The Third Branch

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Bulletin of the Federal Courts

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FREUND COMMITTEE RELEASES SUPREME COURT STUDY

A distinguished seven member panel of professors and members of the Bar familiar with the problems of the Supreme Court recommended last month that a new National Court of Appeals be established to deal with the mounting number of cases filed with the Court.

The Committee, headed by Harvard Professor Paul A. Freund and working under the auspices of the Federal Judicial Center, said that such measures as adding additional staff to the Court or having the Justices meet in panels would not be adequate remedy to solve the problem of mounting filings which may top 7000 before the end of the decade.

In addition to Professor Freund, the committee also included Alexander M. Bickel, Peter D. Ehrenhaft, Russell D. Niles, Bernard G. Segal, Robert L. Stern, and Charles A. Wright.

After considering the problem for over a year, the committee concluded that Congress should establish a National Court of Appeals which should consist of seven judges drawn on a rotating basis from the Federal Courts of Appeals, and that the members would serve staggered three year terms.

The study group said that the proposed court would serve two functions: (1) screen all petitions presently filed with the Supreme Court and refer "the most review worthy" (estimated at about 400 to 450 per term) for decision by the Supreme Court; (2) either deny the remainder of the petitions or retain for decision on the merits "cases of genuine conflict between circuits (except those of special moment, which should be certified to the Supreme Court)."

In addition, the study group also recommended the elimination of direct review by the Supreme Court of decisions made by three judge District Courts; the elimination also of direct appeals of ICC and antitrust cases; and the substitution of certiorari for appeal in all cases where appeal is now the prescribed procedure for review in the Supreme Court.

Finally, the committee also recommended the creation of an ombudsman-type organization which would investigate and report on complaints of prisoners, both collateral attacks on convictions as well as mistreatment complaints.

(Cont'd. on Page 3, Col. 1)

A MESSAGE FROM

THE CHIEF JUSTICE

The recently published *Report of the Study Group on the Caseload of the Supreme Court* is a thoughtful analysis which is provoking healthy debate.

The public is becoming increasingly aware that some adjustment to the growing caseload in the Supreme Court, as in all other courts, cannot be avoided. This is the essence of the unanimous conclusion of a group of eminent scholars and practitioners after long and careful study. After the analysis of the problem, the Report provides a set of recommendations. Few, if any, will find a

(Cont'd. on Page 3, Col. 1)

Federal Criminal Code Bill Is Introduced

On January 4th, the first legislative proposal to create a Federal Criminal Code in the nation's history was introduced in the Senate by Senators John L. McClellan, Sam J. Ervin and Roman L. Hruska.

The bill, titled "The Criminal Justice Codification, Revision and Reform Act of 1973," is the product of a national effort which began in 1966 when Congress created the National Commission on Reform of Federal Criminal Laws. As Senator McClellan said when the bill was introduced, "It is an important and historic milestone."

The 538 page bill is expected to spark intense debate as it proceeds through Congress. A companion measure which is being prepared by the Nixon Administration is expected to be introduced soon.

Senator McClellan said in a Senate floor speech that, "Numbers alone do not do credit to the tremendous amount of study, discussion and preparation that went into the presentations of a number of the organizations which appeared or submitted comments.

"The organizations include: The Association of the Bar of the City of New York, the American Civil Liberties Union, the National Legal Aid and Defender Association, the National Council on Crime and Delinquency, the New York County Lawyers Association, the

(Cont'd. on Page 2, Col. 2)

INSTANT JUDICIAL REPLAY

The Fifth Circuit has developed a simple and inexpensive technique for tape recording oral arguments which allows the presiding judge to quickly re-play part of the argument while preparing his opinion.

Judge Charles Clark (CA-5) said that the tape recording technique was developed with the cooperation of the circuit council and with the assistance of William R. Sweeney, Assistant Director for Management of the Administrative Office.

Judge Clark said, "The preservation of oral argument for later review during the opinion drafting and concurrence phase of the appellate process has long been considered highly desirable. However, until the recent commercial advent of cassette tape recorders, the physical limitations and economics of reel-to-reel tape systems would not permit a Circuit with 15 active and 3 Senior Judges - located in 13 separate cities - to have this aid."

After investigating several tape recorders, the Court selected one which could be easily incorporated into the existing sound system in the courtroom.

A ninety minute tape with forty-five minutes of recording time on each side was found to be the most ideal in light of both convenience and overall economy. The courtroom deputy clerks have quickly learned how to use the equipment.

After each session of oral argument, they mark each tape cassette with both the name and the number of the case and then file it so that it can be quickly found when requested by the judges.

Once a case has been completed and the court order issued, the tapes can be erased and used again.

Judge Clark said, "At the Court's session in November, 1972 when all fifteen active judges and three senior judges held morning and afternoon sessions in the new courthouse in New Orleans, 120 cases were taped in a four day period without incident."

The total cost per judge for incorporating the recording system into the existing courtroom sound system was $165.00.

THE SOURCE

The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers.

Administering Justice: the judges and the courts. Address by Glenn R. Winters. 61 Nat. Civ. R. 403, Sept. 1972

Better Courts. W.E. Burger. 61 Today's Educ. 51, Oct. 1972.

The American Courthouse. Walter H. Sobel. 58 ABA J 1064, Oct. 1972.

Causes and Cures of Administrative Delay. Roger C. Crampton. 58 ABA J 937, Oct. 1972.

Coordination of judicial resources. Address by Jack B. Weinstein. Nov. 29, 1972.

Crime Data Centers: the use (and abuse) of computers in crime detection and prevention. Nicholas deB. Katzenbach and Richard Tomc. 4 Colum. Hum. Rights L. Rev. 49, Winter 1972.

Federal Judicial Center Annual Report 1972 (available from Information Service)

Individual calendar system works in D.C. 58 ABA J 1101, Oct. 1972.

International review symposium--sentencing as a human process. John Hogarth. 10 Osgoode Hall L.J. 233, Aug. 1972.

Less, Not More: police, courts, prisons. Alexander Smith and Harriet Pollack. 36 Federal Probation 12. Sept. 1972.

Report on "victimless crime" in New York State. A. Olivieri and I. Finkelstein. 18 N.Y.L.F. 77, Summer 1972.

Speedy Trial Schemes and Criminal Justice Delay. 57 Cornell L. Rev. 794, May 1972

The Year of the Spoiled Pork: comments on the court's emergence as an environmental defender. Walter A. Rosenbaum and Paul E. Roberts. 7 Law and Society 33, Fall 1972.

Can the Federal Judiciary Be An Innovative System?, Digest of address by Mark W. Cannon at Institute for Court Management, August 31, 1972.

(Federal Criminal Code - from Page 1)

National District Attorneys Association, the National Association for the Advancement of Colored People Legal Defense and Education Fund, the Federal Bar Association, the Committee for Economic Development and the American Bar Association's sections on Taxation, Antitrust, Corporation, Banking and Business Law, and a Special Committee on the Section of Criminal Law of the American Bar Association," he said.

In the January 12th issue of the Congressional Record, a concise section by section summary of the bill is outlined beginning at page S.567.

Persons interested in obtaining copies of the bill and also the final report of the Commission should request the documents by writing the Subcommittee on Criminal Laws and Procedures, Room 2204, Dirksen Senate Office Building, Washington, D.C. 20510.

Following remarks by Senator McClellan, Senator Sam Ervin said that he had joined in sponsoring the bill, "because I believe it represents a reasonable blueprint from which the Congress can begin a comprehensive consideration of reform of the Federal criminal law."

Senator Ervin mentioned the years of study which have preceded the introduction of the bill and said that, "The time has now arrived for Congress to proceed with the serious and careful effort to translate these studies and recommendations into legislation.

"Incorporated in S.1 are new approaches to federal criminal jurisdiction, to defense of federal crimes, to sentencing, and to the general organization of federal criminal law." he said.

In addition, he said, "A major effort has been made in S.1 to simplify the terminology of federal criminal statutory provisions so that a more rational and unified body of law can be established.

"There are important substantative alternations from present law as to what constitutes federal criminal conduct," he said.

At the last meeting of the Judicial Conference of the United States, the standing committee on Criminal Law appointed a subcommittee to study the new proposals and to cooperate with the Senate Subcommittee in redrafting the Code.

(Freund Committee - From Page 1)

At a lengthy press conference on December 19th following the release of the report, Professor Freund said in response to a question as to whether the right of any citizen to appeal to the Supreme Court would be eroded by the proposal, "If the caseload increases, as the Chief Justice has predicted, to 7000 by 1980, what does this right consist of?

"It is a fine symbol and a fine ideal, but I am afraid that so far from adding to the prestige of the Court, it will, if it gets further out of hand, become a ground for disillusionment and cynicism," he said.

(Chief Justice from Page 1)

basis to disagree with facts mustered in the Freund Report or the conclusion that something needs to be done. Reasonable people will have differing views as to what that something is.

The Supreme Court has faced burgeoning workloads before in its history as the Nation grew from three million to 210 million, and attempts to provide remedies have always evoked controversy.

Both the creation of the Circuit Courts of Appeals in 1891 and the Judiciary Act of 1925 were strongly opposed; the latter, relating to the writ of certiorari, was challenged as a threat to the constitutional right of the peoples' access to the Supreme Court.

For at least 40 years of the 48 since the advent of certiorari, these changes have been widely accepted as having been highly desirable and as having strengthened the Supreme Court and enabled it to maintain its historic role.

The creation of the Courts of Appeals for the Circuits had a similar history. Debate and discussion are not *bad* but definitely *good.* We should not make significant changes without searching debate.

Citizens revere the Supreme Court as an institution but may be inclined to overlook the incompatibility of retaining all of the traditional procedural methods while coping with the Nation's litigation explosion.

The Freund Report can be read as suggesting that the nature of the Supreme Court might well change fundamentally if it attempts to meet infinitely expanding needs without making some change in its methods.

Justice Brandeis once wrote to then Professor Felix Frankfurter, as the Act of 1925 on certiorari approached reality:

> Despite the growth of population, wealth, and government functions and development, particularly of federal activities, the duties of the court have -- by successive acts from time to time throughout a generation -- been kept within such narrow limits that the nine men -- each with one helper, can do the work as well as it can be done by men of this calibre. i.e., the official coat has been cut according to the human cloth.

Some commentators on the Freund Report have outlined what are seen as shortcomings without proposing alternatives. Others are suggesting specific proposals to cope with the problems confronted by the Report, and this is constructive. What is called for is public discussion and professional debate without which there can be no final consensus on desirable remedies for any problem. Out of this, some acceptable solution may evolve. When we have heard all the arguments and considered them, then will be the time to reach conclusions.

To foster such debate is one of the functions of the Federal Judicial Center's studies and reports. Since its inception, the Center has pursued studies into the problems of District Courts and Courts of Appeals, and its record is admirable.

The Freund study is, of course, only one of several. The Center expects soon to have a Report from the Advisory Council on Appellate Justice, chaired by Professor Maurice Rosenberg.

Federal appellate problems will also be studied by the Commission on Revision of the Federal Court Appellate System of The United States, which will deal both with geographic alignment and operating methods within the various Courts of Appeals.

The Judicial Center with the collaboration of the Administrative Office is also forging ahead on various studies and programs having to do with District Courts. Each of the studies of the Center will merit careful study by the profession to the end that the Judicial Branch will be able to perform its functions properly.

PERSONNEL

FEDERAL JUDGES

Appointments

Kevin Thomas Duffy, U.S. District Judge, S.D.N.Y., Nov. 28

Hernan G. Pesquera, U.S. District Judge, D.P.R., Dec. 1

Deaths

Richard A. Dier, U.S. District Judge, D.Nebr., Dec. 7

Harold K. Wood, U.S. Senior District Judge, E.D.Pa., Dec. 17

JUDICIAL OFFICERS

Appointments

William E. Bobbitt, Jr., U.S. Magistrate, W.D. Va., Nov. 14

Harold D. Brewster, Jr., U.S. Magistrate, S.D.W. Va., Nov. 15

John W. Ergazos, U.S. Magistrate, N.D. Ohio, Nov. 29

H. James Oleson, U.S. Magistrate, D. Mont., Oct. 27

James M. Thueson, U.S. Magistrate, E.D. Calif., Aug. 25

Harold Martin Lancaster, U.S. Magistrate, E.D. N.C., Jan. 2

Dennis A. Cain, U.S. Probation Officer, W.D.Ky., Dec. 11

Gari K. Chmel, U.S. Probation Officer, D.Minn., Dec. 4

Arlie F. Combs, U.S. Probation Officer, E.D.Calif., Dec. 11

Thomas R. Flowers, U.S. Probation Officer, D. of C., Dec. 4

Carl E. Glotz, U.S. Probation Officer, N.D.Ohio, Nov. 27

Bruce Hesse, U.S. Probation Officer, D.Ariz., Dec. 4

James F. Hobden, Jr., U.S. Probation Officer, E.D.La., Nov. 27

Lyle Robert James, U.S. Probation Officer, D.Kans., Dec. 11

James Edwin Keeter, N.D.Okla., Nov. 28

Arlo D. Lindsey, U.S. Probation Officer, D.Kans., Dec. 18

William Edward Lynn, Jr., U.S. Probation Officer, E.D. Tenn., Dec. 22

(Cont'd. on Page 4, Col. 1)

(Personnel - from Page 3)

John F. McCullough, U.S. Probation Officer, W.D.Pa., Dec. 11

Laura Jane McPhillips, U.S. Probation Officer, D.Minn., Dec. 11

Sterling A. Millet, U.S. Probation Officer, E.D.La., Dec. 11

Darrell K. Mills, U.S. Probation Officer, W.D.Wash., Dec. 4

William T. Peek, U.S. Probation Officer, W.D.Wash., Dec. 11

Rosalind Reiman, U.S. Probation Officer D. of C., Dec. 4

James M. Stein, U.S. Probation Officer, E.D.N.Y., Dec. 11

Scott W. Thornton, U.S. Probation Officer, E.D.Calif., Dec. 18

Charlie E. Varnon, U.S. Probation Officer, E.D.Calif., Dec. 11

John R. Verhagen, U.S. Probation Officer, W.D.Wis., Dec. 1

Patrick F. Walsh, U.S. Probation Officer, E.D.N.Y., Dec. 18

William V. West, U.S. Probation Officer, N.D.Fla., Dec. 18

Promotions

George P. Adams, Chief Probation Officer, E.D.Mich., Nov. 27

Donald A. Berglund, Deputy Chief Probation Officer, E.D.Mich., Dec. 4

Walter J. Crider, Supervising Probation Officer, E.D.Mich., Dec. 11

Henry F. Hussey, Chief Probation Officer, W.D.Okla., Nov. 15

Lee A. Rubens, Chief Probation Officer, W.D.Wis., Dec. 1

Jack C. Silver, Clerk, U.S. District Court, N.D.Okla., Dec. 6

Retirement

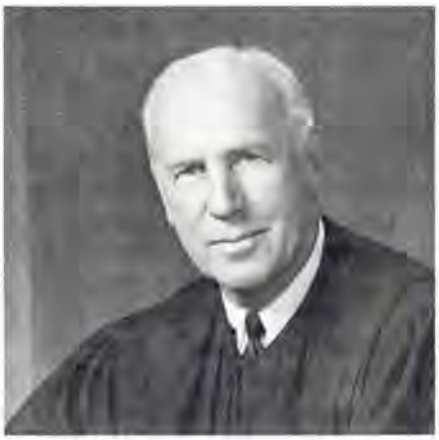
Edward B. Murray, U.S. Probation Officer, D.Kans., Dec. 31

Bulletin

Feb. 8th - The recent Report on the Supreme Court Caseload calling for a National Court of Appeals (see page 1) will be debated on "The Advocates", a national telecast by the Public Broadcasting System. Check local listings for time.

