REPORT OF THE JUDICIAL CONFERENCE.

OCTOBER SESSION, 1931.

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, 1931. The following 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 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.
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur.
Tenth Circuit, Senior Circuit Judge Robert E. Lewis.

The Solicitor General and Assistant Attorneys General were present.

Condition of dockets in the Federal Courts.—General Statistics.—On behalf of the Attorney General, the Solicitor General submitted to the Conference a report of the condition of the dockets of the federal courts for the fiscal year ending June 30, 1931, as compared with the fiscal year ending June 30, 1930. 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 1931.

From these tabulations it appears that there were pending upon the dockets of the District Courts, at the close of the fiscal year 1931, 152,736 cases as compared with 155,730 cases pending at the close of the previous fiscal year,—a decrease of about 3,000 cases—embracing civil cases, both governmental and private, criminal cases and bankruptcy cases.

The number of pending cases, as thus reported, is as follows:

	1930	*1931*
U. S. Civil cases	21,320	21,642
Criminal cases	35,849	27,895
Private suits	37,151	36,776
Bankruptcy cases	61,410	66,423
	155,730	152,736

The increase in the number of bankruptcy cases, that is, about 5,000 cases, cannot be regarded (in view of what appears later in this report) as signifying a greatly increased pressure upon the courts. The most significant fact in the above statement is the decrease in criminal cases pending,—a decrease of nearly 8,000 cases. The decrease has occurred in 62 districts; there are 29 districts reporting an increase. There is little variance in the totals for the two years in the other classes of cases. The Attorney General reports that the reduction in the number of pending criminal cases and also, to some extent, in the private suits, indicates that considerable progress has been made in the past year in clearing the dockets and relieving congestion.

The comparison of cases commenced during the fiscal year with those commenced during the previous year is as follows:

	1930	*1931*
U. S. Civil cases	24,934	25,332
Criminal cases	87,305	83,747
Private suits	23,391	24,000
Bankruptcy cases	62,845	65,335
	198,475	198,414

The comparison in the number of cases terminated shows the following:

	1930	*1931*
U. S. Civil cases	24,722	25,010
Criminal cases	82,609	91,701
Private suits	23,743	24,375
Bankruptcy cases	60,548	60,322
	191,622	201,408

There was an increase in cases brought under the National Prohibition Act as follows:

	1930	*1931*
Civil, commenced	11,882	12,374
Criminal, commenced	56,992	57,405

Of cases of this class there were terminated in 1930, 12,938 civil cases and 52,706 criminal cases; and in 1931, 12,103 civil cases and 61,521 criminal cases.

Despite the reduction in the total number of cases pending in the federal courts, congestion continues to be a major problem.

Circuit Courts of Appeals.—It is gratifying to observe that no problem is presented so far as the Circuit Courts of Appeals are concerned. These appellate courts are well up with their work, and such exceptions as temporarily exist are not serious. The Ninth Circuit has sustained sudden and grave losses in the deaths of Judges Gilbert, Dietrich and Rudkin. Judge Gilbert had long been incapacitated, but Judges Dietrich and Rudkin were suddenly stricken in the midst of their most useful activity. A successor to Judge Dietrich has already been appointed, and on the appointment of a succesor to Judge Rudkin, and with the legislative amendment recommended by the Conference for the appointment of a successor to Judge Gilbert, the Circuit Court of Appeals of the Ninth Circuit will be provided with adequate judicial service. There is no need of additional Circuit Judges in other Circuits.

