

REPORT OF THE PROCEEDINGS OF THE
JUDICIAL CONFERENCE

COMMUNICATION

FROM

THE CHIEF JUSTICE OF THE UNITED STATES

TRANSMITTING

THE PROCEEDINGS OF THE JUDICIAL CONFERENCE
HELD IN WASHINGTON, D.C., ON APRIL 6-7, 1972, PUR-
SUANT TO 28 U.S.C. 331



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LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 27, 1972.

HON. CARL ALBERT,
Speaker of the House,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I have the honor of transmitting to you a copy of the proceedings of the meeting of the Judicial Conference held in Washington, D.C., on April 6-7, 1972.

Cordially,

WARREN E. BURGER.

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

APRIL 6-7, 1972

WASHINGTON, D.C.

1972

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

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

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

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

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

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

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

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

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

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

APRIL 6-7, 1972

The Judicial Conference of the United States convened on April 6, 1972, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Conference continued in session on April 7. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit :

Chief Judge David L. Bazelon
Chief Judge John J. Sirica, District of Columbia

First Circuit :

Chief Judge Bailey Aldrich
Judge Edward T. Gignoux, District of Maine

Second Circuit :

Chief Judge Henry J. Friendly
Chief Judge David N. Edelstein, Southern District of New York

Third Circuit :

Chief Judge Collins J. Seltz
Chief Judge Caleb M. Wright, District of Delaware

Fourth Circuit :

Chief Judge Clement F. Haynsworth, Jr.
Judge Oren R. Lewis, Eastern District of Virginia

Fifth Circuit :

Chief Judge John R. Brown
Chief Judge E. Gordon West, Eastern District of Louisiana

Sixth Circuit :

Chief Judge Harry Phillips
Chief Judge Carl A. Weinman, Southern District of Ohio

Seventh Circuit :

Chief Judge Luther M. Swygert
Chief Judge Robert A. Grant, Northern District of Indiana

Eighth Circuit :

Chief Judge M. C. Matthes
Chief Judge Oren Harris, Western District of Arkansas

Ninth Circuit :

Chief Judge Richard H. Chambers
Judge Fred M. Taylor, District of Idaho

Tenth Circuit :

Chief Judge David T. Lewis

Judge Olin Hatfield Chilson, District of Colorado

Court of Claims :

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals :

Chief Judge Eugene Worley*

Senior Judges Albert B. Maris and Elbert P. Tuttle, Circuit Judges Robert A. Ainsworth, Jr., Irving R. Kaufman, Edward A. Tamm and Francis L. Van Dusen, Senior Judge Roy W. Harper, and District Judges Milton Pollack, Edward Weinfeld and Alfonso J. Zirpoli attended all or some of the sessions of the Conference.

The Honorable Richard G. Kleindienst, Acting Attorney General, addressed the Conference at the opening of the first session on matters of concern to the Department of Justice and the judiciary.

The Honorable Alfred P. Murrah, Director of the Federal Judicial Center and Chairman of the Panel on Multidistrict Litigation, presented reports on behalf of the Center and the Panel.

Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, and Mr. William E. Foley, Deputy Director, attended all of the sessions of the Conference.

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

The Director of the Administrative Office, Mr. Kirks, addressed the Conference on the trends which occurred in case filings during the first half of fiscal year 1972.

As to civil filings, Mr. Kirks said that the trend was still upward, but at a sharply reduced rate. There were 46,888 civil filings for the first half of this fiscal year. This is only one-half of one percent greater than total civil filings during the comparable period last year. Civil terminations were up 12 percent over the first half of last fiscal year. There were 44,407 cases closed compared to 39,771 a year ago.

He observed that in the first half of this fiscal year there was a sharp decline in local jurisdiction cases, largely caused by court reorganization in the District of Columbia which transferred a large number of this type case to the new Superior Court. Motor

*Judge Giles S. Rich attended the second day of the Conference in place of Chief Judge Worley, as designated by the Chief Justice.

vehicle cases nationally dropped to 3,937 as compared with 4,591 in the same period of fiscal 1971. This represents a 15 percent decrease. Prisoner petitions dropped by two percent in the same period.

Mr. Kirks reported that the story on criminal filings was vastly different. Criminal filings increased more than 18 percent over the first six months of 1971. By December 31, 1971, 22,211 criminal actions had been docketed as compared with 18,824 filings for the comparable period last year.

There is an alarming and continuing increase in the number of very old civil cases on the dockets of district courts, Mr. Kirks said; these were up to 9,022 on June 30, 1971, from 8,004 the previous year. As of December 1971, this inventory had climbed again to 9,902—a 10 percent increase in six months.

FEDERAL JUDICIAL CENTER

The Director of the Center, Judge Alfred P. Murrah, presented three recommendations on behalf of the Board of the Center. Two of these related to court reporters and the third to publication of opinions of the Courts of Appeals. The Conference referred the three recommendations to the Committee on Court Administration for study and report. In so doing, the Conference agreed that as a matter of policy in the future, recommendations emanating from the Center should be referred to and staffed through the appropriate committees of the Conference before presentation to the Conference.

