

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

SEPTEMBER 21-22, 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.

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

September 21-22, 1967

The Judicial Conference of the United States convened on September 21, 1967, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331 and continued on September 22. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Judge Carl McGowan (designated by the Chief Justice in place of Chief Judge David L. Bazelon who was unable to attend)
Chief Judge Edward M. Curran (designated by the Chief Justice in place of Judge Matthew F. McGuire who was unable to attend)

First Circuit:

Chief Judge Bailey Aldrich
Judge Edward T. Gignoux, District of Maine

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 John R. Brown
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
Judge Edwin A. Robson, Northern District of Illinois

Eighth Circuit:

Chief Judge Charles J. Vogel
Chief Judge Roy W. Harper, Eastern and 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 Arthur J. Stanley, District of Kansas

Court of Claims :

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals :

Judge Giles S. Rich (designated by the Chief Justice in place of Chief Judge Eugene Worley who was unable to attend)

Senior Judges John Biggs, Jr., Oliver D. Hamlin, Jr., Harvey M. Johnsen, Marvin Jones, Albert B. Maris; Circuit Judges Jean S. Breitenstein, George C. Edwards, Jr., and Irving Kaufman; and Chief Judge William J. Campbell and Judge Theodore Levin attended all or some of the sessions.

The Honorable Roman L. Hruska, a member of the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, attended the morning session of the first day of the Conference and also addressed the Conference. Mr. William T. Finly, Jr., Counsel of the same Subcommittee, and Mr. John F. Davis, Clerk of the Supreme Court, attended all or some of the sessions of the Conference.

The Attorney General, Honorable Ramsey Clark, accompanied by Assistant Attorney General Ernest C. Friesen, Jr., attended the morning session of the second day of the Conference. The Attorney General addressed the Conference on matters of interest to the Conference and the Department of Justice. Mr. Friesen also attended part of the session on the first day.

Professor Bernard J. Ward, Reporter for the Advisory Committee on Appellate Rules, attended the portion of the Conference devoted to the discussion of the proposed Federal Rules of Appellate Procedure.

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

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

Warren Olney III, Director of the Administrative Office of the United States Courts, had previously submitted to the members of

the Conference his report for the fiscal year ending June 30, 1967, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference authorized the immediate release of the report for publication and authorized the Director to revise and supplement the final printed edition to be issued later.

STATE OF THE DOCKETS

Courts of Appeals.—Ten percent more cases were filed in the courts of appeals in 1967 than in 1966. Since 1960 the number of appeals docketed has more than doubled, Mr. Olney reported. At the same time the number of appeals pending has increased almost threefold. A total of 7,903 appeals was filed in the United States courts of appeals in fiscal year 1967. Appeals disposed of in the same year reached a record high of 7,527, an increase of almost 1,000 over the prior year. Dispositions, however, were almost 400 less than the cases filed and as a result on June 30, 1967, the number of appeals pending on the dockets of the courts of appeals increased to a new record of 5,763.

The largest increase in the docketing of new appeals was in the Fourth Circuit where filings increased by 31 percent. Other large increases occurred in the Third Circuit, 24 percent; the Eighth Circuit, 14 percent; the Second Circuit, 12 percent; and the Sixth Circuit, 10 percent. Filings in the Fifth Circuit increased to a new high of 1,173. This is the fourth consecutive year in which cases docketed in the Fifth Circuit have exceeded 1,000. For the first time appeals docketed in the Second and Ninth Circuits exceeded 900.

District Courts.—Cases filed in the United States district courts, exclusive of bankruptcies, leveled off for the first time in many years. In 1967 there were 70,961 civil actions filed as compared with 70,906 in 1966. Civil terminations rose almost 4,000, undoubtedly reflecting the additional judge-power provided under the Judgeship Act of March 18, 1966. The median time interval from issue to trial for civil cases tried in the United States district courts rose in 1967 to 12 months as compared with 11 months in 1966. At the same time, three-year-old cases pending on the dockets of the district courts increased by 9.5 percent over the prior year.

Criminal cases in the United States district courts rose almost three percent during 1967 to a total of 30,534. Increases were noted particularly in the number of Selective Service Act cases, prosecutions for violations of the narcotics laws, and robbery and assault

cases. Terminations in criminal cases numbered 28,677, a total substantially less than the number of case filings. As a result, pending criminal cases on June 30, 1967, increased 16 percent over those pending a year earlier.

Bankruptcy cases continued to rise for the fifteenth consecutive year. In 1967 a total of 208,329 bankruptcy cases was filed as compared with 192,354 cases in 1966, an increase of 8.3 percent. The proportion of business bankruptcies decreased to eight percent of the total, whereas most of the bankruptcy filings, 92 percent, were in wage-earner proceedings. The greatest numerical increases in bankruptcy cases came in the Sixth and Ninth Circuits.

Special Courts.—A heavy increase in the work of the Customs Court was noted during 1967. The number of protest cases received during the year increased from 32,655 in fiscal year 1966 to 108,693 in fiscal year 1967. The United States Court of Customs and Patent Appeals showed a decrease in 1967 in the number of customs cases but an increase in the number of patent cases docketed.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, advised the Conference that the judiciary appropriation bill for fiscal year 1968 has been passed by the House of Representatives but is pending in the Appropriations Committee of the United States Senate. The judiciary has, therefore, been operating under continuing resolutions of the Congress, limiting the program and activities of the courts to the amounts authorized in the previous year.

For fiscal year 1967 the Congress appropriated for the judiciary, exclusive of the Supreme Court, the sum of \$87,221,500. The cost of operating the courts, including the Administrative Office, aggregated \$85,978,700, leaving an unobligated balance of \$1,242,800. This savings was in large measure due to judgeship vacancies. Savings due to such vacancies also bring about savings in expenditures for law clerks, secretaries and other employees normally required for a judge's staff.

For fiscal year 1968, the budget estimates for the judiciary, exclusive of the Supreme Court, as submitted to the Congress aggregated \$93,603,400. The House Appropriations Subcommittee held hearings on the budget in February 1967. On May 25, 1967, the Committee reported the bill recommending appropriations aggre-

gating \$91,314,000. The bill as reported by the Committee was approved by the House of Representatives but with an amendment restricting expenditures in fiscal 1968 to 95 percent of the total estimated expenditures. On June 5, 1967, the Director of the Administrative Office addressed a letter to the Chairman of the Senate Appropriations Subcommittee advising him of his election, approved by the Budget Committee, not to appeal for the restoration of any positions or items of expense which were denied by the House but to consider an amendment to the bill which would exclude the judiciary from the provisions restricting expenditures.

The appropriations bill as approved by the House of Representatives contains obligational authority for nine additional deputy clerks and 22 staff law clerks for the courts of appeals; 30 additional deputy clerks for the district courts; 30 additional probation officers and 23 clerk-stenographers for the probation system; and the conversion of 80 additional secretaries to the combination position of crier-law clerk. The House also allowed the full amount of the request made under the heading "Salaries of Referees," thus permitting the implementation of all of the actions of the Judicial Conference in March and September 1966. The House bill also provides for 40 additional clerical positions for referees' offices and six additional positions for the Administrative Office of the United States Courts.

For fiscal year 1969 the Conference approved the recommendation of the Budget Committee—a total budget, exclusive of the Supreme Court and the Customs Court, in the sum of \$93,594,000, an increase of \$3,710,000 over the amount included in the judiciary appropriation bill for 1968 as approved by the House of Representatives.

The budget for 1969, as approved by the Conference, provides for 12 additional deputy clerks, 55 law clerks, and 33 stenographers for the United States courts of appeals. There is also provision for 83 deputy clerks for the United States district courts. The estimate for "Salaries of Referees" will permit implementation of the actions of the Judicial Conference with respect to new referee positions and changes in salaries and arrangements of existing referees. Provision is also made for 97 additional full-time clerical employees for referees' offices, the conversion of 15 part-time clerks to full-time status and the conversion of 23 temporary employees to a permanent status. For the Administrative Office provision has been made

for five new positions for the purpose of instituting a program for compiling data on the record of federal offenders following their discharge from prison or release from probation or parole supervision. Seven additional employees are also included in the Administrative Office to cope with the increased workload in the Division of Procedural Studies and Statistics.

