

For release on Tuesday, January 28, 1941.

REPORT OF THE JUDICIAL CONFERENCE.

SPECIAL SESSION, JANUARY, 1941.

A special session of the Judicial Conference of Senior Circuit Judges was convened on January 21, 1941, and continued in session for two days. The following judges were present in response to the call of the Chief Justice:

Second Circuit, Senior Circuit Judge Learned Hand.
Third Circuit, Senior Circuit Judge John Biggs, Jr.
Fourth Circuit, Senior Circuit Judge John J. Parker.
Fifth Circuit, Senior Circuit Judge Rufus E. Foster.
Sixth Circuit, Senior Circuit Judge Xenophon Hicks.
Seventh Circuit, Senior Circuit Judge Evan A. Evans.
Eighth Circuit, Senior Circuit Judge Kimbrough Stone.
Tenth Circuit, Senior Circuit Judge Orrie L. Phillips.
District of Columbia, Chief Justice D. Lawrence Groner.

The Senior Circuit Judges for the First and Ninth Circuits, Judges Calvert Magruder and Curtis D. Wilbur, were unable to attend and their places were taken respectively by Circuit Judges John C. Mahoney and William Denman. The Director of the Administrative Office of the United States Courts, the Assistant Director and members of their staff were present.

Report of the Attorney General's Committee on Bankruptcy Administration.—The meeting was called primarily to consider, at the request of the Attorney General, the report by a committee appointed by the Attorney General on the administration of the Bankruptcy Act. Assistant Attorney General, Francis M. Shea, chairman, and Charles A. Horsky, director, of that committee, were present with members of the committee's staff at the opening of the session. Mr. Shea explained the committee's proposals. The Conference also heard Mr. B. Loring Young, the president of

the National Association of Referees in Bankruptcy, in relation to the committee's recommendations.

Copies of the committee's report had previously been distributed to the members of the Conference and they proceeded to the consideration of its recommendations as set forth in Part III of the report, pages 117-120. These recommendations appear in full in the appendix to the present report.

The Conference approved without modification the recommendations made by the committee with respect to the creation of a Division of Bankruptcy in the Administrative Office, as follows:

I. There should be set up, in the Administrative Office of the United States Courts, a Division of Bankruptcy, headed by a Chief, to be appointed by the Director of the Administrative Office.

A. The Division, in addition to the Chief, should include a staff of assistants adequate to enable the Chief and the Director to carry out the functions listed below. It should also include a few expert, highly qualified attorneys who can assist in special problems of research and investigation.

II. The Division of Bankruptcy, and the Chief, should assist the Director in carrying out the following functions:

A. The periodic and frequent examination and audit of the affairs of the referees and other bankruptcy officials.

B. The collection of bankruptcy statistics in such form as will best reflect the actual conditions of bankruptcy and bankruptcy administration throughout the United States.

C. The immediate and continuing investigation of the rules and practices of bankruptcy administration, with the object of discovering the most satisfactory rules of procedure under the various conditions which exist throughout the United States.

D. The receipt and investigation of complaints and suggestions with respect to bankruptcy administration and bankruptcy officials.

The Conference resolved that the statement of the function described in recommendation II E of the committee's summary should be modified so as to read as follows:

II. E. The recommending to the Conference of Senior Circuit Judges changes in the Bankruptcy Act, changes in the general orders and official forms, and changes in local bankruptcy rules, practice and procedure; and the recommending to the Circuit Council of a Circuit any changes with respect to local rules, particular practices and procedures in any court or before any referee in bankruptcy in that Circuit.

With respect to the committee's recommendations II F, III B, III B 1 and 2, and III C 2 and 3, relating to the inauguration and maintenance of a system of full time salaried referees in bankruptcy, the Conference adopted the following resolution:

Resolved, That it is the sense of the Conference that the fee system for the pay of referees in bankruptcy should be abolished and a system of full time referees at fixed salaries, as recommended by the Attorney General's committee, should be adopted for the country at large in so far as such system may be justified by local conditions; further, that a nation wide survey should be conducted by the Director of the Administrative Office with view of determining whether or not such system is practicable in all districts and areas of the country and if not, to what extent it should be supplemented by part time referees on a salary basis; and further, that both with respect to full time referees and with respect to such part time salaried referees as may be found necessary, the Conference should be authorized, upon the recommendation of the Director, to determine the number of referees, the territory over which each shall exercise jurisdiction, the salaries they shall receive, and any changes which may be made with respect to these matters:

Now, therefore, with respect to recommendations II F, III B, III B 1 and 2, and III C 2 and 3 of the report of the Attorney General's committee, the Conference makes the following recommendations:

1. That the legislation to be enacted authorize this Conference to determine whether part time salaried referees are necessary in any district or area of the country in lieu of the full time referees proposed in the report;

