

REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1945.

The Judicial Conference convened, pursuant to 28 U. S. C. § 218, on September 25, 1945, on the call of the Chief Justice, and continued in session for four days. The following judges were present:

The Chief Justice, presiding,
First Circuit, Senior Circuit Judge Calvert Magruder,
Second Circuit, Senior Circuit Judge Learned Hand,
Third Circuit, Senior Circuit Judge John Biggs, Jr.,
Fourth Circuit, Circuit Judge Morris A. Soper,
Fifth Circuit, Senior Circuit Judge Samuel H. Sibley,
Sixth Circuit, Senior Circuit Judge Xenophon Hicks,
Seventh Circuit, Senior Circuit Judge Evan A. Evans,
Eighth Circuit, Senior Circuit Judge Kimbrough Stone,
Ninth Circuit, Senior Circuit Judge Francis A. Garrecht,
Tenth Circuit, Senior Circuit Judge Orie L. Phillips,
District of Columbia, Chief Justice D. Lawrence Groner.

Senior Circuit Judge John J. Parker of the Fourth Circuit was unable to attend the Conference except for the afternoon session of the fourth day. Judge Soper attended in his place.

The Conference welcomed the new Senior Circuit Judge for the Ninth Circuit, Judge Garrecht, succeeding Judge Wilbur, retired, and adopted the following resolution:

“WHEREAS, Judge Curtis D. Wilbur has long served as a member of the Circuit Court of Appeals for the Ninth Circuit, and has attended many of these Conferences as the Senior Circuit Judge of the Ninth Circuit, and

“Whereas, we have found his counsel and advice wise and helpful, and in our personal contacts with him we have always found him sympathetic and considerate, and our association with him pleasant;

“NOW, THEREFORE, BE IT RESOLVED, that we express our appreciation of his valuable services and assure him of our affectionate regard. We treasure the memories of our mutual efforts as members of this Judicial Conference.”

Senator Patrick A. McCarran, Chairman of the Judiciary Committee of the Senate, and Representative Hatton W. Sumners, Chairman of the Judiciary Committee of the House of Representatives, were present on invitation of the Conference for a part of the third day's session, and discussed with the Conference pending and prospective legislation affecting the federal judicial system.

The Attorney General was present on the third day and addressed the Conference.

Henry P. Chandler, the Director of the Administrative Office of the United States Courts, Elmore Whitehurst, the Assistant Director, Will Shafroth, the Chief of the Division of Procedural Studies and Statistics, and other members of the staff of the Administrative Office attended the Conference to aid in its deliberations.

On invitation of the Conference, the following were present at various times: Circuit Judges Charles E. Clark, William Denman, Albert B. Maris, Thomas F. McAllister, District Judge John C. Knox, Justice Alexander Holtzoff, Presiding Judge Finis J. Garrett of the United States Court of Customs and Patent Appeals, Referee in Bankruptcy Henry Bundschu of the Western District of Missouri, Edwin L. Covey, Chief of the Bankruptcy Division of the Administrative Office of the United States Courts, Lewis J. Grout, Chief of the Probation Division of the Administrative Office of the United States Courts, Gerald Davis, Chief, Division of Justice Department Archives of the National Archives, Berry H. Horne, President of the National Shorthand Reporters Association, and the following court reporters from various parts of the country: W. George Briggs, Hall Etter, Raymond R. Farrell, Alfred H. Frederick, Roy E. Fuller, Chloe MacReynolds, A. George Maul, H. S. Middlemiss, Jesse L. Ward, and Kenneth G. Gagan.

Statement of the Attorney General.—The Attorney General addressed the Conference with respect to various matters of importance to the work of the federal judiciary. He stated that both the President and he realized the necessity of promptly filling all the vacancies on the federal bench and said that nearly all such vacancies had been filled. He referred to the fact that in choosing appointees an effort had been, and would continue to be, made to select those who have had trial experience either on the bench or at the bar.

The Attorney General stated that he heartily favored pending legislation for the increase of salaries of federal judges, and spoke with approval of pending legislation designed to provide for public defenders in the federal courts; to place referees in bankruptcy on a salary basis; to simplify and improve the present fee system of the United States Commissioners; and to improve the jury system and the method of selecting jurors in the federal courts. He also endorsed the federal sentencing bill, approved by the Conference in previous years, and in this connection he referred to the frequent deplorable disparity in the length of sentences imposed by the district courts for like offenses. He stated that legislation for dealing with mentally afflicted defendants in criminal cases was in the process of preparation in cooperation with the committee of the Judicial Conference on the Treatment of Insane Persons Charged with Crime in the Federal Courts.

The Attorney General suggested that in *habeas corpus* proceedings the courts should adopt more widely than heretofore the practice of issuing orders to show cause in the first instance instead of issuing the writ. He called attention to 8 U. S. C. § 155, providing for the mandatory deportation of aliens convicted of certain types of crimes, unless the trial judge, at the time of passing sentence or within thirty days thereafter, recommends against deportation. He pointed out that some judges appear to be unaware of the existence of their power in this respect and suggested that the matter be called to their attention, in order that

in each instance in which the defendant is subject to deportation the judge may determine whether to make a recommendation against it. He called attention to the fact that, although practically the entire field of judicial procedure is governed by rules promulgated by the Supreme Court, the procedure in condemnation cases has not been so regulated, and urged the adoption of rules of procedure for such proceedings.

Administration of the United States Courts.—Report of the Director.—The Director submitted to the Conference his sixth annual report reviewing the activities of the Administrative Office for the fiscal year ended June 30, 1945, including the report of the Division of Procedural Studies and Statistics. The Conference approved the Director's report and ordered it released for publication. The Director was authorized to include additional statistical information in the printed edition of the report to be issued later.

State of the Dockets of the Federal Courts.—Cases begun, disposed of, and pending in the District Courts.—The Director's report presented detailed statistical data concerning the work of the federal courts. In addition each Senior Circuit Judge reported to the Conference on the work of the courts in his circuit.

