
REPORT
of the
JUDICIAL CONFERENCE OF THE
UNITED STATES

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PROCEEDINGS, MARCH 18-19, 1965

WASHINGTON, D.C.

1965

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**Warren Olney III
Director**

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

§ 331. Judicial Conference of the United States.

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

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

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

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

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

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

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

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

MARCH 18-19, 1965

The Judicial Conference of the United States convened on March 18, 1965, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on March 19. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge Matthew F. McGuire, District of Columbia

First Circuit:

Chief Judge Bailey Aldrich
Judge Francis J. W. Ford, District of Massachusetts

Second Circuit:

Chief Judge J. Edward Lumbard
Chief Judge Sylvester J. Ryan, Southern District of New York

Third Circuit:

Chief Judge John Biggs, Jr.
Chief Judge Thomas M. Madden, District of New Jersey

Fourth Circuit:

Chief Judge Clement F. Haynsworth, Jr.
Chief Judge Walter E. Hoffman, Eastern District of Virginia

Fifth Circuit:

Chief Judge Elbert Parr Tuttle
Chief Judge Bryan Simpson, Middle District of Florida

Sixth Circuit:

Chief Judge Paul C. Weick
Judge Ralph M. Freeman, Eastern District of Michigan

Seventh Circuit:

Chief Judge John S. Hastings
Judge Edwin A. Robson, Northern District of Illinois (designated by the
Chief Justice in place of Judge Kenneth P. Grubb who was unable to
attend)

Eighth Circuit :

Chief Judge Harvey M. Johnsen
 Judge Richard M. Duncan, Eastern and Western Districts of Missouri

Ninth Circuit :

Chief Judge Richard H. Chambers
 Chief Judge Gus J. Solomon, District of Oregon

Tenth Circuit :

Chief Judge Alfred P. Murrah
 Chief Judge Alfred A. Arraj, District of Colorado

Court of Claims :

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals :

Chief Judge Eugene Worley

Senior Judges Albert B. Maris and Orie L. Phillips; Circuit Judges Jean S. Breitenstein and William F. Smith; Chief Judges William J. Campbell and Theodore Levin; Judges Edward Weinfeld and Luther W. Youngdahl; and Senior Judge Marvin Jones of the Court of Claims, attended all or some of the sessions.

Hubert H. Finzel, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; and John F. Davis, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts; William E. Foley, Deputy Director; William R. Sweeney, Assistant Director; and members of the Administrative Office staff, attended the sessions of the Conference.

At the request of the Chief Justice, Chief Judge John Biggs, Jr., the senior member of the Conference, presided briefly during the morning session of the first day of the Conference.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, reported that hearings before the Subcommittee of the Committee on Appropriations of the House of Representatives on the appropriation requests for the fiscal year 1966 had been held, but that no report by the Appropriations Committee had as yet been issued. Chief Judge Matthew F. McGuire, who at the request of the Chairman of the Committee appeared at the hearings in support of the appropriation requests, informed the Conference that Chief Judge Harvey M. Johnsen had made

an excellent presentation in justification of the need for funds totaling \$7,500,000 to implement the Criminal Justice Act of 1964. The Committee is hopeful that adequate funds to administer the Act will be appropriated.

JUDICIAL STATISTICS

Chief Judge Harvey M. Johnsen, Chairman of the Committee on Judicial Statistics, presented the report of the Committee.

ADDITIONAL CIRCUIT AND DISTRICT JUDGESHIPS

Judge Johnsen reported that the Committee had undertaken, with the assistance of the Division of Procedural Studies and Statistics of the Administrative Office, a systematic and comprehensive statistical review of the judicial business of the circuit and district courts for the purpose of evaluating the need for additional judgeships. The study was made in the light of the policy adopted by the Conference at its September 1964 session (Conf. Rept., p. 52) of making a comprehensive report to the Congress approximately every 4 years on the need for additional judgeships. In accordance with the resolution of the Conference and on the basis of its study of current needs, the Committee submitted its recommendations for additional circuit and district judgeships and recommended that they be approved by the Conference and that the Congress be requested to take action on them at its present session.

Chief Judge John Biggs, Jr. informed the Conference that the Committee on Court Administration concurred in the recommendations of the Statistics Committee, but further recommended the creation of three additional district judgeships not recommended by the Statistics Committee, one of which arises in connection with the proposal to create two additional districts in the State of California.

The Conference received the reports of the Committees on Judicial Statistics and Court Administration and reports from the chief judges and the district judge representatives of the respective circuits concerning the state of the dockets in each circuit and district. On the basis of the Committee reports and the discussions in the Conference, the Conference voted to reaffirm its recommendation for the creation of four additional temporary circuit judgeships in the fifth circuit, previously recommended by the Conference

(Conf. Rept., Sept. 1964, p. 63), and the creation of the following judgeships not heretofore recommended by the Conference:

Courts of Appeals:

- 1 additional judgeship for the Court of Appeals for the Fourth Circuit
- 1 additional judgeship for the Court of Appeals for the Sixth Circuit
- 1 additional judgeship for the Court of Appeals for the Seventh Circuit

District Courts:

First Judicial Circuit :

- 1 additional judgeship for the District of Rhode Island

Second Judicial Circuit :

- 1 additional judgeship for the Western District of New York
- 1 additional judgeship for the District of Vermont

Third Judicial Circuit :

- 3 additional judgeships for the Eastern District of Pennsylvania, the first three vacancies occurring thereafter not to be filled

Fourth Judicial Circuit :

- 1 additional judgeship for the District of Maryland
- 2 additional judgeships for the Eastern District of Virginia

Fifth Judicial Circuit :

- 1 additional judgeship for the Middle and Southern Districts of Alabama
- 1 additional judgeship for the Northern District of Florida
- 1 additional judgeship for the Middle District of Florida
- 2 additional judgeships for the Southern District of Florida
- 1 additional judgeship for the Southern District of Georgia
- 4 additional judgeships for the Eastern District of Louisiana
- 1 additional judgeship for the Northern District of Mississippi
- 2 additional judgeships for the Southern District of Texas
- 1 additional judgeship for the Western District of Texas

Sixth Judicial Circuit :

- 1 additional judgeship for the Northern District of Ohio
- 1 additional judgeship for the Southern District of Ohio

Seventh Judicial Circuit :

- 1 additional judgeship for the Northern District of Illinois
- 1 additional judgeship for the Southern District of Indiana
- 1 additional judgeship for the Eastern District of Wisconsin, the first vacancy occurring thereafter not to be filled.

Ninth Judicial Circuit :

- 1 additional judgeship for the District of Alaska, the first vacancy occurring thereafter not to be filled
- 1 additional judgeship for the District of Arizona

Tenth Judicial Circuit :

- 1 additional judgeship for the District of Kansas, the first vacancy occurring thereafter not to be filled

The Conference also recommended that the existing roving judgeship in the State of Florida be made a judgeship for the Middle District of Florida only.

ADDITIONAL DISTRICTS

H.R. 4534, 89th Congress, would create two additional judicial districts in the State of California; establish three additional divisions with three new places of holding court at Oakland, Redding, and San Jose; and create eight additional district judgeships for the State. Chief Judge Biggs informed the Conference that the Committee on Court Administration had considered H.R. 4534 and recommended that it be approved with certain modifications. The Committee recommended (1) that Oakland, Redding, and San Jose be designated as places of holding court, but that the provisions in the bill setting up separate statutory divisions in the Northern and Eastern Districts of California be eliminated; and (2) that the number of additional judgeships to be created for the State be reduced from eight to four, two of which would be assigned to the new Northern District of California and two to the new Central District of California. It was also suggested that the provisions in the bill requiring judges to reside at certain places of holding court in the Northern District of California be eliminated as unnecessary. The Judicial Council of the Circuit has authority under the law, 28 U.S.C. 134(c), to fix the residence of a district judge when the public interest and the nature of the business of the court so require. The Conference thereupon approved the bill with the modifications suggested and voted to recommend to the Judicial Council of the Ninth Circuit that upon the enactment of this legislation action be taken to designate one or more judges to reside and have their official stations at Oakland and at San Jose in the Northern District of California.

