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

SEPTEMBER 19-20, 1968

WASHINGTON, D.C.

1968

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Ernest C. Friesen, Jr.
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.

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

September 19-20, 1968

The Judicial Conference of the United States convened on September 19, 1968, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued on September 20. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge Edward M. Curran, District of Columbia

First Circuit:

Chief Judge Bailey Aldrich
Judge Edward T. Gignoux, District of Maine

Second Circuit:

Chief Judge J. Edward Lumbard
Chief Judge Sidney Sugarman, Southern District of New York

Third Circuit:

Chief Judge William Henry Hastie
Chief Judge Wallace S. Gourley, Western District of Pennsylvania

Fourth Circuit:

Chief Judge Clement F. Haynsworth, Jr.
Chief Judge Walter E. Hoffman, Eastern District of Virginia

Fifth Circuit:

Chief Judge John R. Brown
Chief Judge G. Harrold Carswell, Northern District of Florida

Sixth Circuit:

Chief Judge Paul C. Weick
Chief Judge Mac Swinford, Eastern District of Kentucky

Seventh Circuit:

Chief Judge Latham Castle
Judge Edwin A. Robson, Northern District of Illinois

Eighth Circuit:

Chief Judge Martin D. Van Oosterhout
Chief Judge Roy W. Harper, Eastern & 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 Arthur J. Stanley, District of Kansas

Court of Claims :

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals :

Judges Philip B. Baldwin and Giles S. Rich for Chief Judge Eugene Worley

Mr. Justice Tom C. Clark, United States Supreme Court, (retired), Senior Judges John Biggs, Jr., Harvey M. Johnsen, Albert B. Maris, Circuit Judges Jean S. Breitenstein, George C. Edwards, Jr., John S. Hastings, Irving R. Kaufman, J. Skelly Wright, and District Judges William J. Campbell, Theodore Levin and Edward Weinfeld attended all or some of the sessions.

The Attorney General, Honorable Ramsey Clark, attended the morning session of the first day of the Conference and addressed the Conference on matters of mutual interest. Assistant Deputy Attorney General William T. Finley, Jr., accompanied the Attorney General.

Honorable Joseph D. Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, United States Senate, also attended the morning session of the first day of the Conference and addressed the Conference on pending legislative matters of interest to the judiciary. Mr. Albert Figinski, Counsel for the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, United States Senate, attended all or some of the sessions.

Ernest C. Friesen, Jr., Director of the Administrative Office of the United States 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

Mr. Ernest C. Friesen, Jr., Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1968, 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.—During 1968 there was an increase of 15.3 percent in new case filings in the courts of appeals for a total of 9,116 new appeals. Terminations increased over 1967 by almost 10 percent. Terminations were still substantially less than the number of new cases docketed. The appeals pending on June 30, 1968 were 14.8 percent above the number on the same date a year earlier. The greatest increase in new filings was in the Fourth Circuit with 27.6 percent, the Ninth with 26.4 percent and the Seventh with 24.7 percent. Small decreases were noted only in two circuits, the Third and the Eighth.

The upward trend in the workload of the courts of appeals over the past ten years is demonstrated by the fact that in 1960 3,889 new appeals were filed as compared with 9,116 in 1968. Terminations more than doubled in this period, from 3,713 in 1960 to 8,264 in 1968. The pending case figure almost tripled, from 2,220 in 1960 to 6,615 in 1968. In 1960 there were 68 judges in the courts of appeals; during 1968 there were 88 judges in these courts. On June 18, 1968, the President approved Public Law 90-347 creating nine new circuit judgeships and making the four temporary judgeships in the Fifth Circuit permanent.

District Courts.—The Director's report pointed out that the total number of civil and criminal cases filed in fiscal year 1968 rose by less than 7/10ths of one percent, thus continuing the leveling trend noted in the prior year. Because dispositions fell, however, the volume of pending civil and criminal cases at the end of the year increased to a new high of 97,245. The drop in terminations is most marked in civil cases; dispositions were less by almost 1,300 cases in 1968. At the end of 1967 there were 317 district judges in active service; by the end of 1968 this number had risen to 323.

The marked increase in civil filings is particularly noted in three areas—federal prisoner petitions, state prisoner petitions, and civil rights. Substantial decreases were noted during 1968 in contract actions, suits involving real property and forfeiture and penalty suits filed by the government.

The Director noted that median time intervals from issue to trial for civil cases remained at 12 months, with 10 months for non-jury and 15 months for jury trials. A serious disproportion in median time intervals appeared again in the larger metropolitan centers—39 months in the Eastern District of Pennsylvania, 36 months in

the Southern District of New York, 31 in the Eastern District of New York and 25 in the District of Columbia.

The Director also pointed to the fact that civil cases pending on the docket for more than three years have continued to rise each year since 1963 and now constitute 10.3 percent of the pending civil cases. These cases are concentrated for the most part in the Eastern District of Pennsylvania, the Southern District of New York, Maryland, the Eastern District of Louisiana, the Eastern District of New York, the Northern District of California and the District of Columbia.

The volume of criminal cases has remained relatively stable for twelve years. A total of 30,714 criminal cases was filed in 1968 and 29,492 were terminated. The composition of criminal cases has changed during the past year, with prosecutions for violations of the Selective Service Act increasing by 37 percent. Narcotics, burglary, robbery and homicide cases also rose appreciably while substantial decreases were noted in federal Civil Rights Act cases and in prosecutions for violation of the immigration laws and the liquor laws and for fraud.

The Director stated that for the first time since 1952 new bankruptcy cases showed a decline, with a total of 197,811 cases filed as compared with 208,329 in 1967. This represents a decrease of five percent. In 1968 the proportion of business bankruptcies increased slightly with respect to the total cases filed although, numerically, there was a small decline. Non-business filings constituted 91.6 percent of all the new bankruptcy filings.

The Director reported that he has asked the Federal Judicial Center to make a study of the weighted caseload index to determine whether this standard properly gives an opportunity to determine judicial workloads. He also pointed to the fact that the delay in criminal cases is partially attributed to the fact that the United States Attorneys' offices are understaffed and that in too many instances—almost 80 percent of the districts—the United States Attorneys are still permitted to control the criminal calendar. He also pointed to the need for circuit administrators who are expert in personnel matters, in questions of space and other administrative problems, including paper work, management and calendar control.

AUTOMATED CALENDAR CONTROL SYSTEM

The Director stated that during the past year the Administrative Office had established a computer data base for the civil jury trial calendar of the Eastern District of Pennsylvania. The system is designed to provide the court with current information, identifying the cases pending on the calendar and reporting on the status of pending cases. The system also provides comprehensive information on the disposition of calendared cases and on the method by which cases are terminated. Since trial counsel are identified in each case, the system also provides an indication of the role of counsel in the operations of the court and the degree to which local attorneys and law firms are active in federal court practice.

The system is also being extended into the Southern District of New York and it is anticipated that further extensions into other districts will prove useful and effective in the calendar phase of court management.

FEDERAL JUDICIAL CENTER

Mr. Justice Tom C. Clark, Director of the Federal Judicial Center, reported on the operations of the Center in its first year of operations. The Director stated that the first meeting of the Board was held on March 2, 1968, at which time Mr. Justice Clark was named as the first Director. The Board approved the initial budget requests of the Center and considered adequate housing facilities, as well as the general organization of the staff and the research projects pending before the Center. The Board held its second meeting on June 4, 1968.

The Board of the Federal Judicial Center has organized six advisory committees made up of members from the judiciary, as well as from other disciplines, such as business, education, science, medical research, public administration, industry and publications. The Committees are Operations and Appraisal, Research, Continuing Education, Innovation and Development, Federal-State Relations, and Library and Publications.

The Director stated that the Congress had appropriated \$40,000 for the initial operations of the Center in fiscal year 1968 and \$300,000 for fiscal year 1969.

The Director said that several projects were already in progress under the aegis of the Center, including a study of the criminal

calendar in the Eastern District of New York aided by a grant of \$8,000 to the Institute of Judicial Administration from the National Defender Program of the National Legal Aid and Defender Association; a civil docket calendar control study in the Southern District of New York; a civil study of the calendar in the Eastern District of Pennsylvania built upon the study undertaken by the Administrative Office during fiscal year 1968; a comprehensive study of the actual jury operation in the Western District of Missouri aimed at a determination of the present utilization of jurors to secure more efficiency in operation and a saving in expense (with the assistance of the American Bar Foundation); an experimental project under the probation system which will reflect a treatment typology to aid the probation service to determine the most fruitful supervisory relationships; a further probation project along the lines recently completed at the University of California in Berkeley concerned with presentence and supervisory practices; a study of systems procedures in the federal courts, including the relative advantages of the master calendar and individual assignment calendaring systems; a study of a clerk's office, using as a test the Clerk's Office for the Eastern District of Louisiana, to determine the necessary business practices and controls that would produce an efficient operation in a multiple-judge district; the preparation of a desk or bench book for district judges; a study of the assignment system of judges to panels in a court of appeals; a study of the screening process in the courts of appeals to prevent severe clogging because of frivolous appeals and a study of the increase in habeas corpus cases in the district courts.

The Director announced that the third seminar to be conducted in 1968 for newly appointed judges which will be held in Washington, D.C., from October 25 through November 1, 1968 will for the first time be held under the sponsorship of the Federal Judicial Center, acting in conjunction with Chief Judge Alfred P. Murrah, Chairman of the Judicial Conference Committee on Trial Practice and Technique which has sponsored all previous seminars for newly appointed judges.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Chief Judge Alfred P. Murrah, Chairman of the Judicial Panel on Multidistrict Litigation, reported on the initial activities of the Panel subsequent to its appointment by the Chief Justice on

May 29, 1968. Judge Murrah pointed out to the Conference that the Panel was created by the enactment of Public Law 90-296, signed by the President April 29, 1968. The law created a new Section 1407 of Title 28, United States Code, providing for the transfer of certain multidistrict litigation for pretrial purposes only. The legislation was enacted partly as a result of the sponsorship and endorsement of the Judicial Conference of the United States. Judge Murrah said that the other members of the Panel are Judge John Minor Wisdom of the Court of Appeals for the Fifth Circuit, Chief Judge William H. Becker of the Western District of Missouri, Judge Joseph S. Lord, III, of the Eastern District of Pennsylvania, Judge Edwin A. Robson of the Northern District of Illinois, Judge Stanley A. Weigel of the Northern District of California and Judge Edward Weinfeld of the Southern District of New York.

