

- (1) Authorized a new part-time magistrate position at Oklahoma City at a salary of \$15,500 per annum.
- (2) Authorized a new part-time magistrate position at Enid at a salary of \$2,700 per annum.
- (3) Continued the part-time magistrate position at Altus for an additional four-year term.
- (4) Increased the salary of the part-time magistrate position at Altus from \$900 to \$2,700 per annum.

Wyoming

- (1) Converted the part-time magistrate position at Yellowstone National Park to a full-time magistrate position at a salary of \$29,000 per annum.

**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.

Arrangements for Bankruptcy Judges

The Conference upon the recommendation of the Committee took the following action with respect to changes in arrangements for bankruptcy judges. These changes are subject to the availability of new facilities.

FOURTH CIRCUIT

District of Maryland

- (1) Changed the headquarters office of the bankruptcy judge at Hyattsville from Hyattsville to Rockville.
- (2) Discontinued Hyattsville as a place of holding bankruptcy court.

SIXTH CIRCUIT

Eastern District of Kentucky

- (1) Designated Corbin and discontinued London as a place of holding court in this district.

Charges for the Referees' Salary and Expense Fund

Judge DeMascio reported that the Committee had received requests from debtors' attorneys in three cases filed under the Bankruptcy Act to reduce or exclude the payment of charges for the Referees' Salary and Expense Fund. The Committee noted that, heretofore, the Conference has not approved any special requests or exceptions in the payment of these charges. Upon the recommendation of the Committee the Conference disapproved these requests.

Attendance of Debtors at Discharge Hearings

The Bankruptcy Code, 11 U.S.C. 524(d), requires the attendance of all individual debtors at a hearing before a bankruptcy judge after a decision has been made with respect to granting a discharge. The appearance enables the Court to discharge its responsibilities under this section in the event a debtor desires to reaffirm a debt. The Committee feels, however, that it is costly and inconvenient for an individual who does not wish to reaffirm a debt to attend a discharge hearing. Upon the recommendation of the Committee the Conference recommended that the Bankruptcy Code be amended to eliminate the requirement that debtors must attend discharge hearings when they do not wish to reaffirm their debts.

**COMMITTEE ON THE ADMINISTRATION OF THE
PROBATION SYSTEM**

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

Sentencing Institutes

The Committee submitted to the Conference a tentative agenda for a joint institute on sentencing for the

judges of the Second Circuit to be held November 12-13, 1981 in the vicinity of the Federal Correctional Institution at Otisville, New York. The Conference approved the time, place, participants, and tentative agenda for the institute.

Judge Tjoflat informed the Conference that a joint sentencing institute for the judges of the Eighth and Tenth Circuits to be held at the Medical Center for Federal Prisoners at Springfield, Missouri during the spring of 1982 is now being planned. The Committee will advise the Conference as the details are further developed.

Pretrial Services Agencies

The Conference in March 1980 (Conf. Rept., p. 29) adopted a resolution recommending the continued funding and expansion of the pretrial services operation in accordance with the procedures outlined in the resolution. Upon the recommendation of the Committee the Conference reaffirmed this resolution.

Narcotic Aftercare Program

The contract authority for aftercare services for drug dependent Federal offenders was transferred from the Bureau of Prisons to the Director of the Administrative Office by the Contract Services for Drug Dependent Federal Officers Act of 1978, effective October 1, 1979. The Act authorized the appropriation of funds only for the fiscal years 1980, 1981 and 1982. The authorization to request funds will expire on September 30, 1982.

Judge Tjoflat informed the Conference that the Act has enabled the Federal Probation System to use contracts to expand the range and intensity of special supervision services to drug dependent persons on probation or parole. The Committee is convinced that the Act provides a valuable and necessary resource for the Federal Probation System in discharging its supervision responsibilities and should be continued. Upon the recommendation of the Committee the Conference approved a draft bill to authorize continued funding authority for this program in an amount to be determined by the appropriations process and authorized its transmission to the Congress.

Probation Personnel

The Committee informed the Conference at its September 1980 Session (Conf. Rept., p. 86) 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 positions from probation offices to clerks' offices." Thereafter the Director of the Administrative Office, with the approval of the House and Senate Appropriations Committees, established the 175 deputy clerk positions with the understanding that during the fiscal years 1981 and 1982, 70 probation officer positions and 45 probation clerk positions would be abolished through attrition.

