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

WASHINGTON, D.C.

SEPTEMBER 21-23, 1960

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

§ 331. Judicial Conference of the United States.

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

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

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

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# Report of the Proceedings of the Annual Meeting of the Judicial Conference of the United States

The Judicial Conference of the United States convened on September 21, 1960, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on September 22 and 23. The Chief Justice presided, and the following members of the Conference were present:

*District of Columbia Circuit:*

Chief Judge E. Barrett Prettyman  
Chief Judge David A. Pine, District of Columbia

*First Circuit:*

Chief Judge Peter Woodbury  
Judge Francis J. W. Ford, District of Massachusetts (designated by the Chief Justice in place of Chief Judge George C. Sweeney, who was unable to attend)

*Second Circuit:*

Chief Judge J. Edward Lumbard  
Chief Judge Sylvester J. Ryan, Southern District of New York

*Third Circuit:*

Chief Judge John Biggs, Jr.  
Chief Judge J. Cullen Ganey, Eastern District of Pennsylvania

*Fourth Circuit:*

Chief Judge Simon E. Sobeloff  
Chief Judge Roszel C. Thompsen, District of Maryland.

*Fifth Circuit:*

Chief Judge Richard T. Rives  
District Judge Ben C. Connally, Southern District of Texas

*Sixth Circuit:*

Chief Judge Thomas F. McAllister  
District Judge Marion S. Boyd, Western District of Tennessee

*Seventh Circuit:*

Chief Judge John S. Hastings  
Chief Judge William J. Campbell, Northern District of Illinois

*Eighth Circuit:*

Chief Judge Harvey M. Johnsen  
District Judge Gunnar H. Nordbye, District of Minnesota

*Ninth Circuit:*

Chief Judge Richard H. Chambers  
Chief Judge William J. Lindberg, Western District of Washington

*Tenth Circuit:*

Chief Judge Alfred P. Murrah

Chief Judge Royce H. Savage, Northern District of Oklahoma

*Court of Claims:*

Judge Sam E. Whitaker (designated by the Chief Justice in place of  
Chief Judge Marvin Jones who was unable to attend)

The Conference welcomed District Judges Marion S. Boyd and William J. Lindberg who attended the Conference for the first time as the elected representatives of the judges of their respective circuits.

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, attended the morning session of the first day of the Conference, and addressed the Conference briefly.

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

Senior Judges Orie L. Phillips and Albert B. Maris; Circuit Judge Jean S. Breitenstein; and District Judges Harry E. Watkins and William F. Smith attended all or some of the sessions.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; Honorable Guy M. Gillette, Counsel, and Henry M. Grether, Jr., former Minority Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; Paul J. Cotter, Staff Member of the Committee on Appropriations of the United States Senate; and James R. Browning, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director; William L. Ellis, Deputy Director; C. Aubrey Gasque, Assistant Director (Legal); John C. Airhart, Assistant Director (Management); Will Shafroth, Chief, Division of Procedural Studies and Statistics; Edwin L. Covey, Chief, Bankruptcy Division; Louis J. Sharp, Chief, Probation Division; Wilson F. Collier, Chief, Division of Business Administration; Dawson Hales, Chief, Division of Personnel; 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 of the United States, on invitation of the Chief Justice, presented a report to the Conference on matters relating to the business of the courts of the United States. The report appears in the appendix.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE  
OFFICE OF THE UNITED STATES COURTS

Warren Olney III, Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1960, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference approved the immediate release of the report for publication and authorized the Director to revise and supplement the final printed edition to be issued later.

*State of the Dockets of the Federal Courts—Courts of Appeals.*—The Courts of Appeals received a record number of new cases during the fiscal year 1960. Cases filed were 3,899, an increase of 4 percent over the 3,754 filed in 1959; cases terminated were 3,713; and the pending caseload increased to a record 2,220 cases on June 30, 1960. Reflecting the increased business in the Courts of Appeals, the median time interval from filing of the complete record to final disposition for cases terminated after hearing or submission in 1960 increased slightly to 6.8 months compared with 6.7 months in 1959. The Courts of Appeals in the Second, Fourth, and Fifth Circuits, where additional judgeships have been recommended, continue to be very much overburdened with case-loads far exceeding the average.

*District Courts.*—The business of the United States District Courts, excluding Alaska, increased moderately during 1960, following the decrease that occurred in 1959 as a result of the Act of July 25, 1958, curtailing jurisdiction in diversity of citizenship and certain Federal question cases. Total civil filings were 57,665, an increase of 4 percent over the 55,521 civil cases commenced in 1959; cases disposed of were 57,449; and the number of pending civil actions increased slightly to 61,016. Alaska is not included in these figures due to an adjustment made during the year as the result of admission to statehood.



The median time interval from filing to disposition of civil cases terminated by trial in the district courts in 1960 increased to 17.8 months compared with 15.3 months last year and the interval from filing to trial also increased to 15.4 months compared with 13.3 months in 1959. The time intervals, however, are longer in the districts with large metropolitan centers and sizable backlogs of civil cases, and shorter in the other districts. Excluding the districts with five or more judgeships, the median time interval from filing to disposition of civil cases terminated by trial in 1960 was 14.3 months and for personal injury cases it was 11.7 months.

The 28,137 criminal cases filed during 1960 were about the same as the previous year, terminations were 28,193 or 56 more than the number filed, and the pending criminal caseload decreased slightly to 7,691 cases as of June 30, 1960.

For the fourth consecutive year bankruptcy cases filed reached an all-time peak. Total filings in 1960 were 110,034, 89 percent of which were commenced by wage-earning employees and other nonbusiness debtors. A record 99,317 bankruptcy cases were closed during the year, or approximately 2,500 more cases than were closed last year. However, the backlog of pending cases continued to climb as filings outstripped terminations by almost 11,000 cases. On June 30, 1960, the backlog of pending bankruptcy cases had reached an all-time high of 94,990.

#### EXPEDITION OF COURT BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims and from the Chief Judges of the respective circuits concerning the state of the dockets and the need for additional judicial assistance in each circuit and district. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits. The Conference also considered the reports of its Committees on Judicial Statistics and Court Administration concerning the need for additional judgeships, which were based upon the studies made by the Committees of the judicial statistics and other relevant factors.

After a full consideration of the Committee reports and of the views of its members, the Conference voted to recommend the creation of the following additional judgeships not heretofore recommended by the Conference:

One additional judgeship for the Court of Appeals for the Tenth Circuit.

One additional judgeship for the Northern District of Alabama.

One additional judgeship for the Northern District of Georgia.

One additional judgeship for the District of Alaska.

One additional judgeship for the District of Arizona.

Upon recommendation of the Committees the Conference disapproved the proposal to make permanent at this time the existing temporary judgeship in the District of Utah.

The Conference granted leave to the Committees on Judicial Statistics and Court Administration to consider further the need for additional judgeships for the Eastern and Western Districts of Arkansas, the Southern District of California, the Western District of Missouri, and the Northern District of Texas, and at the request of Chief Judge John S. Hastings, referred to the Committees on Judicial Statistics and Court Administration the proposal to provide an additional judgeship each in the Northern and Southern Districts of Indiana.

On motion of Chief Judge Harvey M. Johnsen, the Conference authorized the immediate release of its action with respect to the creation of additional judgeships.

A complete list of the present Judicial Conference recommendations for additional judgeships is as follows:

*Courts of Appeals:*

- 3 additional judgeships for the Court of Appeals for the Second Circuit.
- 2 additional judgeships for the Court of Appeals for the Fourth Circuit.
- 2 additional judgeships for the Court of Appeals for the Fifth Circuit.
- 1 additional judgeship for the Court of Appeals for the Seventh Circuit.
- 1 additional judgeship for the Court of Appeals for the Tenth Circuit.

*District Courts:*

First Judicial Circuit:

- 1 additional judgeship for the District of Massachusetts.
- 1 additional judgeship for the District of Puerto Rico.

Second Judicial Circuit:

- 2 additional judgeships for the District of Connecticut.
- 2 additional judgeships for the Eastern District of New York, the first two vacancies occurring thereafter not to be filled.
- 6 additional judgeships for the Southern District of New York.

Third Judicial Circuit:

- 1 additional judgeship for the District of New Jersey.
- 3 additional judgeships for the Eastern District of Pennsylvania.

- 1 additional judgeship for the Middle District of Pennsylvania, the first vacancy occurring thereafter not to be filled.
- 2 additional judgeships for the Western District of Pennsylvania.

Fourth Judicial Circuit :

- 2 additional judgeships for the District of Maryland.
- 1 additional judgeship for the Eastern, Middle and Western Districts of North Carolina.
- 1 additional judgeship for the Eastern District of South Carolina.

Fifth Judicial Circuit :

- 1 additional judgeship for the Northern District of Alabama.
- 2 additional judgeships for the Southern District of Florida.
- 1 additional judgeship for the Northern District of Georgia.
- 2 additional judgeships for the Eastern District of Louisiana.
- 1 additional judgeship for the Southern District of Mississippi.
- 1 additional judgeship for the Northern District of Texas.
- 1 additional judgeship for the Southern District of Texas.
- 1 additional judgeship for the Western District of Texas.

Sixth Judicial Circuit :

- 2 additional judgeships for the Eastern District of Michigan, the first vacancy occurring thereafter in any judgeship not to be filled.
- 2 additional judgeships for the Northern District of Ohio.
- 1 additional judgeship for the Southern District of Ohio, the first vacancy occurring thereafter not to be filled.
- 1 additional judgeship for the Eastern District of Tennessee.
- 1 additional judgeship for the Middle District of Tennessee.
- 1 additional judgeship for the Western District of Tennessee.

Seventh Judicial Circuit :

- 2 additional judgeships for the Northern District of Illinois.

Eighth Judicial Circuit :

- 1 additional judgeship for the Northern and Southern Districts of Iowa.

Ninth Judicial Circuit :

- 1 additional judgeship for the District of Alaska.
- 1 additional judgeship for the District of Arizona.
- 1 additional judgeship for the Northern District of California.
- 1 additional judgeship for the District of Nevada, the first vacancy occurring thereafter not to be filled.

Tenth Judicial Circuit :

- 1 additional judgeship for the District of Colorado.
- 1 additional judgeship for the District of Kansas.

The Conference further recommends that the existing temporary judgeships in the Western District of Pennsylvania, the Middle District of Georgia and the District of New Mexico be made permanent.

The Conference also recommends that the existing roving judgeship in the State of Washington be made a judgeship for the Western District of Washington only.

## SERVICE OF SENIOR JUDGES

The Conference, noting the outstanding work of the senior judges who continue to serve the courts though nominally retired from active duty, adopted the following resolution:

Whereas the reports of the chief judges of the several circuits made to the Judicial Conference concerning the conduct of judicial business within their circuits have made evident the large and important contribution to the administration of justice during the past year by the voluntary service of senior judges; and

Whereas senior judges in many instances, although retired from regular active service, have continued to serve on their own courts even to the extent of contributing time and service to be expected only of regular active judges, and in numerous other instances have volunteered for judicial service in districts and circuits, other than their own, where the need was great;

*Be it resolved*, That we now put on record our appreciation to each and all of the senior judges so serving for their great assistance to the courts where they have served and to the administration of justice generally, and we record our gratitude for their assistance and direct that a copy of this resolution be sent on behalf of the Judicial Conference of the United States to each senior judge.