The Conference elected Judge Walter E. Hoffman of the Eastern District of Virginia to a full four-year term as a member of the Board of the Center, vice Judge Harold Tyler, and elected Judge Marvin Frankel of the Southern District of New York to serve the remaining two years of the term of Judge Gerhard Gesell.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Judge Alfonso J. Zirpoli, Chairman, presented the Committee's report to the Conference.

LAPSE OF PROSECUTION OF CERTAIN OFFENSES

The Department of Justice had directed the attention of the Committee to the fact that there is a substantial lapse in law enforcement of certain offenses, such as the interstate transportation

of stolen vehicles and theft of shipments moving in interstate commerce which though local in nature are subject to concurrent jurisdiction. A major cause for this lapse in prosecution stems from a lack of state funds to meet extradition costs and state witness fees.

The Committee advised the Conference that it believes the primary responsibility for initiating legislation relating to the use of federal appropriation of such funds for use by the states rests with the Department of Justice and, accordingly, the Conference agreed that no action should be taken by the judiciary.

AUTHORIZATION OF MAGISTRATES TO USE PROVISION OF YOUTH CORRECTIONS ACT

Judge Zirpoli advised that the Committee had been requested to comment on a draft bill prepared in the Department of Justice to amend Section 3401 of Title 18, United States Code, to use the provisions of the Youth Corrections Act when placing young offenders on probation. In the interest of greater clarity and the avoidance of any need to refer to other sections of Title 18, the Committee redrafted and the Conference approved a new draft of the proposed legislation, as follows:

A BILL

To amend section 3401 of Title 18, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 3401 of Title 18, United States Code, is amended by adding at the end thereof the following:

"(g) If a United States magistrate has suspended the imposition or execution of sentence and placed an offender under 26 years of age at the time of conviction on probation, he may thereafter, in his discretion, unconditionally discharge such offender from probation prior to the maximum period of probation theretofore fixed, which discharge shall automatically set aside the conviction, and the magistrate shall issue to the offender a certificate to that effect."

DISMISSAL OF INDICTMENTS IN FUGITIVE CASES

The Department of Justice has protested that proposed local rules of some district courts provide for the dismissal of indictments pending for more than one year where the defendants charged are fugitives. The Conference noted that the Department of Justice is of the view that such dismissals might be detrimental to the enforcement of the criminal law and the administration of justice and would leave the government no basis on which to seek extradition after the expiration of one year.

The Conference agreed with the Committee proposal to dis-

approve the use of local rules which do not provide the United States Attorney with an opportunity to show cause why such indictments of fugitives should not be dismissed.

PROPOSED FEDERAL CRIMINAL CODE

The Conference was advised that the Committee has held several meetings and conferred with several members and others of the National Commission on Reform of the Federal Criminal Law in studying Part A of the proposed new criminal code. The Committee submitted to the Conference tentative comments on Part A for study by the Conference members and for discussion at a subsequent session of the Conference.

COMMITTEE ON HABEAS CORPUS

The report of the Committee on Habeas Corpus was submitted to the Conference by the Chairman, Judge Walter E. Hoffman.

The Committee had referred to it by Congressional committees H.R. 13722 and S. 3264, bills which would considerably restrict the range of Constitutional rights which may now be the basis for habeas corpus relief and would substantially repeal existing legislation as interpreted by the Supreme Court. It would remove as a basis for habeas corpus relief, questions involving the voluntariness of confessions, the legality of searches and seizures, unfair identification and many other areas. These issues would be left for trial court determination subject to direct appeal.

The Conference was in agreement with the Committee recommendation that these legislative proposals are essentially matters involving a policy decision in the area of federal-state relations and, therefore, the Conference agreed that it is for the Congress to determine whether the concept of habeas corpus should be altered.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Judge Irving R. Kaufman, Chairman, presented the Committee's report to the Conference.

SIZE OF JURIES

The Conference approved a bill now pending in the Congress, H.R. 13496, to provide for juries of six in civil cases and to reduce

peremptory challenges in such cases from three to two. The bill was drafted in pursuance of prior Judicial Conference action at its March and October sessions (1971) (see Conf. Rept., pp. 5 and 41).

COMMUNICATIONS WITH JURORS

The Committee advised that it had studied S. 2588, a bill which would make it a crime for persons associated with the defense in a criminal trial to question jurors without permission of the court. A special subcommittee, chaired by Judge Bratton, had studied this bill and other approaches to the problem of communications with jurors. A majority of the subcommittee, based on a general survey of the courts, was persuaded that the problem should be handled on a district-by-district basis without the necessity of a general rule.

After hearing the report of the Committee and its subcommittee, the Conference agreed to disapprove S. 2588 and to authorize the Director of the Administrative Office to transmit to each United States district court for its information a copy of the Bratton subcommittee report, together with a recommendation of the Conference to each district court that it consider the problem of communications with jurors to determine whether a specific rule is needed in that district and that notice be given to jurors, counsel and the parties of any rule adopted.

AUTOMATION OF JURY SELECTION PROCESS

The Conference was advised that very slow progress has been made in converting eligible districts to automated selection, with eight out of a possible 25 districts having thus far converted. Some progress is being made toward conversion in five additional districts but it is hoped that this progress can now be substantially accelerated, based on the success achieved in the eight districts now completely automated.

