REPORT

of the

PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

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SEPTEMBER 23-24, 1964

WASHINGTON, D. C.
1964

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Warren Olney III
Director

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

§ 331. Judicial Conference of the United States.

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

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

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims, or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

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

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

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

SEPTEMBER 23-24, 1964

The Judicial Conference of the United States convened on September 23, 1964, 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 24th. 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
Judge Edward Weinfeld, Southern District of New York (Designated by the Chief Justice in place of Chief Judge Sylvester J. Ryan who was unable to attend)

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 Walter E. Hoffman, Eastern District of Virginia

Fifth Circuit:
Chief Judge Elbert Parr Tuttle
Chief Judge Bryan Simpson, Middle District of Florida

Sixth Circuit:
Chief Judge Paul C. Weick
Judge Ralph M. Freeman, Eastern District of Michigan

Seventh Circuit:
Chief Judge John S. Hastings
Judge Kenneth P. Grubb, Eastern District of Wisconsin

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
Chief Judge Alfred A. Arraj, District of Colorado

Court of Claims:
Chief Judge Wilson Cowen

Court of Customs and Patent Appeals:
Judge Arthur M. Smith (Designated by the Chief Justice in place of Chief Judge Eugene Worley who was unable to attend)

Senior Judges Albert B. Maris, Oliver D. Hamlin, Jr., and Orie L. Phillips; Circuit Judges Jean S. Breitenstein and William F. Smith; Chief Judges William J. Campbell and Theodore Levin; and Senior Judge Marvin Jones of the Court of Claims attended all or some of the sessions.

The Acting Attorney General, Honorable Nicholas deB. Katzenbach, attended the morning session of the first day of the Conference and spoke to the Conference informally on matters relating to the administration of justice in the United States courts.

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

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives, and John F. Davis, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts, and members of the Administrative Office staff were also in attendance.

RESOLUTION

On the occasion of the retirement of Mr. Will Shafroth as Deputy Director of the Administrative Office of the United States Courts, the Conference adopted the following resolution:

> The Judicial Conference of the United States expresses to Will Shafroth, upon the occasion of his retirement on July 31, 1964, as Deputy Director of the Administrative Office of the United States Courts, its gratitude and appreciation for his devoted service to the Federal Judiciary. Mr. Shafroth has been with the Administrative Office for almost twenty-five years. During this time he has ably assisted the members of the Conference and the committees of the Conference by his wise counsel, his patience, his understanding, and his warm personality. His sincere dedication to the improvement of the administra-

tion of justice throughout the federal judicial system and his loyalty to each of the judges of the federal courts have been an inspiration to all. We extend to him our every good wish for health and happiness in his retirement and wish him Godspeed.

HOUSE COMMITTEE ON THE JUDICIARY

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, reported to the Conference on the increase in the judicial business of the United States Court of Appeals for the Fifth Circuit, the need for additional judicial assistance in that court, and the recommendation of the Conference in March 1964 (Conf. Rept., p. 14) that the circuit be divided. Congressman Celler expressed the view that there should not be a division of any circuit until there has been a study in depth of the entire circuit system. He called attention to his suggestion to the Conference in March 1959 (Conf. Rept., p. 4) that the Conference undertake "a survey of the geographical organization of the entire federal judicial system to be made in the light of population increases and economic changes and to include a study of the adequacy of the present number of places of holding court." He requested that this survey and study be completed at an early date and stated that if, pending completion of the survey, additional circuit judgeships are needed in the Fifth Circuit for the efficient dispatch of the judicial business of the court, they should be provided.

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, 1964, 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—Appeals docketed in the United States courts of appeals during the fiscal year 1964 were 6,023, an increase of 11 percent, as compared with the 5,437 appeals docketed in 1963. There were 5,700 cases disposed of, 689 more than the previous year, but 323 less than the number of appeals commenced. As a result, appeals pending in the United States courts of appeals on June 30, 1964, increased to an all-time high of 3,780.

Reversing the trend of recent years and reflecting the additional district judgeships authorized in 1961, the increase in cases docketed in the United States courts of appeals during the last two years has been the result of an increase in the number of appeals from decisions of the district courts. Appeals from all other sources, including petitions to review decisions of federal administrative agencies, have declined.

District Courts—Civil cases pending in the United States district courts on June 30, 1964, climbed to a record 72,195, an increase of almost 3,000 cases compared with the 69,219 civil cases pending a year earlier. During the year there were 66,930 civil actions commenced, an increase of 3,300 as compared with 1963. The 63,954 civil actions disposed of, although 3,000 less than the number filed, were an increase of 1,575, or 3 percent, as compared with 1963.

The criminal caseload in the district courts did not increase. During the fiscal year 1964, there were 29,944 criminal cases filed, 29,648 criminal cases were disposed of, and on June 30, 1964 there were 9,578 criminal cases pending. Because of the priority given to criminal cases,

the criminal dockets of the district courts continue to remain current.

For the eighth consecutive year, bankruptcy cases filed reached an all-time high. Total filings were 171,719, an increase of 10 percent over 1963. A record 162,356 cases were closed during the year, or 20,916 more than last year. Nevertheless, filings outstripped terminations by 9,363 cases and the pending caseload on June 30, 1964, increased to a new record high of 157,177 cases. Nonbusiness bankruptcies continue to account for more than 90 percent of all bankruptcy cases filed. During 1964 the filing of nonbusiness bankruptcies accelerated at a faster rate than business bankruptcies.

A New Appraisal of the Needs of the Courts

Mr. Olney suggested to the Conference that the continued congestion of the civil dockets in the district courts, particularly in the three years that have elapsed since the passage of the Omnibus Judgeship Act of May 19, 1961, is a matter requiring renewed attention. The additional judgeship positions authorized in 1961 were originally recommended by the Conference as "necessary to bring the dockets of the courts to a position where the ordinary civil case could be tried within six months of filing." Since then the backlog of pending civil actions has increased more than 13 percent and the time required to reach the ordinary civil action for trial has not been reduced.

Mr. Olney recommended that the Judicial Conference undertake immediately (1) a complete survey and study of the need for additional judges in the United States district courts and courts of appeals; (2) a review of the adequacy of the present staff in the offices of clerks of court; and (3) an investigation into the problem of congestion of the dockets of the district courts of the metropolitan areas, particularly as regards the disposition of the ordinary civil action with particular emphasis on civil actions pending for more than three years.

SURVEY OF JUDICIAL BUSINESS

The Conference received reports from the Court of Claims, the Court of Customs and Patent Appeals and from the Chief Judges of the respective circuits concerning the state of the dockets in each circuit and district. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits. The reports indicated a continuing increase in the judicial business of both the courts of appeals and the district courts and a growing need for additional judgeship positions.

The Committees on Court Administration and Judicial Statistics reported to the Conference that they had considered several suggestions and recommendations for the creation of additional judgeships and had concluded that a complete study of the need for additional judgeships should be undertaken. The Conference thereupon authorized the Committees on Court Administration and Judicial Statistics to consider the judgeship recommendations discussed in their reports and the need for the creation of additional judgeships in other courts, and to prepare an omnibus judgeship bill for the consideration of the Conference at its March 1965 session.

The Conference discussed the upward trend in the judicial business of the federal judicial system and the growing workload of the courts and voted to adopt a policy of making a comprehensive report to the Congress approximately every four years on the need for additional judgeships and the recommendations of the Conference with respect thereto.

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 (exclusive of the Supreme Court and the Customs Court) for the fiscal

year 1966. 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 $84,792,000, an increase of $12,738,-500 over the amount appropriated for the fiscal year 1965, adjusted to reflect the recently authorized pay increases. 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 1966, or, in the alternative, to submit to Congress estimates of supplemental appropriations for any purpose which could not be anticipated at the time of this submission.

The budget estimates for the fiscal year 1966 include funds for 90 additional probation officers and 68 clerk-stenographers for probation offices; 33 additional law clerks, 33 stenographers and 36 messengers for the courts of appeals; and funds to make permanent 15 deputy clerk positions for the courts of appeals and 25 deputy clerk positions for the district courts, which are now provided on a temporary basis. Provision is also made for an additional clerical position in the Court of Customs and Patent Appeals and for the appointment of 12 additional full-time referees in bankruptcy and the conversion of 7 part-time referee positions to full-time status. The appropriation request includes a reserve for additional referee positions and staff which may be authorized by the Conference at the March 1965 and the September 1965 sessions in accordance with recommendations of the Bankruptcy Committee.

There is also included in the budget estimates the sum of $7,500,000 for the implementation of the Criminal Justice Act of 1964, of which $460,000 represents the cost of administration. It was the general consensus of the Budget Committee and the Ad Hoc Committee ap-

pointed to develop rules, procedures and guidelines for an assigned counsel system that this estimate represents the minimum first year's cost of implementing the Criminal Justice Act.

The Conference was informed that the cost of eliminating the so-called nonmetropolitan category of court reporters, as approved by the Conference in September 1963 (Conf. Rept., p. 105), could be absorbed out of savings in the funds provided for the implementation of the Judiciary Salary Plan, subject to the approval of the Appropriations Committees of the Congress.

Upon recommendation of the Committee, the Director of the Administrative Office was authorized to increase the salaries of referees in bankruptcy and court reporters retroactive to the first day of the first pay period in July 1964 in the event of the passage of the bill, then under consideration in Congress, which would authorize such retroactive salary increases.

The Committee also requested and was granted authority to distribute to each chief judge, for his information, a copy of the annual letter of appeal to the Senate Appropriations Committee.

SUPPLEMENTAL APPROPRIATIONS

For the fiscal year 1965 the Congress appropriated to the judiciary, exclusive of the Supreme Court, the sum of $66,360,100. This was $1,906,900 less than the amount requested but $2,583,600 more than the sum appropriated for the previous year. The original estimates for salaries and expenses of referees in bankruptcy included reserves for implementation of the anticipated actions of the Judicial Conference in March 1964. The House Appropriations Committee denied the requests and, although the sum of $114,000 was restored by the Senate, the House version of the appropriations bill was finally enacted. Requests for these funds were resubmitted to Congress on September 11,

1964, and hearings were held before the Senate Appropriations Committee on September 22. The Senate approved the request, but House Conferees would not recede from their disagreement on the item.

The Committee reported that it had considered and approved a supplemental appropriation in the amount of $6,091,000 to cover the estimated cost of pay increases authorized under the Federal Judicial Salary Act of 1964. The estimate contemplates that approximately 10 percent of the total cost of salary increases granted to the supporting personnel of the courts, the employees of the Administrative Office and the clerks to referees will be absorbed. The cost of salary increases authorized for the personnel of the special courts and for judges and referees in bankruptcy cannot be absorbed. An additional sum will be required if the pay increases authorized for referees in bankruptcy and court reporters are to be made retroactive.

