REPORT
OF THE PROCEEDINGS
OF THE
REGULAR ANNUAL MEETING
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES

SEPTEMBER 16 AND 17, 1959

WASHINGTON, D.C.

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 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 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.

TABLE OF CONTENTS

REPORT OF THE PROCEEDINGS OF THE ANNUAL MEETING OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, SEPTEMBER 16, 17, 1959

	Page
Call of the Conference	1
Report of the Attorney General	3
Report of the Director of the Administrative Office of the United States Courts	4
Expedition of court business	6
Report of the Committee on the Budget	6
Joint Report of the Committees on Court Administration and Revision of the Laws:	
Judicial review of veterans' claims	7
Trial of unfair labor practice cases in district courts	8
Judicial review of deportation orders	8
Jurisdiction of actions commenced by fiduciaries	8
Status of retired judges	9
Abolition of terms of court	11
Citizenship of corporations in diversity cases	11
Compact between Puerto Rico and the United States	11
Judicial review of removal or suspension of federal employees	13
Joint Report of the Committee on Supporting Personnel and the Committee on Court Administration:	
Clerks' fees	13
Court reporters	15
Law clerks and secretaries	16
Crier-law clerks	19
Other supporting personnel	19
Judicial employees training act	20
Fees and mileage of witnesses in habeas corpus proceedings	20
Wages and effects of deceased seamen	20
Arbitration of automobile accident cases	20
Standing masters under Rule 53	21
Terms of district judges on the judicial conference	21
Other administrative proposals	21
Additional matters referred to the Committee on Court Administration	22
Bankruptcy Administration:	
Salaries and arrangements	23
Legislation:	
Summary jurisdiction	24
Time for review of referees' orders	25
Verification of pleadings	25
Time for filing claims in Chapter XIII cases	25
Time for filing claims in Chapter XI cases	26

Bankruptcy Administration—Continued	Page
Supplemental appropriations	26
Special charges by referees	26
Retirement of referees	28
Improvements in bankruptcy procedures	28
Report of the Committee on the Administration of the Criminal Law	29
Report on the Pilot Institute on Sentencing	30
Report of the Committee on Judicial Statistics	31
Report of the Committee on Pre-Trial Procedure	32
Report of the Committee on the Operation of the Jury System:	
Travel and subsistence allowance of jurors	32
Legislation:	
Verdicts less than unanimous	33
Compensation of jury commissioners	33
Jury commission	33
Report of the Committee on the Assignment and Designation of Judges	33
Report of the Committee on Revision of the Laws:	
Consent judgments and decrees in antitrust cases	35
Admission of attorneys to practice in Courts of Appeals and District Courts	35
Registration and enforcement of support orders in certain state, territorial and other courts	35
Arbitration procedure—judicial review of questions of law	36
Service of notice by certified mail	36
Record on judicial review of orders issued under the Federal Aviation Act of 1958 and the Food Additives Amendment of 1958	37
Habeas Corpus procedure	37
Report on the status of legislation	37
Institute on Sentencing in the District of Columbia Circuit	38
Conference on administrative procedure	38
Closing of clerks' offices on Saturdays	38
Pretermission of terms of the Court of Appeals of the Tenth Circuit	38
Cases and motions under submission	39
Maintenance and travel expenses of judges	39
Committees	39
Appendix	41
Index	51

Report of the Proceedings of the Annual Meeting of the Judicial Conference of the United States

The Judicial Conference of the United States convened on September 16, 1959, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on September 17. The Chief Justice presided and members of the Conference were present as follows:

District of Columbia Circuit:
Chief Judge E. Barrett Prettyman
Chief Judge David A. Pine, District of Columbia

First Circuit:
Chief Judge Peter Woodbury
Chief Judge George C. Sweeney, District of Massachusetts

Second Circuit:
Chief Judge Charles E. Clark
Chief Judge Sylvester J. Ryan, Southern District of New York

Third Circuit:
Chief Judge John Biggs, Jr.
Chief Judge J. Cullen Ganey, Eastern District of Pennsylvania

Fourth Circuit:
Chief Judge Simon E. Sobeloff
Chief Judge Roszel C. Thomsen, District of Maryland

Fifth Circuit:
Chief Judge Richard T. Rives
District Judge Ben C. Connally, Southern District of Texas

Sixth Circuit:
Circuit Judge Shackelford Miller, Jr.
(Designated by the Chief Justice in place of Chief Judge Thomas F. McAllister, who was unable to attend)
District Judge Paul Jones, Northern District of Ohio

Seventh Circuit:
Chief Judge John S. Hastings
Chief Judge William J. Campbell, Northern District of Illinois

Eighth Circuit:
Chief Judge Harvey M. Johnsen
District Judge Gunnar H. Nordbye, District of Minnesota

Ninth Circuit:
Chief Judge Richard H. Chambers
District Judge William C. Mathes, Southern District of California

Tenth Circuit:
Circuit Judge John C. Pickett
(Designated by the Chief Justice in place of Chief Judge Alfred P. Murrah, who was unable to attend)
Chief Judge Royce H. Savage, Northern District of Oklahoma

Court of Claims:
Chief Judge Marvin Jones

The Conference welcomed the following new Chief Judges of the Circuits: Honorable Peter Woodbury of the First Circuit, succeeding Honorable Calvert Magruder; Honorable Richard T. Rives of the Fifth Circuit, succeeding Honorable Joseph C. Hutcheson; Honorable John S. Hastings of the Seventh Circuit, succeeding Honorable F. Ryan Duffy; Honorable Harvey M. Johnsen of the Eighth Circuit, succeeding Honorable Archibald K. Gardner; and Honorable Richard H. Chambers of the Ninth Circuit, succeeding Honorable Walter L. Pope. The new Chief Judge of the Sixth Circuit, Honorable Thomas F. McAllister and the new Chief Judge of the Tenth Circuit, Honorable Alfred P. Murrah, were unable to attend the Conference and were represented respectively by Circuit Judges Shackelford Miller, Jr., and John C. Pickett.

The Conference also welcomed District Judges Sylvester J. Ryan, J. Cullen Ganey, and Ben C. Connally, who attended the Conference for the first time as the elected representatives of the judges of their respective circuits.

The Attorney General, Honorable William P. Rogers, accompanied by the Deputy Attorney General, Lawrence E. Walsh, and the Solicitor General, J. Lee Rankin, attended the morning session of the first day of the Conference.

Honorable Carl Hayden, Chairman of the Committee on Appropriations of the United States Senate, and Honorable Roman L. Hruska, member of the Sub-committee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, attended the morning session on the second day of the Conference and addressed the Conference briefly.

Senior Judges Orie L. Phillips and Albert B. Maris, Circuit Judge Jean S. Breitenstein, District Judges Harry E. Watkins, William F. Smith, and Lloyd F. MacMahon, and Judges Joseph Warren Madden and Don N. Laramore of the Court of Claims attended all or some of the sessions.

Mr. William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; Mr. Melvin Purvis, Counsel of the Sub-committee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; and Mr. James R. Browning, Clerk of the Supreme Court of the United States, attended various sessions of the Conference.

Warren Olney III, Director; William L. Ellis, Deputy Director; C. Aubrey Gasque, Assistant Director (Legal); John C. Airhart, Assistant Director (Management); Will Shafroth, Chief, Division of Procedural Studies and Statistics; Edwin L. Covey, Chief, Bankruptcy Division; Louis J. Sharp, Chief, Probation Division; Wilson F. Collier, Chief, Division of Business Administration; and Dawson Hales, Chief, Division of Personnel; and members of their respective staffs, all of the Administrative Office of the United States Courts, attended the sessions of the Conference. Joseph F. Spaniol, Jr., attorney of the Administrative Office, served as reporter for the Conference.

The Conference, noting the death of Judge James Alger Fee of the Ninth Circuit, adopted the following resolution:

> Whereas the members of this Conference have been deeply saddened by news of the recent death of the Honorable James Alger Fee, U.S. Circuit Judge for the Ninth Circuit,
>
> Now, therefore, be it resolved, that this Conference, by unanimous vote of all members, expresses profound regret at the untimely passing of Judge Fee and offers deepest sympathy to the widow and all other members of the family.

REPORT OF THE ATTORNEY GENERAL

The Attorney General of the United States, on invitation of the Chief Justice, presented a report to the Conference on matters relating to the business of the courts of the United States. The report appears in the appendix.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Warren Olney III, Director of the Administrative Office, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1959, in accordance with the provisions of 28 United States Code 604(a)(3). The Conference approved the immediate release of the report for publication and authorized the Director to revise and supplement it in the final printed edition to be issued later.

Mr. Olney addressed the Conference and called attention particularly to the urgent problems facing the judiciary, as outlined in his report. He reported also that many proposals contained in the legislative program of the Judicial Conference had been acted upon favorably by the Congress and that the Chairman of the Senate Judiciary Committee, Honorable James O. Eastland, and the Chairman of the House Judiciary Committee, Honorable Emanuel Celler, have cooperated in giving full consideration to Conference proposals.

State of the Dockets of the Federal Courts—Courts of Appeals.—Despite heavy caseloads in some circuits, the Courts of Appeals are disposing of cases promptly and keeping up with their work. Cases filed during the fiscal year 1959 totaled 3,754, which is a slight increase over last year. There were 3,753 cases terminated, one less than the number filed, leaving 2,034 cases remaining for disposition on June 30, 1959.

While there has been only a slight variation in the backlog of pending cases in the Courts of Appeals during the last five years, the median time interval from the filing of the complete record to final disposition has decreased slowly. For cases terminated after hearing or submission in all courts of appeals in 1959, the median was 6.7 months, compared with 7.0 months in 1958, 7.1 months in 1957, and 7.4 months in 1956. The record of the courts of appeals in keeping up with their work in 1959 is due in large measure to the contribution of the senior judges who have continued to sit in their own circuits, and of the district judges who have been sitting by designation in the courts of appeals. The caseloads in the Second, Fourth and Fifth Circuits, however, continue to be excessive.

District Courts.—Despite a substantial decrease in civil filings, the district courts faced a heavy workload throughout fiscal year 1959. They entered the year on July 1, 1958, with 68,168 civil cases and 7,451 criminal cases pending and, during the year, received an additional 57,800 civil cases and 28,729 criminal cases by new filings. Filings of civil cases were down by 9,000 during fiscal 1959, a reduction of 13.9 percent. This reduction in filings was brought about mainly by the Act of July 25, 1958, which altered the jurisdiction of the district courts, although the United States cases were down by more than 1,000.