Judge Murrah stated that the Panel held its organizational meeting on June 26, at which time it adopted provisional rules of procedure and began operations. The first hearings of the Panel were scheduled to take place on August 8, 1968.

COMMITTEE ON COMMITTEES

Chief Judge J. Edward Lumbard of the Second Circuit, Chairman of the Committee on Committees, presented the Committee's report.

Judge Lumbard advised the Conference that the Committee had been created as a result of a recommendation made at the September 1967 meeting of the Conference at which Judge John Biggs, Jr., had stated that the Conference had not reviewed its committee structure for more than twelve years and that the time had come for a complete survey of the structures of Conference committees as to status, number and functions.

As a result of the Committee's deliberations, the Conference approved a recommendation that all of the existing committees of the Conference (other than the Committee on Rules of Practice and Procedure and its advisory committees which were not considered in the Committee's deliberations) should be discharged and that the Chief Justice should be authorized to appoint the members of such committees and subcommittees as were now authorized by the Conference. The Conference agreed further that members of the existing committees which are retained should not be discharged until they are replaced by appointment by the Chief Jus-

tice. The Chief Justice reminded the Conference of his impending retirement, and suggested that it might be more appropriate to have the reorganization of the Conference committees made by his successor. After discussion, on motion the Conference agreed that the appointments should be made by the present Chief Justice before he leaves office. The Conference agreed to abolish the following committees: the Advisory Committee; the Habeas Corpus Committee; the Special Committee on the Geographical Organization of the Courts; the Committees on Judicial Statistics, Supporting Personnel and the Revision of the Laws, the assignments of which will be carried out by subcommittees of the Committee on Court Administration; and the Subcommittee on Discovery and Multiple Litigation of the Committee on Trial Practice and Technique.

The Conference agreed that its responsibilities can best be discharged through three types of committees:

- (a) General committees serving overall requirements of the Conference with broadly based membership and operating in a coordinating capacity for one or more subcommittees as required;
- (b) Standing committees with smaller membership serving a specific need of the Conference; and
- (c) Special committees appointed for a specific limited purpose with tenure of no more than two years unless extended by the Conference.

The Conference voted that three general committees should be established:

- (a) A Committee on Court Administration, with subcommittees on statistics, on judicial salaries, annuities and tenure; on supporting personnel of the courts and on federal jurisdiction, as well as such other subcommittees as it may determine;
- (b) A Committee on the Administration of the Criminal Law with subcommittees as it may determine;
- (c) A Committee on the Operation of the Jury System with such subcommittees as it may determine.

The following standing committees were created by the Conference:

- (a) A Committee on the Budget;
- (b) A Committee on the Administration of the Bankruptcy System;
- (c) A Committee on the Administration of the Probation System;
- (d) A Committee on Intercircuit Assignments; and
- (e) A Committee on Trial Practice and Technique.

The Conference voted further that there should be a Special Committee on the Implementation of the Criminal Justice Act to

serve until September 1969, at which time the Conference would reexamine the need for the continuation of this special committee.

The Conference adopted the following guidelines for the operation of its committees:

- (a) That general committees normally have a member from each circuit and that standing committees and special committees should have seven members, at least four of whom should be district court judges;
- (b) That as a district judge becomes a circuit judge, he should submit his resignation;
- (c) That, except as the Chief Justice may deem desirable for special reasons, no judge should serve on more than one committee at the same time nor should members of the Board of the Federal Judicial Center or judges designated to serve on the Multidistrict Litigation Panel serve as members of Conference committees during their terms of office on the Board or on the Panel;
- (d) That all future committee and subcommittee appointments be for terms of six years, with members initially appointed for two-year, four-year and six-year terms, and, except as the Chief Justice may otherwise determine for special reasons, that the only members who should be eligible for reappointment to the same committee would be those originally appointed for a two-year term;
- (e) That general committees and standing committees be empowered to appoint such subcommittees as they may deem necessary, but no judges, except members of the parent committee, should be appointed to any subcommittee without the approval of the Chief Justice;
- (f) That whenever there is a disagreement between a general committee and a subcommittee with respect to a matter which is reported to the Judicial Conference, such disagreement should also be reported to the Judicial Conference;
- (g) Where recommended by the chairman of the parent committee, and approved by the Chief Justice, the chairman of a subcommittee may report in person at a meeting of the Judicial Conference;
- (h) That committee and subcommittee meetings be held sufficiently in advance of the Judicial Conference meeting to permit proper circulation of reports; that, whenever feasible, meetings should be limited to one day and that at least one committee meeting a year should be held in Washington;
- (i) That matters involving financing or application for financing should be undertaken only with the prior approval of the Chief Justice or the Judicial Conference.

The Conference agreed that the staff of the Administrative Office should be augmented in order that the Administrative Office may perform fully and adequately the staff functions required by the Conference committees and subcommittees, including a legislative reference service. The Conference approved the recommendation of the Committee that representatives of the Administrative Office should attend all committee and subcommittee meetings, record the minutes of such meetings and under the guidance of

committee chairmen prepare necessary preliminary studies as well as the drafts of committee reports and any other staff functions required for the proper implementation of committee work.

With the acceptance of the report of the Committee on Committees, the Conference agreed that this Committee had completed its assigned tasks and the Committee was discharged.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, presented his Committee's report. Judge Campbell reported that the Congress for fiscal year 1968 appropriated for the judiciary (exclusive of the Supreme Court) the sum of \$92,574,000. The cost of operating the courts, including the Administrative Office and the Federal Judicial Center, aggregated \$92,116,000, leaving an unobligated balance of only \$458,000 to be returned to the Treasury—less than one-half of one percent of the total obligational authority. Judge Campbell stated that the budget estimates for the judiciary (exclusive of the Supreme Court) for fiscal year 1969, as submitted to the Congress in January 1968, were in the total amount of \$98,066,000. Subsequently, the estimates were amended to include \$538,000 for the Federal Judicial Center and \$6,395,000 to implement the Jury Selection and Service Act of 1968. Of this total, the Congress actually appropriated \$100,425,500. The appropriation bill for fiscal 1969 provides for the appointment of 55 additional law clerks by circuit judges. The Congress, however, denied requests for 12 deputy clerks for the courts of appeals and 83 deputy clerks for the district courts, as well as requests for 33 stenographers for the courts of appeals, 97 additional full-time clerical positions for referees in bankruptcy and 12 positions for the Administrative Office. The appropriations act allowed \$4,000,000 for the fees of jurors and \$300,000 for the Judicial Center.

Judge Campbell reported further that on August 20, 1968 a request for supplemental appropriations for fiscal year 1969 was submitted to the Bureau of the Budget. This supplemental request included \$623,000 to cover the cost of nine additional circuit judges to be appointed pursuant to Public Law 90-347, enacted June 18, 1968, and \$1,341,000 required in connection with the Jury Selection and Service Act of 1968. The sum of \$24,000 was included for the Administrative Office to cope with an increased workload.

The Conference approved the Budget Committee's recommendations for fiscal year 1970 which, exclusive of the United States Supreme Court and the United States Customs Court, aggregated \$111,242,000, an increase of \$10,171,000 over the amounts appropriated for 1969, adjusted to reflect proposed supplementals for pay costs. The budget for 1970 provides for the additional circuit judges created by the act of June 18, 1968 and the staffing for those judges, as well as for the employment of 33 stenographers and 36 deputy clerks for the courts of appeals, 205 deputy clerks for the district courts and 24 additional positions for the Administrative Office. The budget also provides for implementation of the actions of the Conference at this meeting with respect to new referee positions, changes in salaries and arrangements for existing referees, for 14 clerical positions to staff new referees' offices and those being converted from a part-time to a full-time status and 18 clerical positions for established referees' offices. The sum of \$800,000 is included to cover the cost of liberalized classification standards for law clerks and \$250,000 for liberalized classification standards for crier-law clerks.

The Conference authorized the Director of the Administrative Office to submit to the Congress a request for supplemental appropriations for pay costs and other supplemental appropriations for fiscal year 1969 as may be necessary. The Conference further approved the budget estimates for fiscal year 1970 and authorized the Director of the Administrative Office to amend the budget estimates for 1970, as necessary by reason of the enactment of the Federal Magistrates Bill and other pending legislation and for any purpose which could not be anticipated at the time of the Committee report.

JUDICIAL STATISTICS

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

PENDING CASES

The Conference approved the Committee recommendation that an immediate and concerted effort be made in every circuit and district to dispose promptly of all criminal cases pending over one year, excluding those involving fugitives or defendants otherwise unavailable for trial. The Conference directed the Director of the

Administrative Office to communicate with the Attorney General concerning the expedition of the criminal cases pending in the district courts and the Conference urged the circuit councils to give early consideration to this growing problem. The Committee had pointed out that in 1968 criminal cases pending in all districts increased another nine percent to a record of 14,763 cases, double the number pending ten years ago. More than 2,000 criminal cases other than fugitive cases were pending on district court dockets more than a year as of June 30, 1968.

Civil cases pending more than three years rose from 5,546 at the end of 1963 to 8,241 pending at the end of 1968. The Conference adopted the Committee recommendation that the circuit councils and district courts take all steps necessary to reverse this trend and to reduce the backlog of these cases.

STATISTICS IN THE COURTS OF APPEALS

The Conference reaffirmed its previous position that cross-appeals and other multiparty appeals should be separately docketed and separately counted statistically, both as a matter of sound docketing practice in relation to procedures and the collection of docketing fees and also in the assurance of comparability in statistical comparison. The Conference agreed with the Committee that in the case of a joint notice of appeal there would be only one appeal but each party is entitled to file his own separate notice of appeal and to raise questions not raised by other parties in which instances there are separate appeals deserving of separate docketing and consideration. The Conference also agreed that with regard to separate but related appeals which may be consolidated for purposes of argument or opinion, docket entries should be made only in the principal case with an appropriate cross reference on the other docket sheets so that all documents can be kept in one file and the impact on the workload of the clerk's office be kept to a minimum.

