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

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SEPTEMBER 24–25, 1953

WASHINGTON, D. C.

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REPORT OF THE JUDICIAL CONFERENCE, SEPTEMBER SESSION, 1953

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.

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 Title 28, United States Code, Section 331, on September 24, 1953, and continued in session two days. Because of the vacancy in the office of Chief Justice, Associate Justice Hugo L. Black presided (Title 28, United States Code, Section 3), and the following Judges were present:

Circuit:	
District of Columbia	Chief Judge Harold M. Stephens.
First	Chief Judge Calvert Magruder.
Second	Chief Judge Harrie B. Chase.
Third	Chief Judge John Biggs, Jr.
Fourth	Chief Judge John J. Parker.
Fifth	Chief Judge Joseph C. Hutcheson.
Sixth	Chief Judge Charles C. Simons.
Seventh	Chief Judge J. Earl Major.
Eighth	Chief Judge Archibald K. Gardner.
Ninth	Chief Judge William Denman.
Tenth	Chief Judge Orie L. Phillips.

The Conference adopted the following resolution:

In the death of Chief Justice Vinson the country has sustained the loss of one who filled well and worthily the highest judicial office in the land, and we as members of this Conference have suffered the great personal loss of one whom we loved and respected as a man and whose service as presiding officer of the Conference had made it an instrumentality of great and ever-increasing importance in the administration of justice. Chief Justice Vinson came to the office of Chief Justice at a critical period in the history of our country, a period fraught with many dangers and difficulties. He brought to the performance of his duties a wide knowledge of men and affairs as well as of the law, wisdom ripened by experience and a profound and intimate knowledge of the nature and workings of our government having theretofore served with distinction in the legislative, executive and judicial branches. This experience gave him an unusual grasp of governmental problems and a sureness in approaching and dealing with them rarely equalled in our history. His knowledge of the legislative branch and his personal acquaintance with the leaders of that branch enabled him to develop between this Conference and

the Congress a relationship which has resulted in a better understanding of problems affecting the judiciary and the passage of legislation which has done much to improve the courts and the administration of justice therein.

A man of learning and industry, of wisdom and understanding, of unimpeachable integrity and wide human sympathy, he has served his country well and will be long remembered in gratitude by his fellow countrymen. He measured up to the highest standard of manhood. In the language of the ancient prophet he did justly, he loved mercy and he walked humbly before God. May his kindly spirit rest in peace and may the example which he has left us of consecrated public service and devotion to the common good be an inspiration to all of us in the years that lie ahead.

The Conference also adopted the following resolution:

In the retirement of Judge Thomas W. Swan and Judge Augustus Hand, the federal judiciary loses the active service of two of the outstanding circuit judges of the country who have been of great service in the work of the Conference. The Conference takes note of their long and distinguished records on the federal bench, congratulates them upon their achievements and expresses the hope that they may be with us for many years to come, that they may continue to render service in their judicial capacities and that we may continue to have the benefit of their advice and assistance in solving the problems which arise in the administration of justice.

The Attorney General, Honorable Herbert Brownell, Jr., accompanied by The Deputy Attorney General, Honorable William P. Rogers, attended the afternoon session on the opening day of the Conference.

Circuit Judges Albert B. Maris, Alfred P. Murrah, E. Barrett Prettyman, F. Ryan Duffy, and Wayne G. Borah, and District Judges Harry E. Watkins and Bolitha J. Laws attended some or all of the sessions.

Henry P. Chandler, director; Elmore Whitehurst, assistant director; Will Shafroth, chief, Division of Procedural Studies and Statistics; Edwin L. Covey, chief, Bankruptcy Division; Leland L. Tolman, chief, Division of Business Administration; and Louis J. Sharp, chief, Probation Division; and members of their respective staffs, all of the Administrative Office of the United States Courts, attended the sessions of the Conference.

Commissioner of the Public Buildings Service, W. E. Reynolds, attended the afternoon session on September 25th.

REPORT OF THE ATTORNEY GENERAL

The Attorney General, Honorable Herbert Brownell, Jr., presented his report to the Conference. The full report appears in the appendix.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Pursuant to the statute (28 U. S. C. 604 (a) (3)) the Director had previously submitted his fourteenth annual report on the activities of his office for the fiscal year ended June 30, 1953, including a report of the Chief of the Division of Procedural Studies and Statistics on the state of the business of the courts. The Conference approved the immediate release of the report for publication and authorized the Director to revise and supplement it in the final printed edition to be issued later.

BUSINESS OF THE COURTS

State of the dockets of the Federal courts—Courts of appeals.—Cases commenced in the United States Courts of Appeals increased by 5 percent in the fiscal year 1953 as compared with 1952. The number of cases begun was 3,226 and the number terminated, 3,043, leaving 1,845 pending at the end of the fiscal year. During the last 6 years, the general trend of the cases filed in the appellate courts has been upward but at a gradual rate. The increase since 1948 has been 17 percent. But increases in the District of Columbia, Fifth, Sixth, Eighth and Ninth Circuits have been larger. In the Ninth the increase has been from 284 in 1948 to 450 in 1953 or 58 percent.

The number of cases commenced in 1953 with relation to the number of judges in the court was much larger in the Fifth Circuit than in any other, with the next heaviest load in the Ninth Circuit. In the Fifth Circuit the number of cases filed exceeded the number of cases terminated by 20, while in the Ninth Circuit the difference was 98. The pending load in the Fifth Circuit increased to 264 and in the Ninth Circuit to 430. The only other Circuit with more than 200 cases pending on June 30 was the District of Columbia with 292.

The median interval from filing to disposition for cases heard and submitted in all circuits was 7.0 months compared with 7.3

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months in 1952. The circuits with the longest median interval were the Ninth with an interval of 12.6 months, the District of Columbia with a 9.9 months interval and the Fifth Circuit with a median of 9.6 months. While the dockets of most of the courts of appeals are in satisfactory condition, the existence of 7 vacancies in these courts is making the expeditious disposition of cases more difficult.

Petitions to the Supreme Court for review on certiorari to the United States Courts of Appeals were 603 compared with 592 last year. Of the number acted on, 89 or 14.3 percent were granted compared with 90 or 14.8 percent in 1952.

District courts.—An increase of 9.5 percent in the number of civil cases commenced in the district courts over the 1952 figure brought the number of new cases filed to 64,001. This followed a 13 percent increase in the previous year. Again, as last year, the cases terminated, which numbered 57,490, were about 10 percent less than the number filed. The result has been an increase in the number of civil cases pending to 66,873 on June 30, 1953. This is the largest number of pending cases in many years and it emphasizes the congested state of the civil dockets in many districts, particularly those in metropolitan centers.

Since 1941 the number of civil cases filed annually has increased by 66 percent while the number of judgeships is now only 14 percent greater than it was at the end of the last prewar year. Private cases which on the average take much more judicial time than Government cases have increased even more. The number of private cases filed annually has risen by 83 percent and the number pending by 130 percent, since 1941.

In more than a quarter of the districts having solely federal jurisdiction, the median interval from filing to disposition for civil cases terminated after trial during the fiscal year 1953 exceeded the national median of 12.4 months. Special mention should be made of the situation in the Southern District of New York, the Eastern and Western Districts of Pennsylvania and the Northern District of Ohio where delay in reaching trial has attained very serious proportions. Detailed information concerning these and other districts is given in the Director's report.

The number of criminal cases filed in the district courts is above that of the years immediately preceding World War II because of the large number of immigration cases commenced in districts

bordering Mexico. Excluding them, other criminal cases dropped sharply from 1944 to 1948 and the number has fluctuated within a small range since that time. In 1953 the number of criminal cases filed was 37,291, a decrease of about 700 from the previous year, but criminal cases other than immigration increased from 24,803 to 25,702 or 3.6 percent. While the number of cases terminated was somewhat less than the number commenced, the pending case load is small and consists, in part, of cases which cannot be prosecuted because of fugitive defendants who have not been apprehended. Speaking generally, criminal cases are given precedence, and the criminal dockets are in good condition.

A sharp rise in bankruptcy cases is taking place which was evidenced by a 15 percent increase in filings during the fiscal year 1953 and a rise of 24 percent in the fourth quarter followed by an even larger increase in the first 2 months of the current fiscal year. The upward trend in evidence from 1946 to 1950 appears to have been resumed. Bankruptcy cases filed in 1953 were 40,087 and the number terminated was 37,485 leaving 38,786 pending on June 30, 1953.

Cases and motions under advisement.—At the end of the fiscal year, 102 cases and motions were reported by district judges as having been held under advisement more than 60 days. Of these, 23 which had been taken under advisement more than 6 months before June 30, had been called to the attention of the circuit councils in accordance with a standing direction of the Judicial Conference. A report by the Administrative Office to the Conference indicated that all but 10 of these cases submitted before January 1, 1953 either had been or would be disposed of before the beginning of October.

Additional Judgeships Needed

It is the sense of the Conference that additional judges are desperately needed in many of the federal courts of the country, both circuit and district, and the Conference respectfully urges expeditious action by Congress to provide for the appointment of additional judges.

A bill (S. 15) passed by the Senate at the last session of Congress provided for 4 circuit judgeships and 35 district judgeships, some of which were temporary as the result of a provision that the

first succeeding vacancy should not be filled. The House of Representatives reduced the number to 3 circuit judgeships and 23 district judgeships, and passed the bill as so amended, but the conferees of the two houses failed to agree. The bill is pending for further action by the second session of the 83d Congress.

After reviewing the condition of the dockets of the courts of appeals and the district courts, and considering statistical data submitted by the Director, the Conference reaffirmed its previous recommendations with respect to the establishment of additional judgeships and also recommended the creation of the following judgeships in addition to those heretofore recommended:

1 additional circuit judgeship for the Ninth Circuit (in addition to the two additional judgeships for this circuit heretofore recommended).

1 additional district judgeship for the Southern District of Mississippi.

1 additional district judgeship for the Northern and Southern Districts of Iowa.

1 additional district judgeship for the Northern District of California.

A complete list of the present Judicial Conference recommendations with respect to judgeships is as follows:

Courts of Appeals:

Fifth Judicial Circuit.—The creation of one additional judgeship.

Ninth Judicial Circuit.—The creation of three additional judgeships.

District Courts:

First Judicial Circuit—District of Massachusetts.—The creation of one additional judgeship.

Second Judicial Circuit—Southern District of New York.—The creation of 5 additional judgeships, with a proviso that the first 2 vacancies occurring in this district shall not be filled.

Third Judicial Circuit—District of Delaware.—The creation of one additional judgeship.

District of New Jersey.—The creation of one additional judgeship.

Eastern District of Pennsylvania.—The creation of two additional judgeships.

