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

September 21-22, 1983

Washington, D.C.
1983

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

William E. Foley
Director

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. 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. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372(c) of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372(c) of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

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 21-22, 1983

The Judicial Conference of the United States convened on September 21, 1983, pursuant to the call of the Chief Justice of the United States, issued under 28 U.S.C. 331, and continued in session on September 22nd. The Chief Justice presided and the following members of the Conference were present:

First Circuit:

Chief Judge Levin H. Campbell
Judge W. Arthur Garrity, Jr., District of Massachusetts

Second Circuit:

Chief Judge Wilfred Feinberg
Chief Judge Jack B. Weinstein, Eastern District of New York

Third Circuit:

Chief Judge Collins J. Seitz
Judge Gerald J. Weber, Western District of Pennsylvania

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Robert R. Merhige, Jr., Eastern District of Virginia

Fifth Circuit:

Chief Judge Charles Clark
Judge Adrian G. Duplantier, Eastern District of Louisiana

Sixth Circuit:

Chief Judge George C. Edwards, Jr.
Chief Judge Frank J. Battisti, Northern District of Ohio

Seventh Circuit:

Chief Judge Walter J. Cummings
Chief Judge John W. Reynolds, Eastern District of Wisconsin

Eighth Circuit:

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

Ninth Circuit:

Chief Judge James R. Browning
Chief Judge Manuel L. Real, Central District of California

Tenth Circuit:

Chief Judge Oliver Seth
Chief Judge Luther B. Eubanks, Western District of Oklahoma

Eleventh Circuit:

Chief Judge John C. Godbold
Judge William C. O'Kelley, Northern District of Georgia

District of Columbia Circuit:

Judge J. Skelly Wright*
Chief Judge Aubrey E. Robinson, Jr., District of Columbia

Federal Circuit:

Chief Judge Howard T. Markey

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* Designated by the Chief Justice in place of Chief Judge Spottswood W. Robinson III who was unable to attend.

Circuit Judges Irving R. Kaufman, Otto R. Skopil, Jr., Edward A. Tamm, and Gerald B. Tjoflat; Senior Circuit Judges John D. Butzner, Jr. and Carl McGowan; Senior District Judges Edward T. Gignoux, George L. Hart, Jr., Elmo B. Hunter, and Thomas J. MacBride; and District Judges Robert E. DeMascio, June L. Green, and James R. Miller, Jr., attended all or some of the sessions of the Conference.

The Attorney General of the United States, Honorable William French Smith, Jr., and the Solicitor General of the United States, Honorable Rex E. Lee, addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

Alan A. Parker, Counsel to the House Judiciary Committee, presented a message from the Chairman, Peter W. Rodino, Jr.

William E. Foley, Director of the Administrative Office of the United States Courts; Joseph F. Spaniol, Jr., Deputy Director; James E. Macklin, Executive Assistant Director; William J. Weller, Legislative Affairs Officer; Daniel R. Cavan, Deputy Legislative Affairs Officer; Deborah H. Kirk, Chief, Office of Management Review; Professor A. Leo Levin, Director of the Federal Judicial Center, Charles W. Nihan, Deputy Director, and Gordon Bermant, Director of the Division of Innovations and Systems, attended the sessions of the Conference. Mark W. Cannon, Administrative Assistant to the Chief Justice, also attended the sessions of the Conference.

The Director of the Federal Judicial Center, A. Leo Levin, presented his annual report on the activities of the Center.

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

The Director of the Administrative Office of the United States Courts, William E. Foley, submitted to the Conference the Annual Report of the Director for the year ended June 30, 1983. The Conference authorized the Director to release the Annual Report immediately in preliminary form and to revise and supplement the final printed edition.

A separate report on the operation of the Equal Employment Opportunity Plans in the circuit and district courts, was also received by the Conference and authorized to be released.

JUDICIAL BUSINESS OF THE COURTS

Mr. Foley reported that during its first nine months of operation the newly established Court of Appeals for the Federal Circuit docketed 694 new appeals. There were 429 appeals disposed of during the period and 528 appeals were pending on June 30, 1983. In the other 12 courts of appeals there were 29,630 appeals docketed during the twelve-month period ending June 30, 1983, an increase of 6 percent over the previous year. There were 28,660 appeals terminated during the year, a 2.4 percent increase, and the pending caseload rose to 22,480 on June 30th, an increase of 4.5 percent.

In the United States district courts 241,842 civil actions were commenced during the year, a 17.3 percent increase over the previous year. There were 215,356 civil actions closed during the year, a 13.7 percent increase, and on June 30, 1983 there were 231,920 civil actions pending, an increase of 12.9 percent. The increased civil filings during 1983 resulted primarily from a 37.6 percent increase in civil cases commenced by the Government to recover defaulted student loans and overpayment of veterans' benefits, and a 58.6 percent increase in suits against the Government involving claims for social security benefits.

Criminal cases filed in the district courts during 1983 were 35,872, a 9.8 percent increase over the previous year. There were 33,985 criminal cases closed and pending criminal cases rose to 18,546, the highest level since 1976.

During the year ended June 30, 1983 there were 375,024 bankruptcy cases, representing 535,597 separate estates, filed in the United States bankruptcy courts, an increase of 1.5 percent in estate filings as compared with the previous year. There were 449,029 bankruptcy estates closed during the year and the number of estates pending on the dockets of the bankruptcy courts on June 30, 1983 increased to a record 812,190.

From January 1 to June 30, 1983, there were 3,903 matters transferred from the bankruptcy courts to the district

courts under the Model Interim Bankruptcy Rule. The district courts disposed of 2,402 matters during this period of which 1,901 were disposed of finally without remand to the bankruptcy courts. There were 205 matters referred back to bankruptcy judges for final disposition and 296 matters were referred back for additional, but not final, action.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that during the year ended June 30, 1983, the Panel had acted on 1,060 civil actions pursuant to 28 U.S.C. 1407. Of that number, 496 actions were centralized for consolidated pretrial proceedings with 564 actions already pending in the various transferee districts at the time of transfer. The Panel denied transfer of 123 actions.

Since its creation in 1968 the Panel has transferred 12,154 civil actions for centralized pretrial proceedings in carrying out its responsibilities. As of June 30, 1983, approximately 9,420 cases had been remanded for trial, reassigned within the transferee district, or terminated in the transferee court. On June 30, 1982 there were 2,731 transferred civil actions being processed by transferee judges.

COMMITTEE ON THE JUDICIAL BRANCH

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

SOCIAL SECURITY AMENDMENTS ACT OF 1983

The Social Security Amendments Act of 1983, Sec. 101(c), brings senior judges who continue to accept assignments under 28 U.S.C. 294 into the Social Security system effective January 1, 1984. Senior judges who continue to perform judicial work under assignment will thus be required to pay the Social Security tax, be ineligible to receive Social Security benefits until age 70, and be potentially liable for state and local income taxes in those states which currently consider senior judge compensation "retirement income" exempt from state income taxes. Senior judges who continue to work after January 1, 1984, will, in effect, be paying for the privilege of

performing judicial duties which they are not required to undertake. The new legislation thus creates a substantial financial disincentive for senior judges to continue their activities.

Judge Kaufman informed the Conference that at its last meeting the Committee had considered this problem and had adopted the following resolution which was subsequently approved by the Executive Committee of the Conference.

> Federal judges who have qualified by length of service and age can elect to assume the status of "Senior Judge." By statute, senior judges are not required to render any judicial service at all and receive no additional compensation when they do. Yet, over 200 senior judges have volunteered and are at work regularly at all levels of the federal court system. They provide the equivalent of approximately 66 full-time federal judges. To lose their services would be a crippling blow. Scores of new judgeships would have to be created to replace them.
>
> Certain provisions of the Social Security Amendments Act of 1983 impose a real risk that most, if not all, senior judges will end their voluntary service on January 1, 1984. On that date senior judges will have Social Security taxes taken from their retirement pay if they are working in the courts. If they are between ages 65 and 70 and have earned Social Security benefits from contributions made before their appointment as judges, they will lose those benefits if they are working in the courts. If they choose not to work, no taxes and no loss of benefits will occur.
>
> This disincentive to productive and useful work is unreasonable and wrong. We are aware that it is an altogether unforeseen and unintended aspect of the 1983 statute. We urgently request that appropriate legislation, removing senior judges from the impact of the Social Security Amendments Act of 1983 be passed as soon as possible and well before the deadline date of January 1, 1984.

Legislation has been introduced to repeal the problem provision (Sec. 101 (c)). If Congress finds that solution satisfactory we fully endorse it. Legislation has also been suggested postponing implementation of this provision of the Act until its consequences can be ascertained precisely. If Congress should choose that approach, we endorse it.

QUADRENNIAL SALARY COMMISSION

The Act creating the quadrennial "Commission on Executive, Legislative, and Judicial Salaries," 2 U.S.C. 351, requires the appointment of a new Commission in 1984. Judge Kaufman informed the Conference that the Administrative Office would commence work this Fall on the preparation of a statement and information concerning judicial salaries to be presented to the new Commission when it is appointed. The Committee will consider these materials at its next meeting and prepare plans for presentations to be made to the Commission.

