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

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**PROCEEDINGS, SEPTEMBER 20-21, 1961**

**WASHINGTON, D.C.**

**1961**

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**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

**Warren Olney III**  
Director

**REPORT**  
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THE JUDICIAL CONFERENCE OF THE UNITED STATES, 28 U.S.C. 331

§ 331. Judicial Conference of the United States.

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims is unable to attend the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

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

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

The Judicial Conference of the United States convened on September 20, 1961, pursuant to the call of the Chief Justice of the United States issued under 28 United States Code 331, and continued in session on September 21. The Chief Justice presided and the following members of the Conference were present:

*District of Columbia Circuit:*

Chief Judge Wilbur K. Miller  
Judge Matthew F. McGuire, District of Columbia

*First Circuit:*

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

*Second Circuit:*

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

*Third Circuit:*

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

*Fourth Circuit:*

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

*Fifth Circuit:*

Chief Judge Elbert Parr Tuttle  
Judge Ben C. Connally, Southern District of Texas

*Sixth Circuit:*

Chief Judge Shackelford Miller, Jr.  
Chief Judge Marion S. Boyd, Western District of Tennessee

*Seventh Circuit:*

Chief Judge John S. Hastings  
Chief Judge Luther M. Swygert, Northern District of Indiana

*Eighth Circuit:*

Chief Judge Harvey M. Johnson  
Judge Gunnar H. Nordbye, District of Minnesota

*Ninth Circuit:*

Chief Judge Richard H. Chambers  
Chief Judge William J. Lindberg, Western District of Washington

*Tenth Circuit:*

Chief Judge Alfred P. Murrah  
Chief Judge Royce H. Savage, Northern District of Oklahoma

*Court of Claims:*

Chief Judge Marvin Jones

*Court of Customs and Patent Appeals:*

Chief Judge Eugene Worley



Senior Judges Orie L. Phillips and Albert B. Maris; Circuit Judges Jean S. Breitenstein and William F. Smith; District Judges Harry E. Watkins and William J. Campbell; and Judge Samuel E. Whitaker of the Court of Claims attended all or some of the sessions.

The Attorney General of the United States attended the morning session of the first day of the Conference.

William R. Foley, Counsel of the Committee on the Judiciary of the House of Representatives and James R. Browning, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts; Will Shafroth, Deputy Director; and members of the Administrative Office staff attended the sessions of the Conference.

#### REPORT OF THE ATTORNEY GENERAL

Attorney General Robert F. Kennedy, on invitation of the Chief Justice, spoke to the Conference informally on matters relating to the business of the courts of the United States. He informed the Conference that the Department had made considerable progress in selecting judges to be nominated by the President to fill present judicial vacancies. Of the 118 judgeship vacancies occurring during the year, including the 73 new positions provided in the Omnibus Judgeship Bill, the Department expects that 70 to 75 nominations will be sent to the Senate before the end of the first session of the 87th Congress, and that thereafter some recess appointments will be made. The selection of judges to fill the remaining positions will be handled expeditiously.

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

Warren Olney III, Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1961, in accordance with the provisions of 28 U.S.C. 604(a)(3). The Conference approved the immediate release of the report

for publication and authorized the Director to revise and supplement the final printed edition to be issued later.

#### STATE OF THE DOCKETS

*Courts of Appeals.*—Cases filed in the Courts of Appeals during the fiscal year 1961 increased for the third consecutive year to a record 4,204 cases, an increase of 305 over the previous year. The cases disposed of were 4,049, which is 336 more than the number disposed of in 1960, but 155 less than the number filed in 1961. The pending backlog thus increased to 2,375 cases on June 30, 1961, an increase of seven per cent over last year.

The median time interval from the filing of the complete record to final disposition for cases terminated after hearing or submission in the courts of appeals during 1961 was 6.8 months, the same as in the previous year. The median time interval from the docketing of a civil case in the lower court to decision in the court of appeals in 1961 was 26.7 months; for a criminal case the interval was 16.8 months.

*District Courts.*—Civil cases filed in the United States District Courts increased approximately one per cent during 1961, if the local cases filed and transferred to the new state court in Alaska are excluded. Total civil filings were 58,293; cases disposed of were 55,416 or 2,887 less than the number filed; and the number of pending civil actions increased to 64,128 at the end of the year, an increase of approximately five per cent.

The median time interval from filing to disposition of civil cases terminated by trial in the district courts in 1961 decreased to 16.5 months compared with 17.8 months last year and the median time interval from issue to trial likewise decreased to 11.2 months compared with 11.5 months in 1960. These decreases, however, were due in part to a slight revision in the method used in computing the intervals. Twenty-four district courts during 1961 had a median time interval from issue to trial of six months or less.

Criminal cases filed during the year were 28,460—involving a total of 35,139 defendants. Charges against 34,403 defendants were finally disposed of during the year and on June 30, 1961 there were 11,440 defendants awaiting trial or sentence. The pending figure includes 1,247 defendants who on that date had been fugitives for six months or more, or were serving in the armed forces.

For the fifth consecutive year, bankruptcy cases filed reached an all time peak. The total filings were 146,643, an increase of one-third over 1960. A record 117,943 cases were closed during the year, or 18,626 more than last year. Nevertheless, filings outstripped terminations by 28,700 cases and the pending caseload increased to a new all time high of 123,690, an increase of thirty per cent as compared with the number pending at the end of the previous year.

PROGRAM TO REDUCE COURT CONGESTION AND DELAY IN LITIGATION

Mr. Olney reported to the Conference that as of June 30, 1961, there were 7,065 civil actions pending on the dockets of the district courts, which on that date had been awaiting disposition for three years or more, including 994 pending land condemnation cases. While almost one-half of these cases appear on the dockets in six districts—Southern District of New York, Eastern District of New York, Eastern District of Pennsylvania, Eastern District of Louisiana, Northern District of California and the Northern District of Illinois—the problem of the disposition of the older civil cases exists in most districts.

Mr. Olney proposed, therefore, that, as an initial step toward curtailing delay in litigation in the district courts, the Conference undertake a new plan and program for the disposition of these cases in all districts within a reasonable time. This plan of attacking court congestion by making a first objective the elimination of the oldest cases by a fixed date in each circuit would have the following advantages:

(1) An immediate beginning can be made without having to wait for the full augmentation through judicial appointments of the total number of authorized judges.

(2) The termination of this oldest group of approximately 7,000 cases within a reasonable time is not too large a task and is undoubtedly within the capabilities of the present number of judges.

(3) If a reasonable time is allowed for the task and a date fixed in each circuit for its accomplishment, the necessary judicial assistance from other districts and circuits can be mustered.

(4) Progress in carrying out the plan can be recorded as made and published to the very great benefit of the judiciary as well as to the litigants and the public.

The Conference carefully considered the plan proposed and after full discussion voted to approve the following recommendations of the Director:

(1) That the Judicial Conference of the United States declare it to be the policy of the judiciary that every case pending three years or more and appropriate for trial be regarded as a judicial emergency by all the judges of any circuit where such cases are to be found, and

(2) That the Conference request each circuit, through the judicial council, to make appropriate plans for mustering the available judges of the circuit to pretry, try, and eliminate these cases from the dockets by a date certain, fixed in advance in each circuit with regard to the size of the task.

### SURVEY OF JUDICIAL BUSINESS

The Conference received reports from the Chief Judge of the Court of Claims, the Chief Judge of the Court of Customs and Patent Appeals, and from the chief judges of the respective circuits concerning the state of the dockets in each circuit and district. These reports were supplemented by the district judges who presented additional details concerning the business of the district courts in their circuits. It was the view of the members of the Conference that the 73 additional judgeships provided by the Act of May 19, 1961, would provide a sufficient number of judges in each circuit to administer the present caseload and to make a start toward the reduction of the backlog of civil actions. However, additional judicial assistance will be required on a temporary basis, to assist the judges in certain heavily congested districts in reducing the backlog.

### JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William A. Campbell, submitted to the Conference the appropriation estimates for the fiscal year 1963 for the judiciary. The estimates, which had been prepared by the Director of the Administrative Office pursuant to 28 U.S.C. 605 and which were examined and approved by the Committee, totalled \$58,057,500, an increase of \$3,498,750 over the adjusted appropriations for the fiscal year 1962. On recommendation of the Committee, the budget

estimates presented were approved by the Conference, subject to amendments which may be required by other action of the Conference at this session.

#### SUPPLEMENTAL APPROPRIATIONS

The passage of the Omnibus Judgeship Bill authorizing the creation of 73 additional judgeships required submission of supplemental appropriation estimates for the fiscal year 1962 for the salaries and expenses of the new judges and their staffs. The estimates were submitted on the basis that the new judges and their staffs would be on the rolls for an average of nine months of the fiscal year 1962. Recurring expense items, such as travel and communication services, were computed on the same basis. However, the full amount estimated to be required to initially equip the judges' chambers was requested, because, even though the new judges may not enter on duty until late in the fiscal year, it would be necessary immediately to provide libraries and general office equipment. It was also found to be necessary to request funds to augment the Administrative Office clerical staff. The total of the estimates submitted on this basis was \$4,383,000. The Committee reported that the House Deficiency Subcommittee in its report rendered on September 12, 1961, had recommended the sum of \$2,980,000.

The Conference approved the recommendations of the Budget Committee that the Director of the Administrative Office be authorized to revise the 1963 estimates under the two bankruptcy items in the event of a sharp fluctuation in case filings and to submit to the Congress estimates of supplemental appropriations for fiscal year 1962 for any reason which at the time of the submission of these estimates could not have been anticipated.

The Committee reported that the Bureau of the Budget had suggested that the judiciary amend its estimates for the fiscal year 1962 to include some \$200,000 as rent for space to be used by other governmental agencies to make room for the additional employees to be hired by the Judicial Branch of the Government, if the money requested therefor were allowed. It was the position of the Administrative Office that there was no good reason for the judiciary to request funds of the Congress with which to pay rent for space to be occupied by Executive Agencies. With the approval

of the Chairman of the Budget Committee, the Bureau of the Budget was so informed.

