

REPORT OF THE JUDICIAL CONFERENCE

SEPTEMBER SESSION, 1941

The Judicial Conference, pursuant to the Act of Congress of September 14, 1922, as amended (U. S. Code, title 28, sec. 218), convened on September 23, 1941, and continued in session four days. The following judges were present in response to the call of the Chief Justice:

First Circuit, Senior Circuit Judge Calvert Magruder.
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.
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur.
Tenth Circuit, Senior Circuit Judge Orie L. Phillips.
District of Columbia, Chief Justice D. Lawrence Groner.

Judge Parker was unable to attend the session on the opening day and his place was taken by Circuit Judge Morris A. Soper. Judge Parker and Judge Wilbur were unable to attend on the fourth day.

The Attorney General, with his aides, was present at the opening of the Conference. Mr. Alexander Holtzoff of the Department of Justice was invited to a later session to present the Department's views on some questions of criminal law administration.

The Director of the Administrative Office of the United States Courts, Henry P. Chandler, the Assistant Director, Elmore Whitehurst, the Chief of the Division of Procedural Studies and Statistics, Will Shafroth, and other members of the staff of the Administrative Office were in attendance.

By invitation of the Conference, Representative Hatton W. Summers, Chairman of the Judiciary Committee of the House of Representatives, and Representatives Francis E. Walter and Estes Kefauver, members of the Committee, attended part of the session so that there could be an interchange of views by representatives of the judicial and legislative branches of the government on pending or prospective legislation affecting the work of the courts. Senator Frederick Van Nuys, Chairman of the Senate Judiciary Committee, was also invited but was unable to attend. The Conference found discussion with members of the Congress to be informative and helpful, and decided to continue the practice.

The Attorney General addressed the Conference with respect to various matters of current importance. He stated that the shift of duties relating to the administration of the courts from the Department of Justice to the Administrative Office had worked out most satisfactorily. He stressed the importance of the probation system and urged that probation officers be appointed entirely on merit. He also discussed the problems created by congested dockets and delays in the administration of justice, which have become especially serious in naturalization proceedings, and emphasized the importance of filling promptly existing vacancies in the judiciary.

The administration of the United States courts—Report of the Director.—The Director submitted to the Conference a comprehensive annual report reviewing the activities of the Administrative Office for the fiscal year ending June 30, 1941, and presenting detailed statistical data with respect to the work of the courts.

The Administrative Office has now been in existence for nearly two years. The general outlines of its activities and its statistical investigations were set forth in the Conference's report last year. In addition to its regular studies, detailed in the Director's report, the Administrative Office completed two special procedural studies during the year—one, of the method of selecting jurors in the southern district of New York, and the other a survey of pretrial procedure in the Federal courts. The Administrative Office has also begun special studies of the calendar systems in the individual districts and is cooperating with other agencies in researches concerning the administration of the courts. The Conference approved the Director's report, and ordered it released immediately for publication.

State of the dockets—Number of cases begun, disposed of, and pending, in the Federal district courts.—The Director's annual report contains statistical comparisons of the state of the dockets of the Federal courts for the fiscal year ended June 30, 1941, with those of previous years. Each Senior Circuit Judge also presented to the Conference reports and comments on the statistics submitted by the Director with respect to the work of the Federal courts in his circuit.

The Director's report shows that the number of civil cases pending in the district courts on June 30, 1941, remained at about the same level as the previous year's figure. There was, however, a marked increase in the number of cases commenced, notably Government cases, as is indicated by the following schedule of civil cases in the district courts (exclusive of the Canal Zone and the Virgin Islands):

Fiscal year:	Commenced	Terminated	Pending
1938.....	33,409	38,155	35,872
1939.....	33,531	37,463	31,940
1940.....	34,200	36,893	29,259
1941.....	37,826	37,914	29,171

There has been a slight decline in the number of criminal cases pending, but bankruptcy cases continue to rise, the number of pending bankruptcy cases increasing since last year from 54,494 to 56,506. During the year special progress was made in reducing the number of cases held under advisement for long periods of time after submission. Between the Administrative Office's first quarterly report in March 1940 and August 1, 1941, the number of cases under advisement for more than sixty days declined from 298 to 169.

