

(REPORT OF THE JUDICIAL CONFERENCE.)

September 26-28, 1928

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 September 26 and ending on September 28, 1928. The conference renews its recommendations of last year that three additional district judges be provided for the southern district of New York and one additional circuit judge for the second circuit. It also recommends two additional district judges for the eastern district of New York (instead of one additional judge as recommended last year) and one for the southern district of Florida, and one additional circuit judge for the ninth circuit. In these recommendations I concur. The full text of the report of the conference follows:

The judicial conference, provided for in the act of Congress of September 14, 1922 (42 Stat. 837, 838), was called and sat for three days, September 26, 27, and 28, 1928. The following judges were present in response to the call:

- First circuit, Senior Circuit Judge George H. Bingham.
- Second circuit, Senior Circuit Judge Martin T. Manton.
- Fourth circuit, Senior Circuit Judge Edmund Waddill, jr.
- Sixth circuit, Senior Circuit Judge Arthur C. Denison.
- Seventh circuit, Senior Circuit Judge Samuel Alschuler.
- Eighth circuit, Senior Circuit Judge Kimbrough Stoue.
- Ninth circuit, Senior Circuit Judge William B. Gilbert.

The regular senior circuit judge of the third circuit, Judge Buffington, was absent, and his place was taken by Judge Victor B. Woolley, of Delaware.

The regular senior circuit judge of the fifth circuit, Judge Walker, was absent, and his place was taken by Judge Nathan P. Bryan, of Florida.

Each circuit judge produced a report from the senior district judge of his circuit, with the statistics and an explanation of the condition of each district in his circuit, and much of the conference was taken up in considering the progressive changes in the reduction of dead cases and in the normal growth of business.

The Attorney General and his immediate assistants, the Solicitor General and the Assistant Attorney General charged with the examination of statistics, were also present and made an elaborate report which was examined by the conference.

The statistics presented not only by the Attorney General, but also by the members of the conference, indicate the percentage of inactive cases as compared with the active cases on the entire docket; that in United States cases the inactive cases are 34 per cent of those pending at the end of the fiscal year 1928, and that the inactive cases of all classes, except bankruptcy, are 28.74 per cent; that the total number of cases pending on the docket one year ago were 149,302; that the total number of cases pending on the docket for the fiscal year ending June 30, 1928, were 147,142; that the total number of civil cases in which the United States was a party were, at the close of June 30, 1927, 16,187, while those pending June 30, 1928, were 18,546; that the total number of criminal cases pending at the close of June 30, 1927, were 35,296, while those pending at the close of June 30, 1928, were 30,375; that the total number of civil cases in which the United States was not a party were 38,370 at the close of the year June 30, 1927, while the total number at the close of June 30, 1928, were 39,351.

It will be seen that there was an increase in the civil business of the United States in the year of 2,359, and in the criminal cases there was a decrease of 4,921, but an increase in the same year of private civil cases of 981.

The reports of the district judges and of the circuit judges show that the removal of dead cases goes on under the rules which were suggested by this body in previous reports, but that there is a considerable increase arising from the prosperity and the normal growth of business in the country, which more than offsets the reduction due to the policy of cutting down dead cases.

Speaking generally, it was clear to the conference that the condition of business in all the courts was satisfactory, and showed that there were enough judges to do the business and that the business would all be done, except that in the second circuit, the two districts which are the southern and the eastern districts of New York, including New York and Brooklyn, are in a hopeless situation, and can not be bettered unless at least three district judges are permanently added to the southern district of New York and two in the eastern district of New York. This deficiency has been brought to the attention of Congress for several years, and the present need is greater than ever. It is respectfully urged that there may be no further delay in the creation of these five new district judgeships.

Judge Manton, the senior circuit judge of the second circuit, reports that the following district judges from other circuits have been used in the second circuit. In addition to the transfer of district judges from one part of the second circuit to another part: Anderson, of Tennessee; Atwell, Estes, and Hutcheson, of Texas; Holmes, of Mississippi; Trieber, of Arkansas; Burns, of Louisiana; Grubb, of Alabama; Kennedy, of Wyoming; Gruner, of Virginia; Meekins, of North Carolina; Morris, of New Hampshire; McCormick, of California; Lindley, of Illinois; and Cavanah, of Idaho.