COMMITTEE ON COURT ADMINISTRATION

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

ELECTRONIC SOUND RECORDING

Judge Hunter informed the Conference that the Federal Judicial Center, pursuant to Sec. 401 of the Federal Courts' Improvement Act of 1982, had conducted an experiment to determine whether electronic sound recordings would be a viable alternative to shorthand, stenotype, or other methods of recording proceedings in a district court. The experiment was conducted to assist the Conference in considering whether to promulgate regulations authorizing the use of electronic sound recording equipment as a means of recording proceedings in the district courts. The report concluded that, under appropriate management and supervision, electronic sound recording can provide an accurate record of proceedings in a district court at less cost to the Government, without delay or interruption, and can provide the basis for accurate and timely transcript delivery. After full discussion the Conference adopted the following recommendation of the Committee:

Considering the results of the study, your Committee recommends that the Judicial Conference adopt the following regulations under 28 U.S.C. § 753(b) to authorize electronic sound recording of proceedings by each court. Your Committee also recommends that these regulations not become effective until January 1, 1984, so that the Director of the Administrative Office will have time to procure required equipment and issue procedural guidelines. The proposed regulations follow:

1. Effective January 1, 1984, pursuant to 28 U.S.C. 753(b), individual United States district court judges may direct the use of shorthand, mechanical means, electronic sound recording, or any other suitable method, as the means of producing a verbatim record of proceedings required by law or by rule or order of the court. The judge should consider the nature of the proceedings, the availability of transcription services, and any other factors that may be relevant in determining the method to be used in producing a verbatim record that will best serve the court and the litigants.

2. Electronic sound recording equipment, for purposes of this regulation, shall be multi-channel audio equipment. This regulation shall be augmented by guidelines issued by the Director of the Administrative Office, containing technical standards for equipment and procedures for implementation.

3. In the event the need for shorthand, stenotype, or other reporter services should diminish by reason of the utilization of electronic sound recording equipment, any reduction in personnel, where feasible, shall be accomplished through attrition.

The Conference further authorized the Chief Justice to appoint an ad hoc committee of members of the Conference to monitor, on behalf of the Conference between meetings thereof, the implementation by the Administrative Office of

the regulations adopted on September 21, 1983 with respect to electronic sound recordings of court proceedings.

COURT REPORTERS' ANNUAL LEAVE

At its session in March, 1982 (Conf. Rept., p. 12), the Conference adopted a policy relating to sick leave for court reporters and requested the Committee to study the question of granting annual leave to court reporters. Judge Hunter stated that while the Conference has never adopted a policy granting annual leave to court reporters, some courts have been granting administrative leave to reporters on an individual basis who have been assigned to a "regular tour of duty" encompassing a formal 40-hour work week in the courthouse with a prohibition against engaging in private reporting activities during those hours. The General Counsel of the Administrative Office has concluded that court reporters who are assigned a "regular tour of duty," of whatever length, must come under the Leave Act, 5 U.S.C. § 6301 et. seq. Upon the recommendation of the Committee the Conference adopted the following guideline:

> Beginning with the 1984 leave year (effective January 8, 1984) a reporter who has been placed on a regular tour of duty consisting of a set number of work hours per week in the courthouse, specified in advance, during which hours the reporter may generate transcripts but may not perform any private (free-lance) work of any kind, the reporter is to earn annual leave in accordance with the Leave Act, 5 U.S.C. §6301 et. seq.

The Committee also advised that a court must state in its court reporter management plan whether reporters are assigned a regular tour of duty, and specify the regular hours of attendance. Leave records should be maintained by the clerk of the court.

ANNUAL AND SICK LEAVE FOR LAW CLERKS AND SECRETARIES

The Committee has concluded, on advice of the General Counsel of the Administrative Office, that all employees of the Judiciary, except judges, are entitled to both annual and sick leave benefits under the provisions of Chapter 63 of Title 5, United States Code. For many years, however, judges have

been given the opportunity to elect whether or not members of their personal staffs should be given leave benefits. A survey conducted by the Federal Judicial Secretaries Association indicated that a majority of secretaries would prefer to be placed under the Leave Act and not excluded from benefits by an amendment to existing law. The Committee recognized that secretaries to judges should be entitled to the benefits of the Leave Act, but did not wish to require changes in regard to those already employed. Accordingly, the Committee presented the following recommendation which was approved by the Conference:

> It is therefore recommended that the Judicial Conference require all new secretaries of circuit and district judges to be placed under the Leave Act, but allow judges' secretaries who are not now under the Leave Act to continue as in the past.

Judge Hunter advised the Conference that because of the temporary nature of the appointment of law clerks and of their work habits, the Committee has held for further evaluation any action regarding application of the Leave Act to law clerks and will study the question further. Judge Hunter further advised that the Committee did not reconsider the matter of the Leave Act's application to United States magistrates or bankruptcy judges in view of previous Conference action endorsing legislation to exempt these officers from coverage under the Leave Act.

COURTROOM FACILITIES

The Chief Judge of the United States District Court for the Northern District of Alabama, after obtaining the approval of the Judicial Council of the Eleventh Circuit, had requested the Committee to consider and recommend to the Judicial Conference a variance from the Conference's guidelines regarding sizes of courtrooms.

Upon the recommendation of the Committee the Conference voted to deny the requested variance for the courtrooms to be constructed in the new courthouse at Birmingham, Alabama.

FEES OF COURT REPORTERS

Judge Hunter reported that the court reporters in the Ninth and Tenth Circuits charge parties $2.50 per page for a transcript of a case on appeal, which is $.50 per page more than the maximum fee approved by the Conference. The reporters and other court officials justify this additional fee because of the requirements of these two circuits that two copies of a transcript be filed on appeal, one of which is retained in the district court and the other forwarded to the court of appeals. The Committee is of the view that parties who order transcripts for cases on appeal to the Ninth and Tenth Circuits should not be made to pay higher rates than are required in the other circuits. Accordingly, the Committee presented the following resolution which was approved by the Conference:

> That the Judicial Conference reaffirm its September 1963, decision that no court reporter is authorized to receive payment of a fee for providing a transcript for the clerk's office in the preparation or perfection of an appeal. It is also recommended that the Conference approve the policy that a reporter may charge a party only for transcript ordered by and delivered to the party and that the reporter must bear the expense of providing a copy of a transcript to be filed with the clerk of the district court and a copy to be submitted to the court of appeals, if required. It is further suggested that the Ninth and Tenth Circuit Courts of Appeals should review their requirements that a copy of the transcript be retained in the district court since it duplicates the copy of the transcript that is submitted to the court of appeals.

COURT REPORTER POSITIONS

At its session in March, 1982 (Conf. Rept., p. 9) the Conference adopted a policy that "permanent swing reporters may only be authorized when a court in fact has implemented a system in which each reporter is fully utilized. Swing reporters will be granted only on a showing of demonstrated need and the full use of existing personnel...". In response to the April, 1983 budget call by the Administrative Office, 32 district courts requested 55 additional court reporters, of

which 44 are swing reporters already employed and 11 are new positions. The judicial councils of the circuits have approved these requests.

The Committee reviewed the justifications submitted and determined that not all courts have adopted court reporter management plans. Those that have adopted plans have done so too recently to provide experience. Only six courts provide for a pooling of reporters and most have each reporter assigned to a specific judge. Very few reporters appear to be working to capacity.

The Committee accordingly recommended that none of the requests for additional reporters be approved. The use of contractors — or, in the case of land commissioners, the use of electronic sound recording equipment — combined with better utilization of authorized reporters should be sufficient to meet the courts' needs. The Committee further recommended that Conference approval of the requested additional reporter positions be continued to September, 1984, but that requests for the continuation of, or for additional positions, should be submitted to the Subcommittee on Supporting Personnel by June, 1984. In the interim, swing court reporter positions that become vacant should be abolished, unless the Director of the Administrative Office determines the position is necessary and approves a temporary appointment pursuant to 28 U.S.C. 753(a). These recommendations were approved by the Conference.

AUTOMATION

The Conference of Chief Circuit Judges had recommended the appointment of a standing committee of the Conference to review what is being done in the Judiciary on automation and particularly in the Administrative Office and the Federal Judicial Center. Subsequently, the Chief Justice established an ad hoc subcommittee of the Committee on Court Administration to study the advisability and feasibility of establishing a standing committee and to report to the Committee on Court Administration.

Judge Hunter stated that the Committee had concluded that the choice of appropriate technology should be left to experts, but that it was the consensus of the Committee that there should be input from judges with regard to the automation needs and priorities of the courts. The Committee

felt that an additional level of scrutiny provided by judicial input will produce a greater level of understanding in the courts as well as in the Congress.

