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(REPORT OF THE JUDICIAL CONFERENCE.)

September Session 1926

RECOMMENDATIONS OF CONFERENCE OF SENIOR CIRCUIT JUDGES

The conference of senior circuit judges, presided over by the Chief Justice of the United States, was held in Washington, beginning on Monday, September 27, and ending on October 1, 1926. The conference, after a survey of the business of the respective circuits and districts and conditions present therein, renews its recommendations for the creation of additional Federal judgeships made last year and in addition recommends the creation of others. I concur heartily in these recommendations and urge legislation authorizing an additional circuit judge for the second circuit and additional district judges as follows: Three for the southern district of New York and one each for the western district of New York, the district of Connecticut, the district of Maryland, the eastern district of New York, the eastern district of Michigan, the western district of North Carolina, the eastern district of Pennsylvania, the northern district of California, and the southern district of Iowa. The judges needed in the northern district of California and the eastern district of Pennsylvania are, as pointed out by the Chief Justice in his report, "to take the places of judges who have died and in respect to whose successors the act of 1922 provided that no vacancy occurring could be filled unless Congress should by additional legislation so direct." It is not requested that the proposed additional judgeship for the southern district of Iowa shall be made permanent, the additional judge being needed only to assist the judge now in office, who is disabled by bad health from doing his full work, during the latter's incumbency.

The full report and recommendations of the conference of senior circuit judges, submitted by Hon. William H. Taft, Chief Justice, chairman of the conference, follows:

REPORT AND RECOMMENDATIONS OF THE SENIOR CIRCUIT JUDGES

The senior circuit judges of the nine judicial circuits met upon the call of the Chief Justice, under section 2 of the act of Congress of September 14, 1922 (42 St. 837, c. 306), in Washington, on Monday, September 27, 1926.

There were present under the call Circuit Judge Bingham, of the first circuit; Circuit Judge Hough, of the second circuit; Circuit Judge Woolley, of the third circuit; Circuit Judge Waddill, of the fourth circuit; Circuit Judge Walker, of the fifth circuit; Circuit Judge Denison, of the sixth circuit; Circuit Judge Alschuler, of the seventh circuit; Circuit Judge Sanborn, of the eighth circuit; Circuit Judge Gilbert, of the ninth circuit.

Sessions continued for five days. Adjournment took place on Friday, October 1, 1926.

The conference had the benefit of consultation with the Attorney General and Assistant Attorneys General Donovan and Marshall, Chairman Korner, and Mr. Littleton of the Board of United States Tax Appeals.

Each senior circuit judge presented the reports made to him by the district judges within his circuit as to the statistics of the civil and criminal business in the district courts and the circuit courts of appeals of his circuit, with a full and informal statement by him as to the real and actual conditions and the possibility of betterment.

The conference is gratified at finding that substantial progress had been made during the past year in reducing the delays and congestion of business which recently added judgeships had been created to remove.

The records of the Department of Justice presented by the Attorney General showed the following table for the years 1923, 1924, 1925, and 1926, for the total judicial business in the trial courts of the United States down to the close of business as of June 30 of the last year:

Year	United States a party		Private suits	Bankruptcy	Total
	Civil	Criminal			
1923.....	13,683	67,173	40,193	57,338	177,787
1924.....	15,713	63,943	40,319	59,205	179,183
1925.....	18,692	46,725	38,525	59,959	163,311
1926.....	19,161	38,861	38,368	58,917	153,307

This shows an increase in three years of something more than 6,000 cases, or of 50 per cent on the civil docket in which the United States is a party. It shows a reduction on the criminal docket in the same period of from 67,173 cases in 1923 to 38,861 cases in 1926, a reduction of over 28,312 cases, more than 42 per cent. As to the criminal cases, the evidence before the conference, the statistical reports from the Department of Justice, the reports of the district judges, and the knowledge of the members of the conference lead to the conclusion that this result has been due to the increase in the number of judges, to the policy of the Department of Justice in discouraging the prosecution of insignificant and unimportant alleged violations of the law, and to the activity of courts and district attorneys in seeking to remove from the docket the dead cases that can not be tried for lack of evidence.

It shows a decrease of 4½ per cent on the civil docket in cases in which the United States is not a party.

It shows a slight increase in the bankruptcy cases in the four years.

The increase of 50 per cent in civil cases in which the United States is a party is explained, first, by the devotion of more of the time of the courts and Government officers to the criminal than to the civil side of the docket. It is explained also by the injunction suits brought to enjoin nuisances in the illegal sale of liquor. With respect to the private suits and the bankruptcy suits, the courts are holding their own. On the whole, substantial progress toward better conditions is manifest, but further steps should be taken in two directions to make

these reports more satisfactory. One is to continue the ridding of the dockets of dead cases, and the conference has deemed it wise to take steps to further this much to be desired result by the following recommendations:

"The suggestion heretofore made in respect of long-pending cases is repeated and strenuously urged, i. e., that 'In any case which might have been brought to trial, in which no action has been taken by the parties for one year, it shall be the duty of the clerk to mail notice thereof to counsel of record and to the parties thereto, if their post-office addresses are known, 30 days before the opening of the term of court following the 1st of January in each year. If such notice has been given, and no action has been taken in the case in the meantime, an order of dismissal shall be entered as of course at the opening of such term of court.'