District Courts.—Nor is the problem of undue congestion in the Federal District Courts one that is general throughout the country. While the volume of business creates a pressure that is continuous and exacting, it is only in a comparatively few districts that the burden is excessive, or that additional judicial assistance is required. In some Districts there is a serious condition which demands relief. The Conference considers it desirable that each Circuit, so far as possible, should deal with its own needs, and that by appropriate assignments of District Judges it should be sought to equalize their work and thus promote prompt

administration. It is deemed undesirable that, except where absolutely necessary, Judges should be called to service outside their Circuit. This, however, appears to be inevitable, unless the judicial force in certain Districts is increased. After careful consideration of the problem of congestion, and the need of additional Judges, the Conference decided upon the following recommendations:

Removal of restrictions in existing law as to appointment of successors.—The first recommendation relates to the removal of certain restrictions now imposed by statute on the filling of vacancies which now exist or will arise. On this subject the Conference, reaffirming the views expressed at its session last year, adopted the following resolution:

"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 the following instances, in which the Conference is of the opinion that provision should be made for the appointment of successors, viz:

2 in the District of Massachusetts;
2 in the Southern District of New York;
1 in the Eastern District of New York;
1 in the Western District of Pennsylvania;
1 in the Eastern District of Michigan;
1 in the Eastern District of Missouri;
1 in the Western District of Missouri;
1 in the District of New Jersey;
1 in the Northern District of Texas;
1 in the Northern District of Ohio;
1 in the Southern District of California;
1 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, or which has occurred, shall be filled, are a circuit judeship in the Ninth Circuit (Act of March 1, 1929, sec. 213b, Tit. 28, U. S. Code), and a district judgeship in the Southern District of Iowa (Act of January 19, 1928, sec. 4(i), Tit. 28, U. S. Code)—in both of which vacancies have occurred —and a district judgeship in the District of Minnesota (Act of March 2, 1925, sec. 4, 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."

Provision for additional District Judges.—The Conference was of the opinion, as it was last year, that the removal of these limitations, and the appointment of successors where vacancies now exist or will hereafter occur, as above mentioned, will not give adequate relief. The Conference, after most careful consideration of the need for additional judges, recommends the enactment of legislation making provision for additional district judges as follows:

2 additional district judges for the Southern District of New York;
1 additional district judge for the Eastern District of New York;
1 additional district judge for the Northern District of Georgia;
1 additional district judge for West Virginia;
1 additional district judge for the Southern District of Texas;
2 additional district judges for the Southern District of California;
1 additional district judge for the Western District of Missouri.

With respect to the situation in Missouri, the Conference, upon an examination of conditions there, is satisfied that additional judicial service is needed and that an additional district judge, available for service in both the Eastern and Western Districts, would meet the exigency. The Conference therefore recommends, as above stated, an additional district judge for the Western District of Missouri, with the understanding that he shall be subject to assignment, under provisions of existing law, for such service as may be necessary in the Eastern District of Missouri.

On consideration of the situation in Louisiana, the Conference is satisfied that no additional judgeship is needed in the Western District of Louisiana. The Conference is further of the opinion that judicial service can be adequately maintained in Louisiana by a combination of the Eastern and Western Districts.

The Conference is of the opinion that after providing the additional judgeships above specified no further provision for additional judges should be made in existing districts at this time.

Assignments of District Judges.—The Conference has had brought to its attention instances where the total business in two adjacent districts would not create an undue burden on two judges if it were equally divided, but where the existing unequal division gives the heavy district more than one judge can properly do. In our judgment, this situation does not justify us in recommending an additional judge for the heavy district. The remedy is for the Senior Circuit Judge to determine how much time during the year a judge of the lighter district can reasonably give to the heavy district, and then designate him to duty therein accordingly. Such designation should not be for a few days, now and then, but for substantial, continuous periods, so that calendars may be arranged and disposed of; and should be pursuant to an adopted and announced policy of definitely fixed times and periods. Statutory terms in the lighter district present no necessary obstacle, for they can usually be post-

poned or rearranged. Such equalization of duty as between judges is clearly contemplated by law, and reasonable cooperation in bringing it about will greatly promote the efficiency and the good repute of the federal judicial system. We approve this policy of designations, and we think its judicious and reasonably insistent application will do much to relieve instances of congestion. The same policy is applicable, though in less degree, to all districts in the Circuit, though not adjacent.

