The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

VOL. 10 No. 1 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center JANUARY, 1978

NATIONAL INSTITUTE OF JUSTICE PROPOSALS ANALYZED

Recent months have seen renewed interest in creation of a federal agency called a National Institute of Justice. Proposals for an NIJ, although they use the same title, vary greatly among themselves as to the organization and functions of such an Institute.

What follows is a summary of the major proposals. Although none of them seems to contemplate replacing the Federal Judicial Center or the Administrative Office, an NIJ might well affect the administration of justice in the federal courts.

Some of the major questions to be resolved are: (1) Should an NIJ be a component of an existing agency or be autonomous? (2) Should it consolidate some or all existing "justice agencies"? (The President's Reorganization Project has identified 16 "justice research centers" within the Executive Branch.) (3) Should it award action funds to state and local agencies? Conduct research? Gather and maintain justice statistics? (4) Should its research be civil and criminal? Should research be on the basic causes of behavior and/or applied research on the efficacy of proposed solutions? How independent should be the administration of the research program?

The discussion below does not review all NIJ proposals.

The President's Reorganization Project may recommend some form of NIJ. The Reorganization Project has written to all federal judges soliciting their views on "Federal justice system improvement activities."

(See NIJ, page 2)

PROBATION OFFICERS TO STUDY BRITISH METHODS

Nine probation officers from the U.S. District Court for the District of Columbia will spend 30 days each in London observing the activities of their British counterparts.

The program was arranged by the District of Columbia Probation Office with the Inner London Probation and Aftercare Service. The first three probation officers will leave on February 20 and remain in London for a month. While there, they will be attached to a particular region within London and the regional officer on the London staff will be responsible for the general oversight of their activities.

Each officer will maintain a log of his activities so that a report can be prepared for the use of the Probation Divison of

(See PROBATION page 4)

REPORT OF FALL MEETING OF JUDICIAL CONFERENCE ISSUED

The Report of the Proceedings of the Judicial Conference of the U.S. which were held in mid-September, 1977 was recently published.

Here are some of the more significant actions of the Judicial Conference. [A complete report is available from the Federal Judicial Center Information Service.]

The Report of the Director of the Administrative Office of U.S. Courts revealed that during the past year, filings rose in the courts of appeals. In the year ending June 30 new case filings rose over the prior year by 3.9 percent. The new filings were 63.9 percent greater than in 1970.

In the district courts new case filings in civil litigation remained relatively stationary. There were fewer prisoner suits, a substantial decrease in petitions for black lung benefits, land condemnation and ICC regulation cases while increases were noted in civil rights filings, copyright, patent and trademark suits and in the foreclosure of federally mortgaged property.

The number of felony and misdemeanor cases in the district courts dropped by more than eight percent during 1977. There was a marked decrease in the number of robbery and

(See CONFERENCE, page 6)

(NIJ, from page 1)

The Chief Justice

To stimulate thought, The Chief Justice suggested as early as 1972 before the American Law Institute that Congress might create an NIJ, to be national in scope and not in the exclusive control of judges and lawyers. The NIJ would give technical assistance, on a consulting basis with the National Center for State Courts, on problems facing the state courts. The Chief Justice believes that the Institute should have the resources and authority to make grants for court improvements, somewhat like the Law Enforcement Assistance Administration. Regardless of precise design, the management of the Institute should be broadly representative and operate with a small staff. It should be viewed primarily as a grant organization.

While the Chief Justice has endorsed the concept of an NIJ, he has warned that the Institute should in no way encroach upon the autonomy of the states, which is the bulwark of our system of federalism. As well, the tasks of the Institute must not be such that they overlap the efforts of existing organizations. Furthermore, he has stressed that the Institute should avoid policies that tend to regiment the states; ample room for experimentation of new procedures should remain. Simply, the Chief Justice would say, the two aspects of the judiciary (state and federal) must function together, each with an eye to the needs and purposes that the other is designed to serve.

Department of Justice

Much current interest in an NIJ stems from criticism of the Law Enforcement Assistance Administration, established by Congress in 1968 within the Justice Department (1) to provide funds to non-federal criminal justice agencies; (2) to fund justice research through its National Institute of Law Enforcement and Criminal Justice (NILE); and (3) to support various national justice related projects (such as its core grants to the National Center for State Courts).

Last November, Attorney General Bell proposed that the President "abolish LEAA and create a new organization to be called the National Institute of Justice," headed by a Director appointed by the President with Senate consent and serving at a salary level comparable to the FBI Director.

This NIJ would include five offices and consolidate many Departmental activities. Major units would be (1) a Bureau of Justice Statistics, to include current LEAA statistical functions and others "as may be delegated by the Attorney General," which are to include civil and criminal judicial statistics, both state and federal; (2) an Office of State and Local Assistance, to distribute block grants to the states, but with less stress on criminal justice planning; (3) a Justice Research and Development Institute, basically for applied research, in the belief that "research and action activities need to be routinely linked . . . so that . . . appropriate action program needs affect research priorities" and vice versa; and offices of (4) Community Anti-Crime and (5) Juvenile Justice. The emphasis of the proposal is on criminal justice activities, although there is reference to the need for research on civil justice.

American Bar Association

In a December letter to the President's Reorganization Project, President Spann reiterated the ABA's 1974 endorsement of a small NIJ outside the Department of Justice, to sponsor basic and applied research on, and propose improvements in, "the functioning of the justice system in all its aspects," civil, criminal, administrative, and regulatory, at the national, state, and local levels. While the ABA's NIJ proposal looked favorably on including a justice statistics bureau and other research institutes (primarily those n in the Department of Justice, preferred not to have the NIJ distribute grants, fearing that the research program could be tainted by the political pressures that a grant program might feel.

Research independence also led the ABA to propose an independent NIJ, whose budget would not go through the Office of Management and Budget. It would be governed by a Presidentially-appointed and broadly representative 9-to-15 member Board of Trustees who in turn would select or recommend a Director. Its Board, perhaps assisted by a considerably larger advisory council, would set research priorities, but the Director, "using peer review [i.e., having panels of academic experts evaluate research proposals] and other techniques" would award research grants contracts for "the great bul research . . . so as to utilize the best minds available and avoid a large bureaucratic structure."

Congressional Proposal

The House Science and Technology Committee is charged with House oversight of the entire federal research and development effort. Its subcommittee on Domestic and International Scientific Planning, Analysis, and Cooperation recommended an NIJ last November. This proposal drew heavily on the recommendations of a panel of the National Academy of Sciences, which had evaluated LEAA's National Institute of Law Enforcement and Criminal Justice (NILE) at the agency's request. The Subcommittee accepted the panel's view that NILE's research integrity had been compromised by its cl ties to LEAA action ne producing a "mediocr research record.

The Subcommittee recom-

mended an NIJ created within the Justice Department ("but . . . only if there is assurance" from the Department of "the environment for quality research"). It would have a high degree of autonomy and be headed by a Presidentially-appointed Director with research and administrative stature. The Director would have final sign-off authority for research grants and contracts (by which most of its research would be carried out). The subcommittee also recommended a Presidentially-appointed "advisory board of distinguished scientists, educators, and practioners who are thoroughly familiar with the canons of scientific research." This NIJ would be comprised of three units that would focus on basic research on crime and its causes and on experimentation to prevent or control crime; on operational studies of the interplay between the criminal and civil justice delivery systems; and include two bureaus of criminal and civil justice statistics. Like the National Academy of Sciences panel, the Subcommittee should be the fundamental prerequisite for all major research project decisions," and it advised strongly that research projects extend over a period of years.

The President's Reorganization Project has yet to make a formal proposal on this matter, but it has coordinated hearings with the Justice Department, canvassed practitioners and scholars, and appears to regard the National Academy of Sciences study with respect.

An unscientific analysis of some of the over 80 responses of federal judges to the Project's letter suggests a view among those responding that the research and data collection efforts of the Federal Judicial Center and the Administrative Office be neither duplicated nor replaced and that there may be duplication in federal justice research in executive agencies.

JUSTICE DEPARTMENT RELEASES PRELIMINARY REPORT ON ARBITRATION, USE OF MAGISTRATES

The Justice Department's Office for Improvements in the Administration of Justice recently conducted an in depth series of telephone interviews with 67 percent of the Chief Judges of federal district courts to discover what mechanisms have been adopted for improving access to the courts, especially in civil maters.

Of the courts surveyed, most have adopted alternative procedures for handling civil cases. For example, 78.9 percent have adopted mandatory pretrial conferences, and 77.5 percent are using magistrates for preliminary hearings. Few districts, 8.5 percent, have used arbitration as an alternative for civil cases.

When asked why they had adopted alternative procedures, each Chief Judge indicated that the primary reason was to

(See ARBITRATION, page 5)

LAW DAY: MAY 1

This year's theme for Law Day will be "The law: *your* access to justice." Organizations wishing to observe Law Day are urged to contact the American Bar Association, Law Day U.S.A. Observance, 1155 East 60th Street, Chicago, Illinois 60637 for further information and materials which will be of assistance in planning programs.

Effective January 23, the National Center for State Courts will be headquartered at 300 Newport Ave., Williamsburg, Virginia 23185 and its new telephone number will be 804-253-2000.

RICHARD H. DEANE

NEW A.O. ASSISTANT DIRECTOR FOR PLANS AND ANALYSIS NAMED

The Director of the Administrative Office of U.S. Courts, William E. Foley, announced that Richard H. Deane has been appointed Assistant Director for Plans and Analysis.

Mr. Deane received his B.S. and M.S. degrees in 1966 and 1968 respectively from Mississippi State University where he majored in Industrial Engineering. He received his Ph. D. in Industrial Engineering/Computer Science in 1971 from Purdue University. In addition, he was awarded a J.D. degree from Atlanta Law School in 1974 and admitted to the Georgia bar during that same year.

From 1971 to 1975, he was an Assistant Professor of Industrial and Systems Engineering at the Georgia Institute of Technology. In 1975 he received the Outstanding Research Award from the College of Engineering and was selected the outstanding faculty member in the School of Industrial and Systems Engineering at Georgia Tech. He was also a finalist in the 1975—1976 Judicial Fellows Program.

Since he joined the Administrative Office in 1975, he has served in numerous capacities, most recently as Deputy Assistant Director for Plans and Analysis.

JUDGE WEBSTER (CA-8) SELECTED AS NEW FBI DIRECTOR

President Carter nominated Judge William H. Webster January 19 as Director of the Federal Bureau of Investigation. If he is confirmed, he will be the third FBI Director in the history of the Bureau.

Significantly, the President has chosen federal judges for three key Justice Department posts; Attorney General, Solicitor General and FBI Director.

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the Administrative Office after they have completed their tour.

The officers are assuming all expenses including travel and whatever costs will be involved for food and incidental expenses while in London.

A second group will leave in June and a third in September.

LIBRARY OF CONGRESS ASSISTING IN JUDICIAL RESEARCH

Last August, in cooperation with the Law Library of the Library of Congress, the Federal Judicial Center undertook a pilot project to determine the feasibility of expanding the use of the Law Library's research and reference services. These services, although already available to the federal judges, have not been used extensively in the past.

The Law Library is staffed with 90 highly capable librarians and lawyers, nine of whom specialized in American legal research. Thirty are legal specialists in foreign and international law with an expertise in 50 languages, representing approximately 200 legal jurisdictions. Many on their staff are recognized as specialists and are often called upon to give expert testimony.

(See RESEARCH, page 6)

CHIEF JUSTICE PRESENTS YEAR—END REPORT ON FEDERAL JUDICIARY

In his year-end report on the federal judiciary, The Chief Justice said 1977 may be seen as a year of joint effort by all three branches of government to improve the federal courts.

He singled out the work of both the House of Representatives and the Senate Judiciary Committees in reporting out legislation which will provide for a significant number of new judges for both the courts of appeals as well as the district courts.

Here are the highlights of the year-end report. [A full text is available from the Federal Judicial Center Information Service.]

- The Senate has passed legislation which would enlarge the jurisdiction of federal magistrates by permitting them, with the consent of litigants, to conduct any civil proceeding or any criminal misdemeanor case.
- Interest is growing for legislation which would eliminate mandatory appeal jurisdiction of the Supreme Court. Appeals as of right have increased from 28 percent of the cases decided by the Court on the merits in 1942 to 60 percent of such cases in 1972. "In short, in this period of time the Court has lost control of the majority of the cases which it decides on the merits."
- The Senate Judiciary Committee has reported out a comprehensive revision of the new Federal Criminial Code which establishes a Sentencing Commission to promulgate sentencing guidelines for federal district judges. However, the Judicial Conference of the U.S. voted unanimously that the members of the Commission should be appointed by the Judicial Branch rather than divided between the Judicial Conference and the President.

The new federal criminal code will impose a tremendous workload on all federal courts for a decade or more because new and different jury instructions will be necessary. "In anticipation of the possible passage of this bill, the Federal Judicial Center has already begun studies to develop model jury instructions consistent with the new code."

- The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice has reported out legislation which would curtail a large segment of the jurisdiction of the federal courts which is based solely on the diversity of citizenship of the litigants. "These cases now represent 25 percent of the civil cases filed in the district courts. With few exceptions, these cases belong in the state courts and their transfer from 397 federal district judges to approximately 6,000 state court judges of general jurisdiction will impose no significant new load on the state courts."
- The value of impact statements was recently shown when the Department of Justice assessed the impact of S. 364, the Veterans Administrative Procedure and Judicial Review Act.
- There has been vigorous interest in the problems of the courts by the Executive Branch, especially following the appointment of Griffin B. Bell, formerly a judge of the United States Court of Appeals for the Fifth Circuit, as Attorney General. Attorney General Bell was chairman of the American Bar Association task force to implement the recommendations which came out of the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.
- The American Bar Association has vigorously studied alternatives to traditional litigation in dealing with minor disputes. "The Department of Justice is initiating pilot projects for 'neighborhood justice centers' in an effort to determine whether this alternative is

workable. Three federal courts are about to embark on an experimental program to bring about efforts of litigants to ;pose of cases by arbitration in dvance of trial."

- Modern computer technology, it was noted, should be explored to determine whether computerization of title records for real estate could substantially reduce the cost of examining titles.
- Judges in three states now must participate in continuing education programs. More than 7,000 state judges have participated in programs held by The National Judicial College and over 94 percent of the sitting federal judges have participated in Federal Judicial Center seminars.
- There has been significant progress in juror utilization but more must be done. In 1977, sixty percent of those persons called for jury service in federal courts actually served but this must be improved. In addition, rial judges must exercise eater authority to control unnecessarily lengthy examinations of potential jurors in the process of jury selection."
- All but a handful of federal courts now use six-member juries indicating that there is widespread support for this development and that there is no reason to assume better results from twelve jurors than six.

The Chief Justice closed his year-end report on the federal judiciary with these words: "We may look back at 1977 with some satisfaction in this new cooperation... [b]ut this must be just a beginning. There is a long list of unfinished business we must deal with."

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relieve the caseload demands of the court. In addition, all judges responding agreed that providing litigants with swifter reviews of their claims was the next most important reason for adopting alternative procedures. However, the primary reason for adopting arbitration procedures was also to relieve the caseload demands on the court but those who have adopted arbitration indicate that they think it can also reduce court costs, provide swifter review of claims and reduce costs for litigants.

When questioned regarding the use of mandatory pretrial conferences, all of the judges responding felt the procedure was effective in increasing the overall efficiency of the court's operation and 39.9 percent felt the procedure could be considered very effective in increasing the court's efficiency.

The survey also examined the attitude of the Chief Judges regarding proposals to establish court annexed arbitration for some civil cases and to increase the jurisdiction of U.S. magistrates: 84 percent favored the implementation of court annexed arbitration as an effective means of reducing judicial workload with about 31 percent indicating they believed it would be very effective.

Regarding the attitudes of the judges concerning the proposal to increase the jurisdiction of magistrates, some 75.1 percent indicated that allowing magistrates to hear all civil cases where both parties agreed would effectively reduce their own workload and a majority believed this procedure would effectively reduce the costs of court litigation, thereby increasing the overall efficiency of the court's operation. Over ninety percent cited this procedure as a potentially effective means of providing litigants with swifter access to review of their claims.

JUDGE WOODROUGH DIES AT 104

JUDGE JOSEPH W. WOODROUGH

Judge Joseph W. Woodrough (CA—8), the oldest living member of the federal judiciary, died recently in Chicago after serving for forty-five years as first a federal district judge and later, as a member of the Eighth Circuit Court of Appeals.

Known as "the walking judge" because of his habit of walking up to five miles each day, Judge Woodrough began his career when he was admitted to the Texas Bar at age 20 in 1894. A year later, he was elected a Texas state judge. Following his term as a state judge, he served as County Attorney of Ward County, Texas until 1897 when he returned to Nebraska to practice law until his appointment to the federal trial bench in 1916 by President Woodrow Wilson.

When he took his oath on April 24, 1916, he became the youngest federal judge in the nation. In 1933, President Franklin D. Roosevelt appointed him to the Eighth Circuit Court of Appeals.

During his service he dealt with such diverse cases as the enforcement of the Volstead Act in the 1920's, the sentencing of the "Birdman of Alcatraz", Robert Stroud, and the desegregation of the Little Rock, Arkansas public schools in 1956.

After his nearly half a century of service on the bench, Judge Woodrough retired from active service in 1961.

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Since last summer many of the federal judges have availed themselves of these services.

So that a determination might be made of the type of research information or data that is needed, and in what areas, a reporting form was given the staff of the Library of Congress. On this form they record what was requested, whether they were able to fully meet the request, and the time involved to respond. The Inter-Judicial Affairs and Information Services Division at the Center has been monitoring and analyzing these reports, to learn where there may be weak or no resource material available.

Although it is still too early to draw conclusions, it is already apparent that legislative histories are high on the list of the needs of the judges, especially in those areas where they do not have access to large depository libraries.

Judges and their staff are reminded of the Library of Congress services available to them. Though priority must be given to members of Congress, the reports so far show that in nearly all instances timely responses have been made.

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assault cases and drug law prosecutions which dropped 22 percent.

Bankruptcy filings decreased in the year ending June 30, 1977 by 13 percent; 85 percent of all the filings in that period were in the non-business bankruptcy category.

The work of magistrates increased markedly: the total number of matters handled rose by almost 14 percent and pretrial conferences, motions, prisoner petitions and post-indictment arraignments conducted by magistrates showed a 32 percent increase over the prior year.

In juror utilization, the federal courts continued to progress, with the percentage of jurors called but not selected declining from almost 33 percent in 1971 to 24 percent in 1977.

The Conference disapproved of legislation which would give legislative sanction to the term "Administrative Law Judge" and which would also provide that the salaries of such hearing examiners would be 90 percent of the salaries of federal district judges.

Concerning bills which would increase the fees of witnesses in federal court proceedings from twenty to thirty dollars per day and provide travel and subsistence on the same basis as is provided for federal government employees, the Conference approved, in concept, legislation which would put these changes into effect.

Approved by the Conference was a recommendation that staff law clerks and their assistants in the circuit court shall now be known as senior staff attorney and staff attorney and that these positions, if the Congress approves, should be graded at grades approximating the present salaries of the incumbents.

The expenditure of funds on a pilot civil arbitration program was authorized. This program will be consistent with guidelines and procedures to be established by the Committee on Court Administration in consultation with representatives of the Department of Justice.

The Conference was advised and agreed with the recommendation of the Committee on the Administration of the Federal Magistrates System that the Committee continue to study the eventual adoption of legislation to permit magistrates and referees in bankruptcy to work interchangeably to perform each other's duties as the needs of the courts and fluctuating caseloads dictate and thus provide the greatest flexibility in assigning the business of the federal trial courts to subordinate judicial officers. Each district court would decide on the interchange of duties.

Sufficient funds have been appropriated for fiscal year 1978 to provide for 164 full-time magistrate positions, 305 part-time and 18 combination referee-magistrate or clerk-magistrate positions, the Conference was advised.

The Conference reiterated its opposition to an Article I or an Article III court, as envisioned in H.R. 8200, and also disapproved the establishment of a separate office of U.S. Trustee under the Attorney General and concurred in the views of the Department of Justice that such an arrangement would create conflicts of interest. It also disapproved enlarging the Judicial Conference from 25 to 36 members and increasing the size of the Board of the Federal Judicial Center by including referees in bankruptcy in its membership.

With regard to Sentencing Institutes, the Conference was advised that funds are available for two institutes during fiscal year 1978 and other circuits are being canvassed which are considered to be overdue for institutes. If none is ready during fiscal year 1978, the Committee on the Administration of the Probation System will recommend that the request of the Ninth Circuit for such an institute be approved later in the fiscal year.

On the recommendation of the Committee on the Administration of the Criminal Law, the Conference disapproved of H.R. 94 which, in the opinion of the Conference, would turn a grand jury proceeding into an adversary one and harm the orderly administration of justice and impose an enormous additional burden on an already overloaded judiciary.

Concerning the proposed new federal criminal code, S. 1437,

(See CONFERENCE, page 7)

LEGISLATIVE OUTLOOK

Congressional Action

Senate Majority Leader Robert C. Byrd (D., West Va.) said January 10 that the legislative agenda for the Second Session of Congress will include legislation to reform the Criminal Code, Labor Law Reform, Panama Canal Treaties and the renewal of the Strategic Arms Limitation Agreement.

During the recess, the House Judiciary Subcommittee on Criminal Justice chaired by Rep. James R. Mann (Dem. S.C.) has been holding a series of briefing sessions which include a section-by-section analysis of S.1437, the new Federal Criminal Code. The bill was reported out by the full Senate Judiciary Committee on November 2 and is expected to be passed by the full Senate early in the Session.

The briefing sessions on the bill which were held by the House Judiciary Subcommittee were designed to give members of the Subcommittee necessary background information which will enable the Subcommittee to hold hearings in February, a spokesman for the Subcommittee said.

New judgeships. The Senate passed S.11 on May 24 and the House Judiciary approved its own version, H.R.7843, on November 30, thus clearing the bill for floor action early in the Session in both the Senate and the House.

Diversity. The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice reported H.R. 22 to the full Committee on October 20 and full Committee action is expected early in the Session. The Senate bill, S.2094, is pending before the Subcommittee on Improvements in Judicial Machinery.

Magistrates' jurisdiction. The Senate passed S.1613 on July 22 and the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice held one day of mark up hearings on October 27 and is expected to resume markup of this bill after the new Session convenes.

(CONFERENCE, from page 6)
the Conference voted to request Congress to extend the effective date from two to three years following the date of enactment because of the sweeping changes incorporated in the bill and the resulting impact on the federal judiciary.

Regarding another provision of the proposed new federal criminal code, the Conference agreed with the Committee that it is a mistake to scrap all of the provisions of the Youth Corrections Act. Despite abuses which have been committed under the present legislation, the Conference is of the opinion that a statute should provide some discretion to the court in setting aside a conviction of a young offender, or of an offender of any age where the offender is without a prior record and has fulfilled all of the terms and conditions of his probation.

The proposed Sentencing Commission, the Conference believes, should be appointed by the Judiciary.

The Committee on the Operation of the Jury System and the Conference reaffirmed its previous positions that the voir dire examination in the federal courts should be conducted directly by district judges rather than by attorneys or by litigants. The report of the subcommittee urges the Federal Judicial Center in its training programs to include instructions geared to achieve the proper and comprehensive voir dire examination of federal jurors.

On the subject of grand jury reform, the Conference recommended that a model grand jury charge should be promulgated in an attempt to develop a means of giving grand jurors effective notice of their rights and obligations without the necessity of legislation.

The Committee to Implement the Criminal Justice Act reported that during the first half of fiscal 1977, 20, 614 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. This compares with 19,613 appointments in the first half of fiscal 1976. An increase of approximately four percent in the volume of appointments is forecast for fiscal 1978.

The Committee on the Bicentennial reported that five films and two videotapes have been produced for use in broadcasting and in teaching; that the biographical directory is proceeding but has been delayed by the failure of some judges to respond to questionnaires; that a manuscript has been prepared of the book written for the high school and college level on the federal judiciary and is now being reviewed; and that circuit histories have been completed on some of the courts and that several others are in preparation.

The Committee to Consider Standards for Admission to Practice in the Federal Courts reported that it expects to have its recommendations ready for presentation to the Judicial Conference at its session in September 1978.

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Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

AO/FJC Calendar

Feb. 1 Joint Committee on Code of Judicial Conduct, Miami, FL

Feb. 2-3 Judicial Conference Criminal Law Committee, New Orleans, LA

Feb. 2-3 Federal Judicial Center Board Meeting, Miami, FL

Feb. 2-3 Judicial Conference Criminal Law Committee, New Orleans, LA

Feb. 2-3 Judicial Conference Criminal Rules Committee, Washington, DC

Feb. 7-10 Employment Placement Workshop for Probation Officers, Los Angeles, CA

Feb. 9-10 Judicial Conference Court Administration Committee, San Francisco, CA

Feb. 10 Judicial Conference Bankruptcy Committee, Washington, DC

Feb. 13-15 Jucicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Palm Springs, CA

Feb. 13-15 Advanced Management Seminar for Probation Clerks, San Diego, CA

Feb. 13-17 Advanced Seminar Pretrial Services Agency Officers, San Antonio, TX

Feb. 16-17 Management Training for Supervisors, Los Angeles, CA

Feb. 21-24 Video Production Workshop, San Francisco, CA

Feb. 22-24 Seminar for Assistant Defenders and Panel, Los Angeles, CA

Feb. 23-24 Workshop for District Judges, Phoenix, AZ

CIRCUIT JUDICIAL CONFERENCES FOR 1978

First	May 22-24	Hyannis, MA
Second	Sept. 7-9	Buck Hill Falls, PA
Third	Oct. 23-26	St. Thomas, V.I.
Fourth	June 28-July 1	White Sulphur Springs, W. VA
D.C.	May 21-23	Williamsburg, VA
Fifth	April 23-26	New Orleans, LA
Sixth	May 10-12	Nashville, TN
Seventh	May 8-11	Lake Delavan, WS
Eighth	August 20-23	Brainerd, MN
Ninth	May 17-20	Scottsdale, AR
Tenth	July 19-22	Colorado Springs, CO

PERSONNEL

Appointments

A. Leon Higginbotham, Jr., U.S. Circuit Judge, 3rd Cir., Nov. 7

Gilbert S. Merritt, U.S. Circuit Judge, 6th Cir., Nov. 18

Elsijane Trimble Roy, U.S. District Judge, E. & W.D.Ark., Dec. 9

Thomas Tang, U.S. Circuit Judge, 9th Cir., Nov. 25

George C. Carr, U.S. District Judge, M.D.Fla., Jan. 6

Confirmations

John L. Kane, Jr., U.S. Circuit Judge, 10th Cir., Dec. 15

Robert S. Vance, U.S. Circuit Judge, 5th Cir., Dec. 15

James K. Logan, U.S. Circuit Judge, 10th Cir., Dec. 15

Nominations

Jack E. Tanner, U.S. District Judge, E&W.D. Wash., Jan. 20

Almeric L. Christian, Renominated for 8 year term, U.S. District Judge, D. V.I., Jan. 20

Death

Gerald McLaughlin, U.S. Senior Circuit Judge, 3rd Cir., Dec. 6

THE THIRD BRANCH
VOL. 10, No. 1 JANUARY 1978

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WASHINGTON, D.C. 20005

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(1)

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Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

Vol. 10 No. 2 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center FEBRUARY, 1978

HOUSE APPROVES 145 NEW JUDGESHIPS

By an overwhelming 319 to 80 vote, the House of Representatives February 7 approved 145 new federal judgeships, 110 for the district courts and 35 for the courts of appeals.

Last session, the Senate by voice vote approved 148 new judgeships, 113 for the district courts and 35 for the courts of appeals. In addition, the Senate bill, S. 11, would create a new Eleventh Circuit Court by splitting the Fifth Circuit.

The House bill, H.R. 7843, did not create a new circuit in the South but repealed the so-called "grandfather" clause enacted in 1958 which permitted some chief judges to retain that position after reaching age 70.

In addition, the House bill requires the President to promulgate procedures and guidelines for the merit selection of nominees for the district court judgeships authorized by the bill. However, the bill permits the President to waive such regulations with respect to any nomination by notifying the Senate of the reasons for the waiver. Specifically, the sections of the bill authorizing new district judgeships shall not take effect until the merit selection regulations are promulgated.

The House of Representatives and the Senate are expected to appoint a joint conference committee which will reconcile the differences in the two bills and report out a clean bill early in March.

Below is a list of the judgeships authorized by the bill:

District

Alabama Northern	3
Alabama Middle	1
Arizona	2
Arkansas Eastern	2
California Northern	1
California Eastern	3
California Central	1
California Southern	2
Colorado	2
Connecticut	1
Florida Middle	3
Florida Southern	5
Georgia Northern	4
Georgia Southern	1
Illinois Eastern	1
Illinois Northern	3
Indiana Northern	1
Iowa Southern	1
Kansas	1
Kentucky Eastern	2
Louisiana Eastern	3
Louisiana Middle	1
Louisiana Western	1
Maine	1
Maryland	2

(See JUDGESHIPS, page 2)

LIBRARY STUDY DID NOT ADDRESS JUDGESHIP NEED

In a newspaper interview, widely published one day before the House vote on the judgeship bill, Raymond M. Taylor was quoted as saying that "If they were operating efficiently, there might be no necessity for any new judges, and certainly not on the appellate level." Mr. Taylor was identified as the author of a report prepared for the Federal Judicial Center, analyzing the holdings and operations of the federal court library system.

As soon as the interview was published, Center Director A. Leo Levin denied that Taylor's report cast any doubt on the need for any of the additional judgeships and communicated that fact to the House Judiciary Committee prior to floor debate on the bill. Congressional Quarterly, the highly respected, unofficial journal of Congressional actions, quoted Levin as saying that he was "unequivocal" in denying that Mr. Taylor's study had any rational bearing on the number of new judgeships that were needed.

Mr. Taylor, former librarian of the North Carolina Supreme Court, had not been asked to analyze the need for new judgeships and did not do so in his report.

Taylor's major recommendation would have divorced federal judicial libraries from the Administrative Office and

(See STUDY, page 2)

(STUDY, from page 1)

created an independent federal agency, initially based in North Carolina, to provide research for the federal judiciary. The Center rejected this recommendation. Alternative recommendations have been approved by the Center's Board for the consideration of the Judicial Conference of the United States.

The final report of the Center, transmitting the Board's recommendations to the Judicial Conference, was the culmination of an eighteen-month study prepared under the supervision of the Federal Judicial Center's Division of Inter-Judicial Affairs and Information Services at the request of the Judicial Conference. The report was prepared with the assistance of an advisory committee chaired by Judge John D. Butzner, Jr., (CA-4) and composed of federal judges and library authorities.

(JUDGESHIPS, from page 1)

Massachusetts 3
Michigan Eastern 3
Michigan Western 2
Minnesota ..... [1]1
Missouri Eastern 1
Missouri Western 2
Nevada 1
New Hampshire 1
New Jersey 2
New Mexico 1
New York Northern 1
New York Eastern 1
North Carolina Eastern 1
North Carolina Middle 1
North Carolina Western 1
Ohio Northern ..... [1]1
Ohio Southern 1
Oklahoma (3 districts) 2
Oregon 2
Pennsylvania Middle 2
South Carolina 3
South Dakota 1
Tennessee Middle 1
Texas Northern 3
Texas Eastern 1
Texas Southern 4
Texas Western 1
Utah 1
Virginia Eastern 2
Virginia Western 2
Washington Eastern ..... ½
Washington Western 1½
West Virginia Southern ..... [1]1
Wisconsin Eastern 1
Wisconsin Western 1
Wyoming 1
Puerto Rico 3

[1]Plus 1 temporary.

Circuit:

1st 1
2nd 2
3rd 1
4th 3
5th 11
6th 2
7th 1
8th 1
9th 10
10th 1
D.C. 2

NEW BANKRUPTCY COURT SYSTEM APPROVED BY HOUSE

The House of Representatives February 1 voted 262 to 146 to establish a new federal court system with sole jurisdiction over bankruptcy cases. The judges would have Article III status.

However, it is questionable that the Senate will follow the House move, one which is opposed by the Judicial Conference and the Department of Justice.

When the bill, H.R. 8200, first came to the House floor last October, the House, in a preliminary vote, declined to create a new bankruptcy court system. However, the sponsors of the bill took the measure off the floor of the House and worked to obtain additional support for the bill.

The House-passed bill also would create a separate office of United States Trustee under the Attorney General. Both the Judicial Conference and the Department of Justice are opposed to this concept on the ground that it would create a conflict of interest.

As passed by the House, H.R. 8200 would make a series of technical changes in present bankruptcy procedures, many favoring debtors. For example, one provision would allow a debtor with a steady income to file a repayment plan with the court enabling payment of the outstanding debt over a three year period.

The Senate Judiciary Committee is not expected to take action on the House-passed bankruptcy bill until late in the Spring.

GUIDELINES FOR ACTIVITIES AND AFFILIATIONS OF CLERKS AND PROBATION OFFICERS TO BE ESTABLISHED

The Judicial Conference Joint Committee on the Code of Judicial Conduct has established a subcommittee to prepare guidelines pertaining to the activities and affiliations of clerks of court and probation officers.

The subcommittee, consisting of Judge Bernard M. Decker (N.D. Ill.), Chairman; Chief Judge Frank M. Coffin (CA-1); and Judge Edward T. Gignoux (D. Me.), is endeavoring to obtain the views and suggestions of clerks and probation officers as to proper guidelines.

With the assistance of the Administrative Office Divisions of Clerks and Probation, invitations have been extended to eight clerks of court and seven probation officers asking them to serve on two ad hoc advisory committees. These committees will, in turn, help the subcommittee formulate guidelines which will b considered in late March.

The guidelines which the subcommittee recommends will then be submitted to the Joint

Committee on the Code of Judicial Conduct at its meeting next summer.

The members of the ad hoc Clerks' advisory committee are H. Stuart Cunningham (N.D. Ill.), A. Marvin Helart (D. Wyo.), William H. Barry, Jr. (D. N.H.), Ben H. Carter (N.D. Ga.), Thomas F. Strubbe (CA-7), James E. Vandegrift (N.D. Ala.), and William K. Slate, II (CA-4). The members of the Probation Officers ad hoc advisory committee are Chester C. McLaughlin (W.D. Tex), Henry N. Milburn (D. Me.), William S. Pilcher (N.D. Ill.), Walter Evans (D. Ore.), Claude H. Huguley, Jr. (D. S.C.), Raymond H. Clark (S.D. Oh.) and Morris Kuznesof (S.D. N.Y.).

INTELLIGENCE ORDER REQUIRES COURT APPROVAL OF SOME DOMESTIC SURVEILLANCE

President Carter January 24 signed a sweeping Executive Order "to provide for the organization and control of United States foreign intelligence activities" which requires a "judicial warrant" in instances in which U.S. citizens are the target of domestic surveillance.

However, the Executive Order would allow the citizen to be the target of such activities if the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States citizen is an agent of a foreign power.

The collection techniques include electronic surveillance, television camera monitoring, physical searches, mail surveillance, and physical surveillance.

The full text of the Executive Order, number 12036, was published in the January 26 issue of the Federal Register beginning at page 3674.

SENATE PASSES NEW FEDERAL CRIMINAL CODE

After over six years of work, the Senate January 30 passed S. 1437, the Criminal Code Reform Act of 1977.

The bill codified or repealed some 3,000 statutes and created a Federal Sentencing Commission as an independent Commission in the Judicial Branch consisting of seven members, four appointed by the President and three by the Judicial Conference. The Commission will establish sentencing policies and practices that avoid unwarranted sentence disparities among defendants who have been found guilty of similar criminal conduct. This Commission will determine and promulgate guidelines for use by a sentencing court in determining the sentence to be imposed.

In addition, the bill would provide for fixed rather than indeterminate prison terms for most offenses.

The bill was passed by the Senate after liberals and conservatives worked out a compromise and sections which were most controversial were removed from the bill. However, the prospects of early action on the new Code in the House of Representatives are remote.

Representative James R. Mann, Chairman of the House Criminal Justice Subcommittee, said it was a "toss-up" whether the House will enact the Code this year. His Subcommittee has been holding informal briefing sessions on the provisions in the Senate bill for months.

House hearings on the bill are tentatively scheduled to begin in early March. (See the August 1977 issue of *The Third Branch* for a detailed analysis of the bill. However, the bill was substantially amended during floor debate last month.)

JAMES MACKLIN

JAMES MACKLIN NAMED A.O. ASSISTANT DIRECTOR

The Director of the Administrative Office of U.S. Courts, William E. Foley, announced that James E. Macklin, Jr. has been appointed Assistant Director of the Administrative Office for Program Management.

Prior to his appointment, Mr. Macklin headed the A.O. Criminal Justice Act Division for over two years since the Division was created in the fall of 1975.

In his new post, Mr. Macklin will be managing programs in the Administrative Office Divisions of Magistrates, Probation, Bankruptcy, Criminal Justice Act, and Clerks. He will be charged with full administrative responsibility for planning, developing, directing and coordinating all program activities of the five Divisions and the Equal Employment Opportunity Unit.

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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CHIEF JUSTICE PRESENTS STATE OF THE JUDICIARY ADDRESS TO ABA

In his State of the Judiciary address presented February 12 to the midyear meeting of the American Bar Association, Chief Justice Warren E. Burger asked the Association to focus its attention on the problem of the professional competence of lawyers practicing in the nation's courts.

The Chief Justice also pointed to other problems including the lack of any system to provide federal judges when needed by the federal court system, better utilization of jurors, use of compulsory arbitration and prison reform.

Here are extracts from the address. (The full text is available from the Federal Judicial Center Information Service.)

Judgeships. "We speak constantly of providing speedy justice, but if the present system—or rather lack of any system—for providing federal judges when they are needed is not changed, the objective of speedy justice will become empty rhetoric.... We can cope with that problem (absorbing, in a short period of time, an increase of nearly thirty percent in the number of federal judges) but I ask your help to develop some new method of providing additional judges when they are needed.... I believe the President and the Congress will be receptive to develop some sensible and workable bipartisan system to provide the required judges as they are needed."

Juror Utilization. "Some of our federal districts do much better than others, but courts must devise systems that will avoid the waste resulting from our casual attitude toward jurors.... Six-member juries in federal civil cases are now being used in all but a few federal districts and have proven successful."

Misuse of Witnesses. "Another source of criticism and frustration in both federal and state courts—and I believe legitimately so—comes from people called as witnesses. Hundreds of people experience the frustration of being required to present themselves in court on a given day and hour, on pain of contempt, only to be told the case has been postponed.... Experiences of this kind are the result of bad management, at best, or, at worst, the result of the manipulation of the system by irresponsible lawyers, or the apathy of judges who premit it to happen."

Abuse of Pretrial Procedures. "Another matter calls for study by judges and lawyers: For years there has been a growing volume of complaints by lawyers and judges, on the over-use and abuse of the pretrial procedures under the federal rules. The Federal Judicial Center has been studying this subject and considering what sanctions and remedies can be employed by judges to prevent abuses of the system."

Litigation Costs. "Our profession has a duty to keep justice within the reach of every citizen, and to do that the performance of the participants—lawyers and judges and the management of the courts—must be improved."