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

COURT ADMINISTRATION

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

Pretrial Examiners

The Conference at its March 1964 session (Conf. Rept., p. 10) authorized the appointment of a Committee consisting of two district judges and one circuit judge, to be designated by the Committee on Court Administration, to examine the administration of the respective pretrial examiner systems of the United States District Courts for the District of Columbia and for the Southern District of New York and to report thereon to the Committee on Pretrial Procedure and to the Committee on Court Administration. In accordance therewith, a Committee consisting

of Senior Circuit Judge Phillip Forman and Chief Judges Thomas M. Madden and Theodore Levin made an examination of and filed a report on the pretrial examiner program in each district. The Committee on Court Administration concluded, on the basis of this report, that the budgetary requirements for the continued maintenance of the pretrial examiner system of the United States District Court for the District of Columbia are thoroughly warranted and should continue to be appropriated. The Committee further concluded that the Office of Pretrial Examiners of the United States District Court for the Southern District of New York should be continued on an experimental basis, that the appropriation of funds to sustain the office on its present basis for the fiscal year 1966 is amply justified, and that the appropriation of funds should be continued from year to year until further order of the Judicial Conference, pending an investigation in depth for the purpose of evaluating the pretrial examiner system and related pretrial procedures in the United States District Court for the Southern District of New York by an authority competent to conduct such a study. The Conference was informed that the Committee on Pretrial Procedure concurred in this report. The Conference thereupon approved the conclusions and recommendations of the Committee on Court Administration.

Selection of Chief Judges

A bill, S. 1367, 88th Congress, would provide for the selection of chief judges of United States district courts and courts of appeals by rotation, establish the terms of service of chief judges and set forth the powers and responsibilities of chief judges with respect to the administration and superintendence of the business of the circuit and district courts. While this bill has been considered from time to time, as have other plans for the selection of chief judges of circuits and of multiple-judge district

courts, the Committee reported that it has been unable to arrive at any conclusion as to the best plan for the selection of chief judges. Accordingly, the Committee requested and was granted leave to consider further the proposals contained in S. 1367 and any other plans for the selection of chief judges and to report at a later session of the Conference.

PLACES OF HOLDING COURT

(1) S. 2392, 88th Congress, would add Williston as an additional place of holding court for the United States District Court for the District of North Dakota. The Conference in March 1964 (Conf. Rept., p. 8) disapproved the bill because of the small percentage of cases which would be available for trial at Williston. Upon recommendation of the Committee, the Conference reaffirmed its disapproval of the bill.

(2) S. 2668 and H. R. 9929, 88th Congress, would add Manchester as a place of holding court in the Winchester Division of the United States District Court for the Eastern District of Tennessee "on a temporary basis upon order of the presiding judge." The Conference was informed that the proposal contained in these bills had been disapproved by the Judicial Council of the Sixth Circuit. Upon recommendation of the Committee, the Conference voted to disapprove the bills.

(3) H. R. 8561, 88th Congress, would add Clinton as an additional place of holding court in the Eastern District of North Carolina. This proposal was approved by the Conference at its March 1964 session (Conf. Rept., p. 9). Upon recommendation of the Committee, the Conference reaffirmed its approval of the bill.

(4) H. R. 7811, 88th Congress, would add Ann Arbor as an additional place of holding court for the United States District Court for the Eastern District of Michigan. The Conference discussed the proposal contained in the

bill and referred it to the Judicial Council of the Sixth Circuit for further consideration in the light of the discussions in the Conference.

RETIREMENT OF JUDGES

The Conference in March 1964 (Conf. Rept., p. 9) had requested the Committee on Court Administration to undertake a comprehensive survey and study of the problems arising in the expeditious disposition of the official business of a United States court (other than the Supreme Court) where a judicial officer becomes unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability. The Committee was further requested to undertake a similar comprehensive survey and study of the problems arising in the administration of justice in a United States court (other than the Supreme Court) where a judicial officer is guilty of misbehavior in office, to review the adequacy of existing statutory and administrative procedures relating to both of these problems and to formulate and recommend to the Conference improvements in these procedures. The Committee reported that the survey and study would be of considerable difficulty and magnitude and would require additional time. The Conference, accordingly, granted leave to the Committee to pursue its investigations further and to report to the Conference at a future session.

CLERKS' FEES

The Committee reported to the Conference in March 1964 (Conf. Rept. p. 11) that a study and report on the existing fee schedule for the clerks of court, prepared by the Administrative Office, had been referred to a subcommittee to consider the extent to which fee schedules should be commensurate with the services rendered. The subcommittee, however, has not completed its examination of the problem nor made a report. The Committee, therefore,

requested and was granted leave to report at a later session of the Conference.

Law Books for New Judges

The Committee presented to the Conference a revised list of law books to be made available to each newly appointed judge where there is available to him a reasonably large and well organized central library. It was the view of the Committee that the use of this list would reduce to some extent the cost of the acquisition of law books. With the understanding that the Administrative Office is to exercise its judgment and allow flexibility and latitude to the end that the law book requirements of a newly appointed judge may be satisfied, the Conference approved the use of the list of law books submitted by the Committee and directed that newly appointed judges who have a reasonably large and well organized central library available to them choose law books from among those set out in the list.

Assignment of Senior Judges

The Conference in March 1964 (Conf. Rept., p. 13) authorized the Committee to consider the policy questions involved in granting senior judges indefinite designations and assignments to sit in their own districts. Upon recommendation of the Committee, the Conference concluded that senior judges should be designated to sit in their own districts for periods not longer than a year at a time by each designation, except under exceptional circumstances.

Taxation of Attorneys' Fees in Tax Cases

H. R. 10280, 88th Congress, would provide reasonable attorney's fees for a taxpayer who has been successful in a tax suit against the United States. It was the view of the Committee that unless the principle of authorizing reasonable counsel fees to successful litigants is to be universally applied, there is no reason why the United States

should be subjected to such a burden. Upon recommendation of the Committee, the Conference disapproved the bill.

Reports of Financial Status

H. R. 10703, 88th Congress, would require justices, judges and every officer and employee of the Judicial and Executive Branches of the Government receiving more than $12,620 a year, to file with the Clerk of the House of Representatives and the Secretary of the Senate a written statement of every "thing of economic value," including a "favor," received during the previous fiscal year. The bill would also require the filing of a written statement with the Attorney General setting forth "every source of income and every thing of economic value" received from any individual or organization registered under the Federal Regulation of Lobbying Act. Employees of the Legislative Branch are not included within the provisions of the bill. The Conference expressed the view that it would have no objection to legislation of this kind, provided that it would be made to apply equally to all branches of the Federal Government.

Widows' Annuities

H. R. 10391, 88th Congress, would amend the Judicial Survivors Annuity Act, 28 U.S.C. 376, to authorize payment of an annuity to a widow who has remarried if "her remarriage has been terminated by divorce upon her own application and without fault on her part." Similar bills have been introduced from time to time and considered by the Judicial Conference. It was the view of the Committee that the Judicial Survivors Annuity Act should not be amended for the benefit of particular individuals and that the only amendments that should be made are those which would be of general benefit. Upon the recommendation of the Committee, the Conference voted to disapprove H. R. 10391.

S. 2784, 88th Congress, would authorize the Director of the Administrative Office of the United States Courts to pay an annuity to the widow of Judge J. Frank McLaughlin, formerly of the United States District Court for the Territory of Hawaii, in an amount equal to the annuity she would have been entitled to receive if Judge McLaughlin had elected to bring himself within the purview of 28 U.S.C. 376, and had been in a retired status at the time of his death. The Conference was informed that Judge McLaughlin's widow is receiving an annuity under the Civil Service Retirement Act and that Judge McLaughlin during his lifetime had failed to file the necessary election to bring himself within the purview of the Judicial Survivors Annuity Act. The Conference approved the Committee's recommendation that the bill be disapproved.

RESIDENCE OF JUDGES

H. R. 10010, 88th Congress, would require each district judge, except in the District of Columbia, to be a resident of the district (or one of the districts) to which he is appointed at least three years immediately prior to the time of his appointment and thereafter while in active service. Title 28 U.S.C. §134 (b) presently provides that each district judge, except in the District of Columbia, shall reside in the district or one of the districts for which he is appointed. It was the view of the Committee that the proposed amendment, which seems designed to meet unusual situations, is unnecessary and undesirable. Upon recommendation of the Committee, the Conference disapproved the bill.

RETIREMENT OF TERRITORIAL JUDGES

S. 2912, 88th Congress, would provide that the service of Judge Walter H. Hodge as a judge of the District Court for the Territory of Alaska shall be included in computing, under Sections 371, 372, and 376, of Title 28, United States

Code, his aggregate years of judicial service. No provision was contained in the Alaska Statehood Act for counting service as a territorial judge for the purpose of computing the total length of service in a United States district court. The Committees on Court Administration and Revision of the Laws presented a revised bill to authorize the inclusion of such service for retirement purposes, which, upon recommendation of the Committees, was approved by the Conference.

Disqualification of a Circuit Judge for Bias and Prejudice

The Committees on Court Administration and Revision of the Laws requested and were granted leave to consider further the proposals contained in S. 2538, 88th Congress, to provide for the disqualification of a circuit judge for bias and prejudice and to report at a future session of the Conference.

Retirement of Judges

The Committees on Court Administration and Revision of the Laws reported that they had considered the proposed constitutional amendment contained in H. J. Res. 1121, 88th Congress, to provide that "no person who has attained the age of seventy years may serve as a judge of any court of the United States, but any person who ceases to serve as a judge of such court because he has attained the age of seventy years shall continue to receive the compensation to which he was entitled as a judge."

Upon recommendation of the Committees, the Conference voted to disapprove H. J. Res. 1121.

Disbursement of Judiciary Funds

The Conference had previously disapproved the inclusion of the Judicial Branch of the Federal Government within the provisions of 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." It was brought to the attention of the Committees that an amendment to the bill, which has passed the House of Representatives, is contemplated by the Senate Committee on Government Operations. Upon recommendation of the Committees, the Conference authorized the Director of the Administrative Office to state again to the Senate Committee on Government Operations the view of the Conference that control of substantive administrative programs of the Judicial Branch of the Government should not be vested in the head of an agency of the Executive Branch of the Government.

