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REPORT  
of the  
PROCEEDINGS OF THE  
JUDICIAL CONFERENCE OF THE  
UNITED STATES

SEPTEMBER 22-23, 1966

WASHINGTON, D.C.

1966

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ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

Warren Olney III  
Director

**REPORT**  
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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.

**REPORT OF THE PROCEEDINGS OF THE JUDICIAL  
CONFERENCE OF THE UNITED STATES, SEPTEMBER  
22-23, 1966**

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

SEPTEMBER 22-23, 1966

The Judicial Conference of the United States convened on September 22, 1966, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on September 23. The Chief Justice presided and the following members of the Conference were present:

**District of Columbia Circuit :**

Chief Judge David L. Bazelon

Chief Judge Matthew F. McGuire, District of Columbia

**First Circuit :**

Chief Judge Bailey Aldrich

Judge Francis J. W. Ford, District of Massachusetts

**Second Circuit :**

Chief Judge J. Edward Lumbard

Judge Sylvester J. Ryan, Southern District of New York

**Third Circuit :**

Chief Judge Austin L. Staley

Chief Judge Thomas J. Clary, Eastern District of Pennsylvania

**Fourth Circuit :**

Chief Judge Clement F. Haynsworth, Jr.

Chief Judge Walter E. Hoffman, Eastern District of Virginia

**Fifth Circuit :**

Chief Judge Elbert Parr Tuttle

Chief Judge Herbert W. Christenberry, Eastern District of Louisiana

**Sixth Circuit :**

Chief Judge Paul C. Weick

Chief Judge Mac Swinford, Eastern District of Kentucky

**Seventh Circuit :**

Chief Judge John S. Hastings

Judge Edwin A. Robson, Northern District of Illinois

**Eighth Circuit :**

Chief Judge Charles J. Vogel

Chief Judge Roy W. Harper, Eastern and Western Districts of Missouri

**Ninth Circuit :**

Chief Judge Richard H. Chambers

Judge Albert C. Wollenberg, Northern District of California

**Tenth Circuit :**

Chief Judge Alfred P. Murrah

Chief Judge Alfred A. Arraj, District of Colorado

**Court of Claims :**

Chief Judge Wilson Cowen

**Court of Customs and Patent Appeals :**

Judge Arthur M. Smith (designated by the Chief Justice in place of Chief Judge Eugene Worley who was unable to attend)

Senior Judges Oliver D. Hamlin, Jr., Harvey M. Johnsen, Albert B. Maris, and Orié L. Phillips; Circuit Judges Jean S. Breitenstein, George C. Edwards, Jr., and Irving R. Kaufman; and Chief Judges William J. Campbell and Theodore Levin attended all or some of the sessions.

The Attorney General, Hon. Nicholas deB. Katzenbach, accompanied by Harold Reis, Administrative Assistant, attended the morning session of the first day of the Conference. The Attorney General spoke to the Conference informally on matters relating to the administration of justice in the U.S. courts.

Hon. Joseph D. Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the U.S. Senate, also attended the morning session of the first day of the Conference and addressed the Conference.

William T. Finley, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the U.S. 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 U.S. Courts; William E. Foley, Deputy Director; William R. Sweeney, Assistant Director; and members of the Administrative Office staff were also in attendance.

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

Warren Olney III, Director of the Administrative Office of the U.S. Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1966, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference authorized the immediate release of the report for publication and authorized the Director to revise and supplement the final printed edition to be issued later.

#### STATE OF THE DOCKETS

*Courts of Appeals.*—The increasing judicial workload was particularly reflected in the statistics for the courts of appeals with 6 percent more cases docketed in fiscal year 1966 than in the prior year. Although the courts of appeals disposed of 800 more cases in the year ending June 30, 1966, reflecting a total of 6,571 dis-

positions, they were 612 less than the number of appeals commenced. As a result, for the eighth consecutive year appeals pending in courts of appeals continued to increase, reflecting at the end of 1966 the all-time high of 5,387.

The largest increase in docketing of new appeals occurred last year in the District of Columbia, Third, Eighth, and Tenth Circuits. The Court of Appeals for the Fifth Circuit continued to be the most heavily burdened, with a 3-percent increase in appeals docketed. The practice of assignment of judges from both within the circuit and from other circuits has continued and has been of substantial assistance in the Fifth Circuit.

The increased workload in the courts of appeals was particularly characterized by appeals in criminal cases, which in the past 2 years have increased 40 percent. Appeals rose over those in 1965 by more than 19 percent in criminal cases, climbing from 1,223 in 1965 to 1,458 in 1966.

*District Courts.*—Pending civil cases in the district courts climbed to a record high of 79,117 as of June 30, 1966, Mr. Olney reports. The number of filings increased 5 percent, so that despite the fact that more civil cases were terminated than in the previous year, the total pending caseload figure reached a new high. Efforts to reduce the number of civil cases pending more than 3 years lagged in 1966. Civil actions in this category increased from 6,626 to 7,427 in 1966, a 12-percent increase. About half of these cases were pending in three districts: Southern New York, eastern Pennsylvania, and eastern Louisiana.

The criminal cases removed from State to Federal courts showed a sharp decline, from 1,192 in 1965 to 383 in 1966. Total criminal actions filed in the district courts, excluding removed cases, declined to a 3-year low of 29,346, a decrease of 3 percent from the prior year.

Habeas corpus petitions and other actions filed by persons in custody pursuant to the judgment of a State court again increased, however, to 5,950, reflecting a 19-percent rise over 1965. Motions to vacate sentence, on the other hand, filed by persons in Federal custody under 28 U.S.C. 2255, declined almost 37 percent, reversing a trend of the past few years.

Bankruptcy filings also increased sharply during 1966. New cases numbered 192,354, a 7-percent increase over 1965. Non-business bankruptcies, in particular employee bankruptcies, con-

tinue to increase at a faster rate than business bankruptcies and in 1966 accounted for more than 91 percent of all bankruptcy cases. Referees in bankruptcy closed 186,219 cases as compared with 175,117 in 1965, but filings continued to outstrip terminations, so that the pending caseload on June 30, 1966, reached the record total of 168,507.

*Additional Judgeships.*—The Director's report pointed out that during fiscal year 1966 Congress enacted legislation authorizing 10 additional judgeships in the courts of appeals, including 4 temporary positions in the Fifth Circuit, and 35 judgeships in the district courts. The report points out that this legislation, Public Law 89-372, approved March 18, 1966, follows in large measure recommendations of the Judicial Conference of the United States.

#### SUPPORTING PERSONNEL

In a specific case presented by the Director, the Conference instructed him that the appointment of a law clerk and a bailiff-messenger should not be processed for a judge who had been certified as permanently disabled under the provisions of 28 U.S.C. 372(b) by the Judicial Council of his circuit and who had also been found to be permanently disabled by the President of the United States in appointing an additional judge as provided in section 372(b). In this instance, in response to an inquiry from the Director, the Judicial Council of the circuit had informed the Director that the judge's physical condition had not changed, that he remained unable to discharge the duties of his office, that the Council knew of no judicial function performed by him over a period of some 3 years and that the Council knew of no necessity for the employment of any person or persons to serve the judge in his judicial capacity and of no reason why the public good would be served by the employment of such person or persons.

#### JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, advised the Conference that the judiciary appropriation bill for the fiscal year 1967 had not yet been reported out by the House Appropriations Committee. The judiciary, therefore, was operating under continuing resolutions of the Con-

gress limiting the program and activities of the courts to the amounts authorized in the previous year.