Trial Advocacy. "Another area is perhaps one of the most serious problems facing our profession... today. It is the professional competence of those lawyers who come into the courts. Here I emphasize not the competence of lawyers generally but those who seek to use the courts, which are provided at great expense by the public. Here again, the needs of the consumers must be kept in mind. If a case which could be tried in two or three days with competent advocates actually takes four, five or six days, someone must pay the cost. First we should see to it that those lawyers who come into the courts have at least the minimum acceptable competence.... Until we establish special standards for the right to appear in the courts, independent of admission to the Bar generally, we will not solve our problem.... I have never contemplated in any sense a Barrister-Solicitor division of our profession, as in England, but only a requirement of special training for those who seek to represent others in the courts."

Education. "Continuing professional education is, of course, equally applicable to judges and the advocates who appear in court.... In the federal system, for example, 94 percent of the federal judges active today have taken part in training seminars of the Federal Judicial Center."

Advocacy. "My position was and is that the lack of adequate training of lawyers for courtroom work is a serious problem—a serious problem—in the administration of justice. Recently, the Judicial Conference of the United States created a special committee to study this problem and to propose standards for admission to practice in the federal courts. That committee sent a questionnaire to every federal judge in the United States and 81 percent of them responded. Of those responding, 39 percent said that the problem of inadequacy of trial lawyers in federal courts was 'a serious problem.' "

Alternative Dispute Resolution. "But we must now turn... to explore more fully the utilization of arbitration as an alternative in large commercial conflicts and other claims, a procedure widely employed for so long in many other countries.... It is not clear whether that kind of procedure (exhausting arbitration methods before resorting to the courts)

MEMORIAL CEREMONIES HELD AT SUPREME COURT FOR MR. JUSTICE CLARK

Formal proceedings were held at the Supreme Court January 23 to memorialize Mr. Justice Tom C. Clark, who sat on the Supreme Court of the United States from 1949 to 1967.

Members of the Supreme Court Bar, as is the custom, first met at the Court to adopt a resolution eulogizing the Justice.

Solicitor General Wade McCree presided and turned the meeting over to Chief Judge Thomas E. Fairchild of the Seventh Circuit. Justice Clark was Circuit Justice for the Seventh from 1957 to 1967.

Addresses were heard by the hundreds gathered in the Great Hall. These were delivered by Clark Clifford, Esquire, Professor Charles Alan Wright, and Fred M. Vinson, Jr., Esquire. In eloquent language they praised the contributions of Mr. Justice Clark, pointing out at least four distinct careers—his career in the private sector, his career as a Government lawyer (the only Attorney General on record to have come up through the ranks), his career as an Associate Justice of the Supreme Court of the United States, and, finally, a very full career as a retired Justice, during which years he sat on the U. S. District Courts and all eleven of the U. S. Courts of Appeals while at the same time making enormous contributions in the area of judicial administration.

Following the action of the Supreme Court Bar, the gathering moved into the courtroom to formally present the resolution to the Supreme Court, to hear an address by Attorney General Griffin B. Bell, and a eulogy on behalf of the Court by the Chief Justice.

Mrs. Clark and other members of the Clark family received guests in the East and West Conference rooms following the ceremonies.

Pictured above are, L to R, Chief Judge Thomas E. Fairchild (CA-7), Supreme Court Clerk Michael Rodak, Jr., Professor Charles Alan Wright, and Solicitor General Wade H. McCree, Jr.

JUVENILE STANDARDS CONSIDERED

Agreement was reached at the February, 1978 meeting of the American Bar Association that final action on the adoption of juvenile justice standards would be taken at the Association's 1979 Mid-year meeting in Atlanta.

Chief Judge Irving R. Kaufman (CA-2) had urged consideration of the proposed standards at the annual meeting of the Association next August, but he accepted the compromise date. Chief Judge Kaufman is chairman of the American Bar Association—Institute for Judicial Administration Joint Commission which is sponsoring the standards project. The Joint Commission is comprised of experts in the field of juvenile justice including judges, lawyers, sociologists, and court administrators, penologists, and others.

The commission, after seven years of work and in consultation with four advisory committees and other persons throughout the country, completed a final draft of the proposed standards in twenty-three volumes plus a summary volume.

The purpose of the proposed standards is to offer a model code for a juvenile justice system for those states that are considering amending or revising their juvenile code.

(ADDRESS from page 4)

would be enforceable by sanctions imposed upon litigants who refuse to resort to arbitration."

Corrections. "We profess a high value for the individual, but giving each individual criminal defendant the most elaborate due process, the most expensive trial known anywhere in the world, and then casting the guilty ones into 19th century penal institutions is—to paraphrase an 18th century statesman—not simply wrong, it is stupid—and expensively stupid at that—and all of us pay the bill.... Our goal should be to develop positive, definite educational programs so that the prisoners will have a chance to leave correctional institutions somewhat better human beings than when they entered... and trained in a marketable skill. Then we must encourage employers to hire them. Correctional programs must be designed to encourage prisoners literally to *learn* their way out of confinement. Society must provide not just walls and bars but meaningful training for their re-entry to society.... Today, I therefore urge the Association to help develop a plan...for a national training facility along the lines of that great institution—the FBI Academy at Quantico, Va.—to train correctional personnel in modern procedures and methods as thousands of state and local police have been trained by the federal government."

ABA HOUSE OF DELEGATES ACTIONS

At the American Bar Association's midyear meeting in New Orleans, February 13-15, the House of Delegates considered and took action on a number of resolutions of interest to the federal judiciary. Of particular note were:

APPROVED

Fees. This resolution supported the adoption of legislation to authorize the Attorney General to prescribe by regulation fees now set by statute for the service of summons, writs, and other orders by the United States Marshal Service. The resolution called for Congress to increase fees, travel, and subsistence allowances for witnesses before and jurors serving in federal courts. The American Bar Association body further supported legislation to excuse prospective federal jurors from federal jury service on the grounds of distance upon a showing of individual hardship. Finally, the resolution supported legislation providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's federal jury service. (Res. 104)

Professional discipline. This resolution recommends the adoption of the Model Federal Rules of Disciplinary Enforcement by the Judicial Conference of the United States and by each federal court of the United States. According to an accompanying report, such rules are needed not only to forestall legislative interference, but also because federal discipline "is disorganized, nonuniform, in violation of due process, and detrimental to the reputation of the profession in the eyes of the public." (Res. 109)

Attorney fees. This resolution supports "the principle that reasonable attorneys' fees be included as costs recoverable by prevailing parties in more categories of civil litigation than present rules permit, when they would facilitate the use of legal remedies and services."

To that end, the American Bar Association urges the enactment of legislation to permit courts and administrative agencies, in the interest of justice, to award as costs reasonable attorneys' fees and other expenses of litigation from public funds to a private party who substantially prevailed against the federal Government as a named party in a civil action or administrative proceeding, where (a) the action results in a substantial public benefit or enforces an important public right and (b) the economic interest of the party is small in comparison to the cost of effective participation or the party does not have sufficient resources to compensate counsel. (Res. 129, as amended)

A more specific resolution was also passed supporting the award of attorney fees and costs to the prevailing party (other than the Government) in litigation involving "the redetermination, refund, or collection of any internal revenue tax." (Res. 131)

REJECTED

Diversity jurisdiction. In the face of claims by critics that federal court dockets are too overcrowded, and by opponents that important rights are at stake, the House of Delegates refused to endorse a resolution to abolish or in any way change diversity jurisdiction. (Res. 104a)

WITHDRAWN

The House of Delegates withdrew and took no action on a number of other resolutions. These included a call for an annual salary review for both the federal and state judiciary and revision in the present manner U. S. Magistrates are appointed.

REMARKS AVAILABLE ON CONSEQUENCES OF ALTERNATIVE SENTENCES

Federal judges need not be taken by surprise at what happens after sentencing. That is the thrust of a presentation by Messrs. Eldridge, Partridge, and Chaset, of the Federal Judicial Center staff, and delivered at the Sentencing Institute for the Second and Seventh Circuits convened at Morgantown, West Virginia last fall.

The remarks, entitled *The Consequences of Alternative Sentences: A Presentation,* have recently been released by the Judicial Center in the form of a paper as an aid to judges seeking more information on this critical subject.

The remarks describe the relationship between the formal sentence imposed by the judge and the subsequent treatment of the offender by the Parole Commission, the Bureau of Prisons and the probation office. While statutory and case law detail a number of the differences among alternative sentencing options, the policies and practices of the agencies charged with post sentencing responsibility create other consequences not regularly detailed in standard legal literature. It is the premise of these remarks that an appreciation of these consequences is necessary in the fashioning of appropriate sentences.

[Copies of the remarks are available by contacting the FJC's Information Service.]

STATE-FEDERAL

Missouri. Columbia, Missouri was the site selected for a meeting of Missouri's State-Federal Judicial Council last November. Four subjects were on the agenda for discussion:

(1) Abolition of Diversity, and Congressman Robert W. Kastenmeier's bill, H.R. 9622, which would transfer to the state courts many cases now tried in the federal courts purely because of the diversity of citizenship of the parties to the litigation.

(2) State advisory opinions relating to novel questions arising in federal cases.

(3) Administrative processing of prisoner complaints.

(4) Problems common to the state and federal courts.

New Jersey. In his recent State of the Judiciary address Chief Justice Richard J. Hughes (Supreme Court of New Jersey) included a section on cooperation with the federal courts.

Reported were: joint ceremonies to admit new members to the bar to practice in the state and federal courts; cooperation in resolving conflicting calendar commitments of trial lawyers; and meetings with three New Jersey Assignment Judges and Chief Judge Lawrence Whipple (Dist. Ct., D. N.J.) to determine whether the federal system of assignment of cases for trial would be adaptable in the New Jersey state courts.

In his 1977 Year-End Report, Chief Justice Burger commended the practice of state Chief Justices of making an annual report to their legislatures or their bar associations. This practice has now been adopted by over one-half of the state Chief Justices.

Mississippi. Judge William C. Keady (N.D. Miss.), a member of the Judicial Conference of the United States, made a report to the Conference last September on Mississippi's State-Federal Judicial Council. The Council is now chaired by Chief Justice Neville Patterson (Sup. Ct. Miss.) who was one of the conferees at the Federal Judicial Center's state-federal conference of appellate judges held in 1971. Federal judges currently members of the Council are Judges Charles Clark and J. P. Coleman.

Matters discussed at the last Council meeting were:

- Habeas corpus cases and the necessity for the state trial judges handling these cases to make and preserve a full record of the acceptance of pleas of guilty or nolo contendere by the state defendants;
- Adoption of a formula for establishing priorities in docket settings whereby the first case having a firm setting will control;
- Promotion of Law Day USA observances in state and federal courts;
- Agreement for the interchange of courtroom facilities whenever a need might arise;
- Adoption by state correction officials of a program to establish an administrative grievance procedure for inmates in the state penitentiary;
- Approval for enactment of legislation to provide for certification by a U. S. Circuit Court of Appeals or the Supreme Court of the United States to the Mississippi Supreme Court of unresolved questions of state law dispositive of the pending federal litigation.

Judge Keady reports that at their Council meetings representatives of the Mississippi State Bar are present and that they have made valuable contributions, especially through implementation of the Council's proposals. The State Bar has established a standing committee called Court Liaison and Judicial Administration whose goal is to bring to the attention of the state and federal trial judges problems encountered by members of the bar in such areas as pretrial conferences, discovery, and voir dire.

KANSAS COURT OFFICIALS DESIGN TECHNIQUE TO AVOID TRAFFIC OFFENSE WARRANTS

U.S. Magistrate Samuel Crow and Probation Officer Ralph DeLoach of the District of Kansas have devised a system to reduce the number of warrants issued in traffic cases involving military personnel.

By utilizing this system, some three hundred warrants issued yearly for nonpayment of traffic fines by military personnel stationed at Fort Riley, Kansas have been eliminated.

Many members of the military were unable to pay the traffic fines in full immediately or felt traffic tickets were inconsequential and there was a lack of military sanctions for military personnel convicted of misdemeanor offenses in civilian courts. As a result, it was necessary to issue arrest warrants since there were not any other realistic alternatives available to the Court.

After considerable research, the Probation Office, in conjunction with the Magistrate and the military, devised a plan through which military personnel who are unable to pay their traffic fines when they are assessed, may authorize a voluntary deduction from their pay. By using the military form DD139 which is a type of one-time allotment authorized for payment of a debt the Court has virtually eliminated the issuance of warrants for nonpayment.

In practice, all ticketed individuals are assembled in an auditorium near the Court and persons who wish to plead not guilty are asked to leave. Those

(See WARRANTS, page 8)

ao ocfjc calendar

Feb. 27-28 In-service Training for Probation Officers, Nashville, TN

Feb. 27-Mar. 4 Technical Training for Bankruptcy Court, San Juan, PR

Mar. 2 Committee on Bankruptcy Legislation, Washington, DC

Mar. 2-3 Court Management for Probation Officers

Mar. 6-8 Advanced Management Seminar for Probation Clerks, El Paso, TX

Mar. 6-8 Workshop for Docket Clerks, Hartford, CT

Mar. 6-10 Orientation Seminar for U.S. Probation Officers, Washington, DC

Mar. 8-10 Meeting of Circuit Executives, Washington, DC

Mar. 9 Time Management Seminar, El Paso, TX

Mar. 9-10 Judicial Conference of the United States, Washington, DC

Mar. 14-16 Advanced Management Workshop for Supervising Probation Officers, Washington, DC

Mar. 16-18 Seminar for Bankruptcy Judges, Los Angeles, CA

Mar. 20-22 Management Training for Supervisors, Indianapolis, IN

Mar. 21-23 Seminar for the Staff of the U.S. Magistrates, New Orleans, LA

Mar. 23 Time Management Seminar, Indianapolis, IN

Mar. 27-28 Technical Training for Bankruptcy Court, Jacksonville, FL

Mar. 27-29 Workshop for Docket Clerks, Cleveland, OH

Mar. 28-29 Time Management Seminar, Baltimore, MD

Mar. 30-31 Workshop for District Judges [Fifth (W) Circuit], Austin, TX

PERSONNEL

APPOINTMENTS

Pierre N. Leval, U.S. District Judge, S.D.N.Y., January 6

Robert S. Vance, U.S. Circuit Judge, 5th Cir., January 3

CONFIRMATION

A. David Mazzone, U.S. District Judge, D.Mass., February 7

NOMINATIONS

Almeric L. Christian, Judge of the District Court, Virgin Islands, January 20

Robert F. Collins, U.S. District Judge, E.D.La., January 26

Paul A. Simmons, U.S. District Judge, W.D.Pa., January 26

Jack E. Tanner, U.S. District Judge, E.&W.D.Wash., January 20

Ellen B. Burns, U.S. District Judge, D.Conn., February 15

Robert W. Sweet, U.S. District Judge, S.D.N.Y., February 17

DEATHS

Wilson Warlick, U.S. Senior District Judge, W.D.N.C., January 30

R. Blake West, U.S. District Judge, E.D.La., January 24

(WARRANTS, from page 7)

who wish to pay the fine are asked to leave the auditorium also and proceed to the Magistrate's Clerk while the remainder are advised that they may elect to voluntarily authorize a pay deduction for the purpose of paying the fine.

In the rear of the auditorium, members of the Probation Office's staff are available with partially completed forms which require only the Social Security number of the individual, the amount of the fine and the individual's signature.

THE THIRD BRANCH

VOL. 10, NO. 2 FEBRUARY 1978

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The Third Branch

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Bulletin of the Federal Courts

Vol. 10 No. 3 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center **MARCH, 1978**

JUDICIAL CONFERENCE HOLDS SPRING MEETING

The Judicial Conference of the United States held its Spring meeting at the Supreme Court March 9–10 and reendorsed, in principle, the objectives of legislation which would create a Commission within the federal judiciary to consider and deal with complaints against members of the Judiciary.

In addition, the Conference also:

- Endorsed the House-passed bill, H.R. 9622, which would abolish diversity jurisdiction in federal courts.
- Endorsed S. 2266, the bill which would revise the bankruptcy laws, now pending before the Senate Judiciary Committee. The conference voted to oppose the House-passed Bankruptcy bill, H.R. 8200, insofar as it would establish a separate Article III Court for bankruptcy cases and also create a separate office of United States Trustee in the Department of Justice.
- Disapproved, as a matter of policy, the practice of federal judges traveling abroad to take depositions of testimony in cases pending before them.
- Disagreed with certain substantive and procedural provisions of the Civil Rights Improvements Act, S. 35. The conference recommended against enactment of the bill in its present form, but took no position on the policy of extending coverage of the Civil Rights Act to suits by citizens

(See CONFERENCE, page 2)

HOUSE APPROVES DIVERSITY JURISDICTION BILL

By a vote of 266 to 133, the House of Representatives, February 28, approved H.R. 9622, the bill which eliminates almost all diversity jurisdiction in federal courts.

If enacted, the bill would divert some 30,000 cases yearly from federal to state courts. However, alienage jurisdiction in cases between U.S. citizens and those of a foreign nation or controversies between foreign nations and the United States, is retained. In addition, the bill also eliminates the amount in controversy requirement in federal question cases.

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings March 17 and 20 on counterpart legislation which would abolish almost all diversity jurisdiction in federal courts.

JUDGE AUBREY ROBINSON SELECTED FOR FJC BOARD

Judge Aubrey E. Robinson, Jr.

The Judicial Conference of the United States, at its Spring meeting this month, selected Judge Aubrey E. Robinson, Jr. as a member of the Board of the Federal Judicial Center.

Judge Robinson replaces Judge Marvin E. Frankel (S.D. N.Y.) whose term has expired.

Judge Robinson was appointed to the District Court for the District of Columbia on November 3, 1966. He is a graduate of Cornell University and Cornell Law School where he received his LL.B. in 1947. He served in the U.S. Army during World War II.

From 1965–1966 he was an Associate Judge of the Juvenile Court for the District of Columbia and in recent years he has served on the Judicial Conference Ad Hoc Committee on Court Facilities and Design. In 1977, he was appointed to the

(See ROBINSON, page 3)

(CONFERENCE, from page 1)
against state or local governments.

Attorney General Griffin B. Bell and Solicitor General Wade H. McCree, Jr. attended the Conference during the first day. The Attorney General discussed matters relating to the business of the federal courts and legislation of interest to the members of the Conference.

The Chief Justice and Chief Judge Cornelia G. Kennedy.

Chief Judge Cornelia G. Kennedy (W.D. Mich.), a member of the Conference, is the first woman district judge to serve on the Conference and only the second to serve as a member of the Conference. Judge Florence J. Allen (CA-6) was the first woman to serve on the Conference.

The Judicial Conference, in response to a Congressional request for comment, issued the following statement:

"Among the proposals currently pending in Congress, establishing methods for dealing with judicial conduct and disability, the Judicial Conference approves in principle the objectives of S. 1423, as embodied in the committee print of February 3, 1978.

"While fully cognizant of the Constitutional powers vested in the Congress and the Conference's obligation to respect those powers, in responding to Congressional requests for views on those bills, the Conference also believes it is obligated to express its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"Aside from the reservation expressed on the constitutionality of the removal feature, the Conference concludes that legislation placing authority in the Judicial Branch itself is both compatible with long-standing concepts of separation of powers and desirable in terms of maintaining the ultimate objective of an independent judiciary worthy of public confidence.

"We believe that S. 1423 should be altered in some respects. For example, we would recommend that subsection (c) (1) of proposed section 383 be amended to provide authority for a panel established by proposed section 382 to itself dismiss a complaint, in addition to recommending dismissal or further investigation. Further, we believe that S. 1423 should expressly reaffirm the authority of the judicial councils of the circuits to deal with inappropriate judicial conduct by formal or informal action, and suggest that this might be accomplished by allowing the circuit a reasonable period of time to act with respect to any complaint before that complaint is referred to the circuit panel pursuant to section 382 of S. 1423. Other changes not incompatible with the objectives of S. 1423 may be proposed.

"Because such legislation is a matter of great import to every federal judge, the Conference directs that:

- Copies of the February 3, 1978 committee print and accompanying report be transmitted to all judges with a request that their views be filed with the Administrative Office by April 10, 1978; and
- Those views be reviewed and an appropriate report prepared and transmitted to the Senate Judiciary Committee by May 1, 1978; and
- The Committee on Court Administration is instructed to continue its evaluation of the legislation, taking the responses of the judges in consideration, and to report its recommendations to the Congress as promptly as possible."

JUSTICE DEPARTMENT SEEKING RESEARCH ON FEDERAL SENTENCING

The Department of Justice recently issued a formal Request for Proposals to undertake research aimed at formulating sentencing guidelines for federal offenses.

The request was prepared by the Administrative Programs Management staff of the Department. It calls for sentencing research in anticipation of the enactment of the Criminal Code Reform Act of 1978 (S. 1437 and H.R. 6869) which would create a seven-member independent sentencing commission in the Judicial Branch. The main function of the commission will be to develop and promulgate guidelines to assist federal judges in sentencing.

The research proposal calls for the collection and analysis of data on federal offenders and other related data. Among the major tasks outlined in the proposal are: (1) the development and analysis of the logic underlying the structuring of alternative sentencing guidelines systems; (2) the collection of data on a sample of federal offenders sentenced since 1968 in order to analyze and assess the extent of sentencing disparity; (3) surveying federal justice personnel as well as individuals accused and convicted of federal offenses to

(See RESEARCH, page 3)

(RESEARCH, from page 2)
determine each subgroup's views regarding, among other things, what are appropriate and inappropriate sentences for federal offenses; and (4) surveying a sample of the U.S. adult population over the age of sixteen to generate data on regional, class, and other demographic differences in perceptions of appropriate sentences and the deterrent effect of alternative sentences for federal offenders.

The sentencing research is to be done under the guidance of an advisory board which will meet quarterly to review work progress and approve work plans. In addition to members of the Attorney General's Advisory Corrections Council, the research proposal requires that a representative of the Federal Judicial Center and such other members as the contractor feels are appropriate will serve on the advisory board.

The deadline for submission proposals in response to the Justice Department's request was the end of this month. The final report must be completed in eighteen months following the award of the contract.

(ROBINSON, from page 1)
Committee on the Administration of the Criminal Law. He is a member of the American Bar Association and the American Law Institute and had served as Chairman of the National Conference of Federal Trial Judges from 1973 to 1974.

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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JUDICIAL FELLOWS PROGRAM SEEKING CANDIDATES FOR 7th YEAR

The Judicial Fellows Program is seeking candidates for the 1979-80 year, the seventh year that the program has been in existence.

Highly talented young professionals are invited to apply for the program which is similar to the White House and Congressional Fellowships and attracts outstanding applicants with multidisciplinary backgrounds. At least two fellows will be chosen to spend 1979-80 observing and contributing to projects designed to improve judicial administration. In addition, the program is designed to attract individuals who will not only make a contribution during their Judicial Fellowship year but will contribute in the future to judicial administration.

The program is now entering its seventh year. It is administered by the National Academy of Public Administration. It was instituted through grants from the Ford Foundation, the Edna McConnell Clark Foundation, and the American Bar Endowment.

Fellowship applicants should have at least one post graduate degree, two years of professional experience, and, preferably, familiarity with the judiciary. Salary is negotiable based upon the salary structure of the Federal Judicial Center as well as the candidate's salary history. Fellowships begin in September and have a one year duration. The deadline for applications is November 6, 1978.

Information regarding application and literature describing the Program are available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543.

FEDERAL JUDICIAL CENTER BOARD REPORT ON LIBRARY STUDY APPROVED BY JUDICIAL CONFERENCE

At its March 9-10 meeting, the Judicial Conference of the United States approved a report submitted by the Board of the Center on the federal court library system, based on a study conducted at the request of the Conference.

The report contains 19 specific recommendations relating to federal court libraries, all aimed at modernizing procedures used to acquire and deliver law books, to speed up the process and to bring new techniques and equipment into the system. Also included is a recommendation for a new position in the Administrative Office for a professional to devote full time to handling federal court libraries and, more broadly, other research services.

The Administrative Office was asked to budget for local discretionary funds so that each federal judge would have available "a relatively small but definite amount" to purchase law books for official use directly from vendors.

In the belief it is now timely to reconsider the list of standard holdings for chambers and central libraries, the report recommends that a committee of the Judicial Conference review the lists currently being used by the Administrative Office to establish libraries for all judicial officials in the system.

William E. Foley, Director of the Administrative Office and a member of the Federal Judicial Center Board, said following the meeting of the Conference that he endorsed the Board's suggestions and that he hoped to immediately start implementation of at least some of the recommendations.

NATION'S PRESS DEBATES IMPROVEMENT OF TRIAL ATTORNEYS' COURTROOM PERFORMANCE

Following the Chief Justice's Annual State of the Judiciary Address to the American Bar Association February 12, newspapers throughout the nation have discussed the questions which he raised concerning the need to establish minimum requirements for trying cases in American courts.

The Chief Justice said, "To treat a bar certificate of admission to practice law as a passport to try any and every kind of a case in any court makes no more sense than to say that a medical school degree qualifies the holder to perform every kind of surgery."

Editorial comment was widespread and affirmative. Here is a sampling from major newspapers:

However, this should not be an argument of percentages, but rather of remedies. . . . Various remedies have been put forth, such as greater use of apprentice-style law school teaching, private law firm clinics, and second bar examinations to qualify specifically for trial practice. Members of the bar . . . would do better to explore these and other methods of improving the profession than to argue over the exact percentage of incompetence among lawyers.—***The Portland Evening Express,*** **Portland, Maine (February 15, 1978)**

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The Chief Justice is right in contending that a license to practice law in an office should not necessarily be a license to mangle cases in court. The idea that the lawyer is one of the few remaining generalists who can handle anything has been overwhelmed by the law's own complexity. The trouble with incompetence is that when it exists the victim is rarely the lawyer or the court, but rather some individual (or corporate) victim who may not even realize what happened.—***The Washington Post,*** **Washington, D.C. (February 16, 1978)**

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Burger's point is that young attorneys fresh out of law school aren't ready to take on major trial work, any more than newly minted M.D.s are prepared to perform open-heart surgery. More training is needed. We hope the bar association will come to see the wisdom of Burger's position, and take appropriate action.—***The Daily News,*** **New York, New York (February 14, 1978)**

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Actually, the percentages are not, or should not be, the issue. Regardless of the correct rate of incompetency, Mr. Burger has identified and publicized a weakness that should be treated. And his criticism was accompanied by a creditable remedy. He proposed once again that new lawyers not be permitted to try cases until they had been additionally certified for that speciality through further demonstration of the special skills required.—***The Salt Lake Tribune,*** **Salt Lake City, Utah (February 14, 1978)**

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Detroit lawyers who are steaming over Chief Justice Warren Burger's estimate that 50 percent of U.S. trial lawyers are unfit to represent their clients might be even madder if they knew how many local judges agree . . . One opinion: "I'd say that most of the lawyers I know are competent to handle most legal matters. But when it comes to trying a complicated law suit in court, Justice Burger understated the problem."—***The Detroit Free Press,*** **Detroit, Michigan (February 16, 1978)**

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We'll duck the argument about the approximate percentage of the inadequate or incompetent among trial lawyers. We have them in all lines of work, including newspapers and judges. Mr. Burger talks about improving judges' training too. The point here is better performance in what is often a rough game lawyers play.—***The Evening Bulletin,*** **Philadelphia, Pennsylvania (February 15, 1978)**

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William B. Spann, Jr., ABA President, called Burger's evaluation "grossly disproportionate," but conceded that perhaps 20 percent of trial lawyers are unqualified . . . He (the Chief Justice) replied, "If . . . 20 percent are incompetent, we ought to be doing a great deal more about it than we have up till now." That has been the Chief Justice's essential point all along, and the ABA should meet his criticism for what it is worth.—***The Los Angeles Times,*** **Los Angeles, California (February 16, 1978)**

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Burger has been hammering away at this theme—and the larger theme of more efficient judicial procedures—for years, even before he became Chief Justice. The consumers of justice—the public—have the right to expect that the reforms he preaches become reality.—***The San Francisco Examiner,*** **San Francisco, California (February 16, 1978)**

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Chief Justice Warren E. Burger hit some ultra-sensitive nerves when he said that only about half of the lawyers are qualified to represent their clients in court. The wonder of it is that it has taken so long for someone in such a high place to say it.—***The Kansas City Times,*** **Kansas City, Missouri (February 23, 1978)**

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One would hope that the chief justice of the United States would exhibit "judicial restraint" not only on the bench but in all his public utterances. It does not enhance the prestige of the Supreme Court for any of its nine members, and particularly the presiding justice, to verbally "shoot from the hip" or to make unsubstantiated allegations. . . . For ourselves, we strongly applaud Chief Justice Burger's record on the Supreme Court; he takes a view of the Constitution that we think is sound and in the best interest of the nation. But his statements to which we have referred do not do credit to the Supreme Court or to its top justice. A bit more "judicial restraint" off the court might well be in order.—**Times Dispatc' Richmond, Virginia (February 14, 197**

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The traditional remedies for failure of advocacy and of justice are appellate review and professional disciplinary procedures. The former is cumbersome. The latter is in urgent need of strengthening. A third remedy which is gaining deserved popularity is that of mandatory continuing professional education—among all lawyers. That principle should be considered on a national as well as a state-by-state basis.—***The Philadelphia Inquirer,*** **Philadelphia, Pennsylvania (February 15, 1978)**

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Burger is asking that lawyers be qualified as competent before some poor client's fate or bankroll is placed in their care in a court of law. Seems reasonable enough—unless you're a lawyer who believes in image-building. Like any other trade, the law business has to have its statistical share of bunglers and incompetents. It would seem to be in the interests of its practitioners to upgrade things.—***The Philadelphia Daily News,*** **Philadelphia, Pennsylvani (February 14, 1978)**

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First, it should be noted that [the Chief Justice] referred not to all lawyers, but only

to trial lawyers, who make up about 10 percent of the 375,000 active U.S. practitioners. And then only part of the trial bar. Some past news stories failed to make that distinction.—***The Minneapolis Star,*** **Minneapolis, Minnesota (February 15, 1978)**

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The call for standards for trial lawyers only touches the surface of the deeper and even more divisive issue confronting the legal profession: specialization. Many lawyers develop specialties—tax law, divorce law, patent law to name a few—but there are, with few exceptions, no standards set in these areas.... The American bar has generally responded well to demands on the legal profession. Lawyers have an excellent opportunity to reverse this negative perception by adopting not only the minimum standards for trial lawyers called for by the Chief Justice, but also by carrying on work to establish standards for the entire profession.—***The Evening Journal,*** **Wilmington, Delaware (February 14, 1978)**

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The ABA should launch a major study of the idea of certification and use its tremendous political clout to set up firm standards.—***The Charlotte Observer,*** **Charlotte, North Carolina (February 15, 1978)**

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Regardless of the level of competence among the nation's trial lawyers, it's refreshing to see the Chief Justice...take an interest in lower courts and the quality of legal services provided in them. The issue is not precisely what percentage of the lawyers who represent clients in court are qualified to do so; it's what to do about those who aren't.—***Newsday,*** **Garden City, New York (February 16, 1978)**

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Burger is more right than he is wrong in his outspoken views of the legal profession and the court system. Anyone who has endured the delays, and shouldered the costs, of a court action has reason to wonder if justice is not only blind but bungling.... A poll would show that most Americans overwhelmingly share his views.—***The Arizona Republic,*** **Phoenix, Arizona (February 14, 1978)**

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Once the ABA gets done being mad, it should explore the Chief Justice's idea. He compares lawyers to general practitioners in medicine and says that before they get into court they should have the legal equivalent of a surgeon's training...That kind of system here would enable lawyers to specialize, sharpen their skills in one phase of the system and (presumably) do a better job.—***The Register-Guard,*** **Eugene, Oregon (February 15, 1978)**

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The performance of lawyers in and out of courtrooms is of serious concern to all "consumers" of legal assistance. The performance of lawyers in courtrooms is also of special concern to the general public. The public's tax dollars are being wasted when the courts are burdened by lawyerly ineptitude.—***The Baltimore Sun,*** **Baltimore, Maryland (February 15, 1978)**

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The Chief Justice has spoken on behalf of the consumer. Trial work is a difficult and intricate work involving various skills and proficiencies. They are not the instant gift of every person who has passed a state bar examination, and the lawyers know it themselves.—***The Home News,*** **New Brunswick, New Jersey (February 14, 1978)**

MAGISTRATES DISPOSE OF 150 CASES IN UNIQUE "CRASH" PROGRAM

In a unique "crash" program, three part-time magistrates traveled to Little Rock, Arkansas recently to dispose of some 150 cases which had been on file for more than one year.

The magistrates, Richard W. Peterson (S.D. Iowa), William Walker and Ned Stewart, Jr., (W.D. Ark.), spent about three months holding pretrial conferences to prepare the cases for full hearings before judges of the Eastern District of Arkansas.

All the cases in the program were civil cases and included negligence, insurance, alleged racial discrimination, tax and admiralty causes. The three visiting magistrates divided the cases among themselves for pretrial, each taking about 50 cases.

The cases were then sent for hearing on a pretrial schedule of approximately two weeks span with a typical court day assigned four to five cases. The magistrates used the following guidelines to insure expeditious handling of the cases:

- In instances in which additional discovery was required, a close limitation of the time span for additional responses was imposed.
- If additional time was required for the filing of additional briefs, exhibits, and witness lists, specific filing dates were set.
- In a number of cases, unresolved discovery requests or motions which had not been ruled upon appeared. The case was referred to the local judge to whom the case had been assigned when it was first filed.
- In referring outstanding matters to a local judge for disposition, the magistrates found that the judge's law clerks were particularly helpful. With their assistance, a procedure was developed through which the law clerks secured the ruling of the judge and then prepared the court order or, if required, time was arranged for presentation of the question to the court by counsel.

Magistrate Peterson, in his report on the "crash" program, pointed out the following conclusions and recommendations:

1. Coordination between the judge and the magistrate is of greatest importance in developing the pretrial notice requirements and determining the manner of disposing of outstanding motions and discovery matters.
2. There appears to be a basic psychological value in having out-of-district magistrates conduct the pretrial hearings with local counsel.
3. About one-half hour is sufficient time for pretrial in the normal case. Also, the assistance of deputies from the Clerk's staff is crucial to the case, not only at the hearing itself when there should be a courtroom clerk for the purpose of taking minutes of the hearing, but also to maintain a log of cases and help to control them. The deputy becomes familiar with the cases handled by the magistrate and can deal with them very effectively.

ADMINISTRATIVE OFFICE PRESENTS REPORT ON 1977 FEDERAL COURT ACTIVITY

The Director of the Administrative Office of United States Courts, William E. Foley, presented a brief summary of the activities of the courts of appeals and district courts for the calendar year 1977 to the Spring meeting of the Judicial Conference.

Here are pertinent excerpts from his report.

U.S. Courts of Appeals

During the twelve month period ending December 31, 1977, the pending caseload in the U.S. Courts of Appeals rose 5.1% compared to a year earlier despite a substantial 7.4% rise in cases closed. Although newly docketed cases increased by only 61, or 0.3% compared to the same period a year ago, the 18,916 filings exceeded the 18,128 terminations by 788, pushing the current pending figure for December 31, 1977, to 16,276.

U.S. District Courts

Civil filings in the U.S. District Courts rose to 135,628 during the twelve month period ending December 31, 1977, or 5.3% above the number filed during the comparable period last year. Terminations increased 7.4% over the previous year but fell short of filings by 14,180 cases. This resulted in a record high civil pending caseload of 163,798 on December 31, 1977, 9.5% higher than a year earlier.

The 5.3% rise in civil filing during the twelve month period ending December 31, 1977, was due in large part to a 52.2% increase in real property action. This rise was a result of land condemnation cases which rose 163.9% from 2,249 to 5,936 (most of the rise occurred in the Southern District of Florida).

Social Security, other than "Black Lung", showed a substantial increase of 33.1%, while "Black Lung" filings declined 66.2% from 4,171 in 1976 to 1,411 cases this year. Prisoner petitions were also up as 9.8% more cases were filed than in the previous year. This included a 24.8% increase in motions to vacate sentence and a 22.8% rise in prisoner civil rights.

There were several other major categories which showed increases in filing activity during the twelve month period. The most significant of these was a 14.2% increase in tax suits and a 13.6% increase in protected property rights litigation which includes copyright, patent and trademark cases. Personal Injury cases were up by nearly 4% and civil rights litigation increased a modest 3.2%.

Other than "Black Lung" the only major litigation classification to exhibit a substantial decrease in filings during the twelve month period was I.C.C., most of which involve freight damage. These cases fell from 3,316 to 2,656—a drop of nearly 20%.

Criminal Cases

During the twelve month period ending December 31, 1977, criminal case filings in the district courts dropped to 38,397 or 8.4% below the number filed during the comparable period last year. Case terminations also decreased, by 7.6%, but exceeded filings by 2,371 cases. This resulted in a December 31, 1977, pending figure of 16,96 cases, 12% below the pendi caseload of December 31, 1976.

The overall change in criminal filings was a result of decreases in nearly every major offense classification. Filings for auto theft continued to decline as nearly 28% fewer cases were filed than in the previous year. Drug law violations also exhibited a substantial decrease this year as 24.5% fewer cases were filed. Overall robbery filings dropped by 13% as bank robbery fell by more than 200 cases compared to last year.

The decreases in case filings by major offense categories over-shadowed the few increases which did occur. However, there were a few offenses which showed substantial increases during this twelve month period.

Forgery and counterfeiting prosecutions rose from 3,641 3,938—an increase of mc than 8%. Weapons and firearms filings rose by nearly 300 or 10.5% above the number from

The Circuit Executives held their annual meeting this month in Washington. Pictured above in the Administrative Office Conference Room are (seated, L to R) Charles E. Nelson (CA-DC), R. Hanson Lawton (CA-8), FJC Director A. Leo Levin, and Collins T. Fitzpatrick (CA-7). Standing are (L to R) James A. Higgins (CA-6),William B. Luck (CA-9), Robert D. Lipscher (CA-2), Samuel W. Phillips (CA-4), Robert J. Pellicoro, Chief, A.O. Clerks Division, Thomas H. Reese (CA-5), William A. Doyle (CA-3) Robert H. Hartzell, Chief, A.O. Administrative Services Division, and Paul R. Tuell, Chief, A.O. Procurement and Property Management Branch. (Not pictured: Emory G. Hatcher (CA-10) who attended the meeting but was not present when the photograph was taken.)

last year. Fraud also showed increased filings this year by nearly 6%.

Bankruptcy Cases

During the twelve month period ending December 31, 1977, 208,433 bankruptcy cases were filed, a decline of 8.1% compared to the same period a year ago. Terminations also dropped, 7%, but exceeded filings by 17,587 cases. This resulted in a pending caseload of 245,557 cases on December 31, 1977, 6.7% lower than the 263,144 cases recorded on December 31, 1976.

Petit Juror Utilization

The number of petit jurors available to serve on jury trials decreased 1.5% from 587,778 in 1976 to 578,802 in 1977. There was a corresponding decrease of 2.2% in the number of jury trial days with 29,337 in 1977 compared to 29,991 in the previous year. While the rcentage of jurors selected or rving remained virtually unchanged at 60.5%, the percentage of jurors not selected, serving or challenged increased to 24.2% compared to 23.7% in the previous year. The Juror Usage Index exhibited a slight increase from 19.60 in 1976 to 19.74 in 1977.

Grand Juror Utilization

In 1977 there was a slight increase in the number of grand jury sessions and the number of grand jurors attending sessions. The number of grand juries in existence, however, decreased from 650 in 1976 to 630 in 1977. On the average, 19.8 jurors attended each grand jury session which lasted an average of 5.29 hours.

