REPORT

of the

PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

* * *

MARCH 16-17, 1964

WASHINGTON, D. C.
1964

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, the chief judge of the Court of Customs and Patent Appeals, 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, or the chief judge of the Court of Customs and Patent Appeals 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.

CONTENTS

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

MARCH 16-17, 1964

The Judicial Conference of the United States convened on March 16, 1964 pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on March 17. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:
Judge Charles Fahy (Designated by the Chief Justice in place of Chief Judge David L. Bazelon who was unable to attend)
Chief Judge Matthew F. McGuire, District of Columbia

First Circuit:
Chief Judge Peter Woodbury
Judge Francis J. W. Ford, District of Massachusetts

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

Third Circuit:
Chief Judge John Biggs, Jr.
Chief Judge Thomas M. Madden, District of New Jersey

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

Fifth Circuit:
Chief Judge Elbert Parr Tuttle
Chief Judge Bryan Simpson, Middle District of Florida

Sixth Circuit:
Chief Judge Paul C. Weick
Judge Ralph M. Freeman, Eastern District of Michigan

Seventh Circuit:
Chief Judge John S. Hastings
Chief Judge William E. Steckler, Southern District of Indiana

Eighth Circuit:
Chief Judge Harvey M. Johnsen
Judge Richard M. Duncan, Eastern and Western Districts of Missouri

Ninth Circuit:
Chief Judge Richard H. Chambers
Chief Judge Gus J. Solomon, District of Oregon

Tenth Circuit:
Chief Judge Alfred P. Murrah
Judge Ewing T. Kerr, District of Wyoming

Court of Claims:
Chief Judge Marvin Jones

Court of Customs and Patent Appeals:
Chief Judge Eugene Worley

Senior Judge Albert B. Maris; Circuit Judges Bailey Aldrich and Jean S. Breitenstein; Chief Judges William J. Campbell and Theodore Levin; District Judge Luther W. Youngdahl; and Judge Samuel E. Whitaker of the Court of Claims attended all or some of the sessions.

Honorable Olin D. Johnston of the Senate Judiciary Committee and Chairman of its Subcommittee on Improvements in Judicial Machinery attended the morning session of the second day of the Conference and addressed the Conference briefly.

Hubert H. Finzel, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; and John F. Davis, 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.

At the request of the Chief Justice, Chief Judge John Biggs, Jr., the senior member of the Conference, presided at the afternoon session of the first day of the Conference.

MEMORIALS

The Conference noted the death of Circuit Judges Sam G. Bratton, Charles E. Clark, and Charles C. Simons, all former members of the Conference, and the death of Circuit Judge John B. Sanborn, who was closely associated with the work of the Conference, and adopted the following resolutions:

HONORABLE SAM G. BRATTON

The Conference notes with sorrow the death of Circuit Judge Sam G. Bratton, a former distinguished member of this body. Judge Bratton's brilliant career as a circuit judge in the United States Court of Appeals for the Tenth

Judicial Circuit spanned more than thirty years. Prior to that time he was a representative of his state of New Mexico in the United States Senate. As a member of this Conference for more than three years, Judge Bratton contributed not only his legal talent and skill to the deliberations of the Conference, but also his lively wit and unfailing humor. He will long be remembered by his colleagues in the Tenth Circuit and by the members of this Conference.

HONORABLE CHARLES E. CLARK

The Conference notes with sorrow the passing of Circuit Judge Charles E. Clark on December 13, 1963. He was one of the principal architects of the Rules of Civil Procedure, and, as teacher and judge, he was a leader for procedural reform, serving actively as a member of the Conference Committee on Rules of Practice and Procedure at the time of his death. The Conference remembers and is grateful for Judge Clark's services as a member of the Conference, when Chief Judge of the Second Circuit, and of its committees over the past quarter century, and for the unstinted devotion of his great knowledge, skill and zeal to the improvement of the administration of justice in this country.

HONORABLE CHARLES C. SIMONS

Chief Judge Weick, of the Sixth Circuit, advised the Conference of the death on February 2, 1964, of Charles C. Simons, Senior Judge of the United States Court of Appeals for the Sixth Circuit; and the Conference directed the following statement by Chief Judge Weick to be included in the minutes of the Conference:

> Judge Simons was born in the City of Detroit of immigrant parents on May 21, 1876. He received his Bachelor of Philosophy degree from the University of Michigan and graduated from its law school with honors in 1900. He was a member of the Michigan Senate from 1903 to 1904 and refused to stand for the election for another term but was elected a member

of the Michigan Constitutional Convention in 1908 and was a Presidential elector at large in 1916.

He received honorary degrees from his alma mater, the University of Michigan; Wayne State University; and Detroit College of Law. He was appointed United States District Judge in 1923 and served until he ascended to the bench of the United States Court of Appeals in 1932. For six years he was Chief Judge of that court and in that capacity served as a member of the Judicial Conference of the United States.

He taught law and maintained a keen interest in advancing legal education. He had a constant awareness of the needs of the City of Detroit, where he was born, as well as of the total American community. He led many to a better life.

The Conference resolved to express its profound regret at the death of this distinguished member of the federal judiciary and ordered a copy of this statement and resolution be sent to the Clerk of the United States Court of Appeals for the Sixth Circuit and to the United States District Court for the Eastern District of Michigan.

HONORABLE JOHN B. SANBORN

RESOLVED: That the Judicial Conference takes note, with sorrow, of the death of Senior Circuit Judge John B. Sanborn of the Eighth Circuit on March 7, 1964, and expresses its appreciation of his 39 years of distinguished service on the federal bench, both district and circuit, and of his valuable contribution as a member of a number of the Committees of this Conference.

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

Warren Olney III, Director of the Administrative Office of the United States Courts, brought to the attention of the Conference various problems that will be presented if, as appears imminent, the legislation to authorize payment of compensation to counsel appointed to represent indigent persons accused of crime in the United States courts

should be enacted. The Conference discussed various aspects of the problem of administering a system of compensating assigned counsel and in particular the recommendations of a Special Committee of the Association of the Bar of the City of New York and the National Legal Aid and Defender Association. These recommendations with respect to an assigned counsel system are:

"1. Using rotation to assign *qualified* counsel;
2. Centralizing assignment in a single administrative unit;
3. Having indigency determined by someone other than the assigned counsel;
4. Providing for the reimbursement of assigned counsel for all expenses incurred; and
5. Compensating counsel adequately."

The Conference suggested that the quoted recommendations be brought to the attention of all circuit conferences and recommended the appointment of a committee in each judicial circuit to consider the various problems of compensating appointed counsel. The Conference also authorized the appointment of an ad hoc committee of the Conference to work with the Administrative Office in developing rules, procedures and guidelines for an assigned counsel system.

