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

OCTOBER 31–NOVEMBER 1, 1969

WASHINGTON, D.C.
1969

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Ernest C. Friesen, Jr.
Director

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THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

October 31–November 1, 1969

The Judicial Conference of the United States convened on October 31, 1969, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331. The Conference continued in session on November 1. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:
Chief Judge David L. Bazelon
Chief Judge Edward M. Curran, District of Columbia
First Circuit:
Chief Judge Bailey Aldrich
Judge Edward T. Gignoux, District of Maine
Second Circuit:
Chief Judge J. Edward Lumbard
Chief Judge Sidney Sugarman, Southern District of New York
Third Circuit:
Chief Judge William Henry Hastie
Judge Wallace S. Gourley, Western District of Pennsylvania
Fourth Circuit:
Judge Harrison L. Winter (designated by the Chief Justice in place of Chief Judge Clement F. Haynsworth, Jr.)
Chief Judge Walter E. Hoffman, Eastern District of Virginia
Fifth Circuit:
Chief Judge John R. Brown
Chief Judge Joe Ewing Estes, Northern District of Texas
Sixth Circuit:
Chief Judge Harry Phillips
Chief Judge Carl A. Weinman, Southern District of Ohio
Seventh Circuit:
Chief Judge Latham Castle
Chief Judge Robert A. Grant, Northern District of Indiana
Eighth Circuit:
Chief Judge Martin D. Van Oosterhout
Chief Judge Roy W. Harper, Eastern & Western Districts of Missouri

Ninth Circuit:
Chief Judge Richard H. Chambers
Chief Judge Fred M. Taylor, District of Idaho
Tenth Circuit:
Chief Judge Alfred P. Murrah
Chief Judge Arthur J. Stanley, District of Kansas
Court of Claims:
Chief Judge Wilson Cowen
Court of Customs and Patent Appeals:
Judge Donald E. Lane (designated by the Chief Justice in place of Chief Judge Eugene Worley)

Senior Judges John S. Hastings and Albert B. Maris, Circuit Judges Robert A. Ainsworth, Jr., George C. Edwards, Jr., and Irving R. Kaufman and Judges William E. Doyle and Edward Weinfeld attended all or some of the sessions for the presentation of committee reports.

The Honorable Erwin N. Griswold, Solicitor General of the United States, representing the Attorney General, attended the morning session of the first day of the Conference and addressed the Conference on matters of interest to it and the Department of Justice.

The Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States, Retired, reported to the Conference on his activities as Director of the Federal Judicial Center and presented a written report which had been distributed to all federal judges.

Chief Judge Alfred P. Murrah as Chairman of the Judicial Panel on Multidistrict Litigation described the Panel's activities to the Conference and presented a written report.

Mr. Ernest C. Friesen, Jr., Director of the Administrative Office of the United States Courts, Mr. William E. Foley, Deputy Director, and Mr. Joseph F. Spaniol and Mr. William R. Sweeney, Assistant Directors, were also in attendance.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE

Ernest C. Friesen, Jr., Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1969, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference authorized the immediate release of the report and

authorized the Director to revise and supplement the final printed edition to be issued later.

State of the Dockets

Courts of Appeals.—New case filings in the courts of appeals went above the 10,000 level for the first time in 1969, Mr. Friesen stated. New cases docketed numbered 10,248, while cases disposed of increased to 9,014, also the highest on record. Because of the large increase in filings, however, the pending caseload on June 30, 1969 reached an all-time high of 7,849. Mr. Friesen advised the Conference that the upward trend in new case filings which began in 1961 has resulted in more than doubling the pending caseload in the last seven years.

The increase in cases docketed was registered in nine of the eleven circuits, with the highest increase in the Fifth Circuit—27.9 percent; the Ninth Circuit was next with 26.4 percent; the Second Circuit reflected an increase of 17.8 percent and the District of Columbia—15.8 percent.

The increase in cases docketed in 1969 came almost entirely from decisions of the United States district courts and was heavily reflected in habeas corpus appeals by federal prisoners which were up 55 percent and in appeals from the denial of motions to vacate sentence under 28 U.S.C. 2255 which were up 29 percent.

District Courts.—The new case filings in 1969 reflected a sharp departure from the leveling trend in both civil and criminal cases in the district courts reflected in fiscal year 1968. Civil filings and dispositions, respectively, increased by 8.0 percent and 6.5 percent during 1969. Total civil actions filed in the district courts in 1969 were 77,193 and the dispositions were 73,354. Numerically, the largest increase was in the filing of prisoner petitions which accounted for one out of every six civil cases filed in the United States district courts in 1969. The median time interval from issue to trial for civil cases was 13 months, an increase of one month over 1968.

Criminal cases filed in 1969 reached an all-time peak of 33,585 as compared with 30,714 cases filed in 1968. Terminations reached a new high of 30,578 but the pending caseload rose to 17,770. Of this pending caseload at the end of the year, 3,521 had been pending more than six months but less than one year and 2,625 had been pending more than one year but less than two years.

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The type of criminal cases filed in 1969 changed considerably from those filed in 1968. Selective Service Act cases, for example, were up 81 percent, illegal immigration cases were up 57 percent and prosecutions for violation of the narcotics laws were up 21 percent. Declines were noted particularly in prosecutions for the violation of the liquor laws and in fraud cases.

Bankruptcy.—For the second successive year new bankruptcy cases declined. In 1969 a total of 184,930 bankruptcy cases was filed. This is a decline in filings of 6.5 percent. The heaviest numerical declines in 1969, as in 1968, were in the Sixth and Ninth Circuits. Of the total filings, 91.7 percent were non-business bankruptcies. The number of business bankruptcies remained at a fairly stable level of 8.3 percent of the total.

COMMITTEE ON COURT ADMINISTRATION

Judge Robert A. Ainsworth, Jr., Chairman, presented the report of the Committee on Court Administration.

Resolutions of June 10, 1969

At a special meeting of the Judicial Conference of the United States on June 10, 1969 four resolutions were passed, three of which required further implementation and report to the next session of the Conference by the Committee on Court Administration.

Judge Ainsworth stated that his committee which met in mid-August had discussed at considerable length the first resolution of June 10, 1969 (Conf. Rept., p. 42) relating to the performance of services other than judicial duties by federal judges. He stated that his committee recommended to the Conference that no change should be made in Resolution I short of one year's experience under the resolution as drafted. At the end of a year the committee proposed that it would then report to the Conference with regard to the operation of the resolution and any modification which might be indicated.

The Chief Justice advised the Conference that in this connection he had received a letter, dated October 27, 1969, from Chief Justice Roger J. Traynor of California, Chairman of a special committee of the American Bar Association created in August 1969 to study the entire problem of revising the canons of judicial ethics. Chief

Justice Traynor's letter stated that his committee had held its first meeting on October 25 and that it hopes to have a tentative draft of the proposed standards of judicial conduct available for consideration by the bench and bar by mid-year of 1970. Chief Justice Traynor's letter continued:

> There will be obvious advantages if the rules finally developed for federal judges can take into account the work of our committee. It will be fortunate if both the federal and state judiciaries can eventually abide by the same set of basic canons, and if the federal judiciary can avoid the possible clash of Circuit Councils in interpreting what is considered appropriate non-judicial services. To achieve these ends the members of the committee respectfully suggest that the Conference may wish to consider suspending for as long a period as it deems appropriate any further action on all the resolutions adopted in June. We make this suggestion so that the Conference in whatever action it ultimately takes, may have the benefit of the research and work of this committee.

After considerable discussion of the request of Chief Justice Traynor and his committee, the Conference adopted the following resolution:

> *Whereas*, judges have, since June 10, 1969, been reporting their non-judicial activities to the judicial councils of the respective circuits in accordance with a resolution adopted by the Judicial Conference of the United States, and it now appears that since the Judicial Conference provided no guidelines or standards, the various judicial councils of the circuits acting without standards or guidelines have not acted uniformly, and
>
> *Whereas*, the American Bar Association is now conducting a study on the subject of judicial conduct, including the non-judicial activities of judges, and the ABA advises that this study will be substantially completed by the Summer of 1970 and that this study will permit a more thorough understanding of the subject matter, it is hereby resolved:
>
> That for the calendar year 1969 and the calendar year 1970, Resolution I of June 10, 1969, with respect to compensation for non-judicial services by judges be suspended, and instead,
>
> (a) That the Chief Justice be authorized to appoint a receiving officer to receive reports;
>
> (b) That any judge who in any quarterly period receives compensation for non-judicial services, in a total amount exceeding $100, shall report the same forthwith to the receiving officer, on forms to be furnished, with the details thereof;
>
> (c) That these reports be forwarded by the receiving officer to the members of a panel of three United States judges designated by the Chief Justice, but be at all times kept confidential by them except to the extent that the panel concludes that they should be brought to the attention of the Judicial Conference in executive session for consideration of any aspect as to which the panel feels there may be a question of conflict with standards of Judicial conduct, or except to any other extent that the Conference shall order;

(d) Finally, that the Conference cooperate and collaborate with the American Bar Association Committee on the Code of Judicial Conduct and that the Chief Justice be authorized, in his discretion, to designate one or more representatives of the Conference to present the views of the federal judiciary to that Committee, if requested.

