

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

APRIL 7, 1976

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ST. PAUL, MINNESOTA
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ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Rowland F. Kirks
Director

REPORT
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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 one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

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

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

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

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

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

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

April 7, 1976

The Judicial Conference of the United States convened on April 7, 1976, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Conference met in St. Paul, Minnesota, prior to the convening of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, of which the Judicial Conference of the United States was a co-sponsor. The Chief Justice presided and the members of the Conference were:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge William B. Jones, District of Columbia

First Circuit:

Chief Judge Frank M. Coffin*
Chief Judge Andrew A. Caffrey, District of Massachusetts

Second Circuit:

Chief Judge Irving R. Kaufman
Chief Judge Jacob Mishler, Eastern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Chief Judge Lawrence A. Whipple, District of New Jersey

Fourth Circuit:

Chief Judge Clement F. Haynsworth, Jr.
Judge Charles E. Simons, Jr., District of South Carolina

Fifth Circuit:

Chief Judge John R. Brown
Chief Judge Alexander A. Lawrence, Southern District of Georgia

Sixth Circuit:

Chief Judge Harry Phillips
Chief Judge Damon J. Keith, Eastern District of Michigan

*On designation of the Chief Justice, Judge Edward T. Gignoux attended the Conference in place of Chief Judge Frank M. Coffin.

Seventh Circuit:

Chief Judge Thomas E. Fairchild
 Chief Judge James B. Parsons, Northern District of Illinois

Eighth Circuit:

Chief Judge Floyd R. Gibson
 Chief Judge James H. Meredith, Eastern District of Missouri

Ninth Circuit:

Chief Judge Richard H. Chambers**
 Chief Judge Thomas J. MacBride, Eastern District of California

Tenth Circuit:

Chief Judge David T. Lewis
 Chief Judge Frederick A. Daugherty, Western District of Oklahoma

Court of Claims:

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Senior Circuit Judge Elbert P. Tuttle; Circuit Judges Robert A. Ainsworth, Jr., Wade H. McCree, Jr., Donald R. Ross, and Edward A. Tamm; Senior District Judges Arthur J. Stanley, Jr., Roszel C. Thomsen, Albert C. Wollenberg and Alfonso J. Zirpoli; and District Judges Dudley B. Bonsal, Edward J. Devitt and Edward Weinfeld attended all or some of the sessions of the Conference.

The Honorable Walter E. Hoffman, Director of the Federal Judicial Center, presented a mid-year report of the activities of the Center.

A written report of the activities of the Panel on Multidistrict Litigation was submitted by Circuit Judge John Minor Wisdom, Chairman.

William E. Foley, Deputy Director, and Joseph F. Spaniol, Assistant Director of the Administrative Office, attended all of the sessions of the Conference.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF U.S. COURTS

The Director of the Administrative Office, Rowland F. Kirks, submitted a mid-year report to the Conference on the business of the United States Courts for the six-month period ending December 31, 1975.

**On designation of the Chief Justice, Judge James R. Browning attended the Conference in place of Chief Judge Richard H. Chambers.

The report showed a continuation of the upward trend in case filings in every area except criminal cases where the number of filings was stabilized at approximately 20,000 for the six-month period. Filings in the courts of appeals for the six months ending December 31 showed a 13.2 percent increase over the same period in 1974. Civil case filings rose by 16.3 percent in the same period and bankruptcy filings rose 9.5 percent.

During the first six months of the current fiscal year the juror usage index rose to 19.87, a slight increase over the number recorded in the first half of fiscal year 1975. The percentage of prospective jurors selected for or serving on jury trials was 59.6 percent as compared to 58.7 percent during the same period in fiscal year 1975. This increase in selected or serving jurors, Mr. Kirks reported, is the result of the implementation of juror utilization techniques, such as multiple selection of juries, juror pooling, improved methods of communication with jurors, such as code-a-phone, and local rules permitting the use of less than 12-member civil juries.

The slow down in criminal filings and increase in such cases closed by the district courts, plus an increase in the use of probation by United States magistrates, has resulted in an all-time high of 65,568 persons under the supervision of the federal probation service on December 31, 1975. This was five percent greater than a year ago and 71 percent more than June 30, 1970.

Preliminary figures for the first six months of fiscal year 1976 showed that United States magistrates handled a total of 125,685 matters, an increase of three percent. Trial jurisdiction matters increased eight percent and precommitment matters were down 8.8 percent. These workload figures show a 15 percent increase in the number of additional duties being delegated to magistrates by the district courts.

COURT ADMINISTRATION

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

PLACES AND DIVISIONS OF HOLDING COURT

The Conference approved S. 2412, a bill approved by the judges of the Northern District of Mississippi and the Judicial Council of the Fifth Circuit which would permit office space for a district judge in the Federal Building in Corinth, Mississippi, where the

judge now has an office, paid for by him despite the fact that space is available in the Federal Building.

The Conference also approved S. 2887 which would realign the counties in the Northwestern Division of North Dakota. The Conference was advised that the counties have been allocated in the past on the basis of railroad communications whereas the proposed realignment would accommodate highway communications. The bill was approved by the judges of the district as well as the Judicial Council of the Eighth Circuit.

The Conference disapproved S. 1423, a bill to create an additional judicial district in Alabama, to be known as the Tennessee Valley District. The bill had previously been disapproved by the judges of the districts in Alabama as well as by the Judicial Council of the Fifth Circuit.

