REPORT
OF THE PROCEEDINGS
OF A
SPECIAL SESSION
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES

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MARCH 10, 11, 1960

WASHINGTON, D.C.

THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

§ 331. Judicial Conference of the United States.

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims and a district judge from each judicial circuit 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. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims is unable to attend the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court 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 Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

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

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

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Report of the Proceedings of a Special Session of the Judicial Conference of the United States

Special Session—March 10–11, 1960

The Judicial Conference of the United States convened in a special session on March 10, 1960, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on March 11. The Chief Justice presided and members of the Conference were present as follows:

District of Columbia Circuit:
Chief Judge E. Barrett Prettyman
Chief Judge David A. Pine, District of Columbia
First Circuit:
Chief Judge Peter Woodbury
Chief Judge George C. Sweeney, District of Massachusetts
Second Circuit:
Chief Judge J. Edward Lumbard
Chief Judge Sylvester J. Ryan, Southern District of New York
Third Circuit:
Chief Judge John Biggs, Jr.
Chief Judge J. Cullen Ganey, Eastern District of Pennsylvania.
Fourth Circuit:
Chief Judge Simon E. Sobeloff
Chief Judge Roszel C. Thomsen, District of Maryland
Fifth Circuit:
Chief Judge Richard T. Rives
District Judge Ben C. Connally, Southern District of Texas
Sixth Circuit:
Chief Judge Thomas F. McAllister
District Judge Paul Jones, Northern District of Ohio
Seventh Circuit:
Chief Judge John S. Hastings
Chief Judge William J. Campbell, Northern District of Illinois
Eighth Circuit:
Chief Judge Harvey M. Johnsen
District Judge Gunnar H. Nordbye, District of Minnesota
Ninth Circuit:
Chief Judge Richard H. Chambers
District Judge William C. Mathes, Southern District of California

Tenth Circuit:
Chief Judge Alfred P. Murrah
Chief Judge Royce H. Savage, Northern District of Oklahoma
Court of Claims:
Chief Judge Marvin Jones

The Conference welcomed the new Chief Judge of the Second Circuit, Honorable J. Edward Lumbard, succeeding Honorable Charles E. Clark. The Conference also extended its best wishes to Honorable Paul Jones on his thirty-seventh anniversary as a member of the Federal Judiciary.

The Deputy Attorney General, Honorable Lawrence E. Walsh, representing the Attorney General, Honorable William P. Rogers, who was unable to be present, attended the morning session of the first day of the Conference.

Senior Judges Orie L. Phillips and Albert B. Maris, Circuit Judges Jean S. Breitenstein and Walter L. Pope, District Judges Harry E. Watkins and William F. Smith and Judge Sam E. Whitaker of the Court of Claims attended all or some of the sessions.

Warren Olney III, Director; William L. Ellis, Deputy Director; Aubrey Gasque, Assistant Director (Legal); John C. Airhart, Assistant Director (Management); Will Shafroth, Chief, Division of Procedural Studies and Statistics; Edwin L. Covey, Chief, Bankruptcy Division; Louis J. Sharp, Chief, Probation Division; Wilson F. Collier, Chief, Division of Business Administration; and members of their respective staffs, all of the Administrative Office of the United States Courts, attended the sessions of the Conference.

REPORT OF THE ATTORNEY GENERAL

Honorable Lawrence E. Walsh, Deputy Attorney General of the United States, on behalf of the Attorney General, presented an informal report to the Conference on matters relating to the business of the courts of the United States.

EXPEDITION OF COURT BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims and from the Chief Judges of the respective circuits concerning the state of the dockets and the need for additional judicial assistance in each circuit and district. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits.

Chief Judge Harvey M. Johnsen, Chairman of the Committee on Judicial Statistics, presented to the Conference the Committee recommendations for the creation of additional judgeships, based on the Committee's study of the judicial statistics and other factors relating to the need for additional judgeships. In making these recommendations, the Committee gave consideration in each instance to the effect on the judicial business of each district court of the Act of July 25, 1958 curtailing the jurisdiction of the district courts in diversity of citizenship and certain federal question cases. Chief Judge John Biggs, Jr. advised the Conference that the Committee on Court Administration concurred fully in the recommendations of the Statistics Committee except that it recommended one additional judgeship for the Court of Appeals for the Fifth Circuit in addition to that heretofore recommended by the Conference. At the request of Chief Judge Richard T. Rives of the Fifth Circuit and Judge Ben C. Connally, the Conference also considered proposals for the creation of additional judgeships in the Southern District of Florida and the Southern District of Texas.

After a full consideration of the Committee reports and of the views of its members, the Conference voted to recommend the creation of the following additional judgeships not heretofore recommended by the Conference:

One additional judgeship for the Court of Appeals for the Second Circuit
One additional judgeship for the Court of Appeals for the Fourth Circuit
One additional judgeship for the Court of Appeals for the Fifth Circuit
One additional judgeship for the Court of Appeals for the Seventh Circuit
One additional judgeship for the District of Puerto Rico
One additional judgeship for the Middle District of Pennsylvania, the first vacancy occurring thereafter not to be filled.
One additional judgeship for the Southern District of Florida
One additional judgeship for the Southern District of Texas
One additional judgeship for the District of Nevada, the first vacancy occurring thereafter not to be filled.

The Conference also recommended the creation of one additional judgeship for the Middle District of Tennessee and one additional judgeship for the Western District of Tennessee in lieu of a roving judgeship for the two districts previously recommended. All other recommendations for the creation of additional judgeships previously made by the Conference including the creation of an additional judgeship for the Western District of Texas, were renewed.

The Conference granted leave to the Committees on Judicial Statistics and Court Administration to consider further the need for additional judgeships for the District of Alaska, the District of Arizona, the Southern District of California, and the Western District of Missouri and the proposal to make permanent the existing temporary judgeship in the District of Utah.

Noting the action of the sub-committee of the House Judiciary Committee in reporting a judgeship bill which does not include some of the judgeships recommended by the Conference, the Conference adopted a resolution urging that the additional judgeships recommended by the Conference and omitted from the bill, together with the additional recommendations made by the Conference at this session, be reconsidered.

A complete list of the present Judicial Conference recommendations for additional judgeships is as follows:

Courts of Appeals:

3 additional judgeships for the Court of Appeals for the Second Circuit.
2 additional judgeships for the Court of Appeals for the Fourth Circuit.
2 additional judgeships for the Court of Appeals for the Fifth Circuit.
1 additional judgeship for the Court of Appeals for the Seventh Circuit.

District Courts:

First Judicial Circuit:

1 additional judgeship for the District of Massachusetts.
1 additional judgeship for the District of Puerto Rico.

Second Judicial Circuit:

2 additional judgeships for the District of Connecticut.
2 additional judgeships for the Eastern District of New York, the first two vacancies occurring thereafter not to be filled.
6 additional judgeships for the Southern District of New York.

Third Judicial Circuit:

1 additional judgeship for the District of New Jersey.
3 additional judgeships for the Eastern District of Pennsylvania.
1 additional judgeship for the Middle District of Pennsylvania, the first vacancy occuring thereafter not to be filled.
2 additional judgeships for the Western District of Pennsylvania.

Fourth Judicial Circuit:

2 additional judgeships for the District of Maryland.
1 additional judgeship for the Eastern, Middle and Western Districts of North Carolina.
1 additional judgeship for the Eastern District of South Carolina.

Fifth Judicial Circuit:

2 additional judgeships for the Southern District of Florida.
2 additional judgeships for the Eastern District of Louisiana.
1 additional judgeship for the Southern District of Mississippi.
1 additional judgeship for the Northern District of Texas.
1 additional judgeship for the Southern District of Texas.
1 additional judgeship for the Western District of Texas.

Sixth Judicial Circuit:

2 additional judgeships for the Eastern District of Michigan, the first vacancy occurring thereafter not to be filled.

2 additional judgeships for the Northern District of Ohio.

1 additional judgeship for the Southern District of Ohio, the first vacancy occurring thereafter not to be filled.

1 additional judgeship for the Eastern District of Tennessee.

1 additional judgeship for the Middle District of Tennessee.

1 additional judgeship for the Western District of Tennessee.

Seventh Judicial Circuit:

2 additional judgeships for the Northern District of Illinois.

Eighth Judicial Circuit:

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

Ninth Judicial Circuit:

1 additional judgeship for the Northern District of California.

1 additional judgeship for the District of Nevada, the first vacancy occurring thereafter not to be filled.

Tenth Judicial Circuit:

1 additional judgeship for the District of Colorado.

1 additional judgeship for the District of Kansas.

The Conference further recommends that the existing temporary judgeships in the Western District of Pennsylvania, the Middle District of Georgia and the District of New Mexico be made permanent.

The Conference also recommends that the existing roving judgeship in the State of Washington be made a judgeship for the Western District of Washington only.

REPORT OF THE COMMITTEE ON THE BUDGET

Chief Judge William J. Campbell, Chairman of the Committee on the Budget, reported that the members of the Committee had appeared before the subcommittee of the Committee on Appropriations of the House of Representatives in support of the budget for the judiciary for the fiscal year 1961, which was approved by the Conference at its September 1959 session (Conf. Rept., p. 6). As soon as the action of the Committee on Appropriations of the House of Representatives is made known, the Committee will meet to consider what request, if any, should be made to the Appropriations Committee of the Senate.

The supplemental appropriations for the operation of the courts for the fiscal year 1960, although less than the amount requested, have been approved by the House of Representatives. These are considered sufficient to carry on the activities of the courts for the

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balance of the current fiscal year and the Director of the Administrative Office, Mr. Olney, has so stated in a letter to Senator Carl Hayden, Chairman of the Senate Appropriations Committee.

To assist the Budget Committee and the Administrative Office in the preparation of the budget estimates for the judiciary for the fiscal year 1962, the Chief Judges of the 13 metropolitan districts have been requested to submit statements of anticipated increases or decreases in requirements for that fiscal year. These reports will be analyzed by the staff of the Administrative Office and presented to the Budget Committee at its next meeting.