The Director also called attention to the provisions of the pending legislation which would require the appointment of counsel for the indigent upon appearance before a United States commissioner and suggested that this would make necessary a complete survey of the United States commissioner system. The Conference thereupon authorized the appointment of an ad hoc committee to study the feasibility of establishing a system of full-time, salaried United States commissioners with expanded jurisdiction, who might be empowered to try certain misdemeanors and accept waivers of indictment, and be authorized to conduct full preliminary hearings and enter appropriate holding orders.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, reported that hearings before the Appropriations Subcommittee of the House of Representatives on the appropriation requests for the fiscal year 1965 had been held, but that no report by the Appropriations Committee had as yet been issued. With respect to the current fiscal year 1964, the appropriations appear adequate except for a request for a small supplemental appropriation for salaries of referees in bankruptcy and the possibility of the need for a small supplemental appropriation for fees of jurors. Chief Judge Campbell informed the Conference that the Spring meeting of the Budget Committee had been held in San Francisco in accordance with the plan of the Committee to hold its Spring meeting in various circuits so that the Committee may accumulate at first hand information on the budget needs of the courts in the various circuits and the justifications for them.

Chief Judge Campbell called attention to the experiment in the use of pretrial examiners being conducted in the Southern District of New York and suggested the need for the Conference to determine the results of the experiment and whether or not to continue the request for the funds for the fiscal year 1966.

COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge John Biggs, Jr., presented the report of the Committee.

SELECTION OF CHIEF JUDGES

The Conference at its September 1963 session (Conf. Rept., p. 63) had authorized the Committee to give further consideration to the proposals contained in S. 1367, 88th Congress, relating to (1) the selection of chief judges

of the circuits and of the multiple-judge district courts; (2) the terms of service of chief judges; and (3) the powers and responsibilities of chief judges with respect to the general administrative superintendence of the business of the circuit and district courts. The Committee reported that it had considered the proposals contained in this bill and various other plans for the selection of chief judges of the circuits and of multiple-judge district courts, but had been unable to arrive at any conclusion as to the best method for the selection of chief judges. The Committee accordingly requested and was granted leave to consider further the proposals contained in S. 1367 and other plans for the selection of chief judges and to report at a later session of the Conference.

AMENDMENT OF 28 U.S.C. 372(b)

The Conference at its September 1963 session (Conf. Rept., p. 63) had directed the Committee to give further consideration to the proposal contained in S. 1368, 88th Congress, to amend 28 U.S.C. 372(b) to provide for the appointment of an additional judge in a court where a judge has served 10 years and has reached the age of 70 and the judicial council of the circuit has recommended the appointment of an additional judge. The bill would also provide that whenever a judge is so appointed, the vacancy subsequently caused by the death, resignation, or retirement of the judge by reason of whose failure to resign or retire from regular active service such appointment was made, shall not be filled. Similar provisions with respect to the Court of Claims, the Court of Customs and Patent Appeals and the Customs Court are also contained in the bill.

The Conference discussed the proposed legislation and various amendments thereto recommended by the Committee and directed that the bill be referred to the Committee for further study.

Additional Districts and Divisions

After a full discussion of the various bills to create new districts and divisions in California, including H.R. 6655, H.R. 6821, H.R. 4834 and H.R. 9567, 88th Congress, the Conference voted to authorize the Director of the Administrative Office to inform the Chairman of the House Judiciary Committee that while the Judicial Conference has for many years opposed the creation of additional judicial districts, it recognizes that California has a unique problem because of the large geographic area it embraces and its rapidly expanding population and continuing economic development. The Conference was of the opinion therefore that it cannot adhere in this case to the policy it has consistently followed but felt that it could not at this time take a position as to any pending bill because of insufficient information on the subject. However, the Conference instructed the Director of the Administrative Office to make available to the Congress, on request, any statistical information which it has on the subject. The Committee on Court Administration was authorized to give further consideration to the proposals.

Additional Judgeships

H.R. 8898, 88th Congress, would provide for the creation of an additional judgeship for the Eastern District of Wisconsin. Upon recommendation of the Committee, the Conference voted to withhold any recommendation on H.R. 8898 pending a study of trends in the caseload and of the availability of judicial manpower within the next few months.

Places of Holding Court

S. 2392, 88th Congress, would add Williston as an additional place of holding court for the United States District Court for the District of North Dakota. The Conference was informed that the Judicial Council of the

Eighth Circuit disapproves of holding court at Williston because of the small percentage of cases which would be available for trial there. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

Consideration of the proposal contained in H.R. 9929, 88th Congress, to add Manchester as a place of holding court in the Winchester Division of the United States District Court for the Eastern District of Tennessee "on a temporary basis upon order of the presiding judge" was deferred by the Conference pending action by the Judicial Council of the Sixth Circuit.

H.R. 8561, 88th Congress, would add Clinton as an additional place of holding court in the Eastern District of North Carolina. The Conference was informed that the proposal contained in the bill had been approved by the Judicial Council of the Fourth Circuit. Upon recommendation of the Committee, the Conference voted to approve the bill.

RETIREMENT OF JUDGES

The Conference in September 1963 (Conf. Rept., p. 64) had referred to the Committee for study a draft resolution which would provide that henceforth it shall be the policy of the Judicial Conference not to recommend to the Congress an additional judgeship in any district or circuit wherein there is a judge or judges who are eligible to retire or accept senior status but decline to do so. The Conference considered the draft resolution and the recommendation of the Committee that it be disapproved. After full discussion the Conference adopted the following resolution:

> RESOLVED: That the Committee on Court Administration is requested to undertake a comprehensive survey and study of the problems arising in the expeditious disposition of the judicial business of a United States court (other than the Supreme Court) where a judicial officer becomes unable to discharge efficiently all the duties of his office by reason of

permanent mental or physical disability. The Committee is further requested to undertake a similar comprehensive survey and study of the problems arising in the administration of justice in a United States court (other than the Supreme Court) where a judicial officer is guilty of misbehavior in office. The Committee is also requested to review the adequacy of existing statutory and administrative procedures relating to these problems and to formulate and recommend to the Conference improvements in these procedures.

PRETRIAL EXAMINERS

Chief Judge Biggs informed the Conference that the Committee was not yet ready to report on the use of pretrial examiners as a part of pretrial procedure in the United States District Court for the District of Columbia and in the District Court for the Southern District of New York and requested leave to report at the next Conference session. The Conference considered the need for a first hand study of the pretrial examiner program by a small committee of judges and after full discussion adopted the following resolution:

RESOLVED: That two district judges and one circuit judge, to be designated by the Committee on Court Administration, examine the administration of the respective pretrial examiner systems of the United States District Courts for the District of Columbia and for the Southern District of New York and report thereon to the Committee on Pretrial Procedure and to the Committee on Court Administration.

DISBURSEMENT OF JUDICIARY FUNDS

The Director of the Administrative Office had submitted to the Committee a study of the feasibility of disbursing judiciary appropriations exclusively from the Administrative Office of the United States Courts. The Committee had been informed that a test of such a system with pilot projects in three different courts had disclosed no weaknesses and that the Administrative Office is satisfied that the plan is entirely practical. Upon recommendation of the

Committee, the Conference approved the study demonstrating the feasibility of the system.

