

WEDNESDAY MORNING SESSION

May 20, 1959

The opening session of the Thirty-sixth Annual Meeting of the American Law Institute, held at the Mayflower Hotel, Washington, D.C., convened at ten o'clock in the Grand Ballroom, Harrison Tweed, President of the Institute, presiding.

PRESIDENT TWEED: I bid you good morning, Ladies and Gentlemen of the Institute: We are very glad to see you here. We are going to have a good full four days, and I hope we all enjoy it and make some real progress.

This morning, as you observe, the Chief Justice of the United States has again honored the Institute by coming here. And I may say that when the Chief Justice comes here, he comes promptly--an example that some members of the Institute might follow meticulously.

I shall say nothing further than to express the pride we have when the Chief Justice honors us in this way, and to say that this is his sixth consecutive attendance at the opening session. We hope there will be very many more such occasions. With which I introduce to you the Chief Justice of the United States.

[The assemblage arose and applauded.]

THE HONORABLE EARL WARREN: Mr. President, Ladies and Gentlemen of The American Law Institute: This is the sixth time that I have been here with you, as your President said, and each time I enjoy the privilege more.

There is one thing I notice about this gathering today that is lacking, and it is something for which I am sure, like yourselves, I have a regret. That is that dear old Senator Pepper isn't here at this meeting. I think he has been here at every time I have, and perhaps fifty or sixty years before I started coming. Whenever he is not here, it seems to me that it

is a great loss to the gathering.

First I want to extend the greetings of my associates to you, and to say that each and every one of them would be happy to be here also. Were it not for the fact that we are hearing arguments throughout the week, they might be, but of course there are a few things that have to be done under the circumstances. I too, must leave very shortly after I speak to you, because I must be back there somewhat before Court convenes.

Twenty-five years ago--almost to the day--May 1, 1934, the American Law Institute published the results of a comprehensive national study of the administration of justice in the Federal Courts. The project, in the language of the Institute, "had aimed at a study of the administration of law in the Federal Courts, through a scientific analysis of case-loads both civil and criminal, the general purpose of the study being to test the efficiency of the administration of justice in these Courts."

These reports were the products of exhaustive pioneering research, spanning the whole field of judicial statistics in our Federal courts. They were recognized, at once, as a major contribution to the development of judicial administration in the United States and, as a consequence, they stimulated the interest of many thoughtful persons.

Ultimately, the reports led to the establishment of the Administrative Office of the United States Courts, and to the continuing statistical and procedural studies which, although not developed as fully as we should like, are so much a part of, and so important to, the Federal judicial system.

The American Law Institute has maintained this standard of achievement through the years, with its members consistently demonstrating a vision and a will toward the administration of justice in our country that is a well-spring of inspiration.

It is, then, with confident antici-

pation of your continued interest in our problem that I appear before you today with this current report on the business of the Federal courts.

You may recall that in my appearance last May, I presented you with a battery of statistics pointing up the serious delay and congestion in our United States district courts. These statistics showed, unmistakably, that performance in the dispatch of judicial business in many of our district courts was woefully inadequate. I indicated that, as a result of these deficiencies, our courts were daily risking the loss of public respect and confidence, and I placed considerable emphasis on the larger implications, the inherent dangers, involved for us as a nation.

At that time, looking at the year ahead, it seemed apparent that the Federal judiciary would simply be unable to keep pace with the great forward strides in the economic and social growth of our country as long as it lacked a sufficient number of judges, simplified procedures, and improved administration.

A full year has passed, and while the effect of a new jurisdictional statute has been to slow down the growth of the backlog, the district courts have not been able to reduce the size of the backlog at all.

At the time of my last appearance before you, there were pending on the trial dockets 67,400 civil cases, and 8,700 criminal cases, for a combined caseload of 76,000 cases awaiting disposition.

By January 1 of this year, the combined civil-criminal caseload exceeded 77,000 pending cases.

The most recent statistics--as of March 31--show the existing caseload to be 67,700 civil cases, and 8,900 criminal cases, for a total of 76,650 cases awaiting disposition. This is an increase of about 500 cases over those pending on March 31, 1958.

The district courts, therefore, continue to be faced with one of the heaviest case-

loads in their history--an increase of nearly 100 per cent over the number of cases pending on March 31, 1941.

Measuring this workload in terms of judicial manpower, it means that where there were 149 civil cases pending per judgeship in March 1941, there are now 273 civil cases per judgeship.

