

REPORT OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee on Rules of Practice and Procedure has received from the Advisory Committee on Criminal Rules a report of its study of the provisions of Rule 5(a) of the Federal Rules of Criminal Procedure. That report, a copy of which is annexed hereto, recommends that the Judicial Conference disapprove S. 1012, 88th Cong., and similar bills which seek to abrogate the McNabb-Mallory rule. Your Committee approves the report of the Advisory Committee on Criminal Rules and recommends that it be approved and adopted by the Judicial Conference and that the Bureau of the Budget, which has requested the views of the Conference on S. 1012, 88th Cong., be informed of the action of the Conference.

Our Committee has no definitive proposals to present to the Judicial Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal Rules of Criminal Procedure have been widely circulated and are now being considered by the bench and bar. All five of the advisory committees now under appointment are actively engaged in the work to which they have been assigned. Progress reports from each of them are annexed hereto for the information of the Conference.

Respectfully submitted,

August 26, 1963


Chairman

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25. D. C.

ALBERT B. MARIS
CHAIRMAN

AUBREY GASQUE
SECRETARY

July 15, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

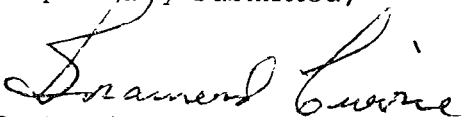
TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

As you know, the Advisory Committee on Admiralty Rules has resolved that unification of the civil and admiralty practices, with certain special rules for distinctively maritime matters, is both feasible and desirable. The plan to implement this resolution has been approved in principle by you and by the Judicial Conference, and the Supreme Court has informally indicated its approval of the principle. The plan has similarly been approved by the responsible committee of the Maritime Law Association of the United States, with whom the Advisory Committee has worked closely. Finally, the plan has been reviewed by the Advisory Committee on Civil Rules with generally favorable results, although a few points of difference have been defined.

The Advisory Committee on Admiralty Rules will meet again in September. At that time, it is hoped, we can take definitive action recommending to you a set of amendments to the Federal Rules of Civil Procedure necessary to effectuate the plan of unification, together with a set of Supplemental Rules governing the distinctively maritime remedies (attachment and garnishment, proceedings in rem, and proceedings for limitation of liability). It is reasonable to hope that at its meeting in October the Advisory Committee on Civil Rules will take definitive action on the proposal. You would then be in position to submit the proposal to the bench and bar generally for criticism.

The proposal will be based on the Civil Rules as of July 1, 1963, including the amendments that became effective on that date.

Respectfully submitted,



Brainerd Currie

Reporter

Advisory Committee on Admiralty Rules

STATEMENT OF THE PROGRESS OF THE WORK OF
THE ADVISORY COMMITTEE ON APPELLATE RULES

June, 1963

To the Chairman and Members of the Standing Committee on
Practice and Procedure of the Judicial Conference of the
United States:

We herewith submit a progress report concerning the present status of our work. Our last such report was submitted a year ago.

We have had two meetings during this past year, the second a three-day meeting May 20-23, 1963. We have scheduled a meeting for August 26th and 27th.

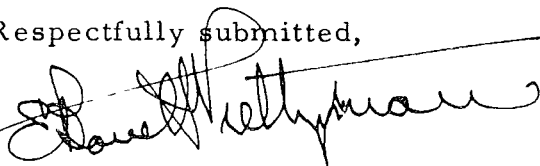
We now have in various stages of development a complete set of proposed rules, beginning with the filing of a notice of appeal. Some of these rules have been approved in final form; some have been approved in first draft; some have been outlined in principle and the principle later reviewed, and in some the principle has merely been determined. We have so arranged our schedule of work that we hope to have by the end of our August meeting a set of appellate rules which will be in such shape as that they can be forwarded to you for your review and circulation to the bar and bench for comment.

This Committee has tried to be careful in those phases of its work which touch upon the work of other Committees and has requested comments in respect to the appellate phases of these other subjects, i.e., admiralty, bankruptcy, etc. As you were advised in our last report, we had attempted to draft a separate rule for review of decisions of the Tax Court. Later developments, however, brought us to the conclusion that this rule should be integrated into the general rules for appellate procedure.

We have been mindful of the request made by your Committee that integrated portions of proposed appellate rules be forwarded to you when and as available, but the rules have not been developed in integrated parts and so we have not been able to follow this program.

In brief, we hope to have before your Committee by November a draft of a complete set of proposed appellate rules.

Respectfully submitted,

A handwritten signature in cursive script, reading "E. Barrett Prettyman". The signature is written in black ink and is positioned above a horizontal line that extends across the width of the signature.

E. Barrett Prettyman, Chairman

July 3rd, 1963

MEMORANDUM

TO: The Honorable Albert B. Maris, Chairman, and the
Members of the Committee on Rules of Practice and
Procedure of the Judicial Conference of the United
States

FROM: Frank R. Kennedy, Reporter for the Advisory Committee
on Bankruptcy Rules

SUBJECT: Progress Report of the Advisory Committee on Bankruptcy
Rules

The Advisory Committee on Bankruptcy Rules is continuing its study of the General Orders and Official Forms in Bankruptcy.

The Committee held two meetings during the fiscal year which ended on June 30, 1963, the first for 3 1/2 days in November and the second for 2 1/2 days in June. At no session of the Committee was more than one member absent, and for a good part of the first meeting all members were present. In addition, Judge Maris and Professor Moore attended most of the sessions of both meetings held during the year. Edwin Covey, who was Chief of the Bankruptcy Division of the Administrative Office of United States Courts until his retirement during the year, attended the first meeting as an advisor to the Committee and the second as a newly appointed member.

In addition, a subcommittee, constituted at the first of these two meetings and consisting of Judge Gignoux and Charles Seligson in addition to the Chairman of the Advisory Committee and the Reporter, met twice for two days each to review matters of form and style of drafts for general orders and official forms previously approved in substance by the Committee.

About ten general orders and thirty official forms appear to be close to final versions after extended consideration by the Advisory Committee. In nearly all cases the revisions are substantial. The process of reaching finality in the drafts of both the general orders and the official forms has proved quite time-consuming. Submission of issues to committee vote by mailed ballots has been utilized where feasible and will continue so to be used, but it has frequently been found necessary during meetings to reconsider matters once supposedly settled by mailed ballots.

The general orders and official forms are promulgated by the Supreme Court pursuant to section 30 of the Bankruptcy Act rather than under the Judicial Code. In carrying out the responsibility assigned it by this section, the Supreme Court has prescribed over sixty forms, many of them quite detailed. Undoubtedly one reason for their specificity is that they were prepared in

contemplation of use by laymen. Unlike the forms accompanying the Civil and Criminal Rules, the Official Forms in Bankruptcy are not merely illustrative; rather, as General Order 38 says, they "shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case."

The Advisory Committee expects to reduce the number of the forms and the detail of those retained. It is considering the feasibility of recommending that some of the forms be issued by or with the approval of the Judicial Conference as illustrations rather than as official forms prescribed by the Supreme Court. Nevertheless, the Committee has necessarily been concerned with a great many particulars of bankruptcy practice in working toward its objective in revising the general orders and forms, many of which have come through without substantial change since 1867.

The Advisory Committee has tentatively set November 20-22, 1963, as the dates for its next meeting, with April of 1964 as the most likely time for a second meeting during the present fiscal year. It is hoped that finishing touches can be put on the ten general orders and thirty official forms earlier referred to and that substantial progress can be made on the considerable number of proposals affecting other orders and forms. The agenda will also include several proposals for new general orders and official

forms. Some of these proposals arise out of recent changes in the Bankruptcy Act, including the Omnibus Act of 1962 and two amendments already enacted in 1963. The Committee does not regard any changes sufficiently pressing, however, to warrant submission of its proposals for consideration by the bench and bar prior to the completion of its study of all the general orders and official forms and the proposals it has received.

Mention should perhaps again be made of the possible enactment by Congress of the proposed amendment of 28 U.S.C. to confer rule-making power on the Supreme Court for proceedings under the Bankruptcy Act comparable to that conferred by sections 2072 and 2073 respecting general civil and admiralty practice. Section 30 of the Bankruptcy Act would be repealed at the same time. The proposal, embodied in H. 2859, passed the House by voice vote on April 22, 1963. If enacted, this measure would substantially revise the frame of reference for the Advisory Committee by freeing it from the obligation to keep all bankruptcy rules and forms it proposes consistent with the Bankruptcy Act. While some of the general orders and official forms would not be significantly affected by enactment of the proposed legislation, some would surely be recast in their entirety. The

Committee is not waiting for Congress to act on this proposal, however. It has much yet to do within existing limitations to bring the general orders and official forms in bankruptcy up to date and to carry out its responsibility to recommend changes in the interest of promoting simplicity of procedure, fairness in administration, just determination of litigation, and elimination of unjustifiable expense and delay.

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

Since July 18, 1962, the date of the last report to the standing Committee, the following has been accomplished or projected.

1. Amendments of the Civil Rules effective July 1, 1963.

In its report of July 18, 1962, the Civil Committee recommended adoption of a set of amendments as revised and supplemented following public circulation of a "Preliminary Draft" in October 1961. At a meeting in San Francisco on August 13-14, 1962, the standing Committee approved the amendments subject to certain changes. Having been recommended by the standing Committee to the Judicial Conference, and by the Conference to the Court, the amendments were adopted by the Court by Order of January 21, 1963, and transmitted to Congress on that day. They became effective on July 1, 1963, affecting twenty-three Rules and various Official Forms.

2. Projected amendments of the Civil Rules bearing on joinder of parties and claims and on other matters. As previously reported, the Civil Committee undertook consideration of joinder of parties (and related joinder of claims) at its meeting on May 28-29, 1962. Revised and amplified drafts were thereafter prepared, considered in intra-Committee correspondence, and discussed at a Committee meeting on February 21-23, 1963. The amendments have now undergone further revision and will be resubmitted to the Committee at its next meeting scheduled for October 31-November 2, 1963. The Committee will also consider a number of draft amendments on miscellaneous topics developed during the same period.

3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (i) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and in revised form it constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

Proceeding concurrently with the field work is a traditional analysis by the Associate Reporter of the Civil Rules, local rules, State statutes and rules, court decisions, and secondary writings on discovery. It is proposed that the initial presentation at the October meeting relate to possible Rules changes that can be wholly or largely appraised without regard to the field investigation. A second presentation will be necessary at a Spring 1964 meeting to take account of the work of the Columbia Project.

4. Unification of Admiralty and Civil Rules. The Reporters for the Admiralty and Civil Committees have worked cooperatively on the changes in the Civil Rules which will be needed to effect unification. Part of the February meeting of the Civil Committee was given over to a consideration of the views of the Admiralty Committee as presented by its Reporter. It is hoped that the remaining problems will be settled to mutual satisfaction at the next meetings of the respective Committees.

5. American Law Institute's Study of Jurisdiction. Recognizing that the Study of the Division of Jurisdiction between State and Federal Courts, undertaken by the ALI at the suggestion of the Chief Justice, is related at various points to the work of the Civil Committee and the Judicial Conference, the Reporters for the Study and the Committee recently met with Judge Maris and had a useful preliminary discussion of methods of procedure.

Benjamin Kaplan
Reporter

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARSH
CHAIRMAN

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APPELLATE RULES

Report on Work of Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules is presently engaged in receiving and analyzing comments on the Preliminary Draft which was circulated in December, 1962. We are planning to meet in October, 1963, to give preliminary consideration to a redraft of the matters covered in the Preliminary Draft. A final draft will be prepared after all comments are in. It is hoped that this draft can be acted on by the Advisory Committee in January, 1964, and presented to the standing Committee in February, 1964.

The Advisory Committee is also working on proposed amendments in addition to those contained in the Preliminary Draft. It is hoped that these additional proposals can be ready for circulation to the bench and bar for comment after the meeting in January, 1964.

June 3, 1963

Edward L. Barrett, Jr.
Reporter

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES
OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of Rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the Committee on these problems is as follows:

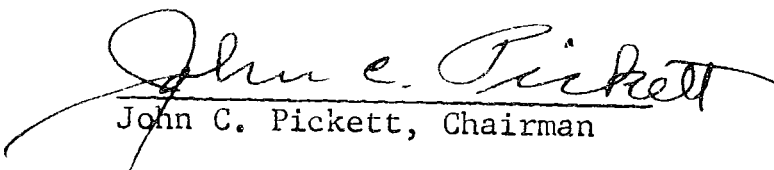
(1) The Committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as McNabb v. United States, 318 U.S. 332 (1943) and Mallory v. United States, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by Rule 5(a) are excluded from evidence.

(2) The Committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various federal districts.

(3) The Committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the Committee has felt that special rules for the District should not be incorporated in the Rules of Criminal Procedure. The Committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the Committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the McNabb-Mallory rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted:


John C. Pickett, Chairman

July 2, 1963

*La. Sup. Committee
file - re
Sept. 1963 Conf.*

August 26, 1963

Mr. Frank H. Schmid
Clerk, United States Court of Appeals
San Francisco 1, California 94101

Dear Mr. Schmid:

Thank you for your letter of August 22 listing the action taken by the Ninth Circuit Judicial Conference at its meeting June 27 and 28, 1963.

Copies of the resolutions addressed to the Judicial Conference of the United States are being sent to each member.

Copies of the resolutions relating to amendments to the Bankruptcy Act and Rule changes are being sent to Judge Albert B. Maris, Chairman of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Judge Phillip Forman, Chairman of the Advisory Committee on Bankruptcy Rules, and to Professor Frank R. Kennedy, Reporter for the last named Committee.

Copies of your report on the action taken by the Ninth Circuit Conference concerning the proposals to amend the Federal Rules of Criminal Procedure are being sent to Judge Maris, Chairman of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference, Judge John C. Pickett, Chairman of the Advisory Committee on Criminal Rules, and to Professor Edward L. Barrett, Reporter for the Committee.

WO:ed
Records
Chrono
Mr. Olney
Mr. Shafroth

Sincerely yours,
Warren Olney III
Warren Olney III,
Director.

August 26, 1963

Mr. Frank H. Schmid
Clerk, United States Court of Appeals
San Francisco 1, California 94101

Dear Mr. Schmid:

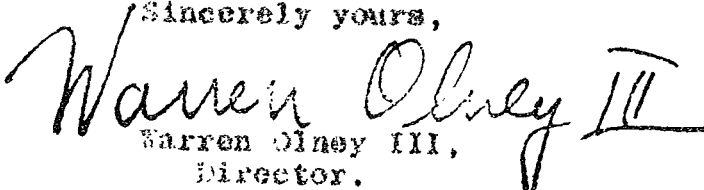
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Sincerely yours,


Warren Olney III,
Director.

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Chrono
Mr. Olney
Mr. Shafroth

Office of the Clerk

U. S. Court of Appeals
For the Ninth Circuit

San Francisco 1, California 94101

August 22, 1963

Hon. Warren Olney, Director
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mr. Olney:

As Secretary of the Judicial Conference for the Ninth Circuit, may I transmit to you herewith the following resolutions, adopted by the Ninth Circuit Judicial Conference at Santa Barbara, California, on June 27 and 28, 1963:

1. News photography of naturalization and ceremonial courtroom judicial matters.
2. For enactment by Congress of amendments to the Bankruptcy Act, and requiring referee to give notice to creditors of dismissal for costs, and of any waiver or denial of a discharge in the proceedings.
3. Recommendation to the Judicial Conference of the United States that it recommend to Congress and sponsor legislation amending Paragraph 1 of Section 1 of Title 18 of the U. S. Code.
4. Resolution respecting fee schedule and salaries paid to U. S. Commissioners, etc.
5. Action taken by the Conference on proposed amendments to the Federal Rules of Criminal Procedure.
6. Resolution regarding the use of temporary court reporters in cases of illness of the regular court reporter, etc.
7. Resolution disapproving Senate Bill No. 1367, now pending in the 88th Congress.
8. Resolution disapproving H.R. 2841 and S. 979, now pending in the 88th Congress.

Handwritten initials

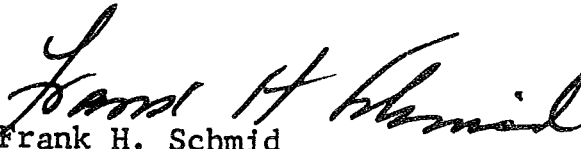
Hon. Warren Olney

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August 22, 1963

May I request that the Advisory Committee on the Federal Rules of Criminal Procedure, and of the Rules in Bankruptcy, be furnished with a copy of these enclosures respecting such matters.

Sincerely,


Frank H. Schmid
Clerk

FHS:sm

Enclosures

August 27, 1963

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND THE
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

The Judicial Conference of the Ninth Circuit at its meeting held June 27 and 28, 1963 passed a number of resolutions addressed to the Judicial Conference of the United States. Copies of these resolutions have been forwarded to this office by Mr. Frank H. Schmid, Secretary of the Conference and Clerk of the Court of Appeals. Copies of the resolutions are transmitted herewith that relate to the following matters:

- (1) Courtroom photography for naturalization and ceremonial matters.
- (2) Amendments to the Bankruptcy Act.
- (3) Amendment of Paragraph 1 of Section 1 of Title 18 of the United States Code.
- (4) United States Commissioners.
- (5) Hiring of temporary court reporters and allowance of sick leave to court reporters.
- (6) Disapproval of Senate Bill No. 1367 - A Bill to provide for improved administrative practices and procedures in the United States courts, and for other purposes.
- (7) Disapproval of H.R. 2841 and S. 979 - Bills to amend section 332 of title 28, United States Code, to provide for the inclusion of a district judge or judges on the judicial council of each circuit.

