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

FEBRUARY 27-28, 1968

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1968

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Ernest C. Friesen, Jr.
Director

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

FEBRUARY 27-28, 1968

The Judicial Conference of the United States convened on February 27, 1968, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on February 28. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge Edward M. Curran, District of Columbia

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 William Henry Hastie
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
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 Martin D. Van Oosterhout
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 Arthur J. Stanley, District of Kansas

Court of Claims:

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals:

Judge Giles S. Rich for Chief Judge Eugene Worley

Mr. Justice Tom Clark, United States Supreme Court, (retired), Senior Judges John Biggs, Jr., Harvey M. Johnsen, Albert B. Maris, Circuit Judges Jean S. Breitenstein, George C. Edwards, Jr., Irving R. Kaufman, J. Skelly Wright, and District Judges William J. Campbell, Theodore Levin and Edward Weinfeld attended all or some of the sessions.

The Attorney General, Honorable Ramsey Clark, attended the morning session of the first day of the Conference and addressed the Conference on matters of mutual interest to the Department of Justice and the judiciary. Included among his remarks was advice to the Conference that the Department of Justice is asking authorization of the Congress for 100 additional Assistant United States Attorneys. The Judicial Conference discussed this proposal and observed that orderly court administration is dependent on an adequate staff of prosecutors who can assure greater rapidity in handling criminal cases. Thereupon the Conference voted its endorsement of the Attorney General's proposal.

Honorable Quentin N. Burdick, a member of the Committee on the Judiciary of the United States Senate, attended the morning session of the first day on behalf of Senator James O. Eastland who was unable to attend.

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

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

Ernest C. Friesen, Jr., 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.

FEDERAL JUDICIAL CENTER

Mr. Justice Clark, United States Supreme Court, (retired), presented to the Conference the report of the ad hoc Committee on the Federal Judicial Center which had been appointed by the Chief Justice with instructions to report to the Conference at this meeting. Mr. Justice Clark stated that within a week of the signing by

the President of the bill establishing the Federal Judicial Center on December 20, 1967, the Chief Justice had appointed the ad hoc Committee, consisting of judges, practicing lawyers and law professors, under the Chairmanship of Mr. Justice Clark, and had charged it with assisting in the implementation of the Federal Judicial Center Act as quickly as possible.

Mr. Justice Clark advised that the Committee was of the view that the most important immediate task was the selection by the Judicial Conference of the members of the Board of the Center. The Committee recommended that the Chief Justice, as permanent Chairman of the Board of the Center as well as Chairman of the Judicial Conference, appoint a committee prior to the convening of the Conference on February 27 to consider and evaluate members of the federal judiciary who might be best suited to carry out the duties of the Board. The Committee recommended that such Board members should be considered for selection based on their broad knowledge of judicial functions, their experience in educational and research programs, their ability to deal constructively with the problems facing the federal judicial system and with due regard for relevant geographical considerations. The Chief Justice in late January appointed a committee consisting of five members of the Judicial Conference, under the Chairmanship of Chief Judge Paul C. Weick, to conduct this screening process. At the same time he advised all federal judges of the appointment of this committee and invited nominations for membership on the Board.

Chief Judge Weick then advised the Conference that his committee had screened some 91 nominations and examined the available information on each of those who were eligible for appointment. The committee was impressed with the universally high quality of all the judges recommended and presented to the Conference the following nominations—Circuit Judges Wade H. McCree, Jr., and James M. Carter and District Judges Edward J. Devitt, William A. McRae, Jr., and Harold R. Tyler, Jr. The Conference immediately approved these five nominees who were duly elected to constitute the first Board of the Federal Judicial Center. Judge McCree was designated for the one year term, Judge McRae for the two year term, Judges Carter and Devitt for three years and Judge Tyler for four.

Judge Weick then advised the Conference that because of the

large number of well-qualified judges whose nominations were considered by his screening committee, the committee had decided to present to the Federal Judicial Center a recommendation of one judge from each judicial circuit who might well serve on one of the advisory committees of the Center as recommended by the ad hoc Committee. These were Judge McGowan—District of Columbia Circuit, Judge Murray—First Circuit, Judge Kaufman—Second Circuit, Judge Higginbotham—Third Circuit, Judge Stanley—Fourth Circuit, Judge Bell—Fifth Circuit, Judge Wilson—Sixth Circuit, Judge Will—Seventh Circuit, Judge Blackmun—Eighth Circuit, Judge Boldt—Ninth Circuit, and Judge Breitenstein—Tenth Circuit.

Mr. Justice Clark then summarized the main conclusions of the ad hoc Committee. He stated that the operation of the Center broke down into three main categories—(1) the education and training of personnel of the courts; (2) research; and (3) systems analysis, the utilization of which the Center is specifically charged by the Act. He stated that the Committee was in full agreement that the Administrative Office and the Center must work closely together, that their offices should be contiguous as nearly as possible and that the Center must draw upon the Administrative Office for assistance, particularly in the area of statistics. The Committee, he stated, was of the view that the Center would conduct or direct such in depth research as has hitherto been unavailable to the judiciary. The Administrative Office will continue to conduct studies in implementation of the work of the Judicial Conference and its committees. He stated that the Committee was enthusiastic over the potential of the computer in judicial administration but he pointed to the need for programming experts to determine what can be done, particularly toward relieving the court congestion. He said that the Committee was of the view that the circuit council and circuit conferences must also be utilized to assist the Center in its work.

The Committee made further specific recommendations concerning the types of persons needed as Director and as officers of the professional staff of the Center. It recommended the establishment of four advisory committees to assist the Director and his staff (1) in formulating and executing research projects and determining their relative priority, (2) to advise on the conduct of programming of continuing education, (3) on the use of systems analy-

sis and innovation, and (4) on oversight for the purpose of evaluating the work of the Center in its over-all operations.

The Committee also recommended that the Center should conduct research through arrangements with private and public institutions as well as through staff efforts, with the decision as to method properly left as a function of the Director. It recommended that the education and research programs should generally be patterned after the National College of State Trial Judges but should not be restricted to newly appointed judges. It recommended that the three seminars planned for federal judges in 1968 should proceed under the direction of the Judicial Conference Committee on Trial Practice and Technique, with the Center participating fully, using the seminars as a laboratory for expanding activity.

The Committee recommended that at the earliest possible date the Center should develop a national library, including a complete library service on judicial administration.

It recommended further that the Administrative Office, in anticipation of the needs of the Center, should immediately begin a tentative program for the expanded use of the computer in court administration.

The Conference voted complete approval of the reports of the Committees chaired by Mr. Justice Clark and Chief Judge Weick and authorized their immediate release.

