
**REPORT
OF THE PROCEEDINGS
OF THE
REGULAR ANNUAL MEETING
OF THE
JUDICIAL CONFERENCE OF THE
UNITED STATES**

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**SEPTEMBER 24-26, 1951
WASHINGTON, D. C.**

TITLE 28, UNITED STATES CODE, SECTION 331

§ 331. Judicial Conference of the United States.

The Chief Justice of the United States shall summon annually the chief judges of the judicial circuits 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.

If the chief judge of any circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the conference and advise as to the needs of his circuit 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 Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

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

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

The Judicial Conference of the United States convened, pursuant to the provisions of Title 28, United States Code, section 331, upon the call of the Chief Justice on Monday, September 24, 1951. The following were present:

The Chief Justice, presiding.

Circuit:

| | |
|---------------------------|-----------------------------------|
| District of Columbia..... | Chief Judge Harold M. Stephens. |
| First..... | Chief Judge Calvert Magruder. |
| Second..... | Chief Judge Thomas W. Swan. |
| Third..... | Chief Judge John Biggs, Jr. |
| Fourth..... | Chief Judge John J. Parker. |
| Fifth..... | Chief Judge Joseph C. Hutcheson. |
| Sixth..... | Chief Judge Xenophon Hicks. |
| Seventh..... | Chief Judge J. Earl Major. |
| Eighth..... | Chief Judge Archibald K. Gardner. |
| Ninth..... | Chief Judge William Denman. |
| Tenth..... | Chief Judge Orie L. Phillips. |

The Attorney General and other officials of the Department of Justice, accompanied by various members of their respective staffs, attended the opening session of the Conference. The Solicitor General was unable to attend because of illness.

Honorable Emanuel Celler, chairman, and the Hon. Chauncey W. Reed, ranking minority member of the Judiciary Committee, and the Hon. Karl Stefan, ranking minority member of the subcommittee on Judiciary Appropriations, Appropriations Committee, House of Representatives, were present at the opening session of the Conference and participated in its discussions.

Circuit Judges J. Ryan Duffy, Albert B. Maris, and E. Barrett Prettyman, and District Judges Chief Judges William C. Coleman, James Alger Fee, and Bolitha J. Laws, and Judges Edward M. Curran and Harry E. Watkins attended various sessions of the Conference and participated in the discussions.

Henry P. Chandler director; Elmore Whitehurst, assistant director; Will Shafroth, chief, Division of Procedural Studies and Statistics; Edwin L. Covey, chief, Bankruptcy Division; R. A. Chappell, chief, Probation Division; and Leland Tolman, chief, Division of Business Administration; and members of their respective

staffs, all of the Administrative Office of the United States Courts, were in attendance throughout the session.¹

Paul L. Kelley, executive secretary to the Chief Justice, served as secretary of the session.

The Chief Justice announced the retirement of Chief Judge Learned Hand of the Second Judicial Circuit, whereupon the Conference adopted the following resolution:

RESOLUTION

In the retirement of Chief Judge Learned Hand this Conference loses one of its most distinguished, most useful, and most beloved members.

For more than 40 years a member of the Federal judiciary, a wise and scholarly jurist with rare powers of expression, he made mighty contributions to the program of the law and strengthened the foundation of the Republic.

As chief judge of one of the most important and busiest circuits of the Nation, he kept his court abreast of the docket and furnished to all of us a brilliant example of how an appellate court should function.

As a member of this Conference, he gave wise guidance in its deliberations and took profound interest in problems of administration throughout the country.

He is a judge of rare charm of personality and a wise and understanding heart. We shall miss him at our meetings, but we trust that he may continue to render judicial service for many years to come and that we may continue to have his advice and assistance in the work of the Conference.

The Conference welcomed Chief Judge Thomas W. Swan of the Second Judicial Circuit as a member of the Conference, succeeding Chief Judge Learned Hand, retired.

REPORT OF THE ATTORNEY GENERAL

The Attorney General of the United States, Hon. J. Howard McGrath, presented his report to the Conference. The full report appears in the appendix.

ADMINISTRATION OF THE UNITED STATES COURTS

Report of the Director of the Administrative Office of the United States Courts.—The Director submitted his twelfth annual report reviewing the activities of his office for the fiscal year ended June 30, 1951, including the report of the Division of Procedural Studies and Statistics. The Conference ordered the report received, and authorized its immediate release for publication. The Director was authorized to incorporate statistical data not now available, and to correct errors of a nonsubstantive nature in the printed edition of the report to be issued later.

¹ For convenience, the Director of the Administrative Office of the United States Courts, and the Administrative Office of the United States Courts are hereinafter referred to as the Director, and the Administrative Office, respectively.

BUSINESS OF THE COURTS

State of the dockets of the Federal courts—Courts of appeals.—Cases filed in the courts of appeals rose from 2,830 in the fiscal year 1950 to 2,982 in 1951, an increase of 5.4 percent. About one-fifth of the 1951 total came from administrative agencies, principally the Tax Court of the United States and the National Labor Relations Board. Cases terminated were 153 less than the number commenced, leaving a pending caseload of 1,828 at the end of the year. A somewhat more expeditious handling of the cases than last year is indicated by the decrease of the median time interval from the filing of the complete record to final disposition from 7.1 months in 1950 to 6.7 months in 1951. Half of the appeals were decided in 1.5 months or less from the time of hearing or submission.

The Fifth, Ninth, District of Columbia and Second Circuits, in that order, received the greatest number of cases. The first three named each had more than 300 cases pending on June 30, 1951, and no other circuit had more than 150.

Petitions to the Supreme Court for review on certiorari to the United States courts of appeals were 600 compared with 663 petitions docketed during the previous year. Of the number disposed of, 76 were granted, a somewhat larger percent than last year, 502 were denied and 9 were dismissed.

District courts.—The condition of the civil dockets of the district courts is somewhat less favorable than last year. Since 1947, the median time from filing to disposition of cases tried (excepting as nontypical land condemnation, habeas corpus, and forfeiture actions) has increased steadily from 9.0 months to the 1951 figure of 12.2 months. During the same period the time from issue to trial has gone from 5.1 months to 7.3 months. While actual congestion of the dockets is largely confined to a few metropolitan districts, other courts have also been under increased pressure, indicating the need for the additional judgeships recommended by the Judicial Conference as specified hereafter in this report.

Civil cases commenced in the district courts in 1951 were about 6 percent less in number than in 1950. The decrease was almost entirely due to a decline in cases brought by the United States. Cases terminated were slightly above the number filed but this was not true of private cases, where the pending caseload continued to climb and reached a new high for more than a decade. The fol-

lowing table shows the trends for the past 11 years and gives separate figures for all civil cases and for those between private litigants:

| Fiscal year | Total civil cases | | | Private civil cases | | |
|-------------|-------------------|-----------------|---------|---------------------|-----------------|---------|
| | Com- menced | Termi- nated | Pending | Com- menced | Termi- nated | Pending |
| 1941..... | 38, 477 | 38, 561 | 29, 394 | 21, 931 | 23, 364 | 18, 807 |
| 1942..... | 38, 140 | 38, 352 | 29, 182 | 21, 067 | 22, 488 | 17, 386 |
| 1943..... | 36, 789 | 36, 044 | 29, 927 | 17, 717 | 20, 124 | 14, 979 |
| 1944..... | 38, 499 | 37, 086 | 31, 340 | 17, 604 | 17, 446 | 15, 137 |
| 1945..... | 60, 965 | 52, 300 | 40, 005 | 17, 855 | 16, 753 | 16, 239 |
| 1946..... | 67, 835 | 61, 090 | 46, 840 | 22, 141 | 18, 438 | 19, 942 |
| 1947..... | 58, 956 | 54, 515 | 51, 281 | 29, 122 | 23, 091 | 25, 973 |
| 1948..... | 46, 725 | 48, 791 | 49, 215 | 30, 344 | 26, 418 | 29, 899 |
| 1949..... | 53, 421 | 48, 396 | 54, 240 | 31, 886 | 28, 159 | 33, 126 |
| 1950..... | 54, 622 | 53, 259 | 55, 603 | 32, 193 | 30, 494 | 34, 825 |
| 1951..... | 51, 600 | 52, 119 | 55, 084 | 32, 176 | 31, 419 | 35, 582 |

Since 1941 the number of civil cases commenced annually has increased by 34 percent while the number of district judges has gone from 197 to 224, a rise of 14 percent. Private cases, which constitute the heaviest part of the courts' business have risen by 47 percent. The result has been a longer period for disposition of contested cases. The number of total civil cases filed in the years from 1945 to 1947 was affected by the very large number of OPA price and rationing cases brought by the Government in those years.

While the number of criminal cases filed in the fiscal year 1951 increased to 38,670 as compared with 36,383 in 1950, the increase was entirely due to immigration cases filed in the 5 districts on the Mexican border. There were 14,965 of these cases and if they are excluded from the totals in both years, there was a decrease of 8 percent in 1951. Criminal cases terminated exceeded the number begun and at the end of the year, the number pending was reduced to 7,701 of which over a fifth involved fugitive defendants. Criminal cases are given priority and generally speaking the criminal dockets are in excellent condition.

Bankruptcy cases continued to increase in 1951, but in a much smaller proportion than during the previous 4 years. The number of cases filed was 35,193 compared with 33,392 in the fiscal year 1950, an increase of 5 percent as compared with 28 percent in 1950 and 40 percent in 1949. Terminations of 32,647 cases although below the number commenced, were 7,065 more than in 1950. The pending caseload at the end of the year increased to 40,922.

Serious congestion of the civil dockets is reported in the Southern District of New York, the District of New Jersey, the Eastern District of Pennsylvania, the District of Columbia, the Northern District of Ohio and the Northern District of Illinois as well as considerable delays in the disposition of judicial business in a few other districts. Outside of seven metropolitan districts, the median time from filing to disposition of cases tried was 10.1 months in 1951 compared with 9.6 months in 1950. The situation in the Southern District of New York remains critical. On June 30, 1951, there were 11,148 civil cases pending in that district which has 16 judgeships. This is more civil cases than were pending on that date in all the district courts of the First, Fourth, Seventh, and Eighth Circuits with 58 district judgeships. At the end of the fiscal year, the assignment commissioner of the Southern District of New York estimated the time for reaching trial after the joinder of issue to be 29 months in jury cases, 23 months in nonjury cases and 30 months in admiralty cases. This compares with a national median of 7.8 months in jury cases and 6.9 months in nonjury cases.

Cases and motions under advisement.—The Conference reviewed the report of the Administrative Office with respect to cases and motions held under advisement for a period of more than 6 months as of June 30, 1951. Mr. Shafroth, chief of the Division of Procedural Studies and Statistics informed the Conference that considerable progress had been made since the date of this report, and that the situation throughout was considerably more favorable at the present time.

The Conference directed that whenever a case or motion is held under advisement for more than 6 months, the matter be brought to the attention of the judicial councils of the respective circuits involved with the view of expediting the disposition thereof insofar as possible.

General.—The Conference reviewed the state of the dockets, and the work of each of the district courts and courts of appeals. Conditions relating to the courts within each particular circuit were discussed by the chief judge of that circuit, and the Conference was informed of matters peculiar to such courts. Statistical data relating to the current and prospective business of the courts were presented by the Director. The attention of the Conference was also directed to factors which were impossible to weigh in these data, but which had a material and substantial effect upon the dispatch of the courts' business. The prospects as to the avail-

ability of judges for assignments outside their own districts during the coming year were considered.

