Statement of

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before

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This is the third conference of Senior Circuit Judges since the creation of the Administrative Office of the U.S. Courts. It marks for me the end of my first year as Attorney General. At the conference last year, held on September 23, I had been in office only for a couple of weeks.

Judicial Vacancies

I believe that almost the most important obligation of the Attorney General is the filling of judicial vacancies. On September 5, 1942, the day when my appointment was confirmed, there were nineteen vacancies existing in the United States Courts. All of these vacancies, with one exception, have now been filled. I have given and shall continue to give careful consideration to filling judicial vacancies with outstanding men.

Since the last Judicial Conference there have occurred twenty-three vacancies, of which fourteen have been filled. There exists today a vacancy in the Third Circuit as a result of the resignation of Judge Clark; and there is one in the Fifth Circuit caused by the death of Judge Foster on August 23rd. There are vacancies in Northern California, Idaho, Northern Illinois, Oklahoma, and four in Hawaii.

In filling vacancies I sincerely hope that I may have suggestions and help from judges as well as from members of the bar. It is often difficult to get proper information to evaluate a man's character and ability; and judges before whom candidates have appeared to try and argue cases necessarily are in a position to judge their abilities. In several instances district and circuit court judges have given me the advantage of their opinion, all of course in a most confidential manner. It seems to me entirely appropriate that Judges should do this, and I hope that such cooperation will continue.

Department of Justice

Before speaking of certain specific problems which may be of interest to the Conferenc , you may wish to hear a brief word about the Department of Justice itself. In the last three years the Department has grown from approximately 9,000 employees to nearly 25,000 employees. This increase is accounted for not only by the addition to the Department of the Immigration and Naturalization Service, which was formerly with the Department of Labor, but by increased personnel resulting largely from problems raised by the war. The F.B.I. has been greatly enlarged as well as the Border Patrol. I have established a new unit in the Department known as the War Division. This is made up of four units, one in charge of alien enemies; another in charge of litigation arising out of the control of the property of alien enemies; a third dealing with "war funds"; and the fourth, a unit which had been established by Mr. Justice Jackson when he was Attorney General, which deals with the analysis of subversive activities, the study of the foreign language press in the United States, and other related matters.

The result of this very swift expansion of the Department of Justice, coupled with the emergence of new and pressing problems as a result of the war, and the fact that many of our personnel are enlisting or being drafted into the Army and Navy have required measures to reorganize the Department. I have recently issued a new order, drawn as a result of months of careful study in cooperation with the Budget and with the heads of the various divisions, which has the effect of reallocating certain functions of the Department and of centralizing administrative direction in the Assistant to the Attorney General, thus freeing the Attorney General for consideration of policies and of matters involving unusual considerations. It is believed that the effect of the order will also be to provide for more centralized control of personnel, essential particularly in

war time; and of more careful consideration of the budget considered as a whole. It is our hope to eliminate duplication and waste, particularly by abolishing unnecessary units. We have already taken two definite steps in that direction.

We have transferred supervision of the Bureau of War Risk Litigation to the Assistant Attorney General in charge of Claims. We have distributed the functions of the Bond and Spirits Division among other divisions in the Department. It is calculated that the saving to the Department as a result of the latter step will be approximately $150,000 a year. This is a particularly good time to make such changes since those of the personnel who will not remain with the Department now have an excellent opportunity of finding positions in other branches of the government where man-power is lacking.

One of our most serious problems is the drain on our personnel from the war demands. We have followed a policy, stringently enforced, of asking for deferments only in a few essential cases and then only for specified periods of time. Almost no individual is essential; although the loss of too many key men, particularly over a short period of time, will seriously handicap the work of any organization. I believe that it is entirely appropriate for the Army to draft an individual if he is to be used in the fighting forces. On the other hand, it seems a short-sighted policy to transfer some lawyer in a key position in the Department of Justice doing important work to a desk in the War Department where his work is far less important and where he is more or less lost in the shuffle. England soon found in the present war that the nation could not afford to drain the civil service of manpower to send to the armed forces; a system has been organized there under which civil servants above thirty are not transferred where their existing work makes it more important for them to continue in their occupations.

