# REPORT OF THE JUDICIAL CONFERENCE

## OCTOBER SESSION, 1940

The Judicial Conference, pursuant to the act of Congress of September 14, 1922, as amended (U. S. Code, Title 28, sec. 218), convened on October 1, 1940, and continued in session for 4 days. The following judges were present in response to the call of the Chief Justice:

First Circuit, Senior Circuit Judge Calvert Magruder.
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.
Tenth Circuit, Senior Circuit Judge Orie L. Phillips.
District of Columbia, Chief Justice D. Lawrence Groner.

The Attorney General and the Solicitor General, with their aides, were present at the opening of the Conference. The Director of the Administrative Office of the United States Courts, Henry P. Chandler, the Assistant Director, Elmore Whitehurst, the Chief of the Division of Procedural Studies and Statistics, Will Shafroth, and other members of the staff of the Administrative Office were in attendance.

By the enactment of the Administrative Office Act, the duty of preparing a report of the state of business of the Federal courts was lodged with the Director of the Administrative Office. Accordingly, the Department of Justice did not undertake to furnish the statistical data which in previous years it had prepared for the Conference.

The Attorney General addressed the Conference with respect to various matters of importance, emphasizing the effect of the national defense program on the work of the courts. He foresaw a greatly increased burden on the courts arising from the enforcement of the Selective Service Act, the Alien Registration Act, and the Espionage Act, and from condemnation cases, applications for naturalization, and deportation problems. The Attorney General referred to the difficulties arising from a disparity in sentences in criminal cases, stating that a Federal indeterminate sentence law would be desirable, and he also stressed the importance of the recent act conferring au-

thority upon the Supreme Court to prescribe rules for pleading, practice, and procedure in criminal cases prior to and including verdict.

*The administration of the United States courts—Report of the Director.*—The Director submitted to the Conference a comprehensive report containing a review of the organization and activities of the Administrative Office and elaborate statistical data with respect to the work of the courts.

The Administrative Office of the United States Courts was created by the Act of August 7, 1939 (53 Stat. 1223; U. S. Code, Title 28, §§ 444–450). The act took effect by its terms on November 6, 1939, and the Director qualified and took office on December 1, 1939. The organization and business of the office were conducted from its inception under the supervision of an advisory committee of the Conference, and at a special session called on January 22, 1940, the Conference itself considered and acted upon particular matters deemed to demand its attention.

The Administrative Office has thus been in existence for somewhat less than a year, but in that time its organization and the general lines of its activities have been determined, and the results in assistance to the Federal courts are beginning to appear. Corresponding with the principal aims of the act, the Office has two main divisions: A Division of Business Administration, the function of which it is to provide the courts with their material needs in the way of quarters, supplies, and clerical and administrative service as smoothly and promptly as possible; and a Division of Procedural Studies and Statistics designed to furnish to the courts accurate current information concerning the state of the judicial business and to make recommendations from time to time looking toward increased efficiency and expedition. Besides these two divisions there has been since July 1, 1940, a small staff exercising a general supervision of the Federal probation system previously conducted by the Bureau of Prisons of the Department of Justice.

Through the cooperation of the Department of Justice and particularly of its Administrative Division which continued to perform its functions in relation to the Federal courts until the Administrative Office was well prepared to take them over, the transfer of duties was effected gradually and without interruption. The staff of the Administrative Office is now well developed and reports from the judges indicate general satisfaction with the way in which the business matters of the courts are handled. Action upon requests for supplies or service is always and necessarily conditioned upon the state of the appropriations. But the Administrative Office is making it a policy to give prompt attention to requests, to treat all upon an equal basis according to existing conditions, and when it cannot act favorably to explain its reasons.

In its investigation and reports upon the dockets, functions discharged by the Division of Procedural Studies and Statistics, the Administrative Office has been helpful in giving to the courts trustworthy information and in suggesting methods of overcoming congestion. This it has done by making the statistics more informative and by familiarizing itself with the special problems in particular districts through observation on the ground and interviews with judges, clerks, and others concerned.

