REPORT OF THE JUDICIAL CONFERENCE

OCTOBER SESSION, 1932.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218) was called and sat for three days, September 29, September 30, and October 1, 1932. The following judges were present in response to the call of the Chief Justice:

First Circuit, Senior 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 Charles H. Moorman.
Seventh Circuit, Senior Circuit Judge Samuel Alschuler.
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 duly taken by Circuit Judge Orie L. Phillips.

The Attorney General, the Solicitor General, and their aides were present.

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 Federal District courts for the fiscal year ending June 30, 1932, as compared with the fiscal year ending June 30, 1931. 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 showed the comparative number of cases in each of the four major classes com-

menced and terminated during the fiscal years 1931 and 1932 respectively as follows:

	Commenced		Terminated	
	1931	*1932*	*1931*	*1932*
United States civil cases	25,332	34,189	25,010	29,591
Criminal cases	83,747	92,174	91,701	96,949
Private suits	24,000	26,326	24,375	26,045
Bankruptcy proceedings	65,335	70,049	60,322	63,502
Total	198,414	222,738	201,408	216,087

It thus appears that there was an increase in the number of cases concluded during the last fiscal year, over the number of cases concluded in the previous year, of 14,679. This gratifying showing was offset, however, by the fact that the number of cases begun during the last year was greater by 24,324 than the number of those begun in the year before. The result was a net increase in the number of cases pending, at the close of the fiscal year, of 6651. The distribution of this increase is shown in the following table:

Pending cases—	*1931*	*1932*
United States civil cases	21,642	26,240
Criminal cases	27,895	23,120
Private litigation	36,776	37,057
Bankruptcy proceedings	66,423	72,970
Total	152,736	159,387

As the Attorney General observed, the increase of 6547, as shown above, in the number of pending bankruptcy proceedings, reflects an accumulation of work, which, while it requires time and attention, does not operate materially to increase the pressure upon the courts. But the increase of 4598 in United States civil cases does involve a heavy addition to judicial work.

War Risk Insurance cases.—The cause of the increase in United States civil cases is found in the large number of war risk insurance cases. The Attorney General's re-

port showed the number of these cases pending during the fiscal years 1931 and 1932, respectively, as follows:

	1931	*1932*
Pending, beginning of year	4,071	4,883
Commenced during year	2,795	8,213
Terminated during year	1,983	2,868
Pending close of year	4,883	10,228

There were approximately three times the number of cases of this sort begun during the fiscal year 1932 as compared with the preceding year, and, notwithstanding the fact that nearly 1000 more cases were terminated during the fiscal year 1932, the number pending at the close of the year, as compared with the previous year, was more than double,—the actual increase in cases pending being 5345. The serious burden created through the accumulation of cases of this description will apparently increase, and thus far no practicable method has been found to relieve it.

National Prohibition Act.—Civil cases.—The number of civil cases under the National Prohibition Act commenced, terminated and pending during the fiscal years 1931 and 1932 was as follows:

Prohibition civil—	*1931*	*1932*
Pending, close of previous year	6,704	6,975
Commenced during year	12,374	15,455
Terminated during year	12,103	15,490
Pending close of year	6,975	6,940

This statement shows an increase in this class of cases from 12,374 begun in 1931, to 15,455 begun in 1932. But the number of cases terminated increased in approximately the same ratio, and the number pending at the close of the year was slightly less than the number pending at the close of the preceding year.

Private suits.—The above tabulation of pending cases shows that there has been but little change in the number of private suits pending, notwithstanding the fact that the number of actions commenced during the last fiscal year was 26,326 as against 24,000 in the previous year.

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Criminal cases.—It is especially noteworthy that there has been a decrease of 4775 in the number of criminal cases pending notwithstanding the fact that the number of criminal cases commenced during the year was 92,174 as against 83,747 begun during the previous year. It thus appears that despite the interruption of the activity of the courts near the close of the year, due to insufficient funds, and the heavy increase in the number of cases begun, the condition of the dockets has been improved by a material reduction in the number of pending criminal cases. This, as the Attorney General submits, is in the circumstances an exceptionally creditable achievement.

Criminal Cases under the National Prohibition Act.—The Attorney General's statement showed that there was an increase of 8555 in the number of these cases commenced, but there was also in increase of 7634 in the number of cases terminated. The result was that at the close of the year there were pending 15,360 of these criminal cases as against 18,555 at the end of the preceding year. The summary is shown in the following table:

Prohibition criminal—	*1931*	*1932*
Pending, close of previous year	22,671	18,555
Commenced during year	57,405	65,960
Terminated during year	61,521	69,155
Pending close of year	18,555	15,360

Circuit Courts of Appeals.—In appellate work, there appears to be no problem in relation to the congestion of dockets. The Circuit Courts of Appeals continue to keep up with their work. There is, however, a special exigency in the Ninth Circuit where there are at present only two Circuit Judges. The pressure of the work of the District Courts is such that District Judges are not available to carry on continuously the work of the Circuit Court of Appeals. As a result, it appears that the Court has been compelled at times to sit with only two Judges. To provide adequate service in that Court there should not only be a successor to fill the vacancy caused by the death of Judge Rudkin, but there should be a removal of the exist-

ing limitation upon the appointment of a successor to Judge Gilbert (Act of March 1, 1929, c. 413, secs. 1 and 2, 45 Stat. 1414; U. S. Code, Title 28, sec. 213 (b)). The Conference renews its recommendation to this effect.