While agreeing that the appointment of a Committee to oversee automation development in the Judiciary was desirable, the Committee reported that it is opposed to the proliferation of Judicial Conference Committees. The Committee therefore recommended that the function of oversight of technology or automation be assigned, on an experimental basis, to the Court Administration's Subcommittee on Judicial Improvements; that the Chief Justice be authorized to appoint, as he may determine, additional members to the Subcommittee; and further that the Subcommittee recommend to the Court Administration Committee within two years whether there is a need to continue the special oversight function. The Committee was further of the view that the Subcommittee should review the five-year plan for automation in the United States courts developed by the Administrative Office and the Federal Judicial Center, monitor its implementation, approve budget estimates for automation in the courts prior to submission to the Budget Committee of the Judicial Conference, determine the timing and priorities for installation of equipment to support operational systems, consider suggestions received from the courts, and approve guidelines. These recommendations were approved by the Conference.

RETIREMENT COVERAGE FOR LAW CLERKS

Judge Hunter informed the Conference that the participation of law clerks and legal assistants in the Civil Service Retirement program has proved costly and administratively difficult. Approximately 2,400 law clerks and legal assistants are employed in the Federal Judiciary (excluding the Supreme Court) of which about 1,800 turn over each year. These employees are given permanent, excepted appointments, and are entitled to the full range of employee benefits. Considerable effort is annually expended in establishing and maintaining retirement records and in processing approximately 1,800 applications for refunds of retirement contributions. The Office of Personnel Management and the Administrative Office jointly spend in excess of three man years of effort in this area at a cost of over $60,000 per year. The Committee therefore recommended that the Administrative Office be authorized to

exclude law clerks and legal assistants from the Civil Service Retirement System and leave them solely under the Social Security system, with the exception of "career law clerks", provided that the change be made prospectively, and with the understanding that it will not adversely affect health or life insurance benefits. This recommendation was approved by the Conference with the understanding that a law clerk would be given the option of electing to participate in the Civil Service retirement system in addition to participating in Social Security.

COURT QUARTERS AND ACCOMMODATIONS

Judge Hunter stated that the House Committee on Appropriations in its report on the Supplemental Appropriation Bill for the fiscal year 1983, H.Rept. 98-207, called for a review by circuit judicial councils of all requests for alterations to new or existing court space that will cost $500,000 or more, and any changes in the scope or modification of a project that will increase the cost of construction by $100,000 or 5 percent over the original estimate. The report further requested the judiciary to enter into an agreement with the General Services Administration establishing procedures for reviewing and processing these requests.

Judge Hunter informed the Conference that the Director of the Budget in the central office of the General Services Administration and the Administrative Office have agreed upon the following proposed memorandum of understanding:

> This Memorandum of Understanding is entered into between the Director of the Administrative Office of the United States Courts (AOUSC), on behalf of the Judicial Conference of the United States, and the Administrator of General Services (GSA) in order to avoid unnecessary cost overruns and project delays in providing facilities for the United States courts. It establishes policies and procedures to be followed by the courts (except the Supreme Court) in processing requests for any proposed change in an approved and funded prospectus project which will result in an increase in the design and/or construction cost by $100,000 or 5% of the original estimate. These procedures are as follows:

1. Any change, regardless of cost, initiated within a Judicial Circuit shall be submitted to the AOUSC. Where necessary, the AOUSC will seek assistance from the appropriate GSA Regional Office to determine the cost impact, including costs associated with the potential design/construction delay, and the cost impact on other portions of the project which may not be court related.

2. When a proposed change exceeds the cost thresholds, the AOUSC will refer the change to the Circuit Council for its review and approval/disapproval.

3. If approved, the AOUSC will forward certification of approval to the appropriate GSA Regional Administrator.

Under no circumstances will GSA or a GSA contractor effect any change to a court project unless the above procedures are followed. If changes are instituted that are not in compliance with the above, the Judiciary will not be liable or responsible for any costs involved.

This agreement is effective upon signing and will remain in full force until cancelled or superseded.

Upon the recommendation of the Committee the Conference approved the memorandum of understanding with the addition of an Item 4 to the list of procedures as follows:

4. GSA will then accomplish the certified changes, as approved, in accordance with 28 U.S.C. 462(f).

PLACES OF HOLDING COURT

H.R. 1579, 98th Congress, would transfer two counties from the Eastern to the Western Division of the Northern District of Illinois. H.R. 3604, 98th Congress, would designate Houma, Louisiana as an additional statutory place of holding court in the Eastern District of Louisiana. Judge Hunter advised the Conference that the district courts and judicial

councils concerned had approved the proposals contained in these bills. Upon the recommendation of the Committee the Conference approved the bills and authorized the Director of the Administrative Office to notify the Congress.

FRIVOLOUS LITIGATION

Judge Hunter stated that the Subcommittee on Judicial Improvements, at the request of Judge Alfred T. Goodwin, had explored ways and means to reduce frivolous or meritless litigation in the courts and had canvassed the various courts for ideas and suggestions. After consideration of the suggestions received, the Subcommittee concluded, as did many judges, that the existing tools are sufficient, but perhaps not fully understood or utilized. The Committee has therefore asked the Federal Judicial Center to provide instruction to judges so that they will know what the tools are and when to use them and how. The Committee also noted that the Judicial Center Committee on Prisoner Civil Rights Litigation had suggested the enactment of legislation to require the exhaustion of state remedies in cases brought under 42 U.S.C. 1983 in situations where the plaintiff has an available state remedy. Upon the recommendation of the Committee, the Conference approved the concept of the exhaustion of state administrative remedies in Section 1983 cases and authorized the Committee to develop and submit appropriate legislation for further consideration by the Conference.

HABEAS CORPUS REFORM

At its session in March, 1983 (Conf. Rept., p. 7), the Conference authorized the Committee to conduct a further study of the several bills introduced in the 97th Congress to reform habeas corpus procedures. Judge Hunter reported that similar legislation is contained in S. 217, Title VI of S. 829, S. 1763 and H.R. 50, 98th Congress. After full discussion the Conference decided to take no action on the proposals contained in these bills, except to express its disapproval of a provision contained in H.R. 50 which would prohibit a United States magistrate from conducting evidentiary hearings in habeas corpus proceedings.

CERTIFICATION OF QUESTIONS OF STATE LAW

In 1967, the Commissioners on Uniform State Laws promulgated a Uniform Certification of Questions of Law Act, 12 U.L.A. 49, to provide State courts of last resort with jurisdiction to determine questions of state law certified to them by United States courts. Approximately one-half of the States now have such provisions, either in their constitution, statutes, or rules of court. Some States provide that only United States courts of appeals may certify questions of State law, others permit any Article III court to certify questions, some require that the question certified must dispose of the case, and still others provide that the certified question must dispose only of a particular issue.

In February, 1983 the American Bar Association adopted a resolution urging "each State to adopt a procedure whereby the highest court of the State may answer a question of State law certified from an Article III court of the United States, when the answer will be controlling in an action in the certifying court and cannot in the opinion of the certifying court be satisfactorily determined in light of State authorities." A study by the Federal Judicial Center concluded that although cases involving questions of unsettled State law require more time from filing to disposition than more typical cases, only a relatively small proportion of that time is directly attributable to use of the certification procedure, and that this delay should decrease with greater experience. The Center report also noted that the delay attending certification is more than compensated by subsequent expedition of other cases involving the same or related questions of State law.

The Committee therefore recommended that the Judicial Conference support the American Bar Association in its efforts to provide a uniform procedure for certification of questions of State law to a State's highest court by any Article III Federal court when a definitive answer to a question of State law will dispose of an issue before the court and materially contribute to the resolution of the litigation, retaining on the part of the State the right to decline to answer any certified question. This recommendation was approved by the Conference.

RACE TO THE COURTHOUSE

The Administrative Conference of the United States had recommended that 28 U.S.C. 2112(a) be amended to provide that if petitions to review the same order of an administrative agency have been filed in two or more courts of appeals within ten days after the order was issued, the agency is to notify an appropriate official body, such as the Administrative Office of the United States Courts, of that fact; that the official body, on the eleventh day after the issuance of the order, is to choose from among the circuits in which the petitions have been filed, according to a scheme of random selection, and notify the agency of that choice; and that the agency is then to file the record of the proceeding in the court so chosen. That particular court of appeals would take jurisdiction and conduct review proceedings, subject to its existing power to transfer the case to any other court of appeals for the convenience of the parties in the interest of justice.

The American Bar Association has endorsed the concept of random selection, but has suggested that the selection be made on the basis of appeals filed through the fifth business day after the day an agency action becomes reviewable. This proposal was embodied in legislative proposals previously considered by the Conference (Conf. Rept., Mar. 1980, p. 11; Conf. Rept., Sept. 1982, p. 69).

The Committee pointed out that the Administrative Office does not have, nor should it be vested with judicial powers. On the other hand, the Judicial Panel on Multidistrict Litigation has exercised a similar power for many years with respect to the consolidation of cases for pretrial discovery. The Committee therefore recommended that the Judicial Conference continue to endorse a scheme of random selection of a court of appeals to review simultaneously filed petitions to review agency orders, but with the additional proviso that the selection of a court of appeals to hear the appeal be vested in the Judicial Panel on Multidistrict Litigation. This recommendation was approved by the Conference.