Judge Tjoflat informed the Conference that the Probation Division of the Administrative Office has been reviewing each probation position vacancy as it occurs to determine if it should be filled, transferred to another district, or abolished. As of January 31, 1981, 12 probation officer positions and 8 probation clerk positions had been abolished.

To meet probation workload imbalances the Probation Division has initiated a program to promote and support the voluntary transfer of probation officers from districts substantially overstaffed to districts substantially understaffed. Chief judges in ten district courts have permitted the Administrative Office to advertise to the staff of their probation offices the opportunity to apply for a transfer at government expense to one of six other districts which are understaffed and which have agreed to give first consideration to these officers for appointment. Upon the recommendation of the Committee the Conference endorsed this program of voluntary transfer of probation officer positions to meet imbalances in probation workload.

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 report of the Committee.

Speedy Trial Act Guidelines

Since 1975 the Committee with the approval of the Conference has issued Guidelines on the Administration of the Speedy Trial Act of 1974. These Guidelines were recently revised and supplemented by the Committee as a result of the enactment of the Speedy Trial Act Amendments Act of 1979, which became fully effective on July 1, 1980. Judge Harvey reported that the Committee had considered whether to continue to issue national Guidelines, particularly in view of the amendment to 18 U.S.C. 3166(f) which authorizes the judicial councils of the circuits to promulgate Guidelines under the Act, and had concluded that national Guidelines still serve a useful purpose. The Conference thereupon authorized the Committee to continue to issue revisions and amendments to the Speedy Trial Act Guidelines as it has done in the past.

Amendments to the Speedy Trial Act Recommended by the General Accounting Office

Judge Harvey reported that the Committee had considered a recent report of the General Accounting Office recommending a clarification of the Speedy Trial Act to resolve conflicting interpretations of some provisions by the Executive and Judicial Branches of the Government. The General Accounting Office specifically recommended amendments to clarify (1) how and under what circumstances pre-indictment dismissals, followed by an indictment, affect the time interval from arrest to indictment; (2) the starting date for the time interval from indictment to trial; (3) the computation of the 30-day minimum period before trial; and (4) whether defense waivers of the time limits in advance of their expiration are allowable. It was the view of the Committee, however, that any further amendments to the Speedy Trial Act should be deferred until more experience has been gained with its administration, particularly since it is now fully effective. The Committee was satisfied that the present Guidelines issued by the Committee adequately deal with the problems raised in the report. Upon the recommendation of the Committee the Conference disapproved the recommendations of the General Accounting Office and recommended that further amendments to the Act be deferred by Congress until additional experience in the administration of the Act is obtained and specific recommendations for amendments are made by the Conference to the Congress.

Speedy Trial Act Reporting Requirements

Judge Harvey advised the Conference that the Committee had authorized the Director of the Administrative Office to discontinue the practice of requiring clerks of court to report every instance of excludable delay in a criminal case in favor of a system of reporting the details of excludable delay only in cases in which time limits have not been met. While the compilation of this information was useful during the transition years, the Committee believed that such detailed reporting was no longer useful or necessary.

The Committee was directed to consider whether the provision of the Speedy Trial Act which sets a minimum 30-day period for the setting of a criminal trial should be repealed and to report its recommendations to the Conference at its next session.

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.

Secrecy of Grand Jury Proceedings

Judge Atkins informed the Conference that a subcommittee appointed to review the recent report of the General Accounting Office pertaining to the secrecy of grand jury proceedings (Conf.Rept., Sept. 1980, p. 108) had submitted its report. After full discussion, the Conference adopted the following recommendations: (1) that the district courts reexamine their jury selection plans, in conformity with 28 U.S.C. 1863 (b)(7), to consider whether the names of grand jurors should be excluded from public records, except upon order of the court; (2) that there be no institutionalized procedure for the advance screening of grand jurors by the prosecution, although government attorneys may move for the exclusion of a juror as authorized under 28 U.S.C. 1866(c)(2); and (3) that the district courts treat all subpoenas, motions, pleadings, and other documents filed with the clerk concerning or contesting grand jury proceedings as permanently sealed documents, except on court order based upon a showing of need after indictments have been returned or the grand jury business has been concluded. The Conference further called attention

to the traditional rule of professional conduct that the prosecution should not make public statements about the proceedings before the grand jury, permit documents to be released or permit others in its employ to make statements concerning such proceedings. The Conference authorized the communication of these recommendations to all district judges, to the General Accounting Office, to the Department of Justice and to the appropriate Committees of the Congress.

