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

SEPTEMBER 22-23, 1965

WASHINGTON, D.C.

1965

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

**Warren Olney III
Director**

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

§ 331. Judicial Conference of the United States.

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

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

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

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

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

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

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

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

SEPTEMBER 22-23, 1965

The Judicial Conference of the United States convened on September 22, 1965, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. 331, and continued in session on September 23. The Chief Justice presided and the following members of the Conference were present:

District of Columbia Circuit:

Chief Judge David L. Bazelon
Chief Judge Matthew F. McGuire, District of Columbia

First Circuit:

Chief Judge Bailey Aldrich
Judge Francis J. W. Ford, District of Massachusetts

Second Circuit:

Judge Sterry R. Waterman (designated by the Chief Justice in place of
Chief Judge J. Edward Lumbard who was unable to attend)
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 Clement F. Haynsworth, Jr.
Chief Judge Walter E. Hoffman, Eastern District of Virginia

Fifth Circuit:

Chief Judge Elbert Parr Tuttle
Chief Judge Herbert W. Christenberry, Eastern District of Louisiana

Sixth Circuit:

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

Seventh Circuit:

Chief Judge John S. Hastings
Judge Kenneth P. Grubb, Eastern District of Wisconsin

Eighth Circuit:

Chief Judge Charles J. Vogel
Chief Judge Roy W. Harper, Eastern District of Missouri

Ninth Circuit:

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

Tenth Circuit :

Chief Judge Alfred P. Murrah
 Chief Judge Alfred A. Arraj, District of Colorado

Court of Claims :

Chief Judge Wilson Cowen

Court of Customs and Patent Appeals :

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

Senior Judges Albert B. Maris, Oliver D. Hamlin, Jr., Harvey M. Johnsen and Orie L. Phillips; Circuit Judges Jean S. Breitenstein and J. Skelly Wright; and Chief Judges William J. Campbell and Theodore Levin attended all or some of the sessions.

The Attorney General, Honorable Nicholas deB. Katzenbach, accompanied by Ernest C. Friesen, Jr., Assistant Deputy Attorney General, attended the morning session of the first day of the Conference and spoke to the Conference informally on matters relating to the administration of justice in the United States courts.

Honorable Joseph D. Tydings, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate, also attended the morning session of the first day of the Conference and addressed the Conference briefly.

William T. Finley, Counsel of the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate; and John F. Davis, Clerk of the Supreme Court of the United States, attended all or some of the sessions.

Warren Olney III, Director of the Administrative Office of the United States Courts; William E. Foley, Deputy Director; William R. Sweeney, Assistant Director; and members of the Administrative office staff were also in attendance.

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

Warren Olney III, Director of the Administrative Office of the United States Courts, had previously submitted to the members of the Conference his report for the fiscal year ending June 30, 1965, 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.

SERVICE OF ADMINISTRATIVE OFFICE EMPLOYEES

The Conference was advised that eleven employees of the Administrative Office have completed twenty-five years of continuous service. In recognition of this service the Conference adopted the following resolution:

The Director of the Administrative Office has brought to the attention of the Judicial Conference that eleven employees now employed in his office have completed twenty-five years of continuous service. The Judicial Conference wishes to express and record its gratitude and appreciation for their long and devoted service to the federal judiciary. These persons and the positions in which they are now serving are:

Darwin H. Anderson, Assistant Chief, Division of Business Administration
 Vivian A. Clements, Chief Auditor
 Wilson F. Collier, Chief, Division of Business Administration
 Roland W. Cutcliffe, Senior Examiner, Audit Section
 Richard C. Davis, Procurement Agent
 Lois L. Dennis, Administrative Officer, Division of Procedural Studies and Statistics
 Lucian D. Drake, Assistant Chief, Section of Court Services and Quarters
 Victor H. Evjen, Assistant Chief, Division of Probation
 Royal E. Jackson, Chief, Division of Bankruptcy
 James Johnstone, Jr., Supervisor of Post-Audit Unit
 John E. Ryan, Supervisor, Records Section

In the conscientious performance of their duties and by their dedication and industry these public servants have set a high standard for their colleagues in the Administrative Office as well as for the other employees of the federal judiciary.

The Judicial Conference extends its thanks and its congratulations and good wishes to each of the persons named.

STATE OF THE DOCKETS

Courts of Appeals.—Appeals docketed in the United States courts of appeals during the fiscal year 1965 again increased sharply to a record 6,766 cases, an increase of 12 percent as compared with the 6,023 appeals docketed in 1964. There were 5,771 appeals terminated, 71 more than the previous year, but 995 less than the number of appeals commenced. The result was an increase in the number of appeals pending in the courts of appeals on June 30, 1965 to a record 4,775.

Appeals filed in the United States Court of Appeals for the Fifth Circuit exceeded 1,000 for the second consecutive year. The largest

increases percentagewise occurred in the Fourth and Ninth Circuits where new appeals filed rose 30 percent. The increase in cases docketed in the courts of appeals during the last three years has been primarily the result of an increase in appeals from decisions of the district courts.

District Courts.—In the United States district courts the civil cases filed during 1965 leveled off at 67,678. This was an increase of less than two percent over the number commenced the previous year. Dispositions were 65,478, or 2,200 cases less than the number of cases filed. As a result the pending backlog on June 30, 1965 increased to a record 74,395 cases.

Habeas corpus applications brought by prisoners in custody pursuant to the judgment of a state or federal court again increased sharply. These and other petitions filed by prisoners totalled 7,888 in 1965 or 12 percent of the total civil caseload of the district courts.

The median time interval from filing to disposition of civil cases terminated by trial in the district courts in 1965 was 17 months, as compared with an interval of 16 months in 1964. The median time interval from issue to trial was 11 months, the same as in the previous year.

Criminal cases filed in the district courts in 1965 increased about five percent, primarily because of the removal of several large groups of criminal cases from state to federal courts under the provisions of the Civil Rights Act. If these cases are excluded, the increase in criminal cases is less than two percent. During the year there were 30,377 criminal cases filed in the district courts (not including removals and cases transferred under Rule 20, Federal Rules of Criminal Procedure); 30,862 cases were terminated (excluding removals and transfers); and on June 30, 1965, 10,834 criminal cases were pending. This is an increase from the 9,578 cases pending at the beginning of the year. The criminal dockets in the district courts, however, receive priority and for the most part are current.

Bankruptcy cases again increased substantially to a record 180,323 cases filed, a five percent increase over the 171,719 filed during 1964. There were 175,117 bankruptcy cases closed during the year, an increase of 12,761 over the previous year. However, filings once again exceeded terminations by more than 5,000 cases, and the pending caseload increased for the thirteenth consecutive year to

an all-time high of 162,372. Nonbusiness or consumer bankruptcy cases accounted for 91 percent of all bankruptcy cases filed.

JUDICIAL STATISTICS

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

ADDITIONAL JUDGESHIPS

Judge Johnsen reported that the Committee had given further study and evaluation to numerous requests and suggestions concerning the need for additional judgeships, both in the courts of appeals and in the district courts, which had been received since the last session of the Conference. On the basis of its study, and in accordance with the policy of making recommendations only where there is a present or immediate need, the Committee decided that it would not make any recommendation to the Conference for the approval of additional judgeships at the present time beyond the action taken by the Conference at its March 1965 session (Conf. Rept., p. 3). Chief Judge Biggs informed the Conference that the Committee on Court Administration concurred in the recommendation of the Committee on Judicial Statistics.

The Conference considered fully the recommendation of the Committees and the reports by members of the Conference concerning the workloads in the various circuits and districts. After full discussion and in view of an increased workload, the Conference voted to approve the two additional judgeships for the Court of Appeals for the Fourth Circuit and the two additional judgeships for the Court of Appeals for the Sixth Circuit contained in S. 1666, 89th Congress, as passed by the Senate. On motion of Chief Judge Biggs, the Conference authorized the Committees on Judicial Statistics and Court Administration to undertake a comprehensive study of the workload of the United States courts of appeals in light of the additional district judgeship positions created in 1961 and the proposals for additional district judgeships presently recommended, and, on the basis of its study and evaluation, to recommend to the Conference any additional appellate judgeships which are required.

Upon the recommendation of the Committees, the Conference withdrew its previous recommendation for the creation of an additional temporary district judgeship for the State of Alaska. A

new Act of Congress allows the district judge in Alaska, who has been ill, to include his service as a judge of the United States District Court for the Territory of Alaska in his total years of judicial service for purposes of retirement under 28 U.S.C. 371 and 372. He will thus be eligible to retire within approximately one year.

Upon recommendation of the Committee on Court Administration the Conference expressed disapproval of H.R. 8385, 89th Congress, to create two additional district judgeships for the District of Maryland. The Conference has heretofore recommended the creation of only one additional judgeship for the District of Maryland.

A complete list of Conference recommendations for the creation of additional circuit and district judgeships is as follows:

Courts of Appeals:

- 2 additional judgeships for the Court of Appeals for the Fourth Circuit
- 4 additional judgeships for the Court of Appeals for the Fifth Circuit, the first four vacancies occurring thereafter not to be filled.
- 2 additional judgeships for the Court of Appeals for the Sixth Circuit
- 1 additional judgeship for the Court of Appeals for the Seventh Circuit

District Courts:

First Judicial Circuit :

- 1 additional judgeship for the District of Rhode Island

Second Judicial Circuit :

- 1 additional judgeship for the Western District of New York
- 1 additional judgeship for the District of Vermont

Third Judicial Circuit :

- 3 additional judgeships for the Eastern District of Pennsylvania, the first three vacancies occurring thereafter not to be filled.

