
REPORT
of the
JUDICIAL CONFERENCE OF THE
UNITED STATES

☆

PROCEEDINGS, MARCH 8-9, 1962

WASHINGTON, D.C.

1962

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Warren Olney III
Director



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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, the chief judge of the Court of Customs and Patent Appeals, 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 the Judicial Conference of the United States

March 8-9, 1962

The Judicial Conference of the United States convened on March 8, 1962, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on March 9. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit :

Chief Judge Wilbur K. Miller

Judge David A. Pine, District of Columbia (designated by the Chief Justice in place of Chief Judge Matthew F. McGuire who was unable to attend)

First Circuit :

Chief Judge Peter Woodbury

Judge Francis J. W. Ford, 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 Thomas M. Madden, District of New Jersey

Fourth Circuit :

Chief Judge Simon E. Sobeloff

Chief Judge Roszel C. Thomsen, District of Maryland

Fifth Circuit :

Chief Judge Elbert Parr Tuttle

Chief Judge Ben C. Connally, Southern District of Texas

Sixth Circuit :

Chief Judge Shackelford Miller, Jr.

Chief Judge Marion S. Boyd, Western District of Tennessee

Seventh Circuit :

Chief Judge John S. Hastings

Chief Judge William E. Steckler, Southern District of Indiana

Eighth Circuit :

Judge Charles J. Vogel (designated by the Chief Justice in place of Chief Judge Harvey M. Johnsen who was unable to attend)

Judge Gunnar H. Nordbye, District of Minnesota

Ninth Circuit :

Chief Judge Richard H. Chambers
Chief Judge William J. Lindberg, Western District of Washington

Tenth Circuit :

Chief Judge Alfred P. Murrah

Court of Claims :

Chief Judge Marvin Jones

Court of Customs and Patent Appeals :

Chief Judge Eugene Worley

Senior Judge Albert B. Maris; Circuit Judges Jean S. Breitenstein and William F. Smith; District Judges Theodore Levin and Edward J. Devitt; and Judge Samuel E. Whitaker of the Court of Claims attended all or some of the sessions.

The Deputy Attorney General of the United States, Byron R. White, attended the morning session of the first day of the Conference.

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, attended the morning session of the first day of the Conference, and addressed the Conference briefly.

Honorable John A. Carroll, representing the Committee on the Judiciary, United States Senate, also attended the first morning session and addressed the Conference briefly.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; and Roy M. Powell, staff member of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts; Will Shafroth, Deputy Director; and members of the Administrative Office staff attended the sessions of the Conference.

REPORT OF THE ATTORNEY GENERAL

The Deputy Attorney General of the United States, Byron R. White, on behalf of the Attorney General, spoke to the Conference informally on matters relating to the work of the Department of Justice. A draft bill to provide for a jury commission in each United States district court, prepared by the Department of

Justice, was brought to the attention of the Conference and was referred to the Committee on the Operation of the Jury System for consideration and report.

JUDICIAL COUNCILS OF THE CIRCUITS

At the request of Congressman Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, and of Senator Olin D. Johnston, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, the Conference reviewed the action taken at the September 1961 session of the Conference (Rept., p. 67), approving H.R. 6690, to provide for the representation of district judges on the judicial councils of the circuits. After full consideration, the Conference voted to reaffirm its approval of this bill.

SURVEY OF JUDICIAL BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims, the Chief Judge of the Court of Customs and Patent Appeals, and from the Chief Judges of the respective circuits, concerning the state of the dockets in each circuit. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits. The Conference was informed that considerable progress has been made in some districts in the disposition of the civil actions pending more than 3 years, in accordance with the plan and policy adopted by the Conference at its last session. Efforts to dispose of these cases, however, have been hampered this year by continuing vacancies in judgeship positions in several heavily congested districts.

COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge John Biggs, Jr., reported on the following matters within the jurisdiction of the Committee.

ADDITIONAL DISTRICTS, DIVISIONS, AND PLACES OF HOLDING COURT

The Conference considered the following bills to create new districts or divisions, and to provide for additional places of holding court:

(1) H.R. 9051, 87th Congress, to provide a new district in the State of California, and to provide an additional district judge for that district, whose official station would be San Jose. The proposal has been disapproved by the Judicial Council of the Ninth Circuit. On recommendation of the Committee, the Conference disapproved the bill.

(2) H.R. 8337, 87th Congress, to establish Clinton, Goldsboro, and Jacksonville as additional places of holding court in the Eastern District of North Carolina. The Judicial Council of the Fourth Circuit favors the holding of court at Clinton which is the residence of the Chief Judge of the district. The Conference thereupon recommended that the bill be amended to provide that Clinton only be designated as an additional place for holding court and that Goldsboro and Jacksonville be not designated as additional places for holding court in the Eastern District of North Carolina.

(3) H.R. 10148, 87th Congress, to amend 28 U.S.C. 130(a), to include Menominee County within the jurisdiction of the United States District Court for the Eastern District of Wisconsin. Menominee County had previously been the Menominee Indian Reservation. Upon recommendation of the Committee, the Conference approved the bill.

ACCOMMODATIONS AT PLACES OF HOLDING COURT

The Conference considered the following bills which would provide for the waiving of the limitations and restrictions of 28 U.S.C. 142 in regard to accommodations at places of holding court:

(1) S. 2730 and H.R. 9902, 87th Congress, to waive the restrictions of 28 U.S.C. 142 with respect to the holding of court at Fayetteville in the Western District of Arkansas. The Judicial Council of the Eighth Circuit has disapproved S. 2730 on the ground that the number of cases filed at Fayetteville does not warrant the expense, and would not in the future warrant the expense of constructing federal court facilities. Upon recommendation of the Committee, the Conference disapproved these bills.

