

## REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1944.

---

The Judicial Conference convened, pursuant to 28 U. S. C. § 218, on September 26, 1944, on the call of the Chief Justice, and continued in session for four days. The following members of the Conference were present:

The Chief Justice, presiding,  
First Circuit, Senior Circuit Judge Calvert Magruder,  
Second Circuit, Senior Circuit Judge Learned Hand,  
Third Circuit, Senior Circuit Judge John Biggs, Jr.,  
Fourth Circuit, Senior Circuit Judge John J. Parker,  
Fifth Circuit, Senior Circuit Judge Samuel H. Sibley,  
Sixth Circuit, Senior Circuit Judge Xenophon Hicks,  
Seventh Circuit, Senior Circuit Judge Evan A. Evans,  
Eighth Circuit, Senior Circuit Judge Kimbrough Stone,  
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur,  
Tenth Circuit, Senior Circuit Judge Orrie L. Phillips,  
District of Columbia, Chief Justice D. Lawrence Groner.

Judge Sibley was unable to attend the session on the last day.

The Attorney General and the Solicitor General, with members of their staff, were present at the convening of the Conference.

Henry P. Chandler, the Director of the Administrative Office of the United States Courts, Elmore Whitehurst, the Assistant Director, Will Shafroth, the Chief of the Division of Procedural Studies and Statistics, and other members of the staff of the Administrative Office attended the Conference to aid in its deliberations.

Representative Hatton W. Sumners, Chairman of the Judiciary Committee of the House of Representatives, was present on invitation of the Conference for a part of the first day's session and discussed with the Conference pending and prospective legislation affecting the federal judicial system. The Conference regretted that as Congress was not in session, other members of the Senate and House Judiciary Committees were unable to accept the invitation of the Conference to be present.

On the invitation of the Conference, the following were present at various times: Circuit Judge Albert B. Maris, Senator Homer T. Bone, appointed Circuit Judge for the Ninth Circuit, Justice Justin Miller of the United States Court of Appeals for the District of Columbia, District Judges John C. Knox and Delbert E. Metzger, Referees in Bankruptcy Carl D. Friebolin, Esq., and Peter B. Olney, Esq., Commissioner Clyde B. Aitchison of the Interstate Commerce Commission, and Frank W. Stonecipher, Esq., Chairman of the Committee on Bankruptcy and Liquidation of the Section on Corporation, Banking and Mercantile Law of the American Bar Association.

*Statement of the Attorney General.*—The Attorney General addressed the Conference with respect to various matters of importance to the work of the federal judiciary. He recommended that Judicial Code, § 215, be amended, so as to provide that five Justices of the Supreme Court should constitute a quorum of that Court. He renewed his recommendation of the referees' bill, H.R. 1107, with the amendments suggested by the Conference, of the public defender bill, H.R. 676, and of the federal corrections bills, S. 894, 895, H.R. 2139, 2140, all proposed or approved by the Conference in previous years, and of S. 919, which would provide for a single trial by jury in condemnation cases in place of the present procedure prevailing in some states by which the amount of the award is determined by commissioners with the right in each party to obtain a trial de novo before a jury. In connection with the public defender bill, he also spoke approvingly of the report of a committee of the Conference presently to be referred to, recommending that the district courts be empowered in their discretion to provide either for salaried public defenders, or under specified conditions for compensation for counsel appointed to represent indigent defendants in particular cases.

He suggested that the present arraignment statutes, which do not provide a uniform period within which ar-

raignment must follow arrest, be replaced by some uniform requirement that federal officers take an arrested person before a committing officer for arraignment "within a reasonable time". He also recommended that the statute, 28 U. S. C. § 832, be amended so as to permit aliens to secure the benefits of the provisions regulating proceedings in forma pauperis. He urged that the Government be given the right to appeal in criminal cases where a defendant's motion to dismiss the indictment, made after the case goes to trial, is granted for technical defects in the indictment. He also suggested that in cases where appeals from the district courts to the Supreme Court are now taken by allowance of an appeal, provision should be made, either by statute or by rule, for taking the appeal by notice of appeal, so as to make this practice uniform with that in appeals to the circuit courts of appeals.

The Attorney General also referred to the fact that there were then only three vacant judgeships in the district courts, and one in the United States Court of Appeals for the District of Columbia. He pointed out that 435,483 aliens were naturalized in the past year, more than in any previous year, and that of these about 150,000 were former citizens of countries with which the United States is at war. He commended the work of the courts in disposing of the large arrearage of these cases, and placing them on a current basis. He indicated that this did not mean that the courts had relaxed the standards for naturalization, since about 4½% of the applications were refused, as against 1% in peace time. He also expressed general approval of the report of the Committee of the Conference on the Treatment of Insane Persons Charged with Crime in the Federal Courts.

*The Administration of the United States Courts.—Report of the Director.*—The Director submitted to the Conference his fifth annual report, reviewing the activities of the Administrative Office for the fiscal year ended June 30, 1944, including the report of the Division of Procedural Studies and Statistics. The Conference

approved the Director's report and ordered it released for publication.

*Cases Begun, Disposed of, and Pending, in the District Courts.*—The Director's report presented detailed statistical data concerning the work of the federal courts. In addition each Senior Circuit Judge reported to the Conference on the work of the courts in his circuit.