The Conference further authorized the Director of the Administrative Office to amend the budget estimates for 1969 and submit requests for supplemental appropriations required as a result of the enactment of a federal salary bill, the jury selection and service bill, the federal magistrates bill, and other pending legislation or other purposes not yet anticipated in time for submission of the 1969 appropriation request to the Conference.

SPECIAL COMMITTEE ON CONTINUING EDUCATION, RESEARCH, TRAINING AND ADMINISTRATION

Chief Judge John S. Hastings, whose suggestion at the September 1966 session of the Conference led to the appointment of a Special Committee on Continuing Education, Research, Training and Administration (Conf. Rept., p. 37), brought to the attention of the Conference the fact that the House of Representatives had passed H.R. 6111, a bill substantially similar to the proposal for the establishment of a Federal Judicial Center which had been approved by the Judicial Conference at its March 1967 meeting (Conf. Rept., p. 3). Judge Hastings pointed out that the bill which was passed by the House of Representatives on June 19, 1967 differed from the Conference approved bill primarily in requiring the supervisory board of the Federal Judicial Center to study and determine ways in which automatic data processing and systems procedure may be used in federal judicial administration. Judge Hastings pointed out that such a requirement had been considered to be implicit in the Judicial Conference recommendation and the Conference agreed to reaffirm its position on the establishment of a Federal Judicial Center and voted to endorse H.R. 6111 as passed by the House of Representatives.

JUDICIAL STATISTICS

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

COURTS OF APPEALS

Judge Johnsen stated that the Committee had reviewed the docket situation of all of the courts of appeals and it noted that the number of cases docketed in the courts of appeals in fiscal year 1967 was 10 percent greater than in 1966, with the average of docketings for the 88 existing judgeships thus increasing on a national basis from 82 cases in 1966 to 90 in 1967. Although terminations have likewise increased from 55 per judgeship in 1966 to 85 per judgeship in 1967, nevertheless, terminations have not kept pace with the docketing and as a result the number of cases pending on June 30, 1967 stands at a record high of 5,763—more than two and one-half times as many as on June 30, 1960.

Almost 22 percent of the pending cases are criminal appeals, representing an increase of approximately 12 percent over the number of criminal appeals which remained pending on June 30, 1966. Judge Johnsen also called to the attention of the Conference the substantially increased number of *per curiams*, in both civil and criminal cases, to which the courts of appeals have resorted in 1967 in order to increase their terminations and keep pace with their docketings. Judge Johnsen stated that the Committee on Judicial Statistics wishes to emphasize the situation as to dispositions in the courts of appeals to indicate to the Conference that the courts have increasingly been resorting to a reduction in general opinion writing and to suggest that each court of appeals keep watch and make periodic appraisal of its use of this expedient so that it does not allow itself to be carried away by an overbalanced concern for dispositional and statistical accomplishment alone.

Judge Johnsen reported further that it was the Committee's judgment on review of the statistics for fiscal year 1967 that the need previously expressed to the Conference and approved by the Conference in March 1967 (Conf. Rept., p. 9) was amply borne out by the statistics, namely, that there was a need for additional circuit judgeships in the Third, Fifth, Ninth and Tenth Circuits. He reported that S. 2349 had been introduced in the Senate to carry out this recommendation of the Conference and that hearings on this bill had been held before the Subcommittee on Improvements in Judicial Machinery on September 8.

Judge Johnsen also reported that because of the recommendation made by Mr. Will Shafroth in his survey report on the courts of appeals that cross-appeals and consultations be dealt with as only

one case, the Committee had again reviewed the question of separate docketing of cross-appeals and remained of the view that where separate notices of appeal had been signed, separate docketing fees should be collected by the clerks with separate docketings being made, shown and so carried. No matter how such docketings are recorded in the clerk's office, they still require separate indexing and require separate identification where as often happens such cross-appeals become appeals themselves with the initial appeal being dropped.

DISTRICT COURTS

In reviewing the docket situation of the district courts, it was noted that only 55 more cases were filed in 1967 than the 70,906 filed in 1966. There was an increase of approximately three percent of criminal cases over the 29,729 filed in 1966. The total number of civil terminations rose to 70,172 at the end of the fiscal year. Criminal terminations decreased so that the pending criminal caseload at the end of fiscal 1967 had increased 16 percent over the preceding fiscal year. Judge Johnsen reported further that the number of civil cases which are three years old or more increased by 9.5 percent in fiscal year 1967. He pointed out, however, that the heaviest concentrations of these cases exist in five districts, constituting approximately 59 percent of the total. He stated, however, that there was room for improvement in this area in practically all of the districts and urged the chief judges of the circuits, as members of the Conference, to remember the opportunity which exists for them to give impetus to the district court efforts through the form of a letter written by them in transmitting to the chief judge of each district court a list of such cases sent him by the Administrative Office at the close of each fiscal year.

Judge Johnsen also advised the Conference that his Committee had examined all of the recommendations for additional district judgeships and was of the opinion that no change in condition had occurred in any district so as to present an emergency situation which would require action by the Conference prior to the quadrennial survey projected for mid-1968 of the needs of the district courts.

FORM J.S. 10

Judge Johnsen referred again to the action of the Conference at its September 1966 session (Conf. Rept., p. 35) directing the

Committee to make a continuing study of Form J.S. 10. He stated that the Committee on Judicial Statistics was of the view that it needed more basic data before it could come to any solution of the many questions which had been raised regarding Form J.S. 10. He stated that a subcommittee consisting of District Judges Carswell and Robson had been appointed to gather data and suggestions and make analysis and recommendation to the Committee at its next meeting for presentation to the Conference at its March 1968 session.

COMMITTEE ON COURT ADMINISTRATION

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

JUDICIAL SURVIVORS ANNUITY ACT

Judge Biggs reported that the Committee, pursuant to Conference authorization at its March 1967 session (Conf. Rept., p. 15), was proceeding with a revision of the Judicial Survivors Annuity Act to bring it into line with the Civil Service Retirement Act, particularly with provisions relating to members of Congress. Judge Biggs requested, and the Conference granted, leave for the Committee to consider the statutory amendments further and to report at a future session of the Conference.

The Conference agreed with Judge Biggs' report that it seems desirable to amend the Act to permit a judge who marries after his accession to the judiciary and who had not before marriage chosen to bring himself within the purview of Section 376 of Title 18, United States Code, upon marriage to avail himself of the benefits of the Act. The Conference was of the view, however, that all amendments to the Act should be made at the same time and, consequently, the Conference made no recommendation as to H.R. 9391, 90th Congress, a bill which would permit a judge who marries after the six-month period provided in the statute to avail himself of the provisions of the Judicial Survivors Annuity Act.

ADDITIONAL JUDGESHIPS

Judge Biggs reported that his Committee had considered several bills and requests for additional judgeships and, except in two instances, these bills and requests had been before the Committee on Judicial Statistics. Judge Biggs reported further that the Com-

mittee on Court Administration was of the view that all applications for additional district judgeships should be deferred until the fall of 1968 at which time the Committees on Court Administration and Judicial Statistics would undertake a comprehensive review of the needs of the district courts. The bills reported on in this regard by Judge Biggs were:

1. H.R. 9577, to provide an additional judgeship for the Eastern District of Texas.
2. H.R. 9608, identical with H.R. 9577.
3. H.R. 9688, identical with H.R. 9577.
4. S. 1957, to provide an additional judgeship for the Eastern District of Texas.
5. H.R. 7299, to provide an additional judgeship for the Northern District of Texas.
6. H.R. 10668, to provide an additional judgeship for the Western District of Texas.
7. H.R. 3568, to create an additional judgeship for the Eastern District of Kentucky.
8. S. 656, to create an additional judgeship for the Eastern District of Kentucky.
9. Request for two additional judgeships for the Eastern District of Michigan.
10. Request for two additional judgeships for the Western District of Pennsylvania.
11. Request for an additional judgeship for the Northern District of New York.
12. Request for an additional judgeship for the District of Colorado.
13. Request for an additional judgeship for the District of Mexico.

