MINUTES OF SECOND JUDICIAL CONFERENCE HELD AT BEDFORD SPRINGS, PA., JUNE 24 AND 25, 1929.

The Second Judicial Conference was called to order June 25, 1929, at 2:30 P. M. in the Convention Hall, Bedford Springs Hotel, Bedford Springs, Pa.

Chief Justice VON MOSCHZISKER, Chairman, opened the conference with an address, during the course of which he stated the following facts:

"Twelve bills, embodying recommendations made by the 1928 Judicial Conference, were drafted by the Crime Commission and introduced in the last Legislature. Eleven of these bills, dealing with rules of procedure either in the trial of criminal cases or on appeal in that class of cases, failed of enactment, the majority of them having died in committee. The twelfth bill, which had to do with increasing and grading penalties for persistent offenders, passed in an amended form and was signed by the Governor.

"Of two bills drafted by the Crime Commission at the suggestion of the District Attorneys' Association, one, increasing the penalty for involuntary manslaughter, was enacted in an amended form, the other, having to do with extra-state subpœnas, was enacted, but vetoed by the Governor for reasons stated by him, among others, that this matter is being dealt with by the Commission on Uniform State Laws, which is preparing a general statute on the subject.

"Three bills, originating with the Crime Commission and drafted by it, which provide a state-wide system of supervising paroles from state institutions, were enacted into law. Two other bills, drafted by the Commission, concerning bail-jumping and regulating the use of firearms, failed.

"Finally, two bills, one authorizing the collection of criminal statistics and the other continuing the Com-

mission, were passed; but, for reasons stated by the Governor, he felt obliged to veto both these measures, the first because it conflicted with the new Administrative Code, and the second because of vital defects in its title.

"In brief, the work of the Commission, which made twenty-one recommendations to the Legislature, resulted in the passage of eight bills, only one of which grew out of the Judicial Conference. Five of the measures enacted were approved by the Governor, and three were vetoed."

Then the Chairman added:

"This has been widely heralded as a bad beginning, but an article in a recent issue of the *Journal of the American Judicature Society* gives statistics showing our situation not to be unique: Of five bills recommended by the Association of the Bar of the City of New York to the Legislature of that State in 1926, only one was adopted; of six bills introduced, at the request of that society, in the Legislature of 1927, but one was adopted; and all the bills fathered by the society in the session of 1928, failed. In the State of Oklahoma, the bar association recommended fifteen measures to the Legislature at the session of 1928, but not one of them was enacted. In Massachusetts, in 1928, the Judicial Council recommended thirty-four bills, only ten of which were enacted, and those of minor importance."

The full text of the Chairman's remarks is published in the *Legal Intelligencer* of June 28, 1929, and the *Pittsburgh Legal Journal* of June 24, 1929.

Justice WILLIAM I. SCHAFFER reported that the two matters assigned to his committee by the 1928 Conference had been found to divide themselves naturally into three subjects, and had been assigned to subcommittees accordingly. He called first on Judge WILLIAM H. KELLER to report on the proposition, "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." Judge KELLER reported two bills (the first drawn by Judge HORACE STERN, of the subcommittee, and the second by Judge E. M. BIDDLE), as follows:

(1)

"AN ACT to authorize the summoning of expert witnesses by the court in criminal cases, providing for their examination of the defendant or defendants in such cases and of papers, documents and things relevant therein, regulating the presentation of the testimony of witnesses so summoned, and providing for the fixing of their fees and expenses, and for payment thereof by the county as part of the costs and expenses of trial.

"Section 1. Be it enacted, etc., That whenever expert testimony shall be relevant and admissible in the trial of any person charged with crime in any court [of oyer and terminer or quarter sessions of the peace] of this Commonwealth, the *tribunal* [court] having jurisdiction of the indictment, or a judge thereof, may, in its or his discretion, either before or at the trial thereof, by written order, designate and direct to be summoned one or more disinterested competent persons, expert in the required field of knowledge, as witnesses who may be called by the court to give evidence before *it or* the jury empaneled to try said indictment.

"Section .2 The said witnesses shall, in advance of giving testimony, make such reasonable examination of the defendant or defendants, or of any and all relevant papers, documents, matters or things concerning which opinion evidence is wanted, as may be necessary and as the court may authorize,

and shall file with the court a report in writing of said examination or examinations, which shall be accessible to the district attorney and to the attorney or attorneys for the accused.

"Section 3. On the trial of the accused the court may, in its discretion, call and examine the said persons so designated and summoned as aforesaid as witnesses, and thereafter they may be cross-examined on behalf of the Commonwealth and the accused respectively. Their evidence shall be subject to the same rules of evidence as would govern the presentation of like testimony by expert witnesses called by the Commonwealth and the accused. The court shall instruct the jury that the evidence of the witnesses thus called to testify in the case is to be considered with all the other evidence in the case and is not to be given preponderating weight because of the fact that the witnesses were called by the court.

"Section 4. The expert witnesses summoned by the court shall receive reasonable compensation for their services and expenses, to be fixed by the court and paid by the county in which the indictment shall be triable, as part of the costs and expenses of the trial.

"Section 5. The courts [of oyer and terminer and quarter sessions of the peace of this Commonwealth] may adopt general rules designed to effectuate and promote the purpose and intent of this act.

"Section 6. This act shall become effective immediately, and shall apply to all indictments now pending or hereafter presented whether the offense charged therein was committed before or after the passage of this act."

(2)

"AN ACT to regulate the calling of expert witnesses, in criminal cases, by the Commonwealth and by the defendant or defendants.

