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 Monday, September 25, 1950. The following were present:

The Chief Justice, presiding.

Circuit:

District of Columbia	Chief Judge Harold M. Stephens.
First	Chief Judge Calvert Magruder.
Second	Chief Judge Learned Hand.
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.

The Attorney General and the Solicitor General, accompanied by various members of their respective staffs, met with the Conference on the second day of the meeting.

Circuit Judges Albert B. Maris and Alfred P. Murrah, and District Judges William C. Coleman and Harry E. Watkins attended various sessions of the Conference and participated in the discussions.

Mr. J. E. Simpson an attorney of Los Angeles, Calif., and a lawyer delegate to the Circuit Conference of the Ninth Judicial Circuit, upon request of Chief Judge Denman, met with the Conference on the second day of the meeting and presented a statement supporting various resolutions adopted by the Circuit Conference of the Ninth Judicial Circuit.

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 eleventh annual report reviewing the activities of his office for the fiscal year ended June 30, 1950, 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.

Business of the Courts

State of the dockets of the Federal courts—Courts of appeals.—The number of cases commenced in the courts of appeals was only slightly less than last year, 2,830 as compared with 2,989. The reduction occurred in appeals from the district courts. Administrative appeals were at about the same level. There were 300 more cases terminated than last year and 234 more were closed than were filed with the result that the pending caseload was reduced to 1,675 on June 30, 1950. The median time from filing the complete record to final disposition of cases heard and submitted remained the same as last year, 7.1 months and from argument to decision it was 1.5 months, a fraction less than in the fiscal year 1949. The District of Columbia Circuit with 434 cases had the largest number of incoming cases, the Fifth Circuit was second with 408 and the Second and Ninth Circuits were next in order with 318 and 317, respectively.

[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.

Over the 10-year period beginning with 1941, there has been some decrease in the number of cases filed annually but this has been due principally to a decline in the volume of appeals from the Tax Court of the United States (462 in 1941 to 239 in 1950) and from the National Labor Relations Board (248 to 167). Six new circuit judgeships created in 1949 have been of major assistance in reducing the pending caseload.

Petitions to the Supreme Court for review on certiorari to the United States courts of appeals exceeded the number filed during the previous term. 663 petitions were docketed during the most recent term, 67 were granted, 560 denied, and 8 dismissed.

District courts.—A small increase in the number of civil actions commenced in the United States district courts in the fiscal year 1950 was accompanied by a large increase in the number terminated. Still, the cases filed exceeded the number closed by 1,363 and the number pending at the end of the year rose to 55,603, the highest point since 1933. The fluctuations over the past 10 years are shown by the following table which gives separate figures for all civil cases and for those between private litigants:

Fiscal year	Total civil cases			Private civil cases		
	Commenced	Terminated	Pending	Commenced	Terminated	Pending
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
1950	54, 622	53, 259	55, 603	32, 193	30, 494	34, 825

Over the 10-year period there has been a definite upward trend, particularly noticeable in the private cases. In the period from 1945 to 1947 the volume of all civil cases was greatly increased by the large number of OPA price and rationing cases brought by the Government. The decline in private cases during the war has been followed by a steady year by year increase so that the number commenced in 1950, 32,193, was 47 percent above the 1941 figure. For all civil cases the increase was 42 percent. During the same period the number of district judgeships has risen by only 12 percent.

Since on the average civil cases take much more judicial time than criminal cases and private cases more than civil actions in which the United States is a party, it is not surprising to find some docket congestion. However, this exists principally in metropolitan centers including New York City, Washington, D. C., Newark, Philadelphia, Pittsburgh, Chicago, and Cleveland. Twenty-two new district judgeships provided by the Eighty-first Congress in 1949 including positions in almost all of the districts just mentioned have been of material assistance. But the condition in the Southern District of New York is still extremely serious where, on June 30, 1950, 11,134 civil cases were pending and the estimated period from issue to trial was reported as 23 months in nonjury cases, 25 months in jury cases, and 30 months in admiralty cases.

The median time from filing to disposition of civil cases tried in 86 district courts in 1950 was 11.2 months compared with 10.4 months in 1949. If seven metropolitan districts are excluded, the median in 1950 was 9.6 months, which was still, however, 1.2 months longer than for the same districts in 1949.

The number of criminal cases commenced in the district courts was 36,383 as compared with 34,432 in the fiscal year 1949. Cases terminated were practically equal to the number begun and of the 8,181 cases pending on June 30, 1950, approximately 2,000 involved fugitive defendants whose cases could not be tried because they were not available. Generally speaking, the criminal dockets are in excellent condition. Statistics in the Director's Report show that immigration cases constituted about 30 percent of all criminal cases commenced in 1950 and that 97 percent of them, involving illegal entry into the United States, were filed in the five districts bordering on Mexico. If these cases are eliminated, it is apparent that the number of other criminal cases commenced in 1941 was one-sixth larger than in 1950. In other words, excluding immigration, Federal criminal prosecutions have decreased noticeably during the past decade.

The number of bankruptcy cases continued to increase in 1950 but the percentage of growth was less than in 1949. Cases commenced were 33,392 and terminations reached 25,582, leaving 38,376 cases pending at the end of the year, the highest total in 7 years. Over the past 10 years, there has been a sharp drop in cases filed from 56,335 in 1941 to a low of 10,196 in 1946, since which time there has been an increase of about two and one-third

times. The referee system is entirely self-supporting and all advances made by the Government since its establishment have been repaid.

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 was 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 assignments 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:

Previous Recommendations Reaffirmed

Eastern, Middle, and Western Pennsylvania Districts.—That the act of 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 District.—The creation of one additional district judgeship.

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

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

Eastern and Western Missouri Districts.—The existing temporary judgeship for these districts to be made permanent.

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

Additional Judgeships Recommended

Southern District of New York.—The creation of five additional district judgeships, with the *proviso* that the first two vacancies occurring in this district shall not be filled.

Delaware District.—The creation of one additional district judgeship.

Middle District of Tennessee.—The creation of one additional district judgeship, with the *proviso* that the first vacancy occurring in this district shall not be filled.

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

Additional Judgeships Disapproved

Southern District of Florida.—The attention of the Conference was directed to Senate Bill 4105 and House Bill 9571 presently pending in the Congress which would provide for the creation of an additional district judgeship on a temporary basis for this District.

Upon consideration of the recent change in conditions in the district; the case load and present condition of the docket, it was the sense of the Conference that the proposed additional district judgeship was not necessary at this time, and that the pending proposal be disapproved.

The Director was instructed to advise the Chairmen of the Judiciary Committees of the House of Representatives and the Senate of this action.

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 1952 were considered by the Conference. The Director was authorized to revise the estimates submitted to include the estimate of costs incident to the reclassification of the position of senior courtroom deputy or minute clerk authorized by the Conference. The estimates as so amended were approved by the Conference.

After consideration, the Conference approved the estimates for deficiency appropriations for the fiscal years 1950 and 1951.

Supporting Personnel of the Courts

The report of the Committee on Supporting Personnel of the United States Courts was presented and discussed by Chief Judge John Biggs, Jr., Chairman of the Committee, and Chief Judge Harold M. Stephens, a member of the Committee.

Upon consideration of the report and recommendations of the Committee, the Conference authorized and directed that the position of Senior Court Room Deputy or Minute Clerk in those Clerks' Offices of the District Courts which are, for administrative purposes, known as large offices be classified in grade GS 8. The Conference directed that only those positions in the group specified whose overall duties encompass to a substantial degree all of the various duties set forth in the job analysis sheet submitted, should receive such classification.

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 four years and who has been separated from the service involuntarily and without prejudice, to acquire for transfer purposes a classified civil-service status upon passing a noncompetitive civil-service examination.

