REPORT

of the

JUDICIAL CONFERENCE OF THE UNITED STATES

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PROCEEDINGS, MARCH 13–14, 1961

WASHINGTON, D.C.

1961

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Warren Olney III
Director

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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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APPENDICES

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

March 13–14, 1961

The Judicial Conference of the United States convened on March 13, 1961, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on March 14. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:
- Chief Judge Wilbur K. Miller
- Chief Judge David A. Pine, District of Columbia

First Circuit:
- Chief Judge Peter Woodbury
- Chief Judge George C. Sweeney, District of Massachusetts

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 William F. Smith, District of New Jersey (designated by the Chief Justice in place of Chief Judge J. Cullen Ganey who was unable to attend)

Fourth Circuit:
- Chief Judge Simon E. Sobeloff
- Chief Judge Roszel C. Thomsen, District of Maryland

Fifth Circuit:
- Chief Judge Elbert Parr Tuttle
- Judge Ben C. Connally, Southern District of Texas

Sixth Circuit:
- Chief Judge Shackelford Miller, Jr.
- 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
- 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:
- Chief Judge Marvin Jones

Senior Judges Orie L. Phillips and Albert B. Maris; Circuit Judge Jean S. Breitenstein; District Judges Harry E. Watkins, Peirson M. Hall, Thomas J. Clary, Louis E. Goodman; and Judge Samuel E. Whitaker of the Court of Claims attended all or some of the sessions.

The Attorney General, Honorable Robert F. Kennedy, accompanied by the Solicitor General, Honorable Archibald Cox, attended the morning session of the first day of the Conference.

Honorable William P. Rogers, former Attorney General, and Honorable J. Lee Rankin, former Solicitor General, attended the Conference briefly on the afternoon of the first day and expressed their appreciation for the cooperation received from the Conference on matters of judicial administration during their terms of office.

Honorable Philip A. Hart, representing the Committee on the Judiciary, United States Senate, attended the sessions on the second day of the Conference.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives; Guy M. Gillette, Counsel, Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, 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 of the Administrative Office of the United States Courts, Will Shafroth, Deputy Director, and members of the Administrative Office staff attended the sessions of the Conference.

COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES

THE WHITE HOUSE,
WASHINGTON, March 14, 1961.

MR. CHIEF JUSTICE, MEMBERS OF THE JUDICIAL CONFERENCE:

This is my first opportunity as President to greet the members of the United States Judicial Conference. I regret that the press of matters has foreclosed the opportunity I had anticipated of seeing and talking with you personally.

I understand that your two-day meeting has been fruitful, and I rejoice with you in the word that an important goal set by the conference appears on the way to achievement when legislation, which has passed in the Senate, is enacted to increase the number of federal judges throughout the country. I believe with you that the new judgeships are essential if the federal system is to continue to cope with the increase of litigation caused by our expanding

population. You may be sure that careful attention will be given to the selection of incumbents when the new positions are authorized to the end that the high regard in which the Federal Judiciary is held will be maintained. I would hope that much of the spade work will have been done in processing these selections before your conference meets in Washington again.

I want to assure you of my continuing interest in matters which are of mutual concern to us and of my support of cooperative efforts between the judicial and executive branches which will result in advancing the high objective of equal justice under law toward which we all strive.

JOHN F. KENNEDY.

REPORT OF THE ATTORNEY GENERAL

Attorney General Robert F. Kennedy, on invitation of the Chief Justice, spoke to the Conference informally on matters relating to the business of the courts of the United States. Among other things, he expressed the Department's interest in the proper administration of the jury system. While the selection of qualified jurors is the responsibility of the Judiciary, the Department of Justice is also deeply concerned because any successful attack on the administration of the jury system necessarily has serious and far-reaching consequences for litigation handled by the Department.

The Attorney General stated he wished to call to the attention of the Conference the allegations being made in several districts at the present time that jurors are not being properly selected and impanelled, and there have been incidents in past years when considerable numbers of unqualified persons actually have been selected for jury duty. He said he was aware that the Conference recently approved a report of its Committee on the Operation of the Jury System, to be made public very shortly, and that he hoped that the Conference and the Judiciary generally would make every effort to bring the administration of the system in every district up to the standards recommended in the report, thus making sure that the administration of the system would not be open to question.

Later, during the course of its session, the Conference considered this matter. The Conference instructed the Director of the Administrative Office to consult and cooperate with the Attorney General, and to bring to the attention of the appropriate chief judge any instance which might be found where procedures in administering the jury system appeared to be open to any possible question.

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COMMUNICATION OF THE CHAIRMAN COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

Honorable Emanuel Celler, Chairman of the Committee on the Judiciary, notified the Chief Justice that he was unable to attend personally the Session of the Judicial Conference and requested that a letter he had addressed to the Chief Justice as Presiding Officer be read to the Conference. Mr. Celler's letter was read by Mr. William R. Foley, General Counsel of the Committee.

Chairman Celler's letter stated that he was gratified to learn that a special committee had been appointed to study the matter of organization and power of the Judicial Councils of the Circuits and that he looked forward with much interest to the Committee's report, which he understood would be presented at this session. He said that his concern over the activities of the Judicial Council had arisen from personal experiences as Chairman of the Judiciary Committee. Problems relating to judicial administration had not infrequently been presented to him as Chairman of the Judiciary Committee which, in his opinion, should not have been permitted to arise and would, he felt sure, never have come to the attention of the Congress if the Judicial Councils had discharged the responsibilities and exercised the powers conferred upon them by Section 332 of Title 28, United States Code.

Without wishing to dwell on specific instances or individuals, the Chairman stated that over the course of the years several of these matters had caused great concern, and had created an undertone of dissatisfaction with the work of the Judicial Councils which had caused him to present the problem to the Judicial Conference. The Chairman stated that he had actively participated in processing the statute in 1939 which created the Judicial Councils and he entertained no doubt whatsoever of the legislative intent in enacting the law. He said that he understood that since that time doubt had arisen in the minds of at least some members of the federal judiciary about the scope of Section 332 and the intent of its language. The Chairman stated he wished to assure the Conference that the broad language of the statute was deliberate, and was intended to provide the necessary elasticity to enable the Judicial Councils to deal with the numerous and varied problems relating to the management and administration of the courts which the Congress knew would be bound to arise.

The Congress believed, the Chairman said, that the Judicial Councils of the Circuits would best know local conditions, needs and problems and the most appropriate actions and remedies, and it intended, consequently, to confer on the Councils broad authority to take whatever action and to apply such remedies as were necessary and most appropriate. Certainly the Congress had never intended the powers conferred on Judicial Councils to lie dormant.

The Chairman stated he felt there was an urgent and immediate need for the Judicial Councils to function as Congress had intended. He hoped the federal judges would resolve any doubts there might be as to the scope of authority under the existing law and would make recommendations if corrective legislation is needed. On the other hand, if the Conference concluded that the authority of the present statute is adequate, Judicial Councils should act fully and effectively without further questioning as to legislative authority. He concluded by emphasizing his conviction that prompt effective action by Judicial Councils on all of the many problems of judicial administration was necessary and was desired by the Congress, and that if appropriate and effective action was not taken by the Judicial Branch on these matters the default would have to be remedied by the Congress.

COMMUNICATION OF THE CHAIRMAN COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

Honorable James O. Eastland, Chairman of the Committee on the Judiciary, United States Senate, addressed a letter to the Director, Mr. Olney, transmitting therewith copies of the following bill:

S. 1268

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth paragraph of section 331 of title 28 of the United States Code is amended as follows:

"The Conference shall make continuing surveys 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 promulgate policies with respect to the reporting of judicial business, administrative practices, and supporting personnel, in the interest of uniformity and expedition of business which shall be observed by judicial councils and circuit and district courts."

SEC. 2. (a) Section 45(a) of title 28 of the United States Code is amended to read as follows:

"(a) The circuit judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the circuit. If all

the circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a circuit judge for one year. The chief judge shall serve for a term of four years, or until he attains the age of seventy years, whichever event first occurs, and thereafter shall be succeeded in rotation by the circuit judges in regular active service who are next senior in commission, under seventy years of age, and willing to serve, who shall serve for terms of four years, or until attaining the age of seventy years, whichever event first occurs."

(b) Section 136(a) of title 28 of the United States Code is amended to read as follows:

"(a) In each district having more than one judge the district judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the district court. If all the district judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age but the judge may not act as chief judge until he has served as a district judge for one year. The chief judge shall serve for a term of four years, or until he attains the age of seventy years, whichever event first occurs, and thereafter shall be succeeded in rotation by the district judges in regular active service who are next senior in commission, under seventy years of age, and willing to serve, who shall serve for terms of four years, or until attaining the age of seventy years, whichever event first occurs."

(c) Except as provided in this subsection, the amendments made by subsections (a) and (b) shall take effect on July 1, 1961. The term of a chief judge (other than a chief judge of a two-judge district court) holding office on June 30, 1961, shall expire four years from that date, or upon such judge attaining the age of seventy years, whichever first occurs. In the case of a two-judge district court the amendment made by subsection (b) shall not take effect so long as the chief judge holding office on June 30, 1961, continues to hold such office.

SEC. 3. (a) Section 137 of title 28 of the United States Code is amended to read as follows:

"§ 137. Duties of chief judges and other district judges

"(a) In each district having more than one judge in active service the chief judge shall, from time to time and for such period or periods as he may determine, designate the judges to preside and attend at the various divisions and sessions of the district court. He shall determine and fix the time of the various sessions of the court, arrange the business of the court, and divide and assign it among the judges. He shall also be charged with the general administration and superintendence of the business of the court, and the prompt implementation of all orders of the judicial council.

"(b) The chief judge shall give his attention to the discharge of the duties especially pertaining to his office, and to the performance of such additional judicial work as he may be able to perform.

"(c) It shall be the duty of the chief judge and the associate judges to meet together at least once in each month in each year, at such time as may be designated by the chief judge, for the consideration of such matters pertaining to the administration of justice in the court as may be brought before them, including the taking of such actions as may be necessary to carry promptly into effect all orders of the judicial council.

"It shall be the duty of each associate judge to attend and serve at any division or session of the court to which he is assigned. Each associate judge

shall submit to the chief judge such data as may be required by the Judicial Conference of the United States, the judicial council of the circuit, or the chief judge in such form as may be required.

"The chief judge, and each judge of a one-judge district court, shall submit to the judicial council of the circuit and to the Judicial Conference of the United States a quarterly report in writing of the business of the court and of the duties performed by each of the judges of the court during the preceding three months."

(b) The item relating to section 137 of such title contained in the analysis of chapter 5 thereof is amended to read as follows:

"137. Duties of chief judges and other district judges."

(c) The amendment made by this section shall take effect on July 1, 1961.

Chairman Eastland requested that the proposed legislation be placed before the Conference for its consideration, and that a report of the Conference action be forwarded to the Committee on the Judiciary at the earliest convenient time.

The bill was referred to the Committee on Court Administration for study and report to the Conference.

JUDICIAL BUSINESS

Circuits and Districts

The chief judge of each circuit, with the district judge from the circuit, made reports on the state of the judicial business and related matters in the courts in each circuit.

The reports generally cited unduly heavy backlogs of cases, lengthy delays in the disposition of judicial business, the need for additional judicial assistance, and, in some instances, the need for additional supporting personnel to handle the continued heavy filings of cases.

Nationally, the trend in litigation is continuing upward. A comparison of the demands upon the courts this year with those of a year even as recent as 1950 produces a striking contrast in the growth of judicial business and the increase in federal judgepower.