Federal Probation System

The Federal Probation System ɔerienced increases in both ɹrsons received for supervision and persons removed from supervision during the year ending December 31, 1977. The 46,990 persons received was nearly 8% above the number recorded in the previous year while the 46,164 persons removed was higher by nearly 3%. This combination resulted in a supervision caseload of 65,105 persons on December 31, 1977, 1.3% above the number recorded one year earlier.

U.S. Magistrates

Total matters handled by U.S. magistrates nearly reached the 300,000 mark during the year ending December 31, 1977, as activity increased by 15% over the previous year. This increase was due primarily to the 35.8% rise in additional civil duties and the 25.9% increase in additional criminal duties.

Trial jurisdiction cases also showed a substantial rise as nearly 12% more defendants were disposed of than in the previous year. The overall increase in matters handled by magistrates and especially the increase in additional duties reflects the growing trend in using magistrates to assist district judges in the disposition of the backlogged dockets of the district courts.

Federal Public/Community Defenders

Cases opened by Federal Public Defenders during the twelve months ending December 31, 1977, increased by 6% over the number opened last year. This was accompanied by an 11.3% increase in the number of cases closed and resulted in a decrease of 10.6% in the pending caseload for these offices.

The Community Defender organizations also experienced increases in case openings and case closings of 5.2% and 7.5%, respectively, and a decline of 9.7% in their pending caseload.

TEXAS COURT USING MULTIPLE VOIR DIRE SAVES $21,140

The U.S. District Court for the Western District of Texas, El Paso Division, saved $21,140 during calendar year 1977 by using multiple voir dire, the technique of selecting several juries simultaneously for use during trials scheduled for a predetermined period.

Judge William S. Sessions said the statistics concerning the use of multiple voir dire were kept solely for the purpose of establishing whether or not the Court was truly saving money as well as making the best possible utilization of juror time in the process.

He pointed out that Judge John H. Wood, Jr., who is in El Paso only one week each month, and is assigned 25 percent of the El Paso civil and criminal docket, was able to effect a savings of $3,360 for 1977.

"If only one out of four active District Court judges was persuaded to utilize the multiple voir dire, the monetary savings alone would be impressive," Judge Sessions said in a letter to Chief Judge Reynaldo G. Garza (W.D. Tex.). Judge Garza, an advocate of multiple voir dire, has discussed the technique at FJC Seminars for Newly Appointed District Judges.

"My use of multiple voir dire is not premised upon money savings alone, but upon what I perceive to be the proper orderly processing of cases on the docket and facilitating the maximum use of juror time," Judge Sessions continued. "Ultimately it allows the court, the attorneys and the juror to plan their activity for an entire month, avoiding the unreasonable waste of time and money by lawyers and their clients, and, best of all, the avoidance of the 'trailing' docket where other cases are required to 'wait in the wings.'"

AO/FJC calendar

Mar. 28–29 Time Management Seminar, Baltimore, MD
Mar. 30–31 Workshop for District Judges [Fifth (W) Circuit], Austin, TX
Apr. 3–5 Management Training for Supervisors, Toledo, OH
Apr. 3–5 Workshop for Docket Clerks, Atlanta, GA
Apr. 7–8 Workshop for District Judges (CA–2), Hartford, CT
Apr. 10–11 Workshop for Personnel Clerks, Washington, DC
Apr. 10–12 Management Training for Executives, New York, NY
Apr. 10–13 Crisis Intervention Seminar for Probation Officers, Nashville, TN
Apr. 11–13 Management Training for Supervisors, Portland, OR
Apr. 12–14 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Denver, CO
Apr. 14 Time Management Seminar, Portland, OR
Apr. 17–19 Seminar for Assistant Federal Defenders, New Orleans, LA
Apr. 17–19 Advanced Management Seminar for Probation Clerks, Minneapolis, MN
Apr. 17–19 Advanced Seminar for Chief and Supervisory Pretrial Services Officers, Washington, DC

PERSONNEL

RESIGNATION

William H. Webster, U.S. Circuit Judge (CA–8), Feb. 22

DEATH

Willis W. Ritter, U.S. District Judge, D. Utah, March 4

NEW FJC PUBLICATIONS AVAILABLE:

Order of Summation in Civil Cases. FJC-SP-77-7. Legislative History of Observation and Study. FJC-SP-77-8.

Apr. 23–26 Fifth Circuit Conference, New Orleans, LA
Apr. 24–26 Seminar for Bankruptcy Clerks, Kansas City, MO
Apr. 24–26 Management Training for Supervisors, Houston, TX
Apr. 25–27 Seminar for Chief Probation Office Clerks, Memphis, TN
Apr. 27–29 Seminar for Bankruptcy Judges, Kansas City, MO

EQUAL JUSTICE UNDER LAW
April Broadcast Dates

Public Broadcasting Service will re-air the two *Equal Justice Under Law* specials the two Sundays prior to Law Day, May 1, 1978. Check your local listings for time.

Mr. Chief Justice, Sunday, April 23, 1978. Dramatization and comment on Marbury v. Madison, McCulloch v. Maryland, and Gibbons v. Ogden.

The Trial of Aaron Burr, Sunday, April 30, 1978. Defendants' rights and presidential privilege in the context of the Aaron Burr treason trial.

THE THIRD BRANCH
VOL. 10, No. 3 MARCH 1978

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(3)

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Bulletin of the Federal Courts

Vol. 10 No. 4 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center **APRIL, 1978**

ADVOCACY STUDY RELEASED

A major federal study just released reveals that 40 percent of federal trial judges believe that the quality of advocacy in their courts is a serious problem. In the view of federal judges presiding at trials, inadequacy was found in at least one of the lawyers out of every six trials rated by the judges.

The study, *The Quality of Advocacy in Federal Courts,* was designed and conducted by the Federal Judicial Center and included judges' evaluation of 2800 courtroom performances of lawyers in federal trial and appellate courts. Responses were obtained from 80 percent of all federal district and circuit judges, as well as a national sample of lawyers practicing in federal courts. Nearly 500 judges responded to the Center's questionnaires.

As a result of the study, a committee of the Judicial Conference of the United States is developing proposed standards for admission to practice in federal trial courts.

The committee chairman, Chief Judge Edw. Devitt of the Minnesota federal district court, presented a progress report on the results of the study to the Judicial Conference at its spring meeting on March 9th.

Judge Devitt said that in addition to the federal judges who were surveyed, over 1,000 lawyers also responded to questionnaires and that they closely agreed with the judges. Both lawyers and judges agreed that the major effect of inadequate representation at trial is the failure to protect client interests. At the appellate level, the major effect of inadequate performance was reported to be unnecessary burdens on judges and staff.

The study revealed that 8.6 percent of the trial lawyers performances were rated inadequate by the judges, 16.7 percent were rated as "adequate but no better" while about 21 percent were regarded as "first rate" and about 47 percent as "first rate" or "very good."

In the district courts, the study showed that the percentage of performances rated as inadequate is higher among young lawyers than among older, higher among those who have not had previous federal trial experience than among those who have, and higher among those who practice alone than among those in group practice.

(See STUDY, page 2)

Sir Garfield Barwick

Sir Garfield Barwick, The Chief Justice of Australia, makes a point while meeting with FJC Director A. Leo Levin during his second visit to the Center on March 29.

JUDGESHIP BILL CONFERENCE COMMITTEE APPOINTED

The Senate and House of Representatives have appointed conferees to work out the differences in the two omnibus judgeship bills passed by both Houses.

However, there has not been any meeting scheduled yet and it is questionable if there will be any final action on the bills until after the Senate debate on the Panama Canal treaties is concluded.

(See JUDGESHIP, page 2)

(STUDY, from page 1)

In the courts of appeals, the study did not reveal convincing evidence of similar relationships. Moreover, in the district courts, the study did not find that inadequate performances were heavily concentrated in any identifiable groups of lawyers, hence there is no suggestion that the problem of inadequacy can be attacked by focusing on one age group or one form of law practice.

The skills in which trial judges believe there is the greatest need for improvement are proficiency in the planning and management of litigation and technique in examining witnesses.

The skills in which appellate judges believe there is the greatest need for improvement are ability to set forth the important facts and issues in briefs in a comprehensible manner, judgment in identifying points on which to focus in briefing, skill in making distinctive use of oral argument, mastery of the law important to the particular case, and mastery of the record from the lower court.

Among the remedies that are being considered are a federal court bar examination, improved and expanded training in law schools, requirements for a minimum amount of trial experience before full admission to the federal district court, continuing legal education, recertification of both knowledge and experience requirements, and peer review.

Judge Devitt said the committee expects to present its tentative recommendations to the Judicial Conference within the next year and following that, the committee will hold regional public hearings to afford interested parties an opportunity to express their views on the proposed recommendations.

The committee consists of twenty-four members and three law student advisers. Members include legal educators, practicing lawyers and federal judges from the trial and appellate courts.

(JUDGESHIP, from page 1)

The two bills differ primarily in side issues rather than the total number of judgeships which they would create. The Senate bill, S. 11, would create a new Circuit Court in the South by splitting the existing Fifth Circuit while the House bill, H.R. 7843, calls for the President to promulgate merit selection standards prior to appointing any new district judges.

CCPA SCHEDULES JUDICIAL CONFERENCE

Chief Judge Howard T. Markey of the United States Court of Customs and Patent Appeals announced that the Court will hold its fifth Judicial Conference in Washington on May 18.

In addition to members of the Court, members of the Patent and Trademark Boards of Appeal and the International Trade Commission, officials of the Treasury, Justice and Commerce Departments, United States Customs Service and members of the Bar have been invited to attend.

Among the topics which will be discussed are patent and trademark litigation from the viewpoint of the judges of the Court, the year in review: CCPA patent and trademark current developments, and the question whether the antidumping act is a fair approach to unfair trade or an unfair approach to fair trade.

FBI Director William H. Webster will address the Conference.

For information regarding registration, contact George E. Hutchinson, Clerk, U.S. Court of Customs and Patent Appeals, 717 Madison Place, N.W., Washington, D.C. 20439.

NEW YORK COURT LAUNCHES ADVOCACY TRAINING PROGRAM FOR LAW STUDENTS

Chief Judge David N. Edelstein (S.D. N.Y.) announced that his Court has begun a Special Training Program for senior law students attending law schools in his District.

Participating law firms will agree to hire at least one student who is in his or her senior year in law school or to hire students on a ratio of one student for each twenty litigators working in the firm. The students will be selected on the basis of recommendations of the dean of the particular law school or someone designated to act in the dean's behalf.

A committee of judges and lawyers will review recommendations of the participating law schools and give special attention to the law student's interest and aptitude for litigation in selecting a assigning the student to participating law firm.

Each law firm will agree that the law students selected to participate in this program will be given the opportunity to work with and under the direction of an experienced litigator in the preparation and trial of cases, ensuring that where possible the student be allowed actual time in court.

The special training program will be distinct from the law firms' current utilization of law students as summer associates and winter law clerks. The participating firms will commit themselves to the express mandate of this program—the training of future litigators.

Therefore, the participating law students should be given assignments designed to maximize the litigation traini envisioned by the spec training program. The participating law firm will make no advance commitment to hire the student upon graduation.

(See ADVOCACY, page 3)

(ADVOCACY, from page 2)

Chief Judge Edelstein said t each district judge in his trict has been encouraged to nire one law student who is finishing his senior year in law school as a law clerk on a part-time basis and the Court is considering a local rule which would allow law students to appear in Court. The rule will be broad enough to include students who participate in other clinical programs such as those of the Legal Aid Society and the Office of the United States Attorney General for the Southern District of New York.

Chief Judge Edward J. Devitt, who is chairman of the Judicial Conference's Committee to consider standards for admission to practice in the federal courts, upon learning of the program, wrote Chief Judge Edelstein of his approval and commented, "I like all aspects of your plan but particularly the ne getting the principal gation firms to hire third-year w students to work under experienced courtroom litigators. I agree with you that *experience* is the key to making a good courtroom advocate. You deserve credit for instituting this wise move."

In 1968, the future Chief Justice of the United States, Warren E. Burger, in his continuing efforts to improve the advocacy bar, observed: ". . . the best, if not the only, way to learn to try a law suit is to watch a skilled professional do it and to work with and under this direction in the process, preparation, and trial of cases in the courtroom."

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H treet, N.W., Washington, D.C. 20005.

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Blueprint for the Future

WILLIAMSBURG CONFERENCE ON THE JUDICIARY

After almost two years of planning, the National Center for State Courts last month held its Conference on the Judiciary, referred to as "Williamsburg II" because it was considered a follow-up of the first Williamsburg Conference on the Judiciary held in 1971.

In addition to members of the judiciary, other disciplines were represented, including businessmen, court administrators, representatives of the press and law professors. An international flavor was brought to the conference through the participation of the Right Honorable Lord Diplock, Lord Chief Justice Widgery and Master I. H. Jacobs—all from England. Australia was represented by Sir Garfield Barwick, their Chief Justice, and Mr. Justice Dennis Mahoney of the Supreme Court of New South Wales; Canada through attendance by their Chief Justice, the Right Honorable Bora Laskin; and from Scotland Lord Emslie.

Ten workshops individually took up discussions on papers prepared by six task forces: Public Image of the Courts, Courts and the Community, Courts and the American System of Government, Internal Organization and Procedures of the Courts; International Models for Court Improvement and Implementation of Court Improvements.

The discussions brought forth a variety of concerns among the state judges for the operation of their courts and the delivery of justice to their citizens.

Of particular interest was the publication of the survey on the courts, and the results of what the public thinks about their operation as well as the judges and the lawyers who are professionally engaged in the work of the courts. The survey was done by the Yankelovich, Skelly and White firm. Alfred Friendly, the task force chairman for this subject, addressed the plenary session and introduced Daniel Yankelovich who, together with Arthur H. White of that firm, explained how the survey was conducted.

The highlight of the meeting was the dedication of the new headquarters building for the National Center for State Courts, preceded by an address by Chief Justice Burger, who commended the work of the State Center and the state judges who since 1971 have dedicated their efforts to bringing this organization into being.

SENATOR EASTLAND RETIRING SENATOR KENNEDY TO HEAD JUDICIARY COMMITTEE

Mississippi Senator James O. Eastland announced that he will retire effective January 3, 1979, thus allowing Massachusetts Senator Edward M. Kennedy to assume the Chairmanship of the Senate Judiciary Committee.

Senator Eastland was elected to the Senate in 1943 and has served as Chairman of the Committee since March 2, 1956.

James A. McCafferty

McCAFFERTY APPOINTED CHIEF, A.O. STATISTICAL ANALYSIS AND REPORTS DIVISION

Director William E. Foley of the Administrative Office of United States Courts has appointed James A. McCafferty as Chief of the Statistical Analysis and Reports Division.

The Division provides the status of the dockets of each court; prepares, each quarter, statistical data and analyses of the judicial business of the courts; prepares supporting statistics and forecasts for other Divisions of the Administrative Office. The Division also provides the statistical and analytical expertise required for handling legislative impact statements, workload statements and for general statistical inquiries by persons seeking judicial statistical information.

This Division is divided into two branches. The Statistical Branch enters statistical information furnished by the courts into mini-computer terminals while the Analysis and Reports Branch handles the manual reports submitted by the courts which are analyzed and eventually become part of the reports prepared by the Branch.

Currently, the Division processes over a million and a half separate statistical documents yearly including wiretap reports, magistrate reports, juror utilization forms, matters and cases under advisement and cases under submission, visiting judge reports, reports regarding three-judge courts, passports and public defender reports.

Mr. McCafferty is a career employee of the Administrative Office. Prior to his appointment, he was Chief of the Operations Branch of the Administrative Office, Division of Information Systems.

Before he joined the Administrative Office, he was a criminologist in the Bureau of Prisons Research Division from 1951 to 1963.

SENTENCING PROVISIONS OF PROPOSED NEW CRIMINAL CODE ANALYZED

The Probation Division of the Administrative Office of United States Courts has prepared a detailed analysis of the sentencing provisions of the proposed new federal criminal code, S. 1437, which was passed by the Senate January 30.

The bill has been referred to the House Judiciary Subcommittee on Criminal Justice which is holding hearings on the measure.

Here is the analysis prepared by the Probation Division.

The bill requires the probation officer to make a presentence investigation and file a report with the court under the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure. Rule 32(c) has been amended to require that the report contain, in addition to the information presently required, information about the category of offense and the category of defendant under guidelines and policy statements established by a sentencing commission. Further, the report must contain the probation officer's estimate of the range of the sentence established by the sentencing commission for such an offense committed by such a defendant. Finally, the report must contain the probation officer's opinion regarding any aggravating or mitigating circumstances which indicate a sentence above or below guidelines established by a sentencing commission. The disclosure provisions of Rule 32(c) have been broadened to require that the report, including the probation officer's recommendation as to sentence, be disclosed to the defendant or his counsel if represented.

The section establishing discretion conditions of probation has been amended to enable the court to order a term of incarceration of 1 year or the maximum term provided by law for the offense, whichever is less, to be served as a condition of probation. The bill originally provided for a term of incarceration of not more than 6 months as a condition of probation. The amendment to extend the term to 1 year was accompanied by the requirement that this incarceration must be served during the first year of the term of probation. "Statutory good time" is not earned on a period of incarceration served as a condition of probation.

The maximum terms of imprisonment are established at section 2301. An amendment was adopted which reduced the maximum term for all Class B, C, D, and E felonies. The Class B felony was reduced from 25 years to 20 years, the Class C felony was reduced from 12 years to 10 years, the Class D felony was reduced from 6 years to 5 years, and the Class E felony was reduced from 3 years to 2 years.

In what appears to be a statement of philosophic intent, the Senate adopted a series of amendments further restricting the Parole Commission's discretion to release a committed offender.

The first of these amendments eliminated the terms "parole ineligibility" as contained in the initial version of the bill and substituted a term of imprisonment in which the offender would be "eligible for ea release." The difference between original version and the amended version essentially that in the former the Parole Commission could release any inmate after a period of 6 months unless the court established a specific period of parole ineligibility. In the amended version the Parole Commission cannot release an inmate unless the court has specifically established a period during which the inmate would be eligible for early release.

In the majority of cases the court will, at the time sentence is imposed, structure the sentence to include a release date. This congressional intent seems to be further clarified by an amendment to section 994 of Title 28 which establishes duties of the U. S. Sentencing Commission. At subsection (b) the bill provides that if a sentence specified by the guidelines includes a term of imprisonment the guidelines shall specify that the term of imprisonment is not to be subject to the defendant's early release, other than in an exceptional situation in which a term subject to a defendant's early release is necessary to satisfy the purposes to be served by the sentence and is consistent with the court's specific findings made pursuant to subsection (j).

Subsection (j) requires that the Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment f purposes of providing a defendant w needed educational or vocational trainir medical care, or other correctional treatment other than in an exceptional case in which imprisonment appears to be the sole means of achieving these purposes. If the court orders a commitment to imprisonment for purposes of treatment, reasons for such commitment must be

stated on the record at the time of sentencing.

In the bill as introduced on May 2, 1977, tutory good time" was deleted. A type of utory good time has been included in the bill as passed by the Senate. Section 3824 of the bill provides for the defendant to earn "credit for service of sentence for satisfactory behavior." There are significant differences in the provision and the statutory good time provision presently found in Title 18. No credit for service of the sentence is earned during the first year of the sentence. If the court has established a portion of the term during which the inmate will be eligible for early release, no credit for satisfactory beahvior is earned at any time during the term of incarceration. Further, if an inmate is committed to a life term, no credit toward service of the sentence is earned for satisfactory behavior.

The maximum credit for service of the sentence allowed is 3 days per month beginning after the first year of incarceration. The Bureau of Prisons must determine within 2 days after the end of each month of incarceration if the inmate is to be granted the 3 days credit or any portion thereof for satisfactory behavior. Credit that has been granted to the inmate cannot be later withdrawn nor can credit which has been withheld be granted at a later date.

There are two means by which an inmate will be released to parole supervision. If the sentence has been imposed by the court to include a period during which the inmate will be eligible for early release, the U. S. Parole Commission may release the inmate ny time during the period of eligibility. If eriod of early release eligibility has been tablished the inmate will be released to parole supervision at the expiration of his sentence, less any credit for satisfactory behavior.

The Parole Commission is authorized to establish, within guidelines promulgated by the U. S. Sentencing Commission, the conditions and the term of parole supervision. The term of parole supervision is statutorily limited to not more than 5 years for a Class A or B felony, not more than 3 years for a Class C felony, not more than 2 years for a Class D felony, and not more than 1 year for a Class E felony. If an inmate is sentenced to serve consecutive terms for two or more misdemeanors and the aggregate term exceeds 1 year, that inmate may be placed on parole for a term not to exceed 6 months.

The Parole Commission's authority to issue warrants and revoke parole is continued essentially as it is in the present law. The term parole supervision is no longer directly related to the length of the sentence originally imposed. If a parolee has served his sentence in full he may be required to serve a "contingent term of imprisonment" of 90 days upon revocation of parole. In the case of an inmate released early by the Parole Commission the Commission may require service of the unserved portion of the inal term or the contingent term of risonment, whichever is greater. A ntingent term of 30 days has been established for parolees committed for a period exceeding 1 year for two or more misdemeanors.

S.1437 as introduced on May 2, 1977, provided for a U. S. Sentencing Commission consisting of nine members to be designated by the Judicial Conference of the United States. The bill as reported out of the Senate Judiciary Committee on November 15, 1977, was amended to provide for a U. S. Sentencing Commission consisting of seven members, four of whom would be appointed by the President with the advice and consent of the Senate and the remaining three to be designated by the Judicial Conference.

S.1437 as passed by the Senate on January 30, 1978, provides for a U. S. Sentencing Commission consisting of seven members, four of whom will be appointed by the President after consultation with the Judicial Conference of the United States. The remaining three will be designated by the President from a list of at least seven judges submitted to the President by the Judicial Conference.

SENATE SELECT COMMITTEE ON INTELLIGENCE ACTS ON SURVEILLANCE BILL

The Select Committee on Intelligence by a vote of 9-0 has approved the Foreign Intelligence Surveillance Act, as amended, which requires a court order for all national security electronic surveillance in the United States.

As amended, S. 1566 allows surveillance of a citizen or resident alien where a court finds probable cause that the person "knowingly" engages in spying activities that "may involve a violation of the criminal statutes of the United States."

The "may involve" provision is understood to allow sufficient leeway to detect foreign spy operations in this country.

The criminal standard applies to Americans who "knowingly" engage in covert action pursuant to the direction of a foreign intelligence service. Such activities must involve or be "about to involve" a federal crime.

The criminal standard also permits surveillance of Americans who "knowingly" engage in activities which "may be in preparation" for sabotage or terrorism for or on behalf of a foreign power.

The bill states "that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the First Amendment of the Constitution of the United States." Therefore, "preparation" for terrorism may not include merely the exercise of free speech.

With respect to foreign visitors to the United States, the Intelligence Committee amended the bill to insure that such foreign citizens will be treated the same as American citizens, unless they act on behalf of a foreign power which conducts clandestine intelligence activities contrary to the interests of the United States. In such a case, the visitor may be wiretapped if the circumstances indicate to a judge that he may engage in secret intelligence activities.

The bill establishes a special court composed of seven federal judges to issue orders approving each surveillance under the bill. A three judge appellate panel also is established. The Intelligence Committee's amendments provided that these judges shall serve for seven-year terms.

Intelligence Committee amendments strengthen the judges' authority to review Executive certifications that surveillance of Americans is necessary and to review how information about Americans is used. They also tighten the restrictions on use and dissemination of information about Americans, including information that is acquired "unintentionally."

Under the bill as amended, the Attorney General must fully inform the Intelligence Committees of the House and Senate concerning all electronic surveillance at least semi-annually. The Intelligence Committees also retain the

(See SURVEILLANCE, page 6)

Participants in the Federal Defender Seminar

The Federal Judicial Center held a seminar for Federal Public and Community Defenders in San Francisco several weeks ago and William E. Foley, Director of the Administrative Office, chaired the meeting. Speakers included federal judges, defenders and prosecutors as well as private practitioners. The topics covered during the meeting ranged from jury selection and appellate practice to the proposed revisions of the federal criminal code (S. 1437). The seminar also included workshops on the operation of the defender system and reports from the various defenders.

PRISONER EXCHANGE PROGRAMS PLANNED FOR CANADA AND BOLIVIA

While the prisoner exchange program with Mexico is still underway the Department of Justice and the Administrative Office are laying the necessary groundwork for future prisoner exchanges with Canada and Bolivia.

In addition, West Germany is presently drafting legislation to allow prisoner exchanges with the U.S. and the State Department has been given the authority to begin discussions with Peru on the subject.

Last month, the second phase of the prisoner exchange program with Mexico was completed with forty-eight Americans returning to this country and thirty-six Mexicans returning to Mexico. Four U.S. Magistrates went to Mexico to hold verification hearings prior to the second exchange.

In the initial exchange last December, seven U.S. Magistrates held hearings in Mexico and 232 Americans returned to this country while thirty-nine Mexicans returned to Mexico.

Benjamin R. Civiletti, then Assistant Attorney General of the Department of Justice Criminal Division, commended the Administrative Office last month for their work in the Mexican prisoner exchange program.

In a letter to Director William E. Foley, he wrote, "I wish to express the special thanks of the Attorney General for the superb cooperation and efforts of your Criminal Justice Act Division, Magistrates Division and your Probation Office in connection with the initial transfer of prisoners under the Treaty with Mexico on the execution of penal sentences."

A spokesman for the Embassy of Canada said that legislation has been introduced in the Canadian Parliament to implement the treaty with the U.S. on prisoner exchanges.

WRIGHT SUCCEEDS BAZELON AS CHIEF JUDGE

Chief Judge David L. Bazelo of the United States Court of Appeals for the District of Columbia Circuit announced March 28 that he was stepping down as Chief Judge. The new Chief Judge is J. Skelly Wright.

In a statement issued on the occasion, The Chief Justice said, "Chief Judge Bazelon has presided over one of the most important of the country's courts for many years, and it was my priviledge to share thirteen years of association with him. His successor, Judge J. Skelly Wright, was also a valued colleague for many years, and I look forward to working with him in my capacity as Circuit Justice for this Circuit. I am glad Judge Bazelon will continue regular judicial duties."

Judge Bazelon has been Chief Judge of the Circuit sinc October 9, 1962 and a judge c the Court of Appeals since November 1, 1949. Judge Wright was appointed to the Circuit Court on April 16, 1962. Prior to his appointment to the Circuit Court, he served as a United States District Judge for the Eastern District of Louisiana from 1949 to 1962.

(SURVEILLANCE, from page 5)

authority to obtain additional information. The Senate Intelligence Committee is required to report annually to the Senate concerning implementation of the bill.

The proposed Foreign Intelligence Surveillance Act was previously approved by the Senate Judiciary Committe and now will be reported to th Senate floor for action.

THE SOURCE
The Information Service of the Federal Judicial Center

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FJC Films

FJC CONTINUING EDUCATION AND TRAINING DIVISION FILMS AVAILABLE

[The following films are available to members of the federal court system on a one-week loan basis. Contact Elizabeth Brennan, Educational Assistant, at 8-633-6024.]

Title: *"The Scar Beneath"*
Time: 30 minutes—16 mm.

Plot: This film depicts some of the behavioral changes brought about in a parolee after he has gone through a period of incarceration and has had facial surgery. Various roles of the probation officer, the Bureau of Prisons, the Board of Parole and the Vocational Rehabilitation Agency are depicted. The team approach to working with offenders is stressed.

Title: *"Parole Granted"*

Time: 50 minutes—16 mm.

Plot: This film was presented by the Armstrong Circle Theater with Douglas Edwards as the narrator, who is devoted primarily to explaining and illustrating the duties of the United States Probation and Parole Office. It shows the probation officer working with an offender's family, engaging in parole supervision, and advising the court through the medium of the presentence investigation.

Title: *"Apples Don't Fall Far From The Tree"*
Time: 55 minutes—16 mm.
Plot: This film was produced by the Four Star Theater and stars David Wayne as a prisoner in a state institution in California. This film shows a parole officer attempting to locate the father of a young boy. Also shown are some of the activities of the California Adult Authority working in placing a parolee who is physically handicapped in meaningful employment.

Title: *"The Eye Of The Beholder"*
Time: 27 minutes—16 mm
Plot: This film is concerned with portraying the life in a day of Michael Gerrard, an artist, as seen through the eyes of five persons. The film has two parts and in the second part, the film illustrates how Michael Gerrard sees himself. This film is particualrly helpful in working with small discussion groups, students, and individuals interested in attitude formation.

Title: *"The Odds Against"*
Time: 32 minutes—16 mm.
Plot: This is a documentary film which portrays the story of a 20 year old male from arrest to a parole hearing. The viewer is taken through each of the procedures from arrest, detention, trial, sentencing, imprisonment, and parole.

Title: *"The Price Of A Life"*
Time: 29 minutes—16 mm.
Plot: Documentary on probation. Portrays the presentence investigation, sentencing, and problems of supervision and revocation as revealed in the work of a probation officer with a young adult offender.

Title: *"The Revolving Door"*
Time: 28 and 1/2 minutes—16 mm.
Plot: Documentary depicting the problems faced by the lower courts in dealing with the 5 million misdemeanants arrested each year in the U.S. and the limitations in facilities and programs in most jails.

Title: *"The Dangerous Years"*
Time: 27 minutes—16 mm.
Plot: Documentary portraying, through actual life situations, the current problems of the juvenile and youthful offender, and the role played by the law enforcement officer, judge, probation officer, and correctional worker in the apprehension, adjudication, and rehabilitation processes. The film is primarily for lay audiences.

(See FILMS, page 8)

aoaoofjc calendar

Apr. 10-11: Workshop for Personnel Clerks, Washington, DC

Apr. 10-12: Management Training for Executives, New York, NY

Apr. 10-13: Crisis Intervention Seminar for Probation Officers, Nashville, TN

Apr. 11-13: Management Training for Supervisors, Portland, OR

Apr. 12-14: Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Denver, CO

Apr. 13-14: Conference for Metropolitan Chief Judges, Denver, CO

Apr. 14: Time Management Seminar, Portland, OR

Apr. 17-19: Seminar for Assistant Federal Defenders, New Orleans, LA

Apr. 17-19: Advanced Management Seminar for Probation Clerks, Minneapolis, MN

Apr. 17-19: Advanced Seminar for Chief and Supervisory Pre-trial Services Officers, Washington, DC

Apr. 23-26: Fifth Circuit Judicial Conference, New Orleans, LA

Apr. 24-26: Seminar for Bankruptcy Clerks, Kansas City, MO

Apr. 24-26: Management Training for Supervisors, Houston, TX

Apr. 25-27: Seminar for Chief Probation Office Clerks, Memphis, TN

Apr. 27-29: Seminar for Bankruptcy Judges, Kansas City, MO

May 1-2: Workshop for Personnel Clerks, Atlanta, GA

May 9-10: Workshop for District Judges (CA-7), Delavan, WI

May 9-10: Workshop for District Judges (CA-6), Nashville, TN

PERSONNEL

APPOINTMENT

A. David Mazzone, U.S. District Judge, D.Mass., March 3.

ELEVATION

Aldon J. Anderson, Chief Judge, U.S. District Court, D.Utah, March 4.

James Skelly Wright, Chief Judge, CA-DC, March 28.

NOMINATIONS

Gustave Diamond, U.S. District Judge, W.D.Pa., March 22

Daniel M. Friedman, Chief Judge, U.S. Court of Claims, March 22

Harold H. Greene, U.S. District Judge, Dist. of Col., March 22

Donald E. Ziegler, U.S. District Judge, W.D.Pa., March 22

DEATH

Lawrence Gubow, U.S. District Judge, E.D. Mich., March 27

(FILMS, from page 7)

Title: *"The Thin Blue Line"*
Time: 26 minutes—16 mm.
Plot: Documentary which tak a look at the law enforcement officers who man *"the thin blue line"* between law and order and criminal chaos. The film is a study of the policemen today—his training, his objectives and his working conditions. You see the inner working of police departments across our country, you hear actual calls as they come into the Communications Center of the Chicago Police Department, you see the newest training methods of our police officers, you go on the 8:00 p.m. to 4:00 a.m. tour of duty with officer Tony Day in Rochester, New York, and you gain insight into problems facing the police today.

Title: *"It Takes A Lot Of Help"*
Time: 27 minutes—16 mm.
Plot: Documentary on community drug abuse act narrated by Lorne Greene. T film is one of the first to actually document and explore the numerous avenues available to individuals and communities combating local drug abuse. The film involves you in an in-depth analysis of citizen initiated programs in Cedar Rapids, Iowa; group therapy sessions in Chicago; a dramatic conversation on Boston's narcotics "hot line"; an actual drug free sensitivity trip in the forests near Tucson, and much more.

THE THIRD BRANCH
VOL. 10, No. 4 APRIL 1978

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

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*U.S. GOVERNMENT PRINTING OFFICE: 1978-240-891(4)

The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

VOL. 10 No. 5 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center MAY, 1978

RULE-MAKING CRITIQUED AT METROPOLITAN CHIEF JUDGES MEETING

Procedural rule-making at the national and local level is in "very deep trouble" and demands serious study to identify the problems and to develop solutions. This was the consensus of speakers at a session on rule-making held during last month's Denver meeting of the Conference of Metropolitan Chief District Judges.

Among the difficulties besetting the current rule-making process, the speakers pointed to recurring Congressional intervention modifying rules submitted by the Supreme Court, a growing body of critical literature, legislative proposals for change in the process, and widespread dissatisfaction with local rules and "standing orders" that appear to threaten a national policy of basic procedural uniformity.

The program was scheduled by the Center in response to a request by the planning committee of the Metropolitan Chiefs. It was arranged by Judge Charles W. Joiner (E.D. Mich.), who presented an overview and analysis of the subject with recommendations for change. Similar presentations were made by Raymond C. Caballero, Esquire, of El Paso, Texas and Professor Arthur R. Miller of Harvard. Judge Walter E.

(See RULES, page 2)

Vice President Mondale addressing the Fifth Circuit Judicial Conference accompanied by Attorney General Griffin B. Bell, left, and Chief Judge John R. Brown, right.

VICE PRESIDENT, CHIEF JUDGE BROWN ADDRESS FIFTH CIRCUIT

Addressing the Fifth Circuit Judicial Conference on April 25th, Vice President Mondale commended the work of the judges in the Fifth, with particular emphasis on the efforts of the federal judiciary to dispose of heavy caseloads in spite of "a massive proliferation of statutory and administrative remedies" coming to their courts.

Special reference was made to the Fifth Circuit's efforts to "set a standard for the Nation in protecting human rights. In conflicts over voting rights and school desegregation, they fashioned working principles which have guided other jurisdictions... and they built a record of progress in defending civil liberties which stands in the finest and most heroic tradition of this Nation."

The Vice President commented on pending legislation which could create 150 additional judgeships in the system and he made it plain that he would do what he could to secure passage of legislation which would significantly assist the federal courts—through legislative impact statements, increased use of arbitration, and

(See ADDRESS, page 3)

(RULES, from page 1)

Hoffman (E.D. Va.), Chairman of the Conference, presided over the session, and he and Chief Judge William B. Bryant (Dist. Col.) served as commentators.

Judge Joiner, a former law professor and a member of the Judicial Conference Committee on Rules of Practice and Procedure, outlined four major problems on the national level: (1) "lack of respect and support by the Congress for the product of judicial rulemaking ...." (2) lack of bar support for individual rules, and, at times, for the process [possibly because the process, "if it has not been secret has been a private one..."]; (3) the slowness with which national rules are produced and changed, which may reflect understaffing and the lack of any systematic process to monitor the operation of the rules; and (4) the failure of lawyers and judges to utilize the rules properly.

Judge Joiner was also critical of some local rules and the process by which they are developed, but he defended local rules as a means of "permitting some aspects of court administration and procedure to be locally run, to conform to local needs". He suggested that some of the proliferation in local rules may be caused by the failure of the national process to react swiftly to new conditions.

Mr. Caballero focused on the problems with local rules that he finds as a practicing trial lawyer. He acknowledged the need for local variations in court management, but he argued that nationally adopted policies are frustrated by local rules such as those forbidding a lawyer to discuss a case with jury members after verdict, or rules by which appellate courts render decisions without oral argument or written opinions.

The third speaker, Professor Arthur Miller, expanded on Judge Joiner's assessment of national rule-making and noted that a process that worked effectively for the federal litigation of the 1930's might not necessarily be able to deal with today's much different and more complex litigation. He urged that the national and local rule-making processes be parts of a single organism—"a unified scheme of running the federal courts"—and dealt with on that basis. Perhaps the greatest obstacle to solving the widely-felt problems of local rules, Professor Miller said, is that we have very little comprehensive information about how many local rules there are and what they provide.

Speakers and conference members agreed that there was need to remedy the dearth of systematic knowledge about the body of local rules across the country. It was also suggested that the operation of national and local rules be monitored in order to provide rule-making bodies with more accurate and timely information to use in their deliberations. It was proposed that the Federal Judicial Center undertake these tasks.

There was little disagreement that the rule-making process could benefit from broader participation by the bar (and in some cases by the public); however, many judges expressed frustration in their efforts to gain greater bar input. Some judges reported success because they sought bar participation, from the outset, when comprehensive rules revisions were made.

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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PROPOSAL: SENTENCING CITATIONS IN CIRCUIT OPINIONS

At the last meeting of the Chief Judges of the Circuit Courts of Appeals in Washington general approval was given to a suggestion that the sentences imposed in criminal cases be footnoted in appellate opinions.

The suggestion was originally made by Judge Bruce M. Van Sickle (D. ND) and presented at the meeting by Chief Judge Floyd R. Gibson (CA-8), Chairman of the Conference of Chief Judges.

It was noted that the judges of the Eighth Circuit, as well as judges in many other Circuits, currently follow this practice.

The inclusion of such information in criminal appeal opinions is helpful both from a statistical standpoint and as a resource and guide to other judges in comparing sentences among similar offenses.

HEALTH PROGRAM QUESTIONNAIRES BEING DISTRIBUTED

The Administrative Office has been notified by the Civil Service Commission that they are auditing each carrier in the Federal Employees Health Benefits Program to ensure that it is complying with its contract.

In order to do as complete an audit as possible, the Commission has begun sending questionnaires to subscribers just prior to their audit of a particular plan or area.

The information requested on the questionnaire is strictly voluntary. Replies will be anonymous since the questionnaires contain no subscriber information or identification and all information will be kept confidential.

(ADDRESS, from page 1)

expansion of the magistrates' jurisdiction. Concurrently he noted "an overriding obligation to assist American citizens in protecting and enforcing their own rights." To accomplish this, he would: Liberalize the rules of standing and certification procedures for class actions, secure legislation which would permit federal suits against state and local custodial institutions, and bring about statutory provisions for civil remedies and liquidated damages against state or federal agencies which might violate constitutional liberties.

Chief Judge Brown opened the Conference with an address which called attention to a heavy backlog of civil cases at both the civil and district court levels. He reported that over the last four years the Circuit's civil caseload has increased by 534 percent and at the District Court level by 79 percent.

The filings per active judgeship were 237—the highest in the Nation during fiscal 1977

Here are excerpts from Chief Judge Brown's address.

While additional judgeships will be helpful, they will not totally solve congestion in the federal courts. First, because we live in a litigious society and, second, because the large backlog of cases which has accumulated in the immediate past, must first be disposed of.