The Committee also reported that in accordance with the policy of the Bureau of the Budget requiring each departmental agency of the Government to budget its own furniture and furnishings, the supplemental budget estimates to cover the expenses of the new judges were initially prepared to include the cost of purchasing furniture and furnishings for judges' chambers and courtrooms. While these estimates were pending before the Bureau of the Budget, the Administrative Office was informed that the Bureau had reversed its policy regarding budgets for furniture and requested that the amount included for furniture in the estimates for the judiciary be withdrawn. In compliance with this recommendation of the Bureau of the Budget, the estimates of the judiciary and the General Services Administration were so amended. For the fiscal year 1962, the General Services Administration will assume the responsibility of purchasing furniture and furnishings for the courts. However, the funds therefor are included in the 1962 appropriations for the judiciary, so that the General Services Administration will be reimbursed periodically for items purchased.

The Budget Committee Chairman presented a further detailed report of the Committee's activities, including numerous recommendations, all of which were approved by the Conference.

#### COURT ADMINISTRATION

The Chairman of the Committee on Court Administration, Chief Judge John Biggs, Jr., reported on the following matters within the jurisdiction of the Committee.

#### ADDITIONAL DISTRICTS AND DIVISIONS

The Conference upon recommendation of the Committee disapproved the following bills to create new judicial districts, or to establish new divisions within existing judicial districts:

(1) S. 61, S. 1824, H.R. 5085, H.R. 5525, H.R. 7029, and H.R. 8834, 87th Congress, to create a new judicial district in the State of Florida.

(2) S. 1855 and H.R. 7533, 87th Congress, to create a new judicial district in the State of North Dakota.

(3) H.R. 6306, 87th Congress, to create a new division in the Southern District of Indiana.

(4) S. 2033 and H.R. 7359, 87th Congress, to create a new division in the Northern District of Georgia.

The Conference directed that the views of the Judicial Council of the Eighth Circuit on H.R. 8216 and S. 2270, 87th Congress, to transfer certain counties from the Western Division of the Western District of Missouri to the St. Joseph Division, be ascertained by the Administrative Office and that those views be reported by the Director to Congress.

#### GEOGRAPHICAL ORGANIZATION

The Conference reviewed its procedure for the consideration of legislation introduced in Congress with regard to additional districts, divisions and places of holding court and with regard to the furnishing of court facilities at places of holding court.

After full discussion, the Conference directed that any bill to create a new judicial district, to establish a new division within any existing judicial district, to authorize a new place for holding federal court, or to waive the provisions of 28 U.S.C. 142 respecting the furnishing of accommodations at places of holding court be submitted by the Director of the Administrative Office first to the Judicial Council of the Circuit involved for its consideration and recommendation, which shall then be transmitted by the Director to the Committee on Court Administration for its consideration and report to the Judicial Conference.

#### REORGANIZATION OF THE COURT OF CLAIMS

At the request of Chief Judge Jones of the Court of Claims, the Conference deferred consideration at the present time of the proposals contained in S. 839, S. 1235 and H.R. 6851, 87th Congress, to reorganize the Court of Claims by establishing separate trial and appellate divisions. These bills had previously been referred to the Committee for study and report to the Conference.

#### RETIREMENT OF JUSTICES AND JUDGES

H.R. 5282 and S. 2285, 87th Congress, would amend 28 U.S.C. 371(b) to provide an administrative *pro rata* retirement plan for justices and judges. The bill provides that a justice or judge may

retire at age 65 with a minimum of ten years' service, if he would agree to accept in lieu of the full salary of his office during the remainder of his lifetime, that portion of the salary of his office which is equal to the ratio existing between the aggregate number of his years of judicial service and fifteen years. The Conference granted leave to the Committee to study the matter further and to report thereon to the next session of the Conference.

#### REPRESENTATION OF DISTRICT JUDGES ON THE JUDICIAL COUNCILS OF THE CIRCUITS

H.R. 6690 and S. 1933, 87th Congress, would amend 28 U.S.C. 332 to provide that there be added to the membership of the Judicial Council of each circuit, as presently constituted, two district judges in every circuit having five or more circuit judges in regular active service, and one district judge in any circuit having less than five circuit judges in regular active service. The bills further provide that one of the district judges on the Judicial Council in every case shall be the district judge selected to represent his circuit on the Judicial Conference of the United States. The second district judge shall be one who is chosen at the annual judicial conference of the circuit who shall be from a district different than that of the district judge then serving as a member of the Judicial Conference of the United States, except in the case of the District of Columbia Circuit. The judge so chosen would serve for a term of three years. After full consideration, the Conference voted to approve the bills.

#### SELECTION OF CHIEF JUDGES

At the request of Senator James O. Eastland, Chairman of the Committee on the Judiciary of the United States Senate, the Conference at its last session referred to the Committee for study, S. 1268, 87th Congress, relating to (1) the selection of chief judges of the circuits and of multiple-judge district courts, (2) the terms of service of chief judges, and (3) the powers and responsibilities of chief judges with respect to the general administrative superintendence of the business of the circuit and district courts.

The Committee reported that it is aware of the importance of the role of the chief judges of circuits and multiple-judge district courts, if the administrative processes of such courts are to be



successfully carried out and that the members of the Committee, and the members of a subcommittee appointed by the Chairman, have spent considerable time and energy in trying to effect some feasible and satisfactory solution to the administrative problems presented. The Conference, at the request of the Committee, authorized further study of the proposals contained in S. 1268.

#### PANEL OF ANTITRUST JUDGES

H.R. 6766, 87th Congress, would amend the Expediting Act, 15 U.S.C. 28, 65 Stat. 195, to provide that the Chief Justice of the United States, with the advice of the chief judge of each circuit, would set up a national panel of antitrust judges to try cases brought by the United States as plaintiff under the Sherman or Clayton Antitrust Acts, when an expediting certificate is filed by the Attorney General stating that in his opinion the case is of national public importance and the proceedings are likely to be protracted. The Conference was of the view that it was inappropriate for the Chief Justice of the United States to make such an assignment and designation of district judges to try antitrust cases and, therefore, voted to disapprove the bill.

The Conference, however, directed the Committee on Revision of the Laws to give consideration to the proposal that the testimony in a civil antitrust case in which an expediting certificate has been filed by the Attorney General be taken before a single district judge rather than a district court of three judges.

#### DISQUALIFICATION FOR BIAS OR PREJUDICE

S. 1477, 87th Congress, would amend 28 U.S.C. 144 to provide that an affidavit of bias and prejudice against a judge shall be deemed to be timely, if filed at least ten days before the commencement of hearings on the matters in issue or if filed at the first session of the court at which such matter or issue is heard after discovery by the affiant of the facts upon which the affidavit is based, "or if good cause shall be shown for failure to file it within such time." The bill further provides that a second or subsequent "such" affidavit shall be deemed to be "ineffective" unless it states facts sufficient to establish *prima facie* that bias or prejudice exists. S. 2478 and H.R. 8940, 87th Congress, contain similar provisions. The Conference discussed the proposals contained in the bills

and voted to approve that portion of S. 2478 which requires a judge other than the one against whom the affidavit is filed to pass upon the legal sufficiency of the affidavit, but disapproved that part which would authorize the filing of a second affidavit. S. 1477 and H.R. 8940 were specifically disapproved.

The Committees on Revision of the Laws and Court Administration were directed to undertake a study of the provisions of 28 U.S.C. 144 relating to the disqualification of judges.

#### QUALIFICATIONS OF JUSTICES AND JUDGES

H.R. 5846 and H.R. 7753, 87th Congress, would amend 28 U.S.C. 1 and 44 to provide certain qualifications for persons to be appointed to the Supreme Court of the United States or to the Courts of Appeals. Under the provisions of these bills persons appointed to the Supreme Court would be required to have from five to ten years service as a judge of a Court of Appeals or as a justice or judge of a state court and to have been admitted to practice in a state or a territorial court, or in the District of Columbia. Persons appointed to the Courts of Appeals would be required to have from three to five years experience as a judge of a district court, or as a judge or justice of an appellate court of a state and to have been admitted to the practice of law as stated above. Upon recommendation of the Committee, the Conference disapproved the bills.

#### PAYMENT OF FEES TO INTERPRETERS, PSYCHIATRISTS AND WITNESSES

The Conference at its March 1959 session referred to the Committees on Court Administration and Supporting Personnel the proposals to provide for the payment of witness' fees and mileage in habeas corpus cases and in proceedings to vacate sentence under 28 U.S.C. 2255, brought by persons authorized to proceed in forma pauperis, and to provide for the payment of fees of interpreters and psychiatrists. Upon recommendation of the Committees, the Conference approved the following new paragraph to be added to 28 U.S.C. 1825, to authorize payment of witness fees.

In all proceedings, in forma pauperis, for a writ of habeas corpus or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, on the certificate of the district judge.

The Conference approved in principle the proposal to authorize the payment of the fees of interpreters and referred to the Committee on Rules of Practice and Procedure the following proposed subsections to Rule 28, Federal Rules of Criminal Procedure and Rule 44, Federal Rules of Civil Procedure.

*Federal Rules of Criminal Procedure:*

Rule 28(b) The court may appoint an interpreter of its own selection, and may determine the reasonable compensation of such interpreter, and direct its payment out of such funds as may be provided by law.

*Federal Rules of Civil Procedure:*

Rule 44(a) The court may appoint an interpreter of its own selection, and may determine the reasonable compensation of such interpreter, and direct its payment out of such funds as may be provided by law.

It was the view of the Committees that the present provisions and language of 18 U.S.C. 4244-48 were sufficient to permit the employment of psychiatrists in criminal cases.

PAYMENT OF COURT REPORTERS WHO FAIL TO FILE TRANSCRIPTS OF PLEAS AND SENTENCING PROCEEDINGS IN CRIMINAL CASES AS REQUIRED BY 28 U.S.C. 753(b).

The Director of the Administrative Office requested instructions from the Conference with respect to paying court reporters who fail to file transcripts of pleas and sentencing proceedings in criminal cases as required by 28 U.S.C. 753(b). The Director pointed out that because questions about the legality of the proceedings in criminal cases are raised with increasing frequency at dates long subsequent to the time of conviction, both in habeas corpus proceedings and in the matter of petitions filed under Section 2255 of Title 28 U.S.C., it is especially important that the official record of what took place, including the proceedings on arraignment, plea and imposition of sentence, even in cases where a plea of guilty is entered, be complete and be preserved. The Director also pointed out that the Congress has recognized this need by requiring in 28 U.S.C., Section 753, that the court reporter in a United States District Court must "report all proceedings in criminal cases had in open court" and must also "transcribe and certify all pleas and proceedings in connection with the imposition of sentence in criminal cases," regardless of whether an appeal is taken or any request is made for the transcript. The purpose of the statute, it seems clear, is to insure perpetuity of the record. This

is one of the services that the court reporter is required by the statute to perform in order to earn his salary.

