REPORT
OF THE PROCEEDINGS
OF A
SPECIAL SESSION
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES

*

MARCH 18, 19, 1958

WASHINGTON, D. C.

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

§ 331. Judicial Conference of the United States

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

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

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

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

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

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

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*As amended by the Act of August 28, 1957.

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Report of the Proceedings of a Special Session of the Judicial Conference of the United States

Special Session—March 18–19, 1958

The Judicial Conference of the United States convened in a special session on March 18, 1958, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on March 19. The Chief Justice presided, and members of the Conference were present as follows:

District of Columbia Circuit	Chief Judge Henry W. Edgerton
	District Judge Bolitha J. Laws
First Circuit	Chief Judge Calvert Magruder
Second Circuit	Chief Judge Charles E. Clark
	District Judge Edward J. Dimock
Third Circuit	Chief Judge John Biggs, Jr.
	District Judge Phillip Forman
Fourth Circuit	Chief Judge Simon E. Sobeloff
Fifth Circuit	Chief Judge Joseph C. Hutcheson
Sixth Circuit	Circuit Judge Potter Stewart (Designated by the Chief Justice in place of Chief Judge Simons, who was unable to attend)
Seventh Circuit	Chief Judge F. Ryan Duffy
Eighth Circuit	Chief Judge Archibald K. Gardner
	District Judge Gunnar H. Nordbye
Ninth Circuit	Chief Judge Albert Lee Stephens
Tenth Circuit	Chief Judge Sam G. Bratton
	District Judge Eugene Rice
Court of Claims	Chief Judge Marvin Jones

The Conference noted with sadness the death of Chief Judge John J. Parker, the senior member of the Conference for many years, and appointed a committee to frame a resolution expressing the sentiments of the Conference. The resolution appears at the end of the report.

The Conference welcomed Chief Judge Sobeloff, the new Chief Judge of the Fourth Circuit succeeding Chief Judge Parker. The Conference also welcomed District Judges Bolitha J. Laws, Ed-

ward Jordan Dimock, Gunnar H. Nordbye, and Eugene Rice who attended the Conference for the first time as the elected representatives of the judges in their respective circuits. There were no district judge representatives from those circuits where there had been no opportunity to hold an election since the passage of the act of August 28, 1957. However, District Judges Roszel C. Thomsen (Fourth Circuit), Paul Jones (Sixth Circuit), William J. Campbell (Seventh Circuit), and Louis E. Goodman (Ninth Circuit) attended the sessions of the Conference, by invitation of the Chief Justice and designation of their respective judicial conferences as members of the Committee on the Participation of the District Judges in the Judicial Conference of the United States.

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

Circuit Judges Orie L. Phillips and Albert B. Maris and District Judge Sam M. Driver attended all or some of the sessions.

Warren Olney III, Director; William L. Ellis, Assistant Director; Will Shafroth, Chief, Division of Procedural Studies and Statistics; Edwin L. Covey, Chief, Bankruptcy Division; Louis J. Sharp, Chief, Probation Division; and Wilson F. Collier, Chief, Division of Business Administration; and members of their respective staffs, all of the Administrative Office of the United States Courts, attended the sessions of the Conference.

REPORT OF THE ATTORNEY GENERAL

The Attorney General presented an informal report to the Conference concerning legislative proposals recommended by the Conference and endorsed by the Department of Justice and the plans being formulated by the Department of Justice for the forthcoming Attorney General's Conference on Court Congestion.

BUSINESS OF THE COURTS

The Conference received an informal report from the Chief Judge of each circuit and from the Chief Judge of the Court of Claims concerning the state of the dockets in their respective jurisdictions, and reviewed the need for additional judicial assis-

tance. The Conference was informed that the Judicial Council of the Eighth Circuit disapproved the provision contained in S. 2799, which passed the Senate on August 30, 1957, to create an additional judgeship for the United States Court of Appeals for the Eighth Circuit on a temporary basis. Upon the recommendation of the Committees on Court Administration and Judicial Statistics, the Conference also disapproved the proposal.

The recommendation of the Judicial Council of the Sixth Circuit for the creation of an additional judgeship for the United States District Court for the Eastern District of Michigan, in addition to the one heretofore recommended by the Conference, was referred to the Committees on Court Administration and Judicial Statistics for further study and report to the Conference.

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

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

Court Reporters

Chief Judge Biggs reported that a number of representatives of the Conference of United States Court Reporters had appeared before the Committees and presented the views and various proposals of their association in regard to compensating court reporters. The Committees considered the proposals of the court reporters and numerous reports and compilations prepared by the Administrative Office, including a number of letters from the United States District Judges respecting the difficulties they were encountering in securing and retaining competent reporters under the present system. The Committees were also furnished compilations and reports respecting the status of reporters within the system prepared by the Conference of United States Court Reporters. The Committees were of the view that the matter requires more extensive study and authorized the chairman to appoint a subcommittee of the Committee on Supporting Personnel to conduct a further study and report to the Committees.

As a measure of immediate relief for the reporters the Confer-

ence, upon the recommendation of the Committees, took the following action:

(1) Authorized the respective United States District Courts to increase the maximum transcript rates [1] for ordinary (as distinguished from daily) transcript, of 10 cents a page for the original and 5 cents a page for copy, and

(2) Authorized the Administrative Office to increase the salaries of court reporters by the amount authorized by the Federal Employees Pay Act of 1958, if and when enacted.

Chief Judge Biggs also reported that there had been brought to the attention of the Committees the emergency situation in the United States District Court for the District of Columbia in respect to transcribing pleas and sentences in cases in which criminal defendants pleaded guilty. The United States Court of Appeals for the District of Columbia Circuit has now required pleas and sentences to be transcribed in all criminal cases, as set out in the statute. In order that this may be done without serious effects upon the daily operation of the district court, Chief Judge Laws requested that the Judicial Conference authorize five additional full-time reporters for the court, their services to be made available as soon as possible.

Upon the recommendation of the Committees, the Conference authorized the employment of five additional full-time reporters for the United States District Court for the District of Columbia.

United States Commissioners

Chief Judge Biggs reported that the Committees had considered the proposal referred to the Committee on Supporting Personnel by the Conference at its September 1957 session (Conf. Rept., p. 9) to place full-time United States commissioners on salary, and are of the view that, in view of the recent statute raising the fee rates and increasing the maximum compensation allowable to United States commissioners from $7,500 per annum to $10,500 per annum, it would not be desirable to undertake a revision of the basis for computation of their pay at this time.

After a full discussion, the Conference approved the recommendation of the Committees that the compensation of full-time

[1] The previous maximum authorized rates for ordinary transcript were set by the Judicial Conference (Sept. 1948 Rep., p. 26) at 55 cents for original and 25 cents for copy.

United States commissioners not be changed from the present fee basis to an annual salary basis.

Law Clerks

The Judicial Conference, at its September 1957 session (Conf. Rept., p. 12), directed the Committee on Supporting Personnel to study possible revisions of the qualification standards for law clerks. Certain legislation on the subject is pending. The Committee reported that it has the matter under consideration, but requires more time before submitting recommendations to the Conference. The Committee was authorized to report at a future session of the Conference.

Probation Officers

The Committees reported that the Administrative Office had studied and recommended against the proposal submitted by the Federal Probation Officers Association, and referred to the Committee on Supporting Personnel by the Conference (Conf. Rept., Sept. 1957, p. 13), that the qualification standards for Chief Probation Officer, grade GS–13, be amended by adding the phrase "or six years as a United States Probation Officer". The Committees were of a similar view, and accordingly recommended that the Conference make no change in the present eligibility requirements for this position. The recommendation was approved by the Conference.

The Committees reported that after studying the proposal, also submitted by the Federal Probation Officers Association, to create a new position of chief clerk in grade GS–7 in large probation offices the Administrative Office had recommended approval with the modification that the new position be designated "administrative assistant" rather than "chief clerk". Upon the recommendation of the Committees, the Conference authorized the creation of a position of administrative assistant to the Chief Probation Officer in large probation offices at grade GS–7, in accordance with the job description supplied by the Administrative Office.