2. That the Director be authorized by such legislation to conduct a nation wide survey with a view of determining the number of full time salaried referees and, if the appointment of part time salaried referees is recommended, the number of such part time salaried referees, together with the territory to be served by each in either case, and the salaries to be paid them, and to report the result of his findings to this Conference and to the various Circuit Councils of the circuits for which such referees are to be appointed, and such Councils shall make recommendations to this Conference with regard thereto;

3. That this Conference be vested with authority to determine, in the light of the recommendations of the Director and of the Circuit Councils, the exact number of referees to be appointed, the territory over which they shall exercise jurisdiction, the salaries they shall receive, and any changes which may be made thereafter as to their respective numbers, territories or salaries;

4. That the transfers provided in III B 2 of the committee's report should be by direction of the Circuit Council for such periods as it may designate.

With respect to the appointment of referees, the Conference resolved that the proposal in recommendation III A of the committee's report should be modified so as to read as follows:

III. A. The power of selection and appointment of referees is to remain in the district judges. Section 34 should be clarified, however, to make it clear that in districts with more than one judge (including judges appointed for more than one district), or in situations in which the territorial jurisdiction of the referee extends over more than one judicial district, appointments shall be by joint action of a majority of such judges, or by the Circuit Council in case no such majority exists.

The Conference approved the committee's recommendation III D that referees shall be appointed for a term of six years. The Conference resolved, however, that the proposals contained in recommendations III D 1 and 2, relating to the removal and reappointment of referees, should be modified so as to read as follows:

III. D. 1. Removal of a referee during the term for which he is appointed shall be only for incompetency, misconduct, inefficiency, or neglect of duty. Incompetency, misconduct, inefficiency, or neglect of duty by a referee coming to the knowledge of the Director shall be reported by him to the district judge or judges of the district or area for which such referee is appointed and to the Circuit Council. A referee may be removed for any one or more of the above mentioned causes by the district judge or judges of the district or area for which he was appointed. When a report of incompetency, misconduct, inefficiency, or neglect of duty by a referee is made to such judge or judges and he or they fail to remove such referee, the Circuit Council, if it deems proper, may remove him from office for any one or more of the above mentioned causes.

Before any order of removal shall be entered, a specification of the charges shall be furnished to the referee and he shall be given reasonable notice of the time and place fixed for the hearing thereof and shall be accorded an opportunity to be heard on the charges.

III. D. 2. Not later than 90 days before the end of the term of each referee, the Director shall report in writing to the judge or judges of the district or area for which the referee was appointed, recommending his reappointment or recommending against reappointment because of incompetency, misconduct, inefficiency, or neglect of duty on the part of the referee. In the event the Director shall recommend against reappointment, the referee shall not be reappointed without the approval of the Circuit Council.

The Conference resolved that the proposal contained in the committee's recommendation III C 4 with respect to the retirement of referees should be modified so as to read as follows:

III. C. 4. In case of incapacity or at the age of seventy after ten years of service as a referee, the referee may retire or be retired by the judge or judges of the district or area for which he was appointed and receive annually thereafter during his life an amount equal to one-half of his salary in the year immediately preceding his retirement. Such benefits are to be paid by the United States.

The Conference adopted the following resolution in regard to aged referees.

Resolved, That the Conference recommends to the committee that it consider the advisability of making some provision for aged referees of long service who may be displaced as a result of the passage of the act.

The committee's recommendations III C 1 and III E, relating to the salaries and expenses of referees, were approved without modification. These recommendations are as follows:

III. C. 1. The salaries shall be paid by the United States from funds derived from charges against bankrupt estates, collected by the clerks of the district courts and paid into the United States Treasury, the system remaining self-supporting as it is today.

III. E. The expenses of each referee's office are to be paid by the United States, but from funds derived from charges against bankrupt estates, collected by the clerks of the district courts, and paid into the United States Treasury, the system remaining self-supporting as it is today. Such expenses are to be under the supervision of the Director and the Chief.

In connection with its proposal that salaries and expenses of referees be paid from a fund derived from charges against bankrupt estates (III C 1 and III E, above), the report, at pages 153 to 155, contains estimates of the probable future amounts of such charges. In arriving at such estimates, the committee included the sum of \$200,000 as the approximate amount of charges arising because of the appointment of referees to act as special masters in proceed-

ings under Chapters IX, X and XII of the Bankruptcy Act. With respect to this item, the Conference adopted the following resolution:

Resolved, That it is the sense of the Conference that the allowances amounting to \$200,000 mentioned as special masters' fees in the recapitulation on page 155 of the committee's report should no longer be made; that the deficiency so resulting should be met by an addition of about two-thirds to the present amount of the "Graduated Fixed Charge on Asset Cases"; and that when a referee is appointed as special master under Chapters IX, X or XII no allowance shall be made to him as special master.