In 1950, private civil cases—which by far are the most burdensome—accounted for 22,600 of the total cases filed in the 86 districts; by 1960 this number had risen to 30,048, an increase of 33 percent. This increase would have been still larger except for the effect which the Jurisdiction Act of 1958 had on private case filings. In fiscal 1958, the last full year before the Act became effective, 37,725 private cases were filed in the 86 districts.

On June 30, 1950, there were 27,771 private civil cases pending; by June 30, 1960, the backlog of private civil cases had climbed to 40,932, an increase of nearly 50 percent.

Yet, between the years 1950 and 1960, the number of all district judgeships only increased from 221 to 245, an increase of 11 percent, for an increase of only 24 judges for the entire nation.

In the Courts of Appeals, it is seen that in 1950 they received 2,830 cases and, by 1960, they received 3,899 cases, an increase of over 38 percent. The cases pending in the courts of appeals on June 30, 1950, were 1,675; by June 30, 1960, the cases pending totalled 2,220, or an increase of 33 percent.

During this ten-year period, only 3 circuit judgeships were created for the entire nation, making a total of 68, or an increase of less than 5 percent.

More current is the experience reported over the last six months of 1960—July through December.

District Courts

The district courts had 61,251 civil cases pending on July 1, 1960. During the next six months, 28,425 civil cases were filed, but only 25,928 terminated. Thus, filings outstripped terminations and, as a result, the total number of civil cases awaiting action on January 1 was 63,748, or an increase of 2,497 over July 1.

On the criminal side, 7,691 were pending on July 1. During the period 13,703 cases were filed, and 13,283 were terminated by final disposition, leaving a total of 8,144 cases pending on December 31, an increase of 453.

Thus, during the six month's period—due largely, of course, to seasonal factors—the United States District Courts experienced an increase of 3,285 cases, and on January 1 of this year, faced a combined civil-criminal backlog of 71,992 cases.

Courts of Appeals

The Courts of Appeals are confronted with the largest backlog in a decade. Filings during the period from July 1 through December 31, 1960, increased 12½ percent to 2,182 cases, compared to 1,939 cases filed during the same months a year ago. At the same time, the number of cases disposed of increased from 1,599 to 1,759. Nevertheless, 400 fewer cases were disposed of than were filed, and the pending caseload rose during the six-month period from 2,220 cases on July 1, 1960, to 2,643 on December 31, 1960. This represents an increase in the pending caseload of 423 cases, or almost 20 percent, and even though this may be attributed in large measure to seasonal variations, it points to the continuing pressure of heavy caseloads.

Court of Claims

Chief Judge Marvin Jones of the United States Court of Claims also reported the accumulation of a backlog of cases. The backlog may be traced to the vast increase in the amount and scope of Government activities since the Korean War which, as would be expected, has been accompanied by an increase in the volume and complexity of cases filed in the Court of Claims.

It is the view of the judges of the Court that substantial inroads upon and the ultimate elimination of this backlog can be accomplished by providing the Court of Claims with trial and appellate divisions as they have proposed in a bill, S. 1235, pending in the Senate and presently under consideration by the Committees on Court Administration and Revision of the Laws of the Judicial Conference.

Service of Senior Judges

The chief judges of the circuits, and the district judges, expressed much appreciation for the contribution of Senior Judges who are continuing to render substantial judicial services in the United States Courts.

As a consequence, the Conference adopted the following:

RESOLUTION

> Resolved, that the Judicial Conference of the United States expresses its deep appreciation for the significant contribution which senior judges continue to make to the effective functioning of our courts, as they have done in the past. In many instances, the task of the active judges would have been quite impossible without such help in the dispatch of judicial business. The Conference gratefully acknowledges the debt of the Judiciary to each of the senior judges who have rendered such service, and directs that a copy of this resolution be sent to each of our senior brethren.

THE NEED FOR ADDITIONAL JUDGESHIPS

The reports presented to the Conference by the judges of the courts of appeals and the district courts underscored again the urgent need for the creation of additional judgeships. While the Conference, in cooperation with the courts, has consistently pressed administrative improvements to lessen the impact of heavy case

filings, it is patently clear that such actions have a limited effect and that they cannot obviate the necessity for increased judgepower.

With this background, the Conference gave full consideration to the exhaustive reports filed by the two committees responsible for the initial studies and documentation of requests for additional judgeships: the Committee on Judicial Statistics, under the chairmanship of Chief Judge Harvey M. Johnsen of the Eighth Circuit, and the Committee on Court Administration, under the chairmanship of Chief Judge John Biggs, Jr., of the Third Circuit.

The Conference renewed the previous recommendations made to the Congress for the creation of new judgeships.

New Proposals Approved

The evidence of the mounting judicial business presented by the Committees on Statistics and Court Administration necessitated the Conference recommending the creation of the following district judgeships not previously recommended:

One additional judgeship for the Northern District of California
Two additional judgeships for the Southern District of California
One additional judgeship for the Northern District of Indiana
One additional judgeship for the Southern District of Indiana
One additional judgeship for the Eastern and Western Districts of Louisiana
One additional judgeship for the Western District of Missouri
One additional judgeship for the Eastern District of North Carolina
One additional judgeship for the Northern District of Texas
One additional judgeship for the Eastern and Western Districts of Washington

With these additions, the following recapitulation is made of the requests being transmitted to the Congress:

Recommendations of the Judicial Conference for the Creation of Additional Judgeships

March 13, 1961

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.

District Courts—Continued

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 District of North Carolina.

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 Eastern and Western Districts of Louisiana.

1 additional judgeship for the Southern District of Mississippi.

2 additional judgeships 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.

1 additional judgeship for the Northern District of Indiana.

1 additional judgeship for the Southern District of Indiana.

Eighth Judicial Circuit:

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

1 additional judgeship for the Western District of Missouri.

Ninth Judicial Circuit:

1 additional judgeship for the District of Alaska.

1 additional judgeship for the District of Arizona.

2 additional judgeships for the Northern District of California.

2 additional judgeships for the Southern District of California.

1 additional judgeship for the District of Nevada, the first vacancy occurring thereafter not to be filled.

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District Courts—Continued

Ninth Judicial Circuit—Continued

1 additional judgeship for the Eastern and Western Districts of Washington.

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; that the existing roving judgeship in the State of Washington be made a judgeship for the Western District of Washington only.

There are at present 68 judgeships in the Courts of Appeals. The Judicial Conference recommends the creation of 9 additional judgeships which, if approved, would bring the number of such judgeships to 77. There are 245 district judgeships; the Conference recommends the creation of 60 additional judgeships which, if approved, would bring the number to 305.

Proposals Not Approved

Additional proposals for the creation of circuit and district judgeships, originating in the Congress and in the courts, were carefully examined by both the committees and the Conference. However, it was determined that the statistical and factual data presented in support of these requests did not merit favorable action by the Conference, and the proposals were not approved.

Time Study of the Workload of United States Judges

The Chairman of the Committee on Judicial Statistics, Chief Judge Johnsen, reported the completion of the sixth Time Study, one of a series to determine from actual experience the relative time required of district judges to handle the various types of litigation.

The studies, first inaugurated in 1946, are conducted by the Administrative Office of the United States Courts under the general direction of the Committee on Judicial Statistics.

They are made possible by the cooperation of district judges who keep daily diaries, detailing the time spent and the nature of

work involved, in the courtroom and in chambers on the various types of cases.

The current report combines the data collected during the fifth Time Study (1955) and the sixth Time Study (1958), for a total of 26,385 hours of judicial time available for analysis, reported by 57 district judges representing 39 districts.

The most important conclusions from these studies are the determinations (1) that a private civil action, on the average, is about three times as burdensome to the court as a civil action to which the United States Government is a party; (2) that personal injury litigation is now consuming approximately one-third of the time devoted to civil cases; (3) that criminal cases are consuming about one-quarter of the time which the courts spend on all litigation; and (4) that the caseload per judgeship figures of themselves are, in most instances, a reasonably reliable and sound gauge of the workload of the district courts.

The report is included in the Annual Report of the Director of the Administrative Office of the United States Courts for 1960.

ADDITIONAL DISTRICTS AND DIVISIONS

The Conference had presented to it, in the form of legislation, various proposals for the creation of new judicial districts and the formation of new divisions within existing districts.

No new districts have been created since 1928, and this is due largely to a recognition of the disadvantages normally accruing with the creation of a new district; over-compartmentalization and uneconomic operation.

As long ago as 1948, the danger of further compartmentalization and costly operations was brought to the attention of the Conference by its *Committee on Ways and Means of Economy in Operation in the Federal Courts.* That Committee, it is worth noting, not only did not approve of the creation of additional districts, but it suggested that action be taken looking forward to consolidating existing judicial districts within a single state. The Committee report contained the following conclusion:

> "Consideration of the problem convinces us that definite action [to consolidate districts within a single state] should be taken, not only as a matter of economy, but also as a matter of efficiency in the administration of the courts. . . . Consolidation would be advantageous for the following reasons:

1. It would unify and integrate the work of the federal courts administering the law of the state and lead to a more efficient and fairer use of the judicial manpower available.

2. It would eliminate much inconvenience to parties and many troublesome questions of venue if all federal courts within a state had statewide jurisdiction.

3. It would result in savings in the operation of the clerks', marshals' and United States attorneys' offices which would run into hundreds of thousands of dollars in the aggregate."

The Conference was not requested to take any specific action toward consolidation of existing districts but, as a result of the study, the Conference did approve the following resolution:

RESOLUTION

Be it resolved, That, henceforth, the Judicial Conference of the United States will definitely oppose the creation of any additional judicial district; and, where it is found that additional judicial service is necessary, it will recommend that such service be provided by the creation of additional judgeships within the then existing judicial districts.

The Conference, at its session in September 1955, and on subsequent occasions, has reaffirmed the resolution in opposition to the creation of additional judicial districts.

With this background, and based upon the recommendation of the Committee on Judicial Statistics and the Committee on Court Administration, the Conference resolved to adhere to its previous policy, and to declare general disapproval of the various proposals for the creation of additional districts and, also, of new divisions in existing judicial districts.

COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge Biggs, also reported on the following matters within the jurisdiction of the Committee:

Places of Holding Court

Several proposals which would provide new places for holding court have been received, but the Committee was of the view that it was without adequate data to evaluate fairly these requests. They are:

(1) H.R. 4312, 87th Congress, to provide that court for the Northeastern Division of the Northern District of Alabama be held at Decatur, as well as at Huntsville.

(2) H.R. 2575, 87th Congress, to provide that court for the District of Connecticut be held at Bridgeport, as well as at Hartford and New Haven, provided that the number of judgeships shall exceed two and that accomodations at Bridgeport shall be without expense to the United States.

(3) H.R. 2503, 87th Congress, to provide that court for the District of Connecticut shall be held at Bridgeport and Waterbury, as well as at Hartford and New Haven.

(4) H.R. 3335, 87th Congress, to provide that court for the Southern District of Illinois shall be held at Alton, as well as at Quincy and Springfield.

(5) H.R. 328, 87th Congress, to provide that a term of court for the Western District of Michigan be held at Lansing instead of Mason.

The Conference directed that the proposals be forwarded to the respective Judicial Councils of the circuits with the request that the councils report their views to the Committee as soon as convenient. The Committee was authorized to inform the Congressional Committees of the views of the respective Judicial Councils of the circuits with respect to these bills.

