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

MARCH 10-11, 1966

WASHINGTON, D.C.

1966

**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 10-11, 1966

The Judicial Conference of the United States convened on March 10, 1966, 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 11. 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 Harry E. Kalodner

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 Herbert W. Christenberry, Eastern District of Louisiana

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 retired Judge Kenneth P. Grubb)

Eighth Circuit:

Chief Judge Charles J. Vogel

Chief Judge Roy W. Harper, Eastern District of Missouri

Ninth Circuit:

Chief Judge Richard H. Chambers

Tenth Circuit:

Chief Judge Alfred P. Murrah

Chief Judge Alfred A. Arraj, District of Colorado

Court of Claims:

Senior Judge Samuel E. Whitaker (designated by the Chief Justice in place of Chief Judge Wilson Cowen who was unable to attend)

Chief Judge Eugene Worley of the Court of Customs and Patent Appeals and Chief Judge Gus J. Solomon of the District of Oregon were excused from attendance.

Senior Judges John Biggs, Jr., Albert B. Maris, and Oliver D. Hamlin, Jr.; Circuit Judges Jean S. Breitenstein and Austin L. Staley; Chief Judge Theodore Levin; and Judge Luther W. Youngdahl attended all or some of the sessions.

The Attorney General, Honorable Nicholas deB. Katzenbach, accompanied by the Solicitor General, Honorable Thurgood Marshall and Assistant Attorney General Ernest C. Friesen, Jr., attended the morning session of the first day of the Conference and spoke to the Conference informally on matters relating to the administration of justice in the United States courts.

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, attended the morning session of the first day of the Conference and spoke to the Conference briefly on matters relating to the maintenance of the integrity and independence of the federal judicial system.

Honorable Joseph D. Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, also attended the morning session of the first day of the Conference and addressed the Conference briefly.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; William T. Finley, 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 were also in attendance.

JUDICIAL APPROPRIATIONS

Chief Judge Matthew F. McGuire, on behalf of Chief Judge William J. Campbell, Chairman of the Committee on the Budget, reported that the hearings on the appropriation requests for the

fiscal year 1967 had been held before the subcommittee of the Committee on Appropriations of the House of Representatives, but that no report by the Appropriations Committee had as yet been issued. The requests this year include funds totalling \$7,040,000 to cover the cost of payments to be made under the Criminal Justice Act of 1964, which is the same as the amount requested last year. The Committee in its presentation also stressed the need for coordinators to be appointed in each circuit to aid in administering the Criminal Justice Act, with particular emphasis on the District of Columbia Circuit. The requests also include funds for additional supporting personnel, additional probation officers, additional assistance in the Administrative Office, and additional clerical assistance for referees in bankruptcy.

The Committee reported that hearings have also been held on a supplemental appropriation request for the fiscal year 1966 for additional funds to take care of a recent increase in jurors' fees and for additional funds for salaries of judges. The Committee is hopeful that these requests for supplemental appropriations will be granted.

JUDICIAL STATISTICS

(Senior Judge John Biggs, Jr., on behalf of Senior Judge Harvey M. Johnsen, Chairman of the Committee on Judicial Statistics, presented the report of the Committee.

ADDITIONAL JUDGESHIPS

Judge Biggs informed the Conference that requests have come to the Committee for recommendations for additional judgeships beyond those which the Conference has heretofore approved. The Committee was of the view, however, that in accordance with previously expressed policy (Conf. Rept., Sept. 1965, p. 47) these requests should be passed over until the time of the Committee's next overall consideration and evaluation and that no additional recommendation should be made at this time for additional judgeships in modification of the pending omnibus judgeship bill. Judge Biggs informed the Conference that the Committee on Court Administration concurred in the views of the Committee on Judicial Statistics.

COURTS OF APPEALS

(The Conference at its September 1965 session (Conf. Rept., p. 47) authorized the Committees on Judicial Statistics and Court

Administration to undertake a comprehensive study of the workload of the United States courts of appeals in light of the additional district judgeship positions created in 1961 and the proposals for additional district judgeships presently recommended, and, on the basis of its study and evaluation, to recommend to the Conference any additional appellate judgeships which are required.

The Conference was informed that the Committees had begun such a study and evaluation, but that there had not been time to perform the task in a manner to afford basis for thorough consideration and report to the Conference. The Committees thereupon, were authorized to continue their study and report at a later session of the Conference.

COURT ADMINISTRATION

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

SELECTION OF CHIEF JUDGES

The Committee on the Judiciary of the House of Representatives had requested the views of the Conference on H.R. 7810, 89th Congress, to amend the Judicial Code to require chief judges of circuits and of multiple-judge district courts to relinquish their duties as chief judges at age 66. The provisions of the bill would not become effective, however, until 5 years after the date of its enactment. H.R. 7641 and H.R. 8712, 89th Congress, are identical bills.

Judge Biggs informed the Conference that the proposals contained in these bills were considered jointly by the Committees on Court Administration and Revision of the Laws and that there was a division of opinion among the judges of the two Committees as to the merits of the proposal and as to the desirability of a delay of 5 years in its effective date. After full discussion the Conference voted to recommend that no change be made in the present statutory age limit of 70 years for chief judges of circuits and district courts.