EFFICIENT JUROR UTILIZATION

The first of the reports prepared by the Director of the Administrative Office for periodic circulation to the chief judges entitled "Juror Utilization in the United States Courts" was circulated in October. The report contains comparative costs and usage statistics by districts. Prior to the issuance of the Administrative Office

report, a four-months' study in depth of juror utilization in the Southern and Eastern Districts of New York had been undertaken under the joint auspices of the Institute of Judicial Administration and the Federal Judicial Center. At its October 1971 session the Conference agreed that the suggestions contained in the report of this survey should be implemented in any judicial district where, in the opinion of the judges, the suggestions would improve the juror usage efficiency. To implement these recommendations, the Judicial Council of the Second Circuit sponsored a workshop in January 1972 for the judges and clerks of the Eastern and Southern Districts of New York, as a result of which the Conference was advised that significant improvement in juror utilization procedures resulted. It was agreed that the success of this demonstration might well be emulated in all circuits.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

The Committee report was presented to the Conference by its Chairman, Judge Edward Weinfeld.

SALARIES AND ARRANGEMENTS FOR REFEREES

The Committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated January 12, 1972, as well as the recommendations of the circuit councils and district judges concerned for the authorization for continuation of new six-year terms for 17 referee positions to become vacant by expiration of terms. The Conference approved the Committee report and recommendations, except as noted below, all to be effective May 1, 1972, unless otherwise indicated and subject to the availability of funds.

The exception noted is the recommendation for immediate authorization for an increase in salaries of all full-time referees in bankruptcy by 5.5 percent as permitted generally for government employees under Section 3(d) of the Economic Stabilization Act of December 22, 1971. The Conference took the position that the referees' salaries should be increased by the 5.5 percent formula but only at such time as the salaries of United States magistrates are brought to a comparable position with the salaries of full-time referees in bankruptcy.

FIRST CIRCUIT

District of Massachusetts

- (1) Authorized the continuance of the full-time referee position at Boston to become vacant by expiration of term on July 14, 1972, for a term of six years, effective July 15, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

District of Connecticut

- (1) Authorized the continuance of the full-time referee position at Hartford to become vacant by expiration of term on October 31, 1972, for a term of six years, effective November 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of New York

- (1) Authorized the continuance of the full-time referee position at Westbury to become vacant by expiration of term on June 30, 1972, for a term of six years, effective July 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

Eastern District of Pennsylvania

- (1) Authorized the continuance of the full-time referee position at Philadelphia to become vacant by expiration of term on June 28, 1972, for a term of six years, effective June 29, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FOURTH CIRCUIT

Eastern District of North Carolina

- (1) Authorized the continuance of the part-time referee position at Wilson to become vacant by expiration of term on October 31, 1972, for a term of six years, effective November 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Western District of Louisiana

- (1) Authorized the continuance of the full-time referee position at Shreveport to become vacant by expiration of term on November 2, 1972, for a term of six years, effective November 3, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Southern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Columbus to become vacant by expiration of term on June 30, 1972, for a term of six years, effective July 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Illinois

- (1) Authorized the continuance of the full-time referee position at Chicago to become vacant by expiration of term on July 31, 1972, for a term of six years, effective August 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of the full-time referee position at Chicago to become vacant by expiration of term on October 13, 1972, for a term of six years, effective October 14, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Indiana

- (1) Authorized the continuance of the full-time referee position at South Bend to become vacant by expiration of term on November 10, 1972, for a term of six years, effective November 11, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Wisconsin

- (1) Authorized the continuance of the full-time referee position at Milwaukee to become vacant by expiration of term on October 31, 1972, for a term of six years, effective November 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

- (1) Authorized the continuance of the full-time referee position at Tucson to apolis to become vacant by expiration of term on June 30, 1972, for a term of six years, effective July 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

District of Arizona

- (1) Authorized the continuance of the full-time referee position at Tucson to become vacant by expiration of term on October 15, 1972, for a term of six years, effective October 16, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of California

- (1) Authorized the continuance of the full-time referee position at San Francisco to become vacant by expiration of term on May 18, 1972, for a term of six years, effective May 19, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Central District of California

- (1) Authorized the continuance of the full-time referee position at Los Angeles to become vacant by expiration of term on November 14, 1972, for a term of six years, effective November 15, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of the full-time referee position at Los Angeles to become vacant by expiration of term on November 30, 1972, for a term of six years, effective December 1, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

NORTHERN DISTRICT OF TENTH CIRCUIT OKLAHOMA

- (1) Authorized the continuance of the full-time referee position at Tulsa to become vacant by expiration of term on October 26, 1972, for a term of six years, effective October 27, 1972, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

In approving the foregoing, the Conference noted that there were two recommendations made by respective courts which were not approved by the Bankruptcy Division or the Committee. The Committee had agreed that no recommendations should be made for the continuance of the third full-time referee position at Memphis because of the decline in the volume of business, and, secondly, the Committee did not concur in a recommendation that the part-time referee position for the District of Delaware be increased to a full-time service, being of the view that the temporary emergency situation could be handled by the assignment of another referee within the circuit to assist with the workload of the bankruptcy court in Wilmington.

