
**REPORT
OF THE PROCEEDINGS
OF THE
REGULAR ANNUAL MEETING
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES**

**SEPTEMBER 17, 18, 19, 1958
WASHINGTON, D.C.**

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 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 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 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 Annual Meeting of the Judicial Conference of the United States

The Judicial Conference of the United States convened on September 17, 1958 pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on September 18 and 19. The Chief Justice presided and members of the Conference were present as follows:

District of Columbia Circuit:

Chief Judge Henry W. Edgerton

District Judge Matthew F. McGuire

(Designated by the Chief Justice in place of Chief Judge Bolitha J. Laws who was unable to attend)

First Circuit:

Chief Judge Calvert Magruder

Chief Judge George C. Sweeney, District of Massachusetts

Second Circuit:

Chief Judge Charles E. Clark

District Judge Edward J. Dimock, Southern District of New York

Third Circuit:

Chief Judge John Biggs, Jr.

Chief Judge Phillip Forman, District of New Jersey

Fourth Circuit:

Chief Judge Simon E. Sobeloff

Chief Judge Roszel C. Thomsen, District of Maryland

Fifth Circuit:

Chief Judge Joseph C. Hutcheson

Chief Judge Seybourn H. Lynne, Northern District of Alabama

Sixth Circuit:

Chief Judge Florence E. Allen

Chief Judge Paul Jones, Northern District of Ohio

Seventh Circuit:

Chief Judge F. Ryan Duffy

District Judge William J. Campbell, Northern District of Illinois

Eighth Circuit:

Chief Judge Archibald K. Gardner

Chief Judge Gunnar H. Nordbye, District of Minnesota

Ninth Circuit:

Chief Judge Albert Lee Stephens

District Judge William C. Mathes, Southern District of California

Tenth Circuit:

Chief Judge Sam G. Bratton

Chief Judge Royce H. Savage, Northern District of Oklahoma

Court of Claims:

Judge Sam E. Whitaker

(Designated by the Chief Justice in place of Chief Judge Marvin Jones who was unable to attend)

The Conference welcomed the new Chief Judge of the Sixth Circuit, Honorable Florence E. Allen, succeeding Honorable Charles C. Simons who has relinquished the office of Chief Judge for the Sixth Circuit pursuant to 28 U.S.C. 45(c). Thereupon the Conference adopted the following resolution:

Through his relinquishment of the office of Chief Judge for the Sixth Circuit, our colleague, Charles Casper Simons, has yielded his membership on the Judicial Conference of the United States which he has held for six years.

Judge Simons is a judge of long and ripe experience, having served with distinction as a district judge of the United States District Court for the Eastern District of Michigan for nearly 9 years and as a judge of the Court of Appeals for the Sixth Circuit for more than 26 years. To the affairs of this Conference, he brought sound judgment and wisdom grounded in a deep learning of the law. His counsel will be very much missed.

Throughout his distinguished career, Judge Simons has been held in affectionate regard by the judges of his own court, the members of the bar of his circuit, and by the members of this Conference. We extend our every good wish for his health and happiness and the strength to continue his judicial service for many years to come.

The Conference also welcomed District Judges George C. Sweeney, Roszel C. Thomsen, Seybourn H. Lynne, Paul Jones, William J. Campbell, William C. Mathes and Royce H. Savage, who attended the Conference for the first time as the elected representatives of the judges of their respective circuits.

The Attorney General, Honorable William P. Rogers, accompanied by the Deputy Attorney General, Lawrence E. Walsh, and the Solicitor General, J. Lee Rankin, attended the morning session of the first day of the Conference.

Circuit Judges Orie L. Phillips, Albert B. Maris, and Alfred P.

Murrah, and District Judge Harry E. Watkins attended all or some of the sessions.

Mr. William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives, and Mr. Paul Cotter, Staff Member of the Committee on Appropriations of the United States Senate, attended the sessions of the Conference.

Warren Olney III, Director; William L. Ellis, Assistant Director; John C. Airhart and C. Aubrey Gasque, Deputy Assistant Directors; Will Shafroth, Chief, Division of Procedural Studies and Statistics; Edwin L. Covey, Chief, Bankruptcy Division; Louis J. Sharp, Chief, Probation Division; Wilson F. Collier, Chief, Division of Business Administration; and Dawson Hales, Chief, Division of Personnel; and members of their respective staffs, all of the Administrative Office of the United States Courts, attended the sessions of the Conference. Joseph F. Spaniol, Jr., Attorney of the Administrative Office, served as secretary and reporter for the Conference.

The Conference noted the death of Judge Sam E. Driver, who had served for many years as a member of the Conference Committee on the Administration of the Criminal Law, and adopted the following resolution:

Whereas the members of this Conference were deeply saddened by the information that the Honorable Sam M. Driver, Judge of the United States District Court for the Eastern District of Washington, was recently killed in an automobile accident, now therefore be it resolved that this Conference profoundly regrets the passing of Judge Driver and by a unanimous vote of its members extends to the widow and other members of the family its deepest sympathy.

REPORT OF THE ATTORNEY GENERAL

The Attorney General of the United States presented a report to the Conference on matters relating to the business of the courts of the United States. The report appears in the appendix.

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

The first annual report of Warren Olney III, Director of the Administrative Office, for the fiscal year ended June 30, 1958 had been submitted previously to the members of the Conference pur-

suant to 28 U.S.C. 604(a)(3). The Conference approved the immediate release of the report for publication and authorized the Director to revise and supplement it in the final printed edition to be issued later.

Mr. Olney addressed the Conference briefly and outlined some current problems facing the federal judiciary. He explained the new organization in the Administrative Office which is designed to enable the Director to carry out his statutory duties and to undertake any new duties with respect to the study of the rules of practice and procedure that may be assigned to him by the Conference.

State of the dockets of the Federal courts—Courts of appeals.—Cases filed in the United States courts of appeals during the fiscal year 1958 numbered 3,694, about the same as last year. There were 3,704 cases terminated during the year and 2,033 cases remained for disposition on June 30, 1958. Only a slight variation in the backlog of pending cases in the courts of appeals has appeared during the last five years. The median time interval from filing of the complete record to final disposition of cases terminated after hearing or submission in all the courts of appeals in 1958 was 7.0 months compared with 7.1 months in 1957 and 7.4 months in 1956. The judges in the Second, Fourth and Fifth Circuits continue to be overburdened, having caseloads substantially in excess of the national average.

District courts.—The United States district courts experienced, during the fiscal year 1958, the heaviest workload in their history. They entered the fiscal year with 62,338 civil cases and 7,495 criminal cases pending and an additional 67,115 civil cases and 28,897 criminal cases were filed during the year. Terminations of civil cases in fiscal 1958 were 61,285, leaving a backlog of 68,168 civil cases, and terminations of criminal cases were 28,994 leaving 7,451 outstanding.

A new high record of private civil cases pending, 51,962, was established on June 30, 1958. The figure was 5,089 greater than a year ago. This is important because the cases between private parties are much more burdensome on the average than government cases, and are the cause of much of the congestion and delay.

The median time interval from filing to disposition of civil cases tried continued at a high level of 13.9 months in 1958 com-

pared with 14.0 months in 1957, and the interval from filing to trial was 11.9 months compared to an interval of 12.0 months last year. Nearly 40 percent of the civil cases which reached trial in 1958 had been delayed from 1 to 4 years after issue had been joined. In fact, only in 7 districts have at least half of the civil cases reached trial within 6 months of filing, as recommended by the Judicial Conference.

Further contributing to the workload of the district courts has been a marked increase in the volume of filings in bankruptcy, particularly those involving individual wage earners. Wage earning employees and other nonbusiness debtors were responsible for 80,264 nonbusiness filings in 1958, or 87.6 percent of the bankruptcy business of the courts. Business filings were 11,404, or 12.4 percent of the bankruptcy business. Total filings during fiscal 1958 amounted to 91,668 cases as compared with 73,761 in fiscal 1957, an increase of 24.3 percent. There were 79,681 bankruptcy proceedings terminated during the year and 80,446 were pending on June 30, 1958.

EXPEDITION OF COURT BUSINESS

The Conference received reports from the Court of Claims and from the Chief Judges of the respective circuits concerning the state of their dockets and the need for additional judicial assistance.

The Committees on Court Administration and Judicial Statistics reported that, despite strong representations by the Attorney General, Committees of the Conference and the Administrative Office, no action was taken during the 85th Congress to provide the 45 additional judgeships recommended by the Conference.

The Conference discussed, in this connection, the probable effects of the Act of August 25, 1958 [P.L. 85-554] increasing the jurisdictional amount in Federal question and diversity of citizenship cases from \$3,000 to \$10,000, making a corporation a citizen for diversity jurisdiction purposes not only of the State of incorporation but also of the State where it has its principal place of business, and prohibiting the removal of Workmen's Compensation cases from State courts to Federal courts. It was agreed that, from a practical standpoint, the effects of the Act on the volume of new filings could not be immediately determined. With respect to additional judgeships, it was decided that there is not

enough known about the effects of the Act to warrant altering the recommendations of the Conference. The Committees on Court Administration and Judicial Statistics were directed to maintain a continuous appraisal of the effects of the Act and report again in March to the Conference.

In the meantime, the Conference reiterated its view that the creation of additional judgeships is vital to the prompt and efficient administration of justice and that action must be sought in the 86th Congress.

RULES OF PRACTICE AND PROCEDURE FOR THE UNITED STATES COURTS

Chief Judge John Biggs, Jr., Chairman of the Committee on Court Administration, and Circuit Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted to the Conference the joint recommendations of their respective Committees for implementing the Act of July 11, 1958 (Public Law 85-513; 28 U.S.C. 331). This Act authorizes the Judicial Conference of the United States to 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.

After a full discussion the Conference approved the following recommendations of the Committees:

(1) That a standing Committee on Rules of Practice and Procedure be created, the members to be appointed by the Chief Justice and to consist in addition to members of the Judicial Conference of a suitable number of representative judges, lawyers and law teachers.

(2) That five advisory committees be created, one on practice and procedure in civil cases; one on practice and procedure in criminal cases; one on practice and procedure in bankruptcy; one on rules of practice and procedure to be applicable to or govern in admiralty cases; and one to recommend general uniform rules of practice and procedure in the courts of appeals and rules governing review of Tax Court decisions, the members of the advisory committees to be appointed by the Chief Justice for terms of four years, the first appointments to be for staggered terms of two and four years, the members to be eligible for reappoint-

ment for one additional term only, and the members to consist of broadly representative judges, lawyers and law teachers.

(3) The function of the standing Committee on Rules of Practice and Procedure shall be to coordinate the work of the several advisory committees, to make suggestions to them of proposals to be studied by them, to consider proposals recommended by the advisory committees and to transmit such proposals with its recommendation to the Judicial Conference or to recommit them to the appropriate advisory committee for further study and consideration, and to make recommendations to the Judicial Conference with regard to any other matters in the field of practice and procedure as to which the Conference may be called upon to act.