JUDICIAL SURVIVORS ANNUITY SYSTEM

Judge Biggs reported that the Committee had considered the *Third Actuarial Valuation of the Judicial Survivors Annuity Sys-*

tem as of December 31, 1964 prepared by the actuarial staff of the Social Security Administration in accordance with the statute, 28 U.S.C. 376. According to this report the Judicial Survivors Annuity Fund will be completely exhausted by the year 1984. To secure additional financing it was suggested to the Committee that agency contributions to the fund be increased to maintain the solvency of the Fund. The Committee intends to discuss this suggestion with the Chairman of the Judicial Conference Budget Committee and with the Civil Service Commission in order to ascertain the possibilities of an increase in the agency contributions in the near future. A further report and recommendation as to what course the Committee believes should be pursued will be made at a later session of the Conference.

PLACES OF HOLDING COURT

H.R. 11825, 89th Congress, would amend 28 U.S.C. 97(b) to add Hopkinsville as an additional place of holding court in the Western District of Kentucky. The Conference was informed that the Judicial Council of the Sixth Circuit was of the view that the additional place of holding court was not needed. Upon recommendation of the Committee, the Conference disapproved the bill.

The Conference was informed that the Judicial Council of the Fifth Circuit had recommended the establishment of an additional division in the Western District of Texas in the Midland-Odessa area with an additional place of holding court at Odessa. Upon motion of Chief Judge Tuttle, the proposal was approved by the Conference.

ELECTRONIC SOUND RECORDING

Public Law 89-163, 79 Stat. 619, permits the use of electronic sound recording equipment in the United States district courts in augmentation of recording by shorthand or by mechanical means (see Conf. Rept., Sept. 1965, p. 58). The use of this recording equipment, however, is subject to regulations promulgated by the Judicial Conference. Judge Biggs informed the Conference that the Director of the Administrative Office had submitted to the Committee proposed regulations, pursuant to the Act, governing the use of electronic sound recording equipment in the district courts, together with a proposed memorandum to court reporters and forms of two certificates, one of which is to accompany the recording to be filed with the clerk of court and the other, a certi-

fication of sound recordings made, is to be filed quarterly with the Director of the Administrative Office. The Committee reported that it had examined the proposed memorandum, regulations and certificates and had found them to be well adapted for the purposes for which they were intended. Upon recommendation of the Committee, the proposed regulations were adopted by the Conference.

RETIREMENT OF JUDGES

The Committee on the Judiciary of the United States Senate had previously requested the views of the Conference on S. 1368, 88th Congress, to provide for the appointment of an additional judge for any of the United States courts of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, or Customs Court, upon the attainment of age 70 by any judge thereafter appointed to such court. The bill would authorize the President upon recommendation of the Judicial Council of the Circuit, or appropriate judicial officer in the case of judges of other courts, to appoint an additional judge, by and with the consent of the Senate, when a judge eligible to retire fails to do so. The bill, however, makes no provision for loss of seniority, nor does it contain any requirement of a finding by the Judicial Council of the need for an additional judgeship in the court. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

JUDICIAL DISABILITY

Judge Biggs submitted to the Conference drafts of two bills, developed by the Committee, to create a Commission on Judicial Disability and for other purposes.

The Conference considered both proposals and, after full discussion, instructed the Director of the Administrative Office to circulate to all members of the federal judiciary for their information that portion of the report of the Committee on Court Administration relating to the proposed Commission on Judicial Disability. The Conference also recommended that the proposals of the Committee be discussed at the Judicial Conferences of the Circuits to be held this year.

The Committee was authorized to continue its study and to cooperate fully with the Judiciary Committees of the Senate and House of Representatives with respect to legislation concerning the tenure and retirement of judges.

In view of the further consideration to be given to the proposals for a Commission on Judicial Disability, the Conference, upon recommendation of the Committee, voted to disapprove the following bills, pending in the 89th Congress, which relate to the disability of judges:

(1) H.R. 10117, 89th Congress, to amend Title 28, United States Code, to provide that whenever any judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and a majority of the members of the Judicial Council of his circuit, in the case of a circuit or district judge, certifies that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment, by and with the advice and consent of the Senate; and

(2) S. 2299, 89th Congress, to amend 28 U.S.C. 372, to provide for the mandatory retirement of district judges of the United States for permanent physical or mental disability.

GEOGRAPHIC ORGANIZATION

Judge Biggs informed the Conference that the proposal to consolidate the two judicial districts in the State of South Carolina, recommended by the Subcommittee on Geographic Organization and approved by the Conference, had been enacted into law. Public Law 89-242, 79 Stat. 951, approved October 7, 1965.

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 LABOR-MANAGEMENT RELATIONS

S. 2891, 89th Congress, would provide for the establishment of a United States Court of Labor-Management Relations. The court would be comprised of a chief judge and four associate judges, appointed to hold office during good behavior, and would have exclusive jurisdiction over labor disputes affecting commerce that result in, or threaten to result in, a strike, lockout or other concerted work stoppage which would adversely affect the public interest of the Nation to a substantial degree. It was the view of both the Committee on Court Administration and Revision of the

Laws that the problem to which the bill is directed is a serious one and that the bill should be given careful study by the Conference before a recommendation is made. Accordingly, the Committees recommended that they be authorized to undertake such a study through a subcommittee, which in addition to members of the two Committees, would include persons specially qualified in the field of labor relations. The Conference approved the study by a subcommittee, to be comprised only of members of the Federal judiciary, and directed that the Senate Judiciary Committee, which had requested the views of the Conference, be informed that the Conference desires to defer the expression of its views on S. 2891 pending completion of the study.