Sincerely yours,

Warren Olney III,
Director.

RESOLUTION OF THE
JUDICIAL CONFERENCE OF THE NINTH CIRCUIT
(RE: COURTROOM PHOTOGRAPHY FOR NATURALIZATION AND CEREMONIAL MATTERS)

The following resolution was duly made, recorded and adopted by the Judicial Conference of the Ninth Circuit at its 1963 meeting held at Santa Barbara, California, on June 27, 1963.

Whereas, it has been long established that good custom and practice in the distribution of certain public news media concerning photography in connection with naturalization and ceremonial matters is essential to the

integrity of the judicial process and to prevent continued abuses in such matters, and Whereas, the Judicial Conference of the United States adopted the following resolution:

Resolved, that the Judicial Conference of the United States hereby disallows the taking of photographs in the courtroom or its environs in connection with any **judicial** proceedings and **the** broadcasting of judicial proceedings by radio, television and other means and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court. And,

Whereas, it is believed that public good derives from continuation of a controlled and decorous custom and practice of naturalization and ceremonial courtroom photography.

Now, therefore, be it resolved by the conference that the Judicial Conference of the United States be requested

to relax the universal thrust of the aforesaid resolution by excluding from the condemning spirit of the resolution news media courtroom photography or telecasting of naturalization or ceremonial judicial matters had in accordance with local rule of court.

I, Frank H. Schmid, as Clerk of the United States Court of Appeals for the Ninth Circuit, and as secretary of the Judicial Conference of said Ninth Circuit, do hereby certify that the foregoing resolution was regularly made, seconded and adopted at the annual Conference of said Judicial Conference held at Santa Barbara on June 27 and 28, 1963.

Frank H. Schmid

RESOLUTION OF THE
JUDICIAL CONFERENCE OF THE NINTH CIRCUIT
(RE: AMENDMENT OF PAR. 1 OF SECTION 1 OF TITLE 18 OF U.S.CODE)

The following resolution was duly made, seconded and adopted by the Judicial Conference of the Ninth Circuit at its 1963 meeting, held at Santa Barbara, California, on June 27 and 28:

Resolved that the Judicial Conference of the Ninth Circuit recommends to the Judicial Conference of the United States that it again recommend to the Congress of the United States and sponsor legislation amending Paragraph 1 of Section 1 of Title 18 of the United States Code to read substantially as follows:

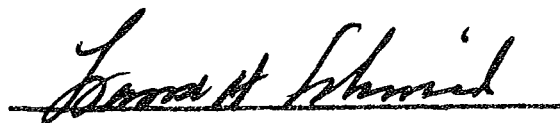
" § 1. Offenses Classified

Notwithstanding any Act of Congress to the contrary,

(1) Any offense punishable by death or imprisonment for a term exceeding one 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 one 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."

I, Frank H. Schmid, as Clerk of the United States Court of Appeals for the Ninth Circuit, and as secretary of the Judicial Conference of said Ninth Circuit, do hereby certify that the foregoing resolution was regularly made, seconded and adopted at the annual Conference of said Judicial Conference held at Santa Barbara on June 27 and 28, 1963.

A handwritten signature in cursive script, reading "Frank H. Schmid", is written over a horizontal line.

RESOLUTION OF THE
 JUDICIAL CONFERENCE OF THE NINTH CIRCUIT
 (RE: U. S. COMMISSIONERS)

The following resolutions were duly made, seconded and adopted by the Judicial Conference of the Ninth Circuit at its 1963 meeting, held at Santa Barbara, California, on June 27 and 28:

1. Resolved that the fee schedule in 28 U.S.C. 633 be increased as herein recommended:

	<u>Present</u>	<u>Recommended</u>
Complaints	\$ 4.00	\$ 12.00
Hearings	14.00 for first twenty-five cases	17.50
	9.00 for next twenty-five cases	15.00
	8.00 for next fifty cases	12.50
	2.00 for all other cases	8.00
Bail	4.00	6.00
Search Warrants	6.00	10.00
Poor Convicts	6.00	10.00
References	8.00 per day	20.00
Petty Offenses	16.00 for first twenty-five cases	25.00
	12.00 for all other cases	20.00

2. Resolved that the maximum annual compensation be increased from \$10,500.00 to the maximum paid to a full time Referee in Bankruptcy, which is now \$15,000.00 as provided in 11 U.S.C. 68. In this respect it is the intention to maintain the maximum compensation of a Commissioner on a parity with the maximum compensation for a Referee in Bankruptcy.

3. Resolved that a department, division or section be established in the Administrative Office to assist commissioners, and to keep the commissioners and the Courts advised and informed on the problems, practices and procedures of commissioners, and, further, that the Commissioner's Manual be revised, brought up to date, and kept up to date.

4. Resolved that a new system of appointment, classification and compensation of United States Commissioners be created similar to the present system for the appointment, classification and compensation for Referees in Bankruptcy.

I, Frank H. Schmid, as Clerk of the United States Court of Appeals for the Ninth Circuit, and as secretary of the Judicial Conference of said Ninth Circuit, do hereby certify that the foregoing resolutions were regularly made, seconded and adopted at the annual Conference of said Judicial Conference held at Santa Barbara on June 27 and 28, 1963.

Frank H. Schmid

RESOLUTION OF THE
JUDICIAL CONFERENCE OF THE NINTH CIRCUIT
(RE: HIRING OF TEMPORARY COURT REPORTERS AND ALLOWANCE OF SICK
LEAVE TO REPORTERS)

The following resolution was duly made, seconded and adopted by the Judicial Conference of the Ninth Circuit at its 1963 meeting, held at Santa Barbara, California, on June 27 and 28:

Whereas, by the terms of 28 U.S.C. 753 the number of court reporters for each district is left by Congress for determination by the Judicial Conference of the United States; and,

Whereas, the Judicial Conference generally authorizes one reporter for each judge; and,

Whereas, the terms of 28 U.S.C. 753 contemplate the appointment of reporters in addition to the regular court reporters for a temporary period when it is impracticable to obtain the previous approval of the Judicial Conference, in the following language: Each such court with the approval of the Director of the Administrative Office of the United States Courts may appoint additional reporters for temporary service not exceeding three months when there is more reporting work in the district than can be performed properly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference; and,

Whereas, the Judicial Conference of the United States meets but twice each year, usually in March and September; and,

Whereas, the Administrative Office of the United States Courts until recently followed the policy set down by Bulletin No. 320, dated January 28, 1947, addressed to all court reporters of the United States District Courts, which stated in pertinent part as follows:

"Annual and Sick Leave. The Attorney General held (opinion cited) that court reporters ^{being} subject to call of the court when their services are needed are part-time employees and that therefore the annual and sick leave laws and regulations are not applicable to them. The effect of this decision is to preclude payment to a regular reporter for terminal annual leave upon his separation from the service, but it is not considered to prevent the court in which a court reporter is employed from permitting the reporter to be absent from duty for reasonable periods because of illness or for other good reasons without reduction in pay during the time the employment is in force."

and,

Whereas, the present Director of the Administrative Office without any advance notice countermanding said Bulletin No. 320 or said policy is disallowing pay for temporary court reporters when the regular reporter is taken so ill as to be unable to physically perform any of the duties of a court reporter on the ground that the regular reporter in such instance must pay for a substitute; and,

Whereas, it is difficult to secure court reporters in the United States District Courts in the various districts in the Ninth Circuit because of the usually higher pay for competing positions in the state and local government, which is particularly so in metropolitan centers in this circuit; and,

Whereas, the matter of compensation of a substitute court reporter when a regular court reporter is ill and the need for a court reporter in order to proceed with judicial business is a matter of serious concern to the court, to the litigants, lawyers, witnesses, jurors and others,

Now, therefore, it is hereby resolved by the Judicial Conference of the Ninth Circuit that the Judicial Conference of the United States be, and it is hereby requested, to lay down as a matter of policy that it authorizes and approves the payment of and directs the Administrative Office of the United States Courts^{to} pay the current local per diem rate to temporary court reporters from time to time substituting for a regular court reporter for not to exceed 26 days in each fiscal year upon the certification by a judge of the United States District Court involved, that such reporter was or is unable to properly perform his duties because of illness and that the services of a court reporter were needed for the proper and prompt transaction of judicial business on particular specified dates.

I, Frank H. Schmid, as Clerk of the United States Court of Appeals for the Ninth Circuit, and as secretary of the Judicial Conference of said Ninth Circuit, do hereby certify that the foregoing resolution was regularly made, seconded and adopted at the annual Conference of said Judicial Conference held at Santa Barbara on June 27 and 28, 1963.



RESOLUTION OF THE
JUDICIAL CONFERENCE OF THE NINTH CIRCUIT
(RE: DISAPPROVAL OF SENATE BILL NO. 1367)

The following resolution was duly made, seconded and adopted by the Judicial Conference of the Ninth Circuit at its 1963 meeting, held at Santa Barbara, California, on June 27 and 28:

Resolved that the Judicial Conference of the Ninth Circuit unanimously disapproves Senate Bill No. 1367, now pending in the 88th Congress. The Clerk of the Conference is instructed to advise the Judiciary Committees of the United States Congress of the action of the Conference.

I, Frank H. Schmid, as Clerk of the United States Court of Appeals for the Ninth Circuit, and as secretary of the Judicial Conference of said Ninth Circuit, do hereby certify that the foregoing resolution was regularly made, seconded and adopted at the annual Conference of said Judicial Conference held at Santa Barbara on June 27 and 28, 1963.

Frank H. Schmid

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25. D. C.

ALBERT B. MARIS
CHAIRMAN

July 15, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

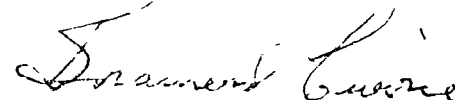
TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

As you know, the Advisory Committee on Admiralty Rules has resolved that unification of the civil and admiralty practices, with certain special rules for distinctively maritime matters, is both feasible and desirable. The plan to implement this resolution has been approved in principle by you and by the Judicial Conference, and the Supreme Court has informally indicated its approval of the principle. The plan has similarly been approved by the responsible committee of the Maritime Law Association of the United States, with whom the Advisory Committee has worked closely. Finally, the plan has been reviewed by the Advisory Committee on Civil Rules with generally favorable results, although a few points of difference have been defined.

The Advisory Committee on Admiralty Rules will meet again in September. At that time, it is hoped, we can take definitive action recommending to you a set of amendments to the Federal Rules of Civil Procedure necessary to effectuate the plan of unification, together with a set of Supplemental Rules governing the distinctively maritime remedies (attachment and garnishment, proceedings in rem, and proceedings for limitation of liability). It is reasonable to hope that at its meeting in October the Advisory Committee on Civil Rules will take definitive action on the proposal. You would then be in position to submit the proposal to the bench and bar generally for criticism.

The proposal will be based on the Civil Rules as of July 1, 1963, including the amendments that became effective on that date.

Respectfully submitted,



Brainerd Currie

Reporter

Advisory Committee on Admiralty Rules

STATEMENT OF THE PROGRESS OF THE WORK OF
THE ADVISORY COMMITTEE ON APPELLATE RULES

June, 1963

To the Chairman and Members of the Standing Committee on
Practice and Procedure of the Judicial Conference of the
United States:

We herewith submit a progress report concerning the present status of our work. Our last such report was submitted a year ago.

We have had two meetings during this past year, the second a three-day meeting May 20-23, 1963. We have scheduled a meeting for August 26th and 27th.

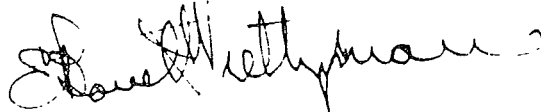
We now have in various stages of development a complete set of proposed rules, beginning with the filing of a notice of appeal. Some of these rules have been approved in final form; some have been approved in first draft; some have been outlined in principle and the principle later reviewed, and in some the principle has merely been determined. We have so arranged our schedule of work that we hope to have by the end of our August meeting a set of appellate rules which will be in such shape as that they can be forwarded to you for your review and circulation to the bar and bench for comment.

This Committee has tried to be careful in those phases of its work which touch upon the work of other Committees and has requested comments in respect to the appellate phases of these other subjects, i.e., admiralty, bankruptcy, etc. As you were advised in our last report, we had attempted to draft a separate rule for review of decisions of the Tax Court. Later developments, however, brought us to the conclusion that this rule should be integrated into the general rules for appellate procedure.

We have been mindful of the request made by your Committee that integrated portions of proposed appellate rules be forwarded to you when and as available, but the rules have not been developed in integrated parts and so we have not been able to follow this program.

In brief, we hope to have before your Committee by November a draft of a complete set of proposed appellate rules.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "E. Barrett Prettyman".

E. Barrett Prettyman, Chairman

July 3rd, 1963

MEMORANDUM

TO: The Honorable Albert B. Maris, Chairman, and the Members of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States

FROM: Frank R. Kennedy, Reporter for the Advisory Committee on Bankruptcy Rules

SUBJECT: Progress Report of the Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules is continuing its study of the General Orders and Official Forms in Bankruptcy.

The Committee held two meetings during the fiscal year which ended on June 30, 1963, the first for 3 1/2 days in November and the second for 2 1/2 days in June. At no session of the Committee was more than one member absent, and for a good part of the first meeting all members were present. In addition, Judge Maris and Professor Moore attended most of the sessions of both meetings held during the year. Edwin Covey, who was Chief of the Bankruptcy Division of the Administrative Office of United States Courts until his retirement during the year, attended the first meeting as an advisor to the Committee and the second as a newly appointed member.

In addition, a subcommittee, constituted at the first of these two meetings and consisting of Judge Gignoux and Charles Seligson in addition to the Chairman of the Advisory Committee and the Reporter, met twice for two days each to review matters of form and style of drafts for general orders and official forms previously approved in substance by the Committee.

About ten general orders and thirty official forms appear to be close to final versions after extended consideration by the Advisory Committee. In nearly all cases the revisions are substantial. The process of reaching finality in the drafts of both the general orders and the official forms has proved quite time-consuming. Submission of issues to committee vote by mailed ballots has been utilized where feasible and will continue so to be used, but it has frequently been found necessary during meetings to reconsider matters once supposedly settled by mailed ballots.

The general orders and official forms are promulgated by the Supreme Court pursuant to section 30 of the Bankruptcy Act rather than under the Judicial Code. In carrying out the responsibility assigned it by this section, the Supreme Court has prescribed over sixty forms, many of them quite detailed. Undoubtedly one reason for their specificity is that they were prepared in

contemplation of use by laymen. Unlike the forms accompanying the Civil and Criminal Rules, the Official Forms in Bankruptcy are not merely illustrative; rather, as General Order 38 says, they "shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case."

The Advisory Committee expects to reduce the number of the forms and the detail of those retained. It is considering the feasibility of recommending that some of the forms be issued by or with the approval of the Judicial Conference as illustrations rather than as official forms prescribed by the Supreme Court. Nevertheless, the Committee has necessarily been concerned with a great many particulars of bankruptcy practice in working toward its objective in revising the general orders and forms, many of which have come through without substantial change since 1867.

The Advisory Committee has tentatively set November 20-22, 1963, as the dates for its next meeting, with April of 1964 as the most likely time for a second meeting during the present fiscal year. It is hoped that finishing touches can be put on the ten general orders and thirty official forms earlier referred to and that substantial progress can be made on the considerable number of proposals affecting other orders and forms. The agenda will also include several proposals for new general orders and official

forms. Some of these proposals arise out of recent changes in the Bankruptcy Act, including the Omnibus Act of 1962 and two amendments already enacted in 1963. The Committee does not regard any changes sufficiently pressing, however, to warrant submission of its proposals for consideration by the bench and bar prior to the completion of its study of all the general orders and official forms and the proposals it has received.

Mention should perhaps again be made of the possible enactment by Congress of the proposed amendment of 28 U.S.C. to confer rule-making power on the Supreme Court for proceedings under the Bankruptcy Act comparable to that conferred by sections 2072 and 2073 respecting general civil and admiralty practice. Section 30 of the Bankruptcy Act would be repealed at the same time. The proposal, embodied in H. 2859, passed the House by voice vote on April 22, 1963. If enacted, this measure would substantially revise the frame of reference for the Advisory Committee by freeing it from the obligation to keep all bankruptcy rules and forms it proposes consistent with the Bankruptcy Act. While some of the general orders and official forms would not be significantly affected by enactment of the proposed legislation, some would surely be recast in their entirety. The

Committee is not waiting for Congress to act on this proposal, however. It has much yet to do within existing limitations to bring the general orders and official forms in bankruptcy up to date and to carry out its responsibility to recommend changes in the interest of promoting simplicity of procedure, fairness in administration, just determination of litigation, and elimination of unjustifiable expense and delay.

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

Since July 18, 1962, the date of the last report to the standing Committee, the following has been accomplished or projected.

1. Amendments of the Civil Rules effective July 1, 1963.

In its report of July 18, 1962, the Civil Committee recommended adoption of a set of amendments as revised and supplemented following public circulation of a "Preliminary Draft" in October 1961. At a meeting in San Francisco on August 12-14, 1962, the standing Committee approved the amendments subject to certain changes. Having been recommended by the standing Committee to the Judicial Conference, and by the Conference to the Court, the amendments were adopted by the Court by Order of January 21, 1963, and transmitted to Congress on that day. They became effective on July 1, 1963, affecting twenty-three Rules and various Official Forms.

