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

March 12-13, 1986

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**Washington, D.C.
1986**

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**L. Ralph Mecham
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.

TABLE OF CONTENTS

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

March 12-13, 1986

	Page
Call of the Conference.....	1
Report of the Director of the Administrative Office of the United States Courts	4
Judicial Business of the Courts.....	4
"Gramm-Rudman-Hollings" Budget Cuts in the Administrative Office	5
Judicial Panel on Multidistrict Litigation	5
Committee on the Judicial Branch.....	6
Committee on Court Administration	6
Arbitration.....	6
United States Courts Design Guide Amendment - Federal Public Defenders	7
Relocation Allowances.....	7
Place of Holding Court.....	8
Regulations for Debt Collection.....	8
Court Interpreters Act.....	9
Removal Jurisdiction	10
Court Reporters	10
Government Contracts.....	10
Civil RICO Suits	11
Federal Jurisdiction Under International Child Abduction Convention	12
Automation	13
Frivolous Litigation	13
Fiscal Year 1987 Budget Request for Supporting Personnel	13
Committee on the Budget	14
Supplemental Appropriations for the Fiscal Year 1986	14
"Gramm-Rudman-Hollings" Budget Cuts.....	15
Judicial Ethics Committee	17
Activities of the Committee.....	17
Advisory Committee on Codes of Conduct	18
Activities of the Committee.....	18
Committee on Intercircuit Assignments	18

Committee on Rules of Practice and Procedure	18
Rules Amendments	18
Committee on the Administration	
of the Probation System.....	19
Sentencing Institutes	19
Comprehensive Crime Control Act of 1984	19
Criminal Fine Collection	20
Restitution.....	20
Committee of the Administration	
of the Bankruptcy System	21
Revised Guidelines for Chapter 13	
Administration.....	21
Noticing Guidelines.....	21
Bankruptcy Estate Administration	21
Committee on the Administration	
of the Federal Magistrates System.....	22
Changes in Magistrate Positions.....	22
Committee to Implement the	
Criminal Justice Act	28
Appointments and Payments	28
Budget Requests - Federal Public	
Defenders	28
Criminal Justice Act Amendments.....	29
Committee on the Administration of the	
Criminal Law	29
Habeas Corpus.....	29
Electronic Surveillance	30
Grand Jury Secrecy.....	31
Bribes and Gratuities Act of 1985	31
Bail Reform Act Amendments	32
Committee on the Operation of the Jury System.....	33
Model Grand Jury Charge	33
Committee to Review Circuit Council Conduct	
and Disability Orders	33
Committee on the Bicentennial of the	
Constitution	33
Ad Hoc Committee on American Inns of Court	33
Ad Hoc Committee on Electronic Sound Recording.....	34
Memorial Resolution.....	34
Elections.....	36
Pretermission of Terms of the	
Courts of Appeals	37
Release of Conference Action	37

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

March 12-13, 1986

The Judicial Conference of the United States convened on March 12, 1986, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on March 13. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Levin H. Campbell
Chief Judge Juan M. Perez-Gimenez, District of Puerto Rico

Second Circuit:

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

Third Circuit:

Chief Judge Ruggero J. Aldisert
Chief Judge Murray M. Schwartz, District of Delaware

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Frank A. Kaufman, District of Maryland

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Pierce Lively
Chief Judge Robert M. McRae, Jr., Eastern District of Tennessee

Seventh Circuit:

Chief Judge Walter J. Cummings
Chief Judge Frank J. McGarr, Northern District of
Illinois

Eighth Circuit:

Chief Judge Donald P. Lay
Chief Judge John F. Nangle, Eastern District of
Missouri

Ninth Circuit:

Chief Judge James R. Browning
Chief Judge Robert J. McNichols, Eastern District of
Washington

Tenth Circuit:

Chief Judge William J. Holloway, Jr.
Chief Judge Sherman G. Finesilver, District of Colorado

Eleventh Circuit:

Chief Judge John C. Godbold
Chief Judge Anthony A. Alaimo, Southern District of
Georgia*

District of Columbia Circuit:

Chief Judge Spottswood W. Robinson, III
Chief Judge Aubrey E. Robinson, Jr., District of
Columbia

Federal Circuit:

Chief Judge Howard T. Markey

* Designated by the Chief Justice in place of Chief Judge
James Lawrence King of the Southern District of
Florida, who was unable to attend.

Circuit Judges Collins J. Seitz, Otto R. Skopil, Jr., and Gerald B. Tjoflat; Senior Circuit Judge John D. Butzner, Jr.; District Judges Robert E. DeMascio and John H. Pratt; and Senior District Judges T. Emmet Clarie, Edward T. Gignoux, and Thomas J. MacBride attended all or some sessions of the Conference.

Diana Waterman, General Counsel of the Senate Judiciary Committee, attended the Conference briefly and spoke on matters pending in the Congress of interest to the judiciary.

The Attorney General of the United States, Honorable Edwin Meese 3rd, addressed the Conference on matters of mutual interest to the Department of Justice and the Conference.

L. Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the sessions of the Conference, as did James E. Macklin, Jr., Deputy Director; Karen K. Siegel, Special Assistant to the Deputy Director; William J. Weller, Legislative Affairs Officer; Daniel R. Cavan, Deputy Legislative Affairs Officer; William R. Burchill, Jr., General Counsel; and Deborah H. Kirk, Chief, Office of Audit and Review. A. Leo Levin and Charles W. Nihan, Director and Deputy Director of the Federal Judicial Center, and Douglas D. MacFarland, Deputy Administrative Assistant to the Chief Justice, also attended the sessions of the Conference. Richard Schickele, Staff Counsel to the United States Supreme Court, was also present.

The Director of the Federal Judicial Center, Professor A. Leo Levin, presented a 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, L. Ralph Mecham, submitted to the Conference a brief report on the judicial business of the courts during the calendar year 1985. The Conference authorized its immediate release.

JUDICIAL BUSINESS OF THE COURTS

Mr. Mecham reported that during the calendar year ended December 31, 1985, there were 2,246 appeals filed in the United States Court of Appeals for the Federal Circuit, an increase of nearly 52 percent over filings in 1984. During the year, the court disposed of 1,824 appeals, 69 percent more than in the previous year. On December 31, 1985, there were 1,379 appeals pending. In the other 12 courts of appeals, there were 33,880 appeals filed, an increase of three percent over the 32,964 appeals filed in 1984. The courts disposed of 32,626 appeals, three percent above the previous year, but 1,254 fewer than the number filed. As a result, the number of appeals pending in the regional courts of appeals on December 31, 1985, increased five percent to 25,676.

In the United States district courts, there were 278,793 civil cases docketed in 1985, a seven percent increase over the previous year. The district courts disposed of five percent more civil cases in 1985, but the 274,253 terminations fell short of filings by 4,540, resulting in an increase of almost two percent in the pending caseload. On December 31, 1985, there were 251,177 civil cases pending in the district courts.

Criminal cases filed in the district courts in 1985 rose to 40,974, an increase of six percent over 1984. There were 38,642 criminal cases terminated, four percent more than the previous year, but still below the number of cases filed. The number of criminal cases pending on the dockets of the district courts rose to 23,791 on December 31, 1985, an increase of nearly 11 percent.

During the year ended December 31, 1985, there were 412,431 bankruptcy petitions filed in the district courts, an increase of more than 18 percent over the previous year. Nearly 12 percent more petitions were terminated in 1985 than

in 1984, but the 350,507 dispositions fell far short of new filings. On December 31, 1985, there were 660,797 bankruptcy petitions pending, an increase of more than ten percent.

Mr. Mecham also reported that on March 11, 1986, there were 11 vacancies among the 168 judgeship positions authorized for the United States courts of appeals, 43 vacancies among the 575 authorized judgeship positions in the United States district courts, and two vacancies on the United States Court of International Trade.

"GRAMM-RUDMAN-HOLLINGS" BUDGET CUTS IN THE ADMINISTRATIVE OFFICE

Director Mecham reported that, in response to Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings"), he had adopted a series of reductions in expenditures by the Administrative Office of 4.5 percent, or approximately \$1,300,000, for the remainder of the fiscal year 1986. The Administrative Office will operate at less than authorized staff; incentive awards and quality step increases have been frozen; funds available for temporary employment and overtime have been reduced; travel allocations have been reduced by a factor of 15 percent; all training has been eliminated except in emergency situations; and all controllable tenant alterations, contract awards, and equipment and furniture purchases have been deferred for the remainder of the fiscal year.