(4) Each of the advisory committees shall carry on a continuous study of the operation and effect of the rules of practice and procedure now or hereafter in use in its particular field, and shall consider, and from time to time propose to the Judicial Conference through the standing Committee on Rules of Practice and Procedure, such changes in and additions to those rules as the advisory committee may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay.

(5) To assist the committees in carrying out their duties a reporter and such associate or assistant reporters as may be necessary should be appointed by the Chief Justice for limited terms of service and at adequate salaries. Supporting staff for the work of the reporter and of the committees should be provided by the Administrative Office.

(6) Steps should be taken to encourage the judicial conferences and councils of the circuits to cooperate through suitable committees in each circuit, and similar steps should be taken in respect to securing the cooperation of national, state and local bar associations.

JOINT REPORT OF THE COMMITTEE ON SUPPORTING PERSONNEL AND THE COMMITTEE ON COURT ADMINISTRATION

Chief Judge John Biggs, Jr., Chairman of the Committee on Supporting Personnel and of the Committee on Court Administration, made a joint report for the two Committees.

Maintenance and Travel Expenses of Judges

Chief Judge Biggs reported that H.R. 3369, 85th Congress, to increase the maximum reimbursement for subsistence expenses allowable to judges on travel status from \$15 to \$25 per day, approved by the Conference at its March 1957 session (Conf. Rept. p. 7), had passed the House in a form substantially different from that recommended by the Conference. It would have authorized a per diem allowance for judges in lieu of actual expenses of subsistence at the per diem rate provided for government employees generally by the Travel Expense Act of 1949, as amended, or, in accordance with regulations prescribed by the Director of the Administrative Office with the approval of the Judicial Conference of the United States, reimbursement for actual expenses of subsistence not in excess of \$25 per day.

Upon the recommendation of the Committees the Conference approved the following draft of a bill which is substantially similar to that which passed the House at the last session of Congress:

A BILL Relating to the maintenance and travel expenses of judges

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of Section 456 of Title 28, United States Code, is amended to read as follows:

"Each Justice or Judge of the United States and each retired Justice or Judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official station, shall be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses, and also a per diem allowance in lieu of actual expenses of subsistence (as defined in the Travel Expense Act of 1949, as amended, 63 Stat. 166, 5 U.S.C. 835) at the per diem rate provided for by the Travel Expense Act of 1949, as amended, or, in accordance with regulations prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, reimbursement for his actual expenses of subsistence not in excess of \$25 per day."

Crier Law Clerks

The Committees called attention to the action of the Conference at its March 1958 session (Conf. Rept. p. 8) recommending that the appropriation proviso with respect to the employees of a judge be expanded so as to include criers and messengers appointed by a judge along with secretaries and law clerks, and that the maximum allowance for each judge be increased by the amount of the base pay of a crier, which was then \$3,415.

In order to bring the resolution adopted by the Conference in March 1956 (Conf. Rept. p. 7) with respect to the compensation of secretaries and law clerks of judges into conformity with the new recommendation of the Conference and the increased rates of compensation provided for by the Federal Employees Salary Increase Act of 1958, the Conference adopted the following resolution:

Resolved, That the compensation of secretaries and law clerks of circuit and district judges shall be fixed by the Director of the Administrative Office of the United States Courts without regard to the Classification Act of 1949, as amended, except that the salary of a secretary shall conform with that of the General Schedule grades (GS) 5, 6, 7, 8, 9 or 10, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the General Schedule grades (GS) 7, 8, 9, 10, 11 or 12, as the appointing judge shall determine, subject to review by the Judicial Conference of the United States if requested by the Director, such determination by the judge otherwise to be final: *Provided*, That (exclusive of step increases corresponding with those provided for by title VII of the Classification Act of 1949, as amended, and of compensation paid for temporary assistance needed because of an emergency) the aggregate salaries paid to secretaries and law clerks appointed by one judge and to the crier appointed by or the messenger assigned to him shall not exceed \$18,590 per annum, except in the case of the chief judge of each circuit and the chief judge of each district court having five or more judgeships, in which case the aggregate salaries shall not exceed \$23,570 per annum.

Further resolved, That this resolution shall supersede the resolution upon the same subject matter which was adopted by the Judicial Conference at its special session in March 1956.

Personnel of the Court of Claims

The Conference at its March 1958 session (Conf. Rept. p. 6) directed the Committee on Supporting Personnel to reconsider the classification of secretaries to commissioners of the Court of Claims. Chief Judge Biggs reported that the Administrative Office had recommended to the Committee that the positions of the secretaries to the commissioners of the Court of Claims be classified in grades GS 7, GS 8 and GS 9 in accordance with the minimum qualification standards submitted to the Committee and set forth in the Committee's report. Upon the recommendation of the Committee the Conference approved the salary grades and qualification standards as submitted.

At the request of Judge Whitaker the Conference referred to the Committee on Supporting Personnel the recommendation of the Court of Claims with respect to the salary classification of the auditors in the Court of Claims.

Probation Officers

Chief Judge Biggs reported that the Committees had considered carefully the proposal to reclassify the Chief Probation Officer in the Northern District of Illinois, who also acts as director of the Federal Probation Officer Training School, from grade GS 14 to GS 15 (Conf. Rept., March 1958, p. 5) and that it was the unanimous view of the Committees that the reclassification should be made. The Conference approved this reclassification.

The Committees reported that 17 additional probation officers and 12 additional probation clerks will be required if the desirable caseload of 85 cases per officer in the federal probation system is to be maintained. Upon the recommendation of the Committees, the Conference directed that sufficient funds to employ this additional personnel be included in the Judiciary budget for 1960.

Upon the recommendation of the Committees the Conference reaffirmed its recommendation (Conf. Rept., Sept. 1957, p. 42) for legislation to authorize the Judicial Conference to promulgate minimum qualification standards to be met by all probation officers appointed in the future.

The Committees reported that the Administrative Office had studied the proposal to create five positions in the Probation Division of the Administrative Office to provide regional supervision and coordination of probation offices throughout the country (Conf. Rept., March 1958, pp. 5-6), and had concluded that two such additional professional positions should be created. Upon the recommendation of the Committees, the Conference authorized the creation of these two positions with supporting staff and directed that the necessary funds be included in the Judiciary budget for 1960.

Court Reporters

Chief Judge Biggs reported that the Committees had studied the results of tests of electronic recording devices conducted by the Administrative Office in actual trials in certain districts, and that the Committees were of the view that these machines offer the possibility of substantial aid in the conduct of trials. It was the view of the Administrative Office that further tests of recording machines should be made, and upon the recommendation of the Committees the Conference authorized the Administrative Office to select typical district courts and to make use of electronic recording devices in the conduct of actual trials in those courts, the court reporter also being present and functioning as usual, and to report back to the Committees and to the Conference at some future time in respect to their use.

The Committees further reported that in their study of the work and the compensation of court reporters there has been frequent reference to the burden placed upon the reporters by the requirement in 28 U.S.C. 753 that all pleas and proceedings in connection with the imposition of sentence in criminal cases be transcribed and certified. Information received from the clerks of the district courts by the Administrative Office shows that this requirement of transcribing and filing in the clerks' offices the arraignments, pleas and sentences is frequently not complied with. In the opinion of the Committees, it is almost impossible for reporters in busy district courts to fulfill this requirement without a substantial increase in the number of reporters, and that the need for a record in criminal cases is met by the present requirement that reporters file their notes in each case. The Committees accordingly recommended that the provisions of 28 U.S.C.

753 be amended to require the transcription of these proceedings only when ordered by the district court or by an appellate court. The Conference approved the recommendation of the Committees.

It was the view of the Committees that the court reporters who function very largely in rural areas receive insufficient compensation in view of the hours of work, time spent in traveling, and the small opportunity to increase their earnings above their salaries through the sale of transcripts. The Committees, therefore recommended that the three salary classifications of court reporters established by the Conference be abolished, and that the court reporters hereafter be classified in two classes as "metropolitan area" reporters at a salary of \$7,095 per annum, and "nonmetropolitan area" reporters at a salary of \$6,505 per annum, respectively, and that this change, which will affect only those reporters who now receive less than \$6,505 per annum, be made effective as soon as appropriated funds are available. The Conference approved the recommendation of the Committee, and directed that the necessary funds be included in the Judiciary budget for 1960.

The Committees were also of the view that the maximum charge permitted for daily transcript by court reporters should be increased, since in delivering daily transcript a reporter ordinarily must employ two additional reporters to assist him and usually must employ two or three additional typists. Upon the recommendation of the Committees, the Conference approved the following maximum charges per page for daily transcript which may be fixed by the district courts up to the stated maximum under 28 U.S.C. 753(f).

Maximum Rates for Daily Transcripts

	Rate per page		Total charge
	Original	Each copy	
Original only.....	\$1.80	\$0.00	\$1.80
Original plus 1 copy.....	1.25	.50	1.75
Original plus 2 copies.....	1.20	.45	2.10
Original plus 3 copies.....	1.15	.40	2.35
Original plus 4 copies.....	1.10	.35	2.50
Original plus 5 copies.....	1.05	.35	2.80
Original plus 6 copies.....	1.00	.35	3.10

For an original and more than 6 copies: \$1 for original and \$0.35 for each copy.

The Conference adopted the following definition of the term "daily transcript":

The term 'daily transcript' is defined as that in which a transcript of each day's proceedings is delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually be a court day.

The Conference approved a recommendation of the Committees that the Director of the Administrative Office be authorized to employ a management analyst to make a complete study of typical court and other reported systems, the courts or bodies to be surveyed to be left to the discretion of the Director.

On recommendation of the Committees, the Administrative Office was requested to study the matter of the quarterly reports now required of court reporters to the end that the reports may be simplified and, perhaps, required to be filed at less frequent intervals. The Committees also reported that they had been informed that on the quarterly reports required to be filed by the court reporters with the Administrative Office the item "Total net earnings" is computed on different bases by different reporters. In order that the Committees may have accurate information as to reporters' earnings for their use in arriving at an estimate as to what the compensation of reporters should be, the Conference directed the Administrative Office to send to each reporter a questionnaire as to the basis on which his total net earnings are reported.

In accordance with the authority granted to it by the conference to take action with respect to the court reporter-secretary assigned to Chief Judge T. Hoyt Davis in the Middle District of Georgia, including the establishment of a new position of court reporter and fixing the salary thereof (Conf. Rept. March 1958, p. 37), the Committees reported that the Administrative Office had been authorized to continue this combined court reporter-secretary position at a salary of \$7,095 per annum, or to establish a separate position of court reporter at the rate of \$6,505 per annum, as Judge Davis may elect. The action of the Committee was approved by the Conference.