Retirement Provisions for Directors of the Administrative Office of the United States Courts

The Conference at its March 1960 session (Conf. Rept., p. 43) considered a retirement program for Directors of the Administrative Office of the United States Courts and adopted a resolution urging the enactment of legislation to establish such a program. The Committees on Court Administration and Revision of the Laws were authorized to prepare a draft bill in accordance with the previous resolution and to report thereon at the next session of the Conference.

Additional Judgeships for the Fifth Circuit

The Conference considered the large increase in the caseload of the United States Court of Appeals for the Fifth Circuit and the need for additional judgeship positions in that court and voted to recommend that, pending consideration in the Congress of the proposal to divide the Fifth Circuit, there be created immediately four additional judgeships for that court on a temporary basis.

REVISION OF THE LAWS

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

AMENDMENT OF THE TUCKER ACT

The Conference at its March 1964 session (Conf. Rept., p. 15) authorized the Committees on Court Administration and Revision of the Laws to consider enlarging the present $10,000 jurisdictional ceiling on suits brought in the district courts under the Tucker Act. The Committees, after full consideration of various proposals, recommended that the present $10,000 limitation on the jurisdiction of the district courts of suits against the United States on contract or compensation claims under the Tucker Act be increased to $50,000. This recommendation was approved by the Conference.

APPEALS FROM THE HIGH COURTS OF AMERICAN SAMOA AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

The Committees on Court Administration and Revision of the Laws had considered jointly a draft bill prepared by the Department of the Interior to provide, for the first time, for appeals to courts in the federal system from the High Courts of American Samoa and from the High Court of the Trust Territory of the Pacific Islands. At present, there is no appeal to any other court from the decisions of these courts. The Committees were in accord with the views of the Department of the Interior that a right to the review of the decisions of these courts should be provided, and that the United States District Court for the District of Hawaii and the District Court of Guam, respectively, are courts which are appropriate, both by reason of location and familiarity with the legal problems involved, to consider such appeals. It was pointed out, however, that the draft bill would restrict the right of

appeal from the decisions of the High Court of American Samoa in four classes of cases.

The Committees were of the view that the right of appeal from decisions of the High Court of American Samoa should be the same as that from the High Court of the Trust Territory of the Pacific Islands. The Committees, therefore, recommended that the bill prepared by the Department of the Interior be approved with the elimination of the restriction on the right of appeal and an amendment to the first sentence of the bill to provide: "The United States District Court for the District of Hawaii shall have jurisdiction of appeals from all final decisions of the High Court of American Samoa." This recommendation was approved by the Conference.

JURISDICTION OF THE DISTRICT OF HAWAII

H. R. 11182, 88th Congress, would enlarge the judicial district of Hawaii to include the Islands of American Samoa and would give the United States District Court for the District of Hawaii appellate jurisdiction to review final judgments of the High Court of American Samoa. The Committee pointed out that the Islands of American Samoa are the only Pacific Islands over which the United States has sovereignty but in which no court is vested by law with the jurisdiction of a United States district court. It was the view of the Committee that the inhabitants of these islands and any other litigants having claims arising therein which would otherwise be cognizable in a United States district court should have access to such a court for the enforcement of their rights. The Committee approved the proposal contained in H. R. 11182 but presented a revised bill, drafted in the form of an amendment to the Judicial Code, Title 28, United States Code, and recommended that the bill, as revised, be approved by the Conference. The recommendation of the Committee was approved by the Conference.

GOVERNMENT CONTRACT DISPUTES

H. R. 10765, 88th Congress, would amend the so-called Wunderlich Act to provide for the full adjudication of the rights of Government contractors in courts of law. The bill would (1) eliminate the present provisions of that Act which make the decision by the head of any department or agency on a dispute arising under a Government contract "final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence" and (2) would authorize a court to decide the issues in a trial *de novo* and on the basis of such evidence as is admissible under the applicable rules of evidence. The Conference, after full discussion, voted to disapprove H. R. 10765.

LEGISLATION

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

(1) H. R. 11101, 88th Congress, to amend 28 U.S.C. 2072 with respect to the scope of the Federal Rules of Civil Procedure (Conf. Rept., March 1964, p. 22).

(2) H. R. 11651, 88th Congress, to provide cost-of-living allowances for judicial employees stationed outside the continental United States or in Alaska or Hawaii (Conf. Rept., March 1961, p. 19).

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

(1) S. 2842, S. 2873 and H. R. 11061, 88th Congress, to confer jurisdiction on the United States district courts to hear and render judgment on certain

claims of any officer who is a member of a Reserve component of the uniformed services of the United States (Conf. Rept., March 1964, p. 18).

(2) H. R. 10169, 88th Congress, to amend the Interstate Commerce Act to make unlawful discriminatory property tax assessments of common carrier property and to confer jurisdiction on the district courts to issue injunctions in such cases (Conf. Rept., Sept. 1962, p. 21).

Court of Veterans' Appeals

S. 2509, H. R. 10272, H. R. 10489, H. R. 11405 and H. R. 11855, 88th Congress, would establish a Court of Veterans' Appeals and prescribe its jurisdiction and functions. These bills are substantially the same as H. R. 2162 and H. R. 3531, 88th Congress, which were considered by the Conference at its March 1963 session (Conf. Rept., p. 18) and approved as to the type of review proposed. At that time, however, the Conference was of the view that the question whether judicial review of the denial of veterans' claims 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. Upon recommendation of the Committee, the Conference reaffirmed its views with respect to the proposals contained in this legislation.

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the Standing Committee on Rules of Practice and Procedure, reported that the preliminary drafts of proposed amendments to the Federal Rules of Civil and Criminal Procedure, including a proposed unification of the civil and admiralty practice, and the preliminary draft of a complete set of Uniform Rules of Federal Appellate Procedure have been

widely circulated to the members of the bench and bar and that comments concerning them are being received by the Committee. Judge Maris informed the Conference that the Committee expects to have definite proposals to submit to the Conference at its session in September 1965.

The Conference was also informed that the bill to authorize the promulgation of rules of practice and procedure under the Bankruptcy Act had been reported by the Senate Judiciary Committee and would in all likelihood be passed at this session of the Congress. The Conference thereupon authorized the Standing Committee on Rules of Practice and Procedure to proceed with the development of rules of practice and procedure for bankruptcy cases in the event that the bill is enacted into law.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments from February 21, 1964 to August 11, 1964. During this period the Committee recommended favorably on a total of 25 assignments which have been, or will be, undertaken by 20 judges, three of whom have accepted more than one assignment. Five assignments were in connection with the national deposition program in the electrical equipment antitrust cases. The 25 assignments were undertaken by one active circuit judge, six senior circuit judges, seven active district judges, five senior district judges and one senior judge of the Court of Claims.

The Committee reported that the condition of the dockets in the Court of Appeals for the Fifth Circuit continues to demand attention. The Committee estimates that the services of thirty visiting judges, each sitting for one week, will be required if the court is to maintain during the fiscal year 1965 the same schedule of sessions that were held during 1964. This is a demand that cannot be met through the services of senior judges. The Committee, therefore,

renewed its previous recommendation that the "Judicial Conference might well consider requesting the chief judges of the various circuits to make available all possible help to alleviate the situation." This recommendation was approved by the Conference.

It had been suggested to the Committee that the statement of principles and procedures for intercircuit assignments adopted by the Conference in March 1963 (Conf. Rept., p. 36) be reconsidered. The statement now requires that help for a court in need be supplied by an intercircuit assignment of an active judge *only* when help is not available from within a circuit or from a senior judge. It was proposed that intercircuit assignments be permitted on a personal arrangement basis and that the Committee be more active in soliciting help for courts in need. The Committee reported that it recognizes that the acceptance of an intercircuit assignment is voluntary and that personal arrangements are often the most effective method of obtaining judicial help. To this end the Committee has urged the chief judges of circuits where courts are in need to call on chief judges of other circuits for aid. The policy statement, in the view of the Committee, does not preclude personal arrangements, but only outlines the situations in which such arrangements will be approved.

In its previous reports the Committee called attention to the disparity in workloads in the courts and recommended that judges who were not busy go to the assistance of judges whose dockets were crowded. It was pointed out, however, that the statutory requirements of certificates of need and grants of consent place the control of intercircuit assignments in the hands of the chief judges of the circuits. The Committee has concluded, therefore, that it may not infringe on the prerogatives of the chief judges but it can and will cooperate with them.

In recommending that no change be made in the statement of principles and procedures previously approved by the Conference, the Committee pointed out that "every

judge is aware that his primary duty is to the particular court to which he is appointed; he may also contribute immeasurably to the administration of justice throughout the Federal judicial system by cooperating with other courts when, because of need or extraordinary situations, his services are requested." The report of the Committee, including a statement relating to the need for intercircuit assignments and the availability of judges for such service, was received and approved by the Conference.

BANKRUPTCY ADMINISTRATION

Senior Judge Oliver D. Hamlin, Jr., Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered (1) the recommendations contained in the survey report of the Director of the Administrative Office, dated June 29, 1964, relating to the continuance of referee positions to become vacant by expiration of term, for new referee positions and for changes in salaries and arrangements for referees and (2) the recommendations contained in the survey report of the Director, dated August 18, 1964, relating to increases in the salaries of full-time and part-time referees in bankruptcy in accordance with the Federal Judicial Salary Act of 1964, Public Law 88–426, approved August 14, 1964. This Act increased the maximum annual salaries that may be fixed by the Judicial Conference to $22,500 for full-time referees in bankruptcy and to $11,000 for part-time referees. The Committee also considered the recommendations of the district judges and of the judicial councils of the circuits concerned. The Conference considered fully the Committee's report and the recommendations of the Director, the judicial councils and the district judges.

On the basis of these reports and recommendations the Conference took the action, shown in Table I, relating to salary increases, changes in salaries, and the creation of

new referee positions. The Conference directed that, except for referees whose salary increases must be deferred under the provisions of Section 40(b) of the Bankruptcy Act, 11 U.S.C. 68(b), all salary increases for referees authorized under Public Law 88–426 be effective as of July 1, 1964, or as soon thereafter as may be permitted by law; and that all other changes in salaries, unless otherwise noted, become effective October 1, 1964, or as soon thereafter as appropriated funds are available.

