REPORT OF THE JUDICIAL CONFERENCE.

OCTOBER SESSION, 1936.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on October 1, 1936, and continued in session for three days. 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.
Seventh Circuit, Senior Circuit Judge Evan A. Evans.
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 Sixth Circuit, Judge Charles H. Moorman, was absent, and his place was taken by Circuit Judge Xenophon Hicks.

The Chief Justice invited the Chief Justice of the United States Court of Appeals for the District of Columbia to attend the Conference, and, on his suggestion, as he was unable to attend, Mr. Justice Groner was present in his stead.

The Attorney General and the Solicitor General, with 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.—Upon the request of the Chief Justice, 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, 1936, 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 Conference was thus advised by the Attorney General of the comparative number of United States and private civil cases, exclusive of bankruptcy cases, commenced and terminated during the fiscal years 1935 and 1936. The report of the Attorney General disclosed the following:

Commenced		*Terminated*	
1935	*1936*	*1935*	*1936*
35,917	39,227	37,287	41,384

The Attorney General submitted the following comparative statement of pending cases, civil and criminal, as of June 30, 1935 (revised) and June 30, 1936:

Pending cases—	*1935*	*1936*
United States civil cases	15,265	13,715
Criminal cases	11,469	10,886
Private suits	32,067	31,460
Bankruptcy cases	61,703	58,910
Total	120,504	114,971

There is thus a decrease not only in the total number of pending cases at the close of the last fiscal year but also a decrease in each class of cases above described.

As has frequently been observed, statistical statements of totals, even of a specified class of cases, do not furnish an adequate basis for estimating the extent of judicial work or the efficiency with which it is prosecuted. Such totals do of course give a general idea of the movement of litigation.

Last year the Conference was greatly aided in its appreciation of the condition of work in the federal courts by the new system which the Attorney General had established. This system has been followed, and an even more elaborate classification of cases has been made, in presenting the statistics for the last fiscal year. The effort of the Attorney

General to supply accurate information which will permit a fair conspectus of the state of the dockets in the different districts is highly commended. The subject is receiving expert attention for the purpose of securing improvements in method, whenever practicable.

One of the most helpful of the statistical tables submitted by the Attorney General is one showing the time required to reach the trial of civil cases after joinder of issue. It is gratifying to note, as the Attorney General states, that it appears from this tabulation that in 51 out of a total of 85 judicial districts the business of the district courts is current, that is, all cases ready for trial are disposed of at the term following joinder of issue. This means that there are no arrears except as to cases continued at the request of counsel. The improvement is shown by the fact that in the fiscal year ending June 30, 1934, there were only 31 districts of which that could be said, and in the fiscal year ending June 30, 1935, it was true of 46 districts.

It also appears that in the last fiscal year this condition obtained not only in the 51 districts above mentioned but also in certain divisions of 9 other districts and as to certain classes of business in 6 additional districts. It is stated that in some of the 51 districts above mentioned equity cases may be tried even between terms as soon as ready.

In 16 districts the average interval between joinder of issue and trial is reported as not exceeding 6 months, and in only 18 districts are there delays of over 6 months.

It is thus apparent that the question of delays in the hearing of cases is one that should be considered with respect to particular districts. The Conference in recent years repeatedly called attention to the serious congestion and delays that were found in the Southern District of California and in the Southern District of New York and recommendations were made for the appointment of additional district judges. These recommendations have been followed by action of the Congress and important gains have been made.

In the Southern District of California, as reported by the Attorney General, the average interval between joinder of issue and trial in ordinary course has been reduced from 18 to 8 months. It is hoped that the recent appointment of additional judges in the Southern District of New York will lead to a similar improvement. Further assistance, by special designation, for the Southern District of New York is also rendered possible by the appointment of an additional judge for the Eastern District in that State.

The Senior Circuit Judges submitted reports with respect to the situation in particular districts where delays have occurred and all practicable efforts are being made to insure promptitude in the disposition of cases.

Provision for Additional District Judgeships.—In 1935 the Conference recommended that additional judgeships 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.

In accordance with these recommendations the following provision has been made by the Congress:

2 additional district judges for the Southern District of New York;
1 additional district judge for the Northern and Southern Districts of West Virginia;
1 additional district judge for the Eastern and Western Districts of Missouri;
1 additional district judge for the Eastern, Northern and Western Districts of Oklahoma.

In addition to the additional judgeships recommended by the Conference, the Congress also made provision for:

1 additional district judge for the Eastern and Western Districts of Kentucky;
1 additional district judge for the Eastern District of Pennsylvania, with the limitation that when a vacancy occur in the office of district judge for that district it should not be filled, and thereafter there should be but three district judges in that district.

After reviewing the condition of work in the various districts, the Conference at the present session recommended that the following additional district judgeships should be provided:

1 additional district judge for the Northern District of Georgia;
1 additional district judge for the Eastern District of Louisiana;
1 additional district judge for the Southern District of Texas;
1 additional district judge for the Western District of Washington.