The Conference also voted to recommend that in the event the additional districts as provided for in H.R. 4534 are not authorized that there be created one additional judgeship for the Northern District of California and two additional judgeships for the Southern District of California.

The Conference further directed that its recommendations with respect to additional judgeships and the creation of two additional districts in the State of California be incorporated in a single bill and transmitted to the Congress.

RESIDENCE OF JUDGES

The Conference recommended to the Judicial Council of the Fourth Circuit that one of the two additional judges recommended for the Eastern District of Virginia be designated under the statute, 28 U.S.C. 134(c), to reside and have his official station at Norfolk.

The Conference also recommended to the Judicial Council of the Fifth Circuit that the roving judge recommended for the Middle and Southern Districts of Alabama be designated to reside and have his official station at Mobile in the Southern District of Alabama and that one of the two additional judges recommended for the Southern District of Texas be designated to reside and have his official station at Corpus Christi.

JUDGESHIP BILLS

Chief Judge Biggs informed the Conference that the Chairmmen of the Judiciary Committees of the Senate and House of Representatives had requested the views of the Conference on numerous bills introduced in the 89th Congress to provide additional judgeships for individual district courts. Upon recommendation of the Committee on Court Administration and in accordance with the above recommendations pertaining to additional judgeships, the Conference took the following action:

(1) Disapproved H.R. 3387, 89th Congress, to provide an additional district judgeship for the District of Minnesota;

(2) Approved S. 13, H.R. 752 and H.R. 2019 to provide additional judgeships for the Northern and Southern Districts of Ohio, but recommended that the proposals contained in these bills be incorporated in the overall judgeship bill;

(3) Disapproved H.R. 5188 to provide an additional temporary judgeship in the Northern District of Ohio and one in the Southern District. It was the view of the Conference, as stated above, that these additional judgeships should be provided on a permanent basis; and

(4) Disapproved S. 620, H.R. 3222, and H.R. 3226 to provide an additional judgeship for the Eastern District of Wisconsin on a permanent basis. It was the view of the Conference that an additional judgeship for the Eastern District of Wisconsin should be provided on a temporary basis.

COURT OF CLAIMS

The Committees on Judicial Statistics and Court Administration recommended the creation of two additional judges for the Court of Claims. In addition, the Committee on Court Administration recommended appropriate legislation to enable the Court of Claims, in the consideration of cases before it, to sit in panels of three. The Conference thereupon voted to recommend the creation of two additional judges for the Court of Claims and an amendment to the statute that would permit the Court to sit in panels of three.

COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge John Biggs, Jr., presented the report of the Committee.

DISQUALIFICATION OF A CIRCUIT JUDGE FOR BIAS AND PREJUDICE

S. 578, 89th Congress, to amend 28 U.S.C. 47(a) to provide means for the disqualification of circuit judges for bias or prejudice, is identical with S. 2538, 88th Congress, which was referred to the Committees on Court Administration and Revision of the Laws at the September 1964 session of the Conference (Conf. Rept., p. 62). The bill would provide that an affidavit stating the reasons for the belief that bias or prejudice exists shall be filed not less than 30 days before the hearing of the proceeding, or good cause shall be shown for failure to file it within such time. It was the view of the Committees that it would be extremely difficult to operate courts of appeals with the efficiency with which their workloads require if the provisions of this bill should become law.

The Committees were further of the view that no need for the bill appears or has been shown. Upon recommendation of the Committees, the Conference voted to disapprove the bill.

RESIGNATION OF JUDGES

S. 631, 89th Congress, would amend 28 U.S.C. 371(a) to permit United States judges who have attained the age of 65 and have served 15 years to resign and continue to receive the salary they were receiving at the time of their resignation. It was the view of the Committees on Court Administration and Revision of the Laws that the bill, if enacted into law, would tend to destroy the

present retirement system and might militate against the continuance in useful service of senior judges retiring under the present provisions of law at age 65 after 15 years of service. Upon recommendation of the Committees, the Conference voted to disapprove the bill.

RETIREMENT OF TERRITORIAL JUDGES

S. 723, 89th Congress, would provide for the inclusion of years of service as judge of the Circuit Court for the Territory of Hawaii in the computation of Federal judicial service of the Honorable Martin Pence. In the opinion of the Committees on Court Administration and Revision of the Laws, Judge Pence's service as a judge of the Circuit Court of the former Territory of Hawaii was substantially the equivalent of service in a State court and that this service, therefore, should not be included in computing his service as a United States district judge. Upon recommendation of the Committees, the Conference voted to disapprove the bill.

S. 163, 89th Congress, would provide that the amendment to 28 U.S.C. 373, made by Section 5 of the Act of February 10, 1954, 68 Stat. 13, should apply to any judge of the United States District Court for the District of Hawaii who retired under Section 373 before February 10, 1954, as if such amendment had been in effect on the date of retirement of the judge. The proposals contained in this bill were previously disapproved by the Conference (Conf. Rept., March 1963, p. 9). Upon recommendation of the Committees, the Conference reaffirmed its disapproval of the bill.

SUPREME COURT VACANCIES

H.R. 536, 89th Congress, would require that all decisions of the Supreme Court shall be participated in by the full Court, and that any vacancies or absences in the membership of the Court shall be temporarily filled by circuit judges. The bill would specifically authorize the Chief Justice, with the approval of the other members of the Court, to designate circuit judges to serve temporarily on the Supreme Court. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

The Conference also voted to disapprove H.R. 887, 89th Congress, which is similar to H.R. 536 except that it would permit judges of the Court of Claims, as well as circuit judges, to be designated for service on the Supreme Court.

QUALIFICATIONS FOR JUSTICES AND JUDGES

H.R. 713, 89th Congress, would amend the Judicial Code to provide that no person may be appointed to the Supreme Court unless at the time of his appointment he has had at least 5 years of judicial service and would provide further that persons who have held certain Federal and State offices shall be ineligible for appointment to any Federal judgeship within 5 years after leaving such offices. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

PLACES OF HOLDING COURT

The Conference was informed that the Judicial Council of the Fifth Circuit had disapproved plans to provide new Federal court facilities at Fernandina Beach in the Middle District of Florida. Upon recommendation of the Committee, the proposal was also disapproved by the Conference.

CONSOLIDATION OF JUDICIAL DISTRICTS IN SOUTH CAROLINA

The Conference at its March 1963 session (Conf. Rept., p. 5) approved a bill to consolidate the Eastern and Western Districts of South Carolina into one judicial district. The Conference was informed that a new draft of such a bill had been prepared which is identical to that previously considered by the Conference except that it does not eliminate any existing places of holding court. Upon recommendation of the Committee, the Conference reaffirmed its approval of the proposed consolidation of the Eastern and Western Districts of South Carolina and approved the new draft bill submitted by the Committee.

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

The Committee on Post Office and Civil Service of the House of Representatives requested the views of the Conference on H.R. 3321, 89th Congress. The bill would establish a Commission on Executive, Legislative and Judicial Salaries to consist of nine members to be appointed respectively by the President of the United States, the President of the Senate, the Speaker of the House, and the Chief Justice of the United States. The Commission would review, at stated intervals, the rates of compensa-

tion and certain expense allowances of Members of Congress and other officers in the Legislative Branch of the Government; Justices, Judges, and certain other personnel of the Judicial Branch; and officers whose salaries are fixed under the Executive Pay Act of 1964. The Commission would determine the appropriate compensation levels and relationships of the respective officers and would report to the President with respect thereto. The bill would further require that the President include in the next budget transmitted by him to Congress his recommendations with respect to the exact rates of compensation, amounts and kinds of expenses and allowances, including any specific requirements, conditions, and all other matters related thereto which he deems advisable. The Conference discussed the role of the Chief Justice in selecting persons to serve as members of such a Commission and concluded that it would be more appropriate for this function to be performed by the Conference itself. Accordingly, the Conference voted to recommend an amendment to the bill to place the responsibility for the selection of Commission members on the Judicial Conference of the United States rather than on the Chief Justice. The bill, as amended, was approved by the Conference.