Western District of Pennsylvania.—The creation of two additional judgeships, with a proviso that the first vacancy occurring in this district shall not be filled.

Eastern, Middle, and Western Districts of Pennsylvania.—The act of July 24, 1946 (60 Stat. 654), creating a temporary judge-

ship for these districts to be amended so as to provide that the present incumbent shall succeed to the first vacancy occurring in the position of district judge for the Middle District of Pennsylvania.

Fourth Judicial Circuit—Eastern and Western Districts of Virginia.—The creation of one additional judgeship for both districts, with a proviso that the judge to be appointed shall reside in Norfolk and that the first vacancy occurring in the Western District of Virginia shall not be filled.

Northern and Southern Districts of West Virginia.—The existing temporary judgeship for both districts to be made permanent.

Fifth Judicial Circuit—Southern District of Florida.—The creation of one additional judgeship.

Southern District of Mississippi.—The creation of one additional judgeship.

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

Southern District of Texas.—The present temporary judgeship in this district to be made permanent.

Sixth Judicial Circuit—Western District of Kentucky.—The creation of one additional judgeship.

Eastern District of Michigan.—The creation of one additional judgeship.

Western District of Michigan.—The creation of one additional judgeship.

Northern District of Ohio.—The creation of two additional judgeships.

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

Seventh Judicial Circuit—Northern District of Indiana.—The creation of one additional judgeship.

Southern District of Indiana.—The creation of one additional judgeship.

Eastern District of Wisconsin.—The creation of one additional judgeship.

Eighth Judicial Circuit—Northern and Southern Districts of Iowa.—The creation of one additional judgeship.

District of North Dakota.—The creation of one additional judgeship.

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

Ninth Judicial Circuit—District of Alaska—Third Division.—The creation of one additional judgeship.

Northern District of California.—The creation of one additional judgeship.

Tenth Judicial Circuit—District of Colorado.—The creation of one additional judgeship.

District of New Mexico.—The creation of one additional judgeship with a proviso that the first vacancy occurring in this district shall not be filled.

Supporting Personnel of the Courts

The Director reported that in his judgment the salaries of national park commissioners ought to be re-examined. Under the statute (28 U. S. C. 634) the salaries of these commissioners are fixed by the district courts of the districts in which the parks are situated, with the approval of the Judicial Conference of the United States. The present salaries of the commissioners were approved by the Conference at a special meeting in November of 1949. The matter was referred to the Committee on Supporting Personnel for study and recommendation.

The Director called the attention of the Conference to the provisions of Public Law 102 of the 83d Congress, approved July 2, 1953, which limits the amount of annual leave which can be accumulated hereafter by Government employees, including employees of the courts, to 30 days. Another provision of the act requires the heads of agencies to take such action as may be necessary to reduce to 30 days the accumulated annual leave to the credit of personnel of their agencies in excess of that amount "within a reasonable period of years, consistent with the exigencies of the public business." The Director recommended that for the supporting personnel of the courts who are subject to the leave laws and regulations a period of 10 years be allowed for the reduction of accumulated annual leave to a maximum of 30 days without prescribing that any specified part of the excess above 30 days be consumed annually. The Director stated that in his opinion this length of time with a maximum degree of flexibility

is necessary in order to be fair to the court employees and to bring about a reduction of excess leave in compliance with the statute without materially impairing the service to the courts. He stated that he would suggest without requiring that the use of the surplus leave be distributed as evenly as feasible over the period. The Conference approved the recommendation of the Director.

Judge Laws submitted a written request for additional provisions for supporting personnel for the District Court for the District of Columbia and asked that it be referred to the Committee on Supporting Personnel for consideration. The request was referred to the Committee for study and report.

Bankruptcy Administration

Judge Phillips, Chairman of the Committee on Bankruptcy Administration, reported that the committee had met and considered the recommendations contained in the report of the Bankruptcy Division of the Administrative Office, which was approved by the Director on August 21, 1953, relating to certain changes in the salaries of referees, and other arrangements.

Studies and surveys were conducted by the Bankruptcy Division covering the districts affected by the report. For those districts, the resurvey extended previous surveys through June 30, 1953, and took into account both for the district and for each referee's office affected, the number, size and character of pending cases; the number, size and character of cases referred to the referees since July 1, 1947; the payments by each district and by each referee into the Referees' Salary and Expense Funds and other pertinent data.

The report of August 21, 1953, was submitted by the Director to the members of the Judicial Conference and to the judicial councils and the district judges of the circuits and districts concerned, with the request that the district judges advise the judicial councils of their respective circuits of their opinion in respect to the recommendations for their districts and that the chief judges of the circuits in turn inform the Administrative Office of the views of the judicial councils of their circuits. The Director's report together with the recommendations of the district judges and of the circuit councils were considered by the Committee on Bankruptcy Administration. The Conference had before it the committee's re-

port as well as the recommendations of the district judges and the judicial councils.

Upon the recommendation of the Committee on Bankruptcy Administration, the Conference took the action shown in the following table:

District	Regular place of office	Present type of position	Conference action		
			Present salary	Type of position	Salary
1st Circuit					
Maine	Portland	Part-time [1]	[1] $6,000	Full-time [1]	$10,000
	Bangor	do	3,000	Discontinued	
New Hampshire	Manchester	do	3,000	Part-time	3,500
3d Circuit					
Pennsylvania (M)	Wilkes-Barre	do	5,000	do	5,500
4th Circuit					
South Carolina (E)	Charleston	do	1,500	do	2,500
5th Circuit					
Alabama (N)	Anniston	do	6,000	Full-time	10,000
Alabama (M)	Montgomery	do	6,000	do	8,000
Alabama (S)	Mobile	do	4,000	Part-time	6,000
Georgia (N)	Atlanta	do	6,000	Full-time	10,000
Louisiana (E)	New Orleans	do	6,000	do	10,000
9th Circuit					
Arizona	Phoenix	do	5,500	Part-time	6,000
California (N)	Sacramento	do	6,000	Full-time	11,250
Washington (E)	Spokane	do	6,000	do	10,000

[1] The Conference authorized the consolidation of the part-time positions at Portland and Bangor into a single full-time position at Portland to serve the entire District of Maine. Bangor was continued as a place of holding court for the full-time referee at Portland.

The salary increases approved by the Judicial Conference for positions that remain on a part-time basis were made effective October 1, 1953. Changes from part-time to full-time positions were made effective as soon as practicable after appropriated funds are available for the payment of the full-time salaries authorized. The Director was instructed to seek, at the first opportunity, a supplemental appropriation sufficient to cover the increased cost of salaries.

DISPOSITION OF UNCLAIMED MONEYS IN BANKRUPTCY CASES

Pursuant to the direction of the Judicial Conference at a special session held in Washington on March 26–27, 1953, the Director circulated among the circuit and district judges, a report of the special committee recommending that Section 66b (11 U. S. C. 106 (b)) of the Bankruptcy Act dealing with the distribution of

unclaimed moneys in bankrupt estates be repealed and that Section 66a (11 U. S. C. 106 (a)) be amended by adding the following sentence at the end thereof so that the section as amended would read as follows:

Dividends or other moneys which remain unclaimed for sixty days after the final dividend has been declared and distributed shall be paid by the trustee into the court of bankruptcy; and at the same time the trustee shall file with the clerk a list of the names and post-office addresses, as far as known, of the persons entitled thereto, showing the respective amounts payable to them. *Such moneys and dividends shall be deposited and withdrawn as provided in Title 28, U. S. C., Section 2042.* [Italics indicate the amendment.]

The judges were requested to express their views upon the report and the proposed amendments.

The resolution of the Judicial Conference also directed that all views expressed be communicated to the Committee on Bankruptcy Administration for its consideration and that the Bankruptcy Committee make further report to the Conference at its next regular session.

The Committee after considering the replies received from the circuit and district judges, recommended that Section 66b of the Bankruptcy Act be repealed and that Section 66a be amended by adding a sentence at the end thereof so that as amended it will read as follows:

Dividends or other moneys which remain unclaimed for sixty days after the final dividend has been declared and distributed shall be paid by the trustee into the court of bankruptcy; and at the same time the trustee shall file with the clerk a list of the names and post-office addresses, as far as known, of the persons entitled thereto, showing the respective amounts payable to them. *Such moneys and dividends shall be deposited and withdrawn as provided in Title 28, U. S. C., Section 2042, and shall not be subject to escheat under the laws of any state.* [Italics indicate the amendment.]

The recommendation of the Committee was approved by the Conference.

CHANGES IN ADDITIONAL CHARGES FOR THE REFEREES' SALARY AND EXPENSE FUNDS

The Committee reported that pursuant to Section 40c (2) of the Bankruptcy Act the Director had recommended that the schedule of additional charges, for the Referees' Salary and Expense Funds, effective as to all cases filed on and after January 1, 1954, be revised as follows:

Fees To Be Charged in Asset, Arrangement and Wage Earner Cases for the Referees' Salary Fund

One percent on net realization in straight bankruptcy cases.

One-half of one percent on total obligations paid or extended in Chapter XI cases.

One-half of one percent upon payments made by or for the debtor in Chapter XIII cases.

Charges To Be Made in Asset, Arrangement and Wage Earner Cases for the Referees' Expense Fund

Referees' expenses in Chapter XIII cases at $10 per case where the liabilities do not exceed $200, and at $15 per case in all other Chapter XIII cases.

One percent on net realization in straight bankruptcy cases.

One-half of one percent on total obligations paid or extended in Chapter XI cases.

One-half of one percent upon payments made by or for the debtor in Chapter XIII cases.

Upon the recommendation of the Bankruptcy Committee the Conference approved the schedules of additional fees and charges as revised by the Director.

SPECIAL CHARGES FOR THE REFEREES' EXPENSE FUND FOR FILING PETITIONS FOR REVIEW AND RECLAMATION PETITIONS

Pursuant to Section 40c (3) of the Bankruptcy Act, the Judicial Conference at a special meeting held in Washington in April 1947, promulgated a schedule of charges for special services rendered by the referees, effective July 1, 1947. Item 3 of the schedule is as follows:

For filing petitions for review and for filing petitions for reclamation of property, $10 for each petition filed, to be paid at the time of filing by the petitioner.

In order to conform this regulation to Section 2412 (a) of Title 28 of the United States Code which makes the United States liable for fees and costs only when such liability is expressly provided for by Act of Congress, the Director recommended that item 3 be revised to read as follows:

For filing petitions for review and for filing petitions for reclamation of property, $10 for each petition filed, to be paid at the time of filing by the petitioner, *provided that no charge shall be made for petitions for review or for reclamation of property filed on behalf of the United States.* [New language is in italics.]

The Committee recommended and the Conference approved this revision of item 3 of the schedule of special charges for the referees' expense fund.