The Assistant Director of the Administrative Office had informed the Committees of an increasing use of temporary court reporting services and that an additional sum of \$20,000 will be required to provide such services. On the recommendation of the Committees, the Conference directed that this additional sum

for temporary reporting services be included in the Judiciary budget for 1960.

The Conference approved a recommendation of the Committees that in the event of a vacancy in the office of a district judge the services of the reporter assigned to him be utilized in the same or in some other district wherever this can be done to advantage.

The Committee on Supporting Personnel, with the assistance of the Committee on Court Administration, was authorized to continue the study of the compensation of court reporters and methods and means of reporting and transcription, with leave to report to the Conference at a future meeting.

Deputy Clerks of Court

At the request of the Committees, the Conference directed the Administrative Office to make a study of the differences in duties and responsibilities of deputy court clerks in charge of divisions and to report to the Committees on Supporting Personnel and Court Administration as to whether or not there should be grade differentials in these positions and, if so, what they should be.

At the further request of the Committees, the Administrative Office was directed to study the qualification standards for court room deputy clerks and judges' secretaries in order to determine whether it would be feasible to include in these standards time spent in study in institutions of higher learning as the equivalent of years of practical experience.

The Assistant Director of the Administrative Office had reported to the Committees that additional deputy clerks would be required if the work of the clerks' offices was to be carried on expeditiously and stated that the minimum number required was 20. Upon the recommendation of the Committees, the Conference directed that sufficient funds be included in the Judiciary budget for 1960 to provide for 20 additional deputy clerks.

Law Clerks and Secretaries

The Assistant Director of the Administrative Office reported to the Committees that in order to provide adequate staffs for judges appointed to succeed retiring judges who were continuing to render judicial service and who would, therefore, retain their staffs, an estimated 11 additional law clerks or secretaries to judges will be required during the next fiscal year. Upon the recommendation

of the Committee the Conference directed that a sufficient sum for this purpose be included in the Judiciary budget for 1960.

Law Clerks

The Judicial Conference at its September 1957 session (Conf. Rept., p. 12) directed the Committee on Supporting Personnel to study possible revisions of the qualification standards for law clerks. The Committee reported that it had requested the Administrative Office to supply the data necessary for the consideration of such a revision but that the necessary informative material had not yet been submitted. The Committee was authorized to consider this matter further and to report thereon at a future session of the Conference.

Uniform Rules of Evidence for the Federal Courts

At the September 1957 session of the Conference (Conf. Rept. p. 43), a proposal to establish uniform rules of evidence for the federal courts was referred by the Conference to the Committee on Court Administration for study and report. In view of the action of the Conference at this session establishing a Committee on Rules of Practice and Procedure, the Committees recommended that this subject, which involves rules of practice and procedure, be referred to that Committee for consideration to the end that it may be referred to an appropriate advisory committee if deemed proper. The Conference approved the recommendation of the Committee.

Conference Procedure

In accordance with the recommendation of the Committees, the Conference directed that reports of Conference Committees be submitted to the Administrative Office for circulation, wherever practicable, at least 20 days prior to the meeting of the Judicial Conference at which they are to be considered.

Use of Per Curiam or Other Brief Opinions by Courts of Appeals

The Committees recommended that the Conference suggest to the Judicial Conferences of the several circuits that they include in their agenda the subject of shortening the time required in the disposition of cases by the courts of appeals through the use of *per curiam* and other brief opinions in those cases in which they

are appropriate. The recommendation was approved by the Conference.

Printing Records on Appeal

Chief Judge Biggs reported that the Committees had discussed the costs and delays involved in the continued use by some of the courts of appeals of the system of printing the record on appeal rather than portions thereof in an appendix to the brief. The Committees recommended that this matter be referred to the standing Committee on Rules of Practice and Procedure to the end that it may be referred to an appropriate advisory committee for consideration if deemed proper. Judge Orie L. Phillips, with whom Chief Judge Hutcheson concurred, noted his disagreement with the proposal because it implies that a system of printing records on appeal involves costs and delays in all courts of appeals that retain that system.

Cost of Living Allowances to Judicial Employees in Territories and Possessions

On recommendation of the Committees, the Conference reaffirmed its approval of the proposal contained in S. 3374 and H.R. 5801 of the 85th Congress (Conf. Rept., March 1958, p. 23) to authorize cost-of-living allowances to judicial employees stationed outside the continental United States or in Alaska.

United States Commissioners

Chief Judge Biggs reported that S. 3841, 85th Congress, to increase the fees of United States Commissioners and S. 3842, 85th Congress, to amend the Civil Service Retirement Act to provide for the crediting of service of United States Commissioners on the basis of 1/238 of a year for each day's service instead of 1/330 of a year, as under the present retirement provisions enacted about two years ago, had been referred to the Director of the Administrative Office by the Chairman of the Committee on the Judiciary of the United States Senate for the views of the Conference. The Committees were of the opinion that since the fees of United States Commissioners were increased recently by the Act of September 2, 1957, Public Law 85-276 and that the present retirement provisions for the United States Commissioners have been so recently enacted, no further increase in fees, or change in the

provisions for retirement should be considered at this time. The Conference concurred in the views of the Committees.

Administrative Office Personnel

Judge Biggs reported that the Committees had considered the proposal contained in S. 4142, 85th Congress, to provide for a change in the title of the Assistant Director of the Administrative Office to "Deputy Director" and to provide two additional positions in the Administrative Office at grade GS 18. Upon the recommendation of the Committees, the Conference approved the proposal.

*Clerical Personnel of the United States Commissioner
in the District of Columbia*

The Conference, in accordance with the recommendation of the Committee, reaffirmed its approval of the proposal contained in H.R. 268, 85th Congress, (Conf. Rept., Sept. 1957, p. 27) which would provide that the salaries of the clerical assistants of the United States Commissioner in the District of Columbia shall be fixed by the Director of the Administrative Office instead of by the District Court.

Subpoena Powers for Judicial Councils of the Circuits

Chief Judge Biggs reported that the proposal to provide subpoena powers for the Judicial Councils of the circuits had been circulated among the circuit and district judges for an expression of views as directed by the Conference at its March 1958 session (Conf. Rept., p. 11). After further consideration the Committees were of the view that the bill as submitted should be modified so as to make it clear that it is not applicable to judges or other persons in the judicial establishment. After a full discussion, the Conference directed the Committees to reconsider the proposal in the light of the discussions in the Conference, and to consider, among other things, the present power of the Judicial Council to order a judge to report on any situation in his court.

Private Practice of Law by Employees of the Judiciary

The Conference upon the recommendation of the Committees adopted the following resolution:

Resolved, That no person employed on a full-time basis in the federal judicial establishment shall engage in the private practice of the law.

National Park Commissioners

The attention of the Conference was directed to the fact that the National Park Commissioners have not received the benefits of the salary increase granted to federal employees generally by the Federal Employees Salary Increase Act of 1958, Public Law 85-462, because pursuant to 28 U.S.C. 634 the salaries of these Commissioners are fixed by each district court, with the approval of the Judicial Conference. In order to give effect to the increase authorized for other judicial personnel generally, the Committee recommended that the Conference approve the following maximum salaries for National Park Commissioners:

- Class A—\$5,950 per annum
 - Rocky Mountain National Park
 - Sequoia and Kings Canyon National Parks
 - Yellowstone National Park
 - Yosemite National Park
- Class B—\$5,350 per annum
 - Glacier National Park
 - Mount Rainier National Park
- Class C—\$4,750 per annum
 - Big Bend National Park
 - Crater Lake National Park
 - Lassen Volcanic National Park
 - Mesa Verde National Park
 - Olympic National Park
 - Great Smoky National Park (\$2,375 for each commissioner)
- Class D—\$3,250 per annum
 - Mammoth Cave National Park
 - Shenandoah National Park
 - Cumberland Gap National Park (\$1,625 for each commissioner)

The district courts were authorized by the Conference to fix the salaries of the National Park Commissioners within the above limits pursuant to 28 U.S.C. 634 and to fix retroactive pay to the extent permitted under the Federal Employees Salary Increase Act of 1958.

BANKRUPTCY ADMINISTRATION

Circuit Judge Orie L. Phillips, Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered the recommendations contained in the report

of the Bankruptcy Division of the Administrative Office dated July 17, 1958, relating to changes in salaries and arrangements for referees and the filling of vacancies in referee positions.

The report of July 17, 1958, was submitted by the Acting Director of the Administrative Office to the members of the Judicial Conference and to the Judicial Councils and the district judges of the circuits and districts concerned in accordance with the Bankruptcy Act. The report, together with the views expressed by the district judges and the circuit councils, was considered by the Committee.

The Conference had before it the Committee's report, as well as the recommendations of the Acting Director, the circuit councils and the district judges, and on the basis of these reports took the action shown in the following table relating to changes in salaries and arrangements:

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
<i>1st Circuit</i>					
Maine.....	Portland.....	Full-time.....	\$13,750	Full-time.....	\$15,000
New Hampshire.....	Manchester.....	Part-time.....	5,000	Part-time.....	6,000
<i>2d Circuit</i>					
New York (N).....	Utica.....	Full-time.....	13,750	Full-time.....	15,000
	Albany.....	do.....	11,250	do.....	12,500
New York (S).....	Yonkers.....	Part-time.....	5,500	Part-time.....	6,000
	Poughkeepsie.....	do.....	3,500	do.....	4,000
New York (W).....	Buffalo.....	Full-time.....	13,750	Full-time.....	15,000
	Rochester.....	do.....	10,000	do.....	11,250
<i>3d Circuit</i>					
Pennsylvania (M).....	Harrisburg.....	Part-time.....	5,500	Part-time.....	6,500
<i>4th Circuit</i>					
No. Carolina (M).....	Greensboro.....	do.....	5,500	do.....	6,500
Virginia (E).....	Richmond.....	Full-time.....	13,750	Full-time.....	15,000
<i>5th Circuit</i>					
Alabama (M).....	Montgomery.....	do.....	11,250	do.....	12,500
Alabama (S).....	Mobile.....	do.....	12,500	do.....	13,750
Georgia (N).....	Rome.....	Part-time.....	7,000	Part-time.....	7,500
Georgia (M).....	Macon.....	Full-time.....	12,500	Full-time.....	\$13,750
Louisiana (E).....	New Orleans.....	do.....	12,500	do.....	13,750
Texas (N).....	Dallas.....	do.....	10,000	do.....	12,500
	Ft. Worth.....	do.....	10,000	do.....	11,250
Texas (S).....	Houston.....	do.....	10,000	do.....	11,250
Texas (W).....	San Antonio.....	do.....	10,000	do.....	11,250

See footnotes at end of table.