TABLE I
SALARIES OF REFEREES IN BANKRUPTCY

District	Regular place of office	Type of position	Present authorized salary	Conference action	
				Type of position	Authorized salary
District of Columbia Circuit	Washington	Part-time	$7,500	Part-time	$11,000
First Circuit					
Maine	Portland	Full-time	15,000	Full-time	22,500
	Bangor	do	12,500	do	20,000
Massachusetts	Boston	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
New Hampshire	Manchester	Part-time	7,500	Part-time	11,000
Rhode Island	Providence	Full-time	15,000	Full-time [1]	20,000
Puerto Rico	San Juan	Part-time	5,000	Part-time	7,500
Second Circuit					
Connecticut	Hartford	Full-time	15,000	Full-time	22,500
	Bridgeport	do	15,000	do	22,500
New York (N)	Utica	do	15,000	do	22,500
	Albany	do	15,000	do	22,500
New York (E)	Brooklyn	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Jamaica	do	15,000	do	22,500
	Mineola	do	15,000	do	22,500
New York (S)	New York	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Yonkers	Part-time	6,000	Part-time	9,500
	Poughkeepsie	do	5,000	do	9,500
New York (W)	Buffalo	Full-time	15,000	Full-time	22,500
	Rochester	do	15,000	do	22,500
Vermont	Rutland	Part-time	3,500	Part-time	6,500
	Burlington	do	3,500	do	6,500
Third Circuit					
Delaware	Wilmington	Part-time	6,500	Part-time	8,000
New Jersey	Newark	Full-time	15,000	Full-time	22,500
	Trenton	do	15,000	do	22,500
	Camden	do	15,000	do	22,500
Pennsylvania (E)	Philadelphia	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Reading	do	12,500	do	20,000
Pennsylvania (M)	Wilkes-Barre	Part-time	6,500	Part-time	8,500
	Harrisburg	do	7,500	do	9,000
Pennsylvania (W)	Pittsburgh	Full-time	15,000	Full-time	22,500
	Erie	do	15,000	do [6]	20,000
	Johnstown	Part-time	7,000	Part-time	7,500

District	Regular place of office	Type of position	Present authorized salary	Conference action	
				Type of position	Authorized salary
Fourth Circuit					
Maryland	Baltimore	Full-time	$15,000	Full-time	$17,500
North Carolina (E)	Wilson	Part-time	5,000	Part-time	6,500
North Carolina (M)	Greensboro	do	7,000	do	11,000
North Carolina (W)	Charlotte	do	5,500	do	7,500
South Carolina (E)	Charleston	do	3,000	do	5,000
	Columbia	do	3,000	do	5,000
South Carolina (W)	Spartanburg	do	7,000	do	7,500
Virginia (E)	Richmond	Full-time	15,000	Full-time	22,500
	Norfolk	do	15,000	do	22,500
	Alexandria	Part-time	7,000	Part-time	9,000
Virginia (W)	Roanoke	Full-time	13,750	Full-time	22,500
	Lynchburg	do	15,000	do [1]	22,500
	Harrisonburg	Part-time	6,000	Part-time	9,000
W. Va. (N)	Wheeling	do	5,000	do	7,000
	Grafton	do	5,000	do	7,000
W. Va. (S)	Charleston	Full-time	15,000	Full-time	22,500
Fifth Circuit					
Alabama (N)	Birmingham	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Anniston	do	15,000	do	22,500
	Decatur	Part-time	6,000	Part-time	9,000
	Tuscaloosa	do	6,000	do	9,000
Alabama (M)	Montgomery	Full-time	15,000	Full-time	22,500
	do	New position	——	do	22,500
Alabama (S)	Mobile	Full-time	15,000	do	22,500
	do	New position	——	do	22,500
Florida (N)	Tallahassee	Part-time	4,000	Part-time	6,500
Florida (M)	Jacksonville	do	6,000	do	8,500
	Tampa	Full-time	12,500	Full-time	20,000
Florida (S)	Miami	do	15,000	do	15,000
	Ft. Lauderdale	Part-time	7,500	Part-time	9,000
Georgia (N)	Atlanta	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	do	New position	——	do	22,500
	Rome	Full-time	12,500	do	17,500
Georgia (M)	Macon	do	15,000	do	22,500
	Columbus	do	15,000	do	22,500
Georgia (S)	Savannah	do	15,000	do	22,500
Louisiana (E)	New Orleans	do	15,000	do	22,500
	do	New position	——	do	22,500
	Baton Rouge	Part-time	7,500	Part-time	9,500
Louisiana (W)	Shreveport	Full-time	15,000	Full-time	22,500
Mississippi (N)	Houston	Part-time	4,000	Part-time	6,500
Mississippi (S)	Jackson	Full-time	15,000	Full-time	22,500
Texas (N)	Ft. Worth	do	13,750	do	22,500
	Dallas	do	15,000	do	22,500
	Lubbock	Part-time	7,000	Part-time	8,500
Texas (E)	Tyler	do	7,500	do	10,000
Texas (S)	Houston	Full-time	13,750	Full-time	17,500
	CorpusChristi	Part-time	7,500	Part-time	10,000
Texas (W)	San Antonio	Full-time	13,750	Full-time	20,000
	El Paso	do	13,750	do	17,500

District	Regular place of office	Type of position	Present authorized salary	Conference action	
				Type of position	Authorized salary
Sixth Circuit					
Kentucky (E)	Lexington	Full-time	$15,000	Full-time	$22,500
Kentucky (W)	Louisville	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Paducah	Part-time [2]	5,000	——	——
Michigan (E)	Flint	Full-time	15,000	Full-time	22,500
	Detroit	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
Michigan (W)	Grand Rapids	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Marquette	Part-time	3,500	Part-time	6,000
Ohio (N)	Cleveland	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Canton	do	15,000	do	22,500
	Akron	do	15,000	do	22,500
	Toledo	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Youngstown	do	15,000	do	22,500
Ohio (S)	Columbus	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Cincinnati	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	New position	——	do	22,500
	Dayton	Full-time	15,000	do	22,500
	do	do	15,000	do	22,500
Tennessee (E)	Knoxville	do	15,000	do	22,500
	Chattanooga	do	15,000	do	22,500
Tennessee (M)	Nashville	do	15,000	do	22,500
	do	New position	——	do	22,500
Tennessee (W)	Memphis	Full-time	15,000	do	22,500
	do	do	15,000	do	22,500
Seventh Circuit					
Illinois (N)	Chicago	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Freeport	do	15,000	do [3]	22,500
Illinois (E)	E. St. Louis	do	15,000	do [3]	17,500
	Danville	Part-time	7,000	Part-time	9,000
Illinois (S)	Peoria	Full-time	15,000	Full-time	22,500
	Springfield	do	15,000	do	22,500
Indiana (N)	South Bend	do	15,000	do [4]	22,500
	Gary	Part-time	7,500	Part-time	11,000
Indiana (S)	Indianapolis	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	Evansville	Part-time	7,500	Part-time	11,000
Wisconsin (E)	Milwaukee	Full-time	15,000	Full-time	22,500
	Milwaukee	do	15,000	do	22,500
Wisconsin (W)	Madison	do	15,000	do	20,000
	Eau Claire	Part-time	7,000	Part-time	10,000

District	Regular place of office	Type of position	Present authorized salary	Conference action	
				Type of position	Authorized salary
Eighth Circuit					
Arkansas (E & W)	Little Rock	Full-time	$15,000	Full-time	$22,500
Iowa (N)	Fort Dodge	do	15,000 [5]	do	20,000
Iowa (S)	Des Moines	do	15,000	do	22,500
Minnesota	Minneapolis	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	St. Paul	do	15,000	do	22,500
Missouri (E)	St. Louis	do	15,000	do	22,500
	do	do	15,000	do	22,500
Missouri (W)	Kansas City	do	15,000	do	22,500
	do	do	15,000	do	22,500
Nebraska	Omaha	do	15,000	do	22,500
North Dakota	Fargo	Part-time	5,500	Part-time	7,500
South Dakota	Sioux Falls	do	5,000	do	6,500
Ninth Circuit					
Alaska	Anchorage	Part-time	7,500	Part-time	10,000
Arizona	Phoenix	Full-time	15,000	Full-time	22,500
	do	do	15,000	do	22,500
	Tucson	do	15,000	do	22,500
California (N)	San Francisco	do	15,000	do	22,500
	Oakland	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Sacramento	do	15,000	do	22,500
	Eureka	do	15,000	do	22,500
	San Jose	do	15,000	do	22,500
	do	New position	——	do	22,500
California (S)	Los Angeles	Full-time	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	do	15,000	do	22,500
	San Diego	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Fresno	do	15,000	do	22,500
	San Bernardino	do	15,000	do	22,500
	Santa Ana	do	15,000	do	22,500
	do	do	15,000	do	22,500
Hawaii	Honolulu	Part-time	6,000	Part-time	8,000
Idaho	Boise	Full-time	15,000	Full-time [6]	22,500
Montana	Great Falls	Part-time	6,000	Part-time	7,000
	Butte	do	6,000	do	9,000
Nevada	Reno	do	7,500	do	11,000
	Las Vegas	Full-time	15,000	Full-time	22,500
Oregon	Portland	do	15,000	do	22,500
	do	do	15,000	do	22,500
	Eugene	do	15,000	do	22,500
	Corvallis	do	15,000	do	22,500
	Pendleton	Part-time	6,000	Part-time	7,000
Washington (E)	Spokane	Full-time	15,000	Full-time	20,000
Washington (W)	Seattle	do	15,000	do	22,500
	do	do	15,000	do	22,500
	do	New position	——	do	22,500
	Tacoma	Full-time	15,000	do	22,500

District	Regular place of office	Type of position	Present authorized salary	Conference action	
				Type of position	Authorized salary
Tenth Circuit					
Colorado	Denver	Full-time	$15,000	Full-time	$22,500
	do	do	15,000	do	22,500
	do	New position	——	do	22,500
	Pueblo	Full-time	15,000	do	22,500
Kansas	Topeka	do	15,000	do	22,500
	Wichita	do	15,000	do	22,500
New Mexico	Albuquerque	do	15,000	do [3]	22,500
Oklahoma (N)	Tulsa	do	15,000	do	22,500
Oklahoma (E)	Okmulgee	Part-time	4,000	Part-time	7,000
Oklahoma (W)	Okla. City	Full-time	15,000	Full-time	22,500
Utah	Salt Lake City	do	15,000	do	22,500
Wyoming	Cheyenne	Part-time	7,000	Part-time	10,000

[1]This position was changed from a part-time to a full-time basis in March 1964, effective July 1, 1964, or as soon thereafter as appropriated funds were available. Until funds for the payment of a salary on a full-time basis are authorized, the part-time salary is to be increased to $11,000 per annum, retroactive to July 1, 1964, if permitted by law.

[2]Part-time position at Paducah is to be discontinued upon the filling of the new full-time position at Louisville.

[3]This position is changed from a part-time to a full-time basis, effective October 1, 1964, or as soon thereafter as appropriated funds are available. Until funds for the payment of a salary on a full-time basis are authorized, the part-time salary is increased to $11,000 per annum, retroactive to July 1, 1964, if permitted by law.

