Text of Hughes Letter

By The Associated Press.

WASHINGTON, March 22.—Following is the text of Chief Justice Hughes's letter read today to the Senate Judiciary Committee:

My Dear Senator Wheeler:

In response to your inquiries, I have the honor to present the following statement with respect to the work of the Supreme Court:

1. The Supreme Court is fully abreast of its work. When we rose on March 15 (for the present recess) we had heard argument in cases in which certiorari had been granted only four weeks before, Feb. 15.

During the current term, which began last October and which we call October Term, 1936, we have heard argument on the merits in 150 cases (180 numbers) and we have 28 cases (30 numbers) awaiting argument. We shall be able to hear all these cases, and such others as may come up for argument, before our adjournment for the term. There is no congestion of cases upon our calendar.

This gratifying condition has obtained for several years. We have been able for several terms to adjourn after disposing of all cases which are ready to be heard.

2. The cases on our docket are classified as original and appellate. Our original jurisdiction is defined by the Constitution and embraces cases to which States are parties. There are not many of these. At the present time they number thirteen and are in various stages of progress to submission for determination.

Our appellate jurisdiction covers those cases in which appeal is allowed by statute as a matter of right and cases which come up to us on writs of certiorari.

The following is a comparative statement of the cases on the dockets for the six terms preceding the current term:

FOR TERMS 1930-32

	1930.	1931.	1932.
Total cases on dockets....	1,039	1,023	1,037
Disposed of during term..	900	884	910
Cases remaining on dockets	139	139	127
DISTRIBUTION OF CASES			
Cases Disposed Of			
Original cases.....	8	1	4
Appellate—on merits.....	326	282	257
Petitions for certiorari....	566	601	649
Remaining on Dockets			
Original cases.....	16	19	17
Appellate—on merits.....	76	60	56
Petitions for certiorari....	47	60	54

FOR TERMS 1933-35

	1933.	1934.	1935.
Total cases on dockets....	1,132	1,040	1,094
Disposed of during term..	1,029	931	990
Cases remaining on dockets	103	109	102
DISTRIBUTION OF CASES			
Cases Disposed Of			
Original cases.....	4	5	4
Appellate—on merits.....	293	256	269
Petitions for certiorari...	732	670	717
Remaining on Dockets			
Original cases.....	15	13	12
Appellate—on merits.....	43	51	56
Petitions for certiorari...	45	45	34

Further statistics for these

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Text of the Hughes Letter on Enlarging the High Court

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terms, and those for earlier term are available if you desire them.

Ended 666 Cases This Term

During the present term v have thus far disposed of 6 cases which include petitions f certiorari and cases which ha been argued on the merits ar already decided.

3. The statute relating to o Appellate jurisdiction is the a of Feb. 13, 1925; 43 stat. 93 That act limits to certain cas the appeals which come to th Supreme Court as a matter right. Review in other cases made to depend upon the allow ance by the Supreme Court of writ of certiorari.

Where the appeal purports to l as a matter of right, the rules the Supreme Court (Rule 12) r quire the appellant to submit jurisdictional statement showi that the case falls within th class of appeals and that a su stantial question is involved. W examine that statement and t supporting and opposing brief and decide whether the court ha jurisdiction. As a result, ma frivolous appeals are forthwi dismissed and the way is open f appeals which disclose substanti questions.

4. The act of 1925, limiting a peals as a matter of right ar enlarging the provisions for r view only through certiorari, w most carefully considered by Co gress. I call attention to the r ports of the Judiciary Committe of the Senate and House of Repr sentatives, 68th Cong., 1st Ses That legislation was deemed be essential to enable the Supre Court to perform its proper fun tion. No single court of last r sort, whatever the number judges, could dispose of all t cases which arise in this va country and which litigants wou seek to bring up if the right appeal were unrestricted.