LIMITATION ON THE JURISDICTION OF FEDERAL COURTS OVER STATE CASES

H.R. 46, 98th Congress, would add a new Section 1621 to Title 28, United States Code, providing as follows: "No court of the United States that is established by Act of Congress

under Article III of the Constitution of the United States shall have any jurisdiction to modify, directly or indirectly, any order of a court of a state if such order is, will be, or was, subject to review by the highest court of such state." The Chairman of the House Judiciary Committee has requested Conference views on this bill.

The Committee reported that the purposes and intent of the bill are not clear and that it is drawn in such broad terms that its potential effect and consequences cannot be ascertained. As written, the bill would severely restrict jurisdiction in an area in which Federal courts have been thought to have special competence in the protection of Constitutional and Federal statutory rights. Furthermore, the Committee believed that the bill is unnecessary in view of the abstention doctrine enunciated by the Supreme Court in Younger v. Harris, and other cases. Upon the recommendation of the Committee, the Conference strongly opposed the enactment of the bill.

FEDERAL TORT CLAIMS ACT

H.R. 490, H.R. 595, H.R. 3142 and Title XIII of S. 829, 98th Congress, are bills to amend the Federal Tort Claims Act to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and to provide an exclusive remedy against the United States with respect to constitutional and other torts. Some of the bills would require a jury trial with respect to alleged constitutional torts.

The Committee was advised that H.R. 3142 has been introduced as a successor bill to H.R. 490 and H.R. 595. The Committee recommended that the Judicial Conference advise the Congress that the enactment of these measures is a matter of policy for the consideration of the Congress, but, if enacted, the bill would probably increase the workload of the district courts and the judicial system generally.

DISCRIMINATION IN EMPLOYMENT

H.R. 415, 98th Congress, would amend the Age Discrimination in Employment Act of 1967 to permit persons to bring suits under the Act in Federal district courts without regard to whether any proceedings have been commenced by or on behalf of such persons under State law. S. 686, 98th

Congress, would also amend the Act to eliminate the upper age limitation of 70 years of age, to make procedural reforms, and to reinstate the tenured faculty exception. The Senate bill would eliminate jury trials in age discrimination cases.

It was the view of the Committee that the elimination of the 70 year age limitation and the reinstatement of the tenured faculty exception in the Act, are matters of policy for the Congress and the Conference agreed. The Committee noted, however, that if enacted, these bills would increase the workload of the district courts.

APPEALS FROM THE INTERNATIONAL TRADE COMMISSION AND CERTIFICATIONS FROM DISTRICT COURTS TO THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT

H.R. 1291, 98th Congress, would provide a period of 60 days in which to appeal to the Court of Appeals for the Federal Circuit from a determination of the United States International Trade Commission. The bill would rectify an oversight in the statute. A similar oversight, however, has occurred with respect to the certification of interlocutory appeals from the district courts. The statute, 28 U.S.C. 1292(d)(1) and (2), provides procedures for the Court of International Trade and the Court of Claims to make these certifications, but no parallel procedure was provided for appeals of interlocutory orders from the district courts to the Court of Appeals for the Federal Circuit.

It was the view of the Committee that the time to be allowed for an appeal from a decision of the United States International Trade Commission and for the certification of interlocutory orders from the district courts to the Court of Appeals for the Federal Circuit are matters of policy for the Congress, but that the oversights in the statute should be corrected. Upon the recommendation of the Committee the Conference approved H.R. 1291 and recommended corrective legislation regarding interlocutory appeals from the district courts.

PEREMPTORY CHALLENGES OF JUDGES

H.R. 3125, 98th Congress, would provide for the reassignment of certain cases from one judge to another upon the request of a party. The bill would require that "if all

parties on one side of a civil or criminal case to be tried in a Federal district court or bankruptcy court file an application requesting the reassignment of the case, the case shall be reassigned to another appropriate judicial officer for trial." The application must be filed within 20 days after the initial assignment of the case or within 20 days of the date of service of process on the most currently joined party filing the application. Only one such application may be filed by the parties on one side of the litigation. It was the view of the Committee that this bill would introduce undesirable judge-shopping and would make it virtually impossible to maintain individual calendars. Upon the recommendation of the Committee the Conference strongly opposed enactment of the bill.

ADDITIONAL JUDGESHIPS

Judge Hunter informed the Conference that the Subcommittee on Judicial Statistics had developed a schedule for conducting the 1984 Biennial Survey of judgeship needs. In this regard the Subcommittee plans to consider, in more detail than in past surveys, the use of magistrates in evaluating judgeship needs in the district courts. The Subcommittee also plans to explore the possibility of recommending decreases as well as increases in the number of authorized judgeships. The Subcommittee will meet in May, 1984 to formulate its final judgeship recommendations. Copies of the Subcommittee's report and analysis will be submitted to the courts concerned and to the judicial councils prior to filing a complete report with the Committee on Court Administration.

The Committee has decided to defer consideration of the need for an additional judgeship for the District of Utah until the completion of the 1984 survey.

COMMITTEE ON THE BUDGET

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

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1984

The Conference, upon the recommendation of the Committee, authorized the Director of the Administrative

Office to submit to the Congress requests for supplemental appropriations for the fiscal year 1984 in the amount of $21,308,000. The request will include funds for an anticipated 4 percent pay increase in salaries to become effective in January, 1984; funds to provide for a contribution to the Social Security system as mandated by Public Law 98-21; additional funds in the amount of $4,500,000 for "Defender Services" due to the increased Criminal Justice Act caseload and related costs; and an additional $4,580,000 for the bankruptcy courts to cover additional postage and printing costs and to replace the United States Trustee program for six months in 1984 in the event that program is terminated.

APPROPRIATIONS FOR THE FISCAL YEAR 1985

The Conference approved the budget estimates for the fiscal year 1985, prepared by the Director of the Administrative Office and submitted by the Committee. The estimates, exclusive of the Supreme Court, the United States Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center total $986,706,000, an increase of $106,984,000 over the amount recommended by the Appropriations Committees of the Congress for the fiscal year 1984, adjusted to reflect proposed supplemental appropriations requests. Approximately 50 percent of the increases in the budget requests are for mandatory or uncontrollable costs such as within-grade salary advancements, promotions, increases in contract rates, and charges for equipment, services, and supplies and the continued demand for large increases in the charges for space rental by the General Services Administration. Provision has been made in the budget for an additional 1,289 permanent personnel positions. The Director was authorized to amend the budget estimates because of new legislation, action taken by the Judicial Conference, or for any other reason the Director and the Budget Committee consider necessary and appropriate.

The Conference also gave approval to including in the budget funds necessary to cover changes in the magistrates program that may be recommended by the Magistrates Committee at its meeting to be held in December, subject to any adjustments that may be necessary by reason of action of the Conference at its next session.

The Conference also approved the conversion of 250 authorized temporary bankruptcy clerical positions to

permanent positions and the conversion of 160 temporary bankruptcy clerical positions to temporary-indefinite.

BUDGET CALL

At the request of Judge Clark the Conference also approved changes in the Judiciary budget call to reflect current requirements and to provide for the allocation of personnel and other resources for court operations. Judge Clark noted that the formulation of budget estimates for submission to the Congress should be based on caseload projections nationwide and on staffing formulas approved by the Judicial Conference.

JUDICIAL ETHICS COMMITTEE

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

ACTIVITIES OF THE COMMITTEE

Judge Tamm informed the Conference that the Committee had received 1,867 financial disclosure reports for the calendar year 1982, including 953 reports from "judicial officers" and 914 reports from "judicial employees". Since January 1, 1983 the Committee has also received 32 reports required to be filed by nominees to judgeship positions. All reports submitted to the Committee are being reviewed by at least one Committee member to determine whether they were "filed in a timely manner, are complete, and are in proper form" as required by 28 U.S.C. App. I 306(a).

The Conference was informed that five judicial employees had not yet filed reports for the calendar year 1982. In the absence of filing, the Committee, acting in accordance with the procedures previously adopted by the Committee and reported to the Conference in Sept. 1980 (Conf. Rept., p. 76), will consider a reference to the Attorney General under 28 U.S.C. App. I 304(b).

REPORTING FORM AND INSTRUCTIONS

The Committee has endeavored to limit future changes in the reporting form and instructions in order to facilitate

comparison of reports with those submitted in prior years, and to ease the burden on reporting individuals in preparing their reports. Consequently, the Committee has decided to retain the current form and instructions for use in making reports for the calendar year 1983 with only minor modifications. These include an addition to Parts II and III of the form to permit a reporting individual to state affirmatively that the "Differences between investments reported last year and those reported this year, which are not explained in Part VII (Transactions) of the report, reflect changes in investments that the Act exempts from disclosure"; a certification pertaining to participation in litigation to make it clear that it applies only to litigation in which the reporting individual participated as a judicial officer or a judicial employee; and an amendment to Section VII of the instructions pertaining to trusts.

