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**REPORT  
OF THE PROCEEDINGS  
OF A  
SPECIAL SESSION  
OF THE  
JUDICIAL CONFERENCE OF THE  
UNITED STATES**

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**MAY 8, 1953  
WASHINGTON, D. C.**

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**TITLE 28. UNITED STATES CODE, SECTION 331**

**§ 331. Judicial Conference of the United States.**

The Chief Justice of the United States shall summon annually the chief judges of the judicial circuits to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States.

If the chief judge of any circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the conference and advise as to the needs of his circuit and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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# Report of the Proceedings of a Special Session of the Judicial Conference of the United States

Special Session—May 8, 1953

A special session of the Judicial Conference of the United States was convened by the Chief Justice on May 8, 1953, and continued in session 1 day. The Chief Justice presided and members of the Conference were present as follows:

Circuit:

District of Columbia.....	Chief Judge Harold M. Stephens.
First.....	Chief Judge Calvert Magruder.
Second.....	Circuit Judge Augustus N. Hand.
(Designated by the Chief Justice in place of Chief Judge Thomas W. Swan who was unable to attend.)	
Third.....	Chief Judge John Biggs, Jr.
Fourth.....	Chief Judge John J. Parker.
Fifth.....	Chief Judge Joseph C. Hutcheson.
Sixth.....	Chief Judge Charles C. Simons.
Seventh.....	Chief Judge J. Earl Major.
Eighth.....	Chief Judge Archibald K. Gardner.
Ninth.....	Circuit Judge Albert Lee Stephens.
(Designated by the Chief Justice in place of Chief Judge William Denman who was unable to attend.)	
Tenth.....	Chief Judge Orie L. Phillips.

Circuit Judge Albert B. Maris, a member of the committee on maintenance expenses of judges, attended the Conference.

Henry P. Chandler, director; Elmore Whitehurst, assistant director; Will Shafroth, chief, Division of Procedural Studies and Statistics; and Leland L. Tolman, chief, Division of Business Administration, all of the Administrative Office of the United States Courts, also attended the Conference.

## ADDITIONAL JUDGESHIPS FOR THE WESTERN DISTRICT OF PENNSYLVANIA

At the special session held March 26, 27, 1953, the Conference recommended the creation of two additional judgeships for the Western District of Pennsylvania, with a proviso that the first vacancy occurring in this district should not be filled. (Rept. p. 4.)

The temporary judgeship was recommended because of the serious illness of one of the judges of that district. This judge has since died. Upon re-examination of the situation in the light of this changed condition the Conference was of the opinion that the temporary judgeship is nevertheless still needed and reaffirmed its previous recommendation.

#### RULES ADOPTED BY COURTS OF APPEALS FOR REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES

Section 11 of Public Law 901 of the 81st Congress (64 Stat. 1132, 5 U. S. C. Supp. V § 1041) provides for the adoption, subject to the approval of the Judicial Conference, of rules covering the practice and procedure in proceedings to review or enforce orders of certain administrative agencies.

The Conference approved rules adopted pursuant to this provision by the Courts of Appeals for the Seventh and Ninth Circuits. The Conference also approved amendments adopted by the Court of Appeals of the District of Columbia Circuit, of a rule heretofore adopted by that court and approved by the Conference at its September 1952 session (Rept., p. 23).

#### A BILL TO PROHIBIT THE IMPOSITION OF CONCURRENT SENTENCES

The Director of the Administrative Office informed the Conference that the Judiciary Committee of the House of Representatives had requested an expression of views with regard to a bill (H. R. 4315) entitled "A bill to prohibit the imposition of concurrent sentences in certain cases." The bill provides that no sentence of imprisonment imposed for a violation of Title 18 of the United States Code, which is the Federal Criminal Code, shall be served concurrently with another sentence of imprisonment imposed for a violation of that title. It further provides that no sentence of imprisonment imposed by the United States District Court for the District of Columbia or the Municipal Court of the District of Columbia for violation of any law which relates solely to the District of Columbia shall be served concurrently with another sentence of imprisonment imposed for a violation of such a provision or of Title 18 of the United States Code.

The Conference, after consideration, disapproved the proposed legislation.

## MAINTENANCE EXPENSES OF JUDGES

Judge Phillips, chairman, presented a report of the committee appointed to study maintenance expenses of judges under section 456 of Title 28, United States Code, pursuant to the resolution of the Conference at its special session of March 26, 27, 1953 (Rept., p. 13).

After consideration the Conference approved the report as submitted. Judge Major did not vote on the adoption of the report. Copies were directed to be transmitted to the Congress and to the General Accounting Office.

The report is as follows:

## REPORT OF THE COMMITTEE ON MAINTENANCE EXPENSES OF JUDGES

*To the Chief Justice of the United States, Chairman, and the Members of the Judicial Conference of the United States:*

## PRELIMINARY STATEMENT

At the Special Meeting of the Judicial Conference of the United States held March 26 and 27, 1953, the Director of the Administrative Office of the United States Courts brought to the attention of the Conference that at a hearing before a subcommittee of the Committee on Appropriations of the House of Representatives, and later at a hearing before a subcommittee of the Senate Committee on the Judiciary, questions had been raised with respect to expense accounts for maintenance certified by certain circuit judges, that a bill had been introduced in Congress to amend Title 28, U. S. C., Section 456, and that members of such subcommittees had informally requested the Judicial Conference to give consideration to these matters.

The Director furnished to the Judicial Conference a statement of payments for maintenance expenses to the circuit judges for the calendar years 1951 and 1952, and to district judges for the first 8 months of the current fiscal year, and certain statements received by him with respect to the residence and official station of 2 circuit judges.

After consideration and discussion the Judicial Conference adopted the following resolution:

That the Chief Justice appoint a committee of five to make a comprehensive study of Section 456, Title 28, United States Code, of the practices that have obtained thereunder and the administrative constructions that have been placed

thereon; that the committee proceed as expeditiously as possible to make such study, and report back to a special meeting of this Conference the results of its study and its recommendations; and that the action of the Conference on the report and such recommendations as the Conference deems appropriate shall be transmitted to the Congress.

Whereupon the Chief Justice appointed and constituted your Committee pursuant to such resolution.

Your Committee held meetings at Washington on April 6 and in Chicago on April 23 and 24, 1953. The Administrative Office furnished to each member of the Committee the legislative history of section 259 *infra* and records of administrative constructions thereof and other relevant material, which members of the Committee studied and considered at and in the interval between its meetings.

#### LEGISLATIVE HISTORY

While as far back as 1850 certain statutes made special provision for the payment of travel and maintenance expenses of circuit and district judges under certain circumstances, Section 259 of the Judicial Code of 1911 (Act of Mar. 3, 1911, 36 Stat., page 1161) for the first time made general provision for the payment of travel and maintenance expenses of circuit and district judges while away from their official residence in the performance of official business.

The earlier acts referred to above are set forth in appendix I to this report.

Section 259 *supra* reads as follows:

SEC. 259. The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed \$10 per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Each such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence.

Section 259 *supra* was carried into the 1924 edition of the United States Code in Title 28, Section 374, and in subsequent editions of the United States Code up to and including 1946 without substantial change.

In 1932 the Comptroller General of the United States ruled that Section 259 *supra* was in effect repealed by the Economy Act of that year.

Section 259 was reenacted without substantial change by the Act of April 22, 1940, 54 Stat. 149. It was carried into the 1948 revision of Title 28, USC, as section 456 which reads:

§ 456. Traveling expenses of Justices and Judges.

Each justice or judge of the United States and each retired justice or judge recalled or designated and assigned to active duty, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses and also his reasonable maintenance expenses actually incurred, not exceeding \$10 per day, while attending court or transacting official business at a place other than his official station.

The official station of the Chief Justice of the United States, the justices of the Supreme Court and the judges of the Court of Claims, the Court of Customs and Patent Appeals, the United States Court of Appeals for the District of Columbia, and the United States District Court for the District of Columbia, shall be the District of Columbia.

The official station of the judges of the Customs Court shall be New York City.

The official station of each circuit and district judge, including each district judge in the Territories and Possessions, shall be that place nearest his residence at which a district court is regularly held.

Each circuit judge and each district judge whose official station is not fixed expressly herein shall upon his appointment and from time to time thereafter, as his residence may change, notify the Director of the Administrative Office of the United States Courts in writing of his residence and official station.

The legislative history of section 259, as it appeared in the Judicial Code of 1911, throws little or no light on the construction to be placed on the phrase "actual residence" as used in that section. We have summarized such legislative history in an attachment to appendix I of this report.

#### ADMINISTRATIVE CONSTRUCTION

##### Evans Case

In 1933 the Department of Justice questioned the accounts for maintenance expense at Chicago, Ill., certified by Circuit Judge Evan A. Evans, on the ground he was an actual resident of Chicago and, therefore, his official residence was in Chicago and not at Madison, Wis., which he had designated as his official residence.

It appeared that during a period from October 1931 until July 1933, Judge Evans had been continuously in Chicago and had been paid for that entire period the maximum allowance for subsistence except for a few weeks in August and September 1932. In response to questions as to whether, in view of his continuous pres-

ence in Chicago, that city was not his actual residence within the meaning of the statute, Judge Evans said that he maintained his home at Baraboo, Wis., where he lived when he was appointed to the Court of Appeals; that he voted and paid property and income taxes there; that his family regarded it as his home and that he intended to return there when he retired. On this account, he had designated Madison, the nearest place to Baraboo where a district court is held, as his official residence under the statute. He said that his Chicago quarters were only a small furnished apartment where he and Mrs. Evans stayed during their necessary presence in Chicago for the work of the Court of Appeals. He urged that under the statute the judge is the one to make the selection, and to change it if he wishes.

After considerable study, the Department of Justice informed Judge Evans that it had concluded to adhere to its position that he was not entitled to draw per diem while attending court or performing other official duties in Chicago. This conclusion was based upon a Departmental memorandum by Alexander Holtzoff (then a special assistant to the Attorney General), which concluded that a judge may not arbitrarily name a place as his actual residence, that this is a question of fact and that in this situation it was his view that Judge Evans actually resided in Chicago and not in Baraboo.

In October 1934, Judge Evans asked that the matter be reviewed, but the Department adhered to its original position and so informed the Judge.

In October 1936, Judge Evans again reopened the matter with the then assistant to the Attorney General. The Department of Justice again reexamined its position and concluded by telling Judge Evans that if he would write the Attorney General stating where he desired his headquarters fixed, and advising of his place of residence, and would certify these designations, the information so furnished would be carried on the Department records and instructions would be issued immediately in accordance therewith. Such a statement was promptly furnished by Judge Evans, reasserting actual residence in Baraboo throughout his entire tenure of judicial office and so requesting that his home there be recorded as his actual residence, and Madison, Wis., as his official residence. Accordingly, the Department instructed the United States Marshal at Chicago to resume payment of maintenance expenses to Judge Evans on that basis after December 1, 1936.

Later, in 1939, in a departmental memorandum, the administrative assistant to the Attorney General stated that this action was based upon the statutory provision which permits the judge to designate and change his official residence, and indicating that in view of this, there appeared no alternative for the Department than to follow this policy until the ambiguities of the law should be cleared up by legislation.

A more detailed statement with respect to this matter is set forth in appendix II attached to this report.

#### Buffington Case

In January 1933 the United States Marshal for the Eastern District of Pennsylvania asked instructions of the Department of Justice with respect to the payment of maintenance expenses at Philadelphia to Circuit Judge Joseph Buffington, who had designated Pittsburgh as his official residence.

Judge Buffington apparently for some time prior to January 1933 had only a legal domicile in Pittsburgh and actually lived in Philadelphia. The Department of Justice ruled that Judge Buffington was not entitled to maintenance at Philadelphia. Judge Buffington acquiesced in such ruling. In May 1934, Judge Buffington advised the Department of Justice that his wife had passed away and that he would henceforth make Pittsburgh unquestionably his actual residence. Whereupon the Department of Justice instructed the Marshal to resume maintenance payments on the basis of the official residence of Judge Buffington at Pittsburgh.

The administrative rulings in the Buffington case are set forth more fully in appendix II attached hereto.

#### Jenney Case

Judge Ralph E. Jenney was appointed United States District Judge for the Southern District of California on July 3, 1937.

In June 1940 the Acting Comptroller General of the United States took up with the Director of the Administrative Office of the United States Courts the question of the allowance of maintenance expenses to Judge Jenney at Los Angeles.

At the time of his appointment Judge Jenney owned and maintained an actual residence at San Diego, Calif., and he had designated San Diego as his actual and official residence. The Comptroller General pointed out that in a period of 17 months,

from July 31, 1938, through November 30, 1939, Judge Jenney spent 395 days in performing his judicial duties in Los Angeles and was in attendance at San Diego 111 days.

The Director of the Administrative Office presented these facts to the Judicial Conference of the United States at its regular annual session in October 1940. After consideration of the problem, the Judicial Conference adopted the following resolution:

With respect to reimbursement for traveling and subsistence expenses incurred while attending court or transacting other official business at any place other than a judge's official place of residence, as provided by section 259 of the Judicial Code (U. S. Code, Title 28, § 374), which defines "official place of residence" as "that place nearest his actual residence at which either a Circuit Court of Appeals or a District Court is regularly held," it was declared to be the sense of the Conference that mere legal domicile is not sufficient to satisfy the words of the statute, "actual residence."

Later, Judge Jenney listed his home at San Diego for sale and established living quarters at Pasadena. Correspondence ensued between the Director and Judge Jenney, resulting in an agreement that thereafter Pasadena should be designated as his actual residence and Los Angeles as his official residence.

Further details with respect to the Jenney case are set forth in appendix II attached to this report.

\* \* \* \* \*

At the meeting of the Judicial Conference in 1952 the Director informed the Conference that at the request of Representatives Hillings of California and Budge of Idaho data concerning the maintenance expenses paid to all circuit judges in the calendar year 1951 had been furnished to these Representatives. The Director stated in this connection that the charges for maintenance of certain circuit judges in the Ninth Circuit had been specifically questioned. The Judicial Conference, after informal discussion of the matter, requested the Chief Judge of the Ninth Circuit to have the matter considered by the Judicial Council of his circuit.

Further facts with respect to this matter are set forth in appendix II attached to this report.

#### PRACTICES UNDER THE ACT

Your committee has made an exhaustive study of practices under the act and has concluded that, with few exceptions, charges made for maintenance by judges have been clearly within both the letter and spirit of section 456. Our studies specifically included

recent maintenance payments to all circuit and district judges which involved substantial amounts.

Disagreement has arisen from time to time with respect to the proper construction of the phrase "actual residence" and the term "residence" in section 259 and section 456, respectively.

At least one judge, and perhaps others, have contended that mere technical residence or bare legal domicile without an actual place of abode comes within the phrase "actual residence" or the term "residence."

Other judges have contended that if they maintain a home at a place designated by them as "actual residence" or "residence" it comes within the meaning of sections 259 and 456 notwithstanding they maintain living quarters at places where their courts are regularly held and live for long periods of time at such living quarters.

Other judges have designated as their "actual residence" or "residence" the place where they maintain an actual place of abode and where they customarily live except for periods when they are away from such place in the performance of official duties, and to which they regularly return on the completion of sessions of court at other places in their districts or circuits. In such cases the time which the judge spends away from his designated place of residence is generally less than the time he lives in his place of abode.

The charges made for maintenance by the judges referred to in the following paragraphs have been questioned.

Circuit Judge WILLIAM HEALY was appointed United States Circuit Judge for the Ninth Circuit on June 21, 1937. Prior to his appointment he owned and maintained a home at Boise, Idaho, in which he and his family lived. Approximately 2 years before his appointment he sold such home. Since his appointment he has not had, or maintained, a home or place of abode of any kind at Boise, Idaho, except during the early part of his tenure when he spent some time in the summer or early autumn at the Hotel Boise or the Wellman Apartments in Boise. Except for relatively short periods during which he has sat in sessions of the Court of Appeals for the Ninth Circuit at Los Angeles, Portland, and Seattle, and the district court at various court towns in Idaho, he has lived in a hotel or rented apartment in San Francisco. Judge Healy votes at Boise and pays income taxes in Idaho. He main-

tains he has always had the animus revertendi with respect to a Boise home and that this with the above facts brings him within section 456. He cites in support of that position the Supreme Court decision of *District of Columbia v. Murphy*, 314 U. S. 441.

Continuously since his appointment Judge Healy has designated Boise as his place of residence and official station and has claimed and been paid his maintenance expenses at San Francisco. It would seem to your committee that such designation is predicated solely on a legal domicile at Boise. The Conference ruled in 1940 that mere legal domicile is not sufficient to satisfy the statute and we recommend that this construction be adhered to with respect to pending or future claims of Judge Healy for maintenance at San Francisco.

Detailed facts with respect to the residence of Judge Healy are set forth in communications and statements furnished by him to your committee which appear in appendix III attached to this report.

Circuit Judge WALTER L. POPE was appointed United States Circuit Judge for the Ninth Circuit on March 1, 1949. At the time of his appointment he owned a large house, situated a short distance from Missoula, Mont., which he and his family regularly occupied as a home. Since his appointment he has continued to own and maintain that home fully furnished and available for occupancy by him at any time he chooses to go to Missoula.

For some time past he has lived in a medium-sized rented home situated near San Francisco, Calif. The rental on this rented home is \$2,424 per annum. It was fully furnished by Judge Pope at a cost of \$7,000. During approximately 2½ months of the summer season in each year Judge Pope returns with his family to Missoula. During those periods Judge Pope lives in his Missoula home and occupies District Judge Murray's chambers in Missoula, and engages in the writing of opinions and the performance of other judicial duties.

Upon his appointment Judge Pope designated Missoula as his place of actual residence and his official station. He has certified and has been paid expenses for maintenance at San Francisco, except during the periods he spends during the summer months at Missoula and except for relatively short periods when he has sat in the Court of Appeals at Portland, Seattle, and Los Angeles, or other court towns in his circuit.

The detailed facts with respect to Judge Pope are set forth in letters and statements furnished by him to the committee, copies of which are attached hereto as appendix IV.

Chief Judge J. EARL MAJOR was appointed United States Circuit Judge for the Seventh Circuit on March 23, 1937. At the time of his appointment he owned and maintained a substantial and fully furnished eight-room home at Hillsboro, Ill. He and his family have occupied that home, except for periods of time when he has lived in a rented apartment at Chicago, Ill. For some time past it has been the practice of Judge Major to remain at Chicago the major portion of the period from the opening of the fall term of the Court of Appeals in September until the summer recess of the Court. He has, however, from time to time during those periods returned to Hillsboro. Judge Major designated Springfield, the court town nearest Hillsboro, as his official station and has claimed and been paid his maintenance expenses while in Chicago. Judge Major is now engaged in the construction of a new home at Hillsboro, which he will furnish and occupy when it is completed. He has given notice of cancellation on his leased apartment in Chicago, and has advised the committee that in the future he will spend substantially less time at Chicago and return to Hillsboro between sessions of the Court for the writing of opinions and the performance of other judicial work.

The facts with respect to Judge Major are more fully set forth in letters and statements furnished by him to the committee, copies of which are attached hereto as appendix V.

Circuit Judge H. NATHAN SWAIM was appointed as a United States Circuit Judge for the Seventh Circuit on October 21, 1949. At that time he owned a large home situated in Indianapolis, Ind., which he and his wife regularly occupied. Since his appointment he has continued to maintain that home and to live there except during periods of time when he has lived in a small furnished apartment at Chicago, rented on a month-to-month basis. Chambers for Judge Swaim have not yet been provided at Indianapolis. However, he advises us that he has now taken steps to procure such chambers. Judge Swaim has lived in his rented apartment in Chicago during the larger portion of the time between the opening of Court in September and its adjournment for the summer recess. Judge Swaim designated Indianapolis as his official station and has claimed and been allowed his maintenance expenses when in Chicago. Judge Swaim advises us that he plans in the

future, as soon as chambers are available in Indianapolis, to spend substantially more time at Indianapolis and there engage in the writing of opinions and the performance of other judicial work between court sessions at Chicago.

The facts with respect to Judge Swaim are set forth in letters and statements furnished by him to your committee, which are attached hereto as appendix VI.

THE CONSTRUCTION OF THE FORMER PHRASE "ACTUAL RESIDENCE"  
AND THE TERM "RESIDENCE" IN THE ACT

The Conference at its 1940 session, as hereinbefore stated, made an administrative ruling to the effect that "mere legal domicile is not sufficient to satisfy the words of the statute, 'actual residence'."

Your committee is of the opinion that Congress in omitting the word "actual" in section 456 from the phrase "actual residence" which was used in section 259, did not intend any change in the meaning of the term "residence." We are, therefore, of the opinion that the 1940 ruling is applicable to section 456, and should be adhered to.

Your committee is of the opinion that a circuit judge who maintains a home at the place designated by him as his actual residence, and who lives at that home except during periods at which he is attending sessions of Court in his circuit or otherwise is absent on official business, and who regularly returns to that home for the preparation of opinions and the performance of other official work, comes clearly within the letter and spirit of Section 456.

It is the opinion of your committee that proper provision for travel and maintenance expenses of judges while away from their homes in the discharge of their official duties is of great importance to the proper administration of justice in the Federal courts. It is desirable that Federal courts, both District and Circuit, shall be held at places which meet the convenience of litigants, witnesses, and jurors, and that proper charges for maintenance and travel expense should not be curtailed. We also think it important that circuit judges, who are appointed from various States in their circuit, should be encouraged to maintain their homes in the State from which they are appointed in order that they may continue to bring to the Court and the judicial councils, of which they are members, their peculiar knowledge of local conditions and local law.

Your committee is of the opinion that the charges for maintenance made by Judge Major and Judge Swaim while engaged in the performance of official duties in Chicago and Judge Pope while engaged in the performance of official duties in San Francisco, come clearly within the final administrative ruling of the Department of Justice in the Evans case and were properly charged and paid. Your committee agrees that the final ruling in the Evans case was permissible under the language of the statute, but we are convinced that the phrase "actual residence" in the former statute and the word "residence" in the present statute mean an actual place of abode where the judge customarily lives. Although a judge may maintain a home in which he spends substantial portions of his vacation, if he actually lives elsewhere in living quarters of substantially permanent character during the greater portion of the year, we believe that the latter is his residence rather than the former, within the spirit of the statute and that section 456 should be so construed hereafter by the Director. We think the intent of the statute was to reimburse the judge for maintenance expenses only when performing official duties at a place other than the place of his actual abode.

Your committee is further of the opinion that the language of the statute is ambiguous and not entirely free from doubt. This is indicated by the varying constructions placed thereon by different judges, and by the administrative rulings referred to above.

Accordingly, your committee suggests that the Judicial Conference recommend to Congress the amendment of Section 456 of the Title 28, U. S. C., so that the fourth and fifth paragraphs of the section will read as follows:

The official station of each circuit and district judge, including each district judge in the Territories and Possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives.

Each circuit judge and each district judge whose official station is not fixed expressly in the second paragraph of this Section shall upon his appointment and from time to time thereafter as his official station may change, notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station.

The purpose of the phrase in our proposed amendment "at or near which the judge performs a substantial portion of his judicial work" is to eliminate the possibility, which the present law permits, of a judge claiming as his official station a place at or near which

he performs no substantial judicial work. It is the opinion of your committee that such a claim would violate the purpose although not the language of the present law, and that the possibility of such a claim in future should be eliminated by the proposed clarifying amendment.

Your committee thinks that the Conference should adopt a resolution instructing the Director with respect to the administration of Section 456 as it now stands. We therefore recommend that the Conference adopt the following resolution:

Resolved that in case the Director of the Administrative Office of the United States Courts shall determine on consideration of the pertinent facts that a notification of official station by a circuit or district judge is not in accordance with the provisions of Section 456 of Title 28, USC, the Director shall notify the judge and unless the Director and the judge shall agree upon a designation of the official station, the Director shall suspend travel and maintenance payments to such judge and report his action to the Judicial Conference.

This rejects any construction that the notification by a judge of his official station is conclusive and binding upon the Director.

In view of the fact that your committee has been advised that the General Accounting Office is conducting an investigation of the maintenance charges made by Judge Healy and has indicated a desire to have the benefits of the study made by this committee, we recommend that a copy of this report as approved by the Judicial Conference be furnished to the General Accounting Office.

Respectfully submitted.

(S) J. C. HUTCHESON, Jr.,  
 (S) JOHN J. PARKER,  
 (S) JOHN BIGGS, Jr.,  
 (S) ALBERT B. MARIS,  
 (S) ORIE L. PHILLIPS,

*Chairman.*

MAY 8, 1953.

## APPENDIX I

### MEMORANDUM OF THE STATUTES FROM WHICH THE LAST TWO PARAGRAPHS OF 28 USC § 456 WERE DERIVED AND STATUTES THAT MAY HAVE RELATION THERETO

The Act of July 29, 1850, 9 Stat. 442, provided for the designation, by the circuit judge of a circuit, of a district judge of any judicial district within the circuit to hold a district court in another district in the same circuit. Section 5 of that Act provided:

*And be it further enacted*, That the district judge so designated and appointed to hold the court and discharge the duties of the district judge of another district, and who shall hold such court or discharge such duties, shall be allowed his reasonable expenses of travel to and from and of residence in such other district necessarily incurred by reason of such designation and appointment, and his obedience thereto; and such expenses shall, when certified by the clerk and the district attorney of the judicial district within which such services shall have been performed, be paid by the marshal of such district, and allowed him in his accounts with the United States.

Section 3 of the Act of March 3, 1871, 16 Stat. 494, provided:

That from and after the first day of July, eighteen hundred and seventy-one, the annual salary of the Chief Justice of the Supreme Court of the United States shall be eight thousand five hundred dollars, and the annual salary of each of the associate justices of the Supreme Court shall be eight thousand dollars, and of each circuit judge six thousand dollars; and all provisions of law providing for additional compensation or allowance to any judge for traveling expenses are hereby repealed. And it shall be the duty of the circuit judge in each judicial circuit, whenever in his judgment the public interest shall so require, to designate and appoint, in the manner and with all the powers provided in an act to provide for holding the courts of the United States, in case of the sickness or other disability of the judges of the district courts, approved July twenty-nine, eighteen hundred and fifty, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or aid of any other district judge within the same circuit; and it shall be the duty of such district judge as shall be for that purpose designated and appointed to hold the district or circuit court as aforesaid without any other compensation than his regular salary as established by law.