SALARIES OF UNGRADED EMPLOYEES

The Conference noted that since the Committee on Court Administration had met the Congress had raised the salaries of full-time referees in bankruptcy and that the Senate had passed a bill raising the salaries of full-time United States magistrates which was then pending in the House of Representatives. At the September 1975 session of the Conference (Conf. Rept., p. 48) the Conference had requested the committee to study further the maximum limitations imposed on salaries of clerks of court. Because of the change in the situation relating to referees and magistrates, Chief Judge Whipple proposed and the Conference adopted a resolution which

(1) Reaffirms, but temporarily suspends, the report of the Committee on Salaries which is contained in the report of the October 1971 session of the Judicial Conference of the United States, p. 65;

(2) Authorizes an increase in the salary of the clerks of the larger courts to \$36,000 per year, the clerks of the medium courts to \$31,500 per year, the clerks of the smaller courts to \$28,200 per year and the salary of the clerk of the United States District Court for Guam to \$26,100 (the salaries of the other territorial courts are included in the first three categories), such salary increases to be effective at the beginning of the second pay period following the adoption of the resolution and subject to the availability of funds; and

(3) Asks that the report of the Committee on Salaries adopted at the October 1971 session be reviewed by the Judicial Conference at such time as Congress changes the salaries of federal judges.

FEES AND COSTS

The Conference approved a recommendation for and authorized the Director of the Administrative Office to transmit to the Congress a bill which would authorize the Judicial Conference of the United States to fix fees and costs in the United States District Court for the District of Columbia as it does for other federal district courts. This legislation, recommended by the judges of the District Court for the District of Columbia, is intended to cure an oversight in the District of Columbia Court Reorganization Act of 1970 which left in force and effect for the District Court the fees and charges set for the courts of the District of Columbia.

ANNUITIES TO JUDGES

The Conference strongly disapproved H.R. 11299 and H.R. 11738, bills to deny to federal judges any annuities under the Civil Service Commission Retirement Fund. The bill as drafted would deny any annuity payments to any federal justice or judge while he is receiving salary as a justice or judge of the United States, whether in active or senior status. It affects primarily judges who have previously served in the Congress or in the Executive Branch of the Government for an extended period.

SUPPORTING PERSONNEL—INTERPRETERS

The Conference approved two permanent full-time Spanish-speaking interpreters for the District of Arizona and authorized that the court be permitted to retain Indian dialect interpreters as needed.

LEGISLATION

(1) The Conference noted that the recommendations of the American Law Institute on diversity and federal question jurisdiction were not embodied in any legislation introduced in the 94th Congress. The Conference reaffirmed its approval in principle of such legislation and recommended further that until passage of such legislation can be accomplished and in order to provide immediate relief to the United States district courts, the

Congress enact an amendment to Section 1332(a)(1) of Title 28, United States Code, to read:

(1) Citizens of different states, if none of the parties in interest properly joined as plaintiffs is a citizen of the states in which such action is brought;

The proposal would prohibit the plaintiff from filing a diversity suit in a district court in a state in which he is a citizen. Prior studies conducted by the Administrative Office indicate that adoption of such a proposal would initially exclude from the federal courts approximately 45 percent of all diversity actions. The Director of the Administrative Office was authorized to prepare a draft bill for submission to Congress.

(2) The Conference's views were sought on H.R. 10344, a bill which would authorize the President to issue orders and regulations to provide for the establishment of priorities of use and for systematic allocation and pricing of propane in order to meet the needs of various sections of the country and to lessen anticompetitive effects resulting from shortages of natural gas. Exclusive original jurisdiction is vested in the United States district courts and exclusive appellate jurisdiction in the Temporary Emergency Court of Appeals. The Conference agreed that this proposal involved basically a matter of legislative policy but agreed that a suggestion be made to the Congress that the bill be amended to authorize the trial of cases involving violations of orders and regulations issued under the act before the United States magistrates with the consent of the defendant.

(3) The Conference considered H.R. 7826, 7827 and 7828 which would authorize the awarding of attorneys fees in certain civil actions. The Conference noted that several similar bills had been introduced in the Congress following the decision of the Supreme Court in 1975 in the Alyska Pipeline case (421 U.S. 240) which held that absent specific Congressional authorization, attorneys fees cannot be awarded to a prevailing party to litigation except in certain circumstances. While the Conference agreed that the subject matter of these bills is a question of public policy for the determination of the Congress, two problems connected with such legislation should be brought to the attention of the Congress:

(1) The potential impact on the workload of the courts which may be small or exceedingly large, depending on the type of legislation which is passed and for which adequate judicial resources should be provided in advance of the effective date thereof; and

(2) The constitutionality of awarding attorneys fees to prevailing plaintiffs in suits against state officers due to the restrictive provisions of the Eleventh Amendment to the Constitution.

The Conference agreed that H.R. 10748, a bill to extend the warning label required on cigarette packages to advertisements as well as regulating smoking in federal facilities and on interstate carriers, embodies a matter of policy on which the Conference expresses no views but that the Congress should be advised of the potential impact of such legislation on the federal court system.

(4) The Conference agreed that H.R. 9218 relating to environmental hazards involves a policy question for legislative determination. The bill does, however, provide that upon a showing giving rise to a rebuttable presumption that a threat to public health exists, the burden of proof shifts to the person engaging in such conduct. Section 5 of the bill, however, provides that nothing in the act shall affect the burden of proof with respect to the question of whether any violation of statute administered by the administrator has been committed. The Conference agreed to the suggestion that the bill should be redrafted so as to avoid any inconsistency with rule 301 of the Federal Rules of Evidence and that Section 5 should be clarified.

(5) The Conference agreed that S. 1284 relating to the antitrust laws involves a policy question for the Congress. The Conference did, however, approve the submission to the Congress of a statement on the workload of the courts in relation to antitrust actions.