Chief Judge Campbell also reported that the Administrative Office has been advised by the General Services Administration that it will not be able to provide furniture for the United States courts in the new buildings being constructed by the General Services Administration which are expected to be completed during the fiscal year 1961. The estimated cost of the new furniture required in seven locations is $142,400. Information on the cost of the furniture for a new building in Charleston, West Virginia, scheduled for completion in April 1961 is not yet available. On motion of Chief Judge Campbell, the Conference authorized the Director of the Administrative Office to request additional appropriations of $142,400 for furniture and furnishings for the courts for the fiscal year 1961 either in the form of a supplemental appropriation or as an amendment to the 1961 appropriations bill.

JOINT REPORT OF THE COMMITTEE ON SUPPORTING PERSONNEL AND THE COMMITTEE ON COURT ADMINISTRATION

Chief Judge John Biggs, Jr., Chairman of the Committee on Supporting Personnel and of the Committee on Court Administration, submitted to the Conference the joint report of the two Committees.

Additional Judgeships

The Committees reported that they concurred fully in the recommendations of the Committee on Judicial Statistics for the creation of additional judgeships, and recommended in addition thereto, that there be created an additional circuit judgeship for the United States Court of Appeals for the Fifth Circuit, which

would increase the number of judgeships for that court to nine. Conference action with respect to these recommendations is shown above.

DEPUTY CLERKS OF COURT

At the request of the Committees the Conference directed the Administrative Office to study the grade classifications of the chief deputy clerks and other personnel in the clerks' offices of the courts of appeals and to report to the Committees prior to their next meeting.

The Conference at its September 1958 session (Conf. Rept., p. 14), directed the Administrative Office to study the differences in duties and responsibilities of deputy clerks of court in charge of divisional offices and to report to the Committees on Supporting Personnel and Court Administration, as to whether or not there should be grade differentials in these positions. The Committees reported that the Administrative Office had submitted a report recommending the adoption of the following resolution:

> *Resolved,* That there shall continue to be grade differentials in the positions of deputy clerks in charge of divisional offices; that the present grade GS–10 ceiling for deputy clerks as provided by the classification plan for clerks' offices of district courts shall be raised to provide a special ceiling of grade GS–11 for deputy clerks in charge of the larger independently operated divisional offices, and that wherever warranted comparable grade raises shall be approved for deputies in charge of other (smaller) independent offices, proportionately scaled downward from the new ceiling of grade GS–11; that substantial latitude shall be allowed the Administrative Office in classifying these positions because of the many variations in the organization of clerks' divisional offices and the distribution of responsibilities among the occupants; that, since funds are not presently available, the upgradings resulting from this determination shall be put into effect as soon as funds do become available, on a gradual basis if necessary; and that such upgradings shall not serve to exclude the deputy clerks concerned from any future general reclassification of positions in clerks' offices.

Upon recommendation of the Committees, the resolution was approved by the Conference.

On motion of Chief Judge Pine, the Committee on Supporting Personnel was directed to make a study of the grade classifications of deputy clerks in charge of divisions in courts not having geographical divisions and to report thereon at the next session of the Conference.

COURT REPORTERS

The Committees reported that they had considered a request of Chief Judge Sylvester J. Ryan for an additional court reporter for the United States District Court for the Southern District of New York and were of the view that the authorization for such additional reporter was a prime necessity. On recommendation of the Committees, the Conference authorized the employment of an additional court reporter for the Southern District of New York at the same salary as the other reporters in the district.

The Committees also reported that since the last meeting of the Conference, the Administrative Office had authorized the position of reporter-law clerk for Senior Judge William J. Barker of the Southern District of Florida, who has continued to perform substantial judicial duties. At present there is a vacancy in a judicial position in this district, which, when filled, will require the services of an additional court reporter. Upon recommendation of the Committees, the Conference approved the action of the Administrative Office and authorized an additional full-time court reporter for the Southern District of Florida, to be appointed when the existing judicial vacancy is filled.

Chief Judge Biggs informed the Conference that Judge Walter H. Hodge of the District of Alaska had requested authority to employ a court reporter at the maximum statutory salary of $7,095 per annum. Judge Hodge pointed out that the reporter he intends to appoint received this salary as the court reporter-secretary to a former district judge of the Territory of Alaska and that his secretarial duties in that position were almost nil. The Committees recommended that the court reporter for the District of Alaska be classified as a non-metropolitan area reporter, but that a salary of $7,095 be approved for this reporter in lieu of overseas cost-of-living differential received by other federal employees in Alaska. This recommendation was approved by the Conference.

The Committees also reported that the United States District Court for the Southern District of California, which has eleven active judges and one senior judge, who continues to perform substantial judicial services, has only eleven authorized court reporter positions. An additional reporter is presently serving the court on a temporary per diem basis. Upon recommendation of the Committee, the Conference authorized a twelfth reporter position for the district at the metropolitan rate of $7,095 per annum.

The Conference was advised by the Committees that the survey of court reporters being conducted by the Administrative Office, with the assistance of the Bureau of the Budget, will be completed in March. After its completion, arrangements have been made for its consideration by a subcommittee, appointed by the Chairman, and by the Committees, with a view toward making a report and recommendations to the Conference at its September session.

Court Criers and Messengers

After a full consideration of the present salary classification for court criers, the Committees have concluded that the classification of Grade GS–4 is insufficient and that the classification for court criers should be changed to Grade GS–5. Since many criers have already completed all possible within-grade promotions and others have reached the final longevity step in Grade GS–4, the Committees recommended that, as soon as funds are available, each crier be placed in a position in Grade GS–5 that would be one full step above his present salary level. The recommendation of the Committees was approved by the Conference.

Upon recommendation of the Committees, the Conference also requested the Administrative Office to make a study of the salary status of the present messengers employed in the United States Courts of Appeals and to report as soon as possible to the Committees in respect thereto.

Secretaries

The Committee of Chief Judges of Multiple-Judge District Courts had recommended to the Committee on Supporting Personnel that the qualification standards for secretaries to judges, Grade GS–10, be amended to reduce the requirement of ten years'

service as a federal judge's secretary to five years or its equivalent. This proposal had been previously considered at the September 1959 session of the Conference (Conf. Rept., p. 10). The Committees, however, were of the view that the matter should have further consideration, and have asked the Administrative Office to study the proposal and to report to the Committees. The Conference granted leave to the Committees to consider the matter further and to report thereon at the next session of the Conference.

Other Supporting Personnel

Upon the recommendation of the Committees, the Conference directed the Administrative Office to proceed as expeditiously as possible with a survey and the preparation of a report with respect to the appropriate grading and classification of personnel in the clerks' offices, the probation offices, and the referees' offices of the district courts to the end that a proper and equitable classification be made for the various positions in these offices.

Employment of Interpreters and Psychiatrists in the Southern District of New York

The Conference at its March 1959 session (Conf. Rept., p. 14) had referred to the Committees on Court Administration and Supporting Personnel the request of Judge Edward J. Dimock with regard to the employment of interpreters on a contract or per diem basis and the payment of fees of psychiatrists by the United States District Court for the Southern District of New York. The proposal is currently under consideration by the Committee on Supporting Personnel and the Conference granted leave to the Committee to report at a later session of the Conference.

Fees and Mileage of Witnesses in Habeas Corpus Proceedings

The Conference granted leave to the Committees on Supporting Personnel and Court Administration to consider further the proposal to provide for the payment of fees and mileage of witnesses in habeas corpus proceedings brought by persons authorized to proceed in forma pauperis, which was referred to the Committees at the September 1959 session (Conf. Rept., p. 20).

National Park Commissioners

The United States District Court for the District of Arizona, pursuant to Public Law 86–258, has appointed a special commissioner for Grand Canyon National Park at an annual salary of $5,950, subject to the approval of the Judicial Conference. This is the same salary paid to the National Park commissioners in the large national parks. The Committees were of the view that this is an appropriate salary for the special commissioner, and upon their recommendation the Conference approved the salary of the special commissioner as fixed by the district court.

Audits of Accounts of Court Officers

It had been brought to the attention of the Committees by Chief Judge Sylvester J. Ryan that the audits of accounts of officers of the courts by the examiners of the Department of Justice occur at relatively long intervals of three to four years. The Director of the Administrative Office had informed the Committees that the Assistant Attorney General, Administrative, concurred in the view that there should be more frequent audits of accounts. The Committees therefore recommended to the Conference that it request the Department of Justice to make annual audits of the accounts of the officers of the courts. This recommendation was approved by the Conference.

Standing Masters Under Rule 53

Upon the recommendation of the Committees, the proposal of Judge John W. Clancy to provide for standing masters under Rule 53, Federal Rules of Civil Procedure, which had been referred to the Committees by the Conference at its March 1959 session (Conf. Rept., p. 14) was referred to the standing Committee of the Conference on Rules of Practice and Procedure.

Seminar for Newly Appointed Judges

The Committees reported that they had considered the proposal to hold a seminar for newly appointed judges (Conf. Rept., Sept. 1959, p. 22) and were informed that Chief Judge Alfred P. Murrah was planning such a seminar to be held in conjunction with the annual Judicial Conference of the Tenth Circuit at

Boulder, Colorado this year. The Committees approved the proposal of Chief Judge Murrah and recommended to the Conference that it authorize such a seminar. The Committees' recommendation was approved by the Conference.

Arbitration of Automobile Accident Cases

S. 2415, 86th Congress, to provide a method for the arbitration of automobile accident cases pending in the United States district courts had been referred to the Committee on Court Administration at the September 1959 session of the Conference (Conf. Rept., p. 20). The Committee reported that it had the matter under consideration, but at the present time insufficient information is available to enable it to make a recommendation with respect to the bill, despite the fact that the Committee on the Judiciary of the United States Senate has requested the views of the Conference with respect to the proposal. The Conference thereupon granted leave to the Committee to consider the matter further and to report at a future date.

Additional Matters Referred to the Committee on Supporting Personnel

On motion of Chief Judge Chambers, the Conference referred to the Committee on Supporting Personnel for study the present salary classifications for librarians and assistant librarians.

BANKRUPTCY ADMINISTRATION

Senior Judge Orie L. Phillips, Chairman of the Committee on Bankruptcy Administration, reported on behalf of the Committee regarding the recommendations contained in the report of the Bankruptcy Division of the Administrative Office, which were approved by the Director on January 15, 1960, relating to changes in salaries for certain full-time and part-time referees and for changes in arrangements in several districts.