Mr. Mecham further advised the Conference that 17 new positions had been cut from the agency's fiscal year 1987 budget request, and studies were under way to determine whether additional cuts were feasible.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A written statement filed with the Conference by the Judicial Panel on Multidistrict Litigation indicated that in the six-month period ended December 31, 1985, the Panel had acted on 172 civil actions pursuant to 28 U.S.C. 1407. Of that number, 133 actions were centralized for consolidated pretrial proceedings, including 74 tag-along cases. The Panel denied transfer of 39 actions.

Since its creation in 1968, the Panel has transferred 14,696 civil actions for centralized pretrial proceedings in carrying out its statutory responsibilities.

COMMITTEE ON THE JUDICIAL BRANCH

The Committee on the Judicial Branch filed a report indicating that favorable action had occurred in the Congress on three matters affecting judicial salaries and benefits: Public Law 99-190, making further continuing appropriations for the fiscal year 1986, effected amendments to the Federal Salary Act of 1967 to make it easier politically for needed salary adjustments to be implemented without the necessity of affirmative congressional action; Public Law 99-234, the Federal Civilian Employee Contractor Travel Expenses Act of 1985, amended 28 U.S.C. 456(a) to permit Article III judges to receive reimbursement for travel expenses at rates or in amounts which the Director of the Administrative Office establishes in regulations approved by the Judicial Conference; and prospects have increased for enactment of legislation to improve judicial survivors' annuities by House passage in December, 1985 of H.R. 3570, the proposed Judicial Improvements Act of 1985.

COMMITTEE ON COURT ADMINISTRATION

Chief Judge Howard T. Markey, a member of the Committee on Court Administration, presented the report of the Committee.

ARBITRATION

As the Conference was advised at its last session (September 1985 Session, Conf. Rpt., p. 53), ten courts are currently participating in the court-ordered arbitration pilot program. Since 1978, when the first arbitration programs began operating in the federal courts, this experiment has been conducted through the process of "authorization by appropriation", i.e., money to run the programs has been appropriated by the Congress, but the programs themselves have not been statutorily authorized by the House and Senate Judiciary Committees.

At the request of the Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the Administrative Office drafted

legislation substantively authorizing the present experimental arbitration program. The Conference approved the draft legislation.

UNITED STATES COURTS DESIGN GUIDE AMENDMENT - FEDERAL PUBLIC DEFENDERS

Since the adoption by the Judicial Conference in March, 1984 of the United States Courts Design Guide (Conf. Rpt., p. 8), problems have been encountered in providing adequate branch office facilities for federal public defenders. The Conference approved a revision of Chapter 12 of the Guide ("Federal Public Defenders") to correct this matter.

RELOCATION ALLOWANCES

Employees of the judiciary are eligible for relocation allowances under Chapter 57 of title 5, United States Code, and regulations of the General Services Administration. Under 28 U.S.C. 604(a)(7), the Administrative Office pays transferred and certain newly-appointed officers and employees of the judiciary for travel and other expenses incident to relocation.

The Conference approved general guidelines governing the payment of employee relocation allowances. Under the guidelines:

1. Judges appointed by the President are entitled to certain relocation allowances upon assuming the judicial office (5 U.S.C. 5723).
2. Any government employee transferred to a permanent position in the judicial branch is eligible for relocation allowances, provided that the employee agrees in writing to remain in government service for one year (5 U.S.C. 5724(i)) and the chief judge of the receiving court certifies that the transfer is "in the interest of the Government" (5 U.S.C. 5724(a)).
3. Employees are generally ineligible for relocation allowances upon initial appointment, but may be reimbursed for relocation expenses incurred as the result

of a judge's change of official duty station during the term of the appointment, provided that the employee signs the one-year service agreement required by law (5 U.S.C. 5724(i)).

4. Judicial branch personnel, including judges taking senior status, who relocate primarily for their own convenience and at their own request, may not be reimbursed for relocation expenses (5 U.S.C. 5724(h)). Staff members required to relocate to retain their positions would be eligible for relocation assistance, provided the one-year service agreements are signed.
5. Contract relocation services authorized (but not required) by 5 U.S.C. 5724c will not be available to judicial branch employees because of the cost of providing such services.

PLACE OF HOLDING COURT

Upon the recommendations of the District of South Carolina, the Judicial Council of the Fourth Circuit, and the Committee, the Conference voted to recommend the creation of a new division in the District of South Carolina consisting of Beaufort and Jasper counties, with Beaufort designated as the place of holding court. The Committee noted that the County Council of Beaufort County has agreed to deed or lease, without charge to the United States, the Beaufort County Courthouse as a suitable location for the federal court.

REGULATIONS FOR DEBT COLLECTION

The Conference approved regulations to implement the Debt Collection Act of 1982 (5 U.S.C. 5514, amended by Public Law 97-365). The regulations establish a procedure for collection by means of salary offset of debts owed the United States by government employees, including all judicial branch officers and employees whose salaries are disbursed by the Administrative Office, except Article III judges.

COURT INTERPRETERS ACT

The Court Interpreters Act, 28 U.S.C. 1827-1828, provides that any person appearing in federal court who does not speak English well enough to comprehend the proceedings or who is speech and/or hearing impaired, should be provided with a certified interpreter or, if no certified interpreter is available, with an otherwise qualified interpreter as determined by the presiding judicial officer. The law requires the Director of the Administrative Office to certify interpreters, and fix their salaries and fees. All fees for interpretation of proceedings arising out of criminal or civil actions initiated by the United States are paid by the court.

The cost of language certification is extremely high, in excess of \$120,000 per language for materials development, plus test administration expenses. The need for interpreters in federal court for languages other than Spanish is modest, with only one-third of one percent of the docketable events needing interpretation in other languages. Accordingly, the Director presently certifies only Spanish/English interpreters, although he also recognizes interpreters for the speech and hearing impaired certified for legal skills by the Registry of Interpreters for the Deaf.

At its September, 1982 session (Conf. Rpt., p. 73), the Conference recommended that, based upon costs and infrequency of use, Congress should amend the Court Interpreters Act to give the Director the discretion to limit the languages for which he will establish certification procedures. The Conference reaffirmed its September, 1982 resolution.

S. 1853, 99th Congress, would maintain the same rights to an interpreter as are provided under current law, but otherwise change substantially the Court Interpreters Act. Among other things, the bill would require the use of certified interpreters in grand jury proceedings, require the certification within one year of eight additional specified languages, and require the Director to evaluate the performance of interpreters, both certified and non-certified.

The Conference voted to support S. 1853 to the extent that it would extend to grand jury proceedings the use of certified interpreters, where reasonably available at the site. The Conference opposed the remainder of the bill as

unworkable, unnecessary, and tremendously expensive. For example, the cost of development and test administration for the certification of eight additional languages alone could exceed \$2,000,000.

REMOVAL JURISDICTION

At its session in September, 1985 (Conf. Rpt., pp. 50-51), the Conference endorsed the Committee's recommendation that 28 U.S.C. 1441(a) should be amended to eliminate the derivative jurisdiction doctrine. Two additional amendments to section 1441(a) proposed by the Committee at this session, to permit removal by "any defendant" and to provide that for removal purposes the citizenship of fictitious defendants shall be disregarded, were disapproved by the Conference.

COURT REPORTERS

The Conference declined to approve additional court reporter positions in the Districts of New Jersey and Northern California.

GOVERNMENT CONTRACTS

At the request of the Department of Justice, legislation has been introduced in the Congress (S. 1674 and H.R. 3337, 99th Congress) to improve the resolution of government contract disputes. The bills would amend 28 U.S.C. 1331 and 1491 to vest exclusive jurisdiction in the United States Claims Court to afford complete relief (including equitable and extraordinary relief) on any claim relating to the award of a government contract, whether suit is brought before or after the contract is awarded.

While other parts of this proposal relate primarily to policy issues for the Congress, the amendments relating to expanded jurisdiction of the Claims Court and withdrawal of jurisdiction from the district courts are central to the workload of the federal courts. The Conference agreed with the Committee that the current multiplicity of forums to resolve pre-awarded and post-awarded contract disputes is inappropriate and, further, that the Claims Court is the preferred forum in which to vest jurisdiction over these disputes. Thus, the Conference endorsed these aspects of the legislation. However, the exclusion of district court

jurisdiction over claims relating to the award of government contracts is drafted in language so broad as perhaps to be susceptible of unintended consequences. The Conference therefore voted to recommend that the proposed amendment to 28 U.S.C. 1331(b)(2) be redrafted or the legislative history made clear that the amendment is intended solely to defeat district court jurisdiction as to claims against the United States relating to the award of a government contract.

