

# The Third Branch

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

*A Bulletin of the Federal Courts*



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## Justices Powell, Rehnquist Take Oaths

Lewis F. Powell, Jr., and William H. Rehnquist were sworn in as Associate Justices of the Supreme Court of the U. S. at a special ceremonial session of the Court on Friday, January 7, 1972, as a crowd of more than 300 friends and invited guests looked on. In the bar area were many former ABA Presidents who had strongly endorsed Mr. Powell's nomination and who understandably looked on with great pride. Equally strong in representation and equally proud were many current and former law clerks at the Supreme Court, to see Mr. Rehnquist, the second clerk in the Court's history to ascend the highest bench. Mr. Justice White was the first in this category. A special guest was Mr. Justice John R. Kerr, a federal judge from Australia, who observed that the ceremony was practically identical to the one followed in his country and in England. The reserved pews to the left of the bench were occupied by family members of all the Justices.

As the ceremonies proceeded each new Justice was first seated in an historic chair—the bench chair of Chief Justice John Marshall—at the side of the Courtroom. Attorney General John N. Mitchell first presented the Commission of Mr. Powell and announced it bore the signatures of Richard M. Nixon, President of the United States, his own as Attorney  
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Mr. Justice Powell (right) and Mr. Justice Rehnquist, 99th and 100th appointees respectively to the Supreme Court, photographed after oath ceremonies. In foreground is bust of Chief Justice John Jay, the first Chief Justice, who took his oath in 1789. [Photograph courtesy, George Tames, The New York Times.]

## Speedy Trial Conference Held At F.J.C.

The second in a series of conferences aimed at dealing with the problems of delay in large metropolitan district court criminal proceedings was held at the Federal Judicial Center on January 13 and 14, 1972. The conferees, who first met in Denver in August, 1971, included the Chief Judges of the 18 largest district courts in the country, or their representatives.

While the Denver meeting concentrated on identifying the significant periods of avoidable delay, the meeting this month focused on possible solutions to eliminate these delays.

The Conference was divided into three parts: The first session dealt with the preliminary results of the Center's speedy trial project, isolating periods of delay to understand further the mechanism of the criminal prosecution in our large district courts.

The second session explored in-depth methods for reducing delay before a guilty plea, verdict, or sentence is rendered. This stage in the criminal proceeding is not necessarily the worst in terms of delay, but in this stage the court does have extensive control and there has been considerable thought and experimentation in this area. Field probation officers as well as representatives from the probation office in Washington were on hand to supplement the discussions.

The third session concentrated on the use of magistrates. While the magistrate program is still in its infancy, there has been significant success in the optimum use of magistrates in the processing of criminal cases, and emphasis was placed on what is being done and what can be done by magistrates with respect to arraignment and the pre-trial motions.

The conferees attending were: Chief Judge Oliver J. Carter and Judge Robert F. Peckham (N.D. Calif.), and Judge Manuel L. Real (C.D. Calif.), Chief Judge Edward Schwartz (S.D. Calif.), Chief Judge John J. Sirica (Dist. of Col.), Judge Gerald B. Tjoflat (M.D. Fla.), Chief Judge Charles Fulton (S.D. Fla.), Judge William J. Campbell (N.D. Ill.), Judge Frederick J. R. Heebe (E.D. La.), Chief Judge Edward S. Northrop (Dist. of Md.), Chief Judge Ralph M. Freeman (E.D. Mich.), Judge James A. Coolahan (Dist. of N.J.), Chief Judge David N. Edelstein (S.D. N.Y.), Judge John Bartels (E.D. N.Y.), Chief Judge Frank J. Battisti (N.D. Ohio), Judge Joseph S. Lord, III and Judge Alfred L. Luongo (E.D. Pa.), Judge Joseph F. Weis, Jr. (W.D. of Pa.), Judge Reynaldo G. Garza (S.D. Texas), and Chief Judge Walter Hoffman (E.D. Va.).

LAW DAY — U.S.A. — MAY 1, 1972

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# A Message From The Chief Justice

On December 22, 1971 Congress enacted "the Economic Stabilization Act Amendments of 1971" and from this Act was created the Temporary Emergency Court of Appeals. This court will have exclusive jurisdiction of all appeals from United States District Courts in cases arising under the Act or under regulations or orders issued thereunder. In addition, the Temporary Emergency Court of Appeals will have jurisdiction to decide substantial constitutional issues arising under the Act and certified to it by a United States District Court. Pursuant to the mandate of the Act I have now appointed the following federal judges to serve on this court: Judge Edward A. Tamm (Chief Judge), Judge Wm. H. Hastie, Judge James M. Carter, Judge John S. Hastings, Judge Martin D. Van Oosterhout, Chief Judge Joe E. Estes, Judge A. Sherman Christensen, Judge Frank Johnson and Judge Robert Anderson.



A review of the history of our courts shows that the establishment of this tribunal has precedent. In 1942 the Congress created the Emergency Court of Appeals to hear cases which determined the validity of regulations, orders and price schedules issued pursuant to the Price Control Act. In that instance also, the Chief Justice of the United States was required to make appointments to that court from the federal judiciary. And, in 1950, during the time of the Korean hostilities Congress utilized the Emergency Court of Appeals a second time and conferred jurisdiction on this tribunal to determine the validity of price and wage stabilization regulations issued by the President under the Defense Production Act of 1950.

In 1961 as a result of unprecedented filings of multi-district litigation, sparked by the electrical equipment cases, over 25,000 antitrust claims were filed in 35 U. S. District Courts, resulting in over 1,900 civil actions. There was good reason for alarm since each claim presented a potential for massive, protracted litigation in our federal courts. However, the district judges responded, in this instance, without the aid of Congress, by designing a plan for handling this litigation. A group of judges volunteered their time and disposed of this massive work load in an orderly fashion and in a short period of time. What they did is now history well known to all of you and there now exists the Multidistrict Litigation Panel. This was another instance where the judiciary responded with extraordinary service.

Now, at another time in our history, members of the United States judiciary are called upon to serve in an emergency. I am proud of the responses that I received as a result of my solicitations for extra duty from our judges. Each one who has agreed to serve on the Emergency Court is carrying already a heavy workload, like the rest of his

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## STATE-FEDERAL NEWS

### VIRGINIA

A second meeting of the Virginia State-Federal Council was held last month with Chief Justice Snead of Virginia's Supreme Court of Appeals presiding as Chairman. Samuel W. Phillips, Clerk of CA-4, is Secretary to the Council. Additional Council members are, from the State of Virginia: Justice Lawrence W. P'Anson, Judge John W. Knowles, and Judge William W. Sweeney. The federal courts are represented by Judges Albert V. Bryan and John D. Butzner, of CA-4, and Chief Judges Walter E. Hoffman and Ted Dalton of the U. S. District Courts in Virginia.

The December meeting was a follow-up of last June's gathering which discussed such topics as: Problems of reproducing transcripts and making copies of state records in prisoner cases; the section of the Virginia Code which provides that state judges must make findings of fact and conclusions of law in prisoner cases; removal of cases from state courts to federal courts; and enjoining state court proceedings by federal courts.

In this more recent session the Council agreed to exchange annual reports from the Virginia General Assembly and the Administrative Office of the U. S. Courts both of which reports contain statistical information helpful to both state and federal courts. Chief Justice Snead extended an invitation to the federal members of the Council to attend the Virginia Judicial Conference to be held Feb. 9-11, 1972, in Williamsburg, Virginia, and Judge Butzner reciprocated with an invitation to the state members to attend the Fourth Circuit Judicial Conference to be held June 28 - July 1, 1972, at White Sulphur Springs, West Virginia.

Of great interest during the December meeting were three special topics: One was raised by Judge Sweeney, who discussed the problem of last minute settlements in civil cases which result in unwarranted jury costs. Another compared jury utilization in both systems and the agreement of the Council that citizens should not be required to serve on state and federal juries in the same calendar year. A third topic was covered by Chief Judge Hoffman, who reported on three alternative proposals which are intended to guard against abuse of the removal proceeding as a way of delaying state criminal prosecutions.

The Virginia Council will meet next on June 30, 1972, at White Sulphur Springs, West Virginia.

### NEW YORK

In November the New York State-Federal Council held its first formal meeting, attended by over 20 state and federal judges. Chief Judge Stanley H. Fuld of the Court of Appeals of the State of New York presided along with Chief Justice Friendly of the Second Circuit, while Tom McCoy, Court Administrator for the State of New York, handled the agenda. By invitation from the Council Chairman, Alice O'Donnell, Coordinator of Inter-Judicial Affairs at the Federal Judicial

*(Continued on page 5)*



## Magistrates Seminar Held in San Francisco

The second in a series of four regional seminars for part-time United States Magistrates was held this month in San Francisco, California. More than thirty Magistrates from the western United States attended the three-day sessions to discuss effective procedural techniques and methods of operation with the experienced full-time Magistrates serving as "faculty."

The program design similar to the course held in Dallas last month, included discussion and analysis of search warrants, bail and commitment, trial of the minor offense, conduct of the full preliminary hearing, complaint and arrest warrants, court organization and office management, ethics and conflicts of interest, and forfeiture of collateral.

Field representatives from the National Parks Service, Bureau of Sport Fisheries and Wildlife, and the Judge Advocate General's Office of the U. S. Air Force were on hand to exchange information with the participating Magistrates in areas of mutual concern and activity. [Inadvertently omitted from list of attendees at Dallas seminar last month: James C. Martin, Corpus Christi, Tex.]

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### JUSTICES (Continued from page 1)

General, and carried the consent of the United States Senate. The Commission was then read by the Clerk, E. Robert Seaver. Mr. Powell was ushered to the center of the bench where he took the judicial oath from Chief Justice Warren E. Burger and was robed. He then was seated at the far right of the Chief Justice. During the ceremony Justice Powell wore a gold watch owned by Chief Justice Marshall, the first Virginian appointed to the Supreme Court. The watch is owned by Jay Johns, Esq. of Charlottesville, Virginia, a descendant of Marshall. The same procedure was followed for Mr. Rehnquist, who took his seat at the far left of the bench. Prior to the public session of the Court, the new members took their Constitutional oaths from the Chief Justice in the Court's Conference Room with only current and past members of the court in attendance.

The Chief Justice closed the session by welcoming the new Justices, saying, "We look forward to many years of work with you in our common calling." Afterwards, the newcomers to the bench were honored at coffee receptions in the building's two main Conference Rooms. Following this, the Court went immediately into a scheduled Friday conference.

It was the first time since 1911 that two Justices were inducted into office on the same day. On January 3 of that year Willis Van Devanter and Joseph Rucker Lamar joined the Court as nominees of President Taft.

Mr. Justice Powell takes the seat of the late Justice Hugo L. Black; Mr. Justice Rehnquist replaces the late Justice John Marshall Harlan.

## Hepler Supreme Court Marshal

Frank M. Hepler, 52, assumed the position of Marshal of the Supreme Court of the United States on January 1, 1972, transferring from the Federal Judicial Center where he had been serving as Director of Administration.

Mr. Hepler, a Marine Corps colonel and aviator who left active duty in 1968, succeeds T. Perry Lippitt, who retired as Marshal of the High Court at the end of the year.

The Marshal, by law, is one of the four officers of the Supreme Court and is responsible for administrative matters at the Court, including financial and property management and supervision of personnel.

Mr. Hepler attended the Institute for Court Management at Denver, Colo., and in 1970 graduated with the first class of 31 to conclude court administration training. He is a native of Smithton, Pa., and a graduate of Muskingum College in New Concord, Ohio. He also holds a Masters Degree in Business Administration from The George Washington University in Washington, D. C.

Mr. Hepler's last combat assignment came in 1966-67 in DaNang where he commanded the largest Marine Aircraft Group in Vietnam. When he completed active service, he was a staff officer at Marine Corps Headquarters in Washington; previously he had served tours of duty in Korea, Guam, Japan and at various Marine Air Stations in the U. S.

He lives in nearby Springfield, Va., and is married to the former Virginia M. Boyer of Columbus, O. They have two daughters, Mrs. Michael Pedigo of Alexandria, Va., and Valerie, a high school senior.

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## Legislation

The Economic Stabilization Act Amendments of 1971 were signed into law by the President on December 22, 1971. In addition to the authority provided to the Executive Branch for implementation of the wage-price stabilization program, the Act creates the Temporary Emergency Court of Appeals, to be composed of judges designated by the Chief Justice of the United States. The district courts will have exclusive original jurisdiction of cases under this Act, while the Temporary Emergency Court of Appeals will have exclusive jurisdiction of appeals from such cases. Provision is made for the district courts to certify important constitutional issues to the Temporary Emergency Court of Appeals.

An additional judicial district has been authorized in the State of Louisiana, by Public Law 92-208, enacted December 18, 1971. Court for this new district, the Middle District of Louisiana, will be held at Baton Rouge. The Act becomes effective on April 16, 1972.



## Mr. Justice Harlan Mourned

The entire Federal judiciary mourned the death last month of Associate Justice John Marshall Harlan, a towering figure in the law for the past two decades who was forced to retire from the Supreme Court of the U.S. in September because of failing health.

He died December 29th at the age of 72 after 17 years as a Federal judge, 16 of which were on the Supreme Court.

A private Episcopal ceremony with about 50 mourners present was held in the 127-year-old Emmanuel Church in Weston, Conn., where Justice Harlan lived during the summer months, followed by burial in the churchyard. The Chief Justice and Associate Justices of the Supreme Court, retired and resigned Justices, and his colleagues from the Federal bench in New York were among those present. Mrs. Ethel Harlan, his widow, was unable to attend due to illness.

As the Supreme Court resumed its sessions after the holidays, Chief Justice Warren E. Burger took official note of the death of Mr. Justice Harlan and said that his loss, for those on the Court, was far more than that of a colleague valued for his great legal abilities, for his penetrating mind, and as a prodigious worker. "The deep personal loss to us is the departure of a beloved friend whose warmth and gaiety lightened all the burdens and cheered all the gatherings of the Justices of this Court for 16 years," The Chief Justice added. "Words are inadequate to express the deep affection felt for John Harlan and our admiration for his gallant courage in adversity and illness. We will miss him greatly."

Mr. Justice Harlan was President Eisenhower's second appointee to the Court in 1955, following Chief Justice Earl Warren in 1953. He followed the career of his grandfather namesake, the first John Marshall Harlan, who served on the Court for nearly 34 years after being appointed in 1877.

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### CURRENT ARTICLES AND PUBLICATIONS

*Struggle for Justice*: A report on crime and punishment in America. Prepared for the American Friends Service Committee, Hill and Wang, 1970; *Beyond A Reasonable Doubt*, by Sandor Frankel, Stein & Day Publishers, New York City, 1971; *Two Modern Correctional Facilities in Japan*, by F. Lovell Bixby, Federal Probation Magazine, September, 1971; *Managing the Courts*, by Ernest C. Friesen, Jr., Edward C. Gallas & Nesta M. Gallas, Bobbs Merrill, Indianapolis, Ind., 1971; *Sentencing as a Human Process*, by John Hogarth, Univ. Toronto Press, 1971.

## Court Reporters Meet At F.J.C.

As part of the continuing efforts to expand and refine the Center's training and education functions, an inaugural pilot institute for Federal Court Reporters took place on January 22-23 at the Federal Judicial Center.

Participants at these sessions included recently appointed reporters from districts in the eastern United States, as well as actively interested reporters from each of the circuits.

The particular focus of the institute centered around the successful, effective techniques and forms for reporting a criminal jury trial as perfected and employed by Reporters Jack Greenberg, Edward A. Barron, and Murray Padgug, (among others), from the Southern District of New York. Mr. Joseph Gimelli, the official reporter for Congressional Committees, discussed innovations he has devised and applied to his reporting activities on Capitol hill. Judicial Center studies and analyses relating to court reporting were presented and discussed by Joseph Ebersole, Director of Systems and Innovations. In addition, Messrs. Lucian Drake and Edward Garabedian from the Administrative Office reviewed the processing of transcripts in criminal and civil cases under the existing Criminal Justice Act and Administrative Office procedure.

Future programs of this nature are contemplated for presentation on the circuit level, incorporating refinements and improvements developed as a result of these pilot sessions and utilizing the talents and expertise of those circuit representatives who participated in the inaugural institute.

### MAGISTRATES' SEMINAR CASSETTES AVAILABLE

Cassette recordings made at the recent seminar for U. S. Magistrates in Dallas, Texas are available for loan to interested parties. The presentations include:

"Search Warrants" — Magistrate Arthur L. Burnett

"The Complaint and Arrest Warrant" — Magistrate Bailey F. Rankin

"Initial Appearance-Bail and Commitment" — Magistrate Max Schiffman

"Conducting the Full Preliminary Hearing" — Magistrate John B. Wooley

"Trial of the Minor Offense" — Magistrate Harry McCue

"The Forfeiture of Collateral System" — Joseph F. Spaniol, Jr.

"Court Organization and Office Management" — Senior Judge Robert Van Pelt



STATE-FEDERAL (Continued from page 2)

Center, was in attendance. The usual subjects of interest to the judicial councils throughout the country, now well over 40, were discussed, including post conviction proceedings, handling state and federal prisoners, and the possibility of the common use of juror lists. Of special interest in this state is the development of a data bank to computerize information on habeas corpus filings as well as assigned counsel. The object of the program is to make available to both courts the number and names related to habeas corpus filings and to avoid overlapping calendar calls. Federal Judges on the Council in addition to Judge Friendly are: Chief Judge Edelstein, and Judges Foley, Henderson, Bartels, Feinberg and Tyler (Board Member).

CHIEF JUSTICE (Continued from page 2)

brethren. But, I can report that each responded instantly with that sense of dedication that is so characteristic of our federal judges. It may well be expected that this court will face substantial work burdens, but the determination of these judges to accomplish the task ahead is reassuring and gratifying.

CIRCUIT CONFERENCES

CA-4	White Sulphur Springs, West Va.	June 28-July 1
CA-5	Savannah, Ga., Desota Hotel	Apr. 25-28
CA-6	Cincinnati, Ohio	May 24-26
CA-7	Indianapolis, Ind.	May 9-11
CA-10	Wichita, Kansas	June 28-30

[Circuit Chief Judges: Please advise when dates are set.]

AO - FJC CALENDAR

Jan. 21-22	Jury Committee, Jud'l. Conf., New York City
Jan. 22-23	Pilot Institute for Official Court Reporters, at F.J.C., Washington, D.C.
Jan. 24-28	Orientation Course for U.S. Probation Officers, at F.J.C., Washington, D.C.
Jan. 26-29	Bankruptcy Rules Committee, Jud'l. Conf., at A.O., Washington, D.C.
Jan. 27-28	Review Committee, Jud'l. Conf., New Orleans, La.
Jan. 28	Statistics Committee, Jud'l. Conf., Williamsburg, Va.

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Harry W. Schloetter Joins F.J.C. Staff

Harry W. Schloetter, Deputy Director of Training at the Federal Probation Training Center in Chicago since 1964, joined the staff of the Federal Judicial Center on January 3, 1972 as Assistant Director of Continuing Education and Training.



He became a U. S. probation officer for the Northern District of Illinois in 1957 and in 1959 was appointed training officer. Prior to joining the federal service he was a counselor with the Illinois Children's Home and Aid Society in Chicago (1951-1953), a counselor for Chicago Heights Public Schools (1954-1956), and a case worker for the United States Charities of Chicago (1956-1957).

Mr. Schloetter has lectured in corrections at St. Joseph's College and in sociology at Thornton Junior College. He has served as a part-time faculty member for the Administration of Criminal Justice Curriculum at the University of Illinois. He has also taught at the Chicago Police Department Training Academy and has served as a supervisor of field work for the Loyola School of Social Work. In addition he has participated in training sessions dealing with corrections and the judicial system throughout the United States.

For a number of years Mr. Schloetter has been on the editorial staff of the *Federal Probation Quarterly* as a reviewer of the *British Journal of Criminology*.

Visitation Program Announced by A.O.

Mr. Kirks has announced that a senior staff member of the Administrative Office will visit every circuit and district court during 1972. The purpose of the visits is to establish a better liaison between the courts and the operating divisions in the Administrative Office. The senior staff member will consult with the chief judge of the court, the clerk of the court, and other court officials regarding any current administrative problems and any assistance which the Administrative Office may render.

The chief judge of the court will be contacted prior to a visit by anyone from the Administrative Office. Generally, the visits are expected to be completed within one day or less.

"So act that your principle of action might safely be made a law for the whole world."

-Immanuel Kant



**A.O.—F.J.C. CALENDAR (Cont'd)**

- Jan. 31-Feb. 1 Court Administration Committee, Jud'l. Conf., New Orleans, La.
- Feb. 2 Interim Advisory Committee, Jud'l. Conf., New Orleans, La.
- Feb. 2 Joint Meeting of Salary and Supporting Personnel Committees, Jud'l. Conf., New Orleans, La.
- Feb. 3 Probation Committee, Jud'l. Conf., at A.O., Washington, D.C.
- Feb. 7-11 Short Course for Probation Officers, Chicago, Ill.
- Feb. 7-10 Regional Seminar for Courtroom Deputy Clerks, Santa Monica, Calif.
- Feb. 11 Criminal Justice Act Committee, at A.O., Washington, D.C.
- Feb. 12 F.J.C. Board Meeting, Dolley Madison House, Wash., D.C.
- Feb. 14 Bankruptcy Committee, at A.O., Washington, D.C.
- Feb. 17-18 Regional Seminar for Referees in Bankruptcy, New Orleans, La.
- Feb. 22-25 Seminar for Part-Time Magistrates, Denver, Colo.
- Feb. 25 Magistrates Committee, Tucson, Ariz.
- Feb. 25 Inter-Circuit Assignment Committee, Miami, Fla.

**THE THIRD BRANCH**

VOL. 4, NO. 1, JANUARY, 1972

**THE FEDERAL JUDICIAL CENTER**

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

**PERSONNEL**

*Federal Judges*

*Appointments*

Lewis F. Powell, Jr., Associate Justice, U.S. Supreme Court, Jan. 7  
William H. Rehnquist, Associate Justice, U.S. Supreme Court, Jan. 7  
Anthony A. Alaimo, U.S. District Judge, South. Dist. of Ga., Dec. 20  
Charles M. Allen, U.S. District Judge, West. Dist. of Ky., Dec. 10  
Thomas A. Flannery, U.S. District Judge, Dist. of Col., Dec. 20  
Alfred T. Goodwin, U.S. Circuit Judge, 9th Cir., Dec. 17  
Kenneth K. Hall, U.S. District Judge, South. Dist. of W. Va., Dec. 15  
William Terrell Hodges, U.S. District Judge, Mid. Dist. of Fla., Dec. 28  
James Hunter III, U.S. Circuit Judge, 3rd Cir., Nov. 10  
Ralph F. Scalera, U.S. District Judge, West. Dist. of Pa., Dec. 17  
Morell E. Sharp, U.S. District Judge, West. Dist. of Wash., Dec. 17  
William C. Stuart, U.S. District Judge, South. Dist. of Iowa, Nov. 8  
Bruce M. Van Sickle, U.S. District Judge, Dist. of N.D., Dec. 22  
Shiro Kashiwa, Associate Judge, U.S. Court of Claims, Jan. 6  
Robt. L. Kunzig, Associate Judge, U.S. Court of Claims, Jan. 17

*Deaths*

John M. Harlan, Associate Justice, Supreme Court of the United States, Dec. 29  
Ted Cabot, U.S. District Judge, South. Dist. of Fla., Dec. 4  
Edwin M. Stanley, Chief Judge, U.S. District Court, Mid. Dist. of N.C., Dec. 23  
Henry L. Brooks, U.S. Circuit Judge, 6th Circuit, Dec. 30

*Supporting Personnel*

*Appointments*

William L. Budzyn, U.S. Probation Officer, North. Dist. of Ill., Jan. 3  
Timothy L. Carroll, U.S. Probation Officer, Dist. of Col., Nov. 29  
John Eugene Cooper, U.S. Probation Officer, South. Dist. of Texas, Dec. 13  
Doris M. Halliday, U.S. Probation Officer, North. Dist. of Ill., Jan. 3  
David R. Irvin, U.S. Magistrate, East. Dist. of Ky., Nov. 4  
Calvin Eugene Jensen, U.S. Probation Officer, South. Dist. of Fla., Jan. 10  
Edwin E. Naythons, U.S. Magistrate, East. Dist. of Pa., Dec. 9  
William L. Norton, Jr., U.S. Referee in Bankruptcy, North. Dist. of Ga., Dec. 8  
Leonard H. Reid, U.S. Probation Officer, South. Dist. of Ohio, Nov. 29  
Bernhard Schaffler, Clerk, U.S. District Court, West. Dist. of Pa., Nov. 30

*Promotion*

John E. Echterhoff, Supervising Probation Officer, West. Dist. of Texas, Dec. 27

*Retirements*

Mrs. Lois E. Harrison, Clerk, U.S. District Court, Canal Zone, Jan. 7  
James Carroll Kemp, U.S. Probation Officer, Dist. of S.C., Jan. 10  
Edwin B. Zeigler, Chief Probation Officer, South. Dist. of Miss., Dec. 24



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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*A Bulletin of the Federal Courts*



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February 1972

## Federal Jury System Reviewed

Trial by jury, one of the oldest and most treasured concepts of our legal heritage is a topic of current articles, speeches and legislation. Some of the recent activity is reported below.

### IN CONGRESS

In draft form is a new bill which will modify H.R. 7800, a bill to provide for the number of peremptory challenges and to provide for six-member juries. The proposed legislation would amend Chapter 121 of Title 28 U.S.C., and would limit to two the peremptory challenges in civil cases and non-criminal proceedings where trial by jury is otherwise granted by statute. The draft bill also provides for six-member juries in suits at common law where the value in controversy exceeds \$20, and in non-criminal proceedings where trial by jury is otherwise granted by statute.

Senate Bill 1975, which passed the Senate Dec. 1, 1971, lowers to 18 years the age requirement for service as a federal juror. House Resolutions 8829, 11245, 11414 and 11415 similar to H.R. 7800, are still pending.

### THE JUDICIAL CONFERENCE

The Judicial Conference of the United States has voted its disapproval of H.R. 1615 which, in effect, calls for federal supervision of state jury selection. Disapproval was rooted in a belief that this legislation would add to juror costs by creating "a tremendously costly bureaucratic supervisory structure and add to the responsibilities of federal courts substantially as well as increase the per diem cost of jurors."

The Conference approved H.R. 2589 which would make mandatory an answer to the race question on federal juror questionnaire forms.

The Conference reaffirmed the resolution adopted at the March 1971 meeting, which approved in principle the reduction in size of juries in civil cases in the District Courts, but took no action on that portion of H.R. 7800 which relates to the size of juries in criminal cases, since this will be further studied by committees of the Judicial Conference.

The Conference commended to the U.S. District Courts for consideration an F.J.C. report on a study of juror utilization in the Southern and Eastern Districts of New York where, in the opinion of the judges, suggestions in the report could be adopted in their court.

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## Jury Utilization Study

In-depth studies of jury utilization in the Southern and Eastern Districts of New York undertaken by the Institute of Judicial Administration under contract to the Federal Judicial Center have developed a number of suggestions aimed at bringing about greater efficiency, a lowering of costs in jury trials, and an elimination of some of the frustrations felt by jurors who are often called to duty only to wait long periods of time, sometimes never to actually serve.

An outcome of the reports was a full day workshop, held on Jan. 22, 1972, for all the federal judges from the Eastern and Southern Districts of New York. Judge Irving R. Kaufman, Chairman of the Judicial Conference Committee on Operation of the Jury System, led the meeting. Opinions were shared on problems of monetary waste in jury calling, (over \$4.5 million in the entire federal system, for jurors called but not serving in fiscal year 1971).

The alleviation of unnecessary personal inconvenience suffered by jurors was also a target for discussion at the workshop. Some over-calling of jurors is unavoidable and is viewed by Chief Justice Burger as "necessary overhead," but he added, "we have an affirmative duty to keep the overhead within bounds."



Reporters photographed at Dolley Madison House while attending Institute for Official Court Reporters last month. In center of picture is Judge Alfred P. Murrah, FJC Director, and at far right Director of Continuing Education & Training, Kenneth C. Crawford. [For Story on the meeting see January 1972 issue of *The Third Branch*, p. 4.]



## A Message From The Chief Justice

With the graduation in December of 34 more persons from the Institute for Court Management now trained to work in the courts, it can be said that the court executive program is reaching a point of maturity, shaping a new profession and offering the courts a measure of hope that much-needed managerial and administrative assistance is on the way.



The latest class to graduate brings the number of career executives who have completed the six-month training course to a total of 87. This is an outstanding accomplishment when we consider that the Institute for Court Management, headquartered at the University of Denver Law School, at Denver, Colorado, is less than two years old and that it takes a half-year to put each prospective court administrator through the program.

To date, the graduates have been quickly absorbed into judicial administration by state courts and some are occupying allied positions as consultants, analysts, and educators with organizations operating in the field of judicial improvement.

The 11 federal circuits are each expected to be able to select within the month a similarly-trained circuit executive from a list of 40 or more persons who have been certified by the statutory Board of Certification provided for by the Congress. The Certification Board which will release its first list of certified executives in March consists of Judge Alfred P. Murrah, Judge Roger Robb, Chief Judge Frank M. Johnson, Jr., John W. Macy, Jr., and Rowland F. Kirks. The Board has held 15 all-day meetings interviewing 129 applicants after screening these from a total of 675 persons who applied for certification.

The Institute for Court Management at the University of Denver Law School provides, at first, a two-week "immersion" in court environment by visiting court houses, asking questions, listening, looking at records, files and systems, conferring with clerks, judges and lawyers; then follows nine weeks of intensive classroom study at Aspen, Colorado on management concepts and their interplay with the legal and judicial processes; next comes a 13-week court internship or field study (those in the December class interned in 21 different court systems); finally, an intensive two-week seminar series, allowing enrollees to share in each other's field work, examine what each has learned and generally re-think the activities of the preceding five and one-half months.

The court executive training emphasizes that the court administrator works for the judges and that his role is totally different from the decisional function; conversely, too, the program's breadth is helping to allay some old residual concern that court administrators are apt to become over dominant in court operations—a concern that really belonged with other "old wives' tales."

*(Continued on page 5)*

## State-Federal News

A number of the state Chief Justices have adopted the practice of delivering a "State of the Judiciary" address, before their legislative bodies and four of these are reported herewith:

### ALASKA

On Jan. 20, Chief Justice Geo. F. Boney of the Alaska Supreme Court delivered the first such address. The Chief Justice read an impressive report and outlined an ambitious program for the future, including "the most modern system of calendar control anywhere." But he also pointed to problems in the area of crime and a growing caseload which would bring to the Alaska courts in 1972 a 57% increase in filings over that in 1969. Also reported were federal grants to the Alaska court system, totalling \$402,301.

### MARYLAND

Chief Judge Hall Hammond, of the Court of Appeals of Maryland, addressed the state legislature on Jan. 26. Referring to his state's State-Federal Council and how they might be of greater service, Chief Judge Hammond has two suggestions: One is that his court be authorized by pending legislation to answer questions of law certified to it by the Supreme Court of the United States. A second suggestion was one compared with the federal statute (18 USC 3731) which gives the federal government the right to appeal in criminal cases where the trial judge grants a motion to suppress evidence because it was unconstitutionally obtained. He urged that such a right of appeal be established in Maryland.

### MICHIGAN

Chief Justice Thos. M. Kavanagh's message was delivered Jan. 24th. His report includes statements on crash programs to tackle "the staggering backlog of civil cases." Of special interest was the contribution of leading computer experts working in the large industries in Michigan. At no cost to the State this committee of experts studied and recommended three computerization projects for the Michigan courts, which Chief Justice Kavanagh intends to implement to "give Michigan the first statewide court computer system in the nation."

### OKLAHOMA

Chief Justice Wm. A. Berry addressed the Oklahoma Legislature Jan. 11th, and reminded them that "though there is no lagging justice in any region of Oklahoma," there were certain things the legislature needed to give the courts, including the Court of Criminal Appeals. Prominent on the list was the reference to budgetary needs for the courts and "proper judicial compensation." Judicial in-service training is made possible through federal funds, but the Chief Justice called on the legislature to continue this program with state funds.



## Chief Judge Walter Hoffman

### Honored

On February 3, following its semiannual meeting at Washington, the Committee on the Administration of the Probation System held a dinner at the National Lawyers Club honoring Chief Judge Walter E. Hoffman of the Eastern District of Virginia. Appointed a member of the Committee at its inception in 1963, Judge Hoffman served as chairman from 1966 to 1971.

In addition to the guest of honor and Mrs. Hoffman, the dinner was attended by six of the Committee members: Judges Francis L. Van Dusen (chairman), Thomas E. Fairchild, Floyd R. Gibson, Irving L. Goldberg, Sidney O. Smith, Jr., and Albert C. Wollenberg. Chief of Probation Merrill A. Smith, Assistant Chief William A. Cohan, Jr., Assistant Chief (Retired) Victor H. Evjen, and their wives, were also present as were Mrs. Van Dusen and Mrs. Wollenberg.

Judge Van Dusen, on behalf of the entire Committee, expressed its appreciation to Judge Hoffman for his years of service to the Probation Committee.

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## Criminal Justice Conference

Some three hundred appellate court judges met at Baton Rouge, La., this month to participate in a four-day conference on the A.B.A. standards for criminal justice. The chief justices and associate justices from the 50 states joined with judges from the U.S. Courts of Appeals and other leaders of the bench and bar to discuss all aspects of criminal law. Chief Justice Pringle, of the Supreme Court of Colorado, spoke on post conviction remedies and said: "The state judicial system must accept the responsibility of determining difficult questions of post conviction remedy. If the state courts are highly competent, responsible bodies, acting in an efficient and expeditious manner to adjudicate claims of constitutional irregularity in trials, the state courts will indeed be strengthened and the federal courts will be less and less into what ought to be exclusively state business." Mr. Justice Clark, Chairman of the Conference, addressed the banquet and an audience of over 600 and called on the judges to exercise their powers to a far greater extent than they have in the past, including rule-making powers and a demand in their states for adequate appropriations for the courts. Judge Murrah, FJC Director, was the final speaker with a message designed to charge the judges with the responsibility to use their knowledge and powers to implement the standards in their states, and to assure that these reports, "the result of eight years' work by leading judges and lawyers in this country, including Chief Justice Burger, will not be put on shelves to be forgotten and gather dust."

## Legislation

H.R. 10394 has passed the House. This legislation provides for one additional judge in each of the following districts: Northern District of Indiana; Western District of Wisconsin; Southern District of Florida; Western District of Missouri; and the Northern District of Texas.

H.R. 6745 to transfer certain counties of the Central Division of the District of South Dakota passed the House of Representatives on February 7.

H.R. 12089 to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse passed on February 3. Subsequently, this passage was vacated and a similar Senate-passed bill, S. 2097, was passed in lieu, after being amended to contain the language of the House bill as passed.

Hearings were held on February 2 by a subcommittee of the Senate Judiciary Committee on S. 1480 and S. 2854 on annuities of widows of Supreme Court Justices.

The Senate Judiciary Committee's Subcommittee on Penitentiaries held hearings on February 3 on S. 2732, providing for the nullification of certain criminal records.

The Juvenile Delinquency Subcommittee of the Committee on the Judiciary began hearings on S. 1428, to establish an Institute for Continuing Studies of Juvenile Justice, receiving testimony from Representative Railsback; Dr. Ruby Yaryan and Thomas Madden, both of the Law Enforcement Assistance Administration; and Mrs. Walter Kimmel, National Congress of Parents and Teachers.

S. 1975, the bill to lower the age of Federal jurors to 18 has been reported to the full House Judiciary Committee by its subcommittee. Several House bills for changing the minimum age of jurors have also been pending in the Judiciary Committee: H.R. 8829, 11245, 11414, 11415, but no action is expected on them in view of the action on the Senate-passed bill.

The President has transmitted to the Senate for its advice and consent the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The Convention will facilitate the obtaining of evidence abroad and clarify several matters of administration concerning letters rogatory.

### BILLS INTRODUCED

S. 3098 (Mr. Roth and Mr. Boggs), to prohibit assaults and other crimes on State law enforcement officers, firemen, judicial officers and prison guards.

Several bills have been introduced which would provide for financial assistance to State and local small community-based correctional facilities and programs of vocational training, job placement and on-the-job counseling. Among these are S. 3051, H.R. 12770 and H.R. 10843 (which also would establish a Federal Corrections Institute to act as an information and training resource).

H.R. 12827 (Mr. Scott), to clarify the jurisdiction of certain Federal courts with respect to public schools and to confer such jurisdiction upon certain other courts.



## A.O.-F.J.C. Course For Probation Officers

During the week of January 24th through 28th, thirty recently appointed federal probation officers from districts throughout the United States, participated in an extensive orientation program conducted at the FJC in conjunction with the A.O.

After opening remarks by Judge Alfred P. Murrah, Center Director, and Rowland Kirks, Director of the A.O., the officers heard Merrill Smith, Chief of the Probation Division, discuss current developments in the probation system. William Cohan, Assistant Chief of the Division, outlined personnel administration in the probation service.

Current activity and trends in correctional and judicial research were discussed by Mr. John Conrad of L.E.A.A. and William B. Eldridge, Director of Research at the Center. Carl Imlay, General Counsel of the A.O., detailed the legal problems of particular relevance and import to the probation officers.

An incisive overview of the Federal Bureau of Prisons' present activities and facilities, as well as projected correctional trends, was presented by Norman Carlson, Director, Eugene N. Barkin, General Counsel, and Richard J. Heaney, Deputy Director, of the Bureau. Guidelines for parole supervisors, policies, and programs for adult and youthful offenders were discussed by Chairman of the U.S. Parole Board, George J. Reed and members of his executive staff.

To supplement and to make their presentations realistic, the new probation officers were given first hand exposure to prison life in a day long visit to the Federal Reformatory at Petersburg, Virginia.

Particulars of supervision, counseling, case recording, presentence investigation, the fundamentals of effective probation services, were presented and discussed by Dr. Eugene Czajkoski, Chairman of the Department of Criminology at Florida State University and Paul W. Keve, Director, Public Safety Department, Research Analysis Corporation.

Specialized topic areas of significance to probation officers were covered by professors from the Washington, D.C. area and included: The Minority Offender and Federal Probation; Standards Relating to Probation; An Ex-Offender Views Corrections; and Racism in the Criminal Justice System.

## Circuit Justices Assigned

On January 7, 1972, when Justices Powell and Rehnquist took their oaths for service on the Supreme Court of the United States, the Chief Justice announced their Circuit assignments. The Circuits are now assigned as follows:

Dist. of Col. — The Chief Justice

1st — Mr. Justice Brennan	6th — Mr. Justice Stewart
2d — Mr. Justice Marshall	7th — Mr. Justice Rehnquist
3d — Mr. Justice Brennan	8th — Mr. Justice Blackmun
4th — The Chief Justice	9th — Mr. Justice Douglas
5th — Mr. Justice Powell	10th — Mr. Justice White

## F.J.C. Director Murrah Addresses Bar Presidents

When the National Conference of Bar Presidents met in New Orleans on Feb. 4th they heard a speech by Judge Alfred P. Murrah, FJC Director, which called on the lawyers to shoulder the responsibility, along with the judges, for speeding up the judicial process.

Judge Murrah talked about the work of the Center and reported that "speedy trial" was a subject receiving high priority at his office. "A wide variety of criticism of our judicial system is forthcoming constantly . . . [and] pervading the criticism . . . is a condemnation of the law's delay." And the Judge denounced emphatically what he termed the invalid contention that the judicial process cannot be expedited without sacrificing the quality of justice. He put the responsibility squarely before them and said that speedy trials can only come about if the lawyers realize that they must join forces with the judges to bring this about.

Judge Murrah's article on court reform — "Recognizing Responsibility" — was published in the Nov.-Dec. 1971 issue of *Trial* magazine. It deals with the responsibility of the judiciary and lawyers to develop and implement ways to improve our processes of justice. "It is a passion that is shared by our sister organization, the newly established National Center for State Courts," he said. And he added, "Both Centers are sensitive to a wide range of problems confronting the courts, and we find delay pervading all those problems."

## A.O.—F.J.C. CALENDAR

- Feb. 25-26 Style Committee of the Bankruptcy Rules, New York City
- Mar. 6-9 Seminar for Courtroom Deputy Clerks, New Orleans, La.
- Mar. 13-17 Refresher Course for Probation Officers, Chicago, Ill.
- Mar. 15 Committee on Courtroom Design at F.J.C., Wash., D.C.
- Mar. 23-25 Seminar for Part-time Magistrates, Atlanta, Ga.
- Apr. 3-15 Seminar for newly appointed District Judges at F.J.C., Wash., D.C.
- Apr. 6-7 Judicial Conference of the United States at Supreme Court, Wash., D.C.
- Apr. 17-21 Refresher Course for Probation Officers, Chicago, Ill.
- Apr. 18-21 Seminar for Courtroom Deputy Clerks, Atlanta, Ga.

## CURRENT ARTICLES AND PUBLICATIONS

*Struggle For Justice: A Report on Crime and Punishment In America*, prepared for American Friends Service Committee, Hill & Wang Publishers, 1971; *Volunteers and Professionals: A Team in the Correctional Process*, by Ira M. Schwartz, Federal Probation Magazine, September, 1971; *A Brief Look at Environmental Causes of Action*, by James W. Moorman, District of Columbia Bar, *The Practical Lawyer*, Vol. 18, #1, January, 1972.



## Prison Legal Assistance

A number of the law schools throughout the country have included in their curricula legal assistance programs at state and federal prisons. One of the most outstanding has been that at Yale Law School, where they have for two years supervised law student participation in legal assistance for inmates at the Federal Correctional Institution at Danbury, Connecticut. Approximately 20 students are now handling cases at the institution under the supervision of two practicing attorneys. The students earn, through this program, academic credits and a wealth of training as they experience actual lawyer-client relationships.

After the inmate has submitted his application for assistance, stating the general nature of his legal problem, a student is assigned to him to work through stages of preliminary research and interviews down to actual letter writing and the drafting of pleadings when appropriate. At all levels faculty attorneys supervise and advise the students. The invaluable experience gained in the questioning of inmates and in the building of a real case produce in the student advocate a rapid realization of client responsibility.

