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**REPORT**  
**of the**  
**PROCEEDINGS OF THE**  
**JUDICIAL CONFERENCE OF THE**  
**UNITED STATES**

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**SEPTEMBER 17-18, 1963**

**WASHINGTON, D.C.**

**1963**

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**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

**Warren Olney III**  
Director

**REPORT**  
**of the**  
**JUDICIAL CONFERENCE OF THE**  
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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.

## CONTENTS

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	Page
Call of the Conference.....	55
Report of the Director of the Administrative Office of the United States	
Courts.....	56
State of the Dockets.....	57
Judicial Appropriations.....	58
Salaries of Court Reporters and National Park Commissioners.....	60
Supplemental Appropriations.....	60
Court Administration.....	60
Court Reporters.....	60
Corporate Directorships.....	62
Reports of Financial Status.....	63
Selection of Chief Judges.....	63
Amendment of 28 U.S.C. 372(b).....	63
Annuities to Widows of Supreme Court Justices.....	64
Additional Judgeships.....	64
Additional Districts and Divisions.....	66
Reports of the Court of General Sessions of the District of Columbia..	66
Publication of Opinions.....	67
Pretrial Examiners.....	67
Witness Fees.....	68
Payment of Court Reporters Who Fail to File Transcripts of Pleas and	
Sentencing in Criminal Cases.....	68
Clerks' Fees.....	69
Disbursement of Judiciary Funds.....	69
Legislative Apportionment.....	70
Quarterly Bulletins.....	70
Substitution of Judges.....	70
Confidential Communications.....	71
Courtroom Photographs.....	71
Revision of the Laws.....	71
Legislation.....	71
Court of Veterans' Appeals.....	73
Civil Rights.....	74
Codification of Title 5, United States Code.....	75
International Legal Conferences.....	75
Tucker Act Amendment.....	75
Interstate Compact on Mental Health.....	76
Expediting Act.....	76
Administrative Court.....	77
Limitations Against Tort Claims.....	77
Assessment of Costs Against the United States.....	78
Administrative Conference of the United States.....	78
Appeals in Patent and Trademark Cases.....	79
International Rules of Judicial Procedure.....	79
Rules of Practice and Procedure.....	79

VI

	Page
Bankruptcy Administration.....	80
Salaries and Positions of Referees.....	80
Vacancies in Referee Positions and Changes in Arrangements.....	81
Appropriations.....	83
Legislation.....	84
Railroad Reorganizations.....	86
Audit of Statistical Reports.....	87
Developments in the Use of Chapter XIII.....	87
Debtor's Counselling Service.....	88
Joint Petitions.....	88
Matters Under Advisement.....	89
Other Matters Referred to the Committee.....	89
Administration of the Criminal Law.....	89
Denial of Bail.....	89
Unauthorized Use of Appropriated Funds.....	90
Admissibility of Confessions.....	90
Commitment of the Insane.....	90
Right to Trial.....	91
Publication of Information in Criminal Cases.....	91
Mandatory Minimum Sentences.....	92
Presence of the Defendant at Time of Sentence.....	92
Statute of Limitations.....	92
Reindictment Following Dismissal of a Defective Indictment.....	93
Definition of a Felony.....	93
Motions to Vacate Sentence.....	94
Compensation of Counsel Appointed to Represent Poor Persons Accused of Crime.....	94
Appellate Review of Sentences.....	94
Administration of the Probation System.....	95
Sentencing Institutes.....	95
Circuit Committees.....	96
Research and Development Center.....	96
Presentence Reports.....	97
Committee Activities.....	97
Judicial Statistics.....	97
Disposition of Civil Cases Pending Over Three Years.....	98
Additional Judgeships.....	98
Statistical Tables.....	99
Pretrial Procedure.....	99
Pretrial Examiners.....	100
Pretrial Procedure in Criminal Cases.....	100
Circuit Judicial Conferences.....	101
Seminar for New District Judges.....	101
Subcommittee for Multiple Litigation.....	102
Committee Activities.....	102
Intercircuit Assignment of Judges.....	103
Supporting Personnel.....	104
Court Reporters.....	104
Court Reporter-Secretary.....	106
Clerks of Court.....	106
Additional Supporting Personnel.....	107
Salaries of Clerks of District Courts.....	108

VII

	<b>Page</b>
Habeas Corpus.....	108
Procedure in Habeas Corpus Cases.....	109
United States Commissioners.....	110
Committees.....	110
Pretermission of Terms of the Courts of Appeals.....	110
Release of Conference Action.....	110

# Report of the Proceedings of the Judicial Conference of the United States

SEPTEMBER 17-18, 1963

The Judicial Conference of the United States convened on September 17, 1963 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 18. The Chief Justice presided and the following members of the Conference were present:

**District of Columbia Circuit:**

Judge Charles Fahy (Designated by the Chief Justice in place of Chief Judge David L. Bazelon 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, Middle District of Florida

**Sixth Circuit:**

Chief Judge Lester L. Cecil  
Judge Ralph M. Freeman, Eastern District of Michigan

**Seventh Circuit:**

Chief Judge John S. Hastings  
Chief Judge William E. Steckler, Southern District of Indiana

**Eighth Circuit:**

Chief Judge Harvey M. Johnsen  
Judge Richard M. Duncan, Eastern and Western Districts of Missouri

**Ninth Circuit:**

Chief Judge Richard H. Chambers  
Chief Judge Gus J. Solomon, District of Oregon



## 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, Oliver D. Hamlin, Jr. and Orie L. Phillips; Circuit Judges Jean S. Breitenstein and William F. Smith; District Judges William J. Campbell and Theodore Levin; and Judge Samuel E. Whitaker of the Court of Claims attended some or all of the sessions.

Honorable Olin D. Johnston, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, attended the afternoon session of the first day and addressed the Conference briefly.

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 some or all 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 were also in attendance.

#### 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, 1963, 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 1963 again increased sharply to a record 5,437 cases, an increase of 614 cases over the previous year or almost 13 per cent. Cases disposed of also increased to 5,011, but failed to keep pace with filings. The result was an increase in the number of appeals pending in the Courts of Appeals on June 30, 1963 to a record 3,457. Appeals filed in the Court of Appeals for the District of Columbia Circuit and in the Fifth Circuit increased more than 20 per cent. The increase in the judicial business in the Courts of Appeals results almost entirely from an increase in appeals from judgments of district courts.

*District Courts*—Civil cases filed in the United States District Courts during the fiscal year ending June 30, 1963 increased 3 percent to a record 63,630. There were 62,379 civil cases terminated, or 1,250 less than the number filed. As a result, the pending backlog on June 30, 1963 increased to a record 69,219 civil cases. There was a sharp increase this year in habeas corpus applications in the district courts brought by petitioners in custody pursuant to the judgment of a state court. Over-all there was no increase in the number of tort actions filed. Notwithstanding the increase in pending civil cases, significant progress has been made in reducing the number of civil actions pending for more than three years.

The median time interval from filing to disposition of civil cases terminated by trial in the district courts in 1963 was 16 months, the same as in 1962. The median time interval from issue to trial was 10 months, also the same as in the previous year.

Criminal proceedings were brought against 36,168 defendants during the fiscal year 1963; charges against 36,265 defendants were disposed of during the year; and on June 30, 1963 there were 12,813 defendants awaiting trial or sentence. The number of criminal defendants

prosecuted in the district courts has not varied appreciably for many years. For the most part the criminal dockets of the district courts are current.

The bankruptcy business of the district courts increased more than 5 percent in 1963 with record filings of 155,493 cases. The increase, which occurred entirely in the last 6 months of the fiscal year, was mostly in employee or wage-earner type cases, as business bankruptcies continue to constitute only 10 percent of total filings. There were 141,440 bankruptcy cases closed during the year, or almost 4,000 more than in the previous year. However, filings once again exceeded terminations by almost 7,500 cases and the pending caseload increased for the eleventh consecutive year to an all-time high of 147,814.

### JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, submitted to the Conference the appropriation estimates for the judiciary for the fiscal year 1965. 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, total \$67,082,000, an increase of \$4,344,500 over the appropriations approved by the House of Representatives for the fiscal year 1964. At the time the appropriation estimates for the fiscal year 1965 were prepared, Congress had not completed action on the 1964 appropriations bill. On recommendation of the Committee, the appropriation estimates presented were approved by the Conference.

The Director of the Administrative Office was further authorized to revise the budget estimates for the fiscal year 1965, or, in the alternative, to submit to Congress estimates of supplemental appropriations in the event of the passage of legislation increasing the salaries of judges, referees, and other officers and employees of the

courts, and for any other purpose which could not be anticipated at the time of this submission.

Included in the budget estimates for the fiscal year 1965 are requests for funds for the employment of 44 additional probation officers, 33 additional clerk stenographers for probation offices, 15 deputy clerks for the United States courts of appeals, and a clerical position in the United States Court of Customs and Patent Appeals. The estimates also include requests for funds for two additional full-time referees in bankruptcy, the conversion of two part-time referees to full-time status, the salary increases in certain referee positions approved by the Conference at its March 1963 session and an additional sum in anticipation of changes in salaries and arrangements for referees that will be required by March 1964.

There is also included in the budget estimates the sum of \$289,000 for the employment of clerks in the offices of the referees in bankruptcy on a temporary basis; \$780,000 for the continued application of the Judiciary Salary Plan; \$625,000 for within-grade salary increases; and \$123,000 for reimbursement to the General Services Administration for tenant alterations and services. The appropriation estimates include an additional sum of \$460,000 which is the initial cost of commencing a program of central disbursement of judiciary appropriations; the annual cost of the program in the second and succeeding years is estimated to be \$38,000. The estimates also provide for anticipated increases in the cost of printing, supplies, communications, and other miscellaneous expenses and for a one-year extension of the pretrial examiner program in the Southern District of New York.

Judge Campbell called attention to the rapidly increasing printing costs and the costs of the acquisition of law books and suggested that a Committee of the Conference be authorized to consider and make recommendations concerning the alarming increase in these costs. The Conference directed that the matter be referred to the

Committee on Court Administration for consideration and report to the Conference.

#### SALARIES OF COURT REPORTERS AND NATIONAL PARK COMMISSIONERS

The Conference, upon recommendation of the Committee, granted authority to the Director of the Administrative Office to increase proportionately the salaries of court reporters and of national park commissioners, the latter with the concurrence of the court concerned, in the event of the enactment of any general pay increase legislation.