CIVIL RICO SUITS

The Racketeer Influenced and Corrupt Organizations provisions, 18 U.S.C. 1961-1968, were enacted as part of the Organized Crime Control Act of 1970. Section 1964(c) provides a private civil action in the federal courts for treble damages and attorney fees to any person injured in his business or property through a "pattern of racketeering activity". A veritable "explosion" of civil RICO suits has occurred in the federal courts in recent years.

While the policies underlying the statute are appropriate for consideration by others, the impact of civil RICO on the workload of the federal courts is an appropriate matter for comment by the judiciary. It is the consensus of the Conference that the impact of civil RICO suits on the federal judicial workload justifies narrowing the scope of this remedy.

The Conference adopted the following resolution:

Responding to the request of the Chairmen of the Senate and House Committees on the Judiciary for the views of the Judicial Conference as to the impact of civil RICO actions under 18 U.S.C. 1964(c), the Conference observes that the statute, among other things, appears to recognize federal jurisdiction in each and every case in which two or more instances of mail or wire fraud are alleged to have occurred.

The extraordinary penalties provided by the civil RICO statute (treble damages and attorney fees) are rapidly causing what would formerly have been considered routine breach of contract or common law fraud actions triable only in state courts, in the absence of diversity,

to be filed in federal courts. This not only increases the burden on the federal courts, but causes friction with the state court system.

Further, in that actions under the statute may be predicated on federal securities or antitrust violations, the statute overlaps and may tend to confuse well-established separate regulatory schemes.

For these reasons, the Judicial Conference respectfully suggests that the Congress should seriously consider narrowing the reach of this statute.

FEDERAL JURISDICTION UNDER INTERNATIONAL CHILD ABDUCTION CONVENTION

The Hague Convention on the Civil Aspects of International Child Abduction has been signed but not yet ratified by the United States Senate, and implementing legislation to accompany the treaty will be transmitted to both houses of Congress. The draft legislation, which establishes the statutory framework for an international structure to deal with the wrongful abduction or removal by a parent of a child from one country to another, provides concurrent federal and state court jurisdiction to determine whether a child in the United States was wrongfully removed to or retained in the United States.

The sole issue considered by the Committee was whether federal courts should have concurrent jurisdiction with state courts over litigation under the convention. It was the unanimous view of the Committee that state interest in and experience with child custody disputes, coupled with the traditional absence of federal involvement in such matters, justified modification of the legislation to eliminate concurrent federal jurisdiction under the convention. The Conference concurred in the Committee's recommendation, and authorized the transmission of this position to the Department of State.

AUTOMATION

Judge Markey reported that the Committee had unanimously approved the Five-Year Plan for Automation in the United States Courts (1986 Update). In addition to providing timetables for the projected transfer of various systems from the Federal Judicial Center to the Administrative Office, the current Five-Year Plan discusses ongoing projects to address the next phase of providing word processing and electronic mail support to the federal judiciary (the Office Automation Project) and to implement a standardized network approach to communications within the judiciary (the Telecommunications Project).

Certain of the Five-Year Plan timetables may have to be adjusted as the result of budget reductions required by Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings").

FRIVOLOUS LITIGATION

In September, 1983, the Judicial Conference approved the concept of the exhaustion of state administrative remedies in cases brought under 42 U.S.C. 1983 and tasked the Committee with developing appropriate legislative language for further consideration by the Conference. Last September (September 1985 Session, Conf. Rpt., p. 46), after spirited debate, the Conference returned the Committee's proposed amendment to 42 U.S.C. 1983, and proposed repeal of 42 U.S.C. 1997e, to the Committee "for an assessment of the draft's impact on the caseload of the federal courts".

The Committee reported that neither the Administrative Office nor the Federal Judicial Center is equipped to undertake such a study, the results of which would be imprecise in any event. Accordingly, the Subcommittee on Judicial Improvements has deferred further action on this subject.

FISCAL YEAR 1987 BUDGET REQUEST FOR SUPPORTING PERSONNEL

Judge Markey reported that, on reconsideration, the Committee on Court Administration had approved for inclusion in the fiscal year 1987 budget request two additional positions (one professional and one clerical) for the Office of the Circuit Executive for the Eighth Circuit.

COMMITTEE ON THE BUDGET

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

SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1986

The judiciary's appropriations act for 1986, Public Law 99-180, was signed by the President on December 13, 1985. The appropriation approved for fees of jurors totaled \$43,400,000, or \$2,800,000 less than the \$46,200,000 requested. Projections of increased juror usage, as well as an unexpected increase in juror obligations in excess of available 1985 appropriations, are estimated to cost an additional \$1,000,000. A supplemental fiscal year 1986 appropriation request of \$3,800,000 for this account was therefore submitted.

The fiscal year 1986 appropriations act also provided for 291 additional deputy clerks for bankruptcy courts. However, a projected increase of 50,000 petitions and 3,000 adversary proceedings for 1986 above the estimates included in the 1986 budget submission to Congress required revised workload projections justifying an additional 200 positions. A supplemental appropriation request of \$1,200,000 to fund the additional 200 bankruptcy clerks for three months during the fiscal year 1986 was also submitted.

A further supplemental appropriation request, solely to transfer funds among appropriation accounts, was submitted in connection with reductions in expenditures made necessary by Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 (see below). This act, known as "Gramm-Rudman-Hollings" for its primary sponsors, requires that, commencing March 1, 1986, across-the-board sequestrations of 4.3 percent be made in each appropriation category for the remainder of the fiscal year 1986. Since across-the-board cuts would have a profound disparate effect on personnel needed to support the administration of justice in the United States, the judiciary requested congressional approval of transfers of funds, from "Salaries of Judges" and "Expenses of Operation and Maintenance of the Courts", to "Salaries of Supporting Personnel".

The Conference noted that, if these requests are denied, or authority to transfer funds between appropriation accounts is not conferred quickly, furloughs of judicial branch employees without pay and/or deferral of civil jury trials, are distinct possibilities during the last quarter of the fiscal year.

"GRAMM-RUDMAN-HOLLINGS" BUDGET CUTS

Judge Clark reported that, in response to Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings"), the Chief Justice had directed the Budget Committee, after consultation with all circuit chief judges and chairmen of affected committees of the Conference, to make recommendations for reductions in expenditures for the fiscal year 1986 in lieu of across-the-board sequestrations. The Committee met in special session on February 18, 1986, and made a series of recommendations for the reduction of expenditures to the Executive Committee of the Conference. On March 5, 1986, after careful consideration of the recommendations of the Budget Committee, the Executive Committee adopted a schedule of reductions which, together with other savings and assuming authority to transfer funds between appropriation accounts will be conferred by the Congress, will enable the judiciary (exclusive of the Supreme Court, the Federal Judicial Center, the Court of Appeals for the Federal Circuit, and the Court of International Trade) to meet the sequestered amount of just over \$40,000,000 required by "Gramm-Rudman-Hollings" for the fiscal year 1986. The schedule of reductions was reaffirmed by the Judicial Conference, to take immediate effect.

Included in the schedule of reductions reluctantly accepted by the Conference was a cut of \$1,360,000 in the judiciary's appropriation category of "Court Security", relating to building or perimeter security and security equipment. The reduction would be realized by deferring the allocation of 60 additional court security officers authorized by Congress for the fiscal year 1986; restricting the acquisition, installation, and maintenance of security equipment; and reducing security services in some courthouses by eliminating some court security officer positions. Judge Clark also reported that the United States Marshals Service has been directed to absorb a substantial reduction of \$6,500,000 in appropriations available for court security in the fiscal year 1986. United States Marshals Service Director Stanley Morris has indicated that this reduction will have a highly adverse effect on prisoner transportation and courtroom security.

Seriously concerned with the impact these cuts would have on the security of the courts, the Conference unanimously approved the following resolution and authorized its transmission to representatives of the executive and legislative branches:

WHEREAS the Judicial Conference of the United States is aware of the need to economize during the present budget crisis, and is determined that the judiciary shall comply fully with the letter and spirit of Gramm-Rudman-Hollings, but recognizes also that the effective operation of the judicial system is essential to the Nation's well-being;

WHEREAS the Courts of the United States have traditionally been open long hours and days substantially beyond a 9-5, five-day week; and

WHEREAS personnel of the courts and the Department of Justice work in the courthouses early and late, seven days a week; and

WHEREAS many courts are in high-crime areas and have been attacked directly and through their personnel; and

WHEREAS it is essential to the effective administration of justice that security, heat and air conditioning be available in federal courthouses when the courthouse must be open;

BE IT RESOLVED that necessary funds and facilities be made available to keep courthouses open, habitable and secure at the times needed in the reasonable exercise of the courts' discretion.

