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

September 15-16, 1977

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ACQUISITIONS

Washington, D.C.
1977

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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 eight circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

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

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

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

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

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

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

September 15-16, 1977

The Judicial Conference of the United States convened on September 15, 1977, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The following members of the Conference were present:

First Circuit:

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

Second Circuit:

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

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 William C. Keady, Northern District of Mississippi

Sixth Circuit:

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

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 James R. Browning
 Chief Judge Thomas J. MacBride, Eastern District of
 California

Tenth Circuit:

Chief Judge David T. Lewis*
 Judge Wesley E. Brown, District of Kansas

District of Columbia Circuit:

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

Court of Claims:

Acting Chief Judge Oscar H. Davis

Court of Customs and Patent Appeals:

Chief Judge Howard T. Markey

Circuit Judges Robert A. Ainsworth, Jr. and Edward A. Tamm; Senior Circuit Judge Richard H. Chambers; District Judges Wesley E. Brown, Charles M. Metzner and Edward Weinfeld; and Senior District Judges Dudley B. Bonsal, Arthur J. Stanley, Jr., Carl A. Weinman, Albert C. Wollenberg and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

Members of the Anglo-American Exchange who were meeting in Washington at the time of the Conference attended, by invitation, at the opening session on the first day of the Conference, as did the Honorable Griffin B. Bell, Attorney General of the United States, and the Honorable Wade H. McCree, Solicitor General of the United States.

The Honorable Edward M. Kennedy, a member of the Judiciary Committee of the United States Senate, addressed the Conference at its second session on September 16.

Professor A. Leo Levin, Director of the Federal Judicial Center, presented the annual report of the Center. The report of the Panel on Multidistrict Litigation was submitted for the record.

Also in attendance were Mark W. Cannon, Administrative Assistant to the Chief Justice, William E. Foley, Dep-

*On designation of the Chief Justice, Judge Oliver Seth attended in place of Chief Judge David T. Lewis.

uty Director, and Joseph F. Spaniol, Jr., Assistant Director of the Administrative Office of the United States Courts.

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

The report of the Director of the Administrative Office of the United States Courts, Mr. Rowland F. Kirks, was approved by the Conference for distribution to all federal judges, as was Mr. Kirks' second annual report on the implementation of the Speedy Trial Act of 1974 which, by statute, must be submitted to the Congress by September 30, 1977.

The Director's annual report on the work of the federal courts in the past year shows once again a rise in the filings in the courts of appeals. In the year ending June 30 new case filings rose over the prior year by 3.9 percent. The new filings were 63.9 percent greater than in 1970.

In the district courts new case filings in civil litigation remained relatively stationary. The type of cases filed, however, showed some change.

There were fewer prisoner suits—there was a substantial decrease in petitions for black lung benefits, in land condemnation cases and in the number of ICC regulation cases. Increases were noted in civil rights filings, in copyright, patent and trade-mark suits and in the foreclosures of federally mortgaged property.

The number of felony and misdemeanor cases in the district courts dropped by more than eight percent during 1977. There was a marked decrease in the number of robbery and assault cases prosecuted in the federal courts. Drug law prosecutions declined 22 percent.

Bankruptcy filings decreased in the year ending June 30, 1977, by 13 percent; 85 percent of all of the filings in that period were in the non-business bankruptcy category.

The work of the United States magistrates increased markedly. The total number of matters handled rose by almost 14 percent. Pretrial conferences, motions, prisoner petitions and post-indictment arraignments conducted by magistrates showed a 32 percent increase over the prior year.

In the area of juror utilization, the federal courts continued to make progress, with the percentage of jurors called but not selected declining from almost 33 percent in 1971 to 24 percent in 1977.

COMMITTEE ON COURT ADMINISTRATION

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

STATUS OF SENIOR JUDGES

Pursuant to a motion made at the March session of the Judicial Conference, the Committee presented a report containing a summary of the current regulations and practices affecting senior judges. The Conference approved the release of this report to all federal judges and in so doing also approved a recommendation that all courts should make a continuing study of the space needs of the courts as related to the senior judge potential of each of them.

The Conference further approved a resolution providing that any judge assuming senior status may retain a court reporter in permanent status for as long as he continues to take at least 75 percent of the draw of annual case filings assigned to judges in active status, as certified annually by the chief judge of the district.

OFFICE OF THE CLERK OF COURT

The Conference approved and authorized distribution of a mission statement of the office of the clerk of court. This statement, originally prepared by a group of clerks of court, was subsequently approved by all clerks of the district courts and by the Conference of Metropolitan Chief Judges which is held under the auspices of the Federal Judicial Center.

DISBURSEMENT FUNCTION

The Conference was advised that the Administrative Office has been conducting a pilot study in four district courts for the purpose of determining the amount of time

and the effort involved in transferring to the office of the clerk of court the disbursement function now handled by the United States marshal. The Conference was advised that the Office of the General Counsel of the Administrative Office and the marshal's office have agreed that the transfer of the disbursement function is consistent with the statutes and is agreeable to both offices. The United States marshal has been serving in his capacity of disbursement officer for the courts as a carry-over function from the days before the establishment of the Administrative Office when such functions were centralized in the Department of Justice. The Conference was satisfied that the experience of the Administrative Office with the pilot project leads to the conclusion that the transfer of the disbursement function to the clerk of court is feasible and will not unduly burden the office of the clerk of court. The Conference agreed with the views of the Committee and the Administrative Office that the transfer of this function is in the furtherance of the separation of powers and the independence of the federal judiciary and, accordingly, approved the recommendation to authorize and designate to the clerks of court the responsibility for the disbursement of funds.

LEGISLATION

Administrative Law Judges

The Conference voted its disapproval of H.R 865, 95th Congress, a bill which would give legislative sanction to the term "Administrative Law Judge" which is currently permitted by Civil Service regulation for all hearing examiners in the executive branch and would further provide that the salaries of all such hearing officers would be 90 percent of the salaries of a United States district judge. The Conference noted that there are now more than 1,000 such hearing examiners in 29 departments and agencies who conduct hearings for their agencies and resolve many matters administratively. In some cases the proceedings are not adversary in nature and in others the hearing examiner is an arm of his agency in policy and rule-making. The Judicial Conference which has historically opposed proposals in the past to give legislative sanc-

tion to the title "Administrative Law Judge" agrees with the recommendation of the Committee that it adhere to this policy and opposes H. R. 863, both as to change of the title and as to the salary change.

Civil Service Annuity Payments to Judges

The Conference voted its disapproval of H.R. 4320, a bill which would amend chapter 83 of Title 5, United States Code, to discontinue Civil Service annuity payments while a person serves in active status as a justice or judge of the United States. The bill would apply to any justice or judge appointed after the enactment of the legislation. The Conference was of the view that H.R. 4320 would result in no substantial savings to the government, since most persons who would be affected by the bill would undoubtedly refuse judicial appointment. Thus, it would effectively freeze out of federal judicial service many former employees of the federal government who are entitled to a Civil Service annuity.

Bilingual Courts Act

The Conference considered two draft bills which would have the effect of putting into legislation the present rules relating to the use of interpreters and would give the Director of the Administrative Office further authority with relation to the maintenance of a list of interpreters in the district courts and the use of translation services. Both bills were essentially the same with the exception that the second bill provided for the optional use of the Spanish language in the federal courts of Puerto Rico. The Conference expressed its preference for the first bill, subject to clarification requested by the Tenth Circuit, pointing out that while the decision as to the use of the Spanish language in the federal courts of Puerto Rico is essentially a matter of policy for legislative determination, nevertheless, certain practical considerations must be considered if such use of the Spanish language is to be permitted, namely, that such legislation would effectively bring to an end the intercourt assignment of judges to serve in Puerto Rico which has become almost continuous to assist the judges of Puerto Rico with the enormous backlog of actions which they face. It would result in the filing in federal courts of many cases now restricted to the

Commonwealth courts because of language barriers and thus bring an enormous increase to the already heavily burdened federal courts; enormous delays in expenses would be incurred in moving cases on appeal to the first Circuit where all documents and briefs and transcripts would have to be in the English language; it would place an enormous burden on the court reporter system in Puerto Rico where a study conducted three years ago makes it clear that very few court reporters who speak only Spanish would qualify under the court reporters' standards required in the federal courts; and, lastly, the federal bar in San Juan is largely an English speaking bar.

Telecommunications Privacy Act

The proposed Telecommunications Privacy Act of 1977 would effectively replace Chapter 119 of the Omnibus Crime Control and Safe Streets Act of 1968. Under this chapter the Administrative Office currently has the responsibility for the collection, compilation and statistical analysis of federal and state court authorized interception of wire or oral communications. Each year at the end of April a report is required to be made to the Congress on all such interceptions terminated during the previous calendar year. The Conference noted that while the Administrative Office has never regarded the reporting of communications interceptions as a natural extension of its functions in administering the federal courts, nonetheless, it has complied completely with the requirements of the statute. The new bill, however, would further enlarge upon the activities of the Administrative Office, requiring it to collect information regarding ex parte orders which would have to remain confidential. The collection of these orders is not required for the preparation of the analysis and summary to be submitted annually to the Congress. Secondly, the collection of the copies of court orders and of the applications and transcripts of related proceedings and reports concerning the disposition of all recommendations go far beyond what the act requires for the report to the Congress. Implementation would require considerable augmentation of Administrative Office personnel, space and security. The Conference, therefore, recommends that the proposed act be amended so that the Ad-

ministrative Office would be required to collect only information which is required to report to the Congress.

