

REPORT OF THE JUDICIAL CONFERENCE

October Session, 1946.

The Judicial Conference convened, pursuant to 28 U. S. C. 218, on October 1, 1946, on the call of the Chief Justice, and continued in session for four days. The following judges were present:

The Chief Justice, Presiding.

District of Columbia, Chief Justice D. Lawrence Groner.

First Circuit, Senior Circuit Judge Calvert Magruder.

Second Circuit, Senior Circuit Judge Learned Hand.

Third Circuit, Senior Circuit Judge John Biggs, Jr.

Fourth Circuit, Circuit Judge Morris A. Soper.

Fifth Circuit, Senior Circuit Judge Samuel H. Sibley.

Sixth Circuit, Senior Circuit Judge Xenophon Hicks.

Seventh Circuit, Circuit Judge J. Earl Major.

Eighth Circuit, Senior Circuit Judge Kimbrough Stone.

Ninth Circuit, Senior Circuit Judge Francis A. Garrecht.

Tenth Circuit, Senior Circuit Judge Orie L. Phillips.

Senior Circuit Judge John J. Parker of the Fourth Circuit was unable to attend the Conference except for the third and fourth days. Judge Soper attended throughout the session.

Senior Circuit Judge Evan A. Evans of the Seventh Circuit was unable to attend because of illness. Judge Major attended in his place.

The Chief Justice called the attention of the Conference to the death of its Chairman, the late Chief Justice of the United States, the Honorable Harlan Fiske Stone, whereupon the following minute was adopted:

Harlan Fiske Stone, the twelfth Chief Justice of the United States, and by virtue of that office Chairman of the Judicial Conference of Senior Circuit Judges, departed this life in the City of Washington the 22nd day of April, 1946.

(1)

The members of this Conference wish to testify their profound regret in the sad event and their great and abiding respect for his memory.

It is but just to say he was a jurist of great learning in the law, whose indefatigable industry led him to explore all the sources of the common law and the constitutional and international law to find precedent and justification in support of the reasoning of his great mind. In our association with him in the discharge of the duties imposed on this Conference he was always patient, sympathetic, cooperative, and his guiding hand was invariably useful and potent in leading the Conference to a right conclusion.

In all of his activities as a lawyer, as a judge, and as a public-spirited citizen, he demonstrated an unflinching search for truth as the cornerstone of his philosophy, and in his long and fruitful life there is not an ignoble memory in his path to place and power. No gift that nature bestowed was ever wittingly used by him in an unworthy cause. His sudden death has brought to each of us profound regret. We have lost a great leader and the Nation a pure and upright judge.

We tender to his family our sympathy, and the Secretary of the Conference is hereby requested to send them a copy of this minute.

Senator Patrick A. McCarran, Chairman of the Judiciary Committee of the Senate, was unable to attend the Conference Session due to pressure of official business which necessitated his absence from the city. Representative Hatton W. Sumners, Chairman of the Judiciary Committee of the House of Representatives, addressed the Conference on the fourth day of the Session.

The Attorney General addressed the Conference on the fourth day of the Session.

Henry P. Chandler, Director, Elmore Whitehurst, Assistant Director, Will Shafroth, Chief, and Leland L. Tolman, Assistant Chief, Division of Procedural Studies and Statistics, Edwin L. Covey, Chief, Bankruptcy Division, and Richard A. Chappell, Chief, Probation Division, all of the Administrative Office of the United States Courts, attended the Conference and aided in its deliberations.

On invitation of the Conference, the following federal court judges were present at various times and participated in Conference discussion: Harold M. Stephens, Associate Justice, United States Court of Appeals for the District of Columbia; District Judges James Alger Fee, John C. Knox, Paul J. McCormick and James W. Morris.

Statement of the Attorney General.—The Attorney General addressed the Conference concerning various matters of importance and interest to the federal judiciary. He reviewed the progress made during the past year with respect to legislation, particular emphasis being given to the Administrative Procedure Act, and to Title IV of the Legislative Reorganization Act of 1946, known as the Federal Tort Claims Act. He stated that, while this would involve an increase in volume in the work of the courts, the satisfaction of affording a more adequate remedy to affected persons would more than compensate for the additional burden.

Attention was called to the fact that, for the first time in many years, there were no existing vacancies in any of the courts comprising the federal judiciary, and the Conference was assured that efforts would be continued to have vacancies filled promptly.

A summarization by the Attorney General of the experiences gained under the new Federal Rules of Criminal Procedure indicated very favorable reaction to the Rules from the Bar, the Department, and the courts. He commended the judiciary upon the genuine endeavor it had evidenced to carry out the general intent of the Rules, i. e., simplicity of procedure, fairness in administration, and the elimination of unjustifiable expense and delay. A few instances in which the experiences of the Department reflected difficulty in administration were pointed to and it was stated that the necessary steps to secure the proper amendments to remove these difficulties were being taken.

The Attorney General then commented upon the desirability of securing enactment of legislation heretofore approved by the Conference and supported by the Department which had not been acted upon by Congress up to the present. Specific

mention was made of the federal jury bills providing for uniform standards of qualification, uniform method of selection of jurors, improvement in the provisions for jury commissions, and increase in the present remuneration for subsistence and expenses of jurors while attending trials; the Youth Offenders Bill; the Public Defenders Bill; the Habeas Corpus Procedural and Jurisdictional Bills; and the bills modifying present procedures respecting review of orders of certain administrative agencies. He stated that the Department was in full accord with the views of the Conference respecting each of these proposals, and that it would render every possible assistance in securing their enactment during the next Congress.