Expediting Cases Vital to the War Effort

I should like to call your attention to the desirability of expediting hearings and appeals in cases where the decision is of immediate importance in the conduct of war activities. Many different questions have arisen as to the extent and character of the authority granted by the many emergency statutes. Such matters as price-fixing, priorities, allocation of essential materials, etc., raise problems which are inevitably litigated in the Federal Courts. It is also inevitable that certain actions of the President and his subordinates, taken in pursuance of special war powers, will be challenged. In order that the extent and nature of the authority of the Executive may be determined as soon as possible and the necessity for any legislative action made quickly apparent, it is desirable that appeals in these cases be given as speedy consideration as possible.

A notable example of this was the special term of the Supreme Court called in July of this year to consider the writs of habeas corpus sued out in behalf of the eight saboteurs who landed in this country from German submarines. These eight prisoners were being tried for violations of the Articles of War and of the common law of war before a special Military Commission set up by the President. Doubts and uncertainties were raised as to the constitutionality of such procedure by the case of Ex parte Milligan. The long and elaborate opinions handed down by the Court in that case rendered uncertain its application to the facts then confronting us. Moreover, the totally different character of modern warfare, in which the destruction of a factory or of an important railroad bridge may be a greater military blow than a localized defeat in an actual zone of combat, rendered uncertain the application of this Civil War precedent. I may say that General Cramer, the Judge Advocate General of the United States

Army, and I, who conducted the prosecution, were equally as pleased as were counsel for the defense when the Supreme Court consented to clarify the law in this regard before a decision was handed down by the Military Commission. This was, of course, a very fundamental and important constitutional problem and as such merited the extraordinary treatment which it received by the Supreme Court. Even though other lesser matters obviously cannot receive such special treatment, if matters closely related to the war effort are expedited on appeal as much as possible, this will be of great value in enabling us to solve the multitude of important legal problems that the war has created.

Cases Involving Essential War Personnel or Vital War Information

There is another matter relating to the conduct of federal judicial business during the present war which I should like to call to your attention. This is the desirability of continuing or adjourning cases whose preparation and presentation would absorb too much time of Army, Navy or essential civilian personnel engaged in war work and cases whose presentation might disclose information of value to the enemy. Early in the war, we were confronted with this problem particularly in connection with anti-trust suits, which because of their great complexity threatened to take up too much of the time of persons engaged in industries essential to the war effort. Under an agreement between the Secretary of War, the Secretary of the Navy, and Department of Justice officials, which was approved by the President, several anti-trust suits have been adjourned because of their interference with the important war work of essential industrial personnel.

Specific provision for postponing suits in which members of the armed forces are defendants has been made, of course, in the Soldiers and Sailors Civil Relief Act. There will inevitably be other types of cases, however, which

demand the attendance of essential war personnel, either as defendants or as essential witnesses, to the detriment of the war effort. The mere fact that a man is concerned with war work of some sort cannot excuse him automatically from all litigation. It seems to me, however, that the Federal Courts, by weighing the hardships caused by the delay against the detriment to the war effort resulting from the absence of essential personnel, should be able to arrive at a practicable and fair solution of this problem.

The other cases which it may be desirable to continue or adjourn are those whose presentation might disclose information of value to the enemy. An example of this type of case is an admiralty suit arising out of a collision between ships in a convoy, where the nature of the case would demand the presentation of evidence as to naval and maritime matters which must be kept absolutely secret.

The Department of Justice, shortly after our entrance into the war, considered proposing legislation specifically authorizing the suspension of litigation when this is necessary for the efficient prosecution of the war. This was not done, however, because we believed that there is already sufficient discretion in the presiding judge of a Federal Court to take care of such situations (See Landis v. North American Company, 299 U. S. 248 (1936)), and because we felt certain that the Federal Courts would use this discretion in the best interests of the national safety.