Diversity Jurisdiction

In considering the provisions of H.R. 5546, the Conference adhered to the position taken at the March 1977 session (Conf. Rept., p. 8) favoring the complete abolition of general diversity jurisdiction, or failing that, the elimination of the in-state plaintiff and the increase in the amount-in-controversy requirement to \$25,000. Should the Congress consider enacting H.R. 5546, the Conference approved certain suggestions for technical amendments which the Director for the Administrative Office was authorized to transmit to the Congress.

Panel on Multidistrict Litigation

The Conference expressed its disapproval of a proposal to amend Section 1407 of Title 28, United States Code, to enlarge the authority of the Panel on Multidistrict Litigation as recommended by the Antitrust Section of the American Bar Association.

Labor Court

The Conference disapproved H.R. 3596, a bill which would create a separate court of five judges to serve for terms of twelve years and to have jurisdiction over certain labor disputes in industries substantially affecting commerce. The Conference expressed its concern with the tendency toward the proliferation of separate courts and tribunals and agreed that the disputes which are the subject of the pending legislation can be adequately handled through the existing federal court structure.

Salaries

In considering the provisions of H.R. 5876, which would revise the manner in which the salary rates of certain executive, legislative and judicial positions are adjusted, the Conference agreed that such legislation involves a policy determination by the Congress on which the Judicial Conference ought to reserve comment. It was pointed out, however, that there was nothing in the proposed legislation which uniquely affects the salaries and salary setting procedures of the officials of the judicial branch vis-a-vis executive and legislative officials.

Federal Right to Support

The Conference disapproved H.R. 6196, a bill to establish the federal right to every unemancipated child to be supported by such child's parents or parent. The Conference noted the Committee's comment that such legislation in establishing a federal right to support could have a substantial impact upon the workload of the federal judiciary although it purports only to affect state court jurisdiction.

Minimum Level for Retirement Salaries

The Conference voted its disapproval of H.R. 5781, as it had similar legislation in the 93rd and 94th Congresses, which would provide a minimum level for retirement salaries of certain federal judges in territories and possessions by amending Section 373 of Title 28, United States Code. The Conference again expressed the view that such legislation involved matters that are essentially private relief bills and that the objective should not be achieved by amending Title 28, United States Code.

Witness Fees

The Conference approved the concept involved in H.R. 8220 which would amend Section 1821 of Title 28, United States Code, to increase the fees of a witness in a federal court proceeding from \$20 to \$30 per day and to provide an allowance for expenses of travel and subsistence on the same basis as is provided for travel and subsistence of salaried members of the federal government.

Speedy Trial Act

At the direction of the Conference at its March session, the Committee, through an ad hoc committee, reviewed the operation of the Speedy Trial Act and proposed to the Conference certain amendments to the act, as follows:

1. The ultimate time strictures of §3161 of 30 days arrest-to-indictment, ten days indictment-to arraignment, and sixty days arraignment-to-trial should be changed instead to sixty days from arrest to indictment, twenty days from indictment to arraignment, and not less than thirty nor more than one hundred days from arraignment to trial.

2. The exclusions of periods of delay enumerated in §3161 (h) should also include the time computations concerned with arraignments, with retrial, and should specif-

ically include the applicability of all exclusions during the interim period that will end July 1, 1978, as provided in §3161 (g).

3. The word "examination," in §3161 (h) (1) should be changed to the word "motion."

4. The minimum time period of thirty days for trial following arraignment provided in §3161 (b) should be waivable by the defendant.

5. Section 3161 (c) should apply to complaints before magistrates so as to read: "The arraignment of a defendant charged in an information or indictment, or in a complaint before a magistrate, with the commission of an offense shall be held . . ."

6. The phrase in §3161 (c), "held to answer," should be eliminated.

Upon review of these recommendations, the Conference expressed its approval of them and authorized the Director of the Administrative Office to transmit to the Congress the report of the ad hoc committee.

BIENNIAL SURVEY OF JUDGESHIP NEEDS

The Conference at its March 1977 session approved a recommendation that the Subcommittee on Judicial Statistics be authorized to make biennial surveys of the judgeship needs of the district courts and of the courts of appeals, commencing in 1978. Inasmuch as the Congress has not yet enacted an omnibus judgeship bill based on prior surveys, the Conference agreed that the Subcommittee should be granted discretion as to the time when the first of the biennial surveys is started.

SUPPORTING PERSONNEL

Satellite Libraries

The Committee, pursuant to a mandate of the Judicial Conference at the March 1975 session (conf. Rept., p. 7), received and examined reports prepared both by the Judicial Council of the Third Circuit and by the Administrative Office concerning the satellite library study under way in that circuit. The Conference agreed that since the entire subject matter of libraries for the federal courts is being studied under the aegis of the Federal Judicial Cen-

ter, no final decision on satellite libraries should be made at this time and the Conference authorized that the present pilot study in the Third Circuit be extended for an additional two years in its present status.

Court Reporters

The Conference agreed with the recommendation that the current five percent increase authorized by the Congress for court reporters be awarded solely on the basis of longevity with no substitution therefore and that the other five percent increase, if authorized by the Congress, be granted strictly upon merit—specifically, the certificate of merit. The Conference in approving this recommendation approved changes in the current qualification standards so that they will read as follows:

1. An applicant for appointment hereafter as an official court reporter in a United States District Court shall possess as a minimum requirement at least four years of prime court reporting experience in the free lance field of service or in other courts or a combination thereof and a certificate of proficiency from the National Shorthand Reporters Association.

2. All official court reporters who have satisfactorily met the qualification requirements outlined in (1) above who, in addition, possess a certificate of merit from the National Shorthand Reporters Association shall receive as a salary a starting salary for court reporters set by the Judicial Conference, plus a 5 percent meritorious increase over that starting salary.

3. All official court reporters who have satisfactorily completed ten years of full-time service as a court reporter for a United States District Court shall receive the starting salary established by the Judicial Conference of the United States, plus a five percent longevity increase over that starting salary.

4. All official court reporters who satisfactorily meet the requirements in (1), (2) and (3) above, shall receive as a salary the starting salary for official court reporters as set by the Judicial Conference, plus a 10 percent meritorious and longevity combination increase over that starting salary.

5. The recommendation of the employing court is prerequisite for any increase or combination of increases above the current starting salary. All salary rates will be

adjusted upwards whenever there is a statutory increase for judiciary employees generally.

6. All initial appointments shall be on a probationary basis to be fixed by the employing court.

7. This plan shall be administered by the Director of the Administrative Office of the United States Courts, under the general direction and supervision of the Judicial Conference of the United States. The requirements of item (1) above may be subject to modification where special circumstances warrant.

Senior Staff Attorneys—Courts of Appeals

The Conference approved the Committee's recommendation that in order to avoid confusion with law clerks who serve on the personal staff of the judges, the senior staff law clerks and their assistants in the circuit courts shall now be known as senior staff attorney and staff attorney and that these positions shall, if the Congress agrees, no longer carry ungraded salaries but should be graded at grades approximating the present salaries of the incumbents for the various positions. The Conference was in agreement that these positions are truly staff advisory functions and that the incumbents of such positions in the executive branch enjoy the benefits of a graded position. The Conference also approved certain specific requests recommended by the Committee which have been made by some of the circuits as follows:

Third Circuit: One grade JSP-13 Supervisory Staff Attorney Position.

Fifth Circuit: One grade JSP-14 Supervisory Staff Attorney position and two JSP-13 Supervisory Staff Attorney positions.

Sixth Circuit: One grade JSP-13 Supervisory Staff Attorney position.

Eighth Circuit: One grade JSP-13 Supervisory Staff Attorney position.

Ninth Circuit: Two grade JSP-14 Staff Attorney positions and three grade JSP-13 Staff Attorney positions. The two grade JSP-14 positions are to serve as assistants to the Senior Staff Attorney in the criminal and civil areas respectively, two of the grade 13 positions to serve as subject-matter specialists in criminal and civil motions respectively, and the other grade 13 to serve as a general research subject-matter specialist.

Tenth Circuit: One grade JSP-13 Supervisory Staff Attorney position.

These recommendations were approved subject to the availability of funds.

Lexis Operators

In view of the fact that the experimental stage with Lexis operations has been completed by the Federal Judicial Center and the Center has recommended that the Administrative Office install Lexis in 17 places of holding court around the country, the Conference approved a recommendation that an appropriate staff position be created in those courts which will receive Lexis and which do not as a result of the pilot project currently have a trained Lexis operator on board. The Administrative Office was empowered to establish such a position, whether on a temporary or on a permanent basis, subject to the availability of funds.

COMMITTEE ON THE BUDGET

The report of the Committee on the Budget was submitted by the Chairman, Judge Carl A. Weinman.

APPROPRIATIONS FOR FISCAL YEAR 1978

The Conference was advised that the budget estimates submitted to the Congress for fiscal year 1978 (exclusive of the Supreme Court) initially were in the amount of \$429,261,000. The Director of the Administrative Office, on March 24, 1977, submitted budget amendments in the amount of \$14,540,000 to the Office of Management and Budget to cover the salary increases authorized for judges, magistrates, referees in bankruptcy, and other judicial officers. The appropriation for "Salaries and Expenses of Magistrates" also was revised to include an additional \$580,000 for the new magistrates and implementation of changes in arrangements approved by the Judicial Conference in March 1977.