The project began in March 1970 and by October 1971 a total of 341 requests for assistance had been filed. Two hundred and twelve of those requests have been closed, and all but 18 of the remaining cases have been assigned to law students.

The project has a secondary value in that it provides a view for the study of the institution itself. The program has been supported and praised by prison staff members and case-workers alike. Warden John J. Morton perceives a distinct reduction in the tension within the institution and believes the program a healthy outlet for the disposition of grievances.

The students have the opportunity to work with personnel from both the U.S. Attorney's office and the District Court.

Two students have argued before the U.S. District Court in Connecticut and increased appearances by program participants are expected. District Judge Robert Zampano at New Haven, has observed that the Danbury Project has increased the quality and reduced the number of petitions to his court.

The growth of this program has developed increasing expertise in the active areas of inmates' rights and post-conviction remedies.

### JUDICIAL CONFERENCE ACTION

In a related matter, the Judicial Conference of the United States at its fall session (1971) agreed to recommend that all federal courts consider the advisability of adopting a local rule similar to the American Bar Association model rule adopted by many of the state courts. The model rule permits law students to represent indigents in civil and criminal proceedings under the supervision of a lawyer admitted to the bar. In commending the ABA rule for consideration the Conference report adds, "but tailored to the needs of the particular district or circuit." The concluding comment in the report states that "the participation of qualified law students in this clinical experiment not only would redound to their benefit as lawyers but would provide much needed legal assistance under appropriate supervision for indigent parties who might otherwise be totally unrepresented."

## Donald L. Chamlee Appointed Editor of "Federal Probation"

Donald L. Chamlee, assistant chief of probation in the Administrative Office of the United States Courts since 1968, has been named editor of *Federal Probation*. He succeeds Victor H. Evjen who retired in January after 35 years with the federal probation system. A graduate of the University of California with a master's degree in criminology from that University, Chamlee entered the federal probation service in 1961 as an officer at Sacramento, Calif. Before becoming a federal probation officer he had been a probation officer with the San Mateo County Adult Probation Division and an employee with the California Youth Authority.

Chamlee was awarded a fellowship by the Center for the Advancement of Criminal Justice at Harvard Law School and is spending the current academic year in Cambridge, Mass. The primary aim of the fellowship program is to provide training in research techniques and administration in the field of criminal justice.

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JURY (Continued from page 1)

### IN THE FEDERAL COURTS

Thirty-four federal district courts have now adopted local rules which reduce the number of jurors, usually six, in all or some types of civil cases. [See Rule 48, F.R.C.P.; *Williams v. Florida*, 399 U.S. 78, (1970); *Colgrove v. Battin*, No. 71-2546, Dist. of Mont., appeal now pending in CA-9]

### REPORTS — ARTICLES

"Juror Utilization in the United States Courts," is a report prepared for the Committee on the Operation of the Jury System by the Administrative Office of the U.S. Courts, released August 13, 1971. Recently completed: A report on jury utilization in the Southern and Eastern Districts of New York. (See article p. 1) "Let the Jury Be — But Modified," is the title of an article by Judge Edward Lumbar of CA-2, in the Nov.-Dec. 1971 issue of *Trial* magazine.

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CHIEF JUSTICE (Continued from page 2)

Beyond all this, the Institute's program at Denver is commencing to produce more than training. Data is accumulating on how courts operate, their management problems, their common and divergent aspects, their points of critical decision, their use of information and records systems and personnel.

A coordinated study of 10 metropolitan trial courts and two state court systems began in 1970 and, as a result, programs for modernization already are being implemented.

These are "never before" efforts and the hope is that in time they will help bring greater efficiency to the courts and let judges concentrate their main efforts on "judging." Yet we know that judges can never fully escape all managerial duties or abdicate the ultimate responsibility for running the courts. But as generals need executive officers and supply sergeants, judges need managerial aides — and the new court executives should become just that in the 11 circuits.



# Memorabilia Exhibits at The Supreme Court

An ad hoc committee on Supreme Court history was recently created by Chief Justice Burger to draft plans and seek memorabilia for a continuing program of exhibits in the Supreme Court Building. The aim of the project is to inform the hundreds of thousands of visitors to the building about some of the individual members of the Court throughout its history, as well as about the Court as an institution in American government.

Members of the committee include Professor William F. Swindler of the College of William and Mary, chairman; Professor Emeritus Arthur Sutherland of Harvard Law School; Professor Erwin C. Surrency of Temple Law School, editor of the *American Journal of Legal History*; Merlo Pusey, lately retired editorial page editor of the *Washington Post* and author of the definitive biography of Charles Evans Hughes; Perry Lippitt, Marshal of the Supreme Court from 1952-1971; Dr. James B. Rhoads, Archivist of the United States; Richard H. Howland, Special Assistant to the Secretary, Smithsonian Institution; Charles van Ravenswaay, Director of the H. F. DuPont Winterthur Museum; and Clement E. Conger, chairman of the Special Fine Arts Committee, Department of State.

Tentative plans call for placing exhibits in the Supreme Court building in areas which are open to the public and where they will not detract from or interfere with the business of the Court. Included in the exhibits will be portraits, facsimiles or originals of historic documents, personal articles or papers of jurists who have served on the Court and other court-related memorabilia.

Prof. Swindler, as chairman of the Committee, invites suggestions from all sources, as to how they can make these exhibits interesting and meaningful. He may be contacted at the Law School, College of William & Mary, Williamsburg, Va.

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OFFICIAL BUSINESS

## PERSONNEL

### *Federal Judges*

#### *Appointments*

J. Blaine Anderson, U.S. Dist. Judge, Dist. Ida., Dec. 30  
Arnold Bauman, U.S. Dist. Judge, S.D.N.Y., Jan. 17  
Levin H. Campbell, U.S. Dist. Judge, Dist. Mass., Jan. 17  
Richard A. Dier, U.S. Dist. Judge, Dist. Neb., Jan. 7  
Lee P. Gagliardi, U.S. Dist. Judge, S.D.N.Y., Jan. 21  
Clifford Scott Green, U.S. Dist. Judge, E.D. Pa., Jan. 4  
James S. Holden, Chief Judge, U.S. Dist. Ct., Dist. Vt., Jan. 21  
Richard W. McLaren, U.S. Dist. Judge, N.D. Ill., Feb. 3  
Clarence C. Newcomer, U.S. Dist. Judge, E.D. Pa., Jan. 4  
Jon O. Newman, U.S. Dist. Judge, Dist. Conn., Jan. 17  
Charles B. Renfrew, U.S. Dist. Judge, N.D. Calif., Feb. 1

#### *Confirmation*

Wilbur D. Owens, Jr., U.S. Dist. Judge, M.D. Ga., Feb. 17

#### *Nominations*

Louis C. Bechtle, U.S. Dist. Judge, E.D. Pa., Feb. 14  
James L. Foreman, U.S. Dist. Judge, E.D. Ill., Feb. 16  
Howard D. Hermansdorfer, U.S. Dist. Judge, E.D. Ky., Feb. 16

#### *Deaths*

J. Cullen Ganey, U.S. Sen. Cir. Judge, 3rd Cir., Feb. 7  
Bernard J. Leddy, Chief Judge, U.S. Dist. Judge, Dist. Vt., Jan. 9  
J. Earl Major, U.S. Sen. Circ. Judge, 7th Cir., Jan. 4

### *Supporting Personnel*

#### *Appointments*

Philip Bigger, U.S. Probation Officer, E.D.N.Y., Jan. 10  
Walter Webster Dininger, U.S. Probation Officer, S.D. Ind., Jan. 24  
Harris Grimsley, U.S. Magistrate, E.D. Va., Jan. 1  
Ernest L. Harris, U.S. Probation Officer, E.D. Mich., Jan. 25  
T. Marx Huff, Clerk, U.S. District Court, N.D. Miss., Feb. 1  
Arthur G. Johnson, Clerk, U.S. District Court, Dist. Kans., Feb. 1  
C. Albert Parente, U.S. Referee in Bankruptcy, E.D.N.Y., Feb. 1

#### *Promotion*

Doris L. McClellan, Clerk, U.S. District Court, Canal Zone, Jan. 10

#### *Retirements*

Charles H. Z. Meyer, Supervising Probation Officer, N.D. Ill., Jan. 31  
William T. Robertson, Clerk, U.S. District Court, N.D. Miss., Jan. 31  
Sherman D. Warner, U.S. Referee in Bankruptcy, E.D.N.Y., Dec. 31

#### *Death*

Charles William Cahill, Clerk, U.S. District Court, Dist. of Kans., Jan. 14



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

*A Bulletin of the Federal Courts*



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## Circuit Executives Roster Announced

The Chief Justice, on March 13, 1972, announced that the Board of Certification has completed its initial work and has now certified 52 individuals as qualified to fill the positions of Circuit Executives.

The Board was created by Act of Congress of January 5, 1971, and was a step to assist the federal courts in processing steadily growing caseloads. Handling administrative and managerial tasks has been taking countless hours of the judges' time which should more appropriately be spent in judging. In his first State of the Judiciary speech in 1970, the Chief Justice urged that Congress establish these positions. Congress responded with an Act which not only did this but also set up a Board of Certification to find qualified people and to set out for them specific standards to meet and maintain. The Judicial Conference of the United States, the arm of the federal courts designated to act and speak for over 500 federal judges, is mandated to appoint three members. These three are: Judge Roger Robb of the U.S. Court of Appeals for the District of Columbia; Chief Judge Frank M. Johnson of the U.S. District Court, Montgomery, Alabama; and John W. Macy, Jr., President of the Corporation for Public Broadcasting, and former Chairman of the Civil Service Commission. The remaining two positions on the Board, as specified by the Act, are the Director of the Administrative Office of the United States Courts, Rowland F. Kirks, and the Director of the Federal Judicial Center, Judge Alfred P. Murrah, designated Chairman.

Over a 14-month period, approximately 1,500 inquiries

were received. Only 700, however, filed formal applications. Further distillation by the Board brought forth 129 invitations for personal interviews. Of the 52 on the roster announced today, 24 or less than 50 per cent are lawyers. One is a woman.

The Act very obviously stresses administration and management and calls for executives with backgrounds of proven expertise in managerial techniques. Some of the duties outlined by the Act which could be assumed by the new executives include administration of non-judicial circuit activities, management of personnel, establishment and maintenance of a modern budget and accounting system, property control, and statistical reporting.

The Board has made its results known to the eleven judicial councils of the circuits through letters to each Circuit Chief Judge, listing the 52 names, and the Circuit Councils are now free to make their appointments.

The continuing task of the Board is to screen further applications when appropriate in time and need. Recertification must be granted every three years to permit an applicant to remain on the availability list. Board members, when questioned about their months of work, most of which was done on week-ends, said that though it was an arduous task, the experience was enormously rewarding. Obviously their "reward" is also a boon to the courts inasmuch as they have now presented to the federal judiciary a roster of highly talented individuals, each of whom has outstanding qualifications.

### The Board of Certification



Judge Alfred P. Murrah,  
Chairman



Rowland F. Kirks



Chief Judge  
Frank M. Johnson



Judge Roger Robb



John W. Macy, Jr.



## A Message From The Chief Justice

At the risk of repeating myself, I want to emphasize the importance of the announcement made on March 6, 1972, by the Board of Certification for Circuit Executives.

When I spoke at the American Bar Association annual meeting in August of 1969, I referred to the need for better management techniques and better trained personnel in the courts — state and federal. On the federal side, Congress acted with unusual and gratifying speed and created the office of Circuit Executive. A key aspect of the statute creating the new office of Court Executive was a Board of Certification. Once constituted, pursuant to the statute, it immediately started its arduous task of screening applicants. The members of the Board, composed of dedicated and knowledgeable men, have spent many days pouring over hundreds of applications; even more days (usually week-ends) conducting personal interviews with 129 candidates for the positions of Circuit Executives. Their work completed, they have certified 52 names of those they find qualified to serve as Circuit Executives.



What might appear to be a lacuna so far as time and events are concerned, is not necessarily that. What I tried to say in 1969 about the need for trained executives to serve the courts had been said many times before, by me and by others who shared my concern. But changes in our courts, particularly the federal courts, come about slowly. Often times this slow pace is necessary and good. My point is that it took literally years and years of effort on the part of many to bring about this month's announcement. I believe in time we will come to see this development as one of the most significant steps forward in many a year.

Obviously there will be no magic changes over night. The Board of Certification has not come up with a list which can be thought of as a cure-all for the ills of the federal courts. What Congress *has* made possible for the courts is potentially able assistance from eleven qualified men, with impressive backgrounds and experience. Each of the 52 certified possesses unusual talents which can be applied to our problems.

There will be many problems and difficulties in the process of absorbing the Executives into the system and using them properly. We judges have gone so long without adequate supporting help that we are inclined to do things for ourselves. The business of knowing how to delegate duties to others is a subtle art that must be learned by many of us. It will require patience and flexibility.

If, as we hope, this new concept proves successful at the Circuit level, we will have a strong case to persuade Congress to provide Executives for the larger District Courts.

## Legislation

### MEASURES PASSED

Legislation affecting the jury system is reported on else where in this issue.

#### Administrative Assistant to the Chief Justice

The bill to authorize the Chief Justice to appoint an administrative assistant was signed on March 1, 1972 (P.L. 92-238).

#### E.E.O.C. bill, H.R. 1746

The bill, as passed by the House and Senate, and now awaiting signature by the President, would provide the Equal Employment Opportunity Commission with authority to seek directly federal court orders requiring employers or unions to cease discrimination in employment practices.

#### Magistrates

H.R. 9180, authorizing temporary assignments of United States magistrates from one district to another in emergencies, passed and was signed into law on March 1, 1972 (P.L. 92-239).

#### Narcotic Addicts

S. 2713, to authorize the Attorney General to care for narcotic addicts who are placed on probation passed the Senate on March 3, 1972.

The House of Representatives has passed, with an amendment, the bill H.R. 2589, regarding the information required on the juror qualification form.

### LEGISLATIVE ACTION

Bills recently introduced or acted upon which are of interest to the judiciary include the following:

H.R. 13118, Parole Improvement and Procedures Act was the subject of hearings before Subcommittee No. 3 of the House Judiciary Committee, on February 29, March 1, 2, and 3;

H.R. 12213, by Mr. Eckhardt for himself and 12 other representatives, on December 13, 1971. The bill would provide for federal jurisdiction for class actions of consumers;

H.R. 13496, introduced by Mr. Celler, on March 1, 1972 will provide for juries of six persons in civil cases. The bill has been referred to the Committee on the Judiciary.

The House Judiciary Committee's Subcommittee No. 5 has approved for full committee action the bill, H.R. 7378, amended, to establish a Commission on Revision of the Judicial Circuits of the United States.

Hearings are scheduled for later this month on bills relating to the subject of compensation for innocent victims of violent crime, by the Senate Judiciary Committee.

H.R. 11441, to amend §2254 of title 18, United States Code regarding federal habeas corpus, was the subject of hearings on February 15 through 17, and 23rd, before a subcommittee of the House Judiciary Committee.

*(Continued on page 4)*



## Supreme Court Bench Remodeled

Remodeling of the bench used by the nine Justices of the Supreme Court of the U.S. has been completed, converting it from a "straight-line" to a "winged" or half-hexagon design.

It is the first time that the bench, made of Honduran mahogany, has been restyled since it was installed in 1935. The bench is the only one used by the nine Justices since there is only one Court chamber in the building.

When the Court is in session, Chief Justice Burger and the two senior Justices — William O. Douglas and William J. Brennan, Jr. — are seated at the center recessed section of the bench, facing the audience, and the other six are at the wings, slightly turned from the audience. At the right wing are Justices Potter Stewart, Thurgood Marshall and Lewis F. Powell, Jr.; at the left wing, Justices Byron R. White, Harry A. Blackmun and William H. Rehnquist.

The new bench does not represent a drastic change. It was cut into sections and refitted into the new design. The recessed center drops back about two feet and the wings taper at a slight angle. The work, approved by the Chief Justice and the other members of the Court, was done under the supervision of the Architect of the Capitol, whose office is in charge of architecture and construction on Capitol Hill buildings.

In use in a number of courtrooms in the United States, the new design offers many advantages. The Court is a more compact unit and the Justices are better able to see and hear each other, as well as attorneys appearing before them. The Clerk and the Marshal remain in the same position in relation to the bench — to the right and left respectively.

## Six-Member Jury Upheld by CA-9

On September 1, 1971, the United States District Court for the District of Montana, following similar action by some 34 other district courts, promulgated a local rule which prescribed that "A jury for the trial of civil cases shall consist of six persons. . .". Petitioner, in the case of *Colgrove v. Battin*, challenged the Montana local rule but the District Judge ordered the trial to go forward with a six-member jury. Petitioner then sought a writ of mandamus in the Ninth Circuit to further challenge the validity of the rule, and the defendant aligned himself with the position of the petitioner. The arguments set forth were mainly three: (1) The rule violates the Seventh Amendment; (2) the local rule cannot stand in the light of 28 U.S.C. Sec. 2072; and (3) the rule is inconsistent with Rules 38 (a) and 48 of the Federal Rules of Civil Procedure and thus violates Rule 83.

A panel made up of Ninth Circuit Judges Merrill, Duniway and Trask heard the case and Judge Charles M. Merrill, writing for the court, denied the writ on March 6, 1972.

### LAW DAY — U.S.A. — May 1st



Gibson B. Witherspoon, Esq., Chairman of the ABA Committee on Law Day, urges that all courts observe Law Day in a manner which might appropriately be tied in with their proceedings, stressing particularly rights and responsibilities of American citizens. Local Bar Presidents are alerted to assist when called upon by the judiciary, and an abundance of material is readily available at the ABA headquarters in Chicago.



REDESIGNED SUPREME COURT BENCH (Photograph courtesy *The Washington Post*)



## Seminar for New District Judges

As the date for the upcoming seminar for newly appointed District Court judges draws near, the staff of the Center and the Administrative Office are busily engaged in making final a program and a list of events which will keep the judges to a rigid two week schedule.

As in the past, presentations will be made on trial and pretrial of both civil and criminal cases. Sentencing, probation and the corrections area will all be covered through presentations by a list of professionals with proven expertise in this area. Special emphasis will be placed on management and the use of para-judicial personnel. "Management remains one of our biggest problems in the courts," Director Murrah said. "Through the use of business techniques by skilled court personnel, we can make the day-to-day operation of the federal courts an efficient operation and give the judges more time to devote to the judicial process itself."

In addition to the seminar program several social events and sightseeing tours are being planned for the judges and members of their families accompanying them. Of special interest will be the five day "Cherry Blossom Festival" held in the Capital City each spring, commencing this year on April 4th.

## Probation Officer Refresher Course

The fifth in the continuing series of refresher courses for United States Probation Officers was held at the Federal Probation Training Center in Chicago, Illinois, February 4th through 11th. These sessions are designed to afford all probation officers the periodic opportunity to convene, in seminar style, and evaluate current topics and problems in federal probation. Twenty officers from across the United States devoted four and one-half working days to analyses of the dimensions of the crime problem; psychiatric and medical views of drug abuse; the program of the Federal Bureau of Prisons; supervision and interviewing techniques; and the work of the U.S. Board of Parole.

### CIRCUIT JUDICIAL CONFERENCES

- CA - DC - April 30 - May 2, Virginia Beach, Va.
- CA - 2 - June 23-24, Lake Placid, N.Y.
- CA - 4 - June 28 - July 1, White Sulphur Springs, W. Va.
- CA - 5 - April 24-28, Savannah, Ga.
- CA - 7 - May 8-10, Indianapolis, Ind.
- CA - 8 - August 28-30, Omaha, Neb.
- CA - 9 - July 26-28, Pasadena, Calif.
- CA - 10 - June 28-30, Wichita, Kan.

## LEGISLATION (Continued from page 2)

Parole Improvement was the subject of hearings before House Judiciary Subcommittee No. 3 on February 29, March 1, 2, and 3.

Hearings have been concluded on two bills affecting the Court of Claims: H.R. 12392, authorizing the court to implement its judgments for compensation; and H.R. 12979, authorizing the temporary recall of retired commissioners of the court, which has been approved for full committee action.

S. 3186 and H.R. 13610 will amend chapter 313, title 18, United States Code, to provide for commitment of individuals acquitted solely on the ground of insanity.

H.R. 13578 would make an appropriation for fiscal 1973 for the narcotic addict treatment programs of the Bureau of Prisons.

H.R. 13611, to amend title 5, United States Code, to authorize payment of increased annuities to secretaries of justices and judges of the United States.

## Magistrates Meet in Denver

From February 22 through 26, the Center and the Administrative Office held, at Denver, Colorado, the fourth in a series of seminars for United States Magistrates.

Center Director, Judge Alfred P. Murrah, presided over the seminar which brought together thirty-four full and part-time Magistrates. Magistrates Arthur Burnett (Washington, D.C.) and Royce Sickler (Dist. Colo.) offered analysis of the procedures and problems arising from the issuance of search, complaint and arrest warrants. The initial appearance and the setting of bail or commitment were discussed by Magistrate Max Schiffman (E. Dist. N.Y.). The second day focused on the conduct of the full preliminary hearing and the trial of the minor offense with Magistrates Richard Goldsmith (N. Dist. Calif.) and Harry McCue (S. D. Calif.) making presentations. Joseph Spaniol of the Administrative Office explained the origins and applicability of the forfeiture of collateral system, with particular emphasis on the need to maintain good liaison with law enforcement officers.

In subsequent sessions the importance of probity, particularly in non-judicial activities such as ethics was discussed by Judge Robert Van Pelt (Dist. Neb.). The appointment and powers of special masters under F.R.C.P. 53 were detailed by Magistrate Morris Bradford. (N. Dist. Okla.). The morning of the final day of the seminar was devoted to an analysis and exposition of the use of the pretrial conference in both civil and criminal cases with special emphasis on omnibus hearing techniques. Magistrate John Wooley (Dist. Kan.) led this discussion.

At the concluding session Clerk-Magistrate Richard C. Peck (Dist. Neb.) spoke on the administrative structure of the judiciary, the role of parajudicial personnel and how to set up a Magistrate's office.



## Rodak Named Clerk

Michael Rodak, Jr., has been promoted to the position of Clerk of the Supreme Court of the U.S. His appointment, already effective, was announced early this month by Chief Justice Warren E. Burger.



Mr. Rodak, 50, has been associated with the Clerk's Office for 15 years and has been Chief Deputy Clerk since last June. He succeeds E. Robert Seaver, who resigned early this month to join the Civil Aeronautics Board.

A member of the bar in both the District of Columbia and the State of West Virginia, Mr. Rodak earned his LL.B. in 1955 and a Master's Degree in 1956 from Georgetown University Law School. Prior to that he graduated cum laude in 1952 from Steubenville College, across the Ohio River from his hometown, Weirton, W. Va.

Mr. Rodak commenced his career with the Court in 1956 as an Assistant Clerk and, on March 23, 1964, he was made a Deputy Clerk. He now becomes the 16th Clerk in the history of the Supreme Court.

Married to the former Patricia Freese of Bergenfield, N.J., he and his wife have three sons and a daughter and live in Cheverly, Maryland. He spent four years with the U.S. Air Force in Africa and Europe and another year with occupational forces in Austria.

### A.O. — F.J.C. — CALENDAR

- Mar. 17-18 Standing Committee on Rules of Practice and Procedure, Philadelphia, Pa.
- Mar. 23-25 Seminar for Part-Time Magistrates, Atlanta, Ga.
- Mar. 23 Multi-District Litigation Bd. of Editors, New York
- Mar. 24 Multi-District Litigation Panel, New York
- Apr. 3-15 Seminar for Newly Appointed District Judges at F.J.C., Washington, D.C.
- Apr. 4 Conference of Temporary Emergency Ct. Judges, U.S. Courthouse, Washington, D.C.
- Apr. 5 Budget Committee, A. O. Conf. Rm. 7th Fl., Washington, D.C.
- Apr. 6-7 Judicial Conference of the United States at Supreme Court, Washington, D.C.
- Apr. 8 Meeting of Circuit Chief Judges, Dolley Madison House, Washington, D.C.
- Apr. 17-19 Criminal Law Committee, San Antonio, Texas, Hotel Placio Del Rio
- Apr. 17-21 Refresher Course for Probation Officers, Chicago, Ill.
- Apr. 18-21 Seminar for Courtroom Deputy Clerks, Atlanta, Ga., Atlanta Hilton Hotel

## Eighteen-Year-Old Jurors

At this writing, legislation which will lower the minimum age qualification of federal jurors from 21 years to 18 years has passed both the House of Representatives and the Senate. The Senate version, S. 1975 would require each district to reconstitute its master jury list by using the voter registration lists or lists of actual voters from the November 1972 general election, by December 31, 1973. In addition, it would permit continued use of existing lists until the next periodic refilling, and would require that such refillings occur at intervals not in excess of four years.

The House of Representatives then acted upon S. 1975, and it was reported and passed with amendments. The House passed version provides for a September 1, 1973, date for refilling the master jury wheel with names obtained from the voter registration lists or lists of actual voters for the 1972 general election. Provision is made also for the District of Columbia, Puerto Rico, and the Canal Zone. The qualified jury wheel shall be refilled from the master wheel not later than October 1, 1973. A savings provision is included for jury wheels in use prior to refilling, and for juries empaneled before such refilling of the qualified jury wheel. The requirement that refillings occur at intervals of not less than four years is retained from the Senate version. The act has now been returned to the Senate, which may either concur in the amendment, or insist upon a conference. Action is presently expected within the next two weeks.

## Deputy Clerks Meet in California

During the week of February 7th, more than forty courtroom deputy clerks from districts in the Western United States met in Santa Monica, California to participate in the fourth regional course sponsored by the Federal Judicial Center.

The three and one-half day sessions examined the role of the deputy clerk in the effective management of litigation, with particular emphasis on individual calendar control in both metropolitan and smaller court situations.

As in the past seminars, clerks of court James Davey (D.C.) and Stuart Cunningham (N.D. Ill.) and deputy clerks Art Morsch (C.D. Calif.) and Thomas DeLuccie (M.D. Pa.) served as faculty members. In addition, Chief Judge Albert Lee Stephens, Jr. and Judge Harry Pregerson (C.D. Calif.) were able to attend some of the seminar sessions and offered their expertise and judicial viewpoints in discussions with participating deputies. William Barnes, Chief of the Division of Personnel, Administrative Office of U.S. Courts, participated in all of the seminar sessions and spoke to the deputies concerning personnel matters and related subjects of interest.

- Apr. 22 F.J.C. Board Meeting, Dolley Madison House, Washington, D.C.
- May 4-5 Regional Seminar for U.S. Referees in Bankruptcy, Newport Beach, Calif., Newporter Inn.
- June 10 F.J.C. Board Meeting, Dolley Madison House, Washington, D.C.



# D.C. District Court Orientation Program

James F. Davey, Clerk, United States District Court for the District of Columbia, reports interest growing in their Orientation Program for New Employees.

The fourth such program was given last month and attracted visitors from the Federal Judicial Center, the Administrative Office of the United States Courts and the Department of Justice, in addition to the new employees of the Clerk's Office.

Developed in 1971 by Mr. Davey's Staff Assistant, Robert C. Huey, the program is based upon an "Orientation Manual for New Employees" which was also developed in 1971 by Mr. Huey.

The material in the manual is presented by a series of lectures, discussions and courtroom observations. Here is a brief description of the course:

## Part I — The Clerk's Office; the Federal Court System

The appointment and functions of the Clerk are discussed; the Table of Organization of the Clerk's Office and the relationship of the Clerk's Office with such organizations as the U.S. Attorney's Office and the U.S. Marshal's Office are explained. Further, new employees are shown how the federal court system is structured and how the District Court fits into that system. The concept of the Clerk's Office as being primarily a service organization serving the judges, members of the bar and the public is emphasized. Part One closes with a tour of the various sections of the Clerk's Office where section heads highlight their operations.

## Part Two — The Civil Action

The principal steps in a civil action are defined and discussed by tracing the typical progression of a civil case through the Court. The orientation group then visits the Dockets Division where they observe the mechanics of filing a new case, assigning the case to a judge and certain other paper flow procedures. Finally, the group visits one or more courtrooms to observe a civil trial.

## Part Three — The Criminal Action

A criminal action is defined and the different ways it can commence are explained. As with civil cases, the typical progression of a criminal case is traced through the court. Next, the group visits the Dockets Division where it is shown how cases are assigned to judges, how defendants in custody are released on bond and other criminal paper work procedures. Part Three closes with the observations of proceedings before the U.S. Magistrate and a criminal trial.

Contemplated changes for future programs include having more discussion periods, illustrating points made in discussions of civil and criminal actions with actual cases and their documents, and longer observations of courtroom proceedings. The total program will be expanded from three half day sessions to three full day sessions.

There has been a very enthusiastic response to the program. New employees feel that the program gives them a much better picture of the overall judicial system and just how their particular job fits into the system.

## PERSONNEL

### *Federal Judges*

#### *Confirmations*

Louis C. Bechtle, U.S. District Judge, Dist. Pa., Mar. 2

James L. Foreman, U.S. District Judge, E. Dist. Ill., Mar. 2

Howard David Hermansdorfer, U.S. Dist. Judge, E. Dist. Ky., Mar. 2

#### *Deaths*

Joseph W. Madden, Senior Judge, U.S. Court of Claims, Feb. 17

Mell Gilbert Underwood, Senior Judge, U.S. Dist. Ct., S. Dist. Ohio, Mar. 8

### *Supporting Personnel*

#### *Appointments*

James J. Junier, U.S. Probation Officer, Dist. of Col., Feb. 22

Robert C. Mitchell, U.S. Magistrate, West. Dist. Pa., Feb. 17

#### *Promotions*

Edward H. Cochran, Supervising Probation Officer, Dist. S.C., Jan. 10

William W. Rush, Supervising Probation Officer, Dist. S.C., Jan. 10

#### *Deaths*

James H. Emsley, U.S. Referee in Bankruptcy, N. Dist. Ohio, Feb. 16

H. Keith Toler, Jr., U.S. Probation Officer, E. Dist. Va., Mar. 3

## THE THIRD BRANCH

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March 1972

## THE FEDERAL JUDICIAL CENTER

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## *A Bulletin of the Federal Courts*



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### Judicial Conference Names New F.J.C. Board Members

Two new F.J.C. Board members were appointed by the Judicial Conference at its April meeting: Chief Judge Walter Hoffman (E.D. Va.) and Judge Marvin E. Frankel (S.D. N.Y.)

Chief Judge Hoffman is not a stranger to the Center, having participated in the seminars for newly appointed district judges since 1961. This and a wealth of experience acquired in almost 18 years on the district court, where he became Chief Judge in 1961, eminently qualifies him to serve in this capacity. In addition to private practice Chief Judge Hoffman has been a law professor and a Referee in Bankruptcy. He has served on several committees including the Center's State-Federal Relations Committee; the Supreme Court's Special Committee on Habeas Corpus, and the Advisory Committee on Criminal Rules; and the Judicial Conference Committee on the Administration of the Probation System.



Chief Judge Walter E. Hoffman



Judge Marvin E. Frankel

Judge Marvin E. Frankel (S.D. N.Y.) brings to the Board an equally impressive background. He started with Government service as an Assistant to the Solicitor General of the United States in 1949, and left that office for private practice in New York City in October of 1956. The teaching profession claimed his talents from 1962 to 1965 when he served as a full Professor of Law at Columbia. In 1965 Judge Frankel was appointed to the "Mother Court" where he has served as a trial judge since that time.

In commenting on the appointments the Chief Justice said he was confident these two jurists would have many meaningful contributions to the important work of the Center.

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"We have to choose, and for my part I think it less evil that some criminals should escape than that the government should play the ignoble part."  
— Oliver Wendell Holmes, Jr.

### New Administrative Aide to Chief Justice Burger

Mark W. Cannon, Director of the Institute of Public Administration, headquartered in New York, has been appointed as Administrative Assistant to Chief Justice Warren E. Burger. The post was recently created by Act of Congress. His appointment was announced last month and he will assume his new duties on May 15.



Mark W. Cannon

The Institute of Public Administration is the oldest center for public administration research and training in the United States. Cannon, who is 43, has worked for the Institute for eight years and has directed projects in the U. S. and in nine foreign countries dealing with institutional development of governmental operations.

Cannon holds a Ph.D. in political economy and government and a Master's degree in Public Administration, both from Harvard University. Prior to joining IPA, he was Chairman of the Political Science Department at Brigham Young University and formerly served as Legislative Assistant to Senator Wallace F. Bennett of Utah and as Administrative Assistant to former Congressman Henry Aldous Dixon, also of Utah.

Cannon will perform administrative and other non-judicial duties delegated to him by the Chief Justice and pertaining to the federal court system and maintain continuing liaison with the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Committees of the Judicial Conference of the United States. A major aim in the new position will be to work on the development and implementation of administrative innovations for the improvement of federal court operations.

The salary of the new position, like that of the Directors of the Administrative Office of the United States Courts and the Federal Judicial Center, is fixed at the same compensation received by a United States district judge.

Cannon was one of 52 from a field of 700 candidates to be certified recently as eligible for appointment as a Circuit Executive.

Mr. Cannon is co-author of a book entitled *Makers of Public Policy* and has written several studies covering subjects in the executive and administrative field. He is married to the former Ruth Marian Dixon of Ogden, Utah, and they have three children, a son and two daughters.



## A Message From The Chief Justice

Pursuant to a resolution of the Judicial Conference more than three years ago, the Judicial Conference this month directed a study be made of the American Bar Association standards on judicial conduct with the view to their adoption as applied to federal judges. The study authorized by the Conference also will include consideration of standards supplementing the ABA standards.



The ABA's code is designed as a guide for all judges, both federal and state. The purpose of the study authorized by the Conference is to determine what changes or additions are needed to fit the standards to the situation of federal judges. A special ABA committee under former Chief Justice Roger J. Traynor of California and including three federal judges — Associate Justice Potter Stewart of the Supreme Court, Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit, and Chief Judge Edward T. Gignoux of the U.S. District Court for Maine — has been working on the new Standards of Judicial Conduct since August of 1969.

The federal judiciary, in the interim, has operated its own machinery to deal with the problems of judicial conduct such as the filing of income reports and off-bench activities. This machinery will remain in effect until the ABA's completed code is adopted by the Judicial Conference, in whole or with special provisions applying to federal judges only.

The study authorized by the Conference will be carried on jointly by the Interim Advisory Committee on Judicial Activities chaired by Senior Judge Elbert P. Tuttle and the Review Committee chaired by Judge Edward A. Tamm. Judge Kaufman and Judge Gignoux, who have been serving on the ABA's Special Committee, will join in the work for the purposes of this study.

The Canons of Judicial Ethics now in force were promulgated in 1908 under the chairmanship of Chief Justice William Howard Taft. They have been supplemented by numerous opinions by the ABA Advisory Committee. The new Code of Judicial Conduct, which will be submitted to the House of Delegates of the ABA in August for final approval, will supersede the 1908 Canons of Judicial Ethics.

### Revised Supreme Court Schedule

Argument Days:	April 10, 11, 17-20
Session Day:	April 24.
Recess:	April 25 — May 14.
Session Days:	May 15, 22, 30; June 5, 12, 19, 26.

## Two Circuit Executives Selected

Robert D. Lipscher and Robert J. Martineau have been selected from a list of 52 qualified applicants to serve as Circuit Executives.

Mr. Lipscher will fill the newly created post in the Second Circuit and Mr. Martineau will serve in the Eighth Circuit.



**Robert D. Lipscher**

Born in Duquesne, Pa., and now a New Jersey resident, Mr. Lipscher is the Assistant Director for the Institute of Judicial Administration. His background attests to skills in the fields of administration and law, having served the State of New Jersey as Administrative Assistant to the Assignment Judge (Passaic County) and as Chief of Legal Research for the state's Administrative Office of the Courts. He holds degrees from Brandeis University (B.A. 1955), Harvard Law School (LL.B. 1961), New York University Graduate School of Law (LL.M. 1969) and was an Institute for Court Management Fellow in 1970.

Robert J. Martineau, a Connecticut resident, was originally a native of Wisconsin. His talents which were sharpened in private practice as a partner with a Maryland firm, as Chief Administrative Officer of that state's Constitutional Convention, and as an Associate Professor of Law at the University of Iowa. He also served as a Visiting Professor of Law at the Institute of Judicial Administration, New York University Law School. He holds a B.S. degree from the College of the Holy Cross and a J.D. degree from the University of Chicago.



**Robert J. Martineau**

Each new Executive will have various non-judicial duties delegated to him by the circuit he serves. Since they are the first to hold these new posts their efforts will have a pioneering quality. Improvement for our court system will result as they and those who follow them meet and master the responsibilities and challenges facing the Circuit Court Executives.

### AO-FJC OFFER JURY UTILIZATION AID

On April 11th Mr. Kirks directed a letter to the Chief Judges of all U. S. District Courts, proffering the assistance of both the Administrative Office and the Federal Judicial Center in establishing and maintaining jury utilization procedures.

The Judicial Conference has often released statements of concern for the growing costs and other problems arising from calling jurors to serve in the district courts. Members of the Conference's Committee on the Operation of the Jury System

(Continued on page 5)



## Temporary Emergency Court Begins Operation

The new Temporary Emergency Court of Appeals, created in response to the Economic Stabilization Act Amendments of 1971, officially began its work at a conference of the court on April 4. The emergency court has exclusive jurisdiction over cases arising under the Act or regulations or orders issued pursuant to the Act which are appealed from the District courts.

Chief Judge Edward A. Tamm states that to date the court has dismissed one case on motion of the parties, has considered two applications for stays of appeal, has five cases pending and has scheduled a hearing on its first case in early June.

With an eye toward raising the court to an even higher level of efficiency, Chief Judge Tamm has sought the assistance of the Federal Judicial Center and the Administrative Office in an experiment to introduce into his court's operation magnetic card selectric typewriters with communication capabilities.

The experiment will hope to determine the extent to which opinion preparation time can be reduced by using these electronic aids. The plan would provide for the installation of ten typewriters, one in the chambers of each judge and one in the office of the court's clerk in Washington, D. C.

The actual operation is two fold: First, draft opinions would be prepared on the typewriters, thus providing a major advantage in reducing the time required to make changes and revisions as the opinion moves toward its final form. Second, a proposed opinion would be sent over telephone lines to the typewriters installed in the chambers of the two other judges on that same panel. Suggested revisions or additions made by other panel members would be sent back via the same method to the typewriter in the originating judge's chambers. Those delays caused by mailing would, therefore, be totally eliminated. *(Continued on page 7)*

## Judicial Conference Meeting

The Judicial Conference of the United States concluded its midyear meeting in Washington on Friday, April 7 and, among other actions, approved pending legislation for an additional judgeship for Western Wisconsin where Judge James E. Doyle was reported to be carrying the largest workload of any single district judge in the federal court system.

Chief Justice Burger, who serves as Chairman of the Conference, announced the following additional actions from the two-day session:

- The Conference, noting that a special committee of the American Bar Association is preparing a final report on Standards of Judicial Conduct for submission to the House of Delegates next August, authorized The Chief Justice to appoint a special committee of the Conference to study the ABA proposals. The Conference requested that its committee consider whether and to what extent the proposed Code of Judicial Conduct should be adopted or whether alternative standards should be required for federal judges. The ABA Code is designed for all judges, federal and state.

- The Conference voted to approve legislation, now pending in Congress, for reduction in the size of juries from twelve to six in federal civil cases and to permit parties in civil litigation two discretionary challenges of jurors rather than three.

- The Conference recommended legislation to authorize United States magistrates to make use of the provisions of the Youth Corrections Act when placing young offenders on probation. At the same time, it disapproved the use by district courts of local rules of court calling for the dismissal of indictments pending more than one year where a defendant is a fugitive unless the rules also provide an opportunity for the United States Attorney to show cause why an indictment should not be dismissed.

*(Continued on page 5)*

### THE TEMPORARY EMERGENCY COURT OF APPEALS



Seated l. to r.: Judges Robert Anderson, James M. Carter, Edward A. Tamm (Chief Judge), William H. Hastie, Sherman Christiansen; standing l. to r.: Judges Joe E. Estes, Martin H. Van Oosterhout, Frank Johnson, John S. Hastings.



GUESTS PHOTOGRAPHED AT SUPREME COURT DINNER APRIL 12, 1972



Seated (l. to r.): A. O. Dir. Rowland F. Kirks, Chief Judge Robert A. Grant, F.J.C. Dir. Judge Alfred P. Murrah, Chief Justice Warren E. Burger, Chief Judge Rabe F. Marsh, and Chief Judge Joe Estes.  
 Attendees at the seminar were: Judges Anthony A. Alaimo, Charles M. Allen, Aldon Anderson, William J. Bauer, Arnold Bauman, Louis C. Bechtle, James M. Burns, Levin H. Campbell, Leroy J. Contie, Jr., Richard A. Dier, Thomas A. Flannery, James L. Foreman, Lee P. Gagliardi, Clifford Scott Green, Kenneth K. Hall, Wm. Terrell Hodges, William B. Jones, Robert L. Kunzig, Walter T. McGovern, Richard W. McLaren, Herbert F. Murray, Clarence C. Newcomer, Jon O. Newman, Earl E. O'Connor, Wilbur D. Owens, Charles B. Renfrew, Ralph F. Scalera, Morell E. Sharp, Otto R. Skopil, Jr., William C. Stuart, Philip W. Tone, Bruce Van Sickle, Joseph H. Young; Chief Judges David N. Edelstein, Robert A. Grant, James D. Holden, Rabe F. Marsh; Chief Justice Virgil L. Kirk, Sr.



Chief Judge Walter E. Hoffman, (E.D. of Va.) named this month to the F.J.C. Bd., speaks to judges on "Purposes and Philosophy of Sentencing".



Colloquy on "Plea Discussion in the Sentencing Process" led by Judge Thomas D. Lambros (N.D. of Ohio).



Seminar participants listen to special session on modern corrections program.



## Fifteenth Seminar for New District Judges Held

Thirty-eight federal judges assembled at the Center this month for the largest and longest seminar ever held for federal trial judges. The judges represented 26 districts, 24 states, and in addition to the district judges, included a judge from the U. S. Court of Claims and the Chief Justice of the Navajo Nation. Their service on the federal bench ranged from approximately a year to six months, and three had been nominated as recently as March of this year.