2. Projected amendments of the Civil Rules bearing on joinder of parties and claims and on other matters. As previously reported, the Civil Committee undertook consideration of joinder of parties (and related joinder of claims) at its meeting on May 28-29, 1962. Revised and amplified drafts were thereafter prepared, considered in intra-Committee correspondence, and discussed at a Committee meeting on February 21-23, 1963. The amendments have now undergone further revision and will be resubmitted to the Committee at its next meeting scheduled for October 31-November 2, 1963. The Committee will also consider a number of draft amendments on miscellaneous topics developed during the same period.

3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (i) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and its revised form constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

Proceeding concurrently with the field work is a traditional analysis by the Associate Reporter of the Civil Rules, local rules, State statutes and rules, court decisions, and secondary writings on discovery. It is proposed that the initial presentation at the October meeting relate to possible Rules changes that can be wholly or largely appraised without regard to the field investigation. A second presentation will be necessary at a Spring 1964 meeting to take account of the work of the Columbia Project.

4. Unification of Admiralty and Civil Rules. The Reporters for the Admiralty and Civil Committees have worked cooperatively on the changes in the Civil Rules which will be needed to effect unification. Part of the February meeting of the Civil Committee was given over to a consideration of the views of the Admiralty Committee as presented by its Reporter. It is hoped that the remaining problems will be settled to mutual satisfaction at the next meetings of the respective Committees.

5. American Law Institute's Study of Jurisdiction. Recognizing that the Study of the Division of Jurisdiction between State and Federal Courts, undertaken by the ALI at the suggestion of the Chief Justice, is related at various points to the work of the Civil Committee and the Judicial Conference, the Reporters for the Study and the Committee recently met with Judge Maris and had a useful preliminary discussion of methods of procedure.

Benjamin Kaplan
Reporter

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARIS
CHAIRMAN

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

Report on Work of Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules is presently engaged in receiving and analyzing comments on the Preliminary Draft which was circulated in December, 1962. We are planning to meet in October, 1963, to give preliminary consideration to a redraft of the matters covered in the Preliminary Draft. A final draft will be prepared after all comments are in. It is hoped that this draft can be acted on by the Advisory Committee in January, 1964, and presented to the standing Committee in February, 1964.

The Advisory Committee is also working on proposed amendments in addition to those contained in the Preliminary Draft. It is hoped that these additional proposals can be ready for circulation to the bench and bar for comment after the meeting in January, 1964.

June 3, 1963

Edward L. Barrett, Jr.
Reporter

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES
OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of Rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the Committee on these problems is as follows:

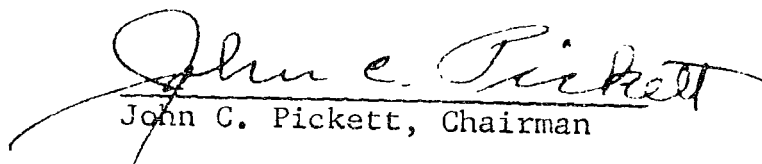
(1) The Committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as McNabb v. United States, 318 U.S. 332 (1943) and Mallory v. United States, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by Rule 5(a) are excluded from evidence.

(2) The Committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various federal districts.

(3) The Committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the Committee has felt that special rules for the District should not be incorporated in the Rules of Criminal Procedure. The Committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the Committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the McNabb-Mallory rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted:


John C. Pickett, Chairman

July 2, 1963

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARIS
CHAIRMAN

AUBREY GASQUE
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

2070 U.S. Courthouse
Philadelphia 7, Pa.
July 19, 1963

Mrs. Constance R. Green
Administrative Office of the U.S. Courts
Supreme Court Building
Washington 25, D.C.

Dear Connie:

I enclose Professor Currie's formal report for the Advisory Committee on Admiralty Rules to be duplicated and held with the others, also a special report of the Advisory Committee on Criminal Rules of its study of Criminal Rule 5(a). This latter report should also be duplicated since I will be submitting it to the standing committee for its approval and transmission to the Judicial Conference.

I think that we will probably annex all of these summary and special reports to the report of the standing committee to the Judicial Conference in September. It will, therefore, be appropriate to make enough copies now for that purpose.

Sincerely yours,

Albert B. Maris

Chicago
July 11th

Dear Connie

Please duplicate the enclosed
and hold for later distribution to
the standing committee with the
other reports.

Yours

ABM

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARIS
CHAIRMAN

AUBREY GASQUE
SECRETARY

June 4th, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

The Honorable Albert B. Maris, Chairman
Committee on Rules of Practice and
Procedure
Supreme Court Building
Washington 25, D. C.

Dear Judge Maris:

I enclose a statement of the status of the work
of the Advisory Committee on Appellate Rules in ac-
cordance with your request.

Sincerely Yours,



Bernard J. Ward
Reporter
Appellate Rules Committee

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

**STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES**

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3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (1) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and in revised form it constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

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Benjamin Kaplan
Reporter

July 23, 1963

Dear Judge Maris:

Here is a copy of Professor Kaplan's report.
We'll await your letters to the standing Committee
before sending the whole batch out.

Connie

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

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Benjamin Kaplan
Reporter

July 24, 1963

Honorable Albert B. Maris
Senior U. S. Circuit Judge
2070 United States Courthouse
Philadelphia 7, Pennsylvania

Dear Judge Maris:

The Bureau of the Budget has requested the views of the Judicial Conference on the enclosed report of the Department of Justice on S. 1012, to make voluntary admissions and confessions admissible in criminal proceedings and prosecutions in the courts of the United States and the District of Columbia. They have requested our report within 30 days.

Sincerely,

Connie Green

June 1963

Materials on standing Committee on Rules of Practice and Procedure

1. House and Senate Reports on H. R. 10154, 85th Congress.
2. Public Law 85-513.
3. Resolution of Judicial Conference, September 1958 session, as to the implementation of P. L. 85-513.
4. March 1960 Judicial Conference Report, p. 422, containing announcement by Chief Justice of organization of Committees.
5. Press Release, November 1960.
6.
 - a. September 1960 Conference Report, p. 33.
 - b. Committee Report to Conference, September 1960.
 - c. Minutes of December 1959 and August 1960 Committee meetings.
7.
 - a. March 1961 Conference Report, p. 24.
 - b. Committee Report to Conference, March 1961.
 - c. Minutes of February 1961 Committee meeting.
8. September 1961 Conference Report, p. 76. (No meeting of Committee prior to this session of the Conference, and no written Report to the Conference.)
9. March 1962 Conference Report, p. 13. (No meeting of Committee prior to this session of the Conference, and no written Report to the Conference.)
10.
 - a. September 1962 Conference Report, p. 40.
 - b. Committee Report to Conference, September 1962.
 - c. Minutes of August 1962 Committee meeting.
11.
 - a. March 1963 Conference Report, p. 19.
 - b. Committee Report to Conference, March 1963.
 - c. Minutes of February 1963 Committee meeting.
12. Matters Referred to Committee on Rules of Practice and Procedure by the Judicial Conference of the United States, 1956-1959."

June 1963

Materials on standing Committee on Rules of Practice and Procedure

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2. Public Law 85-513.
3. Resolution of Judicial Conference, September 1958 session, as to the implementation of P. L. 85-513.
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 - b. Committee Report to Conference, March 1963.
 - c. Minutes of February 1963 Committee meeting.
12. Matters Referred to Committee on Rules of Practice and Procedure by the Judicial Conference of the United States, 1958-1959."

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25, D. C.

ALBERT B. MARIS
CHAIRMAN

March 19, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

TO THE CHAIRMAN AND MEMBERS OF THE STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE:

TO THE CHAIRMEN AND MEMBERS OF THE ADVISORY COMMITTEES:

The Supreme Court of the United States yesterday adopted an Order fixing July 1, 1963, as the effective date of the amendments to the Federal Rules of Civil Procedure adopted by the Court and reported to Congress on January 21, 1963. A copy of the Order of the Supreme Court is enclosed.

Sincerely yours,



Will Shafroth
Secretary

Enclosure

SUPREME COURT ORDER ADOPTED MARCH 18, 1963

Ordered (1) That paragraph (e) of Rule 86 of the Rules of Civil Procedure, as adopted January 21, 1963, is amended to read as follows:

(e) Effective Date of Amendments. The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963, shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(2) That the Chief Justice be authorized to transmit this amendment to Congress in accordance with the provisions of Title 28, U. S. C. , Sec. 2072.

(3) That this amendment shall take effect at the expiration of 90 days after it has been reported by the Chief Justice to Congress.

October 16, 1962

To the Honorable, The Chief Justice and Associate Justices
of the Supreme Court of the United States

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U. S. C. §331, there is herein presented to the Court for its consideration the proposal recommending the desirability of unifying or integrating the admiralty and civil rules, with the inclusion of certain rules for dealing with special admiralty proceedings.

After consideration and approval by the standing Committee on Rules of Practice and Procedure, this proposal received the approval of the Judicial Conference at its session on September 19-20, 1962. The minutes of the proceedings of the Judicial Conference on this subject at its September session read as follows:

The Advisory Committee on Admiralty Rules has given primary consideration to the desirability of unifying or integrating the admiralty rules and the rules of civil procedure and has concluded that unification, with the inclusion of certain rules dealing with special admiralty proceedings, is both feasible and desirable. The standing Committee accepted and approved the action of the advisory committee and recommended to the Conference that unification of the civil and admiralty rules, with the inclusion of certain rules dealing with special admiralty proceedings, be approved. The Committee also recommended that the Conference request the Supreme Court to consider the proposal and indicate their views thereon, so that the Committee may be free to proceed with the task of preparing a draft of the unified civil and admiralty rules, as proposed. These recommendations were approved by the Conference.

The background and purposes of this proposal are described in the attached report.

Respectfully submitted,

Warren Olney III
Director

Enclosure

August 13, 1962

REPORT BY ADVISORY COMMITTEE ON ADMIRALTY
RULES TO THE STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES

One of the first actions taken by the Standing Committee was the adoption of a motion formally requesting the Advisory Committee on Admiralty Rules to make an inquiry into the question of the desirability of unifying or integrating the admiralty and civil rules, and to report back to the Standing Committee. Before the Admiralty Committee could undertake studies in response to that request, it was confronted with the emergency task of making the surveys and inquiries and recommendations suggested by the Supreme Court in *Miner v. Atlass*, 363 U.S. 641, which had invalidated the local rules relating to discovery depositions prevailing in a number of districts. The Committee was thus diverted to this other task which finally resulted in our recommendation to the Standing Committee of the Amendments to the Rules of Practice in Admiralty and Maritime Cases which your Committee approved and which were ultimately adopted by the Supreme Court, becoming effective July 19, 1961.

Since that time the Advisory Committee on Admiralty Rules has given its undivided attention to the problem presented

by the original inquiry of the Standing Committee with respect to unification of the civil and admiralty rules. It has held meetings on September 18, 1961, January 22, 23,24, 1962, and June 11, 12 and 13, 1962. At the conclusion of its last meeting the Committee adopted the following motion:

"That it is the sense of this Committee that unification is both feasible and desirable, with the inclusion of certain rules for dealing with special admiralty proceedings; that we so report to the standing Committee; that we further report to that Committee that we now conceive our future task to be the effectuation of that unification."

Twelve of the thirteen members of the Committee voted in favor of the motion; the single negative vote was not a vote against the desirability or feasibility of unification. The member so voting did so only because of his objection to the phrasing of the motion. He wished to exclude the reference to "certain rules for dealing with special admiralty proceedings".

The Committee is therefore able to make this progress report to the effect that its work has proceeded to a point where it is able to express its unanimous agreement that the inquiry addressed to the Advisory Committee on Admiralty Rules by the Standing Committee should be answered in the affirmative.

Our mode of procedure has been as follows: Our Reporter has prepared suggested sample sets of possible unified rules. After a first such draft was considered by the Committee,

the Reporter produced a second draft incorporating suggestions made by or to the Committee. This further draft has had much study by the Committee.

There has been made available to the members of the Standing Committee a revised summary of how the existing rules would be disposed of in such a unification. This summary should be added to this report.

The work of revising and completing the current draft of the sample set of rules has not been completed. Some difficult problems remain to be solved; but the Committee has reached the point where it has been able to ascertain, as reflected by the action taken by the Committee, that these problems are capable of solution.

Our Reporter, Professor Brainerd Currie, has set forth the following statement of some of the problems of unification. It is illustrative only.

"Unification does not mean complete uniformity. No one has ever suggested that unification could be accomplished by revoking the Admiralty Rules and making the Civil Rules applicable to what are now admiralty cases. There must be special rules to take care of certain admiralty proceedings heretofore unknown to the Civil Practice, such as attachment and garnishment, actions in rem, and proceedings for limitation of

liability. These matters have been dealt with in a set of Supplemental Rules, so constructed as not to have any impact on the civil practice. In the main body of the unified rules uniformity is highly desirable; yet in those few instances in which it does not seem that early agreement on a uniform rule is feasible, exceptions can be made: There can be differential treatment depending on the ground of jurisdiction invoked by the plaintiff. Of course, each exceptions should be kept to a minimum; to multiply them unnecessarily would detract from the desirability of unification. For this reason there should be full cooperation by the two Advisory Committees in an effort to achieve the maximum degree of uniformity.

Most of the Civil Rules are either identical with existing Admiralty Rules or can be applied to admiralty cases without difficulty. Most of the problems involved in agreeing on a uniform rule have been satisfactorily solved, or are minor. Thus the basic problem of the right to jury trial was solved, to the satisfaction of the Advisory Committee on Admiralty Rules, at an early stage. Our purpose was to preserve the status quo: neither to enlarge nor to curtail the right to jury trial. At the present time a suitor wishing to avoid jury trial files a libel in admiralty; a suitor wishing to insure jury trial (if his claim is within the saving-to-suitors clause) files a civil

action. By providing for one form of action, to be commenced by the filing of a complaint, unification will remove this method of differentiating between cases in which there is a right to jury trial from those in which there is no such right. But unification, as envisaged, would preserve the status quo, and in particular the plaintiff's control over the question of jury trial, but (1) providing that the rules do not impair any constitutional or statutory right to jury trial and (2) providing that the rules do not create any right to jury trial when the plaintiff invokes only the admiralty jurisdiction.

Illustrative of the minor problems, and incidentally of the contribution which the study of unification is capable of making to general improvement of the practice, is the time for appeal. In the beginning there was some ground for anticipating that there would be sentiment for retaining the present times for appeals in admiralty cases (90 days, fifteen days for interlocutory appeals). These would be superimposed on the present times for appeal in civil cases (30 days, 60 when the United States is a party, plus one or two special statutory provisions). After some discussion, however, the Advisory Committee on Admiralty Rules unanimously voted in favor of a single time of 30 days for all cases. This rather bold and original move in the direction of uniformity and simplification was made un-

animously, and present indications are that it will be regarded sympathetically by the Civil Committee. There may be objection from the Government, but at our last meeting the Admiralty Committee voted to adhere to its recommendation. Even if it should turn out in the end that agreement cannot be reached on a single time for appeal for all cases, it is evident that agreement can be reached on a uniform rule without distinction between suits in admiralty and civil actions.

It appears that there are probably only two problems that are serious in the sense that agreement on a rule uniformly applicable to civil and admiralty cases may not be likely in the near future.

The first of these concerns third-party practice. This practice originated in admiralty (Admiralty Rule 56), and the original Civil Rule (FRCP 14) was modeled on the Admiralty Rule. Like the admiralty practice, the Civil Rule originally contemplated that the defendant could bring in a third-party defendant not only on the ground of indemnification but also on the ground that the third-party defendant is liable directly to the plaintiff: in other words, that the defendant could tender a new defendant to the plaintiff, and demand that the plaintiff take judgment against him. This feature of the Civil practice encountered two difficulties: (1) In diversity cases, the addi-

tion of a party having the same citizenship as the plaintiff was held to destroy jurisdiction; (2) if the plaintiff refused to amend his complaint and demand judgment against the third-party defendant, there was no way of requiring him to do so. Minor adjustments in the rule might have dealt with these difficulties. Instead, the Civil Rule was amended to abandon this feature of third-party practice altogether, so that the third-party defendant can be impleaded only on the ground of liability over to the defendant.

This feature of the practice, however, is an important implementation of a substantive right under the maritime law. At least in collision cases, and probably in some other cases of maritime tort, it is to the defendant's advantage as a matter of law to implead another party who may be jointly liable to the plaintiff. This is so because of the maritime rule of divided damages, and because of the practice of entering conditional decrees when joint tortfeasors are sued together. Thus if the innocent victim of a mutual-fault collision between two vessels sues only one of the vessels, he is entitled to unconditional judgment for his full damage; but if the vessel sued can implead the other, and mutual fault is found, the decree against each will be in the first instance for only a moiety of the plaintiff's damage, and the original defendant will be liable for the

whole only in the event that the plaintiff cannot collect from the third-party defendant. Our Committee feels that it is important to preserve this procedure.

We have considered several ways of dealing with this problem. Unless, as seems unlikely, the Civil Committee is prepared to return to a modified version of its practice prior to the amendment of FRCP 14, it appears that we shall have to make a differentiation on jurisdictional lines, retaining the admiralty practice for cases founded solely on the admiralty jurisdiction.