With regard to a request that a uniform method of processing prisoner petitions in the courts of appeals be considered, the Conference agreed with the Committee recommendation that each court of appeals once again review its docketing procedures and undertake to conform them to the procedures prescribed by the Conference in March 1964 (Conf. Rept., p. 38), at which time the Conference directed that there be maintained in the clerk's office

of the courts of appeals, in addition to the present docket, another record book entitled "Miscellaneous Record."

ADDITIONAL JUDGESHIPS

Judge Johnsen reported that the Committee had received communications from the Chief Judges of the Fourth and Sixth Circuits recommending additional circuit judgeships in these circuits. The Committee had also received a letter from the Chief Judge of the First Circuit outlining a prospective need for the addition of a circuit judgeship on a projection basis but containing no definitive recommendation. Judge Johnsen advised the Conference that the Committee had reviewed with care the situation in these courts and several other circuits in which the level of case filings in 1968 is arguably larger in workload than it should soundly be, even discounting prisoner petitions which are a significant part of the caseload in some circuits, particularly the Fourth. The Committee pointed out, however, and the Conference agreed that only within the past few months Congress has enacted a bill authorizing nine new circuit judgeships, and 10 additional circuit judgeships were authorized only two years ago. Additionally, there is an unevaluated factor in the courts of appeals, namely, the impact which a second law clerk for each judge may have on the capacity of the courts to sustain a higher level of case dispositions per judge. The Conference, accordingly, agreed to defer consideration of additional circuit judgeships at this time.

Judge Johnsen advised the Conference that the Committee had made a full and comprehensive review and survey of all of the district courts. Four years have elapsed since the Committee's last general survey of district judgeship needs and although many requests for additional judgeships have arisen on an emergency basis during these four years, none of the situations was found to be so critical as to require emergency action. Judge Johnsen stated that the Committee had studied the nature and extent of the accumulation of cases, the rate of attrition in the build-up of the backlog, the rate of dispositions as a matter of overall judicial performance as an aspect of the ability of the court to cope with its caseload, the trends in case filings and the comparative weighted caseload per judgeship with the awareness that the weighted caseload requires revision. In recognition of the policy of reviewing judgeship needs once every four years, the Committee also included as a delibera-

tive element a factor of projection. These factors, Judge Johnsen stated, considered in the light of the recommendations of the judicial councils of the circuits and the individual district courts fused themselves into what the Committee considered to be the demonstrably justifiable needs for judgeships in the district courts now and in the next four years, except as extraordinary developments may occur in some individual situations.

The Committee recommended and the Conference approved the recommendations for additional judgeships in the district courts as follows:

<i>First Circuit</i>	<i>Recommendation</i>
Puerto Rico-----	1
<i>Second Circuit</i>	
New York, Eastern-----	1
New York, Southern-----	5
<i>Third Circuit</i>	
New Jersey-----	1 (Plus 1 temporary judgeship).
Pennsylvania, Eastern-----	5 (Three temporary judgeships to be made permanent).
Pennsylvania, Western-----	2
Virgin Islands-----	1
<i>Fourth Circuit</i>	
Maryland-----	1
North Carolina, Eastern-----	1
South Carolina-----	1
Virginia, Eastern-----	1
<i>Fifth Circuit</i>	
Alabama, Northern-----	1
Alabama, Middle-----	1
Alabama, Middle & Southern-----	(The roving judgeship to be made a judgeship for the Southern District of Alabama only).
Florida, Southern-----	3
Georgia, Northern-----	3
Georgia, Southern-----	1
Louisiana, Eastern-----	2
Louisiana, Western-----	1
Texas, Northern-----	2
Texas, Eastern-----	2
Texas, Southern-----	1
Texas, Western-----	1
<i>Sixth Circuit</i>	
Kentucky, Eastern-----	1
Kentucky, Western-----	1
Michigan, Eastern-----	2
Ohio, Northern-----	1
Ohio, Southern-----	1

	<i>Recommendation</i>
<i>Seventh Circuit</i>	
Illinois, Northern.....	2
Indiana, Northern.....	1
Indiana, Southern.....	1
<i>Eighth Circuit</i>	
Missouri, Eastern.....	1
<i>Ninth Circuit</i>	
Arizona	1
California, Northern.....	2
California, Central.....	3
California, Southern.....	3
<i>Tenth Circuit</i>	
Colorado	1
Kansas	(Temporary judgeship to be made permanent).
New Mexico.....	1
<i>District of Columbia Circuit</i>	
District of Columbia.....	6 (These judgeships are recommended as needed unless the local criminal jurisdiction under Title 22 of the D.C. Code is transferred to another court.)

In light of the recommendations approved by the Conference, the Conference disapproved at this time two pending bills, H.R. 19019 which would provide two additional judgeships for the Fourth Circuit and S. 2905 which would provide two judgeships for the Sixth Circuit.

COURT ADMINISTRATION

Judge John Biggs, Jr., Chairman of the Committee on Court Administration, presented the Committee's report.

JUDICIAL SURVIVORS ANNUITY ACT

Judge Biggs reported to the Conference that pursuant to the authority given to the Committee at the March 1967 meeting (Conf. Rept., p. 15) to propose revisions to the Judicial Survivors Annuity Act, the Committee and members of the staff of the Administrative Office have had under consideration drafts of bills designed to bring the Judicial Survivors Annuity Act into line with the Civil Service Retirement Act; in particular, with those provisions relating to members of Congress.

Judge Biggs presented to the Conference for its preliminary consideration a draft bill which the Conference approved, in principle,

which would achieve this result. He advised the Conference that the proposed bill has not been approved at this time in all respects either by the Civil Service Commission or by the Senate Subcommittee on Improvements in Judicial Machinery. He advised that the Committee would keep the proposed draft under study and would bring it to the Conference for formal approval when it is in substantially final form.

INSPECTION OF JUDICIAL RECORDS

Judge Biggs reported that the Comptroller General of the United States conferred with the Committee in an effort to effect on site inspection of records of various judicial offices of the United States courts. The Comptroller General advised that he has this duty by law but up to the present has been able to discharge this function only at the seat of government. The Committee recommended and the Conference approved the recommendation that the Director of the Administrative Office enter into an agreement with the General Accounting Office for the proposed on site inspection of court records on a nationwide basis.

ADDITIONAL JUDGESHIPS

Judge Biggs advised the Conference that his Committee was in agreement with the recommendation of the Committee on Judicial Statistics which the Conference had approved for the creation of additional district court judgeships. The Committee on Court Administration had differed from the Committee on Judicial Statistics only with respect to the six judgeships recommended for the United States District Court for the District of Columbia. Judge Biggs' Committee would favor making these judgeships temporary until a determination had been reached as to whether local criminal cases would be transferred to some other court. In view of the prior approval by the Conference of the report on judicial statistics, this point was not pressed.

PLACES OF HOLDING COURT

The Conference approved S. 3263, 90th Congress, and H.R. 16993, 90th Congress, which would provide for the holding of terms of the United States District Court for the District of Oregon at

Coquille. The Conference noted that these bills had been approved by the Judicial Council of the Ninth Circuit.

The Conference disapproved H.R. 16867 and H.R. 17184, both 90th Congress, which would provide for the holding of court by the United States District Court for the Eastern District of Pennsylvania at Easton and Philadelphia or their environs. The Conference noted that these bills had also been disapproved both by the judges of the District Court for the Eastern District of Pennsylvania and by the Judicial Council of the Third Circuit.

TRANSFER OF AND ELIMINATION OF DIVISIONS

The Conference approved H.R. 16975, 90th Congress, which would transfer Haywood County from the Western to the Eastern Division of the Western District of Texas. The Conference noted that this proposed bill had also been approved by the Judicial Council of the Sixth Circuit.

The Conference also approved the recommendation of the Judicial Council of the Ninth Circuit that the divisions of the Eastern and Western Districts of Washington and the divisions of the District of Idaho be eliminated. It approved placing this recommendation in the omnibus judgeship bill proposed by the Committee on Judicial Statistics and approved by the Conference.

MATTERS RELATING TO JUDGES

Judge Biggs reported to the Conference that S. 3055 had been introduced in the Senate by Senator Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery, and that hearings had been held on this proposed bill which is in five titles and provides for a national commission to investigate the official conduct of any judge, for the retirement of judges, both for age and disability, for revisions of the Judicial Survivors Annuity Act, for disclosure by judges of financial assets and for the methods of selection of chief judges of circuits and districts. Judge Biggs advised that Senator Tydings plans to revise S. 3055 in the light of hearings that have been conducted and that the revised bill will be introduced in the 91st Congress along with revisions of S. 3071 and S. 3061 providing, among other things, for the mandatory retirement of judges.

Judge Biggs advised the Conference that the Committee will

continue to consider these bills, as revised, and report to a subsequent meeting of the Conference.

REVIEW OF I.C.C. ORDERS

At the February meeting of the Conference (Conf. Rept., p. 12), the Conference approved S. 2687 which would provide that instead of review of orders of the Interstate Commerce Commission by three-judge district courts, jurisdiction for review of I.C.C. orders would be placed in the respective United States court of appeals, thereby eliminating direct appeal to the Supreme Court. Judge Biggs reported that this bill had now passed the Senate with an amendment providing that for good cause shown a court of appeals may extend the time for filing a petition for review for an additional period not exceeding sixty days. The Conference approved the bill as amended.

In response to an inquiry of Chief Judge Harper as to how court reporters could be procured and paid if a court of appeals required a hearing with oral testimony on the issue of whether a stay of an I.C.C. order should be granted, the Conference requested the Chairman to take up this question with the Chairman of the Budget Committee to assure that courts of appeals have an opportunity to utilize the services of a court reporter not only in such I.C.C. cases but whenever they might be needed for purposes of taking testimony in courts of appeals.

CONTRACTS WITH PRIVATE REPORTING COMPANIES

Judge Biggs reported to the Conference that the Director of the Administrative Office had discussed with the Committee the desirability of enacting a statute to provide that a chief judge of a district court could enter into a contract with a private reporting company at rates approved by the Judicial Conference to perform such reporting duties as may be deemed necessary by the inability of the court reporters of the court to perform such duties. The Conference approved the referral of this question to the Committee on Supporting Personnel for study and recommendation.