[4]This position was changed from a part-time to a full-time basis in March 1964 to be effective January 1, 1965, or as soon thereafter as appropriated funds were available. Until funds for the payment of a salary on a full-time basis are authorized, the part-time salary is increased to $11,000 per annum, retroactive to July 1, 1964, if permitted by law.

[5]The regular place of office was transferred from Fort Dodge to Cedar Rapids and the position was changed from a part-time to a full-time basis in March 1964, effective July 1, 1964, or as soon thereafter as appropriated funds were available. Until funds for the payment of a salary on a full-time basis are authorized, the part-time salary is increased to $11,000 per annum, retroactive to July 1, 1964, if permitted by law.

[6]The part-time salary is increased to $11,000 per annum, retroactive to July 1, 1964, if permitted by law, and is to continue until the referee can terminate his law practice and assume full-time duties.

VACANCIES IN REFEREE POSITIONS AND CHANGES IN ARRANGEMENTS

The Conference took the following action with regard to changes in arrangements for both new and existing referee positions and in regard to the filling of referee positions to become vacant by expiration of term, and directed that, unless otherwise noted, the changes become effective October 1, 1964, or as soon thereafter as appropriated funds are available.

FIRST CIRCUIT

District of Maine

(1) Designated Waterville as an additional place of holding court for the referee at Bangor.

THIRD CIRCUIT

Eastern District of Pennsylvania

(1) Authorized the filling of the full-time referee position at Philadelphia, to become vacant by expiration of term on January 20, 1965, on a full-time basis for a term of six years, effective January 21, 1965, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Middle District of Alabama

(1) Authorized an additional full-time referee position at Montgomery at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Montgomery.
(3) Established concurrent district-wide jurisdiction for the referees authorized for this district.

Southern District of Alabama

(1) Authorized an additional full-time referee position at Mobile at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Mobile.
(3) Established concurrent district-wide jurisdiction for the full-time referees authorized for this district.

Northern District of Georgia

(1) Authorized an additional full-time referee position at Atlanta at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Atlanta.
(3) Established concurrent jurisdiction for the new full-time referee with the referees presently authorized at Atlanta.

Eastern District of Louisiana

(1) Authorized an additional full-time referee position at New Orleans at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at New Orleans.
(3) Established concurrent jurisdiction in the territory served by the two full-time referees located at New Orleans.

Eastern District of Texas

(1) Authorized the filling of the part-time referee position at Tyler, to become vacant by expiration of term on December 31, 1964, on a part-time basis for a term of six years, effective January 1, 1965, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Texas

(1) Changed the part-time referee position at El Paso to full-time at a salary of $17,500 per annum, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Northern District of Ohio

(1) Authorized the filling of the full-time referee position at Youngstown, to become vacant by expiration of term on January 14, 1965, on a full-time basis for a term of six years, effective January 15, 1965, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Ohio

(1) Authorized an additional full-time referee position at Cincinnati at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Cincinnati.
(3) Established concurrent jurisdiction for the new referee position with the full-time referees presently authorized at Cincinnati.

Eastern District of Tennessee

(1) Authorized the filling of the full-time referee position at Chattanooga to become vacant by expiration of term on November 23, 1964, on a full-time basis for a term of six years, effective November 24, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Middle District of Tennessee

(1) Authorized an additional full-time referee position at Nashville at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Nashville.
(3) Established concurrent district-wide jurisdiction for the full-time referees in this district.

SEVENTH CIRCUIT

Northern District of Illinois

(1) Changed the regular place of office of the referee at Joliet from Joliet to Chicago.
(2) Changed the part-time referee position at Freeport to full-time at a salary of $22,500 per annum, the regular place of office, and places of holding court to remain as at present.
(3) Established concurrent district-wide jurisdiction for all of the referees in this district.

Eastern District of Illinois

(1) Changed the part-time referee position located at East St. Louis to full-time at a salary of $17,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

(1) Authorized the filling of the full-time referee position at Minneapolis to become vacant by expiration of term on November 30, 1964, on a full-time basis for a term of six years, effective December 1, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

NINTH CIRCUIT

Northern District of California

(1) Authorized the filling of the full-time referee positions at Eureka and San Jose to become vacant by expiration of terms of office on December 31, 1964, on a full-time basis for terms of six years, effective January 1, 1965, at the present salaries, the regular places of office, territory, and places of holding court to remain as at present.
(2) Authorized an additional full-time referee position at San Jose at a salary of $22,500 per annum.
(3) Fixed the regular place of office for the new referee at San Jose.
(4) Established concurrent district-wide jurisdiction for the new referee at San Jose with the full-time referees presently authorized for the district.

Southern District of California

(1) Authorized the filling of the full-time referee position at Santa Ana to become vacant by expiration of term on March 31, 1965, on a full-time basis for a term of six years, effective April 1, 1965, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Washington

(1) Authorized an additional full-time referee position at Seattle at a salary of $22,500 per annum.
(2) Fixed the regular place of office for the new referee at Seattle.
(3) Established concurrent jurisdiction in the territory served by the present full-time referees located at Seattle.

TENTH CIRCUIT

District of Colorado

(1) Authorized an additional full-time referee position at Denver at a salary of $22,500 per annum.
(2) Fixed the regular place of office of the new referee at Denver.
(3) Established concurrent district-wide jurisdiction with the full-time referees presently authorized for this district.
(4) Authorized the filling of the full-time referee position at Denver to become vacant by expiration of term on February 1, 1965, on a full-time basis for a term of six years, effective February 2, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

District of New Mexico

(1) Changed the part-time referee position for this district to full-time at a salary of $22,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

LEGISLATION

The Committee submitted to the Conference a proposal to amend Chapter XI of the Bankruptcy Act to give the court supervisory power over all fees paid from any source.

A similar provision is now contained in Chapter X of the Bankruptcy Act, Section 221(4), 11 U.S.C. 621(4). Upon recommendation of the Committee, the Conference approved the following draft bill and authorized its introduction in the Congress:

A BILL

To amend Chapter XI of the Bankruptcy Act to give the court supervisory power over all fees paid from whatever source

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 366 of the Bankruptcy Act (11 U.S.C. 766) is amended by adding a new clause to read as follows:

"(5) All payments made or promised by the debtor or by a corporation acquiring property under the arrangement, or by any other person, for services and for actual and necessary expenses in, or in connection with, the proceeding or in connection with the arrangement and incident thereto, have been fully disclosed to the court and are reasonable."

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 Referees' Salary and Expense Fund and all overpayments of compensation to receivers and trustees is continuing. The Committee has received no report of any situation with respect to the accountability of a referee for administrative errors in the computation of compensation of receivers and trustees or in the computation of amounts due the Referees' Salary and Expense Fund which required action on the part of the Committee. The statistical forms submitted to the Administrative Office have been amended to include information as to whether trustees were elected by creditors or appointed by the referee. The Committee expects that information obtained from these reports will

disclose the monopoly of appointments in any district where such monopoly may exist.

The Committee had received a resolution of the National Bankruptcy Conference relating to practices in certain courts which are believed to conflict with the free election of trustees by creditors. The National Bankruptcy Conference has asked that steps be taken to bring the practices in these courts into conformity with the practices in other districts. The Committee has requested the Administrative Office to undertake a study and to report to the Committee at its next meeting.

Matters Under Advisement

The Committee reported that in accordance with the direction of the Conference at its September 1963 session (Conf. Rept., p. 89), quarterly reports of matters held under advisement for more than sixty days are being made to the district court, with copies to the Administrative Office. These reports show marked improvement, but a few referees seem to be making little progress in reducing the number of matters held under submission sixty days or longer. The Committee has requested the Administrative Office to change the form of these reports to require a statement of the reasons for delay in deciding these cases and has authorized the Administrative Office to communicate with the district judges where the reasons for delay do not appear to be adequate.

Developments in the Use of Chapter XIII

The Conference was informed of a continuing increase in the use of wage earners' plans under Chapter XIII of the Bankruptcy Act. During the fiscal year 1964 there were 27,292 Chapter XIII cases filed in the district courts, an increase of 12 percent over the 24,329 cases filed during 1963. The Committee reported that generally the bankruptcy courts are complying with the guidelines for Chap-

ter XIII administration promulgated by the Conference at its September 1963 session (Conf. Rept., p. 87).

Debtors' Counseling Service

The Conference was informed that the "Debtors' Counseling Service" procedure instituted in the Western District of Wisconsin is still under consideration by the Judicial Council of the Seventh Circuit which is giving the matter extended consideration. With modifications presently in force in the administration of the Debtors' Counseling Service, the Council has decided to take no action at present but will re-examine the matter later in the year.

Seminar for Newly Appointed Referees

Judge Hamlin informed the Conference that the first seminar for newly appointed referees in bankruptcy was held in Washington, D. C., on March 23–27, 1964, with 49 referees appointed since July 1, 1961 in attendance. Eight experienced referees, three newly appointed referees and the Honorable Edwin L. Covey, former Chief of the Bankruptcy Division, served as discussion leaders. The seminar was highly successful, and the Committee has expressed its appreciation to the Seminar Committee and to Honorable Asa S. Herzog, Referee in Bankruptcy in the Southern District of New York, who served as Chairman of the Committee. A second seminar for referees in bankruptcy to be held under the auspices of the Committee is scheduled to be held at Washington, D. C., during the week of March 29, 1965.

Appointment of a Part-Time Referee as Trustee in a Chapter X Proceeding

Judge Hamlin informed the Conference that in one district a part-time referee in bankruptcy had been appointed to serve as a trustee in a Chapter X proceeding. It

was the view of the Committee that while Section 39b of the Bankruptcy Act, 11 U.S.C. 67(b), does not prohibit such appointments, as a matter of policy and good practice they should not be made. The Conference approved the proposal of the Committee that the last sentence of Section 39b of the Bankruptcy Act be amended to read as follows:

> Active part-time referees and referees receiving benefits under paragraph (1) of subdivision (d) of Section 40 of this Act shall not practice as counsel or attorney *or act as trustee* in any proceeding under this Act.

Reporting in Referees' Offices

The Conference was informed that 17 electronic court reporting units have been installed in 15 referees' courtrooms and that the operation of these units has proven successful. Eight additional units have been installed on a trial basis in seven offices and will be retained if the referees are satisfied that they satisfactorily meet the requirements of their courts.