The Committees reported that action on the proposal to create five positions in the Probation Division of the Administrative Office to provide regional supervision and coordination of probation offices throughout the country, and action on the proposal

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to reclassify the Chief Probation Officer in the Northern District of Illinois, who also acts as Director of the Federal Probation Officer Training School, from grade GS–14 to grade GS–15, have been deferred for further study at the suggestion of the Administrative Office. The Committee on Supporting Personnel was authorized to report on these proposals at a future meeting of the Judicial Conference.

The Conference concurred in a recommendation of the Committees that no change be effected in the grades of clerk-stenographers in the Probation Service as proposed by the Chief Probation Officer of the United States District Court for the Western District of North Carolina.

Personnel of the Court of Claims

Chief Judge Biggs reported that the comparison of the grades and salaries of the supporting personnel of the Court of Claims with those of other United States courts had been completed by the Administrative Office and that the views of the Court of Claims with respect thereto had been considered by the Committees.

After a full discussion, the Conference approved the changes in the grades of the supporting personnel of the Court of Claims recommended by the Committees. The positions in which changes in grades are authorized are as follows:

Position	*Authorized Grade*
Chief Deputy Clerk	GS–13
First Deputy Clerk and Marshal	GS–9
Financial Clerk	GS–12
Assistant Financial Clerk	GS–8
Auditors	GS–14
Reporter	GS–13
Secretary to the Court	GS–13

Action on the recommendation with respect to the classification of secretaries to commissioners was suspended at the request of Chief Judge Jones, and the Court of Claims was granted leave to present to the Committee on Supporting Personnel further information in regard to the classifications of this group of employees.

Jury Commissioners

The Committees recommended that, in view of the fact that H. R. 3365 to revise the jury commissioner system as approved by

the Conference is presently pending in the House of Representatives, no action be taken at the present time by the Conference on the proposal of the Judicial Conference of the Ninth Circuit that jury commissioners be paid $25 per day together with maintenance and travel pay. The Conference approved the recommendation of the Committees.

Court Criers

The Committees reported that they had considered the proposal of the Judicial Conference of the Ninth Circuit that court criers be upgraded, and were of the view that a study should be made by the Administrative Office of the age, length of service, and position in grade of the present court criers. The Committee on Supporting Personnel was authorized to make a full study of the proposal and submit its recommendations to a future meeting of the Judicial Conference.

Clerks of Court

In view of the recent action by the Judicial Conference in respect to the salaries of clerks of court, implemented by the Congress in the 1958 Judicial Appropriations Act, the Committees recommended that the proposal of the Judicial Conference of the Ninth Circuit that district court clerks in cities with populations of 300,000 or more be paid salaries of $15,000; in cities with populations of 100,000 to 300,000, $12,000; and in other districts, $10,000, be disapproved. The Conference concurred in the view of the Committee, and disapproved the proposal.

Personnel of Retired Judges

As required by the resolution of the Conference (Conf. Rept. Sept. 1950, p. 21), the Administrative Office has directed inquiries from time to time to the chief judges of the circuits as to whether retired judges are performing a substantial amount of work which would justify their retention of supporting personnel. The Conference, after a full discussion and upon the recommendation of the Committees, reaffirmed this procedure, and instructed the Director of the Administrative Office to inquire from time to time, at least annually, of the chief judges of the circuits as to the amount of work being done by the retired judges of their circuits

in order that the Director will have the necessary information to furnish to the judicial councils.

Crier-Law Clerk

The Administrative Office had inquired of the Committees as to whether the difference between the salary of a crier-law clerk (authorized by the Conference at grade GS–7) and the base salary of a crier at GS–4 should be charged to the appointing judge under the appropriation proviso limiting total compensation payable to secretaries and law clerks. The Committees recommended that, pending clarification, the amount of the difference between the salary of the crier at grade GS–4 and that of crier-law clerk at grade GS–7, which amounts to $1,110, be charged to the allowance of the appointing judge under the appropriation proviso. The Committees further recommended as a permanent solution to the problem that the appropriation proviso with respect to the employees of a judge be expanded so as to include criers and messengers appointed by a judge, along with secretaries and law clerks, and that the maximum allowance for each judge be increased by the amount of the base pay of a crier, or $3,415. Both recommendations were approved by the Conference.

Personnel of the Customs Court

Chief Judge Biggs reported that the attention of the Committees had been called to the proposed amendment to the Appropriations Act which would remove from the Director of the Administrative Office the power to fix the classifications and salaries of the employees of the Customs Court and vest it in the Customs Court. The proposal presents a substantial deviation from the policy of uniform control of employees of the Judicial Branch of the Government, as prescribed by 28 United States Code 604, which provides that the salaries of supporting personnel of the courts shall be fixed by the Director of the Administrative Office, subject to the direction of the Judicial Conference of the United States.

After a full discussion the Conference adopted the following resolution submitted by the Committees:

> "Whereas the budget statement submitted by the Customs Court relating to the proposed Judiciary Appropriation Act for the fiscal year 1959 contains the recommendation that the

item, 'Salaries and Expenses, United States Customs Court', be changed to read in part: 'For * * * salaries of the officers and employees of the court as determined by the court'; and

"Whereas the new language is designed to place the responsibility for fixing the grades and salaries of the supporting staff of the Customs Court in that court instead of in the Director of the Administrative Office of the United States Courts; and

"Whereas by Section 604 (a) (5) of Title 28 of the United States Code the Director is required to fix the compensation of the employees of the United States courts; and the Customs Court is, according to Section 610 of Title 28 of the Code, a court of the United States, and included within the federal judiciary established under Article III of the Constitution [28 U. S. C. 251]; and

"Whereas, if one court in the federal judicial system be permitted to fix the compensation of its employees, every other federal court should be allowed the same privilege, and such procedure would destroy every semblance of order in the financial features of this branch of the government;

"Now, Therefore, be it Resolved that the Judicial Conference of the United States disapproves the above-described proposal in respect to the pending appropriation act, and recommends that the Congress do not adopt it."

The Director of the Administrative Office was directed to forward the foregoing resolution to the appropriate officers and committees of the Congress.

Roster of Senior Judges

The Committees reported that a certain confusion had resulted from the application of new subsection (d) of Section 294 of Title 28, United States Code, relating to the assignment and designation by the Chief Justice of the United States of judges from the Roster of Senior Judges. In order to eliminate this confusion and to coordinate and unify all of the provisions of Section 294 with respect to the designation and assignment of retired judges of the United States, the Committees proposed new legislation and submitted the following draft of a bill, which was approved by the Conference.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sub-

sections (b), (c), and (d) of Section 294 of Title 28, United States Code, relating to the assignment of retired judges to active duty, be amended to read as follows:

"(b) Any judge of the United States who has retired from regular active service under Sections 371 (b) or 372 (a) of this title shall be known and designated as a Senior Judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

"(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

"(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of retired circuit or district judges, or in a court other than their own, in the case of other retired judges, which roster shall be known as the Roster of Senior Judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court."

TERMS OF DISTRICT JUDGES ON THE JUDICIAL CONFERENCE

Upon the recommendation of the Committees, the Conference adopted the following resolution in respect to the terms of the

district judges as members of the Judicial Conference of the United States:

"*Resolved,* That the terms of service of the district judges first chosen to serve as members of the Judicial Conference of the United States, pursuant to Section 331 of Title 28, United States Code, shall be deemed to end on the following dates:

First Circuit	August 28, 1958
Second Circuit	August 28, 1959
Third Circuit	August 28, 1960
Fourth Circuit	August 28, 1958
Fifth Circuit	August 28, 1959
Sixth Circuit	August 28, 1960
Seventh Circuit	August 28, 1958
Eighth Circuit	August 28, 1959
Ninth Circuit	August 28, 1960
Tenth Circuit	August 28, 1958
District of Columbia Circuit	August 28, 1960

and that the terms of service of their successors shall be deemed to end on August 28th of every third year thereafter.

