

---

---

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

MARCH 30-31, 1967

WASHINGTON, D.C.

1967

---

---

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

Warren Olney III  
Director

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

MARCH 30-31, 1967

WASHINGTON, D.C.

1967

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

**§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES**

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

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

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

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

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

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

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

## CONTENTS

---

	Page
Call of the Conference.....	1
Judicial Appropriations.....	2
Special Committee on Continuing Education, Research, Training and Administration.....	3
Proposed Bill for the Establishment of a Federal Judicial Center.....	4
Judicial Statistics.....	8
Courts of Appeals.....	8
District Courts.....	10
Form J.S. 10.....	10
Court Administration.....	11
Places of Holding Court.....	11
Additional Judgeships.....	12
Matters Relating to Judges.....	12
Judicial Disability.....	14
Examination of Court Offices.....	14
Judicial Survivors Annuity Fund.....	15
Courtroom Photographs.....	15
Courts In Banc.....	15
Defendants At Large After Affirmance of Conviction.....	16
Admissions to Practice.....	16
Salary of Director of Administrative Office.....	17
Revision of the Laws.....	17
Contempts.....	17
Statutory Revisions Resulting From Merger of Admiralty and Civil Procedure.....	18
District Court of Puerto Rico.....	18
Social Security Cases.....	19
Role of United States in Civil Actions.....	20
Other Legislation.....	20
Veterans' Appeals.....	22
Committee on Rules of Practice and Procedure.....	22
Committee on Intercircuit Assignments.....	23
Bankruptcy Administration.....	23
Vacancies in Referee Positions and Changes in Arrangements.....	24
Appropriations.....	29
New Case Filings.....	29
Legislation.....	30
Fees and Special Charges.....	31
Audit of Statistical Reports.....	32
Developments in the Use of Chapter XIII.....	33

	Page
Bankruptcy Administration—Continued	
Seminars for Referees.....	34
Costs of Administration.....	34
Criminal Justice Act of 1964.....	35
Representation of Same Defendant in Two Trials.....	35
Statutory Amendments.....	36
Availability of Local Plans.....	36
Administration of the Probation System.....	36
Sentencing Institutes.....	36
Proposal for a United States Corrections Service.....	37
Residential Community Treatment Centers.....	37
Research Projects.....	37
Administration of the Criminal Law.....	38
Federal Magistrates Act.....	38
Jurisdiction of United States Commissioners.....	40
Appellate Review of Sentences.....	40
Commitment of Persons Acquitted on the Ground of Insanity.....	40
Amnesty for First Offenders.....	41
Other Legislation.....	41
Committee on the Operation of the Jury System.....	41
Jury Selection.....	41
Criminal Contempt Statute.....	43
Committee on Supporting Personnel.....	43
Secretaries to Judges.....	43
Supporting Personnel for a Disabled Judge.....	44
Clerk's Office.....	44
Librarians.....	44
Courts of Appeals.....	44
Law Clerks—Court of Claims.....	45
Court Criers.....	45
Interpreters.....	45
Court Reporter-Secretary.....	46
Trial Practice and Technique.....	46
Resolutions.....	46
Pretermission of the Terms of the Courts of Appeals.....	47
Release of Conference Action.....	47

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

MARCH 30-31, 1967

The Judicial Conference of the United States convened on March 30, 1967 pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331 and continued in session on March 31. The Chief Justice presided and the following members of the Conference were present:

**District of Columbia Circuit :**

Chief Judge David L. Bazelon  
Judge Matthew F. McGuire, District of Columbia

**First Circuit :**

Chief Judge Bailey Aldrich  
Judge Francis J. W. Ford, District of Massachusetts

**Second Circuit :**

Chief Judge J. Edward Lumbard  
Judge Sylvester J. Ryan, Southern District of New York

**Third Circuit :**

Chief Judge Austin L. Staley  
Chief Judge Thomas J. Clary, Eastern District of Pennsylvania

**Fourth Circuit :**

Chief Judge Clement F. Haynsworth, Jr.  
Chief Judge Walter E. Hoffman, Eastern District of Virginia

**Fifth Circuit :**

Chief Judge Elbert Parr Tuttle  
Chief Judge Herbert W. Christenberry, Eastern District of Louisiana

**Sixth Circuit :**

Chief Judge Paul C. Weick  
Chief Judge Mac Swinford, Eastern District of Kentucky

**Seventh Circuit :**

Chief Judge John S. Hastings  
Chief Judge William J. Campbell, Northern District of Illinois (designated  
by the Chief Justice in place of Judge Edwin A. Robson who was unable  
to attend)

**Eighth Circuit :**

Chief Judge Charles J. Vogel  
Chief Judge Roy W. Harper, Eastern & Western Districts of Missouri

**Ninth Circuit :**

Chief Judge Richard H. Chambers  
Judge Albert C. Wollenberg, Northern District of California

## Tenth Circuit:

Chief Judge Alfred P. Murrah

Chief Judge Alfred A. Arraj, District of Colorado

## Court of Claims:

Judge James R. Durfee (designated by the Chief Justice in place of Chief Judge Wilson Cowen who was unable to attend)

## Court of Customs and Patent Appeals:

Chief Judge Eugene Worley

Mr. Justice Stanley Reed, United States Supreme Court, retired; Senior Judges John Biggs, Jr., Oliver D. Hamlin, Jr., Harvey M. Johnsen, Albert B. Maris; Circuit Judges Jean S. Breitenstein, George C. Edwards, Jr., Irving R. Kaufman and Judge Theodore Levin attended all or some of the sessions.

The Attorney General, Honorable Ramsey Clark, accompanied by Assistant Attorneys General John Doar and Ernest C. Friesen, Jr., attended the morning session of the first day of the Conference. Mr. Doar returned for the discussion of the report of the Committee on the Operation of the Jury System and Mr. Friesen for the report of the Committee on the Administration of the Probation System.

The Attorney General addressed the Conference briefly on matters of mutual interest to the Department of Justice and the Conference.

Honorable Joseph D. Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, attended the morning session of the second day of the Conference and also addressed the Conference.

William T. Finley, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, and John F. Davis, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts; William E. Foley, Deputy Director; William R. Sweeney, Assistant Director; and members of the Administrative Office staff were also in attendance.

## JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, advised the Conference that hearings were



held in February by the Subcommittee of the House Appropriations Committee on the Judiciary Appropriation Bill for fiscal year 1968. Judge Campbell advised that he was accompanied at the hearings by Chief Judge Lumbard and Chief Judge Tuttle who addressed remarks to the committee on the need for additional law clerks for judges of the courts of appeals and by Judge Edward A. Tamm of the Court of Appeals for the District of Columbia who spoke to the committee on the need for a coordinator or administrator to implement the Criminal Justice Act, particularly in the District of Columbia.

SPECIAL COMMITTEE ON CONTINUING EDUCATION,  
RESEARCH, TRAINING AND ADMINISTRATION

Mr. Justice Stanley Reed, Chairman, presented the report of the Special Committee on Continuing Education, Research, Training and Administration.

In reviewing with the Conference the reasons for the establishment of the Special Committee, Mr. Justice Reed pointed out that over the last ten years the Conference through its standing committees has engaged in an increasing number of programs and projects, some in the nature of continuing education and training and some in the nature of research, each under the oversight of one or another of its committees, and all designed and intended to meet some pressing need for improvement in federal judicial administration. In addition, the Conference has expressed itself as favoring numerous other programs and projects which have not been undertaken because of the lack of staff, funds and Congressional authority. In September 1966 there were no less than 24 existing or suggested programs or projects of the Conference, each under the supervision of one or another of its standing committees and all in the nature of continuing education, training or research, looking toward improvement in federal judicial administration. It was because of this situation that the Conference at its September 1966 session (Conf. Rept., p. 37) approved a resolution authorizing the establishment of the Special Committee to study the possible need for Congressional authorization for a broad program of continuing education, research, training and administration.

Mr. Justice Reed stated that the Committee had held several meetings and that it had communicated with all federal judges

who had attended seminars for newly appointed judges, all referees in bankruptcy and all chief probation officers, soliciting their views as to the value of the training programs which had heretofore been offered under the sponsorship of the Conference. He stated that the judges, referees and chief probation officers were nearly unanimous in their views that programs heretofore offered should not only be continued but should be improved and expanded in the future. He stated that the Special Committee had reached the following conclusions which it recommended to the Conference:

- (1) The establishment of a Federal Judicial Center in the judicial branch of the government is desirable to attain the dispensation of justice in the federal courts with maximum effectiveness and minimum waste;
- (2) The attainment of this objective will be aided by a thorough scientific study of the methods of judicial administration and by programs of continuing education of judges and training of court personnel; and
- (3) The activities of the Federal Judicial Center should be under the direction and control of an autonomous board composed of the Chief Justice, the Director of the Administrative Office and five judges (two circuit judges and three district judges) elected by the Judicial Conference. The Chief of the Federal Judicial Center must be responsible to the board and not to the Director of the Administrative Office.

After considering these conclusions, the Conference voted its agreement with them and endorsed a bill proposed by the Special Committee providing for the establishment of a Federal Judicial Center as recommended.

The Conference noted that the President in a message to the Congress on February 6, 1967 had urged the establishment of a Federal Judicial Center and that bills had been introduced in the Senate and in the House of Representatives to carry out this recommendation (S. 915, H.R. 5385, H.R. 6111, H.R. 7215, H.R. 6944). The Conference noted that while the bill drafted by the Special Committee which the Conference endorsed and the bills previously introduced were in agreement on the concept of the Federal Judicial Center, the Conference bill differed in certain important details. The bill approved by the Conference reads:

A BILL

To provide for the establishment of a Federal Judicial Center.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a new chapter, to be numbered 42, is added to Title 28, United States Code, as follows:*

§ 620. FEDERAL JUDICIAL CENTER.

There is established in the Administrative Office of the United States Courts a Federal Judicial Center for the purpose of seeking knowledge of the best methods of judicial administration through scientific study so that it may be possible to administer justice in the federal courts with maximum effectiveness and minimum waste. The Center shall have the following functions:

- (1) Stimulating, coordinating and conducting research and studies in all areas of federal judicial administration.
- (2) Stimulating, developing and conducting programs of continuing education and training for personnel in the judicial branch of Government, including but not limited to, judges, referees, court clerks, probation officers and United States commissioners.
- (3) Providing staff, research and planning assistance to the Judicial Conference of the United States and its committees.

§ 621. BOARD.

The activities of the Center shall be supervised by a Board to be composed of the Chief Justice of the United States, two judges of the United States Courts of Appeals, three judges of the United States District Courts, and the Director of the Administrative Office of the United States Courts.

Each of the judges of the United States Courts of Appeals and the United States District Courts shall be elected as members of the Board by a vote of the members of the Judicial Conference of the United States.

The judges of the Courts of Appeals first named to the Board shall continue in office for terms of two and four years respectively from the date of the enactment of this chapter, the term of each to be designated by the Chief Justice following election by the Judicial Conference.

The judges of the United States District Courts first named to the Board shall continue in office for terms of two, three and four years, respectively, from the date of the enactment of this chapter, the term of each to be designated by the Chief Justice following election by the Judicial Conference.