There is no need of additional Circuit Judges in other circuits.

District Courts.—While the Conference fully realizes the difficulties growing out of economic conditions and the imperative necessity for retrenchment in governmental expenses, the Conference deems it to be its duty to set forth the actual needs of the judicial department. Accordingly, the Conference, repeating former recommendations on this subject, again records its view that, in the instances mentioned below, the restrictions now imposed by statute on the filling of vacancies, which now exist or will arise in the District Courts, should be removed (U. S. Code, Title 28, secs. 3, 4, 4(h), 4(i)) as it is believed that the need for the judgeships mentioned is not temporary but permanent. The judgeships as to which this recommendation is renewed are the following:

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 northern district of Ohio;
1 in the southern district of California;
1 in the district of Arizona;
1 in the district of Minnesota;
1 in the southern district of Iowa.

It should be noted, in relation to these judgeships, that there are at present only three vacancies,—one in the southern district of New York, caused by the resignation of Judge Winslow; one in the eastern district of Michigan, caused by the appointment of Judge Simons as Circuit Judge; and one in the southern district of Iowa, due to the

death of Judge Wade. As these are existing vacancies, it is deemed especially urgent that appropriate provision should be made for successors. In relation to the other judgeships above mentioned, where there is at present no vacancy, removal of the limitation on the appointment of successors is deemed to be advisable so as to avoid, when a vacancy arises, a serious interruption in judicial work because of the want of legislative authority for the filling of the vacancy.

Provision for additional District Judges.—In addition to legislative provision for the appointment of successors in the instances above mentioned, the Conference renews its recommendation for the creation of additional judgeships 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.

In this connection, the Conference reaffirms the views expressed last year in relation to conditions in Missouri and Louisiana as follows:

"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".

Assignments of Judges.—Last year the Conference called attention to the provisions of existing law for the assignment by the Senior Circuit Judge of any District Judge to service within the same judicial circuit when by reason of disability, absence of a District Judge, or the accumulation or urgency of business, the public interest so requires; and the Conference expressed the view that this authority should be exercised and the District Judges should willingly accept such assignments and thus aid the Senior Circuit Judge in the discharge of his duty under the statute.

The subject was again brought before the Conference at the present session and, emphasizing the duty as prescribed by law, the Conference adopted the following resolution:

"RESOLVED, That it is the sense of the Conference that whenever a Federal judge is assigned to work or service in a district court he shall accept that assignment and perform the work to which he is assigned as a duty imposed by section 23 of Title 28, United States Code (Judicial Code, sec. 19)".

Provision for travelling and subsistence of law clerks and secretaries to Circuit Judges and of secretaries to District Judges.—In his report to the Conference, the Attorney General recited the recent efforts which he had made to reduce expenses and to maintain the essential service of the judicial department within the restricted appropriation. The Conference expressed its apprecia-

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tion of these efforts and its entire sympathy with the purpose in view. It appeared, however, that the elimination of certain expenditures for needed clerical assistance to Circuit Judges when holding court at places required by law, and to District Judges, within their own circuit, had the effect of seriously impeding the work of Federal courts. The difficulties were very clearly set forth by members of the Conference in an exposition of the conditions obtaining in several circuits. A committee appointed to consider the subject brought in the following report and recommendation:

"Your committee, to which was referred the question of travelling and subsistence expenses of law clerks and secretaries to Circuit Judges and of secretaries to District Judges, beg to report thereon as follows:

"Existing law provides for the payment of these and other expenses for holding court out of a lump-sum appropriation which is placed at the disposal of the Attorney General; but the amount appropriated by Congress for the current year is insufficient to meet all such expenses. Confronted with this situation the Attorney General has pared down the expenses provided for by law and has cut out entirely the travelling and subsistence expenses to which reference is above made. We are advised that such expenses usually amount to about $75,000. Of this amount a part is devoted to travelling and subsistence expenses of secretaries to District Judges where the District Judges go outside of their own Circuit to hold court in other Circuits. As to this part of expense we think the plan of the Attorney General might well be approved. But as to allowances to law clerks and secretaries where the Judges are holding court within their own Circuit we think the dispatch of business will be very much interfered with and the work of the Judges much delayed. The inevitable result will be further congestion of the dockets of both the District Courts and the Circuit Courts of Appeals. We therefore recommend the adoption of the following resolution:

"Be it resolved that the Attorney General be requested to authorize, when approved by the Senior Circuit Judge, the travelling and subsistence expenses for law clerks and secretaries to Circuit Judges and secretaries to District Judges in the respective Circuits and request a deficiency appropriation, if it shall be required, to cover such expenses".