In this connection, it may be well to note that proposals to establish new places of holding court have been a matter of long-standing concern to the Judicial Conference. In fact, the report of the *Committee on Ways and Means of Economy in the Operation of the Federal Courts*, filed with the Conference in September, 1948, concluded:

> ". . . it is clear that, throughout the country, court is now required to be held in many places where such a service is entirely unnecessary and wasteful of time and money."

Recent studies by the Administrative Office of the United States Courts suggest that this conclusion is as valid today as it was in 1948 when the Committee on Economy reported to the Conference.

Accommodations at Places for Holding Court

Additional legislative requests were received for the views of the Conference with respect to the following proposals for waiving the limitations and restrictions of 28 U.S.C. 142.

(1) H.R. 411, 87th Congress, proposing the waiving of 28 U.S.C. 142 and the providing of court facilities for the Western District of Michigan at Kalamazoo.

(2) H.R. 114, 87th Congress, proposing the waiving of 28 U.S.C. 142 and the providing of court facilities for the Eastern District of North Carolina at Fayetteville.

The Committee on Court Administration was directed to forward the bill H.R. 411 to the Judicial Council of the Sixth Circuit for an expression of its views and, following its receipt and study, to file a report at the next session of the Conference.

The Conference approved H.R. 114.

With respect to the future procedure, the Conference reaffirmed its action of September 1960 [Conf. Rept., p. 28] which requires the Director to transmit all proposals for additional court facilities to the judicial council of the appropriate circuit for its consideration 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.

In this connection, the Conference in considering the report on Revision of the Laws affirmed its action of September 1960, and approved the proposal now contained in H.R. 113 which would amend 28 U.S.C. 142 so as to make it clear that the Section does not prohibit the General Services Administration from altering or remodelling an existing Federal building in order to provide accommodations for holding court in a place which the respective judicial council approves as justified, where Congress has specifically authorized sessions of the district court to be held, but where no court facilities have previously been provided.

Reorganization of the Court of Claims

The draft of a bill to reorganize the Court of Claims by establishing separate trial and appellate divisions had been submitted to the Committees on Court Administration and Revision of the Laws for their joint consideration. The Committees reported, after some discussion, that while a need was shown to exist for revising and improving the administration of the Court of Claims, further study was necessary.

The Conference, after appropriate consideration, returned the draft bill to the Committees and directed that a subcommittee be appointed to study the proposal, including the problems discussed

in the Conference concerning the separate and concurrent jurisdiction of the district courts and the Court of Claims.

Representation at the Judicial Conference

H.R. 176, 87th Congress, would amend the first paragraph of 28 U.S.C. 331 to provide that the Chief Justice shall summon the Chief Judge of the Court of Customs and Patent Appeals and the Chief Judge of the Customs Court to participate in the deliberations of the Judicial Conference of the United States. The Conference was informed that the Court of Customs and Patent Appeals desired to be included, and was willing to waive its special budgetary position provided in 28 U.S.C. 605 and have its budget reviewed by the Judicial Conference of the United States, as is the budget of the Court of Claims.

The Conference also was informed that the Customs Court did not wish to be included in the Conference.

The Conference approved H.R. 176 with amendments striking the phrase "the Chief Judge of the Customs Court" and providing that the phrase "the Court of Customs and Patent Appeals and" be stricken from the second paragraph of 28 U.S.C. 605, so as to provide that the Chief Judge of the Court of Customs and Patent Appeals shall be a member of the Judicial Conference of the United States and the budget of that court be subject to approval by the Judicial Conference.

Jury Trials in Land Condemnation Cases

H.R. 126, 87th Congress, would provide that notwithstanding the provisions of Rule 71A(h) of the Federal Rules of Civil Procedure, any party to an action involving the exercise of the power of eminent domain under the laws of the United States may have a trial by jury on the issue of just compensation, except where a special tribunal has been set up by Congress to determine that issue.

The Conference was of the view that this proposal (1) would unduly interfere with the administration of justice in certain district courts and because of the character, location, or quantity of the property to be condemned cause delay in the trial of civil cases, and (2) would interfere unnecessarily with the rule making power conferred on the Supreme Court by the Act of June 19, 1934.

The Conference, upon recommendation of the Committee, disapproved the bill.

REVISION OF THE LAWS

Senior Circuit Judge Albert B. Maris, Chairman of the Committee on Revision of the Laws, submitted a comprehensive report.

1. The Conference gave its specific approval, to the extent indicated, to the following bills pending in the 87th Congress, which would carry out proposals approved, in whole or in part, at previous sessions by the Conference:

(a) H.R. 113, specifically to authorize the General Services Administration to remodel under 28 U.S.C. 142, federal buildings to provide court quarters therein for the first time (Conf. Rept., Sept. 1960, p. 28).

(b) H.R. 187, providing judicial review of administrative deportation orders and orders of exclusion. The Conference approved similar bills at its September 1959 and September 1960 sessions insofar as they related to the judicial review of deportation orders. Noting, however, that these bills limited the review of orders of exclusion to review by writs of habeas corpus, which would seem to deny any review of their exclusion to nonresident aliens (who are not in custody), the Conference expressed no opinion with respect to the proposed limitation (Conf. Rept., Sept. 1959, p. 8; *id.*, Sept. 1960, p. 30). The same limited approval was given to H.R. 187.

(c) H.R. 465, to provide that where applications are made to the court of appeals for interlocutory relief against orders of certain administrative agencies, reasonable notice (instead of a mandatory five days' notice as at present) must be given to the agency (Conf. Rept. Sept. 1956, p. 45; Conf. Rept. Sept. 1957, p. 35).

(d) H.R. 836, requiring that proposed consent decrees in antitrust cases be published in the Federal Register at least thirty days prior to their entry. The requirement would apply to orders entered by a district court and in proceedings by any board or commission for the enforcement of the Clayton Act or the Federal Trade Commission Act (Conf. Rept., Sept. 1959, p. 35).

(e) H.R. 843, extending the registration of judgments provisions of 28 U.S.C. 1963 to the judgments of territorial

courts, and broadening the cited section so as to make it applicable to those portions of divorce decrees which provide for the payment of money or the transfer of property (Conf. Rept., Sept. 1957, pp. 37–38). 28 U.S.C. 1963 presently provides that final money or property judgments entered in a district court may be registered in any other district court, but this has been held not to be applicable to the judgments of territorial courts or to divorce decrees.

(f) H.R. 1184, to provide judicial review of agency orders concerning biological products. At the present time the Secretary of Health, Education and Welfare has the power of refusing to issue, or to suspend or revoke, licenses for establishments manufacturing or preparing biological products. The Conference reaffirmed its approval of the type of review proposed by the bill. (Conf. Rept. Sept. 1960, p. 29).

(g) H.R. 1247 and S. 701, to permit actions on tort claims to be brought in the judicial district in which the act or omission occurred. At present, 28 U.S.C. 1391 permits these suits to be brought only in the districts of the residence of the defendant and the plaintiff. S. 701, while otherwise identical to H.R. 1247, contains an additional provision permitting suit against any person or corporation in any judicial district which is the residence of a state official who, by operation of state law rather than by actual appointment, becomes the agent of that person or corporation to receive service of process. The Conference approved the bills only if amended so as to strike the additional provision noted above (Conf. Rept. Mar. 1949, p. 30).

(h) H.R. 1783, providing that the Director of the Administrative Office may authorize cost of living allowances for judicial employees stationed outside the continental United States or in Alaska or Hawaii. Such allowances may not exceed 25% of the basic rate of compensation (Conf. Rept. Mar. 1959, p. 29).

(i) S. 20 and H.R. 1960, amending 28 U.S.C. 85 so as to provide (a) that district courts shall have original jurisdiction of actions to compel officers or employees of the United States (or agencies thereof) to perform their duty, (b) that civil actions in which each defendant is an officer or employee of the United States or any agency thereof, for an act done

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in the defendant's official capacity or under color of legal authority, may be brought in any judicial district where a plaintiff to the action resides, or in which the cause of action arose, or in which any property in the action is situated, and (c) that the summons and complaint may be delivered to the officer or agency involved by certified mail beyond the territorial limits of the district in which the action is brought (Conf. Rept. Sept. 1960, pp. 27–28).

(j) H.R. 5342, permitting the assignment of retired judges of territorial courts to active judicial service provided (a) that the retired judge consents to the assignment, and (b) that he is not engaged in the practice of law (Conf. Rept. Sept. 1956, pp. 43–44; Conf. Rept., Mar. 1959, p. 30).

(k) H.R. 5344, relating to the jurisdiction of the district courts in actions commenced by fiduciaries by reason of diversity of citizenship. It seems that a practice has arisen in some districts of procuring the appointment of a nonresident fiduciary for a decedent or minor having a claim against a local resident, in order to create diversity of citizenship. The bill would withdraw federal jurisdiction in such cases (Conf. Rept. Sept. 1959, pp. 8–9).

(l) H.R. 775 and H.R. 849, both of which would establish a Court of Veterans' Appeals and prescribe its jurisdiction and functions. The proposed court would review veterans' claims. Its decisions would be final and not subject to review by any other court. Relying upon indications that the future volume of veterans' claims will be so great as to render impracticable review by the normal judicial process, the Conference at its September 1960 session approved a similar bill as to the type of judicial review proposed. Since the Court of Veterans' Appeals would be wholly independent and not subject to supervision on writ of certiorari by the Supreme Court, however, the Conference disapproved that portion of the earlier bill which would include the proposed new court among the courts of the United States and require the Director of the Administrative Office to assume responsibility for its administrative affairs (Conf. Rept., pp. 31–32). The same limited approval was given to H.R. 775 and H.R. 849.

2. The Conference reaffirmed its approval of the following legislative proposals, heretofore approved, which are to be introduced at an early time in the 87th Congress:

(a) That 28 U.S.C. 603 be amended to increase the salary of the Director of the Administrative Office of the United States Courts to $22,500 per annum and of the Deputy Director to $20,000 per annum (Conf. Rept., Sept. 1958, p. 40). Although not separately introduced, this proposal was included in S. 912, the Omnibus Judgeship Bill, by the Senate Committee on the Judiciary.

(b) That all federal judges and libraries of the courts of appeals be furnished with copies of the Congressional Record free of charge, when requested (Conf. Rept., Mar. 1959, p. 29).

(c) That life tenure be provided for the United States district judge for the District of Puerto Rico (Conf. Rept., Mar. 1959, p. 29).

(d) That judgments of the Supreme Court of Puerto Rico be reviewed directly by the Supreme Court of the United States, rather than by the United States Court of Appeals for the First Circuit (Conf. Rept., Sept. 1957, p. 40).

(e) That present statutes which require the holding of formal terms of court be repealed and that it be provided that courts shall be in continuous session (Conf. Rept., Mar. 1960, pp. 34–36).

(f) That the Judicial Survivors Annuity Act be amended so as to accord with present statutory provisions applicable to surviving dependents of members of Congress. The Judicial Survivors Annuity Act, as drafted, was intended to make available to surviving dependents of federal judges the same benefits, on the same terms, as those available to the survivors of deceased members of Congress. A few days before enactment of the Judicial Survivors Annuity System, however, Congress revised and liberalized its own program. The Civil Service Retirement Act amendments of 1956 with respect to survivorship benefits for dependents of members of Congress eliminated the requirement that a widow without dependent children be fifty years of age before receiving a widow's annuity, increased the annuity payable to dependent children, liberalized the formula for computing the widow's annuity in respect to certain civilian service, and increased the maximum widows' annuity to 40% of the decedents' five-year average salary (Conf. Rept., Mar. 1960, p. 36).

