BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Chief Judge Charles A. Moye, Jr.

Judicial Conference Subcommittee Chairman Explains Process for Setting Judgeships

Judge Charles A. Moye, Jr., was appointed to the federal trial bench for the Northern District of Georgia in October 1970 and became chief judge for that court in July 1979.

In the following interview, Chief Judge Moye describes the process for making the federal courts' biennial recommendation to Congress for additional judgeships and details the factors considered by the Subcommittee on Judicial Statistics in initiating that recommendation. Judge Moye has been a member of the statistics subcommittee since 1975 and its chairman since 1980.

Chief Judge Moye holds undergraduate and law degrees from Emory University.

You've been a member of the Judicial Conference's Subcommittee on Judicial Statistics since 1975 and have chaired that subcommittee since 1980. Would you briefly describe the subcommittee's responsibilities?

The Subcommittee on Judicial Statistics, of which Circuit Judges William H. Timbers and J. Blaine Anderson and District Judges James P. Churchill and Tom Stagg are also members, has two basic functions. The first and best known is making biennial recommendations to its parent committee, the Committee on Court Administration, with respect to the needs for additional Article III judgeships and providing the statistical and factual bases to support the requests. The parent committee then acts on the subcommittee's recommendations and transmits its own recommendations to the Judicial Conference, which acts on them and makes appropriate recommendations to Congress. The other responsibility is a general oversight of the statistical functions of the Statistical Analysis and Reports Division (SARD) of the Administrative Office. The subcommittee counsels staff of that division with respect to reports concerning the judiciary and its components. Where changes in the statistical system are required and are of a relatively minor nature, the matter goes no further. Where the changes are of a substantial nature, the subcommittee makes its recommendations with respect to such changes to the Committee on Court

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Chief Judge Charles A. Moye, Jr.

Satellite Seminar on Crime Control Act Set

District judges and other personnel in 68 districts, as well as circuit judges, have been notified of a Center-sponsored satellite video seminar on the Comprehensive Crime Control Act of 1984. The seminar, to be broadcast Jan. 17 in 29 cities, will present an overview of the provisions of the legislation that most affect district judges and supporting personnel.

The Center will make videotapes of the program available to all personnel as soon as possible.

Judicial Ethics Measure Held Constitutional By D.C. District Court

The constitutionality of judicial ethics legislation passed in 1980 was recently upheld by a district court in a case brought by Judge Alcee Hastings (S.D. Fla.), who was seeking to bar an investigation of his conduct.

Judge Hastings, who was tried and acquitted on charges of bribery and obstruction of justice in 1983, was the subject of a complaint to the Eleventh Circuit Judicial Council. Under the 1980 legislation, the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), a circuit judicial council can take sanctions—short of removal—against a judge found guilty of misconduct in office. The complaint against Judge Hastings was related both to the criminal charges on which he was acquitted and to conduct revealed during the criminal trial.

Judge Hastings sued in the District Court for the District of Columbia, claiming that the investigation of

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AO Director Foley To Retire

William E. Foley, director of the Administrative Office of the United States Court, has submitted to the Chief Justice a letter announcing his retirement from his position upon the designation of his successor. Mr. Foley has served in the Administrative Office since 1964, first as deputy director and, since 1977, as director.

The Chief Justice said of Mr. Foley, "All can join in wishing Bill Foley much happiness and good health in the years ahead. His colleagues and friends are well aware

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A Message from The Chief Justice

Editor's Note: From time to time, The Third Branch *will present a comment by the Chief Justice on a matter of concern to the judiciary.*

Perhaps we have been talking, writing, and meeting too much about the "litigation avalanche." Possibly we should focus on specific mechanisms to deal with the litigation and forget the colorful terminology.

One area for swift, easy improvement is the use of a jury pool in a multiple-judge court. Some districts allow each judge to have a separate jury list. A pool method is desirable in any court and surely imperative in a court of more than four judges. Tremendous savings in budget dollars can be achieved by not calling more jurors than are needed.

Apart from dollar savings, persons who have been called for jury duty will go away with a much better attitude toward the court system if they have had their time used efficiently. It is difficult to speak of jury service as a solemn obligation of citizenship if people are called to the courthouse only to have their time "frittered away" watching TV and reading old magazines—or just waiting to be called.

Every court that is not using a jury pool method owes it to the system to move in that direction.

Taped Programs Explain Bankruptcy Act Amendments

The Center recently produced two video/audio programs on the 1984 bankruptcy amendments. "Jurisdiction Under the 1984 Bankruptcy Act," featuring Professor Lawrence P. King of New York University Law School, is a 2-hour and 29-minute program designed primarily to help district judges understand the jurisdictional and structural changes to title 28 resulting from the 1984 legislation. It describes "core" and "non-core" proceedings, withdrawal, abstention, transfer of cases, jury trials, and bankruptcy appeals. (The catalog number for the video program is VJ-066, for the audio, AJ-0679.)

"The 1984 Bankruptcy Amendments," featuring Professor King and George B. Triester, is a 2-hour and 40-minute program that reviews the jurisdictional and structural amendments described above, but also discusses the major amendments to the bankruptcy code made by the 1984 legislation. The presentation presumes a working knowledge of title 11 and of the relevant bankruptcy provisions of title 28. Substantive provisions discussed include executory contracts

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NOTEWORTHY

• The December 1984 issue of *The Third Branch* included a brief reference to a study of judicial restraint on the part of recently appointed federal judges. *The Third Branch* intended no implications regarding the exercise of judicial restraint by other federal judges, nor any intimation of the definition of the term or of the validity of the study. We regret any negative inferences that may have been drawn.

We appreciate hearing from our readers concerning any material published in *The Third Branch.*

* * *

• Former Chief Judge Juan Torruella of the District of Puerto Rico was sworn in as the first circuit judge from Puerto Rico in ceremonies in November.

Lauding Judge Torruella's elevation to the First Circuit by President Reagan as "historic," Chief Judge Levin H. Campbell said at the ceremonies that it was "high time for a judge from Puerto Rico to join us."

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of the many contributions he has made to the federal courts throughout the years. His strong leadership will be missed."

Applicants wishing to be considered for this position should file a letter application and curriculum vita with the Chief Justice of the United States, Supreme Court of the United States, Washington, DC 20543. To assure consideration, applications should be received by Feb. 1, 1985.

The salary of the director is equivalent to that of a federal district judge, currently $76,000 per year.

A full story on Director Foley's retirement will be published in the next issue of *The Third Branch.* ■

Desk Book for Chief Judges Published

The *Desk Book for Chief Judges of United States District Courts*, a new Center publication by Russell R. Wheeler, has recently been distributed to chief district and circuit judges, clerks of court, and district and circuit executives.

The *Desk Book* details the many duties assigned to chief judges and discusses the various offices and personnel within and without the federal courts with whom chief district judges deal. Designed to be part of the chief judge's office, the *Desk Book* can be maintained and augmented as the incumbent chief judge sees fit and reviewed with the next chief judge at the time of a transition.

Because distribution of the *Desk Book* has been limited to the groups named above, others who wish to review it should contact one of those persons. Revised and updated pages will be distributed periodically.

Most Trial Lawyers Favor Judge Intervention In Settlement Talks, ABA Study Finds

Most trial lawyers would prefer that federal judges participate in settlement negotiations rather than rely on counsel to conduct such talks, an American Bar Association survey has found.

The study, cosponsored by the Judicial Administration Division's Lawyers' Conference and the National Conference of Federal Trial Judges, included a poll of attorneys who practice in four federal district courts. More than 3,400 lawyers in the Northern District of California, the Western District of Texas, the Western District of Missouri, and the Northern District of Florida were sent questionnaires; nearly 55 percent responded.

Eighty-five percent of the respondents believed that involvement of a federal judge in settlement proceedings increases the chances of achieving a settlement. But many of those favoring such judicial intervention thought it should come from a judge other than the one who would try the case if no settlement were reached.

Magistrate Wayne D. Brazil (N.D. Cal.), who was a professor at Hastings College of the Law and supervised the survey for the Lawyers' Conference's Federal Courts Committee, said that the survey's findings might have significant practical benefits if "judges begin to develop the capacity to predict how lawyers in different situations will react to different judicial approaches to settlement."

Plaintiffs' lawyers seemed to favor slightly more intervention than did defendants' attorneys. Two-thirds of plaintiffs' lawyers felt that a judge who thinks a settlement is unfair should warn a party about to agree to it, whereas less than one-third of the defense bar felt that the judge should issue such a warning. ■

1985 Circuit Judicial Conferences

First Circuit	Nov. 3–7	San Juan, P.R.
Second Circuit	Sept. 4–6	Hershey, Pa.
Third Circuit	Oct. 6–8	Hershey, Pa.
Fourth Circuit	June 27–29	Homestead, W. Va.
Fifth Circuit	May 19–22	Austin, Tex.
Sixth Circuit	May 14–18	Louisville, Ky.
Seventh Circuit	May 12–14	Chicago, Ill.
Eighth Circuit	July 23–26	Little Rock, Ark.
Ninth Circuit	May 28–31	Tucson, Ariz.
Tenth Circuit	Sept. 4–7	Tulsa, Okla.
Eleventh Circuit	May 12–15	Miami, Fla.
D.C. Circuit	May 18–21	Williamsburg, Va.
Federal Circuit	May 17	Washington, D.C.

CALENDAR

Jan. 6–12 Seminar for Newly Appointed District Judges

Jan. 7–8 Judicial Conference Committee on the Operation of the Jury System

Jan. 10–11 Judicial Conference Committee on the Administration of the Bankruptcy System

Jan. 14–15 Judicial Conference Committee on the Administration of the Criminal Law

Jan. 14–15 Judicial Conference Committee on the Administration of the Probation System

Jan. 21–22 Judicial Conference Committee on Court Administration

Jan. 21–22 Judicial Conference Committee on Judicial Ethics

Jan. 23–24 Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice

Jan. 23–25 Judicial Conference Committee to Implement the Criminal Justice Act

Jan. 24–25 Judicial Conference Ad Hoc Committee on Inns of Court

Jan. 28–30 Workshop for Judges of the Ninth Circuit

Jan. 31–Feb. 1 Judicial Conference Advisory Committee on Bankruptcy Rules

Jan. 31–Feb. 2 Judicial Conference Committee on the Budget

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Administration for subsequent transmittal to and action by the Judicial Conference. The subcommittee also has the responsibility for developing improvements in the methods of assessing the needs for additional judgeships and also in general statistical methods. To that end, it works not only with the AO and the SARD but also with the Federal Judicial Center, particularly the Research Division.

You mentioned developing the judgeship requirements for the federal system, a process that remains a mystery to many judges. Can you give a thumbnail description that will help to clarify the process for them?

First, it must be understood that judgeships are created by congressional action and not by the judiciary. Therefore, to work backwards, a request for additional judgeships must be made to Congress by the Judicial Conference of the United States. The Judicial Conference acts on the basis of recommendations to it by the Court Administration Committee, which has delegated to the Subcommittee on Judicial Statistics the responsibility for making initial recommendations to it. While, formerly, requests for judgeships were made on a quadrennial basis, since 1980 they have been made on a biennial basis, with requests from the Judicial Conference going to the Congress following Conference action at its fall meeting in even years. Therefore, the recommendations from the Court Administration Committee to the Judicial Conference on this subject are formulated at its summer meeting in even years, and the recommendations of the subcommittee are formulated at its spring/summer meeting, also in even years.

To arrive at those recommendations, the subcommittee, beginning in the summer of each odd year, seeks from every Article III court its request, if any, for additional judgeships. The subcommittee asks each court to furnish it with the information that court believes relevant to its request. In the process, the subcommittee forwards to each court a questionnaire seeking answers to basic questions needed to evaluate a request. The subcommittee also solicits from each court information on any unique circumstances affecting the court that indicate a need for special consideration by the subcommittee.

Following receipt of answers to the questionnaire and any other information submitted, the subcommittee considers, at its November/December meeting in each odd year, the information received from the courts and the analysis prepared by the SARD and arrives at tentative recommendations. It then informs the courts involved of its tentative recommendations and submits them to the judicial council for each circuit, soliciting a response from the council with respect to the requests by the courts in its circuit. The subcommittee considers that additional information at its spring/summer meeting (in even years) and formulates its recommendations on the courts' requests in time for transmittal to the Court Administration Committee.

"In cases in which that backlog is so serious that we feel that it would impede the ability of the active judges of the court to manage the court's caseload, we will consider the authorization of temporary judgeships."

The subcommittee's schedules for court of appeals judgeships and for district court judgeships are identical.

You mentioned getting information from SARD as well as from the individual courts. With these data in hand, what factors are considered by your subcommittee in determining judgeship needs?

The most important factor considered by the subcommittee is a district court's weighted caseload per authorized judgeship. The subcommittee has, through long experience, found that a weighted caseload of more than 400 filings per annum— civil and criminal— indicates a need for close scrutiny by the subcommittee. That is merely the beginning. The subcommittee considers in detail other factors such as utilization of magistrates, number of divisions, geographical location of the divisions, the complexity of cases, and all other particular matters that have been brought to its attention.

Generally, the subcommittee has found that absent unusual circumstances, a caseload of substantially fewer than 400 filings per judgeship will not warrant the recommendation of an additional judgeship. Similarly, a weighted caseload substantially in excess of 400 will indicate the need for additional district court judgeships. This factor, of course, is easier to apply in multiple-judge districts than it is in smaller districts, where, for example, the subcommittee would have difficulty—in a theoretical one-judgeship district—recommending an additional judgeship if the weighted caseload were, let's say, 450.

We are currently evaluating predictors of need for additional court of appeals judgeships. We are thinking in terms of about 300-plus dispositions on the merits as the starting point for consideration comparable to the figure of 400 weighted filings we use for district courts. Other factors, principally complexity of the mix of cases, necessarily enter into our final recommendation.

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The ultimate basis of the subcommittee's final recommendation for each court—court of appeals or district court—is its best judgment, on an individual-court basis, of the entire amalgam of factors affecting that court.

You mentioned a standard of 400 for a weighted caseload. How was that standard formulated? How did you arrive at that number?

That particular factor is an empirical one based on the observations of the members of the subcommittee. Its validity has been seriously considered at nearly all of our meetings since I have been a member. It goes back to a time before I was a member of the subcommittee and originates in an empirical analysis of workload in the Eastern District of Louisiana by Judge Alvin Rubin, who formerly was a member of the subcommittee. The subcommittee, as I have said, has considered it often; we have also asked the Federal Judicial Center's Research Division to consider the figure. We have recent research by Barbara Meierhoefer of the Research Division that tends to validate the figure. Generally, it is a figure with which all the members of the subcommittee feel comfortable as a starting point. Again, I must emphasize that it is only a starting, and not an ending, point.

"The most important factor considered by the subcommittee is a district court's weighted caseload per judgeship."

I should mention that Judge Rubin and John Shapard, also of the Research Division, are providing the subcommittee with much welcome assistance in its consideration of court of appeals judgeship predictors.

What about backlog or pending caseload? Does that ever come into play?

It does. We have found courts that have a substantial backlog where the current filings would not indicate a need for an additional judgeship. In cases in which that backlog is so serious that we feel that it would impede the ability of the active judges of the court to manage the court's caseload, we will consider the authorization of temporary judgeships.

Chief Judge Charles A. Moye, Jr.

The subcommittee defines a temporary judgeship as one created for a minimum period of five years, which will lapse with the first vacancy on the court thereafter. We are aware that there have been suggestions that the only valid temporary judgeship is one that lapses only with the retirement of the incumbent of that particular position. The latter definition makes it difficult for the subcommittee to use the temporary judgeship concept for the particular function for which it is conceived to be useful. In our recent recommendations to the Court Administration Committee with respect to temporary judgeships, we specified that the recommendations were based on the definition of a temporary judgeship lapsing with the first vacancy on the court after five years. We, of course, have no control over whether that definition will be accepted by the Congress. The Judicial Conference, however, has accepted our definitions.

You mentioned that you consider the use of magistrates in formulating judgeship requirements. Could you provide a little more detail on that?

This factor is only now entering into our deliberations. For some time it has been the feeling of the Judicial Statistics Subcommittee—as well as of the Court Administration Committee, of which I am a member—that problems will be encountered if the ranks of Article III district judges continue to increase at the present rate. Many voices, within and without the judiciary, are emphasizing the validity of this feeling. The great prominence that is given to alternative dispute resolution mechanisms, to the elimination of diversity jurisdiction, and so forth leads us to the conclusion that this sentiment is shared by virtually the entire federal judiciary.

Therefore, it has seemed to us that one avenue that ought to be explored is the more effective, or greater, use of other personnel within the judicial structure. It is entirely possible that, sometime in the future, the federal practice will be such that magistrates will be handling most of the pretrial work in civil as well as in criminal cases, delivering to the Article III judge a pretrial order that the magistrate has formulated after supervision of discovery, in conference with counsel in a manner and form that has been approved by the judge. The district judge could then examine the pretrial order to determine what further action, if any, on his

"A well-briefed request for judgeships at an early stage is the most helpful thing possible from any court."

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part was necessary prior to trial and take such action or proceed to trial. This would be somewhat analogous to the procedure in which English barristers receive a brief from English solicitors and go to trial thereon.

Judge Walter Hoffman's comments on page 4 of the December *Third Branch* on the lack of problems encountered by visiting judges in trying cases already pretried in another district would seem to lend some validity to this concept.

Of course, magistrates would be under the supervision of the district judges at all times, and discovery supervised by such magistrates, or other activities undertaken by them, would be in a form acceptable to the district judges. Such optimum utilization of magistrates would ultimately reduce some of the pressure for the creation of additional Article III district judgeships—how much, of course, we do not know.

But I emphasize that we are only in the very beginning of the process of analyzing the extent to which the workload needs of a particular court can be handled through the more effective utilization of magistrates rather than the creation of additional Article III district judgeships.

Some observers feel that the judiciary's effort to hold down the increase of judgeships is a commendable policy but that the judiciary may have been too hard on itself in recent years. How does your subcommittee balance the desire to confine growth against the rising demand for court services?

The subcommittee considers each court on an individual basis, and it attempts to make sure that each court has an adequate Article III complement to serve its needs without creating an excess. We have no implements to give us this balance on a statistical, or other precise, basis. It winds up, as I see it, as the empirical judgment of the subcommittee as a whole. We have been made aware of no general feeling that the recommendations of the subcommittee are too parsimonious across the board. We do occasionally get indications from particular courts of dissatisfaction with particular recommendations by the subcommittee. It is our hope that such courts will make their feelings known to us during the interval following the receipt of our tentative recommendations so that we have time to reconsider those courts' presentations prior to making our final recommendations.

"The ultimate basis of the subcommittee's final recommendation for each court . . . is its best judgment . . . of the entire amalgam of factors affecting that court."

You talked about a number of factors, such as weighted caseloads, complexity, and so on. What about the presence of active senior judges? Is that taken into account?

To an extent, it is necessarily taken into account in our judgment as to the effect to be given to the weighted caseload factor. Most often we have found, however, that individual courts do not wish unduly to expand the number of Article III judges where the caseload is being handled adequately by senior judges. Generally, we are of the opinion that the active-judgeship complement of a district ought to be able to handle the workload of that district without great discomfort. It is therefore in relatively few cases that the senior judge factor becomes decisive.

In your last report to the Conference, there was a discussion of the impact of diversity cases. You indicated that if these cases were eliminated, your request for judgeships would decrease by a large amount. Do you think it likely that similar annotations of other sources of judgeship needs will be made in the future?

Perhaps. At the present, we have no such intention.

I'd like to explain why we did that with respect to diversity jurisdiction. First, it is the position of the Judicial Conference that diversity jurisdiction ought to be eliminated. This results from recommendations coming to the Conference from the Subcommittee on Federal Jurisdiction of the Court Administration Committee and the subsequent recommendations by the Court Administration Committee. Therefore, we have not considered, with respect to this item, that the Subcommittee on Judicial Statistics was itself entering a new field. Rather, we are providing the statistical basis for the stated position of the Judicial Conference; we conceive that to be one of our functions. If similar situations arise in the future, we will approach it from the same viewpoint. But, I emphasize, it is not the statistics subcommittee that has adopted a position with respect to diversity jurisdiction. We are simply providing statistics with respect to a stated position.

Earlier, you noted that the federal courts cannot continue to grow at their present pace. Is there a point beyond which the federal judiciary should not grow; is there a point at which alternative solutions must be implemented?

There may be. We are not in a position now even to foresee or, certainly not, to forecast such a point. Generally, we know that in all organizations efficiency decreases with growth.

You talked about courts that might not agree with your decisions as to numbers of judgeships. How can courts help the subcom-

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Eleventh Circuit Judge Johnson Receives Devitt Service Award

Judge Frank M. Johnson, Jr., of the Eleventh Circuit has been named the recipient of the annual Devitt Distinguished Service to Justice Award. Judge Johnson was recognized for his "quiet courage" in pioneering "judicial intervention to enforce constitutional guarantees" and for "leading the peaceful judicial revolution in the states of the former Confederacy." He was also cited for his competence as both a trial and an appellate judge and for his work in improving judicial administration.

Judge Frank M. Johnson, Jr.

The Devitt Award was established in 1982 by the West Publishing Company "to bring public recognition to the contributions to justice made by Federal Judges and to herald their dedication and achievements." It is named for Judge Edward J. Devitt of the U.S. District Court for the District of Minnesota, who served on the selection committee along with Supreme Court Justice Lewis F. Powell, Jr., and Chief Judge James R. Browning of the Ninth Circuit.

Previous recipients were Judge Albert B. Maris (3rd Cir.) and Judge Walter E. Hoffman (E.D. Va.). Chief Justice Warren E. Burger was honored with a special award in 1983. ■

Positions Available

Librarian, Supreme Court of the United States. Salary from $50,000, depending upon prior experience and salary history. Responsible for administration of the Supreme Court Library, including supervision of staff, management of collections and automated information systems, budgeting, procurement, and space planning. Requires law degree, advanced degree in library science, and a minimum of six years of progressively responsible law library experience; also requires prior supervisory experience and competence with automated information systems. Strong interpersonal skills and budgetary experience are desirable. To apply, send resume and standard form 171 by Jan. 31, 1985, to James A. Robbins, Personnel and Organizational Development Officer, Supreme Court of the United States, Room 3, Washington, DC 20543.

* * *

Deputy Clerk, Supreme Court of the United States. Salary from $30,549 to $42,928. Assists in preparation of Court's Order Lists and *in forma pauperis* case Conference Lists; processes emergency applications and drafts orders; corresponds and consults on court practice and procedure. Requires law degree, membership in a state bar, and at least two years of experience in a court or a management position. Experience as a deputy clerk in an appellate court with supervisory experience and/or management training desirable. To apply, send standard form 171 by Jan. 25, 1985, to James A. Robbins, Personnel and Organizational Development Officer, Supreme Court of the United States, Room 3, Washington, DC 20543.

* * *

Chief Deputy Clerk, U.S. District Court for the District of Connecticut (New Haven). Salary from $25,489 to $42,928. Requires bachelor's degree in business or public administration, political science, criminal justice, law, or management. Also requires history of progressively responsible administrative, professional investigative, or technical job assignments; prior court experience preferred. To apply, send resume by Jan. 25, 1985, to Clerk, U.S. District Court, P.O. Box 1206, New Haven, CT 06505.

* * *

Federal Public Defender, Middle District of Tennessee (Nashville). Salary of $59,760. Provides federal criminal defense services, administers an office, and supervises staff. Requires law degree and membership in a state bar. Significant federal criminal trial experience, ability to administer an office effectively, reputation for integrity, and commitment to the representation of those unable to afford counsel are desirable. To apply, obtain application form from Billie Jo Hastings, Acting Clerk, U.S. District Court, 800 U.S. Courthouse, Nashville, TN 37203-3869. Completed applications must be received by Jan. 15, 1985.

* * *

Assistant to the Circuit Executive, District of Columbia Circuit. Salary from $25,366 to $36,152, depending on qualifications. Requires undergraduate degree and work experience that clearly demonstrates administrative and managerial capabilities. Graduate degree in management, public administration, judicial administration, or law is highly desirable. To apply, send application by Feb. 1, 1985, to Charles E. Nelson, Circuit Executive, U.S. Court of Appeals, 4826 U.S. Courthouse, Washington, DC 20001.

EQUAL OPPORTUNITY EMPLOYERS

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mittee—what can they do to aid you in your efforts?

The best help that each court can give is to prepare and submit, as early as possible following our initial request, a complete profile of the court—basically following our questionnaire—and to give the matter at that point the court's careful attention. That is the time when the court is in the best position to develop the factual basis for its request. While the subcommittee has access to the statistical information in the SARD, that division does not have all the information of a local or particular nature that may be important to our recommendations. A well-briefed request for judgeships at an early stage is the most helpful thing possible from any court.

Are you trying to move away from roving judgeships—a judge for more than one district?

We are, and we have been quite successful. When the judiciary was smaller, I am sure that roving judgeships—judgeships crossing district lines—were a useful device. There is no longer any single-judge district in the country, and even in those districts in which roving judgeships have existed in the past, there is no longer a need that cannot be met by the judges assigned to individual districts.

Roving judgeships substantially skewed the statistical basis for determining judgeships. We found that it was difficult to allocate filings on a per-judgeship basis where roving judgeships existed. When we did so it was on an arbitrary 50/50 or other appropriate percentage basis, and, in many cases, we found that a roving judge might be a de facto full-time judge or almost full-time judge in a single district. Therefore, from the viewpoint of developing a rational statistical basis for additional judgeships, the subcommittee prefers to do so on an individual-district basis and has, therefore, in several cases, recommended the elimination of roving judgeships and the assignment of a roving judge to a particular district.

There is sometimes a great deal of criticism about the creation of judgeships after the Judicial Conference finishes its recommendations. Would you care to comment on that process?

The subcommittee takes the position, and, I believe, rightly, that that is not its affair and that it would be unwise for it to state any position with respect thereto. There is a separation between the Congress and the judiciary. Congress is the judgeship-creating agency and not the judiciary. And while, on a statistical basis, we may individually have some question with respect to certain situations, such as those you describe, we have no position on them.

You talked about the fact that roving judgeships sometimes tend to skew some of your statistical bases. Are there problems with the statistics that are collected? Do you hear any criticisms of them? Are changes needed?

The most general criticism we hear is that the present weighted caseload table doesn't adequately reflect some particular type of case that may constitute a substantial part of a district's caseload. The 1979 weighted caseload table is currently our best statistical device for evaluating the overall qualitative and comparative caseload of any court. The subcommittee is thoroughly aware, however, that the weighted caseload table is based upon a single survey in 1979 by the Federal Judicial Center that encompassed only 100 district judges. That survey is used by us in preference to the previous one, which is now well over 10 years old. There have been some more recent analyses of case weights, which indicate that the 1979 table is generally reliable for the broad purposes for which we use it. When the subcommittee authorized that survey in 1979, it was on the basis that the survey be so designed that should additional segments of the judiciary be surveyed subsequently the results would be compatible. So far, our information from the Center has indicated that the weighted caseload table is sufficiently accurate for our purposes, and we have no desire unnecessarily to refine it because that necessarily means a substantial impingement upon judgeship time. The 100 judges who took part in the 1979 survey were asked to keep accurate records of their time, by particular case, for a period of three months. That was a very substantial dedication of judgeship time and we do not wish to repeat it until it becomes more apparent that it is necessary.

Is there anything else you would like to add?

I think I pretty well covered what I had wanted to say. I have emphasized, and will do so again, that the recommendations by the subcommittee are not automatic, statistically derived crosslines figures. We use statistics as a starting point to conserve the efforts of the subcommittee in the analysis of information. We've done this over such a period of years that we are confident that we are pretty well in range when we start our consideration of a particular court. But frequently there have been occasions on which the subcommittee has been activated by a court's expression or justification of a need not apparent from the statistics themselves. The careful attention of the court, particularly of the chief judge, during the period immediately following the request from the subcommittee in the summer of even years—and the careful preparation or documentation of a request, if there be a request, for additional judgeships—would be of the utmost assistance to the subcommittee. ■

PERSONNEL

Appointments

Charles E. Wiggins, U.S. Circuit Judge, 9th Cir., Oct. 16

Richard F. Suhrheinrich, U.S. District Judge, E.D. Mich., Oct. 23

James H. Jarvis II, U.S. District Judge, E.D. Tenn., Oct. 30

Juan R. Torruella, U.S. Circuit Judge, 1st Cir., Nov. 1

Charles R. Norgle, Sr., U.S. District Judge, N.D. Ill., Nov. 1

Illana D. Rovner, U.S. District Judge, N.D. Ill., Nov. 1

Elevations

Harold A. Baker, Chief Judge, C.D. Ill., Nov. 27

Harold M. Fong, Chief Judge, D. Hawaii, Nov. 30

Owen M. Panner, Chief Judge, D. Or., Oct. 20

Juan M. Perez-Gimenez, Chief Judge, D.P.R., Oct. 30

Richard M. Bilby, Chief Judge, D. Ariz., Nov. 30

Correction

Date of Truman M. Hobbs's elevation to Chief Judge, M.D. Ala., is Oct. 18.

Senior Status

C. A. Muecke, U.S. District Judge, D. Ariz., Nov. 30

Death

J. Waldo Ackerman, Chief Judge, C.D. Ill., Nov. 23

Mediation Procedure Used In W.D. Wash. Described

The Center recently published *Mediation in the Western District of Washington,* which describes an innovation applied in the Western District of Washington for mediation of selected civil cases. The report, written by Professor Karl Tegland of the University of Washington School of Law, is the second in a collection entitled *Innovations in the Courts: A Series on Court Administration.*

In an attempt to alleviate a growing backlog of cases, the U.S. district court and the local federal bar association in the Western District of Washington jointly developed a procedure by which judges may refer civil cases to attorneys who serve as mediators without compensation. This procedure is embodied in local civil rule 39.1.

The report, based on interviews with judges, clerks of court, and attorneys, focuses on both the codified procedure and the manner in which the procedure operates.

Copies of the report can be obtained by writing to the Center's Information Services Office, 1520 H St., N.W., Washington, DC 20005. ■

THE SOURCE

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Atwood, Barbara Ann. "Domestic Relations in Federal Court: Toward a Principled Exercise of Jurisdiction." 35 *Hastings Law Journal* 571 (1984).

✔Bazelon, David. "The Insanity Defense: Symbol and Substance." Speech to the American Academy of Psychiatry and the Law, Nassau, Bahamas, Oct. 27, 1984.

Burger, Warren E. "The Judiciary: The Origins of Judicial Review." 54 *National Forum* 26 (1984).

Goldberg, Arthur J. "Regulation of Hostile Tender Offers: A Dissenting Review and Recommended Reforms." 43 *Maryland Law Review* 225.

Goleman, Daniel. "Studies of Children as Witnesses Find Surprising Accuracy." *New York Times,* Nov. 6, 1984, p. C1.

Greene, Harold H. "AT&T Divestiture and Consumers." 5 *University of Bridgeport Law Review* 251 (1984).

Heflin, Howell, and William B. Enright. "Should Lawyers Question Prospective Jurors?" 70 *ABA Journal* 14 (1984).

Kaufman, Irving R. "Keeping Politics Out of the Court." *New York Times Magazine,* Dec. 9, 1984, p. 72.

Markey, Howard T. "The Delicate Dichotomies of Judicial Ethics." 101 *Federal Rules Decisions* 373 (1984).

✔Torruella, Juan R. Remarks at induction into First Circuit judgeship, San Juan, P.R., Nov. 1, 1984.

ETHICS, from page 1
him—and the legislation authorizing it—violated the constitutional guarantee of an independent judiciary by placing disciplinary powers in the hands of a court rather than Congress and violated his due process rights. He further claimed that the legislation was impermissibly vague.

Judge Gerhard Gesell, rejecting that argument in *Hastings v. Judicial Conference*, No. 83–8850 (D.D.C. July 25, 1984), first noted that "Congress was acutely aware of the need both to preserve fundamental judicial independence and at the same time to enable the judiciary 'to put its own house in order' by providing tools to implement the judiciary's own disciplinary procedures where necessary to assure judicial accountability." He concluded that "the Act's disciplinary mechanism does nothing to encroach upon the essential independence of judges to decide cases."

Judge Gesell also ruled that the legislation authorizing the judicial council's investigation of Judge Hastings was not impermissibly vague and provided adequate due process rights for the subject of an investigation.

Moreover, the district court denied Judge Hastings's claim regarding the unconstitutionality of the Administrative Office's rejection of his demand that his legal fees in the disciplinary proceedings be paid for by the government. Judge Gesell noted, however, that Judge Hastings could pursue a nonconstitutional claim for compensation and suggested that the legislative history of the act seemed to favor such payment. ■

VIDEO, from page 2
and leases; labor contracts; avoiding powers; chapter 11 amendments and repurchaser agreements; and consumer amendments. (The catalog number for the video program is VB-021, for the audio, AB-0245.)

Either program can be borrowed in video or audio format from the Center's Media Services Unit, 1520 H St., N.W., Washington, DC 20005. Please include the appropriate catalog numbers in your request, and if you wish to borrow a video program, specify either ½-inch VHS format or ¾-inch U-matic format. ■

1984 Court Management Report Issued

The 1984 edition of *Federal Court Management Statistics* was published recently by the Administrative Office. It contains key data on the workload of federal trial and appellate courts during the years ending June 30, 1979, through June 30, 1984.

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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THE THIRD BRANCH

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Chief Judge Aubrey E. Robinson, Jr.

D.C. District Court Has Unique Jurisdiction, Record of Speedy Case Disposition

Chief Judge Aubrey E. Robinson, Jr., has been a judge of the U.S. District Court for the District of Columbia for more than 18 years, and has been chief judge of this court for more than 2 years.

Judge Robinson, who was born and raised in New Jersey, graduated from Cornell University and Cornell Law School. He accepted his first legal job in Washington, D.C., after graduation, and remained in private practice there until his appointment to the District of Columbia Juvenile Court in 1965. He was named to the district court bench in 1966.

Since taking office, Judge Robinson has served as a member of the Judicial Conference's Ad Hoc Committee on Court Facilities and Design and Committee on the Administration of the Criminal Law. He has also served as a Board member of the Federal Judicial Center and was chairman of the American Bar Association's National Conference of Federal Trial Judges.

In a wide-ranging interview with The Third Branch, *Chief Judge Robinson comments on the atypical mix of cases in his district, warns that courts must not lose sight of their primary goal—dispensing justice—and urges periodic paid sabbaticals for federal judges.*

A 1982 Center study of the caseload of the U.S. Court of Appeals

See ROBINSON, page 4

Enrollment Opens for Judges' Summer Program

The Center will sponsor a program entitled "Statistics and Expert Testimony in the Federal Courts" from June 9 to 14 at the University of Wisconsin Law School in Madison. Because of the favorable reactions of the judges who attended a similar Center-sponsored seminar in Madison last summer, the program is being repeated this year.

The seminar will use a set of specially fashioned cases in such areas as employment discrimination, antitrust, and securities regulation, complemented by secondary readings and judicial opinions. In addition to plenary lecture sessions, there will be small-group discussions between judges and faculty members.

The seminar seeks to provide practical assistance to judges in dealing with—

- Statistical and economic analyses offered to prove or disprove liability or damages.
- Problems in the presentation of expert testimony, including difficulties created when experts are inadequate to their task of explaining statistics, economic behavior, or other complex issues.
- Application of the Federal Rules of Evidence in such cases.
- The degree to which judges may step outside the adversary process to inform themselves of "legislative facts" underlying issues in a particular type of litigation.

Judges wishing to attend should write to Kenneth C. Crawford, Director of Continuing Education and Training, Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005. Letters should be received by Feb. 21.

This program is the only one for judges sponsored by the Center next summer. ■

William E. Foley

Wm. Foley Retires, Caps Distinguished Career At Administrative Office

William E. Foley has announced his retirement as director of the Administrative Office of the United States Courts, a position he has held since November 1977. Director Foley will remain in office until his successor is designated by the Supreme Court.

Mr. Foley has worked with the federal courts pursuing improved judicial administration for more than 20 years. He joined the Administrative Office as deputy director in 1964 and served in that capacity under the directorships of Warren Olney, Ernest Friesen, and Rowland Kirks. During Mr. Foley's tenure as director, the federal judiciary underwent unprecedented expansion: Since 1977 the two largest omnibus judgeship bills in the history of the nation created a

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Inside...

New District Judges Gather at Seminar

Twenty-five recently appointed judges attended the FJC's week-long seminar for new district judges in Washington last month. The program featured lectures from judges and professors on key topics in federal law, remarks by the Chief Justice, and a dinner at the Supreme Court. Among those absorbed in one of the lectures were Judges Walter S. Smith (W.D. Tex.) and Ilana Diamond Rovner (N.D. Ill.), above left. Judges Peter K. Leisure (S.D. N.Y.) and Tom S. Lee (S.D. Miss.), above right, catch up on their seminar reading. At right, Professor Charles Abernathy of the Georgetown University School of Law illustrates a point during a lecture about employment discrimination law.

THE THIRD BRANCH
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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, DC 20005.

Co-editors
Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.
Joseph F. Spaniol, Jr., Deputy Director, Administrative Office of the U.S. Courts.

Supreme Court Clerk Stevas Retiring at Term's End

The Chief Justice announced Jan. 11 that Alexander L. Stevas, Clerk of the U.S. Supreme Court for the past four years, will retire at the end of the Court's current term.

Mr. Stevas, a graduate of George Washington University Law School, was an assistant United States attorney in Washington, D.C., for 11 years, then clerk of court at the District of Columbia Court of Appeals and chief deputy clerk of the U.S. Court of Appeals for the District of Columbia Circuit. He has received numerous awards for outstanding service, including President Ford's Management Improvement Certificate and the American Judicature Society's Herbert Harley Award.

In making the announcement, Chief Justice Burger said, "Mr. Stevas's retirement marks the end of a fine public career. We wish him well for the years ahead."

For vacancy notice, see p. 9. ■

Chief Justice, in Annual Report, Reviews Ways to Ease Court's Caseload

Chief Justice Burger, in his *1984 Year-End Report on the Judiciary*, called for renewed efforts to reduce the Supreme Court's caseload, and expanded on specific proposals to accomplish this.

Two major proposals—both of which have been suggested by the Chief Justice in the past—were to create a temporary panel of federal judges to handle intercircuit conflicts and to reduce the Court's docket by eliminating mandatory appellate jurisdiction.

The Chief Justice urged that the temporary intercircuit tribunal be created for a five-year experimental period, during which time Congress and the Court would evaluate this special court. Pointing to the fact that the Supreme Court reviews many cases merely because there is a conflict on a question of law among the circuits, the Chief Justice proposed that the Supreme Court be authorized to refer these cases to the temporary court. The special panel could provide a uniform federal resolution to issues when circuit conflicts arise. The Supreme Court could modify the panel's decisions, but otherwise its decisions would be binding on all federal courts.

Bills to create such a temporary tribunal were introduced in both the House and the Senate in the 98th Congress by Congressman Robert Kastenmeier and Senators Robert Dole, Strom Thurmond, and Howell Heflin, and were reported out of subcommittees in both houses.

Referring to the Court's mandatory appellate jurisdiction, the Chief Justice said that the elimination of this jurisdiction would not necessarily foreclose Supreme Court review, since cases with questions meriting review could still reach the Court by the discretionary writ of certiorari.

These two steps are needed, the Chief Justice said, because "Supreme Court Justices must now work beyond any sound maximum limits"—issuing more than twice as many full opinions as they did as recently as 1953. As a consequence, he said, "the precious time for reflection so necessary to a court that decides cases with far-reaching consequences has been reduced to, and possibly below, an absolute minimum."

In his year-end report, Chief Justice Burger also called for increased salaries for federal judges at all levels. He said it was "unseemly [and] unjust" that judicial salaries had not kept pace with inflation or with

See REPORT, page 8

THE SOURCE

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Chaset, Alan J. "Implementing Attorney Admission Rules in the Federal Trial Courts: A Status Report on King Committee Activities." 31 *Federal Bar News and Journal* 429 (1984).

Childress, Stephen Alan. "Standards of Review in Federal Civil Appeals: Fifth Circuit Illustration and Analysis." 29 *Loyola Law Review* 851 (1983).

Hellman, Arthur D. "The Supreme Court's Second Thoughts:

See SOURCE, page 11

Judicial Appointments Under Bankruptcy Act Upheld

The constitutionality of the judicial appointment provisions of the 1984 bankruptcy reform act has been upheld by three district courts.

In one case, the subject of an involuntary bankruptcy petition challenged the constitutionality of the extension of the length of the terms of most bankruptcy judges. The Justice Department joined the suit on the plaintiff's side, questioning the constitutionality of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and the Senate and House joined the defense.

The extension was constitutionally permissible, Judge Robert H. Schnacke (N.D. Cal.) ruled, because Congress did not do the appointing, but merely changed "the scope and term of office," which it had the power to do.

The ruling, in *In Re Benny*, Misc. No. C–84–120 (N.D. Cal. Nov. 29, 1984), also held that the two weeks between the time Congress last extended the bankruptcy judges' tenure and the time the bill authorizing appointments was signed did not create a situation in which all bankruptcy judges had to be treated as new appointments. The government and plaintiff Alexandra Benny filed notices of appeal.

The same conclusion was reached in *In Re Wasatch Factoring, Inc.*, Misc. No. B–0015 (D. Utah, Nov. 26, 1984), an oral opinion by Judge David K. Winder.

In *In Re Tom Carter Enterprises, Inc.*, No. SA–84–0624–RP (C.D. Cal. Dec. 5, 1984), Judge Robert Takasugi found that the appointment of incumbent bankruptcy judges was retroactive and not provided for in the 1978 legislation. However, he ruled, Congress had as much power to make those retroactive appointments as it had to make the prospective ones. ■

ROBINSON, from page 1

for the District of Columbia Circuit described it as markedly different from the case mix in other circuits. Does the same hold true for the district court for the District of Columbia?

Yes. Because we are located in the nation's capital, the seat of the federal government, we get more than our proportionate share of civil cases that involve complex and significant legal, economic, and social issues, many of which have national impact. The AT&T case is one example. Our multidistrict cases involving swine flu, the Air Florida crash, the Korean Air Lines 007 case—all of these cases require a substantial exercise of judicial effort, more so than the ordinary civil jury case. The complexity in our caseload is documented by the statistics kept by the Administrative Office; we have the highest weighted caseload average of any district court in the nation, and it is not anticipated that this is going to change.

Do the kinds of cases that come up on your docket present any special problems because of the divided jurisdiction in the District of Columbia?

Not insofar as the civil cases are concerned. But they do present a difficult and special situation insofar as the criminal cases are concerned because under the existing statutory arrangement in the District of Columbia, federal crimes can be joined with local D.C. crimes in a single indictment. When that is done they are tried in our court. This gives rise to the problem of different evidentiary standards that frequently have to be applied. This also gives rise to procedural questions that require us to make a decision about what we will do and how we are going to do it. By and large, under the direction of our circuit court of appeals we have adapted the federal procedures, and, to the extent that we haven't been precluded from doing so by statute, those procedures are utilized in handling the local offenses that are joined.

Did the 1970 act transferring some jurisdiction from the U.S. district court to the District of Columbia Superior Court make quite a difference in your workload?

Washington Law Reporter photo

Chief Judge Aubrey E. Robinson, Jr.

Yes, it's made a difference in the workload of all the judges on the court. Prior to the court reorganization in 1970 our jurisdiction encompassed all of the felony criminal jurisdiction that existed in the District of Columbia, whether it arose out of a commission of local offenses or out of a commission of federal offenses. So we were basically, for all intents and purposes, a criminal trial court for a number of years, and most of our judges spent the vast majority of their time trying criminal cases.

Insofar as our civil jurisdiction is concerned, there was not a great impact because much of the civil jurisdiction that was separated out did not involve trials, but it certainly did involve additional work, since we had probate and conservatorship jurisdiction. Prior to 1970 we even had divorce jurisdiction in the District of Columbia.

Are District of Columbia lawyers going to file more cases in the U.S. district court if they think they will get to trial faster than they will in the District of Columbia Superior Court?

They will if they practice in both courts. There are many lawyers who limit their practices, not exclusively but almost, to one court or the other. I believe that there are a significant number of lawyers who do not feel comfortable practicing in the federal courts and they choose to practice in the local court. But if there are time constraints and if they are looking for verdicts that they think the lower court will not give them, they will file here. Incidentally, they can file a lawsuit here for $10 and it costs $60 to file a civil suit in the superior court. We have been trying for some time to get Congress to change the statute. Considering cheaper filing fees, a perception that they can get to trial more quickly, and the perception that because it is a federal court they may achieve a larger verdict if it is a jury case, lawyers who are comfortable with the federal system, and who have had some experience in practicing in this court, will file here.

Your current disposition time for civil cases is half as much as the national average for all district courts. How did your court achieve such a record of efficiency?

I think that the court is not solely responsible for that. If you look at other statistics you will see that our total average caseload per judge is significantly lower than a large number of other courts in the country. We do not carry a tremendous overall caseload, so our per-judge caseload enables our judges to spend more time with each of the cases for which they are responsible. To the extent that a judge can spend time with a case, he or she can control discovery, and by controlling discovery the judge has a much better idea of

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what cases will in fact go to trial and what cases will be disposed of by settlement. The judge also has the opportunity to deal with a large number of cases that are disposed of by motion, particularly motions for summary judgment. So disposition time, in my judgment, is related basically to two major factors: the overall caseload responsibility of a judge and the ability of any particular judge to exercise strong control over his or her caseload even if that caseload is a large one.

Are your judges at peak efficiency right now?

Well, how do you measure the efficiency of a judge? Is it statistics reflecting the number of dispositions when dispositions can range all the way from the most minuscule kind of matter to one that may have involved as many as several months of trial? I don't know how you would measure efficiency. It cannot be done objectively except as you look at a total court structure. If, given our caseload, and given an incremental increase in that caseload every year, we were not reasonably keeping up with overall disposition, then you could say that as a unit, as a court, we were not operating efficiently. But even that would not mean that there might not be individual judges who were operating at peak efficiency. But if as you looked at the overall operation of the court you saw that in no area was it making any progress, then you could say that that court was operating inefficiently. Our judges are working conscientiously, some of them are overworking themselves. We have judges who are workaholics and they just get immersed in what they are doing and they just go and go and they drive everyone around them. But that doesn't make for efficiency necessarily.

Is there any way to get the disposition rate down?

It is necessary for many reasons to translate our work into statistics. But no court system worth having and maintaining can be operated on the basis of statistics no matter how they are refined. Our job is to see that people who are in difficulty with the criminal law, or who have problems inter se, can have their problems resolved so that the bottom line resembles justice as closely as we perceive it. If to achieve that it means that we have to spend eight months, and if in spending those eight months we have refined it so that the net result is justice, then we've done our job. This is not to say that there may not be a situation in which we can do it much more quickly. But the aim is not how quickly you can terminate cases, but how many you can run through the system, not how many you can take on. The aim is to see that the people we deal with feel that they have been fairly dealt with. Also, we have to remember that in doing this work we are not machines. There are peaks and valleys in our days and in our weeks and in our years. We cannot drive ourselves day in and day out for an extended period of time.

"Because we are located in the nation's capital ... we get more than our proportionate share of civil cases ... which have national impact."

"Our job is to see that people ... can have their problems resolved so that the bottom line resembles justice as closely as we perceive it."

There are some judges that just naturally work faster or slower than others.

Yes, all of us have different work habits and work styles and what will work for me will not necessarily work for "X." Some judges like to write out all of their own drafts. Other judges are comfortable with dictating, other judges are comfortable with doing very little writing, spending more time in discussions with their law clerks, or more time in the trial of cases; what works for some does not necessarily work for others. There is no single pattern.

There are 15 authorized judgeships and there are five senior judges serving the U.S. District Court for the District of the District of Columbia. Do you feel you have enough judge power?

We do at our present rate of filings, both civil and criminal, and that's primarily because all of our judges work and they work diligently. With the support that we get from our senior judges we are able to control our caseload. It's a good situation and we see no present necessity for additional judgeships. In addition to our active and senior judges, one other factor that is of considerable help is the support of our three magistrates. Those magistrates, especially in the criminal area, are very helpful in keeping the caseload current. As for the preliminary matters that are involved in criminal and civil caseloads, magistrates are being utilized by most of our judges. They do most things to assist us in the discovery process and by acting as special masters when we find that we need them. They hold trials of cases where the parties consent to trial before a magistrate. We are not under any great pressure in terms of our overall workload.

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Your court is unique in that all of your jurisdiction is in one geographical area—one city. All your judges are in one courthouse. Does that make your work as a chief judge easier?

Yes, I think it makes it easier. Because we are all physically located in one building it gives rise to the opportunity for much more personal communication and contact, which helps in administering a court. There is also a greater sense of collegiality, which one needs in order to have new ideas presented and discussed rationally to improve the functioning of the court. There is never a problem involved in travel.

Judge Robinson

We have a lot of informal contact, and one tremendous advantage we have being located in one building is that we have an opportunity to frequently have lunch together, where we can discuss a variety of things. It's much easier to have regular meetings in the courthouse, much easier to have committee meetings, and much easier to involve the active litigating lawyers in the community. One of the things we are constantly concerned about is having bar reactions to some of the things we are doing, getting input from the practicing lawyers on ways we can improve. Having them in this relatively small geographical area is very helpful.