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
6th Circuit					
Kentucky (W).....	Louisville.....	Full-time.....	\$12,500	Full-time.....	\$15,000
Michigan (W).....	Grand Rapids.....	do.....	11,250	do.....	12,500
Ohio (N).....	Youngstown.....	do.....	12,500	do.....	13,750
Ohio (S).....	Dayton.....	do.....	12,500	do.....	13,750
Tennessee (E).....	Knoxville.....	do.....	11,250	do.....	12,500
7th Circuit					
Illinois (N).....	Joliet.....	Part-time.....	5,000	Part-time.....	6,000
Illinois (S).....	Peoria.....	Full-time.....	12,500	Full-time.....	13,750
Illinois (E).....	Danville.....	Part-time.....	5,000	Part-time.....	6,000
Indiana (S).....	Indianapolis.....	Full-time.....	13,750	Full-time.....	15,000
8th Circuit					
Arkansas (E. & W.).....	Little Rock.....	do.....	11,250	do.....	13,750
Iowa (N).....	Fort Dodge.....	Part-time.....	5,000	Part-time.....	6,000
Minnesota.....	Minneapolis.....	do.....	do ¹	do ¹	7,500
Nebraska.....	Omaha.....	Full-time.....	12,500	Full-time.....	13,750
9th Circuit					
Arizona.....	Phoenix.....	do.....	13,750	do.....	15,000
California (N).....	San Jose.....	do.....	do ¹	do ¹	12,500
	Eureka.....	do.....	do ¹	do ¹	12,500
Oregon.....	Portland.....	Full-time.....	10,000	Full-time.....	15,000
Washington (E).....	Spokane.....	do.....	12,500	do.....	13,750
Washington (W).....	Seattle.....	do.....	11,250	do.....	15,000

¹ Effective Nov. 5, 1958. ² Effective Jan. 1, 1959. ³ New position.

Upon the recommendation of the Committee the Conference took the following action with regard to changes in arrangements and for the filling of vacancies in referee positions:

THIRD CIRCUIT

Eastern District of Pennsylvania.—Authorized the filling of a vacancy, to occur by expiration of term, in the position at Philadelphia held by Referee Curtin on a full-time basis for a term of 6 years, effective January 26, 1959, at the present salary of \$15,000 a year, the regular place of office, territory and place of holding court to remain as at present.

District of Virgin Islands.—Temporarily postponed the creation of a new referee position for further consideration after the appointment of a district judge.

FIFTH CIRCUIT

Northern District of Mississippi.—Authorized the filling of a vacancy caused by the resignation of Referee Sumners of Oxford, Mississippi, at the present annual salary of \$2,500 a year for a term of 6 years beginning on or after October 1, 1958, on a part-time basis, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota.

- (1) Authorized an additional referee position at Minneapolis on a part-time basis to serve the Fourth or Minneapolis Division for a term of 6 years beginning on or after October 1, 1958 at a salary of \$7,500 a year.
- (2) Fixed the regular place of office of the additional referee at Minneapolis and designated Minneapolis as his place of holding court.

NINTH CIRCUIT

Northern District of California.

- (1) Authorized one additional full-time referee position at a salary of \$12,500 a year, for a term of 6 years beginning on or after October 1, 1958 to serve the counties of Santa Clara, San Benito, Monterey and Santa Cruz.
- (2) Fixed the regular place of office of the new appointee at San Jose and designated San Jose and Salinas as places of holding court.
- (3) Transferred the counties of Santa Clara, San Benito, Monterey and Santa Cruz from the territory now served by the referees at San Francisco and Oakland to the territory to be served by the referee at San Jose and discontinued San Jose and Salinas as places of holding court for the referees at San Francisco and Oakland.
- (4) Authorized a second additional full-time referee position at a salary of \$12,500 a year, for a term of 6 years beginning on or after October 1, 1958 to serve the counties of Siskiyou, Modoc, Trinity, Shasta, Lassen, Del Norte, Humboldt, Tehama, Plumas, Glenn, Butte, Sierra, Nevada, Mendocino, Lake, Sonoma, Napa and Solano.
- (5) Fixed the regular place of office of the new appointee at Eureka and designated Eureka, Redding and Santa Rosa as places of holding court.
- (6) Transferred the counties of Siskiyou, Modoc, Trinity, Shasta, Lassen, Del Norte, Humboldt, Tehama, Plumas, Glenn, Butte, Sierra and Nevada from the territory now served by Referee Hughes at Sacramento to the territory to be served by the referee at Eureka and transferred the counties of Mendocino, Lake, Sonoma, Napa and Solano from the territory now served by the referees at San Francisco and Oakland to the territory to be served by the new referee at Eureka.
- (7) Discontinued Eureka and Redding as places of holding court for the referee at Sacramento and discontinued Santa Rosa as a place of holding court for the referees at San Francisco and Oakland.

District of Oregon.—Established concurrent jurisdiction for the Corvallis and Portland referees in the 27 counties now comprising the territories of these referees.

District of Alaska.—Authorized the filling of a vacancy caused by the resignation of Referee Martin of Anchorage, Alaska at the present annual salary of \$5,000 for a term of 6 years on a part-time basis, the regular place of office, territory and places of holding court to remain as a present.

All the changes in salaries and arrangements in the above table and list were made effective October 1, 1958, unless otherwise noted.

Supplemental Appropriation for 1959 for Referees' Expenses

The Committee reported that the number of bankruptcy cases is continuing to increase rapidly and that approximately 107,000 cases are now anticipated for the fiscal year 1959. The present appropriation for referees' expenses in the amount of \$2,625,550 was based on an estimated volume of 95,000 new cases. The Committee recommended that the Director be authorized to seek a supplemental appropriation for 1959 not to exceed \$351,735. The Conference approved this recommendation.

Appropriations for 1960 for Referees' Salaries and Expenses

The appropriations for referees' salaries and expenses for 1960 are based on an estimate of 117,000 cases. The estimated amount needed for referees' salaries is \$2,106,500 and for referees' expenses \$3,580,000.

The estimate for referees' salaries includes (1) the cost of salary changes and additional positions approved at the present meeting of the Judicial Conference for the full fiscal year 1960; (2) an estimate of the amount needed to cover the salary changes and new referee positions expected to be authorized at the March 1959 meeting of the Conference for the full fiscal year 1960 and (3) an estimate of the amount needed for the equivalent of ten additional full-time referee positions at the maximum salary of \$15,000 a year, expected to be authorized by the Judicial Conference to handle the increased volume of cases in 1960.

The estimate for referees' expenses is likewise based upon an estimated volume of 117,000 new cases in 1960. It is needed to pay the cost of clerical service in the referees' offices and for other items of expense.

Upon the recommendation of the Committee the above estimates were approved by the Conference.

Changes in Additional Charges for the Referees' Salary and Expense Funds

Judge Phillips stated that pursuant to Section 40c(2) of the Bankruptcy Act the Director had recommended that the schedule of additional fees and charges for the referees' salary and expense funds, approved by the Conference at its September 1956 session (Conf. Rept., p. 26), be revised to distribute the charges for the two funds more nearly in accordance with the needs of each by

increasing the charges for the Expense Fund and decreasing the charges for the Salary Fund. These changes would not affect the total charges for the two funds.

The Committee informed the Conference that on June 30, 1958, the total surplus in the Referees' Salary Fund was estimated at \$4,207,000 and in the Expense Fund at \$1,919,000, and that expenditures from the Referees' Expense Fund in 1958 had exceeded receipts by approximately \$55,000. While the accumulated surplus in the salary fund is ample, the surplus in the expense fund is now considerably less than one year's expenditures.

Upon the recommendation of the Bankruptcy Committee, the Conference approved the following schedule of additional fees and charges recommended by the Director, to be effective as to all cases filed on or after October 1, 1958:

FEES TO BE CHARGED IN ASSET, ARRANGEMENT AND WAGE-EARNER CASES FOR THE REFEREES' SALARY FUND

One-half of one percent on net realization in straight bankruptcy cases with a minimum charge of \$2.50 in each Asset and Nominal Asset case.
One-half of one percent on total obligations paid or extended in Chapter XI cases.

One-half of one percent upon payments made by or for the debtor in Chapter XIII cases.

CHARGES TO BE MADE IN ASSET, ARRANGEMENT AND WAGE-EARNER CASES FOR THE REFEREES' EXPENSE FUND

Referees' expenses in Chapter XIII cases at \$10 per case where the liabilities do not exceed \$200, and at \$15 per case in all other Chapter XIII cases.

Two percent on the first \$50,000 and one and one-half percent on the balance of the net realization in straight bankruptcy cases with a minimum charge of \$2.50 in each Asset and Nominal Asset case.

One-half of one percent on total obligations paid or extended in Chapter XI cases.

One-half of one percent upon payments made by or for the debtor in Chapter XIII cases.

Consolidation of the Referees' Salary Fund and the Referees' Expense Fund

The Committee reported that difficulty had been encountered in the past in keeping the referees' salary fund and the referees' expense fund in proper balance with relation to the expenditures from each fund, that the division of the filing fees presently allocated to each fund by statute is not in accordance with the needs

of the bankruptcy system, and that the limitation in Section 40c(2) of the Bankruptcy Act that the schedule of additional charges for the two funds shall not be so revised in any year that the total estimated collections shall exceed by more than 10 percent the total collections in the preceding year has been unrealistic in the light of the increase in the volume of cases filed in recent years.

The Committee was of the view that the consolidation of the two funds would simplify and reduce the work in the referees' offices, the clerks' offices, the United States Treasury, the Appropriations Committees of Congress and several divisions of the Administrative Office. Upon the recommendation of the Committee the Conference approved the proposal to consolidate the two funds, and directed the Administrative Office to draft the necessary legislation for submission to the next Congress.

Legislation

The Conference on recommendation of the Committee reaffirmed its approval of the proposals contained in the following bills introduced in the 85th Congress and authorized the Administrative Office to secure the introduction and to support the enactment of bills of like nature in the next Congress:

(1) H.R. 106 to amend Sections 2a, 11a, 14c and 17a of the Bankruptcy Act, 11 U.S.C. 11a, 29a, 32c and 35a, to provide the bankruptcy courts with clear statutory authority to determine the effect of a discharge.

(2) H.R. 5195 to amend Sections 1(29), 64a, 67b, 67c and 70c of the Bankruptcy Act, 11 U.S.C. 1(29), 104a, 107b, 107c and 110c, with regard to preferences, liens and title to property.

(3) S. 3878 and H.R. 10599 to amend 18 U.S.C. 152 with respect to the concealment of assets in contemplation of bankruptcy.

(4) S. 3775 and H.R. 12115 to amend Sections 606(8) and 659(3) of Chapter XIII—Wage Earners' Plans—of the Bankruptcy Act, 11 U.S.C. 1006(8) and 1059(3), to remove the present limitation of \$5,000 on earnings, thus making more persons eligible to file petitions under Chapter XIII, and to change the commissions of the trustees in Chapter XIII cases from a flat 5 percent to *not more than 5 percent*.