"Section 1. Be it enacted, etc., That in the trial of any criminal case in any court [of oyer and terminer or court of quarter sessions] of this state in which either the Commonwealth or the defendant or defendants may desire to establish any fact by the opinion evidence of expert witnesses, the district attorney, or his assistant in charge of such case, and counsel for the defendant or defendants, shall, within a reasonable time prior to the first day of the week in which such case is set for trial, notify the judge or judges of the court of their intention to call such expert witnesses and of the facts which they wish to establish by the opinion of such witnesses. A failure to give such notice [shall amount to] *may be treated as* a waiver of the right to call such witnesses on the trial of the case, and, in the event of such failure, the trial judge may, on the trial, refuse to permit such witnesses to be called or to testify. *The* [said] courts may, by general rule, fix the time within which the notice of intention to call expert witnesses shall be given."

On motions seconded and carried, the first of the above acts was approved by the Conference in the amended form indicated by the corrections noted therein, the parts enclosed in brackets to be eliminated, and the insertions, in italics, to become part of the draft.

The second bill was approved by the Conference, with the amendment of line 14 of section 1, striking out the words "shall amount to" and inserting, in place thereof, "may be treated as," after Judge KELLER stated that the two proposed acts were consistent with and supplemental to one another and were not submitted as alternative propositions, though so stated in the printed report of Justice SCHAFFER'S Committee.

On the proposition, "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 respon-

sibility of such persons," Justice SCHAFFER stated that his committee submitted for the consideration of the conference an Act of Assembly amending the first paragraph of section 308 of the Mental Health Act of July 11, 1923, P. L. 998, 1005, and that this was intended to meet the situation created by the decision in Commonwealth v. Barnes, 280 Pa. 351, 354. He introduced Judge J. AMBLER WILLIAMS, chairman of the subcommittee in charge of this matter, who discussed the conclusions of the committee and moved that an amending act be approved as follows:

"AN ACT to amend the first paragraph of section 308 of an act approved the eleventh day of July, 1923, P. L. 998, entitled 'AN ACT for the prevention and treatment of mental diseases, mental defects, epilepsy, and inebriety; regulating the admission and commitment of mental patients to hospitals for mental diseases and institutions for mental defectives and epileptics; governing the transfer, discharge, interstate rendition, and deportation of mental patients; providing for the payment by individuals, counties, or the Commonwealth of the cost of the admission, care, and discharge of mental patients; and imposing penalties.'

"Section 1. Be it enacted, etc., That the first paragraph of section 308 of the act approved the eleventh day of July, 1923, P. L. 998, entitled, 'AN ACT for the prevention and treatment of mental diseases, mental defects, epilepsy, and inebriety; regulating the admission and commitment of mental patients to hospitals for mental diseases and institutions for mental defectives and epileptics; governing the transfer, discharge, interstate rendition, and deportation of mental patients; providing for the payment by individuals, counties, or the Commonwealth of the cost of the admission, care, and discharge of mental patients; and imposing penalties,' be and is hereby amended to read as follows:

"Section 308. When any person detained in any prison, whether waiting trial *or before or after sentence* or *while* undergoing sentence, or detained for any other reason (e. g. as a witness), shall, in the opinion of the superintendent, jail physician, warden, or other chief executive officer of the institution or other responsible person, *or in the opinion of the district attorney,* be insane, or in such condition as to make it necessary that he be cared for in a hospital for mental diseases, the said superintendent, jail physician, warden, or other chief responsible officer of the institution, or other person, *or the district attorney,* shall immediately make application, upon a form prescribed by the department, to a law judge of the court having jurisdiction of the charge against said person, or under whose order he is detained, for commitment of said person to a proper hospital for mental diseases. *Upon receipt of said application, or on his own motion if it appear to him to be necessary,* the said judge shall, *after ten (10) days' notice to the private prosecutor, if there is one, and to the district attorney, if he is not the applicant for the commitment, and to such other persons as the judge may designate,* [forthwith] order an inquiry by two qualified physicians, or by a commission as provided in section three hundred and four of this act, who shall immediately examine the said person and make written report of their findings to the said judge. If, in their opinion, the person so detained is insane, the physicians shall so state in a certificate conforming to the requirements of section three hundred and two, or the commission in a report conforming to the requirements of section three hundred and four of this act. They shall also report whether, in their opinion, such person is of criminal tendency. The said judge may, in his discretion, summon other witnesses and secure further

evidence. If he is then satisfied that the person thought or alleged to be insane is in fact insane, he shall order the removal of such person to a hospital for mental diseases. If the prisoner is a convict serving sentence, or if he is of criminal tendency, he shall be removed to a state hospital for insame criminals. In any other case, the judge shall commit him to some other hospital for mental diseases."

Objections were made by Judges WICKERSHAM and TAULANE that, if one accused of homicide were sent away to an insane asylum before trial, he might not be tried on the charge at all.

Justice SCHAFFER, in replying to these criticisms, stated that the proposed amendment makes no real change in the law, but broadens the scope of its usefulness by meeting the position which the Supreme Court was required to take in Com. v. Barnes, 280 Pa. 351, 354.

The Chairman of the Conference called attention to the phrase "other responsible person," and to the limitations which, by judicial construction, had been put on it, and further explained the act.

Judge MAYS suggested that notice to parties interested should be included.