The following table indicates for each of the last four fiscal years, ended on June 30, the number of civil cases commenced in the District Courts (including those of the Canal Zone and the Virgin Islands), and the number of cases in those courts terminated during each year, as well as the number of cases pending at the close of each year:

<i>Fiscal Year ended on June 30</i>	<i>Commenced</i>	<i>Terminated</i>	<i>Pending</i>
1941 .....	38,477	38,561	29,394
1942 .....	38,140	38,352	29,182
1943 .....	36,789	36,044	29,927
1944 .....	38,499	37,086	31,340

The war has continued to have a marked effect on the work of the federal courts. The increase in number of cases commenced in the last fiscal year was due to the increased number of government civil cases, which rose from 19,072 in 1943 to 20,895 last year. This increase in turn was more than accounted for by an increase in OPA cases, of which 6,707 were filed in 1944 as compared to 2,230 the previous year. The number of condemnation cases commenced has begun to decline, having fallen from 4,975 in 1943 to 2,748 last year, although there are still many such cases pending.

The number of private civil cases commenced in the fiscal year ended June 30, 1944, 17,604, was almost the same as in the previous year, when 17,717 cases were begun. The number of new bankruptcy cases again showed a sharp decrease, falling 44% from 1943 to 1944, and 62.5% from 1942 to 1944. And during the last fiscal year there was also a large increase over the previous year in the number of persons naturalized in the federal courts, from 226,800 to 320,165, although the number of petitions filed showed a small decrease.

An increase in war offenses has caused an increase in criminal prosecutions begun, from 36,588 in the previous fiscal year to 39,621 last year. OPA prosecutions increased from none in 1942 to 2,311 in 1943 and 4,565 last year. Selective Service cases, however, decreased from 7,934 in 1943 to 6,751 in 1944.

*The Dispatch of Judicial Business.—Additional Judges.*—The reports of the Director and the Senior Circuit Judges indicated that in general during the past year, the federal courts expeditiously disposed of cases pending before them. The median time from filing to disposition of cases terminated in the district courts, in which a trial was held, was 10.5 months, a slightly shorter interval than in the previous year. The median time for disposition of appeals by the circuit courts of appeals, in cases terminated after hearing or submission, remained 6.5 months.

As in past years the Administrative Office has acted as a clearing house for information with respect to the availability of judges for assignment to districts in which the dockets are congested and has cooperated with the Chief Justice in securing the necessary consents to the assignments made. During the past year the Chief Justice made five designations of circuit judges to serve in other circuit courts of appeals, and twenty-nine designations of judges to sit in district courts outside their circuits.

Even with these assignments it was not possible to satisfy the need for additional judges in some of the circuits, particularly the Second and Third, and in the District of Columbia. The Circuit Court of Appeals for the Third Circuit has been in particular need of this assistance because of the increased business pending there and because Circuit Judge Maris also serves as Chief Judge of the Emergency Court of Appeals. In addition several district courts require the services of additional permanent judges. That these may be provided for, the Conference recommended the passage of the following bills now pending in Congress: S. 1559, providing for an additional circuit judge for the Third Circuit; H.R. 3750,

providing for the appointment of an additional circuit judge for the Third Circuit, and also permitting the filling of the first vacancy in the office of district judge for the Eastern District of Pennsylvania; S. 932 and H.R. 2395, providing for the appointment of an additional district judge for the Eastern District of Pennsylvania; S. 1817, providing for an additional judge for the District of Delaware; H.R. 3731, providing for the appointment of an additional judge for the District of New Jersey; H.R. 3732, providing for the repeal of the prohibition against the filling of the vacancy in the District of New Jersey caused by the death of Judge Avis. The Conference also recommended the repeal of the prohibition against filling the vacancy in the district court for the Southern District of New York caused by the retirement of Judge Woolsey.

The Conference considered the following bills, and found no necessity for their passage at the present time: S. 716, providing for an additional circuit judge for the Seventh Circuit; S. 704, providing for an additional district judge for the District of North Dakota; H.R. 1619, providing for the appointment of an additional district judge for the District of Minnesota; H.R. 4725, providing for the appointment of an additional district judge for the Eastern District of Washington.

The Conference also recommended that legislation be enacted permitting a district judge to sit by designation in the Circuit Court of Appeals in a Circuit other than that of his district.

*Administration of the Probation System.*—The Director's report called attention to an increase of 11% in the number of persons placed on probation by the courts in the fiscal year ended June 30, 1944, as compared with the number in the previous year. The total number of persons under supervision at the end of the year was 30,153, a small decrease from the number in 1943. This is the result of the entry into the armed forces of a larger number of probationers, of whom only a little more than one-

half of one per cent are known to have been dishonorably discharged, while six received decorations for exceptionally meritorious service.

The report emphasized the importance of maintaining the high standard of qualifications of probation officers recommended by the Conference in 1942, since the trained intelligence and experience in personal guidance, required in the supervision of probationers at any time, will be particularly needed in coping with the problems of adjustment that are likely to follow the war. The report points out that of forty new probation officers appointed in 1944 only twenty-eight met the educational standard, and only twenty-nine, the standard of experience recommended by the Conference. It is believed that this is in part due to the difficulty of finding suitably qualified persons at the prevailing compensation. The Conference last year recommended that sufficient funds be appropriated to permit a reclassification of probation officers and clerks, but Congress failed to provide the funds necessary for this purpose. The report expressed the hope that Congress will make the requested appropriation for the coming year.