Upon the recommendation of the Committee, the Conference, in accordance with Section 303(c) of the Ethics in Government Act of 1978, approved the revised reporting form and instructions submitted by the Committee.

ADVISORY COMMITTEE ON CODES OF CONDUCT

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

ACTIVITIES OF THE COMMITTEE

Judge Markey informed the Conference that since its last report the Committee had received 17 inquiries from persons subject to the various Codes of Conduct and had issued 13 advisory responses. The Committee is also publishing Advisory Opinion 73 relating to Requests to Judges for Letters of Recommendation. Judge Markey also advised the Conference that the amendment to 28 U.S.C. 455, the disqualification statute, to enable a judge to consider the effect of disqualification on the public interest in certain limited circumstances, as previously approved by the Conference, had been modified slightly and is expected to be acted upon by the Congress in the current session.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

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

The report indicated that during the period February 15, 1983 to August 20, 1983 the Committee recommended 81 assignments to be undertaken by 59 judges. Of this number, one was a retired Supreme Court Justice, 16 were senior circuit judges, 9 were active circuit judges, 29 were senior district judges, two were active district judges, one was a senior judge of the Court of International Trade and one was an active judge of the Court of International Trade.

Forty-three judges undertook 59 assignments to the Courts of Appeals and 19 judges undertook 22 assignments to district courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Judge Edward T. Gignoux, Chairman of the Committee on Rules of Practice and Procedure, presented the report of the Committee.

RULES ENABLING ACTS

On April 21, 1983 the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, of which Congressman Robert W. Kastenmeier is the Chairman, conducted hearings on the operation of the Judicial Conference rules program. The witnesses included the Chairman of the Standing Committee and representatives of the American Bar Association and the Public Citizen Litigation Group. Subsequent to the hearing, Congressman Kastenmeier forwarded to the Chief Justice and to the Chairman of the Standing Committee a draft bill which would amend the Rules Enabling Acts to modify the present rulemaking process in several significant respects. Mr. Kastenmeier made clear that the purpose of the draft bill was "to solicit formal comments prior to introduction."

The draft bill would amend the Rules Enabling Acts to vest rulemaking authority in the Judicial Conference, rather

than in the Supreme Court, increase the time for Congressional consideration of proposed rules changes from 90 days (180 days for Evidence Rules) to nine months, and would specify how Committee members are to be selected and the procedures to be followed by the Committees. In response to Congressman Kastenmeier's inquiry, the Chief Justice advised that "the members of the Court see no reason to oppose legislation to eliminate this Court from the rulemaking process."

After full consideration the Committee advised Congressman Kastenmeier of its views that the question of whether the Supreme Court should continue to promulgate rules amendments is a question of policy for the Supreme Court and the Congress, but that if a change is to be made, the authority to promulgate rules and rules amendments should be vested in the Judicial Conference, either directly or by delegation from the Supreme Court. The Committee was further of the view that it is for Congress to determine the amount of time it needs to review proposed rules changes, but that a uniform waiting period should be provided for all rules. The Committee questioned, however, the need or desirability for a nine-month waiting period, which would further extend the already lengthy time required to effect rules changes, and suggested that a 180 day waiting period should be sufficient. The Committee was further of the view that the inclusion of provisions in the statute on rules committee membership and operating procedures would create an undesirable degree of inflexibility and suggested that these matters be left to the discretion of the Judicial Conference.

The Conference thereupon endorsed the views expressed in the Committee's letter to Congressman Kastenmeier.

OPERATING PROCEDURES

The testimony presented at the oversight hearings indicated that some members of the bench, bar, and public, in spite of efforts to inform them, are unfamiliar with the functioning of the existing rulemaking process. The result has been to create confusion and occasional criticism. The Committee therefore developed a written statement of Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure, which incorporates long-standing practices of the rules committees and most of the suggested procedural improvements. The statement, however, does not include a

requirement of open committee meetings which the Committee deemed to be neither necessary nor desirable. Judge Gignoux advised the Conference that the procedural statement will be widely published and will be included in any future submission of proposed rules amendments to the bench and bar for comment.

LOCAL RULES OF COURT

Judge Gignoux advised the Conference that the Committee has decided to initiate a study of local court rules, which have proliferated in recent years and have been increasingly criticized. In the meantime, the Advisory Committees on Civil and Appellate Rules have already begun studies of local rules of the district courts and the courts of appeals.

ADVISORY COMMITTEES

Judge Gignoux also informed the Conference that the amendments to the Federal Rules of Civil and Criminal Procedure and the new Bankruptcy Rules, approved by the Conference in September, 1982 (Conf. Rept., p. 85), and transmitted to the Congress by the Chief Justice in April, 1983, became effective on August 1.

At the last Committee meeting the Advisory Committees on Appellate, Civil and Criminal Rules presented to the Committee additional proposed rules amendments. The Committee decided to withhold the distribution of these proposed amendments to the bench and bar for comment until the rules changes then pending became effective. Subsequently, the proposed amendments to the rules of Civil and Criminal Procedure were transmitted to the bench and bar for comment. The publication of the proposed amendments to the Federal Rules of Appellate Procedure for public comment has, however, been withheld to determine whether any further changes will be required when the Congress takes further action on the jurisdiction of bankruptcy courts.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Judge Gerald B. Tjoflat, Chairman of the Committee on the Administration of the Probation System, presented the Committee's report.

SENTENCING REFORM

At its session in March, 1983 (Conf. Rept. p. 28) the Conference approved draft legislation, submitted by the Committee as an alternative to proposals then pending in the Congress, which would create an independent commission on sentencing, authorize the appellate review of sentences and create comprehensive statutory sentencing procedures. Subsequently the draft bill was introduced in the Senate by Senator Dole as S. 1182, 98th Congress, and in the House of Representatives by Congressman Rodino as H.R. 3128, 98th Congress. At Senate hearings conducted last May on S. 829, 98th Congress, Judge Tjoflat recommended that the provisions of S. 1182 be substituted as an alternative to the sentencing provisions of S. 829.

Thereafter the Senate Judiciary Committee favorably reported a new bill, the "Comprehensive Crime Control Act of 1983", S. 1762, 98th Congress, as a substitute for the original bill, S. 829. Title II of the new bill, relating to sentencing reform, incorporates some of the recommendations of the Conference, but continues to provide for an independent Sentencing Commission within the Judicial Branch, rather than a Judicial Conference Committee on Sentencing Guidelines. The Commission would be a permanent body with seven voting members, at least two of whom would be federal judges in regular active service. For the first six years the members would serve full-time, but thereafter all members, except the Chairman, would serve on a part-time basis. The function of developing guidelines for sentencing would remain the same as in previous versions, but a sentencing judge, and a judge reviewing a sentence on appeal, would be required to submit to the Commission, as to each sentence imposed, "a written report of the sentence; the offense for which it is imposed; the age, race, and sex of the offender; information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate." The Commission would also "monitor" the sentencing recommendations that probation officers make to judges and would be empowered to "request such information, data, and reports from any . . . judicial officer as the Commission may from time to time require." The Commission would also assume the work of training probation officers, conducting sentencing institutes, collecting and disseminating sentencing data, and conducting research. Thus the Commission would

unnecessarily duplicate functions already performed by the Judicial Conference, the Federal Judicial Center, and the Administrative Office of the United States Courts.

It was the view of the Committee that an independent Sentencing Commission charged with extensive supervision and control over trial and appellate sentencing judges and probation officers would constitute a substantial intrusion into a judicial function and would unnecessarily duplicate work currently performed by the Judicial Conference, the Federal Judicial Center and the Administrative Office of the United States Courts. Upon the recommendation of the Committee, the Conference reaffirmed its support of the alternative sentencing proposals embodied in S. 1182 and H.R. 3128.

SENTENCING INSTITUTES

The Conference upon the recommendation of the Committee authorized the convening of a Joint Institute on Sentencing for the judges of the First, Third, and District of Columbia Circuits to be held at the Federal Correctional Institution at Otisville, New York, April 30 to May 2nd, 1984, subject to approval of an agenda to be presented at the next session of the Conference.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

SURVEY OF THE NEED FOR BANKRUPTCY JUDGES

At its session in September, 1982 (Conf. Rept., p. 88), the Conference, pursuant to Section 406(d) of the Bankruptcy Reform Act of 1978, recommended the creation of 304 bankruptcy judges to be appointed under this statute, and the location of their official stations. Upon the recommendation of the Committee the Conference amended its recommendation in the following respects:

1. The creation of one full-time bankruptcy judge position for the Middle District of Louisiana in addition to the 304 positions previously recommended.

2. The transfer of the regular place of office for the bankruptcy judge for the Western District of Louisiana from Lafayette to Opelousas.

3. The elimination of the requirement that the bankruptcy judge for the Eastern District of Texas spend half of his time working in the Northern District of Texas.

ARRANGEMENTS FOR BANKRUPTCY JUDGES

The Conference upon the recommendation of the Committee, with the concurrence of the Judicial Council of the Seventh Circuit and the United States District Court for the Central District of Illinois, converted the part-time bankruptcy judge position at Danville from part-time to full-time status and directed that this change become effective as soon as possible.