Fourth Judicial Circuit :

- 1 additional judgeship for the District of Maryland
- 2 additional judgeships for the Eastern District of Virginia

Fifth Judicial Circuit :

- 1 additional judgeship for the Middle and Southern Districts of Alabama
- 1 additional judgeship for the Northern District of Florida
- 1 additional judgeship for the Middle District of Florida
- 2 additional judgeships for the Southern District of Florida
- 1 additional judgeship for the Southern District of Georgia
- 4 additional judgeships for the Eastern District of Louisiana
- 1 additional judgeship for the Northern District of Mississippi
- 2 additional judgeships for the Southern District of Texas
- 1 additional judgeship for the Western District of Texas

Sixth Judicial Circuit :

- 1 additional judgeship for the Northern District of Ohio
- 1 additional judgeship for the Southern District of Ohio

Seventh Judicial Circuit :

- 1 additional judgeship for the Northern District of Illinois
- 1 additional judgeship for the Southern District of Indiana
- 1 additional judgeship for the Eastern District of Wisconsin, the first vacancy occurring thereafter not to be filled.

Ninth Judicial Circuit:

1 additional judgeship for the District of Arizona

Tenth Judicial Circuit:

1 additional judgeship for the District of Kansas, the first vacancy occurring thereafter not to be filled.

The Conference has also recommended that the existing roving judgeship in the State of Florida be made a judgeship for the Middle District of Florida only and that two additional judicial districts and four additional judgeship positions be created in the State of California (See Conf. Rept., March 1965, p. 5).

TRIAL REPORTS

The Conference was informed that a question had been raised by judges in the Tenth Circuit concerning the need for the monthly report of trials and pretrial conferences furnished by clerks of district courts to the Administrative Office. The use of this form has heretofore been approved by the Committee on Judicial Statistics and by the Conference. The Committee reported that after hearing, discussing, and considering some of the views expressed, it was of the opinion that the use of the form ought to be continued, as serving to provide an aspect of information, in conjunction with other aspects, of the full nature and scope of the work of the district courts.

MOTIONS TO VACATE SENTENCE

The Conference at its March 1964 session (Conf. Rept., p. 40) approved a recommendation of the Committee "that motions to vacate sentence, brought under 28 U.S.C. 2255, and applications for leave to proceed *in forma pauperis*, be docketed and that rulings on these matters be made only after they have been docketed." Some district courts were reported to have construed this recommendation to imply that habeas corpus petitions and motions to vacate sentence may be filed without an authorization by the court for the petitioner to proceed *in forma pauperis*.

Judge Johnsen informed the Conference that in making its recommendation the Committee had no intention of suggesting that the requirement for an order to proceed *in forma pauperis*, 28 U.S.C. 1915, may be ignored. The recommendation merely was directed at eliminating the practice in prisoner cases of making perfunctory evaluations of the question of merit on an *in forma pauperis* appli-

cation and at having the matter disposed of instead in the same manner as if the filing fee had been paid in a case where the requirements of 28 U.S.C. 1915 had been met.

JUDICIAL APPROPRIATIONS

The Chairman of the Committee on the Budget, Chief Judge William J. Campbell, submitted to the Conference the appropriation estimates for the judiciary (exclusive of the Supreme Court and the Customs Court) for the fiscal year 1967. 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, total \$86,047,100, an increase of \$9,056,100 over the amount appropriated for the fiscal year 1966. On recommendation of the Committee, the appropriation estimates presented for the fiscal year 1967 were approved by the Conference.

The Director of the Administrative Office was further authorized to revise the budget estimates for the fiscal year 1967, and to submit to Congress estimates of supplemental appropriations required for any purpose which could not be anticipated at the time of this submission. The Committee was further authorized to release immediately any information contained in its report and any other information that may be necessary in the preparation and presentation of supplemental and annual appropriation requests to the Congress.

The appropriation estimates for the fiscal year 1967 include funds for 9 additional deputy clerks, 33 additional law clerks, 33 stenographers and 36 messengers for the courts of appeals; 32 additional deputy clerks for the district courts; and 60 additional probation officers and 45 clerk-stenographers for the probation service. Funds are also included for two additional positions for the Court of Customs and Patent Appeals and one position for the Court of Claims. The estimates for the Administrative Office contain a provision for the appointment of an "executive secretary" and a clerk-stenographer in each of the judicial circuits to assist in the administration of the Criminal Justice Act of 1964. Provision also has been made to augment the Administrative Office staff to cope with an increase in workload and for other purposes.

APPROPRIATIONS FOR THE FISCAL YEAR 1966

For the fiscal year 1966 the Congress appropriated to the judiciary, exclusive of the Supreme Court, the sum of \$78,150,400. This was \$7,158,600 less than the amount requested, but \$5,252,800 more than the obligational authority granted for the previous year.

As originally approved by the House of Representatives, the appropriation bill provided for the employment of 20 additional deputy clerks for the district courts, 30 probation officers and 23 clerk-stenographers for the probation service. The original estimates, however, contemplated 25 additional deputy clerks for the district courts, 90 probation officers and 68 clerk-stenographers for the probation service. Requests for funds for the employment of 15 additional deputy clerks, 33 law clerks, 33 stenographers and 36 messengers for the courts of appeals were denied. The bill, as thus approved, included the sum of \$3,500,000 for the payment of fees and expenses of court appointed counsel pursuant to the Criminal Justice Act of 1964. This sum was \$3,540,000 less than the budget estimate. The sum of \$77,600 was authorized for the Administrative Office for additional clerical positions required for the administration of the Criminal Justice Act, but the request for funds for the appointment of executive secretaries and clerk-stenographers in each of the judicial circuits was denied.

The Senate subsequently restored \$82,000 to permit the employment of 11 additional deputy clerks for the United States courts of appeals. No appeal was made for the restoration of funds for other positions which were denied by the House. The Senate, however, reduced the funds available for the fees and expenses of counsel appointed pursuant to the Criminal Justice Act of 1964 from \$3,500,000 to \$3,000,000. The House subsequently acceded to the amendments of the Senate.

The Conference was informed that in the event the amount appropriated for the implementation of the Criminal Justice Act of 1964 should prove to be inadequate, a request for a supplemental appropriation will be made to the Congress. The report of the Budget Committee was received and approved by the Conference.

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, presented to the

Conference the recommendations of the Committee and a report on the activities of the standing and advisory Committees on Rules of Practice and Procedure. Judge Maris informed the Conference that Mr. William E. Foley, Deputy Director of the Administrative Office, had been appointed Secretary to the standing Committee and ex officio Secretary to the advisory committees, succeeding Mr. Will Shafroth who resigned as Secretary following his retirement last year as Deputy Director of the Administrative Office. The Committee expressed its gratitude to Mr. Shafroth for his excellent service on behalf of the Committee during the last two years.

FEDERAL RULES OF CIVIL PROCEDURE—UNIFICATION OF CIVIL AND ADMIRALTY PROCEDURE

The Advisory Committee on Admiralty Rules had submitted to the standing Committee, with its favorable recommendation, and with the approval of the Advisory Committee on Civil Rules, a definitive draft of proposed amendments to certain of the Federal Rules of Civil Procedure designed to effect the unification of the admiralty and civil procedure. The draft was accompanied by a draft of proposed supplemental rules dealing with certain unique admiralty procedures which the Advisory Committee on Admiralty Rules believes should be preserved for maritime claims.

In addition, the Advisory Committee on Civil Rules submitted, with its favorable recommendation, and with the approval of the Advisory Committee on Admiralty Rules, a definitive draft of certain other amendments to the Federal Rules of Civil Procedure. Also, the reporter for the Advisory Committee on Appellate Rules, at the request of the standing Committee, submitted a draft of proposed amendments to Rules 73, 74, 75 and 81, Federal Rules of Civil Procedure, designed to incorporate therein improvements in appellate procedure which the Advisory Committee on Appellate Rules has approved. All proposals were accompanied by explanatory advisory committee notes approved by the respective advisory committees. With the exception of certain proposed amendments to Rules 43(a), 65(f) and the rescission of the Copyright Rules, all proposals to amend the Federal Rules of Civil Procedure were approved by the standing Committee. The standing Committee also approved the rescission of Rule 6(c), Federal Rules of Civil

Procedure; Rule 2 of the Copyright Rules; and the existing Admiralty Rules.

Upon recommendation of the standing Committee, the Conference approved the proposed amendments to the Federal Rules of Civil Procedure including the recommendation for the rescission of the existing Admiralty Rules, of Rule 2 of the Copyright Rules, and of Rule 6(c) of the Federal Rules of Civil Procedure, and directed that these proposals be transmitted to the Supreme Court with the recommendation that they be adopted.

Judge Maris informed the Conference that the Advisory Committee on Civil Rules is continuing its study of other areas of civil procedure, particularly the field of depositions and discovery. The Advisory Committee on Admiralty Rules will continue with its study of distinctive maritime procedures that have been included in the supplemental admiralty rules.