COURT REPORTERS ACT

Judge Biggs advised the Conference that Judge Hastings, Chairman of the Committee on the Implementation of the Criminal Justice Act, had called to the Committee's attention a proposed

amendment which would enable Criminal Justice Act defendants to obtain the benefits of 28 U.S.C. 753 without the need for additional eligibility screening. The amendment would automatically accord benefits available under the present statute to the Criminal Justice Act as well as to the *in forma pauperis pro se* appellant thereby eliminating the need for a declaration of *in forma pauperis* status. The Conference approved this legislative proposal and a recommendation that it be enacted by the Congress.

OTHER LEGISLATIVE PROPOSALS

The Conference considered S. 1195 which would enact the Office of Administrative Ombudsman and S. 3123 which would establish a two-year study of the Office of Administrative Ombudsman and determined that since neither of these bills would affect directly the administration of the United States Courts, the Conference would refrain from expressing an opinion respecting them.

The Conference disapproved H.R. 15326 which would abolish the Commission on Executive, Legislative and Judicial Salaries established by Section 225 of the Federal Salary Act of 1967.

The Conference voted its disapproval of the following legislative proposals, all relating to the tenure or selection of justices and judges or limiting the powers of the courts.

- H.J. Res. 1269, 90th Cong. 2d Sess. To amend the Constitution to provide other methods of selection of judges (other than judges of the Supreme Court) and specifying qualifications.
- H.R. 17296, 90th Cong. 2d Sess. To provide for the election of circuit and district judges under the provisions of the Article of Amendment to the Constitution proposed by H.J. Res. 1269, 90th Cong. 2d Sess.
- H.J. Res. 418, 90th Cong. 1st Sess. To amend the Constitution to provide that Congress by two-thirds vote of both houses can override decisions of the Supreme Court. Identical with H.J. Res. 988.
- H.J. Res. 420, 90th Cong. 1st Sess. Identical with H.J. Res. 418 and H.J. Res. 998.
- H.J. Res. 443, 90th Cong. 1st Sess. To amend the Constitution to provide that the Supreme Court shall not have the power to decide an act of Congress, State legislature, or provisions of State Constitutions unconstitutional except upon a concurring vote of two-thirds of the members of the full court.
- H.J. Res. 838, 90th Cong. 1st Sess. Constitutional amendment to deprive the Supreme Court of the power to declare any act of Congress or State legislature invalid as unconstitutional except by concurring votes of at least two-thirds of the members of "the full court."
- H.J. Res. 841, 90th Cong. 1st Sess. To amend the Constitution to provide for reconfirmation of all Article III judges every six years and providing qualifications.

- H.J. Res. 988, 90th Cong. 1st Sess. To amend the Constitution to provide that Congress by a two-thirds vote of both houses can override decisions of the Supreme Court.
- H.J. Res. 1094, 90th Cong. 2d Sess. Amendment requiring approval of Justices of the Supreme Court by Congress; provisions for petitions for removal, referendum and recall.
- H.J. Res. 1127, 90th Cong. 2d Sess. Proposed constitutional amendment to authorize Congress by a two-thirds vote of both houses to overrule decisions of the Supreme Court.
- H.J. Res. 1149, 90th Cong. 2d Sess. To amend the Constitution to provide for concurrence of not less than two-thirds of the Justices of the Supreme Court to decide whether an Act of Congress or of a State legislature is unconstitutional.
- H.J. Res. 1172, 90th Cong. 2d Sess. Same effect as H.J. Res. 1149.
- H.J. Res. 1220, 90th Cong. 2d Sess. To amend the Constitution of the United States to provide terms of office of judges of Supreme and "inferior" courts to be for eight years.
- H.R. 12992, 90th Cong. 1st Sess. To add members to the Supreme Court of the United States, not to exceed 15, including the Chief Justice, by appointing associate justices, vacancies not to be filled, and providing qualifications.
- H.R. 15555, 90th Cong. 2d Sess. To establish qualifications for persons appointed to the Supreme Court.
- H.R. 16365, 90th Cong. 2d Sess. To limit appellate jurisdiction of the United States Supreme Court. Bill provides that Supreme Court cannot declare unconstitutional any statute, State or Federal, or provision of a State constitution, or reverse any decision or rule made by the Supreme Court except on the concurrence of the full membership.
- H.J. Res. 1279, 90th Cong. 2d Sess. To amend the Constitution to provide for popular election of Justices of the Supreme Court and other Federal courts.
- H.J. Res. 1282, 90th Cong. 2d Sess. To amend the Constitution to provide for the popular election of Judges of the Supreme Court.
- H.J. Res. 1369, 90th Cong. 2d Sess. To amend the Constitution of the United States to require the concurrence of not less than two-thirds of the Supreme Court to decide whether an act of Congress or State legislature is unconstitutional.
- H.J. Res. 1370, 90th Cong. 2d Sess. To amend the Constitution of the United States relating to the confirmation and reconfirmation of Justices of the Supreme Court.
- H.J. Res. 1373, 90th Cong. 2d Sess. To amend the Constitution of the United States to provide terms of eight years for Justices of the Supreme Court.
- H.J. Res. 1374, 90th Cong. 2d Sess. To amend the Constitution of the United States to require that Justices of the Supreme Court be reconfirmed every six years.
- H.R. 18198, 90th Cong. 2d Sess. To amend Title 28, United States Code, to establish certain qualifications for persons appointed as judges or justices of the United States.
- H.J. Res. 1437, 90th Cong. 2d Sess. To amend the Constitution for selection of Supreme Court justices to be selected by a conference convened by the President, conference to consist of chief judges or chief justices of

the States' highest appellate courts and the chief judge of each circuit, the senior chief judge of the federal circuits to preside. Conference shall transmit to the President names of five or more persons deemed qualified to fill vacancy.

- H.J. Res. 1423, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1437, *supra*.
- H.J. Res. 1438, 90th Cong. 2d Sess. To amend the Constitution to provide a method for nominating and electing justices of the Supreme Court; justices to be selected by the chief justices or chief judges of all the states, names to be submitted to select one upon the vote of the majority of the House and Senate for a term of ten years only; and the judges of the Supreme Court shall select one of their number as Chief Justice.
- H.J. Res. 1424, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1438, *supra*.
- H.J. Res. 1426, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1438, *supra*.
- H.J. Res. 1427, 90th Cong. 2d Sess. Substantially same as H.J. Res. 1438, *supra*.
- H.J. Res. 1428, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1438, *supra*.
- H.J. Res. 1439, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1438, *supra*.
- S.J. Res. 194, 90th Cong. 2d Sess. Substantially the same as H.J. Res. 1437, *supra*.
- H.R. 18841, 90th Cong. 2d Sess. To amend Title 28, U.S.C., to provide qualifications for justices and judges of the United States.

NATIONAL FOUNDATION OF LAW

Judge Biggs advised the Conference that several bills were pending which would establish a National Foundation of Law—S. 2602, S. 2607 and H.R. 13584.

The Conference considered H.R. 13584 and voted its disapproval of it in its present form. It noted the report of the Chairman that S. 1033 which would set up within the Department of Justice an Office for Judicial Assistance is in the process of being redrafted and will be submitted for future Conference consideration.

COMITTEE ON SUPPORTING PERSONNEL

Judge Theodore Levin, Chairman of the Committee on Supporting Personnel, presented the Committee's report.

ADMINISTRATIVE ASSISTANTS TO CIRCUIT CHIEF JUDGES

The Conference affirmed its support of S. 3062 providing for the position of administrative assistants to the chief judge of each

of the courts of appeals. This legislation carries out a recommendation approved by the Conference at its February 1968 meeting (Conf. Rept., p. 31). The Conference agreed that if the bill is not passed by the 90th Congress, its reintroduction in the next Congress and its enactment should be vigorously pursued.

COURT REPORTERS

The Conference reaffirmed its action at the February 1968 meeting (Conf. Rept., p. 31) that Title 28, United States Code, Section 753(e) be amended to eliminate the maximum and minimum limitations upon the annual salary of reporters and to give the Conference the authority to fix salaries of official court reporters.

The Conference noted that H.R. 16805 had been introduced in the 90th Congress in pursuance of this recommendation. The Conference agreed that if the bill is not passed in the 90th Congress, its reintroduction in the 91st Congress should be urged. In order to afford some relief in the meantime, the Conference agreed with the Committee recommendation that transcript rates should be increased as follows:

- (1) Daily copy from the present rate of \$1.50 per page for the original to \$2.00 with a flat rate of \$.50 per page for each copy after the original;
- (2) Ordinary copy from the present rate of \$.90 per page to \$1.00 per page for original copy, with a flat rate of \$.40 per page for each copy after the original.

The Conference considered and disapproved a request from the Chief Judge of the Northern District of California for an additional court reporter, noting that the court now has eight active judges and that eight reporters are authorized.

PERSONNEL OF THE COURTS OF APPEALS

Judge Levin reported that he had requested the chief judge of each of the courts of appeals to submit a projection of the requirements of his court for a five-year period. He also noted that while the Congress had appropriated sufficient funds to permit employment of a second law clerk for each active circuit judge who had requested such assistance, the appropriation for fiscal year 1969 did not provide for any additional deputy clerks or additional secretarial assistance for the courts of appeals. The Conference thereupon approved the Committee recommendation reaffirming prior Conference decisions communicated on two occasions to the Con-

gress for the authorization of 33 secretarial positions for the courts of appeals, together with the necessary appropriations to cover these positions. The Conference also authorized the request for 36 additional deputy clerk positions in the courts of appeals.

The Conference agreed with the Committee action in disapproving requests for messengers for the courts of appeals, noting the action of the Conference at the September 1967 meeting (Conf. Rept., p. 83) that no additional messenger positions should be sought and should a second law clerk be authorized for each circuit judge, no replacement would be made of the existing messenger position for the judge receiving such additional law clerk.

LIBRARIANS AND LIBRARY FACILITIES

Judge Levin reported that he had conferred with Judge Biggs, Chairman of the Committee on Court Administration, concerning the need for a study of central libraries existing in various federal courthouses. As a result, the Committee recommended and the Conference approved the recommendation that the Director of the Federal Judicial Center be consulted as to whether the Center might find it appropriate to undertake a complete study of the libraries, librarians and related matters and if the Center is unable to undertake the responsibility, the Committee, in cooperation with the Committee on Court Administration and the Administrative Office, should engage the services of professional assistance and request an appropriation for that purpose. Pending a resolution of this matter, the Conference agreed that consideration of grades for librarians and assistant librarians be deferred.