(g) That the period of service required to render judges of the territorial district courts eligible for retirement benefits be reduced from ten to eight years. Such judges would thus be eligible for retirement benefits, if otherwise qualified, after serving one term of appointment (Conf. Rept., Mar. 1960, pp. 38–39).

3. The Conference directed that H.R. 75, 87th Congress, which would amend 28 U.S.C. 2103 with respect to appeals to the Supreme Court of the United States, be transmitted to the Supreme Court as a matter for its consideration.

4. H.R. 516, 87th Congress, would confer jurisdiction upon the Court of Claims to review *de novo* claims for benefits and payments under the laws administered by the Veterans Administration, while H.R. 282, H.R. 3814, and H.R. 3815, 87th Congress, would permit judicial review by the district courts of decisions of the Board of Veterans' Appeals in compensation and pension claims. The Conference disapproved the types of review proposed by these bills, since they are inconsistent with review by a special Court of Veterans' Appeals (see 1 (*l*), *supra*, p. 20).

5. The Conference disapproved the following bills, pending in the 87th Congress, which embody proposals previously disapproved by the Conference:

(a) H.R. 842 and H.R. 1260 would authorize members of the bar of the Supreme Court of the United States to practice before the courts of appeals and the district courts. The proposal would deprive the lower courts of all control over the admission to their bars of lawyers who had previously been admitted to the bar of the Supreme Court (Conf. Rept., Sept. 1956. pp. 42–43; *id.*, Mar. 1957, pp. 26–27; *id.*, Mar. 1959, p. 31).

(b) H.R. 2482 would authorize the granting of continuances in district courts to members of state legislatures in accordance with state law. Members of the bar of the federal courts who are also members of state legislatures thus would not be subject to the usual rules governing the orderly conduct of the business of the courts (Conf. Rept., Sept. 1960, p. 27).

(c) H.R. 2733, 87th Congress, would amend the provisions of Title 9 of the United States Code, relating to arbitration, so as to provide for judicial review of questions of law arising in arbitration proceedings. This bill is similar to H.R. 6322,

86th Congress, which, to the extent that it would authorize the judicial review of interlocutory questions of law arising in the course of arbitration proceedings, was disapproved by the Conference at its September 1959 session (Conf. Rept., p. 36).

(d) H.R. 3968, 87th Congress, providing for the enforcement of support orders in certain state and federal courts, would also make it a crime to travel in interstate or foreign commerce to avoid compliance with such orders. This bill is similar to S. 353 and H.R. 495, 86th Congress. The Conference, at its March 1959 session (Conf. Rept., p. 30) disapproved the provisions of those bills which would provide for the registration and enforcement of support orders by federal district courts and expressed no opinion on the other features of the bills. The Conference renewed its action with respect to this proposal.

(e) H.R. 4241 would provide an administrative hearing prior to, and a judicial review after, the administrative removal or suspension of federal employees of the Executive branch. The Conference at its September 1959 session disapproved as inappropriate a proposal for judicial review of this sort of administrative personnel action (Conf. Rept., p. 13). The Conference renewed its disapproval of this feature of H.R. 4241, but expressed no opinion as to the administrative procedures proposed by the bill.

6. Judge Maris reported that the Committee had been requested to consider amending 28 U.S.C. 2253 so as to limit the time within which an application may be made for the certificate of probable cause required by that Section in connection with an appeal from a final order in a habeas corpus proceeding, where the detention complained of arises out of process issued by a state court. It has also been suggested that the certificate of probable cause required by Section 2253 no longer serves a useful purpose and should be abolished. The Conference, upon recommendation of the Committee, referred these proposals to the Committee on Habeas Corpus.

7. The Conference was informed that the Committee had considered the possibility of amending 28 U.S.C. 1404(a), which authorizes the transfer of civil actions for the convenience of the parties and witnesses, in the light of the narrow construction placed upon the section in *Hoffman* v. *Blaski,* 363 U.S. 335. The

problem was reviewed in joint session by the Committees on Revision of the Laws and Court Administration. A majority of the members of these two Committees recommended that the final clause of 28 U.S.C. 1404(a)—"where it might have been brought"—be stricken from the statute so as to permit the transfer of an action to any other district or division for the convenience of the parties and witnesses, in the interest of justice.

The Conference, after a full discussion, directed that the proposal be referred again to the Committees for further consideration in the light of the discussions in the Conference.

8. The Committee, upon request, also studied the statute authorizing the removal of actions from state courts. It had been pointed out that in certain states a civil action may be brought in any county in the state, subject to the right of the defendant to have the case transferred to the county of proper venue. Since, under the present removal statute, a petition for removal must be filed within 20 days after the filing of the first pleading, the defendant in such a case is put to an election whether to move for a change of venue, in which case he must remain in the state court, or to file a petition for removal, in which case he may find himself in an inconvenient federal court. The Committee recommended that 28 U.S.C. 1446 be amended to permit the defendant in a suit in a state court to file his petition for removal within 20 days after the state court has decided his motion for a change of venue, provided such motion was filed within the period of 20 days after service of the first pleading, the time now fixed by law for filing a petition for removal.

The Conference approved this recommendation.

9. The attention of the Committee had been called to the problem involved in the efficient disposition of multiple litigation which has frequently resulted from major catastrophies, such as airplane and rail accidents, resulting in the death or injury of many individuals at the same time and involving the same elements of potential liability. The Committee considered this a serious and important problem, and referred it to a subcommittee on venue for study and subsequent report.

RULES OF PRACTICE AND PROCEDURE

The Chairman of the standing Committee on Rules of Practice and Procedure, Senior Circuit Judge Albert B. Maris, presented

the Conference with a progress report on the work and activities of the standing Committee and the Advisory Committees on Rules of Practice and Procedure.

The Conference was informed that, since its meeting in September, preliminary drafts of proposed rules and amendments were submitted to the standing Committee by four of the Advisory Committees—Civil, Admiralty, Bankruptcy and Appellate—and that these had been widely circulated in printed form to the bench, bar, and law schools throughout the United States. Comments and criticisms were solicited and these, when received, were promptly transmitted to the appropriate Advisory Committee for study. Following full consideration of the communications thus received, three of the Advisory Committees, those for civil, admiralty and bankruptcy rules, approved definitive drafts of proposed amendments and reported them to the standing Committee for consideration and action. The standing Committee carefully considered each of these drafts, made certain technical suggestions for improvement, and approved the drafts and directed that they be submitted to the Judicial Conference.

Advisory Committee on Civil Rules

The Advisory Committee on Civil Rules has underway a formidable program, the significance and the potentialities of which would be difficult to overstate in the efforts to improve the administration of justice.

The Committee has completed a preliminary examination of the 1955 proposed amendments to the Rules of Civil Procedure which were made by the former Advisory Committee, and which the Supreme Court did not, at the time, deem it advisable to transmit to the Congress. The Reporter's comprehensive report to the Advisory Committee upon the 1955 proposed amendments was considered at the first meeting of the Committee on December 5–7, 1960, and conclusions were reached upon certain of the proposals, subject to further consideration, research and drafting, which is going forward.

The Advisory Committee recommended the prompt amendment of certain Rules of Civil Procedure [Rules 25, 54, and 86 and Forms 2 and 19] which are causing confusion and difficulty. The proposed amendments provide (1) for the automatic substitution as a party of the successor when a public officer who sues or is sued

in his official capacity dies, resigns or otherwise ceases to hold office, (2) for authority to enter a final appealable judgment as to one or more but fewer than all of the parties in a multiple-parties suit, and (3) for the inclusion in Forms 2 and 19 of averments consistent with present statutory requirements.

The standing Committee approved these amendments, but the Conference was advised that a communication addressed to the Committee from the Attorney General, dated March 13, had just been received suggesting possible changes in the language with respect to the amendment of Rule 25(d).

The Conference directed that the Committee on Rules of Practice and Procedure confer with the Attorney General, or his designated representative, regarding the proposed amendment to Rule 25(d) and authorized the Committee, at the conclusion of such conference, to submit the amendment without a change in language, or in revised form, or to withdraw it entirely if it is concluded that further consideration is advisable.

Upon this understanding, the Conference voted to approve the proposed amendments to Rules 25(d) and 54(b) of the Federal Rules of Civil Procedure and Forms 2 and 19 and directed that they be transmitted to the Supreme Court of the United States with the recommendation that the amendments be promulgated.

The Advisory Committee on Civil Rules has approved a program of future work which includes, in addition to research, further study and consideration of certain of the proposals made in 1955 by the former Advisory Committee, (a) a general study of the subject of parties (Rules 17–25) which has been initiated, and (b) a general study of Discovery (Rules 26–37) with related study of the Pre-trial Conference (Rule 16), a plan of which has been outlined comprising both analytic work by the Reporter and his associates and field investigation by the Project for Effective Justice at Columbia University Law School to be financed by a foundation. It is contemplated that the analytic work will start about July 1, 1961, and that the work of devising a pattern of field investigation will start about September 1, 1961.

Advisory Committee on Admiralty Rules

The Advisory Committee on Admiralty Rules has devoted its study to (1) matters of an emergency nature resulting from the

decision in *Miner* v. *Atlass,* 363 U.S. 641, and (2) long-range planning of the program of the committee.

The Supreme Court of the United States handed down its opinion in the *Miner* case on June 20, 1960, and referred to the Admiralty Committee, by name, a major problem in admiralty rulemaking.

Briefly stated, prior to the *Miner* case, several districts, in which more than half the private admiralty suits are filed, had adopted local rules specifically making the Federal Rules of Civil Procedure applicable to the taking of depositions of parties and witnesses. Other districts had local rules making the civil rules applicable to matters not otherwise covered. And in certain other districts, for one reason or another, the practice with respect to depositions was broader than was authorized by the existing admiralty rules.

The Supreme Court decided as a matter of law that discovery-depositions procedures were not authorized by the General Admiralty Rules, that local district courts did not possess the authority to promulgate and establish discovery-deposition rules in admiralty cases and, finally, that such basic changes in admiralty practice could be made only in accordance with 28 U.S.C. 2073 which requires promulgation of proposed rules by the Supreme Court and reporting to Congress.

The most evident consequences of the decision are that, as in the *Atlass* case itself, lawyers generally are prevented from taking discovery depositions which they would like to take; and depositions already taken, while they may have served a useful purpose, cannot now be used in evidence.

The results in many districts were quite serious because of the many depositions already taken, involving hundreds of thousands of dollars.

The Supreme Court was mindful that its decision would cause some dislocation in practice in the districts where such rules had been in force, and expressed the hope that the Advisory Committee on Admiralty Rules would give the matter its early attention.

Pursuant to this directive and at the request of the standing Committee, the Admiralty Committee promptly acted and sought by letter the experience and advice of approximately 90 United States district judges and 1,000 admiralty lawyers in those districts having local discovery rules in admiralty. The responses, which

were full and representative, indicated overwhelming approval of the deposition practice, and included valuable technical suggestions for drafting purposes.

As a result, the Admiralty Committee drafted proposed new and amended Rules of Practice and Procedure in Admiralty and Maritime Cases. The amendments would (1) authorize depositions and discovery in admiralty practice substantially in accordance with the Civil Rules, (2) authorize the use of depositions taken prior to July 20, 1960, in reliance on local rules or practices, as well as all depositions taken by consent of the parties, to the same extent as if they had been authorized by valid rules, (3) authorize summary judgments in admiralty and (4) authorize declaratory judgments in admiralty.

The draft was submitted to the standing Committee and widely distributed to the bench, bar, and the law schools. Comments and suggestions were received in due time and were carefully examined by the Admiralty Committee. They were overwhelmingly favorable and required no changes in the amendments as drafted, but certain clarifying changes were made in the notes accompanying the proposed amendments.

