

## REPORT OF JUDICIAL SECTION OF 1928 CONFERENCE ON THE CRIMINAL LAW.

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*To the Crime Commission appointed by the Governor of the Commonwealth under authority of Concurrent Resolution No. 86, approved May 13, 1927, P. L. 1035:*

The Conference of Judges held at Philadelphia on Friday and Saturday, April 6 and 7, 1928, was called by the Chief Justice of Pennsylvania, at the request of Attorney General Baldrige and Charles E. Fox, Esq., Chairman of the Commission on Penal Laws. When the request was received, the Chief Justice laid it before the Supreme Court, and that body determined to take a referendum of those who would be asked to attend the conference, if held. Accordingly a letter was sent to all of the judges who sit in the criminal courts of the Commonwealth asking whether, in their opinion, such a meeting should be called; and, as April 6th and 7th seemed to be the only days which fitted into the calendars of most of the courts of the various counties, those addressed were asked whether, if they favored the proposed conference, these dates would suit them. The replies received were almost unanimous in favor of holding the conference on the days suggested. On March 2, 1928, a letter calling the conference, was sent to the 14 judges of the appellate courts, to the 116 judges of the Courts of Common Pleas, to the 10 judges of the Municipal Court of Philadelphia and to the 6 judges of the County Court of Allegheny County; this was followed by another general letter outlining the program for the conference and enclosing an agenda for prior consideration.

The conference was attended by all 7 members of the Supreme Court, 5 members of the Superior Court, 83 members of the Common Pleas, all 10 members of the

Municipal, 2 members of the Allegheny County Court, 2 ex-judges of the Common Pleas, and 3 judges of the Orphans' Court, privileged to sit in the criminal courts when called into the Common Pleas,—in all, 112 judges. For a full list of those in attendance see pp. xxxiv-xxxvii, following.

Prior to the conference the following committees were constituted:

*Committee on Arrangements:*

ROBERT VON MOSCHZISKER, *Chairman*.

WILLIAM B. LINN, *Vice-Chairman*, Superior Court.

THOMAS F. BAILEY, Bedford County.

WILLIAM F. HARGEST, Dauphin County.

J. WILLIS MARTIN, Philadelphia County.

RICHARD W. MARTIN, Allegheny County.

WM. S. MCLEAN, JR., Luzerne County.

MARION D. PATTERSON, Blair County.

RUSSELL C. STEWART, Northampton County.

*Committee on Coöperation* between various groups in conference:

JOHN W. KEPHART, *Chairman*, Supreme Court.

A. R. CHASE, Clearfield County.

JAMES B. DREW, Allegheny County.

J. FRANK GRAFF, Armstrong County.

WM. A. MCCONNEL, Beaver County.

WM. M. PARKER, Venango County.

CLAUDE T. RENO, Lehigh County.

URIAH P. ROSSITER, Erie County.

ROBERT S. STOTZ, Northampton County.

Chief Justice ROBERT VON MOSCHZISKER was chosen as Chairman of the Judicial Section, and HON. JAMES GAY GORDON, JR., of Philadelphia, as Secretary.

In opening the first meeting of the conference, at a joint session attended by the assembled judges, district attorneys, and the members of the Commission, before the latter two groups retired for their own separate

