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

OCTOBER 29-30, 1970

WASHINGTON, D.C.

1970

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ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

Rowland F. Kirks  
Director

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THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

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The Judicial Conference of the United States convened on October 29, 1970, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on October 30. The Chief Justice presided and the following members of the Conference were present:

**District of Columbia Circuit :**

Chief Judge David L. Bazelon

Chief Judge Edward M. Curran, District of Columbia

**First Circuit :**

Chief Judge Bailey Aldrich

Judge Edward T. Gignoux, District of Maine

**Second Circuit :**

Chief Judge J. Edward Lumbard

Chief Judge Sidney Sugarman, Southern District of New York

**Third Circuit :**

Chief Judge William Henry Hastie

Chief Judge Caleb M. Wright, District of Delaware

**Fourth Circuit :**

Chief Judge Clement F. Haynsworth, Jr.

Judge Oren R. Lewis, Eastern District of Virginia

**Fifth Circuit :**

Chief Judge John R. Brown

Chief Judge Joe Ewing Estes, Northern District of Texas

**Sixth Circuit :**

Chief Judge Harry Phillips

Chief Judge Carl A. Weinman, Southern District of Ohio

**Seventh Circuit :**

Chief Judge Luther M. Swygert

Chief Judge Robert A. Grant, Northern District of Indiana

**Eighth Circuit :**

Chief Judge M. C. Matthes

Chief Judge Roy W. Harper, Eastern District of Missouri

**Ninth Circuit :**

Chief Judge Richard H. Chambers

Chief Judge Fred M. Taylor, District of Idaho

**Tenth Circuit :**

Chief Judge David T. Lewis

Judge Hatfield Chilson, District of Colorado

**Court of Claims :**

Chief Judge Wilson Cowen

**Court of Customs and Patent Appeals :**

Chief Judge Eugene Worley

Senior Circuit Judges John S. Hastings, Albert B. Maris, and Elbert P. Tuttle; Circuit Judges Robert A. Ainsworth, Jr., George C. Edwards, Jr., Irving R. Kaufman, and Edward A. Tamm; Associate Judge Phillip B. Baldwin of the Court of Customs and Patent Appeals; and District Judges William E. Doyle, Walter E. Hoffman, and Edward Weinfeld attended all or some of the sessions.

The Honorable Earl Warren, former Chief Justice of the United States, greeted the Conference and spoke briefly of some of the problems of judicial administration.

The Honorable Richard G. Kleindienst, Deputy Attorney General of the United States, and the Honorable Erwin N. Griswold, Solicitor General of the United States, attended part of the session of the Conference on the first day of the Conference and addressed the Conference on matters of mutual interest.

Senior Judge Alfred P. Murrah, Director of the Federal Judicial Center and Chairman of the Panel on Multidistrict Litigation, submitted to the Conference the reports of the Center and the Panel, each of which has been widely circulated subsequently.

Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, Mr. William E. Foley, Deputy Director, and Mr. Joseph F. Spaniol, Jr., and Mr. William R. Sweeney, Assistant Directors, were also in attendance. Mr. Ernest C. Friesen, Jr., former Director, attended the Conference briefly and was presented with a framed copy of the Conference resolution concerning him which was passed at the March 1970 session (Conf. Rept., p. 2).

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

Mr. Rowland F. Kirks, who assumed the post of Director of the Administrative Office of the United States Courts on July 1, 1970, reported to the Conference on the state of the business of the federal courts.

Mr. Kirks highlighted to the Conference certain factors deserving special mention. For example, case filings in the courts of appeals increased 14 percent in fiscal year 1970 over the preceding fiscal year. At the same time criminal and civil actions begun in the district courts increased 13 percent. Bankruptcy filings, after showing a decline for two years, rose 5.1 percent in 1970 over 1969.



Mr. Kirks expressed particular concern over the mounting petitions to review orders of referees in the district courts and stressed that 367 such petitions were pending in the district courts on March 31, 1970. Of this number 63 have been pending from one to five and one-half years, with the result that often substantial sums of money are held up in depository banks for ultimate distribution to creditors. He suggested Conference study of this problem, and it was agreed that the Administrative Office should advise the circuit councils on a periodic basis of such delinquencies and request that the councils look into each case.

The Conference granted the Director the authority to release the preliminary edition of his report in mimeographed form and to revise and supplement the final printed edition.

#### EXECUTIVE COMMITTEE

Chief Judge Lumbard, Chairman, reported that his committee had approved and authorized implementation of a report of an ad hoc committee, chaired by Judge Edward A. Tamm, relating to security problems in the federal courts. Judge Tamm explained his Committee's study and findings to the Conference. The Conference approved the action of the Executive Committee.

#### COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge George C. Edwards, Jr., Chairman, presented the report of the Committee on the Administration of the Criminal Law.

#### EXPEDITING TRIALS

Judge Edwards presented for consideration S. 3936, a bill to give effect to the speedy trial provision of the Sixth Amendment, and noted that the bill was similar to H.R. 14822, 91st Congress, on which the Conference had expressed its views at the March 1970 session (Conf. Rept., p. 17). The Conference agreed to recommend that the Congress take no action at this time on Title I, which would require trial within a period of 60 days for most cases, subject to certain specified exceptions. Although endorsing the principle of speedy trial, the Conference felt the time limit was unrealistic

in light of insufficient staff personnel in the courts, the difficulty of obtaining witnesses in metropolitan areas and the pressure of priority trials mandated by the Congress or by the Federal Rules. The Conference also noted several steps which federal courts are taking to expedite the trial of federal criminal cases.

The Conference voted further to recommend to the Advisory Committee on Criminal Rules the adoption of a rule to provide that whenever the United States Attorney certifies that he has reason to believe that the pretrial liberty of a particular defendant imposes a serious danger to the safety of persons, including the defendant himself, the district court shall provide for the prompt disposition of such a case. The Conference also voted to suggest that funds be appropriated immediately and that existing funds be utilized for an immediate study of each federal court in order to determine its needs as to judicial and supporting personnel in courtroom and related facilities.

The Conference voted disapproval of Title II of proposed legislation which would impose an additional penalty of up to three years, consecutively with the penalty imposed for an offense committed while the offender was on release under the Bail Reform Act. The Conference noted that its Committee was of the view that the policy contained in Title II can be accomplished by the courts within the framework of the present sentencing structure.

The Conference approved Title III as to pretrial service agencies, noting that it was substantially identical to a feature of H.R. 14822 approved at the March 1970 session of the Conference (Conf. Rept., p. 17).

#### REVIEW OF SENTENCES

In considering further H.R. 6188, the Conference agreed that, because of the heavy additional burden which would be placed on the already overtaxed courts of appeals, it could not approve the principle of appellate review of sentences. The Conference believes, however, that a study should be made to determine some type of review of sentencing and agreed that this was a procedural matter which should be studied by the Advisory Committee on Criminal Rules.

