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REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1934.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on September 27, 1934. 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 Charles H. Moorman.
Eighth Circuit, Senior Circuit Judge Kimbrough Stone.
Ninth Circuit, Senior Circuit Judge Curtis D. Wilbur.
Tenth Circuit, Senior Circuit Judge Robert E. Lewis.

The Senior Circuit Judge for the Seventh Circuit, Judge Samuel Alschuler, was absent, and his place was taken by Circuit Judge Evan A. Evans.

The Attorney General, the Solicitor General, and 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 Federal District Courts for the fiscal year ending June 30, 1934, as compared with the previous fiscal 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, summarizing the annual reports received from district attorneys and clerks, showed the comparative number of cases in each of the three

major classes commenced and terminated during the fiscal years 1933 and 1934, as follows:

	Commenced		*Terminated.*	
	1933	*1934*	*1933*	*1934*
United States civil cases ..	25,797	9,487	27,744	16,479
Criminal cases	82,675	34,152	84,780	45,577
Private suits	26,656	26,472	26,074	28,035
Total	135,128	70,111	138,598	90,091

It thus appears that there was a large decrease in Government cases (civil and criminal) in the fiscal year 1934, as compared with the previous year, a decrease due largely to the repeal of the National Prohibition Act, effective in December, 1933. Private litigation was of about equal volume in the two years mentioned. The Attorney General submitted the following comparative statement of pending cases, as of June 30, 1933 and June 30, 1934:

Pending cases—	*1933*	*1934*
United States civil cases	24,293	17,303
Criminal cases	20,907	9,478
Private suits	37,639	36,051
Total	82,839	62,832

This statement shows that considerable progress was made in clearing the dockets of the district courts during the past year. The total number of cases pending on June 30, 1934, exclusive of bankruptcy petitions, was 24 per cent. less than on June 30, 1933.

Criminal Cases in General.—Notable progress was made in reducing the congestion in the criminal dockets. On June 30, 1933 there were pending in the district courts a total of 20,907 criminal cases of all classes. The number commenced during the fiscal year was 34,152, and the number terminated was 45,577, leaving 9,478 pending on June 30, 1934, as shown by the following table:

Criminal cases—	*1933*	*1934*
Pending beginning of year.....	23,012	20,907
Commenced during year	82,675	34,152
Terminated during year	84,870	45,577
Pending close of year	20,907	9,478

National Prohibition Act.—The reduction of the number of cases on the criminal dockets is largely accounted for by the repeal of the National Prohibition Act. The reports compiled by the Attorney General show that only 6,676 criminal cases were instituted under this Act during the fiscal year 1934, as compared with 57,553 cases during the previous year. The number pending on June 30, 1934 was only 1,280 and it is assumed that these will eventually be dismissed. As to civil cases brought under the National Prohibition Act, there were only 792 pending on June 30, 1934. The following tables give the summary of these cases:

Prohibition-criminal cases—	*1933*	*1934*
Pending close of previous year	15,360	13,646
Commenced during year	57,553	6,676
Terminated during year	59,267	19,043
Pending close of year	13,646	1,280

Prohibition-civil cases—	*1933*	*1934*
Pending close of previous year	6,940	5,148
Commenced during year	11,478	923
Terminated during year	13,270	5,279
Pending close of year	5,148	792

Internal Revenue Cases.—The Attorney General states that since the repeal of the National Prohibition Act a large number of criminal cases are being prosecuted under the internal revenue laws. During the fiscal year 1933 only 775 such cases were commenced and 674 terminated. During the fiscal year 1934, 4,158 were commenced and 2,954 terminated, and 1,786 were pending on June 30, 1934, as compared with 582 on June 30, 1933. The internal revenue laws have now taken the place of the National Prohibition Act as giving rise to the greatest number of criminal cases. The number of civil cases under the internal revenue laws decreased somewhat during the fiscal year. The Attorney General submitted the following tables:

Internal revenue-criminal—	*1933*	*1934*
Pending close of previous year	481	582
Commenced during the year	775	4,158
Terminated during year	674	2,954
Pending close of year	582	1,786

Internal revenue-civil—	*1933*	*1934*
Pending close of previous year	2,787	2,366
Commenced during year	2,614	1,659
Terminated during year	3,035	1,617
Pending close of year	2,366	2,408

War Risk Insurance Litigation.—It appears from the statement of the Attorney General that of the total number of 17,303 civil cases to which the United States was a party, pending on June 30, 1934, 8,220 (or 47.5 per cent.) were suits against the Government under the Veterans' Insurance Acts. This is a reduction of 2,377 cases as compared with June 30, 1933, as shown by the following table:

War Risk Insurance—	*1933*	*1934*
Pending close of previous year	10,228	10,597
Commenced during year	4,023	264
Terminated during year	3,654	2,643
Pending close of year	10,597	8,220

Bankruptcy Petitions.—The Attorney General reports that complete statistics as to bankruptcy cases are not yet available, but that the records show that the number of cases pending on June 30, 1934 was 63,352, as compared with 68,195 on June 30, 1933, a reduction of 4,843 cases during the year.

The general conclusion to be drawn from the data presented by the Attorney General is that while the repeal of the National Prohibition Act has caused a large reduction in the number of cases, the result of the increase in internal revenue cases, and of the institution of proceedings under legislation recently enacted, will prevent any substantial diminution in the actual work of the federal courts. It must be remembered that a large proportion of cases under the National Prohibition Act were terminated on pleas of guilty.