It was also the sense of the Conference that provision should be made that in case any Senior Circuit Judge is disabled by illness from exercising any power given or duty imposed by the Judicial Code such power or duty shall be exercised by the next Circuit Judge in seniority, and the Conference recommends to the Attorney General the proposal of legislation acocrdingly.

Questions as to Creation of New Districts and Changes in Existing Districts. Importance of Comprehensive Survey.—The Conference pointed out last year that proposals had been made 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. It seemed to the Conference that the time had come to consider comprehensively the organization of districts and to ascertain the best means of promoting the economical and effective administration of justice in the federal courts, whether by division of districts, consolidation of districts, or creation of new districts. For this purpose a most careful study is needed. Last year the Conference requested the Attorney General to make a survey, as exhaustive as he might find feasible and with estimates of cost and efficiency, in order that the necessary information should be laid before the Conference. The Attorney General has reported that, pursuant to this request, inquiries have been made, and a summary of these inquiries has been submitted to the Conference. It appears that the survey has not yet been completed and estimates relating to comparative costs have not been com-

piled. The matter is under the careful consideration of the Attorney General who intends at the next Conference to supplement his present progress report.

Judicial Statistics.—The Conference at its last session took under consideration the possibility of improving the compilation of statistics of judicial work in the federal courts. Pursuant to the resolution then adopted by the Conference, proposed forms were submitted for consideration. A further study of the subject has led to the conclusion that, while some improvement in the present forms might be made, it would not go far enough unless there was put into operation, under continuous supervision, a thoroughgoing plan in most, if not all, of the districts. The information now obtainable through statistics is useful to the Senior Circuit Judge in making his report to the Conference, as, with his familiarity with conditions within his circuit, he is able to give the necessary interpretation of the figures presented. The tabulations, standing alone and without such an exposition, are of but slight service for the purpose of forming a judgment of the comparative work of the courts. The need is for such units of specification as will give an adequate view of the work of each court, for uniform methods in the keeping of statistics, so that there may be a basis for comparison, and an expert supervision which will insure the maintenance of records in accordance with the plan adopted.

The National Commission on Law Observance and Enforcement, after considering reports upon the present defects in statistical methods and in the data compiled, has recommended that the compilation and publishing of statistics of the federal administration of justice should be committed to one bureau in the Department of Justice to the end that uniform and adequate methods should be devised and that their prosecution should be competently supervised through the maintenance of a unified system. It is the sense of the Conference that there should be an improved organization of this sort in the Department of Justice in order that the objects sought by the tabulation

of court statistics may measurably be attained. Meanwhile the Conference must of necessity rely upon the interpretation by the Senior Circuit Judges of the data in relation to judicial work as set forth in the reports of the respective circuits.

Bankruptcy.—The Attorney General submitted to the Conference a valuable Memorandum relating to the administration of the bankruptcy law. This Memorandum exhibits the results of an exhaustive investigation into the whole question of bankruptcy law and practice, which has been made by the Attorney General at the request of the President. The work has been under the direction of the Solicitor General. As a result, the Attorney General reports:

> "(1) That the Bankruptcy Act has failed to achieve its central purposes.
>
> "(2) That its administrative machinery is inefficient and subject to exploitation.
>
> "(3) That without radical revision of the law no substantial improvement can be accomplished."