#### SUPPLEMENTAL APPROPRIATIONS

Chief Judge Campbell informed the Conference that the appropriation requests for the fiscal year 1964 had been approved by the House of Representatives substantially as requested and that no appeal had been made to the Senate Appropriations Committee. The amount included in the bill for salaries of referees was \$50,000 less than the budget estimate, which will probably necessitate a request for a supplemental appropriation.

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 appropriation 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.

#### COURT REPORTERS

The Conference at its March 1963 session (Conf. Rept. p. 10) had approved a draft of a bill to amend 28 U.S.C. 753(b) to permit the use of electronic sound recording

equipment in the district courts and to authorize court reporters to file electronic sound recordings of proceedings on arraignment, plea and sentence in criminal cases in lieu of transcripts as presently required. H.R. 6138, containing this proposal, was reported by the House Judiciary Committee with amendments and, as amended, passed the House of Representatives. To a limited degree, the recommendations of the Judicial Conference regarding the filing of electronic sound recordings in lieu of transcripts of arraignment, plea and sentence proceedings were adopted, but the bill would authorize the use of an electronic sound recording only in augmentation of the record made by shorthand or by mechanical means and not in lieu thereof as originally recommended by the Conference. Upon recommendation of the Committee, the Conference reaffirmed its approval of the original proposal and instructed the Director of the Administrative Office to present in detail, through the appropriate committees of Congress, the reasons for the position of the Judicial Conference in this respect.

At the September 1962 session of the Conference, the Committees on Court Administration and Supporting Personnel were 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. The Committees called attention to the sixth paragraph of 28 U.S.C. 753 (b) which provides that both the original notes or other original records and a copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge. In view of this provision of the statute, the Committees were of the opinion that the previous resolution of the Judicial Conference authorizing the payment of a fee to the court reporter for the use of the transcript on file in the clerk's office in the preparation or perfection of an appeal cannot be supported as a matter of law. Upon recommendation of the Commit-

tees, the Conference thereupon rescinded its resolution of September 1951 authorizing such fee. (See Conf. Rept., Sept. 1951, p. 17.)

#### CORPORATE DIRECTORSHIPS

Chief Judge Biggs brought to the attention of the Conference H.R. 6048, 88th Congress, which is a bill to amend 28 U.S.C. 454 to provide criminal penalties for a justice or a judge of the United States who participates, other than in the capacity of a stockholder, in an enterprise organized for profit. It was the view of the Conference that the bill, as drafted, could be so broadly construed as to make it practically impossible for a justice or a judge to participate in the most minor financial transaction, and further, that if enacted the bill would become effective immediately which would not give judges enough time to comply with its provisions prior to its effective date. H.R. 6048 was therefore disapproved by the Conference.

The Conference discussed fully the problem of judges serving in the capacity of officers, directors, or employees of corporations organized for profit and adopted the following resolution:

“RESOLVED: No justice or judge appointed under the authority of the United States shall serve in the capacity of an officer, director, or employee of a corporation organized for profit.”

The Conference further recommended that if there is to be legislation, that the following language be substituted for the provisions of H.R. 6048: “No justice or judge appointed under the authority of the United States shall serve in the capacity of an officer, director, or employee of a corporation organized for profit. This statute shall take effect 90 days after the date of its enactment.”

## REPORTS OF FINANCIAL STATUS

The Conference was informed that the Senate Judiciary Committee had requested the views of the Conference on S. 1613, 88th Congress. The bill would establish an office of reports in each judicial circuit and require judges to submit regularly to a registrar complete financial reports which would be open for inspection by any member of the judicial council of the circuit. It was the view of the Committee that regardless of the merits of the proposal, federal judges should not be singled out from other officials of the United States Government to make such reports. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

## SELECTION OF CHIEF JUDGES

Chief Judge Biggs informed the Conference that there had been introduced in the 88th Congress S. 1367 relating to (1) the selection of the chief judges of the circuits and of the 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 bill is identical with S. 1268 of the 87th Congress. On motion of Judge Biggs, the Committee was authorized to give further consideration to the proposals contained in this bill.

## AMENDMENT OF 28 U.S.C. 372(b)

S. 1368, 88th Congress, would amend 28 U.S.C. 372(b) to provide for the appointment of an additional judge in a court where a judge has served 10 years and has reached the age of 70 and the judicial council of the circuit has recommended the appointment of an additional judge. The bill would also provide that whenever a judge is so appointed, the vacancy subsequently caused by the death,



resignation, or retirement of the judge by reason of whose failure to resign or retire from regular active service such appointment was made, shall not be filled. The Conference considered the proposal contained in the bill and directed the Committee on Court Administration to give further consideration to the bill in the light of the discussion at the Conference.

The Conference also referred to the Committee for study a draft resolution which would provide that henceforth it shall be the policy of the Judicial Conference not to recommend to the Congress an additional judgeship in any district or circuit wherein there is a judge or judges who are eligible to retire or accept senior status but decline to do so.

#### ANNUITIES TO WIDOWS OF SUPREME COURT JUSTICES

Chief Judge Biggs reported that the Senate Judiciary Committee had requested the views of the Conference on S. 1686, 88th Congress, which would amend 28 U.S.C. 375 with respect to the annuities of widows of Supreme Court justices. It was the view of the Committee that the bill was the concern of the Supreme Court and not of the Judicial Conference and accordingly the Conference took no action with respect to it.

#### ADDITIONAL JUDGESHIPS

H.R. 4722, 88th Congress, would provide an additional judgeship for the Eastern District of Virginia. For several years the district has had a heavy caseload. The Committees on Court Administration and Judicial Statistics recommended, however, that since there has been no appreciable change in the caseload and other workload in this district since the Omnibus Judgeship Act of May 19, 1961 the bill be disapproved at the present time. This recommendation was approved by the Conference.

H.R. 6655 and H.R. 6821, 88th Congress, would create an additional district and purport to provide four additional judgeships for the districts in California. Consideration of the proposals contained in these bills was postponed by the Conference.

The Conference was informed that the Committees on Court Administration and Judicial Statistics were in agreement on the need for additional judgeships in the United States Court of Appeals for the Fifth Circuit, but were divided on the question of a geographical division of the Circuit. The Conference thereupon authorized the appointment of a special committee on the geographic organization of the federal courts with authority to continue the study of that subject which has heretofore been undertaken by the Committee on Court Administration. The committee was directed in particular to study and report upon whether there should be a rearrangement or division of judicial circuits having large areas or heavy caseloads, in particular the Fifth Circuit, and the number of active circuit judges required to handle the caseload of that Circuit. In this connection the committee was also authorized to consider and report its judgment as to the maximum number of judges which could be authorized for the court of appeals of any circuit without impairing its efficiency.

The special committee was also authorized to give consideration to S. 1876, 88th Congress, which is a bill to provide for the creation of an eleventh judicial circuit to be comprised of Alaska, Idaho, Montana, Oregon and Washington.

It was announced by the Chief Justice that the membership of the special committee on the Geographical Organization of the Courts will include all members of the Committee on Court Administration, Chief Judge Harvey M. Johnsen and Senior Judge Albert B. Maris and additional members to be named later.

## ADDITIONAL DISTRICTS AND DIVISIONS

H.R. 4833, H.R. 4834, H.R. 4835, H.R. 4780, H.R. 4788, H.R. 4795, H.R. 6760, H.R. 6764, H.R. 6766, H.R. 6847, and H.R. 6853, 88th Congress, would provide for various divisional changes or redistricting in the State of California. The Conference voted to postpone consideration of the proposals contained in these bills.

The Conference, upon recommendation of the Committee, approved the following bills, pending in the 88th Congress, which had heretofore been approved by the district courts and judicial councils of the circuits concerned:

(1) H.R. 5964 to provide that Hopkins County be included in the Paris Division of the Eastern District of Texas;

(2) H.R. 4989 to transfer Genesee and Shiawassee Counties from the Northern Division to the Southern Division of the Eastern District of Michigan; and

(3) H.R. 6434 to add New London as an additional place of holding court in Connecticut.

The Conference was informed that the Judicial Council of the Ninth Circuit had disapproved H.R. 7323 to provide that court shall be held at Boseman in the District of Montana. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

Consideration of the proposal contained in H.R. 7811, to add Ann Arbor as an additional place of holding court in the Eastern District of Michigan was postponed by the Conference pending action by the Judicial Council of the Sixth Circuit.

REPORTS OF THE COURT OF GENERAL SESSIONS OF  
THE DISTRICT OF COLUMBIA

The Department of Justice had suggested an amendment to the District of Columbia Code to require the Chief Judge of the Court of General Sessions of the District of Columbia to submit quarterly reports on the work

of that court to the Director of the Administrative Office rather than to the Attorney General. It was the sense of the Conference that since it was not the duty of the Administrative Office to supervise in any way the business of the Court of General Sessions for the District of Columbia that it would be inappropriate to require by law that reports of that court be filed with the Director. Accordingly, the Conference disapproved the suggestion of the Department of Justice.

#### PUBLICATION OF OPINIONS

The Conference was informed of the appointment of a subcommittee of the Committee on Court Administration to consider possible restrictions on the publication of opinions. The subcommittee has been directed to undertake a complete study and to report back to the Committee.

#### PRETRIAL EXAMINERS

The Conference at its March 1963 session (Conf. Rept., p. 8) had directed the Committee on Court Administration and the Committee on Pretrial Procedure to consider the operation of the pretrial examiner systems in the United States District Court for the District of Columbia and the United States District Court for the Southern District of New York, and directed that the survey reports of the Institute of Judicial Administration be referred to the Committees for consideration and report at the next session of the Conference. The Committees were of the view that the present available information furnishes an inadequate basis for a definitive conclusion with respect either to the value of these programs in the two courts in which they are now in operation, or as to their potential value in other courts. The Committees accordingly requested and were granted leave to consider the matter further. The Conference approved the inclusion in the appropriation requests of funds for the con-

tinuation of the pretrial examiner programs in these districts on the same basis as currently authorized.

#### WITNESS FEES

H.R. 5907, 88th Congress, would authorize the payment by the Government of witness fees and mileage in habeas corpus cases and in proceedings under 28 U.S.C. 2255 brought by petitioners authorized to proceed in forma pauperis. The bill had previously been recommended by the Conference. However, as passed by the House of Representatives, the bill contained one amendment which would provide that "fees and mileage need not be tendered to the witness upon service of a subpoena where the payment is to be made by the United States marshal." Upon recommendation of the Committee, the Conference approved the bill as amended.

