

REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1939.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on September 28, 1939, and continued in session for three days. The following judges were present in response to the call of the Chief Justice:

First Circuit, Senior Circuit Judge Scott Wilson.
Second Circuit, Senior Circuit Judge Learned Hand.
Third Circuit, Senior Circuit Judge John Biggs, Jr.
Fourth Circuit, Senior Circuit Judge John J. Parker.
Fifth Circuit, Senior Circuit Judge Rufus E. Foster.
Sixth Circuit, Senior Circuit Judge Xenophon Hicks.
Seventh Circuit, Senior Circuit Judge Evan A. Evans.
Eighth Circuit, Senior Circuit Judge Kimbrough Stone.
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur.
District of Columbia, Chief Justice D. Lawrence Groner.

The Senior Circuit Judge for the Tenth Circuit, Judge Robert E. Lewis, was unable to attend and his place was taken by Circuit Judge Orie L. Phillips.

The Attorney General and the Solicitor General, with their aides, were present at the opening of the Conference.

State of the dockets.—Number of cases begun, disposed of, and pending, in the Federal District Courts. The Attorney General submitted to the Conference a report of the condition of the dockets of the district courts for the fiscal year ending June 30, 1939, as compared with the previous fiscal year. Each Circuit Judge also presented to the Conference a detailed report, by districts, of the work of the courts in his circuit.

The report of the Attorney General disclosed the following comparison of cases commenced and terminated during the fiscal years 1937 and 1938:

	<i>Commenced</i>		<i>Terminated</i>	
	<i>1938</i>	<i>1939</i>	<i>1938</i>	<i>1939</i>
Criminal	34,099	34,701	34,214	35,588
Civil	33,409	33,531	38,155	37,463
Bankruptcy	57,306	50,997	57,303	52,102

For every year since 1932, the Conference has noted a decrease, more or less pronounced, in the number of cases pending in the district courts. The figures for the year ending June 30, 1939, show a continuation of this trend:

<i>Pending cases</i>	<i>1938</i>	<i>1939</i>
Criminal cases	10,896	10,009
United States civil cases	11,285	9,593
Private suits	24,587	22,347
Bankruptcy cases	54,277	53,172
Total	101,045	95,121

It will be observed that there has been some increase in the number of criminal cases filed and terminated. But the increase in the number terminated has been greater than the increase in the number filed. The result is some reduction in the number of cases pending at the end of the year, this amounting to almost 9%.

There is an increase of 122 civil cases in the number filed during the year ending June 30, 1939, as compared with the preceding year. This difference is little more than negligible. And it appears that during the past year and the preceding year the number of civil cases terminated was approximately 4,000 in excess of the number filed so that there has been a steady decrease in the number of pending cases.

Taking together the United States civil cases and private suits, the total number of civil cases pending at the end of the fiscal year 1937 was 40,618; in 1938, 35,872; and in

1939, 31,940. This decrease in the volume of pending cases is probably due, the Attorney General suggests, to the increase in the number of judges.

There has been a marked reduction in the number of bankruptcy cases filed during the last fiscal year. But as there has been a similar diminution in the number of proceedings concluded, the reduction in the number of pending cases is much less than the diminution in the number filed.

Arrearages.—Delays in the disposition of cases.—There has been a marked reduction in the arrears of civil cases as disclosed by the tabular statement submitted by the Attorney General. It is thus shown that on June 30, 1939, 65.3% of civil cases had been pending six months or over, as against 67% in 1938; 45.6% had been pending one year or over, as against 50.2% in 1938; 25.1% for two years or over, as against 32% in 1938; 17.3% for three years or over, as against 22% in 1938; 12.1% for four years or over, as against 16% in 1938; and 9.4% had been pending five years or over, as against 13% a year ago.

We pointed out last year in considering the tabular statement submitted that to obtain a true picture of the state of judicial work it was necessary to consider the reasons why cases had been pending for a considerable time and not simply the number set forth. There are many reasons for the pendency of cases which do not involve inordinate delays. Thus, as we said last year, cases may be held to await a decision in some other jurisdiction, which would make a trial unnecessary or affect the rights involved, or to await the result of negotiations for settlement; foreclosure suits may be suspended by moratorium or redemption statutes; the litigation may be ancillary to that in another jurisdiction or there may be an injunction restraining proceedings; or cases may be held awaiting appeals.

