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

* *

SEPTEMBER 22–24, 1949
WASHINGTON, D. C.

TITLE 28. UNITED STATES CODE, SECTION 331

§ 331. Judicial Conference of the United States.

The Chief Justice of the United States shall summon annually the chief judges of the judicial circuits to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States.

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

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

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

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

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

The Judicial Conference of the United States convened, pursuant to the provisions of Title 28, U. S. Code, § 331, upon the call of the Chief Justice on Thursday, September 22, 1949. The following were present:

The Chief Justice, presiding.

Circuit:

District of Columbia	Circuit Judge E. Barrett Prettyman.*
First	Chief Judge Calvert Magruder.
Second	Circuit Judge Thomas W. Swan.*
Third	Chief Judge John Biggs, Jr.
Fourth	Chief Judge John J. Parker.
Fifth	Chief Judge Joseph C. Hutcheson.
Sixth	Chief Judge Xenophon Hicks.
Seventh	Chief Judge J. Earl Major.
Eighth	Chief Judge Archibald K. Gardner.
Ninth	Chief Judge William Denman.
Tenth	Chief Judge Orie L. Phillips.

*Chief Judge Harold M. Stephens and Chief Judge Learned Hand of the District of Columbia and the Second Judicial Circuits, respectively, were unable to attend; alternates, designated by the Chief Justice, attended in their stead.

The Attorney General and the Solicitor General, accompanied by various members of their respective staffs, met with the Conference at its opening session.

Hon. Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, addressed the Conference at its opening session.

Circuit Judges Charles E. Clark, Albert B. Maris, Thomas F. McAllister, F. Ryan Duffy, and Alfred P. Murrah, and District Judges John C. Bowen, Bolitha J. Laws and Harry E. Watkins attended various sessions of the Conference and participated in the discussions.

Chief Judge Marvin Jones and Judge Joseph W. Madden of the United States Court of Claims met with the Conference on the second day of its meeting.

Hon. Walter Myers, Assistant Postmaster General, and Hon. W. E. Reynolds, Commissioner of Public Buildings, Public Buildings Administration, met with the Conference on the second day of its meeting.

Henry P. Chandler, Director, Elmore Whitehurst, Assistant Director, Will Shafroth, Chief, Division of Procedural Studies and Statistics, Edwin L. Covey, Chief, Bankruptcy Division, R. A. Chappell, Chief, Probation Division, and Leland Tolman, Chief, Division of Business Administration, together with members of their respective staffs, all of the Administrative Office of the United States Courts, were in attendance throughout the meeting.

Paul L. Kelley, Executive Secretary to the Chief Justice, served as Secretary of the Meeting.

Report of the Attorney General

The Attorney General of the United States, Hon. J. Howard McGrath, presented his report to the Conference. The full report appears in the Appendix.

Administration of the United States Courts

Report of the Director of the Administrative Office of the United States Courts.[1]—The Director submitted his tenth annual report reviewing the activities of his office for the fiscal year ended June 30, 1949, including the report of the Division of Procedural Studies and Statistics. The Conference ordered the report received, and authorized its immediate release for publication. The Director was authorized to incorporate statistical data not now available, and to correct errors of a nonsubstantive nature in the printed edition of the report to be issued later.

State of the dockets of the Federal courts—Courts of appeals.—The number of cases commenced in the courts of appeals in the fiscal year 1949 increased 8 percent from 1948 in a continuation of an upward trend which began last year following an almost uninterrupted decline since 1940. The rise in appeals was greatest in the District of Columbia where the number of new cases rose from 348 to 463. The Fourth, Fifth, Seventh, Ninth, and Tenth Circuits each had over 10 percent more cases commenced in 1949 than

[1] For convenience, the Director of the Administrative Office of the United States Courts, and the Administrative Office of the United States Courts, are hereinafter referred to as the Director, and the Administrative Office, respectively.

in 1948. The number of cases filed in all circuits was 2,989. About one-sixth of those were appeals from administrative agencies. Administrative appeals increased because 172 cases were appealed from the National Labor Relations Board in 1949 as compared with 63 in 1948. There were 233 appeals from The Tax Court of the United States and 86 other administrative appeals, approximately the same total as last year.

Cases terminated were 2,753, or 236 less than the number filed with a resulting rise in cases pending at the end of the year to 1,909, the heaviest pending caseload since the creation of the circuit courts of appeals.

Petitions to the Supreme Court for review on certiorari to the United States courts of appeals were 630 compared with 597 in 1948. Seventeen percent of petitions acted upon were granted compared with 13 percent last year. Forty-two percent of the petitions for review of administrative appeals were granted (16 out of 38); 22 percent of the petitions in civil cases in which the United States was a party (41 out of 190); 14 percent of the petitions in criminal cases (13 out of 93) and 12 percent in private civil cases (34 out of 292).

The median time from the filing of the complete record in the courts of appeals to final disposition of contested appeals was 7.1 months compared with 6.3 months during the previous year, but 12 percent more cases were decided. This increased time was the result of a longer period from docketing to the date of argument. The median from hearing to decision was 1.6 months, the same interval as last year.

District courts.—An increase in civil cases filed in the district courts from 46,725 in the fiscal year 1948 to 53,421 in 1949 was principally the result of the increase in government rent cases commenced by the Office of the Housing Expediter. Private civil cases, which are more time consuming for the courts than government cases, rose about 3.4 percent. Civil cases disposed of were less than the number commenced with the result that at the end of the year there were 5,025 more cases pending than at the beginning. The 54,240 civil cases remaining on the dockets on June 30, 1949, constituted the largest pending caseload since 1933. For the past 10 years the number of civil cases commenced and terminated annually and the number pending at the end of each fiscal

year with separate figures for all civil cases and private civil cases were as follows:

Fiscal year	Total civil cases			Private civil cases		
	Commenced	Terminated	Pending	Commenced	Terminated	Pending
1940	34, 734	37, 367	29, 478	21, 090	23, 364	20, 240
1941	38, 477	38, 561	29, 394	21, 931	23, 364	18, 807
1942	38, 140	38, 352	29, 182	21, 067	22, 488	17, 386
1943	36, 789	36, 044	29, 927	17, 717	20, 124	14, 979
1944	38, 499	37, 086	31, 340	17, 604	17, 446	15, 137
1945	60, 965	52, 300	40, 005	17, 855	16, 753	16, 239
1946	67, 835	61, 000	46, 840	22, 141	18, 438	19, 942
1947	58, 956	54, 515	51, 281	29, 122	23, 091	25, 973
1948	46, 725	48, 791	49, 215	30, 344	26, 418	29, 899
1949	53, 421	48, 396	54, 240	31, 386	28, 159	33, 126

The peak of OPA price control and rationing cases was reached in 1946 and dropped sharply in the two succeeding years. Private civil cases have shown a tremendous increase since the war and the number commenced in 1949 was almost half again as large as the number in 1940. The increase in cases pending at the end of the year is a result of docket congestion in a few places and a heavier civil case load than last year in 9 out of 10 district courts. Private cases based on the diversity of citizenship jurisdiction of the Federal courts have shown a steady increase since the war. Both contract and tort actions in this group are much greater in number than before the war. Diversity cases in 1949 amounted to almost one-fourth of the total civil cases filed. About one-third of these diversity cases were commenced in the state courts and removed to the Federal courts.

A great increase since the war has also taken place in private admiralty suits, while admiralty suits brought against the government have decreased sharply during the same period. Tax suits continued to increase in 1949 but were still not so numerous as in 1941. The Federal Tort Claims Act which went into effect 3 years ago has produced a substantial amount of litigation but the number of actions commenced against the United States under this statute in 1949 was somewhat less than in the previous year, declining from 1,503 to 1,249. Employers' Liability Act cases, involving injuries to railroad employees, after increasing steadily from 100 cases in 1941 to 1,038 in 1948, decreased to 944 in 1949. Three-quarters of the cases filed in the year just passed were commenced in 10 districts.

Civil cases were not disposed of so promptly as last year by the district courts. The median time interval from filing to disposition of civil actions terminated after trial in 86 districts having purely Federal jurisdiction was 10.4 months in 1949 compared with 9.9 months in 1948 while the median time from issue to trial was 5.9 months compared with 5.8 months.

