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**REPORT  
OF THE PROCEEDINGS  
OF A  
SPECIAL MEETING  
OF THE  
JUDICIAL CONFERENCE OF THE  
UNITED STATES**

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**MARCH 24-25, 1949  
WASHINGTON, D. C.**

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**TITLE 28, UNITED STATES CODE, SECTION 331.**

**§ 331. Judicial Conference of the United States.**

The Chief Justice of the United States shall summon annually the chief judges of the judicial circuits 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.

If the chief judge of any circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the conference and advise as to the needs of his circuit 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 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.

The Judicial Conference of the United States, pursuant to action taken at its regular annual meeting in September, 1948, reconvened, upon the call of the Chief Justice, on Thursday, March 24, 1949. The following were present:

The Chief Justice, presiding.

Circuit:

District of Columbia.....	Chief Judge Harold M. Stephens.
First.....	Chief Judge Calvert Magruder.
Second.....	Chief Judge Learned Hand.
Third.....	Chief Judge John Biggs, Jr.
Fourth.....	Chief Judge John J. Parker.
Fifth.....	Chief Judge Joseph C. Hutcheson.*
Sixth.....	Chief Judge Xenophon Hicks.
Seventh.....	Circuit Judge F. Ryan Duffy.**
Eighth.....	Chief Judge Archibald K. Gardner.
Ninth.....	Chief Judge William Denman.
Tenth.....	Chief Judge Orrie L. Phillips.

\*Judge Hutcheson, because of previous engagements which could not conveniently be rearranged, was excused from attending the second day of the conference, March 25th.

\*\*Chief Judge J. Earl Major of the Seventh Circuit was unable to attend; Circuit Judge F. Ryan Duffy attended in his stead.

Chief Judge Bolitha J. Laws of the District Court, District of Columbia, and District Judge Campbell E. Beaumont of the Southern District of California, attended various sessions of the Conference and participated in some of its discussions.

Henry P. Chandler, Director, Elmore Whitehurst, Assistant Director, Will Shafroth, Chief, Division of Procedural Studies and Statistics, and Edwin L. Covey, Chief, Bankruptcy Division, and members of their respective staffs, all of the Administrative Office of the United States Courts, were in attendance throughout the meeting.<sup>1</sup>

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

## FEDERAL COURTS—JUDGESHIPS

### DISTRICT OF COLUMBIA CIRCUIT

*Court of Appeals.*—Chief Judge Stephens urged the Conference to reconsider its action with respect to additional judgeships for

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

this court and to approve its request for three additional judgeships, in lieu of the two approved by the Conference at its September, 1948, meeting.

It was stated that, since the last meeting of the Conference, a further study of the subject matter had been made by the court and it was unanimous in the conclusion that three additional judges were not only needed, but necessary if currency of docket was to be reached and maintained. In the court's opinion, the volume of present business was, in itself, sufficient justification for the requested increase in manpower, and, with the greater case docketing that an analysis of current and anticipated business in the lower courts of the circuit reflected, it was warranted.

Upon consideration of the statistical data submitted and other relevant factors, the Conference recommended that there be created three additional permanent judgeships for the United States Court of Appeals for the District of Columbia Circuit.

*District Court.*—Chief Judge Laws of the District Court, District of Columbia, appealed to the Conference to lend its approval to the bill recently introduced in the House of Representatives (H. R. 3239) providing for three additional permanent judgeships for this court.

Statistics as to case load, median time averages, and other material data were submitted to and considered by the Conference. Relevant factors, impossible of reflection in the statistical presentation, were presented and stressed by Judge Laws and Chief Judge Stephens. A review of results achieved through the adoption of improved procedural methods, as well as the over-all operational plan, indicated a high degree of efficiency in the management and administration of the court's affairs.

It was the view of the Conference that the three additional judgeships provided for this court under the provisions of H. R. 3239 were justified. The Conference, thereupon, approved the bill and recommended its prompt enactment.

#### SIXTH CIRCUIT

*Northern District of Ohio.*—Chief Judge Hicks requested the Conference to recommend the prompt elimination of existing statutory provisions (55 Stat. 148) under which the filling of the first vacancy occurring in this district is prohibited. In support of his request, Judge Hicks reviewed the volume of business in this

district since the last judgeship was authorized, May 1, 1941, and submitted statistical data for the consideration of the Conference.