#### PAYMENT OF COURT REPORTERS WHO FAIL TO FILE TRANSCRIPTS OF PLEAS AND SENTENCING PROCEEDINGS IN CRIMINAL CASES AS REQUIRED BY 28 U.S.C. 753(b).

The Conference had previously authorized the Director to withhold the payment of salaries of court reporters who have not transcribed and filed proceedings on arraignment, plea and sentence in criminal cases as required by 28 U.S.C. 753(b), or have not filed electronic sound recordings of these proceedings as provided in Administrative Office Bulletin No. 255. Chief Judge Biggs informed the Conference that there were 24 court reporters who, as of September 7, 1963, had not filed the certificates which, under the Judicial Conference resolution are due on September 30, 1963. The Conference was advised that the Director of the Administrative Office will immediately furnish to the chief judges of the circuits concerned the names of the reporters in their circuits who have not filed the required certificates.

## CLERKS' FEES

The Conference in March 1962 (Conf. Rept., p. 6) authorized 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. The study and report requested were made but were not submitted in time to be given careful consideration by the Committee. The Committee was thereupon granted leave to consider the matter further and report at the next session of the Conference.

## DISBURSEMENT OF JUDICIARY FUNDS

In view of the decision to install a central disbursing system for the entire federal judicial system, the Committee reported that it no longer had under consideration the proposal of the Department of Justice that judiciary funds be disbursed by clerks of court rather than by United States marshals.

There was brought to the attention of the Conference H.R. 5171, 88th Congress, which would give authority to the Administrator of the General Services Administration "to coordinate and otherwise provide for the economic and efficient purchase, lease, maintenance operation and utilization of electronic data processing equipment by federal departments and agencies." The bill specifically includes the Judicial Branch in its terms. The Committee was of the view that, at least to some extent, the proposal would vest operating control of substantive administrative programs of the Judicial Branch in the head of an agency of the Executive Branch and would thus be in conflict with the policy of the Administrative Office Act which is to preserve the independence of the federal judiciary from possible supervision or control by the Executive Branch of the Government. Upon recommendation of the Committee, the Conference disapproved the inclusion of the Judicial Branch in H.R. 5171.

## LEGISLATIVE APPORTIONMENT

The Committee on the Judiciary of the House of Representatives had requested the views of the Conference on H.R. 2836, 88th Congress, which is a bill to provide for congressional districts composed of contiguous and compact territory, for the election of representatives and for other purposes. Similar proposals are contained in H.J. Res. 300, H.J. Res. 349 and H.R. 7343, all of which are pending in the 88th Congress. The Conference approved the recommendation of the Committee that no action be taken on any of these bills, since they are matters for congressional policy rather than for judiciary consideration.

## QUARTERLY BULLETINS

The Judicial Conference of the Ninth Circuit had adopted a resolution requesting that a quarterly bulletin be issued by the Director of the Administrative Office informing judges of the time and place of Conference committee meetings, matters of major or general interest coming before the committees, and also of actions taken by the Conference on matters of major or general interest which have been released and are not of a confidential nature. It was the sense of the Committee that these proposals would place an undue burden on the committees of the Conference and on the Administrative Office. Accordingly, the Conference took no action on the resolution.

## SUBSTITUTION OF JUDGES

The Conference in March 1963 (Conf. Rept., p. 42) had referred to the Committees on Court Administration and Revision of the Laws a proposal that provision be made for the substitution of a judge for another who becomes ill or disabled during the trial of a protracted case. The Committees recommended that if a judge dies, becomes ill, or suffers other disability, by reason of which

he is unable to continue the trial of a civil or criminal case, provision should be made authorizing the substitution of another judge in the case. The Conference approved the recommendation of the Committees and referred the proposal to the Standing Committee on Rules of Practice and Procedure for the formulation of appropriate rules.

#### CONFIDENTIAL COMMUNICATIONS

The Conference, upon recommendation of the Committees, disapproved S. 1851, 88th Congress, which is a bill to provide that news reporters shall not be required to disclose confidential communications in federal courts or before committees of Congress and for other purposes.

#### COURTROOM PHOTOGRAPHS

A resolution of the Judicial Conference of the Ninth Circuit requesting an amendment of the Judicial Conference resolution on the taking of photographs within the environs of a courtroom to permit "news media courtroom photography or telecasting of naturalization or ceremonial judicial matters had in accordance with local rule of court," was referred to the Committee on Court Administration for consideration and report to the Conference.

#### REVISION OF THE LAWS

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

#### LEGISLATION

The Conference, on recommendation of the Committee, reaffirmed its approval, to the extent indicated, of the following bills pending in the 88th Congress which embody proposals heretofore approved by the Conference:



(1) H.R. 3408 and H.R. 6845, 88th Congress, would provide for the judicial review in the courts of appeals of actions by the Secretary of Health, Education and Welfare refusing to issue, suspending or revoking any license for the propagation or manufacture and preparation of biological products. While expressing no view concerning the policy involved in the proposal, the Conference had previously approved the type of review provided by these bills. (Conf. Rept., March 1961, p. 19)

(2) H.R. 4790, 88th Congress, would amend 28 U.S.C. 1391, to permit actions on tort claims to be brought in the judicial district in which the act or omission complained of occurred. (Conf. Rept., March 1963, p. 17)

(3) H.R. 5432, 88th Congress, to amend 28 U.S.C. 373, to reduce from ten to eight years the period of judicial service required of a territorial judge in order to entitle him to receive a retirement annuity. (Conf. Rept., March 1963, p. 19)

(4) H.R. 5906, 88th Congress, to amend 28 U.S.C. 1446(b) to substitute 30 days for 20 days as the period of time fixed therein for filing a petition for removal of a case from a State to a Federal court. (Conf. Rept., March 1963, p. 13)

(5) H.R. 7031, 88th Congress, to improve judicial procedures for serving documents, obtaining evidence and proving documents in litigation with international aspects. (Conf. Rept., March 1963, p. 15)

(6) S. 1890 and H.R. 7508, 88th Congress, to amend 28 U.S.C. 1336 and 1398 with respect to cases referred to the Interstate Commerce Commission by the district courts or the Court of Claims and to establish jurisdiction and venue in appeals from the Commission's orders in such cases in the courts of referral. (Conf. Rept., March 1963, p. 13)

The Conference, upon recommendation of the Committee, reaffirmed its disapproval of the proposals contained in the following bills pending in the 88th Congress:

(1) H.R. 4235, 88th Congress, to amend 28 U.S.C. 2112 to require that certain proceedings for the review or enforcement of agency orders must be instituted in the judicial circuit within which the controversy or matter which is the subject of the order arose. (Conf. Rept., Sept. 1961, p. 80)

(2) H.R. 4530, 88th Congress, would provide an administrative hearing prior to, and a judicial review after, the administrative removal or suspension of a Federal employee of the Executive Branch. The Conference had previously disapproved as inappropriate a proposal for judicial review of this sort of administrative personnel action, but expressed no opinion as to the administrative procedures proposed by the bill. (Conf. Rept., March 1961, p. 23)

(3) H.R. 4939 and H.R. 6357, 88th Congress, would provide for the enforcement of support orders in certain State and Federal courts and make it a crime to move or travel in interstate or foreign commerce to avoid compliance with such orders. The Conference had previously expressed disapproval of those provisions of the proposed legislation which would provide for the registration and enforcement of support orders by federal district courts, but expressed no opinion on the other features of the proposal. (Conf. Rept., March 1961, p. 23)

#### COURT OF VETERANS' APPEALS

H.R. 3930, 88th Congress, would establish a Court of Veterans' Appeals and prescribe its jurisdiction and functions. The Conference in March 1963 (Conf. Rept., p. 18) in considering similar proposals was of the view that the question as to whether judicial review of the denial of a veteran's claim should be accorded is a matter of public policy which is solely within the province of Congress to decide, and that the judiciary should take no position thereon. If, however, Congress should decide to grant such review, the Conference believed that review

by a Court of Veterans' Appeals, with local hearings by commissioners of that Court, would provide a more suitable form of review than by the district courts, the courts of appeals, or the Court of Claims. The Conference, accordingly, approved the type of review proposed by H.R. 3930, except as to the provisions which would amend 28 U.S.C. 451 and 610 to include the proposed court among the courts of the United States and which would require the Director of the Administrative Office to assume certain responsibility for its administrative affairs. These latter provisions were specifically disapproved by the Conference.

#### CIVIL RIGHTS

The views of the Judicial Conference had been requested on various bills relating to civil rights, including H.R. 24, H.R. 1985 and H.R. 3139, 88th Congress. The Committee reported, however, that subsequent to these requests there were introduced in the Congress S. 1731 and H.R. 7152, which contain the provisions of a comprehensive civil rights bill transmitted to the Congress by the President. It was the view of the Committee, after thorough study, that the volume of civil rights litigation would not be substantially increased under the proposed legislation, although there will undoubtedly be additional injunction suits under the public accommodations sections and that, therefore, the provisions of S. 1731 and H.R. 7152 will not impose an unreasonable burden on the federal courts or unduly increase the amount of time now required by the courts to deal with civil rights cases.

The Conference, upon recommendation of the Committee, approved several technical amendments to those provisions of the bill which would affect the business and operation of the Federal courts, but did not express any views upon the general questions of policy involved in the legislation.

## CODIFICATION OF TITLE 5, UNITED STATES CODE

H.R. 4158, 88th Congress, would revise, codify and enact into law, Title 5, U.S.C., entitled "Government Organization and Personnel." While the stated purpose of the bill is a codification of existing law without substantive change, the Committee reported that it had called to the attention of the staff of the House Judiciary Committee certain provisions in the bill which inadvertently change the present law and adversely affect judicial and Administrative Office personnel. The Committee was authorized to continue its work with the Committees of the Judiciary in both Houses of Congress to the end that existing law and proper practices with respect to judicial and Administrative Office personnel be reflected in the codification as finally enacted.

## INTERNATIONAL LEGAL CONFERENCES

S. 2129, 88th Congress, would provide for the participation by the Government of the United States in (1) The Hague Conference on Private International Law and (2) The International Institute for the Unification of Private Law to be held in Rome. The Conference considered it appropriate for the United States to join in this effort by the nations of the world to draft proposed unified laws with respect to subjects of international concern, and, accordingly, voted to approve the proposed legislation.