*Supporting Judicial Personnel.—Law Clerks.—Bailiffs.*  
—At its last session, the Conference approved the plan recommended by the Committee on Supporting Judicial Personnel, of which Judge Biggs is the chairman. By that plan each circuit and district judge would receive a maximum allotment of \$6,500 for services of secretaries and law clerks, except that the allotment would be \$7,500 for each senior circuit judge and for each senior district judge in districts having at least five judges. The Conference at that time authorized the committee to present to the appropriation committees of Congress recommendations for an appropriation to place the plan into operation. The committee reported that although the Senate had amended the judiciary appropriation bill to provide \$372,115 for these purposes, the amendment was not concurred in by the House, and the Senate recessed. The

Conference continued the committee and authorized it to present to Congress again the recommendation that a suitable appropriation be made.

The Committee on Law Clerks for Judges, of which Judge Knox is chairman, was continued, and was requested to cooperate with the Committee on Supporting Judicial Personnel in securing an appropriation sufficient to provide a law clerk for each district judge desiring and needing such assistance.

Justice Miller presented to the Conference the resolution of the Judicial Conference of the District of Columbia requesting that the Committee on Supporting Judicial Personnel be authorized to consider the classification and promotion of certain administrative officers of the United States courts. The Conference referred to the committee for its consideration the subject of the classification and promotion system for Assignment Commissioners and assistants, Motions Commissioners and Domestic Relations Commissioners of the District Court for the District of Columbia, and for other similar or equivalent officers throughout the federal court system.

Judge Maris, chairman of the Committee on Bailiffs, reported to the Conference that the bailiffs' bill, H.R. 4065, recommended by the committee and the Conference, is pending on the Consent Calendar of the House of Representatives. The Conference requested the committee to continue its efforts to procure enactment of the measure.

At its 1941 session the Conference instructed the Director to establish a plan of promotions for judicial employees, including automatic one-step within-grade promotions after specified periods of satisfactory service. The plan also provided for two-step within-grade promotions "for exceptionally meritorious service" after these periods of service. The Director reported to the Conference that in practice this latter standard was extremely difficult to apply without unfair discrimination among those recommended for two-step promotions, and asked the Conference for directions. In view of these difficulties, the Conference decided to eliminate this part of the plan.

*Bankruptcy Administration.*—Judge Phillips presented the report of the Committee on Bankruptcy Administration. The committee recommended that the Conference renew its approval of the referees' bill, H.R. 1107, with the amendments approved last year. These amendments strike out § 34(b), which limited the discretion of the district judges in the reappointment of referees, and substitute for the present provisions relating to the resignation and retirement of referees, a provision according to full-time referees and full-time employees of referees' offices the benefits of the Civil Service Retirement Act of May 29, 1930, as amended. The committee also recommended that the bill be amended to permit part-time referees to act also as U. S. Commissioners. The committee emphasized, as did the Director in his annual report, that the bill was urgently needed at the present time, in view of the marked decrease in bankruptcy cases. This has resulted in drastic reductions in the compensation of referees and in the exhaustion or near exhaustion of indemnity funds for the payment of the expenses of the referees' offices. The committee believes that passage of the bill will avoid the abandonment for lack of funds to maintain them, of a substantial number of referees' offices, which will be required for the expected increase in bankruptcy cases after the war emergency passes. Referees Friebolin and Olney and Mr. Stonecipher urged the Conference to renew its approval of the referees' bill with the present § 34(b) and the original retirement provisions included. Upon further consideration the Conference approved the bill with the amendments recommended by the committee.

The Conference also approved the following recommendations of the committee: that there be no change in the provisions of §§ 17(1) and 64a(4) of the Bankruptcy Act, as to the discharge or priority of tax claims; that § 57(j) be amended to stop the running of interest and penalties on tax claims at the date of the filing of the petition in bankruptcy or debtor proceedings; that § 116 of Chapter X be amended to insert a new subsection (5) to

permit the court in a Chapter X proceeding to determine the legality and amount of taxes owing by the debtor to the United States or to any state or its subdivision whether or not an order has been entered directing that bankruptcy be proceeded with pursuant to the provisions of Chapters I to VII, inclusive; that § 64a(1) be amended to provide that where a Chapter X, XI, XII or XIII proceeding is superseded by liquidation, the expenses of liquidation may, in the discretion of the court, be given priority over expenses of administration prior to the entry of the order for liquidation; that the Borah Act, 28 U. S. C. § 572(a), be not repealed; and that §§ 156 and 159 of the Bankruptcy Act, requiring the appointment of an independent trustee where the amount of liabilities exceeds \$250,000, be not amended to require such appointment only where the amount of liabilities exceeds \$750,000.

The Conference, on motion of Judge Phillips, requested the committee to continue its consideration of a bill providing for conditional discharges in certain cases. The Conference received from the committee a recommendation for the enactment of a bill to provide that debts incurred after the granting of a discharge or confirmation of a plan should, if the discharge or confirmation be revoked, have priority over debts which were provable in the proceeding prior to the discharge or confirmation. The Conference directed that the recommendation be circulated among the circuit and district judges and others concerned, and an expression of their views requested.

The Conference approved the recommendation of the committee that referees be urged to purchase their supplies and equipment for official use, through the Procurement Division of the Treasury Department, thus securing substantial savings and reducing the overhead cost of operating their offices. The Conference also approved the committee's recommendation that the Administrative Office, in order to prevent the accumulation of deficits in the indemnity funds in those referees' offices where the indemnity rule is not providing sufficient funds for their

maintenance, take up with the judges of the district and the circuit council of the circuit, where such offices are located, the matter of providing for a consolidation of offices or the adoption of other measures which will meet the emergency.