RETIREMENT PROVISIONS FOR DIRECTORS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Conference at its September 1964 session (Conf. Rept., p. 63) authorized the preparation of a draft bill to provide adequate retirement provisions for Directors of the Administrative Office of the United States Courts. The Committee was informed, however, that the President had requested the Civil Service Commission to investigate the retirement benefits for all executive personnel. Representatives of the judiciary are planning to participate in informal discussions for the purpose of having the Director and Deputy Director of the Administrative Office of the United States Courts included in any plan that may be formulated. The Committee accordingly requested and was granted leave to report to the Conference at a later session.

SUPREME COURT SALARIES

S. 610, 89th Congress, would increase the rates of compensation of the Chief Justice of the United States and of the Associate Jus-

tices of the Supreme Court in order to restore the relationship between the salaries of Justices of the Supreme Court and the salaries of other Federal judges and Members of Congress that existed prior to the Government Employees Salary Reform Act of 1964, Public Law 88-426. Upon recommendation of the Committee, the Conference approved the bill.

PHOTOGRAPHS OF PROCEEDINGS BEFORE UNITED STATES
COMMISSIONERS

Chief Judge Biggs informed the Conference that the recent televising and taking of photographs at a hearing before a United States commissioner in Meridian, Miss., in breach of the policies of the Judicial Conference and of the local rules of the district court, appear to have been inadvertent. The Conference noted that the Attorney General on March 11, 1965, issued a memorandum to all United States Attorneys and their assistants calling attention to the resolution adopted by the Judicial Conference in March 1962 (Conf. Rept., p. 8) and instructing them to inform the United States commissioners of the resolution of the Conference when, in their judgment, the possibility exists that photographs will be taken during any hearing before a commissioner. The Conference reconsidered and reaffirmed previous Conference action taken at the March 8-9, 1962, meeting, at which time the Judicial Conference resolved to condemn the taking of photographs in the courtroom or its environs in connection with any judicial proceeding and the broadcasting of judicial proceedings by radio, television, or other means. The Conference reaffirmed the application of Rule 53 of the Federal Rules of Criminal Procedure, which substantially embodies prior Conference action, to all proceedings in United States courts, including ceremonial proceedings, and to all proceedings before United States commissioners wherever held. The Conference, in noting the recent Meridian incident, agreed that the taking of photographs or the broadcasting of proceedings before a United States commissioner should not be permitted regardless of whether such hearing or proceeding takes place on Federal property, in the private office of the commissioner, or otherwise. The Conference instructed the Director of the Administrative Office of the United States Courts to bring this Conference action to the attention of all United States judges and all United States commissioners.

REVISION OF THE LAWS

Senior Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted the report of the Committee.

COURT OF CLAIMS JURISDICTION

H.R. 1665, 89th Congress, would amend the Judicial Code to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment in cases referred to it by resolution of either House of Congress. The Court of Claims now has jurisdiction over two distinct classes of cases, (1) those arising under general or special jurisdictional statutes in which the court awards a final judgment, and (2) those submitted to the court by resolution of either House of Congress upon which the court submits to the Congress an advisory report setting forth the court's findings and recommendation. In the case of *Glidden v. Zdanok*, 370 U.S. 530 (1962), the Supreme Court questioned the validity of the congressional reference jurisdiction of the Court of Claims in view of the statute declaring it to be a constitutional court. The proposed legislation would give to the Court of Claims jurisdiction to hear and render judgment upon equitable claims referred to it by either House of Congress, in lieu of rendering an advisory opinion to the Congress. Judge Maris reported that the Committees on Court Administration and Revision of the Laws had considered jointly the proposal contained in H.R. 1665 and were unanimously of the view that the bill is appropriate as a constitutional substitute for the congressional reference jurisdiction of the Court of Claims. Upon recommendation of the Committees, the Conference approved the bill.

MULTI-DISTRICT LITIGATION

The Subcommittee of the Conference Committee on Pretrial Procedure, which was appointed to study pretrial procedure in multiple litigation with common witnesses and exhibits, submitted to the Committees on Court Administration and Revision of the Laws a draft of a proposed new § 1407 of Title 28, United States Code, to provide for the temporary transfer to a single district for coordinated or consolidated pretrial proceedings of civil actions pending in different districts which involve one or more common questions of fact. The transfer would be made by a judicial panel consisting of seven circuit and district judges, each from a different circuit, to be designated by the Chief Justice. The panel would

have general supervision over such consolidated pretrial proceedings and would be empowered to request the temporary assignment under existing law of circuit or district judges to conduct the proceedings. At or before the completion of the pretrial proceedings, the panel would remand each case to the district of origin unless it had previously been terminated during the course of the pretrial proceedings.

The Committee reported that the proposal has grown out of the practical experience of the Committee on Multiple Litigation in conducting pretrial proceedings in the electrical equipment private antitrust litigation. The proposed legislation would establish a procedure to meet the problems involved in conducting efficiently and economically the pretrial deposition and discovery proceedings in litigation of this type and would be invoked only if the judicial panel determined its use would promote the just and efficient conduct of the litigation. Upon recommendation of the Committee, the Conference approved the draft bill submitted by the subcommittee.

DISTRICT OF COLUMBIA

The Bureau of the Budget had requested the views of the Conference on a proposed bill to transfer certain functions from the United States District Court for the District of Columbia to the District of Columbia Court of General Sessions and to certain other agencies of the Municipal Government of the District of Columbia. The proposals contained in the draft bill would carry out recommendations contained in a report submitted to the Committee on Appropriations of the House of Representatives by a Committee representing the Bureau of the Budget, the District of Columbia Government, and the Administrative Office of the United States Courts. It was the view of the Committees on Court Administration and Revision of the Laws that the United States District Court for the District of Columbia should be relieved of the local functions with which the bill deals. Upon recommendation of the Committees, the Conference approved the draft bill and directed that the Bureau of the Budget be so informed.

RULES OF PROCEDURE

The Conference in March 1964 (Conf. Rept., p. 22) approved a bill to amend 28 U.S.C. 2072 to enlarge the present civil rulemaking authority of the Supreme Court of the United States to include

appellate rules, bankruptcy rules, rules for the review and enforcement of orders of the administrative agencies, and the consolidation of the present admiralty rulemaking power with that for all other civil actions. Legislation was subsequently enacted conferring upon the Supreme Court full power to prescribe rules of procedure under the Bankruptcy Act, Public Law 88-623. It further developed that certain technical amendments should be made in the Hobbs Act, 5 U.S.C. 1041, and in 28 U.S.C. 2112, in connection with the grant of rulemaking authority for the review or enforcement of agency orders. The Committee, therefore, prepared a redraft of the proposal embodied in the previous bill, H.R. 11101, 88th Congress. The new draft bill was approved by the Conference.

INTERPRETERS

H.R. 4515, 89th Congress, would provide for the designation of qualified interpreters to assist defendants who are unable because of deafness to understand proceedings in criminal cases. The Committee had previously called attention to the proposed amendments to Rule 28, Federal Rules of Criminal Procedure, and to Rule 43, Federal Rules of Civil Procedure, which would authorize the court to "appoint an interpreter of its own selection and determine the reasonable compensation of such interpreter and direct its payment out of such funds as may be provided by law." (Conf. Rept., March 1964, p. 16.) Upon recommendation of the Committee, the Conference directed that the Committee on the Judiciary of the House of Representatives be informed that in view of the anticipated amendment of Rule 28, Federal Rules of Criminal Procedure, and of Rule 43, Federal Rules of Civil Procedure, the enactment of H.R. 4515 is not believed to be necessary.

LEGISLATION

The Conference, on recommendation of the Committee, gave its specific approval, to the extent indicated, to the following bills pending in the 89th Congress, which would carry out proposals approved, in whole or in part, by the Conference at previous sessions:

(1) S. 35 and H.R. 5283, 89th Congress, to provide for the inclusion of years of service as judge of the District Court for the Territory of Alaska in the computation of years of Federal judicial service for judges of the United States District Court for the District of Alaska. (Conf. Rept., Sept. 1964, p. 61.)

(2) S. 122 and H.R. 4890, 89th Congress, to provide cost-of-living allowances to judicial employees stationed outside the continental United States or in Alaska or Hawaii. The Committee recommended that S. 122 be amended to make it identical with H.R. 4890 and with H.R. 11651, 88th Congress, as previously approved by the Conference. (Conf. Rept., September 1964, p. 66.)