conference, the Chairman, in order to indicate the general purpose of the meeting and explain the work about to be done by the Judicial Section, said, among other things: "Those who formulated the agenda for the Judicial Section thought we should, at the present meeting, take up only matters of substance, not of form, however important the latter might be. It also seemed best not to enter upon what may be termed the social causes of crime, nor attempt to consider extraneous, alleged scientific, methods of crime prevention, but to devote ourselves to solving some of the most pressing problems which we, as judges, meet in the actual trial and sentencing of defendants in the criminal courts. Even within the restricted areas which the Judicial Section will enter, we have narrowed the program for our work; this course was decided on, not because those in charge of the preliminary arrangements failed to appreciate the many diverse themes that might very properly be considered, but rather because of the impracticability of undertaking additional subjects in the limited time at our disposal. The subjects for consideration by the Judicial Section, set forth in the agenda, are restricted to those which have to do with the trial and sentencing of persons accused and convicted of crime. We have not gathered to draft statutes; we are here merely to formulate our views, after discussion, and to express them to the Crime Commission, which, in turn, will advise the Legislature, whose duty it is to make the statute law and to initiate constitutional amendments. We need not even debate whether certain of the suggestions on our program require constitutional amendments. If such amendments are required to give validity to proposed legislation, let us take it for granted, so far as our present work is concerned, that, should we recommend anything which calls for a change in the fundamental law, and our advice is accepted, the change will be made in due order." The conference accepted these guiding suggestions, which are here quoted so that the work of the Judicial Section may be more clearly understood.

After discussion, the following resolutions (the numbers corresponding with the numbering of the questions on the agenda) were passed with practical unanimity:

1. *Resolved*, That the law forbidding adverse comment, by court or counsel, on the failure of a defendant on trial to offer himself as a witness, should be repealed, to the end that all legitimate argument and comment thereon shall be allowed.

2. *Resolved*, It is the sense of the conference that, whenever, in the opinion of the trial court, the police or court records sufficiently indicate that a defendant is a professional criminal, the Commonwealth should be permitted to present that fact in its case in chief, and that such police and court records should be admissible in evidence, in the discretion of the trial judge.

3. *Resolved*, That the right to separate trials of defendants jointly indicted for capital offenses should rest in the sound discretion of the trial court as in other cases.

4. *Resolved*, That the law should require the examination of prospective jurors on their voir dire to be conducted exclusively by the trial judge, subject to the right of counsel, after such examination, to suggest additional questions to be put to the prospective juror by the trial judge, in his discretion.

(The suggestion was made by Judge SMITH, of Susquehanna County, that when impanelling juries in criminal cases, the jurors called for examination on their voir dire should be examined separate and apart from the balance of the panel; but since this would not be necessary in many cases, and since it is a course which can, under the law as it now stands, be pursued in a proper case without an enactment upon the subject, the matter was not submitted to the conference for action.)

5. *Resolved*, That in all criminal cases, except capital cases and where a constitutional question is involved, the

laws should be so amended as to permit appeals only after allowance thereof by a judge of the appellate court to which the appeal lies.

5. (a) *Resolved*, That the time for taking appeals in criminal cases should be limited to three weeks.

(The following resolution on agenda No. 6 (a) and (b) was adopted but afterwards supplemented as below) :

6. (a) (b) *Resolved*, That a law should be adopted providing that in criminal prosecutions all motions preliminary to trial, such as demurrers to indictments, motions to quash and for bills of particulars, shall be deemed to have been decided against the party advancing them and be subject to assignment as error on appeal from final judgment in the case, unless, within four days after hearing the same, the trial court shall decide them otherwise; and that all motions subsequent to the verdict shall in like manner be deemed to have been dismissed, unless the court shall decide otherwise within 30 days after the hearing: provided, that the court may from time to time by written order suspend for a fixed period, at no one time to exceed 30 days, the operation of this rule.

(The conference thereafter adopted the following resolution as its final judgment in the matter of subjects No. 6 (a) and (b)) :

6. (a) (b) *Resolved*, That the Legislature be requested to pass a general act authorizing the appellate courts of the Commonwealth, with the approval of a majority of the judges of the courts of quarter sessions of the peace and oyer and terminer, to adopt, promulgate and enforce such rules as will expedite and standardize the trial and punishment of those charged with criminal offenses, but so always as not to alter the statutory definition of any crime or to increase or diminish the punishment provided therefor.

6. (c-1) *Resolved*, That legislation should be enacted establishing a uniform rule of four days after the trial within which motions for a new trial and in arrest of judgment must be filed.