The Court Reporting System

The Committee on Supporting Personnel of the Courts, pursuant to authority extended to it by the Chief Justice, heard representatives of the various Court Reporter organizations, and individual Reporters, with respect to a number of problems affecting the Court Reporting System. The report and recommendations of the Committee were presented and discussed by Chief Judge John Biggs, Jr., Chairman, and Chief Judge Stephens and Circuit Judge Maris, members, of the Committee.

Upon consideration of the report and recommendations of the Committee, the Conference directed that the Committee of the Conference on the Court Reporting System be reactivated for the purpose of considering the question of compensation, including transcript rates, and other relevant factors involved in a comprehensive study of the subject, and, also, such other problems as may be presented, and that such Committee submit a report of their conclusions and recommendations at the next meeting of the Conference.

The Conference further directed that the Administrative Office furnish the Committee with such data and render such other services as may be required; and, that the Administrative Office submit recommendations to the Committee with respect to its views concerning proper levels of compensation for each individual reporter.

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

Northern District of Illinois.—Two new court reporter positions at a salary of $5,000 per annum, respectively.

District Court of Guam.—One new court reporter position at a salary of $4,300 per annum.

Salary increases in specific districts.—A review of the job content, working conditions, and the earnings in those districts in which specific salary increases had been requested was had. The Conference authorized the following increases in salary of the reporters concerned:

District of Alaska.—The salaries of the various reporters serving in the first, second, and fourth divisions, who also serve as secretary to the judges, from $4,500 to $5,000 per annum.

The Conference directed that the increases so authorized shall be on a temporary basis, but remain in force and effect until such time as the Conference considers and acts upon the report and recommendations of its Committee on the Court Reporting System with respect to the over-all situation.

Bankruptcy Administration

The report of the Bankruptcy Division of the Administrative Office dated June 15, 1950, approved and adopted by the Director, recommending certain changes in the number and salaries of referees, and other changes in referee arrangements, based upon conclusions drawn from studies and resurveys conducted throughout the year, was submitted for the consideration of the Conference.

Pursuant to the provisions of section 37b (1) of the Bankruptcy Act, as amended, the Administrative Office made resurveys of various territories and referees' offices during the year. These surveys

were made usually at the request of the district judges or the referees. In each instance the original surveys which covered the 10- and 5-year periods ending June 30, 1946, were extended through March 31, 1950. These surveys took into account the number, size, and type of pending cases; the number, size, and type of new cases referred since July 1, 1947; the payments in each district and by each referee into the salary and expense funds; the time necessarily spent in traveling; the proportion and character of cases arising away from headquarters, and the number of large asset and arrangement cases handled. Consideration was also given to the amount and character of judicial work required of the referee.

As a result of these studies and resurveys, it was evident that there were three principal factors contributing to the need for enlarged referee service—(1) the sustained and continuing increase in the volume of business; (2) the large increase in the number and size of asset and arrangements cases, and (3) the great increase in the amount of litigation of all kinds before the referees. The latter factor results from the fact that Bankruptcy Courts have now become recognized as the court of general jurisdiction in bankruptcy matters after a referral has been made.

Practically every district in which any change was recommended was visited by representatives of the Bankruptcy Division who conferred with the district judges, the referees and others interested in bankruptcy matters. Consideration was also given to the salaries presently provided in other districts to the end that the increases recommended would not create disparities in comparable districts. The information thus assembled was submitted to the district judges and the circuit councils concerned. It was also considered by the Committee on Bankruptcy Administration, and the Conference had before it all of these data, together with recommendations of the district judges and the circuit councils, which had been received at the time of the meeting of the Conference. The recommendations of the Director and the Committee were considered separately in the light of the foregoing information along with any special factors affecting each case. Also the Conference had before it additional data compiled as of the close of the fiscal year ending June 30, 1950, and in some instances through July and August, 1950.

908231—51——2

The Conference thereupon took the following action:

Salary increases for referees

District	Regular place of office	Type of position	Annual salary	
			Present	Increase to—
Puerto Rico	San Juan	Part time	$2,500	$3,000
Vermont	Burlington	do	1,200	1,800
Do	Rutland	do	1,200	1,800
Delaware	Wilmington	do	2,500	4,000
Maryland	Salisbury	do	1,000	2,000
Do	Baltimore	do	4,000	5,000
North Carolina—Eastern	Raleigh	do	2,500	3,000
Alabama—Northern	Anniston	do	4,500	5,000
Florida—Southern	Miami	do	3,500	5,000
Mississippi—Southern	Jackson	do	2,000	3,000
Texas—Western	San Antonio	do	1,800	2,500
Ohio—Southern	Dayton	do	4,000	5,000
Nevada	Reno	do	2,400	3,500
Colorado	Denver	Full time	8,000	9,000
Oklahoma—Northern	Tulsa	Part time	3,500	4,000

The Conference authorized these salary increases to be effective as of October 1, 1950.

Changes in Referee Arrangements

Southern District of California.—Authorized, effective January 1, 1951, the appointment of a part-time referee at San Bernardino, at an annual salary of $1,500 per year. The Conference designated San Bernardino as the regular place of office, and San Bernardino and Riverside as places of holding court; the territory to be served by this referee to include San Bernardino and Riverside Counties.

Western District of Missouri.—Designated Jefferson City as a place of holding court, instead of Sedalia.

Northern District of Ohio—Western Division.—Designated Fremont, Lima, and Marion, Ohio, as additional places of holding court.

Chief Judge Phillips, Chairman of the Committee on Bankruptcy, informed that there had been presented to the Committee for its consideration several amendments to the Bankruptcy Act designed to meet certain practical difficulties under some of the provisions of the Bankruptcy Act, and that it was the view of a majority of the Committee that the following amendments to the Bankruptcy Act should be approved and recommended by the Conference.

Referees—Tenure of service.—There should be a provision under the statute to the effect that a referee upon the expiration of his term of office shall continue to serve until a successor is appointed and qualifies. The purpose of this proposal is to prevent a lapse in referee service caused by a delay in the appointment of a referee upon expiration of his regular term of office. In order to so provide, the Committee recommended that Sec. 34a (11 U. S. C. 62a) be amended by adding the following sentence at the end of the paragraph:

Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies.

The Conference approved of the Committee's recommendation, and approved of the proposed amendment to Sec. 34a (11 U. S. C. 62a).

Referees—Place of holding court.—There is a conflict between the provision of Sec. 55a of the Bankruptcy Act (Title 11, U. S. C. sec. 91a) and Sec. 37b (1) (Title 11, U. S. C. Sec. 65b (1)). Sec. 55a provides that the first meeting of creditors shall be held "at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile" and Sec. 37b (1) as amended by the Salary Act provides that the Judicial Conference shall determine "the places at which courts shall be held."

In order to eliminate this apparent inconsistency, the Committee proposed that Sec. 55a (Title 11, U. S. C. Sec. 91a) be amended to read as follows:

The court shall cause the first meeting of the creditors of a bankrupt to be held not less than ten nor more than thirty days after the adjudication, at the *place or at one of the places designated by the Conference pursuant to Sec. 37b (1) as a place at which court shall be held within the Judicial District* in which the bankrupt has had his principal place of business, resided or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held. [New language in italics.]

The Conference concurred in the Committee's views, and recommended the enactment of the proposed amendment to Sec. 55a of the Bankruptcy Act.

Referees—Temporary assignment and designation of.—Judge Phillips called the attention of the Conference to the provisions

of Public Law 790, Eighty-first Congress, approved September 19, 1950, under which the temporary assignment of a referee within a circuit may be made by the chief judge of the circuit upon presentation of a certificate of necessity by the judge or chief judge of the district wherein the need arises, whereas, prior to the enactment of this act, action was required by the entire judicial council of the circuit. The present law also provides for the temporary assignment of a referee from one circuit to another to be made by the Chief Justice of the United States upon presentation of a certificate of the chief judge of the circuit wherein the need arises, whereas, prior to the enactment of this act, action by the entire Judicial Conference of the United States was necessary.