The standing Committee has approved the proposed amendments.

The Conference, after full consideration of the definitive draft of the proposed amendments to the rules of practice in admiralty and maritime cases and accompanying notes, approved the draft and directed that it be transmitted to the Supreme Court with the recommendation that the amendments be promulgated.

The future program of the Admiralty Committee includes extensive research and consideration of the advisability and feasibility of unifying the practice in civil and admiralty cases under a single set of rules of procedure which would, of course, include all special provisions required in admiralty. This is, of course, an undertaking of great importance to the bench and bar.

Advisory Committee on Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules, in addition to embarking on a comprehensive program aimed at improving the General Orders and Official Forms in Bankruptcy, has made a thorough-going study of the statutes enacted since 1952, and has developed a preliminary draft containing proposed revisions of

certain General Orders and Official Forms in Bankruptcy. The proposed amendments would (1) bring the General Orders and Official Forms into harmony with recent amendments of the Bankruptcy Act, (2) bring them into harmony with current and sound practice and (3) correct obvious departures from approved form.

The preliminary draft was transmitted to the standing Committee, printed and submitted to the bench, bar, and law schools for consideration and suggestions. As a result, the draft was revised in certain particulars and forwarded by the Advisory Committee.

The standing Committee has approved the proposed amendments.

The Conference, after full consideration of the proposed amendments to the General Orders and Official Forms in Bankruptcy, approved the draft and directed that it be transmitted to the Supreme Court with the recommendation that the amendments be promulgated.

The attention of the Conference was called to the fact that Section 30 of the Bankruptcy Act, 11 U.S.C. 53, authorizing the Supreme Court to prescribe rules, forms and orders in Bankruptcy, does not require that the Court report them to Congress, as is required in regard to the rules of civil and admiralty procedure. The Advisory Committee on Bankruptcy Rules, after consideration, concluded that rule making in Bankruptcy should conform to the pattern prescribed in rule making in the areas of civil and admiralty procedure and, therefore, recommended the enactment of legislation substantially as follows:

> The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions and the practice and procedure under the Bankruptcy Act.
>
> Such rules shall not abridge, enlarge, or modify any substantive right.
>
> Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.
>
> All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

The Conference, upon the favorable recommendation of the standing Committee, approved the proposal and directed that appropriate legislation be initiated in the Congress.

Advisory Committee on Criminal Rules

The Advisory Committee on Criminal Rules has undertaken a rule-by-rule study of all the Criminal Rules, and proposed amendments will not be forwarded until the entire study has been completed, unless a situation otherwise requires. As a consequence, it is not expected that the Judicial Conference will receive any recommendations developed by the Advisory Committee until such time as a tentative draft covering all the Rules has been prepared.

The Advisory Committee has under discussion currently Rules 1–9, 44, 18–22, 10–17, and 23–31.

Advisory Committee on Appellate Rules

The Advisory Committee on Appellate Rules, upon its appointment, was presented with the immediate task of drafting a proposed rule for the review of decisions of the Tax Court of the United States. Congress had placed responsibility for promulgation of such a rule upon the Supreme Court in 1954, 28 U.S.C. 2074, but the existing personnel and facilities of the Supreme Court are in no sense adequate to perform this type of rulemaking function. Moreover, with the ever-increasing length of the calendars, it is obviously not feasible for the Justices themselves to do the work essential to the original drafting of new or amended rules of procedure. Thus, the task was assigned to the standing Committee on Rules of Practice and Procedure and referred as a first order of business to the Advisory Committee on Appellate Rules.

The Advisory Committee prepared a preliminary draft of a proposed rule for the review of decisions of the Tax Court which was printed and widely circulated in November 1960.

Many suggestions and comments were received and these were considered by the Advisory Committee. It was decided to give the preliminary draft further study in the light of the communications received and to report upon it to the standing Committee at a later date.

The Advisory Committee is developing a comprehensive program for improving appellate procedure in the United States courts, including a broad examination of the appellate rules to

determine how well they are working, to pinpoint the specific problems, and to identify those areas in which there is little or no difficulty. In addition to rules relating to the appeal of civil and criminal cases, there are the rules governing the appeal of admiralty and maritime cases, bankruptcy cases, the review of orders of administrative agencies, the unique—and urgent—problems in appeals in forma pauperis, and many other technical matters which will be given attention.

Advisory Committee on Rules of Evidence

The Judicial Conference at its 1958 session (Conf. Rept., p. 15) referred to the Committee on Rules of Practice and Procedure a proposal to establish uniform rules of evidence for the federal courts.

At its meeting in December 1960 the Advisory Committee on Civil Rules adopted the following resolution:

> That the Advisory Committee on Civil Rules urge the standing Committee to initiate a project, at a time thought suitable by the standing Committee and whether through an existing committee or a new group, to study the feasibility of adopting uniform rules of evidence for the Federal courts and, if found feasible, to draft such rules.

The proposal urging the promulgation of federal rules of evidence has broad support in the bench and bar. It also has the support of the American Bar Association, the American Law Institute, the Federal Bar Association, the National Conference of Commissioners on Uniform State Laws, and the Judicial Conferences of several circuits.

The standing Committee reported that it recommends the establishment of an Advisory Committee to study evidence. The Conference is of the view that the proposal looking forward to the promulgation of Federal Rules of Evidence is meritorious, that it deserves serious study as to its advisability and feasibility and that, if resolved in favor of such rules, that uniform rules of evidence for the federal courts should in due course be promulgated. For these reasons, the Conference approved the recommendation of the standing Committee, authorized the creation of an Advisory Committee on Rules of Evidence, and amended paragraph (2) of the resolution adopted at the September 1958 session (Conf. Rept., p. 6) accordingly.

BANKRUPTCY ADMINISTRATION

Salaries and Positions of Referees

The Conference was informed by the Chairman of the Committee on Bankruptcy Administration, Senior Judge Orie L. Phillips, that the Committee met and considered the recommendations contained in the Report of the Director of the Administrative Office, dated December 23, 1960, relating to the continuance of referee positions to become vacant prior to October 1, 1961, by expiration of term, for changes in salaries of referees, changes in arrangements, and the creating of new referee positions. The Committee also considered the recommendations of the district judges and the judicial councils of the circuits concerned.

The Conference considered fully the Committee's report and the recommendations of the Director, the Judicial Councils and the district judges. On the basis of the report and recommendations, 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 on July 1, 1961, or as soon thereafter as appropriated funds are available:

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
First Circuit					
Maine	Bangor			Part-time [1]	$6,500
Third Circuit					
Delaware	Wilmington	Part-time	$5,000	do	6,500
Pennsylvania, W	Pittsburgh	Full-time	13,750	Full-time	15,000
	Erie	Part-time	6,500	Part-time	7,500
	Johnstown	do	5,000	do	6,000
Fourth Circuit					
South Carolina, E	Charleston	do	2,500	do [2]	7,500
Virginia, W	Roanoke	Full-time	12,500	Full-time	13,750
	Lynchburg	Part-time	7,000	Part-time	7,500
	Harrisonburg	do	2,500	do	3,500
West Virginia, N	Wheeling	do	4,500	do	5,000

District	Regular place of office	Present type of position	Present salary	Conference action	
				Type of position	Authorized salary
Fifth Circuit					
Alabama, N.	Decatur	Part-time	$4,000	Part-time	$5,000
Alabama, S.	Mobile	Full-time	13,750	Full-time	15,000
Florida, S.	Tampa	Part-time	6,000	Part-time [2]	7,500
	Jacksonville	do	4,500	do.[4]	6,000
Georgia, N.	Atlanta			Full-time [1]	15,000
Georgia, S.	Savannah	Full-time	12,500	do	13,750
Mississippi S.	Gulfport	Part-time	6,000	Part-time	7,500
Texas, S.	Corpus Christi	do	6,500	do	7,500
Texas, W.	El Paso	do	3,500	do	5,000
Sixth Circuit					
Michigan, E.	Detroit			Full-time [1]	15,000
Ohio, N.	Canton			do [1]	13,750
Seventh Circuit					
Illinois, E.	Danville	Part-time	6,000	Part-time	7,000
Illinois, S.	Springfield	Full-time	13,750	Full-time	15,000
	Peoria	do	13,750	do	15,000
Indiana, N.	South Bend	Part-time	6,500	Part-time	7,500
Indiana, S.	Evansville			do [1]	5,000
Eighth Circuit					
Iowa, N.	Fort Dodge	Part-time	6,000	do	7,000
Minnesota	Minneapolis	do	7,500	Full-time	15,000
Missouri, E. and W.	St. Louis			do [5]	15,000
Ninth Circuit					
Arizona	Tucson	Part-time	5,000	Part-time	7,500
Montana	Great Falls	do	4,000	do	5,000
	Butte	do	4,000	do	5,000
Oregon	Eugene			Full-time [1]	15,000
Tenth Circuit					
Colorado	Pueblo			Part-time [1]	7,500
New Mexico	Albuquerque	Part-time	6,000	do	7,000
Oklahoma, N.	Tulsa	do	7,500	Full-time	13,750
Oklahoma, W.	Oklahoma City	do	7,500	do	13,750
Wyoming	Cheyenne	do	5,000	Part-time	6,000

[1] New position.

[2] Temporary salary increase to $7,500 per annum, effective Apr. 1, 1961, for 6 months; salary then to be reduced to $5,000 per annum for further period of 1 year and at end of this 18-month period, to revert to present rate of $2,500 per annum.

[3] Consideration of a full-time position at Tampa will be included in the next survey.

[4] Consideration of further increase for the referee position at Jacksonville will be included in the next survey.

[5] New position. The referee will have concurrent jurisdiction with the present referees in both districts.

The Conference took the following action with regard to changes in arrangements for both new and existing referee positions and in regard to the filling of referee positions to become vacant by expiration of term, and directed that the changes become effective July 1, 1961, unless otherwise noted.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia:

(1) Authorized the filling of the part-time referee position at Washington to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and place of holding court to remain as at present.

FIRST CIRCUIT

Maine:

(1) Authorized an additional part-time referee position at Bangor at a salary of $6,500 per annum.
(2) Fixed Bangor as the regular place of holding court for the new referee.
(3) Transferred the Northern Division of the district from the territory of the referee at Portland to the territory of the new referee at Bangor.
(4) Discontinued Bangor as a place of holding court for the referee at Portland.

District of Massachusetts:

(1) Authorized the filling of the full-time referee position at Boston, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

Eastern District of New York:

(1) Authorized the filling of the full-time referee position at Jamaica, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and place of holding court to remain as at present.

Southern District of New York:

(1) Authorized the filling of the part-time referee position at Yonkers, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of New York:

(1) Authorized the filling of the full-time referee position at Buffalo, to become vacant by expiration of term on July 24, 1961, on a full-time basis for a term of six years, effective July 25, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Vermont:

(1) Authorized the filling of the part-time referee position at Rutland, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

Western District of Pennsylvania:

(1) Authorized the filling of the part-time referee position at Johnstown, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at a salary of $6,000 per annum, the regular place of office, territory and places of holding court to remain as at present.

FOURTH CIRCUIT

Eastern District of North Carolina:

(1) Changed the regular place of office of the referee from Raleigh to Wilson.

(2) Designated Wilson and Washington as additional places of holding court.

(3) Discontinued Williamston as a place of holding court.

Middle District of North Carolina

(1) Authorized the filling of the part-time referee position at Greensboro, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Virginia:

(1) Authorized the filling of the full-time referee position at Richmond, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Western District of Virginia:

(1) Transferred Rockbridge County from the territory of the referee at Roanoke to the territory of the referee at Harrisonburg.