The Executive Committee also made additional recommendations for further action in response to "Gramm-Rudman-Hollings". As adopted by the Judicial Conference, those recommendations include (1) urging the consolidation of district and bankruptcy clerks' offices, where savings are feasible; (2) encouraging district judges, bankruptcy judges, and magistrates to utilize electronic sound recording equipment for the recording of proceedings in court or in chambers in lieu of official court reporters and/or contractual services; (3)

requesting that Congress amend 28 U.S.C. 333 to authorize biennial circuit conferences; (4) suggesting annual rather than semiannual meetings of metropolitan chief judges; (5) authorizing annual rather than semiannual meetings of circuit executives; (6) requesting that the Chief Justice consider reducing the number of Judicial Conference committees and the number of committee meetings during the period of deficit reductions; (7) encouraging the imposition of sanctions upon counsel and/or parties for tardy notification of settlement contributing to the calling of unnecessary venirepersons; (8) urging courts to utilize optical scanning equipment for juror qualification purposes, which could eliminate hundreds (if not thousands) of labor intensive hours; (9) requesting the Jury Committee of the Judicial Conference to study the effect of assessing jury costs in civil actions against litigants; (10) continuing to decentralize the budgetary process; (11) requesting that Congress increase civil filing fees from \$60 to \$120; (12) requesting that Congress increase bankruptcy filing fees in Chapter 7 and Chapter 13 cases from \$60 to \$80; (13) requesting the appropriate committees of the Judicial Conference to study the possibility of increasing the entire range of miscellaneous fees prescribed by the Judicial Conference; (14) requesting that Congress implement an incentive awards program under which employees could obtain cash awards for ideas leading to substantial cost savings; (15) requesting that Congress eliminate diversity of citizenship jurisdiction under 28 U.S.C. 1332; and (16) authorizing, as a last resort, end-of-year emergency measures including furloughs of personnel without pay.

JUDICIAL ETHICS COMMITTEE

Judge John H. Pratt, Chairman of the Judicial Ethics Committee, presented the report of the Committee.

ACTIVITIES OF THE COMMITTEE

Judge Pratt reported that the Committee had received 1,998 financial disclosure reports for the calendar year 1985, including 996 reports from judicial officers and 1,002 reports from judicial employees, and had addressed 653 letters of inquiry to reporting individuals.

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

Since its last report, the Committee received 17 inquiries and issued 14 advisory responses. The Chairman also responded to 15 telephone inquiries that did not require reference to the Committee. The Committee is publishing an opinion dealing with the implications of Canons 4 and 5 on judges' writing and lecturing, use of government resources, control of advertising, etc.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

The Committee on Intercircuit Assignments filed a report indicating that during the period August 15, 1985 through February 15, 1986, the Committee had recommended 58 intercircuit assignments to be undertaken by 40 judges. Of this number, nine were senior circuit judges, three were active circuit judges, 19 were senior district judges, four were active district judges, three were senior judges of the Court of International Trade, and two were active judges of the Court of International Trade.

Of the 58 assignments approved, 19 judges undertook 34 assignments to the courts of appeals, and 22 judges undertook 24 assignments to the district courts.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

RULES AMENDMENTS

Judge Gignoux reported that the Committee anticipated submitting gender-neutralizing amendments to the Criminal and Bankruptcy Rules to the September, 1986 session of the Judicial Conference. So that all such rules amendments may be considered simultaneously, the Conference deferred consideration of gender-neutralizing amendments to the Rules of Evidence and the Civil Rules until its next session.

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 report of the Committee.

SENTENCING INSTITUTES

In September, 1985 (Conf. Rpt., p. 60), the Conference approved the tentative program for an Institute on Sentencing for the judges of the Ninth Circuit to be held at Phoenix, Arizona, April 21-23, 1986. The Committee submitted the final agenda for the sentencing institute, which the Conference approved. A proposed Joint Institute on Sentencing for the judges of the Second and Sixth Circuits on March 17-19, 1986, also approved by the Conference in September, 1985 (Conf. Rpt., p. 60), was cancelled at the request of the chief judges of the Second and Sixth Circuits.

COMPREHENSIVE CRIME CONTROL ACT OF 1984

At its session in March, 1985 (Conf. Rpt., p. 21), the Conference authorized the Probation Committee to draft technical and conforming amendments to improve the operation of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). The judiciary's views were shared with the Department of Justice at the Department's request. As the Conference was advised at its last session (September 1985 Session, Conf. Rpt., p. 60), legislation introduced at the Department's behest (S. 1236 and H.R. 2774, 99th Congress) adopts many but not all of the judiciary's suggestions.

On December 12, 1985, the Senate Judiciary Committee ordered reported S. 1236. The reported version of the bill deleted all references to criminal fines and their receipt by clerks of court, thus eliminating two sections opposed by the judiciary (September 1985 Session, Conf. Rpt., pp. 61-62), but also deleted several sections which the Probation Committee had recommended. The Senate Judiciary Committee has indicated that it will address these and other concerns of the judicial branch later this year.

Congressman Kastenmeier has introduced as H.R. 3541, 99th Congress, most of the provisions of the Department's bill (H.R. 2774) which fall within the jurisdiction of his Judiciary

Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The Conference voted to support enactment of sections 3 (restoring the authority of the Director of the Administrative Office to contract for drug aftercare) and 6 (permitting probation officers to supervise protected witnesses on probation or parole under state law) of H.R. 3541.

CRIMINAL FINE COLLECTION

Judge Tjoflat advised the Conference that the dispute between the Department of Justice and the judiciary concerning the collection of criminal fine payments remains unresolved. It is the position of the Judicial Conference that, as a matter of law, the Attorney General is charged with the responsibility of collecting criminal fines and, as a matter of policy, it is inappropriate for the judiciary to collect criminal fines except in limited circumstances where it is in the public interest for the courts to perform this executive branch function (September 1985 Session, Conf. Rpt., pp. 61-62). The Conference approved a clarifying amendment to the Criminal Fine Enforcement Act of 1984 (P.L. 98-596) consistent with this position, in the event such amending language is requested by the Congress.

RESTITUTION

In Robinson v. McGuigan, No. 84-5077 (2d Cir., decided October 30, 1985), the Court of Appeals for the Second Circuit held that state court-ordered criminal restitution is dischargeable in bankruptcy. Previous decisions of other circuits had held that federal court-ordered criminal restitution was not dischargeable. While the Bankruptcy Code prohibits the discharge of "fines", the Robinson court construed restitution to be a "debt", and therefore dischargeable. H.R. 3742, 99th Congress, introduced on November 12, 1985, would amend title 11 of the United States Code to make court-ordered criminal restitution nondischargeable in bankruptcy.

Since H.R. 3742 affects a sentencing court's discretion by clearing up a perceived limitation on that discretion, it is an appropriate matter for consideration by the judiciary. Upon the recommendation of the Probation and Bankruptcy Committees, the Conference voted to endorse H.R. 3742 to the extent that it would make federal restitution orders

nondischargeable in bankruptcy. Application of the bankruptcy laws of the United States to state criminal sentences, including restitution, is a policy determination for the Congress.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

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

REVISED GUIDELINES FOR CHAPTER 13 ADMINISTRATION

Since 1963 (September 1963 Session, Conf. Rpt., pp. 87-88), the Judicial Conference has promulgated, and periodically revised, guidelines for Chapter 13 administration in order to promote trustee supervision practices among the districts and to prevent undesirable actions on the part of the trustees. Upon the recommendation of the Committee, the Conference approved revisions in the Chapter 13 guidelines to provide greater guidance and detail to the courts in trustee supervision.

NOTICING GUIDELINES

The judiciary's current appropriations act encourages the courts to place the burden and expense of bankruptcy noticing on the litigants rather than the taxpayers. Draft noticing guidelines, prepared to assist in the implementation of this policy, were circulated for the views of all bankruptcy judges and clerks, reviewed by the Committee, and approved by the Conference.

BANKRUPTCY ESTATE ADMINISTRATION

Judge DeMascio noted that the Committee had reviewed the existing policy on the U.S. Trustee Program, under the Department of Justice, to administer bankruptcy estates pending before the courts. Since September, 1977 (Conf. Rpt., pp. 72-73), the Conference has opposed such a system and favored authorization of a position within the judiciary to perform these duties. The Bankruptcy Committee, after a thorough review, reaffirmed its support for the existing Conference position.