It was the sense of the Conference that experience has indicated beyond doubt the necessity for the present four district judgeships in this particular district and that they should all be on a permanent basis. Whereupon, the Conference approved the recommendation proposed.

#### NINTH CIRCUIT

*Southern District of California.*—District Judge Campbell E. Beaumont and Chief Judge William Denman asked the Conference to reconsider its action upon the recommendations for additional judgeships for this district and to approve the request for two additional judgeships, in lieu of one approved by the Conference at its September, 1948, meeting.

The Conference was informed of certain developments occurring since its last meeting which have materially affected the adequacy of the "judge-power" of the court; statistics and other relevant data were submitted which indicated a continuation of the increased trend in case docketing and volume of business.

Upon consideration of the statements and data presented, the Conference approved the request for two additional judgeships for this district.

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The Conference directed that the Congress be immediately notified of its action with respect to the foregoing federal judgeships, and urged the prompt enactment of legislation necessary to achieve the results desired.

#### SUPPORTING PERSONNEL OF THE COURTS

*Salaries—Director and Assistant Director of the Administrative Office.*—The Conference was informed that increases in the salaries of these officers are carried in the bill pending in Congress covering salary increase for officers in the Executive Branch of the Government.

*National Park Commissioners.*—The Director stated that, effective July 1, 1943, this group of employees was transferred from the appropriations for the Interior Department to the appropriations for the Judiciary, and brought under the general promotional plan for within-grade promotions for the supporting personnel of the courts which had been adopted by the Conference.

In view of the provisions of Sec. 634 (Title 28 U. S. Code) of the new Judicial Code under which the salaries of these employees are "to be fixed by the district courts with the approval of the Judicial Conference of the United States," and the divergency of views that has arisen between the interested district judges concerning various problems incident to the salary question, it appeared advisable to have the subject-matter reopened and a further study made for the purpose of ascertaining a proper salary-employment plan for these employees.

Upon motion, the Conference directed that the Committee on Supporting Personnel make a study of the problems involved and submit a report, together with recommendations, to the Conference at its next meeting. The Director was authorized to contact the various district judges having this class of employee within their districts to obtain their views and suggestions, and to make a report thereon to the Committee of the Conference to which the matter had been referred.

*Changes in court reporting arrangements.*—Chief Judge Denman submitted for Conference consideration a proposal to change the present arrangements for court reporters for the Districts of Idaho and Montana so that the present combination positions of secretary-law clerk-court reporter will combine only the duties incident to those of secretary and court reporter. Reports relative to the present situation were submitted by Judge Denman and the Director. It was stated that due to the volume of business in each district, the work would be materially expedited and the general efficiency substantially improved in the event the proposed changes were authorized.

Thereupon, the Conference directed that, effective immediately, the courts in each of the districts specified be authorized to make the proposed changes in the position arrangements, and that the salary for each of the new secretary-court reporter positions be \$5,000 per annum.

*Commission on mental health—District of Columbia.*—Chief Judge Stephens presented the recommendation of the Judicial Council of the District of Columbia Circuit that legislation be enacted providing for the transfer of the budgetary affairs of this agency to the Administrative Office. It was pointed out that the members of this commission are appointed by the Judges of the District Court; that their duties are to examine into the sanity

of persons alleged to be insane, and, in case of their insanity, to make recommendations in reference to their care and the mode of defraying the expense involved. Under statute, they are required to act in all respects under the direction of the Equity Court, which means the District Court, and their recommendations are filed with the court, and determination of action to be taken is for the court. In other words, the transfer would, in effect, place the budgetary affairs of this commission, which is truly an arm of the District Court, under the proper supervisory agency.

The recommendation had the full concurrence of both the District Court and the Judicial Council.

The Conference concurred in the recommendations presented, and directed that efforts be made to secure the enactment of such legislation as may be necessary to carry them out.