PLACES OF HOLDING COURT

The Conference acting on information received from the Judicial Council of the First Circuit disapproved of S. 1705 and H.R. 10528 which would authorize the holding of court at Manchester in the District of New Hampshire.

Upon advice that the Judicial Council of the Fourth Circuit disapproved the proposal, the Judicial Conference also disapproved of S. 1674, a bill to authorize the holding of court at Roanoke Rapids in the Eastern District of North Carolina and S. 1170 which would authorize the holding of court at Greenville in the Eastern District of North Carolina.

The Conference upon advice of Chief Judge Lumbard that the Judicial Council of the Second Circuit had approved the proposal for the holding of court in Mineola in the Eastern District of New York, inasmuch as court facilities were available in that location,

approved H.R. 8376 providing for the holding of court at Mineola as well as at Brooklyn in the Eastern District of New York and disapproved H.R. 8379, H.R. 6853 and H.R. 7122 which provide for the holding of court at additional locations within the Eastern District of New York.

The Conference disapproved S. 475 providing for the holding of court at Williston in the District of North Dakota and was advised that the Judicial Council of the Eighth Circuit had also disapproved of this proposal.

The Conference disapproved H.R. 838 and S. 342 which would provide for the holding of court at Hyattsville in the District of Maryland. Similar bills had been disapproved at earlier sessions of the Conference (Conf. Rept., March 1967 session, p. 11). The Conference noted that the Judicial Council of the Fourth Circuit had expressed its disapproval of these bills but had entertained the view that court should be held at some location near the Maryland-District of Columbia line where courtroom facilities could be made available without expense to the United States.

Upon advice from the Chief Judge of the Court of Appeals for the Seventh Circuit that the Judicial Council of that circuit had disapproved the holding of court at Rockford in the Northern District of Illinois, the Conference disapproved H.R. 187 for the holding of court at Rockford.

The Conference disapproved H.R. 4265 providing for the holding of court at Reading in the Eastern District of Pennsylvania and noted that this met with the unanimous concurrence of the judges of the Eastern District of Pennsylvania and of the Judicial Council of the Third Circuit.

ADDITIONAL DISTRICTS AND DIVISIONS

The Conference voted its disapproval of S. 1873 which would create an additional judicial district in the State of Louisiana at Baton Rouge. In noting the approval of this suggestion by the Judicial Council of the Fifth Circuit, the Conference took note of its policy that no new districts would be created unless required by emergent circumstances such as large increases in population.

The Conference reaffirmed its approval of the creation of a new division in the Western District of Texas incorporated in H.R. 8338 (Conf. Rept., September 1966 session, p. 36), but expressed no preference as to whether court should be held at Midland or

Odessa except to state that court should be held at either one location or the other but not both.

In the absence of a report from the Judicial Council of the Fifth Circuit, the Conference deferred a decision on H.R. 11950 which would include Panola and Shelby Counties within the Marshall Division of the Eastern District of Texas.

VACATIONS OF JUDGES

Judge Biggs brought to the attention of the Conference that the matter of judicial vacations had been before the Conference on several occasions and had been the subject of Conference reports. He noted that there has recently been a Senatorial investigation of the continuing backlog of untried criminal cases in the United States District Court for the District of Columbia. The Judicial Conference reaffirmed its policy expressed in 1956 and directed the Administrative Office to bring to the attention of all federal judges the resolution adopted at that time as follows:

Resolved, That the Judicial Conference declares it to be the policy of the courts of the United States that in those circuits or districts where the disposition of judicial business is not upon a current basis, vacations or holidays of individual judges should not exceed one month per annum. (Conf. Rept., September 1956 session, pp. 11 and 12).

MATTERS RELATING TO JUDGES

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

1. H.J. Res. 738, proposing a constitutional amendment to restrict the terms of office of "judges" of the Supreme Court to 12 years.
2. H. Con. Res. 290, proposing a constitutional amendment which would provide that vacancies on the Supreme Court should be filled only by individuals who have served as a judge of a state or federal court and have demonstrated certain qualities.
3. H.J. Res. 333 which would amend the Constitution to require "federal judges", except those who have retired, to be confirmed in office every six years.
4. H. Res. 384 providing among other things that the Supreme Court should have original and exclusive jurisdiction of all cases in which the validity of a statute of the United States or of a state is in question and further that a federal or state statute or any provision thereof may not be declared unconstitutional "except with the concurrence of the full membership of the Court."
5. H.R. 11007 which would amend the Constitution to provide that the Supreme Court can not overrule an act of Congress or of a state legislature except by a majority of six votes.
6. H.J. Res. 418, H.J. Res. 420 and H.J. Res. 443 which would provide a

constitutional amendment that Congress can "overrule" a decision of the Supreme Court by a resolution passed by two-thirds vote of the House and Senate.

7. H.J. Res. 465 which would amend the Constitution to require that Justices of the Supreme Court be reconfirmed in their offices every ten years.
8. S. 1130 which would amend the Constitution by requiring Justices of the Supreme Court to have five years judicial service prior to appointment.
9. H.J. Res. 203 which would require certain qualifications for Justices of the Supreme Court and certain prior service, as well as requiring that no person shall be eligible for appointment as a Justice if he is a member of the same political party as that of a "majority" of the Justices.
10. H.R. 11090 providing certain qualifications for Justices of the Supreme Court and United States judges.
11. H.R. 11176 providing certain qualifications for Justices of the Supreme Court.
12. H.J. Res. 681 which would amend the Constitution to provide that a United States judge shall not hold office for more than ten years without the consent of the Senate.
13. S. 1337 which would amend Section 47(a), Title 28, U.S. Code, to provide for the disqualification of circuit judges by affidavit for bias and prejudice.

INTERNAL REVENUE SERVICE REQUEST FOR INFORMATION AS TO
PAYMENTS MADE FROM CONDEMNATION FUNDS BY CLERKS OF
COURT

Judge Biggs reported that in January 1967 the Internal Revenue Service had held that clerks of the United States district courts are required to file information returns for compensation paid to or made available to property owners for the temporary use of real property acquired by the federal government in condemnation proceedings. Judge Biggs stated that his Committee had noted that the order would require the clerk to file an information return as to money representing "estimated compensation" for the "temporary use of land" when deposited in his registry account—prior to its disbursement—on order of the court. He stated that the Declaration of Taking Act, 40 U.S.C. 258(a), provides that money "vests" in the persons entitled thereto when paid into the registry of the court. The Committee was of the view, and the Conference agreed, that a clerk of court is not in a position to know who is entitled to it or in what shares without an adjudicatory process. The result of the Internal Revenue Service order, therefore, is to impose upon the clerks of court adjudicatory functions in respect to the disbursement of condemnation compensation money, a func-

tion which clerks can not legally perform. The Conference agreed, therefore, that the request of the Internal Revenue Service must be declined.

COURTS OF THE DISTRICT OF COLUMBIA CIRCUIT

The Conference took note of S. 1982 which would amend Section 332 of Title 28, U.S. Code, by providing that the Judicial Council of the District of Columbia Circuit is authorized to make orders for all courts established or continuing in the District of Columbia and would amend Section 338 of Title 28, U.S. Code, by providing that the Chief Judge of the District of Columbia Court of General Sessions, the Chief Judge of the District of Columbia Court of Appeals and the Chief Judge of the Juvenile Court of the District of Columbia shall be summoned annually to attend the Judicial Conference of the District of Columbia Circuit in order to participate in the business of such Judicial Conference pertaining to their respective courts. The Conference was in agreement that these legislative proposals required further study and authorized the Committee on Court Administration to report on them at a future session of the Conference.