In closing, the Attorney General called the attention of the Conference to juvenile delinquency and the seriousness of the problems it presents today. The Department has, for the past several years, given it the closest of scrutiny, and feels that some progress toward a solution has been made. He referred to the so-called *Brooklyn Plan*, and told of several interesting and successful instances of its operation. Under this plan, the juvenile offender, if he gives promise of being amenable to correction, is placed under supervision directed by the United States Attorney, and prosecution is deferred and later dispensed with if the offender makes a satisfactory record. In this process, friendly persons and agencies are drawn upon to the fullest extent for assistance and counsel to the juvenile. Some courts have so interested themselves in this plan that they maintain a standing list of persons who are willing to accept these juveniles; and religious groups, fraternal organizations, and civic bodies have evidenced a great interest in sponsoring the plan and assisting the courts in their placement problems. The Department believes that much more can be accomplished through such cooperative measures, and the Attorney General requested that the Conference authorize the appointment of a committee to consider the problem in the hope that there may be devised, not only a workable plan, but a plan that will afford material opportunities for these unfortunate youngsters.

Administration of the United States Courts.—Report of the Director.—The Director submitted to the Conference his seventh annual report reviewing the activities of the Adminis-

trative Office for the fiscal year ended June 30, 1946, including the report of the Division of Procedural Studies and Statistics. The Conference approved the Director's report and ordered it released for publication. The Director was authorized to include additional statistical information, not now available, in the printed edition of the report to be issued later.

State of the Dockets of the Federal Courts.—Circuit Courts of Appeals.—The number of cases filed in the circuit courts of appeals, among which the United States Court of Appeals for the District of Columbia is included, was about 4 per cent less than last year. From a high of 3,505 cases filed in these courts in 1940, there has been a steady decline to 2,627, which was the number begun in 1946. Over the first half of the last decade, appeals from administrative agencies increased to reach a peak in 1942, from which they declined in number until in 1946 they were back at approximately the 1937 level. On the other hand, appeals from the lower courts, which now account for 83 per cent of the total business of the circuit courts of appeals, have declined from 2,754 in 1937 to 2,188 in 1946.

The number of cases disposed of during the last fiscal year was approximately equal to the number commenced, with the result that there was but an insignificant change in the number pending June 30, 1946, which was 1,531 as compared with 1,525 a year previous. Almost one-third of the total dispositions were cases terminated without hearing or submission. Cases heard or submitted were disposed of slightly more expeditiously than last year, if the median of 6.8 months in 1946 compared with 7 months in 1945 is taken as a guide. The general promptness of dispositions in the circuit courts of appeals is indicated by the median time from hearing or submission to decision or final order, which was only 1.5 months.

District Courts.—An increase was registered in the year 1946 in the number of civil cases filed in the United States district courts; but, as in the previous year, almost half of the cases were brought by the Office of Price Administration for enforcement of price control and rationing regulations. The trend is indicated by the following table, which shows the number of civil cases commenced and terminated annually for the past

five years and the number pending at the close of each year in all United States district courts:

	Commenced	Terminated	Pending
Fiscal year ended on June 30:			
1942.....	38, 140	38, 352	29, 182
1943.....	36, 789	36, 044	29, 927
1944.....	38, 499	37, 086	31, 340
1945.....	60, 965	52, 300	40, 005
1946.....	67, 835	61, 000	46, 840

The phenomenal increase in the number of cases filed during the past two years is accounted for by the 28,653 civil cases commenced by the Office of Price Administration in 1945 and the 31,252 cases in 1946. In most districts only a small percentage of the cases of this type reaches trial, and in the great majority of the cases a consent judgment is stipulated. Therefore they do not constitute the same burden on the courts as the average civil case, and generally they have not caused the district court dockets to become congested. If they are subtracted from the total of civil cases filed, the remainder is smaller than the average number of civil cases commenced annually in the five-year period before the war.

Other civil cases in which the United States is a party were filed in about the same numbers in 1946 as in 1945; but private cases increased about one-fourth, indicating a strong trend toward a return to the prewar volume in private litigation. A total of 22,141 private cases were filed in 1946, compared with 17,855 in 1945.

Cases terminated were 6,835 less than cases filed, resulting in a corresponding increase in cases pending at the end of the fiscal year. Such an increase would be a signal that dockets were becoming congested if it were not for the fact that the pending case load includes 12,929 Office of Price Administration cases. Furthermore, the number of cases pending at the end of the fiscal year 1946 was smaller in proportion to the number commenced than in any of the three years prior to 1945. With few exceptions, the dockets in the district courts are in good condition and cases are heard and disposed of promptly.

In the median case of those which were tried in the 84 district courts within the States of the United States having purely federal jurisdiction (excluding land condemnation, forfeiture and habeas corpus proceedings), the time required for disposition was 9 months, the same period as in the previous year. The median time from issue to trial was 5.1 months compared with 5.3 months in 1945.

The number of criminal cases commenced decreased sharply, due in large part to reduction in the number of charges brought for violation of the internal revenue laws relating to liquor, the Selective Service Act and the price control laws and regulations. On the other hand, there was a substantial increase in automobile theft cases and a small increase in proceedings under the Juvenile Delinquency Act. A total of 33,203 criminal cases were commenced in 1946, compared with 39,429 in 1945. This is in marked contrast to the general increase in crime during the last year, as evidenced by reports to the Federal Bureau of Investigation of "offenses known to the police."