The Court of Appeals

Creation of additional district judgeships with increased termination of cases is going to cause substantially more appeals in the appellate courts within a short period of time. Based on the current average, it is estimated that each new district judge will add 40 appeals per year to the docket of the Circuit Court.

This backlog has resulted in substantial delays, the second principal area of dissatisfaction. Instead of the usual 30 to 60 day normal calendaring delay for preparation and issuance of court calendars, nonpreference civil cases are now taking between 16 and 18 months after all briefs have been filed before they can be orally argued ...[A] new complication has set in. This is the impact of priority preference on calendaring non-preference cases for oral hearing.

For the past several years preference cases have constituted 47 percent of all cases determined by a judge to require oral argument. The preference cases comprise 41 different categories.

Ironically, the non-preference cases include such important litigation as civil rights, U.S. civil, tax, admiralty, and patent matters.

With a continuously increasing backlog, the impact of this is devastating. Out of a maximum number of 780 slots for cases, the number of slots for non-preference cases is 323 for 1977, and these gradually decrease to an estimated 148 in 1983.

Of the 578 new non-preference cases that we project will be filed in 1979... none will be heard in 1979, none in 1980, none in 1981, none in 1982, and only 148 or 25.5 percent in 1983, with the balance of 430 cases being heard between 1984 and 1987, for a delay of 6 to 9 years from the date of readiness to actual hearing. What this means is that most cases will take 4 to 5 years, and some may never be heard.

What all this means, of course, in human terms is that the real victims are not the judges, but the litigants.... From 1972 through 1977, this court terminated over 17,780 cases. This means that the judges of this court during this period were individually responsible for 1,185 terminations.

The District Courts

What is the story of backlog in the district courts of this circuit? In the year 1973 there were 23,000 civil cases commenced in the district courts, but only 19,000 pending at the end of that year. Just four years later, however, the pending caseload in the district courts of the Fifth Circuit has skyrocketed from 19,000 in 1973 to 34,000 in 1977, a staggering 79 percent increase—and this despite a continued increase in output by the district courts year after year ....The simple fact is that the systems and procedures now being used by the district courts, coupled with the limited number of judges and supporting staff available, have resulted in all courts not being able to keep abreast of this burgeoning federal court caseload.

If you combine all of the civil cases pending over one year, the number has increased from 5,900 to 12,800, an increase of 117 percent.

The national average of terminations per active judge is 384 cases for 1977. In our 19 district courts, 15 of them exceeded the national average.

New Developments

Major significant developments in the Fifth Circuit during the past year were:

- The Judicial Council of the Circuit has appointed a Lawyers Advisory Committee to the Rules and Internal Operating Procedures Committee of our court and they have contributed greatly to our continuing study of the Rules and Procedures in the Fifth Circuit. They also have assisted in proposing rules for admission to the federal courts.
- Our Council took a giant step forward in reducing the cost of litigation of appeals in the Fifth Circuit by adopting an amendment to our briefing rule which reduces the number of briefs from 20 copies to 7 and from 8 copies of an appendix to 4.

(See ADDRESS, page 4)

(ADDRESSES, from page 3)

• In April of this year the National Advisory Committee on Appellate Rules submitted to all of the courts proposals for amendments to the Federal Rules of Appellate Procedure.... Our Council has already adopted one of the proposals—to limit all briefs to 50 pages and all reply briefs to 25 pages.

• The Advisory Committee has also proposed an amendment to the oral argument Rule 34 in the Federal Rules of Appellate Procedure. This Rule now sanctions the Fifth Circuit procedures regulating and sometimes denying oral argument; built into the Rule is the safeguard of requiring a unanimous decision by the three judges on the panel that oral argument is not needed.

[The addresses of The Vice President and Chief Judge Brown are available from the FJC Information Service Office.]

HOUSE DELAYS ACTION ON FINANCIAL DISCLOSURE BILL

The House of Representatives has delayed final action on H.R. 1, the bill which codifies the financial disclosure requirements for Congressmen contained in the rules of the House of Representatives and extends annual disclosure requirements to candidates for federal office, some employees of the Executive Branch, employees of the Judicial Branch compensated at the equivalent of GS-16 or above and all federal judges.

The reports would be under the supervision of the Judicial Conference of the United States.

On June 27, 1977, the Senate by a vote of 74 to 5 passed S. 755, a bill which requires public financial disclosure by officials and high-ranking employees of the Legislative, Executive and Judicial Branches.

The House had scheduled action on H.R. 1 for April 12, but final consideration has been indefinitely postponed.

U.S. SUPREME COURT RULES ON JOINT REPRESENTATION OF CRIMINAL DEFENDANTS*

In an opinion handed down April 3, 1978, a divided Supreme Court required separate representation for multiple defendants in state criminal prosecutions absent a specific finding that a risk of conflict of interest was too remote to require separate counsel. The case is *Holloway, et al. v. Arkansas.*

Three men were each charged with one count of robbery of a Little Rock restaurant and two counts of rape of two employees at the restaurant. Their court-appointed public defender moved before trial, and again before the jury was empanelled, for appointment of separate counsel, claiming a conflict of interest, alleging that since each defendant insisted on testifying on his own behalf, cross-examination of each client to protect the others was impossible without revealing privileged information provided by the defendants. The trial judge denied the motions (but conducted a hearing, evidently unrecorded, on the first one). The jury convicted the defendants on all counts after each claimed in unguided testimony that he had been elsewhere. The Arkansas Supreme Court affirmed, rejecting petitioners' claims that their single representation deprived them of effective assistance of counsel. The state court held the potential for conflict had not been shown before trial, nor actual conflict shown during trial.

The U.S. Supreme Court held, 6-3, in an opinion by the Chief Justice, that although there is no *per se* constitutional right to separate representation, the trial judge deprived defendants of effective assistance of counsel by his failure either to appoint separate counsel when requested in good faith as here or to take steps to ascertain if the risk of conflict was too remote to justify it.

Having found it error to refuse separate representation, the Court refused to apply the harmless error doctrine. The Court cited precedent to the effect that "whenever a trial court improperly requires joint representation over timely objection reversal is automatic." In this case, it would require "unguided speculation" to determine whether the error was harmless, since one would have to assess what the conflict led the attorney to *refrain* from doing as to his "options, tactics and decisions in plea negotiations," as well as in the sentencing process.

Mr. Justice Powell's dissenting opinion, in which Justices Blackmun and Rehnquist joined, did not deny that the "trial court should have held an appropriate hearing" on the possibility of potential conflict. But, he argued, the judge's "failure to inquire" was not a constitutional violation meriting reversal given "the particular circumstances of this case," where it was "unlikely that separate counsel would have been able to develop an independent defense ... because of the degree of overlap in the identification testimony of the State's witnesses and because of the consistency of the alibis advanced by petitioners." So finding, Justice Powell worried that "the Court opinion contains seeds of a *per se* rule of separate representation merely upon the demand of defense counsel," which could lead to dilatory defense counsel tactics.

*From time to time, *The Third Branch* will invite its readers' attention to Supreme Court decisions that have significant import but that may not have been widely noticed.

PRESIDENT CREATES 22-MEMBER ANTITRUST COMMISSION

President Carter, in an Executive Order signed several months ago, created a 15 member Antitrust Commission For the Review of Antitrust Laws and Procedures. Last month, in a second Executive Order, the President expanded the Commission to 22 members.

However, the names of all Commission members have not yet been announced.

The President specified that the Commission will consist of the Assistant Attorney General in charge of the Justice Department Antitrust Division, the Chairman of the Federal Trade Commission, the Chairman of one other appropriate regulatory agency, five Senators, five Representatives, one federal district judge, one state attorney general and seven private citizens.

The Chairman shall be designated by the President from among the members of the Commission and the Commission will have six months from the date the last member is appointed to finish work and thirty days afterward to submit its final report to the President and the Attorney General.

The President charged the Commission with the task of studying and making recommendations on the following subjects:

- Revision of the procedural and substantive rules of law needed to expedite the resolution of complex antitrust cases and development of proposals for making available remedies more effective.

Among these proposals are the creation of a roster of district court judges knowledgeable regarding antitrust law and large case problems to whom such cases may be assigned; revision of pleading requirements in order to narrow as quickly as possible the scope of contested issues of fact and law; revision of discovery practices in order to limit expensive and time-consuming inquiry into areas not germane to contested issues; the desirability of a grant of judicial authority to restrict and penalize dilatory practices through control of issue formulation and imposition of sanctions for unnecessary delays or failures to cooperate; amendment of evidentiary practices to expedite introduction of testimony and exhibits at trial; simplification of the standards required to establish attempted monopolization in suits brought by the U.S. under the Sherman Act; and, consideration of structural relief for antitrust violations and of nonjudicial alternatives for resolution of complex antitrust issues.

- The desirability of retaining the various exemptions and immunities from the antitrust laws, including exemptions for regulated industries and exemptions created by state laws that inhibit competition.

JUROR ORIENTATION FILM AVAILABLE

The FJC Division of Continuing Education and Training has available on a one-week loan basis a recent juror orientation film entitled "And Justice for All: The Jury".

The film is in color, 16 mm, and 25 minutes in length. It was developed for the purpose of saving time for judges and court officials who are concerned with juror orientation. It effectively illustrates and explains the duties, procedures, and responsibilities of jury service in simple, direct and understandable terms.

To order the film, call 8-633-6024.

HEARINGS HELD ON ARBITRATION BILL

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings last month on S. 2253, the bill that would provide for mandatory non-binding arbitration of some disputes in pilot district courts selected by The Chief Justice.

The Senate bill was introduced October 28, 1977 by Senator James O. Eastland and the House counterpart, H.R. 9778, on October 27, 1977 by Congressman Peter W. Rodino, Jr.

Under the provisions of the bill, five to eight pilot district courts would be selected but other federal district courts would be allowed to use mandatory non-binding arbitration through the adoption of local rule. The amount in controversy must be less than $50,000 and the court-selected arbitrators would be paid $50 per case.

In addition, if a party demands a trial de novo after arbitration and does not receive a judgment more favorable than the arbitration decision, he would be required to pay the costs of the arbitration proceeding and the interest that the arbitration award would have earned during the period of the federal court trial.

The bill provides for a three-year arbitration experiment that would be evaluated by the Federal Judicial Center.

In testimony on the measure before the Subcommittee last month, Attorney General Griffin B. Bell strongly endorsed the proposed court-annexed arbitration since it is designed to both speed up the resolution of cases that are now settled and also resolve more quickly and less expensively many of the cases that now go to trial.

The Attorney General pointed to successful state arbitration programs in Pennsylvania, New

(See HEARINGS, page 6)

(HEARINGS, from page 5)

York, Ohio, Michigan, Arizona and California and said that from 85 to 95 percent of cases referred to arbitration are not appealed. "The success that the state systems have had clearly indicates that this experiment is one worth trying in the federal courts."

Under the bill, cases could be referred to arbitration if they involved claims for money damages only, the claim does not exceed $50,000 and the cases present predominantly factual issues, rather than complex legal questions, constitutional claims, or novel issues of law that may establish important precedents.

While the Attorney General could not predict precisely how many cases would be referred to arbitration under the legislation, he did indicate that the impact on the federal caseload could possibly be significant.

Robert Coulson, President of the American Arbitration Association, told the Subcommittee that the fee for the arbitrator, $50 per case, may not be sufficient to attract qualified attorneys and that the application of the penalty formula is unclear.

He pointed out that three federal district courts—Connecticut, Eastern Pennsylvania and Northern California—are now carrying out pilot experiments in arbitration without the need for legislation and questioned whether the bill was thus necessary.

Mr. Coulson said the bill called for compulsory, nonbinding arbitration to induce settlements in certain categories of cases in certain district court systems. "I recommend that the bill be recast to eliminate the confusion between this technique and voluntary, binding arbitration."

Craig Spangenberg, Chairman of the Congressional Liaison Committee of the Association of Trial Lawyers of America, questioned both the adequacy of the payment for the arbitrator and the penalty provision. "It is unreasonable and unfair to penalize a party if the jury verdict is not more favorable than the arbitrator's award."

Mr. Spangenberg pointed out that during the last decade tort case filings in the federal court system have decreased by eight percent while there has been a tremendous increase in civil rights, social security, labor, antitrust, and contract cases and in prisoner petitions. "The proposed federal arbitration plan does not reach the real cause of docket congestion."

Lewis J. Gordon, Chairman of the Compulsory Arbitration Committee of the Philadelphia Bar Association, described for the Subcommittee the Pennsylvania experience with compulsory arbitration, which has been used extensively in that state for over 25 years.

Mr. Gordon said that arbitration is one of the most successful methods of disposing of civil actions and that it continues to be the chief means by which civil cases are disposed. In addition, only about 14 percent of appeals from arbitration required a full co trial.

"Without arbitration, our courts would be hopelessly bogged down," he said.

PRISONS DIRECTOR SAYS INMATE POPULATION "STABILIZED", TERMS INCREASING

The Director of the Bureau of Prisons, Norman A. Carlson, in testimony last month before the Senate Appropriations Committee said the total inmate population which is now over 29,700 hit an all-time high in August, 1977 of 30,491 but is now stabilizing.

"Whether or not this is a temporary phenomenon is difficult to predict," he said. "Of the several population prediction models monitored by the Bureau, they project, on the average, a population of 33,200 by 1987.

"Based on our analysis of recent trends, we believe that the inmate population will remain high for the next several years. The average sentence of the confined population continues to increase and now stands at nearly 102 months, an increase of 38% or 28 months since 1967. The more severe offenses for which the courts traditionally impose long sentences, constitute a much larger percentage of the population than in the past.

"In addition, the average length of sentence for these offenses has increased sharply. For example, over 29 percent of the offenders confined are sentenced for crimes of violence.... Ten years ago, the comparable figure was 14 percent. In just two years, the average sentence for offenders confined for robbery has increased by nearly 30 months, from 139.7 to 169.3. It is clear that the Bureau is receiving a more violence-prone offender population for which the period of incarceration is significantly increasing."

The Director pointed out that the inclination of the federal courts to divert so-called "good risk" offenders has changed the prison population so that today there is a greater percentage of "higher risk" offenders in pris than there were a year ag Since 1975, "the number of inmate assaults on inmates and staff has increased by more than 22 percent."

SENATE PASSES FOREIGN INTELLIGENCE ACT

On April 20, the Senate passed S. 1566, the Foreign Intelligence Surveillance Act of 1978, by a vote of 95 to 1.

The Act provides for a special court consisting of seven federal district court judges to be designated by The Chief Justice on a staggered basis and a special court of review consisting of a three-judge panel of judges from either the federal courts of appeals or the federal district courts.

The House counterpart, H.R. 6308, is currently pending in the House Select Committee on Intelligence. It provides for a special court consisting of at least one judge from each of the judicial circuits who shall be designated by The Chief Justice, and a special Court of Appeals consisting of six judges who shall be designated from among judges nominated by the chief judges of the district courts of the District of Columbia, the Eastern District of Virginia, the District of Maryland and the United States Court of Appeals for the District of Columbia.

JURY INSTRUCTIONS ON DISCRIMINATION CASES AVAILABLE

A set of 16 jury instructions for use in §1981 employment cases has been drafted by Judge Earl E. O'Connor (D. KS). While the primary focus of the instructions is racial discrimination, a number of the instructions are generally applicable to all civil cases including burden of proof, significance of assignments of counsel and relief.

Copies of the instructions may be obtained from the Federal Judicial Center's Information Service Office.

An advanced Seminar for Chief and Supervising Pretrial Services Officers was held April 17-19, 1978, in Washington, D.C. Pictured (left to right) are: John Hornberger, Glen Vaughan, Joseph Gibbons, Guy Willetts and James McMullin.

A. O. RELEASES 1977 WIRETAP REPORT

The tenth report submitted under the Wiretapping and Electronic Surveillance provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 was delivered to Congress on April 26, 1978. Of the twenty-four jurisdictions which have laws authorizing courts to issue orders permitting wiretapping and electronic surveillance, nineteen reported use of wiretap statutes in 1977.

During calendar year 1977, 626 applications for orders to intercept wire or oral communications were made and all were granted. This is a nine percent decrease from the 686 authorized in 1976. Seventy-seven or 12 percent of the applications were granted by federal judges, while 549 were granted by state judges. Intercepts authorized and approved in the states of Florida, Maryland, New Jersey, and New York represented 71 percent of all wiretap authorizations during 1977.

The offenses specified in the applications for court orders covered a wide range. There were 265 authorizations, comprising 42 percent of the total, where gambling was the most serious offense. In 237 authorizations, drug offenses were under investigation.

A total of 2,191 persons were arrested as of December 31, 1977, as a result of intercepts terminated during calendar year 1977, with 372, or 17% of these arrests resulting in convictions. The total number of arrests for all wiretaps installed during calendar years 1969 through 1977 is 25,605. Of this total 12, 494, or 49% have resulted in convictions.

A copy of the report may be obtained by writing to the Director of the Administrative Office of the United States Courts, Washington, D.C. 20544.

Notice to Our Readers

The Third Branch is updating its mailing list.

Non-federal subscribers who received a post card within the past month requesting address verification should be certain to return the card at an early date; otherwise the reader will be discontinued from future mailings of *The Third Branch*.

ao aosfjc calendar

May 8-11 Seventh Circuit Conference, Delevan, WI

May 9-10 Workshop for District Judges (Seventh Circuit), Delavan, WI

May 9-10 Workshop for District Judges (Sixth Circuit), Nashville, TN

May 10-12 Sixth Circuit Conference, Nashville, TN

May 15-16 Judicial Conference Subcommittee on Judicial Statistics, Washington, DC

May 16-19 Employment Placement Seminar for Probation Officers, Chicago, IL

May 17-20 Ninth Circuit Conference, Scottsdale, AZ

May 21-23 DC Circuit Conference, Williamsburg, VA

May 22-24 First Circuit Conference, Hyannis, MA

May 22-24 Workshop for Docket Clerks, Dallas, TX

May 22-24 Management Training for Supervisors, Orlando, FL

May 22-26 Seminar for Probation Officers With Indian Caseloads, Salt Lake City, UT

May 25 Time Management Seminar, Tampa, FL

May 26 Time Management Seminar, Jacksonville, FL

June 5-7 Management Training for Executives, Chicago, IL

June 5-9 Orientation Seminar for U.S. Probation Officers, Washington, DC

PERSONNEL

NOMINATIONS

Cristobal C. Duenas, U.S. District Judge, Guam, April 7

Len J. Paletta, U.S. District Judge, W.D. PA, April 7

Leonard B. Sand, U.S. District Judge, S,D, NY, April 7

Alfred Laureta, U.S. District Judge, Northern Mariana Islands, April 10

Adrian G. Duplaniter, U.S. District Judge, E.D. LA, April 24

CONFIRMATIONS

Almeric L. Christian, U.S. District Judge, VI, April 6

Paul A. Simmons, U.S. District Judge, W.D. PA, April 6

Robert W. Sweet, U.S. District Judge, S.D. NY, April 25

Gustave Diamond, U.S. District Judge, W.D., PA, May 1

Donald E. Ziegler, U.S. District Judge, W.D., PA, May 1

DEATHS

Robert P. Anderson, U.S. Court of Appeals, CA-2, May 2

John C. Bowen, U.S. District Senior Judge, W.D. WA, April 27

Frederick van Pelt Bryan, U.S. District Judge, S.D. NY, April 17

Elisha Avery Crary, U.S. District Judge, C.D., CA, April 28

ELEVATION

James L. Foreman, Chief Judge, U.S. District Court, S.D., ILL, March 31

RESIGNATION

Herbert A. Fogel, U.S. District Judge, E.D., PA, May 1

THE THIRD BRANCH
VOL. 10 No. 5 MAY 1978

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The Third Branch

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Bulletin of the Federal Courts

VOL. 10, NO. 6 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center JUNE 1978

FIVE CIRCUITS HOLD ANNUAL JUDICIAL CONFERENCE

The Spring season has brought the usual rash of circuit judicial conferences, with five of the circuits meeting during May.

The Sixth Circuit heard a report by Chief Judge Harry Phillips, who opened the meeting with remarks that have a commonality with all the circuits: "There is docket congestion from Marquette to Memphis." The causes: the litigation explosion, recurring expansion of federal jurisdiction through acts of Congress, and the need for more judges.

The Seventh Circuit heard from their Circuit Justice, Mr. Justice Stevens, from Chief Judge Thomas E. Fairchild, and listened to a panel discussion on problems and techniques in the preparation for and the trial of antitrust cases—a discussion which was repeated in the Sixth Circuit. Also on their program was a panel discussion on Title VII cases.

The District of Columbia Circuit, which met at Williamsburg, Virginia, devoted much of their time to class actions, developments in environmental law and procedures, and the use of magistrates. There were closing remarks by The Chief Justice, their Circuit Justice, and their new Chief Judge, J. Skelly Wright.

(See CIRCUITS, P. 2)

Attending the Sixth Circuit Judicial Conference (left to right) Chief Justice Joe W. Henry, (Sup. Ct. Tenn.); Mr. Justice Stewart (Circuit Justice); Attorney General Griffin B. Bell; and Solicitor General Wade H. McCree, Jr.

COMMITTEE ON JUDICIAL EXPERIMENTATION APPOINTED

The Federal Judicial Center has announced the formation of an Advisory Committee charged with defining the appropriate scope of experimentation in the development of improved methods for the administration of justice.

Committee Chairman Edward D. Re, Chief Judge of the U.S. Customs Court, and twelve other scholars, judges, and lawyers, will investigate the methods of evaluation appropriate to a careful and knowledgeable development of

(See COMMITTEE, P. 2)

Status Report

FEDERAL CRIMINAL CODE IN MARK-UP

Complex proposals for major federal criminal code revision are in the mark-up stage before a House Subcommittee on Criminal Justice chaired by Congressman James Mann (D., S.C.). The subcommittee has several bills before it but is focusing on S.1437, which passed the Senate on January 30th with Justice Department support. The subcommittee has indicated basic disagreement with several aspects of S.1437, including creation of a

(See CODE, P. 2)

(CIRCUITS, from P. 1)

The Ninth met at Scottsdale, Arizona this year and they devoted time to consideration of the Nunn and DiConcini Bills which would establish procedures for the involuntary retirement, removal and censure of federal judges. Also on their program was a report from the lawyer representatives who attended the conference and which included, among other subjects, the proposed new criminal code, the pretrial diversion program, the federal public defender program and judicial polls.

Chief Judge Frank M. Coffin set Hyannis, Massachusetts as the site for the First Circuit's annual judicial conference, and two subjects on their agenda were the use of magistrates and the adequacy of representation in the federal courts. They heard speeches by both Solicitor General Wade McCree and Chief Justice Vincent McKusick of the Supreme Court of Maine.

[Papers distributed at these conferences are available at the Information Service Office.]

(CODE, from P. 1)

sentencing commission to issue sentencing guidelines to judges.

Current expectations are that a bill may go to the full House Committee by early July, and to the House floor before the August recess, with reference to conference committee and reconsideration by both houses after the recess.

Subcommittee members' statements indicate near unanimous opposition to S.1437's sentencing commission provisions. The subcommittee appears to favor advisory, rather than mandatory, sentencing guidelines and prefers that the issuance of such guidelines be the responsibility of the Judicial Conference. This position appears consistent with Judicial Conference testimony before the subcommittee urging that control of any sentencing commission be vested in the Conference.

The subcommittee's approach stands in marked contrast to S.1437, which would create a sentencing commission as an independent judicial branch agency with seven, full-time, presidentially appointed commissioners, three of whom would be selected from a seven-judge list provided by the Judicial Conference. S.1437 would have the commission prescribe guidelines indicating ranges of appropriate sentences for specified offenses and allow defendants or the Government to appeal sentences above or below the specified range.

There are other elements to the recodification. The subcommittee seems most interested in improving existing federal criminal laws by regrouping current sections of Title 18 into a more rational organization, and by eliminating offenses and procedures found to be unnecessary and outdated. On the other hand, the subcommittee appears skeptical about S.1437's provisions for major expansion of federal jurisdiction and for changes in the burden of proof concept, fearing that these two changes may increase dramatically the criminal offenses subject to federal prosecution as well as strengthen the hand of the prosecutors. The subcommittee is further concerned about the large numbers of technical and conforming amendments that would be required in other titles of the U.S. Code to accommodate the basic changes of the revision, fearing that hidden problems lurk in these seemingly innocuous changes.

The subcommittee has yet to focus on several high-visibility issues that have previously loomed large in public comment on the bill, such as the scope of journalists' testimonial privilege.

The Third Branch (Augu 1977) summarized S.143 major provisions as it was reported out of the Senate subcommittee last summer. There were, of course, extensive changes made in full Committee mark-up and during Senate floor debate. The bill passed by the Senate in January reflects compromises on a number of issues that had made similiar legislation in the last Congress (S.1) acceptable neither to prosecution nor defense oriented legislators.

(COMMITTEE, from P. 1)

innovations in the courts, and the justice system in general.

The committee will focus on the use of controlled experimentation to evaluate innovations the justice system. O potential application of this method would be the evaluation of local rules providing for mandatory, non-binding arbitration of civil cases (see "Hearings Held on Arbitration Bill", *The Third Branch,* Vol. 10, No. 5, May, 1978, at p. 6). Such an experiment would require the random assignment of eligible cases to two groups. Cases in the "experimental group" would be subjected to the arbitration procedures, while those in the "control group" would proceed through conventional litigation procedures. The random assignment would assure that the two groups of cases do not differ in any systematic way, and thus that any differences in such things as average time from filing to disposition can be clearly attributed to t differences in procedures.

Although controlled experimentation is generally the most reliable method of policy evaluation, its use in the justice

system poses unique legal and cy questions, which have yet e explored and resolved. The ommittee's task is to assess these questions against the backdrop of the urgent need for effective new methods of dispute resolution and judicial administration. The ultimate goal is to provide guidance on the proper and necessary scope of experimental evaluation of innovations in the delivery of justice.

The Center will provide supporting services to the committee. The committee may recommend to the Center Board that prior to its final report, proposed recommendations of the committee will be aired before a conference of judges, lawyers, litigants and researchers—those for whom the report will have the most direct impact.

The committee is formally known as the Federal Judicial Center Advisory Committee on erimentation in the Law. Its mbers are Judge Re, Chairman; Alvin Bronstein, Executive Director of the A.C.L.U.'s National Prisons Project; Professor Alexander Morgan Capron, of the University of Pennsylvania Law School; Judge Wilfred Feinberg, of the Second Circuit; Jane Lakes Frank, Deputy Secretary to the Cabinet; Professor Paul Freund of Harvard University; Professor Gerald Gunther, of Stanford Law School; Professor Alasdair MacIntyre, of Boston University, Dean Norman Redlich, of N.Y.U. Law School; Jerome Shestack, of the Philadelphia Bar; Judge Joseph T. Sneed, of the Ninth Circuit; Professor Abraham D. Sofaer, of Columbia University School of Law; and Dr. June Tapp, Provost of Revelle College, University of California at San Diego. John apard, of the Research sion at the Federal Judicial enter, will serve as secretary and reporter to the committee.

JUDICIAL FELLOWS CHOSEN FOR 1978-79

The Judicial Fellows Commission has selected William James Daniels, an Associate Professor of Political Science at Union College in Schenectady, New York, a member of the Editorial Board of the *American Political Science Review,* and James A. Robbins, a Senior Management Specialist with the Administrative Office of the Chief Justice of Massachusetts, to serve during the 1978-79 fellowship year.

WILLIAM JAMES DANIELS

Mr. Daniels has a Ph.D. from the University of Iowa in Public Law and Judicial Behavior and was selected for a Fulbright-Hays Lecturing Fellowship. This allowed him to lecture at Japan's Waseda University during 1973. He wrote his Ph.D. dissertation on "Public Perceptions of the United States Supreme Court."

Mr. Robbins is a graduate of Iowa Law School and also holds a B.A. from the University of Iowa in Political Science and Psychology. In addition, he has attended the Institute for Court Management and sessions at the National Judicial College.

Currently, Mr. Robbins has the responsibility of analyzing and solving management problems in the Massachusetts District Courts. Among the management projects he has participated in are performance evaluations, recommendations for management improvements

JAMES A. ROBBINS

and the implementation of programs to improve judicial administration.

DISSENTS TO SENTENCING PROPOSAL IN CIRCUIT OPINIONS

Last month's issue of *The Third Branch* contained an article about the suggestion that information on sentences imposed be footnoted in appellate opinions. The subject was discussed when the circuit chief judges held their Spring meeting in March. Those in favor of the proposal felt it could provide assistance to district judges and could also be of value for statistical purposes.

But, there was disagreement. It was pointed out that with so many criminal appeals affirmed by judgment orders, two-thirds in at least one circuit, the data could have no statistical value. It was also urged that a judge, unfamiliar with the case, and reading the opinion, would gain no helpful information about the defendant and therefore would gain no direct insight to the reasons for the sentence.

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

Co-editors:

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Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts

EARL WARREN MEMORIAL

A portrait-bust commemorating Chief Justice Earl Warren was unveiled on May 15, in ceremonies at the Supreme Court.

The bust is the work of Walker Hancock, of Gloucester, Massachusetts, creator of many other busts and statues in Washington and elsewhere in this country and in Europe.

The bust will join the collection of the thirteen other former Chief Justices of the United States in the Great Hall leading to the Courtroom on the first floor.

The bust is of Bianco P marble from a quarry in the Carrara mountain range in Italy. The marble is of a smooth white type without grains and thus best suited to carving. It is of a type favored by Michelangelo and other Renaissance artists who rejected marbles used by earlier generations of sculptors in its favor.

Mr. Hancock says that the bust of Earl Warren presented difficulties for him because the photographs from which he worked showed the former Chief Justice with animated expressions and with much of his face hidden by horn rimmed spectacles. On completion of the bust Mr. Hancock had similar glasses made, testing them on the bust to be sure that they recreated the same image seen in the photographs.

A plaster bust was made at the outset at the sculptor's studio in Gloucester. This was sent to the Supreme Court for the family's inspection and approval. Next the plaster bust went to Pietrasanta where the Palla firm assigned carvers to create the image. Finally Mr. Hancock went to Pietrasanta for his own final week of work on the details of the face. The marble bust was returned to the Supreme Court where Mrs. Warren examined it and Mr. Hancock added the final touches.

Appearing at the unveiling ceremonies of the marble bust of Chief Justice Earl Warren are (left to right): Mrs. Walker Hancock; the artist, Walker Hancock; Mrs. Earl Warren; Chief Justice Burger; and Mrs. Burger.

CHIEF JUSTICE ADDRESSES ALI

In a speech delivered before the American Law Institute on May 16, Chief Justice Warren E. Burger challenged the legal profession to help law schools improve advocacy training. Speaking at the Mayflower Hotel at the Institute's Annual Meeting, The Chief Justice cited courtroom performance as the profession's greatest weakness.

The Chief Justice urged that three law schools conduct an experiment in which law school fundamentals would be covered in two years and in which the third year would be reserved for instilling advocacy skills:

- The third or final year of the legal education would not be the traditional eight or nine months but a full twelve month period, roughly comparable to a medical internship, devoted to involvement in every phase of the litigation process from th first interviews with the clien interviews with witnesses, preparation of statements of witnesses, and preparation of trial briefs. This should be followed by firsthand observation of the trials of cases they have worked on.
- A large part of the third year should also be devoted to continued observation of trials of cases carefully selected in cooperation with the law school, the bench and bar. To the extent possible, observation of trials should be followed by a "postmortem" analysis of the case with the two trial advocates in seminars by students and the law teachers who are skilled in organizing learning processes.

The Chief Justice called upon the organized bar to provide support and leadership for this experiment "so that people' rights can be vindicated fa and justly and at a cost whic reflects efficient as well as competent professional performance."

ATTORNEY GENERAL NAMES ANTITRUST COMMISSION MEMBERS

Attorney General Griffin B. Bell has named the members of the 22-member Antitrust Commission which will study the nation's antitrust laws and make recommendations for changes they believe are necessary.

The Attorney General on May 19, 1978, named Maxwell Blecher, a Los Angeles Attorney; Eleanor M. Fox, a law professor at New York University; John Izard, a partner in the Attorney General's former law firm in Atlanta; James Nicholson, a Washington, D.C. attorney; Craig Spangenberg, a Cleveland attorney; Gordon Spivack, a New York attorney and visiting Yale University Lecturer, and Lawrence Sullivan, Professor of Law at the University of California in Berkeley.

Also named were Chauncey Browning, West Virginia Attorney General, and Chief Judge C. Clyde Atkins (S.D. Fla.). Ten members of Congress headed by Senator Edward Kennedy and Representative Peter Rodino also were appointed to the Commission. Representing the Executive Branch on the Commission will be Assistant Attorney General in charge of the Antitrust Division, John Shenefield; FTC Chairman Michael Pertschuk and CAB Chairman Alfred Kahn.

The Chairman of the Commission will be Assistant Attorney General Shenefield. The Commission plans to hold public hearings beginning this month in Washington and to complete its work within six months.

EDUCATION AND TRAINING MATERIALS POPULAR

Since March of 1976, over 1700 training cassettes have been loaned out to federal district judges, over 1200 have gone out to probation officers and over 1100 have gone out to Bankruptcy judges.

On a monthly basis over 274 audio cassettes are sent out to some twenty different categories of court personnel.

The number of separate topics on cassettes listed in the Education Media Catalog is now over 1000. An addendum will be published shortly listing those tapes which have been added to the library since the last edition of the Educational Media Catalog. A new Media Catalog will be published sometime towards the end of the summer and will have an updated listing of audio cassettes, films, and video cassettes. Many commercial tapes have been added to the catalog as well. Presently, the Center is sending out about 50 videotapes a month.

Demand for the "Equal Justice Under Law" films has been running very high. Of the 82 films which were sent out in April, over 30 percent of them were one of the five films comprising the "Equal Justice Under Law" series. The films are based on major constitutional decisions of the Supreme Court during the era of Chief Justice John Marshall. There are five films in the "Equal Justice Under Law" series, with each film running about thirty minutes. All of the films are in color and may be loaned either as a five-film package or ordered separately by calling Sherry Ledford or Tom Scott; 202—633-6024.

New to the Media Catalog format are video cassettes. Tapes are available for loan on 45 different topics. All video cassettes are of the 3/4" U-Matic format and can be played on most video equipment.

THIRTY SENATORS NOW USE NOMINATING COMMISSIONS FOR JUDICIAL RECOMMENDATIONS

Thirty senators in eighteen states are now using a nominating commission for district judge recommendations. (A list of the states and senators using these commissions appears on page six.)

Attorney General Griffin Bell February 9 issued a statement on the selection of federal judges and U.S. Attorneys in which he said, "To date, of twenty-one federal district judges appointed by President Carter and confirmed by the Senate, eleven came from nominating commissions. Of twelve additional federal district judgeship candidates either already nominated and awaiting confirmation, or presently being processed for nomination, nine have come from nominating commissions.

"Of the 145 proposed new circuit and district court judgeships to be created by the Omnibus Judgeship Bill now pending in Congress, at least sixty percent will be filled with the assistance of nominating panels. We anticipate that additional panels will be created by Senators as district judgeship vacancies in their states now occur for the first time under this Administration.

"In addition, Senators from approximately eight states have established a commission for the selection of candidates for U.S. Attorney."

NOTICE TO OUR READERS

The Third Branch is updating its mailing list.

Non-federal subscribers who received a post card within the past month requesting address verification should be certain to return the card at an early date, otherwise the reader will be discontinued from future mailings of *The Third Branch*.

SENATORS USING A NOMINATING COMMISSION FOR DISTRICT JUDGE RECOMMENDATIONS

California	Senators Cranston & Hayakawa
Colorado	Senators Hart & Haskell
Florida	Senators Chiles & Stone
Georgia	Senators Nunn & Talmadge
Indiana	Senator Bayh
Iowa	Senators Clark & Culver
Kentucky	Senators Ford & Huddleston
Massachusetts	Senator Kennedy
Michigan	Senator Riegle
New Hampshire	Senator McIntyre
New York	Senators Moynihan & Javits
New Mexico	Senators Domenici & Schmitt
Ohio	Senators Glenn & Metzenbaum
Oklahoma	Senators Bartlett & Bellmon
Pennsylvania	Senators Heinz & Schweiker
Tennessee	Senator Sasser
Utah	Senators Garn & Hatch
Virginia	Senator Byrd

PRESIDENT ISSUES NEW EXECUTIVE ORDER FOR CIRCUIT JUDGE COMMISSION

President Carter issued on May 11 a new Executive Order, number 12059, creating the United States Circuit Judge Nominating Commission.

The Executive Order establishes separate panels for each of the Judicial Circuits and two panels for both the Fifth and the Ninth Circuits.

In general, the function of these panels will be to "recommend for nomination as circuit judges persons whose character, experience, ability and commitment to equal justice under law, fully qualify them to serve in the Federal judiciary."

The Panel for the District of Columbia Circuit will have the dual responsibility of recommending candidates for both the Circuit and the District Court.

(The full text of the Executive Order can be found beginning on page 20949 of the May 16 Federal Register.)

BANKRUPTCY STATISTICS RELEASED

The Administrative Office of U.S. Courts' Bankruptcy Division has just released its bankruptcy statistics for the statistical year ending June 30, 1976 which reveal that almost a quarter of a million persons or businesses availed themselves of the relief offered by the Bankruptcy Act during the period.

The total number of cases filed was 246,549, the second largest number ever filed under the Act, but a decrease of 7,935 cases or 3.1 percent less than the number filed in the peak year, 1975.

There was some drop in filings in all circuits except the District of Columbia Circuit, and those comprised of districts in highly industrialized northeast regions—the First, Second and Third Circuits.

Paralleling the rise in filings in those regions was a continued rise in business bankruptcies to an all time high of 34,156. The sharpest increase in total filings occurred in the Third Circuit where filings rose from 7,484 in 1975 to 10,090 in 1976, an increase of 34.8%.

The Second Circuit followed with an increase in filings from 14,623 in 1975 to 17,093 in 1976, an increase of 2,470.

This table shows the number of business and non-business bankruptcies in the last decad

The number of busine. bankruptcies continued to rise in 1976 to reach the all-time high of 35,201. This represents an increase of 5,071 cases or 16.8 percent over 1975, the previous peak year. Significantly, in the past seven years the percent of business cases to total cases filed has continued to increase, reaching 14.3 percent of the total in 1976.

The small drop in total filings occurred in the non-business bankruptcies. In 1976, they dropped from the all-time high of 224,354 cases filed in 1975 to 211,348—a decrease of 5.8 percent.

The Third Circuit, as in the previous year, experienced the greatest percentage of business bankruptcies in the nation—24.3 percent. With two exceptions, there was a decrease in all types of bankruptcy cases filed i statistical 1976.

Those exceptions were Chapter 9, under which two cases were filed compared with none in 1975, and Chapter Twelve under which 525 cases were filed compared to 280 in 1975. While filings in Chapter Twelve cases increased in 1976, the dismissal and adjudication rate in Chapter Twelve cases was also high in 1976. Of the 218 Chapter Twelve cases concluded, 205 or 94 percent were either by dismissal or adjudication.

While there was some decrease in straight bankruptcy cases and in Chapter Eleven cases, the filings in both categories were the second highest in history. The most significant drop in filings, an 18.5 percent reduction, occurred in Chapter Thirteen. However, the total filings unde Chapter Thirteen, 33,579, al is the second highest in history under that Chapter.