March 15-16 - Metropolitan Judges Conference, Federal Judicial Center, Washington, D.C.

JUDGE MAC KINNON TO SERVE ON BOARD OF CERTIFICATION



HON. GEORGE E. MAC KINNON

Judge George E. MacKinnon, of the Circuit Court for the District of Columbia, has been designated by the Chief Justice to serve on the Board of Certification, replacing Chief Judge Frank M. Johnson (M.D., Ala.).

Other board members are: Judge Alfred P. Murrah, Chairman; Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts; Judge Robert Robb, U.S. Court of Appeals for the District of Columbia; and John W. Macy, Jr., President of the Corporation for Public Broadcasting.

The Board was established by Congress in 1971 following the creation of the position of Circuit Executive to serve in the federal circuits.

Last March, after screening over 700 applicants, and interviewing 129, the Board announced the names of 52 individuals they found qualified. Their names were submitted to the Circuit Chief Judges for consideration.

Judge MacKinnon, a former Congressman and Minnesota attorney, was appointed to the Circuit Court in 1969. Prior to that time he was United States Attorney in his state and during World War II served in the Navy Air Force.

LAW DAY – MAY 1

The nation will observe Law Day May 1st with an all-embracing theme: Help Your Courts Assure Justice. Participating state and local bar associations in Law Day '73 programs will be asked to schedule events around this theme.

NEW TEACHING AIDS FOR COURTROOM DEPUTY CLERKS

Art Morsch, Deputy Clerk of the Tucson Court has prepared a comprehensive booklet on the individual calendar system for new deputy court clerks. The booklet is designed to be used in conjunction with a cassette instruction tape. Both the booklet and tape will be available soon through the Center's cassette lending library program.

FEDERAL JUDICIAL CENTER SPONSORS INTER-AGENCY SEMINAR

The Federal Judicial Center will sponsor a refresher course in Atlanta, Georgia, February 5-9 for three agencies in the corrections field.

Convening to discuss common problems and exchange ideas will be thirty U.S. Probation Officers, twenty representatives of the Bureau of Prisons who specialize in case management, and ten case analysts from the Board of Parole.

THE BOARD OF THE FEDERAL JUDICIAL CENTER

Chairman

The Chief Justice of the United States

Judge Wade H. McCree, Jr.-Vice Chairman
United States Court of Appeals for the Sixth Circuit

Judge Ruggero Aldisert
United States Court of Appeals for the Third Circuit

Chief Judge Adrian A. Spears
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 of the Administrative Office of the United States Courts

THE NINETY-THIRD CONGRESS

The Ninety-Third Congress convened on January 3. By January 6, over 1,400 bills and 140 joint resolutions had been introduced in the House of Representatives, and 250 bills and 12 joint resolutions in the Senate.

Many of the bills concerned matters which had remained pending at the close of the last Congress. Elections of members of some of the committees have been made, in certain instances on a temporary basis.

The House Committee on Appropriations temporarily has the following membership: Majority: Congressmen Mahon (Chairman), Whitten, Rooney of New York, Sikes, Passman, Evins of Tennessee, Boland of Massachusetts, Natcher, Flood, Steed, Shipley, Slack, Flynt, Smith of Iowa, Giaimo, Hansen of Washington, Addabbo, McFall, Patten, Long of Maryland, Yates, Casey, Evans of Colorado, Obey, Roybal, Stokes, Roush, McKay, and Bevill.

Minority: Cederberg, Rhodes, Minshall, Michel, Conte, Davis of Wisconsin, Robison of New York, Shriver, McDade, Andrews of North Dakota, Wyman, Talcott, Riegle, Wyatt, Edwards of Alabama, Del Clawson, Scherle, McEwen, Myers, and Robinson of Virginia.

Senators McClellan, Ervin, and Hruska introduced S.1, to codify, revise and reform Title 18, United States Code, to make appropriate amendments to the Federal Rules of Criminal Procedure, to make conforming amendments to criminal provisions of other titles of the United States Code, and for other purposes.

COMMISSION ON REVISION OF CIRCUITS

The Vice President January 3rd announced his four appointees to the Commission on Revision of the Federal Court Appellate System. They are: Senators John McClellan (D. Ark.), Quentin N. Burdick, (D. N.D.), Roman Hruska, (R. Neb.), and Edward J. Gurney (R. Fla.).

The other 12 appointments, to be made by the President, the Chief Justice and the Speaker of the House, are expected to be announced shortly.

STATE-FEDERAL news

Virginia Virginia's council met December 15th and discussed the feasibility of a comparative study of court reporting in both Virginia courts and federal courts based in Virginia which emphasized techniques and forms for reporting trials and processing transcript orders.

The council also considered the need for a uniform method of selectively publicizing opinions of state and federal courts. As in other states, the council discussed how best to disseminate and implement their recommendations.

The group discussed a memorandum by the Attorney General of Virginia [based on the opinion in *Tharp* vs. *Commonwealth,* 175 S.W. 2d 277 (1970)] which outlines the practice of the Virginia Supreme Court in belated appeals.

Georgia The Georgia Council met December 8th under the chairmanship of Chief Justice Carlton Mobley and agreed to meet again March 2nd for further discussion of Council activities. Federal Circuit Judge Griffin B. Bell (CA-5) is Vice Chairman of the Council.

New York The next Council meeting will be held January 23rd in New York City. According to Tom McCoy, New York's State Court Administrator, topics on the agenda include civil rights actions filed by state prison inmates, the coordination of judicial resources and establishing a data bank for prisoner post-conviction applications.

Judge James P. Griffin of the District Court of Nassau County submitted a memorandum discussing Public Relations and Jurisdiction of Courts for consideration.

Customs Court Judge Edward D. Re is the President-Elect of the Federal Bar Council. In addition to federal judges, the Council consists of attorneys who practice in the federal courts in New York, New Jersey and Connecticut.

Alabama The State-Federal Council met December 9 and Judge Walter P. Gewin (CA-5) stressed areas of concern to both judicial systems such as habeas corpus proceedings, removal of cases from state to federal courts and docket conflicts. Future action was promised in each of these areas through delegation of assignments.

(Con't. on Page 6, Col. 3)

MC CONNELL TO DIRECT STATE CENTER

EDWARD B. MC CONNELL

Edward B. McConnell, presently Administrative Director of the New Jersey Courts, will leave that post next July to become the second Director of the National Center for State Courts.

Justice Winslow Christian, present Director, is resigning to resume his duties on the California Court of Appeals.

The National Center for State Courts was incorporated following a resolution of the National Conference on the Judiciary in March, 1971.

Justice Paul C. Reardon, of the Supreme Judicial Court of Massachusetts, President of the Center's board, said, "Mr. McConnell brings a wealth of experience and talent and an unusual ability to direct the activities of the State Center."

In addition to his service to the New Jersey courts, Mr. McConnell has lectured at the United Nations Asia and Far East Institute in Tokyo, has served as Chairman of the Conference of Court Administrative Officers and is currently on the Council of the ABA's Division of Judicial Administration.

SENATOR BURDICK CALLS FOR PRE-TRIAL DIVERSION

In a speech on the Senate floor January 23rd Senator Quentin N. Burdick, Chairman of the Sub-committee on Improvements in Judicial Machinery, called for new legislation to divert "alleged offenders away from the full criminal process" because, he said, federal courts need more flexibility in dealing with those accused of crime.

The Senator said, "At the present, without formal diversion programs available to federal prosecutors, U.S. Attorneys are faced with the dilemma of either dismissing charges against someone who has a real need for supervision and community service, or prosecuting an individual whose chances for rehabilitation would be damaged by conviction.

"These are the people for whom the opportunities to get jobs, educations, or training would be diminished by a record of criminal conviction," he said.

He continued, "Society would not be well served by returning an individual in need of supervision to the streets. On the other hand, the public is also poorly served by increasing the chances that the individual will become a recidivistic criminal."

The Senator said that he was pleased that the National Conference on Criminal Justice which met in Washington, D.C. this month mentioned in its working papers that diversion" 'should be preferred over traditional punitive measures for those who do not present a serious threat to others'.

"The essence of a good diversion program, according to the standards, requires involvement of the community in planning and establishing practices, and it requires the commitment of community resources to helping these individuals in the community", he said.

"In addition," the Senator continued, "the use of diversion requires a high caliber of supervision for the individual who has such a need."

He told the Senate the Chamber of Commerce of the United States has pointed to pre-trial diversion as a positive correctional technique which not only tends to rehabilitate offenders, but is an inexpensive program "which offers aid in breaking up the backlog of court cases as well as giving the rehabilitated individual the opportunity to avoid the stigma of a crime record."

JUDGE CAMPBELL WORKING FULL TIME FOR F.J.C.

HON. WILLIAM J. CAMPBELL

Judge William J. Campbell (N.D. Ill.) has been working full time since last November to assist the Federal Judicial Center in conducting seminars throughout the nation for judges, court officials and supporting personnel.

Federal Judicial Center Director Judge Murrah said, "I can only applaud the tremendous effort which Judge Campbell has devoted towards helping the Center realize its most important objectives."

Judge Campbell said, "I intend to increase my activity and do everything I can to innovate significant changes by working with the Federal Judicial Center.

"I intend to go everywhere the Center conducts seminars and devote full time to this activity now that our court is current."

The judge said he is helping to familiarize other judges and court officials with the new rules of discovery in criminal cases.

When Chief Judge of his district, Judge Campbell took the especially innovative step of introducing new rules of discovery for criminal cases which were quickly adopted not only in his district, but aroused the interest of other jurisdictions.

The Center is currently in the process of conducting over 40 seminars nationally, and as a result, it is impossible for Center Director Judge Murrah to be present at each seminar.

By attending many of these seminars as Judge Murrah's representative Judge Campbell is making it possible for all seminars to have at least one judge present who has extensive trial experience.

(State-Federal News - from Page 5)

The Council discussed inviting members of the State-Federal Council to attend the 5th Circuit Judicial Conference.

Judge Alfred P. Murrah, F.J.C. Director, attended the meeting and encouraged periodical meetings of the Council, pointing out that similar Councils have been successful in other states. *Washington* This recently organized Council had its first meeting December 15 in Seattle. The program included consideration of by-laws and election of officers. A second draft of the by-laws will be considered at the next meeting.

Chief Justice Orris F. Hamilton was elected Chairman and Judge Walter T. McGovern (W.D.Wn) was elected Vice-Chairman. The Council agreed that Administrator for the Courts, Phillip B. Winberry, would serve as secretary.

Selected to serve on the Executive Committee were Chief Justice Orris F. Hamilton, Chairman; Judge Walter T. McGovern, Vice-Chairman, and as members, Judge Frederick G. Hamley (CA-9), Judge William H. Williams and Judge Gery N. Utigard. The Committee on the Agenda will be chaired by Justice Robert C. Finley and will include Judge Marshall Neill and a Court of Appeals representative to be named later.

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William E. Foley, Deputy Director, Administrative Office, U.S. Courts

LEGISLATION—92ND CONGRESS

This is the third summary of legislation enacted during the 92d Congress. See November and December issues of *The Third Branch* for preceding summaries.

Motor Vehicle Information and Cost Savings Act. This law provides for the establishment and enforcement of "bumper standards" applicable to passenger motor vehicles.

The Secretary of Transportation is authorized to set such standards. Persons adversely affected by any rule setting, amending, or revoking a bumper standard may within 60 days after the rule is issued petition either the Court of Appeals for the D.C. Circuit, or the circuit where he resides or has his place of business for judicial review of such rule.

The provisions of the Administrative Procedure Act of title 5 are generally applicable to these proceedings. Review by the Supreme Court may be had upon writ of certiorari.

Violations of the rules may incur civil penalties in amounts up to $800,000. Criminal contempt charges arising from failure to comply with an injunction or restraining order, when the violation also constitutes a violation of the statute upon request of the accused, may be tried before a jury.

Any owner of a passenger vehicle who sustains damages as a result of a motor vehicle accident because the vehicle did not comply with the bumper standards may bring a civil action in either the District Court for the District of Columbia, or the district court for the district in which he resides, and may recover damages, costs, and reasonable attorneys' fees.

Civil penalties are provided under title 2 - Automobile Consumer Information Study - for failure to provide the Secretary with requested information. Title IV prohibits tampering with odometers and authorizes private treble damage suits, and injunctive relief.

Ports and Waterways Safety Act of 1972. This legislation authorizes the Secretary of the Department in which the Coast Guard is operating to establish vessel traffic services, require certain equipment on vessels, and to control vessel traffic under certain circumstances, as well as to establish procedures and standards for handling of dangerous cargo and to prescribe minimum safety equipment requirements.

Violations of the regulations may incur civil penalties of not more than $10,000, or in the case of willful violations, a fine of not less than $5,000 or more than $50,000 and/or imprisonment for not more than 5 years.

The act substantially amends existing law relating to vessels carrying certain cargoes (particularly fuel oil, etc.) and increases the penalties for violations from a fine of not more than $1,000 and/or one year imprisonment, to a civil penalty of up to $10,000 or, in the case of willful violations, a fine of not less than $5,000 or more than $50,000 and/or imprisonment for up to 5 years. The U.S. district courts have jurisdiction to restrain violations.

Marine Mammal Protection Act of 1972. The act establishes a moratorium on the taking or importation of marine mammals, subject to exceptions which may be made by the Secretary of the appropriate department for scientific purposes or if the application for an exception is reviewed and recommended by the Commission and Committees set up by the Act.

Violations of the act and regulations may incur either a civil penalty of $10,000 per violation, or in the case of willful violations, a fine of $20,000 for each such violation and/or imprisonment for one year. In addition, vessels may be fined, and cargoes may be forfeited.

Enforcement by state officers acting as agents of the federal government is authorized, and the United States district courts and U.S. Magistrates are specifically authorized to issue warrants and other process, including warrants or other process issued in admiralty proceedings in U.S. district courts.