The committee's report, as well as the Director's report, pointed out that much valuable space in the Clerks' offices is taken up by old and useless files in bankruptcy and other cases. The Director stated that the Administrative Office is studying plans for the disposal of much of this material under the Act of July 7, 1943. The committee recommended that bankruptcy case files be destroyed in all no-asset cases and in asset cases not involving real estate at the end of ten years after the cases are closed; and that in asset cases involving real estate the proofs of claim and cancelled checks be destroyed at the end of ten years and the remainder of the files at the end of twenty years after the close of such cases. The committee further recommended that if these files are to be destroyed, referees should be required to keep and preserve adequate claims registers and dockets, showing such information as the date of filing of claims, their allowance or disallowance, the amount allowed, and the dividends paid. The committee recommended that a uniform referee's docket and claims register be designed for use in all referees' offices. The Conference approved these recommendations. In accordance with a suggestion of the committee, the following were appointed by the Chief Justice as a committee to study the problems presented and to make appropriate recommendations: Referees in Bankruptcy Fred H. Kruse, Northern District of Ohio, Chairman; Henry Bundschu, Western District of Missouri; District Court Clerks F. L. Beers, Northern District of Georgia and George J. H. Follmer, Southern District of New York, and Edwin L. Covey, Chief of the Bankruptcy Division of the Administrative Office of the United States Courts.

*Examination of Offices of the Courts.*—The Conference considered the recommendation of the Judicial Conference

of the Seventh Circuit, that personnel examining the offices of the courts be transferred from the Department of Justice to the Administrative Office of the United States Courts, and decided to take no action on the recommendation.

*Appellate Review of Orders of the Interstate Commerce Commission.*—Judge Phillips, the chairman of the Committee on Appellate Review of Orders of the Interstate Commerce Commission and Other Administrative Orders, submitted the report of the committee, recommending a draft bill giving to the Circuit Courts of Appeals (including the United States Court of Appeals for the District of Columbia) exclusive jurisdiction to enjoin or set aside certain specified orders of the Interstate Commerce Commission, any further review to be by writ of certiorari in the Supreme Court; and providing that, with certain exceptions, the review should be upon the record made before the Commission. After hearing Judge Phillips and Commissioner Aitchison, who is a member of the committee, the Conference directed that the report be received and that it be circulated among the federal judges and other interested persons for their consideration and comment.

*Court Reporters.*—The conference, pursuant to § 5a(c) of the Judicial Code, added by § 1 of Public Law 222 of the 78th Congress, authorized the following salaries and duties of reporters for the district courts in the several districts listed below, in lieu of those fixed at the Special Session of the Conference on April 15, 1944:

For the District of Columbia: twelve reporters at \$4,500,

For the District of Maine; one reporter to act also as secretary to the judge, \$4,000,

For the Middle District of Georgia; one reporter at \$3,600,

For the Western District of Texas; one reporter at \$3,600, and one reporter to act also as secretary to the judge at \$4,500,

For the Eastern District of Tennessee: two reporters at \$3,600.

Pursuant to §5a(a) of the Judicial Code, authorizing the Judicial Conference to formulate from time to time standards of qualifications for court reporters, the Conference adopted the following resolution:

“Be it Resolved:

1. 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;

2. That the method of determining these qualifications in each particular case be left to the appointing court which will have a vital interest in securing for the reporting of its proceedings only persons who are competent and upright. The Conference suggests that the district judges may properly take into consideration the experience of applicants who have been reporting in the courts and may appoint without examination such reporters as are known to them to possess through such experience the necessary qualifications. The Conference also suggests that judges would be justified in treating as qualified without examination:

(1) Persons presently engaged in reporting court proceedings in the locality and known to the appointing court to be competent; (2) persons holding certificates of proficiency from the National Shorthand Reporters' Association, or state or local

shorthand reporters' associations known to the appointing judges to base such certificates on merit; or (3) persons holding certificates of proficiency issued by states which have provisions for the examination and certification of shorthand reporters;

3. That where examination of applicants is necessary to determine their qualifications, the Conference suggests that the appointing judge appoint a committee composed of members of the bar or court reporters or both to conduct such examination."

Pursuant to § 5a(c) of the Judicial Code, the Conference considered the fees for transcripts to be charged by court reporters to all parties, including the United States, as prescribed by the district courts. In reaching its conclusions, the Conference also considered the rates established for official reporters in the state courts in the vicinity of the respective federal courts, and the rates for reporting services now charged in the federal courts. It took into account the fact that the salaries authorized at the April 1944 session of the Conference will exceed the per diem fees previously received by court reporters in the federal courts. After making allowance for the requirement of the statute, that the reporters shall transcribe without charge all pleas and proceedings upon the imposition of sentence in criminal cases and any other parts of the proceedings which may be directed by the court, the Conference decided that in view of the salaries authorized, there should be some reduction in the transcript rates now prevailing in the district courts, in order to reduce the costs of litigation in the federal courts. The Conference approved the fees to be allowed per page conforming to prescribed specifications, as shown in the appendix to this report.

The Conference also adopted the following resolution:

"Resolved: That in the opinion of the Conference it is not practicable to fix a limitation on the amounts which reporters may earn from transcripts; that as

the reporters are required by statute to make in detail reports of their earnings, transcript rates should be adjusted in each District from time to time, with a view of reducing the cost of litigation to as great an extent as possible while allowing a fair compensation to reporters for the work required of them."