The district courts during the year terminated 62,172 civil cases and 28,521 criminal cases, or almost 1,000 more cases than in 1958. The decrease in civil filings, plus the increased termination of cases by the district judges, has resulted in an overall decrease in the backlog of 4,372 cases, leaving 63,796 civil cases pending on June 30, 1959. Pending criminal cases increased slightly to 7,727 from 7,451 at the end of fiscal 1958. The overall result, therefore, is that the United States district courts were able, during fiscal 1959, to reduce the pending backlog by only 5.4 percent and ended the year with a civil-criminal combined workload of 71,523 cases.

The median time interval from filing to disposition of civil cases tried increased more than a month to 15.3 months in 1959 compared with 13.9 months in 1958. The interval from filing to trial also increased to 13.3 months compared with 11.9 months in 1958. These increases reflect mostly the increased activity in the district courts in disposing of the older pending cases.

Bankruptcy cases filed in the district courts in 1959 reached a new all-time peak of 100,672 as the filing of petitions by wage-earning employees and other non-business debtors continued to spiral upward. Business filings were 11,729, or 11.7 per cent of the total and non-business filings, including petitions by wage-earning employees, were 88,943 or 88.3 per cent of the bankruptcy business. During the year a record 96,845 bankruptcy cases were closed, or 21.5 per cent more than in 1958. Even so, filings outstripped terminations, and 3,800 cases were added to the backlog, which climbed to 84,273 on June 30, 1959, a new all-time high.

533192—59——2

EXPEDITION OF COURT BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims and from the Chief Judges of the respective circuits, concerning the state of the dockets and the need for additional judicial assistance in each district and circuit. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits.

On recommendation of its Committees on Court Administration and Judicial Statistics, the Conference took no further action with respect to the need for additional judgeships, but directed the Committees to report thereon at the next session of the Conference in March. The Conference reiterated its concern over the condition of the dockets in many courts and called attention to the continuing need for the additional judgeships previously recommended. (Conf. Rept., March 1959, p. 6.)

At the request of Judge William C. Mathes, the Conference referred to the Committees on Judicial Statistics and Court Administration a proposal to provide for two district judgeships for the District of Alaska.

REPORT OF THE COMMITTEE ON THE BUDGET

Chief Judge Charles E. Clark, Chairman of the Committee on the Budget, submitted the estimates of appropriations for the fiscal year 1961. These estimates were prepared by the Director of the Administrative Office pursuant to 28 U.S.C. 605 and were approved by the Committee. The estimates show increases aggregating $2,635,900 over appropriations for the fiscal year 1960 and show a total increase of 204 in the number of positions requested for 1961. On recommendation of the Committee, the Conference approved the budget estimates presented, subject to amendments which may be required by action of the Conference at this meeting, or by legislation enacted by the Congress prior to the submission of these estimates to the Bureau of the Budget.

Estimates of supplemental appropriations for the fiscal year 1960 which include $40,000 for the fees of the United States commissioners; an appropriate sum (not to exceed $70,000) to cover the increased subsistence allowance provided by Public Law 86–138; $12,000 for the purchase of transcripts for persons permitted

to appeal *in forma pauperis;* $270,000 for the purchase of furniture previously furnished by the General Services Administration; and $100,000 for the salaries and expenses of referees in bankruptcy, were also submitted by the Committee. On recommendation of the Committee, the Conference authorized the Director of the Administrative Office to submit to the Congress estimates of supplemental appropriations in such amounts as he deems appropriate for the purposes stated above.

The Conference discussed fully the presentation before the Congress of the budget for the judiciary in prior years and authorized the Committee, with the assistance of the Administrative Office, to develop a plan for improving the annual presentation of the budget estimates to the Congress. The Chief Justice was authorized to increase the size of the Budget Committee or to reconstitute it as he may see fit.

The overall problems of court administration in multiple-judge courts were also discussed, and the Chief Justice was authorized by the Conference to appoint a committee of the Conference consisting of the thirteen chief judges of district courts having five or more judgeships to meet and consider the personnel and budgetary requirements of the large district courts.

JOINT REPORT OF THE COMMITTEES ON COURT ADMINISTRATION AND REVISION OF THE LAWS

Senior Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted a report on legislative proposals considered jointly by the Committees on Court Administration and Revision of the Laws:

(1) *H.R. 594, H.R. 947, H.R. 975, H.R. 1202, H.R. 5986, H.R. 8375, H.R. 2272, and S. 1490, 86th Congress, to authorize various types of judicial review of veterans' claims.*—The Conference, at previous sessions, had taken no position with respect to the policy involved in providing judicial review of veterans' claims, but recommended that if such review is to be granted, that it should be in a district court sitting in the veteran's locality and not in a United States Court of Appeals or a special court, and further that the review, if granted, should be in accordance with the standards of the Administrative Procedure Act. (Conf. Rept., Sept. 1957, p. 36; March 1958, pp. 26 and 27). On recommendation of the

Committees the Conference reaffirmed its position with respect to these proposals.

(2) *H.R. 1107, 86th Congress, to amend the National Labor Relations Act to require the trial of unfair labor practice cases in the federal district courts.*—The proposal would continue the National Labor Relations Board as an administrative agency responsible for the handling of representation matters including the conduct of elections, but would transfer unfair labor practice cases to the district courts. The Conference considered the proposal and voted to disapprove it on the ground that it would enlarge the jurisdiction of the district courts to embrace litigation of controversies of a type and character which the district courts are not organized or equipped to adjudicate and for which there appears no historical precedent.

(3) *H.R. 2807, 86th Congress, to authorize a new type of judicial review of administrative orders for the deportation of aliens from the United States, which, except as to aliens in custody, would be exclusive.*—This proposal would permit an alien to file a petition for the review of a deportation order in a United States Court of Appeals within six months from the date of the final order. In so doing, the bill implements and applies Section 10 of the Administrative Procedure Act, and, with some exceptions, makes the procedure of the Hobbs Act (5 U.S.C. 1031 et seq.) applicable to the judicial review of deportation orders. The review would be had upon the administrative record upon which the order was based, and the Attorney General's findings of fact, if supported by reasonable, substantial and probative evidence on the record considered as a whole, would be conclusive. The right of any alien in custody to petition for a writ of habeas corpus would be preserved. The Committees stated that the proposal is intended to do away with delays which heretofore had been encountered as a result of repeated litigation in deportation proceedings, some of which had been carried on for many years. On recommendation of the Committees, the Conference approved the bill.

(4) *Jurisdiction of the district courts in actions commenced by fiduciaries by reason of diversity of citizenship.*—It was brought to the attention of the Committees that a practice had arisen in a number of districts of procuring the appointment of a non-resident administrator, guardian, or other fiduciary for a decedent or minor

having a claim against a local resident, in order to create diversity of citizenship so that suit may be brought on the claim in the United States district court. The Committees were of the view that the practice is undesirable and not within the spirit of the diversity jurisdiction. The Conference thereupon approved the following draft of a bill, presented by the Committees, which would eliminate this practice:

A BILL To withdraw from the district courts jurisdiction of suits brought by fiduciaries who have been appointed for the purpose of creating diversity of citizenship between the parties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1332 of title 28, United States Code, as amended, is further amended by inserting at the end of subsection (a) thereof an additional paragraph reading as follows:

"Notwithstanding the foregoing provisions of this subsection a district court shall not have jurisdiction of a civil action commenced by an administrator, guardian, trustee or other fiduciary who is a citizen of a State other than that of which the defendant is a citizen unless it appears either (1) that the plaintiff's decedent was or any ward or other beneficiary of the plaintiff is, a citizen of a State other than that of which the defendant is a citizen or (2) that the appointment of the plaintiff as such fiduciary was not obtained for the purpose of creating diversity of citizenship between the parties in order to invoke the jurisdiction of the court."

The Chief Justice did not participate in the consideration of this proposal.

(5) *The status of retired circuit and district judges.*—The Committees reported that various questions had arisen as to the status of retired circuit and district judges with respect to their participation in certain activities of their former courts when they are assigned to active duty therein. These include the participation of retired circuit and district judges in the appointment of officers of the court and in the promulgation of court rules, and, in the case of retired circuit judges, membership on the judicial council of the circuit and of the court of appeals sitting in banc. It was the view of the Committees that under the statute only judges who are in "regular active service", that is, those who have not

retired under Section 371(b) or 372(a), Title 28, United States Code, are the judges in "active service" to which the statutes refer. However, the Committees thought it proper to permit a retired circuit judge to be a member of the court of appeals sitting in banc in the rehearing of a case in which he has sat, by assignment, in the panel of the court which heard the case originally. The Conference agreed and thereupon approved the following draft of a bill, presented by the Committees, clarifying the statute and incorporating the change suggested.

A BILL To clarify the status of circuit and district judges retired from regular active service

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Paragraph (b) of section 43 of title 28, United States Code, is amended to read as follows:

"(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall also be competent to sit as judges of the court."

(b) Paragraph (c) of section 46 of title 28, United States Code, is amended to read as follows:

"(c) Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service. A circuit judge of the circuit who has retired from regular active service shall also be competent to sit as a judge of the court in banc in the rehearing of a case or controversy if he sat in the court or division at the original hearing thereof."

SEC. 2. Paragraph (b) of section 132 of title 28, United States Code, is amended to read as follows:

"(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

SEC. 3. The first sentence of section 332 of title 28, United States Code, is amended to read as follows: "The chief judge

of each circuit shall call, at least twice in each year and at such places as he may designate, a council of the circuit judges for the circuit, in regular active service, at which he shall preside."

The Chief Justice did not participate in the consideration of this proposal.

(6) *Abolition of terms of court.*—Judge Maris reported that the proposal of Chief Judge Carl A. Hatch of the District of New Mexico to repeal the statutes relating to the holding of terms of court and to provide that the court shall be in continuous session, which was referred to the Committee on Court Administration at the last session of the Conference (Conf. Rept., p. 13), was under study by a sub-committee. Accordingly, the Conference granted leave to the Committees to report upon this matter at a later session of the Conference.