The Director's report was submitted 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 views 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 Coun-

cils of the Circuits. The Director's report, together with the views expressed by the district judges and the Circuit Councils, was considered by the Committee. The Conference had before it the Committee's report, as well as the recommendations of the Director, the district judges and the Circuit Councils. Upon the recommendation of the Committee, the Conference took the action shown in the following table relating to changes in salaries of referees:

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
2d Circuit					
New York (N)	Albany	Full-time	$12,500	Full-time	$15,000
4th Circuit					
Maryland	Baltimore	do	13,750	do	15,000
5th Circuit					
Mississippi (N)	Houston	Part-time	2,500	Part-time	3,000
6th Circuit					
Tennessee (M)	Nashville	Full-time	12,500	Full-time	15,000
8th Circuit					
North Dakota	Fargo	Part-time	3,500	Part-time	4,500

These changes in salaries are to become effective on July 1, 1960 provided the necessary funds are contained in the 1961 appropriations for the Judiciary.

Upon the recommendation of the Committee, the Conference took the following action with regard to changes in arrangements:

SECOND CIRCUIT

Northern District of New York:

(1) Established concurrent district-wide jurisdiction for the referees in the district.

(2) Discontinued Malone as a designated place of holding court for the referees in the district.

(3) Designated Massena as an additional place of holding court for the referees in the district.

FOURTH CIRCUIT

Eastern District of Virginia:

(1) Redescribed the territories of the three referees in the Eastern District of Virginia to conform to the descriptions contained in the local rules of court as follows:

(*a*) Territory of the Norfolk referee to include: the Cities of Norfolk, Portsmouth, Suffolk, Franklin, South Norfolk, Virginia Beach and Cape Charles, and the Counties of Accomac, Northampton, Princess Anne, Norfolk, Nansemond, Isle of Wight, Southampton, and any other city or town geographically within the exterior boundaries of said counties, and the Cities of Newport News, Hampton, and Williamsburg, and the Counties of York, James City, Gloucester, Mathews, and any other city or town geographically within the exterior boundaries of said counties.

(*b*) Territory of the Richmond referee to include: the City of Richmond and the Counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland, and any other city or town geographically within the exterior boundaries of said counties.

(*c*) Territory of the Alexandria referee to include: the City of Alexandria and the Counties of Loudoun, Fairfax, Culpeper, Fauquier, Arlington, Prince William, Orange and Stafford and any other city or town geographically within the exterior boundaries of said counties.

SIXTH CIRCUIT

Middle District of Tennessee:

(1) Discontinued the part-time referee position at Cookeville.

(2) Extended the territory of the Nashville referee to include the entire Middle District of Tennessee.

(3) Designated Cookeville as an additional place of holding court for the referee at Nashville.

Salaries, Terms of Office and Retirement of Referees

Judge Phillips reported that a subcommittee, consisting of District Judge Edward Weinfeld, Chairman, Circuit Judge Bailey Aldrich and District Judge Albert V. Bryan, appointed by him to consider various proposals relating to the salaries, terms of office, and retirement of referees, had submitted its findings. After careful consideration of these findings and of the subcommittee report considered as a whole, the Committee recommended to the Conference each of the following proposals of the subcommittee:

(1) That a more liberal retirement plan for referees be provided based on a contribution of 7½ percent of the base pay to be contributed by the employee and a matching 7½ percent contribution from the Referees' Salary and Expense Fund by the employing agency, and that compulsory retirement at age 75 be made a part of the liberalized retirement for referees.

(2) That the term of office of a full-time referee be increased from 6 years to 12 years; the term of office of a part-time referee to remain at 6 years, as at present.

(3) That the maximum salary of a part-time referee be increased from $7,500 to $8,500 per annum and the maximum salary of a full-time referee be increased from $15,000 to $17,500 per annum.

The Conference considered fully each of these three proposals and voted to approve the program with reference to the retirement plan for referees and to the terms of office for full-time referees. However, the proposal to increase the maximum salary of full-time and part-time referees was referred back to the Committee for further study.

Legislation

The Committee reported to the Conference concerning the following legislative proposals considered by the Committee:

(1) *H.R. 4150, to amend Section 2a of the Bankruptcy Act (11 U.S.C. 11a) to give the bankruptcy court jurisdiction to determine the dischargeability of provable debts.*—This bill had been considered previously by the Conference and approved (Conf. Rept., March 1959, p. 18). However, the House Judiciary Committee was of the view that the right of a creditor to sue the bankrupt on a debt, which is alleged to be nondischargeable, in a court other than the bankruptcy court should be preserved, and that additional jurisdiction for the bankruptcy court to determine the effects of a discharge should be authorized only where both the creditor and the bankrupt consent to have the bankruptcy court decide the question. Accordingly, the House Judiciary Committee amended a portion of Section 1 of the bill to read as follows:

> Upon application of the bankrupt and the creditor concerned determine the dischargeability or nondischargeability of all provable debts.

The bill passed the House on September 7, 1959.

It was the view of the Committee that this amendment, to a large degree, nullifies the objective of the bill, and that upon the application of either the bankrupt or the creditor, the bankruptcy court should have jurisdiction to determine the dischargeability of all provable debts. Accordingly, the Committee recommended that the word "and" in the above quoted portion of the bill be

amended by inserting in lieu thereof the word "or" and that the bill, as so amended, be approved by the Conference. The Conference thereupon reaffirmed its approval of the bill as thus amended.

(2) *H.R. 4346, to amend the Bankruptcy Act to limit the use of false financial statements as a bar to discharge, by eliminating as a ground for the complete denial of a discharge the obtaining of money or credit by a false financial statement issued by a nonbusiness bankrupt.*—While the obtaining of money or property on credit through the issuance of a false financial statement under the provisions of the bill is no longer to be a ground for the complete denial of a discharge to a nonbusiness bankrupt, the bill makes it clear that the particular debt incurred as a result of a false statement may not be discharged under Section 17 of the Bankruptcy Act. The bill passed the House of Representatives with minor amendments on September 7, 1959 and is now pending before the Senate Judiciary Committee. Upon recommendation of the Committee, the Conference approved the amendments now proposed and reaffirmed its approval of the bill, as amended by the House of Representatives.

(3) *H.R. 4850, to amend Sections 60b, 67e and 70e of the Bankruptcy Act (11 U.S.C. 96b, 107e, and 110e) to give the bankruptcy court summary jurisdiction in actions involving preferences, liens and fraudulent transfers, and the trustee's title to property.*—Upon the recommendation of the Committee, the Conference reaffirmed its approval of the bill. (Conf. Rept., March 1959, p. 19).

(4) *H.R. 6556, to amend Section 39c of the Bankruptcy Act (11 U.S.C. 67c) to clarify the time for filing a petition to review a referee's order.*—The Conference at its September 1959 session (Conf. Rept., p. 25) approved the suggestion of the Committee that H.R. 6556 be amended by inserting after the second sentence thereof the following:

> Unless the person aggrieved shall petition for review of such order within such 10-day period, or any extension thereof, the order of the referee shall become final.

Upon recommendation of the Committee, the Conference reaffirmed its approval of the bill with the above amendment.

(5) *S. 2052 and H.R. 6557, to amend Section 48c of the Bankruptcy Act (11 U.S.C. 76c) to increase the closing fee of the trustee in bankruptcy from $5.00 to $10.00, and to amend Section 132 of*

the Bankruptcy Act (11 U.S.C. 532) to require payment of a filing fee of $120.00 instead of $100.00 upon the filing of an original Chapter X petition.—The increase of $20.00 in the filing fee for a Chapter X petition would provide the sum of $50.00 for the fees required under Sections 40c, 48c and 52a of the Bankruptcy Act (11 U.S.C. 68c, 76c, 80a), in the event an adjudication is entered. S. 2052 passed the Senate on August 24, 1959. Upon the recommendation of the Committee, the Conference approved the bill.

(6) *H.R. 6816, to amend Section 57a of the Bankruptcy Act (11 U.S.C. 93a) and 18 U.S.C. 152 to eliminate the requirement that proofs of claim be verified under oath.*—The Conference at its September 1959 session (Conf. Rept., p. 25) recommended that H.R. 6816 be amended by adding the following sentence:

> A proof of claim filed in accordance with the requirements of the Bankruptcy Act, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

On recommendation of the Committee, the Conference reaffirmed its approval of the bill as thus amended.

(7) *H.R. 7242, to amend Sections 1(29), 57j, 64a, 67b, 67c and 70c of the Bankruptcy Act (11 U.S.C. 1(29), 93j, 104a, 107b, 107c and 110c), relating to priority claims, statutory liens and title to property.*—This bill, which supersedes H.R. 4158 previously approved by the Conference (Conf. Rept., March 1959, p. 18), preserves the present position of the costs of administration and wages in the distribution of the assets of a bankrupt and at the same time enables valid contractual liens, such as chattel mortgages, conditional sales contracts, trust receipts and the like, to retain their position ahead of statutory liens on personal property unaccompanied by possession. The bill is identical with H.R. 4158 except for the addition in the first line after the word "Debts" of the phrase "whether or not secured by lien". This phrase was contained in a bill previously approved by the Conference (Conf. Rept., Sept. 1957, p. 22). On recommendation of the Committee, the Conference reaffirmed its approval of the proposals contained in H.R. 7242 and recommended its passage.

(8) *H.R. 7726, to eliminate the present requirement contained in Section 678 of the Bankruptcy Act (11 U.S.C. 1078) that copies*

of petitions, notices and orders in Chapter XIII (Wage Earners) proceedings be sent to the Secretary of the Treasury, and to provide in lieu thereof that the notice of the first meeting of creditors be given to the District Director of Internal Revenue for the district in which the court is located and to the Comptroller General of the United States, as provided in Section 58e.—This bill would make the requirements for mailing notices in Chapter XIII cases to certain officers of the Government similar to those provided by Section 58e in straight bankruptcy cases. Section 58e also requires that a notice of the first meeting of creditors be mailed to the head of any department, agency or instrumentality, whenever the schedules of the bankrupt disclose a debt due to the United States acting through any department, agency or instrumentality thereof.

The Committee reported that it had been informed that the Comptroller General did not desire to receive the notice of the first meeting of creditors in Chapter XIII cases, or in any other bankruptcy case, except where the bankrupt was engaged in the business of transporting persons or property. He therefore suggested that the reference to the Comptroller General contained in H.R. 7726 be eliminated, and further, that an additional section be added to the bill that would amend Section 58e of the Bankruptcy Act to require that notices in straight bankruptcy cases be sent to him only when the bankrupt has been engaged in the transportation business.