The Act of March 5, 1872, 17 Stat. 36, provided:

*Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever, in virtue of section 3 of the act entitled "an act making appropriations for the legislative, executive, and judicial expenses of the government for the year ending June thirty, eighteen hundred and seventy-two," passed March third, eighteen hundred and seventy-one, a district judge, from another district, shall hold a district or circuit court

in the southern District of New York, his expenses, not exceeding ten dollars per day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and be allowed in his account.

Section 554, chapter 2, page 93, Revised Statutes of the United States, second edition, 1878, provided:

District judges are entitled to receive yearly salaries at the following rates, payable quarterly from the treasury: The judge of the district of California five thousand dollars; the judge of the district of Louisiana four thousand five hundred dollars; the judges of the district of Massachusetts; the northern, southern, and eastern districts of New York; the eastern and western districts of Pennsylvania; the district of New Jersey; the district of Maryland; the southern district of Ohio, and the northern district of Illinois, four thousand dollars. The judges of all other districts three thousand five hundred dollars. No other allowance or payment shall be made to them for travel, expenses, or otherwise.

Sections 596 and 597, chapter 4, page 105, Id., provided:

Sec. 596. It shall be the duty of every circuit judge, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section five hundred and ninety-one, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit; and it shall be the duty of the district judge, so designated and appointed, to hold the district or circuit as aforesaid, without any other compensation than his regular salary as established by law, except in the case provided in the next section.

Sec. 597. Whenever a district judge, from another district, holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and shall be allowed in the marshal's account.

The Appropriations Act enacted by the 46th Congress, session 3, 1881, 21 Stat. 454, in part provided:

For expenses and fees of bailiffs, furniture, for payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold a circuit or district court, and for other miscellaneous expenses, three hundred and twenty-five thousand dollars; in all, two million nine hundred and fifty thousand dollars. And so much of section five hundred and ninety-six of the Revised Statutes as forbids the payment of the expenses of district judges while holding court outside of their districts is hereby repealed.

Section 8 of the Act of March 3, 1891, which established the Circuit Courts of Appeals, 26 Stat., pages 828, 829, provided:

That any justice or judge, who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

The General Deficiency Act of March 4, 1907 (34 Stat. 1390) contained the following proviso:

Provided further, \* \* \* of reasonable expenses actually incurred for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States of reasonable expenses actually incurred for travel and attendance of justices or judges who shall attend the circuit court of appeals held at any other place than where they reside, not to exceed ten dollars per day, the same to be paid upon written certificates of said judge, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

Section 259, chapter 11, of the Act of March 3, 1911, which codified, revised and amended the laws relating to the judiciary, 36 Stat., chapter 11, page 1161, provided:

The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his responsible expenses (not to exceed ten dollars per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each justice and of each circuit judge while assigned to the Commerce Court shall be at Washington; and the official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence.”\*

On August 5, 1932, the Comptroller General of the United States ruled that by virtue of §§ 207, 208, 210, and 803 of the Economy Act of 1932 (47 Stat. 405, 406, and 419), § 259 of the Judicial Code, *supra*, was in effect repealed so that thereafter Federal judges could be paid for subsistence only at the rate of \$5 per day as provided in §§ 207 and 208 of the Economy Act of 1932 for “all civilian officers and employees of the United States” (12 Comp. Gen. 190).

The Act of April 22, 1940, 54 Stat. 149, reenacted § 259 of the Judicial Code, *supra*, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section 259 of the Judicial Code (U. S. C., title 28, sec. 374) is hereby reenacted, the section reading as follows:

“Sec. 259. The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska,

\*The legislative history of this section of the Judicial Code of 1911, prepared with the assistance of the Library of the Supreme Court, is set forth in the attachment to this appendix.

Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed \$10 per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence."

SEC. 2. This act shall take effect July 1, 1939.

Section 259, *supra*, appears as § 374, Title 28, U. S. Code (1946 edition).

The Act of June 25, 1948, to revise the Judicial Code, 62 Stat. 869, et sequi, at page 996, repealed § 374 of old Title 28, and reenacted it in the following language, as § 456, of the new Title 28, U. S. Code (Judiciary and Judicial Procedure):

§ 456. Traveling expenses of Justices and Judges.

Each justice or judge of the United States and each retired justice or judge recalled or designated and assigned to active duty, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses and also his reasonable maintenance expenses actually incurred, not exceeding \$10 per day, while attending court or transacting official business at a place other than his official station.

The official station of the Chief Justice of the United States, the justices of the Supreme Court and the judges of the Court of Claims, the Court of Customs and Patent Appeals, the United States Court of Appeals for the District of Columbia, and the United States District Court for the District of Columbia, shall be the District of Columbia.

The official station of the judges of the Customs Court shall be New York City.

The official station of each circuit and district judge, including each district judge in the Territories and Possessions, shall be that place nearest his residence at which a district court is regularly held.

Each circuit judge and each district judge whose official station is not fixed expressly herein shall upon his appointment and from time to time thereafter, as his residence may change, notify the Director of the Administrative Office of the United States Courts in writing of his residence and official station.

It will be observed that § 259 from the time of its enactment in 1911 until the revision of 1948 contained the phrase "actual residence" and that the 1948 revision omitted the word "actual."

#### ATTACHMENT FOR APPENDIX I

##### LEGISLATIVE HISTORY OF SECTION 259 OF THE JUDICIAL CODE OF 1911

The general subject matter of section 259 of the Judicial Code of 1911 was presented on the floor of the Senate December 19, 1910,

by Mr. Sutherland (S. 9693, 61st Cong., introduced Dec. 19, 1910)—  
 "A bill to provide for the payment of the traveling and other expenses of United States circuit and district judges when holding court at places other than where they reside"—

\* \* \* That hereafter the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be allowed and paid their actual and necessary expenses of travel and maintenance consequent upon their attending court in pursuance of law at any place other than their official place of residence, said expenses to be paid by the marshal of the district in which such court is held, upon the judge's written certificate: Provided, That for the purposes of this Act each judge shall be deemed to have his official residence at the regular place appointed by law for holding the court of which he is commissioned a judge at or nearest to his place of actual residence. Every such judge shall, upon his appointment, and from time to time thereafter, whenever he may change such official residence, in writing, notify the Department of Justice of the place of his official residence for the purposes of this Act. \* \* \*

This bill was reported with an amendment (S. Rep. No. 1149, 61st Cong., 3d sess., a copy of which is attached) on February 13, 1911, and on February 21, 1911, it passed the Senate as follows:

\* \* \* That hereafter the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be allowed and paid their *necessary expenses of travel, and their reasonable expenses, not to exceed \$10 per day, actually incurred for maintenance*, consequent upon their attending court in pursuance of law at any place other than their official place of residence, said expenses to be paid by the marshal of the district in which such court is held, upon the judge's written certificate: Provided, That for the purposes of this Act each judge shall be deemed to have his official residence at the regular place appointed by law for holding the Court of which he is commissioned a judge at or nearest to his place of actual residence. Every such judge shall, upon his appointment and from time to time thereafter, whenever he may change such official residence, in writing notify the Department of Justice of the place of his official residence for the purposes of this Act. [Italics added to indicate change from bill as introduced.]

SEC. 2. That all laws or parts of laws inconsistent with this Act are hereby repealed.

Senate Bill 9693 was referred to the House Committee on the Judiciary February 23, 1911. Attached are copies of two letters from Attorney General Wickersham dated, respectively, February 22 and 23, 1911, to Mr. R. Wayne Parker, the Chairman of the House Judiciary Committee, explaining the purposes of S. 9693, and urging its enactment. It was reported, with amendments, in the House (H. Rep. 2254, 61st Cong., a copy of which is attached) and was committed to the Committee of the Whole House, February 24, 1911.

On March 3, 1911, without objection, the bill was laid on the table, since its subject matter had been incorporated into the bill (S. 7031) to codify, revise and amend the laws relating to the Judiciary (the Judicial Code of 1911) which passed the House on March 2, 1911.

The text of Senator Sutherland's bill (S. 9693) as introduced is identical with H. R. 30029, introduced in the House by Mr. Mann, and offered by him on the floor of the House, February 15, 1911, as an amendment (which was agreed to as an additional Sec. 202bb of the Judicial Code) during debate on the House version of the Judicial Code (H. R. 23377) for which S. 7031 (an identical bill) was later substituted. An excerpt from the House debate showing the proceedings when this amendment was offered, debated, and adopted, is attached (Cong. Record, vol. 46, pt. 3, pp. 2613-2615).

No debates or other informative documents can be found explanatory of the purposes or meaning of the last two sentences of the section defining residence and beginning with the words: "The official place of residence of each justice \* \* \*."

The Report of the House and Senate conferees dated March 1, 1911, on S. 7031, which became the Judicial Code of 1911 (S. Doc. No. 848, 61st Cong., 3d sess., at page 7; 46 Congressional Record 3763) states:

"SECTION 259. This section is intended to take the place of a part of section 2, all of section 126, and of 202bb, in the bill as it passed the House." A copy of the full Conference Report as it appears in the Congressional Record is attached.

The statement of the managers on the part of the House explains:

It was recognized at the time of its adoption that this amendment [sec. 202bb] did not properly belong in the place at which it was offered, and the suggestion was made in the House that it should be put in its proper place in the bill by the conferees. The Senate [conferees?] concurred in this amendment, *with an amendment limiting the expense for maintenance not to exceed \$10 per day and making more definite provisions respecting the official residence of the circuit and district judges.* This amendment was placed by the committee as section 259, under the title of "Provisions common to more than one court," and its adoption made necessary the striking out of the portion of section 2 of the bill which contained existing law respecting the payment of the expenses of the district judges and also section 126 of the bill which contained existing law respecting the payment of the expenses of the justices and the circuit and district judges when sitting in the circuit courts of appeals. Section 2 was therefore amended by striking out everything that related to the expense of the district judges when sitting outside of their districts, and section 126 was

stricken out altogether. (46 Congressional Record 4002.) [Italics added to emphasize the material relating to the last two sentences defining residence.]

The two sections deleted from the Senate passed version of the Judicial Code by the Conference Report, when Section 259 was inserted as a substitute for the House amendment referred to as Section 202bb are set forth below. In the Report of the Revision Commission (H. Doc. 783, part 2, 61st Cong., 2d sess.) it is indicated that these sections merely restated existing law (pp. 13, 329), quoting the General Deficiency Act of March 4, 1907, and section 8 of the Act of March 3, 1891—both quoted in Appendix I to which this is attached, as its sources.

SEC. 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly installments; and shall also receive reasonable expenses actually incurred for travel and attendance when designated or requested, in accordance with law, to hold court outside of his district, not to exceed ten dollars per day, to be paid on the written certificate of the judge; and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

SEC. 126. Any justice or judge who shall attend the circuit courts of appeals held at any other place than where he resides, shall be allowed his reasonable expenses actually incurred for travel and attendance, not to exceed ten dollars per day, the same to be paid upon the written certificate of said judge; and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

[Senate, 61st Cong., 3d Sess., Report No. 1149.]

## PAYMENT OF TRAVELING AND OTHER EXPENSES OF UNITED STATES JUDGES

FEBRUARY 13, 1911.—Ordered to be printed

Mr. SUTHERLAND, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany S. 9693]

The Committee on the Judiciary, to whom was referred the bill (S. 9693) to provide for the payment of the traveling and other expenses of United States circuit and district judges when holding court at places other than where they reside, having had the same under consideration, report it back favorably, with an amendment, and as amended recommend that it do pass.

In lines 6 and 7 strike out the words "actual and necessary expenses of travel and maintenance," and insert in lieu thereof "neces-

sary expenses of travel, and their reasonable expenses, not to exceed \$10 per day, actually incurred for maintenance."

The object of this bill, as stated in its title, is to provide for the payment of the traveling expenses and expenses of maintenance of the circuit and district judges when holding court at places other than where they reside.

Prior to the passage of the so-called jury law of June 30, 1879 (21 Stat., 43), a district judge was prohibited (sec. 596, R. S.) from receiving "any other compensation than his regular salary when holding court outside of his district"; but in that act an appropriation was made "for expenses of judges holding extra terms of court outside of their districts."

The sundry civil act of March 3, 1881 (21 Stat., 454), after making an appropriation for the payment of the expenses of the district judges when required to hold court outside of their districts, repealed the provision in section 596, Revised Statutes, prohibiting the receipt of "any compensation other than his regular salary" by a district judge; and since that time an appropriation has each year been made for the payment of the expenses of travel and maintenance of the district judges when holding court outside of their respective districts. In recent years the amount which may be allowed has been limited to not exceeding \$10 per day "for expenses actually incurred." The amendment carries into the bill this restriction.

Under section 8 of the circuit court of appeals act (1 Supp., 914) any justice or judge who shall attend that court at any place other than where he resides is allowed his reasonable expenses of travel and attendance not to exceed \$10 per day.

Under existing law, when a circuit judge holds circuit court in any portion of his circuit, or a district judge holds district court in any portion of his district, he must pay his expenses of travel and maintenance. The expense of travel and of maintenance, therefore, when the judges are holding court away from their residence is, in many instances, quite burdensome; and this burden will increase as Congress increases the number of places at which courts are required to be held in the several districts and circuits.

In addition, section 17 of the act of June 18, 1910 (36 Stat., 557), requires that no injunction restraining the enforcement of a State statute upon the ground of its unconstitutionality shall be granted except the matter be heard and determined by three judges, one of whom shall be either a justice of the Supreme Court or a circuit

judge. This requirement, in some instances, places upon the judges a heavy burden of expenses, in one case the expenses to one of the judges called having amounted to nearly \$100.

OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON

FEBRUARY 22, 1911.

HON. RICHARD WAYNE PARKER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. PARKER: I learned that the bill (S. 9693) providing for the payment of traveling expenses to the United States district and circuit judges, passed the Senate yesterday. While there is a similar bill (H. R. 22469) pending in the House, I think it would be very desirable, since this bill has got through the Senate, to have it put through the House as soon as possible. I don't know whether, this being Calendar Wednesday, it could be called up today or not; but if you would kindly watch your chance and move it when there is an opportunity to do so, I should be greatly obliged, and you would be doing, as you know, a very valuable thing in the interest of justice to the judges.

Faithfully yours,

GEO. W. WICKERSHAM.

OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON

FEBRUARY 23, 1911.

HON. R. WAYNE PARKER, M. C.  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

MY DEAR MR. PARKER: I have yours of 22 instant regarding the various bills relating to judges' expenses. I understand that S. 9693 has passed the Senate, and is now in the House referred to your committee. As you suggest, it gives the judges their necessary traveling expenses *and* their expenses of maintenance, not exceeding \$10.00 a day. Of course, traveling expenses means railroad and Pullman fare. The hotel bills of judges when absent from home on official business ought to be paid; take, for instance, the case of the circuit judges, who, under Section 17 of the Act of June 25, 1910, are compelled to go from St. Paul to Muskogee, Okla., to

sit with a district judge on an application for an injunction to restrain an order made by a State corporation board, which it is claimed results in confiscation contrary to a constitutional provision. The judge has to pay his railroad and Pullman fare, his meals on the train and his hotel bills in Muskogee. This bill proposes to reimburse him for those expenses.

In like manner, a circuit judge who has a house where he maintains his family in St. Paul, may have to go to St. Louis or Denver to sit in the Circuit Court in an anti-trust or interstate commerce case under the Expedition Act, and may be kept—indeed has been kept—sometimes two weeks at a time, and yet has to pay his traveling expenses and hotel bills out of his own pocket. This is not fair.

Again, district judges are compelled to hold court in some States in as many as six places, besides that of their own residence, and yet have not only to pay their traveling expenses, but hotel bills as well, out of their own pocket.

Now a flat allowance of \$6 a day would be a great deal better than the present condition. It would not cover their hotel bills in all cases, but it would help—indeed, anything would help. The salaries of judges are small now, and it does not seem right that they should have to pay all of these expenses out of their own pocket.

The bill S. 9693 proposes to reimburse them their actual out of pocket traveling expenses, and their expenses of maintenance, limited to \$10 a day. If your committee in its wisdom thought best to change it to read, "and an allowance of \$6 per day to cover expenses for maintenance, etc." I think it would be an not unfair measure of relief.

The difficulty with the bill S. 7090 is that it is limited entirely to district judges, and that it allows them but \$6 per day for expenses of travel and maintenance. However, as that bill only covers expenses while holding court in some other place within the district whereof he is a judge, I do not think any serious objection could be made to it.

Faithfully yours,

GEO. W. WICKERSHAM,  
*Attorney General.*

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TRAVELING EXPENSES OF UNITED STATES CIRCUIT AND DISTRICT  
COURT JUDGES

FEBRUARY 24, 1911.—Committed to the Committee of the Whole House on the state  
of the Union and ordered to be printed

Mr. PARKER, from the Committee on the Judiciary, submitted the  
following

REPORT

[To accompany S. 9693]

The Committee on the Judiciary, to whom was referred the bill (S. 9693), to provide for the payment of the traveling and other expenses of United States circuit and district judges when holding court at places other than where they reside, having considered the same, do report thereon with the recommendation that said bill be amended as follows:

Page 1, line 3, insert, before the word "circuit," the words "circuit justices and the."

Page 1, strike out from and including the word "their" in line 6, down to and including the word "maintenance," in line 9, viz, "their necessary expenses of travel, and their reasonable expenses, not to exceed ten dollars per day, actually incurred for maintenance," and insert in lieu thereof the words "their reasonable expenses, not to exceed ten dollars per day, actually incurred for travel and attendance."

Amend the title by inserting, after the words "United States," the words "circuit justices and."

By the act of March 3, 1891 (26 Stat. L., p. 826):

Any justice or judge who shall attend the circuit court of appeals held at any place other than where he resides shall upon his written certificate be paid by the marshal of the district in which the court shall be held, his reasonable expenses of travel and attendance not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

In the current appropriation bills (see act of June 25, 1910, Stat. L., p. 750) a like allowance for expenses actually incurred is made to district judges directed to hold court outside of their districts.

In these respects this bill as amended is existing law.

There is no provision of law for the large expenses which fall upon district judges holding court away from their residence, though within their districts, sometimes at a distance of many hundred miles; nor is there provision for attendance of the circuit justice and circuit judges at the various circuit courts. We believe that the courts ought to be brought home to the people, and that some provision should be made for this expense so as to encourage holding of court where most convenient for litigants and witnesses.

EXCERPT FROM CONGRESSIONAL RECORD—HOUSE OF  
REPRESENTATIVES

Feb. 15, 1911, Vol. 46, part 3, pp. 2613-2615

Mr. MANN. Mr. Speaker, I move to strike out the last word. I spoke the other day, when this bill was under consideration, about the power and jurisdiction of these Commerce Court judges, when they are transferred out into the districts or the circuits, and I made a suggestion as to that. I did that because one of the new judges came to me and suggested that the law does not cover the case. Now, I would like to ask, Does not the gentleman from Pennsylvania [Mr. MOON] think it would be advisable to put an amendment in here so that the matter could be thrown into conference, so that if it is necessary to have legislation on this point to authorize this class of Commerce Court cases to be tried in the country it could be done?

Mr. MOON of Pennsylvania. Mr. Speaker, I will admit to the gentleman from New York [Mr. PARSONS] that that was an omission in the original bill, that judges whose labors for a limited period of time will be devoted to serving in that court and whose appointment—because they are appointed for life—will of necessity be added to the judicial machinery of the country. And there does not seem to be any provisions as to where those judges shall go when their service on this court terminates. The only provision as to their creation was that no two of them should be taken from the same circuit. The suggestion may be a very wise one. It seems to me, when we are revising the laws, this is the time to take care of the situation that has developed. I therefore shall welcome any amendment that may be offered by the gentleman, and would suggest that we do not attempt to perfect the phraseology now, but carry it into conference, where we may be able to give it more careful consideration than we can give to it here on the floor.

Mr. MANN. I understood during the debate the other day that one member of the committee would prepare or had prepared an amendment that would cover it.

Mr. PARSONS. I will say to the gentleman from Illinois [Mr. MANN] that I think this section could very readily be amended so as to cover both his points. I see no harm in amending it, and if that phraseology is imperfect it could be amended in conference. I will offer an amendment.

Mr. MANN. Yes; let the gentleman offer an amendment, so as to put it in conference.

Mr. PARSONS. Mr. Speaker, I move to strike out section 202b, and insert in lieu thereof the following:

The five additional circuit judges authorized by the "Act to create a Commerce Court, and for other purposes," approved June 25, 1910, shall hold office during good behavior,

and from time to time shall be designated and assigned by the Chief Justice of the United States Supreme Court for service in the district court of any district, or the circuit court of appeals of any circuit, or in the Commerce Court, and when so designated or assigned for service in the district court or in the circuit court of appeals shall have the power and jurisdiction in this act conferred upon the circuit judge in his circuit.

The SPEAKER pro tempore. The Chair would suggest that the gentleman from New York send his amendment to the Clerk's desk.

Mr. MANN. I am not sure, even under that amendment, what would be the situation in case the Customs Court judge from the New York circuit is assigned to hear cases at Savannah.

Mr. MOON of Pennsylvania. Or in the fourth district, where they have two.

Mr. MANN. Yes; or in the fourth district, where they have two, as to his compensation or his traveling expenses. A judge of the court of appeals is allowed his traveling expenses and per diem if he holds court at any place away from his home, but he can only hold court in the circuit. A circuit judge is not allowed that and a district judge is not allowed that. Now, it is manifestly improper to expect that a judge in New York shall be sent to some other part of the country to hold court unless he receives his traveling expenses, and I think it would be very difficult to get him to go.

Mr. MOON of Pennsylvania. We will take care of that.

Mr. STAFFORD. Does not the gentleman believe that there should be some general provision covering the traveling expenses of all the judges, not only the circuit judges but the district judges as well? The gentleman has pointed out an embarrassing feature in connection with the traveling of these judges to places in the different circuits or districts, which would undoubtedly prevent their going to places where they should go.

Mr. MANN. I have a bill pending which I introduced, prepared by the Attorney General, to cover the question. I had thought possibly the Judiciary Committee would report it before this. I think it could be passed by unanimous consent. I have been carrying it in my pocket for several days to call it to the attention of the proper member of the Judiciary Committee.

Mr. STAFFORD. As I understand, the Senate committee has reported, and the Senate has passed a similar bill.

Mr. MANN. They have reported this same bill, which was introduced in the Senate after I introduced it in the House.

Mr. STAFFORD. And it has passed the Senate, as I understand.

Mr. MANN. It has been reported in the Senate, but I think it has not passed that body. My bill provides:

That hereafter the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be allowed and paid their actual and necessary expenses of travel and maintenance consequent upon their attending court in pursuance of law at any place other than their official place of residence, said expenses to be paid by the marshal of the district in which such court is held, upon the judges written certificate: *Provided*, That for the purposes of this act each judge shall be deemed to have his official residence at the regular place appointed by law for holding the court of which he is commissioned a judge at or nearest to his place of actual residence. Every such judge shall, upon his appointment, and from time to time thereafter, whenever he may change such official residence, in writing, notify the Department of Justice of the place of his official residence for the purposes of this act.

Mr. Cox, of Indiana. We have some kind of a law, have we not, under which a judge is allowed traveling expenses to the amount of \$10 per day when holding court away from his place of residence?

Mr. MOON of Pennsylvania. Out of his district.

Mr. MANN. If a district judge is sent out of his district to hold court, he is allowed traveling expenses and per diem not to exceed \$10 a day. But this

situation arises in the State of the gentleman from Indiana: We have provided for holding court in a number of places in that State, and the district judge does not hold the court. Why should he? Every time he goes to hold court at some place away from his home he pays his expense out of his own pocket, including his traveling expenses.

The circuit court in Indianapolis frequently would like to have one of the circuit judges at Chicago come down and hold court, but why should he? If he goes, he has to pay his expenses out of his own pocket. I do not say that he should not do it. Some of the judges do it; but anyone can see very readily that judges will not be jumping over themselves in their haste to go to some other place to hold court when it is done at their own expense, and they get neither money return nor thanks.

Mr. Cox of Indiana. If the gentleman's bill should become a law, what conflict would there be between it and the existing law?

Mr. MANN. There would be no conflict. It would change the \$10 a day business.

Mr. Cox of Indiana. That is what I am trying to get at. It only provides for actual expenses?

Mr. MANN. Yes.

Mr. Moon of Pennsylvania. The existing law provides for actual expenses not exceeding \$10 a day.

Mr. Cox of Indiana. As a rule, do they not collect the \$10?

Mr. STAFFORD. Oh, no.

Mr. MANN. As a rule, they did take the \$10 without question until there were some impeachment proceedings a few years ago. Since that time I think the judges have been a little more particular. Up to that time it was considered to mean \$10 a day.

Mr. Cox of Indiana. I have always been of the opinion that all Government employees, I care not whether post-office inspectors or Agricultural Department inspectors or Government employees under the Department of Justice, should be put squarely upon the expense basis, cutting out this question of per diem. I do not believe it is proper. I do not think it is right at all.

Mr. Moon of Pennsylvania. The judges complain very seriously of being obliged to keep an account of every little expenditure. They think it is humiliating.

Mr. Cox of Indiana. Well, many things are humiliating, but nevertheless are right.

Mr. Moon of Pennsylvania. I think they would agree with the gentleman from Indiana to limit it to an absolute figure.

Mr. Cox of Indiana. No; that is not my proposition. I would put it on an actual expense account, whatever they have expended.

Mr. Moon of Pennsylvania. But that is what it is now.

Mr. STAFFORD. What objection would there be to offering the bill of the gentleman from Illinois as an amendment to one of the sections now under consideration, so as to bring the subject into conference?

Mr. MANN. If the gentleman in charge of the bill can name any place where it would be applicable, I would be glad to offer it.

Mr. Moon of Pennsylvania. It seems to me that it might be made applicable here almost anywhere if it was coupled with an instruction to this committee that the committee of conference can put it in where it ought to go, under the head of circuit judges or district judges. If that can be understood, I would welcome it.

Mr. MANN. With that understanding, I will offer it.

Mr. STAFFORD. I think it should be offered at this point with that understanding.

The SPEAKER pro tempore. The Clerk will first report the amendment offered by the gentleman from New York [Mr. PARSONS].

The Clerk read as follows:

Strike out section 202b and insert in lieu thereof the following:

"Sec. 202b. The five additional circuit judges authorized by the act to create a Commerce Court, and for other purposes, approved June 25, 1910, shall hold office during good behavior, and from time to time shall be designated and assigned by the Chief Justice of the United States for service in the district court of any district, or the circuit court of appeals for any circuit, or in the Commerce Court, and when so designated and assigned for service in a district court or circuit court of appeals shall have the powers and jurisdiction in this act conferred upon a circuit judge in his circuit."

