REPORT OF THE JUDICIAL CONFERENCE.

OCTOBER SESSION, 1930.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (42 Stat. 837, 838; sec. 218, Title 28, U. S. Code) was called and sat for three days, October 1, 2 and 3, 1930. 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.
Third Circuit, Senior Circuit Judge Joseph Buffington.
Fifth Circuit, Senior Circuit Judge Nathan P. Bryan.
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 senior circuit judge for the Fourth Circuit, Judge Waddill, was absent, and his place was taken by Circuit Judge John J. Parker.

The senior circuit judge for the Ninth Circuit, Judge Gilbert, was absent, and his place was taken by Circuit Judge Frank H. Rudkin.

The Attorney General, the Solicitor General, and their assistants charged with the examination of statistics were present. Among other recommendations and suggestions, the Attorney General submitted to the Conference a report of the condition of the dockets of the federal district courts and circuit courts of appeals for the fiscal year ending June 30, 1930, as compared with the fiscal year ending June 30, 1929. Each circuit judge also presented to the Conference a detailed report, by districts, of the work of the courts in his circuit for the fiscal year 1930.

Our examination of the submitted statistics discloses that there were pending upon the dockets of the district courts at the close of the fiscal year 1930, 155,730 cases as compared with 148,566 cases pending at the close of the previous fiscal year, that is, an excess of over 7,000 cases, embracing civil cases, both governmental and private, criminal cases and bankruptcy cases.

The increase in the number of pending cases, as reported by the Attorney General, is as follows:

	1929	*1930*
U. S. Civil cases pending	21,108	21,320
Criminal cases pending	31,153	35,849
Private suits pending	37,503	37,151
Bankruptcy cases pending	58,802	61,410
	148,566	155,730

It thus appears that the increased number pending at the close of the fiscal year 1930 is accounted for solely by the number of United States civil, criminal and bankruptcy cases pending, since there was a slight decrease in the number of private suits. It is further to be noted that increase in the number of pending cases is in large measure due to the increase in cases filed during the year. In our last report we pointed out that during the fiscal year 1929 8,034 more cases were commenced in the district courts than were commenced in the fiscal year 1928. But during the fiscal year 1930 slightly over 9,500 more cases were commenced in the district courts than were commenced in those courts during the fiscal year 1929. The comparison is as follows:

	1929	*1930*
U. S. Civil cases commenced	24,307	24,934
Criminal cases commenced	86,348	87,305
Private suits commenced	20,980	23,391
Bankruptcy cases commenced	57,280	62,845
	188,915	198,475

The increase in cases brought under the National Prohibition Act is thus shown:

	1929	*1930*
Prohibition cases (civil) commenced	11,237	11,882
Prohibition cases (criminal) commenced	56,786	56,992

We are also informed that in the 35,849 criminal cases pending on June 30, 1930 there were included 22,671 cases under the National Prohibition Act.

The inquiry discloses that the congestion in the federal district courts, despite the fact that, taken as a whole, the increase in the number of cases pending at the end of the year was less than the number of new cases brought, continues to be a major problem. In addressing ourselves to the question of the advisability of

making provision for the appointment of additional judges, we are necessarily brought to the consideration of the effect of the restrictions now imposed by statute upon the appointment of successors to judges, where vacancies now exist or will hereafter arise. Our conclusion is that it is important that these restrictions should be removed, as stated in the following resolution adopted by the Conference:

"By the Act of September 14, 1922 (sec. 3, Tit. 28, U. S. Code) Congress created twenty additional district judgeships; but in the belief that the need was temporary and litigations would decrease, it imposed the limitation that vacancies therein should not be filled, without a further special act. Experience has shown that the need was permanent, and in every instance (but one,—New Mexico) where a vacancy has occurred there has been no question of the need of continuing the judgeship; but the time involved in getting the necessary special act has caused delay and congestion. There now remain of vacancies that have occurred or will occur in these judgeships so limited fourteen instances, viz:

two in the District of Massachusetts;
two in the Southern District of New York;
one in the Eastern District of New York;
one in the Western District of Pennsylvania;
one in the Eastern District of Michigan;
one in the Western District of Missouri;
one in the Southern District of New Jersey;
one in the Northern District of Texas;
one in the Northern District of Ohio;
one in the Eastern District of Missouri;
one in the Southern District of California;
one in the District of Arizona.

"In the same general situation, through the existence of a limitation upon filling a vacancy and the demonstrated permanent need that the vacancy when occurring should be filled, are a circuit judgeship in the Ninth Circuit (Act of March 1, 1929, sec. 213b, Tit. 28, U. S. Code) and district judgeships in Minnesota (Act of March 2, 1925, sec. 4, Tit. 28, U. S. Code) and in the Southern District of Iowa (Act of January 19, 1928, sec. 4(i), Tit. 28, U. S. Code).

"The Ninth Circuit Court of Appeals will be left with only three judges, while it has had four for many years and will need four; and the districts of Minnesota and Southern Iowa cannot do without these judgeships.

"Accordingly, in order that from time to time there be no interruption and delay, we request the Attorney General to draft and urge the passage of legislation removing this limitation as to these specified judgeships and making them permanent."