The following table indicates for each of the last five fiscal years, ended on June 30, the number of civil cases commenced in the District Courts (including those of the Canal Zone and the Virgin Islands), and the number of cases in those courts terminated during each year, as well as the number of cases pending at the close of each year:

| <i>Fiscal Year ended on June 30</i> | <i>Commenced</i> | <i>Terminated</i> | <i>Pending</i> |
|---|------------------|-------------------|----------------|
| 1941 | 38,477 | 38,561 | 29,394 |
| 1942 | 38,140 | 38,352 | 29,182 |
| 1943 | 36,789 | 36,044 | 29,927 |
| 1944 | 38,499 | 37,086 | 31,340 |
| 1945 | 60,965 | 52,300 | 40,005 |

The very large increase in the number of cases commenced in the District Courts since 1944 has been due, almost entirely, to the increase of civil cases in which the United States was a party, the number of which rose from 20,895 in 1944 to 43,110 in 1945. In turn this increase is attributable to the rise in the number of civil suits for the enforcement of the price control and rationing regulations. There were 6,707 such suits in 1944, and 28,653 in 1945. The number of land condemnation cases has continued to decline, dropping from 2,748 in 1944, to 1,307 in 1945.

The number of private civil cases remained about the same, rising about 1.5 per cent from 17,604 in 1944 to 17,855 in 1945. The decline in new bankruptcy cases continued in 1945 although at a lessened rate, the number of such cases filed being 12,862 as compared with 19,533 in 1944. The number filed during the past year was the lowest in any year since the enactment of the present Bankruptcy Act in 1898. The number of naturalization proceedings also declined rapidly, the number of aliens naturalized in the federal courts falling from 320,507 in 1944 to 167,342 in 1945, a decrease of 48 per cent.

The total number of criminal cases filed in 1945 was about 1/2 of 1 per cent less than the number in 1944, 39,429 in 1945, as compared with 39,621 in 1944. Nevertheless there was an increase of prosecutions in 1945 for some of the more common types of peace time offenses; thus, prosecutions for violation of the National Motor Vehicle Theft Act rose from 1,233 in 1944 to 1,281 in 1945; prosecutions for other forms of theft and for fraud, rose from 5,688 to 6,930, and prosecutions for violation of the liquor laws from 5,335 to 5,952.

The Dispatch of Judicial Business.—Additional Judges. The reports of the Director and the several Senior Circuit Judges indicate that generally the federal courts made a good record in the disposition of business during the past year. The median time from filing to final disposition of civil cases terminated in the District Courts in 1945 (excluding habeas corpus, forfeiture, and land condemnation

cases) was 9 months as compared with 10.5 months in 1944. The median time required for the disposition of cases in the Circuit Courts of Appeals in which there was a hearing increased from 6.5 months in 1944 to 7 months in 1945. But the median time for deciding cases in the Circuit Courts of Appeals, that is, the period from argument to decision or final judgment, declined from 1.5 to 1.4 months.

The volume of business of the United States Court of Customs and Patent Appeals and the United States Customs Court remained about stationary during the year. In the United States Court of Claims 457 cases were disposed of, while 359 were filed, the number of pending cases being reduced from 822 in 1944 to 724 in 1945. Of these cases only 441 are regarded as active. Fifty-two cases were pending in the United States Emergency Court of Appeals at the close of the year, as compared with 40 at the beginning. The average time consumed in the disposition of cases by the Emergency Court, from the filing of the complaint to decision (exclusive of any time required for submitting additional evidence) was 6.8 months.

During 1945 the Chief Justice assigned an increased number of circuit and district judges for temporary service in the courts of circuits other than their own. There were eleven assignments of circuit judges to serve in the Courts of Appeals in other circuits, as compared with five in 1944. The Chief Justice designated thirty-three district judges to sit in district courts outside their circuits, as compared with twenty-nine in 1944. The practice of assigning judges for temporary service outside their circuits gives flexibility in the employment of judicial manpower of the federal courts. It affords relief for congested dockets, and the experience gained is of benefit to the judges designated and to the courts to which they are assigned. The Conference authorized the appointment of a committee to study the question whether more effective use of the assignment procedure can be made and to consider whether any amendment to the present statutory provisions governing that procedure is desirable.

After consideration of the Report of the Director and the statements of the several senior circuit judges, the Conference recommended that provision be made for an additional district judge for the District of Delaware, a sixth district judge for the District of New Jersey, an additional district judge for the Eastern District of Pennsylvania, and an additional district judge for the Northern District of California. The Conference recommended that the pending bill to provide for two additional judges for that district (S. 1163) be amended to provide for one additional judge. The Conference also recommended the repeal of the prohibition against filling the vacancy in the district court for the Southern District of New York caused by the retirement of the late Judge Woolsey. The Conference urged the passage of the following bills now pending in Congress: S. 141, "to clarify the law relating to the filling of the first vacancy occurring in the office of district judge for the Eastern District of Pennsylvania", and to make it plain that the vacancy can be filled; H. R. 3871, providing for an additional district judge for the District of Kansas, but providing that whenever a vacancy shall occur in the office of district judge for that district, such vacancy shall not be filled; S. 240 and H. R. 1196, making permanent the last additional office of district judge created for the Eastern and Western Districts of Missouri.

The Conference considered the following bills and found no necessity for their passage at the present time: S. 108, providing for an additional circuit judgeship for the Seventh Circuit; S. 347, repealing the prohibition against filling a vacancy in the office of district judge for the Northern and Southern Districts of West Virginia; S. 981, providing for three judicial districts in the State of Mississippi instead of two as at present; and H. R. 3080, providing for an additional district judge for the Eastern District of Washington.