The revised estimate (exclusive of the Supreme Court) was \$444,381,000. The Appropriation Act for fiscal year 1978 which was approved on August 2, 1977, Public Law 95-86, was in the amount of \$435,127,000, \$9,254,000 less than the amount requested but an increase of \$16,964,000

over the adjusted appropriation for fiscal year 1977. If, for comparative purposes, we exclude the sum of \$31,100,000 appropriated in 1977 for the Judicial Survivors' Annuities Program, the increase—1978 over 1977—would be \$48,060,000, or 11.5 percent.

The Conference authorized the Director of the Administrative Office to submit to the Congress requests for supplemental appropriations for fiscal year 1978 for "pay costs" and for implementation of new legislation, changes in rules, actions of the Judicial Conference and for any other reason he considers necessary and appropriate.

BUDGET ESTIMATES FOR FISCAL YEAR 1979

The Conference approved the budget estimates for fiscal year 1979 which, exclusive of the Supreme Court, Customs Court and the Federal Judicial Center, are in the aggregate amount of \$464,138,000. The proposed increase in budget (obligational) authority over the appropriations for fiscal year 1978 adjusted to the extent of the proposed supplemental for "pay costs" is \$25,660,000 or six percent. The estimates take into account the recommendations of the respective committees of the Conference which will require additional funding. The Director of the Administrative Office was authorized to amend the budget to the extent he considers necessary and appropriate.

The Conference approved the Committee recommendation that the Administrative Office conduct a study for the purpose of reevaluating and recommending to the Judicial Conference any changes in the staffing ratios which may be necessary with respect to clerks' offices in the courts of appeals and the district courts, taking into account any additional duties and responsibilities that have been imposed as well as improvements in methods and procedures accomplished during the past several years.

The Conference also authorized the Director of the Administrative Office to negotiate with the Attorney General for a transfer of funds from the judiciary appropriation for "space and facilities" to the Department of Justice for the purpose of increasing the level of court security

being provided by the United States Marshals Service with a corresponding reduction in protective services being provided by the General Services Administration on a reimbursable basis.

CIVIL ARBITRATION—PILOT PROGRAM

The Conference authorized the expenditure of appropriated funds for the conduct of a pilot civil arbitration program consistent with guidelines and procedures to be established by the Committee on Court Administration in consultation with representatives of the Department of Justice. This action was taken as a result of the recommendation of the Attorney General whose office is preparing proposed legislation on the subject of civil arbitration so that a pilot program might be undertaken to assist both the Department and the Congress in evaluating the proposals for civil arbitration legislation. It is understood that there will be from three to five pilot districts who will participate in the program for a period from six months to one year. It is believed that such an experimental program can be implemented through the adoption of appropriate local rules by the designated courts and that the current appropriations for the operation and maintenance of the courts can be used for this purpose, subject to the approval of the Appropriations Committees of the Congress.

REVIEW COMMITTEE

The report of the Review Committee was presented by the Chairman, Judge Edward A. Tamm.

Pursuant to Committee recommendation, the Conference agreed to establish, through an appropriate committee, standards governing the nature and type of outside activities and affiliations which will be approved for employees of the clerks' offices.

The Conference also agreed that if the present reporting program is continued, public defenders in Grade 15 or above be required to file semiannual reports of non-governmental income.

After giving the Conference a summary of the Committee's review of the reports filed with it pursuant to Conference resolution at the March 1976 session (Conf. Rept.,

p. 24), as subsequently amended, Judge Tamm advised that the following have not filed reports of extrajudicial income for the period January 1 through June 30, 1977, as follows:

Listing, by Circuit, of Judicial Officers Who Have Not, as of September 16, 1977, Filed Reports of Extra-Judicial Income for the Reporting Period Ending June 30, 1977.

Second Circuit

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

Sixth Circuit

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

Ninth Circuit

- Walter Early Craig
U.S. District Judge

Ninth Circuit (Continued)

- ** Warren J. Ferguson
U.S. District Judge
- ** Peirson M. Hall
U.S. District Judge (Senior)
- ** 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 (Senior)
- ** Willis W. Ritter
U.S. District Judge

JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

The report of the Joint Committee on the Code of Judicial Conduct, of which Judge William B. Jones and Judge Edward A. Tamm are Chairmen, was presented to the Conference by Judge Tamm.

The Conference approved the recommendation that Canon 5C(2) be amended to permit a judge to participate in the activities of a family corporation that does nothing more than a judge would be permitted to do by himself in nonincorporated form. The family corporation must be wholly owned by members of the judge's family who are related to the judge or his spouse within the third degree of relationship calculated according to the civil law system.

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

The Conference further approved the recommendation that Canon 5D be amended to redefine the term "member of his family" to mean "any relative of a judge by blood, adoption, or marriage within the third degree of relationship calculated according to the civil law system or any other person treated by a judge as a member of his family who resides, or has resided, in his household." The Conference agreed that this recommendation shall become effective immediately except that it requested the Committee to consider and report to the March session on the question of a grandfather clause as to judges in a fourth degree of familial relationship whose status has previously been approved by his judicial council. As to such judges, the recommendation shall not go into effect until the Conference has an opportunity to consider the Committee report to be made to the March 1978 session.

The Conference further approved the proposal that Canon 5G be amended to permit a judge to accept appointment to a governmental commission or committee if required by Act of Congress.

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge William B. Jones, Chairman of the Advisory Committee on Judicial Activities, submitted the Committee's report to the Conference.

The report showed that in the past six months since the last session of the Conference sixteen new inquiries were received and two published opinions have been issued, as follows:

Advisory Opinion No. 48—Application of Judicial Conference conflict-of-interest rules for part-time magistrates, including permissible office arrangements.

Advisory Opinion No. 49—Code of Judicial Conduct does not require a judge to disqualify himself in a case where a trade association appears as a party because he owns a small percentage of outstanding, publicly-traded shares of one or more members of the trade association.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

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

AMENDMENTS TO THE MAGISTRATES ACT

Judge Metzner advised that the Administration has sponsored legislation to improve access to the federal courts by enlarging the civil and criminal jurisdiction of United States magistrates. This bill, S. 1613, was introduced by Senators DeConcini and Byrd and passed the Senate on July 22, 1977. Among other things the bill specifically authorizes magistrates to try any civil case, jury or non-jury, upon the voluntary consent of the parties. It would expand criminal trial jurisdiction to include all misdemeanors and would permit a jury trial of a misdemeanor to be conducted before a magistrate and would provide greater safeguards to insure that only qualified individuals would be selected as magistrates. It would require that the Judicial Conference adopt qualification standards and selection procedures by April 30, 1978, that all magistrates must be admitted to the bar for a period of at least five years. It would permit a circuit council to disapprove a prospective appointee to a full-term magistrate position and would provide that the new trial jurisdiction in civil cases could be exercised by magistrates serving the courts as full-time officers.

While approving most of the provisions of S. 1613, it was the consensus of the Conference that the provisions in S. 1613 for jury trials before magistrates and for direct appeals to the courts of appeals are new concepts involving a substantial alteration of the structure of the courts and presenting questions of possible constitutional significance.

It further appears that the members of this Conference have had insufficient opportunity as yet to study these proposals and are unprepared to express a considered opinion upon them. Therefore, the Judicial Conference resolved that the House of Representatives be respectfully requested to delay further action on these proposals at

least until after the March 1978 meeting of this Conference when the proposals will be considered with the benefit of study and inquiry.

BANKRUPTCY REGISTRATION

The Conference was advised and agreed with the recommendation that the Committee continue to study the matter of looking toward the eventual adoption of legislation to permit magistrates and referees in bankruptcy interchangeably to perform each other's duties as the needs of the courts and fluctuating caseloads dictate and thus provide the greatest flexibility in assigning the business of the federal trial courts to subordinate judicial officers. The Conference agreed that the interchange of duties would rest on the decision of each district court.

QUALIFICATION STANDARDS AND SELECTION PROCEDURES

The Committee submitted for Conference consideration draft qualification standards and selection procedures with a view to permitting the members of the Conference and the judges whom they represent to study these proposals with a view to requesting Conference action at the March 1978 session.

SALARIES OF MAGISTRATES

Pursuant to the action of the Judicial Conference at its March 1977 session, three levels of salaries were provided for magistrates, as follows: \$39,600, \$42,500 and up to \$46,500 per annum. The Conference was advised that as a result of these three levels and the qualifications required for each, several inequities have resulted and as a result the Conference agreed with the recommendation of the Committee that Level 1 at \$39,600 be eliminated. The Conference further agreed that the certification required as to magistrates receiving the top salary would read that the incumbent has been "authorized by order or rule of court to perform" a full range of additional duties under 28 U.S.C. 636 (b) as revised in 1976 and is actually or will soon be performing these duties in substantial volume.

CHANGE IN ADMINISTRATIVE REGULATIONS

The Conference approved an amendment to Section 2.7 of the regulations of the Director to provide that the rates and conditions for transcripts prepared by electronic recording of proceedings before magistrates be the same rates and conditions established by the Conference for transcripts prepared by an official court reporter.