RECEIVERS AND TRUSTEES

The Bankruptcy Committee brought to the attention of the Conference that several proposals for an increase in the compensation that may be allowed to receivers and trustees have been made in recent months, some of which have taken the form of legislation now pending in Congress, and that in certain districts the problem of obtaining experienced trustees to accept appointment is becoming increasingly difficult.

The Committee adopted the following resolution which was approved by the Conference:

RESOLVED: That the Bankruptcy Committee be authorized to study the subject of receivers and trustees and their compensation including S. 2344, S. 2560, S. 2561, S. 2562, S. 2563 and H. R. 4400—83d Congress, and report to the Conference.

SAVINGS IN THE COST OF POSTAGE ON PENALTY MAIL

Under Public Law 286, 83d Congress, effective August 15, 1953, the cost of postage on penalty mail in bankruptcy cases at first class rates of 3 cents per cover will amount to approximately $112,500 per year upon a volume of 50,000 cases. The Administrative Office estimates that 60 percent of these notices could be mailed as 3d class material at 2 cents per cover which would reduce the cost to approximately $90,000 a year.

Inasmuch as the same franked envelopes will be used as at present, which would be sealed, and therefore would move almost as rapidly as first class mail, the Committee recommended that the Administrative Office urge the referees in bankruptcy to use 3d class mail so far as possible in sending notices to creditors. The Conference approved this recommendation.

The Committee also recommended in the interest of economy that the notice of the time fixed for filing objections to the discharge of the bankrupt and the notice of the first meeting of creditors be combined wherever possible. The Administrative Office estimates that an additional $25,000 or $30,000 a year could be saved in the cost of postage and that an even greater indirect saving could be accomplished in the expenditures for clerical help, supplies and equipment. This would require an amendment to Section 14b of the Bankruptcy Act which now provides that the order fixing the time for filing objections to the bankrupt's discharge shall not be entered until after the bankrupt shall have been examined.

The Committee recommended that the applicable portion of Section 14b be amended to read as follows:

Sec. 14b. *After the filing fees required to be paid by this Act have been paid in full* the court shall make an order fixing a time for the filing of objections to the bankrupt's discharge *which shall be not less than 30 days after the first date set for the first meeting of creditors.* Notice of such order shall be given to all parties in interest as provided in Sec. 58b of this Act. *If the examination of the bankrupt concerning his acts, conduct and property has not or will not be completed within the time fixed for the filing of objections to the discharge the court may, upon its own motion or upon motion of the receiver, trustee, a creditor or any other party in interest or for other cause shown,* extend the time for filing such objections. [Italic language is new.]

The new language at the beginning of the section as amended would conform with General Order 35 (4)c which now provides:

No proceedings upon the discharge of a bankrupt or debtor shall be instituted until the filing fees are paid in full.

Another conforming change would be needed in Section 58b (2). That clause now requires the discharge notice to be mailed to the trustee but, in cases in which the notices would be combined, the trustee would not have been appointed when the notice is mailed. The first sentence of Section 58b as amended would read:

b. The court shall give at least thirty days' notice by mail of the last day fixed by its order for the filing of objections to a bankrupt's discharge (1) to the creditors, in the manner prescribed in subdivision a of this section; (2) to the trustee *if any* and his attorney *if any*, at their respective addresses as filed by them with the court. [The italic words constitute the amendment.]

The Committee recommended and the Conference approved these amendments to Section 14b and Section 58b (2) of the Bankruptcy Act.

In order that the trustee would be notified immediately upon his appointment of the last day fixed for the filing of objections to the discharge, the Committee suggested, if the Bankruptcy Act is amended as above recommended, that the Supreme Court be requested to amend General Order 16 so as to read as follows:

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment *and of the time fixed for the filing of objections to the bankrupt's discharge if such time has been fixed;* and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustees' bond. [The italic words constitute the amendment.]

The Conference approved this suggestion.

THE COURT REPORTING SYSTEM

Pursuant to the direction of the Conference at its meeting in March 1952,[1] the Director reported concerning requests for changes in compensation and arrangements for court reporters.

The judicial conferences of five circuits had adopted resolutions in favor of general increases in the salary scale of the reporters: the District of Columbia Circuit, and the Third, Seventh, Ninth and Tenth Circuits. The resolutions of the judicial conferences of the Third, Ninth, and Tenth Circuits had also recommended increases in the transcript rates approved by the Conference, the resolution of the Third Circuit attaching some conditions.

GENERAL INCREASES IN SALARIES

The Director submitted to the Conference a written report in which he discussed in detail the proposals of the resolutions and stated his recommendations. The Conference approved the report and in accordance therewith provided for general increases in the salaries of the reporters, as shown by the following table, to take effect upon July 1, 1954 contingent upon the necessary appropriation:

Present salary	Proposed salary	Proposed		Number reporters
		Amount	Percent of increase	
			Percent	
$5,500	$6,000	$500	9	109
$5,000	5,500	500	10	50
$4,500	5,000	500	11	32
$4,000	4,500	500	12½	17
$3,600	4,200	600	16⅔	14
$3,000	3,600	600	20	1
$1,114,900	1,227,900	113,000	10	223

CHANGES IN SPECIFIC SALARIES

The Director also reported to the Conference that the judges of the district courts for the eastern district of Tennessee and the southern district of Indiana urged that the salaries of the reporters for those districts were inequitable in relation to the salaries of the reporters for the other districts in the respective states. The Director concurred in their views and recommended that on the basis

[1] Page 27 of the March 1952 report.

of the present salary scale, the salaries of the reporters for the eastern district of Tennessee be increased from $4,000 to $4,500 per annum, and that the salary of the reporter for the southern district of Indiana be increased from $4,500 to $5,000 per annum, both increases to be effective at once. The Director further recommended in accordance with a request of the judge of the district court for the eastern district of Illinois at Danville, that the court be authorized to employ at that location in place of a reporter-secretary as at present, a reporter only at a present salary of $3,600 per annum, the authority for the arrangement to be effective immediately. The Conference approved the salary recommendations of the Director for the three districts effective at once, with the understanding that whenever the general increase in the salary scale approved by the Conference at this meeting as shown above takes effect, the salaries shall be subject to a further increase in accordance with the increase in the general salary scale.

The Conference in accordance with the recommendation of the Director authorized an increase in the estimate for salaries of supporting personnel of the judiciary for 1955 by $115,000, to defray the cost of the general and specific increases in salary above authorized.

INCREASES IN TRANSCRIPT RATES DISAPPROVED

The Director in his report recommended against any increase in the transcript rates which the Conference had previously authorized the several district courts to prescribe. The Conference approved the Director's recommendation, and declined to approve any increase in transcript rates.

Upon the recommendation of the committee on transcript rates of the Judicial Conference of the Third Circuit, which was presented by Circuit Judge Maris of that circuit, the Conference approved a provision in reference to the procedure for determining the charges for daily or other expedited transcript, that such charges shall be fixed by agreement of the parties which in each individual case shall be submitted to the trial judge and shall require his express approval, and that in lengthy cases the reporter's charges shall be fixed after the conclusion of the case, with progress payments to the reporter or deposits as ordered by the court.

APPROPRIATIONS

The Director submitted to the Conference estimates for supplemental appropriations for the fiscal year 1954 and for annual appropriations for the fiscal year 1955 which, under the statute (28 U. S. C. 605), require the approval of the Conference.

He informed the Conference that supplemental appropriations for the current fiscal year will be needed for fees of jurors, for travel expenses due to the enactment of Public Law 222 of the 83d Congress increasing the maximum subsistence allowance of judges to $15 per day, for payment of penalty mail pursuant to Public Law 286 of the 83d Congress, and for increases authorized by the Conference in the salaries of referees in bankruptcy. The estimates for supplemental appropriations were approved by the Conference.

The Director explained the estimates for annual appropriations for the fiscal year 1955 and informed the Conference that the estimates would have to be increased by the cost of penalty mail pursuant to Public Law 286 and increases in the salaries of referees in bankruptcy and court reporters authorized by the Conference. The Conference approved the estimates with authorization to the Director to include these additional items.

OPERATION OF THE JURY SYSTEM

The report of the Committee on the Operation of the Jury System was presented to the Conference by Judge Watkins, the Chairman of the Committee.

JURY ALLOWANCES IN ALASKA

The Committee reported that in accordance with the instructions of the Conference (Rept. Sept. 1952, p. 18) it had studied the resolution of the 1952 session of the Judicial Conference of the Ninth Circuit which had recommended increases in the allowances for attendance and subsistence of jurors in Alaska, and had consulted the Alaska judges about the matter. As a result of this study, the Committee concurred in the resolution of the Ninth Circuit. It recommended that the fee for attendance for jurors in Alaska be increased from $7 to $10 per day; that the subsistence allowance be increased from $5 to $7 per day; and that the allowance for travel be fixed at 15 cents per mile in all divisions or actual

travel expenses in lieu of mileage. The Committee recommended that these rates be prescribed by the Director under U. S. C. Title 48 section 25 and Title 28 section 604, and that they be made effective as soon as practicable.

The Conference approved these proposals of the Committee.

THE COST OF DAILY OR INTERIM TRAVEL OF JURORS

The Committee reported that it had considered the question, referred to it by the Conference at its March 1953 Session, of the desirability of amending section 1871 of Title 28, United States Code, relating to allowances for jurors, with particular reference to the provision for the payment of travel expense at the rate of 7 cents a mile when jurors return to their homes each night during their term of service.

The majority of the Committee were of the view that under the present statute the payment of travel allowances for interim overnight trips by jurors between their homes and the places where they are serving the court can be so excessive as to amount to an abuse. They recommend that the statute be amended so as to make it impossible for jurors to be paid large amounts daily for mileage alone, but to allow them full mileage when the Court excuses them for several days or weeks. The amendment proposed by the Committee would eliminate from the statute the authority which it now contains to pay jurors at the flat rate of 7 cents per mile "for all additional necessary daily travel expense," and substitute for it a provision to permit such payment only when it will not exceed the subsistence allowance which would have been paid the juror if he had remained at the place of holding court overnight or during temporary recess.

The Committee reported that suggestion had been made to it that under present law excessive jury transportation costs could be controlled by the district courts through the exercise of their powers under U. S. C. Title 28, section 1871 to limit daily travel to that which is "necessary" and to require the payment of only "subsistence of $5 per day" when, in the Court's opinion, daily travel appears impracticable and under U. S. C. Title 28, section 1865, to select jurors from only those parts of the district which are close enough to the place where the term of the Court is to be held that "unnecessary expense" and "burden" upon the citizens of any part of the district may be avoided. They pointed out that this is

successfully done now in many districts, and the possibility that if the Conference should call these powers to the attention of the judges in districts where there appears to be unnecessary and impracticable daily jury travel, and the Administrative Office would inform the courts concerned of the situation in their districts, the travel payments to jurors in all courts might be thus reduced to a uniform basis without statutory amendment. The majority of the Committee stated that they would not be adverse to such a course if the Conference should consider it preferable to the enactment of the flat legislative prohibition stated in the proposed statutory amendment.