Noise Control Act of 1972. This comprehensive Law authorizes suits by citizens against any person, including the United States and its agencies or instrumentalities to the extent permitted by the 11th Amendment, alleged to be in violation of noise control requirements set under the act by the Environmental Protection Agency or the Federal Aviation Administration, and suits against EPA and FAA for failure to perform a non-discretionary duty. In any actions brought, either the EPA or FAA may intervene as a matter of right.

Alcohol Abuse and Alcoholism Prevention. This Law amends the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970 to extend grant programs to state and local programs until June 30, 1974.

District of South Dakota. The counties of Mellette, Todd, and Tripp were transferred from the Western Division to the Central Division of the District of South Dakota by this Act.

Juvenile Delinquency. The Congress has authorized a program to assist states and local communities in providing community-based preventive services, including diagnosis and treatment, to youths in danger of becoming delinquent, and to provide assistance in the training of personnel in these fields. Technical assistance is also authorized. The program will be administered by the Secretary of Health, Education and Welfare.

Suits to Adjudicate Certain Real Property Quiet Title Actions. This Act amends section 1346 of title 28, United States Code to vest in the district courts exclusive jurisdiction of civil actions to quiet title to an estate or interest in real property in which an interest is claimed by the United States. Such civil actions are to be tried by the court without a jury.

Retired Commissioners of the Court of Claims. Retired commissioners of the Court of Claims are designated as Senior Commissioners and may be recalled for temporary duty.

Bald Eagle Protection Act. This Act increases the penalty for killing bald eagles to $5,000 and/or one year imprisonment in cases where this is done knowingly or with wanton disregard of consequences.

Simple taking or possession is subject to a civil penalty up to $5,000. A person convicted of a violation of the act or of a permit or regulation issued under the act who is authorized to graze livestock on public lands under a lease, license permit or other agreement may be required to forfeit such lease, without compensation or right to recover damages for the cancellation. State officers will assist in the enforcement of this law.

Consumer Product Safety Act. The purpose of this comprehensive legislation is to protect consumers against injury from hazardous products, to assist them in evaluating the comparative safety of consumer products, to develop uniform safety standards for such products and minimize conflicting state and local regulations, and to promote research and investigation into causes and prevention of product-related deaths, illnesses and injuries.

In general, all consumer products except those regulated under other laws are covered by the act. An independent Consumer Product Safety Commission is established to act as an information clearinghouse and research, testing and training organization in consumer product safety.

In addition, it may establish consumer product safety standards. When a consumer product is found to be unreasonably hazardous and there is no standard which would protect the public, the Commission may ban it.

Any person adversely affected or any consumer organization may petition the U.S. Court of Appeals in the District of Columbia, or circuit in which the person or organization has his principal residence or place of business for review of the rule. The judgment of the court may be reviewed by the Supreme Court on writ of certiorari or certification.

The Commission is authorized to file in district court an action against an imminently hazardous product for its seizure and/or against any person who is its manufacturer, distributor or retailer, for appropriate relief and/or condemnation of the product.

Violations of the act or rules issued thereunder will incur civil penalties of up to $2,000 for each violation, but not more than $500,000 for related series of violations.

A knowing and willful violation after notice of noncompliance from the Commission will incur a penalty up to $50,000 and/or one year imprisonment.

Expanded Protection of Foreign Officials. Title 18, United States Code is amended to prohibit murder, manslaughter or kidnaping of foreign officials or foreign guests. In addition, protection is given such officials and guests against assault, and other physical vio-

(Cont'd. on Page 8, Col. 3)

ao aoFJC 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, Ga.
Feb. 12-13	Committee on Court Administration (of Jud. Conf.), New Orleans, La.
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.
Feb. 26-28	Seminar for U.S. Magistrates, F.J.C., Washington, D.C.
Mar. 8-10	Seminar for Secretaries to District Court Judges, Atlanta, Georgia
Mar. 15-16	Seminar for Referees in Bankruptcy, New Orleans, La.
Mar. 15-16	Metropolitan Judges Meeting, F.J.C., Washington, D.C.
Mar. 16	Budget Committee (of Jud. Conf.), Washington, D.C.
Mar. 17	F.J.C. Board of Directors Meeting, Dolley Madison House, Washington, D.C.
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, California
Mar. 26-29	Seminar for Courtroom Deputy Clerks, St. Petersburg, Florida
Apr. 1-4	Regional Seminar for Probation Officers, Charleston, South Carolina
Apr. 5-6	Judicial Conference of the United States, Washington, D.C.
Apr. 9-13	Metropolitan Probation Officers Orientation Seminar, Los Angeles, Cal.
Apr. 10-13	5th Circuit Conference - El Paso, Texas
Apr. 23-May 1	Seminar for Newly Appointed District Court Judges, F.J.C., Washington, D.C.
May 14-16	7th Circuit Conference, Chicago, Illinois
May 30-June 2	6th Circuit Conference, Galt House, Louisville, Ky.
June 28-30	10th Circuit Conference, Broadmoor Hotel, Colorado Springs, Colo.

(Legislation - from Page 7)

lence, intimidation and harassment.

Federal Environmental Pesticide Control Act of 1972. This Act amends the Federal Insecticide, Fungicide, and Rodenticide Act, clarifying the applicability of the act, providing for a comprehensive system of regulation of environmental pesticides, and criminal and civil penalties for violations of the act. Administrative inspection warrants are specifically authorized.

Ocean Dumping. The Marine Protection, Research and Sanctuaries Act of 1972 regulates the transportation for dumping, and the dumping, of material into ocean waters. Civil and criminal penalties are authorized, and the Attorney General, or his delegate, may bring actions for equitable relief.

In addition, any person may bring a civil suit on his own behalf to enjoin any person alleged to be in violation of the act. The district courts have jurisdiction of such actions, without regard to citizenship of the parties or the amount in controversy.

In addition, the act authorizes the Secretary of Commerce to establish marine sanctuaries and to make regulations applicable to them. Violations would be subject to a civil penalty, and district courts have jurisdiction to restrain violations.

Actions on Behalf of Indian tribes, bands or groups. This Act extends for 90 days the time allowed for commencing actions for money damages brought by the United States for or on behalf of an Indian tribe, band, or group.

THE THIRD BRANCH
VOL. 5, NO. 1 JANUARY 1973

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
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The Third Branch

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Bulletin of the Federal Courts

VOL. NO. 5, NO. 2 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center FEBRUARY 1973

CONGRESS ASKED FOR 51 MORE JUDGESHIPS.

The Director of the Administrative Office, speaking on behalf of the Judicial Conference, has asked Congress for 51 new district judgeships for 32 districts.

In a statement presented January 23 before the Subcommittee on Improvements in Judicial Machinery, A.O. Director, Rowland F. Kirks said that a 1972 review by the Subcommittee on Judicial Statistics of the Committee on Court Administration revealed that the 51 judges are necessary if the Federal District Courts are going to be able to effectively meet the challenge of mounting caseloads.

Director Kirks said the Subcommittee sought the views of both the chief judges of all district courts as well as those of the judicial councils in each of the circuits in order to determine the need for additional judges.

In addition, the A.O.'s Division of Information Systems has prepared detailed statistical data for each district including current filings, weighted filings, case terminations, pending cases, trial days, and a forecast of the filings in the District Courts four years hence, in 1976.

Director Kirks testified that the Judicial Conference is aware of the "national policy of holding down all governmental expenditure to a minimum." He added, "We believe, however, that there are sound and compelling reasons why it is imperative, in order to keep judicial business moving, that additional district judgeships be authorized at this time."

He pointed out that in 1960 the total case filings in the Nation's district courts were 89,112 and that this has risen to a total of 145,227 in 1972.

The Director's testimony also brought out that the rise in civil case filings can be attributed, in part, to the heavy increases in class action cases now permitted under Rule 23 of the Federal Rules of Civil Procedure and through several recent legislative enactments.

"A number of proposals now under consideration, particularly in the consumer field, suggest that the impact on the civil caseload may well increase to overwhelming proportions," he said.

The effect of creating additional judgeships has been demonstrated in case terminations in the past few years.

He pointed out that the termination rate increased from 117,254 cases in 1970 to 143,282 in 1972 and added "this is a persuasive argument to show the impact of increased judge power in combating the mounting case filings."

However, he said, other factors are working to increase the number of case terminations during the past three years and cited the "growing use of the individual calendar" and the impact stemming from the creation of the United States Magistrates System.

He said it was too early to judge the full impact of the Magistrates System but he believed that they have been a substantial contribution to the problem of handling the mounting caseload.

During the first full year of operation of the Magistrates System, Director Kirks said that they "disposed of 237,522 separate items of business." This included the disposition of 72,082 minor offenses.

"We are hopeful that in the future the magistrates system will be a major factor in holding down the number of new district judges which will have to be requested of the Congress," he said.

BILL MAY DELAY NEW EVIDENCE RULES

'More time needed for Evidence Rules review.' **Sen. Sam J. Ervin.**

Senator Sam J. Ervin introduced legislation in late January to prevent the new rules of evidence for U.S. Courts and Magistrates from going into effect until the end of the first session of the current Congress. The Senate has approved the bill and a companion measure is pending in the House.

The new rules were transmitted to Congress in early February after they were approved last November by the Supreme Court by an 8-1 vote, Justice Douglas filing the lone dissent.

They would have automatically gone into effect on July 1, 1973.

In a speech on the Senate floor,

See **EVIDENCE RULES**, p. 2.

EVIDENCE RULES, from p. 1.

Senator Ervin said Congress needed more time to study the rules which were drafted over an eight year period.

However, Senator Ervin said that he was not opposed to the new rules but merely felt that additional time was needed to review them.

Hearings began in early February on the new rules before a House judicial subcommittee, chaired by Representative William L. Hungate of Missouri.

Some House members have also complained that they presently have neither time nor staff to appropriately study the proposals. Meanwhile, despite the move in Congress to delay implementation of the rules of evidence, federal judges are already participating in Federal Bar Association regional programs on the proposed rules.

Attorney General Richard Kleindienst, President of FBA, is expected to attend and address seminars in Jackson, Mississippi on February 9-10; Phoenix, Arizona on March 28-29; Detroit, Michigan on April 11; Minneapolis, Minnesota on May 18-19; and in Boston, Massachusetts on June 15-16.

At the midyear meeting of the American Bar Association in Cleveland this month, the ABA House of Delegates overwhelmingly passed a resolution endorsing S. 583, the Senate bill delaying implementation of the rules, until the end of the current Congressional session.

ABA President Robert W. Meserve and Past President Whitney North Seymour told the delegates that not only Congress but the Nation's attorneys need additional time to study the proposed rules.

The action by the ABA House of Delegates followed a strong speech against the resolution by Albert E. Jenner, Jr., Chairman of the Advisory Committee of the Judicial Conference which drafted the rules.

ABA REFUSES TO ENDORSE EXCLUSIONARY RULE CHANGE

In a surprise move, the American Bar Association's House of Delegates this month refused to endorse legislation which would in effect erode the exclusionary rule presently applied to state and federal courts.

By refusing to endorse a resolution presented to the House the members rejected a proposed bill introduced by Senator Lloyd Bentsen (D. Tex.). If the Bentson bill is not enacted it will leave standing rigid restrictions on the admission of evidence in criminal trials established by the U.S. Supreme Court.

After lengthy debate in which Harvard Professor Livingston Hall and Solicitor General Erwin N. Griswold asked the delegates to endorse the Bentsen bill -- and Georgetown University Professor Samuel Dash and former U. S. Attorney Cecil Poole spoke strongly against the measure -- the House rejected the resolution by a vote of 129 to 114.

During the argument on the floor the delegate from the Division of Judicial Administration, William B. West, III, spoke on behalf of the bill and said its implementation would greatly aid the work of the courts, and at the same time, assure a better quality of justice throughout the country.

He pointed to a majority report of that Division which called for endorsement of the bill. The chairman of the committee of judges writing the report was U.S. Circuit Judge Edward A. Tamm (CA-DC Cir.).

A minority report, signed by two judges, said the bill's "obvious unconstitutionality and the undesirability of excluding evidence obtained by means of an unlawful search and seizure" was the basis for their opposition to the bill.

The membership of this Divison of the ABA is made up mainly of state and federal judges. U.S. District Judge William B. Jones is Division Chairman.

CONSTITUTIONAL BATTLE LOOMS OVER IMPOUNDING

The constitutional question of whether the President has the right to impound appropriated funds marked the opening of the 93rd Congress.

Senator Sam J. Ervin announced that his Judiciary Subcommittee on Separation of Powers will examine this issue in-depth.

Senator Ervin said, "I hope the hearings will alert Congress and the American people to the constitutional crisis we face and to the urgent necessity that some redress be found if our form of Government is to survive."

On the Republican side of the aisle Senate Minority Leader Hugh Scott said President Nixon has found it necessary to impound Federal funds because Congress has not been responsible in controlling spending, thus threatening widespread economic chaos.

Senator Scott said, "What the President is saying is the Congress appropriated $261 billion for a $250 billion dollar budget. You can't spend more than you make, and the Government can't do it without taxing."

The controversy is already spreading to the Federal district courts.

At last count, five suits had been filed in Federal District courts challenging the constitional right of the Executive Department to withhold funds appropriated by Congress.

The suits are seeking to force release of funds for such projects as a St. Louis, Missouri highway, a Florida canal, water anti-pollution facilities in California and rural conservation projects in the southwest.

In a related move, Representative George E. Brown, (Dem.-Cal.) filed suit in the Southern District of California January 26 to force the President to release some $580 million which Congress appropriated for water pollution projects in California.

Representative Brown said Congress approved the projects when it enacted the Water Pollution Control Act last October and that he filed the class action suit as a private citizen.

President Nixon vetoed the bill in November but Congress overrode the President's veto.

Brown claimed in his suit that the President was acting unconstitutionally by refusing to spend the funds for the projects. However, the President said, through a spokesman, that by spending the appropriated funds the Government would only be fueling inflation.

HRUSKA MOVES TO CUT HABEAS FILINGS

'Statistics show mushrooming of prisoner petitions.' **Sen. Roman L. Hruska**

Senator Roman L. Hruska has introduced legislation designed to "reduce the number of frivolous and dilatory petitions" which are flooding the federal courts.

In introducing the bill in the Senate January 26, Senator Hruska said the number of habeas corpus petitions from state and federal prisoners filed under Sections 2253, 2254 and 2255 of Title 28 of the United States Code has become a major problem.

He said, "the 'mushrooming' in the last 20 years and the resulting draining of the trial system's resources away from its regular work are firmly and adequately demonstrated" by the following statistics: Prisoner petitions under U.S.C. 2254 and 2255 in 1950, 672; 1960, 1,184; and 1970, 10,792.

