REPORT OF THE JUDICIAL CONFERENCE.

OCTOBER SESSION, 1935.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on October 3, 1935. 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 Rufus E. Foster.
Sixth Circuit, Senior Circuit Judge Charles H. Moorman.
Seventh Circuit, Senior Circuit Judge Evan A. Evans.
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 taken by Circuit Judge Orie L. Phillips.

The Acting Attorney General (the Solicitor General) and his 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 Acting 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, 1935, 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 and the report of the last Conference show the comparative number of United

States and private civil cases, exclusive of bankruptcy cases, commenced and terminated during the fiscal years 1934 and 1935, as follows:

Commenced		*Terminated*	
1934	*1935*	*1934*	*1935*
35,959	35,917	44,514	37,287

The Attorney General submitted the following comparative statement of pending cases, civil and criminal, as of June 30, 1934 and June 30, 1935:

Pending cases—	*1934*	*1935*
United States civil cases	17,303	19,597
Criminal cases	9,478	11,469
Private suits	36,051	27,345
Bankruptcy cases	63,352	65,347
Total	126,184	123,758

It thus appears that there has been a considerable increase in the number of pending criminal cases. The Attorney General states that, contrary to expectation, the repeal of the Eighteenth Amendment has not resulted in lifting appreciably any burden resting on the federal courts. In the place of "prohibition cases," the dockets contain a large number of cases involving violations of the liquor revenue laws. The Attorney General observes that the population of federal penal and correctional institutions is growing. He also notes that while the number of "prohibition cases" was very large, the percentage disposed of without trial was greater than in other classes of criminal cases because of the large number of dismissals and pleas of guilty.

The total number of cases, civil and criminal, pending as of June 30, 1935, was somewhat less than the number pending at the close of the preceding fiscal year. But the above tabulation shows that the decrease is wholly in private suits, exclusive of bankruptcy cases. That diminution, as the Attorney General points out, may be explained by the action of many district courts in striking a large number of inactive civil cases from their dockets.

Recent legislation, and especially the provisions for corporate reorganization under the amendments of the Bankruptcy Act, have greatly increased the work of district judges. Reorganization proceedings require many hearings on contested questions which are frequently important and difficult. It is increasingly apparent that a mere tabulation of the number of cases, and the classification which has been used in presenting judicial statistics, afford a very unsatisfactory basis for determining the extent of the judicial work required or the efficiency of judicial administration.

The Attorney General advised the Conference that the Department of Justice has inaugurated a new and scientific system for maintaining judicial statistics. Instead of making a tabulation from figures reported by the clerks of the district courts, a statistical section has been installed in the Department, in charge of a trained statistician. A separate card for every civil case, and for every defendant in every criminal case, is sent to the Department, and it is hoped that statistical tables compiled from these cards will be more accurate and helpful. Even with the aid of this improved and detailed information, it will be necessary to know something of the amount of time required in various classes of cases, and especially in bankruptcy cases, under the extended jurisdiction for which the present law provides, in order to form a proper estimate of the burden resting upon district judges.

Last year, to give a clearer view of the actual state of the work of the district courts, the Attorney General compiled for the Conference a table showing the time required to reach the trial of civil cases after joinder of issue. The Attorney General has supplied a similar tabulation based upon reports of the disposition of cases during the last fiscal year. It appears from this tabulation that in 46, out of a total of 84, judicial districts, the business is current and that all ready cases are tried at the term following joinder of issue; that is, the dockets are cleared at each term and there are no arrears of business except as to cases continued at the request of counsel. This salutary situa-

tion also exists in certain divisions of 10 other districts and as to certain classes of business in 4 other districts. In 16 districts the average interval between joinder of issue and trial is reported as not exceeding 6 months. In only 15 districts is there a delay of over 6 months in the time required to reach the trial of a case after issue has been joined.

The Conference called attention last year to the serious congestion and delays that were found in the Southern District of California and in the Southern District of New York. In the former the average interval between joinder of issue and trial in ordinary course is about 18 months. But that situation has been met by the action of the Congress in providing for the appointment of 2 additional judges in that District.

Similar relief has not yet been provided for the Southern District of New York and relief there is most seriously needed. In that District the interval between joinder of issue and trial is found to be 22 months for civil jury cases; 23 months for suits in equity; and 27 months for suits in admiralty. The delays as to actions at law and suits in equity have considerably increased since July 1, 1934. These have occurred notwithstanding the most earnest efforts of the district judges in that District to keep up with their work, and the relief which has been afforded, so far as has been found practicable, by the assignment of judges from other districts. It is earnestly hoped that provision will soon be made for the appointment of additional judges for the Southern District of New York, as the Conference has repeatedly recommended.