In the case of *Poole v. United States*, 250 Fed. 2d. 396 (1957), the United States Court of Appeals for the District of Columbia Circuit in a decision, which appears to be binding upon the Director of the Administrative Office, held that compliance with 28 U.S.C. 753(b) required that court reporters, without additional compensation, transcribe their notes and file transcripts of all proceedings on arraignment, plea and sentence in criminal cases. The Director pointed out that the indications are that this is not being done in many districts.

The general survey of the court reporting system in the federal courts in 1960 showed that in only two districts visited by the survey team was this provision of the law being complied with and that less than 25 percent of the federal district courts were in compliance.

It was brought to the attention of the Conference that in June 1959 the Administrative Office requested the clerks of all district courts to report the number of cases of criminal defendants convicted and sentenced during the fiscal year 1958 in which typed and certified transcripts of the proceedings on plea and sentence had not been filed and to ascertain from the court reporters their best estimate of the number of man-hours that would be required to transcribe and certify the proceedings in conformity with the statute.

The replies showed that in 64 percent of the criminal cases in that one year typed transcripts had not been made and filed and that the court reporters estimated it would require 41,444 hours to make the transcripts necessary to comply with the law for that one year.

The Director stated that there was no evidence suggesting that there was any more general compliance with the law by court reporters at the present time.

The Director raised the question as to the propriety of his continuing to pay the salaries of court reporters who constantly and continually fail to perform an important duty required by statute and requested instructions from the Conference in this regard.

After a full discussion, the Conference authorized the Committee to draft and seek a clarifying amendment to 28 U.S.C. 753(b) which would authorize the filing by the court reporter of an

electronic sound recording of the arraignment, plea and sentence in criminal cases eliminating the necessity for transcription. The Conference authorized the Director in the meantime to continue salary payments to the court reporters and to instruct all court reporters that hereafter they must either file a complete transcript of all proceedings in connection with arraignment, pleas and imposition of sentence in criminal cases, or file an adequately authenticated electronic sound recording of such proceedings, and that they should certify to the Director of the Administrative Office quarterly or at such other suitable intervals as might be fixed by him, that in all such proceedings heard within the quarterly or other period ended six months prior to the certificate either a transcript or an adequately certified electronic sound recording had been filed with the clerk.

#### DISBURSEMENT OF JUDICIARY FUNDS

H.R. 8304, 87th Congress, would amend 28 U.S.C. 711 and 751 to provide that the clerks of the courts of appeals and district courts, respectively, subject to regulations prescribed by the Director of the Administrative Office, should disburse funds appropriated for the maintenance and operation of the courts. It was brought to the attention of the Conference that the personnel in the clerks' offices in some districts may be inadequate to perform the disbursing function, and that the enactment of this bill may require additional supporting personnel. The Conference referred the matter to the Committee for further consideration in accordance with this suggestion.

#### JUDICIAL SURVIVORS ANNUITY ACT

The Conference reaffirmed its disapproval of the proposal contained in H.R. 8048, 87th Congress, to amend the Judicial Survivors Annuity Act to provide that if a widow has remarried, but if her marriage has been terminated by divorce upon her application and without fault on her part, she may receive the annuity provided by the statute.

#### TRAVEL EXPENSES

In view of the recent amendment to the Travel Expense Act, the Conference authorized the Director of the Administrative Office to

increase the authorized per diem for judicial employees traveling on official business from \$12 to \$16 and to allow reimbursement for parking fees as permitted under the statute. The Conference directed that the allowance of 10 cents per mile for the use of privately owned automobiles and the limitation of a maximum of \$25 subsistence per day for those traveling on an actual expense basis remain unchanged.

#### SUPPORTING PERSONNEL

The Chairman of the Committee on Supporting Personnel, Chief Judge John Biggs, Jr., submitted the report of the Committee to the Conference.

#### JUDICIAL SALARY PLAN

There was presented to the Conference a revised, comprehensive judicial salary plan, designed to provide an equitable classification of employees in the clerks' offices, probation offices, and the referees' offices of the district courts. The plan had previously been submitted to the Committee by the Director of the Administrative Office in accordance with the direction of the Conference at its March 1961 session (Conf. Rept., p. 10). It was developed after careful research, consultation with court officials, and an extensive survey by the Administrative Office staff of the court offices in seventeen widely scattered districts.

The Conference, after full consideration, voted to approve the new salary plan and directed that it be put into effect as appropriated funds become available.

#### COURT OF CLAIMS

A request had been made by Chief Judge Marvin Jones of the Court of Claims for authority to appoint additional law clerks for the court to assist the trial commissioners in the preparation of their reports. The Committee reported favorably on the request, and the Conference approved the following resolution:

Resolved that the Judicial Conference approve a request that provision be made for a law clerk for the chief trial commissioner of the Court of Claims and a sufficient number of additional law clerks to provide one for each two of the remaining trial commissioners.

The following legislative proposals, presented by the Court of Claims were referred to the Committee on Supporting Personnel for study and report to the Conference.

(1) To authorize the appointment by the court of additional commissioners as needed, not to exceed a total of twenty.

(2) To provide for the commissioners the same type of retirement system as is now applicable to judges of The Tax Court of the United States (26 U.S.C. 7447).

#### PROCEEDINGS OF CIRCUIT CONFERENCES AND JUDICIAL SEMINARS

The Court of Appeals for the District of Columbia Circuit had recently requested authorization by the Administrative Office for the payment of the cost of providing a verbatim record of the proceedings of the annual circuit conference of the District of Columbia Circuit. The Administrative Office has had similar requests in the past and since 1940 has authorized payment to official court reporters for the preparation of the transcripts of the annual judicial conferences of the Fourth and Ninth Circuits in accordance with the transcript rates prescribed by the Conference. It was the sense of the Committee that there was need for a verbatim record of some of the proceedings of circuit conferences, seminars, institutes on sentencing, and other such meetings concerning judicial functions, and accordingly the Committee recommended that the Conference direct the Budget Committee to recommend a sum to be included in the judiciary budget for the taking and transcription of such verbatim records as may be desired or required. This recommendation was approved by the Conference.

#### APPOINTMENT OF BAILIFFS

The Attorney General has recently proposed that the authority to appoint bailiffs be transferred from the United States marshals to the United States Courts. This recommendation had previously been approved by the Conference (Rept., Sept. 1957, p. 18), but the Attorney General subsequently withdrew his support and approval of the proposal. The Committee called attention to an excerpt from a letter by the Chief Justice to the Director of the Bureau of the Budget, which sets forth cogent reasons why the United States marshals should appoint bailiffs rather than the United States Courts. The excerpt is as follows:

There is a very real need from time to time for the presence in federal courtrooms, particularly the District Courts, but occasionally the Courts of Appeals, and, without regard for whether the particular proceedings are criminal or civil in nature, for someone with the authority, training, and physical stamina of a law enforcement officer to keep order and also to be prepared to provide adequate physical protection for the litigants, the witnesses, and sometimes the judges of the courts. This is in fact the principal reason that the courts presently call upon the United States marshals for the necessary bailiffs to attend the court under authorization of Sections 713 and 755 of Title 28. To meet this need adequately, it is, in my opinion, necessary that the personnel involved, whether called bailiffs or deputy marshals, have the training and physical standards of law enforcement officers, as well as the legal authority of law enforcement officers, and also that they not be isolated but be members of an appropriate law enforcement organization interested in them and upon which they can call for supplemental help, if necessary. I very much doubt if these standards could be maintained and this need adequately met if the bailiffs were severed from their present relationship with the office of the United State marshal.

The Conference, upon recommendation of the Committee, withdrew its prior recommendation that the authority to appoint bailiffs be transferred from the United States marshals to the United States courts or to the judges, and voted to disapprove the legislation now proposed by the Attorney General.

#### NATIONAL PARK COMMISSIONERS

The Conference, upon recommendation of the Committee, authorized an increase in the salary of the national park commissioner for Mt. Rainier National Park to a maximum of \$6,400 per annum, provided that this, in accordance with 28 U.S.C. 631, meets with the approval of the United States District Court for the Western District of Washington.

#### COURT REPORTERS

The Director of the Administrative Office called to the attention of the Conference the need for the appointment of additional court reporters as a result of the recent Omnibus Judgeship Bill. The Conference, thereupon, authorized the appointment of 63 additional court reporters for the district courts to correspond with the number of additional district judgeships created by Public Law 87-36, approved May 19, 1961, at the salaries recommended by the Director.



## RULES OF PRACTICE AND PROCEDURE

The Chairman of the Standing Committee on Rules of Practice and Procedure, Senior Judge Albert B. Maris, informed the Conference that the work of the Committee was steadily progressing. Meetings of several advisory committees have been scheduled for the near future and the Committee expects shortly to have a tentative draft of a revision of some of the rules of practice and procedure.

The attention of the Conference was called to the recent amendment to Rule 25(d) Federal Rules of Civil Procedure, with respect to the substitution of public officers, which became effective on July 19, 1961 and a similar amendment to Rule 48 of the Rules of the Supreme Court of the United States, which became effective on June 19, 1961. It was pointed out that some of the courts of appeals have similar rules governing the substitution of public officers as parties to an appeal. The Committee suggested, therefore, that any such rules be reexamined by the various courts of appeals in the light of the above amendments, and the Conference directed that the matter be brought to the attention of the court of appeals in each circuit.

## REVISION OF THE LAWS

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

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

(a) S. 1662 and H.R. 5753 to abolish terms of district court and to provide that the district courts shall be in continuous session.

(b) S. 1802, H.R. 7229, H.R. 7314 and H.R. 7425, requiring that proposed consent decrees in antitrust cases be published in the Federal Register at least thirty days prior to their entry. The requirement would apply to orders entered by a district court and in proceedings by any board or commission for the enforcement of the Clayton Act or the Federal

Trade Commission Act. These bills are similar to H.R. 836 which was approved by the Conference at its March 1961 session. (Conf. Rept., p. 18).