Legislation now pending in the Congress (S. 1961, H.R. 2660, and H.R. 3664, 99th Congress) would expand the U.S. Trustee Program to a permanent, nationwide program. Another proposal would expand the pilot program on an interim basis. The Conference authorized the Committee to continue its efforts in opposition to any extension or expansion of the U.S. Trustee Program.

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 report of the Committee.

CHANGES IN MAGISTRATE POSITIONS

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

SECOND CIRCUIT

New York, Northern:

- (1) Continued the part-time magistrate position at Watertown for an additional four-year term and increased the salary from \$11,195 to \$22,724 per annum.
- (2) Continued the full-time magistrate position at Syracuse for an additional eight-year term.
- (3) Continued the part-time magistrate position at Champlain (or Plattsburg) for an additional four-year term but decreased the salary from \$7,164 to \$4,030 per annum, effective upon the commencement of the new term.

FOURTH CIRCUIT

Maryland:

- (1) Increased the salary of the part-time magistrate position at Hagerstown from \$7,164 to \$33,888 per annum for a two-month period commencing April 1, 1986. Following the two-month period, the salary of the position will revert to \$7,164 per annum.
- (2) Continued the part-time magistrate position at Hagerstown for an additional four-year term at the currently authorized salary of \$7,164 per annum.
- (3) Increased the salary of the part-time magistrate position at Salisbury from \$4,030 to \$26,040 per annum for a two-month period commencing April 1, 1986. Following the two-month period, the salary of the position will revert to \$4,030 per annum.
- (4) Continued the part-time magistrate position at Salisbury for an additional four-year term at the currently authorized salary of \$4,030 per annum.

South Carolina:

- (1) Continued the part-time magistrate position at Aiken for an additional four-year term at the currently authorized salary of \$2,015 per annum.
- (2) Continued the part-time magistrate position at Florence for an additional four-year term and increased the salary of the position from \$4,030 to \$25,859 per annum.

West Virginia, Southern:

Increased the salary of the part-time magistrate position at Beckley or Bluefield from \$22,724 to \$34,200 per annum.

FIFTH CIRCUIT

Texas, Southern:

- (1) Continued the two full-time magistrate positions at Houston which are due to expire in 1987 for additional eight-year terms.
- (2) Continued the full-time magistrate position at Brownsville (or McAllen) which is due to expire on January 17, 1987, for an additional eight-year term.
- (3) Continued the full-time magistrate position at Corpus Christi for an additional eight-year term.

SIXTH CIRCUIT

Ohio, Southern:

- (1) Authorized an additional full-time magistrate position to serve the court at Columbus.
- (2) Continued the full-time magistrate position at Columbus which is due to expire on April 30, 1987, for an additional eight-year term.
- (3) Continued the part-time magistrate position at Portsmouth for an additional four-year term at the currently authorized salary of \$2,015 per annum.

Tennessee, Western:

Continued the two full-time magistrate positions at Memphis for additional eight-year terms.

SEVENTH CIRCUIT

Indiana, Northern:

- (1) Continued the full-time magistrate position at Fort Wayne for an additional eight-year term.
- (2) Increased the salary of the part-time magistrate position at South Bend from \$22,724 to \$34,200 per annum.

Indiana, Southern:

- (1) Continued the two full-time magistrate positions at Indianapolis which are due to expire in 1987 for additional eight-year terms.
- (2) Continued the part-time magistrate position at Terre Haute for an additional four-year term at the currently authorized salary of \$5,037 per annum.
- (3) Continued the part-time magistrate position at New Albany for an additional four-year term at the currently authorized salary of \$2,015 per annum.

NINTH CIRCUIT

Arizona:

- (1) Redesignated the official location of the part-time magistrate position at Window Rock/Tuba City as Window Rock/Holbrook.
- (2) Consolidated the part-time magistrate positions at Flagstaff (\$5,037 per annum) and Page (\$2,015 per annum) into one position designated as Flagstaff/Page at a salary of \$9,179 per annum, effective April 1, 1986.
- (3) Discontinued the part-time magistrate position at Page, effective April 1, 1986.
- (4) Authorized the part-time magistrate at Flagstaff/Page to exercise jurisdiction in the adjoining District of Utah, formerly exercised by the part-time magistrate at Page.

California, Northern:

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

- (2) Continued the full-time magistrate position at San Francisco which is due to expire on February 4, 1987, for an additional eight-year term.
- (3) Continued the part-time magistrate position at Eureka for an additional four-year term and increased the salary from \$2,015 to \$4,030 per annum.

California, Central:

- (1) Continued the five full-time magistrate positions at Los Angeles which are due to expire on January 17, 1987, September 4, 1987, and June 18, 1988, for additional eight-year terms.
- (2) Continued the part-time magistrate position at San Bernardino for an additional four-year term at the currently authorized salary of \$17,352 per annum.
- (3) Continued the part-time magistrate position at Long Beach for an additional four-year term at the currently authorized salary of \$11,195 per annum.
- (4) Continued the part-time magistrate position at Lancaster for an additional four-year term at the currently authorized salary of \$9,179 per annum.
- (5) Continued the part-time magistrate position at Twentynine Palms or Palm Springs for an additional four-year term but reduced the salary of the position from \$5,037 to \$4,030 per annum, effective at the start of the new term.

Washington, Eastern:

- (1) Continued the full-time magistrate position at Spokane for an additional eight-year term.
- (2) Continued the part-time magistrate position at Yakima for an additional four-year term at the currently authorized salary of \$17,352 per annum.

TENTH CIRCUIT

Oklahoma, Northern:

- (1) Authorized a second full-time magistrate position to serve the court at Tulsa.
- (2) Discontinued the deputy clerk/magistrate position at Tulsa.
- (3) Increased the salary of the part-time magistrate position at Miami from \$5,037 to \$34,200 per annum for a one-month period commencing April 1, 1986, and reduced the salary of the position to \$2,015 per annum, effective May 1, 1986.
- (4) Discontinued the part-time magistrate position at Miami upon the expiration of the term of the incumbent or the appointment of a second full-time magistrate at Tulsa, whichever occurs first.

Oklahoma, Eastern:

- (1) Continued the part-time magistrate position at Hugo for an additional four-year term at the currently authorized salary of \$2,015 per annum.
- (2) Increased the salary of the part-time magistrate position at McAlester from \$4,030 to \$7,164 per annum.

ELEVENTH CIRCUIT

Florida, Northern:

Continued the part-time magistrate positions at Tallahassee and Gainesville for additional four-year terms at the currently authorized salaries of \$34,200 per annum and \$3,022 per annum, respectively.

Florida, Southern:

- (1) Continued the full-time magistrate position at Miami which is due to expire on January 14, 1987, for an additional eight-year term.

- (2) Continued the part-time magistrate position at Fort Pierce for an additional four-year term at the currently authorized salary of \$3,022 per annum.
- (3) Increased the salary of the part-time magistrate position at West Palm Beach from \$13,210 to \$34,200 per annum.

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 report on appointments and payments under the Criminal Justice Act for the fiscal year ended September 30, 1985. The report indicated that Congress appropriated \$64,367,000 for "Defender Services" for the fiscal year 1985. At the time the report was prepared, the estimate of appropriations expenditures for the fiscal year 1985 was approximately \$59,051,000, leaving an estimated balance of \$5,316,000 to be carried forward into the fiscal year 1986.

During the year, approximately 54,600 persons were represented under the Criminal Justice Act, compared to 50,704 persons represented during the fiscal year 1984, an increase of 7.7 percent. Of these persons, federal public and community defender organizations represented 28,680 or 52.5 percent of the total representations, compared to 53.9 percent in the fiscal year 1984 and 52.2 percent in the fiscal year 1983.

The Conference authorized the Director of the Administrative Office to transmit the report to all chief judges, all federal defender organizations, and others who may request copies.

BUDGET REQUESTS - FEDERAL PUBLIC DEFENDERS

The Conference approved supplemental funding requests for federal public defender offices for the fiscal years 1986 and 1987 as follows:

<u>District</u>	<u>Fiscal Year 1986</u>	<u>Fiscal Year 1987</u>
Minnesota	\$ 20,800	\$ 9,600
Ohio, Northern	\$ 56,739	\$ 58,275

CRIMINAL JUSTICE ACT AMENDMENTS

The Conference voted to recommend that the Criminal Justice Act, 18 U.S.C. 3006A, be amended:

1. To authorize, but not require, the delegation of a circuit chief judge's excess fee approval authority to an active circuit judge selected by the chief judge; and
2. To establish a holdover provision to permit the continued service of a federal public defender upon the expiration of the term of office, until a successor is appointed or for one year, whichever is earlier.