The Director submitted to the Conference proposed forms to be used by reporters in filing with the Administrative Office information as to their attendance in court, transcripts furnished and fees charged, as well as their receipts and expenses. The Conference, pursuant to § 5a(d) of the Judicial Code, approved these forms and directed that they be used by the reporters in conformity with the instructions accompanying the forms, in preparing and filing their reports.

The Conference authorized the Committee on Court Reporters to support the recommended appropriations for the court reporter system before the appropriations committees of the Congress.

*Budget Estimates.*—The Conference approved the estimates of expenditures and appropriations necessary for the maintenance of the United States Courts and the Administrative Office for the fiscal year 1946, as submitted by the Director, including estimates of the sums necessary to place in operation the court reporter system.

*Sentencing and Parole of Federal Offenders.*—The Conference adopted the following resolution:

"Resolved: That the Conference renew its approval of the pending sentencing and parole bills (S. 894, 895; H.R. 2139, 2140), as recommended by the Committee on the Punishment for Crime in the Federal Courts, and that the committee be authorized to advocate their passage before Congress; that the committee be authorized to prepare an alternative bill which would make effective the provisions as to youth offenders, and to present such alternative bill to Congress, to the circuit and district judges, to the Attorney General and to other interested persons for their

consideration; that the committee be authorized, if it sees fit, to recommend to Congress that the pending bills be amended to provide that the Board of Corrections to be established under the bills shall be appointed by the President, with the advice and consent of the Senate, and to provide that there be no requirement that the trial judge state the reasons for his action when he fixes a definite sentence different from that recommended by the Board.’’

*Clerks' Fees.*—The Committee on Clerks' Fees, of which Judge Biggs is chairman, reported that Congress had passed and the President had signed H.R. 1569 and 1623 (Public Laws 426 and 427 of the 78th Congress). Public Law 426 gives the Conference power to prescribe the costs and fees to be charged in the Circuit Courts of Appeals, while Public Law 427 prescribes certain flat fees in the district courts and gives the Conference power to prescribe miscellaneous fees in the districts courts. The Conference continued the committee and authorized it to study the question as to what fees should be established pursuant to this legislation, and to recommend schedules of such fees.

*Uniform Time for Appeals from District Courts to Circuit Courts of Appeals.*—The Conference approved the following recommendation of the Committee on Uniform Time for Appeals from District Courts to Circuit Courts of Appeals, of which Judge Stone is chairman:

“That in all civil cases, except where a shorter period may be provided by law and except those wherein the United States is a party, appeals shall be within thirty days after judgment or order denying motions affecting the judgment; and that in cases wherein the United States is a party, the time shall be sixty days; and that this recommendation be addressed to the Committee on Rules of Civil Procedure appointed by the Supreme Court.”

*United States Commissioners.*—The Conference renewed its last year's recommendations of legislation with

respect to United States Commissioners. The Conference also renewed its direction that the Director obtain data as to the number of Commissioners and the qualifications of Commissioners appointed or reappointed since the 1943 Conference.

*Representation of District Judges in the Judicial Conference.*—Judge Phillips submitted the report of the Committee on the Representation of District Judges in the Judicial Conference of Senior Circuit Judges. The report recommends the adoption of the following plan:

“(1) That whenever a matter which affects the district judges or the district courts comes before the Judicial Conference, it be submitted to a committee in which the district judges shall have at least equal representation; (2) that each circuit conference create a legislative committee to be appointed in such manner as the circuit conference shall determine; (3) that the Judicial Conference committee undertake to ascertain through the several circuit legislative committees, the views of the district judges with respect to the matter submitted to the Judicial Conference committee for consideration; (4) that the report of the Judicial Conference committee, including any draft of bills to be recommended to Congress, be submitted to such legislative committees and to each circuit and district judge at least 120 days before submission for action to the Judicial Conference, with the request that the circuit and district judges forward to the Judicial Conference committee, directly or through the legislative committees, their views, suggestions, and criticisms with respect to the report and draft of bills at least 30 days before the meeting of the Judicial Conference; (5) and that such expression of views, suggestions, and criticisms forwarded to the Judicial Conference committee by the circuit and district judges and the legislative committees, together with an accurate summary thereof, be submitted along with the report of the committee to the Judicial Conference; and (6) that the Judicial Conference make no recom-

mentation on the matter until the foregoing procedure has been carried out."

The Conference received the report and instructed the Director to print the report in sufficient numbers to supply a copy to each district and circuit judge and to deliver the copies to the senior circuit judges. The Conference further resolved that each senior circuit judge be requested to submit the report to each district and circuit judge in his circuit, and to ascertain and report their views on the recommendations of the committee.

*Treatment of Insane Persons Charged with Crime in the Federal Courts.*—Upon an interim report by the committee on the subject, submitted by Judge Magruder, its chairman, the Conference adopted the following resolution:

"It appearing from a study by the Bureau of Prisons that a considerable number of persons are being sentenced for federal offenses and sent to prison who, because of their insanity, should not have been convicted, and who, indeed, because of their mental incapacity to participate rationally in their defense, should never have been arraigned or brought to trial, Resolved, that the Conference recommend:

(1) That the district courts make fuller use of the sum provided in the annual appropriation for psychiatric examinations in occasional criminal cases at the instance of the court, for the purpose of procuring a competent and impartial psychiatric examination of accused persons brought before the court, where from the report of the probation officer or from other indications there is reason to believe that the accused may be mentally unsound;

(2) That wherever possible, arrangements should be made with suitable local hospitals and other institutions and agencies whereby in the discretion of the district courts persons charged with crime may be sent temporarily to such institutions for observation and examination as to their mental condition, as is

now done in some districts; and further that the Administrative Office be requested to survey the possibilities of this procedure in the various districts, and if agreeable to the respective district courts to arrange with the officials of local institutions for the use of their facilities for the examination of the mental soundness of persons charged with crime; that for this purpose the Administrative Office be authorized to use the services of the probation officers of the various districts."