## APPEAL BY A DEFENDANT FOLLOWING ENTRY OF A GUILTY PLEA

Judge Edwards reported that pursuant to the action of the Conference at the March 1970 meeting (Conf. Rept., p. 16), his Committee has restudied the matter and agreed to recommend a draft bill to provide that a defendant who has pleaded guilty to an offense may appeal from the denial of his motion made before entry of such plea of guilty for the return of seized property or for the suppression of evidence, with the proviso, however, that a judge denying the motion must certify that the appeal raises a substantial question. The appeal must be taken within ten days of the entry of judgment. The Conference agreed to recommend the Committee's draft bill to the Congress.

## HABEAS CORPUS

In the opinion of the Supreme Court in *Nelson v. George*, decided June 29, 1970, a suggestion was made for amendment to 18 U.S.C. 2241. The Conference agreed with a recommendation of the Committee that legislation be recommended to the Congress to cover the situation where an individual serving a sentence in one state is subject to a detainer filed by another state. The proposed legislation would enable him to challenge the conviction which has given rise to the detainer.

## PREPARATION OF TRANSCRIPTS ON APPEAL

In order to expedite the preparation of transcripts in criminal cases in which appeals are filed, the Conference approved a suggestion of the Committee to suggest to the Advisory Committee on the Rules of Practice and Procedure two additions to Rules 9(b) and 10(b). The Conference further agreed with the Committee recommendation to authorize the Federal Judicial Center to conduct and expedite a study with respect to recording trials through video tape or other similar mechanical processes.

## OTHER LEGISLATION

The Conference voted to take no position on H.R. 13229 relating to acts committed on board trains which are dangerous to per-

sons. The Conference was of the view that this involves a policy matter which is for the decision of the Congress.

The Conference voted disapproval in its present form of H.R. 15167 providing amnesty for certain first offenders.

The Conference voted to take no position on S. 978 which would create a commission to study the effect of certain court decisions inasmuch as this involves a matter of Congressional policy.

The Conference expressed no objection to H.R. 14027 providing certain legal remedies to protect the rights of persons within the jurisdiction of certain Indian tribes provided the requirement for a three-judge court and provision for direct appeal to the Supreme Court are eliminated from the bill.

The Conference voted its disapproval of H.R. 7972 making it a crime to move or travel in interstate or foreign commerce to avoid compliance with certain support orders.

#### COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge Irving R. Kaufman, Chairman, presented the report of the Committee on the Operation of the Jury System.

#### PREJUDICIAL PUBLICITY

At its September 1968 meeting the Conference approved the adoption of a report prepared by the Committee relating to the problem of prejudicial publicity. Judge Kaufman reported that his Committee has restudied those guidelines in the light of the potential prejudice arising from the spate of pretrial publicity surrounding several controversial prosecutions. He stated that his Committee also noted the issuance by the American Bar Association of revised free press fair trial standards. The Committee accordingly recommended to the Conference and the Conference approved two principal changes in the previously approved free press fair trial guidelines. The first concerns the release of information by attorneys during the investigative stage of a criminal proceeding. The present guidelines are limited to attorneys participating in an investigation. This phrase is now changed to read "associated with" an investigation.

The second principal amendment to the guidelines is the addition of a provision to govern disclosures by attorneys before and during the trials of civil cases. This provision corresponds closely to

the rule of the American Bar Association Code of Professional Responsibility.

The Conference approved the distribution of the Supplemental Report on Free Press Fair Trial.

#### VOIR DIRE PROCEDURES

Judge Kaufman stated that a subcommittee of his Committee had completed a study of voir dire examination procedures based on a poll of all federal judges and a parallel survey of United States Attorneys conducted by the Department of Justice. Based on this study, the Committee recommends, as the preferred procedure, examination by the court, supplemented by questions directed to the court by counsel. The Committee also called attention to the fact that trial judges in their broad discretion over voir dire proceedings may occasionally find it appropriate to examine jurors individually out of the presence of other jurors when questions relevant to the case may call for personal or potentially embarrassing responses. The Conference authorized the Administrative Office to distribute this portion of the Committee's report to the district courts.

#### SUPPLEMENTAL QUESTIONNAIRE FORMS

Based on a subcommittee study, the Committee recommended and the Conference approved a supplemental questionnaire form which would eliminate a question relating to employment by an insurance company but would include a question as to whether the prospective juror is an employee of the United States government and a question as to the one-way mileage from home to the court house. The Conference approved the recommendation that the Administrative Office distribute the supplemental form to the district courts, on request, and to advise the clerks of court of the availability of the supplemental form, if desired.

#### JURY SUMMONS

The Committee noted a variation in the procedures by which the district courts summon grand jurors. Some summon them in a separate venire from petit jurors while others issue a general jury summons and select grand and petit jurors from the same jury pool. The only form now available adopts the latter position. To meet

the needs of courts which summon grand jurors separately, the Conference approved the printing and stocking by the Administrative Office of two additional jury summonses, identical to the general summons now stocked, except that one is to be labeled for petit jury service and the other for grand jury service.

#### PERIODIC REPORTS UNDER THE JURY SELECTION ACT

At its October 1969 meeting, the Conference approved a form for the periodic reports on jury selection required by 28 U.S.C. 1863(a) to be filed beginning in September 1971 (Conf. Rept., p. 65). The Conference approved a revised Part 3 of the periodic reporting form, incorporating a new occupational listing compiled in conjunction with the Bureau of the Census. It was agreed that this form can be submitted by the clerk of the court.

#### JUROR UTILIZATION

Judge Kaufman reported that his Committee, in cooperation with the Federal Judicial Center, is sponsoring an extensive study of juror utilization in the Southern District of New York and other appropriate districts in the hope that this study will produce concrete and practical guidelines for jury management which will be valuable to all district courts.

#### JURY UTILIZATION SPECIALIST

Judge Kaufman reported to the Conference that despite the increase in jury costs to more than \$14,000,000 in fiscal year 1970, the Administrative Office does not employ a full-time staff member whose responsibility it is to supervise jury administration on a day-to-day basis to collect and evaluate juror utilization statistics and to assist the district courts in implementing new techniques proposed by the Administrative Office and the Administrative Conference. Judge Kaufman stated that his Committee regards the lack of such a specialist as seriously burdening both the Administrative Office and the district courts in their efforts to modernize juror management. The Conference approved the Committee recommendation expressing support for the addition of at least one full-time specialist in jury selection and management to the staff of the Administrative Office.

## COMMITTEE ON BANKRUPTCY ADMINISTRATION

Judge Edward Weinfeld, Chairman of the Committee on Bankruptcy Administration, presented the Committee report to the Conference.

### SALARIES AND ARRANGEMENTS FOR REFEREES

Judge Weinfeld reported that his Committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated June 17, 1970, as well as the recommendations of the circuit councils and district judges concerned for salary increases for one full-time and two part-time referees, for the continuance of referee positions to become vacant by expiration of term and for increasing the service of one part-time referee to full-time status. On the basis of the reports and recommendations, the Conference took the following action with respect to referee positions and changes in salaries and arrangements. Unless otherwise noted, the changes are effective November 1, 1970 or upon the availability of appropriated funds.