It can not be too often emphasized that judicial statistics require analysis and knowledge of the circumstances to

which they relate, and while they may in a general sense be of value to show a trend, they often afford an inadequate basis for a just conclusion. When the present report was received, several of the Senior Circuit Judges made inquiries to ascertain the actual reasons for the delays which were shown. The result was to indicate that in many cases the delays were justified. There is, however, as pointed out, a gratifying reduction in arrears and this has been due to the efforts of the judges to expedite the disposition of cases. Last year, we pointed out that one remedy which had proved effective in many jurisdictions was to have the entire docket called at reasonable intervals so that the "dead wood" may be removed and the cases that are expected to be tried may be brought to a speedy determination. This practice, as recommended, has been followed in a number of districts.

The Attorney General observes that except in a few congested centers the court dockets are "in excellent condition and generally current, the waiting time for trials being caused by the intervals between terms of court". While it appears, as the Attorney General states, that 18 out of 85 districts—as against 17 a year ago—report more or less congestion in their dockets, a comparison of the conditions in the two years indicates that the extent of the congestion and arrears has considerably diminished; that only in the District of Columbia, the Southern District of New York and the Western District of Washington have the arrears increased.

In the District of Columbia, it is hoped that the recent increase in the number of judges will result in at least an amelioration of the great delays there existing. But this may not prove to be a complete cure in view of the fact that the number of civil cases filed during the year was 5,601 as against 5,045 during the preceding year. On the other hand, there has been a diminution in the number of criminal cases filed.

In the Southern District of New York the arrears appear to be again accumulating. In the Western District of Washington there has been a considerable increase in the arrears in jury cases and some increase as to non-jury cases.

The Attorney General reports that in the Northern District of Georgia, the Western District of Louisiana, the Eastern District of Michigan and the Northern District of Ohio, while there is still congestion, that reported a year or two ago appears to have been considerably alleviated.

The Attorney General also states that the following districts which showed arrears a year ago now report that the dockets are current:

Northern District of Alabama	Eastern District of Pennsylvania
Eastern District of Illinois	Middle District of Pennsylvania
Eastern District of Kentucky	Northern District of Texas.
District of Massachusetts	

It is believed that in the District of Massachusetts an important factor in clearing up the congestion has been the adoption of pre-trial procedure for all jury cases.

It appears that in the following districts where the dockets were reported to be current a year ago there is now congestion to a greater or less degree:

Eastern District of Arkansas	District of New Jersey
Northern District of California	Middle District of Tennessee
Northern District of Illinois	Eastern District of Washington.
Western District of Kentucky	

The Attorney General adds that in the Eastern District of Arkansas, the Northern District of California and the Eastern District of Washington, this state of affairs is due to temporary conditions.

The statement and tables submitted by the Attorney General were supplemented by full reports by the Senior Circuit Judges from each circuit as to the condition of the dockets in the several districts.

Circuit Courts of Appeals.—We are able to report, as heretofore, that in general the Circuit Courts of Appeals are up with their work. We called attention last year to the accumulation of cases in the Sixth Circuit. Progress has been made in the disposition of these cases and the Conference believes that with the present force of circuit judges the Circuit Court of Appeals will be able in the near future to make its docket fairly current.

We also pointed out last year that the Circuit Court of Appeals for the Eighth Circuit had been able to keep abreast of its work only through the aid of retired judges. After a careful review of the situation there, the Conference decided to recommend one additional circuit judge for that circuit.

No other recommendations for additional circuit judges are made at this time.

The Conference renews its recommendation that Sec. 212 of Title 28 of the United States Code should be amended so that, in a circuit where there are more than three circuit judges, the majority of the circuit judges may be able to provide for a court of more than three judges when in their opinion unusual circumstances make such action advisable.

District Courts.—Additional judges required.—The Conference carefully considered the reports submitted by the Attorney General and also the intimate description of conditions furnished by the circuit judges.