REVIEW COMMITTEE

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

The Conference approved three recommendations of the Committee with respect to the public report form of extrajudicial income, as follows:

(1) That the form be revised insofar as it pertains to bequests, to state affirmatively that it is not necessary for a judicial officer to list bequests in which the deviser is a member of the judge's family within the relationships defined in Canon 3C(1)(d) and that the sections dealing with gifts and bequests be consolidated into a single section appropriately identified.

(2) That the form be revised so as to include therein in the descriptive data in Section 1 "Extrajudicial Services" a specific reference to the provisions and limitations imposed on the acceptance of honoraria by Section 616 of Title 18, U.S.C., Public Law 93-443, approved October 15, 1974, and

(3) That judicial officers who are appointed and qualify within the last sixty days of a reporting period not be required to file a public report of extrajudicial income for that period.

Judge Tamm advised the Conference that the judicial officers who have not filed reports of extrajudicial income for the period July 1 through December 31, 1975, as of March 29, 1976, are:

Listing, by Circuit, of judicial officers who have not filed reports of extrajudicial income for the period July 1 through December 31, 1975.

Second Circuit:

**Edmund L. Palmieri
U.S. District Judge
**Sylvester J. Ryan
U.S. District Judge
**Edward Weinfeld
U.S. District Judge
**Inzer B. Wyatt
U.S. District Judge

Sixth Circuit:

**Frank J. Battisti
U.S. District Chief Judge

Ninth Circuit:

**Warren J. Ferguson
U.S. District Judge
**Peirson M. Hall
U.S. District Judge
**Harry Pregerson
U.S. District Judge
**Manuel L. Real
U.S. District Judge
**Stanley A. Weigel
U.S. District Judge

Tenth Circuit:

Stephen S. Chandler, Jr.
U.S. District Judge
**Willis W. Ritter
U.S. District Judge

**Judges declining to file as a matter of conscience.

The foregoing is set forth pursuant to the resolution of the Judicial Conference at its March 1971 session (Conf. Rept., p. 24) as subsequently amended.

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee on the Code of Judicial Conduct of which Judge Elbert P. Tuttle and Judge Edward A. Tamm are co-Chairmen was presented to the Conference by Judge Tuttle.

At the September 1975 session of the Conference the recommendation was approved for the preparation of a document in the nature of an overview of the origin and work of the Review Committee, the Joint Committee, and the Advisory Committee on Judicial Activities. Such a document was submitted to the Conference which approved its release by the Director of the Administrative Office to all federal judges and other interested parties.

The Conference disapproved the provisions of S. 181, S. 192 and S. 2295 insofar as they require financial disclosure by federal

judges since the Conference has already developed a reporting and disclosure procedure for the federal judges.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman, presented the report of the Advisory Committee on Judicial Activities.

Judge Tuttle reported that in the last six months the Committee has received 17 formal inquiries. To date, the Committee has considered and acted upon 97 formal submissions, resulting in the publication of 47 separate formal opinions. The two published in the last six months are:

- (1) Opinion No. 46—Acceptance by judges of public testimonials or awards, and
- (2) Opinion No. 47—Acceptance of complimentary memberships in professional and social clubs.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge Arthur J. Stanley, Chairman, presented the report of the Committee.

PROPOSED AMENDMENTS TO THE JURY SELECTION AND SERVICE ACT

The Committee recommended and the Conference approved draft legislation for transmission to the Congress which would (1) establish a presumption that names of prospective jurors contained in voter lists represent a fair cross-section of the community, and (2) require a finding by the court that voter lists for that district do not represent such a fair cross-section before the voter lists may be supplemented by other sources of juror names. This legislative proposal is a response to the increasing number of cases challenging the process of jury selection.

The Conference voted its disapproval of S. 2779, a bill which would provide for non-unanimous jury verdicts in civil cases. The Conference noted the committee's view that the requirement of unanimity in jury verdicts, besides being in accord with tradition and precedent, serves the continuing function of assuring maximum protection to the expression of minority views in jury deliberations.

JUROR PRIVACY PROJECT

The Committee advised the Conference that a subcommittee had prepared a report on this subject involving pretrial investigation of prospective jurors which concludes that it would not be advisable to suggest the adoption of any uniform rule in this area. A survey of district courts indicates that no significant problem has resulted from the present lack of a uniform practice and that local conditions and the practices of the local bar should be determinative of the procedure to be followed by the court. The Committee was also of the view that the courts at present have sufficient inherent and statutory powers to cope with any abuses or complaints which might result from such pretrial investigation and that each district court remains free to adopt a local rule. The Conference approved the transmittal of the subcommittee report to all federal district judges.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

The report of the Committee on the Administration of the Criminal Law was presented by the Chairman, Judge Alfonso J. Zirpoli.

MANDATORY MINIMUM SENTENCES

The Conference recommended disapproval of S. 2698 which would amend Title 18, United States Code, to impose mandatory minimum terms with respect to certain offenses. Judge Zirpoli reported to the Conference that the Committee on the Administration of the Probation System joined with his committee in recommending the disapproval of this legislation since there is no demonstrated need for it. It would unnecessarily prolong the sentencing process and engender additional appellate review and would increase the expenditure of public funds without increase in additional benefits.

SENTENCING COMMISSION

The Conference disapproved S. 2699, a bill which would establish certain guidelines for sentencing and provide for the establishment of a United States Commission on Sentencing. The Committee on the Administration of the Probation System joined

the Criminal Law Committee in this recommendation, as well as agreeing that there is no need for the creation of such a Commission; that the courts have for years been utilizing pre-sentence reports which are prepared under guidelines promulgated with the approval of the Judicial Conference and there is no reason to believe that guidelines established by a commission would prove more effective in meeting the problem of disparity of sentences; and that a straight-forward review of sentences, whether by appellate review or by a panel of three judges as provided in the proposed amendment to Rule 35(b) of the Federal Rules of Criminal Procedure, is to be preferred over the proposed legislation.