#### SECOND CIRCUIT

##### *Southern District of New York*

- (1) Authorized the filling of the full-time referee position at New York City, to become vacant by expiration of term on December 21, 1970, on a full-time basis for a term of six years, effective December 22, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

#### THIRD CIRCUIT

##### *District of Delaware*

- (1) Increased the salary of the part-time referee at Wilmington from \$10,000 to \$15,000 per annum.

##### *Eastern District of Pennsylvania*

- (1) Authorized the filling of the full-time referee position at Philadelphia, to become vacant by expiration of term on January 20, 1971, on a full-time basis for a term of six years, effective January 21, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

#### FOURTH CIRCUIT

##### *Middle District of North Carolina*

- (1) Changed the part-time referee position at Greensboro to a full-time service at an annual salary of \$25,000, to become effective upon the availability of funds, the regular place of office, territory and places of holding court to remain as at present.

## FIFTH CIRCUIT

*Southern District of Florida*

- (1) Authorized the filling of the full-time referee position at Miami, which became vacant on September 30, 1970, on a full-time basis for a term of six years, effective November 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Eastern District of Texas*

- (1) Authorized the filling of the part-time referee position at Tyler, to become vacant on December 31, 1970, on a part-time basis for a term of six years, effective January 1, 1971, the regular place of office, territory and places of holding court to remain as at present.
- (2) Changed the salary of the part-time referee at Tyler from \$13,000 to \$15,000 per annum.

*Western District of Texas*

- (1) Increased the salary of the full-time referee at San Antonio from \$25,000 to \$30,000 per annum, to become effective when the part-time referee position at El Paso becomes vacant.

## SIXTH CIRCUIT

*Western District of Kentucky*

- (1) Authorized the filling of the full-time referee position at Louisville, to become vacant on January 15, 1971, on a full-time basis for a term of six years, effective January 16, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Eastern District of Michigan*

- (1) Authorized the filling of the full-time referee position at Detroit, to become vacant on March 25, 1971, on a full-time basis for a term of six years, effective March 26, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of Ohio*

- (1) Authorized the filling of the full-time referee position at Youngstown, to become vacant on January 21, 1971, on a full-time basis for a term of six years, effective January 22, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Southern District of Illinois*

- (1) Authorized the filling of the full-time referee position at Peoria, to become vacant on April 15, 1971, on a full-time basis for a term of six years, effective April 16, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.



## EIGHTH CIRCUIT

*Northern District of Iowa*

- (1) Authorized the filling of the full-time referee position at Cedar Rapids, to become vacant on March 26, 1971, on a full-time basis for a term of six years, effective March 27, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*District of Minnesota*

- (1) Authorized the filling of the full-time referee position at Minneapolis, to become vacant on November 30, 1970, on a full-time basis for a term of six years, effective December 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## NINTH CIRCUIT

*District of Arizona*

- (1) Authorized the filling of the full-time referee position at Phoenix, to become vacant on November 30, 1970, on a full-time basis for a term of six years, effective December 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of California*

- (1) Authorized the filling of the full-time referee position at San Jose, to become vacant on December 31, 1970, on a full-time basis for a term of six years, effective January 1, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the filling of the full-time referee position at Eureka, to become vacant on December 31, 1970, on a full-time basis for a term of six years, effective January 1, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## TENTH CIRCUIT

*District of Colorado*

- (1) Authorized the filling of the full-time referee position at Denver, to become vacant on February 1, 1971, on a full-time basis for a term of six years, effective February 2, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*District of Utah*

- (1) Authorized the filling of the full-time referee position at Salt Lake City, to become vacant on March 16, 1971, on a full-time basis for a term of six years, effective March 17, 1971, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## LEGISLATION

Pursuant to Conference authorization at its March 1970 session (Conf. Rept., p. 25), the Committee presented and the Conference approved for transmittal to the Congress a draft bill which would abolish the self-supporting bankruptcy system and eliminate the present criteria for fixing salaries of full-time referees. The bill would provide that fees and charges collected by the clerk of the district court in bankruptcy proceedings be paid into the general fund of the treasury and that salaries and expenses of referees will be paid from the general fund of the treasury.

The Conference voted disapproval of S. 3625, a bill which would amend Section 614 of the Bankruptcy Act to extend the protection of the court to the spouses of debtors filing wage-earner plans even though they are not parties to the proceedings or subject to the jurisdiction of the court. The Conference noted that the same considerations would not apply to an amendment which would permit joint petitions of husband and wife to be filed under a single filing fee.

The Conference approved a proposed bill to amend Section 48 of the Bankruptcy Act to increase the maximum compensation allowable to receivers and trustees. The Conference authorized the Director of the Administrative Office to transmit this proposal to the 92nd Congress.

## AUDIT OF STATISTICAL REPORTS

The Conference noted that the audit of statistical reports of closed bankruptcy cases since the last meeting of the Bankruptcy Committee disclosed four instances of underpayment to the Referees' Salary and Expense Fund, twenty overpayments to the Fund, and 32 overpayments of commissions to receivers and trustees. Other matters relating to apparent errors in the reports taken up with the referees totalled 133.

## CHAPTER XIII CASES

The Conference noted that the Bankruptcy Division reported that in the first nine months of fiscal year 1970 a total of 22,645 Chapter XIII cases was filed. This is 1,212 more than during the comparable period of the prior fiscal year. The Division reported

that compliance with Chapter XIII guidelines previously promulgated by the Judicial Conference was generally satisfactory. The Conference noted that as a result of the new guideline approved at the March 1970 session (Conf. Rept., p. 26) the relatively few Chapter XIII trustees who were also engaged in debt counseling have resigned or have ceased to act as debt counselors for profit.

#### SEMINARS FOR REFEREES

Judge Weinfeld reported four regional seminars as follows: Indianapolis—September 1970, New York City—November 1970, San Francisco—November 1970, and New Orleans—January 1971. The participants in these seminars range from 40–46 referees each. During the past few months representatives of the Fraud Section of the Criminal Division of the Department of Justice have also participated in these seminars and have contributed to a better understanding of the importance of prompt and complete reporting of suspected violations.

#### COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Judge Walter E. Hoffman, Chairman of the Committee, presented the report of the Committee.

#### SENTENCING INSTITUTE

The Conference approved the agenda for the joint sentencing institute of the Sixth and Seventh Judicial Circuits to be held at Dearborn, Michigan, on April 21–23, 1971. In approving the agenda, the Conference also approved the time, place and participants as required by statute.

#### TRANSFER OF JURISDICTION OF PROBATIONERS

At the October 1969 meeting (Conf. Rept., p. 78) Judge Hoffman advised that the Committee had under consideration the need for establishing uniform policy for jurisdictional transfer of probationers, which is authorized by 18 U.S.C. 3653. The Committee has meantime solicited the views of the chief judges of the district courts concerning this problem and, as a result of its study, the Committee recommended to the Conference and the Conference

adopted the following policy statement for the guidance of the district courts:

The Conference recommends that in all instances where the supervision of a probationer is transferred from one district to another, jurisdiction be transferred simultaneously.