(7) *H.R. 3217, 86th Congress, to provide that a corporation for purposes of diversity of citizenship jurisdiction shall be deemed to be a citizen not only of the state of its incorporation, but also of every state in which it is qualified to do business.*—The Conference at its March 1959 session (Conf. Rept., p. 12) directed the Committees to make a study of H.R. 3217 and any bill of similar import which may be introduced. The Committees reported that the American Law Institute, at the suggestion of the Chief Justice, had recently undertaken a comprehensive study of the diversity of citizenship jurisdiction of the district courts. The Committees, therefore, requested and were granted leave by the Conference to establish a sub-committee to collaborate with the American Law Institute on its project and to defer its report on H.R. 3217 to a later session of the Conference. The Committees were further directed to consider the proposal of Judge Bailey Aldrich to prohibit a plaintiff from prosecuting an action under the diversity statute in a district court sitting in the state of which he is a citizen.

(8) *S. 2708 and H.R. 9234 to provide for amendments to the compact between the people of Puerto Rico and the United States.*—These bills (which supersede S. 2023 and H.R. 5926) would provide for an amended compact between the people of Puerto Rico and the United States consisting of sixteen Articles. Only Articles XIII and XIV affect the federal judiciary. Article

XIII relates to the United States District Court for the District of Puerto Rico and provides in paragraph (a) that its jurisdiction shall be the same as that provided by law with respect to district courts of the United States in the various districts in the states of the Union; in paragraph (b) that all proceedings in the court shall be in the English language except that if the judge determines that the interests of justice so require and the parties consent, he may order a trial to be conducted in the Spanish language; in paragraph (c) that the qualifications of jurors in the district court shall be the same as those for jurors in the other federal district courts, except that jurors in proceedings conducted in the Spanish language need not have a knowledge of English; and in paragraph (d) that no suit to restrain the assessment or collection of any tax imposed under the laws of Puerto Rico shall be maintained in any United States court. Article XIV provides that the final judgments of the highest court of Puerto Rico shall be subject to review by the Supreme Court of the United States in like manner as the decisions of the highest courts of the several states of the Union, rather than by the Court of Appeals for the First Circuit as at present.

The Committees recommended that the Conference approve paragraphs (a) and (d) of Article XIII which incorporate existing law and all of Article XIV which incorporates a proposal previously approved by the Conference (Conf. Rept., Sept. 1957, p. 40). The Committees further recommended the amendment of paragraphs (b) and (c) of Article XIII so as to eliminate the authority to conduct trials in the Federal District Court in Puerto Rico in the Spanish language and the provision that jurors in such trials need not have a knowledge of English. It was the view of the Committees that since the United States District Court for the District of Puerto Rico is an integral part of the federal judicial system, its proceedings should continue to be conducted in the English language in accordance with the practice which has always been followed in the federal courts everywhere and which has been followed in that court ever since its creation. Upon the recommendation of the Committees, the Conference approved Article XIV of S. 2708 and H.R. 9234 and also approved Article XIII of the bills, provided that paragraphs (b) and (c) thereof are amended to read as follows:

"(b) All proceedings in said Court shall be conducted in the English language.

"(c) Qualifications of jurors, as fixed by the statutory laws of the United States, shall apply to jurors selected to serve in the United States courts in Puerto Rico."

Judge Maris was granted permission to release immediately Conference action with respect to these proposals.

(9) *S. 1489 and H.R. 5111 to provide judicial review of the administrative removal or suspension of federal employees.*—The proposal contained in S. 1489 would empower the United States district courts to entertain appeals of civilian employees of the Executive Branch of the Government for reinstatement or restoration to duty following final action by the appropriate administrative authority for their removal or suspension without pay from the service or, concurrently with the Court of Claims, for compensation for their period of removal or suspension, or both. The proposal contained in H.R. 5111 would empower the district courts to entertain suits by persons dismissed for cause, or suspended without pay from positions in the classified civil service, to have such dismissal or suspension set aside and reinstatement directed. The Committees were of the view that the ultimate decision as to the retention of employees in the Executive Branch of the Government should remain in the Executive Branch and that judicial review of such decisions is neither appropriate nor justified. Moreover, the enactment of these bills would materially increase congestion in the United States district courts. On recommendation of the Committees, the Conference disapproved the bills.

JOINT REPORT OF THE COMMITTEE ON SUPPORTING PERSONNEL AND THE COMMITTEE ON COURT ADMINISTRATION

Chief Judge John Biggs, Jr., Chairman of the Committee on Supporting Personnel and of the Committee on Court Administration, made a joint report for the two Committees.

Clerks' Fees

The Committee reported that they had been informed by the Bankruptcy Committee of a proposed change in the special charges

533192—59——3

to be made by referees for copy work to provide a certification fee of 50 cents for each certificate to be attached to a copy of a document presented for comparison and certification, in addition to the regular comparison fees. The Committees were of the view that a similar charge should be made by the clerks of court and recommended that the schedule of fees for the comparison and certification of copies presented for certification, approved by the Conference at its March 1959 session (Conf. Rept., p. 8), be further amended in accordance with the above to read as follows:

> "For comparing with the original thereof any copy (except a photographic reproduction) of any transcript of record, entry, record or paper, when such copy is furnished by the person requesting certification, 10 cents for each page of 250 words or fraction thereof, and 50 cents for each certificate.
>
> "For comparing with the original thereof any photographic reproduction of any record or paper not made by or under the supervision of the clerk, 5 cents for each page and 50 cents for each certificate."

The recommendation was approved by the Conference.

The Committees also recommended that the schedule of fees to be charged by the clerks of court for the preparation and mailing of notices in bankruptcy cases be amended to conform with the schedule of such charges to be made by referees as hereinafter approved by the Conference. The Conference approved this recommendation and directed that paragraph 4 of the schedule of miscellaneous fees of the clerks of the United States district courts, approved by the Conference at its September 1945 session (Conf. Rept., p. 25) be amended to read as follows:

> "4. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Bankruptcy Act, in excess of 30 notices per set, 10 cents for each additional notice on the first 10,000 and 5 cents per notice on the balance, provided that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed 25 percent of the net proceeds realized in asset cases."

Chief Judge Biggs reported that the Administrative Office had called to the attention of the Committees the fact that no uniform

system or procedure is followed in respect to the sale by the clerks of the district courts of copies of the opinions of their courts. The Committees have requested the Administrative Office to make a study of the charges for copies of district court opinions throughout the United States and Territories and to report thereon with recommendations. The Conference granted leave to the Committees to consider this matter and report at a future session of the Conference.

Court Reporters

Chief Judge Biggs reported that a sub-committee, under the chairmanship of Judge William C. Mathes, has undertaken a comprehensive study of the court reporting system, including the status of court reporters, their salaries, their fees, and the nature of their work. The Bureau of the Budget, assisted by the Administrative Office, is also engaged in a survey of the court reporting system, and tests of various electronic recording systems have been made by the Administrative Office. Upon recommendation of the Committees, the Conference adopted the following resolutions prepared by the Sub-committee on Court Reporters:

1. That no change be made in the present reporting system, or in salaries or transcript rates in general, until such time as the survey now being made by the Bureau of the Budget is completed, and full information can be made available.

2. That the Administrative Office be instructed, wherever possible and agreeable to the judges concerned, to supply electronic recording systems for use in the United States district courts whenever a vacancy occurs in the office of the existing court reporter.

3. That the Administrative Office be authorized to supply electronic recording systems to the courts of appeals, when requested.

4. That the Administrative Office be instructed to include in the budget estimates the amount necessary to implement the second and third recommendations.

5. As presently advised, the Sub-committee believes that the statute (28 U.S.C. 753) is adequate without amendment to authorize an electronic recording system in the district court, provided the deputy clerk, or other officer entrusted with the keeping of a log in the courtroom and supervising or making the transcription, is designated by order of the court as an official reporter and authorized, as such, to certify the transcript.

The Committees reported that the judges of the Western District of Kentucky had requested the reclassification of their court reporters from "non-metropolitan" at a salary of $6,505, to "metropolitan" at a salary of $7,095 per annum. Only recently, the reporters in this district were raised to the higher classification of "non-metropolitan" from the "rural" classification, which was abolished by the Conference in September 1958 (Conf. Rept., p. 12). The Conference approved the recommendation of the Committee that the reclassification not be granted.

At the request of Chief Judge Biggs, the Committees were authorized to consider the problem of the transcription of the notes of deceased court reporters.

Law Clerks and Secretaries

The Conference at its March 1959 session (Conf. Rept., p. 10) authorized the Committee on Supporting Personnel to consider further the qualification standards for law clerks and secretaries to judges submitted to the Committees by the Administrative Office. The Committees reported that many communications from judges had been received suggesting that the present qualification standards for law clerks and secretaries are insufficient and inadequate, and that careful consideration had been given to the proposed amendments to these standards prepared and submitted by the Administrative Office. After a full discussion, the Conference approved the following revised qualification standards for law clerks and secretaries submitted by the Committees:

QUALIFICATION STANDARDS FOR LAW CLERKS

Junior Law Clerk

GS–7 ..... $4,980

Minimum Qualifications: Professional training in law, equivalent to that represented by graduation from a law school of recognized standing, but with little or no experience.

Assistant Law Clerk

GS–8 ..... $5,470

or

GS–9 (As the judge may determine) $5,985

Experience: One year's experience in the practice of law, in legal research, legal administration, or equivalent experience received after graduation from law school. Major or substantial legal activities while in military service may be credited, on a month-for-month basis whether before or after graduation but not to exceed one year if before graduation.

ALTERNATIVE

Training: As described above.

A law graduate (as above), either admitted to the bar or awaiting examination, is eligible as assistant law clerk GS–8 or GS–9, provided he has:

(a) Graduated within the first 20% of his class from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools; *or*

(b) Had experience on the editorial board of a law review of such a school; *or*

(c) Graduated from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools with LLM degree; *or*

(d) Demonstrated proficiency in legal studies which in the opinion of the appointing judge is equivalent to (a), (b), or (c) above.

Associate Law Clerk

GS–10 ..... $6,505

or

GS–11 (As the judge may determine) $7,030

A member of the bar of a state, territorial, or Federal court of general jurisdiction who qualifies for assistant law clerk GS–9 may be appointed as, or promoted to, law clerk GS–10 or GS–11, when he has completed one additional year in the practice of law, in legal research, in legal administration at GS–9, or its equivalent.