The second of the relatively serious problems concerns FRCP 26(a) and depositions. The stumbling-block here is the requirement of leave of court when the plaintiff serves a deposition notice within 20 days after commencement of the action. Because of its reservations as to this feature of the Rule, our Committee, in adopting the substance of Rule 26 as a new Admiralty Rule, provided that depositions may also be taken in accordance with the de bene esse statutes, which, whatever their limitations, do not require leave. Our Committee objects to the 20-day rule as it stands because (1) it is often inconvenient to obtain leave of court when it is desired to take the deposition of a witness who is about to leave the jurisdiction, and because (2) the rule of thumb concerning the order in which depositions are taken

("first come, first served"), which has grown outside the Rules, is nevertheless based on the 20-day requirement. Probably the latter objection is not peculiar in any way to the admiralty practice, and is just as much a problem for the Civil Committee. While the first is not necessarily peculiar to admiralty, the feeling is that the problem of the departing witness is especially acute because of the mobility of vessels and maritime personnel.

Preliminary discussions have indicated that there is not much hope of early agreement on a uniform rule, so that differential treatment may be necessary here also. As a result of our most recent meeting, however, it appears that there may be good prospects of agreement on a modification of FRCP 26(a) dispensing with the requirement of leave where there is an affidavit to the effect that the witness is about to become unavailable."

Respectfully submitted,

Bailey Aldrich
Charles L. Black, Jr.
Stuart B. Bradley
Herbert W. Christenberry
Leavenworth Colby
Edward J. Dimock
Abraham E. Freedman
William A. Grimes
Harold M. Kennedy
Sam L. Levinson
John C. McHose
W. J. Symmers
Walter L. Pope, Chairman

Brainerd Currie, Reporter

MEMORANDUM ON THE FEASIBILITY OF UNIFICATION

February, 1962

Now that the Advisory Committee has devoted two full meetings to consideration of the feasibility and desirability of unifying the Civil and Admiralty rules, the following summary can be made. This may be regarded as a revision of the memorandum of August 9, 1960, on feasibility.

1. The following Civil and Admiralty rules are identical, or substantially so. The enumeration does not include Admiralty rules that are in principle the same as various provisions of the Civil Rules. (A separate memorandum included in the new draft of "Sample" Unified Rules shows the disposition of each Admiralty rule.

FRCP	ADMIRALTY	SUBJECT
3	1	Commencement of Action
16	44 1/2	Pre-Trial Procedure; Formulating Issues
27	30B	Depositions before Action or Pending Appeal
28	30C	Persons before Whom Depositions May Be Taken
29	30D	Stipulations regarding the Taking of Depositions
30	30E	Depositions upon Oral Examination
31	30F	Depositions of Witnesses upon Written Interrogatories
32	30G	Effect of Errors and Irregularities in Depositions
34	32	Discovery and Production of Documents and Things for Inspection, Copying, or Photographing
35	32A	Physical and Mental Examination of Persons
36	32B	Admission of Facts and of Genuineness of Documents
37	32C	Refusal to Make Discovery: Consequences
43(b)	46A	Evidence: (b) Scope of Examination and Cross-examination
45	32D	Subpoena
56	58	Summary Judgment
57	59	Declaratory Judgments
83	44	Rules by District Courts

2. The following Civil Rules can be incorporated in unified rules with no substantial problem so far as the admiralty practice is concerned. This means that no objection has been voiced either in MLA Document 375 or in the course of the Committee's consideration of unification, or that objections have been found unsubstantial.

FRCP	SUBJECT
5	Service and Filing of Pleadings and Other Papers
9	Pleading Special Matters
10	Form of Pleadings
19	Necessary Joinder of Parties
20	Permissive Joinder of Parties
21	Misjoinder and Non-Joinder of Parties
22	Interpleader
23	Class Actions
24	Intervention
25	Substitution of Parties
39	Trial by Jury or by the Court
40	Assignment of Cases for Trial
41	Dismissal of Actions
42	Consolidation; Separate Trials
43	Evidence
44	Proof of Official Record
46	Exceptions Unnecessary
47	Jurors
48	Juries of Less Than Twelve--Majority Verdict
49	Special Verdicts and Interrogatories
50	Motion for a Directed Verdict
51	Instructions to Jury: Objection
52	Findings by the Court
59	New Trials; Amendment of Judgments
60	Relief From Judgment or Order
61	Harmless Error
65	Injunctions
66	Receivers Appointed by Federal Courts
69	Execution
70	Judgment for Specific Acts; Vesting Title
71	Process in Behalf of and Against Persons Not Parties
71A	Condemnation of property
72	Appeal from a District Court to the Supreme Court
74	Joint or Several Appeals to the Supreme Court or to a Circuit Court of Appeals; Summons and Severance Abolished
75	Record on Appeal to a Circuit Court of Appeals
76	Record on Appeal to a Circuit Court of Appeals; Agreed Statement
77	District Courts and Clerks
78	Motion Day
79	Books and Records Kept by the Clerk and Entries Therein
80	Stenographer; Stenographic Report or Transcript as Evidence
82	Jurisdiction and Venue Unaffected
84	Forms

3. The following Civil Rules, considered as unified rules, raise more or less substantial problems that have been solved, or may have to be solved, by providing for differential treatment of actions founded on the admiralty and maritime jurisdiction:

FRCP	SUBJECT
2	One Form of Action
<u>14</u>	Third-party practice
<u>38</u>	Jury Trial of Right
<u>26</u>	Depositions Pending Action (the twenty-day rule)
<u>33</u>	Interrogatories to Parties (the 10-day rule)

With respect to the rules in brackets the problem may still be solved by agreement with the Civil Rules Committee on a uniform rule.

4. The following Civil Rules, considered as unified rules, raise more or less substantial problems that have been solved, or can readily be solved, without resort to differential treatment based on jurisdictional grounds (except that the bracketed rules may have to be solved by such differential treatment). In some instances agreement must be reached with the Civil Rules Committee on the particular solution reached by the Admiralty Committee; but in each instance agreement on a uniform rule seems possible.

FRCP	SUBJECT
4	Process
6	Time
7	Pleadings Allowed; Form of Motions
8	General Rules of Pleading
11	Signing of Pleadings
12	Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on Pleadings
13	Counterclaim and Cross-Claim
15	Amended and Supplemental Pleadings
17	Parties Plaintiff and Defendant; Capacity
18	Joinder of Claims and Remedies
<u>26</u>	Depositions Pending Action
<u>33</u>	Interrogatories to Parties
53	Masters
54	Judgments; Costs
55	Default
58	Entry of Judgment
62	Stay of Proceedings To Enforce a Judgment
63	Disability of a Judge
64	Seizure of Person or Property
68	Offer of Judgment
73	Appeal to a Circuit Court of Appeals

5. A few Civil Rules such as FRCP 1 (Scope of rules), 2 (One form of action), and 81 (Applicability in general) raise no problem as unified rules, but go to the essence of unification. The incorporation of these rules as modified may encounter resistance; but such resistance goes not to the feasibility but to the desirability of unification. Similarly, there may remain resistance to the treatment of terminology, counterclaims, joinder, and jury trial although all problems of feasibility associated with these matters have been solved.

6. The rules relating to the distinctively maritime remedies (maritime attachment and garnishment, actions in rem, and limitation of liability) are collected in a set of Supplemental Rules. There are relatively few problems, all susceptible of ready solution. Whatever the problems, they are not problems of unification, since they concern only proceedings founded solely on the admiralty and maritime jurisdiction. Their solution does not involve agreement with the Civil Rules Committee. Since these rules are not physically part of the Federal Rules of Civil Procedure the problems can be treated without fear of unduly encumbering those rules.

September 21, 1962

To the Honorable, The Chief Justice and Associate Justices
of the Supreme Court of the United States

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U. S. C. §331, there are herewith presented to the Court for its consideration proposed amendments to Rules of Civil Procedure for the United States District Courts. These amendments received the approval of the Judicial Conference at its session on September 19-20, 1962.

By authority of the standing Committee on Rules of Practice and Procedure of the Judicial Conference, a preliminary draft of proposed amendments with explanatory notes, prepared by the Advisory Committee on Civil Rules, was widely distributed to the bench, bar, and law schools in October 1961.

The Advisory Committee studied the comments and suggestions received, modified the draft in some respects, and presented the revised draft to the standing Committee. The standing Committee approved the revised draft subject to certain further changes, which have been incorporated. Upon the recommendation of the standing Committee, the Judicial Conference has approved the proposed amendments.

The background and purposes of the amendments are described in the Advisory Committee's notes.

The Judicial Conference recommends that the proposed amendments be adopted by the Court.

Respectfully submitted,

Warren Olney III
Director

*The Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States*

December 11, 1962

To the Honorable, The Chief Justice and Associate Justices
of the Supreme Court of the United States

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U. S. C. §331, there are herewith presented to the Court for its consideration proposed amendments to Rules of Civil Procedure for the United States District Courts. These amendments received the approval of the Judicial Conference at its session on September 19-20, 1962.

By authority of the standing Committee on Rules of Practice and Procedure of the Judicial Conference, a preliminary draft of proposed amendments with explanatory notes, prepared by the Advisory Committee on Civil Rules, was widely distributed to the bench, bar, and law schools in October 1961.

The Advisory Committee studied the comments and suggestions received, modified the draft in some respects, and presented the revised draft to the standing Committee. The standing Committee approved the revised draft subject to certain further changes, which have been incorporated. Upon the recommendation of the standing Committee, the Judicial Conference has approved the proposed amendments.

The background and purposes of the amendments are described in the Advisory Committee's notes.

The Judicial Conference recommends that the proposed amendments be adopted by the Court.

Respectfully submitted,

Will Shafroth
Acting Director

FILE COPY

Agenda E- 4
Rules Committee
Sept. 1963

REPORT OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee on Rules of Practice and Procedure has received from the Advisory Committee on Criminal Rules a report of its study of the provisions of Rule 5(a) of the Federal Rules of Criminal Procedure. That report, a copy of which is annexed hereto, recommends that the Judicial Conference disapprove S. 1012, 88th Cong., and similar bills which seek to abrogate the McNabb-Mallory rule. Your Committee approves the report of the Advisory Committee on Criminal Rules and recommends that it be approved and adopted by the Judicial Conference and that the Bureau of the Budget, which has requested the views of the Conference on S. 1012, 88th Cong., be informed of the action of the Conference.

Our Committee has no definitive proposals to present to the Judicial Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal Rules of Criminal Procedure have been widely circulated and are now being considered by the bench and bar. All five of the advisory committees now under appointment are actively engaged in the work to which they have been assigned. Progress reports from each of them are annexed hereto for the information of the Conference.

Respectfully submitted,

August 26, 1963

Albert B. Maris
Chairman

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES
OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of Rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the Committee on these problems is as follows:

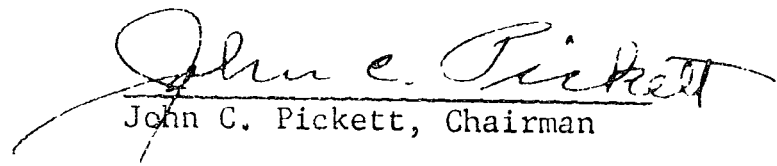
(1) The Committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as McNabb v. United States, 318 U.S. 332 (1943) and Mallory v. United States, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by Rule 5(a) are excluded from evidence.

(2) The Committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various federal districts.

(3) The Committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the Committee has felt that special rules for the District should not be incorporated in the Rules of Criminal Procedure. The Committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the Committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the McNabb-Mallory rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted:


John C. Pickett, Chairman

July 2, 1965

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

Since July 18, 1962, the date of the last report to the standing Committee, the following has been accomplished or projected.

1. Amendments of the Civil Rules effective July 1, 1963.

In its report of July 18, 1962, the Civil Committee recommended adoption of a set of amendments as revised and supplemented following public circulation of a "Preliminary Draft" in October 1961. At a meeting in San Francisco on August 13-14, 1962, the standing Committee approved the amendments subject to certain changes. Having been recommended by the standing Committee to the Judicial Conference, and by the Conference to the Court, the amendments were adopted by the Court by Order of January 21, 1963, and transmitted to Congress on that day. They became effective on July 1, 1963, affecting twenty-three Rules and various Official Forms.

2. Projected amendments of the Civil Rules bearing on joinder of parties and claims and on other matters. As previously reported, the Civil Committee undertook consideration of joinder of parties (and related joinder of claims) at its meeting on May 28-29, 1962. Revised and amplified drafts were thereafter prepared, considered in intra-Committee correspondence, and discussed at a Committee meeting on February 21-23, 1963. The amendments have now undergone further revision and will be resubmitted to the Committee at its next meeting scheduled for October 31-November 2, 1963. The Committee will also consider a number of draft amendments on miscellaneous topics developed during the same period.

3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (i) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and in revised form it constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

Proceeding concurrently with the field work is a traditional analysis by the Associate Reporter of the Civil Rules, local rules, State statutes and rules, court decisions, and secondary writings on discovery. It is proposed that the initial presentation at the October meeting relate to possible Rules changes that can be wholly or largely appraised without regard to the field investigation. A second presentation will be necessary at a Spring 1964 meeting to take account of the work of the Columbia Project.

4. Unification of Admiralty and Civil Rules. The Reporters for the Admiralty and Civil Committees have worked cooperatively on the changes in the Civil Rules which will be needed to effect unification. Part of the February meeting of the Civil Committee was given over to a consideration of the views of the Admiralty Committee as presented by its Reporter. It is hoped that the remaining problems will be settled to mutual satisfaction at the next meetings of the respective Committees.

5. American Law Institute's Study of Jurisdiction. Recognizing that the Study of the Division of Jurisdiction between State and Federal Courts, undertaken by the ALI at the suggestion of the Chief Justice, is related at various points to the work of the Civil Committee and the Judicial Conference, the Reporters for the Study and the Committee recently met with Judge Maris and had a useful preliminary discussion of methods of procedure.

Benjamin Kaplan
Reporter

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25. D. C.

ALBERT B. MARIS
CHAIRMAN

July 15, 1963

CHAIRMEN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
BANKRUPTCY RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

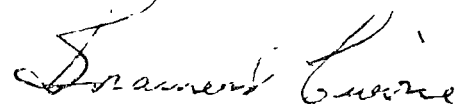
TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

As you know, the Advisory Committee on Admiralty Rules has resolved that unification of the civil and admiralty practices, with certain special rules for distinctively maritime matters, is both feasible and desirable. The plan to implement this resolution has been approved in principle by you and by the Judicial Conference, and the Supreme Court has informally indicated its approval of the principle. The plan has similarly been approved by the responsible committee of the Maritime Law Association of the United States, with whom the Advisory Committee has worked closely. Finally, the plan has been reviewed by the Advisory Committee on Civil Rules with generally favorable results, although a few points of difference have been defined.

The Advisory Committee on Admiralty Rules will meet again in September. At that time, it is hoped, we can take definitive action recommending to you a set of amendments to the Federal Rules of Civil Procedure necessary to effectuate the plan of unification, together with a set of Supplemental Rules governing the distinctively maritime remedies (attachment and garnishment, proceedings in rem, and proceedings for limitation of liability). It is reasonable to hope that at its meeting in October the Advisory Committee on Civil Rules will take definitive action on the proposal. You would then be in position to submit the proposal to the bench and bar generally for criticism.

The proposal will be based on the Civil Rules as of July 1, 1963, including the amendments that became effective on that date.

Respectfully submitted,



Brainerd Currie

Reporter

Advisory Committee on Admiralty Rules

July 3rd, 1963

MEMORANDUM

TO: The Honorable Albert B. Maris, Chairman, and the Members of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States

FROM: Frank R. Kennedy, Reporter for the Advisory Committee on Bankruptcy Rules

SUBJECT: Progress Report of the Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules is continuing its study of the General Orders and Official Forms in Bankruptcy.

The Committee held two meetings during the fiscal year which ended on June 30, 1963, the first for 3 1/2 days in November and the second for 2 1/2 days in June. At no session of the Committee was more than one member absent, and for a good part of the first meeting all members were present. In addition, Judge Maris and Professor Moore attended most of the sessions of both meetings held during the year. Edwin Covey, who was Chief of the Bankruptcy Division of the Administrative Office of United States Courts until his retirement during the year, attended the first meeting as an advisor to the Committee and the second as a newly appointed member.

In addition, a subcommittee, constituted at the first of these two meetings and consisting of Judge Gignoux and Charles Seligson in addition to the Chairman of the Advisory Committee and the Reporter, met twice for two days each to review matters of form and style of drafts for general orders and official forms previously approved in substance by the Committee.

About ten general orders and thirty official forms appear to be close to final versions after extended consideration by the Advisory Committee. In nearly all cases the revisions are substantial. The process of reaching finality in the drafts of both the general orders and the official forms has proved quite time-consuming. Submission of issues to committee vote by mailed ballots has been utilized where feasible and will continue so to be used, but it has frequently been found necessary during meetings to reconsider matters once supposedly settled by mailed ballots.

The general orders and official forms are promulgated by the Supreme Court pursuant to section 30 of the Bankruptcy Act rather than under the Judicial Code. In carrying out the responsibility assigned it by this section, the Supreme Court has prescribed over sixty forms, many of them quite detailed. Undoubtedly one reason for their specificity is that they were prepared in

contemplation of use by laymen. Unlike the forms accompanying the Civil and Criminal Rules, the Official Forms in Bankruptcy are not merely illustrative; rather, as General Order 38 says, they "shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case."

The Advisory Committee expects to reduce the number of the forms and the detail of those retained. It is considering the feasibility of recommending that some of the forms be issued by or with the approval of the Judicial Conference as illustrations rather than as official forms prescribed by the Supreme Court. Nevertheless, the Committee has necessarily been concerned with a great many particulars of bankruptcy practice in working toward its objective in revising the general orders and forms, many of which have come through without substantial change since 1867.

