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REPORT  
of the  
JUDICIAL CONFERENCE OF THE  
UNITED STATES

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PROCEEDINGS, SEPTEMBER 19-20, 1962

WASHINGTON, D. C.

1962

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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 or the chief judge of the Court of Customs and Patent Appeals, 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

SEPTEMBER 19-20, 1962

The Judicial Conference of the United States convened on September 19, 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 September 20. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Judge David L. Bazelon (designated by the Chief Justice in place of  
Chief Judge Wilbur K. Miller, who was unable to attend)  
Chief Judge Matthew F. McGuire, District of Columbia

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 Bryan Simpson, Southern District of Florida

Sixth Circuit:

Chief Judge Lester L. Cecil  
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:

Chief Judge Harvey M. Johnsen  
Chief Judge John E. Miller, Western District of Arkansas

## Ninth Circuit:

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

## Tenth Circuit:

Chief Judge Alfred P. Murrah  
 Judge Ewing T. Kerr, District of Wyoming

## Court of Claims:

Chief Judge Marvin Jones

## Court of Customs and Patent Appeals:

Chief Judge Eugene Worley

Senior Judges Albert B. Maris and Phillip Forman; Circuit Judges Jean S. Breitenstein and William F. Smith; District Judges William J. Campbell, Theodore Levin and Harry E. Watkins; and Judges Sam E. Whitaker and James R. Durfee of the Court of Claims attended all or some of the sessions.

The Attorney General, Honorable Robert F. Kennedy, accompanied by William A. Geoghegan, Assistant Deputy Attorney General, attended the morning session of the second 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.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; Hubert H. Finzel, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; and John F. Davis, Clerk of the Supreme Court of the United States, 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.

COMMITTEE ON THE JUDICIARY OF  
 THE HOUSE OF REPRESENTATIVES

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, in-

formed the Conference that the Committee desires to proceed promptly with a survey of the geographical organization of the entire federal judicial system, to be made in the light of population increases and economic changes and to include a study of the adequacy of the present number of places of holding court. There has been no general revision in the boundaries of judicial circuits since 1910 and unforeseen pockets of litigation have developed. This has resulted in the introduction in Congress of a number of bills to change circuit and district lines and add numerous places of holding court. The need for an over-all survey has thus become imperative. The Committee on the Judiciary desires to cooperate fully with the Judicial Conference subcommittee in the consideration of these problems and Congressman Celler requested that an organizational meeting for the survey be held promptly.

#### REPORT OF THE ATTORNEY GENERAL

Attorney General Robert F. Kennedy, on invitation of the Chief Justice, spoke to the Conference informally on matters relating to the work of the Department of Justice. He informed the Conference that the Department was current in selecting judges to be nominated by the President to fill judicial vacancies. Of the 144 judgeship vacancies occurring since January 1961, including the 73 new judgeships provided by the Omnibus Judgeship Act, 120 have been filled and a number of nominations are now pending before the Senate Judiciary Committee.

The Attorney General informed the Conference that the draft of a jury commission bill, worked out in conference by representatives of the Department of Justice and the Committee on the Operation of the Jury System, was satisfactory to the Department. He also informed the Conference of the appointment of a special committee to consider the cost of furnishing legal services to indigent criminal defendants. The Conference was assured that the Department of Justice would cooperate fully in the pro-

gram to reduce the number of civil cases pending in the district courts more than three years, particularly in respect to land condemnation and tax cases.

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

Warren Olney, III, Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1962, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference approved the immediate release of the report for publication and authorized the Director to revise and supplement the final printed edition to be issued later.

#### STATE OF THE DOCKETS

*Courts of Appeals*—Cases filed in the Courts of Appeals during the fiscal year 1962 increased sharply to a record 4,823 cases, an increase of 374 over the previous year. The increase this year is actually larger due in part to a change in statistical procedures under which cross appeals are counted as separate cases. The net increase in cases commenced is a little more than 8 percent. The cases disposed of in 1962 were 4,167, which is 656 less than the number filed. The pending backlog thus increased to a record 3,031 cases on June 30, 1962.

*District Courts*—Civil cases filed in the United States district courts were 61,836, an increase of approximately 6 percent over the 58,293 civil cases filed during 1961. Civil cases disposed of were 57,996, or 3,840 less than the number filed; and the number of pending civil actions increased to 67,968 at the end of the year, an increase of approximately 6 percent.

The increase in civil cases this year is due in part to the filing of 1,741 private antitrust actions against electrical equipment manufacturing companies, as an outgrowth of the criminal antitrust proceedings in this



industry in Philadelphia during 1961. All but two of these cases were still pending at the end of the year.

The median time interval from filing to disposition of civil cases terminated by trial in the district courts in 1962 was 16.6 months compared with 16.5 months in 1961. The median time interval from issue to trial decreased to 10.4 months compared with 11.2 months in 1961. Fifteen district courts had a median time interval from issue to trial of six months or less.

Criminal proceedings were instituted against a total of 36,108 defendants during 1962; charges against 34,638 defendants were disposed of during the year; and on June 30, 1962 there were 12,910 defendants awaiting trial or sentence. The pending figure includes 1,399 defendants who on that date had been fugitives for six months or more, or were serving in the armed forces.

For the sixth consecutive year, bankruptcy cases filed reached an all-time peak. Total filings were 147,780, an increase of 1,137 cases, or about 1 percent. This in the smallest increase in filings in 10 years. A record 137,709 cases were closed during the year, or 19,766 more than last year. Nevertheless, filings exceeded terminations by more than 10,000 cases and the pending caseload increased to an all-time high of 133,761.

## 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 their courts and circuits. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts of the circuits. The Conference was informed that the program of seminars for new district judges, authorized by the Conference at its last session, had been well received by the new judges and had been very effective in acquainting them

with the problems arising in the operation of a district court.

The Conference was also informed that in accordance with the plan and policy adopted by the Conference in September 1961, considerable progress had been made in most districts in the disposition of the civil actions pending more than three years. It is anticipated that further progress will be made in the coming year, now that most of the judgeship positions provided by the recent Omnibus Judgeship Act have been filled.

### RULES OF PRACTICE AND PROCEDURE

The Chairman of the Standing Committee on Rules of Practice and Procedure, Senior Judge Albert B. Maris, presented to the Conference the recommendations of the Committee and a progress report of the work and activities of the standing committee and the advisory committees on the rules of practice and procedure.

### ADVISORY COMMITTEE ON CIVIL RULES

The Advisory Committee on Civil Rules had submitted to the Committee, with its favorable recommendation, a definitive draft of proposed amendments to certain federal rules of civil procedure, together with committee notes and an explanatory statement. The proposed amendments were fully discussed and considered by the standing committee and approved with one modification involving the last sentence of the proposed amendment to Rule 58, relating to the entry of judgment. Upon recommendation of the Committee the Conference approved the proposed amendments to the rules of civil procedure and directed that they be transmitted to the Supreme Court with a recommendation that they be adopted.

### ADVISORY COMMITTEE ON ADMIRALTY RULES

The Advisory Committee on Admiralty Rules has given primary consideration to the desirability of unifying or

integrating the admiralty rules and the rules of civil procedure and has concluded that unification, with the inclusion of certain rules dealing with special admiralty proceedings, is both feasible and desirable. The standing committee accepted and approved the action of the advisory committee and recommended to the Conference that unification of the civil and admiralty rules, with the inclusion of certain rules dealing with special admiralty proceedings, be approved. The Committee also recommended that the Conference request the Supreme Court to consider the proposal and indicate its views thereon, so that the Committee may be free to proceed with the task of preparing a draft of the unified civil and admiralty rules, as proposed. These recommendations were approved by the Conference.

#### ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Maris reported that the Advisory Committee on Bankruptcy Rules is proceeding with its study of the general orders and official forms in bankruptcy, but has no definitive proposals for amendments to submit at this time.

#### ADVISORY COMMITTEE ON CRIMINAL RULES

The Advisory Committee on Criminal Rules is also proceeding with its study of the Federal Rules of Criminal Procedure. Tentative recommendations for amendments to certain rules are under consideration, but no definitive proposals for amendments are ready for submission.

#### ADVISORY COMMITTEE ON APPELLATE RULES

The Advisory Committee on Appellate Rules has prepared a second draft of a proposed rule for the review of the decisions of the Tax Court, which has been circulated to the bench and bar. Comments on this draft are still being received.

The advisory committee is also engaged in a comprehensive study of appellate procedure in the United States courts of appeals and in preparing a tentative draft of uniform rules in this field. In view of the fact that the advisory committee is engaged in a wholly new undertaking in this field, the standing committee has requested that drafts of rules in related or integrated groups be submitted when they have been approved, rather than postpone their submission until the full draft of all the rules has been completed.

#### SPECIAL COMMITTEE ON RULES OF EVIDENCE

The Chairman of the Special Committee on Uniform Rules of Evidence for the Federal courts, Professor James W. Moore, reported that the preliminary report of the committee, recommending that uniform rules of evidence for the Federal courts be formulated and adopted, had been widely circulated to the bench and bar. It is anticipated that in January 1963 the special committee will reach a definitive conclusion on this matter, after considering the comments received. Professor Moore reported that comments so far received have been overwhelmingly favorable to the project.