The recently enacted Comprehensive Crime Control Act of 1984 makes sweeping changes in the criminal law area. What are your reactions to these changes?

Well, Congress has spoken, and with the furor that has gone on for a number of years about sentencing disparity, it was an expectation that Congress would codify a mandatory sentencing commission, despite efforts that many district courts had made toward sentencing conferences—despite the efforts of the Federal Judicial Center through its educational programs, despite judicial conferences and circuit conferences around the country, and sentencing institutes. It was an idea whose time had arrived.

I believe that when Congress makes the law it ill-behooves me to waste my time and energy arguing about legislation Congress has passed. I believe that we serve best when we try to understand the legislation and the background of the legislation, and attempt to make it as effective as possible. Congress has spoken: Sentencing guidelines will be established; they will be mandated. We have the same obligation as any other citizen affected by legislation, and that is to operate within the bounds of that legislation until it is either appealed or declared to be unconstitutional, neither of which I expect to happen vis-à-vis the new Comprehensive Crime Control Act, at least insofar as the Sentencing Commission is concerned. As for the Sentencing Commission, it has a very difficult job to perform, but there will be the opportunity for input from a large number of people on what should and should not be included in the guidelines.

Just as we made adjustments when the Bail Reform Act of 1966 was enacted, we shall adjust to the requirements of the new bail reform statute. The procedural, practical, and constitutional problem of preventive detention will be tackled in a deliberate and orderly fashion with the requirement of a complete record of our actions. We can anticipate exacting appellate scrutiny.

As far as the Parole Commission is concerned, there again a policy decision has been made. The Parole Commission will have to operate, as I understand it, for a while because there are many people who are still incarcerated who will be subject to the statutes as they existed prior to the abolition. It will be phased out.

It will have to function, obviously, in the context of an entirely new arrangement. Its judgment may be affected by what it sees is on the books with respect to defendants over whom it will have no responsibility. Congress has spoken in no uncertain terms about the desirability of considering punishment, and the desirability of reducing sentencing disparities, and about the desirability of removing from the community people who are dangerous to themselves or others.

"One of the things we are constantly concerned about is . . . getting input from the practicing lawyers on ways we can improve."

Much has been said recently about the federal courts getting into too many social issues—abortion, religion, and so forth—issues some say shouldn't even be in the courts. Do you think some of these or other issues should not be resolved in the federal court system?

Absolutely not. It is quite true that there are and have been outstanding state systems. There are

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Justices Blackmun, Rehnquist, in TV Interview, Discuss Court's Ideology

The Supreme Court is not "chipping away" at civil liberties as some critics claim, Justice William H. Rehnquist said recently in his first-ever television interview.

Civil liberties claims are "essentially antimajoritarian" and should be "sustained when the Constitution requires that they are sustained," Justice Rehnquist said. "But that certainly doesn't mean that every time a case comes to this court where the term 'civil liberties' is invoked, the court ought to unthinkingly decide" in the claimant's favor.

Justice Rehnquist's remarks, as well as an interview with Justice Harry A. Blackmun, were taped in September and broadcast in late December as part of an hour-long program about the Court produced by ABC News. ABC said all the justices were invited to appear.

Justices Blackmun and Rehnquist agreed that the Supreme Court moves in cycles. Justice Blackmun predicted some "pendulum swing" as the Court's justices are replaced over the next several years and voiced hope that the shift will be gradual because "abrupt changes in legal philosophy would be hard on the nation."

Justice Rehnquist called change on the Court "a cyclical thing." ■

FOLEY, from page 1

total of 237 additional judgeships. Mr. Foley oversaw a number of key improvements, including the establishment of pretrial services agencies and the creation of a new unit within the AO to increase and enhance the level of courthouse security.

His term also included the introduction and eventual widespread use of computer and word-processing equipment in court offices, the creation of a federal court library system with a special library unit in the AO, the development of a design guide for the construction of court facilities, and the creation of the first comprehensive schedule for the disposition of court records.

A native of Danbury, Conn., Mr. Foley holds four degrees (A.B., LL.B., A.M., and Ph.D.), all from Harvard University. In 1940, he joined the Department of Justice, leaving two years later for service during World War II as a lieutenant commander in the Navy. He had four years of active duty, eventually retiring from the Naval Reserve in 1968 with the rank of captain.

Mr. Foley returned to Justice in 1946 as part of the War Frauds Unit, trying cases in the Southern District of New York, and was designated chief of the Internal Security and Foreign Agents Registration Section, Criminal Division, in 1948. His 20-year career at Justice included appointments as executive assistant to the assistant attorney general, Internal Security Division (1954–1958), and deputy assistant attorney general, Criminal Division (1958–1964).

Director Foley served as secretary to the Committee on Rules of Practice and Procedure of the Judicial Conference from 1965 to 1977, and has been a member of the Board of the Federal Judicial Center and the Board of Certification.

Chief Justice Warren E. Burger noted "the many contributions [Bill Foley] has made to the federal courts," and added: "His strong leadership will be missed." (See *The Third Branch*, January 1985.)

Calling him "an extraordinarily accomplished public servant, as well as a friend," Senior Judge Elmo Hunter, chairman of the Judicial Conference's Committee on Court Administration, stated that "Bill Foley's finest traits are his dedication to his job and his total fairness. He is not only highly educated, but extremely bright."

Chief Judge Charles Clark, chairman of the Judicial Conference Committee on the Budget, noted that "being the director of the Administrative Office of the United States Courts is a most difficult job. He is always between the rigid strictures of congressional enactments and judicial conference directives on the one side and the insistent demands of over 920 independent, life-tenured federal judges on the other.

"During more than 20 years of service as deputy director and director, Bill Foley has done this grinding job with uncommon dedication, equanimity, and common sense," Chief Judge Clark said. "His retirement marks a time when everyone in the judiciary should recognize our good fortune in having had his steady hand at the tiller. I wish him Godspeed."

A. Leo Levin, director of the Federal Judicial Center, praised Mr. Foley's "rare combination of wisdom, common sense and unstinting devotion to the federal judicial system. Under his leadership our two organizations worked more closely together than ever before in the effort to serve the courts more effectively." ■

CALENDAR

Feb. 1–2 Judicial Conference Committee on the Budget

Feb. 3–6 Sentencing Institute for the Eighth and Tenth Circuits

Feb. 4–6 Civil Case Management Workshop

Feb. 20–22 Seminar for Bankruptcy Judges

Feb. 27–Mar. 1 Seminar for Magistrates of the Ninth and Tenth Circuits

REPORT, from page 3

increases for federal employees generally; and the report footnoted a reference to Article III of the Constitution, which guarantees that salaries of federal judges "shall not be diminished during their Continuance in Office."

To bolster his argument for increased judicial pay, Chief Justice Burger noted that most law clerks to the justices earn more after 10 years' practice than the $100,600 the justices receive. He said that more than 40 federal judges have resigned in the last 15 years, "most of them because of inadequate compensation."

Also in the year-end report, the Chief Justice—

- Urged elimination of diversity jurisdiction.
- Strongly urged Congress not to create a statutory scheme of jury selection by attorneys in the federal trial courts, and thus repeat the "disastrous experience" of some state courts.
- Voiced renewed support for the concept of "factories with fences," which would afford prison inmates meaningful work while in state and federal prisons. The program would keep the inmates occupied, provide them with marketable skills upon release, and help pay part of the high costs of prisons.
- Encouraged the press to take note of instances in which attorneys or litigants are sanctioned for filing frivolous suits or for abuse of pretrial discovery.
- Called for modification of the congressional guidelines for judicial appointments to the new Sentencing Commission, to allow appointment of senior judges and to provide for temporary replacements for active judges who are appointed.
- Asked for the creation of a three-branch federal courts study commission to inquire about and report on the future needs of the federal court system.
- Called upon the federal judiciary to continue efforts to save money through, among other things, efficient jury-management procedures. He urged Congress to authorize the consolidation of the headquarters of the Administrative Office of the U.S. Courts and the Federal Judicial Center into one building. Presently the AO and the FJC are housed in seven different sites in the District of Columbia and Maryland, the rental expense of which would amortize the cost of a new building.

The Chief Justice also proposed the appointment of a tenth justice who, as "Associate Justice for Administration," would assist with administrative matters but have no judicial duties. He explained this proposal in an interview published in the January 1985 issue of the *American Bar Association Journal*. In that interview, the Chief Justice noted that, because of the growing number of judicial and administrative duties, he is compelled to work an average of 80 hours per week. He envisions the tenth associate justice as strictly a nonjudicial officer who would coordinate all the functions of the Chief Justice with the Administrative Office, the Center, and the Judicial Conference of the United States.

The "administrative justice" would be appointed by the Chief Justice for a five-year term and would be a district or circuit judge "with some talent and liking for administrative matters." ■

Use of Jurors Praised

Following Judicial Conference praise for district judges' improvements in juror utilization, the Chief Justice lauded those steps in his year-end report. His assessment of the increase in juror-use efficiency followed comments from the Conference last year hailing efforts to reduce the number of jurors needed and the time jurors await assignments. Efficient use of jurors was also praised by legislators at budget hearings at which Chief Judge Charles C. Clark, who heads the Conference's Committee on the Budget, testified.

FJC Report Examines Efforts to Set Guidelines For Court-Awarded Attorney Fees Before Trial

The Center recently published *Judicial Regulation of Attorneys' Fees: Beginning the Process at Pretrial*, by Thomas E. Willging of the Center's Research Division. The report deals with an effort to control the cost of litigation by defining the court's attorney-fee-award standards at the commencement of the litigation. It features the results of a survey of lawyers' reactions to Judge John F. Grady's innovative pretrial order in the 1983 *Continental Illinois Securities Litigation*.

This order, designed to prevent fee abuses by plaintiffs' attorneys in class actions, sets forth specific guidelines for reviewing fee petitions. Issues covered in the order include compensation for conferring, duplication of effort, rates of compensation, limits on services, and forms of time records.

The 39 lawyers surveyed, representing six categories of practice, identified several innovative features of the order and applauded its concept, but suggested certain improvements. They also called for a more flexible approach to reducing attorneys' fees without sacrificing the quality of or access to counsel.

Copies of this report can be obtained by writing to the Center's Information Services Office, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

Parties Hundreds of Miles Apart Linked Electronically in Courtroom

An innovative procedure brought a bankruptcy petitioner into a Virginia courtroom electronically last month, even though he was actually hundreds of miles away.

The unusual hearing involved Edwin P. Wilson, the former CIA agent jailed for gunrunning and attempted murder. Wilson is in a maximum-security prison in Marion, Ill., and transporting him to the hearing at the bankruptcy court in Alexandria, Va., would have been expensive and posed security problems. Bankruptcy petitioner Wilson appeared via satellite on two wide-screen video monitors.

Wilson's presence was required at a preliminary hearing, during which creditors sought information about his assets. Wilson had filed for bankruptcy protection to keep creditors from seizing, among other things, land he owns in Virginia.

The problems his movement and presence would have posed prompted U.S. Trustee William White to suggest the teleconference. Mr. White said he had kept use of such a procedure "in the back of my mind" since Chief Justice Burger proposed wider use of teleconferences to save time and money.

Mr. White is trustee in the jurisdiction encompassing the District of Columbia and the Eastern District of Virginia—one of 10 pilot programs in 18 district courts.

He had discussed the concept with the four bankruptcy judges in his jurisdiction—Judges Martin V.B. Bostetter, Jr., Blackwell N. Shelley, and Hal J. Bonney, Jr. (all E.D. Va.) and George F. Bason, Jr. (D.D.C.)—and all of them approved. Bankruptcy Judge Bostetter approved the specifics of Wilson's appearance.

More than 50 attorneys and spectators attended the hearing, Mr. White said, and none of them voiced any opposition to the unusual arrangement.

Mr. White, declaring that "the electronic age is here," said, "We're going to do this more often. You can save a great deal of money, [because] your real expense is all the running around." His sentiments were echoed by Michael M. Sheppard, clerk of the Eastern District of Virginia Bankruptcy Court. Two more cases utilizing electronic conferences with hospitalized participants are planned for the near future.

One addition that may be made in the future is to put document-transmitting machines at both ends of the electronic hookup.

The video hookup for the Wilson hearing was arranged by the Justice Department, which is charged with protecting him.

Positions Available

Clerk of Court, Supreme Court of the United States. Salary from $61,296. Responsible for the management of the clerk's office, including interpreting Rules of Court, advising counsel on procedural matters, supervising office personnel, preparing calendars, and managing automated docketing systems. Requires law degree and a minimum of 10 years' experience in a legal environment, at least 5 years of which included substantial managerial experience in a court system. General knowledge of appellate courts and computer technology desirable. To apply, send standard form 171 by Mar. 8 to Betsy Saxon, Assistant Personnel Officer, Supreme Court of the United States, Room 3, Washington, DC 20543.

* * *

Senior Staff Attorney, Fourth Circuit. Responsible for 10 attorneys and 4 other employees who review substantive motions and pro se cases and who review cases for suitability for disposition without oral argument. Applicant must have a law degree, be admitted to the bar, and have 5 years' experience in law practice, legal research, legal administration, or legal education. Salary from $44,430 to $67,940. To apply, send resume and writing sample by Mar. 1 to John M. Greacen, Clerk, U.S. Court of Appeals, Tenth and Main Streets, Richmond, VA 23219.

Clerk of Court, U.S. District Court for the District of Arizona (Tucson). Responsible for managing the administrative duties of the clerk's office. Applicant must have 10 years of administrative experience, at least 3 of them in a position of substantial management responsibility. An undergraduate degree may be substituted for 3 years' experience, a law degree for another 3 years' experience, and any post-graduate work in public, business, or judicial administration for one year's experience. To apply, send resume by Feb. 28 to Chief Judge Richard M. Bilby, U.S. District Court, Room 415, 44 East Broadway, Tucson, AZ 85701.

* * *

Magistrate, U.S. District Court for the Southern District of New York (New York City). Salary $68,400. For a term of eight years, subject to renewal. Applicants must have practiced law for a period of at least 5 years (with some substitutes authorized), be less than 70 years old, and not be related to a judge of this district court. A merit selection panel will review all applicants and recommend to the judges of the court in confidence the five persons whom it considers best qualified. Candidates should submit a letter and detailed resume by Feb. 15 to: Judge Robert L. Carter, U.S. Courthouse, Room 1901, 40 Centre St., New York, NY 10007.

ROBINSON, from page 6

state judicial systems that can deal very effectively with these issues. The issues you posed obviously are the ones that concern the whole country. They are not local in any territorial sense. I don't know where else they would be resolved if they are to be resolved at all in the context of the court system. Now obviously they can't be dealt with exclusively in the executive branch because of the limitations of the executive's authority, even working through established agencies. Legislating does not obviate the necessity to resolve matters in the court system because there is no legislation ever passed by Congress that is not challenged in some place in a court system. So, in that sense I don't know where else any of these issues could arise. But, more fundamentally, these issues don't arise in the abstract; they all arise in the context of individual, statutory, constitutional rights, and it is the responsibility of the federal court to be the basic protector of the individual constitutional rights of the citizens of this country. There is no question in my mind that this litigation is where it belongs, and that's in the federal system.

"No court system worth having and maintaining can be operated on the basis of statistics. . . ."

Sometimes friction develops between trial and appellate court judges; I'm thinking of state as well as federal judges. It is based on reversals, intellectual and philosophical disagreements, disparities in salaries, on the fact that some don't have a voice in matters on council levels. Do you have any suggestions for ameliorating some of these situations?

Circuit judicial conferences and circuit judicial councils should continue efforts to provide reasoned discourse between district and appellate judges. Increased opportunities for informed personal contacts will ameliorate many of the tensions between judges in the federal system and between federal and state judges. Artificial barriers must be eliminated. The respect that the average citizen in this country has for the law and for judicial office should not be denigrated by the inability of judges to work with each other, no matter on which court they sit.

"To the extent that a judge can spend time with a case, he can control discovery."

If you could make one change in the way the federal judiciary operates today, procedural or statutory, what would it be?

If I had one opportunity, high on my list would be the establishment of sabbatical leave for every federal judge.

What time limit would you set?

One should be eligible for a sabbatical after 10 years on the bench. As for the length of the sabbatical, I would think no less than 6 months, ideally 12 months.

After being immersed in the business of judging, year in and year out, I believe one needs to have an opportunity to step back and think—to get some perspective. A judge should have the opportunity to explore some areas of the law in depth—those areas that he or she may not previously have had the opportunity to explore. We need to think about what's coming down the line, to determine whether we want to spend the rest of our life on the bench.

Do you believe that opportunities to travel and meet other judges in other countries would help?

I would put no restrictions on the sabbatical at all. I don't think there should be any requirement that you do anything. I have enough confidence in the integrity of the people to be sure they would avail themselves of the opportunity to do the kinds of things they feel they should do. If it be travel they felt they needed, they would travel; or if it be to study, write, or teach, they would do that. These are the kinds of people, by and large, who have been appointed to the bench. There's a sense of dedication that one has, and it stays; there's a sense of purpose. There need be no restrictions placed at all, just the opportunity.

At least one state, Oregon, does that. The drawback is that their pay stops. They can go off the bench for a year, they can go seek other endeavors, or they can just rest.

They can't rest very well if they don't have any money to rest upon.

That's exactly it. So they teach, most of them.

I think that that is an undesirable situation. What I'm talking about, of course, is the epitome; there is little possibility of the acceptance of the suggestion that a judge be paid for doing what he or she wants to do for a year. There may be some who can afford the Oregon plan; there may be some wealthy enough before they came on the bench who can afford to do what they want to do and not even have to teach. But we are in a position where, even if we can afford to do it, we can't. I would like judges to have the opportunity, and that would be a choice that each judge would have to make.

Do you find that your administrative work as chief judge of a big

See ROBINSON, page 11

ROBINSON, from page 10

metropolitan area court is very demanding—almost too demanding?

No, I don't find it's too demanding. It is demanding, but I happen to enjoy it. I enjoy it because there are things that I have gotten interested in through my experience at the Federal Judicial Center, my contact with other Judicial Conference judges, service on the Judicial Conference committees, and working in the Judicial Administration Division of the American Bar Association. They are areas of concern that I have developed. I'd like to see what I can do about improving the way our court operates. The other reason that I say it is not overburdening is that I have excellent cooperation from the judges on our court. I do not have to participate actively in the draw of new cases. I can limit myself. I have charge of the grand jury, for example. I have been the backstop for the bankruptcy judge because we only have one bankruptcy judge in this jurisdiction. I've taken special cases that I thought would relieve other judges in the court, and I have picked up miscellaneous things to complement the time I spend doing administration.

Do you delegate some tasks?

Oh, yes, I am supported by excellent staff. But if I begin to delegate to other judges, then I've just drawn other judges away from their responsibilities to their casework. The fact of the matter is there are many of us who are not interested in administration and aren't worth a nickel when it comes to administering anything. There are others who administer extremely well. This court was at one time administered by Chief Judge George Hart. He loved it and he was an excellent administrator. Courts need good administrators, but under the system they may have one and they may not, since one gets to be chief judge by seniority.

Have you made changes here that you are very pleased with?

Yes. Well, some of the things we are still in the process of changing.

"One should be eligible for a sabbatical after 10 years on the bench."

But one has to do with the grand juries. We have reduced the number of our grand juries from 14 to 6. We have greatly improved the utilization of the grand jurors' time. We have a much better relationship with the prosecutors in the utilization of grand juries. We have been able to involve staff in the whole court process and develop good rapport with court personnel. We are very fortunate that the clerk of our court, James Davey, is very well trained, very experienced, works well with us, and is considered one of the best clerks in this country. And when you can rely on that kind of person, who himself has developed a staff upon which he can rely, it is extremely helpful. The same is true for our probation office. We have a very fine probation office, supervised by Chief Probation Officer William H. Webb, and we are proud of it.

Do you have two law clerks, Judge?

Yes, I do.

Could you use three?

I think not. I couldn't use three, and two is presenting problems for many judges because of space limitation in the building.

One of the greatest criticisms of federal judges, especially by judges from abroad, is plea bargaining. What's your answer to this criticism?

Plea bargaining is necessary. Plea bargaining is just not understood.

Judges don't have anything to do with plea bargaining, except in one instance, and that is if they get involved actively under rule 11 in approving not only the plea but the sentence. Judges have nothing to do with, nor control over, what goes on between the prosecutor and the defense lawyer. So it's not a judicial problem. Plea bargaining is the problem of the executive branch of government. It arises because prosecutors overcharge and overindict. If they run the grand juries and grind out indictment after indictment, somebody has to try them. Until the public is willing to significantly increase court facilities and judicial personnel, there have to be other solutions, and plea bargaining is one of them. Any lawyer worth his salt as a criminal defender knows that all he has to do is ask for a jury trial and it will be granted. It is presently impossible in many courts to have all of the defendants tried who are entitled constitutionally to a jury trial. The average plea bargain is arrived at when the defendant has been overcharged and the lawyer knows that the case will never get to trial. ■

SOURCE, from page 3

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FJC Publishes Annotated Synopsis of 1984 Crime Control Legislation

The Center recently published *The Crime Control and Fine Enforcement Acts of 1984: A Synopsis*, by Anthony Partridge of the Center's Research Division. The report was distributed within the federal judiciary as part of the Jan. 17 video seminar on the Comprehensive Crime Control Act of 1984.

The report, a 63-page summary in outline form, details the statutes' various provisions, with annotated citations and page-by-page specifications of the effective dates of the provisions under analysis. It reviews prospective changes in federal sentencing procedures and catalogs the numerous changes to the substantive criminal law. Special emphasis is placed on provisions dealing with bail and youthful offenders, on changes affecting fines, forfeitures, and special assessments, and on changes regarding offenders with a mental disease or defect. A subject matter index to the statutes is included.

The report has been sent to judges, magistrates, probation and pretrial services officers, federal and community defenders, and clerks of court. Additional copies are available by sending a self-addressed mailing label, preferably franked (but not an envelope), to the Center's Information Services Office, 1520 H St., N.W., Washington, DC 20005. ■

Judge Mansfield Named To Special Division

Senior Judge Walter Mansfield (2nd Cir.) has been named to a vacancy on the special division of the Court of Appeals for the District of Columbia Circuit, which appoints independent counsel—formerly known as special prosecutors—pursuant to 28 U.S.C. § 49.

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Judge Burnita Shelton Matthews

Leader of Women's Rights Movement Recalls Suffrage Fight and Appointment to Bench

Judge Burnita Shelton Matthews, an appointee of President Harry S Truman in 1949, was the first woman district court judge in the federal court system.

After serving on the trial court for 19 years, she took senior status in 1968 and sat by designation on the Court of Appeals for the District of Columbia Circuit, as well as on the Court of Customs and Patent Appeals.

In the following interview, in her chambers at the U.S. courthouse, Judge Matthews recounts many efforts by herself and others to bring about women's rights in this country, including the right to vote. When Judge Matthews was in private practice, no opponent was too formidable, including Chief Justice William Howard Taft, who wanted property owned by the National Woman's Party so that the Supreme Court building could be erected there. Although she lost the battle to prevent the property's condemnation, she received the largest award in that condemnation proceeding.

Currently, the Judge is working on the distribution of her papers, most of which will go to the Arthur and Elizabeth Schlesinger Library on the History of Women in America at Radcliffe College in Cambridge, Mass.

Judge Burnita S. Matthews
1973 photograph

When did you first come to Washington, Judge?

I came to Washington when World War I started and when Woodrow Wilson was president. I wanted to study law and there just

See MATTHEWS, page 6

Prison Factories May Turn Ideas Into Products

Inmates may get high-tech manufacturing jobs under a program designed to encourage inventors and have prison factories make their products.

Unicor, the trade name of Federal Prison Industries, operates 75 manufacturing plants at 47 federal facilities. The factories' output ranges from furniture to circuit boards for various government agencies.

Unicor executives are seeking new products whose manufacture is labor intensive. The prime designers of such products are inventors seeking government assistance to finance production.

The Energy Department's Energy-Related Invention Program and the Commerce Department's Office of Small Business Technology both assist such inventors, and both refer to the prison agency those inventors with products that seem to meet Unicor's standards.

The advantage to inventors who arrange for production by Unicor is that they do not need to acquire or invest capital in production facilities. Also, because a market among federal agencies is assured, there is not a long wait for royalties.

Chief Justice Renews Proposal for National Intercircuit Panel

Declaring that "we passed any sensible limit on what the Supreme Court should be asked to do . . . years ago," Chief Justice Warren E. Burger has renewed his call for a national appellate panel of circuit court judges, chiefly to resolve circuit conflicts.

The new panel the Chief Justice envisions to cut the Supreme Court's workload would be temporary and experimental, functioning as an auxiliary to the Supreme Court and as a composite *en banc* panel of all the circuits, designed to resolve intercircuit conflicts, chiefly on statutory interpretation.

It would be composed of judges drawn from Courts of Appeals, both active and senior, and would have a five-year life.

The Chief Justice spelled out the need for such a tribunal at a speech at the American Bar Association's midyear meeting in Detroit last month and urged his audience to let their views be known to members of Congress.

The Chief Justice's most telling point was that by Dec. 15, 1984, the justices had been assigned as many cases as were decided by full opinions in the entire 1953–54 term of the Court. By coincidence, in the first 10 weeks following Oct. 1, 1984, there were 65 cases calling for full signed opinions.

"Why is it so difficult," he asked, "to grasp the reality that just as we need more police and more courts to deal with automobile traffic than we did 75 years ago, when there were very few automobiles, we need something more to deal with the avalanche of cases coming to the Supreme Court?"

What he is urging, the Chief Jus-

See CHIEF JUSTICE, page 9

Courts Using Jurors More Efficiently

The number of trial jurors called for service in the federal courts rose 3.7 percent in the last statistical year, the Administrative Office reported.

The percentage of jurors not selected, seated, or challenged in a given day dropped from 19.4 percent to 18.9 percent, according to a report prepared by the AO's Statistical Analysis and Reports Division. It covers the period from July 1983 to June 1984.

The number of jurors who are not seated or at least examined for service on a panel in a given day is considered a benchmark of how efficiently jurors are utilized. The report singled out the districts of Puerto Rico and Minnesota as those where the largest percentages of jurors called—more than half—are not selected or challenged on a given day. The Eastern District of Oklahoma utilized 99 percent of the jurors it summoned for service on a given day. The study placed the cost of the unutilized jurors at $143,833 in Puerto Rico and $283 in the Eastern District of Oklahoma.

The national average for unutilized jurors was 36.4 percent, and their cost was estimated at more than $31 million.

The report also noted that there were 232,844 grand jurors used in

See JURORS, page 5

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Co-editors
Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.
Joseph F. Spaniol, Jr., Deputy Director, Administrative Office of the U.S. Courts.

Two New Center Publications Available

E.D. Michigan Mediation Program Evaluated

The Center recently published *The Wayne County Mediation Program in the Eastern District of Michigan*, by Kathy L. Shuart. The report, part of *Innovations in the Courts: A Series on Court Administration*, describes a procedure used by the United States District Court for the Eastern District of Michigan. That procedure, adopted in 1981 in response to an increase in diversity case filings, utilizes an existing program developed by the state trial court in Wayne County (Detroit), Michigan.

In addition to outlining the operation of the mediation program in the two courts, the report reviews three prior studies of the procedure's performance, which were based on court records and interviews with judges and lawyers. Copies of the court's rules and selected forms are included for the information of courts considering adoption of such a procedure.

Copies of the report can be obtained by writing to the Center's Information Services Office, 1520 H St., N.W., Washington, D.C. 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

May 1, 1985
LAW DAY-U.S.A.

The American Bar Association's theme for this year's Law Day is "Liberty and Justice for All."

Asbestos Litigation Management Reviewed

The Center recently published *Asbestos Case Management: Pretrial and Trial Procedures*, by Thomas E. Willging, a report based in part on a conference of federal judges, magistrates, clerks, and other court personnel sponsored by the Center in June 1984.

The report focuses on case-management procedures various courts have adopted to alleviate the pressures of asbestos litigation and facilitate prompt resolution. Among the methods described are use of standardized pretrial procedures to avoid unnecessary duplication of effort, use of calendaring systems to establish firm and credible trial dates, and consolidation of cases for trial to conserve judicial trial time.

While recognizing that asbestos cases have imposed a substantial burden on the resources of a few district courts, the report concludes that asbestos cases have become relatively routine products-liability cases, susceptible to traditional as well as innovative case-mangement techniques. Specific procedures, such as the use of standardized pleadings and a novel use of standardized sanctions, are documented.

Copies of the report can be obtained by writing to the Center's Information Services Office, 1520 H St., N.W., DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

Multidistrict Panel Refers Bhopal Cases to S.D.N.Y.

The Judicial Panel on Multidistrict Litigation ruled last month that 18 actions against the Union Carbide Corporation, stemming from a gas leak at a plant in Bhopal, India, that killed an estimated 2,000 people last December, would be consolidated in the Southern District of New York for pretrial proceedings.

The cases were assigned to District Judge John F. Keenan. ■

Circuit and District Historical Societies Trace Courts' Roots

Two circuits and four districts now have historical societies, according to a Third Branch survey. More such organizations will probably be created following the suggestion made at the last Judicial Conference meeting that the chief judge of each circuit appoint a circuit historian.

The circuits with existing historical societies are the Second and the Eleventh. Such groups can also be found in the Southern District of New York, the Eastern District of Pennsylvania, the Northern District of California, and the District of Oregon.

The Second Circuit Historical Society is composed of two parallel committees—one representing the court and one representing the Federal Bar Council, a private group. The society's most active unit is the Exhibits Subcommittee, which arranges historical exhibits that appear in the library of the courthouse in lower Manhattan.

The Eleventh Circuit's two-year-old society is a private nonprofit organization whose membership is open to anyone. The society has the advantage of chronicling an appeals court that has been in existence only one year more than the society. However, the group plans to record the history of all the district courts in the circuit, and of judges who have served in those courts. It plans to assemble portraits, oral histories, and printed materials showing the courts' histories. It hopes to publish a written history within the next few years.

The Federal Circuit, which does not have a formal historical society, maintains a collection of articles about the court. There are also documents about the Court of Claims and the Court of Customs and Patent Appeals, the Federal Circuit's predecessor courts.

The Northern District of California Historical Society is not formally connected to the court it chronicles. It is a private, nonprofit organization composed of judges, attorneys, and scholars.

The Oregon district's society is an adjunct of the court, but membership in the group, formed in 1983, is open to anyone. The society has begun an oral-history project and has acquired equipment for videotaping the court's ceremonial occasions.

The District Court for the District of Columbia is weighing the formation of a historical society. ■

William R. Burchill Named General Counsel Of AO to Replace Retiring William M. Nichols

The director of the Administrative Office has announced the appointment of William R. Burchill, Jr., as general counsel of the AO, succeeding William M. Nichols, who retired last month.

Mr. Burchill, a graduate of the University of Pennsylvania and George Washington University National Law Center, has served in the Administrative Office since 1973. He was employed as an attorney in the Magistrates Division before transferring to the Office of the General Counsel in late 1974. He was named associate general counsel in 1976, then deputy general counsel in June 1982. Between 1975 and 1982 he served as staff assistant to the Judicial Conference Committee on the Operation of the Jury System.

The general counsel oversees a staff of 12, including six attorneys. As head of this office, the general counsel serves as legal advisor to the director of the Administrative Office, provides staff assistance of a legal nature to the Judicial Conference and its committees, and arranges representation for court officers sued in their official capacity. ■

William R. Burchill

Sentencing Institute Examines New Laws

The future of sentencing under the Sentencing Reform Act of 1984 was discussed at a sentencing institute for circuit and district judges and chief probation officers of the Eighth and Tenth Circuits in Long Beach, Cal., last month. Recent decisions affecting community service and victim restitution, and the impact of the Bail Reform Act of 1984 on pretrial and posttrial defendants, were also explored.

In addition to a tour of the Federal Correctional Institution at Terminal Island, Cal., there were workshops focusing on sentencing in hypothetical cases during the institute, which was held from Feb. 3 to 6.

Two more sentencing institutes are being planned: one for the Fifth and Seventh Circuits to be held Mar. 31–Apr. 3 in Durham, N.C., and one for the Second and Sixth Circuits to be held Mar. 16–19, 1986, also in Durham. ■

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Service, 1520 H Street, N.W., Washington, DC 20005.*

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Discrimination-Law Manual Errors Cited, Corrected

Judge Charles Richey (D.D.C.), author of the Center's *Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts* (rev. ed. 1984), has discerned several errors in section H's procedural flow chart, which involves judicial review of alleged agency discrimination. At Judge Richey's request, in light of the growing importance of such review, the Center is making revisions to *Manual* pages H-26 and H-27 ("Procedural Flow Chart") available immediately.

Third branch personnel who already have a copy of the 1984 edition of the *Manual* may obtain the revised pages by sending a self-addressed, gummed label, preferably franked (but not an envelope), to the Center's Information Services Office, 1520 H St., N.W., Washington, DC 20005.

Note: Please be certain to include a notation that you are requesting the *February 1985 revised pages*. ■

CALENDAR

Mar. 6–7 Judicial Conference of the United States

Mar. 18–20 Civil Case Management Workshop

Mar. 20–22 Workshop for Judges of the Fourth Circuit

Center's Library Moves

The Federal Judicial Center's media library has moved within the Center's headquarters in Washington, D.C. The media library is now part of the Center's Division of Inter-Judicial Affairs and Information Services, and its direct-dial number is (202) 633-6365 or (FTS) 633-6365. Written requests should be addressed to Information Services, Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005. Attn: Media.

Validity of Recess Appointments Upheld

The judicial authority of judges with recess appointments was spelled out recently in an *en banc* Ninth Circuit decision rejecting a challenge to a drug smuggler's conviction.

The case stems from the recess appointment of Walter M. Heen to the U.S. District Court for the District of Hawaii on Dec. 31, 1980, while Congress was not in session. Article II of the Constitution gives the president power to make such recess appointments, which last until the end of the next session of Congress.

Judge Heen's nomination was withdrawn on January 21, 1981, and he served until the next session of Congress ended, on Dec. 16, 1981.

The issue of Judge Heen's authority arose when a woman convicted on drug charges in his court appealed one of his rulings. A Ninth Circuit panel, *sua sponte*, examined Judge Heen's authority, rather than the substance of his decision, and concluded that he was not empowered to decide the case. The panel's decision was overruled, 7–4, by an *en banc* panel in *United States v. Woodley*, No. 82–1028 (9th Cir. Jan. 14, 1985). The dissent was authored by Judge William A. Norris, who wrote the panel's decision and was joined by three other judges of the *en banc* panel.

Both the majority opinion and the dissent noted that the issue of a recess appointee's authority had arisen only once before, in *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962), when the authority of such judges was also upheld. ■

Crime Bill Broadcast, Beamed by Satellite, Seen by Over 2,200

More than 2,200 judges, magistrates, other court employees, and federal prosecutors turned out for the multicity videoconference on new crime-control legislation produced by the Federal Judicial Center on Jan. 17.

The program, which was beamed by satellite linkup to 30 locations, originated in a television studio near Washington. Judges and other lecturers discussed different aspects of the Comprehensive Crime Control Act of 1984 and the Criminal Fine Enforcement Act of 1984, and engaged in several panel discussions. The viewing sites had telephone connections that allowed participants to call in questions for the faculty.

Videotapes of the conference have been sent to all district courts, to either the site coordinators—in those districts included in the broadcast—or to the clerks of court. A set of the tapes has also been sent to each circuit executive. Requests from interested viewers should be made to these local officials. ■

PERSONNEL

Appointments

Emory M. Sneeden, U.S. Circuit Judge, 4th Cir., Nov. 30

Thomas A. Higgins, U.S. District Judge, M.D. Tenn., Dec. 3

F. A. Little, Jr., U.S. District Judge, W.D. La., Dec. 4

Elevations

Bruce S. Jenkins, Chief Judge, D. Utah, Dec. 20

Scott O. Wright, Chief Judge, W.D. Mo., Jan. 1

Resignation

John A. Reed, Jr., U.S. District Judge, M.D. Fla., Dec. 31

Senior Status

Samuel P. King, U.S. District Judge, D. Hawaii, Nov. 30

Nauman S. Scott, U.S. District Judge, W.D. La., Dec. 4

Malcolm R. Wilkey, U.S. Circuit Judge, D.C. Cir., Dec. 6

Aldon J. Anderson, U.S. District Judge, D. Utah, Dec. 20

Oliver Seth, U.S. Circuit Judge, 10th Cir., Dec. 25

William E. Doyle, U.S. Circuit Judge, 10th Cir., Dec. 28

Thomas R. McMillen, U.S. District Judge, N.D. Ill., Dec. 31

ıarles E. Stewart, Jr., U.S. District Judge, S.D. N.Y., Jan. 2

George C. Edwards, Jr., U.S. Circuit Judge, 6th Cir., Jan. 15

Robert L. Taylor, U.S. District Judge, E.D. Tenn., Jan. 15

Edward McManus, Chief Judge, N.D. Iowa, Feb. 9

Death

J. Robert Martin, Jr., U.S. District Judge, D. S.C., Nov. 14

JURORS, from page 2

the 1983–84 year. In the previous 12 months, 222,980 people served as grand jurors.

The Southern District of New York, with 53, convened the most grand juries in that period. The districts of Wyoming and North Dakota had only one grand jury each during the 12-month period. ■

Position Available

Clerk of Court, U.S. Bankruptcy Court, Western District of Kentucky. Responsible for managing the administrative functions of the clerk's office, and overseeing statutory responsibilities of the clerk. Requirements include 10 years' administrative experience, including three years in a position of substantial management responsibility. Academic degrees and law practice may substitute for some experience requirement. Salary from $37,599 to $52,262. To apply, send resume by Mar. 18 to Luther D. Thomas, Clerk of Court, U.S. Bankruptcy Court, 414 U.S. Courthouse, 601 W. Broadway, Louisville, Ky. 40202. ■

Equal Opportunity Employer

MATTHEWS, from page 1

didn't seem to be a place in Mississippi where I could find work and also study law. I first went to Georgia where I taught piano at a place near Atlanta. There I took an examinntion for a position in Washington, and later was offered a position in the Veterans Administration. By then I was in Chicago so I received the notice after the time I had to report had expired. Finally, I got on the train, came to Washington, went into the Veterans Administration, and they put me to work.

How long did you stay at the Veterans Administration?

I stayed long enough for me to work and go to night school. It was until President Wilson had gone out of office and President Harding came in, around 1921. by that time I had passed the bar.

You went on the District Court for the District of Columbia in 1949. But in the meantime you did a lot of work to advance women's rights. What were you hoping to accomplish by picketing the White House while still a law student?

When I was in law school a woman came to me and asked if I could come and picket the White House for woman suffrage. Women didn't have suffrage then. I told her I couldn't come because I was going to be in law school at night and I was working during the day. I told her I had no time and she asked what I did on Sundays. She finally persuaded me to go over to the White House and to picket on Sundays. At that time you could go to the front of the White House, and you could carry a banner, but if you spoke you were arrested for speaking without a permit. So when they asked me why I was there, I didn't answer.

Even if they said, "How are you?"

Well, they didn't say, "How are you?" They would say, "Why are you here?" Now there was a Mrs. H.O. Havemeyer, who was the wife of a very wealthy man. This was a well-known name in New York. She started a fire out in front of the White House, so, of course, they arrested her and took her away in the "Black Maria" [paddy wagon]. I didn't want to be arrested because I was afraid if I were arrested that record of arrest would follow me. So, if the press or anyone else asked me why I was there, I didn't answer. I stood there with the banner and the banner had a message on it, of course.

How many pickets were there?

There were a good many. Sometimes they came from New York and Philadelphia and many other places. Fifty sometimes, 25 sometimes; they had a lot of people there.

What year was that, Judge?

It was 1919.

Do you remember what was on the banners you carried?

All of the banners we carried had on them statements that were related to women's rights. Some said women at a certain place did this, that or the other thing and so why not here. Women did have a lot of advantages in other places. In England, for example, they got the vote, but only women who were 30 years old or over could vote, whereas men could vote at 21. Much later, about 1925 I think it was, I went to England and I marched in a parade there. Lady [Viscountess] Rhondda invited a group of people from the Woman's Party here and we went. I carried a banner with another woman from the United States. She held one end of it and I held the other, and there was a very stiff wind. This banner said, "Women in the United States vote at 21, why not here?" As we passed, people along the route would shout, "Hear, hear!" At that time Mrs. [Emmeline] Pankhurst was living and they had a platform and benches in Hyde Park in London where all the speeches were made.

Do you think you accomplished anything in England?

Well, of course, but the women in England weren't exactly polite ladies like they were over here. They did annoying things to get their message across. For example, they put things in mailboxes that would stick to the hands—childish things like that. Of course, here in the United States, they did many things too. They visited the Senate Gallery and they would unfold a banner that had a message on it. I never participated in this sort of thing but that was being done at that time.

Do you think President Wilson ever saw you? Did he ever comment on your activities?

President Wilson finally was instrumental in getting the vote for women. But he and others had to be educated about certain things.

And you helped educate him?

I tried to.

Did you ever meet President Wilson?

No, I don't think so. I saw him but I never met him.

How long did you keep up your activities in the suffrage movement?

Well, it wasn't many years, because the suffrage amendment—the XIX Amendment to the U.S. Constitution—was finally passed in August of 1920.

Did you participate in activities other than picketing in front of the White House?

The National Woman's Party had activities and they asked me to help, so I did for a while. They would ask

"They asked him who the best man was to help them. . . . The story goes that this owner of the cafe said that the best man is a woman. That was me."

me to look up legal matters and to give advice. There were a lot of things in Louisiana especially, but in just about every state they had some type of discrimination against women.

The men's bar, right here in the District of Columbia, didn't even allow women to be admitted to the District of Columbia Bar Association.

I made an application with three other women for admission to the Bar Association here in Washington, and my check was returned to me as I believe theirs were returned to them. [Judge Matthews saved this uncashed check and it, along with material denying her application, is now a part of the Burnita Shelton Matthews Collection at Radcliffe College, Cambridge, Mass.] They said that our sponsors had withdrawn their sponsorship. But that wasn't true; they hadn't. And these men who sponsored us all said that wasn't true. But, nevertheless, they got rid of us in that way and said we couldn't be admitted, and we weren't for a long, long time.

Representing the Woman's Party at the White House in 1932 were, from left: Burnita Shelton Matthews, Mrs. Harvey Wiley, aviatrix Amelia Earhart, Anita Pollitzer, and Ruth Taunton.

Now, take jury service here in Washington. Women weren't allowed to serve on juries here for a long time. I drew up for the Woman's Party a bill to allow women to serve on juries, and the bill passed. There were a lot of other discriminations against women right here in the nation's capital. For example, they had all kinds of discriminations against women in the inheritance laws.

But the legislation that finally passed goes to your credit?

It was pretty well known that I was working on it and after a while the Woman's Party gave me a retainer which was very much appreciated because, of course, all this other work that I had done for them, I had done as an individual and as somebody who was interested in the movement.

When you got out of law school did you remain at the Veterans Administration?

No. I didn't stay at the Veterans Administration. I rented a little office not very far from the old courthouse and engaged in private practice.

And your activities with the Woman's Party continued?

Well, yes, they did. I became their attorney. The Woman's Party was interested in getting laws passed in different states removing discriminations against women. I would draft the bills and send them to the person in charge of that in a particular state.

Were you continuously in private practice until you went on the court in 1949?

Yes.

You must have had extensive experience, then.

Well, there were a lot of condemnation cases at the time. For instance, this property right out here was privately owned, as was a lot of other property, including property where the statue of Senator [Robert] Taft now stands. All of that was taken by the federal government. They also took property for the addition to the Library of Congress. Then they took the National Woman's Party's property on Capitol Hill. I represented the party in that condemnation case. I got for them the largest award that was given in the whole condemnation. The Woman's Party property was a choice piece of property because it stood right across from the Capitol. Many other people also had their property condemned in that area. One day they went to a cafe owned by a man who knew all about this property, including property where the Supreme Court now is. They asked him who the best man was to help them with their condemnation cases. The story goes that the owner of the cafe said that the best man is a woman. That was me.

Why were they trying to get this particular piece of property?

Well, I suppose it was because of its close proximity to the Capitol. The government announced that they were going to take it. The Supreme Court was tucked away and housed in quarters in the Capitol. William Howard Taft, when he ceased being president, made it his business to try to get a location for the Supreme Court because he said the Supreme Court had been tucked away in corners in the Capitol long enough. At that time, they [the Justices] saw people in their homes. So I went to see Taft in his home when

See MATTHEWS, page 8

MATTHEWS, from page 7

he was the Chief Justice. I went to see him because the Woman's Party said I must, and that I must tell him that he should take some other property, not theirs. Most of the property owned by the Woman's Party had been given to them by Mrs. O.H.P. Belmont [formerly Mrs. William K. Vanderbilt]. I represented her in this condemnation, too, because they were taking her property, the same property that she had intended, eventually, to give to the Woman's Party to add to their other holdings.

Before President Truman nominated you to the U.S. district court in 1949, the late Judge T. Alan Goldsborough of the District of Columbia was quoted as having said that he felt that "Mrs. Matthews would be a good judge, but that there was just one thing wrong: She's a woman." Didn't you get incensed knowing what hurdles you had to jump to get on the court?

Well, yes, but I did have quite a bit of help. Through my work for the Woman's Party, I got to know a good many of the representatives and senators; so, when I was being considered for a judgeship, I was able to get the endorsement of a lot of senators. And India Edwards, at the Democratic national headquarters, was most helpful.

Harry S Truman: "This was one appointment about which I had no misgivings, only genuine satisfaction."

At that time, no woman had gotten a federal judgeship other than Judge Florence Allen, who was then on the U.S. Court of Appeals for the Sixth Circuit. Judge Allen was very good.

You knew Judge Allen?

Yes. She was a very handsome woman and she came down here when I was named to the court. She was a very friendly person and was anxious to see that women were helped in every way. Of course she was disappointed, and a lot of people were, that she wasn't named to the Supreme Court.

How did you select your law clerks, Judge?

Through resumes and through personal interviews. I had only one law clerk. Now a district court judge may have two law clerks.

"I wanted to show my confidence in women, so I always chose women [as law clerks]."

Did you select your clerks from special law schools?

No. But I never had a man; they were always women. The reason I always had women was because, so often, when a woman makes good at something they always say that some man did it. So I just thought it would be better to have women. I wanted to show my confidence in women, so I always chose women.

Before the president nominated you, Judge, did he discuss with you any problems he felt you might encounter as the first woman in the nation on a district court?

No, he never did. The only time I saw him after that was when I went up there one day to thank him for my appointment. Somehow I went on the wrong day. I don't know whether he made the mistake or I did; but, at any rate, we had a nice visit. When I became a senior judge, President Truman was still living. There was a very commendatory editorial that appeared in the [Washington] Post, which Mrs. Seaton, my secretary, sent him, and he acknowledged it in a letter and said, "This was one appointment about which I had no misgivings, only genuine satisfaction."

Did you encounter any prejudice from other judges or lawyers when you first came on the bench?

I can't reallly say that I did. The judges here were very helpful to me when I first came to the court. There was a serious space problem when I was appointed, and Judge Edward Tamm even vacated his chambers and let me use them on the day of my inauguration as a judge. As for Judge Goldsborough, he thought it was a great mistake to appoint a woman, but he told me later that he thought I had done a good job and he no longer resented the fact that I was a judge.

What kinds of cases did you handle during your early tenure?

We had an assignment commissioner then, Richard Collins, and he would talk over the assignments with Chief Judge [Bolitha] Laws and the chief judge would then determine to whom they were to be assigned. Once, Chief Judge Laws sent for me and wanted to know if I would take a case that had been assigned to another judge. He wasn't happy with the speed, or the lack of speed, that the other judge evidenced, and he asked me to take the case, and I took it. But I felt sorry afterwards that I took it because it was a most difficult case.

Do you remember which one it was?

Yes. It was one where a black man had invaded a building occupied by women, and he killed one woman. It was a mean case. It charged the offense in several different categories, which had to be differentiated; I regretted that I was so quick to accept Judge Laws' suggestion that I take the case.

When you took senior judge status, you sat in the court of appeals by designation. Did grappling with a case along with two other judges have any effect on your relationships with your brethren?

Insofar as the court of appeals is concerned, I don't think that it did. I remember one case very well. It was a patent case. I was told to write the proposed opinion even though the other two judges didn't tell me what their opinion was of the case.

You were to author the opinion and circulate it to the other two judges?

Oh, yes, circulate it; after you get it written, you circulate it.

Customarily you have a post-bench conference and decide not only what goes into the opinion, but who is to write it. You try to determine what the others think about it at that point, or later when they have had a chance to further study it. But sometimes you don't have a chance to study it before you have this initial conference. And so at this time they said, "You write the opinion." I was to write it, but they didn't tell me what I was to say. My proposed opinion became the unanimous opinion of the court.

Why did you take the circuit as opposed to doing more work on the district court when you took senior status?

I served on both courts. I took the circuit assignment because the chief judge of the court of appeals asked me to. He didn't say what case but just inquired whether I would sit on the court of appeals. You don't usually specify the time. They just send the cases to you, and then you go on from there.

You did that in 1968, and you stayed there quite a while?

It was until 1977.

Did you ever feel that your authority as a judge was not fully accepted in the courtroom?

I never felt that way. I always had control of my cases and my courtroom.