Each successor of the first judge-members of the Board shall be elected for a term of four years from the date of the expiration of the term for which his predecessor was elected, except that any judge elected to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected only for the unexpired term of such predecessor. No judge-member shall be eligible to reelection as a member of the Board.

Members of the Board shall serve without additional compensation.

The Chief Justice of the United States shall be the Chairman of the Board.

Regular meetings of the Board shall be held quarterly. Special meetings of the Board may be held from time to time upon the call of the Chairman or upon the request of any three members.

The Board shall take all necessary and appropriate steps to accomplish the purposes and perform the functions stated in § 620 of this Title, including but not limited to the following: The Board shall

develop and carry on programs of research, training, continuing education and administration in all areas of federal judicial administration. It shall make recommendations to the Judicial Conference of the United States and other appropriate agencies and officials for improvements in all such areas. It shall consider and recommend measures for the improvement of federal judicial administration and shall suggest appropriate studies for this purpose to be undertaken by both public and private agencies.

The Board shall submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Center and the Board's recommendations, which report, data and recommendations shall be public documents.

The Board shall also submit to Congress copies of the report and recommendations submitted to the Judicial Conference of the United States.

**§ 622. POWERS OF THE BOARD.**

For the purpose of carrying out any function authorized by § 620 of this Title, the Board may accept donated funds and services, both public and private, and the use of such funds to pay the salaries of the officers or employees of the Center shall not be subject to the provisions of § 209 of Title 18, United States Code.

The Board is authorized to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency and instrumentality is authorized to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Board, upon request made by the Chairman. The Board shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to § 10 of the Act of March 2, 1861, as amended (41 U.S.C. § 5), of any appropriate state or other public agency. The Board may, without regard to § 10 of the Act of March 2, 1861, as amended (41 U.S.C. § 5), utilize the services or facilities of any private agency, organization, group, or individual, in accordance with agreements between the head of such agency, organization, or group, or such individual, and the Board. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

**§ 623. CHIEF OF THE FEDERAL JUDICIAL CENTER.**

(a) The Board shall appoint and fix the duties of a Chief of the Federal Judicial Center who shall serve at the pleasure of the Board.

(b) The Chief of the Federal Judicial Center shall supervise the activities of persons employed in the Center and shall perform such other duties assigned to him by the Board.

(c) The Chief of the Federal Judicial Center, subject to the civil service laws, may appoint necessary employees of the Center. The Chief of the Federal Judicial Center may also procure personal services as authorized by § 15 of the Act of August 2, 1946, as amended (5 U.S.C. 55a), at rates not to exceed \$100 per diem for individuals. The Chief of the Federal Judicial Center is authorized to incur travel and other miscellaneous expenses incident to the operation of the Center.

(d) The Board may contract with governmental or private agencies for research projects and for other purposes, and to that end may delegate such authority to the Chief of the Federal Judicial Center as the Board deems necessary or appropriate in the negotiation for or the execution of such contracts.

§ 624. COMPENSATION OF THE CHIEF OF THE FEDERAL JUDICIAL CENTER.

The compensation of any Chief of the Federal Judicial Center shall be the same as that of a judge of a United States District Court, and his appointment and salary shall not be subject to the civil service laws or Classification Act of 1949, as amended; provided, however, that any Chief of the Federal Judicial Center who is a justice or judge of the United States who has not attained the age of seventy years but who has retired from regular active service pursuant to Section 371(b) of this Title shall serve without additional compensation.

§ 625. RETIREMENT OF THE CHIEF OF THE FEDERAL JUDICIAL CENTER.

(a) Any Chief of the Federal Judicial Center who elects to be subject to the provisions of this Section thereby waives his right to coverage under the Civil Service Retirement Act. Such election shall be made by filing a written notice with the Administrative Office of the United States Courts within six months after the date on which the Chief of the Federal Judicial Center takes office.

(b) Any Chief of the Federal Judicial Center who attains the age of 70 years shall be retired from his office.

(c) Any Chief of the Federal Judicial Center who retires, after having served at least 15 years and after having attained the age of 65 years, shall receive an annuity for life equal to 80 per centum of the salary of the office.

(d) Any Chief of the Federal Judicial Center who has served at least 10 years, but who is not eligible to receive an annuity under subsection (c), may elect to retire and receive an annuity for life equal to that proportion of 80 per centum of the salary of the office which the number of years of his service bears to fifteen, reduced by one-quarter of one per centum for each full month, if any, he is under the age of 65 at the time of separation from service.

(e) Any Chief of the Federal Judicial Center who becomes permanently disabled from performing the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office if he has served at least 15 years, or equal to that proportion of 80 per centum of such salary which the aggregate number of years of his service bears to fifteen if he has served less than 15 years, but in no event less than 50 per centum of such salary.

(f) For the purpose of this section, service means service, whether or not continuous, as Chief of the Federal Judicial Center, and any service not to exceed five years as a Judge of the United States, a Senator or Representative in Congress, a civilian official appointed by the President by and with the advice and consent of the Senate.

(g) The annuities provided by this section of this Title shall be paid by the Administrative Office of the United States Courts.

§ 626. SURVIVORSHIP BENEFITS OF THE WIDOW AND DEPENDENT CHILDREN  
OF THE CHIEF OF THE FEDERAL JUDICIAL CENTER.

The provisions of Section 376 of this title are hereby extended to include the Chief of the Federal Judicial Center. Each reference therein to a judge of the United States or to judicial service shall be deemed to include the Chief of the Federal Judicial Center.

As used in subsections (b), (c), (g), (i) and (n) of Section 376 of this title, the phrase "retirement from office by resignation on salary under Section 371(a) of this title" shall mean "retirement under Section 625."

§ 627. APPROPRIATIONS AND ACCOUNTING.

There is hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be necessary to supplement funds and services accepted by the Board. The Administrative Office of the United States Courts shall provide accounting, disbursing, auditing and other fiscal services for the Federal Judicial Center.

In approving the report of the Special Committee, the Conference took note of the recommendation that the Special Committee, believing that it had completed the function for which it was created, should be discharged and determined that the Special Committee should remain in existence until Congressional action on its recommendations had been completed.

### JUDICIAL STATISTICS

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

### COURTS OF APPEALS

Judge Johnsen advised the Conference that pursuant to its authorization at the September 1965 session (Conf. Rept., p. 47) the Committee had undertaken a comprehensive study of the workload of the courts of appeals and was prepared to recommend additional judgeships. Judge Johnsen stated that it had retained as consultant Mr. Will Shafroth, former Deputy Director of the Administrative Office, who undertook the task of making a field survey of all the courts of appeals and that the Committee's conclusions and recommendations were based on the analysis prepared by Mr. Shafroth.

Judge Johnsen pointed out that in the last five years the number of appeals has increased almost 70 percent. While the number of terminations per judgeship has also materially risen during the period from fiscal 1960 to fiscal 1966 (55 per judgeship in 1960 to

76 per judgeship in 1966), there has been no time since 1960 when the number of terminations has succeeded in keeping pace with the number of filings. As a result, the number of pending cases has increased from a backlog of 2,220 in 1960 to 5,387 in 1966, an increase of 140 percent.

Pursuant to the recommendations of the Committee, and of the Committee on Court Administration as set out hereinafter, the Conference agreed to recommend to the Congress the establishment of the following additional circuit judgeships:

- (1) One permanent judgeship to be added to the Court of Appeals for the Third Circuit, making the total number of judges for that court nine. This recommendation accords with the conclusions of the Judicial Council of the Circuit and the data in the Shafroth report which disclosed that during the first half of fiscal 1967 the number of appeals filed was 29 percent greater than those filed during the corresponding period of fiscal 1966 and that during fiscal 1966 the court had used outside judgepower to carry 20 percent of its hearing load.
- (2) The four temporary judgeships created for the Court of Appeals for the Fifth Circuit by the 1966 Judgeship Act to be made permanent and that there should be added thereto two permanent judgeships, making the number of judges for that court fifteen. This accords with the recommendations of the Judicial Council of the Circuit and the Shafroth report which disclosed that the filings in the Fifth Circuit have progressively increased from 577 in fiscal 1960 to 1,041 in fiscal 1966 and 546 for the first half of fiscal 1967. The pending case backlog has mounted from 279 in 1960 to 1,004 in 1966, whereas during fiscal 1966 the court was actually using an average of fourteen judges.
- (3) Four permanent judgeships for the Court of Appeals for the Ninth Circuit, making the total number of judges for that court thirteen. This court has been operating for a number of years with the help of outside judgepower. During the past two years the amount of this judgepower has been between 19 and 20 percent of the court's hearing load. Its filings have increased from about 450 in 1960 to some 800 in 1966 and the volume of pending cases or backlog has mounted from 399 to 807. The Conference noted not only the increase in caseload but also the enormous growth of the geographical area involved, industrially as well as generally, and the fact that by 1970 the court can be expected to have a filing load correspondent to that of the Fifth Circuit during the last fiscal year.
- (4) One permanent judgeship to be added to the Court of Appeals for the Tenth Circuit, making the total number of judges for that circuit seven. This accords with the views of the Judicial Council of the Circuit. The filings per judgeship in this court are substantially more than the national average and since 1961 the court has been operating with outside judgepower handling more than 10 percent of the hearing load. While terminations after hearing and submission have increased from 179 in 1960 to 359 in 1966, the number of filings has progressively risen from 229 in 1960 to 543 in 1966.

## DISTRICT COURTS

Judge Johnsen reported to the Conference that several requests have been received for additional judgeships in certain districts. The Committee was of the view that the policy established by the Judicial Conference in connection with the recommendations which became part of the 1966 Judgeship Act should continue, namely, that recommendations for additional judgeships should be predicated on absolute demonstrable present need, with the elimination of such situations as were marginal or would involve a measure of projection even though there could be no doubt as to an ultimate future need. Judge Johnsen reported that the Committee made a canvass of the situation in all districts and found no emergency situation which had to be faced before such time as the Committee's next over-all survey of district judge needs is made. The Conference agreed with the Committee's conclusion that in the absence of a pressing emergency situation, no recommendation for district judgeships at the present time was in order.

Judge Johnsen pointed out, however, a special situation which has occurred in the Eastern District of Pennsylvania for which the 1966 Omnibus Act provided three temporary judgeships. With the elevation to the Circuit Court of Appeals of District Judge Francis L. Van Dusen, one temporary judgeship lapsed without an appointment ever having been made thereto. The Conference noted that S. 828 has been introduced in the 90th Congress to reinstitute this temporary judgeship and voted its approval of this legislation.

## FORM J.S. 10

Judge Johnsen referred to the Conference action at its September 1966 session (Conf. Rept., p. 35) directing the Committee to make a continuing study of Form J.S. 10 and of the data which must be furnished in this form to obtain a realistic reflection of the judicial workloads. Judge Johnsen stated that the Committee was still studying this form and he requested and was given Conference permission for further study and a report to the next session of the Conference.