#### MISCELLANEOUS MATTERS

The Committee reported that it had given consideration to delimiting more precisely the area of work of the Advisory Committee on Appellate Rules on the one hand and the advisory committees on civil, admiralty, bankruptcy, and criminal rules on the other hand, with respect to appellate procedure in the district courts. After full consideration, the following statement was adopted by the standing committee for the guidance of the advisory committees:

"The advisory committees in the fields of criminal, civil, admiralty and bankruptcy procedure should take primary responsibility for the study of all such procedure in the dis-

strict courts up to but not including the filing of a notice of appeal, or the form and manner of making up and transmitting the record on appeal or the procedure in the court of appeals after the appeal is lodged there, for all of which procedure the Advisory Committee on Appellate Rules would bear primary responsibility. With respect to matters within its primary responsibility as defined each committee should, of course, welcome such suggestions as the other committees may desire to make as a result of their own studies. It is also to be understood that all proposals with respect to procedure between the filing of the notice of appeal and the docketing of the appeal in the appellate court are to be submitted by the Advisory Committee on Appellate Rules to the appropriate other advisory committees and their views obtained before any proposal in that area is submitted to the Standing Committee."

The Committee is also encouraging the advisory committees to continue the practice, followed in the formulation of the Federal Rules of Civil Procedure, of making proposed rules and amendments thereto brief and general in scope, leaving large areas of discretion to the judges to deal with particular situations.

#### JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, submitted to the Conference the appropriations estimates for the judiciary for the fiscal year 1964. The estimates, which had been prepared by the Director of the Administrative Office pursuant to 28 U.S.C. 605 and which were examined and approved by the Committee, totaled \$61,064,600, an increase of \$2,259,100 over the appropriations approved by the House of Representatives for the fiscal year 1963. At the time the appropriation estimates for the fiscal year 1964 were prepared, Congress had not completed action on the 1963 appropriation bill. On recommendation of the Committee, the appropriations estimates presented were approved by the Conference.

The Director of the Administrative Office was further authorized to submit to Congress estimates of supplemental appropriations in the event of the enactment of the Federal employees salary increase bill and for any purpose which could not be anticipated at the time of this submission.

Judge Campbell pointed out that the Committee plans to ask Congress in the fiscal year 1964 appropriation bill for the full amount required to put into effect the Judiciary Salary Plan previously approved by the Conference. In view of the amount of funds required and the fact that this request will follow a general salary increase, the Committee recommended that the submission of the request for funds for the salary plan for the fiscal year 1964 be approved and that any requests for additional supporting personnel be postponed. This recommendation was approved by the Conference.

At the request of Chief Judge Sylvester J. Ryan, the Conference approved the inclusion in the appropriation requests for 1964 of an item of \$38,855, to continue the pretrial examiner program in the Southern District of New York. The Conference directed the Administrative Office to undertake an examination of the pretrial examiner programs in the District of Columbia and in the Southern District of New York and to report thereon to the Committee on Court Administration.

For the fiscal year 1963 the Conference had approved the inclusion in the budget request of funds for 21 additional positions in the Administrative Office on the basis of the sizable increase in workload imposed by the recent omnibus judgeship legislation. Five of the 21 requested positions were allowed by the House of Representatives. In conjunction with the Committee, the Administrative Office decided not to appeal the reduction made by the House, but to advise the Senate Appropriations Committee that it would first see what could be accomplished with these five positions before asking for any additional funds.

Upon recommendation of the Committee, the Conference authorized the Director, either in a supplemental appropriation or in the request for appropriations for the fiscal year 1964, to include any necessary funds to provide for a portion or all of the requested positions previously disallowed by the House. The Conference also approved the inclusion of \$110,000 in the appropriations of the Administrative Office to carry on the study of the rules of practice and procedure, which is the same amount approved by the House Appropriations Committee for the fiscal year 1963.

#### SUPPLEMENTAL APPROPRIATIONS

The Conference was informed that obligations incurred during the fiscal year 1962 incident to the creation of the new judgeships aggregated approximately \$2,870,000, or \$110,000 less than the sum provided by Congress. Although the over-all amount was adequate, it was necessary to request authority to transfer a surplus of \$100,000 in the appropriation for "Salaries of Supporting Personnel" to the appropriation for the salaries of judges, to complete payment of compensation and related benefits for the services of judges rendered through June 30, 1962.

During the fiscal year 1962 it was also necessary to request supplemental appropriations aggregating \$826,000 for travel and miscellaneous expenses of the courts, fees of jurors and U.S. commissioners, expenses of referees in bankruptcy, and expenses of the Administrative Office. Action on these requests by Congress was not completed as of July 1962 and it was therefore necessary to suspend payments to U.S. commissioners.

Chief Judge Campbell informed the Conference that the appropriation requests for the fiscal year 1963 have been approved by the House Appropriations Committee substantially as requested and no appeal has been made to the Senate Appropriations Committee for restoration of funds. However, the Committee has been requested to

consider an amendment to the 1963 Appropriation Bill to increase the amount approved by the House of Representatives for fees of jurors and commissioners by \$1,500,000 and to add a proviso to the text of the appropriation to make \$300,000 available for completion of payments to U.S. commissioners for fees due for services rendered during the fiscal year 1962.

#### COMMITTEE PROCEDURE

In view of the importance of the timing of requests for appropriations and in view of the fact that there are several proposals before the Conference which would necessitate requests for funds, the Committee requested authority to arrange and time requests for items as approved by the Conference so as, in its best judgment and that of the Administrative Office, to assure success in obtaining funds. The Committee made this request because at the present time items approved by the Conference are presumed to be for immediate release to the Congress. The Committee does not wish to oppose the approval of items which the Conference feels have merit, but does wish to have authority to use its judgment in the timing of requests addressed to the Congress, subject always, of course, to the approval of the Conference. The request of the Committee was approved by the Conference.

The Conference approved the report of the Committee and authorized the immediate release of any information contained therein as may be necessary in the preparation and presentation of supplemental or annual appropriations estimates to the Congress.

#### COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge John Biggs, Jr., presented the report of the Committee.



ADDITIONAL DISTRICTS, DIVISIONS AND  
PLACES OF HOLDING COURT

The Conference considered the following proposals with reference to the creation of additional districts, divisions, and places of holding court:

(1) S. 3156 and H.R. 11143, 87th Congress, to amend 28 U.S.C. 142 to read as follows:

“Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States. The foregoing restrictions shall not, however, preclude the Administrator of General Services at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where regular terms of court are authorized by law to be held, but only if such quarters and accommodations have been approved as necessary by the Judicial Council of the appropriate circuit.”

It was the view of the Committee that this legislation will place in the judicial councils of the circuits a measure of control over the places where court is to be held. Upon recommendation of the Committee, the Conference approved the proposal contained in S. 3156, as passed by the Senate.

(2) H.R. 11678, 87th Congress, to waive the restrictions of 28 U.S.C. 142 with respect to the holding of court at Akron in the Northern District of Ohio. The Judicial Council of the Sixth Circuit has recommended that suitable facilities for holding district court be provided in the new Federal building to be constructed in Akron. Upon recommendation of the Committee, the Conference approved the bill.

(3) S. 2864 and H.R. 10380 to establish Dickinson, Jamestown, Devils Lake and Williston as additional places of holding court in the District of North Dakota; H.R. 7533 to divide North Dakota into two separate districts with additional places of holding court as set forth above;

and H.R. 6378 to establish Dickinson as an additional place of holding court in North Dakota and to waive the provisions of 28 U.S.C. 142 in regard to holding court at Dickinson. The Judicial Council of the Eighth Circuit has disapproved the creation of additional places of holding court in the District of North Dakota on the ground that they are unnecessary and not in the best interests of judicial administration and economy. The Committee, therefore, recommended that S. 2864, H.R. 6378 and H.R. 10380 be disapproved; and that in accordance with the settled policy of the Judicial Conference to disapprove the creation of any new district, that H.R. 7533 also be disapproved. This recommendation was approved by the Conference.

The Conference reviewed its procedure for the consideration of legislation introduced in Congress with regard to additional places of holding court and the waiving of the limitations and restrictions of 28 U.S.C. 142 in respect to places of holding court. Upon recommendation of the Committee, the Conference directed the Administrative Office to refer all such legislation to the Judicial Councils of the circuits involved for their consideration, and to transmit the recommendations of the Councils directly to the Chairmen of the Committees on the Judiciary of the Senate and House of Representatives.

#### JUDICIAL SURVIVORS ANNUITY ACT

The Conference considered the proposal contained in S. 3482, 87th Congress, which is a private bill to authorize the payment of an annuity to the widow of a Federal judge who, at the time of his death, had served four years and eight months. The Annuity Act at present requires a minimum of five years service. While sympathetic with the purposes of the proposal, the Conference was of the view that it presents a matter of policy for the determination of the Congress. The Conference, therefore, took no action on the bill.