The number of bankruptcy cases commenced continued the decline which began in 1936 but at a reduced rate; and the flattening out of this curve indicates that the bottom may have been reached. Filings in 1946 were 10,196, compared with 12,862 in 1945 and with 69,153 in 1935, before the drastic decrease of the last decade began.

Special Courts.—Detailed reports of the business of the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims and the United States Emergency Court of Appeals are contained in the report of the Director. In general, it may be stated that there has been some increase in business in these special courts; but, where the pending case-load has increased, there is no special significance in the change which has taken place. The average time between hearing and decision is given for the Court of Customs and Patent Appeals and the Emergency Court, and in neither case does it exceed two months. The Chief Justice of the Court of Claims reports the docket of that Court to be in excellent shape. The anticipated increase in cases by reason of the filing of war claims has not yet materialized.

Additional Judges.—After consideration of the report of the Director of the Administrative Office and the statements of the several Circuit Judges respecting the work of the courts in their particular circuits, the Conference renewed recommendations heretofore made calling for the creation of additional judgeships in the Southern District of New York, the District of New Jersey, and, also, that the last additional district judgeship created for the Eastern and Western Districts of Missouri be made permanent.¹

In addition, the Conference recommended that provisions be made for the creation of the following additional judgeships:

Circuit Courts of Appeals: One additional judge—Seventh Judicial Circuit.

District Courts: An additional judge for the Northern District of California, and one for the Western District of Pennsylvania (the latter on a temporary basis, with provision that the first vacancy occurring within the District shall not be filled).

The proposal to create a new federal judicial district in California was disapproved.

Court Reporters.—The report and recommendations of the Committee on the Court Reporting System were submitted to, and considered by, the Conference. In order to correct inequities and to provide, in certain instances, more efficient operating methods, it was ordered that the following changes in basic salaries, description of positions, and operating arrangements be made, to become effective if and when the monies necessary to defray the expense incident thereto are appropriated by the Congress:

For the Northern District of New York: The salaries of the two authorized reporters to be increased from \$3,600 to \$4,500.

For the District of Vermont: The salary of the reporter serving also as clerk of the probation office to be increased from \$3,000 to \$4,000.

For the Eastern District of Virginia: The salary of the reporter serving the judge sitting at Norfolk to be increased from \$3,600 to \$4,000.

¹ Conf. Rpt., 1945, p. 7.

For the Northern District of Florida: The salary of the reporter to be increased from \$3,000 to \$3,600.

For the Southern District of Florida: The salaries of the three authorized reporters to be increased from \$3,600 to \$4,000.

For the Northern and Southern Districts of Florida: The salary of the reporter serving the judge for both the Northern and Southern Districts to be increased from \$3,600 to \$4,000.

For the Southern District of Georgia: The salary of the reporter serving also as secretary to the judge to be increased from \$4,500 to \$5,000.

For the Western District of Louisiana: The present authorization of one reporter at a salary of \$5,000 to be changed to two reporters, each to receive a salary of \$4,000.

For the Western District of Texas: The position of reporter, with an authorized salary of \$3,600 to be changed to a reporter serving also as law clerk to the judge, and the salary for the combined position to be fixed at \$5,000; and the salary of the reporter serving also as secretary to the judge to be increased from \$4,500 to \$5,000.

For the Eastern District of Michigan: The salaries of the five authorized reporters to be increased from \$4,500 to \$5,000.

For the Northern District of Indiana: The salary of the reporter to be increased from \$3,600 to \$4,500.

For the Southern District of Indiana: The salary of the reporter to be increased from \$3,600 to \$4,000.

For the Eastern District of Arkansas: The present authorization of one reporter acting also as secretary to the judge at a salary of \$4,500 to be changed to authorize one reporter acting in that capacity alone at a salary of \$3,600.

For the Northern District of Iowa: The salary of the reporter to be increased from \$3,600 to \$4,000.

For the District of Arizona: The salaries of the two authorized reporters to be increased from \$3,000 to \$3,600.

For the District of Idaho: The salary of the reporter who acts also as secretary and law clerk to the judge to be increased from \$4,000 to \$5,000.

For the District of Montana: The salary of the reporter who acts also as secretary and law clerk to the judge to be increased

from \$4,000 to \$5,000; and one of the two positions now authorized of a reporter acting also as secretary and law clerk to the judge to be changed to authorize instead the appointment of a reporter to act in that capacity alone at a salary of \$3,600.

For the District of Nevada: The salary of the reporter to be increased from \$3,000 to \$3,600.

For the District of Oregon: The salaries of the two authorized reporters to be increased from \$4,000 to \$4,500.

For the Western District of Washington: The salaries of the reporters for the Western District of Washington (including the reporter serving Judge Black of the Eastern and Western Districts of Washington at Seattle) to be increased from \$4,000 to \$4,500.

For the District of Colorado: The salary of the reporter to be increased from \$3,600 to \$4,000.

For the District of New Mexico: The position of reporter acting also as secretary to the judge at a salary of \$4,000 to be changed to authorize instead a reporter to act in that capacity alone at a salary of \$3,600.

For the District of Hawaii: The salary of the single reporter now acting to be increased from \$4,000 to \$4,500, with the understanding that the other authorized position of reporter at a salary of \$3,600, which is now vacant, will remain unfilled.

For the District of Puerto Rico: The salary of the reporter to be increased from \$3,600 to \$4,000.

For the District of the Virgin Islands: The salary of the reporter, who acts also as secretary to the judge, to be increased from \$3,500 to \$3,600.