Referees' salaries and arrangements—Resurveys of.—The procedure prescribed by the Bankruptcy Act to effect changes in the number and territories of referees, changes in referees' salaries, and the filling of vacancies by expiration of terms that occur every 2 years in approximately one-third of the offices of referees is substantially the same. It involves a recommendation by the Director to the district judges and the circuit councils concerned, an expression of their views, and the approval or authorization of the Judicial Conference of the United States.

In the past, separate studies have been made and there has been a considerable duplication of work. The studies upon which the recommendations for the filling of vacancies are based must be commenced immediately after the first of the calendar year in order to provide ample time for the completion of such studies and the submission of recommendations to the conference. In the view of the Committee, in the interest of efficiency and economy, it is highly desirable to make the general surveys at such time. The district and circuit courts are then in session and can more readily consider the recommendations than during the summer months. In addition, the committee was of the opinion that the intent of the act was that a general survey of the system should be made every 2 years inasmuch as the referees' terms are staggered so that approximately one-third of their terms expire every 2 years. Chief Judge Phillips reported that a majority of the Committee had approved of the consolidation of the resurveys of referees' salaries and arrangements with the study and report on the needs for filling vacancies occurring by expiration of referees' terms of office every 2 years.

The Conference was in accord with the Committee's views and directed that general resurveys of referees' salaries and arrangements be made at the same time that the study and surveys are conducted on the needs for filling vacancies occurring by expiration of referees' terms every 2 years; that such general surveys be confined to those referees' offices involved in the study.

The Conference also authorized the conduct of special surveys in cases where unusual conditions or an emergency develops which in the opinion of the Director and the Chief of the Bankruptcy Division of the Administrative Office justify such survey. These special surveys shall be made in time to secure the views of the district judges and the circuit councils concerned for submission to the Bankruptcy Committee of the Conference so that it will have ample opportunity for consideration and report to the Judicial Conference at its next scheduled meeting.

Other Committee Reports

Three-judge district (expediting) courts.—Chief Judge Magruder, Chairman of the Committee of the Conference 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" reported that a bill (H. R. 6451) had been introduced in the Congress, the provisions of which were in accord with the recommendations of the Conference. It was stated that the Attorney General was in agreement with the proposal and would urge the adoption of the measure.

The proposed amendment would eliminate the present mandatory provisions of the statute under which a special three-judge tribunal must be created under certain conditions, and would vest discretion to determine whether the designation of three judges to hear a case of the nature specified "would unduly prejudice the dispatch of other judicial business in the circuit" in the Chief Judge of the particular circuit involved.

The Conference thereupon recommended that the amendment to Title 15, U. S. C. 28, as proposed by the present provisions of H. R. 6451, introduced in the House of Representatives on October 17, 1949, be promptly enacted.

Wages and effects of deceased or deserting seamen.—District Judge William C. Coleman, Chairman of the Committee of the

Conference appointed "to consider some more satisfactory method of dealing with the wages and effects of deceased or deserting seamen than that presently provided under existing law" presented and discussed the report of the Committee.

In accord with its policy, the Conference directed that the report be received and circulated throughout the Judiciary in order that the views and suggestions of the various judges may be ascertained, and that, in the light of such additional information, the Committee submit a further report to the Conference.

Punishment for crime—Treatment and rehabilitation of youth offenders.—Chief Judge Orie L. Phillips, chairman of the subcommittee of the Conference Committee on Punishment for Crime on the subject matter of the treatment and rehabilitation of youth offenders reported that the "Youth Authority Bill" (which had then passed the Congress and was subsequently on September 30, 1950, approved by the President) had adopted in principle the recommendations of the Conference on the subject matter, and it was expected that functioning under the provisions of the act would be commenced in the very near future.

The Conference thereupon expressed its appreciation for the efforts and work of its Committee.

Operation of the jury system.—Judge Harry E. Watkins a member of the Conference Committee on the Operation of the Jury System, presented a progress report covering the work of the committee during the past year. He stated that very little had been accomplished toward the enactment of legislation covering the recommendations of the Conference, and urged that the Conference reaffirm its previous position with respect to legislation which had been proposed in the Congress which, if enacted, would be in accord with the views of the Conference.

The Conference thereupon reaffirmed its approval of bills H. R. 2050, H. R. 2051, S. 50, and S. 49, as presently drawn, and recommended their prompt enactment; it reiterated its disapproval of the present provisions of H. R. 3207 and recommended against its enactment.

Appellate review of orders of certain administrative agencies.—Chief Judge Orie L. Phillips, chairman of the consolidated committee of the Conference on the appellate review of orders of the Interstate Commerce Commission and certain other administrative agencies, presented a report with respect to the status of legislation

(H. R. 5487 and H. R. 5488) introduced in the Congress, the provisions of which were in accord with the views and recommendations of the Conference.

The Conference thereupon approved the present provisions of H. R. 5487 and H. R. 5488, and urged that they be promptly enacted.

Indigent litigants—Protection of rights of in Federal Courts.—The Director, pursuant to authorization by the Chairman of the Conference Committee covering the subject-matter, reported on the status of legislation (S. 2206) which had been introduced in the Congress, the provisions of which were in accord with the views and recommendations of the Conference.

Thereupon, the Conference reaffirmed its approval of the present provisions of S. 2206, and urged its prompt enactment.

Pretrial procedure.—Circuit Judge Alfred P. Murrah, Chairman of the Committee of the Conference on Pretrial Procedure, presented and discussed the report of the Committee.

The Committee indicated satisfaction over the expanded use of pretrial procedure and was most appreciative of the cooperation recived from the judges in their work.

The Conference directed that the report of the committee be received and that the proposals outlined in their planning of future operations be approved. It further directed that the report of the Committee be circulated throughout the judiciary as information, and commended it for their consideration.

Judicial statistics.—Pursuant to request and authorization of the Chairman of the Conference Committee on Judicial Statistics, the report of the Committee was presented and discussed by Mr. Will Shafroth, Chief of the Division of Procedural Studies and Statistics. The Committee submitted for consideration and approval by the Conference the following recommendations:

1. That information now furnished quarterly to the circuit councils with reference to cases under advisement by district judges should in the future also be sent to the district judges in each circuit.

2. That circuit court clerks be asked to report quarterly to the Administrative Office for inclusion in quarterly reports of that office, the number of cases pending at the end of the quarter which have been submitted more than 3 months previously with any explanation in reference to individual cases as to reasons for delay, such as where the decision has been postponed, at the request of

the litigants, to await the decision in another case or for other good reason.

The Conference approved of these recommendations. It directed that the report of the Committee be received and approved, and authorized the circulation of the report throughout the judiciary as a matter of information.

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

The attention of the Conference was called to the fact that under the act of May 10, 1950, Public Law 510, amending section 3771 of Title 18, U. S. C., and sections 2072 and 2073, Title 28, U. S. C., Rules of Criminal, Civil, and Admiralty Procedure adopted by the Supreme Court could now be reported to the Congress during any regular session up to but not later than May 1, and such rules may take effect 90 days after the date on which they were so reported. This amendment is in accord with the views and recommendations of the Conference.

The Committee proposed four amendments to existing statutes in order to correct errors in and omissions from Titles 18 and 28, U. S. C., respectively, which have been disclosed since the passage of the Correction Act of May 24, 1949:

1. *Sec. 658, Title 18:*

   That this section be amended by striking out the words "any production credit corporation or corporation in which a production credit corporation holds stock," and inserting, in lieu thereof, the words "any corporation organized under sections 1131–1134m of Title 12, U. S. C., or in which a Production Credit Corporation holds stock,".