The Conference agreed that the part-time referee position at Baton Rouge be designated as a part-time referee for the Middle District of Louisiana as defined by Public Law 92-208, effective April 16, 1972; at the same time the authorization of the part-time referee position in the Eastern District of Louisiana is revoked.

The two-year salary rule for referees, Section 40(b) of the Bankruptcy Act, now provides that the salary of a full-time referee shall

not be changed more often than once in any two years. The Conference agreed with the recommendation of the Committee that such a salary limitation is not warranted and agreed to recommend to the Congress the repeal of that portion of Section 40(b) of the Bankruptcy Act which limits the changes in the salary of full-time referees to not more than once in any two years.

The Conference agreed further to instruct its Select Committee, created at the October 1971 session (Conf. Rept., p. 66) to apprise the 1972 Commission on Executive, Legislative and Judicial Salaries of the problems presented by Section 40(b) of the Bankruptcy Act in respect to salary increases for referees.

The Conference also noted that the Committee had requested the Director of the Administrative Office to solicit an opinion from the Comptroller General regarding the effect of Section 40(b) on a general increase for referees as opposed to the individual increases contemplated by the Bankruptcy Act.

LEGISLATION

The Conference agreed with the Committee recommendation that it reaffirm its support of H.R. 4815 and S. 1396, bills to permit a full-time referee to serve as a part-time magistrate. The Conference also reaffirmed its support of H.R. 4769, a bill to increase the terms of office of full-time referees in bankruptcy from six to twelve years and to provide for mandatory retirement for all referees at age 70. The Conference agreed that this legislation need not be delayed by reason of the existence of the Commission to study the bankruptcy laws.

CHAPTER XIII CASES

The Committee reported that it had observed that certain standing Chapter XIII trustees had advertised in the classified columns of local newspapers as a means of counteracting the effective advertising by private groups recommending their own counseling service in lieu of Chapter XIII. After studying this problem, the Conference agreed on the adoption of an additional guideline for the administration of Chapter XIII, as follows:

15. That it is the sense of the Conference that Chapter XIII trustees should refrain from (a) advertising in newspapers or other public infor-

mation media, and (b) taking any other action which reasonably may be interpreted as directly soliciting debtors to file wage-earner proceedings under Chapter XIII of the Bankruptcy Act.

SEMINARS FOR REFEREES

The Conference was advised that the Eighth National Seminar for Newly-Appointed Referees in Bankruptcy will be held in Washington in the fall of 1972. Since the last session of the Conference, four regional seminars have been held—in Cleveland, New York City, San Francisco and New Orleans.

REFEREES' SALARY AND EXPENSE FUND

Payments into the Referees' Salary and Expense Fund have not equaled disbursements since 1966. In 1971 the surplus accumulated in prior years was exhausted and it was necessary to obtain \$2,857,836 from the General Fund of the Treasury to meet expenses. A deficit of over \$5,000,000 is anticipated in the current fiscal year. The Conference agreed with a Committee recommendation that the Conference adhere to its previous position and recommendation that it is no longer possible to maintain adequate payments in the Referees' Salary and Expense Fund without placing an inordinate burden upon the bankrupts and the assets of bankrupt estates and that the Referees' Salary and Expense Fund should be abolished. The Conference agreed to advise the Congress that to maintain the fund in balance would require heavy increases in the filing fees and increased percentage charges under the Act.

ADMINISTRATION OF THE PROBATION SYSTEM

Judge Francis L. Van Dusen, Chairman, presented the report of the Committee on the Administration of the Probation System.

SENTENCING INSTITUTES

The Conference approved the proposed agenda of a First and Second Circuit Sentencing Institute planned for the fall of 1972. Representatives of the Department of Justice had previously approved the agenda.

The Conference further approved a joint sentencing institute to be held in the Eighth and Tenth Circuits after June 30, 1973, and

agreed to proceed with plans for a tentative institute to be held thereafter jointly in the Fourth and Fifth Circuits.

EXPEDITING PREPARATION OF PRESENTENCE REPORTS

The Conference was advised that the Committee had adopted a resolution advising district judges and chief probation officers that *The Presentence Investigation*, Monograph 103, should be used not as a strict guide to the content of presentence reports but in a flexible fashion in order to reduce the length of the presentence reports and expedite their availability to the sentencing judge. The committee had agreed to make shorter forms of presentence reports available to the judges and probation officers to assist in securing greater flexibility and prompter preparation of presentence reports.

LEGISLATION

The Conference next considered a proposal emanating from the Bureau of Prisons for a draft bill to amend 18 U.S.C. 3655. This proposal would, among other things, give clear authority to probation officers upon request of the Attorney General or his designee to furnish information about and supervision of persons within the custody of the Attorney General while in the community on work release, furlough or other authorized release from their regular place of confinement. The Conference agreed to qualify its approval of this proposal by the proviso that the Congress make adequate provision for additional probation officers to assume this burden, except in such areas where they are now adequately staffed to do so.