Supporting Personnel of the Federal Courts.—The Director reported that despite the addition of 105 court criers under the Act of December 7, 1944, 58 Stat. 796-7, and 143

court reporters for the district courts under the Act of June 20, 1944, 58 Stat. 5-7, the total supporting personnel of the federal courts (exclusive of the Supreme Court) is nearly 900 less than the number reported in the 1940 annual report. This sharp decrease has been due to a reduction in the number of part-time officers, particularly referees in bankruptcy, United States commissioners, and conciliation commissioners and supervising conciliation commissioners under § 75 of the Bankruptcy Act.

The report of the Director emphasized the obligation of the federal courts to take the utmost care to select as probation officers only those presenting credentials which give reasonable assurance of competence. The report drew attention to the importance of compliance with the standards for selecting probation officers approved by the Conference at its September Session, 1942. At this session the Conference recommended that in the appointments of probation officers the appointees should be required to possess the following qualifications: (1) exemplary character; (2) good health and vigor; (3) an age at the time of appointment within the range of 24 to 45 years inclusive; (4) a liberal education of not less than collegiate grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent; (5) experience in personnel work for the welfare of others of not less than two years, or two years of specific training for welfare work (a) in a school of social service of recognized standing, or (b) in a professional course of a college or university of recognized standing. The report pointed out that of the 24 probation officers appointed during 1945 by the federal courts throughout the country, only twelve, or one-half, had had the education, and only sixteen, or two-thirds, the type of experience recommended by the Judicial Conference.

Representation of District Judges in the Judicial Conference.—Judge Phillips, chairman of the Committee on the Representation of District Judges in the Judicial Conference of Senior Circuit Judges, submitted its report. The

report referred to the responses made by the district judges to the plan proposed by the committee, as reported to the Conference at its 1944 session, for increased participation by district judges in the work of committees of the Conference concerning matters affecting the district courts. The committee reported that, as directed by the Judicial Conference at its September session, 1944, the earlier report had been printed and copies delivered to the senior circuit judges for distribution to the district judges in their respective circuits, with the request that they study the report and advise their senior circuit judges of their views. The committee reported that ninety-eight of the district judges have expressly approved the plan, that twelve of the district judges expressly disapproved it, and that eleven think the present method of representation is adequate. Assuming that the seventeen district judges in the Ninth Circuit and the fourteen district judges in the Seventh Circuit, who did not express their views, oppose the plan, the committee reported that the number of district judges who disapproved the plan would be fifty. In the light of this expression of views by the district judges, the committee recommended the adoption of the plan revised as follows:

(1) That whenever proposed legislation affecting the district judges or the district courts comes before the Judicial Conference, it be submitted to a committee in which the district judges shall have at least equal representation; (2) that each Circuit Conference create a legislative committee to be appointed in such manner as the Circuit Conference shall determine; (3) that the report of the Judicial Conference committee, including any draft of bills to be recommended to Congress, be submitted to such legislative committees with the request that each legislative committee consider the same and report its recommendations with respect thereto to the next Circuit Conference in its circuit; (4) that each of such Circuit Conferences give consideration to the report of the Judicial Conference committee, the draft bill, and the report of its legislative committee, and forward to the Judicial Conference committee such views, sugges-

tions, and criticisms of the Judicial Conference committee report and draft of bill as it desires to submit; (5) that such expression of views, suggestions, and criticisms forwarded to the Judicial Conference committee by the several Circuit Conferences, with an accurate summary thereof, be submitted, with the report of the Judicial Conference committee, to the Judicial Conference; (6) that the Judicial Conference take no definite action and make no recommendation with respect to the report of its committee and any draft of bills until the foregoing procedure has been carried out; (7) that the Judicial Conference in forwarding to the Congress its recommendations with respect to such matter and drafts of bills shall advise the Congress of the views expressed with respect thereto by the several Circuit Conferences.

The Conference adopted the report, as amended, and instructed the Director to circulate copies of it among the district and circuit judges. In addition the Conference by resolution adopted the general policy of consulting the district judges whenever it is reasonably possible to do so before taking any action which affects the interests of the district courts whether or not such action relates to proposed legislation.

Court Reporters.—The Judicial Conference considered with care the recommendations of the district judges and of representatives of the reporters, with respect to several proposed changes both in the salaries of reporters and in their transcript rates. It secured a ruling of the Comptroller General of the United States on the question whether part II of title V of the Federal Employees Pay Act of 1945 (Public Law 106 of the 79th Congress), 59 Stat. 295, applies to the salaries (exclusive of fees for transcripts) of the official reporters of the United States District Courts. The Comptroller General ruled “that the action of the Judicial Conference in fixing the salaries to be paid court reporters was based largely upon the cost of similar services in the locality, that is, in accordance with ‘prevailing wages’ and that the action and authority of the Conference

in adjusting the compensation of court reporters from time to time constitute 'similar administrative authority' to a wage board within the purview of § 102c of the Federal Employees Pay Act", 59 Stat. 295, 296, and concluded that for these reasons the Act had no application to court reporters. Despite this ruling and while recognizing that certain inequities may, and probably do, exist in the rates of compensation of reporters, the Conference was of the opinion that, except in a few particular instances, the salary and transcript rates should continue at their present level for an experimental or trial period of one year, until the information required to be filed with the Administrative Office as to the attendance of the reporters in court, the transcripts furnished and fees charged, as well as the reporters' receipts and expenses, could be collected and analyzed. Without such information the Conference felt that it did not have sufficient data on which to make a detailed revision either of the transcript rates or salaries of reporters.

The Conference adopted two general changes in transcript rates. It ruled that the transcript rate approved for copies applies only to carbon copies made coincidentally with the original transcript, and that whenever a transcript has been prepared on the order of one party and thereafter another party orders a transcript of the same testimony which it is necessary to re-type, the reporter shall receive for such re-typed copy the rate prescribed for the original. The Conference further decided that the rates for daily copy may be fixed by agreement between the party ordering it and the reporter, subject to the approval of the district court, but not to exceed in any case twice the rate for regular copy.