Were there some cases especially interesting to try?

Yes, and there are a lot of cases that were dull. When I first came on the bench, they had all kinds of cases here. They even had divorce cases in the federal court. We had all the probate work—every bit of it—wills and contests of that kind. So, I've lived through all of that.

You have had some high-priced talent before your bench, including Leonard Boudin and Arthur Goldberg, and you have handled several very important cases, constitutional issues involved in naturalization cases; significant issues in administrative law cases; and others. Were there any cases which you remember best as making new law or that had special importance to the legal world?

"I always had control of my cases and my courtroom."

Well, all the cases were important, if not to the legal world, then to the litigants themselves. I don't like to designate any as special.

One in particular did give me much personal satisfaction because had it gone the other way, I felt it would have been a great injustice. It involved Glover Park here in the District of Columbia. This property had been accepted for park purposes, and I saw no reason in the world for taking this property. I just felt it was wrong and ruled against the proposal, hence no freeway has ever been built through Glover Park, which remains today one of Washington's nicest park areas. ■

CHIEF JUSTICE, from page 1

tice explained, is nothing more than "a national *en banc* panel of nine judges. It is just that simple." He has proposed a temporary court in the past, most recently in his year-end report on the judiciary last December; the current proposal is a modification of those made by the Freund, Hruska, and Rosenberg reports.

The Chief Justice's proposal included an explanation of how the new court would be constituted and how it would function. The Supreme Court would select one judge from each of the 13 circuit courts. Nine judges would sit in two sessions a year of two weeks each, to hear cases referred by the Supreme Court; the other four judges in reserve would be available if any of the first nine were unavailable or disqualified. Review of the new court's decisions by the Supreme Court wouldn't be barred, but "I would risk a prediction that few cases would be granted further review," the Chief Justice said.

The Chief Justice maintained that such a panel would go a long way toward reducing the "avalanche of cases" the Supreme Court must now deal with in full Court opinions; in each of the last three terms, nearly 50 cases argued have involved intercircuit conflicts. He noted that the number of written opinions the Court issues—which he called "the best single measure" of the Court's workload—had gone from 65 to more than 150 in two decades. The removal of intercircuit-conflict cases could cut the caseload by about a third.

The new panel would also not cost any significant amount, aside from the judges' travel expenses, since the Court of Appeals for the Federal Circuit has tendered its courtroom, and that court's staff and the Supreme Court's could readily absorb the additional clerical work required.

Chief Justice Burger explained that his conception of the new intermediate court was a "modification" of plans advanced more than a decade ago by a study group headed by Professor Paul A. Freund under the auspices of the Federal Judicial Center, and a congressional commission headed by Sen. Roman Hruska. Similar proposals were introduced in Congress in 1981, 1982, and 1983. In the last session of Congress, subcommittees in both the House and Senate favorably reported bills with similar such provisions out to their full judiciary committees. ■

NOTEWORTHY

New methods. Efforts to get judges to employ alternative dispute-resolution techniques in litigated cases will be promoted in a new program sponsored by a group devoted to finding alternatives to litigation.

The goal of the campaign, known as the Judicial Project, is to make both federal and state judges more aware of, and thus more willing to use, alternative dispute-resolution methods. It is sponsored by the New York City-based Center for Public Resources' Legal Program.

The Legal Program will sponsor workshops, seminars, and publications on alternative dispute-resolution methods and how they can be implemented. Funds will also be provided for academic research on the topic.

The Legal Program is composed of law professors and attorneys in private practice. The Judicial Project's advisory committee includes practitioners, professors, and members of the judiciary.

* * *

Old methods. You *can* please most of the people most of the time—at least that's what the clerk's office in the District Court for the District of Columbia has found.

A poll taken by the clerk's office in November revealed that 91 percent of those who have business in the court rated the service of the staff of the clerk's office as "excellent." Another 7 percent called the service "very good," while 1 percent called it "average," and 1 percent called it either "fair" or "poor." The written questionnaire focused on whether the clerk's office employee was courteous, efficient, and able to answer questions or willing to seek assistance if he or she could not be of help.

* * *

New rules. The U.S. District Court for the Northern District of Georgia has revised its local rules. The extensive revision was prepared by a committee of four of the court's judges.

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THE THIRD BRANCH

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Judicial Conference Lifts Time Guidelines Governing Selection of Law Clerks

The Judicial Conference has decided not to extend time restrictions on judges' hiring of law clerks, adopted experimentally two years ago.

Elimination of the nonbinding guidelines leaves judges free to interview and select clerks at any time.

The guidelines, originally promulgated in 1983, called for judges not to accept applications for clerkships until Sept. 15 of a student's third year. The deadline was later changed to July 15, following a student's second year.

The Conference's decision not to extend the guidelines followed a survey conducted by the Federal Judicial Center that found judges almost evenly split over whether the Judicial Conference should be involved in setting policy on hiring law clerks. The views of the judges were even more divided on what the guidelines should provide, if any were adopted.

The survey also found that more judges in the Northeast and mid-Atlantic regions favored guidelines, while fewer in other areas did.

Many judges who favored keeping a cutoff date suggested an earlier date so they could meet competition from law firms that made decisions before the judges could act under the present schedule.

Many judges who opposed guidelines said that they felt the Judicial Conference should not be involved in the matter. Others said that the guidelines were impractical because they were voluntary, and that the judges who did not observe them frustrated the process. ■

Judge Arlin M. Adams

Judge Arlin M. Adams Named to FJC Board

Judge Arlin M. Adams of the Third Circuit has been named to a four-year term on the Board of the Federal Judicial Center by the Judicial Conference.

Judge Adams was appointed to the circuit court in 1969. He is a graduate of Temple University and the University of Pennsylvania Law School, and holds a master's degree from Temple.

Judge Adams was Pennsylvania's secretary of public welfare from 1963 to 1966 and currently serves on the Judicial Conference Committee on the Judicial Branch. Judge Adams will replace Judge Cornelia G. Kennedy of the Sixth Circuit, whose nonrenewable term expired last month.

Judge Adams is a member of the American Law Institute, the American Bar Foundation, the American Judicature Society, and the American, Philadelphia, and Pennsylvania

See ADAMS, page 2

Chief Judge Donald P. Lay Describes "Blueprints For Judicial Management" in Eighth Circuit

Chief Judge Donald P. Lay took his seat on the Eighth Circuit bench on Aug. 26, 1966, and became chief judge on Dec. 31, 1979. He attended the United States Naval Academy and later received both a B.A. and a J.D. from the University of Iowa.

Prior to his court service, Judge Lay practiced law in Omaha and Milwaukee. He has lectured at the National Judicial College and currently teaches at the University of Minnesota Law School and the William Mitchell College of Law. Besides enjoying teaching, the judge firmly believes in what Chaucer referred to years ago—that one who teaches learns.

Chief Judge Donald P. Lay

You are nearing your 20th year on the bench and have seen many changes in the judicial system. What one change do you think is the most remarkable? Over this period, what significant substantive change have you observed in the role of the federal judiciary?

First, from an administrative point of view, I think the most remarkable change that I have seen in almost 20 years is the ability of the courts to take on new and innovative approaches in the decisional process in handling the large growth of litiga-

See LAY, page 4

Inside ...

Employment Bias Supplement Published

The Center recently published a supplement to George Rutherglen's *Major Issues in the Federal Law of Employment Discrimination* (FJC 1983). This 70-page supplement covers developments in employment discrimination case law from September 1983 to August 1984. It also contains a bibliography of recent books and articles and a table of authorities cited in both the supplement and the 1983 monograph.

Among the topics discussed are preferential treatment; claims of disparate treatment, disparate impact, and sexual discrimination under title VII of the Civil Rights Act of 1964; procedural provisions of title VII such as statutes of limitations; and regulation of recipients of federal funds.

Copies of the supplement can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

ADAMS, from page 1

bar associations. He is a former president of the American Judicature Society and has served as chancellor of the Philadelphia bar and as a member of the house of delegates of the Pennsylvania and American bar associations. ■

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

Two Courts Differ on Seizure of Legal Fees

Two courts have issued differing opinions on whether the Comprehensive Forfeiture Act of 1984 permits the government to seize legal fees paid by a defendant who is later convicted.

A district court in Denver held in January, in *U.S. v. Rogers*, 84–CR–337, that such fees were not forfeitable. Last month, in *U.S. v. Payden*, No. M–11–188, a Southern District of New York court held that such fees are subject to seizure.

The new legislation, codified at 18 U.S.C. § 1963, is an amendment to the Racketeer Influenced and Corrupt Organizations Act (RICO) and provides that assets of a person subsequently convicted of racketeering are subject to forfeiture. The relevant assets are not those on the date of conviction, but those at the time of the acts on which a later conviction is based. Assets transferred after the time of the act are subject to seizure from the recipients, with certain exceptions.

Judge John L. Kane (D. Colo.), ruling on a motion to exclude attorneys' fees from any possible forfeiture, found that Congress intended to subject assets in a third party's hands to forfeiture only if those assets were transferred "as some type of sham or artifice.... The attorney who receives funds for bona fide services rendered engages in neither a fraud or a sham."

The issue of seizure was not directly raised in the New York case, which arose from a defendant's motion to quash a subpoena to his attorney seeking information about the lawyer-client fee arrangement. The information was being sought to show the availability of profits from narcotics trafficking. One of the arguments the defendant raised was that the requested disclosure might lead to forfeiture of the fee, and that the threat of such forfeiture deprived him of his right to counsel.

In making that argument, the defendant cited *Rogers*. Judge David N. Edelstein ruled that "Rogers cannot be accepted as the law in this district. In the same manner that a defendant cannot obtain a Rolls-Royce with the fruits of a crime, he cannot be permitted to obtain the services of the Rolls-Royce of attorneys from these same tainted funds." ■

Ninth Circuit Workload Study Published by FJC

The Center recently published *Administration of Justice in a Large Appellate Court: The Ninth Circuit Innovations Project*, by Joe S. Cecil of the Center's Research Division.

In an effort to improve court performance, the Ninth Circuit in 1982 adopted a series of procedures collectively known as the "Innovations Project." The project included a commitment by each of the judges of the circuit to accept a substantially increased workload. In addition, three major innovations were implemented to expedite the handling of appeals: the Submission-Without-Argument Program, the Prebriefing Conference Program, and changes in the calendaring of arguments.

The report outlines the project and reviews its effect on case processing and on the judges and their workload. It concludes that the Innovations Project has substantially reduced disposition time in the Ninth Circuit. The court had no backlog of cases ready for argument at the end of the 1984 statistical year—a tribute to the judges—but there were still more than 4,300 cases, or 573 per panel, pending in the circuit on that date.

Copies of this report can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked. ■

Judicial Conference Supports Proposed Action on Immunity

The Judicial Conference voted last month to support state judges' requests that Congress immunize them from liability for attorneys' fees stemming from their official actions.

The state judges are concerned about the Supreme Court's 1984 decision in *Pulliam v. Allen*, 104 S. Ct. 1970 (1984), which held that a plaintiff who was entitled to injunctive relief against a state magistrate under the Civil Rights Act was entitled, under the act, to recover attorneys' fees from the official.

The Conference of [State] Chief Justices earlier approved a resolution calling on Congress to change the civil rights law to provide immunity for state judges. The Judicial Conference's Committee on Court Administration noted in its report to the Conference that the state judges' group had urged the Conference to support the proposed legislation.

In other developments at last month's session, the Conference:

- Received its Court Administration Committee's report unanimously approving the most recent version of the Five-Year Plan for Automation in the United States Courts. This plan includes estimates of when projects already under way will be completed.
- Made public a list of 106 district court and circuit court vacancies as of March 1. Eighty-five of these are judgeships created by Congress last year, and nine nominees have been named to them so far. Of the remaining twenty-one vacancies, which were created by retirement, resignation, elevation, or death, only two nominations for successors have been named. One of the judgeships for which no nomination has been made has been vacant since October 1983; two others have been vacant since January 1984. Attorney General Edwin Meese, who was sworn in February 25, has pledged that filling vacant federal judgeships will be one of his highest priorities.
- Elected Judge Jack R. Miller of the Court of Appeals for the Federal Circuit to replace Chief Judge Howard T. Markey of the same court on the Board of Certification, which certifies circuit and district executives.
- Approved changes to two bankruptcy rules that would alter the restrictions on appointments made by bankruptcy judges and the disqualification of such judges. Consistent with the Canons of Judicial Ethics, rule 5002 was amended to allow a bankruptcy judge to appoint someone related to another bankruptcy judge in the same district. The prohibition against a judge's appointing anyone he or she is related to remains in effect. The amended rule would also allow appointment of someone in the same firm as, or associated with, a person who is disqualified from appointment by virtue of a connection to the appointing judge. Rule 5004 was amended to make clear that disqualification of bankruptcy judges is governed by 28 U.S.C. 455, which spells out the criteria governing judges' disqualification of themselves. The amended rules now go to the Supreme Court for approval, and then to Congress.
- Authorized free distribution of copies of local rules of the district courts.
- Voted to recommend to Congress that a district executive be authorized for any district with eight or more judges.
- Approved changes in the procedures for reporting cases under advisement or submission, beginning with the report due next September. The reports will now be sent to the circuit executives, rather than to the AO.
- Authorized the Ad Hoc Committee on American Inns of Court to proceed with plans to create a private, nonprofit American Inns of Court foundation in the District of Columbia. The foundation would charter new Inns of Court and coordinate their activities. ■

Douglas D. McFarland, left, has been named this year's Tom C. Clark Judicial Fellow, a special designation for one of each year's Judicial Fellows, which were started in 1977 following the death of Justice Clark, the first chairman of the Judicial Fellows Commission. The Hon. Kenneth Rush, a member of the selection commission and former ambassador to France and Germany, presented the award.

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tion that has occurred since 1966. For example, when I was appointed, in my own circuit we processed approximately 400 cases a year. Our procedures were in the "horse-and-buggy" days; we would hear argument in three cases a day for one week a month, or about 15 cases a month. Each case received a full 30 minutes of argument, and a full opinion was written on each case. We have experienced tremendous increases in case filings; in the Eighth Circuit we will process approximately 2,000 cases this year. All circuits have experienced a similar rise in filings. In spite of these increases the circuit courts have done a tremendous job in expediting and managing the case flow. In studying the opinions of the other circuits I think each court of appeals has innovated new procedures and yet has maintained quality in the decisional process.

As to the most significant change in the substantive role of the judiciary, I would point to the overall concern of federalism—that is, the current deference and comity within the federal system given to the states in many areas of the law. Today, the pendulum has swung the other way. Instead of the federal judiciary assuming the guiding role under the U.S. Constitution, the states are given an equal or dominant role. This has not been achieved without a good deal of tension. For example, today there are many procedural obstacles for state prisoners to come into federal court: (1) total exhaustion of all state remedies; (2) whether a prisoner is precluded from coming into federal court by reason of a state procedural bypass rule; (3) whether there might be "cause" for failure of the petitioner's attorney to make a contemporaneous objection; and (4) if there was cause, whether that was "prejudice" to the petitioner. These procedural obstacles have not deterred state prisoners from filing lawsuits. They have resulted in causing greater work for the district courts and the courts of appeals. The great percentage of these cases could be disposed of very easily on the merits; however, before we reach the merits the lower federal courts have to initially pass on the many procedural concerns.

In so many of these cases we could decide the merits very quickly. Handling habeas cases in the late 1960s and 1970s was much easier for the courts. I think the majority of federal judges find many of the procedural rules are counterproductive. This is perhaps one of the most significant changes we have encountered in the federal judiciary in the last 20 years.

Are you saying large numbers of habeas corpus filings continue in the federal courts?

We still see as many habeas cases filed by state prisoners as in the past. Today they are most often not as successful, but at the same time they are not all frivolous. Many judges feel that some of the states' procedural rules need further analysis in terms of impact upon the federal judicial system. Many of these rules are causing excessive concentration of time and research by the lower federal courts.

In a recent law review article, you made it clear that you are with a minority of federal judges who favor retention of diversity of citizenship jurisdiction. Why do you favor retention of diversity jurisdiction?

Many federal judges favor the abolition of diversity of citizenship jurisdiction. On the other hand, the American Bar Association and the American Trial Lawyers Association have opposed this. I am in favor of raising the jurisdictional amount in diversity cases from $10,000 to $50,000. Otherwise, I oppose abolition of diversity jurisdiction.

First, I know the Conference of Chief Justices has stated that the state courts can handle the shift of responsibility. However, I have talked to many state judges across the country, and many just shake their heads and say that their system is so overcrowded right now that to take on diversity cases from the federal district courts would, in some instances, simply break the system down.

There are many other reasons why diversity cases should remain in the federal courts. One relates to the logistics of trying cases in rural areas. If you had to try a sophisticated product-liability case in Broken Bow, Nebraska, the problems in having witnesses travel from MIT or California to Broken Bow are insurmountable. Some rural county seats may be 300 miles from the nearest airport. The logistics of having physicians and specialists attend trial would be disheartening. The cost to try a sophisticated malpractice or product case in rural areas would be horrendous.

Another reason to retain diversity cases in federal courts is the problem presented by mass tort litigation. The federal judge who is appointed by the multidistrict litigation panel has the authority under title 28, section 1407, to bring all federal cases from across the nation to a central place for pretrial adjudication of discovery, pretrial motions, and management of class-action cases. We can do that in the federal system, but the state systems do not have the authority to manage cases filed in other states. A state court does not have authority to issue process beyond its own state borders. It is essential that we maintain the capacity to expedite and adjudicate preliminary procedures through a single judge in a multidistrict assignment. We couldn't do that if we abolished diversity jurisdiction in federal courts. All of these cases would have to be tried separately in each state. If diversity jurisdiction were abolished in federal courts, it would be essential to provide an exception for a federal forum to try mass tort cases. I frankly cannot perceive how Congress could draft a bill to provide such an exception.

If diversity jurisdiction is abolished in the federal courts, you said, "The role of the federal court in the social and economic fabric of America will become secondary in the eyes and minds of a vast number of lawyers." Are you saying, in essence, that the federal courts feel a responsibility to influence the interpretation of states' common law?

I don't think federal judges have a responsibility any more than any other judge. But, if federal judges are handling diversity cases, they obviously have the duty to impose the law of the particular state under *Erie R.R. v. Tompkins*. All federal trial judges are experienced lawyers in their respective states, and some are former state judges who have a great working knowledge of what the state law is. There are many cases throughout the country where the opinions of the federal courts have made major contributions to state law. Consider, for example, the second-collision injury cases involving automobile manufacturers. Our circuit court had one of the first cases in this area. This was the case of *Larson v. General Motors*. The law in this case has been adopted by practically every state in the country. When I was a lawyer we had a great district judge in the state of Iowa, Henry Graven. Judge Graven once wrote about a 60-page opinion in a case called *Russell v. Turner* on the Iowa Guest Statute. This was a compendium of all gross negligence and guest passenger cases in Iowa. It became almost a bible for state judges thereafter. So federal judges have added a good deal to the law of a particular state. I have never heard any resentment by state judges of a federal court passing on state law.

The Administrative Office reports that statistics on all the circuits show that the Eighth Circuit has had the largest percentage increase in filings since 1979, an increase of 89.5 percent. What has your circuit done to cope with this substantial increase?

Over the years our court has studied different ways and means to maintain a current docket. I know that many other circuits have innovative ways of handling cases, and our procedures are not too much different from what others have done. Two common things that have been done in practically every circuit are

Chief Judge Donald P. Lay

the screening of cases and the development of staff law clerks who work on pro se litigation and non-argument cases. It's interesting to note that from 1966 to about 1970 we had one staff law clerk; now we have 10 staff law clerks, including a general staff attorney.

We have also used two or three other innovative ways to keep our docket current. We have a civil appeals mediation plan where our court attempts to bring the lawyers together in order to try to settle cases before the briefing. These cases basically involve money judgments. We are generally successful in settling close to 100 cases a year through this process. This is equivalent to the work of one judge.

Also, we have adopted a new procedure which we call the expedited docket. Each month we have three panels hear approximately eight 10-minute cases. These cases are preliminarily screened out as single-issue cases; they generally do not require a full opinion. This has helped us process more cases. We also have assigned one of our deputy clerks to serve as an appeals expediter. The appeals expediter primarily manages a case the moment that it is filed; he works with the lawyers and the court reporter on the briefs and the transcripts and makes certain the cases move along at an expeditious rate. Where several parties are involved he attempts to avoid duplication of briefs on common issues and attempts to consolidate briefs. This procedure has been a tremendous assistance to us. This also allows us to see that the cases are expeditiously processed from the notice of appeal to the time of submission. The lawyers are seldom given continuances, the court reporters are not given continuances. It serves as an overall management program much like the district courts do under F.R.C.P. 16(b). In other words, the attorneys meet with the appeals expediter and decide what can be done to expedite the briefs and expedite the appeal so that the case can be submitted at the earliest time possible.

We have tried one other approach that I think has proven very helpful. Our staff attorneys supervise all section 1983 cases and postconviction cases from the moment the notice of appeal is filed. They immediately obtain the district court record and determine on the basis of this record whether in their judgment the appeal, based upon what the district court has written, might possibly be frivolous. If they find any case along that line, it is submitted to a panel of judges, who then decide whether an order to show cause should be issued as to why the appeal should not be dismissed as frivolous. We are able to screen out a good many cases this way; however, we give the petitioner a full opportunity to address the issues that he feels are meritorious. We have a committee that is constantly working on new ideas as to how to maintain a current docket. We are proud of our record. At the end of our June 1984 calendar we had only 15 pending cases that were fully briefed and ready for submission. I think it is essential for the federal courts to main-

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tain an expeditious process. I am pleased to say that, notwithstanding the large increase, we have been able to do that in the Eighth Circuit.

What time period do you set on disposition of a case after it has been heard by a panel?

Well, we don't have any arbitrary limit, but we are all aware of the Administrative Office and the Judicial Conference requirement that we try to decide these cases within 90 days. We can't do this in every case—some are going to take longer. Conversely, many of them take much less time, but we certainly strive for a 90-day ruling. I think we rank first or second in at least getting the case up for a hearing and then disposition. I think our appeals expediter helps a good deal in the front end of the appeal in getting the case ready.

To what extent can you, as chief judge of the circuit, exert your influence over the trial judges? For example, you have said that the opinions of the trial judge should be short; that the opinions should be based on "qualitative reasoning" but not "unnecessarily belabor the thought process" behind the reasoning, leaving the precedent-setting to the appellate courts. As a practical matter, if a trial judge in your circuit were to insist on long, rambling opinions, how can you get the word to the judge that opinions should be shorter?

The district court workshops sponsored by the Federal Judicial Center stress the fundamentals of good craftsmanship and decision making. District judges are not the only ones who should be concerned about long opinions—circuit judges and, in all due respect, the justices of the Supreme Court should be as well. I certainly would not, as a chief judge, go directly to a judge and tell him his opinions are too long. I can understand that district judges are very sensitive towards their own independence and that they don't like anyone telling them what to do. I think the best way to approach change is that when you see a problem, particularly where you see a district judge is not getting his work out on time, is to go to that judge and say, "What can we do to help you? This is not in any way a criticism, but if there is a need for a temporary law clerk, perhaps we can obtain one for you. Is there a need for an outside judge to come in and help you?"

I have found that judges should be given every encouragement and every assistance, and if you approach problems in that way they are more easily solved. It's a learning process for all of us. One of my district judges once said to me that circuit judges are the natural enemy of the district court. I think this is unfortunate. Yet, it's human nature to want to be right. It takes application of human psychology to suggest new ideas. It's very difficult for older, experienced judges to learn new ideas. For example, when the new F.R.C.P. 16(b) relating to scheduling conferences was first debated, every district judge resented it as an intrusion on their own procedures. Yet now, I think, through educational programs and the process of observing other district judges conduct scheduling and management conferences, judges who earlier opposed the rule are now saying, "Hey, this isn't a bad idea. I think I'll try it."

How often do you meet with the trial judges in your circuit?

Well, I have two meetings a year with our chief judges, and we have two meetings a year with the Judicial Council. In our circuit five district judges are on the council. We have the invaluable sentencing institutes and the district court workshops put on by the Federal Judicial Center. Overall I think there is close comradery in our circuit, and we keep in pretty close touch with one another.

Each of your districts has been developing "blueprints for judicial management." How is this working?

Well, here again, it's just an idea to list as many innovative procedures that the district judges can experiment with to process the work expeditiously. For example, some district judges are trying to limit their opinions to no more than 10 pages and to limit the lawyers' briefs in routine cases to no more than 10 pages. This is a very flexible rule but many of our district judges have been doing this, and it's worked out very well.

Other ideas have been that they try to consolidate motions for a preliminary injunction with a motion for a permanent injunction so that the whole issue is ripe for the court of appeals in one appeal. Another suggestion has been to enter an order to show cause why all three-year-old cases should not be dismissed for the failure to further process the case. I have encouraged our districts to rule on all motions within 10 days. That's an idea that many of our district judges are trying out and finding successful. All district judges should try to expedite motions because lawyers continually complain that if a motion is held for any undue length of time by a district judge it can stall the whole litigation process. So it's just a matter of troubleshooting and hopefully getting all district judges to feel pride in what they are doing and to pursue to the end everything they can to improve the administration of justice. There is great comradery yet competitiveness among the districts

"It is essential for the federal courts to maintain an expeditious process."

to have the most current reports.

Would you explain the formation and operation of the federal practice committees that serve your circuit? How do they function and what benefits are gained from their existence?

Although I have been on the court for almost 19 years, my best friends are still lawyers, and I have great empathy for the trial bar. For the judicial process to be properly managed, the bar has to understand that they have a working responsibility to be a partner with the judiciary in helping to formulate rules and in helping to understand scheduling problems. There is a mutual reaction here. In other words, the judiciary must also understand the needs and problems of lawyers. About three years ago we formed what we call federal practice committees of 15 to 20 people in each district. We tried to have a cross-sectional representation on these committees—young lawyers, old lawyers, plaintiff lawyers, members of minority groups, defense lawyers, criminal defense lawyers, prosecutors, public defenders, and United States attorneys. We also bring in one or two of the deans or faculty members of law schools. These people meet twice a year. They are funded through our lawyers' fund, which the court maintains. They talk over ideas with the district judges, they develop new rules, and from these committees we draw upon them for our Federal Advisory Committee, which functions for the circuit.

"The bar has to understand that they have ... to be a partner with the judiciary."

One of the things each Federal Practice Committee is doing now is establishing a historical society within each district. Lawyers are given a forum for the first time to talk to judges about problems within the districts, i.e. scheduling problems, rules, and so forth. Before these committees were organized, a lawyer was reluctant to go in and talk to a judge about such matters. He couldn't communicate with the judge, and so we've tried to break down that barrier. I think it's worked very successfully. Each Federal Practice Committee tries to put a seminar on within their district once a year on federal practice. This complements the Chief Justice's concern to train competent, federal lawyers with an educational process available to the whole bar. This ties in as well with the fact that in the Eighth Circuit our judicial conferences are open conferences. Any lawyer who is an active federal practitioner is invited to come to our conferences. Our conferences have grown from about 100 people up to about 600. They are informational conferences, and they all participate. We have one whole afternoon when all registrants participate with the federal practice committees and visit with the judges and discuss problems within the district.

How do you decide who may attend your judicial conferences?

We try to turn the registration over to the federal practice committees. But our rule is that any lawyer who wants to come can come. We've really had no problems. We were worried that it was going to mushroom on us and get too large. However, we haven't had that problem. We're large, but I think everybody has a good and great learning experience. We have done away with invitations. If any lawyers want to be on the mailing list, they receive the registration material. In this way we avoid the reputation of selectively discriminating within the bar.

Is there any area of the law that you feel has lagged behind the needs of our society?

Yes, and I feel very strongly about this. As a nation we do not exercise the proper judgment and wisdom in our system of penology. I know this is a favorite subject of the Chief Justice, and it's been a private interest of mine for many years. We afford every process that is due to people charged with crimes in this country, but once they are sentenced we more or less shut the door and forget about them. Our treatment of prisoners in the state and federal system, in my judgment, remains barbaric. We defeat our very purpose in sending people to prison. It's probably an old cliche, but there's no question about it, when a person is put into prison we really go through a process of dehumanization. We treat them as numbers. We afford prisoners few rights and we, in effect, "breed crime" in our prisons. I think the figures show that in our state systems it costs about $11,000 a year to maintain a state prisoner; I think it's close to $15,000 to $16,000 a year in our federal prisons. Society must be convinced that our treatment of prisoners must change. The public has to be convinced because they're the ones that can influence the legislatures.

"Most of our treatment of prisoners ... remains barbaric."

Instead of treating prisoners like animals, removed from society, we should be developing some type of a community treatment program where we work with individuals in a way that will help restore their self-respect and provide vital work for them in a community. This can be done, and it can be done very easily. Some day our prisons will be dis-

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THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

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CALENDAR

Apr. 1–3 Sentencing Institute for the Fifth and Seventh Circuits
Apr. 1–3 Workshop for Fiscal Clerks of Circuit, District, and Bankruptcy Courts
Apr. 8–10 Workshop for Appellate Court Case Management
Apr. 10–12 Seminar for Federal Public and Community Defenders
Apr. 15–17 Workshop for Clerks of Circuit Courts
Apr. 17–19 Seminar for Bankruptcy Judges
Apr. 17–19 Workshop for Training Coordinators
Apr. 22–24 Workshop for Estate Administrators of Bankruptcy Courts
Apr. 23–26 Video Seminar for Newly Appointed Magistrates
Apr. 24–26 Pretrial Services Officer Training
Apr. 28–May 1 Seminar for Newly Appointed Federal Appellate Judges

Spanish/English Interpreter Exam Set

Written examinations for Spanish/English interpreters will be given in 36 cities in June. Those who pass the test, and an oral examination, will be placed on a certified list from which full-time interpreters are selected. The salary for full-time interpreters is $24,011 to $34,292. Free-lance certified interpreters earn $175 a day.

Applicants should apply by April 26 to Dr. Roseann Duenas Gonzalez, Director, Federal Court Interpreters Certification Project, College of Arts and Sciences, Modern Language Building, University of Arizona, Tucson, AZ 85721, enclosing a $25 application fee and requesting one of the available sites for the written and oral examinations. The application letter should include date of birth and Social Security number.

The written examinations will be given on June 1 in Albuquerque, Atlanta, Baltimore, Boston, Brownsville, Tex., Chicago, Corpus Christi, Tex., Dallas, Fort Worth, Fresno, Cal., Hartford, Houston, Laredo, Tex., Las Cruces, N.M., Las Vegas, Los Angeles, Miami, Monterey, Cal., Newark, N.J., New Orleans, New York, Orlando, Fla., Phoenix, Reno, Sacramento, Salt Lake City, San Antonio, Tex., San Diego, San Francisco, San Juan, P.R., Santa Fe, Seattle, Trenton, Tucson, Washington, D.C., and West Palm Beach, Fla. The oral test will be given in August and September in Albuquerque, Atlanta, Boston, Chicago, Houston, Los Angeles, Miami, New Orleans, New York, Phoenix, San Francisco, San Juan, and Washington, D.C.

Navajo Glossary Available

An English/Navajo legal glossary has been published by the U.S. District Court for the District of New Mexico. Court clerk Jesse Casaus said it might be useful in more than a dozen federal, state, and tribal courts. For copies, write Mr. Casaus, Box 689, Albuquerque, NM 87103.

Courts' Workload Rises Again, AO Reports

The workload of the circuit and district courts grew again in the latest statistical year, an Administrative Office of the U.S. Courts study has found.

The report, prepared by the AO's Statistical Analysis and Reports Division, covers the 12-month period that ended last September.

Highlights of the summary included:

- The number of appeals docketed by the 12 circuit courts increased 6.5 percent, while the number of dispositions was up 4.6 percent. The largest increase in filings—16.7 percent—was in the Eleventh Circuit. The Seventh Circuit had the largest drop in filings, which were down 2.8 percent. The Eighth Circuit had the largest increase in dispositions, at 17.7 percent, while the Ninth Circuit had the largest drop, at 3.5 percent.
- The U.S. Court of Appeals for the Federal Circuit, for which separate figures are kept, had a 38.5 percent increase in appeals filed. However, the court terminated 66.8 percent more appeals.
- The district courts kept nearly even in handling an increased civil caseload. Those courts received 3.6 percent more cases in the period surveyed and disposed of 3.5 percent more. The Eastern District of Wisconsin had the largest jump in filings, up 36.1 percent. The District for the Northern Mariana Islands had a 56.5 percent drop in filings. The largest drop among mainland districts was the 18.6 percent decrease in the Western District of North Carolina. The Eastern District of California led the increase in terminations, up 69.2 percent, while the Western District of Wisconsin fared worst, with 23.8 percent fewer terminations.
- Criminal cases filed in the district courts were up 6.9 percent. Terminations rose 7.7 percent. ■

PERSONNEL

Nominations

Frank H. Easterbrook, U.S. Circuit Judge, 7th Cir., Feb. 25

James F. Holderman, Jr., U.S. District Judge, N.D. Ill., Feb. 25

Thomas J. Aquilino, Jr., Judge, U.S. Court of International Trade, Feb. 25

Melvin T. Brunetti, U.S. Circuit Judge, 9th Cir., Feb. 26

Howell Cobb, U.S. District Judge, E.D. Tex., Feb. 26

R. Allan Edgar, U.S. District Judge, E.D. Tenn., Feb. 26

Edith H. Jones, U.S. Circuit Judge, 5th Cir., Feb. 27

George La Plata, U.S. District Judge, E.D. Mich., Feb. 27

Ronald E. Meredith, U.S. District Judge, W.D. Ky., Feb. 27

Alice M. Batchelder, U.S. District Judge, N.D. Ill., Feb. 28

Joseph H. Rodriguez, U.S. District Judge, D.N.J., Feb. 28

Herman J. Weber, U.S. District Judge, S.D. Ohio, Feb. 28

Carol Los Mansmann, U.S. Circuit Judge, 3d Cir., Mar. 7

Carolyn R. Dimmick, U.S. District Judge, W.D. Wash., Mar. 7

J. Thomas Green, U.S. District Judge, D. Utah, Mar. 7

Ann C. Williams, U.S. District Judge, N.D. Ill., Mar. 13

Elevation

Donald E. O'Brien, Chief Judge, N.D. Iowa, Feb. 9

Senior Status

Woodrow Wilson Jones, U.S. District Judge, W.D.N.C., Feb. 1

Edward J. McManus, U.S. District Judge, N.D. Iowa, Feb. 9

Bruce M. Van Sickle, U.S. District Judge, D.N.D., Feb. 28

Death

Frank A. Hooper, U.S. District Judge, N.D. Ga., Feb. 11

United States and Italy Cooperate on Crime

New methods of cooperation between the United States and Italy to combat organized crime and narcotics dealings were announced recently by former attorney general William French Smith. The agreements followed a two-day meeting of the Italian-American Working Group on Organized Crime and Narcotics Trafficking in Rome last January. The two nations' joint efforts include a plan to provide each other with more access to their computerized crime data and plans to make extradition between the two nations easier.

LAY, from page 7

mantled, with the exception of maintaining isolation for those people who are violent. I have talked to many wardens. I have visited many state prisons across the country. It's amazing how many wardens agree with me that only about 6 to 8 percent of the people now in prison really need to be locked up. These are the violent prisoners. These are the people who use weapons to commit crimes and put other people's lives in jeopardy. But we can take the vast majority of prisoners and put them in community treatment centers with some kind of industrial training and let them learn vocations and provide them with responsibilities and a renewed self-respect. There will always be an understanding that if there is a violation or an attempt to escape they will have to go into a prison. This is a civilized approach. What we do today is so self-defeating. I think every time I go through a prison I wonder how we can ever persuade the public of this tremendous waste of money and personal resources. I think some day changes will be made, but as long as legislatures react to public hysteria, politics will probably prevent it. We'll continue to do what we're doing now—building bigger prisons and placing more people in them. This doesn't rehabilitate anyone. ■

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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BULLETIN OF THE FEDERAL COURTS

THE THIRD BRANCH

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Interest in Activities of State-Federal Judicial Councils Increases

Recent reports from several state-federal judicial councils, whose formation is strongly supported by Chief Justice Burger, show that interest in the councils continues to grow.

The agendas for council meetings vary, depending on the needs of the jurisdictions, but educational programs are increasingly being held in conjunction with the meetings. These programs help create better understanding between state and federal judges, especially in the areas of habeas corpus cases and postconviction relief. They have been supported by the Federal Judicial Center through arrangements with an authority on these subjects.

The following are recent actions taken by various councils:

• In January, Alabama state appellate and trial judges met jointly with every federal judge and magistrate from Alabama. Eleventh Circuit Chief Judge John C. Godbold, commenting on the meeting, said: "Twenty years ago, many state and federal judges were sharing hostilities; today they are sharing ideas and learning from each other. We are lighting a lot of candles, rather than cursing the darkness. We are pursuing the ends of justice, which is what our jobs are all about."

"Our joint discussions of habeas corpus and other issues have pointed out that federal and state judges not only share common problems," said Alabama Supreme Court Chief Justice C.C. Torbert, Jr., "but we have a mutual goal—that of enforcing and upholding the United States Constitution."

• In Florida, Judge Paul H. Roney of the Eleventh Circuit addressed a group of Florida state appellate judges recently and illustrated his remarks with Center videotapes, which were later available to the judges for replays. Although many state-federal subjects were covered, the emphasis was on the collegiality aspects of a multijudge appellate court.

• State-federal judicial council meetings in Georgia, North Carolina, and Louisiana were especially concerned with habeas corpus proceedings. In Louisiana, a new procedure adopted by State Court Administrator Eugene Murret periodically brings to the attention of state judges the names and dispositions of all cases filed in federal court. Because capital cases have been of particular concern in Louisiana, judges there are made aware of how few of these cases are actually granted review in the federal courts.

• Texas Chief Justice John L. Hill, with some suggestions for agenda items from Chief Judge William Sessions of the U.S. District Court in San

See COUNCILS, page 2

William E. Foley

Retiring Administrative Office Director Reflects On His 40 Years of Government Service

William E. Foley, the director of the Administrative Office for more than eight years, announced his retirement earlier this year. His legal career began after his graduation from Harvard Law School in 1935. He also holds undergraduate, master's, and doctoral degrees from Harvard.

In an interview with The Third Branch *conducted after he announced his retirement, Mr. Foley spoke about his 20 years at the AO and 20 years in other government service—as a federal prosecutor and with the Navy during World War II.*

William E. Foley

You've had a distinguished career in government service spanning a period of over four decades in two branches of the government—executive and judicial. Let's start with your Navy career. You were in the Office of Naval Intelligence?

Yes, I was; first in Washington and then in the Eleventh Naval District in San Diego. In the summer of 1944 I was transferred to the Office of the Naval Attache in London and assigned to a special unit, which was designed to become the staff of the commander of U.S. forces in Germany when occupation of Germany was to begin. I served as deputy chief of staff for Intelligence when we moved to Germany in the summer of 1945 and was discharged in the spring of 1946, at which time I received the commendation with ribbon from the commander of the U.S. naval forces in Europe. I went out with the rank of lieutenant commander and remained active in the Naval Reserve until I retired with the rank of captain in the 1960s.

In addition, I ran a sort of training school for the Command in Ger-

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Inside . . .

NOTEWORTHY

New grants: The National Institute for Dispute Resolution has awarded 16 more grants to law schools to help finance courses in alternative dispute resolution.

Grants to graduate business, planning, public administration, and public policy programs are expected later this year. The institute has, in recent years, made 34 grants to law schools to foster education about alternatives to litigation.

* * *

New law: The Southern District of New York's district executive and the court's Criminal Justice Act Panel are cosponsoring a minicourse about the Comprehensive Crime Control Act of 1984. The five-session course is being offered Tuesday evenings at 5:45 p.m. at the Court of International Trade, 1 Federal Plaza, New York City. The first session was held April 23 and featured a Center-produced videotape about the new legislation, first shown via a nationwide satellite hookup in January. The course is open to attorneys interested in applying for membership on the Criminal Justice Act Panel.

* * *

New manual: A draft of the second edition of the *Manual for Complex Litigation* has been circulated for review to attorneys and the judiciary by the manual's board of editors.

See NOTEWORTHY, page 3

THE THIRD BRANCH
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Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Joseph F. Spaniol, Jr., Acting Director, Administrative Office, U.S. Courts.

COUNCILS, from page 1

Antonio, is weighing the creation of a federal-state council. Replying enthusiastically to the idea, state District Judge Joe E. Kelly said, "It can only improve a judge's ability in handling some simple daily duties which often develop on the problems. The subjects . . . are current although some had their genesis with King John."

• After a hiatus of 10 years, the New York state-federal judicial council has been reactivated, partly because of interest in new approaches to old problems. More than a year ago, state and federal judges held an unprecedented gathering at Pace University in New York City, highlighted by vigorous discussions on mutual problems. The emphasis was on habeas corpus procedures, certification of state law issues, and calendar conflicts. To their surprise, the participants found—through reports based on a study made by two council members (one state and one federal)—that conflict problems are rare. The New York council has taken the position that a procedural rule should be adopted by the U.S. Court of Appeals for the Second Circuit if a certification procedure is established. Chief Judge Jack B. Weinstein, of the Eastern District of New York, at one time suggested that this would be helpful in instances such as those encountered in the Agent Orange cases, where a state statute-of-limitations question was "potentially determinative of as many as 10,000 cases." ■

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

American Civil Liberties Union. "The Rights of Crime Victims." 1985.

Anderson, John R., and Paul L. Woodward. "Victim and Witness Assistance: New State Laws and the System's Responses." 68 *Judicature* 221 (1984).

"Dedication to Justice Harry A. Blackmun on the Occassion of His Twenty-Fifth Year as a Federal Judge." Authors include Richard S. Arnold, Floyd R. Gibson, and Donald P. Lay. 8 *Hamline Law Review* 1 (1985).

Eastern District of Pennsylvania, Continuing Legal Education Committee. "Government Litigation: A Seminar on Litigation Against the Federal, State and Local Governments in the United States District Court for the Eastern District of Pennsylvania." 1985.

Kaufman, Irving R. "To Keep Lawyers from Going Wrong." *New York Times*, Mar. 26, 1985, p. A27.

McGowan, Carl, Louis H. Pollak, John Minor Wisdom, and others. "In Honor of Henry J. Friendly, Jr." 133 *University of Pennsylvania Law Review* 1 (1984).

Nelson, Dorothy W. "Alternative Dispute Resolution: A Supermart for Law Reform." 14 *New Mexico Law Review* 1 (1984).

✓Newman, Jon O. "Rethinking Fairness: Perspectives on the Litigation Process" (The Cardozo Lecture). 40 *Record of the Association of the Bar of the City of New York* 12 (1985). (Also available on loan in audiotape from the Center's Media Library. Request AG-0051.)

Roberts, Samuel J. "The Adequate and Independent State Ground: Some Practical Considerations." 17 *Institute of Judicial Administration Report* 1 (Winter 1985).

Schwarzer, William W. "Sanctions Under the New Federal Rule 11—A Closer Look." 104 F.R.D. 181 (1985).

Supreme Court Historical Society. *1984 Annual Report.*

Center Established To Help Promote Inmate Employment

George Washington University has formed a National Center for Innovation in Corrections to promote efforts to employ prison inmates in meaningful jobs.

The center's formation is one of several steps taken since George Washington and the Brookings Institution sponsored a conference on prisoner employment last year. Chief Justice Burger, who is a major proponent of employment as a means of rehabilitation and as a tool to provide job skills inmates can use upon release, addressed the conference.

The steps taken to promote prisoner employment since then include:

- Appointment of Dr. Judith Schloegel to head the National Center for Innovation in Corrections.
- Recommendation of 111 steps that can be taken by corporate executives, union leaders, prison administrators, and public officials to foster productive employment by prison inmates—a concept known as "factories with fences."

The recommendations came from 39 people appointed to a national task force on prison industries, which met at the Wingspread Center in Racine, Wis., last September.

The task force is chaired by Frank Considine, president of National Can Corp. Its honorary chairman is the Chief Justice.

Quote Without Comment

"[T]he main complaint against the dual jury was its novelty. . . . [and] 'the risk of injecting uncertainty and confusion into the proceedings'. . . . That the dual jury process increases these risks is beyond dispute. We do not believe, however, that the spectre of such risks should deter courts from implementing innovative resource-saving procedures in carefully selected cases so long as these procedures are administered carefully and meet the requirements of due process."

United States v. Lewis
(D.C. Cir. 1983)

E.D. Pa. Historical Society Holds First Session; Eighth, Ninth Circuits Forming Similar Groups

The first annual meeting of the Eastern District of Pennsylvania's Historical Society was held last month, with Chief Judge Alfred L. Luongo delivering the keynote address.

Judge Luongo described the career of Judge Francis Hopkinson, the first judge of the Philadelphia-based court, who was appointed by President Washington in 1789.

The session also featured excerpts of a videotaped oral history interview with Senior Judge Albert B. Maris of the Third Circuit. The society, which was formed a year ago, has been recording the history of the court as described by judges who have served in it. Its goals are to promote public awareness of the court and to explain its functions and history to the public.

The Eighth Circuit, at the suggestion of Chief Judge Donald P. Lay, is also in the process of forming a historical society to gather information about and promote interest in the history of the circuit and each of its 10 districts.

Discussion of the proposed historical society began last year at the meeting of the Eighth Circuit Federal Advisory Committee. Similar efforts in other jurisdictions, notably in the Northern District of California and in the Second Circuit, are being used as models; the society is to be incorporated on a nonprofit basis. Plans call for the appointment of a 22-member board, including one judge and one lawyer from each district and two from the circuit at large.

The society is considering several projects, including the gathering of materials for exhibits in the courthouses in St. Paul and St. Louis, where the Eighth Circuit sits; research into the history of the judges, lawyers, and decisions of the circuit and each of its districts; and, if time and funds permit, the publication of some of the results of its research.

Members of the board of directors representing the circuit at large will be Judge Richard S. Arnold of Little Rock and Robert C. Tucker of St. Louis, who was clerk of the court of appeals for the Eighth Circuit for many years.

The Ninth Circuit is drawing up articles of incorporation for a circuit historical society. The Northern District of California's historical society is already functioning, and the District of Oregon and the Central District of California are well along in the planning stage.

The Seventh Circuit reports no plans for a historical society, but it is taping oral histories from its judges, beginning with the senior judges. ■

NOTEWORTHY, from page 2

New commission: ABA President John C. Shepherd has announced the formation of a special commission with "a broad mandate to study issues affecting the professional performance of lawyers." The commission will take an objective look at the criticisms that have been leveled against lawyers and jurists in a number of areas and attempt "to determine what validity there is in these allegations."

Issues to be studied are lawyer advertising, cost of litigation to litigants and the courts, lawyer competence, commercialization of legal services, availability of legal services to low- and middle-income persons, and professional ethics and discipline. The commission will both identify problems and recommend solutions.

* * *

Old inmates: The Justice Department's Bureau of Justice Statistics has issued a report on a recidivism study that states that "almost 84 percent of the people entering state prisons during the period studied were repeat offenders."

FOLEY, from page 1

many. In the beginning I was about the only German-speaking officer in the group. In addition, we ran a training school in the Reserve work that we did here in Washington after the war.

How many languages do you speak?

I speak some French, but not fluently. I've studied Spanish, but German is the only language I can claim any fluency in.

Did your career continue in the Department of Justice after the termination of World War II or did it start then?

Actually it started just before I went into the Navy in 1940, which is the year I finished my graduate work. I went from the Department of Justice into the Navy, and then came back to the Department of Justice in 1946.

Can you tell us anything about the cases you handled in the Criminal Division?

Well, the first cases I handled were on assignment from the Criminal Division to the Southern District of New York, and they were exclusively war frauds cases. None is of any great note today, but it was very good experience for me. They afforded me good trial and appellate experience, even though we were unsuccessful in the major cases we tried.

Was it common practice at that time to try to cheat on defense contracts?

I can't really say that. It's hard to generalize.

How about the Judith Coplan case, in which you were involved?

Well, that was a very unpleasant experience. She had been, to the best of my knowledge, a trusted employee. It is very disconcerting to find that you are actually dealing with somebody who is handing things over to the potential enemy. And, having to testify, as I did in both trials in Washington and New York, was not a very happy experience.

The other cases I handled at that time were largely appearing before grand juries in matters relating to violations of the Foreign Agents Registration Act. The only one I recall offhand involved the Amtorg Trading Corporation.

Then in 1950, I believe it was, the chief of the Internal Security and Foreign Agents Registration Section, Raymond Whearty, became the deputy assistant attorney general of the Criminal Division, and I succeeded him as chief of Internal Security and Foreign Agents Registration. In 1954 Internal Security became a division of itself, and I became executive assistant to the assistant attorney general. In 1957 I was called back to the Criminal Division as first assistant. That title is now deputy assistant attorney general. I served in that capacity until I came into the Administrative Office in 1964.

"It has always been my ambition to try not to say 'no' if there's any way I can find to meet the wishes of the judges."

One thing I might add about my Criminal Division experience. In 1953, when President Eisenhower came in, he reestablished or at least added new life to the National Security Council and used it very heavily. He had a very interesting head of the council or director, Robert Cutler, who ran the Planning Board of the council, and I was designated as the attorney general's representative on the Planning Board of the National Security Council, and that was for about three years. It was some of the most interesting work I've done.