Judge Ainsworth then reported on Resolution II of June 10 and advised the Conference that his committee had agreed upon a financial statement and a procedure for the implementation of the filing of such a financial statement and he recommended that the Conference authorize the immediate transmission of this proposed financial statement and procedure for its implementation to all federal judges with a request that they submit their comments thereon prior to January 1, 1970. Judge Ainsworth stated to the Conference that this would permit the committee to report back to the Conference at its March 1970 session on any changes deemed appropriate in view of the comments received, thus permitting the Conference to adhere to the timetable established in June for the filing of the first reporting statement on May 15, 1970 for calendar year 1969.

The Conference approved the transmission to all federal judges for comment of the proposed financial statement and procedure for its implementation and also voted that, in soliciting the views of the judges, they also be requested to give their views on the desirability of any financial reporting by federal judges.

Resolution III of June 10 called for a progress report by the Committee on Court Administration on the formulation of standards of judicial conduct. Judge Ainsworth stated that when his committee had last met, the American Bar Association had voted the creation of a committee to revise the standards of judicial conduct which has since been appointed and is now functioning. He stated that his committee recommended to the Conference that it be authorized to work in close cooperation with the American Bar Association committee to avoid duplication of effort and that the committee be permitted to defer any report on Resolution III until the ABA committee has reported and its recommendations have been subjected to scrutiny and study. The Conference agreed to this procedure.

Judge Ainsworth then, in implementation of Resolution IV of June 10, presented to the Conference a draft bill to amend Section 331 of Title 28, United States Code, to authorize the Judicial Conference of the United States to promulgate rules and standards

governing the conduct of United States judges. The Conference approved the transmittal of this draft to the Congress.

Judicial Survivors Annuity Act

Judge Ainsworth presented to the Conference a revised draft of S. 1511, the bill drafted by the Senate Subcommittee on Improvements in Judicial Machinery, to provide benefits for survivors of federal judges comparable to benefits received by survivors of members of Congress. Judge Ainsworth stated that representatives of the committee had worked in close collaboration with the Senate Subcommittee and the Civil Service Commission and that certain technical changes might still be required in the draft but he stated that his committee recommended approval of S. 1511, in principle. The Conference agreed and authorized committee representatives to continue to work with representatives of the Senate Subcommittee and other interested agencies to eliminate any technical difficulties which might remain in the draft of the statute.

Judicial Reform Act of 1969

Judge Ainsworth next reported on S. 1506, 91st Congress, a bill styled the "Judicial Reform Act of 1969." He stated that Title I of the bill provides for a national commission of judges to pass upon the good behavior of a judge. It gives investigative powers to the commission and provides for an appeal by way of certiorari to the Supreme Court of the United States if the Judicial Conference returns a finding of misconduct. If upon final disposition of the case by the Court, the determination is adverse to the judge, the bill provides that he shall be removed from office as if he had been found guilty by the Senate in an impeachment proceeding and a successor judge may be appointed by the President.

Judge Ainsworth reminded the Conference that this subject matter has been considered by the Conference in the recent past and that draft bills have been circulated by the Conference to the entire federal judiciary on this subject matter. He stated that while there was considerable disagreement within his committee as to whether this subject matter can best be handled by a national commission or by the grant of additional authority to the judicial councils of the circuits, the committee had resolved to recommend Conference approval of Title I of S. 1506. After

discussion of this item, the Conference requested that the committee again consider Title I and attempt to reconcile differences of view and asked the committee to report back to the March 1970 session of the Conference.

In considering the provisions of Section 201 of Title II of S. 1506 providing for the retirement of a Justice or a judge after twenty years of continuous service, the Conference agreed with the committee recommendation that this statute should be amended to provide that a judge may retire after twenty years of continuous service if he has reached the age of sixty. The same comments were made to S. 1508, a separate bill carrying out the provisions of Section 201 of Title II.

Judge Ainsworth stated that his committee had given careful consideration to Sections 390(a) and 390(b) of Title IV of S. 1506 relating to conflicts of interest and had reached the conclusion that the language now in Title 28, United States Code, 455, is preferable. The Conference agreed.

In considering Section 391 of Title IV and several other bills relating to the filing of financial statements by judges, the committee recommended and the Conference agreed that the form of financial statement prepared by the committee and authorized for circulation for comment by federal judges was preferable.

The Conference requested the committee to consider further the proposals of Title V of S. 1506 which are also included in S. 1514 providing for the service of district judges upon the judicial councils of the circuits.

In considering Title V of S. 1506 relating to court executives for circuit and district courts, the Conference expressed its preference for the provisions relating to court executives as contained in S. 952 as it passed the Senate on June 23, 1969. The Conference opposed, however, the method of selection of court executives provided in S. 952, namely, from a panel of three names proposed by the Director of the Administrative Office.

The Conference requested the committee to study further the provisions of S. 1507 which would require mandatory retirement of Justices and judges upon reaching the age of seventy.

It also requested further committee study of S. 1513 which would amend Section 294 of Title 28, United States Code, to permit the assignment of duties to a judge retired involuntarily under Section 372(b) but who is willing and able to undertake additional judicial duties.

The Conference expressed approval of S. 1512 which would amend Section 372(a) of Title 28, United States Code, to provide that each Justice or judge retired under that section shall receive the salary of his office during the remainder of his lifetime.

The Conference also approved an amendment to Section 373 of Title 28, United States Code, to provide that a judge in the territories and possessions may retire after twenty years of service, continuous or otherwise, at the salary the judge was receiving when he relinquished his office.

The Conference disapproved S. 1515 providing that a judge cannot begin to serve as chief judge after reaching the age of sixty-six.

Matters Relating to Judges

The Conference considered H.R. 4080, a bill to provide a pension for the widow of Judge R. H. Weber who died some four months short of five years of service as required under the Judicial Survivors Annuity Act and voted its disapproval of this bill.

The Conference disapproved a proposal which would provide for the voluntary retirement at full pay of federal judges at age sixty after eight or more years on the bench.

The Conference also disapproved a proposal submitted by a federal judge which would provide that a judge who becomes a widower may stop making contributions or may withdraw his contributions to the Survivors Annuity Fund.

The Conference voted its disapproval of H.R. 10281 which would provide for recalculating the insurance to be paid to the widow of Referee Fishberg of New Jersey who died three weeks before his salary and insurance would have been increased by operation of statute.

The Conference voted disapproval of H.R. 1874 which would permit Judge Pence of Hawaii to include in computing his aggregate years of judicial service under 28 U.S.C. 371, 372 and 376 the period of time in which he served as a territorial judge. The Conference had disapproved similar legislation in March 1967 (Conf. Rept., p. 13).

The Conference also disapproved H.R. 11360, a bill which would permit federal judges to exclude from gross income for tax purposes pensions and retirement pay received while "performing full judicial service."

Divisions or Districts

Judge Ainsworth advised that the Committee on Court Administration had considered several bills which had been referred by the Congress affecting existing judicial districts or divisions.

In response to considering the committee's report, the Conference voted its disapproval of S. 2364 which would establish one additional judicial district and one additional permanent judgeship in Ohio and H.R. 11352 which would create an additional judicial district in Ohio and authorize two district judgeships for the district. The Conference noted that these bills had been disapproved by the Judicial Council of the Sixth Circuit.

The Conference approved S. 1646 which would create a new Middle District of Louisiana with court to be held at Baton Rouge and in so doing noted that this legislation had been approved by the Judicial Council of the Fifth Circuit.

The Conference approved H.R. 2072 which would transfer Haywood County from the Western Division to the Eastern Division of the Western District of Tennessee. Similar legislation had been approved by the Conference in September 1968 (Conf. Rept., p. 53) and in March 1969 (Conf. Rept., p. 8).