Further, the Conference recommends that in those instances where supervision of a probationer has been transferred without concurrent transfer of jurisdiction and the probationer is considered to be in violation of his probation, jurisdiction be transferred for the purpose of conducting the probation violation hearing.

Finally, the Conference recommends that when a probationer is considered to be in violation of his probation and is found in a district which holds neither supervision nor jurisdiction of his case, jurisdiction be transferred to the district in which he is found for the purpose of conducting the probation violation hearing.

The Conference recognizes that the decision to transfer jurisdiction rests with the district courts and in unusual instances there may exist compelling reasons why jurisdiction should not transfer and why a court would desire to retain jurisdiction, or why a court would want to refrain from accepting jurisdiction. However, it is the sense of the Conference that transfer of jurisdiction will enhance the effectiveness of the probation officers in the performance of their duties and insure that a person held for probation violation be taken before the court "as speedily as possible" (18 U.S.C. 3653).

#### WORK REQUIREMENTS FOR PROBATIONERS

As a result of a suggestion made by Chief Judge Harper at the March 1970 session of the Conference (Conf. Rept., p. 28), Judge Hoffman stated that the Committee has been considering a further resolution recommending that a person placed on probation be required to work. He stated that the Committee has instructed the Division of Probation to conduct a survey to determine, if possible, how many employable probationers are unemployed. At Judge Harper's further suggestion, Judge Hoffman stated that his Committee would look into the possibility of having probation officers instructed to help obtain employment for probationers.

#### COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Chief Judge Roy W. Harper, Chairman of the Committee on Intercircuit Assignments, presented a report on the Committee's activities from February 1, 1970 to September 15, 1970. During this period the Committee recommended 52 assignments to be undertaken by 42 judges. Of this number, seven are circuit judges in active status, four are senior circuit judges, 19 are district judges in active status and six are senior district judges.

Three assignments were carried out by two active judges of the Court of Claims, one by an active judge of the Customs Court and another by an active judge of the Court of Customs and Patent Appeals. Two senior judges of the Court of Claims each carried out an assignment and two retired Supreme Court justices participated in six assignments.

Upon recommendation of the Committee, the Conference approved an amendment to the form for the assignment of a visiting judge so as to provide not only for additional time as may be required to complete unfinished business as it now does but also to provide for such necessary time in advance of trial as may be necessary for the preparation of the trial of the case.

The Conference also approved a Committee recommendation that upon an intercircuit assignment of a district judge, the visiting court should prepare a list of cases which are ready for trial and which are to be transferred to the visiting judge for trial upon his arrival. Such list is to contain at least 30 civil and at least 15 criminal cases or a combination of the two. The cases shall be set for trial at the times directed by the visiting judge. This recommendation does not apply, of course, when the visiting judge is assigned for the purpose of a specific case.

#### COMMITTEE TO IMPLEMENT THE FEDERAL MAGISTRATES ACT

Judge William E. Doyle, Chairman of the Committee to Implement the Federal Magistrates Act, presented the report of the Committee.

#### MAGISTRATE POSITIONS

Judge Doyle informed the Conference that the Committee had met and considered the recommendations contained in the resurvey reports of the Director of the Administrative Office of the United States Courts, as well as the recommendations of the circuit councils and the district courts concerned, with respect to courts where resurveys had been requested by the Conference at the March 1970 session (Conf. Rept., p. 30).

The Conference considered the recommendations of the Committee for changes in full-time and part-time magistrate positions, as well as the recommendations of the circuit councils and the district courts, and approved the following changes in the numbers,

locations, and salaries of magistrates. The Conference further authorized the district courts to make appointments in accordance with these changes as soon as they are notified by the Director of the Administrative Office that appropriated funds for this purpose are available.

District	Location	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary <sup>1</sup>
<i>FIRST CIRCUIT</i>					
Maine.....	Portland.....	Part-time.....	\$1,200	Clerk-magistrate.	+\$1,200
Massachusetts.....	Boston.....			Full-time.....	\$ 22,500
	Ayer.....	Part-time.....	750	Part-time.....	6,000
	Cape Cod Seashore.....	do.....	300	do.....	600
	Worcester.....	do.....		do.....	\$ 600
Puerto Rico.....	San Juan.....	Part-time.....	\$ 11,000	Full-time.....	\$ 22,500
<i>SECOND CIRCUIT</i>					
Connecticut.....	New Haven.....	Full-time.....	20,000	Full-time.....	22,500
New York (N).....	Utica.....	Part-time.....	200		(3)
	Rome.....			Part-time.....	\$ 200
<i>THIRD CIRCUIT</i>					
Delaware.....	Wilmington.....	Referee-magistrate.	\$ +1,500	Part-time.....	1,500
New Jersey.....	Dover.....	Part-time.....	500	do.....	1,000
	Newark.....	do.....	\$ 1,000	Full-time.....	\$ 22,500
	Camden.....	do.....	5,000	Part-time.....	9,000
	Asbury Park.....	do.....	5,000	do.....	7,500
	Hackensack.....	do.....		do.....	\$ 3,000
	Jersey City.....	Part-time.....	750		(9)
	Newton.....	do.....	200	Part-time.....	500
<i>FOURTH CIRCUIT</i>					
North Carolina (W).....	Bryson City and Great Smoky Mountain National Park.	Part-time.....	4,930	Part-time.....	5,239
Virginia (W).....	Roanoke.....	do.....	3,500	do.....	5,000
	Shenandoah National Park.....	do.....	3,004	do.....	3,184
	Cumberland Gap National Park.	do.....	1,838	do.....	1,948
	Danville.....	do.....	750	do.....	500
	Harrisonburg.....	Referee-magistrate.	+600		(2)
	Charlottesville.....	Part-time.....	400	Part-time.....	600
	Winchester.....	do.....	100	do.....	200
	Staunton.....	do.....		do.....	\$ 800
	Martinsville.....	do.....		do.....	\$ 500
	Lexington.....	do.....		do.....	\$ 500
	Wise.....	do.....		do.....	\$ 400
Rocky Mount.....	do.....		do.....	\$ 300	
Christiansburg.....	do.....		do.....	\$ 300	
West Virginia (N).....	Elkins.....	Part-time.....	\$ 7,500	Full-time.....	\$ 22,500
West Virginia (S).....	Charleston.....	do.....	\$ 11,000	do.....	\$ 22,500
	Huntington.....	do.....	1,000	Part-time.....	11,000
	Lewisburg.....	do.....	100	do.....	600

See footnotes at end of table.