Arrearages—Delays in the disposition of cases—Additional judges.—The Administrative Office has found that in a considerable proportion of districts of the United States trial of cases can be had with reasonable promptness if the parties desire. In a small number of metropolitan districts, however, there remains serious congestion despite all efforts to reduce arrears. While this situation will be remedied in part if vacant judgeships are promptly filled, there are some districts where additional judges are necessary. Last year the Conference recommended that an additional district judge be provided for the eastern district of Missouri, and it also recommended that the prohibition against filling the first vacancy occurring in the district of Massachusetts be repealed. After giving consideration to the report of the Director, and the statements of the senior circuit judges for the Eighth and First Circuits, the Conference recommended the passage of H. R. 137 and H. R. 2596, which carry out those two recommendations.

With a further view to relieving congestion of the dockets, the Conference considered ways of promoting freer and more efficient use of the practice of assigning district judges outside of their circuits. To accomplish this end, it is necessary that information be available to the Chief Justice, who makes the assignments, and to the senior judges of the circuits and districts concerned, indicating the district judges who are available for such assignments and the relative needs of the districts to which assignments are to be made. The Conference recommended that within thirty days, and thereafter from time to time on the request of the Director, the senior circuit judge in each circuit inform the Director what judges in his circuit are available for assignments to districts in other circuits, the character of work they are able to undertake and the length of time they are willing to devote to it. The Conference also recommended that all requests for such assignments be transmitted to the Director, whose office will act as a clearing house for the information which will be made available by the Director to the judicial officers charged with the duty of effecting assignments. So far as possible, judges who are available for service outside their circuits will be assigned to the districts where they are most needed.

Circuit courts of appeals.—The circuit courts of appeals have continued to keep abreast of their dockets and no additional circuit judges are recommended at this time. The Conference approved the proposal that the Director gather statistics of cases in the circuit courts of appeals corresponding to those of cases in the district courts; and accordingly the Conference authorized the Director to procure and report statistics of the time consumed in the disposition of cases in the circuit courts of appeals and in the various stages of litigation in those courts substantially as provided in Forms 1 and 2 attached to his memorandum filed with the Conference, such statistics to begin as of July 1, 1941.

The Conference resolved that legislation was desirable authorizing the Chief Justice to assign circuit judges to temporary duty in circuits other than their own, the procedure of assignment to conform to that of existing legislation relating to the assignment of district judges to districts outside their circuits.

Judicial conferences in the circuits.—During the past year, pursuant to the Administrative Office Act, judicial conferences have been held in all the circuits and in the District of Columbia. Ordinarily these conferences include executive meetings of the judges and public meetings which are also attended by representatives of the bar and others. These judicial conferences have already had a noticeable effect in making both the judges and the members of the bar more keenly aware of the problems affecting the administration of the courts. The Conference is of the opinion that the district judges should be more fully informed of matters which are to come before it from time to time so that such matters may become the subject of discussion at the judicial conferences in the circuits and the district judges may have opportunity to communicate their views, either through such conferences or otherwise, to this Conference. It therefore instructed the Director, on approval of the Chief Justice, to communicate as early as possible to all district and circuit judges data with respect to matters likely to come before this Conference, in which they may be particularly interested.

Estimates.—As required by the Administrative Office Act, the Director submitted to the Conference estimates of expenditures and appropriations necessary for the maintenance of the United States courts and the Administrative Office for the fiscal year 1943. The Conference approved those estimates, with the following changes:

1. The Conference directed that the estimate for "Miscellaneous salaries, United States courts" be increased to provide for one additional law clerk for the district judges in each circuit, thus increasing the maximum number of such law clerks in each circuit from three to four.

2. The Conference directed that the estimate for "Salaries of the Administrative Office" be increased by \$3,200 to provide for the employment of an additional attorney in the Division of Procedural Studies and Statistics.