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York.

The amendment was considered and agreed to.

Mr. MANN. Now, Mr. Speaker, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Insert a new section, as follows:

"That hereafter the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be allowed and paid their actual and necessary expenses of travel and maintenance consequent upon their attending court in pursuance of law at any place other than their official place of residence, said expenses to be paid by the marshal of the district in which such court is held, upon the judge's written certificate: *Provided*, That for the purposes of this act each judge shall be deemed to have his official residence at the regular place appointed by law for holding the court of which he is commissioned a judge at or nearest to his place of actual residence. Every such judge shall, upon his appointment, and from time to time thereafter, whenever he may change such official residence, in writing, notify the Department of Justice of the place of his official residence for the purposes of this act."

\* \* \* \* \*

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania.

The question was taken, and the amendment was agreed to.

Mr. MANN. Does that include the amendment that I offered as an amendment to the amendment?

The SPEAKER pro tempore. The Chair will put the question again. The question is on the amendment offered by the gentleman from Pennsylvania as amended by the gentleman from Illinois.

The question was taken, and the amendment was agreed to.

Mr. MOON of Pennsylvania. Mr. Speaker, I ask unanimous consent that the numbering of the chapters, when necessary by the addition of a new chapter, be made by the Clerk.

Mr. MANN. Of course it is understood that the Clerk rennumbers these sections.

Mr. MOON of Pennsylvania. Yes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

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## EXCERPT FROM CONGRESSIONAL RECORD—HOUSE OF REPRESENTATIVES

MARCH 2, 1911, VOL. 46, P. 3998-4001

### CODIFICATION OF THE LAWS RELATING TO THE JUDICIARY

Mr. MOON of Pennsylvania. Mr. Speaker, I submit a conference report on the bill (S. 7031) to codify, revise, and amend the laws relating to the judiciary,

and I ask unanimous consent that the statement may be read in lieu of the report.

The SPEAKER. Is there objection?

There was no objection.

Mr. PARKER. I reserve points of order on the report.

The SPEAKER. The Clerk will read the statement.

The conference report and statement are as follows:

#### CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill S. 7031, being a bill to codify, revise, and amend the laws relating to the judiciary, having met, after full and free conference, have agreed to recommend, and do recommend, to their respective Houses as follows:

That the Senate agree to the House amendment, with amendments to sections 2, 13, 14, 21, 24, 28, 29, 30, 40, 56, 70, 76, 78, 88, 91, 92, 99, 103, 106, 112, 118, 126, 128, 140, 151, 152, 178, 182, 186, 201, 207, 226, 227, 228, 229, 240, 250, 251, 259, 284, 289, 298, 301.

That the House agree to the amendments proposed by the Senate conferees, as follows:

(The references to section numbers and pages are to the bill as reported by the conferees and not to the bill as it passed the House or Senate.)

Section 2: On page 3, in line 16, beginning after the word "installments," strike out the remainder of the section.

Section 13. On page 7, in line 2, after the word "absence," insert the words "of all the circuit judges."

Section 14. Page 8, in line 1, strike out the word "their" and insert in lieu thereof the word "the"; and after the word "absence" insert the words "of all the circuit judges."

Section 21. On page 10, in line 13, strike out the words "or his counsel." In line 22, before the word "reason," insert the words "facts and the." In line 22, after the word "cause," insert the word "shall." On page 11, line 2, after the word "affidavit," insert the words "and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith."

Section 24. On page 12, in line 10, strike out the word "five" and insert "three." On page 15, in line 1, after the word "authority," strike out the following: "except in suits to suspend, enjoin, or restrain the action of any officer of a State in the enforcement, operation, or execution of a statute of such State, upon the ground of the unconstitutionality of such statute," and insert in lieu thereof the following, which will be section 266:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, shall be issued or granted by any Justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a Justice of the Supreme Court, or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented

to a Justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a Justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any Justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

SECTION 28. On page 23, in line 22, after the words "United States," strike out the remainder of the section, reading: "*Provided further,* That no suit against a corporation or joint-stock company, brought in a State court of the State in which the plaintiff resides, or in which the cause of action arose, or within which the defendant has its place of business, or carries on its business, shall be removed to any court of the United States on the ground of diverse citizenship."

SECTION 29. On page 24, in line 17, strike out the word "twenty" and insert the word "thirty." On page 24, in line 25, strike out the word "due" and insert the word "written." In line 3, on page 25, strike out the word "twenty" and insert the word "thirty"; in line 5 strike out the word "twenty" and insert the word "thirty."

SECTION 30. On page 25, in line 13, strike out the word "five" and insert the word "three."

SECTION 40. On page 35 restore section 40, reading: "The trial of offenses punishable with death shall be had in the county where the offense was committed where that can be done without great inconvenience."

SECTION 56. On page 41, in line 15, substitute a period for the semicolon, and strike out the words "provided that." On page 41, in line 21, strike out the word "approval" and substitute the word "disapproval"; in line 1, on page 42, strike out the word "approval" and substitute the word "disapproval." In line 5 strike out the words "The failure to secure"; also the word "approval," and substitute the word "disapproval." Beginning after the word "brought," in line 10, strike out the words, "The circuit court of appeals, or the judge thereof approving such order or appointment, may, at any time, for good cause shown, revoke such approval; and thereafter, unless the circuit court of appeals shall renew such order, the receiver shall thereby be divested of jurisdiction over all such property lying or being without the State in which the suit has been brought." In line 17 strike out the words "proviso to" and insert the words "provisions of"; and in line 4 strike out the words "and his appointment so approved."

SECTION 70. On page 51, in line 9, after the word "district," insert the words "also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette and Lamar, which shall constitute the Jasper division of said district." On page 52, in line 4, after the word "year," insert the words "for the Jasper division, at Jasper, on the second Tuesdays in January

and June; *Provided*, That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the Government."

SECTION 76. On page 58 strike out all of lines 16, 17, and 18, after the word "Tallahassee," and insert in lieu thereof the following: "on the second Monday in January; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; and at Gainesville on the second Mondays in June and December."

SECTION 78. Strike out the section and insert in lieu thereof the following:

"The State of Idaho shall constitute one judicial district, to be known as the district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions.

"The territory embraced on the 1st day of July, 1910, in the counties of Bonner, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Idaho, Latah, and Nez Perce, shall constitute the central division of said district; and the territory embraced on the date last mentioned in the counties of Ada, Boise, Blaine, Cassia, Twin Falls, Canyon, Elmore, Lincoln, Owyhee, and Washington, shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear, Lake, Bingham, Custer, Fremont, Lemhi, and Oneida, shall constitute the eastern division of the said district. Terms of the district court for the northern division of the said district shall be held at Coeur d'Alene City on the fourth Monday in May and the third Monday in November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise City on the second Mondays of February and September; and for the eastern division of Pocatello on the second Mondays of March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Coeur d'Alene City, at Moscow, at Boise City, and at Pocatello, which shall be open at all times for the transaction of the business of the court."

SECTION 81. On page 32, in line 13, after the word "December" insert "and at Waterloo on the second Tuesdays in May and September."

SECTION 88. On page 76, in line 6, after the word "Crawford," insert the word "Genesee"; in line 8, after the word "Saginaw," insert the word "Shiawassee"; in line 11 strike out the word "Genesee"; and in line 13 strike out the word "Shiawassee."

SECTION 91. On page 82, in line 3, after the word "Lincoln" insert the word "Maries"; in line 14, on page 83, strike out the word "Maries." On page 84, in line 10, after the words "St. Joseph" insert the words "at Joplin"; in line 14 strike out the words "of holding court" and insert in lieu thereof the words "at which court is now held."

SECTION 92. On page 84, in line 20, after the word "October" insert the following: "at Missoula on the first Mondays in January and June; and at Billings on the first Mondays in March and August."

SECTION 99. On page 94, in line 9, strike out the words "of holding court" and insert in lieu thereof the following: "at which court is now held."

SECTION 103. On page 99, at the end of line 4, add the following: "The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Harrisburg; and civil suits instituted at that place shall be tried there if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place for trial."

SECTION 106. On page 101, line 2, strike out the word "Lyman"; in line 3 strike out "Crow Creek"; in line 4 strike out "Lower Brule and"; in line 7 strike out "Armstrong"; in line 8 strike out "Dewey"; and strike out all from the word "Reservation," in line 10, and substitute the following: "and in that portion of

the Standing Rock Indian Reservation lying in South Dakota shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sully, and in Cheyenne River, Lower Brule, and Crow Creek Indian Reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington and in the Rosebud and Pine Ridge Indian Reservations shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the first Tuesday in April and the third Tuesday in October; for the northern division at Aberdeen on the first Tuesday in May and the second Tuesday in November; for the central division at Pierre on the second Tuesday in June and the first Tuesday in October; and for the western division at Deadwood on the third Tuesday in May and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court."

SECTION 112. On page 113, line 23, strike out the word "Kittitas" and insert it in line 4, on page 114, after the word "Klickitat"; in lines 1 and 7 on page 114, strike out the word "eastern" and insert in lieu thereof the word "Northern"; in lines 21 and 25 strike out the word "western" and insert in lieu thereof the word "southern."

SECTION 118. On page 121, in line 22, beginning after the word "circuit" strike out the remainder of the section.

SECTION 126. Strike out the section. The provisions of this section are embraced in section 259.

SECTION 128. On page 128, in line 5, after the word "laws" insert the words "under the copyright laws."

SECTION 140. On page 134, in line 5, strike out the word "quarterly" and insert in lieu thereof the word "monthly."

SECTION 151. On page 139, in line 18, after the word "may" strike out the words "or the committee thereof to which it shall have been referred, also may,". On page 140, in line 18, after the word "House" strike out the words "or such committee." At the end of the section add the following: "In any proceeding under this section, the court shall determine as a preliminary inquiry the question of limitation, delay, or laches; and if it shall be of opinion that the delay in presenting the claim is not excusable, and that the bar of the statute of limitation should not be removed, it shall not proceed further to find the existence of loyalty, liability, or the extent thereof, in such case, but shall report such finding in bar to the House by which the claim or matter was referred."

SECTION 152. Strike out the section.

SECTION 178. On page 140, in line 16, strike out the word "hereinbefore" and add, after the word "provided," the words "by law."

SECTION 182. Insert a new section numbered 182, as follows:

"SEC. 182. In any case brought in the Court of Claims under any act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred under sections 229 and 230; and such right shall be exercised only within the time and in the manner therein prescribed."

SECTION 186. On page 152, in line 23, after the word "claims," add the words "on account of color."

SECTION 201. Strike out this section, the provisions of this section being embraced in section 259.

SECTION 207. On page 169, in line 15, strike out the word "now"; in line 16, after the word "thereof" add the following: "immediately prior to June 18, 1910."

SECTION 226. On page 182, in line 7, after the word "court," insert the words "heretofore published"; in line 8, strike out the words "after the 5th of August, 1882"; in line 10, strike out the word "one" and insert the word "two," and strike out "and 50 cents." After the word "volume" add the following: "and those hereafter published at a sum not to exceed \$1.75 per volume." In line 18 strike out "fifty" and insert "seventy-five."

SECTION 227. On page 183, in line 7, after the words "Attorney General" insert the words "each United States district attorney." On page 184, in line 14, after the word "twenty" add the word "five." On page 185, in line 3, after the word "them," insert the words "to each United States judge and to each United States district attorney who has not received a set." On page 185, in line 17, after the word "office" strike out the remainder of the section.

SECTION 288. On page 186, in line 7, strike out the words "or hereafter." In line 9, after the word "than" strike out "one" and insert "two"; and after the word "dollar" strike out "and 50 cents," and at the end of the line add: "and such number of copies of each report hereafter published as he may require, for which he shall pay not more than \$1.75 per volume."

SECTION 229. On page 187. Strike out the section and insert in lieu thereof the following:

"SEC. 229. The Attorney General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publications containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit court of appeals or a district court is now or may hereafter regularly be held, and to the Supreme Court of the United States, the Court of Claims, the Court of Customs Appeals, the Commerce Court, the court of appeals and the supreme court of the District of Columbia, the Attorney General, the Solicitor General, the Solicitor of the Treasury, the Assistant Attorney General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Secretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, not more than three sets each. Whenever any such courtroom, office, or officer shall have a partial or complete set of any such reports or digest already purchased or owned by the United States, the Attorney General shall distribute to such courtroom, office, or officer only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States, and, before distribution shall be plainly marked on their covers with the words "The property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exceed \$2 per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed \$5 per volume for the digest, the said money to be disbursed under the direction of the Attorney General; and the Attorney General shall include in his annual estimates sub-

mitted to Congress an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section."

SECTION 240. On page 192, in line 19, after the word "case" insert "civil or criminal"; in line 22, after the word "otherwise," insert "upon the petition of any party thereto."

SECTION 250. This section is intended to take the place of section 237 of the House amendment.

SECTION 250. Any final judgment or decree of the court of appeals of the District of Columbia may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution or any law of a State is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of the said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases. Except as provided in the next succeeding section, the judgments and decrees of the said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken with the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

SECTION 251. This section is intended to take the place of section 238 of the House amendment.

SECTION 251. Strike out the section and substitute the following: "In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari, or otherwise, any such cause to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instructions on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

SECTION 259. This section is intended to take the place of a part of section 2, all of section 126, and 202*bb*, in the bill as it passed the House.

"SEC. 259. The circuit justices, the circuit and district judges of the United

States, and the judges of the district court of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed \$10 per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each justice and of each circuit judge while assigned to the Commerce Court, shall be at Washington; and the official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence."

SECTION 280. On page 202, in line 10, strike out the words "a time 10 years before" and insert "at the time of."

SECTION 284. On page 211, in line 20, after the word "therefor," insert the following:

"If the United States attorney, for any district which has a city or borough containing at least 300,000 inhabitants, shall certify in writing to the district judge, or the senior district judge of the district, that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury."

SECTION 289. On page 216, in line 3, before the word "authority," insert the word "same."

SECTION 297. On page 218, in line 13, strike out "twenty" and insert "fourteen"; in line 14, after the word "inclusive" insert the following: "sections 716 to 720, both inclusive." On page 220, in line 3, after the word "eighty-seven," insert "except sections 4, 5, 6, 7, and 10 thereof." Beginning in line 13 strike out the following: "An act to establish circuit court of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes, approved March 3, 1891." On page 221, in line 13, after the word "eleven," insert the following: "Sections 1, 2, 3, 4, 5, the first paragraph of section 6, and section 17 of an act entitled 'An act to create a Commerce Court, and to amend an act entitled 'An act to regulate commerce, approved February 4, 1887, as heretofore amended, and for other purposes,' approved June 18, 1910.'"

SECTION 298. On page 221, in line 21, after the word "Act," insert the words "or affecting the organization of the courts."

SECTION 299. On page 222, in line 6, after the word "proceeding," insert the following: "including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within the provisions of this act."

SECTION 301. On page 222, in line 19, strike out the word "July" and insert "January"; and strike out the word "eleven" and insert the word "twelve."

R. O. MOON,  
HERBERT PARSONS,  
SWAGER SHERLEY,

*Managers on the part of the House.*

W. B. HEYBURN,  
GEO. SUTHERLAND,  
JAMES P. CLARKE,

*Managers on the part of the Senate.*

## STATEMENT

An exactly similar bill was introduced both in the Senate and House, the Senate bill being S. 7031 and the House bill H. R. 23377. After the House had considered the bill for a number of days the Senate bill was passed and was sent to the House; whereupon the House took up the Senate bill, struck out all after the enacting clause, and substituted therefor the House bill.

In this statement the sections are the sections of the bill as reported by the conferees. The figures in brackets refer to the sections of the bill as it passed the House.

The Senate, in its consideration of the bill, adopted a number of amendments. Many of these amendments were of a mere formal character, to wit:

Sections 13 and 14. The insertion of the words "of all the circuit judges" being intended to make the meaning of the sections more clear without in any sense changing the character of the sections.

Amendments to chapter 5, which relate wholly to the geographical division of the various States into judicial districts and divisions and the time of holding court therein and to the location of deputy clerks for the transaction of the business of the courts.

Numerous changes were made in both the Senate and House in the particulars enumerated, all of which are specifically set forth in the accompanying report and are not in this statement more particularly referred to. The attitude of both the House and Senate was that such change should be made by the conferees as would bring the law into exact accordance with changes that had been made by the statutes since the bill was reported. No change made in this chapter imposes any expense upon the Government or in any way alters the power of the judges, but is made upon the recommendation of Members and Senators simply for the purpose of better expediting the business of the courts in the various districts and divisions of the country.

Section 284 [269]. The Senate amendment to this section provides for a power on the part of a senior district judge of the district containing at least 300,000 inhabitants, when the exigencies of the public service require it, to order a venire to issue for a second grand jury. This carries into the section the amendment made by the act of March 28, 1910.

Section 289 [274]. The insertion of the word "same" before the word "authority" in line 14, referring to the transfer of authority from the circuit court clerks to district clerks, was made to make the meaning more clear.

Section 298 [283]. The insertion of the words "or affecting the organization of the courts" was intended simply to make it more clear that the abolition of the original jurisdiction of the circuit courts should not affect in any way the office of circuit judge.

Section 301 [286]. This amendment fixes the time when this section goes into effect.

To all of these formal amendments the conferees on the part of the House assented.

The other amendments made by the Senate embracing substantive changes were as follows:

SECTION 128 [127]. The insertion of the words "under the copyright laws," thereby making the appellate jurisdiction of the circuit courts of appeals final in copyright cases as it previously was in patent cases.

SECTION 240 [227]. The insertion of the words "civil or criminal" and the words "upon the petition of any party thereto." The effect of this amendment is to make more clear the right of the Supreme Court of the United States by writ of certiorari to bring before it for review any case in which the judgment

or decree of the circuit court of appeals is made final by the provisions of the act, and to define more accurately the method by which such writ might be obtained.

SECTIONS 250 and 251 [237 and 238]. These sections were stricken out by the Senate and two new sections substituted therefor. These sections refer to appeals from the court of appeals of the District of Columbia to the Supreme Court of the United States and are intended to place this court upon substantially the same basis respecting appeals as are the courts of appeals in the nine judicial circuits of the United States, a special exception being made, however, respecting cases in which the validity of any authority exercised under the United States or the existence or scope of any power or duty of an officer of the United States is drawn in question; this exception being made by the fact that the seat of government is located in the District of Columbia and questions affecting the scope and power of officers of the United States are special features of the jurisdiction of the courts of the District of Columbia.

In all of these amendments the conferees upon the part of the House concurred.

The amendments made by the House to the bill were numerous, in a large number of which the Senate conferees acquiesced without amendment. In four cases in which amendments were made by the House the Senate refused to concur and the conferees upon the part of the House acquiesced therein, to wit:

SECTION 28. The elimination of this House amendment leaves the removal of suits from a State court to a Federal court by corporations upon the ground of diverse citizenship to remain under existing law.

While the conferees on the part of the House strongly insisted upon the amendment, the conferees of the Senate insisted that an important change of this kind should be a subject of distinct legislation and should not be attempted in a bill providing for the codification of the laws.

SECTION 40. The House struck out the whole section, which was as follows:

"Sec. 40. The trial of offenses punishable with death shall be had in the county where the offense was committed where that can be done without great inconvenience."

The House conferees acquiesced in this action because this provision was existing law and had been in operation since 1789. It has been thoroughly adjudicated by the courts, was carried in by the revisers in 1873, and has created no confusion by reason of its existence as part of our judicial system.

SECTION 118 [116]. An amendment was made by the House as follows:

"and, as well as the circuit justices, shall have throughout his circuit the powers and jurisdiction of a district judge."

The House conferees agreed to this being stricken out in view of the fact that provision for the assignment of circuit judges to sit in the district court when the exigencies of business require it was provided for by section 18 of the act.

SECTION 186 [189]. The House struck out the words "on account of color." The section provides that—

"No person shall be excluded as a witness in the Court of Claims on account of color or because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness upon the part of the Government."

This was stricken out by the House on the theory that it was a constitutional provision. The contention of the Senate conferees was that it requires affirmative law to give effect to a constitutional provision, and that the omission of these words from the revision might work an injury to the parties intended to be benefited by the constitutional provision.

In all of the other amendments made by the House the Senate concurred, with amendments as follows:

SECTION 21 [20A]. The challenging of a judge on account of personal bias or prejudice. An amendment was made which required the counsel of record to certify that in his judgment the affidavit so filed was made in good faith.

SECTION 24. Concerns the jurisdiction of the district courts. The House adopted the following amendment:

"Except in suits to suspend, enjoin, or restrain the action of any officer of a State in the enforcement, operation, or execution of a statute of such State, upon the ground of the unconstitutionality of such statute."

This was amended by striking out the provision above recited and substituting therefor as section 266 the provisions of section 17 of the act of June 18, 1910, entitled "An act to create a Commerce Court, etc.," as follows:

"SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

SECTION 24 was further amended by the House so as to increase from \$2,000 to \$5,000 the amount necessary to give the Federal courts jurisdiction of the classes of cases included therein.

SECTION 30. Regulating the removal of cases to the Federal courts in which title to land is claimed under grants from different States, was also amended by increasing the jurisdictional amount from \$2,000 to \$5,000.

The Senate concurred in each of these amendments, with an amendment reducing in each case this amount to \$3,000, in which the House conferees concurred.

SECTION 29. The House amended this section, which provides for the removal of cases, by requiring the party removing the case to file in the Federal court, within 20 days from the date of filing the petition and bond, a certified copy of the record of the case in the State court, and of pleading within 20 days thereafter, instead of on or before the first day of the next term of the court; and by requiring notice to be given the adverse party of the filing of the petition and bond for removal.

The amendment made thereto at the instance of the Senate conferees was to fix the time at 30 instead of 20 days, and to substitute for the words "due notice" the words "written notice," in which the House conferees concurred.

SECTIONS 55 and 56 [54A]. The Senate agreed to this amendment, with an amendment making the proviso of the section a separate section, and by amending the proviso so that the order of the district court should continue unless disapproved within 30 days by the circuit court of appeals or by a circuit judge, and by eliminating matter rendered unnecessary by reason of this change.

The House conferees concurred in this amendment for the reason that in their judgment the change thus effected would continue the supervision of the circuit judges over such appointment as fully as provided in the amendment adopted by the House, and would at the same time avoid legal complications that might ensue if the appointment during the interval before approval might be construed to be of a tentative character only.

SECTION 140 [139]. The payment of salaries is made monthly instead of quarterly, in order to conform to existing law, a general provision of law having modified the previous special provision in the Revised Statutes in regard to the Court of Claims which had been incorporated in the bill.

SECTION 151 [155]. This section is one in which the House rearranged and combined certain provisions of the Bowman and Tucker Acts. The Senate assented thereto with two amendments. First, by striking out the words "or the committee thereof to which it shall have been referred, also may." Under the Bowman Act a committee of either House of Congress could refer claims to the Court of Claims without any act upon the part of Congress. This practice has not been followed in recent years by the Senate Committee on Claims, nor is it possible under the Tucker Act, which was of later date. This amendment prevents such manner of reference in the future. All such claims can still be referred by a resolution of either House instead of merely a resolution of the committees thereof. The second amendment is intended to relieve the court of the duty of finding all the facts of a case submitted to it when its preliminary inquiry shows that laches have been such that the claim ought not to be paid. This provision will relieve the Congress of having to consider the facts in regard to claims as to which the court has found inexcusable laches.

SECTION 157. This section was stricken out because it was taken from the Bowman Act and was a qualification of that act. If left in the bill, it would qualify the Tucker Act and so change existing law, and would remove from the Court of Claims jurisdiction of a large number of cases of which it was given jurisdiction by the Tucker Act.

SECTION 182. Is intended to give to the United States as trustee for Indian tribes the right of appeal from the Court of Claims in certain cases.

SECTION 216a [229]. This section was rewritten to make the meaning more clear; and in line 13, page 200, the word "directed" was stricken out; and after the word "thereof," in line 11, page 201, the following words were added: "No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can

be committed." These words make the section conform in this respect to the section relating to the distribution of the Supreme Court reports.

SECTION 226 [214]. The House adopted an amendment providing that the volumes of the decisions of the Supreme Court after August 5, 1882, should be furnished to the public at a sum not to exceed \$1.50 per volume in lieu of the price of \$2, as provided by existing law. The Senate accepted this amendment with an amendment fixing the price at \$1.75 per volume, respecting current and future volumes; but amended it so as to provide that the volumes previously published shall be furnished at the rate of \$2 per volume. This was considered necessary because of the fact that the back volumes had all been published under an existing contract permitting the reporter to charge \$2 per volume for the same, and the present reporter has no control over the price of these volumes.

SECTION 227 [215]. The Senate added as an amendment thereto the requirement that there should be furnished to the Secretary of the Senate for the use of its committees 25 copies instead of 20, as provided by the House.

SECTION 259. The House adopted an amendment which appears in the bill as section 202bb, providing as follows:

"SEC. 202bb. The circuit and district judges of the United States and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico shall be allowed and paid their actual and necessary expenses of travel and maintenance consequent upon their attending court in pursuance of law at any place other than their official place of residence, said expenses to be paid by the marshal of the district in which such court is held, upon the judge's written certificate: *Provided*, That for the purposes of this act each judge shall be deemed to have his official residence at the regular place appointed by law for holding the court of which he is commissioned a judge at or nearest to his place of actual residence. Every such judge shall, upon his appointment, and from time to time thereafter, whenever he may change such official residence, in writing, notify the Department of Justice of the place of his official residence for the purposes of this act."

It was recognized at the time of its adoption that this amendment did not properly belong in the place at which it was offered, and the suggestion was made in the House that it should be put in its proper place in the bill by the conferees. The Senate concurred in this amendment, with an amendment limiting the expense for maintenance not to exceed \$10 per day and making more definite provisions respecting the official residence of the circuit and district judges. This amendment was placed by the committee as section 259, under the title of "Provisions common to more than one court," and its adoption made necessary the striking out of the portion of section 2 of the bill which contained existing law respecting the payment of the expenses of the district judges and also section 126 of the bill which contained existing law respecting the payment of the expenses of the justices and the circuit and district judges when sitting in the circuit courts of appeals. Section 2 was therefore amended by striking out everything that related to the expense of the district judges when sitting outside of their districts, and section 126 was stricken out altogether.