Senator Hruska said as a result "about 20% of the appeals to the Circuit Courts are from decisions on collateral attack petitions.

"A large expenditure of the Circuit Court's time is spent in these appeals which is not required by the Constitution."

The proposed legislation, he continued, "is based in part upon the suggestion of one of this country's most profound legal scholars and outstanding jurists, the Honorable Henry J. Friendly, Chief Judge of the U.S. Court of Appeals for the Second Circuit."

Senator Hruska pointed out that "the effort in this bill is to extend to everyone convicted all of his constitutional rights but [it] will at the same time deny him the opportunity to abuse the great writ to the detriment of the administration of justice and of the public good."

He told the Senate the legislation has the full support of both the National Association of Attorneys General as well as the Department of Justice.

Senator Hruska pointed to an evaluation by the Department of Justice on the need for federal habeas corpus reform prepared last year by Attorney General Richard D. Kleindienst.

Attorney General Kleindienst said at that time "collateral attack in the federal courts on state and federal collateral judgments has been the ultimate outgrowth of the endless search for certitude in our criminal justice system ... We hesitate in that last instance before sending our convicted criminals to prison and wonder if we have indeed done justice.

"As a result of this laudable concern," the Attorney General said, "we have countenanced a system of collateral attack on these final criminal judgments which literally staggers the imagination."

The Attorney General concluded that "the increasing volume of habeas corpus petitions is one of the causes of the overall problem of court conjestion and trial delays in the federal courts."

Senator Hruska's bill would, in effect, allow state or federal prisoners to appeal their convictions if "the claimed constitutional violation presents a substantial question which was not raised and determined previously or which there was no fair and adequate opportunity to raise at an earlier time."

The Senator cited the address Judge Friendly presented as the 1970 Ernst Freund Lectuer at the University of Chicago Law School (38 Chi. L. Rev. 142).

In that address, Judge Friendly said he challenged "the assumption that simply because a claim can be characterized 'constitutional' it should necessarily constitute a basis for collateral attack when there has been a fair opportunity to litigate it at trial and on appeal."

Judge Friendly said "it defies good sense to say that after Government has afforded a defendant every means to avoid conviction, not only on the merits but by preventing the prosecution from utilizing provable evidence obtained in violation of his constitutional rights, he is entitled to repeat engagements directed to issues of the latter type even though his guilt is patent.

"A rule recognizing this," Judge Friendly continued, "would go a long way toward halting the 'innundation;' it would permit the speedy elimination of most of the petitions that are hopeless on the facts and the law, themselves a great preponderance of the total, and of others where, because of previous opportunity to litigate the point, release of a guilty man is not required in the interest of justice even though he might have escaped deserved punishment in the first instance with a brighter lawyer or a different judge."

Voir Dire

DO MAGISTRATES QUESTION JURORS?

Judge Harrison L. Winter (CA-4) on behalf of the Committee on the Operation of the Jury System has sent to the Chief Judge of each District Court a questionnaire to determine the extent to which U.S. Magistrates presently conduct voir dire examinations of jurors.

The survey is being conducted to determine whether the practice should be encouraged, perhaps by a specific rule or policy statement.

The Committee asked for an immediate response so that they can quickly analyze the results and make appropriate recommendations.

"Modernizing Corrections" A cassette-slide presentation distributed by the Chamber of Commerce of the U. S. is available through the F.J.C. Cassette Library (see page 8). The presentation is designed to give civic audiences an overview of the techniques employed today in the corrections field.

AO DIRECTOR CITES NEED FOR PROFESSIONAL COURT ADMINISTRATORS

'Professional Court Administrators critically needed.' Rowland F. Kirks

Administrative Office Director Rowland F. Kirks said last month professional court administrators are vitally necessary to avoid "a judicial traffic jam resulting in a complete halt in judicial functioning."

Director Kirks said "there is a developing recognition that the problems of court systems have increased to the point where they can no longer be handled in traiditional fashion, that there are indeed problems common to all courts which will yield to systematic study and professional application and that persons with special training who can become specialists in the internal operations of court systems, as distinguished from participation in the decisional process, are critically needed."

In a major address to State Court Judges and Solicitors of Georgia meeting in Savannah, the A. O. Director traced the history of professional court administration and said he believed the day was fast approaching when almost every state will have established court administrative officers.

He told the Georgia group "I conceive the responsibility of the judges to be that of rendering the highest quality of justice, in the shortest period of time, and for the lowest possible cost."

In the past, he said, a judge often believed "his sole responsibility was to go to the courthouse when convinced that counsel had truly arrived at a determination to try the case, to ascend the bench and maintain decorum until opposing counsel had exhausted their case and then in his own leisurely time reach a decision in the matter."

However, he pointed out that in the Federal system today, the concept of judicial responsibility has dramatically changed.

"Today it is the recognized responsibility and concern of a Federal judge to dispose of all matters pending before his court as quickly, as professionally, and as economically as he is capable of doing," Director Kirks said.

Director Kirks outlined his own duties as the chief executive of one of the most sophisticated court administration offices in the world and said he firmly believed "that court administration need not in any way at any time, infringe upon the decision making process which is reserved exclusively to the judge himself."

Pointing to a recent Federal Judicial Center study of one U.S. Court of Appeals he said that about 40% of the judges' time was spent in non-case related activities, mainly administrative matters which probably could be handled by an administrator.

"We are dedicated to the proposition that in this particular court this 40% of non-case related time must be cut back.

"When a judge takes time from his judicial work to be a personnel administrator, a budget officer, an auditor, a housing officer, a purchasing agent, a collector of statistics, and a publisher of reports or even a manager of court calendars, he is not performing the duties of the office which he holds, nor is he engaged in the work for which he was appointed or elected to office," Director Kirks said.

ERVIN INTRODUCES SPEEDY TRIAL BILL

In early February, Senator Sam J. Ervin introduced a bill requiring trial of criminal cases within 60 days after arrest.

The bill, which had 46 other Senate co-sponsors, is the result of a three-year study of the problem of court conjestion by the Senate Subcommittee on Constitutional Rights.

Senator Ervin said, in remarks on the Senate floor when the bill was introduced, "During the past decade, the Congress and many State legislatures have concentrated their energies upon reform of state and federal criminal justice systems [but] despite all this attention our criminal courts are still in an essentially dilapidated state."

In the Federal system, he contended, "The average criminal case is not brought to trial until almost a year after arrest." The Senator did not give any specific examples to buttress his contention, nor did he mention Rule 50 (b) currently being implemented in the federal system.

He said the speedy trial bill "proposes a decisive, although perhaps to some a drastic, strategy to end this quagmire in the Federal courts.

"The courts, undermanned, starved for funds, and utilizing 18th Century management techniques, simply cannot cope with burgeoning caseloads.

"The solution", he continued, "is to create initiative within the system to utilize modern management techniques and to provide additional resources where careful planning so indicates.

"The purpose of the bill," he said, "is to make effective the Sixth Amendment right to a speedy trial in Federal criminal cases by requiring that each federal district court establish a plan for trying criminal cases within 60 days of arrest or receipt of summons," based on the following scheme:

During the first year after enactment, *defendants who are not actually in custody* must be tried within 180 days, during the second year within 120 days, during the third year, 90 days, and after the end of the third year, trials must be within 60 days. Beginning 3 months after enactment and until the 60 day limit goes in effect 3 years later, however, those *defendants who are actually being physically detained in custody* must be brought to trial within 90 days.

"Each district must file a plan with the Judicial Conference for the implementation of the second, third and fourth phases stating what additional resources, personnel and facilities will be required."

The speedy trial bill also will create demonstration "Pretrial Services

See SPEEDY TRIAL BILL, p. 5.

Agencies" in ten federal district courts.

Senator Ervin said "These Agencies will make bail recommendations, supervise persons on bail and assist them with employment, medical and other services designed to reduce crime on bail."

The Senator said the Judiciary Committee has examined many speedy trial schemes.

"Cases in point are the rule adopted by the U.S. Court of Appeals for the Second Circuit, and the statute recently adopted in New York.

"In both," he said, "time limits plus a dismissal sanction have been adopted, but the sanction applies only where the prosecutor is not ready for trial within the time limits."

He said his bill contains a dismissal sanction which "applies even if there is court conjestion, for that is the very problem the bill is designed to address."

The plans required by the bill would also summarize any additional resources necessary in the court, the U.S. Attorney's Office and the Public Defender Office.

"These resources are summarized and approved by the Judicial Conference which submits a nationwide master plan to the Congress," he said.

"In the past, each of the parties – the courts, the prosecution, the defense, and the Congress - has been able to avoid the problem of court delay by pointing out the failures, real or imagined, of the others." In conclusion, Senator Ervin told the Senate that "the advantage of this approach is evident."

SENATORS CALL FOR SENTENCE REVIEW LAW

A group of powerful Senators including Roman L. Hruska, John J. McClellan and Quentin N. Burdick have introduced legislation providing for appellate review of excessive criminal sentences.

As outlined in the bill, the Courts of Appeals would have jurisdiction to review the sentence imposed by U.S. District Judges, a concept similar to – but more broad in its scope - to that proposed by the National Commission on Reform of Federal Criminal Laws.

The Commission, in its final report, suggested that title 28, U.S. Code be amended to give the Courts of Appeals jurisdiction to review criminal sentences.

However, in remarks made on the Senate floor February 1, Senator Hruska said that, "In the context of S.1 (the proposed criminal code) appellate review is recognized only with respect to sentences for dangerous special offenders."

Senator Hruska said, "The bill which I have introduced will correct one of the greatest single injustices existing today: The lack of authority and machinery to review unreasonable sentences.

"Extensive studies," he said, "have shown that unreasonably harsh sentences are imposed on many individuals who stand convicted of a violation of our laws.

"Many of these unreasonable sentences are imposed on individuals with fine families and good backgrounds, on individuals who strayed from the path on a single occasion and under trying circumstances, on individuals whose only offense was minor in comparison to those of others who have yet received far lesser sentences.

"The problem," Senator Hruska continued, "has concerned Congress, bar associations and legal societies, students, and workers in the field of penology and, indeed, the Executive Branch of our Government and the courts for many years."

The Senator noted that, in most instances, federal trial judges "are best able, informed, and qualified to deal fairly with the convicted defendant.

"However, they are the first to recognize the inadequacies in the present system. The exercise of judgment in this delicate area is not easy.

"The responsibility for determining the proper sentence is so great as to justify and warrant the means of review," he continued.

"There is little wonder," he said, "that judges have openly commented on the incongruity of the situation that the power to impose sentence is the only discretionary power vested in the federal trial judge which is not subject to appeal."

Senator Hruska noted that the Judicial Conference of the United States rejected appellate review legislation in 1958 but reversed their stand and approved it in 1964.

"When we review the actions of the Judicial Conference, it is logical to ask what caused such a substantial shift in judicial opinion.

"In retrospect, it seems that a consensus in favor of the principle did not develop until it became manifest that the problem of excessive sentences was not going to be resolved by the extensive use of the facilities provided in the Sentencing Act of 1958 or by other existing legislation."

In addition, Senator Hruska said, "excessive and disparate sentencing prevent the rehabilitation of those who have been unjustly sentenced, they contribute to disorder in our prisons, and they increase disrespect for our criminal process which weakens the moral fiber of our citizens and which can only result in increasing violations of our laws."

He cited a statement of Mr. Justice Potter Stewart which the Supreme Court Justice made before he was appointed to the Court:

> " 'Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives.' "

Senator Hruska said the present sentencing practice has another unfortunate aspect: "Harsh and irrational sentences have often led appeal courts to reverse convictions on technical or minor points and on strained interpretations of the law, interpretations which may not serve justice and society in future cases."

Both Senators Hruska and McClellan agreed that hearings should be held shortly -- as early as March 6 -- to lay the necessary groundwork for subsequent committee action.

Senator McClellan said the problem of appellate review of sentences was a "vital issue" and that his experience in investigating organized crime sparked his interest in the need for the appellate review of sentencing.

JUDGE BOLDT ENDS U.S. PAY BOARD STINT

Judge George H. Boldt Ending Pay Board Duty

Judge George H. Boldt will terminate his work as Chairman of the U.S. Pay Board Feb. 28, and resume his judicial duties as a Senior Judge in the Western District of Washington.

At the request of President Nixon, Judge Boldt took on the Chairmanship of the Pay Board on Oct. 22, 1971, and has directed the work at the Board since that time.

By an Executive Order on Jan. 11, the President established a 90-day period for the Pay Board to wind up all matters presented to the Board prior to this date.

Judge Boldt moved with the speed and efficiency which has always characterized his official activities and immediately advised President Nixon the Pay Board could complete its unfinished business by Feb. 28.

He followed this with a recommendation to the Secretary of the Treasury who serves as Chairman of the Cost of Living Council, that he terminate the Pay Board on February 28.

One of his critics throughout the program, the New York Times, editorialized ". . . the firmness and fairness with which the Pay Board and the Price Commission managed Phase 2 ... richly deserve the thanks . . . of the nation."

The editorial concluded "They shattered the myth that controls could not work in a democracy in peacetime."

In a visit to the Center recently, Judge Boldt referred to his work on the Pay Board as both "stimulating and satisfying," but quickly added that he was looking forward to resuming his judicial duties, "a service which has been the great interest of my lifetime."

STATE-FEDERAL news

The custom of state Chief Justices presenting "State of the Judiciary" messages to their legislatures has become more widespread this year.

Here is a state-by-state sampling:

COLORADO

Chief Justice Pringle struck notes of both accomplishment and anticipation on Janaury 19th as he observed:

"The Colorado Judicial System continues to be viewed as a national model because of administrative structure, state funding, separate personnel system, overall performance in closing cases, and for continued innovations such as the computerized record and information system now being developed...."

Some accomplishments: Trial judges disposed of an average of 1078 cases per judge (national average is 800-900); criminal cases were tried within the statutory time limit of six months; the Supreme Court has reduced from 20 months to two months the time involved to schedule a case for argument, and civil cases are decided within five to six months of the time the case is at issue.

New projects: A study of courthouse law libraries throughout the state to establish law library standards, pattern criminal jury instructions and standards of juvenile justice.

Colorado's pilot program for automated record keeping allows instant retrieval of docket information vital to eliminate scheduling conflicts. If successful, the U.S. District Court may join the system to eliminate state-federal scheduling conflicts.

CONNECTICUT

The January 24th address by Chief Justice Charles S. House to the General Assembly was the first of its kind. Expressing gratitude for the invitation to speak, he pointed out that the legislature and the judiciary each have specific duties to perform in upgrading the judicial system.

"While it is well recognized that the General Assembly, pursuant to its general police powers may enact legislation which declares or aids or augments the

See STATE-FEDERAL, p. 10.

