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REPORT OF THE JUDICIAL CONFERENCE.

SEPTEMBER SESSION, 1933.

The Judicial Conference provided for in the Act of Congress of September 14, 1922 (U. S. Code, Title 28, sec. 218), convened on September 28, 1933. The following judges were present in response to the call of the Chief Justice:

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.
Tenth Circuit, Senior Circuit Judge Robert E. Lewis.

The Senior Circuit Judge for the First Circuit, Judge George H. Bingham, was absent, and his place was taken by Circuit Judge Scott Wilson.

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, 1933, 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 showed the comparative number of cases in each of the four major classes com-

menced and terminated during the fiscal years 1932 and 1933, respectively, as follows:

| | <i>Commenced</i> | | <i>Terminated</i> | |
|-------------------------------|------------------|-------------|-------------------|-------------|
| | <i>1932</i> | <i>1933</i> | <i>1932</i> | <i>1933</i> |
| United States civil cases.... | 34,189 | 25,797 | 29,591 | 27,744 |
| Criminal cases | 92,174 | 82,675 | 96,949 | 84,780 |
| Private suits | 26,326 | 26,656 | 26,045 | 26,074 |
| Bankruptcy petitions | 70,049 | 62,256 | 63,502 | 67,031 |
| Total | 220,738 | 197,384 | 216,087 | 205,629 |

The number of cases terminated exceeded the number filed during 1933, and there was a general decrease in all classes except private suits, as compared with the previous year. The total number of cases filed in 1933 was 25,354 less than in 1932, and the total number terminated was 10,458 less than in 1932. There was a small increase in the number of private suits commenced and terminated.

The Attorney General gave the following comparative statement of pending cases:

| <i>Pending cases—</i> | <i>1932</i> | <i>1933</i> |
|---------------------------------|-------------|-------------|
| United States civil cases | 26,240 | 24,293 |
| Criminal cases | 23,120 | 20,907 |
| Private litigation | 37,057 | 37,639 |
| Bankruptcy proceedings | 72,970 | 68,195 |
| Total | 159,387 | 151,034 |

The above figures indicate that the congestion of the dockets in the district courts (except with respect to private suits) is gradually being reduced. The total number of cases of all kinds was reduced by 8,353 between June 30, 1932, and June 30, 1933. The number of private suits pending increased by 582 during the same period.

War Risk Insurance cases.—Of the 24,293 United States civil cases pending at the close of June 30, 1933, more than 43 per cent were suits against the Government under the Veterans' Insurance acts. The total number pending on June 30, 1933, was 10,597 as compared with 10,228 on June 30, 1932,—an increase of 369.

Criminal cases in general.—Some progress was made in reducing the congestion in the criminal dockets. On June 30, 1932, there were pending in the district courts a total of 23,012 criminal cases of all classes. The number commenced during the fiscal year was 82,675 and the number terminated was 84,780, leaving 20,907 pending on June 30, 1933, as shown by the following table:

| <i>Criminal cases—</i> | 1932 | 1933 |
|--------------------------------|---------|---------|
| Pending beginning of year..... | 27,895 | 23,012* |
| Commenced during year | 92,174 | 82,675 |
| Terminated during year | 96,949 | 84,780 |
| Pending close of year | 23,120* | 20,907 |

National Prohibition Act.—Fewer cases of this character were commenced and terminated during the fiscal year 1933, as compared with the fiscal year 1932. The total number of criminal cases pending at the close of the year was only 13,646 as compared with 15,360 at the close of the previous year, as shown by the following table:

| <i>Prohibition criminal cases—</i> | 1932 | 1933 |
|-------------------------------------|--------|--------|
| Pending close of previous year..... | 18,555 | 15,360 |
| Commenced during year | 65,960 | 57,553 |
| Terminated during year | 69,155 | 59,267 |
| Pending close of year | 15,360 | 13,646 |

Sixty-five per cent of all criminal cases pending on June 30, 1933, were prohibition cases.

Prohibition—civil cases.—The number of civil cases under the National Prohibition Act commenced, terminated and pending during the fiscal years 1932 and 1933 was as follows:

| <i>Prohibition civil—</i> | 1932 | 1933 |
|-------------------------------------|--------|--------|
| Pending close of previous year..... | 6,975 | 6,940 |
| Commenced during year | 15,455 | 11,478 |
| Terminated during year | 15,490 | 13,270 |
| Pending close of year | 6,940 | 5,148 |

*The discrepancy of 108 cases pending is stated by the Attorney General to be due to careful revision after checking the dockets in the Southern District of New York.