The number of criminal cases commenced in all districts was 34,432 or 2,335 more than last year. The principal factor in the increase was violation of the immigration laws. These cases, involving illegal entry into the United States, now amount to almost 30 percent of total criminal proceedings. Almost all of them are brought in the districts adjacent to the Mexican border. There were also increases in cases involving fraud and theft, and for violations of the liquor tax laws while juvenile delinquency cases were fewer and charges of violation of OPA laws almost disappeared. Cases terminated exceeded the number begun and on June 30, 1949, there were less than 6,000 criminal cases pending which were available for disposition. In some 2,000 other cases fugitive defendants were involved. The criminal dockets are in excellent shape and prompt disposition of these cases is the rule.

The number of bankruptcies continues to grow. The lowest point during recent years in bankruptcy cases commenced was in 1946 when only 10,196 cases were filed. A steady increase since then has multiplied the 1946 figures 2½ times to the 26,021 cases filed in 1949. A large rise in pending cases has also occurred by reason of terminations falling below the number commenced, and as of June 30, 1949, the pending figure had reached 30,539.

Additional Judgeships

General.—The Conference reviewed the state of the dockets, and the work of each of the district courts and courts of appeals comprising the Federal judiciary. Conditions relating to the courts within each particular circuit were discussed by the Chief Judge of that circuit, and the Conference informed of matters peculiar to such courts. Statistical data relating to the current and prospective business of the courts were presented by the Director. The attention of the Conference was also directed to factors which, because of their character, were impossible to weigh in these data, but which had a material and substantial effect upon the dispatch of the courts' business. The prospects as to the availability of judges for assign-

ments outside their own districts during the coming year were considered.

It was the sense of the Conference that the following action with respect to judgeships throughout the judiciary should be recommended:

DISTRICT

Delaware.—The existing temporary judgeship in this district be made permanent.

Western Pennsylvania.—The existing temporary judgeship in this district be made permanent.

Eastern, middle, and western Pennsylvania.—That the Act (approved July 24, 1946, 60 Stat. 654) creating a district judgeship for these districts be amended so as to provide that the present incumbent shall succeed to the first vacancy occurring in the position of district judgeship for the Middle District of Pennsylvania, and that, thereafter, the judgeship created by that Act for the Eastern, Middle, and Western Districts of Pennsylvania shall not be filled.

Eastern Texas.—The creation of one additional district judgeship.

Northern Ohio.—The creation of one additional district judgeship.

Northern and southern Indiana.—The creation of one district judgeship for service in both districts.

Northern Illinois.—The creation of two additional district judgeships.

Eastern and western Missouri.—The existing temporary judgeship in this district be made permanent.

Territory of Alaska—Third Division.—The creation of one additional judgeship.

The Director was instructed to present these recommendations to the Congress and to urge the prompt enactment of legislation necessary to carry them out.

Supporting Personnel of the Courts

Chief Judge Biggs, Chairman of the Committee on Supporting Personnel of the United States Courts, presented the report of the Committee:

Salaries—National Park Commissioners.—The report of the Committee, made pursuant to the directions of the Conference,

covering a study of the problems involved in fixing the salaries of National Park Commissioners was ordered received as information and filed. The Director was instructed to communicate with the various district judges having employees of this type within their jurisdiction and bring to their attention the provisions of § 634 of Title 28 of the U. S. Code, with the request that they promptly submit recommendations with respect to the salaries that should be paid such employees.

Law clerks and secretaries—Annual and sick leave.—The Conference was advised that under the rulings of the Comptroller General of the United States it is necessary, in order for these employees to be eligible to receive lump sum payments for their accumulated annual leave, that proper records showing the number of hours worked, the amount of leave earned, the amount of leave taken, etc., be maintained on a current basis. It was the view of the Committee that because of the variant and peculiar circumstances incident to employment of this type, it was not desirable to inaugurate a system whereby rigid hours must be adhered to, but, if these employees are to receive such benefits, compliance with the rulings of the Comptroller General is a prime requisite, and, therefore, proper leave records, kept on a current basis, must be maintained.

Pursuant to the recommendations of the Committee, which were adopted by the Conference, the Director was instructed not to approve claims for accumulated leave benefits unless the claims are supported by proper records, kept in the regular course of business, and such records are produced from time to time for inspection by the examiners of the offices of the courts.

The Conference further directed that the Director inform the various judges concerned that claims for lump sum payments for future accumulations of leave will not be approved by him where the required records are not maintained.

Law clerks and secretaries—Civil-service Status.—The Conference reaffirmed its approval of legislation which will permit the secretary, secretary-law clerk, or law clerk of any Federal justice or judge who has served for 4 years and who has been separated from the service involuntarily and without prejudice, to acquire a classified civil-service status for transfer purposes upon passing a noncompetitive civil-service examination.

Additional deputy marshals for service during trials in the District Courts.—The Committee reported that in the 1950 Ap-

propriation Act the sum allowed the Department of Justice for the employment of temporary deputy marshals to act as bailiffs in the district courts when needed to supplement the work of the regular criers for the district courts was reduced from $100,000 in 1949 to $50,000 and that this amount has proven inadequate to provide the necessary service to the courts in the conduct of their business particularly in the busier districts.

The Conference was of the opinion that the amount of $100,000 which has heretofore been authorized and which experience has shown to be required if adequate service of this type is to be provided for the courts, should be restored in the proper appropriations, and it directed that efforts be made to so provide in the appropriations for the Department of Justice for the fiscal year 1951.

General—Probable reclassifications and salary adjustments.—The Director called the attention of the Conference to legislation pending in the Congress under which certain reclassifications and salary adjustments would be provided for employees under the classified civil service, and requested that he be authorized, in the event such legislation is enacted, to make the required readjustments in classifications and salaries necessary to place the employees in the judiciary on a parallel classification and salary basis with those in similar positions in the Executive Branch. It was stated that such action would accord with the established practice of the Administrative Office, as well as the policy of the Conference.

Thereupon, the Conference adopted the following resolution:

> *Resolved,* That the Director of the Administrative Office of the United States Courts be authorized to make changes in grade classifications and necessary salary adjustments covering personnel of the courts that may be required to place such classifications and salaries on a comparable basis with those established in the Executive Branch by the enactment of any reclassification legislation by the Congress; such reclassifications to be approved by the Committee on Supporting Personnel of the Courts acting for the Conference.

Travel and Subsistence Allowances

Expense allowance—Judges traveling on official business.—The Conference reaffirmed its previously stated views concerning the necessity for increasing from $10 to $15 per day the maximum limitation upon subsistence expenses incurred by judges while in an

official travel status, and urged that legislation so providing be enacted promptly.

Expense allowance—Personnel of the courts, other than judges, excepting the Supreme Court.—The Director advised that subsequent to the last meeting of the Conference, the Congress had enacted the Travel Expense Act of 1949 under which provision is made for a "per diem allowance to be prescribed by the department or establishment concerned, not to exceed the rate of $9 per day, within the limits of continental United States." Acting under this authority, and pursuant to the directive of § 604 (a) (7) [and see § 610] of Title 28, of the United States Code which requires the Director to "regulate and pay necessary travel and subsistence expenses incurred by judges, court officers and employees of the Administrative Office while absent from their official headquarters," and based upon data and information concerning travel expenses throughout the country obtained from various sources, the Director fixed initial rates for subsistence of personnel of the courts, other than judges, excepting the Supreme Court, as follows:

(1) For travel not involving overnight absence from headquarters and so avoiding expense for lodging, $6 a day.

(2) For travel involving overnight absence and lodging expense except in specified locations, mainly large cities, where the cost of transient accommodations was considered to be at the maximum of $9 allowed by the statute, $8 a day.

(3) For travel involving lodging in the excepted locations, $9 a day.

The Director stated that some question had been raised concerning his authority to regulate the expense allowances for the employees of the Court of Claims. It was his view that the statutes were clear in this respect and that under their provisions he was not only authorized, but required to "regulate and pay necessary travel and subsistence expenses * * *" of these employees.

The Conference was of the opinion that the employees of the Court of Claims fall within the purview of the statute, and that the Director's interpretation thereof was correct. It thereupon approved the Director's action in fixing the initial rates for subsistence of the personnel of the courts concerned.