ABA UNIT VOTES TO DELAY EVIDENCE RULES

The American Bar Association House of Delegates this month overwhelmingly approved a resolution endorsing S. 583--the bill introduced by Senator Ervin in January--which would delay implementation of the Federal Rules of Evidence until the end of the current session of Congress.

The evidence rules were transmitted to Congress by the Supreme Court earlier this month and would have become effective on July 1, 1973, without Congressional action. During the floor debate ABA President Robert W. Meserve told the delegates that both Congress and the nation's attorneys needed additional time to consider the proposed rules.

HOUSE SPEAKER ANNOUNCES APPOINTEES TO COMMISSION ON FEDERAL CIRCUITS

Speaker Carl Albert February 6 announced his appointments to the Commission on Revision of the Federal Court Appellate System: Congressmen Jack Brooks of Texas; William L. Hungate of Missouri; Edward Hutchinson of Michigan; and Charles E. Wiggins of California.

Last month the Vice President announced Senators McClellan, Burdick, Hruska and Gurney would represent the Senate.

Eight more Commission members will be appointed, four by the President and four by the Chief Justice. Under the provisions of the Act establishing the Commission, the tolling of the period to complete the project starts when the ninth member is appointed.

JUVENILE JUSTICE BILL INTRODUCED

Senator Percy has introduced a bill designed to create an Institute for the Continuing Studies of Juvenile Justice.

In remarks on the Senate floor following the introduction of the bill, the senator said, "Not only does the bill address a very serious problem in our modern society - that of crime committed by juveniles -- but it also has received the overwhelming support of almost every major group in the country concerned with juvenile justice.

"Endorsements of this bill have come from the National Council on Crime and Delinquency, the American Bar Association, the National Council of Juvenile Court Judges, the American Parents Committee and the American Civil Liberties Union," he said.

"For the period 1960-69," he continued, "juvenile arrests increased by 90 percent, compared to an overall 71 percent increase in total arrests. Even more alarming is the fact that juvenile arrests for violent crimes rose by 148 percent during the same period, according to FBI accounts."

The Senator said the juvenile justice institute is necessary because "Not only are youths becoming increasingly involved in all antisocial behavior, but they are participating to greater degrees in the serious crimes of murder, forcible rape, robbery, and aggravated assault.

"When serious crimes are considered, persons under the age of 15 make up 22 percent of all arrests and those under 18 almost one-half. We are forced to ask ourselves what conditions in our society and judicial system give rise to such increases and cause more than 75 percent of those juveniles in detentions to one day enter the correction process," he said.

"What chance does a juvenile have to be rehabilitated, when over 39 percent of our Nation's juvenile courts have no provisions for separate juvenile facilities," Senator Percy said.

To justify the creation of this new institute, he said, coordination at the Federal level of community-based youth programs is necessary "to prevent youths from establishing a pattern of deviant behavior and serious crime that will eventually bring them back into our prisons and jails."

He cited the conclusions of the annual report of the Youth Development and Delinquency Prevention Administration which was submitted to Congress by the President in March, 1971 as additional justification for the new institute and said "The report recommends a new national program strategy and a concentration of emphasis on new knowledge and techniques into a model system for guiding state and local agencies.

"The purpose," Senator Percy said, "of the Institute is to serve as an information bank for the systematic collection of data obtained from studies and research by public and private agencies on juvenile delinquency."

In addition, the institute "would provide short-term training for corrections personnel and would assist state and local agencies in developing technical training programs within the States," he said.

The new institute would function as an entirely independent government agency with a Director appointed by the President and confirmed by the Senate.

Significantly, the institute's policy and planning responsibilities would be carried out by an Advisory Commission consisting of the Attorney General, The Director of the Federal Judicial Center, the Secretary of HEW and the Director of the National Institute of Mental Health in addition to other "members who have training and experience in the area of juvenile delinquency," the Senator said.

The bill provides for a three-part program; first, to train personnel involved in juvenile justice; second, to collect and publish data dealing with the treatment and control of juvenile offenders; third, to conduct in-depth studies of State and Federal laws as well as new approaches to the problems of juvenile delinquency.

A companion bill was introduced in the House of Representatives by Representative Thomas Railsback. The House passed the measure last year but Congress adjourned before it could be considered by the full Senate.

Crotonville, N. Y.

FIRST AND SECOND CIRCUITS HOLD SENTENCING INSTITUTE

Over 100 persons attended a three-day institute for the First and Second Circuits last month to consider one of the most troublesome matters facing the courts today – sentencing.

Sentencing institutes are held periodically throughout the federal system, but the Crotonville, N.Y. meeting attracted particular attention because of its unusual format.

Judge Harold R. Tyler, Jr. (S.D. N.Y.), and Judge Frank Murray (D. C. Mass.) spent weeks planning the sessions and consulting with experts in this area.

Attending as conferees were 60 U.S. District Judges of the two circuits, Probation Officers, U.S. Attorneys and representatives from both academic and corrections fields.

Among the speakers were New York's Director of Corrections, Russell Oswald, and Arthur Linman, Counsel to the Commission which investigated the Attica prison riots.

Director of the Bureau of Prisons, Norman Carlson, accompanied the judges as they toured the Federal Correctional Institution at Danbury, Connecticut.

Judge Marvin E. Frankel (S.D.N.Y. and FJC Board member) applauded the plan to bring the judges to the prisons. First-hand knowledge, he pointed out, gives judges an opportunity to measure realistically the impact of their decisions.

Working sessions of the institute focused on two principal problems: Whether or not incarceration is required; and, if so, what that sentence should be. Discussion topics included review of sentences, plea bargaining, the type of correctional facilities which are or should be available, probation and parole procedures.

Judge Tyler reported that an informal poll taken at the conference showed that a large majority of the judges attending favored sentence review; also that the bulk of this majority favored having review by panels of experienced trial judges.

See **SENTENCING INSTITUTE**, p. 8.

THE SOURCE
The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers.

- The center for trial advocacy: the courtoom of the future. John J. Dutton and Gordon D. Schaber. 56 Judicature 184, Dec. 1972
- Comment on "Some theoretical effects of the decision-making rules of the U.S. Courts of Appeals" by Burton M. Atkins. Ejan Mackaay, Jeffrey A. Meldman, 13 Jurimetrics J. 108, 113, Winter 1972.
- Guidelines for improving juror utilization in U.S. District Courts. Federal Judicial Center. Oct. 1972 (available from Information Service)
- The impact of consolidated multidistrict proceedings on plaintiffs in mass-disaster litigation. John W. Beatty. 38 J. of Air Law and Commerce 183, 1972.
- Improving public and judicial administration: some comparisons between modernized and modernizing countries. David J. Gould (address at Haifa Univ., Israel) 1972.
- Information science techniques for legal searching. D.C. Goshien. 21 Cleve. St. L. Rev. 30, 1972.
- Legal records in English and American courts. Edward Dumbauld. 36 Amer. Archivist 15, Jan. 1972.
- Limiting publication of judicial opinions. Charles W. Joiner. 56 Judicature 195, Dec. 1972.
- No more prison reform! E. Margolis. 46 Conn. B.J. 448, Sept. 1972.
- Piggyback jurisdiction in the proposed federal criminal code. 81 Yale L.J. 1209, May 1972.
- Prisons in turmoil. Claude Pepper. 36 Fed. Pro. 3, Dec. 1972.
- Proposals for improvements in the administration of justice. W.J. Campbell. 54 Chi. B. Rec. 75, Nov. 1972.
- Sentencing alternatives of U.S. Courts; study and observation procedures in chart form (available from Admin. Off. of U.S. Courts)
- The seventh amendment and the common law: no magic numbers. H. Richmond Fisher. 56 F.R.D. 507, Jan. 1973.

CCPA SAVES COST

Chief Judge Howard T. Markey of the Court of Customs and Patent Appeals announced on December 22, 1972, that, "with the issuance of Volume 59, covering cases heard in the October 1971 term, the Court will cease publication of its own bound volumes of patent decisions."

Noting that "the decisions of this Court in patent cases are officially reported in the Federal Reporter, 2nd Series, and in United States Patents Quarterly," Chief Judge Markey observed that "the substantial cost of this Court's own volumes of its patent decisions cannot presently be justified in the light of the minimal, if any, use made thereof."

The action is expected to save approximately 70% of the printing budget of his Court, he said. Publication of the opinions of the Customs Court will continue at present since the decisions of that Court are not elsewhere reported in bound volumes.

SENTENCING INSTITUTE, from P. 7

Of interest to the judiciary generally is a development at the Federal Reformatory for Women at Alderson, West Virginia. The Parole Board met at the institution recently, took up several cases while there, made their decisions and announced them before leaving the grounds.

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 E. Foley, Deputy Director, Administrative Office, U.S. Courts

CASSETTE LIBRARY

The F.J.C.'s Divison of Continuing Education and Training has been operating since November of 1971 a Cassette Loan Library. Available on a two week loan basis for any judicial employee or other interested parties are selected presentations recorded at various Center sponsored seminars.

CASSETTES AVAILABLE FOR LOAN

JUDGES

1. *Judicial Activities and Ethics* - Judge Edward Gignoux
2. *U.S. Board of Parole* - 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, Discovery, Omnibus* - Magistrate 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.
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 Welsey 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
15. *Conducting The Sentencing Hearing* - Judge Walter Hoffman
16. *Changes in Rules of Federal Procedure* - Judge Walter Hoffman
17. *The Criminal Case - Trial and Post-trial Problems* - Judge Charles Fulton
18. *Proposals for Changes in Federal Jurisdiction* - Professor Bernard Ward
19. *Appellate-District Judge Relations* - Judge Harold R. Tyler, Jr.
20. *Proposed Code of Judicial Conduct* - Judge Irving Kaufman
21. *Impact Decisions* - Alexander Bikel
22. *Impact Legislation* - C. Frank Reifsnyder

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* - Richard C. Peck
4. *The Forfeiture of Collateral System* - Joseph F. Spaniol, Jr.
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. *Judicial Ethics* - Referee Asa 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* - Refree Harold H. Bobier
5. *Dischargeability Amendments* - Benjamin Weintraub, Esq. and Leon S. Forman, Esq.
6. *New Rules* - Professor Charles Seligson
7. *New Rules* - Referee Goerge 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
15. *Discharge and Dischargeability - A Dialogue* - Referees Asa S. Herzog and Roy Babitt (Nov. 9-10, 1972)
16. *Claims - Provability and Allowance* - Referee Russell L. Hiller (Nov. 9-10, 1972)
17. *Thoughts on Chapter XI and X* (Changing Aspects of Chapter XI) Benjamin Weintraub, Esq.
18. *Examination of Brankrupt and Witnesses - A Dialogue* - Referees Asa S. Herzog and Roy Babitt (Oct 19-20, 1972)
19. *Discharge* - Professor Clive Bare
20. *Courtroom Procedures* - Referee Asa Herzog
21. *The Involuntary Petition in Bankruptcy* - Referee Roy Babitt
22. *Fees and Allowances* - Referee David Kline
23. *Contested Matters* - Referee William Thinnes
24. *Office Management and Processing in a Case* - Referee Saul Seidman
25. *Summary and Plenary Jurisdiction* - Referee John T. Copenhaver
26. *Survey of Significant Bankruptcy Decisions* - Referee Emil F. Goldhaber
27. *The Administrative Ofifce* - Mr. H. Kent Presson
28. *Dischargeability - Year II* - Professor Clive W. Bare
29. *Supervision of Trustees* - Referee Saul Seidman
30. *Recent Cases* - Referee David Kline
31. *Dischargeability of Particular Debts* - Referee William Thinnes
32. *Chapter XIII in Maine - An Innovation* - Referee Conrad Cyr
33. *Jury Trials in Bankruptcy Proceedings* - Gene Brooks
34. *Summary Jurisdictions - Current Developments* - Harvey R. Miller
35. *Claims* - Referee David Kline
36. *Pretrial Techniques for Adversary Proceedings* - Joseph Patchan
37. *The First Meeting of Creditors* - Referee Clive Bare
38. *The Referee in Bankruptcy* - Referee Saul Seidman
39. *Stays and Injunctions* - Referee David Kline

PROBATION

1. *Current Developments in Corrections Research* - John Conrad
2. *Current Developments in Judicial Research* - William B. Eldridge
3. *The Minority Offender and Federal Probation* - Julius Debro
4. *The Office of the General Counsel* - Carl Imlay
5. *Federal Bureau of Prisons - Institutional Treatment Programs* - Richard J. Heaney - January 25, 1972
6. *The United States Board of Parole* - Paula Tennant
7. *Principles of Supervision Counselling* - Dr. Eugene H. Czajkoski
8. *Presentence Investigation* - Paul W. Keve
9. *Standards Relating to Probation* - Prof. Herbert Miller
10. *An Ex-Offender Looks at Corrections* - Charles Lankford
11. *Racism in the Criminal Justice System* - Dr. Alyce Gullattee
12. *Dimensions of the Crime Problem* - Prof. Norval Morris
13. *Federal Bureau of Prisons* - Richard J. Heaney - Apr. 18, 1972
14. *The Criminal Justice System Today* - Dr. Robert Carter
15. *The United States Board of Parole* - Curtis C. Crawford (Apr 20, 72)
16. *The United States Board of Parole* - Curtis C. Crawford (May 2, 72)
17. *Realism and Myths of Addiction Modalities* - Dr. Alex Panio
18. *The Role of the United States Magistrate* - Mag. James T. Balog

COURTROOM DEPUTY CLERKS

1. *Court Administration: Clerk and Courtroom Deputy* - James Davey and Stuart Cunningham
2. *Individual Calendar Control* (with script) - Arthur J. Morsch
3. *Oaths* - Arthur J. Morsch

OTHERS

1. *Press Conference Following the Release of the Report of the Study Group on the Caseloand of the Supreme Court* - Prof. Paul A. Freund and Bernard G. Segal
2. *Modernizing Corrections* - Chamber of Commerce of the United States

PERSONNEL

FEDERAL JUDGES

Nominations

Joseph F. Weiss (Now U.S. Dist. Judge, W.D. Pa.), to be U.S. Circuit Judge, CA-3, Feb. 13

Herbert A. Fogel, U.S. District Court Judge, E.D. Pa. Feb. 13

Death

William A. McRae, Jr., U.S. District Judge, M.D. Fla., Jan. 27

JUDICIAL OFFICERS

Appointments

Charles W. Baker, U.S. Referee in Bankruptcy, E. & W.D. Ark., Feb. 1

G. Todd Baugh, U.S. Magistrate, D. Mont., Jan. 8

Thomas Iden Benton, U.S. Magistrate, E.D. N.C., Feb. 1

See **PERSONNEL**, p. 9.

PERSONNEL, from p. 9.