The budget estimate for the judiciary for fiscal year 1967, exclusive of the Supreme Court of the United States, as submitted to the Congress, was \$88,949,900. The estimate was subsequently amended to include \$4,735,000 to cover the cost of the additional circuit and district judges authorized by Public Law 89-372 and the two new judicial districts in California. The estimate was also amended to the extent of \$127,000 to cover the cost of two additional judgeships authorized for the Court of Claims. The total budget estimate, excluding the Supreme Court, was thus \$93,811,900. This represents \$13,285,200 more than the obligational authority granted for fiscal year 1966.

The Conference authorized submission of a request for supplemental appropriations for fiscal year 1967 as a result of the enactment of the Federal Salary and Fringe Benefits Act of 1966.

The Budget Committee recommended and the Conference approved the budget estimates for the fiscal year 1968 which, exclusive of the U.S. Supreme Court and the U.S. Customs Court, aggregated \$91,851,200. The estimate for 1968 provides for 9 additional deputy clerks for the U.S. courts of appeals, 59 additional deputy clerks for the U.S. district courts, 2 additional positions for the Administrative Office of the U.S. Courts, 6 additional full-time referees-in-bankruptcy, the conversion of 2 part-time referees to full-time status and 1 full-time referee to part-time status and 40 additional clerical employees for the bankruptcy system. Provision was made for the reclassification of the secretaries to the commissioners of the U.S. Court of Claims, within-grade salary advancements for judicial personnel and for other miscellaneous expenses of the courts. The estimate included the sum of \$3,500,000 to cover fees and expenses of court-appointed counsel in fiscal year 1968.

The Conference authorized the Director of the Administrative Office to request for fiscal year 1968 any positions included in the 1967 budget which may be denied by the Congress. The Director was also authorized to revise the budget estimates for 1968 and submit to Congress estimates of supplemental appropriations required for any purpose which could not be anticipated at the time of the submission of the 1968 appropriations request to the Conference.

## JUDICIAL STATISTICS

Senior Judge Harvey M. Johnsen, Chairman of the Committee on Judicial Statistics, presented the Committee's report to the Conference.

## COURTS OF APPEALS

Pursuant to the authorization of the Conference at its September 1965 session (Conf. Rept., p. 47), further consideration is being given by the Committee to the aspects of the survey and study which it is attempting to make of the work of the courts of appeals in both their individual and their system status. Judge Johnsen reported that the Committee has succeeded in obtaining the services of Mr. Will Shafroth, former Deputy Director of the Administrative Office of the U.S. Courts, to undertake the necessary field work aimed at studying the varying practices among the courts of appeals in the handling of their administrative and judicial loads. Judge Johnsen advised that his Committee would report further to the Conference at its next meeting.

## ADDITIONAL JUDGESHIPS

Although a number of requests for recommendations for additional judgeships for various district courts have been received, the Committee passed over these recommendations until the Committee's next overall consideration and evaluation of the need for additional judgeships.

## THREE-YEAR-OLD CIVIL CASES

The Conference at its September 1961 session declared that 3-year-old civil cases then pending which were appropriate for trial should be considered as a judicial emergency and be dealt with on that basis (Conf. Rept., p. 61). The Committee reported at the March 1963 session of the Conference that substantial and continuing progress in attention to and disposition of these 3-year-old civil cases had been achieved. Accordingly, the Conference approved the recommendation that thereafter each district court deal with such cases in regular programmed effort (Conf. Rept., p. 46).

Judge Johnsen reported that the reduction effected by 1963 has not been maintained and that the volume of pending 3-year-old

cases has risen progressively each year since. The percentage climb of pending 3-year-old cases has been far beyond the percentage increase in general pending cases. The practice by which the Administrative Office at the close of each fiscal year sends to the chief judge of each circuit a list of the 3-year-old cases pending in the district courts of his circuit has not achieved the result which the Committee hoped and, accordingly, the Conference approved the following resolution.

The Conference requests the Director of the Administrative Office by transmittal of copies of this resolution to call the attention of all the judges of the district courts to the fact that the number of three-year-old cases pending in the federal system has continued to increase materially since 1963 and to remind them of the request which the Conference made at its March 1963 session that each district court undertake to deal with such cases in a continuing regular programmed effort for effecting disposition of them.

#### STATISTICS UNDER THE BAIL REFORM ACT

Judge Johnsen advised that the Committee had considered the likelihood of an increased demand for statistical information on the operation of the Bail Reform Act. The Committee has, however, adopted the view that the Administrative Office should not be asked to gather or maintain such statistics since the demand for information would seem to be capable of being dealt with by the Department of Justice. The files of the U.S. attorneys will presumably contain a notation as to the nature of the bail action taken both by the commissioner and by the district court in each criminal case.

#### FORM JS-10—INFORMATION ON TRIAL DAYS

Judge Johnsen stressed that the information requested on Administrative Office Form JS-10 as to the number of trial days engaged in by each district judge was a factor of value in obtaining a comprehension as to the comparative nature of the judicial work involved in a district as against another in an overall appraisal of the need for additional judge power. The Conference directed the Committee to make a continuing study of this form and of the data which must be furnished in this form in an effort to obtain a realistic reflection of judicial workloads.

## COURT ADMINISTRATION

In the absence of Senior Judge John Biggs, Jr., Chairman of the Committee on Court Administration, the Committee's report was presented by Chief Judge John S. Hastings.

## PLACES OF HOLDING COURT

H.R. 14391, 89th Congress, provides for the establishment of an additional division in the Western District of Texas in the Midland-Odessa area with an additional place of holding court at Odessa. This legislation, recommended by the Judicial Council of the Fifth Circuit and approved by the Conference at its March 1966 meeting (Conf. Rept., p. 5), was again approved by the Conference. H.R. 15796 and H.R. 10867 which differ from H.R. 14391 in certain material respects were disapproved by the Conference.

S. 2070, 89th Congress, which would amend 28 U.S.C. 122 to add Rapid City as an additional place of holding court in the District of South Dakota, previously approved by the Judicial Council of the Eighth Circuit and by the Judicial Conference at its September 1965 meeting (Conf. Rept., p. 56), was again approved by the Conference.

The Conference disapproved H.R. 13658, 89th Congress, providing for the establishment of a northern and southern division within the District of Maryland, and H.R. 15742 and H.R. 15981, 89th Congress, both providing for the holding of court at Hyattsville within the District of Maryland.

The Conference approved S. 3533 and H.R. 15418, 89th Congress, both bills to transfer Haywood County from the Western to the Eastern Division of the Western District of Tennessee. The Conference was informed that this proposal had received the approval of the Judicial Council of the Sixth Circuit.

## JUDICIAL DISABILITY

The Conference at its March 1966 session (Conf. Rept., p. 6) recommended that two draft bills submitted to the Conference be discussed at the Judicial Conferences of the circuits to be held in 1966. The replies received from the chief judges of the circuits reflecting discussions of these proposals at the circuit conferences were considered by the Conference and the Committee was directed

to study the proposals and the replies further and report back at a subsequent session of the Conference.

#### LAW BOOKS FOR NEW JUDGES

The Conference approved the suggestion of the Administrative Office that U.S. Reports furnished to new judges should start with volume 257 instead of volume 200.

#### EXAMINATION OF COURT OFFICES

The Conference at its March 1966 session authorized the Chief Justice to refer to the appropriate committee of the Conference the suggestion of Chief Judge Roy W. Harper that the examination of court offices be placed under the jurisdiction of the Administrative Office of the U.S. Courts rather than the Department of Justice (Conf. Rept., p. 25). Judge Hastings reported that the Committee on Court Administration has undertaken a preliminary study of the matter and the Conference authorized further study and subsequent report on this matter. In this connection, Chief Judge Bazelon presented a resolution of the Judicial Council of the District of Columbia Circuit urging the establishment within the Administrative Office of review and inspection units because of the increased volume and complexity of the work of the clerks of the U.S. courts. Consideration of this resolution was also referred by the Conference to the Committee on Court Administration for study.