It is clear that while the use of district judges from other circuits has been very helpful, they are not of sufficient assistance to give hope of catching up with the dockets in New York and Brooklyn. The delays in the district courts in those cities are well-nigh intolerable to the litigants, but it has not been so much a subject of complaint as it otherwise would be because of the much greater delay in the disposition of business in the trial of cases in the corresponding State courts of New York. The problem that the State courts have is more difficult than that of the Federal courts, for in the latter, with the addition of five new district judges, we can look forward to a reasonable reform in the disposition of business.

In addition to the New York district judges, only one more seems to be required, and that is for the southern district of Florida. In this very extended district it is proposed that there should be district judges enough so that there may be one sitting at Jacksonville, another at Tampa, and a third at Miami. A bill for this has already passed the Senate and has been favorably reported by the Judiciary Committee of the House, and it is urged that this legislation be not delayed. A study of the statistics, the population, and the geography of the district, with the amount of business shown, makes its necessity clear.

Two recommendations are made for an increase in the circuit judges. One which was made last year is for an additional circuit judge in the second circuit. The bill for this is now pending in Congress and is near passage. The four judges of the second circuit have more business by 40 cases a year than the eighth circuit, with its six judges.

The business of the Ninth Circuit Court of Appeals, though not so large as that of the eighth circuit, it has been heretofore possible to dispose of, by the

use of a circuit judge, originally appointed to the Commerce Court, who has been assigned to the ninth circuit for a number of years. This was Judge William H. Hunt, who has now retired for age. The necessity for supplying his place by the creation of another circuit judge for that very large ninth circuit seems clear to us.

The judges of the circuit courts of appeals, many of them, reside at places far from the cities in which they hold court, and after their sessions are obliged to bring to their homes, for the study of cases and the writing of opinions, heavy records and briefs. The limitations imposed by law and the postal regulations are such that these documents, absolutely necessary to the disposition of business by the judges, must be cut down to separate packages not exceeding 4 pounds. We recommend that the law and the regulations be changed so as to permit the sending of necessary court records and books in one package from one place to another free through the mails without limitation of weight.

The circulation of law books to all the Federal judges under previous appropriations has been useful and satisfactory. We recommend that these shall hereafter include the new Recompiled Digest of the Federal Reporter and the new Digest of the United States Supreme Court Reports, published by the Lawyers' Cooperative Publishing Co. Such digests are of the utmost value in facilitating the work of the judges and of the members of the bar who can have access to them.

This conference at its last meeting adopted a resolution providing for a law clerk for each circuit judge at a salary not to exceed \$3,000 a year. We desire to renew this recommendation, because the necessity for such a provision impresses itself more upon the conference than it has ever done before.

It is satisfactory to report that with the exception of the sixth circuit, which has been delayed in the disposition of business before it, there are no arrears and that the business in those courts is substantially up to date. The reason for the delay in the sixth circuit has been the heavy business there and the two years' illness and subsequent death of Judge Donahue. With the filling of the vacancy and the addition of a fourth circuit judge there, just provided and appointed, the small arrears in that circuit will be promptly met. But it can not be too emphatically stated that the only way by which arrears have been prevented in these nine circuit courts of appeal has been continuous and hard labor. The opinions of these courts, which have high standing, are very important, and it is not a waste but a real help to the public business to furnish law clerks to the circuit judges to assist them in their labors of preparation.

The conference recommends to the senior circuit judges that in soliciting reports from the senior district judges of their respective circuits there be included therein the number of cases submitted to the district judges which have not been decided by the 1st of August of each year.

For the judicial conference.

WM. H. TAFT, Chief Justice.

*(Reproduced from the Report of the Attorney General for 1928, pp. 3-5)*

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