Northern District of West Virginia:

(1) Authorized the filling of the part-time referee position at Grafton, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

FIFTH CIRCUIT

Northern District of Alabama:

(1) Authorized the filling of the full-time referee position at Birmingham, to become vacant by expiration of term on June 30, 1961, on a full-

time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of of holding court to remain as at present.

Southern District of Alabama:

(1) Authorized the filling of the full-time referee position at Mobile, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at a salary of $15,000 per annum, the regular place of office, territory and places of holding court to remain as at present.

Northern District of Georgia:

(1) Authorized the filling of the part-time referee position at Rome to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

(2) Authorized an additional full-time referee position at Atlanta at a salary of $15,000 per annum with the regular place of office at Atlanta.

(3) Established concurrent jurisdiction for the two referee positions at Atlanta.

Southern District of Georgia:

(1) Authorized the filling of the full-time referee position at Savannah to become vacant at the expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at a salary of $13,750 per annum, the regular place of office, territory and places of holding court to remain as at present.

Eastern District of Louisiana:

(1) Authorized the filling of the full-time referee position at New Orleans, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Northern District of Mississippi:

(1) Designated Greenville as an additional place of holding court for the referee in the district.

Southern District of Texas:

(1) Authorized the filling of the part-time referee position at Corpus Christi to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at a salary of $7,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Eastern District of Kentucky:

(1) Authorized the filling of the full-time referee position at Lexington to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Eastern District of Michigan:

(1) Authorized an additional full-time referee position with the regular place of office at Detroit at a salary of $15,000 per annum, and designated Detroit, Pontiac, Bay City and Flint as places of holding court for the new referee.

(2) Established concurrent district-wide jurisdiction for the new referee with the present referees of the district.

Northern District of Ohio:

(1) Authorized the filling of the full-time referee position at Cleveland to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

(2) Authorized an additional full-time referee position at Canton at a salary of $13,750 per annum.

(3) Fixed the regular place of office of the new referee at Canton.

(4) Transferred the counties of Carroll, Stark and Tuscarawas from the territory of the referee at Youngstown to the territory of the new referee at Canton.

(5) Transferred the counties of Ashland, Crawford, Holmes, Rochland and Wayne from the territory of the Akron referee to the territory of the new referee at Canton.

(6) Discontinued Canton as a place of holding court for the referee at Youngstown.

(7) Discontinued Mansfield as a place of holding court for the referee at Akron.

(8) Designated Canton, Bucyrus and Mansfield as places of holding court for the referee at Canton.

Southern District of Ohio:

(1) Authorized the filling of the full-time referee position at Dayton, to become vacant by expiration of term on August 8, 1961, on a full-time basis for a term of six years, effective August 9, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SEVENTH CIRCUIT

Eastern District of Illinois:

(1) Authorized the filling of the part-time referee position at Danville, to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years, effective July 1, 1961, at a salary of $7,000 per annum, the regular place of office, territory and places of holding court to remain as at present.

Southern District of Illinois:

(1) Authorized the filling of the full-time referee position at Springfield to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years, effective July 1, 1961, at a salary of $15,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Southern District of Indiana:

(1) Authorize the filling of the full-time referee position at Indianapolis to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years effective July 1, 1961, at the present salary.
(2) Authorized an additional part-time referee position at Evansville at a salary of $5,000 per annum.
(3) Fixed Evansville as the regular place of office for the new referee.
(4) Transferred the counties in the Evansville and New Albany divisions from the territory of the Indianapolis referee to the territory of the new part-time referee at Evansville.
(5) Discontinued Evansville and New Albany as places of holding court for the Indianapolis referee.
(6) Designated Evansville and New Albany as places of holding court for the Evansville referee.

EIGHTH CIRCUIT

District of Minnesota:

(1) Changed the part-time referee position at Minneapolis to full-time, at a salary of $15,000 per annum.
(2) Established concurrent jurisdiction in the fourth (Minneapolis) and fifth (Duluth) divisions of the District for the two full-time referees at Minneapolis.
(3) Discontinued Winona as a place of holding court for the referee at St. Paul.
(4) Designated Rochester as a place of holding court for the referee at St. Paul.

Eastern District of Missouri:

(1) Authorized the filling of the full-time referee position at St. Louis to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years effective July 1, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Eastern and Western Districts of Missouri:

(1) Authorized an additional full-time referee position at St. Louis, at a salary of $15,000 per annum.
(2) Fixed the regular place of office of the new referee at St. Louis.
(3) Established concurrent jurisdiction for the new referee in both the Eastern and Western Districts of Missouri.

NINTH CIRCUIT

Arizona:

(1) Authorized the filling of the full-time referee position at Phoenix, to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years effective July 1, 1961, at the present salary.
(2) Transferred the counties of Yuma, Navajo, and Apache from the territory of the Phoenix referee to the teritory of the referee at Tucson.

(3) Discontinued Yuma as a place of holding court for the referee at Phoenix.

(4) Designated Yuma as an additional place of holding court for the referee at Tucson.

(5) Increased the salary of the part-time referee at Tucson from $5,000 to $7,500 per annum.

Southern District of California:

(1) Authorized the filling of the two full-time referee positions at Los Angeles to become vacant by expiration of term on August 15, 1961, on a full-time basis for terms of six years effective August 16, 1961, at the present salaries, the regular place of office, territory, and places of holding court to remain as at present.

Montana:

(1) Authorized the filling of the part-time referee position at Great Falls to become vacant by expiration of term on May 24, 1961, on a part-time basis for a term of six years effective May 25, 1961, at a salary of $5,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Oregon:

(1) Authorized the filling of the full-time referee position at Corvallis to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years effective July 1, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

(2) Authorized an additional full-time referee position with the regular place of office at Eugene, at a salary of $15,000 per annum.

(3) Designated Eugene as an additional place of holding court for the referees of the district.

(4) Established concurrent jurisdiction for the new referee in the territory now served by the full-time referees located at Portland and Corvallis.

TENTH CIRCUIT

Colorado:

(1) Authorized an additional part-time referee position at Pueblo, at a salary of $7,500 per annum.

(2) Fixed Pueblo as the regular place of office for the new referee.

(3) Transferred the counties of Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Costilla, Custer, Delta, Delores, El Paso, Fremont, Gunnison, Hinsdale, Huerfano, Ouray, Kiowa, La Plata, Las Animas, Mineral, Montezuma, Montrose, Otero, Prowers, Pueblo, Rio Grande, Saguache, San Juan, San Miguel, Teller and Conejos from the territory of the Denver referees to the territory of the new part-time referee at Pueblo.

(4) Discontinued Pueblo, Colorado Springs,, and Durango as places of holding court for the Denver referee.

(5) Designated Pueblo, Colorado Springs, Durango and Montrose as places for holding court for the Pueblo referee.

Northern District of Oklahoma:

(1) Changed the part-time referee position at Tulsa, to a full-time position at a salary of $13,750 per annum, the regular place of office, territory, and place of holding court to remain as at present.

Western District of Oklahoma:

(1) Authorized the filling of the part-time referee position at Oklahoma City to become vacant by expiration of term on June 30, 1961, on a full-time basis for a term of six years effective July 1, 1961, at a salary of $13,750 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Wyoming:

(1) Authorized the filling of the part-time referee position at Cheyenne to become vacant by expiration of term on June 30, 1961, on a part-time basis for a term of six years effective July 1, 1961, at a salary of $6,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.

Pending and Proposed Legislation

Dischargeability of Debts

H.R. 1742, 87th Congress would amend Section 2a of the Bankruptcy Act, 11 U.S.C. 11(a), by adding at the end thereof a new clause which would give to the Bankruptcy court jurisdiction to determine the dischargeability or non-dischargeability of provable debts. The bill embodies a proposal which was approved by the Conference at its September 1960 session (Conf. Rept., p. 23), and the Conference reaffirmed its approval.

Referees' Retirement and Salary Bill

The Conference had previously approved in principle proposals for increasing the salaries of and improving retirement provisions for, referees in bankruptcy. The draft of such a bill had been considered and approved by the Committee, and transmitted by the Administrative Office through the regular channels for introduction in the 87th Congress. The Conference approved the bill (H.R. 5341).

Briefly, the bill would amend the Bankruptcy Act to provide:

1. Terms of 12 years for full-time referees.
2. Maximum salary limitation of $17,500 for a full-time referee and $8,500 for a part-time referee, with an increase for the Chief, Bankruptcy Division of the Administrative Office.
3. Compensation for service of a retired referee.
4. A more liberal retirement annuity, and mandatory retirement at age 75, for referees.

Appropriations

Fiscal Years 1961 and 1962

The Administrative Office had previously reported that a supplemental appropriation of $504,000 had been requested for the fiscal year 1961, and that regular appropriations totaling $6,920,000 had been requested for the fiscal year 1962. These estimates were based on an anticipated volume of 130,000 new bankruptcy cases in 1962. The Director believes that the payments into the Referees' Salary and Expense Fund will be ample to provide these amounts.

Expenses of the Bankruptcy Division of the Administrative Office

The attention of the Conference was called to a proposal originating in the House Appropriations Committee that the cost of the Bankruptcy Division of the Administrative Office of the United States Courts, including the bankruptcy statistical section, be paid from the Referees' Salary and Expense Fund.

The Conference was of the view that, if the House Appropriations Committee desired the change as a matter of legislative policy, it should be accomplished and the Conference voted to approve the proposal.

Receivers, Trustees and Appraisers

Appointment of Receivers and Trustees and Audit of Statistical Reports

The Bankruptcy Division of the Administrative Office has continued, during the last six months, its examination of statistical reports in order to discover the existence of any monopoly situations in the appointment of receivers and trustees. Considerable progress has been made in eliminating these situations and the payment of exorbitant compensation to receivers and trustees.

The statistical report on closed cases, Form J.S. 19, and instructions with respect to it, were revised effective July 1, 1960, so as to eliminate statistical data no longer used, to conform the reports to the consolidation of the Salary and Expense Fund, to provide the names of the attorneys serving in each case, and to provide for the separation of net proceeds realized from gross disbursements where businesses are operated by receivers and trustees. Many referees have expressed their full approval of these changes, which have resulted in a reduction of errors in reporting statistical data.

Accountability of Referees, Receivers and Trustees

The Bankruptcy Division is also continuing its examination of statistical reports to discover any errors in the computation of the compensation of receivers and trustees, and charges for the Referees' Salary and Expense Fund, and the number of errors has been greatly reduced in recent months. The Committee requested the Bankruptcy Division to proceed with its examination of statistical reports, and submit its findings and recommendations to a subcommittee consisting of Circuit Judge Hamlin, Chairman, Circuit Judge Aldrich and District Judge Albert V. Bryan, on the question of the accountability of receivers, trustees and referees with respect to such errors. The subcommittee will report to the full Committee at a later date.

Audit of the Accounts of Trustees in Chapter XIII Cases

The Bankruptcy Division had suggested to the Committee the desirability of periodic audits of the accounts of trustees in Chapter XIII cases, to be paid for out of the trustee's allowance for the expense of operating his office. It was the view of the Committee that such periodic audits are essential and should be made.

Appointment of Court Personnel as Appraisers in Bankruptcy Proceedings

There had been referred to the Bankruptcy Committee by the Director of the Administrative Office the question as to whether the appointment of court personnel to serve as appraisers in bankruptcy cases is proper and appropriate in the administration of the Bankruptcy Act. The Committee concluded, after full consideration, that this practice cannot be justified. Accordingly, the Committee recommended that such practice be prohibited.