After discussion, it was agreed, on motion carried, that if the present Mental Health Act does not already provide for ten days' notice to the prosecutor and the district attorney, such a provision should be inserted in the proposed amendment to section 308, and, with this proviso, the suggested amending act was approved by the conference.* (Motion by Judge J. AMBLER WIL-

* Note: Judge LINN, having made an examination of the act, reported that, in order to carry the above motion into effect, it will be necessary to strike from the 18th line of section 308 the word "forthwith," and to insert in place thereof, "after ten (10) days' notice to the private prosecutor, if there is one, and to the district attorney, if he is not the applicant for the commitment, and to such other persons as the judge may designate." This amendment has been incorporated in the above draft of section 308, and put in italics, as usual.

LIAMS, seconded by Judge CHARLES L. BROWN and Judge FINLETTER).

Justice SCHAFFER introduced Judge LINN as chairman of the subcommittee having charge of the third matter referred to Justice SCHAFFER'S committee, i. e., the question of "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 tribunal, and, if the recommendations should be in favor of so separating the trial of that defense, to suggest methods of procedure."

Judge LINN stated that the committee submitted for the consideration of the conference: (1) A proposed amendment to the Constitution; (2) A bill providing that a court of three judges without a jury shall promptly try the plea of insanity at the time of the alleged commission of the crime; (3) A bill providing for a special jury of six to try the plea.

He explained that "a majority of the members of the committee had come to the conclusion that more intelligent consideration of the expert testimony generally submitted to support the plea of insanity could perhaps be given by three judges than by any special jury that might ordinarily be drawn; that by vesting in the court the power to find the fact, a desirable centralization of control of the proceeding would also result. The court, for example, after having heard enough evidence to satisfy it as to the fact in dispute, might decide to hear further evidence,—a step which would shorten the trial and reduce the expense of it, though one that could not readily be taken if the fact had to be found by a jury. A majority of the committee recommends the adoption of the statute providing for the trial of the insanity plea by a court of three judges. The proposed amendment to the Constitution is phrased to permit the adoption by the Legislature of either form of trial."

The constitutional amendment proposed was as follows:

AMENDMENT TO CONSTITUTION.

"The General Assembly may provide by law for the separate trial, either by a court of three judges, or by a special jury, each to be composed and selected as it shall specify, of any plea of insanity at the time of the alleged commission of a crime, prior to the trial of any other plea, and that the finding of the court or the verdict of the special jury shall be conclusive of the fact thereby determined on the subsequent trial of any other plea."

Moved by Judge LINN, seconded by Judge BARNETT, that this constitutional amendment be adopted. Carried.

Judge LINN offered two acts, as follows, and, on his motion, duly seconded, the first of these was approved by the Conference:

"AN ACT requiring the trial of the plea of insanity at the time of the alleged commission of a crime, before the trial of any other plea to the indictment, providing for the filing of such special plea and the effect thereof, establishing a special tribunal for its trial and providing relevant rules of practice and procedure.

"Section 1. Be it enacted, etc., That the defense of insanity, at the time of the alleged commission of any crime, must be specially pleaded within fifteen days after indictment found, unless the time be extended by the court for a sufficient cause to be stated in the order of extension. Unless filed within said period the plea shall not be received.

"Section 2. Immediately upon notice of the filing of such plea the Commonwealth shall join issue and the clerk shall set the case down for trial on that issue alone, and the trial thereof shall take place before the court as herein constituted, without a jury, within thirty days after plea filed, unless

the time be extended by the court for a sufficient cause to be stated in the order of extension.

"Section 3. For the trial of such issue, the court shall be composed of three judges; the presiding judge shall associate with himself two other judges of the judicial district, or from any other district or districts called in accordance with existing law providing for the assignment of judges to districts other than their own. Said court shall be the judge of the law and the facts.

"Section 4. As heretofore in the case of such defense, the burden of proof shall be on the accused, who shall first produce the evidence to be offered in support of the plea, with the right in the Commonwealth to cross-examine. After the evidence on behalf of the accused has been received, evidence of the Commonwealth may be offered, with the right in the accused to cross-examine. Thereafter evidence in rebuttal may be received as the court may deem proper in accordance with the rules governing such evidence. At any time during the taking of the evidence, if the court is of opinion that sufficient evidence has been offered to enable it properly to determine the issue, the court may decline to hear further evidence.

"Section 5. Of its own motion, or on motion of the Commonwealth or of the accused, the court may appoint not more than three experts to examine the accused and investigate his mental condition and to testify at the trial of such plea. Prompt notice shall be given by the clerk of the court to the district attorney and to counsel for the accused of the appointment of expert witnesses with their names and addresses, and such witnesses may be called by either party or by the court. If called to testify, such expert shall be subject to examination and objection as to competency and qualification as an expert witness and as to bias, and if examined by the court, either party shall have the same right to ob-

ject to the questions asked and the evidence given as though such witness were called and examined by a party. The order of cross-examining such witness shall be determined by the court. The court shall fix the compensation of such expert witnesses at such rate as to the court may seem reasonable, and payment thereof shall be made by the county on order of the court.

"Section 6. After consideration of the evidence and such argument as the court may wish to hear, it shall promptly make and file of record a finding in substantially the following form:

Commonwealth	}	Court of
v.		Term
.....		No.

In the above entitled case the court finds that at the time of the commission of the alleged crime the accused was insane.
was not

"Section 7. Said finding shall be part of the record of the case and in all subsequent proceedings shall be accepted in evidence as conclusive of the fact thereby determined, and the issue raised by the special plea shall not thereafter be questioned in any subsequent proceeding in the case, save on appeal as herein provided.

"Section 8. No appeal shall be taken from the trial on the special plea or from proceedings in connection therewith, but the same shall be subject to assignment of error and review in accordance with the practice in other cases, if and when an appeal is taken by the accused in accordance with existing law, after sentence has been imposed.