The Conference next considered H.R. 13118 and agreed that the Committee should give further consideration to the overall proposals contained in the bill, the overall purpose of which is to establish an independent Board of Parole, to provide for fair and equitable federal parole procedures, to establish a National Parole Institute, and to provide assistance to the states for the operation of fair and adequately staffed parole systems. The Conference agreed, however, that its primary concern was with Section 4221 of the proposed bill entitled "Judicial Remedies" which would impose an enormous additional burden upon the court system. The Conference agreed that if the Constitutional rights of a parolee are infringed, he has an adequate remedy under existing provisions of the United States Code.

INTERCIRCUIT ASSIGNMENTS

Judge Roy W. Harper, Chairman of the Committee on Intercircuit Assignments, reported on the work of his committee for the period covering September 1, 1971 to February 15, 1972.

During the period in question the Committee recommended 51 assignments to be undertaken by 37 judges. Of this number three are circuit judges in active status, five are senior circuit judges, 12 are district judges in active status and 14 are senior district judges. One active judge of the Customs Court and two retired Supreme Court Justices participated in six assignments.

There were 24 assignments to the circuit courts of appeals during this period. Five senior circuit judges, six senior district judges and one retired Supreme Court Justice assisted in carrying out these assignments. There was one assignment to the Court of Claims carried out by a retired Supreme Court Justice and 26 assignments to the district courts, of which 10 were carried out by senior judges.

COMMITTEE TO IMPLEMENT THE FEDERAL MAGISTRATES ACT

Judge Charles M. Metzner, Chairman of the Committee to Implement the Federal Magistrates Act, presented the report of the Committee.

SALARY INCREASE

The Committee reported that the Director of the Administrative Office had recommended that the 5.5 percent comparability salary increase authorized in the 1971 amendments to the Economic Stabilization Act of 1970 be authorized for full-time and part-time United States magistrates to the extent permitted by law. Statutory ceilings on the salary of full-time and part-time magistrates, of course, cannot be exceeded. The increase is intended to apply to the salaries of all magistrates, except that the salary of the part-time magistrate at Redding, California, may not exceed \$500 per annum. The increase will also be applied to the salaries approved by the Conference at its session last October, but only when appropriated funds are available. Meanwhile, the increase will apply to the current salaries of these magistrates. Upon recommendation of the Committee, the Conference approved the pay increase in accordance with the schedule appended to the Committee's report.

MAGISTRATE POSITIONS

The Committee reported that it had considered various requests for the creation of additional magistrate positions, changes in salaries of magistrates and changes in arrangements. These requests have also been considered by the judicial councils of the circuits. In accordance with the recommendations of the Committee, the Conference approved the following changes in the numbers, locations, arrangements and salaries of magistrates and directed that, unless otherwise noted, these changes be made effective at such time as appropriated funds are available.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

- (1) Extended the date for the elimination of at least one of the two pretrial examiner positions from August 1, 1972 to August 1, 1973.

SECOND CIRCUIT

Northern District of New York

- (1) Authorized an additional part-time magistrate position at Troy at a salary of \$300 per annum.

FOURTH CIRCUIT

Western District of North Carolina

- (1) Changed the part-time magistrate position at Asheville from part-time to full-time.
- (2) Fixed the salary of the full-time magistrate at Asheville at \$22,500 per annum.
- (3) Increased the additional salary granted to the part-time referee in bankruptcy at Charlotte for the performance of magistrate duties from \$5,000 to \$6,000 per annum.
- (4) Increased the salary of the part-time magistrate at Bryson City from \$5,239 to \$6,000 per annum.
- (5) Increased the salary of the part-time magistrate at Statesville from \$750 to \$1,200 per annum.

District of South Carolina

- (1) Increased the salary of the part-time magistrate at Greenville from \$2,000 to \$3,600 per annum.
- (2) Increased the salary of the part-time magistrate at Florence from \$900 to \$1,200 per annum.

FIFTH CIRCUIT

Northern District of Florida

- (1) Increased the salary of the part-time magistrate at Gainesville from \$500 to \$1,800 per annum.

Southern District of Florida

- (1) Increased the salary of the part-time magistrate at West Palm Beach from \$1,200 to \$3,600 per annum.
- (2) Increased the salary of the part-time magistrate at Fort Pierce from \$600 to \$1,200 per annum.

Northern District of Mississippi

- (1) Increased the salary of the part-time magistrate at Aberdeen from \$1,800 to \$11,000 per annum.
- (2) Changed the salary authorized for the part-time magistrate position at Oxford from \$11,000 to \$1,800 per annum.
- (3) Directed that the changes in salaries for these two positions be made effective as soon as possible.

Eastern District of Texas

- (1) Increased the salary of the part-time magistrate at Sherman from \$900 to \$1,200 per annum.
- (2) Increased the salary of the part-time magistrate at Marshall from \$200 to \$400 per annum.

Western District of Texas

- (1) Increased the salary of the part-time magistrate at Odessa-Midland from \$500 to \$1,600 per annum.
- (2) Increased the salary of the part-time magistrate at Waco from \$1,000 to \$7,500 per annum.

SEVENTH CIRCUIT

Southern District of Indiana

- (1) Increased the salary of the part-time magistrate at Evansville from \$900 to \$1,800 per annum.