(c) S. 1898, relating to the jurisdiction of the district courts in actions commenced by fiduciaries by reason of diversity of citizenship. A practice, it seems, has arisen in some districts of procuring the appointment of a non-resident fiduciary for a decedent, or minor having a claim against a local resident, in order to create diversity of citizenship. The bill, which is identical to H.R. 5344 approved by the Conference at its March 1961 session, would withdraw federal jurisdiction in such cases.

(d) S. 1900 and H.R. 5255, to clarify the status of federal judges retired from regular active service. The bill would amend 28 U.S.C. 43(b) to provide that the court of appeals shall consist of the circuit judges of the circuit in *regular* active service, but would provide that a circuit judge of the circuit who has retired from regular active service shall also be competent to sit as a judge of the court in banc in the rehearing of a case or controversy, if he sat in the court or division at the original hearing thereof. The bill would also make it clear that the Judicial Council of each circuit is to consist of the circuit judges for the circuit in regular active service and that each district court shall consist of the district judge or judges of the district in regular active service. The Conference voted to reaffirm its approval of the bill, as introduced.

(e) S. 2061 and H.R. 6902, to provide life tenure for the United States district judges for the District of Puerto Rico.

(f) H.R. 5615, to amend the Judicial Survivors Annuity Act so as to accord with present statutory provisions applicable to surviving dependents of members of Congress. The Civil Service Retirement Act amendment of 1956 with respect to survivorship benefits for dependents of members of Congress, eliminated the requirement that a widow without dependent children be 50 years of age before receiving a widow's annuity, increased the annuity payable to dependent children, liberalized the formula for computing the widow's annuity in respect to certain civilian service, and increased the maximum widow's annuity to 40 percent of the decedent's five-

year average salary. The bill would make the same provisions applicable to surviving dependents of judges. (Conf. Rept., March 1961, p. 21).

#### RETIRED TERRITORIAL JUDGES

The Conference considered the proposal contained in S. 1897, 87th Congress, to authorize retired judges of certain territorial courts to perform judicial service, when designated and assigned, and expressed some concern over the assignment of such a judge to active service when he may be engaged in the practice of law. The Committee was authorized to give further consideration to this problem.

#### COURT OF VETERANS' APPEALS

H.R. 3263, H.R. 4134, and H.R. 5992, 87th Congress, would establish a court of veterans' appeals and prescribe its jurisdiction and functions. Similar bills were considered by the Conference at its March 1961 session and approved as to the type of judicial review proposed, but disapproved to the extent that they would amend 28 U.S.C. 451 and 610 to include the proposed new court among the courts of the United States and to require the Director of the Administrative Office to assume responsibility for its administrative affairs. The Conference reaffirmed its action with respect to the proposals contained in these bills.

#### COMPENSATION CLAIMS FOR SERVICE-CONNECTED DISABILITY

H.R. 4696, 87th Congress, would provide for the determination by the district courts of disputed claims for compensation on account of disability or death resulting from disease or injury aggravated in line of duty while serving in the armed forces. The Conference previously disapproved proposals to permit the judicial review of veterans' claims by the district courts and, upon recommendation of the Committee, voted also to disapprove this bill.

#### DEPORTATION ORDERS

S. 2212, 87th Congress, is identical to H.R. 187, 87th Congress, which was approved by the Conference at its March 1961 session insofar as it relates to the judicial review of deportation orders.

Noting, however, that the bill would limit the review of orders of exclusion to review by writs of habeas corpus, which would seem to deny review to any nonresident alien (who is not in custody), the Conference voted to approve S. 2212, but expressed no opinion with respect to those provisions which propose to limit the review of orders of exclusion to writs of habeas corpus.

#### STUDY OF VENUE

Judge Maris reported that a subcommittee had been appointed to study the subject of venue and that at its request a survey of recommendations for changes in the law regulating process and venue in the district courts had been prepared by Professor Degan and Mr. Martino of the University of Utah College of Law. The Committee was granted leave to continue its study of the subject of venue and to report at a later session of the Conference.

#### UNITED STATES AS *AMICUS CURIAE*

H.J. Res. 199, 87th Congress, would prohibit the United States from appearing as *amicus curiae* or in any other fashion, except as a party, in any stage of any civil action in any federal court. Experience has shown that in many cases it is in the public interest for the Federal Government to be permitted, in the discretion of the court, to appear as *amicus curiae*. Upon recommendation of the Committee, the Conference disapproved the bill.

#### INTERSTATE COMMERCE ACT

The Bureau of the Budget had requested the comments of the Judicial Conference with respect to H.R. 5594, 87th Congress, to amend Section 22(b) of the Interstate Commerce Act with respect to the service of process in enforcement proceedings involving motor carriers or brokers. It was the view of the Committee that the method of enforcing the Interstate Commerce Act with respect to motor carriers and brokers would appear to involve a question of policy for the Congress and the Executive Branch of the Government. The Conference, therefore, directed that the Bureau of the Budget be informed that the Judicial Conference does not deem it appropriate to express any views with respect to the bill.

JURISDICTION IN CASES INVOLVING POLLUTION OF INTERSTATE RIVER  
SYSTEMS

H.R. 6717, 87th Congress, would provide that the United States district courts shall have jurisdiction of certain cases involving pollution of interstate river systems. The bill would give to the district courts original jurisdiction, concurrently with the Supreme Court, of cases arising under a proposed interstate compact, which involve pollution of the waters of the river system which is the subject of the compact. Because of the constitutional question involved with respect to the jurisdiction of the Supreme Court, the Conference voted to make no recommendation with respect to the bill.

## CONGRESSIONAL DISTRICTS

H.R. 4068, 87th Congress, would confer jurisdiction upon the district courts of suits to review state action establishing Congressional districts. It was the view of the Conference and the Committee that the grant of jurisdiction to the district courts proposed by the bill involves a question of public policy for Congress to determine. The Conference directed that the Committee on the Judiciary of the House of Representatives be informed that it makes no recommendation concerning the proposal.

## VENUE IN ACTIONS INVOLVING PUBLIC LANDS

S. 717, H.R. 4428, H.R. 5236, H.R. 5407, and H.R. 5938, 87th Congress, would authorize the institution of a civil action for the review of an administrative determination as to the use of lands of the United States for grazing purposes in the judicial district in which such lands are situated; H.R. 5976, 87th Congress, would broaden the venue in certain actions against the Secretary of the Interior or his subordinates involving public lands.

These bills would accomplish to a limited extent the broadening of venue and service of process which would be accomplished in all suits against Government officers by the enactment of H.R. 1960, 87th Congress, which was approved by the Conference at its March 1961 session. Since these bills would accomplish in part the purposes of H.R. 1960, they were approved by the Conference.

## REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES

S. 2398, and H.R. 8189, 87th Congress, would require that certain proceedings for the review or enforcement of agency orders

must be instituted in the judicial circuit within which the controversy or matter which is the subject of the order arose. It was the view of the Committee that the existing venue provisions with respect to the review or enforcement of agency orders in the courts of appeals are in most instances adequate and satisfactory and that it would be unwise and not in the public interest to alter them in the general and summary fashion proposed by these bills. Upon recommendation of the Committee, the Conference disapproved the bills.

#### PRODUCTION OF STATE RECORDS

S. 2161, 87th Congress, would amend 28 U.S.C. 2201 to authorize actions for declaratory judgment to determine the authority of congressional committees to require the production of official records of state or local governmental bodies. The Conference directed that the Committee on the Judiciary of the United States Senate be informed that the proposal contained in this bill concerns a matter of policy for the determination of the Congress upon which the Conference expresses no view.

#### BANKRUPTCY ADMINISTRATION

##### SALARIES AND POSITIONS OF REFEREES

The Conference was informed by the Chairman of the Committee on Bankruptcy Administration, Senior Judge Orie L. Phillips, that the Committee had met and considered the recommendations contained in the Report of the Director of the Administrative Office, dated June 26, 1961, relating to the continuance of referee positions to become vacant prior to April 1, 1962 by expiration of term, for changes in salaries of referees, changes in arrangements, and the creation of new referee positions. The Committee also considered the recommendations of the district judges and the judicial councils of the circuits concerned.

The Conference considered fully the Committee's report, as well as the recommendations of the Director, the circuit councils and the district judges. On the basis of these reports, the Conference took the action shown in the following table relating to changes in salaries and new referee positions and directed that, unless otherwise noted, this action become effective on November 16, 1961, provided appropriated funds are available:

## Changes in Salaries of Referees and New Referee Positions

District	Regular place of office	Type of position	Present salary	Conference action	
				Type of position	Authorized salary
<i>First Circuit</i>					
New Hampshire.....	Manchester...	Part-time...	\$7,000	Part-time...	\$7,500
<i>Second Circuit</i>					
New York (S).....	Poughkeepsie.....	do.....	4,000	do.....	5,000
<i>Third Circuit</i>					
Pennsylvania (E).....	Reading.....	do.....	7,500	Full-time...	12,500
Pennsylvania (M).....	Harrisburg.....	do.....	6,500	Part-time...	7,500
<i>Fourth Circuit</i>					
South Carolina (E).....	Columbia.....	do.....	2,500	do.....	3,000
South Carolina (W).....	Spartanburg.....	do.....	2,500	do.....	<sup>1</sup> 7,500
Virginia (W).....	Harrisonburg.....	do.....	3,500	do.....	4,500
<i>Fifth Circuit</i>					
Florida (S).....	Tampa.....	do.....	7,500	Full-time...	12,500
Louisiana (E).....	Baton Rouge.....	do.....	7,500	Part-time...	7,500
Texas (W).....	El Paso.....	Part-time...	5,000	do.....	7,000
<i>Sixth Circuit</i>					
Kentucky (W).....	Paducah.....	do.....	4,000	do.....	5,000
Ohio (N).....	Toledo.....	do.....	4,000	Full-time...	15,000
Ohio (S).....	Cincinnati.....	do.....	4,000	Full-time...	<sup>2</sup> 15,000
	Dayton.....	do.....	4,000	do.....	15,000
<i>Seventh Circuit</i>					
Illinois (N).....	Chicago.....	do.....	7,500	do.....	<sup>2</sup> 15,000
	Joliet.....	Part-time...	7,500	do.....	15,000
Wisconsin (W).....	Madison.....	do.....	7,500	do.....	12,500
<i>Eighth Circuit</i>					
Iowa (N).....	Fort Dodge.....	do.....	7,000	Part-time...	7,500
South Dakota.....	Sioux Falls.....	do.....	4,500	do.....	5,000
<i>Ninth Circuit</i>					
Arizona.....	Tucson.....	do.....	7,500	Full-time...	15,000
California (N).....	Oakland.....	do.....	7,500	do.....	15,000
California (S).....	Los Angeles.....	do.....	7,500	do.....	<sup>2</sup> 15,000
	San Diego.....	do.....	7,500	do.....	15,000
<i>Tenth Circuit</i>					
New Mexico.....	Albuquerque.....	Part-time...	7,000	Part-time...	7,500
Oklahoma (E).....	Okmulgee.....	do.....	3,000	do.....	4,000

<sup>1</sup> Temporary salary increase to \$7,500 per annum effective November 16, 1961, for 12 months; salary then to revert to \$5,000 per annum, subject to further survey at that time.