"Criminal cases should be forced to trial within what the court deems a reasonable time. To that end indictments and informations should be placed by the clerk on the trial docket calendar or list at the term following issue joined, if trial can not be justly held at the term wherein plea is entered. Criminal cases are subject to the same control by the court as are civil cases, and indictments and informations should be ordered for trial, and tried or dismissed for delay substantially as has been above recommended in respect of pending causes generally."

Everyone who has attempted to deal with the question of delays in the administration of justice has found his path obstructed by a mass of unintelligible statistics in respect to the exact condition of the dockets and the real business of the courts.

The statistics as they are now rendered need investigation and analysis to distinguish between real cases which should be tried, and those which merely lumber the docket and should be dismissed.

The conference has been advised that the Court of Appeals of New York has created a committee, of which Judge Pound of that court is chairman, to devise a plan for judicial statistics that shall be useful, and the need for change and reform in this respect is pressing.

No single agency to induce Congress and State legislatures to the enactment of measures to improve the administration of the criminal law could be more effective than the practical truth in respect to the condition of the courts in the prosecution of crime, and nothing would more stimulate a demand for greater speed in the disposition of the civil cases in behalf of the litigating public than the truth as to the delays and congestion in the civil docket.

The conference has appointed a committee of two of its members, Judge Hough and Judge Denison, to devise a plan of reports for the district judges that shall bring to it at its next meeting more accurate information upon this head. If the result of what the conference is able to do in this matter is encouraging, it may well lead to a recommendation for the establishment, perhaps under the auspices of the conference, of a small bureau of judicial statistics engaged during the whole year in ascertaining the exact facts.

The tabular statement given above discloses the conditions in the district courts. The circuit courts of appeals have continued their admirable record and are substantially abreast of their dockets. A case in one of them is argued and disposed of in less than the year in which it is begun in that court. In order to secure this, however, the judges of those courts have all the work they can do.

While headway is being made against the piling up of arrears, more judges are needed in certain parts of the country, not only to avoid further congestion but to catch up with the docket so that cases can be tried within a reasonable time. We therefore urgently recommend additional judges be provided in the following circuits and districts. As we recommended last year, we recommend again this year that a new circuit judge be provided in the second circuit. That circuit has

now four circuit judges. It has the largest docket of any of the circuits in the United States. It is in the great metropolis of the country, in the city of New York, and it is of the highest importance that no arrears should occur in that court. A fifth judge would certainly avoid this and would avoid what too frequently happens in the Federal courts, the breaking down of judges by overwork.

We recommend also, as we have already done, a district judge for the eastern district of Pennsylvania and a district judge for the northern district of California. These judges are recommended, not to add new judges to the judicial force, but only to take the places of judges who have died and in respect to whose successors the act of 1922 provided that no vacancy occurring could be filled unless Congress should by additional legislation so direct.

One of these judgeships is in the important city of Philadelphia and the other in the important city of San Francisco, and the vacancies made should be at once filled to prevent a falling behind in the district courts there held.

We also recommend that in southern Iowa special provision should be made for the appointment of an additional judge, not to become a permanent addition to the judicial force in that district, but only to assist the judge now in office, who is disabled by bad health from doing his full work.

We renew our recommendation of last year that three new district judges be provided for in the southern district of New York. In that district the results for the year ending June 30 are as follows:

Civil suits between private persons:	
Pending June 30, 1925.....	4, 730
Terminated during the year.....	1, 575
Pending June 30, 1926.....	4, 499
Civil suits by or against the United States:	
Pending June 30, 1925.....	4, 682
Terminated during the year.....	2, 293
Pending June 30, 1926.....	4, 594
Bankruptcy proceedings:	
Pending June 30, 1925.....	4, 689
Terminated during the year.....	2, 162
Pending June 30, 1926.....	4, 398
Criminal causes:	
Pending June 30, 1925.....	4, 989
Terminated during the year.....	6, 225
Pending June 30, 1926.....	2, 007
Number of motions on general motion calendar heard during the year..	3, 258
Bankruptcy motions, discharges, and compositions.....	4, 179
Final hearings in naturalization.....	20, 320

There are six judges in this district and all have been constantly on duty. They have received assistance from the circuit judges of the circuit to the extent of 72 days, from other district judges of the circuit, 47 days, and from 12 or more district judges from other circuits, 378 days.

The very large increase in the population of Brooklyn and the eastern district of New York makes a new district judge there imperative. The work in that district has rapidly fallen behind during the past year. The civil suits between private persons have increased in the year from 5,965 to 7,298. The civil suits in which the United States is a party have increased from 1,281 to 1,856 and the criminal cases from 3,463 to 3,748.

