

## APPENDIX

### REPORT OF THE PROCEEDINGS OF A SPECIAL SESSION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES .

Pursuant to the call of the Chief Justice, issued February 16, 1950, the Judicial Conference of the United States met in special session on Thursday, March 9, 1950. The following were present:  
The Chief Justice, presiding.

#### Circuit:

District of Columbia:

Chief Judge HAROLD M. STEPHENS.

First:

Chief Judge CALVERT MAGRUDER.

Second:

Chief Judge LEARNED HAND.

Third:

Chief Judge JOHN BIGGS, Jr.

Fourth:

Chief Judge JOHN J. PARKER.

Fifth:

Chief Judge JOSEPH C. HUTCHESON, Jr.

Sixth:

Circuit Judge CHARLES C. SIMONS.\*

Seventh:

Chief Judge J. EARL MAJOR.

Eighth:

Chief Judge ARCHIBALD K. GARDNER.

Tenth:

Chief Judge ORIE L. PHILLIPS.

Hon. Arthur F. Lederle, Chief Judge, United States District Court for the Eastern District of Michigan; Hon. Finis J. Garrett, Chief Judge, United States Court of Customs and Patent Appeals;

\*Chief Judge Xenophon Hicks of the Sixth Judicial Circuit was unable to attend and, pursuant to his suggestion, Judge Simons was designated by the Chief Justice to attend in his stead; Chief Judge William Denman of the Ninth Judicial Circuit was unable to attend and, because of the pressure of the court business in the Circuit, he suggested no alternate for designation to attend in his stead.

Hon. Marvin Jones, Chief Judge, United States Court of Claims; and Hon. Webster J. Oliver, Chief Judge, United States Customs Court, were in attendance for part of the session, and participated in the discussions relative to Retirement of Judges.

Henry P. Chandler, Director; Elmore Whitehurst, Assistant Director; Will Shafroth, Chief, Division of Procedural Studies and Statistics; and Leland Tolman, Chief, Division of Business Administration; all of the Administrative Office of the United States Courts, were in attendance throughout the session.<sup>1</sup>

Paul L. Kelley, Executive Secretary to the Chief Justice, served as Secretary of the Meeting.

*Judges—Retirement of.*—The Conference entered upon a general discussion of the subject of retirement of judges of the United States as defined in § 451 of Title 28, United States Code, and the recent communication from the Chairman of the United States Civil Service Commission with respect to possible coverage of such judges by the provisions of the Civil Service Retirement Act. Thereupon, the Conference took the following action:

*Whereas*, the Chairman of the United States Civil Service Commission having expressed the view that judges of the United States as defined in § 451, Title 28, United States Code, are subject to the provisions of the Civil Service Retirement Act, as amended, and the Director of the Administrative Office having requested instructions in the premises, now, pursuant to the provisions of § 604 of Title 28, United States Code, it is

*Resolved that*, It is the sense of the Conference that judges of the United States, as defined under § 451 of Title 28, United States Code, are not subject to the provisions of the Civil Service Retirement Act;

It is not incumbent upon such judges to make any election between the retirement provisions of that Act and the retirement provisions of §§ 371 and 372 of Title 28, United States Code, and

The Director of the Administrative Office is hereby directed to make no deductions from the salaries of such judges because of the provisions of the Civil Service Retirement Act.

*Courts—Places of holding court.*—The Director stated that numerous legislative proposals had been introduced in the Congress which, if enacted, would designate certain localities as a "place of holding court," and inquiries were being directed to him

<sup>1</sup> For convenience, the Director of the Administrative Office of the United States Courts, and the Administrative Office of the United States Courts, are hereinafter referred to as the Director, and the Administrative Office, respectively.

for an expression as to the views of the Judicial Conference concerning such proposals.

The Conference reaffirmed the views previously expressed with respect to its attitude concerning the overall policy question involved<sup>2</sup> and, in connection with the immediate situation, concluded that such determination was a matter within the province and discretion of the Judicial Councils of the respective circuits involved. The Conference authorized the Director to communicate or confer with the Judicial Councils of the Circuits in which the suggested places of holding court are located for the purpose of ascertaining their views on the specific proposals, and instructed him to be governed by the views so expressed.

*Court records—Maintenance and keeping of.*—The Director advised that the Clerk of the United States District Court for the Northern District of California has requested authorization for the installation of a system of microfilming records similar to the systems recently authorized and installed in the District Courts for the District of Columbia and the Southern District of New York. The Chief Judge of the District Court concerned has approved the request and is anxious for the change to be effectuated as promptly as possible.