Estimates.—The Director submitted to the Conference an estimate of the appropriation necessary for the establishment and maintenance of a Division of Bankruptcy in the Administrative Office for the fiscal year 1942. The estimate was based upon the committee's proposals regarding the functions and size of such a division, and contemplates a total appropriation of \$39,193.31 to provide for the salaries of a chief, assistant chief, two other attorneys, a secretary and two stenographers; the addition to the Division of Procedural Studies and Statistics of a senior clerk and two statistical clerks; traveling expenses, and other miscellaneous expenses. The Conference approved this estimate.

With respect to examiners necessary to conduct the investigations contemplated by the committee's recommendations, the Conference adopted the following resolution:

Resolved, That the Conference directs the Director to cooperate with the Attorney General and use his best efforts to secure in the appropriation for examiners for the Department of Justice for the fiscal year 1942 a force sufficient to supply competent examiners for the examination of the bankruptcy offices of the district courts under the supervision of the Administrative Office in accordance with recommendation II A

of the Attorney General's Committee on Bankruptcy Administration (pages 127 and 128 of the report of the committee). This action is without prejudice to such action as the Conference may hereafter deem advisable to provide for a corps of examiners under the Administrative Office of the United States Courts at any time in the future.

At its October (1940) session and in connection with its consideration of estimates submitted by the Director for the fiscal year 1942, the Conference approved certain provisos in the proposed form for that portion of the 1942 appropriation act dealing with "Miscellaneous Salaries, United States Courts". It has now resolved that the first of those provisos, appearing on page 10 of the report of the October session, should be amended by striking out the words "circuit and" in the second line so that, as amended, it shall read as follows:

Provided, That the compensation of secretaries and law clerks of district judges shall be fixed by the Director of the Administrative Office of the United States Courts in accordance with the compensation schedules of the Classification Act of 1923 (as amended), judges' secretaries being classified in the senior clerical grade and law clerks in the principal subprofessional grade.

Proposed Legislation.—The Director submitted to the Conference drafts of bills prepared in accordance with the recommendations of the Conference at its October (1940) session. These drafts were approved, with certain modifications, and the Director was instructed to support such bills before the Congress. In addition, the Conference recommended the enactment of a bill "To amend section 531 of the Revised Statutes, as amended, to divide Kentucky into two judicial districts", proposed by Judge Hicks in order to carry out a plan adopted at a conference of district judges, clerks and United States attorneys of Kentucky for changing the time and places of holding district courts in that state.

The Conference also recommended an amendment to section 306 of the Judicial Code to empower the circuit councils to subpoena witnesses and compel the production of testimony. When so amended, section 306 would read as follows (new matter being in italics and matter omitted in brackets):

306. To the end that the work of the district courts shall be effectively and expeditiously transacted, it shall be the duty of the senior circuit judge of each circuit to call at such time and place as he shall designate, but at least twice in each year, a council composed of the circuit judges for such circuit, who are hereby designated a council for that purpose, at which council the senior circuit judge shall preside. The senior judge shall submit to the council the quarterly reports of the Director required to be filed by the provisions of section 304, clause (2) and *upon the information so furnished and that gathered from other sources by the council* such action shall be taken [thereon] by the council as may be necessary to effectuate the purposes of this section. *For such purposes and for any other purpose within its competency, the council shall have the power to subpoena witnesses and to make orders for the production of evidence before it, and it shall have the powers of a district court of the United States to punish disobedience of such orders and subpoenas.* It shall be the duty of the district judges promptly to carry out the directions of the council as to the administration of the business of their respective courts. Nothing contained in this section shall affect the provisions of existing law relating to the assignment of district judges to serve outside of the districts for which they, respectively, were appointed.

Courthouses in the District of Columbia.—At its October (1940) session the Conference adopted a resolution relating to the erection of a new courthouse for the District Court of the United States for the District of Columbia. The Conference has now resolved to rescind that resolution and has instructed the Director to take such steps as may be practicable to accomplish the early erection of such a courthouse,

subject to the approval of the Chief Justice of the United States Court of Appeals for the District of Columbia.

Cases Decided by Inferior Courts in Conflict with a Later Decision of the Supreme Court.—A committee consisting of Judges Parker, Learned Hand and Phillips was appointed to consider legislation with respect to the review or rehearing within a limited time of cases decided by inferior courts in conflict with a later decision of the Supreme Court.

Civil Service Status for Employees of Clerks' Offices.—The Conference instructed the Director to investigate and report at the next session on the advisability of bringing deputy clerks and other persons employed in offices of clerks under a civil service system.

Instead of adjourning, the Conference declared a recess subject to the call of the Chief Justice.

For the Judicial Conference,

CHARLES E. HUGHES,
Chief Justice.

January 28, 1941.

APPENDIX.

