REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1937.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on September 23, 1937, and continued in session for three days. The following Senior Circuit Judges were present in response to the call of the Chief Justice:

First Circuit, Senior Circuit Judge George H. Bingham.
Second Circuit, Senior Circuit Judge Martin T. Manton.
Third Circuit, Senior Circuit Judge Joseph Buffington.
Fourth Circuit, Senior Circuit Judge John J. Parker.
Fifth Circuit, Senior Circuit Judge Rufus E. Foster.
Sixth Circuit, Senior Circuit Judge Charles H. Moorman.
Seventh Circuit, Senior Circuit Judge Evan A. Evans.
Eighth Circuit, Senior Circuit Judge Kimbrough Stone.
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur.

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

By Act of Congress of July 5, 1937, provision was made for representation in the Conference of the United States Court of Appeals for the District of Columbia. As the Chief Justice of that Court was unable to be present, Justice D. Lawrence Groner attended in his stead.

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, 1937, as compared with

the previous 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 criminal and civil cases (exclusive of bankruptcy cases) commenced and terminated during the fiscal years 1936 (as revised) and 1937:

	Commenced		*Terminated*	
	1936	*1937*	*1936*	*1937*
Criminal	35,920	35,369	36,396	35,351
Civil	39,391	32,672	41,384	37,393

The summaries show a considerable decrease in the total number of cases pending on June 30, 1937, in the district courts. This is true not only of the entire number but also of the totals in each general class except in criminal cases where the number of pending cases is slightly increased:

Pending Cases	*1936*	*1937*
Criminal Cases	10,993	11,011
United States civil cases	14,045	12,623
Private suits	31,294	27,995
Bankruptcy cases	62,527	54,802
Total	118,859	106,431

In accordance with his practice in recent years, the Attorney General submitted to the Conference tabulations showing the approximate time required to reach the trial of cases after joinder of issue in the several district courts. These tabulations indicate that important progress has been made. This is shown by the greater number of districts in which trial dockets are stated to be current, that is, where all cases in which issue has been joined and which are ready for trial are disposed of not later than the term following the joinder of issue, except cases continued at the request of counsel. In the fiscal year 1934, there were only 31 districts of which that could be said; in 1935, 46 districts; and in 1936, 51 districts. The Attorney General's present

report shows that the work of the district courts is thus current in 68 of the 84 districts, exclusive of the District of Columbia. The Attorney General further shows that the same condition prevails in some divisions of four other districts and as to certain types of business in five other districts. In some of the districts, equity cases may be tried even between terms, if ready.

Of the districts in which trial dockets are in arrears—seventeen in all, including the District of Columbia—it appears that there are seven where the trial dockets are one to six months in arrears, and seven others where the trial dockets are between six months and a year in arrears. In the remaining three districts, as pointed out by the Attorney General, the worst conditions appear,—to wit, in the Eastern District of Michigan where the equity trial docket is two years, and the law trial docket is ten months, in arrears; in the Western District of Washington in which the equity trial docket is three to four months, and the law trial docket is fifteen months, in arrears; and the District of Columbia in which the trial dockets are sixteen months in arrears.

This survey indicates clearly that the question of delays in the trial of cases after joinder of issue is one that should be considered with respect to particular districts and affords no just ground for general criticism of the work of the district courts. And in the few districts where serious delays occur the special conditions obtaining should not be overlooked.

It should also be noted that important improvement has been secured in certain districts which have heretofore presented the most serious delays. Thus, the Conference in recent years has had occasion repeatedly to call attention to the congestion and delays in the Southern District of New York. It now appears, by the Attorney General's report, that the average interval between joinder of issue and trial in ordinary course in that district has been reduced

from eighteen to two months in actions at law and from twenty to four months in equity.

The Attorney General has emphasized the presence of other sources of delay than merely the interval between joinder of issue and trial. He directs attention to the pendency of motions to dismiss, demurrers, and preliminary matters which frequently postpone joinder of issue. He states that his studies show that in many districts motions are heard only once a month and sometimes only on the first day of the term. This matter was considered by the Conference and will be taken up by the Senior Circuit Judges with respect to each district within their circuits, and it is believed that in this way appropriate provision may be made to expedite the hearing and decision of preliminary questions which may arise prior to joinder of issue and whatever delays may now be due to lack of such provision may be avoided.

Another source of delay pointed out by the Attorney General is the multiplication of places of holding court. It is quite obvious that this is an obstacle in the way of the speedy disposition of cases. It is also obvious that it may be difficult to secure a reduction in view of the local interests affected. However, this cause of delay is attributable not to the federal judges but to mandatory requirements of statutes. In many instances these requirements were imposed at a time when there were difficulties in transportation which no longer exist. The Conference is of the opinion that this question should receive the careful consideration of Congress to the end that the district judges should be relieved of the duty of holding court in more places than are reasonably necessary. The Attorney General recommends the enactment of legislation providing for the transfer of cases from one division to another, or from one place of holding court to another within the district, in order to make it possible for a case to be tried at the first term of court held at any place within the district. It may be possible to attain the desired end to a considerable

extent by the action of the judges without legislation, but, so far as legislation may be found to be necessary, the Conference approves the recommendation of the Attorney General in principle.