RETIREMENT OF JUDGES

Judge Biggs pointed out to the Conference that the Committees on Court Administration and on Revision of the Laws had been concerned regarding the dichotomy in language between Sections 372(a) and 372(b), Title 28, U.S. Code. Upon discussion of this matter the Conference agreed that this was a subject for further consideration by the two Committees for subsequent report to the Conference.

REVIEW OF I.C.C. ORDERS

Judge Biggs called the attention of the Conference to the fact that I.C.C. orders are now reviewed by district courts comprising three judges, one of whom is required to be a circuit judge. Appeals from the judgment of such courts lie directly to the Supreme Court. He stated that this system is an anomaly since in almost every instance the agency reviews are brought to the courts of appeals of the respective circuits and are reviewed by the Supreme Court on certiorari. The Conference approved, in principle, the draft bill providing for review of I.C.C. orders by the respective courts of appeals and for review by certiorari to the Supreme Court of the

United States. It agreed that the Committees on Court Administration and on Revision of the Laws should reexamine the draft bill, particularly those provisions relating to the issuance of stays and interlocutory injunctions, and should present to the Conference a bill in final form at a later session.

COURT OF CLAIMS

The Conference noted S. 1704 which would authorize the Court of Claims to implement its judgments for compensation and enable it to grant such relief as can now be granted by a district court of the United States in any legal or equitable proceeding. The Conference agreed that the bill should remain with the Committees on Court Administration and Revision of the Laws for subsequent report after further investigation and redrafting by the Committees.

The Conference also noted S. 2020 and H.R. 11164 which would provide that the Court of Claims should render judgments on claims of the Indians, Eskimos and the Aleuts of Alaska against the United States. The Conference agreed that these proposals should be explored with the Court of Claims and the Secretary of the Interior and be made the subject of a future report to the Conference.

CUSTOMS COURT

The Conference noted a Congressional request for its views on S. 1707 which would authorize the United States Customs Court to maintain an office in the City of Los Angeles. It agreed that this matter lies within the internal administration of the Customs Court and that, therefore, the Judicial Conference should take no position with respect to this proposal.

PRIVATE BILLS

The Conference noted but took no action on S. 478, a bill which would confer jurisdiction upon the Court of Claims to hear, determine and render judgment on the claim of one Harold Braun for disability retirement pay allegedly due him as a result of wounds sustained while serving in the armed forces. The Conference was of the view that it should take no action with respect to S. 1702 which would confer jurisdiction upon the United States District Court for the District of Hawaii to hear and determine claims of Agnes J. Wong based on alleged mistreatment while a patient in a United States Air Force hospital and on S. 2096 which would confer jurisdiction upon the District Court for the Western District of

Wisconsin on the claim of Emma Zimmerli for compensation for personal injuries resulting from the alleged negligence of a United States letter carrier. The Conference noted that all three bills were based upon private claims which would prevent the United States from asserting defenses of the statute of limitations and that since these bills are in the nature of private bills, their enactment is a matter of policy to be determined by the Congress.

REVIEW OF CONFERENCE COMMITTEES

Judge Biggs reported that it was now twelve years since the Conference had last reviewed its committee structure and that there were now some fifteen or sixteen committees of the Judicial Conference. He recommended and the Conference agreed to authorize the Chief Justice to appoint a Committee on Committees to examine the structure of the committees of the Judicial Conference to determine which have overlapping functions and which ones have functions which are no longer of current concern to the Conference. The Conference was in agreement that a complete survey of its committee structure as to status, number and functions should be made and requested the Chief Justice to appoint a Committee on Committees which would make the survey requested and report back to the Conference.

REVISION OF THE LAWS

Judge J. Skelly Wright who acted as Chairman of the Committee at its August meeting in the absence of Judge Albert B. Maris presented the Committee's report to the Conference.

VIRGINIA DISTRICTS

Judge Wright pointed out that Section 127 of Title 28, U.S. Code, creates the Eastern and Western judicial districts of Virginia and defines their area solely in terms of counties whereas in Virginia incorporated cities are from a governmental political standpoint wholly outside and independent of the counties from which their territory has been taken. The Conference agreed to a draft bill prepared by the Committee which would add a third section to Section 127 to correct this inadvertent omission by providing expressly that cities of Virginia are part of that judicial district in which are located the counties within which they lie or from which they have been incorporated.

ADMINISTRATIVE PROCEDURE ACT

The Conference considered S. 518 and its companion bill H.R. 6163 which would amend and substantially revise the Administrative Procedure Act. The Conference disapproved these two legislative proposals in their present form because the proposals contained in them for interlocutory judicial review of administrative action would impose a substantially increased burden on the federal courts.

OTHER LEGISLATION

The Conference agreed that the Committee should study further and report to a later session of the Conference its views on the following legislation:

1. S. 1042, H.R. 5924, H.R. 6043 and H.R. 6975, all bills which would generally revise the patent laws, Title 35, U.S. Code.
2. H.R. 10216, a bill to restore to persons having claims against the United States their right to be represented by legal counsel of their own choosing.
3. S. 1867, H.R. 6487 and H.R. 7657, all bills relating to the establishment of a Court of Veterans Appeals.
4. S. 2041 and H.R. 10100, bills which would transfer the Tax Court to Title 28, U.S. Code, as a constitutional court.

The Conference took no action on H.R. 2077, a bill to amend Chapter 115 of Title 28, U.S. Code, to provide that courts of the United States shall not take judicial notice of arrests of persons engaged in peaceful activities in furtherance of rights under the Constitution.

The Conference took the position that S. 1351, a bill to provide for the payment of reasonable costs, expenses and attorney's fees to defendants in actions by the United States for the condemnation of real property, was an issue of legislative policy with respect to which the Conference should take no position.

The Conference approved the two bills embodying proposals heretofore approved by the Conference:

1. S. 1153 to amend the patent and trade-mark laws with respect to appeals in patent and trade-mark cases (Conf. Rept., September 1965 Session, pp. 62-63).
2. H.R. 8633 to repeal the provisions of Section 41 of the Act of March 2, 1917, as amended, relating to the United States District Court for the District of Puerto Rico (Conf. Rept., March 1967 Session, pp. 18-19).

The Conference disapproved the following bills previously disapproved by the Conference:

1. S. 1353 and companion bills to abolish the National Labor Relations

- Board and to establish in its place a United States Labor Court (Conf. Rept., September 1966 Session, p. 40).
2. S. 1337 to amend Section 47 of Title 28 U.S. Code, to provide means for disqualification of circuit judges for bias and prejudice (Conf. Rept., March 1967 Session, p. 13).
 3. H.R. 11471 to provide for the establishment of a United States Court of Labor-Management Relations which shall have jurisdiction over labor disputes which adversely affect the public interest of the nation to a substantial degree (Conf. Rept., March 1967 Session, p. 21).
 4. H.R. 11633 to provide for the enforcement of support orders in certain state and federal courts and to make it a crime to move or transfer in interstate and foreign commerce to avoid compliance with such orders (Conf. Rept., March 1967 Session, p. 21).

The Conference considered S. 1277 and companion bills in the House of Representatives relating to the appointment, terms and classification of deputy U.S. marshals and to provide for the appointment of U.S. marshals by the Attorney General. The Conference adopted a statement viewing favorably legislation which tends to provide for adequate compensation for deputy U.S. marshals but otherwise took no position on these bills since the proposals embodied therein relate to employees of the executive branch.

COMMITTEE ON THE RULES OF PRACTICE AND PROCEDURE

Judge Albert B. Maris, Chairman, presented the report of the standing Committee on Rules of Practice and Procedure.