## TUCKER ACT AMENDMENT

The Committees on the Judiciary of the Senate and House of Representatives had requested the views of the Conference on identical bills, S. 1351 and H.R. 6538, 88th Congress, which would repeal subsection (d) of 28 U.S.C. 1346 to permit the district courts to entertain civil actions by officers or employees of the United States for pensions and for compensation for official services. The Confer-

ence, upon recommendation of the Committee, deferred consideration of the proposals contained in these bills pending inquiry concerning the views of the Department of Justice.

#### INTERSTATE COMPACT ON MENTAL HEALTH

H.J. Res. 25, 88th Congress, would grant the consent of Congress to the several states to enter into an interstate compact on mental health and would authorize the District of Columbia participation in such compact. After full consideration the Conference approved the bill.

#### EXPEDITING ACT

S. 1811 and S. 1892, 88th Congress, would amend the Expediting Act with respect to the provisions for a three-judge district court and a direct appeal to the Supreme Court of the United States. The purpose of both bills is to reduce the number of direct appeals to the United States Supreme Court in Government antitrust cases. S. 1811, sponsored by the American Bar Association, would eliminate government antitrust cases under the Sherman Act entirely from the provisions of the Expediting Act, thus leaving such provisions applicable only to government cases under the Interstate Commerce Act. S. 1892, sponsored by the Department of Justice, would restrict direct appeals to the Supreme Court in Government antitrust cases to those cases in which a certificate is filed that a case is of general importance. Under the provisions of the bill, such a certificate may be filed by the Attorney General or entered by the district court, either on application of a party or upon its own motion.

It was the view of the Committee that a restriction of the Expediting Act to antitrust cases certified to be "of general public importance" was preferable to the elimination of such appeals altogether, but that the Attorney General should not have an unqualified right to file such

a certificate, when such right is denied to the defendant. The Conference, upon recommendation of the Committee, approved S. 1892 with an amendment eliminating the right of the Attorney General to file a certificate without first obtaining leave of court. S. 1811, 88th Congress, was specifically disapproved.

#### ADMINISTRATIVE COURT

H.R. 43, 88th Congress, would provide for a United States Administrative Court which would have concurrent jurisdiction with administrative agencies of certain proceedings now conducted by such agencies and concurrent jurisdiction with the district courts of actions by agencies for the collection of monetary penalties or forfeitures, proceedings for the temporary impounding of mail and proceedings to quash or enforce subpoenas. The Committee was of the view that there is no need for the proposed legislation and the Conference, accordingly, disapproved the bill.

#### LIMITATIONS AGAINST TORT CLAIMS

H.R. 6142, 88th Congress, would amend 28 U.S.C. 2401 to toll the running of the statute of limitations against tort claims of persons under legal disability or beyond the seas at the time the claims accrue. The statute now provides that a civil action (other than a tort claim) brought by a person under legal disability or beyond the seas at the time the claim accrues, may be commenced within three years after the disability ceases. H.R. 6142 would provide a tolling period of two years for a civil action based on a tort claim. The Committee believed that it is appropriate to add to 28 U.S.C. 2401(b) a tolling provision in regard to tort claims for the benefit of persons under legal disability or beyond the seas, as provided for civil actions other than those based on a tort claim. Upon recommendation of the Committee, the Conference approved the bill.

## ASSESSMENT OF COSTS AGAINST THE UNITED STATES

H.R. 7140, 88th Congress, would allow defendants in suits unsuccessfully brought by the United States to recover certain costs. The bill would make it mandatory to award to a successful defendant in any suit by the United States, civil or criminal, not only ordinary costs taxable under 28 U.S.C. 1920, but also reasonable attorneys' fees, fees of expert witnesses and, in the discretion of the court, "any and all other costs, direct or indirect, which have been occasioned the defendant by reason of the suit." It was the view of the Committee that the provisions of the bill go too far in allowing attorneys' fees, fees of expert witnesses, and "all other costs, direct or indirect," and in allowing these costs in criminal cases, as well as in civil cases. Upon recommendation of the Committee, the Conference disapproved the bill.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

The Judicial Conference in March 1960 (Conf. Rept., p. 46) had approved in principle the establishment of a permanent conference on the procedures of executive departments and administrative agencies in adjudication and rulemaking. H.R. 7202 and H.R. 7203, 88th Congress, though differing somewhat in the powers to be conferred upon an Administrative Conference and the manner in which it is to be constituted, would establish an Administrative Conference of the United States with respect to the operations of the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission.

Upon recommendation of the Committee, the Conference approved in principle the proposal to create an Administrative Conference but made no recommendation with re-

spect to the detailed provisions of H.R. 7202 and H.R. 7203 regarding the composition and powers of the Administrative Conference and the agencies to be included in it, since these are not matters of primary concern to the federal judiciary.

#### APPEALS IN PATENT AND TRADEMARK CASES

S. 1940 and H.R. 7553, 88th Congress, would amend the Patent and Trademark statutes to eliminate the present requirement that reasons of appeal in patent and trademark cases must be filed in connection with appeals to the United States Court of Customs and Patent Appeals. The Conference considered the proposals contained in these bills and directed that they be referred back to the Committee for further study.

#### INTERNATIONAL RULES OF JUDICIAL PROCEDURE

There was brought to the attention of the Conference S. 2131, 88th Congress, which is a bill to authorize the continuance of the work of the Commission and Advisory Committee on International Rules of Judicial Procedure. The Conference had previously recommended approval of the legislation creating the Commission and a similar bill to authorize the continuance of its work beyond the original expiration date. Several amendments suggested by the Commission to the Federal Rules of Civil Procedure have already been adopted. The Conference thereupon approved S. 2131.

#### RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, presented to the Conference a report on the activities of the standing Committee and the Advisory Committees on Rules of Practice and Procedure.



Judge Maris reported that the Advisory Committee on the Criminal Rules in connection with its study of the provisions of Rule 5(a), Federal Rules of Criminal Procedure, which requires that a person arrested be brought before a commissioner without unnecessary delay, had considered the proposal contained in S. 1012, 88th Congress. The bill seeks to overcome the effect of the decision in the case of *Mallory v. United States*, 354 U.S. 449, under which confessions obtained during a period of delay longer than that permitted by Rule 5(a) are excluded from evidence. Upon the recommendation of the standing Committee, the Conference voted to disapprove S. 1012 and similar bills which seek to abrogate the McNabb-Mallory doctrine.

The Conference was informed that the Committee had no definitive proposals to present to the Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal Rules of Criminal Procedure have been widely circulated and are now being considered by the bench and bar. All five advisory committees now under appointment are actively engaged in the work to which they have been assigned.

#### BANKRUPTCY ADMINISTRATION

The Chairman of the Committee on Bankruptcy Administration, Senior Judge Oliver D. Hamlin, Jr., reported that the Committee had met and considered the recommendations contained in the Report of the Director of the Administrative Office, dated June 19, 1963, relating to the continuance of referee positions to become vacant by expiration of term, for changes in salaries of referees and for changes in arrangements. The Committee also considered the recommendations of the district judges and the circuit councils of the circuits concerned.

The Conference considered fully the Committee's report and the recommendations of the Director, judicial coun-

cils 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 of referees and directed that, unless otherwise shown, this action become effective on October 1, 1963, or as soon thereafter as appropriated funds are available:

District	Regular place of office	Type of position	Present salary	Conference action	
				Type of position	Authorized salary
<i>Fourth Circuit</i>					
South Carolina (E).....	Charleston.....	Part-time.....	\$5,000	Part-time.....	<sup>1</sup> \$5,000
<i>Fifth Circuit</i>					
Florida (M).....	Jacksonville.....	do.....	7,000	do.....	<sup>2</sup> 7,000
Texas (W).....	El Paso.....	Full-time.....	15,000	Full-time.....	<sup>3</sup> 15,000
<i>Ninth Circuit</i>					
Alaska.....	Anchorage.....	Part-time.....	6,500	Part-time.....	7,500

<sup>1</sup> Temporary salary increase from \$2,500 to \$5,000 per annum to be continued from October 1, 1963 to March 31, 1964; position then to be subject to resurvey.

<sup>2</sup> Temporary salary increase from \$6,000 to \$7,000 per annum to be continued from October 17, 1963 to October 18, 1964; position then to be subject to resurvey.

<sup>3</sup> Temporary salary increase from \$7,000 to \$15,000 per annum and change from part-time to full-time to be continued from October 17, 1963, to October 18, 1964; position then to be subject to resurvey.

#### VACANCIES IN REFEREE POSITIONS AND CHANGES IN ARRANGEMENTS

The Conference took the following action with regard to changes in arrangements for 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, 1963, or as soon thereafter as appropriated funds are available:

#### SECOND CIRCUIT

##### *Southern District of New York*

- (1) Changed the regular place of office of the part-time referee from Beacon to Poughkeepsie.

## THIRD CIRCUIT

*District of New Jersey*

- (1) Authorized the filling of the full-time referee position at Trenton to become vacant by expiration of term on January 31, 1964, on a full-time basis for a term of 6 years, effective February 1, 1964, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FOURTH CIRCUIT

*Western District of Virginia*

- (1) Authorized the filling of the full-time referee position at Roanoke, to become vacant by expiration of term on February 4, 1964, on a full-time basis for a term of 6 years, effective February 5, 1964, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FIFTH CIRCUIT

*Northern District of Florida*

- (1) Authorized the filling of the part-time referee position at Tallahassee, to become vacant by expiration of term on January 22, 1964, on a part-time basis for a term of 6 years, effective January 23, 1964, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## SIXTH CIRCUIT

*Eastern District of Kentucky*

- (1) Designated Frankfort as an additional place of holding bankruptcy court for the referee at Lexington.

*Western District of Tennessee*

- (1) Authorized the filling of the full-time referee position at Memphis, to become vacant by expiration of term on March 31, 1964, on a full-time basis for a term of 6 years, effective April 1, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## NINTH CIRCUIT

*District of Idaho*

- (1) Authorized the filling of the full-time referee position at Boise, to become vacant by expiration of term on February 28, 1964, on a full-time basis for a term of 6 years, effective February 29, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## TENTH CIRCUIT

*District of New Mexico*

- (1) Designated Roswell as an additional place of holding court for the referees at Albuquerque.