The Conference disapproved the practice as improper and detrimental to the proper administration of justice in bankruptcy cases.

The Committee reported that it had concluded that the practice of appointing court personnel as appraisers in bankruptcy should be prohibited by an amendment to the General Orders rather than by new legislation and voted to so recommend to the Conference. This recommendation was approved by the Conference.

The Conference referred the following draft of a proposed amendment to General Order 45, submitted by the Committee, to

the standing Committee on Rules of Practice and Procedure for its consideration:

> "No auctioneer, accountant, or appraiser shall be appointed or employed by the court, receiver, trustee, or debtor in possession except upon an order of the court expressly fixing the amount of the compensation or the rate or measure thereof. No person who is an employee of the Judicial Branch or the Department of Justice shall be eligible for appointment or employment as an auctioneer, accountant or appraiser."

Reference of Chapter X (Corporate Reorganization) Cases and Chapter XII (Real Estate Arrangement) Cases by the Clerk of the Court

The Conference was advised that the subcommittee appointed to consider the proposal to amend the Bankruptcy Act so as to provide for the reference by the clerk of Chapter X (Corporate reorganization) and Chapter XII (Real estate arrangement) cases to referees in bankruptcy had not completed its study. Accordingly, consideration of the proposal has been deferred until the next meeting of the Bankruptcy Committee.

Matters Referred to the Bankruptcy Committee by the Advisory Committee on Bankruptcy Rules

(1) *Pauper Petitions in Bankruptcy.*—Although Section 51(2) of the Bankruptcy Act of 1898 sanctioned the filing of voluntary petitions without the payment of any fee, when accompanied by a pauper's affidavit, General Order 35(4), promulgated by the Supreme Court in 1899, authorized the judge, after notice and hearing, to order payment in full within a specified time on penalty of dismissal. This General Order was strictly enforced. Both provisions, however, were deleted by the Salary Act of 1946 and the Supreme Court was authorized to permit, by General Order, the payment of filing fees, in voluntary straight bankruptcy cases and in Chapter XIII (Wage Earner) cases, in installments. However, there has remained in Section 48c of the Bankruptcy Act, 11 U.S.C. 76(c), with respect to the payment of the trustee's fee, the phrase "when a fee is not required from a voluntary bankrupt."

The Committee recommended that the phrase "where installment payments may be authorized pursuant to Section 40 of this Act" be substituted so that the sub-section would read in part as follows:

"c. *Trustees.* The compensation of trustees for their services, payable after they are rendered, shall be a fee of $10.00 for each estate, deposited with the clerk at the time the petition is filed in each case, *except where installment payments may be authorized pursuant to Section 40 of this Act,* and such further sum as the Court may allow, as follows: . . ."

This recommendation was approved by the Conference.

(2) *Appointment of Trustees.*—The Advisory Committee on Bankruptcy Rules pointed out to the Committee an apparent inconsistency between Section 44a of the Bankruptcy Act, 11 U.S.C. 72(a), which seems to require the appointment of a trustee in every case, and General Order 15, which authorizes the Court to dispense with the appointment of a trustee in no-asset cases. The Bankruptcy Division of the Administrative Office will compile statistical data with respect to this problem and present it for study to both the Bankruptcy Committee and to the Advisory Committee on Bankruptcy Rules.

Miscellaneous Matters

Fees and Special Charges

Several referees have suggested to the Bankruptcy Committee that a special charge should be made for an amendment to a bankruptcy schedule, in order to compensate, to some extent, for the added clerical work in the offices of the referees and to discourage unnecessary amendment of such schedules. It was the view of the Committee that the suggestion has merit and, accordingly, the Bankruptcy Division of the Administrative Office has been directed to study the proposal and draft a regulation to be added to the schedule of special charges under Section 40c of the Bankruptcy Act, 11 U.S.C. 68(c).

Certification of Documents

The Committee reported that recommendations have been received from time to time from referees' offices that someone in addition to the referee and clerk of the district court be authorized to certify documents under the provisions of Section 21d of the Bankruptcy Act, 11 U.S.C. 44(d). At present, the documents in bankruptcy cases are admissible as evidence only when certified by the referee or the clerk of the district court. The Committee recommended that the Conference approve the drafting of an amendment to Section 21d to provide in substance that documents may

be certified by the referee or by an employee designated by him. The Administrative Office would be directed to draft the bill initially. This recommendation was approved by the Conference.

Deposit of Bankruptcy Funds

It had been suggested from time to time that the funds of bankrupt estates be deposited in interest-bearing accounts, such as time deposit accounts, savings accounts and the like, so that some increment will accrue to these estates. In many cases, large sums of money are held by trustees for long periods of time pending the settlement of litigation, and it has been felt that, with proper security, such funds might be deposited at interest. The Committee, accordingly, requested the Bankruptcy Division of the Administrative Office to study the proposal and to draft for the consideration of the Committee an amendment to the Bankruptcy Act which will permit the deposit of funds of bankrupt estates at interest with proper security.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, reported that the Director of the Administrative Office and members of the Committee had appeared before the Subcommittee of the Committee on Appropriations of the House of Representatives in support of the budget estimates for the courts for the fiscal year 1962 and that a full presentation of the needs of the courts was made.

The Conference was advised that during the course of the hearings particular reference was made to travel costs of judges serving on assignment; personnel accompanying judges on assignment; the changes in the volume of court business during the last year; the distribution of questionnaires and other material to judges; the acquisition of furniture; jury costs; and the use of land commissioners. The Subcommittee on Appropriations was supplied with full information with respect to each of these items, and was advised that a special study of the use of land commissioners is currently being made by a Committee of the Conference.

Jury Costs

The Committee reported that the funds available for the payment of jury fees during the current fiscal year are 4½ percent less

than the actual expenditures during 1960. Expenditures through January and February 1961 have exceeded budgeted amounts and, if it is possible for the district courts to stay within the appropriations, further economies must be made in the operation of the jury system during the remaining months of this fiscal year.

Omnibus Judgeship Legislation

The Subcommittee on Appropriations was informed that the cost during the first year of the 73 judgeships contained in the omnibus judgeship bill, S. 912, 87th Congress, as passed by the Senate, was estimated at $6,400,000, not including the cost of space for the new judges and members of their staffs. This is based on a unit cost during the first year of $72,600 for a circuit judgeship and $90,000 for a district judgeship. Because of the non-recurring initial costs of a library and equipment, the unit cost per judgeship decreases in succeeding years to $50,800 for a circuit judge and $65,700 for a district judge, not including the costs of accommodations.[1]

Travel Costs

Chief Judge Campbell informed the Conference that travel costs have increased, necessitating a request for an increase in travel funds for the fiscal year 1962. The Conference resolved that if the requested increase in travel funds is not granted, seminars, institutes on sentencing and similar meetings should be deferred until such time during the fiscal year 1962 as it can be ascertained that they can be conducted without hampering other official travel.

The Conference further resolved that plans for seminars, institutes on sentencing and similar meetings should be submitted to the Judicial Conference in sufficient detail to allow for a reasonably accurate budget estimate and, wherever practical, in sufficient time for inclusion by the Conference in the budget estimates.

ADMINISTRATION OF THE CRIMINAL LAW

The Chairman of the Committee on the Administration of the Criminal Law, Chief Judge William F. Smith, presented to the Conference the proposal for a regional Sentencing Institute for the Sixth, Seventh and Eighth Circuits to be held October 12–13,

[1] See Apppendix I for an itemized statement of the estimated costs involved in creating a new circuit and district judgeship.

1961, at Highland Park, Illinois. The Conference was advised that the program submitted was in accordance with the requirements of the statute, 28 U.S.C. 334, and the Committee recommended that the program be approved and the holding of the Sentencing Institute be authorized.

The Conference authorized the convening of the Institute, in accordance with the plan and program presented, subject to the availability of funds at the time for travel and other expenses.

The Conference was also informed of the publication in a separate volume, by West Publishing Company, of the proceedings of the Pilot Institute on Sentencing, held July 16–17, 1959, at the University of Colorado, Boulder, Colorado.

The proceedings were originally published in 26 Federal Rules Decisions 231.

SUPPORTING PERSONNEL

The Conference referred to the Committee on Supporting Personnel the consideration of the comprehensive survey of court personnel now in process by the Administrative Office. The project had previously been referred to both the Committees on Supporting Personnel and Court Administration.

PRETRIAL PROGRAM

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, reported that plans had been prepared for a seminar in accordance with the resolution approved by the Conference at its September 1960 session (Conf. Rept., p. 37). The purpose of the seminar is to explore and develop the most effective techniques for the utilization of the pretrial and trial procedures contemplated by the Federal Rules of Civil Procedure. The seminar will be held under the auspices of the Southwestern Legal Foundation and has been scheduled for July 10, 11 and 12 at Southern Methodist University in Dallas, Texas. It is anticipated that the newly appointed district judges will be invited to participate.

INTER-CIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Inter-Circuit Assignments, Judge Jean S. Breitenstein, reported upon the processing of requests for inter-circuit assignments.

The Judicial Conference at its meeting on March 11, 1960, had adopted a policy statement and plan for future processing of inter-circuit assignments of United States judges. The first objective was to encourage, as far as possible, judges having comparatively light workloads to accept inter-circuit assignments for service on courts that are hard pressed. The second objective was to make sure that inter-circuit assignments would be authorized only where they would benefit the judicial system as a whole and never when they were merely for the benefit or convenience of the judges concerned.[2]

The Committee, in accordance with sub-division III(9) of the Plan for the Assignment of Judges, prepared and distributed to all members of the Conference a statement relating to the needs for out-of-circuit assistance and to the availability of judges for such services. Twenty-six inter-circuit assignments have been favorably recommended since the last report to the Conference. No adverse recommendation has been made. One offer of assistance was withdrawn after favorable Committee action and designation by the Chief Justice.

The Conference was informed that the unavailability of judicial assistance for districts in need is a matter of much concern, but it is anticipated that solution of the existing problems will become less difficult in the event Congress authorizes the additional judgeships. However, because of inevitable fluctuations in judicial business and emergency situations, the increase in available judgepower cannot eliminate entirely the need for inter-circuit assignments.

The details of all inter-circuit assignments authorized from March 11, 1960, to February 17, 1961, are provided in Appendix II. During this entire period there has been no inter-circuit assignment that has not been fully reviewed and approved by the Advisory Committee of Judges before being authorized.

OPERATION OF THE JURY SYSTEM

The Chairman of the Committee on the Operation of the Jury System, Chief Judge Harry E. Watkins, informed the Conference that the report, *The Jury System in the Federal Courts,* approved by the Conference at its September 1960 session, is being published

[2] See Appendix II for a summary of requests and the action taken by the Advisory Committee.

by the West Publishing Company in Federal Rules Decisions. Individual copies are being forwarded to each judge, to the Attorney General and other officials in the Department, and to members of the Committees on the Judiciary of the Congress.

The report, based on extensive research over a period of three years, contains a detailed statement of the methods of jury selection in the United States district courts and recommends procedures for the selection of qualified jurors with economical administration of the system.

The Committee reported that the following legislation sponsored by the Judicial Conference to improve the jury system had been transmitted to the Congress:

To increase the subsistence and limit mileage allowances of grand and petit jurors. (H.R. 5616)

To increase the fees of jury commmissioners in the U.S. district courts. (H.R. 5392)

To provide for a jury commission for each U.S. district court. (H.R. 5391)

The following bills containing proposals previously disapproved by the Conference were again disapproved:

H.R. 818 and H.R. 1262—would provide that in a civil case the number of jurors required to constitute a jury, and the number of whom must agree for a valid verdict, shall be determined by the law of the State in which the action is tried.