(3) H.R. 854, 89th Congress, to extend the provisions of 28 U.S.C. 1963 for the registration of judgments to the district courts of the Virgin Islands, Guam and the Canal Zone and to provide for the registration of that portion of divorce decrees providing for the payment of money or the transfer of property. (Conf. Rept., March 1963, p. 16.)

(4) H.R. 856, 89th Congress, to provide for the publication before entry of decrees, judgments, and orders entered by consent upon the merits of civil antitrust proceedings in the district courts and in proceedings before a board or commission for the enforcement of any provision of the Clayton Act or the Federal Trade Commission Act. (Conf. Rept., March 1963, p. 16.)

(5) H.R. 1763, 89th Congress, to provide for the payment of witness fees in habeas corpus cases and in proceedings under 28 U.S.C. 2255 for persons authorized to proceed in forma pauperis. (Conf. Rept., September 1963, p. 68.)

(6) H.R. 1781, 89th Congress, to provide for the holding of court at Clinton in the Eastern District of North Carolina. (Conf. Rept., September 1964, p. 57.)

(7) H.R. 2653, 89th Congress, to provide for the holding of court at New London, Conn. (Conf. Rept., September 1963, p. 66.)

(8) H.R. 3989, 89th Congress, to amend 28 U.S.C. 1446(b) to extend from 20 days to 30 days the period of time fixed for the filing of a petition for the removal of a case from a State court to a Federal court. (Conf. Rept., September 1963, p. 72.)

(9) H.R. 3990, 89th Congress, to amend 28 U.S.C. 1871 to increase the per diem and subsistence and limit mileage allowances of grand and petit jurors. (Conf. Rept., March 1963, p. 50.)

(10) H.R. 3991, 89th Congress, to amend 28 U.S.C. 373 to reduce from 10 to 8 years the length of judicial service required of a territorial judge in order to entitle him to receive a retirement pension at or after age 65. (Conf. Rept., September 1963, p. 72.)

(11) H.R. 3992, 89th Congress, to amend 28 U.S.C. 753(f) to

provide for the furnishing of transcripts in proceedings under 28 U.S.C. 2255 to persons permitted to proceed in forma pauperis. (Conf. Rept., March 1963, p. 11.)

(12) H.R. 3997 to amend 28 U.S.C. 753(b) to provide for the recording of proceedings in the United States District Courts by means of electronic sound recording, as well as by shorthand or mechanical means. (Conf. Rept., September 1963, p. 60.)

(13) H.R. 3999, 89th Congress, to provide life tenure for judges of the United States District Court for the District of Puerto Rico. (Conf. Rept., March 1963, p. 16.)

(14) H.R. 4386, 89th Congress, to amend 28 U.S.C. 2401 to toll the running of the statute of limitations on tort claims against the United States by persons under legal disability or beyond the seas at the time their claims accrue. (Conf. Rept., September 1963, p. 77.)

(15) H.R. 3998, 89th Congress, to increase the fees of jury commissioners in the United States district court from \$5 to \$10 per day. The Committee pointed out that the proposal to increase the fees of a jury commissioner to \$10 a day, first approved by the Conference in September 1958 (Conf. Rept., p. 35), is now very inadequate. Upon recommendation of the Committee, the Conference recommended that the bill be amended to increase the compensation of a jury commissioner to \$25 per day.

The Conference, upon recommendation of the Committee, reaffirmed its disapproval of the proposals contained in the following bills pending in the 89th Congress:

(1) S. 102, 89th Congress, to provide for the holding of court at Williston, N. Dak. (Conf. Rept., September 1964, p. 57.)

(2) S. 204, 89th Congress, to confer jurisdiction on the district courts to hear and render judgment on certain claims of any officer who is a member of a Reserve component of the uniform services of the United States. (Conf. Rept., September 1964, p. 66.) The Conference also disapproved H.R. 5268, 89th Congress, which would waive the statute of limitations on these claims.

(3) S. 536, 89th Congress, to amend 28 U.S.C. 2112(a) with respect to the jurisdiction of the courts of appeals to review orders of administrative officers and agencies, and to amend the National Labor Relations Act to provide for the trial of unfair labor practice cases in the United States district courts. (Conf. Rept., September 1958, p. 8; September 1961, p. 80; and March 1964, p. 20.)

(4) H.J. Res. 34, 89th Congress, proposing a constitutional amendment to provide that "no person who has attained the age of seventy years may serve as a judge of any court of the United States, but any person who ceases to serve as a judge of such court because he has attained the age of seventy years shall continue to receive the compensation to which he was entitled as a judge." (Conf. Rept., September 1964, p. 62.)

(5) H.R. 289, 89th Congress, to amend the so-called Wunderlich Act to provide for the full adjudication of the rights of Government contractors in courts of law. (Conf. Rept., September 1964, p. 66.)

(6) H.R. 855 and H.R. 919, 89th Congress, to authorize members of the bar of the Supreme Court of the United States to practice before the courts of appeals and the district courts. (Conf. Rept., March 1961, p. 22; March 1963, p. 18.)

(7) H.R. 2807, 89th Congress, to provide for the enforcement of support orders in certain State and Federal courts and to make it a crime to move or travel in interstate or foreign commerce to avoid compliance with such orders. The Conference had previously expressed disapproval of those provisions of the proposed legislation which would provide for the registration and enforcement of support orders by Federal district courts. (Conf. Rept., September 1963, p. 73.)

(8) H.R. 2057, 89th Congress, to require each district judge except in the District of Columbia to be a resident of the district (or one of the districts) to which he is appointed at least 3 years immediately prior to the time of his appointment and thereafter while in active service. (Conf. Rept., September 1964, p. 61.)

(9) H.R. 5078, 89th Congress, to amend the Judicial Survivors Annuity Act, 28 U.S.C. 376, to authorize payment of an annuity to a widow who has remarried, if her remarriage has been terminated by divorce upon her own application and without fault on her part. (Conf. Rept., September 1964, p. 60.)

COURT OF VETERANS APPEALS

The Conference considered various bills introduced in the 89th Congress to authorize some type of judicial review of the denial of a veteran's claim. After full discussion the Conference voted to express the view that the review of this type of claim should not be cognizable in our constitutional judicial system. The Con-

ference thereupon took the following action with respect to bills pending in the 89th Congress:

(1) Approved the type of judicial review provided for in S. 1200, H.R. 211, H.R. 676, H.R. 2242, and H.R. 5859. These bills would establish a separate court of veterans appeals with commissioners who would conduct hearings at the local level. (Conf. Rept., September 1964, p. 67.)

(2) Disapproved H.R. 2220 and H.R. 4156 which would establish a Court of Veterans Appeals, but require the Director of the Administrative Office of the United States Courts to assume responsibility for its administrative affairs. (Conf. Rept., March 1963, p. 18.)

(3) Disapproved H.R. 840 which would confer jurisdiction on the Court of Claims to review de novo claims for benefits and payments under laws administered by the Veterans Administration. (Conf. Rept., March 1963, p. 19.)

(4) Disapproved H.R. 952, H.R. 1589, and H.R. 3953 which would confer jurisdiction upon the district courts to review decisions upon veterans' claims. (Conf. Rept., March 1963, p. 19.)

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, reported that comments concerning the preliminary drafts of proposed amendments to the Federal Rules of Civil and Criminal Procedure, including the proposed unification of the civil and admiralty practice, and the preliminary draft of a complete set of Uniform Rules of Federal Appellate Procedure are being received by the Committee. The Advisory Committees have scheduled meetings to be held this spring to consider the comments received and to formulate final recommendations to be submitted to the standing Committee. A full meeting of the standing Committee is scheduled to be held late in June and the Committee expects to formulate at that meeting its recommendations on definite proposals to submit to the Conference at its session next September.

Judge Maris also reported that the legislation authorizing the promulgation of rules of practice and procedure under the Bankruptcy Act had been enacted into law during the second session of the 88th Congress. As a result the Advisory Committee on Bankruptcy Rules has commenced work on developing a new and comprehensive set of rules for bankruptcy cases.