INVESTIGATIONS OF MISCONDUCT

On motion of a member of the Conference it was agreed to request the Committee to study what investigative services might be available to a district court when charges of misconduct are levelled at a magistrate.

CHANGES IN MAGISTRATE POSITIONS

At the request of the Committee, the Conference ratified the actions of its Executive Committee as follows:

SIXTH CIRCUIT

Eastern District of Michigan

Extended the time for the discontinuance of the part-time magistrate position at Flint from the date of the appointment of a full-time referee in bankruptcy-magistrate at Bay City until the expiration of the current term of the incumbent.

EIGHTH CIRCUIT

Eastern District of Arkansas

Approved the principle of increasing the salaries of visiting part-time magistrates by an amount equal to the salary of a full-time magistrate for those days on which they perform full-time duties to assist the district court at Little Rock.

District of South Dakota

Converted the part-time magistrate position at Sioux Falls to a combination part-time referee-magistrate position and reduced the salary of the position from \$7,650 per annum to \$4,250 per annum for the performance of magistrate duties.

The Conference was advised that sufficient funds have been appropriated for fiscal year 1978 to provide for 164 full-time magistrate positions, 305 part-time magistrate

positions and 18 combination referee-magistrate or clerk-magistrate positions.

The Conference further approved changes based on the recommendations of the Administrative Office, the district courts, the judicial councils of the circuits and of the Committee, to be effective unless otherwise indicated when appropriated funds are available.

THIRD CIRCUIT

District of Delaware

- (1) Authorized the part-time referee in bankruptcy at Wilmington to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized salary of \$12,240 per annum for the performance of magistrate duties.

District of New Jersey

- (1) Continued the part-time magistrate position at Asbury Park for an additional four-year term at the currently authorized salary of \$14,450 per annum.

FOURTH CIRCUIT

District of Maryland

- (1) Authorized the part-time magistrate at Hagerstown to exercise jurisdiction over the entire area of Fort Ritchie, including that portion lying within the Middle District of Pennsylvania.

Eastern District of North Carolina

- (1) Increased the salary of the part-time magistrate position at New Bern from \$7,650 to \$14,450 per annum.
- (2) Continued the part-time magistrate position at Elizabeth City for an additional four-year term.
- (3) Increased the salary of the part-time magistrate position at Elizabeth City from \$2,550 to \$4,250 per annum.

Western District of North Carolina

- (1) Discontinued the part-time magistrate position at Statesville at the expiration of the current term of the incumbent.

Eastern District of Virginia

- (1) Authorized a second full-time magistrate position at Norfolk at a salary of \$46,500 per annum.

Western District of Virginia

- (1) Continued the part-time magistrate position at Charlottesville for an additional four-year term at the currently authorized salary of \$2,550 per annum.

FIFTH CIRCUIT

Northern District of Florida

- (1) Continued the part-time magistrate position at Gainesville for an additional four-year term at the currently authorized salary of \$2,550 per annum.

Southern District of Florida

- (1) Continued the part-time magistrate position at Key West for an additional four-year term at the currently authorized salary of \$2,550 per annum.

Middle District of Georgia

- (1) Continued the part-time magistrate position at Macon for an additional four-year term.
- (2) Reduced the salary of the part-time magistrate position at Macon from \$9,350 to \$5,950 per annum, effective at the start of the new term.

Northern District of Texas

- (1) Increased the compensation paid to the referee in bankruptcy at Lubbock for the performance of duties of a part-time magistrate from \$19,182 per annum to \$24,200 per annum.

Southern District of Texas

- (1) Continued the part-time magistrate position at McAllen-Edinburg for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at McAllen-Edinburg from \$21,600 to \$24,200 per annum.

Western District of Texas

- (1) Increased the salary of the part-time magistrate position at Austin from \$14,450 to \$24,200 per annum.
- (2) Increased the salary of the part-time magistrate position at El Paso from \$19,000 to \$21,600 per annum.
- (3) Increased the salary of the part-time magistrate position at Waco from \$19,000 to \$21,600 per annum.
- (4) Increased the salary of the part-time magistrate position at Marfa from \$3,400 to \$5,950 per annum.

SIXTH CIRCUIT

Eastern District of Kentucky

- (1) Increased the salary of the part-time magistrate position at London from \$2,550 to \$9,350 per annum.
- (2) Discontinued the part-time magistrate position at Pineville.
- (3) Authorized the part-time magistrate at London to exercise jurisdiction over the entire area of the Cumberland Gap National Park, including those portions lying within the Western District of Virginia and the Eastern District of Tennessee.

Western District of Michigan

- (1) Continued the part-time magistrate position at Traverse City for an additional four-year term at the currently authorized salary of \$850 per annum.

Northern District of Ohio

- (1) Continued the part-time magistrate position at Lima for an additional four-year term.
- (2) Increased the salary of the part-time magistrate position at Lima from \$850 to \$1,700 per annum.

EIGHTH CIRCUIT

Eastern District of Arkansas

- (1) Authorized a second full-time magistrate position at Little Rock at a salary of \$46,500 per annum.
- (2) Discontinued the authority of the clerk of court at Little Rock to perform magistrate duties, effective upon the appointment of the second full-time magistrate at Little Rock.
- (3) Discontinued the part-time magistrate position at Pine Bluff, effective upon the appointment of the second full-time magistrate at Little Rock.

Western District of Arkansas

- (1) Continued the part-time magistrate position at Fort Smith for an additional four-year term at the currently authorized salary of \$4,250 per annum.
- (2) Increased the salary of the part-time magistrate position at Harrison from \$850 to \$2,550 per annum.

Northern District of Iowa

- (1) Continued the authorization for the deputy clerk at Cedar Rapids to perform magistrate duties for an additional four-year period.
- (2) Increased the compensation paid to the deputy clerk at

Cedar Rapids for the performance of magistrate duties from \$6,117 to \$8,000 per annum.

District of Minnesota

- (1) Increased the compensation paid to the referee in bankruptcy at Duluth for the performance of magistrate duties from \$4,250 to \$24,200 per annum.

Eastern District of Missouri

- (1) Continued the part-time magistrate position at Ozark National Scenic Riverways for an additional four-year term.
- (2) Reduced the salary of the part-time magistrate position at Ozark National Scenic Riverways from \$7,650 to \$5,950 per annum, effective at the start of the new term.
- (3) Continued the part-time magistrate position at Hannibal for an additional four-year term at the currently authorized salary of \$850 per annum.

NINTH CIRCUIT

District of Alaska

- (1) Continued the part-time magistrate position at Fairbanks for an additional four-year term at the currently authorized salary of \$19,000 per annum.

Southern District of California

- (1) Continued the part-time magistrate position at San Diego for an additional four-year term.
- (2) Increased the salaries of the part-time magistrate positions at San Diego and El Centro, each from \$21,600 to \$24,200 per annum.

District of Montana

- (1) Continued the part-time magistrate position at Wolf Point for an additional four-year term at the currently authorized salary of \$2,550 per annum.

TENTH CIRCUIT

District of Colorado

- (1) Continued the part-time magistrate positions at Fort Collins and Monte Vista for additional four-year terms, each at the currently authorized salary of \$850.
- (2) Discontinued the part-time magistrate position at Sterling, effective upon the expiration of the current term of the incumbent.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

SALARIES AND ARRANGEMENTS FOR REFEREES

The Conference considered the Committee's report and the recommendations of the Director of the Administrative Office, the judicial councils and the district judges and took the following actions relating to referee in bankruptcy positions and changes in salaries and arrangements in the several districts concerned. These actions are to be effective on October 1, 1977, unless otherwise indicated, subject to the availability of funds.

FIRST CIRCUIT

District of Puerto Rico

- (1) Established a second full-time referee position for the district with headquarters at San Juan at the authorized salary of \$48,500 per annum;
- (2) Authorized concurrent district-wide jurisdiction for the second full-time referee position with the established referee position for the district.

SECOND CIRCUIT

Eastern District of New York

- (1) Authorized the continuance of the full-time referee position at Westbury to become vacant by expiration of term on January 31, 1978, for a term of six years, effective February 1, 1978 at the authorized salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

District of New Jersey

- (1) Authorized the continuance of the full-time referee position at Newark to become vacant by expiration of term on March 5, 1978, for a term of six years, effective March 6, 1978, at the authorized salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Florida

- (1) Changed the part-time referee position at Tallahassee to full-time status as soon as appropriated funds become available, at the authorized salary of \$48,500;
- (2) Designated Tallahassee, Gainesville, Pensacola and Panama City as places of holding court for the full-time referee of the district;
- (3) Established district-wide jurisdiction for the full-time referee position.

Northern District of Georgia

- (1) Authorized the continuance of the full-time referee position at Atlanta to become vacant by expiration of term on December 7, 1977, for a term of six years, effective December 8, 1977, at the authorized salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Texas

- (1) Authorized the continuance of the full-time referee position at Houston to become vacant by expiration of term on November 14, 1977, for a term of six years, effective November 15, 1977, at the authorized salary, with the regular place of office and territory to remain as at present.
- (2) Designated Brownsville, Laredo and Victoria as places of holding court for the referees of the district in addition to Houston, Galveston and Corpus Christi.