A total of 237,793 cases was closed in 1976. This is 45,001

more cases than the number ...sed in 1975 and the largest ...nber of cases ever closed in a ...ear.

However, despite the record number of cases closed in 1976, with the continued high volume of filings in 1976 the pending caseload continued to increase to a record 271,039.

At the close of 1976, there were 200 full-time and 29 part-time referee positions or a total of 229 positions authorized. There were 1,402 clerical positions authorized at the close of 1976.

Statistical Year	Non-Business	% of Total	Business	% of Total	Total
1967	191,729	92.0	16,600	8.0	208,329
1970	178,202	91.7	16,197	8.3	194,399
1973	155,707	89.9	17,490	10.1	173,197
1975	224,354	88.2	30,130	11.8	254,484
1976	211,348	85.7	35,201	14.3	246,549

PROBATION OFFICER EXCELLENCE AWARD NOW INSTALLED AT FJC

At a special commemorative ceremony at the Federal Judicial Center recently, a replica of the Richard F. Doyle Award which honors an ...tanding federal probation ...cer each year was mounted in a prominent location in the Center.

The Doyle Award has been presented each year since 1974 to a federal probation officer in recognition for outstanding contributions toward the improvement of the Federal Probation System.

The award has three purposes: To enhance public opinion of federal probation officers; to recognize federal probation officers who have made outstanding contributions to the system; and, to recognize professional developments establishing new techniques toward the improvement of the Federal Probation System.

The award is named for Richard F. Doyle, retired chief probation officer from the Eastern District of Michigan and ... first president of the Federal ...bation Officers Association.

PERSONNEL

Appointments

Ellen B. Burns, U.S. District Judge, D.Conn., May 20

Almeric L. Christian, Chief Judge, District Court of the Virgin Islands, May 1.

Gustave Diamond, U.S. District Judge, W.D.Pa., May 24

Daniel M. Friedman, Chief Judge, U.S. Court of Claims, May 24

Paul A. Simmons, U.S. District Judge, W.D.Pa., May 3

Robert W. Sweet, U.S. District Judge, S.D.N.Y., May 18

Donald E. Ziegler, U.S. District Judge, W.D.Pa., May 22

Elevations

George H. Barlow, Chief Judge, U.S. District Court, D.N.J., May 15

Howard C. Bratton, Chief Judge, U.S. District Court, D.N.M., April 6

Nominations

Santiago E. Campos, U.S. District Judge, D.N.M., June 2

Shane Devine, U.S. District Judge, D.N.H., May 17

Mary Johnson Lowe, U.S. District Judge, S.D.N.Y., May 10

Louis H. Pollak, U.S. District Judge, E.D.Pa., June 7

(See PERSONNEL, P. 8)

THE SOURCE

The Information Service of the Federal Judicial Center

Publications are primarily listed for the reader's information. Those in bold face are available from FJC Information Service.

- The Care and Feeding of Trial Judges. Donald T. Barbeau. 4 #1 Brief/Case 35-42 (Spring 1978).
- The Code of Judicial Conduct—the First Five Years in the Courts. E. Wayne Thode. 1977 Utah L. Rev. 395–422.
- The Context of Public Bureaucracies: an Organizational Analysis of Federal District Courts. Wolf V. Heydebrand. 11 Law & Society Rev. 759-821 (Summer 1977).
- The Effect of Peremptory Challenges on Jury and Verdict: an Experiment in a Federal District Court. Hans Zeisel & Shari Seidman Diamond. 30 Stan. L. Rev. 491-531 (Feb. 1978).
- **The Litigants Search for Able Advocates: the American and British Systems. Irving R. Kaufman. Address before the Fifteenth Annual Meeting of the Virginia Bar Association, January 13, 1978.**
- **Settling the Blockbuster Case. Otto R. Skopil, Jr. [Unpublished, 1978].**
- Patterns and Strategies of Court Administration in Canada and the United States. Carl Baar. 20 Administration Publique du Canada 242-274 (1977).
- Powers, Duties and Operations of State Attorneys General. National Association of Attorneys General. 1977.
- Standards Relating to Judicial Discipline and Disability Retirement; American Bar Association. 1978.
- Unreported Decisions in the U.S. Courts of Appeals. 63 Cornell L. Rev. 128-148 (Nov. 1977).

AO FJC calendar

June 26-27 Court Management Workshop for Probation Officers, Little Washington, NC

June 27-30 Video Production Workshop, Philadelphia, PA

June 27-30 Crisis Intervention Seminar for Probation Officers, Minneapolis, MN

June 28-29 Workshop for District Judges (3rd Circuit), Cherry Hill, NJ

June 28-July 1 Fourth Circuit Conference, White Sulphur Springs, WV

July (date open) Seminar for Assistant Federal Defenders, Baltimore, MD

July 6 Judicial Conference Bankruptcy Committee, New York, NY

July 6-7 Judicial Conference Advisory Committee on Civil Rules, Washington, DC

July 6-7 Judicial Conference Advisory Committee on Criminal Rules, Washington, DC

July 8-9 Training for Judges' Secretaries, San Francisco, CA

July 10-11 Judicial Conference Subcommittee on Supporting Personnel, Houston, TX

July 10-12 Workshop for Interpreters, Phoenix, AZ

July 10-12 Management Training for Supervisors, Sacramento, CA

July 13-14 In-Court Management Training Seminar, Burlington, VT

July 17-18 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, DC

July 18-21 Orientation Seminar for Part-Time Magistrates, Denver, CO

July 19-22 Tenth Circuit Conference, Colorado Springs, CO

July 24-25 Judicial Conference Jury Committee, Hanover, NH

July 24-25 Workshop for Personnel Clerks, San Francisco, CA

July 24-28 Advanced Seminar for Pretrial Services Officers, Cincinnati, OH

July 25-26 Management Training for Supervisors, Columbia, SC

July 25-27 Judicial Conference Review Committee, Denver, CO

July 26-27 Judicial Conference Advisory Committee on Judicial Activities, Denver, CO

July 27 Time Management Seminar, Columbia, SC

July 28 Time Management Seminar, Charleston, SC

July 28 Judicial Conference Joint Committee on Code of Judicial Conduct, Denver, CO

NEW FJC PUBLICATION AVAILABLE

Observation and Study: Critique and Recommendations on Federal Procedures. A Study pertaining to the use of professional evaluation to support sentencing decisions under 18 USC §4205(c) and 5010(e). FJC R-77-13.

(PERSONNEL, from P.7)

Confirmations

Robert F. Collins, U.S. District Judge, E.D.La., May 17

Cristobal C. Duenas, Judge, District Court of Guam, May 17

Adrian G. Duplantier, U.S. District Judge, E.D.La., May 26

Harold H. Greene, U.S. District Judge, D. of Col., May 17

Alfred Laureta, Judge, District Court of the Northern Mariana Islands, May 17

Leonard B. Sand, U.S. District Judge, S.D.N.Y., May 17

Jack E. Tanner, U.S. District Judge, E.&W.D.Wash., May 17

Withdrawal

Len J. Paletta, U.S. District Judge, W.D.Pa., May 25

Deaths

Robert P. Anderson, U.S. Senior Circuit Judge, 2nd Cir., May 2

John C. Bowen, U.S. Senior District Judge, W.D.Wash., April 27

THE THIRD BRANCH
VOL. 10 NO. 6 JUNE 1978

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The Third Branch

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Bulletin of the Federal Courts

VOL. 10 No. 7 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center JULY, 1978

ANTITRUST COMMISSION UNDERWAY

The National Commission for the Review of Antitrust Law and Procedures has held its organizational meeting and will be conducting public hearings through the end of July.

The Commission, created by Executive Order 12022, will study and make recommendations in two main areas. In the first, the Commission will consider revisions in procedural and substantive rules of law to expedite and improve complex antitrust litigation. In the second area, it will examine current justifications for the retention of the various exemptions and immunities from the antitrust laws.

The Executive Order establishing the Commission set a six-month period for the Commission to undertake these studies and make final recommendations.

(See ANTITRUST p. 3)

SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES

The Federal Judicial Center has announced the dates for the next seminar for newly appointed United States District Judges.

The seminar will open with the usual open house at the Dolley Madison House Sunday evening, November 12, and will conclude on Saturday, November 18.

Judges Frederick B. Lacey (D.N.J.), left, Alvin B. Rubin, (CA-5), center, and Charles B. Renfrew, (N.D. CA.) confer at the Dolley Madison House prior to testifying before the Antitrust Commission this month.

DISPUTE OVER SPLITTING FIFTH CIRCUIT DELAYS JUDGESHIP BILL

The Omnibus Judgeship Bill which would create over 150 new judgeships at both the district and circuit levels has been delayed by controversy over the question of whether the Fifth Circuit should be split.

There is no longer any dispute over the number of judgeships, 117 for the district courts and 35 for the courts of appeals, or the "merit selection" proposal in the bill. However, in the joint conference committee, members of the House and Senate have been unable to reach agreement on the question of creating a new circuit out of the present Fifth Circuit by splitting off Louisiana and Texas.

Senator James O. Eastland of Mississippi, retiring chairman of the Senate Judiciary Committee, has taken the position that the Fifth Circuit should be split, a proposal which most of the House conferees oppose.

Some civil rights groups have opposed splitting the Fifth along the lines advocated by Senator Eastland on the ground that it would make the remaining states in the Fifth Circuit a forum in which, they contend, civil rights cases will not be heard fairly.

In addition, some conferees believe that a single circuit consisting of just Texas and Louisiana would be too easily influenced by petroleum industry interests which are located in those states.

Representative Peter W. Rodino, Jr., Chairman of the

(See DISPUTE p. 4)

A.O. RELEASES WORKLOAD STATISTICS

The Administrative Office of U.S. Courts has just released federal court workload statistics for the period April, 1977—March, 1978 which reveals that for the nine month period ended March 31 of this year, civil cases were up slightly in the district courts while pending bankruptcy cases dropped slightly.

Summary of Activity

During the twelve month period ended March 31, new filings in the courts of appeals totaled 18,591, a drop of 3.3 percent from the 19, 233 cases filed during the comparable period last year. Terminations of appeals increased by 2.7 percent from the 17,406 last year to 17,880 this year, but with the level of dispositions still below that of filings by over 700 cases, the pending caseload rose 4.6 percent from 15,482 last year to 16,193 as of March 31.

Nearly all circuits reported declines in appeals docketed with only the Fourth and the Ninth Circuits countering the trend, each increasing by 8.1 percent. The Eighth Circuit dropped by nearly 16 percent from 1,165 cases, while the Second Circuit's filings fell by 359 cases to 1,795.

Cases Under Submission in the Courts of Appeals

Circuit judges reported 438 cases held under submission which have been heard or submitted more than three months before March 31. This is an 18.7 percent increase over the 369 cases reported on March 31, 1977. A total of 308 cases had been submitted more than three but less than six months, 49 for more than six but less than nine months, 36 for more than nine months but less than one year and 45 cases for more than one year.

The Third Circuit Court of Appeals, the Court of Claims and the Temporary Emergency Court of Appeals reported no cases under submission over 90 days as of March 31. The CCPA reported two cases which had been awaiting an opinion more than three but less than six months.

District Courts

The incoming civil caseload in the district courts rose by 5.5 percent during the twelve month period ending March 31 as 136,258 civil actions were filed. The courts were able to terminate 122,224 cases, an increase of 6.2 percent over the 115,066 cases terminated a year ago. Total case dispositions did not exceed filings, resulting in an increase of 14,034 in the pending caseload. This was a new record level of cases pending, a jump of 9.3 percent for the twelve month period.

Of the 94 district courts, there were 66 which showed increases in filings while 28 recorded declines. The changes ranged from an increase of 91.5 percent in the Southern District of Florida to a decrease of 61.8 percent in the Virgin Islands. The change in the Florida court stemmed primarily from a major rise in land condemnation cases while the drop in the Virgin Islands was due entirely to the transfer of jurisdiction to the newly organized Virgin Islands court system.

The 6.2 percent increase in terminations resulted from 67 courts registering gains in the number of terminations. The largest percentage increase in terminations was in the Eastern District of North Carolina—up by 90.5 percent—and Rhode Island which was up by 90.2 percent.

Pending cases in the 94 district courts kept climbing, reaching a total of 164,660 as of March 31. A total of 73 district courts showed increases in their pending caseload while 21 showed a decline. The 5.5 percent increase in civil filings for the 12 month period ending March 31, stemmed mostly from an increase of 49.1 percent in real property actions which, in turn, was a result of the increase in land condemnation cases which increased 139.5 percent from 2,581 to 6,181 cases. Of the total, 4,680 were filed in the Southern District of Florida.

Criminal Caseload

During the twelve month period ending March 31, 1978, criminal filings decreased to 37,380 cases or a 10 percent drop compared to the previous twelve months. Terminations were down by 15.9 percent from 44,351 last year to 37,298 this year.

Filings exceeded terminations by 82 cases, resulting in a pending caseload of 17,236 cases in March 31, 1978, a slight increase of one-half of one percent above the pending caseload of a year ago.

JUSTICE INSTITUTE PROPOSED

On July 10, President Jimmy Carter unveiled the Administration's proposal to phase out the Law Enforcement Assistance Administration and establish a National Institute of Justice.

The Institute would be within the Department of Justice and contain three primary componants: A civil and criminal justice research body, a bureau of justice statistics, and a grant-making agency.

The Third Branch will provide further information concerning the proposed National Institute of Justice in a future issue.

SECOND CIRCUIT HONORED FOR EFFICIENCY

A special session of the Second Circuit Court of Appeals was held June 26 to mark five years of "cleaning up the backlog" of the Court.

For the last five years, the Second Circuit Court of Appeals has disposed of more appeals each year than the number which were filed.

The hour-long ceremony featured remarks by Attorney General Griffin B. Bell who also read a congratulatory letter from President Carter paying tribute to the efficiency of the Court.

In the year ended June 30, some 1,850 cases were disposed of which is fifty more than will have been filed.

The Attorney General praised the Court for its "extraordinary accomplishments" and The Chief Justice sent the Court a letter in which he said it has accomplished "near miracles."

Chief Judge Irving R. Kaufman said that the Court has taken steps "to stay afloat" and pointed out that "in cases with little jurisprudential value, our court has employed the English practice of deciding appeals orally from the bench, with a fairly comprehensive statement of [the] reasons for our decisions."

Attorney General Griffin B. Bell, left, with Chief Judge Irving R. Kaufman at session commending Second Circuit Court of Appeals.

(ANTITRUST from p. 1)

The following major problems have been identified by the Commission staff:

- Inherent complexity of facts
- Lack of adequate judicial management and control
- Incentives to delay
- Lack of specificity in pleadings and contentions
- Breadth and burden of discovery
- Dilatory behavior and harassing tactics
- Inefficient evidentiary practices
- Problems of structural remedies
- Unclarity of attempt to monopolize standards

To resolve these problems, a number of proposals are being considered:

- Imposition of time limits
- Increased sanctions for dilatory tactics
- Financial disincentives for delay
- Panel of judges with expertise in antitrust law
- Greater issue definition earlier in pretrial
- Narrower scope of discovery
- Greater use of previously discovered material
- Increased use of masters and magistrates
- Increased use of time-saving evidentiary practices
- Improved methods for effecting structural relief
- Clarify standard for attempt to monopolize

Persons desiring further information about the work of the Commission are invited to contact Timothy G. Smith, Staff Director, Department of Justice, Washington, D.C. 20530.

THIRD CIRCUIT ADOPTS TWELVE MONTH SCHEDULE

Chief Judge Collins J. Seitz announced recently that the Third Circuit Court of Appeals began a twelve-month schedule, beginning this month.

He said, "The judges of the Court have unanimously adopted the twelve month schedule—a significant break from tradition—as part of the Court's long standing and continuing policy of promptly deciding its heavy volume of cases—a policy of maintaining a state of currency. The Court has been able to maintain a state of currency despite a growing caseload since 1973."

Before the twelve-month schedule was adopted it was reviewed and approved by the Lawyers Advisory Committee of the Third Circuit.

Under the new schedule, the Court will, for the first time, be sitting regularly in July and August to hear appeals on the merits and motions. In the past, only "motions panels" were convened in these months.

The new schedule will provide more flexibility for the court in scheduling sessions and calendaring cases to better cope with surges in the work load.

the Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts

ARBITRATION PLAN DISCUSSED

A conference focusing upon arbitration under local district rule was held in recent weeks. The all-day meeting was held under the sponsorship of the Office of Improvements in the Administration of Justice at the Department of Justice and chaired by Assistant Attorney General Daniel J. Meador. Among those in attendance were Chief Judge T. Emmet Clarie (D. Conn.), Chief Judge Joseph S. Lord, III (E.D. Pa.), Chief Judge Robert F. Peckham (N.D. Calif.), and Judge William W. Schwarzer (N.D. Calif.). Others included personnel from the Department of Justice, the Administrative Office of the U.S. Courts, Federal Judicial Center, and Congressional staff.

At an informal luncheon between working sessions, the use of arbitration was praised by Chief Justice Warren E. Burger, Attorney General Griffin Bell, and Senator Dennis DeConcini (D. N.M.), Chairman of the Senate Subcommittee on Improvements in Judicial Machinery.

The working sessions were intended to discuss among the parties the different approaches towards arbitration taken in the three districts mentioned above, as well as the Voluntary Masters Pilot Program of the Southern District of New York introduced by Chief Judge David N. Edelstein. The meeting was also helpful in providing feedback relative to the Justice Department draft bill, which calls for a three-year experiment in the use of arbitration in a minimum of five to eight districts and any other interested districts.

Among the subjects discussed were the type of cases selected for arbitration, who classifies those cases, the selection and possible compensation of arbitrators, and discussion of the criteria the Federal Judicial Center will use to evaluate the program including the effect of arbitration on the number of filings; on the number of trials; judge magistrate and clerical time saved; savings in disposition time; and savings to litigants in the cost of litigation.

INSTITUTE FOR COURT MANAGEMENT GRADUATES TENTH CLASS

The Supreme Court of the United States was the scene for the Institute for Court Management's tenth graduation ceremonies last May. Thirty-two certificates were presented after the group had heard talks from both The Chief Justice and FJC Director A. Leo Levin.

The Institute, started in 1969, reported in its 1977 annual report that, since 1970, 277 individuals representing 41 states, the District of Columbia, the Navajo Nation, Canada and the Philippines have completed their Court Executive Development Program, thereby earning certification as Fellows of the Institute for Court Management.

Today approximately 50% of those certified now serve as the administrators or on the administrative staffs of general, limited and special jurisdiction trial courts.

(DISPUTES from p. 1)

House Judiciary Committee, believes that the judgeship bill should not be used as a vehicle for splitting the Fifth Circuit and that such complicated action should be considered in separate legislation.

Some believe that final action on the judgeships bill will come just before the Congress adjourns. The bill may then be hastily passed in the final days of the current Session when the conferees will be anxious to leave before the congressional elections.

THE SOURCE
The Information Service of the Federal Judicial Center

Publications are primarily listed for the reader's information. Those in bold face are available from FJC Information Service.

The Expansion of Federal Jurisdiction and the Crisis in the Courts. Harry Phillips. 31 Vand. L. Rev. 17-26 (Jan. 1978).

Crisis in the Courts: Proposals for Change. Griffin B. Bell. 31 Vand. L. Rev. 1-15 (Jan. 1978).

Determinate Sentencing; Reform or Regression? Proceedings of the Special Conference on Determinate Sentencing, June 2-3, 1977, Boalt School of Law, University of California, Berkeley. LEAA, March 1978.

Managing Information in the Big Case: Time for a Cooperative Experiment. Arthur R. Miller. 4 Litigation 8-11 + (Spring 1978).

A Matter of Color. A. Leon Higginbotham. Oxford University Press, 1978.

The Scientist in the Courtroom: A Heady Experience with Many Dangers. Eugene Garfield. 10 Current Contents 5-10 (June 12, 1978).

Symposium: Computers in Law and Society. 1977 Wash U. L.Q. 372-540.

In Praise of Local Rules. Steven Flanders. 62 Judicature 28-36 (June-July 1978).

Report on Judicial Business of the United States Courts in the Sixth Circuit, Nashville, Tenn. May 11, 1978.

Towards a New Mode of Conflict Resolution in Civil Matters. Lewis D. Solomon & Williams S. Richards. 27 DePaul L. Rev. 1-22 (Fall 19-7).

Trial Advocacy Competence: the Judicial Perspective. Dorothy Linder Maddi. 1978 ABF Res. J. 105-151.

Status Report

MAGISTRATES BILL CLEARS HOUSE COMMITTEE

The House Committee on the Judiciary voted on June 6th to report favorably S. 1613, The Magistrate Act of 1978. The vote on the bill to clarify and expand the jurisdiction of United States magistrates was 23–7. A formal report on the legislation has not been filed.

The bill would expand the jurisdiction of magistrates in criminal cases by empowering them to try any misdemeanor case. Under present law, a magistrate may try only those misdemeanors which involve a possible fine of $1,000 or less. In civil litigation, the bill would provide explicit authority for a magistrate to try any case, with or without a jury, upon the consent of the parties. Finally, the bill would provide for stricter procedures for the selection of magistrates.

The version of the bill approved by the House Committee differs from that passed by the Senate on July 22, 1977 in several particulars, although the basic jurisdictional grants are similar. In criminal cases, the Senate bill would authorize a magistrate to try any petty offense case without the affirmative, written consent of the defendant. The Senate bill would also expressly permit a juvenile accused of a petty offense to be issued a violation notice and would afford the juvenile an opportunity to post and forfeit collateral on the charge, without invoking the procedures of the Juvenile Delinquency Act. Both of these provisions have been deleted in the version approved by the House Committee.

The House Committee included in the bill two administrative provisions not found in the Senate version. Under the House proposal, the Director of the Administrative Office of the United States Courts would be required to submit a report every two years to the Congress. The report would contain detailed statistical information concerning the number of civil cases referred to magistrates under the new law and the prosecution of appeals in such cases. The Director would also be required to include in the report information as to the professional qualifications and backgrounds of individuals appointed to serve as United States magistrates. The second provision added by the House Committee would expressly authorize the attendance of a court reporter at any civil trial conducted by a magistrate unless the parties, with the approval of the magistrate or a judge, agree that the attendance of a court reporter would not be necessary.

In addition, the House Committee has tightened the bill's provisions for selecting magistrates. The Senate version would require the Judicial Conference to promulgate qualification standards and selection procedures for magistrates. The House bill would require selection of magistrates through Merit Selection Panels, appointed by the district courts, which would be similar to panels now assisting in the selection of some district and all circuit judges.

When a formal report is filed by the House Judiciary Committee, the bill will be referred to the Rules Committee of the House. Thereafter, it will be brought before the full House for consideration. If the bill passes the House, differences between the House and Senate versions would still have to be resolved before final enactment of the expanded and clarified jurisdiction of magistrates.

Chief Judge Oliver Seth

TENTH CIRCUIT HOLDS ANNUAL MEETING IN COLORADO

Chief Judge Oliver Seth opened the Tenth Circuit annual Judicial Conference this month at Colorado Springs.

Speakers at the meeting included representatives of business, medicine and other circuits. Justice Byron R. White, Circuit Justice and a native Coloradan, discussed recent Supreme Court decisions. Judge Shirley M. Hufstedler of the Ninth had as her subject, "Some of My Best Friends Are Lawyers." She discussed criticism of the bar generally, and specifically the competency of lawyers to adequately represent their clients—a timely subject these days.

Judge Elmo B. Hunter (W.D. Mo.), Chairman of the Court Administration Committee, talked about recent proposals in the law of diversity jurisdiction.

Representing the Administrative Office were Edward V. Garabedian and James E. Macklin, Jr. and Director A. Leo Levin represented the Federal Judicial Center.

FRIEDMAN TAKES OATH AS CHIEF JUDGE U.S. COURT OF CLAIMS

Daniel M. Friedman became the Eleventh Chief Judge of the United States Court of Claims May 24, 1978. Chief Justice Burger presided over the ceremony at the Court of Claims in Washington, D.C. Chief Judge Friedman succeedes Chief Judge Wilson Cowen who retired March 1, 1977.

The Court of Claims was established in 1855 to provide a forum in which individual citizens and corporations could sue the Federal Government for money damages. The Court has jurisdiction over a wide variety of claims where Congress has waived sovereign immunity.

Because the Federal Government is the Nation's largest contractor, purchaser and employer, the Court has a heavy volume of cases often involving complicated technical issues and large amounts of money.

The Court's final judgments are subject to review only by the Supreme Court on writ of *certiorari*.

Judge Friedman was born in New York City in 1916. He graduated from Columbia Law School in 1940. In 1962 Judge Friedman was appointed Second Assistant to the Solicitor General, and in 1968 First Assistant. He has argued more than 75 cases before the Supreme Court including *Buckley v. Valeo* concerning the constitutionality of the Federal Election Campaign Act of 1971, and *Butz v. Economou* decided June 29, 1978, in which the Court examined whether executive officials of the Federal Government have absolute or qualified immunity in civil suits for damages against them based upon actions taken as part of their official duties. He worked on and was responsible for briefs in hundreds of cases.

Judge Friedman received the Attorney General's Exceptional Service Award in 1969; the Tom C. Clark Award from the District of Columbia Chapter of the Federal Bar Association in 1976; and the National Civil Service League Career Service Award in 1976.

Chief Judge Daniel M. Friedman

More on Advocacy

ABA POLL SHOWS 60% FAVOR CERTIFICATION REQUIREMENT

Chief Justice Burger's speech on lawyer competency last February sparked a number of developments--articles, panel discussions, speeches and surveys. The Chief Justice has estimated that between one-third and one-half of the lawyers in this country are underqualified to represent their clients in the courts.

The most recent survey was done by a New York public opinion research firm at the instigation of the American Bar Association *Journal*. The results of the survey are reported in the June issue.

The survey shows there is a "high degree of acceptance" for the Chief Justice's assertion and was, the *Journal* article states, "surprising in view of the fuss raised by Burger's statements. . . ."

Five hundred and ninety-nine lawyers were polled through telephone interviews. When queried as to whether they would agree with the Chief Justice, 41% said yes; 51% replied in the negative; and 8% were uncertain.

The breakdown by categories showed that the majority (51%) of lawyers interviewed, with incomes of $50,000 or more, and those working in large law firms, replied in the affirmative. Negative replies came from lawyers in smaller cities, smaller incomes, and from small- to middle-sized law firms.

The percentages on the affirmative side were even higher when an inquiry was made as to whether they would favor a specialty certification requirement for trial advocates—a total of 60% (and a high of 72% for litigation when they were queried as to whether this certification should be specifically required for a generalist, a business lawyer or a litigation lawyer).

As for what to do about it, again there were differences. The majority did not favor increased judicial authority to deal with poor advocacy. Law school training received the broadest general approval but it ranked behind approval for an apprenticeship training period "as the single most important step to combat poor advocacy. . . ."

Still another report, published in May by the Educational Testing Service, reflects that the Chief Justice's estimate may be too low. They questioned 1,600 alumni of six law schools, all practicing attorneys.

Here are some of the results of the ETS survey, based on their interviews:

- Sixty percent said their education had not prepared them to investigate facts.
- Sixty-nine percent indicated they had not learned how to counsel clients.
- Seventy-seven percent felt they left their law schools unprepared to negotiate settlements.
- Of the 47.4% who did trial and litigation work 19.6% said they received no law school training in this area, and 10.8% said that which they did receive was of no use.

As for the cures, the ETS survey puts the blame not so

BOLIVIAN, CANADIAN PRISONER TRANSFERS UNDERWAY

Prisoner transfers with Bolivia and Canada are now in progress. The first American prisoners were transferred back to the United States from Bolivia in late July and the transfer of transfer of Canadian and American prisoners is set for early September

At a planning meeting held July 6th in Chicago, representatives of the Administrative Office Criminal Justice Act Division, several United States Magistrates, a representative of the Bureau of Prisons and prison transfer coordinator Michael Abbell who is Special Assistant to the Assistant Attorney General of the Justice Department Criminal Division, discussed the transfer of Canadian and American prisoners.

Over 200 American inmates are in Canadian prisons and about 95 Canadians in American prisons. The transfers between Canada and the United States as well as between Bolivia and this country will be the first under the respective treaties. They follow the continuing transfer of prisoners between the United States and Mexico.

The treaties between each nation require each nation to agree to each transfer and each prisoner to voluntarily agree to the transfer. A transferred prisoner may contest his conviction only in the country in which he was convicted.

At the Chicago meeting Magistrate Ronald J. Blask (S.D. Tex.) and federal defender Charles Szekeley (S.D. Tex.) discussed the problems which they encountered during the initial transfer of Mexican and American prisoners.

Transfer coordinator Abbell said preliminary discussions have been held with Peru, Turkey, West Germany and Panama on the future prisoner transfers. The transfer of prisoners between United States and Panama is required under the recently ratified Panama Canal Treaties.

Federal defenders Edward F. Marek (N.D. Ohio) and Thomas White (W.D. Pa.), and assistant defenders Bernard Velasco (D. Ariz.), Thomas Hillier (W.D. Wash.), Donald N. Krosin (N.D. Ohio) and Richard Walsh (N.D. Ill.) will participate in various aspects of the prisoner programs with Canada and Bolivia.

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much at the door of the law school but more with the state bar examiners. They would opt for a national program which would call for certification only after lawyers had shown themselves to be competent and knowledgeable in substantive law and able to serve as an advocate. And, they would have the specialized certification standards set by a national organization comprised of both state and federal representatives. They see potential for danger should all 50 states function with 50 systems and the federal courts and federal agencies all operate with different standards.

Joel Seligman, an Assistant Professor of Law at Northeastern University, writing in the *Hartford Courant* after the ETS report was released, ended his article with: "The message of the ETS survey is clear: We must act at once to ensure every American who hires a lawyer hires someone who knows what he is doing."

In a press release from the Supreme Court July 17, commenting on these surveys, the Chief Justice said he would be meeting in August with the members of the Judicial Conference Committee to Propose Standards for Admission to Practice in the Federal Courts. That committee, chaired by Chief Judge Edward J. Devitt (D. Minn.) has been studying advocacy in the federal courts for the past two years. At the August meeting members of this committee will review drafts of proposals for a new system promoting a higher level of competence in federal trial court advocacy.

Rule 23(b)(3)

LEGISLATION TO BE INTRODUCED ON CLASS DAMAGE ACTIONS

The Department of Justice has been developing a draft statute proposing changes governing class damage actions presently brought under Rule 23(b)(3).

At its meeting last March, the Judicial Conference of the United States reviewed a report and recommendations from the Advisory Committee on Civil Rules, and thereafter approved in principle the revision of Rule 23(b)(3) of the Federal Rules of Civil Procedure by direct legislative enactment, rather than through rule-making authority. However, the Judicial Conference reserved for further consideration "the merits of any specific statutory proposals and the appropriateness of dealing with specific aspects of such proposals through the rule-making authority."

Specific proposals for changes in class damage actions are currently being reviewed by the Office of Management and Budget. As soon as this review is completed, which should occur by the end of July, the Department of Justice will urge the introduction of legislation based on its recommendations.

When the text of the final bill becomes available, a detailed report on this legislation will be printed in *The Third Branch.*

PERSONNEL

Nominations

Jose A. Gonzalez, Jr., U.S. District Judge, S.D. FL, July 6

Confirmations

Santiago E. Campos, U.S. District Judge, D.N.M., July 10

Shane Devine, U.S. District Judge, D.N.H., June 23

Mary Johnson Lowe, U.S. District Judge, S.D.N.Y., June 23

Louis H. Pollak, U.S. District Judge, E.D. PA, July 10

Robert H. McFarland, U.S. District Judge, D. Canal Zone, July 10

Deaths

Louis Hoffman, Municipal Court of the Virgin Islands, June 18

Luther W. Youngdahl, U.S. Sr. District Judge, District of Columbia, June 21

Terry L. Shell, U.S. District Judge, E.&W. D.AK, June 25

Appointments

Robert F. Collins, U.S. District Judge, E.D. La., May 31

Harold H. Greene, U.S. District Judge, Dist. of Columbia, June 21

Adrian G. Duplantier, U.S. District Judge, E.D. La., June 1

Jack E. Tanner, U.S. District Judge, E. & W. WA, June 2

Cristobal C. Duenas, U.S. District Court of Guam, June 15

REPORT RELEASED ON CENTRAL LEGAL STAFFS

A new FJC monograph on the use of central staffs by the judiciary in each of the U.S. Courts of Appeals is now available in the Information Service Office.

Central staff consist of lawyers, located at circuit headquarters, who work for the court as a whole. They function in all the circuits now; however, their tenure and responsibilities vary throughout the circuits. Creation of these positions was a response of the federal courts to meet the rapid increase in the work load in the appeallate courts.

AO/FJC calendar

Aug. 1-2 Judicial Conference Court Administration Committee; Colorado Springs, CO

Aug. 7-9 Management Training for Supervisors; Oxford, MS

Aug. 14-16 Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice in the Federal Courts Mackinac Island, MI

Aug. 14-15 Meeting of the Board, Federal Judicial Center, Mackinac Island, MI

Aug. 14-16 Workshop for Docket Clerks; Salt Lake City, UT

Aug. 20-23 Eighth Circuit Judicial Conference; Brainerd, MN

Aug. 23-25 Basic Instructional Technology Workshop; Louisville, KY

Aug. 24-25 Judicial Conference Budget Committee; Dearborn, MI

Aug. 28-29 Workshop for Personnel Clerks; Milwaukee, WI

Aug. 28-30 Advanced Instructional Technology Workshop; Louisville, KY

Aug. 28-Sept. 1 Advanced Seminar for Pretrial Services Officers; Pittsburgh, PA

THE THIRD BRANCH
VOL. 10, No. 7 JULY 1978

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(7)

The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

VOL. 10 No. 8 | Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center | AUGUST, 1978

REPORT RECOMMENDS DISCOVERY CUT-OFF DATES

The Federal Judicial Center has released "Judicial Controls and the Civil Litigative Process: Discovery", the second of three volumes to be published from the District Court Studies Project.

The report shows a strong relationship between the imposition of discovery cut-off dates and shortened elapsed discovery time. It also indicates a reduction in overall case disposition time in cases before judges who use strong discovery controls. The report was based on an analysis of docketed discovery activity in a sample of over 3,000 terminated cases drawn from six metropolitan district courts.

The report disclosed two reasons why reliance on control of discovery through attorney initiative is ineffective in securing timeliness.

First, despite widespread failure on the part of attorneys to observe the thirty-day period provided by the federal rules, compelling orders are rarely requested. This is so even though rulings on motions for compelling orders overwhelmingly favor the moving party.

Secondly, sanction motions are rarely filed.

Effective control, therefore, depends upon judicial case management exercised pri-

(See DISCOVERY P. 2)

Photograph courtesy the Curator's Office, Supreme Court of the United States.

On August 6, Lord Widgery and Chief Justice Burger, the heads of the judiciaries of England and the United States, joined in a ceremony to commemorate the first convening of the Supreme Court of the United States in New York City.

The setting was modern—a downtown New York City hotel—but the references were to a very old and very historic site.

The building pictured above is the old Royal Exchange Building, formerly at the foot of Broad Street in New York City. The Court met here for its first two sessions, reconvening in Philadelphia, then the National Capital, until 1800.

Unveiled at the close of the ceremony, was a plaque which will be placed near the site as a permanent reminder of the early history of the United States Supreme Court.

SENTENCING STUDY ANNOUNCED

The Department of Justice recently announced the award of an $897,124 contract for detailed research on sentencing practices in the federal courts.

The eighteen-month study will be conducted by the Institute for Law and Social Research of Washington, D.C.

"The study will develop extensive data that could be used, for example, in creating sentencing guidelines," Attorney General Griffin B. Bell said.

"Precise information on apparent disparities in sentences for the same offense will contribute to making the sentencing process more effective and fair."

The project will have three major components:

- Sentencing variations will be examined in six representative judicial districts to be selected.

Researchers will study the

(See SENTENCING P. 2)

DISCOVERY from Page 1

marily under provisions of Rule 83 of the Federal Rules of Civil Procedure. This rule confers upon courts and judges the discretion to promulgate rules and otherwise regulate federal practice in any manner "not inconsistent with" the Federal Rules.

The amount of discovery activity in the sample cases was surprisingly low. More than half of the terminated cases under study had no recorded discovery requests. Cases having discovery ranged from those with only one request (10.5 percent of the total) to a case with sixty-two requests. Less than five percent of the cases had more than ten requests.

The report quantified the effects of case characteristics on the probable amount of discovery activity. The predictability of discovery makes it particularly suitable for case management.

The study examined strong discovery controls with respect to judges and courts. It was shown that:

- The stronger the extent of controls by judges and courts, the more time is saved in the discovery process
- Cases exhibit the same patterns of discovery requests regardless of the extent of controls
- Responses to discovery requests are prompter where strong controls are applied
- Controls do not result in additional burdens on judges because of greater use of motions to compel
- Gaps of time between discovery initiatives are substantially shortened when strong controls are applied

The ultimate benefit to judges and courts is from the shortened total case disposition time — elapsed time from case filing to termination — that results when strong controls are used. Judges exercising the strongest controls settled cases ten months sooner than those imposing limited or no controls and completed trials over a year sooner. Courts exercising the strongest controls settled cases eleven months sooner and completed trials almost two years earlier than courts exercising the least controls.

A discovery timing control model incorporating the relationships found in the data from the courts studied recommends a case management strategy for effective control of the discovery process:

- Invoke judicial controls as soon as the issues are joined by all parties
- Set discovery cut-off dates according to the guidelines provided in the report
- Enlarge the cut-off date only if the moving party shows both active discovery during the initial control period and a specific need for further discovery
- Terminate the discovery period shortly before the final pretrial conference. Both dates should be set in a single order to insure efficient transition from discovery to final pretrial conference
- Embody the essentials of the discovery timing control system in a local rule

Copies of the report may be obtained from the Information Service Office of the Federal Judicial Center.

SENTENCING from Page 1

presentence reports of 3,000 convicted offenders and the files of U.S. Attorneys on an additional 1,800 persons sentenced after plea bargaining. They also will compare sentences with time actually served in prison.

- A series of special reports will be compiled on the effects of sentencing on offenders and the federal criminal justice system.

The project will develop information on how sentences relate to rehabilitation and to deterring crime by former offenders, as well as members of the general public. There also will be estimates on how much crime is prevented by imprisoning offenders. The cases of 1,200 offenders sentenced to probation, in addition to a sample of those sentenced to prison, will be examined.

- Opinion surveys will be taken of 1,200 persons in the general public, 450 federal judges, 100 U.S. Attorneys or assistants, 100 defense attorneys, 100 prison officials, and 150 offenders.

Members of the general public will be asked what they consider appropriate sentences for various types of offenses and offenders and what punishments they believe most effective in preventing criminal behavior.

Judges and other justice system personnel will be asked for their detailed views on sentencing and the advantages and disadvantages of different types of sentencing systems.

There will be stringent safeguards to ensure the privacy of all persons from whom information is obtained.

A criminal code reform bill, approved by the Senate and under review in the House, would create a Commission to develop sentencing guidelines. Federal judges would not have to follow the Commission's guidelines but would be required to explain reasons for sentencing above or below guideline ranges. The Commission would be set up within two years of the bill's enactment.

The research project will develop hypothetical systems for creating sentencing guidelines but will not create guidelines themselves.