The committee was continued and was instructed to study in particular the following matters: (1) psychiatric examinations as a matter of course in a class of cases, to be determined, in which the offenders are most apt to be insane; (2) a procedure in other cases for determining before trial the sanity of an accused person; and (3) the protection of courts from insane litigants and a suitable procedure for dealing with such persons.

*Tort Claims Against the United States and the Procedure for Their Prosecution.*—Judge Stone presented the report of the Committee on Claims Against the United States and the Procedure for Their Prosecution. The Conference approved the following recommendations of the committee:

"1. That exclusive original jurisdiction of suits based on tort claims against the United States be in the District Courts, provided that reasonable notice (the time to be fixed by Congress) of the occurrence giving rise to such claim be served upon the United States attorney in the district in which the case may be brought and provided further that as to claims for \$———— or less (being such amount as the Congress may empower executive departments or agencies to settle) the plaintiff shall have presented his claim to the proper department or agency and either the claim shall have been disallowed by it, in whole or in part, or its action upon the claim shall have been unduly delayed.

2. That the appellate jurisdiction be exclusively in the courts of appeals, with any further review upon writ of certiorari granted by the Supreme Court.

3. That on any appeal from a judgment awarding damages the amount awarded below may be increased or reduced, where in the opinion of the appellate court the amount of the award is clearly wrong."

*Pre-Trial Procedure in the Federal Courts.*—The Conference approved the following conclusions of the Committee to Study the Use of Pre-Trial Procedure in the Federal Courts, as presented by Judge Parker, the chairman of the committee:

"(1) The committee is of the opinion that every civil case in which issue has been joined should be pre-tried before it is assigned for trial, unless there are special circumstances which render such a conference unnecessary or inexpedient, or unless the case is one of such a nature that it appears that pre-trial would be of no advantage.

(2) The committee believes the use of pre-trial procedure in criminal cases should be left to the discretion of the individual judge.

(3) The committee considers that settlement is a by-product of good pre-trial procedure rather than a primary objective to be actively pursued by the judge.

(4) The committee believes that the question of whether the pre-trial conference should be held in chambers or in open court is a matter which each judge should decide for himself. But in every case, wherever the conference is held, the Committee recommends that an order be entered recording the results of the proceedings.

(5) The committee approves of the practice of the great majority of the judges using pre-trial procedure regularly, of holding the pre-trial conference shortly before the actual trial is had, the preferable interval before the trial being not less than one week or more than three weeks. In exceptional cases it may also

be advantageous to call a pre-trial conference immediately after issue is joined.

(6) The committee is impressed with the desirability of drawing up a pre-trial order while the parties are present, setting forth what has been agreed to or accomplished at the hearing.

(7) The committee recommends that the Conference request the Attorney General to call to the attention of all United States attorneys the benefits to be gained through pre-trial conferences and the desirability of their cooperation in securing the advantages of this procedure in government cases.

(8) The committee desires to furnish assistance to district judges wishing to inaugurate pre-trial procedure in their courts or desiring to improve their technique of holding pre-trial conferences, and requests approval by the Conference of a plan for giving such aid, either by sending a judge experienced in pre-trial practice to the district of the judge requesting aid, or by permitting the latter, upon his request, with the approval of his senior circuit judge, to be temporarily assigned to a district where pre-trial procedure is being effectively used.

(9) The committee recommends that copies of this report be sent to every circuit and district judge in the United States and that the Committee be continued."

*Diversity Jurisdiction.*—The Conference considered a proposal of Circuit Judge William Denman, endorsed by the Judicial Conference of the Ninth Circuit, that federal court diversity jurisdiction be abolished. The Conference concluded that since it did not appear that Congress was considering any such proposal, there was no occasion at this time to express any opinion with respect to it.

*Legislation Recommended.*—The Conference renewed its recommendations in support of the jury system bills, S. 1623, 1624, 1625; and the bill to remove the civil disabilities of probationers successfully completing their pro-

bation, S. 1342 and H.R. 3239. The Conference also renewed its recommendation of last year concerning legislation with respect to applications for habeas corpus in the federal courts, as stated in the Report of the 1943 Session of the Conference.

*Provision for the Trial of Minor Offenses by Commissioners.*—Chief Justice Groner presented the report of the Committee on the Trial of Minor Offenses, by Commissioners. The report recommended legislation to enable the district courts in their discretion, under such limitations as they might prescribe, to confer upon United States commissioners power to accept pleas of guilty and impose sentences in all cases in which the defendant is charged with a petty offense as defined by statute, without being restricted, as at present, to such offenses as are committed upon federal reservations. The committee was continued and the Director was instructed to circulate the report among the circuit and district judges with the request that they submit their views upon the proposed legislation.