## APPROPRIATIONS

The Conference was informed that the appropriation for the salaries of referees for the Fiscal Year 1964, as passed by the House of Representatives, was \$50,000 less than the amount of the request. A supplemental request in the amount of \$136,600 will have to be made to pay current salaries of referees and to cover the cost of the salary increases and new referee positions authorized by the Conference in March 1963, and the salary increases authorized at this session of the Conference. Appropriation requests for salaries of referees for the fiscal year 1965 will be approximately \$2,686,600.

The appropriation for referees' expenses for the fiscal year 1964, as passed by the House of Representatives, totals \$5,250,000, an increase of \$352,000 over the appropriation for 1963. In view of the increase in the filing of bankruptcy cases from 147,780 in 1962 to 155,493 in 1963 the Conference approved the recommendation of the Committee that the appropriation requests for the fiscal year 1965 include additional estimates of referees' expenses of approximately \$300,000 for the employment of 60 additional clerks in referees' offices.

## LEGISLATION

The Conference, upon recommendation of the Committee, reaffirmed its approval of the proposals contained in the following bills pending in the 88th Congress, previously approved by the Conference:

(1) *Priority Claims, Liens and Title to Property*: H.R. 394, 88th Congress, would amend Sections 1, 17a, 57j, 64a(5), 67b, 67c, and 70c of the Bankruptcy Act, 11 U.S.C. 1, 35(a), 93(j), 104(a)(5), 107(b), 107(c) and 110(c) relating to priority claims, statutory liens, and title to property. The bill would preserve the present position of the costs of administration and of wages in the distribution of the assets of a bankrupt, and at the same time, 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. Section 2 of the bill, as introduced, was designed to resolve a conflict in judicial decisions with regard to the treatment of a debt owing to the Government as a penalty or forfeiture. This conflict was resolved by the Supreme Court in *Simonson v. Grandquist*, 369 U.S. 39 (1962) which held that a tax penalty is not allowable against the bankrupt estate even though it was secured by a lien. As passed by the House of Representatives, Section 2 of H.R. 394 was deleted. Upon recommendation of the Committee, the Conference reaffirmed its approval of H.R. 394 as so amended.

(2) *Dischargeability of Debts*: H.R. 5772, 88th 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. This bill is similar to H.R. 1047, 88th Congress, approved by the Conference at its March 1963 session, except that the provisions of H.R. 1047 relating to the stay of suits by and against bankrupt estates have

been eliminated as unnecessary. The Conference, upon recommendation of the Committee, approved H.R. 5772.

(3) *Claims in Chapter XI Cases*: H.R. 1049, 88th Congress, would amend various sections of the Bankruptcy Act and add a new section requiring the filing of claims in Chapter XI cases and limiting the time within which claims may be filed to the time prescribed by section 57n of the Bankruptcy Act, 11 U.S.C. 93(n). This bill passed the House of Representatives on April 22, 1963.

(4) *Referees' Retirement and Salary Bill*: H.R. 2556, 88th Congress, would amend the Bankruptcy Act and the Civil Service Retirement Act, generally, to provide:

- (a) Terms of 12 years for full-time referees;
- (b) An increase in the maximum salary limitation for a full-time referee from \$15,000 to \$20,000 per annum, and for a part-time referee from \$7,500 to \$10,000 per annum;
- (c) A salary for the Chief of the Bankruptcy Division of the Administrative Office at an amount which is not less than the maximum rate of compensation of a full-time referee;
- (d) A more liberal retirement annuity for referees, in general, comparable to the retirement benefits now provided for members of Congress and mandatory retirement for referees at age 75 under certain conditions.

(5) *Summary Jurisdiction*: H.R. 2848, 88th 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 brought under those sections involving preferences, liens and fraudulent transfers, and the trustee's title to property.

(6) *Rules of Practice and Procedure*: H.R. 2859, 88th Congress, would provide for the promulgation of rules of practice and procedure under the Bankruptcy Act, by

the Supreme Court of the United States. This bill passed the House of Representatives on April 22, 1963.

The Conference, upon recommendation of the Committee, took no action on the following bills which appear to involve questions of public policy to be determined by the Congress:

(1) H.R. 66 to increase the amount of wages entitled to priority to \$1,800 and to provide that pension and welfare benefits earned by an employee shall have the same priority as direct wages;

(2) H.R. 549 and H.R. 710 to amend the Bankruptcy Act with respect to the priority of debts owed by a bankrupt to workmen, servants, clerks and certain salesmen;

(3) H.R. 1052 to amend section 64a(2) of the Bankruptcy Act, 11 U.S.C. 104(a)(2), to give priority to certain wages and commissions;

(4) H.R. 1784 to increase the amount of wages entitled to priority to \$2,000, to provide that pension, welfare, and other fringe benefits shall be treated as wages, and to increase the priority period from 3 months to 12 months with respect to certain wage components;

(5) H.R. 3438 to limit the priority and nondischargeability of taxes in bankruptcy; and

(6) S. 1295, H.R. 3443 and H.R. 4037 to give priority to certain wages and commissions.

#### RAILROAD REORGANIZATIONS

S. 1557, 88th Congress, would amend Section 77 of the Bankruptcy Act relating to the reorganization of railroads. This bill is substantially the same as S. 1624, 87th Congress, which was approved by the Conference at its session in September 1962 (Conf. Rept., p. 65). Upon recommendation of the Committee, the Conference approved S. 1557.

## AUDIT OF STATISTICAL REPORTS

The Conference was informed that the examination of statistical reports of closed bankruptcy cases for the determination of errors in the computation of amounts due the referee's salary and expense fund and of overpayments of compensation to receivers and trustees has continued. While no situations were reported with respect to the personal accountability of referees, the Administrative Office had brought to the attention of the Committee several cases involving possible monopolies in the appointment of trustees and receivers in bankruptcy cases. More information concerning these appointments is being developed and a report will be made to the Committee at its next meeting.

## DEVELOPMENTS IN THE USE OF CHAPTER XIII

A subcommittee of the Bankruptcy Committee consisting of Chief Judge Seybourn H. Lynne and District Judges Edward Weinfeld and Wesley E. Brown had previously been appointed to study and recommend guidelines for all phases of the administration of Chapter XIII cases. On the basis of the study and report of the subcommittee, the Committee on Bankruptcy Administration presented the following recommendations which were approved by the Conference:

(1) That it is the sense of the Conference that the annual compensation of any trustee in Chapter XIII cases shall not exceed the maximum compensation of a full-time referee in any district.

(2) That the district judges of each district consider the feasibility of reducing the 5 percent charge against the debtor to a percentage which will produce compensation to a trustee which does not exceed the maximum salary of the referee.

(3) That the judges of the district courts should annually review trustees' commissions and adjust the per-



centage to be paid to an amount which will yield for any one trustee an amount not to exceed the compensation paid to a full-time referee.

(4) That there should be appointed only one Chapter XIII trustee in each integral commercial area to be determined by the judges of the court concerned.

(5) That Chapter XIII trustees be required to maintain standard basic records and that semiannual reports be submitted to the referees by the trustees and that the referee submit a report to the judges concerning the operations of the trustees with a copy to the Administrative Office.

(6) That, where the accounts of Chapter XIII trustees are substantial in amount, an annual audit by an independent accountant should be ordered by the district court concerned.

(7) That non-consumable property purchased out of the expense allowances of the Chapter XIII trustee be regarded as property of the trustee's office and that title should pass to a successor trustee. This will require that property records be maintained and that accountability reports be made to the courts when required.

#### DEBTOR'S COUNSELLING SERVICE

The Conference, upon the suggestion of Judge Hamlin, deferred consideration of the "debtor's counselling service" procedure which has been instituted in at least one district and authorized further study by the Committee.

#### JOINT PETITIONS

The Conference approved a proposal to amend the Bankruptcy Act to permit the filing of joint petitions in bankruptcy by husband and wife who have one or more joint obligations and authorized the Director of the Administrative Office to prepare an appropriate amendment for introduction in Congress.

## MATTERS UNDER ADVISEMENT

The Conference was informed that the proposal to require reports from the referees concerning matters held under advisement for excessively long periods had been considered and that the Committee had reached the conclusion that reports of submitted matters should be required regularly of all referees. The Conference thereupon approved the proposal to require referees in bankruptcy to submit quarterly reports of matters under advisement 60 days or longer to the district courts with copies of such reports to the Administrative Office.

## OTHER MATTERS REFERRED TO THE COMMITTEE

On motion of Chief Judge Chambers, the Conference directed that various proposed amendments to the Bankruptcy Act recommended by the Judicial Conference of the Ninth Circuit be referred to the Bankruptcy Committee for study and report to 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.

## DENIAL OF BAIL

H.R. 42, 88th Congress, would grant authority to the district courts to deny bail in certain criminal cases involving national security. The types of cases enumerated in the bill, however, include both felonies and misdemeanors and the Committee entertained serious doubt as to the constitutionality of those provisions of the bill relating to the denial of bail to offenders who are charged with nothing more than misdemeanors. It was pointed out also that the proposed legislation may affect Rule 46(a) (1), Federal Rules of Criminal Procedure, which

now provides that a person accused of an offense not punishable by death shall be admitted to bail. The Committee, therefore, recommended that the Conference take no action on the legislation at this time and that the subject matter be referred to the Advisory Committee on Criminal Rules and the Committee on the Administration of the Criminal Law for joint study and report to the Conference. This recommendation was approved by the Conference.

#### UNAUTHORIZED USE OF APPROPRIATED FUNDS

The Conference, upon recommendation of the Committee, voted to express no view on the proposal contained in H.R. 903, 88th Congress, to amend 18 U.S.C. 1913 with respect to the use of appropriated funds by executive departments and agencies for the purpose of influencing a member of Congress "to favor or oppose, by a vote or otherwise, any legislation or appropriation by Congress."

#### ADMISSIBILITY OF CONFESSIONS

Judge Smith reported that the Committee had concurred in a recommendation of the standing Committee on Rules of Practice and Procedure to disapprove S. 1012, 88th Congress, and a similar bill, H.R. 4746, 88th Congress, relating to the admissibility of a confession notwithstanding the failure of law enforcement officers to comply with Rule 5(a), Federal Rules of Criminal Procedure. Conference action disapproving this proposal is shown above.