BANKRUPTCY INTERIM RULE

Judge DeMascio informed the Conference that the Committee had reviewed and discussed the experience of the district courts and bankruptcy courts under the Interim Rule procedures recommended by the Judicial Conference and adopted in all courts. He stated that the relatively small number of references of bankruptcy matters to the district courts and their subsequent disposition clearly demonstrates that the district courts are capable of disposing of all such matters in a timely fashion. The Interim Rule has thus averted the potential crisis resulting from the Supreme Court's decision on the constitutional limitation on the bankruptcy court's jurisdiction in the Northern Pipeline case.

COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM

Judge Otto R. Skopil, Jr., Chairman of the Committee on the Administration of the Federal Magistrates System, presented the Committee's report.

CHANGES IN MAGISTRATE POSITIONS

At its session in March, 1983 (Conf. Rept., p. 25), the Conference authorized the Executive Committee to consider

promptly any recommendation emanating from the next meeting of the Magistrates Committee for an additional full-time magistrate position at Montgomery in the Middle District of Alabama. Judge Skopil informed the Conference that the Executive Committee had approved the creation of this position. Upon the recommendation of the Committee the Conference ratified the action taken by its Executive Committee.

Judge Skopil also stated that the Committee had commenced a study of all part-time magistrate positions at the two lowest standard salary levels and had made inquiry to the magistrates affected and the chief judges of their courts as to the need to retain each of the positions and the adequacy of the compensation. The responses are being compiled and will be analyzed by the Committee at its next meeting. In the meanwhile the Committee recommended that the part-time magistrate positions in these categories that will expire before the Committee and the Conference can act on the study be continued for additional four-year terms at the currently authorized salaries, subject to later review as part of the special study. The Conference approved this recommendation.

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the Judicial Councils of the circuits, the Conference approved the following changes in salaries and arrangements for full-time and part-time magistrate positions, including the above recommendations. Unless otherwise indicated, these changes are to become effective when appropriated funds are available. The salaries of full-time magistrate positions are to be determined in accordance with the salary plan previously adopted by the Conference.

FIRST CIRCUIT

Maine:

(1) Authorized the clerk of court at Portland to perform the duties of a part-time magistrate for an additional four-year term at the currently authorized additional compensation of $936 per annum.

Massachusetts:

(1) Continued the full-time magistrate position at Boston which is due to expire on June 13, 1984, for an additional eight-year term.

(2) Continued the part-time magistrate position at Cape Cod National Seashore for an additional four-year term at the currently authorized salary of $4,680 per annum.

SECOND CIRCUIT

New York, Northern:

(1) Increased the salary of the part-time magistrate position at Watertown from $1,872 per annum to $10,400 per annum.

New York, Southern:

(1) Authorized a ninth full-time magistrate position at White Plains or New York City.

New York, Eastern:

(1) Continued the full-time magistrate position at Brooklyn which is due to expire on May 13, 1984, for an additional eight-year term.

THIRD CIRCUIT

Virgin Islands:

(1) Increased the salary of the part-time magistrate position at Christiansted from $21,112 per annum to $31,800 per annum.

FOURTH CIRCUIT

Maryland:

(1) Continued the full-time magistrate position at Baltimore which is due to expire on September 30, 1984, for an additional eight-year term.

(2) Continued the part-time magistrate position at Upper Marlboro for an additional four-year term at the currently authorized salary of $31,800 per annum.

North Carolina, Western:

(1) Continued the part-time magistrate position at Charlotte for an additional four-year term at the currently authorized salary of $31,800 per annum.

South Carolina:

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

(2) Continued the part-time magistrate position at Columbia for an additional four-year term at the currently authorized salary of $12,272 per annum, until conversion of the position to full-time status.

West Virginia, Southern:

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

(2) Continued the part-time magistrate position at Lewisburg for an additional four-year term at the currently authorized salary of $936 per annum, subject to later review.

FIFTH CIRCUIT

Louisiana, Eastern:

(1) Continued the full-time magistrate position at New Orleans which is due to expire on August 31, 1985, for an additional eight-year term.

(2) Authorized a sixth full-time magistrate position at New Orleans.

Louisiana, Western:

(1) Increased the salary of the part-time magistrate position at Lake Charles from $18,616 per annum to $21,112 per annum.

Mississippi, Northern:

(1) Increased the aggregate compensation of the combination clerk-magistrate position at Oxford to that of a clerk of a large district court.

Texas, Eastern:

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

(2) Reduced the salary of the part-time magistrate position at Sherman from $31,800 per annum to $2,808 per annum upon the appointment of the second full-time magistrate at Tyler.

SIXTH CIRCUIT

Kentucky, Eastern:

(1) Continued the part-time magistrate position at Covington for an additional four-year term at the currently authorized salary of $6,656 per annum.

Michigan, Western:

(1) Increased the salary of the part-time magistrate position at Kalamazoo from $6,656 per annum to $31,800 per annum.

Ohio, Southern:

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

Tennessee, Middle:

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

(2) Discontinued the part-time magistrate position at Columbia upon the appointment of the second full-time magistrate at Nashville.

SEVENTH CIRCUIT

Illinois, Central:

(1) Converted the combination bankruptcy judge-magistrate position at Danville to a full-time magistrate position at Danville or Peoria.

(2) Authorized the court to split the combination bankruptcy judge-magistrate position at Danville and to establish a part-time magistrate position at that location at a salary of $3,744 per annum, to serve until the full-time magistrate at Danville or Peoria is appointed.

(3) Discontinued the part-time magistrate position at Peoria upon the appointment of the full-time magistrate at Danville or Peoria.

Indiana, Northern:

(1) Changed the location of the full-time magistrate position at South Bend to Fort Wayne.

(2) Established a part-time magistrate position at South Bend at a salary of $21,112 per annum.

(3) Discontinued the part-time magistrate position at Fort Wayne effective upon the appointment of the part-time magistrate at South Bend.

(4) Discontinued the part-time magistrate position at Lafayette.

Indiana, Southern:

(1) Continued the part-time magistrate position at Evansville for an additional four-year term at the currently authorized salary of $4,680 per annum.

Wisconsin, Western:

(1) Continued the part-time magistrate position at Tomah for an additional four-year term at the currently authorized salary of $936 per annum, subject to later review.

EIGHTH CIRCUIT

Arkansas, Western:

(1) Continued the part-time magistrate position at Texarkana for an additional four-year term at the currently authorized salary of $1,872 per annum, subject to later review.

Iowa, Southern:

(1) Continued the part-time magistrate position at Burlington for an additional four-year term at the currently authorized salary of $3,744 per annum.

Missouri, Eastern:

(1) Continued the full-time magistrate position at St. Louis which is due to expire on September 30, 1984, for an additional eight-year term.

North Dakota:

(1) Increased the salary of the part-time magistrate position at Fargo from $4,680 per annum to $31,800 per annum.

(2) Authorized the part-time magistrate at Fargo to perform the duties of bankruptcy judge at no additional compensation.

(3) Waived the requirement of a full-field background investigation and authorized a complete review of the arrangements at Fargo next year.

South Dakota:

(1) Continued the part-time magistrate positions at Pierre and Rapid City for additional four-year terms at the currently authorized salary of $14,144 per annum for each position.

NINTH CIRCUIT

Arizona:

(1) Continued the part-time magistrate position at Flagstaff for an additional four-year term at the currently authorized salary of $4,680 per annum.

California, Central:

(1) Continued the part-time magistrate positions at Santa Ana and San Luis Obispo for additional four-year terms at the currently authorized salary of $16,120 per annum for each position.

Hawaii:

(1) Increased the salary of the part-time magistrate position at Honolulu from $16,120 per annum to $31,800 per annum.

(2) Continued the part-time magistrate position at Johnston Island for an additional four-year term at the currently authorized salary of $936 per annum, subject to later review.

Oregon:

(1) Continued the full-time magistrate position at Portland which is due to expire on October 17, 1984, for an additional eight-year term.

(2) Continued the part-time magistrate position at Pendleton for an additional four-year term at the currently authorized salary of $2,808 per annum.

TENTH CIRCUIT

Colorado:

(1) Increased the salary of the part-time magistrate position at Colorado Springs from $21,112 per annum to $31,800 per annum.

(2) Increased the salary of the part-time magistrate position at Grand Junction from $27,820 per annum to $31,800 per annum.

Kansas:

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

New Mexico:

(1) Continued the part-time magistrate position at Albuquerque for an additional four-year term and increased the salary of the position from $27,820 per annum to $31,800 per annum.

(2) Increased the salary of the part-time magistrate position at Santa Fe from $1,872 per annum to an annual rate of $31,800, for a three-month period. Following the three-month period, the salary of the position will be set temporarily at an annual rate of $3,744 per annum until the vacant part-time positions at Roswell and Clovis (or Portales) are filled, abolished, or consolidated with other magistrate positions. At that time the salary of the part-time magistrate position at Santa Fe will revert to $1,872 per annum.