In support of the statement of the Attorney General as to the failure of the law to achieve its central purposes, his Memorandum shows that the amount realized by general creditors has ranged from 7.7% of the liabilities in 1923 to 7.4% in 1930. It appears from the records "of all the cases closed in the fiscal year ending June 30, 1930—cases which originated for the most part before the beginning of the depression"—that in 65.44% there were no assets above exemptions; in 82.24% there were assets of less than $500; and in 95.80% the assets were less than $5,000. A further analysis shows that, "in 1930, merchants and manufacturers constituted 21% of the bankrupts," and that, of these, 24.56% had no assets above exemptions; 49.40% had assets less than $500; and 89.92% had assets less than $5,000. It appears that 43,983 cases, "representing over 79% of the total bankruptcies in 1930", were "non-mercantile bankruptcies", and that, of these, 27,929 were cases of wage earners. From these and other facts, the At-

torney General concludes that the bankruptcy courts "have ceased to be important agencies for the realization, liquidation, and distribution of assets and are chiefly engaged in relieving from their debts vast numbers of debtors who obtain their discharges without making any provision for a partial payment of their creditors either out of property or earnings."

The Attorney General has also found that "in practice, discharges are granted virtually for the asking and in most cases quite without regard to the conduct of the debtor or the equities of the case." It appears that during the two and one-half years beginning September 1, 1926 (after the amendments of 1926) and ending March 1, 1929, the clerks' reports show that 85,252 discharges were granted and 776 were denied; and that in the cases closed during the fiscal year ending June 30, 1930, approximately 37,277 noncorporate bankrupts were granted a discharge and in approximately 319 cases of this class discharges were denied. In the case of merchants and manufacturers, it is stated that the percentage of discharges denied was .02% and that in cases of wage earners the percentage of denials was .004%. The Attorney General reports that in most cases applications for discharge receive no consideration as "no one is under any duty to examine into the bankrupt's conduct and affairs," or "to oppose his discharge, however fraudulent he may have been". "In the absence of opposition the courts have no power and must grant the discharge outright if no one opposes it"; and "If there is opposition the courts have no discretion in tempering the discharge action to fit the equities of each case."

The Attorney General has also presented his views as to defects in the administrative processes in relation to referees, and the selection, personnel and compensation of trustees in bankruptcy.

The Attorney General has accompanied his Memorandum with suggestions of measures to remedy the defects shown.

The Conference appointed a committee to consider the

Memorandum and the proposals submitted by the Attorney General, and the committee made the following report:

"The Committee appointed by the Conference to consider the general supervision of the bankruptcy administration in the district courts reports that it has noted with approval, the request of the President that the Attorney General underake an exhaustive investigation into the whole question of bankruptcy law and practice, with the purpose of proposing to Congress essential reforms.

"The Attorney General has submitted to the Conference proposed tentative amendments to the bankruptcy act and has, through the Acting Attorney General, Solicitor General Thacher, presented the reasons therefor orally as well as in printed memorandum. We have examined both with a view of being advised wherein the present act, at this time, has failed to achieve the purposes of its enactment in ensuring a prompt and efficient realization and proper distribution of the assets of insolvent debtors, as well as granting to honest, but unfortunate, debtors a discharge from their debts in cases where they should be relieved and to deny a discharge where fraud and dishonesty are revealed; also to visit appropriate punishment by imprisonment where the law requires. The able study and diligent research of the administration in the past, under the bankruptcy act, as made by the Attorney General discloses that legislation is required to accomplish a more efficient administration for the benefit of both creditors and the bankrupt.

"We therefore advise the Conference that it recommend to the Congress, through the Attorney General, the advisability of legislation amending the present bankruptcy act as follows:

"(a) By provisions necessary to make the discharge in bankruptcy just and effective; to insure a thorough examination of the bankrupt, with due regard to the public interest involved; and to discourage fraud and waste.

"(b) Measures to encourage prompt steps toward liquidation or settlements by insolvent debtors; in matters of composition; to obtain extensions of time for the bankrupt to pay; relating to assignments for the benefit of credi-

tors; to provide relief of wage earners from garnishments or attachments.

"(c) Measures to promote the appointment of more efficient trustees, with sufficient provision for the voting representation of creditors; a more summary procedure for the administration of the estate of the bankrupt by the trustee, with due regard for simplified and expeditious proceeding in filing schedules; creditors' meetings; sales; and dividends; provisions for agencies to coordinate the bankruptcy administration; and promote uniformity of practice without interference with judicial supervision; to regulate compensation of trustees; and the appointment of referees and consideration of the basis for compensation."