## REORGANIZATION OF THE COURT OF CLAIMS

The Conference at its September 1961 session (Conf. Rept., p. 66) deferred action on S. 1235 and H.R. 6851, 87th Congress, to reorganize the Court of Claims by establishing separate trial and appellate divisions. The Committee reported that it has given no further study to the proposal contained in these bills and contemplates no further action.

The proposal contained in S. 3070, 87th Congress, to provide additional commissioners for the Court of Claims, was previously approved by the Conference at its March 1962 session upon the recommendation of the Committee on Supporting Personnel (Conf. Rept., p. 23.) . The Committee reported, therefore, that it no longer has this proposal before it for consideration.

## COURT REPORTING SYSTEM

The Committee presented to the Conference a proposed amendment to 28 U.S.C. 753(b) to permit the filing by court reporters of electronic sound recordings of arraignments, pleas and sentences in criminal cases in lieu of transcripts, as presently required. After full discussion, the Conference directed the Committee to undertake a further study of the proposed amendment in the light of the discussions in the Conference.

The Committees on Court Administration and Supporting Personnel were authorized to consider further the Conference regulations concerning fees to be paid to court reporters when file copies of transcripts are transmitted to the courts of appeals. This regulation was recently considered by the court of appeals for the Ninth Circuit in *U.S. v. Benning*, 295 F.2d 705. The Committees were also authorized to consider the proposal to increase the court reporter's fee for the use of a transcript in the preparation or perfection of an appeal from 25 cents to 30 cents per page and to conduct a full study of 28 U.S.C. 753(b).

Pending further action by the Committees and by the Conference, the Director of the Administrative Office was authorized to continue salary payments to court reporters. (See Conf. Rept., Sept. 1961, p. 70).

#### SELECTION OF CHIEF JUDGES

The Conference at its March 1962 session (Conf. Rept., p. 4) directed the Committee to consider 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. The Committee reported that it had given further consideration to these proposals but had not as yet arrived at definite answers to the difficult questions presented. The Committee was granted leave to consider the matter further and to report at a later meeting of the Conference.

#### GEOGRAPHICAL ORGANIZATION

The Committee reported that the survey of the geographical organization of the entire Federal Judicial System to be made in the light of population increases and economic changes and to include a study of the adequacy of the present number of places of holding court, as requested by Congressman Emanuel Celler, will require statistical information with respect to the cases originating in each district court classified according to county of origin within the district from a venue standpoint. This information is not available in the Administrative Office. A field study to secure the information will therefore be necessary and the Administrative Office has neither funds nor personnel available for this purpose. The Committee therefore recommended that the Conference suggest to Congressman Celler, that the Committee on the Judiciary of the House of Representatives undertake such a statis-

tical study for its own use and to enable the Judicial Conference to carry out the study of the geographical organization of the courts heretofore requested by Congressman Celler. This recommendation was approved by the Conference with the understanding that the Committee on Court Administration will cooperate with the House Committee in the conduct of the survey.

#### FEES OF WITNESSES

S. 2949, 87th Congress, would amend 28 U.S.C. 1821 and 1825 to increase the fees of witnesses from \$4 to \$6 per day; increase the mileage allowance from 8 cents to 10 cents per mile; and increase the subsistence allowance from \$8 to \$10 per day. The bill would also authorize the payment of witness' fees to Government witnesses on the certificate of a Government attorney in charge of the case or a grand jury proceeding, as well as the United States attorney, or an assistant United States attorney. On recommendation of the Committee, the Conference approved the proposal contained in the bill.

#### DISBURSEMENT OF JUDICIARY FUNDS

S. 2948 and 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, may disburse appropriated funds for the maintenance and operation of the courts. The Committee reported that it endorses the plan in principle, but that additional funds will be required to make it effective. Until the cost is ascertained, the Committee was authorized to consider the matter further and report at a later session of the Conference.

#### CLERKS' FEES

The Conference at its March 1962 session (Conf. Rept., p. 6) directed the Administrative Office to undertake a

study of the existing fee schedules for clerks of court and to report any suggested changes in fees to the Committee on Court Administration. However, due to pressure of business and lack of personnel, the Administrative Office has been unable to complete these studies. The Committee was therefore granted leave to consider the matter further and to report to the Conference when the studies have been completed.

#### PRETRIAL EXAMINERS

The Conference, upon recommendation of the Committee, had authorized the employment of pretrial examiners in the United States District Court for the District of Columbia on an experimental or trial basis. In September 1960 the Conference further authorized the inclusion in the budget of funds for the inauguration of a similar system in the United States District Court for the Southern District of New York and funds for these programs were specifically included by the Congress in several Appropriations Acts.

It was the view of the Committee that an examination should be made by the Administrative Office to determine how efficiently these systems are working. The Conference thereupon directed the Administrative Office to examine the operation of the pretrial examiner systems in the District of Columbia and in the Southern District of New York and to report thereon to the Committee.

#### STATE GRANTS TO FEDERAL JUDGES

There was brought to the attention of the Committee a proposal to have the State of New York supplement the salaries of Federal judges in that State in an amount sufficient to render the total compensation of such judges equal to the corresponding salaries of State court judges in the place where each Federal judge maintains an official station within the State. It was the view of the Commit-

tee, with one judge dissenting, that the plan presents an undesirable policy and raises serious constitutional questions. Upon recommendation of the Committee, the Conference voted to oppose adoption of the plan.

### REVISION OF THE LAWS

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

### REMOVAL JURISDICTION

Judge Maris reported that the subcommittee 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, had submitted an interim report and had been authorized to continue its study. It is anticipated that a final report will be completed in February.

### ADMINISTRATIVE PROCEDURE ACT

The Conference at its March 1962 session (Conf. Rept., p. 11) had referred to the Committee S. 1887 and H.R. 9926, 87th Congress, to recodify Chapter 19 of Title 5, United States Code, entitled "Administrative Procedure." The Conference considered fully the Committee's recommendation that it approve with certain amendments the provisions of Section 1009, for the judicial review of agency action and directed that the proposals contained in these bills be referred to both the Committee on Revision of the Laws and the Committee on Court Administration for further consideration in the light of the discussions in the Conference. The Committees were authorized to confine their consideration of these bills to the provisions with respect to judicial review.

The proposal contained in S. 3410, 87th Congress, to amend Section 10(a) of the Administrative Procedure

Act, in regard to judicial review of agency action, was also referred to the Committees for further study.

#### CIRCUIT LEGISLATIVE COMMITTEES

The Committee reported that it had given further consideration to a procedure for establishing and maintaining 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 have been appointed. The Committee concluded that the most feasible procedure is for the preliminary agenda for the semi-annual meetings of the Committee to be transmitted to the chief judge of each circuit for reference to the circuit legislative committee, if any, with an invitation to submit to the Chairman of the Committee on Revision of the Laws, prior to its ensuing meeting, any suggestions or problems on which consideration is desired. Copies of any bills or other documents referred to in the Committee agenda will be available from the Administrative Office upon request.

#### COURT OF VETERANS' APPEALS

H.R. 10915, 87th Congress, would establish a Court of Veterans' Appeals and prescribe its jurisdiction and functions. Similar bills were considered by the Conference at its September 1961 session (Conf. Rept., p. 78) and approved as to the type of judicial review proposed, but disapproved to the extent that they would amend 28 U.S.C. 451 and 610 to include the proposed new court among the courts of the United States and to require the Director of the Administrative Office to assume responsibility for its administrative affairs. Upon recommendation of the Committee, the Conference reaffirmed its action with respect to the proposals contained in H.R. 10915.

#### VENUE AND TRANSFER OF CASES

The Committee reported that H.R. 12027, 87th Congress, would amend the venue statute, 28 U.S.C. 1391, in



accordance with the recommendation of the Conference at its March 1962 session (Conf. Rept., p. 9). Upon recommendation of the Committee, the Conference approved the bill.

Judge Maris reported that the subcommittee appointed to study the subject of venue has continued to give consideration to various aspects of the problem, and in addition has under consideration (1) a proposal to permit multiple claims arising out of a single occurrence, such as an airplane accident, to be consolidated for trial before one tribunal and (2) a proposal to broaden the venue requirements in suits to recover for frauds committed against the United States.

It was the view of the Committee, however, that the enactment of H.R. 12027, above approved, and a possible broadening of the Federal Rules of Civil Procedure with respect to service of process may meet, in an appropriate general way, the problems involved in suits on multiple claims arising out of a single occurrence, as well as other venue problems. The Committee also believed that this action may so modify the effect of the impact of *Hoffman v. Blaski*, 363 U.S. 335, upon 28 U.S.C. 1404(a) and 1406(a) as to render it unnecessary to amend those sections. The Committee accordingly recommended that further consideration of legislative proposals relating to venue and service of process be deferred pending action by Congress on H.R. 12027, or its counterpart in the 88th Congress, and pending action by the Committee on Rules of Practice and Procedure upon proposals for the extension of the right to extraterritorial service of process. This recommendation was approved by the Conference.