Though similar in format to previous sessions, the additional days permitted a desirable expansion of some subjects and some additions to the program. It also permitted more time for question and answer periods and a free exchange of ideas among the judges which was declared extremely helpful. One-half a day was devoted to the use of the omnibus hearing in criminal cases and, to explain the procedures he has adopted, Judge Gerald Tjoflat (M.D. Fla.) spoke and brought with him his Magistrate, Joseph W. Hatchett, who explained his role in the cases.

Directors Kirks and Murrah alternately presided over the sessions and presented the heads of their divisions to explain how the Administrative Office and the Federal Judicial Center function as well as what services are available to the federal judges and their personnel.

The Chief Justice addressed the new judges on three occasions and in addition to words of welcome stressed the important responsibilities they took on as federal judges. He reminisced that when he ascended the federal bench there were approximately 300 federal judges in the system, whereas today there are over 600. The comparison was for a purpose: to emphasize that the federal judicial system today is big business, and that big business necessitates efficient management at all levels. He called upon them to use the resources and talents available to them at the Administrative Office and the Federal Judicial Center as well as the Circuit Executives now joining the system, hopefully to be followed one day by District Executives who could, by assuming administrative tasks, free the trial judge for the judicial process itself.

The usual social activities were scheduled for the judges and the members of their families who accompanied them. Twenty-seven ladies were in Washington for the occasion and to attend the formal dinner at the Supreme Court which is always the highlight of the seminar.

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### CONFERENCE — *Continued from page 3*

• The Conference approved amendments and additions to the Federal Rules of Criminal Procedure and the Federal Rules of Appellate Procedure designed to clarify and improve procedures for the handling of criminal cases in the district courts and the courts of appeals. The changes must be approved by the Supreme Court of the U. S. and transmitted to Congress, becoming effective 90 days thereafter unless Congress disapproves.

## JUDGES EULOGIZED

The death of former Associate Justice James F. Byrnes on April 9 in South Carolina was recorded in Supreme Court annals as the Court opened its session of Tuesday, April 11, 1972. Chief Justice Warren E. Burger said:

"We take note today with sadness of the death of former Justice James F. Byrnes in his 93rd year. He served on this Court in 1941 and 1942 when he resigned upon being appointed by President Roosevelt as Director of the Office of Economic Stabilization. The sadness on the death of Mr. Justice Byrnes is tempered by the knowledge of the full and rich life he lived, serving in the House of Representatives and the United States Senate, and as Governor of South Carolina, Secretary of State, and an Associate Justice of this Court. He served thus with distinction at the highest levels in all three branches of the government and in his native state. Few men have served their country so long or so well."

\* \* \* \* \*

On April 18th Mr. Justice Hugo L. Black was eulogized at the Supreme Court with prominent members of the bench and bar recording in resolutions and speeches their admiration for the Justice. The three-hour ceremonies left no doubt that in the 34 years Justice Black sat on the highest court he was a "giant among justices, a tough opponent in combat" and one who was especially known for his "durable and passionate faith in the Constitution." The reference to the Constitution brought to mind the special provision the late Justice had made himself that pocket editions of the Constitution be on hand at the funeral parlor when friends called to pay their last respects.

In addition to former law clerks who came to pay tribute to the Justice, there were Acting Attorney General Richard Kleindienst, Solicitor General Erwin Griswold, Alabama's Chief Justice Howell Heflin, and former ABA President, Bernard G. Segal. Harvard's Prof. Paul A. Freund, who also spoke, said that he considered this Justice to be "one of the court's most persuasive members for a generation." And Chief Justice Burger, speaking for the Court, referred to personal contacts with the judge, especially when he first came to the Court in 1969, and of the valuable advice he gave him as a friend. (*Continued on page 7*)

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### JURY AID (*Continued from page 2*)

have often pointed to problem areas and this committee and the Committee on the Budget recently joined in a request to the A.O. to extend whatever assistance might be available to bring about more efficient procedures in the calling and utilization of jurors. Immediately following the midyear meeting of the Judicial Conference, therefore, A.O. Director Kirks announced there would be staff men available, as a team or individually, to visit any District Court as consultants on ways and means of improving the jury system. Mr. Kirks, in making the announcement, urged that the Chief Judges contact him personally if assistance is desired, and added that his staff is "ready, willing, and able to comply immediately."



## Jury Exclusion of Paupers Challenged

In an opinion dated April 5, 1972, Senior District Court Judge, Charles E. Wyzanski (Dist. of Mass.) has questioned the validity of the jury selection system in his district.

*United States of America v. Raymond Isaac Andrews*, (Cr. No. 72-74-W), the specific case in point, finds an *in forma pauperis* defendant attacking an indictment returned by a grand jury from which all persons classified as paupers had been excluded.

In the state of Massachusetts, those people who receive public aid or assistance or have not attempted to provide for themselves and families or have been mendicants are defined as "paupers" and are not carried on the voting lists. [Mass. G.L. c.51 § 1, and Opinion of Justices 11 Pick .538, and *Crossman v. New Bedford Inst. for Savings*, 160 Mass. 503]. It is from these same lists, exclusively, that jury members are selected.

The Court, in dismissing the indictment, took judicial notice of the vast number of Massachusetts residents placed outside the scope of jury service by the current practice.

In finding the interest of this defendant to be cognate to the interests of recipients of various other forms of public assistance, Judge Wyzanski viewed him as an "appropriate challenger" to this method of selection whereby paupers are categorically excluded. In writing his opinion the Judge cited 28 U.S.C. § 1862, which states, "No citizen shall be excluded from service as a grand juror . . . on account of . . . economic status."

The court chose to pretermitt 5th Amendment considerations of due process and equal protection which might have negated the indictment on a showing that the grand jury had not been selected from a cross-section of the community.

In a memorandum and order accompanying the opinion, Judge Wyzanski has directed that the clerk of the court prepare for general inspection an affidavit fully revealing the operations of the jury selection plan. Information regarding the age, sex, and background of those selected for jury duty will be compiled.

It is the Judge's contention that citizens under 25 years of age, those of certain ethnic minorities and women as a class are under-represented on juries in his district. He also raises the questions of the district's large alien population which has no opportunity to serve, and the practice of excusing more frequently those who are more affluent and who have had more formal education.

The Administrative Office of the U. S. Courts in partnership with the Federal Judicial Center had anticipated many of those issues posed by Judge Wyzanski in this opinion and began to attack the problem some months ago.

On recommendation of the Committee on the Operation of the Jury System, the A.O began a survey that called upon the clerk of each district court to draw a random sample from each jury wheel under his supervision. Those selected in this sample received questionnaires geared to identify

(Continued on page 7)

## Legislation

### MEASURES PASSED

**Eighteen Year Old Jurors.** The President, on April 6, 1972, signed into law the bill to provide for lowering the age qualification of federal jurors from 21 years to 18 years (P.L. 92-269). As enacted, the legislation provides for refilling of the master jury wheels with names from the 1972 general elections by September 1, 1973, and refilling of the qualified jury wheels by October 1, 1973.

**The Drug Abuse Office and Treatment Act of 1972**, which will establish the Special Action Office for Drug Abuse Prevention, to supervise and promote better coordination of federal programs to combat drug abuse, was signed by the President on March 21, 1972, P.L. 92-255.

### LEGISLATIVE ACTION

#### Bills Reported:

H.R. 12979, authorizing the recall of retired commissioners of the Court of Claims for temporary assignments.

S. 2713, authorizing the Attorney General to provide care for narcotic addicts who are placed on probation, released on parole or manditorily released.

H.R. 7378, with amendments, to establish a Commission on Revision of the Judicial Circuits of the United States.

H.R. 13150, to provide that the Federal government shall assume the risks of its fidelity losses, with an amendment.

A Subcommittee of the House Judiciary Committee has approved for full committee action, S. 2713, authorizing the Attorney General to provide care for narcotics addicts placed on probation, released on parole or manditorily released.

H.R. 13938, to amend the Labor Management Relations Act, 1947, to permit employee contributions to jointly administered trust funds established by labor organizations to defray costs of legal services.

H.R. 13975, a bill to assure the fair selection of jurors and enforce the equal right to jury services.

#### Hearings:

The House Judiciary Subcommittee Number 3 has held hearings on H.R. 8414 and related bills, to abolish the death penalty under all laws of the United States.

S. 2732, a bill to provide the nullification of certain criminal records of rehabilitated first offenders which serve as a barrier to employment was the subject of hearings before the Subcommittee on National Penitentiaries of the Senate Judiciary Committee on March 15.

A bill to provide for the dissemination of criminal arrest records in a manner that ensures their security and privacy, H.R. 13315, by Mr. Edwards, was the subject of hearings before Subcommittee No. 4. of the House Judiciary Committee.

House Judiciary Subcommittee No. 3 continued its hearings on H.R. 13118, the Parole Improvement and Procedures Act of 1972.



**The New Federal Criminal Code.** The Senate Judiciary Subcommittee on Criminal Laws and Procedures held further hearings on the recommendations of the National Commission on Reform of Federal Criminal Laws on March 21, 22 and 23.

The Post Office and Civil Service Committee, Subcommittee on Retirement, Insurance and Health Benefits concluded a hearing on H.R. 8726, to authorize payment of increased annuities to secretaries of justices and judges of the United States.

A new bill on the above subject, H.R. 14148 was introduced on March 28, 1972.

**EULOGIES** – Continued from page 5

This same month Mr. Justice John M. Harlan was eulogized at the Association of the Bar in New York City, in similar ceremonies equally impressive and equally representative of the admiration he received from all disciplines, not just the legal world. Mr. Justice Potter Stewart, who represented the Supreme Court at the ceremonies, spoke touchingly of the greatness of this man; of his warmth; his courage in the face of adversities; and his constant concern for his fellow man. Justice Stewart spoke of the frequent appellations used by the press when writing about Justice Harlan, particularly "scholar" and "conservative" and said, "But he was not an ivory tower academic. He had wisdom and humanity, realism and understanding that carried far beyond mere scholarship. And he was not 'conservative' so much as he was wholly conscientious and responsible. In his approach to the judicial process he never lost sight of the great design of the Constitution as a whole."

\* \* \* \* \*

The Court of Appeals for the District of Columbia on April 17th, set aside all other matters to eulogize two of its prominent judges who died last August: Judge E. Barrett Prettyman and Judge George T. Washington. Again the Chief Justice spoke, followed by Mr. Justice Tom C. Clark, Judge Charles Fahy, former law clerks Thomas Wall and Charles Halpern, with concluding remarks from District Judge Jon O. Newman (Dist. Conn.).

April has served as a reminder that these past months have brought great losses to the federal courts at all levels.

**JURORS** – Continued from page 6

characteristics of age, sex and racial origin. The Bureau of Census, under contract with the Federal Judicial Center, is providing similar data with respect to the composition of the population covered by each jury wheel. Henry Moore, Professor of Statistics at the University of Alabama, will compare the findings from the survey questionnaire to the data provided by the Bureau of Census. By comparing the true cross-section with the random sample, the investigators can pinpoint the areas where jury selection needs altering to reflect more accurately the actual make-up of the community. The study is expected to be completed before the end of this fiscal year.

*We are pleased to this month reprint an appropriate tribute to the judges of the Western District of Texas.*

**LOCAL JUDGES LEAD U. S. IN DISPOSING OF WORK**

Despite an increasing case load, the federal courts in the San Antonio-based Western District of Texas led the nation in disposing of civil cases in the past fiscal year.

The five judges in the district moved civil cases from filing to disposition in an average of only four months. This was done in spite of a 44 per cent increase in cases over three years ago.

In criminal cases, the district was second in the Fifth Circuit Court area and fourth among the 93 districts in the country.

This record is one the judges and other court employes can be proud of, and so can the residents of the big district, which stretches from Waco to El Paso.

It reflects hard work, an attention to the job at hand and an interest in swift justice.

*Reprinted with permission from the San Antonio News of April 3, 1972.*

**ADMINISTRATIVE OFFICE  
1971 ANNUAL REPORT RELEASED**

On April 5, 1972 Director Rowland F. Kirks submitted to Congress his annual statement on the judicial business of the United States Courts. In the report which covered the fiscal year ended June 30, 1971, the Director noted the upward trend in new case filings in both the district courts and the courts of appeals. He called attention to the marked increase in the disposition of civil and criminal cases, though this effort could not offset the rise in filings.

*(Continued on page 8)*

**EMERGENCY COURT** – Continued from page 3

When the final form of the opinion is ready for release, it is transmitted via the equipment from the author's chambers to the typewriter in the clerk's office which will have been loaded with Offset Printing Masterpaper. When motions of an emergency nature are filed in the clerk's office in Washington, the equipment can be used to send the text of the motion immediately to the judge or judges who will ultimately hear it.

Records will be kept to provide data by which the effectiveness of the system can be evaluated. The initial success of the innovation would raise the possibility of its extension to other Courts of Appeals where judges do not have chambers in the same city.

One additional spin-off benefit of this project is that the court decisions will be in machine readable form and will be ready for inclusion into any of the legal research data bases now being built. At the present time the development data banks containing the full text of opinions is inhibited by the cost required for converting previously printed opinions into machine readable form.



## CHIEF JUDGE EDWIN M. STANLEY MEMORIAL FUND

A memorial fund honoring the late Chief Judge Edwin M. Stanley has been established at the Wake Forest University School of Law. Prior to his death on December 23, 1971, Chief Judge Stanley served as federal district judge for the middle district of North Carolina for 15 years. A 1931 graduate of the Wake Forest Law School, he was a member of the Board of Trustees of the University and of the Board of Visitors of the School of Law.

The fund will be used primarily to support the Edwin M. Stanley Award for Scholastic Achievement, which will be presented annually to a student in the Wake Forest University School of Law. Anyone interested in participating in the fund may secure further information from Carmon J. Stuart, Clerk of the U. S. District Court at Greensboro.

### A.O. — F.J.C. — CALENDAR

- Apr. 17-19 Criminal Law Committee, San Antonio, Texas, Hotel Placio Del Rio
- Apr. 17-21 Refresher Course for Probation Officers, Chicago, Ill.
- Apr. 18-21 Seminar for Courtroom Deputy Clerks, Atlanta, Ga., Atlanta Hilton Hotel
- Apr. 22 F.J.C. Board Meeting, Dolley Madison House, Washington, D. C.
- Apr. 27-30 Annual Conference of the National Council of Federal Magistrates, New Orleans, La.
- Apr. 28-29 Ad Hoc Committee on Places of Holding Court and Class Action Mailings, Memphis, Tenn.
- Apr. 30-  
May 3 Regional In-Service Training Institute for Federal Probation Officers, Nags Head, N. C., The Carolinian Hotel
- May 4-5 Regional Seminar for U. S. Referees in Bankruptcy, Newport Beach, Calif., Newporter Inn
- May 8-9 Joint Meeting of Review Committee and Interim Advisory Committee on Judicial Activities, Chicago, Ill.
- June 10 F.J.C. Board Meeting, Dolley Madison House, Washington, D. C.
- June 12-15 Regional Seminar for Part-Time United States Magistrates, Hartford, Conn., Sonesta Hotel

### THE THIRD BRANCH

VOL. 4, NO. 4 APRIL 1972

### THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

## PERSONNEL

### Federal Judges

#### Appointments

Wilbur D. Owens, Jr., U.S. Dist. Judge, Mid. Dist. of Ga., Mar. 11  
Philip W. Tone, U.S. Dist. Judge, North. Dist. of Ill., Mar. 2

#### Nominations

James M. Burns, U.S. Dist. Judge, Dist. of Ore., Mar. 22  
Norman C. Roettger, Jr., U.S. Dist. Judge, South. Dist. of Fla., Apr. 13  
Otto R. Skopil, Jr., U.S. Dist. Judge, Dist. of Ore., Mar. 22

#### Deaths

James F. Byrnes, Associate Justice, U.S. Supreme Court, Apr. 9  
Linton M. Collins, Associate Judge, U.S. Court of Claims, Apr. 12  
George S. Register, U.S. Sen. Dist. Judge, Dist. of N.D., Mar. 18

### Supporting Personnel

#### Appointments

Robert N. Altman, U.S. Probation Officer, East. Dist. of Mich., Mar. 13  
James F. Burke, U.S. Probation Officer, East. Dist. of Mich., Mar. 13  
D. Joseph DeVito, U.S. Referee in Bankruptcy, Dist. of N.J., Mar. 6  
Emile J. Fallo, Jr., U.S. Probation Officer, East. Dist. of La., Mar. 20  
Charles W. Reynolds, U.S. Probation Officer, Dist. of Col., Mar. 20  
Eckhart A. Thompson, U.S. Referee in Bankruptcy, East. Dist. of Calif., Feb. 16

#### Retirement

John A. Sprague, Chief Probation Officer, North. Dist. of Calif., Mar. 31

(Continued from page 7)

Supplementing the Director's statement are reports by the Division of Business Administration, Procedural Studies and Statistics (now Division of Information Systems) Probation Division and the Bankruptcy Division.

Incorporated in the report are the March and October "Reports of Proceedings of the Judicial Conference of the United States." Also appearing in the appendix is a report on the "Criminal Justice Act for the years 1970 and 1971" and the 1970 calendar year report on applications for interception of wire or oral communications, generally referred to as the "Wire Tap Report".

Readers who require the Annual Report for official purposes may obtain a copy by writing the Director of the Administrative Office of the United States Courts. Paper back copies can also be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402, for \$2.50 (stock number 2804-0002).



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

*A Bulletin of the Federal Courts*



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## Five More Circuits Appoint Executives

Five more Circuit Executives have now been appointed making a total of seven who have now or soon will enter the Circuits to apply their talents to assist the judges with increasing tasks which inevitably come with increasing case loads. The



**William A. Doyle**

appointments were announced by the Chief Judges of the Third, Fourth, Fifth, Ninth and the District of Columbia Circuits. Last month's issue of *The Third Branch* announced the appointments of Robert Lipscher to the Second Circuit and Robert

Martineau to the Eighth. Each of the new appointees has an impressive background of education and experience which eminently qualifies him to assume these important responsibilities. We are pleased, through this column, to extend congratulations to these new officials and to wish them well as they take on their important tasks.

The Third Circuit has appointed as their Circuit Executive William Andrew Doyle, now of McLean, Virginia. He holds a B.S. degree from Georgetown University and has also studied at St. Marys College in Minnesota, the University of Minnesota, and George Washington University in Washington, D.C. Mr. Doyle has sharpened his talents through a 1971 stint at the Institute for Court Management, and has



**Samuel W. Phillips**

also studied at the Federal Executive Institute, the Department of Defense Computer Institute, and the Industrial College of the Armed Forces, in all instances concentrating on management. The United States Navy has drawn on his talents both in a civilian and military capacity. During 1943-48 he served as a

Navy flyer with the rank of Ensign and between the years 1949-1965 he served in the Naval Reserve and now holds the rank of Commander. In a civilian capacity he has been employed by the Department of the Navy as principal civilian adviser and consultant to the Naval Material Command, mainly working on vast organization and management problems in this branch of the service which extends its offices throughout the United States and foreign countries. His talents did not go unnoticed out of the country and in 1967 the Navy Department agreed to release him for a special assignment to assist the Philippine Navy. Here he studied and recommended reorganization of the Philippine Navy with special emphasis on organization, management and manpower. Mr. Doyle's



**Thomas H. Reese**



**William B. Luck**

extensive experience in the areas of teaching, organization and management should prove of great value to the Third Circuit.

Samuel W. Phillips, who holds a B.S. degree from the College of William & Mary, a B.C.L. degree from the Marshall-Wythe School of Law, and a certificate for systematic instruction in court management from



**Charles E. Nelson**

the Institute for Court Management in Denver, is now the first Circuit Executive for the Fourth Circuit.

*(Continued on page 7)*



## A Message From The Chief Justice

The idea of a national public agency to serve the needs of justice has been germinating for a long time and now has attracted more attention in legal and judicial circles as the result of an article by Bert H. Early, Executive Director of the American Bar Association. Mr. Early, who believes "the time has come" for such an agency, describes his proposal in detail in an article in the *West Virginia Law Review* (Vol. 74, No. 3, April, 1972).



The general intent of a national institute, as Mr. Early sees it, would be to "marshal our resources and energies" into an accelerated program directed toward the modernization of the American system of justice and law at all levels, federal and state.

He visualizes its funding as from both public and private sources and he disclaims its role as in any way attempting to "federalize" the state courts or to "homogenize" our systems of justice.

In welcoming the American Law Institute to its annual meeting in Washington, May 16, I expressed the view in the form of a question—"Has the time come?" to take this step. It is my view that this is a very large undertaking with vast implications for the future and that we need a careful study by the legal profession, first, into the whole idea of establishing such a national facility. Later, in a speech here during the ALI gathering, Leon Jaworski, President of the American Bar Association, pledged his organization's support of efforts to study the idea of a national institute and within the week the ABA Board of Governors authorized a "feasibility study" of the concept by a 5-man "task force" that includes two former presidents of the ABA.

It would be idle to assume that a "national institute of justice" would be an instant catalyst in the solution of the myriad problems modern justice faces. But if a national facility can be created so that the state courts, being by far the larger segment of the American judicial system, can be given much-needed resources and support, that alone would be a forward step. We spend nearly two and one-half billion dollars annually through the National Institutes of Health with good result in attacks on all of mankind's diseases, and it well might be that a comparable facility could assist in revitalizing our faltering and inadequate machinery of justice.

One can readily outline a half-dozen characteristics such a broad-based facility might possess: 1) a creation of Congress national in scope; 2) a widely representative institution with substantial state representation, and not under the exclusive control of judges and lawyers; 3) a staff, however small, of trained specialists who, in consultation with the National Center for State Courts and others, could lend technical assistance on state judicial problems upon the request of a state—a comparable relationship to the federal courts through the Federal Judicial Center; 4) appropriate resources and authority to make grants for court improvement, much as LEAA now does in many areas; 5) research and development capabilities for transmitting swiftly, to the courts desiring them, the best techniques of the most efficient courts in the country; and 6) assistance to state courts where they lack resources to carry out programs for themselves.

Crucial to the success of such a program is that it firmly avoid any effort to "federalize" the state systems in a common national pattern. Obviously there are common denominators that most states now employ and others will emerge, but states must always be free to experiment and innovate even with all the risks of a "trial and error" approach. No single system, including the federal, has been so uniquely superior that it can claim the right to be the model for all.

The function of the special "task force" authorized on May 20 [by the ABA Board of Governors] will be to make plans to assemble a broad based group to confer on the needs and explore alternative patterns for a national facility, assuming such a facility is considered necessary for the effective functioning of the judicial systems, state and federal.

Other people will have other ideas, and that is good. While the theme for a national facility or ministry in the field of justice has been raised before, the current proposals serve to synthesize a wide range of ideas and they merit further study and exploration.

The time for final judgment will come when a concrete proposal develops, but all of us should welcome the interest exhibited in the problems of judges.

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"Logical consequences are the scarecrows of fools and the beacons of wise men."

—Thomas Henry Huxley



# Juries

## SIX-MEMBER JURIES – Federal Courts

As reported in the March edition of *The Third Branch*, the Ninth Circuit in *Colgrove v. Battin* has upheld the lower court action of U.S. District Judge James F. Battin in which he had ordered a trial to go forward in the face of a challenge to that District's local rule which provided for the use of six-member juries in civil cases. Petitioner, Roland V. Colgrove, having been denied a writ of mandamus by a three-judge panel of the Ninth Circuit on March 6, 1972 has now filed in the U.S. Supreme Court seeking a writ of certiorari. The original suit, an action for libel, having diversity of citizenship and the requisite monetary amount in controversy, was brought in the U.S. District Court of Montana, whose Revised Procedural Rule 13 (d) (1) states, "A jury for the trial of civil cases shall consist of six persons . . ." Forty-one federal districts have now adopted local rules comparable to the Montana rule.

Among other things the petitioner in his brief relied on the language in the Seventh Amendment, particularly its references to the common law pointing out that at common law the jury consisted of twelve.

Respondents in the case have until June 3d to file a brief in opposition and the Solicitor General of the United States (who has been served in compliance with the Court's Rule 33) has until June 23d. While there is a possibility the Court could act on it this Term, the late June filing dates may carry the case over for consideration during the October Term, 1972.

## MAJORITY VERDICTS – State Courts

In decisions handed down by the Supreme Court on May 22d, the highest court has said that state courts may now render verdicts by less than unanimous juries. Mr. Justice White, writing for the Court in cases originating in Oregon and Louisiana, said that constitutional requirements of the Sixth and Fourteenth Amendments are met when a substantial majority of the jurors are satisfied that an accused is guilty; further, that "disagreement of three jurors does not alone establish reasonable doubt . . ." In the Louisiana case an additional attack based on protections set out in the Equal Protection Clause was made on that State's scheme which calls for increased numbers on juries in proportion to the seriousness of the crime or the severity of the punishment. The majority opinion answers this by  
*(continued on page 5)*

# Legislation

## ENACTMENT

On May 11, 1972, the President signed Public Law 92-293, which authorizes the Attorney General to provide after-care for narcotic addicts who are placed on probation, released on parole, or mandatorily released.

## CONGRESSIONAL ACTION

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery, chaired by Senator Burdick, has held hearings on S.J. Resolution 122, to establish a Commission on Revision of the Federal Court Appellate System with testimony presented by Circuit Judge J. Skelly Wright, D.C. Circuit; Chief Judge Collins J. Seitz, Third Circuit; Chief Judge John R. Brown, Fifth Circuit and Richard Green and William Eldridge of the Federal Judicial Center.

Bills to suspend and abolish the death penalty were the subject of continued hearings before House Judiciary Subcommittee No. 3, while Subcommittee No. 5 continued its hearings on the bussing issue.

H.R. 13118, Parole Improvement and Procedures Act of 1972 continued to be the subject of extensive hearings before the House Judiciary Subcommittee No. 3. Testimony was received from Merrill Smith, Chief of the Division of Probation of the Administrative Office of the United States Courts.

The Subcommittee on Public Works of the House Committee on Public Buildings and Grounds has held a hearing on the allotment of space in Federal courthouses.

H.R. 12979, authorizing the recall of retired commissioners of the U.S. Court of Claims for temporary assignments, passed the House April 17, 1972. Hearings on the proposed Federal Court Jurisdiction Act of 1972, S. 1876, were held by the Senate Judiciary Committee, Subcommittee on Improvements in Judicial Machinery.

The House has passed with two amendments H.R. 45, to establish an Institute for Continuing Studies of Juvenile Justice.

The House passed H.R. 12392, amended, authorizing the Court of Claims to implement its judgments for compensation.

H.R. 13150, "to provide that the Federal Government shall assume the risks of its fidelity losses," passed the House on April 17th.

The House Judiciary Subcommittee No. 4 has held hearings on H.R. 13315, to provide for the  
*(continued on page 5)*



# Wiretaps Report

On April 28, 1972, Director Rowland F. Kirks submitted to the Congress the 1971 calendar year *Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications*. The 190-page report, the largest of the annual reports prepared to date, is submitted in accordance with the provisions of Section 2519(3) of Title 18, United States Code.

State and Federal judges authorized all of the 816 wiretap applications requested of them by prosecuting authorities. This was a 37 percent increase over the 596 applications granted in 1970. Wiretapping orders by Federal authorities accounted for 285 applications, or 57 percent more than the 182 granted in 1970. For the states such orders increased by 28 percent, up from 414 to 531. Of those 531 state applications, 83 percent were granted by New York and New Jersey.

Leading the offenses for which electronic surveillance was authorized was gambling for which 570 applications were obtained. Wiretaps were used to investigate 126 drug cases.

In 1971 the average cost per intercept where such cost was reported was \$4,599, down from the \$5,534 recorded in 1970. The range in cost was from \$25 to \$67,860.

Most of the cases in which there were interceptions are still under active investigation. A total of 2,818 arrests and 322 convictions were reported thus far for 1971. This can be compared to 1,874 arrests and 151 convictions during calendar year 1970.

The report provides supplementary data on arrests and convictions as a result of intercept orders authorized and installed for calendar years 1969, 1970, and 1971. Altogether during these 3 years for 1,644 authorized and installed intercepts, there have been 6,131 arrests and 1,154 convictions.

Copies of the 1971 report, as well as the reports for 1968, 1969, and 1970 can be obtained by writing the Director of the Administrative Office of the U.S. Courts.

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## A.O. — F.J.C. — CALENDAR

May 24-27	6th Circuit Conference, Cincinnati, Ohio
June 10	F.J.C. Board Meeting, Dolley Madison House, Washington, D.C.
June 12-14	Regional Seminar for Part-Time U.S. Magistrates, Hartford, Conn., Sonesta Hotel
June 21-24	Bankruptcy Rules Committee, Washington, D.C.
June 23-24	2nd Circuit Conference, Lake Placid, N.Y.
June 26	Supporting Personnel Subcommittee, Washington, D.C.
June 28-30	10th Circuit Conference, Wichita, Kans.
July 1	4th Circuit Conference, White Sulphur Springs, W.Va.

# State-Federal

## MARYLAND

The 27th Maryland Judicial Conference met at Annapolis this month with Chief Judge Hall Hammond presiding. Judge John P. Moore, Chairman of their Judicial Conference Executive Committee, set up a program which included lively discussions on corrections, probation and parole, and all aspects of criminal and civil trials. From the federal side: Chief Judge Edward S. Northrop (Dist. Ct., Md.) and Judge Roszel C. Thomsen (Dist. Ct., Md.) both spoke on May 3d. The following day Judge William B. Jones (Dist. Ct., D.C.) addressed the luncheon meeting with Chief Judge Clement Haynsworth and Judge Harrison L. Winters (CA-4), and Alice O'Donnell (F.J.C.) in attendance. On May 5th William R. Sweeney (Asst. Dir., A.O.) addressed their meeting on "Security in the Court and in the Court House."

We take this means of expressing our deep sympathy to the family and the members of the Maryland judiciary for their great loss on May 6th of one of their great jurists: Judge Thomas B. Finan.

## VIRGINIA

The Virginia State-Federal Council will hold its next meeting at the time of the Judicial Conference for the Fourth Circuit, this year being held June 28-July 1 at White Sulphur Springs, West Virginia.

## WISCONSIN

Wisconsin's State-Federal Judicial Council, now under the Chairmanship of Justice Horace W. Wilkie (Supreme Ct. Wis.), had an excellent statement printed in the *Milwaukee Journal* on Law Day. Judge Thomas E. Fairchild (CA-7) was the first Chairman of this Council. Pointing with pride to the fact that Wisconsin was one of the first states to respond to Chief Justice Burger's call for the creation of state-federal councils, Justice Wilkie said, "It is the mission of the Council to work for a better understanding between the federal judges and the state judges in the operation of the dual system in which both types of courts have their roles to play."

## NATIONAL CENTER FOR STATE COURTS

The State Center will hold its next Board meeting at Denver, Colorado, June 3, 1972, with reports by Justice Winslow Christian (Director) on ongoing programs, those on which he is about to embark, and further discussions on a site for their permanent headquarters.



## Merrill A. Smith To Retire— Wayne P. Jackson Successor

On April 24 Director Rowland F. Kirks announced that Merrill A. Smith, Chief of the Division of Probation in the Administrative Office since 1966, will retire June 30. A native of Los Angeles and a graduate of the University of Southern California, Smith entered the Federal probation service in 1941 at Los Angeles from a background in public and private welfare agencies. In 1952 he was appointed Deputy Chief of the office and in 1954 joined the staff of the Probation Division as Assistant Chief.



Merrill A. Smith

As Assistant Chief Smith initially was responsible for the Division's training activities. He played a major part in shaping the program of the Federal Probation Training Center, and for several years he planned and conducted inservice

training institutes for probation officers throughout the Nation. Later, prior to his appointment as Chief, he managed the probation system personnel program and in this connection was a prime contributor to the development of the Judiciary Salary Plan.

Among the significant programs which have been inaugurated during Smith's six years as Chief of Probation are the installation in 1967 of a new system of data collection providing fuller and more accurate information on the kinds and amounts of investigative work accomplished by probation officers (a major factor in the recent establishment of new workload standards and measurement) and experimentation with the use of paraprofessionals as an adjunct to the regular probation officers. A successful project using indigenous aides in the Northern District of Illinois led the Division of Probation to include in the fiscal 1973 budget a request to authorize the hiring of paraprofessionals as an integral part of the probation system.

After 30 years of service dedicated to the promotion of probation and the welfare of offenders, Smith strongly believes that for many offenders probation is unquestionably the best procedure to be used. But he avers with equal force that confinement institutions, particularly such as those now under design and construction by the Federal Bureau of Prisons, are essential and will be needed far into the future for a substantial proportion of accused persons and convicted criminals.

Effective July 1, Wayne P. Jackson will assume the duties of Chief of the Division of Probation. A graduate of the University of Tulsa with a master's degree from that University, Jackson in 1959 was appointed a U.S. probation officer in the Northern District of Illinois following several years of experience in police work and as probation counselor for the Juvenile Court of Tulsa County. He joined the staff of the Probation Division in 1967 as Assistant Chief.



Wayne P. Jackson

In his announcement to all Federal judges and probation officers Mr. Kirks said, "As much as I regret Mr. Smith's decision to retire I am pleased that he leaves the office in excellent hands. I solicit for Mr. Jackson and his associates the same splendid cooperation and support you have afforded Mr. Smith throughout his tenure."

### JURIES (Continued from page 3)

stating they find "nothing unconstitutional or invidiously discriminatory . . ." in this procedure.

Mr. Justice Powell, though joining the majority opinion, wrote a separate concurring opinion pointing out "there is no sound basis for interpreting the Fourteenth Amendment to require blind adherence by the States to all details of the federal Sixth Amendment standards." Citing a line of Supreme Court opinions handed down since the late 1800's Justice Powell concluded that the Court presumed unanimous verdicts are essential in federal trials, not because of fundamental rights, but because our history mandates it. [England discontinued the requirement of unanimity in 1967.]

(continued on page 6)

### LEGISLATION (Continued from page 3)

dissemination and use of criminal arrest records in a manner which insures their security and privacy.

S. 1736, the Public Buildings Amendment, has been acted upon by both Houses of Congress, and is now in Conference for the purpose of resolving the differences between the House-passed bill (H.R. 10488) and that passed by the Senate.

H.R. 7375, to remove the statutory ceiling on salaries of United States Magistrates was favorably reported by the Judiciary Committee of the House of Representatives where it was passed on May 16 and sent to the Senate for further action.



## F.J.C. Seminars

In recent weeks, the regional series of seminars for part-time United States Magistrates and Courtroom Deputy Clerks have continued with courses held in two sections of the country.

From April 18-21, forty-one clerks and courtroom deputies from districts located in the Southeastern United States met in Atlanta, Georgia for the concluding seminar in the series of six held during this fiscal year. The format of these sessions, though identical in some respects to the preceding courses, was restructured to incorporate many valuable suggestions offered by previous course participants.

What resulted, according to a recently appointed deputy in attendance, was "... truly a rewarding experience which gave me suggestions to bring to my judge to alleviate some of his burden and expedite the 'calendar' for the court."

As in the past, Messrs. Davey (Clerk-D.C.), Cunningham (Clerk-N.D. Ill.), Morsch (Deputy Clerk-C.D. Cal.), and DeLuccie (Deputy Clerk-M.D. Pa.) served as faculty representatives and focused attention on efficient court operating procedures and techniques of individual calendar control as applied to court situations of varying sizes and complexities.

Plans are moving ahead for a series of improved courses for courtroom deputies to be held regionally during the next fiscal year, in an attempt to allow all remaining deputies who did not attend a seminar this year the opportunity to do so in the months ahead.

Full and part-time United States Magistrates from the sixth and seventh circuits met in Indianapolis, Indiana from May 10-12 at the fifth such seminar held this year. Twenty-seven magistrates convened to hear and discuss expository analyses of pertinent procedural and substantive matters directly affecting their magisterial responsibilities. Presentations were made by a number of experienced, full-time magistrates from across the country, supplemented by discussions from Judge Robert Van Pelt (Dist. Neb.) and Joseph Spaniol (Assistant Director-Administrative Office).

The concluding seminar in this series is planned for Hartford, Connecticut, June 12-14. The program will be continued during Fiscal Year 1973.

### **JURIES** *(Continued from page 5)*

Exact standards were not set out in the opinion but Mr. Justice Blackmun, in a concurring opinion stated he had no hesitation in saying that a bare majority, such as 7-5 rather than 9-3 or 75%, would afford him "great difficulty."

## A.O. Semi-Annual Report

In May, Director Rowland F. Kirks released an expanded version of the Semiannual Report which for the first time provides many statistical measures previously limited to the Annual Report of the Director.

Covering the first 6 months of fiscal year 1972, that is, July-December of 1971, the report points up the continued increase in cases filed in the United States Courts of Appeals, up 11 percent over the same period a year ago. Though cases terminated continued at a record level, the pending caseload was up 4 percent over December 31 a year ago.

Civil and criminal cases commenced in the United States District Courts increased by 6 percent over the same period a year ago. For civil cases there appeared to be a leveling off with only a half a percent increase over a year ago, 46,888 filings compared to 46,654 during the first 6 months of fiscal year 1971. The 23,179 criminal filings were up by 18 percent continuing the strong trend begun in 1969.

The projected increase in civil and criminal cases docketed for all of fiscal year 1972 is about 3 percent above 1971. This represents a slowing down of the annual increase in new cases.

Bankruptcy activity declined by 11 percent compared to a year ago. However a decline in terminations resulted in a record closing pending figure of 201,841 cases.

The Federal Probation System had a 14 percent increase in persons placed under supervision. The number of persons placed on probation by the courts increased by 18 percent. The 45,177 persons under supervision on December 31, 1971 was 13 percent higher than a year ago and greater by 21 percent two years ago.

The Semiannual Report prepared by the Division of Information Systems can be obtained by writing the Director of the Administrative Office of the United States Courts.

### **PUBLICATIONS**

**Capital Punishment** by James McCafferty, Assistant Chief, Division of Information Systems, Administrative Office, Aldine-Atherton Publishing Co., Chicago, Ill., 1972.

**Justice in America, Courts, Lawyers, and the Judicial Process** by Herbert Jacob, Little Brown and Co., Boston, Mass., 1972.



## Metropolitan Judges Conference

As part of a continuing effort to aid and improve the administration of justice at the trial court level, the Center is convening a meeting of the Chief Judges of the eighteen largest metropolitan District Courts late this summer. This group has met twice before in the past year, last August in Denver, and at the Center in January. The emphasis at both prior roundtable discussions has been on expediting the flow of criminal cases in the large courts carrying the heaviest case loads.

The Denver meeting stressed problem recognition, as the Chief Judges attempted to identify and isolate those events which produce avoidable delays in the system. Also emphasized was the responsibility of the court in general and the Chief Judge, in particular, to assume the leadership role in attacking the problem of delay.

The second gathering continued the work of problem identification. In addition, however, time was spent considering potential solutions to some of the previously recognized problems. The discussions centered around the efficient use of magistrates and the use of shortened presentence reports.

As a further aid to the Chief Judges, the Center presented at this meeting the initial results of its criminal docket study, thereby giving the Chief Judges new information regarding the dynamics of the criminal case processes in their courts.

While the agenda for the forthcoming third meeting has not been finalized, it is expected that the sessions will continue to focus on the causes of delay and formulation of appropriate responses. The Chief Judges will have the benefit of additional data from the criminal docket study dealing in more detail with the factors associated with delay in the criminal process.

In a parallel development, the Center's Research Division is planning to conduct a civil docket study this summer in most of the large metropolitan courts. The data collections will be performed by law students, and will cover about 13,000 civil cases terminated during Fiscal Year 1971. While the project is similar to the criminal project performed last summer, an important step has been taken which allows the data to be processed by the "Civil Case Management Information System" currently being developed by the Center's Systems and Innovation Division. This system is expected to be operational in several districts in the near future.

## EXECUTIVES (Continued from page 1)

Prior to assuming his new duties on May 1st, Mr. Phillips was Clerk of the U.S. Court of Appeals for the Fourth Circuit, with headquarters at Richmond, Virginia. His record to innovative management and training programs has been truly outstanding and the subject of discussion at all seminars for federal clerks held at the Federal Judicial Center. He has given generously of his time and talents to plan and lecture at Center programs. Though born in New York City, Mr. Phillips has been a Virginia resident for many years, and served as Assistant United States Attorney for the Eastern District of Virginia for six years. His military service from 1948 to 1951 brought him to the rank of Major in the United States Army Reserve. His extensive experience in commercial and public service affords him valuable background to aid his work in the Fourth Circuit.

The Fifth Circuit has named Thomas H. Reese of San Francisco its new Circuit Executive. Mr. Reese comes to this post with a distinguished record of service to the United States Army. Until he begins his court assignment, he will continue in his executive role with the Army Judge Advocate Headquarters, Sixth Army, San Francisco. He had previously served as legal assistant and adviser to the Judge Advocate of the Army, having extensive responsibilities in areas of personnel, budgeting, planning, and legal training. From July 18, 1968 to May 20, 1969, Mr. Reese was in the Republic of South Viet Nam and was in charge of the Army's legal office in that area managing 53 attorneys, 600 units and 55,000 personnel. As officer in charge of court martial proceedings he handled a range of cases which included charges of murder, desertion, assault, and misuse of drugs. He had total responsibility for the administration of military justice in the largest single major command in Viet Nam. Mr. Reese holds B.S. and J.D. degrees from the University of Utah, Salt Lake City, and a M.S. from the George Washington University, Washington, D.C. Mr. Reese is no stranger to big business and undoubtedly will face the business of the Fifth Circuit with the same vigor he has with previous assignments.

The Ninth Circuit will rely on the experience of its former Clerk of Court, in appointing on May 1st, William B. Luck its new Executive. Mr. Luck was born in Richmond, Virginia but moved to California in 1966 to take on the duties of Clerk of the U.S. Court of Appeals for the Ninth Circuit. He received his B.A. at the University of Richmond and his J.D. at the George Washington University. Earlier in his career, he was the Chief of the Field Inspection Branch, Division of Procedural Studies for the Administrative Office of the United States Courts.