REVISION OF THE COPYRIGHT LAWS

H.R. 4347, H.R. 5680, H.R. 6831 and H.R. 6835, 89th Congress, would codify and revise Title 17, United States Code, relating to copyrights. The Committee reported that these bills do not propose any drastic changes in the existing judicial remedies for copyright infringement. Upon recommendation of the Committee, the Conference voted to approve the provisions of Chapter 5 of these bills relating to judicial remedies.

CODIFICATION OF TITLE 5, UNITED STATES CODE

H.R. 10104, 89th Congress, would revise, codify and enact into law, Title 5, United States Code, entitled "Government Organization and Employees" (Conf. Rept., March 1953, p. 14, and Sept. 1963, p. 17). The Committee had previously called to the attention of the staff of the House Judiciary Committee certain provisions of an earlier bill, H.R. 4158, 88th Congress, which would inadvertently change the present law and adversely affect judicial and Administrative Office personnel. The Committee found, however, that a number of the amendments proposed to H.R. 4158 were not included in the revised bill H.R. 10104, which passed the House of Representatives on September 7, 1965. The Committee accordingly submitted a memorandum of amendments which it believes to be still needed in the bill, together with explanatory notes, and recommended that the Senate Judiciary Committee be requested to incorporate these amendments in H.R. 10104. This recommendation was approved by the Conference.

REGISTRATION OF JUDGMENTS

Judge Maris informed the Conference that the Department of Justice had requested the views of the Conference on a proposal to amend 28 U.S.C. 1963 to provide that a judgment of a United States district court for money or property may be registered in any other district immediately after it is entered instead of at the time it is to become final by appeal or expiration of time for appeal. While the Committee believes there is merit in the proposed amendment, it was of the view that there may be problems of due process involved which require more study and consideration. The Committee accordingly recommended that the Conference indicate that it is cognizant of the problem presented by the Department of Justice and agrees that it should be solved by appropriate legislation, but that since there are other problems which should be taken into consideration in framing any legislation on the subject, the Conference desires to defer any definitive expression of views until specific legislation is proposed. This recommendation was approved by the Conference.

The Department of Justice also called attention to the wide diversity in practice among the district courts in connection with the documents that are required for the registration of a judgment under the provisions of 28 U.S.C. 1963. Upon recommendation of the Committee, the Conference authorized the Administrative Office to formulate and provide the clerks of the district courts with a uniform form of certification to be made by the clerk of the originating district, so that the clerks of the districts in which judgments are sought to be registered may act uniformly in compliance with 28 U.S.C. 1963.

LEGISLATION

The Conference, upon recommendation of the Committee, reaffirmed its approval of the following bills pending in the 89th Congress which embody proposals heretofore approved:

(1) H.R. 11875, 89th Congress, to amend the Tucker Act to increase from \$10,000 to \$50,000 the limitation on the jurisdiction of the United States district courts in suits against the United States for breach of contract or for compensation. (Conf. Rept., Sept. 1965, p. 61, and Sept. 1964, p. 64.)

(2) H.R. 12232, 89th Congress, to make admissible in evidence without further authentication, the slip laws published by the General Services Administration and the Treaties and other International Act series, issued by the Secretary of State. (Conf. Rept., Sept. 1965, p. 61.)

The Conference, upon recommendation of the Committee, reaffirmed its disapproval of the proposal contained in H.R. 11876, 89th Congress, to waive the statute of limitations on certain claims of any officer who is a member of a Reserve component of the uniform services of the United States. Similar bills were previously disapproved by the Conference. (Conf. Rept., March 1965, p. 16, and Sept. 1965, p. 63.)

COURT OF VETERANS APPEALS

H.R. 11551, 89th Congress, would amend Title 38, United States Code, to establish a Court of Veterans' Appeals and prescribe its jurisdiction and functions. The bill is identical to H.R. 211, 89th Congress, approved by the Conference at its March 1965 session (Conf. Rept., p. 18) but only as to the type of review which would be provided by a special Court of Veterans' Appeals with local hearings by commissioners of the court. The Conference, however, refrained from expressing any view as to the policy of granting appeals in veterans' cases. Upon recommendation of the Committee, the Conference reaffirmed the views previously expressed.

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, reported that the proposals for amendments to the Federal Rules of Civil Procedure, including the unification of civil and admiralty procedure, and the proposals for the amendment of the Federal Rules of Criminal Procedure, approved by the Conference at its September 1965 session (Conf. Rept., p. 52) were adopted by the Supreme Court without change on February 28, 1966. The amendments thereafter were transmitted by the Chief Justice to the Senate and the House of Representatives and, in the absence of contrary action by the Congress, will go into effect on July 1, 1966, pursuant to the order of the Supreme Court.

The Conference was informed that the Advisory Committee on Civil Rules is continuing its study of the rules relating to deposi-

tions and discovery. Appropriate amendments to these rules will be formulated and published for the consideration of the bench and bar in the near future. The Advisory Committee on the Federal Rules of Criminal Procedure is also continuing its study of a few remaining proposals for rules changes.