*The Representation of Indigent Litigants in the Federal Courts.*—The report of the Committee to Consider the Adequacy of Existing Provisions for the Protection of the Rights of Indigent Litigants in the Federal Courts, of which Judge Augustus N. Hand is chairman, was submitted to the Conference. The committee recommended that each district court be authorized in its discretion to appoint a public defender substantially as provided in the pending public defender bill (H.R. 676); or that in the alternative the district court in a district not having a city of more than 500,000 population, be authorized to compensate from the public funds counsel appointed to represent poor defendants in particular cases, at a rate not in excess of \$25 a day, and to reimburse them for their expenses, the aggregate amount to be so expended in any district to be not more than \$3,000 per year. The Conference continued the committee and directed the circulation of its report among the circuit and district judges with a request for an expression of their views upon the proposed plan. The commit-

tee was also requested to continue its study of the problem of indigent litigants in both criminal and civil cases, including the application to such cases of the provisions governing proceedings in forma pauperis.

*Committees Continued.*—No reports were submitted by the Committee on a Special Court of Patent Appeals, the Committee to Consider Methods of Improving the Existing Scheme of Collecting and Compiling Federal Judicial Statistics by the Administrative Office, and the Committee to Consider the Proposal that the Statute (18 U. S. C. § 541) Be Amended so as to Make the Definition of “Felonv” Depend Upon the Punishment Actually Inflicted, rather than That Which Could Lawfully Be Imposed. The Conference directed that these committees be continued. The Chief Justice, with the approval of the Conference, appointed Circuit Judge Charles E. Clark to be chairman of the committee on improvement of the judicial statistics, and added two new members, Circuit Judge Herbert F. Goodrich and District Judge Archibald B. Lovett. As reconstituted the committee consists of Circuit Judge Charles E. Clark, Chairman, Circuit Judges William Denman and Herbert F. Goodrich, District Judges William H. Kirkpatrick, Archibald B. Lovett and Royce H. Savage.

*Committees Appointed.*—Pursuant to resolutions of the Conference the Chief Justice appointed the following committees, with the request that they report their recommendations at the next session of the Conference:

A committee to consider the recommendation of the Judicial Conference of the Ninth Circuit that provision be made for expediting appeals in those cases in which there are conflicting decisions by district courts within the same circuit, or in which decision will affect numerous cases, or in which the public interest otherwise requires it, consisting of Judge Stone, Chairman, District Judges Alfred E. Coxe and Benjamin Harrison.

A committee to consider the recommendation of the Judicial Conference of the Ninth Circuit that discretion be given to reviewing courts to consider appeals in crim-

inal cases when the sentence of imprisonment has been served, and it appears that the continuance of the judgment on the record would work injustice, consisting of Circuit Judge William Denman, Chairman, Circuit Judge Edwin R. Holmes, District Justice Matthew F. McGuire, and District Judge Robert N. Wilkin.

A committee to consider the advisability of regulating admission to the bar of the federal courts by uniform rules, consisting of Circuit Judge Thomas F. McAllister, Chairman, District Judges Luther M. Swygert, Guy L. Fake and Harry A. Hollzer.

A committee on the codification and revision of the Criminal and Judicial Codes now in progress under the direction of the Committee of the House of Representatives on Revision of the Laws, consisting of Circuit Judge Albert B. Maris, Chairman, Justice Harold M. Stephens, District Judges Clarence G. Galston and William F. Smith.

A committee to consider postwar building plans for the quarters of the United States courts, consisting of Circuit Judge John B. Sanborn, Chairman, District Justice James M. Proctor, District Judges Marion S. Boyd, Randolph Bryant, W. Calvin Chesnut, John C. Knox and Harry E. Watkins.

*Standing Rule as to Reports of Committees.*—The Conference adopted a standing rule that all reports of committees be submitted at least thirty days in advance of the September session of the Judicial Conference.

*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:

HARLAN F. STONE,  
Chief Justice

November 7, 1944.

## APPENDIX.

FEES TO BE CHARGED BY COURT REPORTERS FOR TRANSCRIPTS OF JUDICIAL PROCEEDINGS IN THE UNITED STATES COURTS, APPROVED, PURSUANT TO SECTION 5A(C) OF THE JUDICIAL CODE, BY THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES AT ITS SEPTEMBER SESSION, 1944.

The Conference approved the fees per page shown below, based upon a page conforming to the following specifications:

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.

The average number of words per page shall be not less than 250 words or 2½ folios of 100 words.

With the approval of the court in any district the cost of the original and copies may be apportioned among the persons to whom they are furnished, provided that the total does not exceed the sum of the separate rates prescribed below:

<i>District</i>	<i>Original</i>	<i>1st Copy</i>	<i>Additional Copies</i>
District of Columbia.....	40¢	15¢	15¢
<b>FIRST CIRCUIT</b>			
Maine .....	25¢	12½¢	12½¢
Massachusetts .....	37½¢	17½¢	15¢
New Hampshire .....	25¢	12½¢	12½¢
Rhode Island .....	25¢	25¢	15¢
Puerto Rico .....	50¢	15¢	15¢
<b>SECOND CIRCUIT</b>			
Connecticut .....	25¢	25¢	15¢
New York, Northern .....	37½¢	15¢	15¢
New York, Eastern .....	40¢	15¢	15¢
New York, Southern.....	40¢	15¢	15¢
New York, Western .....	25¢	25¢	15¢
Vermont .....	37½¢	15¢	15¢
<b>THIRD CIRCUIT</b>			
Delaware .....	40¢	15¢	15¢
New Jersey .....	40¢	15¢	15¢
Pennsylvania, Eastern ...	40¢	15¢	15¢
Pennsylvania, Middle ...	30¢	20¢	15¢
Pennsylvania, Western ...	40¢	15¢	15¢
Virgin Islands .....	30¢	20¢	15¢
<b>FOURTH CIRCUIT</b>			
Maryland .....	40¢	15¢	15¢
North Carolina, Eastern..	15¢	7½¢	7½¢
North Carolina, Middle...	37½¢	12½¢	12½¢
North Carolina, Western..	12½¢	12½¢	12½¢