Nearly 50 per cent of all the civil cases in the Federal courts are subject to undue delay--that is, delay from one to five years between the date of filing and the time of trial.

Only seven of the 86 districts exercising purely federal jurisdiction were able to meet the standard set by the Judicial Conference--the standard which provides that a civil case should reach trial within six months from the time it is filed.

It is obvious, therefore, that our district courts have not been able to keep pace. They are not keeping pace despite the fact that the district judges are carrying heavier and heavier workloads and are terminating more cases, on the average, than ever before. During 1941 the average number of cases terminated by each judge was 168. By this year the average had risen to 231.

With respect to the Courts of Appeals, I am able to report a slight reduction of the backlog. In fact, every circuit has succeeded in reducing the number of pending cases and, in some circuits, the reduction has been fairly substantial. The backlog on March 31 of this year was 2,201 as compared to 2,323 on March 31 of last year, a reduction of 122 cases. That is not great, but it is something to be thankful for. As the number of new cases filed has remained at the same level, the improvement is the result of an increase in the number of terminations.

The Fifth, First, and Fourth Circuits are receiving the greatest amount of new work in relation to the number of judgeships available to handle it.

The number of cases docketed in the Supreme Court during the past year has continued at the same high level of the preceding two years. As of May 18 there were 930 cases on the appellate docket and 906 cases on the miscellaneous docket, an increase of 52 as of the same time last year. This increase is due, in large part, to the ever-increasing number of cases brought before the Court in forma pauperis and appearing on the miscellaneous docket.

There have been 143 cases argued before the Court compared to 154 in the preceding year, a decrease of 11. On May 18 we had disposed of 1,415 cases from both dockets compared to 1,391 at that time last year.

On the appellate docket 524 petitions for certiorari have been denied and 98 petitions have been granted. On the miscellaneous docket 672 petitions for certiorari and applications for leave to file extraordinary writs have been denied and 19 petitions and one application have been granted.

We have every reason to believe that at the last session of this Term we will be able to say, as the Court has said every year since 1928 when it acquired the certiorari jurisdiction, that all cases ready for argument have been heard and decided.

Since I last appeared before you, there has been an important legislative development which I should like to discuss briefly with you.

I am referring to the enactment of the so-called "diversity statute" [72 Stat.415], altering the jurisdiction of the district courts in civil actions. This Act became effective on July 25, 1958, and as you may know, had three provisions:

1. It increased the jurisdictional amount in diversity cases from \$3,000 to \$10,000.

2. It changed corporate citizenship for the purposes of diversity jurisdiction to provide that a corporation is a citizen of both the state of incorporation and its princi-

pal place of business. And, finally,

3. It prohibited the removal of workmen's compensation cases from the state to the federal courts.

It is gratifying to report that these provisions of the Act are having a direct and appreciable impact on the total volume of litigation reaching the district courts. In fact, we have noted a decrease in the total civil filings of about 16 per cent.

During the eight months the statute has been in effect--August 1958 through March 1959--31,500 civil cases were filed as compared to 37,700 cases during the same period a year ago. This is a decrease of slightly more than 6,000 cases. As might be expected, these reductions were mainly in the contract and personal injury cases.

The net effect of the statute over the first three quarters of fiscal 1959 is that terminations exceeded filings by about 900 cases.

It is important to recognize, though, that the effect of the Act has not been uniform from district to district. For example, most of the excess of terminations over filings during the first three quarters are concentrated in the Texas districts and in six other widely scattered districts.

On the other hand, in the Southern District of New York heavy filings continued, and exceeded terminations by 1,400 cases.

In the Eastern District of Louisiana filings were 200 above terminations. And, in several other districts, filings continued to exceed terminations.

Our experience with the new statute, at this point, is not of sufficient duration to warrant any very definite conclusions. From a caseload standpoint, there is no certainty that the impact on filings which occurred during the first few months under the new Act will serve as a valid indication of future trends. We are, of course, exceedingly hopeful that this period will prove to be typical.

But, even if the statute should continue to have its present effect on the case-

load, we must still take another factor into consideration. There is even now a constant upward trend in the total volume of filings. Therefore, unless it is possible to increase the annual disposition of private cases--and that would require increased judgepower--in another few months the number of private cases filed will again equal terminations, thus precluding any decrease whatsoever in the existing backlog.