Another proposed Criminal Justice Act amendment, requiring Judicial Conference approval of the establishment or disestablishment of a federal defender organization, was disapproved by the Conference.

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.

HABEAS CORPUS

In September, 1985 (Conf. Rpt., pp. 80-81), the Conference voted to endorse section 5 of S. 238, 99th Congress, which would amend 28 U.S.C. 2254(b) to permit an application for a writ of habeas corpus to be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in state court. Consideration of section 3 (a proposed amendment to 28 U.S.C. 2253 to vest in the judges of the courts of appeals exclusive authority to issue certificates of probable cause for appeal in habeas corpus

proceedings, and to create an identical certificate requirement for appeals by federal prisoners in collateral relief proceedings pursuant to 28 U.S.C. 2255) and section 4 (a proposed amendment to Rule 22 of the Federal Rules of Appellate Procedure to conform to the procedures in 28 U.S.C. 2253) was deferred by the Conference, pending a Committee solicitation and evaluation of the views of the circuit and district chief judges on the provisions.

Judge Butzner reported that responses from 10 courts of appeals and 47 district courts indicated that the courts were approximately evenly divided in their support for, and opposition to, the legislation.

The Conference voted to oppose enactment of S. 238 to the extent that it would amend 28 U.S.C. 2253 to confer exclusive authority to issue certificates of probable cause on the judges of the courts of appeals. Thus, the Conference voted to retain the current authority of district courts to certify habeas corpus proceedings for appeal. With respect to creation of a certificate requirement for appeals from denials of relief under 28 U.S.C. 2255, the Conference voted to support the creation of a certificate requirement comparable to that currently found in 28 U.S.C. 2253.

ELECTRONIC SURVEILLANCE

S. 1667 and H.R. 3378, 99th Congress, would extend the protections against unauthorized interception afforded by Chapter 19 of title 18, United States Code, to advanced forms of electronic communications. In addition, the bills would restrict the installation and use of pen registers and tracking devices by law enforcement officers who apply for and obtain court orders authorizing such devices: before granting an order, a court would be required to find that there is reasonable cause (in the case of a pen register) or probable cause (in the case of a tracking device) to believe that the information likely to be obtained is relevant to a legitimate criminal investigation.

While the substantive provisions of these bills present questions of policy for resolution by the Congress, the Committee observed that the requirement for obtaining a court order for the installation or use of a pen register or tracking device does not explicitly provide that the order could be issued by a United States magistrate. The Conference

concluded that in the event of enactment of this legislation, Congress should be asked to draft the legislative history to show that judges would be permitted to authorize magistrates to entertain such applications and issue orders.

GRAND JURY SECRECY

S. 1676 and H.R. 3340, 99th Congress, the proposed "Grand Jury Disclosure Amendments Act of 1985", were introduced at the request of the Department of Justice. The bills would amend Rule 6(e)(3) of the Federal Rules of Criminal Procedure (1) to permit automatic disclosure of grand jury materials to Department of Justice attorneys for civil purposes without a court order; (2) to permit the Department of Justice to apply for court authorization to disclose grand jury materials to other executive departments and agencies for their use in matters within their jurisdiction, such as adjudicative and administrative proceedings; and (3) to reduce the "particularized need" standard for court-authorized disclosure to a lesser standard of "substantial need" in certain circumstances. S. 1562, 99th Congress, would make similar changes in Rule 6(e)(3), except that it does not specifically provide that only the Justice Department can request a disclosure order (implying that other agencies may do so as well), and it authorizes disclosure not just to personnel of executive departments and agencies, but also to "any committee of Congress".

These bills were reviewed by both the Criminal Law and Jury Committees. The Committees agreed that while enactment of the proposed amendments to Rule 6 of the Criminal Rules is primarily a legislative rather than a judicial question, the amendments could have a considerable impact upon the courts and the functioning of the criminal process. The Committees prepared a joint report discussing various premises Congress might keep in mind in evaluating the legislative proposals. The Conference voted to approve the joint report.

BRIBES AND GRATUITIES ACT OF 1985

The proposed Bribes and Gratuities Act of 1985 (S. 1675 and H.R. 3336, 99th Congress) would permit the United States to terminate for cause any contract, grant, or other benefit, and to assess exemplary damages, if an "authority head" finds after notice and hearing that a person who has been awarded some benefit by the United States obtained or attempted to influence the award of the benefit through some form of

bribery. Alternatively, the authority head could, after notice and hearing, declare void and rescind any contract, grant, or other benefit tainted by bribery, retain all benefits received, and recover all benefits conferred by the United States pursuant to the contract, grant, service, or other benefit.

In general, S. 1675 and H.R. 3336 present policy matters for resolution by the Congress. However, the Committee observed that, as written, the statute would apply to any person who "is awarded a contract . . . by any agency of the United States". The Committee found this language to be unclear, and therefore potentially the subject of litigation, on the question of whether the legislation would apply in situations in which a bribe or gratuity were given to an officer or employee of an agency administering federal grants, even though the person were not employed by the United States. The Committee recommended clarification of this ambiguity in the event of enactment of the bill, and the Conference agreed.

BAIL REFORM ACT AMENDMENTS

As noted in the discussion at pages 19-20 entitled "Comprehensive Crime Control Act of 1984", Congressman Kastenmeier has introduced as H.R. 3541, 99th Congress, most of the provisions of the Department of Justice's proposed amendments to the Act (P.L. 98-473) which fall within the jurisdiction of his House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Section 2 of H.R. 3541 would amend the Bail Reform Act to enable a government attorney to move for a detention hearing if no condition or combination of conditions will assure the appearance of the defendant and the safety of the community, and the offense charged is one involving the unlawful possession or transfer of firearms or explosives. The Committee supported this amendment and the Conference agreed. Section 2 of H.R. 3541 would also permit a detention hearing to be reopened at any time before trial if material information exists "that was not known to the movant at the time of the [original detention] hearing". The Conference voted to support this provision as well, if amended to provide that the material information upon which the reopening is based was not only unknown to the moving party, but also could not have been obtained through the exercise of "reasonable diligence".

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge T. Emmet Clarie, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

MODEL GRAND JURY CHARGE

The current model grand jury charge was approved by the Judicial Conference in September, 1978 (Conf. Rpt., p. 77). The Conference approved an updated and shortened model grand jury charge.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

The Committee to Review Circuit Council Conduct and Disability Orders filed a report indicating that, since its last report, no proceedings within its jurisdiction had been filed or were pending.

COMMITTEE ON THE BICENTENNIAL OF THE CONSTITUTION

Chief Judge Howard T. Markey, Chairman of the Committee on the Bicentennial of the Constitution, presented the report of the Committee.

The Committee, which includes a representative from each circuit, held its first organizational meeting on December 18, 1985. It will serve primarily as a catalyst and coordinator of bicentennial projects locally designed, organized, managed, and funded.

AD HOC COMMITTEE ON AMERICAN INNS OF COURT

The Ad Hoc Committee on American Inns of Court filed a report indicating that, to date, 15 Inns of Court have been chartered by the American Inns of Court Foundation. At its February, 1986 meeting, the Foundation Board of Trustees accepted the resignation of its Chairman, Judge Aldon J. Anderson, and also voted to commend Judge Anderson for his outstanding service to the American Inns of Court movement. Chief Judge Howard T. Markey was elected to succeed Judge Anderson as Chairman of the Board of Trustees of the Foundation.

AD HOC COMMITTEE ON ELECTRONIC SOUND RECORDING

Judge Collins J. Seitz, Chairman of the Ad Hoc Committee on Electronic Sound Recording, presented the report of the Committee.

At the request of the Appropriations Committee of the United States Senate and the Ad Hoc Committee, the Administrative Office conducted a program evaluation of the electronic sound recording program. Although not all courts were included in the evaluation, by the end of 1985, 31 active and senior district judges and 49 bankruptcy judges had requested the installation of electronic sound recording equipment as the means of taking all or part of the record of proceedings in court and/or chambers.

On the basis of the Administrative Office evaluation, the Ad Hoc Committee concluded that substantial financial savings are realized when a court uses electronic sound recording, and accurate and timely transcripts are being produced. The Conference approved the report and determined that the electronic sound recording program should be employed as a permanent part of the facilities and services available to the judiciary, subject to appropriate funding, and authorized the transmittal of the report to the Congress.