After receiving the assurance of the reporters present at the conference that shorthand notes could be transcribed by a reporter other than the one who wrote them, the Conference recommended that Congress amend the Court Reporter Act so as to permit the reporter to file his shorthand notes of the pleas and proceedings on arraignment

and sentence without transcribing them, unless and until so directed by the court.

The Conference approved the transcript fees at the rates approved at its September Session, 1944, except for the following changes, which were thought to be required by the special conditions prevailing in the districts affected:

| <i>District</i> | <i>Original</i> | <i>1st Copy</i> | <i>Additional Copies</i> |
|-------------------------|-----------------|-----------------|--------------------------|
| Fourth Circuit | | | |
| North Carolina, Eastern | 37½¢ | 12½¢ | 12½¢ |
| North Carolina, Western | 37½¢ | 12½¢ | 12½¢ |
| Fifth Circuit | | | |
| Georgia, Southern | 30¢ | 15¢ | 15¢ |
| Seventh Circuit | | | |
| Illinois, Northern | 40¢ | 15¢ | 15¢ |
| Tenth Circuit | | | |
| Oklahoma, Eastern | 40¢ | 15¢ | 12½¢ |

With respect to reporters' salaries only the following changes were made:

For the Western District of Arkansas: one reporter to act also as secretary to the judge, at \$4,500, or one reporter at \$3,600;

For the Middle District of Georgia: one reporter, to act also as secretary to the judge, at \$5,000;

For the Western District of Louisiana: one reporter, at \$5,000;

For the Southern District of Mississippi: one reporter, to act also as secretary to the judge, at \$5,000;

For the Eastern and Western Districts of Missouri: one reporter, to serve also as secretary to Judge Duncan, at \$3,500, with authorization to him to employ temporary reporters when sitting in St. Louis and Kansas City on a per diem basis at a cost not exceeding \$3,000 a year, and with authorization to employ temporary reporters when sitting elsewhere in the Districts at a cost not exceeding \$500 a year.

The Conference was of the opinion that the examiners for the Department of Justice should be requested to include the accounts of the reporters in their examination of the offices of the courts. It also ruled that under the statute the expense of the telephone service of the reporters is to be paid by them and is not to be compensated by the government.

The committee on court reporters with such additional members as might be appointed by the Chief Justice, was requested to consider further the salaries and transcript rates fixed for reporters and any other matters arising in relation to the court reporting system and to report its recommendations to the Conference.

Salaries of Supporting Judicial Personnel.—The Conference received the report of the Committee on Salaries of the Supporting Personnel of the courts, presented by Judge Biggs, chairman of the committee. The report showed that in the three years in which the committee has been functioning the standards of compensation of the principal classes of salaried personnel of the courts (except the judges), employees in the clerks offices, law clerks, and secretaries of judges, librarians of the Circuit Courts of Appeals, and probation officers and clerks, have been substantially increased. The Conference adopted the following statement with respect to the administration of the appropriation for miscellaneous salaries in the 1946 Appropriation Act:

“Pursuant to the provision of the act creating the Administrative Office of the United States Courts (28 U. S. C. 446) that the Director shall exercise his powers ‘under the supervision and direction of the conference of senior circuit judges’, the Director laid before the Conference for its advice a number of questions which have arisen in relation to the administration of the appropriation for miscellaneous salaries in the judiciary appropriation act of 1946. After full discussion and consideration the Conference unanimously arrived at the conclusions expressed in the following statement which it adopted and directed to be communicated promptly to the circuit and district judges:

“We are of the opinion that the classification of secretaries and law clerks is to be determined by the appointing judge, subject to review by the judicial council of the circuit if requested by the Director; that such classification is not to be determined arbitrarily but is to be fixed on the basis of the standards of qualifications recommended by the committee on salaries of supporting personnel for the United States courts and approved by the Judicial Conference, an abridgement of which appears in the report of the hearings before the Committee on Appropriations to accompany H. R. 2603, Report No. 333, 79th Congress, 1st Session, House of Representatives. This conclusion is supported by the legislative history. It follows from the fact that the abridgement of such standards is set forth in the report of the hearings mentioned above and provision is made by the statute, 59 Stat. 169, 199, for review by the judicial councils of the circuits.

“It is our opinion that in fixing such classifications, such standards should be reasonably but not narrowly construed and that substantial equivalents of the enumerated qualifications may be considered by the judge fixing the classification. This, we think, follows from the language of the committee report stating that the purpose is ‘to suggest to the judges standards of qualifications.’

“We find nothing in the Judiciary Appropriation Bill for 1946 nor in the standards adopted that restricts the classification of a secretary or a law clerk to one grade above his present classification. We think he may be advanced to such grade as his qualifications measured substantially by the standards referred to above justify.

“It is further our opinion that grade Caf-8 is not limited to secretaries of senior circuit or district judges. Nothing in the statement of qualifications or in the abridgement in the committee report justifies or requires such a restriction, and there is no suggestion of such a limitation in the body of the report.

“We are further of the opinion that the beginning salary of a secretary or law clerk newly appointed, or one advanced to a higher grade, should be fixed at the entrance rate for that grade, provided, however, that no law clerk or secretary shall be reduced in salary by reason of reclassification. We believe that in determining classifications it will be a wise policy and, in the long run, for the benefit of the supporting personnel of the courts, that the judges act conservatively and fix classifications that can be fully justified.”

A plan for within-grade promotions for the supporting personnel of the United States Courts was submitted by the Director and approved by the Conference, with a reservation permitting additions or changes in the future when approved by the Conference. The plan was designed mainly to conform to changes made in the system of promotions for personnel under the Classification Act of 1923, as amended, by the Federal Employees Pay Act of 1945. The plan applies to the administrative personnel of the United States circuit courts of appeals and the United States district courts, and relates to promotional increases of salary within the grades of the positions and not to increases in salary resulting from changes in the grades.