(5) H.R. 12186 to amend Sections 60b, 67e and 70e of the Bankruptcy Act, 11 U.S.C. 96b, 107e and 110e, to give the bankruptcy

courts summary jurisdiction in actions brought under these Sections involving the recovery of preferences, the avoidance of liens and fraudulent transfers, and the trustee's title to property.

The following bills introduced in the 85th Congress were submitted to the Committee for consideration pursuant to a request received by the Administrative Office from the Judiciary Committees of the Congress for an expression of views:

(1) H.R. 10379 would amend Section 61 of the Bankruptcy Act, 11 U.S.C. 1001, to provide that no security in the form of a bond or otherwise shall be required from bankruptcy depository banks to the extent that they are insured by the Federal Savings and Loan Insurance Corporation. This would merely grant the same protection to accounts so insured as is now granted to accounts insured by the Federal Deposit Insurance Corporation;

(2) H.R. 12217 would amend Section 77c(2) of the Bankruptcy Act, 11 U.S.C. 205c (2), relating to the reorganization of railroads engaged in interstate commerce by making the trustee in operating the business of the debtor subject to the lawful orders of state regulatory bodies; and

(3) S. 3245 would amend Section 64a(2) of the Bankruptcy Act, 11 U.S.C. 104a(2), to increase the maximum priority for wage claimants for wages earned within three months prior to bankruptcy from \$600 to \$1500.

The Committee was of the view that these three bills involve questions of public policy and that it should express no opinion on them. The proposal contained in H.R. 12217 has now become Public Law 85-824.

The Committee reported that the following bills, sponsored by the Securities and Exchange Commission, had been referred to the Administrative Office by the House Judiciary Committee for an expression of views:

(1) H.R. 11586 would amend Section 208 of Chapter X of the Bankruptcy Act, 11 U.S.C. 608, to permit the Securities and Exchange Commission to take an appeal as of right in a Chapter X proceeding if, upon petition to the court of appeals, leave to appeal is granted. The Committee was of the opinion that the granting of a right of appeal to the Commission in these cases is a matter of public policy for the determination of the Congress, but that if such right of appeal is to be given, it should be limited to matters that have been presented by the Commission to the trial court

and that it was of the opinion that they present matters of policy with respect to which the Committee should express no opinion:

(1) H.R. 11585 would amend Sections 174, 179, 216(7) and 221(2) of Chapter X of the Bankruptcy Act, 11 U.S.C. 574, 579, 616(7) and 621(2), to reduce the number of votes required for the confirmation of a plan for the reorganization of a corporation from two-thirds of the number and amount of each class of creditors, to a simple majority as now required for the confirmation of a plan in Chapter XI cases.

(2) H.R. 11589 would amend Section 216(11) of Chapter X of the Bankruptcy Act, 11 U.S.C. 616(11), to provide that for a period of two years after a substantial consummation of a plan of corporate reorganization, a disinterested trustee or his attorney shall not serve in a salaried position with, or as general counsel for the reorganized company.

(3) H.R. 11590 would amend Section 393a(2) of Chapter XI (Arrangements) of the Bankruptcy Act, 11 U.S.C. 793a(2), relating to exchanges or issuances of securities for claims against the debtor, pursuant to an arrangement under Chapter XI. The court does not have jurisdiction to pass upon any securities which are issued by the debtor unless they are issued at least partly in exchange for creditors' claims. The Securities and Exchange Commission feels the issuance of these securities, where issued solely for cash, should be approved by it.

(4) H.R. 11592 would amend Section 328 of Chapter XI (Arrangements) of the Bankruptcy Act, 11 U.S.C. 728, to authorize the judge, under certain circumstances, to transfer a proceeding from Chapter XI to Chapter X, when the court finds the proceeding was improperly brought under Chapter XI.

(5) H.R. 11593 would amend the definition of "debtor" in Sections 306(3) and 323 of Chapter XI (Arrangements) of the Bankruptcy Act, 11 U.S.C. 706(3) and 723, to provide that for the purposes of Chapter XI a debtor shall not include a corporation if the securities of such corporation are beneficially owned by 100 or more persons, and to require a corporation filing a petition under Chapter XI to state affirmatively that it is not a debtor whose securities are beneficially owned by 100 or more persons.

Blanket Bonds for Referees and Other Personnel

The Committee recommended the enactment of a bill prepared by the Administrative Office pursuant to the direction of the Conference at its March 1958 session (Conf. Rept., p. 21) to amend subsections a, d, e, g, h and k, of Section 50 of the Bankruptcy Act, 11 U.S.C. 78, to authorize the Director of the Administrative Office to procure bonds for referees and their personnel at government expense. The Conference approved the Committee's recommendation.

Improvements in Bankruptcy Procedures and Administration

The Committee reported that it had considered the following proposals for the improvement of bankruptcy procedures and administration:

(1) *Automatic adjudication of all ordinary voluntary bankruptcy cases.*—The Committee was of the view that the filing of a voluntary petition in ordinary bankruptcy cases should constitute an adjudication in bankruptcy with the same force and effect as if an order of adjudication had been entered by the court. The Conference concurred in the view of the Committee and directed the Administrative Office to prepare and transmit to Congress the necessary statutory amendments to effect this change.

(2) *Entry of orders of reference by the clerk of the court.*—The Committee recommended an amendment to the Bankruptcy Act to authorize the clerk of the court to enter orders of references in all ordinary bankruptcy cases (voluntary or involuntary), in proceedings under Chapter XI and in those under Chapter XIII, unless the court shall by order or otherwise direct. The Committee also recommended that the official forms be amended so as to provide a concise order of reference. The Conference approved the recommendations of the Committee.

(3) *Elimination of the oath on proofs of claim.*—The Committee recommended that the statutory requirement that proofs of claim be verified under oath be eliminated, and that in lieu of that requirement there be set forth in the official proof of claim the statement that any false material statement of fact in the claim shall constitute a criminal offense. The Administrative Office, through its Bankruptcy Division, was directed to draft and present to the Conference the necessary statutory changes and the necessary changes in the official proof of claim.

(4) *Eliminating paper work in the referees' offices.*—The Committee called to the attention of the Conference the provisions of Section 39a(9) of the Bankruptcy Act, 11 U.S.C. 67a(9), requiring the sending to the clerk of the court "forthwith" all bonds filed with and approved by referees, the originals of all orders of adjudication or dismissing petitions, and certified copies of all orders made by referees granting, denying or revoking discharges and the like. The Committee was of the view that considerable paper work would be eliminated, both in the referees' offices and in the offices of the clerks of court, if these papers would remain in the referees' offices until the case is closed and then be transmitted to the clerk of the court for permanent preservation. The Conference concurred in the view of the Committee and approved amending Section 39a(9) to effect this proposal.

(5) *Consolidation of orders appointing a trustee and approving his bond.*—The Committee reported that considerable work would be saved in the referees' offices if Official Forms 20, 21 and 24 relating to the appointment of a trustee and the approval of the trustee's bond were consolidated. Upon the recommendation of the Committee, the Conference approved the proposal.

(6) *Standing trustees for small cases.*—The Committee reported that it had referred to the Administrative Office for further study and report to the Committee the proposal to provide for a panel of standing trustees to handle small cases.

(7) *Procedures in installment cases—General Order 35(4).*—The Committee informed the Conference that it had requested the Bankruptcy Division of the Administrative Office to prepare the necessary factual data with regard to changes in procedures in installment cases under General Order 35(4) and to present this information to the new standing Committee of the Conference on Rules of Practice and Procedure for the federal courts.

(8) *Payments in contemplation of bankruptcy.*—The Committee reported a proposal to amend Section 60d of the Bankruptcy Act, 11 U.S.C. 96, concerning the payment of money, transfer of property, or the incurring of obligations to attorneys in contemplation of the filing of a petition by or against the debtor, and informed the Conference that it had requested the Bankruptcy Division of the Administrative Office to present to the Committee at its next meeting a proposed amendment to meet this problem.

(9) *Other Administrative Proposals.*—The Committee informed the Conference that it had disapproved the proposal to eliminate the oath on bankruptcy schedules and the proposal to provide blanket bonds for receivers and trustees in bankruptcy cases.

Other Legislative Proposals

The Committee reported that a number of proposals to change substantive provisions of the Bankruptcy Act had been brought to the attention of the Administrative Office, and that the Committee had requested the Bankruptcy Division of the Administrative Office to study the proposals and report to the Committee at its next meeting.

Wage Earners' Petitions Under Chapter XIII

The Committee reported that substantial progress has been made in the effort to better acquaint the referees, petitioners in bankruptcy, attorneys, credit associations and other like associations with Chapter XIII and the desirability of its use in appropriate cases. The Committee has requested the Bankruptcy Division to continue its efforts along these lines.

Retirement of Referees

Judge Phillips reported that the Committee had considered at length various proposals for the compulsory retirement of referees and had taken into account their term of office, salary, retirement benefits, age for retirement, the number approaching retirement age and the like. Upon recommendation of the Committee, the Conference approved a statutory amendment to provide that no referee appointed or re-appointed after the effective date of the amendment may serve beyond his 75th birthday.

Filling Vacancies in Referee Positions

Judge Phillips reported that considerable time, effort and often delay are involved in complying with Section 43b of the Bankruptcy Act, 11 U.S.C. 71b, with respect to the filling of vacancies in the offices of referees resulting from death, resignation or retirement. He pointed out that this is particularly true in connection with a mail vote of the Judicial Conference approving the filling of a vacancy, and that with the enlargement of the Conference, greater delays would probably be encountered.

The Committee, therefore, recommended an amendment to Section 43b to provide that vacancies in the offices of referees in bankruptcy, may be filled without formal approval by the Conference where no change in salary or arrangements is recommended by the Director, the district judge or judges of the district concerned, or the circuit council of the circuit in which the vacancy occurs. The Conference approved this recommendation.

Appeals From Orders of Referees

The Committee reported that it had studied the proposal to provide direct appeals from the orders of referees in bankruptcy to the courts of appeals. Upon the recommendation of the Committee, the Conference disapproved the proposal.

REPORT OF THE COMMITTEE ON THE BUDGET

Chief Judge Charles E. Clark, Chairman of the Committee on the Budget, reported that the estimates submitted by the Administrative Office pursuant to 28 U.S.C. 605 for annual appropriations for the support of the courts for the fiscal year 1960 and supplemental appropriations for 1959 had been reviewed by the Committee and approved. The Conference thereupon approved the budget estimates as submitted, subject to any changes which may be required by action taken by the Conference at this session.

The supplemental estimates for 1959 include funds for the increased cost of personal services and related items pursuant to the Federal Employees Salary Increase Act and for additional personnel to study rules of practice and procedure pursuant to Public Law 85-513; additional funds for fees of jurors and U.S. commissioners; and additional funds for travel and miscellaneous expenses including additional funds for postage as the result of the recent increase in postal rates and for transcripts and printed records furnished to persons permitted to appeal *in forma pauperis*.