#### INTERSTATE COMMERCE ACT

H.R. 7421, 87th Congress, would amend the Interstate Commerce Act to make unlawful any discriminatory tax assessments against the property of a common carrier and would confer jurisdiction on the district courts to issue

injunctions in such cases. The Committee was of the view that this is not a proper extension of the jurisdiction of the courts and recommended that the Conference inform the Bureau of the Budget that it disapproves the bill. This recommendation was approved by the Conference.

#### RETIRED TERRITORIAL JUDGES

The Committee reported that it had given further consideration to the proposal contained in S. 1897, 87th Congress, to authorize retired judges of certain territorial courts to perform judicial service, when designated and assigned. In view of the transformation of Alaska and Hawaii from Territories to States and the pending legislation to give life tenure to the district judges in Puerto Rico, the Committee concluded that the bill is no longer of any significant importance and recommended that it be dropped from the legislative program of the Judicial Conference. This recommendation was approved by the Conference.

#### BANKRUPTCY ADMINISTRATION

The Acting Chairman of the Committee on Bankruptcy Administration, Senior Judge Phillip Forman, presented to the Conference a resolution with respect to the service of Senior Judges Orié L. Phillips and John B. Sanborn who have resigned from the Committee. The Conference concurred unanimously in the resolution and directed that it be transmitted to Judges Phillips and Sanborn.

WHEREAS, the Judicial Conference at its September 1942 Session authorized the Chief Justice of the United States to appoint a Committee to consider and report on matters of bankruptcy administration, and

WHEREAS, pursuant to this authorization a standing Bankruptcy Committee was created, and

WHEREAS, the Honorable Orié L. Phillips and the Honorable John B. Sanborn were appointed by Chief

Justice Harlan F. Stone as chairman and member respectively of that Committee, and

WHEREAS, Judge Phillips and Judge Sanborn have served continuously as members of the Bankruptcy Committee even beyond their retirement from active duty and have displayed tireless energy as well as high legal skill in dealing with the solution of many difficult problems relating to bankruptcy, and

WHEREAS, Judge Phillips and Judge Sanborn have unsparingly sacrificed their time and unusual abilities beyond the demands of all reasonable requirements, and

WHEREAS, Judge Phillips and Judge Sanborn through their efforts have contributed greatly to the improvement of the Bankruptcy Administration throughout the nation,

RESOLVED, that we here record our sincere appreciation for their service to the Bankruptcy Committee and to the improvement of Bankruptcy Administration, and that we here express our real affection for them accompanied by our feeling of deep personal debt for their able guidance and counsel. We wish for them an unalloyed enjoyment of all things that make life pleasant.

#### SALARIES AND POSITIONS OF REFEREES

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 July 6, 1962, relating to the continuance of referee positions to become vacant prior to April 1, 1963 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 and the recommendations of the Director, judicial councils and the district judges. On the basis of the report and recommendations, the Conference took the action shown in the following table relating to changes in salaries and the creation of new referee positions, and directed that unless otherwise shown, this action become effective on October 1, 1962, or as soon thereafter as 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>First Circuit</i>    |                         |                  |                |                   |                     |
| Maine.....              | Bangor.....             | Part-time        | \$6,500        | Full-time         | \$12,500            |
| <i>Fourth Circuit</i>   |                         |                  |                |                   |                     |
| South Carolina (E)..... | Charleston.....         | do               | 5,000          | Part-time         | 5,000 <sup>1</sup>  |
| South Carolina (W)..... | Spartanburg.....        | do               | 7,500          | do                | 7,500 <sup>2</sup>  |
| Virginia (E).....       | Alexandria.....         | do               | 5,000          | do                | 7,000               |
| Virginia (W).....       | Harrisonburg.....       | do               | 4,500          | do                | 6,000               |
| West Virginia (S).....  | Charleston.....         | Full-time        | 13,750         | Full-time         | 15,000              |
| <i>Fifth Circuit</i>    |                         |                  |                |                   |                     |
| Florida (N).....        | Tallahassee.....        | Part-time        | 2,500          | Part-time         | 4,000               |
| Florida (M).....        | Jacksonville.....       | do               | 6,000          | do                | 7,000 <sup>3</sup>  |
| Georgia (M).....        | Columbus.....           | Full-time        | 13,750         | Full-time         | 15,000              |
| Mississippi (S).....    | Gulfport.....           | Part-time        | 7,500          | do                | 15,000 <sup>4</sup> |
| Texas (W).....          | El Paso.....            | do               | 7,000          | do                | 15,000 <sup>5</sup> |
| <i>Sixth Circuit</i>    |                         |                  |                |                   |                     |
| Kentucky (W).....       | Louisville.....         | New Position     | -----          | do                | 15,000              |
| Michigan (W).....       | Grand Rapids.....       | Full-time        | 13,750         | do                | 15,000              |
| Michigan (W).....       | Grand Rapids.....       | do               | 13,750         | do                | 15,000              |
| Michigan (W).....       | Marquette.....          | Part-time        | 2,500          | Part-time         | 3,500               |
| Tennessee (E).....      | Knoxville.....          | Full-time        | 13,750         | Full-time         | 15,000              |
| Tennessee (E).....      | Chattanooga.....        | do               | 13,750         | do                | 15,000              |
| <i>Seventh Circuit</i>  |                         |                  |                |                   |                     |
| Indiana (S).....        | Evansville.....         | Part-time        | 5,000          | Part-time         | 7,500               |
| Wisconsin (W).....      | Eau Claire.....         | do               | 6,000          | do                | 7,000               |
| <i>Eighth Circuit</i>   |                         |                  |                |                   |                     |
| Minnesota.....          | St. Paul.....           | Full-time        | 13,750         | Full-time         | 15,000              |
| <i>Ninth Circuit</i>    |                         |                  |                |                   |                     |
| Montana.....            | Great Falls.....        | Part-time        | 5,000          | Part-time         | 6,000               |
| Montana.....            | Butte.....              | do               | 5,000          | do                | 6,000               |
| <i>Tenth Circuit</i>    |                         |                  |                |                   |                     |
| Colorado.....           | Pueblo.....             | Part-time        | 7,500          | Full-time         | 15,000              |
| Utah.....               | Salt Lake City.....     | do               | 7,500          | do                | 13,750              |

<sup>1</sup>Salary rate to be continued from October 1, 1962 to September 30, 1963; position then to be subject to resurvey.

<sup>2</sup>Salary rate to be continued from November 16, 1962 to December 31, 1963; position then to be subject to resurvey.

<sup>3</sup>Salary increase to \$7,000 to be in effect for one year; at expiration of one year position to be subject to resurvey.

<sup>4</sup>Regular place of office to be changed to Jackson.

<sup>5</sup>Salary increase and change to full-time authorized for a period of one year, position then subject to resurvey.

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 to become vacant by expiration of term, and directed that unless otherwise noted the changes become effective October 1, 1962, or as soon thereafter as appropriated funds are available:

#### FIRST CIRCUIT

##### *District of Maine:*

- (1) Changed the part-time referee position at Bangor to full-time, at a salary of \$12,500 per annum.
- (2) Transferred the counties of Kennebec and Knox from the territory of the Portland referee to the territory of the referee at Bangor.
- (3) Discontinued Augusta as a place of holding court for the referee at Portland.
- (4) Designated Augusta and Caribou as additional places of holding court for the referee at Bangor.
- (5) Authorized the filling of the full-time referee position at Portland to become vacant by expiration of term on November 4, 1962, on a full-time basis for a term of six years, effective November 5, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present, except as indicated above.

#### FIFTH CIRCUIT

##### *Middle District of Florida:*

- (1) Designated the referee at Jacksonville as a referee for the new Middle District for Florida.
- (2) Designated the counties of Madison, Hamilton, Suwanee, Columbia, Baker, Union, Bradford, Lake, Nassau, Duval, Clay, St. Johns, Putnam, Flagler, Volusia, Marion, Citrus, and Sumter as the Territory of the referee at Jacksonville.
- (3) Directed that all bankruptcy cases pending on reference before the referee at Jacksonville on October 28, 1962, the effective date of Public Law 87-562, stand referred to him.
- (4) Directed that the referee at Tampa be designated as a referee for the new Middle District of Florida.
- (5) Designated the counties of Orange, Osceola, Seminole, Brevard, Polk, Charlotte, DeSoto, Hardee, Hernando, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota as the territory of the referee at Tampa.
- (6) Directed that all bankruptcy cases pending on reference before the referee at Tampa on October 28, 1962, arising from the counties listed above, stand referred to him.
- (7) Directed that all bankruptcy cases pending on reference before the referee in Tampa on October 28, 1962, arising from the counties of Glades, Hendry, Highlands, and Collier be transferred and re-

ferred to the referee at Miami in the Southern District of Florida, unless the court shall otherwise order.

*Southern District of Florida:*

- (1) Transferred the counties of Glades, Hendry, Highlands, and Collier from the territory served by the referee at Tampa to the territory of the referee at Miami, effective October 28, 1962.