#### CONTINUING EDUCATION, RESEARCH, TRAINING AND ADMINISTRATION

Judge Hastings next discussed the ever-expanding work of the Conference and its committees, the additional demands for staff support and the requirements for research, as well as the importance of continuing programs of education for court personnel, the judges, referees, probation officers and U.S. commissioners. He pointed out that the demands on the small staff of the Administrative Office were already heavy and suggested the need for congressional approval of a broad expansion of Conference programs. After considering these suggestions the Conference authorized a study of the possible need for congressional authorization of a broad program of continuing education, training, research and

administration by an appropriate committee to be designated or appointed by the Chief Justice for report to the next session of the Conference.

### REVISION OF THE LAWS

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

#### FEDERAL QUESTION JURISDICTION

Since May 1959 the American Law Institute has been engaged in a study of the appropriate division of jurisdiction between the State and Federal courts. The first part of the study relating to the diversity jurisdiction of the Federal courts has been completed and an official draft published. The second part involving the Federal question jurisdiction is nearing completion. The Conference decided that consideration of the results of the American Law Institute study should be deferred until both parts of it have been completed and until the reactions of the bench and bar to it have been received. The Conference instructed the Director of the Administrative Office to request the bench and bar of the country to examine the final reports of the Institute's study promptly upon completion of this study and to request comment and suggestions for use of the Conference in its own study of the Institute's final reports.

#### JURY SELECTION

S. 2923, 89th Congress, is a bill relating to jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief and civil indemnification. Although the Senate Committee on the Judiciary has requested the view of the Conference on this bill, the Conference took the position that it should not give any opinion at this time in view of the other pending legislation in the same area.

#### COURT OF LABOR-MANAGEMENT RELATIONS

S. 2891, 89th Congress, is a bill which would establish a U.S. Court of Labor-Management Relations which would have jurisdiction over labor disputes which result in work stoppages that adversely affect the public interest of the Nation to a substantial

degree. This proposal was studied by the Committee on Revision of the Laws and the Committee on Court Administration. These committees were of the view that the proposed legislation would provide for a permanent compulsory arbitration authority without effective limitation on its jurisdiction or the duration of its judgments. The committees also questioned whether the settlement of labor disputes and the fixing of wages and conditions of employment are judicial functions under Article III of the Constitution and, on the other hand, whether if the legislation creates a legislative court, such a court could use the judicial function of issuing injunctions. Upon recommendation of the committees, the Conference disapproved the bill.

APPEALS FROM THE HIGH COURT OF THE TRUST  
TERRITORY OF THE PACIFIC ISLANDS

The Bureau of the Budget had requested the view of the Conference on a Department of the Interior draft bill to provide for appeals to the District Court of Guam from the High Court of the Trust Territory of the Pacific Islands and to give the District Court of Guam jurisdiction of Federal cases arising in the trust territory. The Conference approved the draft bill but suggested that clarification be made in the text of the bill to show that the jurisdiction thus granted to the District Court of Guam would be concurrent with that of the High Court of the Trust Territory and that it would not include cases arising under the local law of the trust territory promulgated by the High Commissioner even though he has acted under the authority of the President pursuant to the Act of June 30, 1954 (68 Stat. 330) which conferred upon the President the power to govern the trust territory. The Conference was also of the view that it should be made explicit in the bill that the provisions of the local law of Guam providing that jury trials in the District Court of Guam should not be applicable to the District Court of Guam when sitting in the trust territory unless and until made so applicable by the local law of the trust territory. The Conference took the position that the proposal in the bill to confer upon the District Court of Guam jurisdiction over claims against the United States, both in tort and contract, arising in Guam and the trust territory is a question of public policy with respect to the recognition and enforcement of claims

against the United States and, thus, is a matter for congressional determination.

#### OTHER LEGISLATION

The Conference also considered other legislative proposals on recommendation of the Committee on Revision of the Laws and took the following action:

(a) H.R. 16550, 89th Congress, would amend the Administrative Procedure Act and related statutes so as to designate hearing examiners as "administrative judges." The Conference was of the opinion that the designation "hearing examiner" is well understood and that the proposed change would be inappropriate and confusing. Accordingly, the Conference voted its disapproval of the proposal.

(b) S. 3351, 89th Congress, a bill to amend 28 U.S.C. 1651, and S. 3352, 89th Congress, a bill to amend 28 U.S.C. 1292, are both designed to prohibit the issuance of writs of mandamus and prohibition by the courts of appeals based upon interlocutory or non-appealable orders of the district courts or a substitute for interlocutory appeals allowable under Section 1292(b) of Title 28, United States Code. The Conference was of the view that the powers now resting in the courts of appeals in this area are salutary and necessary to protect litigants from the abuse of authority and, accordingly, disapproved both bills.

(c) S. 3631, 89th Congress, would abolish the National Labor Relations Board and in its place establish a U.S. labor court with substantially the same functions of the present board and would confer upon the court the power to enforce its decisions without reference to the Court of Appeals. The Conference agreed with the committee's recommendation that many of the functions which would be assigned to the court are not judicial in nature and, accordingly, voted its disapproval of the proposal.

(d) The Conference reaffirmed its previous approval of September 1965 (Conf. Rept., p. 62) endorsing S. 3254, 89th Congress (which is identical with H.R. 7538, 89th Cong.), to amend sections 2072 and 2112 of Title 28, United States Code so as to empower the Supreme Court to enlarge the scope of the Federal Rules of Civil Procedure to include the procedure in the courts of appeals in civil actions as well as the procedure in the district courts and the courts of appeals for the judicial review or enforcement of orders of administrative agencies.

(e) The Conference reaffirmed its disapproval of H.R. 16164, 89th Congress, to provide means for the disqualification of circuit judges for bias and prejudice. The bill is substantially similar to S. 578, 89th Congress, which the Conference had disapproved at its March 1965 session (Conf. Rept., p. 7).

## RULES OF PRACTICE AND PROCEDURE

Senior Judge Maris, Chairman of the standing Committee on Rules of Practice and Procedure, reported to the Conference on the activities of the standing committee and the advisory committees.

### APPELLATE RULES

Judge Maris reported that the standing committee gave detailed consideration to a definitive draft of Uniform Appellate Rules for the Courts of Appeals and with one exception approved the draft of the Advisory Committee on Appellate Rules. The exception is concerned with providing for the use of the judges of the courts of appeals the parts of the record which they need to consider in deciding an appeal. The advisory committee had proposed a method different from that proposed in the last draft circulated for comment in March 1964 and different from the method followed in a majority of the courts of appeals at the present time. The standing committee concluded, therefore, that the four alternative methods which have been considered by the advisory committee should be published and that the comments and suggestions of the bench and bar should be given full consideration before a final recommendation with respect to this portion of the proposed appellate rules is made.

### CIVIL RULES

The Advisory Committee on Civil Rules is in the final stage of completing a tentative draft of proposed amendments to the rules relating to discovery. It is anticipated that this draft will shortly be published and distributed to the bench and bar for consideration and suggestions.

### BANKRUPTCY RULES

The Advisory Committee on Bankruptcy Rules is hard at work on its task of preparing a draft of comprehensive rules of practice and procedure under the Bankruptcy Act which will supersede the

present general orders and procedural provisions of the act. This is a major task which will take some time to complete.

#### CRIMINAL RULES

The amendments to the Federal Rules of Criminal Procedure which went into effect July 1, 1966, covered most of the criminal procedure. The Advisory Committee on Criminal Rules is continuing to study the subject of preliminary hearings and motions, however, but is not yet ready to report thereon.