The Conference also approved H.R. 2501 which would include Panola and Shelby Counties within the Marshall Division of the Eastern District of Texas. Similar legislation had been endorsed at the February 1968 session of the Conference (Conf. Rept., p. 10).

Places of Holding Court

The Conference considered several bills affecting places of holding court and in each instance acted in accordance with the recommendations of the judicial councils of the respective circuits involved.

The Conference approved H.R. 777 which would require the holding of court at Coquille, Oregon. The Conference had approved a similar bill in September 1968 (Conf. Rept., p. 52).

The Conference endorsed H.R. 7039 for the holding of court at Reading in the Eastern District of Pennsylvania and noted that a similar provision was included in S. 952 as it passed the Senate on June 23, 1969. The Conference had approved a similar proposal in September 1968 (Conf. Rept., p. 53).

The Conference then disapproved the following:

H.R. 2066 for the holding of court at Fort Lauderdale in the Southern District of Florida;

H.R. 9639 for the holding of court at Richmond in the Southern District of Indiana;

H.R. 6167 for the holding of court at Rockford in the Northern District of Illinois;

S. 981 and H.R. 8786 for the holding of court in Hyattsville in the District of Maryland and H.R. 9833 which would amend 28 U.S.C. 124(d) by eliminating the phrase "at no expense to the government" in connection with the holding of court at Odessa, Texas.

Additional Judgeships

Judge Ainsworth stated that Conference views have been asked on S. 2040 which would make permanent the temporary judgeship in the Eastern District of Wisconsin and H.R. 10902, a bill to accomplish the same purpose. The Conference took no action on these bills inasmuch as similar provisions were in S. 952, the bill which passed the Senate on June 23, 1969.

The Conference considered H.R. 6761 to provide two additional judgeships for the Western District of Texas. The Conference had previously recommended one additional judgeship for this district and this recommendation was contained in S. 952 as it passed the Senate, (see Conf. Rept., March 1969, p. 8). The Conference agreed that the emergency standard under which the Conference has operated in approving additional judgeships other than at the time of the quadrennial survey indicated that two additional judgeships for the Western District of Texas could not be supported and, accordingly, voted its disapproval of H.R. 6761.

National Crime Statistics Center

The Conference voted its approval of H.R. 5225, a bill which would establish a national crime statistics center independent of any existing department or agency.

Statistical Reports

The Conference noted the concern expressed by the Committee on Court Administration that in some instances the judicial councils of the circuits might not be giving full consideration to the quarterly statistical reports of the Director of the Administrative Office

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and, therefore, approved the following resolution recommended by the committee:

> The Administrative Office of the United States Courts is instructed to call to the attention of each circuit judge in active service the statutory obligation imposed upon the judicial council of each circuit by Section 332 of Title 28 to meet at least semi-annually to consider the quarterly reports of the Director of the Administrative Office of the United States Courts and to take such action thereon as may be necessary for the effective and expeditious administration of the business of the courts, within the circuit.

Judge Ainsworth advised the Conference that representatives of the Subcommittee on Judicial Statistics are working closely with the Federal Judicial Center in a study designed to test the validity of the weighted caseload index. He stated that the Center has entered into a contract with the Graduate School of the Department of Agriculture for this study. He also said that the subcommittee is giving close consideration to a revision of the J.S. 10 Form with a view possibly even to eliminating this form in favor of some other reporting method.

Judge Ainsworth also stated that the subcommittee is preparing for its quadrenniel survey of the courts of appeals in 1970 and has requested the Administrative Office to update its statistical tables compiled for the 1966 report on the courts of appeals prepared by former Deputy Director Will Shafroth.

Supporting Personnel

Court Reporters.—The Conference noted that S. 952 as it passed the Senate contained two provisions previously recommended by the Judicial Conference. One provision would eliminate the maximum and minimum limitations upon the salaries of court reporters (see Conf. action, Feb. 1968 Report, p. 31, and September 1968 Report, p. 58). The second provision would allow for contracting with court reporter services for temporary purposes in emergency situations (see Conf. action, March 1969 Report, p. 9).

The third section of S. 952 relating to court reporters provides for electronic court reporting in situations when reporters are not necessarily present. The Conference voted its endorsement of this proposal.

Chief Judge Cowen moved that the Conference endorse legislation that the Court of Claims be permitted to contract for reporting services in the same manner as is now permitted for the Tax Court. The Conference voted its approval and authorized

the Administrative Office to draft such legislation for transmittal to the Congress.

Clerks of Court.—On Committee recommendation the Conference voted an increased salary schedule for the clerks of court for the circuits and districts as follows:

Courts of Appeals	28,000
Large Districts	28,000
Medium Districts	25,000
Small Districts	22,000
Territorial Courts	18,000

The Conference also approved a revision of the Judicial Salary Plan for a one-grade increase in the position of Chief Deputy Clerk in the district courts and a two-grade increase in the circuit courts subject to the availability of funds, as follows:

Courts of Appeals:	
Large office:	
From JSP 13 to	JSP 15
Medium office:	
From JSP 12 to	JSP 14
Small office:	
From JSP 11 to	JSP 13
District Courts:	
Large districts:	
From JSP 14 to	JSP 15
Medium districts:	
From JSP 13 to	JSP 14
Small districts:	
From JSP 12 to	JSP 13

The Conference also approved a maximum entrance classification of JSP 11 for the pro se clerks who are attached to the clerk's office for administrative purposes. This conforms to the classification now in effect for judges' law clerks generally.

Court Criers.—The Conference noted a recommendation of Chief Judge Hastie that a new position of court crier-secretary be created and referred this matter for study to the Committee on Court Administration.

Interpreters.—The Conference voted to approve the establishment of the position of Spanish Interpreter in the United States District Court for the Eastern District of New York.

ADMINISTRATION

In response to a resolution proposed by Chief Judge Brown at the March 1969 session of the Conference (Conf. Rept., p. 9) look-

ing toward the employment of every modern means of management available and the utilization of scientific long-range planning and programming, the Conference adopted the following resolutions:

(1) That the Conference continue its program of taking all possible measures to improve methods and procedures in the courts; and the Conference and its agencies, the Committee on Court Administration, the Subcommittee on Supporting Personnel, and the Administrative Office have the responsibility of exploring supporting personnel problems and promising innovations, as to positions, methods, etc., to enable the judiciary to anticipate and meet its continuously increasing burdens;

(2) That the Conference exert every effort to obtain for the courts the supporting personnel necessary to insure that they are adequately staffed to perform properly their judicial and administrative functions; and in its relations with the Congress, the Conference, through its proposed budget requests and otherwise, communicate fully the problems of the judiciary, request the appropriations required to meet these needs, and to the maximum practicable extent urge Congressional acceptance of such proposals and recommendations;

(3) That the Conference support the efforts of the Administrative Office to secure an appropriation that will provide the special and technical personnel necessary to afford expert management assistance on operating problems;

(4) That the Conference reaffirm its prior request that the Chief Judge of each Circuit Court of Appeals furnish the Administrative Office a projection of the personnel needs of his court, and that such projections be furnished annually by May 1 of each year;

(5) That the Conference request that the Chief Judge of each District Court furnish the Administrative Office with a projection of the personnel needs of his court by May 1 of each year.

Legislative Matters

The Conference considered S. 961 and H.R. 8373, 91st Congress, bills which provide for federal jurisdiction and a body of uniform federal laws for cases arising out of aviation and space activities. The Conference at its September 1968 session had approved, in principle, similar bills introduced in the 90th Congress (Conf. Rept., p. 80). The Conference reaffirmed its support of these legislative proposals.

Upon the request of the Chairman of the Civil Service Commission, the Conference considered S. 682, 91st Congress, a bill designed to protect civilian employees of the executive branch of the government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of privacy and specifically Section 4 of the bill which would give the employee the right to go directly into the federal courts. Inasmuch as Section 5 of

the bill provides for the utilization of the administrative process by the aggrieved employee, the Conference disapproved Section 4 as being inconsistent with the provisions of Section 5.

The Conference next considered a draft bill prepared by the Department of Justice to amend the Expediting Act (15 U.S.C. 27, 28; 49 U.S.C. 44, 45). The Conference noted that similar legislation had been presented for its consideration in September 1968 (Conf. Rept., p. 82) at which time the Conference had approved the legislation, in principle, with two exceptions. Inasmuch as the present legislation was designed to meet these objections, the Conference approved the Justice Department's draft, in principle.

The Conference also noted and approved a draft bill of the Department of Justice which would permit actions for condemnation of real property in more than one state for a single federal project to be tried in the same district court.