It was the sense of the Conference that the following action with respect to judgeships throughout the judiciary should be taken:

PREVIOUS RECOMMENDATIONS REAFFIRMED

Courts of Appeals:

*Fifth Judicial Circuit.*²—The creation of one additional judgeship.

Ninth Judicial Circuit.—The creation of two additional judgeships.

District Courts:

Second Judicial Circuit—Southern District of New York.—The creation of five additional judgeships, with the *proviso* that the first two vacancies occurring in this district shall not be filled.

Third Judicial Circuit—District of Delaware.—The creation of one additional judgeship.

Eastern District of Pennsylvania.²—The creation of one additional judgeship.

Eastern, Middle and Western Districts of Pennsylvania.—The act of July 24, 1946 (60 Stat. 654), creating a judgeship for these districts should be amended so as to provide that the present incumbent shall succeed to the first vacancy occurring in the position of district judge for the Middle District of Pennsylvania.

Fifth Judicial Circuit—Eastern District of Texas.—The creation of one additional judgeship.

Sixth Judicial Circuit—Northern District of Ohio.—The creation of one additional judgeship.

Middle District of Tennessee.—The creation of one additional judgeship, with the *proviso* that the first vacancy occurring in this district shall not be filled.

Seventh Judicial Circuit—Northern and Southern Districts of Indiana.—The creation of one judgeship for service in both districts.

Eighth Judicial Circuit—Eastern and Western Districts of Missouri.—The existing temporary judgeship for these districts be made permanent.

² This ratifies and affirms action taken by the Conference by mail since its last meeting.

Ninth Judicial Circuit—District of Arizona.—The creation of one additional judgeship, with the *proviso* that upon the occurrence of a vacancy in the office of the district judge last appointed prior to the creation of this judgeship, such vacancy shall not be filled.

District of Alaska—Third Division.—The creation of one additional judgeship.

Tenth Judicial Circuit—District of Colorado.²—The creation of one additional judgeship.

ADDITIONAL JUDGESHIPS RECOMMENDED

Fifth Judicial Circuit—Southern District of Florida.—The creation of one additional judgeship.

Southern District of Texas.—The present temporary judgeship in this district be made permanent.

Seventh Judicial Circuit—Eastern District of Wisconsin.—The creation of one additional judgeship.

APPROPRIATIONS

Budget estimates and deficiency appropriations.—The estimates of expenditures and appropriations necessary for the efficient maintenance and operation of the United States courts, and the Administrative Office of the United States Courts for the fiscal year 1953, and appropriations covering estimated deficiencies for the fiscal year 1952, were considered by the Conference.

The Conference approved the estimates as submitted, and authorized the Director to make any changes therein that may be necessitated to provide for any additional expense that may be incurred due to the action of the Conference. The Director was further authorized and directed to include in the regular and supplemental estimates such sums as may be required to make applicable to the personnel of the courts, any salary adjustments that may be provided under any pay increase legislation that may be enacted by the Congress.

SUPPORTING PERSONNEL OF THE COURTS

The report of the Committee on Supporting Personnel of the Courts was submitted by its chairman, Chief Judge John Biggs, Jr.

General—Salaries.—Chief Judge Biggs advised that the question of a general salary increase for Government personnel had

reached the point where it was now a matter for agreement by the designated conferees of the two Houses of Congress; that while there was no definite information, the general consensus of opinion was that an agreement would be reached before the adjournment of this session of the Congress, and that legislation providing for some salary increases would be enacted.

United States Commissioners—District of Columbia.—The Conference upon consideration of the report of the committee with respect of the recommendations of the Judicial Conference of the District of Columbia that the United States Commissioner for the District of Columbia be placed on a permanent fixed salary basis and that he be furnished with adequate secretarial services at the expense of the Government, directed that the Committee on Supporting Personnel of the Courts make a further study of the present system of operation of the offices of the various United States Commissioners, with particular attention being given to the manner and method of payment of the Commissioners and their personnel, the costs of office operations, and the manner in which these expenses are being paid, and submit a report together with such recommendations as the committee may deem desirable at the next meeting of the Conference.

United States Commissioners—Territory of Alaska—Deputy Commissioners.—Chief Judge Denman submitted a resolution of the Judicial Conference of the Ninth Judicial Circuit approving the provisions of H. R. 3800, Eighty-second Congress, under which a United States Commissioner in Alaska would be authorized to appoint, with the approval of the district judge, a deputy commissioner; the compensation of such deputy to be paid from the receipts of the office, and to be fixed by the district judge for the division of the territory with the approval of the Director.

Judge Denman briefly outlined the duties and functions of United States Commissioners in Alaska. He pointed out that in a substantial degree the duties falling upon this particular office were peculiar to such office which in itself would, upon a fair comparison, definitely place it upon an entirely different plane from such offices throughout the country. He recommended that the Conference approve of the provisions of H. R. 3800 and urge its prompt enactment by the Congress.

The Conference thereupon approved of the enactment of legislation that would authorize the appointment of Deputy United

States Commissioners in Alaska under the terms and conditions hereinabove recited, and expressed the hope that such legislation would be enacted during the present session of the Congress. The Director was instructed to advise the Congress of this action.

United States Commissioners—Territory of Alaska—Maximum compensation.—The Conference reaffirmed its previous recommendation that the present statutory limitation with respect to the amount of compensation that may be retained by these United States Commissioners, who are paid from fees when earned, be increased from \$5,000 to \$7,500 per annum.

Law clerks and secretaries—Civil-service status.—The Conference reaffirmed its approval of legislation which will permit the secretary, secretary-law clerk, or law clerk of any Federal justice or judge who has served for 4 years and who has been separated from the service involuntarily and without prejudice, to acquire a classified civil-service status for transfer purposes upon passing a non-competitive civil-service examination.

The Probation Service.—Officers and employees.—A general discussion was had concerning the Probation Service with particular attention being given to the existing classification structure throughout the whole service. Comparisons were presented with the classification structure existing for comparable positions in other agencies of the Federal Government, as well as salary ranges prevalent in certain States. It was urged that in view of these comparisons, as well as responsibilities upon the personnel of the Service, an upgrading of certain of the probation officers and clerks was warranted in order that these particular employees may receive a fair, as well as comparable, compensation for performing duties similar in nature and with as high if not higher degree of responsibility as those of employees in other agencies of the Government.

The Conference ordered that the question be referred to the Committee on the Supporting Personnel of the Courts, with a request that a complete survey of the Probation Service be made with respect to the adequacy and fairness of the existing classification structure, and to submit a report together with recommendations at the next meeting of the Conference.

Court criers.—Reclassification.—Chief Judge Swan submitted a proposal that the positions of court criers be resurveyed for the purpose of ascertaining whether an upgrading in the existing classi-

fication thereof was warranted at this time. The Conference directed that the matter be submitted to the Committee on Supporting Personnel of the Courts with request that necessary surveys and studies be made covering the situation, and a report, together with any recommendations, be submitted at the next meeting of the Conference.

Court of Appeals, District of Columbia—Clerk's Position-Reclassification.—Chief Judge Stephens presented for the consideration of the Conference a request for reconsideration of the question of the reclassification of the position of clerk for the Court of Appeals for the District of Columbia. The Conference, upon motion made and carried, agreed to a reconsideration of the question. Judge Stephens then briefly summarized the basis upon which the proposal was previously considered, and brought to the attention of the Conference additional factors that were either omitted from the previous submission or had developed since the last survey of the position was made.

Upon motion made, duly seconded and carried, the Conference authorized the reclassification of the position of clerk, Court of Appeals for the District of Columbia Circuit, upgrading it from its present classification of GS 13 to a classification of GS 14.

District Court, District of Columbia.—Chief Judge Laws presented a proposal covering a general reorganization of the personnel of the various offices of the District Court, District of Columbia. He pointed out that such a reorganization had been contemplated, and needed for a long period of time, but that submission thereof for Conference consideration had been withheld due to the serious space problems confronting the court. In view of the fact that the court would soon be housed in the new court building and adequate space would be available, it was felt that presentation of the proposal at this time was timely. The proposal, as submitted, covers reclassification, the establishing of new and additional positions and other personnel problems incident to a general reorganization program.

The Conference directed that the proposal be submitted to the Committee on Supporting Personnel of the Courts; that a survey of the situation be made and that a report and recommendations thereon be submitted at the next meeting of the Conference. The Conference instructed the Director to assist the committee in any way that the committee desired.

Health service programs.—The Director called the attention of the Conference to questions raised by the Public Building Service of the General Services Administration with respect to whether or not the Judiciary will participate for the personnel of the District Court for the Middle District of Tennessee, which will soon be housed in the new Federal building at Nashville, Tenn., in a health service program for employees in the building under the Statute, 5 U. S. C. 150.

The Conference directed that the matter be referred to the Committee on Supporting Personnel of the Courts for consideration, and a report and recommendations concerning the subject matter be submitted at the next meeting of the Conference.

COURT REPORTERS

Chief Judge John J. Parker, chairman of the committee on the court reporting system presented the report of that committee, which had been reactivated by order of the Conference in September 1950.

SALARIES

Judge Parker informed the Conference that in accordance with its direction, the Administrative Office had submitted to the committee for each court reporting position its recommendation of the appropriate salary for the position, together with a comprehensive analysis, covering the 6 years since the system was established and showing for each reporter the present salary and transcript rates, changes and requests for changes made since the position was established, the earnings of the reporter from salaries and official transcript and nonofficial reporting work, the time he has spent in court, the amount of transcript he prepares without fee, comparisons of his present salary with those currently paid for similar work in the State courts, data regarding his office space, and the extent of increase in the local costs of living since the present salary was established. He also informed the committee that representatives of the Conference of United States Court Reporters had been heard by the committee and had presented requests for increased compensation and for other changes in the administration of the court reporting system at a meeting of the committee and that the committee had considered these requests as well as the data and recommendations of the Administrative Office in arriving at its conclusions.

He informed the Conference that the recommendations of the Administrative Office and the report of his committee have been distributed to the chief judges of the various districts, with a request that they report to the chief judges of their respective circuits any views regarding the compensation of reporters in their courts that they might wish the Conference to consider.

The report of the committee reviewed in general the origin of the present system of compensation, observing that the salary scale had been established originally in 1944 shortly after the enactment of the statute authorizing the employment of the reporters, and that the Conference at that time had no foundation of experience upon which to base its action. Judge Parker pointed out that the present study by the Administrative Office had provided for the first time an opportunity for a thorough reexamination of the salaries of every position based upon an exhaustive analysis of the relevant facts in the light of a substantial period of experience. The committee had considered that in fixing the salaries of court reporters the Conference must preserve a reasonable relationship between their compensation and that of the other highly responsible and skilled supporting personnel of the courts, and it found that although the rate of compensation for similar positions in the State court systems is a pertinent factor for consideration in fixing the salaries, yet, since the state salaries often depend upon factors not found in the federal system and present on the whole a more or less haphazard pattern, they cannot be followed absolutely in the national service. But even from the local viewpoint, the report indicated that in very few instances is the compensation of the reporters below what it would have been if the reporters were paid at the rate of \$25 a day of actual reporting, which is, with few exceptions, the highest rate paid throughout the country for the services of per diem reporters.

Accordingly the committee recommended to the Conference a schedule of revised salaries for the Federal reporters which, with certain exceptions, provided for increases of the salaries of the \$3,000 positions to \$3,600 a year; of the \$3,600 positions to \$4,000 a year; of the \$4,500 positions to \$5,000 a year; and of the \$5,000 positions to \$5,500 a year. The exceptions to this were in positions which the committee believed to be underclassified on the basis of the facts shown by the Administrative Office and so recommended for larger increases than those shown by the scale given above, or,

in some few instances, in positions where the committee found no present basis for a salary increase.