## REPORT OF THE COMMITTEE ON THE BUDGET

Chief Judge William J. Campbell, Chairman of the Committee on the Budget, submitted to the Conference the estimates of appropriations for the fiscal year 1962, which had been prepared by the Director of the Administrative Office pursuant to 28 U.S.C. 605. These estimates had been examined and approved by the Committee. The estimates total \$52,713,100, an increase aggregating \$3,523,200 over the adjusted appropriation for the fiscal year 1961. On recommendation of the Committee the budget estimates presented were approved by the Conference, subject to amendments which may be required by other actions of the Conference at this session.

Estimates of supplemental appropriations for the fiscal year 1961 include \$2,006,460 for the cost of higher salaries to court officers and employees under the Federal Employees Salary Increase Act of 1960, including provision for increases in the salaries of court reporters and National Park commissioners; \$140,000 for the replacement of furniture in GSA buildings; \$171,160 for furniture and furnishings incident to the occupancy of new buildings in court quarters under construction; \$144,240 for the purchase of West's Modern Federal Practice Digest; and \$127,000 for additional clerks to referees in bankruptcy for the last three

months of the fiscal year. Upon recommendation of the Committee, the Conference authorized the Director of the Administrative Office of the United States Courts to submit to Congress estimates of supplemental appropriations necessary for these purposes and for any other reason which at the time of the submission of these estimates could not be anticipated.

The Director was further authorized to request a change in the language of the appropriation for fees of jurors and commissioners to permit the payment of compensation to voting referees appointed under the provisions of the Civil Rights Act of 1960.

The Conference approved the inclusion in the budget estimates for the fiscal year 1962 of the sum of \$100,000 for pretrial examiners and staff for the United States District Court for the Southern District of New York on a one-year experimental basis.

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

Chief Judge John Biggs, Jr., Chairman of the Committee on Supporting Personnel and of the Committee on Court Administration, submitted to the Conference the joint report of the two Committees.

##### ADDITIONAL JUDGESHIPS

Chief Judge Biggs informed the Conference that the Committees had considered the recommendations made by the Committee on Judicial Statistics for the creation of additional judgeships and all other pertinent data relating to new judgeships sought to be created and that the Committee on Court Administration concurred fully in these recommendations. The action of the Conference with respect to the creation of additional judgeships is shown above.

##### RETIREMENT PROVISIONS FOR JUSTICES AND JUDGES

At the request of Circuit Judge John A. Danaher the Committee on Court Administration considered the proposal embodied in S. 3721, 86th Congress, to permit the retirement of justices and judges at reduced pay at age 65 after 10, but less than 15 years' service. The Committees were of the view that this proposal, and similar proposals presented to the Committee, required fur-

ther study, and the Conference thereupon granted leave to the Committees to report at a future session of the Conference.

#### STATUS OF CERTAIN SECRETARIES TO JUDGES

Chief Judge Biggs reported that the Director of the Administrative Office had requested the Judicial Conference to review the proposed reclassification of the secretary to Chief Judge David A. Pine of the District of Columbia from Grade GS-9 to Grade GS-10 and the reclassification made in January 1960 at the request of Judge Matthew F. McGuire of his secretary from Grade GS-9 to Grade GS-10. In accordance with the recommendation of a subcommittee appointed by the Chairman to study the matter, the Committee on Supporting Personnel recommended that both secretaries be classified at Grade GS-9, but that the return to Grade GS-9 of Judge McGuire's secretary not have retroactive effect. This recommendation was approved by the Conference.

The Chairman of the Committees also reported that a subcommittee of the Committee on Court Administration had been appointed to consider the request of the Director of the Administrative Office that the Judicial Conference review the circumstances attendant upon the employment of Mr. William K. Bronstrup, secretary to Judge James C. Connell of the Northern District of Ohio. After considering the report of the subcommittee and various correspondence concerning the matter, the Committee on Court Administration concluded that Mr. Bronstrup has been serving in the position of secretary to a judge in a grade for which he did not have the qualifications and further that Mr. Bronstrup lacks the qualifications for any grade of secretary to a federal judge. The Committee, therefore, recommended that the Conference instruct the Director to remove him from the payroll forthwith. The Conference approved the recommendation of the Committee and directed that all correspondence concerning the employment of Mr. Bronstrup be included in the records of the Conference.

#### SECRETARIES

The Conference at its March 1960 Session (Conf. Rept., p. 9) had authorized the Committee on Supporting Personnel to consider further the proposal to amend the qualification standards of secretaries to judges, Grade GS-10, by reducing the requirement

of 10 years' service as secretary to a Federal judge to 5 years or its equivalent. The Committees reported that this requirement of 10 years' service tends to make Grade GS-10 comparable to a longevity increase, even though it is designated as a grade and not a within-grade increase in the salary schedule. A survey was made of several departments and independent establishments in the Federal service, and, based upon this survey, the Administrative Office was of the opinion that Grade GS-10 secretarial positions for Federal judges, based on normal qualification requirements and without resorting to longevity considerations, are justified.

The Conference thereupon adopted the following standards for secretary, Grade GS-10, for Federal judges, proposed by the Administrative Office and recommended by the Committees, and directed that they be made effective as soon as appropriated funds are available.

*Senior Administrative Secretary*

GS-10 ----- \$6995

Experience: At least six years of experience as a secretary, of which at least five years must have been as a legal secretary involving duties which demonstrate the ability to take rapid dictation and a thorough knowledge of legal terminology. One of these five years must have been as secretary to a Federal Judge at grade GS-9. Substitutions or equivalents will not be acceptable for this requirement. There must also have been demonstrated the ability to perform or supervise the assembling of technical data and the ability to conduct such correspondence as may be assigned by the Judge.

Substitution: 1. Study successfully completed in an accredited academic institution above high school level may be substituted for a maximum of three years of experience on the basis of one year of study for nine months' experience. However, this substitution may not be made for over two years of the five-year requirement as a legal secretary.

Substitution: 2. Study successfully completed in law in an accredited law school may be substituted on the basis of one academic year of study for one year of experience for a maximum of three years. This substitution may not be made for over two years of the five years' requirement as a legal secretary.

LAW CLERKS

The Conference discussed the recommendation of the Committees that additional classifications for career law clerks be authorized and directed that the matter be referred to the Committees for further study.

DEPUTY CLERKS OF COURTS OF APPEALS

In accordance with the direction of the Conference at its March 1960 Session (Conf. Rept., p. 7), the Administrative Office con-

ducted a study and furnished a report to the Committee on Supporting Personnel with respect to the grade classifications of chief deputy clerks and other personnel in the clerks' offices of the courts of appeals. The Administrative Office recommended that these offices, except in the District of Columbia, be categorized for personnel classification purposes into three groups—"large," "medium" and "small"—and submitted position descriptions and classifications in accordance with the three categories, which were defined as follows:

*Large Office*

A clerk's office of a circuit which has 6 or more circuit judges authorized and in which there are filed an average of more than 400 cases a year and for which a staff of 7 or more employees is authorized to handle the work.

*Medium Office*

A clerk's office of a circuit which has 5 or more circuit judges authorized and in which there are filed an average of less than 400 cases a year and for which a staff of 5 or more employees is authorized to handle the work.

*Small Office*

A clerk's office of a circuit which has 4 or fewer circuit judges authorized and in which there are filed an average of less than 300 cases a year and for which a staff of 5 or fewer employees is authorized to handle the work.

The Committees recommended that the position descriptions, qualification standards and education and experience requirements for the positions in clerks' offices of the courts of appeals, as set forth in the Administrative Office report, be adopted as guides in classifying and filling these positions; that substantial latitude be allowed in allocating the positions because of the variance in duties and responsibilities assigned, even though titles are identical; and that upgradings resulting from this determination be put into effect as soon as funds become available.

The Conference approved the recommendation of the Committee with the understanding that the grades specified are not to be made applicable to the office of the clerk of the Court of Appeals for the District of Columbia Circuit. Judge Biggs informed the Conference that the Committee on Supporting Personnel would consider further the inclusion of this office within the over-all grade structure established for the clerks' offices of the courts of appeals.



## OTHER SUPPORTING PERSONNEL

The Conference at its March 1960 Session (Conf. Rept., p. 10), upon recommendation of the Committees, directed the Administrative Office to proceed as expeditiously as possible with a survey and the preparation of a report with respect to the appropriate grading and classification of personnel in the clerks' offices, the probation offices, and the referees' offices of the district courts to the end that a proper and equitable classification be made for the various positions in these offices. The Committees reported that this comprehensive district court personnel survey is under way, but that since the survey is a very large undertaking, considerable time will be required for its completion.

Chief Judge Biggs informed the Conference that the special study of the grade classifications of deputy clerks in charge of divisions of district courts not having geographical divisions, referred to the Committees at the March 1960 session of the Conference (Conf. Rept., p. 8), and the special study requested by Chief Judge Sylvester J. Ryan of the classification of courtroom deputy clerks in courts having the central calendar system compared with the classification of courtroom deputies in courts having the individual calendar system, would have to be made as part of the overall survey of positions in the clerks' offices. The Committees accordingly requested and were granted leave to include these studies as part of the overall survey and to report thereon at a future session of the Conference.

## OVERLAPPING APPOINTMENTS OF LAW CLERKS AND SECRETARIES

The Director of the Administrative Office had brought to the attention of the Committees a number of requests by judges for authority to appoint an employee prior to the separation date of the person whose position is to be filled, usually for the purpose of providing training for the new appointee and of maintaining continuity in court operations. The Committees pointed out that in preparing the budget and submitting appropriation requests to Congress no request for funds is made for overlapping appointments for this purpose; that the appropriation could not absorb them on a general basis, and further that provision has been expressly made by statute for the employment of persons to

fill vacancies created by separation of employees prior to expiration of terminal leave, which seems to imply that, unless authorized by law, dual occupancy of a single position is considered to be illegal.

The regular annual Judiciary Appropriation Act, however, states that "compensation [may be] paid for temporary assistance needed because of an emergency," which leaves the problem of a definition of "emergency" unsolved. Upon recommendation of the Committees, the Conference thereupon resolved that, as a general policy, overlapping appointments for the purpose of training a new employee or for continuity of official operations only, however desirable, should not be construed as an "emergency" under the provisions of the regular annual Judiciary Appropriation Act, to justify such appointments.

#### MESSENGERS

Chief Judge Biggs reported that in accordance with the direction of the Conference at its March 1960 session (Conf. Rept., p. 9) the Administrative Office had made a study of all positions of messengers in the United States courts including the Court of Customs and Patent Appeals and the Court of Claims. The report of the study, however, did not include any recommendation by the Administrative Office. After consideration of the report and a full discussion, the Committees voted to recommend to the Conference that no reclassification of messengers be made at the present time. This recommendation was approved by the Conference.