District	Location	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary <sup>1</sup>
<i>FIFTH CIRCUIT</i>					
Alabama (N)	Birmingham	Part-time	\$ 11,000	Full-time	\$ 22,500
	Huntsville/Decatur	do	11,000	Part-time	7,500
Alabama (M)	Montgomery	do	\$ 11,000	Full-time	\$ 22,500
Alabama (S)	Mobile	do	\$ 11,000	do	\$ 22,500
Florida (N)	Pensacola	do	5,000	Part-time	7,500
	Tallahassee	do	5,000	do	7,500
	Marianna	do	500	do	1,000
	Fort Walton Beach	do	500	do	1,000
Florida (M)	Titusville	do	1,000	do	1,200
Georgia (M)	Columbus	do	1,800	do	7,000
	Macon	do	1,800	do	5,200
	Valdosta/Thomasville	do	1,800	do	( <sup>2</sup> )
	Valdosta	do		Part-time	\$ 3,000
	Athens	Part-time	900	do	( <sup>2</sup> )
	do			Deputy clerk-magistrate.	\$ 1,300
Louisiana (E)	New Orleans			Full-time	\$ 22,500
Louisiana (W)	Shreveport	Part-time	5,000	Part-time	11,000
	Lake Charles	do	5,000	do	11,000
	Lafayette/Opelousas	do	3,000	do	11,000
	Leesville	do	900	do	3,000
	Alexandria	do	750	do	500
Mississippi (N)	Oxford	do	6,000	do	11,000
	Greenville	do	6,000	do	11,000
	Tupelo	do	2,200	do	6,000
	Kosciusko	do	1,800	do	6,000
Mississippi (S)	Jackson	do	6,000	do	11,000
	Biloxi	do	6,000	do	11,000
	Vicksburg	do	1,200	do	6,500
	Meridian	do	1,500	do	1,800
	Hattiesburg	do	700	do	1,800
Texas (N)	Fort Worth	do	11,000	do	( <sup>3</sup> )
	Fort Worth/Dallas			Full-time	\$ 22,500
Texas (S)	Houston			do	\$ 22,500
	Corpus Christi	Part-time	2,400	Part-time	5,000
Texas (W)	San Antonio			do	\$ 7,500
	El Paso			do	\$ 7,500
	Big Bend National Park	Part-time	6,157	do	6,526
<i>SIXTH CIRCUIT</i>					
Kentucky (E)	Lexington	Part-time	\$ 11,000	Full-time	\$ 22,500
Kentucky (W)	Louisville	Full-time	20,000	do	22,500
	Mammoth Cave National Park	Part-time	2,100	Part-time	2,226
	Hopkinsville			do	\$ 1,800
Michigan (E)	Detroit			Full-time	\$ 22,500
	Flint	Part-time	1,200	Part-time	5,000
	Bay City	do	200	do	( <sup>4</sup> )
Michigan (W)	Kalamazoo	do	1,200	Part-time	3,000
Ohio (N)	Cleveland			Full-time	\$ 22,500
	Toledo	Part-time	2,000	Part-time	2,500
	Youngstown	do	1,500	do	2,000
	Akron	do	900	do	2,000
Ohio (S)	Cincinnati	do	\$ 11,000	Full-time	\$ 22,500
	Columbus	do	\$ 11,000	do	\$ 22,500
Tennessee (E)	Knoxville	do	4,000	Part-time	6,000
Tennessee (M)	Nashville	do	\$ 11,000	Full-time	\$ 22,500
Tennessee (W)	Memphis	do	\$ 11,000	do	\$ 22,500
<i>SEVENTH CIRCUIT</i>					
Illinois (N)	Rockford	Part-time	400	Full-time	( <sup>5</sup> )
	Rockford/Ottawa			Part-time	\$ 2,100
Illinois (E)	East St. Louis	Part-time	2,000	do	3,600
	Carbondale	do	700	do	1,200
Indiana (S)	Indianapolis			do	\$ 11,000
Wisconsin (E)	Fond du Lac	Part-time	500	do	1,000
	Racine	do	100	do	400
	Appleton	do	300	do	400
Wisconsin (W)	Madison	do	3,000	do	11,000

See footnotes at end of table.

District	Location	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary <sup>1</sup>
<i>EIGHTH CIRCUIT</i>					
Arkansas (W)	Hot Springs	Part-time	1,500	Part-time	3,600
Iowa (N)	Cedar Rapids	do	2,400		( <sup>2</sup> )
	Cedar Rapids			Deputy clerk-magistrate	<sup>2</sup> +3,500
Missouri (E)	Sioux City	Part-time	1,200	Part-time	300
	St. Louis			Clerk-magistrate.	<sup>2</sup> None
<i>NINTH CIRCUIT</i>					
Alaska	Anchorage	Part-time	5,000	Part-time	7,500
	Fairbanks	do	2,500	do	5,000
	Nome	do	200	do	300
	Ketchikan	do	200	do	300
	Juneau	do	200	do	300
Arizona	Kodiak	do	100	do	200
	Phoenix	do	<sup>3</sup> 11,000	Full-time	<sup>2</sup> 22,500
	Tucson	Full-time	20,000	do	22,500
California (N)	Grand Canyon National Park	Part-time	7,972	Part-time	8,450
	Salinas	do	3,600		( <sup>2</sup> )
California (E)	Salinas/Monterey	do		Part-time	<sup>2</sup> 3,600
	Bishop	Part-time	600	do	1,200
California (C)	South Lake Tahoe	do		do	<sup>2</sup> 400
	Yosemite National Park	Part-time	7,972	do	8,450
	Sequoia-Kings Canyon National Park	do	7,972	do	8,450
	Lassen Volcanic National Park	do	5,864	do	6,064
California (S)	Riverside	do	3,000	do	1,500
	San Bernardino	do		do	<sup>2</sup> 1,500
	Barstow	Part-time	1,200		( <sup>2</sup> )
	Barstow/Victorville	do		Part-time	<sup>2</sup> 1,200
California (S)	Santa Barbara	Part-time	1,800		( <sup>2</sup> )
	Santa Barbara/Oxnard	do		Part-time	<sup>2</sup> 1,800
	San Diego	Part-time	10,000	do	11,000
Hawaii	El Centro	do	8,000	do	11,000
	Honolulu	do	1,000	do	2,000
	Honolulu	do		do	<sup>2</sup> 2,000
Oregon	Hilo	Part-time	300	do	1,000
	Wake Island	do		do	<sup>2</sup> 100
	Johnson Island	do		do	<sup>2</sup> 100
Washington (W)	Bend	do		do	<sup>2</sup> 1,200
	Crater Lake National Park	Part-time	3,386	do	3,589
Washington (W)	Mount Ranier National Park	do	7,972	do	8,450
	Park	do		do	
	Olympic National Park	do	6,157	do	6,526
	Seattle			Clerk-magistrate.	<sup>2</sup> None
<i>Tenth Circuit</i>					
Colorado	Rocky Mountain National Park	Part-time	6,720	Part-time	7,123
New Mexico	Albuquerque	Full-time	20,000	Full-time	22,500
Oklahoma (N)	Tulsa	Part-time	<sup>3</sup> 11,000	do	<sup>2</sup> 22,500
Oklahoma (W)	Oklahoma City	do	<sup>3</sup> 11,000	do	<sup>2</sup> 22,500
	Lawton	do	3,000	Part-time	6,000
	Ponca City/Enid	do	200		( <sup>2</sup> )
	Ponca City	do		Part-time	<sup>2</sup> 100
Wyoming	Enid	do		do	<sup>2</sup> 400
	Shawnee	do		do	<sup>2</sup> 100
	Yellowstone National Park	Part-time	7,972	do	8,450

<sup>1</sup> A plus sign (+) indicates that the amount specified is to be added to the existing salary of the clerk, deputy clerk, or referee.