Judge Maris also called attention to the recent announcement by the Chief Justice concerning the appointment of an Advisory Committee to Develop Uniform Rules of Evidence for the district courts. The Reporter for the new Evidence Committee, Professor Edward W. Cleary of the University of Illinois, is now formulating a suggested outline of the work of the Committee. When the outline is completed, it is expected that the Chairman, Albert E. Jenner, Jr., of Chicago, will convene a meeting of the new Committee.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Circuit Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments from August 11, 1964, to February 6, 1965. During this period the Committee recommended favorably on a total of 33 assignments, of which 31 have been, or will be, undertaken by 26 judges, 5 of whom have each accepted 2 assignments. One senior circuit judge was unable because of illness to undertake his assignment. All assignments recommended by the Committee were approved by the Chief Justice except one where the papers were so delayed in reaching the Committee and the Administrative Office that the Chief Justice could not make the designation in time. The 31 assignments were undertaken by 6 circuit judges, 3 senior circuit judges, 10 district judges, 5 senior district judges, 1 judge of the Court of Customs and Patent Appeals, and 1 senior judge of the Court of Claims.

The Conference was informed that the need for intercircuit assignments to the courts of appeals continues to grow. The Committee believes that the situation is caused, at least in part, by the increase in appeals resulting from the additional district judgeships created in 1961. It was reported that conditions in the Fifth Circuit continue to cause grave concern. Even if the two existing vacancies on the court of appeals are filled promptly, the need for assistance will remain until some other action is taken to alleviate the situation. The Committee doubts that the number of circuit judges available for assignment will be adequate to serve the needs of the Fifth Circuit for any protracted period. The Committee also called attention to the situation of the Court of Appeals for the First Circuit, where one vacancy exists and one of the two remaining circuit judges is able to perform only limited service because of physical disability. The availability of district judges

in the circuit for assignment to the court is limited because of local conditions.

The Conference was also informed that the corps of senior judges available for assignment was reduced considerably during the past year by death and disability. The Committee, however, continues to encourage service by the senior judges and extends its full cooperation to them. Every effort is being made to use such assistance as the senior judges may give. The report of the Committee, including a statement relating to the need for intercircuit assignments and the availability of judges for such service, was received and approved by the Conference.

ADMINISTRATION OF THE CRIMINAL LAW

The Chairman of the Committee on the Administration of the Criminal Law, Circuit Judge William F. Smith, presented the report of the Committee.

MANDATORY MINIMUM SENTENCES

H.R. 677 and H.R. 2092, 89th Congress, would strengthen the criminal penalties for the mailing, importing, or transporting of obscene matter, and for other purposes. These bills would require the imposition of mandatory minimum fines and terms of imprisonment for either the first or subsequent violations. Similar legislation was disapproved by the Conference in September 1961 (Conf. Rept., p. 98.) Upon recommendation of the Committee, the Conference reaffirmed its disapproval of the proposals contained in this legislation.

APPEALS BY THE UNITED STATES IN CRIMINAL CASES

The Bureau of the Budget had requested the views of the Conference on a draft bill, sponsored by the Attorney General, to amend 18 U.S.C. 3731 to authorize an appeal by the Government "from a decision made before trial sustaining a motion for the return of seized property or to suppress evidence, provided the United States Attorney shall certify, to the court granting such motion, that the appeal is not taken for purposes of delay." Similar legislation was previously considered by the Conference and disapproved (Conf. Rept., September 1957, p. 28; March 1960, p. 24.) Upon recommendation of the Committee, the Conference reaffirmed its disapproval of this legislation.

TIME SPENT BY DEFENDANTS IN CONFINEMENT PRIOR TO
SENTENCING

S. 647 and H.R. 3577, 89th Congress, would amend 18 U.S.C. 3568 to assure that all persons convicted of offenses against the United States will receive credit toward service of their sentences for time spent in custody in connection with the offense for which sentence was imposed. The right to credit under existing law extends only to those cases in which the defendant has been sentenced to a mandatory term of imprisonment. Similar legislation was considered and approved by the Conference in September 1964 (Conf. Rept., p. 90). Upon recommendation of the Committee, the Conference approved the bill.

PUBLICATION OF INFORMATION IN CRIMINAL CASES

S. 290, 89th Congress, would add a new section to the Criminal Code, Title 18, United States Code, to provide as follows:

It shall constitute a contempt of court for any employee of the United States, or for any defendant or his attorney or the agent of either, to furnish or make available for publication information not already properly filed with the court which might affect the outcome of any pending criminal litigation, except evidence that has already been admitted at the trial. Such contempt shall be punished by a fine of not more than \$1,000.

The bill embodies the modification of an earlier proposal recommended by the Committee and approved by the Conference in September 1964 (Conf. Rept., p. 84.) Upon recommendation of the Committee, the Conference reaffirmed its approval of the proposal contained in the bill.

JURY TRIAL OF CONTEMPT CASES

The Conference in September 1964 (Conf. Rept., p. 88) referred to the Committee for further study the proposal contained in S. 535, 89th Congress, which would provide "That in any prosecution for criminal contempt in the courts of the United States, the accused shall upon request be accorded a trial by jury." It was the view of the Committee that this bill would seriously circumscribe the traditional authority of the courts as defined by 18 U.S.C. 401 to proceed summarily, without the intervention of a jury, to punish for such contempt as the following:

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions; and

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The Committee was further of the view that the right of an accused to trial by jury in an appropriate case is adequately protected by Sections 402 and 3691 of Title 18, United States Code. Upon recommendation of the Committee, the Conference disapproved the bill.

RIGHT OF TRIAL

S. 291, 89th Congress, is a bill to effectuate the provisions of the Sixth Amendment to the United States Constitution requiring that a defendant in a criminal case be afforded the right to a speedy trial. The bill would (1) require the dismissal of a criminal case where there had been an unreasonable delay in presenting charges to a grand jury or in filing an information, (2) bar a subsequent prosecution for an offense charged in an indictment or information that was voluntarily dismissed by the Attorney General, (3) require that a person against whom there is pending more than one indictment or information be brought to trial in the order in which the indictments or informations were returned or filed, (4) require that a defendant be brought to trial no later than 9 months after the indictment is returned or the information filed, except that a court may, in its discretion, extend the time in which the case shall be delayed on good cause shown, and (5) require the imposition of sentence no later than 60 days after judgment of conviction is entered.

The Committee pointed out that these amendments would impliedly amend various statutes of limitation, prohibit reindictment, interfere in the orderly administration of criminal calendars in those districts having a heavy caseload, and interfere with the discretionary authority of the court to invoke remedial sentencing procedures. Upon recommendation of the Committee, the Conference disapproved the bill.

DEFINITION OF A FELONY

The Committee reported favorably on the proposal of the Judicial Conference of the Ninth Circuit that the definition of a felony contained in paragraph one of 18 U.S.C. 1 be amended to read as follows:

Any offense punishable by death or imprisonment for a term exceeding 1 year is a felony: Provided, that when a person is convicted of any felony and the sentence imposed by the court does not provide for imprisonment for a term exceeding 1 year, such person shall, for all purposes, after the judgment of conviction shall have become final and after the sentence imposed upon him shall have expired, be deemed to have been charged with and convicted of a misdemeanor, and such person shall not suffer any disability or disqualification which would otherwise result from a conviction of a felony.

The Conference discussed the proposed new definition of a felony and directed that it be referred to the Committee for further study in the light of the discussions in the Conference.

PRESENCE OF THE DEFENDANT AT THE TIME OF SENTENCE

S. 1956 and H.R. 7912, 88th Congress, would have amended 18 U.S.C. 4208 (b) and (c) to provide that when a defendant is committed to the custody of the Attorney General for observation and study the defendant need not be present in court when the report is received and action is taken as to any affirmation or modification of the original sentence. The Conference discussed the proposals contained in this legislation, but deferred action thereon pending further study by the Committee.