JUDICIAL APPROPRIATIONS

Chief Judge William J. Campbell, Chairman of the Committee on the Budget, reported that hearings were held by the Subcommittee of the House Appropriations Committee on the judiciary appropriation bill for fiscal year 1968 on February 14, 1968. Judge Campbell stated that he was accompanied at the hearings by Chief Judge Alfred P. Murrah, also a member of the Budget Committee, who advised on the need for additional law clerks and other supporting personnel for the courts of appeals. On behalf of the Budget Committee and of Chief Judge Chambers of the Ninth Circuit, Judge Campbell then presented to the Conference the following resolution which was unanimously approved.

That the dollar limitation stated in the annual appropriation acts be raised to permit a chief judge of a circuit to hire two secretaries in Grade 10 and a law clerk in Grade 11 and, if funds are appropriated for a second law clerk for each circuit judge, the limitation further be raised to accommodate the salary of such law clerk in Grade 9.

JUDICIAL STATISTICS

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

ADDITIONAL JUDGESHIPS

Judge Johnsen stated that a number of express requests had been received by the Committee since its last report to the Conference, asking it to make some emergency recommendations for additional judgeships, both circuit and district, for approval by the Conference and transmittal to the Congress for action during calendar year 1968. Judge Johnsen stated that pursuant to the action of the Conference at its March 1967 meeting (Conf. Rept., p. 9), a bill was now pending in the House of Representatives, having already passed the Senate, providing for certain additional circuit judgeships. He stated that several additional bills had also been introduced and were pending in the Congress but had not yet received Conference action relating to additional circuit and district judgeships.

The Committee, Judge Johnsen reported, canvassed and studied carefully the statistical data of all of these proposals. It concluded that none of them was so critical as to call upon it to recommend that Congress be asked to take any such emergency action during the remaining months of the 1968 legislative session, except for the proposals which emanated from the Conference as to certain circuit judgeships at the March 1967 session. He said that a number of practical considerations entered into the Committee's judgment not to recommend that further judgeships be sought in the 1968 session. Among other things, the Committee was of the opinion that any emergency judgeship bill at the present time might only tend to disrupt and perhaps even nullify the organized program for making requests for additional judgeships in which the Committee has sought to engage and to which it believes Congress has given some indication of acceptance. He advised further that the Committee is planning at its 1968 summer meeting to engage in another complete study and survey of all the district courts and make recommendations on the basis thereof as to the apparent need for additional judgeships at the September 1968 session of the Conference. Such approvals as may be made by the Conference at that time may then be made the subject of an omnibus bill for

introduction at the new session of Congress in January 1969. He said that the survey to be made by the Committee at its next meeting will consist of a full comparative study of the statistics of the district courts during the past seven to ten years and will be fortified by such field work on the part of the Division of Procedural Studies and Statistics of the Administrative Office as seems necessary or desirable in order to penetrate the aspects of some local situations.

The Conference, after a discussion of this portion of Judge Johnsen's report, voted its approval thereof.

FORM J.S. 10

Judge Johnsen stated that his Committee had considered a report of its subcommittee charged with attempting to obtain a more realistic reflection of judicial caseloads than is afforded by Form J.S. 10.

After consideration of the subcommittee report, the Committee recommended to the Conference:

- (1) Continuance of the use of Form J.S. 10 as a standard report but with further study to be made of whether pretrial conferences should be separately listed or merely shown in their total as is now provided;
- (2) Approval of the preparation and publication of a new table to be known as Table X-2 intended to give an over-all indication of the productivity of the district courts in terms of cases actually terminated rather than putting emphasis merely on trials. As to civil case terminations, the table will contain a column showing the terminations occurring without any court action; one showing terminations from a court action in the form of "motions, hearings and submissions," one showing the terminations "incident to a pretrial conference" and columns showing the terminations by trial, jury and non-jury. As to criminal case terminations, the table will show those terminated (a) by dismissal, (b) on plea, and (c) on trial by jury or by the court;
- (3) The Committee requested the Administrative Office to explore the use of a separate type report by judges regularly assigned to duties not involved in the trial of cases and to report to the Committee thereon at an early date;
- (4) The Committee requested the Administrative Office to notify all district judges as to the action taken by the Judicial Conference on these recommendations.

The Conference approved all of the foregoing recommendations, together with a separate suggestion made by Judge Harper that the clerks of the district courts be directed to add at the bottom of each J.S. 10 report, on one line, the following item:

"Arraignments, motions and sentencing in criminal cases; motions in civil cases; and naturalization"

and next to this item to insert the total court time in hours and minutes spent on these matters during the month and in parenthesis thereafter insert the number of days actually involved in this activity; further, with respect to the new Table X-2, that there be added under the heading *Criminal Cases*, a column showing "motions, hearings and submissions."

STATISTICS ON CRIMINAL CASES

The Conference noted its approval of the action of the Committee in requesting the Division of Procedural Studies and Statistics to make special indication in its statistical reports of criminal cases which have been pending more than a year with the reasons therefor and data as to those involving fugitives, persons in custody or persons in military service.

REPORT OF "CASES HEARD OR SUBMITTED" IN THE COURTS OF APPEALS

The Conference noted its approval of the action of the Committee in reaffirming its approval of the procedures and definitions currently used in classifying cases "heard or submitted." The Committee noted that there had been some practice of writing and filing memoranda in cases which are not actually heard or submitted and then showing and reporting these as such cases. In the interest of uniformity as to statistical information, the Committee indicated that such cases should not be reported as heard or submitted. The fact that memoranda are written in such cases does not entitle them to be included in the tables showing "opinions written in cases which are heard or submitted."

DOCKETING OF CROSS-APPEALS

In its report to the Conference, the Committee pointed out that on its recommendation the Conference had previously approved that cross-appeals be separately docketed as a matter of securing uniformity in practice and statistical portrayal among the courts of appeals.

Experience, however, has shown that the use of sub-classification numbers, as for example 2000-A, 2000-B, etc., complicates the computer processing of the Administrative Office. The Committee, therefore, recommended and the Conference approved that in the

future each cross-appeal will be given a separate docket number in every circuit and a separate docket sheet will be opened on each such appeal. Further, in respect to clerical processing, docket entries may be made only in the principal case with an appropriate cross reference on the other sheets so that all documents can be kept in one file and the impact on the workload of the clerk's office as a result of additional docketing will be kept to a minimum.

COURT ADMINISTRATION

The report of the Committee on Court Administration was presented by its Chairman, Senior Judge John Biggs, Jr.

JUDICIAL SURVIVORS ANNUITY ACT

The Committee reported that, pursuant to Conference authorization at its March 1967 session (Conf. Rept., p. 15), it has been preparing a revision of the Judicial Survivors Annuity Act to bring its provisions into line with provisions of the Civil Service Retirement Act relating to members of Congress.

The Committee noted, however, that there is now pending in the Congress a bill, H.R. 10912, which would make important changes in respect to the financing of the Civil Service Retirement Act relating to members of Congress and would provide financing which, if it could be employed, would be of advantage to judges' survivors.