Costs of Administration

The Committee reported that detailed statistical tables analyzing the costs of administration in bankruptcy cases closed during the fiscal year 1963, which were prepared by the Bankruptcy Division of the Administrative Office, have been supplied to all United States judges and referees in bankruptcy. The Conference was informed that a number of the larger courts in the country are taking steps to reduce costs in the administration of asset cases. During the fiscal year 1963, costs of administration reached 26.4 percent of assets realized. This is a matter of continuing concern to the Committee and to the Conference and the Administrative Office will continue its efforts to bring about a further reduction in these costs.

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.

COMMITMENT OF THE INSANE

The Conference at its September 1963 session (Conf. Rept., p. 90) authorized the Committee to consider further the proposal contained in S. 447, 88th Congress, to provide that a person acquitted of a crime against the United States solely on the ground of his insanity may be confined, at the direction of the trial court, to an institution designated by the Attorney General upon a determination, after hearing, that he was insane at the time of his acquittal. The members of the Committee agreed with the apparent intent and purpose of the bill but entertained serious questions as to its constitutionality.

A study by the Committee disclosed that the laws of 46 states contain provisions for the commitment of persons acquitted of crime solely on the grounds of insanity and that in the majority of these states the usual residency requirement for admission to a state institution is not applicable. The Committee was of the view, therefore, that a procedure might be developed whereby the district court would be required, upon the acquittal of an accused person solely on the ground of insanity, and upon a determination that he was insane at the time of acquittal, to so certify to the designated local official, who, under local law, is required to institute insanity proceedings in the state court. The Committee requested and was granted leave to consider the proposed legislation further and to consult with the sponsor of the bill.

PUBLICATION OF INFORMATION IN CRIMINAL CASES

S. 1802, 88th Congress, would 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 pending criminal litigation, except evidence that has already been admitted at the trial. The proposed legislation would make such publication a contempt of court, punishable summarily by the court on motion of any party to the litigation by a fine of not less than $500 for each such publication. It was the view of the Committee that certain provisions in the bill (1) authorizing punishment summarily for misbehavior not committed in the presence of the court, (2) limiting the usual authority of the court by providing that the prosecution proceed only on motion of a party and (3) limiting the discretionary authority of the court to impose a penalty appropriate to the particular facts and circumstances by "a fine of not less than $500 for each publication", were objectionable. The Committee, therefore, proposed that the bill be amended to read as follows:

> "It shall constitute a contempt of court for any employee of the United States, or for any defendant or his attorney or the agent of either, to furnish or make available for publication information not already properly filed with the court which might affect the outcome of any pending criminal litigation, except evidence that has already been admitted at the trial. Such contempt shall be punished by a fine of not more than $1,000."

Upon recommendation of the Committee, the Conference approved the amended bill.

PRESENCE OF THE DEFENDANT AT THE TIME OF SENTENCE

At the request of Judge Smith, the Conference authorized the Committee to give further consideration to the proposal contained in S. 1956 and H. R. 7912, 88th Congress, which 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.

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, although within lawful limits, is excessive. The bill would empower the appellate court to reduce the sentence imposed "if it determines that the conviction was proper, but that the sentence imposed was more severe than warranted by the circumstances of the case."

The Conference in March 1962 (Conf. Rept., p. 22) had directed that the proposal contained in a similar bill, S. 2879, 87th Congress, be made available for discussion at circuit conferences. Pursuant to this direction, the appellate review of sentences was made the subject of panel discussions at annual Judicial Conferences in the Second, Third and Fifth Circuits, at each of which two or more members of the Criminal Law Committee were in attendance. The judges in the Second and Third Circuits overwhelmingly favored some method of reviewing sentences; the judges in the Fifth Circuit did not favor the appellate review of sentences. The subject was also discussed at Judicial Conferences in both the District of Columbia Circuit and the Ninth Circuit.

The Committee reported favorably on the proposed legislation, but recommended that the bill be amended to empower the appellate courts to increase, as well as decrease, the original sentence. The Conference discussed the proposal fully and voted to recommend the approval of S. 823 with the modification suggested by the Committee.

DENIAL OF BAIL

H. R. 42 and H. R. 10156, 88th Congress, would grant authority to the district courts to deny bail in certain criminal cases involving national security. The proposal contained in H. R. 42 had previously been considered by the Conference (Conf. Rept., Sept. 1963, p. 89) and had been referred to the Advisory Committee on Criminal Rules and to the Committee on the Administration of the Criminal Law for study and report to the Conference. H. R. 10156 is similar to H. R. 42, but does not contain any provision authorizing the denial of bail in a misdemeanor case.

The Committee pointed out that since the passage of the Judiciary Act of 1789 the federal courts have uniformly held that the right to bail prior to conviction is absolute, except where the offense is punishable by death, *Stack* v. *Boyle*, 342 U.S. 1. The Committee also pointed out that the proposed legislation runs counter to established provisions relating to bail and is inconsistent with other pending legislation designed to liberalize the provisions with respect to bail. Upon the recommendation of the Committee, the Conference voted to disapprove the bills.

RELEASE ON BAIL

S. 2838 and S. 2840, 88th Congress, would provide for the release of an impecunious defendant on his own recognizance, or otherwise, in lieu of furnishing a bail bond. It was brought to the attention of the Conference that at present the procedure with respect to bail is governed by Rule 46, Federal Rules of Criminal Procedure, and that the proposals contained in these bills might be embodied in an amendment to Rule 46. The Conference, accordingly, requested that the Committee consider whether in view of the existing rule-making power there is a need for legislation and whether the proposals contained in these bills might appropriately be brought to the attention of the

Advisory Committee on the Rules of Criminal Procedure for its consideration.

JURY TRIAL OF CONTEMPT CASES

S. 2722, 88th Congress, would provide that "In any prosecution for criminal contempt in the courts of the United States, the accused shall upon request be accorded a trial by jury." The Conference discussed the proposal and referred the bill to the Committee for further study. Chief Judge Tuttle did not participate in the consideration of this proposal.

RIGHTS OF THE MENTALLY ILL

H. R. 8370, 88th Congress, would amend Chapter 313 of Title 18, United States Code, with respect to the constitutional rights of mentally incompetent persons committed thereunder. The proposed amendments to 18 U.S.C. 4244, contained in the bill, would (1) require that a preliminary motion for a judicial determination of the mental competency of the accused to stand trial be supported by a sworn written statement based on personal observation by a responsible adult as to the mental condition of the accused; (2) require a hearing on the preliminary motion at which the accused and his attorney should be present; (3) authorize a psychiatric examination or temporary commitment for such examination only upon an initial determination by the court "that there is reasonable cause to doubt the mental competency of the accused"; (4) limit the commitment, if commitment is ordered, for a "reasonable period, not to exceed thirty days, as the court may determine"; and (5) require a further hearing on the issue of mental competency to stand trial if the initial report of the physician "indicates a state of present mental incompetency." A new provision, to be set forth in Section 4250 of Title 18, would guarantee to an accused found mentally incompetent and committed pursuant to the provisions of the

statute the right to a periodic re-examination, not more frequently than every six months, on the application of his attorney, legal guardian, spouse, parent or nearest adult relative. The report of the examination would be forwarded to interested parties other than the accused, and would be given to the accused only if the committing court deemed it in his best interests.

The Committee saw no objection to the procedural steps outlined in the bill, but recommended a modification to authorize the temporary commitment of the accused "for a reasonable period of time, not to exceed thirty days, *unless the court for good cause shown shall extend the period for an additional time, not to exceed an additional thirty days.*"

The Committee also noted that 18 U.S.C. 4244 now empowers the court to order an inquiry into the mental competency of a person released on probation at any time "prior to the expiration of the period of probation." This provision has been omitted in the proposed amendment of Section 4244 and the Committee was of the view that it should be retained. On the recommendation of the Committee, the Conference approved H. R. 8370 with the modifications suggested by the Committee.

Right of Trial

S. 1801, 88th Congress, is a bill to effectuate a provision of the Sixth Amendment of the United States Constitution requiring that a defendant in a criminal case be given the right to a speedy trial. The proposals contained in the bill were considered by the Conference and referred to the Committee for further study and report at a later session.

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 emergency," formally declared by Congress or the President, as well as during time of war. The Conference in September 1963 (Conf. Rept., p. 92) referred the proposal to the Committee for further consideration of the meaning of the term "national emergency." Upon examination, the Committee found many statutes which authorize the President to declare a "national emergency" in certain situations and to take such action as may be necessary to alleviate the conditions attendant upon the emergencies. It was the view of the Committee that these emergencies are not such as to require the suspension of the applicable statute of limitations. Upon recommendation of the Committee, the Conference voted to disapprove the draft bill.

Time Spent by Defendants in Confinement Prior to Sentencing

S. 2839, 88th Congress, would amend 18 U.S.C. 3568 to assure that all persons convicted of offenses against the United States will receive credit toward service of their sentences for time spent in custody for lack of bail. The right to credit under existing law extends only to those cases in which the defendant has been sentenced to a mandatory term of imprisonment. Upon recommendation of the Committee, the Conference approved the bill.

Appeals from Indian Tribal Courts

A series of bills introduced in the 88th Congress, S. 3041 to S. 3048, inclusive, are designed to protect the rights of American Indians. One of these bills would provide for a right of appeal from an Indian Tribal Court to the United States district court and a trial *de novo* in the district court. The Committee was authorized to undertake a study of these proposals and to report at a later session of the Conference.

CRIMINAL JUSTICE ACT OF 1964

Chief Judge John S. Hastings, Chairman of the Ad Hoc Committee appointed to Develop Rules, Procedures and Guidelines for an Assigned Counsel System, submitted a comprehensive report which detailed the legislative history of the Criminal Justice Act of 1964, P.L. 88–455, and made the following recommendations for implementing the new Act:

1. That the Conference approve in principle using a system of central disbursement of funds appropriated to carry out the Criminal Justice Act requiring notification to the Administrative Office of every appointment as it is made, the submission of vouchers to the Administrative Office for payment containing adequate information as to the nature and extent of services rendered, both in and out of court, and the expenses incurred, with payment directly from the Administrative Office rather than locally.
2. That the Conference approve in principle the administration of the Criminal Justice Act through a framework of boards of advisers to the judicial councils of the circuits, assisted by full-time, compensated officers.
3. That the Conference request the chief judge of each circuit to call a meeting as soon as practical of the chief judges of the district courts in his circuit to consider the problems of the administration of the Criminal Justice Act, the urgency of developing practical and acceptable plans in each district, ways and means of stimulating the interest and securing the support and cooperation of the bar in every district in the implementation of the Criminal Justice Act, and to make plans for again convening to act as a panel of judges to appoint from the bar an appropriate Board of Advisers to the Judicial Council.
4. That the Conference recommend to the Chief Justice that a special session of the Judicial Conference of the United States be convened at a date as early in January 1965 as possible for the exclusive purpose of considering the problems of administration under the Criminal Justice Act.