Perhaps the outstanding advance made by the Administrative Office in the matter of judicial statistics is in the differentiation of cases undisposed of for periods longer than 6 months according to the reasons for that condition. Heretofore the total numbers of such cases have been shown. The judges have known that a large proportion were delayed for other reasons than the inability of the courts to hear them, but they had only their general unverified opinion for this fact because the statistics did not show the reasons for the delay. Now these reasons are shown.

In civil cases, the reasons are, on the one hand, those which point to real inability of the courts to handle all of their business, such as inability to reach the cases or that no term of court was held in the division since the cases were at issue, and, on the other hand, reasons indicating that the courts were not responsible for the delays, such as continuances upon the request of the parties, the nature of the particular proceedings such as receiverships, etc., and continuances to permit the determination of test cases. In criminal cases likewise there are reasons which go to the inability of the courts to meet fully the demands upon them, such as inability to reach the cases, or that no court had been held in the division since the indictment, and other reasons for which the courts are not responsible, such as that in fact the defendants are fugitives and have not been brought within the jurisdiction of the court or that the defendants are serving sentences on other charges. It is recognized that information in regard to the reasons for the pendency of cases beyond specified periods, gathered as it is by the clerks from such sources as are available, may not always be entirely accurate. Nevertheless it throws new light upon the actual extent of congestion in the Federal courts and indicates that congestion is less than it is generally considered to be.

Another inquiry that the Administrative Office has regularly been making under the direction of the Conference is with respect to cases held under advisement by judges more than 30 days after submission. Judges are asked at quarterly intervals to report the number of such cases held more than 30 and less than 60 days, and the number held more than 60 days, with such explanation as they may wish to give in reference to the latter. This information, with other facts gathered by the Administrative Office, is transmitted to the senior circuit

judge of the circuit who in turn reports it to the circuit council consisting of all the circuit judges of the circuit. The council, which by the act creating the Administrative Office is authorized to take such action upon the information before it as may be necessary, uses the data to determine what assignments of the district judges in the circuit for the ensuing period will be the most effective, and whether there is occasion to call for aid from another circuit. The act makes it the duty of the district judges promptly to carry out the directions of the council as to the administration of the business of their respective courts.

In order to obtain additional information with respect to references to masters, the Conference adopted a resolution, following a recommendation of the Director, that a proposed form of questionnaire to clerks and judges as to references to masters be approved. The form of questionnaire thus authorized is as follows:

To The Clerks:

A list of all references to masters, except in bankruptcy cases, during the preceding quarter of the fiscal year, with the title of the case referred, the date of the order of reference, a short statement of the nature of the reference, and the date when the master's report was filed, if such report has been filed.

To The Judges:

The titles, docket numbers, and dates of the orders of reference in all cases, except bankruptcy cases, where references have been made to masters in which the master's report had not been filed on October 1, 1940, and in which, on that date, the order of reference was more than 90 days old, with any comment as to the nature of the reference or the reason for its nondisposition which you may wish to include. This request may be fulfilled by simply forwarding to this office a duplicate copy of a report to you from the master.

Under the Administrative Office Act, judicial councils and conferences have been held in the circuits during the past year for the first time with statutory authority. The circuit councils supply a directing power from the circuit judges within the circuit who are acquainted with local conditions and yet are in a position to see the district courts in their relation to the judicial system of which they are part. The circuit conferences give opportunity for the Federal judges (sometimes with the presence of judges of State courts) and members of the bar to discuss matters with reference to the practice of the Federal courts that may affect the interests of the communities in the particular circuits.

The general supervision of the Federal probation system falls to the Administrative Office because the probation officers are appointed by and serve under the several district courts. Part of the work of the Federal probation officers continues to be the supervision of Federal prisoners on parole and conditional release. In this part of their work these officers continue to be responsible to the Bureau of Prisons of the Department of Justice. Frequent conferences between the

probation staff of the Administrative Office and the parole staff of the Bureau of Prisons are avoiding any untoward effects of the divided responsibility and are permitting probation and parole policies to remain coordinated.

The annual report of the Director discloses in more detail the organization and development of the Administrative Office. The Conference directed that the report be printed and filed with the Congress and the Attorney General as a public document, that it be distributed to bar associations, State libraries, libraries of the highest court of each State and accredited law schools, and that it be released to the public at the same time as this report.