#### RULES OF EVIDENCE

The Advisory Committee on Rules of Evidence is actively engaged in the work of formulating a draft of uniform rules of evidence for the Federal district courts, a formidable task which will take some time to complete.

#### ADMIRALTY RULES

The Conference approved the recommendation of the standing committee that the Advisory Committee on Admiralty Rules should continue in existence for at least 2 years in order to study the operation of the new amendments to the Federal Rules of Civil Procedure which went into effect July 1, 1966 and merged the admiralty and civil procedure but providing supplemental rules for certain distinctive admiralty procedure. At the expiration of 2 years the Conference will consider whether the advisory committee should be continued for a further period or whether a representative group of its members or other admiralty specialists should be included within the membership of the Advisory Committee on Civil Rules.

#### REVISED RULES FOR THE TENTH CIRCUIT

The U.S. Court of Appeals for the Tenth Circuit has revised its rules, effective July 1, 1966. The Conference approved those of the rules which relate to the review and enforcement of the orders of administrative agencies in accordance with 5 U.S.C. 1041 (now 28 U.S.C. 2352) and 28 U.S.C. 2112.

## INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Circuit Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments for the period February 18, 1966 through August 27, 1966. During this period the committee recommended 14 assignments to be undertaken by 13 judges. The Chief Justice approved all assignments recommended by the committee. The assigned judges included one circuit judge, three senior circuit judges, four district judges, three senior district judges, one senior judge of the Court of Claims and one senior judge of the Court of Customs and Patent Appeals. Of the assignments made, six were for service in the courts of appeals and the remainder for district courts. One judge accepted two assignments.

The committee noted that despite the provisions of Public Law 89-372 providing additional judgeships for the Fifth Circuit, the needs of the Court of Appeals for that circuit continue and will require assistance from without the circuit to dispose of a substantial backlog. The committee pointed out also that the Court of Appeals for the Tenth Circuit has had an unexpectedly heavy increase in filings and that some of the district courts also badly need additional judicial help.

## BANKRUPTCY ADMINISTRATION

Senior Judge Oliver D. Hamlin, Jr., Chairman of the Committee on Bankruptcy Administration, reported that the committee had considered the recommendations contained in the survey report of the Director of the Administrative Office, dated June 27, 1966, relating to the continuance of referee positions to become vacant by expiration of term, for four new referee positions and for changes in salaries and arrangements for referees. The committee also considered the recommendations of the district judges and circuit councils concerned.

On the basis of the reports and recommendations, the Conference took the following action with respect to referee positions and changes in salaries and arrangements. Unless otherwise noted, changes are effective October 1, 1966, or as soon hereafter as appropriated funds are available.

## SECOND CIRCUIT

*District of Connecticut*

- (1) Authorized the full-time referee position at Hartford in which the term of office will expire on October 31, 1966 to be continued for a new 6-year term, effective November 1, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of New York*

- (1) Authorized an additional full-time referee position at a salary of \$22,500 per annum, with the regular place of office at Mineola and districtwide concurrent jurisdiction with the present referees of the district.

## THIRD CIRCUIT

*District of New Jersey*

- (1) Authorized an additional full-time referee position at a salary of \$22,500 per annum, with the regular place of office at Newark and districtwide concurrent jurisdiction with the present referees of the district.

*Middle District of Pennsylvania*

- (1) Authorized the part-time referee position at Wilkes-Barre in which the term of office will expire on March 16, 1967, to be continued for a new 6-year term, effective March 17, 1967, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## FOURTH CIRCUIT

*District of Maryland*

- (1) Authorized that the salary of the full-time referee be increased from \$17,500 to \$22,500 per annum.

*Eastern District of North Carolina*

- (1) Authorized that the salary of the part-time referee be increased from \$6,500 to \$7,500 per annum.

*Western District of Virginia*

- (1) Authorized the transfer of Botetourt County from the territory of the full-time referee at Roanoke to the territory of the part-time referee at Harrisonburg.
- (2) Authorized the inclusion within the territorial jurisdictions of the referees of this district of all independent municipalities embraced within the counties comprising such territorial jurisdictions.

*Northern District of West Virginia*

- (1) Authorized the increase of the salaries of each of the part-time referees located at Wheeling and Grafton from \$7,000 to \$8,000 per annum.

## FIFTH CIRCUIT

*Middle District of Florida*

- (1) Authorized the increase in salary of the full-time referee position at Tampa from \$20,000 to \$22,500 per annum.

*Southern District of Florida*

- (1) Authorized the part-time referee position at Fort Lauderdale to be changed to a full-time position, at a salary of \$22,500 per annum, with the regular place of office transferred from Fort Lauderdale to Miami.
- (2) Authorized districtwide concurrent jurisdiction in the territory to be served by the two full-time referees for this district.

*Northern District of Georgia*

- (1) Authorized the increase in salary of the full-time referee position at Rome from \$17,500 to \$20,000 per annum.

*Western District of Louisiana*

- (1) Authorized the full-time referee position at Shreveport, in which the term of office will expire on November 2, 1966, to be continued for a new 6-year term, effective November 3, 1966, at the present salary. The regular place of office, territory, and place of holding court to remain as at present.

*Northern District of Mississippi*

- (1) Authorized the increase in salary of the part-time referee located at Houston from \$6,500 to \$8,000 per annum.

*Southern District of Texas*

- (1) Authorized the salary of the full-time referee position located at Houston to be increased from \$17,500 to \$22,500 per annum.

*Western District of Texas*

- (1) Authorized the full-time referee position at San Antonio, in which the term of office will expire on December 19, 1966, to be continued for a new 6-year term, effective December 20, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## SIXTH CIRCUIT

*Western District of Michigan*

- (1) Authorized the full-time referee position at Grand Rapids, in which the term of office will expire on December 31, 1966, to be continued for a new 6-year term, effective January 1, 1967, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Southern District of Ohio*

- (1) Authorized that districtwide concurrent jurisdiction be established for the full-time referees authorized for this district.

## SEVENTH CIRCUIT

*Northern District of Illinois*

- (1) Authorized the full-time referee position at Chicago, in which the term of office will expire on October 13, 1966, to be continued for a new 6-year term, effective October 14, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of Illinois*

- (1) Authorized that the salary of the full-time referee located at East St. Louis be increased from \$17,500 to \$20,000 per annum.

*Northern District of Indiana*

- (1) Authorized the full-time referee position at South Bend, in which the term of office will expire on November 10, 1966, to be continued for a new 6-year term, effective November 11, 1966, at the present salary, the regular place of office, territory and place of holding court to remain as at present.

## EIGHTH CIRCUIT

*District of Minnesota*

- (1) Authorized that the regular place of office of the full-time referee position, now occupied by Referee John J. Connelly of Minneapolis, be transferred to St. Paul.
- (2) Authorized that concurrent jurisdiction be established for the referees-in-bankruptcy for the Districts of North Dakota and Minnesota in the territory comprising the Fergus Falls Division of Minnesota, with the exception of Stearns County.

*District of North Dakota*

- (1) Authorized an increase in the salary of the part-time referee at Fargo from \$7,500 to \$11,000 per annum.
- (2) Authorized that the part-time referee for this district be given concurrent jurisdiction with the referees of the District of Minnesota in the territory comprising the Fergus Falls Division of Minnesota, with the exception of Stearns County.
- (3) Authorized the designation of Fergus Falls, Minn., as a regular place of holding court for the referee at Fargo, N. Dak.