(2) H.R. 9844, H.R. 9898, and H.R. 10008, 87th Congress, to

waive the limitations and restrictions of 28 U.S.C. 142 with respect to the holding of regular terms of court at Bridgeport, and special terms of court at Stamford, Connecticut, pending the construction of permanent court quarters and accommodations at Bridgeport. It is the view of the Judicial Council of the Second Circuit that a permanent seat of court should be established at Bridgeport with appropriate facilities and that until such facilities are available at Bridgeport, or become available at New Haven, suitable courtroom facilities should be leased at Stamford. Upon recommendation of the Committee, the Conference requested the immediate enactment of one of these bills.

(3) H.R. 10016, 87th Congress, to waive the restrictions of 28 U.S.C. 142 in regard to holding court at Decatur, Alabama. The Committee reported that this proposal had been favorably acted upon by the Judicial Council of the Fifth Circuit and the Conference approved the bill.

SELECTION OF CHIEF JUDGES

The Committee had considered further the proposals contained in S. 1268, 87th Congress, relating to (1) the selection of chief judges of the circuits and of multiple-judge district courts, (2) the terms of service of chief judges, and (3) the powers and responsibilities of chief judges with respect to the general administrative superintendence of the business of the circuit and district courts, and recommended that the bill not be approved at this time. The Conference discussed the bill at some length and directed the Committee to undertake a further study of the proposals contained therein in the light of the discussions in the Conference.

DISBURSEMENT OF JUDICIARY FUNDS

H.R. 8304, 87th Congress, would amend 28 U.S.C. 711 and 751 to provide that the clerks of the courts of appeals and district courts, respectively, subject to regulations prescribed by the Director of the Administrative Office, should disburse appropriated funds for the maintenance and operation of the courts. The Committee reported that the bill had been discussed with the Department of Justice and the Administrative Office of the United States Courts, and that there was a large variance in their respective estimates of the additional cost to the Judiciary to assume this function. The

Committee suggested that the Conference recommend to the Congress that action on H.R. 8304, or any similar bill, be withheld until further study has been made by the Administrative Office. This recommendation was approved by the Conference.

CLERKS' FEES

It was brought to the attention of the Conference that the clerks of the courts of appeals have expressed some concern as to the proper fee to be charged upon the transfer of a deportation proceeding to a court of appeals from a district court under the provisions of the Act of September 6, 1961, 75 Stat. 650. The Conference, after full consideration, directed that no fee be charged by a clerk of a court of appeals upon the transfer of such a proceeding.

The Conference was informed that it has been more than 15 years since any increases have been made in the filing fees in the district courts and in courts of appeals, and that most of the miscellaneous fees have remained unchanged for about the same length of time. The Conference, upon recommendation of the Committee, directed that the Administrative Office undertake a study of the existing fee schedules and report any suggested changes in fees to the Committee for its consideration and further report to the Conference.

RETIREMENT OF JUSTICES AND JUDGES

S. 2285 and H.R. 5282, 87th Congress, would amend 28 U.S.C. 371(b) to provide a retirement plan for justices and judges similar to that established for territorial judges by 28 U.S.C. 373. The bills provide that a justice or judge may retire at age 65 with a minimum of 10 years' service, if he would agree to accept in lieu of the full salary of his office during the remainder of his lifetime, that portion of the salary of his office which is equal to the ratio existing between the aggregate number of his years of judicial service and 15 years. Upon recommendation of the Committee, the Conference disapproved the bills at the present time.

RETIREMENT OF TERRITORIAL JUDGES

H.R. 1782, 87th Congress, would provide that the amendment to 28 U.S.C. 373 made by Section 5 of the Act of February 10, 1954, 69 Stat. 13, should apply to any judge of the United States District

Court for the District of Hawaii who retired under Sec. 373 before February 10, 1954, as if such amendment had been in effect on the date of retirement of the judge. Upon the recommendation of the Committee, the Conference disapproved the bill.

JUDICIAL SURVIVORS' ANNUITY ACT

The Conference, upon recommendation of the Committee, disapproved the proposal contained in S. 440, 87th Congress, to reduce from two years to one year the time that a wife must have been married to a judge before his death in order to be eligible for a widow's annuity under 28 U.S.C. 376.

DISQUALIFICATION FOR BIAS OR PREJUDICE

In accordance with the direction of the Conference at its September 1961 session (Conf. Rept., p. 68), the Committees on Revision of the Laws and Court Administration undertook a joint study of 28 U.S.C. 144 relating to the disqualification of judges. The following draft of a bill to amend 28 U.S.C. 144, prepared by the Committees, was submitted and approved by the Conference:

A BILL

To amend Section 144 of Title 28 of the United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 144 of title 28 of the United States Code is amended so as to read:

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

"The affidavit shall state the facts and reasons for the belief that bias or prejudice exists, and shall be filed not less than 30 days before the trial or hearing of the proceeding, or good cause shall be shown for failure to file it within such time. An order shall then be entered directing that an authenticated copy of the affidavit shall be forthwith certified to the chief judge of the circuit in which such proceeding is pending, and said chief judge, or any judge designated

by him, shall determine whether the affidavit is timely and sufficient. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

IN BANC HEARINGS

A number of instances have developed recently where courts of appeals sitting in banc have divided equally. The Committee requested and was granted leave to explore the possibility of finding some means of obviating such equal divisions and to report at a later session of the Conference.