The Conference agreed that it would be advantageous to defer the approval of any amendments to the Judicial Survivors Annuity Act until the proposed new financing provisions of the Civil Service Retirement Act have been determined. It was likewise decided to defer the question of whether it would be desirable to merge the Judicial Survivors Annuity Fund with the Civil Service Retirement Fund, assuming that the Administrative Office would continue to administer the Judicial Survivors Annuity Fund.

The Conference approved H.R. 9391 which would amend Section 376(a), Title 28, United States Code, by striking out "or within six months after the enactment of this section" and inserting in lieu thereof "or within six months after he marries or within six months after the enactment of this amendment." The Conference noted that this proposed bill would permit a judge who was not married on his accession to the judiciary but who was married after

the expiration of six months to avail himself of the benefits of the Judicial Survivors Annuity Act.

ADDITIONAL JUDGESHIPS

The Conference noted that the Committee on Court Administration had also received several requests for recommendation for additional district and circuit judgeships. The Committee on Court Administration and the Committee on Judicial Statistics are both prepared to devote close study to this problem at their summer meetings in 1968 in order to prepare recommendations for the Conference in September. Judge Biggs advised that his Committee, therefore, was making no recommendations for Conference action at this time and the Conference concurred in this recommendation.

REALIGNMENT OF TEXAS DIVISIONS

The Conference approved the recommendation of the Committee to endorse H.R. 11950 and S. 2286 which would include Panola and Shelby Counties within the Marshall Division of the Eastern District of Texas. These counties would be withdrawn from the Tyler Division of the Eastern District of Texas. Court would be held at Marshall, with a population of more than 23,000 persons. The Conference noted that the bill had previously been approved by the Judicial Council of the the Fifth Circuit.

DEFENDANTS AT LARGE AFTER AFFIRMANCE OF CONVICTION

Judge Biggs advised the Conference that at the March 1967 meeting he had reported that his Committee had studied the problems raised by Senator Robert C. Byrd concerning defendants who had been released and were at large after affirmance of conviction (Conf. Rept., p. 16). The Conference at that time agreed that the responsibility in such a situation rests upon the prosecution and had requested the Department of Justice to make an examination of its records to ascertain that no defendant remains at large whose conviction has been finally affirmed on appellate review.

Judge Biggs noted that the Administrative Office is now in receipt of a letter from Assistant Attorney General Vinson, in charge of the Criminal Division of the Department of Justice, reporting that all criminal cases in the District of Columbia had been re-

viewed for the past seventeen years to insure that no person is at liberty who should be incarcerated and that careful procedures have been set up in the District of Columbia whereby the Clerk of the District Court will maintain a list of cases in which bond pending appeal has been taken.

Mr. Vinson noted further that if commitment is not required by the Court of Appeals for the District of Columbia pending the disposition of application for certiorari, the Clerk of the Supreme Court will forward a copy of any order entered by the Supreme Court directly to the Clerk of the District Court.

In addition, Mr. Vinson stated that the appellate section of the Criminal Division has established a procedure for notifying each individual United States Attorney of every action taken by the Supreme Court.

Judge Biggs reported, further, that on November 30, 1967 Mr. Vinson wrote to report that the Department of Justice had completed its study of the practices of the United States Attorneys with regard to commitment of defendants after termination of appeals, petitions for certiorari, denials of bail pending appeal or revocation of bail and has requested each United States Attorney to review the procedures of his office to preclude the possibility of error.

LEGISLATION

Judge Biggs reported Committee action on several bills and the Conference took action as noted:

1. The Conference referred for further study H.R. 13584 and other bills similar in tenor which would establish a National Foundation of Law.

2. The Conference disapproved H.R. 13017 which would provide for five additional commissioners for the Court of Claims.

3. The Conference approved S. 1704 which would authorize the Court of Claims to implement its judgments as can United States district courts under the Tucker Act. The Conference approved the Committee recommendation, however, that this approval was contingent on an amendment in the next to the last line of the proposed bill by inserting the words "against the United States" after the word "cases."

4. The Committee advised the Conference that the Conference's views had been requested as to S. 2020, S. 2690, H.R. 11164 and

H.R. 11213, to authorize the Court of Claims to hear and render judgments in claims asserted by or relating to the Indians, Eskimos and the Aleuts of Alaska in respect to the lands in Alaska. Judge Biggs advised that the Department of the Interior and the Secretary of the Interior have taken no definitive position and that hearings are in the process of being held in Alaska on this subject matter. The Conference agreed that the time is not ripe for any recommendation with respect to any of these bills by the Conference.

5. The Conference agreed that absent a definitive expression from the Judicial Conference of the District of Columbia Circuit or by its Judicial Council, no action should be taken at this time in regard to S. 1982 which would provide that the Judicial Council of the District of Columbia Circuit be authorized to make orders for all courts established or continuing in the District of Columbia and which would provide 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.

6. Judge Biggs reported that the Committee on Court Administration, jointly with the Committee on Revision of the Laws, had considered S. 2307, a bill which would provide machinery for Constitutional conventions for amendments to the Constitution of the United States, and had agreed that this legislation embodies a policy matter which should not be the subject of any recommendation by the Conference. The Conference expressed its agreement with this action and recommendation.

7. The Conference approved the joint recommendation of the Committee on Court Administration and the Committee on Revision of the Laws to approve S. 2687 which would provide that instead of review of orders of the Interstate Commerce Commission by three-judge district courts, jurisdiction for review of I.C.C. orders would be placed in the respective United States courts of appeals, thereby eliminating direct appeal to the Supreme Court of the United States from orders of the Interstate Commerce Commission. The Conference agreed with a motion by Judge Harper that the Committee study, in advance, the establishment of ma-

chinery (court reporters, clerks, etc.) to take care of this change should the legislation be enacted.

GEOGRAPHICAL ORGANIZATION OF THE COURTS

Judge Biggs advised the Conference that for some period of time the Committee on Court Administration has had on its agenda the question of geographical organization of the United States courts, a subject which it regards as of prime importance. The Conference agreed to suggest to the Federal Judicial Center that this subject might be one for early consideration and study by the Center.

LIBRARIES AND LIBRARIANS

The Conference discussed the Committee report, which is also a subject of concern to the Committee on Supporting Personnel, on the need for a study of the libraries existing in the several federal courthouses. The Conference agreed that this was primarily an administrative problem but one which the Administrative Office was not at this time equipped to undertake. The question of the salaries of librarians was referred to the Committee on Supporting Personnel for further study.

REVISION OF THE LAWS

Judge J. Skelly Wright, Chairman of the Committee on Revision of the Laws, presented the Committee's report.

ADMINISTRATIVE PROCEDURE ACT

The Conference disapproved S. 2770, a bill to amend and substantially revise the Administrative Procedure Act. The Conference was agreed that this legislative proposal would impose a substantially increased burden on the federal courts. The Conference noted, further, that the Administrative Conference of the United States has now been activated and apparently will undertake a formal study of the need for reform of the Administrative Procedure Act.