## COURT ADMINISTRATION

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

## PLACES OF HOLDING COURT

The Conference withheld a decision on H.R. 838, 90th Congress, which would provide for the holding of court at Hyattsville, Maryland. The Conference was informed that the judges of the District Court for the District of Maryland have been considering an additional place of holding court and, accordingly, the Conference deferred decision until agreement could be reached as to the place of holding court and the provision of adequate facilities. Two similar bills in the 89th Congress, H.R. 15742 and H.R. 15981, were disapproved by the Conference at its September 1966 session (Conf. Rept., p. 36).

The Conference took no action, pending receipt of the views of the Judicial Council of the Seventh Circuit, on H.R. 187, 90th Congress, which would provide that Rockford, Illinois, be constituted as an additional place of holding court in the Western Division of the Northern District of Illinois.

The Conference took no action, pending receipt of the views of the Judicial Council of the Third Circuit, on H.R. 4265, 90th Congress, which would provide that court be held at Reading in the Eastern District of Pennsylvania.

The Conference approved H.R. 2393, 90th Congress, which would create a new division in the Western District of Texas to be known as the Midland-Odessa Division comprising the counties of Andrews, Crane, Ector, Martin, Midland and Upton with Odessa as an additional place of holding court. The Conference approved a similar bill at its September 1966 session (Conf. Rept., p. 36).

The Conference disapproved H.R. 1156, 90th Congress, which would include Denton County, Texas, within the Fort Worth Division of the Northern District of Texas. The Conference noted that the Judicial Council of the Fifth Circuit had previously disapproved a similar bill.

## ADDITIONAL JUDGESHIPS

Judge Biggs reported that the Committee on Court Administration had considered the requests for additional judgeships in the courts of appeals and concurred in the views expressed by the Committee on Judicial Statistics except with regard to the recommendation as to the Fifth Circuit. As to this circuit, the Committee on Court Administration agreed that the four temporary judgeships should be made permanent but was of the view that the two additional permanent judgeships, approved by the Committee on Judicial Statistics, are not warranted. The Chairman expressed his dissent to this conclusion.

Judge Biggs reported that the Committee had considered requests and bills for additional district judgeships, as follows: (1) two additional permanent judgeships for the Western District of Pennsylvania; (2) S. 656 and H.R. 3568, to create one additional permanent judgeship for the Eastern District of Kentucky; (3) a request for two additional judgeships in the Eastern District of Michigan and (4) H.R. 1445, to create an additional judgeship for the Southern District of California. The Committee recommended and the Conference agreed to defer consideration of these bills pending further data and study.

The Conference agreed with the Committee's recommendation to approve S. 828, 90th Congress, a bill which would recreate a vacancy in the United States District Court for the Eastern District of Pennsylvania. The bill would reinstate the vacancy caused by the elevation of one district court judge in the Eastern District of Pennsylvania to the Court of Appeals.

## MATTERS RELATING TO JUDGES

The Conference considered several bills relating to judges and voted its disapproval of each as follows:

(a) S. 3579, 89th Congress, which would have provided for a seven-member commission to be appointed by the President to ascertain the qualifications of proposed appointees to offices as justices or judges of the United States and to make recommendations to the President. The Conference noted that a substantially similar bill, differing only slightly from S. 3579, 89th Congress, in respect to the membership of the commission, has been introduced into the 90th Congress as S. 949.

(b) H.J. Res. 32, 90th Congress, which would provide a Constitutional amendment that judges of the Supreme Court hold office for twelve-year terms.

(c) S.J. Res. 38, 90th Congress, which would amend the Constitution to constitute a "Court of the Union" composed of the chief justices of the highest courts of the states with the sole issue to be decided by the court to be whether or not "power or jurisdiction sought to be exercised on the part of the United States is a power granted to it under the Constitution."

(d) H.J. Res. 104, 90th Congress, a Constitutional amendment to provide for the popular election of justices of the Supreme Court.

(e) H.J. Res. 243, 90th Congress, which would amend the Constitution to provide that Congress shall have power, by two-thirds vote of each House, to limit the authority of the courts of the United States to determine that statutes of the United States or of the states are unconstitutional.

(f) H.R. 146, 90th Congress, which would amend the Constitution to require five years prior judicial service for eligibility for appointment to the Supreme Court. A substantially similar proposal was disapproved by the Conference at its March 1965 session (Conf. Rept., p. 9).

(g) S. 949, 90th Congress, which would provide for a Judicial Service Commission.

(h) H.R. 2805, 90th Congress, which would provide for the disqualification of circuit judges for bias and prejudice by amending Section 47(a) of Title 28, United States Code. Similar bills were disapproved by the Conference at its March 1965 session (Conf. Rept., p. 7) and at its September 1966 session (Conf. Rept., p. 41).

(i) H.R. 4236, 90th Congress, which would provide certain eligibility qualifications for an appointee to the Supreme Court.

(j) S. 415, 90th Congress, which would include the service as a judge of the Circuit Court of the Territory of Hawaii of Chief Judge Martin Pence, now a United States District Court Judge, in computation of his service as a United States district judge. The Conference disapproved a similar bill at its March 1965 session (Conf. Rept., p. 8) on the ground that service as a judge of the Circuit Court of the former Territory of Hawaii was the equivalent of service in a state court and, therefore, should not be included in computing years of service as a district judge.

The Conference approved H.R. 2515, 90th Congress, which would provide an increase in the salaries of the Chief Justice of the United States and of the Associate Justices of the Supreme Court in the amount of \$3,000, to be effective as of January 1, 1967. A substantially similar bill, S. 610, 89th Congress, was approved by the Conference at its March 1965 session (Conf. Rept., p. 10).

#### JUDICIAL DISABILITY

The Conference next considered a resolution of the Ninth Circuit Conference concerning the subject of judicial disability. The Conference requested the Committee on Court Administration to continue to study this problem for a later report to the Conference.

#### EXAMINATION OF COURT OFFICES

Judge Biggs reported to the Conference that the Committee had made an exhaustive study of the recommendation of Chief Judge Roy W. Harper that examination of court offices be placed under the jurisdiction of the Administrative Office (Conf. Rept., September 1966 Session, p. 37). He reported that this matter had been before the Conference on at least three occasions—in 1940, 1941 and again in 1944. He pointed out that the examinations made by the Department of Justice include examinations of the marshals' offices as well as those of the clerks of court and referees in bankruptcy. He said it was the view of the Committee that it was desirable to have examinations of court offices made by examiners outside the judicial system so that courts will not be examining their own offices or officers and that if any indication of substantial criminal misconduct appears, it is then the duty of the Department of Justice to conduct prosecution in which event the Department would have to make its own examination. It was the Committee's view also that to place the examination of court offices under the Administrative Office would develop unnecessary friction since the Administrative Office was created and is geared toward servicing the judicial system. The Conference agreed with the recommendations of the Committee and disapproved the proposal to transfer the examination service from the Department of Justice to the Administrative Office.

## JUDICIAL SURVIVORS ANNUITY FUND

The Conference received a report from Judge Biggs on the status of the Judicial Survivors Annuity Fund and a study of the feasibility of a merger with the Civil Service Retirement Fund. Upon study of this problem the Conference agreed that the Judicial Survivors Annuity Fund should not be merged with the Civil Service Retirement Fund at the present time but that the Conference now call to the attention of the Congress the fact that the Judicial Survivors Annuity Fund will be exhausted in about the year 1984 and that prior to that time, on an occasion the Conference shall deem appropriate, action shall be taken by the Congress to fulfill the obligations of the United States as provided in Section 376 of Title 28, United States Code.

The Conference also authorized the Committee on Court Administration to prepare a revision of the Judicial Survivors Annuity Act to bring it into line with the Civil Service Retirement Act, in particular to the provisions relating to members of Congress.

## COURTROOM PHOTOGRAPHS

Judge Biggs advised the Conference that the Judicial Conference of the Ninth Circuit at its 1966 meeting had suggested that the Advisory Committee on Criminal and Civil Rules of the Judicial Conference elaborate on the resolution adopted by the Judicial Conference of the United States at its March 1962 session (Conf. Rept., p. 10) to provide that the district courts by local rule or order shall define the area included as the environs of the courtroom. The Conference agreed that its resolution of March 1962 should in no way be altered but agreed that the resolution of the Ninth Circuit Conference, as was apparently intended by that Conference, should be referred to the Committee on Rules of Practice and Procedure for consideration.

## COURTS IN BANC

The Conference noted a report by Judge Biggs that the Committee on Court Administration had authorized the Chairman to appoint a subcommittee to consider any problem inherent in courts sitting in banc if the number of circuit judgeships is substantially increased in some circuits.

#### DEFENDANTS AT LARGE AFTER AFFIRMANCE OF CONVICTION

Judge Biggs next reported to the Conference that his Committee had studied the problems raised by Senator R. C. Byrd concerning the circumstances surrounding the release of John M. Eldridge, a criminal defendant who killed a policeman and committed suicide while released on bond after the Supreme Court of the United States had completed its review and the mandate had issued.

Judge Biggs reported that it was his Committee's conclusion that Eldridge was at large at the time of the attempted robbery and murder of the policeman because of a failure of communication between the United States Attorney's Office and the District Court which four weeks before the crime was committed had ordered the bench warrant withdrawn, set aside the bond forfeiture and re-instated Eldridge's bond in an ex parte hearing.

The Committee was of the view that remedial action by the court system has now been taken whereby the clerk, with information promptly supplied by the Department of Justice, maintains an up-to-date list of defendants at large on bond. The Conference agreed that the responsibility in a situation such as the Eldridge case rests upon the prosecution and the Conference agreed further to request the Department of Justice to make an examination of its records of defendants to ascertain that no defendant remains at large whose conviction has been finally affirmed on appellate review.

#### ADMISSIONS TO PRACTICE

The Conference voted to disapprove H.R. 3145, 90th Congress, which would provide that any member of the bar of the Supreme Court would be eligible for admission to the bar of any United States court with the exception of the United States District Court for the District of Columbia. Similar bills were considered and disapproved by the Conference at its March 1965 session (Conf. Rept., p. 17). The Conference requested the Committee to study the problems inherent in this legislative proposal for further report.

The Conference also considered a suggestion by Chief Judge Joseph C. Zavatt of the Eastern District of New York suggesting certain changes in the certificates of admission printed by the Administrative Office and distributed to the United States district courts. The Conference was in agreement that the form of certifi-

cate of admission to a United States district court should be left at the discretion of the individual courts.

#### SALARY OF DIRECTOR OF ADMINISTRATIVE OFFICE

Judge Sylvester J. Ryan pointed out to the Conference that the bill to create a Federal Judicial Center provides that the salary of the Chief of the Center shall be the same as that of a United States district judge. He stated, on the other hand, that the proposed center would be housed in the Administrative Office of the United States Courts and that the Director of the Administrative Office would be a member of the Board of the Center. The present salary of the Director of the Administrative Office of the United States Courts is \$27,000. Judge Ryan moved and the Conference approved a resolution that the Congress be requested to increase the salary of the Director of the Administrative Office of the United States Courts to be the same as that of a United States district judge and the Chief of the proposed Federal Judicial Center and with the same retirement benefits. The Conference further approved a commensurate change in the salary of the Deputy Director.