PUBLICATION OF OPINIONS

Chief Judge Biggs reported that the subcommittee appointed to consider ways and means of limiting the publication of opinions had collected data on this subject from chief judges of the circuits, circuit and district judges, and various other sources including data supplied by officials of the State of New York, and had reported thereon to the full Committee. In view of the rapidly growing number of published opinions of the courts of appeals and of the district courts of the United States, and the ever increasing practical difficulty and economic cost of establishing and maintaining accessible private and public law library facilities, the Committee presented the following resolution which was approved by the Conference:

> RESOLVED: That the judges of the courts of appeals and the district courts authorize the publication of only those opinions which are of general precedential value and that opinions authorized to be published be succinct.

CLERKS' FEES

The Conference was informed that the study and report on the existing fee schedule for the clerks of court, prepared by the Administrative Office, had been referred to a subcommittee to consider the extent to which fee schedules should be commensurate with the services rendered. The Committee therefore requested and was granted leave to report at a later session of the Conference.

COSTS OF PRINTING AND OF BOOKS

The Conference at its September 1963 session (Conf. Rept., p. 59) directed the Committee to consider and make recommendations concerning the alarming increase in printing costs and the costs of the acquisition of law books.

Chief Judge Biggs informed the Conference that the Administrative Office had undertaken to examine these costs and that a subcommittee had been appointed to consider what savings can be made in the purchase of law books. The Committee was thereupon authorized to consider these matters further and to report at a later session of the Conference.

COURTROOM PHOTOGRAPHS

The Judicial Conference of the Ninth Circuit had requested an amendment to the Judicial Conference resolution on the taking of photographs within the environs of a courtroom to permit "news media courtroom photography or telecasting of naturalization or ceremonial judicial matters had in accordance with local rule of court." Upon recommendation of the Committee, the Conference disapproved the proposed amendment.

EQUAL EMPLOYMENT OPPORTUNITY ACT

The Conference was informed that the Senate Committee on Labor and Public Welfare had requested the views of the judiciary on the judicial review provisions of S. 1937, 88th Congress, which is the proposed "Equal Employment Opportunity Act." This bill provides, in general, for the review of the orders of an Equal Employment Opportunity Board by the courts of appeals. The bill further provides that on application a case may be transferred from the court of appeals to a local district court which would then have jurisdiction to consider and dispose of the proceedings in accordance with the provisions of the bill. The district court's decree would be final except for review by the court of appeals. This procedure would be followed for cases arising in areas so distant from places where the court of appeals sits as to impose substantial hardship on a party other than the Administrator or the Board. The judicial council of the circuit would be em-

powered to designate "hardship areas." While these provisions are unusual, it was the view of the Committee that they are desirable and feasible. Upon recommendation of the Committee, the Conference approved the provisions of S. 1937 relating to the judicial review and enforcement of orders of the Board.

JURISDICTION OF THE SUPREME COURT AND THE COURTS OF APPEALS

S. 1683, 88th Congress, would limit the jurisdiction of the Supreme Court of the United States and the United States courts of appeals by depriving them of jurisdiction to review any determination made by any other court in any case involving "the validity under the Constitution, treaties, or laws of the United States of any constitutional provision, statute, or regulation of any State or any political subdivision thereof relating in any matter to—

(1) the establishment, maintenance, or operation of public schools in such State;

(2) the conduct of any election within such State, the qualifications of electors to vote in any election within such State, or the method of determining such qualifications; or

(3) the penal provisions of the law of such State, or the procedure for the enforcement of such provisions."

On the recommendation of the Committee, the Conference disapproved the bill.

ASSIGNMENT OF SENIOR JUDGES

At the request of Chief Judge Roszel C. Thomsen the Conference authorized the Committee on Court Administration to consider the policy questions involved in granting senior judges indefinite designations and assignments to sit in their own districts.

GEOGRAPHICAL ORGANIZATION OF THE COURTS

Chief Judge John Biggs, Jr., Chairman of the Special Committee on the Geographical Organization of the Courts, authorized by the Conference at its September 1963 session (Conf. Rept., p. 65), presented the report of the Committee.

Division of the Ninth Circuit

S. 1876, 88th Congress, would provide for the creation of an eleventh judicial circuit to be comprised of Alaska, Idaho, Montana, Oregon and Washington and would provide for two additional circuit judges to serve in the area comprising the present Ninth Judicial Circuit. The Committee submitted a comprehensive analysis of the judicial business in the circuit and concluded that there is no need at the present time for a division of the Ninth Circuit or for the creation of any additional circuit judgeships therein. Upon recommendation of the Committee, the Conference disapproved the bill.

Division of the Fifth Circuit

The Committee also submitted a comprehensive report on the judicial business of the United States Court of Appeals for the Fifth Circuit. On the basis of its study the Committee concluded that additional circuit judgeships were required in the circuit for the dispatch of the judicial business of the court. The Committee was further of the view that the circuit should be divided and recommended a division of the Fifth Circuit with the states of Alabama, Florida, Georgia and Mississippi to constitute the new Fifth Circuit and the states of Louisiana and Texas and the District of the Canal Zone to constitute the new Eleventh Circuit. The Committee further recommended that the new Fifth Circuit be authorized to have a total of eight circuit judgeships and the new Eleventh

Circuit a total of seven circuit judgeships. These recommendations were approved by the Conference.

The Committee also reported that in its judgment nine is the maximum number of active judgeship positions which can be allotted to a court of appeals without impairing the efficiency of its operation and its unity as a judicial institution.

REVISION OF THE LAWS

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

JURISDICTIONAL STUDY

Judge Maris informed the Conference that the Committees on Court Administration and Revision of the Laws had met jointly and had devoted a full day to a conference with representatives of the American Law Institute and representatives of the Advisory Committee on Civil Rules in regard to problems and proposals under consideration by the American Law Institute in its current study of the Division of Jurisdiction between State and Federal Courts. The full discussion and frank exchange of views were stated by the representatives of the American Law Institute to be most helpful to them.

AMENDMENT OF THE TUCKER ACT

The Conference was informed that the Committees on Court Administration and Revision of the Laws had considered jointly the proposal of the Judicial Conference of the Tenth Circuit that the $10,000 jurisdictional ceiling on suits in the district courts under the Tucker Act, 28 U.S.C. §1346(a)(2), be removed and had recommended that the proposal be approved. After full discussion the Conference voted to disapprove the proposal to remove the jurisdictional limitation, but authorized the Committees

to consider enlarging the present $10,000 jurisdictional ceiling on suits brought in the district courts under the Tucker Act.

Appeals in Patent and Trademark Cases

The Conference at its September 1963 session (Conf. Rept., p. 79) authorized the Committees on Court Administration and Revision of the Laws to give further consideration to the proposals contained in S. 1940 and H.R. 7553, 88th Congress, which would amend the Patent and Trademark statutes to eliminate the present requirement that reasons of appeal in patent and trademark cases must be filed in connection with appeals to the United States Court of Customs and Patent Appeals. The Committees reported that a majority of the members of the Court of Customs and Patent Appeals had approved H.R. 7553 with certain amendments to simplify the bill, while at the same time preserving its purpose to eliminate the requirement for reasons of appeal. The Committees recommended that H.R. 7553 be approved with the amendments proposed by the Court of Customs and Patent Appeals. This recommendation was approved by the Conference.