EIGHTH CIRCUIT

Southern District of Iowa

- (1) Increased the salary of the part-time magistrate at Council Bluffs from \$600 to \$1,000 per annum.

Eastern District of Missouri

- (1) Changed the part-time magistrate position at St. Louis from part-time to full-time.
- (2) Fixed the salary of the full-time magistrate at St. Louis at \$22,500 per annum.

NINTH CIRCUIT

Northern District of California

- (1) Increased the salary of the part-time magistrate at Eureka from \$200 to \$600 per annum.

Eastern District of California

- (1) Authorized an additional part-time magistrate position at Fresno at a salary of \$500 per annum.
- (2) Increased the salary of the part-time magistrate at Bishop from \$1,200 to \$2,400 per annum, and directed that this increase be made effective as soon as the appropriated funds become available for changes in salaries approved by the Conference at its October 1971 session.

Central District of California

- (1) Authorized the appointment of the part-time magistrate who serves the Edwards Air Force Base in the Eastern District of California as a magistrate at Lancaster at no increase in salary.
- (2) Authorized jurisdiction for the magistrate at Lancaster over the entire area of Edwards Air Force Base including the portions thereof lying within the Eastern and Central District of California.

District of Nevada

- (1) Authorized the full-time magistrate at Las Vegas to exercise jurisdiction over the entire Lake Mead National Recreation Area, including that portion lying within the District of Arizona.

TENTH CIRCUIT

District of Colorado

- (1) Increased the salary of the part-time magistrate at Montrose from \$200 to \$600 per annum.

District of New Mexico

- (1) Authorize the appointment of a non-member of the bar to the position of part-time magistrate at Raton.

Northern District of Oklahoma

- (1) Authorize the clerk of the district court at Tulsa to perform the duties of United States magistrate at no increase in salary.

District of Wyoming

- (1) Increased the salary of the part-time magistrate at Cody from \$200 to \$500 per annum.
- (2) Increased the salary of the part-time magistrate at Lander from \$300 to \$600 per annum.
- (3) Increased the salary of the part-time magistrate at Worland from \$200 to \$600 per annum.
- (4) Increased the salary of the part-time magistrate at Laramie from \$400 to \$600 per annum.

The committee reported that it had deferred action on other requests for changes in salaries and arrangements for magistrate positions and would give all such requests further consideration at its next meeting.

PROCEDURES MANUAL

Judge Metzner presented to the Conference a draft of Part I of the *Procedures Manual for United States Magistrates* which had been reviewed by the Committee. The draft had been prepared in accordance with 28 U.S.C. 604(d)(4) which requires that the Director of the Administrative Office, under the supervision and direction of the Conference, "prepare and distribute a manual * * * for the use of such officers which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively and impartially."

Upon recommendation of the Committee the Conference authorized the Director of the Administrative Office to distribute a copy of Part I of the *Procedures Manual for United States Magistrates* to all magistrates and interested officials and further authorized the Director, with the approval of the Committee, to issue annual supplements and periodic revisions.

ADMINISTRATIVE REGULATIONS

The Committee submitted proposed changes to the regulations of the Director of the Administrative Office which are designed to clarify and give more flexibility in the administration of the magistrates system. Upon recommendation of the Committee the Conference approved the changes submitted with the Committee report.

NAME OF COMMITTEE

The Committee pointed out that the United States magistrate system had become fully effective throughout the federal judiciary on July 1, 1971. As a result the official title of the Committee, which indicates that its purpose is to implement the Federal Magistrates Act, no longer seems appropriate. Accordingly, the Conference voted to change the official name of the Committee to "Committee on the Administration of the Federal Magistrates System."

JUVENILE DELINQUENTS CHARGED WITH PETTY OFFENSES

Upon recommendation of the Committee a proposal to amend the Federal Juvenile Delinquency Act to make it inapplicable in

petty offense cases was referred to the Committee on the Administration of the Criminal Law for study and report to the Conference.

COURT REPORTERS

The Conference, upon recommendation of the Committee, instructed the Director of the Administrative Office to refer all requests for court reporter services to the Conference Subcommittee on Supporting Personnel.

CONFLICTS OF INTERESTS

The Committee reported that questions have arisen on matters of judicial ethics and conflicts of interest involving United States magistrates. The problems of full-time magistrates are similar, if not identical, to those of United States district judges which are now considered by the Interim Advisory Committee on Judicial Activities. Problems of part-time magistrates arise primarily in connection with the conflict-of-interest rules recommended by the Magistrates Committee and approved by the Conference in 1969.

Upon recommendation of the Committee, the Conference directed that questions of ethics and conflicts of interest involving full-time magistrates be referred to the Interim Advisory Committee on Judicial Activities and authorized the Magistrates Committee to consider and render advice to part-time magistrates on questions of conflicts of interest.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

In the absence of the Chairman, Judge John S. Hastings, the Committee report was presented by Judge Hatfield Chilson.