MEMORIAL RESOLUTION

Noting the death of Judge Edward Allen Tamm, the Conference adopted the following resolution:

The Judicial Conference of the United States notes with sadness the death of Judge Edward Allen Tamm on September 22, 1985. A distinguished judge of the United States District Court for 17 years and the Court of Appeals for the District of Columbia Circuit for 20 years, and Chief Judge of the Temporary Emergency Court of Appeals for 11 years, Judge Tamm was admired by all who knew and worked with him. In addition to his duties as an active judge serving on a busy circuit, he carried numerous difficult extra-judicial assignments requiring exceptional administrative ability. He faithfully discharged all these tasks with thoroughness and dedication.

Judge Tamm, a native of Butte, Montana, began his judicial career in 1948 when he was selected by President Truman to be a judge of the United States District Court for the District of Columbia. In 1965, he was appointed by President Johnson to the United States Court of Appeals. His 37 years on the federal bench were preceded by 18 years of service in the Federal Bureau of Investigation, where he became one of its highest ranking officers. His extraordinary administrative skills were widely credited as a major factor in the high standing of the FBI during his tenure there.

In 1969, Judge Tamm was appointed by the Chief Justice of the United States to be the first Chairman of the Judicial Conference Review Committee, responsible for administering the then voluntary financial disclosure and reporting program of the federal judiciary. When Congress passed the Ethics in Government Act of 1978, requiring the filing of financial disclosure reports by all senior government officials, that Review Committee became the present Judicial Ethics Committee, under the new Act. Judge Tamm continued as its Chairman. From 1972 until 1979, he was the co-chairman of the Joint Committee of the Judicial Conference on the Code of Judicial Conduct which developed the Code of Conduct for United States Justices and Judges.

In 1972, Judge Tamm was also appointed by the Chief Justice of the United States to be the Chief Judge of the Temporary Emergency Court of Appeals, a court created pursuant to the Economic Stabilization Act of 1970 and consisting entirely of judges serving under assignment from other federal courts. Judge Tamm was Chief Judge of TECA for a decade and relinquished this position in late 1981 only after most of the business of the court had been completed.

Simultaneously with these three important assignments, Judge Tamm was an influential member of the Committee on Court Administration and the Advisory Committee on the Federal Rules of Appellate Procedure. He served on these committees until his death. Few, if any, federal judges have carried as heavy an

administrative and extra judicial burden as did Judge Tamm over a period of many years.

This brief narrative of Judge Tamm's judicial career and leadership in judicial improvement does not convey the essential character of the man as a human being. Each generation produces judges of singular leadership recognized by their contemporaries as pillars of strength and examples of integrity, discipline and dedication. Judge Tamm was one of these, but he was much more. To his friends, he was quiet, unassuming and completely modest. On the bench, while at all times a strict disciplinarian, he was consistently civil and courteous to all who appeared before him. To borrow a classical expression typical of those he took pleasure in quoting, he could be described as "suaviter in modo, fortiter in re." Few judges in the history of the federal judiciary have made comparable contributions to the administration of justice. We shall miss him greatly.

We, the members of the Conference, convey our sympathy to his widow, Grace Tamm, and their two children, Edward and Grace, and ask that this resolution be sent to them as a mark of our profound respect and high esteem.

ELECTIONS

Pursuant to 28 U.S.C. 621(a)(2), the Conference elected Judge Jose A. Cabranes of Connecticut to membership on the Board of the Federal Judicial Center for a term of four years to succeed Judge Warren K. Urbom, whose term expires on March 28, 1986.

Pursuant to 28 U.S.C. 332(f), the Conference elected Judge Louis F. Oberdorfer of the District of Columbia to membership on the Board of Certification for Circuit Executives for a term of three years to succeed Judge John H. Pratt, whose term expires on July 1, 1986. The Conference also reelected Mr. John W. Macy, Jr., to membership on the Board of Certification for an additional term of three years, until July 1, 1989.

**PRETERMISSION OF TERMS
OF THE COURTS OF APPEALS**

Pursuant to 28 U.S.C. 48, the Conference approved the pretermission of terms of the following United States Courts of Appeals during the calendar year 1986: the Court of Appeals for the Fourth Circuit at Asheville, North Carolina; the Court of Appeals for the Eighth Circuit at Kansas City, Missouri and Omaha, Nebraska; the Court of Appeals for the Ninth Circuit at Los Angeles, California; and the Court of Appeals for the Tenth Circuit at Wichita, Kansas and Oklahoma City, Oklahoma.

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

August 25, 1986

Chief Justice
of the United States

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

SPECIAL SESSION

June 30, 1986

**Washington, D.C.
1986**

**REPORT OF THE PROCEEDINGS
OF THE SPECIAL SESSION OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES**

June 30, 1986

The Judicial Conference of the United States convened in special session by telephonic conference call on June 30, 1986, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Chief Justice presided and the following members of the Conference participated:

First Circuit:

Chief Judge Levin H. Campbell
Chief Judge Juan M. Perez-Gimenez, District of Puerto Rico

Second Circuit:

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

Third Circuit:

Chief Judge Ruggero J. Aldisert*
Chief Judge Murray M. Schwartz, District of Delaware

Fourth Circuit:

Chief Judge Harrison L. Winter
Judge Frank A. Kaufman, District of Maryland

- * Judge Aldisert was unavailable at the time of the conference call but cast his vote in advance, based upon written materials submitted to Conference members by mail.

Fifth Circuit:

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

Sixth Circuit:

Chief Judge Pierce Lively
Chief Judge Robert M. McRae, Jr., Eastern District of
Tennessee

Seventh Circuit:

Judge Harlington Wood, Jr.**
Chief Judge Frank J. McGarr, Northern District of
Illinois

Eighth Circuit:

Chief Judge Donald P. Lay
Chief Judge John F. Nangle, Eastern District of
Missouri

Ninth Circuit:

Chief Judge James R. Browning
Chief Judge Robert J. McNichols, Eastern District of
Washington

Tenth Circuit:

Chief Judge William J. Holloway, Jr.
Chief Judge Sherman G. Finesilver, District of Colorado

Eleventh Circuit:

Chief Judge John C. Godbold
Chief Judge James Lawrence King, Southern District of
Florida

** Designated by the Chief Justice (at the request of Judge Cummings) in place of Chief Judge Walter J. Cummings, who was out of the country.

District of Columbia Circuit:

Chief Judge Spottswood W. Robinson, III
Chief Judge Aubrey E. Robinson, Jr., District of
Columbia

Federal Circuit:

Chief Judge Howard T. Markey

L. Ralph Mecham, Director of the Administrative
Office of the United States Courts, also participated.

PROCEEDINGS UNDER JUDICIAL CONDUCT AND
DISABILITY ACT

The Chief Justice called this special telephone conference session of the Judicial Conference to consider a certificate issued on June 18, 1986, by the Judicial Council of the Ninth Circuit pursuant to 28 U.S.C. 372(c)(7)(B), conveying its determination that Chief Judge Harry E. Claiborne of the United States District Court for the District of Nevada had engaged in conduct which might constitute grounds for impeachment under Article I of the United States Constitution. In advance of the conference call, the members of the Conference were provided with a draft of a certificate which the Conference could issue to the House of Representatives under 28 U.S.C. 372(c)(8), concurring in the determination of the Ninth Circuit Judicial Council that consideration of the impeachment of Judge Claiborne may be warranted.

The Chief Justice afforded each member of the Conference the opportunity to comment upon the proposed certificate. After discussion, the Conference agreed to amend the certificate to include an affirmative finding that no additional investigation of Judge Claiborne's conduct was warranted in view of his conviction under federal law and the affirmance of the conviction on appeal. As amended, the certificate provided as follows:

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF
REPRESENTATIVES:

The Judicial Conference of the United States, acting pursuant to section 331 of title 28, United States Code, does hereby certify as follows:

1. On June 18, 1986, the Judicial Council of the Ninth Circuit certified to the Judicial Conference, as provided by 28 U.S.C. 372(c)(7)(B), that United States District Judge Harry E. Claiborne of the District of Nevada has engaged in conduct which might constitute grounds for impeachment under Article I of the United States Constitution.

2. The Judicial Conference, in special session by telephonic conference call, has exercised its authority under 28 U.S.C. 372(c)(8) to consider the certificate of the Judicial Council of the Ninth Circuit. In so doing, the Judicial Conference had before it certified official records of judicial proceedings manifesting as follows:

On October 3, 1984, Judge Claiborne was convicted of two counts of violating section 7206(1) of the Internal Revenue Code of 1954 (26 U.S.C. 7206(1)).