"Section 9. If the court finds the accused was insane at the time of the commission of the alleged crime, the accused shall not thereafter be tried on the indictment, but shall be dealt with in accord-

ance with the provisions of the Mental Health Act of 1923 and its supplements and amendments.

"Section 10. This act shall apply only to crimes committed after its passage. All laws or parts of laws inconsistent herewith are hereby repealed."

The second act reported, but not approved, was as follows:

"AN ACT requiring the trial of the plea of insanity at the time of the alleged commission of a crime, before the trial of any other plea to the indictment, providing for the filing of such special plea and the effect thereof, establishing a special jury for its trial, and providing relevant rules of practice and procedure.

"Section 1. Be it enacted, etc., That the defense of insanity at the time of the alleged commission of a crime must be specially pleaded within fifteen days after indictment found unless the time be extended by the court for sufficient cause to be stated in the order of extension. Unless filed within said period, the plea shall not be received.

"Section 2. Immediately upon notice of the filing of such plea the Commonwealth shall join issue and the clerk shall set the case down for trial on that issue alone; and the trial thereof shall take place before a special jury which shall consist of six members, within thirty days after plea filed, unless the time be extended by the court for sufficient cause to be stated in the order of extension.

"Section 3. On or about the beginning of each term of court, or when necessity for such jury may arise, the presiding judge thereof shall select from the county thirty citizens of outstanding character and intelligence, who shall be notified by the sheriff in the manner provided by law for the summoning of other jurors, to be prepared for service on the special jury during that term of court if summoned. If any special plea, as herein provided, shall be fixed for trial during said term, the persons on said jury list shall be summoned by the

sheriff to appear for jury service on a day named. From the persons so summoned the special jury shall be selected. The Commonwealth and the accused shall each be entitled to four peremptory challenges and as many challenges for cause as may be, all said challenges to be exercised and determined as now or hereafter provided by law governing criminal procedure. If the challenges exhaust the persons summoned and available, a sufficient number of other persons from the county shall be named forthwith by the trial judge, and shall be summoned in like manner as the others and shall appear forthwith for service on this special jury. In the discretion of the trial judge, the members of the jury may be permitted to separate at any time before the charge.

"Section 4. Of its own motion or on motion of the Commonwealth or of the accused the court may appoint not more than three experts to examine the accused and investigate his mental condition and to testify at the trial of such plea. Prompt notice shall be given by the clerk of the court to the district attorney and to counsel for the accused of the appointment of expert witnesses with their names and addresses, and such witnesses may be called by either party or by the court. If called to testify, such expert shall be subject to examination and objection as to competency and qualification as an expert witness and as to bias, and if examined by the court, either party shall have the same right to object to questions asked and the evidence given as though such witness were called and examined by a party. The order of cross-examining such witness shall be determined by the court. The court shall fix the compensation of such expert witnesses at such rate as to the court may seem reasonable, and payment thereof shall be made by the county on order of the court.

"Section 5. As heretofore in the case of such defense, the burden of proof shall be on the accused, who shall first produce the evidence to be offered in support of the plea with the right in the Commonwealth to cross-examine. After the evidence on behalf of the accused has

been received, evidence of the Commonwealth may be offered with the right in the accused to cross-examine. Thereafter evidence in rebuttal may be received as the court may deem proper in accordance with the rules governing such evidence. Each side may address the jury. The court shall instruct the jury as to the rules of law and matters of fact involved, particularly instructing the jury that to sustain the plea the jury must be satisfied by the fair preponderance of the evidence. The jury shall then deliberate and may at any time thereafter return its verdict if all agree. If, after a period of deliberation of four hours, beginning with the time when the charge of the court is completed, a time which the clerk shall enter upon the records of the case, five members of the jury have agreed, a verdict in accordance with their agreement may be rendered and shall be received as the verdict of the jury on the issue involved. The verdict shall be signed by all the jurors agreeing to it and shall be in substantially the following form:

Commonwealth	}	County of
v.	}	Term
.....	}	No.

We, the members of the special jury impaneled to try the issue raised by the special plea in the above entitled case, find that at the time of the commission of the alleged crime the accused was insane.
was not

"Section 6. Said verdict shall be part of the record of the case and in all subsequent proceedings shall be accepted in evidence as conclusive of the fact thereby determined, and the issue raised by the special plea shall not thereafter be questioned in any subsequent proceeding in the case save on appeal as herein provided.

"Section 7. No appeal shall be taken from the trial on the special plea or from any proceedings in connection therewith, but the same shall be subject to assignment of error and review in accordance with the prac-

tice in other cases, if and when an appeal is taken by the accused after sentence has been imposed.

"Section 8. If the special jury find that the accused was insane at the time of the commission of the alleged crime, the accused shall not thereafter be tried on the indictment, but shall be dealt with in accordance with the provisions of the Mental Health Act of 1923 and its supplements and amendments.

"Section 9. This act shall apply only to crimes committed after its passage. All laws or parts of laws inconsistent herewith are hereby repealed."

The Chairman of the Conference called on Judge FINLETTER, chairman, for a report on the assignment to his committee "To consider the present method 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 of the methods and the character of jurors selected."

Judge FINLETTER reported as follows:

"There are four systems of selecting and drawing the jurors in force in Pennsylvania: (1) Under the Act of April 10, 1867, P. L. 62, and supplements, which apply throughout the state, except in counties of the first, second and third classes. (2) Under the Act of April 20, 1858, P. L. 354, which applies only to Philadelphia. Both of these systems preserve some of the administrative features of the Act of 1834, P. L. 333, 356. (3) Under the Act of May 11, 1925, P. L. 561, which applies only to counties of the second class; and (4) under the Act of April 16, 1925, P. L. 244, which applies only to counties of the third class.

