REPORT OF THE JUDICIAL CONFERENCE.

October 3-5, 1929

RECOMMENDATIONS OF CONFERENCE OF SENIOR CIRCUIT JUDGES

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, October 3, 4, and 5, 1929. 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 T. Waddill, jr.
Fifth circuit, Senior Circuit Judge Richard W. Walker.
Sixth circuit, Senior Circuit Judge Arthur C. Denison.
Seventh circuit, Senior Circuit Judge Samuel Alschuler.
Eighth circuit, Senior Circuit Judge Kimbrough Stone.
Tenth circuit, Senior Circuit Judge Robert E. Lewis.

The regular senior circuit judge for the ninth circuit, Judge Gilbert, was absent, and his place was taken by Circuit Judge Frank H. Rudkin, the circuit judge next in seniority in that circuit.

The regular senior circuit judge of the third circuit, Judge Buffington, was absent, and District Judge W. H. S. Thomson (retired) of the western district of Pennsylvania, was summoned to take his place. It was determined by the conference that the following language of the act authorized Judge Thomson, upon summons by the Chief Justice, to represent the third circuit at this conference:

> If any senior circuit judge is unable to attend, the Chief Justice, or, in case of his disability, the justice of the Supreme Court calling said conference, may summon any other circuit or district judge in the judicial circuit whose senior circuit judge is unable to attend, that each circuit may be adequately represented at said conference. (Act of September 14, 1922, c. 306, sec. 2, 42 Stat. 838.)

In accord with the regular order, each member of the conference presented 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.

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 a report which was the subject of examination 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 dockets; that in United States cases the percentage of inactive cases on June 30, 1929, was 29.95 per cent ,as compared with 34 per cent on June 30, 1928; that the total number of classes of cases pending on June 30, 1929, was 149,033, as compared with 147,142 on June 30, 1928; that

the total number of civil cases in which the United States was a party, were, at the close of June 30, 1928, 18,546, as compared with 21,185 such cases pending at the close of June 30, 1929; that the total number of United States criminal cases pending on June 30, 1929, was 31,500, as compared with 30,375 on June 30, 1928; that the total number of private suits (excepting bankruptcy cases) pending June 30, 1929, was 37,546, as compared with 39,351 pending on June 30, 1928; that the total number of bankruptcy cases pending on June 30, 1929, was 58,802, as compared with 58,870 on June 30, 1928. These statistics also showed that there was a large increase in new business commenced in the Federal courts during the fiscal year 1929, as compared with the fiscal year 1928—there being 8,034 more cases commenced in the Federal courts in the fiscal year 1929 than in the fiscal year 1928; and further that the largest single class of cases in the Federal courts is under the national prohibition act. In 1928 there were commenced 9,928 civil cases under the prohibition act and 55,729 criminal cases under such act; in 1929 there were 11,237 civil and 56,786 criminal cases brought in the Federal courts under the national prohibition act.

Referring to the statistics above, and especially to the total number of civil cases in which the United States was a party during the year ending June 30, 1929, an examination discloses that this increas is due, first, to a local situation on the Canadian border with reference to the condemnation of land by the Government for Government use, and, second, and chiefly, to the fact that the statute of limitations in which litigants against the United States are entitled to bring their suits against the United States in cases growing out of the war, is expiring. The other increases are due largely to the ordinary expansion of business in the Federal courts. The judges report generally that the increase is what may be expected from the usual jurisdiction of the Federal courts and the growth of their litigation.

There has been considerable delay on the part of Congress in making provision for additional judges, especially in the New York districts; and while such additions and appointments have now been made, there has not been time enough to adjust and take the benefit of the additional force. We are still in a transition period and must await the fitting in of the new judicial force to the places where additions have been made.

Coming now to deal with the individual circuits, there is nothing of importance in the way of changes for the disposition of business in the first circuit, consisting of Maine, New Hampshire, Massachusetts, and Rhode Island.