Your stint in the Administrative Office came next in 1964, when you became deputy director. The personnel in the Administrative Office was much smaller then.

Indeed it was. We had 177 people on the staff of the Administrative Office in 1964. In the middle of the year 1984, we had 533, and today we have approximately 600.

It is the biggest court system in the world?

I believe that's true. In 1964, in the entire federal court system, we had 6,383 people. That includes judges, law clerks, court clerks, criers, and so forth. In mid-1984 that number grew to 16,677.

In 1964 there were 378 judgeships in the federal court system, whereas today there are 168 judgeships for the courts of appeals and 576 district court judgeships. Counting senior judges who remain active, there are around 1,000 active judges in the federal court system. How has this growth affected the work of the Administrative Office?

The impact on the Administrative Office hit us in almost every branch of our work. There was impact on the Personnel Division, which keeps the records. There was heavy impact on our buildings and furnishings units, for example, when the large number of additional judgeships was added in the 1970s. We had anticipated the legislation, and our buildings unit had surveyed the potential impact on all the courts of the country for which new judgeships were being recommended. As a result we were as ready as we could be for the new judges when they were authorized and then appointed.

For many years you were secretary of the Judicial Conference of the United States. How does the Conference function today to develop policy? Do you feel that it is functioning as effectively as it can through committees, committee reports, and two meetings a year?

Well, the Conference is functioning today pretty much along the same lines as it did when I joined the Conference in early 1965. You must understand that the Conference operates through the committee system just as the Congress does, and the committees meet periodically throughout the year, at least once

before each meeting of the Conference. Some committees hold special meetings, or they operate through subcommittees, which meet at intervals between the meetings.

How many serve on the Executive Committee?

The Executive Committee of the Conference has six members, appointed by the Chief Justice to act for the Conference in matters that need to be taken care of between the regular meetings of the Conference. The Conference also meets especially at the call of the Chief Justice. For example, when the Criminal Justice Act was passed the Chief Justice created a committee that studied the needs of the judiciary to implement the act, and then the Conference was called into special session in January of 1965 and took action to implement the work of the special conference committee. That, incidentally, was the first meeting I attended as secretary of the Conference, Jan. 8, 1965.

Did you get called on much in your capacity as secretary of the Conference?

Occasionally, not frequently.

How do you react to the request for sunshine in government and especially requests by the press for open meetings of the Conference?

I think the Conference, if it held open meetings, would be a lot less successful. The two Chief Justices I have served under were strong believers that the real work of the Conference—the open exchange of views among the members—would be inhibited by open meetings. They might not speak as frankly on matters that affect personnel of the courts and problem areas that inevitably arise. That free, open exchange is something that both the Chief Justices I have served were great believers in.

When you became director of the AO in 1977, you became the fifth individual to fill that position. Did you make any big changes that you felt were necessary to your administration?

Basically the organization of the Administrative Office remains the same, but some changes had to take place to meet the requirements of new legislation. For example, as deputy director I used to handle a good deal of the criminal justice work myself. Once federal public defenders were authorized, however, it became more than I could handle alone, and we set up a Criminal Justice Act Division. That is when I brought in James Macklin as head of that division. And since I've been director, he has been my executive assistant.

"We had 177 people on the staff of the Administrative Office in 1964. . . . Today we have approximately 600."

As director of the AO, dealing with around 1,000 federal judges, you received many requests for more personnel, more courtrooms, more books, more equipment. Obviously there are times when you must say "no." How do you cope with these turndowns and the objections to the turndowns?

"We can't do for all the judges what we would like to do. . . . You can't live beyond your budget."

Well, traditionally and humorously an administrator is known as the person who says "no." It has always been my ambition to try not to say "no" if there's any way I can find to meet the wishes of the judges. Obviously, the greatest limiting factor is funds—the budget—and particularly with expensive equipment such as much of the current automated equipment is. We can't do for all the judges what we would like to do. And this has caused many hard feelings, which I regret very much, but it just seems inevitable that you can't live beyond your budget.

Can you think of any instance, even if it is ancient history, in which you had to disagree with a judge on administrative matters that really led to some sort of confrontation?

Not seriously so; we've had some unfortunate turndowns. For example, a judge may have his heart set on furnishing his chambers in a certain way, which goes beyond the guidelines under which we operate and which have been approved by the Judicial Conference for what we may spend on office furniture. Many times new judges have not had an opportunity to familiarize themselves with the work of the Judicial Conference and what the Judicial Conference means to the Administrative Office. But you must remember that section 604 of title 28 says the director of the Administrative Office shall operate under the policy guidance of the Judicial Conference of the United States. Those are pretty positive words.

Did the Financial Disclosure Act give you any problems, especially when some of the judges failed to comply with filing requirements?

It did not give the Administrative Office as such any problems. The administration of that act was vested in the Judicial Ethics Committee of the Judicial Conference, which has been chaired since its inception by Judge Edward Tamm, and whether Judge Tamm has had any problems, I cannot say.

What is the total budget for the judicial branch for fiscal year 1985?

The adjusted appropriation for fiscal year 1985 is $1,121,680,000. This does not include the U.S. Supreme Court.

How much are you asking for in fiscal year 1986 to cover all the needs, including personnel, for the biggest court system in the world?

We are asking for approximately

See FOLEY, page 6

FOLEY, from page 5
$1,121,449,000; again, this does not include the Supreme Court.

That represents less than 1 percent of the federal budget, doesn't it?

Less than one-tenth of 1 percent.

All right. And your office prepares the request to Congress for funds, which makes it possible for the federal courts to operate. A couple of times in recent history the AO's budget was not yet fully approved before the start of the next fiscal year. This obviously presented some problems. How did you respond to them?

In each instance there was a continuing joint resolution in the Congress permitting us to operate as we had under the prior budget. Now the budget process is for the Administrative Office to prepare the budget and then consult with the Budget Committee of the Judicial Conference before submitting a final budget, which we do by transmittal to the Office of Management and Budget on Oct. 15 each year. You remember, too, that the budget cycle is a long one. We submit it on Oct. 15 for the fiscal year commencing the following Oct. 1.

It's difficult to anticipate?

It's very difficult to anticipate, especially if you have new buildings going up, or new legislation, although if new legislation comes through that requires a substantial addition to the budget, we may go to the Congress to ask for a supplemental appropriation.

You have a good relationship, I understand, with people in Congress.

Well, we try to keep the committees fully advised through their staff on what we're doing and what we hope to achieve in the future.

What are some of your greatest problems today?

Well, one difficult situation is the fact that our headquarters office here in Washington is separated into five different buildings. One of these buildings, which houses our printing plant and mailroom, is even outside the District of Columbia. It does not make for good administration to have your staff separated.

Another problem is related to the demands of automation. Automation is very costly and yet very few judges appointed in recent years find our automation in any way comparable to what they were accustomed to in the private practice. They have become accustomed to certain types of automation and expensive equipment, which sometimes we cannot give them, mainly because of the cost.

Parking is another difficult situation, not only for the judges but the staffs. Courthouses built 50 to 75 years ago were often built in an excellent part of the city that over the years has deteriorated. Often these areas are not safe for judges and their staff.

Is security a big problem?

The U.S. Marshals Service is handling security insofar as funds for personnel permit. Security generally has become a much more important subject in recent years, however, and at present, with all the drug-related offenses, we have very serious problems. We have had threats against federal judges. Sometimes, the judges involved in incidents, and who are the subjects of serious threats, don't think we are doing an adequate job, but we are doing the best we can with what we have. Whenever a threat against a federal judge occurs, we send someone there immediately, as does the U.S. Marshals Service. They send a special individual there who is knowledgeable in planning and so forth.

Some of the judges complain that they get splendid cooperation from the AO but then when the implementation starts through the regional offices of GSA, they run into problems. Is one of the problems at GSA that it is just so big it is impossible to function effectively?

Yes. You cannot treat a courthouse as you would an ordinary public office building utilized by those in the executive branch. You have to have courtroom space, you have to have security provisions to handle prisoners as well as judges and their personal staffs. I'm not sure GSA is always attuned to the needs of the courts.

We have a special building staff here, and it is ready at the drop of a hat to travel to try to meet the requirements and wishes of judges. And by and large I would say judges' requests are usually reasonable.

What would you like to see accomplished for the federal courts in the immediate future and well beyond—the millennium for the federal court system?

That's a hard one to answer. But I would hope that we would become better able to handle the requests of the judges. It all gets back to money. I would hope that the day is not too far away, for example, when the Administrative Office and the Federal Judicial Center would be together in one building. Also, it would probably save the government some money in the sense that we wouldn't need as many conference rooms as we do with separated and multiple housing.

What do you look forward to doing in retirement that you haven't had time to do before because of the demands of your position?

Well, for one thing, reading is something I enjoy very much and I have had very little extra energy to do this at night, especially when we've been in crisis situations. The theater is another. My wife and I both enjoy the theater. And even on vacations there hasn't been much free time. Last summer I spent two weeks in New Hampshire, and the minimum number of calls from the office each day was six. You're really never away from it. It follows you.

And you will have more time to spend with your children. How many are in the Washington area now?

Only three right now.

Any of them lawyers?

Two, and a third coming up. My daughter Ann and son Chris are lawyers, and my son Richard is still in law school. ■

PERSONNEL

Nominations

Walter K. Stapleton, U.S. Circuit Judge, 3d Cir., Mar. 27
Kenneth F. Ripple, U.S. Circuit Judge, 7th Cir., Apr. 1
Mark L. Wolf, U.S. District Judge, D. Mass., Mar. 8
William G. Young, U.S. District Judge, D. Mass., Mar. 8
Charles C. Lovell, U.S. District Judge, D. Mont., Mar. 27

Confirmations

Melvin T. Brunetti, U.S. Circuit Judge, 9th Cir., Apr. 3
Frank H. Easterbrook, U.S. Circuit Judge, 7th Cir., Apr. 3
Edith H. Jones, U.S. Circuit Judge, 5th Cir., Apr. 3
Carol Los Mansmann, U.S. Circuit Judge, 3d Cir., Apr. 3
Walter K. Stapleton, U.S. Circuit Judge, 3d Cir., Apr. 3
Thomas J. Aquilino, Jr., Judge, U.S. Court of International Trade, Apr. 3
Alice M. Batchelder, U.S. District Judge, N.D. Ill., Apr. 3
Howell Cobb, U.S. District Judge, E.D. Tex., Apr. 3
Carolyn R. Dimmick, U.S. District Judge, D. Wash., Apr. 3
J. Thomas Green, U.S. District Judge, D. Utah, Apr. 3
James F. Holderman, Jr., U.S. District Judge, N.D. Ill., Apr. 3
George La Plata, U.S. District Judge, E.D. Mich., Apr. 3
Charles C. Lovell, U.S. District Judge, D. Mont., Apr. 3
Ronald E. Meredith, U.S. District Judge, W.D. Ky., Apr. 3
Herman J. Weber, U.S. District Judge, S.D. Ohio, Apr. 3
Ann C. Williams, U.S. District Judge, N.D. Ill., Apr. 3
Mark L. Wolf, U.S. District Judge, D. Mass., Apr. 3
William G. Young, U.S. District Judge, D. Mass., Apr. 3

Center Publication Evaluates Use of Joint Calendar

The Center has published *The Joint Trial Calendars in the Western District of Missouri*, by Donna Stienstra of the Center's Research Division. Part of *Innovations in the Courts: A Series on Court Administration*, the report describes a calendaring system under which some noncomplex cases are periodically placed on a joint calendar after the assigned judges have prepared them for trial. Those cases are then tried by the first available judge.

Adopted 15 years ago in an attempt to guarantee firm trial dates for certain cases, the joint trial calendar system helps clear the court's dockets at regular intervals.

The report outlines the history and operation of this procedure, reviews its impact on judges, court personnel, attorneys, and the caseload, and offers guidelines for other courts weighing its adoption. Copies of the court's forms and documents are included in the appendixes.

Copies of this report can be obtained from Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

Positions Available

Circuit Executive, U.S. Court of Appeals for the District of Columbia Circuit. Salary up to $68,700, depending on qualifications. See 28 U.S.C. §332(e) and (f) for special qualifications and general functions. Required are undergraduate degree and extensive successful executive experience requiring application of full range of management principles and techniques. Degree in law or graduate degree in management/administration highly desirable. Position available Aug. 1. Send application by May 15 to Judge Abner J. Mikva, U.S. Court of Appeals, U.S. Courthouse, Washington, DC 20001.

. . .

Chief Staff Counsel, U.S. Court of Appeals for the District of Columbia Circuit. Salary up to $67,940. Requires law degree, bar membership, and a minimum of five years of progressively responsible experience in the practice of law or legal administration. Substantial litigation experience is preferred. Send application by May 15 to Judge Patricia M. Wald, U.S. Court of Appeals, U.S. Courthouse, Washington, DC 20001.

. . .

U.S. Magistrate, U.S. District Court for the Western District of Missouri (Jefferson City). Salary $68,400. Responsible for conducting initial appearances in criminal cases, various pretrial matters, and evidentiary proceedings; and the trial and disposition of misdemeanor cases and of civil cases upon consent of litigants. Requires membership in the bar of the Missouri Supreme Court and at least five years' law practice. Applicants must be younger than 70 years old and not be related to a judge of the Western or Eastern Districts of Missouri. For an application form, write R.J. Connor, Clerk, U.S. District Court, Room 201, 811 Grand Ave., Kansas City, MO 64106. The deadline for applications is June 28.

. . .

District Executive, U.S. District Court for the Central District of California. Salary $59,233 to $68,700, depending on experience. Requirements include a college degree and management experience. A degree in business or public administration or in law is desirable. Resumes and cover letters should be submitted by May 17 to Judge Laughlin E. Waters, U.S. District Court, 312 North Spring St., Los Angeles, CA 90012.

. . .

Chief Deputy Clerk, U.S. District Court for the Eastern District of Texas. Salary from $37,599 to $52,262, depending on qualifications. Responsible for assisting the clerk of the court and managing the court's clerical and administrative operations. Send application by June 3 to Murray L. Harris, Clerk, U.S. District Court, 211 W. Ferguson St., Room 309, Tyler, TX 75702.

EQUAL OPPORTUNITY EMPLOYERS

CALENDAR

May 6–8 Civil Case Management Workshop
May 7–10 Video Orientation Seminar for Newly Appointed Magistrates
May 12–14 Seventh Circuit Judicial Conference
May 12–15 Eleventh Circuit Judicial Conference
May 14–18 Sixth Circuit Judicial Conference
May 15–17 Workshop for Newly Appointed Training Coordinators
May 16–21 Seminar for Senior Staff Attorneys
May 17 Federal Circuit Judicial Conference
May 19–21 D.C. Circuit Judicial Conference
May 19–22 Fifth Circuit Judicial Conference
May 20–22 Workshop for Fiscal Clerks of Circuit, District, and Bankruptcy Courts
May 28–31 Ninth Circuit Judicial Conference
May 29–31 Judicial Conference Subcommittee on Judicial Improvements
June 3–5 Workshop for Appellate Court Case Management
June 4–5 Judicial Conference Advisory Committee on Civil Rules
June 5–7 Pretrial Service Officer Training
June 6–7 Judicial Conference Subcommittee on Supporting Personnel
June 6–7 Judicial Conference Advisory Committee on Criminal Rules

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

Vol. 17 No. 5 May 1985

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THE THIRD BRANCH

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JUNE 1985

Chief Judge Cummings Praises Oral Argument, Urges More Active Judicial Conference Role

Walter J. Cummings, chief judge of the Seventh Circuit, has served on that court since 1966. He is a graduate of Yale University and Harvard Law School and began his legal career as a member of the solicitor general's staff in 1940. In 1944, he became special assistant to the attorney general. In 1946, he returned to his native Chicago and joined the firm that is now Sidley and Austin, leaving for two years to serve as solicitor general from 1952 to 1953.

Chief Judge Cummings serves on the Judicial Conference and was chairman of its former Committee on Records Disposition. In this Third Branch *interview, he discusses, among other topics, the size of the Seventh Circuit, the use of en banc decisions, and the usefulness of oral argument, and offers a plan in which active circuit judges would temporarily sit with courts in other circuits.*

Chief Judge Walter J. Cummings

Geographically, your circuit is relatively compact, encompassing three average-sized states. Does this have any impact on your court, either good or bad?

The compactness of the Seventh Circuit helps the court of appeals and attorneys who practice in it, for Chicago is the center of transportation for this circuit as well as fairly close to the geographical center of the circuit. All three states—Illinois, Indiana, and Wisconsin—have a mix of agriculture and industry as well as metropolitan and rural areas. The relative similarity of the states in the circuit fosters the collegial atmosphere shared by all members of the court of appeals. The

See CUMMINGS, page 4

Zheng Tianxiang, president of the Supreme People's Court of the People's Republic of China, visited the FJC last month with three other judges from China. Details on p. 3.

ABA Panel Recommends Higher Judicial Salaries

Salaries for Article III federal judges should be increased, an American Bar Association commission has recommended. The suggestion came from the ABA's Federal Judicial Compensation Commission.

Under the commission's pay formula, district judges would receive $99,600 a year and circuit court judges $105,600, a 31 percent increase; and associate justices $134,900 and the Chief Justice $140,800, a 34 percent increase.

The ABA's recommendations were presented to the federal Commission on Executive, Legislative, and Judicial Salaries in April. ■

New Legislation Allows Senior Judges to Serve On Sentencing Panel

President Reagan has signed legislation allowing the appointment of senior judges to the U.S. Sentencing Commission.

The legislation is an amendment to the Comprehensive Crime Control Act of 1984, which created the commission and provided that three active federal judges would be among its seven members. The act made no provision for replacing judges who left their courts to serve on the commission, so Congress added a provision allowing senior judges to serve on the panel.

Under provisions of the original legislation, which remain in effect, the Judicial Conference submits the names of at least six judges to the president, who nominates three to serve. The Conference submitted its list after the new legislation was signed, and included senior judges on its list.

The amended legislation also authorized the Administrative Office to request appropriation of initial funds for the commission, since the commission, not yet in existence, could not make a request on its own. The AO requested $2,350,000.

The sentencing commission's main task will be to set a narrow range of sentences for given crimes. Judges who depart from those sentences will have to explain why, and appeals of sentences above or below the guidelines' ranges will be allowed. ■

Inside...

Three-Day Conference on Court Automation Focuses on New AIMS System

More than 20 representatives of the courts of appeals joined Administrative Office and Center staff as guests of the Fourth Circuit for a three-day meeting in Richmond this spring to discuss the status and future of the Center's New Appellate Information Management System (New AIMS).

New AIMS is an electronic docketing and case management reporting system that helps courts in calendaring, panel formation, statistical reporting, and other administrative tasks. The Fourth, Ninth, and Tenth Circuits have served as pilot courts for the system and are nearing the completion of testing its functions.

Sixth Circuit Clerk of Court John Hehman, chairman of the group that met in Richmond in late April, said, "New AIMS defines a frontier in appellate-court automation and is a model for other electronic docketing systems. Center staff are now completing work on the first set of goals they and this users' group established a little more than two years ago.

"We are meeting in Richmond to determine what remains to be done, and how responsibility for those tasks will be shared among the Center, the Administrative Office, and the courts."

Mr. Hehman emphasized the roles and responsibilities of court staffs in the success of the automated system. "In the past, responsibility for automated systems was transferred from the Center to the Administrative Office. Now, in an important sense, much responsibility also transfers to the courts themselves. We welcome that responsibility."

One of the session's highlights was a demonstration of New AIMS by Robert Hoecker, chief deputy clerk of the Tenth Circuit and a key contributor to the specification of the system's capabilities. "New AIMS can be as simple or as complex as each court requires," Mr. Hoecker said. "It will revolutionize how we manage the courts' business." ■

Report Examines Presentence Observation Practice

The Center recently published *Observation and Study in the Federal District Courts*, an assessment of the current process for the observation and study of convicts before they are sentenced. The assessment, written by Julie Horney, is based on interviews with judges, probation officers, and Bureau of Prisons staff members.

Under this statutory procedure, a judge may refer a convicted offender to the Bureau of Prisons for a 90-day period of observation and study before imposing sentence. The report focuses on the referral process in the courts and the preparation of the required reports in the correctional institutions, and examines the extent to which the reports are meeting the courts' needs.

The report also comments on the extent to which the process meets the recommendations of a 1977 Center study on the same topic and offers several recommendations for further improvement. In addition, the assessment notes sections of the Comprehensive Crime Control Act of 1984 that will modify the observation and study process.

Copies of the report can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed label, preferably franked. ■

THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Joseph F. Spaniol, Jr., Acting Director, Administrative Office, U.S. Courts.

Open Season for Life Insurance Changes

There is a 30-day open season for changing life insurance benefits until July 1.

All employees of the federal court system can increase or decrease the amount of term insurance they acquire through payroll deductions or purchase insurance for the first time. The Administrative Office has sent out information kits, titled "FEGLI 1985," to all employees.

PERSONNEL

Nominations

John P. Moore, U.S. Circuit Judge, D.C. Cir., Apr. 5

Stanley Sporkin, U.S. District Judge, D.D.C., Apr. 5

George F. Gunn, Jr., U.S. District Judge, E.D. Mo., Apr. 17

Sam B. Hall, Jr., U.S. District Judge, E.D. Tex., Apr. 17

J. Frederick Motz, U.S. District Judge, D. Md., Apr. 23

Confirmation

R. Allan Edgar, U.S. District Judge, E.D. Tenn., Apr. 15

Appointments

Melvin T. Brunetti, U.S. Circuit Judge, 9th Cir., Apr. 5

Frank H. Easterbrook, U.S. Circuit Judge, 7th Cir., Apr. 10

Elevation

Harold D. Vietor, Chief Judge, S.D. Iowa, May 1

Resignation

Robert M. Duncan, U.S. District Judge, W.D. Pa., Apr. 1

Senior Status

Barron P. McCune, U.S. District Judge, W.D. Pa., Apr. 1

Joe Eaton, U.S. District Judge, S.D. Fla., Apr. 2

Chief Judge Clark Urges Reconsideration of Proposed Budget Cut

Reconsideration of a proposed reduction in the federal judiciary's budget for fiscal year 1986 was urged last month by Chief Judge Charles Clark, chairman of the Judicial Conference's Committee on the Budget.

Chief Judge Clark, in a letter to Sen. Pete V. Domenici (R-N.M.), chairman of the Senate Budget Committee, noted that the appropriations subcommittee had advised that a proposed budget resolution would cut the 1986 funding request by nearly 10 percent. "In light of the need to reduce deficit spending," Chief Judge Clark said, "we have already reduced our 1986 request by $4,435,000 and have since conceded an additional $12,150,000. We are now at the bare minimum. The proposed arbitrary reduction will severely impair the ability of the courts to accomplish the mission set for them by Congress."

Chief Judge Clark noted that the entire judicial branch budget is less than one-tenth of 1 percent of all government spending. Among the reasons he cited for not reducing judicial appropriations further are that the judiciary must handle vast increases in litigation over which the courts have no control, since "courts must accept all cases filed which are within the jurisdiction set by Congress," and there are 85 newly created judgeships that require judicial and staff salaries and office space. "The judiciary is essentially a service organization," Chief Judge Clark added. "We cannot discontinue, postpone, or curtail programs or activities. The Criminal Justice Act requires that representation be furnished to defendants in criminal cases. Their numbers are increasing. This expense is uncontrollable. Jury costs resulting from increased civil and criminal filings cannot be stopped. Administrative and clerical needs caused by these increases must be met." ■

Chief Justice Burger Addresses Publishers

The Chief Justice, speaking to the American Newspaper Publishers Association Convention:

> Assume a newspaper in 1953 with a circulation of 146,300; 65 pages of news and editorials; and a senior staff of nine. By 1969, 16 years later, the circulation is 420,200, the paper now has 88 pages of news and editorials, and still has a senior staff of nine. Another 14 years later, that is 1983, the circulation is now 510,000, the news and editorial columns run 151 pages a week, but the senior staff remains at nine.

The Chief Justice converted the hypothetical newspaper figures into 1,463 cases on the docket of the Supreme Court and 65 signed opinions in 1953 as opposed to 5,100 cases and 151 opinions in 1983—and nine justices then and now.

This quoted statement was made in the context of the Chief Justice's further discussion of the workload of the Supreme Court—this time to publishers—urging creation of an intercircuit panel to deal with circuit conflicts, thus relieving the Court of many of the cases it must now decide.

Four judges and four court administrators from the People's Republic of China visited the Federal Judicial Center last month while on a tour of the United States sponsored by the U.S. Information Agency. Listening to a presentation about the federal judiciary at the Center are, left to right, Tang Guangli, president of the High People's Court of Guangdong Province, and Zheng Tianxiang and Ren Jianxin, president and vice president, respectively, of the nationwide Supreme People's Court. President Zheng's rank is equivalent to that of vice premier. They also visited the Supreme Court, where the Chief Justice hosted a dinner and reception in their honor.

New Book Lists Crime Victims' Expanded Rights

A new book published in anticipation of the availability of up to $70 million in funds to compensate crime victims details the assistance to which such victims are entitled.

The book, *The Rights of Crime Victims*, was written for the American Civil Liberties Union by two New York lawyers, James Stark and Howard Goldstein.

Its publication precedes implementation of a crime victims' fund created by Congress as part of the Comprehensive Crime Control Act of 1984.

See VICTIMS, page 7

Federal Rules Sent to Congress

The Chief Justice, on behalf of the Supreme Court, sent to Congress amendments to the federal rules of civil, criminal, and bankruptcy procedure on April 29.

All of the amendments were approved by the Judicial Conference of the United States at its September 1984 meeting and then sent to the Supreme Court for consideration.

If Congress takes no action, the rules become effective Aug. 1.

CUMMINGS, from page 1

compactness means that the judges and attorneys from different parts of the circuit see each other more frequently, which makes for a friendlier atmosphere in the courts.

With the recent death of Chief District Judge J. Waldo Ackerman, there was a great need for judges to try cases in Springfield, Ill. Judges throughout the circuit were tremendous in their willingness to help. I doubt that the response would have been as great if this had been a larger circuit and the volunteering judges had not known Judge Ackerman as well as they did, or if they had to travel great distances to hold court.

Two of the states in your circuit, Indiana and Illinois, are in the so-called "rust bowl"—declining industrial states with severe and persistent unemployment. Does this area's economics affect the court or its caseload in any way?

The term "rust bowl" is really a misnomer. Although it is true that heavy industry has greatly declined throughout the circuit and the railroads have been greatly reduced, new industries are replacing them. The economics of the states in the circuit greatly affect the court's caseload. For example, the decline of heavy industry has reduced large air pollution litigation while also increasing bankruptcy filings. Any change in the economic infrastructure affects the type and number of case filings.

"En bancs should be used only sparingly.... Too many cooks spoil the broth."

The Seventh Circuit showed a 2.8 percent decline in cases filed in the last statistical year. Can you attribute this to any one factor?

I know of no one factor that resulted in the decline in filed cases in the court of appeals last year. I would like to hope that it was the result of attorneys taking a more realistic look at the merits of the issues before filing the appeals. Over the last several years, the courts in this circuit have been much more willing to award attorneys' fees when a complaint or appeal is frivolous. This may be a factor in the reduction of appeals. The decline may also reflect business taking a closer look at the rising cost of litigation. You may be interested to know that the decline of filings has continued. One possibility is the recognition by lawyers that our district judges' fine reputations make reversals less likely.

"The decline of filings has continued. One possibility is the recognition by lawyers that our district judges' fine reputations make reversals less likely."

Have you reduced the caseload of new case filings through any special management techniques?

No, there is nothing special. There are procedures for expediting appeals, but the goal of this is not to dissuade appellants, but to minimize procedural problems and eliminate appeals in which there is no appellate jurisdiction. Preargument sessions with lawyers sometimes produce settlements.

Does your court have a preargument settlement procedure?

The court does have docketing conferences with attorneys, as has been reported in a Federal Judicial Center publication. However, the purpose of those conferences does not include forcing settlement. It is an opportunity to ask the attorneys if they have discussed settlement and if settling is possible. The court has not taken an active role in dissuading appellants from taking their appeals.

Docketing conferences were initiated by then-chief judge Luther M. Swygert, who brought many innovations to the court during his tenure. Now Senior Staff Attorney Ramsay L. Klaff conducts them as they are needed. They occur mostly by request, although Mrs. Klaff suggests them infrequently.

Your court currently has 11 authorized judgeships, and three senior judges continue to serve. Is this enough judge power?

The court currently has only eight active judges and three senior judges. When our three vacancies are filled, our complement should be sufficient to handle the caseload at its present level. I have been concerned for a number of years that increases in the number of law clerks and staff attorneys and in unpublished orders may be viewed as diminishing the judges' input into the decision-making process. Although we need to be concerned about efficient management practices, there must not be an undue delegation of judicial authority and shortcutting of justice.

Some appellate courts are leaning more and more toward the issuance of relatively brief unpublished opinions. Does the Seventh do this?

Although the court of appeals decides cases by unpublished orders, the court does not decide appeals without giving its reasons. The court of appeals has stated that it does not approve of trial judges deciding cases without giving reasons, so it would be inconsistent for the court not to give its reasons. Some of our unpublished orders may be longer than they need to be, since a lengthy recitation of the facts is not necessary and will only be read by the parties. I have discussed this concern with my colleagues. Nevertheless, in order not to proliferate the Federal Reporter [Second], we will continue to use orders when no new principles or conflicts with other circuits are involved.

Some courts use en bancs very sparingly. How do you feel about en banc hearings?

I agree that en bancs should be used only sparingly. The Seventh Circuit

hears about three or four cases a year en banc. The ensuing opinion is difficult for the writing judge because it engenders so many suggestions by the majority judges, requiring many changes before the draft opinion receives approval. In truth, too many cooks spoil the broth.

Has the Seventh Circuit cut back on the time allowed for oral argument, as a timesaving device?

When I came to the court of appeals in 1966, 45 minutes for oral argument was allotted to each side of an appeal. The court then started limiting the oral argument time to a range varying from 10 to 45 minutes per side. Limiting oral argument time is useful since it saves judicial time and does not interfere with the decision making in the case. When judges have questions or want to hear additional oral argument, the panel will allow more than the allotted time to the parties. Although it is easy to give attorneys additional time during oral argument, it is hard to tell them not to use all the time allotted.

How useful is oral argument in deciding a case?

While the majority of cases could be decided without oral argument, it is difficult to determine which cases really need argument for decision. Although oral argument may not be necessary, it is usually helpful in deciding the case. Frequently, the judges have questions about areas of law unanswered by the briefs. Oral argument gives the judges an opportunity to obtain answers to their specific questions. It also allows counsel to hone particular and important points. The Seventh Circuit has been a strong believer in oral argument, and that tradition will continue.

It is important to remember that oral argument is not only helpful in deciding the case, but it is also an element of the appeal that counsel and parties have come to expect. Oral argument demonstrates to counsel that the judges have read the briefs and are familiar with the case. It ensures that parties know their appeal is being decided by well-prepared judges and not by staff. It can determine the outcome in close cases.

Being chief judge of a large metropolitan circuit court of necessity calls for a lot of administrative work. Do you handle this administrative work and also carry a heavy caseload?

I carry the same caseload as all the other active judges. This was also true for my predecessors. We have been able to do that by delegating much of the administrative work to the staff and by the chief judge's willingness to devote more time to his entire workload.

How often does your circuit Judicial Council meet?

The Judicial Council meets about three times a year. However, throughout the year there are many issues that are decided by polling the council via the mail.

As some other circuits have done, the Seventh Circuit and the district courts encompassed in the circuit have adopted local rules for death-penalty cases. What new procedures are now in effect and why were they necessary?

The Seventh Circuit Judicial Council is developing rules for handling habeas corpus cases involving the death penalty in the district courts, as well as appeals in the court of appeals. The procedures will only apply to the states of Illinois and Indiana, for Wisconsin has no death penalty. The rules are being designed to set forth specific procedures so that the cases may be expeditiously decided on the merits. The rules will ensure that all parties are notified and receive copies of all pleadings and that there are no situations in which the courts are unable to act because they do not have the proper information.

"The courts in this circuit have been much more willing to award attorneys' fees when a complaint or appeal is frivolous."

You may be interested to know that I wrote to the chief justices of the Illinois and Indiana supreme courts and asked them if they would consider setting executions during the week as opposed to on a weekend or on Monday in order to minimize weekend communication problems of notifying judges and attorneys. This idea originated with the committee that has been drafting the rules for processing habeas corpus cases involving a person under a sentence of death. The proposal was supported by government attorneys as well as by attorneys who generally represent persons under a sentence of death. Chief Justice Howard Ryan of the Illinois Supreme Court has written to me that Illinois will not set execution dates on Monday so that there will not be a last-minute scramble by attorneys trying to file pleadings over the weekend. I am looking forward to a similar response from Indiana.

Do you have a special jury utilization plan in the Seventh?

The Seventh Circuit has no special jury utilization plan. The members of the Judicial Council do closely review the jury utilization statistics and recently asked one of our districts to work to bring down its percentage of jurors who did not serve and were not challenged. Two chief district judges who are members of the council volunteered to go to that district and talk to the judges about the procedures they had utilized in making effective utilization of potential jurors. The district has not reduced its voir dire panels and is considering other policies, such as pooling of jurors among judges to use them more efficiently and with less intrusion on their time.

Did your experience as solicitor general materially help prepare you for your work in the circuit court?

After graduating from law school, my first few years were spent in the U.S. Solicitor General's Office as a young assistant handling cases in the courts of appeals and later in the

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Supreme Court. In subsequent private practice in Chicago, much of my work was on the appellate level. Also, my stint as solicitor general of the United States consisted solely of appellate work. Consequently, when I was appointed to the court of appeals in 1966, the transition was an easy one.

Do you have anything on the very top of a list of things you would like to see changed in the federal court system?

Active judges should be allowed to sit with courts in other circuits in order to learn other methods of handling cases and to increase the collegiality among the courts of the country. There may be a tendency for a judge to look askance at the decisions of another court. If there were more familiarity with the judges of the other circuits, there would be more attention given to the precedent established by the other court. This would go a long way to minimizing conflicts among the circuits. We would also have the benefit of new ideas gleaned from the way things are done in other courts.

As you know, the Seventh Circuit has had a strong tradition of having judges reside in Chicago. Although I cannot presently ask any sitting judge to give up hometown residence, there is merit in making that a requirement of the job for new appointees. It greatly adds to judicial fellowship and strengthens the court's decisions. It also saves the government a substantial amount of money and of course expedites matters before the court.

The Judicial Conference tends to be a policy-making body that reacts to proposals that are developed by the Administrative Office and Federal Judicial Center staff and filtered through the committee structure. The Conference sometimes loses the forest for the trees, since we are called upon to approve very lengthy and detailed regulations without an opportunity to discuss major policy issues, such as whether the courts and not GSA should administer buildings that are entirely or predominantly court facilities and whether Congress, rather than the courts, should resolve certain issues presented to the Conference for action.

The Judicial Conference during my tenure has not done much in the area of supervising and directing the Administrative Office, although that duty is entrusted to the Conference by 28 U.S.C. § 604(a). Decisions affecting the courts are often made by the Administrative Office with the courts and the Judicial Conference having little impact on the decisions. The development of the automation plan was a fine exception where the courts and the Conference have been informed and consulted. I am concerned with the development of detailed bureaucratic rules, developed nationally, which may hamper independent operations of the courts. Highly detailed regulations seem to be inconsistent with decentralized court operations overseen by the circuit councils.

I would like to see the Federal Judicial Center develop some optimum range of cases that the average circuit, district, and bankruptcy judge should be able to handle during the year, while giving each case the attention it deserves. Of course it is difficult to set a numerical range of cases while at the same time considering the quality of justice. However, it should be done if the judicial councils are to determine intelligently the number of judges needed to decide federal litigation in a timely manner. ■

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

Administrative Office of the United States Courts. *Report on Applications for Delays of Notice and Customer Challenges Under Provisions of the Right to Financial Privacy Act of 1978 for Calendar Year 1984.* 1985.

Administrative Office of the United States Courts. *Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications.* 1985.

Christensen, Sherman D. "The Next Step: A Jurisprudence of Legal Advocacy?" 1984 *Utah Law Review* 671.

Ginsburg, Ruth Bader. "Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*." 63 *North Carolina Law Review* 375 (1985).

Goldberg, Arthur D. "Managing the Supreme Court's Workload." 11 *Hastings Constitutional Law Quarterly* 353 (1984).

Jacoubovitch, M.-Daniel. "Federal Court System Judges UNIX a Success." *Today's Office*, May 1985, p. 58.

Kaufman, Irving R. "The Anatomy of Decision Making." 53 *Fordham Law Review* 1 (1984).

√Rehnquist, William H. "The Lawyer Statesman in American History." Address to the Federalist Society, University of Chicago Law School, May 6, 1985.

Solomon, Rayman L. "The Politics of Appointments and the Federal Courts' Role in Regulating America: U.S. Courts of Appeals Judgeships from T.R. to F.D.R." 1984 *American Bar Foundation Research Journal* 285.

Wald, Patricia M. "Thoughts on Decision Making." 87 *West Virginia Law Review* 1 (1984).

Weinstein, Jack B. "Equality and the Law: Social Security Disability Cases in the Federal Courts." 35 *Syracuse Law Review* 897 (1984).

Wilkey, Malcolm R. "Transnational Litigation—Part II: Perspectives from the U.S. and Abroad: United States of America." 18 *The International Lawyer* 779 (1984).

Chief Justice Hosts Eight Austrian Judges at Supreme Court

Chief Justice Warren E. Burger hosted eight visiting judges from Austria at the Supreme Court in April.

The group was led by Dr. Ludwig Adamovich, president of the Supreme Court of Austria, the equivalent of the U.S. Chief Justice.

The Austrian visitors' day at the Court finished with a reception in their honor attended by more than 80 people, including the Austrian ambassador to the United States and the chief judges of the federal courts located in Washington. The Chief Justice presented Dr. Adamovich with replicas of the inkwell and quill pen used to sign the Constitution.

Earlier, the Austrian visitors heard an oral argument in the courtroom, and learned about the court's operations from several employees, including Cyril Donnelly (budgeting), Wilma Grant (opinion printing), Penny Hazelton (library), and Mark Cannon and Douglas McFarland (general administration). They also heard Acting Director Joseph Spaniol describe the workings of the Administrative Office of the U.S. Courts and Director A. Leo Levin describe the functions of the Center.

The trip, which was funded by the judges themselves, also included visits to New York City, New Orleans, and Salt Lake City ■

VICTIMS, from page 3

As part of that legislation, $65 million to $70 million will be made available to states that have victim compensation programs. So far, 40 states and the District of Columbia have made provisions for such restitution.

The Rights of Crime Victims includes—

- Information on how to file a claim in one of the 40 states that have victim-assistance provisions.
- A survey of the relevant statutes in the 22 states that have so-called "Son of Sam" laws, which allow a victim to share in profits a convict might make on the sale of the story of the crime that involved the victim.
- An analysis of victims' bills of rights passed by 24 states. ■

New Tapes Available Through Center's Media Library

The Center's Media Library has acquired several audiotapes and videotapes that are available to judicial system personnel. They include—

- **In Search of Excellence** (VG-041), based on the best-selling book by the same name. The tape reviews eight management principles said to promote organizational excellence.
- **The One-Minute Manager** (VG-035), a videotape based on the best-selling book of the same name, and **Putting the One-Minute Manager to Work** (VG-036), a sequel.
- **Leadership for Women** (AG-0050), a self-study audiotape package designed to help women develop leadership skills, overcome career obstacles, and prepare for promotion.
- **Introduction to Lotus 1-2-3** (VG-040), a videotape on the use of Lotus 1-2-3 software. It is useful only to those with that software program, and with an IBM PC, PC-AT, PC-XT, or IBM-compatible computer.
- **IBM PC: A Beginner's Guide to the Personal Computer** (VG-037), which is more useful to those who have an IBM personal computer than to those contemplating such an acquisition.
- **The Video Computer Primer** (VG-038), a nontechnical primer on microcomputers.
- **To Have and To Hold** (VPO-027), a videotape on how both abusers and victims can deal with spouse battering.

Requests for these tapes should be sent to Information Services, 1520 H St., N.W., Washington, DC 20005, specifying the number of the tape wanted. Videotape requests should also specify whether the ½-inch VHS format or the ¾-inch U-Matic format is needed. ■

Video Program on Discovery Abuse Offered by FJC

A two-part video program, "Remedying Discovery Abuse in the Federal Courts: Perspectives of the Bench and Bar," is available from the Center's Media Library. Part 1 deals with "Discovery Problems and Effective Case Management" and part 2 with "Incentives and Sanctions." Each part is 50 minutes running time.

The program presents highlights from a two-day workshop on discovery and its abuse, convened in late 1983 by the Chief Justice as chairman of the Center's Board. Workshop participants included federal district judges, litigators, and law professors. The participants expressed a wide variety of views on the underlying causes of discovery abuse and discussed ways of dealing with the problems that exist. The differing perspectives of the participants led to a lively and productive exchange of ideas. The program is designed for use at gatherings of judges, as part of a joint bench-bar educational program, or by individual viewers.

To order the program, write to the Center's Media Library, 1520 H St., N.W., Washington, DC 20005, specifying the program's catalog number (VJ-069) and the VCR format (¾" U-Matic or ½" VHS). The program is also available on audiocassettes (AJ-0690) with major speakers identified. Include a self-addressed, gummed mailing label, preferably franked. ■

Position Available

Circuit Executive, U.S. Court of Appeals for the District of Columbia Circuit. Salary up to $68,700, depending on qualifications. See 28 U.S.C. §332(e) and (f) for special qualifications and general functions. Required are undergraduate degree and extensive successful executive experience requiring application of full range of management principles and techniques. Degree in law or graduate degree in management/administration highly desirable. Position available Aug. 1. Send application by June 30 to Judge Abner J. Mikva, U.S. Court of Appeals, U.S. Courthouse, Washington, DC 20001.

CALENDAR

June 3-5 Workshop for Appellate Court Case Management
June 4-5 Judicial Conference Advisory Committee on Civil Rules
June 5-7 Pretrial Services Officer Training
June 6-7 Judicial Conference Subcommittee on Supporting Personnel
June 6-7 Judicial Conference Advisory Committee on Criminal Rules
June 9-14 Special Summer Program for Judges
June 10-11 Judicial Conference Standing Committee on Rules of Practice and Procedure
June 13-14 Judicial Conference Committee on the Judicial Branch
June 17-18 Judicial Conference Subcommittee on Judicial Statistics
June 17-18 Judicial Conference Subcommittee on Federal Jurisdiction
June 17-18 Judicial Conference Subcommittee on Federal-State Relations
June 17-19 Workshop for Juror Utilization and Management
June 19-21 Judicial Conference Committee on Administration of the Bankruptcy System
June 19-21 Seminar for Magistrates of the First, Second, Third, Fourth, and D.C. Circuits
June 20-21 Judicial Conference Ad Hoc Committee on Inns of Court
June 24-26 Judicial Conference Committee to Implement the Criminal Justice Act
June 24-26 Workshop for Fiscal Clerks of Circuit, District, and Bankruptcy Courts
June 27-29 Fourth Circuit Judicial Conference
July 1-2 Judicial Conference Committee on Administration of the Magistrates System
July 1-2 Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice
July 1-3 Judicial Conference Committee on Judicial Ethics

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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THE THIRD BRANCH

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Supreme Court Names Spaniol as Clerk, Margeton as Librarian

Stephen G. Margeton, chief librarian at one of Washington's largest law firms, has been named librarian of the Supreme Court.

Mr. Margeton will replace Roger Jacobs, who left to become librarian at the University of Notre Dame Law School.

Mr. Margeton, 40, is the chief librarian at Steptoe & Johnson, where he has been for 13 years. He previously served as an assistant reference librarian in the law reading room of the Library of Congress.

Stephen G. Margeton

Chief Justice Warren E. Burger described Mr. Margeton as "well respected by librarians and lawyers alike," and said that "the Court is fortunate to be gaining his leadership and experience."

Mr. Margeton was selected by the Court after a national search. His experience in meeting the research needs of time-pressed lawyers is expected to help him provide assistance to the Justices. He is moving to what he called "a library that's been very well run," and

See MARGETON, page 2

Joseph F. Spaniol, Jr., deputy director of the Administrative Office for the last seven years, has been appointed clerk of the Supreme Court. He will replace Alexander Stevas, who will retire July 31.

Chief Justice Warren E. Burger, who announced the selection on behalf of the Court, said, "I am convinced that Joe Spaniol has the experience, training, and personal qualities to do an outstanding job" as the Court's clerk. "We are delighted he is joining us at the Court."

Joseph F. Spaniol, Jr.

The clerk is one of the Supreme Court's four statutory officers and one of its most prestigious staff members.

"Although service in the Administrative Office has been very rewarding," Mr. Spaniol said, "I look forward to this new challenge and to the opportunity to continue to work within the Federal Judiciary." He will assume his new position on Aug. 1.

The Chief Justice noted that Mr. Spaniol "has had a long and fruitful career with the Administrative Office," a career that began in 1951. Among the positions Mr.

See SPANIOL, page 2

Bureau of Prisons Director Carlson Discusses Crime, Sentencing, Punishment

Norman Carlson has been director of the Bureau of Prisons for 15 years. Born in Iowa, he graduated from Gustavus Adolphus College in Minnesota in 1955 and received a master's degree from the State University of Iowa in 1957. He began his career in penology as a parole officer at Leavenworth, Kan., in 1957 and held a series of positions at the Bureau of Prisons in Washington, including four years as executive assistant to former director James Bennett, from 1960 until his appointment as director in 1970. In a wide-ranging Third Branch *interview, Mr. Carlson discusses expansion of the federal prison system, judicial interest in prison conditions, theories of punishment, employment behind bars, and determinate sentencing.*

There has been great growth in prison populations—in both state and federal institutions. What has caused this, other than an increase in the general population?

The federal prison population has expanded by 40 percent, from 24,000 to over 34,000 during the past five years. There are several factors involved, the first being the increased resources in the federal criminal justice system—additional FBI and DEA agents, more U.S. attorneys, and of course an increase in the number of U.S. district court judges. The capacity of the system has increased, and we, at the end of the system, are experiencing the results of that expansion. Another factor is a shift in public attitude about what should be done to those who commit crimes. Public sentiment has changed in recent years, and I think that has been reflected in sentencing policy as well as by the U.S. Parole Commission.

How many institutions do you have in the federal prison system now, and what plans, if any, do you have for expansion?

We have expanded, and we now have 45 institutions. We have added 2,000 new beds to our capacity during the past year. The newest institution was opened May 17 in Phoenix, Ariz. We are aware of the demands placed on us and are attempting to be responsive.

Can you give more detail about your plans for dealing with the problems of overcrowding?

We are actually involved in what I

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SPANIOL, from page 1

Spaniol has held at the AO were Administrative Attorney (the predecessor to the General Counsel's post); Chief of the Division of Procedural Studies and Statistics; and Assistant Director for Legal Affairs. He was named by the Supreme Court to be Deputy Director of the Administrative Office in 1977 and has been Acting Director since William E. Foley retired as director earlier this year.

Mr. Spaniol, 59, has had extensive involvement with the activities of the Judicial Conference of the United States. During his tenure as AO deputy director, he also served as secretary to the Judicial Conference and is currently secretary to eight of the conference's committees. Mr. Spaniol has attended every Judicial Conference session for the past 28 years, and serves as the liaison between the Judicial Conference and the public, briefing reporters on actions taken at the Conference's twice-a-year meetings.

Mr. Spaniol has also played a role in many innovations in the federal court system, including the first seminars for newly appointed district judges and the establishment of the federal magistrates system.

He holds a law degree from Case Western Reserve University and an LL.M. degree from Georgetown University, and has completed the Harvard University Senior Managers in Government program.

Mr. Spaniol and his wife, Viola, have eight children. ■

Chief Judge Walter T. McGovern, l., (W.D. Wash.), chairman of the Court Administration Committee's Subcommittee on Supporting Personnel, held a meeting of the subcommittee at the Federal Judicial Center recently. With him in the Dolley Madison House during the discussions are, l. to r., Judge Daniel H. Huyett 3rd (E.D. Pa.); Judge Thomas G. Gee (5th Cir.); and R. Glenn Johnson, chief of the Personnel Division of the Administrative Office.

MARGETON, from page 1

will assume his new post on July 15.

Mr. Margeton is experienced in library automation, as well as research, and has held several posts in the American Association of Law Libraries. He has taught legal research at George Mason University School of Law.

At the Library of Congress, Mr. Margeton worked in the law reading room, responding to requests from members of Congress, employees of federal agencies, and the public. He also worked in the Library of Congress's office in the Capitol, and was involved in researching legislative histories at the library. At Steptoe & Johnson, he supervised formation of a unit whose sole responsibility is to track legislative histories. Drawing a contrast between an academic library such as the Library of Congress and a private-sector library, Mr. Margeton said he expected the Supreme Court's library to be "more like academia,but the seriousness and cutting-edge legal nature of the [Justices'] requests will be more like the pressure of a private firm."

He noted that he will probably be torn by a dilemma facing most of those in his profession: "Ideally, all law librarians like to straddle the fence between manager and researcher. I hope I can do both."

Mr. Margeton is a graduate of the National Law Center of George Washington University and holds a master of library science degree from Catholic University of America.