#### LIBRARIANS

The Conference at its March 1960 Session (Conf. Rept., p. 12) referred to the Committee on Supporting Personnel for study the present classifications for librarians and assistant librarians. The Committee also received several suggestions from the Chief Judges of the circuits. A report prepared for the Committee by the Administrative Office proposed classifications for librarians and library positions commencing with Grade GS-3, library attendant, to chief librarian at Grade GS-11. Upon recommendation of the Committees, the Conference approved the revised classification standards and grades proposed by the Administrative Office and directed that they be made effective when funds are available.

## ANNUITANTS

The Conference at its March 1959 Session (Conf. Rept., p. 9) adopted a resolution declaring it to be the sense of the Conference that the reemployment of any retired employee or "annuitant" of the Federal judicial establishment shall, as a general policy, be limited to a period of not to exceed one year. In order that employees not be denied coverage under the group health insurance plan (Public Law 86-382, approved September 28, 1959); the Committees recommended that the resolution of the Conference be changed to increase the maximum period of employment of annuitants from one year to 18 months. This recommendation was approved by the Conference.

## COURT REPORTERS

Chief Judge Biggs reported that some progress had been made in respect to possible changes in the court reporting system, but that the Committees were not yet prepared to make a formal report. A somewhat different type of sound recording machine was recently demonstrated to the Committees, which is designed to record with clarity a multiplicity of voices, even when several people are speaking at the same time.

At the request of the Director of the Administrative Office, a survey has been made of the court reporting system in the Federal courts by Charles Parker, Jr., Esq., and Norman R. Tharp, Esq., management analysts, whose services were obtained through the courtesy of the Bureau of the Budget. The report of the survey, however, is solely the product of these two men and is not an official report of the Bureau of the Budget. Upon recommendation of the Committees, the Conference directed the Administrative Office to circulate the report to the judges, referees in bankruptcy, clerks of court and court reporters for the purpose of securing their reaction in respect to the report and its recommendations. A separate memorandum prepared by Chief Judge Sylvester J. Ryan will, at his request, also be distributed with the report.

The Federal Employees Salary Increase Act of 1960, Public Law 86-568, amended 28 U.S.C. 753(e) by increasing the maximum salaries of court reporters from \$7,095 to \$7,630 per annum. Salary increases, however, cannot be made effective without the approval of the Judicial Conference. The Committees were of

the view that the official court reporters should be accorded the benefits of the Act and accordingly recommended that the salaries of metropolitan reporters be increased to \$7,630 per annum and the salaries of nonmetropolitan reporters to \$7,000 per annum. This recommendation was approved by the Conference.

The Conference granted leave to the Committees to consider further the requested reclassification of court reporters in the Southern and Western Districts of Texas.

#### NATIONAL PARK COMMISSIONERS

The Committees suggested that pursuant to the Federal Employees Salary Increase Act of 1960, Public Law 86-568, the salaries of the National Park commissioners be readjusted so that they may have the same benefits with regard to salary increases accorded by that Act to other judicial employees. Upon recommendation of the Committees, the Conference thereupon approved such increased annual salaries for the National Park commissioners, as any may be fixed by the respective district courts, up to the following maximum amounts:

Class A-----	\$6,400.00
Rocky Mountain	
Sequoia & Kings Canyon	
Yellowstone	
Yosemite	
Grand Canyon	
Class B-----	5,750.00
Glacier	
Mt. Rainier	
Class C-----	5,100.00
Big Bend	
Crater Lake	
Lassen Volcanic	
Mesa Verde	
Olympic	
Great Smoky (½ to each Commissioner)	
Class D-----	3,500.00
Mammoth Cave	
Shenandoah	
Cumberland Gap (½ to each Commissioner)	

The Conference referred to the Committee on Supporting Personnel for study the proposed reclassification of the National Park commissioner for Mount Rainier National Park.

## POWERS OF JUDICIAL COUNCILS

The Committees submitted to the Conference a proposed amendment to 28 U.S.C. 332 with respect to the definition of the powers of the Judicial Councils of the Circuits. The Conference discussed at length the need of such an amendment and directed that the proposal be returned to the Committees for further study in the light of the discussions in the Conference.

## ORGANIZATION OF JUDICIAL COUNCILS

At the September 1959 session of the Conference (Conf. Rept., p. 31) Honorable Emanuel Celler, Chairman of the Committee on the Judiciary of the House of Representatives, proposed that the Conference undertake a comprehensive study of the organization and functions of the Judicial Councils of the Circuits, their jurisdiction over the internal affairs of the courts of the circuits and the advisability of including district judge representatives on the councils. The Committee on Court Administration, on the basis of its study, submitted to the Conference a proposal to reorganize the Judicial Councils of the Circuits and to include thereon district judge representatives.

The Conference, after a full discussion of the proposal, adopted the following resolution and directed that it be circulated to the Federal judiciary for their views:

The Judicial Conference of the United States is mindful of the important role of the circuit councils in supervising and directing the administration of courts of the United States and emphasizes its belief that the greatest progress in judicial administration can come from self-analysis and self-criticism by the Judiciary itself.

The Judicial Conference emphasizes to the judges of the United States Courts the importance of using the circuit councils to promote the efficiency of the courts and to execute the administrative policies laid down by law and by the Judicial Conference for the operation of said courts.

That the judges are invited to submit their comments and suggestions for improvements, wherever necessary, in the proper functioning of the said circuit councils.

Without limiting the generality of the inquiry and without intimating any opinion, favorable or unfavorable, with regard to suggestions for reconstituting the present judicial councils by reducing the number of circuit judges thereon or adding district judges, the comment is solicited on the necessity and desirability of such alteration in the structure of the circuit councils.

\* \* \* \* \*

On motion of Chief Judge Biggs, the Conference authorized the inclusion in the budget of funds for the reclassification of judges' secretaries, deputy clerks of the courts of appeals and librarians, and funds for salary increases for court reporters and National Park commissioners. The Conference also authorized the immediate release of its action with respect to salary increases, the overlapping appointments of law clerks and secretaries, the amendment to the resolution concerning the appointment of annuitants, and the salary classification of the secretaries to Judges Pine and McGuire of the District of Columbia.

#### BANKRUPTCY ADMINISTRATION

Senior Judge Orie L. Phillips, Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered the recommendations contained in the report of the Director of the Administrative Office, dated June 27, 1960, relating to the continuance of referee positions to become vacant prior to April 15, 1961, by expiration of term, for changes in salaries of referees, changes in arrangements, and the creation of new referee positions. The Committee also considered the recommendations of the district judges and the judicial councils of the circuits concerned.

The Conference had before it the Committee's report, as well as the recommendations of the Director, the Circuit Councils and the District Judges. On the basis of these reports the Conference took the action shown in the following table relating to changes in salaries and the creation of new referee positions and directed that, unless otherwise shown, this action become effective as soon as appropriated funds are available:

The Conference deferred action on the proposed increase in the salary of the referee at Roanoke, Virginia, pending a further survey of the entire district by the Administrative Office and a report thereon at the next meeting of the Bankruptcy Committee.

Upon recommendation of the Committee, the Conference took the following action with regard to changes in arrangements for both new and existing referee positions and for the filling of vacancies in referee positions. These are to become effective immediately, unless otherwise indicated:

#### SECOND CIRCUIT

##### *Eastern District of New York:*

- (1) Authorized the filling of the full-time referee position at Brooklyn to become vacant by expiration of term on November 30, 1960, on a full-time basis for a term of six years, effective December 1, 1960, at the present salary of \$15,000 a year, the regular place of office, territory and places of holding court to remain as at present.

##### *Southern District of New York:*

- (1) Authorized the filling of the full-time referee position at New York City, to become vacant by expiration of term on January 13, 1961, on a full-time basis for a term of six years, effective January 14, 1961, at the present salary of \$15,000 a year, the regular place of office, territory and places of holding court to remain as at present.

##### *Western District of New York:*

- (1) Established concurrent, district-wide jurisdiction for the full-time referees in the district.

#### THIRD CIRCUIT

##### *Eastern District of Pennsylvania:*

- (1) Authorized the filling of the full-time referee position at Philadelphia, to become vacant by expiration of term on December 15, 1960, on a full-time basis for a term of six years, effective December 16, 1960, at the present salary of \$15,000 per year, the regular place of office, territory and places of holding court to remain as at present.

##### *Middle District of Pennsylvania:*

- (1) Authorized the filling of the part-time referee position at Wilkes-Barre, to become vacant by expiration of term on March 16, 1961, on a part-time basis for a term of six years, effective March 17, 1961, at the present salary of \$6,500 a year, the regular place of office, territory and places of holding court to remain as at present.

##### *Western District of Pennsylvania:*

- (1) Designated Mercer, Franklin and Warren as additional places of holding court for the referee at Erie.

## FIFTH CIRCUIT

*Northern District of Alabama:*

- (1) Authorized the filling of the full-time referee position at Anniston to become vacant by expiration of term on October 28, 1960, on a full-time basis for a term of six years, effective October 29, 1960, at the present salary of \$15,000 a year, the regular place of office, territory and places of holding court to remain as at present.

*Western District of Louisiana:*

- (1) Authorized the filling of the part-time referee position at Shreveport to become vacant by expiration of term on November 2, 1960, on a part-time basis for a term of six years, effective November 3, 1960, at the present salary of \$7,500 a year, the regular place of office, territory and places of holding court to remain as at present.

*Western District of Texas:*

- (1) Authorized the filling of the full-time referee position at San Antonio to become vacant by expiration of term on December 19, 1960, on a full-time basis for a term of six years, effective December 20, 1960, at the present salary of \$11,250 a year, the regular place of office, territory, and places of holding court to remain as at present.

## SIXTH CIRCUIT

*Western District of Michigan:*

- (1) Authorized the filling of the full-time referee position at Grand Rapids to become vacant by expiration of term on April 14, 1961, on a full-time basis for a term of six years, effective April 15, 1961, at the present salary of \$13,750 a year, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Ohio:*

- (1) Designated Mansfield as an additional place of holding court for the referee at Akron.
- (2) Discontinued Bucyrus as a place of holding court for the referee at Akron.

## EIGHTH CIRCUIT

*Eastern and Western Districts of Arkansas:*

- (1) Authorized the filling of the full-time referee position at Little Rock to become vacant by expiration of term on December 31, 1960, on a full-time basis for a term of six years, effective January 1, 1961, at the present salary of \$13,750 a year, the regular place of office, territory, and places of holding court to remain as at present.

## NINTH CIRCUIT

*Arizona:*

- (1) Authorized an additional referee position at Tucson on a part-time basis at an annual salary of \$5,000 to serve the counties of Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Santa Cruz.
- (2) Fixed the regular place of office of the new referee at Tucson and designated it as a place of holding court.



- (3) Discontinued Tucson as a place of holding court for the referee at Phoenix.
- (4) Transferred the Counties of Cochise, Graham, Gila, Greenlee, Pima, Pinal and Santa Cruz from the territory of the referee at Phoenix to the territory of the new referee at Tucson.

*Northern District of California:*

- (1) Authorized the filling of the full-time referee position at Oakland to become vacant on February 20, 1961, on a full-time basis for a term of six years, effective February 21, 1961, at the present salary of \$15,000 a year, the regular place of office, territory, and places of holding court to remain as at present.