"The difference between the counties in density of population, volume of court business, and in other respects, would seem to call for and justify classification on this subject. No constitutional question, therefore, seems to be involved.

"While there is a difference in detail, the general features of the several plans mentioned above are the same.

"There is at first a selection of the names of all the jurors needed for the year made by the several members of a board from the 'list of taxables' or the 'whole body of electors.' This is personal. But the number to be selected is so large, and the time of their selection so long before the trial of any particular case, and the boards are so constituted, as to eliminate any idea of fraud in the choice of names. No criticism has ever been made on that score.

"After the list has been made up, all of the plans provide for a selection of the panel, and eventually of the jury, by chance, in such a way as to inspire confidence and make fraud almost impossible.

"The method adopted by all the plans is the placing of the names on the original list, written on separate slips of paper, in a wheel or wheels from which the venire lists are publicly drawn.

"No criticism has been made of these plans from the drawing of the names from the wheel to the drawing of the venire.

"The principal objections relate to the method, or lack of it, of the original selection of names, and to the complete neglect to consult the convenience of the jurors as to the time of service. A neglect which we think is a principal cause for the large number of applications for excuse.

"Having regard to the making up of the original list, that is, the selection of the persons whose names shall appear upon it, the only directions of the statutes are that they shall be chosen from the 'whole electorate,' or the 'list of taxables.' No limitation is placed upon the officer or officers making the selection, nor is any method directed, nor any aid given.

"It is plain, we think, that no statute of general application throughout the state should be suggested. Inquiry by the committee in each of the judicial districts has shown a great diversity in the problem. In districts made up of one or more counties of the fourth to eighth classes, the annual requirement for filling the wheel

runs from 320 to 2,100 names. With jury boards of three members—the judge and two elected commissioners—to make the selection, the task of making a careful choice of jurors for the wheel has not presented difficulty. The replies to a communication, sent by the committee to the jury board in each judicial district throughout the state, show that in the judicial districts referred to the opinion is almost unanimous that there is no need for change in the methods of choice, nor of aid to the existing boards. Some commissioners complain of neglect and carelessness on the part of elected jury commissioners, and the suggestion is made that the elected commissioners be supplanted by commissioners appointed by the court. It is a fact too that the salaries of elected commissioners are too small (some being as low as $250 a year) to attract able men or induce care in the performance of duty. These matters, however, are capable of local correction, and, we think, call for no action by the Conference or by the Legislature.

"The selection of jurors in counties of the third class, that is, in Lackawanna, Luzerne and Westmoreland Counties, has only recently been the subject of study by the bench and bar of these counties, who evolved the Act of April 16, 1925, P. L. 244, which was designed to meet special conditions thought to exist in those counties. The plan provided by that statute is apparently satisfactory and should not, in the opinion of the committee, be changed; at least until it has been given the fair trial of a longer experience with its workings.

"On the other hand, the Act of May 11, 1925, P. L. 561, which applies only to Allegheny County, while it contains many excellent and needed reforms, has not in all respects come up to the expectations of its authors.

"The situation in Allegheny County is so like that of Philadelphia County that the two counties should be considered and treated together. The difficulties are the same in the two communities, each so large and of such a varied population as to render impossible a personal knowledge of the citizenry by the members of the jury

board. In the smaller judicial districts, the commissioners know their neighbors, and, in most of them, there is little change in the character of the population from year to year. In the large cities, quite an opposite state of affairs exists.

"The difficulty confronting the jury commissioners, upon whom is cast the duty of selecting names from the 'whole electorate' or from the 'list of taxables' in large communities, is obvious. In Pittsburgh and Philadelphia, the commissioners cannot have sufficient information of the personality of all the taxables to permit them annually to choose the required number. For example, the only information the commissioners in Philadelphia have, as a basis for their selection, is the assessors' lists. The only information these give is the name and occupation of the taxable and the statement as to each that he is a boarder or a householder. Proximity on the list of a woman's name, living in the same house, may justify the inference that he is married. A slight idea of his personality may thus be gained. This is much better than the plan of the Act of May 11, 1925, requiring the commissioner to choose the first name, the fifty-first, and so on. None of the other statutes provide a method for giving the commissioner any information or impose upon him any limitation, except that the person shall be an elector or a taxable and a 'sober, intelligent and judicious citizen.' The meager information given by the assessor's list is plainly insufficient. Nothing is known of the proposed juror's age, intelligence, character, reputation, health (mental or physical), or of his knowledge of the English language. Obviously, his selection is based on little more than chance. The Act of May 11, 1925, even goes so far as to provide that only those are excluded for 'mental disqualification' who have been adjudged mentally incompetent by a court of competent jurisdiction.

"There is no time limit in Allegheny when the choice is to be made by the board, i. e., the list may be made up any time before a certain date. There is nothing to pre-

vent the jury board spending what time it pleases upon the preparation of the list. In Philadelphia, however, the names must be chosen from the revised assessors' lists, which are not complete until November 10th; so that the choice must be made between that date and the end of the year.

"None of the acts, except the Act of May 11, 1925, gives the commissioner the right to call in any help. And that act alone has also the excellent provision that the commissioner and his assistants shall have the right of subpœna. In Philadelphia the choice is hampered by the requirement of a ratable proportion from each ward of the city.

"No provision is made in any of the acts for the preservation of the results of the commissioner's examination.

"It is plain that, since the commissioner is required to make a selection, he should have the means of making it intelligently. Provisions for assistance and the right of the commissioner to subpœna, such as those contained in the Allegheny County Act, should, we think, be made with respect to counties of the first class.