REVISION OF THE PATENT LAWS

Judge Wright advised the Conference that the Committee had studied S. 1042 and H.R. 5924, companion bills which embody the recommendations of the President's Commission on the Patent

System, and S. 2597 and H.R. 13951, companion bills which embody the recommendations of the Patent Section of the American Bar Association and the American Patent Law Association. The Conference considered the reports of a subcommittee of the Committee on the Revision of the Laws on these pending bills and requested that a further study be made of certain portions thereof and, accordingly, deferred until its next meeting consideration of the Committee's recommendations.

TAX COURT

The Conference considered the Committee's report on S. 2041 and H.R. 10100, bills which would transfer the Tax Court to Title 28, United States Code, as a Constitutional court. The Conference noted that the legislation, as drafted, contains many features regarded by it as unacceptable and, accordingly, voted its disapproval of these legislative proposals in their present form. The Conference noted that these proposals had been considered jointly by the Committee on Revision of the Laws and the Committee on Court Administration.

EXPEDITING ACT

The Conference noted that the Committee on Revision of the Laws and the Committee on Court Administration had considered several proposals pending in the 90th Congress relating to the amendment or repeal of the Expediting Act (15 U.S.C. 29). The Conference noted that the views of the Department of Justice and other interested parties had not yet been obtained and agreed that these proposals should remain for further study with the two committees.

OTHER LEGISLATION

1. The Committee expressed its disapproval of S. 1073 and H.R. 10216, bills concerning attorneys' fees earned processing claims before administrative agencies. The Conference noted that S. 1073, in particular, would substantially increase the workload of the district courts.

2. The Conference agreed with the Committee recommendation that H.R. 13984, a bill to provide that certain costs shall be taxed against the United States in condemnation actions brought by it,

presented an issue of legislative policy with regard to which the Conference should take no action.

3. The Conference considered H.R. 3084, a bill to amend 28 U.S.C. 1346 to permit suits against the United States arising out of contracts entered into by non-appropriated fund activities of or under departments or agencies of the United States. The Conference agreed that this legislation involves a fiscal policy decision primarily addressed to the legislative branch and, accordingly, it took no action thereon.

4. The Conference reaffirmed its endorsement of H.R. 13315, a bill to define more precisely the territory included in the two judicial districts of Virginia. This bill which carries out a recommendation of the Conference at its September 1967 session (Conf. Rept., p. 66) has already passed the House of Representatives and is pending in the Senate.

5. The Conference approved H.R. 13016, a bill to provide cost of living allowances for judicial employees stationed outside the continental United States or in Hawaii or Alaska. The Conference noted prior approval of similar bills pending in the 89th Congress (Conf. Rept., March 1965, pp. 15, 36).

6. The Conference disapproved H.R. 12659 and H.R. 12993, similar bills which would abolish the National Relations Board and establish in its place a United States Labor Court. Similar bills were disapproved by the Conference at its September 1967 session (Conf. Rept., pp. 67, 68).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The report of the Committee on Rules of Practice and Procedure was presented by its Chairman, Senior Judge Albert B. Maris.

Judge Maris reported that the Supreme Court has approved the Uniform Rules of Procedure for the United States Courts of Appeals and these were formally presented to the Congress on January 15, 1968. Unless Congress otherwise directs, they will go into effect on July 1, 1968. This culminates a long-time goal of the Conference to secure uniformity in the federal appellate procedure.

Judge Maris reported that proposals for improvement of the rules relating to deposition and discovery in civil cases had been circulated to the bench and bar for study and comment in Novem-

ber 1967 with the request that all comments and suggestions be received no later than January 1, 1969.

Judge Maris reported further that the Advisory Committee on Bankruptcy Rules and the Advisory Committee on Rules of Evidence are carrying on intensive work with frequent committee meetings but that neither committee is yet ready to make a report.

The Advisory Committee on Criminal Rules is undertaking a study of certain phases of criminal procedure, particularly those relating to preliminary hearings, arraignments and other proceedings prior to trial.

The Advisory Committee on Admiralty Rules, he reported, is planning with the aid of a reporter who it is hoped may be appointed to begin service on July 1 to give more intensive study to the practical effect of the new rules as they relate to maritime litigation. Its work is also proceeding on the proposed amendatory statute which the Conference has authorized it to prepare.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

Judge Kaufman reported that S. 989, a bill substantially embodying the recommendations of the Judicial Conference to provide for the random selection of jurors, passed the House of Representatives on February 26, 1968 and that the bill will undoubtedly go to conference between the two Houses at an early date. The Conference approved the recommendation that, in the event S. 989 becomes law, the Committee be empowered to assist the Administrative Office in preparing any guidelines or suggestions which may assist and facilitate the district courts in conforming to the requirements of the new legislation.

PREJUDICIAL PUBLICITY

Judge Kaufman reported that the Conference at its September 1966 session had approved the Committee study of the necessity of promulgating guidelines or taking other corrective action to shield federal juries from prejudicial publicity in light of the Supreme Court decision in *Sheppard v. Maxwell*, 348 U.S. 333 (Conf. Rept., p. 67). Judge Kaufman reported that the subcom-

mittee which he had appointed at that time has now made its report to the Committee. The subcommittee's report advises that the subcommittee had consulted widely, both with representatives of the bar and bench as well as with representatives of the communications media, and that the guidelines recommended by it stem from careful consideration by it after extensive inquiry.

The Conference agreed to accept the report for study and to circulate it forthwith to all federal judges and to release it to the news media with the request that all comments and suggestions be directed to the Administrative Office for the Committee no later than July 1, 1968.

The Conference expressed the hope that the judicial councils and the judicial conferences of the circuits would also give careful consideration to the report and instructed the Committee to report back to the Conference at its September 1968 session on this subject matter.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Judge Jean S. Breitenstein, Chairman of the Advisory Committee on Intercircuit Assignments, reported on the work of his Committee for the period August 18, 1967 to February 9, 1968.

In the period covered by the report, Judge Breitenstein stated that the Committee had recommended 34 assignments to be undertaken by 31 judges. The Chief Justice has approved all assignments recommended by the Committee. The assigned judges include two circuit judges, three senior circuit judges, 19 district judges, six senior district judges and one senior judge of the Court of Claims.

Assignments were made to the following courts: 11 to the District Court for the District of Columbia; one to the District of Puerto Rico; two each to the Court of Appeals for the Second Circuit and the Southern District of New York; one to the Court of Appeals for the Third Circuit; one to the District of South Carolina; two to the Court of Appeals for the Fifth Circuit; four to the Middle District of Florida; one to the Southern District of Florida; two to the Northern District of Georgia; one to the Northern District of Illinois; one to the Southern District of California; four to the Court of Appeals for the Tenth Circuit and one to the Court of Customs and Patent Appeals.