H.R. 189—which would require a juror to take an oath that he does not advocate and is not a member of an organization that advocates the overthrow of the Government of the United States by force or violence.

HABEAS CORPUS

The Chairman of the Special Committee on Habeas Corpus, Senior Judge Orie L. Phillips, stated that the legislation previously approved by the Conference to amend Sections 2244, 2253, and 2254 of title 28, United States Code, relating to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a State court, had been introduced in the Congress.

The Conference, after discussion, reaffirmed its approval of the legislation and, in so doing, authorized the Director to transmit to the Congress two clarifying amendments and one substantive amendment.

First, it is suggested that the bill amend "chapter 153" in lieu of section 2254 specifically. This is purely a technical amendment.

Second, it is suggested that in Section 1, subsection (b), the words "after a hearing" be inserted between the words "denied by" on the second line. This is technical and clarifying only.

Third, 28 U.S.C. Sec. 2254, provides that an application for habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted by a federal court unless the applicant "has exhausted the remedies available in the courts of the state." In *Darr* v. *Burford*, 339 U.S. 200 the Supreme Court held that "the remedies available in the courts of the state" *included* a petition for certiorari to the Supreme Court of the United States. While that case involved a failure to seek a writ of certiorari from a decision of a state court denying post conviction relief, it has been read by some prisoners as suggesting that they must also file petitions for certiorari in the Supreme Court of the United States from the affirmance of their convictions by a state supreme court. This is true even through the record in these state court proceedings is such that the Supreme Court of the United States cannot review the alleged federal questions, and even though the prisoner is aware of this fact and does not wish to seek review of the state court judgment. Dozens of petitions for certiorari are filed in the Supreme Court of the United States each term in which the petitioner asserts that he is aware that certiorari will be denied and is filing his petition only because he is required to do so by *Darr* v. *Burford*. The result of this purely formal procedure is to waste a year's time or more in disposing of the alleged federal questions, and to require the courts to go through a whole series of useless steps in processing appeals that are admittedly purely formal. There appears to be universal agreement that it would be desirable for Congress to correct the language of 28 U.S.C. 2254 so as to eliminate this useless and time consuming procedure. It is suggested that this be accomplished by adding to Section 3 of the bill a subsection (d) providing that "remedies available in the courts of the state" do *not* include review by the Supreme Court of the United States.

THE USE OF LAND COMMISSIONERS

Chief Judge Royce H. Savage, on behalf of Judge Stanley N. Barnes, Chairman of the Committee on the Use of Land Commissioners, informed the Conference that a Committee report had been prepared, but that several items in the report had not been agreed upon among the Committee members. The Conference discussed at some length the various problems that have arisen in regard to the use of land commissioners including the statements made at hearings before the appropriations Committees that the authority to appoint land commissioners had been abused in some districts and that exorbitant compensation to the commissioners had been allowed. The Committee was granted leave to consider these problems further and to report to the Conference thereon as soon as possible.

RESPONSIBILITIES AND POWERS OF THE JUDICIAL COUNCILS

The Chairman of the Special Committee on the Responsibilities and Powers of the Judicial Councils of the Circuits, Chief Judge Johnsen, presented the Conference with a comprehensive report.

The views and conclusions of the Committee, which reviewed the background and legislative history of the statute creating the judicial councils and considered the various expressions of views in the legal literature, are as follows:

(1) Under 28 U.S.C. 332, the Judicial Councils are intended to have, and have, the responsibility of attempting to see that the business of each of the courts within the circuit is effectively and expeditiously administered.

(2) The responsibility of the Councils "for the effective and expeditious administration of the business of the courts within its circuit" extends not merely to the business of the courts in its technical sense (Judicial administration), such as the handling and dispatching of cases, but also to the business of the judiciary in its institutional sense (administration of justice), such as the avoiding of any stigma, disrepute, or other element of loss of public esteem and confidence in respect to the court system, from the actions of a judge or other person attached to the courts.

(3) The Councils have the responsibility and owe the duty of taking such action as may be necessary, including the issuance of "all necessary orders", to attempt to accomplish these ends.

(4) These responsibilities should ordinarily be approached, in the spirit and tradition of the judicial institution, in an attitude of attempted cooperation and assistance to the district courts and not of purported policemanship, since the purpose of the statute is to make the Council an instrument to help prevent problems from arising, to help find solutions for those which have arisen, as well as to take such corrective action for prevention or solution "as may be necessary".

(5) If the Councils are effectively to serve these purposes, it is manifest that they must undertake to keep themselves informed. Their primary source of information will, of course, be the reports of the Director of the Administrative Office, as referred to in the statute. But formal statistics alone will not always, and perhaps not usually, be sufficient as a basis for the exercise of intelligent responsibility. Statistics may point out the existence of a problem, but they do not ordinarily demonstrate the causes or reasons underlying the problem. Thus, in the attempt to deal with a problem, such as where a court appears to be falling behind and perhaps to be approaching an incipient congestion, it would seem desirable for the Council to call upon the Administrative Office to undertake to make an exploration into the particular situation, in order to enable it to get at the underlying picture and understand what it is that needs suggestion or corrective action on the part of the Council.

(6) In the judgment of the Special Committee, the present statute is adequate to enable the Judicial Councils, on proper exercise of their responsibilities, to serve their intended purpose, as an instrumentality in the statutory scheme of Public Law No. 299, for "The Administration of the United States Courts", to assist in achieving "the effective and expeditious administration of the business of the courts". The expression which the Judicial Conference made in the Report of its September 1939 Session, page 11, after the enactment of the Act, is entitled to be renewed: "It is confidently expected that through the operation of this Act the important objec-

tives to which reference has been made will be measurably attained".

The Conference discussed the report fully and, after amendments with respect to the activities of the Councils and the conduct of Council meetings, approved the report and authorized its distribution to all members of the Federal Judiciary.

RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND JUDICIAL CONFERENCES OF THE CIRCUITS

Chief Judge Biggs presented to the Conference a report on the Institute on Sentencing held in conjunction with the Annual Judicial Conference of the Third Circuit in September 1960. The Conference received the report and directed that it be filed with the records of the Conference.

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

At the request of Chief Judge Johnsen, the Conference, pursuant to 28 U.S.C. 48, consented that terms of the Court of Appeals of the Eighth Circuit at places other than St. Louis be pretermitted during the fiscal year commencing July 1, 1961.

At the request of Chief Judge Murrah, the Conference consented that terms of the Court of Appeals of the Tenth Circuit at places other than Denver be pretermitted during the fiscal year commencing July 1, 1961.

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 39 cases under submission in the courts of appeals more than five months as of March 1, 1961, and 15 cases and 2 motions which had been held under advisement by district judges more than six months as of that date. Where necessary, these will be brought to the attention of the judicial councils by the chief judges of the circuits.

INTERLOCUTORY APPEALS

The Conference was presented a suggestion by Judge Charles E. Clark that it reactivate the Committee on Interlocutory Appeals

to re-examine the operation of the recent statute authorizing such appeals on certificate of a district judge, 28 U.S.C. 1292(b). Mr. Will Shafroth, Deputy Director of the Administrative Office, reported that the opinion among the various circuits, as reflected in letters from the chief judges of the circuits, was that the statute was either operating satisfactorily, or that more time was required to determine its effectiveness. No action was taken by the Conference.

JUDICIAL SURVIVORS ANNUITY FUND

Mr. Warren Olney III, Director of the Administrative Office, informed the Conference that the Judicial Survivors Annuity Fund appeared to be in a satisfactory condition and that an audit of the fund would be made in accordance with the statute, 28 U.S.C. 376, when action on the new judgeship bill is completed.

RELEASE OF CONFERENCE ACTIONS

The Conference authorized the immediate release of its action with respect to legislative and administrative proposals contained in the reports of the Committees.

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice.

MAY 10, 1961.

APPENDIX I

Cost to the Judiciary of Establishing a New Judgeship (exclusive of the cost of providing courtrooms, chambers and other office space)

	Circuit judgeship	District judgeship
Appropriation: Salaries of Judges		
Salary of the judge	$25,500	$22,500
Related contributions from the appropriation for life insurance, health benefits and the judicial survivors annuity fund	900	800
Totals	26,400	23,300
Appropriation: Salaries of Supporting Personnel, The Judiciary		
Salary of the:		
Law Clerk, GS-11	7,560	7,560
Secretary, GS-9	6,435	6,435
Crier, GS-5	----------	4,345
Court reporter, ungraded	----------	7,630
Courtroom deputy, GS-7	----------	5,355
Related contributions from the appropriation for retirement, life insurance, and health benefits	1,105	2,575
Totals	15,100	33,900
Appropriation: Travel and Miscellaneous Expenses, United States Courts		
Travel, judge and staff	2,000	3,000
Library:		
Initial cost	16,500	12,500
Recurring annual cost	(1,700)	(1,200)
Equipment and furniture (nonrecurring)	7,000	13,000
Communications, printing, supplies, etc.	3,600	2,300
Totals (initial year)	29,100	30,800
Totals (annual recurring)	7,300	6,500
Appropriation: Salaries and Expenses, Administrative Office, United States Courts		
Salaries and expenses of clerical staff	2,000	2,000
Grand totals:		
Initial year	72,600	90,000
Annual recurring	50,800	65,700

NOTE.—In a location where no quarters are available for the new judge there would be an additional cost of approximately $20,000 per annum to lease space for agencies displaced. It is estimated that this space acquisition cost would be involved in establishing about 75% of the new judges. Apart from this the GSA would encounter construction or alteration costs in an undetermined amount.

Also, it should be recognized that the creation of additional district judgeships will result, after a time, in an increase in the over-all jury costs.

APPENDIX II

ASSIGNMENT AND DESIGNATION OF JUDGES

Assignments Recommended by the Advisory Committee on Inter-Circuit Assignments, Mar. 11, 1960, to Feb. 17, 1961

Courts requesting judicial assistance	Number of assignments recommended by the Advisory Committee		
	Total [1]	Active judges	Senior judges [2]
Total	44	26	18
Courts of Appeals:			
District of Columbia Circuit	5	----	5
First Circuit	2	[3] 1	1
Second Circuit	7	6	1
District Courts:			
District of Columbia	2	1	1
First Circuit:			
Massachusetts	1	1	----
Second Circuit:			
Connecticut	----	----	----
New York, Eastern	3	3	----
New York, Southern	7	5	----
Third Circuit:			
Pennsylvania, Western	3	1	2
Fourth Circuit:			
North Carolina, Eastern	1	----	1
North Carolina, Middle	----	----	----
Virginia, Eastern	----	----	----
Fifth Circuit:			
Florida, Southern	5	4	1
Mississippi, Southern	----	----	----
Texas, Southern	1	1	----
Texas, Western	1	1	----
Sixth Circuit:			
Michigan, Eastern	----	----	----
Ohio, Southern	----	----	----
Tennessee, Eastern	1	1	----
Seventh Circuit:			
Illinois, Northern	4	1	3
Special Courts	1	----	1

[1] One offer of service was withdrawn after the recommendation had been made by the Committee and one consent to service was withdrawn by the Chief Judge of the Circuit after a recommendation had been made.

[2] Includes two assignments of retired Justices of the Supreme Court of the United States to sit in the Court of Appeals for the District of Columbia Circuit.

[3] This assignment was for service in one case only, in which a judge serving on the court was disqualified.

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