For the District of Columbia: The salaries of the twelve authorized reporters to be increased from \$4,500 to \$5,000.

The Director of the Administrative Office was instructed to make every effort to secure promptly appropriation of monies needed to effectuate the foregoing changes.

For the purpose of providing adequate court reporting service for incumbents of recently created judgeships, the Conference approved and authorized the appointment of the following additional permanent reporters:

A fifth reporter for the District of New Jersey, salary \$5,000 per annum.

A fifth reporter for the Northern District of California, salary \$5,000 per annum.

A second reporter for the District of Delaware, salary \$5,000 per annum.

A reporter for the Eastern, Middle, and Western Districts of Pennsylvania, salary \$4,000 per annum.

The description of the court reporting position in the District of the Canal Zone was ordered changed so that the reporter shall also act as secretary to the judge.

The Committee informed the Conference that it had been advised of certain criticisms respecting the qualifications of some of the reporters appointed under the recent act, and that, because of this, a review of the qualifications of nearly all the present reporters in the federal courts was had and the Committee is "satisfied that almost uniformly the federal court reporters are of a high order of reporting ability."

The Conference affirmed the necessity of compliance in all cases with the standard of proficiency formulated by it in 1944,² pursuant to the provision of the Court Reporting Act (28 U. S. C. Supp. V, 9a), namely:

That persons appointed as court reporters of the United States district courts shall be capable of reporting accurately verbatim by shorthand or mechanical means, proceedings before the court at a rate of 200 words a minute, and furnishing a correct typewritten transcription of their notes with such promptitude as may be requisite. They shall demonstrate familiarity with the terminology used in the courts, and shall be persons of unquestionable probity.

The Conference renewed its previous recommendations that, where applicants for appointment are not known to the court to be of proved competence or do not have certificates of proficiency from state authorities or associations whose certificates are based on merit and generally recognized, the court appoint a committee composed of members of the bar, or court re-

² Conf. Rpt., Sept., 1944, p. 13.

porters, or both, to conduct an appropriate examination. The Conference did not deem it advisable to establish a mandatory plan for examinations but urged the district courts to exercise care in selecting for court reporters fully qualified persons.

The definition of "a page of transcript"³ was amended to read as follows:

A page shall consist of 25 lines written on paper 8½ by 11 inches in size, prepared for binding on the left side, with 1¾ inch margin on the left side and ¾ inch margin on the right side. Typing shall be 10 letters to the inch.

In appeal cases *in forma pauperis* in which the transcript is furnished at government expense, the Director of the Administrative Office was instructed to authorize payment for as many carbons as are required to perfect the appeal by rules of court; but, when such service will require substantial additional expense, the Director may report the facts to the Senior Circuit Judge so that consideration may be given to suspension of the rule.

The Conference recognized the need for the appointment of temporary reporters in some instances when the regular reporters are unable to provide all the reporting service which is requisite for the proper functioning of the courts; but it urged that, in the interest of economy, the courts arrange as far as possible to have the proceedings before them reported by the regular reporters, so that the appointment and expense of temporary reporters may be held to a minimum.

The following new transcript rates, effective as of November 1, 1946, were authorized and approved by the Conference:

District	Rate	
	Original	Copies
Second Circuit:		
New York:		
Northern.....	\$0. 40	\$0. 15
Western.....	. 40	. 15
Fifth Circuit: Louisiana, Western.....	. 40	. 15
Sixth Circuit: Kentucky, Eastern.....	. 40	. 15

³ Conf. Rpt., Sept., 1944, Appendix, p. 1.

District	Rate	
	Original	Copies
Seventh Circuit:		
Illinois, Northern.....	\$0. 45	\$0. 20
Indiana, Northern.....	. 45	. 20
Wisconsin:		
Eastern.....	. 35	. 15
Western.....	. 35	. 15
Ninth Circuit:		
California:		
Northern.....	. 45	. 20
Southern.....	. 45	. 20
Oregon.....	. 45	. 20
Washington, Western.....	. 45	. 20
Tenth Circuit: Colorado.....	. 45	. 20

The Committee advised the Conference of the fact that in the proposed revision of Title 28 of the United States Code entitled "Judicial Code and Judiciary," as set forth in H. R. 7124, 79th Congress, the Committee on Revision of the Laws of the House of Representatives has incorporated as § 753 of the bill the major part of the Act of January 20, 1944 (the Court Reporter Act) and, in so doing, has changed the present mandatory provision of the law under which each district court is required to appoint one or more reporters to a permissive provision under which the courts *may* make such appointments.

It was the sense of the Conference that this change was one of substance and directly contrary to the theory of the Court Reporter Act that in each district court there should be always available at least a minimum of official reporting service.

The Conference recommended that the mandatory provisions of the present law should be retained in any revision thereof, and authorized its Committee on the Codification and Revision of the Criminal and Judicial Codes and the Committee on the Court Reporting System to inform the Committee on the Revision of the Laws of the House of Representatives of its attitude and recommendations with respect to the change it has proposed.

The Director was authorized to consider a revision of the forms of periodic reports by the reporters of their business, so

as to make them as simple as possible, consistently with furnishing the needed information, to confer on the subject with representative reporters, and to report his recommendations to the Committee on the Court Reporting System. He was also authorized to take the same course in reference to the forms of records of their operations to be kept by the reporters.

The following resolution in respect of office facilities for court reporters was adopted by the Conference:

Resolved, That the Judicial Conference considers it very desirable for the court reporters for the district courts to have quarters in the federal buildings in which the courts are located, and recommends that wherever possible provision of this nature be made.