5. That the Conference authorize the Chief Justice to supersede the Ad Hoc Committee with a larger Committee to Implement the Criminal Justice Act with some district judges included in its membership.
6. That the Conference approve the budget estimates to be developed with the Budget Committee for administering the Criminal Justice Act according to the above described principles and plan.
7. That the Ad Hoc Committee be discharged.

Chief Judge Hastings emphasized the need for prompt action if the district courts are to formulate plans within six months, have them approved by the Judicial Councils of the Circuits within nine months, and place them in operation within one year, as required by the Act. After full consideration, the Conference approved the report of the Committee and the recommendations contained therein, and authorized the immediate distribution of the report to all United States circuit and district judges.

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

Chief Judge Madden submitted to the Conference a proposal for a regional sentencing institute for judges in the Ninth and Tenth Circuits to be held October 19–22, 1964, at Lompoc, California. The Conference was advised that the program submitted was in accordance with the requirements of the statute, 28 U.S.C. §334. The Conference thereupon authorized the convening of the sentencing institute at Lompoc, California, in accordance with the plan and program presented by the Committee.

The Conference also authorized the issuance of an invitation to Professor J. Ll. J. Edwards, Director of the Centre of Criminology at the University of Toronto, to attend the Institute on Sentencing at Lompoc.

Chief Judge Madden also submitted to the Conference a plan and program for a sentencing institute for the judges of the Third Circuit to be held at Lewisburg, Pennsylvania, November 11–13, 1964. Approximately thirty active district judges of the Third Circuit and such circuit judges as may be able to attend will be invited to participate. The institute is to be conducted under the supervision of the Committee on the Administration of the Probation System in cooperation with the Committee on Sentencing of the Third Circuit. The Conference thereupon authorized the convening of the Institute on Sentencing at Lewisburg in accordance with the plan and program presented.

The Conference was informed that circuit committees on sentencing institutes and seminars have been appointed in eight circuits and that appointments of committees in the remaining three circuits are anticipated in the near future.

Research and Development Center

The Conference at its September 1963 session (Conf. Rept., p. 96) approved, in principle, the proposal for a research and development center in the correctional field and authorized the Committee to work toward its establishment. A meeting, authorized by the Conference in March 1964, to consider and discuss the basic assumptions underlying the administration of probation and parole, to devise and recommend possible experiments, to test the validity of these assumptions and to consider a program of practical and useful research, was held at the National Institute of Mental Health in July 1964. The conferees at this meeting adopted the following resolution which,

upon the recommendation of the Committee, was approved by the Conference:

"Statistics on post release criminality of convicted offenders receiving different types of sentences are essential to supply guidelines to judges, parole boards, and all others charged with making decisions relating to the disposition of federal offenders.

"There has been no systematic knowledge developed to date of the relative success of the different forms of treatment.

"At present the fingerprint identification files maintained by the FBI contain the only national record of further criminality. These record the date and charge of most fingerprint arrests reported to the agency and, less frequently, information as to the disposition of the person arrested.

"This conference unanimously agrees in calling on the courts and all agencies concerned to report to the FBI more completely on arrests and particularly on the disposition of offenders in all felony cases. The participants propose to work diligently for this in their own jurisdictions.

"This conference further unanimously urges that the FBI provide the Administrative Office of the United States Courts with current criminal identification records ("rap sheets") on all federal offenders released for a period of five years following release. This will permit the compilation by the Administrative Office of statistical guidelines which judges, parole boards, and other decision makers find essential."

Presentence Reports

Chief Judge Madden informed the Conference that a Subcommittee on Presentence Reports and Supervision has developed a draft of a uniform presentence report outline and format to serve jointly the needs of the courts, the Bureau of Prisons, and the Board of Parole. The document is under consideration by the Committee and a report will be made to the Conference at its next session.

Group Counseling in the District of Columbia

The Conference at its March 1964 session (Conf. Rept., p. 33) authorized the Committee to seek funds for a study

of the group counseling program in the probation office of the United States District Court for the District of Columbia with the understanding that if nongovernmental funds are sought, the Conference must approve the source of the funds. The Committee reported that federal funds are available and that a study should be initiated in the near future. A further report will be made at the next session of the Conference.

Computer Analysis of Existing Probation and Parole Records

The Conference at its March 1964 session (Conf. Rept., p.34) granted authority to the Committee to seek funds for a retrospective study of probation and parole records in the United States District Courts for the Western District of Missouri and the Northern District of Illinois to determine whether the effectiveness of sentencing procedures can be analyzed. The Committee reported that the cost of this study can be made from operating funds in the Administrative Office and the Department of Justice and that the study will be inaugurated in the near future. A further report will be made at the next session of the Conference.

Deferred Prosecution

The Committee reported that it has undertaken a review of the practice of deferring the prosecution of certain juveniles who are then placed under the supervision of the probation officers of the United States district courts and has requested the Administrative Office to make a study of the nature, purpose and extent of the current practice of deferred prosecution.

Proposed Amendment to Rule 32(c) Federal Rules of Criminal Procedure

Chief Judge Madden informed the Conference that a survey of district judges to determine their opinion of the

proposal to amend Rule 32(c), Federal Rules of Criminal Procedure, was in progress and that the results will be reported to the Advisory Committee on Criminal Rules. The proposed amendment of Rule 32(c) would require the court, on request, to afford counsel for the defendant an opportunity to read the presentence report and to comment thereon.

Access to Investigative Reports

The Committee had reported to the Conference at its last session reports had been received that the work of probation officers is being impeded by the refusal of the Department of Justice to permit probation officers to examine investigative reports relating to the facts of the offense in the files of the United States attorneys. While the Committee has been assured that the Department has no intention of impeding unnecessarily the work of the probation officers, the problem is unresolved. A further report will be made to the Conference at its next session.

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 Federal Judicial Salary Act of 1964, Public Law 88–426, approved August 14, 1964, increased the statutory limitation on the salaries of court reporters from $8,690 to $8,945 per annum. Upon recommendation of the Committee the Conference directed that the salaries of court reporters be increased to the extent permitted under the salary increase Act, and that the increases be made retroactive to the first pay period commencing after July 1, 1964, in the event of the passage of legislation authorizing such action.

Upon recommendation of the Committee, the Conference separated the combined position of court reporter-secretary in the District of New Mexico and one such position in the District of Idaho and authorized the appointment of a court reporter in each district at the salary rate applicable to reporters in the present metropolitan category as approved by the Conference in September 1963 (Conf. Rept., p. 105).

The Chief Judge of the United States District Court for the Northern District of New York had requested authorization for a third permanent court reporter for the district in view of the continued judicial service of Senior Judge Stephen W. Brennan. Temporary court reporter assistance is now authorized for Judge Brennan by the Administrative Office. The Committee was of the view that the system of authorizing temporary reporters may present problems relating to their recruitment and retention and, accordingly, has requested the Administrative Office to undertake a study of the feasibility of providing regular court reporters for those senior judges remaining active, who continue to render substantial judicial service to the district courts. Upon the Committee's recommendation, the Conference directed that the request for an additional permanent court reporter position in the Northern District of New York be denied pending completion of the Committee's study. It was understood that the Administrative Office would continue to supply temporary court reporter assistance to Judge Brennan.

Law Clerks

The Committee had received a report that the existing salary scale for law clerks is creating difficulties in one court in the recruitment of new law clerks, particularly those with high scholastic ratings. The Committee reported, however, that judges generally seem to have no particular difficulty in recruiting law clerks, that the pres-

ent salaries authorized for law clerks are adequate, and that no changes in salary classifications should be made. This recommendation was approved by the Conference.

Court Criers

The Judicial Conference of the Ninth Circuit had recommended a reclassification of court criers from grade JSP-5 to grade JSP-6. A similar suggestion had been made by Chief Judge Willis W. Ritter of the District of Utah. It was the view of the Committee that the present classification for court criers is appropriate, particularly in view of the action of the Conference three years ago in reclassifying court criers from Grade 4 to Grade 5 and that no reclassification should be made. The Conference agreed with the views of the Committee.

National Park Commissioners

Chief Judge Levin informed the Conference that the Administrative Office had undertaken a questionnaire survey of the volume of work handled by National Park commissioners.

Probation Officers

The Chief of the Probation Division of the Administrative Office had brought to the attention of the Committee the urgent need for ninety additional probation officers for the probation system. This is the minimum number of additional positions that are required to bring the personnel strength of the probation service to the point where careful attention can be given to all persons under supervision and comprehensive presentence investigations can be provided for the district courts in all cases where they are needed and requested. To provide adequate clerical service for these additional probation officers, sixty-eight clerk-stenographer positions will also be needed. Upon recommendation of the Committee, the Conference

approved the additional probation officer and clerk-stenographer positions requested and directed that the funds for these positions be included in the appropriation requests.

CLERKS' OFFICES

The Administrative Office has received many requests from clerks' offices, both in the courts of appeals and in the district courts, for additional personnel. Temporary help has been provided within the limits of available funds and currently there are fourteen temporary positions authorized for the clerks' offices of the courts of appeals and twenty-five temporary positions in clerks' offices of the district courts. In recognition of the need for additional help in the clerks' offices, the Committee recommended that wherever possible, the temporary positions currently authorized be converted to a permanent basis, but that this be accomplished, if feasible, without requesting additional funds from the Congress. The recommendation of the Committee was approved by the Conference.

QUALIFICATIONS FOR CLERKS OF COURT

The Conference was informed that the Committee had considered the desirability of prescribing qualification standards for clerks of court and had requested the Administrative Office to undertake a study and prepare a report for submission to the Committee.

ADDITIONAL STENOGRAPHERS FOR THE COURTS OF APPEALS

The Committee had considered requests for additional stenographic assistance in the United States courts of appeals and had concluded that the present stenographic assistance available to some of the particularly burdened courts of appeals was inadequate for these courts to carry out their responsibilities efficiently and economically. The

Committee, therefore, recommended that each court of appeals be authorized to employ not to exceed three stenographers, to be assigned from time to time by the chief judge to judges or to such matters as he may deem desirable to expedite the work of the court. This recommendation was approved by the Conference.

SECRETARIES

The Judicial Council of the District of Columbia Circuit adopted a resolution requesting the creation of two new salary classifications for secretaries to judges that would be above the maximum grade now authorized. A similar recommendation had been made by Chief Judge Chambers of the Ninth Circuit. The Committee reported that this matter is under consideration and will be given further study by the Committee.