The estimates for the annual appropriations for the operation of the courts during the fiscal year 1960 include additional funds for new positions in the courts and additional positions in the Administrative Office to meet the demands of the courts and to undertake the continuing study of the Rules of Practice and Procedure in the United States Courts pursuant to Public Law 85-513; increases for personal services including within-grade promotions; increases in travel funds and other impersonal expenses for new personnel;

and increases for other nonpersonal services including new furniture and equipment and the increased cost of other commodities used in the operation of the courts.

The Administrative Office was authorized, subject to the approval of the Budget Committee and notification as soon as possible to all members of the Conference, to make necessary amendments to the annual budget submission to the Congress and to submit requests for supplemental appropriations to the Congress as required.

CRIMINAL LAW ADMINISTRATION

Chief Judge F. Ryan Duffy made an informal report to the Conference on behalf of the Committee on the Administration of the Criminal Law. He called attention to the action of the Conference at its September 1957 session (Conf. Rept. p. 27) concurring in the view of the Committee that there was no need for legislation giving to a defendant sentenced to a term of imprisonment credit for time spent in jail prior to sentence, since according to available information this is uniformly considered by district judges in imposing sentence. Judge Duffy pointed out, however, that no credit can be given where a mandatory sentence is required under the statute and stated that the Committee will reconsider the proposal.

At the request of Judge Phillips, the Committee was directed to take up for consideration the proposals to redefine the term "felony" and to permit the dismissal of an indictment following a successful term of probation (Conf. Rept., Sept. 1957, p. 26).

The Conference was informed that the National Legal Aid Society had requested an opportunity to present its views in regard to the proposal contained in S. 3275, 85th Congress, to authorize grants to legal aid societies and other organizations providing free legal services to indigent persons accused of crime in the federal courts, which was disapproved by the Conference at its March 1958 session (Conf. Rept., p. 33). The proposal was referred to the Committee on the Administration of the Criminal Law to consider the views of the National Legal Aid Society and to report to the Conference.

On motion of Chief Judge Edgerton, the Administrative Office was requested to endeavor to implement existing legislation respecting assignment of counsel for persons who are before the

Mental Health Commission of the District of Columbia. (See Conf. Rept., Sept. 1957, p. 16.)

COMMITTEE ON JUDICIAL STATISTICS

Chief Judge Charles E. Clark, Chairman of the Committee on Judicial Statistics, presented the report of the Committee. He called attention to the great disparity in workloads among the various courts and suggested the formulation of a procedure for the assignment of judges outside of their circuits as a means of equalizing caseloads. The Conference discussed the matter fully, and on motion of Chief Judge Biggs authorized the Chief Justice to appoint a small committee of judges, who are members of the Judicial Conference, to consider the question of the assignment and designation of judges to serve outside of their own circuits.

The Committee also presented the following resolution with respect to the assignment of judges which was approved by the Conference:

Recommended that the Judicial Conference declare it to be the sense of the Conference that in requesting the designation of visiting judges and in consenting to the designation of judges for service in other circuits, chief judges and circuit councils charged with consenting to such transfers and chief judges charged with the making of certificates of necessity may take such action whenever in the exercise of discretion they consider it to be for the benefit of the judicial system and are not limited solely to situations of congested calendars or where an exchange of service may be anticipated.

Chief Judge Clark reported that the Administrative Office is now receiving monthly trial reports from the clerks of the district courts showing the number of trials and pretrial conferences by judge and the dates on which they are held, and that a similar report as to the work of the courts of appeals is believed by the Committee to be necessary in order to have more information as to the service of individual judges and as to the service of retired judges. On recommendation of the Committee, the Conference authorized the Administrative Office to request the clerks of the courts of appeals to furnish monthly reports show-

ing the name and docket number of each case heard and the name of each judge hearing such case.

The Conference disapproved the proposal of the Committee that the clerks of the district courts be requested to classify pretrial conferences in accordance with whether or not a pretrial order was entered following the conference and to report the number of cases in which the district judge has expressly entered an order obviating the necessity for holding a pretrial conference.

The Conference directed that the report of the Committee be received and that it be circulated throughout the Judiciary for the information of the judges.

REPORT OF THE COMMITTEE ON PRETRIAL PROCEDURE

Circuit Judge Alfred P. Murrah, Chairman of the Committee on Pretrial Procedure, submitted the report of the Committee to the Conference. He stated that there has been a continuing increase in the use of pretrial procedure in the federal courts, and that it was the sense of the Committee that Rule 16 F.R.C.P., should be amended to provide that a pretrial conference be used in every civil case before trial except in extraordinary cases where the district judge expressly enters an order otherwise. The Committee believes this is necessary to insure more widespread use of the pretrial conference.

Judge Murrah reported that the group of judges appointed by the Chief Justice to study pretrial procedure in protracted litigation had conducted a seminar on protracted cases at Stanford University similar to the one held at New York University last year, but with a somewhat larger group of judges. A transcript of the seminar at Stanford University will be printed in due course and will be made available to all federal judges.

OPERATION OF THE JURY SYSTEM

Chief Judge Harry E. Watkins, Chairman of the Committee on the Operation of the Jury System, submitted the report of the Committee.

Legislation

Judge Watkins informed the Conference that the proposal to permit the trial court in its discretion to allow additional per-

empty challenges to multiple plaintiffs in civil actions as well as to multiple defendants, which was approved by the Conference at its September 1956 session (Conf. Rept., p. 39), had passed the Congress, but was vetoed by the President because of an amendment relating to land condemnation cases placed on the bill in the Senate. He stated that there had been no action on the proposal to provide for a jury commission for each United States district court, to regulate its compensation, to prescribe its duties, and for other purposes, which has been advocated by the Judicial Conference since 1943. At the suggestion of the Committee, the Conference reaffirmed its approval of both proposals.

Judge Watkins called attention to one provision of the jury commission bill which would increase the compensation of jury commissioners from \$5.00 to \$10.00 per day with no limit on the number of days of service. The present provision for compensation of \$5.00 per day first appeared in the Appropriation Act of August 7, 1884. The Conference thereupon approved a draft of a bill submitted by the Committee to increase the compensation of jury commissioners from \$5.00 to \$10.00 per day and authorized the Committee to take steps to secure its passage.

The Committee reported that the following bills disapproved by the Conference did not pass in the 85th Congress:

- (1) H.R. 262 to permit grand juries to employ counsel and special investigators;
- (2) H.R. 817 and H.R. 348 to provide that in a civil case the number of jurors required to constitute the jury and the number who must agree for a valid verdict should be determined by the law of the state in which the action is tried;
- (3) H.R. 511 to give any party the right to a trial by jury as to just compensation in a land condemnation proceeding; and
- (4) H.R. 979 to require jurors to take an oath that they do not advocate the overthrow of the Government of the United States by force or violence.

Handbook for Petit Jurors

Following the withdrawal by the United States Court of Appeals of the Seventh Circuit of its first opinion in *United States v. Gordon*, criticizing the use of the Judicial Conference Handbook for Petit Jurors in criminal cases, and the entry after a rehearing in banc of a subsequent opinion, 253 F. 2d 173, the Committee

has redrafted the handbook to obviate any possible future challenges of this kind. The new edition will be made available to all district judges for use in their courts, if they so desire.

Costs of the Jury System

A report prepared by the Administrative Office on the costs of the operation of the jury system for the fiscal year ending June 30, 1958, similar to reports prepared for previous years, was submitted to the Conference by the Committee. At the Committee's request, the Conference authorized the report to be distributed among the judges for their information to the end that jury costs may be kept at the lowest level consistent with the efficient operation of the system.

The Selection of Jurors

Judge Watkins reported that the task of the Committee in revising the 1942 report of the Committee of the Judicial Conference on the Selection of Jurors has progressed with the assistance of the Institute of Judicial Administration in New York and the Administrative Office, and that the Committee is presently engaged in writing its report. At the request of the Committee, the Conference authorized the circulation of the preliminary draft of the report, as soon as it is completed, to all circuit and district judges for their suggestions and criticisms. The Committee plans to submit a final report to the Conference at its next regular annual session.

COMMITTEE ON THE REVISION OF THE LAWS

Circuit Judge Albert B. Maris, Chairman, submitted the report of the Committee on Revision of the Laws on the following proposals considered by the Committee:

(1) *Arbitration procedure—judicial review of questions of law.*—H.R. 7577, 85th Congress, would make a number of changes in the arbitration procedure provided for by Title 9 of the United States Code including a requirement that, unless waived, no final award should be issued in a maritime arbitration until after the arbitrators have submitted to the parties a statement in writing of their proposed award and have offered the parties an opportunity to specify and be heard in respect of any omissions, ambiguities or

errors claimed to exist in the terms of the proposed award. The proposal would also require the arbitrators at any time before final award in a maritime arbitration, if so directed by order of the district court, to state for the decision of the district court any question of law arising in the course of the arbitration, or to state the award or part thereof in the form of a special case. The Conference considered the proposal but postponed action thereon.

(2) *Elimination of the requirement that presidential proclamations be published in the Statutes at Large.*—S. 3492, 85th Congress, recommended by the General Services Administration, would reduce unnecessary printing by eliminating the present statutory requirement that Presidential proclamations be published in the Statutes at Large. The proclamations would continue to be published in the Federal Register where they are readily available. Upon the recommendation of the Committee, the Conference approved the bill.

(3) *The proposal to amend Section 2241(b) of Title 28 U.S.C. so as to eliminate the requirement that the district courts hold hearings on all applications for writs of habeas corpus transferred to them by the Supreme Court, any justice thereof or any circuit judge.*—Chief Judge Duffy had suggested to the Committee that many habeas corpus applications may be determined under existing law without formal hearing merely upon consideration of the averments of the petition and the accompanying documents and that the use of the word "hearing" in Section 2241(b) of Title 28 U.S.C. is unnecessary and results in imposing an unnecessary duty upon the district court in many habeas corpus cases. On motion of Chief Judge Duffy, the Chief Justice was authorized to constitute a Committee on Habeas Corpus to study this and other related problems, including the proposed amendment to 28 U.S.C. 2254 with respect to habeas corpus applications by state prisoners.

(4) *Venue in tort actions in the district in which the act or omission complained of occurred.*—The proposal contained in H.R. 13171, 85th Congress, to permit a civil action on a tort claim to be brought in the judicial district wherein the act or omission complained of occurred is identical to S. 1000, 85th Congress, previously approved by the Conference. On the recommendation of the Committee, the Conference reaffirmed its approval of this proposal.

The Committee reported that it is giving further consideration to the following proposals referred to the Committee for further study by the Conference at its March 1958 session:

(a) S. 1721 and H.R. 6085, 85th Congress, to provide that actions to enforce, enjoin, set aside or suspend orders of the Interstate Commerce Commission be brought by or against the Commission rather than the United States,

(b) H.R. 10892, 85th Congress, to permit a civil action to be brought against an officer or agency of the United States in any judicial district where the plaintiff resides, and

(c) an amendment to the uniform rules of the courts of appeals on the review of agency orders proposed by the Committee on Judicial Administration of the Federal Bar Association to shorten the time required to perfect review proceedings.