*Retirement Act—Excluding temporary employees therefrom.*—The Assistant Director advised that under existing provisions of the Retirement Act all employees of the Judicial Branch, regardless of tenure of service, are brought within the purview of the Act. He urged that, in order to eliminate the useless labor and expense incurred incident to the collecting and accounting for retirement deductions from the salaries of temporary employees, which deductions are required to be refunded, the Administrative Office be authorized to seek the necessary legislative authority whereby such employees will be excluded from the provisions of the Retirement Act. He pointed out that such authority exists in the Executive Branch, and, for all practical purposes, there is no reason why similar authority should not be extended to the Judicial Branch.

The Conference authorized the Director to make effort to secure the desired legislative authority in whatever manner he deemed the most practical and expedient.

### **WAYS AND MEANS OF ECONOMIES IN THE OPERATION OF THE COURTS**

*Court Records—Maintenance and Keeping of.*—The Assistant Director called attention to the request of the Chief Judge and Clerk of the United States District Court for the District of Columbia for authorization to install a system for microfilming certain records of the Court. In this connection, it was stated that, since

July 1, 1948, the Administrative Office, in conjunction with the Clerk of this court, had been conducting an experiment in micro-filming certain of the court's records, and the results obtained therefrom exceeded their utmost expectations. As an illustration of some of the economies which would ensue from the installation of the proposed system, it was estimated that the cost of the new system would be less than one dollar for every twenty-five dollars of costs under the present system; that one file cabinet, approximating 3' x 3' x 6' in size, would provide adequate and sufficient storage space for the records involved for thirty-five years—the records under the present system would require 1,300 cubic feet of space, whereas, under the new system, they would require only 54 cubic feet; that the business of the court would be considerably expedited, and the services to the bar and litigants materially improved. Samples of the film records, and reproductions therefrom were displayed—the mechanics of operation were thoroughly discussed and explained by the Assistant Director.

After consideration of the whole subject-matter, the Conference authorized the issuance of the following directive by the Director.

Rule 79 (b) of the Federal Rules of Civil Procedure, as amended, provides as follows:

The Clerk shall keep in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of Senior Circuit Judges may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

Rule 55 of the Federal Rules of Criminal Procedure provides as follows:

The Clerk of the district court and each United States Commissioner shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of Senior Circuit Judges, may prescribe.

Pursuant to these rules, I, as Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, prescribe that the Clerk of the United States District Court for the District of Columbia, in lieu

of minute books and order books, shall maintain microfilm reproductions, suitably indexed, of the following records of his office:

1. In all civil cases and proceedings except adoption proceedings, each judgment and order.
2. In criminal cases and proceedings, each judgment, order, indictment, bond, and all other formal entries of Court transactions.

### BANKRUPTCY ADMINISTRATION

The Chief of the Bankruptcy Division of the Administrative Office, Mr. Edwin L. Covey, presented the following matters for the consideration of the Conference:

*Appointment of Referees.*—A recommendation for the appointment of a part-time referee, in addition to the present full-time referee, for the District of Connecticut, with headquarters at Bridgeport at a salary of \$3,500 per annum.

The Conference deferred action upon this recommendation until its next meeting. It directed that additional data relating to the volume of business in the area proposed to be served by this part-time referee be submitted at that time.

*Changes in Bankruptcy Arrangements—Northern District of California.*—A recommendation that the counties of San Francisco, San Mateo, and Santa Cruz be incorporated in the territory to be served by the referees located at San Francisco and Oakland.

The Conference directed that the suggested change be made.

*Southern District of California.*—A recommendation that Ventura and San Louis Obispo be designated as additional places of holding court for the referees serving the central division of this district.

The Conference directed that the suggested designations be made, effective immediately.

*Salaries of Referees—District of Nevada.*—A recommendation that the salary of the part-time referee for this district be increased from \$1,800 to \$2,400 per annum, effective April 1, 1949.

Upon consideration of the data submitted with respect to the increase in volume of business; the increase in number of hours required for the proper disposition of the business involved; the character of the case load; the territory served, and the time the referee is required to be away from "home" headquarters, the Conference approved the proposed increase in salary for the referee in this district, effective April 1, 1949.