ELECTRONIC SOUND RECORDINGS

The Conference at its September 1961 session (Conf. Rept., p. 71) directed the Committee to draft and seek a clarifying amendment to 28 U.S.C. 753(b) to authorize court reporters to file electronic sound recordings of proceedings on arraignment, plea and sentence in criminal cases, eliminating the necessity for transcription. The Committee reported that it has considered several drafts of such an amendment, but has made no final determination. The Conference accordingly granted leave to the Committee to consider the matter further and to report at a later session of the Conference.

COURTROOM PHOTOGRAPHS

The Committee reported that it had taken notice of increasing activity by the press, radio and television broadcasting media, and others, calling for a relaxation of the present prohibition of taking photographs in the courtroom during the progress of judicial proceedings and the broadcasting of judicial proceedings by radio and television. The Committee believes this subject to be of such immediate importance that it warrants an expression of policy by the Judicial Conference at this time.

It is the view of the Committee that in the interest of efficient judicial administration and to aid in the preservation of the right to a fair and impartial trial, the Conference should reaffirm its adherence to the principle declared in Rule 53, Federal Rules of Criminal Procedure, and broaden it to include television broadcasting and the taking of photographs within the environs of the

courtroom, making it applicable to all proceedings in the federal courts. The Conference considered the matter and voted to approve the following resolution:

Resolved, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court.

REVISION OF THE LAWS

Senior Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted a comprehensive Committee report.

SERVICE OF PROCESS

H.R. 6323, 87th Congress, would extend the territorial limits with respect to service of process in certain civil actions by providing that in any case in which a civil action against more than one defendant is properly instituted in a judicial district in which at least one defendant resides, any process issued in such action with respect to a defendant who does not reside within such judicial district may be served in the judicial district in which he resides or wherever he may be found. The bill purports to be a regulation of service of process and not of venue. It was the view of the Committee that the objectives of the bill could more properly be attained by an amendment to Rule 4, Federal Rules of Civil Procedure, and that if by implication the bill would amend the venue statutes, it would do so casually and ambiguously and would tend to encourage forum shopping. Upon recommendation of the Committee, the Conference disapproved the bill.

STUDY OF VENUE

Judge Maris reported that the Subcommittee appointed to study the subject of venue had given consideration to various aspects of the problem and had concluded that a need exists for liberalizing the venue statutes, and that consideration should also be given to liberalizing the rules in regard to service of process. The Committee, therefore, recommended the following amendments to subsections (a) and (b) of 28 U.S.C. 1391, to authorize civil actions to

be brought in the district in which the claim arose, as well as in the district of the residence of a party:

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, *or in which the claim arose*.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, *or in which the claim arose*, except as otherwise provided by law.

The Conference approved the recommendations of the Committee and referred the following proposed amendment to Rule 4, Federal Rules of Civil Procedure, to the Committee on Rules of Practice and Procedure for consideration by the Advisory Committee on Civil Rules in the light of the broadened venue provision above proposed:

Whenever it shall appear to the court before which any proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the state in which the court is held or not; and summons to that end may be served in any district by the marshal thereof.

The Committee was granted leave to continue its study of the subject of venue and in particular to consider proposed amendments to 28 U.S.C. 1404(a), and 1406(a), and to report to a later session of the Conference.

FEDERAL RULES OF CIVIL PROCEDURE

H.R. 1561, 87th Congress, would amend 28 U.S.C. 2072 to provide that amendments to the Federal Rules of Civil Procedure adopted by the Supreme Court shall not take effect until the expiration of one year after they have been reported to Congress by the Chief Justice. The present law provides for a waiting period of only three months. It was the view of the Committee that the present law affords adequate time within which Congress may repeal or postpone the effective date of any proposed rule and that the lengthening of this period to one year would be unwise. Upon recommendation of the Committee, the Conference disapproved the bill.

EXPEDITING ACT

The Conference, on recommendation of the Committee, disapproved the proposal that the testimony in a civil antitrust case in which an expediting certificate has been filed by the Attorney General be taken before a single district judge rather than a district court of three judges.

REMOVAL JURISDICTION

Judge Maris reported that a subcommittee had been appointed to study the operation of the procedure prescribed by Chapter 89 of Title 28, United States Code, for the removal of cases from state to federal courts. This study was approved by the Conference.

ADMINISTRATIVE PROCEDURE ACT

S. 1887, and H.R. 9926, 87th Congress, to recodify Chapter 19 of Title 5, United States Code, entitled "Administrative Procedure," were referred to the Committee on Revision of the Laws for study and report to the Conference.

CIRCUIT LEGISLATIVE COMMITTEES

Judge Maris informed the Conference that the Committee was endeavoring to establish and maintain a liaison with the judicial conferences of the circuits and particularly with the legislative committees of the conferences in those circuits in which such committees are under appointment. This will enable the Committee to have the benefit of the views of the local committees with respect to legislative proposals under consideration.

RULES OF PRACTICE AND PROCEDURE

The Chairman of the Standing Committee on Rules of Practice and Procedure, Senior Judge Albert B. Maris, informed the Conference concerning the progress of the rules program. Judge Maris stated that in October proposed amendments to the Rules of Civil Procedure were released to the bench and bar and that comments concerning them are being received by the Committee. These comments will be considered again by the Advisory Committee

early next summer. An exhaustive report by the Special Committee appointed to consider the advisability of uniform Rules of Evidence has also been circulated, and the Special Committee will meet shortly to consider comments with respect to that report. The Advisory Committee on Admiralty Rules is considering the possibility of a merger of the Rules of Civil Procedure and the Admiralty Rules and will consider this in late summer.