The number of such cases commenced and terminated was considerably less in 1933 than in 1932, and the number pending at the close of 1933 was only 5,148 as compared with 6,940 at the close of the previous year.

Circuit Courts of Appeals.—These courts have continued to keep up with their work in a satisfactory manner.

District Courts.—Removal of Restrictions upon Appointment of Successors in Existing Judgeships.—Restrictions are now imposed by statute 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 last year recommended 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 Arizona;
- 1 in the district of Minnesota;
- 1 in the southern district of Iowa.

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; in consequence, the work of that court has been seriously impeded. 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). The attention of the Conference was directed to the situations in other districts, special mention being made of those in Missouri, Minnesota, and Iowa, where the business is very heavy and serious impairment of the administration of justice will result in case vacancies should arise which, under the present limitation, could not be filled.

Provision for additional District Judgeships.—What has been said above relates to properly maintaining the existing judicial service, where judgeships, although temporary, have already been created. In addition to these, there is imperative necessity for an increased number of judges. The Conference last year recommended 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.

On a further consideration of the question, the Conference believes that this recommendation was fully justi-

fied, but in view of existing economic conditions the Conference refrains from renewing the recommendation at this time, without prejudice to its later renewal, except in the following instances where provision for additional judgeships is deemed to be imperatively required;—that is to say, 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.

It should be added that, in addition to the judgeships listed in last year's recommendation, as above stated, the Conference has found that there is serious need for increased judicial service in Oklahoma, which might be afforded by an additional district judge for the western district of Oklahoma, but recommendation to this effect is withheld for the time being in view of the existing situation and of the special need which exists in the southern district of New York and the southern district of California.

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.—On consideration of proposed legislative measures which the Attorney General brought to the attention of the Conference, the Conference expressed its approval of the following:

Proposed Bill:—To prevent the invalidation of an indictment because of the service of one or more unqualified persons upon the grand jury, if it shall appear that twelve or more grand jurors not disqualified concurred in the finding of the indictment.

Proposed Bill:—Where the senior circuit judge of a circuit is disabled by illness, to permit his powers to be exercised by the other judges of the circuit in the order of the seniority of their respective commissions.

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.

Proposed Bill:—To amend the general criminal statute of limitations in criminal cases so as to permit the United States to re-indict at any time within the next succeeding term of court, in cases where a demurrer or other dilatory plea to the indictment is sustained, after the period of limitation has run, on the ground that the indictment is bad as a plea.

The Conference again expresses its opinion that legislation making the husband or wife of a person charged with crime in United States courts a competent, but not a compellable witness for or against his or her spouse, except as to confidential communications, is highly desirable.

Amendment of legislation with respect to the Judicial Conference.—The Conference has heretofore 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 Conference renews its recommendation as to the advisability of this legislation.

Rules of practice and procedure in criminal cases after verdict.—By Act of Congress approved February 24, 1933, the Supreme Court is authorized to prescribe rules of prac-

tice and procedure with respect to any or all proceedings after verdict in criminal cases in District Courts of the United States and in the United States Circuit Courts of Appeals. At the request of the Chief Justice, Attorney General Mitchell submitted a draft of proposed rules which had been prepared in the Department of Justice under the direct supervision, and with the personal attention, of Solicitor General Thacher. The Chief Justice submitted this draft to the circuit judges, to the end that the proposals might be the subject of discussion at this Conference. The senior circuit judges gave careful consideration to the proposals and consulted with other circuit judges and with district judges so that the views of the federal judiciary should find appropriate expression on this important subject, as an aid to the deliberation and action of the Supreme Court.

The senior circuit judges brought to the Conference the results of their consultations and study; and the provisions of the proposed rules, in their most important aspects, were the subject of extensive examination by the Conference, with a full interchange of views, which were recorded for the purpose of submission to the Supreme Court. These proceedings of the Conference were extremely helpful, not only with respect to the immediate purposes in view, but also as they brought before the Conference, vividly and in detail, the existing causes of delays in the prosecution of criminal appeals and the remedies which may be deemed to be available.

General orders in bankruptcy.—The Conference also considered questions relating to ancillary receiverships in bankruptcy, particularly with respect to proposals that have been made for consideration by the Supreme Court.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 2, 1933.