Bailiffs.—Judge Maris, Chairman of the Committee on Bailiffs, presented the final report of the committee, informing the Conference that the bill recommended by the committee and approved by the Conference to revive the office of court crier had been enacted and that \$200,000 had been appropriated for the salaries of criers for the fiscal year ending June 30, 1946. The committee, having completed its assignment, was discharged with the thanks of the Conference.

Bankruptcy Administration.—Judge Phillips presented the report of the Committee on Bankruptcy Administration, supplementing its report for 1943 and 1944. The report noted with deep regret the death of Judge Jenney, who, as a member of the committee, had contributed much of his time and fine talents to its work.

It also reported that two referees' salary bills were introduced in the House of Representatives during the 79th Congress, H. R. 33, following closely the pattern of earlier bills, and H. R. 3338, incorporating the recommendations made by the committee in its 1943 and 1944 reports, except that instead of striking out § 34(b) entirely, it substituted for the language of that section in the earlier bills, the following:

“b. Reappointment.—A referee shall be reappointed upon the expiration of the term of his office, unless there is cause for not reappointing him by reason of incompetency, misconduct, or neglect of duty: *Provided*, however, that, in the case of a part-time referee, an additional cause for not reappointing him shall be that his services are not needed.”

A hearing on these bills was held by a subcommittee of the House Judiciary Committee in Washington on June 25 and 26, 1945, and the Conference was informed that the subcommittee had recommended to the full committee that it report H. R. 3338 favorably with but a slight amendment. (The full committee later reported favorably a new bill, H. R. 4160, containing all the agreed changes, which passed the House on October 24, 1945, and is now pending in the Senate before the Judiciary Committee of that body.)

A draft of a proposed bill for making discharges conditional in certain cases, reported by the committee at the 1944 meeting of the Judicial Conference, was submitted during the year for consideration of the circuit and district judges. The Conference, in conformity with the advice of the committee, declined to recommend the enactment of this legislation until consideration of the Referees' Salary bill by the Congress has been concluded.

The committee renewed its recommendation, made in its 1944 report, that the Judicial Conference urge the adoption of an amendment to the Bankruptcy Act which will stop the running of interest and penalties on all tax claims, as of the date of the filing of the petition in bankruptcy or

debtor proceedings. The Conference requested the Director of the Administrative Office to submit a draft bill to the Judiciary Committees of the Senate and House of Representatives to carry out this recommendation.

The committee renewed its recommendations of the proposals to amend §§ 64(a)(1) and 64(a)(4) of the Bankruptcy Act. The Conference approved these recommendations and requested the Director to forward them to the chairmen of the Judiciary Committees of the Senate and House of Representatives, together with drafts of the proposed amendments as set forth in item IV of the 1944 report of the committee.

The committee submitted a proposed amendment to § 64(b) of the Bankruptcy Act, and the Conference directed that this proposal be submitted for the consideration and comments of the circuit and district judges.

The committee reported that it had studied the proposal to redefine the summary jurisdiction to adjudicate adverse claims to property claimed by a receiver or trustee in bankruptcy, and decided that the summary jurisdiction should be enlarged but that such legislation should not be recommended while the Referees' Salary bill is being considered by the Congress.

The entire report was received, the recommendations of the committee were approved by the Conference, and the committee was continued.

Appellate Review of Orders of the Interstate Commerce Commission and Certain Other Administrative Orders.—Judge Phillips, the chairman of the Committee on Appellate Review of Orders of the Interstate Commerce Commission and other Administrative Orders, submitted the report of the committee. The committee had revised the bill, presented at the last Conference, to review the orders of the Interstate Commerce Commission, giving to the circuit courts of appeals, and the United States Court of Appeals for the District of Columbia, exclusive jurisdiction to enjoin or set aside certain specified orders of the Interstate Commerce Commission, any further review to

be by writ of certiorari in the Supreme Court, and providing that, with certain exceptions, the review should be on the record made before the Commission. The Conference considered the report and approved the revised bill, and recommended its adoption by Congress.

The committee also reported that it had prepared a proposed bill to provide for the review of certain orders of the Secretary of Agriculture under the Packers and Stockyards Act, 1921, and the Perishable Agricultural Commodities Act, 1930, certain orders by the Federal Communications Commission under the Communications Act of 1934, and certain orders by the United States Maritime Commission under the Shipping Act of 1916. In accordance with the recommendation of the committee, the Conference requested the committee to continue its study of these proposals and to submit them for the consideration and comments of the circuit and district judges.

Judge Maris submitted the recommendations of the same committee with respect to the bill reported at the September, 1943, session of the Conference, to regulate the procedure for the designation of the judges sitting in district courts of three judges. The proposed bill had been submitted to the circuit and district judges, had received the approval of the judges who had commented on it, and had been approved by the Conference at its September, 1943 session. Since it was apparent that the legislation for review of orders of the Interstate Commerce Commission cannot be made applicable to all types of orders of the Commission, and that the district courts of three judges will be retained to review certain limited classes of orders, the committee recommended that the draft bill should be approved regardless of the action taken on the proposed legislation for review of orders of the Interstate Commerce Commission and other agencies. The Conference approved the proposed draft bill, with two changes recommended by the committee. The first amends the venue section, § 207, of the Judicial Code to read as follows:

“Except as otherwise provided in the Act entitled ‘An Act to Regulate Commerce’, approved February 4, 1887, as amended, the venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties bringing the suit or wherein such party or any of such parties has its principal office.”

The second strikes out the last two sentences of the proposed § 209 of the Judicial Code so as to make the Federal Rules of Civil Procedure applicable to the methods of service of process and the period of time for filing answers.

Treatment of Insane Persons Charged with Crime in the Federal Courts.—The Conference received and approved the report of the committee on this subject, submitted by Judge Magruder, its chairman.