*State of the dockets—Number of cases begun, disposed of, and pending in the Federal district courts.*—The Director's annual report contains statistics for the fiscal year ended June 30, 1940, as compared with previous fiscal years. Each senior circuit judge also presented to the Conference reports and comments on the statistics submitted by the Director with respect to the work of both district and circuit courts in his circuit.

The Director's report shows a decrease in the number of civil cases pending in district courts on June 30, 1940. This diminution continues the trend noted by the Conference in its annual reports since 1932. It is the result of inroads upon the accumulation of pending cases rather than to any recent lessening of the amount of new business, as will be seen from the following schedule of civil cases commenced, terminated, and pending in the district courts (exclusive of the Canal Zone and the Virgin Islands) during the fiscal years 1937, 1938, 1939, and 1940:

| Year | Commenced | Terminated | Pending |
|---|---|---|---|
| 1937 | 32,672 | 37,393 | 40,618 |
| 1938 | 33,409 | 38,155 | 35,872 |
| 1939 | 33,531 | 37,463 | 31,940 |
| 1940 | 34,200 | 36,893 | 29,259 |

There has been no marked trend toward a decrease in the number of criminal cases pending in district courts at the end of recent years, that is, from 1934 to 1940, but the matter is not of immediate importance, since, as the Director's report discloses, in each year the total number of such cases has amounted only to about one-third or one-quarter of the number filed. In 1940 this proportion was 28.7 percent. This situation compares favorably with that on the civil side of the docket, where during recent years the number of cases pending at the end of each year has varied from 148 percent to 85.6 percent of the number filed. The low proportion of 85.6 percent was reached this year.

There has been an increase of 1,580 in the number of bankruptcy proceedings instituted in 1940 as compared with 1939, and an almost exactly corresponding increase of cases pending on June 30, 1940.

As the comprehensive tabular data submitted by the Director are found in his published report, it is deemed unnecessary to attempt to epitomize them here.

*Arrearages—Delays in the disposition of cases—Additional judges.*—The report of the Director discloses that of the cases pending on June 30, 1940, only a small number can be considered genuinely in arrears. Thus, in the districts other than the District of Columbia, only about one-third of the cases pending on July 1, 1940, had been at issue for more than 6 months, and of the cases in this category only about one-sixth could be classified as remaining on the docket because the court has been unable to reach them. In the District Court for the District of Columbia, notable gains have been made during the past year in clearing up a highly congested calendar, and the Director reports that if a similar degree of progress is made during the next year, the docket will soon become current. Much of that reduction has been occasioned by an intelligent and skillful use of the pretrial procedure permitted by the Rules of Civil Procedure.

Last year, the report of the Attorney General to the Conference indicated an increase in arrearages in the District of Columbia, the southern district of New York, and the western district of Washington. As stated, the congestion in the District of Columbia is being remedied, but in the other two districts it continues to increase. In the western district of Washington, the continued increase seems to be the temporary result of a vacancy in the office of district judge, but the situation in the southern district of New York cannot so easily be explained. After giving consideration to the report of the Director and the statements of the senior circuit judge for the Second Circuit, it was resolved that the Conference recommend that provision be made for at least one additional district judge in the southern district of New York, in addition to those provided for by recent acts of Congress.

The report of the Director and the statement of the senior circuit judge for the Sixth Circuit showed that there is substantial congestion in the northern district of Ohio. Last year the Conference recommended that provision be made for an additional district judge in that district and now renews that recommendation. It likewise renews its recommendation that an additional district judge should be provided for the eastern district of Missouri.

In 1939, the Conference was able to report the substantial disappearance of the congestion which had previously existed in the district of Massachusetts. Although that congestion has not reappeared, the Conference decided, after consideration of the report of the senior circuit judge, that there should not be in the near future any reduction

in the number of district judges in that district. Accordingly, the Conference now recommends the repeal of so much of section 4v of Title 28 of the U. S. Code as provides that the first vacancy occurring in the office of district judge for the district of Massachusetts shall not be filled.