Senior Law Clerk

GS–11 ..... $7,030

or

GS–12 (As the judge may determine) $8,330

A member of the bar of a state, territorial or federal court of general jurisdiction who qualifies for assistant law clerk GS–9, may be appointed as, or promoted to, senior law clerk GS–12, when he has completed two additional years in the practice of law, in legal research, legal administration or legal training, one year of which must have been at grade GS–11 or its equivalent.

QUALIFICATION STANDARDS FOR SECRETARIES TO JUDGES

Junior Secretary

GS–5 ..... $4,040

Experience: At least one year's experience as a secretary involving duties that demonstrate the ability to take rapid dictation and some knowledge of legal terminology.

Associate Secretary

GS–6 ..... $4,490

Experience: At least two years' experience as a secretary, of which at least one year must be as a legal secretary involving duties that demonstrate the ability to take rapid dictation and a knowledge of legal terminology.

Substitution: Study successfully completed in a resident school or institution may be substituted for experience as follows:

1. Study completed in an academic institution above high school level may be substituted for a maximum of one year's experience on the basis

of one year of study for 9 months' experience; however, this substitution may not be made for the one-year requirement as a legal secretary.

2. Study completed in a law school may be substituted on the basis of one academic year of study for one year of experience; however, the ability to take rapid dictation must be demonstrated.

Secretary

GS–7 ..... $4,980

Experience: At least three years' experience as a secretary of which at least two years must be as a legal secretary involving duties that demonstrate the ability to take rapid dictation and a knowledge of legal terminology.

Substitution: Study successfully completed in a resident school or institution may be substituted for the experience as follows:

1. Study completed in an academic institution above high school level may be substituted for a maximum of two years' experience on the basis of one year of study for 9 months' experience; however, this substitution may not be made for over one year of the two years' requirement as a legal secretary.
2. Study completed in a law school may be substituted on the basis of one academic year for one year of experience; however, the ability to take rapid dictation must be demonstrated.

Senior Secretary

GS–8 ..... $5,470

Experience: At least four years' experience as a secretary of which at least three years must be as a legal secretary involving duties that demonstrate the ability to take rapid dictation and a comprehensive knowledge of legal terminology. Also, at this level there must have been demonstrated the ability to perform or supervise the assembling of technical data and the ability to conduct such correspondence as may be assigned by the judge.

Substitution: Study successfully completed in a resident school or institution may be substituted as follows:

1. Study completed in an academic institution above high school level may be substituted for a maximum of two years' experience on the basis of one year of study for 9 months' experience; however, this substitution may not be made for over one year of the three years' requirement as a legal secretary.
2. Study completed in a law school may be substituted on the basis of one academic year for one year of experience; however, the ability to take rapid dictation must be demonstrated.

Administrative Secretary

GS–9 ..... $5,985

Experience: At least five years' experience as a secretary of which at least four years must be as a legal secretary involving duties that demonstrate the ability to take rapid dictation and a thorough knowledge of legal terminology. As at the grade GS–8 level, there must have been demonstrated the ability to

perform or supervise the assembling of technical data and the ability to conduct such correspondence as may be assigned by the judge.

Substitution: Study successfully completed in a resident school or institution may be substituted as follows:

1. Study completed in an academic institution above high school level may be substituted for a maximum of three years' experience; however, this substitution may not be made for over two years of the four-year requirement as a legal secretary.
2. Study completed in a law school may be substituted on the basis of one academic year of study for one year of experience; however, the ability to take rapid dictation must be demonstrated.

Senior Administrative Secretary (Unchanged)

GS–10 ..... $6,505

Minimum Qualifications: The qualifications required for an administrative secretary (GS–9 and at least ten years' experience as a secretary to a federal judge.

The Committees were granted leave by the Conference to consider further a proposal to permit higher ratings for career law clerks than those presently available, and to report thereon at a future meeting of the Conference.

Crier-Law Clerks

Chief Judge Biggs reported that at the hearing before the Sub-committee of the Committee on Appropriations of the House of Representatives on Appropriations for the Judiciary for the fiscal year 1960, a question was raised as to the authority for the employment of crier-law clerks in the courts. At that time no statutory authority satisfactory to the Sub-committee was cited. The question was thereafter considered by the Committees and reported to the Conference. After a full discussion, the Conference directed that the matter be held in abeyance until an opinion could be obtained from the Comptroller General.

Other Supporting Personnel

The Committees reported that they had requested a study and a report from the Administrative Office on the proposal to authorize the employment of interpreters on a contract or per diem basis and to authorize the payment of fees of psychiatrists when employed in the United States District Court for the Southern District of New York (See Conf. Rept., March 1959, p. 14). The

Committees were granted leave to consider the matter further and to report to the Conference at a future session.

Judicial Employees Training Act

Chief Judge Biggs reported that the Administrative Office had submitted to the Committees a draft of a bill to provide the judiciary with the same authority given to the Executive Branch of the Government to train its supporting personnel. On recommendation of the Committees, the Conference approved the proposed legislation in principle and recommended that suitable legislation of this type be enacted.

Fees and Mileage of Witnesses in Habeas Corpus Proceedings

The Committees reported that memoranda had been submitted by the Administrative Office with respect to the proposal to provide for the payment of fees and mileage of witnesses in habeas corpus proceedings brought by persons authorized to proceed *in forma pauperis*, which was referred to the Committees by the Conference at its March 1959 session (Conf. Rept., p. 14). However, the matter requires additional study, and the Committees were granted leave by the Conference to consider the matter further and to report at a later session of the Conference.

Wages and Effects of Deceased Seamen

The Committees informed the Conference of the amendment by Public Law 86–364 of Section 4544, Revised Statutes, (46 U.S.C. 627) increasing to $1,500 the amount of money or the value of the effects of a deceased seaman that may be disbursed through the district courts to certain persons other than a legal representative of the deceased seaman.

Arbitration of Automobile Accident Cases

Chief Judge Biggs reported that the Committee on the Judiciary of the United States Senate had requested the views of the Conference on the proposal contained in S. 2415, 86th Congress, to provide a method for the arbitration of automobile accident cases pending in the district courts. The proposal was referred by the Conference to the Committee on Court Administration for study.

Standing Masters Under Rule 53

At the request of Chief Judge Sylvester J. Ryan, the Conference postponed consideration of the proposal of Judge John W. Clancy to provide for standing masters under Rule 53, Federal Rules of Civil Procedure. (See Conf. Rept., March 1959, p. 14).

Terms of District Judges on the Judicial Conference

Chief Judge Biggs reported that there had been referred to the Committee on Court Administration by the Administrative Office the resolution of the Judicial Conference of the Sixth Circuit requesting that the term of Judge Paul Jones as a member of the Judicial Conference be regarded as one of three years from the time of his election, rather than from the date of the approval of the statute. This would extend the term of Judge Jones to August 1961 instead of August 1960. It was the sense of the Committees that in the light of the statutory provisions and the administrative interpretation thereof by the resolution of the Judicial Conference, dated March 18, 1958 (Conf. Rept., p. 10), that the term of Judge Jones, as district judge representative, will expire on August 28, 1960 and may not be extended unless by way of re-election. The Conference concurred in the views of the Committees.

Other Administrative Proposals

Chief Judge Biggs informed the Conference that the recommendations of Congressman Emanuel Celler (1) that the Conference undertake a comprehensive study of the organization and function of the Judicial Councils of the Circuits, their jurisdiction over the internal affairs of the courts of the circuits, and the advisability of including district judge representatives on the circuit councils and (2) that the Conference undertake a survey of the geographical organization of the entire federal judicial system in the light of population increases and economic changes, which will include a study of the adequacy of the present number of places of holding court, had been referred to the Committee on Court Administration by the Chief Justice. The Chairman of the Committees has been authorized to appoint a sub-committee or sub-committees to consider Congressman Celler's recommendations.

533192—59——4

The Committees have also authorized the Chairman to appoint a sub-committee to consider methods of improving the administration of the courts. These sub-committees will be appointed and reports to the Conference in respect to these matters will be made as soon as possible.

Additional Matters Referred to the Committee on Court Administration

The Conference referred to the Committee on Court Administration the proposal of Judge William C. Mathes that a seminar be held periodically for the benefit of newly inducted district judges, in order to permit an exchange of views with some of the more experienced judges on subjects such as the handling of calendars, juries, pre-trial conferences and the day-to-day practical conduct of the district court in such a manner as best to dispatch the judicial business.

The Conference also referred to the Committee on Court Administration the proposal of the Judicial Conference of the Ninth Circuit to provide for the representation of district judges on the circuit councils.

BANKRUPTCY ADMINISTRATION

Senior Judge Orie L. Phillips, Chairman of the Committee on Bankruptcy Administration, reported on behalf of the Committee regarding the recommendations contained in the report of the Bankruptcy Division of the Administrative Office, which were approved by the Director on July 10, 1959, relating to new referee positions, changes in salaries of referees, changes in arrangements, and the filling of a vacancy in a referee position.

The Director's report was submitted to the members of the Judicial Conference, to the Judicial Councils and the district judges of the circuits and districts concerned in accordance with the Bankruptcy Act, with the request that the district judges advise the Judicial Councils of their respective circuits of their views with respect to the recommendations for their districts, and that the Chief Judges of the circuits, in turn, inform the Administrative Office of the views of the Judicial Councils of their circuits. The Committee considered the report of the Director, together with the views expressed by the district judges and the circuit councils.

The Conference had before it the Committee's report, as well as the recommendations of the Director, the Circuit Councils and the district judges, and on the basis of these reports took the action shown in the following table relating to changes in salaries of referees:

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
4th Circuit					
Virginia (E)	Norfolk	Full-time	$11,250	Full-time	$12,500
West Virginia (N)	Wheeling	Part-time	3,500	Part-time	4,500
West Virginia (S)	Charleston	Full-time	12,500	Full-time	13,750
5th Circuit					
Florida (S)	Tampa	Part-time	4,500	Part-time	6,000
6th Circuit					
Kentucky (E)	Lexington	Full-time	11,250	Full-time	12,500
7th Circuit					
Illinois (N)	Joliet	Part-time	6,000	Part-time	7,500
Indiana (N)	Gary	Part-time	7,000	Part-time	7,500
	Fort Wayne	Part-time	6,000	Part-time	6,500
9th Circuit					
Washington (W)	Tacoma	Full-time	11,250	Full-time	12,500

The foregoing action of the Conference is to become effective as soon as appropriated funds are available.