UNIFORM APPELLATE RULES

Judge Maris presented to the Conference proposed Federal Rules of Appellate Procedure which have been prepared by the Advisory Committee on Appellate Rules and approved by the standing Committee. He advised the Conference that these rules had been widely disseminated to the bench, bar and law schools for comment in March 1964 and as to Rule 30 once again in September 1966. The comments and suggestions received were carefully considered and in many instances incorporated in the proposed rules which the Supreme Court now has authority to promulgate in all types of cases as the result of enactment of Public Law 89-773, November 6, 1966, amending Section 2072 of Title 28, U.S. Code.

The Conference considered and approved the proposed Federal Rules of Appellate Procedure, as well as proposed amendments to the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure made necessary by the adoption of the Appellate Rules,

and directed the transmission of these rules and amendments to the Supreme Court of the United States with the recommendation that they be adopted.

CIVIL RULES

Judge Maris advised the Conference that the Advisory Committee on Civil Rules has approved a draft of revised rules relating to depositions and discovery which is now being prepared for the printer and will soon be distributed to the bench and bar for consideration, comments and suggestions.

CRIMINAL RULES

The Advisory Committee on Criminal Rules, Judge Maris reported, is now studying various phases of the subject of preliminary hearing and motions and the procedure for taking guilty pleas under Rule 11. He stated that Professor Frank J. Remington, formerly a member of the Committee, has taken the position of reporter for the Committee.

ADMIRALTY RULES

The Advisory Committee on Admiralty Rules is continuing to study the effect in practice of the amended civil rules in their relation of maritime litigation. The Committee is proceeding with the preparation of amendatory legislation to bring existing statutory law into harmony with the new provisions of the civil rules relating to admiralty litigation.

BANKRUPTCY RULES AND RULES OF EVIDENCE

Judge Maris reported to the Conference that the Advisory Committees on Bankruptcy and on Rules of Evidence are continuing intensive work on their tasks of preparing comprehensive drafts of rules in their respective fields which when ready will be submitted to the bench and bar for comment.

UNIFORM DISTRICT COURT RULES

The Conference discussed the feasibility of adopting uniform district court rules and agreed that the standing Committee should examine the advisability of a study of this problem.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge Jean S. Breitenstein, Chairman of the Advisory Com-

mittee on Intercircuit Assignments, reported on the work of his Committee for the period January 6, 1967 to August 18, 1967.

During the period covered by the report Judge Breitenstein stated that the Committee had recommended 37 assignments to be undertaken by 32 judges. The Chief Justice has approved all assignments recommended by the Committee. Among the assigned judges were one circuit judge, seven senior circuit judges, 17 district judges, four senior district judges, one judge of the Court of Claims and two senior judges of the Court of Claims. He stated that 13 of the 37 recommended assignments were for service in the courts of appeals. Eight of the assignments to district courts were for the District of Puerto Rico because of the illness of the judge of that court and the fact that the second judgeship position had not been filled.

BANKRUPTCY ADMINISTRATION

The Chairman of the Committee on Bankruptcy Administration, Judge Oliver D. Hamlin, Jr., presented the report of his Committee.

Judge Hamlin stated that the Committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated July 7, 1967, relating to the continuance of referee positions to become vacant by expiration of terms, for increases in salaries of referees and for one new full-time referee position to become effective, unless otherwise noted, on October 1, 1967, or as soon thereafter as appropriated funds are available.

The Conference considered the Committee's report and the recommendations of the Director, the judicial councils and the district judges on the basis of which 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 were approved by the district courts and by the circuit councils concerned.

FIRST CIRCUIT

District of Massachusetts

- (1) Authorized the continuance of a full-time referee position at Boston in which the term of office will expire on February 29, 1968, for a new six-year term, effective March 1, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

District of Connecticut

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

FOURTH CIRCUIT

District of Maryland

- (1) Authorized the continuance of the full-time referee position at Baltimore in which the term of office will expire on December 31, 1967, for a new six-year term, effective January 1, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Virginia

- (1) Approved an increase in salary for the part-time referee position at Alexandria from \$9,000 to \$10,000 per annum.

FIFTH CIRCUIT

Northern District of Alabama

- (1) Authorized the continuance of the full-time referee position at Birmingham in which the term of office will expire on February 6, 1968, for a new six-year term, effective February 7, 1968, 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 the part-time referee position at Tuscaloosa in which the term of office will expire on October 31, 1967, for a new six-year term, effective November 1, 1967, the regular place of office, territory and places of holding court to remain as at present.
- (3) Approved an increase in salary for the above position from \$9,000 to \$10,000 per annum.
- (4) Authorized the continuance of the full-time position at Anniston in which the term of office will expire on November 8, 1967, for a new six-year term, effective November 9, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (5) Approved an increase in salary for the part-time referee position at Decatur from \$9,000 to \$10,000 per annum.

Northern District of Florida

- (1) Approved an increase in salary for the part-time referee position at Tallahassee from \$6,500 to \$8,500 per annum.

Eastern District of Louisiana

- (1) Authorized the continuance of the part-time referee position at Baton Rouge in which the term of office will expire on November 15, 1967, for a new six-year term, effective November 16, 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 the part-time referee position at Lubbock in which the term of office will expire on December 14, 1967, for a new six-year term, effective December 15, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Northern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Toledo in which the term of office will expire on November 15, 1967, for a new six-year term, effective November 16, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Dayton in which the term of office will expire on November 15, 1967, for a new six-year term, effective November 16, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Illinois

- (1) Authorized the continuance of the full-time referee position at Dixon in which the term of office will expire on December 18, 1967, for a new six-year term, effective December 19, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Indiana

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

EIGHTH CIRCUIT

Eastern and Western Districts of Arkansas

- (1) Authorized the continuance of the full-time referee position at Little Rock in which the term of office will expire on January 1, 1968, for a new six-year term, effective January 2, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

Northern District of California

- (1) Authorized the continuance of the full-time referee position at Oakland in which the term of office will expire on November 15, 1967, for a new six-year term, effective November 16, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Southern District of California

- (1) Authorized the continuance of the full-time referee position at San Diego in which the term of office will expire on November 20, 1967, for a new six-year term, effective November 21, 1967, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Alaska

- (1) Authorized the continuance of the part-time referee position at Anchorage in which the term of office will expire on January 1, 1968, for a new six-year term, effective January 2, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

TENTH CIRCUIT

Western District of Oklahoma

- (1) Authorized an additional full-time referee position at a salary of \$22,500 per annum, with the regular place of office at Oklahoma City and district-wide concurrent jurisdiction with the present referee of the district.

District of Wyoming

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

The Conference noted that bankruptcy surveys were conducted in ten additional districts at the request of judges or referees of such districts but that the surveys revealed that recommendations for changes in salaries or arrangements were not justified at this time. In the District of Oregon on which the Committee had previously deferred action, Judge Hamlin advised that a representative of the Bankruptcy Division had conferred with the judges of that district and as a result the court has submitted new recommendations which will require a further survey by the Bankruptcy Division prior to any recommendations to the Committee or the Conference.

REFEREES SERVING WITHOUT APPOINTMENT

The Conference noted that three referees have been serving for a year or longer without appointment following the expiration of regular six-year terms of office although the filling of the vacancies involved has previously been authorized by the Conference. These referee positions are in the Southern District of Texas in which the term expired June 30, 1961, the Eastern District of Tennessee in which the term expired November 23, 1964 and the Northern District of Georgia in which the term expired March 9, 1966.

APPROPRIATIONS

The Conference noted that estimates of appropriations for fiscal year 1968 totaling \$12,042,000 were pending before the Appropriations Committee of the United States Senate. The Conference also noted that the budget estimates for fiscal year 1969 are higher by \$55,500 for salaries of referees to provide for increases approved by the Conference at its March 1967 session and the increases approved by the present session of the Conference. The 1969 estimates also provide for a substantial number of additional clerical positions because of the increasing burden of the clerical work.