3. The Conference was of the opinion that in view of the nature and responsibility of the duties of secretaries and law clerks to circuit judges, salaries should be fixed by the Director of the Administrative Office, as soon as funds are available, within a range of \$2,300 per annum minimum and \$2,900 maximum for secretaries, and within a range of \$2,600 per annum minimum and \$3,000 maximum for law clerks, the amount of salary for both classes of employees to depend upon length of service. The Conference accordingly instructed the Director to add to the estimate of "Miscellaneous salaries, United States courts" the sum of \$23,000, the amount estimated to be necessary for the purpose.

4. The Conference also approved the suggestion of the Director that the Administrative Office take over from the Department of Justice the two salaried court reporters on its rolls—one in the District of Hawaii and the other in the District of Puerto Rico—and authorized the Director to add the sum of \$5,400 to the estimate of "Miscellaneous salaries, United States courts" for this purpose.

Salaries for law clerks.—In addition to the foregoing action, the Conference recommended that the limitation with respect to the maximum salary of law clerks contained in United States Code, title 28, sec. 222 (a), be repealed; and that in those cases where a circuit judge desires to continue the services of his law clerk beyond a period of four years, the law clerk be paid a salary not exceeding \$3,500 per annum. Associate Justice Justin Miller of the United States Court of Appeals for the District of Columbia discussed this subject with the Conference, and urged that the present scale of compensation of law clerks of circuit judges should be substantially increased in order to put their remuneration on a parity with that of legal assistants in some of the executive departments and furnish an incentive to persons of good ability to continue in such positions for extended periods.

Promotional policy for judicial employees.—The Conference considered the matter of a promotional policy for judicial employees and questions raised concerning the application of recent statutes [particularly the act making appropriations for the Departments of State, Commerce, and Justice, and for the Federal Judiciary, for the fiscal year 1942, approved June 28, 1941 (Public Act 135), the Second Deficiency Appropriation Act for 1941, approved July 3, 1941 (Public Act 150), and an act amending the Classification Act of 1923, as amended, to provide for the promotion of employees therein specified, approved August 1, 1941 (Public Act 200)]. The Conference was of the opinion that it is desirable and in the public interest that a plan of

promotions for the employees of the courts be established corresponding to that established for other employees under said Public Act 200.

Accordingly, the Conference instructed the Director of the Administrative Office:

(a) To proceed to authorize promotions of judicial employees permitted by the appropriation act for the courts for the fiscal year 1942, which provides funds for within-grade promotions for judicial employees in the lower salary ranks for 3 years of service without intervening promotion, and for judicial employees in the higher salary ranks for 5 years of service without intervening promotion;

(b) To formulate and as soon as may be to put into operation a promotional plan for the employees of the courts based upon within-grade promotions for employees in the lower salary ranks for 18 months of service and for employees in the higher salary ranks for 30 months of service, in both cases without intervening promotions, corresponding in general with the plan established by Public Act 200 for the employees whom it embraces.

The plan for the judicial employees may include appropriate provisions for rating efficiency and for making promotional increases in salary dependent upon the attainment of specified standards of efficiency as shown by such ratings. The promotional plan for judicial employees authorized by subdivision (b) shall be subject to the approval, in behalf of the Conference, of its advisory committee and shall not be put into operation until so approved.

In order to procure the funds requisite to put into operation a promotional plan for the judicial employees of the nature contemplated in subdivision (b), the estimate of additional appropriations for the fiscal years 1942 and 1943 submitted by the Director for the consideration of the Conference was approved, and the Director was authorized to seek from the Congress such supplemental or deficiency appropriations as he may be advised are requisite for the fiscal years 1942 and 1943 not in excess of the amounts shown in the estimate submitted by the Director, which aggregate \$15,324 for 1942 and \$71,126 for 1943.

The bill to limit the authority of judges to sit.—The Conference considered H. R. 138, which would limit the authority of a circuit judge to sit in the district court to cases where he does so at the request or with the consent of the senior district judge, and would limit the authority of district judges and retired judges to sit in the circuit courts of appeals to those cases in which, by reason of disability, disqualification, or vacancy, a circuit court of appeals could not be otherwise constituted.