The Conference also approved S. 2624 and H.R. 12691, 91st Congress, bills which would amend the statutory provisions relating to judicial actions and administrative proceedings in the Customs Court and in appeals from decisions of the Customs Court.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

The Report of the Committee on the Administration of the Criminal Law was presented by the Chairman, Judge George C. Edwards, Jr.

Commitment of Persons Acquitted on the Ground of Insanity

Judge Edwards advised the Conference that for the past six years legislation has come before the committee and the Conference and that at the March 1969 session he advised the Conference (Conf. Rept., p. 9) that he had appointed a subcommittee to study legislative proposals providing for the commitment of persons acquitted on the grounds of insanity. Representatives of the subcommittee met with representatives of the Department of Justice, Bureau of Prisons, National Institute of Mental Health and the Public Health Service. This interdepartmental group noted that S. 979 and H.R. 447 taken together would constitute a complete revision of Chapter 313 of Title 18, United States Code. Working

from these two bills the interdepartmental committee had drafted an entire revision of Chapter 313 and Judge Edwards stated that his committee approved this draft and recommended it to the Conference for approval. The Conference was in agreement with the recommendation of the committee and directed the Administrative Office to transmit copies of the draft bill to the Congress.

Expediting Criminal Justice

Pursuant to the authorization of the Conference at the March 1969 meeting (Conf. Rept., p. 10), Judge Edwards reported that a subcommittee had considered a number of factors bearing on the delay of criminal cases and studied the statistical data provided by the Administrative Office. As a result of the deliberations of this subcommittee, Judge Edwards stated that his committee recommends to the Conference adoption of a resolution declaring long pending cases as "judicial emergencies." After discussion of this matter, the Conference voted the following resolution:

> *Resolved:* 1. That it is the sense of the Conference that criminal cases in the federal courts, except cases involving fugitives, persons in the military services, and persons in mental or penal institutions who are unavailable for trial, which are pending for more than one year as of the close of any fiscal year, are a judicial emergency to be regarded as such by all judges within any circuit where such cases are found;
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> 2. That the Director of the Administrative Office is hereby authrized and directed to prepare at the end of each fiscal year and send to the Chief Judge of each Circuit a list of all such cases pending within the circuit for more than one year, with copies to the Chief Judge and United States Attorney of each affected district within the circuit. The Director is authorized and directed to send a copy of all such lists prepared by him also to (1) the Attorney general of the United States for his information and such comments which he cares to make, and (2) the Committee on the Administration of the Criminal Law;
>
> 3. That the Judicial Councils of each Circuit are requested to make appropriate plans for the disposition of these cases pending for more than one year on the dockets.

Abolition of the Death Penalty

Judge Edwards advised the Conference that two bills, H.R. 666 and H.R. 2176, to abolish the death penalty under all laws of the United States, had been referred to the Conference for comment. He stated that his committee was of the view that this subject matter was primarily one of policy to be determined by the Congress but that the committee recommended, however, that the Con-

ference express the view that the death penalty with certain possible exceptions should be abolished. A motion to table this recommendation carried.

Obscenity Legislation

Judge Edwards stated that the views of the Conference were sought on two bills relating to obscenity, H.R. 5171 and H.R. 7201, but that the committee was of the view that the Conference should defer any action on such legislation pending the report of the President's Commission on Obscenity. The Conference agreed with this recommendation.

Appellate Review of Sentencing

Judge Edwards stated that the Conference's views had been sought on H.R. 6188, a bill which would allow either the government or the defendant to file with the district court an application for leave to appeal the sentence of the court of appeals. The bill grants discretionary authority to the court of appeals to review the merits of the sentence to affirm, increase, modify or vacate the sentence. The Conference noted that it had previously considered legislation on the subject of appellate review of sentences and had conditioned its approval (Conf. Rept., March 1967, p. 40). The Conference expressed the view that some form of review of sentences was desirable and requested the Committee on the Administration of the Criminal Law to study the problem further to determine which form of review would most nearly meet the endorsement of the Conference and which forum would most appropriately be utilized for such purposes.

Bail Reform Act

Judge Edwards stated that his committee had studied a number of bills introduced into the 91st Congress, First Session, to amend the Bail Reform Act of 1966, including S. 288, S. 289, S. 546, H.R. 335, H.R. 578, H.R. 2781, H.R. 1033, H.R. 5864 and H.R. 8782. Judge Edwards stated that the main thrust of most of the pending bills is to provide for some form of preventive detention pending trial. After discussion of this subject matter, a motion to table Conference action at this time carried.

Immunity of Witnesses

The views of the Conference have been sought on H.R. 11157, a bill which would make uniform a large number of immunity statutes and which provides both for approval of the Attorney General and a court or agency order before immunity is granted. Judge Edwards stated that this is the first bill originating out of the deliberations of the National Commission on Reform of Criminal Law. He stated that an identical bill is pending in the Senate, S. 2122. The Committee recommended Conference approval of this legislative proposal and the Conference agreed.

Organized Crime Legislation

Judge Edwards advised that legislation was pending before the Congress on the subject of organized crime, the underlying purposes of which are so crucial and the remedies proposed so far-reaching in the administration of the criminal law as to make them the subject of special study by the committee. He advised the Conference that he had appointed a special subcommittee to examine these legislative proposals in depth.

COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

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

Grand Jury Handbook

Judge Kaufman advised the Conference that a subcommittee, chaired by Judge Howard C. Bratton, had completed its efforts in preparing a handbook for federal grand jurors authorized by the Conference at its September 1968 session. Judge Kaufman reminded the Conference that for many years a handbook for federal petit jurors, originally approved by the Judicial Conference, had been in use and found effective and helpful. He stated that the handbook for grand jurors seeks only to familiarize prospective grand jurors with the nature of the grand jury and of their duties as its members. It clearly contemplates an oral charge by the court and is intended only to supplement such a charge. Upon recommendation of the committee, the Conference approved

the draft of the handbook for federal grand jurors with one minor textual change and authorized its immediate printing and distribution to those courts desiring to use it.

Effective Use of Juror Time

Judge Kaufman reminded the Conference that at the March meeting he had reported on a study undertaken under the auspices of the American Bar Foundation on the effective utilization of jurors and that the Conference had expressed a desire to extend this research project to a major metropolitan court center where the need for efficient utilization of juror time is most critical. He stated that he is attempting to enlist the services of the Federal Judicial Center and the Institute of Judicial Administration to assist the American Bar Foundation in conducting such studies in the Southern and Eastern Districts of New York. He advised that he would report further to the Conference on this subject at the next session. The Conference moved to request the Federal Judicial Center to study this problem, giving it a top priority in its research program and asking for the necessary appropriations to accomplish the task.

In connection with the subject of effective utilization of jurors, Judge Kaufman advised the Conference that a subcommittee had conducted a selective survey addressed to the chief judges of 19 districts with the heaviest trial calendars and a survey of all district court clerks. The result of this survey was to show that no district involved had encountered any insurmountable problems in selecting jurors in accordance with the new Act but that implementing the Act did impose an excessive workload on district court clerks' offices. It was apparent that this criticism was directed principally to the work involved in accomplishing the initial filling of the master jury wheel and that, therefore, the problem was largely transitional. Pursuant to committee recommendation, the Conference approved a four-point program:

(a) That commencing in 1971, reports made to the Judicial Conference pursuant to 28 U.S.C. 1863(a) be submitted to the Administrative Office within six months after each refilling of the master jury wheel in the respective district or division, but in no event, less often than every four years;

(b) That the time interval for periodic refilling of the master jury wheels be limited to a maximum of every four years;

(c) That courts objecting to keeping a separate roster of persons excused for individual hardship pursuant to 28 U.S.C. 1866(c)(1), be advised to eliminate such record keeping by amending their plans to provide that

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the names of such persons be returned to the qualified jury box unless the court granting the excuse should otherwise rule at the time of the excuse:

(d) That the official juror qualification form be amended in several particulars.

PERIODIC REPORTS UNDER THE JURY SELECTION ACT

At the March 1969 session the Conference had charged the Committee on the Operation of the Jury System with undertaking a study of the general system for the submission of periodic reports by the district courts on the operation of their respective selective jury systems as contemplated by 28 U.S.C. 1863(a). Judge Kaufman presented to the Conference regulations and forms adopted by the committee for this purpose. The periodic reports contained three different types of data: general information as to jury selection, an analysis by race and sex of a fair sample of persons considered for jury service and an analysis by race, sex and occupation of a fair sample of persons who have actually reported for jury service. The Conference approved the proposed regulations and forms for periodic reports and directed that they be circulated to the district courts prior to the date on which the first report is required to be submitted.