RULES OF CRIMINAL PROCEDURE

The Advisory Committee on Criminal Rules had submitted to the standing Committee, with its favorable recommendation, a definitive draft of proposed amendments to certain of the Federal Rules of Criminal Procedure designed to improve the criminal procedure and to bring these rules into conformity with the Criminal Justice Act of 1964 and recent decisions of the Supreme Court. In addition, the reporter of the Advisory Committee on Appellate Rules, at the request of the standing Committee, had submitted a draft of proposed amendments to Rules 37 and 45, Federal Rules of Criminal Procedure, designed to incorporate therein certain improvements in appellate procedure which the Advisory Committee on Appellate Rules has approved. All proposals were accompanied by explanatory advisory committee notes approved by the respective advisory committees.

With the exception of the proposed new Rule 12.1 and proposed amendments to Rules 15 and 23(b), Federal Rules of Criminal Procedure, all proposed amendments recommended by the advisory committees, including the rescission of Rule 45(c), were approved by the standing Committee. Upon recommendation of the standing Committee, the Conference approved the proposed amendments to the Federal Rules of Criminal Procedure and directed that they be transmitted to the Supreme Court with the recommendation that they be adopted.

UNIFORM RULES OF FEDERAL APPELLATE PROCEDURE

Judge Maris informed the Conference that the Advisory Committee on Appellate Rules is engaged in the final stage of modifying and perfecting its draft of uniform Rules of Federal Appellate Procedure which were published and circulated to the bench and bar in March 1964. As indicated above, the proposals of the advisory committee which involve the initial stage of the appellate process—the period from the filing of the notice of appeal in the district court to the lodging of the record in the court of appeals—are incorporated in the proposed amendments to the Federal Rules of Civil and Criminal Procedure.

RULES OF BANKRUPTCY PROCEDURE

As a result of legislation, approved October 3, 1964, authorizing the Supreme Court to promulgate rules of practice and procedure under the Bankruptcy Act, the Advisory Committee on Bankruptcy Rules has now undertaken the formulation of a complete set of bankruptcy rules. Previously the advisory committee had been engaged in preparing revisions of the General Orders and Official Forms in Bankruptcy. It is expected that the new task will require considerable additional time and effort to complete.

UNIFORM RULES OF EVIDENCE

The Advisory Committee on Uniform Rules of Evidence for the United States District Courts has now been appointed and Professor Edward W. Cleary of the University of Illinois Law School has been named reporter for the committee. The Conference was informed that the committee has held an organizational meeting and is preparing to go forward with its work.

COURT ADMINISTRATION

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

RETIREMENT OF JUDGES

Chief Judge Biggs informed the Conference that the Committee on the Judiciary of the United States Senate had requested the views of the Conference on S. 2299, 89th Congress, to provide for

the mandatory retirement of district judges of the United States for permanent physical or mental disability. Another bill, H.R. 10117, 89th Congress, which would authorize the President to appoint an additional judge in any court where there is a judge who is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability, is pending before the Committee on the Judiciary of the House of Representatives.

The Conference at its March 1964 session (Conf. Rept., p. 9) requested the Committee "to undertake a comprehensive survey and study of the problems arising in the expeditious disposition of the judicial business of a United States Court (other than the Supreme Court) where a judicial officer becomes unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability." The Committee was also requested "to undertake a similar comprehensive survey and study of the problems arising in the administration of justice in a United States court (other than the Supreme Court) where a judicial officer is guilty of misbehavior in office" and "to review the adequacy of existing statutory and administrative procedures relating to these problems and to formulate and recommend to the Conference improvements in these procedures."

The Committee reported that it has a number of matters under consideration but was not prepared to report at this time. The Committee accordingly requested and was granted leave to consider the proposals contained in S. 2299 and H.R. 10117 and related matters and to report thereon at the next session of the Conference.

DISQUALIFICATION OF A CIRCUIT JUDGE FOR BIAS AND PREJUDICE

The Conference at its March 1965 session (Conf. Rept., p. 7) voted to disapprove S. 578, 89th Congress, which would amend 28 U.S.C. 47(a) to provide means for the disqualification of a circuit judge for bias or prejudice. On August 12, 1965, a hearing on the bill was held before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary of the United States Senate with several witnesses appearing on behalf of the bill. Judge Biggs informed the Conference that the matters brought out at the hearings were considered by the Committees on Court Administration and Revision of the Laws and that the Committees again recommended that S. 578 be disapproved on the ground that the bill is not needed and that it would enable

litigants to disrupt the procedures of the courts of appeals. This recommendation was approved by the Conference.

CHIEF JUDGES OF CIRCUITS

H.R. 7641, H.R. 7810 and H.R. 8712, 89th Congress, would amend 28 U.S.C. 45(a) to provide that chief judges of circuits should relinquish their duties at age 66 instead of age 70. The bills, as drafted, would not take effect until the expiration of five years from the date of enactment. The Committees on Court Administration and Revision of the Laws were of the view that the matter requires further study. They, therefore, requested and were granted leave by the Conference to consider the proposal further and to report at a future session of the Conference.

JUDICIAL SURVIVORS ANNUITY SYSTEM

Chief Judge Biggs called attention to the *Third Actuarial Valuation of the Judicial Survivors Annuity System, as of December 31, 1964*, prepared by the actuarial staff of the Social Security Administration in accordance with the statute, 28 U.S.C. 376. The report indicates that in approximately seven years disbursements from the annuity fund will rise at a faster rate than income will accrue, and that the fund will be completely exhausted by 1984. The matter was considered at length by the Committee on Court Administration, which suggested that the report be referred to a Conference committee for study and report as to what course should be pursued to maintain the solvency of the fund. The report on the annuity fund was thereupon referred to the Committee on Court Administration for study and report to the Conference.

PLACES OF HOLDING COURT

S. 2070, 89th Congress, would amend 28 U.S.C. 122 to add Rapid City as an additional place of holding court in the Western Division of the United States District Court for the District of South Dakota. The Conference was informed that the bill had been approved by the Judicial Council of the Eighth Circuit. Upon recommendation of the Committee, the Conference approved the bill.

REALIGNMENT OF COUNTIES IN OKLAHOMA

The Committee on the Judiciary of the House of Representatives requested the views of the Conference on H.R. 8317, 89th Congress, to amend 28 U.S.C. 116 to realign the counties of the Eastern and Western Districts of Oklahoma. A similar bill, S. 2049, 89th Congress, is pending before the Judiciary Committee of the United States Senate. Both bills have the approval of the Judicial Council of the Tenth Circuit. Upon recommendation of the Committee, the Conference voted to approve the proposals contained in these bills.

QUARTERS OF THE COURTS OF APPEALS

The Judicial Council of the Fourth Circuit requested permission to release space assigned to it in the courthouse at Asheville, North Carolina. At the present time the facilities are inadequate and the space assigned for judges' chambers is occupied by employees of the National Park Service. It was the view of the Judicial Council that it would be an extraordinarily needless waste of money to provide adequate facilities for the Court of Appeals at Asheville in view of the small number of appeals that would be heard there. Upon recommendation of the Committee, the Conference authorized the Court of Appeals for the Fourth Circuit to relinquish the space assigned to it at Asheville, North Carolina.

LAND CONDEMNATION CASES

H.R. 8704, 89th Congress, would provide that notwithstanding any provision of Rule 71A(h), Federal Rules of Civil Procedure, a defendant in a land condemnation proceeding shall be entitled to a trial by jury of the issue of just compensation "by filing a demand therefor within the time allowed for answer, or within such further time as the court may allow." Similar bills have been disapproved by the Conference on previous occasions. Upon recommendation of the Committee, the Conference disapproved the bill.

RELEASE OF INFORMATION BY GOVERNMENT AGENCIES

H.R. 6172, 89th Congress, would confer jurisdiction upon the district courts to enjoin a federal agency from withholding infor-

mation from any person seeking information from it. Under the provisions of the bill the burden would be placed upon the agency to sustain its action. It was the view of the Conference that problems of the release of information should be dealt with as matters of administration rather than judicial proceedings. Accordingly, the Conference voted to disapprove H.R. 6172 and similar bills pending in the 89th Congress, including H.R. 5012 through 5021, H.R. 5406, H.R. 5520 and H.R. 5583.

ELECTRONIC SOUND RECORDING

Chief Judge Biggs reported that the bill to authorize the use of electronic sound recording in the United States district courts, recommended by the Conference, had been amended in the Congress and enacted into law, Public Law 89-163. The amendments to the bill permit the use of electronic sound recording only to augment recording by shorthand or by mechanical means. The new Act, however, permits an electronic sound recording of proceedings on arraignment, plea and sentence in a criminal case, when properly certified by the court reporter, to be admissible to establish the record of that part of the proceedings. The bill will thus eliminate, in all cases where electronic sound recording equipment is used, the present requirement that the court reporter transcribe and file transcripts of arraignment, plea and proceedings in connection with the imposition of sentence in criminal cases.