6. (c-2) *Resolved*, That it is the sense of the conference that in granting a new trial the court hearing the motion should file of record a general statement of its reasons for that course.

(This is an expression of the view of the assembled judges, not a suggestion for legislation.)

7. *Resolved*, That it is the sense of the conference that the trial of criminal cases not involving the higher felonies, by a judge without a jury, if the accused voluntarily gives his consent thereto, is desirable and should be incorporated in our penal system.

8. *Resolved*, That it is the sense of the conference that a system of increasingly graduated penalties dependent upon the number of former convictions of the accused but without the necessity of including such former convictions in the indictment on trial, should be incorporated in our penal system.

9. *Resolved*, That the Act of June 29, 1923, P. L. 975, commonly known as the Ludlow Act, has been found unsatisfactory in its practical operation under present conditions, and should be repealed.

Propositions 10, 11 and 12 on the agenda were disposed of as follows:

10. The discussion of this proposition resulted in a motion, which was carried, that a committee be appointed by the chairman to investigate and report upon the general subject of the best method of correcting the abuses and deficiencies incident to the present system of trial by jury of questions depending for their solution upon scientific or special knowledge and experience, and, particularly, to consider means by which the testimony of expert witnesses may be protected from the harmful influences of partisan interest.

11. After a discussion of the subject covered by the eleventh proposition of the agenda, it was moved and carried that a committee be appointed by the chairman to investigate and report upon a suitable method of furnishing trial courts with reliable information as to the mental condition of persons indicted for or convicted of crime, and the existence of any mental disease or defect which would affect the responsibility of such persons. The committee was also instructed to report upon the desirability of separating the trial of a defense of insanity from other defenses in criminal cases, so as to have that issue tried at a different time before a special jury, and, if the recommendation should be in favor of so separating the trial of that defense, to suggest methods of procedure.

12. After discussion, the conference decided that a committee, to be appointed by the Chairman, should be instructed to consider the present methods of selecting jurors in the various judicial districts of the Commonwealth, and to make such recommendations for changes therein as, under the conditions existing in the different districts, may be conducive to an improvement in the character of jurors selected.

The Chairman appointed committees as follows:

On proposition Nos. 10 and 11:

MR. JUSTICE WILLIAM I. SCHAFER, Supreme Court, *Chairman*.

JUDGE JAMES M. BARNETT, Perry County.

JUDGE E. M. BIDDLE, JR., Cumberland County.

JUDGE FRANCIS S. BROWN, JR., Philadelphia County.

JUDGE FRANK L. HARVEY, Clarion County.

JUDGE BENJAMIN R. JONES, Luzerne County.

JUDGE WILLIAM H. KELLER, Superior Court.

JUDGE HARRY S. McDEVITT, Philadelphia County.

JUDGE DONALD P. McPHERSON, Adams County.

JUDGE HORACE STERN, Philadelphia County.

JUDGE ROBERT A. STOTZ, Northampton County.

JUDGE W. BUTLER WINDLE, Chester County.

JUDGE J. AMBLER WILLIAMS, Montgomery County.

On proposition No. 12:

JUDGE THOMAS D. FINLETTER, Philadelphia County, *Chairman*.

JUDGE A. R. CHASE, Clearfield County.

JUDGE JOHN E. FOX, Dauphin County.

JUDGE RICHARD HENRY KOCH, Schuylkill County.

JUDGE GEORGE W. MAXEY, Lackawanna County.

JUDGE WM. S. MCLEAN, JR., Luzerne County.

JUDGE FRANK P. PATTERSON, Allegheny County.

On Resolution (c) below:

JUDGE WILLIAM B. LINN, Superior Court, *Chairman*.

JUDGE JOHN E. EVANS, Cambria County.

JUDGE WM. C. FERGUSON, Philadelphia County.

JUDGE WM. M. HARGEST, Dauphin County.