NEW CASE FILINGS

The Conference noted that in fiscal year 1967 a total of 208,329 cases was filed in the bankruptcy courts, a numerical increase of 15,974 cases over the number filed in 1966. This represented a percentage increase of 8.3 percent. Approximately 92 percent of the cases were non-business or the so-called consumer bankruptcy cases.

LEGISLATION

The Conference considered and disapproved H.R. 2895, a bill to amend Section 57(n) of the Bankruptcy Act. The Conference noted that this proposed amendment to the Act would eliminate the one-year period within which infants and insane persons without guardians without notice of the bankruptcy proceedings may file claims and that all creditors without notice of the bankruptcy proceedings may file claims without limitation of time if the referee in his discretion determines such extension necessary to assure the fair and equitable distribution of the debtor's assets. The Conference disapproved H.R. 2895 in its present form because the provisions thereof are not limited to corporations, no ultimate time limit is provided as in the present exceptions and the amendment is not restricted to prospective distributions to creditors.

FILING OF JOINT PETITIONS BY HUSBANDS AND WIVES

In view of the requirements relating to filing fees and the need for consistent and adequate statistical reports of cases filed, the Conference adopted the following resolution:

Resolved, That it is the sense of the Conference that, under the Bankruptcy Act as presently written, separate filing fees should be charged for each estate whether joint or single petitions are filed in husband and wife cases; and that, for statistical purposes, each estate shall be reported as a separate case.

AUDIT OF STATISTICAL REPORTS

The Conference noted that the Bankruptcy Division is now auditing statistical reports of both asset cases closed and arrangement proceedings concluded under Chapter XI. The audit program was extended to Chapter XI cases, effective January 1, 1967. The audit of statistical reports of Chapter XI cases has disclosed a number of misconceptions as to the proper basis for computing amounts to be paid to the Referees' Salary and Expense Fund, as a result of which instructions for determinations of amounts due the fund will be clarified by the Bankruptcy Division in these cases.

The Conference noted that a total of 406 arrangement cases was concluded in the fiscal year 1966. In many of these cases, substantial sums of money are involved and, when requested by the courts, the Bankruptcy Division staff conducts a preaudit of case records to determine the accuracy of payments into the Referees' Salary and Expense Fund before the case is closed. In one such case now in the process of closing, over 110 million dollars is involved, and the payment into the fund will approximate \$350,000.

MATTERS UNDER ADVISEMENT

The Conference was informed that the number of matters reported as under submission before referees 60 days or longer during the past six months is consistent with prior reports to the Conference on this subject. Of the 203 referees reporting, 33 referees had pending a total of 56 matters and 173 referees had no matters pending as long as 60 days.

DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Conference was advised of the report of the Administrative Office that in fiscal year 1967 approximately 32,000 Chapter XIII cases were filed as compared with 28,261 in 1966. The Conference noted that the trend to increase the use of automatic data processing facilities for trustees' record keeping is continuing and that particularly in the larger trustees' offices automatic data processing methods will provide both improved records and better service to the parties in interest and the public.

The Conference was advised that the Committee has studied the lack of uniformity in the fixing of Chapter XIII trustees' bonds and to the need in some instances for more adequate surety bonds. The Conference was advised that the Bankruptcy Division is mak-

ing a study of the entire subject for a report to the Committee at its next meeting and in the meantime the Conference was informed the Committee has suggested that the Administrative Office recommend surety bonds for Chapter XIII trustees of not less than double the amount of the average distribution to creditors.

SEMINARS FOR REFEREES

The fifth annual seminar for referees in bankruptcy and the final seminar in this series will take place in Washington during the week of March 25, 1968. Regional refresher seminars have been held since January 1, 1967 at Los Angeles, Atlanta and Cleveland and a fourth is scheduled to be held at Denver on October 6-7, 1967.

The Conference noted that the published proceedings of the Fourth Annual Seminar have now been distributed and that the seminar program continues to receive a most encouraging response from judges and referees.

CRIMINAL JUSTICE ACT OF 1964

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

The Conference noted the statistical report for fiscal year 1967 prepared by the Administrative Office and observed that 22,315 orders of appointment had been received by the Administrative Office. The Administrative Office estimates that when the additional orders of appointment executed in late June are received, the total for the year will be in the area of 22,800. For the first time appointment figures are available for the Court of General Sessions of the District of Columbia which began to make appointments pursuant to the Criminal Justice Act on December 1, 1966. Of the appointments received by the Administrative Office for fiscal year 1967, 29 percent were made by U.S. commissioners, 56 percent by U.S. district courts, four percent by U.S. courts of appeals and 11 percent by the Court of General Sessions for the District of Columbia.

On disbursements made under the Act the Conference was advised that thus far \$1,029,886 has been disbursed out of the appropriation for fiscal year 1967. Cumulative net disbursements out of the appropriation for fiscal year 1966, as of June 30, 1967, were \$1,998,265. When all outstanding claims have been received and paid, it is estimated that the total cost of representation of

criminal defendants for fiscal year 1966 under the Act will be \$2,350,000. In 1966 1,290 attorneys waived compensation for services rendered. During 1967 the district courts authorized investigative, expert or other services at a cost estimated to be \$54,501. In the same year 22 claims for protracted representation were approved by the chief judges of the courts of appeals.

The Conference was advised that for fiscal year 1968 the House of Representatives has allowed \$3,150,000 for the administration of the Criminal Justice Act, with a ceiling of \$150,000 on payments made pursuant to appointments by the Court of General Sessions for the District of Columbia. This request is now pending in the United States Senate. The Conference had already agreed in considering the report of the Budget Committee that a total sum of \$3,150,000 would be requested for the administration of the Criminal Justice Act for fiscal year 1969.

COUNSEL FOR JUVENILES

The Conference was advised of two instances in which counsel had been appointed for a juvenile whose parents are financially able to obtain adequate counsel but refuse to do so. The Conference agreed with the Committee recommendation that the number of instances in which this problem has arisen is too few as yet to warrant the establishment of a policy statement or guideline other than to note a memorandum prepared in the Administrative Office which in summary states that the law of the state wherein the federal court sits which defines the obligation of a parent to compensate an attorney for professional service incurred by a minor is controlling.

FORMS

The Conference noted a recommendation by a clerk of court that the voucher form (Form 4) be amended to contain a statement by which an attorney can waive compensation. The Conference was of the view that such a statement would not be consonant with the purposes of the Act and agreed that no such statement should be included in the voucher form.

SUPREME COURT RULES

The Conference took note of the fact that the revised Rules of the Supreme Court which become effective October 2, 1967, provide that in cases on direct review in which the defendant in the original

proceeding is financially unable to obtain adequate representation or to meet the necessary expenses in the Supreme Court, the Court will appoint counsel who may be compensated and whose necessary expenses may be repaid to the extent provided by the Criminal Justice Act.

COMPENSATION OF MORE THAN ONE ATTORNEY

The Committee brought to the attention of the Conference a situation in which a district court had appointed an attorney under the Act in a non-capital case and then substituted another attorney for the attorney originally appointed during the course of the litigation. The court then approved vouchers for payment to each of the attorneys. The case was not one involving protracted representation. The Conference agreed that in this type of situation in a non-capital case, compensation for the two attorneys can not exceed \$500 and that either the two attorneys involved should make an agreement on the division of the fee or that the court should direct an appropriate division in approving the voucher. In so doing, the Conference noted that 27 district court plans provide for this type of action.