The practical effects of this statute are being carefully studied by committees of the Congress, the Department of Justice, and others who are weighing the feasibility of obtaining even further limitations on diversity jurisdiction.

There is now pending in Congress a bill, H.R. 3217, which provides that a corporation is to be deemed a citizen of any state in which it is qualified to do business. Another proposal would remove from the jurisdiction of the district courts those civil cases, based solely on diversity of citizenship, in which a plaintiff is a resident of the state in which action is commenced. Other proposals would eliminate diversity jurisdiction altogether.

The very breadth of these proposals points up the need for a full review of the diversity jurisdiction, conducted in the light of current judicial statistics and prevailing economic and social conditions.

It is essential that we achieve a proper jurisdictional balance between the Federal and State court systems, assigning to each system those cases most appropriate in the light of the basic principles of federalism.

To accomplish this may very well require further restrictions on diversity jurisdiction, but we must take care lest the State court systems become swamped with litigation heretofore handled in the courts of the United States and which the States have had every reason to assume would continue to be handled there. I might say in passing that a number of the courts of the states are in worse condition than that which I have reported to you in the Federal system.

This is more than a theoretical problem. It is a matter of great importance both to the State and the Federal courts. For this reason I would hope, Mr. President--if there are not more urgent matters challenging you--that the American Law Institute would undertake a special study and publish a report defining, in the light of modern conditions, the appropriate bases for assigning the jurisdiction of Federal and State courts. Such a study --if there is to be any further transfer of jurisdiction to the States--should logically include the steps to be taken and the order in which they should be taken to enable the State judicial systems to meet any new and unanticipated caseload.

Such a study is necessarily of a long-range nature and, lest there be some misunderstanding, the undertaking can have no effect toward lessening the immediate need for new judgeships, which I will refer to a little later.

Another significant legislative development which has occurred since I met with you last May is the enactment of a statute [72 Stat. 356] which authorizes the Judicial Conference of the United States to conduct a continuous study of the Federal rules of procedure, and to recommend to the Supreme Court changes in or additions to the rules.

Under existing law, as you know, the Supreme Court has the responsibility for prescribing rules of practice and procedure in the courts, including civil, criminal, admiralty, appeals, the general orders of bankruptcy and proceedings before commissioners. Since this function involves both initial promulgation and necessary revision, a conscientious effort to discharge this responsibility places a heavy burden on an institution whose primary purpose is the adjudication of cases, and which has neither the organization nor the staff required for effective rulemaking.

Yet, as new substantive laws are enacted, as the business of the courts varies in substance and intensity, as experience with rules indicates deficiencies in their operation,

there becomes manifest the need for a continuous study which will uncover defects and lead to corrective amendments.

This new statute vests that responsibility for continuous study in the Judicial Conference. The Conference will perform this duty through a number of advisory committees, and the plan includes ample and adequate opportunity for the participation of the Bench and Bar generally, as well as legal scholars.

The Conference has submitted its program to Congress, with an estimate of the funds necessary to put the project into full-scale operation. You may be certain that, just as soon as these funds for staff and equipment are appropriated, appointments to the various committees will be made and the study of the rules will proceed.

Perhaps the most recent development in the Congress--having to do with the Judiciary--is the release of a field study of the operations of the United States Courts by the Senate Appropriations Committee, under the leadership of its Chairman, Senator Carl Hayden of Arizona.

The principal objective of the study was to obtain firsthand information by actual review, of the manner in which appropriated funds were being spent. This involved, necessarily, an appraisal of the conditions existing in the various courts, including the efficiency with which the Federal courts are being operated, the facts with respect to congested calendars, and the efforts of the Judiciary to keep its own house in order, as well as information and views regarding possible improvements.

There will certainly be great differences of opinion about the recommendations of this report. But, whatever one may think about them, it must be recognized that the general description of the weaknesses and partial ineffectiveness of our present system of administration is neither exaggerated nor unfair. The report will undoubtedly prove to have continuing value in the future. Everyone interested in the improvement of the federal system should

read the report for it is full of ideas as well as information and will be the subject of debate and discussion for a long time. It is gratifying indeed to have this Committee of the Senate taking such an active interest in judicial administration.

I also want to mention the valuable personal recommendations for improvement in federal judicial administration made by Congressman Emanuel Celler of New York at the March meeting of the Judicial Conference of the United States. Congressman Celler made three important suggestions:

First, that the Judicial Conference make a survey of the geographical organization of the entire federal judicial system, to be made in the light of population increases and economic changes.