(3) Increased the salary of the part-time magistrate position at Las Cruces from $16,120 per annum to $18,616 per annum.

(4) Continued the part-time magistrate position at Roswell for an additional four-year term at the currently authorized salary of $936 per annum, subject to later review.

Oklahoma, Eastern:

(1) Continued the part-time magistrate position at Muskogee for an additional four-year term and increased the salary of the position from $21,112 per annum to $31,800 per annum.

(2) Continued the part-time magistrate position at McAlester for an additional four-year term and increased the salary of the position from $1,872 per annum to $3,744 per annum.

(3) Discontinued the part-time magistrate position at Sulphur.

Oklahoma, Western:

(1) Authorized a third full-time magistrate position at Oklahoma City, and authorized a review of the position in two years or when an additional judge is appointed for the district, whichever is later.

(2) Discontinued the part-time magistrate position at Altus.

Wyoming:

(1) Fixed the salary of the magistrate position at Yellowstone National Park at 52 percent of the maximum salary of a full-time magistrate.

ELEVENTH CIRCUIT

Alabama, Middle:

(1) Ratified the action of the Executive Committee authorizing a second full-time magistrate position at Montgomery.

Georgia, Northern:

(1) Continued the full-time magistrate position at Atlanta which is due to expire on November 30, 1985, for an additional eight-year term.

(2) Authorized a fifth full-time magistrate position at Atlanta.

(3) Discontinued the part-time magistrate position at Newnan (or La Grange) upon the appointment of the fifth full-time magistrate in Atlanta.

Judge Skopil noted that the above changes in salaries and the creation of new positions are subject to the availability of funds. On behalf of the Committee he submitted a list of priorities for implementing changes which was approved by the Conference.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

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

APPOINTMENTS AND PAYMENTS

Judge MacBride submitted to the Conference a summary report on appointments and payments under the Criminal Justice Act for the six-month period ending March 31, 1983. The report indicated that Congress had appropriated $32,215,000 for "Defender Services" for the fiscal year 1983 and that projected obligations for the year are $34,215,000. A supplemental appropriations bill in the amount of $2,000,000 was signed into law on July 29, 1983. A recent revised projection of expenditures indicates the need for an additional $900,000 for the current fiscal year and funds to offset this additional projected deficiency have been included in a supplemental request for the fiscal year 1984.

During the first half of the fiscal year 1983, approximately 20,700 persons were represented under the Criminal Justice Act, compared to 19,400 in the first half of the fiscal year 1982, an increase of 6.7 percent. The increase in appointments under the Act parallels an 8.9 percent increase in criminal case filings during the twelve month period ending March 31, 1983. Of these persons, Federal Public and Community Defender Organizations represented 12,576 persons, or 61 percent of the total representations, a 16.4 percent increase from the 10,805 appointments received by federal defenders during the first half of the fiscal year 1982.

Judge MacBride stated that a comprehensive report for the entire fiscal year 1983 will be presented to the Conference at its session in March.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Criminal Justice Act, as amended, requires each Federal Public Defender organization, established pursuant to 18 U.S.C. 3006A(h)(2)(A), to submit a proposed budget to be approved by the Judicial Conference in accordance with 28 U.S.C. 605. Judge MacBride stated that the Committee had

reviewed 15 requests for supplemental funding for the fiscal year 1984 and had reviewed requests for 33 of the 34 public defender organizations for the fiscal year 1985. The Federal Public Defender Organization for the District of Oregon, which was recently converted from a Community Defender Organization, will submit its fiscal year 1985 budget request for consideration by the Committee at its next meeting.

The Conference, upon the recommendation of the Committee, approved supplemental budget requests for the fiscal year 1984 for Federal Public Defender organizations as follows:

California, Northern.....$	66,561
California, Eastern.....	51,267
Connecticut.....	37,753
Florida, Northern.....	7,336
Hawaii.....	97,342
Illinois, Central & Southern & Missouri, Eastern.....	101,709
Kansas.....	28,772
Louisiana, Eastern.....	41,588
Maryland.....	26,329
Minnesota.....	39,760
Nevada.....	58,161
New Mexico.....	37,279
Tennessee, Middle.....	54,667
Texas, Southern.....	41,116
Virgin Islands.....	12,518
TOTAL.....$	702,158

The Conference, also upon the recommendation of the Committee, approved budget requests for the fiscal year 1985 for Federal Public Defender organizations as follows:

Arizona.....$	880,045
California, Northern.....	941,722
California, Eastern.....	798,588
California, Central.....	1,655,090
Colorado.....	382,038
Connecticut.....	387,631
Florida, Northern.....	246,042
Florida, Middle.....	558,492

Florida, Southern	1,139,420
Georgia, Southern	310,651
Hawaii	424,027
Illinois, Central & Southern & Missouri, Eastern	315,495
Kansas	359,149
Kentucky, Eastern	285,541
Louisiana, Eastern	382,504
Maryland	734,785
Massachusetts	315,100
Minnesota	254,618
Missouri, Western	530,223
Nevada	443,864
New Jersey	702,277
New Mexico	331,396
Ohio, Northern	308,888
Pennsylvania, Western	317,200
Puerto Rico	351,116
South Carolina	308,840
Tennessee, Middle	306,662
Tennessee, Western	197,939
Texas, Southern	716,651
Texas, Western	634,445
Virgin Islands	432,490
Washington, Western	428,696
West Virginia, Southern	211,618
TOTAL	$16,593,243

Judge MacBride informed the Conference that the above budgets for the fiscal year 1985 were based on projected caseloads and that the Committee will entertain requests for supplemental funding if workloads or other factors warrant reconsideration of funding needs.

GRANT REQUESTS — COMMUNITY DEFENDER ORGANIZATIONS

The Conference, upon the recommendation of the Committee, approved supplemental sustaining grants for the fiscal year 1984 for the following Community Defender Organizations:

Federal Defender Program, Inc., Georgia, Northern.....	$ 21,813
Federal Defender Program, Inc., Illinois, Northern.....	68,201
TOTAL.....	$ 90,014

The Conference also approved sustaining grants for the fiscal year 1985 for five of the six Community Defender Organizations as follows:

Federal Defenders of San Diego, Inc. - California, Southern.....	$ 1,256,495
Federal Defender Program, Inc. - Georgia, Northern.....	430,638
Federal Defender Program, Inc. - Illinois, Northern.....	730,914
Legal Aid and Defender Assn. of Detroit, Federal Defender Division - Michigan, Eastern.....	747,478
Defender Assn. of Philadelphia, Federal Court Division - Pennsylvania, Eastern.....	551,707
TOTAL.....	$ 3,717,232

Judge MacBride stated that the Committee will consider the fiscal year 1985 grant request of the Community Defender Organization for the Eastern and Southern Districts of New York at its next meeting.

GUIDELINES

The Committee submitted to the Conference the following amendments to the Guidelines for the Administration of the Criminal Justice Act which were approved by the Conference:

1. An amendment to paragraph 2.22A to require counsel claiming compensation in excess of $750 to attach to the CJA voucher a memorandum detailing the services provided (an increase from the existing $400 threshhold level) and to authorize a judicial officer to require the submission of such a memorandum for a claim less than $750 in a district court and any amount in the court of appeals.

2. An amendment to paragraph 2.22B to make it clear that the maximum compensation that may be paid under the Act is to be determined on the basis of the offense originally charged.

3. A new paragraph 2.22C, to encourage, in appropriate circumstances, a judicial officer to provide an explanation to appointed counsel of the reasons why a claim for compensation has been reduced, and redesignated paragraphs 2.22C and 2.22D as paragraphs 2.22D and 2.22E, respectively.

AMENDMENTS TO THE CRIMINAL JUSTICE ACT

H.R. 3233, 98th Congress, is a bill to vest authority in the Judicial Conference to establish hourly rates of compensation payable to counsel appointed under the Criminal Justice Act and to make periodic adjustments in these hourly rates for fair and reasonable compensation of counsel in the light of changing economic conditions.

Judge MacBride informed the Conference that the Executive Committee had approved the following resolution which was subsequently transmitted to the Congress:

> The Judicial Conference of the United States, through its Executive Committee, favors an amendment to the Criminal Justice Act which would authorize the Judicial Conference to

establish and modify all dollar limitations on compensation under the Act. This would include the hourly rates of compensation for attorneys, the per-case compensation maxima for attorneys, and the limits relating to the compensation for investigative, expert and other services.

Judge MacBride further stated, however, that the staff of the House Judiciary Committee was considering a proposal to increase the maximum hourly rates to $75 per hour for services performed by appointed counsel both in and out of court and to increase the maximum allowable compensation for various proceedings to a level below those contained in H.R. 3233. After full discussion the Conference reaffirmed the action of its Executive Committee. The Conference also indicated that an increase in the hourly rate to $75 per hour, both in and out of court, and increasing the maximum compensation to $5,000 for a felony case, $1,500 for a misdemeanor, $3,000 for an appeal, and $1,000 for other proceedings, with authority in the judicial council of the circuit to set rates on a district-by-district basis within the maximum hourly rates and maximum allowable compensation established by the statute or the Judicial Conference, would be acceptable.