The Advisory Committee on Appellate Rules is now engaged in perfecting its final draft of uniform rules of appellate procedure, although the bill to empower the Supreme Court to promulgate uniform appellate rules is still pending in the Congress. Both the Advisory Committee on Bankruptcy Rules and the Advisory Committee on Rules of Evidence are presently engaged in the large tasks of preparing complete sets of uniform rules. Completion of the task of drafting bankruptcy rules and rules of evidence is not anticipated for some time. The Advisory Committee on Admiralty Rules was reported as being presently inactive following the completion of its work of preparing rules for the unification of civil and admiralty procedure.

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 intercourt assignments for the period July 30, 1965, through February 18, 1966. During this period the Committee recommended favorably on 34 assignments to be undertaken by 24 judges, 8 of whom have each accepted more than one assignment. All assignments recommended by the Committee were approved by the Chief Justice except one where the certificate of need was withdrawn before the Committee's recommendation was acted upon. One other assigned judge was unable to fulfill his assignment. The judges receiving assignments include five circuit judges, three senior circuit judges, eight district judges, six senior district judges, and two senior judges of the Court of Claims.

Of the assignments which have been, or will be, undertaken, 13 were for service in the courts of appeals. Of these, three were for service in the Court of Appeals for the First Circuit, eight were for service in the Court of Appeals for the Fifth Circuit, and one each for service in the Court of Appeals for the Third Circuit and the Court of Appeals for the Fourth Circuit.

The Committee reported that it is continuing its policy of encouraging service by senior judges in those courts which need help.

During the period of this report, 11 senior judges have accepted assignments.

The Committee reported that the revised forms for intercourt assignments, recommended in its last report, have now been put in use and appear to be well accepted. The report of the Committee, including a statement relating to the need for intercourt assignments and the availability of judges for such service, was received by the Conference.

CRIMINAL JUSTICE ACT OF 1964

Chief Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act of 1964, presented the report of the Committee.

APPOINTMENTS UNDER THE ACT

The Conference was informed that the Director of the Administrative Office had presented to the Committee a report on the appointments of attorneys and the payment of claims made pursuant to the Criminal Justice Act from the period August 20, 1965 to January 31, 1966. The report shows that attorneys are now being appointed at the rate of 1,500 per month, or 18,000 per year, compared with an early estimate of 20,000 appointments annually. Of the total appointments made, 29 percent were by United States commissioners, 68 percent by judges of the district courts and 3 percent by the courts of appeals. The Committee pointed out that the statistical data contained in the report reflect only the experience in the beginning of the operation under the Criminal Justice Act and that definitive conclusions as to ultimate results cannot be forecast at this time.

APPROPRIATIONS

Appropriations in the amount of \$7,040,000 for the operation of the Criminal Justice Act have again been requested for the fiscal year 1967, which is the same amount requested for the fiscal year 1966. The Committee pointed out that financial experience under the Act has not been sufficient to warrant a request for appropriations in excess of what was requested last year. If the amount proves insufficient, the Congress will be requested to consider any needed deficiency in the appropriations. The Committee also reported that a request has again been made for funds to

provide for administrative services for each of the 11 circuits, and that the peculiar needs of the District of Columbia Circuit have been emphasized.

REVOCATION OF PROBATION

The Conference was informed that the Director of the Administrative Office had been authorized to submit to the Comptroller General the question of whether counsel can be appointed under the Criminal Justice Act to represent a defendant in proceedings on revocation of probation. The payment of vouchers for such services had been withheld by the Administrative Office pending action by the Committee.

TRAVEL COSTS

Judge Hastings informed the Conference that the Committee had given consideration to payments under the Criminal Justice Act for the travel time of attorneys and had concluded that if there were appropriate circumstances under which compensation for time spent in travel should be allowed, it could only be at the rate for time spent for services rendered out of court, not exceeding \$10 per hour. The Committee felt that under no circumstances could a rate up to \$15 per hour be justified.

Upon recommendation of the Committee, the Conference adopted the following statement of policy to serve as a guideline to the courts in determining the appropriateness of payments to attorneys for time spent in travel to and from court, which is to become effective as to travel performed on and after March 11, 1966:

When the travel time of an attorney from his office to and from court is 1 hour or more, the court in its discretion, after taking into consideration all the surrounding circumstances, may allow compensation for time spent in such travel at a rate not exceeding \$10 per hour; provided, that such travel is solely in the performance of duties in representing a defendant pursuant to an appointment under the Criminal Justice Act of 1964.

Judge Hastings informed the Conference that it was the view of the Committee that time spent by an attorney in interviewing witnesses and interviewing his client, who may be confined in jail, is compensable under the Criminal Justice Act at a rate not to exceed \$10 per hour, but that time spent in court by an attorney waiting to receive an assignment under the Criminal Justice Act is not compensable under the Act.

ADMINISTRATION OF THE ACT

Several questions pertaining to the administration of the Criminal Justice Act had been brought to the attention of the Committee by the Administrative Office. Judge Hastings reported that the Committee has expressed its views on these matters as follows:

(1) *Juveniles*. That a proceeding under the Juvenile Delinquency Act is a criminal proceeding within the purview of the Criminal Justice Act. If the act with which the juvenile is charged, if committed by an adult would be considered a felony, then it should be considered a felony for the purposes of the Criminal Justice Act; otherwise, it should be treated as a misdemeanor.