Second, that a full study be made of the organization and functions of the judicial councils of the circuits and their authority over the internal administration and operations of the courts of the circuits, including the advisability of placing district judges on the circuit councils.

And, finally, Congressman Celler urged that a thorough study be made of the system of United States Commissioners, with special consideration being given to the feasibility of broadening their responsibility and jurisdiction.

There has also been activity, and some important developments, within the judicial branch itself during the past year. One of the most interesting and promising of these is an unprecedented experiment in testing methods of pretrial and calendar control as a means of attacking a badly congested court docket.

This experiment is still in progress and it would be premature and hardly fair to the participating judges for me to make any announcement of its accomplishments to date, except to say that the results are indeed encouraging.

The experiment to which I refer stems from the activities in past years of the Pretrial Committee of the Judicial Conference of

the United States, whose devoted chairman is Alfred P. Murrah, of the Tenth Circuit Court of Appeals. I am glad to see that he is here today.

I am sure that most of you are aware that this Committee has engaged in an intensive study of pretrial techniques for many years and that, in August 1957, the Committee organized a seminar of some thirty federal judges, under the sponsorship of New York University and Dr. Elliot whom I also see here today, to discuss and develop pretrial techniques for use in shortening and simplifying protracted cases.

Again last August, the Committee organized a seminar at Stanford University on the same subject, and this time some sixty judges attended. Still a third seminar is being planned by the Committee for the coming summer at the University of Colorado, at Boulder.

While the concern of these seminars has been principally with the use of pretrial in expediting the unusually long and protracted case, the Committee has not overlooked the possibility that pretrial when combined with effective calendar control might prove to be an effective means of disposing of ordinary litigation.

Last fall the Committee decided that the time had come to test by actual experiment the effectiveness of combined pretrial and calendar control in attacking a congested court docket.

When Chief Judge Mortimer W. Byers, of the United States District Court in the Eastern District of New York, heard of this plan he wrote a letter to the Chairman of the Conference Pretrial Committee in which he offered his court, in the name of all of the judges of the court, to the Committee as a place for trying out the Committee's experiment and techniques. This invitation was readily accepted by the Committee since the docket of the District Court in the Eastern District of New York has for some years been the most badly congested of any federal court in the country.

The plan of the experiment is quite simple. It calls for the regular judges of the Brooklyn court to continue to hold court in their regular way, precisely as they had planned to do, without reference to this experiment. The experiment is concerned only with those cases that the regular judges were satisfied could not be reached by them in the regular course prior to the end of June 1959.

To attack this huge backlog of well over a thousand cases, the Committee planned to enlist the services of a number of teams of visiting judges whose activities would be directed by an administrative judge who would organize and handle the calendaring and dispatching of business from beginning to end of the experiment. Judge William F. Smith, of the District of New Jersey, consented to take this last-mentioned and very onerous assignment.

The precise methods of pretrial and calendar control were carefully worked out and decided upon by members of the Committee and the participating judges in advance of the commencement of the experiment, and the visiting judges have been following these methods and procedures to test them.

The response of the judges in other districts to the Committee's request for their assistance in this experiment has been one of the most heartening things that has happened in judicial circles in many years. Great willingness to help has been shown. Judges from nearly every circuit are participating. Many of them come from courts that are themselves very hard pressed, but they have been willing to come because they and their fellow-judges believe the results of this experiment in judicial administration will fully justify the extra effort involved.

I feel confident that this effort will produce results. But, even if the results are less than anticipated, the experiment must nevertheless be regarded as a milestone. It is the first time that the federal judges have organized and conducted an actual experiment in judicial administration under controlled condi-

tions and according to scientific principles. This is a new approach on the part of the judiciary to their own problems, and it is indeed full of promise for the future.

I cannot leave this subject without telling you that this important project by the judges of the United States courts could never have been carried out without the cooperation and hospitality of the judges of the Supreme Court of the State of New York. There were no quarters that these visiting judges could go to in the Brooklyn Federal Courthouse, because it is overcrowded as it is. Additional courtrooms in Brooklyn for the five visiting judges were essential, and to meet our needs the judges of the New York Supreme Court have provided five courtrooms complete with chambers and all necessary facilities in their magnificent new courthouse. Their purpose in so doing has been to make it possible for the federal judges to carry on their project. This is indeed cooperation of the highest and most commendable kind.