#### REVISION OF THE LAWS

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

#### CONTEMPTS

Judge Maris reported that his Committee and the Committee on Court Administration met jointly to consider the provisions of S. 300, 90th Congress, which would amend Section 401 of Title 18, United States Code. The bill would prohibit the courts of appeals from reviewing, restricting or restraining the district courts in the exercise of their power to punish for contempts of their authority except upon appeal from final orders or judgments of commitment for contempt. The Conference agreed with the recommendation of the two committees that it would not be in the public interest or promote the administration of justice to restrict in the manner proposed by S. 300 the powers of the courts of appeals to review contempt proceedings in district courts.

STATUTORY REVISIONS RESULTING FROM MERGER OF ADMIRALTY  
AND CIVIL PROCEDURE

The Conference noted that by the amendments to the Federal Rules of Civil Procedure which became effective July 1, 1966 and which merged admiralty procedure into the existing civil procedure a number of provisions of Title 28 and other statutes has been superseded and other statutory revisions have been modified. Inasmuch as the Advisory Committee on Admiralty Rules is comprised of specialists thoroughly familiar with the details of this problem, the Conference requested that committee to undertake the preparation of a bill to bring the provisions of Title 28, United States Code, and other pertinent statutes into harmony with the provisions of the Federal Rules of Civil Procedure relating to the litigation of admiralty or maritime claims and to submit its draft to the Committee on Revision of the Laws for consideration and ultimate submission to the Conference.

## DISTRICT COURT OF PUERTO RICO

The Conference agreed to recommend to the Congress the repeal of Section 41 of the Act of March 2, 1917, as amended by Section 20 of the Act of June 25, 1948 (c. 646, 62 Stat. 989, 48 U.S.C. 863). This section of the statute has four separate parts, three of which are regarded as obsolete or fully supplied by other statutes and the fourth not only obsolete but also confusing and unnecessary. The provision with respect to the naturalization jurisdiction has been superseded by Section 310 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1421) which expressly confers upon the district courts of the United States, including the Puerto Rico District Court, jurisdiction of naturalized persons as citizens of the United States. The payment of salaries of the judges and officials and other expenses of the court are now made directly by the Director of the Administrative Office of the United States Courts pursuant to Section 604 of Title 28, United States Code. Authorization for payment is given in several sections relating to court personnel in Title 28, all of which apply to the District Court for the District of Puerto Rico as they do to any other district court of the United States. The provision of the designation by the President of a judge of the Supreme Court of Puerto Rico as a temporary judge of the District Court in the case of the death, absence



or disability of the district judge antedates the full integration of the District of Puerto Rico into the Federal judicial system by Sections 41, 119, 132, 133 and 134 of Title 28, United States Code. The provision for special diversity jurisdiction antedates the enactment of 28 U.S.C. 1332 which confers diversity jurisdiction and is applicable to the District Court for Puerto Rico in common with all the other district courts of the United States. By the passage of Public Law 89-571 the Congress has now amended 28 U.S.C. 134(a) so as to confer the same life tenure upon the United States district judges in Puerto Rico as is provided for other United States district judges and thus the last remaining barrier to the full and complete integration of the District Court in Puerto Rico into the federal constitutional judicial system has been eliminated.

The Conference, therefore, agreed that the courts of Puerto Rico should handle so much of that special jurisdiction as is not comprehended within the general diversity jurisdiction granted to all United States district courts by 28 U.S.C. 1332, and that direct action cases should be handled by the local courts as they are now required to be in Louisiana and Wisconsin.

#### SOCIAL SECURITY CASES

The Conference considered and disapproved Section 2 of H.R. 1312, 90th Congress, an act to amend Title 2 of the Social Security Act to provide more equitable and efficient method for obtaining administrative and judicial review of decisions of the Secretary of Health, Education and Welfare and a more realistic definition of "disability" for purposes of disability insurance benefits and the disability freeze.

The Conference noted that the effect of the bill with respect to judicial review would be to transfer the ultimate determination of Social Security disability claims from the Department of Health, Education and Welfare to a district court and jury, a proposal which the Conference regards as involving not only a doubtful question of public policy but a very greatly increased burden of litigation in the district courts. The Conference expressed no view with respect to the provisions of the bill relating to the nature of evidence offered in proceedings in the Department and the definition of "disability."

## ROLE OF UNITED STATES IN CIVIL ACTIONS

The Conference considered and disapproved H.J. Res. 146, 90th Congress, a bill which would prohibit the United States or any officer or employee on its behalf to appear as *amicus curiae* or in any other fashion except as a party in any stage of any civil action in any court of the United States.

## OTHER LEGISLATION

1. The Conference then considered several bills previously approved by it which have been reintroduced in the 90th Congress and voted its approval in each instance. These bills are:

a. S. 159 to provide for the temporary transfer to a single district for coordinated or consolidated pretrial proceedings of civil actions pending in different districts which involve one or more common questions of fact (Conf. Rept., p. 62).

b. H.R. 3081 which would extend the provisions of Section 1963 of Title 28, United States Code, for the registration of judgments to the district courts of the Virgin Islands, Guam and the Canal Zone and provide for the registration of that portion of divorce decrees providing for the payment of money or the transfer of property (Conf. Rept., March 1965 Session, p. 15).

c. H.R. 3088 to provide for the publication before entry of decrees, judgments and orders entered by consent upon the merits of civil antitrust proceedings in the district courts and in proceedings before a board or commission for the enforcement of any provision of the Clayton Act or the Federal Trade Commission Act (Conf. Rept., March 1965 Session, p. 15).

d. H.R. 4334 which would amend Section 2401 of Title 28, United States Code, to toll the running of the statute of limitations against tort claims of persons under legal disability or beyond the seas at the time their claims accrue (Conf. Rept., March 1965 Session, p. 16).

e. S. 597, H.R. 2512 and H.R. 5650 provide for the codification and revision of Title 17, United States Code, relating to copyrights. The Conference specifically approved Chapter 5 of these proposals relating to judicial remedies for copyright infringement (Conf. Rept., March 1966 Session, p. 8).

2. The Conference approved in part and disapproved in part the provisions of S. 946 and H.R. 5281 which would amend the Tucker

Act to increase from \$10,000 to \$50,000 the limitation on the jurisdiction of United States district courts in suits against the United States for breach of contract or for compensation. The Conference specifically approved Section 1 of H.R. 5281 and the similar provisions of S. 946 relating to the increase on the jurisdictional limitation from \$10,000 to \$50,000 (Conf. Rept., March 1966 Session, p. 9). The Conference, however, specifically disapproved of Section 2 of H.R. 5281 providing for the waiver of the statute of limitations on certain claims of Reserve officers (Conf. Rept., March 1966 Session, p. 10).

3. The Conference disapproved specifically by number certain bills reintroduced in the 90th Congress which had heretofore been disapproved by the Conference as follows:

a. S. 176 to provide for the establishment of a United States Court of Labor Management Relations which shall have jurisdiction over labor disputes which result in work stoppages which adversely affect the public interest of the Nation to a substantial degree (Conf. Rept., September 1966 Session, pp. 38, 39).

b. S. 301 and S. 302 which would prohibit the issuance of writs of mandamus and prohibition by the courts of appeals based upon interlocutory or non-appealable orders of the district courts or as a substitute for interlocutory appeals allowable under 28 U.S.C. 1292(b) (Conf. Rept., September 1966 Session, p. 40).

c. S. 621 to accord the right to a trial by jury to a defendant in a land condemnation proceeding who is aggrieved by the determination of the issue of just compensation by a commission appointed by a district court under Rule 71A(h), Federal Rules of Civil Procedure, and S. 979, a bill to achieve the same objective (Conf. Rept., September 1965 Session, p. 63).

d. H.R. 5267 to provide for the enforcement of separate orders in certain state and federal courts and to make it a crime to move or travel in interstate and foreign commerce to avoid compliance with such orders (Conf. Rept., September 1965 Session, p. 63).

e. S. 933 to amend the provisions of United States Code with respect to the jurisdiction of courts of appeals to review orders of administrative officers and agencies (Conf. Rept., March 1965 Session, p. 16).

## VETERANS' APPEALS

The Conference reaffirmed previous action with respect to various proposals for the judicial review of veterans' claims as follows:

1. The Conference approved the portions of several bills as to the type of review provided, i.e., by a Court of Veterans' Appeals, but expressed no opinion as to the policy of granting judicial review of veterans' claims (H.R. 603, H.R. 1354, H.R. 2293, H.R. 2907 and H.R. 3334) (Conf. Rept., March 1966 Session, p. 10).

2. H.R. 809, a bill to establish a Court of Veterans' Appeals and to prescribe its jurisdiction and functions, was disapproved as to those sections which would include the Court of Veterans' Appeals among the courts of the United States and would require the Director of the Administrative Office of the United States Courts to assume responsibility for its administrative affairs (Conf. Rept., March 1965 Session, p. 18).

3. The Conference disapproved H.R. 2411 to provide for determination through judicial proceedings in the district courts of claims for compensation on account of disability or death resulting from disease or injury incurred or aggravated in line of duty while serving in the active military or naval service, including those who served in peacetime (Conf. Rept., March 1965 Session, p. 18).

4. The Conference disapproved H.R. 3601 which would confer upon the Court of Claims jurisdiction to review de novo claims for benefits and payments under laws administered by the Veterans Administration (Conf. Rept., March 1965 Session, p. 18).

COMMITTEE ON RULES OF PRACTICE AND  
PROCEDURE

Senior Judge Albert B. Maris, Chairman, reported on the Committee on Rules of Practice and Procedure.

Judge Maris advised the Conference of the passage of Public Law 89-773 which amends 28 U.S.C. 2072 so as to confer upon the Supreme Court authority to prescribe the rules of procedure in the courts of appeals in civil cases, including those involving maritime claims, and in agency reviews. Thus, the Supreme Court now has full authority to promulgate uniform appellate rules which Judge Maris stated are in the final stage of preparation. Only one proposed rule remains to be considered by the Committee, namely, Rule 30 relating to the manner in which the pertinent parts of

the record on appeal are to be reproduced for the use of the judges of the court. A rule proposed by the Advisory Committee, together with two alternative drafts, has been distributed widely to the bench and bar for comment.

Judge Maris reported that the Advisory Committee on Civil Rules has just approved a draft of revised rules in the field of depositions and discovery. These rules will soon be published and distributed to the bench and bar for comment.

Judge Maris stated further that the Advisory Committees on Rules of Bankruptcy and Rules of Evidence are continuing intensive work on their tasks of preparing comprehensive drafts on rules in their respective fields. Much work remains to be done before drafts will be ready for submission to the bench and bar.

#### COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Circuit Judge Jean S. Breitenstein, Chairman of the Advisory Committee on Intercircuit Assignments, reported on the work of his Committee for the period August 27, 1966 to January 26, 1967.

Judge Breitenstein reported that in the period covered by his report the Committee has recommended 25 assignments to be undertaken by 22 judges, three judges having each accepted two assignments. The Chief Justice approved all assignments recommended by the Committee. Among the assigned judges were four circuit judges, four senior circuit judges, six district judges, seven senior district judges and one senior judge of the Court of Claims. Judge Breitenstein stated that 11 of the assignments were for service in courts of appeals. He advised that the Chief Judge of the Customs Court had requested help because of vacancies existing in that court but that the Committee was unable to locate a judge for this assignment. He again emphasized to the Conference the need for long-range planning in connection with intercircuit assignments and stressed the difficulty of finding a judge on short notice.