Interpreters

H.R. 8136, 88th Congress, would provide for the designation of qualified interpreters to assist defendants in criminal actions who are unable because of deafness to understand the proceedings. The Committee called attention to the proposed amendments to Rule 28, Federal Rules of Criminal Procedure and Rule 43, Federal Rules of Civil Procedure, which would authorize the court to "appoint an interpreter of its own selection and determine the reasonable compensation of such interpreter and direct its payment out of such funds as may be provided by law." In each case the Advisory Committee note contains

a statement that the rule is intended to cover interpreters needed where a witness or a defendant is deaf as well as to assist non-English speaking defendants in understanding the proceedings or in communicating with counsel. The Committee was of the view that these proposed changes in the rule to authorize the appointment of interpreters will adequately meet the problem to which H.R. 8136 is addressed. However, the Committee felt that the district court should have discretionary power in appropriate cases to direct that the compensation of interpreters be paid by one or more of the parties and that such compensation may be taxed as costs in the case. This power does not clearly appear in the draft of amendments to the rules. Upon recommendation of the Committee, the Conference requested the standing Committee on Rules of Practice and Procedure to modify the proposed rules amendments relating to interpreters to the extent necessary to make such discretionary power explicit.

Administrative Conference of the United States

The Conference in March 1960 (Conf. Rept., p. 46) had approved in principle the establishment of a permanent conference on the procedures of Executive department and administrative agencies in adjudication and rulemaking. The Committee reported that S.1664, 88th Congress, which would provide for an administrative conference of the United States, had passed the Senate and that the views of the Judicial Conference on the bill had been requested by the House Judiciary Committee. Upon recommendation of the Committee, the Conference directed that the House Committee on the Judiciary be informed that the Conference approves in principle the proposal to create a permanent administrative conference contained in S. 1664, but makes no recommendation with respect to the detailed provisions of the bill regarding the composition

and powers of the administrative conference since these are not matters of primary concern to the Federal Judiciary.

TUCKER ACT AMENDMENTS

The Conference at its September 1963 session (Conf. Rept., p. 75) had deferred consideration of S. 1351 and H.R. 6538, 88th Congress, pending inquiry concerning the views of the Department of Justice. These bills would repeal subsection (d) of 28 U.S.C. 1346 to permit the district courts to entertain civil actions by officers or employees of the United States for compensation for official services. The Committee pointed out that under the provisions of the Act of October 6, 1962, (72 Stat. 744, 28 U.S.C. 1361) it is now possible for government employees who allege that they have been improperly discharged from their employment to sue in their home districts for reinstatement. However, under the provisions of 28 U.S.C. 1346(d) an employee's claim for back pay, which very frequently accompanies his claim for reinstatement, must be brought in the Court of Claims. It was the view of the Committee that the district courts should be given jurisdiction of the compensation claim as well as the improper discharge in order that these claims may be disposed of in a single action. The Conference was informed that the views of the Department of Justice on the proposed legislation had not as yet been formulated. Upon recommendation of the Committee the Conference voted to approve S. 1351 and H.R. 6538.

PENSIONS OF RESERVE OFFICERS OF THE ARMED FORCES

The Committee on the Judiciary of the House of Representatives had requested the views of the Conference on H.R. 7711, 88th Congress, which is a bill to confer jurisdiction upon the district courts to adjudicate the claims

of reserve officers to additional retired pay provided by the Army and Air Force Vitalization and Retirement Equalization Act of 1948. The Conference was informed that claims of reserve officers under the Act had been decided adversely to them on the basis of statutory construction in certain suits decided in the Court of Claims. In these circumstances, the Committee considered it inappropriate to confer jurisdiction on the district courts to consider claims involving the same question and that if the intent of the Congress had not been made clear in the original Act, as construed by the Court of Claims, it would be more appropriate to provide a clarifying amendment to the Act. Accordingly the Conference, upon recommendation of the Committee, disapproved the bill.

Judicial Review of Decisions of the Foreign Claims Settlement Commission

The Committee on the Judiciary of the United States Senate had requested the views of the Conference on S. 2426, 88th Congress, which would provide for the judicial review by the courts of appeals of determinations by the Foreign Claims Settlement Commission under the War Claims Act of 1948. Upon recommendation of the Committee, the Conference voted to approve the form of judicial review provided in the draft legislation. The Conference felt, however, that the question as to whether review should be granted in these cases is one of public policy to be determined by the Congress. The Conference also was of the view that the question whether the claimant only should have a right of review, as the bill provides, is a question of policy for the Congress.

Legislation

The Conference, on recommendation of the Committee, reaffirmed its approval of the following bills pending in

the 88th Congress which embody proposals heretofore approved by the Conference:

(1) H.R. 9436, 88th Congress, to extend the life of the Commission and Advisory Committee on International Rules of Judicial Procedure to December 31, 1966. (Conf. Rept., Sept. 1963, p. 79).

(2) H.R. 9435, 88th Congress, to improve judicial procedures for serving documents, obtaining evidence, and proving documents in litigation with international aspects. (Conf. Rept., Sept. 1963, p. 72).

The Conference, upon recommendation of the Committee, reaffirmed its disapproval of the proposals contained in the following bills pending in the 88th Congress:

(1) S. 2294, 88th Congress, to amend 28 U.S.C. §2112(a) with respect to jurisdiction of the courts of appeals to review orders of administrative officers and agencies, and to amend the National Labor Relations Act to provide for the trial of unfair labor practice cases in the United States district courts. (Conf. Repts., Sept. 1959, p. 8, and Sept. 1961, p. 80).

(2) S. 2240 and H.R. 8246, 88th Congress, to amend the National Labor Relations Act to provide for the trial of unfair labor practice cases in the United States district courts. (Conf. Rept., Sept. 1959, p. 8).

(3) S. 2148 and H.R. 8601, 88th Congress, to amend 28 U.S.C. §1345 to accord to defendants in actions by the United States for the condemnation of real property the right to a determination by a jury of the amount of just compensation notwithstanding the provisions of Rule 71A(h) of the Federal Rules of Civil Procedure. (Conf. Rept., March 1961, p. 17).

International Legal Conferences

Judge Maris reported that a counterpart of the bill to authorize the Government to accept membership in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, which had been approved by the Judicial Conference at its September 1963 session, had become law (Public Law 88-244, December 30, 1963). Pursuant to the request of the Secretary of State that he nominate a representative of the Judicial Conference to serve on an Advisory Committee to the Department of State on Private International Law, the Chief Justice had nominated Judge Maris and he had been appointed to the Advisory Committee.

The Conference approved the nomination and appointment of the Chairman of the Committee on Revision of the Laws as its representative on the Advisory Committee on Private International Law and authorized the Committee on Revision of the Laws to collaborate with the Advisory Committee and the Department of State in the work of the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law.

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, presented to the Conference a report on the activities of the standing Committee and the Advisory Committees.

Advisory Committee on Appellate Rules

Judge Maris informed the Conference that a preliminary draft of a complete set of uniform rules of federal appellate procedure had been received from the Advisory Committee on Appellate Rules and that publication and circulation of these draft rules to the bench and bar for comment and suggestion had been authorized.