YOUTH CORRECTIONS ACT

The Conference approved a draft bill which would amend the Youth Corrections Act so that the court may as a condition of probation or as a condition for treatment for a youth offender committed to the custody of the Attorney General require the youth offender to pay a fine or make restitution to the aggrieved party of actual damages or loss caused by the offense of the youth offender. The Conference authorized the Director of the Administrative Office to submit the draft bill to the Congress.

PERSONS ACQUITTED ON GROUNDS OF MENTAL INCOMPETENCY

The Conference reaffirmed a previous recommendation twice submitted to the Conference which would amend Title 18, United States Code, to provide for a hearing to determine whether or not an accused is mentally competent to stand trial and to provide for civil commitment, after hearing with appropriate due process safeguards, of a defendant who having been charged with an offense against the United States is acquitted after raising the defense of lack of criminal responsibility and who is further found by reason of mental disease or defect to be a danger to himself or the person or property of others.

PATTERN JURY INSTRUCTIONS

Judge Zirpoli advised the Conference that his Committee and the Committee on the Operation of the Jury System have given consideration to substantial changes in jury instructions which will be required if S. 1, the bill for the codification of the criminal

code, is enacted. The bill makes such substantial changes in the substantive law of crime that it will require any group working on the project at least two or three years to prepare jury instructions to a lay jury. The Conference authorized the Chief Justice, if S. 1 should be enacted, to appoint a committee to prepare pattern jury instructions, with full authority to include not only judges but representation from the bar and the Department of Justice.

FEDERAL CRIMINAL CODE

Judge Zirpoli briefed the Conference on the provisions of S. 1, the new proposed federal criminal code, as the bill now stands before the Senate. He submitted a report to the Conference made by his committee in conjunction with the Committee on the Operation of the Jury System, the Committee on the Administration of the Probation System, the Committee on the Administration of the Federal Magistrates System and the Advisory Committee on Criminal Rules. The Conference agreed that copies of this report should be sent to the Chairmen and each member of the judiciary committees of both the Senate and the House of Representatives.

SPEEDY TRIAL ACT

The Conference approved a recommendation submitted by the Department of Justice which would amend the Speedy Trial Act of 1974 to make the exclusions (periods of delay) enumerated in Section 3161(h) applicable to the time running under Section 3164(b) for those held in continuous custody solely for the purpose of trial or designated as high risk.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Judge Albert C. Wollenberg, Chairman, presented the report of the Committee on the Administration of the Probation System.

VISITS TO FEDERAL INSTITUTIONS

Judge Wollenberg advised the Conference that his committee is concerned that the only exposure to federal correctional institutions for many district court judges is a brief visit to a medium or minimum security institution while attending a sentencing in-

stitute. This provides limited exposure to the realities of imprisonment. The committee has found that individual sentencing decisions depend in part on current understanding of the facilities, programs and problems at federal correctional institutions and that this necessary understanding can be furthered by periodic visits by the judges to the federal institutions serving their respective courts. To this end, the committee recommended and the Conference adopted the following resolution:

Whereas, the Conference notes that one of the most serious responsibilities of the judges of the district courts is that of imposing sentence in criminal cases; and

Whereas, the Conference is of the opinion that informed sentencing decisions depend in part on a current understanding of the facilities, programs, and problems at the various Federal correctional institutions; now, therefore be it

Resolved, that the judges of the district courts, as soon as feasible after their appointment and periodically thereafter, shall make every effort to visit the various Federal correctional institutions that serve their respective courts.

PRETRIAL SERVICE AGENCIES

The Committee reported that the ten pretrial service agencies have acquired their necessary space, furniture and equipment. In the five agencies administered by the Probation Division all professional staff have been selected and have entered on duty. In the five board of trustees agencies all professional staff have been selected.

At the request of the Probation Division, the committee has endorsed the establishment of Title II type programs with complete data collection in several districts willing to undertake such a program with existing probation staff. Information obtained from these districts will strengthen the required evaluation.

The Committee has advised the Probation Division that it is of the opinion that the language of Section 3154 of Title 18, United States Code, makes contract services available to all persons released under Chapter 207 of Title 18 and does not restrict such services to residential programs only.

NARCOTIC AFTERCARE PROGRAMS

Judge Wollenberg advised that his Committee has been informed that the Director of the Bureau of Prisons has formally proposed the transfer of responsibility for drug treatment from the Bureau to the Federal Probation System. The Committee noted that Con-

gress has expressed policy in this area through the passage of Title II of the Speedy Trial Act extending limited contract authority to the Probation System for drug treatment programs and other supportive services for persons on pretrial release. There is little assurance that a person participating in a drug treatment program as a condition of pretrial release can continue a treatment program once placed on probation. Accordingly, the Committee instructed the Probation Division to explore the problem and report to the Committee.

In September 1975 the White House Domestic Council Drug Abuse Task Force issued its report and recommended that funds and responsibilities be transferred from the Bureau of Prisons to the Probation Service which should be made the pay agent for treatment services for federal parolees and probationers.

The Committee is of the view that the provision of drug treatment services seems to be a function more appropriate to the Executive Branch than the Judicial Branch. The Committee recognizes, however, that the responsibility for persons on probation and parole rests with the Federal Probation System and that drug treatment services are necessary for the proper operation of the probation system. Aside from the issue of who provides them, the services must be available. The Conference was advised that the Committee has endorsed a policy position that if the Executive Branch does not provide these programs and the Congress transfers the responsibility to the Probation System, then the Probation System must do its utmost to carry out the intent of Congress.