WITNESS' FEES IN HABEAS CORPUS CASES

H.R. 1763, 89th Congress, would authorize the payment of witness' fees in habeas corpus cases and in proceedings to vacate sentence brought under 28 U.S.C. 2255 for persons who are authorized to proceed in forma pauperis. Similar legislation had been previously recommended by the Conference (Conf. Rept., September 1961, p. 69). Upon recommendation of the Committee, the Conference reaffirmed its approval of the proposals contained in the bill.

HABEAS CORPUS APPLICATIONS BY STATE PRISONERS

Judge Smith informed the Conference that the Committee, at its last meeting, had given consideration to the Conference sponsored bill relating to applications for writs of habeas corpus by prisoners in custody pursuant to the judgment of a State court because of the impact it may have upon the administration of the criminal law in the Federal courts. It was the view of the Committee that the impaneling of a court of three judges, as would be provided for in this bill, may lead to serious problems of administration. The Committee was also of the view that the review of

a final order of a three-judge district court only by the Supreme Court on writ of certiorari would place an unusually heavy burden on the Court. The Committee, accordingly, recommended that the proposed legislation be again referred by the Conference to the Habeas Corpus Committee for further study and consideration.

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, informed the Conference that the Committee had met briefly to consider the recommendation of the Criminal Law Committee and that it had no objections to undertaking further study and consideration of the proposed legislation. Judge Phillips pointed out, however, that this action represents no expression, at this time, by the Committee on the merits of the legislation. The Conference thereupon referred the proposed legislation to the Habeas Corpus Committee for further study and consideration in accordance with the suggestion of the Committee on the Administration of the Criminal Law.

BANKRUPTCY ADMINISTRATION

Judge Edward Weinfeld, on behalf of Senior Judge Oliver D. Hamlin, Jr., Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered the recommendations contained in the survey report of the Director of the Administrative Office, dated January 22, 1965, relating to the continuance of referee positions to become vacant by expiration of term and for changes in arrangements for referees. The Committee also considered the recommendations of the district judges and of the judicial councils of the circuits concerned.

The Conference considered fully the Committee's report and the recommendations of the Director, the judicial councils and the district judges. On the basis of the report and recommendations, the Conference took the following action relating to changes in arrangements for existing referee positions and the filling of the referee positions to become vacant by expiration of term, and directed that, unless otherwise noted, the changes become effective April 1, 1965:

FIRST CIRCUIT

District of New Hampshire

- (1) Authorized the filling of the part-time referee position at Manchester, to become vacant by expiration of term on June 30, 1965, on a part-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

THIRD CIRCUIT

District of New Jersey

- (1) Authorized the filling of the full-time referee position at Camden, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Western District of Pennsylvania

- (1) Authorized the filling of the full-time referee position at Pittsburgh, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Authorized the filling of the full-time referee position at Erie, to become vacant by expiration of term on July 19, 1965, on a full-time basis for a term of 6 years, effective July 20, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.
- (3) Transferred Fayette County from the territory of the part-time referee at Johnstown to the territory of the full-time referee at Pittsburgh.

FOURTH CIRCUIT

District of Maryland

- (1) Designated Hagerstown and Hyattsville as additional places of holding court for the referee in this district.
- (2) Discontinued Cumberland as a place of holding bankruptcy court.

Western District of North Carolina

- (1) Authorized the filling of the part-time referee position at Charlotte, to become vacant by expiration of term on June 30, 1965, on a part-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Eastern District of Virginia

- (1) Authorized the filling of the part-time referee position at Alexandria, to become vacant by expiration of term on June 30, 1965, on a part-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

FIFTH CIRCUIT

Middle District of Florida

- (1) Authorized the filling of the part-time referee position at Jacksonville, to become vacant by expiration of term on September 30, 1965, on a part-time basis for a term of 6 years, effective October 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Northern District of Texas

- (1) Established concurrent jurisdiction for the full-time referees at Dallas and Fort Worth in the territory comprising the Dallas, Fort Worth, Wichita Falls, San Angelo, and Abilene divisions of the court.

SIXTH CIRCUIT

Northern District of Ohio

- (1) Authorized the filling of the full-time referee positions at Cleveland and Toledo, to become vacant by expiration of term on June 30, 1965, on a full-time basis for terms of 6 years, effective July 1, 1965, at the present salaries, the regular places of office, territories, and places of holding court to remain as at present.

Western District of Tennessee

- (1) Authorized the filling of the full-time referee position at Memphis, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Illinois

- (1) Authorized the filling of the full-time referee position at Chicago, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Illinois

- (1) Authorized the filling of the full-time referee position at Peoria, to become vacant by expiration of term on April 15, 1965, on a full-time basis for a term of 6 years, effective April 16, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Eastern District of Wisconsin

- (1) Authorized the filling of the full-time referee positions at Milwaukee, to become vacant by expiration of term on June 30, 1965, on a full-time basis for terms of 6 years, effective July 1, 1965, at the present salaries, the regular places of office, territories, and places of holding court to remain as at present.

Western District of Wisconsin

- (1) Authorized the filling of the full-time referee position at Madison, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

- (1) Authorized the filling of the full-time referee position at Minneapolis, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

NINTH CIRCUIT

Southern District of California

- (1) Authorized the filling of the full-time referee position at Fresno, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

District of Nevada

- (1) Authorized the filling of the full-time referee position at Las Vegas, to become vacant by expiration of term on May 19, 1965, on a full-time basis for a term of 6 years, effective May 20, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

District of Oregon

- (1) Authorized the filling of the full-time referee position at Portland, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Western District of Washington

- (1) Authorized the filling of the full-time referee position at Tacoma, to become vacant by expiration of term on June 30, 1965, on a full-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

TENTH CIRCUIT

District of Colorado

- (1) Authorized the filling of the full-time referee position at Denver, to become vacant by expiration of term on May 31, 1965, on a full-time basis for a term of 6 years, effective June 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Eastern District of Oklahoma

- (1) Authorized the filling of the part-time referee position at Okmulgee, to become vacant by expiration of term on June 30, 1965, on a part-time basis for a term of 6 years, effective July 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present. This action is subject to approval by the Judicial Council of the Tenth Circuit.

On recommendation of the Committee, the Conference deferred action on a proposal to authorize an additional referee position in the district of Kansas.

APPROPRIATIONS

The Conference was advised that appropriation estimates for the operation of the Bankruptcy system during the fiscal year 1966 in the amount of \$11,249,000 have been submitted to the Congress. The appropriation estimates, if approved by the Congress, will provide the funds needed for the 12 new referee positions and for changing 7 positions from a part-time to a full-time basis, as authorized by the Conference last year. The estimates also include funds for additional clerical personnel and other services for referees' offices.

The Committee reported that receipts into the Referees' Salary and Expense Fund during the fiscal year 1966 are expected to equal, or exceed, the estimated obligations for the year. The Referees' Salary and Expense Fund was reported to have at the present time a credit balance of approximately \$11 million.

APPOINTMENT OF A PART-TIME REFEREE AS TRUSTEE IN A CHAPTER
X PROCEEDING

The Committee had previously recommended, and the Conference approved, a proposed amendment to Section 39b of the Bankruptcy Act, 11 U.S.C. 67(b), to prohibit the service by a part-time referee as trustee in any proceeding under the Bankruptcy Act. (Conf. Rept., September 1964, p. 82). The National Bankruptcy Conference had suggested that the service of a part-time referee as a receiver under the Bankruptcy Act should also be prohibited. Upon recommendation of the Committee, the Conference approved the suggestion of the National Bankruptcy Conference and reaffirmed its approval of the proposal with the suggested amendment.

AMENDMENT OF CHAPTER XIII

S. 613 and H.R. 292, 89th Congress, entirely different bills, contain provisions which would change the wage earner proceeding under Chapter XIII from an entirely voluntary proceeding to a compulsory proceeding under certain circumstances. While it is recognized that many straight bankruptcy cases can and should be administered as wage earner proceedings, it was the view of the Committee that the proposals contained in these bills are discriminatory in singling out a low-income group that would be compelled under Chapter XIII to pay their debts in full. Other petitioners,

not wage earners, could still avail themselves of straight bankruptcy proceedings and the benefits arising out of a discharge of debts. Moreover, it seemed unfair to the Committee to compel a debtor to accept a plan under Chapter XIII without equal compulsion upon secured creditors to accept the same plan. Upon recommendation of the Committee, the Conference voted to disapprove S. 613 and H.R. 292.