The Committee concurred generally with the proposal of the Comptroller General, but was of the view that notices involving bankrupts engaged in the transportation business should be sent to the Comptroller General only "where it clearly appears on the face of the petition" that the bankrupt has been engaged in such business. The Committee accordingly recommended that the present reference to the Comptroller General in H.R. 7726 be eliminated and that the bill be amended by adding thereto the following additional section:

> SEC. 2. Section 58e of the Bankruptcy Act, as amended (11 U.S.C. 94(e)), is amended by changing the comma following the word "located" in the first sentence thereof to a period, deleting the balance of that sentence, and substituting for the deleted portion the following new sentence:

In cases involving a bankrupt where it clearly appears on the face of the petition that the bankrupt is or was engaged in the business of transporting persons or property, the court also shall mail, or cause to be mailed a copy of such notice to the Comptroller General of the United States.

The Conference thereupon approved the recommendation of the Committee.

(9) *H.R. 7727, to amend Sections 334, 367 and 369 of the Bankruptcy Act (11 U.S.C. 734, 767 and 769) and to add a new Section 355 to require claims to be filed in Chapter XI (Arrangement) proceedings filed under Section 322, within six months from the first date set for the first meeting of creditors as is now required by Section 57n in straight bankruptcy proceedings.*—The Conference at its September 1959 session (Conf. Rept., p. 26) directed that a further study be made of the proposal to require the filing of claims in Chapter XI cases, which the Conference had previously approved (Conf. Rept., March 1959, p. 23).

It was the view of the Committee, after further study, that since Chapter XI cases frequently involve large and complicated arrangements, as well as relatively simple compositions or extensions, and that the debtor's schedules are frequently inaccurate as to the amounts of the debts listed, that the reasons for requiring the filing of claims in ordinary bankruptcy cases apply equally to Chapter XI proceedings. The Committee pointed out that debtors in Chapter XI proceedings are usually engaged in business and often will not know the precise amount due on each debt considering interest, carrying charges, discounts, rebates, refunds, returns for credit and the like. Further, if the debtor is left in possession, there may be no one to challenge the accuracy of claims, even though a creditors' committee has been appointed. It therefore seemed wise to the Committee to require claims to be filed in Chapter XI cases. Upon recommendation of the Committee, the Conference reaffirmed its approval of the proposals contained in H.R. 7727.

(10) *H.R. 8708, to amend Section 60d of the Bankruptcy Act (11 U.S.C. 96d) to give the Bankruptcy Court on its own motion, or on petition of the bankrupt made prior to the granting of his discharge, jurisdiction to determine the reasonableness of fees paid, or agreed to be paid, to his attorney for services rendered, or*

to be rendered.—The proposal contained in this bill, which supersedes H.R. 6352, had been previously considered and approved by the Conference at its March 1959 session (Conf. Rept., pp. 20 and 21). On recommendation of the Committee, the Conference reaffirmed its approval of the proposals embodied in H.R. 8708.

Appointment of Receivers and Trustees

Judge Phillips informed the Conference that the study of the appointments of receivers and trustees and the audit of statistical reports of cases closed in the bankruptcy courts, commenced last year by the Administrative Office with the approval of the Committee and the Conference (Conf. Rept., Sept. 1959, p. 28) had disclosed a number of apparent violations of the monopoly statute (11 U.S.C. 76a), as well as a laxity on the part of certain referees and trustees in observing the provisions of the Bankruptcy Act and the General Orders. The Committee was of the view that this program should continue as a permanent part of the work of the Bankruptcy Division of the Administrative Office. The Conference agreed with the Committee's view.

During the past year the Administrative Office has received substantial assistance from the examiners of the Department of Justice, but because of the limited staff of examiners, regular examinations of judicial offices are made only infrequently. As a result they are ineffective, to a large degree, in bringing to the attention of the Director in a timely manner situations which should be corrected. The Committee was of the view that a larger staff of examiners was required to assist in this work and recommended that the Conference request the Director and the Budget Committee to take up the need for additional examiners with the Department of Justice to the end that provision may be made in the budget of the Department for an adequate staff of examiners. This recommendation was approved by the Conference.

Schedule of Fees and Special Charges

The Committee recommended a revision in the schedule of fees and charges, promulgated by the Conference, pursuant to Section 40c of the Bankruptcy Act (11 U.S.C. 68c), which will combine the charges to be made for the salaries and expenses of

referees to reflect the consolidation of the referees' salary and expense funds, which will become effective July 1, 1960. Both the consolidation of the salary and expense funds and the new schedule of fees and charges to be made by the referees will greatly simplify the work of the offices of the referees and clerks of court and will relieve the Administrative Office and the Treasury Department of a considerable burden of record keeping in accounting for this money. The Conference approved the revised schedule and directed that it be made effective July 1, 1960. The new schedule is as follows:

SCHEDULE OF FEES AND CHARGES

ADDITIONAL FEES TO BE CHARGED IN ASSET, NOMINAL ASSET, ARRANGEMENT AND WAGE-EARNER CASES

I. *Fees to be Charged in Asset and Nominal Asset Cases*

Three percent on net realization in straight bankruptcy cases filed from July 1, 1947 to December 31, 1953, inclusive.

Two percent on net realization in straight bankruptcy cases filed from January 1, 1954 to December 31, 1956, inclusive.

On and after January 1, 1957, two and one-half percent on the first $50,000 of net realization in straight bankruptcy cases and two per cent on the balance of net realization, with a minimum charge of $5.00.

II. *Fees to be charged in Arrangement Cases filed under Chapter XI*

One and one-half per cent on total obligations paid or extended in Chapter XI cases filed from July 1, 1947 to December 31, 1953, inclusive.

One per cent on total obligations paid or extended in Chapter XI cases filed on and after January 1, 1954.

III. *Fees to be Charged in Wage-Earner Cases filed under Chapter XIII*

Referees' expenses in Chapter XIII cases, $10.00 per case where liabilities do not exceed $200.00, and $15.00 per case in all other Chapter XIII cases filed on and after July 1, 1947.

One and one-half per cent upon payments made by or for the debtor in Chapter XIII cases filed from July 1, 1947 to December 31, 1953, inclusive.

One per cent upon payments made by or for the debtor in Chapter XIII cases filed on and after January 1, 1954.

IV. *Schedule of Special Charges to be made under Section 40c(3) of the Bankruptcy Act (11 U.S.C. 68c(3) for Deposit to the Referees' Salary and Expense Fund*

1. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act, in excess of 30 notices per set, 10¢ for each additional notice on the first 10,000 and 5¢ per notice on the balance, provided, that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed 25% of the net proceeds realized.

2. For each set of objections filed to a discharge or confirmation of an arrangement, or plan, $10 to be paid by the objecting creditor provided that no such charge shall be made for filing objections to a discharge by the United

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States Attorney. Where objections to a discharge are filed by the trustee, the charge shall be paid from the estate of the bankrupt unless waived by the court.

3. 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.

4. For making a copy (except a photographic reproduction) of any record or paper, and certification thereof, 65 cents per page of 250 words or fraction thereof. For comparing with the original thereof any copy (except a photographic reproduction) of any transcript of record, entry, record or paper when such copy is furnished by the person requesting certification, 10 cents for each page of 250 words or fraction thereof and 50 cents for each certificate.

For a photographic reproduction of any record or paper, and the certification thereof, 50 cents for each page. For comparing with the original thereof any photographic reproduction of any record or papers not made by the referee, 5 cents for each page and 50 cents for each certificate.

5. For clerical aid on all claims filed in excess of 10, for filing, recording, computing and distributing dividend, 25 cents each in asset cases and cases filed under the relief chapters of the act.

6. For reporting performed by a regularly employed member of the referee's staff a charge may be made for transcripts not exceeding the rates charged by the regular court reporter. The charge shall be paid from the estate of the bankrupt or by the parties requesting that the stenographic record be made and the proceeds shall be transmitted to the clerk for deposit to the credit of the Referees' Salary and Expense Fund.

Jury Trials by Referees in Bankruptcy

Judge Phillips called to the attention of the Conference the inquiry of Senator James O. Eastland, Chairman, Committee on the Judiciary of the United States Senate, with respect to the legality of the conduct of jury trials by referees in bankruptcy. The Conference considered the matter at length, and after a full discussion, adopted the following resolution:

> Without expressing an opinion as to any question of law involved, it is the sense of the Judicial Conference that referees in bankruptcy should not preside upon jury trials of involuntary petitions in bankruptcy; further, that this matter be referred to the standing Committee of the Conference on Rules of Practice and Procedure.

The Director of the Administrative Office was instructed, simultaneously with the adoption of the resolution, to advise the Committee on the Judiciary of the United States Senate of the action of the Conference.

HABEAS CORPUS PROCEDURE

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, informed the Conference that H.R. 3216, to amend 28 U.S.C. 2254 in reference to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a State court, recommended by the Committee and approved by the Conference (Conf. Rept., Sept. 1959, p. 37), had passed the House of Representatives and was now pending before the Senate Judiciary Committee. The Committee is hopeful that final action on the bill will be taken at this session of Congress.

REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Chief Judge William F. Smith, Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

Setting Aside Convictions of Youth Offenders

The Committee reported that it had considered fully the proposal to authorize the setting aside of the conviction of a youth offender prior to the expiration of the maximum term of probation, referred to it by the Conference at its March 1959 session (Conf. Rept., p. 33) and was of the view that the proposal should be enacted into law. The Committee presented a draft bill to amend the Youth Corrections Act, 18 U.S.C. 5021, by adding thereto an additional paragraph to read as follows:

> Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.

The Conference thereupon approved the draft bill presented by the Committee.

Mandatory Capital Punishment in the District of Columbia

Chief Judge Smith reported that there had been referred to the Committee S. 2083 to abolish the mandatory capital punishment provision of the District of Columbia murder statute. The Committee also considered both the proposal of U.S. Attorney Oliver Gasch to amend 18 U.S.C. 1111 to make the provisions of the criminal code applicable to the District of Columbia and a draft bill prepared by a Committee of the Judicial Conference of the District of Columbia Circuit which would permit a jury to recommend life imprisonment. The Conference discussed these proposals fully and upon the recommendation of the Committee approved the draft bill prepared by the Committee of the District of Columbia Circuit Conference.