In the second circuit, the recently authorized increase of district judges in the southern district of New York, in the eastern district of New York, and in the district of Connecticut has not yet furnished

opportunity for effective increase in the business disposed of, and the result in those districts must be awaited for the next year. There is a loss of one judge in the southern district of New York, growing out of peculiar circumstances, and this ought not to be permitted to diminish the judicial force so much needed there. Judge Francis A. Winslow of that district resigned on March 31, 1929. His appointment was provided for in the act of September 14, 1922, and this act prevented the appointment, upon his death or resignation, of a successor except by a special act of Congress. This ought to be changed and a supplemental act should be passed by the present Congress providing for the appointment of a judge to succeed Judge Winslow, and the judicial conference has adopted a recommendation to this effect.

The district judges from other circuits than the second have continued to furnish needed additional assistance in that circuit during the past year.

The growth of business in the eastern district of New York is very large, and the additional judges recently added are very necessary. The additional judge in Connecticut will be used not only in clearing the Connecticut docket but in aiding in the disposition of arrears in the southern and eastern districts of New York.

The increases in the northern and western districts of New York are what were anticipated, and there is no complaint of delay in the disposition of business in those districts.

The anticipated help in the third circuit from the addition of another district judge in the middle district of Pennsylvania has been defeated because of the delay in the confirmation of the candidate there nominated. The business in the eastern and western districts is going on satisfactorily.

The fourth circuit reports that the business is being satisfactorily attended to and no request is made for additional force there.

The same is true as to the force of district judges in the fifth circuit. There has been a very substantial addition to the district strength in the Florida district by which there are now three district judges in the southern district of Florida and one in the northern district. There has been much delay, due to delays in filling vacancies and the illness and death of a judge.

In Mississippi there have been two districts for a good many years, but only one judge. The last Congress provided a second judge for Mississippi. The district judicial force in the fifth circuit is ample. But this is not true in the fifth circuit court of appeals. The fifth circuit is a large circuit, including Florida, Georgia, Alabama, Mississippi, Louisiana (two districts), and Texas (four districts). There have been, however, only three circuit judges to carry on the circuit court of appeals work, with 21 district courts. There clearly ought to be another circuit judge in that circuit. Last year there were in that

circuit 271 cases to be disposed of by three judges. This is far too many. This has led the council to recommend the provision of another circuit judge, which is certainly needed.

The sixth circuit is behind some 100 cases in its court of appeals, due to absence and illness of judges and to a very heavy docket, especially in patent cases. This is a most important circuit in the business center of the country, and therefore another circuit judge has been added. We may look for a much prompter disposition of business than has heretofore been possible under the circumstances. The sixth circuit court of appeals is the only one of the 10 circuits which is not abreast of its docket. All other circuit courts of appeals clean up every case each year.

The condition of business in the seventh circuit calls for no comment or explanation.

The effect of the changes by the division of the eighth circuit into two circuits—the eighth and tenth—needs no further comment here, because we are merely awaiting results, except, however, in regard to the local situation in the Minnesota district, which calls for special note. The increase in business there has been very great, and one of the judges, Judge Molyneaux, has broken down from overwork and is unable to return to the bench. The cases disposed of in this district in 1927 were 1,223; in 1928, 2,285; in 1929, 3,112. But the new cases have increased so rapidly that the docket is steadily falling behind—the pending cases at the close of each of the above years being 1,611 cases for 1927; 1,924 cases for 1928; and 2,382 cases for 1929. During the year 1927 there were 1,565 new cases filed; 2,598 were filed in 1928; and 3,570 in 1929. The conference strongly recommends one additional judge now, and, if Judge Molyneaux continues unable to serve, that a second judge be added, or, at the very least, that provision be made for a successor to Judge Molyneaux when he may retire.

There is no change in the ninth circuit. But the condition of business in the southern district of California, due to the rapid increase in the cases filed and presented for disposition is such that the council has recommended the appointment of another district judge for that district, and the statistics seem to justify the recommendation.