He is married to Margaret Salter Margeton, who is also a librarian. They have two children. ■

THE THIRD BRANCH

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center. Joseph F. Spaniol, Jr., Acting Director, Administrative Office, U.S. Courts.

Judicial Panel, Practitioners Exchange Views On Settlement at Federal Circuit Conference

Judges and attorneys exchanged views on frivolous appeals, unjustified delays in litigation, and settlement methods at the Court of Appeals for the Federal Circuit's recent annual judicial conference.

Practitioners presented statements on those subjects, and Chief Judge Howard T. Markey of the Federal Circuit, Chief Judge Edward D. Re of the U.S. Court of International Trade, and Chief Judge Alex Kozinski of the U.S. Claims Court commented on their remarks. The three judges then answered questions.

More than 1,400 people, including Chief Justice Warren E. Burger, the circuit justice for the Federal Circuit, attended the May 17 conference.

Rep. Henry J. Hyde (R-Ill.) addressed the conference's luncheon session. ■

Insurance Policies for Resigned, Retired, and Senior Judges Explained

Many judges have recently raised questions about the extent of their life insurance coverage under the Federal Employees' Group Life Insurance program, known as FEGLI, when they retire from office or take senior status.

The following series of questions and answers provides details about this insurance. The answers are based upon both the statutory provisions governing FEGLI (chapter 87 of title 5, U.S. Code) and the regulations of the Office of Personnel Management, as interpreted by the Administrative Office's Office of the General Counsel.

Q. Are recent complaints that judges will lose their FEGLI coverage when they retire true?

A. No. If they retire from regular active judicial service to senior status under 28 U.S.C. §§ 371(b) or 372(a), such judges continue to be fully covered for life, as long as they continue in that status.

Q. If a judge takes senior status, is there a minimum of judicial activity he or she must undertake to retain full insurance coverage?

A. No. By statute, a judge who meets the age and length-of-service qualifications for retirement can take senior status and thereafter perform "such judicial duties as he is willing and able to undertake." He or she continues to draw the judicial salary. Thus, a judge who opts to take senior status, but no longer hears cases, retains the judicial office and the right to continue full insurance coverage, even though he or she is totally inactive. Such a judge still holds a judicial commission, however, and therefore remains bound by the Code of Judicial Conduct and the statutory prohibition against practicing law.

Q. What happens to the insurance coverage of judges who resign?

A. New statutory language, adopted as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, eliminates the word "resign" from the relevant U.S. Code provisions. Under the recently amended provisions of 28 U.S.C. § 371(a), a judge who leaves the bench at age 65, having attained an age and years of service totaling 80, can opt to "retire from [judicial] office" rather than take senior status. That is the equivalent of a resignation on salary under the old language. A judge who opts for such a resignation/retirement receives an annuity that, by statute, is equivalent to the judicial salary at the time of leaving the bench. That amount is frozen and does not rise with future judicial pay increases. The retiree is legally free to practice law. According to OPM, life insurance coverage begins to shrink when a judge chooses this type of retirement. This is the same approach that previously applied to judges who resigned on salary under the old language of § 371(a).

Q. Who decided optional coverage should begin to terminate at retirement for judges who don't take senior status?

A. The Office of Personnel Management, over vigorous objection from the Administrative Office.

Q. Can OPM do this?

A. OPM is authorized by statute to prescribe regulations for federal life insurance programs. OPM ruled that notwithstanding an amendment to the definitional section of the FEGLI statute made by last year's bankruptcy legislation, the new category of retired judges—those who resign on a fixed annuity—are no longer active employees and are thus ineligible for full, continuing FEGLI participation. When OPM made its regulatory interpretation known, the Administrative Office sharply disagreed and requested a ruling that, based upon the new statutory language, would treat judges who retired from office the same for insurance purposes as those who retired from active service to senior status. OPM remained firm in its views, however, and two judges who retired under 28 U.S.C. § 371(a) have now filed suits contesting OPM's position. Both suits are pending at this time, and are on expedited schedules for the briefing of cross-motions for summary judgment.

Q. How many people are affected by OPM's interpretation?

A. According to the AO, only two judges eligible for retirement have elected to retire from office since the enactment of the Bankruptcy Amendments and Federal Judgeship Act. These are the plaintiffs in the two lawsuits.

Q. How does insurance coverage for retired judges shrink?

A. In the same manner as for other retired federal employees. Retired judges can opt to keep 25, 50, or 100 percent of their basic insurance for as long as they want. One hundred percent of basic insurance coverage is equal to approximately a year's salary. If only 25 percent of basic insurance is retained, it continues without cost to the judge. If 50 or 100 percent of this coverage is kept, the judge does have to pay, and the premium rates are higher than during the judge's active

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call a multifaceted approach to the problem of overcrowding. We are not concentrating solely on building new institutions. There is simply no way we could build fast enough or obtain enough money from the Congress to solve the problem through construction. We are trying to approach the problem on a systematic basis. First, as I have indicated, we are building several new institutions such as the one recently opened in Phoenix. We are beginning a new high-rise metropolitan detention center in Los Angeles. Other institutions are in the planning process—in the northeast, in the southeast, and in the northwest.

We are also adding housing units wherever existing institutions can accommodate additional living space for inmates.

Thirdly, we are attempting to acquire surplus facilities. We opened a new camp on a former Air Force base in Duluth, Minn., last summer. The bureau purchased the former state mental hospital in Rochester, Minn., and a closed seminary in Loretto, Pa., all of which have been converted into correctional institutions.

Finally, we have expanded the number of inmates who are transferred to community treatment centers at the end of their sentences. On any given day, we have 3,000 inmates who are in a halfway house rather than in prison. If we didn't have them in halfway houses, we'd have 3,000 more inmates to worry about.

You are good enough to come down and give your time to talk to the new district judges. Do they have special questions that they want to ask of you then, or when they visit the prisons?

Yes, they do. I believe it is very important that we have a dialogue with the judges because we are responsible for carrying out the orders of the courts. I think judges should know as much as possible about the federal prison system—our strengths as well as our limitations.

"I believe it is very important that we have a dialogue with the judges."

Do many of the judges come back to revisit?

There are a number of federal judges who want to know where we send the individuals they commit to custody. Some judges have visited every federal institution in their region because they want to know more about what happens once they impose sentence. It's great that a judge has that much interest in the system—that he or she would take time from an obviously very busy schedule to find out firsthand what does happen to a defendant once sentence is imposed.

Do judges ask about specific prisoners?

Some judges want to talk to prisoners they sentenced in order to get their reaction. I think that's a very laudable step on the part of the federal judiciary.

The structure of the sentencing institutes has been changed over the years. What happens to cause changes in how judges, especially district judges, are oriented to sentencing and to their relationship to the bureau?

I think the changes have been a distinct improvement. There is more discussion now by the judges themselves and less lecture from experts. I believe there is a good balance today in the programs. I recall when I first attended a sentencing institute in Highland Park, Ill., when Jim Bennett was director of the Bureau of Prisons. At that time the program was virtually all lecture. The new format that has been developed by the Federal Judicial Center over the past several years involves a mix of both lecture and discussion groups.

Privately run prisons have been built in some areas. At least one of your institutions is under contract with one of these private contractors, isn't it?

We have a small youth facility for inmates in San Francisco that is operated under contract by a private firm. Thus far, we have been generally pleased with the program. I am not necessarily opposed to privatization of prisons, but believe there are a number of questions and concerns that need to be carefully examined. Further research is clearly needed in this area.

Some in correctional work oppose privatization of institutions though?

The control and liability issues are of concern. Also the question is raised concerning the government abdicating its responsibility when it turns over the important criminal justice sanction to the private sector. My guess is that private firms will probably never run maximum-security institutions. On the other hand, they have done well in running halfway houses, community programs, and specialized institutions. I think the idea deserves careful analysis, and that's what we in the Bureau of Prisons are planning to do.

And is security one of your main concerns?

Yes, it is. That is why I have questions concerning the private sector running secure institutions. They do a good job in community-based programs and probably minimum-security institutions.

"The idea [of abolishing parole] is truth in sentencing."

Penologists and sociologists have differing views on jailing convicted offenders, but generally have in mind retribution, general deterrence, rehabilitation, or incapacitation. Each of these has been in vogue at different times, and each requires varying approaches to penology. Does the federal prison system follow a fixed

policy or theory? How much has this changed over the years?

We in the Bureau of Prisons have discarded the notion that we have the ability to rehabilitate inmates. Twenty years ago we thought that if we had sufficient resources we could somehow change inmates' behavior while they were in prison. Experience and research in this country and throughout the world clearly indicate that's impossible. We can, however, provide opportunities for inmates to change. That is an important difference. While people are incarcerated we have the responsibility to provide them with opportunities in education, vocational training, work, religious activities, etc., so that those who are motivated can use their time constructively.

The correctional institution at Butner, N.C., continues with the Morris model of incarceration, with fixed release dates, special programs building up to release, and, sometimes, assignment to a halfway house, supervised by one familiar with the prisoner's background. Has this plan shown a record of success sufficient to bring about an expansion and acceptance of Norval Morris's concepts of prison reform?

We adopted the ideas suggested by Prof. Norval Morris of the University of Chicago Law School in his book *The Future of Imprisonment.*

The research program at Butner was devoted to the long-term recidivistic, assaultive disorders. It has a difficult population.

Butner is one of our newer institutions. The institution was opened in 1976 and has served as a model for prison construction throughout the country. The program has a psychiatric component where we have inmates who are sent for study and observation. The other component is a research program that attempts to find new and better ways of dealing with the problems of prison management.

"We have discarded the notion that we have the ability to rehabilitate inmates."

When a new administration comes in, do you have to adjust to its policy and theory?

No, I can say that I've been director for over 15 years, and the bureau has never changed philosophy or policy because of a change in administration. I believe that our policies and philosophies are in tune with the thinking of most Americans.

Norman Carlson

How well has the concept of giving all or most federal inmates a job within the prison—the Chief Justice's concept of "factories with fences"—worked?

I totally endorse the Chief Justice's advocacy. One of the important things the Chief Justice has done is to serve as an advocate for correctional reform and improvement. There are very few leaders concerned with the need to improve our nation's prisons and jails. Politicians generally don't because there are no votes in this area, or it costs too much money. When a man with the stature of the Chief Justice speaks out on the subject, people listen. It's been a great help to us, with the Congress and others in the budgetary process.

Have you expanded Federal Prison Industries' services recently?

As you know, Federal Prison Industries is a totally self-sustaining corporation that sells goods and services to federal agencies, including the federal courts. We do much of the printing for the federal courts because of the Chief Justice's personal interest and support. We employ nearly 10,000 inmates, on a 40-hour-a-week basis, working in Federal Prison Industries. Most important, it reduces idleness.

Have you been in contact with the National Center for Innovation in Corrections recently started at George Washington University?

Yes, we are actively involved. I went to Sweden and Denmark with the Chief Justice three years ago. That was the origin of the center at George Washington University. I think it's a most worthwhile endeavor.

Can you make arrangements with people in business to employ prisoners?

We certainly do attempt to do so. We have advisory councils that meet in our institutions and assist in developing programs. I would like to mention that Federal Prison Industries now has an IBM executive on loan to the government. It's an excellent example of how corporations can provide support and assistance.

Of all of the countries that you've visited—and you have been in many—where did you find the most exemplary prison system?

"I believe that our policies and philosophies are in tune with the thinking of most Americans."

I would have to say the Scandinavian countries that we visited—Sweden and Denmark. Their prisons are small and highly staffed. They are professionally managed and are the most humane that I have seen anywhere in the world.

Are there a lot of small institutions, or is the percentage of inmates

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a lot lower in those countries?

There is a lower percentage of inmates because there is less crime. They certainly don't have the problems we have in our country. Both Sweden and Denmark consider 50 inmates to be a major institution. The 200 inmates we saw in one institution occupied what is considered to be an extremely large institution.

What are the recidivism rates in Scandinavian countries?

Unfortunately, their recidivism rates are high, if not higher than, we find in this country. They have not solved the problem of recidivism any better than we have.

When the Comprehensive Crime Control Act of 1984 is fully implemented, a prisoner's sentence will not be subject to parole as we now know it, and will only be able to be reduced a minimal amount by "good time." Do you feel that's a good change?

I do. I realize it is controversial, but in effect, the idea is "truth in sentencing."

One of the other goals of that legislation is to reduce the disparities among people who are serving time for the same crime. Will that ease prisoner complaints of unfair treatment?

> **"We are not building institutions like Alcatraz, Leavenworth, or Atlanta."**

Yes, I think it will serve to provide a more rational basis for imposing sentences. We now have similar inmates from one district who receive the maximum sentence for the offense and one from the next district who receives a much shorter sentence for the same offense. I think the Sentencing Commission will provide a more uniform additional basis on which sentences are determined.

Is that going to mean that the sentence will fit the crime and not the criminal?

I believe it will fit both. The legislative history is clear. The sentences are to consider the offender as well as the offense.

One more question on the crime control act: Is it making an impact yet on the federal institutions?

It has already had an impact, primarily in pretrial confinement for offenders who previously would have been released on bond or on recognizance. That has served to increase our population.

At all the institutions or primarily at Springfield, Ill.?

Springfield, and more recently Rochester, Minn. I'd like to mention Rochester because it's an institution judges will be interested in. We acquired the former state mental hospital and are now making some minor modifications to the buildings. It is a comparatively new, modern hospital less than 20 years old. The institution will have a surgical as well as a medical component and a psychiatric program. We have already recruited several top-notch psychiatrists from the Rochester area who are now working at the institution.

Do you expect that as a result of the changing approach to insanity reflected in the 1984 legislation you will house fewer people who are incompetent to stand trial?

No, I don't believe so, because we will be housing some offenders who are found to be both dangerous and incompetent to stand trial. Previously those found incompetent were turned over to state authorities for hospitalization. Because of the new statute, we will be seeing more offenders in confinement who are found to be incompetent.

Would you like to talk about the National Institute of Corrections?

I would certainly like to discuss the National Institute of Corrections. It is a program the Chief Justice is personally responsible for. As you may recall, there was a national conference on corrections in Williamsburg, Va., in 1972. During the conference, the Chief Justice made a speech in which he suggested that the federal government develop a program similar to the FBI Academy in order to assist state and local correctional officials.

From that speech, which several individuals picked up on, the National Institute of Corrections was developed. While located here in the

Norman Carlson

Bureau of Prisons, it is an autonomous organization. While the institute is small—41 full-time staff and a budget of 12 million dollars—I think it does play an important role in attempting to improve our nation's prisons and jails.

Does the institute direct its funds at one specific purpose?

Training is the primary function—training of probation as well as prison and jail personnel.

The escape of Bernard Welch from the Federal Metropolitan Correctional Center in Chicago has received national attention. What might be done to make the bureau's institutions more escape-proof?

There were a series of breakdowns. Welch was initially sent to the maximum-security penitentiary at Marion, Ill.—where he belonged. While there, he cooperated with the government by providing useful information. As a result, we were asked to

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CARLSON, from page 6
move him out of Marion for protection because the information he provided made him vulnerable to attack by other inmates. He was placed in the Chicago Metropolitan Correctional Center, from which he escaped.

There is no such thing as an escape-proof prison. I think that's a myth. Welch proved that certainly Chicago was not escape-proof.

To sum up, you have been in corrections work for many years. What do you view as the most progressive steps that have been taken over the past decade or so?

The professionalism of our staff. Today over half of the new correctional officers have college degrees. Staff, I think, are much better equipped to work in corrections than they were 28 years ago, when I first started. I am also proud of the staff training we provide. We now have a staff training center in Glynco, Ga., which trains all employees.

The second major improvement, I think, is the design of new institutions. We are not building institutions like Alcatraz, Leavenworth, or Atlanta. We are building institutions like Butner and Phoenix that are modern, safe, and humane. Above all, they cost far less to construct than traditional prisons. They cost less because we don't use the bars and the grilles that we have in the old penitentiaries. ■

PERSONNEL

Nominations

Alex Kozinski, U.S. Circuit Judge, 9th Cir., June 5

Robert C. Broomfield, U.S. District Judge, D. Ariz., May 15

Claude M. Hilton, U.S. District Judge, E.D. Va., May 15

Donald E. Walter, U.S. District Judge, W.D. La., May 15

Wayne E. Alley, U.S. District Judge, W.D. Okla., June 3

James D. Todd, U.S. District Judge, W.D. Tenn., June 5

Louis L. Stanton, U.S. District Judge, S.D.N.Y., June 12

Confirmations

John P. Moore, U.S. Circuit Judge, 10th Cir., May 3

Kenneth F. Ripple, U.S. Circuit Judge, 7th Cir., May 3

George F. Gunn, Jr., U.S. District Judge, E.D. Mo., May 3

Sam B. Hall, Jr., U.S. District Judge, E.D. Tex., May 3

Joseph H. Rodriguez, U.S. District Judge, D.N.J., May 3

Appointments

Carol Los Mansmann, U.S. Circuit Judge, 3rd Cir., Apr. 22

John P. Moore, U.S. Circuit Judge, 10th Cir., May 14

Thomas J. Aquilino, Jr., Judge, U.S. Court of International Trade, May 2

Alice M. Batchelder, U.S. District Judge, N.D. Ohio, Apr. 15

Carolyn R. Dimmick, U.S. District Judge, W.D. Wash., Apr. 17

R. Allan Edgar, U.S. District Judge, E.D. Tenn., Apr. 29

Herman J. Weber, U.S. District Judge, S.D. Ohio, Apr. 30

James F. Holderman, Jr., U.S. District Judge, N.D. Ill., May 1

George La Plata, U.S. District Judge, E.D. Mich., May 1

Senior Status

Thomas A. Flannery, U.S. District Judge, D.D.C., May 10

Lee P. Gagliardi, U.S. District Judge, S.D.N.Y., July 17

Deaths

Sarah T. Hughes, U.S. District Judge, N.D. Tex., Apr. 23

William G. East, U.S. District Judge, D. Or., Apr. 27

Albert G. Schatz, U.S. District Judge, D. Neb., Apr. 30

George E. Cire, U.S. District Judge, S.D. Tex., May 5

Correction

John P. Moore was incorrectly identified last month as having been nominated to the D.C. Circuit, not the 10th Circuit.

CALENDAR

July 9-12 Orientation for New Probation Officers

July 15-16 Judicial Conference Committee on the Administration of the Criminal Law

July 16-19 Orientation for New Probation Officers

July 18-19 Judicial Conference Committee on the Administration of the Probation System

July 23-26 Eighth Circuit Judicial Conference

July 29-30 Judicial Conference Committee on the Operation of the Jury System

July 30-31 Judicial Conference Committee on Court Administration

Aug. 7-9 Seminar for Magistrates of the Sixth, Seventh, and Eighth Circuits

Positions Available

Staff Assistant to the Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit. Salary to $36,327. Serves as office manager for administration and internal supervision of circuit executive's office. Assists with budget, personnel, office space, publications, conferences, security, and court planning. Application and resume or SF-171 should be sent by July 15 to Norman Zoller, Circuit Executive, U.S. Court of Appeals, 50 Spring St., S.W., Atlanta, GA 30303-3147.

* * *

Clerk, U.S. Bankruptcy Court, District of Alaska. Salary $44,430 plus $11,107 cost-of-living allowance. Responsible for managing the administrative activities of the clerk's office, including consultation on court policies and supervision of personnel, budget, case processing, service of process, and record keeping. Requirements include 10 years' administrative experience, including 3 years of management responsibility. Law practice may be substituted for either administrative or managerial experience; college-level education may be substituted for general administrative experience, with each year counting for 9 months' experience. A degree in public, business, or judicial administration may be substituted for another year's general experience, and a law degree for 2 years' general experience. Send resume indicating position applied for to Hon. J. Douglas Williams II, Bankruptcy Judge, 701 C St., Box 47, Anchorage, AK 99513.

EQUAL OPPORTUNITY EMPLOYERS

INSURE, from page 3

service because the government's contribution to the cost of the insurance ceases. At retirement, judges begin to lose any optional FEGLI coverage they had when they were active. FEGLI's option A, which usually provides $10,000 in coverage in addition to the basic coverage, shrinks 2 percent a month after resignation until it reaches $2,500, where it stays. Option B, which provides insurance up to five times the annual salary, declines 2 percent a month and ends completely 50 months after resignation. Option C, family coverage, is reduced in the same way as option B. There is no charge for optional coverage while it is being reduced.

Q. Doesn't a life insurance policy usually build up value? What happens to that value for judges who retire?

A. Whole-life insurance builds up value. Term-life insurance, which is basically the kind offered by FEGLI, doesn't have any surrender, trade-in, or residual value. Term life costs much less than whole life for that reason. Insurance experts say that people who want to make sure they will leave something to their survivors should consider whole-life coverage. People who want to protect young children or ensure that a mortgage will be paid off, by contrast, should consider term insurance because, as they approach retirement age, their reasons for having life insurance become less urgent and they can simply let the policy lapse.

Q. Can a retiring judge convert the policy to one paid for individually, as opposed to a FEGLI group policy?

A. Yes, with some limitations, according to OPM. Employees who are separated from federal service have the option of selecting alternate coverage, up to the level of FEGLI's basic, option A, and option B coverage from a private carrier on an approved OPM list. The replacement policy isn't term insurance, though, and will almost certainly be more expensive than FEGLI's group term rates.

Q. Is it necessary to have a physical exam to get that insurance?

A. It is not.

Q. What happens to the insurance benefits of disabled judges?

A. A judge who is disabled becomes a senior judge and is entitled to the same insurance benefits as other senior judges.

Q. What happens to judges who resign before age 65?

A. Such judges come under the general rules for federal employees who resign; that is, they lose all their coverages. There is no provision permitting continuation of the basic insurance indefinitely or of the optional coverage for 50 months. A judge who resigns before 65 could, like any other resigning federal employee, convert the term policy—basic and optional—to a private policy that would be nonterm insurance at increased cost. The right to make such a conversion isn't affected by health or medical considerations. ■

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THE THIRD BRANCH

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THE THIRD BRANCH

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L. Ralph Mecham, ARCO Executive, Named Administrative Office Head

Chief Justice Warren E. Burger greets L. Ralph Mecham, the new AO director.

L. Ralph Mecham, Washington representative for federal government relations of the Atlantic Richfield Company, and a former university and corporate vice president and Senate aide, has become the sixth director of the Administrative Office of the U.S. Courts. He was appointed by the Supreme Court on the recommendation of a search committee composed of the Chief Justice and Justices White and Rehnquist.

Mr. Mecham, 57, took office July 15, replacing William E. Foley, who retired earlier this year.

His selection was announced late in June by the Chief Justice, who said, "Ralph Mecham possesses an impressive background of accomplishment in both the private and public sectors. We are pleased to bring him into the Judicial Branch."

Chief Justice Burger noted that Mr. Mecham's "impressive and varied background and personal qualities took him to the top of the list of an outstanding group considered for the post."

Mr. Mecham earned his B.S. degree at the University of Utah and his J.D. degree at George Washington University. In addition, he holds an M.P.A. from Harvard. He was awarded a congressional fellowship to Harvard in 1963 and a graduate fellowship by Harvard in 1965.

Mr. Mecham began his Washington career as an assistant to Senator Wallace Bennett (R-Utah), for whom he worked for 13 years. He served as the senator's administrative assistant and counsel for eight of those years. He later was special assistant to the secretary of commerce for regional economic coordination, as well as cochairman of the Four Corners Regional Economic Development Commission, a presidential appointment. The Commission was a federal–state agency designed to deal with

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Judge Robert L. Taylor Recalls School Integration Cases, Efforts to Reduce Huge Docket Backlog

Judge Robert L. Taylor of the Eastern District of Tennessee has been on the federal trial bench since 1949 and served as the district's chief judge from 1961 to 1969 and from 1982 to 1984.

Judge Taylor graduated from Milligan College and Vanderbilt University, earning a law degree from Yale in 1924. He was engaged in private practice in Johnson City, Tenn., until his appointment to the district court. In a wide-ranging interview, Judge Taylor recalls the problems of being the only federal judge in a large district for many years, his efforts to clear up a docket backlog of five years, his role in some historic desegregation cases, and his involvement in the trials of two former governors, Otto Kerner of Illinois and Marvin Mandel of Maryland.

You come from a very prominent Tennessee family. Your father was governor of Tennessee, wasn't he?

My father served as governor and also as a congressman. He was a Republican. Of course his brother, Uncle Bob, was a Democrat—this state has always been Democratic, except in the last few years. And Bob beat Alf, my father, easily. Then he ran against him again. Twice they ran, brother against brother, one a Democrat and one a Republican.

Well, in that atmosphere, didn't you ever get bitten by the political bug?

No. The only thing I ever ran for was an elector. I was an elector when I voted for Truman as president.

Did you always want to be a judge?

Never thought about being a judge. I had to make a living; I had a wife and children.

Were you in private practice, Judge?

Right, private practice in Johnson City, in a little firm known as Cox, Taylor and Epps. We thought it was a busy firm not only in Johnson City but throughout the state. As general practitioners we handled anything in the United States. Our firm produced two federal judges, myself and William E. Miller, now deceased, who was appointed to the U.S. Court of Appeals for the Sixth Circuit.

See TAYLOR, page 4

L. Ralph Mecham

MECHAM, from page 1

common problems faced by Utah, Arizona, New Mexico, and Colorado, which comprise one-tenth of the land area in the 48 contiguous states.

Between his service to Senator Bennett and his position at the Department of Commerce, Mr. Mecham returned to Utah for four years as vice president of the University of Utah, where, among other duties, he supervised continuing education programs and served as dean. He also taught constitutional law to political science students.

After his work on the Four Corners commission, Mr. Mecham became vice president in charge of federal government relations for The Anaconda Company. He became Washington representative for the Atlantic Richfield Company when it acquired Anaconda, and held that position until accepting the AO directorship.

Mr. Mecham was lured from the private sector to the AO, he said, because he was "looking for a new challenge—something with a sense of mission. There's a lot of good that can be done, and I want to do my part."

Mr. Mecham said that his goals as the AO's chief would be "to build on the good that's been done already—take a fresh approach to it. I'd like to continue to strengthen the reputation the AO already has—to have the AO viewed as an elite corps dedicated to the needs of the judiciary."

Mr. Mecham also stressed that he wants to establish lines of communication with all judges and that he wants them to know that he will always be available. He hopes that, in cooperation with the judges, administrative standards can be developed that are clearly understood.

Mr. Mecham commented that he is now rounding out his government career in the third branch, having already worked in Congress and in the executive branch.

Asked about his feelings about continuing education for judges, Mr. Mecham said, "I wouldn't presume to tell judges what to do, but every human being should keep the intellectual fires stoked some way."

Mr. Mecham stated that an increase in judicial salaries is among his high priorities. Having come from the private sector, he is well aware of the dramatic differences between those salaries and those of the judiciary—and the basic inequity of the latter.

Mr. Mecham and his wife, Barbara, live in the suburbs of Washington. They have five children. ■

Chief Justice Named To Bicentennial Commission

Chief Justice Warren E. Burger has been designated by President Reagan to serve as chairman of the Commission on the Bicentennial of the U.S. Constitution. Persons interested in applying for the staff directorship or other positions with the commission should send appropriate information to Dr. Bradford Wilson, Supreme Court, Washington, DC 20543. ■

Circuit Executives' Role Traced in Center Report

The First Decade of the Circuit Court Executive: An Evaluation, by John W. Macy, Jr., was published by the Center last month. Mr. Macy has served as a member of the Board of Certification since its inception in 1971.

The author reviews the functions performed by circuit executives in the various circuits and describes the extent to which the position has expanded over the past ten years. He also identifies a number of respects in which the potential of the position has yet to be realized. In addition, he offers recommendations that are relevant to extension of the concept of an executive to the larger district courts.

Mr. Macy assesses the selection process that identifies those who are eligible for appointment and offers suggestions for the future development of the role of the selecting body, the Board of Certification.

Prior to his election to the Board of Certification, Mr. Macy served as executive director of the Civil Service Commission and, afterwards, as chairman for eight years.

Copies of the report can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed label, preferably franked (but do not send an envelope). ■

THE THIRD BRANCH

BULLETIN OF THE FEDERAL COURTS

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Editor

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.

Programs on Inns of Court And Summary Jury Trials Available from Center

The Center has recently released two video programs, which federal court personnel can borrow from the Center's Information Services.

The American Inns of Court Program: An Introduction (VG-043), a 35-minute tape, is introduced by Chief Justice Warren E. Burger and narrated by Chief Judge Howard Markey, a member of the Judicial Conference's Ad Hoc Committee on American Inns of Court.

American Inns of Court are composed of federal and state judges, experienced litigators, law professors, and law students. They meet throughout the year and focus on improved trial advocacy and professional courtesy and ethics. Fourteen Inns have been chartered to date, and several others are being created. The first Inn was founded at the J. Reuben Clark Law School of Brigham Young University.

The video program describes the development of the Inns of Court movement in America, the role of the American Inns of Court Foundation, and the typical structure and membership of an Inn. It also presents Inn meetings, including mock trials and critiques, discussions among Inn members, and other Inn functions.

* * *

Summary Jury Trials in the Western District of Michigan (VJ-071), a 55-minute tape, was produced in cooperation with the bench and bar of that district. The program, narrated by Judge Richard A. Enslen, explains the procedure as it is used in Western Michigan and, using fictitious cases, depicts abbreviated segments of pretrial and settlement conferences as well as attorneys' summary jury presentations in three separate cases. The summary presentations—in a products-liability case, an employment discrimination case, and a breach-of-contract case—illustrate the variety of techniques available to litigators in summarizing their clients' cases to the jury.

U.S. District Judge Thomas Lambros originated the summary jury trial procedure in Cleveland five years ago, and it has since been used, with various modifications, in courts around the country. In essence, the procedure allows attorneys in civil cases that appear unlikely to settle to present a summary of the case to a six-person jury, which renders a nonbinding verdict. The procedure's objective is to provide attorneys and their clients with a realistic assessment of the verdict a jury would likely reach in an actual trial, and thus provide a basis for settlement.

At its September 1984 meeting, the Judicial Conference "endorse[d] the experimental use of summary jury trials as a potentially effective means of promoting the fair and equitable settlement of potentially lengthy civil jury cases."

Further information on this technique is contained in a 1982 Center report, *Summary Jury Trials in the Northern District of Ohio,* also available from the Center's Information Services.

* * *

To order either or both videocassettes, write to Information Services, 1520 H St., N.W., Washington, DC 20005, noting the title and catalog number (given above). Specify either 1/2-in. VHS or 3/4-in. U-matic format and enclose a self-addressed, gummed label.

At present, the FJC is unable to distribute the video programs to persons outside the federal courts, although courts may wish to request the tapes to show at meetings of the bench and bar. ■

Selection of 1985–86 Judicial Fellows Announced

The 1985–86 Judicial Fellows are Thomas E. Baker, law professor at Texas Tech University in Lubbock, Tex.; Susan M. Olson, political science professor at the University of Minnesota in Minneapolis; and Ira P. Robbins, professor at American University's Washington College of Law in Washington, D.C.

Mr. Baker will work at the Supreme Court, while Ms. Olson and Mr. Robbins will work at the Federal Judicial Center.


T. Baker

Mr. Baker, 31, teaches a variety of criminal, procedural, and constitutional law courses. He has taught at Texas Tech since 1979, after a two-year clerkship to Judge James C. Hill of the Fifth Circuit. He graduated from Florida State University and the University of Florida's Holland Law Center.

Ms. Olson, 35, teaches constitutional law, jurisprudence, and courses about the judicial process. She graduated from Pomona College in Claremont, Cal., and received master's and doctoral degrees from Syracuse University. Her dissertation on litigation brought by special-interest groups focused on the disability-rights movement. She has since written a book about the legal rights of disabled people and several articles for legal periodicals.


S. Olson

Mr. Robbins, 35, began his teaching career at the University of Kansas School of Law in 1975, and went to American University in 1979, where he teaches courses on criminal law subjects and on conflict of laws and choice of law. He graduated from the University of Pennsylvania and Harvard University Law School and served as the pro se clerk for the Second Circuit from 1973 to 1975. ■


I. Robbins

TAYLOR, from page 1

Did you ever aspire to be on the court of appeals?

No. I like to be on the district court, where the action is.

After private practice, did you go right to the bench?

Yes, after 25 years of private practice. I was scared to death. I first moved to Knoxville, 100 miles from Johnson City, and stayed for a while at the Andrew Johnson Hotel. I went right to work. I worked down here at night until three or four o'clock in the morning. I was the only federal judge in this part of the state until 1961, when another judgeship was created.

Did you have any orientation?

No. I just walked right in and went to work. The docket was far behind because my predecessor had been ill and he was the only federal judge in the northern part of East Tennessee. It took me five years to catch up, and I made a resolution then that I would never let the docket get behind again. There were hundreds of cases; there had been an accumulation for five years. It took me a long time to clear them, but I had the cooperation of the bar.

Some very prominent lawyers have come from Tennessee, or have traveled to Tennessee to be before your bench. Which of these people do you remember in particular?

Tennessee can be very proud of its lawyers; we had—and have—some of the finest in the country. I am thinking of attorneys like Sen. Estes Kefauver, Ray Jenkins, Graham Morison, and Sen. Howard Baker. Recently I read in the local newspaper that Howard Baker told the press that I "taught" him "how to practice law." There are so many good lawyers in this state, though, I hesitate to be more specific. I could add, however, that both John L. Lewis and Gen. William Westmoreland were the only persons appearing in my court who elected to bow as they approached the bench. Mr. Lewis was a witness for the United Mine Workers union in a suit brought by several small coal companies against the union and larger coal companies. General Westmoreland was a character witness for Judge Otto Kerner.

Do you like to try any special type of case?

Oh, I like any kind of case where you have good lawyers. With good lawyers you don't have any problems. If you have bad lawyers, regardless of what the case is, you do a bad job.

What happens when you get bad lawyers—do you try to help them?

Yes, but there is only so much a judge can do.

> **"I like any kind of case where you have good lawyers."**

Do you get impatient with them if they are not prepared?

They say I get too impatient, but if they are not prepared they shouldn't appear before the court.

What would you do?

Some lawyers would come in expecting that their cases would be passed. I would say, "Now there will be no passing." They probably said later when they left the courtroom, "He's as mean as they come." I would hold them to it, though; I'd try the cases. I finally got the docket current, and from then on I wouldn't pass a case unless there was a death in the family of a litigant or the lawyer, or if an injustice would occur.

I think I am the best friend the lawyer has. He cannot bill his client until he tries or settles the case and closes the file.

How many hours were you sitting each day?

Ten, twelve hours, sometimes at night. I also held court on Saturdays. If I had court on Friday and we weren't finished, we would continue on Saturday. We even met on some Sundays. Holidays?—we didn't know what a holiday was. It took a lot of work but I got the docket current, and it's been current ever since.

Is the docket current now?

Yes it is . With the additional judgeships, we probably have the most current docket in the country. I believe statistics will bear that out.

You've been an active judge on the U.S. District Court for the Eastern District of Tennessee for almost 36 years, and you've earned the reputation of being a good judge—good judicial temperament, fairness, good grasp of the issues before you, and good case management. What advice would you give to new district judges just coming on the federal bench?

What advice would I give them? Well, to work hard, to set the cases for trial promptly, and, after having set a case for trial, to try it on the day for which it is set, unless there is some good reason to change the date, and then decide it. Holding cases under advisement will adversely affect your health. A case should be decided promptly after it has had thorough consideration. The judges must know the law and how to apply it.

You've had considerable Judicial Conference experience. Was this valuable to you?

Yes. I got good experience and received valuable advice from the late Judge Alfred Murrah. I wouldn't take anything for that experience and for Judge Murrah's advice. When he first called me, I told him that I didn't have time for a meeting of his committee, and he said I couldn't afford not to come, that I would save time eventually. I got more out of the pretrial committee work than any other outside activity I ever participated in.

Were you at that committee meeting to learn or to try to give advice to others?

I was there to learn all I could myself, and how to use what I learned in handling cases. I had never used pretrial conferences before; after learning the value of pretrials I [felt I would not be] a good judge without holding pretrials. The judges and lawyers in Tennessee didn't know anything about pretrials. I told them once they knew how to participate in a pretrial conference, they would

appreciate its value. At first they thought I was crazy, and I am sure they said, "He ought to be examined." They learned quickly and they found out I was right.

Was it the old argument that you're just trying the case twice, and therefore they didn't want pretrial?

That's right.

Do you think the Judicial Conference functions in a good way today, through the committees?

Yes, I do.

Many members of the press have pushed for having what they call "sunshine in government." They want to attend the Judicial Conference meetings. Do you believe it would do any harm to have the press attend these meetings?

No. But only if the press comply with restrictions placed upon their attendance—then let them attend. They would attend as observers, but not participants.

Would you feel comfortable with having television cameras in the courtroom?

No, I wouldn't feel comfortable. No type of TV should be allowed in the courtroom. The lawyers and witnesses would play up to TV, and there would be little things that would occur that shouldn't be picked up and broadcast in the news. It would interfere with the in-court management of lawsuits and be distracting to jurors, particularly in sensational cases.

From 1965 to 1970 you were on the Committee on Trial Practice and Technique. What was gained from this committee work?

Well, we emphasized the pretrial conferences. Some judges still do not utilize pretrials, however.

You were also on the Committee on Rules for Admission to Practice in the Federal Courts. That committee considered the possibility of getting uniformity of admission standards. Will uniformity in these rules ever come about?

Well, judges and lawyers are stubborn. They move slowly; they think their way is the best way. They just don't want to change, but I think eventually we will have uniformity.

Chief Justice Burger started the so-called Devitt Committee that studied the quality of advocacy in the federal courts. Do you think that promoting better advocacy is worthwhile?

Judge Robert L. Taylor

Yes. Judge Devitt is a fine man, and a good judge. As for the Chief Justice, I know him well; he argued a case in my court when he was a practicing lawyer. It was a case involving an Oak Ridge dispute, probably in the early fifties. He did a fine job—he is a great Chief Justice, in my opinion.

Both the Mandel and the Kerner cases were of national interest and received considerable attention; they were both emotional cases. Did you dislike going into foreign districts to try emotional and sensitive cases?

No. The Chief Justice appointed me to try the Governor Kerner case. He also appointed me to the Governor Mandel case. Both cases had to be tried. I was aware of the interest and notoriety, but while it was sometimes disruptive to the personnel in the court, we managed to handle it. The press were persistent, but cooperative.

What was the hardest part of the Mandel case?

Mandel was an intelligent man. His wife came up after he was convicted and said to me, "I want to thank you for the fair trial you have given the governor."

It must be difficult for you to see people in emotional situations like that—to see the concerned and worried families in the courtroom.

Yes, it is. When I sentenced Mandel he had members of the clergy and many other friends in the courtroom.

What were your observations of Judge Kerner?

Well, actually, when I handled his case, though we had never met, he referred to my father. It was emotionally disturbing to try a former governor and a circuit judge. He impressed me very much and appeared to be a good man. General Westmoreland testified as a character witness for him. When Judge Kerner referred to my father in his statement, I could have broken down myself; he was really doing some reminiscing. But it broke my heart.

That probably was the toughest case you ever had?

Yes, one of the toughest cases I ever tried. He was the only active judge that had ever been tried up until that time.

Isn't it kind of difficult, Judge, to sit in judgment of your peers? One judge in a like situation commented, "It's just another case."

I disagree with that.

Did you know it would be a hard case to try, emotionally and in other ways, when you got the assignment?

Yes, I did. Sure I did.

Did you try to get out of it?

No. I just took it.

Would you comment on the very first segregation case in Tennessee that you tried?

I thought somebody would have to admit me to the hospital. In the courtroom I had blacks sitting on the right side and whites on the left side. They

"Some of my best friends turned against me on account of the way I ruled in segregation cases."

See TAYLOR, page 6

TAYLOR, from page 5

selected their seats themselves. Some of my best friends turned against me on account of the way I ruled in segregation cases. They never forgave me and never will. It was terrible and very emotional.

You let the parties design their own plan?

Yes. They designed a plan for all students, regardless of race, to attend neighborhood schools. It was a good plan and has withstood the test of time. During the trial I had my telephone disconnected because I was getting calls at home. I also received many letters. I tried to act like a judge. I decided to investigate one writer and found that he was a cousin of my former law partner; he never forgave me.

Did you have concern for yourself and your family at home?

I did then.

Did you have U.S. marshal protection?

No, that service was not available to federal judges then, but I had assistance from an FBI agent who lived near me.

Didn't you worry about your family, though?

Yes, I did. It was a different day then, though. You know, I believe that might have warranted a request for security, but they really weren't into that sort of thing back in those days.

But as I remember, in the Knoxville school case, the main objection you found was the failure of the plan to permit black students to get technical training. They didn't have the same opportunities for technical training as white students did. Did they then change that?

There were three desegregation cases. In the first one, I ruled against desegregation, based on state laws and on the separate-but-equal doctrine—that was in the early fifties. Then there was the trial of a racist in Clinton, a man who beat up a Baptist minister walking children to school. Then there was the *Knoxville* case, where I refused to order busing. I am known now as "the Knoxville City School case judge." In the *Goss* case they kept coming back into court with various interpretations, various things that had evolved. It was a grade-a-year plan and it was fairly palatable to the community. There were some interpretations that had to be defined over the years, as I recall. So that was one continuing case—it was open.

"Sentencing was always hard for me, and it got harder and harder."

Did you have any thoughts about asking an outside judge to come in?

No. I was the judge. I was not going to run away from it.

How do you feel about settlements? Before you tried a case that might take six weeks, did you call counsel in and say, "Have you people talked settlement?"

I do all I can to settle every case pending in this court. And I tell lawyers that society favors compromise, favors settlement. Now I say, "You men who are mature lawyers can settle this case better than the court can. And I want you to try. Now, if you can't, then I will try it. I'm here to try these cases and I'll try them. But I want to urge you to exercise every effort toward an amicable settlement." And I get many settlements in that way.

Some judges feel that a judge shouldn't try the case if that judge participated in the settlement process. You didn't have the luxury in the years when you were the only judge. Did that bother you—participating in the case from beginning to end, including settlement?

Not a bit.

One judge has suggested that federal judges should have some kind of sabbatical leave, so that they would have a time when they could leave their court to reflect on a given subject; to travel; or just to rest during a period of at least six months to a year. Would you approve of that?

No. I believe a judge must work. A judge should approach his tasks with a high degree of responsibility, not as an onerous, everyday chore. A district judge has a duty to the public to perform with promptness and responsibility, and must not subordinate this duty to his personal desires.

What if they feel they are just a little weary, and they want to take some time off?

Well, that's all right if they can keep up with their dockets and they can do that without hurting the public, the lawyers, or the litigants. Then, if there's time for rest, all right; otherwise, just continue to work on the bench or in chambers.

See TAYLOR, page 7

Fourth Circuit Filings Drop Again

The number of cases filed in the Fourth Circuit declined by 3 percent during the 1983–84 statistical year, the circuit's annual report for 1984 shows. The period surveyed ran from July 1, 1983, to June 30, 1984.

The decline represents the second consecutive year in which filings dropped. In the same period, the number of appeals terminated rose 7.5 percent, after dropping 14 percent in the previous 12-month period. Pending appeals dropped in 1983–84, by 7.2 percent.

Filings in the circuit's district courts, however, rose 4.9 percent during the 1983–84 statistical year. Civil filings rose 6.6 percent, while criminal filings dropped 2.3 percent.

Bankruptcy filings in the circuit declined 15.4 percent from the previous 12-month period.

TAYLOR, from page 6

Did you ever take vacations?

I'm not proud of this, but I never had a vacation in my life.

How about pay, Judge? Many judges have recently left the system because of salary considerations. Do you feel you are well paid?

Well, I'm paid enough to live on. If I just wanted the pay I wouldn't be a judge. I'm a judge because I wanted to serve if I could and "abide by the Book" before I die. That's the reason I'm a judge—not for the money. I made much more practicing law. When I came on the bench, I was making over $30,000 a year. As a federal judge I was paid $15,000.

Did you ever put a time limit on oral argument?

Yes—about 20 minutes. In opening they would make a very brief statement; but in closing arguments, I watched that closely.

Do you let the lawyers participate in the voir dire process?

No. I do it all myself.

One of the criticisms of our legal system in this country is related to plea bargaining. Do you do any plea bargaining—or do you believe in it?

No. But if a lawyer wants to do it, that's fine. I stay out of it; I don't believe that the judge should participate in it.

I understand that the judge who preceded you told you during a discussion on sentencing, "Don't worry about it; it will get easier." Did it?

No. Sentencing was always hard for me, and it got harder and harder.

What's the hardest kind of sentencing?

Well, it's not easy for me to sentence anybody. I don't care whether he's a bank robber or some small offender, it's hard for me to send him to the penitentiary. I have talked to a lot of those people who were incarcerated—people like that affect me.

Do you worry about it at night?

No. When I sentence them in the courtroom, that's it—I turn it off. No good comes from thinking about it; I don't want to think about it anymore. The late Judge George Taylor, my predecessor—no kin—taught me that. ■

PERSONNEL

Nominations

Roger J. Miner, U.S. Circuit Judge, 2nd Cir., June 25

Roger L. Wollman, U.S. Circuit Judge, 8th Cir., June 25

James M. Rosenbaum, U.S. District Judge, D. Minn., June 14

Stanley Marcus, U.S. District Judge, S.D. Fla., June 20

Thomas E. Scott, U.S. District Judge, S.D. Fla., June 20

Joseph J. Farnan, Jr., U.S. District Judge, D. Del., June 24

Edmund V. Ludwig, U.S. District Judge, E.D. Pa., June 24

Richard H. Mills, U.S. District Judge, C.D. Ill., June 25

Roger G. Strand, U.S. District Judge, D. Ariz., June 25

John M. Walker, Jr., U.S. District Judge, S.D.N.Y., June 25

Appointment

Walter K. Stapleton, U.S. Circuit Judge, 3rd Cir., May 8

Elevations

Murray M. Schwartz, Chief Judge, D. Del., May 8

Donald D. Alsop, Chief Judge, D. Minn., May 20

Resignation

Abraham D. Sofaer, U.S. District Judge, S.D.N.Y., June 9

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

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Gibbons, John J. "The Antitrust Jurisprudence of the Third Circuit." 40 *Record of the Association of the Bar of the*

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Goldberg, Arthur J. "Regulation of Hostile Tender Offers: A Dissenting View and Recommended Reforms." 26 *Corporate Practice Commentator* 585 (1985).

Lambros, Thomas D. "The Judge's Role in Fostering Voluntary Settlements." 29 *Villanova Law Review* 1363 (1984).

Nejelski, Paul, "Supplements to Trial: A Court Administrator's View." 29 *Villanova Law Review* 1339 (1984).

Posner, Richard. *The Federal Courts: Crisis and Reform*. Harvard University Press, 1985.

Re, Edward D. "State of the Court: The United States Court of International Trade—Three Years Later." 58 *St. John's Law Review* 687 (1984).

Re, Edward D. "International Trade Law and the Role of the Lawyer." 26 *Corporate Practice Commentator* 487 (1985).

Van Kamp, Julie. *State Courts and Law-Related Education*. Wake Forest University, 1985.

Wald, Patricia M. "Negotiation of Environmental Disputes: A New Role for the Courts?" 10 *Columbia Journal of Environmental Law* 1 (1985).

CALENDAR

July 29–30 Judicial Conference Committee on the Operation of the Jury System

July 30–31 Judicial Conference Committee on Court Administration

Aug. 7–9 Seminar for Magistrates of the Sixth, Seventh, and Eighth Circuits

Aug. 19–20 Judicial Conference Advisory Committee on Codes of Conduct

Aug. 23–24 Judicial Conference Committee on the Budget

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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THE THIRD BRANCH

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Congressman Robert A. Young

Subcommittee Chairman Favors Buying Over Leasing of Public Buildings

This month's interviewee is Congressman Robert A. Young (D-Mo.), whose work as chairman of the House Subcommittee on Public Buildings and Grounds directly affects courthouses and facilities occupied by federal judges. The decisions of this subcommittee go to the parent House Committee on Public Works and Transportation, and the subcommittee's recommendations carry great weight. In this interview, the congressman explains the review process, how the subcommittee operates, and why he was selected to serve on it.

Congressman Young, who is serving his fifth term in the House, has a reputation as a strong supporter of federal construction of office space, as opposed to long-term leases, and he frequently travels to personally inspect courthouses and their facilities.

Congressman Young began his political career on the state level by serving in both the Missouri House of Representatives and the Missouri Senate. This background, and his experience as a builder, made him a natural choice for membership on the House Public Works and Transportation Committee.

Congressman Robert A. Young

Every two years, the Judicial Conference recommends additional judgeship needs to Congress. Simultaneously, the Administrative Office of the United States Courts and the General Services Administration commence preliminary assessments of increased space needs for the requested judgeships. When an omnibus judgeship bill is reported from either congressional judiciary committee, cost estimates are prepared that include estimated expenditures for space. Would you describe the role your subcommittee plays in this process?

Once any new judges are appointed or the courts need increased space, they usually go to the General Services Administration. I think we have five regions throughout the whole country, and when those bills look like they are going to pass, then GSA has to get busy to try to find some space for the new courts. When they determine that the cost for new space exceeds $500,000, they must get a prospectus made up and submitted to our Public Buildings and Grounds Subcommittee; then, after we hold a hearing, GSA presents testimony to

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Seminar Scheduled for New District Judges

The next seminar for newly appointed district judges will be held from Oct. 21 to 26, Center Director A. Leo Levin and Continuing Education and Training Director Kenneth C. Crawford have announced. All seminar sessions will be held at the Center's Dolley Madison House in Washington.