Appeals by the United States in Criminal Cases

There had been brought to the attention of the Committee five separate bills, S. 1644, S. 1721, H.R. 4186, H.R. 9063, and H.R. 9181, each of which contemplates the amendment of 18 U.S.C. 3731, to authorize an appeal by the United States from an order suppressing evidence in a criminal case. The two bills on which a hearing has been held by the House Judiciary Committee would authorize an appeal "from a decision entered before or after the trial has begun, sustaining a motion to suppress evidence, if the United States Attorney certifies and the court is satisfied that such decision involves a controlling question of law in that the prosecution is unable to proceed with its case without the suppressed evidence." The Committee members had grave doubts as to the constitutionality of any provision granting the right of appeal to the Government in a criminal case from a decision entered "after trial has begun," but agreed to consider the problem further. However, the Committee did recommend the draft of a bill which reserves to the Government a right of appeal "from an interlocutory order entered prior to trial of a criminal case sustaining a motion to suppress either tangible or intangible evidence."

The Conference considered the proposal at length and directed that it be referred back to the Committee for further study in the light of the discussions in the Conference.

The Committee also expressed the view that the need for an appeal from a suppression order entered after trial has commenced may be due largely to the dilatory tactics of defense counsel. The Committee therefore suggested that the Standing Committee on the Rules of Practice and Procedure consider the present effect of Rule 41(e), Federal Rules of Criminal Procedure, in respect to the discretion of the Court to entertain a motion to suppress evidence after trial has commenced. The Conference thereupon referred the matter to the Committee on Rules of Practice and Procedure.

Institute of Corrections

Upon recommendation of the Committee the Conference approved H.J. Res. 4, 86th Congress, to authorize the Attorney General to establish an Institute of Corrections for the training and instruction in the field of correctional methods and techniques of correction personnel selected by States and their municipal subdivisions.

Criminal Offense Not Committed in Any District

S. 1642 and H.R. 4154, 86th Congress, which are substantially alike, would amend 18 U.S.C. 3238 to provide as follows:

> The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

Upon recommendation of the Committee, the Conference approved these bills.

Punishment for Contempt of Court

The Committee recommended that the proposals contained in S. 1231, H.R. 2262 and H.R. 5115, 86th Congress, to provide for trial by jury of criminal contempt cases, which would have the effect of limiting the contempt powers of courts, be disapproved. This recommendation was approved by the Conference.

Time for Noting an Appeal in a Criminal Case

Judge Bazelon, a member of the Committee on the Administration of the Criminal Law, had requested that the Committee consider an amendment to Rule 37(a)(2), Federal Rules of Criminal Procedure, to permit the enlargement of the time for noting an appeal in a criminal case, where it was determined that the failure to file the notice of appeal within the time specified was ascribable to "excusable neglect". Upon recommendation of the Committee the Conference referred the proposal to the Standing Committee of the Conference on Rules of Practice and Procedure.

Abolition of Capital Punishment in the Criminal Code

Chief Judge Smith reported that the Committee had considered H.R. 870, 86th Congress, to abolish the death penalty under all laws of the United States, except the Uniform Code of Military Justice. At the suggestion of Judge George Boldt, the Committee has undertaken to study all the statutes which define offenses punishable by death before making any recommendation. The Conference thereupon authorized the Committee to conduct such study and to report thereon at a later session of the Conference.

Time Spent by Defendants in Confinement Prior to Sentencing

The Committee recommended approval of S. 2932, 86th Congress, to permit a reduction of the term of imprisonment equal to the time a person is held in custody for want of bail while awaiting trial. The bill would provide as follows:

> The sentence of imprisonment of any person convicted of an offense in a court of the United States shall commence to run from the date such person is received at the penitentiary reformatory, or jail for service of said sentence: Provided, that the Attorney General shall give any such person credit toward service of his sentence for any days spent in custody for want of bail set for the offense under which sentence was imposed.

The Conference thereupon approved the proposal.

Payment of Compensation to Counsel Appointed to Represent Poor Persons Accused of Crime

Chief Judge Smith reported that the Committee had considered fully the views of the National Legal Aid Society and of the New York Legal Aid Society with respect to the proposal to authorize grants to Legal Aid Societies and other organizations providing free legal services to indigent persons accused of crime in the Federal courts. Both groups are in favor of S. 895 and H.R. 4185, 86th Congress, as now written, but, if the legislation is enacted, they desire an opportunity later to present another bill which would allow grants to Legal Aid Societies on a local basis in those districts which do not desire to institute the public defender system. The Conference thereupon reaffirmed its approval of H.R. 4185.

United States Commissioners

The Committee reported that it had discussed preliminarily a program of study of the United States Commissioner system and that it would endeavor to enlist the services of the Institute of Judicial Administration at the New York University School of Law. On motion of Chief Judge Savage, the Conference authorized the Committee and the Administrative Office, in their discretion, to enlist such aid.

Juvenile Offenders in the District of Columbia

The Conference at its September 1959 session (Conf. Rept., p. 30) called to the attention of the Committee, the problem of the waiver by the Juvenile Court of the District of Columbia to the District Court of jurisdiction over juvenile offenders. The Juvenile Court in the District of Columbia has statutory authority to waive its jurisdiction over serious felonies committed by juveniles under 18 to the United States District Court for the District of Columbia, when, in its discretion, it deems that court to be proper.

The Committee reported that, after considering the problem, it was of the view that juvenile cases are essentially local matters, which should be handled by the Juvenile Court of the District of Columbia, and that the question of the proper disposition of juvenile cases requires trained and specialized personnel which at present are available only in the Juvenile Court. The Committee was

also of the view that such cases do not ordinarily belong in the criminal part of the United States District Court, that the District Court has no adequate facilities to dispose of such cases, and that to inject the added burdens of sifting local juvenile cases on an already overburdened district court would probably require more United States district judges and a duplicate professional staff for juvenile cases. The report of the Committee was approved by the Conference.

REPORT OF THE COMMITTEE ON JUDICIAL STATISTICS

Chief Judge Harvey M. Johnsen, Chairman of the newly revised Committee on Judicial Statistics, reported that the Committee had met and had reviewed the comprehensive statistical data compiled by the Administrative Office and other information concerning the need for additional judgeships in the courts of appeals and district courts. The Committee's recommendations for additional judgeships and Conference action with respect thereto are shown above.

Judge Johnsen addressed the Conference informally concerning the work of the Committee. He stated that the Committee had received a number of requests and suggestions that it make a reexamination and reappraisal of some of the statistical standards and bases now used in reporting the work of the courts, including several resolutions of the Conference Committee on Multiple-Judge Courts. These matters already have been discussed, but because of its very recent reorganization, the Committee at present is not prepared to take action on them. Mr. Olney has also informed the Committee that a survey is being made to see what additional statistical materials concerning court administration are now available, which it may be possible to furnish in relation to the operation of the court system and the work of the courts.

The Committee plans at subsequent meetings to canvass these and all other suggestions received and hopes through the Administrative Office to make available additional information on the effect of procedural and jurisdictional changes on the business of the courts. The Committee has therefore recommended to the Administrative Office that it continue to study the improvement of its present methods of reporting the business of the courts and to report thereon to the Committee.

The Committee also recommended to the Conference and to the Director of the Administrative Office, that steps be taken to provide for additional personnel in the Division of Procedural Studies and Statistics. This recommendation was approved by the Conference.

REPORT OF THE COMMITTEE ON PRETRIAL PROCEDURE

Chief Judge Alfred P. Murrah, Chairman of the Committee on Pretrial Procedure, submitted to the Conference the Handbook of Recommended Procedures for the Trial of Protracted Cases, developed under the direction of the special panel of judges appointed by the Chief Justice to make a study of pretrial procedure in protracted litigation. The Handbook, as explained by Judge Murrah, is a well-organized compilation of suggested procedures and correlated forms for use by court and counsel in developing for trial a case involving numerous parties, multiple issues, or voluminous documents. It is a compendium of the many valuable ideas and suggestions expressed by experienced judges and trial counsel at the three seminars on protracted cases conducted by the study group in cooperation with the Committee on Pretrial Procedure.

The recommendations of the study group with respect to the Handbook are as follows:

1. That the Handbook be accepted and approved by the Judicial Conference as a Conference document.

2. That the Director of the Administrative Office be instructed to arrange for the printing of the Handbook together with an appropriate foreword by the Chairman of the study group, the printing format to be approved by a subcommittee of the study group to be appointed by its Chairman.

3. That copies of the Handbook, together with the approving resolution of the Conference be supplied to all United States judges and to the Chairmen of the Judiciary Committees of the Senate and House of Representatives.

4. That the Administrative Office arrange through the Government Printing Office, or private publisher, to have the Handbook made available to the legal profession generally.

The Conference approved these recommendations and directed that upon the printing and distribution of the Handbook, the panel of judges appointed to make the special study be discharged with the sincere appreciation of the Conference for a job well done. At the request of Chief Judge Murrah the Conference granted permission to release immediately its action with respect to the Handbook.

Chief Judge Murrah also reported that the Committee on Pretrial Procedure had completed a survey among the district judges on the use of Pretrial Procedure. On the basis of the information compiled the Committee plans to prepare a statement of the essential elements of a Pretrial Conference and hopes to have this statement available for discussion at the seminar to be held in conjunction with the Judicial Conference of the Tenth Circuit in July.

REPORT OF THE COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Chief Judge Harry E. Watkins, Chairman of the Committee on the Operation of the Jury System, informed the Conference that the study of the operation of the jury system in the United States District Courts, authorized by the Conference at its September 1957 session, (Conf. Rept., p. 33) had been completed. A tentative draft of a report, with recommendations as to improvements in the jury system, has been sent to each United States district judge with a request for additional suggestions and comments. The draft report is also being sent to the clerks of the district courts. The suggestions received will be considered at the next meeting of the Committee and a final report will be presented to the Conference at its next session.

Warren Olney III, Director of the Administrative Office, brought to the attention of the Conference the varying practices which had been disclosed in the surveys, conducted by the Administrative Office, of the cost of the operation of the jury system in the large multiple-judge courts. He noted in particular the divergencies in practice in paying per diems to jurors on empanelment day. He also called to the attention of the Conference the practice in some states of taxing jury fees as costs to the litigants in civil cases. These matters were referred to the Committee on the Operation of the Jury System for study and report to the Conference.