SIXTH CIRCUIT

Eastern District of Michigan

- (1) Authorized the continuance of the full-time referee position at Detroit to become vacant by expiration of term on April 13, 1978, for a term of six years, effective April 14, 1978, at the authorized salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of North Dakota

- (1) Authorized the continuance of the full-time referee position at Fargo to become vacant by expiration of term on November 8, 1977, for a term of six years, effective November 9, 1977, at the authorized salary, the regular

place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

District of Alaska

- (1) Changed the part-time referee position at Anchorage to a full-time position as soon as appropriated funds become available, at the authorized salary of \$48,500;
- (2) Continued the regular place of office and territory as at present;
- (3) Designated Ketchikan as a place of holding court in addition to Anchorage, Fairbanks, Juneau and Nome.

Eastern District of California

- (1) Authorized the continuance of the full-time referee position at Fresno to become vacant by expiration of term on February 15, 1978, for a term of six years, effective February 16, 1978, at the authorized salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Washington

- (1) Authorized the continuance of the full-time referee position at Seattle to become vacant by expiration of term on March 13, 1978, for a term of six years, effective March 14, 1978, at the authorized salary, with the regular place of office and territory to remain as at present;
- (2) Established concurrent district-wide jurisdiction over all cases for all referees of the district;
- (3) Designated Seattle, Everett, Bellingham, Tacoma and Vancouver as places of holding court for all referees of the district.

REFEREES' SALARY AND EXPENSE FUND

In fiscal year 1976 receipts to the Referees' Salary and Expense fund totalled \$22,097,000 and costs were \$26,671,000, making the system 86 percent self-supporting. Increased salary costs are expected to reduce this percentage in fiscal year 1977, even though greater receipts to the Fund are realized.

LEGISLATION

The Conference in approving the recommendation of the Committee reiterated its opposition to an Article I or

an Article III court, as envisioned in H.R. 8200, and endorsed the proposal of the ad hoc Committee on Bankruptcy Legislation for further study of the interchangeable use of referees and magistrates.

The Conference reiterated its opposition to S. 1448 and S. 795 on the same basis as its opposition to S. 2387, 94th Congress, which would create a new court of district and circuit judges known as the Temporary Petroleum Industry Divestiture Court and which would permit reference of subject matter jurisdiction to referees in bankruptcy. The Conference had previously opposed such legislation on the basis that it would be preferable to provide adequate resources to the United States district courts and courts of appeals so that litigation arising under such legislation might be processed in the usual way.

AD HOC COMMITTEE ON BANKRUPTCY LEGISLATION

The third preliminary report of the ad hoc Committee on Bankruptcy Legislation was presented by the Chairman, Judge Wesley E. Brown.

In accordance with the recommendations of the Committee, the Conference endorsed the concept of increasing the jurisdiction of bankruptcy courts in suits "arising under or related to" bankruptcy cases with these limitations:

- (1) A showing of detriment to the estate must be made to invoke the increased jurisdiction of the bankruptcy court;
- (2) Removal of a suit from a state court be discretionary with the bankruptcy court on petition timely made and showing detriment;
- (3) The filing of an original action in the bankruptcy court be permitted only with the consent of the court upon a showing of detriment.

The Conference agreed that the existing district courts should assume this new jurisdiction and that cases arising thereunder should be handled by either the judge or the referee in bankruptcy.

The Conference disapproved the establishment of a separate office of United States Trustee under the Attorney General and concurred in the views of the Depart-

ment of Justice that such an arrangement would create conflicts-of-interest.

The Conference further disapproved enlarging the Judicial Conference of the United States from 25 to 36 members as proposed in H.R. 8200 and to increase the size of the Board of the Federal Judicial Center by including referees in bankruptcy in its membership.

The Conference was in agreement that referees in bankruptcy should be appointed by the circuit councils upon the recommendations of the district courts and further that the term of office of the referee should be increased from six to 12 years, a recommendation approved by the Judicial Conference as early as 1960.

The Conference also agreed with the Committee that more study should be given to the solution of the serious problem of separating administrative and judicial functions in the processing of bankruptcy cases.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

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

MANDATORY RETIREMENT

Public Law 93-350, enacted July 12, 1974, made a number of significant changes to the special provisions for the retirement of law enforcement personnel which include probation officers. One of these changes which becomes effective January 1, 1978 requires mandatory separation of an employee eligible for immediate retirement on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age. The head of the agency, however, when in his judgment the public interest so requires, may exempt such an employee from automatic separation until that employee becomes 60 years of age. The Judicial Conference at its March 1975 meeting (Conf. Rept., pp. 21, 22) on recommendation of the Committee adopted a resolution which, in effect, designates the Director of the Administrative Office as the head of the agency for the purpose of this legis-

lation. To assist the Director in exercising his authority to exempt a probation officer from mandatory separation, the Committee recommended and the Conference approved three guidelines:

- (1) It is the policy of the Judicial Conference that probation officers shall be exempted from mandatory separation when in the judgment of the Director of the Administrative Office of the United States Courts and the chief judge of the district the public interest requires such exemption.
- (2) In determining when the public interest requires an exemption the following factors are to be considered:
 - The benefits which will inure to the government upon exemption;
 - The degree of difficulty in replacing the employee; and
 - The need for the employee to perform essential service in the time of emergency.
- (3) Any exemption shall be limited to one year at a time.

STATISTICAL PROGRAM

Judge Wollenberg advised the Conference that the Committee has always been interested in improving statistics for the probation system. These statistics, in the view of the Committee, serve as limited support at the national level for budget, planning and management control purposes. They are also useful for management at the local level but have proved to be of limited value both for this purpose and for guidance to judges framing sentences. Because of problems of coding and controlling complex data, the committee has found instances where the statistics were not only inadequate but misleading. The Committee has concluded, therefore, that a revised or reformed system would not meet the present or future needs of the courts or the probation system, and, accordingly, has endorsed the concept of a totally new system that would meet the needs of the users in the field, the judge with his day-to-day sentencing problems, the needs of a national system for budget, planning, and management control purposes and the need of researchers seeking to improve understanding of the treatment of offenders and offenses. The Conference endorsed the concept of a new probation information system and adopted four goals:

- (1) Establish a modern information system for field managers—chiefs, deputy chiefs, supervisors, and probation officers. The system is to provide a current data base with immediate feedback to users.
- (2) Provide up-to-date information to guide sentencing courts in selecting sentences for convicted defendants.
- (3) Generate national statistics for budget, planning, and management control purposes.
- (4) Create a data base for research.

LEGISLATION

H.R. 5792

This bill which has been referred for Judicial Conference comment was endorsed by the Conference with two reservations.

This bill would amend title 18 to provide that upon the recommendation of the attorney for the government the court may place any individual charged with a criminal offense under a program of community supervision for a maximum period of 12 months. This placement may be made "at the earliest practicable time." Section 3171 (c) provides that an individual, after consultation with counsel, must voluntarily agree to placement in the program and waive the statute of limitations and right to a speedy trial. At the successful conclusion of the program the charges shall be dismissed. United States probation officers are authorized to perform the investigative and supervisory functions required for the program.

Section 3174 creates an advisory committee appointed by the chief judge to plan the implementation of the program of community supervision and services. Membership shall include the chief judge as chairman, the United States attorney, a Federal public defender or any attorney active in defense work, and other individuals including those representing social service of other agencies to which persons released to community supervision may be referred. Subsection (c) reads:

With the approval of the Director of the Administrative Office of the United States Court, the committee is authorized to operate, or contract for the operation of, appropriate community services and appropriate community or governmental facilities. Such services may be in

addition to or instead of the services of United States probation officers.

The Committee noted that past Conference policy has been that operation of facilities is an executive branch function. However, the Committee has endorsed in principle the concept of providing supportive services to persons on probation or parole through contract arrangements (Conf. Rept. September 1975, p. 65). The Congress has expressed policy in this area through Title II of the Speedy Trial Act which provides contract authority to the probation service for facilities or services for persons on pretrial release.

The Committee is of the view and the Conference concurs that if Congress should place contract authority for facilities and supportive services within the judiciary it should be placed with the probation service rather than an advisory committee. Further, it is the view of the Committee with which the Conference agreed that the bill should clarify the role of the magistrate in the process and recommends that he be given full authority.

Pretrial Services Agencies

The Committee recommended and the Conference approved a legislative proposal which would make the following amendments to 18 U.S.C. 3153 and 3154:

1. Amend 18 U.S.C. 3153 to provide that a U.S. magistrate be a member of the Board of Trustees.

Experience has shown that in most judicial districts magistrates have been delegated the responsibility for holding bail hearings. As a result magistrates are the judicial officers most closely associated with pretrial services agencies and their cooperation is critical to the success of the pretrial services program. The presence of the pretrial services agencies and their involvement with the accused during the bail process impacts significantly on the procedures of judicial officers relating to bail matters.

2. Amend 18 U.S.C. 3153 to provide that pretrial service officers shall be considered law enforcement officers under the Federal Tort Claims Act.

Pretrial service officers deal with the same Federal offender as arresting agents, probation officers, and U.S. marshals. Due to the nature of their work they are exposed to the same hazards as other federal law enforce-

ment officers and for that reason should be considered law enforcement officers within the meaning of section 2680 (h) of title 28 of the United States Code. The amendment will provide an administrative route for resolution of claims against pretrial service officers in the area of assault, false imprisonment, etc. The Conference approved this proposal as an amendment to the Federal Tort Claims Act at its September 1976 meeting (Conf. Rept., p. 52), however, it was never introduced in the Congress.