JOINT REPORT OF THE COMMITTEES ON COURT ADMINISTRATION AND REVISION OF THE LAWS

Circuit Judge Albert B. Maris, submitted the following report on matters of legislation jointly considered by the Committees on Court Administration and Revision of the Laws:

(1) *Transfer of the Tax Court to Title 28, United States Code, as a Constitutional court.*—S. 3796, 85th Congress, would provide for the transfer of the statutory provisions for the Tax Court from the Internal Revenue Code to Title 28 of the United States Code, transforming it from its present legal status as an independent agency in the Executive Branch of the Government to that of a Constitutional court in the Judicial Branch of the Government. After a full discussion, the Conference voted to return the proposal to the Committees for further study.

(2) *Creation of a United States Labor Court and a United States Trade Court.*—S. 3797 and S. 3798, 85th Congress, would create administrative courts to take over certain jurisdiction presently exercised by the National Labor Relations Board and by the Federal Trade Commission and certain other agencies, respectively. After a full discussion, the Conference voted to disapprove both bills.

(3) *Judicial review under the Civil Aeronautics Act.*—S. 3782, and H.R. 12461, 85th Congress, which have been proposed by the Civil Aeronautics Board, would amend the Civil Aeronautics Act to (1) assure for the Civil Aeronautics Board independent partici-

pation and representation in court proceedings, (2) provide for review of nonhearing Board determinations in the courts of appeals, and (3) clarify present provisions concerning the time for seeking judicial review. The Conference postponed action on this proposal until the views of the Department of Justice with respect thereto could be ascertained.

(4) *Taxation of costs in actions for the recovery of Internal Revenue taxes.*—S. 3875 and H.R. 12664, 85th Congress, proposed by the Department of Justice, would amend Section 2412(b) of Title 28, United States Code, to extend the scope of that Section to allow certain costs to the prevailing party in actions brought against the Collector or Director of Internal Revenue, a former Collector or Director, or the personal representative of a deceased Collector or Director for the recovery of Internal Revenue taxes, as well as in an action against the United States for the recovery of Internal Revenue taxes alleged to have been improperly collected, if the United States puts in issue the plaintiff's right to recover. The Conference, on recommendation of the Committees, approved the proposal.

(5) *Official station of a retired judge for travel expense purposes.*—The Committees called attention to 28 U.S.C. 374 which exempts retired judges from restrictions as to residence applicable to judges in regular active service. Nonetheless the official station of a retired judge for purposes of determining his right to be reimbursed for travel expenses when engaged in judicial service away from home is fixed in the same manner as in the case of a judge in regular active service. The official station of a judge in regular active service, 28 U.S.C. 456, is stated to be "that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives." The Committees were of the view that the place where a retired judge maintains an "actual abode in which he customarily lives" should be treated as his official station for the purposes of the allowance of travel and subsistence expenses, so that there may be no question as to his right to reimbursement of travel and subsistence expenses when he serves under an assignment to active judicial duty at a place away from his home. Upon the recommendation of the Com-

mittees, the Conference approved the following draft of a bill to amend 28 U.S.C. 374:

A BILL To fix the official station of retired judges assigned to active duty

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 374 of Title 28 of the United States Code is amended to read as follows:

"374. Residence of retired judges; official station

Retired judges of the United States are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which he customarily lives shall be deemed to be his official station for the purposes of Section 456 of this Title."

SEC. 2. Item 374 in the analysis of Chapter 17 of Title 28 of the United States Code, immediately preceding Section 371 of such title, is amended to read as follows:

"374. Residence of retired judges; official station."

The Conference, on recommendation of its Committees on Court Administration and Revision of the Laws, reaffirmed its approval of the following legislative proposals:

(1) That the salary of the Director of the Administrative Office be set at \$22,500 per annum and the salary of the Assistant Director at \$20,000 per annum;

(2) That district judges be authorized to employ law clerks and secretaries in the same manner as they are employed by circuit judges;

(3) That the judges of the circuit courts of the Territory of Hawaii be included in 28 U.S.C. 373 for purposes of retirement;

(4) That probation officers be afforded the protection provided by the statute making it a crime to harm a federal officer;

(5) That the assignment of a retired territorial judge to active duty be authorized, provided he is not engaged in the private practice of law;

(6) That all federal judges and libraries of the courts of appeals be provided with copies of the Congressional Record free of charge, when requested;

(7) That reasonable notice (rather than the mandatory five-

day notice, as at present) be given to an administrative agency of applications to the courts of appeals for interlocutory relief;

(8) That life tenure be provided for the district judges in Hawaii and Puerto Rico;

(9) That the transfer of cases between the Court of Claims and the district courts be authorized; and

(10) That reviews of judgments of the Supreme Court of Puerto Rico go directly to the Supreme Court of the United States rather than the United States Court of Appeals for the First Circuit.

These proposals are in addition to those listed in the various committee reports, which the Conference also reaffirmed.

COURT REPORTERS

The Director presented to the Conference the requests for increases in salaries of court reporters received from individual courts by the Administrative Office. In accordance with the previous action of the Conference at this session¹ the salaries of the court reporters in the districts of Arizona, Kansas, the Western District of North Carolina, the Western District of Oklahoma, the Middle and Western Districts of Tennessee, and Vermont will be increased from \$5,915 per annum to \$6,505 per annum as soon as appropriated funds are available. The further requests for increases in the salaries of the court reporters in Arizona, the Northern District of Georgia, Kansas, Minnesota, the Western District of Oklahoma, the Western District of Tennessee and the Western District of Texas were referred to the Director of the Administrative Office for study and report to the Conference at its next session.

JUDICIAL SURVIVORS ANNUITY SYSTEM

The Director, in accordance with 28 U.S.C. 605, providing that a periodic examination of the Judicial Survivors Annuity Fund be made by an actuary, submitted to the Conference a report of an examination prepared as of June 30, 1958, by the office of the Government Actuary, Department of the Treasury. The Conference authorized the Chief Justice to appoint a standing Committee of the Conference on the Judicial Survivors' Annuity Sys-

¹ Page 12, *supra*.

tem, the report of the Actuary to be referred to the Committee for study and later report to the Conference.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS OF THE EIGHTH AND TENTH CIRCUITS

At the request of Chief Judge Gardner the Conference, pursuant to 28 U.S.C. 48, consented that terms for the Court of Appeals for the Eighth Circuit at places other than St. Louis be pretermitted during the current fiscal year.

At the request of Chief Judge Bratton, the Conference consented that terms of the Court of Appeals for the Tenth Circuit at places other than Denver be pretermitted during the current fiscal year.

RULES FOR THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES

The Court of Appeals for the Third Circuit submitted to the Conference for approval, pursuant to the provisions of the Act of December 29, 1950 (64 Stat. 1129; 5 U.S.C. 1041) an order amending Rule 18 of the local rules of the court relating to the review and enforcement of orders of administrative agencies. The Conference approved the amendment to the rule as submitted.

Judge Maris called to the attention of the Conference the provisions of Public Law 85-791 with respect to the approval by the Conference of uniform rules for the abbreviation of the record on review or enforcement of orders of administrative agencies. The Conference referred the matter to the Standing Committee of the Conference on Rules of Practice and Procedure for consideration and report to the Conference.

CASES AND MOTIONS UNDER SUBMISSION

The Administrative Office submitted to the Conference a report on cases and motions under advisement in the district courts. The report listed 13 cases and motions which had been under advisement by the district courts more than 6 months on September 1, 1958. Where necessary, these will be brought to the attention of the circuit council by the chief judge of the circuit.

COMMITTEES

The Conference renewed the authorization to the Chief Justice to take whatever action he may consider desirable with respect to increasing the membership of existing committees, the filling of committee vacancies and the appointment of new committees. Subject to such action all existing committees, including the Advisory Committee to assist the Director in the performance of his duties, were continued.

Pursuant to the authorization of the Conference the Chief Justice appointed the following Committee:

Habeas Corpus: Circuit Judge Orie L. Phillips, Chairman; Circuit Judges Albert Lee Stephens and Simon E. Sobeloff and District Judges Phillip Forman and Luther M. Swygert.

The Conference declared a recess subject to the call of the Chief Justice.

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice.

WASHINGTON, D.C., *January 6, 1959.*

APPENDIX

REPORT

OF

THE HONORABLE WILLIAM P. ROGERS

ATTORNEY GENERAL OF THE UNITED STATES

TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

Washington, D.C.

September 17, 1958

APPENDIX

Mr. Chief Justice, Members of the Judicial Conference:

It is a privilege on behalf of the Department of Justice to make this annual report to the United States Judicial Conference on past and prospective progress toward the more efficient administration of federal justice.

At the outset, let me say that in my opinion recent progress—both in legislation and in operation—has been moderately good. Many of the goals set by this Judicial Conference have been achieved and there is promise of further substantial improvement in making our system of justice more effectively perform the tremendous tasks entrusted to it by the people of our country.

Legislation

Turning to the legislation enacted in the last Congress, a number of bills recommended by this Conference have become law. The second session of the 85th Congress enacted several important measures which the Conference recommended and which the Department was pleased to support. Among these is the bill increasing from \$3,000 to \$10,000 the amount required to give civil jurisdiction to the Federal District Courts, providing, for purposes of diversity jurisdiction, that a corporation is a creature of the state in which it has its principal place of business, as well as of the state of its incorporation, and prohibiting the removal of workmen's compensation cases from state courts. Also enacted was the proposal for study by this Conference and recommendation to the United States Supreme Court concerning the rules of practice and procedure in the Federal courts on a continuing basis. Thus the Conference will replace the advisory committee which assisted the Supreme Court in performing its rule making function in the past, but which is no longer in existence. In addition with minor modification, Congress enacted the recommendation of the Judicial Conference for the relinquishment of administrative duties by chief judges after reaching the age of 70. Brief

mention should also be made of the legislation sponsored jointly by the Departments of State and Justice looking toward a modest improvement in international practice and procedure by the establishment of a temporary commission to study existing practices of judicial assistance and cooperation between the United States and foreign countries.

One other measure enacted by the last Congress merits particular comment. I refer to the three-pronged legislation aimed at reducing undesirable disparity in sentencing which, with the backing of the Advisory Corrections Council and this Conference, has now become law. Two of the three principal features of this legislation were strongly supported by the Department—the provision authorizing the Judicial Conference to establish institutes and joint councils on sentencing and the provision permitting greater flexibility in fixing the time the offender actually serves. The third, which extends sentencing provisions of the Youth Corrections Act to defendants between 21 and 26 years of age, the Department opposed. We were of the opinion that a misnomer which classifies such a group comprising some of our most hardened criminals as “youthful offenders” might reflect adversely on the whole program.