The Conference received the report of the Committee on this point, and directed that the report and the proposed statute be circulated throughout the Judiciary for an expression of the views of the judges to be followed by further report by the Committee.

APPEARANCES BEFORE GRAND JURIES

The Committee reported that the late Chief Justice had requested its views concerning the bill, S. 1801, 83rd Congress, "to authorize requests for appearances before grand juries in certain instances," which would make punishable by fine and jail sentence the failure of the foreman of a grand jury or the prosecutor to bring to the attention of the grand jury a written request by one under investigation for permission to appear before the jury. The Committee was of the opinion that as a matter of policy the bill is unnecessary and inadvisable and that in any event, the bill should be amended to provide as a condition for conviction that the failure to present the request to the grand jury must have been willful and deliberate and not a mere matter of inadvertent neglect. The Committee recommended that the Conference disapprove the bill.

The Conference agreed with the recommendation of the Committee and expressed its disapproval of S. 1801.

JURY COSTS

The Committee expressed approval of continuation of the jury cost studies of the Administrative Office and urged the creation in each circuit of circuit committees or the establishment of other procedures to study the Administrative Office statistics concerning costs in the districts of the circuit and develop needed measures for economy in the selection and service of jurors.

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The Conference approved the recommendation.

The report of the Administrative Office on the costs of the operation of the jury system was presented to the members of the Conference and its circulation among the members of the Federal Judiciary was authorized.

JURY ADMINISTRATION IN METROPOLITAN COURTS

The Committee reported that there had been referred to it a complaint by a juror of wasted time and money in his term of service as a juror in one of the district courts in a large city. The Committee had studied the complaint and concluded that while the particular situation of the juror concerned did not of itself indicate any extraordinary condition, yet it served to point out again the difficulties of jury administration in the trial courts in the great metropolitan centers. The Committee urged that in those courts in particular, the jury procedures require study. It pointed out that for such courts the Committee and the Conference have recommended the establishment of jury pools, so operated that only the number of jurors actually required for trials to be conducted at any one time will be in attendance at that time. The Committee suggested that the circuit jury committees in circuits where there are large metropolitan areas should be appointed as soon as possible, and might include in their membership not only judges but lawyers, laymen and jury commissioners as well, and that these committees with the aid of studies which the Administrative Office might furnish should attempt to develop administrative practices that will provide solutions to the peculiar problems of jury administration in multiple judge courts in metropolitan areas.

In accordance with the suggestion of the Committee, the Judicial Conference strongly recommended the establishment of such committees in the circuits concerned and intensive study by those committees of the metropolitan trial court jury systems in those areas.

JURORS' MANUAL

The Committee reported that it is presently revising the Manual for Jurors approved by the Conference in 1943; that it is seeking the assistance of the judges throughout the country in this project; and that it hopes to be able to report finally upon this aspect of its work at the next regular session of the Conference.

RENEWAL OF LEGISLATIVE RECOMMENDATIONS

On recommendation of the Committee, the Conference renewed its recommendation for the enactment of the bill developed by the Committee to establish uniform qualifications of jurors (S. 961, 83d Congress) and, with certain minor amendments explained and recommended by the Committee, of the bill to provide for jury commissioners in the district courts (S. 959, 83d Congress). The Conference authorized the Committee to continue to advocate the enactment of both of these proposals.

The Conference also renewed its disapproval of certain bills relating to the powers of grand jurors, introduced in the present Congress as H. R. 448 and H. R. 478 (See Rept. Jud. Conf., Sept. 1952, pp. 16–17).

PROCEDURE IN ANTITRUST AND OTHER PROTRACTED CASES

Judge Prettyman, Chairman of the Committee on Procedure in Antitrust and other Protracted Cases, reported to the Conference that there has been an apparent growing acceptance by both the courts and the bar of the general suggestions contained in the first report of the Committee adopted by the Conference at its September 1951 session (Conf. Rept. pp. 22–24). He informed the Conference that the American Bar Association has created a section on antitrust law, and that section has created a committee on procedure to which the report has been referred for study. He stated that the Judicial Conference Committee on Pretrial Procedure has been giving special attention to pretrial procedure in protracted cases.

Judge Prettyman informed the Conference that following the recommendations contained in the report on procedure before administrative agencies adopted by the Conference at its September 1951 session (Conf. Rept. pp. 25–26) a conference of representatives of administrative agencies had been called by the President and had held its first session June 10–11, 1953. The conference is composed of delegates from 56 Government departments, bureaus and agencies, 12 members of the practicing bar, and 3 Federal judges. Judge Prettyman is acting as chairman of the conference at the request of the President. Phases of the general problem have been assigned to 10 committees and the next session of the conference is scheduled to be held November 23, 1953.

The report was ordered received and the Committee continued.

Retirement of Judges

Judge Duffy, chairman, submitted the report of the Committee on Retirement of Judges.

Under existing law (Title 28, U. S. C., Sec. 371), in the event a circuit or district judge fails to resign or retire upon becoming eligible because of age and tenure of service, the President may, upon making a finding that such judge is unable to discharge sufficiently 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, appoint an additional judge by and with the advice and consent of the Senate.

At the March, 1952, meeting of the Judicial Conference of the United States (Conf. Rept. pp. 16–17), approval was given to a recommendation from its Committee on Retirement and Tenure of Federal Judges that the scope of said provision be broadened so as to include all United States judges appointed to hold office during good behavior, and judges eligible to retire on account of permanent disability without regard to age or length of service; and in addition the Conference approved the committee's recommendation that before the President could appoint an additional judge when a disabled judge did not retire, a certificate of the judge's inability to perform the duties of his office must first be signed by a majority of the Judicial Council of the Circuit in the case of a circuit or district judge, and by a designated judge in the case of judges of special courts. A proposed bill to carry out such recommendations was approved by the Judicial Conference at its September, 1952, meeting.

In the new Congress the foregoing recommendations were incorporated in the pending bill for additional judgeships (S. 15) as it was reported to the Senate on May 4, 1953, by the Committee on the Judiciary. The language used in S. 15 was as follows:

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the chief judge of the Court of Claims, Court of Customs and Patent Appeals or Customs Court, or by the chief judge of his court in the case of a judge of the Court of Claims, Court of Customs and Patent Appeals or Customs Court, is presented to the President 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. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purposes of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the circuit, district or court.

Unfortunately, however, the entire provision relating to the appointment by the President of an additional judge when a disabled judge fails to retire was stricken from the bill by an amendment adopted on the floor of the Senate, and as a result the bill as passed by the Senate is so worded that the present law as stated in Title 28 U. S. C. 371 (c) will be in effect repealed. This part of S. 15 was not amended by the House of Representatives when it passed the bill with amendments. The Conference renewed its recommendation with respect to the appointment of an additional judge in the event a physically or mentally disabled judge does not retire and urges that Congress expedite the passage of appropriate legislation to accomplish that end.

The Committee recommended that the Conference disapprove the enactment of H. R. 1800 which would provide tenure during good behavior for district judges in Alaska. The recommendation was adopted by the Conference.

The Committee was authorized to circulate among the judges for an expression of their opinion a suggestion that retired judges be designated as "senior judges" instead of "retired judges."

The Question of Legislation to Authorize Compensation for Expert Witnesses

Judge Magruder, Chairman of the Committee to consider whether statutory authority should be given to federal judges to compensate, at rates appropriate for expert witnesses, experts called by the court itself in civil litigation to testify with respect to economic, professional, or other technical matters, reported that the Committee had reached the conclusion and recommended that the Conference take no action with regard to this matter and that the Committee be discharged. The Committee observed that of course individual judges will be free to work out a procedure with the consent of the parties in the relatively infrequent instances in which they may feel the need of summoning expert witnesses in

civil litigation. The recommendation of the Committee was approved.

Sound Recording of Court Proceedings

Judge Laws, Chairman of the Committee on Sound Recording of Court Proceedings, submitted a progress report in which he stated that a number of striking experiments in sound recording of court proceedings have been conducted. The report was received and the Committee authorized to continue its work.

Pretrial Procedure

Judge Murrah, Chairman of the Committee of the Conference on Pretrial Procedure, presented and discussed the report of the Committee. He emphasized its desire to make available full information concerning pretrial to newly appointed judges and referred the members of the Conference to a handbook on pretrial procedure printed by the Administrative Office containing a statement of its essentials, some sample of pretrial notices and orders and a short bibliography. This pamphlet will be furnished to each newly appointed district judge and through the chief judge of the circuit and the members of the circuit pretrial committee as well as the members of the Judicial Conference committee, the new judges' attention will be called to the advantages of pretrial procedure and to the methods by which it can be most successfully employed.

Judge Murrah referred to the recommendation of the Committee for the appointment by the Chief Justice of a panel of district judges to make a special study of the use of pretrial in antitrust and other protracted cases and for the adoption of a policy by the Judicial Conference that a judge of this panel should be available to any judge to whom a long case is assigned for consultation or to sit jointly with him in the pretrial conference or to assist him in such manner and extent as the trial judge may deem advisable. He requested that action on this recommendation contained in the committee report be deferred until the Conference Committee on Procedure in Antitrust and Other Protracted Cases has had the opportunity to study it so that a recommendation in the form to be approved by both committees can be submitted. Judge Murrah's presentation was supplemented by Judge Laws, a member of the Committee.

The Conference directed that the report of the Committee be received, that action on the Committee's recommendation with reference to pretrial in protracted cases be deferred as requested and that copies of the report be circulated throughout the Federal Judiciary.

The Conference resolved that it is the sense of the Conference that the Judicial Councils of the various circuits should assure that pretrial procedure is used in all the districts of their respective circuits.

Judicial Statistics

Mr. Shafroth, Chief of the Division of Procedural Studies and Statistics of the Administrative Office, presented the report of the Committee. He briefly outlined the work of the Committee during the past year and reported that it planned to furnish to newly appointed judges a short monograph now in the course of preparation on the statistical reports furnished to the Administrative Office, the use made of them and an explanation of the statistical tables regularly published by the office. He stated the view of the Committee, elaborated in its report, that where a proposal for added judge power in a particular court is under consideration in the Congress and the available information concerning the judicial business of that court indicates the absence of need for an increase in the judge power of that court, this fact should be expressly stated. The Conference directed that the report be received and that it be circulated throughout the judiciary for the information of the judges.