Upon recommendation of the Committee, the Conference took the following action with regard to the creation of new referee positions, changes in arrangements, and the filling of a vacancy in a referee position. These are to become effective immediately, unless otherwise noted:

SECOND CIRCUIT

Eastern District of New York:

(1) Authorized an additional full-time referee position with regular place of office at Mineola at a salary of $15,000 per annum, to be effective at such time as appropriated funds are available.

(2) Established concurrent, district-wide jurisdiction for the full-time referee at Mineola, who will handle cases from Nassau and Suffolk Counties and from Queens County when necessary to equalize the caseload of the referees.

FIFTH CIRCUIT

Northern District of Georgia:

(1) Authorized the filling of a vacancy to occur by expiration of term, in the position at Atlanta held by Referee Mundy on a full-time basis for a term of six years, effective March 9, 1960, at the present salary of $15,000 a year, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Eastern District of Kentucky:

(1) Designated Pikeville as an additional place of holding court for the referee at Lexington.

Northern District of Ohio:

(1) Authorized an additional full-time referee position with regular place of office at Cleveland at a salary of $15,000 per annum, to be effective at such time as appropriated funds are available.

(2) Established concurrent jurisdiction with the other referees presently located at Cleveland over cases arising from Cuyahoga, Geauga, Lake and Lorain Counties.

Southern District of Ohio:

(1) Authorized an additional full-time referee position with regular place of office at Columbus at a salary of $15,000 per annum, to be effective at such time as appropriated funds are available.

(2) Established concurrent jurisdiction with the present referee at Columbus over cases arising in the Eastern Division of the District.

SEVENTH CIRCUIT

Northern District of Illinois:

(1) On recommendation of the Committee deferred action on the proposal to establish an additional referee position in the Northern District of Illinois at Chicago.

NINTH CIRCUIT

Northern District of California:

(1) Designated Chico as an additional place of holding court for the referee at Eureka, effective October 1, 1959.

TENTH CIRCUIT

District of Colorado:

(1) Designated Durango and Sterling as additional places of holding court for the referees at Denver, effective October 1, 1959.

LEGISLATION

The Committee called attention to the following legislative proposals affecting bankruptcy administration pending before the 86th Congress:

(1) *H.R. 4850 to give the bankruptcy court summary jurisdiction in actions brought involving preferences, liens, fraudulent*

transfers, and the trustee's title to property.—Upon the recommendation of the Committee, the Conference reaffirmed its approval of this bill.

(2) *H.R. 6556 to amend Section 39c of the Bankruptcy Act, 11 U.S.C. 67(c), to clarify the time for filing a petition to review a referee's order.*—The Committee suggested that the bill, now pending before the Senate Judiciary Committee, be amended by inserting after the second sentence the following:

> "Unless the person aggrieved shall petition for review of such order within such 10-day period, or any extension thereof, the order of the referee shall become final."

On recommendation of the Committee, the Conference approved the amendment and authorized the Administrative Office to present it to the Senate Judiciary Committee.

(3) *H.R. 6816 to amend Section 57a of the Bankruptcy Act, 11 U.S.C. 93a, and 18 U.S.C. 152, to eliminate the requirement that proofs of claim be verified under oath.*—The Committee reported that an additional amendment has been proposed to H.R. 6816, which would preserve the present standing of a verified proof of claim as *prima facie* evidence of the validity and the amount of the claim. The bill is now pending before the Senate Judiciary Committee. Upon recommendation of the Committee, the Administrative Office was authorized to request the Senate Judiciary Committee to amend the bill by adding the following sentence:

> "A proof of claim filed in accordance with the requirements of the Bankruptcy Act, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute *prima facie* evidence of the validity and amount of the claim."

(4) *H.R. 7233 to amend Section 632 of Chapter XIII (Wage Earner Plans) of the Bankruptcy Act, 11 U.S.C. 1032, relating to the first meeting of creditors and the filing of proofs of claim.*—This bill, now pending before the Senate Judiciary Committee, would require the filing of proofs of claim in Chapter XIII cases in accordance with Section 57n of the Bankruptcy Act (11 U.S.C. 93n) and would clarify the provisions with respect to the first meeting of creditors. The Committee recommended that the bill

be amended by striking the last sentence of Section 632 as now contained therein and substituting the following:

> "In the event such first meeting shall not be held as provided herein, then the court shall cause such meeting to be held promptly upon not less than 5 days' notice to the debtor, creditors, and other parties in interest."

The Conference approved the Committee's recommendation, and authorized the Administrative Office to request such an amendment to the bill.

(5) *H.R. 7727 to amend Sections 334, 367 and 369 of the Bankruptcy Act, 11 U.S.C. 734, 767 and 769, and to add a new Section 355 so as to require proofs of claim to be filed and to limit the time within which claims may be filed in Chapter XI (Arrangements) proceedings to the time prescribed by Section 57n of the Bankruptcy Act, 11 U.S.C. 93n.*—On recommendation of the Committee, the Administrative Office was directed to make a further study of the need for these amendments to Chapter XI and to report thereon to the next meeting of the Bankruptcy Committee.

Supplemental Appropriations

The Committee reported that it had approved the estimates of supplemental appropriations contained in the report of the Budget Committee for salaries of referees for the fiscal year 1960 in the amount of $25,000, to cover the cost of additional positions and salary increases, and the estimates of $75,000 for expenses of referees, to cover the salaries of additional clerical employees, telephone expense, rent, and the cost of furniture in buildings operated by the General Services Administration.

Special Charges by Referees

The Administrative Office had suggested to the Committee that, in view of the increased postal rates, it would be desirable to change the schedule of charges for the preparation and mailing of notices in bankruptcy cases to provide a uniform charge of 5 cents per notice for all notices in excess of 10,000. Upon the recommendation of the Committee, the Conference amended the first paragraph of the schedule of special charges for referees

promulgated under Section 40c(3) of the Bankruptcy Act, 11 U.S.C. 68c(3), to read as follows:

1. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act, in excess of 30 notices per set, 10 cents for each additional notice on the first 10,000 and 5 cents per notice on the balance, provided, that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed 25 percent of the net proceeds realized in asset cases.

The Committee called attention to the action of the Conference at its March 1959 session (Conf. Rept., p. 25) which amended paragraph (4) of the schedule of special charges to provide a charge, not originally included in the schedule, for photographic reproductions made in the office of the referee. It was pointed out, however, that while a charge is now provided for making photographic reproductions, no charge has been provided for certifying photographic reproductions or other copy not made in the referee's office. The Committee reported that the Administrative Office had recommended a fee of 50 cents for the certification of any document not prepared in the referee's office. Upon the recommendation of the Committee, the Conference amended paragraph (4) to include such certification fee. The amended paragraph is as follows:

4. For making a copy (except a photographic reproduction) of any record or paper, and the certification thereof, 65 cents per page of 250 words or fraction thereof.

   For comparing with the original thereof any copy (except a photographic reproduction) of any transcript of record, entry, record, or paper when such copy is furnished by the person requesting certification, 10 cents for each page of 250 words or fraction thereof and 50 cents for each certificate.

   For a photographic reproduction of any record or paper, and the certification thereof, 50 cents for each page. For comparing with the original thereof any photographic reproduction of any record or paper not made by the

referee 5 cents for each page and 50 cents for each certificate.

Retirement of Referees

The Committee reported that the Administrative Office had brought to its attention several proposals for increased retirement benefits for referees. These proposals were considered by the full committee and a sub-committee has been appointed—

(1) To determine and recommend to the full committee whether items of legislation and the administration of referees in bankruptcy shall be based on a policy of referees being officers of the courts in the same sense as other supporting personnel, such as clerks, or whether they should be considered as being in a different category and more nearly equivalent to judges, and

(2) To consider, in the light of the sub-committee's decision on the above items, pending legislation relating to retirement, salaries and terms of office of referees in bankruptcy.

These studies were approved by the Conference.

Improvements in Bankruptcy Procedures

The Committee reported that a concentration of trustee appointments and appointments of attorneys for trustees in certain areas in violation of 11 U.S.C. 76(a), has been brought to its attention. The Administrative Office is carefully investigating the facts and is taking and will continue to take corrective action.

In cooperation with the Department of Justice, the Administrative Office is also inquiring into the administration of bankruptcy cases in certain districts in which there is clear evidence of laxity on the part of receivers, trustees and referees in observing the provisions of the Bankruptcy Act relating to the sale and disposition of scheduled assets, the inventory and appraisal thereof, the audit of receivers' and trustees' reports and accounts by the referee, and compliance with the Bankruptcy Act and the General Orders relating to the handling of monies belonging to bankrupt estates.

An examination of the statistical reports filed by the referees in cases closed in the fiscal year 1959 has also disclosed many errors in the computation and allowance of receivers' and trustees' com-

missions and in the computation of the charges made for the referees' salary and expense funds. The Administrative Office proposes to audit all statistical reports of cases closed during the fiscal year 1960 and to hold receivers, trustees and referees accountable for any errors therein.

Upon the recommendation of the Committee, the Conference adopted the following policies with respect to these matters and authorized and directed the Administrative Office to put them into effect:

(1) That in all cases where the creditors fail to elect a trustee, any qualified person shall be eligible for appointment by the referee and such appointments shall be spread as widely as reasonably possible. Likewise, appointments of attorneys for trustees should be apportioned among a number of persons so that no monopoly of appointments or inordinate compensation will result.

(2) That the referees shall cause a thorough audit to be made of all accounts of receivers and trustees and require strict compliance by them with all provisions of the Bankruptcy Act relating thereto.

(3) That receivers, trustees and referees shall be held personally accountable for any errors in the computation of receivers' and trustees' compensation and charges for the referees' salary and expense funds disclosed by an audit of statistical reports of cases closed in the fiscal year 1960.

On recommendation of the Committee, the Conference authorized the immediate release of the action of the Conference with respect to the recommendations contained in the Committee's report.

REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Chief Judge William F. Smith, Chairman of the Committee on the Administration of the Criminal Law, reported that the Committee, as reconstituted by the Chief Justice in April, was in the process of being reorganized. An inventory of all matters referred to the Committee has been prepared and an initial business meeting will be held in October. Pursuant to the direction of the Conference at its March 1959 session (Conf. Rept., p. 33) the National Legal Aid Society and the New York Legal Aid Society

have been invited to appear before the Committee at the October meeting to present their views on the proposal to authorize grants to Legal Aid Societies and other organizations providing free legal services to indigent persons accused of crime in the United States courts.

Chief Judge Smith also reported that the Chief Justice had assigned to the Committee the study of the entire system of United States Commissioners which was suggested to the Conference by Congressman Celler in March (Conf. Rept., p. 4).

On motion of Chief Judge Prettyman, the Conference called to the attention of the Committee on the Administration of the Criminal Law the problem of the waiver by the Juvenile Court of the District of Columbia to the District Court of jurisdiction over juvenile offenders in the District of Columbia.

The Conference referred to the Committee on the Administration of the Criminal Law the recommendation of the Judicial Conference of the Third Circuit that mandatory sentences in criminal cases be abolished and the recommendation of the Judicial Conference of the District of Columbia Circuit that mandatory capital punishment be abolished in the District of Columbia.

REPORT ON THE PILOT INSTITUTE ON SENTENCING

Chief Judge William J. Campbell, Chairman of the Institute on Sentencing, reported that the Pilot Institute, authorized by the Conference in March 1959 (Conf. Rept., p. 33), was held in conjunction with the Seminar on Protracted Cases at the University of Colorado on July 16 and 17. There were in attendance about 75 persons, including circuit and district judges, members of Congress, staff members of Congressional Committees, representatives of the Administrative Office, the Department of Justice, the Department of the Treasury, the Department of the Army and federal law enforcement agencies, and members of the Advisory Corrections Council.

The program for the Institute was developed by a planning committee assisted by Professor Frank Remington of the University of Wisconsin School of Law, who also developed a desk book on sentencing for the use of the participants in the Seminar. Copies of the desk book and of the formal papers presented at the Institute were made available to the members of the Conference.

Judge Campbell further reported that a questionnaire on various aspects of the Institute had been circulated among the participants. On the basis of the replies thereto, the following recommendations were submitted to the Conference:

(1) That future sentencing institutes be held from time to time on a national level, in addition to institutes on a circuit level, as contemplated by the authorizing legislation.

(2) That participation be specifically limited to judges, assisted only by such experts in the field of sentencing as the judges themselves, in collaboration with the Administrative Office, may determine.

(3) That the present committee of judges assigned to the pilot institute be discharged.

(4) That future work on the sentencing problem be referred to the Committee on the Administration of the Criminal Law.

(5) That there be created in the office of the Director of the Administrative Office a staff position, with necessary supporting personnel and funds, to which would be assigned the responsibility of preparing agenda and assisting in providing experts for future sentencing institutes on both national and circuit levels and in correlating this work for the Committee on the Administration of the Criminal Law.

(6) That the Attorney General be requested to create a staff position in the Department of Justice to discharge the responsibilities in connection with sentencing institutes which are placed on the Attorney General, and that sufficient funds be allocated to permit collaboration with the Administrative Office and the Judicial Conference, as the statute contemplates.

These recommendations were approved by the Conference.

REPORT OF THE COMMITTEE ON JUDICIAL STATISTICS

Chief Judge Charles E. Clark, Chairman of the Committee on Judicial Statistics, presented the report of the Committee. He stated that during the past year there had been considerable comment and some criticism of the judicial statistics prepared and published by the Administrative Office. In view of these comments, the Committee desired again to emphasize its basic objective of securing and setting forth reliable, impartial information as to the actual operation of the federal judicial establishment. In

general, the Committee was of the opinion that the statistics received by the Administrative Office are adequate, but that greater use of the data should be made in the direction of the preparation and dissemination of more detailed information as to individual districts.

The Committee called attention to Table C 3a., appearing in the Annual Report of the Director for the first time this year, which shows the number of civil cases pending at the end of the year in each district court by nature of suit. The report of the Committee was received by the Conference and ordered to be circulated to all circuit and district judges for their information.

REPORT OF THE COMMITTEE ON PRE-TRIAL PROCEDURE

Chief Judge William J. Campbell, in the absence of Chief Judge Murrah, Chairman of the Committee, presented the report of the Committee. The Conference considered the suggestion of the Committee that it be declared the sense of the Conference that an order, report, or copy of the transcript should be filed following the pre-trial conference which contains the agreements and stipulations of the parties and which shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice. After a full discussion the Conference directed that the proposal, together with the other recommendations contained in the Committee's report, be referred back to the Committee for further study in the light of the discussions in the Conference.

REPORT OF THE COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Chief Judge Harry E. Watkins, Chairman of the Committee on the Operation of the Jury System, submitted the report of the Committee.

Travel and Subsistence Allowance of Jurors

Chief Judge Watkins reported that it was the view of the Committee that the subsistence allowance of jurors who are required to remain overnight should be increased from $7.00 to $10.00 per day, and further, that the daily interim travel allow-

ance should be limited to what the juror would receive as subsistence allowance. Each year since 1954 the Administrative Office has circulated reports to all judges showing the districts where excessive travel payments are being made and the amounts thereof (See Conf. Rept., Sept. 1953, p. 17). The Committee had hoped that these excessive payments would be reduced without the necessity of a statute limiting the payment of daily travel to the amount of the subsistence allowance. However, there has been little improvement over the years. A draft of a bill to amend 28 U.S.C. 1871 to increase the subsistence allowance of jurors to $10.00 per day and to limit daily interim travel expense payments to the amount of the subsistence allowance, presented by the Committee, was thereupon approved by the Conference.

Legislation

Upon recommendation of the Committee, the Conference took the following action with respect to legislative proposals previously considered by the Conference:

(1) Reaffirmed its disapproval of the proposal contained in H.R. 591 and H.R. 1095 to provide that in a civil case the number of jurors required to constitute a jury and the number who must agree for a valid verdict shall be determined by the law of the state in which the action is tried.

(2) Reaffirmed its approval of H.R. 4157 to increase the compensation of jury commissioners from $5.00 to $10.00 per day with no limit on the number of days of service.

(3) Reaffirmed its approval of H.R. 4343 to provide a jury commission for each United States district court to regulate its compensation, to prescribe its duties, and for other purposes.

Judge Watkins reported that H.R. 2978, 86th Congress, to authorize additional peremptory challenges to multiple plaintiffs in civil actions, as now allowed multiple defendants, had been approved by the President as Public Law 86–282.

REPORT OF THE COMMITTEE ON THE ASSIGNMENT AND DESIGNATION OF JUDGES

Circuit Judge Jean S. Breitenstein, Chairman of the Committee on the Assignment and Designation of Judges, submitted on behalf of the Committee a comprehensive report outlining the historical

background of the assignment practice, the factors that limit the use of judges outside of their respective circuits, and an analysis of the procedural means that may be employed for correlating need with available judge power. He reported that the Committee conceives its task to be that of the preparation and submission of a plan for the transfer of judges, but that the Committee believes that study and experimentation are necessary before it can submit such a plan to the Conference.

With the understanding that the procedures suggested below are to aid in the preparation of a plan for the assignment and designation of judges the Committee recommended that:

(1) All requests for the services of judges from without a circuit be presented to the Committee.

(2) The Committee be authorized to request judges to serve outside their circuits and to seek the necessary consents for such service.

(3) The Committee be instructed to obtain information as to the need for and availability of judges for work outside their circuits, to analyze that information, and to report thereon to the Conference.

(4) The Committee be directed to formulate procedural standards and rules to be applied in the transfer of judges outside their circuits and to report its recommendations to the Conference for such action as it deems appropriate.

(5) The Committee be directed to make recommendations to the Chief Justice relative to the transfer of judges for service outside their circuits and to be of such other assistance to the Chief Justice in connection with the assignment and designation of judges as may be requested by him.

The Conference discussed these recommendations fully and agreed that the Committee should undertake this program. It was understood that when the Committee was sufficiently organized to put these procedures into effect, the members of the Conference would be notified. Until then the existing procedures for securing the assistance of judges outside of their own circuits would be used.

REPORT OF THE COMMITTEE ON REVISION OF THE LAWS

Senior Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted the Committee's report on legislative proposals considered by the Committee.

(1) *Consent judgments and decrees in antitrust cases.*—S. 1337, H.R. 6253, and H.R. 5942 would require that proposed consent decrees in antitrust cases be published in the Federal Register at least 30 days prior to their entry. H.R. 5942, which is substantially identical to H.R. 427, 85th Congress, approved by the Conference at its September 1957 session (Conf. Rept., p. 40), would make this requirement applicable to orders entered by a district court or the Federal Trade Commission and S. 1337 and H.R. 6253 would make the requirement applicable also to all consent orders entered by any board or commission for the enforcement of the Clayton Act or the Federal Trade Commission Act. Upon recommendation of the Committee, the Conference approved the proposals contained in these three bills.

(2) *Admission of attorneys to practice in Courts of Appeals and District Courts.*—H.R. 8070 and H.R. 8208, 86th Congress, would provide that any person who is a member in good standing of the Bar of the Supreme Court of the United States and of the highest court of any state, shall be eligible to practice before any court of appeals or district court of the United States without the necessity of making application therfor or of showing any other qualifications. Similar proposals had been previously disapproved by the Conference at its September 1956 session (Conf. Rept., p. 42) and at its March 1959 session (Conf. Rept., p. 31). The Committee pointed out that these bills would deprive the lower federal courts of all effective control of the admission of attorneys to their bar. Upon recommendation of the Committee, the Conference disapproved both bills.

(3) *Registration and enforcement of support orders in certain state, territorial and other courts.*—H.R. 5486, 86th Congress, is substantially identical to bills previously considered by the Conference at its September 1957 session (Conf. Rept., p. 37). The Conference at that session disapproved the provisions of the proposal which would provide for the registration and enforcement of support orders by the federal district courts and expressed no

opinion on the other features of the proposal. On recommendation of the Committee, the Conference reaffirmed its action on this proposal.