It was brought to the attention of the Conference that the funds provided for the work on the Rules of Practice and Procedure have proven inadequate and that a supplemental appropriation will be necessary to finance the work of the Committee during the last three months of the current fiscal year. After full consideration the Conference thereupon adopted the following resolution:

The Judicial Conference of the United States, at its session in March 1962, has reviewed the work of the Advisory Committees on Civil, Criminal, Admiralty, Bankruptcy, and Appellate Rules, and the special Committee on Rules of Evidence, all appointed in accordance with 28 U.S.C. § 331.

The Conference is impressed with the continued need for the improvement of judicial procedure to meet the ever-mounting caseloads of the courts, and with the excellent progress being made by the Advisory Committees in this field, as well as the efficient and economical manner in which the whole program is being conducted. Moreover, the Conference records its gratitude for the time and care which busy judges, lawyers, and legal scholars are devoting to this work.

The Conference is very much concerned, however, lest the work of the Rules Committees be interrupted, and even permanently impeded, by inadequate funds. Therefore, the Conference takes especial note of the present situation in that regard, and respectfully urges the Congress to expedite the appropriation of the additional funds which are needed to insure the uninterrupted continuance of the Rules undertaking which the Conference is required by law to carry on.

BANKRUPTCY ADMINISTRATION

SALARIES AND POSITIONS OF REFEREES

In the absence of Senior Judge Ori L. Phillips, Chairman of the Committee on Bankruptcy Administration, the report of the Com-

mittee was presented to the Conference by Mr. Royal E. Jackson, Assistant Chief of the Bankruptcy Division of the Administrative Office.

The Conference was informed that the Committee had met and considered the recommendations contained in the report of the Director of the Administrative Office, dated January 19, 1962, relating to the continuance of referee positions to become vacant prior to October 1, 1962, by expiration of term, for changes in salaries of referees, changes in arrangements, and the creation of new referee positions. The Committee also considered the recommendations of the district judges and the judicial councils of the circuits concerned.

The Conference considered fully the Committee's report, as well as the recommendations of the Director, the circuit councils, and the district judges. On the basis of these reports, the Conference took the action shown in the following table relating to changes in salaries and new referee positions and directed that, unless otherwise noted, this action become effective on July 1, 1962, provided appropriated funds are available:

Changes in Salaries of Referees and New Referee Positions

District	Regular place of office	Type of position	Present salary	Conference action	
				Type of position	Authorized salary
<i>Fourth Circuit</i>					
North Carolina (E.)	Wilson	Part-time	\$4,500	Part-time	\$5,000
North Carolina (M.)	Greensboro	do	6,500	do	7,000
North Carolina (W.)	Charlotte	do	5,000	do	5,500
Virginia (E.)	Norfolk	Full-time	12,500	Full-time	15,000
<i>Fifth Circuit</i>					
Alabama (M.)	Montgomery	do	12,500	do	15,000
Georgia (N.)	Rome	Part-time	7,500	do	12,500
Georgia (M.)	Columbus	do		do ¹	13,750
Louisiana (W.)	Shreveport	Part-time	7,500	do	15,000
Texas (N.)	Fort Worth	Full-time	11,250	do	13,750
Texas (N.)	Lubbock	Part-time	6,000	Part-time	7,000
Texas (W.)	San Antonio	Full-time	11,250	Full-time	13,750
Texas (S.)	Houston	do	11,250	do	13,750
<i>Sixth Circuit</i>					
Kentucky (E.)	Lexington	do	12,500	do	15,000
Ohio (N.)	Akron	do	13,750	do	² 15,000
Ohio (N.)	Canton	do	13,750	do	² 15,000
<i>Eighth Circuit</i>					
Iowa (S.)	Des Moines	Part-time	7,500	do	15,000
North Dakota	Fargo	do	4,500	Part-time	5,500
<i>Ninth Circuit</i>					
Alaska	Anchorage	do	5,000	do	6,500
Washington (W.)	Takoma	Full-time	12,500	Full-time	15,000
<i>Tenth Circuit</i>					
Oklahoma (N.)	Tulsa	do	13,750	do	15,000
Oklahoma (W.)	Oklahoma City	do	13,750	do	15,000
Wyoming	Cheyenne	Part-time	6,000	Part-time	7,000

¹ New position.² Effective Oct. 1, 1962.

The Conference deferred action on the proposal to change the part-time referee positions in the Northern District of Indiana to full time.

VACANCIES IN REFEREE POSITIONS AND CHANGES IN ARRANGEMENTS

The Conference took the following action with regard to changes in arrangements for both new and existing referee positions and in regard to the filling of referee positions currently vacant and to become vacant by expiration of term, and directed that the changes become effective July 1, 1962, unless otherwise noted:

SECOND CIRCUIT

Northern District of New York:

- (1) Discontinued Schenectady as a place of holding bankruptcy court.