LEGISLATION

The Committee requested and was granted leave, to consider the following bills, sponsored by the National Bankruptcy Conference, which have been recently introduced in the 89th Congress:

- (1) H. R. 20 to amend sections 14c(5), 656(a)(3), and 661 of the Bankruptcy Act with reference to confirmation of plans under Chapter XIII and the dischargeability of debts;
- (2) H.R. 291 to amend section 64a, 238, 378, and 483 of the Bankruptcy Act with reference to the priority of debts and to repeal sections 354 and 459 of the Bankruptcy Act; and
- (3) H.R. 293 to amend Chapter XI of the Bankruptcy Act to clarify certain administrative procedures.

AUDIT OF STATISTICAL REPORTS

The Conference was informed that the Bankruptcy Division of the Administrative Office is continuing its examination of statistical reports of closed bankruptcy cases for the determination of errors in the computation of amounts due to the Referees' Salary and Expense Fund and overpayments of compensation to receivers and trustees. The Committee, however, has received no recent report of any situation requiring Committee action with respect to the accountability of a referee for administrative errors in computing the compensation of receivers and trustees or in computing amounts due to the Referees' Salary and Expense Fund.

The Administrative Office is also continuing to accumulate information from the statistical reports that may disclose a monopoly of appointments in any district. The Committee anticipates that a longer period of study will be required in order to provide more definitive information on this subject.

MATTERS UNDER ADVISEMENT

The Conference was informed of a general improvement in regard to the number of matters held under advisement for more

than 60 days by referees in bankruptcy. Those few instances where it appeared that matters had been held under advisement for longer periods of time than were necessary have been brought to the attention of the judges of the district courts concerned. The Committee has been assured that a special effort will be made to have these matters decided expeditiously.

DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Committee reported that the guidelines for Chapter XIII administration, promulgated by the Conference at its September 1963 session (Conf. Rept., p. 87), are being complied with by the courts and that during the current fiscal year the compensation of trustees in Chapter XIII proceedings will be held within the maximum limit on the salary of a full-time referee in bankruptcy. In several large metropolitan areas, however, the courts have not reduced the number of persons appointed as trustees in Chapter XIII cases to one trustee for the area, as recommended by the Conference. The Committee has requested the Bankruptcy Division of the Administrative Office to report further at the next Committee meeting.

DEBTOR'S COUNSELING SERVICE

Judge Weinfeld informed the Conference that the "debtor's counseling service" procedure instituted in the Western District of Wisconsin is still under consideration by the Judicial Council of the Seventh Circuit and that the council has decided to permit the referee to continue a modified plan of debtor counseling for another 6 months. The Committee has requested the Administrative Office to review the plan and to report thereon at the next Committee meeting.

SEMINAR FOR REFEREES

Judge Weinfeld announced that the second Seminar for Referees in Bankruptcy will be held in Washington, D.C., during the week of March 29. The 41 referees invited to attend include those appointed during the past year and all referees appointed since 1959 who have not previously attended a seminar. The program is again being sponsored by a committee of referees under the chairmanship of Referee Asa S. Herzog of the Southern District of New

York. The committee will be assisted by 12 experienced referees in bankruptcy who will serve as discussion leaders.

FEES AND CHARGES

It had been brought to the attention of the Committee that the rules for the determination of "net proceeds realized" and of payments under Section 40c(2) of the Bankruptcy Act, 11 U.S.C. 68(c)(2), have been subject to varying interpretations resulting in a lack of uniformity in the application of the schedule of fees and charges for the Referees' Salary and Expense Fund. The Committee has requested the Administrative Office to study these matters and report to the Committee at its next meeting.

HABEAS CORPUS

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, called attention to the amendment to 28 U.S.C. 2241, recommended by the Committee and approved by the Conference in September 1964 (Conf. Rept., p. 107), which would permit an application for a writ of habeas corpus made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts to be filed either in the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him.

When the Committee report was originally presented, Chief Judge Woodbury suggested that the proposal be broadened to embrace the case of a person, convicted and sentenced in a State court, who was in custody in a Federal institution located in another State under a contract between the State of his conviction and the Federal Government. Judge Phillips reported that the Committee, after study, had concluded that it was not possible to draft a statute that would satisfactorily overcome the practical problems involved, particularly the transportation of prisoners over long distances. The Committee recommended, therefore, that the proposal made by Judge Woodbury be disapproved. This recommendation was approved by the Conference.

ADMINISTRATION OF THE PROBATION SYSTEM

Judge Luther W. Youngdahl, Chairman of the Committee on the Administration of the Probation System, presented the report of the Committee to the Conference.

PSYCHIATRIC SERVICES

The Committee recommended an amendment to the Probation Act, 18 U.S.C. 3651 et seq., to authorize the payment of the cost of psychiatric examinations and services rendered probationers pursuant to court order from funds appropriated to the judiciary. While it is clear that a psychiatric examination may now be made at the expense of the government in the case of a probationer who is believed to be presently insane or who is involved in a proceeding to revoke probation, it is not certain whether such an examination may be authorized at Government expense for any other purpose. It was the view of the Committee that psychiatric assistance is also needed in some cases in determining the course of probation. Chief Judge Bazelon further suggested that the proposal be broadened to permit probation officers to utilize the services of psychiatrists, psychologists, or other experts in the medical and social sciences when the aid of such persons is deemed necessary. The Conference thereupon approved the recommendation of the Committee with the modification suggested by Judge Bazelon.

RESEARCH AND DEVELOPMENT CENTER

Judge Youngdahl reported that consideration of the proposal to establish a research and development center in the correctional field had been delayed due to changes of personnel in the positions of Attorney General, Director of the Bureau of Prisons, and Director of the National Institute of Mental Health. Discussions and negotiations, however, will soon be resumed and a further report will be made to the Conference at a later session.

SENTENCING INSTITUTES

Judge Youngdahl informed the Conference that the regional Institute on Sentencing held at Lompoc, Calif., October 19-22, 1964, as authorized by the Conference (Conf. Rept., September 1964, p. 92), was highly successful. Included in the program was

a tour of the Federal Correctional Institution at Lompoc and a demonstration of an actual parole hearing by a member of the parole board. As a result of experience at this institute, the Committee is planning to revise the format of future institutes to allow a greater amount of time for judges to participate in discussion, to include visits by participants to institutions maintained by the Federal Bureau of Prisons and to afford opportunity for participating judges to witness actual hearings before officers of the Board of Parole. Judge Youngdahl also informed the Conference that the sentencing institute for the judges of the third circuit held at Lewisburg, Pa., November 11-13, 1964, was well received by the participating judges and very successful.

The Conference was informed that the Committee is tentatively planning another Sentencing Institute to be held at McNeil Island, Wash., either late in September or early in October 1965. At the request of Judge Youngdahl, the Conference authorized the Committee to convene a meeting of the chairmen of the circuit committees on sentencing institutes to discuss plans and programs for sentencing institutes to be conducted at the circuit level.

PRESENTENCE REPORTS

Judge Youngdahl informed the Conference that the Subcommittee on Presentence Reports and Supervision had prepared a monograph entitled "The Presentence Investigation Report." On authorization of the Committee, the monograph will be distributed to judges of the district courts and to all probation officers. The monograph includes a uniform presentence report outline and format designed to serve jointly the needs of the courts, the Bureau of Prisons, and the Board of Parole.

PROPOSED AMENDMENT TO RULE 32(c), FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee reported that its survey of the district judges to determine their opinion of the proposal of the Advisory Committee to amend Rule 32(c), Federal Rules of Criminal Procedure, had been completed. Of the 270 district judges replying, only 18 favored the proposed amendment. The Committee plans to reproduce the results of the entire survey and distribute it to each member of the Advisory Committee and to the Attorney General for their information.

REGIONAL SUPERVISION OF PROBATION OFFICERS

Judge Youngdahl informed the Conference that the Committee had considered the proposed regional organization of the probation system as a possible method of increasing efficiency and effectiveness and that a pilot program designed to test the feasibility of such a system has been approved by the Committee. It was pointed out, however, that the Committee's approval of the pilot program does not constitute a criticism of or a finding adverse to the present system whereby district judges have primary responsibility for their probation officers.