ANALYSIS: JUDICIAL DISQUALIFICATION STATUTE CONSTRUED

A Federal Judicial Center staff paper has been prepared at the request of the Joint Committee of the Judicial Conference of the United States on the Code of Judicial Conduct as an aid to judges in construing 28 U.S.C. §455, the judicial disqualification statute.

The provisions of the statute were substantially amended in 1974, and the staff paper entitled, *Decisions Construing the Judicial Disqualification Statute,* provides an analysis with annotations, of each subsection of the statute.

The statute establishes an objective standard for judicial disqualification under Section 455(a) and the moving party is required to show facts that "would convince a reasonable man that a bias exists." It has not yet been resolved, according to the staff analysis, whether this standard is to be viewed from the perspective of the litigant invoking the statute or from the objective standpoint of a "reasonable man."

The statute not only abolishes the "duty to sit" doctrine, but lists five specific instances that mandate disqualification. The analysis explores each of the areas of personal bias or prejudice, conflict of interest, prior association, family relationships, and financial interest.

The "personal bias or prejudice" required to be shown for disqualification under Section 455(b)(1) has been defined as that which stems from an extrajudicial source and results in an opinion on the merits on some basis other than what the judge learned from his/her participation in the case. Further, a judge should recuse himself/herself when the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding." The requirement that the bias or prejudice be extrajudicial in origin led a court to hold that reading a defendant's presentence report does not constitute grounds for a judge to recuse himself/herself. Disqualification should occur, however, if a judge has received *ex parte* communications advising him of facts relevant to the case; however, conferences between the court and defense counsel *in camera* were held not to justify recusal if the conference took place with the consent of plaintiff's counsel.

Sections 455(b)(2) and (3) deal with potential conflicts resulting from the judge's prior status in either private or governmental practice. In one case, although petitioners did not allege personal bias or prejudice, the judge was disqualified because a former law partner had rendered professional services directly concerning the issues in controversy in the case.

Section(b)(3) requires disqualification only if a judge expresses an opinion regarding or has participated in the particular case before him. The former (employer) agency's position on issues or controversies *per se* will not cause disqualification. Similarly, a judge who is a former Government lawyer is not deemed to have been "associated" with the other lawyers in that agency if the judge had no exposure during his agency tenure to the case presently before him. Finally, a question often arises concerning matters that were at some stage of prosecution while the judge was a United States Attorney. Carefully defining the word "case," the Seventh Circuit recently held, in *Barry v. United States,* that the statute had not been violated, because no case had existed against the defendants until after the judge in question had left the United States Attorney's office.

Although Section 455(b)(4) refers primarily to disqualification in cases of personal financial interests, it has been held that membership in a bar association was not an "interest" within the meaning of the subsection. It has been suggested, however, that the draftsmen of the Code of Judicial Conduct did have economic interests in mind when they wrote the provision upon which this subsection was based. Further, one commentator reasoned that other interests fall within the purview of Section 455(a).

Section 455(c) stipulates that the judge has a responsibility to be aware of his immediate family's financial interests as well as his own; the classifications in this requirement are similar to those set forth in section 455(b). Although subsection (b) was intended to be strictly construed, decisions have indicated that a judge must consider "the remoteness of the interest and its extent or degree" in determining whether to disqualify.

The amended statute allows waiver only where the disqualification plea is based on section 455(a), and then only after an on-the-record, full disclosure has taken place. Under Section 455(b), however, waiver is impermissible.

Copies of the paper may be obtained from the Federal Judicial Center Information Service Office.

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

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CHIEF JUDGE PHILLIPS TO TAKE SENIOR STATUS

Judge Harry Phillips, who has been Chief Judge of the Sixth Circuit since August 25, 1969, has notified President Carter and Attorney General Bell that he will take senior status "effective upon the date of the commission of my successor." Chief Judge Phillips' communication added: "If my successor has not been appointed and confirmed, and his or her commission signed prior to January 15, 1979, my Senior Judge status will become effective at the close of business on that day."

The Judge's record shows that he has, during all his tenure on the Sixth Circuit Court of Appeals, put the work of that court above all other considerations. Typically, he added in his letter that he intended to continue to perform substantial judicial duties during the foreseeable future and that he

Chief Judge Harry Phillips of the Sixth Circuit.

was "motivated to take this step in order to provide a much needed additional judge for the Court.... Legislation now pending ... would create two additional circuit judgeships [but] even with the addition of these two new judgeships, it will not be possible for our court to keep pace with our drastically increasing caseload."

Judge George C. Edwards, Jr., of Cincinnati, Ohio, will be Chief Judge Phillips' successor.

COMPUTERS AID CASE CALENDARING AND JUDGE ASSIGNMENT

The Federal Judicial Center has just completed a project, through the use of computers, to help a case backload problem occurring in the Ninth Circuit.

Calen 9 is a computer program on the Federal Judicial Center's Courtran computer, written at the request of the Court of Appeals for the Ninth Circuit. Its purpose is to automate the procedures already in use in the court for assigning cases on calendars and judges to panels. The case calendaring section is now operational, and has undergone several revisions in the process of becoming a useful administrative tool.

The program works according to procedures for grouping cases devised by Judge Shirley Hufstedler (CA-9) and adopted as official procedure by the Circuit Council. Staff attorneys assign each case a "point count," based on its difficulty and the amount of time it can be expected to take to be heard. Relatively simple cases are worth one point; relatively difficult ones are given up to ten points. A panel can hear fifteen or sixteen points in a sitting. The computer is used simply to select cases from the backlog in groups of fifteen or sixteen points.

Criteria for grouping cases have included requiring that cases be from the same district to minimize the number of assigned judges who must be disqualified from sitting on a panel, and grouping cases by their subject matter, to maximize judge efficiency in hearing the group of cases.

In addition, the program recognizes that certain classes of cases with statutory and other priority must be selected before others. For example, criminal appeals have the highest priority; and certain civil appeals (habeas corpus, immigration, OSHA, and the like) automatically receive next highest priority. Further, cases are given priority by virtue of having been pending for a longer time than other cases. The program also permits individual cases to be ordered onto a calendar (although not to a particular one), or to be ordered off, at the request of the court. Finally, the program lists all calendars it puts together.

The data base is a list of cases maintained by court personnel. The maintenance procedure uses a standard Courtran text editor that gives the operator a great deal of flexibility in modifying case characteristics or correcting erroneously recorded information. The information maintained by the court goes beyond the minimal characteristics required by the computer program (docket number, subject matter, district, case name, and other information) and includes more complete categorical information, case status, and indicators of case complexity. Modifications to the form of the data require fairly substantial modification of the program.

The success of the program is primarily a result of the prior work done at the court to systematize its procedures for dealing with its backlog. The means by which staff attorneys assign "difficulty points" to cases predated the computer system, and was crucial to the system's proper functioning. Further, the dedication and capabilities of court personnel in learning to use and manipulate the system were crucial factors.

A final report on the operation and capabilities of Calen 9 is available from the Information Service at the Federal Judicial Center.

SYMPOSIUM ON SELECTION, DISCIPLINE AND REMOVAL OF FEDERAL JUDGES HELD

A symposium, co-sponsored by the American Judicature Society and the Aspen Institute for Humanistic Studies, was held at Aspen, Colorado, last month to discuss an old subject — how federal judges should be selected and whether some procedure other than impeachment should be adopted for removal.

The group of twenty-five participants were all selected for their direct relationship to the federal judiciary or because of an expressed interest in the subject. They were law professors, writers, members of the Judicial Nominating Commissions who screen the candidates, a representative from the President's staff who is daily involved in the selection process, an Assistant Attorney General from the Department of Justice, and a lawyer from the Federal Judicial Center. Four federal judges (Judges Arlin Adams, William E. Doyle, Clement F. Haynsworth, Jr. and Donald P. Lay) and one nominee for a federal circuit judgeship (Theodore McMillian) were in attendance.

With such a mix of backgrounds and personalities there were bound to be differences. But there were also some good suggestions for bettering the process and there evolved a better understanding on just how the commissions are functioning. The bills introduced by Senators Sam Nunn (D-Ga.) and Dennis DeConcini (D-Ariz.) — the legislation which would handle discipline and removal short of the impeachment process — received considerable attention.

Some things were immediately apparent, and one was that the commissions were functioning with little direction or prior knowledge as to how they should function, and perhaps one of the questions is whether they *should* have direction or staff support. Commissioners present gained an insight as to how their counterparts in other jurisdictions performed their work. The different views on the legislation pending in Congress were mainly related to its constitutionality.

The Directors of the two organizations, Robert B. McKay (the Justice Program at the Aspen Institute) and George H. Williams (American Judicature Society) will later release statements about the symposium. Meanwhile, papers distributed at the meeting are available at the Center or through the Society.

During the month of August another meeting sponsored by the Justice Program will be held at Aspen. This one will be the third and final in a series of workshops put on in cooperation with U.S. District Judge Marvin E. Frankel (S.D. N.Y.). This gathering will take up adversary justice, and the participants will review a draft of Judge Frankel's book re-examining adversary justice.

INFORMATION SERVICE ACQUIRES COMPUTER

The computer age has come to the Judicial Center's Information Service in the form of the *New York Times* Information Bank, an automated index developed by the *New York Times*. The data base consists of abstracts of *Times'* articles since 1969, and feature articles from about 70 other newspapers and periodicals.

Many inquiries about people, subjects and events have been answered by the Information Service staff with the assistance of the Information Bank. It has vastly increased the resources available to the Information Service and has increased the speed with which certain information can be obtained.

Searches are performed by first consulting a thesaurus for consistent subject terminology, then typing the appropriate words on a computer terminal. Various names, subjects, dates and other bibliographic modifiers can be combined in order to narrow a search for specific inquiries.

Results of the combination of terms then appear on the terminal screen. The computer then indicates the number of articles found, plus an abstract of each article, and the name, date and page number of the publication. Often the abstract is sufficient to answer a question but copies of entire articles are available on request.

The Information Bank service is available to federal judicial personnel for official inquiries. The staff welcomes the opportunity to perform searches in answer to such inquiries.

RESEARCH SERVICES OFFERED

Under a cooperative arrangement worked out between the Federal Judicial Center and the British/American Law Division of the Law Library of the Library of Congress, federal judges have been offered special research services in areas of the law that would otherwise be unavailable at their local libraries. During the past year, this service was utilized on almost one hundred different occasions, i.e., to compile sociological data, legislative history, and other projects.

The Library of Congress continues to welcome requests for research by federal judges.

AO/FJC calendar

Aug. 23-25, Basic Instructional Technology Workshop; Louisville, KY

Aug. 24-25, Judicial Conference Budget Committee; Dearborn, MI

Aug. 28-29, Workshop for Personnel Clerks; Milwaukee, WI

Aug. 28-30, Advanced Instructional Technology Workshop; Louisville, KY

Aug. 28-Sept. 1, Advanced Seminar for Pretrial Services Officers; Pittsburgh, PA

Sept. 6-8, Sentencing Institute (Ninth Circuit); Goleta, CA

Sept. 6-8, Management Program for Executives; Detroit, MI

Sept. 7-8, Training for Judges' Secretaries; New York, NY

Sept. 7-9, Second Circuit Judicial Conference; Buck Hill Falls, PA

Sept. 9-10, Seminar for Court Reporters; Hartford, CT

Sept. 11-13, Workshop for Docket Clerks; Minneapolis, MN

Sept. 11-13, Management Training for Supervisors; Washington, DC

Sept. 11-15, Orientation Seminar for U.S. Probation Officers; Washington, DC

Sept. 21-22, Judicial Conference of the United States; Washington, DC

UPHEAVAL BARS BOLIVIA, U.S. PRISONER TRANSFER

The exchange of prisoners between Bolivia and the U.S., reported in the July issue of *The Third Branch,* did not take place as scheduled. A coup d'etat in Bolivia upset exchange plans and no further negotiations on the matter will be held until the situation is stabilized.

PERSONNEL

Appointments

Mary Johnson Lowe, U.S. District Judge, S.D. NY, July 27

Shane Devine, U.S. District Judge, D. NH, July 18.

Nominations

James Dickson Phillips, Jr., U.S. Circuit Judge, (CA-4), July 20

Patricia J. E. Boyle, U.S. District Judge, E.D. MI, July 25

Harry E. Claiborne, U.S. District Judge, D. NV, July 25

Julian A. Cook, Jr., U.S. District Judge, E.D. MI, July 25

Norma Levy Shapiro, U.S. District Judge, E.D. PA, August 1

Thomas A. Wiseman, Jr., U.S. District Judge, M.D. TN, August 1

Theodore McMillian, U.S. Circuit Judge, CA-8, August 3

Marina R. Pfaelzer, U.S. District Judge, C.D. CA, August 8

Confirmations

Jose A. Gonzalez, Jr., U.S. District Judge, S.D. FL, July 26

Edward S. Smith, Associate Judge, U.S. Court of Claims, July 26

Deaths

John L. Miller, U.S. Senior District Judge, W.D. PA, July 20

Thomas F. Croake, U.S. Senior District Judge, S.D. NY, July 21

Joseph C. Waddy, U.S. District Judge, D.C., August 1

Austin L. Stanley, U.S. Senior Circuit Judge, (CA-3), August 3

THE THIRD BRANCH
VOL. 10, No. 8 AUGUST 1978

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891/5,

The Third Branch

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VOL. 10 No. 9 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center SEPTEMBER, 1978

Photograph courtesy of Madden's Resorts. Beverly Vanzo, Photographer.

Attending the Eighth Circuit Judicial Conference (left to right) Chief Justice Robert Sheran (Sup. Ct. Minn.); FBI Director William H. Webster; Mr. Justice Blackmun (U.S. Supreme Court); Chief Judge Floyd R. Gibson (CA-8); Chief Judge Edward J. Devitt (D. Minn.); and Chief Justice J.P. Morgan (Sup. Ct. Mo.).

MR. JUSTICE BLACKMUN, SENATE, HOUSE LEADERS ADDRESS EIGHTH CIRCUIT JUDICIAL CONFERENCE

Brainerd, Minnesota was the site this year for the Eighth Circuit's Judicial Conference, which brought to the gathering a number of distinguished speakers.

Invited to address the Eighth Circuit's annual meeting were such luminaries as Senator Dennis DeConcini and Congressman Harold Volkmer (both members of their respective Judiciary Committees), Attorney General Griffin B. Bell, and FBI Director William H. Webster (a former Judge in the Eighth Circuit).

Of special interest was the Supreme Court review given by their Circuit Justice, Mr. Justice Blackmun. The Justice had words of commendation for the judges of the Eighth and he told them that their record of disposition of cases was one of the best in the system. Also praised was the low percentage of cases going to the U.S. Supreme Court for review, only seven percent of that Court's workload last Term. Nine percent is considered an average.

Both Senator DeConcini (D. Ariz.) and Congressman Volkmer (D. Mo.) gave detailed reports on the activities in the Senate and House Judiciary Committees, with special references to the omnibus judgeship bills bending in both houses.

(See CONFERENCE, page 5)

JUDGESHIP BILL CLEARS CONFERENCE COMMITTEE

Twenty-three weeks after commencing its efforts to reconcile the Senate and House versions of the Omnibus Judgeship Bill, the House-Senate Conference Committee completed its work on September 20. The meeting, the conference's seventh since April 11, lasted only 20 minutes.

When the Senate passed its bill (S. 11) on May 24, 1977, it approved the creation of two circuits within the existing Fifth Circuit. When the House passed its bill (H.R. 7843) on February 7, 1978, the "Fifth Circuit Split" was never considered.

In five meetings held between April 11 and May 17 the conference committee successfully resolved twenty of twenty-three differences between the two bills. Among the three remaining differences the most difficult was "the Fifth Circuit issue." The conference had agreed not to act upon a Senate provision requiring the Ninth Circuit to "report back" to Congress with realignment recommendations until after the Fifth Circuit matter had been resolved, and a Senate provision concerning jurisdictional amounts applicable to freight damage cases had also been deferred.

In a sixth committee meeting on July 26 efforts focused upon resolution of "the Fifth Circuit issue" without success. During the seventh meeting on

(See JUDGESHIP, page 3)

MAJOR LEGISLATION OF INTEREST TO *THE THIRD BRANCH* READERS

95th CONGRESS, SECOND SESSION

Bill	House Status	Senate Status
Omnibus Judgeship Bill (H.R. 7843, S. 11)	Passed 2/7/78	Passed 5/24/77
	(See related story, page 1.)	
Diversity Jurisdiction Abolition (H.R. 9622, (S. 2389, S. 2094	Passed H.R. 9622, amended, 2/28/78	Judiciary Subcommittee completed hearings, 9/25/78
Abolition of Mandatory Supreme Court Jurisdiction (S. 3100, H.R. 12979)	Pending in Judiciary Subcommittee	Pending on Senate Calendar
Magistrates Jurisdiction Act (H.R. 7493, S. 1613)	Judiciary Committee reported S. 1613, amended, 7/17/78	Passed S. 1613, amended, 7/22/77
Jury Reform Legislation (S. 2075)	Reported to Judiciary Committee, 7/26/78	Passed S. 2075, amended, 4/26/78
Bankruptcy Reform Act (H.R. 8200, S. 2266)	Passed H.R. 8200, amended, 2/1/78	Passed S. 2266, 9/7/78
	Now in conference	
Judicial Tenure Act (S. 1423, H.R. 1850, 9042)	Pending in Judiciary Subcommittee	Passed S. 1423, 9/7/78
Omnibus District Court Reorganization (H.R. 13331, S. 3375)	Judiciary Committee reported H.R. 13331, 8/8/78	Passed S. 3375, 9/6/78

The Ninty-Fifth Congress is rapidly running out of time. The date now planned for adjournment *sine die* is October 14. Because there are so few business days within which to complete action on several hundred pending bills, many will not be enacted.

Several bills pending in this Congress of importance to the federal judiciary are close to final approval, and may be in a posture to warrant the expenditure of valuable floor time.

Although the Abolition of Diversity Jurisdiction Bill is pending before the Senate Judiciary Committee, no recommendation for approval has come from Senator DeConcinni's Subcommittee which has deadlocked 2 to 2. If a full committee vote can be arranged in early September, the bill may be sent to the floor with committee approval.

The Abolition of Mandatory Supreme Court Jurisdiction Bill which will allow the Supreme Court greater discretion in selecting cases it will review, is now pending on the Senate calendar. Senator Helms (Rep. NC) has threatened to move an amendment to this bill prohibiting the Supreme Court from exercising any jurisdiction over school prayer cases. The bill may pass in early September—if it does not contain the school prayer amendment. When the matter reaches the House floor, anticipated amendments concerning abortion, school prayer, and school desegragation may delay or prevent passage.

The Magistrates Jurisdiction Act, enlarging the civil and criminal jurisdiction of U.S. Magistrates, and jury reform legislation, providing for a civil penalty and injunctive relief in the event of threatened discharge of an employer because of federal jury service, have been passed by the Senate. Although no vote has been scheduled by the House, passage of both is expected in September.

Passage of the Senate version of the Bankruptcy Reform Act—which does not establish a separate court system—occurred on September 7. Differences between the House and Senate versions of the bill may cause delay in the Conference Committee. Both bills establish a uniform law on the subject of bankruptcies.

(See LEGISLATION, page 3)

SUPREME COURT TO CONFER EARLY TO MEET HEAVY CASELOAD

When The Chief Justice convenes the Supreme Court on the first Monday in October, as mandated by statute, the Court will also announce orders in approximately 1,000 cases. Arguments in cases set for the October Term, 1978 will immediately follow.

During the weeks of adjournment, which began July 3, each member of the Court has received papers in an average of 105 cases per week. As of September 1 this has brought the total number to 950. The Clerk's office estimates over 100 more will be ready for consideration, bringing the aggregate to well over 1,000.

To keep abreast of the heavy caseload, the Court will be following some new procedures this Term. In the past and immediately following the opening of the October Term, a series of conferences were held to consider and vote on the cases which have accumulated since they last met. Following that argument was heard.

This Term, daily conferences will be held beginning the week of September 25. At these conferences the Justices will discuss and vote on cases ready for consideration, estimated to number 1,055. Those cases which present appropriate issues will be placed on the Court's argument calendar to be argued later in the Term, as new briefs on the merits are filed. Of the remaining cases, review is either declined, or summarily reversed with appropriate instructions to the courts below.

With the exception of some cases which may be withheld for further research or special consideration, orders will be announced on October 2nd in the balance of the cases and arguments will start immediately.

FJC BOARD APPROVES COURSES FOR FEDERAL JUDGES AT HARVARD

At its August meeting the Board of the Federal Judicial Center approved, on an experimental basis, a new educational program for federal judges. The program would provide tuition, travel, and per diem expenses for federal judges at Harvard Law School's summer "Program of Instruction for Lawyers." A maximum of ten judges will be supported for a two-week period starting July 16.

The program, which has been offered by the Law School since 1953, provides concentrated instruction by members of the Harvard faculty. Among the subjects being covered, some in one week and some for two weeks, are: Antitrust, federal jurisdiction, securities regulation, labor management relations, corporate income tax, administrative law, comparative law, Soviet law, critical choices in constitutional theory, and statutes and their interpretation. In addition, there will be a few special afternoon programs.

Normally these programs include three hours of morning lectures in two courses, six days a week, the equivalent of thirty-six semester hours. There will be ample opportunity for colloquia and informal discussions. Louis Loss, Cromwell Professor of Law, directs the summer program.

(See HARVARD page 7)

LEGISLATION **from page 2**

Although the Judicial Tenure Act passed in the Senate on September 7, due to the surprisingly close vote of 43 to 31, the House will probably not act upon it this year. The bill would establish a Council on Judicial Tenure in the judicial branch of the Government, and a procedure in addition to impeachment for the retirement of disabled justices and judges.

Final passage of the Omnibus District Court "reorganization" Bill is anticipated during September. Identical "companion bills" make changes in the places of holding federal district court, in the divisions within judicial districts and in judicial district dividing lines. The Senate bill was passed on August 21.

JUDGESHIP BILL **from page 1**

September 20, however, all conferees unanimously agreed to adopt the following language in lieu of the Senate-passed bill's sections requiring realignment of the Fifth Circuit and the "report back" from the Ninth:

> "Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its *en banc* functions by such number of members of its *en banc* courts as may be prescribed by rule of the court of appeals."

Remaining issues in disagreement were resolved immediately, and twenty minutes after the meeting commenced the conferees affixed their signatures to conference report authorizations.

A conference committee report should be filed with both houses by the first week in October, and floor votes necessary for final enactment are anticipated during that week.

The number of judgeships remains the same — 117 for the district courts and 35 for the circuit courts. However, since the next session of Congress will convene next January it will be several months until these new positions can be filled.

FEDERAL COURT LIBRARY REPORT RELEASED

Improving the Federal Court Library System, a report examining the system that supplies federal judges with law books and legal information services, has been released by the Federal Judicial Center. The report, submitted earlier this year by the Board of the Center to the Judicial Conference of the United States, is the result of an eighteen-month study of the libraries of the federal courts—the world's largest law book collection.

Five main problem areas in the system are identified in the report:

- Management
- Budgeting and procurement
- Personnel
- Library use and facilities
- Future planning and policy

The report found that solutions to these problems may be found in the adoption and application of sound management principles to law book and law library management. The nineteen specific recommendations approved by the Judicial Conference are that:

- The position of director of federal court libraries be established within the Administrative Office
- Circuit librarians be charged with the responsibility to propose to the Circuit Executive a circuit-wide library budget, to inventory all law books in the circuit, and to make periodic reports to the federal court library director
- The Administrative Office establish and maintain a computerized inventory of all federal court library holdings
- That law books and other expenses directly attributable to maintenance and support of federal court library holdings receive a definite amount of funding, specified in the Administrative Office Budget.
- Individual circuit library budgets be allocated
- Each federal judge have available a relatively small but definite amount of local discretionary funds to purchase, directly from vendors, law books for official use
- That the Administrative Office develop an efficient procurement procedure that minimizes delay, assures continuation of needed services and supplements, and assures awareness of forthcoming publications of interest to the federal courts.
- Court of Appeals librarian positions be upgraded
- The position of librarian be established for district court libraries and central libraries; that in district courts not requiring a central library an appropriate person be designated to take responsibility for all law books in the district
- There be developed continuing education programs for court librarians
- That the artificial distinction that exists between the circuit and district courts regarding the establishment, maintenance, and staffing of central libraries be eliminated
- Experimentation with satellite librarians be continued and extended to other parts of the country
- That the Administrative Office furnish court of appeals and district court central libraries with at least the legal research material that is necessary to insure compatibility with those minimum standards that the Judicial Conference approves
- Minimum library holdings be furnished court of appeals and district court central libraries
- Minimum library holdings be furnished in the chambers of each court of appeals judge, district judge, magistrate and bankruptcy judge at each individual's official duty station
- A system for withdrawing and redistributing surplus holdings be established
- The Administrative Office establish formal and continuing liaision with GSA to provide architectural guidance
- A continuing program to eliminate unnecessary duplication of holdings be established
- That the Judicial Conference of the United States consider appointing a subcommittee of a Judicial Conference standing committee to oversee the operation of the federal court library system
- That the Administrative Office and the Federal Judicial Center cooperate in an ongoing program to monitor and assist the development, test the utility, and recommend the implementation of new technology and services in the legal research field.

Copies of the report may b obtained from the Information Service Office of the Federal Judicial Center.

THE SOURCE
The Information Service of the Federal Judicial Center

Beyond Mere Competence. A. Leo Levin. 1977 Brigham Young U.L. Rev. 997-1006.

European Alternatives to Criminal Trials: What We Can Learn. William L.F. Felstiner & Ann Barthelmes Drew. 17 Judges' J. 18-24+ (Sept. 1978).

The Impact of the New Copyright Act on Photocopying by Law Firms and Law Libraries. Ralph Artigliere. 52 Fla. B.J. 528-35 (July/Aug. 1978).

Legislative Issues in Crime Control. Institute of Government, University of Georgia, 1978.

Modern Discovery: Promoting Efficient Use and Preventing Abuse of Discovery in the Roscoe Pound Tradition. William H. Becker. 78 FRD 267-78 (July 1978).

Parole Guidelines Confuse Sentencing Process. Herbert J. Miller & Jamie S. Gorelic Legal Times of Washington, Aug. 28, 1978, at 9, col. 1.

CONFERENCE from page 1

The Senator said that a viable legal system must have at least three elements. He identified these elements as:

- Access to the courts. Society has performed better on paper than in practice. Our legal system is too expensive and time-consuming. The middle class and the poor should have the same opportunity to press their claims in our courts as do the rich, the corporations and the Government.
- Courts must expedite cases, particularly civil cases. "Justice delayed is justice denied may sound trite, but it is true." He criticized especially the trials in civil cases and said if justice is not expeditious, it is not effective.
- The quality of justice. Quality reflects more than the caliber of the individual we place on the bench. The best of judges must balance the time and effort he or she can devote to a case against the court's backlog. We can materially affect the quality of justice by changing the structure of the system.

Regarding the judgeship bill, the Senator made no definite commitments, but did make it clear that he was supportive and sympathetic to the needs of the judiciary. He added a personal observation: that the need should have been advanced by everyone involved in the process as vigorously eight years ago as it is today.

Congressman Volkmer referred in his remarks to his belief that there is a need to apply more "flexibility" to the federal system. He evidenced a special interest in the magistrates bill, and the bankruptcy bill and though he was noncommittal on just when a judgeship bill might come out of Congress, he was optimistic for good progress very soon. He agreed with Senator DeConcini that the appointments should be based on merit.

There was good representation from the Committee to Establish Standards for Admission to Practice in the Federal Courts. Chief Judge J. Edward Devitt, (D. Minn.), Chairman, had with him to report on the progress of this Committee Judge James Lawrence King (S.D. Fla.) and two lawyer-members, Thomas E. Deacy, Jr. of Kansas City and Henry Halladay from Minneapolis. Chief Judge Devitt will make a formal report to the Judicial Conference of the United States when it meets in Washington this month.

Attorney General Bell reported on legislation affecting the federal courts, including the Foreign Intelligence Surveillance Act, the proposed criminal code, arbitration and diversity jurisdiction.

Dean Paul Carrington, now at Duke Law School, presented an interesting and very perceptive paper on the United States Courts of Appeals—their work, new developments in appellate procedures over the past fifteen years, and his analysis of why and how changes have come about.

An especially welcome speaker was FBI Director William H. Webster. Judge Webster not only spoke to them as a high Government official and former colleague; he spoke to them as a judge who understood their heavy caseloads and the problems which accompany heavy filings. Aware of their concerns for all aspects of his work, he reassured them that actions in particularly sensitive areas would have his "personal review."

Judge Robert Van Pelt (D. Neb.), as he has done in previous years, presented a scholarly and very helpful review of Eighth Circuit Evidence opinions.

Papers and speeches distributed at the Conference, including new local rules, are available in the FJC Information Service Office.

JUDGES MARVIN FRANKEL AND JOSEPH MORRIS ANNOUNCE RESIGNATIONS

Judge Marvin E. Frankel announced on August 16, that he would resign from the U.S. District Court for the Southern District of New York, effective September 30, 1978. Judge Frankel was appointed to the position by President Johnson on October 21, 1965. His decision was based upon his desire for the challenge and interest of a new position and the ability to become involved in human rights activities. He will return to private practice.

Judge Frankel is one of the most widely-known members of the federal judiciary and has written extensively on the problems of sentencing. He was a member of the Federal Judicial Center's Board from 1972 until 1978.

After graduating from Columbia University School of Law in 1948, Judge Frankel became a Government attorney working as an assistant to the Solicitor General. He was in private practice from 1956 until 1962 when he joined the faculty of Columbia University School of Law.

Judge Morris came to the U.S. District Court for the Eastern District of Oklahoma in 1974 and became Chief Judge of that court in 1975. His prelaw and J.D. degrees were from Washburn University and he earned both LL.M. and S.J.D. degrees at the University of Michigan.

In announcing his resignation, which became effective August 1, the Judge said it was a very difficult decision to make, but that he found it even more difficult to turn down a very attractive and professionally challenging offer. Judge Morris is now Vice President and General Counsel of a major oil company in Houston.

ABA HOUSE OF DELEGATES ADOPTS RESOLUTIONS ON COURTS

At last month's meeting of the American Bar Association the House of Delegates took action on a number of resolutions pertaining to the courts—state and federal.

In one of its most sweeping actions, after a brief but heated debate, the House passed by voice vote a resolution which revised the Criminal Justice Standards. The one resolution contained nine parts relating to standards for trial by jury, speedy trial, the function of the trial judge, electronic surveillance, criminal appeals, appellate review of sentences, post conviction remedies, discovery and procedure before trial, and joinder and severance. The House's approval is partial completion of an exhaustive study and revision of criminal justice standards which were previously adopted by the House, some as far back as ten years ago. Many judges in the federal system served on ABA committees which drafted the original and the new revised standards.

Separately the House took up the report on Fair Trial and Free Press. Judge Alfred T. Goodwin (CA-9) is Chairman of the Task Force which drafted this report. Though the report was approved, there was excised from the report that portion which pertains to the use of cameras in the courtroom, which will probably be taken up next February at the Association's mid-year meeting.

Eight other revised standards for criminal justice are expected to be taken up at the mid-year meeting next February.

Of interest to the federal judiciary also were actions which: Disapproved a resolution to support federal legislation to fund an income tax audit assistance program to offer advice, assistance and representation to low-income taxpayers; deferred action on an amendment to the Code of Judicial Conduct which would permit a judge to serve as a director or an officer of a business wholly owned by members of a judge's family; and approved a resolution to support continuation of affirmative action programs in law school admissions and legal hiring practices.

The House also supported the enactment of comprehensive legislation to revise the procedural and substantive law of bankruptcy as proposed in Title 1 of H.R. 8200 and S. 2266.

The House took action also on a recommendation offered by the Judicial Administration Division. Approved was a Model Judicial Article for the states, a product of the Committee to Implement the Standards of Judicial Administration. Included in the standards are guidelines for appointment to the bench and conduct while holding office, as well as for the removal or suspension of judges in cases of misconduct or disability.

The Division's second recommendation was defeated. This resolution sought support, in principle, for enactment of legislation establishing broad guidelines for the use of mandatory, non-binding arbitration in a limited number of U.S. district courts for a three-year experimental period. Opposition to the proposal came from the Section on Insurance, Negligence and Compensation Law, their argument being that because arbitration would be non-binding it would increase delay and at the same time offer no meaningful right of appeal. A resolution to oppose arbitration, however, was defeated.

Eighth Circuit Conferences to be Restructured

CHIEF JUDGE GIBSON REPORTS ON THE EIGHTH CIRCUIT

In his address opening the Eighth Circuit Judicial Conference, Chief Judge Floyd R. Gibson reported on the state of the business of the courts within the Circuit, articulated some of the problems accompanying heavy workloads, and introduced the new judges who have joined the Circuit since last they met.

Of particular interest was Chief Judge Gibson's references to the work of a special committee he appointed in the spring of 1977 to consider the restructuring of their annual conferences. The committee was constituted by appointments of a lawyer from each of the ten districts, two circuit judges and three district judges. What they were especially asked to address was whether they could in any way "more effectively conform to the congressional mandate embodied in 28 U.S.C. 333," which states that the Judicial Conference of each Circuit shall convene annually "for the purpose of considering the business of the courts and advising means of improving the administration of justice within each circuit."

The committee's report was adopted by the Judicial Council of the Circuit on April 13, 1978, and was distributed at the conference last month.

One of the main recommendations was that members of the bar have more active participation at the conferences; and that "members of the bar shall participate in planning and conducting the conferences." One section of the report establishes a Judicial Conference Advisory Committee and stipulates that this committee will "make recommendations with respect to annual programs and, where appropriate, assist the Conference in implementing

Chief Judge Gibson

its programs, including those where legislative and executive action is required."

Chief Judge Gibson has appointed a committee of ten judges and lawyers—to begin implementation of the plan developed by the committee.

This action by the judges of the Eighth Circuit follows a recent trend to review and restructure the annual statutory conferences. In 1976 the Ninth Circuit released a 100-page report on their circuit conferences, a product of an eight-member committee appointed by Chief Judge Richard Chambers, and approved "in principle" by the Judicial Council of the Ninth Circuit. At the annual conference of the Third Circuit to be held next month there will be on their agenda proposed revision of their rules governing the structure of their conferences.

The FJC Information Service Office has very extensive files on the programs of all the circuit conferences, as well as all major addresses. Also available are the committee reports on restructuring the conferences.

CLASS DAMAGE LEGISLATION INTRODUCED

A Department of Justice draft statute proposing revisions in class damage procedures was introduced in the Senate as S. 3475 on August 25.

The Department's bill is based on three major conclusions. First, more must be done to deter instances of pervasive small injury where it is not economically feasible to initiate individual actions. Second, where individual injury is more substantial (more that $300) effective means of redress should be provided under procedures which avoid unnecessary escalation of expense. Third, the courts must be given the tools to manage both types of cases effectively. In short, this bill is an attempt to establish fair, balanced and effective class damage procedures in response to many of the plaintiff and defendant objections to the application of the existing Rule 23(b)(3).

Therefore, two different procedures are created subject to new management techniques designed to make them triable in a manner fair to both parties.

First, a public action for mass small injury would be created vesting a single claim in the United States against the wrongdoer. Cases meeting the procedural requirements become the exclusive mass remedy. Appropriateness of the lawsuit would be determined at a preliminary hearing which would strongly interject the judicial officer into the management of the action. As an incentive and to make it financially worthwhile for the initiation of public actions by private persons (by notice on the Attorney General and the U.S. Attorney) costs and attorney's fees are awarded if the action is successful. If the plaintiff prevails, the defendant would pay the amount of the judgment into a special fund set up in the Administrative Office of the U.S. Courts. The Administrative Office would then handle individual claims.

Second, the bill would establish procedures for compensation for mass injury of substantial individual amounts. This provision would provide a new less cumbersome remedy where the injury inflicted exceeds $300.

Both of the new procedures would be subject to new management techniques. These include:

- regulation of settlements with clear provisions for notice, participation by the United States in a public action, and judicial control
- elimination of motion practice on adequacy of representation issues with concomitant expansion of the judicial role
- mandatory transfer and consolidation by the multi-district panel where there are multiple actions to provide a single litigation of all matters arising out of the same transaction or occurrence
- supervision by the circuit judicial councils of overly-delayed district court rulings
- provisions for computing attorney fee awards based on hourly rates and more rational allowances for time and risk

[See related story in July issue, Vol. 10, No. 7, p. 7.]

HARVARD from page 1

The Board regarded its approval of this program to be consistent with the Center's practice of providing specialized tuition aid to personnel in the Judicial Branch. It will be an extension of their policy to supplement the Center's regular seminars and workshops by supporting attendance at educational institutions when it is not cost effective for the Center to offer such courses. Heretofore, there have been relatively few opportunities for judges to take advantage of the specialized tuition program.

Further details on the Harvard program are available on request. Interested federal judges should be in touch as soon as possible with Federal Judicial Center Director A. Leo Levin.

AO/FJC calendar

APPOINTMENTS

Alfred Laureta, U.S. District Judge, Mariana Islands, May 19

Santiago E. Campos, U.S. District Judge, D. NM, July 12

Edward S. Smith, Associate Judge, U.S. Court of Claims, Julv 28

Jose A. Gonzalez, Jr., U.S. District Judge, S.D. FL, August 8

Thomas A. Wiseman, Jr., U.S. District Judge, M.D. TN, August 11

Louis H. Pollak, U.S. District Judge, E.D. PA, Sept. 8

CONFIRMATIONS

James D. Phillips, Jr., U.S. Circuit Judge (CA-4), August 11

Harry E. Claibourne, U.S. District Judge, NV, August 11

Norma Levy Shapiro, U.S. District Judge, E.D. PA, August 11

NOMINATIONS

Harold A. Baker, U.S. District Judge, E.D. IL, August 9

Richard S. Arnold, U.S. District Judge, E. & W. AK, August 14

Bruce S. Jenkins, U.S. District Judge, D. UT, August 28

ELEVATION

Fredrick A. Dougherty, Chief Judge, U.S. District Court, E.D. OK, August 1

RESIGNATION

Joseph W. Morris, Chief Judge, U.S. District Court, E.D. OK, August 1

DEATHS

Austin L. Staley, U.S. Senior Circuit Judge (CA-3), August 3

Phillip Foreman, U.S. Senior Circuit Judge (CA-3) August 17

Frank Gray, Jr., U.S. Senior District Judge, M.D. TN, Sept. 9

PERSONNEL

Sept. 18-20 Management Training for Supervisors, Dallas, TX

Sept. 20-22 Seminar for Bankruptcy Clerks, Los Angeles, CA

Sept. 21-22 Judicial Conference of the United States, Washington, DC

Sept. 23-24 Seminar for Court Reporters, Louisville, KY

Sept. 26-29 Employment Placement Workshop for Probation Officers, Washington, DC

Oct. 2-4 Sentencing Institute (Eighth and Tenth Circuits), Denver, CO

Oct. 4-6 Management Training for Supervisors, Seattle, WA

Oct. 5-6 Conference of Metropolitan Chief Judges, Williamsburg, VA

Oct. 12-13 Workshop for District Judges (Seventh Circuit), Chicago, IL

Oct. 19 Judicial Conference Appellate Rules Committee, Washington, DC

Oct. 21-22 Seminar for Court Reporters, Salt Lake City, UT

Oct. 23-25 Management Training for Supervisors, Baton Rouge, LA

Oct. 23-26 Third Circuit Judicial Conference, St. Thomas, V.I.