This bill has passed the House of Representatives and is now pending before the Judiciary Committee of the Senate. Senior Circuit Judges Parker, Stone, and Biggs, Chief Justice Groner, and several circuit judges, in testimony before a subcommittee of the Senate Committee, had previously outlined certain objections to the bill. The discussion at the Conference stressed the fact that from time to time there arise in the district courts, cases in which it is in the public interest that a circuit judge sit in a district court and in which it is inadvisable to require the senior district judge's consent; that the temporary absence or unavailability of a senior district judge might make his consent impossible to secure in some urgent cases; that placing in the hands of the senior district judge an unqualified veto

of the assignment of a circuit judge to sit in a district court would in some cases not be in the public interest and would be a serious departure from the policy of promoting a flexible and efficient system for supervising the work of the federal courts which it was the purpose of the Administrative Office Act to strengthen.

The Conference was of opinion that an adequate safe-guard against improper exercise of the power would be afforded by a provision that assignment of a circuit judge to sit as a district judge be made by the judicial council of his circuit. The Conference looked with disfavor on any regular practice of circuit judges sitting in district courts or district judges sitting in the circuit courts of appeals. It thought, however, that no such regular practice has prevailed in any part of the country and that occasional appellate work by district judges and trial work by circuit judges is necessary to secure the prompt and appropriate disposition of the business of the courts and is beneficial both to the judges and the courts in which they sit. It was also pointed out that the enactment of H. R. 138 might make necessary the creation of several new circuit judgeships, especially since the bill would limit the exercise of the power, under existing legislation, to call on retired judges whose assistance has contributed substantially to the maintenance of the present fortunate state of the dockets of the circuit courts of appeals. The discussion concluded with a resolution—

That it is the sense of the Conference that passage of H. R. 138 is not in the public interest, and the Conference approves statements on the bill made by members of the Conference before the subcommittee of the Senate Committee on the Judiciary.

These views were communicated to the members of the House Committee on the Judiciary who attended one of the sessions.

Court reporters.—At the October 1940 session of the Conference, the subject of compensation of official court reporters was referred to a committee consisting of Judges Parker, Hicks and Phillips to give further consideration to a report which had been submitted by the Director. The committee, after consultation with the Department of Justice, submitted to the Conference a proposed bill, prepared with the assistance of the Administrative Office, which the Conference approved with a minor modification. The bill as recommended by the Conference would authorize each district court to appoint one or more official court reporters in the manner provided for the appointment of the clerks of those courts. The number of reporters to be appointed is to be determined by the Conference, which is also to fix the qualifications required of appointees. Other provisions are that the official reporter is to record all proceedings in criminal cases had in open court and all proceedings in other cases unless the parties specifically agree to the contrary. Each official

court reporter is to receive an annual salary of not more than \$3,000, to be fixed from time to time by the Conference. If the court and the Conference are of the opinion that stenographic services should be procured on the basis of competitive bidding, contracts may be awarded for periods not to exceed three years. The official court reporter may collect from parties, including the United States, such fees for transcripts, and no other, as are established by the court subject to the approval of the Conference or as are established by a contract which has been awarded as a result of competitive bidding. The fees for transcripts furnished to a judge for his personal use and the fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to proceed in forma pauperis are to be paid by the United States. The reporter is to furnish such persons with transcripts of proceedings concerning them without prepayment of fees. An additional clerk's fee of \$5 is to be taxed against all parties other than the United States for the services of the official reporter.

The Conference believes that the present system of reporting in the courts of the United States is inferior to that prevailing in most of the states and that the enactment of a comprehensive bill substantially like that recommended is essential to the proper administration of justice in the federal courts.

The creation of special courts.—The Conference considered the report of the committee consisting of Judges Biggs, Hand, and Phillips concerning the creation of a special court to have exclusive jurisdiction over railroad reorganizations. The Conference concurred in the committee's recommendation that at the present time no feasible plan for such a court has been offered which would materially reduce the delay incident to such reorganization proceedings.

The Conference also considered S. 928 which would establish a separate circuit court of appeals composed of five permanent judges, with exclusive jurisdiction over appeals in patent cases. The following resolution was adopted:

That the Conference disapproves S. 928 in its present form. But without expressing any opinion at this time as to the desirability of a special court of patent appeals, we direct that a committee consisting of Judge Biggs, chairman, and Judges Hand, Hicks, Evans, and Phillips study the whole subject of a special court of patent appeals and report back to the Conference at its next meeting its findings and recommendations in the premises.