Another development since our meeting last May has been the enactment by the Congress of a statute providing for convening, with the approval of the Judicial Conference of the United States, of institutes and joint councils on sentencing in criminal cases.

The purpose of the institutes is to provide for the first time in our history the means for the judges, with the counsel and advice of other competent officers and specialists, to do something concrete to prevent the gross inequities that are all too frequently caused by the wide disparity in criminal sentences.

A pilot institute under the statute is presently being planned under the chairmanship of Chief Judge William J. Campbell, of the United States District Court for the Northern District of Illinois. The meeting will be held at the University of Colorado at Boulder during two days in July, immediately following the Seminar on Protracted Cases.

Some sixty-five judges are being invited to attend, and its purpose will be to work

out ways and means of effectively organizing institutes and joint councils on sentencing in each of the circuits. This is the first step for the judges to take in developing improved methods of sentencing in the federal system. I might say to you that there has been great divergence in the sentencing of defendants, not only as between districts, but sometimes within districts, where one judge would sentence the defendant to the minimum or even not sentence him to imprisonment at all as a habit, and as a custom, while other judges on the same bench in the same district have almost invariably given the defendants the maximum prison term.

That, of course, makes the administration of prisons a very difficult thing, because it brings about a feeling of unfairness so far as the prisoners are concerned, and makes it very difficult to obtain discipline.

Many of you already know that in June of last year the Attorney General of the United States, Mr. William P. Rogers, convened a Conference on Court Congestion and Delay. This was the second time in the history of the country that the prestige of the Department of Justice was brought to bear directly on the problem of delay in both the federal and state courts.

The Conference produced several helpful recommendations, some of which are already being implemented. The proceedings of the Attorney General's Conference have been published, and I commend them to your study.

All of the foregoing developments over the last year--the diversity statute, the program for improving the rule-making process in the federal courts, the continuous efforts of the Judicial Conference Committee on the Administration of Justice, under the Chairmanship of Chief Judge John Biggs of the Third Circuit Court of Appeals whom I see here, the pretrial program in Brooklyn, the Sentencing Institutes, and the Attorney General's Conference--provide profound encouragement in the efforts to improve the administration of justice in the federal courts.

But there is an immediate and most pressing need for additional judges. No new judgeships have been authorized for more than five years and, indeed, during that period we have lost three positions as the result of the expiration of judgeships created on a temporary basis. As you know, when courts are created on a temporary basis, if the judge holding the office dies or resigns, the court goes out of existence. We have had three of those happen in the last five years. The last Congress had before it recommendations by the Judicial Conference for 45 additional judgeships, many of which were contained in the omnibus bill introduced as long ago as 1955.

This year, again, the Judicial Conference has recommended 43 additional judgeships. These are not just requests from localities for more judges. They are recommendations of the Judicial Conference of the United States based upon serious study of the statistics and conditions facing the particular districts and circuits for which the additional judges have been recommended.

I regret to report that this legislation--so vital to the administration of justice in the federal courts--has still not received the consideration of Congress.

In many places this failure is throwing a burden on judges they are not able to bear. If it were not for many of the retired judges who continue to serve so faithfully, we would indeed be in a terrible condition.

I want to say to you that to my personal knowledge there are judges in the Federal Service who have actually broken their health in trying to keep up with this backlog in their districts, and I have no doubt that many others will suffer the same fate unless we can cut down on the terrific burden that is upon them.

Nineteen nominations have been made by the President to fill judicial vacancies which now exist. We look forward eagerly to the confirmation of these appointees, because each of them is sorely needed to handle the pressing workload of judicial business.

I hesitate to say it, but as a nation, we cannot be proud of the dismal picture federal court congestion presents. On the contrary, I can say and I want to say we should be challenged by it.

If democracy is to thrive, it must be made efficient. Nowhere does government touch the life of the people more intimately than in the administration of justice; and nowhere is it more important that the governing process function with efficiency and common sense.

Nothing we can do or say is so important as the way we administer justice. And, when I say we, I mean the members of the Bar, too. The courts represent the one institution of democracy which has been entrusted in a peculiar way to our keeping--judge and lawyer alike.

This places a tremendous obligation on us to make our federal system of courts work. Defects are bound to creep in. Population growth, and a constantly expanding and more complex economy call for adjustments and more modern methods.