R. O. MOON,  
HERBERT PARSONS,  
SWAGER SHERLEY,

*Managers on the part of the House.*

## APPENDIX II

### ADMINISTRATIVE CONSTRUCTIONS OF THE LAW DEALING WITH MAINTENANCE EXPENSES OF JUDGES

(Now embodied in Title 28, U. S. C., § 456)

#### I. IN THE DEPARTMENT OF JUSTICE

##### The Buffington Case

Question was first raised in this matter by a letter from Mr. Walter C. Fetters, United States Marshal for the Eastern District of Pennsylvania dated January 6, 1933, to Mr. John W. Gardner, General Agent and Chief Clerk of the Department of Justice. He stated that Circuit Judge Joseph Buffington of the Third Circuit had an official residence at Pittsburgh, Pa., and submitted vouchers for maintenance for the full number of days in each month because he was attending court at all times in Philadelphia. He said that on this account he could not comply with a Department of Justice circular (No. 2310, dated July 29, 1932) which required the statement of the hour of arrival and departure in Pittsburgh and Philadelphia, because Judge Buffington did not travel back and forth between the two cities. He informed the Department that due to this difficulty he was withholding payment of Judge Buffington's vouchers and asked for departmental instructions.

The Marshal's inquiry was answered by Assistant Attorney General Monte Appel on January 9, 1933, on the basis of a memorandum to him of January 7, 1933, which reads in part as follows:

\* \* \* As to *Judge Buffington* a more serious question is presented. His official residence, as shown by our records, is Pittsburgh, but I am reliably informed (off the record) that he moved to Philadelphia several years ago, and that he is now, and has been for some time, actually domiciled in Philadelphia. An examination of the Marshal's accounts shows that during the fiscal year ending June 30, 1931, Judge Buffington certified that he attended court at Philadelphia for 283 days and that his actual expenses for maintenance amounted to \$10 per day, for which he was paid the sum of \$2,830, in addition to his salary. During the fiscal year ending June 30, 1932, he certified that he was engaged at Philadelphia on official business for 355 days, and that his actual expenses amounted to \$10 a day, for which he was paid the sum of \$3,550 in addition to his salary.

Title 28, Section 374, U. S. Code, provides that:

"The official place of residence of each circuit and district judge shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appoint-

ment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence."

Judge Buffington appears never to have notified the Department of any change in his official residence, and he may claim that his "actual residence" is still in Pittsburgh. As a matter of fact, however, his office is in Philadelphia, his secretary is in Philadelphia, his expense accounts show that he has been living there continuously for several years; it must be held to be his actual and official residence, within the meaning of the statute quote above, notwithstanding he has not notified the Department of any change.

I recommend that the Marshal be advised to withhold further payments to Judge Buffington, on account of per diems in lieu of subsistence, until he can convince the Department that he is an actual resident of Pittsburgh, and not of Philadelphia."

Accordingly, Mr. Appel's letter to the Marshal of June 9, 1933, suggested that no further subsistence payments be made to Judge Buffington "until he can satisfy the Department that he is not an actual resident of Philadelphia."

No further correspondence can be found in the Department of Justice files relating to this matter until May 15, 1934, when Judge Buffington wrote to Mr. C. E. Stewart, who had by then become the Administrative Assistant to the new Attorney General (Mr. Cummings). Apparently this letter was written in answer to one from Mr. Stewart dated April 16, dealing with Judge Buffington's official station; but no copy of that letter can be located in the Department files. In his letter Judge Buffington says, "My official residence has always been in Pittsburgh. No question was ever raised, or could have been raised, about my actual residence there until 2 or 3 years ago. Our court sits altogether in Philadelphia [2 terms annually, 1 beginning in October, the other in March. Two sessions of 2 weeks for argument are held each term and continued until all ready cases are heard—2 weeks each month in October, November, December and January and 2 weeks in March, April, May and June—none in February, July, August, or September as these months are used to clear up accumulations and belated cases and to write opinions. In months of argument, the weeks not so used are spent in conferences and writing opinions].

All of my relatives and most of my friends live in and near Pittsburgh, where I have actually resided during all these years, with the exception of the last 2 or 3 years, when I have remained more in Philadelphia because it was the late Mrs. Buffington's home. Now, since she is dead, I shall make Pittsburgh unquestionably my actual residence so that I can be with my family and folks, and shall stay in Philadelphia as a transient at a hotel, only so long as is necessary to perform the official work of the court there advantageously.<sup>1</sup>

<sup>1</sup> The New York Times of October 22, 1947, when Judge Buffington died, indicates that in 1931 he married Mrs. Mary Fullerton Jones of Philadelphia, who died in 1933.

You made your position very clear. I thoroughly understand it and think it is entirely correct. In saying that Pittsburgh is my actual, as well as my official, residence, I believe that I come not only within the letter but also within the spirit of the law as you have stated it. I shall deeply appreciate it if you will instruct the Marshal as to the payment of my per diem allowance for maintenance and my expenses of travel between Pittsburgh and Philadelphia beginning March 5th of this year.

This letter was referred by the Administrative Assistant (Mr. Stewart) to the General Agent (Mr. Gardner) with the notation: "I think he has justified his position, don't you think so."

Mr. Stewart then wrote the United States Marshal at Philadelphia on May 22, 1934, authorizing payments on account of maintenance at Philadelphia on and after March 5, 1934, sending a copy to Judge Buffington:

The Department has been informed by Judge Buffington that his actual residence has been at Pittsburgh since March 5, 1934, and accordingly the Department withdraws its objection to the payment of Judge Buffington's traveling expenses and per diems in lieu of subsistence, while engaged on official business at Philadelphia, and payments may be made accordingly on certified accounts submitted by the Judge, effective from and after the date mentioned.

The Department of Justice files do not show any official action after May 1934 to question Philadelphia maintenance expense payments to Judge Buffington on account of actual residence there.

An examination of the expense vouchers submitted by Judge Buffington shows the following payments to him for maintenance while holding court in Philadelphia from January 1, 1934, through the end of February 1939. In each case the Judge stated on the voucher that Pittsburgh was his official residence:

June 1934.....	\$42.50	June 1935.....	\$25.00
Total fiscal year 1934.....	42.50	Total fiscal year 1935.....	862.50
September 1934.....	<sup>2</sup> 42.50	July 1935.....	20.00
October 1934.....	<sup>2</sup> 85.00	September 1935.....	45.00
November 1934.....	<sup>2</sup> 140.00	October 1935.....	55.00
December 1934.....	105.00	November 1935.....	120.00
January 1935.....	117.50	December 1935.....	<sup>2</sup> 120.00
March 1935.....	130.00	January 1936.....	90.00
April 1935.....	135.00	February 1936.....	<sup>2</sup> 50.00
May 1935.....	82.50	March 1936.....	125.00

<sup>2</sup> Preaudited. The vouchers for maintenance at Philadelphia presented by Judge Buffington for September, October, and November 1934 and for December 1935 and February 1936 were submitted before payment to the General Accounting Office for preaudit. In each case small sums, ranging from \$2.50 to \$11.25 were deducted from the amounts claimed; but it is clear that in no case did the General Accounting Office question the propriety of the designation of Pittsburgh as the official residence.

April 1936.....	\$120.00	December 1937.....	\$135.00
May 1936.....	60.00	January 1938.....	140.00
June 1936.....	40.00	February 1938.....	15.00
		March 1938.....	125.00
Total fiscal year 1936..	845.00	April 1938.....	95.00
		May 1938.....	120.00
October 1936.....	100.00	June 1938.....	<sup>a</sup> 50.00
November 1936.....	125.00		
December 1936.....	115.00	Total fiscal year 1938..	972.50
January 1937.....	95.00		
March 1937.....	145.00	July 1938.....	25.00
April 1937.....	120.00	September 1938.....	10.00
May 1937.....	75.00	October 1938.....	125.00
June 1937.....	65.00	November 1938.....	105.00
		December 1938.....	115.00
Total fiscal year 1937..	840.00	January 1939.....	120.00
		February 1939.....	30.00
July 1937.....	20.00		
September 1937.....	27.50	Total fiscal year 1939..	530.00
October 1937.....	115.00		
November 1937.....	130.00		

### The Evans Case

On September 7, 1933, Mr. J. W. Gardner, General Agent in the Department of Justice, had called to his attention the large subsistence payments made from October 31, 1931, through June 30, 1933, to Judge Evan A. Evans, United States Circuit Judge for the Seventh Circuit, for attending court in Chicago (Department memo—H. L. Collins to Mr. Gardner, Sept. 7, 1933). Mr. Gardner in turn called this to the attention of Mr. C. E. Stewart, Administrative Assistant to the Attorney General, pointing out that the case seemed similar to that of Judge Buffington whose payments for subsistence at Philadelphia had recently been ordered stopped (memo, J. W. G. to Mr. Stewart). Thereupon, Mr. William Stanley, the Assistant to the Attorney General, wrote Judge Evans that an examination of the accounts of the United States Marshal for the Northern District of Illinois showed that Judge Evans had been continuously in Chicago from October 1931 to July 1933 and had been paid for that entire period the maximum allowance for subsistence except for a few weeks in August and September 1932. The letter states that the Department of Justice records showed Judge Evans' official residence to be at Madison, Wis., and raised the question whether in view of the Judge's continuous presence in Chicago, that city was not now his *actual*

<sup>a</sup> Judge Buffington retired on June 1, 1938.

residence. Mr. Stanley then observed, "If so, it would also become your official residence and no expenses of subsistence would be allowable at that place." The letter closes with a request for an expression of Judge Evans' views.

On September 28, 1933, Judge Evans answered Mr. Stanley, explaining his status and the reasons for his view that his official residence continued to be at Madison. His letter was in part as follows:

\* \* \* In reply, I will say that I was appointed to this position May 1916. This circuit comprises Wisconsin, Indiana, and Illinois. The court was composed of 4 Judges, 1 from Indiana, 1 from Wisconsin, and 2 from Illinois. For various reasons it was deemed advisable that the various judges should retain their residences in the states wherein they resided at the time of appointment. I live at Baraboo, Wis., and Madison became my official residence because of the provisions of the statute which made the place the nearest place where a Federal court was held, my official residence.

The work of the court at that time was not nearly so heavy as it has since been. In a single year we sometimes had only 90 cases. This October session, we have 84 cases, and for the year will probably have nearly 225 cases. I spent about half of my time in the District Court when first appointed and during the first 5 years I was on the bench. Unfortunately as the work grew heavier we found ourselves short 1 of the 4 judges. In fact, we have not had but 3 judges sitting in this court for the last 3 years. When I sat more in the district court and when the work was lighter here, I traveled back and forth from my legal residence in Baraboo a great deal. I frequently sat in Superior, Wis., and in Madison. Judge Sanborn died a year or two after I was appointed and his successor was not named for nearly 2 years. However, for the last 4 or 5 years, I have found it advisable to keep in or near Chicago more than before. In addition to hearing a case in the Court of Appeals we judges have found it necessary to be in close contact for the larger part of the year in order to have conferences and to dispose of emergency matters, etc. Three of us therefore are nearly always here in Chicago. However, I have kept my residence in Baraboo. I have a home there. I vote there, and shall continue to do so regardless of the action of the Government respecting my maintenance when in Chicago. In other words, I am a citizen of Wisconsin and expect to live in Wisconsin after I retire. For that reason I keep my home there. My children have lived there.

\* \* \* \* \*  
 I assume that I had the right to choose my actual residence and my official residence was defined by [the statute] \* \* \* I rent a small furnished apartment here in Chicago; I have never owned a home here. Only such books and wearing apparel as Mrs. Evans and I require are placed in this apartment. All of our treasures and permanent household possessions are in Wisconsin. It is on this theory that I have presented the maintenance bills to which you refer.

On October 4, 1932, Mr. Stanley replied to Judge Evans, stating that it seemed to the Department of Justice that the Judge confused the term "official residence" with "legal residence," and asking him to give the matter further consideration and "please advise

the Department whether your official residence has been changed to Chicago." The gist of the letter is in the following excerpt:

\* \* \* It seems to the Department that you are confusing the term official residence with legal residence. Your legal residence is Baraboo, Wis., where you vote and maintain your permanent home. Your official residence has been at Madison, Wis., for the reason that at the time of your appointment this was the nearest place to Baraboo at which a regular term of court was held. The statute makes no reference to "legal residence," but uses the words "actual residence," which, of course, means the place where you actually reside and have your abode, and it appears from your letter that you and your wife have rented an apartment in Chicago, and that you spend your entire time there, except during the summer vacations. The statute seems to contemplate that a judge will be reimbursed for expenses which he may incur, from time to time, on trips away from his home to attend upon court, and that, if he changes his residence, he will notify the Department. It apparently is not contemplated that a judge may actually and continuously reside at the place where he is holding court, and draw expenses of maintenance.

On December 16, 1933, Judge Evans sent Mr. Stanley a lengthy answer reiterating his position. After some discussion of the recent business of his court, which he said makes it necessary for at least two judges to be in Chicago, he states his views of the purposes of the statute regarding judicial residences as follows:

\* \* \* Obviously, it seems to me that it was to provide for his maintenance when official duties took him away from his home—the place he would be if the official duties did not call him away. The number of days he is required to devote to his official duties is not in the least determinative of his residence. Our Court of Appeals in 1916, when I was appointed, did not have one-third of the work it now has. The first 4 or 5 years I sat on this bench, I devoted fully half of my time to District Court work.

In construing the statute or in disposing of a legal question, I like to consider it on its merits, rather than base my conclusion on technical grounds. Hence the foregoing statement.

However, this question, in the last analysis, is one of statutory construction.

Section 374, Title 28, U. S. C., provides for the selection *by the judge* of his official residence when he is appointed.

First, it is to be noted that *the judge makes the selection*. This is of course natural, proper, and reasonable. Each judge is expected to contribute to the court some of the views and understanding of the profession of his State on substantive law, as well as on State practice and procedure. The territorial jurisdiction of our court includes Indiana, Illinois, and Wisconsin. The President has always appointed 1 judge from each of these States, and when the court is fully organized, we have 2 judges from Illinois, the largest of the 3 States. Various practice acts (the recent Bankruptcy Act relating to railroads being one) necessitate our acquaintance with the members of the bar and familiarity with the State court holdings and State court practice. I was even advised when appointed, and have believed ever since, that it would not be in the spirit of the law to move from Wisconsin, though I have given serious thought to moving to Madison, Wis., or Milwaukee, Wis., where I could have access to the Federal court library.

Then, too, note in this last sentence of section 374 the words "whenever *he may change his official residence.*" They suggest, if they do not clearly say, that the judge in the first instance selects his official residence and second, *he* (not anyone else) may change his official residence.

Inasmuch as the judge notifies the Department of his official place of residence when he is appointed, it is fair to assume that the official residence is determined by its proximity to his then legal residence, which in my opinion defines his actual residence. Living in Baraboo, Wis., a short distance from Madison, Wis., I naturally notified the Department that Madison was my official residence. A Federal court was held at Madison and was not held at Baraboo.

It is not uncommon for one to speak of his legal and his actual residence as meaning the same thing. And that is what Congress intended here.

If, however, there is a difference in meaning between the words "actual" and "legal," then I also wish to stress the noun, the word "residence," as well as the adjective "actual." Residence has a well understood meaning. Residence controls legal and actual. Before determining legal or actual residence, we must first understand the meaning of residence. My residence is not in Chicago. I stay here. I reside in that place which I call home, in that place where I vote, in that place where I pay my personal property tax, in that place where I report to my home State, Wisconsin, my income for State income tax purposes. My residence is the residence of my children, to which place, on their vacation from college, they return. If my actual residence were determined by the number of days that I spent in a certain place, it would be constantly changing, and moreover, the court, by prescribing duties which kept me at one place over half of my time, could thereby determine my residence. To illustrate to what illogical positions this contention would lead, let me call attention to other circuits where court is held in different cities. If the sessions were of unequal length and they together occupied 10 months of the judge's time, where would the judge's residence be? As against the 10 months' time he was away, could he not assert a Wisconsin residence if within the jurisdiction? If not, would he have a changing residence, if the length of the terms of court varied greatly in different years? And how long would he have to be in the new place before his residence would change?

I appreciate that I have dictated considerably longer than I intended. However, I feel quite strongly on the matter and would be glad to discuss the question with you, if you are ever here in Chicago. There are strong personal attachments which cause me to prefer Baraboo, Wis., as my home. I need not relate them to you in this letter. They are, it is needless to say, those sentimental attachments which are a part of us all.

I sincerely trust that the work of this court may permit me to be away from here longer than during the last few years when the work overloaded the partially filled court. And I also trust you will not so construe the law so that I (and my associates), to maintain our residences at our chosen spots, will not be driven from the spot where our official work can best be performed.

Upon receipt of this letter, the General Agent, Mr. Gardner, again called the matter to the attention of the Administrative Assistant (Mr. Stewart) who referred the entire file to Mr. Alexander Holtzoff for a study of the statute. In Mr. Gardner's memorandum of December 20, 1933, he indicates again his view that the situation was similar to that of Judge Buffington, where the Marshal had been ordered to suspend payments, and he says that

Marshal Laubenheimer in Chicago had now been instructed not to make further payments to Judge Evans for maintenance expenses in Chicago.

On December 21, 1933, Mr. Holtzoff sent a memorandum to Mr. Stewart on the subject, stating it to be his opinion that Judge Evans should not be permitted to draw any further per diem for attendance on his official duties in Chicago. After restating the facts as shown by the file, and quoting the statute (Judicial Code of 1911, Section 259) Mr. Holtzoff says:

\* \* \* It will be noted that the judge's *official* residence depends upon the place of his *actual* residence for the statute provides that the official residence must be the place nearest his actual residence where the court is regularly held. What is a person's actual residence is a question of fact. A judge may not arbitrarily name a place as his actual residence. In this case it appears that Judge Evans maintains an apartment all the year round in Chicago, where he and his wife live continuously, except during the summer vacation. That fact would seem to constitute Chicago and not Baraboo, Judge Evans' actual residence. The mere fact that he maintains a voting residence in Wisconsin and owns a home which he is not occupying does not detract from the fact that he actually resides in Chicago. Practically every official and employee of the Department of Justice, other than those who were born or brought up in the District of Columbia, have a voting residence in some state. On Judge Evans' theory they would all be entitled to draw a continuous per diem for subsistence when working in Washington.

The very fact that the statute uses the phrase "actual residence" and not simply residence, would seem to indicate that Congress contemplated by "actual residence," the place where the judge was actually living or dwelling permanently.

Any other construction would seem to defeat the spirit and the purpose of the statute. Obviously, the intention of the framers of the act was to pay subsistence to judges while they were attending official duties away from home, so as to reimburse them for the additional expenditures that they incur. Unquestionably Judge Evans' present home is Chicago, and he does not incur any additional expenses by living there.

It seems to me that the arguments he advances in support of his position are not well taken.

He suggests that he has the right to choose his actual residence. Undoubtedly he has, but he has no right to choose an actual residence and then name a different place as his actual residence. He has actually selected Chicago as his actual residence and for that reason he has no right to name Baraboo.

He further seeks support in the last sentence of section 374, which requires him to notify the Department of Justice whenever he may change his official residence. He argues that he alone may change his official residence. But whether he changes his official residence is a question of fact and does not depend on whether or not he has performed the duty of notifying the Department of such change. Under the statute whenever his actual residence changes, his official residence changes automatically, the latter being that place nearest his actual residence where a Federal court is held.

The judge refers to the fact that there are strong personal attachments which cause him to prefer Baraboo for his home. Undoubtedly he has a right to such a preference, but the fact is that he is not now actually making that place his home even though he may expect to go back there after retirement.

He further suggests that difficulties might arise in the case of a court whose sessions were held in different places. It seems to me that the solution would be simple. If the Circuit Court of Appeals for the Seventh Circuit held one or more sessions away from Chicago, where Judge Evans maintains an apartment all the year round, then obviously he could collect per diem for the periods he was away from Chicago.

On December 26, 1933, Mr. William Stanley (the Assistant to the Attorney General) replied to Judge Evans' letter of December 16 by sending him a copy of the Holtzoff memo of December 21, 1933, and stating that for the reasons given in it, the Department had concluded to adhere to its position "that you are not entitled to draw per diem in lieu of subsistence while in attendance upon court, and performing other official duties, in Chicago."

There is no further reference in the files to the matter until September 26, 1934, when the General Agent (Mr. Gardner) sent a memorandum to Mr. Stewart (the Administrative Assistant), saying that Judge Evans had called upon him and requested that Mr. Stanley (the Assistant to the Attorney General) reconsider the matter of the allowance to him of subsistence payments while holding court in Chicago. This memorandum states that Judge Evans admitted that he was physically present in Chicago about ten months of each year, but that he contended the length of time made no difference.

Mr. Stewart referred the matter again to Mr. Stanley, with the notations "I think the judge is wrong—there is no change in the matter since we settled it before."

Accordingly, on October 2, 1934, Mr. Stanley again wrote Judge Evans. He said that the matter had been reexamined, and he would be glad if the facts and law permitted him to reverse his position, but he found himself reluctantly unable to do so, giving his reasons as follows:

\* \* \* The statute governing this matter (U. S. Code, Title 28, Section 374) makes the right to a per diem allowance dependent on the judge's *actual* residence, rather than his residence in a technical legal sense. In view of the fact that, as I understand, you live in Chicago with your family continuously ten months of the year, I should hesitate to make a finding that Chicago is not your actual residence.

It is my understanding that the purpose of a per diem allowance is to make some contribution to a judge's living expenses when he is compelled to be away from home. It is not dependent on the question as to where his technical residence is for the purpose of voting, taxation, etc.

You will, of course, not overlook the fact that the accounts of the disbursing officer are subject to audit by the Comptroller General, and should a per diem allowance be paid in an instance where it is not legally owing, the accounts of the disbursing officer would be disallowed.

Here the matter apparently rested until 2 years later, when, it seems that sometime in October 1936, Judge Evans discussed it personally in Washington with Assistant Attorney General Dickinson (note from Judge Evans to him, dated October 1936 which does not mention the subject by name but says "May I call your attention to the subject which I discussed confidentially with you while I was in Washington. I am quite anxious that it not be overlooked.").

Apparently he also, at the same time discussed the matter personally with Mr. Joseph Keenan who had then succeeded Mr. Stanley as the Assistant to the Attorney General, for the file shows that a letter was written in his office on October 16, which read as follows:

I respectfully suggest that you address a communication to the Attorney General stating where you desire your headquarters fixed; also advise him your place of residence. Wherever you certify these designations, that is the information which we will carry on our records and instructions will be issued immediately in accordance therewith.

Assistant Attorney General Dickinson looked into the matter, and on October 24, 1936, Mr. Stewart (the Administrative Assistant) wrote him a memo sending him the file (including the Holtzoff memorandum of October 21, 1933), and stating his opinion that "The Judge is undoubtedly wrong in his claim that he is entitled to per diems in the circumstances which he has described." Apparently, on account of Mr. Stewart's opinion, Mr. Dickinson allowed the matter to rock along without writing Judge Evans, though he personally felt some allowance should be granted. (Memo—Johnston Avery, Office Manager, Antitrust Division to Mr. Andretta, January 30, 1937.)

The letter dated October 16, 1936, written in Mr. Keenan's office was never mailed. The draft was submitted to Mr. Andretta, who had then become the Acting Administrative Assistant succeeding Mr. Stewart, by Mr. Holtzoff who questioned its accuracy. Mr. Andretta referred it to the General Agent (Mr. McClure who had succeeded Mr. Gardner) who reported (memo to Mr. Andretta on October 24th) that he could not find the file (it had been sent that day to Assistant Attorney General Dickinson who kept it until January 1937 and until then its whereabouts seems to have been unknown to other interested officials of the Department). With his memorandum, Mr. McClure gave Mr. Andretta a copy of the Holtzoff memorandum of October 21, 1933, and suggested that "if the situation has changed any the past year and Judge Evans now

actually resides at Baraboo, Wis., and will so certify, the Department might properly accept his statement—at least until such time as a further checking of the facts develops otherwise.”

On October 27, Mr. Andretta as Acting Administrative Assistant wrote Judge Evans that Mr. Keenan (the Assistant to the Attorney General) had personally discussed with him the problem of his subsistence payments in Chicago, and had requested him to inform the Judge that Mr. Keenan was away from his office until after election day, but would take the problem up once more after his return “with a view to a satisfactory settlement if it can be done.”

Apparently this was done and it seems that on November 9, 1936, Mr. Keenan wrote Judge Evans. There is no copy of this letter in the file, but from Judge Evans' answer of November 11, 1936, it appears that Mr. Keenan wrote the Judge that the letter of October 16, 1936, set forth above, had been mailed to Judge Evans and Mr. Keenan, quoting it, asked if it had been received (since the original is in the file, it is clear that the letter of October 16 had not in fact been mailed). At any rate, Judge Evans answered saying he observed in Mr. Keenan's letter of November 9 the statement that the letter dated October 16, had been sent; he said he had not received it, but had received only the brief acknowledgment from Mr. Andretta of October 27, 1936. He then indicates that as requested in the October 16, 1936 draft quoted by Mr. Keenan, he was sending to the Attorney General a formal letter of the kind recommended, and that he appreciated “the consideration given to my case” and “the satisfactory manner of my presenting my case through the suggested letter.”

Judge Evans' letter to the Attorney General, mentioned in his letter to Mr. Keenan, was also dated November 11 and it reads as follows:

In view of the fact that there has arisen a difference of opinion as to my actual residence, I wish to inform you that I still have the same place of residence as I originally designated.

When I came upon the bench in May 1916, I selected Baraboo, Sauk County, Wis., as my actual residence. As Baraboo is only 35 miles from Madison, Wisconsin, the latter place, to wit, Madison, Wisconsin, became my official place of residence. I have never changed that residence. I have always desired to live in Baraboo, Wis., and it was my actual residence when I was appointed to the Federal bench. I have always maintained my residence in Baraboo. There I own my home. There I have voted at every election for 35 years, including this year. There I pay my taxes, income as well as property taxes. In that place those who were dear to me are buried. My children have always looked upon the residence at 104 Seventh Avenue, Baraboo, as their home.

I request you to record 104 Seventh Avenue, Baraboo, Wis., as my actual residence and Madison, Wis., as my official residence.

This was answered very briefly by Mr. Andretta on November 20, 1936, by a note, sending Judge Evans a copy of a letter of the same date which he had written to the United States Marshal in Chicago.