#### COMMITMENT OF THE INSANE

S. 447, 88th Congress, would authorize the commitment and confinement of a defendant acquitted in a United States district court solely on the basis of insanity. The Conference discussed the need for a procedure

under which the release of a person following his acquittal in a United States district court by reason of insanity could be avoided and which would provide for the necessary care and treatment of such person in a suitable institution, and directed the Committee to give further consideration to this problem. The proposal contained in S. 447 was referred to the Committee for further study.

#### RIGHT TO TRIAL

S. 1801, 88th Congress, is designed to effectuate the provision of the Sixth Amendment of the Constitution requiring that a defendant in a criminal case be given the right to a speedy trial. The bill would authorize the dismissal of a criminal case where there has been an unreasonable delay either in presenting a charge to a grand jury or in filing an information, or where the accused is not brought to trial within a specified period of time. The bill would also provide that a person against whom there is pending more than one indictment or information shall be brought to trial in the same order in which the indictments were returned or the informations filed. The Conference discussed the provisions contained in S. 1801 and directed that the bill be recommitted for further study in the light of the discussions at the Conference.

#### PUBLICATION OF INFORMATION IN CRIMINAL CASES

The Conference authorized the Committee on the Administration of the Criminal Law to consider further a proposal contained in S. 1802, 88th Congress to make it unlawful for an employee of the United States or for any defendant or his attorney, or the agent of either, to publish information not already properly filed with the court, which might affect the outcome of any criminal litigation.

## MANDATORY MINIMUM SENTENCES

The Conference, upon recommendation of the Committee, reaffirmed its approval of the proposal contained in S. 863, 88th Congress, to amend the Federal Youth Corrections Act by adding the following new subsection:

"Sec. 5027. The provisions of this chapter shall be applicable to all persons otherwise eligible, who are convicted of violations of any Federal penal law relating to narcotics notwithstanding the fact that a mandatory penalty is prescribed for any such violation."

PRESENCE OF THE DEFENDANT AT THE TIME  
OF SENTENCE

S. 1956 and H.R. 7912 would amend 18 U.S.C. 4208(b) and (c) to provide that when a defendant is committed to the custody of the Attorney General for observation and study, the defendant need not be present in court when the report is received and action is taken as to any affirmation or modification of the original sentence, but that in the discretion of the court he may be returned for such proceedings as may be deemed desirable. The Conference was informed that the question of the interpretation of the language of the present statute was now before the courts and, accordingly, postponed consideration of the proposal and referred it to the Committee for further study.

## STATUTE OF LIMITATIONS

The Bureau of the Budget had requested the views of the Conference on a draft bill prepared by the Department of the Army which would amend 18 U.S.C. 3287 to provide for the suspension of the statute of limitations on certain offenses during periods of "national emer-

gency" formally declared by Congress or the President, as well as during time of war. The Conference considered the draft bill, particularly the definition of the term "national emergency," and directed that the proposal be referred to the Committee for further study in accordance with the discussions at the Conference.

#### REINDICTMENT FOLLOWING DISMISSAL OF A DEFECTIVE INDICTMENT

S. 1891 and H.R. 7219, 88th Congress, would amend 18 U.S.C. 3288 and 3289 to provide a uniform period of 6 months for reindictment following dismissal of a defective indictment. At present, the period of reindictment is related to the concept of "terms of court" which would be abolished by the proposal contained in H.R. 2845, 88th Congress, previously approved by the Conference. Upon recommendation of the Committee, the Conference approved S. 1891 and H.R. 7219.

#### DEFINITION OF A FELONY

The Committee was authorized to consider a resolution of the Judicial Conference of the Ninth Circuit recommending that the definition of a felony contained in paragraph 1 of 18 U.S.C. 1 be amended to read as follows:

"Any offense punishable by death or imprisonment for a term exceeding 1 year is a felony: Provided, that when a person is convicted of any felony and the sentence imposed by the court does not provide for imprisonment for a term exceeding 1 year, such person shall, for all purposes, after the judgment of conviction shall have become final and after the sentence imposed upon him shall have expired, be deemed to have been charged with and convicted of a misdemeanor, and such person shall not suffer any disability or disqualification which would otherwise result from a conviction of a felony."

## MOTIONS TO VACATE SENTENCE

The Conference, upon recommendation of the Committee, directed that the various proposals to amend 28 U.S.C. 2255 suggested by Judge Daniel H. Thomas of the Southern District of Alabama be referred to the Committee on Habeas Corpus for consideration and report to the Conference.

COMPENSATION TO COUNSEL APPOINTED TO REPRESENT  
POOR PERSONS ACCUSED OF CRIME

The Conference at its March 1963 session (Conf. Rept., p. 41) had authorized the Committee to reconsider S. 63, 88th Congress, and other pending legislation (including S. 1057, the proposed Criminal Justice Act of 1963) to provide for the payment of compensation to counsel representing indigent defendants and to cooperate with representatives of the Attorney General.

The Conference was informed that at the suggestion of the Committee Chairman several amendments were made to S. 1057 to bring it more into conformity with the provisions of S. 63 which had been previously approved by the Conference and that the bill, as amended, passed the Senate. A similar bill, H.R. 7457, ordered favorably reported by the Judiciary Committee of the House of Representatives, would authorize payment of compensation to counsel appointed to represent indigent defendants, but would not authorize the appointment of full-time or part-time public defenders. After consideration of these two bills, the Conference voted to approve S. 1057 as passed by the Senate.

## APPELLATE REVIEW OF SENTENCES

S. 823, 88th Congress, 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, al-

though within lawful limits, is excessive. The Committee reported that the proposal contained in this bill, which is identical with that contained in S. 2879, 87th Congress, had, in accordance with the recommendation of the Conference at its March 1962 session (Conf. Rept., p. 22), been made the subject of panel discussions at the Judicial Conferences of the Second and Third Circuits. These discussions have been helpful and the Committee requested that the proposed legislation be placed on the programs of other circuit conferences.

#### ADMINISTRATION OF THE PROBATION SYSTEM

Chief Judge Thomas M. Madden, on behalf of Judge Luther W. Youngdahl, Chairman of the Committee on the Administration of the Probation System, presented the report of the Committee to the Conference.

#### SENTENCING INSTITUTES

The Committee submitted to the Conference a detailed program for a Sentencing Institute to be held early in 1964 and a tentative list of supplemental institutes to be held regionally throughout the nation in the next few years. Upon recommendation of the Committee, the Conference approved in principle the general format of the institute program and such supplemental institutes as the Committee may approve. The Conference also approved the detailed program, including participants and agenda, for the first 1964 institute. It was brought to the attention of the Conference, however, that a potential conflict existed in the dates proposed for the first sentencing institute and for the seminar for newly appointed United States district judges being planned by the Committee on Pretrial Procedure. The Conference accordingly authorized the Committees to make arrangements for combining the two programs.



## CIRCUIT COMMITTEES

In connection with its work, the Committee recommended the appointment in each judicial circuit of a committee on sentencing institutes and seminars to consist of at least one circuit judge and two judges who are currently, or have been, district judges, and that the members of such committees be invited to attend at least one of the sentencing institutes now being planned. The Conference voted to so recommend to the Judicial Councils of the Circuits.

## RESEARCH AND DEVELOPMENT CENTER

A subcommittee of the Committee on the Administration of the Probation System had recommended the establishment of a research and development center in the field of probation for the following purposes:

(1) To advance and achieve uniformity in the standards of probation and parole practice by providing continuing education for personnel who are engaged in correction of offenders in the community.

(2) To stimulate, coordinate, and conduct research and experimentation in selection and community treatment of offenders.

(3) To expedite the goal of corrections professionalization through the organization of a body of philosophical and scientific knowledge from the disciplines of law, criminology, social work, sociology, psychology, education, psychiatry, and related areas.

Upon recommendation of the Committee, the Conference approved in principle the proposal for a federal probation and parole research and development center and authorized the Committee to work toward the establishment of such a center.

## PRESENTENCE REPORTS

The Committee requested and was granted authority to study and develop an official format and outline for all presentence reports to the end that they not only be uniform in quality and coverage, but also that they serve jointly the needs of the courts, the Bureau of Prisons, and the Board of Parole.

The views of the Committee concerning a proposed change in Rule 32(c) of the Federal Rules of Criminal Procedure regarding the confidential character of presentence reports, as contained in the draft submitted by the Advisory Committee on Criminal Rules to the Bench and Bar in December 1962, were referred to the Advisory Committee on the Criminal Rules.

## COMMITTEE ACTIVITIES

The Conference was informed that the Committee has under consideration a project to ascertain the availability of data for research into the long-term effects of probation as a method of handling offenders and a proposal to develop a statement of the principles of probation and parole.

A proposal relating to a study in depth of the federal probation system submitted in a letter of Chief Judge David L. Bazelon of the District of Columbia Circuit was referred to the Committee on the Administration of the Probation System.

## JUDICIAL STATISTICS

The Chairman of the Committee on Judicial Statistics, Chief Judge Harvey M. Johnsen, presented the report of the Committee to the Conference.

DISPOSITION OF CIVIL CASES PENDING  
OVER 3 YEARS

The Committee called to the attention of the Conference the figures contained in the Annual Report of the Director of the Administrative Office for the fiscal year 1963 which confirm that there has been a substantial and continuing progress in the disposition of civil cases pending more than three years and which indicate that these cases are being made the subject of a programmed effort. What has been accomplished, though not spectacular, does reflect an attitude and application which is of special significance in judicial administration. The Committee also pointed out the special effort and cooperation of the Lands Division of the Department of Justice in reducing the total number of tracts involved in pending Government land condemnation cases from approximately 32,000 in 1961 to less than 22,000 at the end of the fiscal year 1963.

Upon recommendation of the Committee the Conference adopted the following resolution:

The Conference takes note of the efforts made by the District Courts, since the resolutions of the Conference in September 1961 and March 1963, to dispose of the cases 3 years or more old on their dockets, and also of the cooperation which the Lands Division of the Department of Justice has been giving in accelerating the termination of the condemnation cases which are pending.

The Conference was informed that a list of civil cases pending more than three years as of the end of the fiscal year 1963 as to each of the districts in a circuit is being sent by the Administrative Office to the chief judge of such circuit for transmittal by him to the chief judges of the respective district courts.

ADDITIONAL JUDGESHIPS

The Committee reported that it had considered a recommendation for the creation of an additional judgeship

in the Eastern District of Virginia and for additional judgeships in the Court of Appeals for the Fifth Circuit. Conference action with respect to these proposals is shown under the report of the Committee on Court Administration.