The Conference adopted the resolution thus recommended.

Grand Jury Proceedings.—The Conference adopted last year a resolution in relation to 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, and the Conference recommended to the Attorney General a study of the matter and the consideration of the advisability of permitting in such cases a waiver of grand jury proceedings. The Attorney General reported that legislation to this effect is pending in the Congress.

Probation.—In response to a request of the Conference at its last session, the Circuit Judges presented reports with respect to the administration of the Probation Law in their respective circuits. Following discussion upon these reports, the following resolution was adopted:

"RESOLVED, That it is the sense of this Conference that the Probation System established by recent Act of Congress is a forward step in the administration of justice and that the purpose which it has in view should be furthered by the trial judges of the country; and it appearing, that for the proper administration of probation, a sufficient number of probation officers should be provided, and that the cost of an efficient Probation System will, in all probability, be more than offset by the saving of expense in prison administration:

"It is therefore recommended, That the Attorney General seek provision for the extension and efficient administration of the Probation System so far as the present state of the finances of the government will permit, and that he consider the advisability of securing such change in the law

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as will permit probation to be granted by the trial judge after, as well as before, execution of the sentence has been begun in cases in which the punishment imposed is one year or less''.

Parole.—The Conference also adopted the following resolution with respect to action by the Parole Board:

''RESOLVED, That it is the sense of this Conference that the Parole Board, before passing upon an application for parole, should communicate with the Judge who has imposed the sentence and obtain his view as to whether or not the parole should be granted, and that said inquiry should be made within a reasonable time prior to the action of the Parole Board, and not merely at the time sentence is imposed; and that any Judge of whom such inquiry is made by the Parole Board should communicate to the Board his views in the premises with any recommendations which may seem proper''.

Competency of spouses as witnesses in Federal criminal cases.—The Attorney General directed the attention of the Conference to a pending bill (H. R. 10596, 72d Congress, 1st session) which makes the husband or wife of a person charged with crime in United States courts a competent, but not compellable, witness for or against his or her spouse, except as to confidential communications. The Conference is of the opinion that the proposed legislation, in the interest of definitely removing an archaic rule, irresponsive to modern conditions, is highly desirable.

Rules of practice and procedure in criminal cases after verdict.—The Attorney General reported to the Conference that his study of the Federal criminal procedure, and of the causes for delay in the effective punishment of crime in the Federal Courts, has disclosed that the greatest delay in criminal cases is after the rendition of verdict, and that no effective control of, or remedy for, such delay is possible under existing statutes. The Attorney General stated that under the practice prevailing under existing statutes delays of from nine months to three years now intervene in many cases between verdict and the final mandate upon appeal. Avoidable delay in this class of cases is not due to a fail-

ure of the appellate courts, after the cases reach them, to act expeditiously. It is rather due to dilatory proceedings after verdict and before the cases are ready for appellate action.

The Attorney General called to the attention of the Conference the bill pending in the Congress (H. R. 10639, 72d Congress, 1st Session) to give the Supreme Court of the United States authority to prescribe rules of practice and procedure with respect to proceedings in criminal cases after verdict; and he expressed the opinion that, with the passage of this statute, rules could be framed which would result in the elimination of excessive delays in the disposition of criminal appeals.

The Conference approves this proposed legislation.

Circuit Conferences.—The report of Circuit Judges with respect to Circuit Conferences which have been held during the past year in several Circuits confirms the view of their utility. A Circuit Conference serves to bring together all the Federal Judges of the Circuit and thus to give opportunity for the consideration of problems with which they are confronted in seeking to eliminate obstructions to the prompt and efficient administration of justice in the several districts. It may be that these local conferences are not as necessary in Circuits that are relatively of small area, with large centers of population, in which Federal judges are brought into almost constant contact. In large portions of the country the District Judges have no such contact with each other or with Circuit Judges, and annual Circuit Conferences should be most helpful. It is strongly recommended that such conferences be held wherever feasible.

The Conference has also called attention to the desirability of promoting cooperation between the Bench and Bar in the several Federal districts, to the end that defects in administration which may be thought to exist may have appropriate attention, and that the most expert judgment may be utilized in devising remedies. It is believed that from the several districts, especially if aided by this cooperation, well-considered proposals may be brought to

Circuit Conferences and thence to this Conference of Senior Circuit Judges. The advantage to this Conference of having before it proposals which have been carefully matured in this way is manifest.

Amendment of legislation with respect to the Judicial Conference.—The Conference has requested the Attorney General to urge such change in the statute, under which the Conference is organized, 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 Attorney General has advised the Conference that legislation for this purpose is pending in the Congress. The Conference renews its recommendation as to the advisability of this legislation.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 3, 1932.