3. Amend 18 U.S.C. 3154 to provide that pretrial services agencies may carry out programs of pretrial diversion.

It has become apparent in the two years that pretrial services agencies have been operating that pretrial diversion practices can be readily integrated with pretrial release procedures. Experience has shown that the collection, verification, and reporting of information on an accused who is being considered for pretrial diversion is essentially the same as that information usually provided for the processing of a bail matter and release plan.

In addition, the timing of the collection, verification, and reporting of the information in a bail matter falls at the same time as in a diversion case. The only significant difference under current practices is that information gathered to support a diversion decision is reported to the U.S. attorney and information gathered to support a bail decision and release plan is reported to a judicial officer.

Supervision of persons released under a diversion agreement is essentially the same as supervision of persons released on bail. In both instances the supervising officer provides assistance and reports violations. The significant difference is in the length of time a person is supervised. Supervision in bail cases usually would not exceed 100 days in view of the Speedy Trial Act. The usual length of supervision in a diversion case is 12 months.

4. Amend 18 U.S.C. 3154 by removing the Attorney General as approving authority for contractual arrangements by pretrial services agencies.

It is the view of the Committee, with which the Conference agrees, that no good purpose is served by requiring the Attorney General to approve contracts for pretrial

services between the Administrative Office of the U.S. Courts and Vendors. The Attorney General has delegated this responsibility to the Director of the Bureau of Prisons who in turn has delegated it to community programs officers of the Bureau of Prisons. Traditionally, U.S. probation officers and more recently pretrial service officers have been responsible for the monitoring of services received by persons under supervision (probationers, parolees, and pretrial releasees); for that reason probation officers and pretrial service officers are the most knowledgeable about the type of service and the quantity and quality of services provided. Experience indicates that the Administrative Office through pretrial services personnel can effectively arrange for suitable contracts and monitor their performance.

Finally, it is the view of the Committee, with which the Conference agrees, that it is inappropriate for the Attorney General to have control over a pretrial services agency function operated within the judiciary.

SENTENCING INSTITUTES

The Conference was advised that funds are available for two institutes during fiscal year 1978 and that commitments have been made for the joint session of the Second and Seventh Circuits for October 1977. The Committee is canvassing other circuits who are considered to be overdue for institutes and if none is ready during fiscal year 1978, the Committee will recommend that the request of the Ninth Circuit for such an institute be approved later in the fiscal year.

PRESENTENCE REPORT MONOGRAPH

The Committee reported that it has approved for distribution to judges and probation officers a revised monograph on presentence investigation reports. The revision will be known as Administrative Office Publication No. 105, *The Presentence Investigation Report*. The monograph will provide a more flexible format and calls for a shorter personal and family history section except in unusual circumstances. It sets forth specific guidance on the current legal practices with respect to presentence investigation reports.

PROBATION PERSONNEL

The Committee reported that it has determined the need exists for additional officers in some districts, however, there is no demonstrated need for additional positions for the entire system. The Committee has recommended that no additional positions be requested for fiscal year 1979 but noted that it will be necessary to transfer some positions between districts to keep workloads in balance.

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.

GRAND JURY REFORM

On recommendation of the Committee, the Conference voted its disapproval of H.R. 94, a bill which would, in the opinion of the Conference, turn a grand jury proceeding into an adversary one and harm the orderly administration of justice by needlessly increasing the opportunity for obstructing, delaying, disturbing and prolonging the investigatory and accusatory process, with no showing of offsetting gain to the public or to individual rights. It would further impose an enormous additional burden on an already overloaded judiciary. It was noted that the Conference had taken similar action with regard to two predecessor bills in the 94th Congress, H.R. 1277 and H.R. 2986 (Conf. Rept., 1975, p. 56).

RELEASE OF PERSONS PENDING APPEARANCE IN ANOTHER DISTRICT

The Conference approved for transmission to the Congress, with a recommendation for favorable action, a draft bill which would amend Chapter 315 of Title 18, United States Code, to authorize payment of transportation expenses by United States marshals for persons released pending appearance in another district. This bill would save much of the expense and avoid much of the delay encountered in Criminal Rule 40 removal proceedings,

which directly affect compliance with the requirements of the Speedy Trial Act of 1974.

FEDERAL CRIMINAL CODE

S. 1437, 95th Congress, the successor bill to S. 1 of the 93rd and 94th Congresses, provides for recodification of the Federal Criminal Code. The Conference has at previous sessions commented on portions of the present proposed bill. Judge Zirpoli pointed out that each redraft of the bill inevitably introduces additional issues and that a reprint which has appeared since the Committee met contains further changes which the Committee had not had an opportunity to examine.

One of the principal objections of the Judicial Conference to a portion of S. 1437 has to do with the effective date of any new criminal code. Because of the sweeping changes contemplated and the resulting impact on the federal judiciary thereof, the Conference voted to request Congress to extend the effective date from two years to three years following the date of enactment. Judge Zirpoli pointed out that many other objections to the code previously urged by the Conference had been met in the redraft of S. 1437.

The Conference reaffirmed its views on certain provisions contained in S. 1437, as follows:

(1) The Conference agreed to the position of the Committee that abrogation of the rule of strict construction would introduce a litigable issue at the trial and appellate levels without corresponding benefits to the litigants;

(2) The Conference agreed that in lieu of the present provisions, the following should be supplied as definitions of culpable states of mind:

A person engages in conduct:

- (1) "knowingly" if, when he engages in the conduct, he does so voluntarily and not by mistake, accident or other innocent reason, and with knowledge of existing circumstances to the extent that such knowledge is an element of the offense;
- (2) "intentionally" if, when he engages in the conduct, he does so knowingly and with the purpose of doing that which the law prohibits or failing to do that which the law requires;
- (3) "recklessly" if, when he engages in conduct with respect to a

material element of an offense, he disregards a risk of which he is aware that the material element exists or will result from his conduct. His disregard of that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation; except that awareness of the risk is not required where its absence is due to voluntary intoxication;

- (4) "negligently" if, when he engages in conduct with respect to a material element of an offense, he fails to be aware of a risk that the material element exists or will result from his conduct. His failure to perceive that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation.

(3) The Conference agreed with the Committee's objection to that part of Section 511, as it would be enacted by S. 1437, which provided that a prosecution for an offense necessarily included in the offense charged would not be barred by time even though the period of limitation of the included offense has expired if there is, after the close of evidence at the trial, sufficient evidence to sustain a conviction for the offense charged.

The Conference further agreed that Section 512 does not give specific authority to United States magistrates to deal with offenses by persons under sixteen years of age who commit minor offenses in areas under the exclusive control of the United States.

(4) The Conference reaffirmed its support of legislation previously submitted to the Congress to revise Chapter 313 of Title 18, United States Code. It was noted that H.R. 7239, introduced by Mr. Rodino on May 17, 1977, carries out the recommendation of the Conference.

(5) As to offenses of general applicability, the Conference reaffirmed its previous positions with respect to S.1 as to criminal attempt, criminal conspiracy and criminal solicitation (Conf. Rept., 1975, p. 19). Judge Zirpoli pointed out that with respect to all three offenses that there is provided an affirmative defense of renunciation which, in the view of the Committee, would be too circumscribed.

(6) The Conference recommended revision of the bail provisions of proposed Section 3502 of S. 1437 to authorize judicial officers, in setting conditions of release, to

consider safety to any other person or the community.

(7) The Conference was in agreement with the Committee that it is a mistake to scrap all of the provisions of the Youth Corrections Act. Despite abuses which have been committed under the present legislation, the Conference is of the opinion that a statute should provide some discretion to the court in setting aside a conviction of a young offender, or of an offender of any age where the offender is without a prior record and has fulfilled all of the terms and conditions of his probation.

(8) *Sentencing Commission*—Judge Zirpoli advised the Conference that since the Committee last met, a change had been made in the provisions for a sentencing commission which would now provide for the appointment of four members by the President and three by the Chief Justice at salaries equal to those of a United States circuit judge which, in the view of the Conference, could not be justified for the sentencing commission. The Conference therefore voted to recommend to the Congress that it adhere to its earlier draft as to the method of appointment and payment of members of the sentencing commission. The Conference expressed the view that if the integrity of the principle of separation of powers is to be maintained, another needless and expensive entity should not be created which would in many ways only duplicate the services currently being performed effectively and efficiently by the Administrative Office of the United States Courts and the Federal Judicial Center.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge Arthur J. Stanley, Jr., Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

CONDUCT OF VOIR DIRE EXAMINATION

Judge Stanley advised the Conference that a subcommittee had studied the conduct of voir dire examinations and reported to the Committee on this subject. The report, which was approved by the Committee and by the Conference, reaffirms the previous positions taken in

1960 and again in 1970 that the voir dire examination in the federal courts should be conducted directly by district judges rather than by attorneys or by litigants. The report nevertheless recommends that judges should consider the feasibility of permitting some direct questioning of the jury panel by counsel on a carefully controlled basis in cases where such an exercise of judicial discretion would be appropriate under Rule 24(a), Federal Rules of Criminal Procedure, and Rule 47(a), Federal Rules of Civil Procedure. The report urges the Federal Judicial Center in its training programs to include instructions geared to achieve the proper and comprehensive voir dire examination of federal jurors. The report bases its preference for judge-conducted voir dire examinations primarily on their effectiveness in insulating prospective jurors from the sort of prejudicial influence which might stem from the conduct or approach taken by attorneys in personally conducting the voir dire questioning; a secondary reason is the conservation of time which the subcommittee perceived in reserving the questioning process to the judge.

