

Supreme Court of the United States.
Washington, D. C.

June 16, 1925.

*To the Circuit Judges and
the District Judges of the United States:*

By direction of the Conference of the Senior Circuit Judges, held upon the call of the Chief Justice of the United States under the Act of September 6, 1922, on June 9th and 10th last, I enclose to you the resolutions adopted by the Conference.

These include:

1. Recommendations to the District Judges, (a) as to the proper and improper uses of the conspiracy statute in the prosecution of offenses, (b) as to the proper exercise of the discretion of District and Circuit Judges in allowing or denying bail to convicted defendants pending appeals, to prevent appeals for delay on frivolous grounds.

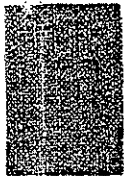
2. Recommendations to Congress for increases in the number of Federal Judges.

3. Plan adopted by the Conference with the approval of the Attorney General for the expenditure of \$165,000 already appropriated for purchase of needed law books for the Circuit Courts of Appeals, the District Courts, the Judges thereof and the U. S. District Attorneys and for future appropriations requested of Congress.

Sincerely yours,

WM. H. TAFT,
*Chief Justice,
Chairman.*

W. W. MISCHLER,
Secretary of the Conference.



Recommendations to the District Judges.

A. We note the prevalent use of conspiracy indictments for converting a joint misdemeanor into a felony; and we express our conviction that both for this purpose and for the purpose,—or at least with the effect,—of bringing in much improper evidence, the conspiracy statute is being much abused.

Although in a particular case there may be no preconcert of plan, excepting that necessarily inherent in mere joint action, it is difficult to exclude that situation from the established definitions of conspiracy; yet the theory which permits us to call the aborted plan a greater offense than the completed crime supposes a serious and substantially continued group scheme for cooperative law breaking. We observe so many conspiracy prosecutions which do not have this substantial base that we fear the creation of a general impression, very harmful to law enforcement, that this method of prosecution is used arbitrarily and harshly. Further the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant.

We think it proper for us to bring this matter to the attention of the District Judges, with the request that they present it to the District Attorneys, and for us to bring it also to the attention of the Attorney General, with the suggestion that he call it to the attention of the District Attorneys, as in his judgment may be proper, and all to the end that this form of indictment be hereafter not adopted hastily but only after a careful conclusion that the public interest so requires, and to the end that transformations of a misdemeanor into a felony should not be thus accomplished unless the propriety thereof clearly appears.

We also think proper to bring the subject matter to the attention of Congress, that it may consider whether any change of the law in this respect is advisable.

B. The right to bail before conviction is secured by the Constitution to those charged with violation of the criminal laws of the United States. The right to bail after conviction by a Court or a Judge of first instance or an intermediate court or a Judge thereof is not a matter of constitutional right. The Acts of Congress make provision for allowance of bail after conviction by Courts and Judges to release the convicted defendant upon the exercise of their judicial

discretion, having in mind the purpose of the Federal Statutes not to subject to punishment anyone until he has been finally adjudged guilty in the court of last resort. But the judicial discretion of the Federal Courts and Judges in granting or withholding bail after conviction should be exercised to discourage review sought, not with hope of new trial, but on frivolous grounds merely for delay. Application for bail should be made to the trial judge in the first instance.

Recommendations to Congress for Increases in Judges.

The business, civil and criminal, in the Federal Courts continues to increase in volume. The Circuit in which we find the most discouraging congestion is the Second, that made up of New York, Connecticut and Vermont. Some twelve Judges have been assigned from other circuits to sit in the Eastern, Southern and Western Districts of New York from time to time since July 1st, 1924, and some reduction has been made in the arrears. But it is perfectly evident that no real remedy will be afforded except by increasing the number of District Judges in that Circuit. After a full consideration of the information, statistical and other, we are convinced that the only solution is that one new District Judge be provided in the Western District of New York, three in the Southern District of New York, and one in the District of Connecticut, and that there be added one new Circuit Judge, making five Circuit Judges for the Circuit Court of Appeals for the Second Circuit.

We renew our earnest recommendation of last year for a new District Judge in the District of Maryland in the Fourth Circuit, as we do that for a new District Judge in Georgia in the Fifth Circuit. In Georgia the judicial force should be increased either by putting the new Judge in the Northern District, or preferably by establishing a third District in that State with the chief place of holding Court at Macon.

In the Eastern District of Pennsylvania, Judge McKeehan was appointed District Judge under the Omnibus Act of September, 1922, which directed that successors should not be appointed for Judges provided by that Act except by consent of Congress. Judge McKeehan died after a short but useful service. Congressional authority should be conferred to appoint his successor.

Expenditure of Appropriations for Law Books.

The Attorney General and Colonel Donovan, the assistant to the Attorney General, conferred with judicial conference as to the expenditure of \$165,000 appropriated in two acts of Congress for the purchase of law books for the use of the Circuit Courts of Appeals, for the District Courts, for the Judges thereof and for the United States District Attorneys. Thereafter a committee of the conference made a report recommending a plan for the expenditure of existing and future appropriations for this purpose. The conference approved the report. It was submitted to the Attorney General. He approved it. It is as follows:

The books committee thinks that the principles of distribution of the present consolidated fund among the judges and the district attorneys should be:

First, to equalize upon a minimum basis by bringing up to that basis all who are now short of it.