We renew our recommendation of a new district judge in the western district of New York and one in the district of Connecticut. We also renew our recom-

mendation that a new district judge be provided in the district of Maryland. We add to our recommendations previously made by one in favor of a new district judge to be created for the eastern district of Michigan, where the present judicial force of two judges is wholly inadequate, and another in favor of a new judge to be created in the western district of North Carolina. This State has two districts and two district judges. The growth of the State in population and in business is so remarkable that another judge is required.

To sum up, therefore, we urge legislation needed to supply the places of judges whose services have been lost by death or illness—three of them. We renew our recommendations made last year for the creation of six new district judges, and we also recommend three more judges in districts whose business, as reported to us by our members, and by the statistics, demonstrates the need for them.

The appropriations for the fiscal year 1926 provided a special fund of \$100,000 for law books for judicial officers, the expenditure of which was to be subject to the approval of the judicial conference. Plans therefor were adopted at the conference meeting in June, 1925, and were carried out during the fiscal year. The plan involved the union of the \$100,000 and the regular appropriation of \$65,000 to carry it out, and required therefore the cooperation of the Attorney General and his assistants, which was effectively given. Under the plan, all the pending requests were surveyed and divided into two classes; the primary need to supply existing deficiency to give each judge and district attorney the minimum essential library, and the secondary need for further desirable books and for some working books at additional places of holding court in each district. By the purchase made (including orders placed but not filed on June 30, 1926), all the primary need was met, and some \$17,000 expended upon the most urgent of the secondary class. The result is that for the first time in many years the district judges find that they are fairly well supplied with their necessary tools, and the circuit courts of appeals have reasonably satisfactory libraries, or will have with the aid of further special items of legislation now in force. We have no doubt that the efficiency of the Courts has been substantially increased by the aid which this Congressional appropriation has given.

For July 1926 to July 1927, the regular appropriation is \$65,000, to be disbursed by the Attorney General. So far as we can judge, a slightly increased annual appropriation should be sufficient for the normal continuing needs for the district courts and circuit courts of appeals. An increase of \$10,000 is needed for three reasons: (a) For books for additional courts about to be created; (b) for new sets of books at new places of holding court in existing districts; (c) for the cost of the new compilation of the United States Statutes soon to be published and circulated. It is extensively annotated and is quite expensive and will be required in large numbers. We recommend that the regular annual appropriation be made \$75,000, and believe that this will be fairly ample for all essential uses for the immediate future.

The chairman of the Board of United States Tax Appeals has requested that the conference recommend to the nine circuit courts of appeals the adoption of a uniform body of rules governing the review provided for by statute in the circuit courts of appeals of decisions of the Board of Tax Appeals. The conference has examined the law and has conferred with the chairman and another member of the board. It believes that such uniformity ought to be had, but it deems it its duty to refrain from framing any rule that seems to declare any opinion in respect of the scope of the jurisdiction of the circuit courts of appeals in this behalf. The rules should be wholly procedural, and relate only to matters not covered by the existing rules of the several circuits, or rules of practice prescribed by the Supreme Court.

The conference thinks that existing rules sufficiently cover the restriction of argument to matters properly assigned as error and the right or absence of right of attorneys to practice in the circuit. It therefore recommends the following rules only:

RULES RESPECTING REVIEW OF DECISIONS OF THE UNITED STATES BOARD OF TAX APPEALS

I. Every petition for review of a decision of the United States Board of Tax Appeals shall set forth briefly the nature of the controversy, shall declare the court in which review is sought, shall contain assignments of error separately stated and numbered in respect of each and every error asserted and intended to be argued, and shall be verified by the petitioner or his attorney of record.

II. If error is assigned in the admission or rejection of evidence, or on the ground that a finding of the board is unsupported by any evidence, a statement of the evidence submitted to the board shall be prepared by the petitioner. Such statement shall contain in narrative form the evidence material to the assignments of error, and shall be prepared by the parties and settled by a member of the board in accordance with the general equity rules promulgated by the Supreme Court of the United States.

III. The party applying for review shall file his petition with the clerk of the Board of Tax Appeals, and serve a copy thereof with notice of filing on the opposite party or parties. The review shall be taken by such filing and notice.

IV. Within 60 days from such filing and notice the statement of evidence, if any, shall be prepared and filed, and the clerk of the Board of Tax Appeals shall transmit and deliver to the clerk of this court copies duly certified as correct of the following documents:

1. The docket entries of proceedings before the board.
2. Pleadings before the board.
3. Findings of fact, opinion, and decision of the board.
4. Petition for review.

5. The statement of evidence, if any, as settled or agreed upon. The time for such transmission and delivery of documents may be enlarged by a member of the board or a judge of this court, and all such orders of enlargement shall forthwith be filed with the clerk of the Board of Tax Appeals and certified copies thereof be sent to this court with the above enumerated documents.

V. If such certified copies are not delivered to the clerk of this court within 60 days from said filing and notice or before the expiration of the time enlarged by order, a motion to dismiss the petition for delay may be made, and shall be granted unless good cause be shown for the delay.

WM. H. TAFT,

Chief Justice, Chairman of the Conference.

WASHINGTON, D. C., October 1, 1926.