"*Further Resolved,* That the district judge to be summoned to the Judicial Conference for the term beginning on August 28th of any year may be chosen at a Judicial Conference of the Circuit held prior to that date."

RULES OF PRACTICE AND PROCEDURE OF THE UNITED STATES COURTS

The Judicial Conference, at its September 1957 session (Conf. Rept., p. 8), referred to the Committees on Court Administration and Revision of the Laws the problem of devising procedures for the implementation by the Conference of the proposal to have the Conference carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter prescribed by the Supreme Court for the other courts of the United States pursuant to law. S. 3152 and H. R. 10154, pending in the 85th Congress, are identical to the draft of bill approved by the Conference. The Committees were authorized by the Conference to postpone action in respect to implementation of the proposal until the proposal has been enacted into law.

SUBPOENA POWERS FOR JUDICIAL COUNCILS OF THE CIRCUITS

Chief Judge Biggs reported that he had submitted to the Committees a proposal to provide the judicial councils of the circuits

with subpoena powers. The Committees were of the view that such a power was desirable for the judicial councils, which are the administrative bodies of the circuits, and recommended legislation to accomplish this purpose.

After a full discussion, the Conference directed that the following draft of a bill, together with an explanatory statement to be furnished by the Chairman of the Committees, be circulated among the circuit and district judges by the Administrative Office requesting an expression of views in regard to the proposal:

A BILL To amend Section 332 of Title 28, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 332 of Title 28 of the United States Code is amended by adding at the end of the last paragraph thereof a new sentence reading as follows:

"If the judicial council finds it to be necessary, in order to carry out its duties under this section, to obtain the testimony of any other person or to inspect any books or papers in the custody of any other person, it may issue a subpoena requiring such person to appear before the judicial council and give testimony, or the custodian thereof to produce such books or papers to the judicial council, touching the matter under investigation, and any failure to obey such subpoena may be punished by the court of appeals of the circuit as a contempt thereof."

Pretrial Examiner for the United States District Court for the District of Columbia

There has been submitted to the Committees the proposal of the United States District Court for the District of Columbia for the appointment by that court of an officer to be known as a "pretrial examiner" to deal at the pretrial level primarily with motor vehicle tort cases involving personal injury and property damage. The Committees were of the opinion that such an officer would accelerate the disposition of business in the United States District Court and effect substantial savings of the time of the judges. Under the plan, the pretrial examiner would be authorized to engage a clerk and a secretary to assist him, and the salaries of the two employees would be fixed at appropriate grades

by the Director of the Administrative Office of the United States Courts. The Committees suggested that the examiner so appointed be paid at least $17,500 per annum.

The Committees recommended that the suggested plan be approved on an experimental basis and, if successful, that it might be adopted in some of the other heavily burdened metropolitan courts. The Conference authorized the employment of a pretrial examiner in the District of Columbia together with the assistants necessary to permit him to function efficiently, and authorized the inclusion in the judicial budget of an amount sufficient to provide for the employment of the pretrial examiner and his assistants.

Trial and Appellate Divisions in the Court of Claims

The Judicial Conference, at its September 1957 session (Conf. Rept. p. 44), referred to the Committee on Court Administration the proposal contained in H. R. 6954 to authorize the Court of Claims by its rules to create trial and appellate divisions. The Committees were informed that this particular matter was not being pressed by the Court of Claims and, therefore, it was unnecessary for them to reach any conclusion in regard to the matter or to make a report thereon.

Uniform Rules of Evidence for the Federal Courts

The Committees reported that they were of the view that further consideration of the proposal to establish uniform rules of evidence for the federal courts was necessary before an adequate report thereon could be made to the Conference. The Committee on Court Administration was given leave to report in respect to this matter at a future meeting of the Conference.

Administrative Court

At the September 1957 session of the Judicial Conference (Conf. Rept. p. 14), the Committees on Court Administration and Supporting Personnel filed a joint report calling attention to S. 2292 and H. R. 8751, 85th Congress, which the Committees stated embodied a proposal approved by the American Bar Association for the creation of an Administrative Court under Article III of the Constitution of the United States to take over jurisdiction now exercised by the Tax Court and by certain administrative agencies.

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The language employed in the report stated that S. 2292 and H. R. 8751, 85th Congress, had been approved by the American Bar Association. The Committees reported that this statement was erroneous in that the bills were not approved by the American Bar Association, and expressed their regrets to the Chief Justice and members of the Conference.

BANKRUPTCY ADMINISTRATION

Circuit Judge Phillips, chairman of the Committee on Bankruptcy Administration, reported that, pursuant to the direction of the Conference at its meeting in September 1957 (Conf. Rept. p. 21), the Committee had studied the questions of policy presented by the creation of an additional full-time referee position at a salary less than the salary of an existing full-time position in the same district. The chairman presented a special report on behalf of the Committee which reviewed the establishment of the Referees' Salary System and outlined the statutory provisions relating to the number and territories of referees, the surveys both general and special to be made by the Director of the Administrative Office, and the procedures and criteria to be considered in fixing the amount of salaries to be paid to referees, both full-time and part-time. The Committee observed that the Bankruptcy Act does not contemplate uniform salaries for full-time or part-time referees. Rather it provides that such salaries shall be fixed within the prescribed maxima for full-time and part-time referees upon a consideration of the average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, together with such other factors as may be material.

The Committee pointed out that where there is only one full-time or part-time referee in a district, no problem is presented, other than to apply the statutory criteria to the pertinent facts.

Likewise, where there are two or more referees in a district, but with each referee assigned to different territory, no problem is presented, other than the application of the statutory criteria to the facts with respect to the territory the referee is to serve.

Where there are two or more referees in a district, each with concurrent jurisdiction throughout the district or a designated portion of the district, and no allocation of territory to each

referee has been made, the procedure followed has been to determine the aggregate salary justified under the pertinent facts and the statutory criteria and to provide the same salary for each of the referees.

The Committee also brought to the attention of the Conference Section 43 (c) of the Bankruptcy Act under which referees may be designated to act within their respective districts, or within their respective circuits or in different circuits.

The Committee expressed the view that the practice that had been followed in certain districts of permitting the district judge or judges to make informal allocations of territory to be served by the referees in their district, for the purpose of fixing the salaries of referees by applying the statutory criteria to the territory informally allocated to each of them, should be discontinued, and that the territorial basis for fixing salaries generally should be that made by the Judicial Conference.

The Committee was also of the view that the solution was not to provide uniform salaries but to allocate the particular territory to be served by the additional referee, fix his salary on the basis of the pertinent facts with respect to such territory and the statutory criteria, and leave the matter of one serving in the territory of the other to assignments or designations. Furthermore, the Committee pointed out that the best practical allocation of territory should be made, and if the facts with respect to such allocated territory justify a salary reasonably approximating the salary of an existing referee, the additional referee should receive the same salary as the existing referee. Moreover, in some cases, concurrent jurisdiction, rather than separate territory for each referee, may be the best allocation. In such event the salaries ordinarily should be the same.

The report of the Committee was adopted by the Conference.

Changes in Salaries and Arrangements

The chairman reported that the Committee had considered the recommendations contained in the report of the Bankruptcy Division of the Administrative Office which was approved by the Director on January 24, 1958, relating to changes in salaries and arrangements, as well as the supplemental report, dated February 10, 1958, relating to the filling of a vacancy in the District of Oregon.