*Fees—Refund of Filing.*—A recommendation that the resolution adopted by the Conference at its last meeting with respect to the effect of dismissal of a bankruptcy proceeding upon the filing fees paid, be amended, so that the resolution, as amended, will read as follows:

Resolved, It is the sense of the Conference that no part of the filing fee of \$45.00 paid upon the filing of a bankruptcy proceeding is refundable upon the subsequent dismissal of the proceedings, *except the \$5.00 trustee's fee deposited in cases where no trustee is appointed*, and that opinions rendered by the Administrative Office relating to the collection of additional and special charges for the referees' salary and expense funds in dismissed cases should be distributed to all referees and clerks of courts for their information. [Amendatory language in italics.]

Mr. Covey pointed out that the reason for the amendment was the fact that the resolution as previously adopted contemplated only those proceedings dismissed *after* the appointment of a trustee which is the usual situation. Occasionally, however, a proceeding will be dismissed without a trustee being appointed. Section 48c of the Bankruptcy Act, as amended (U. S. C. Title 11, c. 5, § 76 (c)), provides that the trustee's fee of \$5.00, which is part of the filing fee of \$45.00, shall be paid to him after his services are rendered. It has been the practice in all cases administered without a trustee, to refund this \$5.00 to the party paying the filing fee.

The Conference adopted the resolution as amended and authorized its immediate promulgation.

### LEGISLATION AFFECTING THE JUDICIARY

*Administrative Court of the United States.*—The attention of the Conference was directed to Senate Bill No. 684, introduced in the Senate of the United States by Senator Pat McCarran on January 27, 1949, "to improve the administration of justice by the creation of an Administrative Court of the United States".

It appearing that the proposed legislation would affect various courts of the federal judiciary, it was the sense of the Conference that the proposal should be submitted, in accordance with the policy of the Conference, to all district and circuit Judges, so that the Conference may be informed of their views, and the Director was authorized and directed to forward immediately a copy of the bill to each of them.

The Conference further directed that a Committee of the Conference be designated by the Chief Justice for the purpose of correlating the views and opinions of the various judges, and to make recommendations to the Conference with respect to what action, if any, should be taken concerning the proposal.

*Sound Recording of Court Proceedings.*—H. R. 3475, introduced in the House of Representatives by Congressman Hobbs under date of March 11, 1949, "to provide for the recording of the proceedings in one of the courtrooms of the United States District Court for the District of Columbia by sound-recording equipment; and for the reproduction of the sounds of such proceedings, in whole or in part, in the United States Court of Appeals for the District of Columbia and in the Supreme Court of the United States upon the review of any such case" was considered by the Conference.

The Conference directed that the subject-matter be referred to a Committee of the Conference to be designated by the Chief Justice for a study and consideration insofar as it concerns the district courts and courts of appeal, and that such Committee submit a report and recommendations to the Conference.

*Picketing of the Courts.*—The subject of picketing the courts and a bill introduced in the House of Representatives by Congressman Boggs, of Louisiana, under date of March 10, 1949, "to prohibit the picketing of courts" (H. R. 3438), were considered by the Conference. Whereupon, the following resolution was adopted:

*Resolved*, That we condemn the practice of picketing the courts, and believe that effective means should be taken to prevent it;

That the subject matter be referred to the district and circuit judges for discussion for the purpose of obtaining their views; and

That a Committee of the Conference be appointed to make a study of the matter and to make recommendations to the Conference with respect to action to be taken thereon.

### LEGISLATION PROPOSED

*Rules—Manner of promulgating rules of procedure.*—The Conference Committee on the Revision and Codification of the Judicial and Criminal Codes filed an interim report advising that in the course of its work in collaborating with the revision staff of the Congressional committees in preparation of the bill for the

correction of errors and ambiguities in Titles 18 and 28 of the United States Code, two matters had come to its attention with respect to which it submitted definite recommendations for the consideration of the Conference.

The first recommendation related to the requirements prescribed by the code for the promulgation of rules of procedure in criminal, civil and admiralty cases, respectively, by the Supreme Court. The Committee stated that in its work it had been forcefully brought home that the procedural requirements of the statute for the adoption of rules and/or amendments thereto is unduly cumbersome and burdensome and involves inordinate delay in their effectuation.