Mileage allowance—For use of privately owned automobiles while traveling on official business.—The Director advised that under the Travel Expense Act of 1949 the mileage allowance for

the authorized use of privately owned automobiles on official business had been increased to seven cents per mile, which was in accord with the recommendations of the Conference.

The Court Reporting System

The Director submitted a report together with recommendations concerning the Court Reporter System.

In view of the recently created judgeships, and in line with its policy standards, the Conference authorized the immediate establishment of the following new court reporter positions at salaries indicated:

District	Number of new positions	Salary (per annum)
District of Columbia	3	$5,000
New York (southern)	4	5,000
New Jersey	1	5,000
Pennsylvania (eastern)	2	5,000
Pennsylvania (western)	1	4,500
Georgia (middle)	1	3,600
Texas (southern)	2	4,000
California (northern)	2	5,000
California (southern)	2	5,000
Oregon	1	4,500
Kansas	1	4,000

Salary increases in specific districts.—A review of the job content, working conditions, and the earnings in those districts in which salary increases had been requested was had. The Conference authorized the following increases in salary of the reporters concerned, effective as soon as the state of the appropriations for the Court Reporting System will permit:

DISTRICT

Maine.—Salary of the reporter, who also serves as secretary to the judge, from $4,000 to $5,000 per annum.

Vermont.—Salary of the reporter, who also serves as clerk in the probation office, from $4,000 to $4,500 per annum.

Changes in court reporting arrangements.—In view of the changes in circumstances and conditions upon which previous recommendations of the Committee on the court reporting system, and action by the Conference, were predicated, the following revisions in the presently authorized official court reporting services were ordered:

DISTRICT

Nebraska.—A new alternative position of court reporter-secretary at a salary of $5,000 per annum, if the judge of the district should find this arrangement preferable to the present position authorized for a court reporter serving solely in such capacity at Omaha at $4,000 per annum.

Texas (western).—A new position of court reporter to serve solely in this capacity at a salary of $4,000 per annum, in lieu of the previously authorized court-reporter-law clerk position at a salary of $5,000 per annum. This action to constitute formal ratification of the informal approval previously given by the Conference for the creation of this position.

BANKRUPTCY ADMINISTRATION

The Chief Justice advised that, pursuant to the authority vested in him by the Conference he had, under date of September 16, 1949, reconstituted the Conference Committee on Bankruptcy Administration, in order that the Conference may have the benefit and views of a Committee of the Conference on the recommendations of the Administrative Office in reference to arrangements for referees. The Committee on Bankruptcy Administration, as reconstituted, is composed of the following members:

Chief Judge Orie L. Phillips, Chairman.

Circuit judges: John B. Sanborn and F. Ryan Duffy.

District judges: H. Church Ford, Seybourn H. Lynne, Claude McColloch, Alfred C. Coxe, and Albert V. Bryan.

Chief Judge Phillips, chairman of the reconstituted Committee on Bankruptcy Administration, stated that, pursuant to the request of the Chief Justice, a special meeting of the Committee was recently held for the purpose of considering the report prepared by the Bankruptcy Division of the Administrative Office, and submitted by the Director with his approval for Conference consideration. The report recommended certain changes in the number and salaries of referees, and other changes in referee arrangements, based upon conclusions drawn from studies and surveys conducted by the Administrative Office throughout the year. The recommendations, except in some few instances, had not been submitted to the various district judges concerned, nor to the respective circuit councils, for their consideration and recommendations. It was the view of the Committee that, before any action upon the proposals could

be taken by it, or by the Conference, the provisions of the statutes required that the whole subject matter be passed upon by the various judges and councils of the circuits concerned.

The Conference agreed with the views of the Committee, and directed that the report of the Bankruptcy Division of the Administrative Office be submitted to the judges of the various districts involved with the request that they make known their recommendations to their respective circuit councils promptly; and, that the circuit councils be requested to act expeditiously upon such recommendations in order that the Committee and the Conference may have the benefit of their views so that action upon the proposals may be taken at an adjourned meeting of the Conference to be held in November.

The district judges, the respective circuit councils, and the Director having submitted recommendations, the Committee, upon consideration of the data submitted with respect to the case load, the kind and size of cases filed, the material and substantial changes in business conditions, and other relevant factors, recommended that the following new referee positions, at the salaries indicated, be authorized immediately:

District	Referees		Salary	Regular place of office	Places of holding court	Territory
	Number	Type				
Illinois (northern).	1	Full time.	$10, 000	Chicago	Chicago and Waukegan.	Cook and Lake. Counties.
Connecticut	1	Part time.	3, 500	Bridgeport	Bridgeport	Fairfield County.

The Conference adopted the Committee's recommendations, and directed that these referee positions be established, effective immediately, at the salaries indicated above.

Pursuant to the Committee's Recommendations, the Conference authorized the following changes in operating arrangements, effective immediately:

DISTRICT:

Georgia (southern).—Washington County to be included in the territory served by the referee located at Savannah.

Indiana (northern).—The designation of Peru as a place of holding court, instead of Logansport, for the part-time referee located at Fort Wayne.

Legislative proposals.—The Conference renewed its previous recommendations that § 58d of the Bankruptcy Act, as amended, be amended to provide that the publication of the notice of the first meeting of creditors shall be discretionary, the same as provided for the publication of other notices.

MISCELLANEOUS ADMINISTRATIVE MATTERS

Court records—Maintenance and keeping of.—The Director advised that the United States District Court for the Southern District of New York has requested authorization for the installation of the system of microfilming records similar to the system which was recently authorized and installed in the District Court for the District of Columbia, and where it has proven so satisfactory. The Chief Judge of the District Court concerned, as well as the Chief Judge of the Circuit, have approved of the request, and are anxious for the change to be made at the first opportunity.

The Director submitted a form of directive which he proposed to issue authorizing the change, and pointed out that action by the Conference in the way of its approval was required under rule 79 (b) of the Federal Rules of Civil Procedure, and Rule 55 of the Federal Rules of Criminal Procedure.

The Conference approved of the directive proposed to be issued by the Director, and authorized the prompt installation of the microfilming method of preserving certain records in the United States District Court for the Southern District of New York.

Quarters for the courts—Available space in existing Federal structures, and future building programs.—The Commissioner of Public Buildings, Public Buildings Administration, Hon. W. E. Reynolds, presented a report relating to the space situation in existing government structures throughout the country that are under his supervision and control. It was indicated that the building programs had been materially curtailed because of the war and subsequent reconstruction programs, and, as a result of this and the magnitude with which the activities of the government in general have expanded, space is not only at a premium, but presents an almost insolvable problem. He stated that the Federal courts rated the highest of priorities in their space allocation program, and that their needs would continue to be of the utmost interest to the Public Buildings Administration.

As to future plans, the Commissioner referred to "the manual setting forth general standards of design and construction for

Federal court quarters in Federal buildings hereafter to be constructed" which had been prepared in connection with a "study of the needs and requirements of the Courts" made in conjunction with the Committee of the Conference on Postwar Building Plans for the Quarters of the United States Courts, which was submitted to the Conference at its Annual Meeting in October 1946. In all of their contemplated programs, the question of proper and adequate space and facilities for the courts was being given their earnest consideration. And, inasmuch as there had been no major Federal building program authorized since 1938, it was hoped, because of the extreme need for new and enlarged facilities, that proper authority for such a program would be forthcoming in the not too far distant future.

Commissioner Reynolds expressed his appreciation for the gracious and courteous manner in which he had always been received by the members of the Federal judiciary and of the Administrative Office, and for the sympathetic interest shown in the consideration of his problems.

The Assistant Postmaster General, Hon. Walter Myers, presented a report concerning existing space available in the Federal buildings under the supervision and control of the Post Office Department. He stated that conditions similar to those confronting the Public Buildings Administration prevailed in that Department. The space situation was tight generally—not only in the government, but outside as well. Because of the expansions necessitated by the greatly increased volume of their own business, the substantial broadening of the services which the Department has been called upon to render, and the required housing of activities other than those originally contemplated, the Department is "hard-put" to solve its own space problems. Mr. Myers assured the Conference of the Department's continued cooperation and effort to render the judiciary every possible assistance. He expressed his thanks and that of the Department's representatives for the considerate and understanding manner with which they, and their space problems, had always been received by the judiciary.