PROBATION PERSONNEL

At its September 1975 session, the Conference on the recommendation of the Committee on the Budget instructed the Committee to review and reevaluate the formula being used to determine the staffing requirements of probation offices prior to the 1976 hearing before the House Appropriations Subcommittee. In response to the instructions the Probation Division conducted a time study which was analyzed by the Federal Judicial Center. This study involved detailed timekeeping by a random sample of 139 officers during the period October 29 to November 25, 1975. After a review of the final report of the time study, the Committee has reaffirmed its approval of the formula being used to determine staffing requirements of the probation offices.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

SALARIES AND ARRANGEMENTS FOR REFEREES

The Conference considered the Committee's report, as well as the recommendations of the Director, the judicial councils and the district judges, and took the following actions relating to bankruptcy judge positions and changes in salaries and arrangements in the several districts concerned. The Conference agreed that its action would be effective May 1, 1976, unless otherwise indicated and subject to the availability of funds.

THIRD CIRCUIT

Western District of Pennsylvania

- (1) Authorized a third full-time referee in bankruptcy position at Pittsburgh, at an annual salary of \$37,800;
- (2) Established the place of office at Pittsburgh and the territory of both the new position and the currently authorized position to consist of fifteen counties, as follows:

1. Allegheny	9. Fayette
2. Armstrong	10. Greene
3. Beaver	11. Indiana
4. Bedford	12. Lawrence
5. Blair	13. Somerset
6. Butler	14. Washington
7. Cambria	15. Westmoreland
8. Clearfield	
- (3) Established the places of holding court away from the Pittsburgh area at Greensburg and Johnstown;
- (4) Established the territory of the present full-time referee position at Erie to consist of the remaining counties in the district, as follows:

1. Clarion	6. Jefferson
2. Crawford	7. McKean
3. Elk	8. Mercer
4. Erie	9. Venango
5. Forest	10. Warren
- (5) Established the places of holding court away from the Erie headquarters at Mercer and Warren; and
- (6) Established concurrent district-wide jurisdiction for all the full-time referees of the district.

FOURTH CIRCUIT

Eastern District of North Carolina

- (1) Changed the part-time referee in bankruptcy position at Wilson to a full-time position, at an annual salary of \$37,800;
- (2) The change to full-time service to become effective as soon as appropriated funds become available;
- (3) Continued the regular place of office and territory as at present, and designated, in addition to the headquarters office, Washington, Raleigh, New Bern, and Fayetteville as places of holding court.

Southern District of West Virginia

- (1) Authorized the continuance of the full-time referee position at Charleston to become vacant by expiration of term on May 31, 1976, for a term of six years, effective June 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Texas

- (1) Authorized the continuance of the full-time referee position at Dallas to become vacant by expiration of term on September 30, 1976, for a term of six years, effective October 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Southern District of Ohio

- (1) Authorized a third full-time referee position at Columbus, at an annual salary of \$37,800;
- (2) Transferred the counties of Union, Logan, Madison and Fayette, currently being served by the referees at Dayton, to the referees headquartered at Columbus;
- (3) Established the regular place of office for the new position to be the same as for the other full-time referees now headquartered at Columbus;
- (4) Established the places of holding court away from the Columbus headquarters at Zanesville and Steubenville; and
- (5) Established concurrent district-wide jurisdiction for the full-time referees of the district.

SEVENTH CIRCUIT

Southern District of Indiana

- (1) Authorized the continuance of the full-time referee position at Indianapolis to become vacant by expiration of term on August 31, 1976, for a term of six years, effective September 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

Western District of Missouri

- (1) Authorized a third full-time referee position at Kansas City, at an annual salary of \$37,800;

- (2) Established the regular place of office and territory to be the same as for the other full-time referees presently headquartered at Kansas City;
- (3) Established concurrent State-wide jurisdiction for the full-time referees in the Eastern and Western Districts.

NINTH CIRCUIT

Northern District of California

- (1) Authorized a seventh full-time referee position for the district with headquarters at San Francisco, at an annual salary of \$37,800;
- (2) Established the regular place of office and territory to be the same as for the other full-time referees headquartered at San Francisco;
- (3) Established concurrent district-wide jurisdiction for all full-time referees of the district.

Eastern District of California

- (1) Authorized the continuance of the full-time referee position at Sacramento to become vacant by expiration of term on June 30, 1976, for a term of six years, effective July 1, 1976, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Nevada

- (1) Authorized the continuance of the full-time referee position at Reno, which was authorized for full-time status effective October 1, 1976 and which is to become vacant by expiration of term on September 30, 1976, for a term of six years effective October 1, 1976, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

TENTH CIRCUIT

District of Kansas

- (1) Authorized a third full-time referee position for the district, at an annual salary of \$37,800, the regular place of office to be at Topeka;
- (2) Designated Wichita, Topeka, Kansas City, Salina, and Fort Scott as places of holding court for all referees in the district.
- (3) Established concurrent district-wide jurisdiction for all referees in the district over cases filed within the district.

Northern District of Oklahoma

- (1) Authorized an additional part-time referee position for the district, at an annual salary of \$16,500, for a term of six years;
- (2) Established Tulsa as the headquarters for the position, with Tulsa being the only designated place of holding court within the district.

Eastern District of Oklahoma

- (1) Increased the salary for the part-time referee position at Okmulgee from \$13,900 to \$16,500 per annum, subject to the availability of funds.

CHANGE IN ARRANGEMENTS

Upon recommendation of the Bankruptcy Committee and with the approval of the Judicial Council of the Second Circuit the Executive Committee of the Judicial Conference on December 15, 1975 approved the transfer of the headquarters of the Bankruptcy Office in Yonkers in the Southern District of New York to White Plains.