#### BANKRUPTCY ADMINISTRATION

The Chairman of the Committee on Bankruptcy Administration, Senior Judge Oliver D. Hamlin, Jr., reported that the Committee had met and considered the recommendations contained in the survey report of the Director of the Administrative Office, dated January 20, 1967, 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 to become effective on April 1, 1967 unless otherwise indicated.

The Committee also considered the recommendations of the district judges and the circuit councils concerned.

The Conference considered the Committee's report and the recommendations of the Director, the judicial councils and the district judges. On the basis of the report and recommendations, the Conference took the following action relating to referee positions and changes in salaries and arrangements in the several districts concerned. In each instance, the recommendations have been approved by the district courts and by the circuit councils concerned.

#### DISTRICT OF COLUMBIA CIRCUIT

##### *District of Columbia*

- (1) Authorized the continuance of the referee position in Washington in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, the regular place of office, territory and place of holding court to remain as at present.
- (2) Approved the change in this position from a part-time position at a salary of \$11,000 per annum to a full-time position at a salary of \$22,500 per annum, effective April 1, 1967 or as soon thereafter as appropriated funds can be made available.

#### FIRST CIRCUIT

##### *District of Maine*

- (1) Authorized the continuance of a full-time referee position at Bangor in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

##### *District of Massachusetts*

- (1) Authorized the continuance of a full-time referee position at Boston in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

#### SECOND CIRCUIT

##### *Eastern District of New York*

- (1) Authorized the continuance of a full-time referee position at Jamaica in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

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

- (1) Authorized the continuance of a part-time referee position at Yonkers in which the term of office will expire June 30, 1967 for a new six-year

term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Western District of New York*

- (1) Authorized the continuance of a full-time referee position at Buffalo in which the term of office will expire July 24, 1967 for a new six-year term, effective July 25, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*District of Vermont*

- (1) Authorized the continuance of a part-time referee position at Rutland in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

*Western District of Pennsylvania*

- (1) Authorized the continuance of a part-time referee position at Johnstown in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Approved a salary increase for this position from \$7,500 to \$11,000 per annum.

FOURTH CIRCUIT

*Middle District of North Carolina*

- (1) Authorized the continuance of a part-time referee position at Greensboro in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*District of South Carolina*

- (1) Authorized a new full-time referee position at Columbia at a salary of \$20,000 per annum, with the regular place of office at Columbia and designated places of holding court at Columbia, Charleston and Greenville.
- (2) Authorized the discontinuance of the part-time referee positions at Charleston, Columbia and Spartanburg, with annual salaries of \$5,000, \$5,000 and \$7,500, respectively.
- (3) Directed that the above changes be effective on April 1, 1967, or as soon thereafter as the district court can make the necessary arrangements.

*Eastern District of Virginia*

- (1) Authorized the continuance of a full-time referee position at Richmond in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of West Virginia*

- (1) Authorized the continuance of a part-time referee position at Grafton in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FIFTH CIRCUIT

*Northern District of Alabama*

- (1) Authorized the continuance of a full-time referee position at Birmingham in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of a part-time referee position at Decatur in which the term of office will expire on April 30, 1967 for a new six-year term, effective May 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Southern District of Alabama*

- (1) Authorized the continuance of a full-time referee position at Mobile in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of Georgia*

- (1) Authorized the continuance of a full-time referee position at Rome in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Southern District of Georgia*

- (1) Authorized the continuance of a full-time referee position at Savannah in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Eastern District of Louisiana*

- (1) Authorized the continuance of a full-time referee position at New Orleans in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of Texas*

- (1) Authorized the continuance of a full-time referee position at Fort Worth in which the term of office will expire on May 12, 1967 for a new six-year term, effective May 13, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Approved a salary increase for the part-time referee at Lubbock from \$8,500 to \$11,000 per annum.

## SIXTH CIRCUIT

*Eastern District of Kentucky*

- (1) Authorized the continuance of a full-time referee position at Lexington in which the term of office will expire on August 31, 1967 for a new six-year term, effective September 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.



*Eastern District of Michigan*

- (1) Authorized the continuance of a full-time referee position at Flint in which the term of office will expire on August 31, 1967 for a new six-year term, effective September 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Western District of Michigan*

- (1) Authorized the continuance of a full-time referee position at Grand Rapids in which the term of office will expire on April 14, 1967 for a new six-year term, effective April 15, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Northern District of Ohio*

- (1) Authorized the continuance of a full-time referee position at Cleveland in which the term of office will expire on May 31, 1967 for a new six-year term, effective June 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of a full-time referee position at Canton in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## SEVENTH CIRCUIT

*Eastern District of Illinois*

- (1) Authorized the continuance of a part-time referee position at Danville in which the term of office will expire on June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office to remain as at present.
- (2) Approved the designation of Kankakee and Mattoon as additional places of holding court for the Danville referee and Benton as an additional place of holding court for the East St. Louis referee.
- (3) Approved the transfer of Counties Clay, Richland, Wayne, Edwards, Wabash and White from the territory of the Danville referee to the territory of the East St. Louis referee.

*Southern District of Illinois*

- (1) Authorized the continuance of a full-time referee position at Springfield in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Southern District of Indiana*

- (1) Authorized the continuance of a full-time referee position at Indianapolis in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary and the regular place of office and territory to remain as at present.
- (2) Approved the designation of Richmond, Kokomo and Muncie as additional places of holding court for the referees of this district.

## EIGHTH CIRCUIT

*Northern District of Iowa*

- (1) Approved an increase in salary for the full-time referee at Cedar Rapids from \$20,000 to \$22,500 per annum.

*Eastern District of Missouri*

- (1) Authorized the continuance of two full-time referee positions at St. Louis in which the terms of office will expire on June 30, 1967 for new six-year terms, effective July 1, 1967, at the present salaries, the regular places of office, territories and places of holding court to remain as at present.

## NINTH CIRCUIT

*Central District of California*

- (1) Authorized the continuance of two full-time referee positions at Los Angeles in which the terms of office will expire on August 15, 1967 for new six-year terms, effective August 16, 1967, at the present salaries, the regular places of office, territories and places of holding court to remain as at present.

*District of Montana*

- (1) Authorized the continuance of a part-time referee position at Great Falls in which the term of office will expire on May 24, 1967 for a new six-year term, effective May 25, 1967, at the present salary, the regular place of office and territory and places of holding court to remain as at present.

*District of Oregon*

- (1) Authorized the continuance of full-time referee positions at Eugene and Corvallis in which the terms of office will expire on June 30, 1967 for new six-year terms, effective July 1, 1967, at the present salaries, the regular places of office, territories and places of holding court to remain as at present.

*Eastern District of Washington*

- (1) Approved the designation of Richland as an additional place of holding bankruptcy court and the discontinuance of Pasco as a place of holding bankruptcy court.

*District of Alaska*

- (1) Approved an increase in salary for the part-time referee of this district from \$10,000 to \$11,000 per annum.

## TENTH CIRCUIT

*District of Colorado*

- (1) Authorized the continuance of a full-time referee position at Pueblo in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, 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) Approved the designation of Las Vegas, Clovis and Las Cruces as additional places of holding bankruptcy court.

*Western District of Oklahoma*

- (1) Authorized the continuance of a full-time referee position at Oklahoma City in which the term of office will expire August 31, 1967 for a new six-year term, effective September 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*District of Wyoming*

- (1) Authorized the continuance of a part-time referee position at Cheyenne in which the term of office will expire June 30, 1967 for a new six-year term, effective July 1, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## APPROPRIATIONS

The Conference was advised that estimates of appropriations for the fiscal year 1968 totaling \$12,042,000 have been submitted to the Congress; that hearings have been held before the Subcommittee of the House Appropriations Committee. These estimates include funds for the salaries of all referee positions now authorized and include funds for sixty additional clerical positions and for other services for referees' offices. The Conference was advised that it will be necessary to obtain an increase in the appropriation for salaries of referees in an amount of \$25,000 because of the Committee's recommendations which the Conference approved. The Conference was further advised that income from the system in fiscal years 1967 and 1968 is expected to fall below the obligations for these two fiscal years.

As of June 30, 1966 the total surplus in the Referees Salary and Expense Fund was \$9,985,809.

## NEW CASE FILINGS

Judge Hamlin reported that a total of 192,354 cases was filed in the bankruptcy courts in fiscal year 1966. In the first half of fiscal year 1967, 99,080 cases were filed, representing an increase of 8.2 percent over the corresponding period of the preceding year. Total filings for the fiscal year 1967 are estimated to reach 205,000 cases.

An analysis of the cases filed in the first half of fiscal year 1967 indicates that 91.7 percent are non-business cases compared with 90.6 percent non-business bankruptcies in 1965.

## LEGISLATION

The Conference considered three proposals introduced in the first session of the 90th Congress and voted disapproval of each:

(1) H.R. 2521 is a bill sponsored by the National Bankruptcy Conference which would amend Sections 1(19), 5, 32a, 64a(1) and 67(4) of the Bankruptcy Act pertaining to partnerships and partners and related provisions. The Conference agreed that the objectives of the bill were generally good but was opposed specifically to proposed Sections 5d(1) and 5d(3). These proposed sections would give the bankruptcy court summary jurisdiction to determine the membership of a partnership when a petition is filed by or against a partnership. Upon adjudication of the partnership, the bankruptcy court would be permitted, at the insistence of any party in interest, to determine whether there will be a deficiency for partners not joined as bankrupts to make up. If a deficiency is found, the court would be permitted to enter judgment for this amount against one or more of such partners or authorize the deposit of a security adequate to insure payment of the deficiency. If the judgment is not duly paid or the deposit timely made, adjudication of the defaulting partners is authorized. The Conference noted that these proposed new subsections have no provision for adjudication upon notice and hearing and agreed with the Committee's recommendation that the court should not take assets of a co-partner to satisfy a partnership deficiency without such notice and hearing.

(2) H.R. 2520 is a bill sponsored by the National Bankruptcy Conference which proposes numerous amendments throughout Chapter XIII relating to wage earner proceedings. Specifically, the bill would amend Sections 606(1), 614, 623, 624, 626, 633(4), 642, 646(2), 652, 656(b), 659 (2) and (3), and 662, and would add new sections 644 and 657(1). The Conference was of the view that generally the objectives of the bill are good but disagreed with the bill in its present form. The Conference objected specifically to those sections which would change the title of "trustee" to "distributing agent." The Conference also objected to the new language to be added to Section 642 for the reason that if state law does not make "loss of profit" a measure of damages, the Bankruptcy Act should not do so; there appears to be no sound reason to give a creditor a right in a Chapter XIII proceeding that he does not

possess under state law. The Conference further objected specifically to amendments to Sections 646(2) and 652 relating to non-assenting secured creditors and in so doing agreed with the Committee that claims should not be considered secured beyond the value of the security and that such claims should be reduced to the value of the security in lieu of permitting the secured creditor to be excluded from the plan. The Conference agreed that the Committee should continue its study of problems arising in Chapter XIII cases.