*Middle District of Georgia:*

- (1) Established district-wide concurrent jurisdiction for the full-time referees located at Macon and Columbus.

*Southern District of Mississippi:*

- (1) Authorized for the district a full-time referee position at Jackson, at a salary of \$15,000 per annum.
- (2) Discontinued the part-time referee position at Gulfport, as no longer needed.
- (3) Designated Jackson, Meridian, Hattiesburg, Vicksburg and Gulfport as places of holding court for the full-time referee at Jackson.

*Western District of Texas:*

- (1) Changed the part-time referee position at El Paso to a full-time basis at a salary of \$15,000 per annum, for a period of one year after the effective date, the position then to be subject to resurvey.

#### SIXTH CIRCUIT

*Western District of Kentucky:*

- (1) Authorized an additional full-time referee position at Louisville, at a salary of \$15,000 per annum.
- (2) Discontinued the part-time referee position at Paducah as no longer needed.
- (3) Established concurrent district-wide jurisdiction for the referee positions at Louisville.
- (4) Designated Paducah and Owensboro as additional places of holding court for the referees at Louisville.

#### SEVENTH CIRCUIT

*Northern District of Illinois:*

- (1) Authorized the filling of the full-time referee positions at Chicago to become vacant by expiration of term on December 31, 1962 and March 4, 1963, on a full-time basis for terms of six years, effective January 1, 1963 and March 5, 1963, respectively, at the present salary, the regular places of office, territory, and places of holding court to remain as at present.

*Northern District of Indiana:*

- (1) Deferred action on proposals with respect to referee positions in this district until the next meeting of the Conference.

*Southern District of Indiana:*

- (1) Transferred the Terre Haute Division from the territory of the referee at Indianapolis to the territory of the part-time referee at Evansville.
- (2) Discontinued Terre Haute as a place of holding court for the referee at Indianapolis.
- (3) Designated Terre Haute as an additional place of holding court for the part-time referee at Evansville.

*Western District of Wisconsin:*

- (1) Changed the regular place of office for the part-time referee from Superior to Eau Claire.

## EIGHTH CIRCUIT

*Western District of Missouri:*

- (1) Authorized the filling of the full-time referee position at Kansas City to become vacant by expiration of term on February 28, 1963, on a full-time basis for a term of six years, effective March 1, 1963, 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) Established concurrent jurisdiction for all full-time referees in this district.

*Southern District of California:*

- (1) Authorized the filling of the full-time referee position at San Bernardino to become vacant by expiration of term on January 31, 1963, on a full-time basis for a term of six years effective February 1, 1963, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*District of Nevada:*

- (1) Authorized the filling of the part-time referee position at Reno to become vacant by expiration of term on January 11, 1963, on a part-time basis for a term of six years effective January 12, 1963, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## TENTH CIRCUIT

*District of Colorado:*

- (1) Changed the part-time referee position at Pueblo to full-time, at a salary of \$15,000 per annum.
- (2) Established concurrent district-wide jurisdiction for the referees at Pueblo and Denver.

*District of Utah:*

- (1) Changed the part-time referee position at Salt Lake City to full-time at a salary of \$13,750 per annum.



## APPROPRIATIONS

The Conference was informed that a supplemental appropriation for referees' expenses for the fiscal year 1962 in the amount of \$100,000 had been approved by both Houses of Congress, but that funds for the salaries and expenses of referees for the fiscal year 1963 had not yet been appropriated. However, the report of the Committee on Appropriations of the House of Representatives on the fiscal year 1963 budget provides the sum of \$2,600,000 for salaries of referees, an increase of \$230,000. This sum will be sufficient to put into effect all salary increases and changes previously approved by the Conference, including those authorized above. The bill also includes the sum of \$4,850,000 for expenses of referees, an increase of \$640,000 over 1962.

Upon recommendation of the Committee, the Conference authorized the Director to seek adequate appropriations for referees' salaries and expenses for the fiscal year 1964 and in addition such supplemental appropriations as may become necessary for the fiscal year 1963.

## PENDING AND PROPOSED LEGISLATION

The Conference reaffirmed its approval of the following bills, pending in the 87th Congress, and authorized the Administrative Office to seek the introduction in the next Congress of those bills which do not become law in the present Congress.

(1) *Dischargeability of Debts*: H.R. 1742, 87th Congress, would amend Section 2a of the Bankruptcy Act, 11 U.S.C. 11(a), by adding at the end thereof a new subsection which would give to the bankruptcy court jurisdiction to determine the dischargeability or nondischargeability of provable debts.

(2) *Priority Claims, Statutory Liens and Title to Property*: H.R. 1961, 87th Congress, would amend Sections 1, 17a, 57j, 64a (5), 67b, and 70c of the Bankruptcy Act, 11 U.S.C. 1, 35(a) 93(j), 104(a) (5), 107(b) and

110(c), relating to priority claims, statutory liens, and title to property. While preserving the present position of the costs of administration and wages in the distribution of the assets of a bankrupt, the bill would enable 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 passed the House of Representatives on August 7, 1961 with an amendment approved by the Conference at its September 1961 session (Conf. Rept., p. 87).

(3) *Summary Jurisdiction*: H.R. 4855, 87th Congress, would amend Sections 60b, 67e, and 70e, of the Bankruptcy Act, 11 U.S.C. 96(b), 107(e), and 110(e), to give the bankruptcy court summary jurisdiction in actions involving preferences, liens and fraudulent transfers, and the trustee's title to property.

(4) *Claims in Chapter XI Cases*: H.R. 4856, 87th Congress, would amend various Sections of the Bankruptcy Act and add a new Section so as to require the filing of claims in Chapter XI cases within the time prescribed by Section 57n of the Bankruptcy Act, 11 U.S.C. 93(n). The bill passed the House of Representatives on April 16, 1962.

(5) *Attorneys' Fees*: H.R. 5149, 87th Congress, would amend Section 60d of the Bankruptcy Act, 11 U.S.C. 96(d) to give the bankruptcy court authority on its own motion to reexamine attorneys' fees to be paid in a bankruptcy proceeding. The bill passed the House of Representatives on April 16, 1962.

(6) *Referees' Retirement and Salary Bill*: H.R. 5341, 87th Congress, would amend the Bankruptcy Act generally to provide:

- (1) Terms of 12 years for full-time referees.
- (2) An increase in the maximum salary limitations for full-time and part-time referees and a provision that the salary of the Chief of the Bankruptcy Division of the Administrative Office shall not be less than the maximum salary rate for a full-time referee.

- (3) Compensation for services of a retired referee.
- (4) A more liberal retirement annuity and mandatory retirement for referees.

A separate bill to provide compensation for the services of a retired referee became law on September 19, 1962, Public Law 87-677. This Act provides that the compensation of a retired referee shall be the same as the salary applicable to any full-time position he fills, or when assigned to serve on a full-time basis in the territory of a part-time referee, the minimum salary established by the Judicial Conference for full-time referee service. Compensation authorized under this Act is subject to the provisions of Section 13 (b) of the Civil Service Retirement Act, 5 U.S.C. 2263. Upon recommendation of the Committee, the Conference reaffirmed its approval of those provisions of H.R. 5341 not included in Public Law 87-677.

(7) *Omnibus Bill: H.R. 5393*, 87th Congress—the so-called noncontroversial omnibus bill—provides for several clarifying, perfecting and conforming improvements in the Bankruptcy Act. The bill became law on September 25, 1962, Public Law 87-681.

(8) *Rules of Practice and Procedure: H.R. 7405*, 87th Congress, would provide for the promulgation of rules of practice and procedure under the Bankruptcy Act by the Supreme Court of the United States. The bill passed the House of Representatives on August 7, 1961.

(9) *Deposit of Bankruptcy Funds: H.R. 10204*, 87th Congress, would authorize the deposit of funds of bankrupt estates in interest bearing accounts under proper safeguards. The bill passed the House of Representatives on May 7, 1962.

#### OTHER LEGISLATION

(1) *Railroad Reorganizations: S. 1624* and *H.R. 7403*, 87th Congress, would amend Section 77 of the Bankruptcy Act, and *S. 2733*, 87th Congress, would amend Section 20b of the Interstate Commerce Act, relating to the reorganization of railroads. The Conference considered these

bills fully and voted to approve the proposal to amend Section 77 of the Bankruptcy Act. The Conference, however, referred the proposal to amend Section 20b of the Interstate Commerce Act to the Bankruptcy Committee for further study.

(2) *Claims in Chapter XIII Cases*: S. 3307, 87th Congress, would amend Section 606(1) of the Bankruptcy Act, 11 U.S.C. 1006(1), to broaden the definition of "claims" in Chapter XIII cases by striking from this subsection the words "but shall not include claims secured by estates in real property or chattels real." The Committee recommended that the Conference disapprove the proposal contained in the bill on the ground that the inclusion of claims secured by estates in real property or chattels real in proceedings under Chapter XIII would needlessly complicate the administration of this procedure. This recommendation was approved by the Conference.