SALARY LIMITS FOR LAW CLERKS

Judge Levin reported that his Committee had undertaken a comprehensive survey of recently adopted salary schedules for law graduates eligible for law clerk positions. As a result, the Committee recommended to the Conference and the Conference approved an increase in JSP grades for law clerks, secretary-law clerks and crier-law clerks, as follows:

Senior Law Clerk	
JSP-12 -----	\$12,174

A member of the bar of a state, territorial, or Federal court of general jurisdiction who qualified for Associate Law Clerk (JSP-10 or JSP-11) may be appointed as, or promoted to, Senior Law Clerk JSP-12 when he has completed

one additional year after graduation from law school in the practice of law, in legal research, in legal administration at JSP-10 or JSP-11, or the equivalent.

Secretary-Law Clerk

JSP-12 ----- \$12,174

Minimum Qualifications—Professional training in law equivalent to that represented by graduation from a law school of recognized standing; admission to the bar of a state, territorial, or Federal court of general jurisdiction; legal experience of at least one year after graduation from law school; also at least five years' experience as a secretary of which at least three years should be as a legal secretary involving duties that demonstrate the ability to take rapid dictation and a capacity for difficult and responsible assignments.

Associate Law Clerk

JSP-10 ----- \$9,297

or

JSP-11 (As the Judge may determine) ----- 10,203

Experience: One year's experience in the practice of law, in legal research, legal administration, or equivalent experience received after graduation from law school. Major or substantial legal activities while in military service may be credited, on a month-for-month basis whether before or after graduation but not to exceed one year if before graduation.

Substitution: A law graduate (as above), either admitted to the bar or awaiting examination, is eligible as Associate Law Clerk JSP-10 or JSP-11, provided he has:

- (a) Graduated within the upper third of his class from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools; or
- (b) Had experience on the editorial board of a law review of such a school; or
- (c) Graduated from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools with an LL.M. degree; or
- (d) Demonstrated proficiency in legal studies which in the opinion of the appointing judge is the equivalent to (a), (b), or (c) above.

Junior Law Clerk

JSP-9 ----- \$8,462

Minimum Qualifications—Professional training in law, equivalent to that represented by graduation from a law school of recognized standing, but with little or no experience.

Clerk-Law Clerk

JSP-9 ----- \$8,462

Minimum Qualifications—Professional training in law, equivalent to that represented by graduation from a law school of recognized standing, but with little or no experience.

The Conference further authorized the Chairman of the Budget Committee to seek a supplemental appropriation for the purpose of these increased grades and determined that such increases should take effect immediately upon receiving the supplemental appro-

priation and be made available to present law clerks as well as to those subsequently appointed. The Conference also agreed that if the additional appropriation is obtained, the statutory limitation on the combined salaries of secretaries and law clerks should be increased accordingly.

PERSONNEL FOR DISTRICT COURT CLERKS' OFFICES

Judge Levin advised the Conference that the Jury Reform and Selection Act of 1968 will add to the burdens of the clerks' offices in the district courts. These clerks' offices are already heavily burdened because of other factors, particularly the increases in filings of prisoner petitions. Judge Levin noted that a supplemental appropriation request has been submitted to the Congress which would provide for 166 deputy clerks to implement the Jury Selection and Service Act of 1968. The Conference authorized the Director of the Administrative Office and the Budget Committee to review the action taken on the supplemental appropriation and in light thereof to make such adjustments as may be necessary in the number of new deputy clerk positions requested for fiscal year 1970.

QUALIFICATIONS FOR PROBATION OFFICERS

At the present time the Judicial Salary Plan includes minimum qualification standards for the appointment of probation officers requiring that the appointee possess a college degree and that he have either two years of experience in personnel work for the welfare of others or two years of specialized graduate training or specific combinations of experience and advance training. The standards, however, provide further that any other qualifications are acceptable if in the opinion of the appointing judge they are equivalent to the combination of experience and advance training specified in the plan. The Conference agreed to amend the Judicial Salary Plan with respect to qualifications for appointment of probation officers so as to provide that in lieu of specific requirements of advance training and experience, the appointee may possess qualifications which in the opinion of the appointing judge and the Director of the Administrative Office, subject to review by the appropriate committee of the Conference, are equivalent to those specified in the plan.

INTERPRETERS

The Conference authorized the establishment of the position of interpreter in Grade JSP 5 (\$5,732 per annum) for the United States District Court for the Southern District of Florida.

COURT REPORTER—SECRETARY POSITIONS

The Conference approved the request of Chief Judge Guthrie F. Crowe of the United States Court for the Canal Zone to divide his present combination position of court reporter-secretary into two separate positions. The Conference authorized the Judge of the District Court of Guam to divide his present combination position of court reporter-secretary into two positions.

NATIONAL PARK COMMISSIONER

The Conference noted and approved a request of the Chief Judge of the Western District of Kentucky that the annual salary of the commissioner in Monmouth Cave National Park be increased from \$1,000 to \$2,000. In so doing, the Conference noted that the annual salary of this position had at one time been \$3,000 but because of reduced caseload the court had requested a salary reduction to \$1,000. The Conference noted that the court is now of the view that the caseload has developed to the point where the position should properly be raised to \$2,000.

EXPENSES OF JURY COMMISSIONERS

In execution of the statutory responsibility to establish schedules for expenses of jury commissioners, the Conference agreed—

- (a) Inasmuch as there is no provision for clerical assistance or office expenses for jury commissioners, all necessary assistance should be provided by the respective clerks of court;
- (b) Necessary travel and subsistence should be paid in accordance with Government Travel Regulations. These regulations now govern the travel and subsistence of supporting personnel and should apply to jury commissioners.

RULES OF PRACTICE AND PROCEDURE

Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, reported on the work of the Committee and its advisory committees.

Judge Maris stated that the Chief Justice has appointed Professor Bernard J. Ward, former reporter to the Advisory Committee on Appellate Rules, as reporter to the standing Committee.

He noted that the Committee on Appellate Rules has completed its assignment and that the Federal Rules of Appellate Procedure have gone into effect as of July 1, 1968. The advisory committee has been discharged and any suggestions relating to the appellate rules will be considered by the standing Committee.

Judge Maris stated that the Advisory Committee on Civil Rules is continuing to receive comments and suggestions from the bench and bar on the tentative draft of revised discovery rules which was published in November 1967. The final date for comments is January 1, 1969 and soon thereafter the Committee hopes to complete its consideration of the suggestions and comments and to present a tentative draft to the standing Committee in the spring of 1969.

The Advisory Committee on Criminal Rules is continuing to study those phases of criminal procedure on which it has not heretofore reported, particularly, the arraignment and other pretrial procedures.

The Advisory Committee on Admiralty Rules, with the assistance of its newly appointed reporter, Professor Preble Stolz, is giving consideration to the operation of the unified civil rules with respect to maritime cases and is also studying the supplemental admiralty rules with a view to their improvement and enlargement, if needed.

The Advisory Committee on Bankruptcy Rules is continuing its work. Professor Lawrence P. King and Professor Vern Countryman have been appointed associate reporters of the committee to work with Professor Kennedy who is in general charge of the work.

The Advisory Committee on Rules of Evidence is preparing a tentative draft of uniform rules of evidence which it hopes to have ready for publication and public discussion early in 1969.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The report of the Advisory Committee on Intercircuit Assignments was presented by the Committee Chairman, Judge Jean S. Breitenstein.

Judge Breitenstein advised that the Committee has recommended 28 assignments in the period from February 9, 1968 to September 6, 1968, the assignments to be undertaken by 24 judges.

One senior circuit judge accepted three assignments but for personal reasons will be unable to fulfill two of them. Two other senior circuit judges each accepted two assignments but because of calendaring problems, the service of one of them will not be needed at the designated time.

The Chief Justice approved all assignments recommended by the Committee except two to district courts in which unusual conditions developed after the Committee made its recommendations.

Eight senior judges accepted intercircuit assignments.

Judge Breitenstein pointed out that special programs designed to clear heavy dockets appeared to be increasing in number. The evaluation of such programs and the recruitment of the necessary judges present perplexing questions. The Committee interprets its instructions from the Conference to give it no freedom to evaluate such programs or to determine priorities between programs competing for the available judgepower.

Judge Breitenstein reviewed the work of the Committee in the period from March 11, 1960 to September 6, 1968. During that period the Committee recommended 432 assignments. Of these, 69 were undertaken by senior circuit judges and 81 by senior district judges. The two circuits contributing the most judges in active service for intercircuit assignments were the Ninth with 45 and the Eighth with 31. The two circuits contributing the fewest active judges for intercircuit assignments were the Seventh with five and the Third with 10. The two circuits to which the greatest number of assignments were made were the Fifth with 113 and the Second with 67. The two circuits to which the least number of assignments were made were the Eighth with three and the Fourth with four. About 35 percent of the assignments were made to courts of appeals and 65 percent to district courts.

In evaluating the work of the Committee, Judge Breitenstein pointed out that the evaluation of intercircuit assignments on the basis of trials and trial days is not realistic and may be misleading because it neither includes nor reflects the large amount of important judicial work done in addition to trials. Nevertheless, he asserted, such statistical evaluation is significant. For the past ten-year period the average cost per trial conducted by a judge assigned from without a circuit was \$250 and the average per trial day was \$114. According to the reports of the Administrative Office, the annual recurring cost of one district judgeship is

\$84,900. For a cost 5.25 times that amount, intercircuit assignments resulted in 1,784 trials consuming 3,901 trial days. If a trial judge would work 200 days a year trying cases, the cost per trial day on the basis of the annual recurring cost of a district judgeship would be \$424. This compares with \$114 per trial day on intercircuit assignments.

Judge Breitenstein advised the Conference that he had testified before the Senate Subcommittee on Improvements in Judicial Machinery on the subject matter of intercircuit assignments. He also quoted from a recent report of the American Bar Foundation which states that "fuller utilization of temporary intercircuit assignments can be made within the present circumstances."