The letter to the United States Marshal at Chicago (Mr. William H. McDonnell) reads as follows:

The Honorable Evan A. Evans, United States Circuit Judge for the seventh circuit, having stated that his actual residence is Baraboo, Wisconsin, his official residence, under the law, is automatically fixed at Madison, Wis.

You are accordingly advised that beginning December 1, 1936, you may properly pay to Judge Evans the usual per diem of \$5 in lieu of subsistence during such time as he is away from Madison, Wis., in connection with attendance upon terms of court or the transaction of official business.

Apparently this ended the matter, and no further question was raised by the Department concerning the propriety of the subsistence payments to Judge Evans during his official visits in Chicago.

Indeed, the final action in the Evans Case appears to have been influential in the formulation of a statement of Departmental policy for similar situations.

The Department of Justice files show an inter-departmental memorandum from Mr. S. A. Andretta to Mr. Quinn dated April 15, 1939, which refers specifically to the Evans Case. This was accompanied by a lengthy survey of the law and prior Departmental action under it, dated April 8, 1939, by Mr. Arthur Robb. The substance of Mr. Robb's memorandum is stated in Mr. Andretta's, which reads as follows:

With respect to the matter of per diems being paid to Judge Evans in Chicago, a study of the attached file indicates that the Department in the past took the position that while he maintained a technical residence at Baraboo, his actual residence was in Chicago and the Marshal was ordered to stop his per diems on this basis. Subsequently, Mr. Keenan ordered the per diem payments restored, no doubt basing his action on the following language in the Act:

"Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence. (U. S. C., Title 28, sec. 374)."

If Judge Evans says his actual residence is Baraboo, as he has done, I don't see what else can be done about the matter.

The problem of judges' per diems is a fundamental one owing to the ambiguity of the present law. After posing certain questions to Mr. Robb, he conducted a search on the problem and the attached memorandum covers the matter pretty thoroughly. In brief it is as follows:

That the original Act of the House was clear in its language that a circuit judge's official residence was to be at a place where a circuit court was held and a district judge's official residence was to be at a place where the district

court was held. The Senate Bill, which is the present law, was ambiguous in its terms. Therefore, it is very difficult to determine what the actual intent of the Congress was when the present law was enacted.

You will also note that many judges have interpreted the Act in its intent to mean that the official residence of a circuit judge was to be at the place nearest his actual residence at which a circuit court of appeals is regularly held and the official residence of a district judge was to be at the place nearest his actual residence at which a term of the district court is regularly held. For a long time, however, the policy of the Department has been to fix the official residence at a place nearest the actual residence at which either a circuit court or a district court is held. It is noted, furthermore, that the Comptroller General has never passed upon this point.

In view of these facts there appears no justification for the Department to change its policy of long standing. The matter is really one for legislation to clear up any ambiguity in the present law.

## II. IN THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS AND THE JUDICIAL CONFERENCE OF THE UNITED STATES

### The Jenney Case

On June 26, 1940, the Acting Comptroller General of the United States, (Mr. R. N. Elliott) wrote Mr. Chandler that a report of representatives of his office on the accounts and records of Mr. Robert E. Clark, United States Marshal for the Southern District of California, had disclosed that the official residences of certain district judges (mentioning particularly District Judges Ralph E. Jenney, George Cosgrave, and Campbell E. Beaumont, all of the Southern District of California) were "not fixed as contemplated by § 259 of the Judicial Code (reenacted Apr. 22, 1940, in Public No. 469, 76th Cong.)."

Mr. Elliott stated that since Congress had so recently reenacted the provisions of § 259 of the Judicial Code, the matter was being brought to Mr. Chandler's attention for such consideration as he deemed proper.

Mr. Elliott's letter incorporates listings of maintenance payments made to Judge Jenney from July 31, 1938, through November 30, 1939 (17 months), totalling \$1,965 for attendance at court in Los Angeles on a total of 395 days as against only 111 days of attendance in San Diego, his official residence, during the same period. For Judge Cosgrave, during the same period the letter shows payments for maintenance at Los Angeles totalling \$1,135 while holding court there a total of 216 days as against only 4 days of attendance in Fresno, his official residence during that same period. For Judge Beaumont (who was appointed August 5,

1939), the tabulation presented by Mr. Elliott shows that from September 1939, through November 1939, he claimed maintenance payments totalling \$125, for attendance at court on 28 days at Los Angeles while during the same period he was at his official headquarters in Fresno a total of 40 days.

On July 10, 1940, Mr. Chandler answered Mr. Elliott's letter. He pointed out that each of the three judges had designated his official place of residence; Judge Jenney, San Diego on July 3, 1937, and Judges Cosgrave and Beaumont, Fresno on April 8, 1930, and August 5, 1939, respectively.

He observed that Mr. Elliott's letter raised a question concerning the meaning of the provision in § 259 of the Judicial Code relating to the official residence of judges and that this question had previously come to his attention. He stated that he planned to submit it to the Judicial Conference in October, 1940 and ask whether it wished to give him directions, after which he would again write the Comptroller General.

Accordingly, on October 2, 1940, at the regular annual meeting of the Judicial Conference, Mr. Chandler laid the problem before that body. He stated the facts regarding Judge Jenney as set forth in the letter of the Acting Comptroller General, and he explained that he had received from Judge Jenney a letter on the subject, indicating that when he was appointed in June, 1937 his home was in San Diego and there was a general understanding with Senator McAdoo that he would perform most of his judicial work there. This plan did not work out and the judge was required after his appointment to sit almost continuously in Los Angeles. Mr. Chandler then read to the Conference from Judge Jenney's letter as follows:

Under the circumstances I have always felt that I was only temporarily located in Los Angeles because of the extreme congestion of this calendar. I have spent practically all of my time in Los Angeles. Until such time as we get additional judges it seems vital for me to continue here. Until the spring of last year I lived at the Biltmore and Ambassador Hotels in Los Angeles. This arrangement nearly wrecked my health, so Mrs. Jenney and I have rented temporarily a home in Pasadena so that I might have the benefit of home cooking. However, my residence has always been maintained at San Diego, and I have always collected the per diem.

Considerable discussion of the problem, including the facts in Judge Jenney's situation and the meaning of the words "actual residence" as they then appeared in the law followed. The result of the discussion was the adoption of a resolution stating it to be the sense of the Conference that mere "legal domicile" is not

sufficient to satisfy the words of the statute. Excerpts from the more significant parts of the discussion follow:

Mr. CHANDLER. I am bringing up the letter simply because it raises a question which we are encountering in a number of situations.

Judge WILBUR. How can there be any doubt about it? The judge has a right to determine his residence, unless there is some law to the contrary. That is the common law, and common sense.

\* \* \* \* \*

Mr. CHANDLER. \* \* \* I want to say that as far as the Administrative Office is concerned we took the status as we found it, and we have not raised the question. When the question has been brought up we have had to consider it. The simple question is whether "actual residence" is to be construed as the place where to all outward intents and purposes the man is maintaining his abode, or whether it is his domicile, his legal residence.

\* \* \* \* \*

Judge HICKS. Does he have a house down at San Diego?

Mr. CHANDLER. I think he has written me that he has retained his home in San Diego. In another case a judge wrote me that if he could sell his house where he had lived before he became judge, he would.

Judge BIGGS. There is a court house I take it in San Diego, and court is held there?

Judge WILBUR. Yes.

\* \* \* \* \*

The CHIEF JUSTICE. And he goes there. What does he do when he holds court in San Diego. Does he go back and forth from Los Angeles,

Judge WILBUR. He has been relieved there a great deal by Judge Neterer and some of the other Judges. I do not think he has held court there very much.

Mr. CHANDLER. He has not held court in San Diego. The fact is that Judge Jenney has sat there in the whole time since he has been appointed only a very few days.

\* \* \* \* \*

Judge WILBUR. He has chambers in Los Angeles.

Mr. CHANDLER. His mailing address, Mr. Whitehurst informs me, is Los Angeles.

Judge HAND. I take it that what you really want to know, is, you want a general direction?

Mr. CHANDLER. Oh, absolutely, and this is not by way of criticism of Judge Jenney. It is a question for instructions in reference to a practice which is challenged by the Comptroller General.

Judge HAND. It seems to me the question is whether it is to be determined by the legal residence, the domicile, or whether the actual residence in this case is sufficient to constitute the domicile.

Mr. CHANDLER. That is it, in a nutshell.

\* \* \* \* \*

Judge FOSTER. The law says "official domicile." It is a matter of his conscience whether he shall charge when he goes down there to Los Angeles.

Judge WILBUR. Is that a matter for this conference, anyway? Isn't it between the judge and the comptroller?

Mr. CHANDLER. The letter is addressed by the Comptroller General to the Administrative Office, which is approving from time to time the claims.

The CHIEF JUSTICE. Your point is as I understand it whether you will approve the expense voucher.

Mr. CHANDLER. That is right.

The CHIEF JUSTICE. And the ultimate question is of course a question of law.

Mr. CHANDLER. That is right.

The CHIEF JUSTICE. If you do not approve it, and the man is not paid what he is entitled to, then he can go to the Court of Claims to have the question decided upon the facts as they are there found, but in the meantime you have to pass upon his vouchers.

Mr. CHANDLER. Exactly.

The CHIEF JUSTICE. And you want to have the protection of the opinion of this conference as to how you shall perform that administrative duty—

Mr. CHANDLER. That is right.

The CHIEF JUSTICE. The conference not of course taking the responsibility of deciding, as courts, what in a particular case would be the right of the party concerned, but the general rule that is to be followed.

Now, how could that general rule be stated, Mr. Chandler? You have considered this. The statute says, if I have it here, that—

“The official place of residence of each circuit and district judge shall be at the place nearest his actual residence, at which either a circuit court of appeals or a district court is regularly held.” The point is, what is an “actual residence”?

Mr. CHANDLER. That is it. It all comes down to the construction of the term “actual residence.”

The CHIEF JUSTICE. It is a question of whether “actual residence” means simply a legal residence, and whether a legal residence, or what might be found to be the domicile, is to be regarded as “actual residence” within the meaning of this statute, regardless of where the judge actually makes his home.

\* \* \* \* \*

Judge HAND. It seems to me that very clearly turns on the underlying purpose of the statute. The purpose is to indemnify a judge for the expenses caused in traveling from where he lives to the place where he is to do his duty, and I should think that the circuit judge referred to a circuit court of appeals or a district court, and similarly the actual residence, I rather think that the underlying purpose would construe that finally. Whatever may be his legal domicile is of no great consequence if he has in fact moved, so it is not costing him anything to attend in his new place. If Judge Jenney has really not paid anything, and he has moved there, and he is not running two establishments, he has not been subject to any expense, and he has no right to reimbursements. Isn't that the proper way to look at it?

The CHIEF JUSTICE. In other words, you construe “actual” as having some significance, “actual residence”?

Judge HAND. Yes.

The CHIEF JUSTICE. Congress had some idea when it said “actual residence.” Congress knew enough about disputes over domicile and actual residence, and whatnot, and it must have meant something when it said “actual residence.” The whole point is whether, as you say, Judge Hand, when he goes to the place where he must perform his duties, then his “official residence” is to be regarded as the place where his actual residence is, where that duty is performed. Now, if he is a district judge, he may be a district judge in an entire state; I mean, with a district covering the entire state, or he may be a district judge for a portion of a state, and I suppose that should be taken to relate to the place where the particular district judge is to go to do his duty. Is that your idea, Judge Hand?

Judge HAND. Yes, that is the idea I had, and I think that is borne out by the “reasonable expenses actually incurred,” because I do not think a man is

actually incurring expenses, if he has moved, we will say, to Los Angeles. If really he has moved, his expenses have ceased in San Diego. However, a court might, when he died, treat it as his domicile, because of the character of his temporary residence in Los Angeles.

Judge BIGGS. Mr. Chief Justice, I am not clear as to whether or not Judge Hand is construing that phrase distributively or not. I think that act means insofar as both the circuit and district judges are concerned, that the judge's official residence is the place nearest the point where a circuit or a district court is held. I think that applies equally to a circuit judge. In other words, I live in Wilmington. I think my official domicile, my official residence, is in Wilmington, in spite of the fact that the sessions of the court are regularly held in Philadelphia; and I think that has a very plain historical backing, because there were of course circuit judges long before there was circuit courts, and they had certain functions to perform around the circuit, and then the domicile was, so to speak, always in a certain district within the circuit.

Now it has always been my understanding, although there is probably no official sanction for it under the law as it stands, that a circuit judge was required or "expected," let me put it that way, to be available in the district from which he was appointed, so that counsel for example, if they wanted a stay or a supersedeas, could apply to a judge, the circuit judge within the district, without necessarily going to the place where a court was holding an official court, getting aid which the statute permits a circuit judge to give. I think that is meant distributively.

Judge EVANS. What is the meaning of the word "either"?

Judge HAND. I am a little surprised at the construction of the word distributively, because I was reading it definitely as though it was this:

"The official residence of each circuit judge shall be nearest the place of his actual residence, at which a circuit court of appeals is regularly held. The official place of residence of a district judge shall be nearest the place of his actual residence, at which a district court is regularly held." That seems to me to be the natural way to read it.

Judge PHILLIPS. It has always been construed to read the other way.

Judge HICKS. That differs from the old statute.

Judge FOSTER. Mr. Chief Justice, the point I wanted to raise was this. The judge's expense account is paid on his own voucher. I do not think that we have any jurisdiction to say what kind of voucher he should send in, nor do I think the Director has any leeway. In other words, his duties are ministerial.

Now, if this judge out there wants to send in an account to which he is not entitled, he is subject to impeachment, or if the Comptroller objects to it, he will go after Mr. Chandler, he won't go after the judge. He will disallow his account in some way, \* \* \*, and he can call upon the judge to refund this, and if the judge does not do it, then some disciplinary action may be taken against the judge. He is very apt to be impeached if he does something like that; but so far as we are concerned, and so far as the Director is concerned, I do not think we have got a thing to do with it.

Judge PHILLIPS. Well, it seems to me, Mr. Chief Justice, that this is a pretty close question. A judge may go to a place where court is held for a considerable length of time. He may go to a hotel. He may go to an apartment, but if he maintains and keeps up at his legal residence a home which he returns to when his official duties have been completed, I think that is his "actual residence" as contemplated by the statute; but if Judge Jenney has given up his home in San Diego and leased it or otherwise disposed of it and is not maintaining it as a home, then I think he has put his actual residence in Los Angeles, and I think the facts before us are incomplete.

Judge GRONER. I think that is exactly right. That is exactly my opinion. If he has given up his home, I think it is a scandal to make a demand on the theory that he has retained that, because he retains it as his legal domicile; and I do not think he ought to do it; but if he has not done so and has his home still there, the fact that he spends the greater part of his time in Los Angeles does not seem to me to deprive him of the benefits of the per diem that the law allows him.

\* \* \* \* \*

Mr. CHANDLER. It occurred to me the purpose of the Act was plainly to provide that the judges who were required to travel in the performance of their duties, to go from the place where they normally and ordinarily lived, to somewhere else, and therefore incurred the additional expense that always goes with travel, they should be made whole, but it really would not seem to me that if a judge had elected to become a dweller in a city where he was holding court, that that was within the contemplation of the statute. I may be wrong.

Judge BIGGS. I think the word "home," which is not used in the statute, is really what it meant probably, the real substance of it. I should think Judge Jenney had given up his home, so to speak, in San Diego, if he had changed—for example, if he had a house and sold it, and merely maintained some clothes in a clothes closet in his brother's house, something of that sort, and had given up his home, why, I think if he intends to return back there and actually regards it as his home, that is his actual residence, but I do think that if he maintains a home so to speak in Los Angeles, whatever may be the reason, the reason of his health or the reason that he wants his family with him, and has put San Diego beyond him, I think that his actual residence is in Los Angeles.

Judge WILBUR. I think if he has moved to Pasadena and set up housekeeping there in a private residence, that he has actually changed his residence to that place.

Judge BIGGS. Yes.

\* \* \* \* \*

The CHIEF JUSTICE. \* \* \* Now, what he means by "my residence had always been maintained at San Diego," we do not know, whether he has a house there which he still owns and keeps ready for him, or whether he has a house or an apartment he has leased there, whether he goes back there—we do not know anything about it. Now, how can the Director rule?

Now, the difficulty it seems to me that inheres in this matter is that under the statute the Director is required under the supervision and direction of the Conference of Senior Judges to have charge of the disbursement of the monies appropriated for the maintenance, support, and operation of the courts.

Now, he is called upon to perform that duty of passing upon vouchers. He will have to conduct an inquiry with regard to the personal habits and conduct of these particular judges, where the question is raised in relation to them. He has his conscience to satisfy in approving a voucher, because, whether you regard that as ministerial or not, it is a duty, and it is supposed to be performed intelligently according to the statute, and the Director is bound to do that. This Conference is asked merely, I take it, for a general suggestion for his guidance on this point—whether in the opinion of the Conference and for the purpose of guiding the Director he shall regard the words "actual residence" in the statute as satisfied by a purely legal residence or domicile apart from the actual abode or home of the judge.

Now, if you are of the opinion that "actual residence" in the statute means nothing more than a legal residence or legal domicile and so advise the Director, of course his duty will be greatly simplified. If on the other hand you come to

the conclusion that "actual residence" imports something more than a mere legal residence or legal domicile, and has the suggestion of ambulating in the sense of a permanent home, then he has great difficulties possibly in particular cases in determining whether or not he shall approve a voucher; but you are not asked I take it to advise him as to that, but only on the general question. Am I right, Mr. Chandler?

Mr. CHANDLER. Right, Mr. Chief Justice.

\* \* \* \* \*

Judge PARKER. I move it is the sense of the Conference that an actual residence is required, and that a mere legal domicile is not sufficient.

(The motion was duly seconded.)

Judge STONE. Let me inquire as to that. What do you mean by "legal residence"? Now, that may vary. A man does not have to have a home, he does not have to rent an apartment, to have an actual residence in a place. For instance, I live in a hotel. Well, it is as much my actual residence as though I owned a block of ground with a larger residence on it, and yet I have to go to St. Louis and other places to hold court. I register in that precinct. I vote in that precinct.

Now, if that is not an actual residence, it would be difficult for me to say what is.

Judge GRONER. Nobody would think otherwise.

\* \* \* \* \*

The CHIEF JUSTICE. I understand that this motion, as made and seconded, carries with it the thought that merely "legal domicile" is not sufficient to satisfy the words of the statute, "actual residence." Now, the motion does not call for a determination of what an actual residence is, further than that it is not merely the legal domicile. Is that right?

Judge WILBUR. Yes.

Judge GRONER. That is my thought.

The CHIEF JUSTICE. Now, are there further remarks?

(The motion was duly agreed to.)

Judge HAND. Will that let out the Director?

Mr. CHANDLER. I do not know. I will do the best I can, and of course it goes without saying that the determination made by the judge and the statement to me of where his residence is settles and concludes with me all questions that are fairly open. \* \* \*

The CHIEF JUSTICE. I suppose the Director in this particular instance might inform Judge Jenney of the statement of the Conference, and ask for the facts, to see whether or not he is maintaining an actual residence in San Diego.

Mr. CHANDLER. That is what I would do.

The CHIEF JUSTICE. And that will guide him.

The action of the Conference was published in the Report by the Chief Justice (October sess., 1940, p. 12) as follows:

With respect to reimbursement for traveling and subsistence expenses incurred while attending court or transacting other official business at any place other than a judge's official place of residence, as provided by section 259 of the Judicial Code (U. S. Code, Title 28, § 374), which defines "official place of residence" as "that place nearest his actual residence at which either a Circuit Court of Appeals or a District Court is regularly held," it was declared to be the sense of the Conference that mere legal domicile is not sufficient to satisfy the words of the statute, "actual residence."

On November 6, 1940, following the instructions of the Conference, Mr. Chandler wrote Judge Jenney telling him of the Conference's action, and asking him for more specific information on the subject that would be helpful. His letter continued:

The Conference considers that legal domicile is not enough to constitute actual residence, and the maintenance of a home in Pasadena indicated in your letter of the 27th of February last is suggestive of actual residence of Pasadena. Nevertheless, I take it that you considered that not only your legal residence but your actual residence was then in San Diego. If that is your view I shall be glad if you will advise me of the elements upon which it is based, such for instance, (if it is a fact) as the maintenance and keeping available for your use and your occupancy from time to time of a residence in San Diego with your address there, in order that I may be informed upon the facts when I write to the Acting Comptroller General.

My purpose in doing this is not only to carry out the intent of the Judicial Conference but if possible to put at rest this rather troublesome matter.

Due to Judge Jenney's illness, no answer was received until March 18, 1941. In that letter Judge Jenney stated that he had sold his San Diego home and moved the furniture to a rented house in Pasadena, with the intention of leaving it there until wartime restrictions in San Diego would be relaxed so that he could carry out his plan to build a new smaller home in San Diego, and the Los Angeles court congestion should become somewhat relieved. He indicated that in these circumstances it would be perfectly satisfactory for him to have his official residence determined to be at either San Diego or Los Angeles. Excerpts from his letter follow:

As you are aware, the Southern District of California has three divisions, (1) the Central Division at Los Angeles, (2) the Northern Division at Fresno, and (3) the Southern Division at San Diego.

At the time I took the bench, on November 1, 1937, my home was in San Diego and had been for twenty-five years theretofore. I accepted the appointment upon the definite understanding with Senator McAdoo that I was to be placed in charge of the district court at San Diego, as soon as arrangements to that effect could be consummated. This arrangement met with the approval of Attorney General Cummings, as it did, likewise, with Judge James, the Senior District Judge in Los Angeles.

Judge James felt, however, that, due to the severe congestion of the calendar at Los Angeles, I should give as much of my time as was possible for the first year or two to the work in Los Angeles. The work at that time was light in San Diego and extremely heavy in Los Angeles.

For approximately the first two years of my stay here in Los Angeles I maintained the same home in which I had lived for years in San Diego. Mrs. Jenney remained there practically all of the time. I lived at the Biltmore Hotel in Los Angeles for the first twelve or fourteen months, later moving to the Ambassador Hotel in Los Angeles. I commuted back and forth to San Diego, only keeping a single room in the hotel.

My health suffered from hotel food and, under the advice of my physician, I took, temporarily, under a month to month lease, a furnished house in Pasadena in order that I might get home-cooking. I was then maintaining two homes—my real one in San Diego and a furnished house in Pasadena.

My San Diego home was a rather large one with considerable garden, expensive to keep up, and not particularly desirable, on account of its size, for a man and wife—with no children left at home.

We, therefore, concluded to put the house on the market with the thought that it would take a year or two to find a buyer. However, in the summer of 1939 we had an opportunity of selling, which we accepted. We had not the slightest intention of changing our place of residence and, as a matter of fact, immediately began looking for another house to buy; failing which, we ordered plans prepared for building. In the meantime, we had the problem of storing a large houseful of furniture. We found we could rent an unfurnished house in Pasadena, in which we could store the furniture, as cheaply as we could store it in San Diego. We, therefore, moved the furniture to an unfurnished house at 1334 South El Molino Avenue, in Pasadena. We have never taken any part in the community life of Pasadena and only considered ourselves as temporary sojourners there. As a matter of fact, I think that until just recently we have not slept in the Pasadena house more than once or twice since the 20th of September of last year.

Due to service activities and war industry activities, no houses are presently available in San Diego, nor is it practicable to attempt to build. After discussing the situation last month with our San Diego architect and several San Diego contractors, we have concluded to defer building for the present.

The result of the foregoing is that we have our furniture in the house in Pasadena and have rather concluded to maintain the house there for the next year or two—at least until conditions get more normal in San Diego and the court congestion in Los Angeles has been relieved. Everything indicates that I shall be required to hold court in San Diego from one third to one half the time each year. It is, therefore, not a question which involves much difference of expense either way. I should appreciate, however, a ruling by the Comptroller General as to my proper place of residence from now on in order that I may be governed accordingly.

It will, of course, be perfectly satisfactory to me to have my residence determined to be, presently and until some change occurs, in either place. However, as long as I have the divided responsibility of two courts, I feel entitled to a maintenance allowance in one place or the other.

In answer, on March 22, 1941, Mr. Chandler wrote Judge Jenney that on the basis of the information given it seemed to him plain that the Judge's actual residence at that time was at Pasadena and his official residence in Los Angeles. Mr. Chandler said the matter seemed so clear that he could see no necessity for asking the Comptroller General for a ruling on it.

On March 28, 1941, Judge Jenney answered Mr. Chandler saying he was entirely satisfied with Mr. Chandler's view and that he concurred in it. And he asked that his letter be considered as a notice of change of residence from San Diego. He said that if he should move back to San Diego, he would immediately notify Mr. Chandler.

Mr. Chandler agreed to this on April 7, 1941, and on April 8 he wrote Comptroller General Lindsay C. Warren, telling him of the October 1940 action of the Judicial Conference, and of the facts regarding Judge Jenney's sale of his San Diego home and his move to Pasadena. He said that on this account he and Judge Jenney agreed that his official place of residence "is now and will continue to be, subject to some change in conditions in the future, Los Angeles, Calif."

This closed the matter.

Judge Cosgrave's case did not require consideration because he retired on August 31, 1940.

Judge Beaumont's case did not require consideration because the statute under which he was appointed required him to have his official residence in Fresno (Act May 31, 1938, Ch. 290; 52 Stat. 584-5, § 4 (b)).

#### The Garrecht Case

In November of 1941, Senator Homer T. Bone of Washington questioned Mr. Chandler concerning the practice in making payments for subsistence to Federal judges generally, and particularly to Circuit Judge Francis A. Garrecht of the Ninth Circuit for attending court in San Francisco, asserting that these were made upon a fictional rather than a factual basis since Judge Garrecht was not truly a resident of Spokane, Washington, his designated official residence, but of San Francisco, Calif. After conference with Chief Justice Stone, Mr. Chandler referred the question to Judge Curtis D. Wilbur, who was then the Chief Judge of the Ninth Circuit.