RATIFICATION OF EXPENSES INCURRED PRIOR TO AUTHORIZATION

At its session in September, 1982 (Conf. Rept. p. 111) the Conference, upon the recommendation of the Committee, amended paragraph 3.02B of the Guidelines for the Administration of the Criminal Justice Act to reflect the present language of the Act prohibiting nunc pro tunc approvals of payments for investigative, expert, or other services costing in excess of $150. The Committee is of the view, however, that judges and magistrates should have the flexibility to give retroactive approval of expenses incurred for these services. Upon the recommendation of the Committee, the Conference approved and authorized the transmittal to Congress of proposed legislation, submitted by the Committee, to allow a judge or magistrate to approve in the interest of justice and upon a finding that timely procurement of necessary services could not await prior authorization, payment for such services, after they have been obtained, even where the cost of such services exceeds $300.

LEGAL MALPRACTICE

The Conference authorized the Committee to give further consideration to a provision contained in H.R. 3233, 98th Congress, to authorize the Director of the Administrative Office to obtain legal malpractice insurance or hold harmless defenders sued in legal malpractice actions.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge John D. Butzner, Jr., Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

BAIL REFORM

The Conference in March, 1983 (Conf. Rept., p. 29), approved the various suggestions of the Committee to amend a draft bill, submitted for consideration by the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, to reform the Bail Act of 1966. Judge Butzner stated that the draft bill was subsequently amended to conform in all substantial respects with the position taken by the Conference and was then introduced by Congressman Kastenmeier as H.R. 3005, 98th Congress.

Judge Butzner reported that the Committee had again considered the proposals contained in this bill and had reviewed S. 215, 98th Congress, and the bail reform provisions contained in S. 829, 98th Congress, the "Comprehensive Crime Control Act of 1983." The principal difference between the Senate bills and the House bill is a provision in the procedures established for the preventive detention of persons accused of Federal criminal law offenses. While the Committee considers these provisions to be matters of policy for Congressional determination, it was concerned that a provision in the Senate bills prohibiting a judicial officer from imposing a financial condition that results in the pretrial detention of a person may require the release of a person who claims he is unable to meet a financial condition of release which the court had determined was required in order to assure the person's future appearance. The Senate Committee report on S. 215, S. Rept. 98-147, indicated that this was not the intended effect of the provision. The Conference thereupon approved a

recommendation of the Committee that this provision in S. 215 and S. 829 be amended to conform with the legislative intent expressed in the Senate report.

COMPREHENSIVE CRIME CONTROL ACT OF 1983

S. 829, 98th Congress, the "Comprehensive Crime Control Act of 1983" does not attempt an overall revision of Title 18, United States Code, as had prior criminal code reform bills. Rather it provides for a number of reforms in the Federal criminal justice system including, inter alia, reforms in bail as discussed above, sentencing, forfeiture, the formulation of the insanity defense, and procedures for civil commitment. The bill also contains substantive and procedural amendments to specific criminal offenses. Judge Butzner informed the Conference that the Committee had reviewed the provisions of S. 829 and had comments with respect to only two of its provisions.

The bill would amend Rule 704, Federal Rules of Evidence, to prohibit an expert witness, who testifies with respect to the mental state or condition of a defendant, from stating an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. The Committee expressed concern that the language, as drafted, failed to address lay witnesses and noted that the amendment, if adopted, was likely to produce difficult questions on appeal as to whether the Rule had in fact been violated. The Committee, however, made no recommendation concerning this provision of the bill.

The bill also includes a provision making it a crime to threaten or injure a family member of a United States judge in circumstances relating to the performance of the judge's duties. The Committee recommended that the Conference endorse this provision as well as reiterate its endorsement of legislation to make it a crime for a person to threaten with bodily harm or seek to intimidate officers and employees of the United States courts. (See Conf. Repts. Sept. 1980, p. 105, and Sept. 1981, p. 94). The Conference approved the recommendation of the Committee.

WITNESS SECURITY

S. 474, 98th Congress, would provide for the protection of Government witnesses in criminal cases and S. 1178, 98th Congress, would provide for the rights of third parties seeking to enforce court judgments directed against protected witnesses. Upon the recommendation of the Committee, the Conference endorsed the provisions of S. 474 making an agreement entered into between the Attorney General and a protected witness not legally enforceable, and authorizing a district court to overturn the Attorney General's decision not to disclose the identity and location of a protected witness to a judgment creditor only upon a finding that the Attorney General's decision was arbitrary and capricious.

NATIONAL VIOLENT CRIME PROGRAM

S. 889, 98th Congress, is a bill to authorize appropriations to the Department of Justice to carry out the National Violent Crime Program. The Committee concluded that the bill was primarily concerned with matters of policy with respect to which the Conference should not take a position other than to support the general purposes of the bill. The Committee recommended that the Conference take no position with respect to the specific provisions of the bill, but that it encourage Congress to consider the bill in conjunction with the effect it would have on the Federal criminal caseload and the needs of the Federal judiciary. This recommendation was approved by the Conference.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge June L. Green, a member of the Committee on the Operation of the Jury System, presented the report of the Committee, in the absence of the Chairman, Judge T. Emmet Clarie.

JUROR QUALIFICATION QUESTIONNAIRE

The Committee submitted to the Conference a revised juror qualification form for Conference approval as required by 28 U.S.C. 1869(h). Judge Green explained that the form has been reduced in size to avoid the necessity of paying additional postage charges for oversized material. The content of the

form remains the same except that it includes a provision for a prospective juror to indicate whether or not the juror is Hispanic. The Conference thereupon approved the new form.

IMPLEMENTATION COMMITTEE ON ADMISSION OF ATTORNEYS TO FEDERAL PRACTICE

Judge James R. Miller, Jr., in the absence of Judge James Lawrence King, Chairman of the Implementation Committee on Admission of Attorneys to Federal Practice, presented the Committee's report.

Judge Miller stated that the Committee had spent considerable time in discussing the timing and appropriate methods of performing an evaluation of the pilot program now being conducted among the 13 United States district courts experimenting with the implementation of Federal attorney admission standards and had received advice and assistance from Professor Levin and the staff of the Federal Judicial Center. After consideration of the various purposes to be served by the evaluation, as originally envisioned by the Conference in 1979 (Conf. Rept., p. 103), the Committee determined to commence an evaluation in the near future with a targeted completion date of July 1, 1985. The evaluation will address the following issues:

1. Have the projections of certain negative effects stemming from the pilot program been realized?

2. What have been the economic and resource costs of implementing and applying separate Federal admission standards?

3. What have been the most significant developments in each facet of the pilot program as conceived by the Devitt Committee in its 1979 report to the Judicial Conference?

4. Is it now possible to assess the causes of whatever change there has been in the state of Federal trial advocacy on either an objective or subjective basis? If so, what have been those causes?

The Conference thereupon authorized the Committee to undertake an evaluation, with the assistance of the Federal Judicial Center, to be completed on or about July 1, 1985.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The written report of the Committee to Review Circuit Council Conduct and Disability Orders, submitted by the Chairman, Judge Clement F. Haynsworth, Jr., was received by the Conference.

The report indicated that the Committee, since its last meeting, had received a petition to review an order of the United States Claims Court affirming the dismissal of a complaint by its Chief Judge. Consistent with its position, stated in its last report to the Conference, that the Committee had no authority to review court action approving the dismissal of a complaint by its Chief Judge (Conf. Rept., Mar. 1983 p. 36), the Committee reported that the petition had been dismissed for lack of jurisdiction.

AD HOC COMMITTEE ON THE LAW CLERK SELECTION PROCESS

Judge Carl McGowan, Chairman of the Ad Hoc Committee on the Law Clerk Selection Process, reported that because of the short period of time the March, 1983 Conference resolution on the selection of law clerks has been in effect (Conf. Rept. p. 36), the Committee has not had an opportunity to consider its operation.

Members of the Conference, however, related their experiences in considering law clerk applications and some of the difficulties involved in postponing the review of law clerk applications until September 15th when many applicants have already returned to school. After full discussion the Conference voted to change the date for considering law clerk applications from September 15th to July 15th. The resolution, as amended, is as follows:

Applications for law clerkships will neither be received nor considered prior to July 15 after completion of the student's second year of law school. This policy shall be effective immediately for a trial period of two years, at which time it will be reexamined by the Conference at its March 1985 meeting in light of the experience under it and with the benefit of the views of all federal judges formed by reference to that experience.

ELECTIONS

The Conference, pursuant to 28 U.S.C. 621(a)(2), elected Bankruptcy Judge John J. Galgay to membership on the Board of the Federal Judicial Center for a term of four years succeeding Bankruptcy Judge Lloyd George whose term expires on October 1, 1983.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

The Conference, pursuant to 28 U.S.C. 48, approved the pretermission of terms of court of the United States Court of Appeals for the Tenth Circuit at Oklahoma City, Oklahoma, and Wichita, Kansas during the calendar year 1984.

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 28, 1983

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