The Director of the Administrative Office was instructed to confer with the custodians of the various federal court buildings in an effort to carry out the wishes of the Conference in connection with the furnishing of office space for court reporters.

The Conference ordered the Committee on the Court Reporting System continued with the request that it pursue its studies, make an examination of each District in respect to reporters' salaries and transcript rates, and submit a further report and recommendations as promptly as possible.

Budget Estimates.—The estimates of expenditures and appropriations necessary for the maintenance of the United States Courts and the Administrative Office of the United States Courts for the fiscal year 1948 were ordered approved as submitted, and the Director of the Administrative Office, with the approval of the Chief Justice, was authorized to make any adjustments necessitated by the recently enacted Referees' Salary Act or by the Conference action with respect to the Court Reporting System. The Conference also approved the estimates for deficiency appropriations for the fiscal year 1947.

The Director referred to the need for savings to be effectuated wherever possible and called attention to the admonitions of the Appropriations Committee respecting economies in operation, as set forth in the Hearings before the Subcommittee and in the Report of the House Committee on the bill.

The Conference respectfully referred the members of the judiciary to the statement by the Director appearing under the topical heading "Economy in the Administration of the Courts" as Item VIII of his annual report for 1946, and urged that they continue to cooperate with the Director in his efforts to provide the courts with efficient and economical methods of operation.

Bankruptcy Administration.—The Committee on Bankruptcy Administration reported that the Administrative Office through Mr. Edwin L. Covey, Chief of the Bankruptcy Division, was engaged in the survey and plan for a reorganization of the system of referees in bankruptcy provided for by the recently enacted salary bill for referees (Public Law 464 of the 79th Congress, approved June 28, 1946); that in this connection Mr. Covey and his staff were conferring with the district judges and other interested persons in the various districts in order to arrive at a plan as satisfactory as possible to all concerned, and were keeping the Committee informed of their work; that the Committee considered that good progress was being made and expected that a plan for the determination of the number and salaries of referees under the new act would be ready for consideration by the Conference at a special meeting to be held in April of 1947, the exact time to be recommended later; and that according to this schedule operation under the new act would begin on July 1, 1947.

The Conference reaffirmed its previous approval of the proposed amendments to § 57j, § 64a (1), and § 116 of the Bankruptcy Act⁴ and recommended their early enactment by the Congress.

After consideration of the proposals of the Committee for amending § 64b, the Conference referred the matter back to the Committee with instructions that the recommendations be circulated throughout the judiciary in conformance with Conference policy, and that a further report to the Conference be submitted at its special session in the spring of 1947.

It was ordered that, in the event legislation is proposed under which § 75 of the Bankruptcy Act would become permanent,

⁴ Conf. Rpts., Sept., 1944, pp. 9, 10; 1945, pp. 16, 17.

the Conference recommend the abolishment of the offices of Conciliation Commissioner and Supervising Conciliation Commissioner and the absorption of their duties and functions by the Referees in Bankruptcy. The Committee on Bankruptcy Administration and the Director of the Administrative Office of the United States Courts were authorized, in the event such legislation is proposed, to inform the Congress of the Conference's position.

With respect to the practice of transferring funds from one referee's office to another within the same district, the Conference adopted the following resolution:

The Conference having been advised that under present practice, transfers of funds between referees in the same district have been permitted in order to provide indemnity monies for referees in whose accounts deficits have been created, and that such deficits in some instances may not have been justified,

It is, therefore, Resolved, That it is the sense of this Conference that transfers of indemnity funds between referees in a district should not be permitted without a prior audit of the offices involved by the Administrative Office of the United States Courts.

With respect to office quarters for referees, the Conference adopted the following resolution:

Resolved, That the Judicial Conference considers it very desirable for the Referees in Bankruptcy to have quarters in federal office buildings and recommends that wherever possible provision of this nature be made.

It directed that the Director of the Administrative Office of the United States Courts confer with the custodians of various federal office buildings in an effort to carry out the wishes of the Conference with respect to office facilities for referees.

The Committee was authorized to continue its study in connection with conditional discharges and summary jurisdiction.

Review of Orders of the Interstate Commerce Commission and Other Administrative Agencies, and Procedure for Three-Judge Courts.—The Consolidated Committees on Appellate Review of Orders of the Interstate Commerce Commission and

other Administrative Orders, and on Three-Judge Court Procedure, submitted separate reports covering the following subjects:

Interstate Commerce Commission.—The bill previously approved by the Conference⁵ and recommended for enactment provided solely for review of orders of the Interstate Commerce Commission. The Committee, pursuant to request of the United States Maritime Commission, proposed an amendment which would bring orders of that agency within the provisions of the bill. The Conference approved the bill as amended, and recommended its early enactment.

Federal Communications Commission and the Secretary of Agriculture.—The Committee submitted a draft of a bill giving to the Circuit Courts of Appeals (including the United States Court of Appeals for the District of Columbia) exclusive jurisdiction to enjoin, set aside, suspend, or determine the validity of all final orders of the Federal Communications Commission made under the Communications Act of 1934, as amended, and certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act of 1921, as amended, and under the Perishable Agricultural Commodities Act of 1930, as amended, and providing for review in the Supreme Court of the United States upon writ of certiorari. The Conference adopted an amendment to the venue section of the Committee's bill, fixing alternative jurisdiction in the United States Court of Appeals for the District of Columbia, and recommended prompt enactment of the amended bill.