F. Stuart Clark, U.S. Magistrate, E.D.N.C., Feb. 1
Robert W. Connor, U.S. Magistrate, D. Wyo., Feb. 1
Johnny Fortune, U.S. Magistrate, N.D. Fla., Jan. 1
James Wells Olson, U.S. Magistrate, D.S.D., Dec. 26

Retirements

Herbert Lowenthal, U.S. Referee in Bankruptcy, S.D.N.Y., Jan. 31

Deaths

Challenge S. Wheeler, U.S. Magistrate, E.D. Okla., Jan. 8

SUPPORTING PERSONNEL

Appointments

Benjamin Averbuch, U.S. Probation Officer, E.D. Mo., Jan. 22
Jerry B. Baines, U.S. Probation Officer, N.D. Texas, Jan. 29
Robert L. Brent, U.S. Probation Officer, W.D. Mich., Jan. 8
Ronald Walter Brooks, U.S. Probation Officer, D. Kans., Jan. 22
Thaddeau R. Cocot, U.S. Probation Officer, N.D. Ill., Jan. 22
Martin F. Collins, U.S. Probation Officer, E.D.N.Y., Jan. 2
Leonard Coventry, U.S. Probation Officer, N.D. Ill., Jan. 15
David M. Crean, U.S. Probation Officer, D. Ariz., Jan. 22
Paul F. Cromwell, U.S. Probation Officer, W.D. Texas, Jan. 22
Calvin Cunningham, Jr., U.S. Probation Officer, W.D. Tenn., Dec. 27
Jerome W. Dickens, U.S. Probation Officer, W.D. Okla., Jan. 22
Cal W. Erbaugh, U.S. Probation Officer, D. Wyo., Jan 8
Beverly F. Greene, U.S. Probation Officer, E.D.N.Y., Jan. 2
Arnold J. Harvey, Jr., U.S. Probation Officer, N.D. Texas, Jan. 22
Anthony Ellis Hayne, U.S. Probation Officer, N.D. Calif., Jan. 15
Charles R. Higginbotham, U.S. Probation Officer, M.D. Fla., Jan. 22
William R. Jones, U.S. Probation Officer, S.D. Ohio, Jan. 8
Carlos K. Juenke, U.S. Probation Officer, N.D. Texas, Jan. 29
Jim W. Kersey, U.S. Probation Officer, N.D. Texas, Jan. 15
Ernest K.K. Lee, U.S. Probation Officer, D. Hawaii, Jan. 2
David R. Looney, U.S. Probation Officer, D. Oreg., Jan. 22
August B. Manns, Jr., U.S. Probation Officer, D. Md., Jan. 2
Carroll L. Marcus, U.S. Probation Officer, D. Md., Jan. 2
George McGrath, Clerk, U.S. Dist. Court, D. Mass., Feb. 5
James Joe McKinley, U.S. Probation Officer, W.D. Tenn., Dec. 27
Robert S. Mitchell, U.S. Probation Officer, W.D. Okla., Jan. 2
Stephen J. Paulmeno, U.S. Probation Officer, E.D. Pa., Dec. 29
John F. Purcell, Jr., U.S. Probation Officer, E.D. Pa., Jan. 5
Otis Lamont Ramage, U.S. Probation Officers, W.D. Texas, Feb. 5
W. H. Richardson, Jr., U.S. Probation Officer, N.D. Ala., Jan. 8
Arthur E. Riley, Jr., U.S. Probation Officer, D. Md., Jan. 2
James D. Sellers, U.S. Probation Officer, W.D. Mo., Jan. 2
Allen M. Siegel, U.S. Probation Officer, E.D. Pa., Dec. 29
Joseph B. Steelman, Jr., U.S. Probation Officer, M.D. N.C., Jan. 22
Ronald L. Wilson, U.S. Probation Officer, M.D. Fla., Jan. 29
Harvey H. Whitehill, Jr., U.S. Probation Officer, W.D. Texas, Feb. 5

Promotion

Evan L. Barney, Clerk, U.S. Dist. Court, D.Del., Feb. 2
Robert F. Burnaugh, Chief Probation Officer, D. Wyo., Jan. 8

Retirements

Hazel S. Bostrom, U.S. Probation Officer, S.D. Fla., Jan. 6
John Livingston, Clerk, U.S. Dist. Court, S.D.N.Y., Feb. 14
Charles E. Mindnich, U.S. Probation Officer, D. N.J., Jan. 26
Edward G. Pollard, Clerk, U.S. District Court, D. Del., Feb. 1

Deaths

Charles Edward Raggio, U.S. Probation Officer, S.D. Miss., Jan. 11

STATE-FEDERAL, from p. 6.

inherent powers of the jurisdiction, as a practical matter, it is better that as much as can be done by rule of Court be done that way."

Chief Justice House sees the time fast approaching when a new appellate court will be needed in his state to process and review many of the cases now coming to the Connecticut Supreme Court. He feels also that Connecticut's Juvenile Court, with its increased caseload, should utilize retired judges as referees and that para-professionals should be authorized to assist the judges of this court.

MARYLAND

January 31, Chief Judge Robert C. Murphy, of the Court of Appeals of Maryland, gave the second "State of the Judiciary Address" in that state's history.

The next address will be delivered in 1975 when a new General Assembly convenes. Chief Judge Murphy remarked on the recent strides made in the state judiciary: "Indeed, Maryland is one of only three states in the nation in which every contested legal matter is resolved by a judge, who is required to be a lawyer, with at least five years experience in the practice of law and devoting his full time to his judicial duties."

He cited the legislative creation of the Court of Special Appeals in 1967 to ease the load of the state's highest court as a giant step foward in the proper disposition of increased filings.

The greatest challenge facing the state now is the crush of criminal cases originating in the Baltimore area. Abandoning the grand jury indicting process is seen as a possible aid in the attempt to accelerate case dispositon.

OKLAHOMA

Chief Justice Denver N. Davison January 23rd addressed the Oklahoma State Legislature.

"The size of the state judicial manpower and its geographical distribution," said Chief Justice Davison, "must be treated as one of those problems only you have the authority to settle... You determine not only how many judgeships there shall be, but also where we shall have them."

In the upcoming session Chief Justice Davison hopes for the necessary legislative action to reduce the present workload disparity. Also high on his list for legislative consideration are both the funding of state provided defense services and the increase of judicial salaries.

See **STATE-FEDERAL**, p. 12.

LEGISLATION

Speedy Trial

Senator Ervin and 46 other Senators have introduced S. 754. A similar bill, S. 895, was considered in the last Congress. S. 754 would require that each district court establish a plan for trying criminal cases within 60 days of arrest or receipt of summons, the time limits to take effect in four states. (See Speedy Trial article, p. 4)

Title II of the bill deals with Pretrial Services Agencies, which are to be established by the Director of the Administrative Office of the United States Courts on a demonstration basis in 10 districts. The power of the agencies would be vested in a Board of Trustees appointed by the Chief Judge of the district and consisting of one district court judge, the United States Attorney, two members of the local bar, one of whom shall be the Federal Public Defender, if any, the Chief Probation Officer, and two members who are representatives of community organizations. The Board would appoint the Chief Pretrial Services officer.

The categories of crimes contained in S. 895 have been eliminated as a basis for determining the time limits and the general limits would be applicable to all offenses except petty offenses. However, unusual complexity of a case would be grounds for a continuance.

Public Safety Officers

Numerous bills have been introduced in this session which would establish various programs to provide life insurance or death or disability benefits to the dependents of State public safety officers. In the Senate, S.15, introduced by Senators McClellan, Hruska and Thurmond, would amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a Federal death benefit to the surviving dependents of public safety officers. S.33, introduced by Senator Kennedy, would also amend the Omnibus Crime Control and Safe Streets Act of 1968 to authorize group life insurance programs for public safety officers and to assist State and local governments to provide such insurance. In the House of Representatives, H.R. 12, introduced by Congressman Rodino would provide benefits to survivors of certain public safety officers who die in the performance of duty. Other House bills include H.R. 165, H.R. 167, H.R. 270, H.R. 393, H.R. 473, and H.R. 1990.

Legislation to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers bill of rights in each of the several states has been introduced in the House of Representatives: H.R. 1531, by Mr. Biaggi, for himself and 24 other Congressmen, and H.R. 269, by Mr. Annunzio.

S. 258, introduced by Senators Eastland and Thurmond, would make it a federal offense to assault, injure or kill police officers and firemen. S. 294, introduced by Senator Humphrey would make an assault on or murder of a State or local policeman, fireman, or prison guard a federal offense. Similar bills have been introduced in the House of Representatives: H.R. 280, H.R. 392, H.R. 514, H.R. 916, H.R. 166.

H.R. 266, introduced by Mr. Annunzio and H.R. 527, by Mr. William D. Ford and Mr. Biaggi, would authorize the Attorney General to make grants to certain law enforcement officers to reimburse them for costs incurred by them in legal actions arising out of the performance of official duties.

Omnibus Judgeship Bill

The Judicial Conference's recommendation for 51 additional judgeships was transmitted to the Congress on January 8, 1973. S. 597 incorporates these recommendations. Hearings have been held on the recommendations by the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. On January 23, Judge John D. Butzner, Jr. (4th Circuit) and David Cook of the Administrative Office of the United States Courts testified. Hearings were continued on January 30, Chief Judge Walter Hoffman (E.D.Va.) Chief Judge Ted Dalton and Judge James C. Turk, (W.D.Va.) and Chief Judge James T. Foley (N.D.N.Y.); Janaury 31, Senators Nelson and Eagleton, Representative Frenzel, Senator Symington's Administrative Assistant, Chief Judge Edward Devitt, (Minn.), Chief Judge James E. Doyle, (W.D. Wisc.), Chief Judge William H. Becker, (W.D.Mo.); February 6, Chief Judge Frank H. McFadden (N.D.Ala.), Judge Robert E. Varner, (M.D. Ala.) and Chief Judge Virgil Pittman, (S.D. Ala.); and on February 7, Senator Gurney, Chief Judge George C. Young (M.D.Fla.), Chief Judge Charles B. Fulton (S.D.Fla.) and Chief Judge Sidney O. Smith, Jr. (N.D.Ga.). Further hearings will commence on Tuesday, February 20, 1973.

In addition to the recommendations concerning additional district judgeships, the Judicial Conference has also recommended the creation of 11 additional circuit judgeships.

(see article on Judgeship Bill, page 1).

Environmental Protection

Bills to amend the National Environmental Policy Act of 1969 would authorize citizens suits and class actions in the United States District Courts against persons responsible for creating certain environmental hazards, including the United States itself. Such actions could be brought without regard to the amount in controversy. H.R. 591 has been introduced by Mr. Green of Pennsylvania, H.R. 657 by Mr. Karth for himself and Mr. Dingel, and H.R. 1247 by Mr. Udall.

Rules of Evidence

On February 7, 1973, the Senate passed and sent to the House S. 583 which provides that the Rules of Evidence and the amendments to the Civil and Criminal Rules embraced by the order of the Supreme Court entered on Monday, November 20, 1972, shall not take effect prior to the end of the first session of the Ninety-third Congress, unless they are expressly approved by Congress prior to that date. Also on February 7, the House of Representatives Judiciary Committee, Special Subcommittee on Reform of Federal Criminal Laws, began hearings on the proposed rules of evidence. Representative Podell, Senior Judge Albert B. Maris, Albert E. Jenner, Jr. and Professor Cleary presented testimony. On February 8, 1973, testimony was received from witnesses representing various legal organizations and from Arthur J. Goldberg, former Justice of the Supreme Court.

AO FJC Calendar

Mar. 8-10	Seminar for Secretaries to District Court Judges, Atlanta, Georgia
Mar. 8-10	Criminal Law Committee (of the Jud. Conf.), tentatively Phoenix, Ariz.
Mar. 15-16	Seminar for Referees in Bankruptcy, New Orleans, La.
Mar. 15-16	Metropolitan Judges Meeting, F.J.C., Washington, D.C.
Mar. 16	Budget Committee (of Jud'l Conf.), Washington, D.C.
Mar. 17	F.J.C. Board of Directors Meeting, Dolley Madison House, Washington, D.C.
Mar. 19-22	Seminar for Appellate Judges, F.J.C., Washington, D.C.
Mar. 26-29	Seminar for Courtoom Deputy Clerks, St. Petersburg, Fla.
Apr. 1-4	Regional Seminar for Probation Officers, Charleston, S.C.
Apr. 5-6	Judicial Conference of the United States, Washington, D.C.
Apr. 9-10	D.C. Circuit Conference, The Homestead, Hot Springs, Va.

See **CALENDAR**, p. 12.

STATE-FEDERAL, from p. 10.

NATIONAL CENTER FOR STATE COURTS:

The State Center Board will meet in Williamsburg, Va. March 10. Board members are expected to decide on a permanent headquarters site. Meanwhile regional offices are already established in Atlanta, St. Paul and Denver, with others expected to open soon.

PENNSYLVANIA:

Conference of Presiding Judges and Trial Court Administrators held panel discussions on the need for professionalism and standardization of functions and qualifications for trial court administrators.

Ernest C. Friesen, Inst. for Court Management Director, was moderator and Circuit Executive William (Pat) Doyle spoke on "Administration in the Federal Courts." A State-Federal Council meeting is now being planned for April.

WISCONSIN:

State-Federal Council met in January at Madison. Reelected for another one-year term: Justice Horace W. Wilkie (Supreme Ct. Wis.), Chairman; Judge Thomas E. Fairchild (CA-7) Vice-Chairman.

Transcripts of proceedings available: Federal State Judicial Council discussion, Judge Thomas E. Fairchild (CA-7) moderator; "Recent Cases on Post Conviction Procedures," by Francis Croak, Esq.; "Recent Cases on Civil Rights," by Steven H. Steinglass, Esq.

CALENDAR, from p. 11.

Apr. 9-13	Metropolitan Probation Officers Orientation Seminar, Los Angeles, Cal.
Apr. 10-13	5th Circuit Conference, El Paso, Texas
Apr. 15-28	Nat'l Council of Fed. Magistrates Annual Conference, San Francisco
Apr. 26-27	Subcommittee on Judicial Statistics (of the Jud'l Conf.), Washington, D.C.
Apr. 23-May 1	Seminar for Newly Appointed District Court Judges, F.J.C. Washington, D.C.
May 7-10	Seminar for District Court Judges, F.J.C., Washington, D.C.
May 14-16	7th Circuit Conference, Chicago, Illinois
May 22-24	1st Circuit Conference, Portsmouth, New Hampshire
May 30-June 2	6th Circuit Conference, Galt House, Louisville, Ky.
June 27-30	8th and 10th Circuit Joint Conference, Broadmoor Hotel, Colorado Springs, Colo.
June 28-30	4th Circuit Conference, The Homestead, Hot Springs, Va.
Sept. 7-8	Seminar for District Court Judges, F.J.C., Washington, D.C.