<sup>2</sup> New position added.

<sup>3</sup> Part-time position is abolished.



## ADMINISTRATIVE REGULATIONS

The Committee submitted to the Conference a revision of the administrative regulations previously adopted by the Director of the Administrative Office and approved by the Conference for use in the pilot districts (Conf. Rept., Mar. 1969, p. 33). The revised regulations are substantially the same as those previously approved. Upon recommendation of the Committee the regulations were approved by the Conference.

## SALARIES OF MAGISTRATES

At its previous session in March 1970 (Conf. Rept., p. 30) the Conference voted to take no further action with respect to legislation to increase the statutory limitation on salaries payable to United States magistrates on the basis that salaries would be reviewed by the Presidential Salary Commission in 1972. The Committee pointed out, however, that the Salary Commission would not have jurisdiction to make recommendations regarding salaries of magistrates. The Committee therefore recommended (1) that the Conference reaffirm the principle that the maximum salary payable to a United States magistrate should be on a parity with the maximum salary paid to a referee in bankruptcy and (2) that the Federal Magistrates Act accordingly be amended to increase the maximum salaries to \$30,000 per annum for full-time magistrates and \$18,000 per annum for part-time magistrates.

The Conference discussed the recommendations of the Committee and voted to postpone action on the proposal until the next session of the Conference.

## FORFEITURE OF COLLATERAL

The Committee reported that the forfeiture of collateral procedure in use in three pilot districts had been operating satisfactorily. It has reduced paperwork, safeguarded the handling of funds and relieved magistrates of clerical functions. It has further obviated the necessity of bringing petty offenders before a judicial officer, thus freeing magistrates to perform other substantial duties for the courts. On the basis of this favorable experience the Committee has recommended that each district court consider adopting this system.

On recommendation of the Committee the Conference approved the form of the violation notice developed in the pilot program for use in all district courts adopting the forfeiture of collateral procedure.

#### VACANCIES IN MAGISTRATE POSITIONS

The Committee recommended that the procedure for filling a vacancy in a magistrate position, by reason of death or resignation, be the same as the procedure followed in filling such a vacancy in the position of referee in bankruptcy. The Conference approved the recommendation and adopted the following policy:

A vacancy in the office of United States magistrate may be filled without any change in the salary or arrangement upon the recommendation of the Director, the district court, and the circuit council that the office be so continued. If a change in the salary or arrangement is recommended by the Director, the district court, or the circuit council, a vacancy shall not be filled until the Conference has acted thereon.

#### COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Albert B. Maris, Chairman of the standing Committee on the Rules of Practice and Procedure, presented the Committee's report.

#### RULES OF EVIDENCE

Judge Maris presented to the Conference the Committee's definitive draft of proposed rules of evidence for United States courts. In so doing, he advised the Conference that the rules were the culmination of a project begun in 1958 when the Judicial Conference first referred a proposal for uniform rules of evidence to the standing Committee. In 1961 the Conference authorized the creation of an advisory committee to study and report on the advisability and feasibility of the proposal. Based on a favorable recommendation of this advisory committee, the Chief Justice in 1965 appointed an Advisory Committee which has produced the present proposed rules. Judge Maris pointed out that these rules were before the bench and bar for comment for approximately sixteen months and that this present draft was revised in light of the comments received.

The Conference, after considering these rules, voted approval of them and transmittal to the Supreme Court with a recommendation that the Court approve the rules. In so doing, the Conference

also voted approval and reference to the Supreme Court for favorable action certain changes in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure which will be necessary if the evidence rules are adopted.

#### CIVIL, CRIMINAL AND APPELLATE RULES

Judge Maris presented to the Conference certain minor changes in the Civil and Criminal Rules required either by changes in the law or for corrective reasons which became apparent after the rules were originally adopted. The Conference approved these changes for transmittal to the Supreme Court with a recommendation that they be approved and promulgated.

#### MAGISTRATES RULES

Judge Maris pointed out to the Conference that at its March 1969 session it had approved a set of rules to govern the procedure of United States magistrates. These rules, which were adopted by the Supreme Court on May 19, 1969, were designed as interim rules to make it possible for the magistrates then about to be appointed in five pilot districts to function in the trial of minor offenses.

Judge Maris stated that the Advisory Committee on Criminal Rules had continued its study of the magistrates procedure and as a result it presented to the standing Committee revised rules for the conduct of proceedings before United States magistrates. He said further that it was likely that the magistrates system would become operational throughout the country at about the end of calendar year 1970. Upon recommendation of the standing Committee, the Conference approved these revised magistrates rules for transmittal to the Supreme Court with a recommendation that the Court act favorably upon them.

#### SUPPLEMENTAL ELECTRONIC RECORDING

Judge Maris advised that the standing Committee had been concerned with the difficulty in the procurement of the transcript of testimony which has become a major source of delay in bringing motions for new trials and appeals on for hearing and disposition. The Conference approved a Committee recommendation that the Administrative Office be authorized to establish in a few selective

districts an experimental program for the use of electronic recording equipment, supplemental to the work of the court reporters, the recording of which would be made available to litigants on appeal.

#### FUTURE ORGANIZATION OF THE RULES PROGRAM

Judge Maris stated that the Advisory Committee on Civil Rules had completed the program it began more than ten years ago and that the terms of service of the members of that committee expired on October 1, 1970. He said that the Advisory Committee on Admiralty Rules was nearing the completion of its tasks of studying the experience of maritime rules under the unified civil rules and in revising the supplemental admiralty rules. He stated that both the Admiralty Committee and the Advisory Committee on Bankruptcy Rules may have completed their assignments prior to the expiration of the terms of their members on October 1, 1972. With the report of the Advisory Committee on the Rules of Evidence, which the Conference approved for transmittal to the Supreme Court, the work of that committee had been completed. The work of the Advisory Committee on Criminal Rules is an on-going program which the standing Committee believes must be continued. The standing Committee recommended also the reactivation of the Advisory Committee in the field of civil procedure which would also include maritime litigation, and possibly bankruptcy after the work of the present Advisory Committee on Bankruptcy Rules is completed. The Conference approved the recommendation that the Chief Justice be requested to appoint a new Advisory Committee on Civil Rules when he deems it appropriate.

Judge Maris said that meanwhile the standing Committee will continue to study and report on appellate rules and rules of evidence until such time as it may be determined that these areas of study should be assigned to either the Civil or the Criminal Rules Committee.

Because there is at present a crisis in the administration of justice in the federal courts, caused at least in part by the inordinate delays resulting from the constantly increasing caseloads, Judge Maris said that his Committee believes the time has come to consider all serious proposals for modernizing the procedure and improving the efficiency of the courts without impairing the just determination of litigation no matter how drastic or fundamental

the proposals may be. He said that the standing Committee recommended that a small ad hoc committee of legal scholars who are specialists in the field be appointed by the Chief Justice to consider and report to the Conference a list of those proposals which they think might be helpful in this regard and which they believe merit serious discussion and detailed study by an advisory committee and its reporter. He said that the Committee believes such a program would be in line with the responsibilities of the Conference under 28 U.S.C. 331. The Conference agreed and voted to authorize the Chief Justice to constitute such a preliminary study committee as a joint committee of the Conference and the Federal Judicial Center to propose an agenda for modernizing the procedure and improving the efficiency of the courts.

#### COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of his Committee.

#### APPOINTMENTS AND PAYMENTS

Judge Hastings presented a cumulative report prepared in the Administrative Office on appointments and payments under the Criminal Justice Act from the effective date of the statute, August 20, 1965, through June 30, 1970. He stated that the amount of payments for services rendered has risen steadily each year, with approximately one-third of the cumulative payments having been made in fiscal year 1970. During the same year, counsel were appointed for over 33,000 criminal defendants and appellants. Payments for investigative, expert and other services, as well as authorizations for transcripts, also rose sharply during fiscal year 1970. The Conference authorized the Director of the Administrative Office to release this cumulative report immediately and to transmit copies to all federal judges.

#### STATUTORY AMENDMENTS

On October 14, 1970, the President signed into law a bill making far-reaching changes in the Act. These amendments extended the coverage of the Act, providing for increased payments and author-

ized the establishment of a public defender or community defender organization. Judge Hastings pointed out that these amendments would become effective in 120 days or approximately mid-February 1971. During this interim period he advised that his Committee, together with the Administrative Office, was engaged in preparing a model revised plan for consideration by each district, as well as revised guidelines and forms to be used under the Act. The Conference authorized the Committee to submit these proposed plans, guidelines, forms and other recommendations to the members of the Conference and request reply by mail vote so that all of the proposed changes may be in the hands of the district courts and the courts of appeals well in advance of the effective date of the amendments.

#### COMMITTEE ON COURT ADMINISTRATION

Judge Robert A. Ainsworth, Jr., Chairman, presented the report of the Committee on Court Administration.

#### JUDICIAL REFORM ACT OF 1969

Judge Ainsworth advised that certain further technical changes had been proposed in the provisions of S. 1511, 91st Congress, to amend the Judicial Survivors Annuity Act but that the Act still remains before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. Two other amendments to the Act, however, have been referred to the Conference for comment, namely, S. 3515 and S. 3705, 91st Congress, which would make provision in the Act for a widow of a judge who has remarried but whose remarriage has been terminated by divorce without fault on her part. The Conference voted its disapproval of these two proposed bills.

Judge Ainsworth stated that his Committee had again considered S. 1507 providing for the mandatory retirement of justices and judges at the age of 70 and stated that his Committee recommended that S. 1507 be approved if redrafted to provide that a judge who has not served ten years continuously or otherwise when he attains the age of 70 years shall be retired upon his completion of ten years of active service. The Conference approved this recommendation.

The views of the Conference have been requested on H.R. 14231 which would provide that a judge who has reached the age of 70 may retire after ten years of service, at the age of 69 after 11 years of service, at the age of 68 after 12 years of service, at the age of 67 after 13 years of service, at the age of 66 after 14 years of service and at the age of 65 after 15 years of service. The Conference voted approval of this legislation provided it were amended to permit a judge to retire at the age of 64 after 16 years of service, at the age of 63 after 17 years of service, at the age of 62 after 18 years of service, at the age of 61 after 19 years of service and at the age of 60 after 20 years of service. The Conference noted that the Committee, in recommending this amendment, pointed out that such legislation would have the desirable effect of creating as large a cadre of senior judges as may reasonably be effective.

#### FINANCIAL REPORTING

The Conference approved one change in the public report approved at the March 1970 meeting (Conf. Rept., p. 7), namely, insertion of a footnote in Item 2 entitled "Gifts" which would read:

Books and periodicals received from publishers need not be included.

#### COURT EXECUTIVES

The Conference reaffirmed its approval of the principle of court executives as contained in S. 3916 and H.R. 17901, both bills to provide for the appointment of court executives in the circuit courts of appeals on a permissive basis.

#### ADDITIONAL DIVISIONS AND PLACES OF HOLDING COURT

H.R. 17653 would amend Section 122 of Title 28, United States Code, by providing for the transfer of certain counties in South Dakota among the four divisions of that judicial district. Upon recommendation of the judges of the district and the Judicial Council of the Eighth Circuit, the Conference approved H.R. 17653 with the amendment that Washabaugh and Bennett Counties

should remain in the Western Division of the District of South Dakota, thus avoiding a split of one Indian reservation between two divisions.

#### LEGISLATIVE MATTERS

The Conference approved in principle S. 3568 which would amend the Administrative Procedure Act to permit the naming of the United States as a defendant. The Conference specifically approved Section 2 of the bill, eliminating the jurisdictional amount requirement, and Section 3, providing for suit in the same judicial districts in which the federal official or agency may be sued.

S. 4000 and H.R. 18485, relating to compensation to growers, manufacturers, packers and distributors for damage resulting from reliance on the official listing of cyclomates as a safe product, were considered by the Conference to be matters involving legislative policy on which the Conference should take no action.

#### THREE-JUDGE DISTRICT COURTS

The Conference noted from the Committee report the increased judicial burden which has resulted from the convening of three-judge district courts in injunction cases alleging unconstitutionality of federal or state statutes. Originally, three-judge district courts were conceived as a means of allaying concern of state officials directed at the granting of injunctions against enforcement of state statutes by a single federal judge. This concern has been lessened with the passage of time but the Committee reported that not only has the work of the district and circuit courts been affected by the need to supply judges for three-judge courts but also the direct appeal from such courts to the Supreme Court has often brought that Court into the review process prematurely and placed the burden of direct appeal on the Supreme Court in many cases where the winnowing process of appellate review at the circuit court level would have better served the interests of justice.

After reviewing the Committee report on this subject, the Conference approved draft legislation and authorized its transmittal to the 92nd Congress which would amend Sections 2281 and 2282 of Title 28, United States Code, to eliminate the three-judge district court requirement. The proposed legislation would provide for five days' notice to the Attorney General and the Governor of the



state or the Attorney General of the United States and the United States Attorney, depending on the statute involved in the litigation. It would also provide a new section 1259 of Title 28 providing for the direct review of any preliminary or permanent injunction granted against enforcement of a state or federal statute for repugnance to the Constitution by the appropriate court of appeals or by the Supreme Court at the election of the Attorney General of the state or of the United States, depending on the statute in suit. This legislative proposal would not affect three-judge courts convened for the taking of land by T.V.A., for violations of the 1964 Civil Rights Act, of the Voting Rights Act of 1965, nor would it cover I.C.C. matters affected by the proposed amendment to the Expediting Act.

#### DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS

Because of the far-reaching nature of the changes proposed by the American Law Institute's study on the division of jurisdiction between state and federal courts, the Conference agreed that these proposals should be studied by the Congress at an early date so as to afford an opportunity, through the legislative process, for all interested parties to be heard. The Conference, therefore, approved early submission of the A.L.I. study to the Congress for appropriate legislative examination of the several proposals contained therein for legislation.