#### AUDIT OF STATISTICAL REPORTS

The Administrative Office had reported to the Committee that the audit of statistical reports of closed asset cases has continued in accordance with the schedule approved by the Conference in September 1961 (Conf. Rept., p.89). It was the view of the Committee that the audit of statistical reports of closed cases should be continued as a permanent part of the work of the Bankruptcy Division of the Administrative Office.

Judge Forman also reported that the subcommittee appointed to consider the question of the accountability of referees, trustees and receivers with respect to errors in the computation of the compensation of receivers and trustees and the charges to be made for the Referees' Salary and Expense Fund had recommended that receivers and trustees should be held personally accountable for all overpayments of commissions and compensation. Upon recommendation of the Committee, the Conference ap-

proved the following resolution to carry out these objectives:

"Resolved, That the Administrative Office be authorized and directed to continue the policy of requiring referees to cause a thorough audit to be made of all accounts of receivers and trustees and to require strict compliance by them with all the provisions of the Bankruptcy Act relating thereto; that the Administrative Office continue its policy of auditing the statistical reports of closed cases; and that receivers and trustees shall be held personally accountable for any errors in the computation of receivers' and trustees' compensation."

The question of the accountability of referees for errors in the computation of charges for the Referees' Salary and Expense Fund was referred to the Committee for further study.

#### DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Administrative Office has reported to the Committee a continuing increase in the use of the provisions of Chapter XIII of the Bankruptcy Act, covering wage earner plans for the payment of creditors. During the fiscal year 1962 there were 22,880 Chapter XIII cases filed, compared with 19,723 in 1961. In the last year there were only six districts in which no Chapter XIII cases were filed.

The expanded use of Chapter XIII has created a number of administrative problems, including the amount and type of trustees' bonds; the charges and allowances to trustees for compensation and expenses; the use of revolving funds to pay the salaries and expenses of trustees; the cost of administering Chapter XIII cases; the use of more than one Chapter XIII trustee in a district; the supervision of the fiscal operations of the trustee; the audit of trustees' accounts; and the records to be maintained and the reports to be required from the trustees and referees. Accordingly, the Committee has directed that a subcommittee be appointed to study and recommend guide lines for all phases of the administration of Chapter XIII cases.

### ANNUAL AND SICK LEAVE FOR REFEREES

The Committee was advised by the Administrative Office that inquiry had been made as to whether referees in bankruptcy are subject to the Annual Sick Leave Act and Regulations relating to Government employees. It was brought to the attention of the Conference that the Comptroller General of the United States has held that officers and employees whose hours of duty are not subject to a fixed schedule are not subject to the leave system and that this principle applies to judges of the federal courts. Upon recommendation of the Committee, the Conference approved the principle that referees in bankruptcy, because of the nature of their work schedules, are not subject to the annual and sick leave laws.

### INCAPACITY OF REFEREES

It was brought to the attention of the Committee that on occasion full-time referees have become incapacitated, due to accident or prolonged illness. In those instances the referees have continued to receive their full compensation and their duties have been performed by other referees in the district, or by referees assigned from other districts in the circuit. It was the view of the Committee that in cases of illness or accident, resulting in the prolonged absence of the referee, the Director of the Administrative Office should notify the district court and the judicial council of the circuit concerned of the resulting effect on the bankruptcy work in the district. This procedure was approved by the Conference.

### CHARGES FOR THE REFEREES' SALARY AND EXPENSE FUND

The Conference at its March 1962 session (Conf. Rept., p. 18) authorized the Administrative Office to undertake a study of the regulations under Section 40c(2) of the Bankruptcy Act for the determination of "net proceeds realized" and of payments into the Referees' Salary and

Expense Fund as promulgated by the Conference in May 1947. The Bankruptcy Division, after study, concluded that a change in these rules and regulations and a revision of the percentage and special charges for the Referees' Salary and Expense Fund are not required at this time. The Committee recommended that this suggestion be approved with the understanding that the Bankruptcy Division will continue to express its views upon inquiry from referees and others as to the application of the regulations and charges. The recommendation was approved by the Conference.

#### 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.

#### TIME SPENT BY DEFENDANTS IN CONFINEMENT PRIOR TO SENTENCING

H.R. 4846, 87th Congress, would amend 18 U.S.C. 3568 to provide that a person held in custody awaiting trial because of his inability to post bail shall be allowed credit for the time spent in custody prior to imposition of sentence. Upon recommendation of the Committee, the Conference approved the bill.

Consideration is being given by the Committee to the proposal to amend 18 U.S.C. 3568 to allow credit for time spent in custody pending appeal where the reversal of the defendant's conviction requires a new trial. The Committee has requested the views of the members of the Conference as to the advisability of a further amendment of the statute.

#### APPELLATE REVIEW OF SENTENCES

The Committee reported that no action has been taken on S. 2879, 87th Congress, which would provide for the appellate review of any sentence to a term of imprisonment in excess of five years on the ground that the sentence,

although within lawful limits, is excessive. The Committee is giving further consideration to this proposal.

#### INDIAN TRIBAL COURTS

The Conference at its March 1962 session (Conf. Rept., p.23) deferred action on the proposal contained in S. 2612, 87th Congress, to provide for the appointment of Indian tribal court judges by the judges of the district courts. The Committee reported that the Department of Interior is opposed to the legislation and that no Congressional action is anticipated in the near future.

#### CONFLICTS OF INTEREST

H.R. 8140, 87th Congress, would revise and strengthen the laws dealing with bribery, graft, and conflicts of interest. The Conference at its March 1962 session (Conf. Rept., p. 20) disapproved the bill insofar as it applies to part-time United States commissioners due to the impact the conflicts of interest provisions may have on the ability of the district courts to retain lawyers as part-time commissioners. The Conference was advised that its views on this bill had been communicated by the Committee to the Senate Judiciary Committee.

#### SUPPORTING PERSONNEL

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

#### FUNCTIONS AND RESPONSIBILITIES OF THE COMMITTEE

The Conference was informed that the Committee desired to have a formal definition of its functions and responsibilities which would assist the Committee in determining matters properly and tend to lessen the possibility of conflict with other Conference Committees. Upon recommendation of the Committee, the Conference approved the following definition of its functions and responsibilities:



The Committee is responsible for initiating and reviewing policies, programs, rules, regulations, procedures and proposals for legislation, for presentation to the Judicial Conference in the following areas:

1. Classification of positions.
2. All types of compensation for all supporting personnel.
3. Recruitment, placement and conduct of supporting personnel.
4. Personnel training and incentives for career service.
5. Personnel health, safety, welfare and retirement programs.
6. Cooperation and coordination with other Committees of the Conference where matters in the above areas involve functions and responsibilities of such other Committees.

#### COURT REPORTERS

The Committee reported that a request had been received from Chief Judge Hoffman of the Eastern District of Virginia for additional court reporter assistance. While sympathetic with the conditions existing in this district, the Committee recommended that the request be disapproved pending the completion of a study by the Administrative Office on the advisability of altering the present policy of providing one court reporter for each district judge. The Committee's recommendation was approved by the Conference.

#### JUDICIAL EMPLOYEES TRAINING ACT

The Conference at its September 1959 session (Conf. Rept., p. 20) approved in principle legislation to provide the Judiciary with the same authority given to the Executive Branch of the Government to train its supporting personnel. The Committee presented a draft bill and recom-

mended that the Conference approve the bill, subject to such minor revisions as may be found necessary to conform to the technical changes desired by the Committees of Congress to which it may be referred. The recommendation was approved by the Conference.

#### INCENTIVE AWARDS

The Committee was authorized to undertake a study of the proposal to provide for an incentive awards program for the supporting personnel of the Judiciary and to report at a later session of the Conference.

#### CLERKS OF COURTS OF APPEALS

The Committee reported that requests had been received for salary increases for the clerk and chief deputy clerk of the Court of Appeals for the District of Columbia Circuit and for the clerk of the Court of Appeals for the Second Circuit. It has also been suggested to the Committee that consideration be given to suitable salary increases for the clerk of each of the larger courts of appeals. After full discussion, the Conference directed the Committees on Court Administration and Supporting Personnel to consider these requests further and report to a later session of the Conference.

#### CLASSIFICATION OF PERSONNEL IN THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Conference at its September 1960 session approved a salary plan for deputy clerks of the courts of appeals, except the District of Columbia, and directed the Administrative Office to survey the positions in that office and report thereon to the Committee on Supporting Personnel. As a result of its survey, the Administrative Office recommended to the Committee that the supporting personnel in the clerk's office of the Court of Appeals for the District of Columbia Circuit be classified generally under the salary plan for deputy clerks of courts of appeals, but that

the Administrative Office be authorized to make exceptions to the plan by providing additional appropriate grades for any positions which cannot properly be graded under the plan. The Committee was advised that the small number of positions involved did not justify the establishment of a separate plan for the District of Columbia Circuit. Upon recommendation of the Committee, the Conference approved the recommendation of the Administrative Office.