Complex Criminal Jury Cases

The Conference upon the recommendation of the Committee authorized a study of the techniques of managing a jury trial in a complicated criminal case. The study is to be performed by a subcommittee representing the Jury Committee and the Committee on the Administration of the Criminal Law and is to be coordinated with the work of the Court Administration subcommittee examining alternatives to jury trials in complex civil cases.

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 August 15, 1980 to February 15, 1981 the Committee recommended 63 assignments to be undertaken by 47 judges. Of this number eight were senior circuit judges, seven were active circuit judges, one was a senior judge of the Court of Claims, one was an active judge of the Court of Customs and Patent Appeals, two were active judges of the Court of Claims, 18 were senior district judges, three were active district judges, four were active judges of the Court of International Trade and three were active judges of the bankruptcy courts.

Thirty-three judges undertook 45 assignments to the courts of appeals and 12 judges undertook 14 assignments to the district courts. In addition one senior judge of the Court of Claims was assigned to the Court of Customs and Patent Appeals and three active bankruptcy judges were assigned to perform duties in bankruptcy courts outside their circuits.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The written report of the Committee on Rules of Practice and Procedure, submitted by the Committee Chairman, Judge Edward T. Gignoux, was received by the Conference.

Criminal Rules

The Advisory Committee on Criminal Rules met in January and is scheduled to meet once again this year to complete its work on drafts of amendments to rules which are then to be circulated to the bench and bar for comment. It is not anticipated that any amendments will be ready for submission to the Conference until September 1982.

Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules met in October and November last year and is scheduled to meet again during March and April this year. The work of preparing new rules under the bankruptcy code is progressing satisfactorily, but because of the magnitude of the task the submission of rules to the bench and bar for comment will not occur before 1982. During the current fiscal year the Advisory Committee will be holding as many meetings to consider draft rules as limited available travel funds will permit.

Civil Rules

The Advisory Committee on Civil Rules met in December 1980 and is scheduled to meet again in April 1981. The Committee is considering a revision of the rules relating to pretrial procedure and is reviewing the discovery rules in the light of suggestions made since the last amendments were approved. New draft amendments are expected to be ready for circulation to the bench and bar for comment later this year.

Appellate Rules

The Advisory Committee on Appellate Rules met in December 1980 and is tentatively scheduled to meet again before the end of the current fiscal year. The Committee is in the early stages of reviewing various proposals to amend the Appellate Rules and is considering, among other problems, the matter of the costs of appeal, especially in the printing of appellate records.

COMMITTEE ON PACIFIC TERRITORIES

The written report of the Committee on Pacific Territories, chaired by Judge Richard H. Chambers, was received by the Conference.

The report advised the Conference on the progress of a bill, H.R. 8030, 96th Congress, which would establish a type of diversity jurisdiction in the District of Guam; the continued participation of judges of the Ninth Circuit in the hearing of appeals in the High Court of American Samoa; and the negotiations between the United States and the people of the Trust Territory of the Pacific Islands concerning their future political status.

COMMITTEE ON THE BICENTENNIAL OF INDEPENDENCE

A written report of the Committee on the Bicentennial of Independence, chaired by Judge Clement F. Haynsworth, Jr., was received by the Conference. The report indicated that the National Audio/Visual Center has reported sales of 524 bicentennial films since September 1977, about 60 percent to colleges and universities. Although the Center does not report on total resales, it has stated that rentals have been brisk during those months in which schools are in session. The gathering of information through questionnaires to newly appointed judges and others continues and the Committee will in the future present a plan for the preparation of a second edition of the biographical directory. "Circuit histories" continue in various stages of preparation in seven of the eleven circuits.

As of January 31, 1981 a balance of approximately \$916,509 remained in the appropriation for bicentennial programs.

IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE

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

Following the last session of the Conference the members of the Committee attended in a seminar for judges representing the district courts participating in the pilot program on federal attorney admission standards. A substantial portion of this seminar was devoted to receiving reports from the judges overseeing the pilot programs as to the status of their plans and the attitude of the judges and local bar on the prospects for the program. Progress thus far on the development of the program has been satisfactory.

The report also indicated that the Federal Judicial Center is planning to survey each of the 14 pilot districts in order to record the progress to date in implementing new rules and procedures on the admission of attorneys. In addition Mr. Irving Younger, former professor of law at Cornell, is working to enlist the participation of law schools and law school faculties in all phases of the pilot program. Several members of the Committee have participated in an ALI-ABA continuing education program discussing the evaluation of peer review systems. The Committee further reported that the Ninth Circuit Judicial Council has formed a circuitwide committee to consider the ultimate adoption of federal attorney admission standards in every district court within the circuit.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Senior Judge Thomas J. MacBride, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of the Committee.