*Southern District of California:*

- (1) Authorized two additional full-time referee positions at Los Angeles at salaries of \$15,000 a year each, to serve jointly with the present Los Angeles referees in Los Angeles, Ventura and Santa Barbara Counties.
- (2) Authorized the filling of the full-time referee position at Los Angeles to become vacant by expiration of term on February 27, 1961, on a full-time basis for a term of six years, effective February 28, 1961, at the present salary of \$15,000 a year the regular place of office, territory, and the places of holding court to remain as at present.

*District of Oregon:*

- (1) Authorized the filling of the full-time referee position at Portland, to become vacant by expiration of term on January 31, 1961, on a full-time basis for a term of six years, effective February 1, 1961, at the present salary of \$15,000 a year, the regular place of office, territory, and places of holding court to remain as at present.

SALARY AND RETIREMENT OF REFEREES

In accordance with the action of the Conference at its March 1960 Session (Conf. Rept., p. 15) the Committee reported that it had considered further the proposal to increase the maximum salaries for full-time and part-time referees. After careful study the Committee recommended that the Conference reaffirm its approval of the proposals to provide a more liberal retirement plan for referees and to increase the term of a full-time referee from six to twelve years, and that the Conference approve the following proposals:

- (1) That the following language, or similar language to provide for compensating retired referees for their services when recalled to duty be added to Section 40d(2) of the Bankruptcy Act:

and the retired referee shall receive as full compensation for his services a salary which shall be the difference between his annuity and the maximum annual salary provided for a full-time referee under this Act.

(2) That Section 40 of the Bankruptcy Act be amended to increase the maximum salaries of full-time referees from \$15,000 to \$17,500 per annum and to increase the maximum salaries of part-time referees from \$7,500 to \$8,500 per annum, with the further provision that the salary of the Chief of the Bankruptcy Division of the Administrative Office of the United States Courts be fixed at the maximum rate of compensation of a full-time referee in bankruptcy.

(3) That these provisions be made effective on the first day of the first month which begins more than 60 days after the date of the approval of the legislation.

The Conference approved these recommendations of the Committee.

#### LEGISLATION

Judge Phillips called to the attention of the Conference the following new laws affecting bankruptcy administration which have been enacted since the last meeting of the Committee:

(1) *Public Law 86-504 approved June 11, 1960.*—This Act increased the closing fee of the trustee in bankruptcy from \$5.00 to \$10.00 and thus increased the total filing fee in straight bankruptcy cases from \$45.00 to \$50.00 (Section 48c of the Bankruptcy Act, 11 U.S.C. 76c). The Act also increased the filing fee in an original Chapter X proceeding from \$100.00 to \$120.00 (Section 132 of the Bankruptcy Act, 11 U.S.C. 532).

(2) *Public Law 86-519 approved June 12, 1960.*—This Act eliminated the statutory requirement that proofs of claim in bankruptcy proceedings be filed under oath. The words "under oath" were also stricken from the third paragraph of 18 U.S.C. 152.

(3) *Public Law 86-621 approved July 12, 1960.*—This Act eliminated as a ground for the complete denial of a discharge the obtaining of money or credit by false financial statements issued by a nonbusiness bankrupt and made it clear that, although the obtaining of money or property on credit through the issuance of a false financial statement is no longer ground for the complete denial of a discharge to a nonbusiness bankrupt, the particular debt incurred as a result of such statement is to be nondischargeable under Section 17 of the Bankruptcy Act.

(4) *Public Law 86-631 approved July 12, 1960.*—This Act eliminated the requirement that copies of various petitions, notices,

and orders in Chapter XIII proceedings be sent to the Secretary of the Treasury (Section 678 of the Bankruptcy Act, 11 U.S.C. 1078). The Act requires, also, that notices of the first meeting of creditors in cases involving bankrupts who are, or were, engaged in the business of transporting persons or property, be sent to the Comptroller General of the United States (Section 58e of the Bankruptcy Act, 11 U.S.C. 94e).

(5) *Public Law 86-662 approved July 14, 1960.*—This Act amended Section 39c of the Bankruptcy Act (11 U.S.C. 67c) to make it clear that a petition for the review of a decision of the referee must be filed within the prescribed 10-day period, or within such extended time as the court may allow upon petition for extension filed within the 10-day period.

(6) *Public Law 86-701 approved September 2, 1960.*—This Act amended the sixth paragraph of Title 18 U.S.C., Sec. 152, to make individuals who knowingly and fraudulently transfer or conceal their property in contemplation of their own bankruptcy subject to the same prosecution as provided for agents and officers.

The Committee reported to the Conference concerning the following legislative proposals considered by the Committee:

(1) *H.R. 4150, 86th Congress, to amend Section 2a of the Bankruptcy Act (11 U.S.C. 11a) to give the Bankruptcy Court jurisdiction to determine the dischargeability of provable debts.*—At its March 1960 session (Conf. Rept., p. 15) the Conference recommended an amendment to this bill. As it passed the House of Representatives in September 1959, the bill granted jurisdiction to the bankruptcy court to determine dischargeability “upon application of the bankrupt and the creditor concerned.” The Conference in March 1960 recommended that the word “and” be changed to “or” so as to provide that the bankruptcy court would have jurisdiction to determine the dischargeability of provable debts either upon application of a bankrupt, or a creditor. Upon recommendation of the Committee, the Conference reaffirmed its approval of the bill as thus amended.

(2) *H.R. 4850, 86th Congress, to amend Sections 60b, 67e, and 70e of the Bankruptcy Act (11 U.S.C. 96b, 107e, and 110e) to give the bankruptcy court summary jurisdiction in actions involving preferences, liens and fraudulent transfers, and the trustee's title to property.*—Upon recommendation of the Committee the

Conference reaffirmed its approval of the bill (Conf. Rept., March 1960, p. 16).

(3) *H.R. 7727, 86th Congress, to amend Sections 334, 367 and 369 of the Bankruptcy Act (11 U.S.C. 734, 767 and 769) and to add a new Section 355 to require claims to be filed in Chapter XI (Arrangement) proceedings filed under Section 322, within 6 months from the first date set for the first meeting of creditors as is now required by Section 57(n) in straight bankruptcy proceedings.*—Upon recommendation of the Committee the Conference reaffirmed its approval of this bill (Conf. Rept., March 1960, p. 19).

(4) *H.R. 8708, 86th Congress, to amend Section 60d of the Bankruptcy Act (11 U.S.C. 96d) to give the bankruptcy court on its own motion, or on petition of the bankrupt made prior to the granting of his discharge, jurisdiction to determine the reasonableness of fees paid, or agreed to be paid, to his attorney for services rendered, or to be rendered.*—Upon recommendation of the Committee the Conference reaffirmed its approval of this bill (Conf. Rept., March 1960, p. 19).

(5) *H.R. 9630, 86th Congress, to amend Section 11e of the Bankruptcy Act (11 U.S.C. 29e) to increase the period of time within which a receiver or trustee may institute proceedings on behalf of an estate upon any claim from two to three years subsequent to the date of adjudication.*—A further suggestion was made to the Committee that the limitation period be left at 2 years with a proviso that the court may, for cause shown, extend the time for bringing suit to 3 years. The Committee was of the view that the proposal involves a question of policy to be determined by the Congress, but sees no objection to the period of limitation being extended to 3 years. However, the Committee does see objection to giving the court of bankruptcy discretion to extend the period of limitation. The Conference thereupon approved the Committee's views.

#### APPOINTMENT OF RECEIVERS AND TRUSTEES AND AUDIT OF STATISTICAL REPORTS

Judge Phillips informed the Conference that during the past six months members of the Bankruptcy Division of the Administrative Office had personally conferred with the referees in districts where there was evidence of a monopoly of appointments

of receivers and trustees, or of the payment of exorbitant compensation. As a result, referees in almost every instance have taken steps to establish an informal panel of persons willing to serve as trustee by appointment of the referee in cases where no trustee is chosen by the creditors.

The Committee has also been informed that the audit of statistical reports of closed bankruptcy cases conducted by the Bankruptcy Division of the Administrative Office was proceeding with favorable results. Recent reports have shown marked improvement in accuracy. Members of the staff of the Administrative Office have also made a number of comprehensive "operational" surveys of referees' offices in recent months and it is contemplated that these surveys will continue.

REFERENCE OF CHAPTER X (CORPORATE REORGANIZATION) AND CHAPTER XII (REAL ESTATE ARRANGEMENT) CASES BY THE CLERK OF THE COURT

The Committee reported that it had considered a proposal to amend the Bankruptcy Act to provide for the reference of Chapter X (corporate reorganization) and Chapter XII (real estate arrangement) cases to referees in bankruptcy in the same manner as Chapter XI (Arrangement) cases are now referred, but that the involved nature of the proposal will require numerous amendments to the Bankruptcy Act. Accordingly, the Chairman has appointed a subcommittee composed of Senior Judge John B. Sanborn, Chairman, Circuit Judge Oliver D. Hamlin, Jr., and District Judge Edward Weinfeld to study the proposal and to report to the Committee at its next meeting. Mr. Edwin L. Covey, Chief of the Bankruptcy Division of the Administrative Office, was named advisor to the subcommittee.

ACCOUNTABILITY OF REFEREES, RECEIVERS AND TRUSTEES

Judge Phillips reported that the Committee had discussed the present policy with regard to the accountability of referees, receivers and trustees with respect to errors in the computation of receivers' and trustees' compensation and charges for the Referees' Salary and Expense Fund. The matter has been deferred for further consideration at the next meeting of the Committee.

ATTENDANCE OF REFEREES AT THE ANNUAL JUDICIAL CONFERENCES  
OF THE CIRCUITS

The Judicial Conference of the Ninth Circuit had recommended that 28 U.S.C. 333, relating to the constitution of the Judicial Conferences of the Circuits, be amended by including therein the referees in bankruptcy. The Committee was informed that the Chief Judge of the Ninth Circuit had extended an invitation to all referees in the Circuit to attend the annual Judicial Conference of the Ninth Circuit, which was held recently. The Administrative Office at the request of the Committee estimated that the cost of travel and subsistence of the 31 referees in the Ninth Circuit for attendance at the Circuit Judicial Conference would be \$3,000 a year, and that if the practice were universally followed in all circuits, the total annual cost would be approximately \$25,000. This would require an increase in the annual appropriations. Upon recommendation of the Committee the Conference disapproved the proposal.

FEES AND SPECIAL CHARGES

At the suggestion of Judge Phillips, the Conference amended certain regulations adopted at the September 1947 session (Conf. Rept., pp. 13, 14) to conform them to Public Law 86-110, which consolidated the Referee's Salary and Expense Funds, and Public Law 86-504, which increased the filing fee in straight bankruptcy cases and in Chapter X proceedings. The revised regulations are as follows:

*I. Filing Fees and Charges in Reopened Bankruptcy Proceedings*

There shall be deposited with the clerk, at the time a petition is filed to reopen any closed bankruptcy proceeding (a) \$32 for each estate for the referees' salary and expense fund; (b) \$10 for each estate for the trustee's fee; (c) \$8 for each estate for the clerk's filing fee. Where applicable, all additional and special charges prescribed by the Judicial Conference of the United States pursuant to section 40c(2) and 40c(3) of the Bankruptcy Act, as amended, shall also be charged for the referees' salary and expense fund.