This report of the committee was adopted by the Conference and the recommendations of the Conference are made accordingly.

Probation.—The Conference adopted a resolution that the Senior Circuit Judges be requested to consider the administration of the Probation Law in their respective circuits with a view to its consideration by the next annual Judicial Conference.

Grand Jury Proceedings.—The Conference adopted the following resolution:

"District Judges call to our attention, and we otherwise observe, the delay and expense caused by the necessity of both a preliminary examination and a presentment to the grand jury in cases where the accused intends to plead guilty. We recommend to the Attorney General a study of the matter, and, if thought practicable, that he propose to Congress legislation permitting in such cases a waiver of grand jury proceedings."

Official Stenographers.—It was represented to the Conference that in some districts considerable inconvenience had been caused by the lack of official stenographers. The Conference expressed its views upon this subject as follows:

"Resolved that it is the sense of the Conference that provision should be made for the appointment by the Judge of

official stenographers in the District Courts in those districts where such appointment is deemed advisable by the Judge of the District, and that we request the Attorney General to give consideration to the matter with a view of securing the necessary legislative authority for the appointment and compensation of such stenographers."

Amendments to Rules.—The Conference discussed various proposals that had been made for the amendment of the Equity and Admiralty Rules and General Orders in Bankruptcy promulgated by the Supreme Court, and these proposals were submitted for the consideration of that Court.

Circuit Conferences.—At its last session the Conference expressed its opinion that it was feasible under existing laws to hold conferences of the federal judges within each circuit, and its belief that such conferences to deal with local problems of administration would prove to be of no little value. During the past year such conferences have been held in several circuits and have demonstrated their usefulness. It is the sense of the Conference that such conferences should, if possible, be held annually.

Cooperation of Bench and Bar.—In seeking to improve the administration of justice in the federal courts, it is the opinion of the Conference that there should be active cooperation of the Bench and Bar. The Conference has noted with interest the recommendation to this end that has been made by the Committee of the Conference of Bar Association Delegates which was approved by that Conference at its recent meeting.

It is deemed desirable that in each district a committee of representative members of the Bar should be appointed either by the District Judge or Judges, or by Bar Associations, to confer with the District Judge or Judges. There will thus be afforded an opportunity for judges and lawyers not only to consider together whatever defects in administration may be said to exist within the respective districts, but proposals for remedies may be brought to the test of

60

the most expert judgment. Inconsiderate proposals will thus be promptly discarded and attention centered upon such as may appear to have merit. Inquiries into the administration of justice should be appropriately localized and generalities give place to a definite examination of particular problems. In many instances, it is not unlikely that needed improvements may be obtained by simple arrangements suited to local conditions. Whenever questions arise which relate to the administration of justice in its more general aspects, opportunity may be afforded for bringing such questions, through representatives of these district committees, to the attention of the annual conference of federal judges within the circuit. Again, as a result of such studies in circuit conferences, proposals may be prepared and thoroughly matured for the consideration of the annual Judicial Conference of the Senior Circuit Judges.

The Committee of the Conference of Bar Association Delegates has suggested that a representative member of the local bar committees could be chosen to represent each circuit at an informal conference to be held at Washington shortly before the regular meeting of this Conference. While the integrity of this Conference, as a Judicial Conference, should be maintained, the Conference would welcome this cooperation of the Bar.

Amendment of the Act Relating to the Judicial Conference.—Last year the Conference considered the appropriate development of its own work. In order to avoid any question as to the scope of the authority which the Congress intended to confer upon the Conference, as such, the Conference thought 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 requested the Attorney General to urge such change in the statute as should expressly 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.

The Conference renews this recommendation.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 5, 1931.