Three-Judge Court Procedure.—Two amendments to the draft of a bill previously approved by the Conference⁶ were submitted by the Committee. The first would retain existing statutory provisions which require that at least two judges join in the granting of a temporary stay or suspension of an order of the Interstate Commerce Commission. The second would require that action be brought by or against the Commission with leave to the United States to intervene, rather than against the United States with leave to the Commission to intervene.

⁵ Conf. Rpt., 1945, pp. 17, 18.

⁶ Conf. Rpts., 1943, p. 20; 1945, p. 18.

The Conference adopted the amendments and recommended the enactment of the bill, as amended.

Treatment of Insane Persons Charged with Crime in the Federal Courts.—The Conference approved, with certain amendments, the draft of a bill submitted by the Committee of the Conference on this subject which provides for a method of treatment, care, and custody of insane persons charged with or convicted of offenses against the United States. The bill, as amended, sets forth a procedure for raising the issue of the mental competence of an accused and for its determination; it makes provision for the disposition of an accused who has been judicially determined to be incompetent before trial. Procedure is prescribed for the setting aside of a conviction where the issue of mental competency has not been raised or determined before or during the trial, and where mental incompetency becomes apparent after the defendant has been committed to prison. The bill provides for the commitment to the Attorney General, upon a judicial proceeding and after a hearing, of any insane prisoner whose sentence is about to expire and whose release might endanger the safety of the officers, the property, or other interests of the United States.

Sentencing and Parole of Federal Offenders.—Pursuant to direction of the Conference,⁷ the Committee on Punishment for Crime submitted a draft bill incorporating the provisions of the sentencing bill affecting youthful offenders which had heretofore been approved by the Conference.⁸

The bill as submitted provides for the creation of a Federal Youth Authority to which the court, in its discretion, may sentence a youthful offender for treatment and supervision in lieu of probation or the penalty of imprisonment otherwise provided by law. A youthful offender, for the purposes of the Act, is defined as a person, male or female, under the age of twenty-four years.

The Authority is charged with the responsibility of laying down general treatment and correctional policies; provision is made for the creation of classification centers to which offenders

⁷ Conf. Rpt., 1945, p. 22.

⁸ Conf. Rpts., 1943, p. 26; Sept., 1944, pp. 15, 16; 1945, p. 22.

committed to the Authority shall be sent for observation and study prior to confinement in an institution for treatment. Institutions for treatment are to be of three types of security—maximum, medium, and minimum—and segregation of the offenders according to class of treatment determined necessary is a feature of the plan.

Power is vested in the Authority to release an individual conditionally and under supervision at any time after his commitment, and unconditionally at the expiration of one year from his conditional release. It is mandatory for the Authority to release an offender conditionally and under supervision on or before the expiration of four years from the date of his conviction, and unconditionally on or before the expiration of six years from date of his conviction. Power of revocation and modification of previous orders respecting conditional releases is vested in the Authority.

In the event an offender is unconditionally discharged before six years from date of his conviction, the conviction is automatically set aside and the offender shall be issued a certificate to this effect by the Authority, such certificate having the same effect as a pardon.

The bill in no way affects the existing power of the courts to suspend the imposition or execution of any sentence and place the offender on probation, nor does it affect in any way the provisions of the Federal Juvenile Delinquency Act or the enforcement or administration of that Act.

The Conference adopted certain amendments to the bill proposed by the Committee respecting the formality of findings of the court, approved the bill as amended and recommended its early enactment.

Removal of Civil Disabilities of Probationers Satisfying the Terms and Conditions of Their Probation.—The Committee on the Removal of Civil Disabilities of Probationers Fulfilling the Terms of their Probation recommended that the bill heretofore approved by the Conference⁹ be amended so that the Act will be applicable to all persons on probation on the effective date of the Act; that persons discharged from probation prior

⁹ Conf. Rpts., 1942, p. 12; Sept., 1944, pp. 21, 22; 1945, p. 25.

to the effective date of the Act be excluded; and that the right of the probationer to apply for relief be barred six months after the date of the expiration of his probation.

The Conference adopted the proposed amendments and recommended the early enactment of the amended bill.

Provision for the Trial of Minor Offenses by Commissioners.—Chief Justice Groner, Chairman of the Committee on the Trial of Minor Offenses by Commissioners, stated that the Committee desired to reconsider their previous report and recommendations¹⁰ and requested that the matter be referred back to the Committee for further consideration, with authority to make any revision deemed desirable by the Committee.

The matter was referred back to the Committee with the requested authorization and instructions that the proposals as finally determined upon by the Committee be circulated in conformance with Conference policy, and that a report of the Committee be submitted at the next session of the Conference.

Transfer of Jurisdiction for Supervision of Probationers from the Court of Original Jurisdiction to the District of Supervision.—Pursuant to Conference direction¹¹ the Director of the Administrative Office prepared a draft of a bill amending § 2 of the Probation Act of 1925, as amended, 18 U. S. C. 725, and circulated it throughout the judiciary with request that views upon the proposal be submitted. The Director reported that the reaction indicated a large majority favoring the bill, and presented it for Conference action.

The bill provides for the transfer of jurisdiction, in the discretion of the courts concerned, over a probationer moving from one jurisdiction to another (including all the power the court may possess with respect to the probationer). The courts of both jurisdictions must be agreeable to the transfer and provision is made for repeated transfers as the movements of the probationer may require. The bill prescribes that the arrest of a probationer, during the period of probation, by a probation officer must be for cause; and that a warrant for the

¹⁰ Conf. Rpt., Sept., 1944, p. 22.