Judge Breitenstein reminded the Conference that the last two reports cover roughly the 12 months from the end of January 1967

to the first of February 1968. During that time the Committee approved 71 assignments, of which 22 have been to courts of appeals; 14 to the District Court for the District of Columbia and nine to the District of Puerto Rico. The remaining 24 have been scattered among a number of courts. Of the assigned active judges, 21 have come from the Ninth Circuit and seven from the Eighth Circuit.

Judge Breitenstein pointed out that special programs, such as the one under way in the District of Columbia, put a heavy strain on the national judgepower available for intercircuit assignments. He stated also that it was the Committee's view that while some circuits have furnished valuable help, others from which judges might be available have not contributed substantially to intercircuit assignments. He stated that his Committee has not undertaken to evaluate the special programs with a view to determining priorities among simultaneous programs and, without Conference direction, it would not undertake to do so. He stated also that the Committee is handicapped because it has no way of knowing in advance what judges are available and from where. He recommended, therefore, that the Conference give consideration to some plan whereby the Committee will be advised of potential availability of judgepower.

BANKRUPTCY ADMINISTRATION

Judge Edward Weinfeld, Chairman, presented the report of the Committee on Bankruptcy Administration.

Judge Weinfeld reported that the Committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated January 26, 1968, for the continuance of referee positions to become vacant by expiration of term, for changing two part-time referee positions to a full-time basis, for an increase in the compensation of one part-time referee, for changes in arrangements for referees of five districts, and for the creation of three additional full-time positions and one additional part-time position. These recommendations, which had been approved by the district courts and circuit councils concerned, were, with the following exceptions, approved by the Committee with a recommendation that they become effective on March 1,

1968 unless otherwise indicated, subject to the availability of appropriated funds. The Committee recommended that action be deferred with respect to the creation of a new full-time referee position in the Eastern District of Missouri, a new part-time position in the District of Minnesota, and the change of a part-time position to a full-time basis in the District of Oregon and changes in regular places of office of the referees at Pendleton and Eugene in the latter district. The Committee took this action pending further study of the caseload in these districts by the Bankruptcy Division. 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:

SECOND CIRCUIT

Western District of New York

- (1) Authorized the continuance of the full-time referee position at Rochester in which the term of office will expire on September 3, 1968 for a new six-year term, effective September 4, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

District of New Jersey

- (1) Authorized the continuance of the full-time referee position at Newark in which the term of office will expire on May 24, 1968 for a new six-year term, effective May 25, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FOURTH CIRCUIT

Eastern District of Virginia

- (1) Authorized the continuance of the full-time referee position at Norfolk in which the term of office will expire on September 30, 1968 for a new six-year term, effective October 1, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Middle District of Alabama

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

Southern District of Texas

- (1) Authorized the continuance of the full-time referee position at Houston in which the term of office will expire on June 15, 1968 for a new six-year term, effective June 16, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Western District of Kentucky

- (1) Authorized the continuance of the full-time referee position at Louisville in which the term of office will expire on July 8, 1968 for a new six-year term, effective July 9, 1968, 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 creation of an additional full-time referee position at Columbus at a salary of \$22,500 per annum.
- (2) Established district-wide concurrent jurisdiction for the new referee position with the full-time referee positions presently authorized for the district.

SEVENTH CIRCUIT

Northern District of Illinois

- (1) Authorized the continuance of the full-time referee position at Chicago in which the term of office will expire on July 1, 1968 for a new six-year term, effective July 2, 1968, 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 part-time referee position at Gary to be changed to a full-time position at a salary of \$22,500 per annum.
- (2) Authorized district-wide concurrent jurisdiction in the territory to be served by the two full-time referees of this district.

Western District of Wisconsin

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

EIGHTH CIRCUIT

Southern District of Iowa

- (1) Authorized the continuance of the full-time referee position at Des Moines in which the term of office will expire on May 14, 1968 for a new six-year term, effective May 15, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Minnesota

- (1) Deferred action on the following recommendation: For the creation of an additional part-time referee position at Duluth at a salary of \$11,000 per annum, to serve the Fifth Division of the district.

- (2) Deferred action to limit concurrent jurisdiction of the full-time referees located at Minneapolis and St. Paul to the First, Second, Third, Fourth, and Sixth Divisions of the District.

Eastern District of Missouri

- (1) Authorized the creation of an additional full-time referee position at St. Louis at a salary of \$22,500 per annum.
- (2) Authorized district-wide concurrent jurisdiction for the new referee position with the full-time referee positions presently authorized for the district.

District of Nebraska

- (1) Authorized the continuance of the full-time referee position at Omaha in which the term of office will expire on June 30, 1968 for a new six-year term, effective July 1, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of South Dakota

- (1) Designated Rapid City as an additional place of holding bankruptcy court for the referee of this district.

NINTH CIRCUIT

Central District of California

- (1) Authorized the creation of an additional full-time referee position at San Bernardino at a salary of \$22,500 per annum.
- (2) Established district-wide concurrent jurisdiction for the new referee position with the full-time referee positions presently authorized for the district.

District of Idaho

- (1) Established concurrent jurisdiction for the full-time referee of this district with the referees of the District of Oregon in Malheur County of the District of Oregon.

District of Montana

- (1) Established the territory of the part-time referee at Great Falls to include the following counties of the district: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux, Yellowstone, Cascade, Choteau, Fergus, Glacier, Judith Basin, Pondera, Teton, Toole, Blaine, Daniels, Hill, Liberty, McCone, Phillips, Roosevelt, Sheridan, and Valley.
- (2) Established the territory of the part-time referee at Butte to include the following counties of the district: Beaverhead, Deer Lodge, Gallatin, Jefferson, Madison, Park, Powell, Silver Bow, Broadwater, Lewis and Clark, Meagher, Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders.
- (3) Authorized the discontinuance of Billings as a place of holding bankruptcy court for the part-time referee at Butte and designated this city as an additional place for holding court for the part-time referee at Great Falls.
- (4) Approved a salary increase for the part-time referee at Great Falls from \$7,000 per annum to \$8,500 per annum.

District of Oregon

- (1) Deferred action on the recommendation that the part-time referee position at Pendleton be changed to a full-time referee position, at a salary of \$22,500 per annum and that his regular place of office be changed from Pendleton to Eugene.
- (2) Deferred action on the recommendation that the regular place of office of the full-time referee presently located at Eugene be changed to Portland.
- (3) Approved the Committee's recommendation that referees of the District of Oregon be given concurrent jurisdiction with the full-time referee for the District of Idaho in Malheur County of the District of Oregon.

TENTH CIRCUIT

District of Colorado

- (1) Changed the regular place of office of the referee at Pueblo to Denver.
- (2) Authorized the discontinuance of Sterling, Durango, and Montrose as designated places of holding bankruptcy court.
- (3) Authorized the above changes to be placed in effect on July 1, 1968, or as soon thereafter as the District Court can make the necessary arrangements.