#### LAW CLERKS

The Conference discussed the recommendation of the Committee that an additional salary grade be authorized for law clerks with five years experience as a law clerk with a Federal judge and directed that the matter be referred to the Committee for further study.

#### SECRETARIES

The Committee submitted the proposal of Chief Judge McGuire of the District of Columbia that secretaries to Federal judges be provided the same retirement benefits as are presently provided for members of Congressional staffs, 5 U.S.C. 2259 (b). The Conference, after full consideration, approved the proposal.

#### DEPUTY CLERK FOR THE FOURTH CIRCUIT

The Conference, upon recommendation of the Committee, approved the request of Chief Judge Sobeloff for an additional deputy clerk for stenographic work in the United States Court of Appeals for the Fourth Circuit subject, however, to the program of the Budget Committee.

#### PERSONNEL IN THE EASTERN DISTRICT OF NEW YORK

The Committee reported that it had received a request from Chief Judge Zavatt of the Eastern District of New York to authorize additional personnel for the clerk's office in that district. It was the view of the Committee,

however, from all the information available, that the clerk's office of the Eastern District of New York is amply staffed. The Committee therefore recommended that the Conference disapprove the request with the understanding that the Administrative Office will make a further study of the needs of the district and report to the Committee at its next meeting. This recommendation was approved by the Conference.

#### PAY INCREASE LEGISLATION

The Committee reported that it had been advised that the inclusion of the supporting personnel of the Judiciary in any pay increase legislation would be fully considered by the Post Office and Civil Service Committees of the Senate and House of Representatives.

#### JUDICIAL STATISTICS

The Chairman of the Committee on Judicial Statistics Chief Judge Harvey M. Johnsen, informed the Conference that the Committee had reviewed with the Director and members of the staff of the Administrative Office various aspects of the statistical system for reporting the judicial business of the courts.

The Committee reported that the present system appears sound and that it will continue to be of assistance in developing and analyzing the data compiled.

#### DISPOSITION OF CIVIL CASES PENDING OVER THREE YEARS

The Conference at its September 1961 session (Conf. Rept., p. 63) declared it to be the policy of the Judiciary that every case pending three years or more, and appropriate for trial, be regarded as a judicial emergency by all the judges of any circuit where such cases are to be found and requested that each circuit, through its judicial council, make appropriate plans for mustering the avail-

able judges of the circuit to pretry, try, and eliminate these cases from the dockets by a date certain, fixed in advance in each circuit with regard to the size of the task.

It was the view of the Committee that this program has had a salutary effect in many districts. Accordingly, the Committee recommended that the Conference renew its September 1961 resolution in regard to the disposition of civil cases pending over three years. This recommendation was approved by the Conference.

#### WEIGHTED CASELOAD

The Chief of the Division of Procedural Studies and Statistics had presented to the Committee a proposal for a weighting system for civil and criminal cases, which is designed to provide a more useful and comparative measure of workload among the individual district courts. The weighting system is based on a series of time studies participated in by a number of district judges in the last ten years and a special study of time devoted to the trial of cases in the last five years. Upon recommendation of the Committee, the Conference authorized the publication of the weighted caseload table of filings for the fiscal year 1962 in the annual report of the Director.

#### CRIMINAL OFFENDER STATISTICS

The Committee also considered a proposal by the Chief of the Statistical Division to establish a center for the collection of information concerning persons accused of crime in the Federal courts, which would include a follow-up on the record of each defendant convicted and sentenced. It was the view of the Committee that a system for collecting full information with reference to persons charged with Federal crime will provide information useful in the administration of justice, particularly in regard to sentencing. Upon recommendation of the Committee, the Conference endorsed the proposal in principle, leaving

the development of the details of such a system and its administration for further study among the agencies concerned with the problem.

#### MOTIONS TO VACATE SENTENCE AND PROCEEDINGS IN FORMA PAUPERIS

It was brought to the attention of the Committee that the practice of docketing motions to vacate sentence under 28 U.S.C. 2255 is not uniform among the districts and further that there is considerable variation in processing these motions when they are filed *in forma pauperis*. In many districts motions to vacate sentence are carried on the criminal docket.

It was the view of the Committee that motions to vacate sentence are civil proceedings under the law and court decisions and that these motions should therefore be docketed on the civil docket of the court, in order that the records of the court may be correct in terms of the statute and in regard to the nature of judicial responsibility for these matters. Upon recommendation of the Committee, the Conference directed that the district courts be instructed to docket all such motions on the civil dockets.

In regard to applications accompanied by motions for leave to proceed *in forma pauperis*, it was the view of the Committee that there is value in having an official record of such applications and that the better practice is to permit the filing of the application and then to deny the motion where, on its face, it is without substance, rather than to deny the motion for leave to proceed *in forma pauperis*.

#### OTHER MATTERS

The Conference was informed that the Committee had approved the new classification system for civil and criminal cases used in the annual report of the Director for fiscal years 1961 and 1962, and that the Committee had authorized the inclusion of an additional table, by district, showing the cost per trial, per trial day, and per juror

day of the operation of the petit jury system in the district courts. The Committee has also suggested that cross appeals be counted as separate cases in the statistical tables concerning the business of the courts of appeals.

### PRETRIAL PROGRAM

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, reported on the activities of the Committee in the past year.

#### SEMINARS FOR NEW DISTRICT JUDGES

The Conference at its September 1961 session (Conf. Rept., p. 102) requested the Committee to undertake a seminar or series of seminars for newly appointed district judges for the purpose of acquainting them with the problems of judicial administration arising in the operation of the district courts. In accordance with this authorization, the Committee this year planned and conducted three regional seminars, attended in the aggregate by 90 recently appointed district judges. Informative and illustrative material, together with copies of the remarks of the experienced trial judges who served as discussion leaders, were made available to the new district judges during the course of the seminar proceedings.

Statements by the participants indicate that the seminars have been invaluable to the new district judges and have achieved their purpose of acquainting them with some of the problems involved in the operation of their courts. On the basis of this experience, it was the view of the Committee that the program should be continued. The Conference thereupon authorized the Committee on Pretrial Procedure to conduct an annual seminar, commencing in 1963, for recently appointed district judges.

#### CIRCUIT PRETRIAL COMMITTEES

The Conference in September 1952 (Conf., Rept., p. 21) adopted a resolution requesting the chief judge of each

circuit to appoint a regular standing committee of his circuit conference on pretrial procedure, consisting of at least five members and to include both judges and lawyers, which would be charged with the duty of

- (a) Ascertaining the extent and the efficiency of the employment of pretrial procedure in the Federal and State courts of the circuit;
- (b) Considering appropriate measures to promote its wider understanding and use and taking appropriate action; and
- (c) Making an annual written report of its activities and of the extent of the employment of pretrial in the circuit to the annual conference of the circuit and furnishing a copy to the chairman of the national committee.

It has been brought to the attention of the Committee that in several circuits the local pretrial committees have not been functioning. Chief Judge Murrah advised the Conference that the Committee would contact the chief judges of the circuits concerning the reactivation of any circuit pretrial committees that have become inactive.

#### SUBCOMMITTEE FOR MULTIPLE LITIGATION

The subcommittee of the Pretrial Committee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits has continued to give its consideration to the problems presented by the large volume of antitrust treble damage actions arising out of the proceedings in the electrical equipment industry in Philadelphia last year. The judges having the responsibility for the litigation have held two meetings this year and have established an information center in the Federal court building in Chicago to assist in compiling and disseminating information on the progress of the litigation in the various districts, including rulings made on preliminary issues and on matters of discovery. A series of pre-



trial orders has been entered in almost every district, a deposition program is underway, and the litigation is proceeding in an orderly manner. The subcommittee believes that experience in the processing of this litigation will provide precedents and guide lines for future litigation. The development of general principles applicable to the handling of discovery problems in multiple litigation will therefore be considered further by the subcommittee in the light of the methods developed in processing the cases presently under consideration.

#### STATEMENT OF THE ESSENTIALS OF PRETRIAL PROCEDURE

The special study of the Committee, aimed at the development of a statement of the essentials of pretrial procedure and calendar control, was interrupted this year by the seminars for new district judges and the special study of discovery problems in multiple litigation. The Committee, however, plans to proceed with the study and anticipates that a draft of a statement on pretrial procedure will soon be available. The proceedings of the Seminar on Procedures for Effective Judicial Administration, held at the Southwestern Legal Center in July 1961 as a part of the Committee's special study, were published in March and April 1962 in 29 F.R.D. 191 and a reprint of the proceedings was made available to every Federal judge.

#### USE OF PRETRIAL PROCEDURE

Reports received by the Committee indicate a continuing increase in the use of the pretrial conference technique among the district judges. Every Federal trial judge uses pretrial, at least to some extent, and for the most part the newly appointed district judges are enthusiastically embracing the procedure.