*Circuit courts of appeals.*—As in recent years the Conference reports that in general the dockets of the courts of appeals are current. Progress is being made in reducing the accumulation of cases in the Sixth Circuit, to which we have heretofore referred, and it is thought that there will be a further reduction as a result of the appointment of the additional circuit judge for which the Congress has provided. No recommendation for additional circuit judges is made at this time.

The Conference renews its recommendation that section 212 of Title 28 of the U. S. Code 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.

*Estimates.*—Pursuant to the Administrative Office Act, the Director submitted to the Conference estimates of the expenditures and appropriations necessary for the maintenance of the United States courts and the Administrative Office for the fiscal year 1942. The Conference approved those estimates, with the following exceptions:

1. With respect to the proposed form for that portion of the 1942 Appropriation Act dealing with "Miscellaneous salaries, United States courts," the Conference resolved that, in lieu of the first two provisos in the form submitted, there should be inserted the following proviso:

> *Provided*, That the compensation of secretaries and law clerks of circuit and district judges shall be fixed by the Director of the Administrative Office of the United States Courts in accordance with the compensation schedules of the Classification Act of 1923 (as amended), judges' secretaries being classified in the senior clerical grade and law clerks in the principal subprofessional grade.

And that the last proviso in that form should be amended so as to read:

> *Provided further*, That not to exceed three law clerks to district judges shall be appointed in any one Circuit.

2. In order to cover the above changes, the Conference resolved that there should be an addition to the estimates for "Miscellaneous salaries, United States courts," in the amount of $30,000, and a further amount sufficient to provide for three law clerks for district judges in each circuit instead of two as now authorized.

3. With respect to the estimate for "Probation system, United States courts," the Conference recommended that there should be no

provision in the 1942 Appropriation Act limiting the maximum salaries of probation officers to $3,200.

Further, with respect to the proposal in the estimates for the transfer of the item covering the salaries of librarians from the estimate for "Miscellaneous salaries, United States courts" (where it appeared for the fiscal year 1941), to "Salaries and expenses of clerks, United States courts," the Conference resolved:

That by the approval of this item it is not intended to put librarians under the control or direction of the clerks or to make the clerks responsible for librarians, except where that is done with the approval of the Senior Circuit Judge of the Circuit.

*Deficiency appropriation.*—The Conference authorized the Director to seek a deficiency appropriation for the fiscal year 1941 in the amount of $60,000 to cover the cost of supplying the new "Lifetime" Federal Digest to the libraries of all the circuit courts of appeals and to those circuit and district judges who require it. It was the sense of the Conference that each senior circuit judge should make a survey of the need for this digest in his circuit and inform the Director of the result to the end that there may be no unnecessary duplication in its distribution.

*Library funds.*—With respect to the practice of using admission fees for the maintenance and development of the libraries of various circuit courts of appeals, the Conference adopted the following resolution:

That it is the sense of the Conference that the fees and moneys received by the clerks of the circuit courts of appeals are fixed and limited by the order of the Supreme Court of the United States entered February 19, 1897 (168 U. S. 720; Sec. 543, Title 28, U. S. Code Annotated, p. 221), and that amounts received by clerks, librarians, or other persons as trustees for library funds under rules of the circuit courts of appeals from attorneys on admission to a court of appeals are not fees and other moneys received by the clerks by virtue of their office and are not coverable into the Treasury of the United States under section 544 of Title 28 of the United States Code.

*Traveling and subsistence expenses.*—With respect to reimbursement for traveling and subsistence expenses incurred while attending court or transacting other official business at any place other than a judge's official place of residence, as provided by section 259 of the Judicial Code (U. S. Code, Title 28, § 374), which defines "official place of residence" as "that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held," it was declared to be the sense of the Conference that mere legal domicile is not sufficient to satisfy the words of the statute, "actual residence."

With respect to the question of claims for reimbursement under the act of April 22, 1940 (54 Stat. 149) in excess of the amounts provided for by preexisting legislation, the Conference adopted the following resolution:

That in view of the circumstances connected with the passage of the act and the understanding of the Bureau of the Budget, it is the sense of the Conference that no claim should be made for subsistence prior to the date of the approval of the act in excess of the amount allowed under prior legislation.