The improvement in the speedy disposition of cases in the district courts generally is notable. Instead of 31 districts in which it was found by the last Conference "that all ready cases were tried at the term following joinder of issue", it now appears, as above stated, that during the last fiscal year there were 46 districts in which cases were thus promptly tried. The Conference heard reports from the Senior Circuit Judges with respect to the situation in the particular districts where delays have occurred, and every effort is being made to insure as prompt a disposition

of cases as is practicable in view of the inescapable burden of judicial work. The Conference, as is shown below, makes particular recommendations as to the localities where additional judicial assistance is essential.

Circuit Courts of Appeals.—It is gratifying to be able again to observe that no problem is presented so far as the circuit courts of appeals are concerned.

Provision for Additional District Judgeships.—At the last session of the Congress, provision was made for the appointment of two additional district judges for the Southern District of California, one additional district judge for the Eastern District of Virginia, and one additional district judge for the Eastern District of New York.

The Conference in 1934 recommended the removal of restrictions upon the filling of vacancies in certain existing judgeships, as follows:

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.

The Congress at its last session removed the restrictions in all these instances and, in addition, with respect to judgeships in the District of Arizona and the Northern District of Texas.

In 1931, and again in 1932, the Conference recommended that provision be made 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.

While restating its belief that this recommendation was fully justified, the Conference in 1933, in view of existing economic conditions, refrained from renewing the recommendation at that time, without prejudice to its later renewal, except with respect to the additional district judges for the Southern District of New York and for the Southern District of California where the increase was deemed to be imperatively required. The same attitude was taken by the Conference in 1934.

At its present session, the Conference has carefully reviewed the existing exigencies in the various districts, and now recommends that, in addition to the provision already made by the Congress, additional district judgeships should be provided as follows:

2 additional district judges for the Southern 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 Western District of Missouri;
1 additional district judge for Louisiana;
1 additional district judge for Kansas;
1 additional district judge for Oklahoma.

With respect to Missouri, the Conference repeats its statements of 1931 and 1932 to the effect that additional judicial service is needed, and that an additional district

judge, available for service in both the Eastern and Western Districts, will meet the exigency. The Conference 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 servce as may be necessary in the Eastern District of Missouri.

Appointment of Masters.—In making the above recommendation for additional judges, the Conference has in mind the importance of compliance with Equity Rule No. 59, that, save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some specal condition requires it. (See *Los Angeles Brush Manufacturing Corp.* v. *James, District Judge,* 272 U. S. 701.) The Conference has found that on account of the lack of an adequate number of judges the practice has been freely indulged, in certain districts, of appointing masters to hear equity cases. This practice imposes upon parties an inordinate expense which should be avoided wherever possible. It is essential to the appropriate administration of justice that adequate provision be made for judicial administration through judges.

Procedure.—The Chief Justice gave the Conference a summary of the action taken under the Act of June 19, 1934 (48 Stat. 1064), with a view to the preparation of a unified system of rules for cases in equity and actions at law, so as to secure one form of civil action and procedure for both, so far as this may be done without the violation of any substantive right. The Chief Justice referred to the appointment by the Supreme Court, on June 3, 1935, of an Advisory Committee to assist the Court in this undertaking, and to the gratifying interest which has been evinced by the members of the bar.

Death of Senior Circuit Judge Bryan, of the Fifth Circuit.—The Conference adopted the following resolution:

> On the assembling of the Judicial Conference of 1935, members thereof consisting of the Chief Justice

of the United States and the Senior Judges of the ten Circuits, the deep feeling of all centered in the sense of loss in the death of Nathan P. Bryan, Senior Circuit Judge of the Fifth Circuit. Judge Bryan had endeared himself to us all, enlisted our warm friendship by the fine traits of his character, and gained our confidence in his legal ability, the wisdom of his counsel and the poise and worth of his matured judgment. To his wife, deprived of his companionship, to the bench and bar of the Fifth Circuit, deprived of his leadership, we severally and unitedly, extend our heartfelt sympathy in the passing away of one in whom there was no guile, *suaviter in modo, fortiter in re.*

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 7, 1935.