LEGISLATION

Three bills introduced in the 95th Congress carry out previous recommendations of the Judicial Conference.

- (1) H.R. 7809, to make the excuse of prospective jurors from service on the grounds of distance from the place of holding court contingent upon the showing of hardship on an individual basis;
- (2) H.R. 7810, to increase the attendance fees and reimbursable expenses payable to federal jurors and to provide for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of his federal jury service, and
- (3) H.R. 7813, to provide for six-person juries in civil cases, to establish statutory presumption with names of prospective jurors selected from voter lists representing a fair cross-section of the community, to clarify the means of eligibility for jury service by restoration of civil rights following conviction of a crime, to add certain definitions applicable with respect to jury selection by automated data processing, and to extend to federal jurors the protection of the Federal Employees Compensation Act.

On recommendation of the Committee, the Conference reaffirmed its endorsement of these legislative proposals and, particularly, urged prompt action by the Congress in regard to H.R. 7810.

Grand Jury Reform

With respect to H.R. 94, which the Conference considered in connection with the Committee on the Administration of the Criminal Law (see above, p. 79), the Committee recommended, and the Conference agreed, that a model grand jury charge should be promulgated in an attempt to develop a means of giving grand jurors effective notice of their rights and obligations without the necessity of legislation. The Committee further recommended that the Conference disapprove that portion of H.R. 94 which would authorize the summoning of additional persons "from the body of the district" when an insufficient number of grand jurors attend. Instead the Committee recommended that additional grand jurors should be summoned directly from voter lists, as provided with respect to petit jurors at 28 U.S.C. §1866(f). The Conference agreed to this recommendation and authorized the communication of its views in this regard to the Congress.

REVIEW OF ABA TRIAL STANDARDS

On recommendation of the Committee, the Conference authorized a study of the American Bar Association Standards Relating to Trial Courts as to their application and effect on the federal courts. The Committee was particularly concerned by, and recommended referral to the Judicial Conference with a view to correcting, abuses in the selection of jurors, as well as considering the implementation of modern improvements in jury trial procedure, such as interrogatories, special verdicts and improved communication of instructions via videotape. The Chairman was authorized, as he deemed appropriate, to assign this problem to the Jury Committee or to a subcommittee which he might form for this purpose.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The report of the Committee on Intercircuit Assignments was submitted for the record by the Chairman,

Judge George L. Hart, Jr.

The report covering the period from February 16 to August 15, 1977 shows that during this period the Committee recommended 79 assignments to be undertaken by 47 judges. Of this number, two are senior circuit judges, one is an active circuit judge, six are district judges in active status and 27 are senior district judges. Twenty-four assignments involved two active judges and two senior judges of the Court of Claims, two active and one senior judge of the Customs Court, three active judges of the Court of Customs and Patent Appeals and one retired Supreme Court Justice of the United States.

Two senior circuit judges, 18 senior district judges and two senior judges from the Court of Claims carried out 35 of the 46 assignments to the circuit courts of appeals which were recommended during this period. One active circuit judge, two active judges of the Court of Customs and Patent Appeals and two active judges of the Court of Claims participated in the other eleven assignments to the courts of appeals. In addition, Retired Associate Justice Tom C. Clark at the time of his death had been designated to sit in eight circuit court assignments.

Of the 25 assignments to the district courts, 13 senior district judges participated in 15 assignments, the remaining ten being carried out by six active district judges, one active and one senior judge of the Customs Court and one active judge of the Court of Customs and Patent Appeals.

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 Committee received and authorized the Director of the Administrative Office to transmit to the chief judges of the circuit and district courts, the defender organiza-

tions and other interested parties the report of the Administrative Office on appointments and payments covering the first half of fiscal year 1977.

The report reflects that the sum of \$21,000,000 was appropriated by Congress for CJA operations in fiscal year 1977. A projected deficiency of approximately \$1,000,000 was taken into account in the budget for fiscal year 1978 and the Congress has appropriated the necessary funds to liquidate those obligations.

During the first half of fiscal year 1977, 20,614 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. This compares with 19,613 appointments in the first half of fiscal year 1976. While the number of case assignments in the first half of fiscal year 1977 was thus five percent greater than in the comparable period in fiscal year 1976, the annual projection for the two years is the same. An increase of approximately four percent in the volume of appointments is forecast for fiscal year 1978.

The cost of operating the twenty-four federal public defender offices in fiscal year 1977 is expected to average \$440 per case (including appeals). The comparable estimate for the eight community defender organizations, which are receiving sustaining grants, is \$407 per case while representation by CJA panel attorneys should average \$405.

The cost of providing transcripts, expert and other services during the first half of fiscal year 1977 was \$672,769 compared with \$518,886 for the first six months of fiscal year 1976. Current estimates indicate that as later claims attributable to fiscal year 1977 are processed, the total cost for fiscal year 1977 should reach approximately \$2,400,000.

BUDGET REQUESTS

The Committee presented and the Conference approved budget requests for federal public defenders for supplemental requests for fiscal year 1978 and for budget requests for fiscal year 1979. The budgets were approved in the following amounts:

	FY 1978				FY 1979			
	Supplemental Requests				Budgetary Requests			
	Attys.	Inv.	Secys.	Amt.	Attys.	Inv.	Secys.	Amt.
Arizona	—	—	—	—	12	2	7	\$576,000
Calif., N.	1	—	—	\$20,000	9	1	5	450,688
Calif., E.	—	—	—	—	7	2	4	391,000
Calif., C.	—	—	1	24,000	18	5	12	957,000
Colorado	1	—	—	30,019	4	1	2	211,110
Connecticut	—	—	—	8,222	4	1	2	192,000
Florida	—	—	—	—	8	2	5	390,068
Kansas	—	—	—	—	4	1	2	229,000
Kentucky, E.	—	—	—	—	3	1	1	154,000
Louisiana, E.	—	—	—	—	5	1	3	240,000
Maryland	—	—	—	10,000	7	2	4	383,000
Missouri, W.	—	—	—	10,000	8	1	4	398,511
Nevada	—	—	—	—	4	1	2	216,987
New Jersey	—	—	—	6,000	7	3	4	387,000
New Mexico	—	—	—	—	3	1	2	164,884
Ohio, N.	—	—	—	—	5	1	2	228,258
Pa., W.	—	—	—	—	3	1	2	208,000
S. Carolina	—	—	—	—	3	1	2	\$155,761
Tenn., W.	—	—	—	—	2	—	1	97,717
Texas, S.	—	—	—	—	7	2	5	359,180
Texas, W.	—	—	—	\$7,000	7	2	5	376,000
Virgin Is.	—	—	—	—	3	2	2	228,000
Wash., W.	—	—	—	10,000	5	1	3	267,000
W. Va., S.	—	—	—	—	2	—	1	113,151
TOTALS	2	—	1	\$125,241	140	35	82	\$7,374,315

In addition, the Conference approved budget requests for two new federal public defender offices in the Southern District of Georgia and in the District of Puerto Rico which were established since the last session of the Conference in the following amounts:

Georgia, S.	3	1	2	\$168,987	3	1	2	\$176,775
Puerto Rico	2	—	1	123,456	2	—	1	124,883

The addition of these two public defender offices brings to 26 the number of such offices now operational.

PAROLE COMMISSION AND REORGANIZATION ACT

Pursuant to the ruling of the Comptroller General of June 16, 1977, B-156932, that appointment of counsel for financially eligible persons facing parole termination proceedings is mandatory and that compensation is payable from CJA appropriations, the Conference approved the following revised guidelines for the administration of the Criminal Justice Act, as follows:

1-2.01 DISTRICT PLANS

A. Each district court, with the approval of the judicial council, is required to have a plan for furnishing representation for any person financially unable to obtain adequate representation:

1. who is charged with a felony or misdemeanor (other than a petty offense as defined in Section 1 of Title 18 of the United States Code, unless the defendant, charged with a petty offense, faces the likelihood of loss of liberty, if convicted) or with juvenile delinquency (see 18 U.S.C. 5034) or with a violation of probation *or parole*,
2. * * *
3. who is ~~subject to revocation of parole~~, in custody as a material witness, or seeking collateral relief, as provided in Subsection (g), or
4. * * *
5. *who is facing a parole termination hearing pursuant to Section 4211 (c), Title 18 of the United States Code.*

2-2.22 LIMITATIONS

A. ***

B. *Maximum Compensation*

1. *Preliminary Proceedings and Proceedings Before a United States District Court.*

Compensation (exclusive of allowable expenses) is limited to \$1,000 for each attorney in a case in which one or more felonies are charged, to \$400 for each attorney in a case in which only misdemeanors are charged in preliminary proceedings and proceedings before a United States district court, and to \$250 for each attorney in connection with a post-trial motion made after entry of judgment, or in a probation *or parole* revocation *or parole termination* proceeding, or for representation as provided under Subsection (g).***

AMENDMENTS TO THE CRIMINAL JUSTICE ACT

The Conference approved and authorized transmission to the Congress of amendments to the Criminal Justice Act which conform the Act to the Juvenile Delinquency Act and the Parole Commission and Reorganization Act, provide counsel for grand jury witnesses who are putative defendants, and authorize expert services necessary for

adequate representation. The Conference decided that the question of how much to raise rates and maximum limits, as proposed in the most recent draft of S. 1437, was a policy matter best left to Congress.