The Conference noted and authorized for distribution the report of the Director of the Administrative Office of the United States Courts on appointments and payments under the Act for the six-month period ending December 31, 1971. During this first half of fiscal year 1972, there were 20,431 persons for whom counsel were appointed, an increase of about 20 percent over the same period of the previous year. These appointments do not include cases assigned to federal public defender or community defender organizations operating under sustaining grants. During the same period

there were approximately 900 discretionary appointments under the new subsection (g) of the Act for probation and parole violators, habeas corpus petitioners and the like. The sum of \$197,826 was authorized for transcript, expert and other services.

PUBLIC DEFENDER ORGANIZATIONS

The Conference noted that in addition to the seven public defender organizations in operation at its last session (Conf. Rept., p. 55), a public defender organization had become operational and was functioning in the District of Connecticut, with headquarters at Hartford.

COMMUNITY DEFENDER ORGANIZATIONS

The Conference was advised that two community defender organizations applied for and received grants since those reported to the Conference at the last session (Conf. Rept., p. 56). The applications as recommended by the Conference committee and approved by the Executive Committee of the Conference for payment were:

- (1) An initial grant in the sum of \$12,624 and a sustaining grant in the sum of \$155,000 on an annual basis to the Philadelphia Defender Organization, and
- (2) An initial grant in the sum of \$43,000 and a sustaining grant of \$224,000 for the period March 1-June 30, 1972, to the Federal Defender Services Unit of the Legal Aid Society, New York City, which serves the Southern District of New York and the Eastern District of New York.

SINGLE TRIAL OF SEPARATE INDICTMENTS

The Conference noted a situation presented to the Committee which arose in one district court in which the same defendant was indicted on three separate occasions for three allegedly different acts of armed robbery of a national bank. These cases were handled throughout the pretrial period as separate cases until defendant, after considerable investigation by his counsel, agreed to plead guilty to lesser included offenses. At that time the three cases were heard together and separate sentences were awarded in each case. The Conference noted that the Committee ruled that separate vouchers could appropriately be filed in each case but that counsel could not charge separately for time spent on all three cases; he can prorate such time, cross-referencing each case on his vouchers, but time spent exclusively on any one case may properly be charged on the voucher for that case.

CONTINUED APPOINTMENT OF SAME COUNSEL

The Conference was advised of an inquiry emanating from the Senate District of Columbia Appropriations Committee which revealed that a number of attorneys assigned in the District of Columbia had earned very large sums during the past two years as assigned counsel appointed under the Criminal Justice Act. The Conference agreed that such a practice was contrary to the Congressional intent expressed in the Act and contrary to the plans adopted in virtually every district and circuit requiring the establishment of a panel of attorneys and rotation of appointment of attorneys from the panel. Accordingly, the Conference resolved that the Administrative Office should determine on a quarterly basis the names of any attorneys appointed under the Act who during that quarter were paid more than \$1,000 and report such facts to the chief judges of the circuits involved.

RETIREMENT OF JUDGE HASTINGS

The Conference noted that Judge Hastings had asked to be relieved of his duties as Chairman of the Committee at the close of the Conference. The Conference noted that Judge Hastings had chaired the three-judge committee which was created to prepare the way for the new Criminal Justice Act and that, after completing that task, began in 1964 the Chairmanship of the new nine-judge committee, which also administered the Criminal Justice Act as newly amended in 1970. The Conference voted to express to Judge Hastings its appreciation for his long and faithful service as Chairman of the Committee to Implement the Criminal Justice Act.

RULES OF PRACTICE AND PROCEDURE

The report of the Committee on Rules of Practice and Procedure was presented to the Conference by the Chairman, Judge Albert B. Maris.

ADMIRALTY RULES

The Conference was advised that the Advisory Committee on Admiralty Rules had been kept in existence for six years for the purpose of studying the effect of the merged maritime and civil practice upon admiralty litigation and to recommend any changes in the combined procedure and any improvements in the new Supplemental Admiralty Rules which might be indicated. Judge Maris

stated, however, that no such need had developed and, accordingly, the Conference agreed with the Committee recommendation that the Advisory Committee on Admiralty Rules be discharged.

CRIMINAL RULES

The Conference approved for transmittal to the Supreme Court, with a recommendation for favorable action, proposed amendments to the following rules of criminal procedure—1, 3, 4(b) and (c), 5, 5.1, 6(b), 7(c), 9 (b), (c) and (d), 17 (a) and (g), 31(e), 32(b), 38(a), 40, 41, 44, 46, 54, and 55. In so doing, the Conference noted that the principal objective of the changes now proposed was to conform the existing criminal rules to statutory changes. The Conference likewise approved for transmittal to the Supreme Court a proposed amendment to Rule 9(c) of the Federal Rules of Appellate Procedure.

SALARY COMMITTEE

At the October 1971 session of the Conference it was agreed that the Salary Committee should undertake a study of graded positions in the judiciary, meeting jointly with the Subcommittee on Supporting Personnel. This study was undertaken and the joint report was presented to the Conference by Judge Milton Pollack, Chairman of the Subcommittee on Supporting Personnel.