"The present plan in Philadelphia, of using the information on the assessor's list, might be preserved for the making of a preliminary list. The assessors' lists at least furnish the names and addresses of the taxable and some little information of their personality.

"There is no necessity, in our opinion, for creating—as we are informed is done in New York—a general list of all persons in a community who are fit for jury service.

"A preliminary list, however, of enough persons to man the courts for a year, could be made, or the making of it could be commenced in January of one year for use in the following year. The assessor's list should be used as a basis for closer examination by the commissioners and their aides.

"It will be noticed that the number of persons upon the board varies in the several acts. In Philadelphia, it consists of the fifteen judges of the common pleas and

the sheriff, sixteen in all; in Pittsburgh, of the president judge of the common pleas and two elected commissioners; under the Act of 1867, of one judge and two elected commissioners.

"The large number provided in Philadelphia has not been found unwieldy; indeed it has been an absolute necessity in view of the annual need for 20,000 and more names for the wheel. Any thought of a personal, unaided examination of the 1,250 persons by each of the judges must be dismissed as impracticable, in view of the present volume of court business in the county and the lack in the jury board of power of subpœna to bring the prospective juror before it or before one of its members or aides. But, given a right to a master or other assistant, with power of subpœna and ten months in which to make the examination, the task could easily be performed.

"The large number of applications for excuse has been the subject of much criticism, some justly founded and some not. When it is realized that jurors are given no voice as to the time when they are expected to serve and but from ten to thirty days' notice, it is not surprising that busy men—the most desirable jurors—frequently find the summons very inconvenient.

"The only statute that presents a device to give the juror any attention is the Act of May 11, 1925, as to Allegheny County. This requires notice to him when his name is put on the original list, with the requirement that he indicate, within a fixed period, the time of year most convenient to him for service. Four wheels are provided, one for each quarter of the year, and the juror's name is put in the quarter of his choice.

"Other devices may be imagined, but the one referred to seems a good one. Some such device will have a tendency to reduce the number of applications for excuse.

"The question remains whether a new or a general act, or amendments of existing acts, should be proposed.

"We think it obvious that a statute of general application throughout the State would not be practicable.

Indeed, no change is needed, except in Allegheny and Philadelphia. Again, the present statutes, and the practice under them, are well known, and have given satisfaction except upon the points above referred to. The plan in Philadelphia, of a board made up of the judges and the sheriff, has the advantage of economy, in that no additional salaries are paid. It might raise opposition if the elective boards provided for in the other judicial districts were done away with.

"We, therefore, recommend:

"(1) That, in judicial districts comprised of counties of the fourth to eighth classes, there be no change in the existing law.

"(2) That, throughout the State, there be no change in the practice subsequent to the point where the names of jurors are put into the jury wheel.

"(3) That, in Philadelphia, the restriction to choice from the assessors' lists of the current year be done away with, as well as the requirement for a proportionate choice from each ward.

"(4) That, in Philadelphia, the commissioners be authorized to appoint aides, who, as well as the commissioners, be given the power of subpœna in making their examination of proposed jurors. (Section 17 of the Act of May 11, 1925, P. L. 561, so provides for Allegheny County.)

"(5) That a provision similar to that contained in section 11 of the Act of May 11, 1925, P. L. 561, be enacted for Philadelphia. This section provides for four wheels and an opportunity for the proposed juror to choose the time of his service.

"(6) That the 7th section of the Act of May 11, 1925, P. L. 561, applying to Allegheny County, be amended so as to permit a free choice by the commissioners from the list of taxables."

The Chairman inquired the wishes of the Conference as to the recommendations of this committee. There was considerable discussion on the 5th proposal, "That a provision similar to that contained in section 11 of the

Act of May 11, 1925, P. L. 561, providing for four wheels and an opportunity for the proposed juror to choose the time of his service, be enacted for Philadelphia." Justice SIMPSON said he had been informed by lawyers of New Jersey that, in that state, their experience had been that those who failed to designate a preferred time were not called at all. Judge RICHARD W. MARTIN stated that the system works well in Pittsburgh. Judge FINLETTER said that Judge MCLEAN, one of the members of the committee, had expressed a fear that, if the system were extended to the counties, it would lead to class juries,—for instance, juries chiefly of farmers in winter; merchants in summer, etc. The Chairman replied that there was no thought of extending such a provision to counties generally, the committee's recommendation applying only to Philadelphia.

Upon motions duly seconded, all the recommendations, including the fifth one, were finally approved by the conference.

Judge LINN, chairman of the committee 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," moved that the conference should advise an amendment to the Constitution and a statute as follows:

AMENDMENT TO CONSTITUTION.

"The General Assembly is hereby authorized to provide that in the trial by jury of one or more accused of crime or misdemeanor, except in prosecutions for felonious homicide, the agreement of five-sixths of such jury, after at least six hours' deliberation, shall constitute its verdict *when accepted and recorded by the court.*"

STATUTE.

"AN ACT relating to verdicts in criminal trials.

"Section 1. Be it enacted, etc., That in all crim-

inal prosecutions tried by jury in any court of record in this Commonwealth, except in prosecutions for felonious homicide, the agreement of five-sixths of the jury, after six hours' deliberation, shall constitute its verdict *when accepted and recorded by the court;* the deliberation of the jury shall be deemed to have commenced when the jury shall have been conducted to their jury room, which time the clerk shall enter on the record of the proceedings."