Oct. 30-Nov. 1 Seminar for Circuit Court Clerks, St. Louis, MO

Jan. 17-19, 1979 Conference of Federal Appellate Judges, Los Angeles, CA

THE THIRD BRANCH
VOL. 10, No. 9 SEPTEMBER 1978

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(9)

The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

VOL. 10 No. 10 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center OCTOBER, 1978

HOUSE, SENATE, PASS OMNIBUS JUDGESHIP BILL

After deliberating for more than 17 months, the 95th Congress has passed the Omnibus Judgeship Bill. Final action came in the House of Representatives on October 4, and in the Senate on October 8. Reconciliation of the House and Senate versions of the bill on September 20 was reported in last month's issue of *The Third Branch*.

In September 1972, the Judicial Conference approved the finding of its Quadrennial Survey of Judgeship Needs and authorized their transmittal to Congress. An appropriate draft of an "Omnibus Judgeship Bill" was filed with both the House and Senate on the first day of the 93rd Congress, January 3, 1973.

On January 29, that draft bill was introduced as S.597, 93rd Congress, a bill to create 51 additional judgeships. That bill failed of passage. A successor bill, S.287, was reintroduced in the 94th Congress. It too failed of passage on *adjournment sine die* on October 20, 1976.

Almost simultaneously, the Judicial Conference approved for transmittal to Congress the findings of its 1976 Quadrennial Survey. That draft legislation was transmitted to Congress on February 7, 1977. The late Senator John L. McClellan (D. Ark.) introduced the draft bill on February 10, 1977.

See JUDGESHIPS page 3

Chief Judges in the federal court system met at the Supreme Court September 20 in conjunction with the meeting of the Judicial Conference of the United States. Chief Judges pictured from left, Collins J. Seitz (CA-3), Skelly Wright (CA-DC), Floyd R. Gibson (CA-8), Harry Phillips (CA-6), Howard T. Markey (CCPA), John R. Brown (CA-5), Frank M. Coffin (CA-1), Daniel Friedman (Ct. Claims), Irving R. Kaufman (CA-2), Thomas E. Fairchild (CA-7), Clement F. Haynsworth, Jr. (CA-4), Oliver Seth (CA-10). Not available at time photograph was taken: Chief Judge James R. Browning (CA-9).

METROPOLITAN CHIEF JUDGES HOLD SEMI-ANNUAL MEETING

Juries, antitrust, improving trial advocacy in the federal courts, and "flex-time" were topics which dominated the semi-annual meeting of the Conference of Metropolitan District Chief Judges on October 4-6 in Williamsburg, Virginia.

The Conference provides the chief judges of the larger federal district courts with an opportunity to stay abreast of developments of particular interest to their courts. It is intended to focus on the problems of the chief judges and to allow for an exchange of views among the participants. The Federal Judicial Center sponsors the Conference. The Center's Director Emeritus, Senior Judge Walter E. Hoffman (E.D. Va.) is the Conference Chairman. Joseph L. Ebersole, Deputy Director of the Center, serves as Secretary.

The role and the utilization of the jury in federal courts was a major topic of discussion. There was a presentation by Professors Veda and Robert Charrow, explaining the implications of their research on the comprehensibility of jury instructions. On a related but more operational level, the Met Chiefs had the opportunity to exchange information on their courts'

See METROPOLITAN page 6

Reaffirms Support in Principle

JUDICIAL CONFERENCE CALLS FOR CHANGES IN JUDICIAL TENURE BILL

Last March, the Judicial Conference of the United States, responding to a Congressional request, expressed the Conference's views on three pending proposals relating to tenure and removal of federal judges. These proposals were embodied in three bills: H.R. 9042, H.R. 9451, and S. 1423.

The statement issued by the Conference reads in part:

"Among the proposals currently pending in Congress, establishing methods for dealing with judicial conduct and disability, the Judicial Conference approved in principle the objectives of S. 1423, as embodied in the 'committee print' of February 3, 1978.

"While fully cognizant of the Constitutional powers vested in the Congress and the Conference's obligation to respect those powers, in responding to Congressional requests for views on those bills, the Conference also believes it is obligated to express its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"Aside from the reservation expressed on the constitutionality of the removal feature, the Conference concludes that legislation placing authority in the Judicial Branch itself is both compatible with long-standing concepts of separation of powers and desirable in terms of maintaining the ultimate objective of an independent judiciary worthy of public confidence.

"We believe that S. 1423 should be altered in some respects. For example, we would recommend that subsection (c) (1) of proposed section 383 be amended to provide authority for a panel established by proposed section 382 to itself dismiss a complaint, in addition to recommending dismissal or further investigation. Further, we believe that S. 1423 should expressly reaffirm the authority of the judicial councils of the circuits to deal with inappropriate judicial conduct by formal or informal action, and suggest that this might be accomplished by allowing the circuit a reasonable period of time to act with respect to any complaint before that complaint is referred to the circuit panel pursuant to section 382 of S. 1423. Other changes not incompatible with the objectives of S. 1423 may be proposed."

Because it appeared the Conference's views on S. 1423 were misunderstood, the Conference again reaffirmed its position with the following resolution adopted by that body on September 22, 1978:

"The action of the Judicial Conference concerning S. 1423, 95th Congress, has been widely misunderstood and the Conference hereby reaffirms its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"The Conference expresses its disapproval of any legislative provision which purports to delegate to any tribunal or entity the constitutional power of Congress to remove a federal judge from Office."

An additional resolution directed the Conference's Committee on Court Administration to conduct a study "to determine whether legislation is necessary to clarify the power of the Judicial Councils of the Circuits to adopt procedures for the examination of judicial conduct in cases where it is warranted and to take appropriate action with respect to such instances."

This Committee, one of the largest and most prestigious, was instructed to report the results of their study at the next meeting of the Judicial Conference which will be held next March. The purpose of this second resolution is obviously to recommend proposals which might be necessary to set up procedures which would make it possible for the Judicial Branch to deal with judicial misbehavior through revisions of existing administrative machinery.

Since 1940 the Conference has approved five statements related to legislative proposals similar to the pending Senate bill, S. 1423. In every instance the Conference has consistently sought, in the context of evaluating specific legislative proposals, to convey three principal beliefs:

(1) The belief that more efficient and effective methods for resolving problems associated with alleged judicial misconduct would promote the ultimate objective of an independent judiciary worthy of public confidence;

(2) The belief that corrective authority would best be vested in the Judicial Branch itself in recognition of long-standing separation of powers concepts; and

(3) The belief that any authorization of a "power of removal" applicable to federal judges in any institution other than the Congress would, perhaps unnecessarily, but surely inevitably, raise the fundamental constitutional question of the scope of the impeachment power vested in Congress.

Patricia A. Thomas

PATRICIA THOMAS APPOINTED CHIEF, LIBRARY SERVICES BRANCH

The appointment of Patricia Anne Thomas as Chief of the Library Services Branch was announced by the Administrative Office September 11. The position, which is within the Administrative Services Division, was created in response to recommendation made in the recently released report, *Improving the Federal Court Library System*. The recommendations made in the report were approved by the Judicial Conference in March, 1978.

Ms. Thomas' first plans focus on travel to each of the circuits to observe the operation of the circuit courts and their libraries, learn of existing library problems and to become acquainted with library staff throughout the country. She plans to complete her tour before a librarians seminar to be held in Washington in the Spring of 1979.

A native of Rockey River, Ohio, Ms. Thomas graduated from Case Western Reserve University in 1949 with an A.B. in political science, history and economics. She received her J.D. from Case Western in 1951, and was admitted to the Ohio Bar the same year. Before her appointment as Chief, Library Services Branch, she was head librarian at the Internal Revenue Service.

COMMITTEE ON STANDARDS FOR ADMISSION REPORTS TO JUDICIAL CONFERENCE

A committee of the Judicial Conference of the United States on September 22 released a report and recommendations on standards for admission to practice in the federal district courts. The proposals set out in the report are based on approximately two years of study and public hearings.

The Judicial Conference Committee report tentatively proposes two basic standards, one involving knowledge of federal legal practice and the other involving actual trial experience. Lawyers desiring to practice in federal district courts would be required to undergo an examination to demonstrate knowledge of federal jurisdiction, Federal Rules of Procedure, Federal Rules of Evidence, and the Code of Professional Responsibility—an examination which may be part of the multi-state bar examination presently administered in about forty states.

The Committee also recommends that an applicant for admission to federal trial practice be required to have been involved in at least four trial experiences, two of which must be in actual cases in either a state or federal court working with experienced trial lawyers. The other experiences may be participation in simulated trials in law schools, or supervised

See STANDARDS page 7

JUDGESHIP from page 1

The final version of the bill provides for 152 new judgeships, 117 for the district courts, and 35 for the circuit courts. District court judgeships authorized in the bill are identical to those of the House version reported in the February 1978 issue of *The Third Branch* with the exception of an additional eight added in the conference agreement as shown below. (A district court judgeship proposed in the House version for Wyoming was deleted by the conferees.)

District	Added by House	Added Under Conference Agreement
Arizona	2	3
Florida Northern	0	1
Georgia Northern	4	5
Indiana Southern	0	1
Louisiana Eastern	3	4
Massachusetts	3	4
Puerto Rico	3	4
Texas Southern	4	5

Nominations from the President are expected shortly after the 96th Congress convenes on January 3, 1979, and Attorney General Bell has already said that he is geared up to process the nominees. In addition, the American Bar Association, which investigates and rates all nominees, has already announced they are prepared to act immediately, possibly by working through two committees.

SURVEY OF DISCOVERY LITERATURE AVAILABLE

Survey of the Literature on Discovery from 1970 to the Present: Expressed Dissatisfaction and Proposed Reforms, authored by Professor Daniel Segal of the University of Pennsylvania Law School for the Federal Judicial Center, is available from the Center's Information Service Office.

The report is a survey of the literature on discovery rules since the last major revision of the discovery provisions of the Federal Rules of Civil Procedure.

SECOND CIRCUIT CONFERENCE HELD

Over 600 federal judges, law school deans, law professors, and private practitioners from New York, Connecticut and Vermont, along with high level federal officials and well-known mental health experts, convened at the annual Second Circuit Judicial Conference held September 7-9 in Buck Hill Falls, Pennsylvania.

The theme of the Conference this year was "Psychiatry and the Law"—one of the first efforts of the bench and bar and the psychiatric profession to reconcile the "wisdom and demands of these two divergent spheres of thought and action."

Well-known psychiatrists, professors and lawyers participated as panelists at the Conference examining these questions:

- Do present tests and procedures for commitment make sense?
- Should involuntarily committed patients have rights to receive or refuse treatment?
- Is it time to abolish the insanity defense?
- Should permanently incompetent defendants be tried?

In his "state of the Circuit" address opening the Conference, Chief Judge Irving R. Kaufman noted progress made in implementing the work of earlier conferences, and steps taken by the Circuit to improve the administration of justice:

- The report of the Clare Committee, appointed by Chief Judge Kaufman over five years ago to study the quality of advocacy in the Circuit, has resulted in greater attention to the need for "on-the-job" training of advocates.
- The work of the Commission on the Reduction of Burdens and Costs in Civil Litigation — inspired by last year's conference to deal with the demands made by massive discovery and repeated motions and countermotions upon the parties and the courts — has resulted in a voluntary masters project in the Southern District of New York. The master, a highly qualified trial lawyer, will assist parties in clarifying and narrowing the issues presented by a dispute.
- Employment by the Circuit of the English practice of deciding appeals by oral opinion delivered from the bench when disputes present relatively simple issues or do not "break new legal ground."
- Adoption, on an experimental basis, of a so-called "letter-brief" program in which the court relies on a ten-page letter and the appeal heard on the full original record in relatively uncomplicated, single-issue civil appeals.

Chief Judge Kaufman also reviewed the performance of the courts in the Circuit.

For the fifth consecutive year, and for the seventh time in the past eight years, more cases than were filed were terminated in the Court of Appeals.

District courts in the Circuit cleared their criminal calendars for the fifth consecutive year. The Southern and Western Districts of New York and the District of Vermont cleared their civil calendars as well.

In the address, Chief Judge Kaufman proposed creation of a "five year plan" to blueprint the improvements needed in the district courts to eradicate backlog and delay. A committee composed of judges of the district courts and members of the trial bar to work on the proposed blueprint and establish goals and plans, is to be appointed soon.

BICENTENNIAL FILMS SUCCESSFULLY LAUNCHED

The film series, "Equal Justice Under Law," produced as a Bicentennial project of the Judicial Conference, is enjoying a successful run as evidenced by a growing list of viewers. The exact number of people who have seen the films will never be known, but reports received to date from Chief Judge Howard T. Markey (C.C.P.A.), make 2,000,000 a conservative estimate.

Narrated by E. G. Marshall, the five films dramatically portray the factual backgrounds, as well as public and court debates on the issues in *Marbury v. Madison, McCulloch* v. *Maryland, Gibbons* v. *Ogden* and the trial of Aaron Burr (two films).

Critical audiences, including justices, judges, lawyers, and educators, have been enthusiastic in their praise of the films, as have members of the general public.

Audiences have been diverse and widespread. Thus far, the films have been shown a number of times on the Public Broadcasting System, and at hundreds of high schools, colleges, and law schools where with accompanying teacher's guide, they have been well received as teaching tools. They have been shown, and used as part of regular courses, in the four Military Academies. A set has been acquired by the International Communication Agency with plans to make the films available to all overseas posts as part of their cultural programs. The Smithsonian is showing the films to enthusiastic tourist groups. The series has served as part of a lecture program at the Salzburg Seminar and has been shown at the Inns of Court in London. A number of Circuit Judicial Conferences have shown one or more of the films at their Judicial Conferences.

The foregoing is a partial list,

See BICENTENNIAL page 8

U.S. MINT COMPLETES ADDITIONAL MEDALS IN CHIEF JUSTICE SERIES

The U.S. Mint has announced the completion of the Chief Justice John Rutledge Medal and the Chief Justice Earl Warren Medal in the Commorative Medals Series honoring the Chief Justices of the United States. The obverse side of each medal bears the likeness of the Chief Justice while the reverse side bears the seal of the Supreme Court of the United States. The three inch bronze medals, which may be purchased from the Mint, are also made available from the Supreme Court Historical Society.

The completion of the Chief Justice Rutledge and Chief Justice Warren medals brings the total number of completed medals in the series to four. The Chief Justice John Jay and Chief Justice Warren E. Burger medals have been available for some time. All are available through the Supreme Court Historical Society.

UNIFORM REPORTING DISCIPLINARY ACTIONS RECOMMENDED

In 1967 the President of the American Bar Association constituted a committee to study and evaluate disciplinary procedures in the United States. The late Mr. Justice Clark, just retired from the U.S. Supreme Court, was appointed Chairman. Three years later the committee members reported their findings and recommendations in a comprehensive report.

One recommendation was the establishment of a central office to receive and keep accurate records of disciplinary proceedings in all courts, state and federal. Carrying out this proposal, the ABA moved quickly and set up a national discipline data bank. All states now report the names of lawyers censured, suspended or disbarred, and participating courts are eligible to receive information from the data bank. It cured a major criticism recited in the report—that lawyers who had been disbarred in one state could easily move into another state and practice law without disclosing their prior record.

While some federal courts report to this data bank, there are many that do not. Mindful of this, the Chief Justice recently wrote the Chief Judges in the non-participating courts and urged that they commence reporting their disciplinary actions. Included in the Chief Justice's letter is the observation that "...the integrity of our profession would be enhanced by a uniform reporting of all attorney disciplinary actions. When an attorney is disciplined in one jurisdiction every court in the system should have access to this information."

So far over half of those contacted replied saying they would be reporting to the Chicago based data bank office.

A further outgrowth of the so-called "Clark Report" is the development of proposed standards for lawyer disciplinary and disability proceedings. These standards are designed to be models for adaptation by the courts when structuring their disciplinary proceedings.

The Judicial Conference of the United States at its meeting last month approved, with modifications, those ABA model rules. They are to be distributed to all district and circuit courts with a recommendation for adoption "on an optional basis."

EMPLOYMENT PLACEMENT WORKSHOPS HELD FOR PROBATION OFFICERS

Probation officers from the Northeast and Southeast regions attended an Employment Placement Workshop September 26-29 held at the Federal Judicial Center. The workshop was the third specialized training course for probation office employment specialists conducted by the Center's Education and Training Division.

An interagency agreement made in March 1977 between Wayne P. Jackson, Chief of the Division of Probation and Norman A. Carlson, Director of the Bureau of Prisons provided the impetus for the training. As a result of the agreement, the U.S. Probation System assumed administrative and operational responsibility for developing employment resources and job referrals for persons released from federal prison on parole or mandatory release. Previously, employment placement was the responsibility of the Bureau's Community Programs Officer.

While the U.S. Probation System has always assisted persons under supervision in seeking employment, the inclusion of responsibility for parolees demands more time and more extensive resources from the probation office. As a result, many districts have given one officer the primary responsibility for developing employment programs. (In most instances the officer still maintains his regular duties of supervision and investigation.)

The workshop provided the employment specialist with training in topics such as employment placement in the probation process; legal issues; advocacy and brokerage vs. direct placement; use and development of community resources; trends in employment; and job readiness training. A highlight of the September program was a discussion of the role of the private sector in the hiring of ex-offenders by John R. Armore and Stanley F. Lay of the National Alliance of Business.

Earlier this year similar workshops were held in Los Angeles for the Western region, and Chicago for the North Central and South Central regions. As a result probation officers from each judicial district have been trained in employment placement methods.

ACTIONS ON FEDERAL RULES

Federal Rules of Criminal Procedure. Federal Rules of Appellate Procedure. The Judicial Conference of the United States on September 22nd announced approval of proposed amendments to the Federal Rules of Appellate Procedure as well as proposed amendments to the Federal Rules of Criminal Procedure. They will now be submitted to the Supreme Court of the United States for their consideration. Following that, they will be submitted to Congress. If Congress makes no changes they automatically become effective in 90 days.

Federal Rules of Civil Procedure. Since several individuals and organizations have requested additional time to comment, the original deadline of July 1, 1978 to submit written comment has been extended to November 30, 1978. Rules involved are Rules, 4, 5, 26, 28, 30, 31, 32, 33, 34, 37 and 45 These mainly deal with discovery, including depositions on oral examination (Rule 30) and interrogatories (Rule 33).

Two public hearings have been scheduled by the Advisory Committee on Civil Rules: October 16, 10:00 a.m., at the U.S. Court of Claims, 717 Madison Place, N.W., Washington, D.C.; and October 26, 10:00 a.m., at the U.S. Court of Appeals, 312 North Spring Street, Los Angeles, California.

Those interested in testifying should advise the Committee on Rules of Practice and Procedure, Administrative Office of the U.S. Courts, Washington, D.C. 20544. Arrangements may also be made by calling Joseph F. Spaniol, Jr., Secretary to the Committee, in Washington, D.C. (202) 633-6021. Written comment should be directed to the same office.

Judge Roszel C. Thompsen (D Md.) is Chairman of the Committee on Rules of Practice and Procedure.

METROPOLITAN from page 1

policies as to the excuse of jurors who live at great distances and the release of deliberating juries.

Various proposals under consideration by the Justice Department's National Commission for the Review of Antitrust Laws and Procedures were reviewed for the Conference by Chief Judge Clyde Atkins (S.D. Fla.), a member of the Commission, and by Wendell Alcorn, and Richard P. Larm of the Commission staff.

The Conference heard a report on the recommendations proposed recently by the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. Chief Judge Adrian Spears, and Judge Lawrence King, both members of the "Devitt Committee," made this presentation, and the Met Chiefs continued their discussion of these matters that had taken place at their meeting last April.

The meeting adjourned after a presentation by James Davey, Clerk of Court of the District for the District of Columbia, on the use of "flex-time" for supporting personnel in metropolitan district courts.

A CONFERENCE ON STUDENT ADVOCACY

On September 18, the first cuit conference on student appellate advocacy programs was held in Richmond, Virginia. The program was developed by William K. Slate, II, the Clerk of the Fourth Circuit Court of Appeals, along with Dulcey Fowler, Senior Staff Counsel, and Professor George K. Walker of Wake Forest University Law School.

The Fourth Circuit implemented a local rule in 1972 permitting third-year law students to practice before the court. Although any attorney of record may have a qualified law student appear, in practice, the Rule is most often utilized by law schools which have developed clinical appellate programs. Thus, with six years of history behind the Rule, this conference was convened to discuss the experience and the expectations with respect to student advocacy programs in cases on appeal with emphasis on the need for effective, competent, and responsible student advocates. Participants included representatives of the Court, the law schools throughout the Circuit, the offices of the United States Attorneys, the Clerk's Office of the United States Supreme Court, and State Attorneys General, and members of the Bar at large.

Judge John D. Butzner, Jr., (CA-4) delivered opening remarks in which he extolled the quality of student advocates before the court. He observed, however, that clinical programs should be considered in the totality of the law school experience. Professor Walker's keynote address focused on the report of the Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice the Federal Courts, and specifically the Model Rule being recommended by the committee.

Judge Robert R. Merhige (E.D. Va.) spoke at a luncheon and called for a formal internship program for law students similar to the practices followed by medical schools.

In addition to discussions of the Model Student Practice Rule, the program considered the student advocate's case as seen by the court, the student advocate's case as viewed by his attorney and professorial supervisor, brief writing, oral argument and motions practice, as well as the petition for a writ of certiorari. A segment of the program provided opposing government counsel in student advocate cases to present their views.

The conferees agreed that a very positive by-product of the conference was the opportunity for rapport among appellate system participants.

STANDARDS from page 3

observation at actual trials. Lawyers who are members of state bars are generally eligible for automatic admission to practice in federal district courts today although a few district courts have other requirements, including an examination. The Committee is proposing that uniform minimum standards of competency for admission to practice in U.S. district courts should be adopted by each district court. However, each district court should implement the standards by their own local rule which might also govern other matters of local concern such as residence and admission of nonresident attorneys *pro hac vice.*

The report will be widely circulated to permit all segments of the legal profession and the public to express their views. After further hearings throughout the country the Committee will make a final report, probably late next year.

Copies of the report released September 22nd are available from the Administrative Office by contacting Cathy Catterson, (633-6127). It will also be published soon in Federal Rules Decisions.

TUITION AID FOR ICM PROGRAM APPROVED

At its August meeting the Board of the Federal Judicial Center approved a new policy governing tuition support for attendance at the Institute for Court Management's, Court Executive Development Program (CEDP). Under the new policy, and subject of course to available funds, the Center will provide all expenses—tuition, travel, and per diem—for qualified individuals to attend any two of the five regular in-service ICM training workshops. The workshops serve as Phase I of the CEDP. Individuals who complete two of the workshops and are approved for one or more of the other three—whether or not they wish to pursue Phase II of the CEDP — will be expected to pay the course tuition, although the Center will pay travel and expenses.

Students will pay all Phase II tuition and the Center will assume travel and per diem.

Any application to the CEDP must have the approval of the applicant's supervisor.

Each application will be evaluated in terms of the Center's general policy guiding tuition aid:

- Courses supported should not duplicate those of the Center
- Support will take account of the recipient's likely tenure with the federal court system
- No individual will receive an undue proportion of the total resources available
- Support will reflect budgetary priorities and limitations.

NORMAN LYNCH TO HEAD CRIMINAL JUSTICE ACT DIVISION

Norman B. Lynch has been appointed Chief of the Criminal Justice Act Division in the Administrative Office.

Mr. Lynch graduated from the Coast Guard Academy in 1956, majoring in engineering. He received his J.D. degree in 1965 from George Washington University Law School and was admitted to the District of Columbia Bar in the same year. He is also admitted to the bar of the U.S. Court of Military Appeals and to the U.S. Supreme Court bar.

While in the Coast Guard, Mr. Lynch served in many legal capacities including that of Military Trial Judge; Deputy Chief Counsel; Appellate Judge, U.S. Coast Guard Court of Military Review; Chief, Legislative Division, Office of the Chief Counsel; and Chief, Claims and Litigation Division.

BICENTENNIAL from page 4

but is sufficient to indicate the growing demand for this unique set of films.

The Federal Judicial Center can supply the films to judges wishing to view them at judicial meetings. Judges interested in even wider distribution of the "Equal Justice Under Law" film series may suggest that bar associations, wishing to show the films at their meetings, contact:

(Free Loan) Association Films, Inc., 1815 N. Fort Myer Drive, Arlington, Va. (703) 525-4475

(Purchase) National Audio/Visual Center, National Archives & Records Service, GSA, Order Section, Washington, D.C. 20409 (301) 763-1896

AO/FJC calendar

Oct. 21-22 Seminar for Court Reporters; Salt Lake City, UT
Oct. 23-25 Management Training for Supervisors; Baton Rouge, LA
Oct. 23-27 Management Review Seminar; Washington, DC
Oct. 30–Nov. 1 Seminar for Circuit Court Clerks; St. Louis, MO
Oct. 30–Nov. 3 Orientation Seminar for U.S. Probation Officers; Washington, DC
Nov. 2-3 Management Training for Supervisors; San Francisco, CA
Nov. 6-8 Management Training for Supervisors; Salt Lake City, UT
Nov. 13-15 Seminar for Assistant Federal Defenders and Panel Attorneys; Detroit, MI
Nov. 13-18 Seminar for Newly Appointed District Judges; Washington, DC
Nov. 14-16 Management Training for Supervisors; Oklahoma City, OK
Nov. 20-21 Subcommittee on Judicial Statistics; New Orleans, LA
Nov. 27-29 Seminar for District Court Clerks; Reno, NV
Nov. 29-Dec. 1 Workshop for District Judges (CA-9); Palm Springs, CA
Dec. 4-8 Orientation Seminar for U.S. Magistrates; Washington, DC

PERSONNEL

Appointments

James D. Phillips, Jr., U.S. Circuit Judge (CA-4); Aug. 11
Robert H. McFarland, U.S. District Judge, Canal Zone; Aug. 17
Harry E. Claiborne, U.S. District Judge, D. NV; Sept. 1
Norma L. Shapiro, U.S. District Judge, E.D. PA; Sept. 29

Confirmations

Richard S. Arnold, U.S. District Judge, E. & W.D. Ark.; Sept. 20
Bruce S. Jenkins, U.S. District Judge, D. Utah; Sept. 20
Harold A. Baker, U.S. District Judge, E.D. IL; Sept. 20
Patricia J. E. Boyle, U.S. District Judge, E.D. Mich.; Sept. 22
Julian A. Cook, Jr., U.S. District Judge, E.D. Mich.; Sept. 22
Theodore McMillian, U.S. Circuit Judge, (CA-8); Sept. 22
Mariana R. Pfaelzer, U.S. District Judge, C.D. CA; Sept. 22
Donald E. O'Brien, U.S. District Judge, N. & S.D. IA; Oct. 4

Nominations

Carin Ann Clauss, U.S. District Judge, DC; Sept. 19
B. Avant Edenfield, U.S. District Judge, S.D. GA; Sept. 26

Death

Algernon L. Butler, U.S. Senior District Judge, E.D. NC; Sept. 5

Resignation

Marvin E. Frankel, U.S. District Judge, S.D. NY; Sept. 30

THE THIRD BRANCH
VOL. 10, No. 10 OCTOBER 1978

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(10)

The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

Bulletin of the Federal Courts

VOL. 10, No. 11 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center NOVEMBER, 1978

SENTENCING INSTITUTES AND THE FEDERAL JUDICIAL CENTER

While the debate continues over the revision of the federal criminal code and the corresponding changes in the federal sentencing system, the Center maintains its role in seeking to better understand the workings of the present system and in assisting the federal judiciary to function more efficiently within that system. One important vehicle for the judiciary's efforts in this regard has been the sentencing institutes convened under the auspices of the Judicial Conference pursuant to 28 U.S.C. §334.

Congress enacted the institute legislation in 1958 with a stated interest in seeking uniformity in sentencing procedure. These institutes, also called joint councils, were to be convened "for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States." Additionally, Congress suggested several agenda items that would be appropriate for the institutes. These items range from the general formulation of sentencing principles and criteria to the specifics of the content and use of presentence reports.

While the responsibility for approving the agendas for these

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PRESIDENT SIGNS BANKRUPTCY ACT

On November 6, President Carter signed Public Law 95-598, styled "An Act to establish a uniform Law on the Subject of Bankruptcies," commonly referred to as the Bankruptcy Reform Act. It takes effect in stages; full implementation will not be realized until after April, 1984, by which time the Judicial Conference is directed to recommend to Congress the number of bankruptcy judges needed. Beginning October 1, 1979, however, all bankruptcy cases will be filed with the bankruptcy court rather than the district court, and will be subject to the provisions of bankruptcy law contained in the new act.

Legislative Development

When the new bill, introduced as H.R. 6, in January of 1977, was reintroduced as a "clean bill," H.R. 8200, in March of 1977, the Judicial Conference established a special committee to review it and report to the Conference. Judge Wesley Brown, himself a former referee in bankruptcy, chaired the committee. The committee concluded that the Conference should take no position on the substantive provisions contained in Title I, which revises various chapters of the bankruptcy law itself. However, after more than a year of study, the committee unanimously recommended disapproval of H.R. 8200's Title II, concerning reorganization of the bankruptcy court. Title II, among other things, made the former referee positions the equivalent of Article III judgeships to be filled by Presidential appointment, placed eleven bankruptcy judges on the Judicial Conference and one on the Board of the Federal Judicial Center. Although the Judicial Conference had unanimously disapproved the bill, H.R. 8200 passed the House in February 1978. The Senate, on September 7, 1978, passed its own version, S. 2266, introduced by Senator DeConcini of Arizona and expressly approved by the Judicial Conference. This bill retained appointment power in the district courts, subject to approval of the Circuit Judicial Councils.

On September 28, the House adopted a variety of amendments to H.R. 8200, including provisions that were different in major particulars from both the earlier House and Senate versions. When informed of that development, the Chief Justice, acting as the statutory Chairman and spokesman for the Judicial Conference, communicated with Senators designated as conferees on the bill to request that the Senate conferees study the House bill in light of the major departures from the bill passed by the Senate only three weeks earlier.

In the closing days of the 95th Congress, members and staffs of both houses and the Attorney General reached a compromise without the usual resort to a

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conference committee. This final version passed the House on October 5 and the Senate on October 6. That version retained presidential appointment but reduced representation on the Judicial Conference to two members with one on the Federal Judicial Center Board. A special meeting of the Executive Committee of the Judicial Conference was convened on October 15; it proposed that the Judicial Conference urge the President to veto the bill. All members of the Judicial Conference were polled and a veto was unanimously recommended. When the Office of Management and Budget requested the views of the Conference, this view was communicated to the President and OMB. The Conference documented its position with detailed calculations showing that in the first ten years of operation, the act would add a minimum of a half billion dollars' cost—without taking into account the inflation factor. The Conference described this as unnecessary and wasteful.

Training Plans

Meanwhile, recognizing that the Judiciary had two obligations, *first* to communicate its views to the Congress and the President, and *second,* to execute the will of the political branches should the bill become law, contingency plans were being developed to comply promptly with its provisions, especially those relating to training of bankruptcy court personnel during the transition.

To carry out these training programs arising from the substantive changes in bankruptcy law and procedure created by the new act, the Federal Judicial Center is now prepared to present two three-day seminars, each for half of the bankruptcy judges in the country. One is scheduled for Atlanta, March 7-9 and one in Salt Lake City, April 4-6. These will replace the regional seminars contemplated prior to the act's passage. The Center will also provide focused education on the new act for other bankruptcy court personnel, assuming supplemental appropriations are enacted.

Provisions of P.L. 598

The new act creates no new bankruptcy judgeships at this time. Instead, it extends through March, 1984, the terms of bankruptcy judges now serving. In the interim, the Administrative Office will analyze the need for additional bankruptcy judges, in order to enable the Judicial Conference to make recommendations to Congress on the number needed. During the transition period from October, 1979, to April, 1984, merit screening committees of bar and law school representatives will come into existence, with the authority to recommend termination of bankruptcy judges whose six-year terms expire. The Chief Judges of the courts of appeals can terminate such judges and appoint replacements. The act authorizes, starting October 1, 1979, law clerks for bankruptcy judges and position upgradings in bankruptcy clerks' offices.

The act broadens the bankruptcy courts' jurisdiction to allow all matters involving any particular debtor (which replaces the term "bankrupt") to be brought into one proceeding, in one jurisdiction.

Among the points of Senate-House difference, which were worked out late in the session, are these:

- The act provides, after March, 1984, for Presidential appointment and Senate confirmation of bankruptcy judges to terms of 14 years. The Senate bill (S. 2266) would have provided appointment by the Circuit Councils; as signed, the Councils are limited to submit-

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institutes rests with the Committee on the Administration of the Probation System (and then ultimately the Conference itself), the actual agenda preparation is a coordinated activity. Planning is conducted among a subcommittee of the Committee, representatives of the circuit for whom the meetings are convened, the Center, and staff from the Bureau of Prisons, the Parole Commission, and the Probation Division of the Administrative Office.

Over the last thirteen months, three sentencing institutes have been held. In October of 1977, the Second and Seventh Circuits held a joint meeting at Morgantown, West Virginia; in September of this year, the Ninth Circuit met at Goleta, California; and in October, 1978, judges from the Eighth and Tenth Circuits met at Denver, Colorado. Each institute included a visit to a nearby federal correctional institution, providing the participants with an opportunity to meet and talk with inmates, guards, and prison staff personnel. Among the items discussed at these institutes were observation and study procedure, S.1437 and sentencing reform, sentencing councils, sentencing alternatives and their consequences, the new presentence report monograph (A.O. Publication 105), and the concurrent sentence doctrine.

Two institutes currently are in the planning stages. The First, Fourth, and D.C. Circuits will be meeting in April 1979 in Durham, North Carolina. The agenda will include a visit to the federal prison at Butner, North Carolina. In October of next year, the judges of the Fifth Circuit will convene in Dallas, Texas, and an institutional visit will be included as part of this program.

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ting non-binding lists of recommended candidates to the President. The act provides the President must give "due consideration" to Council recommendations.

- The House bill would have made the bankruptcy courts "adjuncts" of the courts of appeals, but in the act, as signed, they retain their current status and are identified as adjuncts to the district court.
- The act, as passed, retains bankruptcy appeals to the district courts; the House bill would have given this appellate jurisdiction to the courts of appeals. The act, however, does authorize appeal to the appellate courts if both parties consent, and further authorizes the appellate courts, alternatively, to provide by rule for appeal to a panel of three bankruptcy judges appointed by the courts of appeals.
- The act raises the salaries of bankruptcy judges to $50,000. House provisions for more liberal retirement provisions were set aside in favor of much more modest provisions in the Senate bill.
- The act leaves largely intact the trustee system, but directs the Attorney General to appoint ten United States trustees in 18 districts for a pilot program. The Attorney General is to analyze the operation of the pilot system, and report to Congress the results of the analysis by January, 1984. For cases filed after September, 1978, in the non-pilot districts, bankruptcy judges appointing trustees must select them from a panel named by the Director of the Administrative Office.
- The act provides for the appointment of two bankruptcy judges to the Judicial Conference of the United States, the two to be selected by the bankruptcy judges at large. The September House version provided for three bankruptcy judges. The act also adds a bankruptcy judge to the Board of the Federal Judicial Center, to be selected by the Judicial Conference as are the two appellate and three district judges who now serve on the Board.

Informational Role of the Judicial Conference

In remarks delivered at Fordham University several weeks after Congressional passage, the Chief Justice observed that "when Congress is legislating on matters directly affecting the courts, . . . it is not only appropriate for judges to comment upon issues which affect the courts but absolutely necessary. The Judicial Conference of the United States and the Administrative Office of the United States Courts receive requests from Congress from fifty to one hundred times each year to comment on pending bills, and, of course, we do so," as Congress contemplated when creating the Conference. Congress, the Chief Justice noted, is "overwhelmed . . . with a host of other more visible problems" than those of the courts. "Someone," he said, "must make these problems real to the busy members of Congress," and "this is clearly one of the obligations of the office I occupy." The Chief Justice went on to note that "the ultimate responsibility rests with the Congress—especially if questions of statutory change, or rules of procedure, jurisdiction or appropriations are involved."

NEW LAWS AFFECT JUDICIAL BRANCH

In the closing days of the 95th Congress, several important bills were cleared for Presidential action which are now public law.

Jury System Improvements Act (P.L. 95-572). The act increases the attendance fee for jurors to $30 per day and provides for enhanced attendance fees for both grand and petit jurors on account of extended service. Subsistence and travel allowances are revised to incorporate by reference those amounts now authorized for supporting court personnel in travel status. At any time that the travel rate is increased by the Director of the Administrative Office of the United States Courts to parallel an increase in the general government rate, jurors would then receive the benefit of such an increase.

Jurors' employment is also protected by the law's provision for a civil penalty and injunctive relief against an employer who discharges or coerces an employee as a result of the employee's federal jury service or summons for such service.

All fees and subsistence provisions become effective 60 days after November 2, the date the act was signed. All other provisions became effective as of the date of enactment.

Witness Fees Reform Act (P.L. 95-535). Witness fees including subsistence and travel allowances for witnesses appearing in federal court and grand jury proceedings or giving depositions, are increased for the first time since 1968 as a result of legislation signed into law October 27. The act increases per diem for witnesses to $30; replaces the set travel allowance with guidelines directing reimbursement for actual expenses

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The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to 1520 H Street, N.W., Washington, D.C. 20005

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GARNISHMENT REGULATIONS ISSUED

Regulations relating to the garnishment of salaries or wages of officers and employees in the Judicial Branch of the federal Government were issued by the Director of the Administrative Office of the United States Courts effective October 1, 1978. The regulations were issued after clarifying amendments to the Social Security Act were enacted in 1977 (Public Law 95-30). These amendments clarify garnishment provisions of the Social Security Act, 42 U.S.C. 659, by defining the term "United States" as "the Federal Government of the United States, consisting of the Legislative Branch, the Judicial Branch and the Executive Branch thereof...."

42 U.S.C. 659 as amended, provides that the United States shall be subject in like manner and to the same extent as a private person to *State* legal process brought to collect moneys due from or payable by the United States, the entitlement to which is based upon remuneration for employment, in order to enforce an officer's or employee's legal obligation to provide child support or to make alimony payments.

Any private person who is a present or former officer or employee of any agency, court or other establishment of the Judicial Branch of the federal Government, including a law clerk or secretary to a retired Justice of the Supreme Court of the United States and any person who is an officer or employee of the Supreme Court of the United States in regular active service is subject to the garnishment regulations.

The regulations provide:

- Procedure for service of process
- Data and documents to accompany legal process
- Compliance with process
- Invalid legal process
- Officials to accept legal process.

Copies of the regulations may be obtained from the Director of the Administrative Office of the United States Courts.

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of public transportation and grants allowances for private transportation equal to those granted to federal employees; and replaces set subsistence allowances with that granted federal employees. The new fees became effective upon signing by the President.

U.S. Marshals' Transportation Expenses Act (P.L. 95-503). The act authorizes any federal judge or magistrate to direct a U.S. marshal to furnish an indigent defendant released pending further proceedings, with noncustodial transportation or with transportation expenses to an appearance before that court, any division of that court, or any federal court in another judicial district in which criminal proceedings are pending. Defendants may also be provided with money for subsistence expenses en route if needed.

The provisions of the act take effect as of the date the act was signed, October 24.