Western District of New York:

- (1) Authorized the filling of the full-time referee position at Rochester, to become vacant by expiration of term on September 3, 1962, on a full-time basis for a term of 6 years, effective September 4, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

THIRD CIRCUIT

New Jersey:

- (1) Authorized the filling of the full-time referee position at Newark, to become vacant by expiration of term on May 24, 1962, on a full-time basis for a term of 6 years, effective May 25, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

FOURTH CIRCUIT

Eastern District of Virginia:

- (1) Authorized the filling of the full-time referee position at Norfolk, to become vacant by expiration of term on September 30, 1962, on a full-time basis for a term of 6 years, effective October 1, 1962, at a salary of \$15,000 a year, the regular place of office, territory, and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Georgia:

- (1) Changed the part-time referee position at Rome to a full-time basis at a salary of \$12,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Middle District of Georgia:

- (1) Authorized an additional full-time referee position at Columbus at a salary of \$13,750 per annum.
- (2) Fixed Columbus as the regular place of office for the new referee.
- (3) Transferred the territory comprising the Columbus, Albany, Americus, Valdosta, and Thomasville divisions from the territory of the Macon referee to the territory of the Columbus referee.
- (4) Discontinued Columbus, Americus, Albany, Valdosta and Thomasville as places of holding bankruptcy court for the Macon referee.
- (5) Designated Columbus, Americus, Albany, Valdosta, and Thomasville as places of holding bankruptcy court for the new referee at Columbus.

Western District of Louisiana:

- (1) Changed the part-time referee position at Shreveport to a full-time basis at a salary of \$15,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Enlarged the territory of the referee at Shreveport to include the parishes of Iberia and St. Mary which were transferred from the Eastern to the Western District of Louisiana under the provisions of Public Law 87-36.

Southern District of Texas:

- (1) Authorized the immediate filling of the full-time referee position at Houston which became vacant December 13, 1961, by death of the incumbent referee, on a full-time basis for a term of 6 years, at the present salary of \$11,250 per annum, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Eastern District of Michigan:

- (1) Authorized the filling of the full-time referee position at Detroit, to become vacant by expiration of term on April 30, 1962, on a full-time basis for a term of 6 years, effective May 1, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SEVENTH CIRCUIT

Southern District of Illinois:

- (1) Discontinued Edwardsville as a place of holding bankruptcy court for the referee at Springfield.
- (2) Designated Alton as a place of holding bankruptcy court for the referee at Springfield.

EIGHTH CIRCUIT

Southern District of Iowa:

- (1) Changed the part-time referee position at Des Moines to a full-time basis, at a salary of \$15,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Nebraska:

- (1) Authorized the filling of the full-time referee position at Omaha, to become vacant by expiration of term on August 20, 1962, on a full-time basis for a term of 6 years, effective August 21, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

NINTH CIRCUIT

Northern District of California:

- (1) Transferred Calaveras and Tuolumne Counties and the territory comprising Yosemite National Park, from the territory of the referee at Sacramento to the territory served by the San Francisco and Oakland referees.
- (2) Designated Modesto as an additional place of holding bankruptcy court for the San Francisco and Oakland referees.

TENTH CIRCUIT

New Mexico:

- (1) Authorized the filling of the part-time referee position at Albuquerque, to become vacant by expiration of term on August 30, 1962, on a part-time basis for a term of 6 years, effective August 31, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

BANKRUPTCY LEGISLATION

(1) *S. 1624 and H.R. 7403, to amend Section 77 of the Bankruptcy Act and Section 20b of the Interstate Commerce Act relating to the reorganization of railroads.*—The Conference deferred action on the proposals relating to railroad reorganizations contained in these bills pending further study by the members of the Conference.

(2) *H.R. 2040 to amend Section 17a(2) of the Bankruptcy Act, 11 U.S.C. 35(a)(2), to prohibit the discharge of debts and obliga-*

tions of which moral turpitude is the basis.—The Committee reported that the need for this bill has not been demonstrated and recommended disapproval on the basis that it is too indefinite and uncertain in its language. This recommendation was approved by the Conference.

(3) *H.R. 9191 to amend Section 64a(2) of the Bankruptcy Act, 11 U.S.C. 104(a)(2), to give priority to payments due to any fund or plan established for the purpose of providing employee benefits.*—It was the view of the Committee that the proposal contained in the bill concerns a matter of public policy on which the Conference should express no opinion. Accordingly, the Committee recommended that no action be taken. This recommendation was approved by the Conference.

SCHEDULE OF SPECIAL CHARGES UNDER SECTION 40c(3)

A proposal has been made to authorize the refund of the \$10 filing fee for filing either a reclamation petition or a petition for review, if the petitioner is successful. The Committee considered the proposal and recommended that no change be made in the schedule of special charges under Section 40c(3) of the Bankruptcy Act, 11 U.S.C. 68(c)(3). This recommendation was approved by the Conference.

PRIORITY OF WORKMEN'S COMPENSATION PREMIUMS

The Conference, on recommendation of the Committee, disapproved the proposal to amend the Bankruptcy Act to give priority to claims in bankruptcy cases for workmen's compensation premiums owed by the bankrupt.

APPOINTMENT OF RECEIVERS AND TRUSTEES AND AUDIT OF STATISTICAL REPORTS

The Administrative Office had reported to the Committee that the audit of statistical reports of closed asset cases has failed to bring to light any monopoly situations with reference to the appointment of receivers and trustees. It has come to the attention of the Administrative Office and the Committee, however, that the rules for the determination of net proceeds realized and of payments under Section 40c(2) of the Bankruptcy Act, 11 U.S.C.