*II. Additional Charges To Be Made Upon the Transfer of an Original Chapter X Proceeding to a Regular Bankruptcy Proceeding*

Upon the transfer of an original Chapter X proceeding to a regular bankruptcy proceeding, an additional charge shall be made in the sum of \$15 to be paid by the trustee out of the assets of the estate to the clerk of the court for deposit to the credit of the referees' salary and expense fund in the United States Treasury. This charge shall apply only to Chapter X proceedings where the original petition was filed prior to June 11, 1960.

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The Conference, at the request of Judge Phillips, authorized the immediate release of Conference action with respect to new referee positions and salary changes and directed that they be made effective on October 1, or as soon thereafter as funds are available. The Conference also authorized the immediate release of its action with respect to legislation and the amendments to the schedule of fees and special charges.

#### JOINT REPORT OF THE COMMITTEES ON THE REVISION OF THE LAWS AND COURT ADMINISTRATION

Senior Judge Albert B. Maris, Chairman of the Committee on the Revision of the Laws, submitted a report on legislative proposals considered jointly by the Committees on Court Administration and Revision of the Laws:

(1) *H.R. 11403, 86th Congress, to authorize the granting of continuances in district courts to members of State legislatures in accordance with State law.*—This bill would provide that any party to an action or other proceeding before a district court, who is an officer or a member of a State legislature, or who has, prior to or during the session of a State legislature, retained to represent him in such proceeding an attorney who is an officer or member of such legislature, shall be entitled to a continuance to the same extent and upon the same terms, by virtue of the convening of such legislature, as he would be entitled to if such proceeding were before a court of record of such State.

The Committees were informed that a number of States have enacted such statutes and that in many instances they have been subject to abuse. It was the view of the Committees that members of the bar of the Federal courts, who are also members of State legislatures, owe a duty to the courts to so arrange their affairs as not to interfere with the orderly conduct of the business of the courts and to decline to accept legal retainers if their public duties will prevent timely attention to the client's business. Upon recommendation of the Committees, the Conference disapproved the bill.

(2) *H.R. 12622, 86th Congress, to amend 28 U.S.C. 85 with reference to the jurisdiction of the district courts.*—This bill is a revision of H.R. 10089, 86th Congress, which was considered by the Conference at its March 1960 session (Conf. Rept., p. 41). The revised bill (a) confers upon the district courts original juris-

diction of actions to compel officers or employees of the United States or agencies thereof to perform their duty, (b) provides that civil actions in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides or in which the cause of action arose or in which any property in the action is situated, and (c) provides that the summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

The bill follows the recommendations made by the Conference at its March 1960 session and upon recommendation of the Committees the Conference approved the bill.

(3) *H.R. 10843, 86th Congress, to amend 28 U.S.C. 142 to make it clear that this Section does not prohibit providing accommodations for holding district court in Federal buildings in which no court accommodations exist.*—The General Services Administration has taken the view that, while it is empowered to enlarge court facilities in Federal buildings in which such facilities already exist, 28 U.S.C. 142 prohibits remodeling a Federal building to provide court quarters therein for the first time. The Committees were of the view that the construction placed upon this Section by the General Services Administration is doubtful, but recommended that H.R. 10843 be approved so that, in any event, there will be no statutory prohibition against remodeling an existing Federal building to provide court facilities at a place where, pursuant to Act of Congress and in the light of the amount of the judicial business, it is necessary to hold sessions of the district court. The Conference thereupon approved the bill.

The Committees also reported that the Director of the Administrative Office has considered it his duty to approve and to forward all requests from district courts for additional court facilities directly to the General Services Administration without himself considering the necessity for such facilities. It was the view of the Committees that all such requests should have the consideration of the judicial council of the appropriate circuit before they are



transmitted by the Director to the General Services Administration. The Conference thereupon authorized the Director of the Administrative Office to refer all requests for additional court facilities to the judicial council of the appropriate circuit for its consideration and judgment as to the necessity for such additional facilities, and to request the General Services Administration to provide such facilities only if and after they have been approved as necessary by the judicial council of the circuit.

(4) *S. 3444, H.R. 11940, H.R. 11958, H.R. 11960, H.R. 11961 and H.R. 11990, 86th Congress, to prohibit certain judicial acts affecting the internal affairs of labor organizations.*—These bills would deprive the Federal courts of jurisdiction to issue or continue in effect any judicial order appointing a receiver, trustee, monitor, or administrator, whether so denominated or not, to manage or administer, or supervise the management or administration of, the affairs of any labor organization. However, it would not prevent the appointment of a receiver for the sole purpose of preserving the funds, property or assets of a labor organization pending the conduct of an election of officers or vote upon the removal of officers.

The Committees pointed out that it has been a traditional function of the courts, through appointed officers, to manage and administer, or supervise the management or the administration of, the affairs of corporations and other organizations when such action is required in the interests of justice and under the established rules of law. These bills would withdraw that authority in the case of a single type of organization, namely, a labor organization. The Committees were of the opinion that such an exception to the authority of the courts should not be made with respect to one particular type of organization. On recommendation of the Committees, the Conference thereupon disapproved the bills.

(5) *H.R. 12110, 86th Congress, to provide judicial review of agency orders concerning biological products.*—This bill would authorize judicial review in the courts of appeals of actions by the Secretary of Health, Education, and Welfare refusing to issue, or suspending or revoking licenses, for the maintenance of establishments or for the propagation or manufacture and preparation of biological products. The Committees were of the opinion that the type of review to the courts of appeals provided by the bill was appropriate. The Conference thereupon approved the type of review proposed by the bill.

(6) *H.R. 9062, 86th Congress, to amend 28 U.S.C. 2103, with respect to appeals to the Supreme Court of the United States.*—The Conference referred the bill to the Supreme Court for its consideration.

(7) *H.R. 10648, 86th Congress, to amend 28 U.S.C. 504 to provide that a United States attorney holding over in office after the date of expiration of his term shall in no event remain in office for more than six months after such expiration date and that if no successor has been appointed within such period of six months, the district court shall designate a United States attorney to serve until a successor has been appointed.*—It was the view of the Committees that the problem of the holding over in office of a United States attorney after his term has expired is primarily one for the Attorney General and is a matter which can and should be dealt with by him administratively and without the need for additional legislation. The Committees were further of the view that the responsibility of the district courts to appoint United States attorneys should not be increased and recommended that the bill be disapproved. This recommendation was approved by the Conference.

(8) *S. 3548, 86th Congress, to amend the Norris-LaGuardia Act, the National Labor Relations Act, and the Railway Labor Act to withdraw from their scope those labor disputes which involve the creation or discontinuance of positions by employers.*—The Committees were of the view that the passage of this bill would not materially affect the caseload of the courts, but that the basic policy involved is one for Congress to decide. Accordingly it was recommended that the Committee on the Judiciary of the United States Senate, which had requested the views of the Conference on the bill, be so informed. This recommendation was approved by the Conference.

(9) *H.R. 2807, 86th Congress, to establish a statutory form of judicial review of administrative orders for the deportation of aliens from the United States which, except as to aliens in custody, shall be exclusive.*—This bill was considered by the Conference at its September 1959 Session (Conf. Rept., p. 8) and approved. The Association of Immigration and Nationality Lawyers, however, has requested reconsideration of the bill, and a representative of the Association appeared before the Committees.

While the Committees did not see any reason to withdraw the prior recommendation of approval, they noted that the bill also provides that orders of exclusion shall be reviewed solely by writs of habeas corpus, which would seem to have the practical effect of denying to nonresident aliens, being not in custody, any review of their exclusion. Accordingly, the Committees recommended that the Conference adhere to its approval of the bill so far as it relates to deportation orders and that the Conference express no opinion with respect to the proposed limitation to habeas corpus of the judicial review of exclusion orders. This recommendation was approved by the Conference.

(10) *H.R. 12653, 86th Congress, to establish a Court of Veterans' Appeals and to prescribe its jurisdiction and functions.*— This bill, which after extensive hearings was favorably reported to the House of Representatives by the Committee on Veterans' Affairs, would provide for the review of decisions of the Board of Veterans' Appeals in the Veterans' Administration by a Court of Veterans' Appeals to consist of five judges to be appointed by the President for terms of ten years at annual salaries of \$25,500. The decisions of the court would be final and not subject to review by any other court. Provision is made for the appointment by the court of not more than 50 commissioners, who would conduct hearings in the veterans' localities.

The Conference at its March 1960 Session (Conf. Rept., p. 41) and at previous sessions decided to take no position with respect to the policy involved in according judicial review to veterans' claims, but to recommend that if judicial review is to be granted, it should be in the district court of the veteran's residence. According to testimony given at the hearings conducted by the Committee on Veterans' Affairs, however, the number of veterans' appeals is likely to be so large as greatly to increase the congestion in the district courts, if those courts are given jurisdiction to consider them. The Committees accordingly suggested that the Conference withdraw its previous recommendation that judicial review of veterans' claims, if accorded, be in the district courts, and that instead the Conference approve the type of judicial review by a Court of Veterans' Appeals and its commissioners which is proposed by the bill.

The Committees pointed out however that the bill would also include the Court of Veterans' Appeals among the courts of the

United States as defined in 28 U.S.C. 451 and 610 and for which the Administrative Office of the United States Courts under the supervision of the Judicial Conference, collects statistics, supervises administrative matters and provides for the compensation of personnel and other expenses and needs of the courts. In the opinion of the Committees, the proposed Court of Veterans' Appeals is not a court of the type intended to be included in Section 451 and that a sweeping and indiscriminate application of the provisions of Title 28 U.S.C. to the court would be unwise. The Committees were likewise of the view that since the Court of Veterans' Appeals would be wholly independent and not subject to supervision on writ of certiorari by the Supreme Court, the Director of the Administrative Office, who is appointed by the Supreme Court and who functions under the supervision and direction of the Judicial Conference, should not be given responsibility with respect to the administrative affairs of the court. The Conference thereupon withdrew its suggestion that this type of review, if accorded, be in the district courts and approved the type of judicial review by a Court of Veterans' Appeals and its commissioners which is proposed by H.R. 12653, but recommended against the inclusion of the Court of Veterans' Appeals in 28 U.S.C. 451 and 610.

(11) *H.R. 12958, 86th Congress, to amend the Internal Revenue Code of 1954 to provide that taxpayers may obtain review in the United States district courts of alleged deficiencies in payment of taxes without being required to pay the tax before filing suit.*—The bill would give the United States district courts jurisdiction, concurrent with the Tax Court of the United States, of proceedings for the determination of alleged deficiencies in the payment of taxes and would open the way for the institution in the district courts of a large volume of tax litigation which is now brought in the Tax Court. The Committees believed that this litigation for the redetermination of alleged deficiencies in tax before payment is now being handled satisfactorily by the Tax Court and that the transfer of any substantial part of it to the already overburdened district courts would not be in the public interest, since it would serve only to increase the congestion in those courts and the consequent delay in the trial of cases therein. Upon recommendation of the Committees, the Conference disapproved the bill.