The Conference expressed its appreciation of the efforts of the Public Buildings Administration and the Post Office Department to render efficient and courteous service, and to provide adequate and proper quarters, and recorded its thanks to Commissioner

Reynolds and Assistant Postmaster General Myers for their presentations.

Budget and deficiency appropriation estimates.—The estimates of expenditures and appropriations necessary for the maintenance and operation of the United States Courts, and the Administrative Office of the United States Courts, for the fiscal year 1950 were considered by the Conference. Certain revisions in the estimates covering the operation of the referees' salary and expense funds were ordered made by the Conference. The estimates as so amended were then approved by the Conference.

After consideration, the Conference approved the estimates for deficiency appropriations for the fiscal year 1950.

Other Committee Reports

Three-judge district (expediting) court.—The report of the Committee appointed to "make study concerning the proposal to eliminate or modify the provisions for a three-judge district (expediting) court in antitrust cases as presently provided for under Title 15 U. S. Code § 28," was submitted by Chief Judge Calvert Magruder, Chairman of the Committee.

Pursuant to its policy, the Conference directed that the report be circulated throughout the judiciary in order that the views and suggestions of the various judges may be ascertained, and that a further report covering the subject matter be submitted to the Conference by the Committee.

Pretrial procedure.—The report of the Committee on pretrial procedure was presented and discussed by Circuit Judge Alfred P. Murrah, Chairman of the Committee. A resumé of the work of the Committee was had and indicated considerable headway had been made in bringing about a broadening of the use of pretrial procedural methods. Judge Murrah stated that the Committee was much encouraged and felt that with the program contemplated for the immediate future substantial improvements could be anticipated.

The Conference ordered the report of the Committee received and filed, and that the work of the Committee, as well as its proposed program and recommendations, be approved. The Conference directed that copies of the report be sent to all judges as information with the request that they continue their cooperation with

the Committee in its work, and that the suggestions and recommendations of the Committee, which are those of the Conference by adoption, be given their earnest consideration.

Judicial statistics.—The report of the Committee on Judicial Statistics was presented and discussed by Circuit Judge Charles E. Clark, Chairman of the Committee. Judge Clark stated that considerable progress had been made in the various Committee projects, and that the Committee was favorably impressed and quite pleased with the interest and cooperation evidenced by the whole of the judiciary in the Committee's undertakings. The Conference ordered the report of the Committee received and approved, and directed that copies of the report be sent to all judges for their information and consideration.

Statutory definition of felony.—The Committee of the Conference appointed to consider the proposal, approved by the Judicial Conference of the Ninth Judicial Circuit, that "title 18 U. S. Code 541 (Old Code) be amended so as to make the definition of 'felony' depend upon the punishment actually inflicted, rather than the punishment which could lawfully be imposed" submitted a written report to the Conference.

The Committee expressed the view that, because of the limited interest expressed with respect to the subject matter under consideration, no further useful service is to be rendered by it in the premises.

The Conference ordered the Committee discharged, and the subject matter stricken from the Conference agenda.

Revision of criminal and judicial codes.—Circuit Judge Albert B. Maris, Chairman of the Committee on the Revision of the Criminal and Judicial Codes presented the report of the Committee.

During the past year, a bill to correct all errors and ambiguities which had come to the attention of the Committee was enacted into law (Pub. Law 72, 81st Cong. app'd May 24, 1949). The Committee renewed its recommendations concerning the desirability of changing the procedures involved under present statutory requirements in respect of the promulgation of rules of civil and criminal procedure adopted by the Supreme Court of the United States.

It appeared to the Committee that further amendments to § 1446 (b), title 28 of the U. S. Code, which relates to the time for

filing a petition for removal of a case from a State court to the Federal District Court, as amended by § 83 (a) of the Act of May 24, 1949, may be necessary in order to better meet the procedural provisions of some States. It was the view of the Committee that, in order to determine whether such an amendment is actually needed, further studies of the procedures of several states covering the commencement of civil actions, and the manner in which amended § 1446 (b) of Title 28 operates in practice should be had.

The Committee recommended that an appropriate committee of the Conference be authorized to make such studies and submit its recommendations for changes, if any, found to be needed in § 1446 (b) of Title 28, as well as any other amendments of that title, or Title 18, which may be needed to correct errors or ambiguities which may hereafter be discovered.

The Conference ordered that the report of the Committee be received and approved; it reaffirmed its previous recommendations with respect to suggested changes in existing statutory provisions concerning procedures covering the reporting and promulgation of rules of Civil and Criminal procedure adopted by the Supreme Court of the United States. The Conference directed that the present Committee of the Conference on the Revision of the Criminal and Judicial Codes be continued for the purposes recommended by the Committee.

Treatment of insane persons charged with crime in the Federal courts.—Chief Judge Magruder, Chairman of the Conference Committee on the treatment of insane persons charged with crime in the Federal courts, advised that legislation had recently been enacted covering the subject matter, and, therefore, the Committee should be discharged.

The Conference extended its thanks to the members of the Committee for their efforts in this instance, and ordered the Committee discharged.

Legislation Affecting the Judiciary

LEGISLATIVE PROPOSALS APPROVED

Picketing of the courts.—The report of the Committee appointed to make a study of the practice of picketing the courts and to make recommendations to the Conference with respect to action to be taken thereon was submitted by its Chairman, Circuit Judge F. Ryan Duffy.

It was stated that Senate bill 1681, as amended, and reported

favorably in the Senate (Report No. 732, 81st Cong., 1st sess.) on July 20, is the result of joint House and Senate Judiciary Committee hearings on two companion bills S. 1681 and H. R. 3766; there is also now pending in the Senate H. R. 5647, which was reported favorably by the House Judiciary Committee, and passed the House under unanimous consent by voice vote on August 26, 1949. Each of these measures deal with the subject matter.

As a result of the Committee's consideration, it is clear that the sentiment of the bar associations and individual lawyers has been and is practically unanimous in favor of some legislation in regard to the subject matter. On February 1, 1949, the House of Delegates of the American Bar Association by resolution condemned picketing of courts as an interference with the orderly administration of justice; and, many local and State bar associations have taken similar action. Several of the circuit judicial conferences have either specifically endorsed the pending measures, or have endorsed them in principle. The few judges expressing opposition to the proposals were either of the opinion that proceedings in contempt were adequate to cope with such situations, or they were resentful of the idea that a judge could be influenced by picketing demonstrations. In connection with the latter viewpoint, the committee unanimously agreed with the statement made by its Chairman when he appeared before the Joint Congressional committee in expressing his individual, personal viewpoint: "I have no doubt that a judge's decision or action could not be so influenced. But the judge is not the entire court. I am apprehensive that jurors and witnesses might well be influenced by such intimidating outside pressure. I think the Ellender bill (Senate bill 1681) will provide the proper insulation."

In conclusion, the committee expressed the opinion, substantiated by a great preponderance of the sentiment of judges who have expressed their views and of the bar of this country, that the enactment into law of either H. R. 5647 or S. 1681 is desirable.

The Conference entered upon consideration of the provisions of H. R. 5647 and S. 1681, after which, upon motion made and adopted, the Conference approved S. 1681, as amended, and reported favorably by the Senate Judiciary Committee, and recommended its prompt enactment.

Circuit judicial conferences—Attendance of district judges.—The recommendation of the Judicial Conference of the Ninth Judi-

cial Circuit that the present provisions of § 333 of title 28, U. S. Code, be amended so that the judges of the United States District Court of Hawaii and the District Court of the Territory of Alaska would be authorized and directed to attend the annual meetings of that Conference, was discussed by Chief Judge Denman. It was stated that, insofar as the judges of the United States District Court of Hawaii were concerned, a bill (H. R. 4579) had been introduced covering the subject matter.

The Conference was of the opinion that it was highly desirable to have in attendance at the respective Circuit Judicial Conference concerned not only the judges of the United States District Courts located outside the continental United States in Hawaii and Puerto Rico, but also the judges of the District Courts for the Territory of Alaska and the Virgin Islands, and the United States District Court for the Canal Zone. It thereupon directed that the necessary amendments to § 333 of title 28, U. S. Code to so provide be submitted to the Congress with the request that they be promptly enacted.