68(c)(2), as promulgated by the Judicial Conference at its May 1947 session, have been subject to varying interpretations by the referees. As a result, the determinations of the amounts to be paid into the Referees' Salary and Expense Fund lack uniformity. Upon recommendation of the Committee, the Conference directed that a study be undertaken by the Administrative Office with a view to recommending clarifying revisions of this regulation.

RETIREMENT AND SALARIES OF REFEREES

H.R. 5341, 87th Congress, would amend the Bankruptcy Act to increase the maximum salary limitation for full-time and part-time referee positions and to liberalize the provisions of the Bankruptcy Act with reference to the terms of office and the retirement of referees. The bill, which embodies the recommendations of the Conference (Conf. Rept., September 1961, p. 88) is now pending before the Judiciary Committee of the House of Representatives. The Conference reaffirmed its approval of this legislation, and authorized the Administrative Office to request that the proposals contained in the bill be considered separately, if that appears appropriate.

ADMINISTRATION OF THE CRIMINAL LAW

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

PAYMENT OF COMPENSATION TO COUNSEL APPOINTED TO REPRESENT POOR PERSONS ACCUSED OF CRIME

The Committee had given consideration to various bills to provide for the payment of compensation to counsel appointed to represent indigent persons accused of crime, including S. 655, S. 854, S. 1484, and H.R. 2696, 87th Congress, and prepared a draft of a bill which is basically a modification of H.R. 2696. This draft bill was subsequently introduced in Congress as S. 2900, 87th Congress.

The draft bill prepared by the Committee proposes the following modifications of H.R. 2696:

(a) A provision authorizing the court to appoint a public defender to represent a defendant in an "unpopular" cause.

(b) The elimination of the requirement of 5 years' experience for assistant public defenders. This qualification is retained for public defenders.

(c) The elimination of the provision permitting grants to legal aid societies providing free legal services to indigent persons in the federal courts.

(d) The elimination of any restriction on the right of the defendant to have the public defender represent him on appeal.

The Conference considered the proposal at length and on recommendation of the Committee voted to approve S. 2900.

CONFLICTS OF INTEREST

H.R. 8140, 87th Congress, would revise and strengthen the laws dealing with bribery, graft, and conflicts of interest. The bill prohibits any "officer or employee of the United States in the executive, legislative, or judicial branch of the Government" from serving as an attorney in connection with "any proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest." The Committee pointed out that these provisions would preclude any part-time United States commissioner, who is also an attorney in private practice, from handling any federal matter in the course of his private practice and would probably prompt the resignation of attorneys who are now serving as part-time commissioners. The Committee recommended therefore that the bill be disapproved insofar as it applies to part-time United States commissioners.

It was the view of the Conference, however, that when United States commissioners handle judicial matters, there should be some restriction upon them in regard to conflicts of interest. Accordingly, the Committee was authorized to give further consideration to this problem.

MANDATORY MINIMUM SENTENCES

S. 2619, 87th Congress, would amend Sections 4208 and 4209 of Title 18, U.S.C., with respect to the imposition of mandatory minimum sentences. On recommendation of the Committee, and

consistent with the established policy of the Conference concerning mandatory minimum sentences, the Conference approved the bill.

OBSERVATION AND STUDY OF JUVENILE DELINQUENTS

S. 1691, 87th Congress, would amend 18 U.S.C. 5034, to authorize the commitment of a juvenile delinquent for observation and study prior to the imposition of sentence. The provisions of the bill are similar to those contained in 18 U.S.C. 4208(b) relating to commitment for observation and study prior to the imposition of sentence. Upon recommendation of the Committee, the Conference approved the bill.

APPELLATE REVIEW OF SENTENCES

The Committee reported favorably on S. 2879, 87th Congress, which would provide for the appellate review of any sentence to a term of imprisonment in excess of 5 years on the ground that the sentence, although within lawful limits, is excessive. The Conference discussed the proposal at length and after full consideration directed that it be made available for discussion at circuit conferences and, with this understanding, referred the matter back to the Committee.

INDETERMINATE SENTENCES

The Committee reported that H.R. 3228, 87th Congress, would add a new subsection to 18 U.S.C. 4208, as follows:

(e) When a judgment of conviction is entered and sentence is imposed for less than life but for more than 5 years upon a defendant who has had no prior judgment of conviction entered against him, if the trial judge who imposed the sentence is a resident of a state other than that in which the court having jurisdiction is located and the court failed to receive or to require a report touching the defendant from the United States Probation Office in the district before imposing sentence and failed to designate in the sentence, as permitted under subsection (a), when the defendant should become eligible for parole, such defendant shall be eligible for parole at such time as the Board of Parole may determine and upon request of such

defendant an immediate study shall be undertaken and made as described in subsection (c).

It was the opinion of the Committee that this proposal was desirable, but that it should be made applicable to all cases where the sentencing judge fails to receive or require a presentence report and not merely to those cases where the sentencing judge is a resident of a state other than that in which the court having jurisdiction is located. The Conference thereupon approved the recommendation of the Committee that the bill be approved with the omission of the limitation on its applicability.

INTERPRETERS

S. 2617, 87th Congress, would provide for the designation of qualified interpreters to assist defendants who are unable because of deafness to understand proceedings in Federal criminal actions. The compensation of the interpreter would be fixed by the court and would be paid out of public funds. It was brought to the attention of the Conference that the proposal to authorize the payment of the fees of interpreters had previously been approved in principle by the Conference (Conf. Rept., September 1961, p. 70), and that proposed amendments to Rule 28, Federal Rules of Criminal Procedure, and Rule 44, Federal Rules of Civil Procedure, to authorize such appointments, had been referred to the Standing Committee on Rules of Practice and Procedure. The proposal contained in S. 2617 was therefore referred to the Committee on Rules of Practice and Procedure.