The Conference considered the question as to the manner in which a set of appellate rules, when finally perfected, can be promulgated. Upon recommendation of the Committee, the Conference approved a draft bill, submitted by the Committee, which would amend 28 U.S.C. §2072, to enlarge the present civil rulemaking authority of the Supreme Court of the United States to include appellate rules. The bill, as drawn, would extend the civil rulemaking power of the Supreme Court to include bankruptcy proceedings and proceedings for the review and enforcement of orders of administrative agencies. The bill would also consolidate the present admiralty rulemaking power with that for all other civil actions.

Advisory Committees on Civil and Admiralty Rules

The Advisory Committee on Admiralty Rules had submitted to the standing Committee a preliminary draft of amendments to the Federal Rules of Civil Procedure and supplementary rules in admiralty cases, designed to merge the admiralty procedure into the civil procedure. These amendments to the Civil Rules had been prepared by the Advisory Committee on Admiralty Rules and approved by the Advisory Committee on Civil Rules. Additional amendments to the Civil Rules formulated by the Civil Rules Committee and approved by the Admiralty Rules Committee were also submitted to the Committee. The Conference was informed that both sets of proposed amendments will be printed together and distributed to the bench and bar for comment and suggestion.

Advisory Committee on Criminal Rules

The proposed amendments to the Federal Rules of Criminal Procedure formulated by the Advisory Committee on Criminal Rules and circulated to the bench and bar in December 1962 had produced many comments and sug-

gestions. In the light of the suggestions received the Advisory Committee on Criminal Rules revised a number of these rules and in addition has formulated proposed amendments to other rules. These proposals have been submitted to the standing Committee, which has authorized republication of all proposals, both old and new, so that they may be considered together.

The Conference was informed that the standing Committee is asking that the comments and suggestions of the bench and bar with regards to the drafts of Appellate, Civil-Admiralty, and Criminal Rules be made not later than April 1, 1965. The Committee plans to consider final drafts in the summer of 1965 and to transmit them to the Conference in September of that year. In accordance with this schedule the standing Committee is requesting the Judicial Conferences of the circuits and the appropriate bar association sections and committees to allot substantial time at their meetings during the coming year for consideration of the various rules proposals being submitted by the Committee for public consideration at this time.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments from August 2, 1963, to February 21, 1964. During this period the Committee recommended favorably on a total of 47 assignments. No adverse recommendation was made. The number of assignments is unusually large because of 28 assignments which related to the national deposition program in the electrical equipment antitrust cases. These 47 assignments were undertaken by 26 judges including 3 active circuit judges, 13 active district judges, 4 senior circuit judges and 6 senior district judges.

The Committee reported with regret its inability to meet the requirements of the very pressing and continuing need

of the Court of Appeals for the Fifth Circuit and concluded that if this need was to be met, the only immediate solution was the assignment to that court of additional judges from other circuits. The Committee suggested that the Conference request the chief judges of the various circuits to make available all possible help to alleviate the situation. The report of the Committee was received and approved by the Conference.

BANKRUPTCY ADMINISTRATION

Circuit Judge Bailey Aldrich on behalf of Senior Judge Oliver D. Hamlin, Jr., Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered the recommendations contained in the report of the Director of the Administrative Office dated January 24, 1964, relating to the continuance of referee positions to become vacant by expiration of term, for changes in salaries of referees, changes in arrangements, and the creation of new referee positions. The Committee also considered the recommendations of the district judges and the Judicial Councils of the circuits concerned.

The Conference considered fully the Committee's report and the recommendations of the Director, 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, 1964, or as soon thereafter as appropriated funds are available:

District	Regular Place of Office	Type of Position	Present Salary	Conference Action	
				Type of Position	Authorized Salary
First Circuit					
Rhode Island	Providence	Part-time	$7,500	Full-time	$15,000
Fourth Circuit					
South Carolina (E)	Charleston	Part-time	5,000	Part-time	5,000[1]
South Carolina (W)	Spartanburg	Part-time	7,500	Part-time	7,500[2]
Virginia (W)	Lynchburg	Part-time	7,500	Full-time	15,000
Seventh Circuit					
Indiana (N)	South Bend	Part-time	7,500	Full-time	15,000[3]
Eighth Circuit					
Minnesota	Minneapolis	New Position	——	Full-time	15,000
Missouri (W)	Kansas City	New Position	——	Full-time	15,000
Iowa (N)	Fort Dodge	Part-time	7,500	Full-time	15,000[4]
Ninth Circuit					
California (S)	Santa Ana	New Position	——	Full-time	15,000

[1] Temporary salary increase from $2,500 to $5,000 per annum to be continued from April 1, 1964 to December 31, 1964; position then to be subject to resurvey.
[2] Temporary salary increase from $2,500 to $7,500 to be continued to December 31, 1964; position then to be subject to resurvey.
[3] Change to a full-time position to be effective January 1, 1965, subject to the availability of funds.
[4] The regular place of office is changed from Fort Dodge to Cedar Rapids.

VACANCIES IN REFEREE POSITIONS AND CHANGES IN ARRANGEMENTS

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, unless otherwise noted, the changes become effective July 1, 1964, or as soon thereafter as appropriated funds are available:

FIRST CIRCUIT

District of Rhode Island

(1) Changed the part-time referee position for this district to full-time at a salary of $15,000 per annum, the regular place of office, territory and places of holding court to remain as at present.

SECOND CIRCUIT

Southern District of New York

(1) Authorized the filling of the full-time referee position at New York City to become vacant by expiration of term on June 30, 1964, on a full-time basis for a term of six years, effective July 1, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

FOURTH CIRCUIT

Western District of Virginia

(1) Changed the part-time referee position at Lynchburg to full-time at a salary of $15,000 per annum.
(2) Transferred the counties of Nelson, Albemarle and Fluvanna and the city of Charlottesville from the territory of the part-time referee at Harrisonburg to the territory of the full-time referee at Lynchburg.
(3) Designated Charlottesville as an additional place of holding court for the referee at Lynchburg.
(4) Discontinued Charlottesville as a place of holding court for the referee at Harrisonburg.
(5) Transferred Alleghany County and the cities of Covington and Clifton Forge from the territory of the referee at Roanoke to the territory of the referee at Harrisonburg.
(6) Discontinued Covington as a place of holding court for the referee at Roanoke.
(7) Designated Covington as an additional place of holding court for the referee at Harrisonburg.

Southern District of West Virginia

(1) Authorized the filling of the full-time referee position at Charleston to become vacant by expiration of term on May 31, 1964, on a full-time basis for a term of six years, effective June 1, 1964, 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 Mississippi

(1) Authorized the filling of the part-time referee position at Houston to become vacant by expiration of term on September 30, 1964, on a part-time basis for a term of six years, effective October 1, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Northern District of Ohio

(1) Authorized the filling of the full-time referee position at Akron to become vacant by expiration of term on April 30, 1964, on a full-time basis for a term of six years, effective May 1, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SEVENTH CIRCUIT

Northern District of Indiana

(1) Changed the part-time referee position at South Bend to full-time at a salary of $15,000 per annum, effective January 1, 1965, the regular place of office, territory, and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

(1) Authorized an additional full-time referee position at Minneapolis at a salary of $15,000 per annum.
(2) Established concurrent district-wide jurisdiction for the four full-time referees authorized for this district.