On May 1, 1986, Judge Claiborne's conviction became final upon receipt in the United States District Court for the District of Nevada of the mandate of the United States Court of Appeals for the Ninth Circuit.

3. The Judicial Council of the Ninth Circuit has determined and certified to the Judicial Conference that a violation of section 7206(1) of the Internal Revenue Code might constitute one or more grounds for impeachment and that Judge Claiborne has engaged in conduct which might constitute grounds for impeachment under Article I of the Constitution.

4. As provided in 28 U.S.C. 372(c)(8), the Judicial Conference concurs in the determination of the Judicial Council of the Ninth Circuit that a violation of section 7206(1) of the Internal Revenue Code might constitute one or more grounds for impeachment and that Judge Claiborne has engaged in conduct which might constitute grounds for impeachment under Article I of the Constitution. The Judicial Conference considers no additional investigation appropriate.

5. Consideration of the impeachment of Judge Claiborne may be warranted.

There are attached to this certificate the certificate of the Judicial Council of the Ninth Circuit to the Judicial Conference and certified copies of the judgment and commitment order of the United States District Court for the District of Nevada entered on October 3, 1984, the judgment of the United States Court of Appeals for the Ninth Circuit on July 8, 1985, affirming the judgment of the District Court, and a certificate of Joseph F. Spaniol, Jr., Clerk of the Supreme Court of the United States, that the Supreme Court on April 21, 1986, denied the petition for writ of certiorari filed by Judge Claiborne in this matter.

Executed this 30th day of June, 1986.

The Conference voted to authorize the Chief Justice to execute the certificate and issue it to the Speaker of the House of Representatives.

Warren E. Burger

July 28, 1986

Chief Justice
of the United States

INDEX

	Page
Administrative Office, U. S. Courts	
Court Interpreters Certification.....	9
Gramm-Rudman-Hollings Budget Cuts	5
Judicial Business of the Courts.....	4
Report of the Director	4
Appellate Rule 22	30
Appointments and Payments, Criminal Justice Act.....	28
Appropriations (see Budget)	
Arbitration.....	6
Automation	13
Bail Reform Act Amendments	32
Balanced Budget and Emergency Deficit	
Control Act of 1985 (see "Gramm-Rudman-Hollings")	
Bankruptcy System:	
Bankruptcy Estate Administration	21
Committee on; Report of.....	21
Noticing Guidelines.....	21
Revised Guidelines for Chapter 13 Administration	21
Bicentennial of the Constitution:	
Committee on; Report of.....	33
Bribes and Gratuities Act of 1985	31
Budget:	
Committee on; Report of.....	14
Decentralize Budget Process.....	17
Gramm-Rudman-Hollings Cuts	14
Supplemental Appropriations for FY 1986.....	14
Budget Requests:	
Federal Public Defenders.....	28
Supporting Personnel; Eighth Circuit.....	13
Cases Cited:	
Robinson v. McGuigan	20
Child Abduction Convention; Federal Jurisdiction	
Under International.....	12
Circuit Conferences; Biennial.....	17
Circuit Executives	
Certification Board; Election to	36
Meetings of	17
Civil RICO Suits	11
Claiborne, Harry E.....	41
Claims Court	10

Clerks:	
Consolidation of District & Bankruptcy.....	16
Deputies for Bankruptcy Courts	14
Codes of Conduct:	
Advisory Committee on; Report of	18
Comprehensive Crime Control Act of 1984	19,32
Conduct and Disability Act; Proceedings under	41
Contract Disputes	10
Court Administration:	
Arbitration	6
Automation	13
Child Abduction Convention; Federal Jurisdiction under International	12
Civil RICO Suits	11
Committee on; Report of.....	6
Court Interpreters Act	9
Court Reporters	10
Courts Design Guide	7
F frivolous Litigation	13
Government Contracts.....	10
Places of Holding Court	8
Regulations for Debt Collection.....	8
Relocation Allowances.....	7
Removal Jurisdiction	10
Supporting Personnel	13
Court Interpreters Act	9
Court Reporters	10
Courts of Appeals; Pretermission of Terms of	37
Criminal Fine Collection	20
Criminal Justice Act:	
Amendments to the Act	29
Appointments and Payments	28
Budget Requests - Federal Public Defenders	28
Committee on; Report of.....	28
Criminal Law:	
Bail Reform Act Amendments	32
Bribes and Gratuities Act of 1985	31
Committee on; Report of.....	29
Electronic Surveillance	30
Grand Jury Secrecy.....	31
Habeas Corpus	29
Debt Collection Act of 1982	8
Design Guide, U. S. Courts	7
Diversity Jurisdiction	17
Drug Aftercare	20

Elections:	
Board of Certification	36
Board of the Federal Judicial Center.....	36
Electronic Sound Recording:	
Ad Hoc Committee on; Report of.....	34
Utilization under Gramm-Rudman-Hollings	16
Electronic Surveillance	30
Ethics (see Judicial Ethics)	
Executive Committee Actions:	
Schedule of Budget Reductions.....	15
Federal Judicial Center Board; Election to.....	36
Fee Schedules; Increase in.....	17
Federal Public Defenders:	
Budget Requests	28
Design Guide Amendment	7
Financial Disclosure (see Judicial Ethics)	
Five-year Plan for Automation.....	13
Frivolous Litigation	13
Government Contracts.....	10
Gramm-Rudman-Hollings:	
Administrative Office Budget Cuts	5
Automation	13
Balanced Budget and Emergency Deficit	
Control Act of 1985	14
Court Security.....	15
Schedule of Reductions	15
Transfers of Funds	14
Grand Jury	
Model Grand Jury Charge	33
Secrecy.....	31
Use of interpreters	9
Guidelines:	
Bankruptcy Chapter 13 Administration.....	21
Bankruptcy Noticing.....	21
Relocation Allowances.....	7
Habeas Corpus.....	29
Hague Convention	12
Impeachment; Certificate of Consideration of.....	42
Incentive Awards.....	17
Inns of Court:	
Ad Hoc Committee on; Report of.....	33
Intercircuit Assignments:	
Committee on; Report of.....	18

Judicial Branch: Committee on; Report of	6
Judicial Business of the Courts	4
Judicial Conference of the U.S.:	
Call of	1,39
Committees of	17
Release of Action	37
Special Session	39
Judicial Ethics: Committee on; Report of	17
Judicial Panel on Multidistrict Litigation:	
Report of	5
Jurisdiction	
Diversity	17
Government contract disputes	10
International Child Abduction Convention	12
Removal	10
Juror Qualification Scanning	17
Jury Costs	17
Jury System:	
Committee on; Report of	33
Model Grand Jury Charge	33
Legislation:	
Arbitration	6
Bail Reform Act Amendments	32
Bribes and Gratuities Act of 1985	31
Comprehensive Crime Control Act of 1984;	
Amendments to	19
Court Interpreters Act	9
Criminal Fine Enforcement Act of 1984	20
Criminal Justice Act Amendments	29
Electronic Surveillance	30
Grand Jury Secrecy	31
Habeas Corpus	29
Government Contract Disputes	10
Jurisdiction under International Child	
Abduction Convention	12
Places of Holding Court	8
Removal Jurisdiction	10
Restitution	20
U. S. Trustee Program	22

Magistrates:	
Changes in Magistrate Positions	22
Committee on; Report of	22
Electronic Surveillance Orders	30
Marshals Service	15
Memorial Resolution; Judge Edward A. Tamm	34
Metropolitan Chief Judges.....	17
Multidistrict Litigation:	
Judicial Panel on; Report of	5
Noticing Guidelines.....	21
Organized Crime Control Act of 1970	11
Places of Holding Court	8
Pretermission of Terms of the Courts of Appeals	37
Probation System:	
Committee on; Report of.....	19
Comprehensive Crime Control Act of 1984	19
Criminal Fine Collection	20
Restitution.....	20
Sentencing Institutes	19
Protected Witnesses; Supervision of.....	20
Racketeer Influence and Corrupt Organizations	11
Release of Conference Action	37
Relocation Allowances	7
Restitution.....	20
Review Circuit Council Conduct and Disability Orders:	
Committee on; Report of.....	33
Rules of Practice and Procedure:	
Appellate Rule 22	30
Committee on; Report of.....	18
Salary Offset; Debt collection regulations	8
Sentencing Institutes	19
Supporting Personnel:	
FY 1987 Budget Request for	13
Furlough of.....	17
Tamm, Edward A.; Memorial Resolution	34
Telecommunications Project	13
Trustees	21