Rules of circuit courts of appeals.—The Conference approved the recommendation of its committee on uniform rules for the circuit courts of appeals, consisting of Judges Parker, Hicks, Wilbur, and Phillips, that the following rule be adopted by the several circuit courts of appeals:

Where, pending appeal, application is made to the court, or a circuit judge, for any relief which might have been granted by the trial judge, such application

must show either that it is not practicable to apply to the trial judge for the relief or that application has been made to him and denied, with the reasons given by him for the denial. With the application shall be filed copies of such parts of the record in the court below as are available; and timely notice of the application shall be given the opposite party or his counsel.

Federal indeterminate sentence law.—At its October 1940 session the Conference recommended passage of an indeterminate sentence law for the Federal courts. In some circuits the judicial conferences subsequently expressed opposition to the proposed bill. The Conference therefore resolved:

That in view of the objections made by several circuit conferences to the indeterminate sentence bill approved by this Conference last year, it is the sense of the Conference that a further study should be made of the indeterminate sentence, the objections of the district judges thereto, and the general subject of punishment for crime, including the treatment of youthful offenders; and that to that end the Chief Justice appoint a committee of circuit and district judges to study the matter fully and make report as soon as possible to the end that the same may be considered by the various circuit conferences and that the views of such conferences, together with the report of the committee, may be considered by this Conference at its next annual meeting.

The Committee appointed to study these questions consists of Judge Parker, chairman, Judges Hand and Phillips, and District Judges Carroll C. Hincks, John C. Collet, Paul J. McCormick and Bolitha J. Laws.

Waiver of indictment.—Judge Biggs placed before the Conference a resolution of the judicial conference of the Third Circuit recommending the passage of legislation which would authorize the filing of an information by the United States Attorney in cases where a defendant wishes to plead guilty. Such a procedure would enable a defendant, who desires to plead guilty, to avoid the delays which sometimes occur when the impaneling of a grand jury to find an indictment is required. The Conference recommended that existing law or established procedure be so changed that a defendant may waive indictment and plead guilty to an information filed by a United States attorney in all cases except capital felonies.

Probation officers and personnel in clerks' offices.—With respect to standards of qualifications of probation officers, the Conference reaffirmed its position expressed in 1940 "that in view of the responsibility and volume of their work, probation officers should be appointed solely on the basis of merit without regard to political considerations; and that training, experience, and traits of character appropriate to the specialized work of a probation officer should in every instance be deemed essential qualifications." The Conference further authorized the Chief Justice to appoint a committee of seven members, four circuit judges and three district judges, to consult with the Director and report to a future meeting of the Conference whether it will be advisable for

the Conference to supplement its general statement of principle by recommending to the district courts definite qualifications to be required of persons considered for appointment as probation officers and, if so, what those qualifications should be.

The Director submitted a report on the question of bringing the personnel of clerks' offices, except the clerks, under a merit system and the Conference referred this question for further study to the same committee which is to consider the standards of qualifications of probation officers.

The committee designated to study the last mentioned subjects consists of Judge Magruder, chairman, Judge Stone, Circuit Judges Augustus N. Hand and Samuel H. Sibley, and District Judges William C. Coleman, F. Ryan Duffy, and Adolphus F. St. Sure.

Abolition of statutory divisions of judicial districts and of unnecessary terms of court.—In the interests of economy and dispatch in the administration of justice and of the convenience of the litigants, the Conference at its October 1940 session resolved that all statutory divisions of judicial districts should be abolished. It recommended general legislation authorizing the adjournment of a term of court whenever there was insufficient business to justify the holding of the term, and authorizing the judge to transfer pending cases to other places within the district where court could be held. Judge Parker submitted a bill covering this subject as a substitute for S. 1054, which is now pending. The Conference suggested certain changes in Judge Parker's proposed bill and with those changes recommended its passage. The recommended bill provides:

SEC. 1. That upon a finding by the judicial council of a circuit that the public convenience does not require the holding of a stated term of court at a place within the circuit designated by law for that purpose, and that the amount of business there pending does not warrant the holding of such term of court, the council may direct that such term be not held; and the district judges shall thereupon be absolved of the duty of holding such term of court at such place and shall transfer any cases there pending to some other place within the district convenient to the parties.