(2) *Capital cases*. That in capital cases two attorneys may be appointed under the Criminal Justice Act. If this is done, each attorney would be entitled to claim compensation not to exceed \$500 without the necessity of approval by the chief judge of the circuit, even though the aggregate of the two claims may exceed \$500.

(3) *District of Columbia Court of General Sessions*. It was reported that the Chief Judge of the District of Columbia Circuit has been of the view that a judge of the Court of General Sessions, sitting as a committing magistrate in federal cases, may appoint an attorney under the Criminal Justice Act to represent a defendant in a preliminary hearing in a case which subsequently may be tried in the district court. While the Committee has been of the opposite view, it has authorized the Director of the Administrative Office to submit this question to the Comptroller General with all available material.

(4) *Multiple defendants*. That in cases involving multiple defendants one attorney may be appointed under the Criminal Justice Act to represent two or more of the defendants being charged. However, separate orders of appointment of such attorney should be executed, since there must be a separate finding of financial inability to pay as to each defendant. A single voucher may be submitted by the attorney covering services performed for all defendants; however, if separate vouchers are filed by the attorney as to each defendant, the charges should be prorated among the several defendants so represented.

RELEASE OF COMMITTEE REPORT

Upon recommendation of the Committee, the Conference authorized the immediate release of the Committee's report and re-

requested the Director of the Administrative Office to distribute copies to all members of the Federal judiciary for their information.

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.

PROPOSAL FOR A UNIFIED CORRECTIONAL SERVICE

The Committee presented to the Conference a comprehensive report compiled by Judge William B. Herlands, with respect to a proposal for a unified federal correctional service which would include the Probation Service and which would be organized as a part of the Department of Justice. The Conference instructed the Director of the Administrative Office to distribute copies of the Herlands report to all federal judges for their information as to the work and views of the Probation Committee.

The Conference voted to record its opposition to placing the Probation Service under the jurisdiction and control of the Department of Justice.

The Conference authorized the Chief Justice to refer to an appropriate committee or committees of the Conference for study and report the advisability and feasibility of establishing a unified federal correctional system that would not involve placing the Probation Service under the jurisdiction and control of the prosecuting arm of the Government.

STUDY OF STATE AND FEDERAL SYSTEMS

The Committee reported that it had received a tentative proposal from the Dean of the School of Criminology of the University of California, Dr. Joseph D. Lohman, for a study of the probation system and administration generally in the several States and in the Federal Government. The Committee is making further inquiry concerning the proposed study and will report at a later session of the Conference.

TRANSFER OF JURISDICTION

It had been suggested to the Committee that upon the transfer of jurisdiction of a probationer from one district to another that the transferring court expressly authorize the court to which transfer is made to alter the period of probation without further in-

quiry of the sentencing court. Existing law, 18 U.S.C. 3653, grants plenary power to the transferee district with respect to the probationer, except that the period of probation may not be changed without the consent of the sentencing court. Upon recommendation of the Committee, the Conference authorized the addition of the following language to Probation Form 22 authorizing the transfer of jurisdiction of a probationer together with a footnote to the form indicating that the provision may be deleted by the transferring court:

The Court hereby expressly consents that the period of probation may be changed by the district court to which this transfer is made without further inquiry of this court.

SENTENCING INSTITUTES

On motion of Chief Judge Alfred P. Murrah, the Conference, pursuant to 28 U.S.C. 334, authorizing the convening of an Institute on Sentencing for the judges of the Eighth and Tenth Circuits to be held in Denver, Colo., July 11-13, 1966 in accordance with the plan and program outlined by Judge Murrah.

The Conference was advised that plans were underway for an Institute on Sentencing for the judges of the Second Circuit to be held in the fall of 1966, and that Chief Judge Walter E. Hoffman, a member of the Probation Committee, was exploring the possibility of a joint Sentencing Institute for the judges in the Fourth and Fifth Circuits during the fiscal year 1967.

SUPPORTING PERSONNEL

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

COURT REPORTERS

At the request of Chief Judge Levin the Conference authorized the Committee to reexamine the transcript rates for court reporters established by the Conference at its March 1958 session (Conf. Rept., p. 3). The Administrative Office will undertake a survey of the transcript rates permitted to be charged by reporters in state courts for the use of the Committee and a report will be made to the Conference at a future session.

At the suggestion of Judge Levin, the Conference authorized the appointment of a court reporter for each of the new district judges

to be appointed under the judgeship bill which has passed the Congress and is awaiting the signature of the President. The salary is to be at the rate applicable to other court reporters.

LAW CLERKS

The Conference was informed that difficulties were being encountered by some judges in the selection of law clerks due to their eligibility for military duty and in some instances because of the drafting of law clerks for military duty before they had completed their terms of service as law clerks. The Conference took note of these problems and also of the needs of the Nation for qualified young men to serve in the military service. After full discussion the Conference instructed the Committee to refrain from taking any steps to obtain draft deferments for law clerks.