(continued on page 8)



(Continued from page 7)

Before assuming that position he was an assistant Administrative Attorney with the U.S. Department of Justice. In this capacity he made financial and management audits for the Department of Justice and the United States Courts, made personnel surveys of the Department's field offices, and indoctrinated newly appointed U.S. Marshals. Mr. Luck also attended the Institute for Court Management and has taken graduate courses in public administration and management and computer usage at the University of California. His military service has been in both the U.S. Coast Guard (Seaman 1st class) and the U.S. Army (Cpl.).

The U.S. Court of Appeals for the District of Columbia has appointed Charles E. Nelson as its new executive. He is currently Acting Chief, Management Systems Branch and Senior Analyst for the Executive Office of the President, Office of Management and Budget. Mr. Nelson, who resides in McLean, Virginia, graduated from the U.S. Naval Academy (B.S.) and later obtained a B.S.E.E. from the U.S. Naval Postgraduate School. He also holds an M.S. degree in Industrial Engineering from Purdue University and has attended the U.S. Naval War College. Prior to his present position, Mr. Nelson served the Chief of Naval Operations in supervisory capacities within the Systems Analysis Division, and very early in his career he was Special Assistant to the Chairman for National Security Affairs gaining knowledge of relations of departments, agencies and Congress at high policy levels. Mr. Nelson's varied and extensive experience in handling management problems, planning policy directives and forecasting capabilities of public agencies and their personnel amply qualifies him for his responsibilities in the District of Columbia Circuit, one of the largest in the system.

The talents of these new executives bodes well for the future of the federal courts.

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

## PERSONNEL

### *Federal Judges*

#### *Appointments*

**James L. Foreman**, U.S. District Judge, E.D. Ill., Apr. 26

#### *Nominations*

**Marion T. Bennett**, Associate Judge, U.S. Court of Claims, May 22

**Albert W. Coffrin**, U.S. District Judge, Dist. Vt., May 3

**Charles W. Joiner**, U.S. District Judge, E.D. Mich., Apr. 25

**Samuel P. King**, U.S. District Judge, Dist. Ha., May 22

**Howard T. Markey**, Chief Judge, U.S. Court of Customs and Patent Appeals, May 3

**William H. Quealy**, Judge, U.S. Tax Court, May 22 (Re-appointed for 15 yr. term)

**Arnold Raum**, Judge, U.S. Tax Court, May 22 (Re-appointed for 15 yr. term)

**Irene Feagin Scott**, Judge, U.S. Tax Court, May 22 (Re-appointed for 15 yr. term)

**J. Clifford Wallace**, U.S. Circuit Judge, Ninth Circuit, May 22

**Hiram H. Ward**, U.S. District Judge, M.D.N.D., May 18

#### *Deaths*

**John W. Delehant**, U.S. Senior District Judge, Dist. Neb., Apr. 20

**Arthur F. Lederle**, U.S. Senior District Judge, E.D. Mich., Apr. 20

### *Supporting Personnel*

#### *Appointments*

**Charles H. Banta**, Clerk, U.S. District Court, M.D. La., Apr. 16

**James W. Brown**, U.S. Probation Officer, Dist. S.C., Apr. 17

**Herbert Katz**, U.S. Referee in Bankruptcy, S.D. Calif., May 8

**John P. Ovall**, Clerk, U.S. District Court, E.D. Ill., Apr. 27

#### *Retirement*

**Matthew J. Terrizzi**, Supervising Probation Officer, S.D.N.Y., April 30.

#### *Death*

**John K. Hunter**, U.S. Probation Officer, M.D.N.C., Apr. 8



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

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F.J.C. Undertakes New Projects

## Tenth Circuit Names Emory Hatcher Circuit Executive

The Clerk of the U. S. District Court (C.D. Calif.), Emory G. Hatcher, has been named the Tenth Circuit's new Circuit Executive. Mr. Hatcher holds a B.A. degree in Political Science from the University of California at Los Angeles and a J.D. degree from Southwestern University, School of Law, Los Angeles.



**Emory G. Hatcher**

Before assuming his present position, Mr. Hatcher was Clerk of the Superior Court of Los Angeles, a position called for extensive management skills in serving a court which constitutes one of the largest trial courts in the world. Earlier in his career, he was Chief, Criminal Division, Department of County Clerk for Los Angeles County. In this capacity he directed and supervised the preparation of all criminal, juvenile and psychiatric case records and exhibits for the Superior Court. These and other positions have provided Mr. Hatcher with a wealth of experience in personnel management, budget administration and data processing.

In addition to the usual duties of a clerk of a large District Court, Hatcher has acted as Fiscal Officer and Jury Commissioner. And, so that others might benefit from his experience, Mr. Hatcher has found time to teach a night class in legal procedures.

Emory G. Hatcher is the eighth Circuit Executive to be named since the list of 52 certified candidates was released by the Board of Certification in March.

### SPECIAL NOTICE



J.C. Division of Continuing Education & Training announces complete list of cassettes available. (See Page 2.)

### District Court Docket Studies

As part of the Research Division's continuing efforts to compile a detailed accurate information base for the federal district courts, a civil docket study of the eighteen major metropolitan district courts is being conducted this summer. These eighteen courts handled 45% of the over 86,000 civil cases terminated in FY '71.

The study is designed to provide a better picture of the flow of civil cases by examining the docket sheets of a randomly selected, statistically significant number of cases terminated in a given fiscal year. For each of the sample cases, the researchers will record information relating to all events from the filing of the complaint, through discovery and pretrial and terminating with the disposition of the case in the district court. The information will then be computerized and analyzed by the Center staff. Of particular interest will be motions and continuance practice and how they influence the disposition time.

The samples vary in size from a few hundred to over a thousand, each sample containing a random distribution of case type, method of termination and other variables. This will enable the Center to study the correlation between these variables and elapsed time for termination. In view of the variances in court practices and docket sheet nomenclature among the districts, the researchers must be able to understand and interpret the proceedings. For this reason, the Center has employed a staff of capable law students to conduct the field research.

In the course of the summer the researchers will visit the Eastern and Southern Districts of New York, the District of New Jersey, the Eastern and Western Districts of Pennsylvania, the District of Maryland, the District of Columbia, the Eastern District of Virginia, the Middle and Southern Districts of Florida, the Eastern District of Louisiana, the Southern District of Texas, the Northern District of Ohio, the Eastern District of Michigan, the Northern District of Illinois, and the Northern, Central, and Southern Districts of California.

*Continued on page 5*



# F.J.C. Cassette Library

In November of this past year, the Center announced plans to develop, on a small scale experimental basis, a cassette recording library comprised of selected presentations made during the various seminars sponsored for judicial officers and supporting personnel. Subsequent notices appeared in both the December and January editions of *The Third Branch* offering Magistrates' and Referees' Seminar recordings for general distribution.

Over the past several months, substantial additions have been made to this library — both in terms of content and scope. Within the next several weeks, the Division of Continuing Education and Training expects to have approximately one-hundred cassettes available on a two-week loan basis for any judicial employee or other interested parties.

Listed below are the recordings which are, or will shortly be, available. All inquiries and requests should be directed to the Division of Continuing Education and Training.

## CASSETTES AVAILABLE FOR LOAN

### Judges

1. *Judicial Activities and Ethics* — Judge Edward Gignoux
2. *U. S. Board of Parole* — Mr. George Reed
3. *The Criminal Case — Pretrial, Discovery, Omnibus* — Judge Gerald Tjoflat
4. *Prisoner Correspondence and Prisoner Petitions* — Judge Sidney Smith
5. *The Criminal Case — Pretrial, Discover, Omnibus* — Mag. Joseph Hatchett
6. *Settlement* — Judge Noel P. Fox
7. *Docket Control* — Judge James H. Meredith
8. *Use of Magistrates in the Future* — Joseph F. Spaniol, Jr., Esq.
9. *Sentencing Aims and Policy* — Judge Harold Tyler
10. *Trial of the Civil Jury Case* — Judge Alvin B. Rubin
11. *Use of Magistrates in the Future* — Judge Wesley Brown
12. *Management of Civil Case Flow* — Judge Howard C. Bratton
13. *The Civil Nonjury Trial* — Judge Howard C. Bratton
14. *Habeas Corpus Petitions by State Prisoners* — Judge Warren Ferguson

### Magistrates

1. *The Complaint and Arrest Warrant* — Magistrate Bailey F. Rankin
2. *Conducting the Full Preliminary Hearing* — Magistrate John B. Wooley
3. *Court Organization and Office Management* — Clerk-Magistrate Richard C. Peck
4. *The Forfeiture of Collateral System* — Joseph F. Spaniol, Jr., Esq.
5. *Initial Appearance — Bail and Commitment* — Magistrate Max Schiffman
6. *Search Warrants* — Magistrate Arthur L. Burnett
7. *Trial of the Minor Offense* — Magistrate Harry McCue
8. *Ethics and Conflicts of Interest* — Judge Robert Van Pelt
9. *Search Warrants* — Magistrate Lawrence Margolis
10. *Conducting the Full Preliminary Hearing* — Magistrate James T. Balog
11. *The Trial of the Minor Offense* — Magistrate J. Edward Harris
12. *The Complaint and Arrest Warrant* — Magistrate Thomas J. Faulconer

13. *The Complaint and Arrest Warrant* — Magistrate R. Macey Taylor
14. *Conducting the Full Preliminary Hearing* — Magistrate J. Roger Thompson

### Referees in Bankruptcy

1. *The Brookings Report* — Referee Asa S. Herzog
2. *The Consumer Bankrupt* — Referee Daniel R. Cowans
3. *Discharge and Dischargeability — A Dialogue* — Referees Asa S. Herzog and Roy Babitt
4. *The Dischargeability Act and Other Recent Amendments* — Referee Harold H. Bobier
5. *Dischargeability Amendments* — Benjamin Weintraub, Esq. and Leon S. Forman, Esq.
6. *New Rules* — Professor Charles Seligson, Referee
7. *New Rules* — George M. Treister
8. *Provable Debts* — Professor William T. Laube
9. *Recent Cases* — Referee David A. Kline
10. *Recent Cases* — Referee Richard E. Poulos
11. *Tax Distribution and Procedure* — Referee Elmer P. Schaefer
12. *Why Chapter XII?* — Referee Kenneth S. Treadwell
13. *Chapter XIII in Maine: An Innovation* — Referee Conrad K. Cyr
14. *Recent Decisions Under the New Dischargeability Law* — Referee Clive W. Bare

### Courtroom Deputy Clerks

1. *Court Administration: Clerk and Courtroom Deputy* — Clerk James Davey and Clerk Stuart Cunningham

### Probation

1. *Current Developments in Corrections Research* — Mr. John Conrad
2. *Current Developments in Judicial Research* — William B. Eldridge, Esq.
3. *The Minority Offender and Federal Probation* — Professor Julius Debro
4. *The Office of the General Counsel* — Carl Imlay, Esq.
5. *Federal Bureau of Prisons — Institutional Treatment Programs* — Mr. Richard J. Heaney
6. *The United States Board of Parole* — Mrs. Paula Tennant
7. *Principles of Supervision Counselling* — Dr. Eugene H. Czajkoski
8. *Presentence Investigation* — Mr. Paul W. Keve
9. *Standards Relating to Probation* — Professor Herbert Miller
10. *An Ex-Offender Looks at Corrections* — Mr. Charles Lankford
11. *Racism in the Criminal Justice System* — Dr. Alyce Gullattee

## A.O. — F.J.C. — CALENDAR

- |                       |   |
|-----------------------|---|
| <b>June 26</b>        | Supporting Personnel Subcommittee, Washington, D.C.                         |
| <b>June 28-30</b>     | 10th Circuit Conference, Wichita, Kans.                                     |
| <b>June 28-July 1</b> | 4th Circuit Conference, White Sulphur Springs, W. Va.                       |
| <b>July 5-6</b>       | Judicial Statistics Subcommittee, Rye, N.H.                                 |
| <b>July 8</b>         | Center Probation Advisory Committee, Dolley Madison House, Washington, D.C. |
| <b>July 10</b>        | Bankruptcy Committee, Washington, D.C.                                      |
| <b>July 20</b>        | Intercircuit Assignment Committee, Washington, D.C.                         |
| <b>July 26-28</b>     | Ninth Circuit Conference, Pasadena, Calif.                                  |
| <b>July 31-Aug. 2</b> | Criminal Law Committee, San Francisco, Calif.                               |
| <b>Aug. 3-4</b>       | Judicial Salaries, Annuities, and Tenure Subcommittee, Houston, Texas       |
| <b>Aug. 3-4</b>       | Federal Jurisdiction Subcommittee, Lake Geneva, Wis.                        |
| <b>Aug. 9-10</b>      | Probation Committee, San Francisco, Calif.                                  |
| <b>Aug. 9-10</b>      | Jury Committee, San Francisco, Calif.                                       |
| <b>Aug. 16-17</b>     | Interim Advisory Committee, San Francisco, C                                |
| <b>Aug. 18-19</b>     | Courtroom Facilities and Design Committee, Berkeley, Calif.                 |



# Legislation

## Enactment

On June 13th, the Senate acted favorably on the convention on the Taking of Evidence Abroad in Civil or Commercial matters.

On June 6, 1972, H.R. 13150, a bill "to provide that the Federal government shall assume the risks of its fidelity losses and for other purposes", was signed by the President.

## Bills Introduced

S. 3612, a bill to establish a National Institute of Justice, in order to provide a national and coordinated effort for reform of the judicial system in the U.S. and for other purposes.

H.R. 15049, (Representatives Kastenmeier, Conyers, Ryan, Mikva, and Fish), a bill to amend the Voting Rights Act of 1970 to prohibit the states from denying the right to vote in Federal elections to former criminal offenders who have not been convicted of any offense related to voting or elections and who are not confined in a correctional institution.

S. 3689. (Senator Humphrey). A bill to suspend the procedure with respect to fiscal year 1973 for increasing certain Federal salary rates. (Suspending the schedule salary review by the Commission on Executive, Legislative and Judicial Salaries.)

S. 3669 (Senator Jackson). A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to require the prompt trial of defendants in criminal cases and provide grants to state and local governments for improving the administration of criminal justice and for other purposes.

S. 3673 (Senator Percy). A bill relating to the parole of certain District of Columbia offenders.

S. 3674 (Senator Percy). A bill relating to the parole of certain federal offenders.

S. 3653 (Senator Burdick). A bill to improve judicial machinery by amending the requirement for a three-judge court in certain cases and for other purposes.

H.R. 15270, a bill to provide for the comprehensive development of correctional manpower training and employment and for other purposes.

H.R. 15289 (Representatives Keating, Derwinski, Ware, Hansen of Idaho, Thone, Forsythe Podell, Wyatt, Collins of Texas, Robinson of Virginia, Mazzoli and Kemp). A bill to guarantee the right of defendants to a speedy trial and to reduce crime and improve justice by improving the supervision of persons released on bail and probation and for other purposes.

H.R. 15300, to amend the Judiciary and Judicial Procedure Act of 1948.

# Ethics Code For Federal Judges

At the April 1972 meeting of the Judicial Conference of the United States, the Conference voted to combine two of its committees for the purpose of recommending to the Conference a code of ethics which could be adopted as guidelines for federal judges. The two committees—the Interim Advisory Committee on Judicial Activities (Judge Elbert P. Tuttle, Chairman), and the Committee to Review Judicial Activities (Judge Edward A. Tamm, Chairman)—though jointly working on one project will still retain their separate identities. The Tuttle committee receives and informally replies to inquiries from federal judges concerned about extra-judicial activities which may range from lectures at law schools to participation in charitable activities, whereas the Tamm committee reviews semi-annual reports submitted by federal judges on outside income and its source.

Their basic working paper is the report of ABA's 14-member committee constituted three years ago to update and revamp that organization's canons of judicial ethics now almost a half century old. Chief Justice Roger Traynor (Sup. Ct. Calif., ret.), its chairman, will submit their final draft to the American Bar Association House of Delegates for approval next August. Currently most states apply the present ABA code whenever a case or controversy arises but the federal judiciary does not. The Traynor draft, as now written, obviously aimed at strict limits on all judges, contains hortatory portions which say a judge can never serve as a director, advisor or employee of any private business and may act as an executor of an estate only if it is for a member of his immediate family. If a judge does engage in non-judicial activities the proposed code admonishes they must be of such a nature that they do not arouse even an appearance of impropriety; in short, they must by their nature never even prompt questioning by anyone. Further, any amounts realized from this activity must be reported. Political activities, where necessary by the state judges, must be limited to the judges' endeavors to be elected or re-elected to the bench, and precludes any service on government committees or commissions except those dedicated to the improvement of judicial administration.

The two Judicial Conference committees have already met once to review portions of the ABA report and will have another meeting soon to continue their deliberations. Ultimately they will recommend portions of the ABA code they feel could appropriately apply to the federal judiciary, or recommendations for additional or substitute guidelines.



## Chief Judge Joe Estes Receives Sumners Award

For the past 18 years the Southwest Legal Foundation at Dallas has presented the Hatton W. Sumners Award to a distinguished citizen who has rendered outstanding service in the administration of justice and the preservation of the democratic process. The Award memorializes the Honorable Hatton W. Sumners (1875-1962), who served the people of Texas and the national for 34 years as a member of Congress, after having spent two terms as prosecuting attorney for Dallas County.



Judge Joe E. Estes (r) is presented the Hatton W. Sumners Award by Judge Alfred P. Murrah.

Award Photo—Courtesy Dallas News Staff Photographer Clint Grant

This year the Award was conferred upon Chief Judge Joe E. Estes of the Northern District of Texas. Presenting the Award on behalf of the Foundation was Judge Alfred P. Murrah, Director of the Federal Judicial Center, who was the first Sumners Award recipient in 1954.

The presentation took place during a ceremony marking the end of "Lawyer's Week" activities on the campus of Southern Methodist University.

*Continued on page 5*

## Broadcasting Of Class Action Information

Faced with insufficient appropriations to cover notices to prospective class members in class action suits, the Administrative Office, with the cooperation of the executive attorney of the Judicial Panel on Multidistrict Litigation, has been studying the feasibility of asking for gratuitous public service time on radio and television stations throughout the nation for the purpose of circulating to the public the fact of the pendency of specific class suits in their applicable geographical areas and information concerning intervention.

The task of notifying all potential members of the class is formidable. For example, the pending treble damage cases in the broad spectrum antibiotic litigation have involved classes estimated to comprise over half of the citizens of 43 states and Puerto Rico and all government entities therein. New consumer class litigation in the drug field involves as potential litigants all the consumers of the antibiotic drug "ampicillin" in 25 states and Puerto Rico, as well as all Government entities therein. A pending case against the snack food industry involves an estimated class of 2,000,000 potential litigants in three states. Class litigation involving other consumer complaints, pollution, and other problems of public concern provokes the necessity of informing hundreds of thousands or millions of persons of the pendency of these suits.

The results of this study, instituted by the Office of the General Counsel of the Administrative Office, will be turned over to an ad hoc committee of the Judicial Conference considering these problems, which committee is headed by Judge Elmo Hunter, and which also includes Judge Bailey Brown and Judge Sherman Christensen. This committee will then consider the possibility of the use of broadcasting as one method of reaching large groups potentially interested in suits affecting their group interests.

The survey was materially assisted by Mr. John Summers, General Counsel of the National Association of Broadcasters who, on May 10, 1972, sent the Administrative Office prospectus of the plan for broadcast notices in class action suits to the Association's 4,000-member television and radio stations. To date, 334 broadcast interests (some having both television and radio facilities) and including some broadcast stations which service major metropolitan areas, have indicated their interest in cooperating with this program, provided that it be found ultimately feasible.



### U. S. Courts of Appeals Internal Operating Procedures

Last year under contract to the Center, Mr. William Whittaker, now Clerk of the Temporary Emergency Court of Appeals, conducted a study of the internal operating procedures of three U.S. Courts of Appeals. Using the design developed by Mr. Whittaker, the survey is now being extended to the other eight Courts of Appeals by the Center's division on Innovation and Systems Development. During the next few months each court will be visited in order to study its individual situation and procedures. Heading the program in the field will be J. Earl Langner of the F.J.C. By using a very general research outline the study will emphasize the exemplary procedures which have been found to be effective in improving the administration of appellate justice by each circuit. Meetings with judges and clerk's office personnel will be used to supplement the examination of court rules, procedures, and operating systems. The study will lead to the preparation of a narrative description of the work flow of each court through the various steps of cases. A summary and comparison of the 11 Circuits will then be prepared taking into account four major causes of existing differences: (1) Geographical make-up; (2) Differing cultures and traditions; (3) Differing philosophies of judicial management; (4) Lack of awareness of individual courts as to the differences and uniqueness of methods used by other courts.

### Forecasting Methodology

The F.J.C. has begun exploration of a forecasting methodology for the federal judicial system. Within the context suggested by the Center's Board the proposal would take form as a two-stage process: a design development stage of modest proportions, followed by an implementation stage of longer duration and substantial commitment. Such a program would be very long-ranged and would be undertaken to fill the void which exists regarding the data necessary to form a reliable basis for predicting a clear picture and estimate of the needs of the federal courts in future years. The predictions made to date have been limited and one-dimensional, based solely on data of past measureable internal events, i.e. increases in filings or increases of productivity or resources. In improving this approach there must be consideration as to how the internal events are affected by external events.

After starting with analysis of a general base of raw data. "candidate factors" judged likely to have important effect on future caseloads will be evaluated for their actual impact on past caseloads. When actual effects are known it will be possible to generate

better predictions of future caseloads and the effectiveness of various internal changes in court procedures.

Examples of these external pressures (candidate factors) might be population, urban-rural patterns, education, mobility, etc. In addition to these candidate factors certain other "surprise" factors might be added to the system to gauge their potential effect on the judicial system should they actually come into existence. Samples of surprise factors which might be selected are: The enactment of no-fault insurance, the abolition of selective service, redefinition of federal jurisdiction, major changes in maritime activity, or re-structuring of the court system.

William B. Eldridge, Director of Research at the F.J.C. has stated, "It must of course be recognized that forecasting is not an exact science whether applied to the family budget or to the whole social behavior. Nevertheless, systematic use of our past experience is the best clue we have to the future."

### Admission – Discipline Project

At the request of the Judicial Conference Committee on Court Administration, the Center has started a study of all admission rules in the federal courts, as well as disciplinary proceedings. The work is being carried forward in cooperation with the ABA Committee on National Coordination of Disciplinary Enforcement, the committee constituted to implement the recommendations contained in the report submitted by Mr. Justice Clark after a two year study of all disciplinary enforcement procedures in the states. The study will support the work of the subcommittee assigned to this study, whose members are: Chief Judge Ben Connally (S.D. Tex.), Judge Walter J. Cummings (CA-7), and Chief Judge Wilson Cowen (Ct. Claims).

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### Award – Continued from page 4

Chief Judge Estes, in addition to administering a six-judge District Court, also serves on the newly established Temporary Emergency Court of Appeals and gives generously of his time to attend and lecture at the Center's seminars for newly appointed judges.

The Citation read in part as follows:

"The Southwest Legal Foundation's Hatton W. Sumners Award is conferred upon Judge Joe Ewing Estes in recognition of his most outstanding contribution to the preservation of democracy and the improvement of the administration of justice within the Southwestern States of Arkansas, Louisiana, Oklahoma, and Texas. . . ."



# Berkeley Wright Named Chief Of Bankruptcy

Director Rowland F. Kirks has named Berkeley Wright to succeed Royal E. Jackson as Chief of the Division of Bankruptcy in the Administrative Office. Mr. Wright, who assumed his duties May 15, was formerly Assistant Chief of the Division.

A native of Indiana, Mr. Wright has lived most of his life in the District of Columbia and is a graduate of George Washington University. He received his J.D. degree from the University's Law School in 1951.

Mr. Wright joined the staff of the Bankruptcy Division as an attorney in September 1959, having previously been associated with the Office of Judicial Examinations in the Department of Justice. He is a member of the District of Columbia bar, is admitted to practice before the Supreme Court of the United States, and is a member of the Federal Bar Association.

## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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Judge Marvin E. Frankel  
United States District Court, Southern District of New York

Mr. Rowland F. Kirks  
Director, Administrative Office of the United States Courts

### THE THIRD BRANCH

VOL. 4, NO. 6 JUNE 1972

## THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

## Personnel

### Federal Judges

#### Confirmations

James M. Burns, U.S. District Judge, Dist. Oreg., May 25

Albert W. Coffrin, U.S. District Judge, Dist. Vt., June 8

Charles W. Joiner, U.S. District Judge, E.D. Mich., June 8.

Otto R. Skopil, Jr., U.S. District Judge, Dist. Oreg., May 25.

#### Nominations

Marion T. Bennett, Associate Judge, U.S. Court of Claims, May 22

William B. Enright, U.S. District Judge, S.D. Calif., June 13

Samuel P. King, U.S. District Judge, Dist. Ha., May 22

Marshall A. Neill, U.S. District Judge, E.D. Wash., June 13

J. Clifford Wallace, U.S. Circuit Judge, 9th Circuit, May 22

Hirman H. Ward, U.S. District Judge, M.D. N.C., May 18

#### Deaths

John W. Lord, Jr., U.S. Senior District Judge, E.D. Pa., May 16

### Supporting Personnel

#### Appointments

Joseph Ray Reed, U.S. Probation Officer, S.D. Miss., June 1

James Monroe Robertson, III, U.S. Probation Officer, N.D. Ala., June 1

Harry W. Schloetter, Chief Probation Officer, N.D. Calif., May 29

James Howard Williams, U.S. Referee in Bankruptcy, N.D. Ohio, June 5.

#### Retirements

J. Leo Baldwin, U.S. Probation Officer, N.D. Tex., June 30

Elbert Austin Davis, U.S. Probation Officer, N.D. Ala., May 31

Charles T. Hosner, Chief Probation Officer, E.D. Mich., June 30

William H. Lutz, U.S. Probation Officer, E.D. Ill., June 30

George C. Quinell, U.S. Referee in Bankruptcy, W.D. Mich., May 31

William N. Wilder, U.S. Probation Officer, M.D. N.C., June 5



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

*A Bulletin of the Federal Courts*



Vol. 4, No. 7

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July 1972

## Record Supreme Court Term

The Supreme Court of the U.S. concluded its 1971-72 Term on June 29 after again experiencing the heaviest workload in history, a total of 4,533 cases on the dockets compared to 4,212 at the preceding Term and almost double the 2,585 cases filed even 10 years ago.

Working with a full complement of nine Justices only since January, the Court nevertheless turned out a record of 129 written opinions, final statistics showed. For the past 15 years, the number of written opinions has been averaging about 100 per Term.

Cases disposed of at the Term also set a new record. The Justices acted on 3,645 cases, up more than 300 over the 1970 Term. Oral arguments were heard in 177 cases, one of the highest figures for that category in modern annals.

For their summer work, the Justices already are faced with a carry-over of 781 cases which were not ready for consideration by June 29, plus 99 other cases in which review has been granted. Added to that, are new cases now being filed at an average of more than 80 per week every week in the year.

The rising caseload prompted one of the newest Justices, Mr. Justice Powell, to declare that the Court's standards of quality and scholarship "for which it has long been famous" are threatened. The statement echoes one of last summer by Chief Justice Warren E. Burger in his Annual Report on the Judiciary before the American Bar Association. ■

## Speedy Trial—Rule 50(b)



The Supreme Court of the United States on April 24, 1972 approved a series of amendments to the Federal Rules of Criminal Procedure including an amendment creating subsection (b) to Rule 50. This rule calls upon each district court, in an effort to minimize undue delay and to further prompt disposition of criminal cases, to prepare a plan including rules relating to time limits, means of reporting the status of cases and other matters necessary for prompt disposition. The district plans are to be submitted to a reviewing panel taken from the membership of the judicial council. These amendments to the

*Continued on page 2*

## Judges Offer Suggestions

In recent weeks several Judges have, through correspondence with the FJC, offered suggestions which they feel might benefit their brethren.

Though the Center is not always able to respond fully to all the proposals, it appreciates and greatly relies upon these suggestions in planning programs of service to the federal judiciary.

Judge William G. Juergens, (E.D. Ill.), has pointed up the need for a more facile system of ready reference to recent cases. Noting the ever increasing necessity to read material pertinent to the judicial process, Judge Juergens suggested that each judge's office have a uniform filing system which would catalog with appropriate headings and catch words, synopsis and key points, especially recent Supreme Court and Appellate Court decisions. Observed Judge Juergens, "I believe the majority of the district courts do not have adequate, comprehensive and workable digest systems . . . to find what they need without time-consuming research." Judge Juergens adds this suggestion was prompted by his diligent and innovative Secretary, Thelma Tucker.

The desirability of this type of fingertip reference file will be added to a list of topics to be explored in a short questionnaire being prepared by the Center to bring to light the changing informational need of judges.

Judge Roszel C. Thomsen, (Dist. Ct., Md.), suggests in a letter that judges at the district level notify the Center of decisions or procedures found particularly helpful regarding prisoner petitions and suits.

Judge Thomsen points out, "These might be evaluated and a memorandum thereafter sent to all the judges containing any suggestions which the Judicial Center feels would be particularly helpful." Brevity, of course, would be paramount. The Judge offered two examples of the type of information which would be shared: (1) "The use of *amici curiae* to help develop procedures or guidelines similar to those which were ultimately attached to my opinion in *Bundy v. Cannon*, 328 F. Supp. at pp. 174-177 and (2) the Maryland statute creating an Inmate Grievance Commission." [Copies of this information can be obtained through the Center.]

*Continued on page 7*



## A Message From The Chief Justice

In my January, 1972 message I reported to you the establishment of the Temporary Emergency Court of Appeals and announced the names of the judges to serve on this court. I am pleased to report now that the work of this court is going forward smoothly and with unusual speed.

The volume of cases being filed in the District Courts under the Economic Stabilization Act amendments is increasing daily, however. More than 300 cases challenging the actions of the Pay Board and the Price Commission have been filed in the District Courts in the past few months. If the purposes of the Act are to be realized, it is imperative that the disposition of these cases be accelerated at all levels so that those taken on appeal to the Emergency Court will be afforded prompt hearing and an expedited ruling.

The judges of the Emergency Court are to be commended for their diligence in carrying out the extra service I have called upon them to perform. I am confident their efforts will be paralleled by the cooperative efforts of everyone in the federal judiciary. ■



### Speedy Trial—continued from page 1

Federal Rules of Criminal Procedure become effective October 1, 1972 and each district court is given 90 days thereafter to submit its plan to the reviewing panel. In an effort to assist district judges in the preparation of such plans, the Judicial Conference Committee on the Administration of Criminal Law is planning to issue, shortly after its next meeting scheduled for early August, three or more model plans which may be adaptable to different needs of the district courts. These plans will be sent to all Federal judges and hopefully will arrive in adequate time to be of help in complying with the time set forth above. ■

## Significant Cases

Of the cases decided last term by the Supreme Court several stand out as particularly significant.

The cases of *Johnson v. Louisiana* and *Apodacca v. Oregon*, held valid those states' statutes which require less-than-unanimous jury verdicts in criminal cases. The court stated that such statutes do not violate the Due Process Clause for failure to satisfy the reasonable doubt standard. It was also held that the Sixth Amendment, made applicable to the states by the

Fourteenth, does not carry with it the necessity of unanimity as is required of federal court jury trials.

In *U.S. v. U.S. District Court for the Eastern District of Michigan, Southern Division, et al.*, the Supreme Court held that 18 U.S.C. §2511 (3) does not authorize the executive branch to conduct warrantless electronic domestic security surveillances. The Fourth Amendment was found to invoke a balancing test between the duty of the Government to protect domestic security, and the potential danger posed by unreasonable surveillance to individual privacy and free expression.

The companion cases of *Furman v. Georgia*, *Jackson v. Georgia*, and *Branch v. Texas*, held the death penalty to be cruel and unusual punishment, in violation of the Eighth and Fourteenth amendments, when imposed by discretion so infrequently and randomly that it has lost its deterrent value.

The case of *Jackson v. Indiana*, more clearly sets out the rights of the mentally incompetent when accused of a crime and committed. In *Jackson* the court held that indefinite commitment due to lack of capacity to stand trial violates due process. The state must, within a reasonable time, determine whether there is a substantial probability that the accused will attain competency within the foreseeable future. If it is determined that he will not, the state must either institute civil proceedings applicable to indefinite commitment or release the defendant.

In the same case the Court also held that by subjecting the accused to a more lenient commitment standard and to a more stringent standard for release than those applicable to people not charged with a crime, Indiana had deprived petitioner of equal protection.

In *Loper v. Beto*, the Supreme Court concluded that use of prior convictions which were constitutionally invalid under *Gideon v. Wainwright*, 372 U.S. 335, to impeach a defendant's credibility deprives him of due process of law.

In the cases of *Kastigar v. U.S.* and *Zicarelli v. New Jersey State Commission of Investigation*, the Court held that the federal and state government can compel testimony from one who claims the Fifth Amendment privilege against compulsory self-incrimination or demands transactional immunity. The conferring of immunity from the use of the compelled testimony and evidence derived therefrom in subsequent criminal proceedings is sufficient to compel testimony.

In *Barker v. Wingo* the Supreme Court for the first time set out criteria by which the right to a speedy trial is to be judged. The factors to be balanced are the length of delay between arrest and trial; justification for the delay; the defendant's assertion of or failure to assert his right to a speedy trial; and

*Continued on page 6*



## Three Schools Offer Degrees in Judicial Administration

The Institute for Court Management, which started functioning in 1970 to train court administrators and other personnel to serve the courts of this country, has filled a great and long felt need. But Ernest C. Friesen, its Director, and an impressive Board which controls the Institute, have continued to bespeak the need for the universities in this country to assume also responsibilities in this area by providing degree programs for those who wish to beam their college level education to prepare themselves specifically to enter the field of judicial administration immediately upon graduation. This degree, when supplemented by time spent at the Institute to sharpen their skills in special areas of court administration, would enhance their background and their value to the courts. Three universities are now offering such degrees: American University, Washington, D.C., the University of Southern California, Los Angeles, and the University of Denver College of Law at Denver.

The University of Denver will graduate their first class of students with Masters of Science degrees in Judicial Administration on August 1, 1972. Theirs is a four quarter, eleven-month program, designed to give students an understanding of the many disciplines and kinds of professions involved in the justice system. Their training also includes knowledge of how to initiate research studies and to collect and interpret data which would be of value to court systems.

American University offers B.S. and M.S. degrees in Judicial Administration affording the opportunity to specialize in court management. The University will sponsor a special institute on this topic in July.

The University of Southern California offers a Master of Public Administration degree which also allows specialization in court management and judicial administration for its participants.

All three universities, in following the lead of the Institute for Court Management, are performing a much needed service by preparing young men and women to become problem solvers in the field of judicial administration. ■

## Legislation

### ENACTMENT

The Public Buildings Amendments of 1972, S. 1736, was signed by the President on June 16, 1972 (P.L. 92-313).

## CONGRESSIONAL ACTION

S.J. Res. 106, proposing a constitutional amendment requiring reconfirmation of Federal judges every eight years. Hearings have been held before the Senate Subcommittee on Constitutional Amendments, with testimony being received from Senator Harry F. Byrd, Jr., Professor Paul A. Freund, Harvard Law School, Professor Philip B. Kirland, University of Chicago Law School, Paul Shuford, Attorney, Virginia.

The Senate Subcommittee on Criminal Laws and Procedure has held further hearings on the Proposed New Federal Criminal Code, receiving testimony from Ralph Nader, Jack Greenberg, NAACP Legal Defense and Education Fund, William Cohn, National District Attorney's Association, William G. Florence, Washington, D.C., Judge Sidney H. Asch, Association of the Bar of the City of New York, Dean Burke Marshall, Yale Law School, Joseph E. Ross, Federal Bar Association, Sheriff John J. Buckley, Middlesex County, Mass., and Dr. James Wesley, Drug Abuse Unit, Harlem Hospital, New York City.

H.R. 7375, the Magistrates salary ceiling bill passed the House on May 16, 1972. It is now pending in the Senate Judiciary Committee.

The Senate Subcommittee on Improvements in Judicial Machinery held hearings on May 16th on S. 1876, the proposed Federal Court Jurisdiction Act receiving testimony from Chief Judge Henry J. Friendly, (CA-2), Chief Judge Collins J. Seitz (CA-3), Chief Judge John R. Brown (CA-5), Judge Skelly Wright (CA-D.C.), Professor Paul Carrington, University of Michigan and Professor Charles Alan Wright, University of Texas, Law School.

The House Judiciary Committee has favorably reported H.R. 12101, with amendments, relating to annuities to widows and Supreme Court Justices.

H.R. 2374, permitting mailing of lottery tickets and broadcasting or television of lottery information and transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a state agency, was approved for full Judiciary Committee action by Subcommittee No. 2, on May 23, 1972.

On June 30th, the Senate passed, with amendments, the bill S. 2854, to provide for the payment of gratuities to widows and surviving dependent children of Supreme Court Justices, with amendments. (S. Rept. 92-928)

H.R. 7378, to establish a Commission on Revision of the Judicial Circuits, with amendments was favorably reported by the Senate Judiciary Committee, and passed the Senate on June 30.

*Continued on page 4*



*Continued from page 3*

The Senate passed the bill S. 3010, extending programs administered by the Office of Economic Opportunity, enacting the following amendments: Modified Cook amendments dealing with the tax exempt status of the Legal Services Corporation, Office of Management and Budget, and OEO review of the activities of the Corporation's attorneys. Other amendments would subject employees of the Legal Services Corporation to the provisions of the Hatch Act, and would direct the OEO Director to continue a study of alternative methods of delivering legal services to eligible clients.

The Senate Judiciary Committee Subcommittee on Administrative Practice and Procedure held hearings on the impact of the recent Supreme Court decision concerning electronic surveillance procedures.

S. 3463, to provide copies of the daily and semi-monthly Congressional Record to libraries of certain United States courts was favorably reported by the House Committee on House Administration.

S. 3049, establishing minimum standards for federally assisted State and local correctional institutions, was the subject of hearings before the Senate Judiciary Committee, Subcommittee on Penitentiaries. Professor Norval Morris, University of Chicago, Professor Richard G. Singer, University of Cincinnati, and Major John D. Case (USMC, ret.), Bucks County, Pa. Department of Corrections, presented testimony.

Committee on Government Operations, Subcommittee on Foreign Operations and Government Information held hearings on the Freedom of Information Act, receiving testimony from Representatives Koch and Mikva, and Anthony Modello, General Counsel, U.S.C.S.C.

The Senate has passed S. 1682, with amendments. The bill would establish a Federal Executive Service to administer manpower management programs for supergrade personnel.

On June 15, 1972, the Senate passed H.R. 14989, making appropriations for the Departments of State, Justice and Commerce, the Judiciary and related agencies for fiscal year.

The Senate passed, with committee amendments, the bill S. 3443, to extend for two years the Juvenile Delinquency Prevention and Control Act of 1968.

S. 945, to require no-fault motor vehicle insurance as a condition precedent to operating a motor vehicle, with an amendment, was favorably reported by the Senate Committee on Commerce (S. Rept. 92-891)

*Continued on page 5*

## **Personnel** *Federal Judges*

### *Appointments*

**Marion T. Bennett**, Associate Judge, U.S. Court of Claims, June 28

**James M. Burns**, U.S. District Judge, Dist. Oreg., June 12

**Albert W. Coffrin**, U.S. District Judge, Dist. Vt., June 9

**Charles W. Joiner**, U.S. District Judge, E.D. Mich, June 9

**Howard T. Markey**, Chief Judge, U.S. Court of Customs and Patent Appeals, June 21

**Norman C. Roettger, Jr.**, U.S. District Judge, S.D. Fla., June 2

**Otto R. Skopil, Jr.**, U.S. District Judge, Dist. Oreg., June 2

### *Confirmations*

**Levin H. Campbell**, U.S. Circuit Judge, 1st Circuit, June 28

**William B. Enright**, U.S. District Judge, S.D. Calif., June 28

**Thomas P. Griesa**, U.S. District Judge, S.D. N.Y., June 18

**Samuel P. King**, U.S. District Judge, Dist. Ha., June 28

**Whiteman Knapp**, U.S. District Judge, S.D. N.Y., June 28

**Eldon B. Mahon**, U.S. District Judge, N.D. Tex., June 28

**Norman C. Roettger, Jr.**, U.S. District Judge, S.D. Fla., May 31

### *Deaths*

**Charles G. Briggie**, U.S. Senior District Judge, S.D. Ill, June 6

**Walter A. Huxman**, U.S. Senior Circuit Judge, Tenth Circuit, June 25

**John F. X. McGohey**, U.S. Senior District Judge, S.D. N.Y., July 7

**Robert Shaw**, U.S. District Judge, Dist. N.J., July 9

### *Circuit Executives United States Courts of Appeals*

**Robert D. Lipscher**, Second Circuit, E.O.D. May 29

**William A. Doyle**, Third Circuit, E.O.D., Aug. 1

**Samuel W. Phillips**, Fourth Circuit, E.O.D. May 1

**Thomas H. Reese**, Fifth Circuit, E.O.D. Sept. 1

**Robert J. Martineau**, Eighth Circuit, E.O.D., Aug. 1

**William B. Luck**, Ninth Circuit, E.O.D., May 1

**Emory G. Hatcher**, Tenth Circuit, E.O.D., Aug. 1

**Charles E. Nelson**, District of Columbia Circuit, E.O.D., June 1

### *Supporting Personnel*

#### *Appointments*

**George Becouvarakis**, U.S. Probation Officer, E.D. Va., June 19

**Milner Benedict**, Attorney, Division of Bankruptcy, July 10

**G. Harrold Carswell**, U.S. Referee in Bankruptcy, N.D. Fla., June 16

**Ben H. Carter**, Clerk, N.D. Ga., July 1

**Jean F. Dwyer**, U.S. Magistrate, Dist. of Col., June 22

**David A. Gonzales**, U.S. Probation Officer, C.D. Calif., June 26

**Thomas W. James**, U.S. Referee in Bankruptcy, N.D. Ill., July 5

**Robert C. Mercier**, U.S. Probation Officer, Dist. Mass., July 10

**Richard M. Prather**, U.S. Probation Officer, N.D. Tex., July 3

**Roger M. Whelan**, U.S. Referee in Bankruptcy, Dist. of Col., July 1

**James H. Williams**, U.S. Referee in Bankruptcy, N.D. Ohio, June 5

#### *Promotions*

**George P. Adams**, Deputy Chief Probation Officer, E.D. Mich, July 1

**Clarence Y.C. Chang**, Chief Probation Officer, Dist. Ha., July 1

*Continued on page 7*



## BILLS INTRODUCED

S. 3783 (Senator Griffin) to limit the jurisdiction of Federal courts to issue busing orders based on race, to impose a moratorium on the issuance of such orders, and for other purposes.