## REPORT OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, reported that the Committee had been organized and that Aubrey Gasque, an Assistant Director of the Administrative Office, had been appointed secretary to the Committee and its five advisory committees.

All matters referred to the standing Committee by the Conference have been in turn referred to the appropriate advisory committees for study and report except the proposal to establish uniform rules of evidence in the district courts and the proposal to provide for standing masters under Rule 53, Federal Rules of Civil Procedure. The standing Committee has decided to postpone consideration of the proposal for uniform rules of evidence until later, in view of the large program presently being undertaken by the Advisory Committee on Civil Rules. With respect to the proposal for standing masters, the standing Committee is of the opinion that Rule 53 in its present form gives full authority to the district courts to appoint such officers and that all that is now needed is a sufficient appropriation by the Congress of funds for their compensation and expenses.

At the suggestion of Judge Maris the courts of appeals were requested to submit to the Committee on Rules of Practice and Procedure, for consideration and report to the Judicial Conference, any rules or amendments thereto adopted by such courts which are by statute required to have the approval of the Judicial Conference.

Judge Maris urged the appointment of local circuit Committees on Rules of Practice and Procedure that would be accorded a place on the programs of the Judicial Conferences of the Circuits and suggested that lawyers serving on the advisory committees be invited to attend the local Judicial Conferences of the circuits in which they reside.

## REPORT OF THE COMMITTEE ON JUDICIAL STATISTICS

Chief Judge Harvey M. Johnsen, Chairman of the Committee on Judicial Statistics, reported that the Committee, in reviewing the need for additional judgeships in the courts of appeals and

district courts, had considered the comprehensive statistical data prepared by the Administrative Office and all other pertinent information concerning the need for additional judgeships. The recommendations of the Committee for the creation of additional judgeships, and Conference action with respect thereto are shown above.

The Committee reported as follows concerning the recommendations made by the Committee on Multiple Judge Courts with reference to the reporting of judicial statistics:

(1) *That the Administrative Office specifically indicate in its statistical report of cases pending, that land condemnation cases with multiple tracts and designations, which require separate disposition, in reality encompass a number of cases equal to the number of separate takings.*—The Committee was of the view that since the clerks of the district courts docket each case separately, it is not feasible to require them additionally to report each tract separately to the Administrative Office and to require the Administrative Office to report each tract separately in the tables showing civil actions filed, terminated, and pending in each court. Furthermore land condemnation cases appear to be a major problem in only a limited number of districts.

The Committee pointed out that a report concerning pending land condemnation cases and tracts, based on data received from the Lands Division of the Department of Justice, is now being published in the reports of the Director of the Administrative Office and that the Administrative Office has also adopted the practice of making special reference to pending land condemnation cases and the number of open tracts in its reports concerning the judicial business of particular districts, whenever that appears to be significant. The Committee was, therefore, of the opinion that the suggested revision of the present method of reporting land condemnation cases would not serve any useful, general statistical purpose. The Conference agreed with this view.

(2) *That the statistical reports published by the Administrative Office show the actual "ready for trial" cases pending before each court rather than the number of cases that have been filed and not terminated.*—The Committee reported that since information concerning the number of cases "ready for trial" is available in only a few districts, namely, those districts which require a certificate of readiness, it would not be desirable to change the

present form of the statistical tables. The Conference discussed the possibility of publishing in addition to the regularly published data information concerning cases "ready for trial" in those districts where such information is available, and directed the Committee to consider this proposal further in the light of the discussions in the Conference.

(3) *That the work of the district courts be reported by divisions as well as by districts in those districts where there are separate divisions.*—The Committee pointed out that there are 240 offices where deputy clerks are located and where cases are filed and that to publish information as to each of these offices would add greatly to the volume of the tables and diminish their usefulness. The Committee was further of the view that the responsibility of the judges in a district is for the work of the district as a whole, and that the statistics which are published should not be localized to confine the responsibility for any part of the district to a judge, or a group of the judges. The Conference thereupon approved the Committee's statement.

(4) *That in civil jury trials, where a jury has been selected or assigned and the proceeding is subsequently settled, that appropriate credit be given for such jurors.*—The Committee pointed out that the matter of jury costs has been extensively discussed with the Appropriations Subcommittees of the Senate and House of Representatives, and they understand that the present figures include cases where last-minute settlements or pleas have resulted in a larger than usual number of jurors held in reserve and not used. The Committee felt that to change the present reporting system by giving a theoretical credit where jurors were actually not used might reflect on the factual basis of the statistics, and that, moreover, it would fail to give due advantage to those districts, large and small, where, by calendar control, cooperation of the bar and the establishment of settlement deadlines, or other expedients, the instances where jurors are called and not used are held to a minimum. The Committee was in favor of continuing the present method of reporting jury statistics. The Conference agreed.

(5) *That consideration be given to the value and worth of the median time formula between issue and trial.*—The Committee reported that the median time from issue to trial is probably the most realistic of the time intervals now used, because it measures

the time from joinder of issue to trial during which the judge should have complete control of the case and the responsibility for moving it forward toward disposition. The Committee is presently giving further consideration to the value and worth of the median time interval from issue to trial as an indication of docket conditions, and was authorized to consider the matter further as part of its survey of the overall statistical standards to be used in reporting the work of the district courts. The Committee informed the Conference that, for practical convenience, the annual reports of the Director of the Administrative Office will hereafter contain an explanation of the term "median" on each table in which it is used.

#### SURVEY OF STATISTICS

Chief Judge Johnsen informed the Conference that the Committee had reviewed at length the principles and bases of statistical portrayal which were approved by the Committee prior to its recent reorganization. The Committee desires to undertake some further canvassing and evaluation in order to cover the statistical field as completely as possible before making a restatement of these principles, and will report thereafter to the Conference.

#### REPORT OF THE COMMITTEE ON PRETRIAL PROCEDURE

Chief Judge Alfred P. Murrah, Chairman of the Committee on Pretrial Procedure, reported to the Conference a continuing increase in the use of the pretrial conference procedure in the district courts under Rule 16, Federal Rules of Civil Procedure, particularly among recently appointed district judges. Almost every district judge now uses the pretrial conference at least to some extent. Moreover, figures compiled by the Administrative Office indicate that pretrial orders defining the issues and reciting agreements made by the parties are entered in about two-thirds of the total pretrial conferences held, as required by Rule 16.

#### STATEMENT OF THE ESSENTIALS OF PRETRIAL AND TRIAL PROCEDURE— SEMINAR PROGRAMS

The Committee has planned for several years to prepare a concise statement of the essentials of pretrial and trial procedure, as an aid to the district courts in the conduct of judicial business. In



the opinion of the Committee, however, the only practical way of bringing out in full the views of the judiciary on matters of judicial administration, which the Committee deems vital for the development of such a statement, is through the seminar discussion. The Conference thereupon adopted the following resolution recommended by the Committee:

That your Committee on Pretrial Procedure, in cooperation with the Committee on Court Administration be authorized to conduct, at appropriate times and places, a series of meetings or seminars of judges and lawyers for the purpose of exploring the most effective techniques for the utilization of the pretrial and trial procedures contemplated by the Federal Rules of Civil Procedure; and that in conjunction with these meetings your Committee be further authorized to conduct a special study for the purpose of developing a statement of the essentials of pretrial and trial practice for presentation to the Judicial Conference for its consideration and adoption.

#### CIRCUIT PRETRIAL COMMITTEES

The Conference in September 1952 (Conf. Rept., p. 21) adopted a resolution requesting the chief judge of each circuit to appoint a regular standing committee of his circuit conference on pretrial procedure, consisting of at least five members and to include both judges and lawyers, which would be charged with the duty of—

- (a) Ascertaining the extent and the efficiency of the employment of pretrial procedure in the Federal and State courts of the circuit;
- (b) Considering appropriate measures to promote its wider understanding and use and taking appropriate action; and
- (c) Making an annual written report of its activities and of the extent of the employment of pretrial in the circuit to the annual conference of the circuit and furnishing a copy to the chairman of the national Committee.

Upon recommendation of the Committee the Conference invited the chief judges of the circuits to reactivate or to reconstitute any circuit pretrial committees that have become inactive, with the request that the local committees keep the national Committee informed of their plans and activities.

#### ASSIGNMENT OF JUDGES

Chief Judge Murrah stated the view of the Committee that a policy of assigning newly appointed district judges for service in other districts is sound and fully consonant with the statement of

policy adopted by the Advisory Committee on Inter-Circuit Assignments and approved by the Conference at its March 1960 Session (Conf. Rept., p. 32), and that such assignments should be freely made. The Committee accordingly recommended that for the purpose of observation and experience district judges be assigned for judicial service from time to time to districts utilizing effective methods of pretrial procedure and other improved techniques of judicial administration. This recommendation was approved by the Conference.

The Conference received the report of the Committee and ordered that it be circulated to all members of the Federal judiciary.

#### REPORT OF THE ADVISORY COMMITTEE ON INTER-CIRCUIT ASSIGNMENTS

Circuit Judge Jean S. Breitenstein, Chairman of the Advisory Committee on Inter-Circuit Assignments, submitted a comprehensive report of the activities of the Committee under the plan for the inter-circuit assignment of judges approved by the Conference on March 11, 1960 (Conf. Rept., March 1960, p. 31). In accordance with the plan, the Committee submitted a list of the requests for approval of assignments referred to the Committee by the Chief Justice after March 11, 1960, or presented directly to the Committee, together with the recommendations of the Committee to the Chief Justice. All requests for assignments were approved by the Committee, except one for which the certificate of necessity for service was later withdrawn.

Judge Breitenstein reported that questions have arisen as to how far in advance assignments should be made and as to the length of assignments. It was the opinion of the Committee that while advance planning of assignments is desirable, it should not recommend any assignment which has a termination date of more than one year from the date of the consent to the assignment, if an active judge is involved, or from the date of the expression of willingness to serve, if a senior judge is involved. Further, the Committee was of the opinion that assignments of active judges should not ordinarily exceed six weeks and senior judge assignments should not ordinarily exceed one year.

With regard to the propriety of inter-circuit assignments for the disposition of a certain case, the Committee was of the opinion

that the need for services in particular cases is a factor which has an important bearing on the question of need, but that at the same time the action of the Committee should be based upon service related to a particular period of time rather than related to a particular matter before a court. The Conference was of the view, however, that such assignments may be desirable in some cases, and directed that the Committee report be amended by adding the following: "Unless the circumstances make it desirable to make the recommendation for a particular case."

Chief Judge Chambers presented a written statement with respect to the work of the Committee and requested that it be included with the records of the Conference. The Conference thereupon directed that the Committee's report, together with Judge Chambers' statement, be received and filed.

#### REPORT OF THE COMMITTEE ON THE OPERATION OF THE JURY SYSTEM

Chief Judge Harry E. Watkins, Chairman of the Committee on the Operation of the Jury System, presented to the Conference the Committee's study on the operation of the jury system, authorized by the Conference at its September 1957 session (Conf. Rept., p. 33). The Committee expressed the hope that this report may serve as a handbook for judges, clerks, and jury commissioners for many years, and that the recommendations that have been made for improvement in the operation of the jury system may bear fruit. The final report was approved by the Conference and the Administrative Office was authorized to have it printed and circulated immediately to all Federal judges, clerks of district courts, jury commissioners, and others upon request.