The Third Branch is *your* publication.

Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

THE THIRD BRANCH
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Bulletin of the Federal Courts

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CHIEF JUDGES TESTIFY ON OMNIBUS JUDGESHIP BILL

The Senate Subcommittee on Improvements in Judicial Machinery began hearings in late January on the proposed Omnibus Judgeship Bill which, if passed, would create 51 new federal district judgeships.

The request for new federal judgeships stems from a recent quadrennial statistical survey conducted by the Administrative Office of the U.S. Courts.

The testimony focused on:

- The question of whether the statistics accurately reflect present needs.
- Whether they accurately forecast future caseloads.
- Whether magistrates are being fully utilized to reduce the need for additional judges.

Chief Judge Edward Devitt, *'six member jury to be ruled on by Highest Court.'*

Here is a summary of some of the testimony presented by Chief Judges in recent weeks before the Senate subcommittee.

Senator Quentin N. Burdick, Chairman of the Subcommittee, said when the hearings began on January 23 that, "The task for the subcommittee in this series of hearings, is to look thoroughly into the performance statistics of a given district, and, in fact, the overall administration and allocation of existing judge power by the Circuit authority.

"In other words, achievement and performance of a bench and not mere filings per judge should be the criteria."

The A.O.'s statistics indicate that the national average caseload per judge today is 341 and that it will rise to 400 by 1976.

During the hearings members of the subcommittee as well as some of the judges who testified questioned whether the statistics that are now available accurately reflect the present conditions, and also whether they are accurate in forecasting future needs throughout the federal court system.

Chief Judge Adrian Spears (W.D. Tex.) told the subcommittee, "I feel that this manner of forecasting or failing to forecast has been a very real problem for the judiciary over the years.

"I happen to be a member of the Judicial Center Board, and at this time we are trying to develop a forecasting technique in order to help Congress with this type of thing. I don't think the judiciary has ever done it before.

"They have had to rely pretty much on raw statistics, and we are going to try to come up with something realistic that the Congress can use in determining the number of judges that will be needed all over the country in future years," Judge Spears said.

The hearing testimony brought out that members of the subcommittee wanted to make it clear that they would not reward inefficiency or underutilization of existing resources by creating additional judgeships.

Several Chief Judges told the subcommittee that the federal courts today are being confronted with whole new areas of litigation arising, in part, from new laws passed by Congress recently.

For example, Chief Judge Ben C. Connally (S.D. Tex.) said, "Congress at every session gives us new types of business that we never had before ... I don't complain about that.

"The Congress under our Constitution fixes our jurisdiction but when we are given tremendous new volumes of work, we are placed between the immovable object and the irresistible force. When we come to Congress and we ask for more clerks or secretaries, more help to get it done, [we are told] that this is an economy year."

The subcommitee members questioned each Chief Judge closely on whether or not they were taking maximum advantage of alternative means available to keep caseloads under control.

William Westphal, Chief Counsel to

(See **JUDGESHIP BILL**, p. 2, col. 1)

(JUDGESHIP BILL, from p. 1)

Senator Quentin N. Burdick, *'... a thorough look into performance statistics.'*

Chief Judge Ben C. Connally, *'Congress generates new business for Courts.'*

the subcommittee, repeatedly questioned the Chief Judges on their use of magistrates.

At one point Senator Burdick commented, "Well, when we passed the Magistrate Act it was thought and believed, and it was the theory behind it, that we would relieve some of the judges' work."

In general, the testimony indicated that many Chief Judges believe that magistrates are being increasingly utilized but that each district has its own plan on how magistrates should spend their time.

For example, some courts are using magistrates to screen prisoner petitions while others are continuing to use judges and law clerks to do the initial screening.

The Chief Judges testifed that in some instances magistrates are conducting pre-trial in both civil and criminal cases but in other districts the judges feel that they themselves should conduct pre-trial hearings because it gives them an opportunity to not only become aware of the potential problems involved in the case but it leads to additional pre-trial settlements.

Frequently the question of transferring judges for temporary inter-circuit and even intra-circuit assignments was raised during the hearings.

Counsel Westphal said at one point that, "Assignment of judges, like charity, should begin at home." His additional comment was that he felt there is no logic to taking a judge in an

Chief Judge Charles B. Fulton, *'... wary of borrowing and lending judge power.'*

overworked district out of that district and assigning him to another overworked district.

Chief Judge Charles B. Fulton (S.D. Fla.) agreed that "Borrowing courts should not lend, and lending courts should not borrow."

Chief Judge Albert Lee Stephens (C.D. Calif.), in responding to questions put to him, pointed to specific cases where his district with a current docket, had sent judges to assist in districts then suffering from a temporary judicial emergency. Examples of "emergencies" he cited were death and illness of judges, which cannot be specifically predicted. His conclusion was that this is good judicial management.

The subcommittee carefully reviewed the A.O.'s statistics which, they said, in some cases revealed that although certain judges or districts were exceeding the national average workload other judges or districts within the

(See **JUDGESHIP BILL**, p. 7, col. 1)

CONFERENCE OF FEDERAL TRIAL JUDGES IS ORGANIZED

Last August in the ABA's Division of Judicial Administration a National Conference of Federal Trial Judges was organized. The Division already has four conferences of judges, but until now the federal judges have had no forum for discussing their interests.

To date the conference membership is over 300.

Elected to lead the conference were: Judge Walter E. Craig of Phoenix, Arizona, Chairman; Judge Aubrey E. Robinson, of Washington, D.C. Chairman-elect; Judge George N. Beamer of Hammond, Indiana, Vice-Chairman; and Judge Cornelia G. Kennedy, Detroit, Michigan, Secretary. Executive Committee Members are: Judges C. Clyde Atkins, Walter E. Hoffman, Earl E. O'Connor, John W. Oliver, Michael H. Sheridan and Edward Weinfeld.

Judge Craig has contacted FJC Director Alfred P. Murrah to develop programs to assist district judges.

Currently the judges are working on programs for the ABA annual meeting in Washington next August, one which will be a panel discussion on the proposed new rules of evidence.

FEDERAL JUDGES SOCIAL SECURITY ELIGIBILITY:

Senior judges who are otherwise eligible to receive social security payments are not barred from receiving them by virtue of their "retired pay."

Under a 1969 ruling of the Administrative Office pursuant to the Social Security Act, "retired pay" is not wages within the meaning of the Social Security Act. While some Social Security Offices have been unfamiliar with the ruling, and some judges have encountered difficulties in this regard, the Social Security Administration is making efforts to ensure that all offices are informed of this situation.

ADDITIONAL JUDGESHIPS ARE REQUESTED

Arkansas. Both of Arkansas's Senators last month co-sponsored a bill in the Senate which would create an additional permanent judgeship in the Eastern District of Arkansas.

Senator John J. McClellan, in introducing the legislation, said that though he had refused previous requests to create judgeships in his state, he now felt the time had come when an additional judgeship was needed to handle increased filings. Its weighted filings, he told the Senate, is the eighth largest in the country. Currently there are four judgeships in Arkansas.

Alaska. In a related move, Senators Ted Stevens and Mike Gravel of Alaska also introduced legislation to create an additional Federal judgeship for the District of Alaska. Senator Stevens said that in recent years "there has occurred a significant increase in the caseload handled by the present two U.S. District Judges now in Alaska.

"In addition, the unusually large size of Alaska requires wide travel by the two judges in order to serve all areas of the state."

Texas. Representative De La Garza of Texas said that he would introduce legislation to provide four additional judgeships for the Southern District of Texas, "in an attempt to relieve the congested dockets, and live up to the American ideal of speedy justice."

TAX COURT CHANGES ROLE

For years the U.S. Tax Court was a Court in name only.

But the 1969 Tax Reform Act changed this.

The Tax Court is now an Article I legislative court. The status change now makes it clear that this is a court and not an administrative body under the executive branch.

Appointments to this bench are now for 15-year terms, whereas they were previously for 12 year terms. The judges receive a salary of $40,000 per year.

The court now has contempt powers also.

The importance of the work of these judges and the increasing numbers of cases brought before them have pointed out a long overdue need for parajudicial assistance. The 1969 Act authorized the appointment of commissioners to assist with the processing of the tax cases and today five commissioners who receive a salary of $36,000 per year are on duty to save the judges hours of time.

In deference to the problems of the small, pro se taxpayer the Congress established new procedures for the handling of small cases. If a case involves deficiencies of $1,500 or less, the taxpayer can elect new simplified procedures. His case is heard by one of five commissioners of the Small Tax Case Division.

The commissioners specialize in the development and hearing of small cases and travel to many small cities, which the Tax Court never before visited. In essence, the Court is trying to "go to the people" rather than having the taxpayer come to it. The purpose of the Small Tax Case Division is to give the taxpayer a convenient, expeditious and fair hearing in as informal an atmosphere as possible.

An analysis of the Tax Court workload since the fiscal year ending June 30, 1970, shows that an increasing number of cases are being docketed and disposed of by the Court:

Fiscal Year	Cases Docketed	Cases Closed
1970	7,362	6,603
1971	8,283	7,787
1972	9,237	8,526

It is difficult to predict whether the above trend will continue but as more and more people become aware of the small tax case procedures the caseload probably will continue to rise.

The Tax Court is scheduled to move into its own courthouse in the summer of 1974.

The new building is now under construction at 3rd St. and Indiana Ave., N.W., Washington.

CONTINUING EDUCATION AND TRAINING

1st CONFERENCE HELD FOR TENURED DISTRICT JUDGES

The first conference for District Court Judges with five years tenure was held at the Center in February. Twenty-eight Judges from twenty-three Districts met for four days to analyze ways to expedite the flow of litigation.

In his opening remarks, Judge Alfred P. Murrah said the aim of the conference was to determine how "we can do our very best with the resources we have available."

Following an agenda planned by a group headed by Chief Judge Walter E. Craig (Dist. Ariz.), the Judges considered how to: use supporting personnel effectively; innovate technological systems in the courts; use time-saving techniques; increase settlements and assign cases more realistically.

This initial experienced judges conference is the first of a series of refresher courses which will be offered to District Judges in the future. A second conference is scheduled for May 7-10.

MAGISTRATES

The continuing program of seminars for Magistrates included a January course aimed at special problems Magistrates confront in border states, particularly those involving illegal entry, narcotics and contraband cases, and minor offense litigation.

CLERKS

As part of the training for supporting personnel, the Center sponsored the first of two seminars designed for District Court Clerks in January. This seminar was built upon the experience gained from Clerk's Seminars held in 1970, and designed to provide a forum for exchanging procedural information and techniques, with emphasis on recent innovations in the judiciary including the creation of Circuit Executive positions,

(See **1st CONFERENCE**, p. 7, col. 2)

METROPOLITAN JUDGES HOLD FOURTH CONFERENCE

District Judges meet at Federal Judicial Center to confer on problems of metroplitan courts. L. to R.:
Judge Renaldo G. Garza, Brownsville, Texas; Judge James L. King, Miami, Florida; Chief Judge Oliver J. Carter, San Francisco, Cal.; Chief Judge James A. Coolahan, Newark, N.J.; Chief Judge Edward S. Northrop, Baltimore, Maryland; Chief Judge David N. Edelstein, New York, N.Y.; Chief Judge John J. Sirica, Washington, D.C.

The fourth in a series of conferences of Metropolitan District Judges was held this month at the Federal Judicial Center, with 23 districts represented.

Faced with problems evolving from mushrooming caseloads, the judges decided to meet the issue head on. Their first meeting, held in August of 1971, identified problem areas and subsequent conferences were used as a forum to discuss solutions.

The judges represent metropolitan area courts which handle over 54% of the litigation pending in the federal district courts.

The value of a free exchange of information on the use of magistrates, new techniques and equipment is already reflected in the results. But, though the judges reported they are in control today, they are deeply concerned about the steady increase in criminal and civil filings.

The Chief Justice addressed the conference at the opening session and commended the judges, as he has in the past, for devoting hours of time to assure litigants in their courts that every effort is being made to see that caseloads are moved expeditiously.

L. to R:
Judge Richard B. Kellam, Norfolk, Va.
Chief Judge Walter E. Hoffman, Norfolk, Va. (F.J.C. Board Member)
Chief Judge Adrian A. Spears, San Antonio, Texas (F.J.C. Board Member)

FIGURES BEHIND THE FACTS

FEDERAL CASELOAD UP OVER PAST DECADE

Hardly anyone familiar with the federal courts would be surprised to learn there has been a significant increase in the business of the federal courts over the past decade. But exactly how much.

These are the most recent figures available from the A.O.

In the ten year period, (Fiscal Year 1962 to Fiscal Year 1972) federal district court cases increased by 57 percent. That represents a growth rate of about six percent per year. In recent years criminal filings have shown a heavier increase than civil; in fact, they have climbed at four times the rate of civil last year -- as the table below indicates.

During the same decade the number of appeals filed in federal Courts of Appeals climbed over 250 percent, a workload increase averaging 25% per year. As was true in district court statistics, the number of appeals arising on the criminal side is increasing at a significantly faster rate than civil appeals.

DISTRICT COURT FILINGS

	Criminal	Civil	Total
1962	29,274	61,836	91,110
1971	41,290	93,396	134,686
1972	47,043	96,173	143,216
FY 1972 percent Change over			
• Last year (FY 1971)	13.9	3.0	6.3
• Ten years ago (FY 1962)	60.7	55.5	57.2

COURT OF APPEALS FILINGS

	Criminal	Civil	Total
1962	773	2,758	3,531
1971	3,197	7,601	10,798
1972	3,980	8,399	12,379
FY 1972 Change over			
• Last year (FY 1971)	24.5	10.5	14.6
• Ten years ago (FY 1962)	414.9	204.5	250.6

Federal Judges Are Nominated and Confirmed

Marcn 14th the Senate confirmed Joseph F. Weis as U.S. Circuit Court Judge for the 3rd Circuit.

On the same day Herbert A. Fogel was confirmed as a U.S. District Judge for the Eastern District of Pennsylvania.

J. Foy Guin, Jr. and James H. Hancock were nominated March 20 to be Northern District of Alabama Judges.

(The following article is reprinted with the permission of the Washington, D.C. Star-News, from the edition of March 12, 1973. The article refers to the proposal of the Report of the Study Group on the Caseload of the Supreme Court which recommended the creation of a new National Court of Appeals.)

PROPOSED COURT LINES UP MODERATE

By **Fred Barnes**
Star-News Staff Writer

Three federal appeals court judges, appointed by President Dwight D. Eisenhower, one appointed by President John F. Kennedy and three by President Lyndon B. Johnson would be in line for seats on the proposed mini-Supreme Court--if that court were created early this year.

In terms of judicial philosophy, the new court would consist roughly of two liberals, four moderates and one conservative.