Eastern District of Missouri

(1) Directed that the territorial jurisdiction for the second full-time referee position at St. Louis, authorized at the March 1961 session of the Conference for both the Eastern and Western Districts of Missouri, be limited to the Eastern District of Missouri.

Eastern and Western Districts of Missouri

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

Northern District of Iowa

(1) Changed the part-time referee position in this district to full-time at a salary of $15,000 per annum.
(2) Changed the regular place of office of the referee from Fort Dodge to Cedar Rapids.

NINTH CIRCUIT

Southern District of California

(1) Authorized an additional full-time referee position at Santa Ana at a salary of $15,000 per annum.
(2) Established concurrent district-wide jurisdiction for all of the full-time referees in the district.

District of Oregon

(1) Authorized the filling of the part-time referee position at Pendleton to become vacant by expiration of term on May 11, 1964, on a part-time basis for a term of six years, effective May 12, 1964, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Western District of Washington

(1) Authorized the filling of the full-time referee position at Seattle to become vacant by expiration of term on April 20, 1964, on a full-time basis for a term of six years, effective April 21, 1964, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

APPROPRIATIONS

The Conference was informed that a supplemental appropriation of $65,000 had been requested for the fiscal year 1964 for salaries and expenses of Referees in Bankruptcy to restore a reduction of $50,000 made in the original estimate submitted for the fiscal year 1964 and to provide funds for new referee positions and salary increases authorized by the Conference a year ago.

The appropriation request for the fiscal year 1965, if approved by the Congress, will provide funds for the salaries of approximately 60 additional clerical employees. If, however, a salary increase is authorized for referees and for the government service generally, additional appropriations will be required.

JOINT PETITIONS

At its September 1963 session (Conf. Rept., p. 88) the Conference approved a proposal to amend the Bankruptcy Act to permit the filing of joint petitions in bankruptcy by husband and wife who have one or more joint obligations and authorized the Director of the Administrative Office to prepare an appropriate amendment for introduction in Congress. Upon the recommendation of the Committee, a draft bill, prepared by the Director, was approved by the Conference.

Notice of Filing Objections to Discharge

The Bankruptcy Division of the Administrative Office had suggested an amendment to Section 14(b) of the Bankruptcy Act, 11 U.S.C. 32, to permit the court, before the filing fees required to be paid by the Act are paid in full, to make an order fixing a time for the filing of objections to the bankrupt's discharge. At present such an order is not permitted until after the filing fees have been paid in full. The court is thus required in many cases, particularly those in which fees are paid in installments under General Order 35, to send a separate notice of the first meeting of creditors and a separate notice of the last day fixed by the court for the filing of objections to a discharge. The proposed amendment to Section 14 would permit the court to combine these two notices in almost every ordinary bankruptcy case at a substantial savings of time and cost. Upon recommendation of the Committee a draft bill, prepared by the Administrative Office, was approved by the Conference.

Fees in Chapter XI Cases

Judge Edward Weinfeld had called to the attention of the Committee a practice becoming prevalent in Chapter XI proceedings in which the compensation of attorneys, accountants, and others is paid or promised by third parties. It has been held that such payments are beyond the control of the bankruptcy court. It was the view of the Committee that all such payments should be subject to the approval of the court in the same manner as payments made in proceedings under Chapter X of the Bankruptcy Act. The Conference, upon the recommendation of the Committee, authorized the Administrative Office to undertake a study of the need for remedial legislation and further authorized the Committee to recommend remedial legislation if it be deemed necessary.

Recommendations of the Judicial Conference of the Ninth Circuit

The Conference at its September 1963 session (Conf. Rept., p. 89) directed that various proposed amendments to the Bankruptcy Act, recommended by the Judicial Conference of the Ninth Circuit, be referred to the Bankruptcy Committee for study and report to the Conference. These proposed amendments include (1) an amendment to Section 67a(1) of the Bankruptcy Act, 11 U.S.C. 107 (a) (1), relating to the status of liens in bankruptcy proceedings, (2) an amendment to the Bankruptcy Act to authorize subsidiary and affiliated corporations to file proceedings in the same district as a parent corporation, and (3) an amendment, either of the Act or General Orders, to require a referee before closing a case, to give notice to creditors of dismissals for costs and of any waiver or denial of a discharge in the proceedings.

These proposals appear to be both technical and controversial and have for some time been under consideration by the National Bankruptcy Conference. It was the recommendation of the Committee that, inasmuch as no bills embodying these proposals have been introduced in the Congress and in view of their controversial nature, no action should be taken at this time. The Conference approved this recommendation and discharged the Committee from further consideration of these proposed amendments.

Audit of Statistical Reports

The Conference was informed that the examination of statistical reports of closed bankruptcy cases for the determination of errors in the computation of amounts due the referees' salary and expense fund and of overpayments of compensation to receivers and trustees has continued. No situation was reported with respect to the personal

accountability of a referee. However, the Administrative Office had called attention to the difficulty encountered in determining whether a monopoly of appointment of receivers and trustees actually existed in certain districts because the statistical information available does not show whether trustees are elected by creditors or appointed by the referees. More information with respect to the election of trustees by creditors is being developed and a report will be made to the Committee at its next meeting.

Matters Under Advisement

The Committee reported that in accordance with the direction of the Conference at its September 1963 session (Conf. Rept., p. 89) quarterly reports from referees concerning matters held under advisement 60 days or longer are now being made to the district courts with copies of such reports to the Administrative Office. The Committee plans to review these reports at its next meeting to determine whether the district courts are taking steps to bring about the decision of matters held under advisement by referees for unusually long periods of time.

Developments in the Use of Chapter XIII

The Committee reported a continuing increase in the use of wage earners' plans under Chapter XIII of the Bankruptcy Act. Total cases filed during the fiscal year 1963 numbered 24,329, an increase of more than 6 percent over the 22,880 cases filed during the fiscal year 1962. At the current rate the expectation is that case filings under Chapter XIII during the current fiscal year may reach 27,000.

The Committee called attention to a proposal advanced in one district that a corporate trustee be employed for Chapter XIII cases. Upon recommendation of the Committee the Conference voted to disapprove the proposal.

SPECIAL CHARGES

Suggestions had been received from a number of referees that a special charge be established for amending the schedule of creditors after notice has been given of the first meeting of creditors. Where such an amendment occurs, a second notice to creditors is necessary and an order must be prepared extending the time within which objections to the discharge may be filed. It was the view of the Committee that a special charge for the amendment of a schedule will compensate to some extent for the additional clerical work involved in mailing notices and will result in the exercise of more care in the preparation of schedules. Upon recommendation of the Committee, the Conference approved the following additional special charge for bankruptcy cases, effective April 1, 1964, the proceeds of which are to be deposited in the referees' salary and expense fund:

> For amendments to bankrupt's schedules of creditors after notice to creditors, $10.00 for each amendment, provided that the referee may, for good cause, waive the charge in any case.