Circuit Courts of Appeals.—The reports of the circuit judges show that the circuit courts of appeals generally are well up with their work. Circuit Judge Wilbur submitted a request that the Conference recommend that two additional circuit judges be provided for the Ninth Circuit. In view of this request the Conference appointed a committee to consider the necessities of the Ninth Circuit, including the question of the practicability and desirability of a change in the territorial division of States among the Eighth, Ninth and Tenth Circuits,—the committee to report at the next session of the Conference. Further, as proposed by Circuit Judge Wilbur, the Conference appointed a committee to consider the advisability of amending § 212 of Title 28 of the United States Code in relation to the constitution of the circuit courts of appeals, with particular reference to those circuits in which there are now more than three judges,—that

committee also to report at the next session of the Conference.

Delay in Imposing Sentences in Criminal Cases.—The Attorney General submitted a statement in relation to the "prevailing tendency" in some district courts to delay sentence in criminal cases, even when there is "no impediment" operating against such imposition. The Attorney General's statement related only to "instances where, after conviction, the court postpones the duty of imposing judgment from time to time, or from term to term, meanwhile permitting the defendant to go where he will without restriction". The procedure to which reference was thus made did not involve cases where under the applicable statute there was resort to probation. The Attorney General submitted a number of illustrations.

The practice thus challenged is disapproved. The attention of district judges is directed to the provision of the Criminal Appeals Rules promulgated May 7, 1934, by the Supreme Court of the United States. Rule I provides as follows:

> "I. *Sentence.* After a plea of guilty, or a verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, and except as provided in the Act of March 4, 1925, c. 521, 43 Stat. 1259, sentence shall be imposed without delay unless (1) a motion for the withdrawal of a plea of guilty, or in arrest of judgment or for a new trial, is pending, or the trial court is of opinion that there is reasonable ground for such a motion; or (2) the condition or character of the defendant, or other pertinent matters, should be investigated in the interest of justice before sentence is imposed.
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> "Pending sentence, the court may commit the defendant or continue or increase the amount of bail."

Amendment of Section 24b of the Bankruptcy Act.—The Conference appointed a committee to consider the advisability of amending § 24b of the Bankruptcy Act with respect to the allowance of appeals.

Rules of Civil Procedure for the District Court of the United States and the Supreme Court of the District of Columbia.—This session of the Conference afforded an opportunity for the discussion of questions raised by the preliminary draft of Rules of Civil Procedure as prepared by the Advisory Committee appointed by the Supreme Court. Advantage was taken of this opportunity and views were presented and discussed on a number of important points. These views and the discussion will be submitted to the Supreme Court.

Appointment of Official Stenographers.—The following resolution was adopted by the Conference:

> "Resolved that it is the sense of the Conference that provision should be made for the appointment of official stenographers for the reporting of trials in the district courts. It is not necessary that salaried offices be created. The need would be met by an act authorizing the district judge of each judicial district to appoint one or more official court stenographers for that district, and to fix by rule of court the compensation which such stenographers shall be entitled to charge for their services, with provision that amounts properly paid by parties for the service of such stenographers be taxable as costs in the case in the discretion of the trial judge."

Clerical Salaries in the Southern District of California.—In view of a request from all the district judges of the Southern District of California for an increase of clerical salaries in that District (based upon a detailed statement of the urgent need therefor), and of correspondence with the Department of Justice relating to that subject in which the lack of adequate appropriations for the purpose is emphasized, the Conference resolved that the request be referred to the Attorney General for such consideration as he may find to be appropriate.

Rules of Circuit Courts of Appeals as to Procedure on Petitions to Review Decisions of the Processing Tax Board of Review.—Referring to the provision of § 906(g) of the

Revenue Act of 1936, authorizing the Circuit Courts of Appeals and the United States Court of Appeals for the District of Columbia to adopt rules "for the filing of petitions for review, the preparation of the record for review, and the conduct of the proceedings on review", the Conference adopted the following resolution:

> "Resolved that each of the Circuit Courts of Appeals and the United States Court of Appeals for the District of Columbia add after the rule relating to petitions to review decisions of the Board of Tax Appeals a rule relating to a review of decisions of the Board of Review as follows:
>
> "*BOARD OF REVIEW.*
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> "The procedure on petitions to review decisions of the Board of Review established in the Treasury Department by Section 906 of the Act of June 22, 1936, shall be the same as that prescribed by these rules for review of decisions of the Board of Tax Appeals; and the provisions of Rule ——* shall apply to such petitions to review decisions of said Board of Review, except that where the words 'Board of Tax Appeals' occur in said rule the words 'Board of Review' shall be understood as applicable."

* The reference is to the particular rule of the appellate court.

Representation, in the Conference, of the United States Court of Appeals for the District of Columbia.—The Conference adopted a recommendation that the Act constituting the Conference (28 U. S. C. 218) be amended so as to provide for attendance at its sessions, as a member of the Conference, of the Chief Justice of the United States Court of Appeals for the District of Columbia or of such other justice of that Court as he may designate.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 3, 1936.