United States Court of Claims—Legislation affecting.—Hon. Marvin Jones, Chief Judge, and Hon. Joseph W. Madden, Judge, of the United States Court of Claims appeared before the Conference for the purpose of discussing the provisions of legislation (H. R. 5301) which has been introduced in the House of Representatives by Congressman Celler providing for the reconstitution of the Court of Claims, and redefining its jurisdiction. Subsequent to the presentations by Judge Jones and Judge Madden, the conference entered upon a general discussion of the proposal and adopted certain amendments to the bill as submitted. The Conference thereupon approved the bill (H. R. 5301) as amended by the Conference.

Courts—District of Columbia—Conflict of Jurisdiction, District Court of the United States and the Municipal Court.—Circuit Judge E. Barrett Prettyman, and Chief Judge Laws of the United States District Court for the District of Columbia, discussed the proposal, recommended by the Judicial Conference of the District of Columbia Circuit, to amend Section 4 of the Act of Congress approved April 1, 1942, 56 Stat. 192 (Sec. 11–755, Supp. VI, D. C. Code 1940 Ed.) by adding the following additional proviso:

> *Provided, further,* That upon a showing in the Municipal Court for the District of Columbia that a claim there pending arises out of a transaction or occurrence that is the subject

matter of an action pending in the United States District Court for the District of Columbia and is one which would constitute a compulsory counterclaim therein except for its pendency in the Municipal Court, the Municipal Court for the District of Columbia shall certify the same to said United States District Court, together with a copy of the docket entries and any orders theretofore entered and the deposit for costs, for interposition as a counterclaim in the action pending therein.

It was stated that under the provisions of Rule 13 (a), as amended, of the Federal Rules of Civil Procedure, there is excepted as a compulsory counterclaim in the District Court a claim which is already the subject of a pending action in the Municipal Court; and the Municipal Court of Appeals has ruled that the Municipal Court has no jurisdiction to entertain as a counterclaim an action over which the District Court has jurisdiction. Thus, it would appear, that adverse claims growing out of the same occurrence are required to be adjudicated in separate actions in separate tribunals, and the decision in the case tried first is res judicata of the other, if the matter in defense in the former is the same as the claim in the latter. In view of the fact that under the provisions of the Act of April 1, 1942 (56 Stat. 192), the District Court has jurisdiction concurrent with the Municipal Court over counterclaims in actions over which the District Court has jurisdiction, the existing defect will be removed by the enactment of the proposed amendment.

The Conference approved of the proposed amendment to Section 4 of the Act of Congress approved April 1, 1942, 56 Stat. 192 (Sec. 11–755, Supp. VI, D. C. Code 1940 edition) as submitted, and recommended its prompt enactment by the Congress.

LEGISLATIVE PROPOSALS DISAPPROVED

Administrative Court of the United States.—Chief Judge Hutcheson, Chairman of the Committee designated to make study and recommendations relating to the bill (Sen. 684) introduced in the Congress "to improve the administration of justice by the creation of an Administrative Court of the United States" presented the report of the Committee.

The Committee stated that all of the eleven circuit conferences, excepting the Sixth and Ninth Circuits, upon full discussion and consideration of the proposals, had adopted resolutions disapprov-

ing not merely the terms of the bill but the general theory and policy of the proposal for an administrative court, and recommending against its creation. It was pointed out that, while the form of the resolutions adopted varied, in substance each conference took the same action, and that the following minute adopted by the Circuit Conference for the First Judicial Circuit adequately summarizes the views not only of that circuit, but also of the other circuits:

> The judicial conference of the judges of the First Circuit recommends that Senate bill 684, providing for the creation of an Administrative Court of the United States, be disapproved.
>
> The functions which the regular courts now exercise in judicial review of agency action are appropriate functions for courts of general jurisdiction; that is, determination of the constitutionality of the statutes under which the administrative agencies act, interpretation of the statutes to determine whether the agencies have acted within their statutory authority, determination of whether the agencies have accorded due process of law, determination of whether there is substantial evidence to support the administrative findings of fact and whether the ultimate conclusions reached by the agencies are rationally derived from such findings. In apparent recognition that the foregoing functions are appropriate for courts of general jurisdiction, it is noted that S. 684 does not withdraw the existing jurisdiction of Federal district courts and courts of appeal, but merely adds another court with optional, overlapping jurisdiction which may be invoked at the instance of a party other than an agency. In addition, the bill provides that on request of the Administrative Court, any active or retired judge of the United States may, with his consent, be assigned by the Chief Judge of his court or the Chief Justice of the United States, to duty as a judge of the Administrative Court for a temporary period. It is further noted that appellate jurisdiction over the proposed Administrative Court is conferred upon the Supreme Court on certiorari, so that, as at present, the ultimate power of determination in this class of cases is conferred upon a court of general jurisdiction.
>
> We believe that the bill, in setting up another specialized judicial tribunal, takes an undesirable and unnecessary step

in the direction of further disintegration of the Federal judicial system.

The Committee also stated that, although no formal conference action was taken by the Sixth and Ninth Circuits, the Judges of those circuits have, with substantial unanimity, expressed similar views.

It was emphasized that the official statistics as to the number of appeals annually from administrative orders in all the circuits conclusively demonstrates the utter lack of necessity for such a court.

On the basis of the views and opinions gathered from the judges, members of the bar, and other pertinent sources, the Committee concluded that the passage of Senate bill 684, as originally proposed or as amended, is not only unnecessary but in its implications and consequences would be positively harmful.

In accordance with the recommendations of the Committee, which were adopted and approved, the Conference ordered that its disapproval of the proposals of Senate bill No. 684 to create an Administrative Court be recorded and the Congress advised of this action.

Sound recording of court proceedings.—The report of the Committee appointed to make a study of legislation that had been proposed (H. R. 3475) "to provide for the recording of proceedings in one of the courtrooms of the United States District Court for the District of Columbia by sound-recording equipment; and for the reproduction of the sounds of such proceedings in whole or in part in the United States Court of Appeals for the District of Columbia * * *" was presented by its Chairman, Chief Judge Bolitha J. Laws. The Committee was unanimous in its opposition to the provisions of the bill as drawn. However, it did not oppose such tests and experiments being conducted on a voluntary basis by the courts mentioned, provided it was accomplished administratively, and not by legislation. The committee indicated that as a result of its explorations, it was probable that the necessary tests could be obtained on an administrative basis within the courts concerned, and without cost to the government.

The Conference thereupon ordered that its disapproval of the legislation proposed by H. R. 3475 be recorded; but, that it approves the installation of a sound-recording device in the United

States District Court for the District of Columbia for experimental and test purposes only.

Transfer of proceedings—Disqualification of judges.—The Conference considered the provisions of H. R. 2722, introduced in the House of Representatives on February 15, 1949, by Congressman Emanuel Celler "to amend section 144, of title 28, United States Code, with respect to the procedure for transfer of proceedings before United States district court judges by reason of bias or prejudice."

The Conference ordered that its disapproval of the bill, H. R. 2722, be recorded.

LEGISLATIVE PROPOSALS PREVIOUSLY RECOMMENDED

Punishment for crime-youthful offenders—The Federal Youth Authority.—Chief Judge Orie L. Phillips, Chairman, Subcommittee on Youth Offenders of the Committee on Punishment for Crime, advised that legislation to establish a Youth Correction Authority in conformity with the recommendations of the Conference was introduced in the Eighty-first Congress in both the House of Representatives (H. R. 1780) and the Senate (S. 1114).

In the course of the Senate study of the bill, certain difficulties were pointed out which it was feared would develop in the administration of the system if the legislation should be enacted in the form presented. Accordingly, representatives of the committee met with the Director of the Bureau of Prisons, the American Law Institute's Special Advisor on its Youth Authority program, Mr. John Ellingston, and a member of the staff of the Judiciary Committee of the Senate, for the purpose of considering these difficulties and endeavoring to devise ways and means of overcoming them.

After considerable thought and consideration, the conferees tentatively agreed that the present bill should be amended to embody the following ideas:

(1) The administrative functions; that is the classification, allocation, treatment and correctional functions, should be vested in the Bureau of Prisons, and the functions of the Youth Correction Agency should relate primarily to orders of discharge, both conditional and unconditional, and the revocation or modification of conditional releases; but that the agency should be empowered to consider problems of treatment and correction and to counsel with and make recommendations to the Director of the Bureau of Prisons with respect thereto.