(3) H.R. 2078 is a bill to amend Section 17 of the Bankruptcy Act to provide that taxes shall not be discharged and that debts that are not released by the bankruptcy proceeding shall be explicitly described in the order of discharge. In disapproving this proposal the Conference agreed that it would place upon the bankruptcy courts an overwhelming burden in holding hearings involving issues of fact as well as law relative to various claims to determine whether particular debts come within the several classes excepted from discharge by Section 17 of the Act. The Conference noted also that the bill is inconsistent with H.R. 4990—S. 578 (90th Congress), the so-called dischargeability bill previously approved by the Judicial Conference (Conf. Rept., September 1963 Session, pp. 84—85). The Conference further saw no reason for repeal of the recently enacted Public Law 89—496 which provides for the discharge of debts for taxes due and owing more than three years preceding bankruptcy.

#### FEES AND SPECIAL CHARGES

The Conference considered four specific recommendations relating to fees and special charges, taking the following action:

(1) Approved a revision of Schedule of Special Charges to be made under Section 40c(3) of the Bankruptcy Act to provide "for searching the records of the referee's office and furnishing information regarding any bankrupt or debtor, \$1.00." The Conference noted in support of this change that there is a growing demand upon the bankruptcy courts for lists of creditors' claims with information concerning the bankrupt's discharge and the like, and that the time of the clerical staffs consumed in the preparation of such data is becoming burdensome in many of the courts.

(2) The Director of the Administrative Office was authorized and directed to prepare and seek the introduction in the Congress

of an appropriate bill to amend Section 40c(1) and Section 52a to change the allocation of the clerk of court's portion of the filing fee from \$8.00 to \$3.00 in straight bankruptcy Chapter XI and Chapter XII cases. The Conference noted that the \$8.00 clerk's fee was established by the Referees Salary Act, effective July 1, 1947, and has remained unchanged although the services required of the clerk of court with respect to bankruptcy cases have been substantially reduced since that time. Section 22 was amended in 1959 to provide for automatic reference of bankruptcy cases, obviating the need for preparation of orders of adjudication in voluntary proceedings. Fund accounting and deposit proceedings have been simplified and bankruptcy case docketing and case reporting procedures of the clerk were simplified in 1963, relieving the clerk of the maintenance of active bankruptcy files and dockets while cases are pending. The Conference noted further that by allocating \$5.00 of the \$8.00 clerk's fee to the Referees Salary and Expense Fund the income of the Fund would be increased \$825,000, based on fiscal year 1967 estimates, without increasing the cost of these proceedings to bankrupts. The Conference also noted that with this additional income to the Fund, it may be possible to reduce the percentage charges against assets of bankrupt estates, thus reducing costs of administration in these cases.

(3) The Conference did not accept the Committee's recommendation for an increase of one-half to one percent in the Schedule of Fees authorized to be promulgated under Section 40c(2) of the Bankruptcy Act to be charged in asset and nominal asset cases.

(4) The Conference also disapproved the Committee's recommendation that the Schedule of Fees and Charges in arrangement cases filed under Chapter XI be increased. In disapproving this and the preceding item the Conference was of the view that the legislation approved to permit reallocation of \$5.00 of the \$8.00 clerk's fee to the Referees Salary and Expense Fund will compensate for the additional charges which have been incurred during the past year by the Fund because of increases in salaries and expenses of the system.

#### AUDIT OF STATISTICAL REPORTS

The Conference noted that the Bankruptcy Division is continuing the examination of statistical reports of closed asset bankruptcy cases for the determination of errors in the computation of amounts

due the Referees Salary and Expense Fund and over-payments of compensation to receivers and trustees. The Conference noted that pursuant to its authorization at its March 1966 session (Conf. Rept., p. 23) the audit program has been extended to arrangement proceedings concluded under Chapter XI of the Act during the current fiscal year but that there is at present no systematic examination of costs of administration in wage earner proceedings administered under Chapter XIII. The Conference agreed that inasmuch as these wage earner cases are growing in number in the current fiscal year, the studies of costs of administration be extended to Chapter XIII cases.

#### DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Conference received a report from the Administrative Office that the filing of Chapter XIII cases is increasing in the current fiscal year and that the estimated total of new wage earner cases in 1967 is 30,000 as compared with 28,261 in 1966. An increasing number of Chapter XIII trustees are using automatic data processing facilities for record keeping and the production of notices and reports to creditors. The Conference noted in the report of the Bankruptcy Division, however, that it will improve administration insofar as the bar, creditors and other parties in interest are concerned to have wage earner cases all handled by the same referee's office, either permanently or for reasonable periods of time. Accordingly, it approved the following guideline:

It is the sense of the Conference that in multiple referee offices all wage earner cases should be regularly referred to one referee or, in the alternative, that the supervision of wage earner proceedings should be rotated periodically but not more frequently than biannually among the several referees.

The Conference further approved an additional guideline in Chapter XIII cases as follows:

It is the sense of the Conference that referees should carefully review expenses of Chapter XIII trustees to the end that such expenses shall be reasonable and necessary and exclude such items as bar association dues, association membership dues, travel and subsistence expenses incident to attending meetings of professional associations, entertainment, purchase of law books, subscriptions to publications, and the like. Referees should likewise periodically review the compensation allowance of the trustee to the end that it will be reasonable and not in excess of the maximum compensation of a full-time referee.

## SEMINARS FOR REFEREES

Judge Hamlin reported that the Fourth Annual Seminar for Referees in Bankruptcy was then in session in Washington, D.C. (March 27-31, 1967), with twenty-seven referees attending as participants. He reported further that regional refresher seminars, primarily for referees who have attended one of the annual seminars, have been held at New York City, Los Angeles, Atlanta, Cleveland, Chicago, Denver, and Kansas City, Missouri. Judge Hamlin reported that the seminars are conducted by the referees who serve as discussion leaders and that the response has been gratifying.

## COSTS OF ADMINISTRATION

The Conference was informed that cost studies of the Bankruptcy Division for fiscal year 1966 showed continued improvement in over-all costs of administration in straight bankruptcy asset cases. In fiscal year 1964 the percentage cost of administration of these cases was 26.6 percent in cases having an average realization of \$4,840; in 1965 this percentage cost was lowered to 25.7 percent in cases having an average realization of \$5,227 and in 1966 the percentage cost was down to 24.8 percent in cases having an average realization of \$5,363.

Judge Hamlin reported that in reviewing the procedure of the Bankruptcy Division in presenting costs of administration to judges and referees the Committee had received a report of a subcommittee composed of Chief Judge Bailey Aldrich and Judges Edward Weinfeld and Wesley Brown. The Conference noted that the Committee believes that the studies of costs of administration should be concentrated on attorneys' fees which comprise over 41 percent of the total costs of administration and that the courts should adhere closely to the requirements of Section 58a(8) of the Bankruptcy Act requiring notice to creditors of all applications by receivers, ancillary receivers, marshals, trustees, committees and attorneys for compensation from a bankrupt estate for services rendered, specifying the amount and by whom made. The Committee also recommended that General Orders 42 and 44 be closely observed and no attorney's fee be allowed without an appropriate and detailed fee application which should include professional duties only and should never be based on duties properly performed by a trustee, receiver or other non-professional officer.



## CRIMINAL JUSTICE ACT OF 1964

Chief Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of that Committee.

The Conference noted that during the first half of fiscal year 1967 the Administrative Office had received 9,211 orders appointing counsel under the Criminal Justice Act, of which 265 were by the Court of General Sessions for the District of Columbia which began on December 1, 1966 to utilize the provisions of the Act in accordance with the ruling of the Comptroller General of the United States. Judge Hastings advised the Conference that by the end of January 1967 the number of orders of appointment by the Court of General Sessions of the District of Columbia had risen to 611.

The Conference also noted that during fiscal year 1966, representing a period of approximately ten months and ten days, attorneys were appointed to represent a total of 15,635 defendants and 575 appellants. Cumulative net disbursements under the Act in the first half of fiscal year 1967 were \$979,092. Investigative, expert or other services which have been authorized during the first half of the fiscal year 1967 are estimated to cost \$18,879 as compared with approximately \$31,000 obligated for this period in fiscal year 1966.

Judge Hastings further stated that a statistical analysis of the financial affidavits executed by 2,243 defendants revealed that 26 percent were employed and 74 percent were unemployed. Of those who were employed the average weekly salary was \$63.00.

Judge Hastings stated that the total amount requested in the appropriation request for fiscal year 1968 to implement the Criminal Justice Act is \$3,500,000. This constitutes an increase of \$500,000 over the sum requested for fiscal year 1967 to provide funds to extend the coverage of the Act to the District of Columbia Court of General Sessions.

## REPRESENTATION OF SAME DEFENDANT IN TWO TRIALS

The Conference noted that the Committee had been requested for its views on the compensation to be allowed counsel in instances where a second trial was necessary for a defendant. The question arose as the result of a second trial in the District of

Columbia which was required because the first trial resulted in a hung jury. The Chief Judge of the Circuit ruled that the statutory limit of \$500 applied because he did not consider the case to involve protracted litigation as defined by the statute. The Conference agreed with the Committee that it could not see any basis for setting a firm standard in such cases and agreed that each must be decided on its individual merits by the appropriate district and chief circuit judges.

#### STATUTORY AMENDMENTS

Judge Hastings reported that the subcommittee, chaired by Senior Judge Harvey M. Johnsen (Conf. Rept., September 1966 Session, p. 53), had met with representatives of the Department of Justice and had begun discussions as to the areas where improvement in the Act might ultimately be possible. He advised that the Committee and the Department representatives were in agreement at this point, however, that experience is still too inconclusive to warrant making any proposals. Judge Hastings reported further that a representative of the Department of Justice met with the full Committee and that excellent working relationships have been established between the Department and the Committee.

#### AVAILABILITY OF LOCAL PLANS

Because of some complaints which have been received from appointed counsel that they had difficulty in obtaining copies of local district and circuit plans to implement the Act, the Conference directed the Administrative Office to communicate with all federal judges requesting them to review their practices in making their plans available to avoid the possibility of appointed counsel not having proper access to them.

#### ADMINISTRATION OF THE PROBATION SYSTEM

Chief Judge Walter E. Hoffman, Chairman, presented the report of the Committee on the Administration of the Probation System.

#### SENTENCING INSTITUTES

The Conference approved the holding of a joint sentencing institute for the judges of the Fourth and Fifth Judicial Circuits at

Atlanta, Georgia, on October 29-31, 1967. Judge Hoffman advised that the agenda will be presented for Conference approval at the September 1967 meeting.

#### PROPOSAL FOR A UNITED STATES CORRECTIONS SERVICE

The Conference noted that two identical bills, S. 916 and H.R. 5038, had been introduced in the 90th Congress to create a United States Corrections Service which would remove from court control the supervision of persons on probation. The Conference voted disapproval of these bills in their present form.