H.R. 15760 (Congressman Edwards of California) to amend title 18 of the United States Code to enable the Federal criminal justice system to deal more effectively with the problem of narcotic addiction, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enable the States and municipalities to deal more effectively with that problem, and for other related purposes.

H.R. 15832 (Representatives Hogan and Gude) to amend title 28 of the United States Code to create an additional judicial district in southern Maryland.

H.R. 15676, to provide for a comprehensive program designed to strengthen the criminal justice system in the United States, to attack urban street crime, to undertake new training programs for law enforcement personnel, to improve the training, care and rehabilitation of criminal offenders, and for other purposes. (By Congresswoman Abzug, to the Committee on Ways and Means)

H.R. 15677, to permit officers and employees of the Federal government to elect coverage under the old-age survivors, and disability insurance system (Social Security). Mrs. Abzug, to the Committee on Ways and Means.

H.R. 15684 to provide for the compensation of innocent victims of violent crime in need; to make grants to states for the payment of such compensation; to authorize an insurance program and death and disability benefits for public safety officers, police, firemen, and members of an ambulance team or rescue squad; to provide civil remedies for victims of racketeering activities; and for other purposes. (By Congressman Roe, referred to the Committee on Ways and Means) also H.R. 15651, by Mr. Heckler of West Virginia, referred to the Judiciary Committee.

H.R. 15619 (Congressman Aspin) to amend title 28 of the United States Code to provide for the recovery by defendants of reasonable attorneys fees in certain civil actions brought by the United States, in the discretion of the Court.

H.R. 15621 (Congressman Blackburn) to amend title 18 and title 28 of the United States Code with respect to the trial and review of actions involving obscenity, and for other purposes.

H.R. 15625 (Congressman Cederberg) to amend the Federal Property and Administrative Services Act of 1949 to prohibit the making available of Government procurement sources to Federal grantees and contractors. (Referred to the Committee on Government Operations)

H.R. 15696, to amend title 18 of the United States Code to provide a misdemeanor penalty for a first offense involving the possession of counterfeit currency of a face value of \$100 or less.

H.R. 15717, to improve judicial machinery by providing benefits for survivors of Federal judges comparable to benefits received by survivors of members of Congress and for other purposes.

S. 3750 (Senator Ervin) to prohibit any civil or military officer of the United States using the land or naval forces of the United States or the militia of any State to execute civil laws against civilians except where such forces or militia are actually engaged in repelling invasion or suppressing rebellion, insurrection or domestic violence pursuant to the Constitution or laws of the United States.

H.R. 15648, to amend the Controlled Substances Act to provide increased penalties for distribution of heroin by certain persons, and to provide for pretrial detention of such persons. (By Congressman Frey, for himself and others. Referred to the Committee on Interstate and Foreign Commerce.)

H.R. 15468 (Mr. Koch) to establish a National Human Resources Conservation Corps to rehabilitate persons convicted of violating certain narcotic drug laws and persons who volunteer for membership in such Corps, and to improve the quality of the environment. (Referred to the Committee on Education and Labor).

H.R. 15605, (Congressman Wyman) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to include in the definition of law enforcement the enforcement of laws, ordinances, and regulations in any State relative to environmental recreation, including parks. ■

### THE BOARD OF THE FEDERAL JUDICIAL CENTER

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United States District Court, Western District of Texas

Chief Judge Walter E. Hoffman  
United States District Court, Eastern District of Virginia

Judge Marvin E. Frankel  
United States District Court, Southern District of New York

Rowland F. Kirks, Director,  
Administrative Office of the United States Courts



## Judiciary Personnel

Nathan J. Paulson, recently retired as Clerk of the U.S. Court of Appeals for the District of Columbia, after ten years of service there, has been named Associate Dean of the Antioch School of Law. In addition to teaching, he will head Antioch's teaching law firm, the Urban Law Institute, which provides legal services to indigents.

Judge Ralph M. Freeman (Ch. Judge, E. Dist. Mich., 1967-72), received an engraved plaque on May 31st from the probation staff of the District, in appreciation of his strong interest in and support of the probation service. The plaque, presented by retiring Chief Probation Officer Charles T. Hosner, was inscribed: "A great humanitarian and distinguished jurist—with appreciation, Federal Probation Officers, Eastern District of Michigan."

Supreme Court Retirees: Eleven Supreme Court employees whose cumulative service to the U.S.

Government totals 356 years, retired from the top court, at the end of June. Senior in length of service is William M. Allison, who in various capacities has worked at the Supreme Court for 45 years, his last position being that of Deputy Clerk to the Court. Two others almost equal his record: Associate Librarian



William M. Allison

George R. Houston, who began his service at the Court as a page boy, has 41 years to his credit, and Irving E. Blum, Assistant Reporter of Decisions, has served the federal government at the Court and elsewhere for nearly 38 years. Others in the group are: Horace F. Slade, Director of the First Aid Office with 37 years of government service; Eugene T. Lyddane, Asst. Clerk, Clerk's Office; Lois T. LaGarde, Secretary; Hansford Harrison, Robing Attendant; Gerald D. Ross, on the staff of Mr. Justice Stanley F. Reed (Ret.) for 34 years; Shackelford C. Rollins, Marshal's Office; Mrs. Mary E. Smalls and Mrs. Hilda Lewis, both of the housekeeping staff at the Court. ■

Cases—continued from page 2

prejudice to the defendant caused by oppressive pre-trial incarceration, impairment of his defense, and pretrial anxiety.

In *Peters v. Kiff*, the Court held that whatever his race, a criminal defendant has standing to challenge the system used to select his grand or petit jury on the ground that it arbitrarily excludes from service the members of any race and thereby denies him due process of law. If such systematic exclusion is shown, petitioner's indictment, conviction, or both cannot stand.

In *Morrissey v. Brewer*, the Supreme Court determined that the Fourteenth Amendment's Due Process Clause requires a hearing before parole can be revoked. The Court set out requirements which include a preliminary hearing and a revocation hearing. At each the parolee must be afforded adequate notice, opportunity to appear personally and offer testimony and evidence and to confront adverse witnesses (unless the hearing officer determines that there would be a risk of harm to the witness). At the revocation hearing the additional requirements of written notice of proceedings and charges and written findings must be complied with. ■

### SUGGESTION BOX

Benjamin Reisch, Clerk of the E.D. La., has innovated a program which calls for monthly "working luncheons." Attending these luncheons are the U.S. Attorney, the Chief Probation Officer, the Magistrates in the district, Referees in Bankruptcy, and the U.S. Marshal together with their Chief Assistants. Up for discussion are procedural problems in connection with the joint operations of the Court, or any other problems that might arise. And, even though there might not be a prepared agenda or any business to be taken up, by keeping to their schedule the lines of communication remain open between all of their offices. The purpose, of course, is to work on any problems which may arise and to go to the Chief Judge with these problems only when it becomes necessary.

### INFORMATION AVAILABLE AT F.J.C.

"Proving Federal Crimes," 5th edition of a handbook dated April 1971. A 133-page manual on the law of evidence prepared by the staff of the Criminal Div., U.S. Attorney's Office, S.D. N.Y. is available upon request (Federal Judges only).

"Cassettes" The Center is making available, on a two-week loan basis, approximately 100 tape cassettes for any judicial employee or

other interested party. For listing of available tapes, see June '72 edition of *The Third Branch*.

**Forms for Entering Guilty Plea**—Copies of the forms used by Judge Gus J. Solomon available on request. See story on page .

"Reducing Crime & Assuring Justice," June 1972. A statement by the Research & Policy Committee of the Committee for Economic Development.



## Regional Seminar for U.S. Magistrates

From June 12th through 15th, sixteen part-time U.S. Magistrates predominately from courts situated in the Northeast, met in Hartford, Connecticut for the sixth Regional Seminar sponsored during this fiscal year by the F.J.C. and the A.O.

During the three day sessions, considerable emphasis was given to probing the practical spheres of activity open to part-time magistrates. Subjects included in the discussions were, relationships with attorneys and investigative agencies, and procedural, ethical, and administrative questions relevant to the magistrates work.

Among the Magistrates in attendance were: Edward H. Keith (Dist. of Maine); James L. Haley, Philip R. Kneel and John P. Curley, (Dist. of Mass.); Jacob Hagopian (Dist. of Rhode Island); Thomas F. Parker, Dion W. Moore, Leon M. Gwiazdowski (Dist. of Conn.), Edward M. Conan (N.D. N.Y.); Edgar C. Brisach, Frederic L. Atwood (E.D. N.Y.); Bruce F. Banta (Dist. N.J.); Paul J. Murphy (W.D. N.Y.); Edwin G. Barham (M.D. Ga.); David Kessler (Dist. N.D.); George W. Nichols (N.D. Ala.). ■

*suggestion continued from page 1.*

**Judge Gus J. Solomon**, (Dist. Ct., Ore.), has submitted to the Center a revised version of the forms used to enter a guilty plea in his court. The form is labeled "Petition to enter Plea of Guilty and Order Entering Plea" and operates within the scope of Fed. R. Crim. P., Rules 10 and 11.

The forms provide for a clear identification of the defendant, his age and level of education, his counsel, and his assertions that he has fully comprehended the procedures and ramifications of his plea. He is apprised, through the forms, of his Constitutional rights, and the maximum punishments provided by the law. Potential problem areas, such as, youthful offenders, parole and probation status of the defendant, bargained pleas, competency of counsel, and coercion are handled within the framework of this form. The final page is in two parts; the certification of counsel and the Court's order accepting the plea. The Center will make copies of these forms available to interested parties. Judge Solomon's revised forms will be used as aids in the Center's seminar programs.

As always *The Third Branch* welcomes the opportunity to serve as a forum where new ideas or procedures of individuals concerned with bettering the administration of justice can be shared and evaluated to the benefit of all. ■

*Personnel—continued from page 4*

**John T. Connolly**, Chief Probation Officer, S.D. N.Y., June 26  
**Leon E. DeKalb**, Deputy Chief Probation Officer, S.D. N.Y., June 26

**Billy G. Drown**, Chief Probation Officer, W.D. Mo., July 1  
**Charles F. Hengstebeck**, Chief Probation Officer, E.D. Mich., July 1

**Beal Kidd**, Chief Probation Officer, E.D. Ark., July 3  
**Morris Kuznesof**, Supervising Probation Officer, S.D. N.Y., June 12

**Arthur C. Langeveld**, Clerk, W.D. Mich., July 1  
**Fergus R. Pettigrew**, Clerk, N.D. Calif., July 1  
**H. Kent Presson**, Assistant Chief, Division of Bankruptcy, June 12

**Edgar Scofield**, Clerk, W.D. Wash., July 3  
**Harry G. Sydor**, Supervising Probation Officer, S.D. N.Y., June 26  
**Joyce F. Witt**, Clerk, W.D. Va., July 1

### *Retirements*

**Virginia M. Ayers**, Clerk, W.D. Va., June 30  
**Jacob B. Barnett**, U.S. Probation Officer, N.D. Ill., June 30  
**Samuel Berke**, U.S. Referee in Bankruptcy, N.D. Ill., June 20  
**John A. Bresnahan**, U.S. Referee in Bankruptcy, Dist. of Col., June 30  
**Paul L. Brown**, Chief Probation Officer, E.D. Ark., June 30  
**Albert A. Cobb**, Supervising Probation Officer, N.D. Ohio, June 30

**James H. Cooney**, Clerk, E.D. Texas, June 30  
**Edward J. Devlin**, Supervising Probation Officer, C.D. Calif., June 30

**Edward J. Dougherty**, Chief Probation Officer, Dist. Ariz., June 30

**Christian C. Evensen**, Clerk, N.D. Calif., June 30  
**Claude L. Goza**, Clerk, N.D. Ga., June 30  
**Edwin F. Hannon**, U.S. Referee in Bankruptcy, Dist. Mass., June 30

**Richard H. Johnson**, Chief Probation Officer, W.D. Mo., June 30

**Stephen P. Laffey**, U.S. Referee in Bankruptcy, W.D. Pa., June 30

**Henry P. Long**, U.S. Probation Officer, E.D. Va., June 30  
**James K. Mattoon**, Chief Probation Officer, Dist. Haw., June 30

**Reginald W. McDuffee**, U.S. Referee in Bankruptcy, S.D. Ga., June 30

**Fred W. Peterson**, Deputy Chief Probation Officer, Dist. of Col., June 30

**Arch E. Sayler**, Chief Probation Officer, S.D. N.Y., June 25  
**Howard T. Ziel**, Clerk, W.D. Mich., June 30

### *Deaths*

**Leo C. DeVoto, Jr.**, Clerk, E.D. Mo., June 21  
**Charles R. Paine**, Chief Probation Officer, W.D. Okla., June 16

### THE THIRD BRANCH

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

#### Co-editors:

Wm. Foley, Deputy Director, Administrative Office; Alice L. O'Donnell, Coordinator, Inter-Judicial Affairs, Federal Judicial Center.



## State-Federal

**Mississippi.** Official sanction has now been granted by the full state judiciary to organizational plans started last March for one of the latest State-Federal Councils.

On June 22d Federal representatives, Chief Judge Dan Russell (S.D. Miss.) and Judges Orma Smith (N.D. Miss.), Walter Nixon (S.D. Miss.) and Judge Charles Clark of the Fifth Circuit met in Biloxi with the Mississippi State Judicial Council (comprised of all state trial and appellate judges) to finalize plans for the Council.

Judge Clark reports that relations were most cordial and cooperative and adds, "We are off to a good start." The new State-Federal Council will have in addition to the federal representatives, the Chairman of the Chancery, representatives of Circuit and County Judges' organizations and the designee of Chief Justice Gillespie (Mississippi Supreme Court).

**Virginia.** The third meeting of the Virginia State-Federal Council was held June 20th in conjunction with the Judicial Conference for the Fourth Circuit. Virginia was one of the first states to organize a council following the suggestion of Chief Justice Burger, and their meetings have all been carefully planned to bring about meaningful discussions. Discussed at their June meeting were such things as litigation in federal courts involving supervision of state jails; and cooperation in avoiding conflicting court engagements of counsel; inter-change of information for presentence reports. Of particular interest: A proposal to establish a joint state-federal public defender's office. Chief Justice Harold F. Snead was unanimously elected chairman of the Council for the next year, and Samuel W. Phillips, (Circuit Executive for CA-4) will continue as Secretary. ■

### THE THIRD BRANCH

VOL. 4, NO. 7 JULY 1972

### THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

## A.O.—F.J.C.—CALENDAR

July 26-28	Ninth Circuit Conference, Pasadena, Calif.
July 31-Aug. 2	Criminal Law Committee, San Francisco, Calif.
Aug. 3-4	Judicial Salaries, Annuities, and Tenure Subcommittee, Houston, Texas
Aug. 3-4	Federal Jurisdiction Subcommittee, Lake Geneva, W.
Aug. 9-10	Probation Committee, San Francisco, Calif.
Aug. 16-17	Interim Advisory Committee, San Francisco, Calif.
Aug. 18-19	Courtroom Facilities and Design Committee, Monterey, Calif.
Aug. 18-19	Metropolitan Judges Conference, Monterey, Calif.
Aug. 21-22	Committee on Court Administration, San Francisco, Calif.
Aug. 23-24	Committee on Criminal Justice Act, San Francisco, Calif.
Aug. 28-29	Eighth Circuit Conference, Omaha, Nebr.
Sept. 11-14	Seminar for Courtroom Deputy Clerks, Cambridge, Mass., Sheraton Commander Hotel.
Sept. 17-22	Refresher Course for U.S. Probation Officers, Chicago, Ill.
Sept. 22	Federal Judicial Center Board Meeting, Dolley Madison House, Wash., D.C.
Sept. 25-27	Central States Regional Institute for U.S. Probation Officers, Wagoner, Okla., Western Hills Lodge
Oct. 2-3	Fifth Transferee Judges Meeting, Multidistrict Litigation Panel, New Orleans, La.
Oct. 2-6	Seminar for Newly Appointed Referees in Bankruptcy, F.J.C.
Oct. 10-13	Seminar for United States Magistrates, F.J.C.
Oct. 15-20	Refresher Course for U.S. Probation Officers, Chicago, Ill.
Oct. 19-21	Refresher Course for Referees in Bankruptcy, South Bend, Ind.
Nov. 27-30	Appellate Judges Seminar, F.J.C.

### CURRENT ARTICLES AND PUBLICATIONS

*The Superlawyers*, by Joseph C. Goulden, Weybright & Talley, 1972; *The Criminal Law Revolution and Its Aftermath 1960-1971*, Third Edition, 1972, BNA Books; *Improved Parole Decision-Making*, by George J. Reed and William E. Amos, Federal Probation Magazine, March, 1972.



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

*A Bulletin of the Federal Courts*



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August 1972

## STATE OF THE JUDICIARY: 1972

Speaking before a packed audience of thousands, Chief Justice Burger delivered his third State of the Judiciary report at the American Bar Association's opening assembly on August 14th.

As in past years, the Chief Justice commended for consideration certain proposals to Congress, the bar and the judiciary. At the same time he had laudatory words for the Association and the legal profession generally for responding so quickly and effectively on past proposals. Specifically singled out as worthwhile accomplishments were: The establishment of the Institute for Court Management; the passage of legislation which made it possible for each federal circuit to employ a Circuit Executive; revision of the Canons of Judicial Ethics (the ABA House of



Double exposure snapped at the ABA Annual Meeting in San Francisco shows ABA seal superimposed on the Chief Justice as he delivers his State of the Judiciary Message.

—photo by Wm. Young, Courtesy of Abe Mellinkoff  
San Francisco Chronicle

Delegates adopted the Traynor Report three days later); the creation of the ABA's Commission on Correctional Facilities and Services; and the funding and implementation of the Commission on Standards of Judicial Administration (under chairmanship of Judge Carl McGowan, CA-DC). The federal judges received an equal amount of praise for efforts to improve the efficiency of their courts, citing among other things the adoption of the individual calendar, the use of the omnibus hearing procedure, the adoption of Rule 50(b) of the Federal Rules of Criminal Procedure to set up effective October 1, 1972, mandatory speedy criminal trials, and cooperation with the A.O. and the F.J.C. to bring to their courts more efficient procedures handled by trained supporting personnel.

But, the Chief Justice pointed out, there is much yet to be done and he had words of exhortation for the judges who must handle increased case loads in the years ahead. He said: "Our constant purpose must be to keep in mind that the duty of lawyers and the function of judges is to deliver the best quality of justice at the least cost in the shortest time."

*continued on page 7*



Judge Frank M. Coffin, Judge Alfred P. Murrah, and Judge John J. Gibbons discuss preparations for Appellate Judges' Seminar in November.

A vision without a task is fantasy,  
A task without a vision is drudgery,  
A task with a vision is the hope of the world.

Author unknown



## APPELLATE JUDGES TO CONVENE

Well underway are plans which call for a four-day seminar for U.S. Circuit Judges next November. To advise and assist in setting up a program in Washington, Director Murrah and the head of FJC's Continuing Education and Training Division, Kenneth Crawford, invited to the Center Judges John Minor Wisdom (CA-5), Frank W. Coffin (CA-1), John J. Gibbons (CA-3), Eugene A. Wright (CA-9), Wilbur F. Pell, Jr. (CA-7), and Harold R. Tyler, Jr. (S.D.N.Y.)

Invitations to the fall seminar have not yet been sent out, but they will go to as many of the federal circuit judges as can be accommodated with some priority given to the newly appointed circuit judges.

A second appellate seminar has been scheduled for March, 1973, to accommodate those judges unable to attend in November.

The program will cover, among other things, the Third Circuit time study, opinion writing, the Code of Judicial Conduct, management and use of parajudicial personnel.

### WHO'S READING THE THIRD BRANCH?



That's what your editors want to know. Please fill out and return the questionnaire being mailed to you under separate cover and aid us in our attempt to keep you better informed.

"We have learned there are troublesome problems inherent in a dual system of law; that we need an interchange of ideas to minimize any conflicts which may have developed or could develop; and that as we get to know one another better, information and ideas flow into a consistent policy of action"

— Chief Justice  
Harold F. Snead

Supreme Ct. of Virginia speaking at the Conference of Chief Justices,  
Aug. 10, 1972

## AMERICAN UNIVERSITY RECEIVES \$200,000 FROM LEAA

Dean Gordon Christenson of The American University Law School announced the university's receipt of a \$200,000 contract from the Law Enforcement Assistance Administration for the purpose of providing technical assistance to state criminal courts and related agencies. Under condition of the contract received as the result of competitive bidding, the University will respond to nation-wide requests for assistance from state and local courts, program development, judicial training, law reform, etc., when the requests are beyond the capacity of existing state and federal government resources to handle. All requests for technical assistance will be handled through State Planning Agencies.

To carry out this national project, designed to help improve the quality of criminal justice in the United States, the university has assembled a pool of experts in the fields of criminal procedure, public administration, systems analysis, records keeping and court management, who will be available as consultants to requesting courts. In order to effectively serve various regional consulting needs, The American University will cooperate in this project with, among others, the Judicial Administration Program and law school of the University of Southern California and the Institute for Court Management and school of law of the University of Denver.

The new Criminal Courts Technical Assistance Project will be administered by The American University Law School's Institute for Studies in Justice and Social Behavior with the cooperation of the university's Center for the Administration of Justice. Among the consultants for the project will be Professor Nicholas N. Kittrie, Director of the Institute, and Mr. David J. Saari, head of the Center. Mr. Joseph A. Trotter, Jr. is the director.

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## PAROLE BOARD NAMES NEW HEAD

Maurice H. Sigler, was named chairman of the United States Board of Parole, effective July 1, 1972. Mr. Sigler has been a member of the Board since August 2, 1971.

The Attorney General made the designation after receiving, with great reluctance, the resignation from the post by Mr. George J. Reed, who asked to be relieved because of ill health. He will remain on the Board as a member.



# LEGISLATION

## CONGRESSIONAL ACTION

On August 7th the House of Representatives passed S. 2854 concerning annuities for widows of Supreme Court Justices, amended to conform with H.R. 12101, which was passed earlier by the House in the form in which it was reported by the Committee. S. 2854 will now be returned to the Senate.

Hearings were held on the bill to remove the ceiling on magistrates' salaries (H.R. 7375) before the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, receiving testimony from Director Rowland F. Kirks of the Administrative Office, accompanied by Assistant Director for Legal Affairs, Joseph F. Spaniol, Jr.

H.R. 2374 was favorably reported with amendments by the House Judiciary Committee. The bill would amend title 18 U.S.C., to permit mailing of lottery tickets and the interstate communication of lottery information, where the lottery is conducted by a state.

H.R. 13825, to extend the time for commencing actions on behalf of an Indian tribe, band, or group was favorably reported, with amendments by the House Judiciary Committee P.L. 92-353 (H.R. 15869) providing a 90-day extension for commencing actions on behalf of an Indian tribe, band, or group was signed July 18, 1972.

The Senate has passed and cleared for the President H.R. 15635, providing Federal assistance for programs designed to prevent juvenile delinquency (S. Rept. 92-1003);

H.R. 12979, authorizing recall of retired senior commissioners of the Court of Claims for temporary assignment (S. Rept. 92-996); and H.R. 6745 to transfer certain counties to the central division of the Federal Judicial District of South Dakota (S. Rept. 92-995).

The Senate Judiciary Committee has favorably reported S. 2507, to prohibit the sale of handguns which are determined to be unsuitable for lawful sporting purposes, with amendments (S. Rept. 91-1004).

H.R. 2829, The Runaway Youth Act was passed by the Senate with Committee amendments (S. Rept. 92-1002) and has been returned to the House of Representatives.

S. 3463, to provide copies of the daily and semimonthly Congressional Record to libraries of certain U.S. Courts was passed by the House, thus clearing the measure for the President.

The Senate Committee on Commerce has favorably reported H.R. 755 to convert criminal penalties to civil penalties for provisions under the shipping act, with amendments. (S. Rept. 92-1014).

The House has disagreed to the Senate amendments of H.R. 7378, Commission on Revision of the Judicial Circuits of the U.S. and requested a conference with the Senate.

Hearings have been held by the Subcommittee on National Penitentiaries of the Senate Committee on the Judiciary on a number of bills concerning the parole system (S. 2383—Senators Burdick, Hruska and Mathias, S. 2462—Senators Cook, Bayh and Mathias, S. 2955, Senator Cook, S. 3185—Senator Percy and S. 3674—Senator Percy. Testimony was presented by the Honorable Francis L. Van Dusen, CA-3, Wayne P. Jackson, Chief of the Division of Probation of the Administrative Office of the United States Courts, and Ben S. Meeker, Chief, U.S. Probation Officer, U.S.D.C., N.Dist. of Illinois.

S. 3309, to provide for rehabilitation of certain criminals through voluntary community oriented corrections programs, was the subject of hearings before the Subcommittee on National Penitentiaries of the Senate Judiciary Committee.

## NEW LEGISLATION

H.R. 16056, to amend the Judicial Code to provide for the transfer of Grand Jury proceedings where the convenience of parties or witnesses and the interests of justice so require.

H.R. 15929, (Representatives Wiggins, Poff, McClory, McKeivitt and Hunt) to provide for the dissemination and use of criminal record information and for other purposes. (Department of Justice proposal)

H.R. 15930, to restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes. (Representative Charles H. Wilson); also H.R. 15978 (Representative Conyers, to Committee on House Administration)

H.R. 15975, to amend title 5 of the United States Code, to authorize the payment of increased annuities to secretaries of justices and judges of the United States. (Representatives Waldie, Chappell, Daniels, and Brasco, to the Committee on Post Office and Civil Service)

S. 3832, by Senator Hart. To supplement the antitrust laws and to protect trade and commerce against oligopoly power or monopoly power, and for

*continued on page 7*



# F.J.C. HOSTS FOREIGN VISITORS



Chief Judge Teh Sheng Chang (Nationalist China) and Mr. Karin N. Shadan, Court Administrator of the Afghanistan Supreme Court paid a visit to the Center after having completed a Master degree program in Court Administration at the University of Denver.



Miss Terry Wood, program coordinator for the International Legal Center in New York, accompanied a group of Korean Judges and Prosecutors to the Center recently for an orientation on the work of the Center.



Dr. R.M. Sudikno Mertokusumo, Chief of Trial Court, Bandung, Indonesia, visited the Center in early August. In his homeland of Indonesia he is actively pursuing the application of time saving practices in judicial administration.



Dr. Wolfgang Kilian (center) of West Germany meets with Mr. Crawford (right) and staff to discuss the Center's educative function.



Mrs. Pho Thi Ngoc Ahn is greeted by Mr. Thomas J. Burgess of the Center's Inter-Judicial Affairs staff. Mrs. Ahn, an attorney in Saigon, South Viet Nam, is touring the U.S. to study American Court procedures.

## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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Administrative Office of the United States Courts



## A MESSAGE FROM THE CHIEF JUSTICE

The burden of an ever-growing caseload has become a pre-occupation of judges and lawyers to the extent that the words and phrases about it have taken on an almost cliché aspect. No court is exempt as the Supreme Court's final statistics from the 1971-72 Term reveal. I hope my colleagues of the federal judiciary will permit me a small space to discuss the problems of the Supreme Court.



A total of 4,533 cases were docketed in the Term just ended. This is almost double the 2,585 cases of only 10 years ago. For instance, the 1967 Term saw 3,586 cases docketed; the 1968 Term, 3,918; the 1969 Term, 4,202; and the 1970 Term, 4,212.

Despite the fact that a full complement of nine members was available only since January, the Court, in this Term, heard full oral arguments in 177 cases, turned out 129 signed, written opinions, and disposed of a record number of cases, 3,645. These figures are the highest in the history of the Court in almost each category. Following adjournment a Special Term was called and subsequently another was sought but denied.

The burden threatens to be even greater next year. New cases are being filed with the Court at an average of more than 80 per week every week in the year. And the total of carried-over cases (which were not ready for consideration by June 29) already stands at 789, plus another 99 in which full review was granted before adjournment.

Justice Lewis F. Powell, Jr., one of the two new Justices, remarked to the Fourth Circuit Judicial Conference that the work on the Court has required 6½ days a week and almost every night of his time. He sees the rising caseload as a threat to the Court's ability to perform its historic role in our system. My own expressions in discussions with the Bar have been much the same.



JUDGES: F.J.C. is interested in receiving any articles or speeches you write, particularly those related to the federal courts.

## F.J.C. ESTABLISHES INFORMATION SERVICE

An Information Service is being established at the Federal Judicial Center. It is planned that there will be a collection of documents, reports, pamphlets and publications dealing with the specialized area of judicial administration. However, it is to be distinguished from a traditional law library in that current information will be collected here for dissemination. In the future, there is a possibility of providing microfilmed literature, on a loan basis, for the convenience of persons outside the District of Columbia area.

Since the Center's primary task is to support the judicial branch in the areas of research, systems, education and training, the information staff will work closely with those performing studies in these fields. Also, it is planned that the information service will be a clearinghouse for distribution of FJC studies, and an information center for any matters associated with the federal court system. It is an attempt to aid in finding information even if it is not in our collection. There will be an effort made to index and make available unpublished material which may be buried in files, for instance, and which may be helpful to someone else, thereby eliminating a duplication of effort. Future plans call for automation of indexing as well as other areas.

The Information Service, while primarily established to serve the federal courts, will also serve—to the best of its ability—other government offices and all those working in the area of judicial administration. Permanent quarters are now established at the Center and the staff will be in full operation by the end of August.

### C.A.—9 Conference

In July the Ninth Circuit held its conference at Pasadena, California. Representing the A.O. were Director Rowland Kirks, Gilbert Bates and Wayne Jackson while the F.J.C. was represented by Alice O'Donnell. Special guests at the Conference were retired Chief Justice Earl Warren and Mr. Justice Douglas. Justice Douglas, the Ninth Circuit's Justice, addressed the banquet on the closing day. Traditionally each Judge of the Ninth Circuit invites one lawyer from his district who attends as a conference delegate with full voting rights. In conjunction with the Judges, these lawyers sponsored exceptionally well planned panel discussions covering class actions, juries, and the exclusionary rule.



## FEDERAL COURT CLERKS CONFERENCE

Jackson, Mississippi played host to Federal Court Clerks from every region of the country and its territories as they gathered from August 6-10 to mark their Association's Forty-fourth Annual Conference.

Highlighting the program was an address by Judge Alfred P. Murrah, Director of the FJC; an explanation of the role of the Circuit Executive by Robert D. Lipscher and a balanced discussion of the merits of an "Early Trial Plan for Criminal Actions" by Judge Gerald B. Tjoflat, and Carl Imlay, General Counsel of the A.O.

Warmly received also were presentations on "Wire-tapping and the Interception of Oral Communication—Clerk's Function", by Lewis Orgel, Clerk (E.D.N.Y.), Angelo W. Locascio, Clerk (Dist. N.J.), and Philip T. White, Attorney, Justice Department; "The Federal Defender under the Criminal Justice Act" by Wallace J. Furstenau, Clerk (Dist. Ariz.); "Continuing Education and Training—Federal Judicial System" by Kenneth C. Crawford, Director, Education and Training Division, F.J.C.; "The Effect of the Proposed Revision of the Bankruptcy Laws on Clerks' Offices" by Elmore Whitehurst, Referee in Bankruptcy (N.D. Tex.); "Division Offices of the Clerk: Operations and Management" by W. Farley Powers, Jr., Clerk (E.D. Va.) and Angelo Locascio, Clerk (Dist. N.J.); and "The Ins and Outs of Property Management" by L.N. Stewart, Regional Commissioner, G.S.A., Fort Worth, Texas.

New officers elected were: Angelo W. Locascio (Dist. N.J.), President; Ronald E. Longstaff (S.D. Iowa), Vice President; Daisy H. Nalle (W.D. Va.), Secretary; and Marcella E. Moritz (N.D. Iowa), Treasurer.



Photographed at Federal Court Clerk's Conference (l. to r.): Judge Alfred P. Murrah, FJC Dir.; Bob Thomas, Host Clerk, S.D. Miss.; Gov. Wm. E. Waller; Hazel M. Hillstrom; Marcella E. Moritz; Geo. E. Hutchinson, Clerk, CCPA and Past President; Angelo W. Locascio.

## CONTINUING EDUCATION AND TRAINING PLANS ANNOUNCED

The Center's Division of Continuing Education and Training is currently formulating a broad program calling for a series of seminars to be offered to personnel of the judiciary during the present fiscal year.

This program includes forty-six structured seminars and short courses designed to meet the initial and continuing information needs of newly appointed, as well as experienced employees working in the federal judicial system. At present, one or more seminars are being developed for Judges of the United States Courts of Appeals; experienced District Court Judges; newly appointed District Court Judges; Circuit Executives; full and part-time United States Magistrates; Referees In Bankruptcy; United States Probation Officers; Clerks of Court; Public Defenders; Court Reporters; Secretaries to District Court Judges; and Courtroom Deputy Clerks. A total of more than two thousand persons will be invited to participate in these formal sessions. The varied goals of these particular educational endeavors will all focus on a single, overall theme—improved judicial administration.

To supplement this formalized activity, the Center intends to pursue several recent training directions and initiate new ones. Publications containing seminar presentations and other pertinent information developed for certain courses, will continue to be compiled and distributed, not only to seminar participants, but throughout the system. In addition the Center will expand and refine its cassette recording library drawing on a variety of sources.

The Education and Training Division will also experiment with video tape capabilities. Over the next few months, several video tape recordings will be made covering subject areas of universal application and interest. The use of this type of training aid will increase the Center's ability to disseminate current information and expertise free from the constraints of "faculty" availability.

As an additional complement to these Center initiated programs, a continuing effort will be made to support individual requests for special attendance at local educational conferences and courses. This funding support will continue to be proportioned among judicial personnel on an equal distribution, priority basis.



Recommendations made by the Chief Justice included:

- That Congress prepare a "Court Impact Statement" to accompany new federal legislation which creates new causes of action so that estimates may be made of how many additional judges and supporting personnel will be needed to handle the new litigation. [See June, 1972, issue of *THE THIRD BRANCH* for report on "forecasting" project launched by the F.J.C.]
- Creation of position of District Executive to serve the metropolitan district courts as the Circuit Executives now serve the circuits.
- Adequate numbers of probation and parole personnel, suggesting that while a request to Congress for 348 additional officers was made, a more realistic number would have been to double the number of probation officers now on duty.
- Study of the proposed National Institute of Justice.
- Effective use of Magistrates to relieve district judges of burdens attached to processing civil and criminal cases.
- Efficient use of court reporters in multi-judge courts, including, where feasible, placing court reporters in a pool to provide central supervision and management.
- Efficient use of jurors' time, endorsing the jury pool formula.
- Circuit Courts: Consideration of procedures to speed up disposition of cases, including screening of cases, use of typewritten record on appeal and shorter or no written opinions where appropriate.
- ABA support for solution to problem of restructuring circuits.
- Total elimination of three-judge district courts as one step toward possible aid to U.S. Supreme Court to handle an anticipated case load of 7000 by 1980.

Concluding his annual address, the Chief Justice called on every judge and lawyer in the country to meet the responsibility "to move and shape the changes we need," adding, "... whatever the obstacles of resistance or apathy, we must continue to work together for the changes essential to provide the machinery that will keep faith with the American tradition."

## NEW FACES AT F.J.C. AND A.O.

**Richard Marshall Mischke**, a Virginia resident and retired USAF Colonel has joined the staff of the Center as Assistant Director of Continuing Education and Training. Mr. Mischke was one of 52 recently certified as eligible for



the position of Circuit Executive. In his new role he will assist in the preparation and execution of seminars which the Center holds for federal court personnel at various levels. Well suited for his new position, Mr. Mischke served until July of 1970 as the Director of Curriculum at the Air University. He holds a Bachelor of Science in Business Administration from the University of Texas and a Master of Business Administration from Ohio State University.

**Attorney Milner Benedict** has joined the staff of the Bankruptcy Division of the A.O. A graduate of the University of Virginia Law School and a member of both the Virginia State and District of Columbia Bars, he was formerly associated with the Office of Judicial Examinations in the Justice Department.

### Legislation—continued from page 3

other purposes. (The bill would *inter alia* amend title 28 of the United States Code to provide for a special district court, the Industrial Reorganization Court.)

S. 3833, Senators Hruska and Scott, to revise title 28 of the United States Code. (To revise court review of habeas corpus petitions under section 2253-2255, title 28. The bill incorporates the proposals of the Department of Justice and the National Association of Attorneys General.)

S. 3834 (Hruska by request), to provide for the dissemination and use of criminal record information and for other purposes.

### THE THIRD BRANCH

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

#### Co-editors:

Alice L. O'Donnell, Coordinator, Inter-Judicial Affairs, Federal Judicial Center; William Foley, Deputy Director, Administrative Office.



**PERSONNEL**

*Federal Judges*

*Appointments*

**J. Clifford Wallace**, U.S. Circuit Judge, 9th Cir., July 14

**Hiram H. Ward**, U.S. District Judge, M.D.N.C., July 12

*Confirmations*

**Robert L. Carter**, U.S. District Judge, S.D.N.Y., July 21

**Marshall A. Neill**, U.S. District Judge, E.D. Wash., August 2

*Nomination*

**Frank H. Freedman**, U.S. District Judge, Dist. Mass., August 14

*Deaths*

**Alexander J. Napoli**, U.S. District Judge, N.D. Ill., July 12

*Supporting Personnel*

*Appointments*

**Augustus J. Calloway III**, U.S. Probation Officer, E.D. Mich., July 31

**Joseph M. Brandenburg Jr.**, U.S. Probation Officer, W.D. Mo., August 7

**Jack E. Frost**, Clerk, U.S. District Court, W.D. Mich., August 1

**Richard Arthur Fallon**, U.S. Probation Officer, Dist. of Col., July 17

**Lawrence Fisher**, U.S. Referee in Bankruptcy, N.D. Ill., August 1

**Harold D. Germann**, U.S. Probation Officer, C.D. Calif., July 17

**Harry Minoru Kaneshiro**, U.S. Probation Officer, Dist. Hawaii, July 24

**Eloy T. Ochoa**, U.S. Probation Officer, S.D. Texas, July 17

**Gene J. Ottonelo**, U.S. Magistrate, E.D. Calif., July 1

**Edward A. Quinnel**, U.S. Referee in Bankruptcy, W.D. Mich., July 10

**James Oran Sarrels**, U.S. Probation Officer, Dist. Ariz., July 24

**Arthur D. Ward**, U.S. Probation Officer, N.D. Ill., July 10

*Promotions*

**Edward L. Brown**, Supervising Probation Officer, Dist. Ariz., July 24

**William F. Johnson**, Chief Probation Officer, Dist. Ariz., July 17

**James R. Manspeaker**, Clerk, U.S. District Court, Dist. Colo., August 1

**Rosalie M. Trahan**, Clerk, U.S. District Court, E.D. Texas, July 1

*Retirements*

**F. Donald Delaney**, U.S. Referee in Bankruptcy, M.D. Ill., July 31

**Charles E. Gibson**, U.S. Probation Officer, M.D. Fla., June 30

**A.O. — F.J.C. — CALENDAR**

- Aug. 28-29** Eighth Circuit Conference, Omaha, Neb.
- Sept. 6-7** Criminal Rules Committee, AO, Washington, D.C.
- Sept. 11-14** Seminar for Courtroom Deputy Clerks, Sheraton Commander Hotel, Cambridge, Mass.
- Sept. 13-16** Bankruptcy Rules Committee, AO, Washington, D.C.
- Sept. 17-22** Refresher Course for U.S. Probation Officers, Chicago, Ill.
- Sept. 19-20** Judicial Conference Committee on the Administration of the Federal Magistrates System, AO, Washington, D.C.
- Sept. 20-22** 3rd Circuit Judicial Conference, Cherry Hill Inn, Cherry Hill, N.J.
- Sept. 22** Federal Judicial Center Board Meeting, Dolley Madison House, Washington, D.C.
- Sept. 22-23** Civil Rules Committee, AO, Washington, D.C.
- Sept. 25-27** Central States Regional Institute for U.S. Probation Officers, Western Hills Lodge, Wagoner, Okla.
- Oct. 2-3** Fifth Transferee Judges Meeting, Multidistrict Litigation Panel, New Orleans, La.
- Oct. 2-6** Seminar for Newly Appointed Referees in Bankruptcy, F.J.C., Washington, D.C.
- Oct. 6-7** Judicial Conference Standing Committee on Rules of Practice and Procedure, A.O., Washington, D.C.
- Oct. 10-13** Seminar for United States Magistrates, F.J.C., Washington, D.C.
- Oct. 14-15** Seminar for Federal Court Reporters, Chicago, Ill.
- Oct. 15-20** Refresher Course for U.S. Probation Officers, Chicago, Ill.
- Oct. 19-21** Refresher Course for Referees in Bankruptcy, South Bend, Ill.
- Oct. 23-28** Seminar for Circuit Court Executives, F.J.C., Washington, D.C.
- Oct. 26-27** Judicial Conference of the United States, Supreme Court Building, Washington, D.C.
- Oct. 27-28** National Bankruptcy Conference, A.O., Washington, D.C.
- Oct. 30-Nov. 3** Orientation Course for U.S. Probation Officers, F.J.C., Washington, D.C.
- Nov. 9-10** Refresher Course for Referees in Bankruptcy, New York, N.Y.
- Nov. 13-17** Refresher Course for U.S. Probation Officers, Chicago, Ill.
- Nov. 16-18** Seminar for Secretaries to District Judges, F.J.C., Washington, D.C.
- Nov. 27-30** Appellate Judges Seminar, F.J.C., Washington, D.C.