Committee on Revision of the Laws

Judge Maris, Chairman of the Committee on Revision of the Laws, submitted an interim report. The Committee believes that it would be desirable to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary and to authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of the review proceedings. This would require an amendment of existing statutes. The Committee has prepared a tentative draft of a bill for this purpose and recommended that it be authorized to submit the draft to the circuit judges and the agencies concerned for

their consideration and suggestions. The Committee also recommended that the President's conference on administrative procedure be requested to consider the proposal and give the Committee its suggestions. In the light of such consideration and suggestions received, the Committee would plan to present a definitive draft of bill to a later session of the Conference. The Conference authorized and requested the Committee to include in its tentative draft provisions covering petitions for enforcement of administrative agency orders as well as proceedings to review such orders, and with this amendment it authorized the circulation of the draft in accordance with the recommendation of the Committee.

Rules Adopted by Courts of Appeals for Review or Enforcement of Orders of Administrative Agencies

Section 11 of Public Law 901 of the Eighty-first Congress approved December 29, 1950 (64 Stat. 1129; 5 U. S. C. Supp. V, 1041), provides for the adoption, subject to the approval of the Judicial Conference, of rules governing the practice and procedure in proceedings to review or enforce orders of certain administrative agencies. The Conference approved a rule adopted by the Court of Appeals of the Eighth Circuit pursuant to this provision.

Pretermission of Terms of the Courts of Appeals of the Eighth and Tenth Circuits

At the request of Chief Judge Gardner, the Conference, pursuant to Title 28, U. S. C. 48, consented that terms of the Court of Appeals of the Eighth Circuit at places other than St. Louis be pretermitted during the current fiscal year.

At the request of Chief Judge Phillips, the Conference consented that terms of the Court of Appeals of the Tenth Circuit at Oklahoma City be pretermitted during the current fiscal year.

Proposal to Assign Circuit Judges to Court of Military Appeals

The Conference disapproved the part of H. R. 5794 which would provide that if any judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals to fill the office for the period of disability.

Habeas Corpus

The Conference directed that the former Committee on Habeas Corpus be reactivated for the purpose of considering the questions with regard to the use of the writ of habeas corpus to which reference was made by the Attorney General in his report to the Conference. Judge Phillips and District Judge Frank A. Hooper were appointed as members of the Committee in place of Circuit Judge Kimbrough Stone, retired, and District Judge E. Marvin Underwood, retired.

Appeals From Interlocutory Orders of the District Courts

Judge Parker, who is the Chairman of the Committee appointed to study proposals to enlarge the scope of appeals from interlocutory orders of the district courts presented the report of his Committee. He told the Conference that the various proposals on this subject which had been suggested, and the views of the district and circuit judges and of the Conferences of the various circuits which had studied the matter had been considered by the Committee and that the Committee had come to the unanimous conclusion that provision should be made for the allowance of appeals from interlocutory orders in those exceptional cases where it is desirable that this be done to avoid unnecessary delay and expense and that the danger of opening the door to groundless appeals and piecemeal litigation can be avoided by proper limitations to be included in the amendatory statute.

Accordingly the Committee recommended and submitted to the Conference a proposed amendment to Section 1292 of Title 28 of the United States Code reading as follows:

Section 1292 of Title 28 of the United States Code is hereby amended by insertion of the letter (a) at the beginning of the section and adding at the end thereof an additional subparagraph lettered (b) to read as follows:

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order; provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

The Committee expressed the view that this proposed procedure would be used only in those exceptional cases where a decision of the appeal may avoid protracted and expensive litigation, as in antitrust and similar protracted cases, where a question which would be dispositive of the litigation is raised and there is serious doubt as to how it should be decided. It pointed out that the right to appeal given by its proposal is limited both by the requirement of certificate of the trial judge, who will not countenance dilatory tactics, and the resting of final discretion in the courts of appeals which will not permit its dockets to be crowded with piecemeal or minor litigation.

The Conference approved the recommendation of the Committee. Judge Stephens and Judge Magruder voted in opposition to the proposal of the Committee, and Judge Stephens requested that their position in the matter be recorded in the report of the Conference.

Quarters of the Courts and Related Facilities

Hon. W. E. Reynolds, Commissioner of the Public Buildings Service, discussed with the Conference problems concerning provision of quarters for additional judges, the need for space for other governmental activities, difficulties of maintenance of public buildings in view of budgetary limitations, and the need for air conditioning of court quarters. He informed the Conference that budget estimates are being prepared by the Public Buildings Service to include funds for air conditioning the courts and the repair and maintenance of public buildings. The Conference again pointed out the urgency of air conditioning court quarters to permit their use during summer months since the steady increase in business of the Federal courts requires their operation during the summer.

Establishment of a Separate Domestic Relations Court for the District of Columbia

The Conference adopted the following resolution:

Resolved, that the Judicial Conference of the United States reaffirms its approval of the creation in the District of Columbia of a separate court for the handling of domestic relations cases and matters pertaining to them; and recommends that legislation providing for this separation be promptly enacted by the Congress of the United States.

The Conference represents to Congress that unless this separation of business as recommended is accomplished at an early date, three additional judges will be required and should be authorized by Congress for the United States District Court for the District of Columbia.

Mandatory Minimum Sentences in Criminal Cases

Judge Stephens presented to the Conference the following resolution adopted by the Judicial Conference of the District of Columbia Circuit June 12, 1953:

It is resolved by the members of the Judicial Conference of the District of Columbia Circuit (to wit, the Judges of the United States District Court for the District of Columbia and the Judges of the United States Court of Appeals for the District of Columbia Circuit) that they oppose enactment of those provisions of H. R. 5312, 83d Congress, and S. 1946, 83d Congress, which compel the Judges of the District Court to impose minimum sentences in certain classes of cases, which deny such Judges the right to place certain defendants on probation and the right to admit certain defendants to parole, and which bring about, in effect, repeal of certain provisions of the Federal Youth Correction Act as it was made applicable to the District of Columbia.

And it is further resolved that copies of this resolution be presented to the Judicial Conference of the United States and to the appropriate Committees of Congress.

After the adoption of this resolution, the House bill (H. R. 5312) was amended in a way to lessen although not to eliminate altogether the provisions to which objection is expressed by the resolution. As amended, the bill was enacted as Public Law 85, approved June 29, 1953. The Conference approved the resolution adopted by the Judicial Conference of the District of Columbia Circuit.

Revocation of Radio Station Licenses, H. R. 3977

Judge Stephens presented the following resolution adopted by the Judicial Conference of the District of Columbia Circuit June 12, 1953:

It is resolved by the Judicial Conference of the District of Columbia Circuit that it opposes the enactment of H. R. 3977, 83d Congress, a bill to provide that radio station licenses shall be issued for an indefinite term and shall be revoked only by the United States District Court for the District of Columbia, with an appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit, and with review by certiorari.

The Conference approved the resolution.

Judicial Review of Certain Orders of the Federal Security Administrator

Judge Stephens presented the following resolutions adopted by the Judicial Conference of the District of Columbia Circuit opposing the enactment of H. R. 4277 and H. R. 4901 of the Eighty-third Congress:

It is resolved by the Judicial Conference of the District of Columbia Circuit that it opposes the enactment of H. R. 4277, 83d Congress, a bill which, inter alia, gives the United States District Court for the District of Columbia exclusive jurisdiction over appeals from orders of the Federal Security Administrator under the Federal Food, Drugs and the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 with respect to applications for the registration of a pesticide or with respect to a regulation establishing a tolerance for a pesticide or exempting the pesticide therefrom.

It is resolved by the Judicial Conference of the District of Columbia Circuit that it opposes the enactment of H. R. 4901, 83d Congress, 1st session, a bill to amend the Federal Food, Drug, and Cosmetic Act.

These bills provide for review of administrative orders which would be issued under the proposed acts by de novo trials in United States District Courts instead of review in the United States Court of Appeals on the record made before the administrative agency. The Conference approved the action of the Judicial Conference of the District of Columbia Circuit in opposing these provisions of the bills.

The Costs of Appeal Including the Cost of Printing

The Administrative Office reported that the first draft of a survey report concerning the costs of appeal including the cost of printing had been completed and permission was given to circulate it to the circuit judges and clerks for suggestions before the issuance of a final report.

Committees

The Conference renewed the authorization to the Chief Justice to take whatever action he deemed desirable with respect to increasing the membership of existing committees, the filling of committee vacancies, and the appointment of new committees. Subject to such action existing committees were continued. The Conference continued the Advisory 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:

HUGO L. BLACK,
Senior Associate Justice, Acting Chief Justice.

Dated Washington, D. C., October 2, 1953.

APPENDIX

Report of Honorable Herbert Brownell, Jr., Attorney General of the United States

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

It is with a deep sense of sorrow in the irreparable loss of the past chairman of this Conference, the late Chief Justice Fred M. Vinson, that I open my first report to you. Chief Justice Vinson graced the high court with dignity, vigor, and assurance. He gave to the Judicial Conference active leadership and wise guidance, and contributed to the growing stature which the Judicial Conference has assumed in the administration of the affairs of the federal judiciary.

With your permission, I would like to depart from a practice of the past and avoid reviewing the great variety of subjects and happenings affecting the Department of Justice and the courts. Instead, I would like to concentrate upon a selected few.

I have been encouraged in this course by the late Chief Justice and by Judge Parker, both of whom asked me at the last meeting of the Judicial Conference of the Fourth Circuit to report to this body on two subjects, namely (1) what should be the position of the court, the prosecutor, and the grand jury in regard to requests by persons under investigation by a grand jury to appear voluntarily before the inquest, and (2) should there be a public defender system for the representation of indigents in federal criminal cases or should assigned counsel be compensated.

I

Voluntary Appearances by Defendants Before Grand Juries.—On the first subject—Voluntary Appearances by Defendants Before Grand Juries—a bill was introduced in the 83d Congress (S. 1801) which would amend Section 1504 of 18 U. S. C., relating to communications addressed to grand or petit juries by authorizing any person under investigation by a Federal grand jury to make written requests to the foreman thereof or to the chief prosecutor

in charge to appear before the grand jury. If the foreman or prosecutor should fail to bring the request to the attention of the grand jury during its deliberations he would be subject to a fine of $1,000 or imprisonment of 6 months, or both. There has been no action on this bill. In 1933, after a long period of agitation, the grand jury was abolished in England, except for a very few kinds of cases. Many of the States in this country have done likewise. Nevertheless, in the Federal courts and the courts of at least half of the States, the grand jury remains a part of the judicial system for criminal cases. It has won both condemnation and praise. Some, like the Wickersham Crime Commission in its 1931 report on prosecution, argued that we might do better without the instrument of the grand jury. Others have urged that it would be the height of folly, in an era of expanding executive power, to eliminate the grand jury which stands as a bulwark against possible executive tyranny.