The committee reported that it had under consideration proposals for legislation dealing with procedure for determining the sanity of an accused person. The committee presented a revised draft of a bill, prepared in 1944, dealing with cases where insanity occurs after conviction, and with cases of insane persons whose sentences have expired. But the committee did not give its final approval to the draft in its present form, suggesting that it be circulated among the circuit and district judges so that their suggestions may be considered. The bill sets forth a procedure for raising the issue of the mental competence of an accused and for its determination; it makes provision for the disposition of an accused who has been judicially determined to be incompetent before trial; it provides a procedure for setting aside a conviction where the issue of mental competency has not been raised or determined before or during the trial, and where mental incompetency becomes apparent after the defendant has been committed to prison. Further, the bill makes provision for the commitment of any insane prisoner

whose sentence is about to expire and whose release might endanger "the safety of the officers, currency, domain or other interests of the United States." The draft makes no provision for "psychiatric examinations as a matter of course in a class of cases, to be determined, in which the offenders are most apt to be insane", a matter which the committee was directed to consider further by the action of the Judicial Conference of last year. The committee reported that a study of the available federal statistics of the incidence of insanity revealed no significant differences referable to the classes of offenses committed.

Regulation of Admission to the Bar of the Federal Courts by Uniform Rules.—The Conference received the preliminary report of the Committee on Regulation of Admission to the Bar of the Federal Courts by Uniform Rules. The committee recommended that it be authorized to pursue its study of the subject, and to stimulate discussion of it at circuit conferences and bar association meetings. This action was taken, and the committee was continued.

Judicial Statistics.—Judge C. E. Clark submitted the report of the Committee on Judicial Statistics, of which he is chairman. The report outlined the purpose and function of statistical studies in the federal judicial system, pointing out that a purpose of creating the Administrative Office was to make it an agency for gathering and publishing accurate information concerning the work of the federal courts under the direction of the Judicial Conference. The report indicated the great practical utility of comparative statistical studies showing the nature and extent of the judicial business in the district courts, and pointed out that other functions of judicial statistics are to furnish information bearing upon procedural changes and improvements as well as to give information of a more general historical and sociological nature. The report dealt with the usefulness of the statistics compiled by the Administrative Office and the methods of reporting them employed by that office. The committee was of the

opinion that it could be of assistance to the statistical division of the Administrative Office in pursuing its objectives and suggested that with the aid of expert assistance, which it might call on in the future, it could bring to the work of the division the benefit of an outside viewpoint, which would be helpful. The Conference continued the committee and recommended that its report be discussed and considered at the circuit conferences.

The Representation of Indigent Litigants in the Federal Courts.—The supplemental report of the Committee to Consider the Adequacy of Existing Provisions for the Protection of the Rights of Indigent Litigants in the Federal Courts, of which Judge Augustus N. Hand is chairman, was submitted to the Conference. The Conference approved the bill recommended by the committee at the 1944 Conference with the following changes, suggested by the committee: that § 4 of the bill relating to service of subpoenas by the marshal, without charge, be omitted; that where indigent defendants have such conflicting interests that they cannot properly be represented by a public defender, the Court be authorized to assign separate counsel to one or more of them and to allow compensation to such separate counsel at not more than \$25.00 per day for time necessarily and properly expended in connection with the defense; and that in districts where the allowance is on a per diem basis, the per diem maximum compensation may, in the discretion of the court, include not only time spent in actual trial but in preparation for trial. The committee did not recommend any legislation to provide compensation at the present time for attorneys for indigent persons in civil cases, because it considered that experiments should be made by the federal courts in the criminal field before undertaking the compensation from government funds of counsel for parties in civil suits. The committee was continued and asked to consider the present provisions of the Code with respect to cases *in forma pauperis*, particularly appeals

in forma pauperis, and to consider the matter of printing the record in the circuit courts of appeals in *in forma pauperis* cases.

Budget Estimates.—The Conference approved the estimates of expenditures and appropriations necessary for the maintenance of the United States courts and the Administrative Office for the Fiscal year 1947, as submitted by the Director, and approved the estimates for deficiency appropriations for fees of commissioners for the fiscal year 1945 and for salaries of criers for the fiscal year 1946.

Sentencing and Parole of Federal Offenders.—The Conference directed the Committee on Punishment for Crime to report a separate bill to make effective the provisions affecting youth offenders contained in the Sentencing Bill heretofore approved by the Conference, and to submit such report and bill for the consideration of the circuit and district judges.

Clerks' Fees.—The Conference approved the following recommendations, as amended, contained in the report of the Committee on Clerks' Fees, of which Judge Biggs is chairman:

“Fees, Clerks of the United States Court of Appeals for the District of Columbia, and the United States Circuit Courts of Appeals.—The Judicial Conference of Senior Circuit Judges, pursuant to the provisions of the Act entitled ‘An Act to amend the Act entitled “An Act to amend the Act creating the circuit court of appeals in regard to fees and costs, and for other purposes”, approved February 19, 1897’ (29 Stat. 536; 28 U. S. C 543), approved September 27, 1944, (58 Stat. 743, 28 U. S. C. Supp. IV 543), prescribes the following schedule of fees to be paid for services performed by clerks of the United States Court of Appeals for the District of Columbia and the United States Circuit Courts of Appeals on or

after January 1, 1946, except when the services are performed on behalf of the United States:

"1. For docketing a case on appeal or review or docketing any other proceeding, \$25.00.

"2. Preparing the record for the printer and supervising the printing (where required by rule or order of court), for each printed page of the record and index, \$.25, *Provided*, That the charge for any single record and index shall not exceed \$250.00.

"3. For making a copy (except a photographic reproduction) of any record or paper, and comparison thereof, 40 cents per page of 250 words or fraction thereof; for comparing for certification a copy (except a photographic reproduction) of any transcript of record, entry, record or paper when such copy is furnished by the person requesting its certification, 10 cents for each page of 250 words or fraction thereof.