Federal Judges and Special War Work

I have wished for some time that some way might be found during the present national emergency to make more available the talents of members of the Federal Judiciary for special war assignments. Federal Judges have already been called upon to serve on such bodies as the Emergency Court of Appeals under the

Price Control Act, and there are many other war duties, both of a quasi-judicial and of an administrative nature, which they could perform with exceptional effect. Service of Federal Judges on special non-judicial assignments is thoroughly in accord with our American traditions. I need only cite the valuable work of Judge Putman on the Bering Sea Seizures Commission, that of Mr. Justice Brewer and Judge Alvey on the Venezuela Boundaries Commission, and that of Mr. Justice Roberts in the Pearl Harbor investigation as notable examples of the contribution which members of our judiciary have made outside of the field of their regular duties. The diplomatic missions of Chief Justice Jay, of Chief Justice Ellsworth and of Mr. Justice Nelson are other noteworthy instances of service of this sort.

I should like to ask that you give consideration to the desirability of continuing this practice during the present war. I appreciate that such a request raises the always difficult problem of the extent to which a judge should mix in lay affairs which might later be brought before him in his judicial capacity. I appreciate also that the provision of the Judicial Code which forbids Federal Judges "to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law" (28 U.S.C. 373), limits to some extent the duties they may undertake. There are many valuable functions of an administrative and quasi-judicial character, however, which Federal Judges might perform without any possibility of their being thought to engage in the practice of law and without any possibility of embarrassment in the future discharge of their judicial duties.

Under the existing judicial system, it seems to me that the practical problems arising from such service can be solved. There is the possibility of assigning Federal Judges to courts other than their own and of calling back to

the bench retired Federal Judges (See 28 U.S.C. 17, 22, 216, 375, 375(a)). During the period of the war, you might consider it desirable to make the divisions between the various judicial districts and even between the various circuits somewhat more fluid as regards assignments of work, so that the necessary judicial duties could always be carried on adequately despite the absence of particular judges. By reallocating the work of the district courts within the circuits and by cooperative efforts of the Senior Circuit Judges, the services of many Federal Judges might be temporarily released for other important work. There is an ever-increasing need for men of ability and experience to help out with the vast body of essential war work, and I therefore commend this matter to your attention.

In this connection there seems to be some misunderstanding among Federal judges as to whether or not they can take leave of absence to join the Army or the Navy. Although I have not given any formal opinion with respect to this situation, it seems fairly clear that under Section 62 of Title 5 of the U.S. Code, any Judge who enters the armed forces as an officer, and takes the salary attached to his commission automatically vacates his judicial office. The section to which I refer reads as follows:

> "No person who holds an office, the salary or annual compensation attached to which amounts to the sum of $2,500, shall be appointed to or hold any other office to which compensation is attached, unless specially authorized thereto by law."

It may be that this section does not operate as a prohibition to appointment to a second office in a case where no compensation was attached to the first office. There is however a principle of common law that no person can hold two incompatible offices. There are also decisions of the courts which seem to hold that where the law attaches compensation to an office a person cannot accept that office under an agreement to forego such compensation.

It is of course to be expected that judges are not unnaturally tempted even to the point of resigning to help the country in its war effort. It should be remembered, however, that in such cases where men obtain commissions in the armed forces, they are often assigned to work which, comparatively speaking, is really less important to the general needs of the country than the work they leave; and that a judge should always weigh the importance of his present work and consider carefully whether he should abandon it.

United States Commissioners

The Judicial Conference at its September Session in 1941 requested the Administrative Office to make a study of the Commissioner system and report to this meeting. The Report, which is now before you for discussion, is most comprehensive, covering the scope of the functions of the Office, the methods of appointment, occupations and ages of the commissioners, their eligibility for appointment, the territorial jurisdiction of their offices, typical proceedings and pertinent statistics describing such items as their hours of service, compensation and burden of work.

While numerous statutes have given additional general jurisdiction, the Office of Commissioners remains today as it was when established in 1896. The change in conditions which has occurred over the years since that time suggests a reexamination of the whole subject.