(2) The Youth Correction Board should become a part of the regular Parole Board, which should be reorganized by enlarging it from five to eight members, all of whom are to be appointed by the President with Senatorial confirmation, and whose chairman is to be designated by the Attorney General. The Attorney General should be empowered to assign members of this enlarged Parole Board, as they are needed, to a separately established "Youth Correction Division," within the Parole Board which will devote its full attention to the administration of the Youth Correction Act.

(3) The district judges should be given the additional power to request that youthful offenders to whom the system could be applied be sent, for study and analysis, to one of the classification centers to be established under the Act, and then returned to the court for sentencing in the light of this study.

(4) The district judges should be empowered in their discretion to specify a term of treatment under the Act in excess of the term which the Act fixes for youth offenders otherwise committed to the Youth Correction Division. In such instances, the term so specified must be for a term not greater than the maximum specified by the statute for the offense of which the offender was committed.

(5) The members of the Youth Correction Division should be required, as soon as practicable after commitment to it, to interview each defendant personally in order that the Division may have first-hand information concerning him and be thus enabled to give thorough individual treatment to each offender under its supervision.

(6) There should be established an unpaid Advisory Correction Council composed of representatives of the judiciary and of the various correctional agencies to advise in the coordination and improvement of the administration of criminal justice for all classes of offenders after conviction.

It was the view of the Committee that the suggested changes would overcome the administrative difficulties presented and clarify the areas of responsibility for the administration of the system; that it would give to the system a greater elasticity, to be used in the discretion of the judges, and, at the same time, retain the fundamental purposes and objectives of the Conference.

The Committee recommended that the Conference—

(1) Approve in principle the revisions proposed to be made in the pending bill;

(2) Reaffirm its interest in the establishment—at as early a date as practicable—of a system for the treatment of youth offenders, along the lines previously recommended, and

(3) Authorize the Committee on Punishment for Crime to continue to work with representatives of the Department

of Justice and the Congressional Committees in perfecting details of the legislation ultimately to be enacted.

The Conference approved and adopted the recommendations of the Committee.

The Federal jury system.—District Judge Harry E. Watkins, of West Virginia, a member of the Committee appointed to make a study of the Federal jury system, reported to the Conference concerning the status of legislation relating to certain changes in the Federal jury system which had been proposed pursuant to recommendations of the Conference.

Allowances for jurors.—A bill further increasing the compensation for jurors was recently enacted into law. Under the provisions thereof, jurors will now receive a per diem of $7 per day, and a subsistence allowance of $5 per day in those cases where it is necessary for them to remain away from home over night. In addition, they will receive a travel allowance of 7 cents per mile—this covers all travel without limitation.

The bills relating to uniform qualifications of jurors in the Federal courts (H. R. 2051) and the bill (H. R. 2050) to provide for a jury commission remain pending in the Congress. In this connection, it was stated that another bill (H. R. 3207) had been introduced in the House of Representatives by Congressman Ramsay which related to the subject matter covered by both H. R. 2051 and H. R. 2050. The provisions of this bill differed very materially and substantially from those, and was not in accord with the views and recommendations of the Conference.

The Committee recommended that H. R. 2050 as presently drawn be amended with respect to the compensation of the jury commissioner so that it will provide that each jury commissioner shall receive $5 per day for each day necessarily employed in the performance of his duties. It was stated that such an amendment would be in conformity with the existing compensation allowances under § 1864 of title 28, U. S. Code, and that the fixed daily rate, without limitation, was preferable to the allowances set forth in H. R. 2050.

The Conference recommended that H. R. 2050 as presently drawn be amended to accord with the Committee's recommendations. It reaffirmed its previous approval of the legislation proposed by H. R. 2050, as amended, and H. R. 2051, and ordered that its disapproval of the legislation proposed in H. R. 3207 be recorded.

Legislative proposals reaffirmed.—The Conference reaffirmed its previous recommendations regarding proposed legislation relating to the following:

(1) The removal of civil disabilities of probationers fulfilling the terms of their probation.

(2) Providing for proper representation in Federal Courts for the protection of the rights of indigent litigants.

COMMITTEES

Committees continued and discharged.—All present Committees of the Conference were ordered continued with the exception of the following which were ordered to be discharged:

Committee on the treatment of insane persons charged with crime in the Federal courts.

Committee on the statutory definition of felony.

New committees.—The Conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious and economic disposition, and authorized the designation of a Committee of the Conference to consider:

(1) means whereby the proceedings of regulatory agencies may be shaped both to satisfy the needs of the parties and to facilitate the reviewing function of the courts;

(2) means whereby at *nisi prius* particular evidence may be explicitly related to defined issues and all of the evidence on a particular issue presented together;

(3) means whereby (a) the materials in the record are confined to the issues under review by preparation of the record after points for argument have been exchanged between the parties and by any other means devised for delimiting such, and (b) such materials are marshalled in a form most helpful for their consideration;

(4) and all other modes by which the general ends herein indicated may be achieved.

The Committee to report to the Conference the results of its consideration and recommendations promptly upon completion of its study.

Pursuant to such authorization, the Chief Justice designated the following as a Committee of the Conference for the purposes indicated:

Circuit Judge E. Barrett Prettyman, Chairman, and Circuit Judges Kimbrough Stone (Retired), Calvert Magruder, Augustus N. Hand and Walter C. Lindley, and District Judges W. Calvin Chestnut, Frank L. Kloeb, Paul C. Leahy, Simon H. Rifkind and Leon R. Yankwich.

Committees General.—The Conference authorized the Chief Justice to take whatever action he deemed desirable with respect to increasing the membership of existing committees, the reconstituting of discharged committees, the filling of any existing committee vacancies, the appointing of new committees, and the designation of membership in such instances.

Advisory Committee.—The Conference continued the committee consisting of the Chief Justice, and Chief Judges Stephens, Biggs, Parker and Phillips, 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:

FRED M. VINSON,
Chief Justice.

Dated: Washington, D. C., November 25th, 1949.

APPENDIX

Report of the Attorney General, Hon. J. Howard McGrath

Mr. Chief Justice, Members of the Judicial Conference of the United States, Honored Guests:

Last year in his report to this Conference, Attorney General Clark stated that he considered the work of the Judicial Conference of the United States one of the most important single elements in the administration of justice in the Federal courts. I agree wholeheartedly with the view expressed by Attorney General Clark. During my tenure of office as Solicitor General of the United States, I came to realize and appreciate the truly great contribution which this Conference makes toward the improvement of the Federal judicial system. The detailed and tedious work done by your committees, your willingness to examine and reexamine your own rules and procedures, and your ever-present spirit of cooperation with the executive and legislative branches of the Government have resulted in steady progress toward achieving a speedy, efficient, simple, inexpensive, and fair system of Federal justice. It is most gratifying to me that one of my first functions as Attorney General is the privilege of appearing here, in a similar spirit of mutual cooperation, and playing a part in your work for the constant and steady improvement of the judicial system of the United States. The responsibility for the efficient and just operation of our Federal judicial system is a responsibility which the Department of Justice shares with this Conference—and we consider our share of that responsibility as one of our most important functions.

A judicial system is not to be judged by court decisions alone. Almost equally as important as the ultimate decision in a case are the methods and procedures required in order to obtain that decision. Oftentimes the expenses and delays of litigation deprive the prevailing party of the fruits of his victory. A good judicial system must enable a litigant to enforce his rights as quickly and as economically as possible. In order to achieve this goal two things are essential—an adequate number of qualified judges to cope with the ever expanding work of the courts, and an increased use of improved procedures designed to simplify and shorten litigation and thereby make it less expensive.

A great step forward was accomplished last month when the Congress enacted and the President approved Public Law 205 which authorized increases in the number of circuit and district judges, substantially as recommended by this Conference. The enactment of this legislation constitutes recognition on the part of the executive and legislative branches of the Government of the importance of the work of the Federal judiciary during this great and important period of history, and, indeed, is tangible evidence of the sincere appreciation of the other two branches of the Government for the great effort made by the Federal judges under the strain of an almost impossible work load and under the most trying circumstances. I am sure that the President will continue, as he has done in the past, to endeavor to fill the new vacancies, as well as others as they occur, as rapidly as possible, consistent with his established policy of appointing only the most qualified to judicial office. I hope that never again shall we have the unpleasant experience of reading in a report of the Director of the Administrative Office of the high incidence throughout the country of disability of Federal judges because of illnesses largely attributable to overstrain in work.