Judge Breitenstein concluded on behalf of the Committee that it is their view that the statistics indicate that intercircuit assignments play an important and valuable role in the operation of the federal judicial system. The present system, however, operates largely on an ad hoc personal arrangement basis. Such a system can not and will not produce the most advantageous use of judicial personnel. In view of these circumstances, the Committee made six recommendations to the Conference, all of which were approved by the Conference, as follows:

- (1) Adopt the policy that a federal judge has a responsibility, first, to the particular court of which he is a member, second, to the other courts within his own circuit, and, third, to the courts outside his circuit.
- (2) Except for emergency situations, courts in need of help, through the chief judge of the circuit, shall forecast that need by at least six months and advise the committee of the times and places where help is required and of the number of judges desired.
- (3) When there are conflicting requests for the available judges, the committee shall determine the relative priorities of such requests.
- (4) The practice of intercircuit assignments of active judges on a personal arrangement basis is not approved.
- (5) The committee shall make requests of the Chief Judges of the circuits for judges available to respond to requests for help. The results of such requests shall be reported to the Conference.
- (6) No judge shall be assigned out of his circuit without his consent and, in the case of active judges only, without the consent of the Chief Judge of his circuit.

Judge Breitenstein stated that the Advisory Committee on Intercircuit Assignments functions on a continuing basis in view of the nature of its assignment. He stated that because of the recommendations of the Committee on Committees which the Conference had adopted which calls for the reorganization of committee

structure, the Advisory Committee has refrained from making recommendations except as to senior judges on assignments scheduled to begin after January 1, 1969. The Conference directed the Committee to continue to function as it has, without reference to any cut-off date, until such time as the committee membership is replaced. Any assignments made by the present committee which are approved by the Chief Justice shall not be subject to re-review by a newly organized committee.

OPERATION OF THE JURY SYSTEM

Judge Irving R. Kaufman, Chairman of the Committee on the Operation of the Jury System, presented the report of the Committee.

PREJUDICIAL PUBLICITY

At the prior meeting of the Conference in February 1968 (Conf. Rept. p. 16), Judge Kaufman presented to the Conference the report of the subcommittee which had been charged with preparing guidelines or taking other corrective action to assure federal juries from prejudicial publicity in light of the Supreme Court decision in *Shepherd v. Maxwell*, 348 U.S. 333. The Conference at that time agreed to accept the report for study, to circulate it immediately to all federal judges and to release it to the news media with the request that all comments and suggestions be made prior to July 1, 1968. In accordance with the Conference's instructions, Judge Kaufman reported that the responses received as a result of the February action of the Conference were generally enthusiastic over the report, as written, and that an overwhelming number expressed views most favorable to all its recommendations. Views were received from 58 individual judges (writing for themselves and not the court), of whom 46 fully approved the report and 12 approved in part or with some relatively minor qualification or suggestion. Three courts totaling 24 judges also approved the report in part or with similar qualifications or suggestions. Some individual comments proposed the extension of the recommendation to encompass additional subjects not covered in the report or more stringent restraints on the press. In addition, the First, Fourth, Fifth and Eighth Circuit Conference each approved the report by a total of 118 judges in favor with 32 opposed. The Sixth Circuit Conference

permitted nonjudicial members to vote with the judges of the circuit. The report was there approved by a narrow margin.

Judge Kaufman advised that the Committee had made some changes in the report that was circulated after the February meeting. The Conference approved the report as amended and authorized its immediate release.

JURY SELECTION AND SERVICE ACT

Following the action of the Conference at its February 1968 session (Conf. Rept., p. 16), the Committee undertook the task of preparing guidelines to assist the district courts in conforming to the requirements of the new legislation. These guidelines were prepared and distributed to all federal judges and district court clerks. The members of the Committee and the Administrative Office have also attempted to assist the district courts in the preparation of their plans which are required by the Jury Selection and Service Act of 1968.

Judge Kaufman stated that the Committee had considered the district jury plans which describe as a daily compensation for jury commissioners a daily rate within the statutory maximum without specifying any pro rata amount of compensation for a period of service of less than the usual 8-hour day, and with respect thereto the Committee had drafted for Conference action the following resolution:

Be it resolved, That in respect to those district jury plans which have described as the daily compensation of citizen jury commissioners a daily rate within the statutory maximum without specifying any pro rata amount of compensation for a period of service of less than the usual 8-hour day, such provision shall be interpreted to mean that the jury commissioner shall be compensated at a prorated amount for any period of less than 8 hours in any given work day.

Be it further resolved, That the Administrative Office be instructed to take whatever steps are necessary to prepare and distribute an appropriate voucher for jury commissioners in lieu of the present version of AO Form 60.

The Conference approved the foregoing resolution of the Committee.

Judge Kaufman also stated that the Committee had distributed a form of questionnaire and related documents to be sent to the prospective juror as part of the guidelines. After evaluating the comments received on this questionnaire form and revising it in the light of those comments, the Committee presented the question-

naire for Conference action and the Conference approved the Juror Qualification Questionnaire as presented to it.

PILOT STUDY ON UTILIZATION OF JUROR TIME

At the September 1966 session of the Conference 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 the jury requirements and to reduce costs (Conf. Rept., p. 57).

Judge Kaufman reported that he has been able to utilize the facilities and resources of the American Bar Foundation which has assigned a research attorney to undertake the pilot project which is now under way in the Western District of Missouri.

ADMINISTRATION OF THE PROBATION SYSTEM

The report of the Committee on the Administration of the Probation System was presented by the Committee's Chairman, Chief Judge Walter E. Hoffman.

SENTENCING INSTITUTE

At the February 1968 session the Conference approved the plans of the District of Columbia Circuit for holding a sentencing institute in the fall of 1968 (Conf. Rept., p. 30). Judge Hoffman presented the proposed agenda for the institute to be held November 22-23, 1968 for Conference consideration and the Conference voted its approval of the proposed agenda.

BACKGROUND INVESTIGATION OF APPOINTEES

Judge Hoffman advised that it has been the practice for many years for the Administrative Office to request the Attorney General for a background investigation by the Federal Bureau of Investigation of each person appointed to the position of probation officer. Judge Hoffman stated that his Committee had taken note of the fact that each district court relies not only on the performance of its own probation officers but on the performance of the entire probation system. It is a rare occasion when a presentence investigation can be completed for any court without the probation officer calling

into action the probation officer in one or more other districts. Because of the mobility of our population, a person placed on probation in one district is likely to be supervised during the course of his probation in one or several other districts. The character of a person appointed as a probation officer is of concern not only to the court making the appointment but to every court in the federal establishment.

Judge Hoffman stated that since the policy of the Director of the Administrative Office requesting background investigations of appointees had begun when the Probation Division was part of the Department of Justice, the Judicial Conference had never formally approved this policy with respect to the investigation of the background of each person appointed to what is clearly a sensitive position. The Conference instructed the Director of the Administrative Office to continue this policy and to arrange for a full investigation by the Federal Bureau of Investigation of the background of every proposed appointee. The Conference further urged that district courts should wherever feasible have such investigation accomplished prior to appointment.

DEFERRED PROSECUTION

Judge Hoffman reported that the Committee's study of deferred prosecution and the plan for preprosecution probation was continuing but the Committee was of the view that the ramifications of this subject was such as to require more extensive study than can be afforded by any one committee of the Conference. The Chairman requested and the Conference granted him leave to discuss with the Director of the Federal Judicial Center the matter of deferred prosecution with a view toward the possibility of a study, in depth, of this problem by the Center.

ADMINISTRATION OF THE CRIMINAL LAW

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

PERSONS ACQUITTED ON GROUNDS OF INSANITY

Judge Edwards advised the Conference that a subcommittee was studying the bills now before the Congress providing for the commitment of persons acquitted on the grounds of insanity. He

reminded the Conference that at the September 1967 meeting he had discussed S. 1007 and that the Conference had reaffirmed its approval of the principle of the proposed legislation (Conf. Rept., p. 79). The subcommittee requested further time for the study of the pending bills and of a draft version of a proposed bill prepared by the Administrative Office. The Conference expressed its agreement with the request for further time in which to study this subject for report to the Conference at its next session.

BAIL REFORM ACT

Several additional bills have been introduced in the 90th Congress, Judge Edwards reported, relating to problems which have arisen in the administration of the Bail Reform Act. These bills have all been referred to a subcommittee chaired by Judge Chilson for a comprehensive study to be based on the experiences both of federal judges and of the Department of Justice in the administration of the Act. The conference expressed its agreement with such a study and deferred consideration of any of the pending legislative proposals at this time.

FEDERAL MAGISTRATES BILL

Judge Edwards advised the Conference that the Federal Magistrates Bill previously approved by the Conference (Conf. Rept., March 1967, pp. 38-40) had passed the Senate in substantially the form approved by the Conference and was pending in the House of Representatives. He stated that the House Judiciary Committee had amended the bill in certain minor respects but had preserved all of its major features.

The Conference expressed its approval with the House amendments and directed that an appropriate communication of its action be transmitted to the Chairman of the Committee on the Judiciary of the House of Representatives.

CIVIL DISORDERS

The Conference was advised that the Committee has been concerned with the serious problem that has faced the administration of justice in areas of riots or civil disorders. The problems of according accused persons prompt release proceedings and preliminary hearings and of assigning counsel where necessary placed a severe strain on the judicial machinery.

The conference noted that the area of possible federal jurisdiction in respect to civil disorder emergencies has recently been extended by the provisions of Title I and Title X of Public Law 90-284. The Conference, therefore, directed that this problem be brought to the attention of the Federal Judicial Center as a possible area of study.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT

Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act, presented the Committee's report to the Conference.

APPOINTMENTS AND PAYMENTS

Judge Hastings presented to the Conference the report of the Administrative Office on appointments and payments under the Criminal Justice Act through June 30, 1968. This report reflects that the Administrative Office during fiscal year 1968 received 25,334 orders appointing counsel under the Criminal Justice Act. Because other orders of appointment made prior to June 30 will be received by the Administrative Office during the early months of fiscal year 1969, these figures can not be regarded as final. For the same reason, cost figures for fiscal year 1968 are not final.

During 1968 the Administrative Office paid vouchers submitted under the Criminal Justice Act in the aggregate amount of \$3,887,266. The district courts during 1968 authorized investigative, expert and other contractual services estimated to cost \$83,116. The chief judges of the courts of appeals approved 24 claims for protracted representations during the year.