The Advisory Committee has tentatively set November 20-22, 1963, as the dates for its next meeting, with April of 1964 as the most likely time for a second meeting during the present fiscal year. It is hoped that finishing touches can be put on the ten general orders and thirty official forms earlier referred to and that substantial progress can be made on the considerable number of proposals affecting other orders and forms. The agenda will also include several proposals for new general orders and official

forms. Some of these proposals arise out of recent changes in the Bankruptcy Act, including the Omnibus Act of 1962 and two amendments already enacted in 1963. The Committee does not regard any changes sufficiently pressing, however, to warrant submission of its proposals for consideration by the bench and bar prior to the completion of its study of all the general orders and official forms and the proposals it has received.

Mention should perhaps again be made of the possible enactment by Congress of the proposed amendment of 28 U.S.C. to confer rule-making power on the Supreme Court for proceedings under the Bankruptcy Act comparable to that conferred by sections 2072 and 2073 respecting general civil and admiralty practice. Section 30 of the Bankruptcy Act would be repealed at the same time. The proposal, embodied in H. 2859, passed the House by voice vote on April 22, 1963. If enacted, this measure would substantially revise the frame of reference for the Advisory Committee by freeing it from the obligation to keep all bankruptcy rules and forms it proposes consistent with the Bankruptcy Act. While some of the general orders and official forms would not be significantly affected by enactment of the proposed legislation, some would surely be recast in their entirety. The

Committee is not waiting for Congress to act on this proposal, however. It has much yet to do within existing limitations to bring the general orders and official forms in bankruptcy up to date and to carry out its responsibility to recommend changes in the interest of promoting simplicity of procedure, fairness in administration, just determination of litigation, and elimination of unjustifiable expense and delay.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON 25 D C

ALBERT B. MARIS
CHAIRMAN

CHAIRMEN OF ADVISORY COMMITTEES

DEAN LACHESON
CIVIL RULES

PHILIP FORMAN
BANKRUPTCY RULES

JOHN C. POCKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

Report on Work of Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules is presently engaged in receiving and analyzing comments on the Preliminary Draft which was circulated in December, 1962. We are planning to meet in October, 1963, to give preliminary consideration to a redraft of the matters covered in the Preliminary Draft. A final draft will be prepared after all comments are in. It is hoped that this draft can be acted on by the Advisory Committee in January, 1964, and presented to the standing Committee in February, 1964.

The Advisory Committee is also working on proposed amendments in addition to those contained in the Preliminary Draft. It is hoped that these additional proposals can be ready for circulation to the bench and bar for comment after the meeting in January, 1964.

June 3, 1963

Edward L. Barrett, Jr.
Reporter

STATEMENT OF THE PROGRESS OF THE WORK OF
THE ADVISORY COMMITTEE ON APPELLATE RULES

June, 1963

To the Chairman and Members of the Standing Committee on
Practice and Procedure of the Judicial Conference of the
United States:

We herewith submit a progress report concerning the present status of our work. Our last such report was submitted a year ago.

We have had two meetings during this past year, the second a three-day meeting May 20-23, 1963. We have scheduled a meeting for August 26th and 27th.

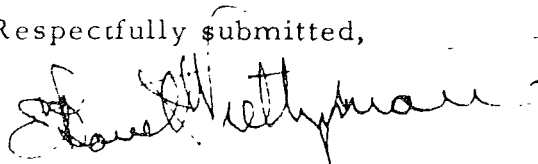
We now have in various stages of development a complete set of proposed rules, beginning with the filing of a notice of appeal. Some of these rules have been approved in final form; some have been approved in first draft; some have been outlined in principle and the principle later reviewed, and in some the principle has merely been determined. We have so arranged our schedule of work that we hope to have by the end of our August meeting a set of appellate rules which will be in such shape as that they can be forwarded to you for your review and circulation to the bar and bench for comment.

This Committee has tried to be careful in those phases of its work which touch upon the work of other Committees and has requested comments in respect to the appellate phases of these other subjects, i.e., admiralty, bankruptcy, etc. As you were advised in our last report, we had attempted to draft a separate rule for review of decisions of the Tax Court. Later developments, however, brought us to the conclusion that this rule should be integrated into the general rules for appellate procedure.

We have been mindful of the request made by your Committee that integrated portions of proposed appellate rules be forwarded to you when and as available, but the rules have not been developed in integrated parts and so we have not been able to follow this program.

In brief, we hope to have before your Committee by November a draft of a complete set of proposed appellate rules.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "E. Barrett Prettyman".

E. Barrett Prettyman, Chairman

Feb 1962 Minutes attached

Agenda D 3
Rules Committee
March 1963

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Summary of Report

The annexed report recommends that an Advisory Committee on Uniform Rules of Evidence for the United States District Courts be appointed by the Chief Justice, together with a reporter or reporters, but only after the Supreme Court has indicated informally its approval of proceeding with the Evidence project.

The report also recommends that the Special Committee on Evidence, having completed its assignment, be discharged.

REPORT OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee on Rules of Practice and Procedure met in Washington on February 25, 1963. All the members of the Committee were present. Mr. Shafroth and Mr. Spaniol of the Administrative Office were also present.

Election of Secretary

The Committee received the resignation of Aubrey Gasque, former Assistant Director of the Administrative Office, as Secretary of the Committee and elected Will Shafroth, Deputy Director of the Administrative Office as Secretary of the standing Committee and ex officio, as Secretary of the Advisory Committees. The Committee adopted a resolution expressing its gratitude for the excellent service which Mr. Gasque had rendered for and with the Committee as its Secretary in the improvement of federal judicial procedure.

Uniform Rules of Evidence

The Special Committee appointed to consider the feasibility and desirability of formulating uniform rules of evidence for the Federal

Courts presented its final report, which your Committee unanimously approved. A copy of the report is annexed hereto as Appendix "A".

In accordance with the report of the Special Committee, your Committee reports that it is feasible and desirable to formulate uniform rules of evidence to be adopted by the Supreme Court for the United States District Courts. Your Committee accordingly recommends that an advisory committee on rules of evidence be appointed by the Chief Justice consisting of approximately 15 members broadly representative of all segments of the profession, with special emphasis on trial lawyers and trial judges, and that a reporter, or reporters, to the advisory committee be appointed by the Chief Justice. Your Committee suggests, however, that the appointment of the advisory committee and reporter be deferred until after the Supreme Court has indicated informally its approval of proceeding with the project.

The Special Committee on Evidence has asked to be discharged, and since its assignment has been completed your Committee recommends that its request be granted.

Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules held a meeting on October 1-3, 1962 and gave tentative approval to amendments to a large number of the Rules of Criminal Procedure. These amendments have

been prepared by your Committee in printed form and circulated widely to the Bench and Bar of the country who have been requested to submit their comments and suggestions not later than December 31, 1963. Meanwhile, the Advisory Committee is proceeding with its study of the remaining Rules of Criminal Procedure not involved in the foregoing amendments and hopes to have its recommendations with respect to those rules formulated within the coming year.

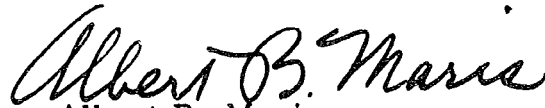
Advisory Committees on Civil, Admiralty, Bankruptcy
and Appellate Rules

Each of these Advisory Committees has held a meeting since our last report and each of them is giving active consideration to the study and formulation of amendments to the rules of procedure within its jurisdiction. None of these Committees, however, has formulated any definitive amendments to be submitted to the Bench and Bar at this time.

It should be added that the Advisory Committees on Civil Rules and Admiralty Rules, and their Reporters, are working closely together in the program of unifying the Civil and Admiralty Rules of Practice, and substantial and gratifying progress is being made in this project. The Committees are looking forward to the probability of being able to

agree at meetings to be held next Fall upon the amendments of the Civil Rules, which are necessary to this end.

Respectfully submitted,


Albert B. Maris
Chairman

February 25, 1963

Final Report of the Special
Committee on Evidence

To the standing Committee on Rules of Practice and Procedure of the
Judicial Conference of the United States:

The special Committee on Evidence met in the Supreme Court
Building on January 17, 1963. The following members were present:

James Wm. Moore, Chairman
Dean Acheson
Phillip Forman
Walter L. Pope

Others attending were Albert B. Maris, Chairman of the
standing Committee on Rules of Practice and Procedure; Dean Mason
Ladd and Peyton Ford, members of the standing Committee; Aubrey
Gasque, Executive Secretary of the Rules Committee; Will Shafroth
and Joseph F. Spaniol, Jr., of the Administrative Office of the
United States Courts; Thomas F. Green, Jr., Reporter of the special
Evidence Committee and Howard P. Fink, Assistant to the Reporter.

The Committee considered the replies which have been re-
ceived from the bench and bar in response to the Preliminary Re-
port of February 1962.

The deliberations of the Committee were directed princi-
pally to the feasibility and desirability of having evidence rules
which would be uniform throughout the Federal Court system; and

whether the existing statutory authority was sufficient to encompass the promulgation of such rules.

After full discussion of the views of those present, and of the comments received, it was decided that the time has now arrived for an advisory committee to be formed to go forward with the task of drafting such rules. Moreover, it was the view of the Committee that existing statutory authority under the Rule-making Act encompasses the promulgation of evidence rules for the Federal courts, and that further legislative action was not needed.

The Committee voted unanimously that:

- "1. Rules of evidence applied in the Federal courts should be improved; and
2. Rules of evidence, which would be uniform throughout the Federal court system, are both advisable and feasible."

It was the consensus of the Committee that an advisory committee on evidence should be broadly representative of all segments of the profession, and that the size of such a committee should approximate that of the Advisory Committee on Civil Rules.

The special Committee on Evidence, having completed its assigned task, respectfully submits this, its final report, and asks to be discharged.

Dean Acheson
Phillip Forman
* John C. Pickett
Walter L. Pope
E. Barrett Prettyman
James Wm Moore, Chairman

* Judge Pickett has expressed himself as in favor of the appointment of an advisory committee to draft rules of evidence but was not available for consideration of the committee report.

August. 1962 Minutes Attached

Agenda No. 7
Rules Committee
Sept. 1962

REPORT OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Your Committee on Rules of Practice and Procedure met in San Francisco on August 13 and 14, 1962. All the members of the Committee were present. Judge Walter L. Pope, Chairman of the Advisory Committee on Admiralty Rules, and Professors Benjamin Kaplan, Brainerd Currie, Frank R. Kennedy, Edward L. Barrett, Jr., and Bernard J. Ward, Reporters for Civil, Admiralty, Bankruptcy, Criminal and Appellate Rules, respectively, were also present by invitation. Reports were received and considered from each of the Advisory Committees.

Advisory Committee on Civil Rules

The Advisory Committee on Civil Rules submitted with its favorable recommendation a definitive draft of proposed amendments to certain of the Federal Rules of Civil Procedure. The Advisory Committee presented a brief explanatory statement with respect to these proposals, a copy of which is annexed hereto marked Exhibit "A". The statement also includes a progress report with respect to the

study of the rules on joinder of parties and discovery which the Advisory Committee is carrying on, and the cooperation which it has extended to other advisory committees.

In addition, Professor Kaplan made oral explanations of each of the proposals and they were fully discussed and considered by your Committee. With one modification, about to be mentioned, the proposals of the Advisory Committee on Civil Rules were approved by your Committee.

The modification involves the last sentence of the proposed amended Rule 58, relating to the Entry of Judgment. In this instance, your Committee recommends that the final sentence of the proposed amended Rule should read:

"Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course."

in lieu of the following sentence which the Advisory Committee had recommended:

"Except upon a direction of the court, which shall not be given as a matter of course, attorneys shall not submit forms of judgment in any case in which a party recovers only money or costs or in which all relief is denied."

The modified language would eliminate the practice, existing in some districts, of attorneys submitting forms of judgment in cases where they are not directed to do so by the court. Your Committee believes that this modification will tend to expedite the entry of judgment and eliminate an unnecessary burden upon counsel in such cases. It is believed that ordinarily it will be more expeditious if the form of judgment is prepared by the Clerk in accordance with the directions of the Judge, and that a direction to counsel to prepare forms of judgment, while undoubtedly helpful in complicated cases, should be the exception rather than the rule.

A draft of the proposed amendments to the Federal Rules of Civil Procedure, as approved by your Committee, is annexed hereto as Exhibit "B". Following each amendment is an explanatory note prepared by the Advisory Committee. Your Committee recommends that these proposed amendments be approved by the Judicial Conference and submitted to the Supreme Court with the recommendation that they be adopted.

Advisory Committee on Admiralty Rules

The Report of the Advisory Committee on Admiralty Rules was presented by its Chairman, Judge Pope. Your Committee had requested that the Advisory Committee give primary consideration to the question of the desirability of unifying or integrating the admiralty and civil

rules, and to report its conclusions to your Committee. Judge Pope reported that it is the sense of the Advisory Committee on Admiralty Rules, after full consideration of the subject, that unification is both feasible and desirable, with the inclusion of certain rules for dealing with special admiralty proceedings. A copy of the Report of the Advisory Committee on Admiralty Rules is annexed hereto, marked Exhibit "C".

Your Committee accepted and approved the action of the Advisory Committee on Admiralty Rules in this regard and recommends to the Judicial Conference that unification of the civil and admiralty rules be approved with the inclusion of certain rules for dealing with special admiralty proceedings, and that the Conference request the Supreme Court to consider the proposal and indicate its views thereon so that your Committee may be free to proceed with the task of preparing a draft of unified civil and admiralty rules, as proposed.

Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules is proceeding with its study of the General Orders and Official Forms in Bankruptcy, but had no definitive proposals for amendments to submit at this time. A copy of the progress report submitted by the Advisory Committee is annexed hereto marked Exhibit "D".

Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules is proceeding with its study of the Federal Rules of Criminal Procedure. Tentative recommendations for amendments of certain of these rules are under consideration, but no definitive proposals for amendments were ready for submission at this time. A copy of the progress report of the Advisory Committee is annexed hereto marked Exhibit "E".

Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules has prepared a second draft of a proposed rule for Review of the Decisions of the Tax Court, which has been circulated to the bench and bar. Comments on this draft are still being received and, accordingly, a definitive proposal was not presented to our Committee at this time.

The Advisory Committee is also engaged in a comprehensive study of appellate procedure in the United States Courts of Appeals and in the preparation of a tentative draft of uniform rules in this field. Here, also, the draft has not progressed to the point where definitive proposals are ready for consideration. In view of the fact that the Advisory Committee is engaged in a wholly new undertaking in this field, it has been requested to submit to your Committee drafts

of rules in related or integrated groups when and as such rules are approved by it, rather than to postpone their submission until the full draft of all the rules has been completed and approved by it.

A copy of the progress report of the Advisory Committee is annexed hereto marked Exhibit "F".

Special Committee on Uniform Rules of Evidence
for the Federal Courts

Professor Moore, Chairman of the Special Committee on Uniform Rules of Evidence for the Federal Courts, presented a progress report. The Committee has made a preliminary report recommending that uniform rules of evidence for the Federal Courts be formulated and adopted, and this report has been widely circulated to the bench and bar. It is anticipated that in January 1963 the Special Committee will reach a definitive conclusion upon this matter after considering the comments received from the bench and bar. Professor Moore reported that the comments received so far have been overwhelmingly favorable to the project.

Miscellaneous Matters

Your Committee gave consideration to more precisely delimiting the area of work of the Advisory Committee on Appellate Rules

on the one hand, and the Advisory Committees on Civil, Admiralty, Bankruptcy and Criminal Rules on the other hand, with respect to appellate procedure in the district courts. After full consideration of this matter the following statement was adopted for the guidance of the Advisory Committees:

"The advisory committees in the fields of criminal, civil, admiralty and bankruptcy procedure should take primary responsibility for the study of all such procedure in the district courts up to but not including the filing of a notice of appeal, or the form and manner of making up and transmitting the record on appeal or the procedure in the court of appeals after the appeal is lodged there, for all of which procedure the Advisory Committee on Appellate Rules would bear primary responsibility. With respect to matters within its primary responsibility as defined each committee should, of course, welcome such suggestions as the other committees may desire to make as a result of their own studies. It is also to be understood that all proposals with respect to procedure between the filing of the notice of appeal and the docketing of the appeal in the appellate court are to be submitted by the Advisory Committee on Appellate Rules to the appropriate other advisory committees and their views obtained before any proposal in that area is submitted to the standing Committee."

Your Committee also considered the philosophy which should underlie the style and manner in which rules are to be prepared -- whether they should be brief and general in scope, or whether they should attempt to spell out in detail the procedure to be followed in

all situations. After full discussion of the subject, your Committee voted to encourage the Advisory Committees to continue following the practice, which was followed in the formulation of the Federal Rules of Civil Procedure, of making their proposed rules amendments brief and general in scope, leaving large areas of discretion to the judges to deal with particular situations.

Respectfully submitted,

Albert B. Musis
Chairman

September 12, 1962

July 18, 1962

To the Chairman and Members of the Standing Committee on Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE
ADVISORY COMMITTEE ON CIVIL RULES

- A. The Advisory Committee Recommends Adoption of the Amendments Appearing in "Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Courts" (October 1961), as Revised and Supplemented.