CLERKS OF COURTS OF APPEALS

The chief judges of the Courts of Appeals for the Second Circuit and the District of Columbia Circuit suggested a separate salary classification for clerks of each of the large size United States courts of appeals. The Committee reported that it had considered the proposal and was of the view that it would be extremely difficult to devise reasonable standards of classification for the clerks of the courts of appeals which would accurately and fairly recognize differences in the positions that would be necessary to justify a difference in salary level.

SALARIES OF CLERKS OF COURT

In accordance with the provisions of the salary increase Act of 1964 granting discretion in the fixing of salaries of ungraded positions in the Judicial Branch of the Government, the Director of the Administrative Office authorized increases in the salaries of clerks of courts of appeals and district courts in accordance with a plan which would re-

establish the relative rates of pay of clerks of court, on the one hand, with rates of pay authorized for judges, referees in bankruptcy and deputy clerks, as existed when the clerks of court were placed in ungraded positions by the Judicial Conference in 1957. The Conference was informed that the Committee unanimously approved the salary classification schedule for clerks of court established by the Director and placed in operation by him in accordance with the salary increase Act of 1964. The Conference concurred in the Committee's approval.

Additional Personnel for the Clerk's Office of the Court of Appeals for the District of Columbia Circuit

Chief Judge David L. Bazelon of the Court of Appeals for the District of Columbia Circuit requested authority to employ two additional deputy clerks and two stenographers for the clerk's office of the court of appeals. The request is based on an increase in the routine business of the clerk's office and the need for an "indigency clerk" whose duties would be partly to arrange for and coordinate the large number of assignments of counsel to represent indigent defendants in criminal cases in various courts in the District of Columbia. The Committee concluded that action on the request for an "indigency clerk" ought to await the development of the plan of representation for the District of Columbia authorized and required by the Criminal Justice Act of 1964. The Committee indicated, however, that a subcommittee has been appointed to consider the matter and that the Committee would reconsider the request in the event an additional deputy clerk is necessary to make the plan effective. The Committee further concluded that the request for additional assistance to meet the increase in the routine business of the clerk's office was not justified in comparison with the workload in other offices of clerks of courts of appeals.

Upon recommendation of the Committee, the Conference disapproved the request for additional positions.

JUDICIAL STATISTICS

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

COURTS OF APPEALS

Chief Judge Johnsen informed the Conference that the *Miscellaneous Record System* recommended by the Committee and approved by the Conference at its March 1964 session (Conf. Rept., p. 28) has been put into effect in the offices of the clerks of the courts of appeals and appears to be operating without significant difficulty. The purpose of this system is to secure uniformity in the clerks' offices of the courts of appeals as to making a record and furnishing reports of the increasing number of miscellaneous applications, not already docketed, on which the courts of appeals or the judges thereof are called upon to act.

SUSPENSE DOCKET IN THE DISTRICT COURTS

The Committee had received a suggestion that there be created a "Suspense Docket" in the United States district courts on which would be placed criminal cases involving fugitive, incarcerated and mentally incompetent defendants and civil cases which, for reasons not controllable by the court, are unable to be reached for trial in the normal order. A subcommittee appointed to consider the suggestion reported that a great majority of the district judges responding to a questionnaire expressed themselves as not seeing any need for and not favoring such a docket. It was the unanimous view of the Committee that no helpful statistical purpose can be served by the creation of such a special docket and that the present required practice of reporting such cases and having them shown as cases pend-

ing on the court's general docket should be adhered to. The Committee has suggested to the Administrative Office, however, that an appropriate indication of the number of fugitive, incarceration and mental-incompetence cases pending might be added to the general statistical portrayal of pending criminal cases.

JAIL LISTS

The Committee considered a proposal that each district court make periodic reports to the Administrative Office of all federal prisoners in confinement and awaiting trial in the district so as to focus attention on any prisoners held for lengthy periods before trial. The Committee was of the view that this is a matter that could sufficiently be entrusted to the responsibility and control of the individual district courts, that there was no present need for such statistical routine and burden, and that there was, therefore, no occasion for the Committee to take any action on the proposal.

APPLICATIONS IN FORMA PAUPERIS

Chief Judge Johnsen informed the Conference that the practice in a number of clerks' offices of treating motions filed under 28 U.S.C., §2255, as incidents in the criminal case and not docketing them as civil proceedings, in accordance with the previous Conference resolution (Conf. Rept., Sept. 1962, p. 76 and March 1964, p. 40) seems in some measure to be continuing. The Committee has requested the Administrative Office once again to direct the clerks to treat such motions as civil proceedings and not simply to make entry of them in the criminal docket.

The Committee reiterated its views that as a matter of more deliberate judicial examination and consideration occurring and as a matter of a desirable record for statistical history, pauper petitions by prisoners ought not ordinarily to be summarily returned, but ought to be per-

mitted to be docketed and acted upon in relation to their frivolousness.

The Committee has also suggested that the annual report of the Director of the Administrative Office show specifically the number of state prisoner habeas corpus petitions which are being filed in increasing number in the various district courts.

Disposition of Civil Cases Pending Over Three Years

Chief Judge Johnsen reported that the Committee continues to have concern about civil cases pending in the district courts for more than three years. The Administrative Office has been requested to continue to make special reference to these cases and to emphasize them.

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

PRETRIAL PROCEDURE

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

Handbook for Effective Pretrial Procedure

Chief Judge Murrah submitted to the Conference a *Handbook for Effective Pretrial Procedure,* which was prepared by a subcommittee consisting of Circuit Judge Irving R. Kaufman, Chairman, and Chief Judges Joe E. Estes and William E. Steckler, and approved by the Committee at its last meeting. The material for the Handbook was developed principally through presentations and discussions at various seminar sessions conducted by the Committee during the last four years, including the seminars for newly appointed United States district judges. The Conference received the Handbook and adopted the following recommendations of the Committee:

1. That the Handbook be accepted and approved by the Judicial Conference as a Conference document.
2. That the Director of the Administrative Office be instructed to arrange for the printing of the Handbook, with the printing format and any last minute editorial changes to be approved by the subcommittee under whose direction the document was prepared.
3. That a copy of the Handbook, together with the resolution of the Conference approving it, be supplied to each United States judge and to the Chairmen of the Judiciary Committees of the Senate and the House of Representatives.
4. That the Administrative Office arrange to have the Handbook made available to the legal profession generally.

AMENDMENT OF RULE 16

A subcommittee of the Pretrial Committee had undertaken a study of Rule 16, Federal Rules of Civil Procedure, and had filed a detailed report pointing out the desirability of the present general language in Rule 16 and the lack of any expressed desire among the judges of the district courts for any general revision. It was the sense of the Committee, acting upon the report of the subcommittee, that Rule 16, Federal Rules of Civil Procedure, should not, at this time, be amended. The views of the Committee will be brought to the attention of the Advisory Committee on the Rules of Civil Procedure.

PRETRIAL PROCEDURE IN CRIMINAL CASES

Chief Judge Murrah informed the Conference that a subcommittee on Pretrial Procedure in Criminal Cases, had considered the proposed amendment to Rule 16, Federal Rules of Criminal Procedure, Discovery and Inspection, and the proposed new Rule 17.1 authorizing pretrial conferences in criminal cases. The suggestions of the subcommittee will be brought to the attention of the Advisory Committee on Criminal Rules.

The Committee also pointed out that district judges throughout the country, without the benefit of a pretrial rule for criminal cases, have extensively conducted pretrials and fostered discovery in criminal cases. It was the view of the Committee that the experience of district judges with regard to pretrial procedure and discovery in criminal cases, together with any forms, orders, stipulations and techniques developed, should be compiled. Accordingly, the Committee has undertaken through the member of the Pretrial Committee in each circuit, to submit to every district judge that portion of the subcommittee's report on "Recommended Procedures in Criminal Pretrials" and to request his comments and suggestions about it.

Subcommittee for Multiple Litigation

The subcommittee of the Pretrial Committee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits has continued to concentrate its efforts on the national coordination program for the private antitrust electrical equipment cases. The trial of the first case was concluded this spring, the national discovery program in six separate product lines has been substantially completed, additional cases have been settled, and several more cases have been scheduled for trial.

The Committee recommended that a proposal to add a new subsection (e) to Section 1404 of Title 28, United States Code, to authorize the transfer of "numerous related civil actions pending in different districts to any district for the purpose of pretrial proceedings," which was developed by the subcommittee, be approved in principle. The Conference expresed recognition of the need for statutory change and authorized the subcommittee to continue to work toward the development of this proposal.

SEMINAR FOR NEW DISTRICT JUDGES

Following a review of the content, form and method of presentation of seminars for newly appointed United States district judges previously held, the Committee has concluded that it would be desirable to revise the general format of the seminar program and to include additional experienced judges as discussion leaders. A subcommittee has been appointed to formulate plans for a new seminar program and to organize a seminar for new judges at an early date. The Committee was authorized by the Conference to conduct another seminar for newly appointed United States district judges during 1965.

PRETRIAL IN HABEAS CORPUS CASES

Judge James M. Carter, a member of the Pretrial Committee, has developed a procedure to curtail excessive applications by federal prisoners brought under 28 U.S.C. §2255. The Committee reported that Judge Carter's technique, published in 34 F.R.D. 391, has been widely adopted among the district judges. In view of the interest in Judge Carter's technique, Chief Judge Murrah requested that the article appearing in Federal Rules Decisions be brought to the attention of every district judge.

HABEAS CORPUS

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, presented to the Conference a proposal to amend 28 U.S.C. Section 2241 by inserting therein an additional subsection to provide as follows:

> "(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a state court of a state which contains two or more federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the state

> court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

Upon the recommendation of the Committee, the Conference approved the proposed amendment to 28 U.S.C. §2241 and directed that it be transmitted to the Congress with a recommendation that it be enacted into law.

The Conference also considered the problem arising in a habeas corpus proceeding where a person convicted of a crime in a state court is confined in a federal institution on a contract basis, but is being held in a state other than the state of conviction. After full discussion, the Conference directed the Committee on Habeas Corpus to study this problem and report to the next regular session of the Judicial Conference.

The Conference at its September 1963 session (Conf. Rept., p. 108) approved a bill to amend Chapter 153 of Title 28, United States Code, with reference to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a state court. The provisions of the bill recommended by the Conference are contained in H. R. 1835, 88th Congress, as reported by the House Judiciary Committee, except for one change in language made by the Judiciary Committee. The bill was passed by the House of Representatives on June 23, 1964. Upon recommendation of the Committee, the Conference approved H. R. 1835, as amended by the House Judiciary Committee and passed by the House.

RELEASE OF CONFERENCE ACTION

The Conference authorized the 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 of the United States

October 31, 1964

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