The Conference reviewed with care the salary schedule thus submitted, and the members of the Conference presented for the consideration and action of the Conference views transmitted to them by the district judges in reference to the positions in their respective courts. The Conference then approved in general the revised salary schedule as proposed by the committee in its report and, after making changes in the recommended salaries for positions in some particular districts, it fixed the salary of each position as follows:

Tabulation of present salaries of reporters and those fixed by the Judicial Conference

| Circuit and district | Number of positions | Present salary | Salary fixed by Judicial Conference |
|-----------------------------|---------------------|----------------|-------------------------------------|
| <i>First Circuit</i> | | | |
| Maine..... | ¹ 1 | \$5, 000 | \$5, 500 |
| Massachusetts..... | 4 | 5, 000 | 5, 500 |
| New Hampshire..... | 1 | 3, 000 | 3, 600 |
| Rhode Island..... | 1 | 3, 000 | 4, 000 |
| <i>Second Circuit</i> | | | |
| Connecticut..... | 2 | 4, 500 | 5, 000 |
| New York (N)..... | 2 | 4, 500 | 5, 000 |
| New York (E)..... | 6 | 5, 000 | 5, 500 |
| New York (S)..... | 16 | 5, 000 | 5, 500 |
| New York (W)..... | 2 | 4, 500 | 5, 000 |
| Vermont..... | ² 1 | 4, 500 | 4, 500 |
| <i>Third Circuit</i> | | | |
| Delaware..... | 2 | 5, 000 | 5, 500 |
| New Jersey..... | 6 | 5, 000 | 5, 500 |
| Pennsylvania (E)..... | 7 | 5, 000 | 5, 500 |
| Pennsylvania (M)..... | 2 | 4, 000 | 4, 500 |
| Pennsylvania (W)..... | 4 | 4, 500 | 5, 500 |
| Pennsylvania (EM & W)..... | 1 | 4, 000 | 4, 500 |
| <i>Fourth Circuit</i> | | | |
| Maryland..... | 2 | 5, 000 | 5, 500 |
| North Carolina (E)..... | 1 | 3, 000 | 3, 600 |
| North Carolina (M)..... | 1 | 3, 000 | 3, 600 |
| North Carolina (W)..... | 1 | 3, 000 | 3, 600 |
| South Carolina (E)..... | 1 | 3, 000 | 4, 000 |
| South Carolina (W)..... | 1 | 3, 000 | 3, 600 |
| South Carolina (E & W)..... | 1 | 3, 000 | 3, 600 |
| Virginia (E)..... | 2 | 4, 000 | 5, 000 |
| Virginia (W)..... | 2 | 3, 000 | 3, 600 |
| West Virginia (N)..... | 1 | 3, 600 | 4, 000 |
| West Virginia (S)..... | 1 | 3, 600 | 4, 000 |
| West Virginia (N & S)..... | 1 | 3, 600 | 4, 000 |

¹ Reporter-secretary.

² Also probation clerk.

| Circuit and district | Number of positions | Present salary | Salary fixed by Judicial Conference |
|------------------------|---------------------|----------------|-------------------------------------|
| <i>Fifth Circuit</i> | | | |
| Alabama (N)..... | 2 | 4,000 | 4,500 |
| Alabama (M)..... | 1 | 3,000 | 3,600 |
| Alabama (S)..... | 1 | 3,600 | 4,000 |
| Florida (N)..... | 1 | 3,600 | 4,000 |
| Florida (S)..... | 3 | 4,000 | 4,500 |
| Florida (N & S)..... | 1 | 4,000 | 4,500 |
| Georgia (N)..... | 2 | 4,000 | 5,000 |
| Georgia (M)..... | 1 | 3,600 | 4,000 |
| Georgia (S)..... | 1 ¹ | 5,000 | 5,500 |
| Louisiana (E)..... | 2 | 4,000 | 5,000 |
| Louisiana (W)..... | 2 | 4,000 | 4,500 |
| Mississippi (N)..... | 1 | 3,000 | 3,600 |
| Mississippi (S)..... | 1 ¹ | 5,000 | 5,500 |
| Texas (N)..... | 3 | 4,000 | 5,000 |
| Texas (E)..... | 1 | 3,600 | 4,500 |
| Texas (S)..... | 4 | 4,000 | 5,000 |
| Texas (W)..... | 1 | 4,000 | 4,500 |
| | 3 ¹ | 5,000 | 5,500 |
| <i>Sixth Circuit</i> | | | |
| Kentucky (E)..... | 1 | 4,000 | 4,500 |
| Kentucky (W)..... | 1 | 4,000 | 4,500 |
| Kentucky (E & W)..... | 1 | 4,000 | 4,500 |
| Michigan (E)..... | 5 | 5,000 | 5,500 |
| Michigan (W)..... | 1 | 4,500 | 5,000 |
| Ohio (N)..... | 4 | 4,500 | 5,500 |
| Ohio (S)..... | 3 | 4,000 | 5,000 |
| Tennessee (E)..... | 2 | 3,600 | 4,000 |
| Tennessee (M)..... | 1 | 4,000 | 4,500 |
| Tennessee (W)..... | 1 | 4,000 | 4,500 |
| <i>Seventh Circuit</i> | | | |
| Illinois (N)..... | 8 | 5,000 | 5,500 |
| Illinois (E)..... | 1 | 3,000 | 3,600 |
| Illinois (S)..... | 1 ¹ | 5,000 | 5,500 |
| Indiana (N)..... | 2 | 3,000 | 3,600 |
| Indiana (S)..... | 1 | 4,500 | 5,500 |
| Wisconsin (E)..... | 1 | 4,000 | 4,500 |
| Wisconsin (W)..... | 1 | 4,500 | 5,000 |
| | 1 | 3,600 | 4,000 |
| <i>Eighth Circuit</i> | | | |
| Arkansas (E)..... | 1 | 3,600 | 4,000 |
| Arkansas (W)..... | 1 | 3,600 | 4,000 |
| Arkansas (E & W)..... | 1 ¹ | 4,500 | 5,000 |
| Iowa (N)..... | 1 | 4,000 | 4,500 |
| Iowa (S)..... | 1 | 4,000 | 4,500 |
| Minnesota..... | 3 | 4,500 | 5,000 |
| Missouri (E)..... | 2 | 4,500 | 5,000 |
| Missouri (W)..... | 2 | 4,500 | 5,000 |
| Missouri (E & W)..... | 2 | 4,500 | 5,000 |
| Nebraska..... | 1 | 4,000 | 4,500 |
| North Dakota..... | 1 ¹ | 5,000 | 5,500 |
| South Dakota..... | 1 ¹ | 4,500 | 5,000 |
| | 1 ¹ | 4,500 | 5,000 |

¹ Reporter-secretary.² Reporter-law clerk.

| Circuit and district | Number of positions | Present salary | Salary fixed by Judicial Conference |
|-------------------------------------|---------------------|---------------------|-------------------------------------|
| <i>Ninth Circuit</i> | | | |
| Arizona..... | 2 | 3, 600 | 4, 000 |
| California (N)..... | 7 | 5, 000 | 5, 500 |
| California (S)..... | 10 | 5, 000 | 5, 500 |
| Idaho..... | ¹ 1 | 5, 000 | 5, 500 |
| Montana..... | 1 | 3, 600 | 4, 000 |
| Nevada..... | ¹ 1 | 5, 000 | 5, 500 |
| Nevada..... | 1 | 3, 600 | 4, 000 |
| Oregon..... | 3 | 4, 500 | 5, 000 |
| Washington (E)..... | 1 | 4, 000 | 4, 500 |
| Washington (W)..... | 2 | 4, 500 | 5, 000 |
| Washington (E & W)..... | 1 | 4, 500 | 5, 000 |
| <i>Tenth Circuit</i> | | | |
| Colorado..... | 1 | 4, 000 | 5, 000 |
| Kansas..... | 2 | 4, 000 | 4, 500 |
| New Mexico..... | 1 | 3, 600 | 4, 000 |
| Oklahoma (N)..... | 1 | 3, 600 | 4, 500 |
| Oklahoma (E)..... | 1 | 4, 000 | 4, 500 |
| Oklahoma (W)..... | 1 | 4, 000 | 4, 500 |
| Oklahoma (W)..... | 1 | 3, 600 | 4, 500 |
| Oklahoma (NE & W)..... | 1 | 4, 000 | 4, 500 |
| Utah..... | ⁴ 1 | ⁵ 3, 000 | ⁶ 3, 000 |
| Wyoming..... | 1 | 3, 000 | 3, 600 |
| <i>District of Columbia Circuit</i> | | | |
| District of Columbia..... | 15 | 5, 000 | 5, 500 |
| <i>Territories</i> | | | |
| Alaska..... | ¹ 4 | 5, 000 | 5, 500 |
| Hawaii..... | 2 | 4, 500 | 5, 000 |
| Puerto Rico..... | 1 | 4, 300 | 4, 500 |
| Virgin Islands..... | ¹ 1 | 4, 500 | 5, 000 |
| Canal Zone..... | ¹ 1 | 4, 500 | 5, 000 |
| Guam..... | 1 | 4, 300 | ⁷ 4, 300 |

¹ Reporter-secretary.⁴ Also U. S. Commissioner.⁶ Plus Commissioner's fees.⁵ For present incumbent. \$3,600 for reporters without added duties if later appointed.⁷ Or alternative combined position of reporter-secretary at \$5,000.

The Conference instructed the Director to include in the regular budget for 1953 the amounts necessary to accomplish the salary increases thus approved and to seek a deficiency appropriation for the fiscal year 1952 sufficient to permit the new salaries to be made effective after the appropriation is obtained, as of October 1, 1951.

In his report, Judge Parker informed the Conference of the requests made by the representatives of the court reporters in reference to their compensation when they appeared before the committee.

Their request for an over-all increase of 20 percent in salary was considered by the Conference and disapproved.

The reporters had also requested that the Conference endorse the petition of the reporters to the Congress for legislation to provide that the cost-of-living increases allowed to other Government employees since 1944 be made applicable to the salaries of the court reporters. Judge Parker's report pointed out in reference to this that the salaries established in 1944 were established without experience to show what the total earnings from salaries and transcript would be, or how much of the reporters' time would be required for their official duties, and that the increases recommended by the report appeared to bring the earnings from official transcripts and salary to a rate which under present standards is commensurate with the service actually furnished by the reporters. The report also reminded the Conference that the salaries as they are now increased are comparable to those paid in the executive agencies to shorthand reporters employed under the civil-service laws, who are required to work a 40-hour week and receive no transcript fees. And it called the attention of the Conference to the steady increases in earnings of the Federal court reporters from official transcript that have occurred since 1944. In this connection it was observed that the Federal court reporters' compensation is not limited to salaries, and that under the law the positions do not require a full-time 40-hour week, but that the reporters may augment their salary income by the sale of official transcript and the performance of private reporting work when they are not needed for their official duties. In this respect they differ from the other Government employees for whom the general pay acts were designed.

The Conference agreed that, taking these factors into consideration for the positions involved, the higher living costs since 1944, recognized for full-time Government employees by the various pay acts of 1945, 1946, and 1948, are given sufficient weight in the increases now approved by the Conference, and that this is also true of the increased living costs involved in pending legislation. However, the Conference approved the recommendation of the committee that any changes in the salaries of Federal employees authorized by Congress in future years to meet changes in the cost of living should be made applicable to the salaries of the reporters as they are now increased and fixed by the Conference.