With respect to procedures designed to make the judicial process simpler, less complicated and more economical, the Department of Justice strongly advocates the increased use of the pretrial procedure permitted by Rule 16 of the Federal Rules of Civil Procedure. Our experience has demonstrated that satisfactory and effective results have been achieved by the use of this procedure. In some districts, however, the courts have been reluctant to recognize the most effective methods for administering their authority under Rule 16, and in some districts the pretrial conference is very perfunctory. A more effective use of this pretrial procedure would assist in expediting the disposition of cases and effecting a speedier clearance of court dockets, and would result in economies to the courts, the litigants, and the public. I was glad to note that your Committee on Ways and Means of Economy in the Operation of the Federal Courts urged upon the district judges the increased use of the pretrial procedure as well as of the provisions of the Federal Rules dealing with depositions and discovery and summary judgment.

Last year Attorney General Clark called the attention of the Conference to the great increase in litigation under the Federal Tort Claims Act. I am glad to say that the processing of these cases is being handled more expeditiously than it was 2 years ago.

We are now usually able to obtain the investigative reports from the agencies involved and have them in the hands of the United States Attorneys in time to enable the Government to answer or move within the 60-day period. Also, systematic procedures within the Government have been worked out for making available without delay Army, Navy, and Coast Guard personnel, as well as civilian employees of the Government, when they are needed as witnesses. The Department will continue in every way possible to process these cases so as not to clutter up the court dockets. In this connection, I might point out that recently there has been a tremendous increase in litigation involving veterans and their dependents. We foresee an even greater increase in this type of litigation as a result of the various governmental programs relating to veterans. Here, too, the Department will make every effort to expedite and avoid delay.

A problem with which the Department of Justice has become concerned has to do with the time to answer in admiralty cases. Rule 44 of the General Admiralty Rules authorizes the district courts to regulate their practice in such manner, not inconsistent with the Rules, as they deem most expedient for the due administration of justice. Pursuant to this authorization, the district courts have established varying local rules concerning the time to answer, and in some districts the time limit has been set at 15 days. These varying time limitations are applicable to the United States and its agencies. This Conference is well aware that these time limits are entirely too short to enable the Department of Justice to obtain from the agencies involved the necessary data and reports on the basis of which it must decide what action is to be taken. In most cases, the Department is required to move for an extension of time, and in many cases answers have to be drawn without sufficient study. This problem has become more acute in recent years because of the great increase in admiralty litigation conducted by the Department. In cases under the Federal Rules of Civil Procedure, the Government is specifically permitted 60 days in which to move or answer, and it would appear that the practice in admiralty should provide a similar uniform rule for the Government. Perhaps a suggestion by this Conference to the district courts will achieve the purpose. It may be, however, that an amendment to the General Admiralty Rules is required. The Department of Justice will sincerely appreciate the assistance of this Conference in this regard.

This Conference is, of course, well aware of the approval on May 24, 1949, of Public Law 72 which brought Titles 18 and 28 of the United States Code up to date and corrected many errors appearing therein and removed certain ambiguities which had been discovered. Indeed, Public Law 72 is largely the work of your Conference Committee, and the report of the House Judiciary Committee (H. Rep. 352, 81st Cong., p. 2) expressed the gratitude of the Judiciary Committee "to the members of the Judicial Conference Committee for their generous devotion to this work and for their important contributions and assistance to the House Committee and its revision staff." I am sure that the members of the bar will silently express their gratitude to the members of your Committee as they have occasion from day to day to deal with the various sections of Titles 18 and 28. The only changes in existing law effectuated by Public Law 72 that I wish to refer to are those contained in sections 59, 103, and 104, which provide that amendments to the Federal Rules of Criminal Procedure and to the Federal Rules of Civil Procedure shall be reported to the Congress by the Chief Justice instead of by the Attorney General. This change was recommended by this Conference, and its adoption, it seems to me, was entirely proper, inasmuch as the Attorney General no longer acts as the administrative officer of Federal courts.

The Department of Justice greatly appreciates the efforts of this Conference toward the development of better procedures for the representation of indigent defendants in criminal cases in the Federal district courts. S. 2206, which was introduced in the Congress on July 7 by Senator Kefauver, follows the suggestions made by this Conference and appears to me to represent a practical way of making counsel available to impoverished defendants without undue expense upon the Government and without imposing upon the time and services of members of the bar. The Department of Justice wholeheartedly approves this salutary legislation and will be glad to support and endorse it. One point might be mentioned, however, in connection with S. 2206. I note that in districts where no public defender is appointed and where counsel is appointed for particular cases, the counsel so appointed may be compensated at a rate not to exceed $35 a day for time necessarily expended in preparation and trial, in addition to reimbursement for expenses reasonably incurred and approved by the court. However, the aggregate amount expended for compensation and

reimbursement of counsel is not to exceed $5,000 for any one fiscal year in any one district. In the event of an appeal, the assigned counsel is to continue to represent the indigent defendant during the appellate stages of the case and he may continue to be compensated and reimbursed as set forth above, these expenditures to be included within the $5,000 limitation.

It seems to me that if several extended and lengthy trials occur in a district during the same fiscal year and there are appeals in those cases, the $5,000 limitation may well be exceeded. The cost of printing records and briefs in the appellate courts after a lengthy trial and in a complex case runs very high. I am not suggesting that the $5,000 limitation be raised, but I am suggesting that consideration be given to adding a provision in this bill to the effect that the assignment of counsel pursuant to the bill shall in no way affect the otherwise existing right to proceed *in forma pauperis*. The elimination of the necessity of printing briefs and records in appellate courts in many cases will, of course, result in an economy to the Government itself. It is true that there is nothing in the bill as now drafted which expressly excludes the right to proceed *in forma pauperis* in appropriate cases, but I believe the suggestion I have made is desirable in order to assure against any construction to that effect.

Recently, certain criminal trials which have been conducted by the Department, and which have gained prominence in the press, have brought about several suggestions for various changes in Federal criminal practice and procedure. These suggestions have been directed to the Department as well as to the President, and in some cases have come from congressional sources. It might be fitting if I were to call your attention to several of them.

It has been suggested to the President that in criminal trials of great importance and anticipated great length, the chief judge of the district court be authorized to appoint an additional judge to sit during the trial. At the present time, neither the statutes nor the Federal Rules of Criminal Procedure permit the designation of an alternate or substitute judge except after a verdict or finding of guilty. The sole function of this second judge would be to assume the duties of the regular presiding judge in the event that the latter died or became incapacitated, just as in the case of alternate jurors. The obvious argument in support of this suggestion is that the designation of an alternate judge would in many cases prevent unnecessary mistrials, would relieve the parties from the

burden and expense of retrying the case, and would also remove the unfair advantage that might accrue to a defendant, in a new trial, brought about by the prior disclosure of the Government's case during the course of the first trial. On the other hand, the contingency is fairly remote that the services of the second judge would ultimately be required, and it may be inadvisable to tie up a second judge in any district on that remote contingency. Even with with the additions to district courts authorized by Public Law 205, a procedure which would completely tie up two judges for an extended period of time should probably not be authorized unless a great deal of careful study is given to the matter and proper limitations and restrictions are placed upon the discretion of the chief judge, both for his own protection against pressure and for the efficient and economical operation of the district courts.

This Conference is authorized by statute to "prepare plans for assignment of judges to or from circuits or districts where necessary" and to make "recommendations for legislation" (28 U. S. C. 331) and it seems appropriate to call the above suggestion to the attention of the Conference for such consideration as you may wish to give to it. The Department of Justice has advised the President that this matter would be called to your attention.

Another suggestion brought about as a result of recent criminal trials has to do with protecting against the disclosure of information, during espionage trials or other trials involving the national security, which in the interest of national security should be kept secret. It has been suggested that a study be made concerning the possibility of formulating changes in the rules of evidence or in criminal procedure which would protect the national interest and security and at the same time would offer a defendant the proper scope of his constitutional rights.