District Court Reorganization Act, H.R. 14145 (P.L. 95-573). The act changes judicial district dividing lines in Illinois by placing Kankakee County in the Central District of Illinois. In addition, the Act abolishes the two divisions of the District of Maine; authorizes White Plains, in the Southern District of New York, and Johnstown, in the Western District of Pennsylvania as places of holding federal court; and requires the Director of the Administrative Office of the U.S. Courts to conduct a comprehensive study of the judicial business of the Central District of California and the Eastern District of New York an make recommendations to Congress on the need for creation of new judicial districts from portions of the two districts or the immediately surrounding districts. The study is to take place within one year of enactment, or November 2, 1979. All other provisions take effect 180 days after enactment.

Federal District Court Organization Act, S. 3375 (P.L. 95-408). Title 28 USC is amended to: add Ashland in the Eastern District of Kentucky and Corinth in the Eastern Division of the Northern District of Mississippi as additional places for holding court; eliminate the six divisions of the Western District of Louisiana; and include Bottineau, McHenry, Pierce, Sheridan and Wells Counties in the Northwestern Division of the District of North Dakota.

The act also makes changes in the boundary lines of district courts in three states: Florida—Madison County is moved from the Middle District to the Northern District; Illinois—existing Eastern and Southern Districts are realigned to form Central and Southern Districts; New York—Columbia, Green and Ulster Counties are transferred to the Northern District.

Provisions of the act become effective 180 days after October 2, the date the act was signed.

Privacy of Rape Victims Act (P.L. 95-537). This legislation amends the Federal Rules of Evidence to provide for the protection of privacy of rape victims by prohibiting the use in evidence of reputation or opinion about the past sexual behavior of the victim. Use of direct evidence of past sexual behavior is restricted to cases in which a judge finds, after a hearing, that the evidence is

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LAWYERS IN THIRD CIRCUIT CRITIQUE STRUCTURE OF CIRCUIT CONFERENCES

In 1975 Chief Judge Collins Seitz (CA-3) appointed a Lawyers Advisory Committee to act as liaison between the members of the bar who practice in the Circuit and the federal judges of the Third. It was a move to bring about greater bar participation in promulgating rules and procedures adopted in the Circuit, and through bench-bar cooperation bring about better judicial administration generally. Time and events have demonstrated that the work of this committee is mutally beneficial.

The Committee met during the time of the Third Circuit's Judicial Conference last month and spent considerable time discussing the structure of the annual conference, a matter especially referred to their group by the Judicial Council. Following this they reported:

- The proposal to eliminate the permanent members of the Circuit Judicial Conference was disapproved by the attorneys present. They reasoned that significant contributions had been made by those members and stated that they had reason to expect contributions in the future.
- The membership of the Conference is not too large; bigness in itself is neither a problem nor undesirable in other respects. Problems raised, related to size, could be resolved by organizing small work sessions, better organization of the program and better utilization of talents of the attorney members.
- The rule requiring attendance to maintain permanent membership should be abolished; the main objective should be to assure that interested members attend.
- They questioned an

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Third Circuit Judicial Conference participants photographed after panel discussion on "Role of the Federal Courts in the Future." They are (L. to R.): Circuit Executive Wm. A. (Pat) Doyle; Prof. Burt Neuborne (N.Y. Univ.); Judge Joseph F. Weis, Jr. (CA-3) who presided over the panel; Prof. Bernard J. Ward (Univ. Texas); Chief Judge Collins J. Seitz (CA-3); Prof. Geoffrey C. Hazard, Jr. (Yale); and Prof. Chas. Alan Wright (Univ. Texas).

A "first" for the Third

THIRD CIRCUIT JUDICIAL CONFERENCE HELD IN VIRGIN ISLANDS

The Third Circuit Judicial Conference met at St. Thomas, Virgin Islands, last month and they thereby broke their traditional practice of meeting in one of the three states embraced by the Circuit. In all the circuits, where accommodations permit it, the site of the meetings is rotated. Two U.S. District Judges and two part-time magistrates are headquartered in this district.

In addition to holding a meeting of the Judicial Council of the Third Circuit and a business meeting for district and circuit judges there were a variety of subjects taken up by lecturers or panelists—contempt, last term's Supreme Court opinions, discovery, and opinion writing.

Chief Judge Edward Devitt and Thomas E. Deacy, Esquire, were present to explain progress on the work of their committee on standards for admission to practice in the federal courts. They called for questions and there were many. The discussions made it evident that the judges and lawyers of the Third Circuit share the concern of many that the quality of advocacy in the courts be maintained at a high level. Public hearings to take up the recommendations presented to the Judicial Conference last September will be held in metropolitan cities next April, after which a final report will be submitted. Tentative dates and places where hearings will be held are: San Francisco, California, April 5-6; Kansas City, Missouri, April 9; Atlanta, Georgia, April 17-18; and Washington, D.C., April 26-27.

Of prime interest was a report of the Lawyers Advisory Committee, a group of lawyers who practice in the Circuit. Many matters on which they reported were controversial and general agreement was arrived at only after spirited discussions. Some resolutions reported were:

- Retrials. There should be adopted throughout the Circuit a mandatory rule that if on appeal a case is reversed and remanded for retrial, the retrial

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should be before a judge other than the judge who originally presided. The rule should apply to both criminal and civil cases and jury and non-jury trials.

• Admission to Practice. In any state containing more than one district, counsel admitted to practice before any U.S. District Court should be permitted to practice before all districts in that state, thus obviating the necessity of retaining local counsel. Defeated was a proposed amendment to the resolution which stated that counsel admitted to practice in any district in the Circuit should be permitted to practice in all other districts throughout the Circuit.

• Uniformity. This resolution called for greater uniformity of practices and procedures before all district judges in the same district.

• The New Jersey Rule. This resolution recorded objections to the New Jersey rule which prohibits any one lawyer or law firm from appearing in more than three matters in any one year unless their principal office is in the district.

• Court Reporters. Embraced in this resolution were difficulties with court reporters, (including excessive charges) and the problem created when reporters turn out non-reproducible transcripts.

• Oral argument. Objections to limitation on oral argument were enunciated in this one which stated that the Third Circuit's limitation is too restrictive.

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required under the Constitution; that the assailant was someone other than the accused and with whom the victim had had past sexual relations; or when the issue of consent is raised where there had been prior sexual behavior with the accused.

The act applies to trials which begin more than thirty days after the date of enactment, October 28.

Court Interpreters Act (P.L. 95-539). The act provides for more effective use of interpreters in federal criminal and civil proceedings when a party or witness speaks only or primarily a language other than English or suffers from a hearing impairment.

A certification procedure for interpreters used in federal courts is to be established by the Administrative Office of the U.S. Courts. In addition the Administrative Office must maintain on file a list of all certified interpreters. Under the act, the federal Government, will pay the cost of interpreters' services in criminal actions initiated by the United States, whether or not the defendant is indigent. In civil actions the judge may apportion all or part of the cost among the parties. Provisions of the act become effective 90 days after its signing, October 28.

Drug Dependent Offenders Act (P.L. 95-537). The supervision of drug dependent probationers, parolees and others released from prison is transferred from the Bureau of Prisons to the U.S. Probation Service by the act. Authority to grant contracts to independent organizations involved in rehabilitation of drug dependent offenders is also given to the probation service. The act becomes effective October 1, 1979.

ETHICS IN GOVERNMENT ACT SIGNED

On October 26, the President signed into law the Ethics in Government Act of 1978 (P.L. 95-521). The law requires detailed financial disclosure by members of Congress, executives of the Executive Branch, and judges and others of the Judicial Branch. The first reporting period covering the year 1978 calls for statements to be filed by May 15, 1979, on forms which will be developed. The Administrative Office will distribute copies of the public law as soon as they become available.

The Act contains separate titles covering financial disclosure for officers and employees of each branch of the federal Government. Title III, Judicial Personnel Financial Disclosure Requirements, in part requires:

• Annual disclosure reports to be filed by Supreme Court justices, federal judges, and judicial branch employees who are authorized to perform adjudicatory functions or are paid the equivalent of a GS-16 salary or above.

• Presidential nominees for judgeships to file disclosure reports when their nominations are sent to the Senate.

• Judicial branch employees to file the annual reports with a Judicial Ethics Committee to be established by the Judicial Conference of the United States. The committee is authorized to monitor and investigate compliance with the disclosure requirements.

• Each judicial officer and judicial employee to file the report with the Judicial Ethics Committee and to file a copy as a public document with the clerk of the court on which he sits or serves. Reports may not be used

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FJC Director A. Leo Levin (left) and Attorney General Ingemas Gullnas of Sweden photographed following a briefing session at the Dolley Madison House.

FJC HOSTS VISITORS FROM ABROAD

Briefing official visitors from abroad — judges, legal officers and others — is an important function of the Federal Judicial Center. Referrals to the Center come from the State Department, United Nations, American and Federal Bar Associations and other groups. Visitors often learn of the Center from others who have visited here.

During the past year, the Center received visitors from Brazil, Korea, Australia, Japan, Thailand, Chile, New Zealand, South Africa, Afghanistan, Nigeria, Colombia, Zaire, France, Great Britain, Canada, Sweden, Indonesia, and Iceland.

Most recently, the Center hosted Ingemas Gullnas, Attorney General of Sweden, Santoso Poedjosoebroto, Vice Chief Justice of the Supreme Court of Indonesia, and Hrafa Bragason, a judge in the Reykjavik, Iceland, civil court.

Mr. Gullnas traveled to Washington, D.C. and Atlanta to study the American judicial system. He was particularly interested in court procedures, especially as they related to criminal cases. His first stop was at the Judicial Center for a general orientation.

Justice Poedjosoebroto's tour of the United States judicial system also began at the Judicial Center. Because of its role in the federal judicial system, the Center is often the first stop for foreign visitors interested in the judicial system of the United States.

Like many Center visitors, Justice Poedjosoebroto was interested in the selection, appointment, tenure, and removal and retirement of federal judges.

Judge Bragason was traveling to cities in the United States as a UN Fellow to do research on court administration for civil cases and training programs for judges.

Other areas in which interest is frequently expressed by foreign visitors are the dual system of courts in the United States; the origin and role of the Center; how newly appointed judges prepare to become a judge; and methods of managing and controlling increasingly large case loads.

THE SOURCE
The Information Service of the Federal Judicial Center

Advocates on Trial. Harry Sabbath Bodin. 4 Litigation 304, 61-63 (Summer 1978).

Chilling Judicial Independence. Irving R. Kaufman. Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York, November 1, 1978.

Constitutional Criminal Procedure. Charles H. Whitebread. American Academy of Judicial Education, 1978.

Essays on the Constitution of the United States. M. Judd Harmon. Kennikat Press, 1978.

How Long Can We Cope? Warren E. Burger. Remarks to the Seminar on Legal History, The National Archives, Washington, D.C., September 21, 1978.

The Ideology of Advocacy: Procedural Justice and Professional Ethics. William H. Simon. 1978 Wis. L. Rev. 30-144.

Judicial Discipline and Disability Symposium. 54 Chi-Kent L. Rev. 1-175 (1977).

Our Tottering Legal System. W.S. Stafford. 57 Mich. S.B.J. 831-7 (Oct. '78).

Needed: A Judicial Welcome for Technology—Star Wars or Stare Decisis? Howard T. Markey. 79 F.R.D. 209-18 (Oct. 1978).

New Intern Program Gives Law Students Actual Courtroom Trial Experience. David N. Edelstein. 17 Court Rev. 14-16 (Sept.-Oct. 1978).

Prison Reform: the Judicial Process. A BNA Special Report on Judicial Involvement in Prison Reform. Bureau of National Affairs, 1978.

Third Report on the Implementation of the Speedy Trial Act of 1974. Administrative Office of the U.S. Courts, 1978.

LAWYERS from p. 5

"unexplained discrepancy in the requirements that members appointed by the judges must meet certain criteria, but the appointees of bar association presidents or law school deans need not fulfill the same standards."

- There is a feeling that the Conference has not been organized in such a way that the best use is made of the available lawyer talents.
- Approved was a suggestion that separate meetings be held from time to time between the delegates of a district and the district judges within the district; or, failing this, the delegates should meet alone prior to the Conference.
- Through their report they expressed again a willingness to participate more actively in the work of the Conference.

Copy of the full report of the Lawyers Advisory Committee is available through the Information Services Office of the Federal Judicial Center.

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for any unlawful purpose or any commercial use other than news reporting.

- Reports received by the committee to be held in its custody and be made available to the public for six years. After the six-year period the report is to be destroyed unless needed in an ongoing investigation.

AO/FJC calendar

Nov. 29-Dec. 1 Workshop for District Judges (CA-9); Palm Springs, CA

Dec. 6-8 Management Training for Supervisors; Brooklyn, NY

Dec. 7-8 Workshop for District Judges (CA-4); Hilton Head Island, SC

Dec. 7-8 Advisory Committee on Civil Rules, Washington, DC

Dec. 11-13 Seminar for Assistant Federal Defenders and Panel Attorneys; Denver, CO

Dec. 11-15 Management Seminar for Chief Probation Officers; Kansas City, MO

1979

Jan. 3 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC

Jan 5. Judicial Conference Subcommittee on Federal Jurisdiction, Washington,DC

Jan. 8-9 Judicial Conference Subcommittee on Judicial Improvements, Savannah, GA

Jan. 8-10 Seminar for District Court Clerks; Charleston, SC

Jan. 11-12 Workshop for District Judges (CA-5) Orlando, FL

Jan. 15-16 Judicial Conference Committee on Administration of the Probation System, West Palm Beach, FL

Jan. 15-19 (Rescheduled) Orientation Seminar for Newly Appointed Full Time U.S. Magistrates; Washington, DC

PERSONNEL

APPOINTMENTS

Julian A. Cook, Jr., U.S. District Judge, E.D., MI, Sept. 27

Theodore McMillian, U.S. Circuit Judge for the Eighth Circuit, Oct. 2.

Patricia J. Boyle, U.S. District Judge, E.D., MI, Oct. 10

Harold A. Baker, U.S. District Judge, E.D., IL, Oct. 11

Bruce S. Jenkins, U.S. District Judge, D. of UT, Oct. 11

ADVOCACY REPORT NOW IN PRINT

"The Quality of Advocacy in the Federal Courts" is now in print. This is the Federal Judicial Center's report of research performed for the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. It can be obtained from the Information Service of the Federal Judicial Center.

Earlier this year, the Center distributed a limited number of copies of the report that had been offset-printed from the manuscript. The typeset edition is identical, except that page numbers and some table numbers have been changed. In the recently released report of the Judicial Conference Committee, citations to the Center's study are to the typeset edition.

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VOL. 10, No. 11 NOVEMBER 1978

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*U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(11)

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Bulletin of the Federal Courts

VOL. 10, No. 12 | Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center | DECEMBER, 1978

DISTRICT COURT MERIT SELECTION GUIDELINES ISSUED

On November 8, 1978, the President signed Executive Order 12097, "Standards and Guidelines for the Merit Selection of United States District Judges."

Section 1-1 of the Order applies to nomination; Section 1-2 sets forth standards for evaluating proposed nominees.

Nomination provisions are that:

- Whenever a vacancy occurs in a district court of the United States, the President shall nominate as district judge to fill that vacancy a person whose character, experience, ability, and commitment to equal justice under law qualifies that person to serve in the federal judiciary.
- The Attorney General shall assist the President by recommending to the President persons to be considered for appointment who are qualified to be district judges and by evaluating potential nominees. The Attorney General shall receive recommendations of such persons from any person, commission or organization.
- The use of commissions to notify the public of vacancies and to make recommendations for district judges is encouraged. The Attorney General shall make public the suggested

(See GUIDELINES p. 6)

New District Court Judges photographed during one of the sessions of the Seminar last month: In the foreground, Judge Jose A. Gonzalez, Jr. (S.D. Fla.), and (left) Judge Pierre N. Leval (S.D. N.Y.), and Judge Mary Johnson Lowe (S.D. N.Y.).

NEW DISTRICT JUDGES CONVENE AT FJC

Thirty-three judges assembled at the Dolley Madison House November 13 to start a week of both formal and informal discussions on how to bring about effective judicial administration in the federal trial courts. One district judge travelled from as far away a jurisdiction as the Northern Mariana Islands and one was from the District Court just a few blocks from the Center.

A significant statistic: The largest number of women ever to simultaneously attend such a seminar — six U.S. District Judges and one Trial Judge from the U.S. Court of Claims.

The new judges heard tenured judges tell them how

(See NEW DISTRICT JUDGES p. 7)

CASE WEIGHTS REVISION UNDERWAY

During the fall and winter the Federal Judicial Center will survey about 100 federal district judges in order to revise the system of case weights. Conducted at the request of the Judicial Conference Subcommittee on Judicial Statistics, the survey follows a two and one half year period of design and refinement.

Under the guidance of Judge John D. Butzner, Chairman, the Center has explored a number of possible techniques to determine the relative burdens of courts' different caseloads, attempting to obtain the best possible accuracy without taking up the judges' time in the process.

Unfortunately, no technique appears feasible except a judge time study. However, the present time study is much simpler than any of those in the past, including the most recent one: The 1969-70 Federal Judicial Center survey that is the basis of the present weighted caseload.

The case weights are seriously out of date, and have been criticized on technical grounds as well. Many things have changed since the 1969-70 time study. The Magistrate Act of 1968 (as amended) has taken effect, and undoubtedly greatly affected the relative burden of

(See CASE WEIGHTS p. 4)

STATE-FEDERAL

An informal survey of the State-Federal Judicial Councils was recently made by the Federal Judicial Center, and some new and innovative subjects for discussion surfaced. If readers are interested in an amplification of this information, they should write or call Joseph Coudon at the Center (633-6347).

Here are reports from five states which have held meetings since the last column was published:

Alabama. As in the past, this council held a meeting at the time the Alabama State Bar met. Subjects discussed: Rule making by state and federal courts, including local rules; desirability of greater bar participation in the rule-making process; the necessity of assuring that local rules are published and available; and the desirability of assuring that rules promulgated do not bring about constitutional issue challenges.

Another subject on the Council's agenda was better liaison between courts and the bar membership. For the federal courts there was the suggestion that in each judicial district there be formalized a liaison group with which the chief district judge, or all of the district judges, meet at least once yearly to discuss matters of mutual interest.

Justice James Bloodworth, of the Supreme Court of Alabama, reported on procedures followed by his court on questions certified from the federal courts. The Justice reports it is working extremely well in Alabama. Council member Judge John C. Godbold (CA-5 and FJC Board member) agrees and reports: "It is working well and speedily, and through constant liaison between the Supreme Court of Alabama and the Fifth Circuit judges residing in Alabama, [potential] problems in the administration of certification procedures have been eliminated as they arise."

Maryland. Chief Judge Edward S. Northrop and Judge Alexander Harvey represented the federal courts at the last meeting of this state's council. State judges on the council are Judges Anselm Sodaro (who presided), C. Awdry Thompson and Robert S. Sweeney. Reported was a program for coordination between state and federal probation officers. Presentence reports have been exchanged, and though there was some concern expressed that a federal defendant might be able to secure a copy of the report, assurance was proffered that the state presentence report is not filed as a public record and is available to the defense attorney only.

Also on the agenda was the matter of possible conflicts and priorities on case assignments in the trial courts; however, it was agreed that very few problems have arisen. Efforts have been made to avoid this; in those instances where federal court trial dates are set far in advance, the state judges have agreed to let the federal trial go forward first.

Judge Harvey explained their new local rule which became effective last April, which provides for a fine to be imposed on attorneys who appear late for hearings or trials. In addition to a fine, gross violations could result, through application of the rule, in referral to the Disciplinary Committee of the court.

A final matter discussed was the proposed legislation to abolish diversity jurisdiction. It was estimated that if the bill is passed into law, approximately eight percent of the cases now tried in federal courts would be filled in the state courts.

Oregon. A new agenda item for this Council was the recurring problem of the accused not only appearing for arraignment without an attorney but also declaring one was not wanted. To preclude the filing of a Section 2254 case in the federal courts if a state judge has not appointed a lawyer, it was suggested that the judge conduct a careful examination of the defendant to make a supportable and clear finding that the defendant intelligently waived his right. But, it was pointed out, the court must set this out on the record. Judge Alfred T. Goodwin (CA-9) recommended for consideration a dialogue contained in several pages of the California state judges' bench book. Basis for the California procedure may be found in *Farreta* v. *California* (45 L. Ed. 2d, 562 [1975]).

Comparisons were made of plea bargaining procedures in both the Oregon courts and the federal courts and the problems extant throughout the two systems. Another developing problem in Oregon was reported — problems in the state courts caused by recent statutory provisions for expanded sentence review by the Oregon Court of Appeals. Also described was the new state law which permits their Parole Board, by a 4-5 vote, to reduce a sentence imposed by a judge, significantly increasing the authority of the Board.

Memorandum opinions, per curiam opinions, published and unpublished opinions and when they should be used was an important topic brought up, as was the problem of avoiding conflicting decisions on identical points of law when the courts sit in panels or departments. It was decided a case data bank accessible in a computer may be the answer.

Two more subjects wer

(See STATE FEDERAL p. 4)

EXTENSIVE TRAINING OFFERED PROBATION OFFICERS

Chief U.S. Probation Officers met December 11-15, at a management seminar held in Kansas City, Missouri. The meeting was the first attended by all chief probation officers since 1950. Judge James M. Burns (D. Ore.) was chairman of the seminar.

The curriculum, developed by the Education and Training Division of the Federal Judicial Center and the Probation Division of the Administrative Office, included an update on matters involving the probation system, pretrial services, the Bureau of Prisons and the U.S. Parole Commission. Workshops were conducted on personnel matters, law related issues and the purposes and impact of Monograph 105, a new publication on the writing of the presentence report.

During the meeting, four task groups were created to assess needs and develop policy recommendations on goals and standards for the probation system, professional accountability, interoffice and interdistrict communications, narcotic aftercare and employment placement.

The federal probation system has a long tradition of training. As early as 1930, probation officers attended periodic regional institutes. Nineteen years later the concept of a

(See PROBATION p. 5)

The Third Branch

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005

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HOLIDAY GREETINGS from The Chief Justice

I extend warm greetings for an enjoyable Holiday Season to all personnel of the Federal Judiciary and their families and my deep appreciation to the Judges and all those who daily support the administration of justice. By this I include the Clerks of all courts and their staffs, Magistrates, Probation Officers, U.S. Marshals, Court Reporters, and all who labor to make the system work.

We can look back on the past year with satisfaction; altogether your dedication and efforts have brought about significant improvements in the quality of our system of justice. There has been a spirit of cooperation in the pursuit of our mission to provide for all Americans a system of justice which is fair, accessible, competent, swift and deserving of public confidence. That we have public confidence in a period when confidence is not universally accorded to public institutions is a tribute to steadfast dedication throughout the Judicial Branch at every level.

The Congress finally passed and the President has signed legislation providing much needed additional judges, advocated by the Judiciary for more than eight years. The Administrative Office continues to provide support which makes effective planning a reality; the Federal Judicial Center continues its valuable service in research, planning, and continuing education.

Federal Judges have again terminated a record number of cases. There has been more effective communication between the branches of government and between the federal courts and state courts on matters affecting the administration of justice.

On a broader front as we approach the Holiday Season, we close a year with another period of peace for our country. We extend our greetings and support to the President and peacemakers of all nations for their persistent efforts to eliminate the blight of war.

Mrs. Burger joins me in wishing each of you and your loved ones a happy and safe Holiday Season and a continued dedication to our common calling.

FEDERAL BAR ASSOCIATION ESTABLISHES AWARD FOR TRIAL ADVOCACY

Another step forward in the current trend towards efforts to improve trial advocacy was taken by the Federal Bar Association in Cincinnati, Ohio through the establishment of the Judge John W. Peck Award for outstanding trial practice.

The award will be given at the University of Cincinnati College of Law by the Cincinnati Chapter of the Federal Bar Association. Judge Peck has for many years taught a course in trial practice at this law school and has been active in many continuing educational bar programs designed to improve advocacy skills.

Judge Peck assumed Senior Judge status on July 1, 1978, after having served as a state judge, a U.S. district judge and a judge of the U.S. Court of Appeals for the Sixth Circuit. His service on these courts covers a span of years totalling almost 30 years.

DELEGATION FROM IRELAND STUDIES U.S. FEDERAL DEFENDER PROGRAM

On November 9 a delegation from Ireland visited the Criminal Justice Act Division of the Administrative Office for an extended briefing on the United States Federal Defender Program. The delegation consisted of District Justice William A. Tormey, Solicitor Michael Reilly, Frank Sheridan of the Irish Embassy and Irish Department of Justice attorneys Tim Dalton and Parse Rayel.

At the present time in Ireland a court appointment system is used to provide counsel to criminal defendants who are unable to afford legal representation. The Irish Government is considering the creation of a national public defender program, and sought the assistance of the Administrative Office in reviewing and studying the Federal Defender Program followed in this country.

Topics such as contributions from defendants to help pay for representation, fiscal controls exercised over the defender offices and the role of the judiciary in the Criminal Justice Act system were discussed. The delegation was also provided

(See IRELAND p. 8)

NINTH CIRCUIT from p. 7

shall be handled should the Chief Judge of the Circuit not reject a claim "and is unable to assure himself that appropriate action has been taken. . ." In those instances the Chief Judge will refer the complaint to "a committee of three judges of the circuit, which may include circuit and district judges appointed by him to consider the complaint."

The new procedures were codified only after all the judges of the Ninth Circuit, as well as members of the bar who practice in this Circuit, were given an opportunity to review and comment on them.

CASE WEIGHTS from 1

various types of cases. The same can be said of many other procedural changes. There has been a great increase in the number of cases in some of the most difficult categories: Civil rights cases (employment, accommodations, etc.) have increased 229%, antitrust cases have increased 78%, narcotics cases 212%, and tax fraud cases 98%. At the same time, motor vehicle personal injury cases have decreased 36%.

The effect of these large shifts in caseload composition must be accurately measured in order to provide adequate resources for the courts. It is widely thought that the existing system never adequately measured the difficulty of particularly demanding litigation, and that it may, as a result, have undervalued the caseload of the metropolitan, or largest courts. Although the survey may or may not bear this out, it has been designed in a fashion that would determine whether this kind of effect exists.

The approach has been to strip past time studies to their essentials, and design a form that is as little burden as possible. Since the only purpose of the survey is to obtain case weights, many of the items in past surveys are not included: The types of work judge time was devoted to, time devoted to activities that do not involve cases, etc. The survey will be modeled on one designed by the late Chief Judge Charles Clark, prime author of the Federal Rules of Civil Procedure and Chairman for twelve years of the old Judicial Conference Committee on Statistics. As a judge, law reformer, teacher, and researcher, Judge Clark was convinced that sound statistical information was essential for policy making. His method for case weighting, which was both simple and effective, has proved an excellent model for the forthcoming revision.

Unless there are unforeseen problems, the Federal Judicial Center will contact a sample of about 100 judges in early January, requesting time records for the period through March. The resulting weights will be calculated in the winter and spring, applied to the data for fiscal year 1979, and used in preparing the next judgeship bill of the Judicial Conference late in 1979.

The Institute for Law and Social Research, Washington, D.C., has conducted an evaluation of case weighting techniques under contract to the Center. Their report will be available by January 1.

STATE FEDERAL from p. 2

aired: When a summary judgment may be used and the value of settlement conferences.

Virginia. With Chief Justice Lawrence W. I'Anson presiding, this Council met for its semi-annual meeting at the time the Fourth Circuit Judicial Conference was held. Reported to the group was the status of a certification system for the Commonwealth of Virginia. A bill has been proposed to implement the system but is being carefully reviewed since constitutional questions related to the legislation have been raised, one being whether the legislature has authority to confer jurisdiction on the state's Supreme Court. Further action is anticipated when the General Assembly next meets.

Washington. Conflicts in dates foreclosed the council meeting called by Chief Judge Marshall A. Neill (E.D. Wn.) for September 11; however, the Judge will be setting another date soon. This state rotates the chairmanship between a state and federal judge and meets at least once a year.

PROBATION from p. 3

training center was fully developed. With strong support from Judge William J. Campbell, the Division of Probation and the University of Chicago, the Judicial Conference officially authorized the opening of the Federal Probation Training Center in 1950. Under the leadership of Chief Probation Officer Ben S. Meeker, (N.D. Ill.), the Chicago Center provided orientation seminars and inservice training for the entire federal probation system from 1950-1970.

In 1970 responsibility for training was gradually shifted from Chicago to the Federal Judicial Center in Washington. A period of phenomenal growth ensued between 1973 and 1977. Congress authorized 1200 new positions in those five years. Thus since 1970, the Education and Training Division of the Judicial Center has conducted orientation seminars for over 1400 new probation officers. For several years orientation seminars were held almost every month in cities throughout the country. Today these orientation seminars, approximately four per year, are held at the Dolley Madison House to train those officers employed to fill vacancies created by retirement and resignation.

With the expertise provided by the Probation Division and constant input and evaluation from the field, the Education and Training Division continuously reviews the format of the seminars to insure that the training is meeting the needs of the new officers. Although many changes have been made in format and methodology, the seminars continue to focus on the basics of presentence report writing, investigative techniques, supervision, sentencing alternatives, and relationships with the Court, the Bureau of Prisons, the Parole Commission and the A.O. Probation Division.

As the responsibilities of probation officers continue to expand, the training courses become more extensive. A wide variety of seminars have been conducted in the past few years. Management and supervisory training has been provided for chief and supervising probation officers and chief probation office clerks. Specialized courses have been offered in crisis intervention, rational behavior therapy, employment placement, and supervision of Indian caseloads.

Advanced seminars have offered participants a choice of nine out of 26 possible topics during a week of training. This approach allowed each officer to determine what subjects would be most beneficial for his particular caseload. The most widely attended sessions have included white collar crime, financial data interpretation, guidelines for sentencing recommendations, innovative sentencing techniques, supervision of the difficult offender and new approaches in case management.

The expansion of training over the past 48 years is best exemplified by the fact that in Fiscal Year 1978 over 1500 federal probation officers participated in training seminars such as these. It appears that the future of probation training will continue its heavy concentration on advanced training seminars.

LAW DAY, U.S.A—1979

"Our Changing Rights" is the theme selected for the twenty-second annual nationwide observance of Law Day, U.S.A., traditionally held each May 1st.

The program was started as an activity of the American Bar Association, with state and local bar associations participating throughout the country.

FJC REPORT ON VOIR DIRE EXAMINATION RELEASED

The Voir Dire Examination, Juror Challenges, and Adversary Advocacy has been released by the Federal Judicial Center. The report evolved from *Conduct of the Voir Dire Examination: Practices and Opinions of Federal District Judges* a Center report published in 1977. While the new report summarizes the information and opinions of the 1977 publication, it places them in a larger context — a general analysis of the adversary system's functions and effectiveness in the selection of jurors.

The major theme of the report is that problems inherent in understanding the role and importance of the voir dire examination and challenges can be divided into categories and analyzed separately. Four categories of research problems are examined: Problems of interest, criteria, parameters and methodology. The report attempts to clarify the problems involved in each category and to suggest solutions.

The section on parameters presents for the first time a mathematical model of jury selection. This model plots the changes in the average bias of a twelve-member jury as a function of the selection strategies of defense and prosecution attorneys. Use of the model enables a better understanding of the relative superiority of the struck jury method to other, sequential methods of jury selection.

The report concludes that the major problem before policymakers in the courts is that of defining appropriate goals for jury selection.

Copies of the report may be obtained from the Information Service of the Federal Judicial Center.

U.S.-CANADIAN TRANSFER BEGINS

Prisoner transfers between Canada and the United States took place October 12 and 13. Forty American and 28 Canadian offenders were the first to be returned to their native countries under a 1977 treaty agreeing to the transfer. Enabling legislation was enacted in the U.S. in October 1977 (P.L. 95-144), and in Canada, April 1978.

Information Booklet for United States Citizens Incarcerated in Canadian Prisons is a pamphlet prepared by the United States Department of Justice to familiarize United States citizens who are Canadian prisoners with the terms and implementation of the Treaty and enabling legislation and operation of United States parole laws and prison system.

Bureau of Prisons Director Norman A. Carlson, and Donald Yeomans, Commissioner of the Canadian Penitentiary Service, held a brief ceremony at the Chicago Metropolitan Correctional Center where the exchange took place. From Chicago, the returning Americans were designated to appropriate institutions throughout the federal system.

Canada is the third nation with whom the U.S. has transferred prisoners. Three hundred twenty-nine Americans have been transferred from Mexico in a series of transfers begun last December and seven Americans were transferred from Bolivia in August. A second exchange with Canada is planned for March, 1979.

PAPER ON EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS ACTIONS AVAILABLE

The Center has a limited supply of two publications by Judge Charles R. Richey: *Manual on Employment Discrimination and Civil Rights Action in the Federal Courts* and *Selected Jury Instructions Used in Employment Discrimination and Civil Rights Actions.* These publications were originally prepared for use at the Center's District Court Workshops.

The original material has been edited and updated.

GUIDELINES from p. 1

guidelines for such commissions.

- Before making recommendations, the Attorney General shall consider whether: Public notice of the vacancy has been given and an affirmative effort has been made, in the case of each vacancy, to identify qualified candidates, including women and members of minority groups; the selection process was fair and reasonable; those recommended meet the standards for evaluating proposed nominees.
- In evaluating proposed nominees, consideration will be given to reports of Department of Justice investigations and all other relevant information concerning potential nominees and their qualifications.

The standards to be used in determining whether a person is qualified to serve as a district judge are whether that person:

- Is a citizen of the United States, is a member of a bar of a state, territory, possession or the District of Columbia, and is in good standing in every bar in which that person is a member.
- Possesses, and has a reputation for integrity, good character, and common sense.
- Is, and has a reputation for being, fair, experienced, even-tempered and free of biases against any class of citizens or any religious or racial group.
- Is of sound physical and mental health.
- Possesses and has demonstrated commitment to equal justice under law.
- Possesses and has demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and their processes.
- Has the ability and the willingness to manage complicated pretrial and trial proceedings, including the ability to weigh conflicting testimony and make factual determinations, and to communicate skillfully with jurors and witnesses.

Public Law 95-486 signed October 20, 1978 provides for the appointment of 117 new district court judges. Entitled "An Act to provide for the appointment of additional district and circuit judges and other purposes," it is popularly known as the Omnibus Judgeship Act. Those parts of the Act which provide for additional judgeships take effect "immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for the United States District Court judgeships authorized by the Act." Nominating Commissions established in February 1977 now send the President lists of those qualified for circuit judgeships. *See The Third Branch, Volume 9, No. 2, p. 10, February 1977.*

The President, however, may waive the standards and guidelines with respect to any nomination, by notifying the Senate of the reasons for such waiver.

NEWLY APPOINTED DISTRICT JUDGES from p. 1

they tried their cases—civil and criminal, jury and nonjury—and they answered questions on such matters as sentencing, calendar control, jury utilization, case flow management, judicial activities and ethics, patent cases, and the Federal Rules of Evidence.

Senior staff at the Administrative Office and the Federal Judicial Center met with the Judges to explain how these offices could be supportive. The Chief Justice met with them twice, once at the Dolley Madison House and once when he and Mrs. Burger hosted a "black tie" dinner honoring the new judges at the Supreme Court.

NINTH CIRCUIT ADOPTS PROCEDURES FOR JUDICIAL MISCONDUCT COMPLAINTS

Chief Judge James R. Browning (CA-9) announced last month that the Ninth Circuit Council has adopted new procedures for processing any complaints that might be filed alleging judicial misconduct in the circuit.

The procedures were drafted by a committee appointed by the council last May, the members of which were Circuit Judges Merrill and Goodwin and District Judges MacBride, Peckham, Schwartz and Sharp.

With one exception, informal administrative practice called for these procedures in the past, but they were formalized and codified, Chief Judge Browning says, to "make the bar and the public more aware of this internal administrative process and to demonstrate that the judiciary is willing and able to handle complaints against judges administratively."

The one addition to the procedures outlines how a complaint

(See NINTH CIRCUIT p. 4)

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(1) The Chief Justice of the United States visited the FJC to extend a special welcome to the latest group of U.S. District Judges to join the federal judiciary. On the left is Judge Wm. J. Campbell (Seminar Program Chairman) and on the right, Judge Sam C. Pointer, Jr. (N.D. Alabama), (2) Judge Pointer photographed as he discussed with the newly appointed U.S. District Judges the Federal Rules of Evidence. (3) Group photograph taken during a presentation on "The Role of the Judge in the Settlement Process" by Judge Frederick B. Lacey (D. N.J.). (4) Judge Sherman G. Finesilver (D. Colo.) and Judge William J. Campbell conferring prior to Judge Finesilver's presentation on the trial of civil nonjury cases. (5) Judge Damon J. Keith (CA-6) photographed discussing "Management of the Criminal Case from Indictment to Trial" and "Guilty Pleas and Plea Bargaining."

ao ocfjc calendar

Dec. 11-15 Management Seminar for Chief Probation Officers; Kansas, City, MO

Dec. 18 Meeting of the Board, Federal Judicial Center; Washington, DC

1979

Jan. 3 Judicial Conference Subcommittee on Supporting Personnel; Washington DC

Jan. 5 Judicial Conference Subcommittee on Federal Jurisdiction; Washington, DC

Jan. 8-9 Judicial Conference Subcommittee on Judicial Improvements; Savannah, GA

Jan. 8-10 Seminar for District Court Clerks; Charleston, SC

Jan. 11-12 Workshop for District Judges (CA-5); Orlando, FL

Jan. 15-16 Judicial Conference Committee on Administration of the Probation System; West Palm Beach, FL

Jan. 15-19 Orientation Seminar for Newly Appointed Full Time U.S. Magistrates; Washington, DC

Jan. 19 Judicial Conference Committee on Administration of the Magistrates System; San Diego, CA

Jan. 17-19 Conference for Federal Appellate Judges; Los Angeles, CA

Jan. 22-23 Judicial Conference Committee on the Operation of the Jury System; Brownsville, TX

Jan. 22-25 Seminar for Federal Public Defenders, New Orleans, LA

Jan. 23-24 Judicial Conference Review Committee; Singer Island, FL

Jan. 24-25 Judicial Conference Advisory Committee on Judicial Activities, Singer Island, FL

Jan. 26 Judicial Conference Joint Committee on Code of Judicial Conduct; Singer Island, FL

Jan. 25-26 Judicial Conference Committee on Implementation of the Criminal Justice Act, New Orleans, LA

Jan. 29-30 Judicial Conference Committee on Court Administration; Singer Island, FL

Feb. 1-2 Judicial Conference Committee on the Administration of the Criminal Law; San Juan, PR

Feb. 2 Judicial Conference Committee on the Budget; Ft. Worth, TX

Feb. 9 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC

IRELAND from p. 4

with relevant materials to help in understanding the Federal Defender system.

Following this meeting, the delegation spent the next two weeks visiting the Federal Public Defenders in Baltimore, Atlanta, and New Orleans, as well as the Community Defender in the federal unit of the New York City Legal Aid Society.

PERSONNEL

APPOINTMENTS

Richard S. Arnold, U.S. District Judge, E. & W.D., AR, Oct. 16

Donald E. O'Brien, U.S. District Judge, N. & S.D., IA, Nov. 2

THE THIRD BRANCH

VOL. 10, No. 12 DECEMBER 1978

THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

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U.S. GOVERNMENT PRINTING OFFICE: 1978—240—891(12)