First, the report suggests that the commissioners be furnished at Government expense with all of their supplies and that wherever practical they should be provided with office space and a hearing room. The report further suggests a reduction in the number of commissioners in some of the districts which apparently are over staffed. For example, in North Carolina there are 86 United States Commissioners, 22 of whom had no business in 1941.

There is a suggestion in the report as to the possible desirability of having a larger percentage of lawyers appointed commissioners than is at present the case. There are approximately 1,000 United States Commissioners of whom not more than half are lawyers. I believe that it is highly desirable that whenever possible the office of commissioner should be filled by a lawyer, as questions of law are involved in most of their work; and this Conference might well go on record as indicating to the district judges that wherever lawyers are available for such services, the office of commissioner should be filled by a lawyer.

The report further discusses the question whether the compensation of commissioners should be increased or its basis changed. At the present time commissioners are paid on a fee basis at the scale fixed in 1896; the list of fees is so broken down and divided up into such small items that the report compares it to a laundry list. Many commissioners are required to spend as much time preparing their accounts as they devote to the performance of their functions. The report suggests, and I commend this suggestion to you, the possibility of putting some of the commissioners on a salary, subdividing them into classes as is done with postmasters on the basis of the amount of work done in the course of the year.

The question of whether the trial jurisdiction of United States Commissioners should be increased is also raised by the report. At the present time United States Commissioners are permitted to try petty offenses if they are committed on Federal reservations, provided that the defendant waives his right to be tried in the district court. The question discussed in the report is whether or not this jurisdiction should be extended to cover all Federal petty offenses, irrespective of where they may have been committed.

I should hesitate, at this time, and without further consideration, to recommend this extension of jurisdiction.

The Status of Bailiffs

There is another matter of an administrative nature to which I should like to direct your attention. The Conference gave some consideration at its last session to the question of the status of bailiffs, but concluded that the time was not opportune to present legislation to Congress recommending changes. The situation with regard to bailiffs is a vexing one and the Department of Justice is entirely sympathetic with the Judges who suffer inconvenience because of the fact that bailiffs are per diem employees who are not allowed traveling expenses and are therefore unable to serve the judges except when court is in session at official quarters. It has been suggested to me that the Department might be helpful to the extent of having the status of deputy marshal conferred upon bailiffs. Our hands are tied in that respect, however, because the law limits appropriations for deputy marshals to the objects for which they are made. There is an appropriation for deputy marshals and another for bailiffs. Under existing law bailiffs cannot be employed unless the marshal certifies to the Judge that no deputy marshals are available for this work. Mr. Chandler is familiar with the problem involved and with the obstacles which must be overcome and I think you may again want to give consideration to recommending legislation which would regularize the status of bailiffs and make them full-time employees.

Indeterminate Sentences - Treatment of Youthful Offenders

I have considered with great care the report to the Judicial Conference of the Committee on Punishment for Crime. It is a splendid report, and I congratulate Judge Parker, Judge Hand, Judge Phillips, and the District Judges who cooperated in preparing it. It marks the beginning, I believe, of a fundamental improvement in the Federal system of criminal justice.

There is a real need for greater uniformity in the imposition of sentences. In the Annual Report of the Attorney General for 1938 and in his message to the Conference of Senior Circuit Judges in that year, Attorney General Cummings pointed out how the "wide disparities and great inequalities in sentences" make it "difficult to maintain that equal, even-handed justice is attained"; and that the sense of injustice and resentment inevitably created in the prisoners by these inequalities serves to increase the disciplinary problems in Federal prisons. Each succeeding Annual Report of the Attorney General has shown increasing interest in and concern with this problem. But the achievement of relative uniformity is of small moment if it does not reflect a uniform application of sound penalogical principles.