TRANSCRIPT RATES

Judge Parker reported that the court reporters who attended the meeting of his committee had asked that the maximum allowable rate for original transcript at ordinary delivery be increased from 55 cents to 65 cents. The committee recommended that this request be not approved. Judge Parker again pointed out that transcript earnings under the maximum limits approved by the Conference in 1948 had increased on the average about 20 percent since that time. He reminded the Conference that one of the primary purposes of the Congress in enacting the court reporter law, and of the Judicial Conference in its administration, has been to reduce and hold at the lowest possible level the costs of litigation of which the transcript rates are a substantial part. The Conference approved of the recommendation.

The committee also reported that for the reasons stated above, it recommended disapproval of the request of the reporters for the removal of the present maximum of 90 cents for the original and 30 cents for copies for daily delivery transcript. The Conference approved of the recommendation.

In this connection, the committee observed that in multiple judge courts some fortuitous inequalities of income from this source to reporters serving in the same court arose from the differing work assignments of the reporters. The committee found that a means to avoid this situation was accomplished in several districts by a voluntary system of pooling the transcript income and each of the reporters in the district sharing therein upon a predetermined percentage basis. The committee suggested that this practice be commended to the consideration of judges and reporters in other districts where such conditions exist. The Conference approved of this suggestion.

Judge Parker also reported that representatives of the court reporters had informed his committee that the use by attorneys of the copies of transcript filed by them in the offices of the clerks of court in compliance with the requirements of the statute (U. S. C., Title 28, sec. 753 (b)) had been the cause of unfair loss of revenue to them because of its use without charge in situations where otherwise copies would have been purchased from the reporters. They referred particularly to the use of this file copy for purposes of appeal under Rule 75 (b) and (g) of the Federal Rules

of Civil Procedure. The committee had concluded that although the file copy must be filed promptly with the clerk and made freely available by him for reasonable public reference in his office, like other papers in the case, yet if it is used for purposes of appeal the reporters are justly entitled to a reasonable fee for that use.

Accordingly, the Conference approved the recommendation of the committee that provision may be made by the district courts if they see fit that when the certified copy filed in the office of the clerk pursuant to the act is used by the parties or their attorneys in the preparation or perfection of appeals, they shall pay the reporter for that use a fee of 25 cents a page.

REPORTS OF EARNINGS—INCOME FROM PRIVATE REPORTING

Judge Parker reported to the Conference the renewed objection of the reporters, reiterated by them at the meeting of his committee, to the present requirement of the Conference that they report to the Administrative Office their earnings from private reporting work not connected with their official positions. He said that the committee on the court reporting system had again considered this objection and had concluded once more that for the present the requirement should be continued. He pointed out that in view of the part-time nature of the positions it is essential for the Conference to know, in establishing salaries and official transcript rates, the extent of the opportunities given each reporter to engage in outside work, and that the reports of private earnings, like the reports of time spent in court are important indices of this factor. He observed also that these reports are not without benefit to the reporters themselves, since they serve to correct any impression that the outside earnings of reporters are generally excessive.

The Conference agreed with the view of the committee and instructed the Director to continue to require from the reporters the usual quarterly reports of their earnings from private reporting.

BANKRUPTCY ADMINISTRATION

The report of the Committee on Bankruptcy Administration was submitted by Chief Judge Phillips, chairman. He informed the Conference that pursuant to its direction the Director on

May 7, 1951, circulated among the circuit and district judges (1) a copy of a bill introduced by Congressman Byrne (H. R. 1651, 82d Cong.) which if enacted would raise the maximum limit on the salaries of full-time referees from \$10,000 to \$13,000 per annum and on those of part-time referees from \$5,000 to \$6,500 per annum; (2) a report of a special committee of the National Association of Referees in Bankruptcy recommending that all full-time referees receive a fixed salary of \$12,500 per annum and that part-time referees receive salaries to be fixed by the Judicial Conference at rates not exceeding \$6,500 per annum; (3) a bill introduced by Congressman Bolling (H. R. 3337, 82d Cong.) embodying the recommendations contained in the latter report; and (4) an estimate prepared by Mr. Covey of the Bankruptcy Division of the increase in the annual cost for salaries of referees which might be entailed by the various proposals according to the action taken under them by the Judicial Conference, and the relation of the increases to the salary fund. The Director requested the circuit and district judges, the judicial conferences and the judicial councils to express their views upon the bills as well as upon the general question of compensation of referees in bankruptcy.

The chairman reported that the committee had before it the letters expressing the views of the district judges and the circuit conferences so far as they had acted upon the question. The committee was of the opinion that in view of the steady increase in the cost of living since the establishment of the salary system for referees in 1947, especially in the metropolitan areas where many of the full-time referees are located, the maximum limit upon salaries of referees should be raised. The committee considered, however, that there were many districts in which it was desirable to have full-time referees as at present but in which conditions would not warrant the maximum salary. Consequently it did not favor a fixed salary for all full-time referees.

The chairman reported that the committee preferred the Byrne bill and recommended its approval with an amendment fixing the maximum limit on salaries of full-time referees at \$12,500 per annum and on those of part-time referees at \$6,000 per annum, both to be fixed by the Judicial Conference as at present. The Conference approved the recommendation.

CHANGES IN SALARY AND OTHER ARRANGEMENTS FOR REFEREES

The committee recommended and the Conference approved the following changes in referees' salaries, to be effective as of October 1, 1951:

| District | Regular place of office | Type of position | Annual salary | |
|--------------------|-------------------------|------------------|---------------|--------------|
| | | | Present | Increase to— |
| New Hampshire..... | Manchester..... | Part time... | \$2, 000 | \$2, 500 |
| New Jersey..... | Camden..... | do..... | 3, 500 | 4, 000 |
| Texas (W)..... | San Antonio..... | do..... | 2, 500 | 3, 500 |
| New Mexico..... | Albuquerque..... | do..... | 1, 500 | 2, 500 |
| Wyoming..... | Cheyenne..... | do..... | 1, 800 | 3, 000 |

DISTRICT OF OREGON

The committee recommended and the Conference approved the following changes in the designation of places for the holding of bankruptcy hearings in the District of Oregon: (a) Hillsboro to be discontinued as a place of holding court for the referee at Portland; (b) Astoria, Tillamook, and The Dalles to be designated as additional places of holding court for the referee at Portland; and (c) Bend to be designated as an additional place of holding court for the referee at Corvallis.

The chairman reported that there had been brought to the attention of the Committee a suggestion made by District Judge J. Waties Waring of the Eastern District of South Carolina that the procedure for the filling of vacancies in the office of referee in bankruptcy be simplified so as to permit the appointment of referees to fill vacancies in case of emergency. After consideration the Committee recommended that no change be made in the present procedure. The Conference concurred in the recommendation.

The committee recommended that the chairman of the committee be authorized in his discretion to appoint a subcommittee from the membership of the committee to consider matters referred from time to time to the committee by the Judicial Conference of the United States or by the Administrative Office. This recommendation was approved.

OPERATION OF THE JURY SYSTEM

The report of the Committee on the Operation of the Jury System was presented to the Conference by the chairman of the

committee, District Judge Harry E. Watkins, of West Virginia. Upon the recommendation of the committee, the Conference reaffirmed its endorsement of the proposed legislation recommended by the Conference at previous sessions, to establish uniform qualifications for jurors (S. 19 and H. R. 3959, 82d Cong., 1st sess.), and to provide for a jury commission for each United States District Court, to regulate its compensation, to prescribe its duties, and for other purposes (S. 1684 and H. R. 4514, 82d Cong., 1st sess.).

Judge Watkins also called to the attention of the Conference the bill, H. R. 5254, of the Eighty-second Congress, dealing with jury commissions in the district courts, and he reported that because it eliminates the clerk of the court from participation in the work of the commission, his committee recommended that the bill be disapproved. The Conference recorded its disapproval of H. R. 5254, and instructed the committee so to inform the Congress.

The committee also reported that as a result of its consideration of H. R. 5254, it had concluded that in its opinion there is no objection to those of its provisions which prescribe a form of oath for jury commissioners, and which increase from 300 to 500 the number of names of jurors required to be in the jury box when a jury panel is drawn. The Conference agreed in this view and authorized the committee to propose to the Congress appropriate drafts of legislation in the premises.

The committee also reported that it had under consideration a proposal made by District Judge Alfred D. Barkdale of Virginia that the number of persons necessary to constitute a grand jury be reduced to not less than ten nor more than fourteen, with eight votes required for an indictment. The Conference authorized the committee to continue its study of this subject and to report its conclusions to the Conference.

Federal grand juries—Investigatory power.—The Chief Justice brought to the attention of the Conference a letter directed to him by the Hon. Franck R. Havenner, Member of Congress, House of Representatives, from the Fourth Congressional District of California, concerning a communication and resolution which he had received from the Association of Grand Jurors of the city and county of San Francisco, Calif., with respect to the investigatory power and authority of Federal grand juries. The attention of the Conference was also directed to a bill [S. 2086] relating to the subject matter which had been introduced in the Senate on August 31, 1951.

The Conference directed that the matter be referred to the Committee on the Operation of the Jury System for study and recommendations, and that a report thereon be submitted at the next meeting of the Conference.

Jury commissioners—District of Columbia—Compensation.—Chief Judge Harold M. Stephens presented for the consideration of the Conference a proposal to amend existing law which limits the maximum amount of compensation which a jury commissioner in the District of Columbia may receive in any one year to \$250, so that such maximum amount would be increased to \$600 per year.

It was pointed out that this amendment had been sought for many years, and that it has the wholehearted approval of the District Court. Judge Stephens stated that all of the jury commissioners in the District of Columbia were spending a great deal more time on their duties than they can be compensated for under existing law, and that this increase in the maximum allowable compensation per annum would in a very small measure be a recognition of their valuable services.

The Conference approved of the proposal and recommended that section 198 of the act to establish a Code of Law for the District of Columbia, approved March 3, 1901, and the Acts amendatory thereof and supplementary thereto, constituting the Code of Law for the District of Columbia, as amended (D. C. Code 1940 Ed. § 11-1401) be further amended by striking therefrom the following words: "(nor two hundred and fifty dollars per annum)".

The Director was instructed to advise the Congress of this action and to request that the proposed amendment be enacted promptly.

COURTS—GENERAL

Controversies arising under the antitrust laws, and actions of regulatory agencies—Procedure.—Circuit Judge E. Barrett Prettyman, chairman, presented the report of the Committee of the Conference designated to consider:

(1) Means whereby the proceedings of regulatory agencies may be shaped both to satisfy the needs of the parties and to facilitate the reviewing function of the courts;

(2) Means whereby at *nisi prius* particular evidence may be explicitly related to defined issues and all of the evidence on a particular issue presented together;

(3) Means whereby (a) the materials in the record are confined to the issues under review by preparation of the record after points for arguments have been exchanged between the parties and by any other means devised for delimiting such, and (b) such materials are marshalled in a form most helpful for their consideration;

(4) And all other modes by which the general ends herein indicated may be achieved.

Judge Prettyman reviewed the manner followed in organizing the work of the committee, and the developments incident to evolving a program for carrying out the purposes for which the committee was designated. It was stated that after completion of its preliminary organizational work, the committee was of the unanimous opinion that, because of the importance of its task, the breadth and scope of its assignment, and the complexities of the many problems incident to such an undertaking, it would be an advisable step to segregate its work into two phases—one dealing primarily with prevalent procedures and methods of improvement therein before judicial tribunals, and one dealing with existing procedures and methods of improvement therein before administrative tribunals.