We are hopeful that the use of the first two mentioned provisions of the new law will substantially alleviate the inequalities in the length of terms imposed for similar offenses and the unfortunate consequences such disparities have on rehabilitation, as well as deterrence. It is to be hoped, for example, that the wide divergences in sentences imposed in income tax evasion cases can be greatly narrowed in the future. One example of the areas which require study involves sentences in tax cases. Over a twelve-year period (1946–58), 85 out of 94 defendants convicted in the Western District of Washington went to jail while at the same time in the District of Nebraska out of the same number of defendants convicted only 6 were imprisoned. In the Southern District of California, only 27 percent of all those convicted were imprisoned while in the Northern District of the same state, 57 percent went to jail. The discrepancy in treatment between the Northern and Southern Districts of Ohio has been even more pronounced, 70 percent going to prison in the Northern District and only 33 percent in the Southern District. Similar statistics

can no doubt be assembled in respect of other kinds of federal crimes.

Turning to the legislation which Congress failed to enact, the most important possibly was the omnibus judgeship bill. As you know, the bill, H.R. 13672, including all of the recommendations of the Judicial Conference (plus an additional temporary court of appeals judgeship for the Eighth Circuit) was reported favorably to the House and ordered favorably reported to the Senate by their respective Judiciary Committees without dissenting vote.

That the omnibus judgeship bill failed of passage in the closing sessions is not attributable to any lack of public support or effort on the part of those who favored it. Indeed, strong nonpartisan expressions of support for the program and recognition of the urgent need for the additional judges it would provide came from all segments of the country as demonstrated by hundreds of letters, newspaper editorials and radio and television commentaries. Considering that the problem is not of a kind as likely to arouse public awareness as, for example, dramatic issues in the foreign policy or educational field, the public response seems to me all the more remarkable. I sincerely hope and assume that the new Congress will act promptly next year to create the additional judgeships for which the need has been so amply demonstrated.

Next year would also be an appropriate time to move forward toward another improvement in our system of Federal justice—the provision of adequately compensated and experienced counsel for indigent defendants accused of crime. You will recall that this Conference renewed its earlier recommendation for public defender legislation in March of 1957. It is very encouraging to note that a bill in the form approved by the Conference passed the Senate this year. The Department is planning in the months ahead to make a sustained drive in cooperation with the Conference to secure the enactment of legislation along this line. In considering the need for such a program at this time, it is worth suggesting that by providing better representation for indigent defendants we may measurably reduce the burden on our courts, not only on trial and appeal, but in the habeas corpus proceedings that sometimes follow.

To conclude the legislative part of this report let me refer to the defeat of two bills the Department strongly opposed. The first, S. 2646, commonly called the Jenner-Butler bill, before its amend-

ment provided for the withdrawal of appellate jurisdiction from Supreme Court in five specified areas. As to this bill, we said, "This type of legislation threatens the independence of the Judiciary. . . . [I]ts enactment would be extremely detrimental to the proper administration of justice and harmful to our balanced system of government based on the separation of powers among the three great branches of our government."

The other bill, H.R. 3, was designed to revive certain state laws previously held unconstitutional because of their conflict with federal statutes. Its key provision was a retroactive rule of interpretation that no act of Congress may be construed to indicate the intent to occupy a field to the exclusion of state laws, unless there is an express provision to that effect or unless there is a direct and positive conflict so that they cannot consistently stand together. The Department opposed this bill on the ground it "is so broadly drawn that its effect cannot be foretold and if it is effective, it must change the meaning of statutes conclusively interpreted many years ago, basic statutes under which millions of dollars have been invested and under which important human relationships have become fixed". Fortunately, these bills failed to pass.

Administrative matters

Against this background of legislative accomplishments, there have been some significant improvements in administrative matters. Not that the overall congestion in our Federal courts when measured against the number of cases pending and disposed of, of average number of months of delay in reaching trial, is less than last year. It has in fact increased. However, in particular areas there has been gratifying progress toward increasing the efficiency of handling the Government's litigation. It is useful to consider what has been accomplished in some of these areas.

During fiscal 1958, the Tax Division of the Department reduced its backlog of pending work for the fourth straight year, despite the receipt of the largest number of new cases in its history. The cut in 1958 amounted to approximately 300 cases and matters, bringing the total reduction for the four year period to more than 2,300. In the eight preceding years the backlog of pending tax cases increased each year, from 2,237 at the beginning of 1947 to 6,770 at the end of 1954. By reversing this trend in the face of an ever increasing volume of new business, the Tax Division has made a notable contribution to the relief of congestion in the courts.

Fiscal 1958 also saw the Tax Division cut into and roll back by nearly 22 million dollars the growing dollar backlog involved in pending tax cases. This was the first such reduction since 1950 and, again, was accomplished in spite of a record dollar volume of new business. By doing so, the Division cut the potential interest liability of the Government by more than \$3,000 per day with a consequent potential interest saving for the year of approximately 1.2 million dollars.

No single factor is responsible for bringing about these results, but several steps are worthy of mention:

There were many complaints in the past as to the Government's delay in filing answers to petitions in tax cases. The complaints were justified, for in earlier years requests for delays in filing tax pleadings averaged more than two requests per case. By scrutinizing closely every request proposed for such an extension of time, the number of such requests was cut to 151 in 1958, an average of only 0.09 per case—and this despite the fact that the caseload has been nearly doubled.

In addition, the Tax Division has established a Litigation Control Unit, charged with the full time duty of continuously reviewing the flow of tax litigation through the courts, of pinpointing and eliminating bottlenecks and other causes of delay, and of suggesting changes in procedure calculated to expedite the handling of litigation. This unit has contributed greatly to the general speedup program. To take one example, in the matter of accelerating delivery of refund checks to taxpayers on judgments adverse to the Government, the average time for delivery of the checks has been cut from more than seven to less than three months, with a resultant interest saving to the Government of approximately \$1 million in 1958 alone.

In conjunction with the Office of the Chief Counsel of Internal Revenue, a Tax Liaison Committee was created which meets monthly and works from a prepared agenda. This has resulted in a close working relationship at a high level between the Revenue Service and the Tax Division and many problems have been solved in these conferences in a manner which has contributed to prompt handling of litigation.

The result of these and other steps taken with the close cooperation of the judges has been to reduce the time for the processing of tax cases through the District Courts from an average of 2 years

and 11 months in 1952 to 1 year and 7 months in 1958, a reduction of time of more than one full year.

The Civil Division of the Department, which, as you know, handles the bulk of the Government's civil litigation, too has been making strenuous efforts to reduce the heavy volume of its civil caseload. Over a six year period the number of cases pending in that Division has been reduced from 72,000 civil cases and matters to 15,000, a reduction of about 80 percent.

These results have been achieved by the institution of more expeditious and efficient procedures for the handling of cases, by extensive delegations of authority for the handling of minor cases, which involve substantial numbers, to the United States Attorneys in the field, and by constant emphasis upon the desirability of the settlement of cases which do not involve any major legal principle of significance to the Government. Thousands of civil cases are now disposed of at an early stage or even prior to the institution of suit without the Federal Courts being burdened with the hearings incident to their disposition. For example, during fiscal 1958 the largest number of suits under the Tort Claims Act were settled since the Act was adopted—647 as compared with 427 in 1957.

The Civil Division has accorded particular priority to the disposition of government cases involving the payment of interest by the Government from the time the claims arose which are known as "just compensation cases". Examples are cases in which the Government appropriated vessels during a war emergency and is obligated to pay just compensation for fair value. During fiscal 1956, the Government paid \$6,323,000 in interest on such claims. During 1957, such interest payments had been reduced to \$294,000 and during 1958 to \$163,194.

One of the means that shows promise of reducing court congestion in this field is the use of a periodic special call of all civil government cases. Some District Courts in the West have special calendars for government civil tax cases, but there may be advantages in a special calendar for all civil government cases.

Last March a Judge in the Eastern District of New York, in an effort to cut the backlog of cases pending on the congested civil calendar in his district, made a mass calendar call. Many of the cases which were answered "ready" were promptly set down for settlement conferences in his chambers. In that district there were approximately 700 cases on the civil calendar, about one-

half of which were government cases. At the Judge's suggestion, a representative of the Civil Division attended many of the conferences involving the Tort Claims Act cases in order to have present Washington counsel, who would ordinarily make an independent review of any large settlement recommendation by the United States Attorney. As a consequence, a substantial number of government cases were settled without trial.

In another area, a little known program is now being quietly completed by the Civil Division in a way that is making a marked contribution to the administration of justice for an important group of our people. When in 1942, the War Department ordered the desperately hasty evacuation of over 110,000 persons of Japanese ancestry, 65 percent of them native born citizens, the evacuees suffered heavy financial losses through the abandonment, sale at sacrifice prices or inadequate care of the businesses, homes and personal possessions left behind them. In addition, the treatment accorded these loyal Nisei forced a number of them to renounce their United States citizenship.

Under the Assistant Attorney General in charge of the Civil Division, the Japanese Claims Section is now winding up the approximately 26,000 claims filed under the Evacuation Claims Act of 1948. As of the end of fiscal 1958, awards made on these claims aggregated approximately 35½ million dollars, with dismissal of not more than 3 percent of the claims filed. Yet prior to 1951 only 745 claims had been acted upon with awards totalling only a fraction of the final sums. It is significant that one of the principal reasons it has taken so long to make amends to this deserving group is that not until 1956 was the Department given authority to settle claims in excess of \$2,500 per claim and not until 1951 were compromises permitted at all. Incidentally only one claimant, whose claim involved an amount within the compromise authority of the Department, now limited to \$100,000 per claim, has elected to exercise his right to sue in the Court of Claims.

On the question of restoration of citizenship to those who renounced it under circumstances of coercion, technical legal objections were at first invoked to defeat restoration, even though the Department undertook to act on the basis of affidavits without requiring resort to the courts in each case. In 1956, liberalized standards were put into effect. 4,308 of the original 5,790

renunciants have now applied for restoration of citizenship and, except for 370 whose applications were denied and 367 whose applications are all that remain pending, have once again become citizens of the United States.

These are, of course, mere examples of progress in the administration of justice and, being drawn from the Department's experience, are naturally concerned primarily with its role in the process. Certainly the full dimensions of the problem can only be appreciated from the perspective of the courts themselves where the Department of Justice is only one of the litigants. The recent address of Chief Justice Warren on judicial administration, before the opening Assembly Session of the American Bar Association meeting in Los Angeles, is one of the most significant contributions that have been made in this field. It should be read at least by every lawyer in the country and by every member of Congress.

The intensified efforts being made by the Director of the Administrative Office of the United States Courts and his assistants to improve the organization and administrative planning of the business of the courts give promise of great achievement. The Department of Justice stands ready in every way possible, in cooperation with the Administrative Office, to support the recommendations of this Judicial Conference.

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