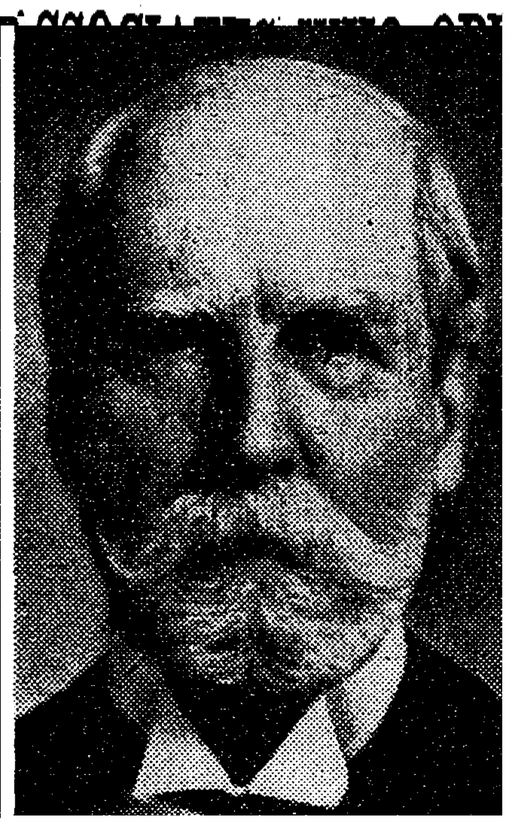
Hosts of litigants will take a peals so long as there is a trib nal accessible. In protracted li gation, the advantage is wi those who command a long purs Unmeritorious appeals cause i tolerable delays. Such appea clog the calendar and get in t way of those that have merit.

Review Is in Interest of Law

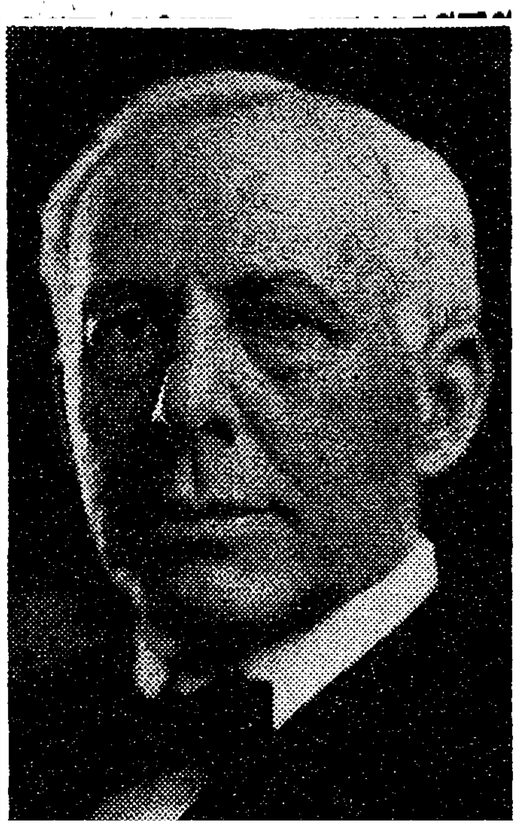
Under our Federal system, wh litigants have had their cas heard in the court of first i stance, and the trier of the fact jury or judge as the case may r quire, has spoken and the case the facts and law has been d cided, and when the dissatisfi party has been accorded an a peal to the Circuit Court of A peals, the litigants, so far as me private interests are concerne have had their day in court.

If further review is to be ha by the Supreme Court it must because of the public interest the questions involved. That r view, for example, should be f the purpose of resolving conflic

Louis D. Brandeis



Charles Evans Hughes



Willis Van Devanter

peals and State courts where the question is one of State law; or for the purpose of determining constitutional questions or settling the interpretation of statutes; or because of the importance of the questions of law that are involved. Review by the Supreme Court is thus in the interest of the law, its appropriate exposition and enforcement, not in the mere interest of the litigants.

It is obvious that if appeal as a matter of right is restricted to certain described cases, the question whether review should be allowed in other cases must necessarily be confined to some tribunal for determination, and of course, with respect to review by the Supreme Court, that court should decide.