In the Southern District of New York additional judges are clearly required. The Conference recommends that the vacancy caused by the appointment of Judge Robert P. Patterson to the Circuit Court of Appeals should be filled, and that the present restriction should be removed. (See Act of May 31, 1938, sec. 4(d); 52 Stat. 584.) The filling of this vacancy, however, will not afford all the judicial assistance that is needed and the Conference recommends that provision should be made for two additional judges,

that is, in addition to the filling of the vacancy above mentioned. This recommendation is made with the qualification that it be provided that the first three vacancies occurring in the district court in that district shall not be filled.

The Conference also recommends that provision be made for an additional district judge in the following districts:

- 1 additional district judge for the District of New Jersey;
- 1 additional district judge for the Eastern District of Pennsylvania;
- 1 additional district judge for the Northern District of Georgia;
- 1 additional district judge for the Northern District of Ohio;
- 1 additional district judge for the Eastern District of Missouri;
- 1 additional district judge for the Southern District of California;
- 1 additional district judge for the Western District of Oklahoma.

Court rules.—In view of the changes necessitated in the rules of courts by reason of the adoption of the Rules of Civil Procedure, the Conference last year appointed a committee to review the rules of the Circuit Courts of Appeals for the purpose of making recommendations in order to obtain uniformity so far as might be found practicable. This committee was composed of Circuit Judges Parker, Hicks, Wilbur and Phillips.

At the present session of the Conference, Judge Parker submitted two rules which had been drafted in cooperation with a committee of the Department of Justice, of which Hon. James W. Morris was chairman. These rules concern the review by the Circuit Courts of Appeals (a) of orders of the Board of Tax Appeals and of the United States Processing Tax Board of Review, and (b) of orders of other administrative bodies. The Conference recom-

mends to the several Circuit Courts of Appeals the adoption of these rules, as thus submitted, in the form in which they are proposed.

District Court rules.—At the last Conference a committee was appointed, composed of District Judge John C. Knox of the Southern District of New York, District Judge William P. James of the Southern District of California, and District Judge Robert C. Baltzell of the Southern District of Indiana, to examine the various rules of the District Courts and to make recommendations so that the greatest practicable degree of uniformity throughout the country should be secured. This committee was assisted during the year by Major Edgar B. Tolman and by representatives of the Department of Justice. A tentative draft of uniform local rules was prepared and presented to the members of the Conference.

The Conference continues this committee for another year to the end that the above-mentioned report and such further suggestions as may be made should be considered.

Boundaries of judicial circuits and districts.—At the Conference held in 1937 a committee was appointed to consider possible changes in the boundaries of existing circuits and districts and to confer with the appropriate committee of the Senate and House of Representatives with relation to this matter. The Conference continues this committee which, as now constituted, consists of Judges Foster, Wilbur, Phillips and Learned Hand.

The administration of the United States courts.—For some time measures have been under consideration looking to the establishment of an administrative office of the United States courts. One objective was to give to the courts the power of managing their own business affairs and to that extent to relieve the Department of Justice of responsibility. Another objective was to secure an im-

proved supervision of the work of the courts through an organization under judicial control. After full discussion of these objectives the Conference at its last session appointed a committee to prepare recommendations in collaboration with the Attorney General. This committee was composed of Chief Justice Groner of the United States Court of Appeals for the District of Columbia, and Circuit Judges Manton, Parker, Evans and Stone. The result of the collaboration of this committee with the committee appointed by the Attorney General and with representatives of bar associations has been the promotion and ultimate adoption of legislation to attain the desired ends. The Act, which adds a new chapter (Chap. XV) to the Judicial Code entitled "The Administration of the United States Courts", was passed by the Congress and was approved by the President on August 7, 1939, to take effect ninety days thereafter.