LEGISLATION

Judge Kaufman stated that H.R. 10966 had been introduced and would make mandatory an answer to the race question on the juror qualification form, thus eliminating the option which is now given to a prospective juror to answer or refuse to answer the question as to race. He advised the Conference that empirical studies undertaken thus far have indicated that unless the question on race is answered, it will be difficult to prove that prospective jurors are being drawn from a fair cross-section of the community. He stated that his committee also deemed it important that the question as to occupation should be answered so as to assist in determining whether the selection process is reaching a fair balance of persons of diverse economic background. Upon recommendation of the committee, the Conference approved the principle embodied in H.R. 10966 but expressed the view that it would be preferable also to make mandatory a reply to the question on occupation.

The Conference further agreed that, pending possible legislative amendment to the Jury Selection and Service Act as proposed,

those courts undertaking a review of the racial balance of their master jury wheels which find that more than five percent of the juror questionnaires in any drawing are returned either with the employment or racial information omitted should make further solicitation of those questionnaire recipients concerned to obtain their voluntary cooperation in providing the missing informaton.

The Conference considered and on committee recommendation disapproved S. 2373, a bill which would provide jury trials in condemnation proceedings in the district courts of the United States. The bill would accord the right to a jury trial in land condemnation proceedings to a defendant aggrieved by a determination of just compensation by a commissioner appointed by a district court under Rule 71A(h) of the Federal Rules of Civil Procedure. Similar legislation was disapproved by the Conference in September 1965 (Conf. Rept., p. 63) and in March 1967 (Conf. Rept., p. 21).

Judge Kaufman next reported on the provisions of Title I of S. 30, a bill relating to the control of organized crime in the United States. Judge Kaufman stated that Title I proposes sweeping changes in the procedures and functions of the federal grand jury. It provides, among other things, that a grand jury on its own motion can extend its term as long as 36 months. It may report to the Attorney General that an attorney, investigative officer or agent appearing before it on behalf of the United States has not performed his duties "diligently and effectively," and it would, in fact, restore the former system of returning presentments. These provisions would be applicable to all grand juries and not restricted to those engaged in investigations of "organized crime." Judge Kaufman stated that the committee had concluded that the bill would seriously diminish the power of judges to supervise the activities of grand juries, that it would invite grand juries to intervene in matters best left within the control of the executive and legislative branches and, in general, that it would disrupt the orderly administration of justice. He stated that while the Congress had not specifically requested the views of the Conference, the bill would alter an important facet of the judicial process so drastically that an expression of Conference opinion would hardly be inappropriate. The Conference expressed its agreement with this point of view and voted its disapproval of the provisions of Title I of S. 30.

Voir Dire Survey

Judge Kaufman advised the Conference that the committee in April 1969 addressed a questionnaire to all federal district judges designed to elicit data relating to voir dire procedures in the several courts and seeking suggestions for reducing the time consumed between the first appearance of a prospective juror at the courthouse and his selection as a juror. The responses to this questionnaire are under study and will be the subject of report to the Conference when the committee is ready to make specific recommendations. Among other things, the committee is considering the supplemental questionnaire in use in some districts to facilitate the juror selection process.

Judge Kaufman stated that at the August meeting of his committee, Assistant Attorney General Leonard of the Civil Rights Division of the Department of Justice delivered a comprehensive report on the results of a survey of the views of United States Attorneys on the operation of the new Jury Selection and Service Act of 1968. Among other things, Mr. Leonard pointed out that the great majority of United States Attorneys believed the Act is functioning well. He stated that none of the reports reflected any legal challenge to the respective selection systems since the Act became effective.

Automation of Jury Selection

Judge Kaufman advised the Conference that three metropolitan courts are now automated and substantially all juror clerical tasks are now performed by computer in the District of Columbia and the Eastern and Southern Districts of New York. It is hoped that during fiscal year 1970 an additional four to eight courts will be automated. This computer service, when fully utilized, will not only address the juror summons but will simultaneously imprint the juror's name, address and number on his pay voucher through use of a newly devised procedure that joins this voucher to the juror's summons.

Charge to a Deadlocked Jury

Judge Kaufman stated that his committee had considered an extensive report submitted by Judge Steckler on the "current status of the law as respects the Allen charge." Judge Kaufman stated

that his committee favored the recommendation on this subject matter of the American Bar Association's "Project on Minimum Standards for Criminal Justice, Trial by Jury." He noted, however, that the subject matter was currently the subject of litigation in the courts and, accordingly, the Conference adopted a motion to table further consideration of the subject of a charge to a deadlocked jury.

RULES OF PRACTICE AND PROCEDURE

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

Judge Maris summarized the work of the advisory committees and stated that the Advisory Committee on Criminal Rules is currently in the process of approving preliminary drafts of amendments to a number of the Federal Rules of Criminal Procedure which will shortly be circulated to the bench and bar for comment.

He noted, with sorrow, the death on March 27, 1969 of Senior Circuit Judge Walter L. Pope who had rendered distinguished service over a period of ten years as Chairman of the Advisory Committee on Admiralty Rules. He stated that Judge Herbert W. Christenberry has been appointed to succeed Judge Pope and that the Advisory Committee on Admiralty Rules is continuing its study of the operation of the Unified Federal Rules of Civil Procedure and especially the supplemental admiralty rules in cases of admiralty and maritime jurisdiction. A request has been submitted to all members of the Maritime Law Association of the United States to furnish the Advisory Committee with their experience in this regard. When the responses to this request have been received, the Advisory Committee will undertake to formulate such amendments as may be found desirable and they will be circulated to the bench and bar.

The Advisory Committee on Bankruptcy Rules is continuing the large task of preparing rules of procedure for bankruptcy proceedings and also for the various forms of debtor relief proceedings provided by the Bankruptcy Act.

The preliminary draft of Uniform Rules of Evidence for Federal Courts is now being circulated to the bench and bar for comment.

Judge Maris stated that in the opinion of the Supreme Court, concurring in this respect with the dissenting opinion of Mr. Justice Harlan in the case of *Harris* v. *Nelson,* 1969, 394 U.S. 286, 300 (Footnote 7), it is stated to be the view of the Court that the rule-making machinery should be invoked to formulate rules of practice with respect to federal habeas corpus and (28 U.S.C.) § 2255 proceedings on a comprehensive basis and not merely confined to discovery. Accordingly, the committee recommended to the Conference that it grant authorization to prepare such rules of procedure. The Conference agreed and concurred further in the recommendation of the committee that the task be assigned to the Advisory Committee on Criminal Rules since both habeas corpus and § 2255 proceedings relate in fact to and are in substance extensions of criminal cases even though they have been treated technically as civil proceedings.

APPELLATE RULES

Judge Maris reminded the Conference that upon the discharge of the Advisory Committee on Appellate Rules the standing Committee assumed the responsibility for the study of the operation and improvement of the Federal Rules of Appellate Procedure. He said that the committee has already received a number of suggestions for changing the appellate rules but it determined that most of the suggestions should await further study and experience with the rules which have been in effect only since July 1, 1968. He said that the committee did, however, propose immediate consideration of two amendments to the appellate rules: (1) that Rule 30(c) be amended to require permission of a court of appeals before the filing of the appendix to the briefs may be deferred, and (2) that Rules 30(a) and 31(a) be amended to permit a court of appeals to reduce the time allowed for filing of briefs and the appendix if reduction of the time will expedite the hearing of argument.

After some discussion, a change was made by the Conference in the proposed amendment to Rule 31(a) and the Conference approved the transmission to the Supreme Court, with recommendation for approval, the following changes in the Federal Rules of Appellate Procedure:

30(a) Duty of Appellant to Prepare and File; Content of Appendix: Time for Filing; Number of Copies. The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant shall serve and file the appendix ~~within 40 days of the date on which the record is filed~~ *with his brief*. Ten copies of the appendix shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented, unless the court shall by rule or order direct the filing or service of a lesser number.