It is my belief that the new system of punishment embodied in the Committee's proposed bill is just, practicable, and scientifically sound. It provides a technique for the careful examination of prisoners, before their sentence is definitely fixed, by a competent and integrated group of experts. As Attorney General Jackson pointed out in his report for 1940:

> "A trial judge has but restricted time and limited facilities for the purpose of apprising himself of all of the facts that should be considered in determining the penalty that should be imposed in any one case. In addition to considering the facts of the offense and the defendant's prior criminal record, a thorough study should be made of his background, environment, training, education and experience. The defendant's aptitude and his physical and mental condition must likewise be considered in reaching a determination as to the type of institution and length of treatment which is apt to have the best influence on the defendant."

Judge Parker and his Committee have now shown us how the necessary trained and expert judgment may be brought to bear on the sentencing problem, without depriving the courts of any of their essential powers and without delegating judicial functions to an administrative body.

I approve of the Committee's excellent recommendations with regard to the treatment of youthful offenders. The increase in crimes committed by young persons in recent years has been a source of concern to us all. The proposed correctional system, which is patterned after the English Borstal system, should serve to round out our entire system of criminal punishment and to provide a needed bridge between the treatment provided for in the Juvenile Delinquency Act and that provided for adult criminals.

The plan of referring the cases of all convicted persons to a qualified board for advice before the court makes its final determination, will promote the more expeditious handling of the criminal dockets. Much of the time now spent by the conscientious judge in studying the records of the defendants who plead guilty will be saved. Nearly eighty-five per cent of all defendants plead guilty, I am told, on routine charges of violating the liquor laws, transporting a stolen automobile, forging a Government obligation, and for using drugs and the like. In these cases there is no testimony in open court as to the details of the crime and little opportunity to appraise the character of the offender. These must be ascertained from a study of the reports of the prosecuting authorities and from those of the probation officer.

I do not know, of course, what action this Conference will take on the Committee's recommendations, but assuming you concur in its conclusions and approve the proposed bill, I think this Conference might well consider what further steps should be taken to secure its enactment. Doubtless you will wish the executive branch of the Government to assume the responsibility for bringing it to the attention of the appropriate Committees of Congress. I should appreciate it, however, if the Conference would designate some judge or committee to cooperate

with us in this regard. After all, this is a revision of the basic law originating with the courts themselves, and it, therefore, would seem very desirable for members of the Federal Bench to join with us in explaining the plan to Congress.

Federal Juvenile Delinquency Act

Mr. Bennett, Director of the Bureau of Prisons, has asked me to remind you, and through you the Federal District Judges, of the important responsibilities placed on District Judges by the Federal Juvenile Delinquency Act. The success of this Act depends almost completely upon the care and sympathetic understanding with which it is administered; its aims can only be achieved through special diligence on the part of the trial judge. We must remember that the fundamental aim should be not to punish juvenile delinquents but to remake them through proper correctional treatment into persons who will be able to find their proper places in society. This molding of character can never be successful unless the correctional treatment for each juvenile delinquent is selected with the greatest care and understanding. It is a field of law in which long experience on the part of the judge is of the greatest importance. It is desirable, therefore, that in the larger districts a particular District Judge be singled out to deal with this type of case. It is clear that this special competence, which will contribute so much to the rehabilitation of juvenile delinquents, can best be achieved by a judge who has made this field his special province. I urge you to pass along these thoughts to the District Judges of your Circuits.

The Director of the Bureau of Prisons has also called my attention to the progress that has been made in reducing the length of time defendants are held in jail awaiting trial. In 1934 the average time spent in jail was about 29 days. The all-over, country-wide average has now decreased to 26 days. Perhaps

this may not seem a great reduction, but when it is realized that this average is computed by taking into account the amount of time spent in jail awaiting trial by nearly 40,000 defendants, it becomes more significant. It means that the work of the courts in handling criminal cases has been speeded up by at least 10 per cent. Some of the districts, indeed, have reduced the average period of jail detention before trial to as low as 12 days; others, unfortunately, have held defendants awaiting trial for as much as 70 days on the average. The nation-wide reduction, however, is most encouraging and indicates the progress that is being made in the more expeditious handling of the criminal dockets in the federal courts.