In view of this determination, the chairman sought, and received, authority from the Chief Justice of the United States and chairman of the Judicial Conference of the United States, to designate a subcommittee on administrative procedures as an advisory committee to the Committee of the Conference. And, pursuant to this authority, he had established, by designation, such an advisory committee composed of representatives of the administrative agencies of the Federal Government, the general counsels of such agencies and members of the legal profession.

A detailed and comprehensive presentation of the reports and work of the two committees was submitted by Judge Prettyman. He stated that the report and recommendations of the Advisory Committee because of their consistency with the over-all objectives sought had been approved and adopted by the Committee of the Conference. He advised that such reports and recommendations had been distributed to all of the judges of the Federal judiciary and that the comments which had been received were all favorable to the views expressed with reference to procedures before judicial tribunals. Due to the fact that the work of the committee had been divided into two phases, Judge Prettyman proceeded to submit the conclusions and recommendations of the committee separately:

PROCEDURE BEFORE JUDICIAL TRIBUNALS

CONCLUSIONS

1. That unnecessary delay, volume of record, and expense in judicial proceedings constitute an obstruction to the administra-

tion of justice; that such delay, volume and expense occur in a sufficient number of cases to constitute a serious problem.

2. That prevention of these conditions depends upon a fixed determination on the part of judges to prevent them and a firm course of action to that end.

3. That the most effective means of preventing unnecessary delay, volume of record, and expense are:

(a) conferences between judge and counsel prior to trial, such conferences to be of a style and scope to meet the peculiar needs of the particular case;

(b) the exclusion from the record of all unnecessary, as well as all irrelevant and incompetent, matter; and

(c) a course of procedure which will minimize delay in the accurate disposition of the cause after the completion of the trial.

Specific methods meeting with the approval of the committee for these purposes are set forth in the report of the committee.

RECOMMENDATIONS

1. That this report be accepted and approved by the Judicial Conference as a committee report.

2. That the report be printed, in form and style usable for ready reference by judges and trial counsel; for example, in the style and form customary in briefs in appellate courts.

3. That copies of the report, together with copies of the approving resolution of the Conference, be supplied to the judges of the district courts and circuit courts of appeals.

4. That copies of the report and the resolution of approval of the Conference be forwarded to the chairmen of the Judiciary Committees of the Senate and House of Representatives.

5. That the Administrative Office be instructed to make available copies of the report to practicing lawyers, and to organizations thereof, upon appropriate terms.

6. That the Administrative Office be instructed to give publicity to the report in such manner as the Director may deem appropriate, to the end that its existence and terms come to the attention of practicing lawyers generally; for example, through the media of bar journals and law school publications.

PROCEDURE BEFORE ADMINISTRATIVE AGENCIES

The chairman, Judge Prettyman, read from the report of the Advisory Committee on Procedure before Administrative Agencies the following excerpts:

On June 30, 1950, your Advisory Committee initiated a first-hand investigation of the causes of excessive delay and expense and unduly voluminous records in the procedures of Federal regulatory agencies, and possible remedies therefor. Each member of the Committee conducted such an inquiry among the members and staff of one such agency, and among the attorneys practicing administrative law before it. Consideration was given to the views expressed by members of the American, the District of Columbia and Federal Bar Associations. On the basis of these investigations, findings have been made and recommendations formulated.

I

Importance of the problem.—The Advisory Committee finds that for some time a number of Federal regulatory agencies have been making earnest efforts to eradicate from their administrative practice the causes hindering the expeditious adjudication of their proceedings. It has been found further, however, that although the problems here under consideration have been partially solved in some agencies, they still remain as continuing major difficulties in the overall administrative procedures of the Federal Government. In fact, unduly voluminous records and unreasonable delay constitute a hindrance to the success of the administrative process and to the effective administration of justice by regulatory agencies. It is with respect to this type of lengthy hearing and unduly bulky record that the observations and recommendations of the Advisory Committee are made.

The contributing causes of these difficulties vary from proceeding to proceeding, and from agency to agency. In fact, the responsibility for these causes must be shared to some degree by the courts, the administrative agencies, the hearing examiners, and by counsel for all parties, public and private. Necessarily, the remedies for the causes must also vary. Accordingly, no attempt has been made to specify any cause as the principal one, nor any remedy as universally applicable, or as a complete and final solution for all the problems here considered.

II

Administrative Agency Conference.—The procedure of the administrative agencies, pursuant to acts of Congress, is primarily a matter for the executive branch of the government. In the final analysis, it would be inappropriate and impractical for the Judicial Conference [of the United States] to attempt to formulate and promulgate uniform rules for the guidance of the Federal regulatory agencies. The regulatory agencies themselves must solve this problem. The solution may best be accomplished by the cooperation of all agencies involved; in fact, a cooperative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your committee's primary recommendation is that the Judicial Conference suggest to the President that he call, or cause to be called, a Conference of Representa-

tives of the Administrative Agencies having adjudicatory and substantial rule-making functions, for the purpose of devising ways and means for achieving the objectives with which this committee is concerned: that is, of preventing unnecessary delay, expense, and volume of records in administrative proceedings and of improving generally the efficiency and economy of the administrative process, and that particular attention be given to each factor of the problems herein outlined. It is further suggested that such Conference might establish a procedure for a continuous exchange of views and a review of progress relating to these objectives at regular intervals.

A brief résumé of the Advisory Committee's conclusions and suggestions by Judge Prettyman followed. It was emphasized that although the committee had reached some rather definite conclusions with respect to the manner in which improvements could be obtained in the saving of time, reduction of costs, and the acceleration of disposition through the establishment of certain procedures, it was the consensus of opinion of both the Advisory Committee and the Committee of the Conference that the problem involved is primarily one for the departments and agencies of the Government to consider, and that a cooperative approach to the situation would afford the most feasible medium through which a practicable solution may evolve.

Upon consideration, the Conference ordered that the committees' suggestions and recommendations with respect to the call of a Conference of Representatives of the Administrative Agencies having adjudicatory and substantial rule-making functions, be approved with this additional recommendation:

That representatives from the Federal Judiciary and the Bar as may be desired be designated to attend said Conference and to serve in such capacity as the President may determine.

Thereupon, the Conference approved the reports and recommendations of the committee as amended. It directed that the full reports of the committees be incorporated in the report of this Conference meeting by reference. It further directed that the Director should make arrangements for a special printing of the report and for its distribution to all members of the Federal judiciary, with special attention being called to the favorable attitude of the Conference with respect to the recommendations submitted. The Director was instructed to make available copies of the reports for distribution to those that may desire them; that such distribution shall be made upon request directed to the Director and upon such terms as he may deem necessary.

DISTRICT COURTS—VENUE AND JURISDICTION

Chief Judge Parker, chairman of the committee appointed to study the venue and jurisdiction of the district courts of the United States reported to the Conference the conclusions and legislative recommendations of his committee. He informed the Conference that the comprehensive report presented to it by his committee in March 1951 had been circulated throughout the judiciary in accordance with the directions of the Conference and had been considered by the circuit conferences of the First, Second, Third, Fourth, Fifth, Seventh, Eighth, and Tenth Circuits. Following receipt of the reactions of the judges and of the conferences, the committee had met again to consider its previous report in the light of these comments. The committee had then reviewed the recommendations of its previous report and concluded to adhere to all of them except the one which would foreclose to corporations the Federal jurisdiction in cases based upon diversity of citizenship in States where they are doing business and from which they receive more than half their gross income. As to this recommendation, the committee had concluded to follow a recommendation of the Tenth Circuit, which would substitute for the formula based upon net income, the standard specified in the jurisdictional sections of the Bankruptcy Act (U. S. C., Title 11, § 11) which rests the matter upon the principal place of business of the corporation, and it presented to the Conference a draft of legislation to accomplish this purpose by amendment of United States Code, Title 28, section 1332. Accordingly the committee recommended that the Conference approve its four recommendations as follows:

(1) That the historic jurisdiction based upon diversity of citizenship be retained in the Federal courts.

(2) That section 1332 of the Revised Judicial Code be amended to provide that in cases based upon diversity of citizenship a corporation shall be deemed a citizen both of the State of its creation and the State in which it has its principal place of business, and that its recommended draft of a bill to accomplish this purpose be approved.

(3) That the jurisdictional amounts prescribed by sections 1337 and 1332 of the Revised Judicial Code as requisite for Federal jurisdiction in cases based upon diversity of citizenship or a Federal question be raised from \$3,000 to \$7,500.

(4) That no change in the law dealing with the transfer of cases for trial of the nature proposed by legislation now before the Congress be made in section 1404 of the Judicial Code and that bills to accomplish such a change be disapproved.

After considerable discussion the Conference approved of the reports and recommendations of the committee and authorized the committee to be of any possible service to the Congress in its consideration of the legislative changes proposed.

DISTRICT COURTS—CONDEMNATION CASES—METHOD OF TRIAL

It was reported to the Conference that there was pending in the House of Representatives a bill (S. 1958, 82d Cong.), already passed by the Senate, which would require the district courts in condemnation cases to provide a trial by jury of the issue of just compensation upon the demand of any party, notwithstanding the provisions of subdivision (h) of Rule 71A of the Rules of Civil Procedure, which was recently promulgated by the Supreme Court and became effective on August 1, 1951, and which permits the district court in its discretion to order this issue to be tried by three commissioners when the character, location, or quantity of property to be condemned or other reasons in the interest of justice make preferable that method of trial. It was the view of the Conference that the new Supreme Court rule should not be thus modified by legislation until the courts have an opportunity to study the proposal, formulate their views, and express them to Congress.

Accordingly the Conference adopted the following resolution:

Whereas rule 71A of the Rules of Civil Procedure relating to the exercise of the power of eminent domain under a law of the United States was recommended by the Supreme Court's Advisory Committee on Rules of Civil Procedure, of which former Attorney General, the Hon. William D. Mitchell, is chairman, and was adopted by the Supreme Court after the most careful study and consideration; and whereas there has been introduced into the Senate of the United States a bill, S. 1958, which will modify subdivision (h) of this rule so as to take away the discretion reposed in district judges with respect to the manner of determining the issue of just compensation and to require jury trials in all cases where demanded by either of the parties, notwithstanding that the judge may be of opinion that such method of trial is not in the interest of justice because of the character, location, or quantity of the property to be condemned or for other reasons; and whereas said bill has been passed by the Senate without giving the courts an opportunity to be heard with regard thereto but has not been passed by the House; and whereas legislative modifications of a rule of procedure adopted by the Supreme Court should be undertaken only after the most careful consideration and with opportunity on the part of the courts to be heard with regard to the matter—

Now, therefore, be it Resolved: That a committee of the Conference be appointed to give study to the change in the rule that will be accomplished by S. 1958, seek the advice of the United States judges and circuit councils, and report to the Conference with respect thereto at the meeting in the spring of 1952, so that the Conference may express to Congress its considered views as to the desirability of the proposed change in the rule; and that in the meantime the Conference ask Congress to withhold action on the proposed legislation until the study can be made and the Conference can have opportunity to express its views.

The Director was instructed to transmit this resolution to the appropriate officers of the Congress.

Deceased or deserting seamen—Method of disposing of wages and effects of—District Judge William C. Coleman, chairman of the Conference Committee designated to consider some more satisfactory method of dealing with wages and effects of deceased or deserting seamen than that presently provided for under existing law advised that the committee's report and recommendations had been circulated throughout the judiciary in conformity with Conference policy; that of the judges commenting thereon an overwhelming majority favored the proposals. He advised that upon further consideration, the committee proposed to amend its recommendation with respect to the maximum value of deceased seamen's wages and effects up to which formal administration of the deceased seaman's estate is not required before distribution, by changing the maximum amount of \$500 heretofore proposed to \$1,000.