JUDGE ELDER W. MARSHALL, Allegheny County.

JUDGE PAUL N. SCHAEFFER, Berks County.

JUDGE A. T. SEARLE, Wayne County.

The Chairman and the Secretary of the conference are ex officio members of the above committees.

The committees are expected to be prepared to report at the call of the Chair in the month of November, 1928.

It was further

(a) *Resolved*, That it is the sense of the conference that the indiscriminate allowance, under existing laws, of a supersedeas in criminal cases where the appeal is without substantial merit, should, in practice, be more generally discouraged.

(b) *Resolved*, That it is the sense of the conference that the courts should expedite the trial and disposition of criminal cases as much as practicable, and that trials should not be continued except for substantial reasons.



(c) *Resolved*, That a committee be appointed to investigate and report at a future conference whether the law should not be altered so as to permit the rendering of verdicts by agreement of less than twelve jurors in all except homicide cases. (Carried 26 to 25.)

(d) *Resolved*, That the Judicial Conference shall be a continuing body and shall meet at the call of the Chief Justice of the Commonwealth. The Committees on Arrangements and Coöperation shall be authorized to report to the Commission on Penal Laws and to continue in existence as a part of the organization. The Chief Justice shall be authorized to appoint such other committees, and to refer such matters to them as in his judgment shall be proper. (Carried unanimously.)

(e) *Resolved*, That one hundred and ten judges, who administer the criminal law of Pennsylvania, convened in conference at Philadelphia to consider the state of the criminal law and to make recommendations for its improvement, so that it may more fittingly serve the needs of the present time, send their felicitations to the HONORABLE WILLIAM HOWARD TAFT, Chief Justice of the United States, who long since inspired the general movement in which they are engaged, and wish him a long life of health, happiness and continued service to the public. (Offered by Mr. Justice KEPHART and carried unanimously.)

(Signed) ROBERT VON MOSCHZISKER, *Chairman*.  
JAMES GAY GORDON, JR., *Secretary*.

Mr. Chief Justice TAFT sent the following acknowledgment to resolution (e) above:

"I am greatly indebted to your Conference of the Judges of Pennsylvania for the kindly message which you send me. I think your meeting must be productive of good. I am greatly in favor of the solidarity of the judicial force so that with the same aims we shall adopt more or less the same methods. I welcome the example

that you have set for other judges in other States in respect to having such a discussion as you have had."

NOTE.—At the conclusion of the conference, the Chairman and other officers were thanked by a rising vote; expressions of appreciation were given to the Law Association and to the Lawyers' Club of Philadelphia, to Hon. Francis Shunk Brown, Chancellor and President of these associations, and to Mr. Thomas Robins, the Prothonotary of the Supreme Court at Philadelphia, for their hospitality, Mr. Robins having entertained all the visiting and local judges at luncheon at the Rittenhouse Club on Friday, and the Law Association and the Lawyers' Club having entertained all participants at the conference, with the ladies who accompanied them, at luncheon in the ballroom of the Bellevue-Stratford Hotel on Saturday.

LIST OF JUDGES WHO ATTENDED THE CONFERENCE AT  
PHILADELPHIA ON APRIL 6 AND 7, 1928.

*Supreme Court.*

Chief Justice Robert von Moschzisker.

Justice Robert S. Frazer.

Justice Emory A. Walling.

Justice Alex. Simpson, Jr.

Justice John W. Kephart.

Justice Sylvester B. Sadler.

Justice William I. Schaffer.

*Superior Court.*

Judge Frank M. Trexler.

Judge William H. Keller.

Judge William B. Linn.

Judge Robert S. Gawthrop.

Judge Jesse B. Cunningham.

*Common Pleas.*

	<i>Dist.</i>
Alessandroni, Eugene V. ....	1
Bailey, Thomas F. ....	20
Barnett, James M. ....	41
Berkey, John A. ....	16
Biddle, E. M., Jr. ....	9