REPORT OF THE ADVISORY COMMITTEE ON THE ASSIGNMENT AND DESIGNATION OF JUDGES

Circuit Judge Jean S. Breitenstein, Chairman of the Advisory Committee on the Assignment and Designation of Judges, submitted to the Conference a revised comprehensive plan, prepared by the Committee, for the inter-circuit assignment of judges. He informed the Conference that following approval of the plan previously submitted at the September 1959 session of the Conference (Conf. Rept., p. 33), the Committee became aware of a reluctance on the part of some chief judges to give the work of the Committee their full support. The Committee thereupon formulated a statement of its understanding of the scope of its work and of the general policy underlying its proposed operations, and undertook to visit the chief judge of each circuit to advise him personally of the position of the Committee and to encourage his cooperation. Thereafter, the Committee developed a statement of policy with respect to the assignment of judges, which was submitted with the plan.

The Conference considered fully the statement of policy and the proposed plan for the inter-circuit assignment of judges, as set forth in the Committee report. Every detail of the report was carefully explained by Judge Breitenstein. After amending the statement of policy to eliminate any reference to the obligation of a judge to accept an assignment outside of his circuit, the Conference thereupon approved both the statement of policy, as amended, and the Committee's plan for the inter-circuit assignment of judges and directed that, except for assignments theretofore arranged, the plan become effective on July 1, 1960.

A summary of the policy statement and plan, as approved by the Conference, is as follows:

Policies Governing the Assignment of Judges

1. That the courts created by Congress constitute a composite unit of the Government and are designed, intended, and expected to administer justice throughout all of the United States.

2. That the authority of the chief judge of a circuit, or the chief judge of a special court to request outside judicial help, and the authority to consent to the assignment of an active judge by the chief judge or judicial council of a circuit,

or the chief judge of a special court, must be recognized at all times. Requests for assistance should be made to, and, except in the case of senior judges, offers of help should be made through the respective chief judges of the circuits and of the special courts.

3. That in arranging for the inter-circuit assignment of a judge, the controlling principle should be "benefit to the judicial system as a whole" and that a certificate of necessity ordinarily should not be issued when there are within the circuit, or special court requesting the transfer, judges reasonably available to supply the needs of the circuit or the special court. Such benefit will occur in situations involving an emergency, vacancy in a judgeship, the disability of a judge, the accumulation of court business beyond the ability of the appointed active judges to handle expeditiously, or the over-all improvement of judicial administration.

4. That consent to the inter-circuit assignment of an active judge who is not reasonably current with his work ordinarily should not be given. In situations where a judge is reasonably current with his own work, but the court to which he is appointed is not current, the assignment may be approved when the experience which such judge may be expected to gain, and the services to be rendered, will contribute to the over-all improvement of judicial administration. Consent to the inter-circuit assignment of a newly appointed judge may be given when there is a reasonable expectation that the experience to be gained will be useful in the performance of his judicial duties in the court of appointment. In emergency situations, consent should be given freely.

5. That senior judges be encouraged to have their names placed on the Roster of Senior Judges and to carry on such judicial work as their personal situations warrant.

Procedure for the Assignment of Judges

1. That there be appointed by the Chief Justice an Assignment Committee composed of five judges with headquarters at the official station of the chairman of the Committee, who would be authorized to employ such secretarial and clerical help as may be reasonably required.

2. That the Committee assist in the assignment and designation of federal judges for service outside of their circuits, or the special courts to which they have been appointed, by making recommendations to the Chief Justice, but without authority to approve or to disapprove such assignments.

3. That all requests by the chief judge of a circuit or the chief judge of a special court for the assignment of a judge to his circuit or court, be presented to the Committee. The request should state why, when, where and for how long such service is required and the type of judicial work to be performed.

4. That an offer of an active judge to serve outside of the circuit or special court to which he is appointed, be first submitted to the chief judge or the Judicial Council of the Circuit, or in the case of a judge of a special court to the chief judge of that court, and, if approved, that it then be transmitted to the Committee. The offer of a senior judge to serve outside of his circuit should be transmitted directly to the Committee.

5. That upon the receipt of a request for the services of a judge, the Committee shall communicate with the chief judge of the circuit, or the chief judge of the special court from which an offer of service has been received, or directly with a senior judge who has offered his services, to ascertain the availability of a judge to accept the assignment.

6. That if a request for an assignment is received and no offer of service has been made by a judge available for such assignment, the Committee shall ascertain from the chief judges of the circuits, the chief judges of the special courts, or directly from the senior judges, the availability of a judge to accept such assignment.

7. That having ascertained the availability of a judge to accept an assignment, the Committee shall secure the required certificate of necessity and the grant of consent, or, in the case of a senior judge, his statement as to availability, and transmit them to the Chief Justice with the recommendation of the Committee.

8. That in the event the requests for service exceed the number of judges available for such service, the Committee shall recommend to the Chief Justice which requests shall be

preferred and in making such recommendation, shall give priority to situations of emergency, vacancy, and disability.

9. That the Committee prepare a statement from time to time showing the courts of appeals, district courts and special courts which need, or may need, the services of judges from other circuits and courts, the courts from which judges are, or might reasonably be expected to be available for such service, and the senior judges who are available for service away from their circuits or courts. Copies of the statement shall be sent by the Committee to the Chief Justice and to the chief judges of each circuit and of each special court.

10. That the Committee prepare for each meeting of the Judicial Conference of the United States, a report showing the requests received for the services of judges, the offers received of availability for assignments to other courts, the recommendations which the Committee has made with respect to assignments, and any other pertinent information.

JOINT REPORT OF THE COMMITTEES ON COURT ADMINISTRATION AND REVISION OF THE LAWS

Senior Judge Albert B. Maris, Chairman of the Committee on the Revision of the Laws, submitted a report on legislative proposals considered jointly by the Committees on Court Administration and Revision of the Laws:

(1) *Abolition of Terms of Court.*—The Conference at its March 1959 session (Conf. Rept., p. 13) referred to the Committee on Court Administration the proposal of Judge Carl A. Hatch to repeal the statutes requiring the holding of formal terms of court and to provide that courts shall be in continuous session. The Committees were of the view that the requirement for holding formal, periodic terms by the district courts no longer serves any useful purpose and that the statutory requirements for such terms should be eliminated.

The Conference thereupon approved the following draft of a bill presented by the Committees:

A BILL

To provide that the district courts shall be always open for certain purposes, to abolish terms of court and to regulate the sessions of the courts for transacting judicial business.

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled That sections 138, 139, 140, and 141 of title 28, United States Code, be amended to read as follows:

138. *Terms abolished; court always open*

The district court shall not hold formal terms but shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

139. *Times for holding regular sessions*

The times for commencing regular sessions of the district court for transacting judicial business at the places fixed by this chapter shall be determined by the rules or orders of the court. Such rules or orders may provide that at one or more of such places the court shall be in continuous session for such purposes on all business days throughout the year. At other places sessions of the court shall continue for such purposes until terminated by order of final adjournment or by commencement of the next regular session at the same place.

140. *Adjournment*

(*a*) Any district court may by order made anywhere within its district, adjourn or, with the consent of the judicial council of the circuit, pretermit any regular session of court for insufficient business or other good cause.

(*b*) If the judge of a district court is unable to attend and unable to make an order of adjournment, the clerk may adjourn the court to the next regular session or to any earlier day which he may determine.

141. *Special sessions; places; notice*

Special sessions of the district court may be held at such places in the district as the nature of the business may require, and upon such notice as the court orders.

Any business may be transacted at a special session which might be transacted at a regular session.

SEC. 2 Section 1869 of title 28, United States Code, is amended by striking out the word "term" and inserting in lieu thereof the word "session".

(2) *Judicial Survivors Annuity Act.*—Judge Maris informed the Conference that as a result of a revision of the Civil Service Retirement Act, occurring a few days prior to the enactment of the Judicial Survivors' Annuity System, the provisions of 28 U.S.C. 376 are not in accord with the survivors' annuity provisions with respect to Members of Congress, as originally intended, and in addition that the Section contains two references to the Civil Service Retirement Act, which are no longer appropriate or correct. The Civil Service Retirement Act amendments of 1956 with respect to survivorship benefits for Members of Congress eliminated the requirement that a widow without dependent children be 50 years of age before receiving a widow's annuity, increased the annuity payable to dependent children, liberalized the formula for computing the widow's annuity in respect to certain civilian service, and increased the maximum widow's annuity, which the widow of a Member of Congress might receive, to 40 percent of the member's five-year average salary.

The Committees recommended that Congress be requested to amend 28 U.S.C. 376 to bring it into conformity with the survivorship annuity provisions of the present Civil Service Retirement Act, as they apply to Members of Congress. The Conference thereupon approved this recommendation and the following draft of a bill recommended by the Committee:

A BILL

To amend section 376 of title 28, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 376 of title 28, United States Code, is amended by striking out in the first sentence thereof the words:

"within the purview of section 707 of title 5"

and inserting in lieu thereof the words:

"which would be creditable under section 3 of the Civil Service Retirement Act as amended".

SEC. 2. Subsection (d) of such section 376 is amended by striking out in the first sentence thereof the words:

"or Federal farm loan bonds".

SEC. 3. Paragraphs (1), (2), and (3) of subsection (g) of such section 376 are amended to read as follows:

"(1) if such judge is survived by a widow there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (n) of this section; and

(2) if such judge is survived by a widow or widower and a dependent child or children there shall also be paid to or on behalf of each such child an immediate annuity equal to $1,800 divided by the number of such children or $600, whichever is lesser; or

(3) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity of $720."

SEC. 4. Subsection (n) of such section 376 is amended by striking out the words:

"an employee described in section 698(g) of title 5, and (2) ¾ of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½"

and inserting in lieu thereof the words:

"a Congressional employee defined in section 1(c) of the Civil Service Retirement Act as amended, (2) ¾ of 1 per centum of such average annual salary multiplied by his years, not exceeding five, of any other prior allowable service, (3) ⅞ of 1 per centum of such average annual salary multiplied by his years, in excess of five but not exceeding ten, of such other prior allowable service, and (4) 1 per centum of such average annual salary multiplied by his years of service, in excess of ten, of such other prior allowable service, but such annuity shall not exceed 40".