REVISION OF THE LAWS

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

PATENT CASES

S. 1971, 89th Congress, would amend 35 U.S.C. 103 to remove the initial determination of the question of "obviousness" of an invention from the jurisdiction of the Commissioner of Patents and make it a matter solely for judicial determination after the grant of a patent. This change in existing law was suggested because of the large backlog of pending patent applications resulting from the detailed investigations conducted by the Patent Office to resolve the issue. It was the view of the Committees on Court Administration and Revision of the Laws that the proposal, if enacted, would

increase greatly the volume of patent litigation in the district courts, which would then be called upon to decide initially the issue of "obviousness" without the advantage of the research and reasoning of the Patent Office. The Committee pointed out that, in addition, the jurisdiction of the two courts having the greatest experience in deciding this issue, the Court of Customs and Patent Appeals and the United States District Court for the District of Columbia, would be eliminated. Upon recommendation of the Committee, the Conference disapproved the bill.

INTERNATIONAL RULES OF JUDICIAL PROCEDURE

The Secretary of State requested the views of the Conference on the draft Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, proposed by The Hague Conference on Private International Law held October 7-28, 1964. The Committee reported that the proposals contained in this Convention are in accord with the provisions of the recently adopted subdivision (i) of Rule 4, Federal Rules of Civil Procedure, and with the amendments made to various federal statutes by the Act of October 3, 1964, Public Law 88-619. It was the view of the Committee that the Convention will facilitate the prosecution in American courts of litigation having international aspects. Upon recommendation of the Committee, the Conference voted to approve the draft Convention.

JURISDICTION OF CIVIL ACTIONS BY INDIAN TRIBES

S. 1356, H.R. 10007, H.R. 10077, and H.R. 10348, 89th Congress, would amend the Judicial Code to permit Indian tribes to maintain civil actions in the United States district courts without regard to the \$10,000 jurisdictional limitation. The Committee expressed the view that the elimination of the \$10,000 jurisdictional limitation upon civil litigation by Indian tribes would present no difficulty of judicial administration and would be in line with the more recently enacted statutes conferring federal question jurisdiction, which do not contain a monetary limitation. The Committee suggested, however, that the proposed new Section 1361 of Title 28, U.S.C., as set out in S. 1356, be numbered Section 1362, to avoid conflict with an existing Section 1361 in the Code. The Conference thereupon approved the bill with the modification suggested by the Committee.

MORTGAGE FORECLOSURE CASES

S. 1473, 89th Congress, would amend 28 U.S.C. 2410 to prescribe the relative priority of liens of the United States and claims for certain costs, expenses and attorneys' fees in mortgage foreclosure actions. The Committee pointed out that while the proposal appears meritorious, the bill involves only a small segment of the much larger problem of the priority of liens of the United States. Upon recommendation of the Committee, the Conference adopted the view that the proposal should be dealt with in consideration of the entire problem and not as an isolated matter, and directed that the Judiciary Committee of the United States Senate, which had requested the views of the Conference, be so informed.

BANKS AND BANKING

S. 1907 and H.R. 6849, 89th Congress, would add a new Section 2415 to the Judicial Code to provide that the United States courts may not restrain a bank or a banking association with respect to property or rights to property of any depositor in accounts maintained at branches of such banks in foreign countries unless compliance with such restraint will not violate foreign law or involve civil liability under the law of the country in which the branch is located. The Committee was of the view that the problem to which these bills are addressed is one of policy involving American foreign relations. Accordingly, the Committee recommended that the Conference take no position on the bill and so advise the Judiciary Committee of the United States Senate, which had requested the views of the Conference. This recommendation was approved by the Conference.

CONSOLIDATION OF PROCEEDINGS BEFORE THE CIVIL AERONAUTICS BOARD

The Civil Aeronautics Board has proposed legislation, H.R. 10929, 89th Congress, to relieve the Board from strict compliance with the rule set out in *Ashbacker Radio Co. v. F.C.C.*, 326 U.S. 327 (1945), which requires a consolidated or comparative hearing in a situation where there is more than one application before the Board for the same certificate of public convenience and necessity. The bill would authorize separate hearings of these applications, if the hearings are followed by simultaneous decisions. The proposed

legislation is predicated upon Recommendation No. 20 of the Administrative Conference of the United States, December 15, 1962. The Committee pointed out that the recommendation by the Administrative Conference included a provision authorizing intervention as of right in the case of separate hearings of such applications. The Committee recommended that the bill be amended to include this provision and that as amended, the bill be approved. This recommendation was approved by the Conference.

AVIATION AND SPACE LAW

The Bureau of the Budget requested the views of the Conference on a draft bill to provide federal jurisdiction and a body of uniform federal law for cases arising out of aviation and space activities. The Committee reported that the draft bill involves matters of considerable difficulty and doubt in a field which is presently on the verge of rapid expansion. The Conference, thereupon, voted to take no position on the draft bill at this time.

ADMISSIBILITY OF EVIDENCE

H.R. 9240, 89th Congress, would make admissible in evidence, without further authentication, the slip laws published by the General Services Administration and the Treaties and other International Act series, issued by the Secretary of State. Upon recommendation of the Committee, the Conference approved the bill.

LEGISLATION

The Conference, on recommendation of the Committee, gave its specific approval, to the extent indicated, to the following bills pending in the 89th Congress, which would carry out proposals approved, in whole or in part, by the Conference at previous sessions:

(1) S. 1587, 89th Congress, to increase from \$10,000 to \$50,000 the limitation on the jurisdiction of the United States district courts in suits against the United States for breach of contract or for compensation. (Conf. Rept., Sept. 1964, p. 64.)

(2) S. 1611 and H.R. 8115, 89th Congress, to transfer certain functions from the United States District Court for the District of Columbia to the District of Columbia Court of General Sessions

and to other agencies of the municipal government of the District of Columbia. (Conf. Rept., March 1965, p. 13.)

(3) H.R. 5506, 89th Congress, to amend the Judicial Survivors Annuity Act to bring it into conformity with the provisions of the revised Civil Service Retirement Act for annuities for survivors of members of Congress. (Conf. Rept., March 1963, p. 17.)

(4) S. 1911 and H.R. 7707, 89th Congress, to authorize the appointment of crier-law clerks by United States district judges. (Conf. Rept., March 1965, p. 35.)

(5) H.R. 5640, 89th Congress, to provide for a jury commission for each United States district court, to regulate its compensation, and to prescribe its duties. (Conf. Rept., Sept. 1962, p. 47.)

(6) H.R. 7382, 89th Congress, to amend 28 U.S.C. 1391 (a) and (b) to authorize civil actions to be brought in the district in which the claim arose, as well as in the district of the residence of a party. (Conf. Rept., March 1963, p. 17.)

(7) H.R. 7538, 89th Congress, to amend 28 U.S.C. 2072 and 2112 to empower the Supreme Court to enlarge the scope of the Federal Rules of Civil Procedure to include the procedure in the courts of appeals in civil actions, as well as the procedure in the district courts and in the courts of appeals for the judicial review or enforcement of orders of administrative agencies. (Conf. Rept., March 1965, p. 13.)

(8) H.R. 7618, 89th Congress, to amend 28 U.S.C. 2241 with respect to the jurisdiction and venue of an application for a writ of habeas corpus by a person in custody under the judgment and sentence of a state court. (Conf. Rept., Sept. 1964, p. 107.)

(9) H.R. 7710, H.R. 8182, H.R. 10262, H.R. 10263, and H.R. 10300, 89th Congress, to amend the Civil Service Retirement Act to authorize the payment of an annuity to a secretary of a justice or judge of the United States on the same basis as an annuity to a congressional employee or former congressional employee. (Conf. Repts., Sept. 1962, p. 39, and March 1965, p. 36.)

(10) H.R. 8276, 89th Congress, to provide for the temporary transfer to a single district for coordinated or consolidated pretrial proceedings of civil actions pending in different districts which involve one or more common questions of fact. (Conf. Rept., March 1965, p. 12.)

(11) S. 2207 and H.R. 9199, 89th Congress, to amend the patent and trademark laws with respect to appeals in patent and trade-

mark cases. The proposals embodied in these bills were approved in substance by the Conference in March 1964. (Conf. Rept., p. 16.)

The Conference, upon recommendation of the Committee, reaffirmed its disapproval of the proposals contained in the following bills pending in the 89th Congress which embody proposals heretofore disapproved by the Conference:

(1) S. 1345, 89th Congress, to accord the right to a trial by jury to a defendant in a land condemnation proceeding who is aggrieved by the determination of the issue of just compensation by a commission appointed by a district court under Rule 71A(h), Federal Rules of Civil Procedure. This bill is similar to S. 2148, 88th Congress, disapproved by the Conference in March 1964. (Conf. Rept., p. 20.)

(2) S. 1384, 89th Congress, to amend the National Labor Relations Act to provide for the trial of unfair labor practice cases in the United States district courts. (Conf. Rept., March 1965, p. 16.)

(3) H.R. 6970, 89th Congress, to grant to persons in the classified civil service the right to a hearing before removal or suspension and the right to judicial review by a district court thereafter. The Conference previously expressed no opinion as to the administrative procedures proposed in the bill, but disapproved the provision for judicial review. (Conf. Rept., Sept. 1963, p. 73.)