It was the sense of the Conference that the rate of reimbursement for traveling and subsistence expenses of judges of the United States Customs Court and the Court of Claims holding court or traveling on official business away from their official places of residence should be made equal to the rate applicable in the case of circuit and district judges.

*Court reporters.*—At the September 1939 session of the Conference, the subject of the compensation of court reporters was referred to the Director to the end that as soon as practicable after his appointment he should prepare recommendations for the consideration of the Conference. The Director has now submitted a careful and exhaustive report on this matter. In general, the report indicates that practices with respect to court reporting vary so widely that no all-inclusive recommendation is desirable at this time. It was, however, the sense of the Conference that the district courts should avail themselves of the authority provided by Rule 80 (b) of the Rules of Civil Procedure in order to make adequate provision for court reporting at reasonable cost; that the practice of letting contracts for court reporting upon a competitive bidding basis has obvious disadvantages in view of the confidential and skilled service of the reporter and the tendency to reduce the quality of that service to the minimum in order to meet a bid; that in relatively rural districts where private reporters are not readily available, it is advantageous to have an official reporter attached to the court; and that if an official reporter is appointed in any court, he should be required to serve all litigants, public and private alike, upon equal terms. The Conference appointed a committee consisting of Judges Parker, Hicks, and Phillips to give further consideration, in conjunction with the Director, to the matter of the appointment of official reporters.

*Probation system.*—The report of the Director contains statistics and a brief study of probation in the Federal courts. It shows in general that the number of persons being placed on probation is increasing, with a consequent increase in the burden resting upon probation officers. On June 30, 1940, there was an average case load of 148 cases per officer, and although that average has been somewhat reduced since 1939 by the appointment of additional officers, it is still far too high in the light of the responsibility devolving upon the individual officer. It was declared to be the sense of the Conference that in view of the responsibility and volume of their work, probation officers should be appointed solely on the basis of merit without regard

to political considerations; and that training, experience, and traits of character appropriate to the specialized work of a probation officer should in every instance be deemed essential qualifications. It was to this end that the Conference, in considering the estimates, resolved that the maximum limit of $3,200 per year for salaries of probation officers should be removed, in order not to close the door to advancement in the service.

With respect to the provision for transportation of probationers from the court convicting them to the place where the probationer is required to proceed in accordance with the terms of the court's order, the Conference approved in principle section 3 of Senate Bill 1875, Seventy-sixth Congress, third session, with a limitation to cases where the probationer is indigent or otherwise unable to pay his own travel and subsistence expenses.

*Federal indeterminate sentence law.*—At its 1939 session the Conference appointed a committee composed of Judges Learned Hand, Evans, and Wilbur to consider and report upon the advisability of an indeterminate sentence law for the Federal courts, and also of conferring upon circuit courts of appeals the power to increase or reduce sentences. After considering the recommendation of the Attorney General and the report of the committee, the Conference adopted the following resolution:

> That the Conference favors the adoption of the indeterminate plan of sentence in criminal cases, along the line of the system set out in "Draft B," prepared in the Attorney General's Office, with the reservation that the Conference prefers a system whereby a board in each circuit or at each Federal prison shall exercise the powers of a parole board.

The "Draft B" to which the resolution refers is in the form of a proposed bill which provides as follows:

> SEC. 1. In any case in which a court of the United States imposes a sentence of imprisonment for an offense punishable by imprisonment for a term exceeding one year, such sentence shall be for the maximum term fixed by law. Within four months after any defendant commences to serve a sentence imposed as aforesaid, the Board of Indeterminate Sentence and Parole shall fix a definite term of imprisonment that the defendant shall serve. Such term shall not be more than the maximum term fixed by law in respect of the offense of which the defendant has been convicted; and if a minimum term is prescribed by law in respect of such offense, then the term fixed by said Board shall not be less than that so prescribed. In computing commutation for good conduct and in determining the date on which such defendant becomes eligible for parole, the term of imprisonment so fixed by the Board shall be deemed to be the term of imprisonment to which the defendant has been sentenced.
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> SEC. 2. In fixing terms of imprisonment pursuant to Section 1 of this Act, the Board of Indeterminate Sentence and Parole shall consider any recommendation made by the judge who presided at the trial; the recommendation of the United States Attorney; the report and recommendation of the probation officer; the reports and recommendations of officers of the institution at which the defendant is confined, including the warden, the medical officer, the psychologist, and the

psychiatrist, and other officers whose reports the Board may deem useful; as well as any other information that the Board may deem proper. In addition, a hearing shall be accorded to the defendant before the Board or a member thereof, or before an examiner who shall report the proceedings to the Board. At such hearing the defendant shall have the privilege of being represented by counsel. Every case shall be considered by at least three members of the Board.