ADMINISTRATION OF THE PROBATION SYSTEM

Judge Luther W. Youngdahl, Chairman of the Committee on the Administration of the Probation System, presented the report of the Committee to the Conference.

RESEARCH AND DEVELOPMENT CENTER

The Conference at its September 1963 session (Conf. Rept., p. 96) approved in principle the proposal for a Federal Probation and Parole Research and Development Center and authorized the Committee to work towards the establishment of such a center. Judge Youngdahl reported that the Committee had prepared a proposed bill in the form of a Joint Resolution for introduction in Congress, which would (1) establish a Research and

Development Center in the Correctional Field, (2) amend the provisions of 18 U.S.C. 5002 to give the Corrections Council authority to direct studies relating to the problems of treatment and correction of offenders, and (3) change the organization and membership of the Corrections Council by adding the Director of the National Institute of Mental Health in place of the public member of the Council. The Council would make its recommendations to the Judicial Conference of the United States and to the Attorney General instead of to the President and Congress. Upon recommendation of the Committee, the Conference approved the proposed Joint Resolution and authorized the Committee or its Chairman to make such further changes in it, after further discussion with representatives of the Department of Justice and the National Institute of Mental Health, as may be desirable.

Judge Youngdahl informed the Conference that the Probation Committee in conjunction with the National Institute of Mental Health is planning a meeting of twelve or more persons in the correctional field to be held at the National Institute of Mental Health in May 1964. The meeting will be called to consider and discuss the basic assumptions underlying the administration of probation and parole, to devise and recommend possible experiments to test the validity of these assumptions, and to suggest and recommend a program of practical and useful research in this field.

Group Counseling in the District of Columbia

The Committee requested and was granted authority to seek funds for a study of the group counseling program in the Probation Office of the United States District Court for the District of Columbia with the understanding that, if nongovernmental funds are sought, the Conference must approve the source of the funds.

COMPUTER ANALYSIS OF EXISTING PROBATION AND PAROLE RECORDS

The Committee also requested and was granted authority to seek funds for a retrospective study of probation and parole records in the United States District Courts for the Western District of Missouri and the Northern District of Illinois to determine whether the effectiveness of sentencing procedures can be analyzed, with the understanding that, if nongovernmental funds are sought, the Conference must approve the source of the funds.

SENTENCING INSTITUTES

The Conference in September 1963 (Conf. Rept., p. 95) authorized the Committee on Pretrial Procedure and the Committee on the Administration of the Probation System to conduct a program that would combine a sentencing institute with a seminar for newly appointed United States district judges. Judge Youngdahl informed the Conference that an Institute on Sentencing and Seminar for newly appointed United States district judges, attended by approximately fifty circuit and district judges, was held in Denver, Colorado, February 1–8, 1964.

The sentencing institute portion of the program included the discussion of procedures prior to trial; the criminal trial; the problem of disparity; aids in sentencing available to the court; the application of psychiatry to the study, observation, and treatment of federal offenders; the use of probation; the use of commitment; the sentence hearing; and probation supervision and revocation. The program featured a one-day visit to the Federal Correctional Institution at Englewood, Colorado, including a tour of the Institution, a demonstration of a preliminary hearing by the Parole Board, and a demonstration by the Bureau of Prisons of the method used in

formulating recommendations in the case of defendants committed for observation and study.

Circuit Committee Activities

Judge Youngdahl informed the Conference of the appointment of a subcommittee on presentence reports to conduct a survey of district judges to secure their opinion of the most recent proposal to change Rule 32(c)(2) of the Federal Rules of Criminal Procedure, as contained in the draft submitted by the Advisory Committee on Criminal Rules to the bench and bar in December 1962. The amendment requires the court on request to afford counsel for the defendant an opportunity to read the presentence report and to comment thereon.

The Committee had received reports from the chief judges in several districts that the work of their probation officers is being impeded by the refusal of the Department of Justice to permit probation officers to examine investigative reports relating to the facts of the offense in the files of the United States attorneys. The Committee reported that the situation had been brought to the attention of the Deputy Attorney General who explained that the Department of Justice had no intention of unnecessarily impeding the work of probation officers. It was understood that a clarifying communication would be sent to the United States attorneys.

SUPPORTING PERSONNEL

The Chairman of the Committee on Supporting Personnel, Chief Judge Theodore Levin, submitted the report of the Committee to the Conference.

Law Clerks in the Courts of Appeals

Chief Judge Levin informed the Conference that the Committee had received several requests for additional

law clerk assistance in the United States courts of appeals and had concluded that additional law clerks should be authorized for the courts of appeals. The Conference discussed the proposal fully and voted to recommend that each United States court of appeals be authorized to employ not to exceed three law clerks to be assigned from time to time by the Chief Judge to cases or to judges as he may deem desirable.

Court Reporters

The Conference was informed that the Committee's study of the over-all problems of the federal court reporter system, based on the replies to a direct inquiry to each court reporter made by the Chairman of the Committee, had been completed. A majority of the court reporters who responded offered no criticism and made no recommendation for change. Among those who did suggest change, there was no consensus. On the basis of this survey the Committee reported that it has no recommendation to make for change in the present court reporter system.

The Committee had been requested to consider recommending payment of a substitute court reporter for a reporter who was absent from his official duties because of a tragic accident suffered by a member of his family. There are no funds presently available to provide for paying substitute reporters because of illness or accident or other circumstances affecting the members of a reporter's family. The Committee, while sympathetic with the problem, did not consider it appropriate that any steps be taken to provide for such payment.

Cost-of-Living Allowances Outside Continental United States

Chief Judge Walter H. Hodge of the District of Alaska had brought to the attention of the Committee the problems

that are caused by the fact that court reporters stationed outside continental United States do not receive the cost-of-living allowances granted other employees in the Judicial and Executive Branches of the Federal Government because of the statutory limitation on the salary authorized for a court reporter. Similarly, staff employees of judges have in some instances not received full cost-of-living allowances because of the limitation on aggregate salaries contained in the Appropriation Act. Upon recommendation of the Committee, the Conference directed the Administrative Office to take the necessary steps to obtain changes in the statutes to provide equivalent treatment to supporting personnel stationed outside continental United States who are not now receiving full cost-of-living allowances as are other employees.

National Park Commissioners

The Committee had been advised by Chief Judge Henry O. Brooks of the Western District of Kentucky that the caseload of the United States commissioner for Mammoth Cave National Park was very light. In view of this the Committee recommended that the salary of the United States commissioner be reduced and that the salary be set at $1,000 per annum. This recommendation was approved by the Conference.

Probation Training Center

The Conference was informed that the application of the Judicial Salary Plan had nullified the differential previously existing between the grade of the chief probation officer in the Northern District of Illinois, who also acts as Director of the Federal Probation Officer Training School, and other positions in the probation system. The Conference had previously authorized such a differential (Conf. Rept., Sept. 1958, p. 10). A similar differential in

the grade of the chief deputy officer has also been affected. The Committee recommended therefore that the position of the Chief Probation Officer in the Northern District of Illinois be removed from the Judicial Salary Plan and that the position be assigned a salary equivalent to that of Grade GS-16 in the Classification Act of 1949, as amended. The Committee also recommended that the Chief Deputy Probation Officer position be placed in a grade which will maintain any differential existing prior to the application of the Judicial Salary Plan. These recommendations were approved by the Conference.