The proposed changes, as approved by the Conference, are, as follows:

1. Amend Section 3006A, (a) to read:

(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency ~~by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor~~ or with a violation of probation or parole, (2) who is under arrest, when such representation is required by law, (3) ~~who is a witness appearing before a grand jury or court where there is reason to believe, either prior to or during testimony, that the witness could be subject to any criminal prosecution or face loss of liberty,~~ (4) who is ~~subject to revocation of parole,~~ in custody as a material witness, or seeking collateral relief, as provided in subsection (g), (5) ~~who is facing a parole termination hearing pursuant to Section 4211(c), Title 18 of the United States Code, or,~~ (6) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for ~~an adequate defense representation~~. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both: ***

2. Amend the second sentence of Section 3006A(b) to read as follows:

~~In every criminal any case in which the defendant a person is charged with a felony or misdemeanor (other than a petty offense is denied in section 1 of this title) or with juvenile delinquency by the commission of an act which if committed by an adult, would be such a felony~~

~~or misdemeanor or with a violation of probation and appears without counsel, may be entitled to representation pursuant to a plan and appears without counsel,~~ the United States magistrate or the court shall advise the ~~defendant~~ person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel.

3. Amend Section 3006A, (d) (1) to read as follows:

(1) **HOURLY RATE.**—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$30 per hour for time expended in court or before a United States Magistrate and \$20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the Circuit, ~~not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district.~~ *not to exceed the usual minimum hourly rate in the district for similar services.* Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

4. Amend Section 3006A, (d) (2) by adding at the end of the subsection the following:

For representation required to be provided under this chapter by any Federal law, when not otherwise prescribed, the compensation to be paid to an attorney may not exceed \$400.

5. Amend Section 3006A, (e) (1) by changing the first sentence as follows:

Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for ~~an adequate defense~~ *representation* may request them in an ex parte application.

6. Amend Section 3006A, (e) (2) as follows:

(2) **WITHOUT PRIOR REQUEST.**—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services without prior authorization if necessary for ~~an adequate defense representation~~. The total cost of services obtained without prior

authorization may not exceed \$150 and expenses reasonably incurred.

7. Amend Section 3006A, (g) by deleting the words "subject to revocation of parole,".

COMMITTEE ON THE RULES OF PRACTICE AND PROCEDURE

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

Judge Thomsen advised the Conference that the Office of General Counsel of the Administrative Office had prepared and submitted to the Committee a historical survey of the rule-making power of the federal courts as well as a memorandum detailing various proposals for changes in the rule-making program which have been made in the Congress and in legal publications. The Chairman also advised that the Committee had agreed to the appointment of an ad hoc committee to draft operational procedures, both for the Standing Committee and the various advisory committees.

APPELLATE RULES

The Committee circulated to the bench and bar proposed amendments prepared by the Advisory Committee on Appellate Rules to the Federal Rules of Appellate Procedure. Comments are due no later than November 15, 1977, after which they will be considered by the Advisory Committee.

CRIMINAL RULES

Judge Thomsen also advised that on July 30, 1977, the President signed into law Public Law 95-78 which incorporates in the Federal Rules of Criminal Procedure the amendments to subdivisions (b) and (c) of Rule 23, as approved by the Supreme Court, eliminates the amendment to Rule 24 and the proposed new Rule 40.1 as approved by the Supreme Court and amends the proposed changes to subdivision (e) of Rule 6 and subdivision (c) of Rule 41.

The legislation further amends Section 1446 of Title 28, United States Code, concerning removal proceedings. These amended sections and rules become effective on October 1, 1977.

COMMITTEE ON PACIFIC TERRITORIES

The report of the Committee on Pacific Territories was presented by the Chairman, Judge Richard H. Chambers.

The Conference approved the following recommendations of the Committee.

I. *Guam*

A. That insofar as the views of the Judicial Conference may be solicited, the Committee should be empowered to recommend on behalf of the Conference that the present appellate route for local courts—comprehending the appellate division of the district court, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States—currently is the most appropriate for review of decisions from Guam's local courts, and should be retained.

B. That any statement on the judicial system for Guam in accordance with paragraph A above should recommend retention of diversity jurisdiction for the District Court of Guam.

II. *American Samoa*

A. That the Committee should be empowered to endorse in principle, on behalf of the Judicial Conference (if the Congress and Samoans favor outside review), the draft legislation which provides for appellate review by writ of certiorari to the Ninth Circuit of the decisions of the High Court of American Samoa, subject to the two enumerated jurisdictional limitations concerning matai titles and communally-owned land.

B. That a further jurisdictional limitation which would exclude immigration matters from the class of appealable decisions in the draft legislation involves questions of legislative policy which properly should be resolved by the Congress of the United States, and accordingly, the Judicial Conference expressed an opinion on this jurisdictional limitation.

C. The Conference endorsed the interim solution to

the companionate review problem of the High Court of American Samoa, which calls for the use of federal judges to participate in the hearing of appeals in accordance with section IV below.

III. *Commonwealth of the Northern Mariana Islands*

A. That the Committee should be empowered to endorse on behalf of the Judicial Conference the draft legislation which provides for the establishment of the District Court of the Northern Mariana Islands and for the appointment of its judge and other officers, subject to clarification of the provision concerning coterminous expiration of the terms of dual appointments of officers of the court, and subject to the following further recommendations:

1. The legislation should make applicable to the District Court of the Northern Mariana Islands the rules heretofore or hereafter promulgated and made effective pursuant to sections 2072, 2075, and 2076 of Title 28, United States Code; and sections 3771 and 3772 of Title 18, United States Code; and the Federal Rules of Evidence, except insofar as otherwise provided in the covenant (Covenant to Establish the Northern Mariana Islands) with respect to the requirements of indictment by grand jury and trial by jury when the district court is exercising jurisdiction other than the jurisdiction of a district court of the United States.

2. The legislation should include a provision to establish a procedural framework to guide operation of the Appellate division, analogous to that provided for the appellate division of the District Court of Guam.

3. The legislation should empower any judge temporarily assigned to the District Court of the Northern Mariana Islands (when there is no incumbent) by the Chief Justice or the Chief Judge of the Ninth Circuit to appoint on a temporary basis individuals to statutory offices.

4. The legislation should amend Article IV of the covenant to provide that review by the United States Court of Appeals of decisions of the appellate division will be by writ of certiorari in accordance with rules promulgated by the court of appeals.

5. The legislation should amend Article IV of the covenant to provide that only one judge of the appellate division of the district court will be a judge of a commonwealth court of record of the Northern Mariana Islands, which judge shall be, or shall have been at the

time of his appointment to the court of record of the Northern Mariana Islands, a licensed attorney admitted to practice before the highest court of a state or territory who was in good standing at the time of his appointment.

B. That the Committee should be empowered on behalf of the Judicial Conference to endorse the appointment of a judge, a clerk of court, a United States Attorney, and a United States Marshal for the District Court for the Northern Mariana Islands who shall hold office independent of appointment to the same office in another court, including specifically the District Court of Guam.

IV. Truncated Trust Territory of the Pacific Islands

A. The Conference endorsed, consistent with the needs of the courts of the United States and available manpower, the policy of encouraging judges and senior judges to assist whenever possible by sitting in local territorial courts to hear appeals, subject to the understanding that such assistance will be accomplished without additional expense to the federal judiciary.

B. That the Secretary of the Interior, in accordance with paragraph A above, be advised that the Conference will not object to a secretarial order permitting, on an experimental basis, any active or retired Article III or federal territorial judge appointed by the President to serve as a judge in the High Court of American Samoa and the High Court of the Trust Territory of the Pacific Islands.

REPORT OF THE COMMITTEE ON THE BICENTENNIAL OF INDEPENDENCE AND THE CONSTITUTION

The report of the Committee on the Bicentennial was submitted for the record by Judge Clement F. Haynsworth, Jr. Chairman.

The report reflects that five films and two videotapes have been produced for use in broadcasting and in teaching; that the biographical directory is proceeding but has been delayed by the failure of some judges to respond to questionnaires; that a manuscript has been prepared of

the book written for the high school and college level on the federal judiciary and is now being reviewed; and that circuit histories have been completed on some of the courts and that several others are in preparation.

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

Judge Edward J. Devitt, Chairman of the Committee to Consider Standards for Admission to Practice in the Federal Courts, submitted for the record the report of the work of the Committee.

The report reflects that the Committee has held four meetings and has conducted four public hearings in Washington, Los Angeles, Chicago and Boston; and that it expects to have its recommendations ready for presentation to the Judicial Conference at its session in September 1978.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference approved the pretermision of terms of courts of appeals, pursuant to 28 U.S.C. 48, for sessions of the Eighth Circuit at Kansas City, Missouri and Omaha, Nebraska for the balance of 1977 and until after the next session of the Conference.

RELEASE OF CONFERENCE ACTION

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

WARREN E. BURGER
Chief Justice of the United States

OCTOBER 20, 1977

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