SEC. 3. The provisions of Sections 1 and 2 of this Act shall not apply in respect of any offense committed prior to the effective date of this Act.

SEC. 4. The name of the Board of Parole is hereby changed to Indeterminate Sentence and Parole Board. Said Board shall consist of five members to be appointed by the Attorney General at a salary of $7,500 each per annum.

SEC. 5. This Act shall apply only in the continental United States, other than the District of Columbia or Alaska.

SEC. 6. This Act may be referred to as the "Federal Indeterminate Sentence Act."

*Public defenders.*—Upon considering its former action on this subject, the Conference again recommends that provision be made for the appointment of public defenders in districts where there is a large volume of criminal business.

*The coordination of the work of district judges in districts having more than one judge.*—After discussing this subject, the Conference adopted the following resolution:

> That when the Director ascertains that in any district, where there are two or more judges, the work of the district is not being carried out because of lack of cooperation and coordination between the judges, he should report the matter to the Senior Circuit Judge so that he or the Circuit Council may take the matter up and remedy the condition.

*District court rules.*—At the 1938 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 Court 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 has been assisted by Maj. Edgar B. Tolman, Mr. Leland Tolman, and by representatives of the Department of Justice. Last year a tentative draft of uniform local rules was prepared and presented to the Conference, and the committee was continued for another year.

The committee has now presented a final report. The Conference expressed its appreciation of the care, thoroughness and ability with which the committee has performed its exacting work. The Conference resolved that the report be printed under the supervision of the Director and distributed by him to the circuit judges, district judges, and to the committees on local rules in the respective districts. It was further resolved that the Conference request the district judges and the rules committees to give consideration to the report with a

view to arriving at such uniformity throughout the nation, and especially within the circuits, as may be found feasible, and that the analyses of existing rules which the committee regards as in conflict with the Rules of Civil Procedure be distributed among the district judges and the rules committees. The Conference recommends that appropriate action be taken to remove any such conflict.

*Rules for the circuit courts of appeals.*—At its 1938 session, the Conference appointed a committee consisting of Judges Parker, Hicks, Wilbur, and Phillips to review the rules of the circuit courts of appeals for the purpose of making recommendations to the end that uniform rules for all circuits might, so far as practicable, be adopted. Last year that committee submitted two rules which the Conference recommended for adoption by the several circuit courts of appeals. The committee made no further recommendations at this session of the Conference, but it was resolved that it be continued and that particular attention be given to the rules relating to supersedeas.

*Rules of evidence in criminal cases in the Federal courts.*—Last year 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. The committee was continued for another year.

*Boundaries of judicial circuits and districts—Divisions of districts and the holding of terms of court at more than one place within a district.*—At the 1937 session of the Conference, a committee was appointed to consider possible changes in the boundaries of existing circuits and districts, and at the 1938 and 1939 sessions that committee was continued. The committee as now constituted consists of Judges Foster, Wilbur, Phillips, and Learned Hand, and it was resolved that it be continued to the end that a further study of the problem might be made with the assistance of the Director.

With respect to the inclusion of the Virgin Islands within the Third Judicial Circuit, it was resolved:

> That the Conference recommend to the Congress that section 116 of the Judicial Code as amended (28 U. S. Code § 211) be amended so that the Virgin Islands shall be included in the Third Judicial Circuit; that section 126 of the Judicial Code (28 U. S. Code § 223) be amended so that, when in the judgment of the Circuit Court of Appeals for the Third Circuit the public interests require, a sitting of that court shall be held at a place in the Virgin Islands to be designated by that court.