The reports of January 24, 1958 and February 10, 1958, had been submitted by the Director to the members of the Judicial Conference and to the judicial councils and district judges concerned, in accordance with the Bankruptcy Act. These reports, together with the views expressed by the district judges and the circuit councils, were considered by the Committee. The Conference, having before it the Committee's report and recommendations, as well as the recommendations of the Director, the circuit councils, and the district judges, took the action shown in the following table relating to changes in salaries and arrangements:

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
4th Circuit					
Virginia (E)	Norfolk	Part-time	$7,000	Full-time	$11,250
Virginia (W)	Harrisonburg			Part-time [1]	2,500
5th Circuit					
Mississippi (S)	Gulfport	Part-time	5,000	do	6,000
6th Circuit					
Kentucky (E)	Lexington	do	7,500	Full-time	11,250
Ohio (S)	Cincinnati	do	7,500	do	15,000
Tennessee (W)	Memphis			do [1]	15,000
7th Circuit					
Illinois (N)	Freeport	Part-time	5,500	Part-time	7,500
Illinois (E)	E. St. Louis	do	7,000	do	7,500
Indiana (N)	Gary	do	6,000	do	7,000
	Ft. Wayne	do	5,000	do	6,000
8th Circuit					
Iowa (S)	Des Moines	do	6,000	do	7,500
9th Circuit					
Nevada	Las Vegas	do	7,500	Full-time	15,000
Oregon	Pendleton	do	4,000	Part-time [2]	5,000
10th Circuit					
New Mexico	Albuquerque	do	5,500	do	6,000
Oklahoma (E)	Okmulgee	do	2,500	do	3,000
Wyoming	Cheyenne	do	4,000	do	5,000

[1] New position.

[2] See District of Oregon below for changes in arrangements and filling of vacancy.

Upon the recommendation of the Committee, the Conference took the following action with regard to changes in arrangements and for the filling of the vacancy in the District of Oregon:

FOURTH CIRCUIT

Western District of Virginia:

(1) Authorized an additional part-time position to serve the counties of Nelson, Albemarle, Fluvanna, Greene, Madison, Bath, Highland, Augusta, Rockingham, Page, Shenandoah, Rappahannock, Warren, Frederick, and Clark.
(2) Authorized an annual salary of $2,500.
(3) Fixed the regular place of office of the new appointee at Harrisonburg and designated Harrisonburg, Charlottesville, Staunton and Winchester as places of holding court.
(4) Transferred the counties of Nelson, Albemarle, Fluvanna, Greene and Madison from the territory now served by the referee at Lynchburg to the territory to be served by the referee at Harrisonburg, and discontinued Charlottesville as a place of holding court for the referee at Lynchburg.
(5) Transferred the counties of Bath, Highland, Augusta, Rockingham, Page, Shenandoah, Rappahannock, Warren, Frederick, and Clark from the territory now served by the referee at Roanoke to the territory to be served by the referee at Harrisonburg, and discontinued Staunton and Harrisonburg as places of holding court for the referee at Roanoke.
(6) Authorized no change in the salaries now provided for the referees at Roanoke and Lynchburg.

SIXTH CIRCUIT

Western District of Tennessee:

(1) Authorized an additional full-time referee position at Memphis at a salary of $15,000 a year.
(2) Approved concurrent district-wide jurisdiction for the referees.

NINTH CIRCUIT

District of Oregon:

(1) Authorized the filling of the vacancy caused by the death of Referee Howard E. Dixon at the present annual salary of $4,000 if a successor is appointed before funds are appropriated for an increase in the salary to $5,000 per annum, as authorized above.
(2) Changed the regular place of office of the referee from LaGrande to Pendleton.
(3) Designated Pendleton as an additional place of holding court.
(4) Fixed the territory to be served by the referee at Pendleton as Gilliam, Marrow, Umatilla, Union, Wallowa, Grant, Baker, Harney, and Malheur Counties.

All the changes in salaries and arrangements in the above table and list are to become effective as soon as funds are appropriated and available.

Section 60 and Related Sections

The Judicial Conference, at its September 1957 session (Conf. Rept. p. 22), approved the recommendation of the Committee that H. R. 5195, 85th Congress, which would have the effect of promoting statutory liens on personal property not accompanied by possession to a position ahead of costs of administration and wage claims, be redrafted so as to preserve the position of costs of administration as it now exists under present law, with a proviso that the postponement of such statutory liens should not thereby in any way affect the standing, position, rank or seniority of valid contractual liens on personal property. The Committee reported that such an amendment had been drafted and approved by the National Bankruptcy Conference, providing for the insertion of a new clause between clauses 2 and 3 of subsection c of Section 67 of the Bankruptcy Act (11 U. S. C. 107c). It would preserve the present position of costs of administration and wages and, at the same time, enable valid contractual liens, such as chattel mortgages, conditional sales contracts, trust receipts, and the like, to retain their position ahead of tax liens on personal property not accompanied by possession. The new clause is as follows:

> "(3) Every tax lien on personal property not accompanied by possession shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision (a) of Section 64 of this Act, and to all liens indefeasible in bankruptcy."

Upon the recommendation of the Committee, the Conference approved the foregoing amendment to H. R. 5195, and recommended the passage of the bill as so amended.

Determination of the Dischargeability of Provable Debts

The Committee called attention to the action of the Conference at its September 1957 session (Conf. Rept. p. 24) approving H. R. 106, 85th Congress, as passed by the House of Representatives, which would give jurisdiction to the Bankruptcy Court to determine the dischargeability or nondischargeability of provable debts. The bill, as passed by the House, removes from Section 14c (3) the making of a false financial statement as a ground for a complete denial of a discharge. The National Bankruptcy Conference, at its meeting in Washington in November 1957, dis-

approved the complete removal of Section 14c (3) and recommended that it be retained in the following amended form:

> "(3) while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation;"

With such an amendment, individual bankrupts not engaged in business could obtain a discharge from all debts except those incurred in reliance upon a materially false statement in writing. These particular debts, however, would be nondischargeable under Section 17, as amended by H. R. 106.

Upon the recommendation of the Committee, the Conference approved the proposed amendment of Section 14c (3) and recommends the enactment of H. R. 106 with the foregoing amendment.

Submission Under the Phillips Plan of Proposal To Enlarge the Summary Jurisdiction of the Bankruptcy Court

The Committee reported that the proposals recommended by the Committee at the September 1956 session of the Conference (Conf. Rept. p. 25) to enlarge the summary jurisdiction of the Bankruptcy Court over proceedings against third parties to recover preferences or set aside fraudulent transfers under Sections 60b, 67c, and 70e had been circulated under the Phillips Plan as directed by the Conference. The Committee presented a memorandum setting forth a summary of the replies received from the circuit conferences and individual judges in response to the submission. Of the eight judicial conferences of the Circuits, which had considered the proposed legislation, seven had voted approval of it. The Committee recommended, with Judge Lynne dissenting, that the Conference approve the proposal of the Bankruptcy Committee and recommend to Congress the adoption of legislation to enlarge the summary jurisdiction of the Bankruptcy Court. The Conference approved the recommendation of the Committee, and voted to recommend to Congress the enactment of a bill effecting the following amendments to the Bankruptcy Act:

(1) Amend the last sentence of Section 60b to read as follows:

"The court, after due notice to all parties in interest, shall have summary jurisdiction of any proceeding brought under this section for the purpose of recovering or avoiding a preference."

(2) Amend Section 67e to read as follows:

"e. The court, after due notice to all parties in interest, shall have summary jurisdiction of any proceeding brought under this section for the purpose of recovering or avoiding a transfer."

(3) (a) Repeal clause (3) of subsection e of Section 70.

(b) Add a new subsection f to Section 70 to read as follows:

"f. The court, upon due notice to all parties in interest, shall have summary jurisdiction of all proceedings brought under this Section for the purpose of recovering or avoiding any preference, transfer or obligation."

(c) Reletter the present subsections f and g of Section 70 as subsections g and h respectively.

CONCEALMENT OF ASSETS IN BANKRUPTCY CASES

The Committee reported that there had been brought to its attention by the Administrative Office H. R. 10599, 85th Congress, introduced at the request of the Attorney General, to amend the sixth paragraph of 18 U. S. C. 152, relating to the concealment of assets in bankruptcy cases. The purpose of the proposed amendment is to make certain that individuals who conceal property in contemplation of bankruptcy be held accountable when they act on their own behalf, as well as when they act for any other person or corporation. The Committee recommended approval of H. R. 10599 with, however, a clarifying amendment making the bill read as follows:

"Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against any person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of the property of such person or corporation, or"

The Conference approved the clarifying amendment suggested by the Committee and recommended the passage of H. R. 10599 so amended.