The removal of the limitations above mentioned, and the appointment of successors where vacancies now exist or will hereafter occur, will not give adequate relief. In several parts of the country there is present need of additional judges. Accordingly the Conference recommends the enactment of legislation making provision for additional district judges as follows:

an additional district judge for the Southern District of New York;

an additional district judge for the Eastern District of New York;

an additional district judge for the Northern District of Georgia;

an additional district judge for the Eastern District of Michigan;

an additional district judge for West Virginia.

It is the sense of the Conference that no further provision for district judges should be made in existing districts at this time.

In our consideration of the problem of congestion, we have been met with proposals for the creation, not simply of additional judgeships, but of additional districts, which would involve the provision of the positions and facilities essential to the equipment of new districts. The question is thus presented as to the best means of promoting the economical and efficient administration of justice in the federal courts, whether by divisions of districts, consolidation of districts, or creation of new districts, and it seemed to the Conference that the time had come for a comprehensive survey. The Conference adopted the following resolution:

"The Attorney General calls our attention to the fact that there are pending in Congress several bills for the creation of new districts, and asks our recommendation as to the better method of meeting the need for more judicial service; either by making new districts or by additional judges in existing districts. It is represented to us by the West Virginia judges that special need for additional judicial service there exists and that a new district is the preferable method. We do not feel prepared to recommend either as to this instance or as to the general policy, until possessed of more information.

"We therefore request the Attorney General to make a survey or study of the general subject, as exhaustive as he may find feasible, including the possible consolidation or change of existing districts and division points, with estimates of cost and efficiency, and report the same to us at our next meeting."

The Conference recommends to the Attorney General that House Bill 11622, now pending, be so amended as to provide that the Eastern and Western Districts of Louisiana be combined to make but one district for Louisiana.

The Conference is satisfied that it is feasible under existing laws to hold conferences of the district judges within each circuit, and believes that such conferences to deal with local problems of administration will prove to be of no little value. Such conferences have been held to advantage in the Sixth and Eighth Circuits. The Conference adopted a resolution approving this policy.

In view of the pendency of the inquiry which is being undertaken by the Department of Justice through the Solicitor General, the Conference postponed consideration of matters relating to procedure in bankruptcy cases until the next Conference.

We observe, with satisfaction, that the Circuit Courts of Appeals are reasonably abreast of their dockets; that the congestion in the Circuit Court of Appeals for the Sixth Circuit due to the illness of judges, which we reported last year, has been much relieved by the work of the judges of that court during the past fiscal year. We note that legislation has been enacted to provide an additional circuit judge for the Fifth Circuit to remedy the overburdening of the circuit judges upon which we commented last year. Aside from the recommendation which we make for the enactment of legislation to provide for the appointment of a successor to a circuit judge in the Ninth Circuit, when a vacancy shall occur, we have no recommendations at the present time for any increase in the judicial forces in the Circuit Courts of Appeals.

The Conference is advised that the existing statute (Act of Congress of March 3, 1911, c. 231, sec. 126; 36 Stat. 1132; sec. 223, Tit. 28, U. S. Code) requiring the Circuit Court of Appeals for the Fifth Circuit to hold sessions each year at Atlanta, Georgia; Montgomery, Alabama; and Ft. Worth, Texas; in addition to its session at New Orleans, Louisiana, has imposed unnecessary hardship upon the judges of that court and tends to delay the prompt disposition of the business of the court without compensating advantages. The Conference therefore recommends the amendment of the statute so as to require the holding of sessions of the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, only.

The Conference requests the Attorney General to make provision to furnish to each Circuit Court of Appeals a copy of the U. S.

Supreme Court Service, a publication of the Legal Research Service, such copy to be sent as directed by the senior circuit judge.

The Conference has taken under consideration the possibility of improving the making and compilation of statistics of judicial work in the federal district courts and circuit courts of appeals. It is highly desirable that there should be uniform methods in the keeping of statistics in the various circuits so that resulting data may afford a satisfactory basis for comparison. It is also important that further consideration should be given to the categories to be adopted for the keeping of statistics so that there may be such units of specification as will furnish, so far as practicable, an adequate view of the work of each court. The science of judicial statistics is in the making and before recommending the adoption of an improved system for the federal courts the Conference believes that it should have advice from each circuit as to the measures deemed to be best adapted to the end sought and that through a consideration of the proposals thus submitted an appropriate plan may be formulated. Accordingly the Conference adopted a resolution that each senior circuit judge should send to the Chief Justice on or before March 1st next his conception of the form to be used for making a report of the business of the circuit for the fiscal year; that the Chief Justice be empowered to appoint a committee of the Conference, if he thinks it desirable in connection with this subject, and to prepare and to submit to the next Conference a form for use in all circuits.

The Conference also took into consideration the appropriate development of its own work as an effective agency for the improvement of the administration of justice in the federal courts. In order to avoid any question as to the scope of the authority which Congress intended to confer upon the Conference as such, the Conference thinks it advisable that there should be an amendment of the statute which created it (Act of September 14, 1922, 42 Stat. 837, 838; sec. 218, Tit. 28, U. S. Code). The Conference has resolved to request the Attorney General to urge such change in the statute as shall authorize the Conference to recommend to the Congress, from time to time, such changes in statutory law affecting the jurisdiction, practice, evidence and procedure of and in the different district courts and circuit courts of appeals as may to the Conference seem desirable.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 4, 1930.