*THE THIRD BRANCH*  
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 DOLLEY MADISON HOUSE  
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**OFFICIAL BUSINESS**



**POSTAGE AND FEES PAID  
 UNITED STATES COURTS**



# The Third Branch

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

## *A Bulletin of the Federal Courts*



Vol. 4, No. 9

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September 1972

### METROPOLITAN DISTRICT JUDGES ATTACK DELAY



Photographed at Monterey, Calif. while attending Metropolitan District Judges' Conference: Chief Judge Oliver J. Carter (N.D.Calif.), Rowland F. Kirks, Dir., Administrative Office of the U.S. Courts, and Judge Alfred P. Murrah, Dir., Federal Judicial Center.

A third meeting of metropolitan district judges was held in August to confer again on the processing of growing case loads and how speedy trials can be assured, especially criminal cases. This and the two previous conferences are the judges' response to the Chief Justice's request for a definite program on the causes and cures of delay in the federal courts.

The first conference, held in August 1971, outlined critical stages of the criminal process and identified problems as the judges perceived them. The second conference, in January, 1972, continued with problem identification but also focused on specific areas and considered potential solutions. The recent meeting afforded the conferees a forum for a further exchange of ideas on how to meet the current deluge of filing. Of special interest was the Center's ongoing project on forecasting which will consider how the judiciary might anticipate its needs well into the future.

At the outset, the judges discussed the problem of how to avoid delay resulting from a judge's unavailability when the court is operating on an individual calendar system. With the new Rule 50(b) relating to speedy criminal trials coming into effect soon, this matter is of immediate concern to the judges.

At the conclusion of the meeting, Director Murrah inquired whether the judges felt such discussions were helpful and the response was unanimously in the affirmative. In a letter lauding the efforts of the judges, the Chief Justice said, "You have a unique opportunity to implement tried and proven tech-

### DOLLEY COMES HOME

In 1970 the Pennsylvania Academy of Art loaned to the White House the Gilbert Stuart painting of Dolley Madison and in impressive televised ceremonies in Philadelphia, the President and Mrs. Nixon accepted on behalf of the White House. Now in 1972 the Federal Judicial Center is the derivative beneficiary of this act of generosity, for the President and Mrs. Nixon have agreed with equal generosity to loan to the Center the Ursula Whitlock portrait of Mrs. Madison which was copied from the Stuart painting. Until 1970 the Whitlock painting hung in the President's Mansion as the official portrait of Mrs. Madison.

It seems altogether fitting to have this splendid portrait of Mrs. Madison hanging in the parlor of the Dolley Madison House—the place which Mrs. Madison called her home from 1837 to 1849. The Center is grateful for the loan and for the efforts of Clement Conger, Curator at the White House, to bring about this transfer. □



Ursula Whitlock's portrait of Mrs. James Madison in its new setting.

niques which, if employed, will contribute substantially to moving the business of our courts in a more efficient, expeditious and economical manner. You have my heartfelt thanks for the time and talent you have contributed through this conference."

Several judges expressed the hope that all district judges could also receive the type of assistance afforded through the conferences. Consequently, the Judicial Center plans to distribute materials on this speedy trial effort to all district court judges. The success and enthusiasm for this meeting has set into motion immediate planning on how the Center can design similar programs which can be of assistance to all the federal judiciary.



## A MESSAGE FROM THE CHIEF JUSTICE

Last month the third in a series of conferences of Chief Judges of Metropolitan Districts dealt with current and pressing problems in the federal trial courts. These meetings of the leaders of the 19 Metropolitan Districts help to formulate more definite programs to assure that litigation in the federal courts will be handled expeditiously, efficiently and with appropriate consideration. Though the judges have so far concentrated their discussions on criminal cases, our most pressing problem, they will soon turn to the important matter of civil cases.



Other commitments prevented my attending the conference this year, but the reports which have come to me show that it was one of the most beneficial and productive meetings yet held. This is indeed encouraging, for if really significant progress is to be made in improving the judicial process in the federal courts it must at least start in our metropolitan trial courts, which include more than half of the 400 authorized district judgeships and two-thirds of all civil and criminal cases pending in the 94 district courts.

From this conference, and others, a wealth of information has evolved pointing the way to better methods of handling our cases. It is most encouraging to know that the trial judges are continuing to meet to ask themselves how we can do a better job and to seek specific means of improvement — such things as the use of the jury pool formula to bring about more efficient and economical use of jurors, better court reporter management, possibilities of compulsory arbitration in civil cases, the use of video taped depositions, pretrial discovery through the use of “omnibus” or single hearing techniques, the use of bifurcated trials, when appropriate, and optimum use of parajudicial personnel, especially the Magistrates.

We should all applaud these judges and others who are making similar efforts for their innovative and intelligent approach to our problems, but, most of all, for the spirit in which they tackle their problems.

We can take encouragement also from a current report of the Administrative Office showing that only 42 of more than 400 District Judges had any cases or motions under advisement more than six months and of these 27 had only one such case or motion. This is a good performance record, especially considering the increasing complexity of current cases and the volume of novel questions. The Court of Appeals figures are encouraging but not quite up to those of District Courts.

The value of having continuing statistical reports on the status of our work was illustrated by Judge Alfred L. Luongo at the Conference. He said he felt “like a repentant sinner at a revival meeting.” He recalled that he and his colleagues were skeptical about the value of reports and meetings to discuss the work of various districts. Then, he said Chief Judge Joseph S. Lord and he discovered that Eastern Pennsylvania was far behind in performance, as compared with most other districts, in the time lapse from indictment to sentencing, from arrest to indictment, and from indictment to trial.

Confronted with this, Judge Luongo said they searched out the reasons for the delays and promptly corrected them. This involved a 30-day limit for reports from arresting agencies, court control of the calendars with automatic scheduling, the single hearing, etc.

Judge Luongo’s report graphically illustrates the value of the foresight of Chief Justice Taft who pointed out fifty years ago that the federal court system would not work if each judge insisted on “paddling his own canoe” without consulting with other judges having similar problems.

If this were true a half century ago, when we had 135 federal judges, how much more it demonstrates the need for exchange of ideas in our time.

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“A constitutional democracy recognizes the right of the minority to be protected from the arbitrariness or, in some instances, the tyranny of the majority. When forces within our system would abridge these rights, the court must intervene and protect those . . . unable to protect themselves . . . . Judicial review of legislative acts may run counter to the will or the wish of the majority, but to say that judicial review is undemocratic is to ignore fundamental rights guaranteed to all, including the members of the minority.” Chief Justice Donald R. Wright (Supreme Ct. of California)

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### CASSETTE LIBRARY LISTINGS—UPDATED

Several new recordings have been added to the FJC Cassette loan library.

—Judges	
“Conducting the Sentencing Hearing”	Chief Judge Walter Hoffman
“Changes in the Rules of Federal Procedure”	Chief Judge Walter Hoffman
—Probation	
“Dimensions of the Crime Problem”	Prof. Norval Morris
“Federal Bureau of Prisons”	Richard J. Keaney
“The Criminal Justice System Today”	Dr. Robert Carter
No longer available:	
“The Brookings Report”	Asa S. Herzog

For a complete listing of available cassettes see THE THIRD BRANCH, June '72, pg. 2.



# LEGISLATION

## ENACTMENTS

S. 2854 Annuities for widows of Supreme Court Justices was signed by the President on August 22, 1972 (P.L. 92-397).

H.R. 12392, authorizing the Court of Claims to implement its judgments for compensation and H.R. 755, to convert criminal penalties to civil penalties for certain provisions of the Shipping Act were signed on August 29 (P.L. 92-415 and P.L. 92-416).

## CONGRESSIONAL ACTION

H.R. 16188, Immigration and Nationality Act Amendments was favorably reported by the House Judiciary Committee and passed by the House. The bill provides sanctions against knowing employers of illegal aliens ranging from warning to the imposition of civil penalties to criminal prosecution.

The bill, H.R. 7375 to amend the statutory ceiling on salaries payable to U.S. Magistrates has passed both houses and is awaiting action by the President.

H.R. 9222, to correct deficiencies in the law relating to counterfeiting and forgery. The House has concurred in the Senate amendments, thus clearing the measure for the President.

H.R. 9323, to amend the Narcotic Addicts Rehabilitation Act of 1966 (authorizing methadone maintenance as a method of treatment) was sent to the President on September 7.

S. 750, to provide compensation to victims of certain criminal acts was favorably reported by the Senate Judiciary Committee.

The proposed Consumer Protection Organization Act of 1972, S. 3970 (a substitute for S. 1177) was favorably reported by the Committee on Government Operations.

H.R. 15003 (its counterpart is S.3419 which passed the Senate on June 21, 1972) was favorably reported by the Committee on Interstate and Foreign Commerce. The bills are designed to protect consumers from products which kill or cause illness or injury. Each would create an agency which would promulgate rules relating to hazardous products and file suit in the district courts against any hazardous product or its manufacturer, distributor or retailer. The agency would act in concert with the courts in carrying out the objectives of the Act.

H.R. 9265, to provide treatment and rehabilitation to servicemen and veterans who are addicted to drugs or alcohol was passed by the Senate. Also passed by the Senate were S. 16, amending title 18, U.S.C. to provide civil remedies to victims of racketeering activity and theft, and S. 2089, to provide a federal minimum death and dismemberment benefit to public safety officers or their surviving dependents.

## BILLS INTRODUCED

S. 3948, to establish a National Institute of Corrections for the purpose of providing federal, state, and local corrections personnel with continuing education and guidance on methods of treatment and rehabilitation of criminal offenders.

S. 3979, to establish an independent Board of Parole to provide for fair and equitable federal parole procedures, to study the parole procedures provided for released prisoners.

H.R. 16517, to amend the Controlled Substances Act to provide for the registration of practitioners conducting narcotic treatment programs.

H.R. 16526, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enable units of general local government to increase the numbers of police.

H.R. 16594, to amend chapter 44 of title 18, United States Code, to penalize the use of firearms in the commission of any felony and to increase penalties in certain related existing provisions, to lower certain age limits from 21 to 18, and to eliminate certain record keeping provisions with respect to ammunition.

H.J. Res. 1299, proposing an amendment to the Constitution to permit the imposition and carrying out of the death penalty in certain cases.

H.R. 16534 (Dellums) to establish minimum prison and parole standards in the United States.

H.R. 16542(Koch) to protect non-disclosure of information coming into the news media.

H.R. 16544 (Mann) to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to provide increased penalties for distribution of heroin by certain persons. □

## FJC INFORMATION SERVICE OPEN

Though in operation only a brief time, FJC's Information Service has already demonstrated its value to FJC staff and the judiciary the Center serves. Mrs. Sue Welsh, in charge of this office, reports a number of requests have already come in for specific papers or information leading to the material.



Mrs. Sue Welsh

Designed to be more a nucleus for judicial administration information than a "books and pamphlets" center, this office will serve as a source of assistance in a myriad of ways including sources for articles, law review material, speeches, directories, etc. Often times it is information on the unwritten word that is valuable. It is in this instance where this service can be of aid by directing the inquirer to an individual or an office possessing information on a given subject. "In some instances," Mrs. Welsh said, "we may know if there just isn't anything reduced to writing, and this is helpful by saving someone hours of time which might otherwise be spent on a futile search." In at least one instance this week, having determined that nothing helpful had been written on a subject, one caller left determined to start such a project.

The federal Judicial Center offers this service to the federal judiciary and their personnel and urges that they avail themselves of this assistance.



# ALICE O'DONNELL

## CHAIRMAN-ELECT ABA

### SEC. JUD'L. ADMIN.

By Judge Alfred P. Murrah  
Director, Federal Judicial Center

Alice L. O'Donnell, who heads our Division of Inter-Judicial Affairs at the Federal Judicial Center, has attained the height of recognition from her colleagues in the field of judicial administration. At the American Bar Association annual meeting in San Francisco this August, she was unanimously voted into office as Chairman-elect of the Section of Judicial Administration—the first woman ever to be so elevated and the third non-judge chairman in the history of the Section. To say that she is highly deserving and equally qualified would be an understatement for she has been associated with the Section's work in various capacities for many years.



Alice L. O'Donnell

Miss O'Donnell was born in Washington State and attended the University of Washington and the University of Southern California. Her degree in law was received in 1954 at George Washington University Law School.

After serving on the staff of Mr. Justice Clark at the Supreme Court she transferred to the Federal Judicial Center. Now Coordinator of Inter-Judicial Affairs, Miss O'Donnell not only edits *The Third Branch* but also acts as liaison between this office and other organizations working in the area of judicial administration. Through membership in a small steering committee she keeps abreast of the activities of the American Bar Association, the National College of the State Judiciary, American Judicature Society, the National Center for State Courts (as Secretary-Treasurer), the Institute for Court Management, the National Council on Crime and Delinquency, and the Institute of Judicial Administration. Her enthusiasm in the furtherance of the concept of state-federal judicial councils is revealed in her cognizance of what is happening in each state in regard to its particular state-federal council. In addition to this, she follows Congressional legislation as it affects the federal courts. Aside from all these things, she adds a personal touch to the Center's work as she extends herself in many directions to be of assistance to all with whom she comes in contact.

Beyond her duties here at the Center, Miss O'Donnell is a member of the National Association of Women Lawyers, the National Council of the

Federal Bar Association, and is on the Board of Advisors of the Federal Reformatory for Women. She has been admitted to practice before the District Court of the District of Columbia, the United States Court of Appeals and the Supreme Court of the United States.

With a career as full of challenges and rewards as this, her new venture as Chairman-elect of the Section represents greater goals and achievements. In the world of judicial administration, Alice O'Donnell is on top.

On behalf of the staff at the Center, I would like to extend our best wishes to Miss O'Donnell in her new endeavor and to express the pride we feel in her accomplishment. □

## COURT VISITATION PROGRAM CONTINUES

In January of this year *The Third Branch* reported the initiation of a court visitation program by the A. O. The purpose of the program, as outlined by Director Rowland F. Kirks, is to have a senior staff member of the A.O. visit every circuit and district court during 1972 to promote communication and cooperation. At the end of August the record showed that seven circuit courts had been visited by eight A.O. staff members. Three of the four remaining circuits have scheduled visits in the coming months and one circuit will be re-visited.

At the district level 46 courts have been visited by 29 staff members; 15 of these have requested a re-visit. Of the 48 district courts not yet visited, 19 are presently scheduled to be visited by A.O. staff members in the coming weeks. □

## NEW EDITION MULTIDISTRICT MANUAL

The Board of Editors who update and revise the Manual for Complex and Multidistrict Litigation held a meeting last month to put the final touches on the third major revision of the Manual.

Presented to the Board were summaries of suggestions from several professional associations who follow this particular litigation closely, as well as lawyers who specialize in this practice. It is expected that the new edition will be printed this fall. Members of the Board are: Judge Thomas J. Clary, Chairman, (E.D.Pa.), Judge George H. Boldt (W.D. Wn.), Judge Joe E. Estes (N.D. Tex.), Chief Judge Edwin A. Robson (N.D.Ill.), Chief Judge William H. Becker (W.D.Mo.), Judge Hubert L. Will (N.D.Ill.), and Judge Inzer B. Wyatt (S.D.N.Y.). □



## CA-8 CONFERENCE HELD

The 33rd annual Judicial Conference of the Eighth Circuit was convened in Omaha, Nebraska, August 27, through the 30th.

Attending the Conference were Governors James J. Exon of Nebraska, and Warren E. Hearnes of Missouri. After words of welcome by James A. Lane, President of the Nebraska Bar, and the introduction of Supreme Court Justice William Rehnquist and the Tenth Circuit's Chief Judge David T. Lewis, those in attendance heard addresses by U.S. Senator Roman L. Hruska (R.-Neb.), and Supreme Court Justice Harry A. Blackmun. Judge Alfred P. Murrah, F.J.C. Director, and Kenneth C. Crawford, head of the F.J.C. Division of Continuing Education and Training were on hand to speak about the operation of the Federal Judicial Center. Presentations and discussions covered a wide range of provocative topics, including: "Decisions on Evidence", "Omnibus Hearing", "Amendments to Federal Rules of Criminal Procedure", "The Role of the Trial Judge in Settlement of Civil Cases", and "The Role of the Circuit Executive".

### Hruska on Habeas Corpus

Much discussion was prompted by Senator Hruska's address. The Senator has recently introduced with Senator Hugh Scott (Pa.) S. 3833 to amend sections 2253 and 2255 of the present Habeas Corpus Statute (Chapter 153 of Title 28). This bill carries the endorsement of the National Association of Attorneys General and the Department of Justice and meets the objections they raised to the House bill previously introduced (H.R. 13722). Senator Hruska stressed, "It should be particularly noted that the bill does not provide either a repeal or any impairment of or trespass upon the Great Writ as guaranteed by the Constitution in Article I, Section 9, Clause 2."

The Writ is protected by the Constitution's Suspension Clause but legislation and Supreme Court decisions have broadened the Writ's application through the years. The Senator contends therefore: "Habeas Corpus thus exists today in its expanded state primarily as a matter of statutory construction and not as a matter of Constitutional requirement.

With the support of eminent, highly regarded authority it can be soundly concluded that the Writ is not constitutionally required to be any broader than it was at common law; Congress can amend its previously enacted law dealing with habeas corpus if it so chooses." The Sponsors of the bill hope to maintain a basic fairness in the trial and appeal process while attacking problems of court congestion and trial delays.

In general, the Senator's speech called for reform of the existing order wherever necessary in order to instill once again a basic respect for the law and the judicial process in our society. □

## SPEEDY TRIAL: RULE 50 (b)

Last month there was distributed to all federal judges a suggested plan to comply with Rule 50 (b) which was drafted by the Judicial Conference Committee on the Administration of the Criminal Law. The work of drafting a model plan was undertaken by this committee at the request of the Judicial Conference after several questions arose as to how compliance might be effected.

Judge Ruggero J. Aldisert (CA-3), a member of the committee, commenting on the plan said, "The committee is fully aware of procedural and other differences which would by their very nature preclude a district from adopting the model plan *in toto*. In those instances changes can and should be made by the judges where a more workable plan can be put into effect. Indeed, the courts are free to disregard the plan completely if they have something better."

Judge Aldisert reports also that suggestions related to compliance are still coming in from several sources. Further information on this subject will be disseminated later. □

## JUDGE WEIS, JOS. EBERSOLE ON VIDEO TAPE PANEL

Judge Joseph F. Weis, Jr. (W.D.Pa.) and F.J.C.'s Joseph Ebersole participated in a panel discussion on "Uses of Video Technology" at the ABA meeting last month. The program, planned as a technology assessment session, traced the history of the use of television, and other equipment in the courts, state and federal.

Of special interest was the discussion on the potential uses for modern equipment, especially video tapes. Panel members stressed the necessity to guard against extravagant optimism as well as extravagant pessimism for the use of new equipment in processing cases. When feasible, they pointed out, courts should make the optimum use of modern equipment, but at the same time must realize that all equipment has well defined capabilities with definite limitations.

In subsequent issues of *The Third Branch* a summary of the presentations made at this panel will be printed. □

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Alice L. O'Donnell

William E. Foley

#### Co-editors:

Coordinator, Inter-Judicial Affairs  
Federal Judicial Center  
Deputy Director, Administrative  
Office, U.S. Courts



## STATE-FEDERAL NEWS

□ *Georgia.* Chief Justice Carlton Mobley (Sup. Ct. Ga.) in an address to the state bar on the state of the judiciary included the announcement of a State-Federal Judicial Council for the state of Georgia. On the same program Judge Griffin B. Bell (CA-5) addressed the bar on the state of the federal judiciary in Georgia. The dual reports were a "first" in that state. State judges on the council are Chief Justice Mobley, Justice Hiram K. Undercofler, Chief Judge John Sammons Bell, Judge Irwin Stolz, Judge James B. O'Conner, Judge Paul Painter and Judge Taylor Phillips. Representing the federal judiciary on the council are Judge Griffin Bell (CA-5) and Chief Judges Sidney O. Smith, Jr. (N.D. Ga.), J. R. Elliott (M.D. Ga.), and Alex A. Lawrence (S.D. Ga.).

□ *Washington.* Another State-Federal Council has been started in Washington. To formally constitute their council and map out plans, representatives of both courts will meet in early fall. State members are: Chief Justice Orris L. Hamilton, Justice Robert Finley, Chief Judge Charles Harowitz, Chief Judge Ray E. Munson, Judge Ed Nollmeyer, Judge Story Birdseye, Judge William Williams, Judge Gary Utigard, and Phillip Winberry (Court Administrator for the State of Washington). The federal judiciary will be represented by: Judge Frederick G. Hamley (CA-9), Chief Judge William N. Goodwin (E. D.Wn.), Chief Judge William T. Beeks (W.D.Wn.) and Judge Walter T. McGovern (W.D.Wn.).

□ *Wisconsin.* Justice Horace W. Wilkie of the Supreme Court of Wisconsin has reported that the June meeting of the Wisconsin Bar Association featured a panel discussion on "Civil Rights in the Federal and State Courts" (42 U.S.C. 1983). Participating panelists were: Judge John P. Stevens (CA-7), Sverre O. Tinglum, Assistant Attorney General of Wisconsin, and William M. Coffey, a practicing attorney widely experienced in civil rights and criminal matters. The following questions were presented:

1. When does Section 1983 require a federal court to interfere with state proceedings which are either threatened or in progress?
2. What is the effect of a lower federal court decision holding a state law invalid?
3. What are the responsibilities of the state courts on civil rights questions where plaintiffs may alternatively seek relief in the federal courts under 42 U.S.C. 1983?
4. What are the factors to be weighed by plaintiffs in determining whether to seek civil rights relief in federal or state courts?

Justice Wilkie found the panel discussion "a first class opportunity for a real airing of the problems of state-federal court relations in this delicate civil rights area."

A short meeting of the Wisconsin State-Federal Judicial Council was held immediately following the panel discussion and it was decided unanimously that further discussion regarding Section 1983 and civil rights matters in both state and federal courts would be included as part of the program for the 1973 Judicial Conference. □

## GUILTY PLEA PETITION

As a result of an article in the July, 1972 issue of *The Third Branch* about Judge Gus J. Solomon's Petition to Enter Plea of Guilty, several inquiries have been received relating to its use. Judge Solomon has replied individually to these letters and calls, but the increasing number of inquiries has prompted him to prepare a detailed report on the use of the petition. This has been digested and is available upon request to the Center.

Some pertinent parts of the Judge's report are:

"Most defendants in criminal cases are represented by court appointed lawyers. Our active Criminal Justice panel has about 60 lawyers, and they serve for at least one year. The lawyers on this panel have all handled some criminal cases, and most of them have practiced for at least five years. At the time they are appointed, or shortly thereafter, they know that a defendant must sign a petition which must be completed before he enters his plea of guilty.

"Most defendants, when arrested after indictment, are brought before a Magistrate. The Magistrate appoints a lawyer for the defendant, informs him of his rights, and may admit him to bail.

"When the Magistrate appoints a lawyer, the United States Attorney sends the lawyer a copy of the indictment and notifies him of the time and place of arraignment. The United States Attorney also encloses a copy of the Petition to Enter Plea of Guilty and gives advice on how to complete it. He suggests that the Petition be filled out in the defendant's own handwriting before the hearing and that he make sure that the defendant sets forth in section 5 of the Petition the details of the crime committed. This statement shall contain all the essential elements of the crime."

## NEW CLERKS APPOINTED

C.A.-4. William Kenneth Slate, II, of Richmond, Virginia, is the Fourth Circuit's new Clerk of Court, filling the vacancy left by Samuel W. Phillips, now Circuit Executive in the Fourth. Mr. Slate is leaving a state court to serve the federal judiciary but federal service is not new to him; his background also includes a stint as a Special Agent for the Federal Bureau of Investigation. More recently he has been Clerk of the Hustings Court of the City of Richmond.

*(continued on page 7)*



(continued from page 6)

The new Clerk is a graduate of the T. C. Williams School of Law and the University of Richmond; and, he is a member of the Virginia Bar.

*Supreme Court*, Julian S. Garza, Jr., a lawyer who also holds an electrical engineering degree, has been appointed a Deputy Clerk of the Supreme Court of the U.S., commencing his new duties on August 16.

Mr. Garza, 33, comes to the Court from Denver Colorado where he has been attending the University of Denver College of Law on a three-year scholarship granted by the Council of Legal Education Opportunities Institute. He concluded work this summer on both his Law degree and a Master's degree in Judicial Administration. Mr. Garza also is a 1971 graduate of the Institute for Court management in Denver.

Previously, he graduated in 1967 from the University of Utah as an electrical engineering major and has worked in computer programs, experience which should prove helpful as the use of such systems are widened by courts.

Born in McAllen, Texas, Mr. Garza served three years in the U.S. Air Force and is married to the former Ernestine Aragon of Trinidad, Colorado. They have two daughters, Clementina, 9, and Cynthia, 7.



Grand Justice Yueh-Sheng Weng of Taiwan, recent visitor to the F.J.C., is greeted by The Chief Justice.

## MAGISTRATES GET SALARY INCREASE

Since the positions for United States Magistrates were created some four years ago, these officials have served at a salary of \$22,500 for full time work and up to \$11,000 for part time work. Referees in Bankruptcy now are paid \$30,000 per year.

H.R. 7375, signed by the President on Sept. 21, 1972, establishes a new ceiling on the salaries of Magistrates, and full time Magistrates may now receive as much as \$30,000 per year. Also raised were the salaries for part-time magistrates, who may now make up to \$15,000 per year, their exact salary being determined by the type and volume of their work.

## 102nd CONGRESS OF CORRECTION HELD

The 102nd Congress of Correction, sponsored by the American Correctional Association, was held August 20 to 25 at Pittsburgh, Pa. Twelve hundred persons of various professions—all concerned with prisoner rehabilitation—attended the opening session at which Governor of Pennsylvania Milton J. Shapp was guest speaker.

In his presidential address delivered the following morning Maurice H. Sigler, chairman of the U.S. Board of Parole, charged all present with the responsibility of restoring confidence in corrections. In a time of accelerating change corrections personnel also must change, he affirmed, primarily in attitudes toward (1) courts (judicial review); (2) lawyers (corrections agencies should employ legal advisors); (3) the media (reporters should be allowed to see offenders to be better able to separate fact from fiction; and (4) the public (rehabilitation is also their responsibility).

Sigler added that the ACA itself should change its old, prison-oriented philosophy and, in this connection, mentioned that the Association's Reorganization Committee had spent the last 18 months redrafting a new constitution. The ACA, in conjunction with the courts, lawyers, and media, can make corrections the strong service it should be, he concluded. □

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## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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\* Vacancy — caused by resignation of Judge Frank M. Coffin who became Chief Judge of the First Circuit Aug. 28, 1972. [Under the Act creating the F.J.C. no member of the Judicial Conference may serve on the Board.]



# A.O. - F.J.C. - CALENDAR

- Sept. 22** Federal Judicial Center Board Meeting, Dolley Madison House, Washington, D.C.
- Sept. 22-23** Civil Rules Committee, AO, Washington, D.C.
- Sept. 25-27** Central States Regional Institute for U.S. Probation Officers, Western Hills Lodge, Wagoner, Okla.
- Oct. 2-3** Fifth Transferee Judges meeting, Multidistrict Litigation Panel, New Orleans, La.
- Oct. 2-6** Seminar for Newly Appointed Referees in Bankruptcy, F.J.C., Washington, D.C.
- Oct. 6-7** Judicial Conference Standing Committee on Rules of Practice and Procedure, A.O., Washington, D.C.
- Oct. 10-13** Seminar for United States Magistrates, F.J.C., Washington, D.C.
- Oct. 14-15** Seminar for Federal Court Reporters, Chicago, Ill.
- Oct. 15-20** Refresher Course for U.S. Probation Officers, Chicago, Ill.
- Oct. 19-21** Refresher Course for Referees in Bankruptcy, South Bend, Ill.
- Oct. 23-28** Seminar for Circuit Executives, F.J.C., Washington, D.C.
- Oct. 26-27** Judicial Conference of the United States, Supreme Court Building, Washington, D.C.
- Oct. 27-28** National Bankruptcy Conference, A.O., Washington, D.C.
- Oct. 30-Nov. 3** Orientation Course for U.S. Probation Officers, F.J.C., Washington, D.C.
- Nov. 9-10** Refresher Course for Referees in Bankruptcy, New York, N.Y.
- Nov. 13-17** Refresher Course for U.S. Probation Officers, Chicago, Ill.
- Nov. 16-18** Seminar for Secretaries to District Judges, F.J.C., Washington, D.C.
- Nov. 27-30** Appellate Judges Seminar F. J. C. Washington, D.C.
- Dec. 11-14** Seminar for Federal Public Defenders, F.J.C.
- Jan. 11-13, 1973** Sentencing Institute, First and Second Circuits. Crotonville, N.Y.

# PERSONNEL

## *Federal Judges*

### *Confirmation*

**Cynthia Holcolm Hall**, Judge, U.S. Tax Court, Aug. 18

### *Nomination*

**Hernan G. Pesquera**, U.S. District Judge, Dist. P.R., Sept. 5

**Frederick Pierce Lively**, U.S. Court of Appeals, CA-6, Sept. 12

**Joseph L. Tauro**, U.S. District Judge, Dist. Mass., Sept. 12

### *Death*

**Alfred D. Barksdale**, U.S. Senior District Judge, W.D. Va., Aug. 16

## *Supporting Personnel*

### *Appointments*

**Dudley H. Bowen**, U.S. Referee in Bankruptcy, S.D. Ga., Sept. 1

**Allen L. Chancey, Jr.**, U.S. Magistrate, N.D. Ga., Aug. 11

**Clayton T. Godfrey**, U.S. Probation Officer, M.D. Fla., Sept. 11

**Paul E. Jennings**, U.S. Referee in Bankruptcy, M.D. Tenn., Sept. 1

**Harold Lavien**, U.S. Referee in Bankruptcy, M.D. Tenn., Aug. 21

**Garnet W. Taylor**, U.S. Referee in Bankruptcy, E.D. Mo., Sept. 1

### *Promotion*

**Hugh E. Kline**, Clerk, U.S. District Court, Dist. of Col., Aug. 21

### *Retirement*

**John M. Bates**, U.S. Referee in Bankruptcy, M.D. Tenn., Aug. 31

### *Death*

**Herbert R. Maulitz**, U.S. Referee in Bankruptcy, N.D. Ala., Sept. 8

**John C. Airhart**, Asst. Director Administrative Office, 1958-1964, Sept. 18

## *THE THIRD BRANCH*

VOLUME 4, NO. 9 SEPTEMBER 1972

THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE

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UNITED STATES COURTS



# The Third Branch

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## *A Bulletin of the Federal Courts*



Vol. 4, No. 10

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

Oct. 1972

## **Circuit Revision Commission Authorized**

With the passage of Public Law 92-489, signed by the President on October 13, 1972, a Commission is established to study the federal appellate court system, and to report to the President, the Congress and the Chief Justice its recommendations. The thrust of the Act is set forth below.

*Purpose:* The purpose is twofold: (1) to study the present division of the federal circuits with a view to recommending boundary changes "appropriate for the expeditious and effective disposition of judicial business," and (2) to study the structure and internal procedures of the federal courts of appeals and recommend changes "as may be appropriate for the expeditious and effective disposition of the caseload of the federal courts of appeals, consistent with fundamental concepts of fairness and due process."

*Composition of the Commission* — 16 members:

4 members appointed by the President of the United States

4 members of the Senate appointed by the President pro tempore of the Senate

4 members of the House of Representatives appointed by the Speaker of the House

4 members appointed by the Chief Justice of the United States

*Operation:* The Commission members are to elect their own Chairman and Vice Chairman from among their membership. Nine members constitute a quorum; as few as three may conduct hearings. The Commission may appoint an Executive Director and the Director may in turn appoint necessary personnel. The Administrative Office of the U.S. Courts is to "provide administrative services, including financial and budgeting," and the Federal Judicial Center is to "provide necessary research services."

*Authority:* The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance necessary.

*Timing:* The report on the circuits' geographical boundaries is to be completed within 180 days, the polling of time to begin when the ninth member is appointed (a quorum). The report on the structure and internal procedures of the courts of appeals is due within 15 months of the date the ninth member of the Commission is appointed.

*Funding:* An amount of not more than \$270,000 is appropriated to the Commission to complete its task.

## **Supreme Court Opens Oct. Term — 1972**

The Supreme Court of the United States began its first sessions of the 1972-73 term this month in a newly refurbished courtroom and a heavy docket of cases.

After the ceremonial opening on the first Monday in October, as required by law, the Court settled down to consideration of hundreds of cases — petitions for writs of certiorari, appeals, motions — a massive workload accumulated since their adjournment last June.

Oral argument scheduled by the court months ago commenced October 10th, and from now until their 1973 adjournment date the Court will consider a variety of important issues, including the effect of the expediting Act in antitrust actions, First Amendment cases (obscenity, TV broadcasters' refusal to sell advertising time for controversial issues), state statutes (abortion), school cases (segregation, bussing, taxes), and a new question on patent law (are computer software programs patentable?).

Filings during the summer months indicate the record number of 4533 cases last term will bring the high court's docket to an even higher number this term. ■

## **Judge Carl Rubin's Trial Notebook**

*Having heard of Judge Carl Rubin's orderly preparations for trial, we made inquiry of the Judge. We are indebted to Judge Rubin and his Secretary, Ms. Margaret Hock, for the following description of his administrative technique.*

There is one thing that all litigation files have in common. They generate an enormous amount of paper. Filings induce counter filings until the proliferation resembles rabbits placed in close proximity to each other. For purposes of trial few of the documents are necessary and an attempt to find them while a trial is in progress is sheer insanity. In self defense I have developed a technique that might be worth passing on. There are legal size 14½ inch by 8½ inch looseleaf binders. Legal documents make 8½ inch by 11 inch binders almost useless. Either papers will hang out in an unsightly fashion or they are folded into an unmanageable mess. Through trial and

*(continued on page 4)*



## Third Circuit Conference

Cherry Hill, New Jersey, was the site chosen this year for the Third Circuit Conference. A different format was used for this conference, with discussion leaders engaging in spirited colloquy. Participants on the first day were all judges, while the second day involved both judges and lawyers. Conference Chairman was Judge Arlin M. Adams. Mr. Justice Brennan, Circuit Justice for the Third, was in attendance, and Whitney North Seymour, Sr., of New York City, was the banquet speaker. Representing the Administrative Office was Director Rowland F. Kirks.

### Judge John J. Gibbons Speaks on "Granting Bail for State Prisoners"

Addressing himself to the existing "confusion over the powers of the district courts with respect to bail for state prisoners," Judge John J. Gibbons (CA-3) presented to the Judges' Session of the Conference a historically traced, case-substantiated report bringing to light the scope of the problem and the existing applicable law.

The Judge began by posing five hypothetical situations in which a federal judge could be called on to deal with a state prisoner petitioning for release. The five situations raise such problems as: denials of bail or excessive bail by the state court, custody while a hearing on a habeas corpus petition is pending, prisoner custody by state while appealing prisoner's release by a federal court habeas decision, etc.

Presently, basic definitions and existing rules when not strictly interpreted can muddle the issue under consideration.

States Judge Gibbons, "One source of confusion in all of these situations is the use of the word 'bail.' Frequently we have seen briefs addressed to the standards for release and for bail set forth in 18 U.S.C. Sec. 3141-3152, and Rule 46, Fed. R. Crim. Proc. These provisions, and the cases construing them, are simply irrelevant to the release by federal courts of state prisoners. They deal solely with federal criminal proceedings. The release of state prisoners will always be as a result of an order in a civil proceeding.

Likewise, Rule 46 (a) (2), Fed. R. Crim. Proc., and 18 U.S.C. Sec. 3148, governing bail pending appeal, are applicable only to federal criminal proceedings, and provide neither authority nor standards for bail pending appeal in habeas corpus cases.

The only authorities for release of a state prisoner are the habeas corpus statute, 28 U.S.C. Sec. 2241 et seq., and possibly in some cases, the Civil Rights Act 28 U.S.C. Sec. 1343, 42 U.S.C. Sec. 1983 et seq. Thus 'bail' which has a criminal connotation, is a misnomer."

Discussing the state prisoner who petitions the federal court for relief, based on the denial of bail or

excessive bail, the Judge points out that there is still unresolved, at the Supreme Court level, a substantive law issue — whether the Eighth Amendment prohibitions against requiring excessive bail is binding on the states. Though parts of the Eighth Amendment have been applied to the states, the Supreme Court has not expressly ruled on this issue. In the Circuits dicta indicates the appellate courts feel the Eighth Amendment would be applicable to the states in such instances.

The report discusses the issues of: "Comity"; the exercise of federal jurisdiction in taking custody; the proper holder of the bond or surety as well as the amount of surety while the habeas proceeding is pending; and the availability to the state of review of a granted Habeas Writ by mandamus proceedings in the U.S. Circuit Court.

Judge Gibbons' carefully drafted and well cited report gives an in depth, comprehensive examination of the problems attending this area of the law which has become a topic of increasing discussion for the ever-growing number of state-federal councils.

Copies of the full text of Judge Gibbons' remarks can be obtained by contacting the Center. ■

## N. I. J.

### Commissioners Named

ABA President Robert W. Meserve announced last month the establishment of a 22-member commission to draw up plans for a National Institute of Justice with Charles S. Rhyne, Washington attorney, as chairman. In addition to lawyers and judges, the group brings together representatives of business, labor and civic groups — generally a cross section of all disciplines and professions.

The proposed institute, as outlined in previous announcements would "provide for the field of law and justice the kind of centralized direction and funding now supporting research and development in the physical sciences and medicine through the National Science Foundation and the National Institutes of Health."

Initial plans call for a Washington based conference of 100 (December 6-8, 1972), to further discuss the concept, with a larger conference to follow in the spring of 1973.

### Keenan and Willetts Join Probation Division Staff

Michael J. Keenan, U.S. probation officer at Cleveland, Ohio, and Guy Willetts, U.S. probation officer at Raleigh, N.C., have been appointed assistants to the chief of probation in the Administrative Office. Keenan began his Washington assignment on October 2. The date of Willetts' entrance on duty is October 16.

A graduate of the University of Notre Dame with a



master's degree in correctional administration from that University, Keenan served for 3 years as an adult probation officer with the Lucas County Court of Common Pleas, Toledo, Ohio, before joining the Federal probation system in 1964. For the past 2 years he has been a part-time instructor in the Department of Sociology at Notre Dame College, South Euclid, Ohio.

Willetts graduated from East Carolina University and received a master's degree in social work from the University of North Carolina. Prior to becoming a Federal probation officer in 1966 he worked as a caseworker with the New Hanover County Welfare Department and as a community services consultant with the North Carolina State Department of Social Services. He served recently as regional vice president of the Mid-Atlantic States for the Federal Probation Officers Association. ■

## David Gould Joins Center Staff

A new member of the FJC staff is David J. Gould, who is serving as Special Assistant to Deputy Director Richard A. Green. Mr. Gould, 29, is assisting in the internal management of the Center, in planning and program development, and in carrying out some specific projects.

Born in New York, Mr. Gould was raised in New Jersey and educated at Harvard College, where he received a B.A. in Romance Languages and Literature. Selected as a Root-Tilden Scholar at the New York University School of Law from the Third Circuit, Mr. Gould took his J.D. and Ph.D. in Public Administration at N.Y.U. He formerly served as a broadcasting trainee at the German Service of the Voice of America, legal assistant in a New York City poverty agency, Junior Fellow at the N.Y.U. Center for International Studies, Assistant Professor of Political Science at California State University, Chico, and, most recently, Visiting Professor and Advisor at the Venezuelan National School of Public Administration in Caracas. Mr. Gould has contributed articles to several journals and is the co-author of *Multinational Cooperation: Economic, Social and Scientific Development* and *Papers on National Security Policy*. ■

### THE THIRD BRANCH

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Alice L. O'Donnell

William E. Foley

#### Co-editors:

Coordinator, Inter-Judicial Affairs  
Federal Judicial Center  
Deputy Director, Administrative  
Office, U.S. Courts

## For Your Information . . .

Current judicial administration material available at the FJC Information Service office.

Mrs. Sue Welsh, Information Specialist

The following are selected publications which may be of interest to readers of *The Third Branch*.

The American Courthouse; planning and design for the judicial process. Product study of Ann. Bar Ass'n/Ann. Inst. of Architects. Fall 1972. (\$30) Order from: Book Dept., Inst. Continuing Ed., Hutchins Hall, Ann Arbor, Mich. 48104.

Analysis of methods of judicial selection and tenure. 6 Suffolk U.L. Rev. 955, Summer 1972.

Architectural and electronic innovations for improving courthouse administrative efficiency. 6 Suffolk U.L. Rev. 989, Summer 1972.

Articles and reports: a symposium (Court of Tomorrow). 12 Jurimetrics J. 193, June 1972.

Computers, data banks and individual privacy: an overview. A.R. Miller. 4 Colum. Human Rights L. Rev. 1, Winter 1972.

The conception, the labor and the birth of the National Center for State Courts. Gerald C. Snyder. 56 Judicature 17, June-July 1972.

Developmental syndromes in judicial management. J.A. Gazell. 38 Brooklyn L. Rev. 587, Winter 1972.

An experiment in the use of court statistics. Pasqual A. DonVito. 56 Judicature 56, Aug-Sept. 1972.

Implementation story - Where we must go. Tom C. Clark. 55 Judicature 383, May 1972.

"In order to establish justice" - the Federal Magistrates Act. Richard W. Peterson. 56 Judicature 29, June-July 1972.

In quest of speedy justice. J.N. Mitchell. 24 U. of Fla. L. Rev. 230, Winter 1972.

Judicial reform: A symposium. 23 U. of Fla. L. Rev. 217, Winter 1971.

Justice and workability: *un essai*. F.M. Coffin. 5 Suffolk U.L. Rev. 567, Winter 1971 (Pt. 2)

Lawlessness in sentencing. M.E. Frankel. 41 U. of Cinn. L. Rev. 1, 1972.



error I have found that interior indexes can divide the book into usable sections. At the present I use eight tabs identified as: Pleadings, Plaintiff's Trial Brief, Defendant's Trial Brief, Final Pretrial Order, Stipulations and Witness List, Exhibit Lists and Depositions, Trial Notes and Findings.