The recommendations made by the Attorney General's committee, as stated in its summary at pages 117-120 of its report, to which reference is made in the report of the Judicial Conference, are as follows:

I. There should be set up, in the Administrative Office of the United States Courts, a Division of Bankruptcy, headed by a Chief, to be appointed by the Director of the Administrative Office.

A. The Division, in addition to the Chief, should include a staff of assistants adequate to enable the Chief and the Director to carry out the functions listed below. It should also include a few expert, highly qualified attorneys who can assist in special problems of research and investigation.

II. The Division of Bankruptcy, and the Chief, should assist the Director in carrying out the following functions:

A. The periodic and frequent examination and audit of the affairs of the referees and other bankruptcy officials.

B. The collection of bankruptcy statistics in such form as will best reflect the actual conditions of bankruptcy and bankruptcy administration throughout the United States.

C. The immediate and continuing investigation of the rules and practices of bankruptcy administration, with the object of discovering the most satisfactory rules of procedure under the various conditions which exist throughout the United States.

D. The receipt and investigation of complaints and suggestions with respect to bankruptcy administration and bankruptcy officials.

E. The recommending to Congress of changes in the Bankruptcy Act, to the Supreme Court of changes in the General Orders and Official forms, to the district courts

of changes in local bankruptcy rules and to any referee or other bankruptcy official of changes in practice and procedure. In connection with this function, the Director should be empowered, if his recommendations as to changes in the local rules are not accepted by the district judges, or his recommendations as to practice and procedure are not accepted by the referee or other official or corrected by the district judges, to request, if he sees fit, that such recommendations be approved and made effective, or rejected, by the Circuit Court Judicial Council of that circuit.

F. The inauguration and maintenance of a system of full-time salaried referees, and the supervision and maintenance of their offices.

III. The system referred to in II F, *supra*, should be constituted and maintained as follows:

A. The power of selection and appointment of referees is to remain in the district judges. Section 34 should be clarified, however, to make it clear that in districts with more than one judge, or in situations in which the territorial jurisdiction of the referee extends over more than one judicial district, appointments shall be by joint action of a majority of such judges (or by the senior district judge in case no majority exists) unless the majority, by rule or standing order, shall otherwise provide.

B. The number of referees is to be substantially reduced, and each of them is to be put upon a full-time basis.

1. The exact number of referees and the territory over which each shall exercise jurisdiction are to be determined by the Director after a careful study of conditions throughout the country as a whole, and of local conditions such as the area, the population, the transportation and communication facilities, the type and amount of bankruptcy work in prior years and where it is centered, the existing personnel and the over-all amount of funds available for salaries.

2. The number of referees and their respective territories may be changed from time to time, and ref-

rees may be transferred from one area to another within the same judicial circuit, as changes in these conditions warrant, subject, however, to the limitations contained in III D, *infra*.

C. Each referee is to be paid a stated salary in an amount between the limits of \$3,000 and \$10,000 a year.

1. The salaries shall be paid by the United States from funds derived from charges against bankrupt estates, collected by the clerks of the district courts and paid into the United States Treasury, the system remaining self-supporting as it is today.

2. The salary of each referee is to be determined by the Director upon consideration of, among other factors, the average number and the types of cases closed and pending and the average amount of gross assets realized for the preceding five-year period in the territory over which the referee is to have jurisdiction.

3. The salary of a referee may be changed as changes in conditions warrant, but a salary shall not be reduced during the tenure of any referee below that at which he was originally appointed, nor reduced during any term below that which it was at the beginning of that term, and shall not be changed more often than once every two years.

4. In case of incapacity or at the age of seventy after ten years service as referee, the referee may retire and receive annually thereafter during his life an amount equal to one-half of his salary in the year immediately preceding his retirement. Such benefits are to be paid by the United States.

D. The term for which referees are to be appointed is to be six years.

1. Removal of a referee during the term for which he is appointed shall be only for misconduct, inefficiency or neglect of duty. Removal is to be by the district judge or judges who appointed him, upon the written recommendation of the Director to the district judge or judges, or by such judge or judges upon his or their own initiative. Both the judges and the Director shall specify in writing the grounds upon which their action

is based. Either the referee, if a removal be decided upon by the judges, or the Director, in any case, may seek a review of the judges' action by the Circuit Court Judicial Council.

2. The Director is to report in writing to the district judge or judges near the end of the term of each referee, recommending his reappointment or non-reappointment upon the three grounds mentioned above. In the event the recommendation is not accepted, the Director may seek a review of the recommendation by the Circuit Court Judicial Council, and in the event of failure of re-appointment the referee may likewise request a similar review.

E. The expenses of each referee's office are to be paid by the United States, but from funds derived from charges against bankrupt estates, collected by the clerks of the district courts, and paid into the United States Treasury, the system remaining self-supporting as it is today. Such expenses are to be under the supervision of the Director and the Chief.