Provision for Additional Judges in the Circuit Courts of Appeals.

The reports of the Senior Circuit Judges show that in general the Circuit Courts of Appeals are well up with their work. In six of the circuits and in the Court of Appeals for the District of Columbia, no additional judges are now required. It should be noted, however, that in the Eighth Circuit, the Court of Appeals is able to keep abreast of its work only through the aid of retired judges, of whom there are three. There is no certainty as to the length of time this aid will be available and if, in the future, it should be seriously lessened, the business of that court would require another judge.

The Circuit Court of Appeals for the Second Circuit is up with its work but in view of the severe and disproportionate burden imposed upon its members by its heavy docket, an additional circuit judge is thought to be necessary.

The Circuit Court of Appeals for the Fifth Circuit is also fully up with its work but it is faced with a probable increase of business and in view of the extent of the present and future burden upon the court, it is felt desirable to have an additional circuit judge.

The Circuit Court of Appeals for the Sixth Circuit is not able with the present number of judges to hear all of the cases as promptly as they should be heard and an additional circuit judge is necessary.

While the Circuit Court of Appeals for the Seventh Circuit has been able to dispose of its cases, it has been handicapped by the delay in filling vacancies, one of which still remains. The court has been compelled to rely upon the constant assistance of district judges. It is the sense of

the Conference that it should not be necessary for a Court of Appeals to call in district judges except in some exigency for a temporary period. Even with the filling of the existing vacancy, the Court of Appeals of the Seventh Circuit would still be lacking in a sufficient number of circuit judges to keep abreast of its work and the appointment of an additional circuit judge is needed.

Accordingly, the Conference recommends that provision be made for an additional circuit judge in the Second, Fifth, Sixth and Seventh Circuits, respectively.

Provision for Additional District Judges.

The Conference gave close consideration to the extent of the need for additional district judges, having regard to the volume and character of the work of the district courts and appropriate provision for the prompt disposition of cases.

In 1936, the Conference recommended that additional judges be provided as follows:

1 additional district judge for the Northern District of Georgia;
1 additional district judge for the Eastern District of Louisiana;
1 additional district judge for the Southern District of Texas;
1 additional district judge for the Western District of Washington.

It will be observed that the last mentioned district is one of the two districts (aside from the District of Columbia) to which the Attorney General has directed special attention as showing serious arrearages. For this district as well as for the others, embraced in the recommendation of the Conference last year, no additional judges have yet been provided.

The Conference renews its recommendation as to the four districts above mentioned.

In past Conferences, it had been hoped that there would be an improvement in the state of the trial dockets in the Eastern District of Michigan, but this hope has not been realized and in view of the arrearages, specially mentioned in the report of the Attorney General, the Conference recommends that provision be made for an additional judge.

Because of special conditions in the District of Kansas, the Conference has concluded that an additional judge is needed there.

Other increases are found to be advisable in the Southern District of California, the Western District of Louisiana and the Northern District of Ohio.

In the District of Columbia special conditions demand consideration. In this District, the courts have not only the important federal cases committed to their jurisdiction, but also the cases which within a State would fall within the jurisdiction of state courts. As, prior to this year, the statute had not provided for the representation of this District in the Conference, Justice Groner presented statistics applicable to a period of seven years. In view of the increasing number of cases and the impossibility of bringing the dockets up to date with the present judicial force, and having regard to the character of the work and the future needs of the District, the Conference recommends that provision be made for three additional judges for the District Court for the District of Columbia.

Including the recommendations made last year and now renewed, the Conference therefore recommends that additional district judges be provided as follows:

1 additional district judge for the Northern District of Georgia;

1 additional district judge for the Eastern District of Louisiana;

1 additional district judge for the Western District of Louisiana;

1 additional district judge for the Southern District of Texas;

1 additional district judge for the Eastern District of Michigan;
1 additional district judge for the Northern District of Ohio;
1 additional district judge for the Western District of Washington;
1 additional district judge for the Southern District of California;
1 additional district judge for the District of Kansas;
3 additional district judges for the District of Columbia.

In the remaining seventy-five districts, it is the opinion of the Conference that no additional district judges are now required.

The Conference is also of the opinion that the present method of assigning judges to meet temporary emergencies is adequate.

Boundaries of Judicial Districts and Circuits.

In view of the pending inquiries by committees of the Senate and of the House of Representatives, respectively, which have been appointed to study the organization and operation of federal courts, it seemed to the Conference that it was probable that the boundaries of existing districts and circuits would become the subject of consideration. In order to provide the means for suitable collaboration in the examination of that subject, the Conference appointed the following committee to cooperate with the congressional committees, to wit, Judges Manton, Foster, Wilbur and Phillips, the Chief Justice being authorized to add to the committee from time to time.