Blanket Bonds for Referees, Receivers and Trustees

The Committee reported that the Administrative Office had brought to the attention of the Committee a proposal to provide a blanket bond for referees in bankruptcy, the cost to be paid from the referees' expense fund. Upon the recommendation of the Committee, the Conference approved the proposal in principle, and directed the Administrative Office to work out and report to the Conference the mechanics by which such proposal should be put into effect, including any necessary amendments to the Bankruptcy Act.

A similar proposal to provide a blanket bond to cover all receivers and trustees was referred to the Administrative Office for further study.

Improvements in Bankruptcy Procedures and Administration

The Committee reported that the tremendous upsurge in the volume of bankruptcy cases has made simplification and improvement of bankruptcy procedures and administration imperative, and that the Bankruptcy Division of the Administrative Office and the Committee are currently engaged in studies in certain areas with the purpose of attaining those objectives. These matters include the consideration of fixing automatically, upon the filing of the petition, the status of the petitioner as a bankrupt in voluntary cases, which would eliminate considerable paperwork; the entering by the clerk of an order of reference in voluntary cases; providing a panel of standing trustees to serve in small cases or in cases which appear from the petition to be nonasset cases; and providing blanket bonds for trustees in small cases.

The Committee reported that the Bankruptcy Division of the Administrative Office, in accordance with the direction of the Conference (Conf. Rept. Sept. 1957, p. 24), is continuing its cost of administration studies in districts where costs seem to be abnormally high, and is accomplishing constructive results.

Wage Earners' Plans Under Chapter XIII

The Committee reported that it is of the opinion that means should be devised to bring about a greater utilization of Chapter XIII, Wage Earners' Plans, in appropriate cases. The Committee believes that a procedure by which a debtor, financially involved and unable to meet his debts as they mature, works out his involvement and pays his debts in full over a period of time, is good for his creditors and good for him. The Committee suggested that referees might be directed by the district judges to consider at the first meeting of creditors whether the case is an appropriate one for a Chapter XIII proceeding and, if so, to urge consideration by the debtor and his lawyer, if he is represented by counsel.

In order to widen the scope of Chapter XIII relief, the Committee recommended that Section 606 (8) of the Act be amended to read as follows:

> "Wage earner" shall mean an individual whose principal income is derived from wages, salary, or commissions.

This recommendation was approved by the Conference.

In order to permit the referee to reduce the charge where a trustee is handling a large number of Chapter XIII cases and thus reduce the cost to the debtor, the Committee also recommended that Section 659 (3) of the Act, which fixes the commissions of the trustee in Chapter XIII cases at five per centum upon the amount of payments actually made by or for the debtor, be amended to provide that the commissions of the trustee in Chapter XIII cases be fixed at not more than five per centum upon the amount of payments actually made by or for the debtor. The recommendation of the Committee was approved by the Conference.

Leave was requested to have the Administrative Office distribute that portion of the Committee's report under the heading "Improvements in Bankruptcy Procedures and Administration", including the recommendations for a greater utilization of Wage Earners' Plans, to the district judges, clerks of court and referees with a request that they give the Bankruptcy Committee the benefit of their views and suggestions with respect to such improvements. The Administrative Office was directed to comply with this request of the Committee.

COMMITTEE ON REVISION OF THE LAWS

Judge Maris, chairman, submitted the report of the Committee on Revision of the Laws. Upon the recommendation of the Committee, the Conference approved the following bill, which contains a proposal previously endorsed by the Conference:

(1) *Cost of living allowances to judicial employees stationed outside the continental United States or in Alaska.*—S. 3374, 85th Congress, is identical with H. R. 5801, 85th Congress, which was approved by the Judicial Conference at its session in March 1957. (Conf. Rept. p. 24.)

The Committee reported as follows concerning legislation upon which reports or other action have been requested by the Conference:

(1) *Review of orders of Interstate Commerce Commission—Commission to be respondent in suits under Sections 2322 and 2323 of Title 28, United States Code.*—S. 1721 and H. R. 6085, 85th Congress, would amend Sections 2322 and 2323 of Title 28, United States Code, so as to provide that suits to review orders of the Interstate Commerce Commission shall be brought against the Commission as respondent, rather than against the United States. The Committee, pursuant to the direction of the Conference (Conf. Rept. September 1957, p. 40), had obtained the views of the Interstate Commerce Commission and of the Department of Justice with respect to the proposal embodied in these bills and submitted them to the Conference. After a full discussion, the Conference voted to return the proposal to the Committee for further study.

(2) *Rules of practice and procedure for the Federal Courts.*—The Committee joined in the recommendation of the Committee on Court Administration that no steps be taken in respect to the implementation of the proposal to have the Judicial Conference make a continuous study of the rules of practice and procedure for the Federal courts until the proposal has been enacted into law.

The Committee reported that it had considered the following bills pending in Congress upon which requests by Committees of Congress for reports have been referred to the Committee by the Director of the Administrative Office:

(1) *Commission and Advisory Committee on International Rules of Judicial Procedure.*—S. 1890 and H. R. 4642, 85th Congress, would establish a Commission on International Rules of Judicial Procedure together with an advisory committee to make a comprehensive study of the existing practices of judicial assistance and cooperation between the United States and foreign countries with a view to achieving improvements. The Commission's work would be completed by December 31, 1959, with a report to the President as to possible treaties, conventions, or legislation which might be helpful in this field. H. R. 4642 passed the House of Representatives on February 3, 1958, and is pending in the Senate.

The Committee reported that the bill has the support of the American Bar Association and the Department of Justice and that the Department of State has also joined in recommending approval of the bill. Upon the recommendation of the Committee, the bill was approved by the Conference.

(2) *Retirement of judges of the circuit courts of the Territory of Hawaii.*—H. R. 8484, 85th Congress, would include the eleven judges of the circuit courts of the Territory of Hawaii in the provisions of Section 373 of Title 28, United States Code, for the retirement of judges of the territorial courts. The three judges of the Supreme Court of the Territory of Hawaii are now covered by Section 373 as are the two United States district judges for the District of Hawaii. The bill also provides that prior service as a judge of one of the circuit courts shall be counted in determining the length of service of a judge of the Supreme Court of Hawaii or a judge of the United States District Court for the District of Hawaii for retirement purposes. The Committee considered it fair and reasonable to include the judges of the circuit courts of the Territory of Hawaii in the Retirement Act to the same extent as the other judges of Hawaii, particularly since all of them are appointed by the President of the United States and all are paid a salary from the federal treasury. Upon the recommendation of the Committee, the Conference approved the bill.

(3) *Venue in tax refund suits by corporations.*—H. R. 9817, 85th Congress, would establish a rule of venue for tax refund suits requiring a corporation to sue the United States in the judicial district in which it has its principal place of business. A liberal *forum non conveniens* provision is also included which

would permit the court to transfer the suit to any other district to meet the convenience of the parties.

The Committee reported that the bill had been recommended by the Section on Taxation of the American Bar Association and approved by the Association at its annual meeting in July 1957. Its purpose is to remove the uncertainty resulting from the decisions in the United States district courts, some of which have held that a corporation may bring a suit against the United States only in the judicial district within which it was incorporated, while others have held that the corporation may also sue the United States in any district in which the corporation is doing business.

The Committee was of the opinion that the proposal of the American Bar Association was appropriate to resolve the uncertainty in these cases, but in the interest of precision suggested that it would be well to use only the phrase "principal place of business" and to strike from the bill the alternate phrases "or principal office or agency". The Committee pointed out that the phrase "principal place of business" has come to have a well-defined meaning in the Bankruptcy Act and in other statutes, and to refer also to "principal office or agency" in the proposed bill seems either to indicate the possibility of an alternate venue or to broaden in some undefined way the established meaning of "principal place of business." The Committee recommended that the Conference approve the bill with an amendment striking out the phrase "principal office or agency" wherever it appears. The recommendation of the Committee was approved by the Conference.