2. *Sec. 48, Title 28:*

   That this section be amended by adding a new paragraph, reading as follows:

   Any court of appeals may with the consent of the Judicial Conference of the United States pretermit any regular term or session of the court at any place for insufficient business or other good cause.

3. *Sec. 411, Title 28:*

   Second paragraph of subsection (c) of this section, be amended by striking out "Secretary of War" and inserting, in lieu thereof, "Secretary of the Army".

4. *Sec. 2253, Title 28:*

Second paragraph of this section be amended by inserting after the phrase "pursuant to section 3042 of Title 18" the words "or pursuant to any rule of criminal procedure prescribed by the Supreme Court of the United States under the authority of section 3771 of Title 18."

Upon consideration of the proposed amendments, the effect thereof and the reasons and necessity therefor, the Conference approved of the proposed amendments and recommended their prompt enactment by the Congress. The Conference directed that the Committee present these proposals to the respective Judiciary Committees of the two Houses of Congress, together with any other perfecting amendments designed to bring the language of Titles 18 and 28 into accord with subsequent legislation and presidential reorganization plans which may be found to be necessary.

Thereupon, the Conference ordered the report of the Committee received and approved.

New Business

Recommendations of the Judicial Conferences and Councils of the Circuits

The members of the Conference presented recommendations of their respective circuit judicial conferences and councils. Upon consideration of the proposals submitted, the Conference took the following action:

Opinions of the courts of appeals—Printing and charge for.—The questions relating to the costs and manner of printing, and the charge to the public for copies, of the opinions of the courts of appeals, presented by the District of Columbia and Second Judicial Circuits, respectively, were referred to the Advisory Committee of the Conference for consideration.

Territorial Judges—Tenure and retirement, Virgin Islands.—Circuit Judge Maris, Chairman of the Committee of the Conference of the Third Judicial Circuit appointed "to consider the matter of tenure and retirement provisions of law relating to the Judge of the District Court of the Virgin Islands," submitted and discussed the report of the Committee.

It was pointed out that the Organic Acts of the Territories, namely, Puerto Rico, the Canal Zone, and the Virgin Islands originally fixed the term of office of the judges of the district courts at 4

years; that in 1938, the term of office for the district judges of the Canal Zone and Puerto Rico was changed from 4 to 8 years; and, in view of the fact that the individuals accepting appointments for the district judgeship of the Virgin Islands were in the same position as those accepting appointment in Puerto Rico and the Canal Zone, and the same reasons which, apparently, guided the Congress in extending the term of these particular judges from 4 to 8 years prevailed in so far as the Virgin Islands were concerned, the Committee felt that the same tenure of service should be applicable to the Virgin Islands. The Committee, therefore, proposed legislation amending the Organic Act (sec. 26) of the Virgin Islands of the United States, providing for a tenure of service for 8 years, rather than 4 years; this would bring the term of service of the district judge of the Virgin Islands in line with that presently prescribed by the Organic Acts of Puerto Rico and the Canal Zone, as amended by the Congress.

It was the view of the Conference that the tenure of the judgeship of the District Court of the Virgin Islands should be upon the same level as those of the other territories involved, namely Puerto Rico and the Canal Zone, and it approved of the proposed legislation so providing submitted by the Committee and urged that its prompt enactment by the Congress be effectuated.

The Committee's views and recommendations with respect to present statutory retirement benefits governing judges of the territories and island possessions of the United States were considered by the Conference. It directed that the subject matter be referred to the Committee of the Conference on Retirement for its consideration and recommendations.

District courts—Jurisdiction and venue.—Chief Judge Parker presented a resolution of the Judicial Council of the Fourth Circuit with respect to legislation proposing to establish restrictions upon the existing statutory power of the district courts in the transfer of civil cases. It was the opinion of Judge Parker, as well as that of the judicial council of the fourth circuit, that, because of the numerous legislative proposals which had recently been introduced affecting the venue and jurisdiction of the courts, it was advisable to have a Committee of the Conference created for the purpose of considering the entire question of venue and jurisdiction of the courts.

The Conference, thereupon, directed that a Committee of the Conference be appointed by the Chief Justice for the purpose of considering the question of venue and jurisdiction of the District Courts.

Courts of appeals—Places of holding court.—Chief Judge Gardner presented a proposal submitted by the judges of the Court of Appeals for the Eighth Judicial Circuit to amend section 48, Title 28, U. S. C., specifying St. Louis, Kansas City, Omaha, and St. Paul as places for holding terms of that court by eliminating all but St. Louis. He advised that a bill (S. 4104) had been introduced in the Congress which, if enacted, would carry out this proposal.

Upon consideration of the representations of Judge Gardner with respect to the effect of such proposal upon economies of operation, convenience to litigants, and other relevant factors, the Conference approved of the provisions of S. 4104 as presently drawn, and recommended its prompt enactment by the Congress.

Judges—Circuit and district—Resignation, retirement of.—Chief Judge Denman presented the resolution of the Judicial Conference of the Ninth Judicial Circuit, proposing that paragraph 4, section 371, Title 28, U. S. C., be amended to read as follows:

> Whenever any circuit or district judge eligible to resign or retire under this section *or under section 372* does neither, and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate.

The Conference entered upon a discussion of the proposal, as well as other relevant questions to the subject matter. It was the sense of the Conference that because of the numerous pertinent factors involved, it was desirable to have an over-all study of the problem by a Committee of the Conference. Thereupon, the Conference directed that a Committee of the Conference be appointed by the Chief Justice for the purpose of considering the specific proposal of the Ninth Circuit Judicial Conference and kindred matters; that the Committee should have broad jurisdiction and encompass in its consideration problems relating to retirement for age or disability; seniority, designation and assignment; retention of personnel for retired judges, and other problems which in the direction of the committee were relevant to their study of the subject matter.

United States Commissioners—District of Alaska—Compensation.—The resolution of the Ninth Circuit Judicial Conference with

respect to increasing the compensation of the United States Commissioners in the District of Alaska was presented by Chief Judge Denman. The Conference directed that the matter be referred to the Conference Committee on Supporting Personnel of the Courts for consideration.

Probation—Removal of civil disabilities upon fulfillment of terms of.—The resolution of the Ninth Circuit Judicial Conference proposing an amendment to section 3651, Title 18, U. S. C., was presented for consideration. The Conference directed that the matter be referred to the Conference Committee on the Removal of Civil Disabilities of Probationers fulfilling the terms of their probation.

Probation—Imposition of jail sentence as a condition of.—The resolution of the Ninth Circuit Judicial Conference proposing that section 3651, Title 18, U. S. Code be amended "to provide that the court shall have power in granting probation to defendants in criminal cases to impose as a condition of probation that the defendant be imprisoned in a jail-type institution for a period not exceeding 6 months" was referred to the Conference Committee on the Removal of Civil Disabilities of Probationers fulfilling the terms of their probation.

Felony—Definition of.—The resolution of the Ninth Circuit Judicial Conference, reading as follows:

> *Resolved:* That paragraph (1) of Section 1 of Title 18 of the United States Code be amended by the addition thereto of the following:
>
> "*Provided*, That when a person is convicted of any felony and the sentence imposed by the court does not provide for imprisonment for a term exceeding 1 year, such person shall, for all purposes, after the judgment of conviction shall have become final and after the sentence imposed upon him shall have expired, be deemed to have been charged with and convicted of a misdemeanor, and such person shall not suffer any disability or disqualification which would otherwise result from a conviction of a felony."

was directed to be referred to the Conference Committee on Punishment for Crime for its consideration.

Wages and effects of deceased or deserting seamen.—The recommendations and resolutions of the Ninth Circuit Judicial Conference with respect to the subject matter were referred to the Committee of the Conference on the method of dealing with the wages and effects of deceased or deserting seamen, for its consideration.