Judge Hoffman advised the Conference that a subcommittee of the Committee on the Administration of the Probation System, chaired by Judge William B. Herlands, had met with representatives of the Attorney General's office in an effort to develop legislation which would be mutually satisfactory to the judiciary and the Administration. As a result of these meetings an amended draft of S. 916 had been developed which would make changes within the correctional organization of the Department of Justice and would provide a strengthened, well-structured Corrections Council to replace the now inactive Advisory Corrections Council. The bill, as amended, would not divide or dislocate the probation service. The Conference approved the amended proposal as submitted by the Committee.

#### RESIDENTIAL COMMUNITY TREATMENT CENTERS

The Conference considered a proposal now being drafted in the Bureau of Prisons which would make available the several residential community treatment centers of the Bureau of Prisons for selected probation and parole cases, thus affording housing and treatment facilities not now available to such persons. The Conference approved the proposed legislation in principle and purpose and noted that the Committee would give further study to the provisions of the bill.

#### RESEARCH PROJECTS

Judge Hoffman advised the Conference of a proposal of the Center for Studies of Criminal Justice of the University of Chicago to conduct a research project in cooperation with the probation office of the United States District Court of the Northern District of Illinois. The Center which itself is funded by the Ford Founda-

tion will seek a grant from the National Institute of Mental Health to finance a proposed project which will be designed to test the possible value of using sub-professional personnel, including some rehabilitated former offenders, as counselors under the close supervision of skilled probation officers. Judge Hoffman advised that the Committee approved the concept of the project.

Judge Hoffman also reported on the progress of the five-year research project conducted by the School of Criminology, University of California, in cooperation with the probation office of the United States District Court for the Northern District of California under a \$275,000 grant from the National Institute of Mental Health. This project is now in its third year and some of the data produced thus far have raised questions with respect to some prevailing probation concepts and practices. Judge Hoffman stated that the Probation Division of the Administrative Office had proposed to the University the expansion of the project to include a representative number of federal probation offices in dissimilar districts to validate the tentative findings of the San Francisco project and to determine to what degree they may be relevant elsewhere. Judge Hoffman stated that the Committee had endorsed the proposal with the understanding that probation offices would be selected for participation only with the concurrence of the respective courts. The proposal anticipates funding through federal government sources.

#### ADMINISTRATION OF THE CRIMINAL LAW

Circuit Judge George C. Edwards, Jr., Chairman, presented the report of the Committee on the Administration of the Criminal Law.

#### FEDERAL MAGISTRATES ACT

Judge Edwards reported that pursuant to the authorization of the Conference at its September 1966 session (Conf. Rept., p. 54) he had conferred with the Chairman and members of the staff of the Senate Subcommittee on Improvements in Judicial Machinery concerning the differences between the Committee and the Senate Subcommittee in the bill to establish a system of full-time and part-time United States magistrates in place of the present system of United States commissioners. Judge Edwards stated that the Committee at its last meeting considered a redraft of S. 3475, 89th

Congress. He reported agreement on two areas of differences which remained after the September 1966 session of the Conference. He stated that the draft bill would in Section 636(b) (1) allow the district court to assign the United States magistrate the power within his territorial jurisdiction to serve as a special master in an appropriate civil action. The draft bill adds to this provision the condition that this delegation is subject to the applicable provisions of Title 28, United States Code, and the Federal Rules of Civil Procedure. He stated that the Committee approved the provisions of this section of the draft bill subject to the qualifications expressed in *LaBuy v. Howe Leather Company*, 352 U.S. 249, and also subject to the observation that this approval is not to be construed to modify or extend the present rules on the use of special masters. He stated that the Committee was of the view that these qualifications could be met by incorporation of a reference to the *LaBuy* rule in the report of the Congressional Committee.

Judge Edwards reported further that the draft bill in Section 636(b) (2) provides that the court may delegate through the magistrate the duty of providing assistance to the district court in the conduct of pretrial or discovery proceedings in civil or criminal actions. He stated that the Committee approved this version in lieu of the counterpart provision which had appeared in S. 3475. He also reported that the draft bill includes among powers and duties which may be assigned to magistrates (636(b) (3)) "preliminary review of applications for post-trial relief made by individuals convicted of criminal offenses and submission of a report and recommendation to facilitate the decision of the district judge having jurisdiction over the case." He advised the Conference that the Committee approved this version subject to the addition of a phrase after the word "case"—"as to whether there should be a hearing."

Judge Edwards reported further that the other area of prior disagreement with the Senate subcommittee involved Section 302 of S. 3475 extending the jurisdiction of a magistrate designated for that purpose to try a "minor offense" where the defendant signs a written consent waiving trial before the district court and trial by jury. He stated that the definition of "minor offense" in the draft bill has been narrowed to meet the approval of the Committee by excepting from such jurisdiction a list of misdemeanors deemed inappropriate to the trial jurisdiction of magistrates. The Conference voted its approval of the draft bill which the Committee

had last considered subject to the qualifications expressed by Judge Edwards.

#### JURISDICTION OF UNITED STATES COMMISSIONERS

Judge Edwards reported that the Department of the Interior is sponsoring a draft bill which would extend the petty offense trial jurisdiction of designated commissioners to petty offenses committed in areas where the United States exercises only proprietary jurisdiction. The present provisions of the statute now are limited to areas where the United States has exclusive or concurrent jurisdiction and the amendment would extend the jurisdiction of the commissioner to petty offenses committed with any federal area administered for wild life, park, recreation, natural or historic purposes. The Conference approved the proposed bill in the event that the Federal Magistrates Bill is not enacted by the Congress.

#### APPELLATE REVIEW OF SENTENCING

The Conference considered S. 2722 and H.R. 14343, 89th Congress, which provide for the appellate review of sentences imposed in criminal cases. The Conference agreed with the principle of appellate review on the condition that (1) three years be the minimum appealable sentence; (2) the bills exempt from the provisions for appellate review sentences providing for an indeterminate term (e.g., 18 U.S.C. 4208(a), 5010); (3) that language be added to provide that a decision of a panel of the court of appeals shall be final and there shall be no right to file or have considered an application for an en banc review of such panel decision except that the court of appeals may sua sponte on its own discretion grant further review en banc and (4) language be added to clarify the fact that there is no right of appeal except to the United States court of appeals and that any application for review in the Supreme Court must be by petition for a writ of certiorari to review a claim of constitutional violation.

#### COMMITMENT OF PERSONS ACQUITTED ON THE GROUND OF INSANITY

Judge Edwards reported that the Committee had considered bills pending in the 89th Congress (S. 3689, S. 3753 and S. 1007). He stated that the Committee was in full agreement on the vital need for federal legislation in this area but that inasmuch as the

Committee has been advised that extensive hearings are planned on bills to be introduced in the 90th Congress and since the interested executive agencies have not had an opportunity to express their views, he requested and the Conference granted authorization for the Committee to continue its study of this subject and report to the next session of the Conference.

#### AMNESTY FOR FIRST OFFENDERS

The Conference disapproved the form of H.R. 8373 (89th Congress) which was reintroduced in identical form in the 90th Congress as H.R. 5714, a bill providing for amnesty for first offenders (Conf. Rept., September 1966 Session, p. 56). The Conference approved the recommendation of the Committee that the appropriate committee of the Congress be advised that while it disapproved of the form of the bill providing amnesty for first offenders, the Conference favors the principle of providing amnesty for some first offenders.

#### OTHER LEGISLATION

The Conference considered and disapproved two additional legislative proposals as follows:

1. S.J. Res. 179, 89th Congress, proposing an amendment to the Constitution relating to the powers of courts of the United States to review convictions in criminal actions.
2. S.J. Res. 196, 89th Congress (reintroduced in the 90th Congress as S.J. Res. 22), which would make an admission admissible against a defendant in any court if it was made voluntarily.

#### COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

The Chairman of the Committee on the Operation of the Jury System, Circuit Judge Irving R. Kaufman, presented the Committee's report.

#### JURY SELECTION

Judge Kaufman reported that pursuant to the authorization of the Conference at its September 1966 session (Conf. Rept., p. 57), a subcommittee was appointed to study the mechanics of the several proposals relating to both federal and state methods of selec-

tion of juries subject to the principle endorsed by the Conference of random selection of jurors in a manner which would produce a fair cross-section of the community in the district or division in which the court is held. As a result of the work of the subcommittee and subsequently of the full committee, he presented to the Conference for consideration and the Conference approved a draft of a bill to assure non-discrimination in federal and state jury selection and service.

Title 1 of the draft bill as approved by the Conference provides for the random selection of jurors. Voter lists are to be used as the source of prospective jurors except in a few jurisdictions where voter lists do not represent a fair cross-section of the community. In those areas provision is made for the use of other sources. Title 1 employs the approach of the Criminal Justice Act in providing for the adoption of a plan for random jury selection for each judicial jurisdiction or division subject to the approval of the judicial council and under rules adopted by the Judicial Conference of the United States. The bill permits separate plans for each division within a judicial district and in districts without statutory divisions, the equivalent of a division may be established by order of the district court for the purpose of the Act.

The bill also requires that the district plan spell out procedures for the selection of names to go into the master wheel so that the names of persons residing in each of the political subdivisions of the district or division will be represented in the wheel in substantial proportion, either to the number of actual voters at the last general election in each political subdivision or to the number of registered voters if registration of voters is uniformly required throughout the district or division.

The bill requires that the plan provide for periodic emptying and refilling of the wheel; that it specify those occupational classes or groups of persons whose members may on individual request either be excused from jury service subject to the qualification that the district court must find and the plan must state that jury service by such class or group would create undue hardship or extreme inconvenience to the members and that excusing such individual would be consistent with the policy of and rights secured under the Act. Other provisions for exemption are spelled out in the bill as are the procedures incident to the public drawing of names at random from the master jury wheel.



Title 2 of the draft bill prohibiting discrimination in state jury selection and providing to secure the right to an impartial state jury is substantially similar to Title 2 of the Civil Rights bills submitted to the Congress by the Administration in 1966 and 1967 and approved by the Conference (e.g., H.R. 14765).

In approving the Committee's draft bill, the Conference disapproved the following bills pending in the 90th Congress: S. 383, S. 384, S. 385, S. 386, S. 387, S. 1318 and S. 1319, all bills relating to jury selection. The Conference noted that S. 989, 90th Congress, substantially embodies the recommendations of the Committee which it has approved as Title 1 of the Committee draft.

#### CRIMINAL CONTEMPT STATUTE

Pursuant to Conference action at the September 1966 session (Conf. Rept., p. 57) Judge Kaufman appointed a subcommittee headed by Judge Gignoux to study the possible statutory conflicts which might result from the Supreme Court's opinion in *Cheff v. Schnackenberg*, 384 U.S. 373, which held that sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived. As a result of the subcommittee's deliberations, Judge Kaufman presented for Conference consideration a draft of a federal contempt statute which would spell out the distinction between those criminal contempts which may, by limiting the sentence which may be imposed to the petty offense maximum (six months imprisonment and/or \$500 fine), be disposed of without the necessity of offering the accused trial by jury and those contempts which may be tried only by jury unless jury trial is waived. After consideration of the proposed bill, the Conference approved it and directed the Administrative Office to transmit it to the Congress.

#### COMMITTEE ON SUPPORTING PERSONNEL

The Chairman of the Committee, Judge Theodore Levin, presented the Committee's report.