* * * * * * *

(c) Alternative Method of Designating Contents of the Appendix; How References to the Record may be Made in the Briefs When Alternative Method is Used. If ~~the appellant shall so elect, or if~~ the court shall so provide by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until after the briefs have been filed, and the appendix may be filed 21 days after service of the brief of the appellee. ~~Notice of the election by the appellant to defer preparation of the appendix shall be filed and served by him within 10 days after the date on which the record is filed.~~ If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 30 shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary

31(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 40 days after the date on which the record is filed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. *If a court of appeals is prepared to consider cases on the merits promptly after briefs are filed, and its practice is to do so, it may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.*

CIVIL RULES

Judge Maris said that the committee had received from the Advisory Committee on Civil Rules its revised draft of amendments to the Federal Rules of Civil Procedure relating to the discovery procedure. He said that the draft had been approved by the Advisory Committee in April after it had received and considered the comments and suggestions of the bench and bar with respect to the preliminary draft which had been published and widely circulated in November 1967 and after the Advisory Committee had modified

portions of the draft in the light of those suggestions. Judge Maris stated that the standing committee carefully considered this draft at its meeting and modified some of the Advisory Committee's proposals in comparatively minor respects. He recommended to the Conference that it approve for transmission to the Supreme Court of the United States, with a recommendation for approval, amendments to Rules 5, 9, 26, 30, 31, 32, 33, 34, 35, 36, 37, 45 and 69 and Form 24 of the Federal Rules of Civil Procedure. The Conference approved the Committee recommendation and directed the transmission of these proposed rule changes to the Supreme Court.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

Chief Judge Roy W. Harper, Chairman, presented the report of the Committee on Intercircuit Assignments covering the period September 8, 1968 to August 11, 1969.

Judge Harper stated that during the period in question the committee recommended 54 assignments to be undertaken by 43 judges. Of this number four were circuit judges in active status, four were senior circuit judges, 15 were district judges in active status and 12 were senior district judges. The other assignments were by judges of the special courts and by retired Supreme Court Justices.

Judge Harper advised that there were 15 assignments to the circuit courts of appeals, ten assignments to the Court of Customs and Patent Appeals, one assignment to the Court of Claims and 28 assignments to the district courts.

COMMITTEE ON TRIAL PRACTICE AND TECHNIQUE

The report of the Committee on Trial Practice and Technique was presented by its Chairman, Chief Judge Joe E. Estes.

Judge Estes stated that his committee has undertaken several studies to develop methods and techniques of effective judicial administration, including first drafts of sample jury instructions to be used in tax and antitrust cases, techniques to be used in proceedings under Rules 16 and 17.1 of the Federal Rules of Criminal Procedure and is planning further studies on the use of a panel of impartial medical experts, bifurcated trials before the same jury of the issues of liability and damages, methods of achieving a specification of issues in patent cases prior to discovery and a suggested post-conviction conference in criminal cases to consider any possible post-conviction remedies.

Judge Estes further advised that studies were being undertaken in connection with a stipulation to a verdict of less than twelve jurors and submission of written instructions to the jury. In this connection the Conference noted the inordinate use of jurors and requested the committee to investigate this matter in coordination with the Federal Judicial Center.

Judge Estes stated that his committee is also considering the problem of time limits in third-party practice and pretrial formulation of issues.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

The report of the Committee on the Administration of the Bankruptcy System was presented by the Committee Chairman, Judge Edward Weinfeld.

Judge Weinfeld reported that the committee had considered the recommendations contained in the survey report of the Director of the Administrative Office of June 23, 1969, as well as the recommendations of the circuit councils and district judges concerned, for increases in the salaries of four full-time referees, for continuance of 13 referee positions to become vacant by expiration of term, for the creation of one additional part-time referee position and for the designation of additional places of holding court in one district.

Salaries of Referees

At the March 1969 meeting of the Conference, action was taken to increase the salaries of referees pursuant to a report of the President's Salary Commission authorized under Public Law 90–206. Not included in the Conference action in March were the Districts of Northern Oklahoma, Western Oklahoma and Utah (Conf. Rept., p. 16). The Chief Judge of the Tenth Circuit had advised the committee that his judicial council now recommended immediate implementation of these salary increases from $22,500 to $30,000 per year in the districts which were omitted from the Conference action in March. The proposal for the increases in salaries of these referees was included in a vote slip circulated among the members of the Conference in September 1969 and approved by the Conference at that time.

CHANGES IN REFEREE POSITIONS

Because the position of referee in bankruptcy at Columbus, Georgia, was scheduled to expire on October 15, 1969, the Conference by vote slip in September approved the continuation of this position.

Judge Weinfeld next presented to the Conference recommendations in the survey report relating to the changes in arrangements for the filling of vacancies in referee positions in certain districts as approved by the district courts and the circuit councils involved. The Conference approved each of these recommendations, to be effective November 1, 1969 unless otherwise noted, subject to the availability of funds.

SECOND CIRCUIT

Eastern District of New York

(1) Authorized the continuance of the full-time referee position at Brooklyn in which the term of office will expire on February 28, 1970, for a new six-year term, effective March 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

Middle District of Pennsylvania

(1) Authorized the continuance of the part-time referee position at Harrisburg in which the term of office will expire on January 6, 1970, for a new six-year term, effective January 7, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FOURTH CIRCUIT

Western District of Virginia

(1) Authorized the continuance of the full-time referee position at Roanoke in which the term of office will expire on February 4, 1970, for a new six-year term, effective February 5, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Florida

(1) Authorized the continuance of the part-time referee position at Tallahassee in which the term of office will expire on January 22, 1970, for a new six-year term, effective January 23, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Middle District of Georgia

(1) Authorized the continuance of the full-time referee position at Macon in which the term of office will expire on December 31, 1969, for a new six-year term, effective January 1, 1970, at the present salary, the regu-

lar place of office, territory and places of holding court to remain as at present.

Western District of Louisiana

(1) Authorized that an additional part-time referee position be established for this district, at an annual salary of $15,000, with the regular place of office at Opelousas, and

(2) That the territory for this position include the Opelousas, Lake Charles and Lafayette Divisions of the court and that they be removed from the jurisdiction of the Shreveport referee, and

(3) That Opelousas, Lake Charles and Lafayette be designated as places of holding court for this position and that they be eliminated as places of holding court from the Shreveport referee position, and

(4) That this new referee position be made effective as soon as funds become available

Western District of Texas

(1) Authorized the addition of Midland and Odessa as places of holding court for the referee position at El Paso.

SIXTH CIRCUIT

Northern District of Ohio

(1) Authorized the continuance of the full-time referee position at Cleveland in which the term of office will expire on December 17, 1969, for a new six-year term, effective December 18, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

(2) Authorized the continuance of the full-time referee position at Akron in which the term of office will expire on April 30, 1970, for a new six-year term, effective May 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Tennessee

(1) Authorized the continuance of the full-time referee position at Memphis in which the term of office will expire on March 31, 1970, for a new six-year term, effective April 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

(1) Authorized the continuance of the full-time referee position at St. Paul in which the term of office will expire on November 30, 1969, for a new six-year term, effective December 1, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

Central District of California

(1) Authorized the continuance of the full-time referee position at San Bernardino in which the term of office will expire on February 14, 1970, for a new six-year term, effective February 15, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Idaho

(1) Authorized the continuance of the full-time referee position at Boise in which the term of office will expire on February 28, 1970, for a new six-year term, effective March 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Washington

(1) Authorized the continuance of the full-time referee position at Seattle in which the term of office will expire on February 28, 1970, for a new six-year term, effective March 1, 1970, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Compensation for Full-Time Referees

Judge Weinfeld stated that a subcommittee which he had appointed reported to the full committee on the criteria and method of fixing the salaries of full-time referees. The subcommittee emphasized the statement of policy approved by the Judicial Conference at the March 1969 session to the effect that the maintenance of a self-supporting bankruptcy system, as contemplated by Section 40 of the Bankruptcy Act, is no longer possible without placing an inordinate financial burden upon bankrupts and the assets of bankrupts. Pursuant to the subcommittee's report, the committee recommended to the Conference and the Conference approved a statement of policy that the present criteria for fixing salaries of full-time referees should be eliminated from the Bankruptcy Act and all full-time referees should be paid at the same rate within the limit upon such salaries established by the President's Salary Commission.

New Case Filings

The decline in the filing of new bankruptcy cases noted in fiscal year 1968 continued in fiscal year 1969. In 1967 a record number of 208,329 cases was filed. The number declined in 1968 to 197,799 and in 1969 to 184,930. Of the total filings during fiscal year 1969, 91.6 percent were nonbusiness bankruptcies.

Matters Under Submission

The committee noted a marked improvement in matters under submission. The most recent quarterly reports show a total of only 47 matters under submission for over sixty days, the second lowest total ever reported.