Reclassifications

Chief Judge Levin informed the Conference that the Committee had received several requests for grade reclassifications and salary increases. Consideration of these requests has been deferred for further consideration at the next meeting of the Committee.

JUDICIAL STATISTICS

The Chairman of the Committee on Judicial Statistics, Chief Judge Harvey M. Johnsen, presented the report of the Committee.

Records of Courts of Appeals

Chief Judge Johnsen informed the Conference that the Committee had studied the problem of the lack of uniformity existing in the internal record practices and the resultant lack of uniformity in the statistical portrayals of the clerks' offices of the courts of appeals in regard to matters other than appeals or reviews regularly docketed. On the basis of its study the Committee recommended that there be maintained in the clerks' offices of the courts of appeals, in addition to the present *docket*, another record book, to be provided by the Administrative Office, entitled

Miscellaneous Record. The matters to be entered in this record would include:

(1) Applications *in forma pauperis* except those incident to matters regularly docketed. If the application to proceed *in forma pauperis* is granted, the matter would be transferred to the regular docket.

(2) Applications for permission to appeal under any statute requiring an allowance of an appeal including appeals under 28 U.S.C. §1292(b) and appeals under 11 U.S.C. §47(a). Where permission to appeal is granted, the application would be transferred to the regular docket and the docketing fee would then be charged.

(3) Applications for the allowance or reduction of bond or bail, except where incident to a case already docketed, or where it is in the form of an appeal from an order refusing bail or denying reduction of bail and the docketing fee has been paid. See *Stack* v. *Boyle*, 342 U.S. 1.

(4) Applications by prisoners addressed to individual judges of courts of appeals requesting the issuance of writs of habeas corpus or certificates of probable cause.

(5) Applications for the stay of an order or judgment.

The Committee further recommended that a card index be maintained by the clerks of the courts of appeals on all applications entered in the miscellaneous record, that no fee or charge be made for entering an application in the miscellaneous record and that the Director of the Administrative Office be authorized to give such directions or suggestions to the clerks of the courts of appeals as may be necessary in carrying these recommendations into effective operation.

These recommendations were approved by the Conference.

The Conference also approved the recommendation of the Committee that applications under the "all writs" statute, 28 U.S.C. §1651, and any other application made which the court has plenary power to entertain and as to which there is no statutory provision requiring leave to file, be entered on the regular docket, provided they are accompanied by the regular docketing fee.

The Committee reiterated its views that where both the plaintiff and defendant appeal from a judgment, or where a number of defendants file separate and not joint notices of appeal, each should be charged a docketing fee and each appeal should be given a separate docket number. A separate docketing of appeals, however, would not prevent the court from consolidating cases for the purposes of the printed record, briefs, hearing, or opinion.

Definition of a Trial

Chief Judge Johnsen informed the Conference that the Committee had considered requests by several district judges that hearings on preliminary injunctions and other interlocutory proceedings which are contested be considered trials for statistical purposes. The Committee was of the view that these proceedings should be counted as trials and voted to recommend that a trial, for statistical purposes, be defined as "a contested proceeding before either the court or a jury in which evidence is introduced." This recommendation was approved by the Conference.

Application in Forma Pauperis

At the request of the Committee the Conference recommended that the district courts direct that motions to vacate sentence brought under 28 U.S.C. §2255 and applications for writs of habeas corpus, accompanied by motions for leave to proceed in forma pauperis, be docketed and that rulings on these matters be made only after they have been docketed.

Upon recommendation of the Committee the Conference reaffirmed the action taken at its September 1962 session (Conf. Rept., p. 76) that the courts be instructed to docket all motions to vacate sentence under 28 U.S.C. §2255 on the civil dockets.

ADDITIONAL JUDGESHIPS

At the request of Chief Judge Roszel C. Thomsen a proposal to create an additional judgeship in the District of Maryland was referred to the Committees on Judicial Statistics and Court Administration for study and report to the Conference.

PRETRIAL PROCEDURE

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, presented the report of the Committee.

SEMINAR FOR NEW DISTRICT JUDGES

Judge Murrah informed the Conference that in continuation of the program of the Conference to acquaint newly appointed district judges with the problems of judicial administration they are likely to encounter in the operation of their courts, the Committee had joined with the Committee on the Administration of the Probation System in sponsoring an Institute on Sentencing and Seminar for Newly Appointed District Judges which was held in Denver, Colorado, February 1–8. This was the first such combined program and from the comments of the participants, it appears to have been very successful. Twenty-one newly appointed district judges from seventeen different districts, most of whom were appointed since the previous Seminar in August 1962, were in attendance. In addition, two judges recently appointed to courts of appeals and a trial commissioner from the Court

of Claims were present. Altogether, 111 United States district judges appointed since the Omnibus Judgeship Act of May 19, 1961 (or shortly before) have now attended a seminar session.

SUBCOMMITTEE FOR MULTIPLE LITIGATION

The subcommittee of the Pretrial Committee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits has continued to assist in the conduct of the program for the trial and disposition of the antitrust treble damage actions which arose out of the criminal antitrust proceedings in the electrical equipment industry in Philadelphia in 1961. Several phases of the national deposition program instituted under the direction of the Coordinating Committee of Judges responsible for the litigation, including the pretrial deposition and examination of more than 185 witnesses, have been completed. The trial of the first case has begun and trials in several other cases have been tentatively scheduled to commence this year.

The subcommittee has given concentrated study to the problems which have developed in the electrical equipment antitrust cases during the last two years and believes that the experience gained through the study, work and research involved in these cases will be of great relevance in other types of multiple litigation. The following resolution authorizing a continuation of the work of the subcommittee was thereupon approved by the Conference:

> "RESOLVED, that the subcommittee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits is authorized to conduct a thorough review and study of the program and of the unique experience of the judges having the responsibility for the private antitrust litigation in the electrical equipment industry so as to develop from this experience general principles and guidelines for use in other multiple litigation, including any recom-

mendations for statutory change; and further, that the subcommittee is authorized to consult and cooperate with the Advisory Committee on the Federal Rules of Civil Procedure in the development of any desirable rules of procedure for multiple litigation. The Chief Justice is authorized in his discretion to expand the membership of the subcommittee."

SURVEY OF JUDICIAL BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims, the Chief Judge of the Court of Customs and Patent Appeals, and from the Chief Judges of the respective circuits concerning the state of the dockets in their courts and circuits. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts of the circuits. The Conference was informed of a general increase this year in the judicial business of the courts, particularly in the courts of appeals in several circuits. The district courts are continuing to give attention to the disposition of civil actions pending more than three years.

PRETERMISSION OF TERMS OF THE COURTS OF APPEALS

At the request of Chief Judge Harvey M. 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, 1964.

RELEASE OF CONFERENCE ACTION

The Conference authorized the immediate release of

its action on matters considered at this session where necessary for legislative or administrative action.

For the Judicial Conference of the United States.

EARL WARREN
Chief Justice of the United States

June 8, 1964.

INDEX