It is the view of the Department of Justice that the problem of protecting against the disclosure of national security documents or information during the course of criminal trials is not as serious or all-embracing as it is thought to be in many quarters. The Court of Appeals for the Second Circuit has held, and I believe properly, that if a defendant desires the introduction in evidence of a confidential Government document, he must first prove to the satisfaction of the court that the paper is directly material to his defense. Thereafter, the court will permit the introduction of only such part of the document as it deems material, and will exclude and seal all immaterial and irrelevant portions. *United*

States v. *Andolschek*, 142 F. 2d 503; *United States* v. *Koulewitch*, 145 F. 2d 76; *United States* v. *Cohen*, 145 F. 2d 82; *United States* v. *Ebeling*, 146 F. 2d 254. It is also the view of the Department of Justice that, consistently with the constitutional requirements of a public trial, even those parts of confidential documents which the judge has ruled material and admissible may be protected from disclosure to the public by limiting their examination and inspection to the judge, the attorneys and the jury. On appeal, the material may be kept under seal and viewed only by the members of the appellate courts. It seems to me that this procedure would adequately take care of a very substantial segment of the problem. Perhaps specific legislation is necessary in order to insure uniformity of practice in all the Federal courts.

The real difficulty lies in certain cases where the information is such that it cannot be disclosed even to the court, the attorneys or the jury. In many cases of this type the Department has been compelled to refrain from prosecuting, and known violators of the law remain at large. Very careful consideration, it seems to me, should be given to this aspect of the problem. Within the executive branch of the Government, the problem is important not only to the Department of Justice, but also to the Department of State, the Department of Defense, and the Atomic Energy Commission, among others. Because of this Government-wide interest, the problem has been brought to the attention of the Inter-Departmental Committee on Internal Security (ICIS) operating under the National Security Council. It may be that this Conference also will wish to give independent consideration to the problem, and it is for that reason that I have called this matter to your attention. The Department of Justice's representative on the Inter-Departmental Committee will be available at any time to cooperate with any committee that might be established by this Conference to deal with this matter.

In reading the report of the proceedings of the special meeting of this Conference on March 24 and 25, 1949, I noticed that a committee was appointed to study and report, together with recommendations, on legislation proposed to prohibit the picketing of courts. The Department of Justice has also concerned itself with this problem. In recent months reports have been transmitted to the House Committee on the Judiciary concerning H. R. 3766 and H. R. 5647 and to the Senate Committee on the Judiciary on S. 1681. In these reports the Department of Justice

pointed out that the question whether legislation of this type should be enacted was primarily a matter of legislative policy upon which the Department preferred not to comment. The Department did, however, suggest for the consideration of the Committees the possibility that existing provisions of the Criminal Code might be adequate to protect against interference with the administration of justice in most cases. And, on the assumption that the proposed legislation would be given active consideration, the Department suggested certain changes in the bills which were thought desirable and necessary in order to remove possible constitutional objections. Drafts embodying these changes were transmitted to the Committees, and I might point out that the Senate Committee which reported favorably on S. 1681, after joint hearings with the House Committee, adopted the changes suggested by the Department (S. Rep. No. 732, 81st Cong.).

I might add here that I am not entirely satisfied in my own mind as to the necessity or desirability of legislation of this type, despite what was said on this point in the report of the Senate Judiciary Committee. As appears from the Committee report, the practice of picketing courts is of recent origin and has been employed solely in connection with proceedings involving alleged Communist Party members or communist sympathizers. It may well be that this practice is only a passing phase, and, in any event, *ad hoc* legislation in this field may, in the long run, not be the proper way to handle the problem. I will be very much interested to learn the views of the committee of this Conference concerning this subject.

Since the last meeting of this Conference, Attorney General Clark exchanged some correspondence with Chief Judge Magruder in an effort to arrive at a mutually satisfactory modification of the so-called Expediting Act in antitrust cases. It is my understanding that some members of the Conference Committee feel that the requirement of existing law which makes it mandatory upon the chief judge of the circuit to convene a three-judge court upon the filing of an expediting certificate by the Attorney General in many instances causes extreme inconvenience and prejudices other business on the court docket. It was suggested that the mandatory feature be eliminated and that the chief judge be required to convene a three-judge court only "if in his judgment the case is of sufficient general public importance to warrant the constitution of a court of three judges, and if in his judgment

the constitution of such a court would not, in the circumstances, unduly prejudice the dispatch of other judicial business in the circuit." Attorney General Clark advised Chief Judge Magruder that the Department of Justice is willing to endorse an amendment to the Expediting Act which would eliminate the mandatory feature from existing law and which would permit the chief judge to convene or not to convene a three-judge court, depending upon whether, in his discretion, the assignment of three judges would disrupt other judicial business in the circuit. He stated, however, that the discretion of the chief judge of the circuit should be limited to the question of the effect of the convening of a three-judge court upon the judicial business in the circuit, and that the question whether the particular case was of sufficient general importance should remain for the Attorney General's determination. As Attorney General Clark pointed out, an antitrust case is instituted by the Department of Justice only after a great deal of study and investigation by the Department's staff. At the time the case is instituted, the Department has full knowledge of all the facts and is in a position to understand completely the relationship of that particular case to current antitrust policy. It is extremely difficult for the chief judge to evaluate the general importance of any particular case upon a mere reading of the complaint and without full knowledge of all the facts and of the relationship of the particular case to other cases in process. I wish to state here that I wholeheartedly endorse the position of Attorney General Clark and that the Department will continue to cooperate with your Conference Committee in an effort to work out a satisfactory compromise along these lines.

I would like at this time to say a few words concerning a bill now pending in the Congress which I believe to be of great interest to this Conference. I refer to H. R. 2722 which would amend section 144 of Title 28 of the United States Code dealing with the procedure for disqualifying Federal district judges because of bias or prejudice. H. R. 2722 would make several changes in existing law, but the most fundamental change is one that would completely alter the present procedure.

As you know, under the law as it now stands, a district judge must disqualify himself if he finds the affidavit filed against him to be legally sufficient, and he must accept as true all the facts stated in the affidvait. Thereafter, another judge is appointed

by the chief judge of the circuit to hear the case. If, however, the district judge refuses to disqualify himself, an appeal will lie from his ruling, and, in appropriate cases, mandamus or prohibition is available. The only function of the chief judge of the circuit in these cases is to designate another judge when the district judge has actually disqualified himself.

H. R. 2722 would completely change this procedure. It provides that when an affidavit of prejudice is filed, the district judge shall preside no longer but shall send an authenticated copy of the affidavit of prejudice to the chief judge of the circuit who "shall then pass upon the legal sufficiency of the affidavit. If he shall find it legally sufficient, he shall forthwith designate another judge to hear such matter." Under this change, the district judge no longer would have the authority to pass upon the legal sufficiency of the affidavit; his only function would be to pass it along to the chief judge of the circuit who would then pass upon its legal sufficiency. It is my own view that the present procedure affords ample protection to litigants in most cases, particularly in view of the availability of an appeal or the right to mandamus or prohibition in special cases. Quite apart from that, however, the proposed change would seem to present several difficulties which merit consideration. Suppose, for example, the chief judge of the circuit found the affidavit not to be legally sufficient. The trial would undoubtedly proceed with the original judge sitting in the case but in any subsequent appeal on the whole case in which the prejudice or bias of the district judge was made an issue, the chief judge of the court of appeals would undoubtedly be automatically disqualified because he had previously ruled upon the sufficiency of the affidavit. Any procedure which would permit such an automatic disqualification of the chief judge of the circuit would, indeed, seem to be open to question. Finally, if the chief judge holds the affidavit insufficient and the case is otherwise appropriate for mandamus or prohibition, the question arises as to where the litigant could go to get his writ. He certainly could not go to the district court for a writ directed to the chief judge of the circuit, and it is questionable whether the court of appeals could issue a writ of prohibition or mandamus against its own chief judge. If, as a legal matter, the writ could be obtained from the Supreme Court of the United States, the question arises whether it is desirable to burden the Supreme Court with this type of litigation, particularly in the early stages of any particular case.

H. R. 2722 contains several other interesting changes of existing law, but I shall not burden the Conference with them at this time.

In closing this report to the Conference, I wish to emphasize what I stated before. The work of this Conference is of real importance. To be a part of it is indeed a privilege. And it is most gratifying that my appearance here constitutes one of my first functions as Attorney General.

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