CASE FILINGS

Bankruptcy case filings increased by 9.5 percent in the first six months of fiscal year 1976, following the 34.3 percent increase of the previous year. It is now anticipated that 280,000 new bankruptcy cases will be filed in fiscal year 1976, or an increase of 26,000 cases over the 254,484 cases filed in fiscal year 1975. The percentages of business cases to the total number of cases filed continues to increase, as well as the number of business cases filed under the special relief chapters of the Act. In the first four months of fiscal year 1976 business cases made up 13.8 percent of the total filings as compared to 11.4 percent in the same period of the previous fiscal year.

STATUS OF THE REFEREES' SALARY AND EXPENSE FUND

It is estimated that receipts to the Referees' Salary and Expense Fund for fiscal year 1976 will be \$22,503,000 and that expenses of the system will be \$26,358,000. In fiscal year 1977 (October 1, 1976 to September 30, 1977), it is estimated that receipts to the Fund will be \$25,879,000 and that expenses of the system will be \$29,769,000. Expenses of the system in excess of receipts to the Fund are paid from the general funds of the Treasury.

LEGISLATION

The Conference was advised that the President on February 27, 1976 signed Public Law 94-217 making the salaries of full-time referees statutory and setting them at \$37,800 per annum, subject to future cost-of-living adjustments and the actions of the Quadrennial Salary Commission.

STUDY OF PROCEDURES FOLLOWED IN BANKRUPTCY APPEALS

Judge Weinfeld advised that his Committee has requested the Bankruptcy Division of the Administrative Office to study the

procedures followed in the courts for processing bankruptcy appeals under Part VIII of the Rules of Bankruptcy Procedure to insure that procedures will result in cases being promptly brought before the judges.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge Roy W. Harper, Chairman of the Committee on Intercircuit Assignments, submitted a written report for the consideration of the Conference covering the period from August 15, 1975 to February 15, 1976.

During this period the Committee recommended 73 assignments to be undertaken by 53 judges. Of this number, four are senior circuit judges, four are active circuit judges, 17 are district judges in active status and 23 are senior district judges. One retired Supreme Court Justice participated in seven assignments. Six assignments involved one active judge from the Court of Claims, two active judges from the Court of Customs and Patent Appeals and one active judge of the Customs Court.

Four senior circuit judges, nine senior district judges, and one retired Supreme Court Justice carried out 26 of the 43 assignments to the circuit courts of appeals which were recommended during the period. Of the 30 assignments to the district courts, 16 senior district judges participated in 17 assignments, the remaining 13 being carried out by ten active district judges and one active judge of the United States Customs Court.

COMMITTEE ON THE ADMINISTRATION OF THE
FEDERAL MAGISTRATES SYSTEM

In the absence of the Chairman, Judge Charles M. Metzner, the report of the Committee on the Administration of the Federal Magistrates System was presented by Judge Donald R. Ross.

CONFLICTS OF INTEREST

Pursuant to the request of the Judicial Conference at its September 1975 session, the Committee obtained the views of the judiciary on the proposal to preclude a part-time magistrate from accepting fees for services performed as a special master, whether or not such service is rendered in the magistrate's official capacity. The proposal would also preclude the taxing of fees against liti-

gants for the magistrate's service. The assessment of costs for other expenses of the referees would not be covered by the resolution.

In the light of the responses received from the questionnaires sent to all federal judges, the Committee reconsidered its proposal and again recommended to the Conference that as a matter of policy a part-time magistrate be precluded from accepting fees, in addition to the salary set for his position by the Conference, for services performed as a special master, whether or not the service is rendered in the magistrate's official capacity. The Conference agreed to this policy statement and also to the recommendation that no fees should be taxed against litigants for such service.

CHANGES IN MAGISTRATES POSITIONS

Prior to the meeting of the Conference, the Executive Committee authorized, upon recommendation of the Administrative Office and the Magistrates Committee, the conversion of the part-time magistrate position at Charlotte in the Western District of North Carolina to a combination deputy clerk-magistrate position at no change in the currently authorized \$8,000 annual compensation. The Conference ratified the action of its Executive Committee.

After full consideration of the survey reports of the Director of the Administrative Office regarding changes in magistrates positions and salaries, together with the views of the district courts and the circuit councils concerned, as well as the Committee recommendations, the Conference approved the following changes which, unless otherwise indicated, are to be effective when appropriated funds are available.

FIRST CIRCUIT

District of Massachusetts

- (1) Increased the salary of the part-time magistrate position at Ayer from \$9,500 to \$13,959 per annum.

District of Rhode Island

- (1) Authorized a full-time magistrate position at Providence at a salary of \$31,500 per annum;
- (2) Discontinued the authority of the clerk of court at Providence to perform the duties of a part-time magistrate, effective upon the appointment of the full-time magistrate;
- (3) Discontinued the part-time magistrate position at Providence, effective upon the appointment of the full-time magistrate.

SECOND CIRCUIT

Northern District of New York

- (1) Increased the salary of the part-time magistrate position at Syracuse from \$1,661 to \$1,993 per annum.

Eastern District of New York

- (1) Increased the salary of the part-time magistrate position at Patchogue from \$1,329 to \$3,323 per annum.

THIRD CIRCUIT

Middle and Western Districts of Pennsylvania

- (1) Authorized jurisdiction for the full-time magistrate at Harrisburg over the entire area of Raystown Lake National Recreation Area, including the portions thereof lying within the Western District of Pennsylvania.

FOURTH CIRCUIT

District of Maryland

- (1) Authorized an additional full-time magistrate position at Baltimore at a salary of \$31,500 per annum.