(4) *Broaden the scope of the All Writs Act.*—H. R. 10634, 85th Congress, would eliminate from the All Writs Act, 28 U. S. C. 1651, the limitation that writs, which are by that statute authorized to be issued by the courts, shall be "in aid of their respective jurisdictions". The Committee reported that it had been informed that the purpose of the bill is to permit the courts of appeals to exercise their supervisory functions over the district courts by such means as the issuance of a writ of prohibition without having to relate the writ to any pending matter which may ultimately come before the court of appeals for review, but has been unable to secure full information as to the purposes of the bill or the need which its sponsors see for it. The bill would appear to broaden to an indeterminate extent the juris-

diction of the federal courts to issue common law writs and, in view of its broad and ill-defined extension of jurisdiction, the Committee, in the light of such information as it has been able to secure, recommended that the Conference disapprove the bill. The recommendation of the Committee was approved by the Conference.

(5) *Denial of jurisdiction to the federal courts in certain cases involving the right of persons to practice law before state tribunals.*—S. 3386, 85th Congress, would deny to any court of the United States jurisdiction to entertain an injunction suit against the operation or enforcement of state statutes or regulations which have denied the privilege of practicing law in that state because of (1) subversive, criminal or corrupt activities, or (2) refusal to answer questions in a state judicial, legislative, or executive inquiry relating to such activities or to cooperate therein. The bill would further deny to the Supreme Court or any other federal court jurisdiction to review in any manner the decision of a state court with respect to the validity of any such statute, rule or regulation or action taken thereunder. It was the view of the Committee that the implication of this bill is that the courts of the United States should not be entrusted with the determination of the constitutionality of state action in this area and, accordingly, the Committee recommended disapproval of the bill. The Conference adopted the recommendation of the Committee.

Judge Maris reported that pursuant to the authority given by the Conference at its September 1956 session (Conf. Rept. p. 46) the Committee had considered the following bills and proposals:

(1) *Establishment of a United States Court of Veterans' Appeals.*—H. R. 9722, 85th Congress, would create a new United States Court of Veterans' Appeals with five judges appointed for life and with exclusive jurisdiction to review on appeal decisions of the Board of Veterans' Appeals in the Veterans Administration. Its decisions would be final and not subject to further review by any officer or court.

The Judicial Conference, at its September 1957 session (Conf. Rept. p. 36) considered H. R. 272, 85th Congress, which would authorize review of decisions of the Veterans Administration by the courts of appeals. The Committee suggested that the Conference adhere to the position which it then took; namely, that

no position be taken with respect to the policy involved in providing for judicial review of veterans' cases, but if such review is to be granted, it should be in the district court sitting in the veteran's locality and not in either a United States Court of Appeals or a special court of appeals, and that in any case the review should be in accordance with the standards of the Administrative Procedure Act, as provided in H. R. 272. The suggestion of the Committee was approved by the Conference.

(2) *Venue in automobile personal injury cases in the district in which the automobile accident occurred.*—H. R. 9748, 85th Congress, would extend the venue in a particular class of civil tort actions, namely, actions to recover damages for personal injuries sustained in an automobile accident, so as to provide that such actions may be brought in the judicial district where the accident occurred, as well as in the district of the plaintiff's or defendant's residence. The proposal is intended to overcome the present limitation of venue pointed out in *Olberding* v. *Illinois Central Railroad Co.*, 346 U. S. 338.

The Conference, at its September 1957 session (Conf. Rept. p. 36), approved a similar bill, S. 1000, 85th Congress, which is broader in that it would provide that an action on any tort claim may be brought in the judicial district where the act or omission complained of occurred. It was the opinion of the Committee that the broader approach of S. 1000 is preferable and that it would be unwise to carve out one area in the tort field for special venue treatment. Accordingly, the Committee recommended that H. R. 9748 be approved with an amendment broadening it so as to include within its enlarged venue all tort claims, as would be provided by 28 United States Code 1391 (e), if amended as proposed by S. 1000. The Conference approved the recommendation of the Committee.

(3) *Proposal to permit civil actions against officers and agencies of the United States to be brought in any judicial district where plaintiff resides.*—H. R. 10892, 85th Congress, would broaden the venue in civil actions against officers of the United States in their official capacity, persons acting under them, or agencies of the United States so that such suits could be brought in any judicial district where the plaintiff resides. The bill would have a far-reaching effect, not only upon the business of the district courts but also upon the operations of the Department of

Justice. The Committee reported on the bill for the information of the Conference and suggested that it be given further study. The Conference authorized such study by the Committee.

(4) *Bonds of United States marshals.*—S. 1438 and H. R. 4756, 85th Congress, sponsored by the Attorney General, are intended to facilitate the blanket bonding of all United States marshals by the Attorney General in accordance with the more economical group purchase plan contemplated by the Act of August 9, 1955, 69 Stat. 618, which became effective on January 1, 1956. The bills would strike from 28 United States Code 544 the present provision that the bond of the marshal shall be approved by a judge of the district court and filed and recorded in the office of the clerk. The Committee was satisfied that the proposal embodied in these bills is a good one and deemed it appropriate to transfer the responsibility for approving marshals' bonds from the district judge to the Attorney General. The proposal is in line with what has already been done in the case of bonds for other court officers. Upon the recommendation of the Committee, the Conference approved the bills.

(5) *Proposed amendment of rules of courts of appeals to shorten the time required to perfect proceedings for review of agency orders.*—The Committee reported that a proposal had been presented by Honorable Willard W. Gatchell, Chairman of the Committee on Judicial Administration, Federal Bar Association, to shorten the time required to perfect proceedings for review of agency orders by requiring briefs to be filed at an earlier period. The Committee has the proposal under consideration and has requested the Administrative Office to circulate it among interested parties for their views. A report will be made at a future session of the Conference.

Other Recommendations of the Committee

Judge Maris called to the attention of the Conference its action at the March 1957 session authorizing the Director of the Administrative Office to submit directly to the appropriate Committees of the Conference for study and report to a later session of the Conference requests of congressional committees for expressions of view with respect to various bills pending in the Congress. (Conf. Rept., p. 27.) This was done in order to cooperate with Congress by making it possible to reply to inquiries from con-

gressional committees as promptly as may be, within the limitations of Conference procedure.

Further, to advance the same end, the Committee suggested that the Conference authorize the Director immediately after the adjournment of each session of the Conference, and without awaiting the publication of the formal report of the session, to inform the appropriate congressional committees of any action taken by the Conference at that session with respect to pending bills as to which the committees have requested the views of the judiciary or in which they are otherwise interested. The Conference approved the suggestion of the Committee and authorized the Director to so communicate with the committees of the Congress.

COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

By reason of the recent death of Chief Judge John J. Parker, Chairman of the Committee on the Administration of the Criminal Law, Chief Judge Bolitha J. Laws, acting as temporary chairman by vote of the Committee, assisted by other Committee members, presented the report of the Committee.

Disparity of Sentences

Judge Laws informed the Conference that pursuant to the resolution of the Conference at its September 1957 session (Conf. Rept., p. 29) the Committee had given further consideration to the report of its subcommittee on disparity of sentences in connection with the Advisory Corrections Council, and upon the further study made recommended the following amendments to bills heretofore approved by the Judicial Conference:

(1) *H. J. Res. 424, to improve the administration of justice by authorizing the establishment of institutes and joint councils on sentencing for the development of objectives, standards, procedures and policies to be followed in the sentencing of persons convicted of offenses against the United States.*—The Committee believes the establishment of institutes and joint councils would constitute a significant step forward and would represent a worthy contribution to the administration of justice. The bill provides for the Attorney General to submit recommendations from time to time for the establishment of such institutes and joint councils, and the Committee believes that the bill should also authorize

their establishment by the Judicial Conference of the United States, so they may be held in the event the Attorney General fails to make provision for them. The Committee recommended that the following sentence be added at the end of subsection (a) of the bill:

> "The chief judge of each United States court of appeals may at any time submit similar recommendations to the Director of the Administrative Office of the United States Courts for the consideration of the Judicial Conference of the United States."