Upon the recommendation of the Advisory Committee on Civil Rules, the Standing Committee on Rules of Practice and Procedure in October 1961 published and circulated a preliminary draft of various proposed Civil Rules amendments to the bench and bar, inviting comment and criticism. The proposed amendments had been considered at three meetings of the Advisory Committee and in substantial part resulted from its restudy of proposals made by the former Advisory Committee in 1955, upon which the Supreme Court had taken no action. A copy of the October 1961 draft is annexed hereto as Exhibit "A."

At its fourth meeting on May 28-29, 1962, the Advisory Committee again reviewed the amendments contained in the October 1961 draft, taking into consideration the communications which had been received from the bench and bar in response to the Standing Committee's invitation. The com-

munications were generally favorable to the amendments. An analysis of the communications, prepared by the reporter and submitted to the Advisory Committee in advance of the May meeting, is set forth in a memorandum dated May 1, 1962, and a supplemental memorandum dated May 14, 1962, annexed hereto as Exhibits "B" and "C" respectively.¹

In the light of the discussion at the May meeting, the Advisory Committee voted a number of changes of and supplements to the October 1961 draft, affecting both the text of amendments and the Advisory Committee's Notes. The draft, as revised and supplemented pursuant to the Advisory Committee's direction, is annexed hereto as Exhibit "D."

The Advisory Committee now recommends to the Standing Committee the adoption of the October 1961 draft, revised and supplemented as indicated in Exhibit "D."

¹ Some additional communications were received after the preparation of these memoranda.

Summary Statement of the Civil Rules Amendments
Recommended for Adoption²

1. Process [Rules 4, 12, 13, 30, 71A]. An amendment allows resort in original Federal actions to the procedures provided by State laws for effecting service on nonresidents. The State laws referred to include statutes of the nonresident-motorist and similar types. (To this extent the amendment confirms decisions interpreting the present Rules.) Also included, and of particular interest, are State laws of the quasi-in-rem type (attachment or similar seizure of the nonresident's property within the State, accompanied by notice).

In addition to all other authority for service, service is permitted within a stated territorial area on persons brought in as impleaded parties, as parties to counterclaims and cross-claims, or as additional parties "indispensable" or "conditionally necessary" to pending actions; the stated territorial range is an area outside the State in which the District Court is held, but within the United States, which is within a 100-mile radius of the Federal courthouse. Service of an order of commitment for civil contempt is also permitted within this territorial range.

Related amendments are as follows: When service is made upon nonresidents in accordance with State law, the summons

² This summary omits various matters of detail.

is to correspond as nearly as may be with the State form, and the time to answer is in accordance with the State provision. When a defendant is brought in by attachment or other process by which the court does not acquire personal jurisdiction over him, he need not plead counterclaims which would ordinarily be compulsory. (If, however, he voluntarily pleads any counterclaim, he falls under the usual obligation to plead his compulsory counterclaims.)

Service upon persons in foreign countries is clarified and facilitated. Whenever service is authorized upon a non-resident and is to be effected on him abroad, various alternative manners of carrying out the service are permitted which may make it easier to accomplish the service, avoid collision with foreign law or policy, and improve the chance of recognition of the judgment in the action by the law of the foreign country. Proof of foreign service is also facilitated.³

Certified mail is allowed as an alternative to registered mail in making service upon the United States. (This alternative is also permitted in sending depositions to the clerk of court for filing.)

2. Third-party practice (impleader) [Rules 5, 7, 14, 24, 77(d), Forms 22-A, 22-B]. Modifying the present Rule which requires leave of court for all impleaders, an amendment

³ The amendments referred to in this paragraph were developed collaboratively by the Commission and Advisory Committee on International Rules of Judicial Procedure and the Advisory Committee on Civil Rules.

provides that a defendant need not obtain leave of court to bring in a third-party defendant if he files his third-party complaint not later than 10 days after he serves his answer in the action. However, after a third-party defendant is brought in, the court may in appropriate situations strike the impleader or sever it or accord it separate trial. Official Forms are amended to reflect the basic change in the impleader Rule, and the statement of permitted pleadings is also correspondingly amended. An amendment makes it clear that a third-party defendant is required to serve his answer to the third-party complaint upon the plaintiff as well as the defendant (third-party plaintiff); more generally, except as otherwise provided in the Rules, the consequential papers in an action are required to be served on all parties, rather than the parties "affected thereby," as at present.

3. Supplemental pleadings [Rule 15]. An amendment, overruling some case decisions, provides that the court may grant permission to file a supplemental pleading even though the original pleading is defective in its statement of a claim or defense.

4. Substitution of parties upon death [Rules 6(b), 25, Form 30]. The present unsatisfactory provision, that an action shall be dismissed as to a party who dies pending the action if substitution is not made within 2 years after the death, is abandoned, and it is provided instead (following

the Illinois practice) that a motion for substitution must be made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of death. The 90-day period may be enlarged by the court. An Official Form is added illustrating the "Suggestion of Death upon the Record."

5. Depositions in foreign countries [Rules 26, 28].

Foreign depositions on notice are facilitated by enlarging the class of persons before whom such depositions may be taken. An amendment overrules case law to the effect that a letter rogatory will not be issued unless a deposition on notice or by commission is shown to be impractical; choice will now be made among the devices in the light of all the circumstances. To accommodate to the fact that, in taking evidence in response to a letter rogatory, foreign authorities follow their own methods of eliciting and recording testimony, it is provided that evidence obtained under a letter rogatory shall not be excluded by our courts merely for the reason that it is not a verbatim transcript, or that the testimony is not taken under oath, or for any similar departure from the requirements for a domestic deposition. (The method of taking or recording the testimony may, however, affect its weight or warrant its exclusion.)⁴

⁴ See note 3, supra.

6. Motion for involuntary dismissal at close of plaintiff's evidence [Rule 41]. At present a motion for involuntary dismissal at the close of the plaintiff's evidence, when made in a case tried to a jury, has the same effect as a motion for a directed verdict made at the same stage. To eliminate the confusing overlap, it is provided that a motion for involuntary dismissal at the close of the plaintiff's evidence can be made only in a case tried without a jury, where it has a distinctive and useful function.⁵

7. Dismissal for lack of an indispensable party [Rule 41]. The present Rule omits to mention that a dismissal for lack of an indispensable party does not operate as an adjudication on the merits. A statement to this effect is added.

8. Directed verdict [Rule 50(a)]. The order of the court granting a motion for a directed verdict is stated to be effective without any assent by the jury. This eliminates the merely formal but offensive practice of requiring the jury to signify assent to a so-called verdict which is actually not theirs.⁶

9. Motion for judgment n.o.v.; conditional rulings accompanying grant or denial of this motion [Rule 50(b), (c), (d)]. The time limit for making a motion for judgment n.o.v.

⁵ This amendment did not appear in the October 1961 draft as published and circulated, but is considered noncontroversial.

⁶ See note 5, supra.

is set at 10 days after entry of judgment, rather than 10 days after reception of the verdict, as at present, in order to conform to the period provided for making a motion for a new trial.

At present the procedure to be followed in ruling on the now conventional post-verdict alternative motions for judgment n.o.v. and for a new trial, and the consequences of these rulings, must be pieced out of the court decisions, and this is not easy. Accordingly, the proper practice is summarized in the text of the amended Rule. The amended Rule deals with the situations where the motion of the verdict-loser for judgment n.o.v. is granted, and his alternative motion for a new trial is either conditionally granted or conditionally denied by the trial court. It mentions the right of the verdict-winner to move in the trial court for a new trial after his opponent's motion for judgment n.o.v. has been granted. It also refers to the right of the verdict-winner to assert grounds for a new trial in the appellate court when the trial court has denied his opponent's motion for judgment n.o.v. and entered judgment on the verdict, but the appellate court reverses the judgment on the verdict.

10. Summary judgment [Rule 56]. An amendment corrects the omission to provide that answers to interrogatories may be used in supporting or opposing a motion for summary judgment.

A further amendment overrules decisions, principally in the Third Circuit, holding that a party against whom a

factual case has been made sufficient to warrant summary judgment, may avert such judgment simply by standing upon averments of his own pleadings without bringing forward opposing facts. These decisions impaired the utility of the summary judgment device. The amendment does not affect the normal standards applicable to the summary judgment motion, nor does it alter the burden normally cast on the moving party.

11. Entry of judgment [Rules 49, 52, 58, 79, Forms 31, 32]. When a judge has used apparently dispositive words in an opinion or memorandum, such as "The plaintiff's motion for summary judgment is granted," the question has arisen whether this is tantamount to a judgment and is therefore a sufficient basis for the entry of judgment in the civil docket. As the time to make post-verdict motions and to file notice of appeal begins to run from the effective entry of judgment, the question has been serious. To avoid doubts, an amendment provides that every judgment shall be set forth in a separate document. The wording of other related Rules is clarified.

A further amendment states clearly the situations in which the clerk (unless the court otherwise orders) is authorized to prepare, sign, and enter a judgment without awaiting a direction from the court, and the more complex situations in which the court is to approve the form of the judgment which the clerk is then to enter. Two forms of judgment are added to the Official Forms.

To avoid useless paper work and delay, it is provided that, except upon the court's direction, which shall not be given as a matter of course, attorneys shall not submit forms of judgment where a party recovers only money or costs or all relief is denied.

12. Saturday closing of clerks' offices; computation of time [Rules 6(a), 77(c)]. It is provided that clerks' offices may be closed on Saturdays so far as civil business is concerned, except as the particular district court may require that its clerk's office remain open for specified hours on that day. "Legal holiday" is defined and closing of clerks' offices on those holidays is also regulated.

In the light of the foregoing changes in the Rules, the provision for computation of time periods is suitably amended.

13. Proceedings to which Rules are applicable, references to officer of the United States [Rule 81(a), (f)].

These are minor technical corrections.

14. Jury demands in removed cases [Rule 81(c)]. To prevent unintended waivers of the jury right in removed cases, it is provided that a party who, prior to removal, has made an express demand for jury in accordance with State law, need not make a demand after removal; and, further, that if State law does not require an express demand in order to claim trial by jury, the party need not make demand after removal. In the latter situation, however, the court on its own motion

may, and upon request of any party must, require the parties to state whether they desire to claim a jury, and failure then to make a claim constitutes a waiver of trial by jury.

15. Correction of Official Forms as to the amount of damages alleged [Forms 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 21]. The statements of the damages claimed, appearing in various Official Forms, are now misleading because of statutory changes increasing the requisite jurisdictional amount in diversity and Federal question cases. The relevant Forms are therefore amended.

16. Official Form of complaint for patent infringement [Form 16]. The prayer for relief is amended to conform to the present patent statute.⁷

B. Discussion of Other Matters

The principal additional matters now engaging the attention of the Advisory Committee on Civil Rules may be summarized as follows.

1. Study of the Rules on joinder of parties (and related study of joinder of claims). At its meeting on May 28-29, 1962, the Advisory Committee undertook the consideration, among other subjects, of various problems regarding the joinder of

⁷ See note 5, supra.

parties and claims. The reporter's preliminary studies will be amplified in succeeding months and consideration will be resumed at the next meeting of the Committee.

2. Study of the Rules on discovery (and related study of the pretrial conference). As the Standing Committee is aware, the Advisory Committee has undertaken a study of discovery (including the pretrial conference) on both analytic and empirical lines. On the latter aspect of the study, the Advisory Committee invited the assistance of the Project for Effective Justice at Columbia Law School. Funds have been provided to the Project for this purpose through the generosity of the Ford Foundation and the Walter E. Meyer Research Institute of Law, Inc., which is acknowledged with thanks.

The analytic study is under way and a start has been made on the field investigation. The help of the Administrative Office of the United States Courts and of other groups and persons is required to make this work a success. Help is already being given in good measure, for which the Committee desires also to express its thanks.

3. Cooperation with the Admiralty Committee and others. Cooperation between the Admiralty and Civil Committees is essential and has been forwarded by discussion and correspondence between the reporters and by the attendance and participation of the reporter to the Admiralty Committee at meetings of the Civil Committee.

There are also questions of common interest between the

Criminal and Civil Committees; and in the future cooperation will also be needed between the Appellate Rules and Civil Committees. In addition, the work of the Study of the Division of Jurisdiction between State and Federal Courts (American Law Institute) is closely related to the Civil Rules.

Exhibit "B"

page proof copy of Civil Rules Amendments
published Oct 1961

as revised by Civil Rules
Committee & Standing Committee
to be presented to Supreme
Court for approval.

August 13, 1962

REPORT BY ADVISORY COMMITTEE ON ADMIRALTY
RULES TO THE STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES

One of the first actions taken by the Standing Committee was the adoption of a motion formally requesting the Advisory Committee on Admiralty Rules to make an inquiry into the question of the desirability of unifying or integrating the admiralty and civil rules, and to report back to the Standing Committee. Before the Admiralty Committee could undertake studies in response to that request, it was confronted with the emergency task of making the surveys and inquiries and recommendations suggested by the Supreme Court in *Miner v. Atlass*, 363 U.S. 641, which had invalidated the local rules relating to discovery depositions prevailing in a number of districts. The Committee was thus diverted to this other task which finally resulted in our recommendation to the Standing Committee of the Amendments to the Rules of Practice in Admiralty and Maritime Cases which your Committee approved and which were ultimately adopted by the Supreme Court, becoming effective July 19, 1961.

Since that time the Advisory Committee on Admiralty Rules has given its undivided attention to the problem presented

by the original inquiry of the Standing Committee with respect to unification of the civil and admiralty rules. It has held meetings on September 18, 1961, January 22, 23, 24, 1962, and June 11, 12 and 13, 1962. At the conclusion of its last meeting the Committee adopted the following motion:

"That it is the sense of this Committee that unification is both feasible and desirable, with the inclusion of certain rules for dealing with special admiralty proceedings; that we so report to the standing Committee; that we further report to that Committee that we now conceive our future task to be the effectuation of that unification."

Twelve of the thirteen members of the Committee voted in favor of the motion; the single negative vote was not a vote against the desirability or feasibility of unification. The member so voting did so only because of his objection to the phrasing of the motion. He wished to exclude the reference to "certain rules for dealing with special admiralty proceedings".

The Committee is therefore able to make this progress report to the effect that its work has proceeded to a point where it is able to express its unanimous agreement that the inquiry addressed to the Advisory Committee on Admiralty Rules by the Standing Committee should be answered in the affirmative.

Our mode of procedure has been as follows: Our Reporter has prepared suggested sample sets of possible unified rules. After a first such draft was considered by the Committee,

the Reporter produced a second draft incorporating suggestions made by or to the Committee. This further draft has had much study by the Committee.

There has been made available to the members of the Standing Committee a revised summary of how the existing rules would be disposed of in such a unification. This summary should be added to this report.

The work of revising and completing the current draft of the sample set of rules has not been completed. Some difficult problems remain to be solved; but the Committee has reached the point where it has been able to ascertain, as reflected by the action taken by the Committee, that these problems are capable of solution.

Our Reporter, Professor Brainerd Currie, has set forth the following statement of some of the problems of unification. It is illustrative only.

"Unification does not mean complete uniformity. No one has ever suggested that unification could be accomplished by revoking the Admiralty Rules and making the Civil Rules applicable to what are now admiralty cases. There must be special rules to take care of certain admiralty proceedings heretofore unknown to the Civil Practice, such as attachment and garnishment, actions in rem, and proceedings for limitation of

liability. These matters have been dealt with in a set of Supplemental Rules, so constructed as not to have any impact on the civil practice. In the main body of the unified rules uniformity is highly desirable; yet in those few instances in which it does not seem that early agreement on a uniform rule is feasible, exceptions can be made: There can be differential treatment depending on the ground of jurisdiction invoked by the plaintiff. Of course, each exceptions should be kept to a minimum; to multiply them unnecessarily would detract from the desirability of unification. For this reason there should be full cooperation by the two Advisory Committees in an effort to achieve the maximum degree of uniformity.

Most of the Civil Rules are either identical with existing Admiralty Rules or can be applied to admiralty cases without difficulty. Most of the problems involved in agreeing on a uniform rule have been satisfactorily solved, or are minor. Thus the basic problem of the right to jury trial was solved, to the satisfaction of the Advisory Committee on Admiralty Rules, at an early stage. Our purpose was to preserve the status quo: neither to enlarge nor to curtail the right to jury trial. At the present time a suitor wishing to avoid jury trial files a libel in admiralty; a suitor wishing to insure jury trial (if his claim is within the saving-to-suitors clause) files a civil

action. By providing for one form of action, to be commenced by the filing of a complaint, unification will remove this method of differentiating between cases in which there is a right to jury trial from those in which there is no such right. But unification, as envisaged, would preserve the status quo, and in particular the plaintiff's control over the question of jury trial, but (1) providing that the rules do not impair any constitutional or statutory right to jury trial and (2) providing that the rules do not create any right to jury trial when the plaintiff invokes only the admiralty jurisdiction.

Illustrative of the minor problems, and incidentally of the contribution which the study of unification is capable of making to general improvement of the practice, is the time for appeal. In the beginning there was some ground for anticipating that there would be sentiment for retaining the present times for appeals in admiralty cases (90 days, fifteen days for interlocutory appeals). These would be superimposed on the present times for appeal in civil cases (30 days, 60 when the United States is a party, plus one or two special statutory provisions). After some discussion, however, the Advisory Committee on Admiralty Rules unanimously voted in favor of a single time of 30 days for all cases. This rather bold and original move in the direction of uniformity and simplification was made un-

animously, and present indications are that it will be regarded sympathetically by the Civil Committee. There may be objection from the Government, but at our last meeting the Admiralty Committee voted to adhere to its recommendation. Even if it should turn out in the end that agreement cannot be reached on a single time for appeal for all cases, it is evident that agreement can be reached on a uniform rule without distinction between suits in admiralty and civil actions.