Eastern District of North Carolina

- (1) Increased the salary of the part-time magistrate position at New Bern from \$2,658 to \$5,539 per annum.

Western District of Virginia

- (1) Increased the salary of the part-time magistrate position at Lynchburg from \$1,661 to \$3,323 per annum.

Northern District of West Virginia

- (1) Authorized a part-time magistrate position at Parkersburg at a salary of \$387 per annum.

Southern District of West Virginia

- (1) Converted the part-time magistrate position at Huntington to a full-time position at a salary of \$31,500 per annum.

FIFTH CIRCUIT

Northern District of Georgia

- (1) Continued the part-time magistrate position at Newnan for the remainder of the current term, with no change in salary.

Western District of Louisiana

- (1) Increased the salary of the part-time magistrate position at Alexandria from \$9,417 to \$13,959 per annum.

Southern District of Texas

- (1) Increased the salary of the part-time magistrate position at Edinburg-McAllen from \$11,079 to \$15,000 per annum.

SIXTH CIRCUIT

Southern District of Ohio

- (1) Increased the salary of the part-time magistrate position at Dayton from \$11,079 to \$15,000.
- (2) Discontinued the part-time magistrate positions at Springfield and Chillicothe.

EIGHTH CIRCUIT

Western District of Arkansas

- (1) Increased the salary of the part-time magistrate position at Fort Smith from \$1,993 to \$3,323 per annum.

Eastern District of Missouri

- (1) Authorized an additional full-time magistrate position at St. Louis at a salary of \$31,500 per annum.
- (2) Discontinued the authority of the clerk of court at St. Louis to perform the duties of a part-time magistrate, effective upon the appointment of the new full-time magistrate.

Western District of Missouri

- (1) Authorized an additional full-time magistrate position at Kansas City at a salary of \$31,500 per annum.
- (2) Discontinued the part-time magistrate position at Jefferson City, effective upon the appointment of the new full-time magistrate at Kansas City.

NINTH CIRCUIT

Eastern District of California

- (1) Authorized a full-time magistrate position at Fresno at a salary of \$31,500 per annum.
- (2) Discontinued the two part-time magistrate positions at Fresno, effective upon the appointment of the full-time magistrate at that location.

Eastern and Central Districts of California

- (1) Increased the salary of the part-time magistrate position at Lancaster from \$1,329 to \$2,658 per annum.

District of Oregon

- (1) Authorized an additional full-time magistrate position at Portland at a salary of \$31,500 per annum.
- (2) Increased the compensation paid to the referee in bankruptcy at Eugene for the performance of duties as a part-time magistrate from \$13,959 to \$15,000 per annum.

TENTH CIRCUIT

District of New Mexico

- (1) Increased the salary of the part-time magistrate position at Albuquerque from \$664 to \$11,079 per annum.

District of Wyoming

- (1) Increased the salary of the part-time magistrate position at Cheyenne from \$3,323 to \$6,647 per annum.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

The report of the Committee to Implement the Criminal Justice Act was presented by the Chairman, Judge Dudley B. Bonsal.

APPOINTMENTS AND PAYMENTS

The Conference authorized the Director of the Administrative Office to disseminate to the chief judges of all United States district courts, to all defender organizations and to any other interested parties the report of the Administrative Office on appointments and payments made under the Criminal Justice Act for the period ending December 31, 1975.

This report showed that during the first half of fiscal year 1976 there were 19,613 persons represented under the Criminal Justice Act, a 5.8 percent increase over the number represented during the first half of fiscal year 1975. Private attorneys were appointed to represent 11,756 persons and federal defender organizations were assigned 7,857 cases, the latter representing an increase of 17 percent.

Judge Bonsal reported that since the last session of the Conference a new federal public defender organization has become operational in the Western District of Texas.

Congress appropriated \$18,890,000 for fiscal year 1976 which includes a supplemental of \$2.3 million. For fiscal year 1977 an appropriation request was made for \$20,686,000.

FEDERAL PUBLIC DEFENDER OFFICES

In accordance with the requirements of the Criminal Justice Act the Conference approved a proposed budget for the remainder of fiscal year 1976, the transition period, and for fiscal year 1977 for the new public defender office established in the Western District of Texas in the amounts of \$188,500 for fiscal year 1976, \$69,700 for the transition quarter and \$294,900 for fiscal year 1977, with an eventual staff of seven attorneys, two investigators and five secretaries.

COMMUNITY DEFENDER ORGANIZATIONS

The Federal Defenders of San Diego, Inc., which operated on an initial grant approved by the Judicial Conference and since that time has been submitting vouchers for individual cases only, has now submitted a request for sustaining grants for the transition quarter, commencing July 1, 1976, and for fiscal year 1977 in the amounts of \$150,000 and \$612,000. On recommendation of the Committee, the Conference approved the grants in the amounts requested.

The Conference likewise approved sustaining grants for other community defender organizations for the fiscal year ending September 30, 1977, as follows:

Atlanta, Georgia-----	\$158,941	New York, New York-----	863,295
Chicago, Illinois-----	293,000	Portland, Oregon-----	130,000
Detroit, Michigan-----	575,000	Philadelphia, Pennsylvania--	291,500
Minneapolis, Minnesota-----	33,185		

The Conference also approved a supplemental grant in the amount of \$5,000 for the Community Defender Organization in Portland, Oregon, for the fiscal year ending June 30, 1976.