District of Kansas

- (1) Authorized the continuance of the full-time referee position at Wichita in which the term of office will expire on April 26, 1968 for a new six-year term, effective April 27, 1968, 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) Authorized the continuance of the full-time referee position at Albuquerque in which the term of office will expire on August 30, 1968 for a new six-year term, effective August 31, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Judge Weinfeld explained that the Committee had recommended deferring for further study requests for additional referee positions in the District of Minnesota and the Eastern District of Missouri and for a change in the part-time position at Pendleton to a full-time basis, and for changes in the regular place of office of the Pendleton and Eugene referees. The Conference approved of all of the Committee's recommendations except the recommendation relating to the Eastern District of Missouri. On motion of Judge Harper, the Conference voted its approval of the establishment of an additional full-time referee position at St. Louis, to become effective on the same basis as the other positions authorized by the Conference.

Judge Weinfeld stated that, with the exception of the part-time position at Great Falls, Montana, no recommendations had been

made for salary increases because of the enactment of the Postal Revenue and Federal Salary Act of 1967 which contains a provision for a Commission on Executive, Legislative and Judicial Salaries, which will study, among others, the salaries of referees in bankruptcy.

APPROPRIATIONS

The Conference noted that estimates of appropriations for the fiscal year 1969 totaling \$13,205,000 are now pending before the House Appropriations Committee. These estimates include an increase of \$74,000 for salaries of referees and \$1,197,000 for expenses of referees' offices; the latter item is largely for additional clerical personnel needed to handle the growing volume of cases in referees' offices.

NEW CASE FILINGS

During fiscal year 1967, a total of 208,329 cases was filed in the bankruptcy courts. During the first six months of fiscal year 1968, a total of 97,634 was filed, reflecting a decrease of 1.5 percent over the comparable period of the preceding year. Ordinarily, the heavier filings occur in the last half of the fiscal year. There are indications that the number of non-business bankruptcy cases is still increasing, with a comparable decrease in the number of business cases in relation to the total number filed.

LEGISLATION

The Conference considered Senate Joint Resolution 100, 90th Congress, introduced by Senator Burdick, which would establish a commission to be known as the Commission on Bankruptcy Laws of the United States, to study, analyze, evaluate and recommend changes to the Bankruptcy Act; to reflect and more adequately to meet the demands of present technical, financial and commercial activities. The Conference approved, in principle, the creation of this commission but took the view that the scope of the commission's functions should be broadened to include study of the basic philosophy and causes of bankruptcy and possible alternatives to the present system of bankruptcy administration. The Conference also recommended that the composition of the Commission should be patterned after the Commission on Executive, Legislative and Judicial Salaries established by Public Law 90-206 which provides for a nine-member commission, three appointed by the President

of the United States and two each by the President of the Senate and Speaker of the House and by the Chief Justice of the United States.

MATTERS UNDER ADVISEMENT

The Conference noted that of 207 referees reporting for the quarter ending December 31, 1967, 35 referees reported a total of 76 matters held under advisement for 60 days or longer.

DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Conference noted the report of the Administrative Office that in fiscal year 1967 31,963 Chapter XIII cases were filed. This represents an all-time high and an increase of 13.1 percent above the Chapter XIII filings of the previous year. The greatest increases were in the Seventh and Ninth Circuits. The Conference was advised that the Bankruptcy Division has noted that some bankruptcy courts are experiencing difficulty in obtaining meaningful independent audits of Chapter XIII trustees' operations at reasonable costs to debtors.

The Conference was advised that a number of referees whose trustees have between 50 and 200 cases under supervision are still using individual case bank accounts although the guideline, approved by the Conference at its December 1966 session (Conf. Rept., p. 49), applicable to all Chapter XIII trustees who have 50 or more wage-earner proceedings requires that the trustee shall maintain debtor funds in a consolidated bank account. The referees have reported that their depositories still maintain individual accounts for debtors without additional cost and that this arrangement makes trustees' record-keeping easier and permits the referee or his clerks to audit each wage-earner's account when his case is closed. Moreover, it is now possible for Chapter XIII trustees to obtain the benefits in savings of a blanket bond but still maintain individual bank accounts for debtors. Accordingly, the Conference approved the new guideline, modifying the one adopted in September 1966, as follows:

The trustee shall maintain debtor funds in a consolidated bank account: Provided, however, individual bank accounts for debtors may be maintained in the discretion of the local bankruptcy court if this can be accomplished without increasing the costs (bank service charges, bond premiums, etc.) to debtors.

The Conference was also advised that the Bankruptcy Division of the Administrative Office is studying the adequacy and lack

of uniformity in the fixing of Chapter XIII trustees' bonds has found that many of the existing bonds were in amounts less than 10 percent of annual receipts. The Conference agreed with the Committee's recommendation that the best and most economical protection against loss which the bankruptcy court can supply to creditors and debtors in the event of a shortage in the trustee's accounts is to make sure of the adequacy of the trustee's bonds. The Conference, therefore, approved an additional guideline, as follows:

That the amount of the bond of the trustee as a minimum be one and one-half times (150 percent) the average monthly balance in the trustee's accounts over the last twelve-month period.

SEMINARS FOR REFEREES

Approximately 40 referees will participate in the Fifth Annual Seminar and the final one in this series to be held in Washington during the week of March 25, 1968, the Conference was told.

Two regional refresher seminars have been held during the current fiscal year, one in Denver and one in Tulsa. Two additional regional seminars are planned before the end of the fiscal year to be held in Chicago and New York.

CRIMINAL JUSTICE ACT OF 1964

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

STATUTORY AMENDMENTS

Judge Hastings advised the Conference that the study of the administration of the Act, undertaken by the University of Chicago School of Law under the direction of Professor Dallin Oaks, had been completed and reviewed by the Committee. Judge Hastings stated that the general conclusion reached by Professor Oaks is that the administration of the Act has been praiseworthy, that the judiciary moved with dispatch in promulgating plans for furnishing representation and that the Administrative Office established prompt and efficient payment procedures and forms. He stated that the report carries a series of specific recommendations, each predicated upon detailed analysis set forth in the report.

As the Conference was advised at its September 1967 session (Conf. Rept., p. 78), the report and recommendations were transmitted to the subcommittee, chaired by Judge Johnsen, for further

study, review and recommendation to the Committee at its next meeting. The subcommittee was formed pursuant to the mandate of the Conference Committee of the Congress that the Department of Justice, in cooperation with the Judicial Conference, obtain the benefit of the experience in the operation of the Act and report to the Congress on the advisability and feasibility of a public defender system as against an assigned-counsel system. The subcommittee in making its study and preparing its report will work in collaboration with the Department of Justice.