<sup>2</sup> These positions are not to be filled until appropriated funds are available.

## VACANCIES IN REFEREE POSITIONS AND CHANGES IN ARRANGEMENTS

The Conference took the following action with regard to changes in arrangements for both new and existing referee positions and in regard to the filling of referee positions to become vacant by expiration of term, and directed that the changes become effective November 16, 1961, unless otherwise noted:

## SECOND CIRCUIT

*Connecticut:*

- (1) Authorized the filling of the full-time referee position at Bridgeport, to become vacant by expiration of term on October 31, 1961, on a full-time basis for a term of six years, effective November 1, 1961, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

*Southern District of New York:*

- (1) Changed the regular place of office of the referee at Poughkeepsie from Poughkeepsie to Beacon, effective October 1, 1961.
- (2) Designated Beacon as an additional place of holding bankruptcy court.

## THIRD CIRCUIT

*Eastern District of Pennsylvania:*

- (1) Changed the part-time referee position at Reading to a full-time position at a salary of \$12,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

## FOURTH CIRCUIT

*Maryland:*

- (1) Authorized the filling of the full-time referee position at Baltimore, to become vacant by expiration of term on December 31, 1961, on a full-time basis for a term of six years, effective January 1, 1962, at the present salary, the regular place of office, territory and places of holding court to remain as at present.

## FIFTH CIRCUIT

*Middle District of Alabama:*

- (1) Authorized the filling of the full-time referee position at Montgomery, to become vacant by expiration of term on April 1, 1962, on a full-time basis for a term of six years, effective April 2, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Southern District of Florida:*

- (1) Changed the part-time referee position at Tampa, to a full-time basis at a salary of \$12,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of Louisiana:*

- (1) Authorized an additional part-time referee position at Baton Rouge, at a salary of \$7,500 per annum.
- (2) Designated Baton Rouge as a place of holding court for the new referee.



- (3) Fixed the regular place of office for the new referee at Baton Rouge.
- (4) Transferred the Baton Rouge Division of the district from the territory of the referee at New Orleans to the territory of the new referee at Baton Rouge.
- (5) Discontinued Baton Rouge as a place of holding court for the referee at New Orleans.

*Southern District of Mississippi:*

- (1) Authorized the filling of the part-time referee position at Gulfport, to become vacant by expiration of term on November 9, 1961, on a part-time basis for a term of six years, effective November 10, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Texas:*

- (1) Authorized the filling of the part-time referee position at Lubbock, to become vacant by expiration of term on December 14, 1961, on a part-time basis for a term of six years, effective December 15, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

*Western District of Kentucky:*

- (1) Authorized the filling of the full-time referee position at Louisville, to become vacant by expiration of term on October 7, 1961, on a full-time basis for a term of six years, effective October 8, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of Michigan:*

- (1) Changed the regular place of office of the referee at Flint from Flint to Detroit effective October 1, 1961.
- (2) Designated Flint as the regular place of office of the new referee to be appointed pursuant to the authorization of the Judicial Conference at its March 1961 session.

*Northern District of Ohio:*

- (1) Authorized an additional full-time referee position at Toledo at a salary of \$15,000 per annum.
- (2) Fixed the regular place of office of the new referee at Toledo.
- (3) Designated Toledo, Fremont, Lima, and Marion as places of holding court for the new referee.
- (4) Established concurrent jurisdiction in the Western Division of the district for the referees at Toledo.

*Southern District of Ohio:*

- (1) Authorized an additional full-time referee position at Cincinnati at a salary of \$15,000 per annum.\*
- (2) Fixed the regular place of office of the new referee at Cincinnati.
- (3) Designated Cincinnati and Portsmouth as places of holding court for the new referee at Cincinnati.

\*To be effective when appropriated funds are available.

- (4) Established concurrent jurisdiction in the following counties for the full-time referees at Cincinnati: Butler, Hamilton, Warren, Clermont, Brown, Highland, Adams, Scioto, Lawrence, and Clinton.
- (5) Authorized an additional full-time referee position at Dayton, at a salary of \$15,000 per annum.
- (6) Fixed the regular place of office of the new referee at Dayton.
- (7) Designated Dayton and Springfield as places of holding court for the new referee at Dayton.
- (8) Established concurrent jurisdiction in the following counties for the two full-time referees at Dayton: Darke, Preble, Shelby, Miami, Montgomery, Clark, Champaign, and Greene.

## SEVENTH CIRCUIT

*Northern District of Illinois:*

- (1) Authorized the filling of the part-time referee position at Freeport, to become vacant by expiration of term on December 18, 1961, on a part-time basis for a term of six years, effective December 19, 1961, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Authorized an additional full-time referee position at Chicago at a salary of \$15,000 per annum.\*
- (3) Fixed the regular place of office of the new referee at Chicago.
- (4) Designated Chicago and Waukegan as places of holding court for the new referee.
- (5) Established concurrent jurisdiction for the full-time referees at Chicago in the territory comprising Cook and Lake Counties.
- (6) Changed the part-time referee position at Joliet to full-time at a salary of \$15,000 per annum, the regular place of office, territory, and places of holding court to remain as at present.

*Eastern District of Illinois:*

- (1) Authorized the filling of the part-time referee position at East St. Louis, to become vacant by expiration of term on December 31, 1961, on a part-time basis for a term of six years, effective January 1, 1962, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

*Northern District of Indiana:*

- (1) Authorized the filling of the part-time referee position at Gary, to become vacant by expiration of term on October 31, 1961, on a part-time basis for a term of six years, effective November 1, 1961, the regular place of office, territory, and places of holding court to remain as at present.

*Western District of Wisconsin:*

- (1) Changed the part-time referee position at Madison to full-time at a salary of \$12,500 per annum, the regular place of office, territory, and places of holding court to remain as at present.

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\*To be effective when appropriated funds are available.

## NINTH CIRCUIT

*Arizona:*

- (1) Changed the part-time referee position at Tucson to full-time, at a salary of \$15,000 per annum.
- (2) Established concurrent jurisdiction throughout the entire district for the referees at Phoenix and Tucson.
- (3) Designated Phoenix, Tucson, Yuma and Prescott as places of holding court for each of the full-time referees in the district.

*Northern District of California:*

- (1) Authorized an additional full-time referee position at Oakland at a salary of \$15,000 per annum.
- (2) Fixed the regular place of office of the new referee at Oakland.
- (3) Established concurrent jurisdiction for the referees at San Francisco and Oakland in the counties of San Francisco, Marin, San Mateo, Contra Costa, Alameda, San Joaquin and Stanislaus.
- (4) Transferred the counties of San Joaquin and Stanislaus from the territory now served by the full-time referee at Sacramento to the territory served concurrently by the referees at San Francisco and Oakland.
- (5) Discontinued Stockton as a place of holding court for the referee at Sacramento.
- (6) Designated Stockton as an additional place of holding court for the referees at San Francisco and Oakland.

*Southern District of California:*

- (1) Authorized an additional full-time referee position at Los Angeles at a salary of \$15,000 per annum, to serve the Central Division of the district excepting Orange, San Luis Obispo, San Bernardino and Riverside Counties.\*
- (2) Fixed the regular place of office of the new referee at Los Angeles.
- (3) Established concurrent jurisdiction for the new referee with the present referees at Los Angeles.
- (4) Designated Los Angeles, Santa Barbara, and Ventura as places of holding court for the new referee.
- (5) Authorized an additional full-time referee position at San Diego at a salary of \$15,000 to serve the counties of San Bernardino, Riverside, Orange, San Diego and Imperial.
- (6) Fixed the regular place of office of the new referee at San Diego.
- (7) Established concurrent jurisdiction for the new referee with the referees located at San Diego, Santa Ana and San Bernardino.

## PENDING AND PROPOSED LEGISLATION

*Dischargeability of Debts*

H.R. 1742, 87th Congress, would amend Section 2a of the Bankruptcy Act, 11 U.S.C. 11(a), by adding at the end thereof a new subsection which would give to the Bankruptcy Court jurisdiction to determine the dischargeability or nondischargeability of provable debts. Upon recommendation of the Committee the Conference reaffirmed its approval of this bill.

\*To be effective when appropriated funds are available.

*Priority Claims, Statutory Liens and Title to Property*

H.R. 1961 and S. 1142, 87th Congress, would amend Sections 1, 17a, 57j, 64a(5), 67b and 70c of the Bankruptcy Act, 11 U.S.C. 1, 35(a), 93(j), 104(a)(5), 107(b) and 110(c), relating to priority claims, statutory liens, and title to property. While preserving the present position of the costs of administration and wages in the distribution of the assets of a bankrupt, these bills would enable valid contractual liens such as chattel mortgages, conditional sales contracts, trust receipts and the like, to retain their position ahead of statutory liens on personal property unaccompanied by possession. The Committee on the Judiciary of the House of Representatives has reported favorably on H.R. 1961 with an amendment deemed necessary because of the decision in *Lewis, Trustee v. Manufacturers National Bank of Detroit*, 364 U.S. 603, which overruled *Constance v. Harvey*, 215 F. 2d 571. Upon recommendation of the Committee, the Conference approved H.R. 1961 as so amended.