Court reporters—Compensation.—The resolutions of the Ninth Circuit Judicial Conference with respect to the question of proper

compensation for Court Reporters in that Circuit were directed to be referred to the Conference Committee on the Court Reporting System.

Courts of appeals—Admission fees.—The Conference considered the problems involved under the subject matter, the focal point being the recent ruling of the Comptroller General of the United States with respect to the liability of the estate of the Clerk of the Court of Appeals of the Third Judicial Circuit to the United States for the Clerk's failure to report monies received as payments from lawyers upon their admission to the bar of the court as receipts or emoluments of his office.

It was the sense of the Conference, in view of the previous positions taken by the Comptroller Generals, when similar issues were raised, that the matter be referred to the Committee of the Conference on Library Funds, Court of Appeals, for its consideration and disposition.

Courts—Jurisdiction—Diversity of citizenship—Amount necessary to invoke.—The attention of the Conference was directed to various legislative proposals which had been introduced in the Congress under which the amount involved in litigation, in order to come within the purview of the jurisdiction of the district courts, either as cases based upon Federal law or upon diversity of citizenship, would be increased from the existing statutory minimum to various amounts, as set forth in the numerous legislative proposals which have been introduced.

The Chief Justice presented a statement from the Hon. Emanuel Celler, Chairman of the Committee on the Judiciary, House of Representatives, concerning the general topic.

The Conference directed that the matter be referred to the Committee of the Conference which had been authorized and directed to be created to consider the over-all problem of "venue and jurisdiction" of the district courts of the United States.

Retired judges—Personnel, office space, and equipment.—Chief Judge John Biggs, Jr., advised that, apparently because of his position as Chairman of the Conference Committee on Supporting Personnel of the Courts, numerous inquiries and recommendations had been made with respect to providing for secretaries, law clerks, office space, and equipment for retired judges who render material service to the judiciary; and, that while the Committee had not formally acted upon the question, it appeared that a majority of

them were in favor of such services being made available to those retired judges who rendered a substantial service to the judiciary. He, thereupon, recommended that the Conference authorize the Director of the Administrative Office to provide such personnel services and adequate quarters for those retired judges performing such services. Whereupon, the Conference directed that the Director permit retired judges to retain their personnel and be furnished with suitable quarters, provided that they continue to perform substantial judicial work, that the question as to whether or not the services performed are substantial will be a matter for determination by the particular circuit judicial councils involved.

Records—Court—Preservation of, method, etc.—The Director presented a request of the District Court for the Northern District of Ohio that the installation of the microfilming method of preservation of current records be authorized. He pointed out that specific authority of the Conference for such installation was called for under Rule 79 (b) of the Federal Rules of Civil Procedure and under Rule 55 of the Federal Rules of Criminal Procedure, inasmuch as those rules provide that such records shall be kept in such manner as the Director, with the approval of the Judicial Conference, may prescribe.

The Conference authorized the installation of the microfilming method of preservation of current records in the Northern District of Ohio. The Conference further directed that wherever, in the opinion of the Director, the installation of such system of preservation of the records was warranted, the Director be empowered by the authority of the Conference to authorize and approve the installation of such system of record preservation without the specific approval of the Conference in individual instances.

Judges—District courts—Assignment of reserve or alternate judges in causes of unusual importance or protracted duration.—The provisions of H. R. 6432 as introduced in the House of Representatives on October 14, 1949, were considered by the Conference. Thereupon, the Conference disapproved H. R. 6432 as presently drawn, and directed that the Director convey these views to the Committee on the Judiciary of the House of Representatives.

Bail—Forfeiture of and remittal ordered—Appropriations available for.—The Director apprized the Conference of the fact that under existing appropriation acts, in those cases wherein the court finds, pursuant to the provisions of Rule 46 (f) (4), Federal

Rules of Criminal Procedure, "that justice does not require the enforcement" (forfeiture of bail), and an order is entered directing the remission of bail previously forfeited, there is no authority to pay the monies involved because of their coverage into the general funds of the Treasury. In order to correct this apparent deficiency of existing statutory provisions, it was recommended that an act be passed providing that "Hereafter appropriations available for refunding moneys erroneously received and covered shall be available for the refund of forfeited bail covered into the general fund of the Treasury which has been ordered remitted, in whole or in part, pursuant to the Federal Rules of Criminal Procedure."

The Conference was in accord with the views of the Director, and directed that he advise the Congress of its position, and recommend that the necessary legislation be enacted promptly.

COMMITTEES OF THE CONFERENCE

All of the existing committees of the Conference were ordered continued.

NEW COMMITTEES

Pursuant to the order and direction of the Conference, and under the powers and authority vested in him, the Chief Justice appointed the following new committees of the Conference:

1. To study and consider the questions involved relating to the retirement of judges; that such consideration shall encompass questions relating to retirement for age or disability; seniority; and designation and assignment:

Circuit Judge F. Ryan Duffy, Chairman, and Circuit Judges, Herbert F. Goodrich, Armistead M. Dobie, Kimbrough Stone (Retired), and Shackleford Miller, Jr., and District Judges Ernest W. Gibson, Sylvester J. Ryan, E. Marvin Underwood (Retired), Sam M. Driver, Carl A. Hatch, and Henry A. Schweinhaut.

2. To study and consider the over-all problem of the "venue and jurisdiction" of the district courts of the United States:

Chief Judge John J. Parker, Chairman, and Circuit Judges D. Lawrence Groner (Retired), William Denman, Orie L. Phillips, and Robert L. Russell; and District Judges, John D. Clifford, Jr., John C. Knox, Phillip Forman, Arthur F. Lederle, Luther M. Swygert and Richard M. Duncan.

COMMITTEES REACTIVATED AND/OR EXPANDED

Pursuant to the order and direction of the Conference, and under the powers and authority vested in him, the Chief Justice ordered the Conference Committee on the Court Reporting System reactivated with the following membership:

Chief Judge John J. Parker, Chairman, and Chief Judges Xen Hicks and Orie L. Phillips, and District Judges Ben C. Dawkins, Paul J. McCormick, James W. Morris and Philip L. Sullivan.

Pursuant to the power and authority vested in him by the Conference, the Chief Justice ordered that the following Committees of the Conference be reorganized with membership as indicated:

Committee on the Operation of the Jury System:

Chief Judge John C. Knox, Chairman, and District Judges Alfred D. Barksdale, F. Dickinson Letts, John W. Murphy and Harry E. Watkins.

Committee on Library Funds—Courts of Appeals:

Chief Judge Harold M. Stephens, Chairman and Chief Judges John Biggs, Jr., John J. Parker, Joseph C. Hutcheson, Jr., J. Earl Major and Orie L. Phillips, and Circuit Judges John D. Martin, Sr., and Harvey M. Johnsen.

Committee on Pre-Trial Procedure:

Circuit Judge Alfred P. Murrah, Chairman, and District Judges Bolitha J. Laws, John C. Knox, William H. Kirkpatrick, James V. Allred, Robert L. Taylor, William J. Campbell, John W. Delehant and Paul J. McCormick.

Pursuant to the power and authority vested in him by the Conference, the Chief Justice ordered that District Judge Vincent L. Leibell be designated and assigned as a member of the Committee of the Conference on the study of procedures in controversies arising under the antitrust laws and actions of regulatory agencies, *vice* Judge Simon H. Rifkind, resigned.