¹¹ Conf. Rpt., 1945, p. 28.

arrest may be issued only during a maximum period of five years (the maximum period of probation). In the event of revocation of probation, the court may, if there was no previous sentence, impose any sentence which might previously have been imposed, or, if there was previous sentence, confirm it or set it aside and impose a new sentence not to exceed the previous sentence.

The Conference approved the report and draft of the bill submitted and ordered that it be forwarded to the Congress with recommendations for its early enactment.

The Use of Trial Memoranda in Criminal Cases.—The Conference, after consideration of the report of the Committee appointed to study the subject matter, disapproved the practice, prevalent in some districts, of trial judges in criminal cases receiving from the attorney on one side a brief or trial memorandum that has not been furnished to the attorney on the other side, and recommended the immediate discontinuance of such practice.

Habeas Corpus Procedure.—The Conference renewed its previous approval and recommendations of the procedural bill (S. 1452, H. R. 4232, 79th Cong.).¹² The jurisdictional bill, as amended (H. R. 6723, 79th Cong.), was referred back to the Committee on Habeas Corpus Procedure with instructions that the bill and the report of the Committee be circulated among the judiciary in conformance with Conference policy, and that a further report of the Committee be submitted to the Conference at its next session.

The Jury System.—The Conference reaffirmed its approval and recommendations heretofore given¹³ to bills¹⁴ providing, *inter alia*, for the establishment of uniform standards of qualifications for federal jurors; for improved provisions for jury commissions, and some increase in the compensation of the members thereof; for the establishment of a uniform method of selection of jurors; and for increase in the travel and subsistence allowance of jurors.

¹² Conf. Rpts., 1943, pp. 22, 23; 1944, p. 22; 1945, p. 28.

¹³ Conf. Rpts., 1943, pp. 15, 16, 17; Sept., 1944, p. 21.

¹⁴ H. R. 3379, 3380, 3381, S. 1244, 1245, 1246—79th Cong.

Representation of Indigent Litigants in the Federal Courts.—The approval heretofore given ¹⁵ to legislation proposed by the Committee to Consider the Adequacy of Existing Provisions for the Protection of the Rights of Indigent Litigants in the Federal Courts, was reaffirmed by the Conference. The Conference was of the opinion, however, that the proposal should be broadened so as to make available to indigent defendants in criminal cases in the courts of appeals the services of the public defender and counsel provided for under § 3 of the proposed bill; and, further, to provide counsel for indigent persons applying for habeas corpus.

The matter was, therefore, referred back to the Committee with instructions that consideration be given the Conference's suggestions and that a further report by the Committee be submitted at the special session of the Conference in the spring of 1947.

Judicial Statistics.—The report of the Committee on Judicial Statistics as presented by Mr. Shafroth of the Administrative Office was approved by the Conference.

Pursuant to the Committee's request, the Conference authorized the Director of the Administrative Office to request that the names of the trial judges be reflected in the monthly trial reports of the district judges, and urged compliance with such request by the courts. It also directed the Administrative Office to publish separately, wherever feasible, the judicial statistics concerning the following parts of districts or places of holding court: Northern District of Ohio, Eastern and Western Divisions; Southern District of Ohio, Western Division (Cincinnati), Eastern and Western Divisions (Dayton), and Eastern Division (Columbus); Eastern District of Tennessee, Northern and Northeastern Divisions to be combined for statistical purposes and statistics for those divisions to be published separately from the statistics for the Southern and Winchester Divisions. It was understood that the various judges directly concerned approved this plan of reporting their statistics.

In view of the continuing need for further study and research with respect to the subject matter, the Conference designated

¹⁵ Conf. Rpt., 1945, p. 21.

the present Committee on Judicial Statistics a standing committee of the Conference.

Outside Assignments of Judges.—The Committee designated by the Conference to study the subject matter submitted a comprehensive and detailed report reviewing the development of the assignment practice, and analyzing the effectiveness of present methods of “outside of circuit” assignments. Statistics were presented supporting the view of the Committee that the practice at present falls considerably short of its possibilities. It was emphasized that, whatever the plan may be, it would still be unsuccessful unless the whole of the judiciary was in accord and cooperated in its operation.

As a general plan of operation, it being understood that it will be necessary to continue to make arrangements for assignments without regard to the plan in emergencies, the Committee recommended the adoption of the following procedure:

(a) The Director will ask the senior circuit judge of each circuit, on or before May 1st of each year, how many visiting judges he thinks he will need in the following year, and in what districts and at what times he will need them.

(b) When the judges have answered, the Director will ask the senior circuit judges what judges may be available for service outside their circuits in the following year, and will ask them for their consent that he may write to any such judges directly.

(c) The Director will then try to arrange with any of such judges to fill the requirements of such circuits as need help; will inform the Chief Justice of those whom he has persuaded; and will see to it that the proper certificates and other documents are executed.

(d) All this will, if possible, be done during the summer months, so that it will be completed by the opening of the autumn terms.

The Conference approved the report and recommendations of the Committee; directed the Director of the Administrative Office of the United States Courts to adopt the system of procedure outlined; and earnestly requested all judges to conform to the system.

Admiralty Rules—Amendments.—The Committee appointed to consider amendments to Rules 51, 52, 53, and 54 of

the Supreme Court Rules in Admiralty, proposed by the Maritime Law Association of the United States, submitted its report. It stated that, for the purpose of clarification, certain changes were made in the amendments, but that, in substance, it had followed the Association's suggestions, and that the principal purpose of the amendments was to provide uniformity in limitation proceedings.