Judge Coleman stated that a special committee of the Maritime Law Association had been heard and their views were fully considered by the Conference Committee and, further, that such special committee was opposed to the recommendations of the Conference Committee.

The Chief Justice called the attention of the Conference to the Report of the Committee of the Maritime Law Association of the United States on the Disposition of Wages and Effects of Deceased and Deserting Seamen, a copy of which report had been furnished to each member of the Conference. He also read a letter from Mr. Vernon S. Jones, chairman of this committee, voicing its opposition to the recommendations proposed by the Conference Committee.

The Conference thereupon entered upon consideration of the committee's recommendations. As stated by the committee, the basic proposed amendment to existing law is to effectuate the

transfer of the custody and administration of the wages and effects of deceased or deserting seamen from the district courts to the Coast Guard through the implementation of the Administrative Procedure Act, preserving a right of review in the district courts.

Each of the procedural steps proposed, and each of the amendments to existing law were reviewed and discussed by the Conference.

Whereupon, the Conference approved of the report and recommendations of the committee, as amended, and instructed the Director to advise the Congress of this action and to request that the proposed legislation be enacted as promptly as possible.

Judges—Retirement of.—Circuit Judge F. Ryan Duffy, chairman of the Conference Committee appointed to study and report with recommendations with respect to problems relating to the retirement of judges for age or disability, seniority status, designation and assignment and personnel assistance for retired judges, and other problems which in the discretion of the committee were relevant to its study of the subject matter, submitted the report and recommendations of the committee.

It was pointed out that the committee had not submitted recommendations concerning matters relating to the retirement of judges in the Territorial courts inasmuch as it had not had an opportunity to consider expressions which had been received only a short time before the date of the Conference. He advised that the committee would deal with this in the near future and a report and recommendations thereon would be presented promptly.

The Conference directed that the report be received and circulated throughout the judiciary in order that the views and expressions of the district and circuit judges with respect thereto could be ascertained, and that a further report from the committee be submitted at the next meeting of the Conference.

Felony—Statutory definition of.—Chief Judge Parker, chairman of the Committee on Punishment for Crime which had been directed to consider and make recommendations with respect to the following resolution of the Judicial Conference of the Ninth Judicial Circuit:

Resolved: That paragraph (1) of section 1 of Title 18 of the United States Code be amended by the addition thereto of the following:

“Provided, That when a person is convicted of any felony and the sentence imposed by the court does not provide for imprisonment for a term exceeding 1 year, such person shall, for all purposes, after the judgment of conviction shall

have become final and after the sentence imposed upon him shall have expired, be deemed to have been charged with and convicted of a misdemeanor, and such person shall not suffer any disability or disqualification which would otherwise result from a conviction of a felony."

presented a report of the committee. He informed that the report and recommendations of the committee which had been submitted at the spring meeting of the Conference had been circulated throughout the judiciary in conformity with the policy of the Conference. He stated that the reaction was very favorable in a majority of instances, and that, upon consideration of those objections which had been received, the committee had determined that they were not of sufficient consequence to alter the committee's position.

Upon consideration, the Conference approved the recommendations of the committee to the effect that paragraph (1) of section 1 of Title 18, be amended in accordance with the proposals submitted by the Judicial Conference of the Ninth Judicial Circuit. The Director was instructed to advise the Congress of this action, and to request that the necessary legislative action be taken as promptly as possible to enact into law the suggested statutory amendment.

Probation—Imposition of jail sentence as a condition of.—Chief Judge Phillips stated that pursuant to directions of the Conference the committee had considered the resolution of the Ninth Circuit Judicial Conference proposing that section 3651, Title 18, United States Code, be amended "to provide that the court shall have power in granting probation to defendants in criminal cases to impose as a condition of probation that the defendant be imprisoned in a jail-type institution for a period not exceeding 6 months" and had unanimously concluded that such amendment was not desirable, and therefore recommended against its being proposed for legislative action. Upon consideration, the Conference concurred in and adopted the views of the committee.

Courts—Clerks' offices—Closing of certain.—The Director called the attention of the Conference to a statement of the Appropriations Committee of the House of Representatives, which is set forth in its report to the House on the annual appropriations for the fiscal year 1952 (H. Rept. 685, 82d Cong., p. 21), and which reads as follows:

Examination of the hearings will disclose that United States District Court clerks' offices are maintained at several locations at which a total of less than

50 cases (civil and criminal combined, but excluding bankruptcy and naturalization) were commenced during the fiscal year 1950. It is felt that the locations of these offices should be carefully examined and that all unnecessary offices should be eliminated.

In the consideration of the subject matter, it was pointed out that this question had heretofore been urged for consideration by the judges of the districts wherein there are offices at outlying places with a very small volume of business, and that it was a matter of especial comment by the Conference Committee on Ways and Means of Economy in the Operation of the Federal Courts.³ However, because of the pointed reference to the situation as hereinabove recited, the Conference instructed the Director to have the matter brought to the special attention of the district judges in whose districts clerks' offices falling within the classification described are located, with the request that they give earnest consideration to the necessity for the continued operation of such offices.

Courts—Discretionary allowance of appeals from interlocutory orders, judgments and decrees in certain instances.—Chief Judge Swan brought to the attention of the Conference a suggestion submitted by Circuit Judge Frank that a committee be appointed to consider a proposed new statute, to be known as section 1292A, of Title 28, United States Code, which would authorize the courts of appeals to permit, in their discretion appeals from interlocutory orders, judgments or decrees in certain instances. As a basis for such committee's study, Judge Frank suggested the following:

In addition to appeals from interlocutory orders, judgments and decrees permitted as of right under section 1292, a court of appeals, on the application of a party, may in its discretion authorize an appeal from an interlocutory order, judgment or decree if such court determines that such authorization is necessary or desirable to avoid substantial injustice. Any such application must be made within 30 days after the entry of the order, judgment or decree. No appeal will lie from any interlocutory order, judgment or decree in bankruptcy except as provided in this section or section 1292. Failure to take or apply for an appeal under this section or section 1292 shall not bar an appeal from any order, judgment or decree when it becomes final.

A statement with respect to Judge Frank's proposal by Judge Charles E. Clark was also presented.

The Conference directed that the matter be referred to the committee authorized to be designated by the Chief Justice to study legislation which has been proposed in the Congress with reference to procedures in condemnation cases. The committee

³ Rpt. Jud. Conf., Sept. 1948, pp. 34-35.

was requested to make a study of the proposal, and to submit its report and recommendations as promptly as possible.

Pretrial procedure.—Chief Judge Phillips, at the request of Circuit Judge Alfred P. Murrah, presented the report of the Committee on Pretrial Procedure.

The Conference expressed its approval and satisfaction with the progress that is being made in the task of making more widespread the use of pretrial procedural methods throughout the Federal judiciary. It noted with interest the fact that such methods have been adopted in many of the various State courts.

The Conference directed that the report of the committee be received and approved, and that it be brought to the attention of the various district and circuit judges.

District judges—Representation on Judicial Conference.—Pursuant to request of Chief Judge Denman, the Conference heard Chief District Judge James Alger Fee of the District of Oregon, who presented the views of the Judicial Conference of the Ninth Judicial Circuit concerning personal representation of district judges on the Judicial Conference of the United States. After consideration, Chief Judge Denman, at the request of Judge Fee, presented the following motion:

That a committee be appointed by the Chief Justice to consider the question of representation of District Judges on the Judicial Conference of the United States, with special attention being given to the proposal approved by the Judicial Conference of the Ninth Judicial Circuit whereby it suggests that existing law with respect to membership of the Conference be amended so that the District Judge senior in commission in each circuit will be included therein.

The motion was rejected.

Thereupon, the following motion was presented and considered:

That a committee be appointed by the Chief Justice to consider the relations of the District Judges with the Judicial Conference of the United States and the Administrative Office of the United States Courts, with special attention being given to the views expressed in the recommendation of the Ninth Judicial Circuit Conference.

The motion was disapproved.

Judges—Territorial courts—Tenure.—Judge Denman presented the suggestion of the Judicial Conference of the Ninth Judicial Circuit that section 134 (a) of Title 28 of the United States Code dealing with the district judges in Hawaii and Puerto Rico be amended to eliminate the present limitation of terms to six and eight years respectively and instead to provide for tenure during good behavior.

Upon consideration, the Conference directed that the question of tenure of service for judges of all the Territorial courts be referred to the Committee on Retirement, Tenure, etc., for study, and to submit a report and recommendations thereon at the next meeting of the Conference.

Courts—Expert witnesses called by the court—Compensation.—Chief Judge Magruder presented the following resolution adopted by the Judicial Conference of the First Judicial Circuit:

Resolved: That it was the consensus of the conference held on June 19, that the Judicial Conference of the United States be requested to appoint a committee to consider whether statutory authority should be given to federal judges to compensate, at rates appropriate for expert witnesses, experts called by the Court itself in civil litigation to testify with respect to economic, professional, or other technical matters upon which the court desired disinterested expert testimony.

The Conference approved of the resolution, and directed that a committee of the Conference be designated by the Chief Justice for such purpose, and that report and recommendations be submitted by such committee as promptly as possible.

Revision of criminal and judicial codes.—Circuit Judge Albert B. Maris, chairman of the committee, submitted its report. Judge Maris gave an interesting résumé of his work in connection with the formulation of legislation to be enacted by the Guam Legislature to reorganize the judicial system, and, as an incident thereto, to investigate the existing judicial system and to make recommendations for its improvements. In this connection, Judge Maris urged the Conference to approve an amendment to section 1291 of Title 28, United States Code, which was pending in the Congress whereby all final decisions of the District Court of Guam shall be appealable to the Court of Appeals for the Ninth Judicial Circuit. The Conference thereupon adopted the following resolution:

Resolved: That the Judicial Conference of the United States approves the amendment of section 1291 of Title 28, United States Code (into which the provisions of sec. 23 (a) of the Organic Act of Guam are being incorporated by H. R. 3899, sec. 48) so as to provide that all final decisions of the District Court of Guam shall be appealable to the Court of Appeals.

The Conference directed that the report of the Committee on the Revision of Criminal and Judicial Codes be received and approved.

Judicial statistics.—Mr. Will Shafroth, Chief of the Division of Procedural Studies and Statistics, Administrative Office, presented the report of the committee. He briefly outlined the work of the

committee since its last report. The Conference directed that the report be received and approved, and that it be circulated throughout the judiciary for the information of the judges.

COMMITTEES

Committees continued and discharged.—All present committees of the Conference were ordered continued with the exception of the following which were ordered to be discharged:

Committee on the Court Reporting System.

New committees.—The Conference directed that a committee of the Conference be appointed to give study to the change in Rule 71A of the Rules of Civil Procedure that will be accomplished under the provisions of S. 1958 of the Eighty-second Congress which has passed the Senate and is pending in the House of Representatives. This has particular reference to the method of trial with respect to the question of just compensation in condemnation cases.

Pursuant to such directive, the Chief Justice designated the following as a committee of the Conference for the purposes indicated, which are more fully set forth in the resolution of the Conference appearing on page 28 of this report.

Chief Judge John J. Parker, Chairman, and Circuit Judges Wayne G. Borah, Shackelford Miller and Walter C. Lindley, and District Judges Ernest W. Gibson, Roy W. Harper, Peirson M. Hall, and Carl A. Hatch.