STATUTORY AMENDMENTS

Judge Harvey M. Johnsen, Chairman of the subcommittee appointed to consider amendments to the Criminal Justice Act in collaboration with the Department of Justice, reported on the study being undertaken on the administration of the Act by the University of Chicago School of Law under the direction of Professor Dallin Oaks. This project involves the study, in depth, of the administration of the Act in five selected districts and is scheduled to be completed by December 31, 1967. The Conference was in agreement that until Professor Oaks' study and report were completed so that a documented recommendation can be adopted and transmitted to the Congress, the Conference should withhold any recommendations for amendments to the Criminal Justice Act. The Conference, however, took cognizance, as the Committee had in its report, of the many expressions of opinion from many parts of the country that the statute should be amended to include representation of defendants in post-conviction and ancillary matters, including habeas corpus, Section 2255 and revocation of probation proceedings.

ADMINISTRATION OF THE CRIMINAL LAW

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

COMMITMENT OF PERSONS ACQUITTED ON GROUNDS OF INSANITY

The Conference considered the Committee's report on S. 1007, a bill providing for the commitment of persons acquitted on the grounds of insanity. The Conference reaffirmed its approval of the principle of this proposed legislation but agreed with the Committee recommendation that a suggestion be made to the Congress that serious consideration be given to making the Department of Health, Education and Welfare the agency responsible for receiving persons committed under this proposed legislation in lieu of the Attorney General as now specified in S. 1007. The Conference agreed that the Committee should defer a final report on the bill, however, pending the issuance of a study by the Department of Justice which presumably will deal with the establishment within the executive branch of an institutional program to receive persons committed under the proposed statute.

PROBABLE CAUSE HEARINGS AS A METHOD OF DISCOVERY

The Conference received a report from the Committee requested at the prior session of the Conference at which S. 945, the federal magistrates bill, was approved that the Committee consider whether probable cause hearings before commissioners should properly serve as a preliminary method of discovery and whether S. 945 would preclude such function. The Conference noted that the Committee reported that S. 945, as approved by the Conference (Conf. Rept., March 1967 Session, pp. 38-40), does not intend that discovery will be a primary function of the probable cause hearing. The Conference took note of the fact that the Advisory Committee on Criminal Rules is now studying the general topic of discovery in criminal proceedings and agreed that further action by the Committee on the Administration of the Criminal Law should await a report of the Advisory Committee on Criminal Rules.

APPELLATE REVIEW OF SENTENCING

After approving the principle of appellate review on certain conditions at its March 1967 session (Conf. Rept., p. 40), the

Committee, at Conference request, gave further consideration to the problem of appellate review of cases where the sentence prescribed by statute provides for a mandatory minimum sentence. The Conference approved a recommendation of its Committee confirming the general opposition of the Conference to mandatory minimum sentences. The Conference further considered the specific provisions of S. 1540, a bill which passed the Senate on June 29, 1967, and noted that this bill does not contain the modifications heretofore recommended by the Conference (Conf. Rept., March 1967 Session, p. 40). It noted that S. 1540 provides for an application for leave to appeal. After discussion of the Committee report on S. 1540, the Conference voted its endorsement of the bill with the proviso that the statutory standard of review be specified as the abuse of discretion of the district judge.

OTHER LEGISLATION

The Conference took the action, as indicated, on the following bills:

1. Disapproved H.R. 7275, a bill to amend the Federal Youth Corrections Act by changing the terms for commitment thereunder in certain instances, to permit the use of examiners and for other purposes.
2. Agreed that S. 917 and companion bills designed to assist state and local government in reducing the incidence of crime and to increase the effectiveness, fairness and coordination of law enforcement and criminal justice systems at all levels of government were bills which lie in the area of legislative discretion. The Conference did, however, approve the policy statement contained in Section 2 of S. 917.
3. Approved H.R. 2537, H.R. 4121, H.R. 5597 and H.R. 6354, all bills designed to protect the constitutional rights of mentally incompetent persons committed under Title 18. In so doing, however, the Conference agreed that one change should be made regarding the method of handling funds as provided in H.R. 2537 so that the phrase "to the court" would be eliminated in the final sentence of Section 251 after the words "funds appropriated."
4. Disapproved S. 1194 and H.R. 6944 which would make the voluntary character of an admission or confession the sole test of admissibility and would limit the jurisdiction of any federal court to review the issue.
5. After considering S. 675, H.R. 7093, H.R. 5386, H.R. 6710, H.R. 10037 and H.R. 10090, all bills designed generally to prohibit wiretapping and/or eavesdropping, the Conference agreed that the purposes of S. 675 were most acceptable and approved these purposes and the bill provided that it be amended to comply with the standards set forth in the opinion of the Supreme Court in *Berger v. New York*, 388 U.S. 41 (1967).
6. Disapproved S.J. Res. 22, S. 674, S. 1518, H.R. 7092, H.R. 6709, H.R. 10889, H.J. Res. 313, H.J. Res. 365, all proposals which *inter alia* would establish a new test of admissibility of an admission or confession by amendment to the Constitution or by enactment of a federal statute.

7. Considered H.R. 5269 and related bills proposing to establish an Academy of Criminal Justice and agreed that the subject matter of these proposals is generally one of legislative policy.
8. Approved S. 676 and companion bills which would provide punishment for any person who wilfully endeavors by means of bribery, misrepresentation, intimidation or threats to obstruct, delay or prevent the communication of information relating to violation of criminal statutes of the United States.
9. Approved S. 677, H.R. 6053 and H.R. 7095, bills which would allow application to the court to compel testimony and grant corresponding immunity to one testifying in connection with a violation of 18 U.S.C. 1952, 18 U.S.C. 1503 or in connection with violations of Chapters 9 and 11 of Title 18, U.S. Code.

OPERATION OF THE JURY SYSTEM

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

JURY SELECTION

Judge Kaufman reported on S. 989, a bill which incorporates Title I of a draft previously approved by the Judicial Conference (Conf. Rept., March 1967 Session, pp. 41-43), and stated that extensive hearings have been conducted before the Senate Subcommittee on Improvements in Judicial Machinery and a committee report is expected in the near future.

Pursuant to its action at the September 1966 session (Conf. Rept., p. 57) in approving the principle of random selection of juries, the Conference agreed to direct the Administrative Office to communicate with the chief judges of the United States district courts which have heretofore utilized the "key man" jury selection system, in whole or in part, to ascertain whether such districts have since adopted a system of random selection in a manner that would produce a fair cross-section of the community in the district or division in which court is held. The Conference resolved further that it is desirable that those courts which have not already done so should convert as soon as convenient from the key man system to the random system. In so resolving, the Conference agreed to reaffirm its view that the passage of S. 989 as quickly as possible would be of substantial benefit in producing desired uniformity in jury selection and qualification procedures in the federal judiciary. The Conference voted further to direct the Administrative Office to provide those courts seeking to convert to a random selection system with such administrative assistance as may be required,

within budgetary limitations, and with such other technical assistance as may be helpful, including the furnishing of model plans, orders and forms relating to jury selection programs. Each court adopting a district plan, report, order or rule relating to jury selection was requested to send copies to the Administrative Office.

PREJUDICIAL PUBLICITY

The Conference at its September 1966 session approved a Committee study of the necessity of promulgating guidelines or taking other corrective action to shield federal juries from prejudicial publicity in the light of the Supreme Court decision in *Sheppard v. Maxwell*, 384 U.S. 333 (Conf. Rept., p. 57). Judge Kaufman reported that the subcommittee which he had appointed to study this problem has conducted extensive research, and has met with representatives of the press and the communications media. The Conference agreed to approve the continuation of the subcommittee's work pending the receipt of a report and recommendations.

ADMINISTRATION OF THE PROBATION SYSTEM

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

SENTENCING INSTITUTE

The Conference at its March 1967 session approved the holding of a joint sentencing institute of the Fourth and Fifth Circuits at Atlanta, Georgia, on October 29-31, 1967 (Conf. Rept., p. 36). Judge Hoffman presented to the Conference and the Conference approved a detailed agenda for this forthcoming sentencing institute.