#### STATISTICAL TABLES

A substantial amount of the time of the Committee has been spent in reviewing statistical practices, tables, and reports and in giving consideration to suggested changes and improvements therein. In so doing, the Committee has considered and approved various proposals made by the Division of Procedural Studies and Statistics of the Administrative Office for:

- (1) Changes in jury reports on Form J.S. 11;
- (2) Revision of the instructions for statistical reporting by clerks of courts of appeals;
- (3) The form of a directive to the clerks of the district courts as to docketing procedures for motions under 28 U.S.C. 2255;
- (4) The use of forms to report appointments of counsel made by courts of appeals;
- (5) Making a special analytical report with detailed information concerning persons under probation supervision; and
- (6) Preparing a separate annual report on criminal offenses processed in the district courts.

The Conference was informed that when any matters arise in any area where the Committee regards it as necessary or desirable to have Conference approval or expression for policy purposes, they will be made the subject of report by the Committee.

#### PRETRIAL PROCEDURE

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, presented the report of the Committee.

## PRETRIAL EXAMINERS

The Conference, as reported above, authorized the Committees on Pretrial Procedure and Court Administration to consider further the survey reports on the pretrial examiner systems in the District of Columbia and in the Southern District of New York.

## PRETRIAL PROCEDURE IN CRIMINAL CASES

Judge Murrah informed the Conference that the Committee had considered and approved the preliminary draft of the proposed new Rule 17A, Federal Rules of Criminal Procedure, relating to the use of pretrial conference procedures in criminal cases, as drafted by the Advisory Committee on the Criminal Rules. In view of the increasing number of protracted criminal trials and of the need to develop procedures designed to expedite the disposition of all criminal cases in a manner consistent with the constitutional rights of a defendant, the Committee felt that a complete, thoroughgoing study of the use of pretrial procedure in criminal cases should be undertaken. The Committee was further of the view that the program for such a study should be worked out with representatives of the Department of Justice and should include meetings or seminar type sessions of judges, government attorneys, and representatives of the Bar generally who are thoroughly familiar with procedures in a criminal case. Upon recommendation of the Committee, the Conference adopted the following resolution:

That the Committee on Pretrial Procedure is authorized to make a study of special problems involved in the pretrial of all criminal cases, the study to be under the auspices of the Pretrial Committee and in conference with representatives of the Department of Justice and with leading trial counsel conversant with procedural problems in criminal cases; and further, that the Committee is authorized to conduct, at ap-

propriate times and places, meetings or seminars of judges and lawyers for the purpose of developing useful administrative techniques for the pretrial of criminal cases.

#### CIRCUIT JUDICIAL CONFERENCES

The Committee suggested that a portion of the annual judicial conference of each circuit be set aside for a discussion of problems relating to judicial administration, discovery, pretrial procedure and calendar control. This would be a logical extension of the seminar type programs conducted for newly appointed United States district judges. The Conference was informed that the Committee is prepared, through the member of the Pretrial Committee in each circuit, to assist the chairman of each circuit conference program committee in preparing such a program and obtaining speakers.

#### SEMINAR FOR NEW DISTRICT JUDGES

The Conference was informed that the seminar for new district judges planned to be held at Denver, Colorado, last July was postponed by the Committee. Appointments to existing judgeship vacancies on the district courts were not made as rapidly as had been expected, and the Committee was of the view that the seminar ought not to be held unless a sufficient number of new district judges were in attendance. The Committee is now working with the Committee on the Administration of the Probation System on a combined sentencing institute and seminar session to be held early in February 1964.

The Committee reported that an account of the proceedings of the seminars for new district judges, conducted during 1962, has been printed by the West Publishing Company and that a copy is being made available to every federal judge.

## SUBCOMMITTEE FOR MULTIPLE LITIGATION

The subcommittee of the Pretrial Committee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits submitted a progress report on the conduct of the program for the trial and disposition of the antitrust treble-damage actions which arose out of the criminal antitrust proceedings in the electrical equipment industry in Philadelphia in 1961. Through the efforts of the subcommittee, 20 separate pretrial orders, national in scope, have been prepared and entered in every case with some local variations; the third round of a national deposition program is virtually complete; a national depository containing more than 600,000 documents produced by defendants has been established in Chicago and a similar depository for documents of the plaintiffs is being planned; and several legal decisions have been made by the courts on issues basic to the litigation. It is expected that a number of these cases will soon be scheduled for trial.

## COMMITTEE ACTIVITIES

The Conference was informed that the Committee on Pretrial Procedure plans a complete study and re-examination of Rule 16, Federal Rules of Civil Procedure, in the light of experience and current practices in regard to pretrial procedure. The Committee further plans to study the use of pretrial procedure in the processing of habeas corpus petitions and motions to vacate sentence brought under 28 U.S.C. 2255 and of the use of pretrial procedure in land condemnation cases.

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

## INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Judge Jean S. Breitenstein, reported on the processing of requests for inter-circuit assignments. Since its last report, the Committee has recommended favorably on 18 inter-circuit assignments and no adverse recommendation has been made. The judges receiving assignments during this period include three circuit judges, two senior circuit judges, six district judges, three senior district judges and one senior judge of a special court. Except for the assignment of senior judges, all assignments recommended by the Committee during the period covered by the report related either to the Court of Appeals for the Fifth Circuit or to the program with respect to the multiple antitrust cases in the electrical equipment industry.

The Committee reported that despite vigorous efforts of the Court of Appeals for the Fifth Circuit to keep up with its docket and despite the help which has been given, docket congestion continues and the prospects are that out-of-circuit assistance will continue to be needed.

The Advisory Committee indicated that the electrical equipment antitrust cases pose a special problem in the assignment of judges which was not covered by the statement of principles adopted by the Conference at its March 1963 session (Conf. Rept., p. 36). As previously authorized by the Conference, the subcommittee of the Committee on Pretrial Procedure concerned with multiple litigation has been dealing with the problems arising out of these cases. Because of the national scope of depositions and their importance to the disposition of the cases pending throughout the nation, the depositions are being taken before a judge. The specialized character of the evidence is such that the taking of the depositions must be under the supervision and control of a judge who is thoroughly familiar with the litigation. The Committee



has thus recommended assignments for this purpose because it was of the view that the expeditious handling of these cases is of prime importance to the administration of justice. The Committee indicated that additional assignments in the electrical equipment cases may be expected.

Upon recommendation of the Committee, the Conference added the following paragraph to the policy statement approved in March 1963:

In extraordinary situations concerning related cases pending in multiple districts the principles and procedures adopted by the Conference on March 11, 1963, shall not control and the Advisory Committee on Intercircuit Assignments in making its recommendations to the Chief Justice shall give consideration to the over-all need of, and benefit to, the federal judicial system.

The report of the Committee, including a statement relating to the need for intercircuit assistance and the availability of judges for such service, was received and approved by the Conference.

#### SUPPORTING PERSONNEL

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

#### COURT REPORTERS

The Conference was informed that the Committee had considered jointly with the Committee on Court Administration various matters pertaining to the court reporting system and had concurred in the recommendations of the Committee on Court Administration, presented above.

The Committee also considered several requests that provision be made for sick leave for court reporters. At present a court reporter who is absent from duty must either be placed on leave without pay, if a substitute

reporter is to be employed at Government expense, or he must provide a substitute to be paid by the reporter. The Committee was of the view that some equitable plan should be devised whereby, within reasonable limits, substitute court reporters may be provided at Government expense for court reporters who become ill or disabled. The Committee, therefore, recommended that the Director of the Administrative Office, subject to the availability of funds, be authorized and directed to approve the employment of temporary court reporters and their compensation, at prevailing local per diem rates, from judiciary appropriations when such temporary employment is necessary because of the bona fide illness of a court reporter. The Committee further recommended that these temporary appointments be made within the limitations and under the rules and regulations to be promulgated by the Director of the Administrative Office, and that a showing of a bona fide illness should include a certification by the chief judge or single judge of the court involved that the services of such a temporary reporter on the day specified were or are needed for the prompt and proper transaction of judicial business and that other regular reporters of the court were or are not available to perform the duties of the reporter who is ill. These recommendations were approved by the Conference.

The Conference at its March 1963 session had authorized the Committee to consider the suggestion that the two categories of court reporter positions be combined. The Committee was of the view that the distinction between "metropolitan" and "nonmetropolitan" court reporters has become artificial since there is no way of evaluating with particularity the benefits accruing to and the working conditions of a court reporter in a large court as contrasted with the same considerations affecting a court reporter attached to a small court. The Conference thereupon approved the recommendation of

the Committee that, subject to the availability of funds, the nonmetropolitan category of court reporters be eliminated and that all court reporters be placed in the salary rate applicable to reporters in the present metropolitan category.

The Conference was informed that the Committee had decided to make a direct inquiry of each reporter for information concerning the over-all problems of the federal court reporter system. The request will be in the form of a letter from the Chairman summarizing the various proposals which have reached the Committee, including those contained in the study of the court reporter system by Messrs. Parker and Tharp. A report on the results of this inquiry and study will be made at the next session of the Conference.

#### COURT REPORTER-SECRETARY

The Conference, upon recommendation of the Committee, approved the creation of a combination position of court reporter-secretary in the District of Guam at a salary of \$8,310 per annum.

The Committee requested and was granted leave to consider further the requests of the judges in the District of North Dakota and the District of the Canal Zone to increase the salaries for the positions of court reporter-secretary in these districts.

#### CLERKS OF COURT

The Judicial Council of the Second Circuit has suggested a separate salary classification for the clerks "of each of the large sized United States Courts of Appeals." The Conference was informed that the Committee would give consideration to this request, but has postponed action until such time as the Judiciary Salary Plan for the offices of the clerks of the district courts, the offices of the referees, and the probation offices has been fully funded and applied.

The Conference, upon recommendation of the Committee, disapproved the request of the United States Court of Appeals for the District of Columbia Circuit for authority to re-employ the retired clerk of that court as a consultant to assist the court with matters pertaining to Judicial Council meetings and matters pertaining to the Circuit Judicial Conference.