In the last analysis, there are but two ways these adjustments can be achieved. One is through self-motivation--from within the court system itself. The other is through pressures from outside;--pressures that arise because of a failure to meet the needs of the people.

I am sure that every member of the Institute realizes that changes made from such external pressures are seldom as understanding, as forward-looking and as progressive as those which come from within.

We must look to the leaders in every branch of the legal profession--to the scholars, to the judges, to the lawyers--who have the will-
ingness and the courage, and who possess a vision for the future, to accept the leadership in making an efficient judiciary. For without an efficient judiciary, there can be no real justice.

John Marshall understood this well

and realized that efficiency is the hand-maiden of independence. He sought to make the federal court system efficient in order that it might attain the very independence it enjoys today.

Insistence upon the independence of the judiciary in the early days of our nation was perhaps John Marshall's greatest contribution to constitutional law. He aptly stated the controlling principle when, in speaking of the Court during his tenure, he said that he had "never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required."

That is precisely the obligation of the judiciary today. And in equal measure it is the obligation of every lawyer in America to help in the performance of it.

[The assemblage rose and applauded.]

PRESIDENT TWEED: Thank you, very much, Mr. Chief Justice, for taking us into your confidence and telling us how things are going in the Federal courts.

It is quite obvious that the Chief Justice of the United States has some responsibilities beyond writing opinions, and I am sure that he is discharging those responsibilities in a way that no one else could do.

When he turns to the Institute and asks us to make a study of the diversity jurisdiction problem, we should feel greatly honored, and I certainly should hope that we would respond affirmatively. I cannot speak for the Institute. We are a democratic body. This is something which I shall have to submit to the Council, although I think not to the membership. Fortunately the Council is meeting at lunch time on Friday, and we will certainly consider then our answer to your request.

CHIEF JUSTICE WARREN: Thank you!

PRESIDENT TWEED: There is involved, of course, the little matter of financing. But the Institute has somehow or other, when pushed to it, always been able to find a friend to make the necessary contribution because, if you don't know it I will tell you now that the Institute has no money. It has to seek funds for

each separate enterprise which it is conducting.

This is subject to the one exception that the work for subsequent Restatements is endowed, and guaranteed in perpetuity through the generosity of The A. W. Mellon Educational and Charitable Trust.

I never let any question as important as what the Institute will do in this situation, pass without calling on the Director to express his opinion. We work together on these things, and I may say that neither of us carries a rubber stamp in his pocket.

Mr. Director, would you say what your reaction is to the suggestion that the Institute make a study in the field of diversity jurisdiction?

DIRECTOR GOODRICH: I will indeed, Mr. President. You simply want my reaction to this question, and then you are going to call on me after a while for something else?

PRESIDENT TWEED: Oh, yes, you will get another chance.

DIRECTOR GOODRICH: My reaction is one of enthusiastic affirmance. I remember the study which was made in 1934. We have got the results of that study still. We have had with the Committee on Statistics a whole lot of the material with which this kind of thing will start.

I think we can approach it objectively, as Uncle Billy Lewis would have said, without any axe to feather or nests to grind [laughter], and I think we can do a good job. I hope we shall. [Applause]

PRESIDENT TWEED: As you know, there have been only three Presidents of the Institute, so that I am very proud to be the third. There was a custom under the first President, General Wickersham, that the President give an address at the opening of the Annual Meeting.

Senator Pepper abandoned the practice and never made an annual address. Not wishing to commit myself to either of my predecessors and his policy, I have an alternating system that sometimes I do and sometimes I don't.

You will regret--and I know that that's the truth--when I tell you that this is the year when I do make an address, because I have something that I want to say. I will say it as briefly as possible.

Before doing that I want to note my very great regret at the absence of Senator Pepper, a regret that I know you all share. Senator Pepper is not in good health. He has not been able to overcome the troubles he has with his heart. He is not any worse or any better than he was six months ago. He still appreciates messages from friends and others, and fully understands the import of them. His difficulty is in talking, which is where the heart condition has affected him. It is a tragic thing that that beautiful voice cannot now respond and speak to any of us.

I think it is appropriate that at this meeting we should recognize the situation, and I am asking leave of you to send this telegram:

Members of the Institute at the opening session of the Annual Meeting instruct me by resolution unanimously adopted to send you their most affectionate greetings and warmest regards.

May I ask a standing vote in favor of that action?

[The entire assemblage arose.]

PRESIDENT TWEED: Thank you, very much.