MESSENGER-LAW CLERKS

Judge Levin reported that the Committee had under consideration a proposal for legislation to permit circuit judges to employ messenger-law clerks, in the same manner as the position of crier-law clerks has been authorized by legislation for district judges. In view of the present request for 33 additional law clerks for the courts of appeals, the Committee has deferred further consideration of this proposal.

SECRETARIES

The Committee reported that it had given full consideration to the proposal to permit higher grades for secretaries to judges and had concluded that it should make no recommendation at this time for increasing the salaries of secretaries. The Committee did recommend, however, that the Conference reaffirm its approval of legislation to bring the retirement benefits of judges' secretaries to the same level as those of secretaries to Members of Congress (Conf. Rept., Sept. 1962, p. 73). This recommendation was approved by the Conference.

DEPUTY CLERKS

Judge Levin reported that the Committee had discussed several problems that have arisen in connection with grades of courtroom deputy clerks and had concluded that a restudy of the classifications of courtroom deputy clerks should be made. The Conference

thereupon authorized the Committee to restudy the classifications assigned to the positions of courtroom clerks under the Judiciary Salary Plan, and, if deemed necessary, to report the results of that study to the Conference at a future meeting.

TRAINING ACT

S. 2345, 89th Congress, would amend the Government Employees' Training Act so as to extend its benefits to officers and employees of the Senate and House of Representatives. It was the view of the Committee that if training programs and benefits are to be made available to legislative employees, similar programs and benefits should be extended to the supporting personnel of the courts. The Conference, thereupon, approved the recommendation of the Committee that supporting personnel of the courts be included in the proposed amendment to the Training Act, or, alternatively, that separate legislation be introduced for that purpose.

PROBATION OFFICERS

The Federal Probation Officers Association had recommended that higher grades be authorized for probation officers in "one-man" districts. It was the view of Committee, however, that the Judiciary Salary Plan at the time of its establishment had made adequate provision for classifying and compensating probation officers in "one-man" districts and that no change should be made in the existing arrangement. The Conference voted to concur in this view.

INTERPRETERS

At the request of Judge Levin the Committee was authorized to consider further the need for an interpreter in the United States District Court for the District of Puerto Rico.

BANKRUPTCY ADMINISTRATION

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 21, 1966, relating to the continuance of referee positions to become vacant by expiration of term, for two new referee positions and for changes in salaries and arrangements for referees. The Com-

mittee also considered the recommendations of the district judges and of the judicial councils of the circuits concerned.

The Conference considered the Committee's report and the recommendations of the Director, the judicial councils of the circuits and the district judges. On the basis of the report and recommendations, the Conference took the following action relating to new referee positions, changes in salaries and arrangements for existing referee positions and the filling of referee positions to become vacant by expiration of term, and directed that, unless otherwise noted, the changes become effective April 1, 1966:

FIRST CIRCUIT

District of Massachusetts

- (1) Authorized the filling of the full-time referee position at Boston, to become vacant by expiration of term on July 14, 1966, on a full-time basis for a term of 6 years, effective July 15, 1966, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

Eastern District of New York

- (1) Authorized the filling of the full-time referee position at Mineola, to become vacant by expiration of term on June 30, 1966, on a full-time basis for a term of 6 years, effective July 1, 1966, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of New York

- (1) Authorized the filling of the full-time referee position at New York City, to become vacant by expiration of term on January 13, 1967, on a full-time basis for a term of 6 years, effective January 14, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Western District of Texas

- (1) Changed the full-time referee position at El Paso from a full-time basis at a salary of \$17,500 per annum to a part-time basis at a salary of \$11,000 per annum, effective March 11, 1966.
- (2) Authorized the filling of this part-time referee position which became vacant upon the retirement of the former referee on February 28, 1966, on a part-time basis for a term of 6 years, effective March 11, 1966.

SIXTH CIRCUIT

Southern District of Ohio

- (1) Authorized the filling of the full-time referee position at Columbus, to become vacant by expiration of term on June 30, 1966, on a full-time basis for a term of 6 years, effective July 1, 1966, at the present

salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Tennessee

- (1) Authorized an additional full-time referee position at Memphis at a salary of \$22,500 per annum.
- (2) Fixed the regular place of office for the new referee at Memphis.
- (3) Established concurrent districtwide jurisdiction for the three full-time referees in this district.

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 July 31, 1966, on a full-time basis for a term of 6 years, effective August 1, 1966, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Changed the regular place of office of the full-time referee at Freeport from Freeport to Dixon.

Southern District of Indiana

- (1) Changed the part-time referee position at Evansville to a full-time basis at a salary of \$22,500 per annum.
- (2) Established concurrent district-wide jurisdiction for the three full-time referees in this district.

Eastern District of Wisconsin

- (1) Authorized an additional full-time referee position at Milwaukee at a salary of \$22,500 per annum.
- (2) Fixed the regular place of office for the new referee at Milwaukee.
- (3) Established concurrent district-wide jurisdiction for the three full-time referees in this district.

NINTH CIRCUIT

Northern District of California

- (1) Authorized the filling of the full-time referee position at San Francisco, to become vacant by expiration of term on May 18, 1966, on a full-time basis for a term of 6 years, effective May 19, 1966, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Washington

- (1) Increased the salary of the full-time referee at Spokane from \$20,000 to \$22,500 per annum.