The Court of Appeals for the Fifth Circuit had requested an increase in the grade of the senior deputy clerk from GS-10 to GS-11 as an exception to the salary plan for clerks' offices of courts of appeals. It was pointed out that the court has widely separated places for holding court and an unusually heavy caseload which require the delegation of authority and responsibility to the senior deputy clerk. The Committee views the special problem in this court as unprecedented and unique and, without suggesting or recommending any change in the over-all plan, recommended an increase in the grade of this position from GS-10 to GS-11. This recommendation was approved by the Conference.

#### ADDITIONAL SUPPORTING PERSONNEL

The Committee reported that it had considered numerous requests for additional permanent positions in the offices of the clerks of the courts of appeals and district courts and in the probation offices and offices of the referees in bankruptcy. The Conference, upon recommendation of the Committee, took the following action with respect to these requests:

(1) Deferred consideration of all requests for additional positions in the offices of the clerks of the district courts pending a possible reduction in workload through the installation of a central disbursing system in the Administrative Office and through the introduction of modern equipment and procedures in these offices. Temporary assistance in emergency situations is available and is being provided.

(2) Authorized the inclusion in the appropriation requests for the fiscal year 1965 of sufficient funds for at least fifteen permanent deputy clerk positions in the courts of appeals. These positions are needed because of the increased workload in the courts of appeals resulting from the impact of the new judgeships recently authorized for these courts.

(3) Authorized the inclusion in the appropriation requests for the fiscal year 1965 of sufficient funds for the full number of additional officer and clerical positions for the probation system requested by the various courts and found to be justified by the Administrative Office.

(4) Authorized the inclusion in the appropriation requests for the fiscal year 1965 of sufficient funds for fifty to sixty additional clerical positions, on a temporary basis, in the offices of the referees in bankruptcy. These positions will be needed if the increase in the filing of bankruptcy cases, amounting to more than 5,000 cases during the last 6 months of the fiscal year 1963, should continue.

#### SALARIES OF CLERKS OF DISTRICT COURTS

The Committee had considered a request that the salary classification of the clerk of the United States District Court for the Western District of Texas be increased to the highest category for clerks of district courts and after a thorough study, recommended that the request be disapproved. This recommendation was approved by the Conference.

#### HABEAS CORPUS

Senior Judge Orié L. Phillips, Chairman of the Committee on Habeas Corpus, presented to the Conference a comprehensive Committee report detailing the history of proposed legislation with respect to habeas corpus applications in the district courts by persons in custody pursuant to the judgment of a state court. The Committee

recommended that the Conference reaffirm its approval of the bill previously recommended by the Committee with two amendments. The Conference also considered a proposal to amend the section of the proposed bill with respect to the procedure before a three-judge district court.

After full discussion the Conference voted to reaffirm its approval of the bill with the three amendments discussed at the Conference and instructed the Director of the Administrative Office to send the draft bill, as modified by the Conference, to the Chairman of the Judiciary Committees of both Houses of Congress recommending that the bill be enacted into law. The draft bill, as amended, will be sent to the judges of the Courts of Appeals and District Courts for their information.

#### PROCEDURE IN HABEAS CORPUS CASES

The Committee called attention to local rule 23 of the United States District Court for the Northern District of Illinois, which sets forth in some detail the procedure to be followed by a petitioner in a habeas corpus proceeding or in a proceeding under 28 U.S.C. 2255 to vacate sentence. It was the view of the Committee that this type of procedure affords a constructive approach toward the disposition of habeas corpus petitions not only more expeditiously, but also upon a sounder factual basis, and would greatly aid the habeas corpus judge in making the preliminary inquiry provided for in the draft habeas corpus bill sponsored by the Conference.

Upon recommendation of the Committee, the Conference directed that a copy of the rule, forms and instructions in use in the United States District Court for the Northern District of Illinois, together with a copy of the appropriate section of the Committee report, be brought to the attention of the judges of the several district courts. The Conference further recommended that the

judges consider the adoption of a like rule, forms and instructions in their respective districts.

#### UNITED STATES COMMISSIONERS

On motion of Chief Judge Chambers, a resolution of the Judicial Conference of the Ninth Circuit concerning an increase in fees payable to United States Commissioners was referred to the Committee on the Administration of the Criminal Law for study and report to the Conference.

#### COMMITTEES

On motion of Chief Judge Matthew F. McGuire, the Conference directed that the Committee on the Operation of the Jury System be continued as a separate standing Committee of the Conference.

#### PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

At the request of Chief Judge Simon E. Sobeloff, the Conference, pursuant to 28 U.S.C. 48, consented to the pretermission of the term of the Court of Appeals for the Fourth Circuit, scheduled to be held at Baltimore in November 1963.

#### RELEASE OF CONFERENCE ACTION

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

For the Judicial Conference of the United States.

EARL WARREN,  
*Chief Justice*

*October 30, 1963.*

## INDEX

	Page
Additional districts and divisions.....	66
Additional judges.....	64
Administrative Office of the United States Courts:	
Disbursement of appropriations.....	69
Report of the Director.....	56
Administrative Conference of the United States.....	78
Appropriations:	
Bankruptcy.....	83
Budget Committee, report of.....	58
Costs of printing and of law books.....	59
Disbursement of.....	69
General.....	58
Supplemental.....	60
Unauthorized use of.....	90
Assignment of Judges, Advisory Committee on.....	103
Bankruptcy Administration:	
Appropriations.....	83
Arrangements, changes in.....	81
Audit of statistical reports.....	87
Chapter XI, filing of claims.....	85
Chapter XIII, developments in the use of.....	87
Committee on, report of.....	80
Debtors' counselling service.....	88
Dischargeability of provable debts.....	84
Joint petitions.....	88
Priority claims, liens and title to property.....	84
Priority of wage claims.....	86
Provable debts, dischargeability of.....	84
Railroad reorganizations.....	86
Referees:	
Changes in arrangements.....	81
Matters under advisement.....	89
Retirement and salary bill.....	85
Salaries and arrangements.....	80
Rules of practice and procedure.....	85
Summary jurisdiction.....	85
Civil Rights.....	74
Conference:	
Call of.....	55
Committees.....	110
Release of Action.....	110



	Page
<b>Court Administration:</b>	
Chief judges, selection of .....	63
Clerks' fees .....	69
Committee on, report of .....	60
Disbursement of judiciary funds .....	69
Districts and divisions .....	66
Electronic data processing equipment .....	69
Electronic sound recording .....	60
Failure to file transcripts .....	68
Geographical organization .....	65
Judges:	
Corporate directorships .....	62
Reports of financial status .....	63
Substitution of .....	70
Judgeships, additional .....	64
Legislative apportionment .....	70
Opinions, publication of .....	67
Photographs in the courtroom .....	71
Places of holding court .....	66
Pretrial Examiners .....	67
Privilege of News Reporters .....	71
Quarterly Bulletins by Administrative Office .....	70
Supreme Court, Annuities to widows of Justices .....	64
Witness fees .....	68
<b>Courts:</b>	
Business of, state of the dockets .....	57
Courts of Appeals:	
Pretermission of terms of court .....	110
District Courts:	
Chief Judges, selection of .....	63
Places of holding court .....	66
<b>Criminal Law Administration:</b>	
Appropriations, unauthorized use of .....	90
Bail, denial of .....	89
Committee on, report of .....	89
Confessions, admissibility of .....	90
Felony, definition of .....	93
Indigent defendants, compensation of counsel for .....	94
Insane defendants, commitment of .....	90
Publication prior to trial .....	91
Reindictment .....	93
Right to trial .....	91
Sentencing:	
Appellate review of .....	94
Institutes on sentencing .....	95
Mandatory minimum sentences .....	92
Motions to vacate sentence .....	94
Presence of defendant at time of .....	92
Statute of limitations .....	92
<b>Fees:</b>	
Clerks .....	69
Court reporters .....	60
United States commissioners .....	110
Witness .....	68

	Page
Habeas Corpus:	
Committee on, report of.....	108
Indigent Defendants, compensation of counsel for.....	94
Intercircuit assignment of judges.....	103
Judges:	
Chief judges, selection of.....	63
Corporate directorships.....	62
Financial status, reports of.....	63
Retirement of.....	63
Substitution of.....	70
Territorial judges, retirement of.....	72
Jurisdiction and venue:	
Expediting Act.....	76
Interstate Commerce Commission, referrals to.....	72
Removal jurisdiction.....	72
Tort actions.....	72
Mental Health, Interstate Compact on.....	76
Multiple Litigation.....	102
National Park Commissioners.....	60
Pretrial Procedure:	
Circuit conference programs.....	101
Committee on, report of.....	99
Criminal cases, use in.....	100
Pretrial examiners.....	100
Rule 16, FRCP, study of.....	102
Seminar for new district judges.....	101
Subcommittee for Multiple Litigation.....	102
Probation Administration:	
Committee on, report of.....	95
Institutes on sentencing.....	95
Presentence reports.....	97
Research and development center.....	96
Study of probation system.....	97
Release of Conference Action.....	110
Revision of the Laws:	
Administrative agencies, review of orders of.....	73
Administrative Conference of the United States.....	78
Administrative court.....	77
Appeals in patent and trademark cases.....	79
Civil rights.....	74
Committee on, report of.....	71
Costs against the United States.....	78
Court of Veterans Appeals.....	73
Expediting Act.....	76
International legal conferences.....	75
International rules of judicial procedure.....	79
Interstate Commerce Commission, referrals to.....	72
Judicial procedure internationally.....	72
Judicial review:	
Biological products.....	72
Removal of government employees.....	73
Mental Health, Interstate Compact on.....	76
Removal jurisdiction.....	72
Statute of limitations.....	77

	Page
Revision of the Laws—Continued	
Support orders, enforcement of.....	73
Territorial judges, retirement of.....	72
Tort actions.....	72
Tucker Act.....	75
Rules of Practice and Procedure:	
Committee on, report of.....	79
Mallory Rule.....	80
Promulgation of rules in bankruptcy.....	85
Statistics, judicial:	
Committee on, report of.....	97
Disposition of three-year-old cases.....	98
Judgeships, additional.....	98
Statistical tables.....	99
Supporting Personnel:	
Additional personnel.....	107
Committee on, report of.....	104
Court reporters.....	104
Court reporter-secretary.....	106
Retired clerk, re-employment of.....	107
Salaries:	
Clerks of court.....	108
Court reporters.....	60
Deputy clerk in the Fifth Circuit.....	107
National park commissioners.....	60
United States commissioners.....	110
Veterans Appeals, court of.....	73