DESK BOOK FOR SENTENCING

The Conference approved the following recommendations of the Committee with respect to the distribution of the revised Desk Book for Sentencing, dated April 1961:

- (a) That the Desk Book be made available in its present form to all district judges.
- (b) That the distribution of the Desk Book be under the authorization of the Committee on the Administration of the Criminal Law.
- (c) That any proposed revision or modification of the Desk Book, whether solicited or unsolicited, be referred to the Committee for study, and that no revision or modifica-

tion is to be adopted without the approval of the Committee.

(d) That Judicial Conference approval of the Desk Book, or any revision thereof, is not required as a prerequisite to distribution.

INSTITUTES ON SENTENCING

Chief Judge J. Edward Lumbard of the Second Circuit had submitted to the Committee through Judge Irving R. Kaufman a request for Conference approval of an Institute on Sentencing to be held in New York City on May 5, 1962. The Conference was advised that the program submitted to and considered by the Committee was in accordance with the requirements of the Statute, 28 U.S.C. 334. The Conference thereupon authorized the convening of the Institute on Sentencing in accordance with the plan and program presented to the Committee.

INDIAN TRIBAL COURTS

The Conference deferred action on the proposal contained in S. 2612 to provide for the appointment of Indian tribal court judges by the judges of the district courts, pending further study of the proposal by the Committee and by the members of the Conference.

SUPPORTING PERSONNEL

The Chairman of the Committee on Supporting Personnel, Chief Judge Theodore Levin, submitted the report of the Committee to the Conference.

COURT OF CLAIMS

The Conference at its September 1961 session (Conf. Rept., p. 74) referred to the Committee on Supporting Personnel the legislative proposals of the Court of Claims to authorize the appointment by the Court of additional trial commissioners as needed, not to exceed a total of twenty and to provide for the trial commissioners the same type of retirement system as is now applicable to the judges of The Tax Court of the United States. The Committee recommended that the Conference approve the seeking of legislation to provide for an increase in the number of commissioners in the Court of Claims, as requested, up to a

maximum of twenty and to provide for the retirement of commissioners and for payment of amounts to their widows and certain of their dependents in a manner similar to provisions made for judges of the Tax Court. The recommendation was approved by the Conference.

COURT REPORTERS

Some years ago the Conference had authorized combination positions of court reporter-secretary for the district judges in the territories of Guam and the Virgin Islands. Because of the press of business and other conditions, the judges in both courts have submitted requests to the Administrative Office for authority to appoint both a secretary and a court reporter. Upon the recommendation of the Committee, the Conference separated the positions of court reporter-secretary in the districts of Guam and the Virgin Islands and authorized the appointment of a court reporter in each district at a salary of \$7,000 per annum.

PAY INCREASE LEGISLATION

It was brought to the attention of the Conference that pay increase legislation for federal employees, now under consideration in the Congress, contemplates not only pay increases but a general revision of the entire salary structure. Merely to include the supporting personnel of the courts in the pending legislation for the purpose of according them the benefits of any salary increases may, therefore, have the effect of placing them within a new salary structure. The Conference thereupon authorized the Administrative Office, with the assistance of the Committee on Supporting Personnel, to seek to have the Judicial Salary Plan, recently approved by the Conference, included as a part of H.R. 10480, 87th Congress, or in any event to secure an appropriate authorization for increasing the salaries of the supporting personnel of the courts in an amount that would be relatively the same as any salary increase granted to other Government employees.

PRETRIAL PROGRAM

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, reported that, in accordance with the resolution of the Conference at its September 1961 session (Conf.

Rept., p. 101), the first in a series of three seminars for new judges was held in Monterey, California, during the week of February 12, 1962. Twenty-eight judges recently appointed to district courts in the Seventh through the Tenth Circuits and in Texas and Louisiana were present. A group of 15 experienced trial judges served as discussion leaders and participated actively in all phases of the seminar. The seminar program was similar in organization to the seminar programs conducted in Boulder, Colorado, in 1960, and in Dallas, Texas, in 1961, and, in addition, embodied topics suggested for discussion by those new district judges who responded to a questionnaire from the Committee. Ample time was allowed for general discussion and every new judge was afforded an opportunity for questions.

Judge Murrah informed the Conference that the second seminar for new district judges was scheduled to be held in Norfolk, Virginia, during the week of April 30, and the third in Dearborn, Michigan, during the week of August 20. The new district judges in the Third, Fourth, and Fifth Circuits (except Louisiana and Texas) have been invited to Norfolk, and those in the First, Second, and Sixth Circuits will be invited to Dearborn. District judges whose appointments are made after the Monterey and Norfolk Seminars will also be invited to attend the seminar at Dearborn. It was the expressed desire of the Committee that every newly appointed district judge be afforded an opportunity to attend and participate in one of the seminars.

SUBCOMMITTEE FOR MULTIPLE LITIGATION

Chief Judge Murrah informed the Conference that the Subcommittee of the Committee on Pretrial Procedure appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits had met and had given consideration primarily to the problems presented by the large volume of antitrust treble damage actions recently filed throughout the country, which have arisen out of the criminal proceedings in the electrical equipment industry in Philadelphia last year. In many jurisdictions these cases have already been assigned to a single judge as suggested in the *Handbook of Recommended Procedures for the Trial of Protracted Cases*. The subcommittee reported that it has arranged for a meeting of the judges to whom the

cases have been assigned in Philadelphia on March 22, 1962, to consider various procedural problems. The Conference thereupon adopted the following resolution:

That the Conference desires to express its approval and encouragement of the forthcoming meetings of judges aimed to effect voluntary coordinating procedures in processing the civil antitrust cases in the electrical equipment industry.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments.