INVESTIGATION OF ASSISTANT FEDERAL PUBLIC DEFENDERS

Upon recommendation of the Committee, the Conference agreed to rescind its requirement that all prospective assistant federal public defenders be subject to a full-field investigation by the Federal Bureau of Investigation prior to employment. In lieu thereof, the Conference agreed that only a name check will be required unless the federal public defender concerned requests a full-field investigation. The report of any investigation made of an assistant federal public defender shall be transmitted to the federal public defender concerned since by statute he is the appointing officer.

REIMBURSEMENT AS A CONDITION OF PROBATION

Judge Bonsal advised that his Committee had noted that some judicial officers are requiring as a condition of probation reimbursement by the defendant of funds expended under the Criminal Justice Act by the government for his defense. He advised that the Committee has reaffirmed the current guideline which reads that:

Subsection (f) of the Act does not authorize a judicial officer to require reimbursement as a condition of probation.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

At the September 1975 session of the Conference there were approved for transmittal to the Supreme Court, with an endorsement for favorable action, proposed rules under Chapter IX of the Bankruptcy Act relating to Composition of Indebtedness of Certain Taxing Agencies. On March 25, 1976, the Congress approved for transmittal to the President for signature a bill amending Chapter IX which when signed became Public Law 94-260. Anticipating the passage of this bill, the Committee had arranged with the Advisory Committee on Bankruptcy Rules to prepare an amended set of Chapter IX rules to conform to the proposed new statute. These rules were submitted to the standing Committee and approved, with minor modifications. The Conference approved these new Chapter IX rules, as amended, for immediate transmittal to the Supreme Court in place of the Chapter IX rules approved at the September 1975 session.

BICENTENNIAL COMMITTEE

Judge Clement F. Haynsworth, Jr., and Judge Edward J. Devitt, co-Chairmen, submitted a report to the Judicial Conference on the work of the Bicentennial Committee.

The report stated that the Committee is completing negotiations with Metropolitan Pittsburgh Public Broadcasting, Inc., for the production of five films available to the general public for use in the classroom and at group meetings, and a ninety minute special feature film, formed of excerpts of the movies, to be shown on prime time on public broadcasting stations. The movies will focus on early decisions that were significant in the development of this country's federal system. The movies are expected to be available for distribution in the fall of 1976.

The Committee's projected popular book, intended for use primarily by the lay public and focusing on the role of our courts, is being written by Professor Sidney Hyman of the University of Illinois at Chicago and should be available for distribution during the summer of 1976.

In furthering the biographical directory project the Committee has distributed biographical questionnaires to all members of the federal judiciary. Similar questionnaires are being completed about each deceased judge by a subcommittee of the Bicentennial Committee.

The report stated that the circuits have the option of preparing a history of the courts in their geographic area and the Committee is considering providing up to \$5,000 to each circuit for the writing of its history, upon submission of justification thereof.

The Committee further noted that it has been working closely with the planners of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, of which the Judicial Conference is a co-sponsor, as a very important part of the Judiciary's Bicentennial celebration.

RESOLUTION

Noting with deep regret the death of its long-time member and Director of the Federal Judicial Center, the Honorable Alfred P. Murrah, the Conference adopted the following resolution:

The Judicial Conference of the United States mourns the passing of Alfred P. Murrah on October 30, 1975. Truly one of the great men of his time, he has made a profound and lasting impression on the Judiciary.

Born in Indian country in 1904, Judge Murrah worked his way through the School of Law at the University of Oklahoma. He practiced law in Seminole and Oklahoma City, until he was appointed to the United States District Court at the age of 32, one of the youngest men ever appointed to the Federal Bench. Only three years later he was elevated to the Court of Appeals for the Tenth Circuit. In 1959 he became Chief Judge, a position he held until 1970 when he took senior status to succeed Justice Tom Clark as the second Director of the Federal Judicial Center. Resigning from this position in 1974, he returned to his beloved Oklahoma but continued to hear cases even though he was suffering from cancer.

This bare skeletal outline does not begin to suggest the service he rendered to the judicial and legal professions, as well as to the community as a whole. He was not only a member of this Conference for many years but served on many of its Committees. Because of his great capacity as a leader, he usually became Chairman of whatever group or committee he served. He held many posts in the American Bar Association and the American Judicature Society, receiving the Justice Award from the latter organization in September, 1973. His many accomplishments, services rendered and honors received would fill many pages.

We looked to him for leadership and depended upon him for his advice. We will miss his delightful wit, his warm handshake and friendly smile. As Reverend Doctor Hinchley, Pastor of the Crown Heights United Methodist Church in

Oklahoma City, said in concluding his remarks at Judge Murrah's funeral service, "This world and the next are richer—oh so richer—because we have been blessed to have lived with him."

REPORTS BY CHIEF JUDGES

The Conference agreed to dispense in the future with the requirement of the reports on the disposition of cases pending in the district courts for more than three years and the disposition of cases under submission in the courts of appeals and cases and motions under advisement in the district courts heretofore required by sections (a) and (b) of Agenda Item H.

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, for the session of court to be held by the Fourth Circuit at Asheville, North Carolina, the sessions of the Court of Appeals for the Fifth Circuit to be held outside of New Orleans, Louisiana, for the sessions of the Eighth Circuit Court of Appeals to be held at Kansas City, Missouri, and Omaha, Nebraska, and for all sessions of the Tenth Circuit Court of Appeals to be held at Oklahoma City, Oklahoma, prior to the next session of the Conference.

ELECTIONS

The Conference noting that the term as a member of the Board of Certification for Circuit Executives of Chief Judge Howard T. Markey would expire on July 1, 1976, unanimously elected Judge Markey to serve for another term, commencing July 1, 1976, in accordance with the provisions of 28 U.S.C. 332(f).

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.

WARREN E. BURGER,
Chief Justice of the United States.

JUNE 8, 1976.

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