After considering the report of the Administrative Office, the Conference authorized the Director to distribute copies of the report to all federal judges, as well as to the Chief Judge of the District of Columbia Court of General Sessions and to the Chief Judge of the District of Columbia Court of Appeals.

STATUTORY AMENDMENTS

At the February meeting of the Conference Judge Hastings advised of the completion of the survey report on the operation of the Act undertaken by the University of Chicago School of Law under the direction of Professor Dallin Oaks (Conf. Rept., p. 25). Judge

Hastings stated to the Conference that the subcommittee chaired by Judge Harvey M. Johnsen had now made a thorough study of the Oaks' report and had met on several occasions with representatives of the Department of Justice to consider methods of meeting the suggestions and criticisms made in the Oaks' report as well as to comply with the mandate of the Congressional Conference Committee that the Department of Justice, in collaboration with the Judicial Conference, shall report to the Congress on the merits of an assigned counsel system as compared with a public defender system.

Since the Department of Justice is not yet ready to make a final determination on the comparative merits of the two systems and since Judge Hastings' Committee shares this position, the Conference authorized the Committee to continue its study, in collaboration with the Department of Justice, in the expectation that a final report may be ready for consideration in 1969.

Judge Hastings referred to the Conference action in 1967 (Conf. Rept., p. 78) at which the Conference took cognizance of the many expressions of opinion from many parts of the country that the Criminal Justice Act should be amended to include representation of defendants in post conviction and ancillary matters, including habeas corpus, Section 2255 and revocation of probation proceedings. Judge Hastings stated that the subcommittee had completed its study and recommendations of proposed amendments to the Criminal Justice Act and Judge Hastings presented these proposed amendments to the Conference. These amendments specifically bring within the purview of the Act probation revocation proceedings; they provide for the possibility of compensation of counsel appointed from the approved panel who may have represented a defendant after arrest but prior to arraignment; they specifically include defender organizations as well as legal aid agencies; they provide for compensation to counsel for representation in ancillary matters appropriate to the proceedings; they recommend an increase in the rate of compensation in the light of the present price structure without altering the basic principle of the Act that the rates should not be compensatory in the normal sense and they increase the maximum amount which may be paid for representation. They include the costs of transcripts authorized by the court as a reimbursable expense and they provide a different standard for excess payments approved by the chief judge of the circuit. They

extend the excess payment provision to appellate proceedings and the use of expert services. The amendments also provide for compensation to assigned counsel when a full-scale evidentiary hearing is required in connection with representation in habeas corpus and Section 2255 matters.

After consideration of the proposed amendments, the Conference voted approval thereof and directed transmission of these amendments to the Congress and the Attorney General.

GUIDELINES

The Conference agreed with the recommendation of the Committee that sufficient experience has now been gained in the operation of the Act to make it feasible to prepare guidelines in the administration of the Act for the use of judges, clerks of court and commissioners. The Conference noted that the Chairman of the Committee had appointed a subcommittee to study and prepare such guidelines.

NARCOTIC ADDICT REHABILITATION ACT

The Conference noted that Titles I, II and III of the Narcotic Addict Rehabilitation Act provide for the appointment of counsel. Since Title I and Title II cases are criminal in nature, the Conference was of the view that such cases already fall within the coverage of the Criminal Justice Act. Section 313 of Title III of the Act provides that counsel assigned by the court in civil commitment proceedings shall be entitled to reasonable compensation in an amount to be determined by the court and to be paid upon order of the court out of such funds as may be provided by law. The Conference was of the view that civil commitment proceedings under Title III do not properly belong within the purview of the Criminal Justice Act but that courts should be guided in fixing compensation under Title III by the rates established by the Criminal Justice Act. The Conference also agreed that courts should follow the format of orders used under the Criminal Justice Act in Title III cases.

BANKRUPTCY ADMINISTRATION

Judge Edward Weinfeld, Chairman of the Committee on the Administration of the Bankruptcy System, presented the Committee's report.

Judge Weinfeld stated that the Committee had considered the recommendations in the survey report of the Director of the Administrative Office, dated June 25, 1968, and in the supplemental survey report, dated July 12, 1968. These reports recommend the continuance of referee positions to become vacant by expiration of term, for changing one part-time position to a full-time position, for the creation of one additional part-time position and for the discontinuance of certain designated places of holding bankruptcy court. These recommendations which had been approved by the district courts and circuit councils concerned were approved by the Conference, with the changes to become effective October 1, 1968, unless otherwise stated, as follows:

FIRST CIRCUIT

District of Maine

- (1) Authorized the discontinuance of Lancaster, Allentown and Pottsville in which the term of office will expire on November 4, 1968 for a new six-year term, effective November 5, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

THIRD CIRCUIT

Eastern District of Pennsylvania

- (1) Authorize the discontinuance of Lancaster, Allentown and Pottsville as places of holding bankruptcy court for the referee at Reading.

FIFTH CIRCUIT

Southern District of Mississippi

- (1) Authorized the continuance of the full-time referee position at Jackson in which the term of office will expire on October 31, 1968 for a new six-year term, effective November 1, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

SIXTH CIRCUIT

Southern District of Ohio

- (1) Authorized the continuance of the full-time referee position at Dayton in which the term of office will expire on February 3, 1969 for a new six-year term, effective February 4, 1969, 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 Illinois

- (1) Authorized the continuance of the full-time referee position at Chicago in which the term of office will expire on November 12, 1968 for a new six-year term, effective November 13, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

- (2) Authorized the continuance of the full-time referee position at Chicago in which the term of office will expire on December 31, 1968 for a new six-year term, effective January 1, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (3) Authorized the continuance of the full-time referee position at Chicago in which the term of office will expire on March 4, 1969 for a new six-year term, effective March 5, 1969, 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 the continuance of the full-time referee position at East St. Louis in which the term of office will expire on October 4, 1968 for a new six-year term, effective October 5, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

EIGHTH CIRCUIT

District of Minnesota

- (1) Authorized the creation of an additional part-time referee position at Duluth at a salary of \$11,000 per annum.
- (2) Established the territory of the part-time referee at Duluth to include the Fifth Division of the District.
- (3) Established concurrent jurisdiction for the full-time referees at Minneapolis and St. Paul in the First, Second, Third, Fourth and Sixth Divisions of the District.

Western District of Missouri

- (1) Authorized the continuance of the full-time referee position at Kansas City in which the term of office will expire on February 28, 1969 for a new six-year term, effective March 1, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of North Dakota

- (1) Authorized that the part-time referee position for this district be changed to a full-time basis at a salary of \$20,000 per annum, the regular place of office, territory and places of holding court to remain as at present.

NINTH CIRCUIT

Central District of California

- (1) Authorized the continuance of the full-time referee position at Los Angeles in which the term of office will expire on December 31, 1968 for a new six-year term, effective January 1, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.
- (2) Authorized the continuance of the full-time referee position at Los Angeles in which the term of office will expire on January 20, 1969 for a new six-year term, effective January 21, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Montana

- (1) Authorized the continuance of the part-time referee position at Butte in which the term of office will expire on February 17, 1969 for a new six-year term, effective February 18, 1969, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

District of Hawaii

- (1) Authorized the continuance of the part-time referee position at Honolulu in which the term of office will expire on December 25, 1968 for a new six-year term, effective December 26, 1968, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

Judge Weinfeld stated that bankruptcy surveys were conducted in six additional districts at the request of the judges or referees of such districts and that the studies made by the Bankruptcy Division reveal that recommendations and changes are not justified at this time. Included in the requests were recommendations for increases in compensation of referees in two districts. The Director made no recommendation for salary increases in these districts because of the enactment of the Postal Revenue and Federal Salary Act of 1967 which contains provisions for the creation of a commission to review legislative, judicial and executive salaries, including the salaries of referees in bankruptcy.

APPROPRIATIONS

Judge Weinfeld stated that the Congress had approved the full amount of the estimate for referees' salaries for fiscal year 1969 totaling \$4,588,000. The amount requested for the expenses of operating referees' offices, however, was reduced from \$8,617,000 to \$8,200,000. The principal item of reduction was the disallowance of the request for 97 additional clerical positions for referees' offices for fiscal year 1969.

For the first time Congress provided that the expenses of operating the Bankruptcy Division of the Administrative Office in 1969 be appropriated out of the Referees' Salary and Expense Fund. Judge Weinfeld noted in this connection that obligations against the fund have exceeded payments into it for the fiscal years 1966, 1967, and 1968 and that it is anticipated that obligations will again exceed receipts by a substantial amount in fiscal year 1969.

NEW CASE FILINGS

In fiscal year 1968 the total number of cases filed was 197,792, a decline of 10,537 cases or 5.1 percent from 1967. This is the first year since fiscal year 1952 that the filing of new cases has dropped below the total of the preceding year and it is only the second time that this has occurred since World War II.

In 1968 the proportion of business bankruptcies increased slightly with respect to the total cases filed although, numerically, there was a small decline. Non-business filings constituted 91.6 percent of all of the new bankruptcy filings.

LEGISLATION

The Conference considered and voted its disapproval of S. 2997, a bill to authorize the waiver of certain fees in bankruptcy proceedings.

The Conference considered H.R. 16711, 90th Congress, a bill to amend Section 57(n) of the Bankruptcy Act. At its September 1967 meeting the Conference had considered and disapproved H.R. 2895, a bill to achieve the same purpose (Conf. Rept., p. 74). At that time the Conference stated that it was disapproving the legislation because the provisions were not limited to corporations, no ultimate time limit was provided as in the present exceptions and the amendment was not restricted to prospective distribution to creditors.

The Conference noted that the present bill, H.R. 16711, is designed to meet the comments of the Conference made at its September 1967 meeting. The Conference requested the Bankruptcy Division to make a thorough analysis of the new proposal and report to the Conference at its next meeting.

AUDIT OF STATISTICAL REPORTS

The Conference noted that in the audit of statistical reports of closed asset cases and arraignment proceedings successfully concluded under Chapter XI during the past six months, approximately 225 inquiries have been made by the Audit Unit. The audit program continues to reveal more overpayments to the Salary and Expense Fund than underpayments. The Conference was advised that statistical report forms for reporting successfully terminated Chapter XI cases have been revised and simplified with a view to

increasing accuracy of the data reported and expanding the data supplied to the Bankruptcy Division in these cases.