The Director submitted a form of directive authorizing this change and requested approval thereof by the Conference. Pursuant to the provisions of Rule 79 (b) of the Federal Rules of Civil Procedure, and Rule 55 of the Federal Rules of Criminal Procedure, the Conference approved the proposed directive and authorized the prompt installation of the microfilming method of preserving certain records in the United States District Court for the Northern District of California.

*Commissioners, United States—Method of compensation.*—The Director informed the Conference that a bill (H. R. 4452) had been introduced in the Congress to “provide that United States Commissioners shall be paid an annual salary to be fixed by the Judicial Conference of the United States” which, if enacted, would eliminate the present fee system of compensation, and that in response to an inquiry directed to him by the Chairman of the Committee on the Judiciary, House of Representatives, Honorable Emanuel Celler, he had advised as follows:

In answer to your inquiry of June 23rd [1949] concerning a bill to provide that United States commissioners shall be

<sup>2</sup> Conf. Report, Sept. 1948, pp. 33-34.

paid an annual salary to be fixed by the Judicial Conference of the United States (H. R. 4452) I would say that this bill provides for changing the compensation of United States commissioners from a fee to a salary basis.

The fees presently payable to United States commissioners are fixed by § 633 of Title 28 of the United States Code. This in substance incorporates the provisions of an act revising the fees of United States commissioners approved August 1, 1946 (60 Stat. 752-753). That act was recommended by the Judicial Conference of the United States in accordance with the report of a committee, consisting of District Judge Carroll C. Hincks of Connecticut, chairman, and District Judges W. Calvin Chestnut of Maryland, James Alger Fee of Oregon, Gunnar H. Nordbye of Minnesota, J. Foster Symes of Colorado, and George C. Taylor of Eastern Tennessee. The act very much simplified the previous fee structure and also somewhat increased the yield of the fees to meet a justified complaint of commissioners that their compensation under the old law was not adequate.

The Judicial Conference, under which I act, has not considered the bill to place the compensation of United States commissioners upon a salary basis. In view, however, of the consideration of the subject of compensation for commissioners by the Judicial Conference when the schedule of fees was revised by the act of 1946 which has been cited it may be proper to say this. Ideally a salary system of compensating public officers is always preferable to a fee system. The committee of the Judicial Conference after considering the matter of a salary plan in connection with its study of the commissioner system concluded, however, that in reference to United States commissioners, it would be impracticable. This is because of the large number of United States commissioners, who were 648 on June 30, 1948, [674 on November 14, 1949] and the wide variation in the volume of their services and their resulting compensation ranging from a few matters for which the fees are trifling, to virtually full-time work, the compensation for which may run to a maximum of \$9,376.50.

The pending bill amends § 633 (a) of Title 28 of the United States Code to authorize the Judicial Conference of the United States to fix the salaries of United States commissioners somewhat in the manner that it fixes the salaries of referees in bankruptcy under the Bankruptcy Act. There are, however, only 163 authorized referees' positions in contrast with the 648 [now 674] positions of United States commissioners at the end of the fiscal year 1948. Also there is no control by the Judicial Conference of the United States upon the number of United States commissioners because each district court may appoint such number as it deems advisable. There is almost every gradation in amount of service of United States

commissioners from slight service with nominal compensation to the sum about \$9,000 above mentioned. All the reasons from the standpoint of impracticability which led the committee of the Judicial Conference to decide against a salary system for United States commissioners in its report to the Judicial Conference in 1943 and the Conference to approve its report, exist today.

The Director advised further that hearings on the proposed measure were being conducted by a subcommittee of the Committee on the Judiciary, and that pursuant to the subcommittee's request he had appeared before it and made substantially the same statement as that which appears in his letter to the Chairman of the full committee.

The Conference reaffirmed its approval of the recommendations of the Hincks Committee dealing with a salary system of compensation for commissioners, previously approved by the Conference in September, 1943, and approved the position taken by the Director in connection with the proposed legislation.

*Budget estimates—Fiscal year 1950.*—The Director advised that an analysis of present conditions with respect to the appropriation account covering monies available for the purpose of defraying expenses incident to the payment of jurors' fees indicated that a rather substantial deficiency would be incurred in this particular account. He requested the Conference to authorize him to seek the additional amounts deemed necessary to properly take care of this item. Thereupon, the Conference authorized and directed the Director to seek such additional funds as may be required for the purpose outlined.

There being no further business to come before the Conference, the Conference declared a recess subject to the call of the Chief Justice.

For the Judicial Conference of the United States:

FRED M. VINSON,  
*Chief Justice.*

Dated: Washington, D. C., March 16, 1950.