(4) H.R. 7296, 89th Congress, to provide for the enforcement of support orders in certain state and federal courts and to make it a crime to move or travel in interstate and foreign commerce to avoid compliance with such orders. The Conference had previously expressed disapproval of those provisions of the proposed legislation which would provide for the registration and enforcement of support orders by United States district courts. (Conf. Rept., March 1965, p. 17.)

(5) H.R. 7646, H.R. 8402 and H.R. 9871, 89th Congress, to amend the so-called Wunderlich Act to provide for the full adjudication of the rights of Government contractors in courts of law. (Conf. Rept., March 1965, p. 17.)

(6) H.R. 7802, 89th Congress, to adjust the retirement benefits of certain retired judges of the United States District Court for the District of Hawaii. (Conf. Rept., March 1965, p. 8.)

(7) S. 2375, 89th Congress, to waive the statute of limitations on certain claims of any officer who is a member of a reserve com-

ponent of the uniform services of the United States. (Conf. Rept., March 1965, p. 16.)

COURT OF VETERANS APPEALS

The Judiciary Committee of the United State Senate requested the views of the Conference on S. 2258, 89th Congress, which is a bill to establish a Court of Veterans Appeals and to prescribe its jurisdiction and functions. This bill is identical to H.R. 8091 and H.R. 8192, 89th Congress, which are pending in the House of Representatives. Similar bills were considered by the Conference at its session in March 1965 (Conf. Rept., p. 18) and approved as to the type of review which will be provided by a special Court of Veterans Appeals, with local hearings by commissioners of the court. The Conference, however, refrained from expressing any view on the policy of granting appeals in veterans' cases. Upon recommendation of the Committee, the Conference voted to reaffirm the views which it previously expressed.

INTERCIRCUIT ASSIGNMENT OF JUDGES

The Chairman of the Advisory Committee on Intercircuit Assignments, Circuit Judge Jean S. Breitenstein, reported on the processing of requests for intercircuit assignments for the period February 6, 1965 through July 30, 1965. During this period the Committee recommended favorably on 24 assignments which have been, or will be, undertaken by 19 judges. All assignments recommended by the Committee were approved by the Chief Justice. The judges receiving assignments include seven circuit judges, four senior circuit judges, five district judges, two senior district judges, one senior judge of the Court of Claims, and one senior judge of the Court of Customs and Patent Appeals.

Of the 24 assignments which have been, or will be, undertaken, 12 were for service in the courts of appeals. Of these, seven were for service in the Court of Appeals for the First Circuit where there have been two vacancies in judgeship positions. No assignments were made in connection with the national deposition program in the electrical equipment antitrust cases.

The Committee noted that the Court of Appeals for the Fifth Circuit continues to need help from without the circuit to cope with its heavy caseload, even though two vacancies on the court have recently been filled. Additional assistance may also be needed in

the Court of Appeals for the Fourth Circuit and the Court of Appeals for the Sixth Circuit if these courts are to be kept abreast of their dockets.

The Conference was also informed that the number of inter-circuit assignments of retired judges has continued to decline. Only two of the 50 retired district judges and only four of the 26 retired circuit judges accepted assignments outside of their circuits during the period covered by the report. The Committee suggested that, if service by retired judges is to be encouraged, consideration be given to the desirability of a review of the policies pertaining to the staff and facilities furnished retired judges.

The Committee reported that the numerous forms now being used in the submission of requests for inter-circuit assignments have caused confusion and delay. The Committee, accordingly, prepared two new forms, one a certificate of need and the other a grant of consent (except a consent by a senior judge) and suggested that the use of these simplified forms be approved.

With respect to the solicitation of assistance of judges of other circuits, the Committee noted that it continues to work only through the chief judges. The Committee suggested that if solicitations for assistance are not made through the Committee, greater cooperation probably will be secured by initiating the request with the chief judge of the circuit and refraining from the solicitation of individual judges until the consent of the chief judge is obtained. In the case of a retired judge, however, only his consent, and not that of the chief judge, is required. The report of the Committee, including a statement relating to the need for inter-circuit assignments and the availability of judges for such service, was received and approved by the Conference.

BANKRUPTCY ADMINISTRATION

Senior Judge Oliver D. Hamlin, Jr., Chairman of the Committee on Bankruptcy Administration, reported that the Committee had met and considered the recommendations contained in the survey report of the Director of the Administrative Office, dated June 22, 1965, relating to the continuance of referee positions to become vacant by expiration of term, for new referee positions, and for changes in salaries and arrangements for referees. The Committee also considered the recommendations of the district judges and of the judicial councils of the circuits concerned.

The Conference considered fully the Committee's report and the recommendations of the Director, the judicial councils and the district judges. On the basis of the report and recommendations, the Conference took the following action relating to new referee positions, changes in arrangements for existing referee positions and the filling of referee positions to become vacant by expiration of term, and directed that, unless otherwise noted, the changes become effective October 1, 1965:

SECOND CIRCUIT

Southern District of New York

- (1) Increased the salaries of each of the part-time referees located at Yonkers and Poughkeepsie from \$9,500 per annum to \$11,000 per annum.

FOURTH CIRCUIT

Northern District of West Virginia

- (1) Authorized the filling of the part-time referee position at Wheeling, to become vacant by expiration of term on October 31, 1965, on a part-time basis for a term of six years, effective November 1, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

FIFTH CIRCUIT

Southern District of Florida

- (1) Authorized the filling of the full-time referee position at Miami, to become vacant by resignation from office of the present referee on December 17, 1965, on a full-time basis for a term of six years, effective December 18, 1965, the regular place of office, territory, and places of holding court to remain as at present.
- (2) Increased the annual salary of the full-time referee at Miami from \$15,000 per annum to \$22,500 per annum, effective December 18, 1965.

Northern District of Georgia

- (1) Authorized the filling of the full-time referee position at Atlanta, to become vacant by expiration of term on March 8, 1966, on a full-time basis for a term of six years, effective March 9, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

SIXTH CIRCUIT

Eastern District of Michigan

- (1) Authorized the filling of the full-time referee position at Detroit, to become vacant by expiration of term on April 13, 1966, on a full-time basis for a term of six years, effective April 14, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Southern District of Ohio

- (1) Authorized the filling of the full-time referee position at Cincinnati, to become vacant by expiration of term on December 8, 1965, on a full-time basis for a term of six years, effective December 9, 1965, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Middle District of Tennessee

- (1) Authorized the filling of the full-time referee position at Nashville, to become vacant by expiration of term on January 6, 1966, on a full-time basis for a term of six years, effective January 7, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

NINTH CIRCUIT

Southern District of California

- (1) Authorized the filling of the full-time referee position at San Diego, to become vacant by expiration of term on November 16, 1965, on a full-time basis for a term of six years, effective November 17, 1965, at the present salary, at the regular place of office, territory, and places of holding court to remain as at present.
- (2) Authorized the filling of the full-time referee position at Los Angeles, to become vacant by expiration of term on February 15, 1966, on a full-time basis for a term of six years, effective February 16, 1966, at the present salary, at the regular place of office, territory, and places of holding court to remain as at present.

Eastern District of Washington

- (1) Authorized the filling of the full-time referee position at Spokane, to become vacant by expiration of term on March 16, 1966, on a full-time basis for a term of six years, effective March 17, 1966, at the present salary, the regular place of office, territory, and places of holding court to remain as at present.

Upon recommendation of the Committee, the Conference deferred action on the proposal to establish an additional full-time referee position in the Eastern District of Wisconsin at Milwaukee and the proposal to increase the salary of the full-time referee at Spokane. These proposals will be considered by the Committee at its next meeting.

The Conference, upon recommendation of the Committee, disapproved the proposal to create an additional full-time referee position in the District of Kansas.

APPROPRIATIONS

The Conference was advised that the \$10,739,000 appropriated for the operation of the bankruptcy system during the fiscal year

1966, although \$510,000 less than the appropriation estimates, appears to be adequate. For the fiscal year 1966 receipts into the Referees' Salary and Expense Fund are expected to equal or exceed estimated obligations. As of June 30, 1965 the Referees' Salary and Expense Fund was reported to have a credit balance of \$10,720,690.

LEGISLATION

The Committee reported on the following bills introduced during the first session of the 89th Congress, which had not previously been brought to the attention of the Conference:

(1) H.R. 20, 89th Congress, to amend Sections 14c(5), 656(a)(3) and 661 of the Bankruptcy Act (11 U.S.C. 32(c)(5), 1056(a)(3) and 1061). This bill would resolve a conflict in judicial decisions on the question of whether Section 656(a)(3) of the Bankruptcy Act, 11 U.S.C. 1056(a)(3), bars confirmation of a wage earner's plan, by way of extension, when the debtor has received a discharge in bankruptcy within the previous six years. The bill would codify the view expressed in a number of cases that the Congressional policy of encouraging payment of debts in full, pursuant to plans by way of extension, ought to be as fully recognized when the question is whether such a plan should be confirmed, as when the issue is the effect of a prior confirmation of a plan by way of extension on the right to a subsequent discharge. Upon recommendation of the Committee, the Conference approved the bill.