The bill was approved by the Conference with the modification recommended by the Committee.

(2) *H. J. Res. 425, to authorize the court in sentencing a prisoner to fix an earlier date when the prisoner shall become eligible for parole or to except such prisoner from the statutory limitation as to eligibility for parole when, in the judgment of the court, it might reasonably be expected to facilitate the rehabilitation of the prisoner.*—Judge Laws reported that the subcommittee had been informed that outside of the federal courts there are only ten jurisdictions among the states of the nation which are still using a system of definite sentences. Most jurisdictions, particularly those with larger populations and a greater volume of crime, use some type of indeterminate sentences, usually a form in which both a minimum and a maximum sentence are imposed by the court within statutory limits, and thereafter some executive agency determines how long the offender needs institutional treatment. However, the Committee decided that no fundamental, far-reaching change should be made in existing federal sentencing procedures at this time, but that the alternatives open to the sentencing judge should be expanded. For this reason, it considered the provisions of this bill highly desirable.

The bill, as drafted, provides the sentencing court with two additional alternatives in determining parole eligilibility dates and in order to reflect these alternatives more clearly the Committee recommended that the last part of subsection (a) of the proposed new Section 4208 be amended to read as follows:

> "Section 4208. Fixing eligibility for parole at time of sentencing.

"(a) Upon entering a judgment of conviction, except where the death penalty is mandatory, if the court having jurisdiction to impose sentence is of the opinion that the ends of justice and the best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, the court may designate in the sentence imposed a time when the prisoner may become eligible for parole, *which time may be less than, but shall not be more than, the one-third limitation now provided in Section 4202 of this title, or the court may fix only the maximum sentence to be served, in which event the prisoner may be released at such time as the Board of Parole may determine.*"

The Committee reported that a great deal of thought and discussion had been given by its subcommittee to the advisability of extending the Federal Youth Corrections Act as contemplated in H. R. 8923, 85th Congress. It was concluded that H. J. Res. 425, if enacted, would itself provide some benefits which might accrue from an extension of the Youth Corrections Act. Accordingly, the Committee recommended that the approval of the Judicial Conference to H. R. 8923 be withdrawn, and that the purpose intended to be accomplished by that bill be accomplished by amending H. J. Res. 425 with the following additional section authorizing the judge to make greater use of the Youth Corrections Act procedures and facilities in selected cases:

"Section 4208.

"(b) Upon entering a judgment of conviction, the court may, in the cases of defendants twenty-five years of age and under, impose sentence under the provisions of the Federal Youth Corrections Act, if in the opinion of the court they are suitable for the rehabilitative treatment provided by the Federal Youth Corrections Act."

The Committee also believes that, where indicated, the sentencing judge, before imposing final sentence, should be able to receive, if he deems it advisable, a more complete study of the defendant than is available in a probation officer's report. Facilities for such studies are presently in existence, but authority is lacking for the judge to reduce or change a sentence after two months, which may not afford ample time to complete such study. Accordingly, the Committee recommends that an additional section in the

appropriate chapter of H. J. Res. 425 be inserted substantially as follows:

> "Upon the imposition of sentence the court may sentence in accordance with other existing provisions of law, or at its option may impose a tentative sentence to imprisonment generally, which shall be deemed to be for the maximum term prescribed by law; in such latter event the defendant shall be committed to the custody of the Attorney General for a complete study of the defendant as described in subsection (b) hereof, except that a report based on this study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, will be furnished to the court within three months unless the court grants time for further study not to exceed an additional three months. After receiving such reports and recommendations, the court may, in its discretion: (a) reduce the sentence or (b) place the defendant on probation as provided by Section 3651 of this title."

The Committee further reported that attention had been given to subsection (c) in H. J. Res. 425 which authorizes the Board of Parole to discharge unconditionally a parolee before the expiration of the maximum sentence, and endorsed the provision which would make it unnecessary for the Board of Parole to retain jurisdiction over a prisoner long after he has proved his ability to conduct himself as a law-abiding citizen in the community. However, the Committee questioned the constitutionality of the clause reading, "which unconditional discharge shall automatically set aside the conviction and the Board shall issue to such parolee a certificate to that effect," and recommended that the clause be stricken from the bill.

Upon the recommendation of the Committee, the Conference rescinded its approval of H. R. 8923 (Conf. Rept. Sept. 1957, p. 29), approved the foregoing amendments to H. J. Res. 425, and recommended the enactment of the bill as so amended.

Appellate Review of Sentences

Judge Laws informed the Conference that the subcommittee on disparity of sentences had received a suggestion that provision be made for a rotating panel of district judges in each circuit,

which would have power to review sentences upon petition of aggrieved prisoners, the Director of the Bureau of Prisons, or the Board of Parole. A similar system in Massachusetts, enacted in 1943, has worked out successfully, according to the opinions of a number of judges of that state, and Connecticut recently has passed a similar law. However, after deliberation, the subcommittee recommended that further consideration of a sentence review system be deferred until such time as experience has tested the effectiveness of the other legislation proposed to reduce sentence disparities. The Committee was authorized to defer consideration of the proposal.

Punishment for Contempt of Court

Judge Sam M. Driver reported that the Committee had considered H. R. 3768 and H. R. 4076, the purposes of which are stated "to guarantee the right of trial by jury in certain contempt cases and to restrict citations for contempt to proceedings involving persons having actual notice of the terms of the writ, process, order, rule, decree, or command of the court, and for other purposes" and recommends to the Conference that these bills be disapproved as unwarranted restrictions on the federal courts. The recommendation of the Committee was approved by the Conference.

The Conference also discussed at length the problems presented by the imposition of long sentences in certain criminal contempt cases and, at the suggestion of Judge Goodman, referred to the Committee on the Administration of the Criminal Law the matter of the imposition of sentences in such cases for the purpose of proposing any statutory change which may appear to be advisable in the light of the trend of sentences in criminal contempt cases.

Payment of Compenation to Counsel Appointed to Represent Poor Persons Accused of Crime

The Judicial Conference, at its September 1957 session (Conf. Rept., p. 28), recommended that Congress be urged to enact legislation to provide for the appointment of public defenders or the payment of compensation to counsel appointed by the courts to represent indigent defendants accused of crime as embodied in H. R. 108 of the 85th Congress. Recently S. 3275 has been intro-

duced in the Senate embodying the principles of H. R. 108, but increasing the amounts that may be paid to public defenders and appointed counsel and making provision for grants of funds by the Director of the Administrative Office to organizations providing free legal services to indigent defendants in criminal cases. The request of the congressional committee for a report on this bill was referred by the Administrative Office to the Committee on the Administration of the Criminal Law. The Committee reported that S. 3275 deals more effectively with the problem and recommended that it be approved.

The Conference was of the view that private organizations providing free legal services to indigent defendants in criminal cases should not be subsidized by grants of Government funds and, accordingly, approved S. 3275 with the proviso that the section providing for grants of funds to private organizations be stricken from the bill.

Payment of Actual Expenses Incurred by Counsel Appointed to Represent Indigent Defendants

The Committee reported that it had reconsidered its recommendation, approved by the Conference at its September 1957 session (Conf. Rept., p. 28), that provision be made for the payment of expenses actually incurred by counsel appointed to represent indigent defendants, subject to the approval of the district judge making the appointment, and that appropriate legislation to that end be drafted by the Administrative Office and submitted to Congress. Upon the recommendation of the Committee, the Conference directed that action on this matter be deferred by the Administrative Office until Congress has had an opportunity to act on the public defender bill.