Appointments and Payments

The Conference authorized the Director of the Administrative Office to distribute copies of the report of appointments and payments under the Criminal Justice Act for the fiscal year 1980, October 1, 1979 to September 30, 1980, to all chief judges, all Federal defender organizations, and to others who may request copies. The report indicated that \$26,000,000 was appropriated for the implementation of the Act during the fiscal year 1980 and that the projected obligations are \$24,052,000. During the year approximately 42,000 persons were represented under the Criminal Justice Act, compared to approximately 42,800 persons during the fiscal year 1979, a decrease of 1.9 percent.

Federal public defender organizations represented 13,924 persons during the year and community defender organizations represented 7,468 persons. Collectively, these defender organizations accounted for 50.9 percent of the total representations under the Act, compared with 48.3 percent in the fiscal year 1979 and 45.7 percent during the fiscal year 1978.

The report further indicated that the average cost of representation under the Criminal Justice Act by all Federal defender organizations during the fiscal year 1980 was \$627 per case compared with \$529 per case during the fiscal year 1979, an increase of 18.5 percent. The cost of representation by private panel attorneys during the year was \$499 per case compared with \$489 per case during 1979, an increase of 2 percent.

Grant Requests—Community Defender Organizations

At its session in September 1979 (Conf.Rept., p. 99), the Conference approved sustaining grants for seven community defender organizations for the fiscal year 1981. Since that time there have been two cost-of-living pay increases authorized for all Federal employees. Consistent with the policy of maintaining comparability between Federal public and community defender organizations, each community defender organization has been authorized to provide cost-of-living pay increases to its employees to the same extent as those provided to Federal employees. Upon the recommendation of the Committee the Conference approved supplemental sustaining grants to community defender organizations for the fiscal year 1981 as follows:

Federal Defenders of San Diego, Inc.	\$ 79,643
Federal Defender Program, Inc. — Atlanta, Georgia	31,229
Federal Defender Program, Inc. — Chicago, Illinois	24,922
Federal Defender Division, Legal Aid and Defender Assn. of Detroit, Michigan	56,485
Federal Defender Services Unit of the Legal Aid Society of New York	119,753

Federal Defender, Inc. -- Portland, Oregon	10,083
Federal Court Division of the Defender Assn. of Philadelphia, Pennsylvania	<u>11,939</u>
Total Cost of Living Adjustments:	\$334,054

The Conference also authorized a supplemental grant to the Federal Defenders of San Diego, Inc. in the amount of \$99,607 to establish one additional secretarial position, to acquire word processing equipment and to cover the Organization's cost of an employees' pension plan that was authorized after the Conference had approved the fiscal year 1981 sustaining grant. The acquisition of word processing equipment will be subject to the approval of the Administrative Office of the United States Courts.

The Conference also approved a supplemental grant to the New York Legal Aid Society in the amount of \$11,452 for the renovation and improvement of the offices of the Federal Defender Services Unit in Manhattan.

Budget Requests -- Federal Public Defenders

The Conference, upon the recommendation of the Committee, approved supplemental funding for the Federal Public Defender for the Northern District of California for the fiscal year 1981, in the amount of \$42,221. These funds are to be used to add one permanent paralegal specialist position to the San Jose branch office, one temporary paralegal position to the San Francisco office, and for the acquisition of word processing equipment. The acquisition of word processing equipment will be subject to the approval of the Administrative Office of the United States Courts.

The Conference also approved supplemental funding for the Federal Public Defender for the Southern District of Florida for the fiscal year 1981, in the amount of \$117,247. These funds are to be used to increase the staff of the office by adding three attorneys, one investigator, one secretary and one bilingual clerical assistant, and for the replacement of furniture, furnishings and equipment. The actual hiring of one of the three attorneys, the secretary and the investigator are subject to approval by the Administrative Office after a review and evaluation of the changing situation and conditions in this district.