It appears that there are probably only two problems that are serious in the sense that agreement on a rule uniformly applicable to civil and admiralty cases may not be likely in the near future.

The first of these concerns third-party practice. This practice originated in admiralty (Admiralty Rule 56), and the original Civil Rule (FRCP 14) was modeled on the Admiralty Rule. Like the admiralty practice, the Civil Rule originally contemplated that the defendant could bring in a third-party defendant not only on the ground of indemnification but also on the ground that the third-party defendant is liable directly to the plaintiff: in other words, that the defendant could tender a new defendant to the plaintiff, and demand that the plaintiff take judgment against him. This feature of the Civil practice encountered two difficulties: (1) In diversity cases, the addi-

tion of a party having the same citizenship as the plaintiff was held to destroy jurisdiction; (2) if the plaintiff refused to amend his complaint and demand judgment against the third-party defendant, there was no way of requiring him to do so. Minor adjustments in the rule might have dealt with these difficulties. Instead, the Civil Rule was amended to abandon this feature of third-party practice altogether, so that the third-party defendant can be impleaded only on the ground of liability over to the defendant.

This feature of the practice, however, is an important implementation of a substantive right under the maritime law. At least in collision cases, and probably in some other cases of maritime tort, it is to the defendant's advantage as a matter of law to implead another party who may be jointly liable to the plaintiff. This is so because of the maritime rule of divided damages, and because of the practice of entering conditional decrees when joint tortfeasors are sued together. Thus if the innocent victim of a mutual-fault collision between two vessels sues only one of the vessels, he is entitled to unconditional judgment for his full damage; but if the vessel sued can implead the other, and mutual fault is found, the decree against each will be in the first instance for only a moiety of the plaintiff's damage, and the original defendant will be liable for the

whole only in the event that the plaintiff cannot collect from the third-party defendant. Our Committee feels that it is important to preserve this procedure.

We have considered several ways of dealing with this problem. Unless, as seems unlikely, the Civil Committee is prepared to return to a modified version of its practice prior to the amendment of FRCP 14, it appears that we shall have to make a differentiation on jurisdictional lines, retaining the admiralty practice for cases founded solely on the admiralty jurisdiction.

The second of the relatively serious problems concerns FRCP 26(a) and depositions. The stumbling-block here is the requirement of leave of court when the plaintiff serves a deposition notice within 20 days after commencement of the action. Because of its reservations as to this feature of the Rule, our Committee, in adopting the substance of Rule 26 as a new Admiralty Rule, provided that depositions may also be taken in accordance with the de bene esse statutes, which, whatever their limitations, do not require leave. Our Committee objects to the 20-day rule as it stands because (1) it is often inconvenient to obtain leave of court when it is desired to take the deposition of a witness who is about to leave the jurisdiction, and because (2) the rule of thumb concerning the order in which depositions are taken

("first come, first served"), which has grown outside the Rules, is nevertheless based on the 20-day requirement. Probably the latter objection is not peculiar in any way to the admiralty practice, and is just as much a problem for the Civil Committee. While the first is not necessarily peculiar to admiralty, the feeling is that the problem of the departing witness is especially acute because of the mobility of vessels and maritime personnel.

Preliminary discussions have indicated that there is not much hope of early agreement on a uniform rule, so that differential treatment may be necessary here also. As a result of our most recent meeting, however, it appears that there may be good prospects of agreement on a modification of FRCP 26(a) dispensing with the requirement of leave where there is an affidavit to the effect that the witness is about to become unavailable."

Respectfully submitted,

Bailey Aldrich
Charles L. Black, Jr.
Stuart B. Bradley
Herbert W. Christenberry
Leavenworth Colby
Edward J. Dimock
Abraham E. Freedman
William A. Grimes
Harold M. Kennedy
Sam L. Levinson
John C. McHose
W. J. Symmers
Walter L. Pope, Chairman

Brainerd Currie, Reporter

July 13, 1962

To the Honorable Albert B. Maris, Chairman, and the Members of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

The following is a progress report of the Advisory Committee on Bankruptcy Rules.

The Advisory Committee on Bankruptcy Rules is engaged in a study of the General Orders and Official Forms in Bankruptcy. The Orders and Forms, promulgated by the Supreme Court pursuant to the authority granted by section 30 of the Bankruptcy Act, are valid only insofar as consistent with the Act.

The Committee has had two meetings of two days each, the first in December 1960 and the second in October 1961. A three-day meeting scheduled for May 2, 3, and 4 of this year was postponed because of the deficiency in the appropriation. The agenda for that meeting included proposed amendments of about forty of the General Orders and Official Forms and proposals for about ten new Orders or Forms. The meetings held have been well attended and have been fruitful. The Committee has been materially aided in its deliberations by the presence and active participation in the discussion of Judge Maris at its first meeting and, at both its meetings, of Professor J. W. Moore of the Standing Committee and Edwin Covey, Chief of the Bankruptcy Division of the Administrative Office.

The Advisory Committee has twelve members in addition to the Chairman. It has lost one member by death, and he has been replaced. The original terms of the appointments of six of the members expire on September 30, 1962.

Amendments of twelve General Orders and twenty-three Official Forms as recommended by the Advisory Committee and approved by the Standing Committee and the Judicial Conference became effective on July 19, 1961, by order of the Supreme Court. On the same date and by the same action three new Official Forms were established, and nine were abrogated. These amendments were restricted in scope to those required (1) to bring the General Orders and Official Forms into harmony with recent amendments of the Bankruptcy Act, (2) to bring them into harmony with current and sound practice, and (3) to correct obvious departures from approved form.

Six matters have been specifically referred to the Advisory Committee through the Standing Committee by the Judicial Conference: (1) the improvement of procedures in installment fee cases under General Order 35(4); (2) elimination of the oath on proofs of claim; (3) revision of Schedule B-4 in conformity to a proposed amendment of section 60d of the Bankruptcy Act; (4) the proposal of the Bankruptcy Division of the Administrative Office to establish panels of standing trustees to handle small cases; (5) the question whether referees should preside over jury trials in proceedings authorized by the Bankruptcy Act; and (6) a proposal to amend General Order 45 to make

employees of the Judicial Branch and the Department of Justice of the United States ineligible for appointment or employment as auctioneers, appraisers, or accountants in bankruptcy cases. The status of these matters will be indicated in brief statements about each as follows.

(1) The agenda for the postponed meeting of the Advisory Committee includes drafts of a proposed revision of General Order 35(4) and of new Official Forms for an Application for Permission to Pay Filing Fees in Installments and for an Order for Payment of Filing Fees in Installments. Discussions at two meetings and a considerable exchange of correspondence have explored the subject of installment fees rather fully, and the issues remaining to be resolved are fairly narrow.

(2) Elimination of the oath on proofs of claim was accomplished ^{to} by the amendments/the Official Forms promulgated last year. The agenda for the postponed meeting includes proposals for further simplification of the forms for proofs of claim.

(3) A draft of a revision of Schedule B-4 in conformity with the proposed amendment of section 60d in H.R. 5149 now pending in Congress has been drafted. When and if the proposal is enacted, an appropriate revision of the schedule will be submitted by the Advisory Committee for approval.

(4) The proposal to establish panels of trustees for small cases and other aspects of administering the enormous burden of no-asset and nominal-asset cases have received extended attention at both

meetings of the Advisory Committee. It is in this area that differences of opinion among members of the Committee are most pronounced. Like differences, it should be added, develop in most discussions of this subject, and generally acceptable solutions are elusive. The Administrative Office of United States Courts has made a survey of the administration of no-asset cases among a number of selected districts and has furnished tabulated results to the Committee, but the implications have not yet been fully considered. The Advisory Committee is not ready to submit a recommendation on this matter.

(5) The propriety of the conduct of jury trials by referees was extensively discussed at the first meeting of the Advisory Committee. The Committee was impressed by two facts: (1) that the demands for jury trial in bankruptcy proceedings are exceedingly few and far between; and (2) that there appears to be a general antipathy toward use of the rule-making power to dilute or modify traditional rights to jury trial, whether derived from constitutional or statutory sources. Nonetheless the Committee resolved tentatively to approve a revision of General Order 12 which would assure a jury trial before a judge in any bankruptcy proceeding only if request for a judge had been coupled with the demand for jury trial made pursuant to the Act. Pending completion of its study of other aspects of General Order 12 the Committee was disposed to postpone submitting a final recommendation on this matter.

(6) The proposed amendment of General Order 45 was attributable to a situation that developed in one federal district where the judges' bailiffs were uniformly appointed as appraisers in all bankruptcy proceedings. After disapproval of the practice by the Judicial Conference the judges of the court in question promulgated a district rule to prohibit it. Although the immediate cause of the reference to the Advisory Committee has been dissolved, the Committee has proceeded to consider the Conference's suggestion in company with a number of other proposals affecting General Order 45. It appears to be close to agreement on a draft of a revision of this Order.

The Committee on Bankruptcy Rules has received a large number of recommendations for changes affecting practically every one of the General Orders and Official Forms. Recommendations come not only from such organizations as the National Bankruptcy Conference and the National Association of Referees in Bankruptcy but from individual members of the bench and bar and from staff members in governmental agencies. Additionally an increasing number of proposals are being received which contemplate new Orders or Forms. The Reporter is undertaking preliminary evaluations of the proposals and preparation of drafts for those susceptible of formulation.

H.R. 7405, now pending in Congress, would amend title 28 of the United States Code by inserting a new section 2075 to confer rule-making power on the Supreme Court in respect to practice and procedure

under the Bankruptcy Act in terms comparable to the grants in other areas of federal procedure. Section 30 of the Bankruptcy Act would be repealed. H.R. 7405 passed the House without amendment on 7 August 1961, and it is understood that passage by the Senate during this Second Session of the 87th Congress is likely. The immediate result of enactment of H.R. 7405 would be to impress a new pattern on the procedure to be pursued in prescribing and amending bankruptcy rules and forms, which do not now need to be reported to Congress. Enactment would, moreover, make appropriate a consideration of the question whether new rules and forms of practice and procedure under the Bankruptcy Act should be formulated. Such rules would presumably merge the General Orders and procedural provisions of the Bankruptcy Act and would supersede the latter. Reforms not now within the jurisdiction of the Committee on Rules of Practice and Procedure and the Advisory Committee on Bankruptcy Rules could be studied and proposed. The dimensions of such a project would be substantially different from those of the present assignment of the Advisory Committee on Bankruptcy Rules.

MEMORANDUM

TO: Judge Albert B. Maris, Chairman, Committee on Rules of Practice and Procedure

FROM: Judge John C. Pickett, Chairman, Advisory Committee on Criminal Rules

RE Report of Advisory Committee on Criminal Rules.

1. The Advisory Committee on Criminal Rules has had three meetings--October 14, 1960; May 31-June 2, 1961; and October 30-November 1, 1961. All members of the Committee were present at each of these meetings. A fourth meeting, scheduled for April, 1962, was cancelled for budgetary reasons.

2. At its first meeting the Advisory Committee adopted the following motion: "That the Committee proceed to a study of all the Criminal Rules, but that any tentative or final report on its recommendations be held in abeyance until the entire study has been completed, except where a situation otherwise requires."

3. The Reporter has now completed a study of all of the rules and has made tentative recommendations concerning them. The Committee has discussed in meetings substantially all of these recommendations. Proposals for amendments to Rules 4, 15, 17-21, 23, 24, 28-31, 33-35, 45, 49, and 54-56 are substantially in form for circulation to the bench and bar for comment and criticism. More important and difficult problems concerning Rules 5, 6, 8, 11, 14, 16, 32, 37, 44, and 46 are on the agenda for discussion and determination at a meeting to be held early in October.

4. It is planned that shortly after the October meeting the Committee will have ready for circulation to the bench and bar its recommendations for all of the proposed amendments which have been the subject of Committee discussion. If work on some rules is not completed at that meeting they will be withheld for further study and later recommendations.

STATEMENT OF THE PROGRESS
OF THE WORK OF
THE ADVISORY COMMITTEE ON APPELLATE RULES

JULY 1962

To the Committee on Rules of Practice and Procedure:

The Committee on Rules of Practice and Procedure has instructed the Advisory Committee on Appellate Rules (1) to present a proposed draft of a uniform rule for review of decisions of the Tax Court of the United States, and (2) to undertake a comprehensive study of appellate procedure in the courts of appeals of the United States for the purpose of presenting its recommendations for improvement of present procedures.

- (1) The Uniform Rule for Review of Decisions of the
Tax Court of the United States

In November, 1960, the Appellate Rules Committee submitted to the Standing Committee a draft of a proposed rule for review of decisions of the Tax Court. The draft was then submitted to the Bench and Bar for criticisms. A number of suggestions were received, and in the meantime the Appellate Rules Committee had tentatively determined as a result of its general study to recommend certain changes in appellate practice which it was thought desirable to incorporate in the Tax Court Rule. Accordingly, in March, 1962, it submitted a second proposed draft to the Standing Committee. This draft has recently been submitted to the Bench and Bar for criticisms. The Committee will consider a final proposed draft at its next meeting.

(2) Study of Appellate Procedure in the United States
Courts of Appeals

The Appellate Rules Committee is now studying the statutes, rules and practices which touch upon the work of the United States courts of appeals and the judges thereof. This study includes provisions respecting appeals which are now contained in the Civil, Criminal and Admiralty Rules and in the Bankruptcy Act and the General Orders. The Committee feels that its recommendations to the Standing Committee can be set forth most precisely and effectively in a set of rules regulating the whole of the practice and procedure in the courts of appeals from the invocation of jurisdiction to ultimate disposition of the case. It has accordingly undertaken to present a draft of such a set of rules to the Standing Committee.

The Committee is working from an outline in the form of tentative descriptive titles of rules. In general, its procedure is this: (1) following preparation and distribution of relevant materials, titles are placed on the agenda for general discussion and agreement on principles and content; (2) a tentative draft incorporating the decisions reached as a result of the general discussion is then prepared and circulated for detailed consideration at the next meeting; and (3) following consideration of the tentative draft, a preliminary draft is prepared for adoption by the Committee and, ultimately, for presentation to the Standing Committee.

The general scope of the Committee's work and its progress to date may best be indicated by setting out its working outline of titles together with a brief statement of the present status of each title in terms of the three-step process described in the paragraph above:

I. GENERAL PROVISIONS.

Rule 1. Scope and Construction of Rules.

(Tentative draft considered; preliminary draft in preparation.)

Rules 2-4. Untitled

(Reserved pending decisions on extent of coverage of the rules.)

II. APPEALS FROM JUDGMENTS AND ORDERS OF THE DISTRICT COURTS

Rule 5. Appeals -- How Taken.

(Tentative draft considered; preliminary draft in preparation.)

Rule 6. Appeals -- When Taken.

(Tentative draft considered; referred to reporter for further study.)

Rule 7. Interlocutory Appeals under 28 U. S. C. 1292(b).

(Tentative draft considered; preliminary draft in preparation.)

Rule 8. Appeals by Allowance in Bankruptcy.

(Tentative draft considered; preliminary draft in preparation.)

Rule 9. Bond on Appeal

(Tentative draft in preparation.)

Rule 10. Supersedeas; Stays.

(Tentative draft in preparation.)

Rules 11-14. Untitled.

(Reserved pending decisions of extent of coverage of the rules.)

Rule 15. The Record on Appeal.

(Tentative draft considered; preliminary draft in preparation.)

Rule 16. Transmission of the Record.

(Tentative draft considered; preliminary draft in preparation.)

Rule 17. Filing of the Record.

(Tentative draft considered; preliminary draft in preparation.)

III. APPEALS FROM DECISIONS OF THE TAX COURT.

Rules 18-19. Untitled.

(Reserved; the Rule on Review of Decisions of the Tax Court will ultimately be incorporated here.)

IV. REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS.

Rules 20-25. Untitled.

(Reserved; materials are now being prepared for Committee discussion.)

V. EXTRAORDINARY WRITS.

Rules 26-27. Untitled.

(Reserved; materials are now being prepared for Committee discussion.)

VI. PRACTICE.

Rule 28. Filing and Service.

(Tentative draft considered; preliminary draft in preparation.)

Rule 29. Computation of Time.

(Tentative draft considered; preliminary draft in preparation.)

Rule 30. Motions.

(Tentative draft considered; preliminary draft in preparation.)

Rule 31. Briefs -- General Provisions.

(Tentative draft in preparation.)

Rule 32. Briefs -- Contents and Arrangement.

(Tentative draft in preparation.)

Rule 33. Appendix to Briefs.

(Tentative draft considered; preliminary draft in preparation.)

Rule 34. Form of Briefs and Other Papers.

(Tentative draft considered; preliminary draft in preparation.)

Rule 35. Call and Order of the Calendar.

(Tentative draft in preparation.)

Rule 36. Oral Argument.

(Materials for discussion in preparation.)

Rule 37. Death of a Party; Substitution.

(Materials for discussion in preparation.)

VII. SPECIAL PROVISIONS.

Rule 38. Appeals in Forma Pauperis.

(Materials submitted and considered; referred to reporter for further study.)

Rule 39. Appeals from Orders Fixing Bail.

(Materials for discussion in preparation.)

Rule 40. Constitutional Questions in Cases to Which the United States is Not a Party.

(Tentative draft in preparation.)

Rule 41. Untitled.

(Reserved pending determination of extent of coverage of the rules.)