*Fourth Circuit (continued)*

<i>District</i>	<i>Original</i>	<i>1st Copy</i>	<i>Additional Copies</i>
South Carolina, Eastern ..	30¢	15¢	15¢
South Carolina, Western.	30¢	15¢	15¢
Virginia, Eastern .....	40¢	15¢	15¢
Virginia, Western .....	35¢	15¢	10¢
West Virginia, Northern..	40¢	15¢	15¢
West Virginia, Southern..	40¢	15¢	15¢

## FIFTH CIRCUIT

Alabama, Northern .....	37½¢	15¢	15¢
Alabama, Middle .....	25¢	12½¢	12½¢
Alabama, Southern .....	37½¢	15¢	15¢
Florida, Northern .....	30¢	15¢	15¢
Florida, Southern.....	30¢	15¢	15¢
Georgia, Northern .....	30¢	15¢	15¢
Georgia, Middle .....	30¢	15¢	15¢
Georgia, Southern .....	25¢	12½¢	12½¢
Louisiana, Eastern .....	30¢	15¢	15¢
Louisiana, Western .....	30¢	15¢	15¢
Mississippi, Northern ...	30¢	15¢	15¢
Mississippi, Southern ...	30¢	15¢	15¢
Texas, Northern .....	40¢	15¢	15¢
Texas, Eastern .....	40¢	15¢	15¢
Texas, Southern .....	40¢	15¢	15¢
Texas, Western .....	40¢	15¢	15¢
Canal Zone .....	40¢	15¢	15¢

## SIXTH CIRCUIT

Kentucky, Eastern .....	37½¢	12½¢	12½¢
Kentucky, Western .....	37½¢	12½¢	12½¢
Michigan, Eastern .....	40¢	15¢	15¢
Michigan, Western .....	37½¢	17½¢	12½¢
Ohio, Northern			
Eastern Division .....	40¢	15¢	15¢
Western Division .....	30¢	15¢	15¢
Ohio, Southern .....	40¢	15¢	15¢
Tennessee, Eastern .....	35¢	15¢	15¢
Tennessee, Middle .....	40¢	15¢	15¢
Tennessee, Western .....	40¢	15¢	15¢

## SEVENTH CIRCUIT

Illinois, Northern .....	25¢	15¢	15¢
Illinois, Eastern .....	35¢	15¢	15¢
Illinois, Southern .....	35¢	15¢	15¢
Indiana, Northern .....	35¢	15¢	15¢
Indiana, Southern .....	35¢	15¢	15¢
Wisconsin, Eastern .....	33⅓¢	12½¢	12½¢
Wisconsin, Western .....	35¢	12½¢	12½¢

<i>District</i>	<i>Original</i>	<i>1st Copy</i>	<i>Additional Copies</i>
<b>EIGHTH CIRCUIT</b>			
Arkansas, Eastern .....	35¢	15¢	10¢
Arkansas, Western .....	35¢	15¢	10¢
Iowa, Northern .....	30¢	12½¢	12½¢
Iowa, Southern .....	30¢	12½¢	12½¢
Minnesota .....	35¢	10¢	10¢
Missouri, Eastern .....	37½¢	15¢	15¢
Missouri, Western .....	37½¢	15¢	15¢
Nebraska .....	35¢	15¢	15¢
North Dakota .....	35¢	12½¢	12½¢
South Dakota .....	35¢	12½¢	12½¢
<b>NINTH CIRCUIT</b>			
Arizona .....	37½¢	12½¢	12½¢
California, Northern ....	40¢	15¢	15¢
California, Southern ....	40¢	15¢	15¢
Idaho .....	37½¢	12½¢	12½¢
Montana .....	37½¢	12½¢	12½¢
Nevada .....	37½¢	12½¢	12½¢
Oregon .....	40¢	15¢	15¢
Washington, Eastern ....	40¢	12½¢	12½¢
Washington, Western ....	40¢	15¢	15¢
Alaska, First Division ...	50¢	15¢	15¢
Alaska, Second Division ..	50¢	15¢	15¢
Alaska, Third Division ...	50¢	15¢	15¢
Alaska, Fourth Division ..	50¢	15¢	15¢
Hawaii .....	37½¢	18¢	15¢
<b>TENTH CIRCUIT</b>			
Colorado .....	40¢	15¢	12½¢
Kansas .....	37½¢	12½¢	12½¢
New Mexico .....	37½¢	12½¢	12½¢
Oklahoma, Northern ....	40¢	15¢	12½¢
Oklahoma, Eastern .....	37½¢	12½¢	12½¢
Oklahoma, Western ....	40¢	15¢	12½¢
Utah .....	37½¢	12½¢	12½¢
Wyoming .....	37½¢	12½¢	12½¢

Rates for daily copy shall not be more than one and one-half times the rates above prescribed. Rates for hourly copy may be fixed by agreement between the reporter and the persons ordering such copy or may be prescribed by the court.

A party shall be entitled to procure a transcript at the rates above prescribed without being required to purchase any additional copy.