Second, to distribute the balance of the fund in the order of actual relative needs and without judging the need by the demand.

We appreciate that it is most difficult for the Attorney General to carry out this second principle and we believe that the senior circuit judges have the best facilities for comparative judgment as to these needs, each in his own circuit. To adjust all these things in our Conference would require an impracticably long session. We see no method so feasible as to apportion among the circuits any available fund and put the responsibility upon each senior circuit judge for his own circuit. The basis of apportionment among the circuits might be according to the number of districts or according to the number of judges. There are reasons for each. We recommend the latter method.

The statute provides that the distribution of the \$100,000 fund be subject to the approval of this Conference. We assume that the delegation by this Conference of part of this power to the senior circuit judges for their respective circuits would meet with the approval of the Attorney General and that he will be quite willing to adopt this method of placing the final responsibility. Accordingly, we propose the following action by this Conference:

"The Judicial Conference recommends to the Attorney General that the total \$165,000 of the two book appropriations be united for joint action in accordance with his recommendations submitted to us and that they be apportioned as follows:

"1. Let the sum of \$46,000 be reserved and allocated for circuit courts of appeals libraries and be used in purchasing books for the circuit courts of appeals, including not to exceed \$3,000 for each of the First, Fourth, Fifth, Sixth, Seventh and Ninth Circuits, and including not to exceed \$15,000 for the Second Circuit, and including not to exceed \$13,000 for the Eighth Circuit, of which last amount not to exceed \$8,000 may be used in establishing a law library at Denver, Colorado.

"2. Let the sum thought by the Attorney General the necessary minimum for maintenance and emergencies for the fiscal year estimated by him at about \$23,000, be reserved in his hands to be expended by him for those purposes.

"3. Let each circuit and district judge and district attorney not now supplied be provided with one complete set of U. S. Supreme Court Reports and Federal Reporter and Digests of each: continuations of both series with advance pamphlets to be included, also missing volumes in existing sets. Volumes and continuations which have been and are supplied by official distribution are not to be duplicated hereunder. The circuit judges are to have the official Supreme Court Reports with Rose's Notes and the Lawyer's Edition Digest; the district judges and attorneys who have existing official sets, to have those sets continued and also supplemented with Rose's Notes and the Lawyer's Edition Digest; new sets of Supreme Court Reports to district judges and attorneys to be the Lawyer's Edition with that Digest; Michie's Encyclopedia may be substituted for the United States Digest when requested. This paragraph is subject to the proviso that if any senior circuit judge shall find that it is not inconsistent with efficiency for any district judges or district attorneys to make a joint use of these reports and digests and shall promptly certify to the Attorney General that any set of reports and digests called for by this paragraph can be dispensed with, it shall thereupon be omitted from the execution of the plan.

"4. That each circuit and district judge not now supplied be provided with:

"One set of Compiled Statutes of 1916 and all supplements or Federal Statutes annotated, new edition, with supplements as he may prefer; one set Shepard's United States and Federal Citations; one last edition of the Judicial Code to be selected by him; one latest edition of a book on Federal Practice to be selected by him; one latest edition of a book on Bankruptcy to be selected by him.

"This paragraph is subject to the same proviso as paragraph 3.

"5. That each district attorney not now supplied be provided with statutes as specified in paragraph 4 and subject to the same proviso as in paragraph 3.

"6. Let the foregoing requirements be ascertained and estimated as soon as possible and before August 1, 1925. Then let the remainder of the total appropriations be allocated to and reserved for the nine circuits in proportion to the number of district judges in each.

"7. Let the further distribution within each circuit of its allotment be upon the approval of the senior circuit judge according to his judgment of the relative needs of each judge and district attorney. We recommend to him that he first endeavor to provide a complete outfit of Supreme Court Reports and Federal Reports and Digests and Statutes at the most convenient second place where each district judge holds court if it be unsupplied, and that he see that each district judge is provided (taking into account what he already has) with textbooks amounting to \$100 and each district attorney with textbooks amounting to \$25.

"8. All purchases will be made by the Attorney General as is now customary upon requisition of the presiding judge of the circuit court of appeals for the libraries of those courts and upon the requisitions of the individual judges and district attorneys for their needs, approved by the senior circuit judge.

"9. In order that relative needs may be quickly known, let each judge and district attorney forthwith send in duplicate to the Attorney General and to his senior circuit judge a list of all books now officially possessed by him and where located, specifying volumes needed to complete sets.

"10. Should it be necessary to change this plan in any way before the next Conference of the Senior Circuit Judges, the Chief Justice and Judge Denison of the Sixth Circuit are authorized to agree with the Attorney General in making the changes."

This completes the present plan. The requisitions which have been made to the Attorney General and the senior circuit judges show that the present appropriation will be exhausted, leaving unsatisfied a very great part of the existing imperative needs. The conference therefore earnestly requests that the next Congress make a similar special appropriation of \$200,000, under the same conditions attending the \$100,000 appropriation made by the last Congress, and in addition to the regular maintenance appropriations made for the Department of Justice and in order that the contemplated work of supplying judges and judicial officers, the reasonable minimum of their imperative needs for law books may be completed.