The Administrative Office was further authorized to distribute a copy of the questionnaire summary, compiled for the Committee during the course of its study, to each Justice of the Supreme Court, circuit judge, and district judge.

#### LEGISLATION

Upon recommendation of the Committee the Conference reaffirmed its approval of the following bills relating to the operation of the jury system upon which no action was taken by the 86th Congress:

(1) H.R. 4343, to provide a jury commission for each United States District Court, to regulate its compensation, to prescribe its duties and for other purposes.

(2) H.R. 4157, to increase the compensation of jury commissioners from \$5.00 to \$10.00 per day with no limit on the number of days of service.

(3) H.R. 11472, to increase the subsistence allowable of jurors to \$10.00 per day and to limit daily interim travel expense payments to the amount of the subsistence allowance.

Upon recommendation of the Committee, the Conference reaffirmed its disapproval of H.R. 591 and H.R. 1095, 86th Congress, to provide that in a civil case the number of jurors required to constitute a jury and the number who must agree for a valid verdict shall be determined by the law of the State in which the action is tried.

#### JUROR'S CREED

Chief Judge Watkins informed the Conference that through the cooperation of Mr. James V. Bennett, Director of the Bureau of Prisons, the Committee had arranged to have copies of the Juror's Creed drawn in color beside a background of the Statue of Liberty. The work is being done by a class in commercial art at the El Reno Reformatory and a copy will be furnished to each district court, upon its request, to be hung in each jury room.

#### EMPANELMENT DAY

The Conference at its March 1960 session (Conf. Rept., p. 30) referred to the Committee for study the divergencies in practice in paying per diem to jurors on empanelment day. The Committee found that empanelment day is used in only three districts—the District of Columbia, and the Northern and Southern Districts of California—and while it was of the view that, wherever practical, jurors should be used for actual jury service on the first day they report, it recognizes that the problem in the metropolitan districts is different than in other districts and that the solution of the problem should be left to the discretion of the judges of these courts.

#### PAYMENT OF JURORS BY LITIGANTS

The Committee considered the proposal referred to it by the Conference at its last session to require the party demanding a

jury trial to prepay, at the beginning of each trial day, the per diem fees to be paid to the jurors and recommended that the proposal be disapproved. This recommendation was approved by the Conference.

#### COST OF THE JURY SYSTEM

The Committee called attention to table J 1 published in the Annual Report of the Director of the Administrative Office for the fiscal year 1960 which shows the number of petit jurors present and paid divided into those serving on juries, the number challenged and the number in reserve. The record of petit juror utilization for 1960, as disclosed in the table, is the best in eight years. With 90 more trials in 1960 than in 1959, the number of jurors present declined by 13,000 and the number in reserve and not used by 24,000. Not only has this resulted in an important saving of the time of jurors but it also reflects a substantial reduction of jury costs in spite of the increase in jury trials. The saving has been in excess of \$300,000.

#### REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE CRIMINAL LAW

Chief Judge William F. Smith, Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

#### FEES AND ALLOWANCES OF UNITED STATES COMMISSIONERS

There had been introduced in the 86th Congress a bill, H.R. 2547, to increase the maximum fees that may be earned by a United States commissioner in one calendar year from \$10,500 to \$12,500 and to increase generally the fees payable to the United States commissioners. Upon recommendation of the Committee the Conference approved the revised schedule of fees payable to United States commissioners set forth in the bill.

#### JURISDICTION OF UNITED STATES COMMISSIONERS

The Committee reported that H.R. 3218, 86th Congress, would amend 18 U.S.C. 3401 (a) and (b) with respect to the trial jurisdiction of the United States commissioners by inserting in lieu of the term "petty offenses" the term "an offense punishable by imprisonment for not more than one year or by a fine of not more

than \$1,000, or both." The bill retains the provision that a defendant may elect to be tried before the district court, but eliminates from subsection 3401(b) the requirement that the commissioner apprise the defendant of his right to elect to be tried in the district court and that he secure from the defendant a signed, written consent to be tried before the commissioner. The Committee recommended that the bill be approved with an amendment restoring the requirement that the United States commissioner apprise the defendant of his right to elect to be tried before the district court and prohibiting him from proceeding to try the case unless the defendant, after being so apprised, signs a written consent to be tried before the commissioner. The bill as thus amended was approved by the Conference.

#### IMMUNITY LEGISLATION

The proposal contained in H.R. 7392, 86th Congress, would grant immunity from criminal prosecution when upon order of the Court a witness is compelled to testify, or to produce evidence before any grand jury or court of the United States, in a prosecution under 18 U.S.C. 1951 with respect to interference with commerce by threats or violence, or in a prosecution under 29 U.S.C. 186 with respect to the bribery of a labor representative. Upon recommendation of the Committee, the Conference approved the bill.

#### INTERCEPTED COMMUNICATIONS AUTHORIZED BY STATE LAW

The Conference considered the report of the Committee with regard to S. 3340, 86th Congress, which would authorize certain communications to be intercepted in compliance with State law, if the interception was made after determination by a State court that reasonable grounds existed for belief that such interception might disclose evidence of the commission of a crime. After a full discussion, the Conference referred the bill to the Committee for further study.

#### MENTALLY INCOMPETENT PRISONERS

The Attorney General of the United States is presently authorized by 18 U.S.C. 4248 to transfer a prisoner committed to his custody under the authority of Section 4246 or Section 4247 to the proper authorities of the State of his residence. H.R. 9676,

86th Congress, would amend this section to vest in the Attorney General, or his authorized representative, the authority also to transfer a mentally incompetent prisoner "to a hospital or other facility with which suitable arrangements have been made for his custody and care." Upon recommendation of the Committee, the Conference approved the bill.

Chief Judge Smith informed the Conference that the Committee, at the request of the Director of the Bureau of Prisons, has undertaken a study of the need for more specific criteria in determining competency under 18 U.S.C. 4244 and 4245, the need for more specific criteria for determining potential dangerousness under 18 U.S.C. 4247, and the need for improved standards of procedure.

#### ESCAPE INVOLVING JUVENILES

The Conference, on recommendation of the Committee, approved the provisions of H.R. 11887, 86th Congress, which would amend 18 U.S.C. 1073 to provide a lesser punishment for the crime of escape, attempt to escape, or instigating or aiding escape, where the crime is committed by a person who is under commitment as a juvenile delinquent, or by a person who is in custody by virtue of a lawful arrest for a violation of any law of the United States, not punishable by death or life imprisonment, committed before such person's 18th birthday and as to whom the Attorney General has not specifically directed the institution of criminal proceedings.

#### FUGITIVE FELON ACT

The Conference considered the proposal contained in H.R. 11889, 86th Congress, to extend the provisions of 18 U.S.C. 1073 to cover flight to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, punishable by death or imprisonment for a term exceeding one year and directed that the Committee give further consideration to the proposal.

#### INDETERMINATE SENTENCES

The Committee reported that H.R. 11359, 86th Congress, would add a new subsection to 18 U.S.C. 4208, as follows:

(e) When a judgment of conviction is entered and sentence is imposed for less than life but for more than five years upon a defendant who has had no prior judgment of conviction entered against him, if the trial judge who im-

posed the sentence is a resident of a State other than that in which the court having jurisdiction is located and the court failed to receive or require a report touching the defendant from the United States Probation Office in the district before imposing sentence and failed to designate in the sentence, as permitted under subsection (a), when the defendant should become eligible for parole, such defendant shall be eligible for parole at such time as the Board of Parole may determine and upon request of such defendant an immediate study shall be undertaken and made as described in subsection (c).

It was the opinion of the Committee that this proposal was desirable, but that it should be made applicable to all cases where the sentencing judge fails to receive or require a presentence report and not merely to those cases where the sentencing judge is a resident of a State other than that in which the court having jurisdiction is located. The Conference thereupon adopted the recommendation of the Committee that the bill be approved with the omission of the limitation on its applicability.

#### VOLUNTARY ADMISSIONS AND CONFESSIONS

At the suggestion of the Committee, the Conference referred the proposal contained in S. 3411, 86th Congress, with respect to the admissibility of voluntary admissions and confessions to the Advisory Committee on Criminal Rules with the request that it be made the subject of a joint study by that Committee and the Committee on the Administration of the Criminal Law.

#### JOINDER OF DEFENDANTS

It was the view of the Committee that the proposal contained in H.R. 12923, 86th Congress, to provide that a new trial shall be granted a defendant upon his motion if during trial the basis for the original joinder of defendants no longer exists, may have an effect upon Rule 8(b), Federal Rules of Criminal Procedure. On recommendation of the Committee the Conference thereupon referred the bill to the Advisory Committee on Criminal Rules with the request that it be made the subject of a joint study by that Committee and the Committee on the Administration of the Criminal Law.

#### CONVEYANCE AND DELIVERY OF OBSCENE MATTER

The Committee recommended that H.R. 10172 and various other bills introduced in the 86th Congress, to strengthen the criminal



penalties for the mailing, importing or transporting of obscene matter, be disapproved because of the objectionable provisions requiring the imposition of mandatory terms of imprisonment and fine. The Committee noted, however, that there was no objection to the proposed range of punishment, if the imposition thereof is made permissive and not mandatory. The recommendation was approved by the Conference.

#### MANDATORY MINIMUM SENTENCES

Judge Smith informed the Conference that the Committee had discussed briefly the several problems which arise from the existing and proposed statutory provisions requiring the imposition of mandatory minimum sentences and that the Committee would undertake a further study of the problem and report thereon to the Conference.

#### CONFLICT OF INTEREST STATUTES

The Committee reported that it had been informed that the application of the conflict of interest statutes, 18 U.S.C. 281 and 283, to United States commissioners has created a personnel problem in many districts. Out of a total of 500 United States commissioners, there are approximately 300 whose earnings do not exceed \$1,000 a year and 186 of these are attorneys, many of whom prosecute claims against the United States before government agencies and departments. Resignations among this group because of the application of the conflict of interest statutes would adversely affect the efforts of the district courts to retain the services of competent attorneys. The Committee, therefore, recommended a statutory amendment to exempt part-time United States commissioners from the application of these statutes. The recommendation was approved by the Conference.

#### CAPITAL PUNISHMENT

The Committee reported that H.R. 870, 86th Congress, would abolish the death penalty under all laws of the United States except the Uniform Code of Military Justice, and substitute life imprisonment in lieu thereof. On motion of Chief Judge Smith, the Committee was authorized to continue its study of this proposal.

## GRAND JURY HANDBOOK

Chief Judge Smith reported that a Federal Grand Jury Handbook, prepared under the auspices of the Section of Judicial Administration of the American Bar Association, had been submitted to the Committee with a request that it be approved for official publication. While there appears to be nothing objectionable in the contents of the handbook, it was the view of the Committee that it would be inappropriate to approve it for official publication, and therefore, no recommendation concerning it was made.