The Chief Justice advised that he had authorized the Chairman of the Committee to establish an Advisory Committee to the Committee; and that, pursuant to such authorization, the Chairman had designated the following as members of such advisory committee:

Hon. Clyde B. Aitchison, Interstate Commerce Comm., Hon. John Carson, Federal Trade Comm., Hon. Paul L. Styles, Natl. Labor Relations Bd., Hon. Benedict P. Cottone, Fed-

eral Communications Comm., Hon. Bradford Ross, Federal Power Comm., and Hon. E. L. Reynolds, U. S. Patent Office; and Messrs. Joseph J. O'Connell, Jr., Preston C. King, Jr., Robert K. McConnaughey, John L. Sullivan, and Roger J. Whiteford, Attorneys at Law.

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 of the United States:

FRED M. VINSON,
Chief Justice.

Dated at Washington, D. C., November 27, 1950.

908231—51——3

APPENDIX

REPORT OF HON. J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES

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

The annual meeting of the Judicial Conference is one of the reassurances that in our country the state is still the servant of its people and not a tyrant over them. With its plenary concern for the efficient administration of justice under law, the Conference is a sober reminder, above the clamor of temporary exigency, that our ship of state continues to maintain that course.

Few responsibilities arising in the administration of justice since the recent war have been so urgent and yet so complex as that of assuring our national security and at the same time preserving individual civil liberties. This is a task of transcendent importance, and tests are arising in many ways.

I do not feel free to discuss, at this Conference, the many situations in which the balancing of these two considerations will be required. I am sure you will agree that I should not, since many of them arise in cases now pending before the various Federal courts. However, I should not like to leave the subject without reference to a recent legislative proposal, affecting the judiciary, which seems now, happily, to have become moot. This was a resolution proposed by the Senate Judiciary Committee that it undertake an investigation of the competence, fitness, and legal qualifications of the entire Federal judiciary. The proposal apparently was evoked because of displeasure with the Court of Appeals' decision directing the release on bail of Harry Bridges pending his appeal from conviction for perjury. On September 1, 1950, I wrote to the Senate in opposition to this resolution, pointing out that aside from important stated constitutional considerations such a step could only be construed by the public as a reprisal for the rendition of an honest interpretation of the law, an attempt to intimidate the judiciary, and a complete lack of confidence in our own institutions. I am happy to report that the Senate Judiciary Committee has reversed itself and is no longer proposing this resolution.

A legislative proposal which this Conference might want to look into, relating to judges, is H. R. 17, which would provide a novel means for the removal of district judges. Under the bill, the Supreme Court would be empowered, upon probable cause, to designate three circuit judges as a special temporary court for trial upon the issue of good behavior of any United States judge except those of the Supreme Court and Courts of Appeal. In addition to the three circuit judges, the Supreme Court would designate three members of the bar to represent the judicial branch of the Government in the preparation and trial of the issue of good behavior. The bill would make the judgment of this special court final and, if it determined that the behavior of the judge had been other than the good behavior referred to in the Constitution, its judgment to that effect would remove him from office without imposing any other penalty. The bill has been favorably reported by the House Judiciary Committee, but a sharply dissenting minority report has also been filed. The substantive issue of judicial self-policing, and the constitutionality of court proceedings which smack of impeachment, invite careful consideration by this Conference. To date the Department of Justice has not been asked to comment, and has not commented, on the bill.

While we are on the subject of the removal of judges, I would like to urge upon the Conference consideration of a related subject. This is the desirability of finding ways and means for making greater use of existing statutes which deal with the retirement of judges for disability. As you know, under present law, a judge desiring to retire for disability may do so upon furnishing a certificate of disability to the President, signed by the Chief Justice or a chief judge, as the case may be. If he retires, he is entitled to receive full salary for the balance of his lifetime, or half salary if he has served less than 10 years.

Unfortunately, there are several situations where judges have been incapacitated and unable to serve for long periods of time. Of course, no man relishes retirement under such adverse circumstances, and I can understand the reluctance of one so situated to seek retirement. Nevertheless, unless suggestions and promptings are forthcoming by the chief judges in such situations, I am concerned that future congressional activity in this field might prove embarrassing to the entire judiciary.

Another legislative proposal, which the Conference might wish to examine, is H. R. 4202 proposing to empower the Supreme Court

to promulgate a code of ethics for attorneys practicing before the Federal courts. I understand that the suggestion was prompted by the thought of making disbarment proceedings an adjunct to the existing power of contempt in preventing outrageous performances by counsel, such as those which plagued recent trials at New York and San Francisco. It would seem to me that exploration of the appropriateness of this approach, along with any others for promoting the orderly conduct of criminal and civil trials, is well within the purview of this Conference. The Department of Justice has not been requested to comment, and has not commented, on this proposal.

In the matter of antitrust litigation, I reported last year at some length on a satisfactory agreement reached in correspondence between former Attorney General Clark and Chief Judge Magruder in the matter of amending the so-called Expediting Act of February 11, 1903, 15 U. S. C. 28. Since that time a bill, H. R. 6451, has been introduced to amend the Expediting Act by providing that upon determination by the chief judge, or presiding circuit judge, that the designation of three judges would unduly prejudice the dispatch of other judicial business, the case may be assigned instead to a single district or circuit judge with instructions to expedite its hearing and determination. I should like to report that the Department of Justice has written the House Judiciary Committee in support of this legislation.

I should also like to indicate the continuing interest of the Department of Justice in respect to a recommendation which was submitted to this Conference by Attorney General Clark in his report 2 years ago. This concerns the designation in each antitrust case of a single judge to hear all motions and other matters preliminary to trial, to conduct all pretrial procedure, and to preside at the trial of the case itself. When an antitrust case is pending in a court which is composed of many judges and has a large volume of business, the various motions necessary from time to time normally come up for hearing before whatever judge happens to be assigned to the motions calendar at the time the motion is made. This has inevitably meant that each judge so involved must familiarize himself with comprehensive and highly involved pleadings and issues, as well as with the prior proceedings in the case. This is, obviously, time-consuming and needlessly burdensome. The procedure I am supporting here has been followed, recently, in the *United Shoe*

Machinery case in Boston, and in the cases against the Borden Co. and the Bowman Dairy Co. in Chicago, as well as in the *Morgan* and *Imperial Chemical Industries* cases in the Southern District of New York. I submit that consistent use of this procedure would be desirable.

One further problem connected with antitrust litigation seems to me of sufficient importance to merit inclusion in this report. This pertains to the use of masters in antitrust cases. In response to a request for views from a Committee of this Conference concerning the length and expense of trial in such cases, the Committee was advised that in our opinion the use of masters for the trial of facts in complex antitrust cases was a practice neither desirable nor sound. Our experience indicates that such referral results in delay; in unnecessary inflation of the record which must finally, in spite of all, be read by the trial judge; in constant reference of matters back to the presiding judge even during the course of the trial; and lastly, in what is effectively a retrial of the whole matter before the judge when exceptions are taken to the master's report. It is a procedure which would seem likely to yield only disorder in the record and postponement of the time when the trial judge will, inevitably, himself try the case. In view of the fact, that in June of this year, the *Armour* case was assigned to a master for trial over the protest of the Government, I should like to reiterate these objections of the Department of Justice to the procedure.

Turning to matters of criminal procedure, the transfer provisions of Rule 20 of the Federal Rules of Criminal Procedure appear to merit special mention. After this rule was unexpectedly held invalid by the Oregon District Court in the *Bink* case some time ago, its constitutionality was twice upheld in the last few months. These favorable decisions were handed down by the Courts of Appeal for the Eighth Circuit (*United States* v. *Levine,* 182 F. (2d) 556) and the Third Circuit (*United States* v. *Gallagher,* not yet reported).