Social Security and Tax Identification Numbers

Judge Weinfeld advised the Conference that the committee had been informed of a request from the Internal Revenue Service for assistance in obtaining Social Security or Tax Identification Numbers of bankrupts and debtors on bankruptcy notices of first meetings to creditors to aid the Internal Revenue Service in locating quickly and accurately through its automatic data processing system the tax liability of the bankrupt or debtor and to permit the prompt filing of claims. Pursuant to committee recommendation, the Conference adopted the following resolution:

> *Resolved*, That it is the sense of the Conference that, effective immediately, all petitions in bankruptcy or under the special relief chapters of the Bankruptcy Act shall contain the Social Security or tax identification number of the bankrupt or debtor in order that such numbers may be included on notices of first meetings of creditors to assist the Internal Revenue Service in the prompt and accurate filing of claims and the prompt allowance of refunds in these proceedings.

Legislation

The Conference approved, in principle, Senate Joint Resolution 88 which would establish a commission to study the bankruptcy laws. The Conference expressed a preference, however, for the composition of such a commission along the lines provided by the Commission on Executive, Legislative and Judicial Salaries, Public Law 90–206, rather than to require the President to appoint two active practitioners in the field of bankruptcy law and to require the Chief Justice to appoint two full-time referees in bankruptcy.

The Conference approved, in principle, H.R. 6664, a bill which would amend Section 1, 5, 32, 64 and 65 of the Bankruptcy Act relating to partnerships and partners with the proviso that Section 5(d)(1) be amended to read:

> *The court in which a petition is filed by or against a partnership shall have summary jurisdiction to determine upon due notice and hearing who are the partners thereof.*

The words "upon due notice and hearing" were recommended for insertion as a result of Conference action.

The Conference approved, in principle, H.R. 6665 which would authorize the bankruptcy court to determine the dischargeability or non-dischargeability of provable debts and render judgments thereon.

The Conference approved, in principle, H.R. 6792, an omnibus bill relating to Chapter XIII of the Bankruptcy Act.

The Conference expressed no view on the proposals in H.R. 3676, a bill to give priority to pension fund contributions earned within three months of bankruptcy, inasmuch as these provisions appear to involve matters of public policy for the determination of the Congress.

COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Chief Judge Walter E. Hoffman, Chairman, presented the committee's report.

Judge Hoffman reminded the Conference that in September, by vote slip, the members had approved the agenda for the Third Circuit Sentencing Institute held in mid-October at Morgantown, West Virginia.

Judge Hoffman advised that the Ninth Judicial Circuit was planning to hold a sentencing institute in the spring of 1970 and the Conference approved the proposal, noting that the agenda would be submitted for approval at the March 1970 session of the Conference.

Judge Hoffman, who is also a member of the Advisory Committee on Criminal Rules, advised the Conference that the Probation Committee has worked in close collaboration with the Advisory Committee in connection with changes in Rule 32 with respect to presentence investigations and has submitted its own recommendations to the Advisory Committee for revision of the rule.

He stated that the committee has under consideration the need for establishing uniform policy and procedure for jurisdictional transfers of probationers and that the committee also plans to survey the judges of the district courts to ascertain the circumstances under which a probation officer routinely is present in court and the circumstances under which each judge regards the presence of a probation officer to be absolutely essential.

COMMITTEE TO IMPLEMENT THE FEDERAL MAGISTRATES ACT

Judge William E. Doyle, Chairman, presented the report of the Committee to Implement the Federal Magistrates Act.

SURVEY REPORT OF THE DIRECTOR

Judge Doyle reminded the Conference that 28 U.S.C. 633(a)(1) required the Director of the Administrative Office no later than October 17, 1969 to conduct a survey to determine the number of appointments of full-time and part-time magistrates, the locations at which they should serve and their respective salaries and make recommendations to the Judicial Conference of the United States. Judge Doyle presented the Director's report and recommendations and requested the authority to transmit this survey report and recommendations to the judicial councils of the circuits and to the district courts. The Conference approved this action and requested the district courts and the judicial councils to present their comments on the survey report no later than January 1, 1970 so that the committee at its next meeting in January 1970 might examine the comments received and make such further recommendations to the Conference as may then be indicated.

Judge Doyle advised the Conference that his committee had furnished the Director with certain general guidelines to assist him in making the initial survey and later surveys as may be required. These guidelines were in eight general categories:

(1) Types of functions to be assigned to the magistrates;
(2) Additional duties which may be assigned but are discretionary with the court pursuant to 28 U.S.C. 636(b);
(3) Anticipated workload;
(4) Combination positions, as for example, combining the work of a part-time magistrate and a part-time referee in bankruptcy;
(5) Salary levels—since gradations or levels of salary for full-time services are contemplated by the statute and should be used;
(6) Backup positions which the committee regards as questionable to be used in emergency situations;
(7) Forfeiture of collateral which is working well in the pilot districts; and
(8) Other considerations, such as restraints in making recommendations in the initial survey since the system will be a continuing one and whereas increases in positions and salaries can easily be made, the elimination of positions or decreases in salaries would be most difficult.

CONFLICT OF INTEREST RULES

At the March 1969 meeting the Conference adopted six regulations affecting possible conflict of interest on the part of part-time magistrates. During the course of the survey which the Administrative Office conducted, the committee became aware of the inherent danger of retaining a part-time employee who was both

a confidant of the judge in handling general court business and an advocate at the bar. Pursuant to discussion of this matter, the Conference agreed on the following resolution:

> A part-time magistrate who is assigned additional duties under Section 636(b) of Title 28, United States Code, may not appear as counsel in any case, civil or criminal, in the district court for which he is appointed. This prohibition shall not extend to a part-time magistrate whose additional assignments are limited to the review of prisoner petitions or service as a special master in a specified case.

Costs of the System

Under 28 U.S.C. 634(a), as amended by the Magistrates Act, full-time magistrates may receive up to $22,500 per annum in salary, and part-time magistrates may receive up to $11,000 per annum. Full-time magistrates will be provided with secretarial assistance and other support. The statute also provides for reimbursement of actual and necessary expenses incurred by part-time magistrates in the performance of their duties, in accordance with regulations issued by the Director of the Administrative Office and approved by the Conference. Under the present commissioner system costs of secretarial assistance, stationery, and telephone calls are borne by the commissioners out of their fee earnings. Therefore, in addition to the payment of the salaries of the part-time magistrates, the government will be assuming substantial additional costs under the new program in the way of support services and equipment.

Judge Doyle advised the Conference that the Administrative Office had prepared an estimate of the cost of establishing part-time magistrate positions at authorized salary levels.

Pilot Districts

At the March 1969 meeting the Conference agreed to the establishment of the magistrates system in five pilot districts: California, Southern; District of Columbia; Kansas; New Jersey and Virginia, Eastern. Judge Doyle stated that the system has been functioning satisfactorily in these districts and has proved to be of substantial assistance to the courts. The establishment of the program, however, has required more time than was anticipated, particularly in the administrative tasks associated with setting up offices and getting acquainted with new duties.

On motion of Chief Judge Stanley of the District of Kansas, the Conference approved an increase in the salaries of the two full-time magistrates in Kansas from $20,000 to $22,500 with such increases to be promulgated as required by statute on November 1, 1969.

Standards for Selection

The Conference at the March 1969 meeting (Conf. Rept., p. 31) considered tentative standards for the pilot districts and requested the committee to study further the problem of other standards. The Conference reaffirmed the need of an investigation and report from the Federal Bureau of Investigation on all applicants selected prior to appointment. The Conference further agreed that there should be public announcement that appointments are to be made to the office of magistrate.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

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

Appointments and Payments

Judge Hastings advised the Conference that the Administrative Office had prepared a cumulative report on appointments and payments from the effective date of the Act, August 20, 1965, through June 30, 1969. The Conference received copies of this report and authorized its dissemination to all federal judges.

Judge Hastings advised that the statistical report of the Administrative Office would hereafter be carried as an appendix to the Director's Annual Report and would be published with it.

The cumulative report shows aggregate disbursements of $10,213,643. During the last fiscal year, Judge Hastings said, that there was a marked increase in the volume of vouchers submitted by court-appointed counsel and payments during fiscal year 1969 amounted to $4,027,671. It was necessary for the first time to seek a supplemental appropriation in the sum of $850,000, thus making the appropriation for the Criminal Justice Act for fiscal year 1969 $4,000,000. He said that it is estimated that in the current year this total will be increased by $300,000 to handle the

volume of vouchers expected from the Juvenile Court of the District of Columbia.