Qualifications of Probation Officers

I should like also to mention briefly the admirable report of Judge Magruder's Committee on Standards of Qualifications of Probation Officers. It is my hope that the suggestions of this Committee will be approved by your Conference. Good probation service can stem only from active, alert, intelligent, and experienced officers. There may be doubt as to whether it is wise to vest in the courts the power to appoint probation officers. If the Judges are to continue to select their own probation officers, these officers should satisfy the qualifications which are suggested by the Committee.

Useful as such standards as these are bound to be in the selection of probation officers, I hope that as time goes on more and more Judges will ask the help of the Civil Service Commission in recruiting new officers. Any judge can obtain the benefit of the Civil Service procedure merely by asking the District Director of the Civil Service Commission to hold an examination and provide him with a list of qualified applicants. The Judge may then select any one or none of those on the list as he chooses. The Commission, I am sure, would be glad to

supply this service. It is a procedure similar to that adopted by many Congressmen in choosing appointees to West Point and Annapolis. It is also used by certain Government agencies exempt from the compulsory provisions of the Civil Service Law. This procedure should help in improving the quality of our probation officers, and I hope that you will urge the District Judges to avail themselves of it.

Court Reporters in Federal District Courts

In my Annual Report for the year 1941, I urged the enactment of legislation to provide for salaried official reporters in all Federal Courts and to enable litigants appealing in forma pauperis to procure transcripts of the record without expense. This was in accord with a similar recommendation of the Conference in that year, made on the basis of a report of Judge Parker's Committee.

The lack of official salaried reporters has created serious difficulties in the administration of federal justice. The present system is extremely burdensome on litigants, especially in cases of protracted trials. If a party wishes to take an appeal, he is required to pay not only for his copies of the transcript, but also for the attendance of the reporter at the trial and for his services in recording the proceedings. The condition is even more deplorable in criminal cases, because of the fact that most defendants are financially unable to hire a reporter. The result is that many criminal cases in the Federal Courts are not reported at all, unless the prosecution has some particular reason for having a transcript prepared. If the defendant desires to appeal from a conviction in such an instance, he is practically precluded from securing a review of the question whether the evidence warranted the verdict of guilty, which frequently is the most important point the defendant desires to raise. Even in those instances in which a criminal trial is reported, the defendant frequently is unable

to pay for the cost of the transcript. While the statute which permits an appeal to be presented in forma pauperis exempts an appellant so proceeding from the payment of clerk's fees, it makes no provision for securing for him a copy of the stenographic transcript of the trial.

It seems manifest that the existing conditions require rectification. The lack of a system of official salaried reporters is in marked contrast to the practice prevailing in most state courts, and I am sure you agree with me that the adoption of some such system in the Federal Courts is long overdue. I am pleased that an appropriate bill has finally been prepared. The present bill is the result of conferences during this summer between Judge Parker, representatives of the Administrative Office of the United States Courts, the Bureau of the Budget and the Department of Justice. We shall present it to Congress at an early date.

Imprisonment for Failure to Pay Fine

Several members of the Department have recently expressed to me their concern over the 30-day period of imprisonment which a person who is unable to pay a fine imposed by a Federal Court must serve before he is permitted to take a poor convict's oath. Mr. Lyons, the Pardon Attorney of the Department of Justice, has pointed out, for instance, that in run-of-the-mill cases, the imposition of a fine in addition to imprisonment really amounts to nothing more than a sentence of additional imprisonment, since the majority of prisoners are unable to pay a fine. This situation could be remedied, presumably, by urging the District Court Judges to exercise greater restraint in imposing fines in those cases where a sentence is also imposed.

The problem is really a fundamental one and involves a reconsideration of the justice of the entire 30-day sentence rule. It would seem that under the

present law a fine is in many instances a very unfair type of punishment, since to a man of means it may be only a slight inconvenience, while to a poor man it may result in imprisonment. As Attorney General Jackson said in his Annual Report for 1940, "The incarceration thus becomes a penalty for poverty rather than punishment for the offense committed by the defendant." In some instances, however, such as those of falsification of records by foremen in pursuance of a plan to violate the Wages and Hours Law, the threat of 30-days' imprisonment would seem a valuable crime preventative. When dealing with a law, such as this, in which a fine is the sole punishment provided for the first offense, the only effective deterrent to a judgment-proof person may be the possibility of imprisonment. The complete abolition of the 30-day sentence would require, moreover, a much more careful examination of poor convicts in order to prevent abuses, and this might entail a considerable personnel expansion.