SEC. 2. That all statutory divisions of judicial districts be, and they hereby are abolished, and the judge holding the courts of a judicial district may transfer a case from one place of holding court to another upon a finding by him that the convenience of the parties or the ends of justice so require.

Judicial approval of accounts.—On this subject the Conference adopted the following resolution:

That the Judicial Conference renews its endorsement of the bill introduced upon its recommendation and now pending in the House of Representatives (S. 1051), which is designed to relieve the judges of the district courts of burdensome administrative detail in connection with the accounts for fees of jurors and witnesses and to permit such accounts to be certified by the clerks of court in the case of jurors and by the United States attorneys or their assistants in the case of witnesses. In this connection the Conference approves, either by way of amend-

ment to the pending bill or by separate act, an amendment of the present statutory provision with reference to allowance of expenses of subsistence to witnesses incurred in attending court or hearings before United States commissioners away from their homes, so that their right to allowance may be certified to by the United States attorney, assistant United States attorney, or the commissioner, in lieu of the certificate by order of the court or the commissioner now required.

Further resolved, that the Conference recommends that the statute providing for the payment of the expense accounts of United States attorneys and assistant United States attorneys (U. S. Code, title 28, sec. 592) be amended so that such accounts may be approved for payment by the United States attorney.

Compensation of attorneys.—In past years the Conference has recommended that provision be made for the appointment of public defenders in districts where there is a large volume of criminal business. Such legislation however has not yet been enacted, and the Conference therefore considered the problem of compensating attorneys appointed by the court to represent indigent persons in criminal cases and in habeas corpus proceedings where no provision is made for a public defender. The Conference recommended legislation making possible such compensation, the legislation to contain appropriate limitation of the maximum amount of compensation and to provide that the award, if any, of compensation within the maximum shall be in the discretion of the judge before whom the case or proceeding is tried. Four members of the Conference wished their dissent noted, believing it to be the duty of the members of the bar to represent indigent persons without compensation.

Jury selection.—The Conference discussed the need of improvement in methods of jury selection in United States courts and authorized the appointment by the Chief Justice of a committee of five district judges to investigate the subject. The committee designated consists of District Judge John C. Knox, chairman, and District Judges Harry E. Watkins, Walter C. Lindley, Colin Neblett, and James M. Proctor. The Conference requests that the subject be discussed in the judicial conferences of the several circuits. It also authorized the Administrative Office to make a study of the jury system in the federal courts with special reference to the selection of jurors and economy of operation.

Civil disabilities legislation.—A resolution of the judicial conference of the Tenth Circuit urged this Conference to recommend appropriate legislation to free from civil disabilities a probationer who has been found by the court to have met the conditions of his probation. The Conference authorized appointment by the Chief Justice of a committee to study this subject and report at the next meeting. The committee appointed consists of Judge Phillips, chairman, and Judges Biggs and Wilbur.

Cases decided by inferior courts in conflict with a later decision of the Supreme Court.—At its January 1941 session, the Conference appointed a committee consisting of Judges Parker, Hand, and Phillips to consider legislation with respect to the review on rehearing within a limited time of cases decided by inferior courts in conflict with a later decision of the Supreme Court. The committee reported that in its judgment such legislation was not necessary or desirable and the Conference approved the report.

Compensation of United States commissioners.—There is now pending a bill to change the compensation of United States commissioners (H. R. 3751). The Conference requested the Administrative Office to make a study of the commissioner system and report to the next annual meeting of the Conference. It recommended that pending such report no legislation affecting the compensation of commissioners be adopted.

Appeals in admiralty.—Last year the Conference appointed a committee composed of Judges Hand, Magruder, Parker, Foster, and Chief Justice Groner to consider the advisability of extending to appeals in admiralty suits the practice obtaining in appeals in other civil actions. The committee rendered a report recommending the abolition of admiralty rule 45 which permits further proof to be taken by leave of a circuit court of appeals or the Supreme Court on an appeal in admiralty. The committee recommended that admiralty appeals should no longer be treated as a new trial, and that in this respect they should be assimilated to appeals in other civil cases. The Conference approved the report.