I think it is needless for us to debate the merits of either position. We should consider, in the prospect of the continued existence of the grand jury system in the Federal courts, how to make it work well.

This leads to the matter of whether or not a person who knows that he is under investigation by a grand jury may voluntarily seek and obtain the privilege of appearing before the inquest to speak in his own favor. We know that in the Federal courts the defendant has no right to appear and be heard or present witnesses in his favor. (*Duke* v. *United States,* 90 F. 2d 840, cert. den. 302 U. S. 685.) Long ago it was pointed out by Chief Justice McKean sitting in a Pennsylvania court (1 Dallas 236), that to permit such a proceeding would be to usurp the province of the petit jury to determine on the whole evidence, for as well as against him whether the defendant is or is not guilty; further, that such procedure might result in twice putting the defendant in jeopardy for the same offense. The rule has been restated and followed in the Federal courts by Chief Justice Taney (30 Fed. Cas. 998) and others down to contemporary times. At least one State, New York, deviates from this rule, by statute. Under a 1940 amendment to section 257 of New York's Code of Criminal Procedure, a person, who has reason to believe that a grand jury is investigating a charge that he has committed a crime, may voluntarily file with the foreman of the grand jury and the district attorney a request to be heard

before the grand jury. In such case, the grand jury must give the individual, if he files a waiver of immunity, an opportunity to be heard before finding an indictment, although the grand jury need not hear any witness on his behalf. An indictment found in violation of this provision of law may be voided.

However, the opportunity to be heard which New York affords to prospective defendants as a matter of right, is the unusual case. The more usual rule is that set forth in the American Law Institute Code of Criminal Procedure, section 139. It is there stated:

> The grand jurors are under no duty to hear evidence for the defendant, but may do so. They shall weigh all the evidence received by them and when they have reasonable ground to believe that other evidence, which is available, will explain away the charge they may require the same to be produced.

The commentary to section 139 indicates that this is the law in most of the grand jury States by statute. I think it will be agreed that, although there is no equivalent Federal statute, the rule in the case of Federal grand juries is about the same. Many years ago, Mr. Justice Field in his famous charge to the grand jury for the Circuit Court of the California District said:

> From these observations, it will be seen, gentlemen, that there is a double duty cast upon you as grand jurors of this district; one a duty to the government, or more properly speaking, to society, to see that parties against whom there is just ground to charge the commission of crime, shall be held to answer the charge; and on the other hand, a duty to the citizen to see that he is not subjected to prosecution upon accusations having no better foundation than public clamor or private malice. * * *
>
> If, in the course of your inquiries, you have reason to believe that there is other evidence, not presented to you, within your reach, which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced. Formerly, it was held that an indictment might be found if evidence were produced sufficient to render the truth of the charge probable. But a different and a more just and merciful rule now prevails. To justify the finding of an indictment, you must be convinced, so far as the evidence before you goes, that the accused is guilty—in other words, you ought not to find an indictment unless, in your judgment, the evidence before you, unexplained and uncontradicted, would warrant a conviction by a petit jury (30 Fed. Cas. 992).

Our courts have ruled many times against appearances by prospective defendants as a matter of right, but have said very little on the subject of voluntary appearances as a matter of grace. In 1944, Judge Learned Hand noted in an opinion (144 F. 2d 604, 605) that grand juries have in recent times occasionally invited persons, whose conduct they are examining, to appear. In addition, Congress made it clear in 1948, in the amendment which was added to

section 1504, title 18 U. S. C. that this practice is approved. You will recall that section 1504 makes punishable any attempts to influence the action of grand and petit jurors. The amendment provides that the section shall not be construed to prohibit the communication of a request to appear before the grand jury.

Such being the permissible practice, what should be the attitude of the grand jury, the court, and the prosecutor when such requests to appear voluntarily are made?

If, as the Supreme Court has said, "the most valuable function of the grand jury was not only to examine into the commission of crimes, but to stand between the prosecutor and the accused, and to determine whether the charge was founded upon credible testimony or dictated by malice or personal ill-will," it seems to me there can be and should be no hard and fast rule excluding voluntary appearances by defendants before Federal grand juries. All three functionaries—the grand jury, the court, and the United States Attorney—are interested in the accomplishment of justice and the avoidance of persecution. All three may have a common interest in permitting a prospective defendant to voluntarily testify before a grand jury.

In some cases, the defendant's testimony may even strengthen the Government's case. In other cases, where the United States Attorney is able to present a prima facie case to the grand jury which uncontroverted might be sufficient for an indictment, it may be that a mere statement by the defendant of completely exculpating circumstances would result in a different result and a saving in time and money to the Government as well as possible irreparable damage to the reputation of the defendant.

Recently, Chief Judge Sterling Hutcheson of the Eastern District of Virginia wrote us out of his experience on the subject. Regarding his conclusions on the position to be taken by the court, the prosecutor, and the grand jury, I could render no greater service than to read to you four brief paragraphs from his letter. He says:

> Circumstances vary and each case should be handled in accordance with the peculiar circumstances. It is a practice which should not be encouraged. At the same time it should be borne in mind that an indictment is not difficult to obtain and when improperly obtained can cause great injustice. * * * If the United States Attorney, present with the right of cross examination in the absence of counsel for the defendant, is unable to obtain an indictment before a grand jury, the case of the Government can not be very strong. It is also to be remembered that the action of the grand jury is in no sense *res adjudicata* and the case may be presented to an unlimited number of other grand juries.

One important consideration is that since grand juries consist of laymen unfamiliar with legal principles and only infrequently called to act, it is a body peculiarly likely to relinquish its authority and fail to meet its responsibility unless these are clearly brought to the attention of the members.

I do not believe there is danger that the hearing will develop into a trial of the charge on the merits. Members of the grand juries with whom I have been in contact, with few exceptions, indicate an earnest desire to give full and fair consideration to matters before them, but they are content to do no more than discharge their responsibility and leave the burden of determining guilt where it belongs.

It is my opinion that the answer to the question is care in the selection of jurors, the appointment of a level-headed, intelligent foreman, a full and careful charge concerning the duties of the members and from that point the jury should reach its own decision. I believe that with few exceptions, a wise and sound conclusion will be reached. I do not mean to indicate that the United States Attorney should not render assistance by pointing out pertinent matters, explaining the difference between competent evidence and that which would be rejected at the trial, and acting generally as the advisor of the grand jury. As previously mentioned, if Government counsel believes an error has been made the case can usually be presented to another jury.

Briefly summed up, it is my feeling that the grand jury system should be strengthened wherever practicable and nothing should be done to weaken it.

I might add that Judge Hutcheson has related some of his personal experiences. A recent one in the February 1952 term in his district will be of interest to you. When the grand jury was convened, he says, he charged it fully concerning its responsibilities and the power vested in it. The jury was informed of requests to appear that had been made by prospective defendants, and he made clear that the grand jury must determine whether such testimony would be received. The individuals requesting permission to appear were informed in open court of their constitutional rights and were advised that, in the event they testified, any statement made might be used against them. All this was done with the court reporter in attendance. The judge made no recommendation, stating however, that either the court or the United States Attorney had the right to make a recommendation if either deemed it advisable. Of the 10 individuals who requested permission, the grand jury agreed to hear only 1. He alone was indicted and subsequently convicted.

To conclude this point, I would like to see gathered, possibly by a committee of this Conference or by the Administrative Office, information on the experiences in the several districts. If there is a wide disparity in practices, it may be that a simple information bulletin issued jointly by the Conference and the Attorney General would eliminate any misapprehensions and achieve a fairly uni-

form approach in treating with proposed appearances by defendants before Federal grand juries throughout the United States.

The Public Defender System and Compensation of Assigned Counsel.—The public defender, as a means of providing adequate counsel for indigent defendants in criminal cases, is no longer a matter of mere speculation in this country. In addition to the voluntary systems that have existed in some communities, nine States plus Puerto Rico and the Canal Zone have provided by law for a public defender system. Two of the States, Connecticut and Rhode Island, provide effective Statewide coverage. The American Bar Association Standing Committee on Legal Aid Work reported this year that there are now functioning 38 public and voluntary defenders. To our knowledge, 26 of these have been governmentally established in State, county, or city systems. I thought it would be useful for the Conference to know about this group of officers. Hence, I am submitting as an annex to this paper, a summary of salient facts about the jurisdiction, appointment, tenure and salary of each.

The American Bar Association Standing Committee on Legal Aid Work recently adopted a six point program which was evolved as the result of the thorough legal aid study made for the Survey of the Legal Profession. Points 5 and 6 of the program provide:

> 5. In all of the larger cities, there should be an organized Defender service for criminal cases, conducted either as a coordinate function of a legal aid office or as an independent publicly or privately supported agency, to provide competent counsel at every stage of the proceedings, in all felony cases and other serious offenses.
>
> 6. Adequately compensated assigned counsel, of equivalent character and coverage, should be provided in all counties not served by a Defender office.

It is, indeed, an anomaly that the Federal courts operating under the strong and strict guarantee of counsel for all defendants in criminal cases under the Sixth Amendment, have had to limp along with nothing comparable to the public defender in indigent cases, particularly in the populous districts. This has not been from inattention to the subject by the judges or the attorneys general. Since 1937, both the Judicial Conference and the Department of Justice have endorsed and urged the enactment of legislation which would authorize the appointment of public defenders in the districts where the amount of business justifies the appointment, and the allowance of compensation to assigned counsel in the other districts. These have been the recommendations of the Judicial

Conference under the chairmanship of Chief Justices Hughes, Stone, and Vinson, and of the Attorneys General since Homer Cummings.

I am happy to add my endorsement to these recommendations. I pledge that my Department will do all that it can to advance the necessary proposals for legislation.

In this connection, I might describe briefly the two pending proposals in the 83d Congress, H. R. 398 and H. R. 2091. H. R. 398 is identical with bills in the last two Congresses which were supported by both the Judicial Conference and the Department. Both H. R. 398 and H. R. 2091 would provide for the appointment by the several district courts of the United States of public defenders either as full-time or part-time officers as the volume of work, in the judgment of the respective courts, may require. Salaries would be based upon the services to be performed, in no case exceeding $10,000 per year, to be fixed by the Judicial Conference of the United States. In districts that do not contain a city of over 500,000 population, where the court considers that representation of the indigent can be more economical by the appointment of counsel in individual cases, and no public defender is appointed, assigned counsel may be compensated at a rate not to exceed $35 per day, plus expenses, for time necessarily and properly spent in preparation and trial. The same could also be done in a district with a city of over 500,000 population if the judicial council of the circuit approves and no public defender is appointed. H. R. 2091 would vary this slightly by making the controlling population figure 300,000 and the maximum compensation $40 per day. Both measures have a $5,000 ceiling on the amount to be spent in compensating appointed counsel in the district in any fiscal year.