#### SECRETARIES TO JUDGES

The Conference reaffirmed its approval of the bill originally introduced in the 89th Congress and reintroduced in the 90th Congress as H.R. 1091 to provide the same retirement benefits for

secretaries to federal judges as are now enjoyed by Congressional employees.

#### SUPPORTING PERSONNEL FOR A DISABLED JUDGE

Judge Levin reported that his Committee, at the request of the judge involved, reconsidered the specific case which the Director had presented to the Conference at the September 1966 session (Conf. Rept., p. 32), as a result of which the Conference had instructed him that the appointment of a law clerk and a bailiff-messenger should not be processed for a judge who had been certified as permanently disabled under the provisions of 28 U.S.C. 372(b) by the Judicial Council of his Circuit and who had also been found to be permanently disabled by the President in appointing an additional judge as provided in Section 372(b). Upon Judge Levin's report of the Committee's consideration of the case, the Conference agreed that no further action was required.

#### CLERK'S OFFICE

The Conference approved the recommendation of the Committee that one additional law clerk be assigned to the Southern District of New York to handle pro se matters. The position was regarded as necessary to relieve the judges of a great amount of detailed research work which has developed as a result of a large increase in the volume of habeas corpus and other prisoner petitions. The Conference also directed the Budget Committee to include a request for funds for this position in the appropriation for the judiciary for fiscal year 1969.

#### LIBRARIANS

The Conference declined to take any action in upgrading the positions of the librarian and the assistant librarians of the Seventh Circuit Court of Appeals library. The Conference took the position that the grades of librarians and assistant librarians were established after careful study and that these grades had been equitably established.

#### COURTS OF APPEALS

Judge Levin pointed out to the Conference that for the next fiscal year the Congress is being requested to provide funds for

22 staff law clerks, 33 clerk-stenographers and 36 messengers for the courts of appeals. He advised the Conference that Chief Judge Lombard had proposed that no attempt be made to change the current appropriation request but that the 1969 appropriation request provide for one additional law clerk for each circuit judge who regards the extra assistance as necessary; that with respect to the 33 clerk-stenographers the fiscal 1969 budget reflect any of this number not allowed in fiscal 1968 and that if the proposal for an additional law clerk for each judge was approved, the item in the current budget request for 36 messengers should be reexamined.

Judge Lombard also proposed that each chief circuit judge be provided an administrative assistant to aid him in the administrative load arising from increased caseloads, the addition of new judges, the greater number of prisoner petitions, the need for more three-judge courts and other matters, but if the 1968 request for circuit coordinators to aid in the administration of the Criminal Justice Act is granted, their duties should be expanded to include those contemplated for administrative assistants.

The Conference agreed to support in principle the needs outlined by Chief Judge Lombard and requested the Committee to study these items at its next meeting.

#### LAW CLERKS—COURT OF CLAIMS

The Conference agreed that the Chief Judge of the Court of Claims had made an adequate showing for the need for four additional law clerks for the commissioners of the Court of Claims and voted its approval of this request.

#### COURT CRIERS

Judge Levin reported a resolution of the Ninth Circuit Conference for a change in the grade previously established by the Judicial Conference for court criers. The Conference agreed with the Committee's action in denying the requested increase.

#### INTERPRETERS

The Conference approved the request of the Chief Judge for the Southern District of California for a full-time interpreter and the Budget Committee was requested to include funds for this position in the next appropriation.

## COURT REPORTER-SECRETARY

The Conference approved the separation of the positions of secretary and court reporter in the District of North Dakota because of the increased workload in the court of Judge Ronald N. Davies.

## TRIAL PRACTICE AND TECHNIQUE

Chief Judge Alfred P. Murrah, Chairman of the Committee, presented the report of the Committee on Trial Practice and Technique.

Judge Murrah concentrated his report on the work of the Coordinating Committee for Multiple Litigation, a subcommittee of the Committee on Trial Practice and Technique. He noted that most of the electrical equipment cases have now been terminated, attesting to the success which the judges participating in the program have achieved. He stated that other facets of antitrust litigation of a multi-district nature remained, such as the rock salt cases, the aluminum cable cases and other types of multiple litigation. Discussing the over-all problems of trial practice and technique, he reiterated the importance of seminars for new judges and referred to the work of the Special Committee on Continuing Education, Research, Training and Administration and stated that his Committee is hopeful of a Federal Judicial Center to assist not only in the training programs but in providing the necessary staff assistance to the Conference committees.

## RESOLUTIONS

On the motion of Chief Judge Hastings who noted that Chief Judge Tuttle was completing his term as Chief Judge of the Fifth Judicial Circuit, the Conference adopted the following resolution:

*Resolved*, that the Conference, with regret, takes note that Chief Judge Elbert Parr Tuttle of the Fifth Judicial Circuit has announced that he will attain the age of seventy years this coming summer and will then relinquish his position as a circuit chief judge and thereby cease to be a member of this Conference.

That we record in the minutes of the Conference our unanimous recognition of the outstanding contribution to the work and progress of the Conference of this excellent member and fine gentleman; That we shall sorely miss him at our future meetings, both as a judicial colleague and a friendly and happy associate; That we wish for him many more years of unexcelled service as a member of the federal judiciary in whatever form he may choose to serve; and That good health and happiness may attend him and his lovely wife.

The Chief Justice noted with regret the absence because of illness of one of the members of the Conference from the Seventh Circuit, the Honorable Edwin A. Robson, United States District Judge for the Northern District of Illinois, whereupon the Conference adopted the following resolution:

*Resolved*, at the suggestion of the Chief Justice, that the members of the Judicial Conference of the United States express their deep appreciation to Honorable Edwin A. Robson, United States District Judge for the Northern District of Illinois, for his pioneering services to the administration of justice in the Federal judicial system as coordinator of multi-district litigation and for the singular success which he and his committee have achieved in supervising the conclusion of more than 1,900 cases arising out of the electrical equipment antitrust proceedings involving over 25,000 separate claims in thirty-five judicial districts.

The members of the Conference also extend to Judge Robson their best wishes for a full and complete recovery and continued good health in the future.

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

At the request of Chief Judge Clement F. Haynsworth, the Conference, pursuant to 28 U.S.C. 48, consented to the pretermission of the term of court of the Court of Appeals for the Fourth Circuit scheduled to be held at Asheville, North Carolina, in June 1967.

#### 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.*

MAY 29, 1967

## INDEX

	Page
Additional judgeships .....	8, 10, 12
Additional personnel .....	44, 45
Admissions to practice .....	16
Appellate review of sentences .....	40
Appropriations:	
Bankruptcy .....	29
Budget Committee, report of .....	2
Criminal Justice Act of 1964 .....	35
Assignment of judges, advisory committee on .....	23
Bankruptcy administration:	
Appropriations .....	29
Chapter XIII:	
Developments in the use of .....	33
New guidelines .....	33
Committee on, report of .....	23
Costs of administration .....	34
Fees and special charges .....	31
Legislation .....	30
Referees:	
Arrangements, changes in .....	24
Seminars for .....	34
Vacancies .....	24
Civil actions .....	20
Commissioners, U.S., jurisdiction of .....	40
Conference:	
Call of .....	1
Release of action .....	47
Contempt proceedings .....	17, 43
Continuing education, research, training and administration:	
Federal Judicial Center, proposal for establishment of .....	4
Special committee, report of .....	3
Court administration:	
Additional judgeships .....	9, 12
Admissions to practice .....	16
Committee on, report of .....	11
Courtroom photographs .....	15
Courts in banc .....	15
Defendants at large after affirmance of conviction .....	16
Examination of court offices .....	14
Judicial disability .....	14
Judicial Survivors Annuity Fund .....	15
Matters relating to judges .....	12
Places of holding court .....	11
Salary of Director of Administrative Office .....	17

Courts:	
Courts of appeals:	Page
Additional judgeships.....	8, 12
Additional personnel.....	44
Appellate review of sentences.....	40
Courts in banc.....	15
Librarians and assistant librarians—(Seventh Circuit).....	44
Rules on procedure.....	22
Study of.....	8
District courts:	
Additional judgeships.....	10, 12
Additional personnel.....	44, 45
Court reporter-secretary, separation of in North Dakota.....	46
Courtroom photographs.....	15
Examination of court offices.....	14
Places of holding court.....	11
Puerto Rico, jurisdiction of.....	18
Court of Claims:	
Additional personnel.....	45
Criminal Justice Act:	
Appointment of attorneys, report on.....	35
Appropriations.....	35
Availability of local plans.....	36
Committee, report of.....	35
Representation of same defendant in two trials.....	35
Statutory amendments.....	36
Criminal law:	
Amnesty for first offenders.....	41
Appellate review of sentences.....	40
Commitment of persons acquitted on the ground of insanity.....	40
Committee on, report of.....	38
Federal Magistrates Act.....	38
Legislation.....	41
United States commissioners, jurisdiction of.....	40
Defendants at large after affirmance of conviction.....	16
Director of Administrative Office, salary of.....	17
Federal Judicial Center.....	4
Federal Magistrate Act.....	38
Form J.S. 10.....	10
Intercircuit assignment of judges:	
Committee on, report of.....	23
Judicial appropriations.....	2
Judicial Survivors Annuity Fund.....	15
Judges:	
Disability of.....	14
Disabled judge, supporting personnel for.....	44
Secretaries to.....	43
Survivors Annuity Fund.....	15
Jury selection.....	41
Jury system:	
Committee on, report of.....	41
Criminal contempt statute.....	43
Jury selection.....	41

	Page
Legislation.....	20, 30, 41
Multiple litigation, subcommittee on.....	46
Pretermission of the terms of courts of appeals.....	47
Probation system:	
Committee on, report of.....	36
Research projects.....	37
Residential community treatment center.....	37
Sentencing institutes.....	36
United States corrections service.....	37
Release of Conference action.....	47
Research projects.....	37
Resolutions.....	46
Revision of the laws:	
Civil actions, role of United States in.....	20
Committee on, report of.....	17
Contempts.....	17
District Court of Puerto Rico.....	18
Legislation.....	20
Social security cases.....	19
Statutory revisions resulting from merger of admiralty and civil procedure.....	18
Veterans' appeals.....	22
Robson, Honorable Edwin A:	
Resolution of Conference expressing appreciation of and best wishes to.....	47
Rules of practice and procedure:	
Committee on, report of.....	22
Seminars for referees.....	34
Sentencing institutes.....	36
Social security cases.....	19
Statistics, judicial:	
Additional judgeships.....	8, 10
Committee on, report of.....	8
Courts of appeals, study of.....	8
Form J.S. 10.....	10
Statutory revisions.....	18
Supporting personnel:	
Clerk's office.....	44
Committee on, report of.....	43
Court criers.....	45
Court reporter-secretary.....	46
Courts of appeals.....	44
Interpreters.....	45
Law clerks—Court of Claims.....	45
Librarians.....	44
Secretaries to judges.....	43
Supporting personnel for disabled judge.....	44
Trial practice and technique:	
Committee on, report of.....	46
Multiple litigation, subcommittee on.....	46
Tuttle, Honorable Elbert Parr:	
Resolution of Conference expressing appreciation of and best wishes to.....	46
Veterans' appeals.....	22