The traditional reception for the new judges and their families will be held on the day preceding the opening of the seminar. The program also includes a black-tie dinner at the Supreme Court on Oct. 24.

Four Circuit Chief Judges Highlight Rising Caseloads At Appellate Conferences

Plans to deal with the staggering increase in judicial caseloads must be based on the assumption that the number of cases won't decline, at least two chief circuit judges said at separate circuit conferences recently.

"The flood of cases is not going to abate," said Chief Judge John C. Godbold of the Eleventh Circuit, after noting the steps his court had taken to increase case terminations and reduce the number of pending cases and the time it takes to decide an appeal. Courts will be forced to "seek better and more efficient ways of doing our work," he added.

Rather than recite annual statistics, Judge Godbold had a five-page summary of the court's vital statistics distributed to the audience as he spoke. It depicted the court's rising caseload in bar graphs and pie charts, as well as in statistical tables. "Do not be intimidated" by the material, Judge Godbold told his audience. "I will take you by the hand and lead you through it." He did so in fewer than 900 words.

One hurdle to increased efficiency, Judge Godbold said, is that the precedent-based system of deciding cases spills over into the management methods judges use.

We "tend to do things the way they have been done before. We live with

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one foot in the present and one in the past."

The cure for that kind of behavior, Judge Godbold continued, is "to ask ourselves regularly: 'Why do we do this in this manner?' 'Could we do it better?' 'Do we need to do it at all?' "

One possible way to break with established practice, and thus save time, Judge Godbold said, is to write less, and do it faster.

"I want each word [I write] to be polished and to shine," he noted. "But in a proper scale of values for case deciders pressed by too many cases, maybe this emphasis on style and perfection is wrong."

Judge Godbold also suggested that district courts might rely less on the written word. An example of writing overuse, he said, was a habeas case where a side issue—whether the testimony of the state trial judge should be taken live or by deposition or affidavit—produced four sets of briefs, punctuated by two written motions for extensions and two written extension orders. The issue was decided eight months after it was raised. "The dispute could have been solved in 10 minutes by calling the lawyers in and having the judge decide it."

"If a district court is drowning in paper," he said, the court will have to ask itself if that has happened "because the judges permit it, or require it, or find themselves unable to break free of the quicksand."

Chief Judge James R. Browning of the Ninth Circuit also started with the proposition that "the constantly rising volume of litigation will not go away." He noted that in the last quarter century, the caseload of most federal judges has doubled or tripled, despite increases in the number of judges.

"Thus far," he said, "the difference has been bridged...primarily by the adoption of innovative techniques. But the upward trend in filings continues unabated. The problem will not go away. We must continue to develop more efficient ways of managing our affairs—through greater decentralization, improved organization, better planning, improved case management, vigilant monitoring of the processing of caseloads, more effective use of advancing technology, development of workable alternatives to the judicial resolution of disputes. And we must do this in such a way that management does not intrude upon the performance by judges of their essential task of judging, but instead frees them to judge more effectively."

One radical change that would have a dramatic timesaving effect—discretionary review in the court of appeals—is being circulated for comment by the Ninth Circuit Judicial Council's senior advisory board, Judge Browning said. He also noted the widespread efforts in courts throughout the circuit to promote alternative dispute resolution programs.

"The 'good old days' are gone," Judge Browning concluded. "They will never return again. An ever-growing share of our people are seeking to protect their interests and vindicate their rights in federal court. If the benefits our society derives from the federal court system are to survive, we cannot assume that any of our practices are beyond improvement."

Chief Judge Spottswood W. Robinson III of the District of Columbia Circuit also noted the relentless increase in that court's caseload. Among the steps implemented to handle the crush, he reported, were a civil appeals management program and a screening program to detect jurisdictional problems earlier in the appellate process.

Chief Judge Harrison L. Winter of the Fourth Circuit noted at his court's circuit conference that "the caseload...after a brief respite, is again on the rise." The court has been successful, he said, in eliminating "bottlenecks" in the appellate process. That has meant that "the supply of cases mature and ready for argument rose sharply during the last 12 months."

The load has required 15 judges a month, and since the circuit has only 11 active judges, and two senior judges "who continue to work substantially full time," the gap has been filled by district judges in the circuit who serve by designation. ■

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Editor

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.

CALENDAR

Sept. 4-7 Tenth Circuit Judicial Conference
Sept. 5-8 Second Circuit Judicial Conference
Sept. 8-13 Seminar for Newly Appointed Bankruptcy Judges
Sept. 9-11 Regional Seminar for Probation Officers
Sept. 9-13 Video Orientation for New Probation/Pretrial Officers
Sept. 11-13 Seminar for Magistrates of the Fifth and Eleventh Circuits
Sept. 16-19 Video Orientation for Newly Appointed District Judges
Sept. 16-19 Regional Seminar for Probation/Pretrial Officers
Sept. 16-20 Video Orientation for New Probation/Pretrial Officers
Sept. 17-18 Judicial Conference of the United States
Sept. 17-19 Regional Seminar for Probation Officers
Sept. 23-27 Video Orientation for New Probation/Pretrial Officers
Oct. 2-4 Juror Management Workshop

Chief of AO Bankruptcy Division Appointed

Francis F. Szczebak has been named chief of the Bankruptcy Division of the Administrative Office.

The appointment was announced in June by Joseph F. Spaniol, Jr., former AO deputy director.

Mr. Szczebak, who has held a variety of posts at the AO since 1978, assumed his new post in July. He is a graduate of Defiance College in Defiance, Ohio, and Suffolk University Law School, and holds an LL.M. degree from George Washington University. ■

Filings Up Again in Most Appellate and District Courts

A large majority of the courts of appeals received more cases this year than last, an Administrative Office report shows.

This report, *Federal Judicial Workload Statistics*, prepared by the AO's Statistical Analysis and Reports Division, covers the 12-month statistical year ending last March 31. It shows that the Federal Circuit had the largest increase in new cases in the period surveyed, a rise of 150 percent. The court's terminated cases rose by 40 percent.

The second-largest increase was in the District of Columbia Circuit, where 33 percent more cases were filed than in the previous period.

The Second, Third, Fifth, and Seventh Circuits all reported slight decreases in new cases filed for the 12-month period. Terminations did not equal filings in the appeals courts. Excluding the Federal Circuit, terminations rose 1.5 percent and filings were up 6.4 percent.

The report also found that the number of civil cases filed in all the district courts rose by 3.3 percent during the period studied. The courts terminated 12.5 percent more civil cases than they did in the earlier period. The number of criminal cases filed in the district courts rose 8.3 percent in the period, more than offset by an 8.9 increase in terminations of criminal cases in that same time.

Filings in the bankruptcy courts rose 1 percent during the period, while terminations increased by 6 percent. ■

Judicial Evaluation Guidelines Approved by ABA House of Delegates at Annual Meeting

Before journeying to London to meet with the membership of the Law Society of England and Wales, members of the American Bar Association met in Washington, D.C., to consider pending issues, including some of significance to the federal judiciary.

Starting in 1982, a major effort was launched by the ABA to develop guidelines for evaluating state and local judiciary. The redrafting of these guidelines, after extensive meetings and debates for the next three years, emphasized that they were not meant to be hard rules for judicial performance or conduct, or a substitute for polls, but, rather, guidelines for an evaluation process. This was necessary, the special committee on evaluation of judicial performance said, to assure fairness and to accomplish the ABA's goal—high-quality performance by judges. The committee developed redrafts to meet objections of both lawyers and the judiciary after failing to achieve approval at the midyear meeting of the House of Delegates last February, and the revised guidelines were approved in July.

A proposal that the guidelines include federal judges was defeated after the Conference of Federal Trial Judges argued that the federal judiciary is already specifically covered by the Judicial Conduct and Disability Act of 1980, as well as by procedures established by the Judicial Conference of the United States.

Class actions again had the attention of the House when the sections of litigation and antitrust law pushed to amend rule 23 of the Federal Rules of Civil Procedure. One of 40 proposals would amend the rules relating to requirements for certifying class actions and would allow federal judges to use their discretion in excluding individuals from a class. Opponents of aspects of these proposals believe that the changes suggested would allow cases to be certified as class actions that would, under present rules, be disallowed. The Antitrust Law Section has consistently opposed this change. The House took no action but did authorize the sections to present their recommendations directly to the Advisory Committee on the Rules of Civil Procedure.

Chief Justice Burger attended both the Washington and London sessions. In London, where programs were designed for the common interest of both the United Kingdom and the United States, several issues were discussed and vehemently debated by representatives of the ABA and the Law Society. Eliciting the most interest was the discussion of international terrorism, presided over by former vice president Walter Mondale. Other panelists included Britain's home secretary, Leon Brittan, FBI Director William Webster and his counterpart in England, Scotland Yard Chief Sir Kenneth Newman, and counsel to the State Department Abraham Sofaer, a former federal judge in the Southern District of New York. The panelists and many in the audience agreed that immediate and drastic steps must be taken to end terrorism and to prevent repetition of recent incidents such as the hijacking of a TWA plane in Athens.

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our subcommittee and then, usually, following the recommendation of GSA, we proceed with allowing them to go ahead and get the additional space.

In many instances in the past decade, Public Works Committee approval or denial of the requested authorization for new space has taken years. Is there any way to expedite the process?

Through the new chairman of the subcommittee. Each chairman does different things on a priority basis. They run their subcommittees differently, and when I became the chairman of this subcommittee three years ago, and Clay Shaw, from Florida, became the ranking minority member, we agreed that we would do everything we possibly could to make the subcommittee as effective as it possibly could be. The additional help of Mr. Shaw on the subcommittee because he is a lawyer and former mayor of Fort Lauderdale, Fla., gives us a pretty good insight into the problems. My background is in the construction business so they don't have to have a bunch of maps to tell us about a court or about how to get the thing built. So we have made the process move a lot faster, in my judgment, than in the other years that I have been here on the full committee.

Are the members of the committee selected or appointed by the speaker because of any special background?

Not necessarily. When we are all elected, we are asked by our respective party caucus chairmen what committees we would like to serve on, and I think Mr. Shaw's main committee is the Judiciary Committee because he is a lawyer. My main committee is Public Works and Transportation because of the jurisdiction we have over water, aviation, transportation, and then the public buildings section. So automatically I thought I could do more good for my area. My second choice is science and technology, which is considered a nonmajor committee. But I have been very interested in nuclear energy and the use of fossil fuel. So that all fits in pretty well. My area has McDonnell-Douglas, Emerson Electric, Monsanto, and Mallenkrodt Chemical Co., and a lot of the research and development comes through the Science and Technology Committee. Those, then, are two natural committees for me, particularly as they relate to the middle part of the country and the things that are important in my area.

Does your whole subcommittee meet en banc?

Yes, but in a subcommittee like this, because it doesn't necessarily attract headlines, it's Mr. Shaw and I most of the time. But we call out and get the members to attend if we think they have an interest in a specific matter. But it is really more of a housekeeping type of activity. It's very important, and I am sure that when we are through you will realize that this is a very important subcommittee, but if you ask most of the members they would hardly recognize what the subcommittee does. When we found out the number of federal buildings that we have under our jurisdiction, we realized it was incredible. We are paying rent of $1 billion a year for leased space in commercial buildings. Now if that doesn't shake the public up, I don't know what will. But Mr. Shaw and I feel that if we can get Uncle Sam to buy these buildings or if we get him to lease them for 10 years with an option to buy them after the end of 10 years, it becomes a part of the federal inventory and we get out of paying these ridiculously high lease costs. Most of the state legislatures have a capital-improvements budget, where you set aside $40 million to build a new state office building so that you are not in leased space. One of the things we have talked about is that GSA starts seeing the building needs, then they think, "Well, it's easier and it hardly shows up in the budget to go out and lease space." We've just never been very comfortable when you take a look at a 20-year lease that is going to cost the government $40 million to $50 million at the end of that 20-year period and all you have is rent receipts. It's hard now, particularly in the budget crunch we have all the time, but we're fighting constantly to get more general revenue money so that we can have GSA build a building and move the people out of leased space. So that's kind of the thing that Mr. Shaw and I are thinking about—whether we can accomplish that. It's a big process and will take many years.

"We've just never been very comfortable when . . . a 20-year lease is going to cost the government $40 million to $50 million [and] at the end . . . all you have is rent receipts."

The Public Buildings Act of 1959 includes language providing that approval of the House committee would not be necessary for "any alteration and acquisition authorized . . . the estimated maximum cost of which does not exceed $200,000." That amount was increased to $500,000 in 1972, 13 years later. Is it now timely, in view of the high degree of inflation, to substantially raise this amount again?

I have no problem with that. We had talked about raising it to $1 million before they'd have to get our approval, but I don't know of anybody who has really complained to us about it. It's just that with all the other things we have to do we just really haven't had time to address it, but I would have no problem with

that. I don't think it hurts to have us take a look at those sorts of appropriations, though, so the $1 million seems kind of small. Just so they don't start moving it where the legislature doesn't have some control. But I would have no basic problem increasing that amount because of inflation and things like that to $1 million or any other figure that would seem reasonable.

Once a prospectus has been approved, how is it funded?

That's not really part of my business, but I would assume that most of this would go right on to the appropriate House appropriations subcommittee, and in this particular situation Congressman Neal Smith from Iowa is the chairman of the Subcommittee on Commerce, Justice, State and Judiciary. He looks at that. He recently saw some figures on some of the prospectuses and he thought we were not getting much for our dollar on a couple of the items in the Washington area. I think he felt that GSA could have reached a better agreement with the lessors, and I understand he just released the funds on one particular building because he just thought that the price was too high. So he had his staff reevaluate that lease, and I assume that they figured out that was about all they could do. At least there is that sort of check on what we do, but the money would come from the appropriations subcommittee.

Do you work closely with the House Appropriations Committee?

Closely enough. Maybe there should be a closer relationship because they're paying the bills and we're authorizing the leases.

I understand that GSA forwards all prospectuses for a given fiscal year for all three branches of government in January of each year. How do you determine when you will consider a specific prospectus, and do you consider all of the judicial branch prospectuses at the same time?

The staff look over the prospectuses before I ever see them, and they kind of cull them out—the ones that they think would need a closer review or at least should be brought to the subcommittee members' attention. It works out that way, and we do not consider all the judicial branch prospectuses at one time. A lot of the judiciary is in federal buildings. That is very, very helpful. You've got small towns where the building is old or something like that—that's when we get involved. Under my chairmanship I've established an open-door policy with GSA so they are able to come in here and make an appointment and go over those items that are really critical.

"I've established an open-door policy with GSA so they are able to come in and go over those items that are really critical."

Is your subcommittee constituted in such a way that emergency action can be taken if needs are critical?

Yes, and we work very closely with GSA.

If GSA simply does not have sufficient money to complete a necessary building, can your subcommittee help?

Yes. We can move on an emergency basis because our staff is rather small and GSA has already gathered together the information from the agencies. So our subcommittee doesn't have to go back out in the field and make a determination of how many employees there are, and whether they are using the guidelines set by the president to keep within 135 square feet per employee. Generally, that's the figure the president has asked us to keep to, and so they have all that documentation ready for us and then we can recheck it if we want. I think we've had a good relationship, particularly as a Democrat working with a Republican administration. The heads of the GSA, when they are appointed, usually come in and we have a talk, and I think we understand each other right from the start. I'm not hard to talk with. We are very accessible—as much as we can possibly be—and then I think that if they don't have sufficient money, we can make a case with the appropriate appropriations subcommittee, and then we can also help them make a case before the Office of Management and Budget.

Have you ever had really strong differences with GSA, say, over whether something was too extravagant?

When I first came in, during the Carter administration, I was not chairman. I became chairman when President Reagan became president in 1981, so I don't know how the relationship with the subcommittee was before that, but we've had a good relationship with GSA and we disagree with them on many things. Now, were the 20- and 25-year leases signed back with Carter and Ford and Johnson? I don't know because I didn't think I had to go back that far, but GSA just started bringing in lease after lease with 20-year expiration dates and I said there's no way, unless it is an absolute emergency, that I'll approve or authorize any 20-year lease. Bring me something else back. I prefer five- and at the maximum 10-year leases. That would be the maximum of what we are approving right now, a 10-year lease, and we keep asking them to try and get options to buy the building.

With the idea that it would give you another review?

No. We try to encourage building new buildings or buying existing buildings. That's our goal. We could authorize $500 million tomorrow on new buildings in San Francisco, Oakland, Houston, Dallas—some of the areas where we are paying such high rents per square foot. That would be one of my goals—to have the administration in power give us more money to have GSA build new build-

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ings. We have to change the act. I think that there is a building fund, and I think it's only about $100 million this year, and all they are authorizing is the building of three border patrols. My $60 million annex out in St. Louis, where the Army records center burned back in 1973, and where all the Army records are kept—they have come up with a proposal to build an annex to store the restored records. So [then-OMB director] David Stockman gave them very little money for new buildings. We have the authority to override OMB but that doesn't mean the president will let the agency spend the funds. But at least at this point we are getting along with them the best we can. But we could sure use a lot more money in the capital building fund, and I guess that's the bottom line on that.

"We have the authority to override OMB but that doesn't mean the president will let the agency spend the funds."

How much of a staff do you have to handle what must be a vast amount of paperwork and call for considerable expertise? How is it organized?

The staff director has been here longer than I have. She is considered the expert on the GSA budget and the housing needs. So I depend on her quite a bit. I think the only personal staff member that I have is Vicki Schaaf.

We also have a subcommittee secretary. The minority has the same setup. So Mr. Shaw has the same number of people to work for him that I have. Among the six of them they do all the work. There is no organizational chart. I don't know if we would do better by having 16 rather than three.

You have hearings out in the field?

Yes. This subcommittee could be gone from Washington all the time—and I think it would be beneficial to the taxpayers—but you have to make roll call.

The judicial branch, like other entities in the government, now pays rent to GSA. Is it a waste of time and money to have one agency paying another?

I don't know the answer to that question. With GSA being the government's landlord there is an economy of scale. Meaning they are so large they can bargain with a landowner more effectively because they are not just moving in a group of people. If you have 150 judges trying to get space for themselves and their staffs, they're all off on their own different agendas. If they have to adhere to GSA, the GSA person has more clout to deal with the landlord. Plus GSA does all the maintenance and they are more cost-effective because they are larger and they do all of the rental and the housekeeping as well. It seems to be about the only system that can work—that GSA has to charge the tenant out of its own fund because those funds are coming from another appropriation process.

Do you pay rent here?

No. Just for supplies and things like that. In the Capitol, Congress does not pay rent. In fact, we own the place.

Do you ever get calls or questions directly from the judges?

There is a proposed courthouse and federal building in Los Angeles that we have approved, and some of the judges are not completely happy with the housing that they might have in the future. They are going to build in that area a new federal courthouse for federal employees. The judges don't want to leave the old courthouse but we've agreed with the chairman of the subcommittee on appropriations, who is from Los Angeles, that it won't be that inconvenient to the judges to have two different buildings that they have to operate under, because it is my impression that the older, more

Congressman Robert A. Young

senior judges will stay in the older facility in downtown L.A. and the newer judges will move into the new facilities. So I think their concern is not well-founded. I can understand their wanting all to be in one building but it just doesn't seem possible to work it out. We've had correspondence from one judge and we've answered and just said we disagree.

I have had a phone call from the Chief Justice of the United States, Warren Burger. He wants a new administrative office building for consolidation of all of the administrative employees of the judicial branch. They are in about nine different places throughout the whole Washington area. So I agreed with the Chief Justice and I agreed that we ought to build them a new building. So we passed that out of my subcommittee to the full committee and it is now waiting final action in the House of Representatives. It's going to be the newest federal building after the Library of Congress and the Hart Senate Office Building. It will be the latest one in the Capitol complex.

A chief judge, John F. Nangle, came to Washington to ask for improvements at the federal courthouse in St. Louis. And being from St. Louis I was very familiar with the courthouse and could understand some of the problems. He felt they were subject

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to unsafe practices. One thing in particular is where you come in off an alley and there is an elevator going up—not a public elevator, but an elevator where you bring supplies in—and that's where they bring the prisoners in. So here you have a judge on an elevator. They are bringing a prisoner in. He's probably going to sentence him in the next 15 or 20 minutes. That made no sense to me. The elevators are slow and it seemed a very bad security risk.

How about the public elevators? Can't the judges use those or would that be worse?

Well, then they are out in the front with the general public. Seeing the judge, someone might say, "Don't be mean to my son" or something like that. So I think they need something different. Last year we approved a prospectus and allocated $9.5 million to improve the conditions at that courthouse and the improvements were a new judges' entrance and the new courtroom. And we put in a new fire sprinkler system. The building had been built in the early 1930s by the WPA. Good building. And repairs to the heating and the air conditioning system.

Going through different courts throughout the country, I have been concerned about the security at the entrances, to try to make sure that our buildings are protected from terrorists. So we insisted that all of the new buildings that are being built have better security systems.

And you inspect for that?

We were in Fort Lauderdale about a year ago when the biggest drug bust in heroin that DEA had ever made coming in and out of one of the South American countries took place. I was surprised with what I thought was the lack of security for those agents who were holding the drugs to present to the judge as the judge was trying this case of these two people who had been caught with the drugs. It seemed to me that the building should have been more secure. So we worked with GSA and that security is being tightened up in Fort Lauderdale. It just didn't make sense that there wasn't better security.

Who goes with you? Do you just pop in unannounced?

Staff, but not necessarily. I've done it on my own, but it's no witch hunt we're holding, and I think we get a lot more out of it if we have the office that's responsible for it present and we can see the faulty things on our own. So we can work closely with GSA.

Have you ever walked into an office and seen something that you thought was rather outlandishly expensive, unnecessary, or very elaborate appointments to an office—something you felt was needlessly expensive?

Truthfully, in the short time that I have been chairman, the answer would be no. I just can't think of anything that surprised me—that the administrator of a court or the federal marshal had any extra adornments in their office or anything like that. I just can't think of anything. I'm sure there is, but nothing that has been brought to my attention. ■

Four New Publications Available from Center

The Center recently published *Attorney Fee Petitions: Suggestions for Administration and Management*, by Thomas E. Willging and Nancy A. Weeks.

Building on Prof. Arthur Miller's seminal report, *Attorneys' Fees in Class Actions* (Federal Judicial Center 1980), the authors use a case-management perspective to review cases, statutes, local rules, and other materials affecting judicial management of attorney fee petitions.

The report follows a three-part approach to the fee application process, covering establishment of guidelines at the pretrial phase, the fee applications—including the steps involved in applying the lodestar method—and consideration of alternative approaches to the troublesome problem of simultaneous negotiation of attorney fee issues and the merits of the litigation. With regard to the pretrial phase, the authors explore alternative uses of nonjudicial personnel to handle routine aspects of the fee application process. They also discuss techniques for streamlining the repetitive aspects of managing attorney fee applications and disputes, such as use of standardized formats to simplify decisions about market rates and use of local rules to establish a standard process for discovery and settlement.

* * *

A new edition of *The Sentencing Options of Federal District Judges* is available now for distribution.

This work, by Anthony Partridge of the Center's Research Division, was published in 1979 and last revised in June 1983. The current revisions reflect recent legislative changes—such as the repeal of the Youth Corrections Act and enactment of the Fine Enforcement Act—as well as administrative and case-law developments. The new edition is current to April 30, 1985.

Copies of the work will be distributed to district judges, full-time magistrates, probation officers, and public and community defenders, as well as to other persons in the judicial branch who have requested previous editions. Copies will also be provided to the Department of Justice for the use of government attorneys.

* * *

Another recent publication is *Visiting Judges in Federal District Courts*, by Donna Stienstra of the Center's Research Division, prepared to assist courts that occasionally need the temporary services of a judge from another district or appellate court.

Based on information gathered from clerks in 18 district courts, this report describes the methods some districts use to ensure that a visiting judge's stay is satisfying and produc-

See REPORTS, page 10

The Institute for Court Management held its 17th graduating ceremonies for the Court Executive Development Program at the Supreme Court in June. Pictured is the Chief Justice congratulating George Ray, chief deputy clerk (N.D. Cal.), one of five federal employees in the program.

ABA, from page 3

Another program, staged after months of planning, "Justice for a Generation," focused on what ABA President John Shepherd said was "a special responsibility to deal with issues unique to our time." Topics such as foreign investments in the United States, practicing law abroad, computers, alternative dispute resolution, juries, lawyer competency and bar admissions, comparative costs of litigation in England and the United States, and conducting discovery abroad were discussed. American participants and paper writers included former federal judge Marvin E. Frankel (S.D.N.Y.), U.S. Magistrate Wayne Brazil (N.D. Cal.), senior federal circuit Judge Malcolm R. Wilkey (D.C. Cir.), and Center Director A. Leo Levin.

Discussed at length during a meeting at the Notre Dame Law School Center in London was what is being done to assure continuing judicial education, where it is being done, and whether it is being done effectively. Participants from Italy, Ireland, and Australia, as well as those from the United States and England, exchanged ideas, and questions came from members of the audience, who represented other nations. Lord Chief Justice Lowry of Northern Ireland delivered the keynote address. Director Levin described the work of the Federal Judicial Center and Justice Florence Murray (S. Ct. R.I.), the operations of the National Judicial College. Talbot D'Alemberte represented the American Judicature Society, and Samuel J. Roberts, former chief justice of the Pennsylvania Supreme Court, described the work of the ABA Legal Education and Admissions to the Bar Section. ■

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

American Bar Association. *Justice for a Generation.* 1985.

Committee on Corrections. "Can Our Prisoners Become 'Factories With Fences'? " 40 *Record of the Association of the Bar of the City of New York* 298 (1985).

Feinberg, Wilfred. "The Office of Chief Judge of a Federal Court of Appeals." 53 *Fordham Law Review* 369 (1984).

Friendly, Fred W. (moderator). "The Federal Judiciary: What Role Politics?" (Transcript of panel discussion at American Judicature Society meeting). 68 *Judicature* 330 (1985).

Gibbons, John J. "The Antitrust Jurisprudence of the Third Circuit." 40 *Record of the Association of the Bar of the City of New York* 198 (1985).

Goldman, Sheldon. "Reaganizing the Judiciary: The First Term Appointments." 68 *Judicature* 313 (1985).

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Johnston, David F. "The Equal Access to Justice Experiment." 32 *Federal Bar News & Journal* 176 (1985).

McGowan, Carl. "The Administrative Conference: Guardian and Guide of the Regulatory Process." 55 *George Washington Law Review* 67 (1984).

Re, Edward D. "Legal Writing as Good Literature." 59 *St. John's Law Review* 211 (1985).

Report of the Proceedings of the Judicial Conference of the United States (March 6-7, 1985).

Simon, Roy D., Jr. "Rule 68 at the Crossroads: The Relationship Between Offers of Judgment and Statutory Attorney's Fees." 53 *University of Cincinnati Law Review* 889 (1984).

Steele, Walter A. "The Honorable Jean S. Breitenstein—A Profile." 62 *Denver University Law Review* 1 (1985).

Stolz, Barbara Ann. "Congress and Criminal Justice Policy Making: The Impact of Interest Groups and Symbolic Politics." 13 *Journal of Criminal Justice* 307 (1985).

Wald, Patricia M. "The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values." 33 *Emory Law Journal* 649 (1984).

Rep. Rodino to Receive Award at Court Conference

Chief Justice Warren E. Burger will present an award to Congressman Peter W. Rodino, Jr., chairman of the House Judiciary Committee, at the second annual Judicial Conference of the United States Court of International Trade. The conference will be held on Oct. 23, Chief Judge Edward D. Re has announced. It will take place at the World Trade Center in New York City, beginning at 9 a.m.

Those interested in attending should register before Sept. 20 by contacting the Office of the Clerk, U.S. Court of International Trade, One Federal Plaza, New York, N.Y. 10007.

PERSONNEL

Nominations

Ferdinand F. Fernandez, U.S. District Judge, C.D. Cal., July 19
Stephen H. Anderson, U.S. Circuit Judge, 10th Cir., July 23
Ralph B. Guy, Jr., U.S. Circuit Judge, 6th Cir., July 23
Glen H. Davidson, U.S. District Judge, N.D. Miss., July 23
Robert B. Maloney, U.S. District Judge, N.D. Tex., July 23
David B. Sentelle, U.S. District Judge, W.D.N.C., July 25
Brian B. Duff, U.S. District Judge, N.D. Ill., Aug. 1

Confirmations

Wayne E. Alley, U.S. District Judge, W.D. Okla., July 10
Robert C. Broomfield, U.S. District Judge, D. Ariz., July 10
Claude M. Hilton, U.S. District Judge, E.D. Va., July 10
James D. Todd, U.S. District Judge, W.D. Tenn., July 10
Donald E. Walter, U.S. District Judge, W.D. La., July 10
J. Frederick Motz, U.S. District Judge, D. Md., July 11
Roger J. Miner, U.S. Circuit Judge, 2nd Cir., July 19
Roger L. Wollman, U.S. Circuit Judge, 8th Cir., July 19
Richard H. Mills, U.S. District Judge, C.D. Ill., July 19
Roger G. Strand, U.S. District Judge, D. Ariz., July 19
John M. Walker, Jr., U.S. District Judge, S.D.N.Y., July 19

Appointments

Charles C. Lovell, U.S. District Judge, D. Mont., May 10
Howell Cobb, U.S. District Judge, E.D. Tex., May 17
Joseph H. Rodriguez, U.S. District Judge, D.N.J., May 22
Mark L. Wolf, U.S. District Judge, D. Mass., May 24
Sam B. Hall, Jr., U.S. District Judge, E.D. Tex., May 28
George F. Gunn, Jr., U.S. District Judge, E.D. Mo., May 29
Edith H. Jones, U.S. Circuit Judge, 5th Cir., May 30
Ann C. Williams, U.S. District Judge, N.D. Ill., June 3
Kenneth F. Ripple, U.S. Circuit Judge, 7th Cir., June 10

Elevations

Donald J. Porter, Chief Judge, D.S.D., July 1
Maurice B. Cohill, Jr., Chief Judge, W.D. Pa., July 2

Senior Status

Miles W. Lord, U.S. District Judge, D. Minn., May 20
Myron H. Bright, U.S. Circuit Judge, 8th Cir., June 1
Jack Miller, U.S. Circuit Judge, Fed. Cir., June 6
Leland C. Nielsen, U.S. District Judge, S.D. Cal., June 14
Andrew W. Bogue, U.S. District Judge, D.S.D., July 1
Lee P. Gagliardi, U.S. District Judge, S.D.N.Y., July 17

Deaths

Thomas P. Thornton, U.S. District Judge, E.D. Mich., July 1
Harry Phillips, U.S. Circuit Judge, 6th Cir., Aug. 3

NOTEWORTHY

Less Time. The time convicts spent in state prisons dropped to a record low in 1982, the Justice Department has found.

The department's Bureau of Justice Statistics reported that the median confinement was 1.8 years. It based its findings on an examination of the sentences of 157,000 released prisoners in 29 states and the District of Columbia in 1982, the most recent year for which records are available.

* * *

Less Crime. Serious crime dropped again last year, but violent crime rose slightly, the FBI reported in its annual crime survey.

All serious crimes—murder, rape, robbery, theft, and burglary—dropped for the third consecutive year, to the lowest level since 1978. There were 11.8 million such crimes in 1984.

Violent crime increased by 1 percent. The number of rapes and assaults rose, but murders and robberies declined.

Four Pakistani judges visited the Federal Judicial Center for a day-long briefing on Center activities during a six-day trip to Washington recently. The guests were (l. to r.) Chief Justice Javid Iqubal of the Lahore High Court, Chief Justice Abdul Kureshi of the Sind High Court, Justice Ali Qazilbash of the Peshawar High Court, and Justice Mumawwar Mirza of the Baluchistan High Court. Each of the courts is the highest in its state.

REPORTS, from page 7

tive for both the visitor and the court. It covers issues such as selecting and preparing the visiting judge's caseload, arranging for his or her travel and accommodations, providing an orientation to the court, and the impact of a visitor on court staff and facilities.

Appended to the report are a list of 10 "essential ingredients" for a visit and two visiting judge checklists developed by one district court.

* * *

The Center recently published *The Roles of Magistrates: Nine Case Studies*, by Carroll Seron. The report, a follow-up to an earlier Center study on the same topic (*The Roles of Magistrates in Federal District Courts*, FJC 1983), takes a detailed look at nine district courts' use of magistrates for pretrial case management. Three approaches to the use of magistrates are identified: (1) In some courts, magistrates play the role of peers, or "additional judges," in court administration and case management; (2) in other courts, they are viewed as specialists who become experts in particular areas of the docket, such as Social Security or prisoner cases; and (3) in still other courts, they are considered members of a team and are given discretionary responsibility for the pretrial phases of case processing.

The report also examines the extent to which the outcome of magistrates' work is questioned by lawyers, finding that magistrates' reports and recommendations generally are not challenged. The author concludes that magistrates are making a significant contribution to case management and conservation of judicial time, and that this contribution can be further enhanced if the bar and court staff are educated about the potential roles of magistrates.

* * *

Copies of these reports can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed label, preferably franked (but do not send an envelope). ■

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THE THIRD BRANCH

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THE THIRD BRANCH

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Judge Mazzone Says New Crime Legislation Will Require Judicial Education Programs

This month The Third Branch *interviews Judge A. David Mazzone of the District of Massachusetts. Last December, the Chief Justice, as Chairman of the Board of the Center, asked Judge Mazzone, as a member of the Board, to chair a committee to advise the Center on educational programs related to the October 1984 crime legislation.*

The Chief Justice has noted, "The 23-chapter Comprehensive Crime Control Act and the Criminal Fine Enforcement Act, both signed into law last October, created an immediate need for familiarizing judges and supporting personnel with the changes in the law that they introduce. When the sentencing guidelines mandated by the Congress are announced, the need for this will become even greater. For that reason, I asked Judge Mazzone to chair a small Center committee to consider how these educational needs can best be met. The committee's recommendations will be of considerable assistance to the Center and to the federal judicial system."

Judge A. David Mazzone

Serving with Judge Mazzone on the new committee are Judge Edward Becker (3rd Cir.), Senior Judge John Butzner (4th Cir.),

See MAZZONE, page 4

Chief Justice Urges Greater Use of Arbitration To Relieve Courts of Litigation Burdens

The long-range solution to mushrooming caseloads in the federal courts is "not to create more and more judgeships, even though that is needed now," Chief Justice Burger declared recently. The solution is to encourage would-be litigants to use other methods of dispute resolution and excercise judicial power to impose sanctions on litigants and lawyers found to have abused the judicial process.

Mark W. Cannon has been named Staff Director of the Commission on the Bicentennial of the U.S. Constitution. See story p. 2.

"Arbitration is vastly better than conventional litigation for many kinds of cases," the Chief Justice told a joint meeting of the American Arbitration Association and the Minnesota State Bar Association in St. Paul in late August. For example, he said, a personal injury case "diverts people and entire families from their normal pursuits and sometimes makes them neurotics."

"Large commercial litigation takes businessmen and their staffs off the creative paths of production and

See CHIEF JUSTICE, page 7

Sentencing Commission Members Nominated By President Reagan

President Reagan has nominated the members of the United States Sentencing Commission, which was created by the Comprehensive Crime Control Act of 1984. The nominations must be approved by the Senate.

Judge William W. Wilkins, Jr., of the U.S. District Court for the District of South Carolina was designated Chairman. The other two judicial nominations were Judge Stephen G. Breyer of the First Circuit, who has served since 1980, and Senior Judge George E. MacKinnon of the District of Columbia Circuit, who was named to the bench in 1969. Judges appointed to the panel do not have to resign their judgeship appointments.

The President's other nominees were Ilene H. Nagel, a sociologist who also teaches at Indiana University of Bloomington School of Law; Professor Paul H. Robinson of Rutgers University School of Law; Michael K. Block, a professor of management and economics at the University of Arizona School of Business and Public Administration; and Helen G. Corrothers, a member of the U.S. Parole Commission.

In addition to the seven voting members who were named by the President, the Attorney General or his designee is a nonvoting member of the Commission, as is the Chairman of the Parole Commission, until the Parole Commission is abolished.

The principal responsibility of the Commission is to draft and promulgate sentencing guidelines to be used by federal district court judges. Initial guidelines are to be completed by the commissioners by April 12, 1986, and they then must lie on the table in Congress six months before they become effective. ■

Retroactive Pay Raise For Federal Judges Approved by Congress

Article III judges' pay rose 3.5 percent last month, after President Reagan signed legislation extending the cost-of-living increase other federal employees received in January to the judiciary.

The increase is retroactive to Jan. 1, and the checks covering the January through July pay periods were sent out last month, L. Ralph Mecham, Director of the Administrative Office, said.

Separate legislative action on a raise for judges was necessary because of the Comptroller General's opinion that existing legislation requires specific congressional approval of cost-of-living adjustments for federal judges.

Chief Justice Warren E. Burger, notifying the judiciary of the President's approval of the legislation on Aug. 15, pointed out that Judge Frank Coffin of the First Circuit, Chairman of the Judicial Conference's Committee on the Judicial Branch, has submitted a renewed request to the Comptroller to reconsider his opinion, so that cost-of-living increases in the future would apply to the judiciary without need for further congressional action.

The 3.5 percent raise brings the salary of the Chief Justice to $108,400, that of associate justices to $104,100, that of circuit judges to $83,200, and that of district court and Court of International Trade judges to $78,700. ■

Mark W. Cannon Is Selected as Staff Director of Bicentennial of Constitution Commission

Mark W. Cannon, Administrative Assistant to Chief Justice Burger, has been named Staff Director of the Commission on the Bicentennial of the United States Constitution. The Commission is in charge of organizing the commemoration of the 200th anniversary of the U.S. Constitution, which was written in 1787.

Chief Justice Burger, Chairman of the Commission, named a search panel last June to find a director, and it selected Dr. Cannon from more than 150 applicants.

"Mark was the Commission's unanimous choice," the Chief Justice said. "I acceded to the Commission's request to release him as my Administrative Assistant with reluctance and misgiving. On the other hand, I'm delighted to have a man of Mark's proved abilities and stature helping our Commission give leadership to this important celebration."

Betty Southard Murphy, the Commission member who headed the search committee, noted, "We were able to persuade the Chief Justice to release Dr. Cannon because of the Commission's need to get off to a fast start."

The Commission is authorized to hire 6 staff members to be paid with appropriated funds, to borrow 20 staff members from other agencies, and to hire 40 staff members to be paid with private funds. It will soon receive more than $300,000 in appropriated funds, and will launch a national fund-raising effort.

The Bicentennial for 1976 had a staff of about 250, and Congress appropriated more than $100 million for it; the program had other income in excess of $22 million.

Dr. Cannon has been the Chief Justice's Administrative Assistant since the position was created in 1972. He previously taught at Brigham Young University, served as Administrative Assistant to a U.S. representative and Staff Assistant to a U.S. senator, and was an executive with the Institute of Public Administration in New York. He holds a doctorate in economics and government from Harvard.

In addition to the Chief Justice, two other members of the judiciary serve on the 23-member Commission. They are Judges Cornelia G. Kennedy of the Sixth Circhit and Charles W. Wiggins of the Ninth Circuit. ■

Probation Officer and Training Coordinator John Travis (D.D.C.), above, discusses ways to reduce training expenses at a three-day session reviewing such programs and planning future ones. Among the probation and pretrial chiefs, deputies, and training coordinators who met with FJC staff members during the session in August were, l. to r., William Broome, Chief U.S. Probation Officer (D.N.D.); James McHenry, Chief U.S. Pretrial Services Officer (E.D. Mich.); Michael Kendrick, Deputy Chief U.S. Probation Officer (N.D. Ga.); Douglas Leroy, U.S. Probation Officer and Training Coordinator (W.D. Wash.); and Bernard Meagher, Supervising U.S. Probation Officer (D. Md.).

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Editor

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.

D.C. Circuit Court Holds Judge's Challenge To 1980 Judicial Ethics Act Untimely

A challenge to the constitutionality of judicial ethics legislation has been rejected as not yet ripe by the U.S. Court of Appeals for the District of Columbia Circuit. The ruling overturns a district court ruling that upheld the facial validity of the legislation.

The August ruling came in *Hastings v. Judicial Conference* (No. 84-5576), a case brought by District Judge Alcee Hastings (S.D. Fla.) after an investigation of his judicial conduct was begun by the Eleventh Circuit Judicial Council. The Council was proceeding under provisions of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c).

Judge Hastings had argued that the legislation was facially unconstitu-

See ETHICS, page 9

Visiting Judges in Florida's Southern District Asked to Try One Complex Criminal Case Each

The Southern District of Florida has developed a new method for using visiting judges, assigning them to complex criminal cases under a "one-month, one-trial" program.

According to the district's Chief Judge, James Lawrence King, the program was inspired by Chief Judge John C. Godbold of the Eleventh Circuit. Chief Judge Godbold, aware of the district's staggering load of complex criminal cases, assigned at least one judge from each of the Eleventh Circuit's eight other district courts to Southern Florida for a month.

Chief Judge King, working with Judge Peter T. Fay (11th Cir.), Chief Judge William Terrell Hodges (M.D. Fla.), Chief Judge William H. Stafford, Jr. (N.D. Fla.), and Judge Sidney M. Aronovitz (S.D. Fla.), decided that it would be far more efficient to have each of the visiting judges hear one complex criminal trial than to schedule each of them for 25 to 30 short criminal cases, as had been done in the past.

"It's so difficult to arrange a calendar of 30 short cases, so we did something that, as far as I know, has never been done," Judge King said, scheduling 14 lengthy cases to be heard by the visiting judges, starting last July and extending until February.

The impetus for the program, Judge King explained, was the Speedy Trial Act's mandate of quick trials—or dismissals—for criminal defendants. The idea that a defendant will go free, untried, because a court has failed to hear the case on time, puts "staggering pressure" on the judges to keep their criminal cases moving, Judge King noted. Nevertheless, most judges have done so without exceeding Administrative Office guidelines on time limits for handling civil matters.

Getting help with the complex criminal trials was "our greatest need," Judge King said. In May, there were more than 50 pending criminal trials, whose length was estimated at three to four weeks each. "If every one of our judges worked on nothing but those cases 40 hours a week, we would finish that backlog in 14 months and 1 week," Judge King said.

Judge King praised Chief Judge Godbold and Chief Justice Burger for their help in providing assistance to his court, whose criminal caseload is exacerbated by the large number of prosecutions involving drug traffickers bringing narcotics from South America to the United States.

The complex cases—many of them multiple-defendant drug conspiracy cases—are seldom disposed of without trial, Judge King explained, because the defendants "face such severe sentences"—often of 20 to 30 years—that there is usually no incentive to plead. ■

Conference Hears of Steps To Reduce Court Delays

Judge Richard A. Enslen (W.D. Mich.) presides at panel discussion of complex cases.

The National Conference on Court Delay Reduction held in Denver last month heard reports on efforts by courts of all sizes to reduce delays in litigation.

The Conference, organized by the National Center for State Courts and cosponsored by more than 40 other organizations including the Federal Judicial Center, began with a keynote address by American Bar Association President William Falsgraf.

Subjects discussed at the Conference included—

- Recent efforts to reduce litigation delays, including an examination of successful programs in courts of differing sizes.
- The roles of members of the bar and the judiciary in case management.
- The key elements of delay-reduction plans in courts of different sizes and functions.
- Additional resources that a delay-reduction plan might require.
- Arbitration, settlement conferences, and other alternatives to litigation.

Members of the federal judiciary participating in the discussions included Judge Robert C. Broomfield (D. Ariz.), Judge Richard A. Enslen (W.D. Mich.), Chief Judge John C. Godbold (11th Cir.), Chief Judge Robert F. Peckham (N.D. Cal.), Judge Roger G. Strand (D. Ariz.), and Judge Jack E. Tanner (W.D. Wash.). ■

MAZZONE, from page 1

Judge William Orrick (N.D. Cal.), and Judge Gerald Tjoflat (11th Cir.).

Judge Mazzone graduated from Harvard College and De Paul University College of Law. He served as Assistant District Attorney for Middlesex County and Assistant U.S. Attorney for the District of Massachusetts. He was an associate justice of the Massachusetts Superior Court for two years prior to his appointment to the federal bench in 1978. He is a member of the Judicial Conference Subcommittee on Federal Jurisdiction.

Can you tell us something about the purpose of this new committee, as you see it?

Well, as the charge came from the Chief Justice, our specific role is to advise the Center on the educational programs needed by those members of the federal judicial system affected by the Comprehensive Crime Control Act of 1984 and the Criminal Fine Enforcement Act, also passed last October. Of course, an important part of the Crime Control Act is guideline sentencing, which has yet to take effect, and that will probably be where most of our effort is devoted.

Of the committee's members, I should point out that Judge Tjoflat is the Chairman of and Judge Becker is a member of the Judicial Conference Committee on the Administration of the Probation System. Both have been district judges, both have had wide experience and background with the federal criminal justice system. Judge Tjoflat in particular has dealt with this legislation for years and has testified before congressional committees when called upon to do so. Judge Butzner is the Chairman and Judge Orrick is a member of the Conference's Committee on the Administration of the Criminal Law. Judge Butzner was a district judge. They all bring to this planning committee widely varied experience and background. They have the type of talent that is needed for the purpose for which we were established.

Could you give us an idea, from where you sit, of the impact of this legislation on the judiciary, as far as educational needs are concerned?

Obviously, this legislation is having a major impact on how we handle our criminal cases. In important ways, it is a rewrite of federal criminal law and procedure. The courts have had to adapt to new provisions on bail, fines, the new special assessments, forfeitures, how we handle juvenile defendants—and that's not to mention the changes in the substantive law, in the insanity defense, and so on. I think all elements of the third branch have some educational needs as far as this legislation is concerned—circuit court judges, district court judges, and magistrates, including part-time magistrates, some of whom are located in outlying places and typically don't get to seminars. Of course, appellate staff attorneys need to know about the changes. Federal defenders are obviously affected. It's very important to recognize that probation and pretrial services play a major role in this effort; we have to be very aware of their specific needs. In this regard, among others, Judges Tjoflat and Becker, as members of the Conference Committee on Probation, will be extremely helpful.

The judges and other personnel know their specific needs better than I, but I have, for example, talked to members of every element of the system affected by the acts in my own district to get ideas of what those within the judicial system will need by way of education. We're prepared to address the needs of all of those areas, separately and, if we can, together.

The committee has found it helpful to see the educational efforts in terms of preguideline educational needs and postguideline educational needs. In other words, we think that those are two discrete needs that we will have to address separately. The changes I alluded to a moment ago have been in effect since October of last year—for slightly less time than the new fine act—and the courts, on their own and with the assistance of the Center's educational programs, have been digesting the changes and applying them. As a matter of fact, even granting that there have been some rough spots, I think the judiciary has absorbed these changes in remarkably good fashion.

What do you mean by postguideline needs?

I mean the educational programs that will be needed after the sentencing guidelines have been promulgated by the Sentencing Commission, the need to familiarize the courts with the guidelines and with sentencing procedures under these guidelines. As I mentioned, I believe this is the area where our committee will see the greater share of its activity.

"[The Crime Control Act] is having a major impact on how we handle our criminal cases."

Let's talk about what you call preguideline educational needs. What has the Center done as regards those aspects of the statutes that are in effect now?

Well, soon after the Crime Control Act was signed, the Board of the Federal Judicial Center had a meeting and determined quickly that some kind of program to highlight the legislation's provisions should be prepared to reach as many as possible of the federal court personnel affected by them. A four-hour video seminar was developed and broadcast to various locations throughout the country, and videotapes of the program were also sent to all the courts. The video seminar took place in January 1985. On that program, as a matter of fact, were two members of our committee, Judges Butzner and Tjoflat, as well as others. So that was one of the first things that was done. At the same

time, Tony Partridge of the Center prepared a written synopsis of the legislation, which was first distributed at the video seminar locations. By now close to 9,000 copies of this synopis have been distributed, and, I believe, to great acclamation. It covers the entire act in a brief, but comprehensive, fashion.

And then the Center has added something about the legislation to almost every one of its programs since last October—sentencing institutes, district and circuit judges' orientation seminars and workshops, magistrate seminars, probation and pretrial service officers' programs—in other words, almost every program. There was also a recent *Bench Comment* dealing with appellate interpretations of the "bail on appeal" provision. We also think it's important to keep the courts abreast of special procedures that particular courts have developed to accommodate the legislation. Obviously, the needs that I mentioned are varied and a video seminar can't meet and could not meet everybody's specific needs.

I might say that as far as what I call preguideline education is concerned, there have been other efforts independent of the Center's work.

Can you describe some of those?

Most important, let's not forget that judges, with the help of lawyers, routinely educate themselves as to developments in the law. By the way of more formal efforts, the Second Circuit's annual judicial conference this year was devoted to the legislation, and the Tenth Circuit conference dealt with parts of it. There have been local court educational programs—the Eastern District of New York had one last December. I'm somewhat reluctant to give these examples for fear of skipping over what other courts have done, but it does give an idea of what's going on. And, as would be expected, private educational groups have sponsored programs, mainly aimed at the bar.