The language of the rule, however, has prevented its application in cases where the accused is confined in a penal institution, but was not actually "arrested" in the district where the institution is located. It fails of application to any such individual until the prisoner has completed his pending sentence and has thereafter been taken into custody to answer an indictment or information pending in another district. As a consequence, we have many out-

standing detainers filed against prisoners because of indictments in districts other than where they are confined. Although many defendants in this situation would gladly take advantage of Rule 20 if it were open to them, in the hope, I suppose, that any sentence imposed would be made to run concurrently with those they were serving, the rule is not available to them. This has an unfortunate effect. Under the rules of the Board of Parole, the prisoner is ineligible for consideration for parole release because of the outstanding indictment and detainer. He becomes a greater custodial risk. He must be removed to another district at Government expense. I would therefore like to urge a simple amendment of the rule to cure the situation. I suggest that Rule 20 be amended by substituting the words "held" and "is held" in the first sentence of the rule for the words "arrested" and "was arrested." The change would be consistent with the present use of the word "held" in the second sentence of Rule 20. As amended, the first sentence of the rule would then read:

A defendant *held* in a district other than that in which the indictment or information is pending against him may state in writing, after receiving a copy of the indictment or information, that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending, and to consent to disposition of the case in the district in which he *is held*, subject to the approval of the United States attorney for each district.

Pending legislation on criminal matters, which is of particular interest to the Conference, concerns special treatment for youthful offenders, counsel for indigent defendants, amendment of the immunity provisions of certain statutes, and changes in the Federal jury system.

For a number of years, as you know, legislation providing special treatment and care for youthful offenders has been the subject of serious consideration both by this Conference and by the Department of Justice. A bill which would accomplish the purposes was prepared by you in consultation with representatives of the Department and others interested in the subject, and was introduced as S. 2609. It has passed both Houses of Congress and was sent to the President for approval on September 18, 1950.

The problem of legal representation of indigent defendants accused of crime in the Federal courts has been the subject of special study by the Judicial Conference for several years. The Department of Justice, for its part, has long advocated the creation of the office of public defender in the Federal courts. We have strongly

recommended to the Senate Committee on the Judiciary the enactment of S. 2206, which would achieve that objective. It appears, however, that no action has been taken by that Committee with respect to the bill.

The provisions of certain statutes would be amended by H. R. 5136, so as to compel the testimony of witnesses, but affording immunity from prosecution regarding any matter as to which a witness is compelled to testify after he specifically claimed the privilege against self-incrimination. The Department of Justice has strongly urged the enactment of this measure in the interest of law enforcement, but up to the present time no action seems to have been taken with respect to it.

Two useful bills have been introduced in Congress relative to the Federal jury system. H. R. 2050 would amend section 1864 of Title 28, U. S. C., to provide for a jury commission for each United States district court. The bill has been approved by this Conference, and the Department of Justice has stated that it would have no objection to its enactment. H. R. 2051 would amend section 1861 of Title 28 to remove from the States any control over the qualifications of Federal jurors. The Conference has approved that proposal also, and the Department of Justice likewise has indicated that it has no objection to its enactment.

In the field of admiralty, I would like to direct your attention to the urgent need for revision of admiralty practice to bring it into accord with modern Federal practice. Specifically, it is the view of my Department, as the chief litigant in admiralty cases, that the time is now ripe for appropriate action by the Supreme Court to make available to the district courts in their admiralty practice the modern procedural advantages of the Federal Rules of Civil Procedure.

The Federal Civil Rules constitute a carefully detailed prescription of Federal practice, the Federal Admiralty Rules do not. The Admiralty Rules contemplate that they will be largely supplemented by reference to another body of law which, historically, has been the reported decisions of the courts on practice points. But in many cases those decisions on practice are long outmoded and embody procedures which the Civil Rules were deliberately designed to abolish. At present in admiralty proceedings the courts, instead of supplementing the Admiralty Rules by resort to the modern Federal practice embodied in the Civil Rules, must resort to the obso-

lete practice established by the practice decisions of the last century.

For example, the Civil Rules contain provisions as to the details of service and filing of pleadings and process (Rules 4 and 5), the computation of time (Rule 6), and the approved manner of pleading special matters and defenses (Rule 9). They carefully detail capacity, joinder, and substitution of parties (Rules 17–25), and the procedure for the taking of depositions (Rules 26–32). They regulate in minute detail the procedure respecting orders, judgments and decrees, their entry, effect and correction of errors (Rules 54–63). With respect to nearly every one of these matters the Admiralty Rules are entirely silent. Thus, theoretically, there is no conflict between the Rules of Admiralty and of Civil Procedure. But in supplementing the Admiralty Rules, conflicts between civil and admiralty practice are engendered because reference is had, not to the Federal Rules of Civil Procedure, but to the old admiralty practice decisions.

I do not believe that consolidation of the Admiralty and Civil Rules is either necessary or desirable at this time. But the Civil Rules, rather than old and often outmoded decisions, should be made to supplement the admiralty practice established by the Federal Admiralty Rules to the extent that they are not inconsistent with express provisions of those Rules. The need for action of this sort has particularly been pointed out by the Court of Appeals for the Second Circuit in the recent case of *Marcado* v. *United States*, decided July 13, 1950. The occasion of the court's remarks in that case was the matter of deposition practice—one of the numerous difficult problems resulting from the repeal in the revision of the Judicial Code of the statutes relating to various matters believed by the revisers to be fully covered by the Civil and Criminal Rules. It was overlooked by the revisers that the Civil Rules do not apply in admiralty except in certain district courts which have adopted local rules to that effect. As the court said:

> To our minds this case shows the desirability of making the civil rules directly applicable in admiralty (with of course such additions on peculiar subjects, such as limitation of liability, as may be needed) without the confusion and question which may follow from a recopying of parts.

But aside from difficulties occurring as the result of the repeal of various statutes by the revision of the Judicial Code, other difficulties have also arisen in admiralty practice for which the Civil Rules

afford a plain solution. Especially significant is the increasing accumulation of cases on the admiralty docket resulting from the unavailability under the Admiralty Rules of a motion for summary judgment and the efforts of some courts to solve the problem by the appointment of commissioners. Also important are the questions of partial appeals in cases involving multiple claims.

Admiralty has no summary judgment procedure such as is provided by Civil Rule 56, permitting prompt disposition of actions in which there is no genuine issue as to any material fact. Admiralty cases may remain on the docket for years when there is no substantial controversy regarding the merits so that, if the legal questions could be disposed of on motion, the parties would quickly agree as to the amount of damages. The congestion of the admiralty dockets has caused some courts to attempt to clear their dockets by referring cases to commissioners. This in its turn has raised a further difficulty resulting from the inapplicability in admiralty of the Civil Rules.

Civil Rule 53 (b) directs that "in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it." No such limitation exists in the corresponding Admiralty Rule 43. Certain courts therefore assert the right to refer to commissioners even admiralty suits by seamen for personal injuries, wages, and claims for salvage. The result is highly undesirable from the standpoint of proper judicial administration.

Congress, having provided a number of judges which it deems sufficient, has made no appropriation for the payment of fees to commissioners and these must be taxed to the losing party as an additional part of the costs in the case. The trial of cases before a commissioner must, therefore, necessarily be far more expensive and burdensome to litigants than trial before the court. Commissioners are usually remunerated at a rate many times that of a judge's salary. And not only the commissioner's fee but also the stenographer's charges must be taxed against the losing party. In trial before the court it is only occasionally that the stenographer's notes must be fully transcribed. Considering the difficulties which arise in the course of proceedings before a commissioner, it is necessary in nearly every case before a commissioner for the entire transcript to be written up for submission to the court, with exceptions to the commissioner's report. So far as concerns the

attorneys, much of the work done before the commissioner must be repeated before the court.

But in seamen's cases, which form the numerical bulk of all admiralty litigation, a special difficulty arises. Seamen, by virtue of 28 U. S. C. 1916, proceed "without prepaying fees or costs or furnishing security therefor." Thus the commissioner's only chance for payment of his fee is by a decision in favor of the seaman, to the end that the costs, including his fee, can be assessed against the defending ship operator. A decision in favor of the Government or any other ship operator would give the commissioners only an empty right against a seaman without any assets subject to levy. The resulting pressure on the commissioner cannot be ignored.