"For a photographic reproduction of any record or paper, and the comparison thereof, 25 cents for each page; and for comparing with the original thereof any photographic reproduction of any record or paper not made by the clerk, 5 cents for each page.

"4. For every search of the records of the court and certifying the result of the same, \$1.00.

"No other fees for services than those above prescribed shall be charged or collected by the clerks, provided however that nothing herein shall be construed to prevent the clerk of any court of appeals, with the approval of the court, from charging and collecting a fee for each printed copy of an opinion as shall be fixed by the court.

"Fees for services of the clerks whenever performed in all cases docketed prior to January 1, 1946 shall be determined in accordance with the rates now in force."

The Conference adopted the following recommendations of the committee with respect to miscellaneous fees of the clerks of the District Courts:

Miscellaneous Fees, Clerks of the United States District Courts.—The Judicial Conference of Senior Circuit Judges, pursuant to section 8 of the Act entitled ‘An Act to provide fees to be charged by clerks of the district courts of the United States’, approved February 11, 1925, as amended by the Act approved September 27, 1944, (58 Stat. 744, 28 U. S. C. Supp. IV, sec. 555), prescribes the following schedule of fees to be paid for miscellaneous services performed by clerks of United States District Courts on and after January 1, 1946, except when on behalf of the United States, in addition to the fees for services rendered in cases or proceedings:

“1. For filing and indexing any paper, not in a case or proceeding, 25 cents.

“2. For making a copy (except a photographic reproduction) of any record or paper, and comparison thereof, except a copy of a writ for service on a party in a suit or action covered in section 2 of the Act entitled ‘An Act to provide fees to be charged by clerks of the district courts of the United States’, approved February 11, 1925, as amended by the Act approved September 27, 1944, (58 Stat. 743, 28 U. S. C. Supp. IV, sec. 549), 40 cents per page of 250 words or fraction thereof; for comparing for certification a copy (except a photographic reproduction) of any transcript of record, entry, record or paper, except a copy of a writ for service on a party in a suit or action covered in said section 2, when such copy is furnished by the person requesting its certification, 10 cents for each page of 250 words or fraction thereof.

“For a photographic reproduction of any record or paper, and the comparison thereof, 25 cents for each page; and for comparing with the original thereof any photographic reproduction of any record or paper not made by the clerk, 5 cents for each page.

“3. For filing a præcipe or requisition for and certifying the result of a search of the records of the court for judgments, decrees, other instruments, suits pending, and bankruptcy proceedings, 50 cents for each name.

“4. For preparation and mailing notices in bankruptcy 10 cents each for the first 20 notices and 5 cents for each additional notice; *Provided*, That this fee shall cover and include all services and expenses in connection therewith: *And provided further*, That such fee shall not be deemed to be included in any other fee for services in bankruptcy proceedings.

“5. For admission of attorneys to practice, \$2.00 each. This fee shall include a certificate of admission.”

Removal of Civil Disabilities of Probationers Satisfying the Conditions of their Probation.—The Conference received the report of the Committee on the Removal of Civil Disabilities of Probationers Fulfilling the Terms of their Probation, presented by Judge Phillips, and approved a new draft of the bill heretofore approved by the Conference, making amendments to the former draft desired by the Attorney General.

Uniform Time for Appeals from District Courts to Circuit Courts of Appeals.—The Conference approved an addition to the 1944 recommendation of the Committee on Uniform Time for Appeals from District Courts to Circuit Courts of Appeals, of which Judge Stone is chairman, providing that agencies of the United States be included with the United States in the provision allowing 60 days for appeal. It was also the sense of the Conference that the recommendation of the 1944 session of the Conference, allowing 60 days to appeal, applies to every litigant in suits to which the United States is a party.

Expedition of Cases.—The Conference, on the recommendation of the Committee on Expedition of Cases, of which Judge Stone is chairman, adopted the following resolution:

“It is the sense of this Conference that, whenever there is an appeal in a case wherein the trial judge deems it is, for any reason, to the public interest that the appeal be speedily determined, he may, in his dis-

cretion, notify the appellate court of the situation and of the reasons for expedition. Thereupon, the appellate court may treat such notice as in the nature of a motion to advance and shall promptly dispose thereof as seems to it proper. Further, it is the sense of this Conference that, where litigation involving the same issue or issues of validity or of construction of the same United States statute or statutes is pending before different judges in the same district, arrangements be made (unless substantial rights in other like cases would be prejudiced thereby) for the speedy determination and appeal of a typical case and that the court to which the appeal is taken be promptly notified of the situation by the trial judge so that a final determination of such issues may be expedited."

Codification and Revision of the Criminal and Judicial Codes.—The Conference received and approved the report of the Committee on the Codification and Revision of the Criminal and Judicial Codes, submitted by Judge Maris. The committee concluded that since the codification and revision of the Criminal Code had been completed and reported to the House in the form of a bill, the committee could perform no useful service in connection with the codification and revision of that Code. With respect to the revision of the Judicial Code it stated its purposes as follows: (a) to confer with the revisers with respect to any questions which they desire to submit to the committee regarding the proper treatment in the revision of existing statutory provisions which appear to be obsolete, ambiguous or inappropriate or which they think may require modification for some other reason, (b) to act as a clearing house in receiving from the members of the federal judiciary and transmitting to the revisers suggestions for the revision of certain statutory provisions deemed to be archaic, ambiguous or inappropriate, and (c) to transmit to the revisers such suggestions for revision as may be directed by the Judicial Conference.