What would you say is the single most important aspect of the crime legislation affecting the courts right now?

Immediately, I think the bail provisions are the most important, because they affect not only the judges and magistrates themselves but pretrial services and probation officers. That is the area where we recognize the most immediate needs.

In terms of the committee's role, do you think it will be prescribing specific topics that should be included in the Center's various educational programs?

We will certainly suggest things, but let me say here that we're going to depend on the personnel within the system. We always get some assessment from those judges and personnel who attend our various programs, and the Center usually doesn't dictate topics for seminars, on the theory that the participants know what they want and know what they need. But you can't always wait for those expressions, especially when the need is obvious. Last fall and winter, right after the statutes were passed, the Center added orientation sessions on the acts to its various judges' workshops, even though the participants had been surveyed and the agendas had already been set. And that was, I think, welcomed by all.

Let's turn to the sentencing guidelines. When will they be in effect?

Well, let's go back to the statute. The statute was passed on October 12, 1984. It called for the establishment of a Sentencing Commission and promulgation of guidelines by that Commission by April 12, 1986.

"It's hard to overemphasize the major changes guideline sentencing will produce."

To whom will they promulgate these guidelines?

To the Congress, and the Congress then has about six months from that time, to November 1986, to consider them. So the statute says they will be in effect, following that timetable, by November 1986. Now, to be realistic, I don't know if that schedule's going to be kept or not. The commission obviously has a huge task, once it gets in place.

Judge A. David Mazzone

But it's conceivable, anyway, that the guidelines could be before the Congress in about six months and before the courts in about a year?

That's still the statutory schedule, but April gets closer every day. We are going to monitor the developments to know as best we can when the guidelines will be promulgated, and we're going to try to anticipate what we will be called upon to furnish when the Sentencing Commission is set in place.

Once the guidelines are promulgated by the Commission, what can third branch personnel look forward to as far as learning about these guidelines?

I see and I think we see—the committee sees—an enormous demand for educational programs after the guidelines are promulgated. Also, the law governing guideline sentencing will have to develop slowly and continuously.

Who will provide that education?

Let me just paraphrase what the statute says about the Sentencing Commission's role. It says the Sentencing Commission—and here I'm quoting—is to "devise and conduct periodic training programs of

See MAZZONE, page 6

MAZZONE, from page 5

instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process." That's at 28 U.S.C., at section 995(a)(18). That statute goes on to say that the Commission should—I'm quoting again—"to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication." That's at section 995(b). So the Commission may elect to sponsor its own programs. It would seem only reasonable to me, however, that the Commission would work with the Center as far as training goes.

Why is that?

The Center has established access to personnel and experience in the field, access to the resources of the law schools, and of course access to the judges themselves. The Center knows about providing education to the federal courts, and will continue to do so. The Commission's mandate simply creates the need for more coordination.

What is the extent of any formal relationship between the Commission and the Center, or what will be the relationship between the Commission and your committee?

Well, other than what is implied in the statutory language I just quoted, there is no relationship. However, the statute says that the Sentencing Commission is part of the judicial branch—"established as an independent commission in the judicial branch of the United States" are the exact words at section 991(a) of title 28. It is a Commission within the judicial branch, and some Commission members will, of course, be judges, and some will be nonjudicial personnel. Our planning group, as I said, consists of members of Conference committees—all of us are members of Conference committees—and with some experience and background in this area. So we would hope to meet with the Commission, probably at the Center, soon after it is appointed to let it know that we are available to it and describe to it our facilities and the means that we think we can put at its disposal. We would hope to be of whatever help we could be immediately because of the press of time on their part and the urgency of the task to which they are assigned.

"When it comes time to familiarize the courts with this new sentencing system, it's hard to see anything else of greater importance."

It would be fair to say, would it not, that the committee attaches great importance to programs to familiarize the courts with the guidelines?

It certainly does. It's hard to overemphasize the major changes that guideline sentencing will produce. For those who sentence—the judges and the magistrates—there's an entirely new approach to be made. For those who for the first time will hear appealed sentences, there's a new approach. For probation officers, staff attorneys, and defense counsel, there's a new approach. So educational programs to address those new approaches are not optional, in my view. They are absolutely necessary, and I wouldn't limit that to one-time-only needs.

For example?

Let's take a look at what the circuit court is now going to be called upon to do. For the first time, it's going to be called upon to hear appeals of sentences, both by the defendant and by the United States. Now the statute says that a sentence can be appealed if it is imposed in violation of the law—or, second, if it is imposed as a result of the incorrect application of the guidelines—or, third, if it is outside the guidelines. It's one thing to say that a sentence outside the guidelines can be appealed. I think the second provision is the problem, or could be the problem. This is a highly complex new system of imposing sentence. Since it's so highly complicated, until we develop a body of law that is consistent and has been tested, the phrase "incorrect application" could be alleged in many cases, even if the guidelines are not exceeded or a sentence is not imposed below the guidelines. It may be that appeals will be just as likely when a sentence is imposed within the guidelines as beyond the guidelines. So there will be need, I think, for a very intense, and continuing, program in that area.

Circuit judges will be able to resentence if the sentence is vacated. Some have been district judges, but some have not. Of course, they can remand as well and that would not be a problem, but overall it means to me that circuit judges will very much need to attend sentencing institutes. The institutes are authorized, of course, for all judges, but in my experience, circuit judges do not routinely attend. That's just one of the more specific areas where I can see a need for, as I said, some intense education.

What will these postguideline programs be like? Will they be crash courses?

As to the initial programs to orient the third branch about the guidelines once they're promulgated, I can't at this time say what the precise format would be for such programs, although our committee did discuss this at some length. More than anything else, the programs will have to provide very practical guidance on what the act requires and what the guidelines contain.

Once it becomes clearer what the guidelines will look like, and depending on what the Commission plans, we'll set to work on structuring a program that can be brought to the courts in a quick, efficient fashion. We will probably want to provide the education by a series of regional pro-

See MAZZONE, page 8

New Videotapes Available From Media Library

The Center's Media Library has acquired several new videotapes of interest to the judiciary:

Macros and Other Advanced Features of Lotus 1-2-3 (VG-053), a follow-up to *Introduction to Lotus 1-2-3*, features advanced applications of this software. The package includes a diskette and workbook as well as a videotape and will be useful only to those with access to the Lotus software and an IBM-compatible microcomputer other than the IBM PC Jr.

A Passion for Excellence (VG-052) presents Tom Peters, coauthor of the book *In Search of Excellence*, in a discussion of how successful organizations provide services.

Building One-Minute Manager Skills (VG-056) and *Leadership and the One-Minute Manager* (VG-054) feature Ken Blanchard, coauthor of the book *The One-Minute Manager*, who explains how to build management leadership skills and use them toward subordinates' development.

Persuasive Negotiating (VG-050) and *Everybody's A Negotiator* (VG-051) present Herb Cohen, author of the book *You Can Negotiate Anything*, in an explanation of the basic principles of negotiation.

Those interested in viewing a tape should ask one of the training coordinators in their court to request it from Information Services. Because of limited copies, requests will be filled in the order they are received. ■

FJC Publications on Automation, Caseloads Available

The Center recently published *Preparing a United States Court for Automation*, by Gordon Bermant of the Center's Innovations and Systems Development Division.

Earlier this year, the Judicial Conference Committee on Court Administration approved a five-year court automation plan developed by the Administrative Office of the U.S. Courts and the Federal Judicial Center. The heart of the plan involves decentralizing automation by placing computer hardware in the courts. The report outlines the various problems that must be addressed before and during the installation of an individual court's computer system.

Each step in orienting a court to automation is examined. The report describes the key role played by the clerk of court in a new system's implementation; the importance of the system manager position; the logistical and personnel demands involved in the installation of computer hardware; and ways to use the system efficiently once it has been installed.

* * *

The Center also recently published *The Caseload Experiences of the District Courts from 1972 to 1983: A Preliminary Analysis*, a staff paper by Barbara Stone Meierhoefer and Eric V. Armen.

Based on published court statistics, the paper examines the appropriateness of using 400 weighted filings pe. judge as a guide in developing recommendations for the creation of new district judgeships. The authors compare the 400 level with six other cutoff points to determine which of these best predicts when problems with the pending caseload will arise. None of the other levels was better than 400, a finding that lends empirical support to the current policy of using that number as a guide for determining when more judges are needed.

The paper also concludes, however, that the single factor of per-judge filings in a particular year is only one among many variables affecting a court's ability to control its caseload. Some courts are able to keep control despite large caseloads; further study of factors such as case mix and approaches to case management is needed to gain a better understanding of court capacity.

The paper includes tables comparing the predictive value of the various cutoff levels and graphs showing the caseload experiences of selected district courts over this 12-year period.

* * *

Copies of either publication can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope). ■

CHIEF JUSTICE, from page 1

often produces more wear and tear on them than the most difficult business problems."

"A large proportion of civil disputes in the courts," the Chief Justice said, "could be disposed of more satisfactorily in some other way." The most obvious other way, he indicated, is arbitration. Its advantages include selection of the trier by the parties, possibly on the basis of expertise in a given area; closed, confidential proceedings; and rapid decisions.

The success of arbitration as an alternative to litigation has been proven by experiments in the federal courts in Philadelphia and San Francisco, the Chief Justice told his audience. In the Eastern District of Pennsylvania, only 1.5 percent of cases subject to court-annexed arbitration over a six-year period subsequently went to trial, while 8 percent of other cases proceeded to trial. Comparable figures were produced in a similar program in the Northern District of California.

The Chief Justice asserted that "every private contract of real consequence to the parties ought to be treated as a 'candidate' for binding arbitration."

He told his audience that he intended "no disparagement of the skills and broad experiences of judges. I emphasize [arbitration] because to find precisely the judge whose talents and experience fit a particular case of great complexity is a fortuitous circumstance." ■

Justice Department Mediation Service Expanding

The Community Relations Service (CRS) of the Department of Justice is expanding its mediation services to all federal district courts. The CRS, established as part of the 1964 Civil Rights Act to conciliate and mediate charges of discrimination on the basis of race, color, or national origin, has conducted a pilot mediation-referral program in the district courts of the Seventh Circuit since 1979. Because of the success of that pilot program, the CRS plans to expand its mediation services to all district courts.

According to its congressional mandate, the CRS can offer services to resolve any disputes involving allegations or perceptions of racially related discrimination. Litigation involving such issues as land-use disputes, allocations of local government resources, and environmental disputes, as well as suits brought under the civil rights laws, may fall under the CRS mandate as long as some aspect of the case deals with race, color, or national origin.

CRS conciliators and mediators are also available, on a more restricted basis, as fact finders, but cannot operate as special masters or arbitrators.

According to CRS Director Gilbert G. Pompa, courts' use of CRS mediation has advantages for both the parties and the courts. Mediation is often less time-consuming and resource-consuming than litigation. Moreover, a dispute resolved through mediation frequently allows opposing parties to maintain an ongoing relationship of benefit to a community. Finally, a mediated agreement involving several factions of a community can set a pattern for future friendly negotiations, eliminating the need for continual resort to court battles.

Information on how this type of mediation can be arranged is available from Gail B. Padgett, Special Assistant for Legal Affairs at the Justice Department, at (301) or (FTS) 492-5929.

MAZZONE, from page 6

grams for judges, magistrates, and probation officers, who will be most directly affected by it.

Some aspects of guideline sentencing are known now—they are spelled out in the statute—such as the basic grounds for appeal. That sort of thing can be discussed in programs before the guidelines are promulgated—and have been at sentencing institutes.

You mentioned the sentencing institutes. Would you expect the sentencing institutes to be the main vehicle for the initial judicial branch educational programs about the guidelines?

Well, while the sentencing institutes are now in place, probably they will not be the major vehicle, even assuming that the Center provides this training. It was the view of our committee—which, as I said, includes Judges Tjoflat and Becker of the Probation Committee, and they plan the institutes—that guideline sentencing is such a major change that it would not be a good idea to introduce it as what you might call more "business as usual." I think we will develop other programs, regional programs, perhaps one for every circuit, with special materials to show the entire sentencing process from beginning to end. That's what I think will probably be the better approach rather than to tack an extra session onto the existing sentencing institutes, or even devote them entirely to guideline sentencing.

We may well be looking then to a six-month window in which every judge, every magistrate, every probation officer, at least, is going to need to attend a program to learn about these guidelines and the changes created by them. What impact do you, as a member of the Board, think that will have on other regular educational programs of the Center?

Well, I speak as only one member of the Board, and it's hard to say right now, anyway, until we know more about the Commission's intentions and what their needs are and what we will be called upon to do. There are also the budgetary implications of such a massive effort, and that will be affected also by any relationship we may have with the Commission. Suffice it to say, however, that when it comes time to familiarize the courts with this new sentencing system, it's hard to see anything else of greater importance. So it may be that some of the other, regular programs will have to be canceled or curtailed or modified. Everybody in the system—judges, probation officers, magistrates—is very busy, and we can't ask them to spend all their time going to seminars and attending programs. So we'll have to focus on those areas which are in need immediately and where we can really help and, as I said, work intensely on those programs.

The federal public defenders and, to a degree, community defenders come within the Center's training ambit, but the sentencing guidelines will affect all members of the criminal bar, defense and prosecution. Has the committee given any thought to that need?

Yes. First, we know that the Department of Justice will be training the U.S. attorneys' offices throughout the country. And there will no doubt be private educational programs sponsored for the defense bar. But Judge Becker in particular, at our committee meeting, was concerned about the need for each district court to bring the entire criminal bar into an educational program, and we all support that idea. It conforms to the tradition of local continuing legal education.

So you see a role for each district perhaps taking on an educational responsibility once these guidelines come into effect?

See MAZZONE, page 9

Devitt Award Nominees Sought

Nominations for the fourth annual Edward J. Devitt award to be conferred on a federal judge are now open. This award carries with it an honorarium of $10,000 and is named after the former chief judge of the U.S. District Court for the District of Minnesota. The selection committee includes, in addition to Judge Devitt, Justice Lewis F. Powell, Jr., of the Supreme Court of the United States and Chief Judge James R. Browning of the U.S. Court of Appeals for the Ninth Circuit.

The award was established "to recognize the dedicated public service of members of the federal judiciary." All Article III federal judges are eligible recipients.

Previous recipients of this award are Senior Judge Albert B. Maris (3rd Cir.), Senior Judge Walter E. Hoffman (E.D. Va.), and Judge Frank M. Johnson, Jr. (11th Cir.). A special award was made to Chief Justice Burger in 1984.

Nominations for this award should be submitted in writing by November 30, 1985, to Devitt Distinguished Service to Justice Award, P.O. Box 43810, St. Paul, MN 55164. ■

Third Edition of Bench Book Started

The second edition of the *Bench Book for United States District Court Judges* has been completed.

The Bench Book Committee met in August and made plans for a third edition, which will contain several changes made necessary by new legislation, including the Comprehensive Crime Control Act of 1984, and other updated information.

The Bench Book Committee is chaired by Chief Judge William S. Sessions (W.D. Tex.) and includes Chief Judge William Terrell Hodges (M.D. Fla.), Judge A. David Mazzone (D. Mass.), Chief Judge Aubrey E. Robinson, Jr. (D.D.C.), and Judge Donald S. Voorhees (W.D. Wash.).

MAZZONE, from page 8

Yes, I do. I think that was the thrust of Judge Becker's suggestion, and as I say, it was adopted by the committee. We would consider recommending that each district put on a seminar for the bench and the bar together, and we'll do whatever we can to put together some packages. We have not yet developed a basic package, but we're going to try to develop something that could be sent to each district court for its use and its adaptation as it sees fit. ■

New Rules Now in Effect

Amendments to the federal rules of civil procedure, criminal procedure, and bankruptcy procedure were approved by the Judicial Conference at its September 1984 meeting and sent to Congress by the Supreme Court April 29. The new rules became effective August 1, after expiration of the statutory period during which Congress could have modified them.

ETHICS, from page 3

tional and unconstitutional as applied to him, that its application amounted to a conspiracy, and that it violated his privacy rights. The district court, acting on cross-motions for summary judgment, upheld the statute's facial constitutionality and dismissed the other claims as unreviewable or as failing to state a claim.

The court of appeals noted that the Council's investigation is not yet complete, and thus no decision on possible action against Judge Hastings has been reached. The opinion, written by Judge Carl McGowan, stated it was "an established and salutory principle . . . that constitutional issues affecting legislation will not be determined 'in advance of the necessity of deciding them' or 'in broader terms than are required by the precise facts to which the ruling is to be applied.' "

"We must permit the proceedings against appellant to unfold as they will. In the course of time we may have a more concrete application of the Act as a whole. Then, and only then, will we be justified in deciding the facial constitutionality of the Act."

The appellate court thus overturned the district court's determination that the legislation was facially constitutional, leaving adjudication of that issue for a later time. On the same ripeness grounds, it rejected the district court's finding that the constitutionality of the legislation as applied to Judge Hastings was beyond review. It agreed with the district court that the conspiracy charge should be dismissed, but for different reasons. The lower court had called the claim unreviewable under the legislation; the appeals court rejected that reasoning on ripeness grounds, holding alternatively that the conspiracy claim had been fully and fairly litigated in earlier proceedings and could not be raised again. The appeals court also upheld the district court's dismissal of the privacy claim.

Judge Harry T. Edwards, concurring, agreed with the ripeness ruling, but voiced serious concern about the legislation, which, he said, "may, in part, be significantly at odds with our basic constitutional structure and previously inviolate principles of separation of powers."

"My concern," Judge Edwards said, "has less to do with issues of individual misconduct than with a potentially unconstitutional legislative incursion into the judicial province. . . . Our self-righteous finger pointing at Judge Hastings may blind us to the reality that his case has more to do with the potential diminution of the independence of the judiciary than with the alleged misconduct of an individual judge.

Judge Hastings was acquitted of bribery and obstruction of justice charges in 1983. The subsequent Eleventh Circuit investigation was based in part on those charges and in part on evidence of conduct presented during the trial. ■

PERSONNEL

Nominations

David A. Nelson, U.S. Circuit Judge, 6th Cir., Sept. 9
James L. Ryan, U.S. Circuit Judge, 6th Cir., Sept. 9
Alan H. Nevas, U.S. District Judge, D. Conn., Sept. 9
David Sam, U.S. District Judge, D. Utah, Sept. 9
Stephen V. Wilson, U.S. District Judge, C.D. Cal., Sept. 9

Confirmations

Joseph J. Farnan, Jr., U.S. District Judge, D. Del., July 16
Stanley Marcus, U.S. District Judge, S.D. Fla., July 16
James M. Rosenbaum, U.S. District Judge, D. Minn., July 16
Thomas E. Scott, U.S. District Judge, S.D. Fla., July 16
Louis L. Stanton, U.S. District Judge, S.D.N.Y., July 16

Appointments

Roger J. Miner, U.S. Circuit Judge, 2nd Cir., Aug. 2
Roger L. Wollman, U.S. Circuit Judge, 8th Cir., Sept. 6
William G. Young, U.S. District Judge, D. Mass., May 24
Donald E. Walter, U.S. District Judge, W.D. La., July 15
James M. Rosenbaum, U.S. District Judge, D. Minn., July 19
James D. Todd, U.S. District Judge, W.D. Tenn., July 19
Joseph J. Farnan, Jr., U.S. District Judge, D. Del., July 26
Claude M. Hilton, U.S. District Judge, E.D. Va., Aug. 1
Robert C. Broomfield, U.S. District Judge, D. Ariz., Aug. 12
Stanley Marcus, U.S. District Judge, S.D. Fla., Aug. 16
Wayne E. Alley, U.S. District Judge, W.D. Okla., Aug. 20
Roger G. Strand, U.S. District Judge, D. Ariz., Aug. 20
Richard H. Mills, U.S. District Judge, C.D. Ill., Aug. 27
John M. Walker, Jr., U.S. District Judge, S.D.N.Y., Sept. 9

Senior Status

Ellsworth A. VanGraafeiland, U.S. Circuit Judge, 2nd Cir., May 11

Judicial Conference Reports Now Available On-Line

The Administrative Office of the United States Courts has, with the West Publishing Company, created an on-line, full-text data base of the Reports of the Proceedings of the Judicial Conference of the United States. This data base now covers December 1922 through March 1984, and subsequent Judicial Conference proceedings will be added shortly.

The data base can be accessed by calling the operator for computer-assisted legal research at each circuit library.

Miles Lord, U.S. District Judge, D. Minn., July 1

Resignation

Miles Lord, U.S. District Judge, D. Minn., Sept. 11

Deaths

Joseph C. Zavatt, U.S. District Judge, E.D.N.Y., Aug. 31
Edward A. Tamm, U.S. Circuit Judge, D.C. Cir., Sept. 22

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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THE THIRD BRANCH

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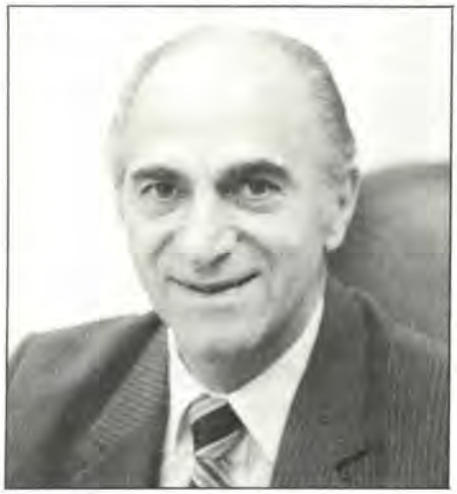
Chief Judge Re Discusses International Trade Court's Jurisdiction and Procedures

The subject of this month's interview is Chief Judge Edward D. Re, who has been Chief Judge of the U.S. Court of International Trade since its creation in 1980. He previously was Chief Judge of the U.S. Customs Court.

In addition to 17 years of judicial experience, Chief Judge Re's distinguished record includes service as Chairman of the U.S. Foreign Claims Settlement Commission (1961–68) and as Assistant Secretary of State for Educational and Cultural Affairs (1968–69) and 11 years' membership on the New York City Board of Higher Education.

Chief Judge Re holds nine honorary degrees in addition to his B.S., LL.B., and J.S.D. degrees, and in 1980 he was named Distinguished Professor of Law by St. John's University School of Law. He has written extensively on brief writing, opinion writing, and numerous subjects in the international law field.



Chief Judge Edward D. Re

You have been the Chief Judge of the United States Court of International Trade since it was created.

Why was this court created?

As you know, the United States Court of International Trade is a national Article III court. The geographical jurisdiction of the court extends throughout the United

See JUDGE RE, page 4

Commission on Bicentennial of Constitution Releases First Report, Holds Public Hearings

On September 17, the 198th anniversary of the signing of the Constitution, the Commission on the Bicentennial of the United States Constitution released its first report, and held public hearings to learn of the activities and recommendations of 19 public and private agencies involved in bicentennial planning.

Although preparations for the bicentennial were well under way before the Commission was formed in June, the Commission, one speaker said, would "impart a sense of purpose and direction to the nation's commemoration of the bicentennial" of our Constitution.

Both the Commission's report, issued 12 days prior to the statutory deadline, and those who testified at the hearings stressed the educational opportunity the bicentennial presents the nation—a chance for "a history and civics lesson for all of us," in the words of the Chief Justice, who is Chairman of the Commission. The occasion, one speaker said at the hearings, calls for "*cerebration* as well as *celebration*."

The Commission's report, inviting the participation of "[e]very state, city, town, and hamlet, every organization and institution, and every family and individual," outlined a three-phase effort, tracking the developments of two centuries ago. Emphasis from now until 1987 will be on the events leading up to the constitutional convention and the Con-

See BICENTENNIAL, page 2

Judicial Conference Recommends 47 More Bankruptcy Judgeships

The Judicial Conference, at its semiannual meeting in September, urged creation of 47 additional bankrupty judgeships. It voiced support for pending legislation to provide for reimbursement of visiting judges' actual expenses. The Conference agreed to recommend to Congress that it not pass legislation providing commuting expenses for judges and legislation requiring clerks of court to collect criminal fines.

Attorney General Edwin Meese addressed the Conference and promised that the Reagan Administration would move quickly to fill judicial vacancies. At that time there were 86 vacancies—66 on the district courts and 20 on the courts of appeals.

The Conference's recommendation on additional bankruptcy judgeships, which will be transmitted to Congress, calls for appointments in all circuits except the First, Second, and District of Columbia. The largest number of new judgeships would go to the Central District of California. (See box, page 7.)

Proposed legislation disapproved by the Conference included a bill that would authorize reimbursement of all federal judges for travel between their home and their official duty station. The other pending bill disapproved would have required court

See CONFERENCE, page 7

Inside...

BICENTENNIAL, from page 1

stitution itself. The Commission urged designating September 17, 1987, as a national holiday.

The year 1988 will emphasize the ratification debates. The year 1989 will focus on the creation of the new government and prepare the way for a celebration of the Bill of Rights.

Activities reported at the hearings included:

- More than 160 awards totaling more than $11 million, which the National Endowment for the Humanities has allocated to bicentennial projects.
- Plans by the National Archives, Library of Congress, and National Park Service for celebrations on key dates, as well as exhibits and accompanying public education.
- PROJECT '87, a joint venture of the American Historical Society and the American Political Science Association, which has for almost ten years been serving as a national bicentennial clearinghouse as well as sponsoring numerous educational programs.
- The American Bar Association's "We the People" bicentennial program.

Bicentennial activity to date has been characterized in large measure by scholarly symposia and academic research, as well as by summer seminars for law school, college, and secondary school teachers on teaching about the Constitution. As 1987 draws near, activity is moving toward a greater level of public education and citizen involvement. Various state and community organizations, the most important of which is the "We the People 200" effort, based in Philadelphia, are planning citizen-education forums. The hearings revealed more than 25 video and radio programs—from documentaries on the founding to contemporary analyses of key constitutional provisions—in various stages of planning or production.

The Commission's report also recommended certain changes in its authorizing legislation to increase the Commission's fund-raising capacity, as well as provide it additional staff. At this point the resources available to the Commission are far fewer than those available in the planning of the bicentennial of the Declaration of Independence in the 1970s.

The Center is distributing copies of the Commission's report to all federal judges. Others who wish copies can obtain them by sending a self-addressed label, preferably franked, to the Information Services Office, 1520 H Street, N.W., Washington, DC 20005. ■

1986-87 Judicial Fellows Program

Chief Justice Burger has announced the 1986-87 Judicial Fellows program. This program, patterned to some extent after White House and congressional programs, brings into the judicial branch highly talented young professionals who have an opportunity to make contributions to the work of the Supreme Court, the Federal Judicial Center, and the Administrative Office of the U.S. Courts. Each year one of the fellows is designated the Justice Tom C. Clark Fellow, a memorial arranged by Justice Clark's law clerks and friends and other supporters of the program.

Application forms and further information about the program can be obtained from the office of the Administrative Assistant to the Chief Justice, Supreme Court of the United States, Washington, DC 20543. Applications should be mailed by Nov. 8 to assure consideration.

Asbestos Litigation Burdens Subject of New Research to Be Conducted by FJC

The Federal Judicial Center is undertaking new research into the burdens imposed by asbestos litigation in some district courts. The Center plans a systematic analysis of the costs and effectiveness of alternative procedures for management of asbestos cases and other toxic-tort litigation. Information will be gathered from court records, Administrative Office statistics, and interviews with judges, lawyers, clerks, and others.

An FJC report based on a 1984 asbestos litigation conference noted that "case management crises" in several districts with heavy asbestos caseloads could be addressed only by dramatic changes such as increases in personnel or restructuring of the court's system of calendaring. The report also noted that "[s]tatistics on asbestos cases in federal courts fail to reflect the burden of those cases in some districts and may result in a failure to allocate adequate resources to courts with heavy asbestos caseloads," and it called for further study of those burdens.

The conclusion that drew the most attention, however, was that "asbestos cases have become relatively routine products liability cases" that are susceptible to traditional case management practices, especially the setting of firm, credible trial dates.

The new research comes in part in response to the report's recommendations for further study and to concerns expressed by several members of the judiciary that participants in the conference did not adequately address the question of the burdens of managing asbestos cases. ■

THE THIRD BRANCH

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Editor

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.

Third Circuit Issues Report on Court-Awarded Attorneys' Fees

A Third Circuit task force on court-awarded attorneys' fees recommended last month that such fees be set on a percentage basis in cases in which a common recovery fund will be created, and that the currently used "lodestar" method for computing awards in some statutory-fee cases be revised.

The task force's report, "Court Awarded Attorney Fees," urged different treatment for cases in which compensation comes out of a common fund and those in which the successful litigant recovers fees under a fee-shifting statute.

Headed by Judge H. Lee Sarokin (D.N.J.), the task force was asked to determine what changes, if any, were needed in the current Third Circuit method of determining the amount of court-awarded attorneys' fees.

The Third Circuit has for the past decade followed the lodestar method. A fee under that method is arrived at by determining the number of hours reasonably expended on the case and multiplying by an hourly rate. That rate is determined by such factors as the lawyers' experience, qualifications, and reputation. The resulting amount—the lodestar—is then increased or decreased by a multiplier factor based on the risk involved in the case and the quality of the attorneys' work.

Most other circuits have adopted the Third Circuit test or a similar standard, so proposals to change that method may have a nationwide impact.

The task force found that the lodestar method was not the best one to use in cases in which there will be a common fund. It recommended, instead, that the court appoint a fee representative early in the litigation who would negotiate with the putative class's attorneys on the class's behalf to set a fair contingency fee. That fee, if approved by the court,

See FEES, page 8

AO Director Reports Increases in Court Filings

Administrative Office Director L. Ralph Mecham told the Judicial Conference in September that the federal courts' workload increased substantially again in 1985, with increases in virtually all courts and all categories of cases.

The Director summarized for the Conference the AO's annual report, which covers the statistical year July 1, 1984, to June 30, 1985. The annual figures show that—

- Filings in the 12 regional courts of appeals were up 6 percent.
- Filings in the Court of Appeals for the Federal Circuit rose 120 percent.
- Civil cases in the district courts rose 5 percent.
- District court civil cases in which the United States was plaintiff rose 22 percent.
- Criminal cases filed in the district courts grew by 5 percent.
- Bankruptcy filings rose 8 percent.

In each of those categories, the number of cases disposed of also rose over the previous year, but not fast enough to absorb all of the filing increases.

The annual report also summarizes activity under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. There were 191 complaints about judges filed in statistical year 1985, an increase of 8 percent.

U.S. Parole Commission Issues New Guidelines

The Parole Commission has amended its guidelines for treatment of youthful offenders and some adult offenders. The new proposals were published in the *Federal Register* as final rules on Oct. 3.

Among other significant changes, the Commission abolished the separate guidelines for youthful offenders—those sentenced under the Youth Corrections Act or the Narcotic Addict Rehabilitation Act and those who were less than 22 at the time of their offense. These inmates will be subject to the same new guidelines as adult offenders now are. Offenders of all ages guilty of less-severe offenses who are judged to be in the better-risk category will fare better under the new guidelines, and youthful offenders involved in serious crimes will be treated more severely than in the past, because they will be treated as adults.

The new guidelines will apply to any prisoner whose initial parole hearing is held Nov. 4 and after. They will also apply to recission and revocation hearings held after that date. Prisoners involved in interim hearings and prerelease record reviews after Nov. 3 will be covered retroactively by the revised guidelines if the new guidelines are more favorable.

The following table shows the new guidelines issued by the Commission:

OFFENSE CHARACTERISTICS: Severity of Offense Behavior	**OFFENDER CHARACTERISTICS:** Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10–8)	**Good** (7–6)	**Fair** (5–4)	**Poor** (3–0)
	Guideline Range (in Months)			
Category One	≤ 4	≤ 8	8–12	12–16
Category Two	≤ 6	≤10	12–16	16–22
Category Three	≤10	12–16	18–24	24–32
Category Four	12–18	20–26	26–34	34–44
Category Five	24–36	36–48	48–60	60–72
Category Six	40–52	52–64	64–78	78–100
Category Seven	52–80	64–92	78–110	100–148
Category Eight*	100+	120+	150+	180+

*No upper limits are specified because of the extreme variability of the cases within this category.

JUDGE RE, from page 1

States. In fact, the court also is authorized to hold hearings in foreign countries. The court's subject-matter jurisdiction is exclusive, and includes judicial review of civil actions arising out of import transactions and federal statutes regulating importations. The existence of the court ensures expeditious procedures and avoids jurisdictional conflicts among the federal courts. Most important, it provides uniformity and consistency in judicial decision making regarding import transactions, as required by Article I, Section 8, of the Constitution. It may not be well-known, but the provision of the Constitution that authorizes the Congress to lay and collect taxes, duties, imposts, and excises also requires that all duties, imposts, and excises shall be uniform throughout the United States. A purpose of the court is to see to it that this requirement of uniformity is maintained.

What does the court do that wasn't done by the former Customs Court, of which you were also Chief Judge?

The new name more accurately describes the court's expanded jurisdiction and its increased judicial functions relating to international trade disputes. The new court has increased subject-matter jurisdiction, as well as plenary authority in law and equity that wasn't possessed by the former Customs Court. This was achieved by the Customs Court Act of 1980, which created the new court. The act conferred expanded subject-matter jurisdiction, which now includes just about all civil actions against the United States, its officers, or its agencies that arise out of the laws regulating imports. An important provision of the 1980 act made it clear that this court has all the powers in law and equity of, or as conferred by statute upon, the district courts of the United States.

So the provision put you on a par with the district courts?

The act conferred upon this court all of the powers both in law and in equity, possessed by the district courts, including the power to grant any relief appropriate to the case before it. I think it's also important to note that the act permits the Chief Justice of the United States to assign judges of this court to perform judicial duties in the courts of appeals of the United States as well as in the district courts.

Chief Judge Edward D. Re

You primarily hear challenges to administrative decisions made by agencies such as the Customs Service and the Treasury Department. Does that make your operations more like an appellate tribunal than like a trial court?

Well, yes and no. Yes, because from one standpoint you may say that you are appealing a decision of a department or administrative agency. From another standpoint, no, because in some categories, the cases are heard de novo. In other areas, judges of this court review administrative action, not de novo, but upon the record developed before an agency based on the usual standards of review applied by appellate tribunals. Hence, it may be said to be comparable to taking an appeal to an appellate court. However, it is important to keep in mind that the so-called administrative records presented to this court are not always comparable to the administrative records developed under the Administrative Procedure Act by other agencies whose administrative decisions are appealable directly to a court of appeals.

The records presented to us come from agencies that perform investigative rather than adjudicative functions. Therefore, in this court, much judicial time and effort is spent shaping the record itself and resolving disputes among the parties as to the record. There are preliminary skirmishes pertaining to the record upon which the court is to make its decision. The records that we review are not always comparable to the record that is presented to an appellate court. Once we decide a case, the question that will be presented to the court of appeals—in our case, the Court of Appeals for the Federal Circuit—is whether this court properly reviewed the record before it.

You mentioned before, Judge, that your court has exclusive jurisdiction over most of the cases it hears. Can you explain why this is so, and whether this is better than the situation that exists in the tax realm, where a plaintiff often has the choice of the Tax Court, the U.S. Claims Court, or a district court?

As I mentioned, our work could be divided into two types of cases. In the first, we try cases de novo in the traditional areas of jurisdiction of the old Customs Court, deciding whether goods that have been imported have been properly classified or assessed for customs duty purposes. These cases, by statute, are heard de novo. Here, there is a full-blown trial to determine whether the imported merchandise has been properly classified or assessed. In the second type of case, we review the administrative records of the agencies of government that deal with import transactions. The case could start with the action of the President himself, the President's Special Trade Representative, the Department of Commerce, the Department of the

"The records presented to us come from agencies that perform investigative rather than adjudicative functions."

Treasury, the International Trade Commission, or, of course, the Customs Service. We also hear cases that originate with the Department of Labor under the Trade Adjustment Assistance program.

I believe it is best to have those cases heard before this court not merely because of expertise, or uniformity and consistency. Although our subject-matter jurisdiction may be somewhat specialized, we are a generalist court which applies general principles of administrative law and equity. In addition to expertise, we have developed efficient and expeditious procedures for the disposition of these cases. It is simply good judicial administration to have all of these import-related cases heard before this court. If warranted, we may also grant a jury trial. Of course, in the future Congress may wish to consider whether for certain disputes—for example, those involving penalties and seizures—it would be appropriate to have concurrent jurisdiction.

Would concurrent jurisdiction with the district courts make it easier for litigants to litigate closer to home?

No. Although the courthouse is located in New York City, we can hear any one of these cases anywhere in the United States. While most of our cases are heard in New York, that doesn't prevent us from hearing cases in any other city. As a matter of fact, many of our cases are heard in Los Angeles, San Francisco, Chicago, Houston, Dallas, Washington, Boston, and Detroit; and, as I indicated earlier, the court is also authorized to hold hearings in foreign countries. So, without any difficulty, we can hold a trial anywhere in the United States.

What is the court's caseload like, and what's happened to it in the last several years?

The number of cases filed each year from 1970 to 1980 has decreased. Although from the standpoint of numbers the cases are fewer, they are much more complex and much more difficult. The difficulty and complexity reflect the great importance of international trade, particularly in the areas of dumping and countervailing duties. Since 1980 the number of filings and the cases assigned to each judge have generally been unchanged. So the best I can say is that although since 1970 the number of cases filed may be fewer, they're much more complex and surely require more time to be decided.

"We can hear . . . cases anywhere in the United States . . . . The court is also authorized to hold hearings in foreign countries."

Does that mean you could use more judge power?

No, it does not. An indication of this is the fact that we have assisted the courts of appeals and many district courts whenever we could.

As the Chief Judge of the court, what are your administrative duties? Are they similar to those of the chiefs of the district and circuit courts?

Yes. They're just about the same; they are very similar to the administrative responsibilities of the chief judges of the district and circuit courts. I think I can best explain those duties by referring to the fine book published by the Federal Judicial Center, *Desk Book for Chief Judges of United States District Courts.* I've had occasion to read it, and found it very valuable. I want to congratulate the various authors who contributed to that book. The chief judge of a federal court ultimately is responsible for ensuring that the court is administered in compliance with statutes, Judicial Conference and court policies, and Administrative Office regulations. And in a broader sense I think it is the chief judge's duty to ensure that the court is administered effectively and efficiently.

There is one difference, however, between the duties of the chief judge of this court and the chief judge of a district court. Rather than using a random system for the assignment of cases, the chief judge of this court assigns the cases among the nine judges. This helps accomplish not only fairness in workload distribution but also, to a certain extent, expertise in various areas, and uniformity and consistency. Except for these differences, the responsibilities of the chief judge of this court are similar to those of the district courts and courts of appeals.

Do you carry the same load as the other judges despite your administrative duties?

Yes, I do.

Your name is as well-known as the author of *Brief Writing and Oral Argument* as it is as a chief judge. How did you come to be a recognized authority on those subjects?

You take me back many years by that question. I've always been interested in language, writing, and literature. For many years I have been interested in attempting to improve the quality of legal writing, and the quality and effectiveness of briefs.

When I started teaching at St. John's Law School in 1947, I was made the Director of the moot court program. In that capacity I organized both trial and appellate moot courts. As a result, I lectured and prepared an outline on the writing of trial and appellate briefs. In 1950, Mr. Philip Cohen, who is the President of Oceana Publications, heard about these materials from students at St. John's and New York University. He asked to see my notes and stated that he wished to publish a book on the subject. In 1951 there appeared the first edition of my *Brief Writing and Oral Argument.* The book has gone though many revisions and is now in its fifth edition. Oceana had also published my first book, *Foreign Confiscations in Anglo-American Law.*

Has the quality of the briefs filed

See JUDGE RE, page 6

JUDGE RE, from page 5

in your court gone up or down in your time on the bench?

I think they are better, and for a very good reason—I think that lawyers are becoming increasingly aware of the importance of briefs. I usually start talks on brief writing by quoting a sentence from the famous case of *McCulloch v. Maryland:* I say, "When I say 'the power to tax is the power to destroy,' of whom do you think?" The audience will say John Marshall. Some may also say *McCulloch v. Maryland.* I then say, "That's correct, but you could also have said that those words were inspired by the *lawyer* who wrote the brief for the 'plaintiff in error' in that case, and his name is Daniel Webster." I try to have lawyers know that judges, by and large, not only look forward to the brief but actually *need* an effective brief. The brief is an essential part of judicial decision making.

I believe judges receive better briefs if they let lawyers know that they need the brief and may indeed rely upon it. I think it is counterproductive to state that briefs are poor and oral arguments are useless. If lawyers believe that briefs are ignored and not relied upon, and that oral arguments are useless, why should lawyers spend time and effort preparing them? At every opportunity I emphasize that I look forward to receiving counsel's brief. I hope that the brief will be helpful, and look forward to the oral argument because the court may have some important questions that it may wish to ask that may not have been treated in the brief.

Is the quality of oral argument going up or down?

Quality to me has to be equated with the word *helpfulness.* I believe that a brief is as effective as it is helpful to the court in deciding the question presented. I regard oral argument as a supplement to the brief. Oral argument is helpful if counsel answers whatever questions the court may ask that were not adequately treated in the brief. Some oral arguments have been most helpful, whereas others have neither helped nor harmed. I favor oral argument because it is counsel's opportunity personally to see and speak with the court. It also affords counsel the invaluable opportunity to answer whatever questions the court may wish to ask.

You've also lectured on appellate opinion writing. What's the state of that art today?

It is improving. As with briefs, we are aware of their importance, and consciously try to write better opinions. I have had the privilege of lecturing with Chief Judge Ruggero Aldisert, and other very fine judges, and believe that a great deal has been accomplished by showing that legal writing can be good literature. Surely legal writing not only can be good English but, indeed, must be good English. It must be clear, it must be accurate, and it must be as brief as the subject matter will permit. I am in favor of instruction in the opinion-writing process, because it also highlights the importance of the opinion in memorializing the law. Like other forms of art and literary composition, there is a definite form to the judicial opinion. There should be an introductory statement, a statement of the question presented, a statement of the pertinent facts, an indication of the contentions of the parties, a discussion of the application of the law to the facts, and a conclusion that flows logically from the discussion.

We take the judicial opinion for granted. A court or judge cannot simply declare, "judgment for the plaintiff, X dollars," or "judgment for the defendant." In the opinion one must explain why. In memorializing the law the judge must set forth reasons why the case was decided in the manner that it was. This is a distinctly Anglo-American contribution.

I lectured on opinion writing at a Federal Judicial Center program for newly appointed bankruptcy judges in September. I stressed that in opinion writing as in brief writing, a great deal of thought must be given to the question presented. In writing either a brief or an opinion, I would want to make sure that I knew what was the question presented. I would ask myself, Did I correctly answer the question presented, and did I give thought to the relief requested? Was the requested relief appropriate, and for what reason was it or was it not granted? We cannot forget that it is a judicial opinion that we are writing rather that a law review article or a monograph.

You were appointed by the Chief Justice to chair the Federal Judicial Center's Advisory Committee on Experimentation in the Law, which issued its report four years ago. Your Committee's report points out that there are dangers associated with inadequately justified experimentation, uncontrolled innovation, and failure to institute needed innovations. What steps have to be taken to ensure that experimentation or innovation does not sacrifice fairness?

Innovations must advance the cause of justice. In experimentation, disparate treatment of individuals must be reconciled with fundamental legal and ethical ideals. In order to avoid misleading results, it is essential that experiments be properly designed. The Committee report indicated the factors to be considered *before* a program of experimentation is undertaken. It suggests an analytical framework for an administrator to use experiments consistent with legal and ethical standards. In my opinion, the Committee made a valuable contribution in highlighting the ethical problems of program experimentations that deserve careful attention and sensitivity. ■

"Judges receive better briefs if they let lawyers know that they need the brief and may indeed rely upon it."

Court Representatives, Business Executives Meet to Improve Judicial Management in D.C.

A new program in the District of Columbia has already been beneficial to the two federal courts here and to the District's business world.

In what Chief Judge Aubrey E. Robinson, Jr. (D.D.C.), and District Clerk James F. Davey called a "first," the Greater Washington Board of Trade, the Council for Court Excellence, representatives of the federal and local courts, and executives from local industries met recently to plan and sponsor programs aimed at bringing together personnel from all those offices to reach a better understanding of the courts' work and how it affects the private sector. It is, declared Mr. Davey, "a link between the private and public sector. If we [the courts] do a better job, then the business climate is better."

The Council for Court Excellence served as the initial catalyst in bringing together court officials and private-industry executives. Representatives from both groups found that they had similar management concerns. Among the topics they discussed were the need to plan well into the future and to draft mission statements and the need for interagency staff meetings involving clerks' offices, U.S. attorneys' offices, and probation offices in the local and federal systems. Personnel issues were also discussed, and the plan is to develop motivation programs as well as a reward system. An attractive brochure that explains court procedures was suggested to recruit highly qualified candidates to apply for vacancies.

Chief Judge Robinson met with the groups to express his appreciation for their efforts—especially a seminar developed and sponsored by corporate planners—and told them that "the seminar was a rare opportunity to address issues sometimes overlooked in the day-to-day business of the courts and could not have been accomplished without [your] support. Your efforts will be greatly rewarded."

Later this month there will be a meeting of all those involved in this effort—numbering about 40—to review what has been accomplished by five project teams and to decide what remains to be done. ■

Insurance Open Season Begins

An open season to enroll in or change health insurance benefits will take place from Nov. 4 to Dec. 6, the AO has announced.

CONFERENCE, from page 1

clerks to collect fines levied under the Comprehensive Crime Control Act of 1984. That act now requires the Justice Department to collect the fines.

The expenses-reimbursement legislation endorsed by the Conference would allow judges assigned to other courts as visiting judges to receive actual expenses no matter how long a visit lasted. Visiting judges now receive actual expenses only if their stay is longer than 30 days; otherwise, they receive a fixed allowance that may not cover their hotel and meal expenses.

In other actions, the Conference—

- Approved more than 20 amendments to the Federal Rules of Appellate Procedure, which will now go to the Supreme Court. Many of the proposed changes are designed to make the rules' language gender neutral. Rule 30, as revised, would require each circuit court to establish a rule governing sanctions for appellate litigation brought in bad faith. A proposed change to rule 45 would allow courts to maintain computerized, as opposed to written, dockets.
- Endorsed legislation pending in Congress to authorize membership on the Judicial Conference for the Court of International Trade. The same legislation would allow that court to conduct an annual judicial conference, as the circuit courts do. ■

Request for New Bankruptcy Positions

The 47 new bankruptcy judgeships the Judicial Conference urged Congress to create would be distributed as shown below. (The Conference also authorized its Executive Committee to request several more bankruptcy judgeships by the end of this year, after deciding which districts they should be located in.)

3rd Cir.	D.N.J.	2
4th Cir.	D. Md.	1
	D.S.C.	1
	E.D. Va.	1
5th Cir.	N.D. Tex.	1
	S.D. Tex.	3
	W.D. Tex.	1
6th Cir.	W.D. Ky.	1[a]
	W.D. Mich.	1
	E.D. Tenn.	1
	W.D. Tenn.	1
7th Cir.	C.D. Ill.	1[b]
	N.D. Ill.	2
	N.D. Ind.	1
	E.D. Wis.	1
8th Cir.	E.D./W.D. Ark.	1
	N.D. Iowa	1
	S.D. Iowa	1
	D. Neb.	1
9th Cir.	C.D. Cal.	7
	E.D. Cal.	2
	N.D. Cal.	2
	S.D. Cal.	1
	D. Idaho	1
	D. Or.	1
	E.D. Wash.	1
	W.D. Wash.	1
10th Cir.	N.D. Okla.	1
	W.D. Okla.	1
	D. Utah	1
11th Cir.	M.D. Fla.	2
	N.D. Ga.	2
	S.D. Ga.	1

[a] To have concurrent jurisdiction in the Eastern District of Kentucky.
[b] To have concurrent jurisdiction in the Northern and Southern Districts of Illinois.

Office of Eighth Circuit Executive Changes Location

The Eight Circuit has moved its circuit executive's main office from St. Louis, Mo., to St. Paul, Minn.

The change will put the circuit executive's main office in the same city as the chief judge of the circuit.

Chief Judge Donald P. Lay, who announced the move, also announced that Lester Goodchild, the Circuit Executive since March 1980, resigned last month, and the work of the office will be temporarily supervised by June L. Boadwine, the Assistant Circuit Executive. Mr. Goodchild has become Assistant Circuit Executive in the Second Circuit.

Mail to the Eighth Circuit executive's office should now be sent to Ms. Boadwine at Box 75428, St. Paul, MN 55175. The phone numbers for that office are FTS or 612/725-7311.