(2) H.R. 291, 89th Congress, to amend Sections 64a, 238, 378 and 483 of the Bankruptcy Act (11 U.S.C. 104(a), 638, 778 and 883) and to repeal Sections 354 and 459 (11 U.S.C. 755 and 859). This bill, sponsored by the National Bankruptcy Conference, would make clarifying changes with respect to the priority of the costs of administration incurred under a special relief chapter of the Bankruptcy Act following an adjudication therein. The provisions in the bill would clarify the procedure for the selection of a trustee in a Chapter X proceeding, place a duty on a trustee or receiver to file a schedule and statement of unpaid obligations incurred in contracts assumed during a Chapter X proceeding, clarify the power of a trustee to assume or review executory contracts following an adjudication in Chapter X, and add two new sections with respect to the filing of claims in Chapter X proceedings.

Similar changes would be made in provisions of the Act pertaining to Chapter XI and Chapter XII proceedings. Upon recommendation of the Committee, the Conference voted to approve the bill.

(3) H.R. 5646, 89th Congress, would amend Sections 334, 355, 367, and 369 of the Bankruptcy Act (11 U.S.C. 734, 755, 767 and 769), to make flexible the time within which claims in Chapter XI proceedings may be filed. The bill, sponsored by the National Bankruptcy Conference, would also increase the time within which the first meeting of creditors is to be held. Upon recommendation of the Committee, the Conference approved the bill.

(4) H.R. 293, 89th Congress, to amend Sections 337 and 338 of the Bankruptcy Act (11 U.S.C. 737 and 738), to make clarifying changes with respect to the functions of creditors' committees and the expenses incurred by such committees in the administration of proceedings brought under Chapter XI of the Bankruptcy Act. The Conference, upon recommendation of the Committee, deferred action on the bill pending further study by the Committee.

(5) H.R. 8121, 89th Congress, to amend Section 656(a) of the Bankruptcy Act (11 U.S.C. 1056(a)), relating to the confirmation of a wage earner's plan under Chapter XIII of the Bankruptcy Act. It was the view of the Committee that the proposal contained in the bill, which is broad and unlimited in scope, would give a debtor the right to obtain repeated relief under Chapter XIII by way of a composition at any time. The bill would thus override and eliminate the six year restriction period with respect to a composition under Chapter XIII by nullifying the application of Section 14c(5) to Chapter XIII cases. The Committee further believes that the bill would create a class of habitual debtors seeking relief under Chapter XIII and the discharge of debts. Upon recommendation of the Committee, the Conference voted to disapprove the bill.

FEES AND SPECIAL CHARGES

The Conference, upon recommendation of the Committee, adopted the following changes in the Schedule of Fees and Special Charges in bankruptcy cases:

(1) Pursuant to Section 37b of the Bankruptcy Act, 11 U.S.C. 65(b), the Schedule of Fees to be charged in arrangement cases, filed under Chapter XI of the Bankruptcy Act, was amended to read as follows:

One and one-half percent on total obligations paid or extended in Chapter XI cases filed from July 1, 1947 to December 31, 1953, inclusive.

One percent on total obligations paid or extended in Chapter XI cases filed from January 1, 1954 through December 31, 1965.

One percent on the first One Hundred Thousand dollars of total obligations paid or extended in Chapter XI cases, and one-half of one percent on the balance in all cases filed on and after January 1, 1966.

Chief Judge Bailey Aldrich did not participate in the vote to amend this section of the schedule of fees and special charges.

(2) Pursuant to Section 40c(3) of the Bankruptcy Act, 11 U.S.C. 68(c)(3), item 3 of the Schedule of Charges for Special Services, approved by the Conference in September 1947 (Conf. Rept., p. 13), was amended, effective October 1, 1965, to read as follows:

3. For filing petitions for review, for filing petitions for reclamation of property *and for filing petitions for leave to foreclose a mortgage*, \$10 for each petition filed, to be paid at the time of filing by the petitioner, provided that no charge shall be made for petitions for review or for reclamation of property *or for leave to foreclose* filed on behalf of the United States.

(3) Pursuant to Sections 40c (2) and (3) of the Bankruptcy Act, 11 U.S.C. 68(c) (2) and (3), the Schedule of Charges for Special Services in reopened bankruptcy cases was amended, effective October 1, 1965, to read as follows:

There shall be deposited with the clerk, at the time a petition is filed to reopen any closed bankruptcy proceeding (a) \$32 for each estate for the referees' salary and expense fund; (b) \$10 for each estate for the trustee's fee; (c) \$8 for each estate for the clerk's filing fee. Where applicable, all additional and special charges prescribed by the Judicial Conference of the United States pursuant to section 40c(2) and 40c(3) of the Bankruptcy Act, as amended, shall also be charged for the referees' salary and expense fund *based upon the rates in effect on the date the case is reopened.*

MATTERS UNDER ADVISEMENT

The Conference was informed of a marked improvement in the number of matters held under advisement for more than sixty days by referees in bankruptcy. The list of these matters reported under advisement on March 31, 1965 is the smallest since the reports were inaugurated. No referee reported having more than three matters under advisement more than sixty days as of that date.

AUDIT OF STATISTICAL REPORTS

The Conference was informed that the Bankruptcy Division of the Administrative Office is continuing the examination of statistical reports of closed bankruptcy cases for the determination of

errors in the computation of amounts due the Referees' Salary and Expense Fund and overpayments of compensation to receivers and trustees. The statistical reports are also being analyzed for the purpose of disclosing a monopoly of appointments of trustees in any district. Information is also being assembled with respect to the compensation of trustees in large metropolitan areas.

DEVELOPMENTS IN THE USE OF CHAPTER XIII

The Committee reported a gradual increase in the use of wage earners' plans under Chapter XIII of the Bankruptcy Act. During the last fiscal year 28,027 Chapter XIII cases were filed, compared with 27,292 in 1964. The guidelines for Chapter XIII administration, promulgated at the September 1963 session of the Conference (Conf. Rept., p. 87), are being complied with generally by the courts. In several large metropolitan areas, however, the courts have not reduced the number of persons appointed as trustees in Chapter XIII cases to one trustee for the area, as recommended by the Conference. A further report will be made by the Bankruptcy Division of the Administrative Office to the Committee at its next meeting.

SEMINAR FOR REFEREES

Judge Hamlin informed the Conference that the Second Seminar for Referees in Bankruptcy, held in Washington, D.C. on March 29-April 2, 1965, was as fully successful as the first. Altogether, there were 44 referees in attendance. Plans are now being made for a third seminar to be held in Washington during the week of March 27-April 1, 1966. In addition, several regional seminars are being planned for referees who have previously attended one of the annual seminars.

COSTS OF ADMINISTRATION

The Committee called attention to the study of costs incurred in the administration of bankruptcy asset cases during the fiscal year 1964, which was recently distributed to all judges and referees. This study shows that in 1964 the percentage cost of administration of bankruptcy asset cases increased to 26.6 percent in cases having an average realization of \$4,840. This compares with a percentage cost in 1963 of 26.4 percent in asset cases having an average realization of \$5,511. The Committee suggested that every

district court examine the items of cost which according to the study appear to be higher than the national average in their jurisdiction, with a view to reducing the expense of administration to the lowest level consistent with good administration.

ADMINISTRATION OF THE CRIMINAL LAW

Warren Olney III, Director of the Administrative Office, on behalf of Circuit Judge William F. Smith, Chairman of the Committee on the Administration of the Criminal Law, presented the report of the Committee.

RELEASE ON BAIL

S. 1357, 89th Congress, would revise and improve existing bail practices in the courts of the United States. The bill would authorize the release of an accused on one or more of the following conditions: (1) the execution of a written promise to appear as required; (2) the execution of a personal recognizance; (3) the execution of a personal recognizance coupled with the deposit of cash or security equal to ten percentum of the amount of the recognizance, with the deposit to be refunded upon the performance of the release condition; (4) under the supervision of a probation officer; and (5) in the custody of a third person.

The Conference was informed that the bill had passed the Senate with certain modifications which the Committee reported were desirable. The Conference, thereupon, approved S. 1357 in the form in which it passed the Senate.

ELECTRONIC EAVESDROPPING

H.R. 4348, 89th Congress, would provide that evidence obtained through the use of electronic eavesdropping by means of concealed microphones or recording devices is inadmissible in the trial of a person charged with the commission of an offense against the United States. The Committee reported that the bill would abrogate existing law and in particular two decisions of the Supreme Court approving the use of this equipment in certain situations, *Goldman v. United States*, 316 U.S. 129 (1942) and *On Lee v. United States*, 343 U.S. 747 (1952). It was the view of the Committee that there are areas of law enforcement in which the use of eavesdropping devices should be permitted and that for

this reason the proposed legislation is too broad. Upon recommendation of the Committee, the Conference disapproved the bill.

IMMUNITY LEGISLATION

S. 2190, 89th Congress, would permit the compelling of testimony with respect to certain crimes and the granting of immunity in connection therewith, but only with the approval of the Attorney General or an Assistant Attorney General designated by him. The Conference discussed the constitutional aspects of the proposed legislation and voted to defer consideration of the bill until the next session of the Conference.