Several days prior to trial I remove from the litigation jacket the documents that I need. Complaint or Amended Complaint and Answer or Amended Answer are about all of the pleadings required. Trial briefs are usually filed near the time of trial directly with the Court. They are available for ready reference in the notebook. The final Pretrial Order usually contains stipulations and a list of exhibits attached to it. These are separated for ease of handling. With great frequency I have found that the listing of exhibits in the note book stops disputes and hastens the trial. I rule on objections to deposition questions in advance by filling out a simple form which identifies the objection by page and line and the action that I take. I put a copy of it in the trial notebook in the event counsel wish to be heard. Prepunched legal pads enable me to keep trial notes in the book together with notes of pretrial and settlement conferences. If the matter involves a jury trial, I can disassemble the notebook when it is over and have it available for the next case. If the trial is to the Court, the notebook remains intact until Findings of Fact and Conclusions of Law are completed. The trial notebook is portable and can be used as the basis for writing an opinion and findings away from Court chambers without transporting enormous files. It is also a handy place to keep law clerks' memoranda, applicable slip opinions, and important items of evidence. Prepunched transparent plastic containers are useful for these purposes.

The chief advantage of a trial notebook is to keep in one compact place those documents which are necessary for trial and useful in controlling its progress.

There is a temptation to have a law clerk prepare the trial notebook. Resist that temptation. The short time it takes to put the notebook together provides an excellent review of the file and frequently recalls to mind troubling questions that you had intended to research and didn't.

I admit to being a chronic paper misplacer. For those trial judges with a similar problem, I strongly commend this technique. ■

## Video Technology

In last month's issue of *The Third Branch* we reported the participation of Judge Joseph F. Weis, Jr. (W.D. Pa.) and FJC's Joseph Ebersole in a panel discussion on "Uses of Video Tehnology" at the annual ABA meeting and said that *The Third Branch* would feature a series of articles on the topics covered at

this panel. This is the first article in the series and covers the experience of Judge Weis in the use of videotape equipment provided for the Western District of Pennsylvania by the Federal Judicial Center. For the past year the equipment has been used to record depositions for use in civil trials where a witness was unable to be present for a scheduled trial. During the panel discussions Weis, J. noted that until recently the only substitute the law has developed for the presence of a live witness was the stenographically recorded deposition. Lawyers object to the cold record because it does not reveal the witness' personal appearance and his manner of answering questions. The development of videotape and inexpensive equipment to utilize it offers an attractive alternative to the written deposition and may eventually change the conduct of trials and the places where they are conducted to something far different from that we have been using in the past few hundred years.

Depositions have now been videotaped in over thirty cases in the Western District of Pennsylvania. As of September 1972, Judge Weis had presided over four trials in which these were used. Three were jury trials and the other a non-jury proceeding. In each the deposed witnesses were physicians who were unavailable for the trial for varying reasons.

The first case provided a dramatic example of the difference between the traditional court reporter question and answer testimony and an audio-visual presentation. The case actually was tried twice. The first trial which used the stenographically recorded deposition of several out-of-town physicians ended in a hung jury. The attorneys subsequently arranged to take videotaped depositions of the physicians and these were used at the second trial. It was not possible to say if the first trial might have ended differently had video been used, but the second jury did come to a decision. Judge Weis found that in comparison with the dry reading of the deposition, the videotape, which revealed the idiosyncrasies and personalities of the witnesses and the mannerisms and methods of explaining things, added much more interest and created lasting impressions.

In the non-jury proceeding, Judge Weis again reported that the difference between reading a cold page of testimony and seeing the witness was startling. The videotape affected his "... reactions to certain points in the testimony of these doctors differently than those which were present after simply reading the depositions."

While videotape was used for physicians in the aforementioned trials, Judge Weis had another case which illustrates the versatility of the process. This litigation was for breach of contract and involved disputes over sales of sugar and cotton futures. The individual defendant, who was really the only person who had any knowledge of the tangled transactions, became ill and was left with a serious nervous and

(continued on page 5)



### THE CHIEF JUSTICE

Because of the demands on the Chief Justice's time this month in connection with the annual meeting of the Judicial Conference of the United States, as well as the opening of the October 1972 Term, *The Third Branch* will be unable to publish the regular monthly "Message from the Chief Justice"

## Judicial Conference of the United States

The Judicial Conference of the United States held its annual meeting in Washington, D.C. on October 26th and 27th. The agenda of the Conference was exceptionally large consisting of important matters of legislation, court organization and judicial administration as well as many routine items. Reports were made by 14 committees of the Conference.

Action taken by the Conference will be set out fully in the report of the Chief Justice which is required by law to be submitted to the Congress, the Attorney General and to all federal judges. The following are the principal items of Conference action of immediate interest to judges and officers in the judicial system:

(1) Recommended the creation of 11 additional judgeships in the United States Courts of Appeals and 51 new judgeships in the United States District Courts.

(2) Cleared for transmission to the Supreme Court a comprehensive new set of rules governing procedures in ordinary straight bankruptcy cases and under the debtor relief provisions of Chapter XIII of the Bankruptcy Act.

(3) Cleared for transmission to the Supreme Court certain amendments to the Federal Rules of Criminal Procedure.

(4) Approved the conversion of 13 part-time magistrate positions from part-time to full-time status and approved salary increases, based on increased workload, for part-time magistrates at 41 court locations, subject to the availability of funds.

(5) Approved standards for auxiliary courtroom facilities providing for District Courts:

a. 1,600 square feet of space to be allocated by each judge for himself, secretary and law clerks; and

b. 1,300 square feet for adjunct facilities including jury deliberation room, holding cell for defendants in custody, witness room, and such other facilities to be allocated at the discretion of the judge for conference or robing room, attorneys' conference room, minute clerk's office, court reporter's room, exhibit and storage areas or other court use.

c. Approved the following standards relating to new courthouse construction:

Resolved, that it is the sense of the Conference that courtrooms for United States Dis-

trict Courts in courthouses hereafter constructed should range from a minimum of 28' x 40' (1120 square feet) to 34' x 44' (1496 square feet) and, where need is demonstrated on the basis of projected caseloads, one or more larger courtrooms for special needs including multi-party cases, and ceremonial purposes; and that in the planning of future construction the Judicial Councils of the Circuits shall fix the number of such courtrooms after consultation with the District Judges.

It is further resolved to be the sense of the Judicial Conference that, in adapting existing space to courtroom use, General Services Administration should apply practical standards on a case by case basis so as to make the best use of available space.

(6) Voted to request appropriated funds for 340 additional probation officer positions.

(7) Approved the adoption of an integrated policy aimed at improving court reporter services in the federal judicial system including the adoption of (a) a certification process for all reporter personnel; (b) production standards; and (c) a plan for the supervision, assignment and accountability of reporters.

(8) Authorized the distribution of the Judicial Center-developed "Guidelines for Improving Juror Utilization in the United States District Courts."

(9) To assure sufficient time for proper preparation of budget estimates and to facilitate Conference consideration of proposals submitted for its consideration, a schedule has been developed requiring the filing of Judicial Conference committee reports on or before August 10th in those instances where committee recommendations will require funding.

(10) The Spring 1973 session of the Judicial Conference will be held on April 5-6, 1973 and the Fall session will be held September 13-14, 1973. ■

### VIDEO (continued from page 4)

emotional problem. His doctor advised the man could testify for only an hour at a time, that he would require about a half hour's rest thereafter, and that he would not be able to testify for more than a half day at a time. This witness' testimony would require several full days to complete direct and cross-examination even under normal circumstances. The witness required at times that questions, even the simplest ones, be written out so he could understand them better. There was no reason to doubt that the defendant's difficulties were legitimate and that his testimony would be lengthy and would greatly prolong the trial. Defense counsel advised at the pretrial conference that he was not satisfied to use the discovery depositions.

To shorten this trial without doing harm to the defendant's cause, an order was entered requiring that the defendant's testimony be videotaped so that his

(continued on page 7)



## Letters Rogatory

The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters has been ratified by the United States, with the advice and consent of the Senate. The Convention, having been ratified by three countries, became effective on October 7, 1972. At the time of this writing, four countries have ratified the Convention: United States, France, Denmark, and Norway. The Convention will provide for a more efficient and effective procedure for the rendering of international judicial assistance. Each country will appoint a central authority which will be responsible for channeling letters of request or letters rogatory received from another country to the appropriate court and through which the executed letter will be returned. The Department of Justice will act in this capacity for the United States. Other provisions of the convention deal with translation and acceptable languages, and fees. Of particular interest is the provision that the country requesting the assistance of the judicial authorities of another country may specify the procedure to be used. Thus, a common law country such as the United States may be requested to provide evidence in the form used by the civil law countries. The Office of the General Counsel of the Administrative Office of the United States Courts can provide further information with respect to specific matters arising under this Convention, or other conventions or treaties concerning judicial matters.

### WILLIAM E. DAVIS NEW CHIEF DIV. OF INFORMATION SYSTEMS

On September 19, 1972, William E. Davis was appointed Chief of the Division of Information Systems in the Administrative Office. He is a graduate of St. Louis University and holds a master's degree from the Wharton Graduate School, University of Pennsylvania.



William E. Davis

Mr. Davis will replace Paul C. Bender who left the post in August to become Secretary of the Atomic Energy Commission.

Davis served in the U.S. Army from 1942 to 1965 rising through the ranks from private to colonel. Upon retirement he joined the Executive Office of the President in the Bureau of the Budget and in 1967 transferred to the Office of the Assistant Secretary of the Army (Financial Management) which office he left to accept his A.O. assignment.

Announcing his appointment, Director Kirks said, "Mr. Davis brings with him a fine record of public service, administrative and management experience. We are most fortunate to have him join us in the Administrative Office."

## Legislation

### BILLS SENT THE PRESIDENT

**Marine Mammals Commission.** H.R. 10420, to protect marine mammals, to establish a Marine Mammal Commission, and for other purposes. As passed, the bill contains provisions relating to civil penalties and criminal penalties of up to \$20,000 and/or one year imprisonment and forfeiture of cargoes.

H.R. 14731, to provide for the more effective enforcement of the laws prohibiting shooting at birds, fish and other animals from aircraft.

**Protection of Foreign Officials and Guests.** H.R. 15883, to amend title 18, United States Code, to provide for expanded protection of foreign officials and for other purposes (including protection of "official guests").

**Motor Vehicle Manufacturers Competition.** S. 976, to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes. The act provides for judicial review in instances where any person is adversely affected by regulations, and for private suits by individuals who sustain damages as a result of an automobile accident caused by failure of the vehicle to comply with safety standards.

**Consumer Legislation.** S. 3419, the Consumer Product Safety Act, to protect consumers against unreasonable risk of injuries from hazardous products, which provides for suits by individual consumers in federal courts subject to the requirements of 28 U.S.C. § 1331. S. 3970, which would have established a council of consumer advisers in the Executive Office of the President, and an independent consumer protection agency, and authorized a program of grants to protect and serve the interests of consumers, failed of enactment in the Senate.

H.R. 12186, to strengthen the penalties imposed for violation of the Bald Eagle Protection Act.

S. 3358, to prohibit the use of certain small (Canadian) vessels in United States fisheries.

H.R. 13895, to provide for the reclassification of positions of deputy U.S. marshals.

S. 216, to permit suits to be brought against the United States to adjudicate disputed land titles.

**Appropriations** H.R. 14989, making appropriations for the Departments of State, Justice, Commerce, and the Judiciary, for fiscal 1973, and H.R. 17034, Supplemental Appropriations for F.Y. 1973.

### Other Congressional Action

**Importation of Pre-Columbian Sculpture & Murals.** H.R. 9463, to prohibit the importation into the United States of certain pre-Columbian monumental or architectural sculpture or murals exported contrary to the laws of the countries of origin and for other purposes. The Conference report recommends acceptance of the Senate amendments (with technical changes) which deal with customs port security measures and judicial review for domestic manufacturers in countervailing duty cases.

H.R. 13915, Equal Educational Opportunities Act (the antibusing bill), has failed of enactment in the Senate.

The House Committee on Post Office and Civil Service favorably reported H.R. 15975 to authorize the payment of increased annuities to secretaries of justices and judges of the United States (H. Rept. 92-1571).

### ENACTMENTS

H.R. 2589, requiring Federal court juror qualification forms to request race and occupation of prospective jurors was signed by the President on September 29, 1972 (P.L. 92-437).

H.R. 9222, an Act to correct deficiencies in the law relating to the crimes of counterfeiting and forgery, signed on September 28, 1972 (P.L. 92-430).

H.R. 9323, to amend the Narcotic Addict Rehabilitation Act of 1966 (authorizing methadone maintenance in the treatment of addicts), and for other purposes, September 16, 1972. P.L. 92-420.

**Single Convention on Narcotic Drugs.** The Senate agreed to the resolution of ratification of the protocol to amend the Single convention on Narcotic Drugs.

The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (The "Montreal Convention"). The motion for ratification was agreed to by the Senate on October 3.

**Revision of Judicial Circuits.** H.R. 7378, to establish a Commission on Revision of the Judicial Circuits of the United States, was signed by the President on October 13, 1972. (P.L. 92-489). (See p. 1.)



## BILLS INTRODUCED

H.R. 16695 to amend section 98 of title 28, U.S.C. to place Tangupahoa Parrish in the Middle District of Louisiana (by Representatives Rarick, Hebert, Boggs, Passmar, Waggoner, Longoka, and Raffrey), and referred to the Judiciary Committee.

H.R. 16677 to reduce street crime in the U.S. by substantially increasing police manpower and by providing emergency narcotics treatment in areas designated as high narcotics-related crime areas. (By Representative Reid, referred to the Judiciary Committee)

S. 4014, to amend the antitrust laws of the U.S. and for other purposes. (By Senators Tunney and Gurney; referred to the Judiciary Committee)

S. 4051 (Senator Hruska, by request; and referred to the Judiciary Committee) "To amend section 101 and 902 of the Federal Aviation Act of 1958 and chapter 2, title 18 U.S.C. to implement the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and for other purposes." The bill is an Administration measure designed to implement the "Montreal Convention" signed on September 23, 1972 and forwarded to the Senate for its advice and consent. This convention is a companion measure to the Hague Convention of aircraft hijackers and deals with individuals who commit related acts of terrorism against, or on board, aircraft.

H.R. 16632 (Representative Badillo) to amend title 18 U.S.C., to provide rules for the treatment of persons in Federal correctional institutions.

H. Res. 118, a resolution to authorize the House Judiciary Committee to conduct an investigation and study of Federal grand jury practices. (By Mr. Dow; referred to the Committee on Rules.)

S. 3882 to amend the Communications Act of 1934, as amended with respect to penalties and forfeitures. (Senator Magnuson by request; referred to the Committee on Commerce.)

S. 3993 (Senator Burdick) to establish the Parole Commission, and for other purposes.

S. 895. A bill to guarantee speedy trial in federal courts; favorably reported to the Judiciary Committee from the Subcommittee on Constitutional Rights, after two year study. Bill redrafted and reintroduced Oct. 12, 1972 by Sen. Ervin.

S. 4106. A bill to establish a temporary commission to evaluate the development of automatic data processing systems for legal and legislative research and analysis and related areas and other purposes. (By Sen. Mathias; also on the bill: Senators Magnuson, Mansfield, Stafford, Stevenson, Taft, Thurmond and Williams.)

The Senate has passed S. 750 to provide for the compensation of persons injured by certain criminal acts, to make grants to states for the payment of such compensation, and for other purposes. Subsequently, during consideration of H.R. 8389, a House-passed bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide for the development and operation of treatment programs for certain drug abusers who are confined to or released from correctional institutions and facilities, the provisions of S. 750, were added to the bill, together with the provisions of S. 33, establishing a contributing group life, accidental death and dismemberment program for state and local public safety officers, S. 2087, authorizing a non-contributing death and dismemberment benefit for public safety officers in those situations where the death or dismemberment occurs in the line of duty as the result of a crime, and S. 16, providing expanded civil remedies for the victims of certain types of organized crime, or theft activity. The Bill, H.R. 8389, now including all of these additional provisions, has been returned to the House which has disagreed to the amendments of the Senate and requested a conference. However, conferees have not yet been appointed. H.R. 16932, (a companion bill to S. 2087), to amend the Omnibus Crime Control and Safe Streets Act of 1968 as amended, to provide benefits to survivors of certain public safety officers who died in the performance of duty was passed by the House with Committee amendments, after which the House passed S. 2087, amended to conform to H.R. 16932, as passed. (H. Rept. 92-1542) The bill, S. 2087, now is in Conference.

H.R. 45, to establish an Institute for Continuing Studies of Juvenile Justice, was approved September 13, for full Senate Judiciary Committee action.

S. 3885 and S. 3886, hearings held by Subcommittee on Compensation and Employment Benefits of Committee on Post Office and Civil Service, September 13, 1972.

S. 3452, to amend the Trademark Act to extend the time for filing oppositions, to eliminate the requirement for filing reasons of appeal in the Patent Office and to provide for awarding attorneys fees. (S. Report 92-1149) Passed the Senate on September 19.

H.R. 16191 and S. 2280, to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended to implement the Convention for the Suppression of Unlawful Seizure of Aircraft; to amend title XI of such act to authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Convention for Suppression of the Unlawful Seizure of Aircraft; and to authorize the Secretary of Transportation to suspend the operating authority of foreign air carriers under certain circumstances. (This bill would implement the Hague Convention.) Passed House October 2. A similar bill passed by the Senate, S. 1180, was then taken up and passed, after amending the bill to conform to the text of the House-passed bill. The Conference report has been filed.

### VIDEO—(continued from page 5)

condition would not be exacerbated but yet allowing the trial to proceed much faster. The attorneys were to schedule the videotaping sessions at convenient times and present it all on one occasion during the trial. Like so many cases that lawyers talk about, however, this one was settled before the testimony commenced. The fact situation, however, does show what a tremendous time saver the use of video would have been to the court.

In future issues of *The Third Branch* topics of discussion will include further uses of videotape in both the civil and criminal sectors, necessary standards for quality, integrity, and storage, and the National Center for State Courts' demonstration project on video support in criminal courts.

## John C. Airhart Mourned

John C. Airhart, who served as Assistant Director of the Administrative Office of the United States Courts from 1958 to 1964, died on September 18 after a long illness. Mr. Airhart had a wide acquaintance with judges and court personnel in all parts of the country. One of his best known achievements while serving with the Administrative Office was the development of the Judicial Salary Plan. In the words of former director, Warren Olney III, "He conceived the idea, developed it and, with Conference approval, applied it successfully to the permanent betterment of the supporting personnel of the federal judiciary."

Mr. Airhart, who devoted his entire career to the federal service, starting as a messenger in the 1930s, had risen to the highest classification in the federal service when illness forced his retirement in 1969 as Deputy Assistant Secretary of Defense. Before joining the Administrative Office, Mr. Airhart served for five years as Administrative Officer of the Criminal Division of the Department of Justice and before that time was associated with the Reconstruction Finance Corporation. His devotion to the public service is reflected in Mr. Olney's statement that public service was almost a religious calling with him and at the end of his life he considered himself most fortunate that he had been able to spend his entire career in the service of the United States. In paying tribute to Mr. Airhart, Mr. Olney said: "He was a true public servant and the country is better for his many friends, both in and out of the judiciary, and he will be sadly missed."



## PERSONNEL

### *Federal Judges*

#### *Appointments*

**Levin H. Campbell**, U.S. Circuit Judge, 1st Cir., Aug. 31  
**Robert L. Carter**, U.S. District Judge, S.D.N.Y., Sept. 28  
**Thomas P. Griesa**, U.S. District Judge, S.D.N.Y., Sept. 22  
**Whitman Knapp**, U.S. District Judge, S.D.N.Y., Sept. 20  
**Charles E. Stewart**, U.S. District Judge, S.D.N.Y., Oct. 6

#### *Confirmations*

**Kevin Thomas Duffy**, U.S. District Judge, S.D.N.Y., Oct. 12  
**Frank H. Freedman**, U.S. District Judge, Dist. Mass., Oct. 12  
**Frederick Pierce Lively**, U.S. Circuit Judge, 6th Cir., Oct. 3  
**Hernan G. Pesquera**, U.S. District Judge, Dist. P.R., Oct. 12  
**Joseph L. Tauro**, U.S. District Judge, Dist. Mass., Oct. 12  
**James C. Turk**, U.S. District Judge, W.D.Va., Oct. 12  
**Robert J. Ward**, U.S. District Judge, S.D.N.Y., Oct. 12  
**H. Emory Widener, Jr.**, U.S. Circuit Judge, 4th Cir., Oct. 12  
**Darrell D. Wiles**, Judge, U.S. Tax Court, Sept. 25

#### *Death*

**Edward C. McLean**, U.S. District Judge, S.D.N.Y., Oct. 12

### *Supporting Personnel*

#### *Appointments*

**William Edward Bayles**, U.S. Probation Officer, N.D. Ohio, Oct. 2  
**Arthur Carrington**, U.S. Probation Officer, Dist. of Col., Sept. 25  
**J. Bruce Chambers**, U.S. Probation Officer, E.D. Ill., Sept. 5  
**José M. Dechoudens**, U.S. Probation Officer, Dist. of P.R., Oct. 10  
**Ernest J. Flowers**, U.S. Referee in Bankruptcy, N.D. Texas, Sept. 1  
**Henry R. Hanssen**, Clerk, U.S. District Court, E.D. Mich., Oct. 2  
**Marie Henderson**, U.S. Probation Officer, N.D. Calif., Oct. 2  
**Edward A. Infante**, U.S. Magistrate, S.D. Calif., Sept. 6  
**Harold Lavien**, U.S. Referee in Bankruptcy, Dist. Mass., Aug. 21  
**Dennis R. Mathews** Clerk, U. S. Court of Appeals, 9th Cir., Aug. 28  
**William D. Rund**, Clerk, U. S. District Court, E.D. Mo., Sept. 1  
**Kent Sandidge, III**, U. S. Magistrate, M.D. Tenn., Sept. 1  
**William K. Slate, II**, U. S. District Court, E.D.N.C., Oct. 2  
**John R. Whitty**, Clerk, U.S. District Court, Oct. 2

### *THE THIRD BRANCH*

VOL. 4, NO. 10 OCTOBER 1972

## THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

#### *Promotions*

**James A. Fetzner**, Chief Probation Officer, Dist. Conn., Oct. 1  
**Hugh E. Kline**, Clerk, U.S. Court of Appeals, D.C. Cir., Aug. 21  
**Marlin L. Kohr**, Supervising Probation Officer, C.D. Calif., Oct. 2  
**Francis Patrick Tunney**, Supervising Probation Officer, Dist. Md., Oct. 2  
**Charles J. Ulfers**, Clerk, U. S. District Court, N.D. Calif., Sept. 5

#### *Retirements*

**Edward Walter Markowski**, Chief Probation Officer, Dist. Conn., Sept. 30  
**Miguel Torres-Cortes**, U.S. Probation Officer, Dist P.R., Oct. 6

## A.O.—F.J.C. CALENDAR

- Oct. 23-28** Seminar for Circuit Executives, F.J.C., Washington, D.C.  
**Oct. 26-27** Judicial Conference of the United States, Supreme Court Building, Washington, D.C.  
**Oct. 27-28** National Bankruptcy Conference, A.O., Washington, D.C.  
**Oct. 28** Meeting of Circuit Chief Judges F.J.C., Washington, D.C.  
**Oct. 30-Nov. 3** Orientation Course for U.S. Probation Officers, F.J.C., Washington, D.C.  
**Nov. 9-10** Refresher Course for Referees in Bankruptcy, New York, N.Y.  
**Nov. 13-17** Refresher Course for U.S. Probation Officers, Chicago, Ill.  
**Nov. 16-18** Seminar for Secretaries to District Judges, F.J.C., Washington, D.C.  
**Nov. 27-30** Appellate Judges Seminar, F.J.C., Washington, D.C.  
**Dec. 11-14** Seminar for Federal Public Defenders, F.J.C., Washington, D.C.  
**Jan. 8-11, 1973** Seminar for Courtroom Deputy Clerks, Phoenix, Arizona  
**Jan. 11-13** Sentencing Institute, First and Second Circuits, Crotonville, N.Y.  
**Jan. 12-14** Seminar for Secretaries to District Judges, Phoenix, Arizona  
**Jan. 15-17** Seminar for U.S. Magistrates, Phoenix, Arizona  
**Jan. 20-21** Seminar for Official Court Reporters, Phoenix, Arizona  
**Jan. 22-26** Seminar for U.S. District Court Clerks, Phoenix, Arizona  
**1973**  
**April 10-13**, Fifth Circuit Judicial Conference, El Paso, Texas



POSTAGE AND FEES PAID  
UNITED STATES COURTS



# The Third Branch

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

*A Bulletin of the Federal Courts*



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November, 1972

## Circuit Executives Meet

The eight Circuit Executives appointed earlier this year and now operating under the provisions of Title 28 U.S.C. Section 332 (e) and (f) gathered at the F.J.C. in late October to discuss common goals, problems and procedures and how they might best serve the judges of their respective Circuits.

It was an unprecedented and stimulating seminar for all involved since these men are the first to hold these new Congressionally-established posts.

From October 23rd to 28th, the Executives met in both morning and afternoon sessions, to familiarize themselves with all procedures and intricacies of the federal judicial system. The seminar struck a profitable balance between (A) "work-shop" periods of free flowing discussion on topics such as "statutory duties and functions of the Circuit Executive" and "structure and management of the U.S. courts" and (B) more formalized presentations by division officials and experts within the federal system.

By the week's end the new Executives had been exposed to and oriented and briefed on such diverse matters as: Calendar and Jury Management; and the respective roles of Judges, Magistrates, Referees in Bankruptcy, Clerks of Court, Probation Officers and Marshals.

The Circuit Executives Robert D. Lipscher (CA-2), William A. (Pat) Doyle (CA-3), Samuel W. Phillips (CA-4), Thomas H. Reese (CA-5), Robert J. Martineau (CA-8), William B. Luck (CA-9) and Emory G. Hatcher (CA-10) were joined in one discussion period by the Chief Justice, and his Administrative Assistant, Mark W. Cannon.



CIRCUIT EXECUTIVES AT THE F.J.C.

Left to right: WILLIAM B. LUCK (9th), THOMAS H. REESE (5th), SAMUEL W. PHILLIPS (4th), ROBERT J. MARTINEAU (8th), ROBERT D. LIPSCHER (2nd), EMORY G. HATCHER (10th), CHARLES E. NELSON (D.C. CIR.), WILLIAM A. DOYLE (3rd)

## A Message From the Chief Justice

Recently, a columnist carried a story indicating the Judiciary was engaged in "lobbying" against certain pending legislation, and although the story was totally false, it was picked up by other reporters who did not trouble to ascertain the facts.

Brushing aside the misinformed reporting, the episode affords a good occasion to put some perspectives on the larger question of relations between Judiciary and the Congress.

(1) The authorizing statute of the Administrative Office requires it to submit data and recommendations to the Congress.

(2) The statute creating the Federal Judicial Center requires the Board to transmit to Congress reports and recommendations.

(3) The Chief Justice is required by statute to submit to Congress the recommendations for legislation of the Judicial Conference.

Functioning as the staff of the Judicial Conference, the Administrative Office has, during the past two decades, proposed 203 bills (76 were repeats of previous bills) of which 92 percent were introduced into the House of Representatives and about half were enacted. During the recently adjourned 92nd Congress, the Administrative Office responded to Congressional request by supplying 50 written commentaries on House bills and 36 on Senate bills. This is about the annual average. In addition, as solicited by individual Congressmen, Senators and Committees, the staff of the Administrative Office frequently testify and supply verbal information. Historically, judicial improvement has occurred because the Judiciary actively analyzed and urged consideration of judicial needs.

The Act of 1925 gave the Supreme Court a measure of control of its docket by the writ of certiorari, and, in 1922, what is now the Judicial Conference of the United States (initially called the Conference of Senior Circuit Judges) was created. These represented giant steps forward in the operation of the Federal Judiciary. In these situations, the legislation was drafted and vigorously pressed by Chief Justice Taft and other distinguished judges.

(continued on page 2)



## Cannon First ABA Associate Member



Mark W. Cannon, left above, receives his certificate as the first non-lawyer "Judicial Associate" of the American Bar Association from Robert W. Meserve, ABA President. Mr. Cannon, who is Administrative Assistant to Chief Justice Warren E. Burger, was inducted into the new ABA program on November 13 at a brief ceremony at his office in the Supreme Court. Under the "judicial associates" program, inaugurated in August, an estimated 15,000 to 25,000 non-lawyer judges, magistrates, justices of the peace in courts of limited jurisdiction and court administrators now are eligible to join the ABA as associate members with all privileges except voting and office-holding rights.

Mr. Cannon, 44, formerly served as Director of the Institute of Public Administration in New York City. He holds a Ph.D. in political economy and government and an M.A. in public administration from Harvard University. ■

## Code of Judicial Conduct

In August following approval by the ABA's House of Delegates of a Code of Judicial Conduct, a committee was constituted to aid the implementation of the Code.

The Code is the first formal recitation of judicial ethics in almost 50 years. The ABA Committee is under the Chairmanship of Illinois' 8th Judicial Circuit Chief Judge, John T. Reardon, and its membership includes a list of distinguished lawyers and judges.

Early this month Chief Justice Burger, in a press release from the Court, said action on the Code by the Judicial Conference is expected by April, 1973, when the Conference next meets, with recommendations from two Judicial Conference committees as to whether the Code should be adopted by the federal judges. Meanwhile, the Chief Justice reminds that the standards apply to all federal judges in the same manner that the 1923 canons applied until their revision last August. ■

MESSAGE (continued from page 1)

Similarly, Chief Justice Hughes, other judges, and bar leaders, like ABA President Arthur Vanderbilt, played active roles in urging Congress to create the Administrative Office of the U.S. Courts and Judicial Councils in each circuit in 1939. This transfer of federal court administration from the principal litigant before the courts, the Department of Justice, again represented an important administrative improvement. The advent of the Federal Judicial Center is a more recent example of Congress responding to the urgings of the courts and the bar.

Thus, statutes, historic tradition and the logic of the situation require the Federal Judiciary, through its established organizations to work constantly for improved methods of providing justice and to advise the public and the other branches of government so that intelligent action can be taken. This takes nothing away from the legislative prerogatives of Congress, but simply supplies its members with information they need and generally want. Indeed the chief complaint I hear from members of Congress is that they do not have enough information as to our needs and problems.

My own concept of how this informational responsibility should most appropriately be carried out is far more restrained than was the case with Chief Justice Taft. As the biographies of Taft show, he personally testified before Congressional Committees and frequently he visited with Senators and Congressmen in the Capitol, in their offices or in their homes to urge his views on them.

I intend to continue to stimulate interaction with members of the Judiciary to develop consensus on what our needs are and to see that Congress and the public are informed on the problems of the courts.

Our joint efforts up to this date have been productive even though far less than I would like. If we, the judges, fail to do these things in the face of almost crisis level burdens on the courts, we would be abdicating our duty. ■

### DISTRICT JUDGES:

The Office of the General Counsel of the Administrative Office of the United States Courts is currently updating Chapter Six, "Crimes and Penalties", of the Judges' Bench Book.

Upon completion, the new material will be distributed to all District Judges.

### THE THIRD BRANCH

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

#### Co-editors:

Alice L. O'Donnell, Coordinator, Inter-Judicial Affairs, Federal Judicial Center; William Foley, Deputy Director, Administrative Office.



## LEGISLATION

The Ninety-Second Congress adjourned *sine die* on October 18, 1972. The Ninety-Third Congress will convene on January 3, 1973. This issue of the *Third Branch* contains the first installment of a summary of the action of the 92nd Congress of interest to the Judiciary.

**Commission on Revision of Judicial Circuits.** The Act of October 13, 1972 (P.L. 92-489) establishes a 16-member Commission on Revision of the federal Court Appellate System which will undertake a study of the present geographical division of the circuits and the internal procedures and structure and make recommendations as to changes to the President, the Congress and the Chief Justice. Members of the Commission will be appointed by the President, the Speaker of the House, the President of the Senate, and the Chief Justice. It is required to submit its report as to geographical divisions within 180 days of the date on which the 9th member is appointed and the report on structure and internal procedures within 15 months of that date. The Commission will cease to exist ninety days after the submission of the second report.

The Commission is authorized to appoint an Executive Director who may appoint and fix the compensation of additional personnel. The Administrative Office of the United States Courts will provide administrative services, including financial and budgeting services and the Federal Judicial Center will provide research services, both on a reimbursable basis. There is authorized to be appropriated for the Commission not exceeding \$270,000. However, it will not be possible until the next session of the Congress to obtain an appropriation for this purpose.

**Penalties Under the Shipping Act.** Public Law 92-416, to convert criminal penalties to civil penalties under certain provisions of the Shipping Acts, was signed on August 29, 1972. It affects sections of the Shipping Act, 1916 (46 U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 U.S.C. 844) and provides for civil penalties which may be recovered by the United States in a civil action. In addition, however, it provides that violations of certain of these sections shall be misdemeanors subject to a fine penalty only.

**Economic Opportunity—Drug Abuse Program.** The Economic Opportunity Amendments of 1972 (P.L. 92-424, Sept. 19, 1972) authorize the Director of the Office of Economic Opportunity to undertake special programs to promote employment opportunities for rehabilitated addicts or addicts participating in methadone maintenance or other therapeutic programs, with special priority given to veterans and employers of veterans.

**Magistrates' Salaries.** The ceiling on salaries payable to United States magistrates was amended by the Act of September 21, 1972 (P.L. 92-428). Under the new legislation, magistrates' salaries are to be fixed by the Conference at rates not exceeding the rates for referees in bankruptcy, except that the salary of a full-time magistrate may not exceed 75% of the salary of a district court judge.

**Bankruptcy Commission.** Public Law 92-251, signed on March 17, 1972, extends the life of the Commission on the Bankruptcy Laws of the United States until June 30, 1973, and increases the authorization for appropriations from \$600,000 to \$826,000.

**Drug Abuse Office & Treatment Act of 1972.** The Act establishes the Special Action Office for Drug Abuse Prevention in the Executive Office of the President to provide overall planning and policy and establishment of objectives and priorities for all federal drug abuse programs. Grants and technical assistance are made available to states, and a National Drug Abuse Training Center is established. The Civil Service Commission is given responsibility and treatment programs and services for drug abuse among federal civilian employees. The Act further provides that "No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse." (But this does not prohibit dismissal of an employee who cannot properly function in his employment.) P.L. 92-255, March 21, 1972.

**Eighteen-Year Old Jurors.** P.L. 92-269, signed on April 6, 1972, provides for the lowering of the age qualification of federal jurors from twenty-one to eighteen years of age.

**Economic Stabilization Act Amendments of 1971.** In addition to the authority to take action to stabilize prices, rents, wages, salaries, dividends, and interest, the Act provided for the establishment of the Temporary Emergency Court of Appeals which has exclusive jurisdiction of all appeals from the district courts in cases and controversies arising under the Act or regulations issued pursuant to it.

## State—Federal News

**MISSISSIPPI.** This State's Council recently met to discuss intersystem problems common to the state and federal courts. Several helpful agreements were reached, including: (1) that conflicts in case settings will be handled by a rule which declares the first setting will control; (2) that recent jury service in any court in the state by a prospective juror is justifiable grounds for excusal from service under that call; (3) that transcripts of proceedings will be made and filed when guilty pleas are accepted so that the record should be available to the federal courts if and when *habeas corpus* proceedings are filed in the federal court; also that some uniformity of questions would be agreed upon by all the state judges when taking guilty pleas, and to conclude with the following question, "Do you have other constitutional grounds of defense that you desire to express?"; (4) the consensus of the council was that it would be helpful to the federal judges if the state judges preserved the testimony in *habeas corpus* hearings and rendered findings of fact and conclusions of law.

Further discussions centered on removal of criminal cases to a federal court at the time trial has just begun in a state court; also, the problem of continuing a case in either a federal or a state court when attorneys are engaged in a jury trial of a case in another court.

**NEW YORK.** At this state's Council meeting of December, 1971, Chief Judge Henry Friendly (CA-2) was requested to appoint a committee to study and report on state prisoner civil rights. Appointed were Federal Judges Feinberg (Chairman), Frankel, Tyler and Neaher. State members were Hillel Hoffman of the Attorney General's office, Michele Hermann, then associated with the ACLU's Prisoner's Rights Project, and William E. Jackson, Esquire, of the New York Bar.

This committee's report is now in. Inquiries regarding the report should be directed to the Council's Executive Secretary, Thomas F. McCoy, Judicial Conference, 270 Broadway, New York, New York, 10007.

**WISCONSIN.** Of interest to all Councils will be Chief Justice Harold Hallows' opinion in *Just v. Marinette County* handed down October 31, 1972. In an effort to discourage state judges from avoiding decisions which would declare state laws unconstitutional, the Chief Justice said:

"Although the practice for trial court not to hold laws unconstitutional has not been uniformly followed, nevertheless, it is our belief many lawyers have been and are bringing to the federal courts cases involving questions of constitutionality of state laws because of the limitation placed on state courts in the exercise of the power to declare a law unconstitutional.

(continued on page 8)



# Continuing Education and Training

The Center's program of continuing education and training for personnel of the judiciary began the current fiscal year with an extensive schedule of Fall activities. Nine seminars and short courses were sponsored during the months of September and October, with seven additional programs planned for November.

**Probation.** Refresher courses for U.S. Probation Officers continued with three seminars in Chicago, for 102 participants, at Wagoner, Oklahoma. A Central Region In-Service Training Institute was staged for 17 officers.

The first of several anticipated Orientation Courses for recently appointed officers was held at the Dolley Madison House early this month. Thirty-six participants from more than twenty districts met for five days in sessions designed not only to present an overview of the operations of the system, but to analyze and sharpen basic interviewing counselling, case load management, and supervisory skills.



A two day seminar for Referees in Bankruptcy was held at Notre Dame in October. From left to right—F.J.C. Director of Continuing Education and Training, Kenneth C. Crawford, U.S. District Judge Robert A. Grant, Referee Don Miller (N.D. Ohio), and Referee Robert K. Rodibaugh (N.D. Indiana).

**Referees.** Twenty-two newly appointed referees in bankruptcy gathered at the annual national seminar last month in Washington. Guided by the seminar program committee, and the Bankruptcy Division of the Administrative Office, these judicial officers discussed topics ranging from judicial ethics through the mechanics of case disposition and such specialized areas as jurisdiction, injunctions, and dischargeability of debts.

In addition, regional seminars in South Bend, Indiana and New York, New York continued to provide the periodic opportunity for the structured exchange of innovative procedures, case analyses, and proposals for improvement and change among experienced referees.

**Magistrates.** Under its statutory mandate for magistrates' training, the Center, with the cooperation and assistance of the Administrative Office, has sponsored two seminars for both full and part-time magistrates this Fall.

Twenty-four recently appointed judicial officers with a full range of duties convened at the Center last month. Their agenda focused on the substantive and procedural demands of the magistrate's office, with discussions on search and arrest warrants, the trial of the minor offense, prisoner petitions, the initial appearance, preliminary hearings, and pre-trial among others.

Part-time magistrates from districts in the Northwest met in Rapid City, South Dakota early this month in sessions dealing with practice and procedures, office management, ethics, and legal questions arising in the initial series of regional seminars for part-time magistrates will be supplemented in future months with specialized refresher sessions.

**Court Reporters.** The second regional short course for official court reporters was held in Chicago, Illinois with thirty-three reporters from the Midwest in attendance. This seminar detailed the techniques of effective trial reporting, use of note readers and note-readability, the pool system in the Southern District of New York, computer transcription, and the processing of transcript orders. ■



Peter Paskell, a probation official visiting from Nottingham, England shared his thoughts with participants at a recent F.J.C. Seminar for U.S. probation officers.



These Deputy Courtroom Clerks attended an F.J.C. seminar this fall at Cambridge, Massachusetts.



## For Your Information. . .

## Video Technology

(Second in a Series)

Current judicial administration material available at the FJC Information Service office.

Mrs. Sue Welsh, Information Specialist

The following are selected publications which may be of interest to readers of *The Third Branch*.

The American Courthouse; planning and design for the judicial process. Product study of Amn. Bar Ass'n/Amn. Inst. of Architects. Fall 1972. (\$40) Order from: Book Dept., Inst. Continuing Ed., Hutchins Hall, Ann Arbor, Mich. 48104.

Court administration—a new profession: a role for universities. D.C. Oglesby, G.S. Gallas. 10 American Business Law Rev. 1, Spr. 1972.

Crisis in the courts: the need for reform. E.J. Gurney. 46 Fla. B.J. 196, Apr. 1972.

Environment Law Review 1972, by H. Floyd Sherrod, ed. (selecting writings)

Federal judges: the appointing process. Harold W. Chase. Univ. of Minn. Press, 1972. \$10.00.

Has the time come? W.E. Burger. 55 F.R.D. 119, Ag 1972.

The judge goes to jail. Karl-Gustav Lindelow (Sweden). 11 Judges' Journal 81, Oct. 1972.

National Criminal Justice Document Retrieval Index, Vol. 1, #1, July 1972. LEAA (quarterly publication). Available from: National Criminal Justice Reference Service, U.S. Department of Justice, Law Enforcement Assistance Administration, Washington, D.C. 20530. Ask for "Registration for Services" form.

National Institute of Justice; address, May 16, 1972. W.E. Burger. 38 Vital Speeches 521, June 15, 1972.

Operational research and the courts. John H. Reed. 56 Judicature 67, Aug-Sept. 1972.

Speedy trial—major surgery for a national ill. J.C. Godbold. 24 Ala. L Rev. 265, Spr., 1972.

Victimless crime: whose responsibility? Milton G. Rector. Trends, a journal of resources, July-Aug 1972.

The wasted juror. Irving R. Kaufman. 56 Judicature 72, Aug-Sept 1972.