The vacant circuit executive position will be advertised in the future, Judge Lay said. ■

PERSONNEL

Nominations

Nicholas Tsoucalas, Judge, Court of International Trade, Sept. 11
Laurence H. Silberman, U.S. Circuit Judge, D.C. Cir., Sept. 11
Paul N. Brown, U.S. District Judge, E.D. Tex., Sept. 11
Alan A. McDonald, U.S. District Judge, E.D. Wash., Sept. 11
Henry T. Wingate, U.S. District Judge, S.D. Miss., Sept. 11
Richard H. Battey, U.S. District Judge, D.S.D., Sept. 27
John A. Fuste, U.S. District Judge, D.P.R., Sept. 27
John S. Rhoades, Sr., U.S. District Judge, S.D. Cal., Sept. 27
Lyle E. Strom, U.S. District Judge, D. Neb., Sept. 27
Bobby R. Baldock, U.S. Circuit Judge, 10th Cir., Oct. 7
David R. Thompson, U.S. Circuit Judge, 9th Cir., Oct. 7
Glenn L. Archer, Jr., U.S. Circuit Judge, Fed. Cir., Oct. 16
James L. Buckley, U.S. Circuit Judge, Fed. Cir., Oct. 16
John T. Noonan, Jr., U.S. Circuit Judge, 9th Cir., Oct. 16
Edward R. Korman, U.S. District Judge, E.D.N.Y., Oct. 2
Robert E. Cowen, U.S. District Judge, D.N.J., Oct. 7
William J. Zloch, U.S. District Judge, S.D. Fla., Oct. 9
Patrick A. Conmy, U.S. District Judge, D.N.D., Oct. 16
Lynn N. Hughes, U.S. District Judge, S.D. Tex., Oct. 16
Albert I. Moon, Jr., U.S. District Judge, D. Hawaii, Oct. 16
Jane R. Roth, U.S. District Judge, D. Del., Oct. 16

Confirmations

Stephen H. Anderson, U.S. Circuit Judge, 10th Cir., Oct. 16
Ralph B. Guy, Jr., U.S. Circuit Judge, 6th Cir., Oct. 16
David A. Nelson, U.S. Circuit Judge, 6th Cir., Oct. 16
James L. Ryan, U.S. Circuit Judge, 6th Cir., Oct. 16
Paul N. Brown, U.S. District Judge, E.D. Tex., Oct. 16
Glen H. Davidson, U.S. District Judge, N.D. Miss., Oct. 16
Brian B. Duff, U.S. District Judge, N.D. Ill., Oct. 16
Ferdinand F. Fernandez, U.S. District Judge, C.D. Cal., Oct. 16
Edmund V. Ludwig, U.S. District Judge, E.D. Pa., Oct. 16
Robert B. Maloney, U.S. District Judge, N.D. Tex., Oct. 16
Alan A. McDonald, U.S. District Judge, E.D. Wash., Oct. 16
Alan H. Nevas, U.S. District Judge, D. Conn., Oct. 16
David Sam, U.S. District Judge, D. Utah, Oct. 16
David B. Sentelle, U.S. District Judge, W.D.N.C., Oct. 16
Stephen V. Wilson, U.S. District Judge, C.D. Cal., Oct. 16
Henry T. Wingate, U.S. District Judge, S.D. Miss., Oct. 16

Appointment

Louis L. Stanton, U.S. District Judge, S.D.N.Y., Sept. 10

FEES, from page 3

would be payable even if the litigation were settled quickly—removing the incentive under the lodestar method to reject settlement offers before many hours of legal time have been expended.

The task force also recommended the appointment of a fee representative in cases involving the enforcement of statutory rights in which little or no money is at issue. The contingent fee would be awarded if the litigation were settled. But if the case went to trial, the fee would be set by the lodestar method, with the following changes:

- Developing standardized districtwide hourly rates instead of litigating the worth of attorneys' time on a case-by-case basis.
- Requiring projections of the number of hours needed for a case at early pretrial conferences.
- Modifying the multiplier formula to reflect the risk, the outcome, the petitioning attorneys' contribution to a quick or protracted resolution, and the delay in receiving the fee.

Statutory-fee cases that would create a large common fund would be treated like the other common-fund cases, with the agreed-upon fee governing even if the case went to trial.

The task force also suggested ways the court can ensure that plaintiffs' attorneys can agree on settlements and fees with defendants while minimizing the risk that the agreement will inflate fees at the expense of the settlement funds.

The report is being published in the October 14 advance sheet issue of *Federal Reporter 2d* (No. 43), at yellow pages 1-49, and in the November advance sheet issue of *Federal Rules Decisions*. Copies can also be obtained from William K. Slate, Circuit Executive for the Third Circuit, 20716 U.S. Courthouse, Philadelphia, PA 19106. ■

CALENDAR

Nov. 3–7 First Circuit Judicial Conference

Nov. 6–8 Regional Seminar for Bankruptcy Judges

Nov. 7–8 Workshop for Judges of the Second and Third Circuits

Nov. 13–15 Workshop for Judges of the Fifth Circuit

Nov. 18–20 Workshop for Judges of the Eighth and Tenth Circuits

Nov. 18–22 Workshops for Clerks and Chief Deputy Clerks of Circuit and National Courts of Appeals

Nov. 20–21 Judicial Conference Advisory Committee on Civil Rules

Nov. 21–22 Seminar for Circuit Executives

Dec. 2–4 Juror Management Workshop

Positions Available

Clerk, Tenth Circuit Court of Appeals, Denver, Colorado. Salary $52,202–$68,700. Requirements include 10 years' administrative experience (law practice may be substituted for general administrative experience; college education and degrees in public business, judicial administration, and law may be substituted partially for general administrative experience). Send resume (original and three copies) indicating position applied for, by Nov. 15, to Emory G. Hatcher, Circuit Executive, C-428 U.S. Courthouse, Denver, CO 80294, 303/844-4118 or FTS/564-4118.

* * *

Clerk, U.S. Bankruptcy Court, Eastern District of Texas. Salary to $44,130, JSP-14. Manages administrative activities of the clerk's office and oversees performance of the statutory duties of that office. Applicants must have a minimum of 10 years of progressively responsible administrative or appropriate professional experience in public service or business and a full understanding of the organizational and procedural aspects of court management.

Deputy Clerk—Estate Administration. Salary to $37,599, JSP-13. Responsible for all matters related to managing trustees and trustee-related activities. Must be a college graduate with a degree in law, business, court administration, or similar discipline and must have a minimum of two years of progressively responsible management or legal experience.

For both positions, submit resume and salary history, by Nov. 12, to Honorable Houston Abel, Judge, U.S. Bankruptcy Court, P.O. Box 1448, Tyler, TX 75710, FTS/749-6038 or 214/597-8432.

EQUAL OPPORTUNITY EMPLOYERS

Above top, Judge Morey L. Sear (E.D. La.), Chairman of the recent FJC Seminar for Newly Appointed Bankruptcy Judges, introduces seminar lecturer George M. Treister, a member of the California Bar and of the faculty of the University of Southern California Law Center. At the seminar, l. to r., are Judges Rosemary Gambardella (D.N.J.), R. Clifford Fulford (N.D. Ala.), A. Jay Cristol (S.D. Fla.), Stacey W. Cotton (N.D. Ga.), and Francis Conrad (D. Vt.).

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

Cannon, Mark W., and David M. O'Brien. *Views from the Bench.* Chatham House, 1985.

Covington, Margaret. "Jury Selection: Innovative Approaches to Both Civil and Criminal Litigation." 16 *St. Mary's Law Journal* 575 (1985).

Dimond, Paul R. "Provisional Review: An Exploratory Essay on an Alternative Form of Judicial Review." 12 *Hastings Constitutional Law Quarterly* 201 (1985).

√ Edwards, Harry T. "Do Lawyers Still Make a Difference?" Speech to the State Bar of Michigan, Sept. 11, 1985.

√ Feinberg, Wilfred. "Remarks at the Judicial Conference of the Second Circuit." Sept. 6, 1985.

Markey, Howard T. "Ethics Today: Young Lawyers and Old Wine." 12 *Barrister* 55 (Summer 1985).

Mikva, Abner J., "Judge Picking." 10 *District Lawyer* 36 (Sept. 1985).

Schwartz, Bernard. "Earl Warren as a Judge." 12 *Hastings Constitutional Law Quarterly* 179 (1985).

Sessions, William S. "Attorney Competency in Federal Courts: The Second Milestone and the Challenge Ahead." 32 *Federal Bar News & Journal* 285 (1985).

Stevens, John Paul. "Judicial Restraint." 22 *San Diego Law Review* 437 (1985).

Stevens, John Paul. "Professor Edward H. Levi." 52 *University of Chicago Law Review* 290 (1985).

Torruella, Juan R. "The Supreme Court and Puerto Rico." University of Puerto Rico Press, 1985.

Trangsrud, Roger H. "Joinder Alternatives in Mass Tort Litigation." 70 *Cornell Law Review* 779 (1985).

Grand Jurors to See New Orientation Film

At its last meeting the Judicial Conference encouraged district court judges to use an orientation film prepared especially for grand jurors. The one-half-hour film is designed to familiarize grand jurors with the federal court system and their responsibilities as part of the system.

Entitled *The Federal Grand Jury: The People's Panel*, the film is narrated by John Houseman and looks at the grand jurors' role largely through the eyes of a woman who is summoned to serve.

The film presents a mock grand jury session. The prosecutor explains the allowable use of hearsay in such proceedings and the need for the use of immunity in some situations—including one presented in this mock hearing. The grand jurors eventually decide to indict one of two suspects in a bank robbery, but decline to indict the other one because of insufficient evidence. The foreperson, who has served on a previous grand jury, explains to the other jurors that if the prosecution can find more evidence, the suspect may be indicted later.

Orders for the film should be placed directly with the vendor listed below. Invoices may be paid from each court's consumable-supply allocation. Further questions can be referred to the AO's Office of General Counsel (FTS or 202/633-6127).

Norman Carpenter
MGM Laboratories
10202 W. Washington Blvd.
Culver City, CA 90230

Outline of Cases on Bail Laws Available

The Office of General Counsel in the Administrative Office has prepared an outline of cases interpreting the Bail Reform Act of 1984. This outline has been reviewed by the Judicial Conference's Committee on the Administration of the Criminal Law.

The Committee members believe the outline could be helpful to federal judges and magistrates dealing with problems that arise under the new bail laws and have recommended that it be made available to the courts through the Center.

To obtain a copy, send a self-addressed label, preferably franked, to Inter-Judicial Affairs, Federal Judicial Center, 1520 H St., N.W., Washington, DC 20005.

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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Chief Judge Motley Describes Court, Career; Reflects on National Impact of Landmark Cases

Chief Judge Motley

When Chief Judge Constance Baker Motley came to the U.S. District Court for the Southern District of New York in 1966, she brought to that court many years of experience and an educational background that well prepared her for the demands of the office. Sixteen years later she became Chief Judge of that court, one of the largest in the federal court system.

Service with the NAACP Legal Defense and Educational Fund during the early years of her career identified her with civil rights cases. In addition, she was a vital part of the team of lawyers who made legal history in 1954 with Brown v. Board of Education.

Chief Judge Motley earned a B.A. degree from New York University and an LL.B. from Columbia, and she has received six honorary degrees. Just this year the Judge received the first Distinguished Alumna Award from the Columbia Law Women's Association. When New York University conferred an honorary degree upon her in 1983, they commended her for "brilliant mastery of the law . . . and for beneficial influence upon the laws of the nation."

Chief Judge Motley is a former member of the New York State Senate and president of the borough of Manhattan; she has served on the Judicial Conference Committee on Records Disposition and currently is a member of the Committee on the Administration of the Bankruptcy System.

You've been Chief Judge of New York's southern district for three years now. What do you see as the district's strengths and weaknesses?

Well, I do not know that I can give you a laundry list for those two categories, but I think one of our great

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Civil, Criminal Rules Committees Invite Suggestions for Changes in Evidence Rules

At the last meeting of the Judicial Conference, a decision was made to ask the Advisory Committee on the Federal Rules of Criminal Procedure and the Advisory Committee on the Federal Rules of Civil Procedure to work together to monitor the Federal Rules of Evidence and to recommend any changes in those rules. The reporter to the criminal rules committee, Professor Stephen A. Saltzburg, will serve as reporter for the group. The decision to rely upon a combined effort of the two existing committees means that the Advisory Committee on the Rules of Evidence, which was discharged after Congress approved the rules in 1975, will not be reactivated.

Any suggestions for changes to the Federal Rules of Evidence are welcome and will be considered in the same way that changes to the criminal and civil rules of procedure are considered, albeit by a combined effort of two committees. Suggestions for changes in the Rules of Evidence should be submitted to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the U.S. Courts, Wash., DC 20544.

Attorney Admissions Committee Concludes Study

The report of the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, chaired by Chief Judge James Lawrence King (S.D. Fla.), was released following the fall meeting of the Judicial Conference. The committee made two major recommendations.

The first recommendation was that the Judicial Conference recommend to the federal courts their con-

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James Macklin Named AO Deputy Director

The Supreme Court has appointed James E. Macklin, Jr., to be Deputy Director of the Administrative Office

James E. Macklin, Jr.

of the U.S. Courts.

Mr. Macklin came to the Administrative Office in 1975 following a 31-year career in the U.S. Army. His Army career included service as Chief of the Criminal Law Division in the Office of the Judge Advocate General and Chairman of the Joint Service Committee on Military Justice.

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Seventh Circuit Upholds Attorney Admission Rules

The Seventh Circuit has upheld a district court decision approving distinct federal standards for admission of attorneys to practice in the District Court for the Northern District of Illinois. Local rules of the court implementing such standards had been challenged by an attorney who contended that their effect in requiring him to meet new standards in order to maintain his previous admission to practice in the federal court constituted a denial of due process. The rules were promulgated in connection with the court's participation in the pilot program authorized by the Judicial Conference to implement, on an experimental basis, the recommendations of the Devitt Committee based upon its study of the competency of trial lawyers practicing in the federal courts.

The local rules of the Northern District of Illinois require attorneys to belong to the "trial bar" of the court before being allowed to appear alone either on behalf of a defendant in a criminal proceeding or during testimonial proceedings in a civil case. To become a member of the trial bar, an attorney is required to have four "qualifying units" of trial-type experience. At least two such units must be acquired by participating in actual trials.

The plaintiff, on behalf of a class of attorneys, alleged that the creation of the trial bar for this court in effect disbarred him, and that he was deprived of his due process right to notice and an opportunity to defend against such action.

The court of appeals held that the imposition of trial bar membership was a proper exercise of the district court's rule-making power rather than an adjudication of the plaintiff's competence as an attorney. Moreover, the plaintiff had received notice and an opportunity to comment, the court found, because the local bar committee charged with implementing some of the Devitt Committee's recommendations had published the proposed rules and invited attorney comment at an open meeting. ■

Conference at Yale Assesses Procedures, Weighs Judges' Options in Processing Cases

The National Conference on Litigation Management, held recently at the Yale Law School, was attended by approximately 150 people, including members of the federal judiciary, practicing lawyers, and academics. The conference attempted a critical evaluation of the present status and future prospects of civil litigation. One of its goals was to "initiate a fundamental reassessment of the procedural tools presently available to the federal judiciary," according to conference organizer E. Donald Elliott, Jr., Professor of Law at Yale Law School. Another aim of the conference was "to reduce the costs of litigation by improving the ability of federal judges to process major cases efficiently," Professor Elliott said. The conference was cosponsored by Yale Law School, the ABA Litigation Section, and the Center for Public Resources.

Among the topics included on the conference's agenda were the role of judges in settling cases, the summary jury trial, and the role of special masters. A series of workshops gave participants an opportunity to propose various settlement options and other responses to a hypothetical complaint filed by plaintiffs residing near a

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sideration of programs aimed at improving trial advocacy. The recommended programs are those that were originally suggested by the Devitt Committee and subsequently tested by the thirteen district courts that participated in the pilot program on attorney admissions authorized by the Conference in 1979. (The Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, known as the Devitt Committee, was appointed by Chief Justice Burger in 1976, and reported to the Judicial Conference in 1979 that programs aimed at improving the state of advocacy in the federal courts were warranted.)

The pilot programs included federal practice bar examinations, trial experience requirements, peer review procedures, continuing legal education programs, and the implementation of student practice rules, although not every district court operating a pilot program utilized all of these program elements. The thirteen district courts that operated pilot programs were C.D. Cal., N.D. Cal., N.D. Fla., S.D. Fla., N.D. Ill., S.D. Iowa, D. Md., D. Mass., E.D. Mich., W.D. Mich., D.P.R., D.R.I., and W.D. Tex.

The implementation committee's second major recommendation was that the Judicial Conference assign to a committee responsibilities for receiving information from all district courts on programs aimed at improving federal trial advocacy, helping the courts share such information, and making any appropriate further proposals to the Conference.

Upon acceptance of the implementation committee's report by the Judicial Conference, the committee was discharged.

Judge A. Leon Higginbotham, Jr. (3rd Cir.), dissented from the committee's report, in response to which the committee filed an addendum. ■

THE THIRD BRANCH

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Editor

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center.

Holiday Message from Chief Justice Warren E. Burger

As the close of this year approaches it is appropriate that we pause a while to reflect on the history made by the federal judiciary during 1985, and I want to personally thank all of you in the Judicial Branch who have contributed so much to our accomplishments.

This past year has brought us significant and important changes. It is good to be able to report that the federal judiciary adjusted to these changes and met its obligations.

One of the biggest changes came when the Administrative Office realized a change in leadership with the appointment of L. Ralph Mecham as the new Director and James E. Macklin, Jr., as the new Deputy Director. They replace dedicated public employees whose combined service to the federal judiciary totals over half a century. The transition, thanks to everyone involved, was smooth and efficiently executed.

When the Omnibus Crime Control Act was passed into law in 1984, the Judicial Branch immediately took steps to assure compliance. This work continued in 1985. I am proud of the voluntary, dedicated action of all those involved in the process—individuals who made certain that the judiciary met its responsibilities. The Administrative Office, the Federal Judicial Center, and the judges and their supporting personnel continue to devote many hours of effort to assure that their tasks are carried out as mandated by the Congress. An example of this effort is the four-hour, live satellite broadcast to 30 cities in January 1985, which reached more than 2,200 personnel in 68 districts. This panel discussion was also videotaped and has since reached more than three times as many individuals.

The Chief Justice

Our cooperation with the newly established Sentencing Commission is another example of how the federal judiciary has met its obligations. It was my privilege to issue the oath of office to the seven who serve on this commission, including three federal judges, on October 29, and the Chairman of the commission, Judge William W. Wilkins, Jr., early on held meetings of the commission and set about the task he and the other commissioners face.

Our accomplishments have been supported by the effective use of modern technology. It is a splendid example of how the Administrative Office and the Federal Judicial Center, in close cooperation with the Judicial Conference of the United States, have been able to move forward efficiently and to reap the benefits of the computer age.

During the past year many judgeship vacancies have been filled and we have the assurance of the Attorney General that nominations to fill remaining vacancies will be made as expeditiously as possible. More than 60 new judges were afforded the opportunity to gather in Washington in January and October to attend seminars for newly appointed trial judges, and it was personally gratifying to learn of their keen interest and enthusiasm for their work. As for the appellate judges, last spring 17 new judges from the circuits gathered at the Center for an orientation seminar. In addition, I have appointed Judge Arlin Adams of the Third Circuit to be chairman of a committee to evaluate and assist in designing special programs that will be helpful to circuit judges. All of this bodes well for the future.

I would like to take this opportunity to thank each of you for your many contributions during the year. Mrs. Burger and I extend to all of you our sincere wishes for a happy holiday season and a productive and healthy 1986.

Sincerely,

Warren E. Burger

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hazardous-waste disposal site.

More than 50 federal judges were in attendance. The conference noted that 1985 marks the 50th anniversary of the Federal Rules of Civil Procedure.

Five scholarly papers were produced for the conference. They include Seventh Circuit Judge Richard Posner's paper "The Summary Jury Trial: Some Cautionary Observations"; Professor Elliott's paper "Managerial Judging and the Evolution of Procedure"; U.S. Magistrate Wayne D. Brazil's analysis "Special Masters in Complex Cases: Expanding the Judiciary or Reshaping Adjudication?"; Yale Law Professor Peter H. Schuck's "The Role of Judges in Settling Cases: The Agent Orange Example"; and "Lessons from ADR," by Jethro K. Lieberman and James F. Henry, Vice President and President, respectively, of the Center for Public Resources.

Copies of the above-mentioned papers may be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed label, preferably franked (but do not send an envelope). ■

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strengths is that we have developed in this court a management system whereby all the judges participate in managing the court along with the Chief Judge. We meet regularly as a board of judges and vote on all policy matters. We have twenty-three committees (membership of which is selected by the Chief Judge), each headed by a judge (selected by the Chief Judge), which oversee one particular area of the court's business. For example, we have a committee on the probation department, the bankruptcy court, the clerk's office, the pro se litigation activity—so that the administrative work of this court, which is the largest federal trial court in the country, is shared by all the judges. The committee system has been in effect for many years and has served to give each judge a sense of community and collegiality.

I hate to confess to any weaknesses, but I do think that perhaps in the area of supporting personnel there is a great deal to be desired. I think that as the caseload for each judge has increased over the last twenty years, the manpower necessary to help us deal with that tremendous increase has not kept pace. So that would be a weakness, I would think, in our operation.

Where do you need more help?

In the clerk's office the position called courtroom deputy should be substantially upgraded, and a requirement for the position should be that that person be a law school graduate. That person would have the responsibility of taking full charge of the judge's calendar in the sense of not only calling up the lawyers on the telephone and saying "come in, the judge wants to see you" but telling the judge what the status of the case is and what the lawyers have failed to do since the last conference, for example. Now somebody trained as a lawyer would be able to do that with very little guidance from the judge, whereas if you have a high school graduate—and we have some excellent people who have gained a lot of experience—I think that they are not really able to grapple with some of these cases and tell the judge what the status is, what ought to be done next to get the lawyers moving. You always find an exception here and there, but I do think that courtroom position should be upgraded and that salary increased to what's necessary to get competent people.

Now the clerk's office is being automated, which would seem to suggest to me we need people who have training in automation and use of computers and more modern techniques. I don't know that we really have that. I think we have a terrible problem with our files. We don't seem to have enough people whose job it is to file things and to be able to retrieve those things from the file. That's a real weakness in our clerk's office. Judges complain every day to me how they send something to the clerk's office and then it can't be found—a recent order usually, a recent opinion—because it's away somewhere being photostated or it's mislaid in the clerk's office. And that just suggests a lack of manpower. Now when you speak to the clerk about it he will tell you that we can't hire people in the clerk's office with sufficient competence to keep up with the files because the salary does not look inviting to anybody with any competence. So it seems to me that we have to look at these job classifications more realistically and bring them up to scale—particularly to match the scale of the New York labor market. In other parts of the country you may be able to get skilled people for much less money because the cost of living is much lower. We have, apparently, one standard that applies throughout the country, which renders us weak in that respect. We can't hire people with the skills that are now needed in the clerk's office to take charge of masses of documents and cases. It's a continuing problem that I say has never really been dealt with.

"We have developed in this court a management system whereby all the judges participate in managing the court."

We know there are judges who are here late at night trying to keep current. You recently wrote to New York's two senators urging they help break the logjam that has delayed judicial appointments. What kind of results did that produce?

Well, it produced the results that the two judges suggested by Senator D'Amato—Mr. Stanton and Mr. Walker—have now been nominated by the President. Their names were submitted by Senator D'Amato several months ago and it's taken all this time to get them nominated. Now, at the moment, we are down five judges, including the two vacancies which Mr. Stanton and Mr. Walker will fill. We have a vacancy created by the death of Judge Werker last year. Here it is more than a year later and it's still unfilled. We have a new vacancy created by the recent appointment of Judge Sofaer to be Legal Adviser to the State Department, and Judge Gagliardi stepped down in July as an active judge and became a senior judge and that created our fifth vacancy. But as I've indicated, Judge Werker died more than a year ago and nobody has even been named for that. One of the vacancies to be filled by Mr. Stanton and Mr. Walker goes back to when Judge Lasker or Judge Pollack took senior status in September of 1983. So you see it's more than a year and a half or so that that position has been vacant. Now that means that the work of five judges is then redistributed among the remaining 22 judges.

If the court were at its full authorized strength, could it cope with the current caseload?

Well, certainly, I think much better than we are now. Yes, I do think so, although we have been authorized to have another position—that is, we've

been authorized to have 28 judges because of our caseload. We have, I think it is, 400 weighted cases per judge, which entitles us to another judge. But here again, Congress has yet to authorize the position and that would probably be another couple of years. They just authorized positions, as you know, last October. We were not included in that judgeship bill. So even if we had all of our vacancies filled, we would still have the problem to deal with that we all just have too many cases to really cut down on our long working hours.

What's the consequence of those caseloads? Does the quality of the judges' work suffer?

Well, I think so. It would be bound to suffer. That is, you can't devote as much time and thought and reflection as many of these matters require. We have to rely more heavily on our law clerks to do the research. We have to rely on them to draft opinions. We have to help out in the courtroom with respect to the status of cases, that is, getting cases moving along where lawyers aren't doing anything. And that goes back to what I said about the courtroom deputy being upgraded. So that seems to be the situation there.

Your court has recently formed a committee on discovery sanctions. Is that working, and if it works, does it free some judge time?

Yes, that committee has finally reported. We really haven't taken any drastic action with respect to that. I think the existence of the new rule itself permitting such sanctions has had its effect. And, of course, you're always going to have problems with lawyers in that direction. But I think the most helpful thing has been the fact that the rule does exist which permits the judge to impose sanctions.

I'd like to talk a minute not just about the number of cases coming into your court—the federal system's largest trial court—but about the types of cases you see. New York, of course, is the nation's capital of commerce, and I assume your caseload reflects that.

Yes. I think that we have probably a disproportionate number of commercial cases in this court because of our location here in the financial center of the country. It makes this court unique, perhaps, in that respect, although Washington probably has a similar load—although probably involving more governmental agencies—whereas we have the major American corporations that are all represented by Wall Street lawyers, so that we do have the heavy traffic in that kind of litigation. Major cases.

"As I travel about the country now even I am amazed at the progress which has been made."

And don't you also get some agency cases—from the Federal Trade Commission and Securities and Exchange Commission, for example?

Oh, yes, we do. I was simply saying that Washington would be another busy court in terms of probably commercial-type cases arising out of agency activity. But we certainly get our share right here because there's a regional SEC office. The agency is going after many major corporations located here.

When you get one of those cases—an agency case or a commercial case with a phalanx of lawyers on either side, that's equal to what—maybe half a dozen drug cases—in terms of judge effort?

Oh no, those can be far beyond that. Usually those cases take several years before they are finally resolved, and a judge could try a dozen drug cases in a year.

Do you think that there's going to be more work for the court as a result of last year's Comprehensive Crime Control Act?

Oh yes, many, many problems are cropping up. I know that in this district our caseload on the criminal side has been increased something like 24 percent in the last year alone, and that is presenting us with serious problems because they are unusual cases in the sense that they involve numerous defendants. Twenty or thirty defendants and a hundred counts. We have a case now, for example, that Judge Sofaer had been working on—a case with something like 24 defendants in which the government plans to prove 24 murders. There are similar cases that have recently been filed which are unprecedented in the number of defendants and the number of charges involved and the time it will take for us to actually try and dispose of those cases. So we do have on the criminal side really serious problems in the sense that each of us also already has what we call two Wheel C cases. Those are two cases each of which will take at least three weeks to try, and as I've said we've got some now that are in the category of four or five months to try.

Does the clerk make the determination when those cases come in as to which ones go in Wheel C?

The U.S. Attorney, by telling us how long it would take to try a case, makes the initial designation. He will say, "Well, this case will take four months to try" (or four weeks to try) and this is a Wheel C case.

Going back to civil cases—many judges have urged abolishing diversity jurisdiction to cut back the federal courts' caseload. How do you feel about that?

Yes, I favor that. I do think that that would make a dent in our caseload. I think the statistics show that is about 20 percent of our caseload. That would be a substantial reduction right there and I certainly think that that should be done. Of course, the state courts are probably in worse condition and that's probably the drawback. The country as a whole probably would not be better off, but the federal judicial system would experience an easing in its caseload, I

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believe, if we were to lose our diversity jurisdiction.

Many New York litigators look for any possible way to get into federal court, to get a much faster trial and one judge all the way through.

Yes. Well, I think the single-judge calendar system is the greatest invention since the wheel. Without that this place wouldn't move at all. And each judge, of course, guards his reputation jealously and would like to see himself referred to as a competent judge, and having an individual calendar system is the incentive for everybody to keep working so that he is not the last man on the totem pole.

You talk about keeping the court moving. Let's talk about your role as the court's administrator. What do you do to help your colleagues cope with their workload? What can you do?

Well, basically our problems result from the fact that a judge is tied up in a long trial and he has to meet speedy trial requirements with respect to these other criminal cases. He would be tied up in a long civil trial, as Judge Sofaer was with the Ariel Sharon libel suit and as Judge Leval was with the Westmoreland case. Both of those judges were in court for weeks and weeks and that meant they couldn't try criminal cases. And so we had to call on senior judges whenever they found that the Speedy Trial Act was about to run and ask a senior judge if he wouldn't like to try the case. Fortunately, so far we've usually been able to get a senior judge, because we have about 12 senior judges, about eight of whom are active. So I can always in an emergency like that call on a senior judge, and thank goodness they are around because they do save the day, so to speak, in that respect. But in addition we have the problem of reassigning a major case if a judge already has two about to be tried. The assignment committee, of which I am chairman, then has to either decide to put it back in the wheel if a senior judge can't be found, or just ask some other judge if he could take that case at that particular time. Since everybody is busy that's next to impossible, so we usually just put it back in the wheel and some lucky judge gets another big case.

Is it easier for a senior judge to pick up a criminal case just before trial than a civil case because there's less judge involvement before the trial itself?

Yes, I think so. But there's a pretrial order limiting the issues and indicating the witnesses and exhibits in a civil case, so it's not that hard to pick up on a ready civil trial.

You do all your administrative work while you're carrying a full caseload?

"The only way I know how old I am is when I meet young blacks who never heard of *Brown*."

Oh yes, and that's because I am the first Chief Judge to have a District Executive, whose job it is to actually see to and do the administrative work in many areas, particularly our relations with the Administrative Office. We get memos daily from the Administrative Office requesting that this, that, or the other be done or requesting certain information and requiring that certain notices be given to judges. Well, all that is wholly administrative—it has nothing to do with judicial function—and so it's very important in a court of this size to have an official who is competent to deal with these administrative matters. And then, of course, we have our relations with the public and that kind of thing, which the executive also deals with. And then the executive in addition to helping me as Chief Judge acts as secretary to all these committees. The judge who is chairman of a committee can't really devote a lot of time to simply sending out committee notices and making sure arrangements are made for the meeting, getting the agenda together, accepting excuses from judges who can't attend and so forth, so there's a tremendous amount of work for the District Executive who's in charge. He also runs our purchasing department, our inventory, and we have other functions—we have educational programs for lawyers who are on the pro bono panel, we have educational programs for lawyers on our Criminal Justice Act panel that he supervises—he gets the professors in from the law schools to conduct those programs—and we also have other in-house training programs for employees, and so forth. And it's a tremendous job in terms of the number of duties and responsibilities which have attached to that new position.

Can we talk about you as a judge rather than as an administrator? You've been on the bench almost two decades. What changes have you seen in the court? What trends, what operating shifts?

Well, the major one is the increase in litigation, which everyone is aware of. I think that in the last 20 years that I've been here the caseload in the federal system as a whole has increased over 200 percent. Whenever I go out to speak somewhere I always mention that, and I think that a lot of our problems stem from the fact that we have become a society of litigators, with more and more people looking to the federal courts as a place to go to resolve all disputes in society. We're not just getting commercial litigation, which was the usual fare here 20 years ago, but many major social issues which seem to resist resolution by the President or the Congress or by the governor or some state agency and end up in the federal court, so that the federal courts have really moved to center stage in this society in a way that not many people contemplated, say, four decades ago, particularly when people hardly knew that we had a Supreme Court except they knew it was in Washington. But now everyone is aware of

the significant role that the Court plays in our society. Either you hate the Court for its decisions or you love it, because these are very controversial issues in many respects. A couple of decisions came down recently in the area of freedom of religion—highly controversial—and that kind of case has, in the last two decades, occupied the time of federal judges considerably. And so the third branch has come into its own, so to speak. We have not always been prominent in the history of the country but now we are, and I think that's a good thing because we profess to be a society governed by law and this reflects it. That is, people do still reflect the fact, by their activities, that the court is the place to go, and if you look at it, as Anthony Lewis of the *New York Times* said, the court is still the only place where a citizen can go where the judge has to hear his case. No matter how frivolous the case, the judge can't throw it in a wastebasket. He has to hear it and dispose of it. Whereas if you go to Washington you may or may not get in to see your congressman or your senator and you're certainly not going to get in to see the President unless you are really special. So anybody can walk in the front door here and file a petition and the judge will pass on it. And I think the citizens of this country are becoming aware of that. That is, the right to redress our grievances goes now to the court in the main.

Before you went on the bench you were in the forefront of using the courts for social ends, a relatively new trend, as you say, and a trend that you were part of making. Are people who are doing the kind of legal work you were doing more involved in their cases and closer to their clients than a commercial litigator is? Does that make it tougher to take the bench—is it tougher to get to a state of judicial neutrality quickly?

Well, of course, the issues that I was involved in 20 or 30 years ago have been largely resolved. I was involved in the fight to level the legal barriers to integration and that issue, as far as the law is concerned, is resolved. What is happening now, of course, is more and more cases stemming from more recent legislation enacted by the Congress in 1964—fair-employment-practices cases that fill the courts and controversies involving affirmative action and quotas, which is a more advanced stage of the kind of thing that I was doing. But I, along with Thurgood Marshall and Robert Carter, who is also a judge of this court, and others were kind of pioneers in this whole area of going to the federal court to enforce constitutional rights and when we were out there we were the only ones. And since then the whole area has grown tremendously, so that now public-interest law is a major discipline in our jurisprudence.

"I think the greatest change in the legal profession in the last 30 years has been the influx of women."

Some of those cases that you and Justice Marshall and others working with the NAACP Legal Defense Fund handled made history. What kind of feeling does it give you as a lawyer when you are on the prevailing side in a case like *Brown v. Board of Education*?

Well, naturally you would have a great feeling of accomplishment, not only personally but you know that as far as the country is concerned you have been able to contribute to the development of this nation. I think that perhaps we don't make as much of the fact that we have used the law to resolve major social problems as we should. I think other countries could learn a great deal from us, for example, South Africa. They have a similar kind of race problem. If they would look at the way we resolved a lot of it, by letting the courts handle many of these problems which the politicians find too hot to handle, well then they would probably be able to resolve some of their own problems. But we don't as a whole view that as a significant thing. In time, I think, history will record as a great achievement in American society that we were able to resolve this very difficult problem of race relations through peaceful means. But, as I say, I think that as a whole we as a nation are not now making as much of that as we should.

What's happened to some of the people you've represented in these historic cases?

I've heard from James Meredith off and on. He's now living in Cincinnati. Harvey Gant, who was another client of mine, is now the Mayor of Charlotte, N.C. I got him into Clemson College in 1961. I was recently in New Orleans and I saw Mayor Ernest Morial. I worked on the Louisiana State University case and he was the first—one of the first—black graduates of the law school there. I see a lot of the lawyers at the National Bar Association meetings. That's an organization of black lawyers in the country that I worked with around the South. Several of them have become federal judges, like Matthew Perry in South Carolina. And I see a lot of the lawyers with whom I worked, and as I travel around the country now even I am amazed at the progress which has been made, especially when you talk to young blacks who never experienced segregation, and hear their expressions of amazement that "Jim Crow" railroad cars existed in the past, for example. The only way I know how old I am is when I meet young blacks who never heard of *Brown*. Then I know I'm 65 or near it. But otherwise I have no sense, really, that it's been 30 years since *Brown*. You can't—time has no depth, so to speak. You can't feel the weight of it, and you feel as young as you did 30 years ago, but you really aren't.

If there were one change you could make in the federal judiciary, what would it be?

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Well, I think I would push for more women to be federal judges. It seems to me that woman judges reflect a major change in the federal system. When I came on in 1966 I think there were only five woman federal judges in the country. President Carter appointed about 45 woman judges and that has been a significant advance for woman lawyers. I think that trend should continue because women are the majority group in our society (although everybody calls them members of a minority group), and I think that I would continue, if it were within my power, but of course it is not, to appoint more women. I think the greatest change in the legal profession in the last 30 years has been the influx of women, which I think will greatly strengthen and revitalize the profession. This will be a different country in the 21st century. One of the significant changes will be the number of women who are leaders in this society. I think the federal courts should not be out of step with the times. ■

The most important . . . dissatisfaction with all law . . . is to be found in the necessarily mechanical operation of legal rules.

— Roscoe Pound (1906)

CALENDAR

Dec. 2-4 Juror Management Workshop

Dec. 9-10 Judicial Conference Subcommittee on Judicial Statistics

Dec. 9-10 Judicial Conference Subcommittee on Federal Jurisdiction

Dec. 9-10 Judicial Conference Subcommittee on Federal-State Relations

Dec. 11-13 Judicial Conference Subcommittee on Judicial Improvements

Dec. 11-13 Judicial Conference Subcommittee on Supporting Personnel

THE SOURCE

The publications listed below may be of interest to The Third Branch *readers. Only those preceded by a checkmark are available through the Center. When ordering copies, please refer to the document's author and title or other description. Requests should be in writing, accompanied by a self-addressed, gummed mailing label, preferably franked (but do not send an envelope), and addressed to Federal Judicial Center, Information Services, 1520 H Street, N.W., Washington, DC 20005.*

√Aldisert, Ruggero J. "State of the Circuit Address 1985." Third Circuit Judicial Conference, Oct. 7, 1985.

American Bar Association. "Appellate Litigation Skills Training—The Role of the Law Schools." Report and recommendations of the Committee on Appellate Skills Training. 1985.

√Brennan, William J., Jr. "The Constitution of the United States: Contemporary Ratification." Georgetown University, Oct. 12, 1985.

Burger, Warren E. "The Need for Change in Prisons and the Correctional System." 38 *Arkansas Law Review* 711 (1985).

Eble, Timothy E. "Effective Appellate Practice in the Sixth Circuit." 16 *University of Toledo Law Review* 643 (1985).

Engelmayer, Seldon, and Robert Wagman. *Lord's Justice*. Doubleday, 1985.

Forrester, Ray. "Truth in Judging: Supreme Court Opinions as Legislative Drafting." 38 *Vanderbilt Law Review* 463 (1985).

Gerhardt, Michael J., and Robert J. Martineau, Jr. "Reflections on Appellate Practice in the Sixth Circuit." 16 *University of Toledo Law Review* 667 (1985).

Goldberg, Stephen, Eric Green, and Frank Sander. *Dispute Resolution*. Little, Brown, 1985.

Haskins, George L. "Prejudice and Promise in the Early Years of the Federal Judiciary." 37 *Maine Law Review* 301 (1985).

Lambros, Thomas D., "The Judge's Role in Fostering Voluntary Settlements." 29 *Villanova Law Review* 1363 (1984).

√Levin, A. Leo, and Denise D. Colliers. "Containing the Cost of Litigation." 37 *Rutgers Law Review* 219 (1985).

Lyons, David. "Formal Justice and Judicial Precedent." 38 *Vanderbilt Law Review* 495 (1985).

Martin, Boyce F., Jr. "The Flood of the Present: Congressional Inaction and Judicial Reaction." 16 *University of Toledo Law Review* 619 (1985).

Martineau, Robert J., Jr. "Practice in the Sixth Circuit: Oral Argument and Decisions from the Bench." 16 *University of Toledo Law Review* 655 (1985).

O'Connor, Sandra D. "Introduction: Achievements of Women in the Legal Profession." 57 *New York State Bar Journal* 8 (Oct. 1985).

Oliver, Solomon, Jr. "Appellate Fact Review Under Rule 52(a): An Analysis and Critique of Sixth Circuit Precedent." 16 *University of Toledo Law Review* 667 (1985).

Peckham, Robert F. "A Judicial Response to the Costs of Litigation: Case Management, Two-Stage Discovery Planning, and Alternative Dispute Resolution." 37 *Rutgers Law Review* 253 (1985).

Rehnquist, William H. "Presidential Appointments to the Supreme Court." 2 *Constitutional Commentary* 319 (1985).

√Rehnquist, William H. Remarks at the University of Wyoming, Oct. 25, 1985.

Render, Edwin R. "On Unpublished Opinions." 73 *Kentucky Law Journal* 145 (1984-85).

Shimomura, Floyd D. "The History of Claims Against the United States: The Evolution From a Legislative Toward a Judicial Model of Payment." 45 *Louisiana Law Review* 625 (1985).

Stevens, John Paul. "Legal Questions in Perspective." 13 *Florida State University Law Review* 1 (1985).

√Stevens, John Paul. Address to the Federal Bar Association, Chicago, Ill., Oct. 23, 1985.

"Symposium: Reducing the Costs of Litigation." 37 *Rutgers Law Review* No. 2 (1985).

Tribe, Laurence H. "What Difference Can a Justice or Two Make?" 71 *American Bar Association Journal* 60 (Sept. 1985).

Whitebread, Charles H. "The Burger Court's Counter-Revolution in Criminal Procedures." 24 *Washburn Law Journal* 471 (1985).

Position Available

Circuit Librarian, U.S. Court of Appeals for the Fourth Circuit (Richmond, Va.). Salary from $26,381 to $44,430. Requires accredited M.L.S. and J.D., significant administrative experience; and knowledge of WESTLAW, LEXIS, and OCLC. Responsible for supervision of circuit and three branch libraries. Position open Mar. 1, 1986. To apply, send resume by Dec. 31, 1985, to Samuel W. Phillips, Circuit Executive, U.S. Court of Appeals, P.O. Box 6-G, Richmond, VA 23214.

EQUAL OPPORTUNITY EMPLOYER

MACKLIN, from page 1

At the AO, Mr. Macklin has served as Chief of the Criminal Justice Act Division, as Assistant Director for Plans and Program Management, and then as Executive Assistant Director. He has been a staff member to the Judicial Conference of the United States and its Committee on Court Administration, and he is also Secretary to the Committee on Rules of Practice and Procedure.

The new Deputy Director is a graduate of the U.S. Military Academy at West Point and Columbia University Law School. ■

1985 Circuit Judicial Conferences Concluded

In delivering his annual report to the Second Circuit Judicial Conference, Chief Judge Wilfred Feinberg praised the judges and their staffs for disposing of cases in spite of heavy filings and, in some courts, judgeship vacancies.

At the outset, the Chief Judge reminded the audience that additional judgeships are not the complete answer to their heavy caseloads, and he urged consideration of other methods of dispute resolution. He especially commended for consideration expanded use of arbitration. He also reported on new programs already started in the Southern and Eastern Districts of New York.

In the Southern District of New York there is a pilot project that calls for referral of cases to arbitration. Under this program, judges order parties to confer with the American Arbitration Association "about the possibility of resolving a dispute through arbitration or some other process" (such as mediation). Parties to the litigation are still free to call for trial. If they do decide to submit to arbitration, they must also execute a stipulation that advises the court that they voluntarily agree to dismissal of their action with prejudice.

The Eastern District of New York will also be starting a program for court-ordered arbitration. After discovery, each party to the litigation in a civil case will go before a panel of three paid arbitrators to present his or her version of the case. Up to 30 days after the decision from the arbitrators, either one of the parties has the right to request a trial de novo, but with this right comes the requirement that the party making the request pay the arbitrators' fees.

(For comments made by Chief Justice Burger at a joint meeting of the American Arbitration Association and the Minnesota State Bar Association last August, see *The Third Branch*, Oct. 1985, p. 1.)

* * *

Puerto Rico was this year's site for the First Circuit Judicial Conference. Chief Judge Levin H. Campbell presided and on behalf of the First Circuit accepted a warm welcome extended by both the Governor of Puerto Rico, Rafael Hernandez Colon, and the Mayor of San Juan, Baltasar Corrado del Rio.

The program included a timely subject—the Omnibus Crime Control Act—with emphasis on the work of the newly constituted Sentencing Commission. Four attorneys who practice in the Commonwealth of Puerto Rico conducted a panel discussion on the authority of the courts to impose sanctions.

FBI Director William Webster gave an informative presentation on the operation of the Bureau and how it handles some very sensitive matters—including issues that the federal judiciary sometimes encounters.

* * *

At the Third Circuit Judicial Conference in October, Chief Judge Ruggero Aldisert's "1985 State of the Circuit" address was read for him, since Chief Judge Aldisert was unable to attend. Though the address deals with the business of the circuit, it is also a scholarly dissertation on such matters as opinion writing and a critical look at how both lawyers and judges are using citations to cases to justify what they would have be a precedent. Still another criticism is directed to Congress, with Chief Judge Aldisert's conclusion that "we are in the midst of a congressional law explosion and a tournament to see what agency can proliferate the most regulations." He observed that "at least 100 bills to expand federal jurisdiction are proposed each year. This legislative and agency blast fattens the body of law, and adds more structures . . . to the house of the law."

Distributed at the conference was the "1985 Annual Report and Directory," prepared not only as a report but as a pamphlet that Chief Judge Aldisert and Circuit Executive William Slate designed for the assistance of the bar and public as well as the judiciary.

(For a related story on a Third Circuit task force's report on attorneys' fees, see *The Third Branch*, Nov. 1985, p. 3.)

* * *

Chief Judge Donald P. Lay presided at the Eighth Circuit's Judicial Conference, held this year in Little Rock, Ark., and released a 380-page report on the business of the circuit.

Judge Lay noted that the Eighth Circuit has kept one of the most current caseloads in the country, even though since 1979 the circuit has had the greatest percentage increase in filings in the nation. Going back to 1977 and comparing that year's filings with current figures shows an 82.7 percent increase in filings.

Judge Lay also referred to the circuit's preargument conference program and said it continues to be a significant factor in the reduction of cases. Of the 284 cases in the program during the calendar year 1984, 71 resulted in settlements and 42 were dismissed.

In the bankruptcy courts, there was a dramatic increase in filings of 26 percent, while nationally there was an average 1 percent increase. The District of Minnesota recorded the largest number of petition filings. ■

FJC Releases Paper on Videotaped Hearings

The Center has released a staff paper, *Assessment of Videotaped Bankruptcy Discharge Hearings in the U.S. Bankruptcy Court for the Western District of Pennsylvania.* The paper discusses this court's use of videotape equipment in 1984. The videotaped presentation was used in place of a judge's live recitation to impart to debtors the standardized portion of the information which is a part of the hearing. The 6-page paper concludes that "the use of a videotape can be recommended as a means of both conserving judge time and enhancing the value of the discharge hearing to the debtor."

FJC Report on Unpublished Dispositions Available

The Center has published *Unpublished Dispositions: Problems of Access and Use in the Courts of Appeals*, by Donna Stienstra of the Center's Research Division.

The paper presents a detailed description, in both tabular and narrative form, of the appellate courts' rules and practices with regard to distribution and citation of unpublished dispositions, including data on the number and types of unpublished dispositions in statistical years 1981-1984.

This paper also includes a history of the debate over limited publication of appellate decisions and a brief analysis of the issue of equitable access to unpublished dispositions, concluding that any combination of restrictions or freedoms with regard to distribution or citation of such dispositions leads to problems for either the courts or the bar.

Copies of this report can be obtained by writing to Information Services, 1520 H St., N.W., Washington, DC 20005. Enclose a self-addressed, gummed mailing label, preferably franked (but do not send an envelope).

PERSONNEL

Nominations

James H. Buckley, U.S. Circuit Judge, D.C. Circuit, Oct. 16 (incorrectly listed as Fed. Cir. in November issue)

Alan B. Johnson, U.S. District Judge, D. Wyo., Oct. 22

Frank X. Altimari, U.S. Circuit Judge, 2nd Cir., Oct. 23

Morris S. Arnold, U.S. District Judge, W.D. Ark., Oct. 23

Garrett E. Brown, Jr., U.S. District Judge, D.N.J., Oct. 23

Robert L. Miller, U.S. District Judge, N.D. Ind., Oct. 23

Jefferson B. Sessions III, U.S. District Judge, S.D. Ala., Oct. 23

Sidney A. Fitzwater, U.S. District Judge, N.D. Tex., Oct. 29

Thomas J. McAvoy, U.S. District Judge, N.D.N.Y., Oct. 29

Deanell R. Tacha, U.S. Circuit Judge, 10th Cir., Oct. 31

Harry D. Leinenweber, U.S. District Judge, N.D. Ill., Nov. 7

J. Spencer Letts, U.S. District Judge, C.D. Cal., Nov. 7

George H. Revercomb, U.S. District Judge, D.D.C., Nov. 7

Dickran M. Tevrizian, Jr., U.S. District Judge, C.D. Cal., Nov. 7

Confirmations

Laurence H. Silberman, U.S. Circuit Judge, D.C. Cir., Oct. 25

Richard H. Battey, U.S. District Judge, D.S.D., Oct. 25

José A. Fuste, U.S. District Judge, D.P.R., Oct. 25

John S. Rhoades, Sr., U.S. District Judge, S.D. Cal., Oct. 25

Lyle E. Strom, U.S. District Judge, D. Neb., Oct. 25

Robert E. Cowen, U.S. District Judge, D.N.J., Nov. 1

Edward R. Korman, U.S. District Judge, E.D.N.Y., Nov. 1

Jane R. Roth, U.S. District Judge, D. Del., Nov. 1

William J. Zloch, U.S. District Judge, S.D. Fla., Nov. 1

Alex Kozinski, U.S. Circuit Judge, 9th Cir., Nov. 7

Retirement

Miles W. Lord, U.S. District Judge, D. Minn., Sept. 11 (incorrectly listed in October issue as resignation)

Death

Edward W. Day, U.S. District Judge, D.R.I., Oct. 22

BULLETIN OF THE FEDERAL COURTS
THE THIRD BRANCH

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