NARCOTICS LAWS

S. 2152, 89th Congress, would amend the Criminal Code to make available to the district courts a range of expedients adaptable to the individualized treatment of criminal offenders who are found to be addicted to the use of narcotic drugs. Included in the bill are procedures for the civil commitment of an "eligible individual" (as defined in the bill) to the custody of the Surgeon General for treatment. During the period of treatment the prosecution on pending criminal charges would be held in abeyance. If the Surgeon General thereafter certifies that the individual has successfully completed treatment, he could then be discharged from custody and the pending criminal charges against him dismissed.

The Conference was informed that the procedures set up under the bill would apply in the case of any person who is an addict whether or not the offense charged is related to his addiction. It was the view of the Committee that a person should not be relieved of the obligation to answer a criminal charge merely because he is an addict, and that the availability of the provisions under the bill would place a premium on drug addiction, and would result in an inequality in the administration of criminal justice. The Committee recommended, therefore, that the provisions of the bill be made available only where it is found by the court that the criminal charge is related to narcotic addiction.

The Conference, thereupon, approved the bill with the modification suggested by the Committee.

RIGHTS OF THE MENTALLY ILL

S. 1109, 89th Congress, would amend Section 24-301(d), District of Columbia Code, to make discretionary with the court the confinement in a mental hospital of an accused person acquitted of crime solely on the ground of insanity. This section of the District of Columbia Code now provides that such person "shall" be confined to a mental hospital. The Committee was of the view that confinement to a mental hospital should be authorized only if, after hearing, it is determined that the accused was insane at the time of acquittal and that his insanity was such that this release would be a threat to the health, safety, or morals of the community. The Committee, therefore, recommended that the bill be further amended to require a hearing by the trial judge on the issue of insanity as of the time of acquittal and that the bill, as amended, be approved. This recommendation was approved by the Conference.

ACADEMY OF CRIMINAL JUSTICE

S. 1288, 89th Congress, would provide for the establishment of an Academy of Criminal Justice as an agency of the United States to be located at a law school selected by the President. The bill would also provide for the establishment of branch academies at law schools and areas designated by the Congress as the need arises. The Committee reported that it had no information at the present time as to the feasibility of the proposed legislation, the need for establishing such academies, or the probable cost entailed. Upon recommendation of the Committee, the Conference deferred action on the bill pending further study by the Committee.

APPEALS FROM INDIAN TRIBAL COURTS

S. 962, 89th Congress, would authorize an appeal from a judgment of conviction in an Indian Tribal Court where there has been an alleged deprivation of a constitutional right. The appeal would be to a district court and the method of review would be a trial *de novo*. The Committee was unable to express an opinion at the present time as to the impact which the proposed legislation may have on the internal administration of tribal courts, particularly in those situations in which exclusive jurisdiction is reserved to the tribes by treaty. The Conference, thereupon, referred the bill to

the Committee for further study with authorization to seek the views of the Bureau of Indian Affairs.

YOUTH CORRECTIONS ACT

The Youth Corrections Division of the Board of Parole has recommended a bill to amend the Federal Youth Corrections Act, 18 U.S.C. 5005 et seq., to place certain restrictions on the application of the Act and to circumscribe its use in misdemeanor cases. In its consideration of the proposals contained in the draft bill, the Conference also discussed other aspects of problems relating to the sentencing of youth offenders, including those arising upon the revocation of probation. After full discussion, the Conference voted to refer the bill to the Committee for further consideration in the light of the various suggestions made at the Conference.

CRIMINAL JUSTICE ACT OF 1964

Chief Judge John S. Hastings, Chairman of the Committee to Implement the Criminal Justice Act of 1964, presented an interim report to the Conference on the activities of the Committee and the formulation of district and circuit plans under the provisions of the Act.

Judge Hastings informed the Conference that numerous inquiries have arisen from a wide variety of sources setting forth problems and questions in connection with the implementation of the Act. With respect to these specific inquiries the Committee has given its views to the Director of the Administrative Office. With a few exceptions, however, the Committee has not deemed it advisable to suggest permanent guidelines to the Conference at this time. It was felt that there has not been enough experience in the operation of the Act to warrant a recommendation of further rules and guidelines. The Committee did express its view, however, that a claim for compensation and reimbursement of expenses in connection with the preparation of a petition for a writ of certiorari to the Supreme Court of the United States is properly a part of the claim to be submitted by appellate counsel for services and expenses incurred in the court of appeals. With regard to the printing of briefs and appendices in the court of appeals, the Committee felt that if a court of appeals, prior to the Criminal Justice Act, had followed the practice of taking a case on the original record and

typewritten briefs, without incurring the additional expense required by printing, that it should continue to do so in cases in which counsel are appointed under the provisions of the Act.

APPROVED FORMS

The Conference was informed of the results of a trial run under the Criminal Justice Act conducted at San Diego in the Southern District of California. This experiment suggests the probable need for minor changes in certain approved forms now in use. It was further suggested that individual district courts may wish to supplement the forms, recommended by the Committee and approved by the Conference, with local forms designed to serve their own particular needs.

PUBLIC DEFENDERS

The report of the conference committee in the Congress on the Criminal Justice Act of 1964 placed upon the Department of Justice, in cooperation with the Judicial Conference of the United States and the judicial councils of the circuits, the duty to re-examine the need for public defenders in the light of the operation of the Criminal Justice Act and to submit conclusions and recommendations "as expeditiously as proper after adequate facts and experience offer a sound basis for proper conclusions and recommendations." The Committee reported that it had conferred with a representative of the Department of Justice and had authorized the Director of the Administrative Office to designate members of his staff to meet with representatives of the Department to consider the preparation of a plan leading to such a study and to submit recommendations to the Committee. The Director was also authorized to exchange information with the Department of Justice reflecting the results of statistical studies at appropriate intervals. It was agreed that all reports made to the Congress should be joint reports, even though there may be a divergence of views on particular matters set out in a report.

REVIEW OF PLANS

The Conference was informed that all district and circuit plans have now been filed with the Administrative Office, as required by the Criminal Justice Act. The Administrative Office has completed

a review of the plans, both from the standpoint of fiscal control and for conformity with the statute, and has brought certain matters to the attention of the Committee. It was the view of the Committee, however, that no specific recommendations should be made at this time for the modification of any plan until it is determined by experience whether the operation of particular plans conforms to the provisions of the Criminal Justice Act.

APPROPRIATIONS

The Committee recommended that appropriation requests to the Congress for the fiscal year 1967 include the sum of \$7,500,000 for the operation of the Criminal Justice Act. This is the same amount requested by the Conference for the fiscal year 1966. The Committee, believing that the need for administrative services is present in all circuits, urgently recommended the renewal of the request for appropriations for administrative services in all circuits.

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

ADMINISTRATION OF THE PROBATION SYSTEM

Chief Judge Thomas M. Madden, on behalf of Judge Luther W. Youngdahl, Chairman of the Committee on the Administration of the Probation System, presented the report of the Committee to the Conference.

REGIONAL SUPERVISION OF PROBATION OFFICES

Judge Madden informed the Conference that the pilot project on the regional supervision of probation offices, as reported to the Conference in March 1965 (Conf. Rept., p. 34) is now under way. A profile for office evaluation—an instrument to measure the effectiveness of a probation office—has been developed by the project director and approved by the Probation Division. It was reported that the Federal Probation Officers Association, which for a number of years has endorsed the concept of regional supervision, has expressed its enthusiasm for the project and its progress to date.

YOUTH SERVICES

The Committee reported that the Director of the Job Corps and members of his staff have pledged their full cooperation in making

available to youthful probationers and parolees the facilities of the Job Corps conservation camps. A memorandum setting forth policies and procedures was distributed in May to the judges of the district courts and to all probation officers.

The Director of the Neighborhood Youth Corps of the Department of Labor and members of his staff have also agreed to cooperate in making available the resources of that agency. The judges of the district courts and probation officers have been so informed.

REORGANIZATION OF THE PROBATION SERVICE

Judge Madden informed the Conference that members of the Committee had conferred with the Attorney General, representatives of the Department of Justice, the Administrative Office, and various other interested judges on the proposal to establish a unified federal correctional service. While there appears to be general agreement on the objectives sought through a unified service, there is disagreement on the organization of such a service. A further report will be made at a later session of the Conference.

SENTENCING INSTITUTES

The Conference was informed that the Sentencing Institute in the Ninth Circuit, previously reported to the Conference (Conf. Rept., March 1965, p. 33), was held at the United States Penitentiary, McNeil Island, Washington, on September 13 and 14. The Committee was represented by Judge Francis L. Van Dusen, Chairman of the Subcommittee on Sentencing Institutes, which had approved the format of the program.

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

SUPPORTING PERSONNEL

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

LIBRARIANS

The Chief Judges of the Court of Claims and the Court of Customs and Patent Appeals jointly requested authority to employ two persons as librarians to staff the joint library in the new

building soon to be occupied by both courts. One position would be a librarian at Grade JSP-11 in the Court of Claims and the other a position of librarian at Grade JSP-7 in the Court of Customs and Patent Appeals. Upon recommendation of the Committee, the Conference authorized these two new positions under the terms of the classification for librarians approved by the Conference in September 1960 (Conf. Rept., p. 13), subject, however, to the availability of funds.