MATTERS UNDER ADVISEMENT

The Conference was told that of the 214 referees reporting for the quarter ending March 31, 1968, 176 reported no matters held under advisement for 60 days or longer. The remaining 38 referees reported a total of 72 matters undecided, a sum which in the view of the Bankruptcy Division is normal.

DEVELOPMENTS UNDER CHAPTER XIII

The Conference was advised that the Bankruptcy Division has continued its study of accounting systems and audits of the records of Chapter XIII trustees. While it does not appear feasible to prescribe a uniform accounting system for all trustees, it does appear feasible and desirable to prescribe minimum accounting standards which accounting systems should meet. The Bankruptcy Division is preparing and publishing such standards.

The Conference also noted that progress has been made in obtaining meaningful audits of Chapter XIII trustees' records and accounts at reasonable costs in conformance with the guidelines adopted by the Conference at its September 1963 session (Conf. Rept., pp. 87, 88). The Conference noted that the Committee had approved proposals of the Bankruptcy Division in implementation of this program with instructions to bring the proposals to the attention of the referees who supervise Chapter XIII trustee operations.

SEMINARS FOR REFEREES

The fifth annual seminar for referees in bankruptcy was held in Washington during the week of March 25-29, 1968. These five seminars have given every referee an opportunity to participate in one of the national seminars.

Regional two-day seminars have continued since the last session of the Judicial Conference. Regional seminars have been held in Chicago and New York City and additional seminars are contemplated during 1968 for St. Paul, Minnesota, Portland, Oregon, and either Atlanta or Athens, Georgia.

COSTS OF ADMINISTRATION

The Conference noted continued improvement in overall costs of administration in straight bankruptcy cases. In fiscal year 1964 the percentage cost of administration of these cases was 26.6 percent in cases having an average realization of \$4,840; in 1967 the percentage cost was 22.8 percent in cases having an average realization of \$5,445.

BACKGROUND INVESTIGATION OF APPOINTEES

Judge Weinfeld pointed out to the Conference that referees in bankruptcy are quasi-judicial officers who take the same oath of office as judges but that at the present time no investigation is made on a regular basis except on special requests of the district court concerned of appointees to referee in bankruptcy positions. He stated also that many trustees in Chapter XIII proceedings handle substantial sums of money and occupy positions of trust and that the Committee is of the view that where the district courts concerned are of the opinion that such trustees should be the subject of a background investigation, a policy should be adopted to provide for such investigation.

The Conference noted and approved these recommendations, adopting a policy that all appointees to referee in bankruptcy positions be the subject of investigation by the F.B.I. and that Chapter XIII trustees shall be the subject of such investigations upon recommendation of the district courts concerned.

REVISION OF THE LAWS

Judge J. Skelly Wright, Chairman of the Committee on Revision of the Laws, presented the Committee's report.

The Conference approved the Committee's recommendation approving S. 2716, 90th Congress, a bill which would update references in certain federal statutes to Oklahoma state courts dealing with Indians.

The Conference approved S. 2941, 90th Congress, which would amend the provisions of Chapter 5, Title 5, United States Code, making the Freedom of Information Act applicable to the District of Columbia government. When the Freedom of Information Act was passed in 1966, the operations of the District of Columbia gov-

ernment were excluded from its coverage. This bill would remedy the omission.

The Conference agreed with the Committee recommendation that it express no view on S. 858, 90th Congress, which would amend the Interstate Commerce Act with respect to recovery of reasonable attorneys' fees in successful suits for recovery of damages sustained in the transportation of property by common carrier. The Conference was of the view that this legislation presented a policy question which addresses itself to Congress and presents no substantial problem in judicial administration.

The Conference agreed with the Committee recommendation that S. 3163, 90th Congress, a bill to provide courts of the United States with jurisdiction over contract claims against non-appropriated fund activities of the United States, concerns a matter of fiscal policy which is properly a concern of the Congress rather than the judiciary. The Conference, therefore, expressed no view on S. 3163. The bill is similar to H.R. 3084, 90th Congress, on which the Conference declined to express its views at the February 1968 meeting (Conf. Rept., p. 15).

As to S. 3305, S. 3306, H.R. 16706 and H.R. 16707, 90th Congress, bills which would provide for federal jurisdiction over cases arising out of certain operations of commercial aircraft, the Conference approved, in principle, the proposed legislation insofar as

- (1) It would create a federal cause of action and a body of uniform federal law covering damage claims arising out of commercial aviation activity;
- (2) It adopts and expands the Multidistrict Litigation Act procedures; and
- (3) It provides for extraterritorial service of process and subpoenas throughout the country.

The Conference noted that the Senate bills are now under active consideration in the Senate Subcommittee on Improvements in Judicial Machinery.

The Conference disapproved insofar as the bill relates to judicial review of attorneys' fees set by administrative agencies H.R. 15150, 90th Congress. The Conference noted that it has disapproved similar bills, S. 1073 and H.R. 10216, 90th Congress, at its February 1968 meeting (Conf. Rept., p. 14).

The Conference voted disapproval of H.R. 15118, 90th Congress, a bill which would amend Title 28, United States Code, to require three-judge district courts to determine cases involving reversal of a decision of the highest court of a state.

The Conference approved H.R. 5713, 90th Congress, to amend Section 2401 of Title 28, United States Code, expanding the time for filing tort actions by persons under the age of 21 or mentally ill or imprisoned on a criminal charge. The Conference noted that the bill is similar to H.R. 4334, 90th Congress, which was approved by the Conference at its March 1967 meeting (Conf. Rept., p. 20).

The Conference voted its approval, in principle, of Sections 137 and 294 of H.R. 5924, a bill providing for a general revision of the patent laws. Section 134 provides that the burden of persuasion is on the applicant for a patent and Section 294 for collateral estoppel when a claim in a patent is finally found to be invalid and authorizing cancellation thereof by the court.

At the same time the Conference voted its disapproval of two other sections of the proposed legislation, namely, Section 147 relating to the review of Patent Office decisions and Section 747 providing for appointment by district courts of civil commissioners for patent cases.

The Conference voted its disapproval of H.R. 17441, 90th Congress, amending Title 28, United States Code, to incorporate therein provisions relating to the creation of a United States Labor Board and the abolition of the National Labor Relations Board. The bill is similar to H.R. 12659 and H.R. 12993 disapproved by the Conference at its February 1968 meeting (Conf. Rept., p. 15), as well as to similar bills disapproved by the Conference at its September 1967 meeting (Conf. Rept., pp. 67, 68).

The Conference voted its disapproval of H.R. 17742, 90th Congress, providing for the enforcement of support orders in certain state and federal courts and making it a crime to move or travel in interstate and foreign commerce to avoid compliance with such orders. The bill is similar to H.R. 5267, 90th Congress, disapproved by the Conference at its March 1967 meeting (Conf. Rept., p. 21), and H.R. 11663, 90th Congress, disapproved by the Conference at its September 1967 meeting (Conf. Rept., p. 68).

Judge Wright advised the Conference that the Committee on the Revision of the Laws, meeting jointly with the Committee on Court Administration, has deferred its study of district court jurisdiction pending the completion of the American Law Institute study of the division of jurisdiction between state and federal courts. The American Law Institute study is now complete and recommends

far-reaching changes not only in diversity jurisdiction but in the federal question jurisdiction as well.

Before completing their study of the recommendations and before completing their own, the Committees requested and were granted authorization by the Conference to obtain copies of the ALI study for the bench and bar in order to obtain the reaction and the response of the bench and bar to the ALI study. The Conference further approved the recommendation that the chief judge of each circuit be requested to obtain the consensus of the judges of his circuit concerning the ALI study and report thereon by July 1, 1969.

The Conference approved S. 2721, 90th Congress, relating to the amendment of the Expediting Act, 15 U.S.C. 29; 49 U.S.C. 45, with the following exceptions:

- (1) There should be included in the legislation a provision for repeal of Section 1 which requires the calling of a three-judge court on certification of the Attorney General and
- (2) the elimination of the provision for appeals from interlocutory orders under 28 U.S.C. 1292(b).

The Conference recommitted to the Committees on the Revision of the Laws and on Court Administration for further study S. 2041 and H.R. 10100, 90th Congress, bills which would transfer the Tax Court of the United States to Title 28, United States Code, as a constitutional court. In so doing, the Conference noted that Senator Tydings had advised the Conference in his presentation to the Conference that his Subcommittee on Improvements in Judicial Machinery was going to give further study to these legislative proposals.

TRIAL PRACTICE AND TECHNIQUE

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

Judge Murrah advised the Conference that two seminars for newly appointed district judges had been held thus far in 1968. These seminars have been expanded to a nine-day format, including a full day session on sentencing in criminal cases. So far 55 judges have attended the 1968 seminars. A further seminar is scheduled to be held commencing October 25 and will be the first held in conjunction with the Federal Judicial Center.

In view of prior Conference authorization that the Committee

initiate a broad program designed to encourage the development of sound methods of dealing with congested calendars in the district courts through the use of accelerated calendars and other proven techniques of calendar control and the further authorization that the Committee cooperate with those districts having congested calendars in formulating sound procedures of calendar control consistent with the needs of the jurisdiction (Conf. Rept., Sept. 1967, p. 85), Judge Murrah stated that the Committee considers to be essential to any accelerated calendar program the following:

- (1) Careful and thorough analysis of the inventory of pending cases, perhaps through the use of computer techniques;
- (2) Adequate number of judges to be available for the trial of cases;
- (3) Timely notice to the bar advising of the objectives of the program and the need for the bar to complete preparation for trial as promptly as possible;
- (4) Adequate pretrial conference review, and
- (5) The setting of cases for trial with strong judicial control over requests for continuance.

Judge Murrah stated that his Committee is prepared to offer its assistance to any district in a cooperative effort to deal effectively with any problem of congestion.

MULTIPLE LITIGATION

Judge Murrah presented to the Conference a complete revision of the Outline of Suggested Procedures and Materials for Pretrial and Trial of Complex and Multiple Litigation. The Conference voted its approval of this revised report and authorized its dissemination. The Conference agreed that the publication should be in looseleaf form so that it might be updated periodically and it agreed that the Committee should continue to be in charge of such necessary revisions and updating.

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 22, 1968.

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