In the October issue of *The Third Branch*, we described the experience of the U.S. District Court for the Western District of Pennsylvania in the use of videotape equipment provided by the Center. To date, it has been used primarily to eliminate trial delays caused by the unavailability of expert witnesses. The next step is to consider prerecording all testimony in a trial. This has already been done in Ohio in several trials — both civil and criminal. In the future, we can expect to see more trials where all the testimony will be prerecorded on videotape. This shows great promise for reducing the length of trials. Some proponents claim the average time for trials can be reduced by 50% with the extensive use of videotape. Although federal rule changes would be required to present all testimony via videotape, some state rules (e.g., Rule 40 of the Ohio Rules of Civil Procedure) have now been revised to provide for this type of trial. Since the judge does not have to be present when videotaped testimony is presented to a jury, this releases his time to work on matters in chambers or to conduct a concurrent live trial.

It is still uncertain if total judge time would be reduced in every case via the use of videotape. After testimony is recorded, the judge has to review all objections and overrule or sustain each one. When an objection is sustained, the entire question, the objection by counsel and the answer are omitted from the edited tape. If the objection is overruled, the question and answer are retained and the attorney's verbal objection is removed from the tape. The judge-time required for this review and editing could be as long or longer than the amount of time which would be required if the testimony were presented live at a trial. However, experience to date has shown that in some cases the judge-time required is only 1/3 or 1/4 of the total time for the testimony. Even where judge-time consumption is the same the risk of error is reduced, since the judge can carefully listen to objections in the relaxed atmosphere of his chambers and can rule on them after more careful reflection than is generally possible in the heat of a trial. For difficult or close objections, a judge can seek assistance from counsel by way of argument or memoranda before making his rulings. In addition, the judge has the opportunity to weigh the impact of the objected to testimony in light of all the evidence. Thus, rulings on especially tough questions can be deferred until more thought and study are given to the matter. This can be done without delaying a trial and can be done at the judge's convenience.

The quality of justice may also be improved by the elimination of those situations where jurors are asked to disregard questions and answers after they have



heard them. Jurors have reported that in spite of such instructions on the part of the court to disregard an inadmissible question and answer, or an improper remark from a lawyer, they cannot erase it from their minds and it remains there, perhaps to improperly influence their decision. Sometimes, jurors also express irritation or at least puzzlement over objections made by lawyers during a trial. When this occurs, the client of a lawyer who is conscientiously trying to keep the record clear of irrelevant or improper evidence may be prejudiced in the jurors' minds by the attorneys' continued proper objections. This prejudice is eliminated when testimony is prerecorded and the judge, after review of objections, is able to edit them out of the tape presented to the jury.

When testimony is prerecorded on videotape for a bench trial, the judge has much more flexibility in his schedule. The trial could be conducted at almost any time convenient for him whether this be early in the morning, during regular working hours, or in the evening. This is especially feasible if opening statements and closing arguments are also videotaped.

Expanded use of videotape can also help to solve the engaged counsel problem. If attorneys are engaged elsewhere on the scheduled date for a trial, testimony and argument could be videotaped for one of these trials so an attorney could be trying one case on videotape and one "live" in two different courts at the same time.

Another attractive feature of videotape is the possibilities it gives for achieving finality at the trial court level. After review by the trial judge, prerecorded testimony could be submitted for review by an appellate court. After the appellate court screened for error, a legally "clean" tape could be presented to the jury. Once the jury made its determination, the result would be finalized by judgment, appealable issues having already been disposed of. The advantages could be outweighed by the threat of wasting appellate court time for litigation that would not have otherwise been appealed. The extent of such waste must be balanced with the offsetting advantages before a true evaluation could be made. Research in this area and pilot experiments will be required before the full impact can be assessed.

Video technology also holds great promise for improving the quality of the judicial process. Videotaped confessions and lineups are seeing increased use in criminal trials. In an Eighth Circuit case, the majority, in upholding the use of a defendant's videotaped confession which was shown to the jury at this trial, stated that it was "protection for the accused" and "is an advancement in the field of criminal procedure and a protection of defendant's rights." They went on to suggest that "to the extent possible, all statements of defendants should be so preserved." (*Hendricks v. Swenson*, 456 F.2d 503, 506 (1972)).

Videotaping can also provide demonstrative evidence at its best. For example, in *Carson v. Burlington Northern, Inc.*, 52 F.R.D. 492 (1971), the use of videotape was allowed to take the deposition of the plaintiff at the blacksmith shop where the accident occurred.

Many witnesses have a general disaffection for our judicial system because of the inconvenience which they now often suffer in their experiences with the courts. When testimony is prerecorded via videotape, the witness has to appear only once and does not have to worry about coming back to the courthouse a number of times. The expensive assembling of witnesses, particularly experts, can be transformed into a series of office interviews. ■

## "TECA" Seminar on Magnetic Card System

The Temporary Emergency Court of Appeals in Washington (TECA) has concluded a three-day seminar on communicating magnetic card selective typewriters under F.J.C. sponsorship. The seminar was one phase of a pilot program to evaluate equipment with automatic redrafting and communicating capabilities which has the potential for reducing the total disposition time for appeals.

The magnetic card typewriters permit the operator to perform revisions in opinion drafts without manually retyping unchanged portions, as do the standard MT/ST machines, but have the additional equipment which permits the author of the opinion to communicate his draft or subsequent revisions in a matter of a few minutes.

The members of the court on the receiving end can likewise transmit their response to the judge writing on behalf of the court within a matter of minutes. This capability is especially important in emergency situations. Without this equipment, and relying upon an exchange through the mails, several days are required to effectuate an agreement on an opinion.

But to bring about effective utilization of these typewriters, uniform office and inter-office procedures must be adapted. The seminar was called to design these procedures and to develop user skills. Staff members who serve the nine TECA Judges observed equipment demonstrations and gained valuable knowledge which will make it possible for them to adapt the equipment to specific needs of the emergency court and the individual judges.

The seminar began with a welcoming speech by Chief Judge Edward A. Tamm. Following this there were talks by Joseph Ebersole, Director of Innovation and Systems Development at the F.J.C. and by William L. Whittaker, Clerk of the TECA. ■



## Judge Jones To Focus On Judiciary's Role

The Honorable William B. Jones, United States District Judge for the District of Columbia, is well into his work as Chairman of the Judicial Administration Division of the American Bar Association. The new Division is an outgrowth and expansion of what was until last August the Section of Judicial



*Hon. William B. Jones*

Administration. As first Chairman of this Division, Judge Jones is principally concerned with bringing to the public at large, an awareness of the growing role and responsibilities of the judiciary in today's urban, mobile and technological world. With so many of our societal changes and upheavals now seeking resolution in our courts, he sees it essential to preserve and heighten the esteem in which the judiciary has traditionally been held. Drawing from a legal background both rich in experience and broad scope, Judge Jones is certain to infect the members of the Division with his enthusiasm as he works to translate sound proposals into effective programs of action.

Judge Jones was born in Cedar Rapids, Iowa, and received his degrees (A.B. and LL.B.) from the University of Notre Dame. His law career began with private practice in Montana from 1931 to 1937. He was Special Assistant Attorney General for the State of Montana from 1935 to 1937 after which he was an attorney with the Department of Justice for six years. During the years 1943 to 1946, he served as Executive Assistant to the American Chairman of the Joint British American Patent Interchange Committee. Judge Jones was engaged in private practice from 1946 until he was appointed a federal judge by President Kennedy in 1962. He is a member of the bars of Maryland, the District of Columbia and Montana.

In addition to his governmental assignments and civic achievements, Judge Jones has for many years been a very active member of the ABA Section of Judicial Administration. Chairman of the Section's Committee on Advocacy since 1967, he is now Chairman of the Board of Directors of the National Institute for Trial Advocacy. He was elected to the Section Council in 1968, was elected Chairman-Elect in 1971, and assumed his duties as Chairman of the Division last August. ■

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"Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially."

*Socrates*

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## Christean, Supreme Court Deputy Clerk

Arthur G. Christean, 37, a Utah attorney and court administrator, was sworn in as a Deputy Clerk of the Supreme Court of the U.S. on November 15, 1972. The Court has one other Deputy, Julian S. Garza, Jr., who was appointed in August.

Mr. Christean is a native of Salt Lake City and has been serving since 1968 as Administrator of the Utah State Juvenile Court System, one that is state-funded and operated on a unified, state-wide basis. His administrative duties there included working with a computer records system, budgets, personnel, logistics, and federal grant funds.

He is a member of the Utah Bar and completed training at the Institute for Court Management in 1971. He holds three degrees from the University of Utah, a BS, a JD, and a Master's in Social Work.

From 1961 to 1963, he served in the Judge Advocate General's Department of the U.S. Air Force, stationed at bases in Dover, Del., and overseas at Sidi Slamaine, Morocco. Afterwards, he worked for two years as an attorney for the American Oil Co., in Salt Lake City, went to graduate school, and then was named to the Utah administrator's post. He is married to the former Nelda Bohon of Roanoke, Va., and they have three children, two daughters and a son. ■

## N. Y. Federal Courts Fight Drug Addiction

The tide of thought which favors decriminalization of certain aspects of the law has set a new high water mark in New York.

For the first time in the nation, U.S. federal courts will participate in a program offering treatment rather than punishment for drug addicts.

Viewing addiction as a result of crime and a breeder of new crime rather than a crime in and of itself, the new plan would extend the option of treatment to an addict arrested on federal charges. After one year of successful participation in the treatment program, charges would be dropped.

The project, an idea of two U.S. Attorneys, Whitney North Seymour, Jr. and Robert Morse, will be funded by a \$522,000 federal grant and will be expected to handle a capacity of 300 addicts a year coming into the Brooklyn and Manhattan federal courts.

The plan would parallel similar action in some of the local courts. U.S. Attorney Seymour was quoted as emphasizing, however, that some addicts, major pushers and those involved in crimes of violence, would not be offered the treatment option until their cases had been disposed of. ■



**STATE-FEDERAL** (continued from page 3)

We think that when a constitutional issue is not presented to the trial courts of this state, it is the better practice for those courts to recognize its importance, have the issue thoroughly briefed, and fully presented. The issue should be decided as any other important issue with due consideration. The practice of assuming constitutionality, until the contrary is decided by an appellate court, is no longer necessary or workable . . ." (Pages 20, 21.)

Justice Horace Wilkie (Sup. Court, Wisconsin) reports that their Judicial Conference made up of all Wisconsin Judges, will have further discussions on "Civil Rights in Federal and State Court" when they meet next January.

(Note: Copies of Chief Justice Hallows' opinion may be obtained by writing the Editor, *The Third Branch*.)

**PERSONNEL**

*Federal Judges*

*Appointments*

**Frank H. Freedman**, U.S. District Judge, Dist. Mass., Nov. 1  
**Frederick Pierce Lively**, U.S. Circuit Judge, CA-6, Oct. 30  
**Joseph L. Tauro**, U.S. District Judge, Dist. Mass., Nov. 2  
**James C. Turk**, U.S. District Judge, W.D. Va., Oct. 28  
**H. Emory Widener, Jr.**, U.S. District Judge, S.D.N.Y., Oct. 28

*Deaths*

**James Rosen**, U.S. Circuit Judge, CA-3, Nov. 18

*Supporting Personnel*

*Appointments*

**William K. Slate, II**, Clerk, CA-4, Oct. 2  
**Thomas Leon Brock**, U.S. Probation Officer, E.D.Ark., Oct. 30  
**Glen J. Goldburn**, U.S. Referee in Bankruptcy, Dist. Md., Nov. 2  
**William P. Guerra**, U.S. Probation Officer, Dist. Conn., Oct. 30

**Richard Arthur Gullickson**, U.S. Magistrate, Dist. Minn., Oct. 16  
**William E. Johnson, Jr.**, U.S. Referee in Bankruptcy, N.D.Ala., Nov. 15  
**Burton L. Matthies**, U.S. Probation Officer, Dist. Neb., Oct. 16  
**Lee C. Oberly**, U.S. Probation Officer, C.D. Calif., Oct. 30  
**Ronald S. Rogart**, U.S. Probation Officer, S.D.N.Y., Nov. 6  
**Joseph L. Ward**, U.S. Magistrate, Dist. Nev., Oct. 6

*Promotion*

**Patrick J. Murphy**, Chief Probation Officer, N.D., Ga., Nov. 4

*Retirement*

**Harley A. Miller**, U.S. Magistrate, Dist. P.R., Oct. 31  
**William W. Bird**, Chief Probation Officer, N.D. Ala., Nov. 15

**A.O.—F.J.C. CALENDAR**

- Nov. 28 Multidistrict Litigation Panel, Bd. of Editors Meeting, F.J.C., Washington, D.C.
- Dec. 2 F.J.C. Board of Directors Meeting, F.J.C., Washington, D.C.
- Dec. 7-8 Criminal Law Committee, A.O., Washington, D.C.
- Dec. 11-14 Seminar for Federal Public Defenders, F.J.C., Washington, D.C.
- Jan. 8-11, 1973 Seminar for Courtroom Deputy Clerks, Phoenix, Arizona
- Jan. 11-12 Joint Committee to Study ABA Code of Judicial Conduct, A.O., Washington, D.C.
- Jan. 11-13 Sentencing Institute, First and Second Circuits, Crotonville, N.Y.
- Jan. 12-14 Seminar for Secretaries to District Judges, Phoenix, Arizona
- Jan. 15-17 Seminar for U.S. Magistrates, Phoenix, Arizona
- Jan. 19-20 Jury Committee, A.O., Washington, D.C.
- Jan. 20-21 Seminar for Official Court Reporters, Phoenix, Arizona
- Jan. 22-26 Seminar for U.S. District Court Clerks, Phoenix, Arizona
- Feb. 5-9 Refresher Course for U.S. Probation Officers, Atlanta, Georgia
- Feb. 12-14 Seminar for U.S. Magistrates, Chicago, Illinois
- Feb. 20-23 Seminar for U.S. District Judges, F.J.C., Washington, D.C.
- Mar. 8-9 Seminar for Referees in Bankruptcy, New Orleans, La.
- Mar. 8-10 Seminar for Secretaries to District Judges, Atlanta, Ga. (revised)
- April 10-13 Fifth Circuit Judicial Conference, El Paso, Texas

*THE THIRD BRANCH*

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**THE FEDERAL JUDICIAL CENTER**

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## *A Bulletin of the Federal Courts*



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Photographed at the dinner meeting of the Conference on the National Institute of Justice: (L. to R.) ABA President-Elect Chesterfield Smith, Esq.; The Chief Justice of the United States; Justice James K. Groves of Colorado, Chairman, ABA House of Delegates; Chas. S. Rhyne, Esq., Conference Chairman; and ABA President Robt. W. Meserve, Esq.

### SUPREME COURT APPROVES NEW RULES OF EVIDENCE

A 15-member committee of the Judicial Conference, with Chicago lawyer Albert E. Jenner, Jr., Chairman, last month got Supreme Court approval attached to their product which evolved after eight years of drafting. The Supreme Court will transmit the rules to Congress with their approval in January and, unless both houses of Congress express disapproval, the rules will become law in 90 days. Congressional objections are not anticipated since the draftsmen frequently consulted with and worked out the most controversial rules with members of Congress and their staff.

This means that all 93 District Courts will probably be processing criminal and civil cases starting July 1, 1973, with profoundly different procedures than have been applied in the past. Indeed, it will be the first time in the history of the federal judiciary that uniform rules of evidence will be applied on a national scale.

Drastically changed by the 43-pages are rules relating to such things as questions which may be propounded on cross-examination, the requirement that counsel vouch for the credibility of witnesses they call, expansion on the use of confessions, limitations on doctor-patient confidentiality rules, and husband-wife privilege rules which are now limited to criminal cases only.

Big business will be affected as will government officials through new rules which relate to corporate merger cases. Government lawyers will find themselves with limitations but

*(continued on page 3)*

### CONFERENCE CALLED ON NATIONAL INSTITUTE OF JUSTICE

Last August the ABA House of Delegates endorsed a concept which was outlined by an ABA-constituted Task Force calling for a National Institute of Justice and there quickly followed a meeting of a 22-member Commission to further expand on the Task Force Report. The Commission thereafter invited 100 individuals from throughout the country to attend a two-day meeting to explore with them all phases of the judicial process and to respond to inquiries as to whether it was working as it should.

The conference was launched with a dinner meeting attended by all conferees, representatives of the press, and outside observers.

With no directives on how to develop the concept of a "Quest for Justice", the conferees met in four separate groups. For a starter, however, five questions were suggested to provoke discussion: What are the most important problems of justice today? What institutions need improvements the most? What kinds of improvements? What contribution could a National Institute of Justice make? What considerations should be set up in organizing such an Institute?

Reporters announced what they understood was the consensus of their group, followed by a more comprehensive summary by Geoffrey C. Hazard, Jr., a Consultant to the Commission of 22.

In opening remarks Mr. Hazard said, "There was a strongly shared sense that there should be a National Institute of Justice, but there was considerable divergence on what should be its scope, role and structure." Some common threads were



woven into the final statement, however. It was agreed that such an Institute might and could find a place in our society and could and should try to cure existing faults in the system. The main problem today, it was almost unanimously agreed, was that public authority at all levels suffers from a severe lack of "credibility." Reason: Public agencies, including the courts, were not being fully truthful about what they are doing, were not wholeheartedly concerned about discharging their responsibilities, or thoughtful about what they were trying to do. Some suggested that such an Institute could "aim at the conscience of the national community regarding the provision of equal justice." As one conferee put it, "The image of justice is tarnished, and confidence needs to be restored."

But conceptions on the scope, role and structure were more problematic. The weight of opinion was that the perspective adopted by such an institute should be comprehensive, extending to all that can be implied by "social justice"; that its program should be broader than court administration, but that it should channel its efforts along conventional avenues distinctly related to the law. But the conceptions of the general scope ranged from a large agency to take in courts, legal services and administrative tribunals, to one exclusively dedicated to research. The weight of opinion was for an organization that would be engaged chiefly in stimulating and sustaining investigation and experimentation with systematic programs of monitoring and education, deferring to existing institutions for carrying out programs for improvement. The prevailing opinion also was that the proposed institute could easily become competitive if not duplicative with existing organizations, but that it should "recognize the areas of special responsibility that have been assumed by them." Specifically mentioned were LEAA, the National Center for State Courts, and the Federal Judicial Center.

As for the role of the proposed institute, the concepts ranged from a very large, multi-purpose agency with large grant programs, to an agency that would merely develop standards and establish them as conditions for grants to agencies in the judicial arena; however, the more popular thought was that if the institute were to be effective on a long range plan, it would have to rely on a plan to support efforts by operating agencies to develop and implement improved standards through their own efforts.

The structure concept was one of the most difficult and brought forth suggestions for an autonomous organization entirely independent of support from the federal government to an agency of the government somewhat on a par with the Department of Justice or the National Institutes of Health. Equally perplexing were suggestions for a governing body. The suggestion which gained the greatest concurrence was the view that if the institute were funded chiefly by federal money its board would have to be appointed by the President, but that various professional, public and community constituencies should be authorized to submit nominations; further, that the

membership of the board would have to reflect both the element of representativeness and that of individual stature.

The conclusion of the Hazard summary: There is such a thing as objective reality, which may be discerned by careful examination and consideration; every individual in the national community has a worth and dignity that must be made secure with the aid of law; renewal of efforts is now necessary to enhance that security through inquiry and public discourse; and a National Institute of Justice might be an appropriate agency through which to make the effort.

The 22-member Commission met immediately after the meeting was concluded to decide what course to follow next.

**THE BOARD OF THE FEDERAL JUDICIAL CENTER**

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United States District Court, Eastern District of Virginia

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United States District Court, Southern District of New York

Rowland F. Kirks, Director,  
Administrative Office of the United States Courts

**HUDON NAMED SUPREME COURT LIBRARIAN**

Edward G. Hudon, 57, was appointed the Chief Librarian of the Supreme Court on the first of this month to succeed H. Charles Hallam, Jr., who retired after completing a 44-year career with the Court.

Mr. Hudon, who served as Assistant Librarian in the Supreme Court Library from 1944 to 1966, left the Library in 1966 to become Assistant U.S. Attorney for Maine until he entered private practice in Brunswick, Maine.

He is a member of the Bars of Maine, the District of Columbia, and the Supreme Court. In addition, he holds five college degrees including a Master's in Library Science from the Catholic University of America.



(continued from page 1)

they also could find assistance when trying cases involving evidence related to the national security.

From the adoption of the uniform procedures could come many changes in the state courts, whose statutes have of necessity been applied in the federal courts in certain types of cases. With 50 states trying cases with as many sets of rules, it is not unlikely some of them will give thought to making the entire judicial process in the dual systems more facile, less costly and more understandable to lawyers and their clients.

### JUDGE KAUFMAN LECTURES ON "PRISON: THE JUDGE'S DILEMMA"

On Monday, November 20, 1972, Judge Irving R. Kaufman (CA-2) delivered the Third Annual John F. Sonnett Lecture at Fordham Law School.

In the address entitled "Prison: The Judge's Dilemma", Judge Kaufman pointed out the shift of attention which has taken place within the last five years from how people are processed through the criminal justice system to an intensive examination of the system itself.

The Judge portrays the dilemma's horns: "In the foreground of the public's mind, it seems to me, are two thoughts. One is the horror of Attica and all it symbolizes about the daily life of prisoners and about society's attitudes toward them. The second involves the inmate recently discharged from a prison who shortly thereafter is arrested for another mugging, or for armed robbery, or for rape. This is the familiar problem of inmate recidivism which plagues our system of corrections."

Citing statistical evidence of high recidivism rates, Judge Kaufman labeled "rehabilitation" one of the great myths of the twentieth century.

He questioned the limits to which a prison official could be forced by the court to undertake reform when rehabilitation itself cannot be forced upon prisoners.

The judge commented on the long raging debate whether punishment or treatment should be the proper thrust of post-conviction activity and whether "treatment" cannot serve as a mask for punishment in some cases.

In response to the surge of prisoner petitions concerning First Amendment rights, Judge Kaufman cautioned, "Moreover, the courts are naive in their understanding of the operation of clearly volatile prison subcultures. . . . Thus, although judges realize that institutions that rely on a veil of silence to protect themselves from criticism may become calcified, still prison officials must retain substantial discretion in day-to-day decision-making."

In concluding his speech, the judge viewed the only hope for solution of the prison problem to be a "mutual commitment" of courts, prisoners, administrators, legislatures and community groups; and that the final answer will come only through an adequate outlay of tax dollars.



*Hon. Ruggero J. Aldisert*

### ALDISERT NAMED TO FJC BOARD

Circuit Judge Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit has been named to the board of directors of the Federal Judicial Center, to fill the unexpired term of Judge Frank M. Coffin who was recently elevated to Chief Judge of the First Circuit. As a Circuit Chief Judge, he is by virtue of this office, a member of the Judicial Conference and under the statute establishing the Center, no member of the Judicial Conference may serve on the Center board.

Prior to his appointment by President Lyndon B. Johnson in 1968, he served as Judge of the Court of Common Pleas of Allegheny County from 1961 until 1968. From 1947 to 1961 he was engaged in the private practice of law in Pittsburgh.

Judge Aldisert's professional awards include the "Outstanding Merit Award" of the Academy of Trial Lawyers of Allegheny County, received in June, 1964. The award cited that Judge Aldisert had "immeasurably advanced the cause of justice."

During World War II, Judge Aldisert served as a Marine Corps officer in the Pacific Theater and was discharged with the rank of Major.

Judge Aldisert is a 1947 graduate of the University of Pittsburgh Law School. He is currently professor of law at that school, specializing in federal jurisdiction and procedure and Pennsylvania civil practice.

He is also a faculty member of the Appellate Judges' Seminars at New York University; lectured at the International Seminar on Legal Medicine at the University of Rome in March, 1965; at the Law Society of London in May, 1967; and at the Comparative Law Seminar in Rome in February, 1971.



## SALARY COMMISSION APPOINTMENTS

Public Law 90-206, enacted in 1967, established a Commission to make recommendations to the President every four years on salaries for members of Congress, federal judges, members of the Cabinet and other high-ranking officials in all three branches of the government.

The President names three commissioners, the President of the Senate two, the Speaker of the House two, and the Chief Justice two.

All appointments have now been made. On December 8, 1972, the Chief Justice announced his appointees would be Roger M. Blough, former Board Chairman of the United States Steel Corporation and William T. Gossett, Esq., Detroit lawyer and former General Counsel of the Ford Motor Company.

The last salary increase for federal judges which was put into effect following a report by this commission was March 1969, when District Judges were raised from an annual salary of \$30,000 to \$40,000 per year, and Circuit Judges from \$33,000 to \$42,500. Senators and Congressmen currently receive the same salary as Circuit Judges.

The President on December 11th appointed three members of the Commission. They are: Arch A. Patton, of Washington, D.C., Senior Partner, McKinsey and Company; David Packard, of Palo Alto, California, Executive Vice President, Hewlett-Packard Company; and John H. Lyons, of St. Louis, Missouri, General President, International Association of Bridge, Structural and Ornamental Iron Workers.

The President designated Mr. Patton Chairman of the Commission and requested that the Commission submit its report on June 30, 1973. The President will then make his recommendations to the Congress when he submits the 1975 budget in early 1974. The salary adjustments, if any, will thus go into effect in March, 1974, unless they are disapproved by either House of Congress.

## CIRCUIT JUDGES SEMINAR

Responding to requests from the Circuit Judges for additional seminars, Center Director Judge Murrah called into session a corps of Judges from the U.S. Courts of Appeals to confer and set up a program. The program committee was composed of Chief Judge Frank W. Coffin (CA-1), Judge John J. Gibbons (CA-3), Judge John Minor Wisdom (CA-5), Judge Wilbur F. Pell, Jr. (CA-7), and Judge Eugene A. Wright (CA-9). The District Courts were represented by Judge Harold R. Tyler, Jr. (S.D. N.Y.). This group of seasoned and knowledgeable judges worked for many weeks to design a program responsive to the interests and needs of all participants who jointly represented all the federal circuits as well as the U.S. Court of Claims and the U.S. Court of Customs & Patent Appeals.

A twenty-member faculty composed of judges, legal scholars, lawyers and one Circuit Executive presented topics including: Opinion Writing, Use of Management and Parajudicial Personnel, Third Circuit Time Study, Code of Judicial Conduct; Impact Decisions and Impact Legislation, and Appellate-District Judge Relations.

Chief Justice Burger, meeting with the group in an afternoon session reiterated one of the seminar's overriding themes: "Time is our most precious commodity."

In order to accommodate all those who wished to participate, it was necessary to schedule a second Appellate Judges' Seminar for March 19-22, 1973.

In preparing invitations for the November Seminar, some preference was given to the newer judges and those who had not previously attended a seminar of this type.

The March Seminar, while patterned after November's, will no doubt profit from the positive input and concise clear discussions which Judge Murrah found to be the hallmark of the November Seminar.

### THE THIRD BRANCH

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## JUDGE RUBIN OUTLINES HIS COURT POLICY

U. S. District Judge Carl B. Rubin, Southern District of Ohio, recently outlined his court policy in an address before the Franklin County Bar Association.

Judge Rubin said: My policy is a simple one. When you file a suit, it will be assumed you intend to try it. We will confer promptly, establish a timetable and prepare for trial. You will be given ample notice of Pretrial and Trial and you won't be required to wait in line for trial. You also will not be granted a continuance. Your opponent will not receive a continuance. No one will appear for trial with witnesses and learn that the matter will not be heard.

It is your job to be ready and mine to be ready for you. I would say that we have had remarkable success and cooperation from this bar. We have been able to adhere to this policy with very, very few exceptions. I believe that you are entitled to know substantially in advance when a case is set for trial.



## MARYLAND DISTRICT COURT PLANS YEAR AHEAD

Weekly conferences to bring about smooth procedural operations and plans for the handling of cases extending over a period of one year are now routine in the District of Maryland. The judges of this district commend for consideration by other districts their tried practices.

Each week Chief Judge Northrop calls one-hour conferences attended by all the judges, the Clerk of Court, the U.S. Attorney, the Marshal and the Magistrate. An agenda is prepared and distributed before the next meeting.

The weekly gathering permits all participants to beam in on any current court problems as well as to form desirable policies which will bring about the most effective operation of the entire court system. Reports Chief Judge Northrop: "This conference is invaluable in not only solving court problems but also in avoiding them. Through such meetings definitive court policies are developed on day-to-day practices and problems."

With communications open at all levels, personnel and counsel are all made aware of these policies and their cooperation follows smoothly -- certainly much quicker and easier when they are made a part of the scheme.

Looking to an effective procedure for handling the criminal docket and assuring speedy trials, the Maryland District puts their cases in two categories, specially assigned cases and the less serious they consider routine. Each month one judge handles the routine arraignments each Friday morning and at arraignment the cases are assigned to that judge. The judge, at arraignment, announces to counsel the time and date of the pretrial conference. The pretrial conference is generally held in the month after arraignment. Also at arraignment, the judge announces that the case will be tried during a certain week in the second month after arraignment. Counsel, then, have two deadlines to meet: first, the pretrial conference and, second, the actual trial date. The criminal arraignment judge then, in the second month, becomes the routine criminal trial judge, and he tries all of those cases during that month. The assignment of judges is set up at least a year in advance. The more serious criminal cases are specially assigned immediately to an individual judge, who treats those cases like any civil assigned case, except that they are given priority over civil cases.

### For Your Information . . . .

Current judicial administration material available at the FJC Information Service office.

Mrs. Sue Welsh, Information Specialist

The following are selected publications which may be of interest to readers of *The Third Branch*.

Annual review of information science and technology, v. 7. Carlos A. Cuadra. 1972.

Chief Justice and law reform, 1921-1971. W. F. Swindler. 1971 Sup. Ct. Rev. 241. 1971.

Delays in criminal cases. W.J. Campbell. 55 FRD 229, 1972.

Experience of transferee courts under the multidistrict litigation act. 39 U. Chicago L. Rev. 588, Spring 1972.

Federal court intervention in juvenile proceedings. J. A. Cannon. 48 Denver L. J. 503, 1972.

Federal courts of appeals: radical surgery or conservative care. Quentin N. Burdick. 60 Kentucky L. J. 807, 1972.

Laying the ghost of the "invention" requirement. Giles Rich. Address before three patent law ass'ns., 1972.

Practical uses of trialvision and depovision. J.J. Kennelly. 16 Trial Lawyers Guide 183, Summer 1972.

Predictability in appellate courts. J.E. Thornton. 33 Ala. L.Rev. 234, July 1972.

The process of federal judicial administration: a study of institutional development and administrative power (dissertation). Peter Graham Fish. 1972

Proposed federal penal code. 47 NYU L. Rev. 320. May 1972.

State of the federal judiciary - 1972. W.E. Burger. 58 ABA J. 1049, Oct. 1972.

Symposium: court and prison reform. 6 Suffolk U. L. Rev. 775, Summer 1972.

Symposium: law and social change. 18 Catholic Lawyer 2, Winter 1972.

You are there! (use of videotape). Edmund W. Sinnott. 11 Judges' J. 84, October 1972.

## LEGISLATION

In this month's issue, we are continuing the summary of legislation enacted by the Ninety-Second Congress that is of interest to the judiciary. Further reports will appear in the January issue of *The Third Branch*.

*Longshoremen's & Harbor Workers Compensation Act Amendments of 1972*. Public Law 92-576, October 27, 1972, establishes an administrative review board for compensation claims under the Act. Decisions of the Board will be reviewable by the Courts of Appeals, both in cases where compensation is denied or where it is granted. Harbor workers generally



will also be included within the scope of the Act.

*Federal Water Pollution Control Act.* Passed over Presidential veto, the legislation authorizes programs of financial assistance to states and communities to prevent, reduce, and eliminate water pollution. Provisions of the law which are of interest to the judiciary include authority for the Administrator of the Environmental Protection Agency to bring civil actions for enforcement, and civil and criminal penalties for violations. Any citizen is authorized to bring suit on his own behalf against any person, including the United States itself, alleged to be in violation of effluent standards under the Act, or against the Administrator for failure to perform a duty under the Act. The district courts will have jurisdiction of such suits without regard to citizenship of the parties or the amount in controversy. The courts may award costs of litigation, including reasonable attorneys and expert witness fees in such actions. Section 9 of the Act requires that the President, acting through the Attorney General, make a full and complete study of the feasibility of establishing a separate court or court system to have jurisdiction over environmental matters and make a report to Congress no later than one year after enactment.

*Protection of Wild Mustangs and Burros.* P.L. 92-195, signed on December 15, 1971, prohibits removal of such horses and burros from the public lands, prohibits their conversion to private use, including processing into commercial products, or their death or harassment, on the public lands. The penalty for violation of the act or regulations issued by the Secretary of the Interior pursuant to the Act is a fine of not more than \$2,000 or imprisonment for not more than one year, or both. While under the Magistrates Act, United States magistrates would not have jurisdiction of these cases since the fine penalty exceeds that of a minor offense, this legislation specifically provides that a magistrate designated for that purpose by the appointing court may try and sentence persons charged with these violations.

*Correcting Deficiencies in the Law Relating to the Crimes of Counterfeiting and Forgery.* P.L. 92-430, signed September 23, 1972. This act amends Title 18, Section 500, to include postal money orders or postal notes.

*Education Amendments of 1972 (Anti-busing).* Although H.R. 13915, the Equal Educational Opportunities Act (the anti-busing bill), which had been passed by the House failed of enactment in the Senate during the last days of the session, Congress had previously taken action concerning busing of students. The Education Amendments of 1972 (P.L. 92-318, 6/23/72) contained, in Title VIII, provisions relating to the busing of students. In addition to precluding the expenditure of federal funds for the purposes of busing (unless this is voluntarily requested by the school officials), until midnight on January 1, 1974, any busing order of a court is to be stayed until all appeals have been taken, and any parent or guardian of a child, or parents or guardians of children similar-

ly situated, transported in accordance with a court order may seek to reopen or intervene in the court proceeding, if the distance of travel is so great as to risk the student's health or significantly impinge on his or her educational process. The prohibition of busing orders contained in Section 407(a) of the Civil Rights Act of 1964 is restated with the explicit provision that it applies to all schools and pupils in all parts of the United States.

*Commission on Civil Rights.* The Act of October 14, 1972, P.L. 92-496, extends the life of the Commission to the end of fiscal year 1978, and in addition, expands the jurisdiction of the Commission to include discrimination on the grounds of sex. The Act makes several other amendments concerning payments by the Commission, including provision for the payment of witness fees.

*Narcotic Addicts Placed on Probation, Paroled, or Mandatorily Released.* The Attorney General is authorized, under P.L. 92-293, May 11, 1972, to provide care for narcotic addicts placed on probation, released on parole or mandatorily released. The courts may, as a condition of probation, require that an addict or drug dependent person, participate in community supervision programs authorized by NARA, if the Attorney General certifies that a suitable program is available.

*Equal Rights.* In addition to the Equal Rights Amendment, Congress has taken other action concerning equality in federal service. Public Law 92-187 provides for equality of treatment of married women and married men under the laws relating to federal employee benefits, including preference eligibility, and tropical differential. It is expressly provided that any federal law providing a benefit to a male federal employee or his spouse or family shall be deemed to provide the same benefit to a female federal employee or to her spouse or family.

*New Judicial District in Louisiana.* Public Law 92-208, December 18, 1971, entitled "An Act for the relief of Richard C. Walker and to create an additional judicial district in the State of Louisiana," provided for the establishment of the new Middle District of Louisiana.

*Court of Claims Jurisdiction in Renegotiation Cases.* P.L. 92-41, signed on July 1, 1971, amended the Renegotiation Act of 1951 to provide that the Court of Claims would have jurisdiction of cases arising out of the Act, in lieu of the Tax Court. The decisions of the Court of Claims would be subject to review by the Supreme Court upon writ of certiorari. Section 4 of the Act made certain amendments with respect to annuities of widows of Tax Court judges.

*Methadone Maintenance.* The Narcotic Addict Rehabilitation Act of 1966 was amended by P.L. 92-420, September 16, 1972, to expand the definition of the word "treatment" as used in all titles of the act to include the concept of controlling the addict's dependence. This will authorize the use of methadone maintenance programs where appropriate.

*Shooting Birds, Fish & other Wildlife from Aircraft.* The Act of November 18, 1971, P.L. 92-159 which provided for



criminal penalties for shooting or harassing birds, fish or other animals from aircraft (\$5000 and/or one year imprisonment) was further amended to provide for enforcement by the Secretary of the Interior. The Secretary is authorized to enter into agreements with State agencies and to delegate enforcement authority to State law enforcement personnel. Any United States judge or magistrate may, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. The wildlife shot or captured contrary to law, and the guns, aircraft and other equipment used in violation are subject to forfeiture to the U.S. The laws applicable to forfeiture of vessels for violation of the customs laws are generally applicable in these cases, except that the Secretary of the Interior would exercise the powers, rights and duties that would otherwise be exercised by officers of the Treasury Department.

## JURY DEVELOPMENTS

### A.O. Releases Juror Utilization Report

The A.O. has released its 1972 Report on Juror Utilization in the U.S. Courts with Director Kirks noting a marked improvement over last year.

The report, the second of its kind, listed 545,861 total paid juror days for Fiscal Year 1972.

Of these total paid juror days, 303,482 days of 55.6% were spent in actual trial service. The paid remaining days represent either jurors challenged but not serving (14.5%) or jurors neither challenged nor serving (29.9%).

The report breaks down juror utilization by various circuit and district courts and computes costs for both petit and grand juries in federal courts.

### Supreme Court Takes Six-Member Jury Case

The U.S. Supreme Court has granted certiorari in the case of *Colgrove v. Battin*, and thus agreed to review the constitutionality of procedures which dispose of civil cases in the federal courts through the use of juries of less than twelve. The Ninth Circuit last March, upheld a ruling by District Judge James F. Battin (Dist. Mont.) which called for trial of the case with six jurors over the objection of counsel.

The issue before the court is narrowed to deal only with the question of smaller juries in civil cases in federal courts. [The Federal Rules of Criminal Procedure (23)(b) require juries of 12 in criminal cases unless parties stipulate in writing, subject to court approval, that a smaller jury would suffice.]

Fifty-six Districts have now adopted local rules which are comparable to the one applied to the *Colgrove* case, hence the decision of the Supreme Court will have a far-reaching impact on the growing trend to use the smaller juries in civil cases. Chief Judge Edward Devitt (Dist. of Minn.) was the first U.S. District Judge to set up this procedure by local rule in January 1971.

## States Vote on Smaller Juries

The November 7th General Election found the question of smaller juries as a referendum issue in several states.

The electorate of *Connecticut* voted for limited use of smaller juries, consent of parties being necessary. The number of jurors would remain at 12, however, in capital cases.

*Arizona* Revised Statute 21-102 was voted into effect providing for:

	<u>In Courts of Record</u>	
Criminal	8 members	(unanimity required)
Civil	8 members	(all but 1 required)
	<u>In other Courts</u>	
Criminal	6 members	(unanimity required)
Civil	6 members	(unanimity required)

It is noted, however, that in criminal cases involving sentences of 30 years or more, the jury number would remain at 12 (unanimity required).

The voters of *New Mexico* failed to approve a proposal which would have allowed six member juries in all cases before magistrates and municipal courts.

By referendum the *Oregon* voters empowered their state legislature to provide for juries of less than 12, but never less than 6 in both Civil and Criminal Trials.

### Jury Selection Challenged

U.S. District Judge William B. Bryant (D.C.) recently denied a motion by defense counsel to strike down the existing jury pool system in the District of Columbia as unconstitutional. The judge had previously ordered the U.S. Attorney's office to justify the existing selection of jurors in light of the challenge that persons under thirty were under-represented. In making his final ruling the judge said evidence showed the past use of juries in the District was, in fact, heavily weighted with people under thirty.

In a second federal juror selection challenge, a Northern Virginia lawyer has appealed to the Fourth Circuit contending that selection of jurors solely from voting lists does not supply a representative cross-section of the community.

### AO - FJC Calendar

Jan. 22-25	Seminar for U.S. District Court Clerks, Phoenix, Arizona
Jan. 25	Sub-Committee on Judicial Salaries, Annuities, and Tenure, Tucson, Arizona
Feb. 2	Bankruptcy Committee (of the Jud. Conf.), Washington, D.C.



- Feb. 2 Magistrates Committee (of the Jud. Conf.), Phoenix, Arizona
- Feb. 5-9 Refresher Course for U.S. Probation Officers, Atlanta, Georgia
- Feb. 12-14 Seminar for U.S. Magistrates, Chicago, Ill.
- Feb. 16 Probation Committee (of the Jud. Conf.), Washington, D.C.
- Feb. 20-23 Seminar for District Court Judges, F.J.C., Washington, D.C.
- Feb. 23 Criminal Justice Act Committee (of the Jud. Conf.), Washington, D.C.
- Mar. 8-10 Seminar for Secretaries to District Court Judges, Atlanta, Georgia
- Mar. 14-16 Seminar for Referees in Bankruptcy, New Orleans, La.
- Mar. 19-22 Seminar for Appellate Judges, F.J.C., Washington, D.C.
- Mar. 19-23 Orientation Course for U.S. Probation Officers, Los Angeles, Cal.
- Mar. 26-29 Seminar for Courtroom Deputy Clerks, St. Petersburg, Fla.

## PERSONNEL

### Federal Judges

#### Appointments

*Marshall A. Neill*, U.S. District Judge, E.D. Wash., Nov. 17  
*Robert J. Ward*, U.S. District Judge, S.D.N.Y. Nov. 16  
*H. Emory Widener, Jr.*, U.S. Court of Appeals, 4th Cir., Oct. 28

### Supporting Personnel

#### Appointments

*Donald D. DeLash*, U.S. Probation Officer, Dist. of Col., Nov. 13  
*John M. Garcia*, U.S. Magistrate, D.P.R., Nov. 9  
*William E. Johnson, Jr.*, U.S. Referee in Bankruptcy, N.D. Ala., Nov. 15  
*William A. Morton*, U.S. Probation Officer, C.D. Calif., Nov. 13  
*Gene J. Ottonello*, U.S. Magistrate, E.D. Calif., Dec. 1  
*Clifford T. Pay*, U.S. Magistrate, D.S.D., Sept. 25.  
*Cornish Lee Roberts*, U.S. Probation Officer, D.Oreg., Nov. 6  
*David T. Sano*, U.S. Probation Officer, C.D. Calif., Nov. 13

#### Death

*Charles F. Hengstebeck*, Chief Probation Officer, E.D. Mich., Nov. 17



*Season's Greetings*

*THE THIRD BRANCH*  
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