Statutory Amendments

Judge Hastings reminded the Conference that at its September 1968 session the Conference had approved numerous amendments to the Criminal Justice Act based on a survey report prepared under the direction of Professor Dallin Oaks of the University of Chicago School of Law (Conf. Rept., pp. 71–73). These amendments were incorporated in a bill introduced early in the 91st Congress by Senator Hruska as S. 650. Later in the session Senator Hruska introduced a second bill, S. 1461, incorporating the substance of the changes approved by the Conference and contained in the earlier bill S. 650 but making certain additional proposals relating to the Criminal Justice Act. The principal change is a new subsection (h) which provides for two types of public defender organization available for a district or the part of a district in which at least 200 defendants annually require the appointment of counsel. The first alternative is a federal public defender organization and the second a community defender organization defined as a nonprofit defense counsel service established and administered by any organization authorized by the district plan to provide representation.

On committee recommendation, the Conference approved these two types of public defender organization set forth in subsection (h) with certain changes relating to the administration of a public offender office which would require the judicial council of the circuit to approve the number of full-time attorneys to be attached to such organization and in general to provide for the operation of such an organization under rules and regulations issued by the Judicial Conference of the United States.

Judge Hastings pointed out further that S. 1461 compensates court-appointed counsel at $20.00 per hour for all types of service. The Conference, on recommendation of the committee, approved $20.00 an hour as a minimum but adhered to the principle that a distinction should be recognized between service rendered in court and service rendered out of court and recommended, therefore, to the Congress that this distinction be maintained in the compensation provided in S. 1461.

GUIDELINES

The committee received a report from its subcommittee which has prepared guidelines in implementation of the Criminal Justice Act. Judge Hastings said that his committee was not prepared to recommend any guidelines at this time, however, because of the likelihood of the early amendment of the Act and because full implementation of the Magistrates Act which may occur in 1970 makes premature any issuance of guidelines at this time.

STATUS OF THE COMMITTEE

Judge Hastings reminded the Conference that in adopting the report of its Committee on Committees in September 1968, it agreed that the Committee to Implement the Criminal Justice Act should be a special committee of the Conference and that the Conference would reexamine the need for the continuation of this special committee at its fall session in 1969 (Conf. Rept., pp. 43–46). The Conference agreed that the work of the committee was not finished and that it would be awkward at this time to transfer its duties to any other committee. It voted, therefore, to continue this special committee in existence for one additional year, at which time the need to continue the committee would again be considered.

JUDICIAL APPROPRIATIONS

Because of the necessity of filing the budget request for fiscal year 1971 with the Bureau of the Budget on or before October 15, it was necessary to obtain Conference approval of the proposed budget by mail. Judge Weinman, Chairman of the Committee, reported that this was accomplished and the budget was duly submitted.

Judge Weinman stated that Congress in the Annual Appropriation Act of 1969, Public Law 90–470, approved August 9, 1968, appropriated for the judiciary, exclusive of the Supreme Court, $100,429,500. An additional $6,552,500 was provided in the Second Supplemental Appropriation Act of 1969 which included $4,907,400 for pay costs. Thus, the obligational authority for fiscal year 1969 (exclusive of the Supreme Court) was $106,982,000, whereas the cost of operating the courts in that year was $106,345,000, leaving a prospective unobligated balance of $637,000. The Supplemental

Appropriation Act contained provisions which made the funds included therein available for obligation for certain limited periods in fiscal year 1970.

The budget estimates for the judiciary, exclusive of the Supreme Court, for fiscal year 1970, as submitted to the Bureau of the Budget in October 1968 and to the Congress in January 1969, were in the total amount of $114,145,000. Subsequently, the estimates were amended to include an additional $7,466,400 to cover increases in salaries granted to judges, referees in bankruptcy and other executives.

The Appropriation Bill for fiscal year 1970, as approved by the House of Representatives, contains obligational authority in the amount of $117,694,000 for the judiciary, exclusive of the Supreme Court. This is an increase of $10,712,000 over the adjusted appropriations for 1969 but $3,917,400 less than the amended budget estimates. Judge Weinman advised the Conference that as of the time of the meeting the Appropriation Bill was still before the Senate for action.

The bill, as approved by the House of Representatives, for fiscal year 1970 provides for the appointment of 18 additional clerks for the courts of appeals and continuing authority for 83 deputy clerks (out of a request for 166) for the district courts provided in the Second Supplemental Appropriation Act of 1969. Funds also were provided for the reclassification of law clerks and secretary-law clerks under the revised standards adopted by the Judicial Conference. Six additional positions for the Administratice Office were also authorized but a request for 33 stenographers for the courts of appeals was denied as was a request for 39 additional deputy clerks for the district courts to cope with increased workloads. No funds were allowed for additional referees nor for clerical positions for referees' offices.

Judge Weinman stated that supplemental requests for pay costs for fiscal year 1970 will be required and that it will be necessary to seek supplemental appropriations of $549,000 for salaries and expenses of United States magistrates in the pilot districts, an additional $800,000 for fees and allowances of jurors and $1,150,000 for fees and expenses of court-appointed counsel ($850,000 to cover a deficiency resulting from increases in the volume of appointments and average cost per case, plus $300,000 for fees and expenses of court-appointed counsel in the Juvenile Court for the District of Columbia.)

Judge Weinman stated that the budget estimates for fiscal year 1971, which had already been approved by the Conference by mail vote, aggregate for the judiciary, exclusive of the Supreme Court, the Customs Court and the Federal Judicial Center, a total of $124,957,400, an increase of $4,324,400 over the amounts appropriated for 1970 adjusted to reflect proposed supplementals for pay costs.

The budget estimates for 1971, Judge Weinman stated, include funds for an anticipated increase of five in the average number of senior judges to be carried on the rolls. It also includes funds for the employment of 32 additional deputy clerks for the courts of appeals. Judge Weinman pointed out that the sum $549,000 under the caption "Salaries and Expenses, United States Magistrates," is intended to cover only the salaries and expenses of the magistrates in the five pilot districts. This item will subsequently have to be amended to include funds to implement the Magistrates Act fully. The additional sum will have to be calculated after the Judicial Conference has determined the number of full-time and part-time magistrates to be authorized. It is also proposed that the appropriation for court-appointed counsel will have to be increased by $850,000 to provide sufficient funds for payments of fees and expenses of court-appointed counsel incurred during fiscal year 1971. An additional sum of $300,000 will have to be sought for counsel to be appointed for the Juvenile Court of the District of Columbia. Because the current limitations on the aggregate salaries of secretaries and law clerks to district judges preclude the appointment of crier-law clerks in Grade JSP 9 if the district judges' law clerk and secretary are classified in Grades JSP 12 and JSP 10, respectively, it is also proposed that the limitations, including the limitation applicable to chief judges in district courts with five or more judges, be increased to the extent of $1,463.00.

COMMENTS ON LEGISLATION

Chief Judge Bazelon recommended to the Conference that an expression of Conference views should be made on an amendment to S. 3016, then pending in the House of Representatives, which would give the governor of each state an item veto over legal service programs in his state. It would also remove the power of the Director of the Office of Economic Opportunity to override a governor's veto. Judge Bazelon reminded the Conference that fed-

eral courts are authorized to appoint counsel for indigents in civil as well as criminal cases, and, therefore, an expression of Conference views would be appropriate. He moved that because of the amendment's potential impact upon the administration of civil justice in the federal courts, the Conference should disapprove the proposed amendment. The Conference concurred in this recommendation.

ADMINISTRATIVE MATTERS

The Chief Justice suggested to the Conference that he thought it would be helpful in the administration of the affairs of the Conference if an Executive Committee not to exceed five members were to be created. The Conference concurred in this suggestion and approved the establishment of an Executive Committee.

The Chief Justice stated that he also would like to appoint an ad hoc committee for the purpose of reporting to the Conference at the March 1970 session on questions of jurisdiction among the several committees of the Conference. This ad hoc committee would be requested to furnish definitions and guidelines as to the activities of the Conference committees. The Conference concurred in this suggestion.

PRETERMISSION OF TERMS OF COURTS OF APPEALS

At the request of Chief Judge Van Oosterhout, the Conference, pursuant to 28 U.S.C. 48, consented to the pretermission of the terms of the Court of Appeals for the Eighth Circuit to be held in 1970 anywhere except in St. Louis, Missouri.

RELEASE OF CONFERENCE ACTION

The Conference authorized the immediate release of its action on matters considered at this session where necessary for legislative or administrative action.

For the Judicial Conference of the United States.

WARREN E. BURGER,
Chief Justice of the United States.

DECEMBER 18, 1969.

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