SEC. 5. Subsection (o) of such section 376 is amended by striking out at the end thereof the words:

"within the purview of section 707 of title 5" and inserting in lieu thereof the words:

"which would be creditable under section 3 of the Civil Service Retirement Act as amended".

(3) *Revision of the Canal Zone Code.*—The Committees reported that the views of the Conference had been requested with respect to the following three provisions contained in a proposed revision of the Canal Zone Code: (a) that the term of the district judge be increased from eight to ten years; (b) that the removal of the district judge by the President before the expiration of his term be made only "for cause"; and (c) that in the discretion of the Director of the Administrative Office of the United States Courts that the district judge shall receive, in addition to the basic compensation prescribed for judges of the United States District Courts, "an overseas (tropical) differential not in excess of an amount equal to 25 percent of the amount of the basic compensation".

The lengthening of the term of the district judge for the Canal Zone from eight to ten years would make him eligible to retire under the provisions of 28 U.S.C. 373, after completing one term of appointment. It was the view of the Committee that this was desirable, but that such a provision should also be made applicable to the territorial judges in Guam, Puerto Rico, and the Virgin Islands. Accordingly, the Committees have hereinafter recommended an amendment to 28 U.S.C. 373 to reduce from ten to eight years the length of time which a territorial judge must serve in order to secure minimum retirement benefits. On recommendation of the Committee, the Conference disapproved the lengthening of the term of the judge in the Canal Zone alone from eight to ten years.

The Committees reported that the Organic Acts of the territories of Guam and the Virgin Islands restrict the power of the President over district judges to removal "for cause", and accordingly recommended that this same provision be incorporated in the Canal Zone Code. This recommendation was approved by the Conference.

With respect to a cost-of-living differential for the district judge in the Canal Zone, the Committees noted that while such differentials have been paid for many years to federal employees in the other overseas territories, such as Alaska, Hawaii, Puerto Rico, the Virgin Islands and Guam, they have never been allowed to the judges of the district courts of these territories. The salary of

$22,500 per annum paid to the district judges in the territories is presently in excess of the salaries paid to all other federal employees in the territories, including the Governors, and in the opinion of the Committees, it is adequate without the allowance of the cost-of-living differential. Upon recommendation of the Committee the Conference disapproved the proposal.

(4) *H.R. 9005, to amend 28 U.S.C. 373 to Provide Retirement Pensions After Age 65 to Territorial Judges Who Have Served at Least Eight Years Instead of Restricting These Benefits to Those Who Have Served for at Least Ten Years.*—It was the view of the Committees that retirement benefits should be provided after age 65 to a judge who has been compelled, through no fault of his own, to leave office after serving a term of eight years. However, H.R. 9005 also provides that a pension, after age 65, be paid to a judge who voluntarily resigns before reaching retirement age and that service in the Armed Forces in time of war, not exceeding five years, be included in the computation of aggregate years of judicial service for the purpose of determining whether a territorial judge is entitled to a pension and in determining its amount. The Committees were of the view that these two proposals should be disapproved and suggested that the Conference recommend to Congress that H.R. 9005 be amended so as merely to reduce from ten to eight years the amount of judicial service required of a territorial judge in order to entitle him to receive a retirement pension under 28 U.S.C. 273, based upon his salary and service. This recommendation was approved by the Conference.

(5) *S. 2326 To Give Congressional Consent to an Interpleader Compact Between or Among Any Two or More of the States, Territories, and Possessions of the United States and the District of Columbia.*—This interpleader compact would enable service to be had in any of the states adhering to the compact in actions in the nature of interpleader brought in any other of such states, thus enabling the interpleader court to acquire personal jurisdiction over claimants located anywhere within the compacting states. The Federal Interpleader Act now permits such actions to be brought in a federal district court with the right to make service throughout the United States in cases involving diversity of citizenship and at least $500.00 in amount. The compact will make it possible for many interpleader cases to be brought in the state courts, thus relieving to some extent the burden of work in the

federal district courts. The Committees recommended that S. 2326 be approved in principle, insofar as it affects the federal courts, recognizing that the policy involved is largely one for determination by Congress. This recommendation of the Committee was approved by the Conference.

(6) *H.R. 8752 To Limit Venue in Cases Brought Under the Federal Employers' Liability Act.*—This bill would amend the Employers' Liability Act, 45 U.S.C. 56, to provide that suits thereunder may be brought against an interstate carrier by railroad only in a federal district court within, or a competent state court of, (1) the state in which the cause of action arose, or (2) the state of which the person suffering injury or death was a resident at the time the cause of action arose. The bill would also add the proviso that if

> at any time the period during which suit on any such cause of action shall not be barred by limitation, the common carrier, against which such cause of action is asserted, shall either not be doing business within the State in which the cause of action arose, or shall not be doing business within the State of which the person suffering injury or death was a resident at the time the cause of action arose, in that event such suit may at such time be brought in any district court of the United States within, or in a State court of competent jurisdiction of, any State in which such carrier then is doing business.

The Committee reported that under the present provisions of law a great many suits under the Federal Employers' Liability Act have been brought in certain congested metropolitan district courts where counsel for the claimants reside, but which are far distant from the scene of the accident, or the place of residence of the claimant. As a result witnesses have frequently been transported for long distances at great expense and hardship to a party. This abuse has been corrected in part through the exercise by the district courts of their discretionary power, under 28 U.S.C. 1404(a), to transfer such suits to a more convenient district. However, this involves additional procedure and delay and is not available, in any event, in the State courts. The Committees were of the view that the proposal to restrict venue, as proposed in the bill, is salutary. The Conference thereupon approved the bill.

(7) *H.R. 9591 and H.R. 9632 to Provide for a Court of Veterans' Appeals to Review Decisions of the Board of Veterans' Appeals in the Veterans' Administration.*—These bills are similar to other bills introduced in the 86th Congress, which were considered by the Conference at its September 1959 session (Conf. Rept., p. 7). As it had done on previous occasions, the Conference at that session took no position with respect to the policy involved in providing judicial review of veterans' claims, but recommended that if such review is to be granted, that it should be in the district court sitting in the veteran's locality and not in a United States Court of Appeals, or a special court of appeals, and further that the review, if granted, should be in accordance with the standards of the Administrative Procedure Act. Upon the recommendation of the Committees the Conference adhered to this position and accordingly disapproved H.R. 9591 and H.R. 9632.

(8) *S. 2970 to require that judgments for the Condemnation of Land by the United States be Registered, Recorded, Docketed, Indexed, and Cross-indexed in Conformity with the Law of the State in which such Property is Situated.*—At present judgments for the condemnation of land entered in a district court are recorded only in the office of the clerk of the court for the district and division in which the judgment was entered. The Committees pointed out that 28 U.S.C. 1962 provides under certain circumstances for the registration and recording of a judgment of a district court in the appropriate local or county office before a lien will attach to property, and that recently similar provisions with respect to the filing of a notice of the commencement of a suit in the district court concerning real property have been made by 28 U.S.C. 1964, in order that the effect of *lis pendens* may be achieved. The Committees were of the view that a similar procedure with respect to the recording of judgments in condemnation proceedings would be appropriate and recommended that S. 2970 be approved in principle. The recommendation was approved by the Conference.

(9) *H.R. 10,089 to Permit a Civil Action to be Brought Against an Officer of the United States in His Official Capacity, a Person Acting Under Him or an Agency of the United States, in Any Judicial District of the United States Where a Plaintiff in the Action resides.*—This bill is similar to H.R. 10,892, 85th Congress, which was referred to the Committee on the Revision of the Laws at

the March 1958 session of the Conference (Conf. Rept., p. 27). Present law requires that civil actions against officers or agencies of the United States be brought in the district of the residence of the defendant officer or agency, which, in many cases, means that the action must be brought in the District of Columbia. The Committees were of the view that the venue statute should be broadened so as to authorize the institution of such suits not only in the district of the residence of the defendant, and in the district of the residence of the plaintiff as provided by H.R. 10,089, but also in the district in which the cause of action arose, or in which the property involved is located. The Committees accordingly recommended that H.R. 10,089 be approved in principle, but that it be amended so as to broaden the venue to include the district in which the cause of action arose, or in which the property involved in the action is situated. This recommendation was approved by the Conference.

(10) *H.R. 3217 to Provide that for Purposes of Diversity of Citizenship Jurisdiction a Corporation Shall Be Deemed a Citizen of any State Where It Is Qualified To Do Business.*—The Conference at its September 1959 session (Conf. Rept., p. 11) authorized the Committees to establish a subcommittee to collaborate with the American Law Institute in its comprehensive study of the diversity of citizenship jurisdiction and further were directed to consider the proposal of Judge Bailey Aldrich to prohibit a plaintiff from prosecuting an action under the diversity statute in a district court sitting in the State of which he is a citizen. Judge Maris reported that a subcommittee, consisting of Chief Judge Biggs, Senior Judge Phillips, Circuit Judge Prettyman and District Judges Goodman, Connally, Wright and Christenson had been constituted to consider ways and means of cooperating with the American Law Institute in its study. The subcommittee had also prepared a report concerning the historical and legal background of the diversity jurisdiction and is sending a questionnaire to State Bar Associations, law schools and associations of state judges. Accordingly the Committees requested and were granted leave to defer their report on H.R. 3217 and the proposal of Judge Aldrich until a later session of the Conference.

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At the request of Judge Maris the Conference authorized the immediate release of its recommendations with respect to any legislative proposal.

REPORT OF THE COMMITTEE OF MULTIPLE-JUDGE COURTS

Chief Judge David A. Pine, Chairman of the Committee appointed to meet and consider the personnel and budgetary requirements of the large district courts, reported that the Committee had been organized and had agreed upon the scope of its activities as follows:

(1) To provide for a greater exchange of experience and ideas among the several metropolitan district courts,

(2) To make available to the Administrative Office and to Congress, if needed, detailed organizational charts of the multiple-judge courts, showing the duties and functions of the clerk's office and other agencies and supporting personnel of the courts, as an aid in the presentation of the budget and other matters to the Congress, and

(3) To consider methods for supplying more detailed statistical information about the workloads in the various multiple-judge courts, which handle approximately one-half of the judicial business of the federal system.