GROUP COUNSELING IN THE DISTRICT OF COLUMBIA

The Committee reported that funds are now available from the Vocational Rehabilitation Administration, Department of Health, Education, and Welfare for a limited pilot study, and the preparation of plans for a complete study, of the group counseling program in the probation office of the United States District Court for the District of Columbia (Conf. Rept., September 1964, p. 94). The pilot study will be undertaken by a private research organization.

Recently the chief probation officer for the United States District Court for the Eastern District of Pennsylvania has requested assistance in setting up a group counseling program in the Philadelphia office similar to the program in the District of Columbia.

DEFERRED PROSECUTION

The Conference discussed the problems involved in placing persons under the supervision of probation officers when there has been no criminal conviction. On motion of Judge Arraj, the Conference requested the Committee to undertake a study of the problems discussed in the Conference and to report thereon at a later session.

VOCATIONAL REHABILITATION

The Conference was informed of the joint effort of the Federal Probation System and the Vocational Rehabilitation Administration, Department of Health, Education, and Welfare to make available to selected probationers and parolees resources of vocational training, medical attention, provision of necessary tools, and funds for board, room, and clothing. An application from the State

of Washington for a planning grant has recently been approved by the Vocational Rehabilitation Administration.

BAIL INVESTIGATIONS

Judge Youngdahl called attention to the recent proposal that Federal probation officers be used to conduct investigations to compile information for use by United States commissioners in fixing bail. Judge Youngdahl informed the Conference that the Committee considers such investigations to be inconsistent with the work of the probation officers and that the Committee would oppose any such suggestion.

SUPPORTING PERSONNEL

The Chairman of the Committee on Supporting Personnel, Chief Judge Theodore Levin, submitted the report of the Committee to the Conference.

CRIER-LAW CLERK

Chief Judge Walter E. Hoffman of the Eastern District of Virginia had suggested to the Committee that 28 U.S.C. 755 be amended to authorize the combined position of crier-law clerk for district judges. The Committee was of the view that there are instances when such a combination position of crier-law clerk might be helpful to a particular judge, but pointed out that the suggestion must be considered in the light of the Appropriations Act which sets a limitation on the aggregate salaries of law clerks and secretaries. Upon recommendation of the Committee the Conference approved a draft of an amendment to 28 U.S.C. 755, submitted by the Committee, subject to any changes in the language of the draft bill that may appear necessary or desirable.

COURT REPORTER-SECRETARY

The Conference, upon recommendation of the Committee, separated the position of court reporter-secretary authorized for Chief Judge Fred M. Taylor of the District of Idaho and authorized the appointment of both a court reporter and a secretary by Judge Taylor.

SECRETARIES

The Judicial Council of the District of Columbia Circuit had recommended that each circuit and district judge be permitted to

appoint a secretary in any grade up to and including JSP-11 or JSP-12, as the appointing judge may determine, and that the aggregate salaries that may be paid to the secretary and the law clerk of any one judge be increased accordingly. The Committee reported that it had requested the Administrative Office to make a survey of employee positions which may be comparable to that of secretary to a Federal judge. A complete review of this matter will be undertaken at the next meeting of the Committee.

COURT OF CLAIMS

The Court of Claims had requested an additional secretarial-stenographic position at grade JSP-7 to provide additional assistance to the secretary of the court. It is also contemplated that the person to be employed will also provide part-time secretarial service to the auditors. The Conference was informed by the Committee that authorization of this particular position would not require an increase in appropriations. The Conference thereupon approved the request of the Court of Claims.

CHIEF DEPUTY CLERKS

Chief Judge Gus J. Solomon of the District of Oregon had suggested to the Committee an increase in the salaries of chief deputy clerks in large district courts such as the Southern District of California. The Committee recommended, however, that the suggestion be disapproved in view of the fair consideration given these positions in fixing salaries under the Judiciary Salary Plan. This recommendation was approved by the Conference.

RETIREMENT OF SECRETARIES

The Conference in September 1962 (Conf. Rept., p. 73) approved a proposal to provide for secretaries to Federal judges the same retirement benefits as are now provided for members of congressional staffs. At the suggestion of the Committee, the Conference recommended that a bill to so provide be introduced in the 89th Congress.

COST-OF-LIVING ALLOWANCES OUTSIDE CONTINENTAL UNITED STATES

S. 122 and H.R. 4890, 89th Congress, would provide cost-of-living allowances for judicial employees stationed outside the con-

tinental United States or in Alaska or Hawaii. Judge Levin informed the Conference that these bills embody the proposals previously recommended by the Conference (Conf. Rept., March 1964, p. 37.)

COURT REPORTERS

The Committee reported that the Administrative Office had recommended that senior judges who continue to render substantial service to the district courts be provided with the services of a regular court reporter in the same manner as they are provided with the services of secretaries and law clerks. The Administrative Office report also sets out specific conditions for the employment of regular court reporters for senior district judges and for a periodic review of their retention in the service of the court. Upon recommendation of the Committee, the Conference approved the report and recommendations of the Administrative Office.

CLERKS OF COURT

The Committee submitted to the Conference a report, prepared by the Administrative Office, relating to qualification standards for clerks of court. The report recommended certain qualification standards for clerks of court which are not mandatory, but which the Committee believes are firm enough to provide the court with a guide without detracting from the court's authority in making a selection. The Conference, after full consideration, approved the report and the standards set forth therein and instructed the Director of the Administrative Office to circulate the report to all judges, clerks of court, and chief deputy clerks.

NATIONAL PARK COMMISSIONERS

The Committee submitted for the information of the Conference a report on salaries paid, outside work performed, and other matters relating to National Park commissioners. No action on the report was requested by the Committee.

PRETRIAL PROCEDURE

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, informed the Conference that the fifth Seminar for Newly Appointed United States District Judges, authorized by the Conference in September 1964 (Conf. Rept., p.

107), is scheduled to be held in Denver, Colo., during the week of June 28, 1965. This year certain revisions have been made in the program to enable the new district judges to participate more freely in the discussions. The format, however, remains basically the same as that of previous seminars.

In order to reflect the additional duties and responsibilities assigned to the Committee in recent years of conducting seminars and promoting improved calendaring practices, the Conference, on motion of Judge Murrah, changed the name of the Committee from the Committee on Pretrial Procedure to the "Committee on Trial Practice and Technique."

SUBCOMMITTEE FOR MULTIPLE LITIGATION

The Subcommittee of the Pretrial Committee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits has continued to pursue the planned course of the national coordination program for the private anti-trust cases in the electrical equipment industry. Since the last report of the subcommittee, six additional product lines have been made the subject of national discovery, three jury trials and one nonjury trial have been concluded, and another nonjury trial is underway. Since the last report of the subcommittee approximately 250 cases have been fully dismissed and numerous partial settlements of other cases have occurred. Less than one-half of all claims originally filed now remain pending and the number is continuing to decline.

A draft of a bill to add a new section 1407 to Title 28, United States Code, relating to multi-district litigation, had been submitted by the subcommittee to the Conference Committees on Court Administration and Revision of the Laws for their consideration. Conference action on the proposal is shown above under the report of the Committee on Revision of the Laws.

PRETERMISSION OF THE TERMS OF COURTS OF APPEALS

At the request of Chief Judge Clement F. Haynsworth, Jr., the Conference, pursuant to 28 U.S.C. 48, consented to the pretermis-sion of the term of court of the Court of Appeals of the Fourth Circuit scheduled to be held at Asheville, N.C., in June 1965.

At the request of Chief Judge Harvey M. Johnsen, the Conference consented that terms of the Court of Appeals of the Eighth Circuit at places other than St. Louis be pretermitted during the fiscal year commencing July 1, 1965.

At the request of Chief Judge Alfred P. Murrah, the Conference consented that terms of the Court of Appeals of the Tenth Circuit at places other than Denver and Oklahoma City be pretermitted during the fiscal year commencing July 1, 1965.

RELEASE OF CONFERENCE ACTION

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

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice of the United States.

APRIL 15, 1965.

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