The problem is an intricate and difficult one upon which I do not feel able to make any specific recommendations at this time. It has occurred to me, however, that this is an admirable subject for consideration by a special committee appointed by the Conference. It is my sincere belief that the various reports which have been submitted by committees to the Conference constitute some of the most valuable contributions toward the improvement of our Federal Judicial system that have been made in recent years. I feel that the 30-day sentence problem could best be dealt with by such a committee, and I therefore ask you to consider the desirability of making such an assignment.

Federal Treatment of the Insane

Another very serious problem which I should like to see studied by a Committee of Judges appointed by this Conference is the treatment of insane

persons in the federal courts. There is each year a steady increase in the number of mentally abnormal or mentally deficient persons who appear in the Federal District Courts charged with violations of federal statutes. In the last year, particularly, the courts have had to deal with a very large number of mentally abnormal persons, who were charged with violations of the Selective Service Act, and other emergency acts. There have also been recently an ever-increasing number of feeble-minded juveniles appearing before the federal courts.

It is difficult to believe that there is at the present time no standard procedure in the federal courts for raising the question of sanity on motion of the court or of the prosecuting attorney; that there is no standard procedure and technique for making a determination of sanity or insanity; and, perhaps worst of all, that there is no fixed policy as to the disposition of a person determined to be insane. Federal Judges, I am told, have at times permitted persons clearly insane to stand trial and be convicted, and then have sentenced them, --not becaus they believed this was a desirable way to handle cases of this sort, but because there seemed to be no other practicable disposition of the case. If such a case is dismissed, the accused person, who may be socially dangerous, will return to society unless some state institution is willing to accept him. In order to avoid this, the judge permits him to be convicted and sentences him, with the knowledge that he will be cared for by federal authorities, if only for the term of his sentence.

The problem involves not only the proper procedure to be followed in raising the question of insanity and making a determination thereof, but also the problem of the proper disposition of such cases and the relationship between federal and state facilities for taking care of the insane. We are proceeding now with no definite policy and with no definite plan. I therefore suggest that

this Conference appoint a committee to study the matter in conjunction with officials of the Department of Justice and appropriate medical authorities.

Selection of Jurors

Through the kindness of Judge John C. Knox, the recently completed report of the Committee on Selection of Jurors has been made available to me. The report is most comprehensive, and to me convincing. The recommendation that standards for jury selection should be controlled by Federal law, rather than by compulsory reference to state law, seems to me but one more of the steps which we must take in order to integrate and modernize the procedure of our Federal courts. As the Committee points out:

> "Such fundamental changes in the Federal judicial system as the Federal Rules of Civil Procedure, the forthcoming Rules of Criminal Procedure, the Rules of Bankruptcy, Admiralty, and Copyright Procedure, uniform appellate practice in most cases, and the coordination of all branches of the Federal court system through the media of the Supreme Court, the Judicial Conference of Senior Circuit Judges, and the Administrative Office of the United States Courts tend to create for the Federal Government an independent method of judicial administration which can and should operate upon its own base without compulsory reference to state law. It is entirely consistent with this highly successful principle that the standards for jury selection should be controlled by Federal law, and not by the legislatures of the states."

It has often seemed to me that we have only recently begun to realize the true basis upon which our careful solicitude for the special peculiarities of state law should rest. It is a fundamental belief in our American jurisprudence that the differences in the common law of the various states is but a natural and desirable reflection of the differences in modes of life, economic structure, and social organization of the states. It is something of an anomaly, therefore, that the Federal courts should so long have been tied to state procedure by the

various conformity acts and yet have been so free under the rule of Swift v. Tyron to over-ride state substantive law. The new rule of the Erie Railroad case and the creation of a uniform federal procedure have now completely reversed this state of affairs, and I think a more rational and equitable application of state law in the federal courts has resulted. A uniform system of selecting jurors in the federal courts is thoroughly in accord with this new point of view.