The report found that the classifications and salaries of the graded positions in the courts are now on a reasonable parity with those of comparable positions inside and outside the federal government service. The Conference agreed with a Committee recommendation (1) that the Administrative Office study the position of senior administrative secretary to the chief judge of any large circuit or district court to determine whether an increase is due such personnel, and (2) that the Administrative Office conduct studies of the clerk's office in each court of appeals for the purpose of determining the need for intermediate supervisory classifications in order to achieve an adequate and reasonable span of supervisory control.

The Conference noted further that the joint report found that the salaries of federal court reporters, at present and as projected, are reasonable and adequate.

REVIEW COMMITTEE

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

The Review Committee examined reports of 583 of the 596 federal judges which were filed after the close of the second half of calendar year 1971. Pursuant to the resolution of the Conference at its March 1971 session (Conf. Rept., p. 24), Judge Tamm reported that 13 judges did not file reports for the period July 1–December 31, 1971, as follows;*

Second Circuit:

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

Ninth Circuit:

**William M. Byrne
U.S. Senior District Judge
William Matthew Byrne, Jr.
U.S. District Judge
**Walter Early Craig
U.S. District Judge
**Walter Ely
U.S. District Judge
**Warren Ferguson
U.S. District Judge
**Peirson M. Hall
U.S. Senior District Judge
**Oliver D. Hamlin
U.S. Senior District Judge
**William D. Murray
U.S. Senior District Judge
**Manuel L. Real
U.S. District Judge

Tenth Circuit:

Stephen S. Chandler
U.S. District Judge

*Not including nine U.S. Customs Court judges.

**Judges heretofore declining to file "as a matter of principle".

INTERIM ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

Judge Elbert P. Tuttle, Chairman of the Committee, reported that since the last session of the Conference the Committee had published no written reports. It has, however, advised individual judges in several matters by separate correspondence. Judge Tuttle advised that one reason for withholding written reports has been the imminence of the publication of new standards by the American

Bar Association's Special Committee on Standards of Judicial Conduct. As a result of the deliberations of the Conference it was resolved that the Review Committee, chaired by Judge Tamm, and the Interim Advisory Committee on Judicial Activities, chaired by Judge Tuttle, should combine for the purpose of examining the report of the ABA's Special Committee which is expected to be approved by the House of Delegates of the American Bar Association in August 1972. The combined Committee is charged with reporting back to the Judicial Conference on the feasibility of adopting this report as applying to all federal judges and to determine whether any additional standards may be needed in the federal system.

COMMITTEE ON COURT ADMINISTRATION

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

JUDICIAL SURVIVORS' ANNUITY

Judge Ainsworth advised the Conference that hearings have been held before the Senate Subcommittee on Improvements in Judicial Machinery on S. 2854, a bill designed to bring Supreme Court justices under the coverage of Section 376 of Title 28, United States Code. This bill would also increase from \$5,000 to \$10,000 the annuity applicable to present widows of justices as provided in 28 U.S.C. 375. With respect to active justices or those resigned or retired who are receiving salary under 28 U.S.C. 371, a six-month election period is provided within which period each such justice shall elect either (a) to continue under Section 375 at the present \$5,000 rate or (b) become subject to Section 376. In the event of an election to come under Section 376, the justice must make the deposit required by Section 376(c). All justices appointed after the date of enactment will automatically come under Section 376.

Judge Ainsworth advised the Conference that because of the imminence of the hearings at the time the Committee on Court Administration met, it was decided to recommend approval of S. 2854 and to request the Executive Committee of the Conference to take immediate action. The Executive Committee promptly expressed its concurrence therewith.

ADDITIONAL JUDGESHIPS

The Conference concurred in a recommendation of the Committee to approve S. 3015, a bill to provide for a temporary additional judgeship for the Western District of Wisconsin. The Conference agreed that despite the fact that the quadrennial survey of district judgeship needs was now in progress, there was no doubt that an emergency situation existed in Western Wisconsin requiring at least one additional judgeship as promptly as possible.

The Conference was advised that the Committee, through its Subcommittee on Judicial Statistics, had considered other legislative proposals to create additional district judgeships but was in agreement that none of these involved an emergency situation and, accordingly, voted to defer consideration of all other proposals until completion of the quadrennial survey.

LEGISLATION REGARDING FIDELITY LOSSES

The Conference considered a recommendation of the Committee for approval, with certain changes, of legislation proposed by the Treasury Department to provide that the federal government should assume the risks of its fidelity losses. The Conference noted that the legislation as drafted would leave unprotected or have the federal government assume losses in situations, for example, where the clerk of court holds private funds pursuant to court order. By proposing certain minor amendments to the bill, the Conference agreed that this situation could be covered.

COMMITTEE ON THE BUDGET

Judge Carl Weinman, Chairman of the Budget Committee, reported to the Conference that the appropriations hearings before both the House and the Senate had taken place but that no appropriations bill had yet been presented by the committees to the Congress.

Judge Weinman, on behalf of the Committee, suggested that the Conference consider revising its schedule of fall meetings so that there would be ample opportunity for the Conference to review the report of the Budget Committee and the justifications prior to submission to the Office of Management and Budget on October 15.

PRETERMISSION OF TERMS OF COURTS OF APPEALS

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

RELEASE OF CONFERENCE ACTION

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

WARREN E. BURGER,
Chief Justice of the United States

MAY 4, 1972.

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