Judge BARNETT, Judge BROWNSON, Judge RICHARD W. MARTIN, Judge KELLER and Judge GORDON suggested amendments to avoid ambiguity as to the meaning of the word "verdict." After discussion, Judge LINN, for the committee, accepted the suggestion to add, after the word "verdict" the words inserted above in italics, "when accepted and recorded by the court." So amended, the drafts of the amendment and statute were approved.

Justice SCHAFFER moved:

"That the Chairman should send copies of all bills approved by the Conference to the Pennsylvania Bar Association and other bodies, selected by him, which might be interested in the particular subject-matter of any proposed bill, for consideration and advice; further, that copies of all bills or suggestions approved by the Conference should be sent to the Attorney General for transmission to the Governor of the Commonwealth."

Judge GORDON moved that:

"WHEREAS, this Conference, at its first session, resolved, that it shall be a continuing body, to meet at the call of its Chairman; and Whereas, it would be conducive to the efficient performance of its functions that a permanent committee be created to consolidate and perpetuate its organization

between sessions, BE IT RESOLVED, That the Chief Justice of Pennsylvania, for the time being, or such other Justice of the Supreme Court as he shall designate, shall be the Chairman of the Conference; AND BE IT FURTHER RESOLVED, That there shall be an executive committee of this Conference, composed of the Chairman and fifteen (15) members, *the latter to serve for the term of one year and to be appointed yearly by the Chairman of the Conference.* It shall be the duty of this committee to see to the enforcement of such resolutions of the Conference as shall not otherwise be in charge of special committees and generally to advise and aid the Chairman of the Conference respecting the calling of sessions thereof, and such other matters as shall arise between sessions."

Upon motion of Judge HARGEST, the resolution as originally submitted was amended to include the words which appear in italics.

It was moved, seconded, and the motion carried, that

"Committees whose reports were approved at this morning's Conference be continued to do anything else that may be necessary in connection with the proposed bills."

Upon motion, the conference adjourned to meet at the same place on the following morning at 10 o'clock.

The conference resumed its work at the same place this morning, June 25th, at 10 o'clock.

Judge BARNETT presented the action of the committee on the report of the Crime Commission to the Judicial Conference, and, on his motion, duly seconded and carried, it was

"RESOLVED, That the Chairman of the Conference be authorized to appoint such committees as he may

deem proper to consider the various bills drawn in pursuance of the recommendations of the Judicial Conference, mentioned in the report to this body, made by the Chairman of the Crime Commission, and that these committees shall recommend to the next Judicial Conference, what, if any, further action shall be taken as to the several measures referred to them."

The chairman appointed committees as follows:

On resolutions Nos. 1 and 2 of the 1928 conference noted in the report of the Crime Commission, namely:

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, That 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."

ROBERT S. GAWTHROP, Superior Court, Chairman.
RICHARD W. MARTIN, C. P. 5th Dist.
CHARLES V. HENRY, C. P. 52d Dist.
SAMUEL E. SHULL, C. P. 43d Dist.
CHARLES L. BROWN, Municipal Court, Phila.

On resolutions Nos. 3 and 4:

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."

THOMAS D. FINLETTER, C. P. No. 4, 1st Dist., Chairman.
HARRY H. ROWAND, C. P. 5th Dist.
WILLIAM S. MCLEAN, JR., C. P. 11th Dist.
FRANK B. WICKERSHAM, C. P. 12th Dist.
H. ROBERT MAYS, C. P. 23d Dist.

On resolutions 5, 5a and 9a:

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."

9. (a) "RESOLVED, That a law should be passed 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 thirty 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 thirty days, the operation of this rule."

JOHN W. KEPHART, Supreme Court, Chairman.
HARRY S. MCDEVITT, C. P. No. 1, 1st Dist.
ROBERT A. STOTZ, C. P. 3d Dist.
ALBERT DUTTON MACDADE, C. P. 32d Dist.
JOHN S. FINE, C. P. 11th Dist.

On resolutions 7 and 9:

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."

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."

E. M. BIDDLE, JR., C. P. 9th Dist., Chairman.
JAMES B. DREW, C. P. 5th Dist.
JOHN M. BROOMALL, 3D, C. P. 32d Dist.
EDWIN O. LEWIS, C. P. No. 2, 1st Dist.
HAROLD G. KNIGHT, C. P. 38th Dist.

The Chairman also appointed the executive committee authorized by the Conference at the meeting on the first day as follows:

ROBERT VON MOSCHZISKER, Supreme Court, Chairman.
ROBERT S. FRAZER, Supreme Court.
WILLIAM H. KELLER, Superior Court.
WILLIAM B. LINN, Superior Court.
JAMES GAY GORDON, JR., C. P. No. 2, 1st Dist.
ROBERT A. STOTZ, C. P. 3d Dist.
RICHARD W. MARTIN, C. P. 5th Dist.
WILLIAM S. MCLEAN, JR., C. P. 11th Dist.

WILLIAM M. HARGEST, C. P. 12th Dist.
H. ROBERT MAYS, C. P. 23d Dist.
MARION D. PATTERSON, C. P. 24th Dist.
JAMES I. BROWNSON, C. P. 27th Dist.
JAMES M. BARNETT, C. P. 41st Dist.
DONALD P. MCPHERSON, C. P. 51st Dist.
WILLIAM N. APPEL, Orphans' Court, 2d Dist.
CHARLES L. BROWN, Municipal Court, Phila.

On motion of Justice SIMPSON, duly seconded and carried, it was

"RESOLVED, That a committee of nine (9) be appointed to make a survey of the judicial business of the Commonwealth and to suggest methods for its expedition and improvement."