Judge Wilbur apparently took the matter up directly with Judge Garrecht, who on November 14, 1941, wrote a letter directly to Senator Bone in which he explained that he was a resident at the time of Spokane and that although the exigencies of his work on the Court of Appeals made it necessary for him to be absent continuously in San Francisco he still regarded Spokane as his actual residence and thus his "official place of residence" under the Statute. Judge Garrecht's letter reads in substantial part as follows:

For the benefit of all who may inquire, I am very happy to assert that I have always been a bona fide citizen and resident of the state of Washington. In that State I was born and also were all the members of my family; my wife owns the farm on which she was born, first acquired by her parents more than 90 years ago; while I live I expect Washington to continue to be my residence and I am to be buried there in a plot already provided. My social

and such political affiliations as are presently permitted me are there; my church and lodge affiliations are maintained there; and it may be pertinent to here refer to the Federal Income Tax Law which requires returns and payments to be made in the state of the taxpayer's residence, and in that connection, to cite the fact that in conformity with the statute, my returns and payments all go to the Tacoma office. I vote in Spokane at all state and national elections and can recall missing but a single city election in my life. I am a part of the State of Washington, rooted in its very soil. I have been identified with its growth and history since the days of the pioneers, to which class my father and mother belonged. I saw the state grow from a remote outpost into one of the great states of the Union. I was personally and politically associated with men who framed its constitution and took some part in the election at which it was adopted. I attended the first political convention that was held after its ratification. I personally knew every governor the state has ever had but one, and every senator but one, and some of them were my warm friends. I was well acquainted with nearly every judge that sat on the Supreme Court of my state. I have been honored by my fellow citizens with many positions of trust and honor and no less by the Indian tribes of Eastern Washington. At one of its recent commencement exercises Gonzaga University, located at Spokane, Washington, honored me by conferring on me its deSmet Medal, which is annually awarded to a citizen of one of the Pacific Northwest states for outstanding service to Church and State. The award bears eloquent witness that my own people regard me as still a citizen of the State of Washington. There is nothing more certain than that I never had and have not now any intention of becoming a citizen of California or of giving up my residence in Washington.

Moreover, many practical reasons suggest themselves why I would not want to become a resident of California, not the least of which is the very uncertainty of the status of this Court. You know that for the last several years there has been more or less constant agitation for a division of the Circuit, which keeps some of the members of the Court in a position of uncertainty as to where the location of their court will be. The bill which you introduced very correctly provides that automatically I would be part of the new court. From a purely personal standpoint this would be altogether advantageous to me. I would then become Senior Circuit Judge and enjoy whatever distinction that position entails; I would be able to attend the conferences held in Washington each year; I would function nearly altogether in my home state; and nearly all of my time would be spent there among my friends. Be assured I will go along with my State into whatever Circuit it becomes a part.

So much for the facts. Now, just a word as to the legal aspects of the situation. The governing statute is Section 374, Title 28, U. S. C. A. \* \* \* When I was appointed a judge of this Court, Spokane was my residence and pursuant to the statute, my official residence was designated in the Department of Justice as Spokane, Washington. Very correctly and properly I have never changed that official residence; I have drawn for necessary expenses of travel and maintenance only such allowances as I was clearly entitled to under the law.

It has always been the uniform practice of judges appointed from Washington, Oregon, Idaho, and Arizona to designate the city and state of their residence at the time of their appointment as their official residence, and to claim their per diem while in attendance upon the Court here and it has always been allowed without question under exactly the same circumstances that exist in my case. This has been the established custom since the organization of the Court and I firmly believe that a correct interpretation of the statute has been followed.

There has never been any suggestion that I am not entitled to receive the compensation I claim. The reference to the 1940 Conference Report, alluded to in your letter to the Administrator, concerned district judges only. As the stenographer's notes show, the matter was very loosely considered. Investigation will show that many circuit judges in other circuits are in exactly the same position that our judges are here, and the circumstances are entirely different from the facts considered by the Judicial Conference in 1940 relative to district judges; indeed, some of the judges at the Conference noted some of these distinctions.

The Court has more hearings in San Francisco than in all the other cities combined, which is the reason that most of our time is taken up here. Under the rules of court the arrangement of the dockets and the assignment of judges to hear the cases are made by the Senior Circuit Judge in connection with the Clerk. During this last year it has so happened that I have been assigned to the hearing of cases in San Francisco in every month. The interval between nearly all of these hearings was so brief as to make it altogether impractical and too expensive to be reasonable for me to return to Spokane during the period. When relieved from duty I spent my time there at my office located there. The fact that I am engaged in my work here more of the time than in Washington, Oregon, or anywhere else, does not deprive me of my citizenship in the State of Washington, any more than your living in the District of Columbia nearly all of the time forfeits your residence in Tacoma.

I trust you will come to the conclusion that the practice followed by the circuit judges since the inception of the court is proper and accords with the intent of the statute and that this will satisfy those who have instituted the inquiry.

In transmitting a copy of this letter to Mr. Chandler, Judge Wilbur wrote a separate letter dated November 19, 1941, in which he supported Judge Garrecht's position. Judge Wilbur's letter was as follows:

Referring to our correspondence relative to the official place of residence of circuit and district judges and the statement in relation thereto contained in the Report of the Judicial Conference for October, 1940, particularly as it may concern Judge Garrecht, your attention is directed to the fact that the discussion at the Conference did not concern circuit judges, whose situation in some respects differs from that of district judges, inasmuch as it seems to be the intention of the law that they should be appointed from different states and be representative of such states on the bench. Moreover, at the Conference, none of the judges gave any consideration to the words "actual residence" and "official residence" as applied to one in Judge Garrecht's situation.

Evidently the use of the term "actual residence" in the statute was intended to distinguish the appointee's residence at the time of his appointment from the "official residence" which the appointed judge was required to designate at the time he took office. To illustrate, had Judge Garrecht's actual residence at the time of appointment been elsewhere in the judicial district than Spokane, the statute would nevertheless require that his "official residence" be designated at Spokane as being the place nearest his actual residence at which a district or circuit court was regularly held. In such a case, although the judge may have his actual residence 100 miles or more distant from Spokane, he would not receive any additional compensation for attendance upon the court on this account and Spokane would remain his "official residence."

It may be well to remind ourselves that the Ninth Circuit is one of magnificent distances—there is none other like it. As members of our court, we have judges with homes in Portland, Oreg.; Boise, Idaho; Spokane, Wash.; and elsewhere. It is the purpose of the law that judges should be appointed representing different States because of their familiarity with the laws of those States which are frequently involved in litigation before our court and it has always been expected, and it has been the uniform practice, that they would remain residents of their respective States.

Since I have been a member of this court we have had other judges from Arizona, Idaho, Oregon and Washington, all of whom were occupied during most of each year in the hearing of cases in San Francisco and most of their time was spent here and who returned to their respective States during vacations. All of these judges claimed allowance for travel and per diem similarly to Judge Garrecht and the other judges from these States at the present time and there never has been any question of the legality of such claims.

Through the efforts of Judge Denman, our Circuit secured the passage of laws by Congress whereby we now have seven judges. He says that at the time he appeared before the Congressional Judiciary committees he told the members that if his plea for relief of existing congestion in this Circuit were granted, he would insist that this Court discontinue the usual custom, previously followed here as in other circuits, of not hearing cases during the summer months and that he would try to have continuous sessions throughout the year, hearing cases during every month in order that the arrearage be cleared. To this end a rule was adopted by the court effectuating that proposal and since that time and during the last two years that practice has been followed and hearings of cases have taken place every month. Judge Garrecht, as the records show, has participated in hearings during every month of the year 1941.

Our custom has been to hold court in periods for 2 or 3 weeks, continuously, judges alternating every other day; then a recess for a week or sometimes 2 weeks is taken for necessary conferences and opinion writing. It is desirable that during this period the judges keep in close touch with one another to facilitate exchange of views while opinions are in preparation. If this is not done, it invariably results in delays in disposition of the business of the court.

In the cases of Judge Garrecht and Judge Healy, whose official residence is farthest away, should they return home during these short intervals between sittings it would require them to be on the road much of the time, besides greatly hindering the accomplishment of their work. In addition, it would be far more expensive to the Government than to have them remain here during these intervals.

The Senator appears to have acquiesced in the explanation because he raised no further question.

#### The Inquiry of Representatives Hillings and Budge in 1952

In the winter of 1952, the Administrative Office was called upon by Representative Hillings of California and Representative Budge of Idaho for information concerning the expenses for maintenance in the performance of official duty incurred by the circuit judges of the country in the calendar year 1951. Copies of the data so furnished for each circuit were given by Mr. Chandler to the chief

judge of the circuit. After the information was furnished it was discovered that some vouchers in payment of expenses had been overlooked so that the information supplied was not altogether complete. Revised statements were then prepared and furnished to the members of Congress and copies for each circuit were mailed to the chief judge of the circuit.

Mr. Chandler then presented the matter to the Judicial Conference at its special session in March of 1952 in a memorandum reading in part as follows:

The inquiry raised a question concerning the application of the provision of Section 456 of Title 28 of the United States Code which provides that each judge of the United States,

"shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses, and also his reasonable maintenance expenses actually incurred, not exceeding \$10 per day, while attending court or transacting official business at a place other than his official station.

\* \* \* \* \*

"The official station of each circuit and district judge, including each district judge in the territories and possessions, shall be that place nearest his residence at which a district court is regularly held.

"Each circuit judge and each district judge whose official station is not fixed expressly herein shall upon his appointment and from time to time thereafter, as his residence may change, notify the Director of the Administrative Office of the United States Courts in writing of his residence and official station."

The provision quoted is substantially similar, with one difference which will be noted later to the provision of Section 374 Title 28 which was in force prior to the revision of 1948. [Mr. Chandler's memo then outlines the prior consideration of the subject by the Conference in 1940 when Judge Jenney's case arose, and the facts of the inquiry later from Senator Bone concerning Judge Garrecht's residence].

The present Judicial Code would appear if anything to increase the weight to be given to the notice by each judge of his residence and official station, and the latitude allowed him in choosing his residence, because it omits from the provision that the official station shall be the place "nearest his residence at which a district court is regularly held" the word "actual" which was contained in the former statute. Still probably the opinion of the Judicial Conference expressed in 1940, that to constitute "actual residence" within the meaning of the statute then in force, something more than "mere legal domicile" is necessary, still applies.

The information furnished to members of the Congress concerning maintenance expenses shows some instances in which circuit judges spent extended periods of time in cities in which courts of appeals were held and that these periods predominated over the time that they spent at the locations which they designated as their official stations. Nevertheless it appeared that from time to time they went back to the latter where they retained marks of residence such as the maintenance of a dwelling, and that they did a part of their work in those locations, even though apparently less than in the locations in which they charged maintenance. It would not seem that in such instances there could be any reasonable question that their course was in conformity with the statute which

appears to give to a judge a large degree of freedom in reference to his choice of residence. Furthermore it is regarded as advantageous that between sessions of courts of appeals, judges where conditions permit should be available for consultation by persons concerned in the business of court in the parts of the circuit which they regard as their homes.

The question which appeared to be raised in the present inquiry by Representatives Hillings and Budge refers to a situation in which for a very large proportion of the year a circuit judge may charge maintenance in a place where he is present and does his work on the ground that his official station under the statute as shown by his notice is in another place, and there is a lack of the usual indicia of residence in the latter. The last paragraph of Section 456 of Title 28 of the United States Code appears to put the responsibility for designating his residence and official station within the terms of the statute upon each circuit judge and district judge. The Administrative Office is continuing to be guided by his designation. I deem it my duty, however, to bring to the attention of the Judicial Conference the question which appears to be raised by the members of Congress in their inquiry and what seems to be the basis of it.

The situation concerning the payments shown by the tabulation made to circuit judges was discussed by the Conference and conditions in respect to individual cases were explained by the Chief Judges of the circuits concerned. No formal action was taken by the Conference, but it was agreed that the matter would be informally considered by the Judicial Councils of the circuits concerned.

After the Conference had adjourned, Judge William E. Denman, the Chief Judge of the Court of Appeals for the Ninth Circuit wrote to Representatives Hillings and Budge, explaining the situation in his circuit and giving its full history.

A copy of Judge Denman's letter of May 2, 1952, follows:

In construing the maintenance per diem statute as related to the practice of Judge Healy, it is obviously of importance to know the practical interpretation given the statute by judges of the Ninth Circuit Court who served at and prior to the time he came on the bench and whose situations were the same as or closely similar to his own. I have examined into this early practice by consulting available records in the office of the United States Marshal at San Francisco and by inquiry of our clerk, who has served with the Court for nearly 50 years.

In the last half of the 1920 decade the three judges then comprising the court (namely Judges Gilbert, Rudkin, and Dietrich) had each been appointed from one or another of the outlying States of the circuit. Each had his designated official residence throughout his tenure in the State from which he was appointed, one at Portland, Oreg., the second at Seattle, Wash., and the third at Boise, Idaho. A study of the official data for a typical year (1928) shows that each of these judges regularly collected the statutory per diem for the full time while in attendance on the Court at San Francisco. Two of them, incidentally, would appear to have claimed the full per diem of 10 dollars, the third, somewhat less than that. I am reliably informed that one of them did not own during his

service on the court any dwelling house at his home city or official residence. These judges died in 1930 or early 1931.

In February 1931 a successor judge (Sawtelle) from the outlying State of Arizona was appointed, serving until his death in 1934. His official residence was designated as Tucson, Arizona. He regularly collected the full statutory per diem while at San Francisco. As an example, the total maintenance allowance claimed by him for the fiscal year ending June 30, 1932, was in excess of \$2,700, not including per diem while attending court at Portland and Seattle.

In 1933 and 1935 two other judges from outlying states were appointed, namely Judges Garrecht of Spokane and Haney of Portland. Each designated his home city as his official residence and each uniformly collected the maintenance per diem while at San Francisco. Judge Garrecht served until his death in 1948; Judge Haney until his death in 1943. I am informed that Judge Garrecht did not during his tenure own or occupy a dwelling house at his official residence.

Judge Healy of Boise came on the court in 1937. The records show that in respect of the subject under inquiry he followed the settled practice of the Ninth Circuit judges in like situations with his own as that practice prevailed at the time of his appointment and had prevailed for many years prior thereto. They show, also, that during the years Judge Healy served with Judges Garrecht and Haney, their per diem claims did not substantially differ in amount.

The practice of these various judges whom I have mentioned cannot rationally be considered apart from the geographical conditions obtaining in the Ninth Circuit, as I have in other communications described those conditions to you. It is to be remembered, also, that for a long time past, and during much of the time here mentioned, the volume of the work of this Court has been such that the judges have been required during nearly the entire year to be in attendance at San Francisco, Los Angeles, Seattle, or Portland. Back in the 1920's the first three judges mentioned found an opportunity at the close of each quarter's session to return to their official residences. Customarily, they did not meet in the summer months. But it will be noted that by the time Judge Sawtelle took office, in 1932, practically continuous sessions were being held, as they have been ever since. Thus, Judges Gilbert, Rudkin, and Dietrich, in 1928, averaged 158 days each at San Francisco, whereas Judge Sawtelle, in the fiscal year I have mentioned, spent 270 days there. In the succeeding years the demands on the judges' time have steadily become more imperative, finally reaching the point where we have been compelled to ask the Congress for two additional circuit judges.

I urge on you that if the subject of Judge Healy's per diems becomes a matter of discussion, that this letter and my earlier statement to you be made a part of the record.

No further inquiry on the subject was made until the recent question at the hearings on the appropriations for travel in January of 1953.

### APPENDIX III

UNITED STATES COURT OF APPEALS, NINTH JUDICIAL CIRCUIT

SAN FRANCISCO 3, CALIF., *February 12, 1953.*

Chambers of William Healy, United States Circuit Judge

Hon. HENRY P. CHANDLER, *Director,*  
*Administrative Office of the United States Courts,*  
*Supreme Court Building, Washington 13, D. C.*

DEAR MR. CHANDLER: I am obliged to you for your letter of February 6th. Presumably the view expressed by the Subcommittee will be considered by the members of the Judicial Conference and that an expression of policy will ensue.

I am enclosing copy of a letter written last May by Chief Judge Denman to Congressmen Hillings and Budge in reference to inquiries they were currently pursuing.\* This letter you will find historically informative as regards the practice in this Circuit. The "geographical conditions" mentioned by Judge Denman on the second page of the letter refer to problems inherent in the lines of travel and the great distances obtaining in the Ninth Circuit, making it impracticable as well as wasteful of time and public money for distantly located judges to repair to their official stations in the brief intervals between calendars. As a personal illustration, it requires practically two days to travel from San Francisco to Boise, Idaho, whether by train or automobile, and a like time to return.

I desire not to be understood as suggesting that these considerations are determinative of the matter of policy. The interests of the federal judiciary as a whole will probably be adversely affected by perpetuation of the differences with the Subcommittee. I feel that these interests are paramount, and I am prepared to go along with such solution as may be proposed by spokesmen for the Conference more closely in touch with the situation. In the meantime I shall conform to the views of the Appropriations Subcommittee as respects subsistence claims while in attendance on the Court at San Francisco.

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\*Set out in full in appendix II, p. 70, *supra*.

I would be happy to have you pass along this communication and the enclosed letter to members of the Conference with whom you are in contact. I have already supplied Chief Judge Denman with copies of the exchanges between you and myself, together with a copy of this letter.

With my very kind regards, I remain  
Sincerely yours,

WILLIAM HEALY,  
*United States Circuit Judge.*

UNITED STATES COURT OF APPEALS, NINTH JUDICIAL CIRCUIT

SAN FRANCISCO 3, CALIF., *March 10, 1953.*

Chambers of William Healy, United States Circuit Judge

HON. HENRY P. CHANDLER,

*Director, Administrative Office of the United States Courts,  
Supreme Court Building, Washington 13, D. C.*

DEAR MR. CHANDLER: This is in response to your request for information bearing on my residence at Boise.

I became a resident of Idaho in 1908 following upon my graduation from the Iowa University law school in that year. I practiced law at Silver City, Idaho, for several years, or until the end of 1913, when, after a term in the legislature, I removed to Boise and thereafter practiced in that city. My wife is a native of Idaho and our children were born and grew up in Boise. My older daughter was a student at the University of Idaho from 1934 through 1936.

Upon my appointment to the circuit bench in 1937 I designated Boise as my official residence. Subsequent to my going on the bench my wife and I have continued, as before, to be registered at the Boise polls and have regularly voted there at all general elections. I did not own a dwelling house in Boise at the time of my appointment, having disposed of my home there about 2 years before because it had ceased to be adequate for our purposes. I have not since acquired a dwelling house at San Francisco or elsewhere. At San Francisco we have lived in part at a hotel but most of the time in rented apartments.

At the time of my appointment I took over offices in the Federal building at Boise which had some years before been set apart for the accommodation of the United States circuit judge. These are adequate quarters, fully furnished, and equipped with a law

library supplied by the Government. I keep there also my private law library. These quarters I have regularly occupied and used at all times when in Boise, and have written many opinions there.

Subsequent to my appointment I continued to pay the full amount of the Idaho State income tax as a resident. The State of California also exacted from me, as from other out-of-State judges, their tax assessed against nonresidents upon income earned in California. About 1941, as I recall, the Idaho legislature passed a reciprocal law relieving residents from tax on income earned in other States. Since 1942 my Idaho income tax has been small inasmuch as my salary has very largely been earned in other States of the circuit. My Federal returns are made to the Boise collector.

In the early years of my tenure on the court we were able to spend much of the summer at Boise, staying while there at the hotel Boise or in rented quarters at the Wellman Apartments. Growth in the volume of court business and the development of the practice of holding regular calendars at San Francisco throughout the entire year rendered it impracticable in most years thereafter to spend much time in Idaho. My wife and I have always regarded Boise as our home and intend on my retirement to return there permanently.

There is another aspect of my practice which may be thought to have little bearing on the question of residence, but which does throw light on my continued interest in my home State and my desire to be helpful there. As you are aware there is but one judge in the Idaho district and the business there has become very heavy during the last 2 decades. Throughout my tenure on the circuit bench I have at intervals tried many cases in the Idaho district court at Boise and Pocatello at the request of Judge Clark or his predecessor, Judge Cavanah. These have included both court and jury cases, civil and criminal. The contribution I have made and am making in this respect has not been a mere nominal or token gesture, but a substantial service, productive, I think, of important results in the periodical easing of the heavy burden resting on the Idaho judge. As you may surmise this work has at times cut heavily into my supposed vacations.

I am enclosing for your convenience a copy of this letter.

With kind regards, I am

Courteously yours,

WILLIAM HEALY,  
*United States Circuit Judge.*

OFFICE OF CLERK OF UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF IDAHO

BOISE, IDAHO, *March 13, 1953.*

Mr. HENRY P. CHANDLER,

*Director, Administrative Office, United States Courts,  
Supreme Court Building, Washington 13, D. C.*

DEAR MR. CHANDLER: Following is the information requested in your teletype of March 11th, giving dates of orders of designation and period effective of the Honorable William Healy, Judge of the Circuit Court for the Ninth Circuit:

Order dated August 18, 1939. Period effective—September 1, 1939, to October 15, 1939. Sat—September 29, 1939, at Boise.

Order dated November 18, 1940. Period effective—November 20, 1940, until completed. Three judge court. Sat—November 20, 1940, at Coeur d'Alene.

Order dated August 18, 1942. Period effective—October 4, 1942, to November 4, 1942. Sat—October 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 1942, at Pocatello. Sat—October 30, 31, 1942, at Boise.

Order dated December 21, 1942. Period effective—December 21, 1942, to completion. Sat—None.

Order dated May 6, 1948. Period effective—May 17, 1948, to June 5, 1948. Sat—May 25, 26, 1948, at Pocatello.

Order dated February 24, 1949. Period effective—May 16, 1949, to? Three judge court. Sat—May 17, 1949, at Boise.

Order dated July 1, 1950. Period effective—August 10, 1950, through September 20, 1950. Sat—August 23, 24, 25, 26, 27, 28, 29, 30, 31, September 1, 2, 3, 4, 5, 6, 1950, at Boise.

Order dated February 9, 1952. Period effective—February 12, 1952, to February 26, 1952. Sat—February 13, 14, 15, 16, 17, 18, 19 and 20, 1952, at Boise.

Order dated August 13, 1952. Designated to hear case of *United Mercury Mines Co. v. Bradley Mining Co.* Sat—August 27, 1952, at Boise.

Order dated February 26, 1953. Designated to hear cases 2974S and 2985S. Sat—None to date.

Dates italicized are those the minutes show Judge Healy was actually hearing cases in court.

Sincerely,

ED. M. BRYAN,  
Clerk.

[Telegram]

SEATTLE, WASH.,  
 April 17, 1953, 3:26 p. m.

HON. ORIE L. PHILLIPS,  
*United States Court of Appeals, Denver, Colo.*

Your letter of April 8 re Judicial Conference meeting has just been received by me at Seattle where we are hearing an extensive calendar which will not conclude until Wednesday of next week.

I have with me here a copy of a factual statement submitted to the General Accounting Office at its request on March 13. This covers the matters you mention. Copies of this statement were at that time furnished also to Director Chandler and to Judge Denman. Since the time is too short to get a copy of this statement in your hands at Denver I will mail it to you at the Drake Hotel, Chicago.

WILLIAM HEALY,  
*United States Circuit Judge.*

UNITED STATES COURT OF APPEALS, NINTH JUDICIAL CIRCUIT  
 SAN FRANCISCO 3, CALIF., April 20, 1953.

Chambers of William Healy, United States Circuit Judge.

Judge ORIE L. PHILLIPS,  
*United States Court of Appeals,  
 Drake Hotel, Chicago, Ill.*

MY DEAR JUDGE: Pursuant to my wire of April 17 in response to your letter, I enclose a copy of the statement which I submitted to the General Accounting Office on March 13 at its request. As indicated in the wire, copies of this statement were at that time furnished also to Director Chandler and to Chief Judge Denman. The only material not included in the enclosed copy are the graphs mentioned on page 7 of the statement showing the dates on which cases were calendared during the year 1951 and indicating those in which I personally sat. I do not have available here at Seattle either exemplars of the graphs or copies of the 1951 calendars. However, copies of the graphs were attached to the copy of the statement submitted to Director Chandler and I believe also to Judge Denman's copy.

I assume, although I have no definite information to that effect, that the General Accounting Office has made a report to the Senate Judiciary Committee or to Senator McCarran on my status inas-

much as, according to the press, the GAO was asked by Senator McCarran to make inquiry and to report on that matter in the course of a committee hearing held on March 7, 1953. I would think that the nature of the report, if one has been made, would be of interest to the Judicial Conference.

There is one phase of your letter of April 8 that I desire to comment on, and I trust that my comments will be called to the attention of the committee and the conference as well. You state that whether my "actual" residence is at Boise has been called in question; and, again, that it is desired that I give your committee the pertinent facts upon which I claim that Boise is my "actual" residence.

I assume that your employment of the adjective "actual" was not an inadvertence but that it perhaps indicates your interpretation of the pertinent statute as it existed prior to 1948, and as rephrased in the latter year. I have not thought that the appearance of the word in the former statute carried any significance as relates to the point now under discussion. Nor did Judges Garrecht of Spokane or Judge Haney of Portland, who were serving on the court when I became a member, attach significance to it; and I gathered that a like view was entertained at least by Judge Rudkin of Washington and Judge Sawtelle of Arizona who had served earlier.

The old statute used the term "official residence," defining it as that place nearest the judge's actual residence at which a district court, etc., was regularly held. The employment in juxtaposition of the term "residence" in both phrases rendered the definition an awkward one to state unless some distinguishing word such as "actual," or "real," were used to distinguish between the two kinds of residence. A glance at the old statute will reveal this clumsiness. That the word "actual" was thought by Congress to serve no other purpose than a grammatical one is demonstrated, I think, by the fact that it was dropped from the statute when the phrase "official station" was substituted for "official residence." The 1948 codifiers indicated that no change in meaning was intended by the changes in phraseology, hence it would appear that the word "actual," being no longer needful in a grammatical sense, was purposely omitted.

With assurance of my regards, I am

Respectfully yours,

WILLIAM HEALY,  
*United States Circuit Judge.*

UNITED STATES COURT OF APPEALS, NINTH JUDICIAL CIRCUIT  
SAN FRANCISCO, CALIF., *March 13, 1953.*

Chambers of William Healy, United States Circuit Judge

MR. MORRIS H. KNEE,  
*General Accounting Office,  
Washington, D. C.*

DEAR MR. KNEE: In response to your request I am furnishing the following with certain material appended thereto.