APPOINTMENTS AND PAYMENTS

Judge Hastings presented to the Conference the report of the Administrative Office reflecting appointments and payments under the Criminal Justice Act for the first six months of fiscal year 1968. The Conference was advised that in this period the Administrative Office received 11,870 orders appointing counsel under the Criminal Justice Act, of which 2,173 were appointments by the Court of General Sessions for the District of Columbia. During fiscal year 1967, attorneys were appointed to represent a total of 21,044 defendants in the district courts and 964 appellants in the courts of appeals. Cumulative net disbursements under the Act in the first six months of fiscal year 1968 were \$1,264,033. In the same period district courts have authorized investigative, expert and other services under subsection (e) to cost \$31,741. Claims for protracted representation were approved by the chief judges of the courts of appeals in 77 cases out of the appropriation for fiscal year 1967.

ADVANCES UNDER THE CRIMINAL JUSTICE ACT

Acting on a specific case in which a district judge had ordered the Director of the Administrative Office to advance a sum of money to appoint counsel for the purpose of travel and subsistence in connection with the interview of witnesses prior to trial, the Conference agreed that the Administrative Office was correct in advising the judge that since neither the appropriation for the Administrative Office nor the Criminal Justice Act of 1964 contains any authority for the advance of public money, the provisions of Section 529, Title 31, United States Code, must prevail.

The Conference noted, however, that the court had possible alternatives; either in authorizing the assigned attorney to advance his own money and immediately upon return submit a voucher for such expenses which the Administrative Office could pay immedi-

ately or assigned counsel could apply to the court for investigative service pursuant to subsection (e) of the Act and arrangements could be made for the interview of witnesses at distant points through investigators obtained in accordance with the provisions of the subsection.

JUVENILE COURT OF THE DISTRICT OF COLUMBIA

Acting upon a specific order of appointment and voucher approved by a judge of the Juvenile Court for the District of Columbia, the Conference agreed that the provisions of the Criminal Justice Act did not apply to proceedings in the Juvenile Court for the District of Columbia.

TRANSCRIPT OF PRELIMINARY HEARING

The Conference noted its approval of the action of the Administrative Office in paying a voucher approved by a district judge for a copy of a transcript of a preliminary hearing. It noted that the Administrative Office had advised the judge that where a person may not be found to be a pauper and, therefore, not entitled to a transcript under 28 U.S.C. 753(f), he may be provided with a preliminary hearing transcript under 18 U.S.C. 3006A(e). The Conference noted that the Administrative Office suggested that rather than have the attorney pay for such transcript and claim reimbursement, the reporter could complete a CJA Form 9 (so-called "other services voucher") to be supported by a CJA Form 10 containing a certificate by the judge. Thus, the reporter would be paid without delay.

RELEASE OF ACTION

The Conference agreed that the report of the Committee as well as the statistical exhibit prepared by the Administrative Office for appointments and payments during the first half of fiscal year 1968 should be released immediately and directed the Director of the Administrative Office to transmit copies to all federal judges and to the Chief Judges of the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals.

ADMINISTRATION OF THE CRIMINAL LAW

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

SAFE-STREETS LEGISLATION

Judge Edwards reported that S. 917, a bill to assist the state and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, had been substantially amended in the Senate since the last report on this bill to the Conference at the September 1967 session (Conf. Rept., p. 8).

The Conference voted to limit its action on this proposed legislation to the approval of the policy statement contained in Section 2 of S. 917. This is in accord with Conference action at the September 1967 session.

WIRETAPPING AND EAVESDROPPING

The Conference noted and approved the Committee's report on the subject of wiretapping and eavesdropping, bills pending in the 90th Congress. It reviewed its action at the September 1965 session on H.R. 4348, 89th Congress, (Conf. Rept., p. 72) and the action which it took at its September 1967 session (Conf. Rept., p. 80) and stated that consistent with the recommendations previously made, without expressing preference for any one of the several bills now pending, the Conference is of the view that there are areas of law enforcement in which the use of wiretapping and eavesdropping devices should be permitted provided that any legislation therefor meets the Constitutional standards of *Berger v. New York*, 388 U.S. 41 (1967) and *Katz v. United States*, 389 U.S. 347 (1967). The Conference agreed that its action on this subject matter should be released immediately.

INTERSTATE AGREEMENT ON DETAINERS

Judge Edwards advised the Conference that the Bureau of the Budget has requested the Conference's views on a draft bill which would make the United States a party to an agreement, already joined in by over twenty states, under which prosecuting authorities or prisoners under sentence in the jurisdiction of the signatories may require the disposition of detainees pending against a prisoner prior to the expiration of the term. The Conference approved the draft bill.

AMNESTY FOR FIRST OFFENDERS

Judge Edwards advised the Conference that the House Judiciary Committee had asked its views on H.R. 11215, a bill to amend Title 28, United States Code, to provide amnesty for certain first offenders under federal criminal law. The Conference disapproved the bill in its present form but was of the view that the objective of the bill deserves further study. The Conference, therefore, voted to suggest to the Federal Judicial Center that this might be a fit subject matter for research by the Center.

BAIL REFORM ACT

Judge Edwards advised the Conference that the Committee has under consideration various proposals to amend the Bail Reform Act of 1966. Included among them are proposals contained in resolutions of the Judicial Conference of the Ninth Circuit that the Act be amended to eliminate the requirement in the fixing of bail that the court should take into consideration the weight of the evidence against the accused to eliminate the provisions for the subsequent 24-hour review of bail conditions and to provide the same penalties for failure to appear in a misdemeanor case or as a material witness as are now provided for failure to appear in a felony case. Judge Edwards advised and the Conference approved further research on this subject matter by a subcommittee chaired by Judge Olin Hatfield Chilson.

INDETERMINATE SENTENCES

The Conference noted a resolution of the Judicial Conference of the Ninth Circuit at its 1967 meeting recommending to the Judicial Conference of the United States that it give consideration to the wisdom of seeking the enactment of appropriate legislation for the use of the indeterminate sentence as the basic penalty or sentencing statute for offenders against the United States. Judge Edwards pointed out that this subject falls within the area of study committed by Congress to the National Commission on the Reform of Federal Criminal Laws. The Conference was in agreement and authorized the transmission of the legislation to the National Commission on the Reform of Federal Criminal Laws.

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 INSTITUTE

The Conference approved the plans of the District of Columbia Circuit for the holding of a Circuit Sentencing Institute in the fall of 1968. The Conference noted that the agenda for the sentencing institute will be submitted for its consideration at the September 1968 session.