The Conference also resolved that all statutory divisions of district courts should be abolished, and, with respect to the holding of district courts at more than one place within a district, pursuant to statute, it resolved:

> That it is the sense of the Conference that in the interest of efficiency and expedition in the administration of justice the statutes with respect to holding

terms of the district courts in the several districts be amended by a general provision making applicable in other districts the provision of section 177 of Title 28, U. S. Code, with respect to the power of the judge to adjourn or continue any term of court when there is insufficient business to justify his holding of said term and to transfer cases whenever the convenience of the parties or the ends of justice so require.

*Certification by judges of vouchers covering various expenses of the courts.*—The Conference discussed at some length statutory requirements that judges certify or approve various vouchers. Particular consideration was given to a memorandum prepared on this subject by Judge Sames of the District of Arizona at the direction of the Judicial Conference of the Ninth Circuit. The Conference resolved to recommend the amendments to sections 577 and 608 of Title 28 of the U. S. Code which were submitted by Judge Sames. These sections, as thus amended, would read as follows (the proposed amendments being in italics):

SEC. 577. No accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner shall be so reexamined as to charge any marshal for an erroneous taxation of such fees or costs. *No accounts of fees or costs paid to any witness upon the certificate of any United States Attorney or Assistant United States Attorney, shall be so reexamined as to charge any marshal for an erroneous taxation of such fees or costs.* Where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof under the special taxation of the district court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary.

SEC. 608. *The Marshal shall pay to the jurors all fees to which they appear to be entitled on the certificate of attendance of the Clerk of the Court, which sum shall be allowed him at the treasury in his accounts. In cases where the United States are parties, the Marshal shall pay to the witnesses all fees to which they appear to be entitled on the certificate of attendance of the United States Attorney, or his Assistant, which sum shall be allowed him at the treasury in his accounts. No accounts of fees or costs paid to any witness upon the certificate of the United States Attorney, or his Assistant, and no accounts of fees or costs paid to any juror upon the certificate of the Clerk of the Court, shall be so reexamined as to charge any Marshal for an erroneous taxation of fees or costs paid for attendance of any witness or juror paid in accordance with such certificate.*

The general problem of certifications by judges was referred to the Director for further study and report.

*Clerks' fees and charges.*—The Conference considered proposals for the adoption of systems of a flat fee in the district and circuit courts. It was the sense of the Conference that no present recommendations should be made as to these proposals and that each member should take them up with the judges and clerks in his circuit. With respect to the charges made by clerks of the various circuit courts of appeals for supervising the printing of transcripts, it was the sense of the

conference that it should recommend to the Supreme Court a consideration of the present fees payable to clerks for that purpose and that, if the court desires to retain the present schedule of fees, amounting to 25 cents per page, it consider fixing a maximum fee for each transcript, not to exceed $500.

*The status of retired judges.*—It was the sense of the Conference that a judge who has retired because of disability pursuant to the act of August 5, 1939, should not thereafter exercise judicial functions without appropriate approval, and the Conference accordingly resolved:

That the Conference recommends that the act of August 5, 1939, be amended so as to provide that a Justice of the Supreme Court so retiring may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties, in any judicial circuit, including those of a circuit justice in such circuit, as such retired Justice may be willing to undertake; that a circuit or district judge so retiring may nevertheless be called upon by the senior circuit judge of that circuit and be by him authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake; and that any judge of any other court of the United States so retired may be called upon by the presiding judge or senior judge of such court and be by him authorized to perform such judicial duties in such court as he may be willing to undertake, and that any such justice or judge so retiring may perform judicial duties only when so called and authorized by the Chief Justice, the senior circuit judge, presiding judge, or senior judge.

With respect to judges retiring without disability under the provisions of the first paragraph of section 375, Title 28 of the U. S. Code, the Conference approved the following resolution:

That the Conference recommends that Title 28 of the United States Code, section 375, be amended by inserting a proviso that any judge so retiring may perform judicial duties only when so called and authorized by the Chief Justice, senior circuit judge, presiding judge, or senior judge.

It was the sense of the Conference that where any retired judge actually performs judicial service, he will be entitled to the services of a secretary.

*Appointment of relatives.*—It was declared to be the sense of the Conference that no person should hereafter be appointed as law clerk or secretary to a circuit or district judge who is related to the judge concerned within the degree of affinity or consanguinity described in section 126 of Title 28 of the U. S. Code.