APPROPRIATIONS

The Conference was informed that appropriation estimates for the operation of the Bankruptcy System during the fiscal year 1967 in the amount of \$11,263,000 had been submitted to the Congress. The appropriation estimates, if approved, will provide funds for the salaries of all referee positions duly authorized, and

funds for 40 additional clerical positions and other services for referees' offices. Hearings on these estimates were held before a subcommittee of the House Appropriations Committee on February 7, 1966. However, it will be necessary to obtain an increase in the appropriations for the salaries of referees in the amount of \$74,000 for the additional referee positions and changes in the salaries for referees above approved.

The Committee reported that receipts into the Referrees Salary and Expense Fund during the fiscal years 1966 and 1967 are expected to equal or exceed the obligations for these two fiscal years and leave a balance of approximately \$11,000,000.

AMENDMENT OF CHAPTER XI

H.R. 293, 89th Congress, would amend Sections 337 and 338 of the Bankruptcy Act (11 U.S.C. 737 and 738), and add a new Section 339 to make clarifying changes with respect to the functions of creditors' committees and the expenses incurred by these committees in the administration of proceedings brought under Chapter XI of the Bankruptcy Act. The proposed new Section 339 would permit payment to unofficial creditors' committees of expenses incurred by attorneys' accountants and agents, retained by them prior to the filing of the petition under Chapter XI in the preparation of a plan that might be acceptable to the creditors, debtor and the court. The Committee reported that the bill, sponsored by the National Bankruptcy Conference, is intended to overcome the decision in *Lane v. Haytian Corp. of Am.* (2nd Cir. 1941), 117 F. 2d 216, holding that the payment of these expenses could not be included in a plan under Chapter XI. Upon recommendation of the Committee, the Conference voted to approve the bill.

OTHER LEGISLATION

Judge Hamlin informed the Conference that the following bills, pending in the 89th Congress, had been referred to a subcommittee of the Committee on Bankruptcy Administration for study and report to the Committee at its next meeting:

- (1) H.R. 11769, 89th Congress, to amend Sections 1(19), 5, 32a, 64a(1) and 67d(4) of the Bankruptcy Act, 11 U.S.C. 1(19), 23(a), 55(a), 104(a)(1), and 107(d)(4) relating to partnerships, and
- (2) H.R. 11965, 89th Congress, an omnibus Chapter XIII bill,

which would make numerous changes in the provisions of the Bankruptcy Act relating to wage earner proceedings under Chapter XIII.

FEES AND SPECIAL CHARGES

It had been brought to the attention of the Committee that the rules for the determination of "Net Proceeds Realized" in computing payments to be made under Section 40c(2) of the Bankruptcy Act, 11 U.S.C. 68(c)(2), have been subject to varying interpretations. The result has been a lack of uniformity in the application of the schedule of fees and charges for the Referees' Salary and Expense Fund previously approved by the Conference. Some bankruptcy courts have been of the view that the entire proceeds of sales free and clear of liens were to be included in computing charges for the Referees' Salary and Expense Fund and commissions of trustees. Other courts have used only the net proceeds over and above liens and mortgages in computing these charges. Upon recommendation of the Committee, the Conference amended Section No. 1 of the rules for determining net proceeds realized in asset cases, promulgated by the Conference at the April 1947 session (Conf. Rept., p. 40), pursuant to Section 40c(2) of the Bankruptcy Act, to read as follows:

1. *Determination of Net Proceeds Realized in Asset Cases.* In determining the amount of net proceeds realized in asset cases for the purpose of Section 40c(2) of the Bankruptcy Act as amended, the term "net proceeds realized in asset cases" shall mean, in the case of sale or liquidation, the amount of money coming into the estate of a bankrupt as assets of such estate *which shall include the entire sale price of encumbered property when sold free and clear of all liens* or, if not sold or liquidated, the fair cash market value of all property coming into the estate as assets of such estate, exclusive of all statutory exemptions whether State or Federal and exclusive of all expenses directly incurred in the operation of the debtor's business after bankruptcy; provided, however, that where property is sold or transferred subject to a valid existing mortgage, lien or other encumbrance, the amount of such mortgage, lien or other encumbrance not affected by such sale shall not be included in determining the amount of net proceeds realized.

The Committee, however, further expressed the view that it is inequitable to require unsecured creditors to bear the full cost of administration in sales free and clear of liens and felt that consideration should be given to legislation to permit their equitable allocation. Accordingly, the Bankruptcy Division of the Adminis-

trative Office has been instructed to study the matter and report to the Committee at its next meeting.

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 asset bankruptcy cases for the determination of errors in the computation of amounts due the Referees' Salary and Expense Fund and overpayments of compensation to receivers and trustees.

The Committee pointed out, however, that there is at present no systematic examination of costs of administration for the 400 or more arrangement proceedings successfully concluded annually under Chapter XI of the Bankruptcy Act. Upon recommendation of the Committee, the Conference authorized the extension of the audit program to include arrangement proceedings concluded under Chapter XI.

MATTERS UNDER ADVISEMENT

Referees in bankruptcy reported a slight increase in the last 6 months in the number of matters held under advisement for longer than 60 days. The list shows, however, that at the time of the reports only 31 of the 208 referees presently in office had any matters held under submission more than 60 days. The Bankruptcy Division of the Administrative Office is continuing to keep the judges and the Committee informed of these matters.

DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Conference was informed that the filing of Chapter XIII cases in the district courts has leveled off at approximately 28,000 cases per year. Last year trustees in Chapter XIII cases reported total collections from debtors of approximately \$33,000,000 and payments to creditors of almost \$26,500,000.

The use of electronic data processing systems by trustees for the distribution of checks and the preparation of reports appears to be gaining. Indications are that eventually economies will be made in this method of record keeping. The Conference was also informed that the guidelines for the administration of Chapter XIII cases, promulgated by the Conference at the September 1963 session (Conf. Rept., p. 87), are now being complied with generally

by the courts. In one metropolitan area, however, the referees continue to use more than one Chapter XIII trustee.

SEMINARS FOR REFEREES

Judge Hamlin informed the Conference that the third seminar for referees in bankruptcy is scheduled to be held in Washington, D.C., during the week of March 28. Altogether, 44 referees have been invited as participants. In addition, two regional seminars of 2 days each have recently been held, one in Los Angeles and the other in Atlanta. Three additional regional seminars are planned and are expected to be held prior to the end of the fiscal year. The regional seminars are being conducted by experienced referees and attendance has been limited to those referees who have attended one of the annual seminars held in Washington, D.C. Reports from these regional seminars indicate that the program thus far has been highly successful.

COURT REPORTING

It had been reported to the Committee that in a number of courts the charges made by freelance reporters in the bankruptcy court are in excess of the established rates prescribed by the Conference for official court reporters for the district courts. The Committee, accordingly, has authorized the Bankruptcy Division of the Administrative Office to communicate with the referees in these districts with a view to reducing these charges to the level of the rates established for the official court reporters.

TRIAL PRACTICE AND TECHNIQUE

Chief Judge Alfred P. Murrah, Chairman of the Committee on Trial Practice and Technique, informed the Conference that, in view of the passage of the new omnibus judgeship bill, the Committee will undertake to formulate plans for a new seminar, or series of seminars, for newly appointed United States district judges. The Committee is also continuing its studies on the efficient utilization of judicial manpower through the use of pretrial procedure and other improved techniques of judicial administration.

SUBCOMMITTEE FOR MULTIPLE LITIGATION

Judge Edwin A. Robson, a member of the Subcommittee Appointed to Consider Discovery Problems Arising in Multiple Litigation with Common Witnesses and Exhibits, presented to the Conference a comprehensive report concerning the progress made in the coordination of the private antitrust suits arising out of the criminal antitrust proceedings in the electrical equipment industry in Philadelphia in 1961. The report showed that as of February 1966 there remained for disposition only 360 cases, involving 3,855 claims for relief, out of the 1,912 suits originally filed, involving 25,714 separate claims. Cases remain for disposition in only 17 of the 36 districts in which they were filed and the subcommittee expects that this litigation will be concluded by the end of the year. The Conference was also informed that the proposal to establish a judicial panel on multidistrict litigation and to permit transfer of such cases for pretrial purposes, approved by the Conference in March 1965 (Conf. Rept., p. 12), had been introduced in the House of Representatives as H.R. 8276, 89th Congress. The report also outlined the action taken by the subcommittee in the so-called "rock salt" and "aluminum cable" antitrust cases and described the study being conducted of court dockets to discover pending multidistrict litigation and to develop methods for its prompt identification.

The Conference discussed the work of the subcommittee and the steps being taken to coordinate discovery matters in multidistrict litigation, other than the electrical equipment cases. After full consideration the Conference voted to approve the concept of the subcommittee's work, as expressed in its report, including the recommendation of appropriate legislation in this field. Chief Judges Chambers, Lumbard, Harper, Madden and Ryan were recorded in opposition to this motion.

EXAMINATION OF COURT OFFICES

On motion of Chief Judge Harper, the Conference authorized the Chief Justice to refer to the appropriate committee of the Conference, for study and report to the Conference, a proposal to place the examination of court offices under the jurisdiction of the Administrative Office of the United States Courts rather than the Department of Justice.

PLACES OF HOLDING COURT IN THE NORTHERN DISTRICT OF CALIFORNIA

The Conference at its March 1965 session (Conf. Rept., p. 5) approved a suggestion to eliminate, as unnecessary, a provision in the pending omnibus judgeship bill requiring judges to reside at certain places of holding court in the Northern District of California. It was pointed out that under existing law, 28 U.S.C. 134(c), the Judicial Council of the Circuit has authority 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 pending judgeship bill with this and other modifications 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."

Chief Judge Chambers informed the Conference that in view of this action by the Conference, which had been relied upon by members of Congress and others, he would take whatever steps were necessary to comply with the Conference recommendation.

PRETERMISSION OF THE TERMS OF COURTS OF APPEALS

At the request of Chief Judge Charles J. Vogel, the Conference, pursuant to 28 U.S.C. 48, consented that terms of the Court of Appeals for the Eighth Circuit at places other than St. Louis be pretermitted during the fiscal year commencing July 1, 1966.

At the request of Chief Judge Clement F. Haynsworth, Jr., the Conference consented to the pretermission of the term of court of the Court of Appeals for the Fourth Circuit scheduled to be held at Asheville, North Carolina in June 1966.

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 18, 1966.

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