Additional Funding for Defender Office Operations

The Conference in March 1977 (Conf.Rept., p. 34) authorized the Director of the Administrative Office of the United States Courts to increase the budget of a Federal public defender office, and approve supplemental grants for community defender organizations, to the extent necessary to cover cost-of-living pay increases and other unforeseen or unanticipated expenses provided that such additional funds shall not exceed 15 percent of the amount previously approved by the Conference. The comparability increases in salaries granted to Federal employees in October 1979 and October 1980, however, aggregated more than 17 percent. These increases were not reflected in the budgets and grants approved by the Conference in September 1979 for the operation of these offices during the fiscal year 1981 and were in excess of the authority granted to the Director of the Administrative Office to increase the amounts approved by the Conference. Upon the recommendation of the Committee, the Conference approved the following revised resolution:

That the Director of the Administrative Office is authorized to increase the budget of a Federal Public Defender office and approve supplemental grant funds for Community Defender Organizations to the extent necessary to cover general (cost-of-living) pay increases comparable to those provided to Federal employees; and in addition, the Director is authorized to increase the budgets of Federal Public Defender offices and approve supplemental grant funds for Community Defender Organizations for unforeseen or unanticipated expenses, provided such additional authority shall not exceed 15 percent of the amount approved by the Judicial Conference for each such office or organization.

Payment of Witness Fees

The Conference, upon the recommendation of the Committee, approved an amendment to 28 U.S.C. 1825 to authorize Federal public defenders and certain other counsel appointed under the Criminal Justice Act to certify the payment of witness fees for defense witnesses. The Director of the Administrative Office was authorized to transmit the proposal to the Congress.

Revision and Consolidation of Criminal Justice Act Forms

The Criminal Justice Act, 18 U.S.C. 3006(A)(c) and (f), authorizes the court to terminate the appointment of counsel and order payment, or partial payment to be made by a defendant found to be financially able to obtain counsel for representation provided under the Act. At the present time there are two printed forms for use by the court in entering these orders, CJA Form 6 and CJA Form 7. Upon the recommendation of the Committee, the Conference approved the consolidation of these two forms into a revised CJA Form 7, and authorized the printing and distribution of the new form. The Conference also approved an amendment to paragraph 2.17 of the Criminal Justice Act Guidelines pertaining to the use of the new form.

Revisions to the Criminal Justice Act

Judge MacBride pointed out that the Criminal Justice Act has not been amended or revised since 1970. In the past 10 years the Committee has received many recommendations for further revisions which are intended to update and streamline the Act and improve its implementation and operation. One significant recommendation was an amendment to authorize the Judicial Conference of the United States to establish the maximum hourly rates of compensation to be paid to attorneys appointed under the Act. This recommendation and other proposed amendments to the Act were incorporated in a draft bill, submitted by the Committee, entitled, "Criminal Justice Act Revision of 1981." Upon the recommendation of the Committee the Conference approved the draft bill and authorized the Director of the Administrative Office to transmit it to the Congress. The Conference, however, requested that, at its next meeting, the Committee review the question of whether the Act should be further amended to provide immunity to Federal defenders and other attorneys providing representation under the Act.

Community Defender Organizations — Conditions of Grant

Judge MacBride informed the Conference that several problems relating to the financial recordkeeping practices of community defender organizations continue to pose difficulties for the Administrative Office in discharging its financial oversight responsibilities. The Committee believed that these problems could be overcome through the establishment of

uniform methods of accounting and auditing expenditures of grant funds, and the development of a standard form, or set of forms, that all community defender organizations would be required to use in connection with their annual audits. Upon the recommendation of the Committee, the Conference amended clauses 7 and 8 of the Community Defender Organization Grant and Conditions to read as follows:

7. FINANCIAL AND OTHER RECORDS: The Grantee shall keep financial books and records in accordance with the federal fiscal year unless a waiver is granted by the Administrative Office. Such records shall fully disclose the amount and disposition of grant and grant-related income and the total cost of the program for which the grant is awarded. The Grantee's records shall be maintained in such manner as required by the Administrative Office. The record keeping procedures utilized by the Grantee shall provide for the accurate and timely recordation and determination of all income and funds received, all expenditures, and unexpended grant funds, grant interest, and grant-related income balances. In addition, the Grantee shall maintain the records in such a manner as to permit the determination of the propriety of all expenditures of grant funds and the charges to specific object classifications. The Administrative Office may inspect the financial records, bank statements, and other records related to the expenditure of grant funds, except client records and files, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed. The Grantee must keep financial records for a period of three years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by the Administrative Office.

The Grantee shall maintain and submit such periodic statistical records and reports as may be required by the Administrative Office.

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 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. In submitting the audit, the Grantee shall use such form or forms as are promulgated by the Administrative Office. Unless waived by the Administrative Office Grantee audits must be performed according to the federal fiscal year.