The other suggestions of the Committee, particularly those concerning the use of questionnaires to determine the qualifications of jurors and the use of the jury pool system, are equally sound. I was delighted with the vigorous discussion in the report of racial and class discrimination in the selection of juries, and the relation of this to the equal protection clause in the Fourteenth Amendment. This is a matter which is fundamental to any proper system of jury selection. I hope that the Conference will approve this report and that it will be widely circulated among the judiciary and the legal profession.

Procedure in Naturalization Cases

For a good many years suggestions have been made that the procedure for the naturalization of aliens, particularly when they take their final oath before a United States Court, be made more dignified. In the last few years applications for naturalization have increased enormously, particularly since the war. This pressure has a tendency to make the ceremony of induction more casual. Some courts, however, have taken occasion to make such ceremonies memorable.

I remember going to a meeting on May 10, 1915, where about 5,000 aliens had been naturalized. President Wilson spoke to them, saying: "This is the only country in the world which experiences this constant and repeated rebirth. . .

This country is constantly drinking strength out of new sources by the voluntary association with it of great bodies of strong men and forward-looking women out of other lands. . . being renewed from generation to generation by the same process from which it was originally created. . ." The aliens who made up the audience were made to feel that they were bringing strength to this country. They were not lectured; they were welcomed. I believe that, if the naturalization proceedings emphasize the significance and privilege of citizenship, it would have great value in unifying the new recruits to the American nation.

Joint Resolution No. 67, of the 76th Congress, provided that the Judge or his designee, when the decree of naturalization is granted, should address the new citizens "upon the form and genius of our Government and the privileges and responsibilities of citizenship; it being the intent and purpose of this section to enlist the aid of the judiciary. . . to dignify and emphasize the significance of citizenship."

Naturalization is a continuing process and unless responsibility for bringing about an improvement of the system is fixed somewhere it is improbable that many changes will be made. The criticism of our present procedure has gone on for years; yet little has been done about it. I suggest, therefore, that the Conference may wish to consider first the designation of the Administrative Office as a center of information to cooperate, with the District Judges in carrying out such plans of procedure as may seem advisable to them; and secondly that the matter be raised for discussion at the conferences in the various circuits.

Appellate Procedure in Interstate Commerce Commission Cases

Before concluding I should like to mention a suggestion which has come to me from the Solicitor General. It concerns a proposed change in the method of handling Interstate Commerce Commission order cases and would substitute certiorari

procedure for the present statutory appeal to the Supreme Court. Legislation to effect such a change would be desirable in order to bring judicial review in Interstate Commerce Commission cases into line with that which obtains in the case of orders made by other administrative bodies.

Since 1914, when the Federal Trade Commission was created, statutes providing for court review of the orders of administrative bodies have almost invariably specified hearing in a circuit court of appeals. The decision of the circuit court of appeals in such cases is then subject to further review in the Supreme Court by certiorari (since 1925). The legislative policy favoring such discretionary review is a sound one and there appears no reason why the parties in ICC litigation should have an appeal by right to the Court when parties similarly situated in cases involving orders of the National Labor Relations Board, Federal Power Commission, or Administrator of the Fair Labor Standards Act may obtain Supreme Court review only in the Court's discretion.

If certiorari procedure is substituted for statutory right of appeal in these cases, it would be advisable at the same time to assimilate judicial review further to that which generally obtains and provide that Interstate Commerce Commission orders be first reviewed in Circuit Courts of Appeals rather than in specially constituted three-judge district courts. The same results could be accomplished by circuit courts of appeals review. This change would again have the advantage of conforming review in Interstate Commerce Commission cases to the type of review obtaining in analagous cases and of obviating the necessity for convening specially the court which first reviews an Interstate Commerce Commission order.