## NINTH CIRCUIT

*District of Arizona*

- (1) Authorized the full-time referee position at Tucson, in which the term of office will expire on October 15, 1966, to be continued for a new 6-year term, effective October 16, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of California*

- (1) Authorized the full-time referee position at Oakland, in which the term of office will expire on February 20, 1967, be continued for a new 6-year term, effective February 21, 1967, at the present salary, the regular place of office to remain as at present.
- (2) Authorized that the full-time referees located at Eureka, San Francisco, Oakland and San Jose be designated as full-time referees having district-wide concurrent jurisdiction in the Northern District of California, as defined in Public Law 89-372, approved March 18, 1966.
- (3) Authorized referees located at Eureka and Oakland in the new Northern District of California to be given concurrent jurisdiction with the referees of the Eastern District of California until such time as appropriated funds are made available for payment of the salaries of the new referee positions authorized for the Eastern District of California.

*Central District of California*

- (1) Authorized that the full-time referee positions at Los Angeles, in which the terms of office will expire November 14, 1966, November 30, 1966 and February 27, 1967, be continued for new 6-year terms, effective November 15, 1966, December 1, 1966 and February 28, 1967, respectively, at the present salaries, the regular places of office to remain as at present.
- (2) Authorized that the full-time referees located at Los Angeles, Santa Ana and San Bernardino be designated as full-time referees having district-wide concurrent jurisdiction in the Central District of California, as defined in Public Law 89-372, approved March 18, 1966.

*Southern District of California*

- (1) Authorized that the full-time referees located at San Diego be designated as full-time referees having district wide concurrent jurisdiction in the Southern District of California, as defined in Public Law 89-372, approved March 18, 1966.

*Eastern District of California*

- (1) Authorized the full-time referees located at Fresno and Sacramento be designated as full-time referees having district wide concurrent jurisdiction in the Eastern District of California, as defined in Public Law 89-372, approved March 18, 1966.
- (2) Authorized two additional full-time referee positions at salaries of \$22,500 per annum for the Eastern District of California, one to be located at Sacramento and one at Modesto.
- (3) Authorized that the two new referee positions shall have district wide concurrent jurisdiction with the referees previously authorized for the Eastern District of California.
- (4) Authorized two additional places of holding bankruptcy court for the district, one at Modesto and one at Vallejo.
- (5) Authorized that the referees located at Eureka and Oakland in the new Northern District of California be given concurrent jurisdiction with the referees in the Eastern District of California until such time as appropriated funds are made available for payment of the salaries of the new referee positions approved for the Eastern District of California.

*District of Hawaii*

- (1) Authorized the increase in salary of the part-time referee at Honolulu from \$8,000 to \$9,000 per annum.
- (2) Authorized the designation of Hilo on the Island of Hawaii and Lihue on the Island of Kauai as additional places of holding bankruptcy court.

*District of Oregon*

- (1) Authorized the full-time referee position at Portland, in which the term of office will expire on January 31, 1967, to be continued for a new 6-year term, effective February 1, 1967, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

## TENTH CIRCUIT

*District of Kansas*

- (1) Authorized that the full-time referee position at Topeka, in which the term of office will expire on March 15, 1967, be continued for a new

6-year term, effective March 16, 1967, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Oklahoma*

- (1) Authorized the full-time referee position at Tulsa, in which the term of office will expire on October 26, 1966, to be continued for a new 6-year term, effective October 27, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

APPROPRIATIONS

The Conference noted that as of the time of its meeting, no report had been received from the Appropriations Committees of the Congress with respect to appropriations for the bankruptcy courts for fiscal year 1967.

The Conference was advised that it will be necessary to obtain an increase in the appropriation for salaries of referees in an amount of \$74,000 for the annual cost of new referee positions and salary increases authorized at the March 1966 session of the Judicial Conference and an additional amount of approximately \$140,000 as a result of the recommendations adopted by the Conference at its current session. The income from the system in fiscal years 1966 and 1967 is expected to equal or exceed the obligations from these 2 fiscal years and leave a balance of approximately \$11,000,000 in the referees' salary and expense fund and in the treasury.

NEW CASE FILINGS

Judge Hamlin reported that in fiscal year 1965 a total of 180,323 cases was filed in the bankruptcy courts. In 1966 the total increased 6.7 percent to a new high of 192,354 cases. Of these, approximately 91.4 percent were nonbusiness or so-called "consumer" bankruptcy cases. Total filings in 1967 are estimated to reach 200,000 to 205,000 cases.

AUDIT OF STATISTICAL REPORTS

The Bankruptcy Division of the Administrative Office is continuing the examination of statistical reports of closed asset and nominal asset bankruptcy cases for the determination of errors in the computation of amounts due the referees' salary and expense fund and overpayments of compensation to receivers and trustees.

The audit program of the Bankruptcy Division will be expanded to include arrangement proceedings terminated under chapter XI

during fiscal year 1967, in accordance with Conference authorization at the March 1966 session (Conf. Rept., p. 23).

#### MATTERS UNDER ADVISEMENT

The Conference was advised of a gradual overall improvement in the reports of matters held under advisement by referees 60 days or longer. As of mid-July, 1966, only 25 referees out of 186 who had submitted reports for the quarter ending June 30, 1966, reported any matters under submission 60 days or longer.

#### DEVELOPMENTS IN THE USE OF CHAPTER XIII

Filings in chapter XIII cases in fiscal year 1966 increased about 1½ percent over 1965. The Bankruptcy Division of the Administrative Office conducts a careful review of the financial reports of chapter XIII trustees supplied to the Administrative Office pursuant to the guidelines adopted by the Conference at the September 1963 session (Conf. Rept., p. 87). The reports of accountants who audit the records of chapter XIII trustees are also examined when they are supplied.

Because of the necessity for adequate supervision of the fiscal aspects of wage earner plan administration, the Conference approved the committee's recommendations for the adoption of additional guidelines to apply to all chapter XIII trustees who have 50 or more wage earner proceedings under supervision as follows:

- (1) The trustees shall maintain debtor funds in a consolidated bank account;
- (2) Trial balances shall be submitted to the referee not less frequently than semiannually;
- (3) Copies of annual audit reports shall be forwarded to the Administrative Office for review and comment and the referee shall accompany the report with a statement of the action he has taken to have rectified any discrepancies reported by the accountant.

#### SEMINARS FOR REFEREES

The third annual seminar for referees-in-bankruptcies was held in Washington March 28 through April 1, 1966. Forty-four referees attended as participants. Five regional seminars of 2 days each were held at Los Angeles, Atlanta, Cleveland, Kansas City and Chicago. These regional seminars are a form of continuing

legal education for referees who have attended one of the annual seminars in Washington. The Conference was advised that the response of the referees who have attended the seminars indicates that the program is highly beneficial and successful. The Conference was advised that during the next 2 years the remaining 57 referees will be given an opportunity to attend an annual seminar in Washington.

#### COSTS OF ADMINISTRATION

The Conference noted that tables prepared by the Bankruptcy Division reveal that in 1965 costs of administration were 25.7 percent in asset cases having an average realization of \$5,227 compared to 26.6 percent in asset cases having an average realization of \$4,840 in 1964. The Conference noted that in those districts where the costs of administration exceeded the 1965 national average, the matter has been brought to the attention of the chief judges with a solicitation of the cooperation of the judges and referees in reducing these costs. As in previous years, attorneys' fees represent the largest single item of cost.

#### CRIMINAL JUSTICE ACT OF 1964

Chief Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act, presented the report of the committee.