## REPORT OF THE COMMITTEE ON THE USE OF LAND COMMISSIONERS

Chief Judge Royce H. Savage, on behalf of Circuit Judge Stanley N. Barnes, Chairman of the Committee on Land Commissioners, informed the Conference that the Committee had met and had considered the problem assigned to it. While much information has been gathered, there are many matters in dispute which must be investigated. A preliminary report containing some tentative conclusions of the Committee was filed with the Conference and a definitive and final report will be submitted later.

## INSTITUTES ON SENTENCING

On motion of Chief Judge Rives, the Conference authorized the convening of an Institute on Sentencing in the Fifth Circuit pursuant to 28 U.S.C. 334 in accordance with the plan and program prepared by the circuit committee.

## LEGISLATIVE PROGRAM

At the request of Warren Olney III, Director of the Administrative Office, the Conference authorized the distribution to the Federal judiciary of a report prepared by the Administrative Office on legislation relating to the Judiciary enacted by the 86th Congress.

## COURT FACILITIES IN GUAM

The Conference referred to the Director of the Administrative Office the recommendation of the Judicial Conference of the Ninth Circuit that means be provided to obtain adequate court facilities in Guam.

## CASES AND MOTIONS UNDER ADVISEMENT

The Administrative Office submitted to the Conference a report on cases under submission in the courts of appeals and cases and motions under advisement in the district courts. The report listed 46 cases under submission in the courts of appeals more than 3 months as of September 1, 1960, and 16 cases and motions which had been held under advisement by the district courts more than 6 months as of that date. Where necessary, these will be brought to the attention of the circuit councils by the chief judges of the circuits.

## COMMITTEES

On motion of Chief Judge Johnsen, the Conference requested the Chief Justice, if he sees fit, to appoint a special committee to make a study and analysis of the legislative history, congressional expression, legal literature and other available data on the question of the powers of the Judicial Councils, under the language of the last paragraph of 28 U.S.C. 332, and to make a report thereon to the Conference with its recommendations of what it believes the Conference can properly do or declare to make those powers realized and effective.

On motion of Chief Judge Biggs the Conference authorized the Chief Justice to reconstitute the Committees on Court Administration and Supporting Personnel and directed that the Advisory Committee of the Conference, heretofore appointed by the Chief Justice, be continued.

For the Judicial Conference of the United States.

EARL WARREN,  
*Chief Justice.*

WASHINGTON, D.C., *January 6, 1961.*

# APPENDIX

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REPORT OF  
THE ATTORNEY GENERAL OF THE UNITED STATES  
TO  
THE JUDICIAL CONFERENCE OF THE UNITED STATES  
BY  
THE HONORABLE WILLIAM P. ROGERS  
Attorney General of the United States

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Washington, D.C.

September 21, 1960

## APPENDIX

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Mr. Chief Justice, members of the Judicial Conference of the United States:

It is a privilege again to meet with the members of the Conference and to discuss briefly a few matters of mutual interest.

### *Omnibus Judgeship Bill*

We are, of course, deeply concerned by the failure of Congress to create the judgeships recommended by the Conference. We believe, as you do, that each of the new judgeships is necessary if the Federal system is to cope with the increased litigation arising from our expanding population.

The judgeship bill was among those designated by the President for special consideration at the regular session and again at the August session of Congress. To remove the bill from political considerations, the President assured Congress early in the year that if the bill were enacted he would make nominations from qualified candidates drawn from each of the two major political parties on an equal basis. Later, we requested that Congress enact the bill supported by the Judicial Conference, effective January 20, 1961. However, as you know, despite the fact that most of the recommendations for new judgeships had been pending since 1954, and despite the detailed justification of need made as to each judgeship, no action was taken on the bill.

### *Vacancies*

In these circumstances the necessity to maintain the existing judge power of the Judiciary at full strength becomes all the more important. At the present time, eleven vacancies exist. Needless to say we were most disappointed that the nominations made for four district court judgeships, one each in Hawaii, Massachusetts, Eastern Michigan and Texas, were not confirmed by the Senate. As to the other seven, most of them are fairly recent, all but three having come into existence since the end of May.

*Caseload*

Every effort has been made to continue to reduce the backlog of cases in which the United States is a party. Overall, our status today as compared to when we instituted this program in 1954 is most favorable. In total cases and matters pending, we have effected a reduction of 30,363 items or 41.8 percent.

The Civil Division again had an excellent year. At the end of fiscal year 1960, it had reduced its caseload of pending cases to 13,342, the lowest number in the history of the Division. It closed 9,085 cases in 1960 as compared with 7,984 in the previous year. The Division terminated 4,479 suits against the United States. In these cases a total of \$17,600,000 was recovered by plaintiffs. In the 4,606 cases on behalf of the Government which were closed, a total of \$41,097,000 was recovered.

On the other hand, a marked increase in other areas, particularly in tax lien and land condemnation cases has resulted in a slight upturn over a year ago in total pending criminal and civil cases.

*Protracted Cases*

Over the years the trial of protracted cases has been the subject of much study and discussion. We therefore have received with much interest the Handbook approved last spring by this Conference which sets forth recommended procedures for the trial of these cases. We share the view of the Conference that many obstacles can be met and overcome by the early identification of the protracted case and its assignment to one judge for pretrial and trial. We welcome this comprehensive treatment of the subject and we wish to assure the Conference that the Department will continue to cooperate fully with the courts in seeking the means to expedite the trial of departmental cases of a protracted nature.

In this connection, the Conference may be interested in our recent experience in the trial of antitrust cases. During fiscal 1960, thirteen antitrust cases were tried requiring a total of 223 trial days. In the preceding year, twelve cases were tried requiring a total of 146 days. Accordingly, for a two-year period the actual trial days excluding time for pretrial in antitrust cases in which the Government was involved total 369.

*Public Defenders*

Legislation to provide a public defender system for the Federal court system passed the Senate but unfortunately was not reported by the House Judiciary Committee (S. 895). However, the status of this legislation is such as to give hope for favorable action in the next Congress.

We were, of course, pleased by the enactment of legislation to provide for a public defender's office in the District of Columbia. The \$75,000 annual appropriation will not provide for legal assistance to all indigents, a program which it was estimated would have cost in the neighborhood of \$200,000 a year. However, it is contemplated that the office will conduct investigations, aid in location of witnesses and provide other substantial assistance to counsel representing indigent defendants.

*Commitments of Defendants for Study and Observation Under 18 U.S.C. 4208(b)*

We have now had two years of experience under the statute which provides that the courts may commit adult offenders to prison for study and observation prior to the fixing of sentence.

During the period October 7, 1958, when the first commitment was ordered, and August 8, 1960, the courts made a total of 393 commitments under the Act. It has been used in each Judicial Circuit and in a total of 46 Judicial Districts.\*

That the courts are apparently satisfied by the way in which this Act is being administered is indicated by the fact that during the calendar year 1959 there were an average of approximately 15 defendants committed for study each month; in the months of June and July 1960 the figure exceeds 30 per month.

Of the group committed to date, the courts have taken final action on a total of 283 defendants—55 were placed on probation after study; 170 were committed under the new statute which gives the United States Board of Parole authority to establish the parole eligibility date; 43 were sentenced under the regular sentencing statute; and most of the remainder were returned to State jurisdictions for hospitalization. In approximately 80 percent of the cases, the recommendation of the Director of the Bureau of Prisons as to the appropriate sentence was adopted by the court.

\*The distribution of commitments by Circuit is as follows: First Circuit, 1; Second, 18; Third, 31; Fourth, 54; Fifth, 64; Sixth, 20; Seventh, 16; Eighth, 4; Ninth, 143; Tenth, 39; District of Columbia, 3.

The courts are also making use of the provisions of the statute (18 U.S.C. 4208(a)(2)) which authorizes the Board of Parole to fix the parole eligibility date; a total of 642 defendants were committed under this law during the fiscal year 1960. On the other hand, the courts have made less frequent use of 4208(a)(1) under which a judge may himself set minimum and maximum terms. Only 71 defendants were sentenced under this provision during the past fiscal year.

#### *Youth Corrections Act*

There has been a continuing and steady increase in the commitment of youth offenders under the provisions of the Federal Youth Corrections Act. The increase in the youth population of Federal institutions was an important factor in the Department's acquiring from the Department of Defense the former Disciplinary Barracks at Lompoc, California. This modern, well-equipped institution was activated, primarily as a youth center, early in August of 1959 and currently has a population of more than 1,000 young men. The Lompoc institution also serves as a study center for adults and youths committed for observation and study under 18 U.S.C. 4208(b) and 18 U.S.C. 5010(e), respectively.

The enactment in August 1958 of the statute (18 U.S.C. 4209) which extends the provisions of the Youth Corrections Act to selected young offenders between the ages of 22 and 25 has contributed substantially to the number of youth offenders in our custody. Since the statute became operative, a total of 518 have been committed under its provisions. During the fiscal year 1960, 280 youths were committed under the provisions of the Extended Youth Act or 21.5 percent of the approximately 1,300 youth offenders committed during that year.

Although there have been some difficulties in the administration of the Act, on the whole we believe that the program is fulfilling the objectives contemplated.

#### *Sentencing Institutes*

As envisioned in Public Law 85-752, the Department and the Bureau of Prisons have participated actively in the various circuit sentencing institutes held during the past year.

The Department feels that the sentencing institute program is a worthwhile and essential contribution to the administration of justice in the Federal system and we will continue to do our part



in making this program successful. We have already discussed with representatives of the Judicial Conference and the Administrative Office of the Courts the mutual interest in another sentencing institute on the national level, somewhat similar to that held in Boulder, Colorado, in the summer of 1959. A national institute serves a very useful purpose in integrating and coordinating the efforts of the several circuits in working toward their objective, as stated by the Congress, of formulating "sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States." If the Judicial Conference approves the tentative plan to hold another national sentencing institute in 1961, we, of course, will extend our full cooperation.

*President's Conference on Administrative Procedure*

The Department is pleased to note that Chief Judge Prettyman, who so excellently chaired the first President's Conference on Administrative Procedure, has been designated by the President to serve as temporary chairman of the renewed conference. We sincerely hope that the Administrative Conference will attain the stature and usefulness of the conferences which have come to be an integral part of our judicial system. Our office of Administrative Procedure will be pleased to cooperate with the organizing committee and I wish to assure you the full support of the Department in this important undertaking.

*Honor Program*

Finally, a word about our Honor Program in which we select outstanding young law school graduates based solely on their records. Since its establishment in 1954, a total of 355 select law graduates from 76 law schools located in 40 States and the District of Columbia have been recruited. As of today, approximately 210 honor recruits or 60 percent of the total are still with the Department.

As you know, we attempt to provide these young lawyers with a general background in government litigation, with particular emphasis on courtroom experience, and a majority of these lawyers have argued in the courts throughout the country. I am pleased to say that the judges share our enthusiasm for the program and that practically all comments concerning their legal capabilities and demeanor have been favorable.

The program has been most effective in providing the Department with some of the ablest young legal talent in the country. We believe in its long range effectiveness, and we hope that it will continue to be a major and permanent recruiting source for the Department of Justice in the years ahead.

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