*Courthouses in the District of Columbia.*—The Conference approved the following resolution submitted by Chief Justice Groner:

Whereas, in a report of the Oliver Wendell Holmes Devise Committee (S. Doc. No. 197, 76th Cong.) submitted to the Congress pursuant to Public Resolution No. 124, Seventy-fifth Congress, recommendation is made for the immediate acquisition of certain lands east of the Supreme Court Building to be set apart for the Justice Holmes Memorial;

Whereas, the report recites that the National Capital Parks and Planning Commission approves the plan for the Holmes Memorial (as indicated) as a part of its larger general project for the development of two squares east of the Supreme Court Building (Nos. 758 and 759), in order to accomplish the proper setting for said memorial; and

Whereas, there is urgent and immediate need for increased space and facilities for the District Court of the United States for the District of Columbia and prospective need for increased space and facilities for the United States Court of Appeals for the District of Columbia,

It is resolved by the Conference of Senior Circuit Judges that the report of the Oliver Wendell Holmes Devise Committee receives its approval, and further, that the necessities of the new court buildings, together with the other public buildings referred to therein, are so pressing that it recommends that appropriate action be taken as soon as possible to acquire the property and develop it in conformity with the report of the Oliver Wendell Holmes Devise Committee and the recommendations of the National Capital Parks and Planning Commission.

*Appeals in admiralty.*—The Conference appointed a committee composed of Judges Learned Hand, Parker, Foster, Groner, and Magruder to consider the advisability of extending to appeals in admiralty suits the practice obtaining in appeals in other civil actions, and to report at the next Conference.

*Time for taking appeals to the circuit courts of appeals.*—It was the sense of the Conference that there ought to be greater uniformity regarding the time for the taking of appeals, and with that end in view the Conference adopted the following resolution:

Whereas the time for taking an appeal to a circuit court of appeals from a final judgment or decree of a district court in a civil, bankruptcy, admiralty or copyright case (28 U. S. Code § 230), the time for taking an appeal to a circuit court of appeals from an interlocutory order of a district court in certain cases, the time for making application for appeal and the time for filing of a notice of appeal from, or petition for review of, or to set aside an order or decision of an administrative board, commission, or agency, varies from fifteen days (7 U. S. Code § 8) to ninety days, and that from some administrative boards the time is not fixed by statute,

*Be it resolved,* That it is the sense of this Conference that the time periods in such cases be made uniform and not to exceed thirty days, and that in computing such time periods the provisions of Rule 6 (a) of the Federal Rules of Civil Procedure shall govern.

*Removal from office of certain Federal judges without impeachment.*—A committee consisting of Judges Biggs, Phillips, and Learned Hand considered the advisability of legislation with respect to an alternative for impeachment proceedings in the case of circuit and district judges charged with derelictions. On the report of the committee the Conference adopted the following resolution:

Assuming its constitutionality, as to which we express no opinion, we are in accord with the general purpose and approve in principle the provisions embodied in H. R. 9160, 76th Congress, 3d session.

The committee was continued to consider the advisability of making provision for the creation of special courts, or the designation of

particular judges, to deal with questions calling for specialized knowledge, especially in relation to proceedings for the reorganization of railroads. The committee is to report at the next Conference.

*Circulation of director's quarterly report.*—The Conference resolved that the Director should send copies of the quarterly reports direct to all the circuit judges and that these quarterly reports should be considered at the meetings of the circuit councils.

*Communications from circuit councils.*—The Conference resolved that it was always ready to receive any proper communications from any circuit council.

*Advisory committee.*—At its 1939 session the Conference appointed a committee, consisting of Chief Justice Hughes, Chief Justice Groner, and Judges Stone, Parker, and Biggs, to advise and assist the Director in the exercise of his duties. That committee has been continued. It is the sense of the Conference that any recommendations in the report of the Attorney General's Committee on Bankruptcy Administration which have reference to the business of the Administrative Office should be referred to this advisory committee for preliminary consideration.

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

For the Judicial Conference.

CHARLES E. HUGHES,
*Chief Justice.*

OCTOBER 9, 1940.