#### APPOINTMENTS UNDER THE ACT

The Conference noted a report prepared by the Administrative Office on appointments of attorneys and payments of claims under the Criminal Justice Act covering the first year of the operation of the statute, namely, from August 20, 1965 to August 31, 1966. The report showed that in that period 8,984 attorneys had been paid, representing 15,998 defendants. Of this number, 112 attorneys represented 560 defendants in the courts of appeals, the remaining attorneys represented defendants in the district courts and before U.S. commissioners. A total of \$960,721.83 was paid as compensation to attorneys appointed under the act and \$22,937.20 was paid as attorneys' expenses. A total of \$178,585.18 was paid for investigative, expert and other services. Of this sum, \$153,390.55 was for the payment of transcripts. The average cost per case

in the courts of appeals was \$341 and in the district courts and before commissioners \$108.

#### PROTRACTED LITIGATION

Judge Hastings advised the Conference that during the first year of the operation of the statute several opinions have been handed down by chief judges of the circuits, as well as by trial judges, relating to the subject of compensation to counsel in cases of protracted litigation. The statutory provision states that in extraordinary circumstances payment in excess of the limits set forth in the statute may be made if the district court certifies that such payment is necessary to provide fair compensation for protracted representation and that the amount of the excess payment is approved by the chief judge of the circuit. The Conference authorized the Administrative Office to transmit a representative group of nine opinions on this subject to all Federal judges.

#### FORMS

The Conference approved a committee recommendation that the present voucher forms previously approved by the Conference, namely, CJA Form 4 and CJA Form 12, be amended to provide that while the appointed counsel will calculate his total requested fee and expenses, the approving judge will approve only the payment in a total sum for fees and for expenses. The Administrative Office was directed to confer with the General Accounting Office to obtain the approval of the Comptroller General for the changes in these two forms.

#### TRAVEL

At its March 1966 session, the Conference adopted a statement of policy to serve as a guideline to the courts in determining the appropriateness of payments to attorneys for time spent in travel to and from court (Conf. Rept., p. 13). The Conference noted that the guideline had caused some differing interpretations as to whether counsel might be compensated for travel undertaken outside of normal working hours. Accordingly, the addition of a final clause to the guideline was approved so that the guideline now reads:

When the travel time of an attorney from his office to and from court is 1 hour or more, the court in its discretion, after taking into consideration

all the surrounding circumstances, may allow compensation for time spent in such travel, at a rate not exceeding \$10 per hour; provided, that such travel is solely in the performance of duties in representing a defendant pursuant to an appointment under the Criminal Justice Act of 1964, and that compensation shall be allowed only for time spent in travel during the normal working hours of the attorney's office.

#### ADMINISTRATION OF THE ACT

Judge Hastings reported on several matters which have arisen in connection with the administration of the Criminal Justice Act:

##### Revocation of Probation Proceedings

In accordance with the authorization of the Conference at its March 1966 session (Conf. Rept., p. 13), the Director of the Administrative Office submitted to the Comptroller General a test claim regarding the applicability of the act to representation of a defendant in proceedings for revocation of probation. The Comptroller General, by letter of June 13, 1966, advised that in his opinion the act did not apply to such proceedings.

##### District of Columbia Court of General Sessions

At its March 1966 session, the Conference authorized (Conf. Rept., p. 14) the Director of the Administrative Office to submit to the Comptroller General a proper voucher as a test case to determine whether a judge of the Court of General Sessions of the District of Columbia sitting as a committing magistrate in Federal cases may appoint counsel under the terms of the Criminal Justice Act. The opinion of the Comptroller General, dated June 15, 1966, holds that the Criminal Justice Act applies to all cases in the U.S. branch of the Court of General Sessions. By subsequent letter of July 27, 1966, the Comptroller General further advised that the statute applies to the payment of costs of transcripts in the Court of General Sessions to which court the provisions of the Court Reporter Act, 28 U.S.C. 753, do not extend.

The Conference also noted that the committee considered a request of the Clerk of the Court of General Sessions for permission to print new forms for the use of that court and the committee's view that the forms now in use and previously approved by the Conference are adequate and can be utilized by the Court of General Sessions.

## Corporate Defendants

Judge Hastings advised the Conference that the Administrative Office had received vouchers in two cases in which counsel had been appointed for corporate defendants. He advised the Conference that the committee had directed the Administrative Office not to process such vouchers since in the committee's view the statute applies only to natural defendants and not to corporate defendants.

## STATUTORY AMENDMENTS

Judge Hastings advised the Conference that several suggestions for possible amendment to the statute had originated in the Department of Justice and had been forwarded to the committee.

The committee also considered the mandate of the Conference Committee of the Congress that the Department of Justice, in cooperation with the Judicial Conference, obtain the benefit of the experience of the operation of the act and report to the Congress on the advisability of the establishment of a public defender system.

Judge Hastings reported that the committee was in agreement that sufficient experience had not yet been obtained and sufficient accurate information on costs had not yet been received to carry out the congressional request or to warrant recommendations at this time for amendment of the statute. To carry out these purposes, however, the committee authorized its chairman to establish a subcommittee which, with representation from the Administrative Office, would consider these matters and confer with the Department of Justice as appropriate. Judge Hastings advised that he had appointed a subcommittee for this purpose comprised of Judge Harvey M. Johnsen as Chairman, Judge Wade H. McCree, Jr., Chief Judge James M. Carter, and Judge Dudley B. Bonsal.

## RELEASE OF COMMITTEE REPORT

Upon committee recommendation, the Conference authorized the immediate release of the committee report and directed the Administrative Office to distribute copies to all members of the Federal judiciary for information.

## ADMINISTRATION OF THE CRIMINAL LAW

The Chairman of the Committee on the Administration of the Criminal Law, Circuit Judge George C. Edwards, Jr., presented the report of the committee.

## FEDERAL MAGISTRATES ACT

S. 3475, 89th Congress, would abolish the office of U.S. commissioner and in place thereof would establish within the judicial branch of the Government the offices of full-time and part-time U.S. magistrates. Judge Edwards reported that the proposed legislation was first examined by a subcommittee created to study the U.S. commissioner system and subsequently the bill and the comments of the subcommittee were reviewed and considered by the full committee. Judge Edwards reported that the committee approved the major principles of the bill, namely, the proposed upgrading of the status of the present system of U.S. commissioners and the more efficient utilization of them through the transfer, where feasible, of appropriate items for trial or disposition to relieve the workload of district courts. The committee had several recommendations for amendments of the bill, all of which had been discussed with Senator Tydings, who introduced the bill, and members of his staff. All differences had been reconciled Judge Edwards reported with the exception of proposed changes in section 636 relating to the delegation of duties of the magistrates and section 3401 concerning the minor offense jurisdiction proposed for the magistrates. The Conference authorized the chairman of the committee to confer further with the chairman and members of the staff of the Senate Subcommittee on the Improvements in Judicial Machinery concerning the differences between the committee and the Senate subcommittee in these two areas and requested him to report back to the Conference at its next meeting.

## BAIL JUMPING

The Conference considered H.R. 12442 and S. 2855, bills prescribing procedure for the return of persons who have fled in violation of the conditions of bail given in any State or judicial district of the United States to another State or judicial district. The Conference noted the views of the committee that insofar as the bills relate to State bail jumpers, they may infringe on extradition

procedures and that the bills do not specify the manner in which a bail jumper, after issuance of a removal warrant, would be returned to the appropriate jurisdiction. The Conference voted its disapproval of these bills as drafted.

#### APPELLATE REVIEW OF SENTENCES

Judge Edwards reported that the committee had given further study to S. 2722 and H.R. 14343 providing for appellate review of sentences in criminal cases arising in the district courts of the United States. The Conference requested the committee to study these bills further and to make a recommendation to the Conference on this subject at its next meeting.

#### IMMUNITY

The Conference approved S. 2190, a bill which would provide that on approval of the Attorney General or a designated assistant attorney general immunity could be granted to a witness compelled to testify before a grand jury or U.S. court involving a violation of 18 U.S.C. 1952, proscribing interstate or foreign travel or transportation in aid of racketeering enterprises.