For the last three years the clerks of the courts have classified pretrial conferences reported to the Administrative Office on the basis of those in which a pretrial order

was entered (as required by Rule 16) and those in which no order was entered. These figures indicate that pretrial orders defining the issues and reciting agreements made by the parties have been entered in about two-thirds of the total pretrial conferences held. It is the view of the Committee that more adequate statistical information concerning pretrial procedure is desirable. Accordingly the chairman of the Committee has been authorized to appoint a subcommittee to explore this problem with the Committee on Judicial Statistics and with the Administrative Office.

### 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 need for intercircuit assistance and the availability of judges for such service. Since its last report, the Committee has recommended favorably on ten intercircuit assignments. No adverse recommendation has been made. In one instance however, there was no subsequent designation by the Chief Justice and no designation had been made on the Committee's latest recommendation at the time of its report.

The judges receiving intercircuit assignments during this period include one circuit judge, three district judges, one senior circuit judge and three senior district judges. Since the filling of most of the new judgeship positions created by the Act of May 19, 1961, the requests made to the Committee have decreased in number, but in many instances those which have been made were of a very urgent nature. The Committee has been unable to satisfy all the requests.

The Committee has observed that there is a desire among the chief judges to communicate directly with other chief judges rather than through the Committee, when help is either needed or available. The Committee gave its assurance that it encourages such direct arrangements.

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

### OPERATION OF THE JURY SYSTEM

The Chairman of the Committee on the Operation of the Jury System, Chief Judge Harry E. Watkins, submitted the report of the Committee.

### JURY COMMISSION BILL

The Conference at its March 1962 session (Conf. Rept., p. 2) referred to the Committee for study certain amendments proposed by the Department of Justice to the Jury Commission Bill, H.R. 5391, 87th Congress, previously approved by the Conference. The Committee reported that it had made an extensive study of these proposals and had conferred at length with representatives of the Department of Justice. As a result of these conferences, the Committee concurred in a number of desirable changes recommended by the Department. Upon recommendation of the Committee, the Conference thereupon approved the following amended bill to provide for a jury commission in each United States district court.

### A BILL

To provide for a jury commission for each United States district court, to regulate its compensation, to prescribe its duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1864 of title 28 of the United States Code is hereby amended to read as follows:

"§1864. Jury commission: duties, compensation, and methods of selecting and drawing jurors.

“(a) Appointment. A jury commission shall be established in each judicial district, consisting of the clerk of the court and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good character residing in the district of appointment who, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

“Jury commissioners shall be appointed to serve on a part-time or full-time basis. If in the opinion of the court the efficient operation of the jury system requires the services of a full-time jury commissioner, the court may, with the approval of the Judicial Conference of the United States, appoint one or more full-time jury commissioners.

“(b) Duties. In the performance of all its duties the jury commission shall act under the direction and supervision of the chief judge of the district.

“The sources of the names and the methods to be used by the jury commission in selecting the names of persons who may be called for grand or petit jury service shall be as directed by the Chief Judge. The procedures employed by the jury commission in selecting the names of qualified persons to be placed in the jury box shall not systematically or deliberately exclude any group from the jury panel on account of race, sex, political or religious affiliation, or economic or social status. In determining whether persons are qualified as jurors under section 1861 of this title, the jury commission shall use questionnaires and such other means as the chief judge may deem appropriate, including the administering of oaths.

“The names of jurors shall be publicly drawn by chance from a jury box, wheel or similar device which contains at the commencement of each drawing the names of not less than three hundred qualified persons selected by the jury commission in accordance with the provisions of this subsection.

“The jury commission shall keep records of the names of persons placed in the jury box, wheel or similar device, the ques-

tionnaires returned by said persons, the names of the persons who are selected for jury service, the dates of service, and such other appropriate records as the chief judge may direct, all for a period of not less than two years. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge can be assigned to them.

“(c) Compensation. Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of ten dollars per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

“Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which in the opinion of the Judicial Conference corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

“Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

“(d) Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district; Provided, however, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section.

“(e) This section shall not apply to the District of Columbia.”

SEC. 2. Section 1865 of such title is amended by striking out the words ‘and may appoint a jury commissioner for each such place’ in the second sentence of subsection (a) thereof and inserting a period after the word ‘district’ in such sentence.

SEC. 3. Each jury commissioner holding office on the effective date of this Act shall continue in office until his successor is duly appointed and qualified.

SEC. 4. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry the provisions of this Act into effect.

SEC. 5. The provisions of this Act shall take effect ninety days after the date of approval thereof, Provided, however, that no grand or petit jury sworn prior to the effective date of this Act nor any person called or summoned for jury service, or whose name is on a jury list or has been placed in a box, wheel, or similar device, prior to that date, shall be ineligible to serve if the procedure by which the jury or the individual juror was selected, called, summoned, or by which his name was listed or placed in a box, wheel, or similar device, was in compliance with the law in effect at the time of such action.

#### LEGISLATION

The Committee reported that no action has been taken on any of the following bills which had previously been disapproved by the Conference:

- (1) H.R. 818 and H.R. 1262, 87th Congress, to provide that in a civil case the number of jurors required to constitute a jury, and the number of whom must agree for a valid verdict, shall be determined by the law of the State in which the action is tried.
- (2) H.R. 189, 87th Congress, to require a juror to take an oath that he does not advocate and is not a member of an organization that advocates the overthrow of the Government of the United States by force or violence.

The Committee further reported that S. 1899, 87th Congress, to increase the fees of jury commissioners in the United States district courts from \$5 to \$10 per day, previously approved by the Conference, had passed the Senate on August 2, 1961, but that no action has been taken on a similar bill in the House of Representatives, H.R. 5392.

There has been no action in Congress on S. 1660 and H.R. 5616, 87th Congress, to increase the subsistence and limit the mileage allowances of grand and petit jurors, nor on the Jury Commission Bill, H.R. 5391.

## HABEAS CORPUS

Chief Judge Simon E. Sobeloff, in the absence of Senior Judge Orié L. Phillips, Chairman of the Committee on Habeas Corpus, reported that the Committee had considered S. 2888, 87th Congress, to add a new Section 2256 to Title 28, United States Code, with regard to the issuance of a stay of execution or sentence. The new Section would provide as follows:

*"§2256. Stay of execution or sentence*

"(a) A stay of execution or sentence in connection with any habeas corpus proceeding or other proceeding collaterally attacking any conviction of a person which has been affirmed by the highest court of any State shall be granted only by (1) the concurrent action of a majority of the circuit judges of a circuit who are in active service, or (2) the concurrent action of a majority of the justices of the United States who are in active service.

"(b) A stay of execution or sentence in connection with any habeas corpus proceeding or other proceeding collaterally attacking any conviction of a person obtained in a district court and affirmed by the Supreme Court, or with respect to which the Supreme Court has denied certiorari, shall be granted only by (1) the judge who presided at the trial in which the conviction was obtained, or (2) the concurrent action of a majority of the circuit judges of a circuit who are in active service, or (3) the concurrent action of a majority of the justices of the United States who are in active service.

"(c) Nothing contained in this section shall limit the power of any justice of the United States, or any circuit or district judge, to stay the execution of a sentence of death in connection with any habeas corpus proceeding if it appears that such sentence will be carried out before such proceeding can be disposed of, and that such stay is essential to a proper disposition of such proceedings."

It was the view of the Committee that there is no real need for the legislation. In most instances where an application for stay is made to a United States court, the applicant is under sentence of death and the execution of

the prisoner is imminent. That being so, the provisions of subsections (a) and (b) would largely be nullified by the provisions of subsection (c). Also, the requirement for concurrent action by a majority of the judges of the circuit, or a majority of the justices of the Supreme Court, required by subsections (a) and (b), would impose an unnecessary and undue burden on the members of these courts without resulting in compensating advantages.

The Committee pointed out that the proposed legislation relating to habeas corpus actions brought by persons in custody under judgment of a state court, approved by the Conference in March 1959, was designed to cure alleged abuses in habeas corpus proceedings brought by persons in custody under judgments of state courts. It was the view of the Committee that if any legislation is to be enacted, it ought to be the proposed legislation approved by the Conference. The Committee suggested however that in the absence of any manifested interest in Congress for a revision of habeas corpus procedure, the Conference proposal should not be pressed towards enactment. Upon recommendation of the Committee, the Conference disapproved S. 2888.

On motion of Chief Judge William J. Lindberg, the Conference referred to the Committee for study the question of the need for a person, in custody pursuant to the judgment of a state court, to file a petition for a writ of certiorari in the Supreme Court of the United States in order to exhaust state remedies.

#### 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 58 cases under submission in the courts of appeals more than six months as of September 1, 1962, and 36 cases and motions which had been held under advisement by district judges more than six 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.

### LEGISLATION

On motion of Chief Judge Biggs, the Conference authorized the Director of the Administrative Office to seek the introduction in the 88th Congress of any bills, sponsored by the Conference, which are not enacted into law by the 87th Congress.

### COMMITTEES

On motion of Chief Judge Biggs, the Conference directed that the Advisory Committee, heretofore appointed by the Chief Justice, be continued.

### RELEASE OF CONFERENCE ACTION

The Conference authorized the 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*

October 20, 1962

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