#### ADDITIONAL JUDGESHIPS

S. 3361 is a bill to create an additional permanent district judgeship in the District of Oregon. The Conference agreed that this additional judgeship could not be justified under the standard limiting such requests to emergency situations during the interval between quadrennial surveys of the district courts. Accordingly, disapproval of S. 3361 was voted.

The Conference noted that five judgeships had previously been approved and recommended to the Congress for additional district judgeships in the Western District of Missouri, the Southern District of Florida, the Northern District of Indiana, the Southern District of Indiana and the Northern District of Texas. The Conference was of the view that the need for an additional judgeship

in each of these five districts constituted an emergency situation and, therefore, voted to recommend to the Congress the authorization of these five additional judgeships at as early a date as possible.

#### SUPPORTING PERSONNEL

*Secretaries to Judges.*—The Conference approved a proposal that a secretary to a federal judge shall receive step increases in Grade JSP 10 to step 6 at 52-week intervals and from step 6 to step 10 at 104-week intervals, thus permitting a secretary in Grade JSP 10 to reach the top of her grade after fourteen years of service instead of after nineteen as at present.

The Conference reiterated its support of legislation to place the retirement annuities of secretaries to judges on the same basis as the retirement of Congressional secretaries (Conf. Rept., March 1970, p. 12).

*Court Reporters.*—Pursuant to the authority vested in the Conference by Public Law 91-272, enacted June 2, 1970, the Conference approved the raising of the ceiling of court reporters' salaries from \$12,302 to \$16,000 per annum. Further, the Conference authorized the Director of the Administrative Office to increase the transcript rates, for original copies only, by no more than ten percent over existing maximum rates when, in the Director's judgment, a situation exists in a district which would be classified as unique, critical and an emergency and when the district court has requested such action. In addition, the Conference authorized the Director of the Administrative Office to undertake a long-range study to cover fully the relationships of court reporters of the district courts.

*Crier-Clerk.*—In furtherance of the action of the Conference at the March 1970 meeting (Conf. Rept., p. 12), the Conference approved the following qualification standard for the position of court crier-clerk:

To qualify for the position of court crier-clerk, Grade JSP 6, a person must be a high school graduate or the equivalent and must have a minimum of two years of clerical or administrative experience in public service or business; also at least one year of service in the United States courts as court crier in JSP 5.

*Interpreter.*—In view of the creation of an additional judgeship for the District of Puerto Rico, the Conference authorized an additional position of Spanish Interpreter for that court at Grade JSP 5.

*Courts of Appeals Personnel.*—The Conference authorized 50 additional positions in the clerks' offices of the courts of appeals and

at least 52 other positions in the courts of appeals, one of which would be for a librarian and the others for general secretaries. Fifteen of these secretaries are for the judges of the Court of Appeals of the Fifth Circuit and nine are for the judges of the Court of Appeals of the District of Columbia Circuit. At least three additional secretaries are to be added to the remaining courts of appeals as a secretarial pool but the Conference agreed that a second secretary should be provided for any circuit judge who certifies a need for such a second secretarial position.

*Chief Deputy Clerks of Courts of Appeals.*—The Conference voted to reaffirm its approval of Grade JSP 15 for the chief deputy clerks of the courts of appeals. Until this authorization is approved, however, the Conference agreed that, unless otherwise proscribed by law, the Director was to assign the chief deputy clerks of the courts of appeals to that step in Grade JSP 14 which is next below the salary for the opening step in Grade JSP 15.

*Law Clerk for Senior Judge.*—The Conference agreed that, subject to the approval of the circuit council, a circuit judge who takes senior status and continues to perform virtually full-time work on the court of appeals should be allowed a second law clerk.

*Law Clerk for District Judge.*—The Conference approved the proposal that any district judge may have two law clerks starting at Grade JSP 11 instead of one law clerk and one court crier or crier-law clerk.

#### COMMITTEE ON TRIAL PRACTICE AND TECHNIQUE

Chief Judge Joe E. Estes, Chairman of the Committee on Trial Practice and Technique, reported that the Committee was continuing its work of preparing sample jury instructions for use in certain types of tax cases. Work on instructions in cases involving questions of fraud, accumulated earnings, depreciation, valuation, bad debt reserves, business expenses, and corporate loans or dividends is now being completed. These sample instructions will be distributed to all district judges, as they become available, in accordance with previous Conference authorization.

The Committee is also continuing its studies of procedural problems arising in class actions in common disaster cases, procedure in three-judge court cases, and the administration and control of individual calendars in a large district court. The results of these studies will be reported to the Conference at future sessions.

## COMMITTEE ON THE BUDGET

Judge Carl A. Weinman, Chairman of the Committee on the Budget, presented the report of the Committee.

Judge Weinman noted that, because it was necessary to submit a proposed budget for the judiciary to the Office of Management and Budget prior to October 15, his Committee's recommendations had been submitted by mail vote and approved by Conference members. He noted that these budget estimates for fiscal year 1972, exclusive of the United States Supreme Court, the Customs Court and the Federal Judicial Center, aggregated \$155,621,000, an increase of \$22,467,000 over the amounts appropriated for fiscal year 1971, adjusted to reflect proposed supplementals for pay costs.

The budget was so prepared as to anticipate Conference approval of several items involving supporting personnel. It further proposes that the limitation with respect to the chief judge of each circuit for secretaries and law clerks be increased from \$47,835 to \$55,933 and that the limitation with respect to other circuit judges be increased from \$36,966 to \$45,064.

The Conference further authorized the submission to the Congress of a request for supplemental appropriations for pay costs for fiscal year 1971 and other supplemental appropriations as might be necessary.

The Conference approved changes on the aggregate salaries of secretaries and law clerks to circuit judges to permit the employment of an additional secretary in Grade JSP 7.

The Conference also approved a transfer to the Federal Judicial Center of the funds appropriated for the operation of the Federal Probation Center in Chicago and for the conduct of in-service institutes for probation officers.

The Conference authorized the Director of the Administrative Office to submit to Congress a request to delete from the judiciary appropriation bill the general provisions relating to the District of Columbia's share of expenses of the federal courts in view of the specific provisions contained in the District of Columbia's Court Reform and Criminal Procedure Act of 1970.

## SPECIAL COMMITTEE

( On the motion of Chief Judge Lumbard, the Conference approved the establishment of a special committee to study state prisoner litigation in the federal courts. Judge Lumbard noted that such prisoner petitions now number upwards of 12,000 each year and constitute a very heavy burden on the federal court system.

## PRETERMISSION OF TERMS OF COURTS OF APPEALS

The Conference approved the pretermission of terms of courts of appeals pursuant to 28 U.S.C. 48 as might be necessary prior to the next session of the Conference, particularly those sessions of the Court of Appeals for the Fourth Circuit to be held at Asheville, North Carolina, and those terms of the Court of Appeals for the Eighth Circuit which might be held in places other than St. Louis, Missouri.

## RELEASE OF CONFERENCE ACTION

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

For the Judicial Conference of the United States.

WARREN E. BURGER,

*Chief Justice of the United States.*

DECEMBER 28, 1970.

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