#### COMMITMENT OF PERSONS ACQUITTED ON THE GROUND OF INSANITY

Judge Edwards advised the Conference that the committee had considered S. 3689 and S. 3753, both bills which while varying in specific details would empower a district court on the acquittal of a defendant solely on the ground that he was insane at the time of the commission of a Federal offense to hold commitment proceedings to determine on the basis of examination and hearing whether the release of such person would constitute a danger to himself and others and whether he should be committed to the custody of a designated Federal officer for institutional treatment. The Conference approved these bills, in principle, but directed that the committee make a more detailed study of the specific provisions and to that end instructed the Administrative Office to obtain background material and other data to assist the committee in its continuing study.

## COMMISSION ON REFORM OF CRIMINAL LAWS

H.R. 15766 and H.R. 16206 are bills proposing the establishment of a national commission to make a complete review of the statutory and case law of the United States for the purpose of formulating and recommending to the Congress legislation to improve the Federal system of criminal justice and to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the official structure as will better serve the ends of justice. Upon committee recommendation, the Conference approved the principle of these bills but suggested that they be amended to include specific provision for the study of all criminal penalties in the laws of the United States for the purpose of determining those which might be appropriately reduced to the grade of "petty offenses," as defined in Section 1 of Title 18, United States Code.

## OTHER LEGISLATION

The Conference considered and voted to disapprove the following items of legislation:

1. S. 3350, a bill which would provide that the power of the district courts under 18 U.S.C. 402 relating to contempts constituting crimes shall not be vacated, reviewed, restricted or restrained by the courts of appeals except upon an appeal from a final order or judgment of commitment entered by the district courts.

2. S. 2578, a bill which provides that no confession made while the defendant is in custody or other detention shall be inadmissible solely because of delay in bringing such defendant before a judicial officer.

3. H.R. 8373, a bill to provide amnesty for first offenders under federal criminal law. The Conference agreed that the committee should continue to study the general problem to which this bill is addressed.

4. S. 962, a bill which would authorize the appeal of a criminal conviction of a tribal court to the U.S. district court on a claim of deprivation of a constitutional right; on the filing of such appeal from a tribal court, the district court would try the case de novo.

As to one item of legislation, the Conference agreed that it involved a matter of public policy exclusively within the competence of Congress. This was H.R. 14887, a bill which would

establish a commission empowered to order the payment of compensation to a person injured as a result of an act or omission of another person which is a felony under State or Federal law.

#### OPERATION OF THE JURY SYSTEM

Circuit Judge Irving R. Kaufman, Committee Chairman, reported on the first meeting of this recently-reactivated Committee on the Operation of the Jury System.

Judge Kaufman advised the Conference that this committee has reviewed the numerous legislative proposals relating to jury selection and that he had appointed a subcommittee to study the mechanics of the several proposals which relate both to Federal and State methods of selection. The Conference approved this action, and on recommendation of the committee, endorsed the principle of random selection of jurors in a manner that would produce a fair cross section of the community in the district or division in which court is held. The Conference also approved the committee recommendation that district judges consider reevaluation of present methods of jury selection in the light of recent judicial decisions.

Judge Kaufman also reported that the committee had observed that in recent months considerable interest had been generated in the possible use of data computers for court administration and for predicting with greater accuracy the jury requirements of particular courts. The Conference authorized the chairman to cooperate with the Institute of Judicial Administration in a study of the possible use of data computers for court administration, specifically including a pilot study of the possibility of the use of computers for the administration of the jury system in order to achieve a more accurate prediction of jury requirements and to reduce costs.

The Conference approved further committee study of the necessity of promulgating guidelines or taking other corrective action to shield Federal juries from prejudicial publicity in the light of the Supreme Court's decision in *Sheppard v. Maxwell*, 384 U.S. 333.

The Conference also approved committee study of the possible statutory conflicts which might result from the Supreme Court's opinion in *Cheff v. Schnackenberg*, 384 U.S. 373, and a study of draft amendments to the contempt statute and, if necessary, coop-

eration with the Advisory Committee on the Federal Rules of Criminal Procedure.

#### ADMINISTRATION OF THE PROBATION SYSTEM

Chief Judge Walter E. Hoffman, Chairman of the Committee on the Administration of the Probation System, presented the committee's report to the Conference.

#### SENTENCING INSTITUTES

The Conference approved the holding of a sentencing institute in the Second Circuit in New York City and Danbury, Conn., on November 10 and 11, 1966, as well as the agenda for the meeting.

Judge Hoffman advised the Conference that tentative plans have been drawn for a sentencing institute for the judges of the Fourth and Fifth Circuits at Atlanta, Ga., in the fall of 1967.

#### WORKLOAD MEASUREMENTS

Judge Hoffman reported that the committee had received a memorandum outlining in a preliminary way a proposal for consideration by the committee and the Administrative Office for study of workloads of probation officers. The Conference expressed the view that such a study should await the report of the National Crime Commission.

#### STUDY OF STATE AND FEDERAL SYSTEMS

At the March 1966 session of the Conference (Conf. Rept., p. 15), the committee reported it had received a tentative proposal from the dean of the School of Criminology of the University of California for a study of probation systems and administration generally in the Federal and State governments. Judge Hoffman reported that the committee had concluded that such a study should not be pursued at this time.

#### SUPPORTING PERSONNEL

Chief Judge Theodore Levin, Chairman of the committee, presented the report of the Committee on Supporting Personnel.

## CLERKS' OFFICES

The Conference approved the request for 68 additional personnel for the clerks' offices and also approved the recommendation that should the fiscal year 1967 request for 41 additional persons be reduced by the Congress, the deficiency be added to the 1968 appropriation request. Included in the new request are personnel for the new Southern District of California.

## INTERPRETERS

Judge Levin reported a request for a full-time interpreter for the District Court of Puerto Rico. Judge Aldrich, in reporting that the request had the full approval of the Judicial Council of the First Circuit, stated that an interpreter is required in more than 90 percent of the cases in the District Court of Puerto Rico. The Conference authorized the employment of a full-time interpreter for this court at a salary to be fixed by the Director of the Administrative Office.

Judge Levin reported that a request for consideration of the need of a full-time interpreter had been received for the District Court for the Western District of Texas, particularly at San Antonio, El Paso, and Del Rio. The Conference was of the view that adequate provision has already been made for the employment of interpreters in this district on a case-by-case basis.

## SALARIES OF COURTROOM CLERKS

The Conference agreed with the committee's conclusion that the rank of grades of courtroom clerks up to JSP-12 has created a marked imbalance in the structure of the Judiciary Salary Plan and, accordingly, agreed with the committee recommendation that a more appropriate method of classification of courtroom clerk positions would be to reconstitute two compensation categories, with grade ranges of:

First Category : JSP-8 ; JSP-9 ; JSP-10

Second Category : JSP-9 ; JSP-10 ; JSP-11

The first and lower category would be for those positions having little or minor calendar responsibilities. The second and higher category would be for those positions having complete calendar responsibilities.

The Conference agreed further that no incumbent should be reduced in grade as a result of the Conference action for reclassification of grades unless such a reduction is desired by the court in which the individual is currently serving.

#### SECRETARIES—COURT OF CLAIMS

The Conference approved the qualification standards proposed by the Chief Judge of the Court of Claims for the position of secretary to the Chief Commissioner who performs not only duties as a secretary but also as an administrative assistant for all of the commissioners of the court. The Conference approved the grade classification of JSP-10 for this position.