Within Judicial Discretion

5. Granting certiorari is not a matter of favor but of sound judicial discretion. It is not the importance of the parties or the amount of money involved that is in any sense controlling. The action of the court is governed by its rules from which I quote the following (Rule 38, Par. 5):

"5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(A) Where a State court has decided a Federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(B) Where a Circuit Court of on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of Federal law which has not been, but should be, settled by this court; or has decided a Federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

(C) Where the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court."

All Justices Aid in Decisions

These rules are impartially applied, as it is most important that they should be.

I should add that petitions for certiorari are not apportioned among the justices. In all matters before the court, except in the mere routine of administration, all the justices—unless for some reason a justice is disqualified or unable to act in a particular case—participate in the decision. This applies to the grant or refusal of petitions for certiorari.

Furthermore, petitions for cer- quired in such cases. Even two or three of the justices a strongly of the opinion that ce tiorari should be allowed, fr quently the other justices will a quiesce in their view but the p tion is always granted if four vote.

6. The work of passing up these applications for certiora is laborious but the court is ab to perform it adequately. Obse vations have been made as to t vast number of pages of reco and briefs that are submitted the course of a term. The total imposing but the suggested co clusion is hasty and rests on illusory basis.

Records are replete with tes mony and evidence of facts. B the questions on certiorari a questions of law. So many cas turn on the facts, principles law not being in controversy. is only when the facts are interwoven with the questions law which we should review th the evidence must be examin and then only to the extent th it is necessary to decide the que tions of law.

Disposes of Controversies

This at once disposes of a va number of factual controversi where the parties have been ful heard in the courts below a have no right to burden t Supreme Court with the dispu which interests no one but the selves. This is also true of co troversies over contracts a documents of all sorts which i volve only questions of conce to the immediate parties.

The applicant for certiorari required to state in his petiti the grounds for his applicati and in a host of cases that d closure itself disposes of his uest. So that the number of ages of records and briefs ford no satisfactory criterion of e actual work involved. It must so be remembered that justices ho have been dealing with such atters for years have the aid of long and varied experience in parating the chaff from the heat.

I think that it is safe to say at about 60 per cent of the ap- ications for certiorari are holly without merit and ought ver to have been made. There e probably about 20 per cent or in addition which have a fair gree of plausibility but which il to survive critical examina- on. The remainder, falling ort, I believe, of 20 per cent, ow substantial grounds and are anted. I think that it is the ew of the members of the court at if any error is made in deal- g with these applications it is the side of liberality.

crease in Court Held Unneeded

An increase in the number of stices of the Supreme Court, part from any question of olicy, which I do not discuss, ould not promote the efficiency the court. It is believed that would impair that efficiency so ng as the court acts as a unit. here would be more judges to ear, more judges to confer, more judges to discuss, more judges to be convinced and to decide.

The present number of justices is thought to be large enough so far as the prompt, adequate and efficient conduct of the work of the court is concerned. As I have said, I do not speak of any other considerations in view of the appropriate attitude of the court in relation to questions of policy.

I understand that it has been suggested that with more justices the court could hear cases in divisions. It is believed that such a plan would be impracticable. A large proportion of the cases we hear are important and a decision by a part of the court, would be unsatisfactory.

I may also call attention to the provision of Article III, Section 1, of the Constitution that the judicial power of the United States shall be vested "in one Supreme Court" and in such inferior courts as the Congress may from time to time ordain and establish. The Constitution does not appear to authorize two or more Supreme Courts or two or more parts of a Supreme Court functioning in effect as separate courts.

On account of the shortness of time I have not been able to consult with the members of the court generally with respect to the foregoing statement, but I am confident that it is in accord with the views of the justices. I should say, however, that I have been able to consult with Mr. Justice Van Devanter and Mr. Justice Brandeis, and I am at liberty to say that the statement is approved by them.

I have the honor to remain, respectfully yours,

(Signed)

CHARLES E. HUGHES,
Chief Justice of the United States.

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