As a result of its deliberations, the Committee has formulated various resolutions which have been transmitted to the Chairmen of the appropriate Committees of the Judicial Conference for their consideration.

RETIREMENT PROVISIONS FOR DIRECTORS OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Conference was advised by Chief Judge Biggs that, while the general retirement provisions for employees of the Administrative Office are adequate, those in respect to the Director are not adequate. The reason for this is not that the usual Civil Service retirement provisions are not liberal, but that neither the former Director, nor the present Director was appointed from the ranks of career Government employees and that the retirement system is geared to this latter group. The need for such a retire-

ment program, together with a proposed plan, was discussed and the Conference thereupon adopted the following resolution:

Resolved, That the Judicial Conference of the United States urge the enactment of legislation to establish a retirement program for Directors of the Administrative Office, including the former Director, designed to conform to the particular nature of the office, which is affected in character, tenure, and independence by its unique position in the Judicial Branch of the Government. Further, that such a program should include retirement and disability benefits, and participation in the Judicial Survivors Annuity System, upon the same basis as United States judges, except that retirement at 70 years of age should be mandatory in the case of a Director.

OPINIONS OF THE COURT OF CLAIMS

On motion of Chief Judge Marvin Jones, the Conference adopted the following resolution:

Resolved, That the Judicial Conference of the United States approve a request by the United States Court of Claims that its opinions be published hereafter in the Federal Reporter, 2d series.

INSTITUTES ON SENTENCING

Honorable Lawrence E. Walsh, Deputy Attorney General of the United States, had informed the Conference that it would be difficult for the Department of Justice, with its limited staff, to provide speakers and other services for all the Institutes on Sentencing being scheduled on a circuit level this year. He further suggested that Institutes on Sentencing conducted on a regional or national basis are likely to be more productive and to attract recognized experts in the fields of criminology and penology, who would be unable to attend every circuit institute.

The Conference thereafter received requests from the Chief Judges of the Second, Third, Fourth and Ninth Circuits for authority to convene Institutes on Sentencing in their circuits this year pursuant to 28 U.S.C. 334. Plans for some of these institutes are not yet complete. The institutes in the Third, Fourth and Ninth Circuits are being planned in conjunction with the annual

Judicial Conferences of the Circuits, but the institute in the Second Circuit is to be scheduled as a one-day program apart from the Circuit Conference.

It was brought to the attention of the Conference that 28 U.S.C. 334 requires that the chief judge of each circuit request, through the Director of the Administrative Office of the United States Courts, authority of the Judicial Conference to convene institutes and joint councils on sentencing. The statute further requires the approval of the Judicial Conference of the "time, place, participants, agenda, and other arrangements for such institutes and joint councils".

The Conference discussed fully the views of the Department of Justice and the statutory requirements for convening Institutes on Sentencing. It was pointed out during these discussions that a program on sentencing could be held as part of an annual Circuit Conference without invoking the provisions of 28 U.S.C. 334. The Chief Judges of the Third, Fourth and Ninth Circuits thereupon withdrew their requests for authority to convene formal sentencing institutes stating that they would develop a sentencing program for their circuit conferences. The Conference thereupon approved the plan for an Institute on Sentencing in the Second Circuit and authorized the Director of the Administrative Office to arrange with these other circuits, and with the Attorney General, a program for their respective judicial conferences that would be similar to the program of a sentencing institute.

It was the sense of the Conference that, in the future, sentencing institutes should be held on a regional or national basis so that both the Administrative Office and the Department of Justice could be of maximum assistance in program planning, as contemplated by the statute.

COMPENSATION OF COMMISSIONERS APPOINTED PURSUANT TO RULE 71 A(h) FEDERAL RULES OF CIVIL PROCEDURE

Mr. Warren Olney III, Director of the Administrative Office, brought to the attention of the Conference the proposal of the Department of Justice that the compensation of commissioners appointed in land condemnation cases under Rule 71 A(h) Federal Rules of Civil Procedure, be charged against the appropria-

tions made to the Judiciary instead of the appropriations of the Department of Justice.

The Conference expressed disapproval of the proposal and authorized the Chief Justice to appoint a special committee of the Conference to conduct, in cooperation with the Department of Justice, a study of the over-all problems with respect to the utilization and compensation of land commissioners.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS OF THE EIGHTH AND TENTH CIRCUITS

At the request of Chief Judge Johnsen the Conference, pursuant to 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 fiscal year commencing July 1, 1960.

At the request of Chief Judge Murrah the Conference consented that terms of the Court of Appeals of the Tenth Circuit at places other than Denver be pretermitted during the fiscal year commencing July 1, 1960.

CONFERENCE ON ADMINISTRATIVE PROCEDURE

Chief Judge E. Barrett Prettyman, Chairman of the Committee appointed to consider the proposal of the Judicial Conference of the District of Columbia Circuit for the establishment of a permanent Conference on Administrative Procedure, presented the following resolution prepared by the Committee. The resolution was approved by the Conference:

> *Resolved,* That this Conference approves the establishment of a permanent conference on the procedures of executive departments and administrative agencies in adjudications and rule-makings, in which conference representatives of the departments, the agencies, and the practicing bar would participate, for the purposes of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as Chairman of this Conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is fur-

ther authorized to implement this action further in such other ways as he may deem appropriate.

COMMITTEES

The Chief Justice announced to the Conference the appointment of the members of the Committee on Rules of Practice and Procedure of the Conference and the five advisory committees, on civil procedure, criminal procedure, appellate procedure, admiralty procedure, and bankruptcy procedure. The public announcement and the list of committee members, and reporters, appear in the appendix to this report.

For the Judicial Conference of the United States,

EARL WARREN,
Chief Justice.

Washington, D.C., *May 19, 1960.*

APPENDIX

COMMITTEES ON RULES OF PRACTICE AND PROCEDURE

The Chief Justice of the United States, subsequent to the Conference session, publicly announced the appointment of six nationally-organized committees of judges, lawyers, and legal scholars whose job it will be to study and to recommend to the Supreme Court improvement in the rules of practice and procedure in the Federal courts.

The Committees were appointed pursuant to an Act passed by Congress [P.L. 85–513, 72 Stat. 356] July 11, 1958, authorizing the Judicial Conference of the United States, of which the Chief Justice is Chairman, to make a continuous study of the Federal rules.

"The rules of court," Chief Justice Earl Warren said, "are the most important tools of the courtroom lawyer. So long as we have the inevitable changes in our social, economic and political lives, the demand for amendments in the rules, and also for new rules, by which we resolve conflicts in the courts is equally inevitable.

"It is essential that our rules of court be up-to-date and all amendments should be studied and recommended by committees with as broad an outlook and base as possible. Accordingly these committees include representatives of the bar, the judiciary and the legal scholars and for their ideas they will draw upon the bench and bar of the country as a whole and particularly the Judicial Conferences in all eleven of the Federal circuits.

"Experience has shown that in order to promote simplicity in procedure, the just determination of litigation and the elimination of unjustifiable expense and delay, it is essential that the operation and effect of the Federal rules of practice and procedure should be the subject of continuous study. Such study is the objective of the committees being announced today, and every judge, practicing lawyer, and legal scholar will be afforded the opportunity

to participate—to state his views—with assurances that those views will be given consideration."

The Committees, and the Committee Chairmen, are:

Standing Committee on Rules of Practice and Procedure
Albert B. Maris, Chairman
Advisory Committee on Civil Rules
Dean Acheson, Chairman
Advisory Committee on Criminal Rules
John C. Pickett, Chairman
Advisory Committee on Admiralty Rules
Walter L. Pope, Chairman
Advisory Committee on General Orders in Bankruptcy
Phillip Forman, Chairman
Advisory Committee on Appellate Rules
E. Barrett Prettyman, Chairman

The Advisory Committees will conduct the basic studies and develop reports and recommendations in the respective fields. These will be forwarded to the standing Committee on Rules of Practice and Procedure which, in turn, will report to the Judicial Conference of the United States. If approved, the Judicial Conference will formally forward the report and recommendations to the Supreme Court of the United States. The Supreme Court will approve, modify, or disapprove of the changes in the Federal rules, and those adopted will be transmitted by the Supreme Court to the Congress. In such cases, the rules automatically become law in ninety days unless the Congress acts adversely.

Membership on the Committees are for 2 and 4 year terms, with each member entitled to one additional term. This will have the effect of bringing new ideas to the Committees and keeping pace with developments in the law.

Headquarters Secretariat for the rules study will be in the Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C., under the direction of Warren Olney III, Director. Aubrey Gasque, Assistant Director of the Administrative Office, will serve as Executive Secretary for the Rules Committees.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

MARIS, ALBERT B., Chairman	Senior Circuit Judge, United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania.
BOLDT, GEORGE H.	Judge, United States District Court for the Western District of Washington, Tacoma, Washington.

CLARK, CHARLES E	Judge, United States Court of Appeals for the Second Circuit, New Haven, Connecticut.
LADD, MASON	Dean, College of Law, University of Iowa, Iowa City, Iowa.
MOORE, JAMES WM	Professor, Yale Law School, New Haven, Connecticut.
PERLMAN, PHILIP B	Perlman, Lyons & Emmerglick, 1021 Tower Building, Washington 5, D.C.
RANKIN, J. LEE	Solicitor General of the United States, Washington, D.C.
SEGAL, BERNARD G	Schnader, Harrison, Segal & Lewis, 1717 Packard Building, Philadelphia 2, Pennsylvania.
WRIGHT, J. SKELLY	Judge, United States District Court for the Eastern District of Louisiana, New Orleans, Louisiana.

ADVISORY COMMITTEE ON CIVIL RULES

ACHESON, DEAN, Chairman	Covington & Burling, 701 Union Trust Building, Washington, D.C.
DOUB, GEORGE COCHRAN	Assistant Attorney General in charge of the Civil Division, Department of Justice, Washington, D.C.
ELLIOTT, SHELDEN DOUGLASS	Professor, New York University, 40 Washington Square South, New York, N.Y.
FORD, PEYTON	Ford, Larson, Greene & Horan, 1000 Connecticut Avenue, NW., Washington, D.C.
FRANK, JOHN P	Lewis, Roca, Scoville, Beauchamp & Linton, Phoenix, Arizona.
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