*Summary Jurisdiction*

H.R. 4855, 87th Congress, would amend Sections 60b, 67e, and 70e of the Bankruptcy Act, 11 U.S.C. 96(b), 107(e) and 110(e), to give the Bankruptcy Court summary jurisdiction in actions involving preferences, liens and fraudulent transfers, and the trustee's title to property. This legislation has been previously approved by the Conference and upon recommendation of the Committee the Conference reaffirmed its approval of the proposals contained in the bill.

*Claims in Chapter XI Cases*

H.R. 4856, 87th Congress, would amend various sections of the Bankruptcy Act to require the filing of claims in Chapter XI cases within the time prescribed by Section 57n of the Bankruptcy Act. The bill embodies a proposal previously approved by the Conference at its September 1960 session (Conf. Rept., p. 24). Upon the Committee's recommendation the Conference reaffirmed its approval of the proposals contained in the bill.

*Attorneys' Fees*

H.R. 5149, 87th Congress, would amend Section 60d of the Bankruptcy Act, 11 U.S.C. 96(d), to give the bankruptcy court on its own motion, or on petition of the bankrupt made prior to the

granting of the discharge, jurisdiction to determine the reasonableness of fees paid, or agreed to be paid, to his attorney for services rendered, or to be rendered. The proposal contained in this bill is identical to that previously approved by the Conference at its March 1960 session (Conf. Rept., p. 19). The Conference reaffirmed its approval of the legislation.

*Referee's Retirement and Salary Bill*

H.R. 5341, 87th Congress, would amend the Bankruptcy Act to provide:

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

This bill embodies the recommendation of the Conference with respect to the terms of referees, retirement and salary, and the Conference reaffirmed its approval of the legislation.

*Omnibus Bill*

H.R. 5393, 87th Congress—the so-called noncontroversial omnibus bill—provides for several clarifying, perfecting and conforming improvements in the Bankruptcy Act. Upon recommendation of the Committee the Conference approved the bill.

*Rules of Practice and Procedure*

H.R. 7405, 87th Congress, would provide for the promulgation of rules of practice and procedure under the Bankruptcy Act by the Supreme Court of the United States. Upon recommendation of the Committee the Conference reaffirmed its approval of this proposal.

*Priority of Wage Claims*

S. 113 and H.R. 3329, 87th Congress, would amend Section 64a(2) of the Bankruptcy Act, 11 U.S.C. 104(a)(2), to increase the amount of the priority of wages, salaries and commissions earned by workmen, servants, clerks and certain salesmen within three months prior to the date of bankruptcy from \$600 for each claimant to \$1,000. Senator Javits, who introduced the bill in the Senate, had requested the views of the Judicial Conference

with respect to S. 113, and the matter was referred to the Committee by the Administrative Office.

It was the view of the Committee that the proposal contained in the bill involves a question of public policy to be determined by the Congress and was not a matter on which it should express any view. Accordingly, the Conference took no action.

#### *Railroad Reorganizations*

The Committee reported that the proposal contained in S. 1624, 87th Congress, to amend Section 77 of the Bankruptcy Act and Section 20(b) of the Interstate Commerce Act relating to the reorganization of railroads, had been referred to a subcommittee for study and report to the Bankruptcy Committee.

### RECEIVERS AND TRUSTEES

#### *Appointment of Receivers and Trustees and Audit of Statistical Reports*

The Bankruptcy Division of the Administrative Office has continued its examination of statistical reports in order to reduce the number of errors in the computation of charges for the Referees' Salary and Expense Fund and the overallowance of fees to receivers and trustees, and to discover the existence of any monopoly situations in the appointment of receivers and trustees. This review has resulted in a notable reduction in the number of errors and in bringing to light any monopoly situations.

The program of the Administrative Office now provides for the audit of the statistical reports of each referee's office for at least two months of each year and where referees' offices have shown a high frequency of error, their reports will be audited each month until a continuous period of six months elapses without error. At that time the regular auditing schedule will be followed. The statistical reports of all newly appointed referees will be audited monthly until it can be determined that the reports received from their offices are accurate.

#### *Accountability of Referees, Receivers and Trustees*

The Conference at its March 1961 session referred to a subcommittee, consisting of Circuit Judge Hamlin, Chairman, Circuit Judge Aldrich and District Judge Byran, the question of the accountability of receivers, referees and trustees with respect to

errors in the computation of the compensation of receivers and trustees and charges for the Referees' Salary and Expense Fund. The subcommittee is continuing its study of the problem and will report to the Committee at a later date.

#### SURVEY OF BANKRUPTCY OFFICES

The continued increase in the number of bankruptcy cases filed in the district courts has brought into focus a number of problems incident to the necessary increase in the services of referees in the district courts. These include the creation of new part-time referee positions, the consolidation of existing part-time positions into a single full-time position where practicable, and the elevation of referee positions from a part-time basis to a full-time basis where justified by the volume of business.

While the Committee recognizes the importance of having the full support of the courts and the referees in the administration of the bankruptcy system, it is of the view that if the intent and spirit of the Referees' Salary Act are to be given effect, the establishment of full-time referee service, where it is clearly needed, should not be indefinitely deferred because of personal considerations of the incumbent referee.

The Committee, therefore, recommended that wherever possible, part-time positions within the same district be consolidated into a single full-time position, whenever such consolidation will provide for the expeditious transaction of the bankruptcy business of the court. This recommendation and the following general guide lines to be followed by the Administrative Office in conducting surveys of bankruptcy offices were approved by the Conference:

(1) That part-time referee positions be considered for change to full-time status whenever the volume of business reaches approximately 600 average cases a year. ("Average" case refers to the national average as to size and type of case).

(2) That recommendations for the change of part-time positions be submitted, with or without the concurrence of the district court, when surveys indicate that—

(a) The extent and physical characteristics of the territory are such that it can be efficiently served by a single full-time referee,

(b) Whenever the volume of business exceeds the normal volume for efficient part-time service and in any event when the total filings reach 900 to 1,000 cases a year, and

(c) New part-time positions should be recommended only when there is no other practical way to provide adequate referee service for the district.

#### DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Administrative Office has reported to the Committee a continuing use of the provisions of Chapter XIII of the Bankruptcy Act, covering wage earner plans for the payment of creditors. During the fiscal year 1961 there were 19,700 Chapter XIII cases filed, an increase of more than 6,000 cases over 1960. The Committee noted, however, a wide variance in the use of Chapter XIII between districts in the same state, and even between referees' offices in the same district. There remains a large number of districts that still receive no Chapter XIII cases.

The Committee called attention to the value of the procedures under Chapter XIII as reflected in the amounts paid to creditors in Chapter XIII cases and in no-asset straight bankruptcy cases. During the fiscal year 1960, the *unpaid* liabilities scheduled in the 63,086 straight bankruptcy cases closed during the year were \$469,865,567. During the same period the debts affected in the 5,920 Chapter XIII cases completed were \$5,277,737, of which \$5,168,251, or 98 percent, was paid to creditors. The Administrative Office is continuing its efforts to encourage the use of Chapter XIII in appropriate cases.

#### MISCELLANEOUS MATTERS

##### *Certification of Documents*

The Committee reported that the proposal to amend Section 21d of the Bankruptcy Act, 11 U.S.C. 44(d), to provide that documents on file with the referee may be certified by an employee designated by him, which was recommended by the Conference in March 1961, had been forwarded by the Administrative Office to the House Judiciary Committee with the request that it be included in the Omnibus Noncontroversial Bankruptcy Bill, H.R. 5393, 87th Congress.



*Deposit of Bankruptcy Funds*

The Conference, upon recommendation of the Committee, approved the proposal to authorize the deposit of funds of bankrupt estates in interest bearing accounts, such as time deposit accounts, savings accounts and the like, so that some increment will accrue to these estates. The Administrative Office was authorized to submit to Congress the following draft of an amendment to Section 47a(2) of the Bankruptcy Act, 11 U.S.C. 75(a)(2), with respect to the duties of the trustee:

(2) Deposit all money received by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest bearing savings deposits, time certificates of deposit, or time deposit-open accounts.

*Modernization of Referees' Offices*

The Conference was informed that the consolidation of the district court clerk's office and the referee's clerical staff in the United States District Court at Chicago had been completed and that new and modernized space, scientifically designed to handle the clerical work of the court had been provided. Eventually, only one bankruptcy docket for each case will be maintained in this office, which will eliminate entirely the keeping of a separate clerk's docket for bankruptcy cases. It is believed that this consolidation will greatly reduce the overall amount of clerical work, as well as the cost of both offices. If successful, it will provide a pattern for installations of a like nature in other large offices.

*Training Course for New Referees*

It was called to the attention of the Conference that 31 new referees were appointed in the 18-month period ending July 1, 1961 and that eight additional new referee positions have now been authorized. It was suggested to the Conference that much could be gained from the attendance of new referees at meetings concerning bankruptcy administration, practices and procedures. It was estimated that the cost would be approximately \$9,000. Upon recommendation of the Committee, the Conference authorized the Director to seek the appropriation of the necessary funds for the travel and subsistence expenses incident to such a meeting at the earliest opportunity.

*Woodmar Realty Company Case*

The Conference was informed that a petition for assistance and relief had been filed with the Judiciary Committee of the United States Senate, relative to the matter of the *Woodmar Realty Company* bankruptcy case, No. 3151, pending in the United States District Court for the Northern District of Indiana, Hammond Division. Many communications and memoranda concerning the case have been forwarded to the Chairman of the Bankruptcy Committee. The Court of Appeals for the Seventh Circuit has recently handed down an opinion in the case, and a petition for rehearing is pending. It appears that many of the matters involved in the petition referred to are under consideration by the Court of Appeals for the Seventh Circuit.

The Committee reported that it had examined the petition, correspondence, documentary evidence and other material submitted and had unanimously decided that the Committee should take no action. The Conference approved the views of the Committee and authorized the immediate release of Conference action concerning this matter.

## ADMINISTRATION OF THE CRIMINAL LAW

The Chairman of the Committee on the Administration of the Criminal Law, Chief Judge William F. Smith, presented the report of the Committee.

## FEES AND ALLOWANCES OF UNITED STATES COMMISSIONERS

The Conference approved the following draft of a bill, submitted by the Committee, to increase the maximum fees that may be earned by a United States commissioner in one calendar year from \$10,500 to \$12,500 and to increase generally the fees payable to the United States commissioners.