Appointment of Counsel for Indigent Defendants in Criminal Cases—Public Defender.

The Attorney General brought to the attention of the Conference the subject of proper representation for indi-

gent defendants in criminal cases and the following resolution was adopted:

> "We approve in principle the appointment of a Public Defender where the amount of criminal business of a district court justifies the appointment. In other districts the district judge before whom a criminal case is pending should appoint counsel for indigent defendants unless such assistance is declined by the defendant. In exceptional cases involving a great amount of time and effort on the part of counsel so assigned, suitable provision should be made for compensation for such service, to be fixed by the court and to be a charge against the United States".

Amendment of Section 25 of the Bankruptcy Act.

At the Conference last year a committee was appointed to consider the advisability of amending Section 24b of the Bankruptcy Act with respect to appeals. Upon receiving the report of that committee, and after considering the various questions raised in the discussion, the Conference adopted the following resolution:

> "Resolved: That in the opinion of this Conference Section 25 of the Bankruptcy Act should be amended so as to permit consideration by the Circuit Courts of Appeals and by the United States Court of Appeals for the District of Columbia of appeals which have not been properly applied for or allowed because of mistake as to the applicable section of the statute relating to appeals in such cases. We suggest that the following subsection be added to the statute as Subsection 25 (d), viz:
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> > "(d) In any case where an appeal which is allowable only in the discretion of the appellate court under Subsection 24 (b) hereof has been allowed under Subsection 24 (a) or 25 (a), or where an appeal which is allowable only under Subsection 24 (a) or

25 (a) has been applied for under Subsection 24 (b), the appellate court before which such appeal or application is pending may in its discretion allow or entertain the appeal, notwithstanding the error in procedure, and may review the order or decree appealed from as though the proper procedure for obtaining a review of same had been followed, provided the appeal has been allowed or the application for the allowance of appeal has been filed within thirty days of the entry of the order or decree which it is sought to review."

Appointment of Official Stenographers.—The Conference in 1936 adopted the following resolution:

"Resolved that it is the sense of the Conference that provision should be made for the appointment of official stenographers for the reporting of trials in the district courts. It is not necessary that salaried offices be created. The need would be met by an act authorizing the district judge of each judicial district to appoint one or more official court stenographers for that district, and to fix by rule of court the compensation which such stenographers shall be entitled to charge for their services, with provision that amounts properly paid by parties for the service of such stenographers be taxable as costs in the case in the discretion of the trial judge."

At the present session the Conference renewed this recommendation.

H. R. 4721.— The Conference adopted the following minute in relation to this measure:

"The attention of the Conference has been called to H. R. 4721 now pending in the Congress.

"The purpose of this bill is to require that in all cases, civil and criminal in the federal courts, as stated, the 'form, manner, and time of giving and granting in-

structions to the jury' shall be governed by the 'law and practice in the state courts of the state in which such trial may be had'. The result of the enactment of this bill will be to change the practice in the federal courts respecting the charging of juries in varying degrees in a large number of states. In many it will result in changing federal trial judges from active instruments of justice to mere referees of contests between opposing counsel. It will deprive the juries of the benefit of the learning and experience of the trial judge in the determination of issues of fact. Even the most honest and intelligent juries need and welcome the trial judge's aid in performing their often difficult duties so that they may arrive at a fair and impartial verdict and do full justice between the parties.

"One of the outstanding excellencies of the federal courts in accomplishing justice is the right and duty of the federal judge to charge juries in a manner which will be most helpful to them in arriving at just verdicts, a feature of federal practice of especial importance in criminal cases in the interests of both the Government and the defendant. Many decisions of the United States Supreme Court, as well as of the Courts of Appeals, have carefully laid down such limits as are necessary to prevent any encroachment upon the province of the jury by a judge in his charge, and such limitations are carefully enforced. Thus controlled, the long established and well-working present method of charging juries in federal courts should, in the opinion of the Conference, be continued. In expressing this opinion the Conference has not taken into consideration any questions of constitutional validity, and expresses no opinion thereon.

"The bill would substitute a practice which in state jurisdictions is gradually being abandoned. A notable instance is a recent constitutional amendment in California adopting the federal practice respecting charging juries in the courts of that State.

"We respectfully call this bill to the attention of the Attorney General and earnestly urge him to oppose its enactment."

Rules of Civil Procedure for the District Courts of the United States.

The Conference availed itself of the opportunity to consider the draft of the Rules of Civil Procedure prepared by the Advisory Committee appointed by the Supreme Court. Various questions were raised and discussed, to the end that the Supreme Court should have the advantage of the views of the members of the Conference.

The Conference adjourned subject to the call of the Chief Justice.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

September 28, 1937.