LEGISLATION

The Conference noted that the President in a message to the Congress on February 7, 1968 had again pointed out that the courts supervise probation and parole while the Executive Branch administers the prison system and that this division of responsibility impedes the efforts to build a strong correctional system. The President advocated to the Congress the establishment of a United States Corrections Service within the Department of Justice. The Conference was of the view that the most effective way to implement the President's recommendation for a United States Corrections Service was in legislation approved by the Conference at its March 1967 session (Conf. Rept., p. 37) which would make changes within the correctional organization of the Department of Justice and would create a Corrections Council but would not divide or dislocate the probation service. The Conference reaffirmed its disapproval of S. 916 and H.R. 5038 in their present form since these bills would remove from court control the supervision of persons on probation. The Conference likewise reaffirmed its views expressed at the March 1966 session (Conf. Rept., p. 15) in opposition to placing the probation service under the jurisdiction and control of the Department of Justice. The Conference instructed the Director of the Administrative Office to convey to the President of the Senate, the Speaker of the House of Representatives and the Chairman of the Judiciary Committee of each Body the opposition of the Conference to the bills now pending and the endorsement of the amended draft of S. 916 which would strengthen the correctional organization of the Department of Justice and create a Corrections Council but not divide or dislocate the probation service.

COMMITTEE ON SUPPORTING PERSONNEL

The report of the Committee on Supporting Personnel was presented to the Conference by its Chairman, Judge Theodore Levin.

ADMINISTRATIVE ASSISTANT TO CIRCUIT CHIEF JUDGES

The Conference noted and approved a report of the Committee which recommends legislation to establish the position of administrative assistant to the chief judge of each circuit. Such administrative assistant should have the qualifications to warrant the grade of JSP 14. The Conference noted that the Committee report recommends that the initial appropriation request, if overall statutory authorization is granted, be limited to the six courts of appeals in which there are eight or more circuit judges and in which the chief judge has indicated an immediate need for an administrative assistant.

COURT REPORTERS

The Judicial Conference approved the drafting and submission to the Congress of legislation which would eliminate from Section 753(e) of Title 28, United States Code, the dollar restriction on the annual salary of court reporters and give the Judicial Conference full authority to set the salaries of court reporters. The Conference noted the significant disparities which now exist in several districts between the salaries of state court reporters and federal reporters. The Director of the Administrative Office was directed to draft and submit to the Congress an appropriate legislative proposal to carry out the Conference action.

The Conference declined the request of the United States District Court for the District of Columbia that a new and higher category of transcript rate be established in order to expedite the production of transcripts, such new rate to equal that charged for daily copy. The Conference noted the Committee report which stated that the problem of court reporters in the District of Columbia has been raised many times and that the District Court now has twenty court reporters for its fifteen active judges, a ratio of court reporters to active judges which is higher than in any other district. The Conference also noted that the Administrative Office has consistently authorized temporary reporters for the senior judges of the Court and, further, that there are three existing vacancies

on the District Court. The Conference also approved the establishment of a subcommittee of the Committee on Supporting Personnel to make a complete study of the Court Reporters Act to determine its present adequacy and to make appropriate recommendations.

CAREER LAW CLERKS

The Conference noted and approved the Committee recommendation that the limit of the salaries of law clerks should be Grade JSP 12. The Federal Salary Act of 1967 raised salaries retroactively to October 1967 and provided for two additional increases for graded employees as of July 1969. When these two increases are put into effect, the steps in Grade JSP 12 will range from \$12,800 per year to \$16,700 per year. The Conference agreed that a minimum of five years of service by the law clerk would be necessary before he could be considered a career law clerk. At that time he would normally be in Step 4 of Grade JSP 12 and would have received increases in excess of \$1,500. Once a law clerk becomes a career law clerk, the Conference agreed that the present fifteen-year period to advance from Step 4 to Step 10 should be shortened to a minimum of eight years.

NATIONAL PARK COMMISSIONERS

The Conference disapproved a request for an increase for the commissioner at Yosemite National Park but agreed to authorize the Director of the Administrative Office to grant to park commissioners the same percentage increase that Congress authorizes for graded employees. This order is effective with the next statutory increase and will be effective for all future statutory increases.

TRIAL PRACTICE AND TECHNIQUE

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

Judge Murrah advised that under Committee auspices three seminars for newly appointed judges have been projected for 1968; the first such seminar to commence in Denver in late May, a second in Berkeley in mid-July and a third in Denver in October. Each seminar is to be approximately nine days in length and it is hoped that each judge appointed since the last seminar in June 1965 will have an opportunity to attend one of the three sessions.

MULTIPLE LITIGATION

Judge Edwin A. Robson spoke in behalf of the report of the Subcommittee on Multiple Litigation and summarized the principal activities of the subcommittee since the last session of the Conference in coordinating certain types of multi-district litigation. He stated that the Committee has performed its services by identifying, analyzing and recommending procedures for coordinated processing of major multi-district civil actions which present complex problems similar to those raised by and amenable to techniques developed in the electrical equipment, rock salt and aluminum cable antitrust litigation and in the air crash disaster cases.

Judge Robson stated that in accordance with the action of the Judicial Conference at its September 1966 session (Conf. Rept., p. 63), the subcommittee had continued its plans to revise the Outline of Suggested Procedures and Materials for Pretrial and Trial of Complex and Multiple Litigation. It is contemplated that the Manual will contain a looseleaf appendix which will contain a continually revised and supplemented collection of legal essays, briefs, documents, forms and sample orders for use in implementing the procedures recommended in the Manual. The Conference agreed that the subcommittee should continue to undertake its revision of the Outline and submit it to the Conference as soon as completed as well as the projected Manual.

COMMENTS ON LEGISLATION

The Conference noted that some criticism has been raised to the fact that the Conference undertakes to consider, study and express its views on pending legislation which affects or is of interest to the judiciary even when the views of the Judicial Conference have not been expressly requested by some committee of the Congress or by the Bureau of the Budget. The Conference was of the view that it is appropriate for the Conference to study legislation affecting the judiciary and that the views of the Conference should be given in advance of consideration on such legislation even though its views have not specifically been sought. The Conference voted to adhere to its present practice.

PRETERMISSION OF THE TERMS OF COURTS OF APPEALS

At the request of Chief Judge Clement F. Haynsworth, Jr., 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 1968.

At the request of Chief Judge Martin D. Van Oosterhout, the Conference, pursuant to 28 U.S.C. 48, consented to the pretermission of the terms of court of the Court of Appeals for the Eighth Circuit to be held at Kansas City, Omaha and St. Paul in 1968.

RESOLUTIONS

Chief Judge Alfred P. Murrah of the Tenth Circuit advised the Conference of the passing of Mrs. Orié L. Phillips, wife of Senior Judge Orié L. Phillips, and the Conference voted the following resolution:

Resolved: That the members of the Judicial Conference express their deepest sorrow at the passing of Mrs. Orié L. Phillips, wife of their colleague of many years, Judge Orié L. Phillips, and that the Conference send to Judge Phillips this expression of profound sympathy.

The Chief Justice advised the Conference of the death on February 26 of the Honorable William F. Smith, Judge of the Court of Appeals for the Third Circuit and former Chairman of the Conference Committee on the Administration of the Criminal Law. The Conference requested the Chief Justice to advise Judge Smith's widow of its sorrow and sympathy and voted to stand adjourned in memory of Judge Smith.

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.

MARCH 27, 1968.

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