Pursuant to the direction of the Conference, the Chief Justice designated the following as a committee of the Conference to consider whether statutory authority should be given to Federal judges to compensate, at rates appropriate for expert witnesses, experts called by the court itself in civil litigation to testify with respect to economic, professional, or other technical matters upon which the court desires disinterested expert testimony:

Chief Judge Calvert Magruder, Chairman, and Circuit Judges Henry W. Edgerton and Walter L. Pope, and District Judges Carroll C. Hincks, William H. Kirkpatrick, Joe W. Sheehy, Michael L. Igoe, and Albert L. Reeves.

Committees general.—The Conference authorized the Chief Justice to take whatever action he deemed desirable with respect to increasing the membership of existing committees, the reconstituting of discharged committees, the filling of any existing com-

mittee vacancies, the appointing of new committees, and the designation of membership in such instances.

Advisory committee.—The Conference continued the committee consisting of the Chief Justice, and Chief Judges Stephens, Biggs, Parker, and Phillips, to advise and assist the Director in the performance of his duties.

The Conference declared a recess, subject to the call of the Chief Justice.

For the Judicial Conference of the United States:

FRED M. VINSON,
Chief Justice.

Dated Washington, D. C., October 24, 1951.

APPENDIX

REPORT OF HON. J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES

*Mr. Chief Justice, Members of the Judicial Conference of the
United States, Honored Guests:*

When I was privileged to address this Conference a year ago, I expressed the firm conviction that the administration of justice is confronted today by few responsibilities that equal, in urgency and complexity, the preservation of our fundamental individual liberties while at the same time the national security is being assured. The perplexities and pressures have not abated. Recently decided cases, of which you all are cognizant, have served to highlight this outstanding problem of our time. I am confident that our efforts in the past have been constructive, and I pray that, despite unreasoning clamor and momentary passions, those responsible for the administration of justice will continue to meet with calmness and courage the burdens they must bear.

The present time is one of stress. It is not the first period of tension through which this Nation has passed, nor can we hope on any reasonable basis that it will be the last. Yet, it has been observed in our history that in such times there is a tendency for attacks to be mounted against the law itself and against the procedure and personnel of the courts that administer it.

I referred last year to a legislative proposal, apparently evoked by displeasure with a court of appeals decision directing release on bail of a well-known individual pending appeal of a conviction for perjury, that a committee of Congress undertake an investigation of the competence, fitness, and legal qualifications of the entire Federal judiciary. I opposed this resolution, on the ground, among others, that it would be construed as an attempt to intimidate the judiciary and would represent a lack of confidence in our system of government. I was happy to report to you then that the Senate Judiciary Committee had withdrawn the resolution. But other proposals of similar character have arisen. Last January, in response to a request by the chairman of the Senate

Judiciary Committee, I set forth my views concerning a proposed resolution that a subcommittee of that committee make "a thorough investigation of the Federal judiciary, and of actual or attempted coercion or improper influencing of Federal judges and the actual or potential sources thereof." I declared that I had no knowledge of the need for such an investigation, and that if there were complaints of improper conduct against any judge the constitutional provisions on impeachment furnished an ample remedy. I warned that an investigation of the kind proposed would be attended by the sort of publicity and notoriety that could only seriously prejudice the proper administration of justice. In April of this year, there was introduced Senate Resolution 123, which proposed the making of a study and investigation by the Senate Committee on the Judiciary with respect to the practices, procedures, and legislative provisions involved in appointments to the Federal judiciary, with particular reference to the political affiliations of appointees, the proper interpretation of the advice and consent clause of the Constitution, delays in filling vacancies, and the utilization of minimum qualifications standards for appointees. No action has been taken on this resolution.

A troublesome problem in the balancing of individual rights against the demands of national security has arisen by reason of the recent defections of some of the persons admitted to bail in certain national security cases. A suggestion has been made for alteration of the Federal bail statute in H. R. 4821, which would provide that bail shall not be taken from a surety listed as subversive by the Attorney General of the United States. The Conference may wish to set forth its views as to whether a statutory adjustment is needed or not at this time. However it does seem to me that, on the question of who may qualify as bondsmen, there is sufficient authority now in the courts to exclude unreliable or irresponsible sureties. And may I add that my Department has not been remiss in calling this fact to the attention of the courts when the occasion demanded it.

In the interest of facilitating Federal criminal law enforcement, the Department of Justice has sought legislation which would empower the Attorney General to obtain needed testimony by a grant of immunity from prosecution to witnesses who claim their constitutional privilege against self-incrimination in refusing to testify before courts and grand juries and before congressional com-

mittees. In the light of the history of the constitutional privilege, it is clear that the granting of immunity from prosecution would present a means of obtaining needed testimony from those who might otherwise hide behind the constitutional protection against self-incrimination. If any witness, benefited by immunity, refused to testify, he could then be punished for contempt; or, if he committed perjury in his testimony, he could be convicted and punished for that offense. In providing power to grant immunity it has been our view that the authority should be centered in the Attorney General because he is the official charged with the responsibility for all prosecutions under the Federal laws. Similarly, in extending the principle of immunity in exchange for testimony before a congressional committee we feel that responsibility must be centered in the Attorney General or, at the very least, in a congressional officer acting with the concurrence of the Attorney General. If authority for the granting of immunity is scattered it is easy to foresee the impeding or complete frustration of prosecutions contemplated by the Department of Justice on any matter touched upon even incidentally in a congressional investigation. Indeed, we might even have a repetition of the situation that existed in the period between 1857 and 1862, when, under an act of Congress that granted immunity in exchange for testimony in the form of a complete legislative pardon for any act to which a witness should be required to testify, persons deliberately sought invitations to testify before Congress on matters regarding which they had good reason to fear successful criminal prosecution.

Two pending bills on the subject of immunity are S. 1747, which deals with the granting of immunity before any grand jury or court of the United States when, in the judgment of the Attorney General, the testimony of a witness is necessary in the public interest; and S. 1570, as reported by the Senate Judiciary Committee on August 27, 1951, which would provide that a witness may be compelled to testify before either House of Congress or a committee thereof when a specified number of members of the committee shall have authorized the granting of immunity to the witness. Obviously, I have opposed S. 1570, since it violates the principle of centralizing the responsibility for the grant of immunity in the officer of the United States who is responsible for the prosecution of offenders. On the other hand, S. 1747 recognizes that principle, and I have fully supported it; and while S. 1747 does not relate to

congressional investigations it could be easily amended to that end if it is considered desirable to do so.

A second matter in which the Department of Justice has made a strong recommendation for legislation, in the interest of better law enforcement, has to do with perjury in the course of grand jury investigations and the trial of cases. We feel that the Federal authorities should be equipped with the same facility in dealing with perjury as is enjoyed by enforcement authorities in a number of the States. In New York, for instance, when a witness makes willful contradictory statements under oath, a case of perjury can be made out by establishing proof of that fact without a showing by the prosecution of which statement is true and which is false. Under existing Federal law (18 U. S. C. 1621) a person may not be convicted of perjury for making contradictory statements under oath unless the indictment charges and the prosecution proves which of the statements is false. And, as you know, under the rules of proof in perjury cases, in order to convict, the falsity of the statement made under oath must be established by the testimony of two independent witnesses or by one witness and corroborating circumstances. (*Weiler v. United States*, 323 U. S. 606.) Companion measures, H. R. 2260 and S. 1625, have been introduced, which would make punishable the giving under oath or affirmation, within a period of three years, of willful contradictory statements on a material matter, either in proceedings before a grand jury or during the trial of a case; and such perjury may be established by proof of the willful giving or making of such contradictory statements without alleging or proving which one is false. Unfortunately, H. R. 2260 has been tabled by the House Judiciary Committee after an adverse report by a subcommittee. The Senate companion is pending before the Senate Judiciary Committee.

The reprehensible conduct of certain attorneys in the course of recent trials involving the national security has given rise to proposals that the Supreme Court promulgate a code of ethics for members of the bar appearing before the Federal courts. H. R. 1610 would empower the Supreme Court to do this. At the present time, of course, judicial supervision of the conduct of attorneys in the Federal courts is not governed by court rules uniform throughout the United States and its Territories. Another proposal dealing with attorneys is Senate Resolution 92, which would place the Senate on record as favoring the disqualification from

practice before the Federal courts of attorneys who are known or proven to be members of the Communist Party, and the denial of admission to practice in those courts to persons known or proven to be Communists. On this general subject I can only suggest, as I did a year ago, the possible interest of this body in exploring the appropriateness of such proposals, together with any others that might promote the orderly conduct of criminal and civil trials.

I should like to turn now to matters relating more specifically to the judiciary itself.

At its September 1950 and March 1951 meetings, this Conference recommended the creation of a number of additional judgeships. Bills carrying out these recommendations have been introduced. S. 1203 is an omnibus bill that would provide for most of the additional judgeships recommended by this Conference as well as others which the Conference has not recommended. Hearings have been held on this bill, and the measure was reported on last month [S. Rept. 691].

In addition to S. 1203, a number of other bills have been introduced on the same subject. H. R. 3736 would create two additional circuit judgeships for the Ninth Circuit. H. R. 163 would provide one additional judgeship in the Third Division of Alaska. H. R. 3673 would provide one additional judge for the District of Arizona. H. R. 1324 would create one judgeship to serve both the Northern and Southern Districts of Indiana. S. 922 and H. R. 1645 would make permanent the existing temporary judgeship for the Eastern and Western Districts of Missouri. H. R. 3099 would provide that the incumbent of the roving judgeship in the Eastern, Middle, and Western Districts of Pennsylvania should succeed to the first vacancy occurring in the Middle District, and that thereafter the roving judgeship should be eliminated. S. 88 would create an additional judgeship in the Middle District of Tennessee. No action has been taken by the Congress on any of these bills.

In my report to the Conference last year, I referred to the possibility of amending the statutes dealing with the retirement of judges for disability so as to provide for cases where judges failed to retire in spite of incapacity and inability to serve continuing over a long period of time. A bill now before the Congress, H. R. 3960, would in my opinion help to ameliorate this situation. It would provide that, in any case where a circuit or district judge was eligible to resign or retire for disability under the provisions

of sections 371 or 372 of Title 28 and the judge failed to resign or retire, and the President found that that judge was unable to discharge his official duties efficiently by reason of permanent disability and that the appointment of an additional judge was necessary for the efficient dispatch of business, an additional judge might be appointed. The Department of Justice has submitted a favorable comment on this bill. A similar provision appears in section 5 of S. 1203, the omnibus judgeship bill to which I referred earlier. A further suggestion is contained in H. R. 107 which would amend section 371 of Title 28 to provide that a judge, who resigned after attaining the age of 70 years and after serving at least 10 years, would receive the salary of the office rather than, as is the case at present, the salary he was receiving when he resigned. Thus, he would benefit by any statutory pay increases, as in the case of a judge who retains his office but retires from active service. No action has been taken on either of these bills. I should like, nevertheless, to urge upon the Conference a consideration of these proposals, and any others that may be forthcoming, as a solution for the difficulties created by the continuance in office of judges who unfortunately have been incapacitated for long periods of time.

For some time the Department of Justice has urged the enactment of legislation to provide annuities for the widows and dependent children of deceased judges and justices. Four bills on this subject have been introduced in the present Congress, S. 16, H. R. 89, H. R. 1386, and H. R. 1763. The Senate bill is identical to S. 3108, Eighty-first Congress, without certain amendments proposed by the Senate Judiciary in the last Congress to give greater protection to surviving minor children under its provisions. This department has taken the position that it would prefer the enactment of S. 16 if that bill were amended to conform with the earlier committee proposals for altering S. 3108. While no further action has been taken on the House bills, S. 16 was reported out of committee a month ago.