The Chairman appointed

ALEXANDER SIMPSON, JR., Supreme Court, Chairman.
ROBERT S. GAWTHROP, Superior Court.
JAMES GAY GORDON, JR., C. P. No. 2, 1st Dist.
GEORGE HENDERSON, O. C. 1st Dist.
ELDER W. MARSHALL, C. P. 5th Dist.
JOHN E. FOX, C. P. 12th Dist.
W. A. VALENTINE, C. P. 11th Dist.
PAUL N. SCHAEFFER, C. P. 23d Dist.
JAMES A. CHAMBERS, C. P. 53d Dist.

On motion of Justice SIMPSON, duly seconded and carried, it was

"RESOLVED, That a committee, to be appointed by the Chairman, shall consider and report at the next session of the Conference as to the advisability of recommending the adoption, in this Commonwealth, of the doctrine of comparative negligence in actions of tort."

The Chairman appointed

JAMES GAY GORDON, JR., C. P. No. 2, 1st Dist., Chairman.
ALEXANDER SIMPSON, JR., Supreme Court.
ELDER W. MARSHALL, C. P. 5th Dist.
CLAUDE T. RENO, C. P. 31st Dist.
JOHN E. FOX, C. P. 12th Dist.

On motion offered by Justice SIMPSON for Judge BARNETT, seconded by Judge CHARLES L. BROWN, and carried, it was

"RESOLVED, That a committee be appointed by the Chairman to consider the subject of the juvenile courts and the procedure therein, and to report at the next Judicial Conference."

The Chairman appointed

FRANK B. WICKERSHAM, C. P. 12th Dist., Chairman.
FRANK L. HARVEY, C. P. 18th Dist.
FRANCIS SHUNK BROWN, JR., C. P. No. 4, 1st Dist.
ALONZA T. SEARLE, C. P. 22d Dist.
H. ROBERT MAYS, C. P. 23d Dist.
CHARLES L. BROWN, Municipal Court, 1st Dist.
SYLVESTER J. SNEE, County Court, 5th Dist.

Justice SCHAFFER offered the following resolution:

"RESOLVED, That a committee of fifteen be appointed to investigate and report upon the power and advisability of the various courts providing by general rule for the submission of special findings to juries in all civil cases,

(a) upon the request of counsel on either side,
(b) upon the court's own motion;

and further providing that when a special finding shall be in conflict with the general verdict, the special finding shall control, and that the court

shall mold the verdict in accordance with such finding.

"And if, in the opinion of the committee, such general rule is desirable, to submit a form therefor, or an appropriate act of assembly,"

the last paragraph of this resolution being added on motion of Justice SIMPSON, duly seconded and carried, and the resolution as a whole being seconded by Judge NILES and approved by the conference.

The conference approved the following resolution offered by Judge PAUL N. SCHAEFFER, seconded by Justice SCHAFFER:

"RESOLVED, That a committee be appointed to consider and report whether, in the light of present-day conditions, it is advisable to recommend to the Legislature that the jurisdiction in equity should be enlarged, and, if so, in what respects and over what subjects."

It was agreed that this last-mentioned resolution should be referred to the same committee as the immediately preceding one regarding special finding of juries. The following committee, to be known as the Committee on Practice, was appointed to consider both resolutions:

WILLIAM I. SCHAFFER, Supreme Court, Chairman.
WILLIAM B. LINN, Superior Court.
JAMES GAY GORDON, JR., C. P. No. 2, 1st Dist.
E. M. BIDDLE, JR., C. P. 9th Dist.
HORACE STERN, C. P. No. 2, 1st Dist.
W. ROGER FRONEFIELD, C. P. 32d Dist.
CHARLES V. HENRY, C. P. 52d Dist.
JOHN M. GROFF, C. P. 2d Dist.
WM. M. HARGEST, C. P. 12th Dist.
THOMAS F. BAILEY, C. P. 20th Dist.
JAMES B. DREW, C. P. 5th Dist.
FRANK E. READER, C. P. 36th Dist.

GEORGE W. MAXEY, C. P. 45th Dist.
W. A. VALENTINE, C. P. 11th Dist.
WM. G. THOMAS, C. P. 56th Dist.
PAUL N. SCHAEFFER, C. P. 23d Dist.

On motion of Judge HARGEST, seconded and carried, it was

"RESOLVED, That the above Committee on Practice consider also possible improvements in practice relating to motions n. o. v."

On motion of Judge TAULANE, seconded by Judge STOTZ, it was

"RESOLVED, That a committee be appointed to consider and report upon the Criminal Code drafted by the American Law Institute and to make such recommendations as to it shall seem proper."

The Chairman appointed:

JOSEPH H. TAULANE, C. P. No. 1, 1st Dist., Chairman.
JESSE E. B. CUNNINGHAM, Superior Court.
HARRY H. ROWAND, C. P. 5th Dist.
JOHN E. EVANS, C. P. 47th Dist.
W. BUTLER WINDLE, C. P. 15th Dist.

On motion of Judge JOHN E. FOX, duly seconded and carried, it was

"RESOLVED, That this Conference shall not confine itself to consideration of criminal procedure, but shall also consider improvements in any branch of administrative law which appear to be desirable."

Judge GAWTHROP offered the following resolution:

"RESOLVED, That all judges on the retired list of the State of Pennsylvania shall be accounted members of the Judicial Conference [without, however, the right to vote]."

Members of the conference objected to the clause "without, however, the right to vote," and the general opinion being that such a clause was unnecessary, it was stricken out and the resolution passed as amended.

On motion, duly seconded and carried, the conference adjourned to meet at the call of the Chair.

(Signed) ROBERT VON MOSCHZISKER,
Chairman.

Attested:

JAMES GAY GORDON, JR.,
Secretary.