Thus, under either bill the way would be open to make use of the best that can be derived from both the public defender and assigned counsel systems.

There is, of course, no need for me to emphasize with the Judicial Conference the desirability of the regularized public defender in the largely populated districts. I need only recall the report to this Conference in 1943 by Judge Augustus N. Hand, for the committee on indigent litigants, in which he said:

> To call on lawyers constantly for unpaid service is unfair to them and any attempt to do so is almost bound to break down after a time. To distribute such assignments among a large number of attorneys in order to reduce the burden

upon anyone, is to entrust the representation of the defendant to attorneys who in many cases are not proficient in criminal trials, whatever their general ability, and who for one reason or another cannot be depended upon for an adequate defense. Too often under such circumstances the representation becomes little more than a form.

In the less populated districts, where assigned counsel can sufficiently meet the problem of representing indigents, the difficulty is to find the most equitable means of compensating assigned counsel. On the one hand, a nominal sum might encourage counsel to urge pleas of guilty or to hurry the disposition of cases without adequate investigation of the facts. On the other hand, the per diem method of compensation might tempt the court-appointed counsel to prolong a case, resulting in unnecessary expense and delay. However, with the court in control, it seems to me that the per diem method offers the flexibility which would permit adjustments in accordance with particular needs and, in most cases, result in more effective representation of the rights of the indigent person. It may be difficult at the outset to arrive at the best formula for fixing compensation. It would seem to me, however, that if the principle of compensation can be established by legislation, adjustments can and will be made in due course.

II.

Habeas Corpus Review of State Court Convictions.—Recently the Federal habeas corpus examination of State criminal court convictions has been the subject of criticism. The Conference of Chief Justices and the National Association of Attorneys General of the States have urged that there be a limit upon the review of State court convictions by the lower Federal courts.

As you well know, the use of the writ of habeas corpus in the Federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it. The use extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused and where the writ is the only effective means of preserving his rights. The result has been that prisoners, who have exhausted their State court remedies and unsuccessfully sought certiorari in the Supreme Court of the United States (*Darr* v. *Burford*, 339 U. S. 200), may file petitions for habeas corpus in the Federal district

courts raising the same questions which were or could have been raised in the State courts. Most of the claims raised in petitions of this sort have dealt with alleged denials of the right to counsel, coerced or fraudulent confessions, and other influences not conducive to a fair trial.

A study of this category of petitions filed in the district courts has been made by the Administrative Office of the United States Courts covering the last 12 years. It indicates that about 500 petitions have been filed each year. However, in only a small number of cases were the petitioners successful. The record of the last 4 years shows that only 29 petitions were granted, and that out of that number only 4 petitioners won their ultimate release from State penitentiaries. However, about 85 percent of the petitions filed required the time and attention of the district courts by decision before trial or by trial with evidence introduced; and approximately 10 percent of those filed resulted in appeals to the courts of appeals. The effect has been to burden the Federal courts with a duplication of judicial action and to prolong the final determination of criminal cases, contrary to the public interest. State officials, although recognizing the propriety and constitutional necessity of review of State court convictions by the United States Supreme Court, assert, with some reason, that it is inappropriate for Federal district courts to engage in a process which in fact constitutes a review of State appellate court decisions. The difficulty is to balance these public interest considerations against the need and importance of maintaining the availability of the writ as a protection of individual liberty, if only in a few cases.

A good deal of light has been shed upon the problem by a recent study and report, dated June 1953, by the Committee on Habeas Corpus of the Conference of Chief Justices. The Committee reported that "responsibility for the unfortunate conditions prevailing in habeas corpus litigation rests upon the state as well as upon the Federal judicial systems and the evils presently prevailing can be reduced substantially by action taken at the state level." The Committee recommended, and the Conference of Chief Justices as a whole concurred on August 22, 1953, that the state legislatures or judicial rule-making bodies consider the taking of seven measures. In brief, these measures would assure that the post-conviction process of the state is at least as broad in scope as the procedure for testing claims of constitutional rights in the Federal

courts under the Federal habeas corpus statute. Further, they would establish practices which will produce a complete record in each case showing consideration and disposition on the merits of claimed Federal constitutional rights.

The suggestions are extremely useful and far-sighted. In part, they bear out the view of the Administrative Office that a large percentage of the petitions in previous years have emanated from a few states where there has been an alleged lack of an adequate and effective habeas corpus or similar procedure in the state courts. On the whole, the recommendations indicate the wisdom and moderation of the chief justices in suggesting that the states put their houses in order.

On the Federal side, the Committee of Chief Justices had a suggestion for amending some of the sections of title 28 of the United States Code relating to the writ of habeas corpus. You will recall that the Supreme Court's most recent decision on the subject, *Brown* v. *Allen,* 344 U. S. 443, decided in February of this year, emphasized that the practice which permits State prisoners to apply to the lower Federal courts for relief by habeas corpus is required by the present habeas corpus statute, in particular, 28 U. S. C. 2254. The Committee of Chief Justices has suggested amendments, which would not take the lower courts entirely out of the picture, but would permit them to act only if the United States Supreme Court, in denying relief on the review sought of the state proceedings, expressly reserves the right of the prisoner to apply for habeas corpus to a district or circuit judge upon the issues presented to the Supreme Court. The Committee felt that this proprosal would be a more readily acceptable means of dealing with the Federal side of the problem, since the Supreme Court would probably oppose an amendment placing upon it the whole burden of disposing of these cases. And, I might add, the limited consideration which the Supreme Court can give to a case in passing upon a petition for certiorari might not be regarded as sufficient Federal protection.

However, it does not appear that the whole of the Conference of Chief Justices endorsed this portion of the Committee report. Instead, the resolution of August 22, 1953, after adopting and endorsing the state side of the report, reaffirms an earlier resolution of September 1952, which favored subjecting a final judgment of a State's highest court to review or reversal only by the Supreme

Court of the United States. Presumably, this proposal also entails an amendment of the statute.

Still another form of statutory amendment might be the proposal implicit in Mr. Justice Jackson's concurring views in *Brown* v. *Allen*. This would exclude lower federal court entertainment of a petition unless the state law allowed no access to its courts on the constitutional point raised; or the petition showed that, although the law allows a remedy, the petitioner was improperly obstructed from making a record upon which the question could be presented.

I mention these several suggestions for Federal action because it seems to me that this is a problem for the Judicial Conference in the first instance. The Conference played an important role in the drafting of the present statute. It would undoubtedly be concerned with any amendments. I might also say that the section on Judicial Administration of the American Bar Association, composed of both Federal and State judges, has commended the Conference of Chief Justices of the States for its practical approach to the total solution of the problem, and has likewise suggested that the Judicial Conference examine into the matter.

Judicial Review in place of Habeas Corpus in Deportation Cases.—The phase of Federal habeas corpus jurisdiction which, in my opinion, is ripe for legislative revision has to do with the review of deportation orders. The recent decision in *Heikkila* v. *Barber* (345 U. S. 229) held habeas corpus proceedings to be the exclusive method for reviewing deportation orders issued under the 1917 Immigration Act, notwithstanding the broad judicial review contemplated by section 10 of the Administrative Procedure Act and notwithstanding the Declaratory Judgment Act. Under the new Immigration and Nationality Act of 1952, however, the issue is up again. The Court of Appeals for the District of Columbia, in *Rubinstein* v. *Brownell*, held on June 11, 1953, that deportation orders under the new act may be reviewed in an action for declaratory and injunctive relief. While the Government has filed a petition for a writ of certiorari in this case, we think the Congress should spell out a method of obtaining judicial review in the district court for any alien against whom a final order of deportation has been issued, whether he is in custody or not. Such legislation would provide an opportunity to specify appropriate venue provisions, which could avoid a concentration of cases in the District

of Columbia; and might also provide, insofar as is constitutionally possible, against a duplication of procedures.

Regarding the scope of review, it is doubtful whether the scope is now any different in habeas corpus from that which is accorded to the orders of other agencies under section 10 of the Administrative Procedure Act. In spite of the formal differences between habeas corpus and statutory review referred to in the *Heikkila* opinion (345 U. S. at 236), it looked as though the Supreme Court had applied the substantial evidence rule in *Bridges* v. *Wixon,* 326 U. S. 133, and several lower courts have expressly stated that deportation orders must be supported by substantial evidence. Section 242 (b) of the Immigration and Nationality Act provides that "no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence." It is quite likely that the courts will analogize this direction to the concept of "substantial evidence" upon the whole record found in section 10 (e) of the Administrative Procedure Act. In short, making deportation orders subject to judicial review in accordance with section 10 of the Administrative Procedure Act would have little or no effect upon the scope of review given to such orders anyway.

On the other hand, by providing a remedy other than habeas corpus it will be possible for one against whom a deportation order is outstanding, but who is not in physical custody, to obtain at once judicial review of the deportation order which is administratively final. As Mr. Justice Frankfurter observed in contending for this result in his dissent in *Heikkila* v. *Barber:* "The point is legally narrow but practically important."

Concerning Judges.—While President Eisenhower has appointed 9 district court judges in the 8 months since January 20, 1953, the matter of providing for additional judges to help carry the tremendous load of judicial business still rests with the Congress. Different versions of S. 15 were passed by the Senate and House in the recently adjourned session of the Congress. The Senate form of the bill would add 4 circuit judgeships and 35 district judgeships, of which 7 would be temporary. The House form of the bill provides for 3 circuit judgeships and 23 district judgeships, of which 4 would be temporary. The bill has gone to conference but the Congress adjourned before an agreement was reached. Oddly, the Department of Justice was not asked to report on S. 15.

However, in reporting on another bill (H. R. 2558) at the request of the House Judiciary Committee, the Department made it clear that it concurred in the recommendations of the Judicial Conference for additional judgeships. I believe that, with the return of Congress, S. 15 provides the basis for strengthening the Federal judiciary.

One disturbing difficulty with S. 15 is that it strikes out an existing provision of law, subsection (c) of 28 U. S. C. 371. Under this subsection the President may appoint an additional judge whenever a permanently disabled circuit or district judge eligible to retire because of age and length of service, fails to do so. The loss of this provision would be particularly regrettable, since the Judicial Conference had recommended extending its scope to include all judges appointed to office during good behavior and to all cases of judges eligible to retire on account of permanent disability (under 28 U. S. C. 372), even though they might not be eligible to retire on account of age and length of service. The deletion from the bill of the existing provision of law occurred in the debate on the Senate floor. The bill has passed both Houses and gone to conference without the provision. If there is any chance of correcting this action before or after final passage of S. 15, I would hope that the Judicial Conference will be especially diligent in the matter.