Specially constituted statutory courts.—The Conference authorized appointment by the Chief Justice of a committee to report at its next meeting on the advisability of amending various statutes relating to the district courts of three judges, and also the special court of circuit judges under the Expediting Act (U. S. Code, title 15, sec. 28 and U. S. Code, title 49, sec. 44), so as to provide a uniform method of assembling such courts. The committee designated for the purpose consists of Judge Evans, chairman, and Judges Stone and Phillips.

Clerks' fees.—Last year the Conference considered proposals for the adoption of flat-fee systems in the district and circuit courts. At that time the Conference made no recommendation concerning such proposals. The Conference again considered the subject and authorized the Chief Justice to appoint a committee to study it further and report to the Conference. The committee appointed consists of Judge Biggs, chairman, Judges Foster and Evans, and Chief Justice Groner.

Reimbursement of judges for expenses of travel and subsistence.—The statute relating to reimbursement of travel and subsistence expenses of judges incurred in the performance of duty away from their official

places of residence (Sec. 259 of the Judicial Code, as amended, U. S. Code, title 28, sec. 374), provides that such expenses shall "be paid by the marshal of the district in which such court is held or official business transacted." In many instances this provision works an inconvenience which could be avoided if the marshal of the judge's home district were also authorized to make payment. The Conference therefore recommended that Section 259 of the Judicial Code be amended by eliminating the words "by the marshal of the district in which such court is held or official business transacted."

Pending bills disapproved.—The Conference disapproved bills introduced in the Congress to divide the Ninth Circuit into two circuits (S. 1793 and H. R. 5489), and a bill providing that jurors in the district courts of the United States shall be drawn from the state jury lists (H. R. 51). It also disapproved a proposed bill to authorize the President to designate the judge of the district court of the Virgin Islands to discharge the duties of judge of the district court for Puerto Rico, and vice versa.

Bills approved.—The Conference recommended the passage of H. R. 5203, extending the power of the Supreme Court to make rules for criminal procedure so as to include expressly the regulation of proceedings to punish for criminal contempt of court. It also approved H. R. 4807, exempting the states and their agencies from the payment of certain district court fees.

The Conference renewed its action with respect to certain legislation urged at last year's session. Accordingly it recommended the passage of S. 1052, authorizing payment of subsistence expenses of not more than \$10 per day to judges of the Court of Claims; and S. 1050, relating to the status of retired judges. With respect to H. R. 146, relating to the removal of judges by a method alternative to impeachment, the Conference repeated its recommendation of last year that "assuming its constitutionality, as to which we express no opinion, we are in accord with the general purpose and approve in principle the provisions embodied" in the bill.

The Conference renewed its recommendation that appropriate action be taken to secure a new court building in the District of Columbia.

Last year the Conference recommended that the time periods for all appeals to the circuit courts of appeals be made uniform and not to exceed thirty days. The Conference instructed the Director to discuss this recommendation with the Attorney General with a view to securing legislation to carry out the recommendation.

Selection of penal institutions.—Public Act 112, approved June 14, 1941, provides that convicted persons shall be committed to the custody of the Attorney General or his authorized representative, who shall designate the place of confinement where the sentences of such persons shall be served. This statute eliminates the power of the court to determine the type of institution to which the prisoner is to be committed. It has been found that under this Act the selection of the place of commitment has in some instances been delegated to the United States attorneys or marshals. The Conference appointed a committee consisting of Judges Parker and Phillips to confer with the Attorney General, who is now drawing up regulations governing places of commitment.

Certificate in constitutional cases.—The Conference approved a form of certificate suggested by the Acting Solicitor General for use by district judges under the Act of August 24, 1937, in cases in which the constitutionality of a federal act is questioned and the United States is not a party.

Advisory committee.—The Conference continued the committee, consisting of the Chief Justice, Judges Biggs, Parker and Stone and Chief Justice Groner, to advise and assist the Director in the exercise of his duties.

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

For the Judicial Conference,

HARLAN F. STONE,
Chief Justice.

OCTOBER 6, 1941.