The Committee further pointed out that sustaining grants must, of necessity, be approved subject to the availability of appropriated funds. To prevent any future misunderstanding, the Conference, upon the recommendation of the Committee, amended the fourth paragraph of the Community Defender Organization Grant and Conditions to read as follows:

The Conference has approved, subject to the availability of appropriated funds, a grant in the amount of \$ _____ for fiscal year _____, as further detailed by object classifications contained in attachment (1), commencing on October 1, 19 __, and terminating on September 30, 19 __; and ...

Federal Public Defender -- Ft. Smith, Arkansas

The Conference authorized the Director of the Administrative Office to provide necessary supplemental funding during the fiscal year 1981 to the Federal Public Defender for the Western District of Missouri to cover the cost of establishing and operating a branch office at Ft. Smith, Arkansas to resolve problems arising from the program of resettling approximately 5,000 Cuban refugees now located at Ft. Chaffee, Arkansas.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of the United States Court of Appeals for the Tenth Circuit at Oklahoma City, Oklahoma, and Wichita, Kansas during the calendar year 1981. The Conference also approved the pretermission of a June 1981 term of the Court of Appeals for the Fourth Circuit at Asheville, North Carolina.

ELECTIONS

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected Judge Cornelia G. Kennedy to membership on the Board of the Federal Judicial Center for a term of four years succeeding Judge John C. Godbold whose term expires on March 28, 1981. The Conference also elected Judge John D. Butzner, Jr. to membership on the Board of the Federal Judicial Center to fill the unexpired term of Judge William H. Mulligan who has resigned.

The Conference, pursuant to 28 U.S.C. 332(f), reelected Judge George E. MacKinnon to membership on the Board of Certification for Circuit Executives for a term of three years, until July 1, 1984.

RESOLUTIONS

On motion of Judge Robert R. Merhige, Jr., the Conference adopted the following resolution:

Whereas, Clement F. Haynsworth, Jr., Chief Judge of the United States Court of Appeals for the Fourth Circuit, has announced his intention to avail himself of the right to take senior status, which will preclude his membership in this Conference; a membership which incidentally has been of longer service than that of any other judge in recent time - 17 years;

It is therefore Resolved that:

His service both as an active judge of the United States Court of Appeals for the Fourth Circuit and as a member of this Conference has contributed immeasurably to the administration of justice, and while his keen perception, wise counsel

and gentle but firm manner will be sorely missed at future sessions of this Conference, it is the pleasure and privilege of the Conference by this resolution to acknowledge on behalf of the judiciary of the United States our deep appreciation for Judge Haynsworth's many contributions, and to express to him the best wishes of his fellow judges, as well as our grateful appreciation of the fact that while he will be in senior status, his past accomplishments belie any suggestion that his contributions to the administration of justice will diminish in even the slightest degree. He leaves this Conference and its members with its and their sincere thanks, warm personal regards, and hopefully with the knowledge that his contributions to the administration of justice are indelible.

We wish to publicly express that those of us who have had the honor and privilege of serving with him on the Judicial Conference of the United States take solace in the fact that his contributions will continue as a senior circuit judge.

We do hereby express our sincere appreciation, warm affection and best wishes.

On motion of Chief Judge Ray McNichols the Conference adopted the following memorial resolution:

United States District Judge Morell E. Sharp of the Western District of Washington, and a member of this Conference, passed away on October 19, 1980 at Seattle, Washington. Judge Sharp served with distinction in his state as a trial judge and on the highest state appellate court. In December 1971 the President appointed him to be a United States District Judge. In 1973 the judges of the Ninth Circuit elected him to represent them on the Judicial Conference of the United States.

During an all too-short career in the Federal Judiciary Judge Sharp impressed all with his warm, personal charm, his wise counsel, and the diligent manner in which he carried out his assigned duties. His death leaves us with a deep sense of loss.

I ask unanimous consent that this Conference spread the foregoing on the permanent minutes of this Conference in memory of Judge Sharp.

COMMITTEES

The Conference authorized the Chief Justice to appoint the following Ad Hoc Committees:

1. A Committee to study the problems to be faced by the Judiciary in the next two decades including a review of the papers of the Pound Conference.
2. A Committee to consider the potential impact upon the Federal courts of provisions providing for judicial review in pending legislation to implement regulatory reforms and to report thereon to the next session of the Conference.
3. A Committee to consider problems in the assignment of potentially protracted litigation to individual trial judges and the formation of a panel of senior judges available to accept assignments to handle complicated litigation.

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

July 17, 1981

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