After consideration of the report, the Conference requested the Committee to amend its proposed Rule 54 by adding a provision that would permit the court, in its discretion, to transfer the proceedings to any district for the convenience of the parties; that, as so amended, the report and recommendations be submitted to the judiciary in conformance with Conference policy; and that a further report be submitted to the Conference by the Committee.

Disposition of Old Records of the United States Courts.—The Committee on the Disposition of Old Records of the United States Courts reported that in compliance with the directive of the Conference¹⁶ it had amended its previous recommendations so as to provide for the permanent retention of all orders for sale of real estate and orders of confirmation of such sales; that such report and recommendations, as amended, had been circulated in conformance with Conference policy and the reaction thereto was most favorable.

The Conference approved the report and recommendations of the Committee and urged that the system proposed be put into general effect as promptly as possible.

Postwar Building Plans for the Quarters of the United States Courts.—The Committee on Postwar Building Plans for the Quarters of the United States Courts submitted, with its report, a manual setting forth general standards of design and construction for federal court quarters in federal buildings hereafter to be constructed. The Committee emphasized that the manual was submitted solely for the purpose of serving as a general guide, pointing out, however, that, in its opinion, the manual "if closely followed—except where variations were required to meet some local situation—would be

¹⁶ Conf. Rpt., 1945, p. 27.

conducive to a substantial increase in the usefulness and efficiency of the facilities to be provided for the Courts.”

The Conference approved the report and recommendations of the Committee, and directed that copies of the report and the manual be circulated throughout the judiciary.

The Committee was continued and it was requested to pursue its studies in conjunction with the Public Buildings Administration.

The Administrative Office of the United States Courts—Salaries.—The Conference unanimously approved a proposed draft of a bill submitted by Chief Justice Groner of the United States Court of Appeals for the District of Columbia, amending present statutes so as to provide annual salaries for the Director and the Assistant Director of the Administrative Office of the United States Courts in the amounts of \$15,000 and \$12,500, respectively, and recommended its prompt enactment by the Congress.

Legislation Affecting District Courts and District Judges.—The Conference discussed at length the experiences had under its present procedural policy¹⁷ with respect to the circulation throughout the judiciary of proposed legislation affecting district judges or district courts. It was stated that in some of the circuits the legislative committees for the circuit conferences contemplated under the plan have not been created and, in others, although established they were not functioning in accordance with the plan. The Conference reemphasized the desirability of having the benefit of the views of the full judiciary on such proposals.

Attention was called to the fact that sometimes the circuit conferences are held at a season which precludes action by these circuits upon many matters considered in the Senior Conference.

The Conference adopted the following resolutions regarding these matters, and urged compliance with the procedure suggested wherever possible:

Resolved, That the Director of the Administrative Office call the attention of the circuit and district judges to the policy of the Conference that each circuit confer-

¹⁷ Conf. Rpt., 1945, pp. 8, 9, 10.

ence appoint a legislative committee to consider proposed legislation affecting district judges or district courts, so that the Conference may be informed of the views of the district judges and of the circuit conferences.

To this end the Conference requests the circuit conferences to appoint such legislative committees where they have not already been appointed, so that proposed legislation may be given prompt consideration.

For this same purpose the Conference recommends that the circuit conferences be held in the three months, June, July and August, in each year so that the Conference which meets annually in the week before the first Monday of October, may have the benefit of the views of the circuit conferences.

Resolved, That whenever legislation affecting the district courts or district judges, or any other matter affecting the district judges or district courts is circulated for comment in accordance with the procedural policy of the Conference, the Director of the Administrative Office is hereby authorized to communicate directly with each senior circuit judge, calling his attention to the fact that the matter is being circulated for consideration.

The Director will again call the attention of the senior circuit judge to all such matters that may be pending as early as possible in advance of the time set for the circuit judicial conference.

Legislative Proposals Reaffirmed.—The Conference reaffirmed its previous recommendations regarding legislation providing basic authority for the employment of certain personnel of the courts and urged its early enactment by the next Congress.

Keeping Offices Open on Saturday Forenoons.—The Conference reaffirmed its statement of last year that,

It was the sense of the Conference that the clerks' offices, and the offices of the probation officers of all the federal courts, also the district attorneys' and marshals' offices, should be kept open on Saturday forenoons, with such service provided in the buildings occupied as is satisfactory to the judges of the courts concerned.

Committees Continued.—All the present Committees of the Conference, except the Committee on the Library Funds of

Certain Circuit Courts of Appeals and the Committee on the Use of Trial Memoranda in Criminal Cases, were continued.

Committee Appointed.—Pursuant to resolution of the Conference, the Chief Justice appointed the following Committee:

Committee on Probation with Special Reference to Juvenile Delinquency. This Committee will study and make recommendations to the Conference relative to the specific problems of juvenile delinquency discussed by the Attorney General, and relative to the general operation of federal probation. The following were designated as members of this Committee: District Judge Harold M. Kennedy, Chairman, District Judges Bower Broaddus, Chase A. Clark, James P. McGranery, Arthur J. Mellott, Clarence Mullins and George C. Sweeney.

The Chief Justice designated District Judge Paul J. McCormick as a member of the Committee on the Court Reporting System to succeed District Judge A. F. St. Sure, resigned.

The Chief Justice appointed District Judge John McDuffie as an additional member of the Committee on the Statutory Definition of "Felony."

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

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

For the Judicial Conference:

FRED M. VINSON,
Chief Justice.