S. 15, as passed by both Houses, would permit the retirement of judges at age 65 after 15 years service, as well as at age 70 after 10 years service now allowed under existing law. The Department of Justice had an opportunity to concur in, and voiced its approval of, this recommendation of the Judicial Conference in reporting on a related House bill, H. R. 2559.

The Department has gone on record and presented testimony in favor of the increase of salaries of Federal judges, members of Congress, and United States attorneys. As a first step, the Congress has provided for a Commission on Judicial and Congressional Salaries (P. L. 220, 83d Cong.), which is to determine appropriate rates of salaries for judges and members of Congress and report its findings on or before January 15, 1954.

Curtailing of Nolo Contendere Pleas.—In assessing the practices of government in relation to law enforcement, we recently concluded that one of the factors which tended to breed contempt for Federal law enforcement was the practice of Federal prosecutors

consenting, almost as a matter of course, to the filing of pleas of nolo contendere to criminal indictments.

Uncontrolled use of the plea has resulted in shockingly low sentences and inadequate fines which are no deterrent to crime. The public impression created, and no doubt reflected by the courts in imposing punishment, is that the Government in consenting to the plea has only a technical case at most.

In many districts, the court will ordinarily not accept a nolo plea unless consented to by the United States attorney. In other districts, where the plea may be accepted without the prosecuting attorney's consent, the responsibility for its acceptance, in the face of a refusal to consent, is squarely on the judge.

In an effort to discourage widespread use of the plea of nolo contendere, I recently instructed each United States attorney not to consent to the filing of such plea except in the most unusual circumstances and then only after his recommendation for its acceptance had been reviewed and approved by the responsible Assistant Attorney General or by my office.

Enforcing the Conflict-of-Interest Law.—Another factor which appears to have brought disrepute to Federal law enforcement has been the practice of government employees entering private life or employment to engage in defending or prosecuting the claims or cases on which they worked while in government. The past condoning of this practice has led to influence peddling and corruption, and to the equally devastating public belief that both exist on a wide scale.

A lawyer, who has held public office and who after leaving that office accepts employment on the other side in a matter which he investigated or passed upon while in office, violates the canons of ethics and may be subject to disbarment. And, in my view, he commits a crime. Section 284 of title 18 U. S. C. makes it a felony for an employee within 2 years after leaving Government service to act as counsel, attorney, or agent in presenting any claim against the United States involving any subject matter with which he was directly connected when employed. The statute has never been judicially construed, but in my opinion it is not to be so narrowly read as to be limited to monetary claims or claims which seek affirmative relief against the Government. Its purpose also embraces nonmonetary claims, and claims asserted to defeat those of the Government.

I have accordingly advised the United States attorneys of my position that the statute prohibits any former employee of the Federal Government, for a period of 2 years after leaving Government service, from representing any nongovernmental interest in any matter involving a subject matter directly connected with which such person was so employed or performed duty, in which the United States is interested, directly or indirectly, whether as a party, as an enforcement agent, or otherwise. I have instructed the United States attorneys to vigorously prosecute violations of section 284 as so construed.

The President's Conference on Administrative Procedure.—The final item to which I call your attention is the President's Conference on Administrative Procedure. This Conference was recently appointed by President Eisenhower, upon the recommendation of the Judicial Conference and myself, and consists of approximately 75 representatives of the Federal agencies, the judiciary, and the bar.

It is a unique cooperative effort to eliminate unnecessary delay, expense, and size of records in administrative proceedings. At the first meeting of the President's Conference in June 1953 various aspects of this problem were assigned to working committees for study. At the same time, at my request, the Conference undertook to explore the desirability of establishing an Office of Administrative Procedure to make continuing studies of administrative procedures, and the feasibility of formulating uniform rules of procedure for Federal agencies. Subsequent meetings of the full Conference will consider the reports and recommendations of its working committees.

The administrative process has become so pervasive in our national life that we can no longer afford to let it develop haphazardly. The forward step in the Administrative Procedure Act must be followed by continuous study and effort to establish and maintain procedures which will be fair to the individual and effective to carry out the regulatory policies laid down by Congress. I am confident that the President's Conference on Administrative Procedure will demonstrate that the kind of cooperative effort which produced the Federal rules of civil and criminal procedure can also greatly improve our administrative procedures.

Annex—Public Defender System in the United States

Place	Jurisdiction	Authority	Selected by	Tenure	Salary
CALIFORNIA	Any contempt or offense triable in Superior Court at all stages of the proceedings, including preliminary examination.	California Statutes of 1947, chapter 424, as amended by statutes of 1949, chapter 1288.	Election or appointment (determination by County Board of Supervisors optional at time office is created in county).	Indefinite if appointed, 4 years if elected.	Fixed by county or counties (if two counties combine in establishing office).
Los Angeles County	County—Superior Court and certain delinquency cases. Limited civil.	Freeholders Charter, art. 6, sec. 23.	Board of Supervisors on basis of competitive examination.	Civil Service	
Alameda County (Oakland City). Orange County.[1] Riverside County.[1] Sacramento County.[1] San Diego County.[1] San Joaquin County.[1] Tulare County.[1]	Criminal offenses, in all courts except Federal.	County Charter, secs. 17 and 27.	Board of Supervisors on basis of competitive examination.	Civil Service	
CONNECTICUT (Statewide 8 counties.)	Crimes in Superior Court or court of common pleas upon any preliminary hearing before any court in the State, or before any committing magistrate.	Connecticut General Statutes, see 8796 (1949 revision) generally and sec. 3615 (compensation).	Assembly of the judges of the Superior Court at annual meeting in June.	1 year	Reasonable allowance in addition to expenses made by presiding judge at conclusion of crim. term.
ILLINOIS (in effect in Chicago, Cook County.)	Felony cases	Jones Statutes Annotated secs. 37.720 (1) to 37.720 (8).	Judges of Circuit Court of Cook County or judges of Circuit and Superior Courts civil and criminal in counties of more than 500,000.	Indefinite (at pleasure of judges).	Fixed by county board. Not to exceed State's Attorney of the county.
INDIANA (In effect in Indianapolis, Marion County.)	Offenses in criminal courts	Act of 1951, Burns Indiana Statutes Annotated, secs. 4-2316 to 4-2318.	Judge of the Criminal Court or any division thereof having population of 400,000 or more.	Indefinite	Fixed by judge out of fund of $12,500 appropriated annually by county council.
(In effect throughout State.)	Indigents in penal institutions asserting unlawful or illegal imprisonment after time for appeal has expired.	Burns Annotated Statutes, cumulative supplement 1945, secs. 13-1401 to 13-1407.	Superior Court of the State (court authorized to give such tests as it deems proper to determine fitness of applicant).	At pleasure of Superior Court for a term of 4 years.	To be fixed by Superior Court.
MINNESOTA (In effect in Minneapolis, Hennepin County.)	Felony or gross misdemeanor in Criminal Court and before boards of pardon and parole.	Minnesota Statutes Annotated (1947) sec. 611.12.	Judges of district in counties having a population of 300,000 or more.	4 years with reappointment as often as a majority of the judges concur.	Compensation fixed by judges.
Ramsey County	----do----	Minnesota Statutes Annotated (1947) as amended sec. 611.13.	In counties having a population of more than 240,000 and less than 300,000.	2 years in counties of more than 240,000 and less than 300,000.	Compensation not to exceed $2,500.

[1] Complete information unavailable.

Annex—Public Defender System in the United States—Continued

Place	Jurisdiction	Authority	Selected by	Tenure	Salary
NEBRASKA. (In effect in Omaha, Douglas County.)	Capital and felony cases in district court and civil matters up to $100.	Nebraska Revised Statutes 1943, secs. 29-1804 and 1805.	Election by popular vote in counties having a population in excess of 200,000.	4 years	$4,500.
OKLAHOMA. (In effect in Oklahoma City, Oklahoma County and Tulsa, Tulsa County.)	Felony cases, J. P. courts by assignment.	Oklahoma Statutes. Annotated, title 19, sec. 134.	Judges of the courts of record for all counties having a population of 200,000 and a city of more than 175,000.	Indefinite. (At pleasure of court.)	$5,600 per annum, $3,000 to be paid by county and $2,600 from the court fund.
RHODE ISLAND. (Statewide 5 counties with single office at Providence.)	Criminal cases in Superior courts.	Created by General Assembly May 8, 1941. 1941 Laws of Rhode Island, chapter 1007, as amended by acts of 1942, chapter 1133.	Governor, with advice and consent of senate.	3 years	$6,500.
VIRGINIA	Criminal cases in courts of criminal jurisdiction and in police courts from which appeal lies to said courts.	Virginia Code (1950), sec. 19-7, which continues in effect chapter 360 of the acts of 1920, formerly codified as sec. 4970 (a) Michie's Virginia Code of 1942.	Judge of court having criminal jurisdiction in cities of 100,000 to 160,000 may in their discretion appoint.	2 years but may be removed by judge appointing.	None unless city council so provides.
PUERTO RICO	Misdemeanors or felonies where penalty is more than 1 year.	Puerto Rico Laws of 1940, No. 91, as amended by laws of 1941, No. 71, and laws of 1943, No. 70.	District court appointments, 1 to 3 in each judicial district on rotating plan.	1 criminal term cannot be reappointed while other lawyers residing in corresponding judicial districts have not been appointed in said district court.	Fixed by A. G. of Puerto Rico.
CANAL ZONE	Appearance in district court for arraignment, plea and trial.	Title 7, sec. 43, Canal Zone Code, of 1934, as amended.	Governor of Panama Canal		$1,200.

Public Defender System in Cities of the United States

Place	Jurisdiction	Authority	Selected by	Tenure	Salary
Long Beach, Calif.	City-municipal court cases, limited civil cases.	Local ordinance	City council on basis of competitive exam.	Civil Service	
Los Angeles, Calif.	City-municipal court cases, limited civil cases.	City ordinance 54691. Amended ordinance 75,366.	City council from 3 highest qualifying by competitive exam.	Civil Service	
San Francisco, Calif.	City-criminal offenses in all courts except Federal. Limited civil cases.	City charter, sec. 33	Public election	One year	
Columbus, Ohio	City-misdemeanors and preliminary hearings in felonies. Limited civil jurisdiction.	City charter, Sec. 12, 1914 and 1930 Code Chapter 3.	City council	Indefinite	
Memphis, Tenn.	Shelby Co.-criminal offenses in all courts.	Private laws of 1917. Chapter 69.	County commissioners	4 years	
St. Louis, Mo.	City of St. Louis, first offenders in felony.	City ordinance 41239 (1938)	Director of Public Welfare on recommendation of Supervisory Committee composed of 1 member from faculty of each approved law school in St. Louis, 1 member each from Public Defenders Committee of St. Louis Bar Association and the Lawyers Association, 1 member of Board of Aldermen who must be licensed attorneys. All members appointed by mayor.	Civil Service	

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