VIII. DISPOSITION OF CAUSES.

Rule 42. Opinions of the Court.

(Tentative draft in preparation.)

Rule 43. Interest and Damages.

(Materials for discussion in preparation.)

Rule 44. Costs.

(Tentative draft in preparation.)

Rule 45. Rehearings.

(Materials for discussion in preparation.)

Rule 46. Process; Mandates.

(Materials for discussion in preparation.)

Rule 47. Dismissal by the Parties.

(Tentative draft in preparation.)

Respectfully submitted,

Bernard J. Ward
Reporter
Advisory Committee on Appellate Rules

Feb. 1961 Minutes attached

Agenda 8
Rules Committee
March 1961

REPORT OF THE COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE

TO THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The standing Committee on Rules of Practice and Procedure met in the Supreme Court Building in Washington on February 24, 1961. Judges Maris, Clark and Wright, Professor Moore, and Messrs. Ford, Rankin and Segal were present. Judge Boldt and Dean Ladd were unavoidably absent. Judges Pope and Prettyman, Chairmen of the Admiralty and Appellate Advisory Committees, respectively, and Professors Kaplan, Currie and Kennedy, Reporters for Civil, Admiralty and Bankruptcy Rules, respectively, were also present during part of the meeting.

Since the last meeting of the standing Committee, four of the Advisory Committees, those for the Appellate Rules, Bankruptcy, Admiralty, and Civil Rules, submitted to the Committee preliminary drafts of proposed rules and amendments to existing rules for circulation to the bench and bar. These drafts were promptly and widely

circulated in printed form under the dates of November 1960, November 1960, December 1960, and January 1961, respectively. Comments and criticism were solicited and these when received were promptly transmitted to the appropriate advisory committee for study. Following such circulation and after full consideration of the communications thus received three of the advisory committees, those for Civil, Admiralty and Bankruptcy Rules, approved definitive drafts of proposed amendments and reported them to the standing Committee for consideration and action at the meeting on February 24, 1961.

Advisory Committee on Civil Rules

The Advisory Committee on Civil Rules has undertaken a formidable program. In fact, it would be difficult to overstate the significance and the potentialities of this new work toward the improved administration of justice.

The Committee has completed a preliminary examination of the 1955 proposed amendments to the Rules of Civil Procedure which were made by the former Advisory Committee, and which the Supreme Court did not, at the time, deem it advisable to transmit to the Congress. The Reporter's comprehensive report to the Advisory Committee upon

the 1955 proposed amendments was considered at the first meeting of the Committee on December 5-7, 1960, and conclusions were reached upon certain of the proposals, subject to further consideration, research and drafting, which is going forward.

The Advisory Committee decided to recommend the prompt amendment of certain Rules of Civil Procedure [Rules 25, 54 and 86 and Forms 2 and 19] which are causing confusion and difficulty. The proposed amendments provide (1) for the automatic substitution as a party of the successor when a public officer who sues or is sued in his official capacity dies, resigns or otherwise ceases to hold office, (2) for authority to enter a final appealable judgment as to one or more but fewer than all of the parties in a multiple-parties suit, and (3) for the inclusion in Forms 2 and 19 of averments consistent with present statutory requirements.

The preliminary draft was published and circulated to the bench and bar throughout the country in January 1961. The comments and suggestions received have been analyzed by the Reporter and considered by the Advisory Committee. Since the standing Committee gave the bench and bar until March 10, 1961 to submit their comments, and additional comments may, therefore, yet be received, the advisory committee's recommendation was tentative. Its final recommendations

will be presented to the Judicial Conference orally by the chairman of the standing Committee. Meanwhile the advisory committee tentatively recommends that the preliminary draft as circulated be approved with minor changes as indicated in Exhibit 1 hereto.

The standing Committee on Rules of Practice and Procedure, having considered the draft of the proposed amendments to the Federal Rules of Civil Procedure and accompanying notes at its meeting on February 24, 1961, recommends that the draft be approved by the Judicial Conference, with any changes proposed in the final report of the advisory committee, and transmitted to the Supreme Court with the recommendation that the amendments be promulgated.

The Advisory Committee on Civil Rules has approved a program of future work which includes, in addition to research, further study and consideration of certain of the proposals made in 1955 by the former Advisory Committee, (a) a general study of the subject of parties (Rules 17-25) which has been initiated, and (b) a general study of Discovery (Rules 26-37) with related study of the Pre-trial Conference (Rule 16), a plan of which has been outlined comprising both analytic work by the Reporter and his associates and field investigation by the Project for Effective Justice at Columbia University Law School to be financed by a foundation. It is

contemplated that the analytic work will start about July 1, 1961, and that the work devising a pattern of field investigation will start about September 1, 1961.

Advisory Committee on Admiralty Rules

The Advisory Committee on Admiralty Rules has devoted its study to (1) matters of an emergency nature resulting from the decision in Miner v. Atlass, 363 U.S. 641, and (2) long-range planning of the program of the committee.

The Supreme Court of the United States handed down its opinion in the Miner case on June 20, 1960, and referred to the Admiralty Committee, by name, a major problem in admiralty rulemaking.

Briefly stated, prior to the Miner case, several districts, in which more than half the private admiralty suits are filed, had adopted local rules specifically making the Federal Rules of Civil Procedure applicable to the taking of depositions of parties and witnesses. Other districts had local rules making the civil rules applicable to matters not otherwise covered. And in certain other districts, for one reason or another, the practice with respect to depositions was broader than was authorized by the existing admiralty rules.

The Supreme Court decided as a matter of law that discovery-deposition procedures were not authorized by the General Admiralty Rules, that local district courts did not possess the authority to promulgate and establish discovery-deposition rules in admiralty cases and, finally, that such basic changes in admiralty practice could be made only in accordance with 28 U. S. C. 2073 which requires promulgation of proposed rules by the Supreme Court and reporting to Congress.

The most evident consequences of the decision are that as in the *Atlass* case itself, lawyers generally are prevented from taking discovery depositions which they would like to take; and depositions already taken, while they may have served a useful purpose, cannot now be used in evidence.

The results in many districts were quite serious because of the many depositions already taken, involving hundreds of thousands of dollars.

The Supreme Court was mindful that its decision would cause some dislocation in practice in the districts where such rules had been in force, and expressed the hope that the Advisory Committee on Admiralty Rules would give the matter its early attention.

Pursuant to this directive and at the request of the standing Committee the Admiralty Advisory Committee promptly acted and

sought by letter the experience and advice of approximately 90 United States district judges and 1,000 admiralty lawyers in those districts having local discovery rules in admiralty. The responses were full and representative, indicated overwhelming approval of the deposition practice, and included valuable technical suggestions for drafting purposes.

The result of all this activity was the drafting by the Advisory Committee of proposed new and amended Rules of Practice in Admiralty and Maritime Cases, relating to depositions and discovery and providing for summary judgment and declaratory judgment procedure. The draft was submitted to the standing Committee for distribution and was printed. Nearly 5,000 copies were distributed in December 1960 to the bench and bar.

The proposed amendments would (1) authorize depositions and discovery in admiralty practice substantially in accordance with the Civil Rules, (2) authorize the use of depositions taken prior to July 20, 1960, in reliance on local rules or practices, as well as all depositions taken by consent of the parties, to the same extent as if they had been authorized by valid rules, (3) authorize summary judgments in admiralty and (4) authorize declaratory judgments in admiralty.

The Advisory Committee met in Washington on February 20, 1961 and examined the comments and suggestions received from the bench and bar. These were overwhelmingly favorable and required no changes in the amendments as drafted, but certain clarifying changes were made in the notes accompanying the proposed amendments, as well as some typographical corrections. These are indicated on Exhibit 2 to this report.

The standing Committee on Rules of Practice and Procedure, having considered the definitive draft of the proposed amendments to the Rules of Practice in Admiralty and Maritime Cases and accompanying notes at its meeting on February 24, 1961, recommends that the draft be approved by the Judicial Conference and transmitted to the Supreme Court with the recommendation that the amendments be promulgated.

The future program of the Admiralty Committee includes extensive research and consideration of the advisability and feasibility of unifying the practice in civil and admiralty cases under a single set of rules of procedure which would, of course, include all special provisions required in admiralty. This is an undertaking of great importance to the bench and bar.

Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules, in addition to embarking upon a comprehensive program aimed at improving the General Orders and Official Forms in Bankruptcy, made a thoroughgoing study of the statutes enacted since 1952 -- the most recent year in which amendments to the General Orders and Official Forms were adopted -- and developed a preliminary draft containing proposed revisions of certain general orders and official forms in bankruptcy.

The proposed amendments would (1) bring the General Orders and Official Forms into harmony with recent amendments of the Bankruptcy Act; (2) bring them into harmony with current and sound practice; and (3) correct obvious departures from approved form.

The amendments are designed to correct an unnecessarily confusing and annoying situation which, until the Rules Committees were established, had little hope for continuous attention. Statute after statute was enacted amending the Bankruptcy Act and the General Orders and Official Forms fell farther and farther behind and out of date; yet, they existed as official procedure and criteria in the handling of bankruptcy litigation.

The preliminary draft was transmitted to the standing Committee, printed and submitted to the bench and bar in November, 1960

for consideration and suggestions. Following receipt of such suggestions and in the light of discussion had at the meeting of the Advisory Committee in December, the draft was revised in minor particulars and definitively approved. A copy is annexed as Exhibit 3.

The standing Committee on Rules of Practice and Procedure, having considered the definitive draft of the proposed revision of certain general orders and official forms in bankruptcy and accompanying notes at its meeting on February 24, 1961, recommends that the draft be approved by the Judicial Conference and transmitted to the Supreme Court with the recommendation that the amendments be promulgated.

An additional matter of importance in the work of the Advisory Committee on Bankruptcy Rules relates to the existing statutory authority for promulgating procedural rules in bankruptcy.

Section 30 of the Bankruptcy Act provides:

"All necessary rules, forms, and orders as to procedure and for carrying the provisions of this title into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States."

There is no requirement that the Court refer to Congress the bankruptcy rules and forms which it promulgates pursuant to this authority. In other areas of its rulemaking responsibility, of course, the Supreme

Court is required by pertinent legislation to report proposed rules to Congress. Once the rules reported to Congress by the Court have gone into effect at the close of a statutory waiting period, all conflicting laws, including Congressional enactments, are superseded. No such effect attaches to the General Orders and Official Forms in Bankruptcy promulgated pursuant to section 30 of the Bankruptcy Act. The result is that Congress is constantly being called upon to give time to the consideration of bills dealing with needed changes in small details of procedure now set out in the Bankruptcy Act.

The Advisory Committee concluded at its December meeting, after consideration of the matter, that rule making in bankruptcy should conform to the pattern prescribed for rule making in the areas of civil procedure and admiralty, and recommended to the standing Committee the enactment of Congressional legislation to substantially the following effect:

"The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act.

"Such rules shall not abridge, enlarge, or modify any substantive right.

"Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

"All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."

The standing Committee on Rules of Practice and Procedure,
having considered the proposal that legislation should be enacted pro-
viding that rule making in bankruptcy should conform to that prescribed
for civil actions and admiralty cases, recommends that the proposal
be approved by the Judicial Conference of the United States and that
appropriate legislation be requested from Congress.

Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules held its first meeting in Washington on October 14, 1960. At that time, the Committee decided that it would proceed to a study of all the Criminal Rules, but that any tentative or final report on its recommendations would be held in abeyance until the entire study has been completed, except where a situation otherwise requires. As a consequence, it is not expected that the Advisory Committee will forward to the standing Committee any recommendations until such time as a tentative draft covering all the Rules has been prepared.

At the October 14 meeting, the Advisory Committee discussed many of the problems arising from Rule 5. Since that meeting, tentative drafts covering Rules 1-9, 44, 18-22, and 10-17, have been prepared by the Reporter and circulated to the members for preliminary consideration.

Advisory Committee on Appellate Rules

Upon its appointment, the Advisory Committee on Appellate Rules was presented with the immediate task of drafting a proposed rule for the review of decisions of the Tax Court of the United States. Congress had placed responsibility for promulgation of such a rule upon the Supreme Court in 1954, 28 U. S. C. 2074, but the existing personnel and facilities of the Supreme Court are in no sense adequate to perform this type of rulemaking function. Moreover, with the ever-increasing length of the calendars, it is obviously not feasible for the Justices themselves to do the work essential to the original drafting of new or amended rules of procedure. Thus, the task was assigned to the standing Committee on Rules of Practice and Procedure and referred as a first order of business to the Advisory Committee on Appellate Rules.

The Advisory Committee prepared a preliminary draft of a proposed rule for the review of decisions of the Tax Court. The

draft was printed and widely circulated in November, 1960.

Many suggestions and comments were received and these were considered at the meeting of the Advisory Committee on January 30, 1961. At that meeting it was decided to give the preliminary draft further study in the light of the communications received and to report upon it to the standing Committee at a later date.

The Advisory Committee is developing a comprehensive program for improving appellate procedure in the United States courts, including a broad examination of the appellate rules to determine how well they are working, to pinpoint the specific problems, and to identify those areas in which there is little or no difficulty. In addition to rules relating to the appeal of civil and criminal cases, there are the rules governing the appeal of admiralty and maritime cases, bankruptcy cases, the review of orders of administrative agencies, the unique -- and urgent -- problems in appeals in forma pauperis, and many other technical matters which will be given attention.

Appointment of Reporters

The Judicial Conference, at its session on September 18, 1958, approved a resolution which established the basic organization of the Rules Committees. Paragraph 5 of that resolution reads:

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

During the organizational stages of the Rules undertaking, as jurisdiction of the various committees was refined, it was found by the standing Committee that no one Reporter could handle properly and expeditiously the varied matters that are before the civil, admiralty, bankruptcy, criminal and appellate rules committees. As a consequence, instead of appointing a principal Reporter, with associates or assistants, the standing Committee recommended to the Chief Justice the appointment of full Reporters for each of the Advisory Committees. While this change has not altered the objectives of the Rules undertaking, it is nevertheless a necessary change in organization which should be brought specifically to the attention of the Judicial Conference and, if it accords with the views of the Conference, have Conference approval.

Your Committee recommends that paragraph 5 of the Resolution of September 18, 1958, be amended to read as follows:

Each of the Advisory Committees shall have a Reporter, appointed by the Chief Justice for limited terms of service and at adequate salaries. Supporting staff for the work of the reporter and of the committees should be provided by the Administrative Office.

Advisory Committee on Federal Rules of Evidence

The Judicial Conference previously referred to the Committee on Rules of Practice and Procedure a proposal to establish uniform rules of evidence for the federal courts. [Sept. 1958]

At its meeting in December, 1960 the Advisory Committee on Civil Rules adopted the following resolution:

That the Advisory Committee on Civil Rules urge the standing Committee to initiate a project, at a time thought suitable by the standing Committee and whether through an existing committee or a new group, to study the feasibility of adopting uniform rules of evidence for the Federal courts and, if found feasible, to draft such rules.

The proposal urging the promulgation of federal rules of evidence has broad support in the bench and bar. It also has the support of the American Bar Association, the American Law Institute, the Federal Bar Association, the National Conference of Commissioners on Uniform State Laws, and the Judicial Conferences of several circuits.

The standing Committee is convinced that the proposal looking forward to the promulgation of Federal Rules of Evidence is meritorious, that it deserves serious study as to its advisability and feasibility and that, if resolved in favor of such rules, that uniform rules of evidence for the federal courts should in due course be promulgated. Therefore:

The standing Committee on Rules of Practice and Procedure recommends that the Judicial Conference of the United States amend paragraph 2 of its Resolution adopted September 18, 1958, to read as follows:

(2) That six advisory committees be created, one on practice and procedure in civil cases, one on practice and procedure in admiralty cases, one on practice and procedure in bankruptcy cases, one on practice and procedure in criminal cases, one on rules of evidence in the federal courts, and one on appellate practice and procedure, the members of the advisory committees to be appointed by the Chief Justice for terms of four years, the first appointments to be for staggered terms of two and four years, the members to be eligible for re-appointment for one additional term only, and the members to consist of broadly representative judges, lawyers and law teachers.

Newly Appointed Members

The following appointments have been made by the Chief Justice:

To the standing Committee:

Peyton Ford, Esquire
1000 Connecticut Avenue
Washington 6, D. C.

To fill the vacancy created by the death of Phillip B. Perlman

To the Advisory Committee on Civil Rules:

Professor Charles Alan Wright
University of Texas Law School
Austin, Texas

To fill the vacancy created by the resignation of Professor Charles T. McCormick for reasons of health.

To the Advisory Committee on Civil Rules (Continued)

W. Brown Morton, Jr., Esquire
247 Park Avenue
New York 17, New York

To fill the vacancy created by the appointment of Peyton Ford, Esq. to the standing Committee.

To the Advisory Committee on Admiralty Rules:

William G. Symmers, Esquire
37 Wall Street
New York 5, New York

To fill the vacancy created by the death of Arnold W. Knauth, Esquire.

William A. Grimes, Esquire
640 Mathieson Building
Baltimore 2, Maryland

To fill the vacancy created by the resignation of Professor Brainerd Currie, who became the Reporter for the Committee.

Sam L. Levinson, Esquire
Northern Life Tower
Seattle 1, Washington

Stuart B. Bradley, Esquire
135 South LaSalle Street
Chicago, Illinois

John C. McHose, Esquire
634 South Spring Street
Los Angeles, California

As additional members.

Respectfully submitted,

Albert B. Maris

Chairman

March 9, 1961