A suggestion was made to the conference, at the instance of the Federal Trade Commission, concerning changes in the rules of the circuit courts of appeals for the filing and printing of abstracts of records instead of full transcripts thereof. After full discussion, the suggestion was laid upon the table for lack of a satisfactory solution.

A suggestion was presented by Judge Manton, at the instance of district judges in the second circuit, to the effect that Equity Rule No. 13 be amended to allow substituted service of process in so-called

padlock cases, but was, on motion of the Chief Justice, in view of the possible constitutional questions involved, referred for consideration to the Supreme Court of the United States.

A report was read by Judge Manton embodying a tentative report of a committee appointed by three bar associations of New York City to consider the bankruptcy situation and recommend suggested needed reforms in this regard to Congress. The conference resolved that it was its desire to aid with its advice and assistance a speedy solution of the difficulties presented, and, without interfering with the existing investigation, to add such useful suggestions as occur to the conference. To this end, Judges Manton, Alschuler, and Buffington were constituted a committee to confer with other agencies now working for the same general purpose. The committee was directed to report its conclusions to this conference.

The conference passed the following resolution:

Reports to this conference from district judges in many parts of the country, and our own knowledge as to the circuit courts of appeals, convince us that the efficiency of the courts in making prompt disposition of the business of the United States is substantially impeded by the lack of sufficient and competent help in the offices of the clerks, marshals, and district attorneys, including assistant district attorneys; and we are satisfied that there must be considerable additional expenditure in order to obtain and retain the necessary competent assistance. We learn that the Attorney General is submitting to the Bureau of the Budget four estimates for 1931—main and supplemental—which together we consider not more than reasonably sufficient to cover the expenditures which ought to be made to bring these offices up to the proper standard. We therefore respectfully recommend to the Bureau of the Budget and to Congress that these main and supplemental estimates be approved and that these requested appropriations be made, and also that corresponding provisions be made for the remainder of the current year, so that the necessary improvement may not be delayed.

This is one of the most important reforms needed to secure expedition, efficiency, and dispatch in all the Federal judiciary. On motion made, it was resolved that the conference recommend that Congress provide by law that the administration of the clerks' offices of the circuit courts of appeals be under the supervision of the senior circuit judge of each circuit; that the salaries and disbursements of the several clerks and their assistants and necessary disbursements be provided for and paid under his supervision; that a budget therefor be prepared annually and an appropriation be made by Congress. The Chief Justice did not vote on this resolution.

The conference renews its recommendation made last year that the postal 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 conference also renews its recommendations made in its last two annual reports for the adoption of legislation to provide a law clerk

for each circuit judge, at a salary not to exceed $3,000 per annum. The necessity for the provision of such law clerks continues forcefully to impress itself upon the conference.

The conference suggests to the Congress the necessity for legislation which will provide that all criminal cases, as soon as docketed in a circuit court of appeals, shall be expedited automatically and as of course, and assigned for each hearing not later than on the calendar at the session of the circuit court of appeals next after their docketing, wherever the regular sitting may be made and wherever such session may be held. Such legislation should provide, however, that the statute should in no case be enforced so as to prejudice the presentation of the case of the defendant-appellant or prevent a fair review.

The conference greatly rejoices at the urgent demand by the public generally for more efficiency, more speed, and more certainty in the prosecution of the general criminal law, which has led to the appointment by the President, and to the organization of, a great commission for the discussion and adoption of new methods, and a greater efficiency and dispatch in the consideration and prosecution of crime. The Federal system for the punishment of violations of the Federal criminal statutes offers an opportunity to the Federal courts to lead in the matter of this reform. Congress has been engaged in the last few years in stiffening the prosecution of violations of Federal criminal laws, and in rendering more efficient the procedure in such cases. But the working out of these changes is necessarily slow, and we must not look for too rapid improvement. Much remains to be done in this regard.

For the judicial conference.

WM. H. TAFT, *Chief Justice.*

OCTOBER 6, 1929.