A BILL To amend section 633 of title 28, United States Code, prescribing fees of United States commissioners.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 633(a) of title 28 of the United States Code is amended to read as follows:*

(a) United States commissioners in each judicial district, except national park commissioners, shall receive the following fees only for all services rendered, not to exceed \$12,500 for any one calendar year:

(1) For attending to any reference by order of court of a litigated matter in a civil case or in admiralty, \$10 a day.

(2) For taking and certifying depositions, 38 cents for each folio and for each copy thereof furnished on request, 25 cents per folio.

(3) A fee graduated according to the aggregate number of cases in each quarterly accounting period, in the sum of \$17.50 for each of the first twenty-five cases, \$11.25 for each of the next twenty-five cases, \$10 for each of the next fifty cases, and \$2.50 for each additional case, of the following kinds:

Issuance of an attachment and subsequent hearings in internal revenue matters pursuant to section 7604(b) of title 26;

Settling or certifying the nonpayment of a seaman's wage pursuant to sections 603 and 604 of title 46;

Preliminary proceedings to hold an accused person to answer in district court, payable to the commissioner who disposes of the case by discharge or binding over, for all services rendered after presentation of the accused;

Each accused person brought before the commissioner for holding to answer in district court shall be considered a case for the purpose of computation of fees.

(4) For all services rendered for each accused person presented before him for purposes of bail only and not for holding to answer in district court, whether or not bail is taken or commitment ordered, \$5.

(5) Upon the filing of a sworn, written complaint, for all services rendered prior to presentation of the accused before the commissioner, \$5 for each person accused.

(6) For all services in connection with each formal, written application for a search warrant, whether granted or denied, \$7.50.

(7) For each proceeding for the discharge of an indigent prisoner, \$7.50.

(8)(a) For each defendant who appears before the commissioner and is tried or sentenced by him for a petty offense, in lieu of all other

fees provided in this section, a fee graduated according to the aggregate number of cases in each quarterly accounting period, in the sum of \$20 for each of the first twenty-five cases and \$15 for each additional case.

(b) For each defendant in a petty offense proceeding allowed to forfeit collateral, or sentenced without appearance at a formal hearing, a fee of \$10 in lieu of all other fees provided in this section.

#### JURISDICTION OF UNITED STATES COMMISSIONERS

H.R. 3094, 87th Congress, would amend 18 U.S.C. 3401 (a) and (b) with respect to the trial jurisdiction of the United States commissioners by inserting in lieu of the term "petty offenses" the term "an offense punishable by imprisonment for not more than one year or by a fine of not more than \$1,000, or both." The bill retains the provision that a defendant may elect to be tried before the district court, but eliminates the present statutory requirement that he be apprised of his right to a trial in the district court and sign a written consent to trial before the commissioner. The Conference at its September 1960 session (Conf. Rept., p. 42) approved a similar bill with an amendment restoring the requirement that the United States commissioner apprise the defendant of his right to elect to be tried before the district court and prohibiting him from proceeding to try the case unless the defendant, after being so apprised, signs a written consent to be tried before the commissioner. The Conference reaffirmed its approval of the bill as thus amended.

#### IMMUNITY LEGISLATION

Various bills to provide for a grant of immunity from criminal prosecution in certain cases have been introduced in the 87th Congress, including S. 1655, S. 1386, S. 526, and H.R. 1246. The Conference at its September 1960 session (Conf. Rept., p. 42) approved the proposal contained in S. 1655 which would grant immunity from criminal prosecution when upon order of the court a witness is compelled to testify or to produce evidence before any grand jury or court of the United States in a prosecution under 18 U.S.C. 1951 with respect to interference with commerce by threats or violence, or in a prosecution under 29 U.S.C. 196 with respect

to the bribery of a labor representative. Upon recommendation of the Committee, the Conference reaffirmed its approval of these proposals contained in S. 1655.

#### MENTALLY INCOMPETENT PRISONERS

The Attorney General of the United States is presently authorized by 18 U.S.C. 4248 to transfer a prisoner committed to his custody under the authority of Section 4246 or 4247 to the proper authorities of the state of his residence. The Conference reaffirmed its approval of a proposal to amend 18 U.S.C. 4248 to authorize the Attorney General, or his authorized representative, to transfer a mentally incompetent prisoner to a hospital or other facility with which suitable arrangements have been made for his custody and care.

#### CAPITAL PUNISHMENT IN THE DISTRICT OF COLUMBIA

S. 1380 and H.R. 5143 would amend Section 801 of the District of Columbia Code to provide that "the punishment for murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment." At the present time, the death penalty is mandatory upon a conviction of murder in the first degree.

The Conference at its March 1960 session approved a draft of a bill to provide that the penalty for murder in the first degree shall be life imprisonment "unless the jury unanimously recommends the death penalty." It was the view of the Committee that while S. 1380 and H.R. 5143 differ from the previous recommendation of the Conference, they have the virtue of changing that feature of present District of Columbia law which requires the imposition of the death penalty in every case of first degree murder which results in a conviction. The Conference thereupon approved the bills.

#### ESCAPE INVOLVING JUVENILES

The Conference reaffirmed its approval of the proposal contained in H.R. 6524, 87th Congress, which would amend 18 U.S.C. 1073 to provide a lesser punishment for the crime of escape, attempt to escape, or instigating or aiding escape, when the crime is committed by a person who is under commitment as a juvenile

delinquent, or by a person who is in custody by virtue of a lawful arrest for a violation of any law of the United States, not punishable by death or life imprisonment, committed before such person's 18th birthday and as to whom the Attorney General has not specifically directed the institution of criminal proceedings.

#### INTERSTATE COMPACTS DEALING WITH JUVENILES

The Conference reaffirmed its approval of the proposals contained in H.J. Res. 95 and H.J. Res. 283, 87th Congress, which would give the consent of Congress to compacts among certain states dealing with (a) the supervision by one state of juveniles placed on probation or parole by another state, and for detention and return of such juveniles; (b) the detention and return of runaway juveniles from one state to another; (c) the detention and return of juvenile delinquents who are on probation or parole and who run away to another state; and (d) the joint rehabilitation of juveniles found delinquent in one state and placed in specialized institutions in another state.

#### SETTING ASIDE CONVICTIONS OF YOUTH OFFENDERS

H.R. 5343, 87th Congress, would amend the Youth Corrections Act, 18 U.S.C. 5021, to authorize the court to grant a certificate setting aside the conviction of a youth offender placed on probation, prior to the expiration of the maximum period of probation. This bill embodies a proposal made by the Committee and approved by the Conference in March 1960. The Conference reaffirmed its approval of the proposal.

#### INSTITUTE OF CORRECTIONS

H.J. Res. 93, 87th Congress, would authorize the Attorney General to establish an Institute of Corrections for the training and instruction of corrections personnel, selected by states and their municipal subdivisions, in the field of correctional methods and techniques. Upon recommendation of the Committee, the Conference approved the bill.

#### APPELLATE REVIEW OF SENTENCES

S. 1692, 87th Congress, would provide that a defendant, convicted in a district court of an offense for which no mandatory sentence

is fixed by law, may appeal to the appropriate circuit court on the ground that the sentence is excessive. A similar proposal was disapproved by the Conference at its September 1957 session (Conf. Rept., p. 26). Since that time Congress has broadened the discretion of the district judge in fixing sentences by the enactment of 18 U.S.C. 4208, and has also authorized the convening of sentencing institutes under 28 U.S.C. 334. It was the view of the Committee that, in time, these statutes may have the effect of reducing disparity in sentences. Upon recommendation of the Committee, the Conference thereupon disapproved the bill.

The Conference, however, expressed its concern over the problem of disparity of sentences and authorized the Committee to undertake a full study of the problem.

#### TIME SPENT BY DEFENDANTS IN CONFINEMENT PRIOR TO SENTENCING

The Conference was informed that Public Law 86-691, approved September 2, 1960, provides for the reduction in the sentence of a person convicted under a statute requiring the imposition of a mandatory minimum sentence, for the time spent by such person in custody awaiting trial for want of bail. The Committee requested and was granted leave to study whether or not credit should also be given for time spent in jail pending appeal.

#### FUGITIVE FELON ACT

The Committee reported that it had given consideration to the proposal contained in S. 525 and H.R. 468 to extend the provisions of 18 U.S.C. 1073 to cover flight to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, punishable by death or imprisonment for more than one year. Upon recommendation of the Committee, the Conference approved the bill.

#### MANDATORY MINIMUM SENTENCES

The Conference was informed concerning a number of bills introduced in the 87th Congress, to strengthen the criminal penalties for the mailing, importing or transporting of obscene matter, including S. 1195, H.R. 3281, H.R. 327 and H.R. 4233. Each of these bills includes a provision for a mandatory minimum sentence for either the first or subsequent violations. Upon recom-

mendation of the Committee, the Conference took no position with regard to the merits of the bills, but disapproved in principle those provisions requiring the imposition of mandatory minimum sentences.

#### PROTECTION OF FEDERAL OFFICERS

H.R. 3538, 87th Congress, would amend the criminal code to provide that whoever by force or intimidation prevents or attempts to prevent any person from accepting or holding a federal office, or attempts to induce by like means any officer of the United States to leave his place of duty, or attempts to impede such officer in the discharge of his duties, shall be fined not more than \$5,000 or imprisoned not more than six years, or both. This legislation was approved by the Conference.

#### PERJURY

S. 1385, 87th Congress, would amend 18 U.S.C. 1621 to provide degrees of perjury and the punishment therefor. It was the view of the Committee that this legislation is not needed at the present time and the Conference disapproved the bill.

#### PAYMENT OF COMPENSATION TO COUNSEL APPOINTED TO REPRESENT POOR PERSONS ACCUSED OF CRIME

The Conference was informed that a number of bills had been introduced in the first session of the 87th Congress to provide for the payment of compensation to counsel appointed to represent indigent persons accused of crime. The Conference reviewed the bills and authorized the Committee to consider further the varying and different provisions of these bills and to report further to the Conference concerning them. The Conference, however, disapproved the proposal to authorize grants to legal aid societies and other organizations providing free legal services to indigent persons accused of crime in the federal courts.

#### PROTECTION OF PROBATION OFFICERS

The Conference, upon recommendation of the Committee, reaffirmed its approval of the proposal to extend to probation officers the protection afforded federal officers generally by 18 U.S.C.



111, which makes it a crime to assault, resist, or impede certain federal officers or employees, and by 18 U.S.C. 1114, relating to the protection of officers and employees of the United States.