DEPUTY CLERKS FOR THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

A request was received from the Court of Appeals for the Fifth Circuit for five additional permanent positions in the clerk's office of that court. At present the court has four temporary positions, three of which will be made permanent upon the enactment of the current appropriations bill. In view of the pressing situation in the Fifth Circuit, the Committee recommended that, within the funds available, every effort be made to continue the fourth temporary position and, in addition, that the court be authorized to appoint another temporary employee. The Committee also recommended that when funds are available, the two temporary positions be made permanent. These recommendations were approved by the Conference.

Judge Levin informed the Conference that the Committee had again considered the request of the Court of Appeals for the Fifth Circuit for the reclassification of the clerk of that court. A similar request was considered by the Committee last year (Conf. Rept., Sept. 1964, p. 100) and disapproved. Upon recommendation of the Committee, the Conference directed that no reclassification be made.

ADDITIONAL POSITIONS FOR CLERKS' OFFICES FOR COURTS OF APPEALS AND DISTRICT COURTS

The Conference was informed that numerous requests have been received for additional positions for the clerks' offices of the courts of appeals and district courts, some of which were for additional positions as a result of the Criminal Justice Act of 1964. Consonant with the expressed views of the Conference, the Committee concluded that until experience has been gained with practices under the Criminal Justice Act, no provision should be made for augment-

ing the staffs of clerks' offices on that account. The Committee was of the view, however, that requests should be made for 32 additional positions in the clerks' offices of the district courts and 9 additional positions in the clerks' offices of the courts of appeals for the fiscal year 1967. The views of the Committee were approved by the Conference.

The Committee also recommended that temporary help continue to be authorized for clerks' offices within the limits of available funds.

SECRETARIES

A survey of positions comparable to that of a secretary to a judge, prepared by the Administrative Office at the direction of the Committee, was submitted to the Committee for its consideration. Judge Levin informed the Conference that the report had been discussed, but that the matter of providing higher grades for judges' secretaries had been deferred by the Committee pending further study.

LAW CLERKS

Upon recommendation of the Committee, the Conference directed that the request of the Chief Judge of the District of North Dakota for a higher grade and salary for his law clerk, who is presently in Grade JSP-12, be denied. Requests of a similar nature had been considered in the past and denied on the grounds that the present maximum law clerk classification is appropriate.

PROBATION OFFICES

The appropriation estimates for the fiscal year 1966 included funds for 90 additional probation officer positions and 68 clerk-stenographer positions in the probation service. However, funds were provided for only 30 probation officer positions and 23 clerk-stenographer positions. The Committee recommended that a request be made to Congress to restore for 1967 the funds for the 60 additional probation officers and 45 additional clerk-stenographer positions which were cut from the 1966 estimates. This recommendation was approved by the Conference.

COURT REPORTERS

It was suggested to the Committee that the present court reporter system be changed in order to place court reporters on the same salary basis as other supporting personnel of the courts. The Committee, after considering the proposal, concluded that in the absence of concrete suggestions for improving the current system, there was no reason to recommend any change in the present court reporting system. The Conference concurred in the views of the Committee.

Upon motion of Chief Judge Chambers, the Conference separated the combined position of court reporter-law clerk to Chief Judge William D. Murray of the District of Montana and authorized the appointment of a court reporter at the salary rate applicable to all other court reporters.

COURT CRIERS

The Judicial Conference of the Ninth Circuit renewed its request for a reclassification of court criers from Grade JSP-5 to Grade JSP-7. On the basis of a similar request a year ago, the Committee concluded that the present court crier classification of JSP-5 was appropriate. Upon recommendation of the Committee, the Conference reaffirmed its approval of the views of the Committee.

UNITED STATES COMMISSIONERS

On motion of Chief Judge Solomon, the Conference authorized the Committee on Supporting Personnel to consider a proposal to amend 28 U.S.C. 633(a) to increase the limitation on fees that may be earned by a United States commissioner from \$10,500 per annum to \$22,500 per annum.

TRIAL PRACTICE AND TECHNIQUE

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

SEMINAR FOR NEW DISTRICT JUDGES

Judge Murrah reported that in accordance with the resolution adopted by the Conference at its session in September 1964 (Conf.

Rept., p. 107) a fifth seminar for newly appointed United States district judges, conducted under the auspices of the Committee, was held in Denver, Colorado during the week of June 28. Twenty newly appointed district judges and three circuit judges, who expressed an interest in learning more about the day-to-day operation of a district court, participated in the seminar discussions. The chief trial commissioner of the Court of Claims was also present during the first half of the seminar.

This year's seminar was planned and arranged by a subcommittee under the chairmanship of Circuit Judge Irving R. Kaufman. The program followed the basic plan of the four seminars for new district judges previously held. The format, however, was thoroughly revised, the number of discussion leaders sharply reduced, and the time allotted for formal presentations greatly curtailed. The seminar was acclaimed by the participants and discussion leaders as being most successful.

Altogether 131 newly appointed United States district judges have attended one of the five seminars conducted under the auspices of the Committee. In accordance with the prior authorization of the Conference, the Committee will formulate plans, and announce at an early date, the time and place for the next seminar for newly appointed district judges.

HANDBOOK FOR EFFECTIVE PRETRIAL PROCEDURE

The Committee reported that the *Handbook for Effective Pretrial Procedure*, approved by the Conference at its session in September 1964 (Conf. Rept., p. 104) was published in the July 1965 issue of Federal Rules Decisions, 37 F.R.D. 257. Reprints of the Handbook were supplied through the courtesy of the West Publishing Company and a copy has been distributed to every circuit and district judge.

CIRCUIT COMMITTEES

Judge Murrah called attention to the resolution adopted by the Conference in September 1952 (Conf. Rept., p. 21) and renewed in September 1962 (Conf. Rept., p. 77), recommending the appointment of a pretrial committee in each circuit. The Committee requested the chief judge of each circuit to review these resolutions

of the Conference and consider the reactivation of any circuit committee which may not be functioning.

SUBCOMMITTEE ON MULTIPLE LITIGATION

The subcommittee of the Committee on Trial Practice and Technique, appointed to consider discovery problems arising in multiple litigation with common witnesses and exhibits has, during the past year, continued its work of coordinating the 1,912 private antitrust suits arising out of the criminal antitrust proceedings in the electrical equipment industry in Philadelphia in 1961. A report by the subcommittee detailing the significant progress made towards the disposition of this litigation was presented to the Conference with the recommendation that the Director of the Administrative Office be authorized to circulate a copy, as a matter of information, to every United States judge.

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

HABEAS CORPUS

Senior Judge Orie L. Phillips, Chairman of the Committee on Habeas Corpus, reported that in accordance with the direction of the Conference at its March 1965 session (Conf. Rept., p. 23) the Committee had considered further the provisions of the bill, heretofore recommended by the Conference, relating to the empanelment of three-judge district courts to consider certain habeas corpus applications by state prisoners. These proposals are now embodied in H.R. 4977, 89th Congress, which is presently pending before the Judiciary Committee of the House of Representatives.

The Committee reported that various tables showing the number of applications filed by state prisoners in the United States district courts and the disposition thereof for the fiscal years 1941 to 1957, inclusive, and for the fiscal years 1963 and 1964 had been furnished by the Administrative Office. These tables show that if the provisions of H.R. 4977 had been in force in 1957, the number of hearings by three-judge district courts on habeas corpus applications by state prisoners would have averaged less than three per circuit. In the fiscal year 1956 the average would have been only two per circuit and in 1954 and 1955, less than three per circuit. The Committee in its report to the Conference in March 1959 estimated

that the number of three-judge district courts that would have been constituted, had the proposed legislation been enacted and in force in the fiscal year 1958 would not have exceeded, in that year, an average of four per circuit.

The statistical information supplied by the Administrative Office, however, shows that significant changes have taken place since 1957. If the proposed legislation had been in effect during the fiscal year 1963, the number of three-judge district court cases, according to the statistics, would have averaged eleven per circuit, and in the fiscal year 1964 the number would have risen to more than 26 per circuit. The Committee also noted that only a small percentage of state prisoners filing habeas corpus applications in the United States district courts are successful.

In view of the large number of three-judge district courts that would now be required to hear habeas corpus applications by state prisoners, the disruption of the normal work of the two additional judges and inconveniences they would suffer when designated to sit on a three-judge district court, and, the comparatively few applications by state prisoners that are now decided in favor of the prisoner, the Committee concluded that the provisions with respect to three-judge district courts incorporated in H.R. 4977, 89th Congress, can no longer be justified. The Committee, accordingly, recommended to the Conference that it request the respective Committees on the Judiciary of the Senate and House of Representatives to accord it the privilege of withdrawing its previous recommendation and that there be substituted for H.R. 4977, 89th Congress, a revised bill, submitted by the Committee, which eliminates all provisions with respect to three-judge district courts. This recommendation was approved by the Conference.

PRETERMISSION OF THE TERMS OF COURTS OF APPEALS

At the request of Chief Judge Clement F. Haynsworth, Jr., the Conference, pursuant to 28 U.S.C. 48, consented to the pretermis-
sion of the term of court of the Court of Appeals for the Fourth Circuit scheduled to be held at Asheville, North Carolina in June 1966.

RELEASE OF CONFERENCE ACTION

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

For the Judicial Conference of the United States.

EARL WARREN,
Chief Justice of the United States.

OCTOBER 15th, 1965.

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