A large part of the present session of the Conference has been taken up with a discussion of the provisions of this Act and of the necessary steps fully to achieve the purposes in view. The Act provides for the appointment by the Supreme Court of the United States of a Director and an Assistant Director of the Administrative Office. While these appointments are to be made by the Supreme Court, the Act provides that the Director shall have charge of the matters specified "under the supervision and direction of the conference of senior circuit judges". The Director is charged with duties of the highest importance and it was deemed not only fitting but necessary that the Conference of Senior Circuit Judges, in order to exercise the intended supervision over his activities, should be represented by a committee which shall be in immediate touch with the Director and be in a position to keep the Conference fully informed. For this purpose the Conference has appointed an Advisory Committee to advise and assist the Director in the exercise of his duties until further order of the Con-

ference. The committee is composed of the Chief Justice of the United States, as chairman, Chief Justice Groner of the United States Court of Appeals for the District of Columbia, and Circuit Judges Parker, Stone and Biggs.

The Act provides (sec. 306) that, to the end that the work of the district courts shall be effectively and expeditiously transacted, it shall be the duty of the senior circuit judge of each circuit to call at least twice a year a council composed of the circuit judges for the circuit at which the senior circuit judge shall preside. The senior judge is directed to submit to the council the quarterly reports which the director is required to submit (sec. 304(2)) in relation to the state of the dockets of the various courts, their needs of assistance, the preparation of statistical data and information as to the business transacted. It is made the duty of district judges promptly to carry out the directions of the council as to the administration of the business of their courts. The Conference considered the duty of the circuit judges under this provision and the responsibility of the council, convened and informed as stated, for the appropriate expediting of the work of the district courts.

In addition to these councils composed of the circuit judges in each circuit, the Act provides (sec. 307) that a conference shall be held annually in each judicial circuit which shall be composed of circuit and district judges in such circuit, who reside within the continental United States, with participation of members of the bar under rules to be prescribed by the Circuit Courts of Appeals. These conferences are stated to be for the purposes of considering the state of the business of the courts and of advising ways and means of improving the administration of justice within the circuits.

The Conference considered these provisions and several of the circuit judges described at length the character of the proceedings of conferences which had been held in their

circuits, including the sort of questions presented, the arrangement of programs and incidental matters. The profitable results of these conferences in a number of circuits were emphasized.

It is confidently expected that through the operation of this Act the important objectives to which reference has been made will be measurably attained.

Sentences in criminal cases.—The Conference appointed a committee composed of Judges Learned Hand, Evans and Wilbur to consider and report upon the feasibility of an indeterminate sentence law for the federal courts; also with respect to the advisability of conferring upon the Circuit Courts of Appeals the power to increase or reduce sentences.

Rules of practice and procedure in criminal cases.—The Supreme Court, on May 7, 1934, pursuant to the Act of March 8, 1934, promulgated Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in Criminal Cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia. The Conference requests the Supreme Court to consider amendments of these rules so as to conform the practice relating to records on appeal in criminal cases to the practice provided for by the Rules of Civil Procedure. The Conference also requests the Supreme Court to consider an extension of the Criminal Appeals Rules (within the authority conferred by the Congress) to appeals from courts to which the rules do not presently apply.

The Conference approved Senate Bill No. 1283, 76th Congress, 1st Session, which provides for the conferring upon the Supreme Court of the power to promulgate rules of pleading, practice and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by a court if a jury has been waived, or plea of guilty, in criminal cases in the various courts specified.

Rules of evidence in criminal cases in the federal courts.—The Conference appointed a committee composed of Judges Phillips, Hicks and Wilbur to study and report on the advisability of legislation with respect to the rules of evidence, and also the competency and privilege of witnesses, in criminal cases in the courts of the United States.

Provision for law clerks.—The Conference directs that the Director of the Administrative Office of the United States Courts, upon his appointment, prepare as soon as practicable for the consideration of the Conference proposals with respect to the salaries of law clerks of district judges and circuit judges with a view to a recommendation of such legislation as may be found advisable.

Court reporters.—The subject of compensation of court reporters was referred to the Director of the Administrative Office of the United States Courts to the end that as soon as practicable after his appointment he should prepare recommendations for the consideration of the Conference.

Public defenders.—Upon considering its former recommendation upon this subject, the Conference approved in substance S. 1845 and H. R. 4782, 76th Congress, 1st Session, with respect to the appointment of public defenders.

Recess.—In view of the fact that action may be required by the Conference in connection with the operation of the Act creating the Administrative Office of the United States Courts, the Conference, instead of adjourning, declared a recess subject to the call of the Chief Justice.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

September 30, 1939.