Yet in the face of these obvious defects in the commissioner procedure certain district judges, relying on the inapplicability in admiralty of Civil Rule 53 (b), insist upon referring cases to commissioners.

There is every reason to believe that the members of the bar who may be chosen to sit as commissioners will endeavor not to be swayed by their financial interest in the matter. But it presents them with a heavy burden on their time or a financial interest which morally ought not to be imposed upon any man exercising a judicial function. Indeed, where judges are concerned, 28 U. S. C. 455 expressly requires that a judge disqualify himself in any case in which he has an interest. Supplemental resort to Civil Rule 53 (b), if it were permitted under admiralty rules, would obviate the problem.

The congestion of the docket also gives rise to a problem of appeals from orders making final disposition of less than all of the claims involved, where several claims for relief are presented in the litigation—whether as separate claims of the party originally bringing suit or as counter-claims, cross-claims, or claims against an impleaded third party. When an order is entered disposing of a part of the claims, there is at once a difficulty as to whether the unsuccessful party must appeal or can wait until final disposition of the entire litigation. Civil Rule 54 (b), as amended December 27, 1946, provides that the court may direct "entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Otherwise the

order "shall not terminate the action as to any of the claims" but remains "subject to revision at any time before the entry of judgment adjudicating all the claims." No such clarifying provision exists in the Admiralty Rules.

Out of abundant caution, Civil Rule 54 (b) not being applicable in admiralty, a large number of partial appeals are taken, a substantial number of which are dismissed as improperly taken. A new admiralty rule providing that the Civil Rules should be applied would dispose of this problem and relieve the courts of appeal of many partial appeals which would not need to be taken.

I have gone into these details to point out not only the aggravated background, but also the fairly simple solution it suggests. This would be the adoption of a single additional admiralty rule which would make the Rules of Civil Procedure the supplemental source of decision in admiralty matters. Such a rule would be similar to Bankruptcy General Orders 37 and 56 which makes the Civil Rules a supplemental source of decision in matters of bankruptcy practice. Adoption of such an admiralty rule could be accomplished at once without the delays consequent upon the appointment of a committee on the general revision of the Admiralty Rules. The results of the proposed rules' operation would soon provide decisions on which to base action, as recommended by the Second Circuit, looking toward a possible repeal of many of the existing Admiralty Rules, which duplicate in part the Civil Rules, and the possible eventual consolidation of the Admiralty with the Civil Rules.

In order to expedite study and solution of the problem, I am submitting a proposed text of the suggested new admiralty rule, which would come at the end of the existing rules, and would read as follows:

RULE 58. *General provisions.*—In proceedings in admiralty the Rules of Civil Procedure for the district courts of the United States shall, so far as they are not inconsistent with these rules, be followed as nearly as may be. Each district court, by action of a majority of the judges thereof, may from time to time make and amend rules governing its practice in admiralty proceedings not inconsistent with these rules or with the Rules of Civil Procedure. Copies of rules and amendments so made by any district court shall, upon their promulgation, be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

At the same time it would appear necessary to make a slight alteration of Rule 81 of the Federal Rules of Civil Procedure, which,

in paragraph (a) (1), now provides, among other things, that said Civil Rules "do not apply to proceedings in admiralty." I would like to assure the Conference that the Admiralty specialists of the Department of Justice will be available to assist, should it be desired, in the further study and solution of the problem.

Adverting now to some matters directly affecting the members of the judiciary itself, it will be recalled that at the meeting of this Conference last year, the creation of a number of additional judgeships was recommended. Bills to carry out those recommendations have been introduced, and considerable progress has been made toward their enactment. H. R. 3775, to provide an additional judge in the Third Division of Alaska, has been passed by the House. Public Law 753 has made permanent the existing judgeship in the District of Delaware. Two additional judges have been provided for the Northern District of Illinois by Public Law 691. H. R. 6240, providing for one judge to serve in both the Northern and Southern Districts of Indiana, has passed the House of Representatives. H. R. 7009, to make permanent the existing temporary judgeship in the Eastern and Western Districts of Missouri, has also passed the House. H. R. 7570, on the other hand, which would have provided an additional judgeship in the Northern District of Ohio, has failed of passage. The temporary judgeship in the Western District of Pennsylvania has been made permanent by Public Law 738. A bill eliminating the roving judgeship in the Eastern, Middle, and Western Districts of Pennsylvania, and providing that the roving judge should become a judge for the Middle District when a vacancy occurs there, has passed the House and been reported on in the Senate. H. R. 5137, providing an additional judge in the Eastern District of Texas, has passed the House in amended form, with the proviso that a vacancy occurring in the office should not be filled.

The Department of Justice has vigorously supported and taken the lead in seeking the enactment of legislation to provide annuities for widows and children of judges and justices. Several bills have been proposed to accomplish these ends, among which the most preferable would seem to be S. 3108 and H. R. 7593. The Senate Judiciary Committee has reported favorably on S. 3108, with amendments which are designed to give greater protection to surviving minor children than was provided in the bill as originally introduced, but the House Judiciary Committee has taken no action.

In my report last year, I commented at some length on H. R. 2722, which would amend section 144 of Title 28 of the Code with respect to the procedure for disqualifying a district judge for bias or prejudice. I stated my opinion that the proposed amendment was unnecessary and undesirable, and would hamper the work of the Federal courts. This Conference also went on record against the bill. I mention it now only to apprise you that, up to this time, a House Judiciary Committee has held hearings on the measure, but that no action has been taken as a consequence thereof.

The adoption of uniform rules for all the courts of appeal, particularly with reference to the preparation and contents of printed records and briefs on appeal, is a step which has been urged in recent years by both Attorney General Clark and myself. The importance of taking that step is, in my opinion, increasing. Once again I call the recommendation to the attention of this Conference and ask for its support.

These are days, as we all know, when economy in operating the Government is most important. In searching for possible ways to reduce expenses, it has occurred to us that it might be permissible to effect some reduction in the number of terms of court which are held at outlying points and which are of not more than a few days duration each. Such terms of court entail travel of the entire staff of the court and, usually, of several representatives of the United States attorney's and the United States marshal's offices, at Government expense, of course. It seems to me that, with modern means of transportation, the number of these brief sessions in sparsely populated areas could be reduced without unduly increasing the burdens upon individual litigants who might be obliged to proceed occasionally to the headquarters of the district. I therefore suggest that this Conference give consideration to reducing the number of such terms of court.

Along the same lines of protecting the revenue, I call your attention to the matter of taxation of marshal's costs against criminal defendants under section 1921 of Title 28, U. S. C. While the law leaves it in the discretion of the judge as to whether or not marshal's costs shall be so taxed, in many districts it seems to be the invariable rule not to tax such costs. This practice hardly appears warranted, and undoubtedly results in an unnecessary financial loss to the Government, however small. It would be of value if the Conference were to call this situation to the attention of the district judges.

In concluding my report may I invite the attention of this body to the fact that your administrative office, so ably presided over by Mr. Henry P. Chandler, with the assistance of Mr. Elmore Whitehurst, celebrated its tenth birthday shortly after the close of the last Judicial Conference. We in the Department of Justice have had occasion to appreciate the high competence and generous assistance of these two gentlemen and of their staff. I venture to hope that they will be with us for a good many more years.

I am appreciative, as always, of having had the opportunity to report to you on these matters of serious concern to the administration of justice in the Federal courts. Each of the matters, I know, will receive your thoughtful attention. Working together, as we have been, I am confident that notable progress will be made in advancing and securing solutions for the many difficult problems.