On the subject of Territorial judges, H. R. 1741 would amend section 373 of Title 28 to permit certain of these judges upon leaving the bench, after having served for 10 years and having attained 70 years of age, to continue to receive the salary received at the time of relinquishment of office. At present, such judges are not entitled to that full salary unless they have served 16 years.

The tenure of Territorial judges in Alaska and the Virgin Islands would be changed by two bills that have been introduced at the present sessions. H. R. 158 would provide that judges of the United States District Court for Alaska, who are now appointed for terms of 4 years under section 112 of Title 48, should hold office during good behavior. H. R. 2731 would increase the term of the District Judge of the Virgin Islands from 4 years as it is at present [48 U. S. C. 1405y], to 8 years. This change would bring his term into conformity with those of the judges of Puerto Rico and the Canal Zone [28 U. S. C. 134, 1353]. In its comment on these bills, the Department of Justice suggested that the House Judiciary Committee might wish to examine the entire question of the tenure of Federal judges in all of our territories and insular possessions with the view of obtaining uniformity in this field. No further action has been taken on either of these bills.

Another bill, H. R. 2393, would authorize the Chief Justice to assign temporarily any circuit judge to sit upon the Supreme Court in place of any justice of that Court who had disqualified himself or was otherwise unable to serve. It seems to me that a serious constitutional question is involved in any proposal which would empower participation, as a member of the Supreme Court, by a judge who had not been appointed and confirmed by the Senate to serve on that Court. In addition, there may also be a practical objection in placing on the Chief Justice the responsibility to select the specific circuit judge who would serve in a particular case. So far no action has been taken on this bill.

Two proposals now pending in the Congress are, it seems to me, worthy of your consideration. H. R. 486 would prohibit any justice of the United States from testifying as to the character or reputation of any person or as to any matter of opinion in any action in any court of the United States. H. R. 950 would provide no Federal judge or justice shall be compelled to appear in any judicial proceeding as a character witness or where, in the opinion of the court trying the case, the testimony of the judge could be obtained from other sources. The provision would be applicable to any action in any court, whether State, or Federal, but would not limit the right of any judge or justice from appearing voluntarily. No action has been taken on either of these bills.

For several years consideration has been given both in the Justice Department and in the Judicial Conference to the question of

amending the Expediting Act (15 U. S. C. 28) in antitrust cases. A recommendation made at last year's meeting of this Conference was embodied in H. R. 3516, which would permit the chief judge of a circuit, if he determined that assignment of three judges to a case under that act would unduly prejudice the dispatch of other judicial business in the circuit, to assign it to a single judge for expeditious disposition. The Department of Justice has supported this bill, as it supported a similar proposal in the Eighty-first Congress. I regret to advise this body, however, that the House Judiciary Committee has recommended unfavorable action on the present bill.

In the field of criminal procedure, I should like first to report on the situation with regard to the provision of legal representation for indigent defendants in the Federal courts, a subject to which the Judicial Conference has devoted special study and attention. At its 1950 meeting, the Conference urged the enactment of S. 2206, Eighty-first Congress, which the Department of Justice had also strongly recommended. A similar bill, H. R. 3978, has been introduced in the present Congress and another bill, S. 1561, which differs from it in some respects, is now pending in the Senate Judiciary Committee. The Department of Justice has advised that committee that the Department would prefer the enactment of the House bill which provides for the establishment of the office of public defender, rather than for the appointment of counsel in specific cases. There is another bill, S. 1210, now pending in the Senate Committee for the District of Columbia, which would provide for the appointment of counsel for indigent defendants in criminal cases in the United States District Court for the District of Columbia. However, the committees involved have taken no action on any of these bills.

In my report to this body in 1950, I advised the Conference that the language of the transfer provisions of Rule 20, Federal Rules of Criminal Procedure, prevents its application in cases where the accused is confined in a penal institution but was not actually "arrested" in the district where the institution is located. As a consequence, we have many outstanding detainers filed against prisoners because of indictments in districts other than those where they are confined. This gives rise to many unfortunate effects which I shall not repeat here. But I would like to urge again the simple amendment to Rule 20 which, as set forth in last year's report, would make it clear that a defendant may consent to the

disposition in the district where he is held of an indictment or information pending elsewhere.

Two recent enactments affecting the release and parole of prisoners are worthy of mention in this discussion of criminal law administration.

Public Law 62, approved on June 29 of this year, which was recommended by the Department of Justice, amended section 4164 of Title 19, United States Code, to provide that whenever a released prisoner has less than 180 days of the maximum term imposed upon him remaining to be served, his release shall be unconditional. I believe that this measure will result in a considerable saving of the time, effort and expense formerly involved in keeping such persons on parole.

Certain inequities in the laws relating to parole were corrected by Public Law 98, which became effective on July 31, 1951. This statute amended section 4202 of Title 18 of the Code so as to permit prisoners serving sentences of more than 45 years to be eligible for parole after 15 years, in place of the full one-third of the sentence formerly required, and also to provide that all prisoners serving terms of over 180 days may be eligible for parole. Before this enactment, prisoners serving life sentences, being eligible for parole after serving 15 years, received preferential treatment over those sentenced to terms longer than 45 years, and prisoners serving terms of less than 1 year were not eligible for parole at all.

With respect to the Federal jury system, S. 1684 would amend section 1864 of Title 28 of the Code to provide for a jury commission for each United States district court. This bill is similar to H. R. 2050, Eighty-first Congress, which this Conference and the Department of Justice approved. Other similar bills now pending before the House Judiciary Committee are H. R. 3961, H. R. 4514, and H. R. 293.

In the matter of amending section 1861 of Title 28, United States Code, to remove from the states any control over the qualifications of Federal jurors, thereby establishing uniform qualifications for jurors in Federal courts, there are now pending S. 19 and H. R. 3959. This change has been approved by the Conference. H. R. 1983, which likewise is pending, would require that an oath of allegiance be taken by all Federal jurors. No action has been taken on any of these bills.

Turning to matters of a civil nature, I should like first to refer again to a recommendation which I discussed at length in my

report to this Conference in 1950. In brief, it was the considered view of my Department, as the chief litigant in admiralty cases, that now is the time for action by the Supreme Court to make available to the district courts in their admiralty practice the modern procedural advantages of the Federal Rules of Civil Procedure. I offered a fairly simple solution, in the form of a single additional admiralty rule which would make the Federal Rules of Civil Procedure the supplemental source of decision in admiralty matters. This would avoid the need at this time for general revision of the Admiralty Rules, and would in fact provide a sounder basis for their ultimate revision in the future. It is my hope that this proposal will be speedily adopted. I again offer for the assistance of the Conference the services of the admiralty specialists of the Department of Justice.

On August 1 of this year there went into effect Rule 71A of the Federal Rules of Civil Procedure. This provides for a uniform system of procedure governing all cases involving condemnation of land in the Federal courts except those which fall under special statutes. Prior to the adoption of this rule, Federal court procedure was governed in each case by the procedures existing in the respective States. The Department of Justice is now in the process of working out the necessary adjustments to procedures under the new provision.

As promulgated, subsection (h) of Rule 71A abolished the right of trial by jury on the issue of just compensation, which had been preserved in most of the Federal courts by virtue of the fact that such a right was granted by law in the great majority of the States. Under the rule as it now stands, however, discretion rests with the trial judge as to whether a jury or commissioners should be used. A bill, S. 1958, has been passed by the Senate to restore the right to trial by jury upon the demand of either party, and this bill is now pending before the House Judiciary Committee. The Department of Justice has consistently advocated permitting trial by jury upon the demand of either party.

At its 1950 meeting the Judicial Conference recommended the prompt enactment of two bills then pending before the Congress relating to the appellate review of certain orders of certain administrative agencies. One of these bills, providing for the review in the courts of appeals of certain orders of the Federal Communications Commission, the United States Maritime Commission and of the Secretary of Agriculture, became law, Public Law 901, on December 29, 1950.

The other bill, providing for review in the courts of appeals of certain orders of the Interstate Commerce Commission, failed of enactment, and a similar bill, H. R. 4025, has been introduced in the present Congress. As introduced, section 10 of this bill requires that a petition for certiorari must be filed within 60 days after the entry of final judgment and within 30 days after an order granting or denying an interlocutory injunction. It is the view of the Department of Justice that in the light of the general 90-day period allowed for submission of a petition for certiorari under section 2101 of Title 28, as well as the difficult and time-consuming nature of such applications, the bill should allow 90 days for such petitions after final judgment and 45 days after the entry of interlocutory orders. This was done in the case of P. L. 901 of the last Congress, and the same practice ought to be adopted for orders of the Interstate Commerce Commission.

Two proposals have been made to limit the removal of civil actions from State to Federal courts. H. R. 1328 and H. R. 1988 would raise from \$3,000 to \$10,000 and \$15,000, respectively, the jurisdictional amount required for removal of actions from State to Federal courts on the basis of a Federal question or diversity of citizenship. There would be no change in the present jurisdictional requirement of \$3,000 in cases originally brought in the United States district courts on these grounds. In its comment on these bills the Department of Justice has opposed their enactment as creating an anomalous situation wherein a different amount would be required for the removal of cases from State to Federal courts than would be required for the original bringing of suits on the same grounds in the Federal courts. In addition, these changes might impair the usefulness of 28 U. S. C. 2403, whereby in cases in the Federal courts to which the United States is not a party, the Attorney General may nevertheless intervene on constitutional issues. No action has been taken by the Congress on any of these bills.

Another bill, S. 1593, would raise from \$3,000 to \$5,000 the jurisdictional amount for the Federal courts in cases based on diversity of citizenship. It is probable that the enactment of such a provision would have only slight effect on the work of the courts or of the Department of Justice. This bill too is awaiting congressional action.

In my report last year I repeated a recommendation, which had been made in previous reports to this Conference, that there be

adopted uniform rules for all the courts of appeals, particularly with reference to the preparation and contents of printed records and briefs on appeal. I stressed last year that in my opinion the importance of effecting that uniformity was increasing, and I wish once more to suggest the desirability of taking that step.

Similarly, it would be desirable to reconcile the existing differences of practice in the district courts with respect to the taxation of costs in both civil and criminal cases. To provide a measure of uniformity in that field would eliminate many disputes and attendant delays. In addition, I mentioned last year the practice which seems to have become the rule in many districts not to tax the marshal's fees against criminal defendants. In some districts, no costs of any kind are taxed against criminal defendants in favor of the Government. Under section 1920 of Title 28, taxation of costs lies within the discretion of the judge, but a uniform practice against it in any court does not seem to be warranted, and undoubtedly results in some unnecessary financial loss to the Government. Therefore, I should like once again to recommend that the Conference call this situation to the attention of the district judges.

This meeting opens the thirtieth year of the Judicial Conference, established by the Congress in the act of September 14, 1922. It is interesting to note that the official record of the first two meetings of the Conference was first printed in the Texas Law Review of June 1924 with the following note:

This official memorandum of the first two meetings of the Federal Judicial Council contains so much information of interest to lawyers and serves so well to illustrate how an important piece of judicial machinery may be set up and put to work and the sort of problems it has to deal with, that it is, with the kind permission of Chief Justice Taft, reproduced in its entirety. * * *

If this evaluation of almost 30 years ago was meant to be a prediction, it certainly has been made good by the splendid achievements of the intervening years. I am proud to have been able to participate in this work, and to have been able to present to this group some of the annual summaries of things done and to be done, which are the product of the work and thought of the hundreds of able lawyers in the Department of Justice. I confidently expect that 30 years hence some other Attorney General will stand before you to comment upon what may prove to be the even greater achievements of the next three decades of the Judicial Conference of the United States.