I became a resident of Idaho in 1908 following my graduation from the Iowa University law school in that year. I was admitted to the bar and practiced law at Silver City, Idaho, for several years, or until the end of 1913, when, after a term in the legislature, I removed to Boise. There I continued in the active private practice except for 3 years during which I served as general counsel of the Farm Credit Administration of Spokane. In the period 1930 to 1933 I was a member of the Idaho State Bar Commission and served as president of the State Bar Association. I understand that since going on the bench I have continued to be carried on the rolls of that association as a member, since notification of its annual meetings have ordinarily been mailed me. I have attended several of these meetings when in the State at the time. The Idaho bar is what is known as an integrated bar, and practicing lawyers are obliged by law to be members of it and to pay into the State treasury an annual license fee of \$10. Idaho Code, 1947, volume 2, § 3-409 provides for this, but excepts "State and United States judges of the courts of record within this State" from the payment of the license fee. As a United States circuit judge who acts at times, as I do, as a United States district judge within the State the provisions of the act are not clear. Section 3-405 of the Code, in defining those who are members of the Idaho State bar states that "all judges of the district and supreme courts of this State, and of the district court of the United States for Idaho" are members of the Idaho bar. At the time of my appointment I was a member of the State bar as membership is defined in the statute, having continued at all times since the enactment of the legislation to comply with the requirements of the act. I should add that I have never been a member of nor affiliated with the bar of any State other than Idaho since I came to that State in 1908 up to the present.

Prior to 1920 I was for several years a member of the State Board

of Education and of the board of regents of the University of Idaho. In 1933 I was elected a member of the Idaho State convention which ratified the repeal of the eighteenth amendment.

My wife is a native of Idaho and our two daughters were born and grew up in Boise. The latter, on their mother's side, are Idahoans of the fourth generation, their great grandparents having been among the founders of Silver City.

Upon taking the oath as circuit judge in 1937 I designated Boise as my official residence. Subsequent to that time my wife and I have continued, as before, to be registered at the Boise polls and have regularly voted there at all general elections, usually by absentee ballot. Consult Idaho Code, 1947, volume 6, § 34-1021, as to residence. Consult also *District of Columbia v. Murphy*, 314 U. S. 441. Parenthetically, we have been registered and have voted in the same precinct in Boise from 1915 to date. I have not voted at any election nor been registered as a voter in any State other than Idaho since coming there in 1908, nor has my wife ever voted or been registered as a voter in any State other than Idaho.

I did not own a dwelling house in Boise at the time of my appointment, and have not since acquired a dwelling house at San Francisco or elsewhere. At San Francisco we have had our living quarters at times at a hotel but during the bulk of the time have occupied various rented apartments. At present we occupy a rented apartment at 26 West Fourth Avenue in San Mateo. My wife owns real and personal property in Idaho, inherited from her mother. I own no real property anywhere.

At the time of my appointment I took over offices in the Federal building at Boise which had some years before been set apart for the accommodation of the United States Circuit judge. These are adequate quarters, fully furnished, and equipped with a law library supplied by the government, plus supplies and official and private files. I keep there also my private law library, which is of considerable proportions. These quarters I have regularly occupied and used at all times when in Boise, and have written many opinions there.

Subsequent to my appointment, when Federal judicial salaries were opened to local taxation, I continued to pay the full amount of the rather heavy Idaho State income tax as a resident. The State of California also exacted from me, as from other outstate judges, its tax assessed against nonresidents upon income earned in California. About 1941, as I recall, the Idaho legislature passed

a reciprocal law relieving residents from tax on income earned in other States. Because of this legislation my Idaho income tax, which I have since paid annually as a resident, has been reduced proportionately and is not very large. My Federal returns are made to the Boise collector.

In the early years of my tenure on the court we were able to spend much of the summer and early autumn at Boise, living while there at the Hotel Boise or more generally in rented quarters at the Wellman Apartments. Growth in the volume of court business and the development of the practice of holding regular calendars throughout the year rendered it impracticable in most of the years thereafter to spend a great deal of time in Idaho, although I have continued to be there for varying periods each year during my tenure. This situation will be more fully gone into at another place. My wife and I have always regarded Boise as our home and intend on my retirement to return there permanently. Though necessarily away the great bulk of the time, we have maintained our old ties and associations with friends and acquaintances in the city and over the State. I have never been much of a "joiner," and have not for well over 20 years been a member of any lodge or fraternal order in Idaho. Nor have I become affiliated with any such organization in any other State.

There is another aspect of my life as a judge which appears to me worth mentioning since it throws light on my continued attachment to my home State and my desire to be helpful there. The Idaho Federal district has but one judge, and its business has grown very heavy during the last two decades. At intervals during the period of my tenure on the circuit bench I have tried many cases in the Federal district court for Idaho at Boise or Pocatello at the request of Judge Clark or his predecessor, Judge Cavanah, who retired I believe about 1942. These have included both court and jury cases, civil and criminal. At the moment there are three pending cases assigned to me in that district, one of which was partly but not wholly concluded last year. The contribution I have made over the years in this respect has been substantial and, I think, productive of benefit to the State, more particularly in the periodical easing of the heavy burden resting on the Idaho judge. This work has usually been done at a considerable sacrifice of my supposed vacations. Except in my own case, it has not in my time been the practice of the ninth circuit judges to do trial work in the district courts.

I have earlier spoken of the increase in the volume of the court's business since I came on the bench and to the growth of the practice of calendaring cases regularly the year round. The circuit court, you no doubt understand, sits in other places than San Francisco, inasmuch as the statute requires the holding of terms also at Portland, Seattle, and Los Angeles. I append a graph showing the days on which cases were calendared during the year 1951, and another indicating those on which I personally sat.<sup>1</sup> Usually the court hears two cases per day. A particular judge is ordinarily assigned to sit on Monday, Wednesday, and Friday of one week and on Tuesday and Thursday of the next, although that custom varies considerably with the circumstances and the membership of the court available.

In a letter of Chief Judge Denman, copy of which I append for your information with his permission, he refers to the "geographical conditions obtaining in the Ninth Circuit." \* By this he doubtless had reference to problems inherent in the lines of travel and the great distances obtaining in the circuit, making it impracticable and wasteful of time and public money for distantly located judges to repair to their official stations in the intervals between calendars. In my case it takes the better part of 2 days to travel from San Francisco to Boise, whether by train or auto, and a like time to return.<sup>2</sup> Between calendars the time of the judge is normally devoted to the study of submitted cases and to the onerous work of writing opinions. If he does this work at his official station it is necessary for him to take along his secretary and ordinarily his law clerk to aid in these tasks. In addition to the travel expense of the judge there is to be considered the travel and subsistence expenses of his attachés. (The latter allowances are \$8 per day for each.) For these several reasons the distantly located judges have not in my time gone to their official stations between the recurring sessions, as may be the practice of judges in geographically smaller circuits or those of the Ninth whose official stations are not far removed from San Francisco. In these years of heavy calendars we find, too, that the cases are disposed of more expeditiously when the judges remain together, so that they may the more

<sup>1</sup> The graphs do not, of course, cover the Judicial Conference of the Ninth Circuit for 1951 which was held at Santa Barbara during the week beginning June 25, and which I attended.

\*Set out in full in appendix II, p. 70, *supra*.

<sup>2</sup> I append a schedule showing time and transportation expense involved between San Francisco and Boise.

readily confer and iron out differences of opinion. You will find the letter of Chief Judge Denman historically informative on this general subject. As already stated, I am appending a copy of his letter.\*

It may be proper to add that I have not spared myself as regards participation in these recurring sessions or sought to escape the routine drudgery of the court. As to the latter I may say that, apart from calendared cases, in most days a varying grist of uncalendared matters passes over my desk for consideration and disposition by myself in conjunction usually with two other judges.

Perhaps the statement of these conditions may afford an understanding of the reasons why an outstate judge like myself is so much away from his official station in attendance upon the court or in the performance of judicial business.

I have never doubted that the statute defining the official station of circuit judges applies to my situation and warrants in letter and spirit, the practice I have followed in claiming subsistence allowance in the varying amounts certified by me through the years. I consider it, and always have considered it, fair and just as well as lawful that I should claim those amounts. My appraisal of the law found support in the opinion and practice of the judges, in like situations with myself, who were serving on the bench when I came here, and in the obtainable information concerning the practice of deceased judges in like situation who had served in earlier periods. The appended letter of Judge Denman\* contains rather full and detailed information concerning this matter.

If there is additional information which the accounting office desires I shall be happy to furnish it if I have it.

Courteously yours,

WILLIAM HEALY,  
*United States Circuit Judge.*

A. *Transportation by railroad.* (Information furnished by Southern Pacific Company in November 1952.)

(1) *Fares* (without tax):

(a) Round trip rail ticket San Francisco-Boise, via Portland (most direct route), \$72.

(b) Pullman:

San Francisco to Boise (less than 24-hour stopover) _____	<i>Lower</i>	<i>Roomette</i>	<i>Bedroom</i>
	\$13. 90	\$19.50	\$26. 45
Round trip Pullman fares_____	27. 80	39. 00	52. 90

\*Set out in full, appendix II, p. 70, *supra*.

(2) *Time schedules:*

## (a) San Francisco to Boise:

- 1st day—Lv. San Francisco 5 p. m. (Cascade).
- 2d day—Ar. Portland 9:30 a. m. (Cascade).
- 2d day—Lv. Portland 9:45 p. m. (Portland Rose).
- 3d day—Ar. Boise 12:10 p. m. (Portland Rose).

## (b) Boise to San Francisco:

- 1st day—Lv. Boise 3:45 p. m. (Portland Rose).
- 2d day—Ar. Portland 6 a. m. (Portland Rose).
- 2d day—Lv. Portland 4:45 p. m. (Cascade).
- 3d day—Ar. San Francisco 9:15 a. m. (Cascade).

B. *Transportation by car.*—San Francisco to Boise via Reno—most direct route—AAA mileage 651 miles, 2 days travel.

C. *Transportation by plane.*—Up until the last few months, at least, there has been no direct plane service to Boise from San Francisco other than antiquated planes with nonpressurized cabins.

## IDAHO CODE, 1947, VOLUME 6, § 34-1021

*Residence—How determined.*—The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

1. That place shall be held and considered to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State, territory or county of this State, for temporary purpose merely, with an intention of returning.

3. If a person remove to any other State or to any of the Territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this State.

4. If a person remove from one county in this State to any other county in the State with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county from which he removed.

## IDAHO CODE, 1947, VOLUME 2, § 3-405

*Member of the Idaho State bar defined.*—All persons who have been heretofore, or shall hereafter be, duly admitted to practice law before the Supreme Court of this State, and who have not been disbarred or suspended therefrom, and who shall have paid the license fee in this act provided for, and all judges of the district and supreme courts of this State, and of the district court of the United States for Idaho, are hereby declared to be members of the Idaho State bar.

## IDAHO CODE, 1947, VOLUME 2, § 3-409

*License fees and appropriation.*—Every person practicing, or holding himself out as practicing, law within this State, or holding himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this State, except State and United States judges of the courts of record within this State, shall, prior to so doing and prior to the first day of March of each year, pay into the State treasury as a license fee the sum of \$10. \* \* \*

UNITED STATES CIRCUIT COURT OF APPEALS, NINTH JUDICIAL  
CIRCUITSAN FRANCISCO, CALIF., *March 17, 1953*

Chambers of William Healy, United States Circuit Judge

Mr. MORRIS H. KNEE,  
*General Accounting Office,  
Washington, D. C.*

DEAR MR. KNEE: In my statement handed to you a few days ago I overlooked inserting a citation to a recent decision of the Supreme Court in *District of Columbia v. Murphy*, 314 U. S. 441, dealing with a kindred situation. This citation should have been inserted on page 3, line 12, where reference was made in my statement to the Idaho statute relating to residence.

There was another matter that I had intended to refer to but overlooked in my hurry because of your desire to have the statement promptly. In Senator Welker's reference to the amount of my per diem he used the figures for the calendar year 1951. Our court year is not the calendar year but the fiscal year, and statistics of all kinds are compiled on the basis of the latter. I think a fairer picture would have been presented, if, instead of using data covering half of two fiscal years, the whole of the figures for the two fiscal years involved were used. I have before me the data for the fiscal year beginning July 1, 1950, and ending June 30, 1951, which Director Chandler sent me. These show per diem collected in the amount of \$3,340. The figures for the fiscal year beginning July 1, 1951, and ending June 30, 1952, obtained from my own files, show a total claimed for that year of \$3,230. I should perhaps add that in the calendar year 1951 I had no assignments for any district court matters at Boise. However, I had agreed at the request of Judge Clark to take over several cases in which he deemed himself disqualified or preferred not to sit. These cases had been set for trial at Boise during February 1952, and I went up to try them in that month returning there again for a few days in March.

I would be happy if you would forward this additional matter to Washington.

Yours sincerely,

(S) WILLIAM HEALY.

APPENDIX IV

[Telegram]

APRIL 17, 1953.

HON. ORIE L. PHILLIPS,  
*Denver 1, Colo.*

Your letter April 8 just caught up with me this morning at Seattle where we are holding court. Am having some material sent you by air mail from San Francisco today. John Biggs has copy of letter of April 10 to Congressman Metcalf and both Montana Senators have copies letter. Contains a full statement of claim to residence. Mister Chandler also has a complete file of material from me. Will be on the bench here through April 22 at Missoula on the 23d and will hold court Helena on 24th. Returning to San Francisco on the 27th.

(S) WALTER L. POPE.

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

SAN FRANCISCO 1, CALIF., *February 4, 1953.*

Chambers of Walter L. Pope, United States Circuit Judge

Mr. HENRY P. CHANDLER,  
*Director, Administrative Office,  
United States Courts, Supreme Court Building,  
Washington 13, D. C.*

DEAR MR. CHANDLER: I have your telegram requesting for the Subcommittee of the House Appropriations Committee a statement of the number of days in which I sat in court in the calendar year 1951.

I have wired you that I would send you by air mail some information to disclose that the demands of the calendar here are such that I do not have the opportunity which the circuit judges of some other circuits do to spend a substantial portion of my time at my official station. I am enclosing a 1951 calendar which discloses the days in which this court sat during that year. Those days are circled in red.\* Generally speaking, you will notice that there is never a period of more than one week when cases are not being heard.

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\* The days thus referred to are horizontally lined out in the reproduction of the calendar which follows the telegram on p. 87.

Of course I did not sit on every day circled on this calendar. The pattern generally is that I will sit on Monday, Wednesday and Friday of one week and Tuesday and Thursday of another week. I will endeavor to mark on another calendar and send to you the precise days on which I personally participated in hearings. At any rate you will note that there is no opportunity for me to travel to Montana between sittings.

So far I have been able to arrange with my associates to spend July and August in Missoula where I use the district court chambers and carry on my work. In 1951, I remained at Missoula during September also.

I think it should be understood also that on almost every day when I am in San Francisco, whether I am on the bench or not, there are orders to be signed not involving arguments in open court but which require prompt action. I think my associates would object to an arrangement whereby I might spend alternate months in San Francisco and at Missoula. For one thing it would interfere with our system of frequent conferences with respect to cases submitted. But if this alternate month system could be arranged, it would entail additional transportation costs not only for me but for my law clerk and secretary, and each of them would be entitled to per diem while in Missoula in these alternate months. I think it is apparent that such a plan would prove more costly than the present one.

Sincerely,

WALTER L. POPE.

[Telegram]

SAN FRANCISCO, *February 5, 1953.*

HENRY P. CHANDLER:

Retel I sat in this court 72 days in calendar year 1951. These are the days in which causes were argued in open court 2A Division of which I was a member. This does not include numerous other days on which I have participated in making orders upon applications not receiving argument or presentation in open court. I think I also sat in 1 and perhaps 2 three-judge cases in District Court at Los Angeles the records of which are not immediately available but will send supplemental wire on that as soon as records can be checked. That would add possibly two more days. For your information in checking travel expenses against the days in court it should be borne in mind that calendars here are so arranged that I have neither time nor opportunity to return to

Montana between hearings expect (except) during the summer months and am forwarding airmail graphs disclosing how this works.

(S) WALTER L. POPE,  
Circuit Judge.

Received 9:30 a. m., February 5, 1953.

1951

JANUARY							JULY						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
	1	<del>2</del>	3	4	5	6	1	<del>2</del>	3	4	5	6	7
7	<del>8</del>	<del>9</del>	<del>10</del>	<del>11</del>	<del>12</del>	13	8	<del>9</del>	<del>10</del>	11	12	13	14
14	<del>15</del>	<del>16</del>	<del>17</del>	<del>18</del>	<del>19</del>	20	15	<del>16</del>	<del>17</del>	<del>18</del>	19	20	21
21	<del>22</del>	23	24	25	26	27	22	<del>23</del>	<del>24</del>	<del>25</del>	<del>26</del>	<del>27</del>	28
28	<del>29</del>	<del>30</del>	<del>31</del>				29	<del>30</del>	31				

  

FEBRUARY							AUGUST						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
				<del>1</del>	<del>2</del>	3				1	2	3	4
4	<del>5</del>	<del>6</del>	<del>7</del>	<del>8</del>	<del>9</del>	10	5	<del>6</del>	<del>7</del>	8	<del>9</del>	10	11
11	12	13	14	15	16	17	12	<del>13</del>	14	15	16	17	18
18	<del>19</del>	<del>20</del>	<del>21</del>	<del>22</del>	<del>23</del>	24	19	<del>20</del>	<del>21</del>	22	23	24	25
25	<del>26</del>	<del>27</del>	<del>28</del>				26	<del>27</del>	28	29	30	31	

  

MARCH							SEPTEMBER						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
				<del>1</del>	<del>2</del>	3							1
4	<del>5</del>	6	7	<del>8</del>	9	10	2	3	<del>4</del>	<del>5</del>	6	7	8
11	<del>12</del>	<del>13</del>	<del>14</del>	<del>15</del>	<del>16</del>	17	9	10	11	<del>12</del>	<del>13</del>	<del>14</del>	15
18	<del>19</del>	<del>20</del>	<del>21</del>	<del>22</del>	<del>23</del>	24	16	<del>17</del>	<del>18</del>	<del>19</del>	<del>20</del>	<del>21</del>	22
25	<del>26</del>	27	28	29	30	31	23	<del>24</del>	25	26	27	28	29
							30						

  

APRIL							OCTOBER						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
				<del>1</del>	<del>2</del>	3							1
4	<del>5</del>	6	7	<del>8</del>	9	10	7	<del>8</del>	<del>9</del>	<del>10</del>	<del>11</del>	12	13
11	<del>12</del>	<del>13</del>	<del>14</del>	<del>15</del>	<del>16</del>	17	14	<del>15</del>	<del>16</del>	<del>17</del>	<del>18</del>	<del>19</del>	20
18	<del>19</del>	<del>20</del>	<del>21</del>	<del>22</del>	<del>23</del>	24	21	<del>22</del>	23	24	25	26	27
25	<del>26</del>	27	28	29	30	31	28	<del>29</del>	30	31			

  

MAY							NOVEMBER						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
			<del>1</del>	<del>2</del>	<del>3</del>	4					1	2	3
6	<del>7</del>	<del>8</del>	<del>9</del>	<del>10</del>	<del>11</del>	12	4	<del>5</del>	<del>6</del>	<del>7</del>	<del>8</del>	<del>9</del>	10
13	<del>14</del>	<del>15</del>	16	17	18	19	11	<del>12</del>	<del>13</del>	<del>14</del>	<del>15</del>	<del>16</del>	17
20	<del>21</del>	22	23	24	25	26	18	<del>19</del>	20	21	22	23	24
27	<del>28</del>	29	30	<del>31</del>			25	<del>26</del>	27	28	29	30	

  

JUNE							DECEMBER						
S.	M.	T.	W.	T.	F.	S.	S.	M.	T.	W.	T.	F.	S.
						1							1
3	<del>4</del>	5	6	7	8	9	2	<del>3</del>	<del>4</del>	<del>5</del>	<del>6</del>	<del>7</del>	8
10	<del>11</del>	<del>12</del>	<del>13</del>	<del>14</del>	<del>15</del>	16	9	<del>10</del>	<del>11</del>	<del>12</del>	<del>13</del>	<del>14</del>	15
17	<del>18</del>	<del>19</del>	<del>20</del>	<del>21</del>	<del>22</del>	23	16	<del>17</del>	<del>18</del>	19	20	21	22
24	25	26	27	28	29	30	23	24	25	26	27	28	29
							30	<del>31</del>					

\* Seattle

\*\* Los Angeles

[Telegram]

SAN FRANCISCO, *February 5, 1953.*

HENRY P. CHANDLER:

Supplementing my telegram of yesterday I find there were two additional dates when I sat in court occasioned by two separate assignments at Los Angeles. Also note that three meetings of our Judicial Council in 1951 which I attended were on days when no court session was held. Portions of the amount paid me in 1951 covered days when this court sat in Los Angeles. Your records do not disclose this because all my per diem was collected through the San Francisco marshal.

(S) WALTER L. POPE,  
*Circuit Judge.*

Received 3:25 p. m., February 5, 1953.

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

SAN FRANCISCO 1, CALIF., *February 12, 1953.*

Chambers of Walter L. Pope, United States Circuit Judge

MR. HENRY P. CHANDLER,

*Director, Administrative Office U. S. Courts,  
Supreme Court Building, Washington 13, D. C.*

DEAR MR. CHANDLER: I thank you for your letter advising of the inquiries of the Appropriations subcommittee which led to the sending of your telegram concerning the days when I sat on the bench.

The committee's suggestion that the problem be handled by the judiciary is a sound one. To my mind, that would mean a recommendation by the Judicial Conference, after study by a committee. While I think the committee's views may change when it gets a more complete picture (some facts it should have are mentioned later herein), yet I propose now, and of my own motion, to conform to what I understand the committee's present ideas are. Thus I take it that if I were to follow the plan of some judges of spending, say, every other month at my home, and less than half my total time at San Francisco, no fault would be found with my collecting per diem for days at San Francisco thus computed.

While I cannot, consistent with the way this court operates, as I explained in my former letter, actually absent myself from San Francisco any more than I have done in the past, yet there cannot be any just objection if my collections for subsistence at San Fran-

cisco are in amount *no more than if I were at Missoula more than half the time.* (And note that I would continue to be one of the smallest consumers of transportation requests.)

Therefore, beginning with fiscal 1953, I shall limit my collection for subsistence at San Francisco to 180 days in any 1 fiscal year, and I shall continue that way until either Congress, the Judicial Conference, some committee thereof, or other appropriate official body figures out a better plan.

The House Committee, I judge, has only the figures made up by you a year ago for Congressmen Budge and Hillings, relating to subsistence costs only and for the calendar year 1951. As a key to what the travel expenses of the various judges are, or as to which judges cost the most, it is wholly inadequate. These partial figures of travel cost make it appear that two judges of the Ninth Circuit are the most expensive ones, followed next by two judges of the Seventh. The complete figures may disclose that such is not the case. To illustrate, Judge A of the Z circuit lives and has his official station at Middleburg. The court sits at Court City. He spends July and August at Middleburg; the remainder of the year he works, 3 weeks at Court City followed by 3 weeks at Middleburg, and so on through the year. If I were one of the committee I would be curious to know: (1) What is the round trip rail or plane fare between the two places? (2) Does the judge have the benefit of his secretary and law clerk at Middleburg only, or at Court City, only, or does he take them back and forth with him? (3) What does their travel cost? (4) If they do go back and forth, do they each draw per diem for subsistence at Middleburg, or at Court City? When all these items are added to what Judge A collects for his subsistence, what does it amount to? Until the committee is furnished all these costs, it will not have the full picture.

That the matter is not simple becomes apparent when one analyzes the committee's suggestion that a charge should not be made for subsistence at the seat of the court when a judge spends "the greater part of the time" there. Thus Judge A, previously mentioned, would spend less than half of his time at the seat of the court. If he is typical, he owns his home at Middleburg, just as I own mine at Missoula. My home, although occupied part of the year only, is, like his, fully furnished and always ready for occupancy when I am at my official station. Now when we are at the seat of the court, each of us must rent a place to stay. I

have no idea what this costs Judge A, but I know that just a place to stay, without including food, heat, light, or anything other than housing costs me \$3,400 a year.

I assume that no one will suggest that under these circumstances it is just that I should charge nothing simply because I am compelled, for the reasons explained in my former letter to be here, say, three-fourths of the time. When some action on this matter is taken, I hope this consideration will not be overlooked.

I think there is sound reason for the present rule which establishes the judge's official station (subject to his right to change it), at a place near his residence. It maintains a desirable contact between the judge and the people of his State. It equalizes the situation of the home-owning judge coming from a distance with that of the judge who lives where the court sits. I think the circuit judges generally would like to see that provision retained.

My previous procedure has but followed precisely what my predecessors on this court from the States of Washington, Oregon, Idaho, and Arizona, have done for the past 30 years. In view of what my housing arrangements cost me, as stated above, I do not share the committee's views but I am prompted to adopt the plan I have here undertaken primarily by my desire to do away with any discussion which may cause any criticism of the courts.

Sincerely,

WALTER L. POPE,  
*Circuit Judge.*

EXCERPTS FROM LETTER FROM JUDGE WALTER L. POPE TO  
HONORABLE LEE METCALF

APRIL 9, 1953.

\* \* \* The section relating to the allowances to judges is 456 of title 28. It took this form at the time of the revision and reenactment of title 28 in 1948, but in substance it is the same as the section which it superseded and which was enacted as a part of the old judicial code of 1911. If you will examine it you will see that it makes Missoula, Mont., my official station as it provides that the official station of each circuit judge shall be "that place nearest his residence at which a *district court* is regularly held." I think that it is generally understood by the lawyers in Montana that I have been anxious to take advantage of this provision for each summer; for two or three months, I set up headquarters in Judge Murray's chambers at Missoula and there work all summer

with the aid of my law clerk and secretary writing opinions and doing other paper work connected with my office.

It is a matter of great satisfaction to me that I am thus permitted to take my assistants to Missoula, where I have full use of the University law library which is a better law library than this court has here, and where I can live in my own home. The incidental advantages of a summer in Montana are as well known to you as to me.

I have also taken advantage of other provisions of the same section which provide that while I am attending court or transacting official business at a place other than my official station, e. g., at San Francisco, Los Angeles, Seattle, or Portland, I am entitled to subsistence not exceeding the statutory per diem. When I first joined the court I was advised by the clerk and by others of the fact that all of the judges of this court for many years past, other than those whose residences were at or near San Francisco, have claimed the per diem when away from their official stations. This was not only true of the early day judges from Washington, Oregon, Idaho, and Arizona, such as Rudkin, Gilbert, Haney, Dietrich, and Sawtelle, but it has been true of the later and present judges such as Garrecht, Bone, both from Washington; Mathews, formerly from Arizona; and Orr, formerly from Nevada. However, in the case of a few of the judges, they sold and disposed of their homes at their original official station and thereafter, perhaps because they had some question as to whether they thereby lost their original residences and hence their official station, they ceased to collect their per diem while in attendance at San Francisco.