#### QUALIFICATION STANDARDS FOR PROBATION OFFICERS

The Conference referred to the Committee on Supporting Personnel the proposal to fix mandatory minimum qualification standards for probation officers.

#### COURT REPORTERS' TRANSCRIPTS

The Committee brought to the attention of the Conference the hardship sometimes imposed upon indigent defendants and the Government when a motion to vacate sentence under 28 U.S.C. 2255 is presented to a successor judge and no transcript of the original trial is on file. At present the statute does not provide for the furnishing at public expense of the transcript of a criminal trial for use in a proceeding brought under 28 U.S.C. 2255. The Conference thereupon approved the following draft of a bill to amend 28 U.S.C. 753(f) to authorize the furnishing of transcripts at public expense in actions brought under 28 U.S.C. 2255.

A BILL To amend section 753(f) of title 28, United States Code, relating to transcripts furnished by court reporters for the district courts.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 753(f) of title 28 of the United States Code is amended to read as follows:*

(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose. *Fees for transcripts furnished in proceedings brought under Section 2255 of this Title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or*

*appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.* Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

## PRETRIAL PROGRAM

The Chairman of the Committee on Pretrial Procedure, Chief Judge Alfred P. Murrah, reported that the new series of seminars of federal judges and trial lawyers, authorized by the Conference at its September 1960 session (Conf. Rept., p. 37), was inaugurated at the Southwestern Legal Center, Southern Methodist University School of Law, Dallas, Texas, on July 10-12, 1961. Thirty federal judges and approximately sixty members of the bar, representing the twelve states comprising the Fifth and Tenth Judicial Circuits, were in attendance. Several lawyers attending the seminar have since received appointments to the district courts. The seminar program, arranged by a special committee under the chairmanship of Judge Irving R. Kaufman, was entitled "Procedures for Effective Judicial Administration." A wide range of topics and problems, from the filing of a civil action to its disposition, was discussed. The proceedings of the seminar will be published in due course and a copy will be made available to every federal judge.

### STATEMENT OF THE ESSENTIALS OF PRETRIAL AND TRIAL PROCEDURE

The Committee also reported the commencement of its special study aimed at the development of a statement of the essentials of pretrial and trial procedure which will discuss the role of the court in such matters as lawyer preparation, full and fair disclosure of relevant facts, discovery, motions practice, the pretrial conference, calendar supervision, and trial practice. A detailed tentative outline and drafts of certain portions of the statement have been prepared and will be considered further by the Committee.

## SEMINAR FOR NEW JUDGES

In view of the large number of judicial appointments to be made as the result of the recent Omnibus Judgeship Bill, the Conference considered the possibility of conducting a seminar or series of seminars for newly appointed district judges for the purpose of acquainting them with the problems of judicial administration arising in the operation of the district courts. It was the sense of the Conference that seminar meetings, conducted on a regional basis, at which a small group of new district judges could discuss the problems of judicial administration with experienced trial judges, would be beneficial to the administration of justice. The seminar program would cover such matters as fundamental court procedures, techniques of effective judicial administration, jurisdiction, and substantive problems arising in suits brought under federal statutes. Insofar as the subject matter permits, the program would be conducted in the manner of the classic university seminar and participation would be limited to the new district judges and those experienced trial judges chosen as panel members or discussion leaders.

The Conference was further of the view that this seminar program ought to be undertaken by the Committee on Pretrial Procedure which has had unique experience in the conduct of judicial seminars, and that in conducting these seminars the Pretrial Committee should be given the responsibility for developing and promoting effective techniques for the efficient and expeditious administration of justice in the district courts at all stages of litigation.

Accordingly, the Chief Justice was authorized to broaden the duties of the Pretrial Committee to include the promotion of administrative techniques for the expeditious and efficient administration of justice in the district courts, and, if desirable, to reconstitute the Committee, to change its name and to enlarge its membership.

## OPERATION OF THE JURY SYSTEM

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

and distributed to every federal judge, clerk of court and jury commissioner. A summary of the replies to a questionnaire addressed to the clerks of the district courts, compiled by the Institute of Judicial Administration under the direction of the Committee, has also been printed in a separate volume, which is in the nature of an appendix to the original report. This appendix has been distributed to all judges and clerks of court and both volumes are being furnished to the newly appointed district judges.

Chief Judge Watkins further reported that through the office of the Deputy Attorney General of the United States a copy of the Committee's report had been distributed to each United States attorney with the request that he review with the clerk of court and jury commissioner the section of the report on "Standards of Selection and Sources of Names of Jurors" and "Qualifications and Exemptions of Jurors." The comments of the United States attorneys were made available to the Committee, and where it was indicated that the procedures of a particular district appear to be below the standards recommended in the report, the chief judges of the circuits and the chief judges of the district courts concerned have been so informed.

#### GRAND JURIES

A question has been raised by Chief Judge Sylvester J. Ryan, of the Southern District of New York, as to whether a grand jury should be continued beyond its specified term, without specific order of the court. Upon recommendation of the Committee, the matter was referred to the Committee on the Administration of the Criminal Law for study and report to the Conference.

#### COST OF THE JURY SYSTEM

As a result of the program undertaken by the Administrative Office in the fall of 1959 to improve petit juror utilization in the district courts, the fees paid to jurors for services rendered during the fiscal year 1960 were \$316,000 less than the previous year, even though there was an increase during the year in the number of trial days. The Committee reported that the savings achieved in 1960 have continued to 1961, when total jury costs were \$124,000 less than in the fiscal year 1960.

## ALTERNATE JURORS

There was brought to the attention of the Committee an instance in which a mistrial was declared in a criminal case after more than five months of trial because of the illness of jurors which reduced the jury to less than twelve. This occurred even though a full complement of four alternate jurors, as provided by Rule 24(c), Federal Rules of Criminal Procedure, had been selected. Similar situations have occurred in other cases from time to time. It was the view of the Committee that the limitations on the number of alternate jurors as provided in Rule 47(b) of the Federal Rules of Civil Procedure and Rule 24(c) of the Federal Rules of Criminal Procedure, should receive careful study in the light of this experience. The Committee has, therefore, called this matter to the attention of the Committee on Rules of Practice and Procedure and the Committee on the Administration of the Criminal Law.

## LEGISLATION

The Conference, upon recommendation of the Committee, reaffirmed its approval of the proposals, relating to the jury system, contained in the following bills pending in the 87th Congress:

(1) S. 1899, to increase the fees of jury commissioners in the United States district courts from \$5 to \$10 per day.

(2) S. 1660 and H.R. 5616, to increase the subsistence and limit the mileage allowances of grand and petit jurors.

(3) H.R. 5391, to provide for a jury commission for each United States district court.

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

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

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

## INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments.

The Committee, in accordance with subdivision III(9) of the plan for the assignment of judges, approved by the Conference at its March 1960 session, had prepared and distributed to the members of the Conference a statement relating to the needs for out-of-circuit assistance and to the availability of judges for such service. Since its last report, dated February 19, 1961, the Committee has recommended favorably on thirteen intercircuit assignments all of which have been approved by the Chief Justice. No adverse recommendation has been made. The judges receiving intercircuit assignments during this period include one circuit judge, five district judges, three senior circuit judges, and three senior district judges.

The Committee has undertaken a careful re-evaluation of the policies to be applied in connection with intercircuit assignments as the result of the Act of May 19, 1961, creating ten new circuit judgeships and 63 new district judgeships. It is the view of the Committee that the disparity in caseloads which exist among the eleven circuits is such that for there to be the desired improvement in the expedition of court business, some circuits, at least temporarily, will not be self-sufficient and will require the use of judgepower from outside the circuit.

Previously the Committee had called attention to the desirability of advance planning for intercircuit assignments. The Committee suggested that there are and will be many judges who will enthusiastically accept intercircuit assignments, if the planning is so coordinated that there is a minimum of interference with their duties to their own courts and a maximum opportunity to render worthwhile service elsewhere.

The report of the Committee was received and approved by the Conference.

## MULTIPLE-JUDGE DISTRICT COURTS

It was brought to the attention of the Conference that the Committee of thirteen chief judges of district courts having five

or more judgeships, which was authorized by the Conference to meet and consider the personnel and budgetary requirements of the large district courts, had transmitted to the appropriate Conference Committees various recommendations which are now being given careful consideration. The Conference, therefore, directed that the Committee be discharged with the appreciation of the Conference.

#### USE OF LAND COMMISSIONERS

Chief Judge Royce H. Savage, on behalf of Judge Stanley N. Barnes, Chairman of the Committee on the Use of Land Commissioners, presented a comprehensive report on the use of land commissioners by the United States district courts under Rule 71A(h), Federal Rules of Civil Procedure. The recommendations of the Committee concerning the use of land commissioners were as follows:

(1) That no change be made in the provisions of Rule 71A(h).

(2) That the responsibility for obtaining funds for the compensation of commissioners be transferred from the Department of Justice to the Administrative Office of the United States Courts as quickly as feasible.

(3) That further study be made of the advisability of establishing fixed regional standards for the compensation of commissioners.

(4) That further study be had, looking toward the possible preparation of recommended forms, or handbook, or checklists, of suggestions to trial judges which might enable them to make use of commissioners in condemnation cases more economically and efficiently.

The Conference considered fully the report and recommendations of the Committee and directed that the report be accepted and filed, and that the recommendations contained therein be approved, except the recommendation that the responsibility for obtaining funds for the compensation of commissioners appointed in land condemnation cases be transferred from the Department of Justice to the Administrative Office of the United States Courts. The Conference voted to disapprove this proposal at this time.

## CASES AND MOTIONS UNDER ADVISEMENT

The Administrative Office submitted to the Conference a report on cases under submission in the courts of appeals and cases and motions under advisement in the district courts. The report listed 61 cases under submission in the courts of appeals more than six months as of September 1, 1961, and fifteen cases and three motions which had been held under advisement by district judges more than six months as of that date. Where necessary, these will be brought to the attention of the judicial councils by the chief judges of the circuits.

## RELEASE OF CONFERENCE ACTION

The Conference authorized the immediate release of its action on matters considered at this session, where necessary for administrative action.

For the Judicial Conference of the United States.

EARL WARREN,  
*Chief Justice.*

DECEMBER 12, 1961.



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