(4) *Arbitration Procedure—Judicial Review of Questions of Law.*—Judge Maris reported that H.R. 6322, 86th Congress, on which a request for the views of the Conference had been received from the Committee on the Judiciary of the House of Representatives, is substantially similar to H.R. 7577, 85th Congress, previously considered by the Conference at its September 1958 session (Conf. Rept., p. 36). In addition to making a number of desirable and non-controversial improvements in the arbitration procedure provided by Title 9, United States Code, the bill previously considered contained two controversial provisions. One of these would require that no final award may be issued in a maritime arbitration proceeding until after the arbitrators had submitted to the parties a statement in writing of their proposed award. This provision is not included in H.R. 6322, but the other controversial proposal to require the arbitrators at any time before final award in the maritime arbitration, if so directed by order of the district court, to state for the decision of the district court any question of law arising in the course of the arbitration, or to state the award or a part thereof in the form of a special case, has been retained. The Conference discussed the proposal fully, and on motion of Chief Judge Sylvester J. Ryan disapproved H.R. 6322 on the ground that the bill is inconsistent with the basic principles of arbitration, and that its enactment would result in serious delay in arbitration procedure and in a substantially increased burden upon the presently congested district courts in the metropolitan port centers.

(5) *Service of Notice by Certified Mail.*—H.R. 8542 and H.R. 8543, 86th Congress, would authorize the use of certified mail for the transmission or service of matter now required by certain federal laws to be transmitted or served by registered mail. With regard to judicial proceedings, the bills would authorize the use of certified mail in the service of notices now required to be given by registered mail under 28 U.S.C. 2284 and 2410(b), and under section 3491(c) of the Revised Statutes, 31 U.S.C. 232. These provisions are contained in paragraphs (23), (24) and (32) of section 1(a) of the bills. On recommendation of the Committee, the Conference approved these provisions.

(6) *Record on Judicial Review of Orders issued under the Federal Aviation Act of 1958 and the Food Additives Amendment of 1958.*—The Congress in 1958, upon recommendation of the Conference, enacted Public Law 85–791, 72 Stat. 941, making uniform the law relating to the record on review of agency orders, which by specific amendment applied to all existing statutory provisions for the review of agency orders by the courts of appeals. The Committee reported, however, that at the time this recommendation was under consideration by Congress, two new Acts were passed which made provision for judicial review of agency orders. These were the Federal Aviation Act of 1958, which superseded the Civil Aeronautics Act of 1938, and the Food Additives Amendment of 1958 which added to the Federal Food, Drug, and Cosmetics Act. H.R. 7847, 86th Congress, would bring the provisions of these Acts, with respect to the record on judicial review of the orders of the agencies concerned, into harmony with the uniform law on that subject established by Public Law 85–791. Upon recommendation of the Committee, the Conference approved the bill.

HABEAS CORPUS PROCEDURE

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, informed the Conference that the bill, H.R. 3216 to amend 28 U.S.C. 2254 in reference to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a state court, drafted by the Committee and approved by the Conference (Conf. Rept., March 1959, p. 28), had passed the House of Representatives and was now pending before the Senate Judiciary Committee. He suggested, however, that a proposed amendment to the last sentence of 28 U.S.C. 2254(b), as provided in the bill, with respect to the constitution of the three-judge district court, would be desirable. The Conference adopted the suggestion and recommended that this sentence be amended to read as follows: "At least one of the judges designated shall be a circuit judge".

REPORT ON THE STATUS OF LEGISLATION

The Conference directed that the report prepared by the Administrative Office on the status in the 86th Congress of legislative

proposals considered by the Conference be brought up to date and circulated to the members of the Conference.

INSTITUTE ON SENTENCING IN THE DISTRICT OF COLUMBIA CIRCUIT

Pursuant to Public Law 85–752, 72 Stat. 845, the Conference consented to the convening of an Institute on Sentencing in the District of Columbia Circuit in accordance with the plan submitted by Chief Judge Prettyman.

CONFERENCE ON ADMINISTRATIVE PROCEDURE

On motion of Chief Judge Prettyman, the Conference adopted the following resolution with respect to the establishment of a permanent Conference on Administrative Procedure:

> "Be it resolved, That this Conference (1) hereby approves the action of the Judicial Conference of the District of Columbia Circuit proposing the establishment of a permanent Conference on Administrative Procedure, as set forth in the resolution adopted by that Conference on May 21, 1959, and (2) authorizes the appointment of a Committee to consider this matter and report to this Conference at its March 1960 meeting.

CLOSING OF CLERKS' OFFICES ON SATURDAYS

The Conference referred to the Committee to be appointed to study the rules of practice and procedure the proposal of the Judicial Conference of the District of Columbia Circuit to effect the closing of the clerks' offices of the federal courts throughout the country on Saturdays.

PRETERMISSION OF TERMS OF THE COURT OF APPEALS OF THE TENTH CIRCUIT

At the request of Circuit Judge Pickett the Conference, pursuant to 28 U.S.C. 48, consented that terms for the Court of Appeals for the Tenth Circuit at places other than Denver be pretermitted during the current fiscal year.

CASES AND MOTIONS UNDER SUBMISSION

The Administrative Office submitted to the Conference a report on cases under submission in the courts of appeals and cases and motions under advisement in the district courts. The report listed 29 cases under submission in the courts of appeals more than three months as of September 1, 1959, and 44 cases and motions which had been held under advisement by the district courts more than six months as of that date. Where necessary, these will be brought to the attention of the circuit councils by the chief judges of the circuits.

MAINTENANCE AND TRAVEL EXPENSES OF JUDGES

The Director of the Administrative Office submitted for the approval of the Conference the interim travel regulations dated August 11, 1959 relating to the maintenance and travel expenses of judges issued by him pursuant to the provisions of Public Law 86–138. The Director proposed, subject to the approval of the Conference, to issue permanent regulations requiring a judge who elects to claim reimbursement for actual expenses of subsistence to list on his voucher under approximately five broad headings the actual expenses incurred by him for each calendar day up to $25.00. Any other unusual expense not included under one of the headings could be listed separately. Upon motion of Chief Judge Biggs the proposed regulations with respect to the subsistence expenses of judges were approved by the Conference.

COMMITTEES

The Conference, on motion of Chief Judge Biggs directed that all existing Committees, including the Advisory Committee of the Conference, be continued and authorized the Chief Justice to reconstitute any Committee as he may see fit.

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

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice.

WASHINGTON, D.C., *November 30, 1959.*

APPENDIX

REPORT OF

THE ATTORNEY GENERAL OF THE UNITED STATES

TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

BY

THE HONORABLE WILLIAM P. ROGERS

Attorney General of the United States

Washington, D.C.

September 16, 1959

APPENDIX

Mr. Chief Justice, Members of the Judicial Conference:

It is always a privilege to attend the Judicial Conference of the United States and to render a report on matters of mutual interest. This Conference, quite properly, tends to focus its attention on measures to further improve the administration of justice. By continuing to unite our efforts, we may hope to make progress toward our objective of equal justice for all under law.

I. *Court Calendars*

Problems of court congestion and delay still claim our primary attention. Although there has been a recent decrease in filings of civil cases and increased terminations, there were nevertheless 63,796 civil cases pending on June 30, 1959—more than in any recent year except 1958, when 68,168 cases were pending. This caseload continues to be a matter of serious concern.

Certainly the judges have made considerable effort to meet the increasingly heavy workload in our Federal District Courts. On an average the individual judge terminated 236 civil cases in 1959 as compared to 231 per judge in 1958 and to 169 in 1941—an increase over the past eighteen years of about 40% in the productivity of our Federal district judges. As a matter of fact, the average disposition for each judge may well be higher since these figures are based upon the number of authorized judges and not the number actually on duty.

Special assignments made of additional judges to districts where calendars have been particularly congested have been most productive. Furthermore, the holding of special terms of court has been helpful. For instance, the assignment of additional judges to the Eastern District of New York during the Spring of this year enabled the Government to dispose of 132 of the 186 cases originally set on this court calendar.

The total of all cases and matters pending in the United States Attorneys Offices is now at an all-time low. The number of pend-

ing government cases in the United States District Courts was reduced during the past year in all categories except criminal cases. It is significant that although the criminal cases terminated were greater than in the previous year, the terminations did not keep abreast of the criminal cases filed. There were 7,727 criminal cases pending at the end of fiscal 1959, an increase of about 500 cases over the preceding year.

The increase in pending criminal cases is attributable primarily to the steady increase in the number of criminal matters being received in United States Attorneys Offices and the lack of available judges in some districts.

We are encouraged by the progress made in the reduction of government cases. I am confident that we will continue to make even greater progress during the coming year in our combined efforts to reduce court congestion and bring about the disposition of all cases within a reasonable time.

II. *Filling Judicial Vacancies*

At the close of the Congressional session just completed, the President had sent nominations to the Senate for all vacancies which had been in existence more than thirty days except one. Forty were confirmed and four were left pending at the close of the session. In addition, one district and one circuit vacancy have come into existence since the first of the month. We thus open the full term of court with practically a full complement of judges. The cooperation of the Senate, particularly the Chairman of the Senate Judiciary Committee, has been of utmost value in bringing about this satisfactory situation.

III. *Antitrust Cases*

During the last fiscal year, criminal antitrust cases filed increased from 22 to 41. Government civil cases dropped from 32 to 21. With respect to dispositions, the number of cases tried and closed dropped from 12 to 10, but the number terminated without trial increased from 37 to 55. It is our hope that we can continue to reduce the amount of court time consumed by the average antitrust case. Last year only one antitrust trial exceeded 19 court days and was then classified as a protracted case. This case lasted 37 court days but except for 1956 this is the least number of trial days consumed by protracted antitrust cases for the last ten years.

The difference in efficiency between cases which are handled by a single judge compared to those which are left to pass from one judge to another in a multiple judge court continues to be striking. For example, the *Bethlehem-Youngstown* case took only two years from filing to final judgment, notwithstanding the complexities of the evidentiary materials necessary for consideration. In another merger case in which such an assignment was not made it took one year to dispose of one set of interrogatories. Although we recognize the calendar problems of the courts, we hope that it will be possible to increase the frequency of assignments of antitrust cases to a single judge.

IV. *Sentencing Institute*

In previous years I have discussed with you the disparities in the sentences given like offenders for like offenses and you may be sure that the Department welcomed the speed with which the first sentencing institute was organized under the 1958 law which made provision for them.