This was true of three of our present judges, Mathews, Bone, and Orr. At some period after he was appointed to this court, Judge Mathews disposed of his Phoenix, Ariz., residence and built himself a home in San Francisco and gave formal notice of change of residence to San Francisco. Prior to that time he collected the per diem for periods when he was at San Francisco. Likewise Judges Bone and Orr when they first joined the court in 1944 and 1945, and for a few years thereafter, collected the per diem for attendance at San Francisco as each then owned his home in the State from which he came. When thereafter they sold their homes they ceased making the claims for the per diem when at San Francisco. In other words, all of them while they were situated as I am followed the practice which I have pursued in this matter.

\* \* \* As you probably know, my house stands ready for my occupancy every day of the year, even the furnace is not turned off in the winter; I occupy it a substantial number of days in the year, I keep up all my local church and lodge memberships and have always declared my intention to return whenever possible.

\* \* \* As a measure of what an individual judge costs the government in travel expense the figures are most misleading as the typical circuit judge is constantly driving back and forth not only himself but with his law clerk or secretary, or both. In many instances there is a 3-fold railroad or transportation expense, for whenever the law clerk or secretary is away from his or her official station, they draw per diem also.

The reason that judges of the Ninth Circuit, with some exceptions, have not been able to follow the usual practice of going home every month, or even every week, is that the distances are too far and our calendars too continuous. The pattern of our calendars is that the court sits for 2 weeks followed by an interval of 1 week. If in that interval I started for Missoula I would get there in time to get the next train back.

\* \* \* An additional circumstance which I think is of major importance is that the amounts that I have collected by way of per diem at San Francisco have represented amounts which I am actually out of pocket. By that I do not mean amounts I spend for groceries, heat, light, and meals which I would have to purchase wherever I happen to be. I refer to the cost of providing at San Francisco an additional place to sleep and eat and stay when I am here. I am obliged to rent housing accommodations here and to have suitable ones I have to rent by the year. That cost me \$2,424 per annum. I had to furnish these quarters at a cost of \$7,000 and the annual depreciation is reasonably \$700. I have to employ someone to assist in the care of the place which cost \$300 more; this means that I am actually out of pocket in these respects \$3,424 per annum which is more than I have ever collected in per diem.

The sum of the matter is as follows: I have conscientiously followed the statute both in letter and spirit and I have pursued the practice followed by every judge in this court coming from a distant State for at least the last 25 years and the amounts paid to me represent less than the amount I have actually been out of pocket.

\* \* \* The main reason I would like to see the present provision as to the official station remain as it is, is that I would deplore not

# TELEPHONE DIRECTORY

MAY 1952

For  
**MISSOULA**

Revised to April 5, 1952

Pilate L. L. 808 S. 6th W.  
Pulcher C. R. 402 W. Central av.  
Pikington Paul 316 1/2 Ash  
Pilotto Leo L. 1616 Cooper  
Pine Arthur A. E. Missoula  
Pine E. J. 1872 S. Main Street

5271  
9-0676  
Pope Joseph Mrs. Randall Acts  
Pope Richard A. 844 G. Woodford  
Pope & Smith (See Smith Boone & Rimel)  
Pope Walter L. Butler Creek  
Pope William R. 1610 Arthur  
Popham D. W. 326 N. 24 E.

9-1051 M  
4795  
8147

THIS IS YOUR 1952 PASSENGER REGISTRATION RECEIPT (Do Not Destroy)

Return Postage Guaranteed by Lou Hoedeker, Registrar of Motor Vehicles, Deer Lodge, Montana

YEAR	MAKE	MODEL	STYLE	WEIGHT
1950	CHRYSLER	C48	4DR SUN	5640
C4 853 632		70 829 070		
702 470		910.00		

← 1954 LICENSE NO. 4-2074  
← 1953 LICENSE NO.

LICENHOLDER NAME AND ADDRESS

Valuation	Amount	Kind
	School Dist. No.	Tax Paid

MY-3 DO NOT FOLD THIS CARD



WALTER L. POPE  
1480 ALYARADA  
BURLINGAME CALIFORNIA

1-22-53

Missent to *Walter L. Pope, Mont*

# DIRECTORY

FIRST  
BAPTIST  
CHURCH

MISSOULA, MONTANA

MAY 1, 1952 - APRIL 30, 1953

ACTIVE MEMBERS -- (Continued)

Mrs. and Mr. Alex Babcock 1245 Jackson City  
Mr. and Mrs. Louisa Pouch 542 Woodford City  
Judge and Mrs. Walter L. Pope 1480 Alyarada Burlingame Calif.  
Mrs. Pearl Popham 816 Kern City  
Mrs. Wm. A. Pridel 217 N. 4th City  
Richard Purdy 233 S. 2nd W. City

MEMBERSHIP CARD  
**Montana Automobile Association**  
BOX 1703 HELENA, MONTANA TELEPHONE 3787



7-7-1952

Walter L. Pope  
Missoula, Montana

A 2269

*Heber M. Austin*  
HEBER M. AUSTIN, SECRETARY

Missoula No. 2175  
MONTANA  
March 1953 3 5 94

A. F. & A. M. This is to certify that  
BROTHER *Walter L. Pope*  
IS A MASTER MASON IN GOOD STANDING AND A MEMBER OF  
*Missoula* LODGE No. 13  
AND HAS PAID DUES TO *December 31, 1953*  
*William A. Gove* SECRETARY

No. 1586 1952-53

THIS IS TO CERTIFY THAT  
*Bro. Walter L. Pope*  
Missoula, "Hell Gate" Montana Lodge No. 388, S. W. State  
HAS PAID DUES TO *APRIL 1, 1953*  
*JUN 12 1952* DAY OF *June*  
*Walter L. Pope*  
No dues shall be paid to the member if dues are not paid.

MONTANA DRIVER'S LICENSE

PRINT OR TYPE FULL NAME *Walter Lyndon Pope*  
FIRST MIDDLE OR MAIDEN LAST  
BY & NO. *R.F.D. # 2*  
CITY & STATE *Missoula, Montana* DATE OF BIRTH *MAY 28 1913*  
W 67 180758 W 61 Y 28 1913  
THIS LICENSE EXPIRES LEAVE THIS SPACE BLANK 1 36 1955 0127  
RESTRICTIONS FOLD HERE TO FIT WALLET  
OCCUPATION *U.S. Circuit Judge*  
USUAL SIGNATURE *Walter L. Pope*  
The person named hereon is hereby licensed to operate a motor vehicle as an OPERATOR only, unless otherwise authorized, and when validated by Postage Meter No. 132879 cancellation stamp on reverse side.  
*H. L. Ornel*  
SUPERVISOR, MONTANA HIGHWAY PATROL

Supreme Court of Montana

This is to certify that  
*WALTER L. POPE*, Esq.,  
of *San Francisco, Cal. MEMBER*  
is duly enrolled as an Attorney in the Supreme Court of Montana. That he has complied with the rules of this Court and is an Attorney and Counsellor-at-Law in good standing of the Bar of this State.  
Given under my hand and Seal of the Supreme Court of Montana, this *21st* day of *May*, 1952.  
*835* Clerk Supreme Court of Montana  
*Frank Murray*

Signature of Member:

*Walter L. Pope*

NO. \_\_\_\_\_  
MONTANA BAR ASSOCIATION  
THIS IS TO CERTIFY THAT:  
HON. WALTER L. POPE  
IS A MEMBER OF THE MONTANA BAR ASSOCIATION AND HAS PAID DUES TO DECEMBER 31, 1952  
FRNEST A. PETERSON PRESIDENT  
HOWARD J. LUKAN SECRETARY TREASURER

being able to continue to take my staff to Montana for the summer. If they want to put a maximum limit on the per diem I can collect here at San Francisco, e. g., providing that it cannot exceed half the days of the year, or must have some relation to the actual number of days I am on the bench, that is all right with me. Something similar to that I assume is inevitable at the very least.

\* \* \* Certainly the procedures have been unchallenged for many years and Congress undoubtedly intended to provide that the judges might keep their official stations at their homes in order to make their tasks more pleasant. It is in line with the practice of providing the judges with convenient and pleasant quarters. The fact that the Montana judge cannot go home every week or every month because of the distance limitation should not work to his disadvantage. Had I made it a practice of spending alternate months at home throughout the year, as many judges do, my per diem at San Francisco would have been much less, but the cost of hauling me and my staff back and forth would have been something for the books, although I would never have been mentioned under the present circumstances.

[Telegram]

MISSOULA, MONT., *April 23, 1952, 4 p. m.*

HON. ORIE L. PHILLIPS,

*Chief Judge, U. S. Court of Appeals,  
The Drake Hotel, Chicago, Ill.*

My home located approximately 9 miles west of Missoula is a two-story stone and frame structure consisting of six rooms plus two complete bathrooms. It has an almost full basement, and there is also a completely finished and furnished bedroom above the garage. It is heated by an automatically controlled furnace which is never turned off whether I am there or not. The appointments of the house are extraordinarily attractive with great fireplace, beautiful paneling, and plank floors of wide Tennessee oak. It is completely furnished, as all the furniture I had when I joined the court has remained there. Also there, and continuously kept there, are complete supplies of linens, bedding, tablecloths, napkins, dishes, silverware, and extra clothing of myself and Mrs. Pope. We have our own water system supplied from springs, and the running water is never cut off even during my absence, the same is true of the electric current, used for cooking, and the telephone.

Mrs. Pope and I can walk into the house on any day in the year, push up the thermostat, and be completely at home, as we even keep on hand canned goods, flour, sugar, and other foods. In 1952 we occupied the house from June 20 to September 1. In 1951 from July 3 to October 5 or 12, just which I cannot verify today. In no year since on the court have I occupied the house less than 2 months.

In one earlier year Mrs. Pope and I came home a month earlier, and she remained while I returned to Los Angeles for the Judges Conference following which I returned here. The total time that year was 3 months, not counting the interruption mentioned. When I am not here no one occupies the house. The house is located on a tract of 360 acres, most of it hill pasture land, where my saddle horses are kept the year around. There is a small tenant house on the place where a young couple live and receive free use of the small house and barn and chicken house and free use of a small amount of tillable land. For this they act as caretaker and water and mow my lawn. My telephone rings in their house. Last summer a neighbor lost his house when it was struck by lightning and burned down, and I allowed him and his wife to stay in my house while they were arranging to build. They were there as guests, and not as tenants. They are now in California where I understand they have purchased a home. This is the only time anyone other than my family has ever occupied the house. I am an officer, and holder of one-third of the stock of Hammond Building, Inc., a Missoula corporation owning one of the largest business rental properties in downtown Missoula, and I also own individually a downtown business building which I lease. These holdings require substantial management duties on my part. I have a bank account in the local bank, am an active member of the Missoula Kiwanis Club, and since I joined the court I have continued and increased my financial contributions to the local church of which I am an active member. Mrs. Pope buys most of her clothes in the Missoula stores. In fact that is exactly what she was doing, and showing me her purchases, when they tried to deliver your telegram. Interesting is the fact that this is so well known to people here that they knew where to look for her, and thus finally found me. The maintenance of this home is an objective not only for myself, but is part of the provision I seek to make for my wife in case anything should happen to me. \* \* \*

(S) WALTER L. POPE.

## Sky Range

MISSOULA, MONT., *April 26, 1953.*

DEAR JUDGE PHILLIPS: I found these two newspapers in the house. When the interviews were given I knew nothing of section 456 as I had not read it before I signed the oath.

Sincerely,

(S) WALTER L. POPE.

EXCERPT FROM THE DAILY MISSOULIAN, MISSOULA, MONT., TUESDAY MORNING,  
FEBRUARY 15, 1949

POPE NOMINATED FOR CIRCUIT COURT JUDGESHIP

Maintaining Home Here

\* \* \*

As a judge, Mr. Pope will be in San Francisco most of the time, but he emphasized that he and Mrs. Pope will maintain their Sky Range home on Butler Creek, where they expect to reside at least 3 months of every year. He said he plans to continue his membership in the Missoula Chamber of Commerce, which he has served as a director and in other capacities, and in the Kiwanis Club, of which he is a charter member and a past president. He is also a member of the board of directors of the Memorial Hospital association, and the immediate past president of the organization.

EXCERPT FROM THE DAILY MISSOULIAN, MISSOULA, MONT., SATURDAY MORNING,  
FEBRUARY 26, 1949

SENATE AFFIRMS WALTER POPE CIRCUIT JUDGE

Walter L. Pope, who has practiced law in Missoula 32 of his 60 years, was confirmed Friday by the United States Senate for judge of the Ninth Circuit Court of Appeals at San Francisco.

Mr. Pope plans to leave March 8 to take the oath of office at San Francisco and enter upon his duties under the lifetime appointment submitted to the senate by President Truman on February 14.

He and Mrs. Pope will continue to maintain their residence here, and the judge said they expect to spend at least 3 months a year at their Sky Range home on Butler Creek.

## APPENDIX V

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1212 LAKE SHORE DRIVE, CHICAGO 10,

Apr. 13, 1953.

Chambers of Judge J. Earl Major, Chief Judge

Home address: Hillsboro, Ill.

HON. ORIE L. PHILLIPS,

*Chief Judge, United States Court of Appeals,*

*Tenth Circuit, Denver 1, Colo.*

DEAR JUDGE PHILLIPS: This is in response to your letter of April 8, as chairman of the committee appointed by the Chief Justice, relative to certain practices pursued in connection with Section 456, Title 28 United States Code. I am enclosing copies so that they may be furnished other members of your committee, if you so desire.

Your first and most important request is that I furnish "pertinent facts" to show that Hillsboro, Ill., is my actual residence. I was born and reared in Montgomery County, of which Hillsboro is the county seat. Upon admission to the bar I established Hillsboro as my residence and commenced the practice of law in 1911. I was married in 1913, and have owned a home in Hillsboro continuously since that date. I have never lived any place else, even temporarily, except when away from Hillsboro in official positions, which includes my judicial tenure and three terms and part of a fourth in the United States House of Representatives (I was serving my fourth term when I resigned in 1933 to accept appointment to the District Court for the Southern District of Illinois). At that time I had a law office in Hillsboro which I used while on the District Court.

In April 1937, I was appointed a member of this Court of Appeals. I continued to maintain my law office in Hillsboro until 1948 and did considerable of my judicial work there. In that year I turned over the office, library, furniture, and equipment to Mr. Paul Hickman, a young attorney, who still occupies the office, but it is available for my use when I so desire. I still own the contents of the office and pay taxes assessed thereon. I own and have lived with my family in my present home since 1920, which of course is

completely furnished. I also own a farm 4 miles from Hillsboro which is operated on a share basis. My income tax return has always been filed at Springfield, Ill. (Hillsboro is in that district). I own stock in the bank in Hillsboro and retain my membership there in four fraternal lodges. My wife and I are members of and contribute to the church there; also, all our contributions to charitable organizations, such as the Red Cross, Salvation Army, etc., are made there. I have never cast a vote any place other than at Hillsboro. I am a member in good standing (pay dues) of the Montgomery County Bar Association, and have been since its organization a member of the Montgomery County Farm Bureau. I pay a Hillsboro wheel tax on my automobile and I am issued a license by the State of Illinois as a resident of Hillsboro.

Certainly there can be no question but that Hillsboro was my actual residence and that Springfield (the nearest place of a District Court) automatically became my official residence at the time I was appointed to this court. I could not at that time, if I had so desired, made even a colorable claim that my residence was elsewhere. The only question that possibly could arise is whether in the interim I have changed my actual residence and failed to notify the administrator. So I will now give you the other side of the picture, if it can be so characterized.

During my early experience on this court, my family remained in Hillsboro, and when in Chicago I stayed at a hotel. I made the trip back and forth over the weekends, and my travel expense exceeded the per diem I would have received had I remained in Chicago, and besides, I soon discovered that Saturdays and Sundays were my two best working days. I also found it difficult to obtain hotel accommodations in Chicago unless a room was retained by the week; in fact, during the war period it was almost impossible to obtain a room unless it was continuously reserved. In 1939, I leased an apartment by the year and furnished it, in which my wife and I have since lived while in Chicago. I voluntarily listed my furniture for assessment and pay taxes on it (I think this is contrary to the custom in Chicago.) I own no other property and pay no other tax in Chicago. I have membership in no church, lodge, or organization in Chicago other than some clubs and bar associations, of which I have been made an honorary member.

The following may or may not be pertinent but I think it discloses a rather definite intent and purpose on my part to maintain

Hillsboro as my place of residence. Many years ago my wife and I made plans to build a home in Hillsboro smaller than the one we have occupied since 1920. Erection of that home was commenced last summer and is now almost completed. We have canceled the lease on our Chicago apartment, effective June 1, and our furniture will be moved to Hillsboro and placed in the new home. As soon as that is done, we will have a public sale of the household furnishings in the old home. That house is now in the hands of a real estate agent for sale. (These plans were all formulated long before the instant controversy concerning per diem.)

I do not see how it can reasonably be thought that my actual residence has ever been at any place other than Hillsboro, unless it be possible that I have had 2 places of actual residence, 1 in Hillsboro and the other in Chicago. If I have abandoned my Hillsboro residence by reason of my activities in Chicago in connection with this court, I did precisely the same thing during my service in Congress, where I lived with my family on numerous occasions in a leased apartment for periods as long as 7 or 8 months at a time.

I have given much thought to means that might be adopted in this circuit to decrease the maintenance expenses of judges, and it is a perplexing problem. Of course, they can be reduced by judges spending less of their time here, which calls for some kind of a limitation. It would be easier to express my views if I were not involved, in other words, if they only related to other members of the court, as well as its future members. I recognize that the members of this Court who reside at places other than Chicago can come here, hear the cases and go home to write their opinions. To do so, in my judgment, will seriously impair the character of service which the court is expected to and should render the bar and litigants. If the committee should be interested in this phase of the matter, I would suggest that it obtain the views of some of the leading members of the bar, particularly those of Chicago.

A requirement that members of this court establish Chicago as their official residence would, in my opinion, constitute a serious blow to the court, presently and even more so in the future. I need not tell your committee that Walter Lindley is a splendid judge who, in my view, can do more and better work than any judge I have known. He no doubt would take advantage of his right to retire if Chicago was designated as his official residence, which would require him to pay his own expenses while attending

court in Chicago. Such a provision would probably eliminate the desire or willingness of any district judge of the circuit (other than Chicago) to become a member of this court. I am sure that neither Lindley nor Duffy, both former district judges, would have accepted an appointment to this court under such circumstances. At any rate, they would have been better off financially to continue on the district bench. And so it will be with other district judges who might be considered for appointment in the future.

I am sorry to have written in so much detail and in such rambling fashion. I have great confidence in your committee and I feel safe in stating in advance that you will find me willing to subscribe to any recommendation which it makes.

I expect to attend the meeting of your committee at the Drake Hotel on April 23, in order to be available for any assistance which I may be able to render. In the meantime, if there is any further information that you desire, please advise me.

Sincerely,

J. E. MAJOR.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT  
1212 LAKE SHORE DRIVE, CHICAGO 10,  
*April 24, 1953.*

Chambers of Judge J. Earl Major, Chief Judge  
Home address: Hillsboro, Ill.

HON. ORIE L. PHILLIPS,  
*Drake Hotel, Chicago, Ill.*

DEAR JUDGE PHILLIPS: AS per our telephone conversation and supplementary to my letter to you of April 13, 1953, I give you the following information regarding my living status both in Hillsboro and in Chicago:

My home in Hillsboro is a 2-story house, with 4 rooms on the first floor and 4 bedrooms on the second floor, including an enclosed sleeping porch. All the rooms are completely furnished, most of which furniture is more than 20 years old. This house was purchased in 1920. During the time I have been away, occasioned by my service in Congress and as a member of the court, the house has never been leased or rented, and at all times I have paid utility bills, such as telephone, water, gas, light, and heat. In other words, the house was always ready for occupancy when we were there.

My apartment in Chicago is 11-A at 180 East Delaware Street. It has a living room, small dining room, kitchen and two bedrooms.

I leased this apartment in 1939, and purchased the furniture which it contains (the kitchen utilities are furnished by the management). I have leased this apartment on an annual basis. The rent in the beginning was \$145 per month but has been increased until I am now paying \$235 per month, and I am advised it shortly will be increased to \$275. As I told you before, the main reason for leasing this apartment was that in 1939 and for several subsequent years it was difficult and almost impossible to obtain any kind of apartment, furnished or otherwise, except on an annual basis. It was equally difficult to obtain a room in a hotel without reserving it by the week or month. My wife is here with me most of the time. This apartment is larger than we need but, after much searching, it was the only one we could find at the time it was first leased.

As I told you before, we have planned for several years to build us a new home in Hillsboro, all on the ground floor, and this we have done. I have given notice that the apartment lease will be canceled June 1, and have already made arrangements to move the furniture in the apartment to the new home in Hillsboro. The old home there is for sale and most of the furniture which it contains will be sold in the near future. I expect to be able from now on to do what I would always have liked to have done, that is, spend more of my time in Hillsboro. The more time I can spend there, the better it will suit me.

Sincerely,

J. E. MAJOR.

APPENDIX VI

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1212 LAKE SHORE DRIVE, CHICAGO 10,

*April 13, 1953.*

Chambers of Judge H. Nathan Swaim  
Home address: Indianapolis, Ind.

The Honorable ORIE L. PHILLIPS,  
*United States Circuit Judge,*  
*Post Office Box 2210, Denver 1, Colo.*

MY DEAR JUDGE PHILLIPS: I am happy to answer your letter of April 8, concerning my actual residence.

My home has continuously been in Indianapolis since early in 1919 when I returned there after World War I. When I was appointed to the United States Court of Appeals for the Seventh Circuit I had no thought of giving up or abandoning our home in Indianapolis. When I closed my law office to come on this court I retained part of my law books thinking that I would try to secure an office in the Federal Building in Indianapolis so that I could do some of my work there. I called on Mr. George Ress, the postmaster at Indianapolis, and talked to him about the possibility of my securing an office in the Federal Building.

After I started work on this court I tried to do some work in Indianapolis at my home but I found that, while working there, I was subjected to many interruptions—my wife and I had both been engaged in too many civic activities and had too many friends to suddenly quit everything while we were down there. However, I think that if I now had an office in the Federal Building in Indianapolis, after having been up here for more than 3 years, I could work there with few interruptions. But at that time I did not pursue the matter further and I have never had an office furnished me in the Federal Building there.

We still own and maintain our home at 3166 North Delaware Street in Indianapolis just the same as before I came on this court. It is a rather large home with automatic gas heat. We have a colored maid there all of the time and she has worked for us for

more than 15 years. She takes care of our home and has it ready for us at all times. The only other person who considers that home as his home is our unmarried son who is now, and has been for about 3 years, working for the J. Lewis Small Manufacturing Co. at Elwood, Ind. He does a great deal of traveling for the company but spends many of the weekends at home.

At the time I came on this court I was a member of many organizations in Indianapolis, including the North Methodist Church, Indianapolis Athletic Club, Masonic Lodge, Indianapolis Bar Association, Lawyers' Club, Indiana Bar Association, American Legion, Forty and Eight, YMCA, Indianapolis Service Club and many others. I have retained my membership in these organizations in Indianapolis and have joined no such organizations in Chicago. I have been sent honorary membership cards for a few organizations in Chicago but have been active in none here.

All my contributions to charities, such as the Community Fund, Red Cross, Infantile Paralysis, and Crippled Children, have been made in Indianapolis.

Since I have been on this court I have paid quarterly Indiana gross income and bonus tax as a resident of Indianapolis, Ind.

When I am in Chicago Mrs. Swaim is usually with me and most of the time we have been here we have lived in a small furnished apartment which we rent by the month. The only things we own in that apartment are our personal belongings, a television set and an orthopedic mattress on which I have to sleep. If the bills now pending in Congress are passed we, of course, shall have to change our pattern of living.

Before coming on this court I had been for many years well acquainted with two of the judges and knew how the members of this court had been interpreting the provisions regarding maintenance and travel expenses. While I appreciate the honor of being a member of this court I seriously doubt if I would have accepted the appointment if I had thought that coming on this court meant giving up our home in Indianapolis, where Mrs. Swaim and I have lived practically all of our lives.

I should be very happy to meet with your committee at the Drake Hotel in Chicago on April 23d to further discuss this matter with you.

Yours sincerely,

H. NATHAN SWAIM.

## UNITED COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1212 LAKE SHORE DRIVE, CHICAGO, 10,  
*April 24, 1953.*

Chambers of Judge H. Nathan Swaim  
Home address: Indianapolis, Ind.

The Honorable ORIE L. PHILLIPS,  
*Drake Hotel, Chicago, Ill.*

MY DEAR JUDGE PHILLIPS: Judge Major has informed me that you would like to have additional information on my home in Indianapolis.

My home there is located at 3166 North Delaware Street. It is a large two-story house which I bought in 1932. It has three bedrooms, a den and a sleeping porch on the second floor and on the first floor there is a large entrance hall, a living room, dining room, breakfast nook, and kitchen. There is also a maid's room in the basement. The taxes on this home—on real and personal property—are a little more than \$500 per year. As I indicated in my former letter to you, we keep this home open and all utilities turned on all the time and we have a maid there taking care of it so that it is ready for occupancy at any time that we are able to get down there. We, of course, pay all of the taxes and utility bills and the maid's salary.

As I pointed out to you in my former letter, I have continued since being on this court to pay the Indiana gross income tax as a resident of Indianapolis, Ind. This tax applies only to residents and to persons doing business in Indiana. This gross income tax on my salary amounts to approximately \$200 per year.

As to the apartment I have been occupying while I am here in Chicago, it is located at 40 East Oak Street, an apartment hotel. The apartment is fully furnished by the hotel which also furnishes linens, maid service, bell boy service, and the other ordinary services provided by a hotel of that type. The apartment which I am occupying there now consists of a living room, bed room, dinette, and small kitchen. The rental is \$275 a month and I rent the apartment on a month-to-month basis.

As to my home in Indianapolis, I am attaching a small snapshot picture of the same which I happen to have here.

Yours sincerely,

H. NATHAN SWAIM.

The Conference declared a recess, subject to the call of the Chief Justice.

For the Judicial Conference of the United States:

FRED M. VINSON,  
*Chief Justice.*

Dated Washington, D. C., May 12, 1953.