Interstate Compacts Dealing with Juveniles and Delinquent Juveniles

The Committee reported that it had given consideration to H. J. Res. 10, which would give the several states authority to enter into compacts or agreements dealing with the supervision, detention, return, care, treatment and rehabilitation of juveniles who have been found delinquent. Upon the recommendation of the Committee the Conference approved the bill.

INDIGENT DEFENDANTS IN THE DISTRICT OF COLUMBIA

The Conference approved the following resolution concerning indigent defendants in the District of Columbia, which was recommended by the Committee:

WHEREAS, the problem of assigning counsel in the District of Columbia in criminal cases, mental health cases, habeas corpus cases, cases arising under Section 2255, Title 28, United States Code, and in cases of juveniles charged with delinquency, has reached a critical state; and

WHEREAS, the courts do not have the power to set up an adequate system to provide for the proper representation of the aforesaid persons; and

WHEREAS, it appears that legislation is essential in order to provide an adequate system;

NOW THEREFORE, BE IT RESOLVED, that it is the sense of the Judicial Conference of the United States that it is essential that legislation be obtained providing for the representation of indigent persons in courts of the District of Columbia, and, therefore, Congress is urged to enact legislation to provide for such representation; that such legislation should be in such broad terms as to provide for the representation of the indigent in criminal, mental health, habeas corpus cases and cases arising under Section 2255, Title 28, United States Code, and further that such legislation should apply to the United States Court of Appeals, the United States District Court for the District of Columbia, the Municipal Court and the Juvenile Court. It is recommended that said legislation be in one or the other of the following forms:

(a) Provide a public defender, together with the necessary assistants, for the District of Columbia, the public defender to be authorized to encourage help by volunteers; or

(b) That a system of appointed counsel be authorized and an appropriation be made, to the end that the court might assign counsel to represent the indigent in the class of cases aforesaid and to pay counsel compensation not to exceed a certain amount.

APPROPRIATIONS

The estimates of supplemental appropriations submitted by the Administrative Office pursuant to the statute (28 United States Code 605) were approved for the fiscal years 1958 and 1959.

The estimates include additional funds for the appropriation items covering the salaries of supporting personnel of the courts and the Administrative Office which will be required if pending legislation to authorize salary increases to government personnel generally is enacted; additional funds for the employment of a pretrial examiner and necessary assistants in the District of Columbia as approved by the Conference at this session; and an item of $49,000 for the fiscal year 1959 to provide funds for the payment of counsel to represent indigent persons alleged to be insane in the District of Columbia if the pending request for additional funds for this item for the fiscal year 1958 is approved.

COURT REPORTERS

The Assistant Director, Mr. Ellis, reported to the Conference that a number of requests had been received from district judges that the salaries of specific court reporters be increased. Upon the recommendation of the Administrative Office, the combination position of court reporter-probation clerk in the District of Vermont and the combination position of court reporter-law clerk-secretary in the District of Montana were separated and a new position of court reporter at a salary of $5,375 per annum was authorized for each district.

The Conference by mail vote in January 1958 had authorized the separation of the position of court reporter-secretary in the District of Maine, and upon the recommendation of the Administrative Office the salary for this position was now fixed at $5,915 per annum.

Upon the further recommendation of the Administrative Office, the Conference authorized an increase in the salary of the court reporters in the following districts from $5,375 per annum to $5,915 per annum; the Southern District of Florida (including the reporter of the Judge appointed to serve both the Northern and Southern Districts of Florida), the Middle District of Georgia, the Northern District of Iowa, and the Eastern District of Tennessee. In the Eastern District of Wisconsin, where the reporters

by local rule of the district court are not permitted to engage in private reporting, the Conference authorized an increase in the salary of the court reporters from $5,915 per annum to $6,450 per annum.

The Conference concurred in a recommendation of the Administrative Office that no changes be made at the present time in the salaries of the court reporters in the Northern District of Georgia, the Western District of Texas and the District of Minnesota.

Chief Judge Hutcheson brought to the attention of the Conference the request of Chief Judge T. Hoyt Davis of the United States District Court for the Middle District of Georgia for the separation of the position of court reporter-secretary assigned to him. Authority was granted to the Committee on Supporting Personnel to consider the proposal and take any action thereon, including the establishment of a new position of court reporter and fixing the salary thereof.

PHILLIPS PLAN

On a motion of Chief Judge Magruder the Conference adopted the following resolution:

Resolved, That, in view of the fact that representative district judges now sit as members of the Judicial Conference of the United States pursuant to Section 331 of Title 28, United States Code, as amended, the Conference hereby rescinds its action taken at its September 1945 session (Conf. Rept., 1945, p. 7), that the Judicial Conference should take no definite action and make no recommendation with respect to any report of a committee and any drafts of bills, affecting the district judges or the district courts until the procedure prescribed by the Conference at that session (commonly known as the Phillips plan) had been complied with for submitting such reports of committees, drafts of bills or other proposals to committees of the circuit conferences, to the circuit conferences and to all the district judges.

SECRETARY-LAW CLERK TO CIRCUIT JUDGE ALLEN

The Director, Mr. Olney, presented to the Conference the question of the proper salary classification of the secretary-law clerk

to Circuit Judge Allen. The request of Judge Allen that her secretary-law clerk be reclassified from grade GS–9 to grade GS–11 had been denied by the Director on the ground that the person appointed to the position, though a law graduate, had not been admitted to the bar of any state. The Conference concurred in the view of the Director.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS OF THE EIGHTH AND TENTH CIRCUITS

At the request of Chief Judge Gardner the Conference, pursuant to 28 United States Code 48, consented that terms of the Court of Appeals of the Eighth Circuit at places other than St. Louis be pretermitted during the fiscal year commencing July 1, 1958.

At the request of Chief Judge Bratton, the Conference consented that terms of the Court of Appeals of the Tenth Circuit at places other than Denver be pretermitted during the fiscal year commencing July 1, 1958.

RULES FOR THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES

Upon motion of Chief Judge Edgerton, the Conference adopted a resolution approving in advance any rule of a court of appeals relating to the review or enforcement of orders of administrative agencies, which is adopted precisely in accordance with the uniform rule, or amendment thereof, previously approved by the Conference.

CONFERENCE PROCEDURE

The Conference referred to the Committee on Court Administration a suggestion of Chief Judge Edgerton relating to the presentation of Committee reports to the Conference.

CLERKS OF COURT

It was the sense of the Conference that the clerks of court are employees within the meaning of the pay increase bills now pending before the Congress and authorized the Administrative Office to grant to them pay increases equivalent to that granted to other employees by the pay bill, if and when enacted.

CASES AND MOTIONS UNDER SUBMISSION

The Administrative Office submitted to the Conference a report concerning cases under submission in the courts of appeals and cases and motions under advisement in the district courts. The report listed 10 cases and motions which had been under advisement in the district courts more than 6 months on March 1, 1958. Where necessary, these will be brought to the attention of the circuit council by the Chief Judge of the circuit.

The Conference adopted the following resolution and then declared a recess subject to the call of the Chief Justice:

> The Judicial Conference of the United States assembled at Washington, D. C., has learned with profound sadness of the death of Chief Judge John J. Parker of the Fourth Judicial Circuit of the United States. Chief Judge Parker was distinguished for ability and integrity of the highest order, and his wise counsel was of inestimable value in the deliberations of this body of which he was for many years the Senior member. His creative leadership in advancing judicial administration has been excelled by none. Judge Parker's opinions contributed and will continue to contribute great and lasting value to American jurisprudence. To this Nation and to his native State of North Carolina, he brought honor by his exceptional courage, devotion, and wisdom.
>
> The members of this Conference express their deep sympathy to his family and to his colleagues.
>
> *Be it resolved,* That the Conference stand adjourned in honor of his memory.
>
> For the Judicial Conference of the United States.
>
> EARL WARREN,
> *Chief Justice.*
>
> MAY 29, 1958.

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