The Conference also agreed that the qualification and entrance standards for secretaries to the commissioners be modified to conform basically to the standards established for secretaries to U.S. circuit and district judges.

#### SECRETARIES TO JUDGES

Judge Levin reported that the committee had again given full consideration to permit higher salaries for secretaries to judges and it again concluded that it should make no recommendation at this time for increasing the salaries of secretaries. At the same time the committee recommended and the Conference approved reaffirming its position that legislation should be adopted to bring the retirement benefits of judges' secretaries to the same level as those of secretaries to the members of Congress. The Conference endorsed H.R. 10263 now pending in the 89th Congress which would carry out this purpose.

#### COURT REPORTERS

The Conference approved the committee recommendation that the present rate for Federal court reporters be increased from 65 cents to 90 cents per page for original copy and the rate of original daily copy be increased from \$1.30 per page to \$1.50 per page, and with additional rate per page for daily transcript as follows:

	Rate per page for daily transcript		
	Original	Each copy	Total charge
Original only.....	\$1.50	\$0.00	\$1.50
Original plus 1 copy.....	1.25	.50	1.75
Original plus 2 copies.....	1.20	.45	2.10
Original plus 3 copies.....	1.15	.40	2.35
Original plus 4 copies.....	1.10	.35	2.50
Original plus 5 copies.....	1.05	.35	2.80
Original plus 6 copies.....	1.00	.35	3.10

NOTE.—For an original and more than 6 copies: \$1.00 for original and \$0.35 for each copy.

The Conference approved the committee recommendation that the request on behalf of the U.S. District Court and the Court of Appeals for the District of Columbia for an increase in salaries of court reporters to \$15,000 per annum and for five additional court reporters for the District Court of the District of Columbia not be granted.

The Conference agreed with the present practice of the Administrative Office in publishing the earning figures of reporters for the use of judges and denied the request of the Court Reporters Association that the earning figures be held only for the confidential use of the Administrative Office and the Judicial Conference.

#### MESSENGER-LAW CLERKS

The Conference approved the recommendation of the committee to defer the request from the Court of Appeals for the Second Circuit for introduction of a bill to provide for the combination position of messenger-law clerk until such time as the Congress takes action on the current appropriation request for 33 staff law clerks and necessary additional stenographers for courts of appeals.

#### INTERCHANGE OF FEDERAL-STATE PERSONNEL

In regard to the Bureau of the Budget request for views on proposed legislation which would permit temporary interchanges of personnel between Federal and State governments, the Conference authorized the Director of the Administrative Office to advise the Bureau of the Budget that while this interchange would no doubt be of great value in those areas where counterparts can be found within the Federal and State governments, it is unable

to find appropriate counterparts between Federal and State judiciary.

#### EQUAL EMPLOYMENT OPPORTUNITY

The Conference noted the memorandum from the Director of the Administrative Office to all members of his staff advising of the national policy in favor of a positive program for equal opportunity of employment. The Conference in endorsing this policy directed that appropriate notice thereof be sent to each Federal judge and to each clerk of court.

#### COURT REPORTER-SECRETARY

The Conference noted and disapproved a request that individuals serving in the combination position of court reporter-secretary be given an increase in salary which would amount to  $1\frac{1}{3}$  to  $1\frac{1}{2}$  of their present salaries. The committee noted that there are only three such combination positions now remaining in continental United States.

#### TRIAL PRACTICE AND TECHNIQUE

Chief Judge Alfred P. Murrah, Chairman of the Committee on Trial Practice and Technique, presented the report of the committee.

Judge Murrah pointed out that the committee had previously called attention of the Conference to the fact that only a small percentage of civil cases normally reached the trial stage. As a result, the committee has been continuing to explore methods of identifying well in advance of trial those cases which are likely to be settled or disposed of short of trial. Judge Murrah stated that the committee is of the view that such cases can be identified at an early stage and can be placed on an accelerated calendar for prompt disposal. He advised that the committee members have agreed to undertake an innovative use of an accelerated calendar in their own courts.

The committee also recommended that an approach to the development of techniques for the judicial management of civil litigation should be undertaken on a broad front and that this could best be done through circuit committees on trial practice and technique. The Conference approved a resolution that such circuit committees be appointed by the chief judges in circuits

where they do not exist and where they do exist that these committees be revitalized and reactivated. The Conference further approved the resolution that each such circuit committee be composed of, but not limited to, at least one district judge and one attorney from each State in the circuit, that the member of the Judicial Conference committee from the particular circuit be a member, ex officio, of the circuit committee and that the circuit committee should study the problem of civil dockets and backlogs and with the help and assistance of the Judicial Conference Committee on Trial Practice and Technique, seek the cooperation of and offer assistance to district judges and courts in making realistic attacks on the backlog problem by the use of an accelerated calendar.

The resolution, as approved by the Conference, further provides that the Administrative Office make available, on request, from its IBM processing machine lists all pending civil cases, showing docket number, name of the case, date filed, and type of case by code number.

The Conference also approved the committee recommendation that a subcommittee of the Conference committee be appointed consisting of one judge from a multiple court district with more than eight judges which uses the master calendar in civil cases, one judge from a multiple court district of more than eight judges which uses an individual assignment calendar in civil cases, one judge from a court of from four to eight judges and one judge from a court of three or less judges to study and promulgate proposed methods and techniques for the use of an accelerated calendar in connection with cases deemed appropriate.

#### SUBCOMMITTEE FOR MULTIPLE LITIGATION

Judge Edwin A. Robson, a member of the subcommittee appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits, advised the Conference that the antitrust proceedings in the electrical equipment industry had been reduced to 67 cases. The Conference was advised of progress made in other areas of litigation, such as Aluminum Cable and Rock Salt proceedings.

Judge Robson advised the Conference that he and other members of the subcommittee had testified before the House Judiciary Committee on H.R. 8276, 89th Congress, a bill previously approved

by the Conference at its March 1965 session (Conf. Rept., p. 12) and that hearings were scheduled in October before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee.

Judge Robson next presented to the Conference the text of an outline of suggested procedures and materials for pretrial and trial of complex and multiple litigation. The Conference approved the subcommittee recommendation that the text be submitted to all Federal judges for comment, ideas and suggestions. Judge Robson advised that a special drafting subcommittee has been appointed from the committee membership to review and consider the comments, ideas and suggestions which are received, after which a further report will be made to the Conference.

### HABEAS CORPUS

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, advised the Conference that the proposed amendment to Section 2241 of Title 28, United States Code, approved by the Conference at its September 1965 session (Conf. Rept., p. 84), had passed the House of Representatives on September 6, 1966 and was now pending before the Senate Judiciary Committee. The Conference reaffirmed its support of the revised bill approved by the September 1965 session of the Conference, as passed by the House of Representatives.

### RESOLUTION

On motion of Chief Judge Paul C. Weick who noted the absence because of illness of Senior Judge John Biggs, Jr., Chairman of the Conference Committee on Court Administration, the Conference adopted the following resolution:

RESOLVED, that the members of the Judicial Conference of the United States express their deep appreciation to Honorable John Biggs, Jr., for the outstanding service he has rendered to the Conference over a period of many years and for his great contribution to the administration of justice.

The members of the Conference also extend their best wishes for Judge Biggs' speedy recovery and hope he will soon be able to resume his active participation in the affairs of the Conference. His good companionship and sound advice are missed by everybody.

PRETERMISSION OF THE TERMS OF COURTS OF  
APPEALS

At the request of Chief Judge Charles J. Vogel, the Conference, pursuant to 28 U.S.C. 48, consented that the terms of the Court of Appeals for the Eighth Circuit at places other than St. Louis be pretermitted during the fiscal year commencing July 1, 1967.

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.*

OCTOBER 24, 1966.

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