Postwar building plans for the Quarters of the United States Courts.—The Conference adopted the following statement with reference to the need for improvements in the quarters of the Courts:

“On account of the virtual stoppage of building construction and alterations for civilian purposes during the war years, the quarters for the federal courts in many locations have become seriously inadequate. There is urgent need for their enlargement and improvement. In some cases new buildings are required, in others expansion, remodeling and modernization of the present quarters. The Conference instructs the Director to obtain from the courts current information in reference to their needs of this nature and to place it before the appropriate authorities (whenever it has not already been done) and to use his utmost efforts to secure, as early as possible, suitable action providing for these needs. The Conference urges upon the executive agencies responsible for the erection and operation of buildings, the Congress, and all others concerned the necessity of convenient and appropriate quarters for the courts, in order to enable them to function to their fullest efficiency. Such quarters should include accommodations for all the officers of the courts including the United States commissioners, referees in bankruptcy, and court reporters.”

Disposition of old records of the United States Courts.—The Conference received the report of the Committee on the Disposition of Old Records of the United States Courts, submitted by Referee Bundschu, in the absence of the chairman, Referee Kruse. The Conference requested the committee to amend its recommendations so as to provide for the permanent retention of all orders for sale of real estate and orders of confirmation of such sales, and, as so amended, to submit the report and recommendations to the circuit and district judges.

Further Legislation Recommended.—The Conference reaffirmed its approval of the bills heretofore recommended by the Judicial Conference with respect to applications for habeas corpus in the federal courts and concerning United States commissioners, and the bill extending the present retirement privilege of specified judges of the Territory of Hawaii to the district judges of the other territories and insular possessions, S. 565. The Conference also reaffirmed its approval of the recommendations submitted at the 1944 session of the Conference with respect to tort claims against the United States and the procedure for their prosecution, including the recommendation that the appellate jurisdiction of suits upon such claims be exclusively in the Courts of Appeals, subject to further review upon certiorari granted by the United States Supreme Court.

Transfer of Jurisdictions for Supervision of Probationers from the Court of the District Originally Having Jurisdiction to the District of Supervision.—The Conference authorized the Director to draw a bill to empower the district courts in their discretion to transfer jurisdiction from the court of the district originally having jurisdiction of any probationer, to the district of supervision, and to submit the bill to the circuit and district judges.

Keeping Offices of the Courts Open on Saturday Forenoons.—It was the sense of the Conference that the clerks' offices, and the offices of the probation officers of all the federal courts, also the district attorneys' and marshals' offices, should be kept open on Saturday forenoons, with such service provided in the buildings occupied as is satisfactory to the judges of the courts concerned.

A Plan for a Loan Service of Records and Briefs of Cases in the Courts of Appeals.—The Conference authorized the Director in response to a request from the Law Librarian of the Library of Congress to invite the cooperation of the clerks of the circuit courts of appeals in a plan being furthered by the Law Librarian of the Library

of Congress, to establish a limited loan service for records and briefs in cases in the courts of review of the nation and states.

Disposition of the Records and Law Library of the Former United States Court for China.—The Director presented a recommendation of Honorable Milton J. Helmick, the last judge of the United States Court for China, which ceased to exist on May 20, 1943 in consequence of the treaty between the United States and China abolishing extra-territorial jurisdiction of the United States in China. Judge Helmick proposed that arrangements be made with the Department of State for the custody and maintenance by that Department of the records and library of the former court in China in such a manner that they would be of service to all persons, Chinese and others, who might have occasion to consult them there. The State Department had expressed to the Director in a letter which he reported to the Conference its approval of the proposal and its interest in carrying it out. The Conference approved the plan in principle and authorized the Director in cooperation with the State Department to make the necessary arrangements to carry it into effect, including any legislation that might be requisite.

Committees Continued.—The following committees, which submitted no written reports, were continued by the Conference: the Committee on a Special Court of Patent Appeals, the Committee on the Operation of the Jury System, the Committee on the Library Funds of Certain Circuit Courts of Appeals, the Committee on the Trial of Petty Offenses by Commissioners or Similar Federal Officers, the Committee to Study the Use of Pre-Trial Procedure in the Federal Courts, and the Committee to consider the proposal that the statute (18 U. S. C. § 541), be amended so as to make the definition of felony depend upon the punishment actually inflicted rather than that which could lawfully be imposed, of which committee Circuit Judge Peter Woodbury was appointed chairman, to

succeed Circuit Judge Curtis D. Wilbur, retired, and District Judge Henry N. Graven was appointed another member.

Committees Appointed.—Pursuant to resolutions of the Conference the Chief Justice appointed the following committees with the request that they lodge their reports with the Director at least thirty days in advance of the September session of the 1946 Conference: A committee to study the question whether more effective use of the assignment procedure can be made and to consider whether any amendment to the present statutory provisions governing that procedure is desirable, consisting of: Circuit Judge Learned Hand, Chairman, Circuit Judge John D. Martin, District Judges Charles G. Briggie, Thomas F. Meaney, and J. Waties Waring.

A committee to consider the practice in some districts of submission to the court by the United States Attorney of a trial memorandum in criminal cases without serving a copy on the defendant or his counsel, consisting of District Judge W. Calvin Chestnut, Chairman, District Judges Henry W. Goddard, Thomas M. Kennerly, Paul Leahy, and Fred M. Raymond.

A committee to consider the amendments of the Admiralty Rules proposed by the Maritime Law Association of the United States, consisting of Circuit Judge Thomas W. Swan, Chairman, District Judges Wayne G. Borah, John C. Bowen, Phillip Forman, George M. Hulbert, and Sterling Hutcheson.

The Chief Justice added as new members to the Court Reporter Committee District Judge Benjamin C. Dawkins, Justice James W. Morris, District Judges Adolphus F. St. Sure and Philip L. Sullivan.

The Chief Justice appointed District Judge Claude McCulloch a member of the Committee on Bankruptcy Administration.

Advisory Committee.—The Conference continued the committee, consisting of the Chief Justice, Judges Biggs, Parker and Stone, and Chief Justice Groner, to advise and assist the Director in the performance of his duties.

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

For the Judicial Conference:

HARLAN F. STONE,
Chief Justice.