It was emphasized that, while amendments to the rules may be adopted by the Supreme Court at any time, the statutes specify that they may not be put into force until after they have been reported (through the Attorney General) to Congress "*at the beginning of a regular session and until after the close of such session.*" As the *regular sessions* under law begin on January 3rd, this means that the amendments must be adopted and transmitted to the Congress prior to January 3rd, and the amendments so adopted, regardless of their nature, cannot go into effect until some considerable time later, averages of recent Congresses show a period of from eight to eleven months. Further, if the need for a change in the rules should develop *any* time after "the beginning of the regular session", say on January 4, a correcting amendment could not, in the first place, be submitted to the Congress until the beginning of its *next regular session*, or the following January 3rd, and, of course, would not become effective until the adjournment of that session, or, based on recent experience, until approximately one and three quarters years later.

The Committee called attention to the fact that the Congress originally stipulated for the full period of the regular session in order that it could have ample time to consider the Rules of Civil Procedure *if they should combine law and equity, a very major controversial change.* Inasmuch as comprehensive Criminal and Civil Rules are in effect today and the only amendments that are likely to arise are those covering particular problems within the framework of existing rules, the Committee was of the opinion that a lesser period of time would suffice for not only the proper Congressional consideration, but to afford those interested in the amendments to make known their views with respect thereto.

Under § 132 of the Legislative Reorganization Act of 1946 it is the plan for Congress to adjourn sine die not later than July 31st of each year, unless it otherwise provides. Assuming July 31st as the adjournment date, this would mean that amendments to the rules could be reported to the Congress as late as May 1st and the Congress would still have three full months of sessions in which to consider them before adjournment. It was the sense of the committee, considering the character of amendments that ordinarily could be anticipated in view of the existing rules, a ninety-day period would be ample for all concerned. Accordingly, the committee recommended that the Conference propose to the Congress the enactment of an act amending § 3771 of Title 18 U. S. C., and §§ 2072 and 2073 of Title 28 so as to provide that rules of procedure adopted by the Supreme Court may be reported to Congress at any regular session up to but not later than May 1st and may take effect ninety days after the date on which they are so reported.

In addition to the foregoing suggested changes, the Chief Justice should be substituted for the Attorney General as the agent for transmitting the rules to the Congress. It was urged that the present provisions under which the Attorney General is required to act as the transmitting agent between the Supreme Court and Congress is wholly unnecessary and is inconsistent with the plan of Title 28 under which the Attorney General no longer acts in any capacity as an administrative officer for the Federal courts.

The Conference recommended that efforts be made to have the necessary legislation enacted.

The second recommendation related to a revision of the Admiralty Rules. The committee reported that a study and review of the present Admiralty Rules indicated that they are no longer wholly adequate or sufficiently comprehensive, and, therefore, recommended that immediate steps be taken for a full revision of such rules for the consideration of the Supreme Court under § 2073 of Title 28, U. S. Code.

The Conference was advised that this matter was, at the present time, under consideration by the Supreme Court. In view of this, no action was taken by the Conference upon the recommendations of the Committee.

### COMMITTEES

*New Committees.*—Pursuant to the direction of the Conference, the Chief Justice designated the following committees:

Committee to make a study and report together with recommendations on legislation proposed "to prohibit picketing of the court": Circuit Judge F. Ryan Duffy, Chairman, District Judges Johnson J. Hayes, Gunnar H. Nordbye, Murray Hulbert, Claude McCulloch, Robert N. Wilkin, and John D. Clifford, Jr.

Committee to make a study and report, with recommendations, on legislation proposed to have court proceedings recorded by sound: Chief Judge Bolitha J. Laws, Chairman; Circuit Judge Bennett Champ Clark, and District Judges T. Alan Goldsborough, James W. Morris, and David A. Pine.

Committee to make a study and report, with recommendations, on the legislation proposed to create an Administrative Court: Chief Judge Joseph C. Hutcheson, Jr., Chairman: Circuit Judges D. Lawrence Groner and Archibald K. Gardner, and District Judges George C. Sweeney, Michael J. Roche, Arthur F. Lederle, Simon H. Rifkind, James P. McGranery, and Carl A. Hatch.

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

For the Judicial Conference of the United States:

FRED M. VINSON,  
*Chief Justice.*

WASHINGTON, D. C., April 20, 1949.