Circuit Courts of Appeals.—These courts continue to keep up with their work in a satisfactory manner. Since the last session of the Judicial Conference, the Supreme Court has promulgated (May 7, 1934) rules of practice and procedure, after plea of guilty, verdict or finding of guilt, in criminal cases brought in the district courts of the

United States and in the Supreme Court of the District of Columbia. This action was taken under the Act of Congress of February 24, 1933, c. 119 (U. S. Code, Title 28, sec. 723(a)), as amended by the Act of March 8, 1934. It is believed that under these rules unnecessary delays in the prosecution of criminal appeals will be avoided.

District Courts.—In order to give a clearer view of the actual state of the work of the district courts, with respect to delays caused by an undue congestion of civil dockets, the Attorney General has compiled for the Judicial Conference a table showing the time required to reach the trial of civil cases after joinder of issue in the several courts.

It is gratifying to note that it appears from this tabulation that, out of 84 federal districts in continental United States (exclusive of Alaska and the District of Columbia) in 31 districts "all ready cases are tried at term following joinder of issue". This is also true in certain divisions of 6 other districts, as to all civil cases, and in all divisions in 3 other districts, as to some classes of cases. Further, in 13 other districts, and in certain divisions of 3 other districts, as to all classes of cases, and in 6 districts as to some classes of cases, the average interval between joinder of issue and trial is reported to be not over 6 months. It is apparent that any general criticism of the work of the district courts, with respect to delays in reaching cases for trial, is wholly unjustified. Undue congestion and delays characterize, not the district courts as a whole, but only certain districts and because of exceptional circumstances.

The most serious congestion and delays are found in the Southern District of New York and in the Southern District of California, and this condition is caused by the failure to provide a sufficient number of judges. Thus, the Attorney General reports that in the Southern District of New York, the average interval between joinder of issue and trial in civil jury cases is 17 months, in suits in equity, 16 months, and in admiralty causes, 33 months. In the Southern District of California, the Attorney General finds that this average interval, for all classes of civil cases, is from 18 to 24 months.

Provision for Additional District Judgeships.—The Judicial Conference earnestly urges, in accordance with its previous recommendations, that this situation in New York and California should be promptly relieved by providing for the necessary number of judges to dispose of the business of these highly congested districts. Provision for the prompt and efficient administration of justice is a primary concern. It is of no avail to multiply laws if the machinery of enforcement is inadequate. All possible efforts have been made to give relief to these districts by assignments of judges from other districts. But, in justice to the demands of administration in other parts of the country, assignments of this sort cannot be made so as to give the relief that is imperatively needed. Despite all the assignments that have been found to be practicable, and notwithstanding the unremitting endeavors of judges to dispose of the cases on their dockets, the delays above stated exist, causing a serious impairment of the administration of justice.

The Conference accordingly renews its recommendation that the following additional district judges should be provided:

2 additional district judges for the Southern District of New York;

2 additional district judges for the Southern District of California.

In view of existing economic conditions, the Conference refrains at this time from pressing recommendations which it has previously made for other additional judgeships, but without prejudice to their later renewal.

Removal of Restrictions upon Appointment of Successors in Existing Judgeships.—Apart from provision for additional judges, the Conference has heretofore directed attention to the need of removing restrictions upon the filling of vacancies in certain existing judgeships. The Conference has carefully considered the desirability of the removal of these restrictions so that successors can be appointed in the cases in which vacancies occur, where experience has shown the necessity of having a permanent, instead of a temporary, judgeship. As a result of its examination of

conditions in each district, the Conference recommends that the following judgeships should be made permanent by removing the existing limitation upon the appointment of successors:

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 Minnesota.

As stated by the Conference in its report of last year, the importance of making appropriate provision for the filling of such vacancies, before the vacancies actually arise, is shown by the situation in the Eastern District of Michigan, one of the judgeships above mentioned. That judgeship was held by Judge Simons, and on his appointment as circuit judge there was no provision for filling the vacancy in the district court in the Eastern District of Michigan. Another illustration is found in the inability, under the existing statute, to fill the vacancy in the Southern District of New York which arose on the resignation of Judge Winslow (since deceased).

Places of Holding Terms of the Circuit Court of Appeals for the Fifth Circuit.—The Conference has heretofore recommended that sessions of the Circuit Court of Appeals for the Fifth Circuit should be held only at New Orleans, Louisiana, and the Conference deems the matter worthy of serious consideration by the Congress.

Recommendations of Legislation.—The Conference renews its expression of approval of proposed legislation as follows:

Proposed Bill:—To relieve United States district judges of the duty of certifying to the expense accounts of United States attorneys and their assistants.

Proposed Bill:—To amend existing law so as to abolish the requirement of a certificate by United States district judges as to the necessity for the appointment of assistant United States attorneys.

Rules in Actions at Law.—The Act of Congress, approved June 19, 1934, gives the Supreme Court authority to prescribe rules for the district courts of the United States, and for the courts of the District of Columbia, to govern practice and procedure in civil actions at law. The Act provides:

> That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.
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> SEC. 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided, however,* That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session.

The Conference, at the suggestion of the Chief Justice, considered appropriate methods for assisting the Supreme Court in the discharge of this highly important and difficult task, through the cooperation of the members of the Bench and Bar throughout the country, to the end that the views of the federal judges and of the Bar may find adequate and helpful expression.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 1, 1934.