The Committee in accordance with subdivision III(10) of the plan for the assignment of judges, approved by the Conference at its March 1960 session, had prepared and distributed to the members of the Conference a statement relating to the needs for out-of-circuit assistance and to the availability of judges for such service. Since its last report, the Committee has recommended favorably on 20 intercircuit assignments, all of which have been approved by the Chief Justice. No adverse recommendation has been made. The judges receiving intercircuit assignments during this period include six circuit judges, three district judges, four senior circuit judges, and six senior district judges.

The Committee reported that in one instance a request has been made to furnish a judge for the trial of a protracted case, but that it was not able to fill this request. This sustains the belief of the Committee that, except in extraordinary circumstances and except when a senior judge is willing to undertake such an assignment, it is better judicial administration to have a protracted case handled by a local judge and for outside assistance to be provided for work which the local judge is unable to do at the time.

It has been the experience of the Committee that it is virtually impossible to be of assistance when a request involves immediate service. A judge's work is usually planned far in advance and except in emergencies the practical working of any plan for intercircuit assignments requires the projection of both needs and availabilities for a reasonable length of time in the future.

The Committee suggested, therefore, that the chief judges of the circuits carefully reappraise the situation in their circuits.

Disparities in the amount of judicial business of the various circuits and districts have existed, now exist, and will occur in the future and it is to the benefit of the federal judicial system to utilize the available judgepower of the nation to the fullest extent possible consistent with the primary obligation of judges to their respective circuits and districts. The Committee accordingly called attention to the desirability of re-evaluation of needs and availabilities in each circuit and of advance planning which will facilitate the synchronization of need with availability.

The report of the Committee was received and approved by the Conference.

TRAVEL EXPENSES OF JUDGES

The Conference at its September 1961 session (Conf. Rept., p. 72) directed that the limitation of \$25 per day on the traveling expenses of judicial employees traveling on an actual expense basis remain unchanged, even though the revision of the Travel Expense Act had permitted an increase in the actual travel expense allowance to \$30 per day. It was brought to the attention of the Conference that 28 U.S.C. 456 in regard to the traveling expenses of justices and judges provides for "reimbursement for his actual expenses of subsistence not in excess of the maximum amount fixed by the Travel Expense Act of 1949, as amended." It thus appears that the statute is self-executing and that an administrative regulation is not authorized by law. The Conference, after full consideration, voted to rescind its former action with regard to the reimbursement of the expenses of judges traveling on an actual expense basis.

FEEES OF LAND COMMISSIONERS

Mr. Olney brought to the attention of the Conference, the stated intention of the Administrative Assistant Attorney General to eliminate from the 1964 Budget Estimates of the Department of Justice any request for funds for the fees of land commissioners appointed under Rule 71A(h), Federal Rules of Civil Procedure. The Conference was also informed that a special subcommittee of the Committee on Public Works of the House of Representatives has undertaken a study of existing laws, practices, and procedures in the acquisition and evaluation of real property

required for federal and federally assisted programs which will include a study of the use of land commissioners. The Conference thereupon adopted the following resolution:

Whereas the Committee on Public Works of the House of Representatives has recently created a Select Subcommittee on Real Property Acquisition, of which Congressman Clifford Davis of Tennessee is Chairman; and

Whereas the Subcommittee was established to make an objective study of existing laws, practices and procedures in the acquisition and evaluation of real property required for Federal and federally assisted programs to determine whether they are unfair either to property owners because of inadequate payments or to the taxpayers because of overpayments, and to produce a considered report with sound recommendations and legislative proposals, if appropriate; and

Whereas the work of the Subcommittee will include a study of the use of land commissioners appointed under Rule 71A(h) of the Federal Rules of Civil Procedure, including their compensation; and

Whereas the Administrative Assistant Attorney General has written a letter to the Director of the Administrative Office of the United States Courts under date of February 14, 1962, stating that it is his intention to eliminate from the 1964 budget estimates the item for land commissioners' fees, which in former years has been included in the Department of Justice budget:

Be it resolved, That the Judicial Conference of the United States requests the Attorney General to include in the 1964 budget estimates for the Department of Justice and in the budget of the Department in subsequent years the item for land commissioners' fees, as in prior years, and continue such budgeting until the Davis Select Subcommittee on Real Property Acquisition has completed its studies and made its report, recommendations and legislative proposals.

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

At the request of Judge Charles J. Vogel, 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, 1962.

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 and Oklahoma City be pretermitted during the fiscal year commencing July 1, 1962.

CASES AND MOTIONS UNDER ADVISEMENT

The Administrative Office submitted to the Conference a report of cases under submission in the courts of appeals and cases and motions under advisement in the district courts. The report listed 50 cases under submission in the courts of appeals more than 6

months as of March 1, 1962, and 24 cases and 5 motions which had been held under advisement by district judges more than 6 months as of that date. Where necessary, these will be brought to the attention of the judicial councils by the chief judges of the circuits.

RELEASE OF CONFERENCE ACTION

The Conference authorized immediate release of its action on matters considered at this session, where necessary for administrative action.

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice.

MAY 25, 1962.

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