RESIDENTIAL COMMUNITY TREATMENT CENTERS

The Conference approved H.R. 10511, a bill to amend Title 18 of the U.S. Code to authorize the Attorney General to admit to residential community treatment centers persons who are placed on probation, released on parole or mandatorily released. In so doing, the Conference took note of the fact that at its March 1967 session, it had approved, in principle and purpose, a legislative proposal now embodied in H.R. 10511 (Conf. Rept., p. 37).

UNITED STATES CORRECTIONS SERVICE

Judge Hoffman reported to the Conference that there has been no action by the Congress on S. 916 or H.R. 5038, bills disapproved by the Conference at the March 1967 session (Conf. Rept., p. 37). Judge Hoffman reported further that he had transmitted to the general counsels of the Senate Judiciary Committee and the House Judiciary Committee copies of his letter of April 12, 1967 to federal judges and chief probation officers setting forth the approval by the Conference at its March 1967 session of an amended bill 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 and which would not divide or dislocate the probation service (Conf. Rept., p. 37).

SUPPORTING PERSONNEL

Judge Theodore Levin, Chairman, presented the report of the Committee on Supporting Personnel.

COURTS OF APPEALS

The Conference approved that provision be made for 88 additional law clerks for the judges of the courts of appeals. In so doing, the Conference agreed that no additional messenger positions should be sought and that upon appointment of an additional law clerk for a circuit judge, no replacement be made of the existing messenger position for the judge receiving such additional law clerk. The Conference also agreed that upon the granting of the appropriation for additional personal law clerks, the authorization for staff law clerks be rescinded and the appropriation be converted for the compensation of personal law clerks.

The Conference approved resubmission to the Congress in the budget for fiscal year 1969 a request for three additional secretaries for each court of appeals.

Judge Levin reported that the Committee on Supporting Personnel had considered at length the request of some chief judges for the appointment of an administrative assistant to the chief judge of each circuit. He stated that all members of the Committee were in agreement that any request to the Congress for legislation to provide for such an administrative assistant would require a

salary of librarians. The Conference was in agreement that a study should be undertaken under the aegis of the Committees on Supporting Personnel and Court Administration.

ADDITIONAL DEPUTY CLERKS

The Conference approved a Committee recommendation for 12 new deputy clerk positions for the courts of appeals and 34 for the district courts. The Conference also approved the renewal of the request to the Congress for the 49 deputy clerk positions which were eliminated from the appropriation for fiscal year 1968 by the Congress.

COURT REPORTER-SECRETARY

The Conference approved the request of Chief Judge Register, District of North Dakota, that the duties of his combination position of court reporter-secretary be separated and that the judge be authorized both a secretary and a court reporter.

TRIAL PRACTICE AND TECHNIQUE

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

The Conference approved at the Committee's suggestion a broad program by the Committee on Trial Practice and Technique designed to encourage the development of sound methods of dealing with congested calendars in the district courts through the use of accelerated calendars and other proven techniques of calendar control. The Conference further authorized the Committee to cooperate with those districts having congested calendars in formulating sound procedures of calendar control consistent with the needs of their jurisdictions.

Pursuant to a discussion of the need for preparing seminars for newly appointed judges, the Conference approved the following resolution presented by Judge Murrah on behalf of the Committee:

Resolved, That inasmuch as approximately one hundred judges have been appointed to the federal bench since the last seminar for newly appointed judges was held, the Committee on Trial Practice and Technique is authorized to sponsor and organize one or more seminars for such judges for the purpose of acquainting them with the problems of judicial administration arising in the operation of the district courts. It is the sense of the Conference that the seminar programs should cover such matters as fundamental court procedures, techniques of effective judicial administration, jurisdiction, and substantive problems arising in suits brought under federal statutes.

The number, time, place, duration, and program content of such seminar or seminars is left to the discretion of the Chairman.

MULTIPLE LITIGATION

Judge Edwin A. Robson presented a report relating to the activities of the Subcommittee for Multiple Litigation. He identified as the areas of general concern to the subcommittee the air crash multiple litigation, several aspects of antitrust litigation, patent and trade-mark multiple litigation, products liability multiple litigation, litigation relating to corporate management, securities and stock brokerage fields and potential multi-litigation in the fields of water and air pollution. He stated that the subcommittee has undertaken to coordinate the active processing of the Technograph Inc. litigation in the Seventh and Ninth Circuits.

Judge Robson reported that S. 159, a bill sponsored by the Judicial Conference authorizing the appointment of a judicial panel on multiple litigation, passed the Senate on August 9, 1967. It is now being considered by a subcommittee of the House Committee on the Judiciary.

The Conference approved the following recommendations relating to the work of the subcommittee:

- (1) That the revision of the *Outline of Suggested Procedures* in the form of (a) a *Manual for Pretrial and Trial of Complex and Multidistrict Litigation*, and (b) collection of *Materials for Pretrial and Trial of Complex and Multidistrict Litigation* be completed as soon as possible and submitted to the Judicial Conference of the United States for its approval.
- (2) That the Subcommittee continue its functions in identifying and recommending to the concerned judges coordination of multidistrict litigation in appropriate circumstances, as heretofore done by it.
- (3) That the Subcommittee, with the assistance of the Administrative Office of the United States Courts and of the United States courts, continue to collect information about multidistrict litigation filed in the federal and state courts and develop improved procedures for systematic identification of such litigation, and for disseminating information thereon for use of the concerned judges.
- (4) That the Subcommittee continue to make studies of the nature and incidence of multidistrict litigation for the purpose of determining the magnitude of such litigation in the federal courts and the economies in costs and judicial time that may be effected through coordination of processing thereof and by other methods.
- (5) That the Subcommittee, with the assistance of the Administrative Office of the United States Courts and of the United States courts, continue to act as a clearing house for information about multidistrict litigation in order that the judges of the courts in which such multidistrict litigation is pending may regularly be advised of the existence of such

litigation of the desirability of consideration of possible coordinated proceedings.

- (6) That the Subcommittee continue to call meetings of judges before whom specific multidistrict litigation is pending for the purpose of initiating coordinated proceedings when appropriate and when approved by the judges before whom such litigation is pending.
- (7) That the Subcommittee continue to study means for conserving judicial time, and the time and expense of litigants in related multidistrict litigation on the basis of the Subcommittee's experience in the electrical equipment antitrust litigation and other litigation with which it has been concerned.
- (8) That the Subcommittee continue to study and recommend to the Judicial Conference of the United States additional rules, practices, standards and legislation as may hereafter appear to the Subcommittee to be necessary or useful in the expediting of the multidistrict litigation in the federal courts.
- (9) That until S. 159 or a similar satisfactory provision is enacted into law, the Subcommittee continue to support the passage of S. 159, containing the proposed new § 1407 of Title 28, U.S.C.

RESOLUTIONS

On motion of Chief Judge Wilson Cowen of the Court of Claims, the Conference adopted the following resolution:

Resolved, That, the Conference, upon the approval by it and referral to founding of the Committee on Trial Practice and Technique, formerly known as the Committee on Pretrial Procedure, take note of the outstanding service of the Committee's Chairman, Chief Judge Alfred P. Murrah, and commend Judge Murrah for his significant contribution to the administration of justice in the United States.

Upon motion of Judge Edwin A. Robson, the Conference adopted the following resolution:

Resolved, That, the Conference, upon the approval by it and referral to the Supreme Court of uniform Federal Rules of Appellate Procedure, express its recognition and appreciation of the outstanding services of Senior Judge Albert B. Maris, as Chairman of the standing Committee on Rules of Practice and Procedure, as well as to the members of that committee and to the Chairman, Reporter and members of the Advisory Committee on Appellate Rules, for their faithful, arduous and dedicated work in response to the Conference's call for the drafting of uniform rules of appellate procedure in the federal courts.

RELEASE OF CONFERENCE ACTION

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

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice of the United States.

OCTOBER 25, 1967.

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