The new law, as you know, also gave the courts some additional sentencing alternatives in their efforts to fit sentences more closely to the various factors involved in each case. Recognizing that there are about 27,000 convictions during each fiscal year, the new procedures cannot yet be considered in wide use. However, more and more of the courts are applying them. Under the subsection which authorizes the court to fix a minimum term (18 U.S.C. Sec. 4208(a)(1)), sixteen courts during the 1959 fiscal year sentenced 38 defendants to maximum terms up to 15 years and to minimums ranging from one month to five years, with nearly all the latter for one year or less.

The provisions of 18 U.S.C. 4208(a)(2) authorizing the court to impose only the maximum term and to specify that the Board of Parole shall determine parole eligibility have been used with more frequency. Twenty-three courts disposed of 119 cases by the maximum-only procedure, with the maximums ranging from six months to more than 15 years.

We have also watched with particular interest the use of the diagnostic and observation procedure contained in section 4208(b). In effect, as you know, this section extends to a period of three to six months the court's authority to modify a sentence, and the court can commit the defendant to one of our institutions for

intensive study over this period. This procedure furnishes the judge a summary of data concerning the defendant's mental and emotional health, his physical condition, his social history, his vocational or educational needs and any other information pertinent to the disposition of his case. It gives the court the benefit of the views of the people who must deal with the prisoner and a good idea whether the defendant needs institutional treatment and how lengthy this treatment should be. Twenty-three courts during the last fiscal year sent us 99 of these cases.

You know of course that our institutional populations are increasing rapidly, and a number of you have expressed your concern to us that the resulting overcrowding will adversely affect the rehabilitation of the offenders you have committed. During the past year or so we have taken a number of steps which will permit us more effectively to carry out the sentences of the courts. We have opened a new camp in South Carolina and another in Arizona, which are expected to relieve to some extent the overcrowding of institutions in those areas. We have also reopened the Sanstone, Minnesota, institution, and from now on offenders qualified for medium or minimum custody will be committed directly to it from the courts in that area. Two months ago we took over from the Army the superlatively equipped institution at Lompoc, California, and it will serve as a reception center for courts in that area and as an institution for the confinement and rehabilitation of young adult offenders. Finally, the Congress has given us funds to begin construction of a new maximum custody institution in southern Illinois, but it will be at least three years before this institution can be occupied.

V. *The Commission on International Rules of Judicial Procedure*

The Commission on International Rules of Judicial Procedure and its Advisory Committee, established by the Act of September 2, 1958 (P.L. 85–906) have made some progress since our last Conference.

As you know, the Commission is charged with the study of existing practices of judicial cooperation between the United States and foreign countries, particularly in the service of judicial documents abroad, the obtaining of testimony abroad by deposition and letters rogatory, and in proving foreign law. For the purpose of making practice more efficient, expeditious and economical, the

Commission is to draft international agreements, to be negotiated by the Secretary of State, and to recommend other legislation found necessary. Since the Act of September 2, 1958 provided that the Commission should terminate prior to December 31, 1959, it has limited its activities to tasks which seemed capable of substantial accomplishment in that short time. Except for a pilot project of examining our juridical relations with Austria and Japan, a study of only the pertinent sections of the Federal Judicial Code, the Criminal Code, and the Federal Rules of Civil and Criminal Procedure has been undertaken. The purpose of this limited program is to recommend such revisions as will permit the maximum use abroad of existing procedures which are now impossible of utilization in many civil law countries. It is also contemplated, if time permits, that model laws and rules fashioned after the Federal revision and suitable for adoption by the States will be drafted, and that statutes and rules designed to simplify proof of foreign law will be considered.

A Bill, H.R. 8461, providing for an extension of the life of the Commission to December 31, 1961 was enacted into law September 16, 1959 (P.L. 86–287).

VI. *Legislation*

(a) *Omnibus judgeship bill*

As you know the Conference recommended the creation of 4 new circuit and 35 new district judgeships. It also recommended that 4 temporary district judgeships be made permanent. Although no bill incorporating these specific recommendations was introduced in either House, other bills varying slightly from that recommended by the Conference were introduced and received vigorous support from the Department. During the closing days of the session a judgeship bill creating 25 new judgeships was introduced in the Senate and was reported by the Senate Judiciary Committee. Unfortunately, it did not come to the Floor prior to adjournment. It is, however, now in a position to receive prompt consideration in January.

(b) *Increasing per diem for judges on travel status*

The Conference at its session in September, 1958 approved a bill to increase the maximum reimbursement subsistence expenses for judges on travel status from $15 to $25 a day. The Department

supported that proposal. On August 7, 1959, it was enacted into law.

(c) *Habeas corpus*

The Conference originally approved a proposal in March of 1955 dealing with habeas corpus applications to the United States Courts by persons in custody pursuant to the judgment of a State court. After further consideration the Conference made changes in its proposal. It limited the grounds for habeas corpus applications by state prisoners to federal constitutional questions; provided that a state prisoner may not relitigate a federal constitutional question previously adjudicated adversely to him by the Supreme Court unless a controlling fact was not before the Supreme Court and could not with reasonable diligence be brought before it; and provided for a hearing before a district court of 3 judges of all cases in which a writ is issued. The decision of the district court of 3 judges would be reviewable only on writ of certiorari to the Supreme Court. The Department of Justice supported the position of the Judicial Conference and the House of Representatives passed a bill incorporating the views of the Conference on July 29, 1959. This bill is now pending before the Senate Judiciary Committee.

(d) *Public defender*

The Department sponsored a bill in this Congress to provide for court appointment of public defenders for indigent defendants. This Conference on March 16, 1959 urged upon the Congress and Mr. Olney gave strong support to the bills sponsored by the Department in his testimony before the Committee on the Judiciary in the House of Representatives on May 6, 1959. The Senate passed the bill sponsored by the Department on May 20, 1959, but it has been impossible to date to receive its discharge by the subcommittee of the House Judiciary Committee to which it was referred.

The United States is a party in a major share of the cases actually tried in the federal courts each year. It is also involved in a substantial part of the cases taken on appeal and those finally heard in the Supreme Court. Whether we are in the role of plaintiff, prosecutor, petitioner or respondent, our sole objective is to secure the prompt impartial administration of justice. This is an

awesome responsibility which we share with you. We solicit your advice as to how we may better discharge these duties and would welcome the opportunity to report on any matter of interest to the Conference.

INDEX

	Page
Administrative agencies, record on review of orders of	37
Administrative Office of the United States Courts, report of the Director	4
Administrative procedure, conference on	38
Appropriations:	
Bankruptcy system	26
Budget Committee, report of	6
General	6
Supplemental	6
Attorney General, report of	3
Bankruptcy Administration:	
Appropriations, supplemental	26
Chapter XI proceedings, time for filing claims	26
Chapter XIII proceedings, time for filing claims	25
Committee on, report of	22
Procedures and administration:	
Improvements in	28
Oath on proof of claim, elimination of	25
Referees:	
Retirement of	28
Salaries and arrangements	23
Special charges by	26
Review of referees' orders, time for	25
Summary jurisdiction	24
Budget, Committee on, report of	6
Cases and motions under submission	39
Committees	39
Conference:	
Call of	1
Committees of	39
Terms of district judges	21
Court Administration:	
Arbitration of automobile accident cases	20
Clerks' fees	13
Clerks' offices, Saturday closing	38
Committee on, report of	13
Diversity Jurisdiction:	
Actions commenced by fiduciaries	8
Citizenship of corporations	11
Geographical organization of courts	21
Judicial councils, organization of	21
Maintenance and travel expenses of judges	39
Seminar for newly appointed district judges	22

	Page
Court Administration—Continued	
Standing masters under Rule 53	21
Terms of court, abolition of	11
Terms of district judges on the Judicial Conference	21
Wages and effects of deceased seamen	20
Witness' fees in habeas corpus cases	20
Court reporting system	15
Courts:	
Business of—state of the dockets	4
Courts of Appeals:	
Cases and motions under submission	39
Pretermission of terms of court of the Tenth Circuit	38
District Courts:	
Cases and motions under advisement	39
Clerks' fees	13
Jurisdiction in diversity of citizenship cases:	
Corporations, citizenship of	11
Fiduciaries, actions commenced by	8
Saturday closing of clerks' offices	38
Wages and effects of deceased seamen	20
Geographical organization of	21
Criminal Law Administration:	
Committee on, report of	29
Indigent defendants, compensation of counsel for	29
Institute on Sentencing, District of Columbia Circuit	38
Mandatory sentences	30
Pilot Institute on Sentencing, report on	30
U.S. Commissioner system, study of	30
District of Columbia:	
Capital punishment	30
Institute on sentencing	38
Juvenile offenders, waiver to the district court	30
Expedition of Court Business	6
Habeas Corpus	37
Institute on Sentencing:	
District of Columbia	38
Pilot institute, report on	30
Judges:	
Assignment and designation of judges, report of committee on	33
Maintenance and travel expenses of	39
Retired circuit and district judges, status of	9
Judgeships—additional	6
Judicial Councils, powers and organization of	21
Jurisdiction and Venue:	
Corporations, citizenship in diversity cases	11
Fiduciaries, actions commenced under diversity jurisdiction	8
Jury System:	
Committee on the operation of, report of	32
Jury commission	33
Jury commissioners, compensation of	33
Peremptory challenges	33

	Page
Jury System—Continued	
Travel and subsistence allowance	32
Verdicts less than unanimous	33
Law clerks and secretaries	16
Legislation, report on status of	37
Memorial: Honorable James Alger Fee	2
Pretrial procedure, report of committee on	32
Revision of the Laws:	
Admission of attorneys to practice in federal courts	35
Antitrust cases, consent judgments and decrees	35
Arbitration, judicial review of questions of law	36
Committee on, report of	35
Compact between Puerto Rico and the United States	11
Deportation orders, judicial review of	8
Federal employees, judicial review of removal or suspension of	13
Notices, service of by certified mail	36
Orders issued under Federal Aviation Act of 1958 and the Food Additives Amendment of 1958, record on review	37
Support orders, registration of	35
Unfair labor practice cases, trial of	8
Veterans' claims, judicial review of	7
Seamen, wages and effects of	20
Statistics, report of committee on	31
Supporting personnel:	
Court reporters, salaries of	16
Crier-law clerks	19
Employees training act	20
Interpreters and psychiatrists, employment of	19
Law clerks and secretaries, qualification standards	16

U.S. GOVERNMENT PRINTING OFFICE: 1960