The mini-court, whose creation was urged by a panel of attorneys and law professors picked by Chief Justice Warren E. Burger, would ease the justices' workload by screening out all but about 400 cases a year for Supreme court review.

It would retain another 300 or so cases and rule on them itself, while rejecting the remainder of the appeals -- some 3,000 -- out of hand.

Elaborate System

The panel which proposed the mini-court set down a complicated system for selecting the judges from the 11 U.S. Courts of Appeals to sit on the junior court for three-year terms.

If the court were established early this year, these judges would be elevated to it:

John Minor Wisdom of the 5th U.S. Court of Appeals in New Orleans. He is a liberal and was appointed to the appellate bench in 1957 by Eisenhower.

Paul C. Weick of the 6th Circuit in Cincinnati. He is regarded as very conservative and was appointed by Eisenhower in 1959.

Charles Merrill of the 9th Circuit in San Francisco. He is considered a moderate and was named to the appeals court in 1959 by Eisenhower.

Roger Kiley of the 7th Circuit in Chicago. A liberal, he was appointed to the appellate court in 1961 by Kennedy.

Gerald W. Heaney of the 8th Circuit in St. Louis. He is regarded as a moderate and was named to the appeals bench by Johnson in 1966.

Francis Van Dusen of the 3rd Circuit in Philadelphia. A moderate, he was appointed by Johnson in 1967.

John D. Butzner, Jr., of the 4th Circuit in Richmond. A moderate from Fredericksburg, Va., he was put on the appeals court in 1967 by Johnson.

While these seven judges would go on the mini-court if it were set up now, there might be some different judges in line for it later.

Five Years' Experience

The plan calls for members of the mini-court to be associate judges -- not chief judges -- with more than five years' experience on the appeals court.

This narrows the list of judges currently eligible to 40. There are 93 fulltime judges on the federal appeals courts.

The mini-court judges would be chosen by alternately selecting the most senior and most junior judges on the list of 40. No two judges from the same appeals court could serve on the mini-court at the same time.

Five of the nine full-time judges on the U.S. Court of Appeals here are on the list of 40, but none would be among the first seven if the new court were created early this year.

The plan makes no mention of whether any of the seven would serve as chief judge.

Congress Not Eager

Congress could lay down a different selection system, but it isn't considered likely to do so.

In fact, the mini-court proposal has stirred little interest in Congress, despite persistent complaints by Burger that something must be done to ease the Supreme Court workload.

The proposal has run into stiff criticism in legal circles, with four former Supreme Court justices among the opponents.

The critics contend that the new court would alter the historic U.S. judicial setup and diminish the power and prestige of the Supreme Court.

JUDICIAL BRANCH ASKS CONGRESS FOR $205.4 MILLION

The appropriations request for the Judicial Branch submitted to the House Appropriations Committee in early March, for Fiscal Year 1974 totals approximately $205.4 million dollars.

The A.O. requested $205,441,000 on behalf of the judiciary to cover the costs of the Supreme Court ($6,198,000), Court of Customs and Patent Appeals ($692,000), Customs Court ($2,341,000), Court of Claims ($2,154,000), Courts of Appeals, District Courts and other judicial services ($191,994,000), Federal Judicial Center ($2,062,000).

The budget increase request was $16,600,400 over that of Fiscal Year 1973.

The Federal Judicial Center's request for $2,062,000 for Fiscal Year 1974 represents an increase of $518,000.

The Federal Judicial Center, in remarks presented by Director Alfred P. Murrah, said that $146,000 of the increase would be required to expand its continuing education program to 45 seminars in which an estimated 1,705 members of the judiciary are expected to participate.

The FJC also told the Committee that it would need about $120,000 to begin a comprehensive research survey of the internal operating procedures of the U.S. District Courts, and an additional $115,000 for contractual services in research and systems development.

Information presented to the Appropriations Committee by the Administrative Office indicated the A.O. expected the number of senior judges during fiscal 1974 to increase from 143 to 161, costing approximately $765,000.

The A.O. asked for $27,300,000 for judges' salaries - an increase of $800,000 over 1973.

LEGISLATION

Senators Burdick, Lloyd Bentsen and John J. McClellan introduced bills of interest to the judiciary recently.

Burdick reintroduced his pre-trial diversion bill which received strong support during the previous congressional session.

Burdick's bill, S. 798, would provide that at the time of arrest, individuals would be screened to determine if there are any who might benefit from an intensive supervision program.

If a defendant has been found to be one of those who would benefit from such a program, the U.S. Attorney must agree to diverting the defendant into a community supervision program, or else prosecution would continue in the normal fashion.

Senator Burdick said when the bill was introduced that "pre-trial diversion is not a form of leniency on the part of the court or the prosecutor. Rather, it requires a high level of community supervision -- a level well above that available in any community correctional programs today.

"The supervision and services are necessary to insure the public's safety and to improve the chances for rehabilitation of offenders."

Senator Lloyd Bentsen of Texas reintroduced his bill calling for a modification of the exclusionary rule of evidence, which under present procedure requires evidence to be excluded in Federal criminal cases if it is acquired through illegal search and seizure.

Senator Bentsen said his bill, S. 881, "provides the courts with an opportunity to weigh the gravity of the offense charged to a defendant and then consider the gravity and circumstances of the offense in seizing or searching the evidence.

"The courts would then make a relative decision on the admissibility of the evidence involved."

Senator John J. McClellan introduced legislation, S. 800, to amend the Omnibus Crime Control and Safe Streets Act of 1968 "to provide for the compensation of innocent victims of violent crime in financial stress; to make grants to the states for the payment of such compensation; to authorize an insurance program and death benefits to dependent survivors of public safety officers; to strengthen the civil remedies available to victims of racketeering activity and theft."

Majority Leader Mike Mansfield, in a Senate speech following the introduction of the bill, said that "the shooting of Senator Stennis has brought into focus the urgency of proposals such as this.

"The law officers, not just the victim, deserves special consideration in our system of justice, and while the victim would be compensated under this proposal, the police officer would be singled out for special attention when it comes to injuries he receives in the line of duty, and when it comes to obtaining insurance against such injuries."

DIAL-A-BILL

Congress has recently set up a computer system to keep track of all legislation allowing members of the Judiciary to find out in seconds the status of any bill in Congress by dialing 202 (Area Code) 225-1772.

Operators are on duty week days from 9:00 a.m. to 5:00 p.m., Washington time, and all a caller need do is give them the number of the bill, or its author and subject, and moments later they can inform on what stage of the legislative process it is at that moment.

'TECHNIQUE REALLY WORKED'

MASS MEDIA USED FOR CLASS ACTION NOTICE

If you'd been driving through the middle of Missouri at noon last October 31, you may have been surprised to hear over your car radio that the U.S. District Court for the Western District of Missouri had suddenly struck down most of the residency requirements for voting in counties throughout the state.

This unusual news stemmed directly from a decision by Chief Judge William H. Becker to use Missouri's newspapers, radio and television stations to inform every prospective voter throughout the state that they now would only need to be a resident for 30 days in order to vote in the November 7 election.

Judge Becker said that the case was an unusual one in which the urgency of the matter called for an unusual technique for notifying millions of prospective voters.

Eighth Circuit Executive Robert J. Martineau said that "in this particular situation this technique really worked."

The Administrative Office's legal counsel, Carl Imlay, would like to know if any other court has used the mass media in class actions to notify potential class members.

SENATOR TUNNEY TO INTRODUCE BI-LINGUAL COURTS BILL

Senator John V. Tunney plans to introduce later this session a bi-lingual courts act which would require the Director of the Administrative Office "to provide more effectively for bi-lingual proceedings in certain District Courts of the United States."

The bill would require the A.O. to determine judicial districts in which at least 5 percent of the residents do not speak or understand English, certify each such district as a bi-lingual judicial district, and provide personnel and equipment for the simultaneous translation and recording of all proceedings in these bi-lingual courts.

The Federal Judicial Center has been exploring the problem of simultaneous translation of courtroom testimony, following a request from District Judge Gerhard A. Gesell of the District of Columbia.

The Center would appreciate receiving any information on the problem from interested parties who are familiar with the need for courtroom translation.

The Third Branch is *your* publication.

Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

LAW DAY -- 1973

"Help Your Courts Assure Justice" is this year's theme for Law Day. Members of the judiciary are especially urged to observe Law Day on May 1st by participating in bar association or other observances scheduled throughout the nation.

(JUDGESHIP BILL, from p. 2)

Chief Judge Albert L. Stephens, *'illness and death of judges bring emergency conditions.'*

Chief Judge William H. Becker, *'A U.S. District Judge, a natural resource.'*

same circuit appeared to be operating below the average.

The subcommittee suggested that perhaps some circuit Chief Judges might be able to eliminate some of this workload disparity.

The impact of the newly-created Circuit Executives upon the management problem facing the court system was discussed by the subcommittee.

Chief Judge William H. Becker (W.D. Mo.) responded to questions about the need for management skills in the system, and said, "Oh, yes, I think the federal judicial system has some built-in inefficiencies now."

On the question of transferring judges, Chief Judge Becker said, "I have always believed that a district judge of the United States ought to be treated as a natural resource and deployed where he is needed but the history and background and the attitude are such that that is not easily done."

The use of six-member juries in civil cases is tending to reduce both the time and expense in districts where they have been used, testimony revealed.

However, Chief Judge Edward Devitt (Dist. Minn.) raised the question of the procedural propriety of using six-member juries in civil cases since the Supreme Court has not ruled on the question.

After having taken the testimony of more than thirty Chief Judges, the sub-committee concluded its hearings on the 28th of March and is expected to report to full committee later this spring.

(1st CONFERENCE, from p. 3)

COURTRAN, and A.O. statistical services. Clerks from Districts in the Eastern United States will be invited to participate in the second seminar, June 11-14.

PUBLIC DEFENDERS

Federal Public Defenders and Community Defenders met for the second time recently to discuss internal office procedures and to participate in sessions covering a full range of procedural and substantive legal issues affecting their positions. In contrast to the first course, this seminar provided a more extensive interplay among the several judicial officers and agencies involved in the judicial process, with presentations by judges, a magistrate, and representatives of the Department of Justice.

PROBATION OFFICERS

A southeast regional institute for 90 probation officers and 15 Bureau of Prisons case managers will be held at Charleston, South Carolina, April 2-4.

Last November, Congress authorized 168 additional probation officers, and a series of orientation courses will be held for many of these appointees starting next month. Washington, D.C. will be the site for the first course and the second will be held in Los Angeles for officers in the western states.

THE SOURCE

The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers.

- Bias impeachment and the federal rules of evidence. John R. Schmertz, Jr. and Karen S. Czapanskiy. 61 Geo. L.J. 257, Nov. 1972.
- The code of judicial conduct. Walter P. Armstrong, Jr. 26 Sw.L.J. 708, Oct. 1972.
- Comity and the Constitution: The changing role fo the federal judiciary. Shirley M. Hufstedler. 47 N.Y.U.L. Rev. 841, Nov. 1972.
- Court intervention in the parole process. Donald J. Newman. 36 Albany L. Rev. 257, Winter 1972.
- A glass house: court administration from the inside. Arnold M. Malech. 56 Judicature 249, Jan. 1973.
- Judicial activism in prison reform. C. Pepper. 22 Cath. U. L. Rev. 96, Fall 1972.
- Let's everybody litigate? Maurice Rosenberg. 50 Tex. L. Rev. 1349, Nov. 1972.
- Modern administrative proposals for federal habeas corpus: the rights of prisoners preserved. Donald Lay. 21 DePaul L. Rev. 701, Spring 1972.
- One justice for all: a proposal to establish, by federal constitutional amendment, a national system of criminal justice. Robert P. Davidow. 51 N.C. L. Rev. 259, Dec. 1972.
- Proposed and opposed--a semi-Supreme Court (chart) 74 U.S. News 29, Jan. 1, 1973.
- Relieving the appellate court crisis. Albert Tate, Jr. 56 Judicature 228, Jan. 1973.
- Some answers to your criminal law problems - ABA Criminal Justice Standards. Laurence S. Margolis. 39-40 D.C. Bar J. 23, Oct. 1972-Feb. 1973.
- Streamlining appellate procedures. Kenneth J. O'Connell. 56 Judicature 234, Jan. 1973.
- Symposium: The grand jury. 10 American Criminal L. Rev. (ABA) 671, Summer 1972 (entire issue)

AO FJC calendar

Apr. 1-4 Regional Seminar for Probation Officers, Charleston, S.C.

Apr. 5-6 Judicial Conference of the United States, Washington, D.C.

Apr. 9-10 D.C. Circuit Conference, The Homestead, Hot Springs, Va.

Apr. 9-13 Probation Officers Orientation Seminar, F.J.C. Wash., D.C.

Apr. 10-13 5th Circuit Conference, El Paso, Texas

Apr. 25-28 Nat'l Council of Fed. Magistrates Annual Conference, San Francisco

Apr. 26-27 Subcommittee on Judicial Statistics (of the Jud'l Conf.), Washington, D.C.

Apr. 23-May 1 Seminar for Newly Appointed District Court Judges, F.J.C. Washington, D.C.

May 7-10 Conference for District Court Judges, F.J.C., Washington, D.C.

May 14-16 7th Circuit Conference, Chicago, Illinois

May 15-18 American Law Institute, Washington, D.C.

May 19-20 Seminar for Official Court Reporters, Atlanta, Ga.

May 22-24 1st Circuit Conference, Portsmouth, New Hampshire

May 21-25 Probation Officers Orientation Seminar, Los Angeles, Calif.

May 30-June 2 6th Circuit Conference Galt House, Louisville, Ky.

June 11-14 Seminar for District Court Clerks, Norfolk, Va.

June 27-30 8th and 10th Circuit Joint Conference, Broadmoor Hotel, Colorado Springs, Colo.

June 28-30 4th Circuit Conference, The Homestead, Hot Springs, Va.

July 10 Committee on Bankruptcy Administration (of the Jud'l Conf.), Washington, D.C.

New York Clerk Retires

John Livingston, Clerk of the nation's oldest and largest District Court (S.D.N.Y.) retired on February 14th bringing to a close a career in The Third Branch which began in 1927.

He was appointed Clerk of Court by the unanimous vote of the active judges on January 4, 1969 and is retiring after 45½ years of continuous honorable and faithful service. Mr. Livingston, whose professional career spanned tremendous changes in the court effecting the number of personnel and the types of cases litigated, leaves behind him a vast reservoir of goodwill and fond memories.

THE THIRD BRANCH
VOL. 5, NO. 3 MARCH, 1973

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JUDICIAL CONFERENCE APPROVES STRINGENT ETHICS CODE

The Judicial Conference of the United States, during its spring meeting in Washington last month, adopted a comprehensive code of judicial ethics more stringent than that which the American Bar Association approved last August.

The code is the first ever adopted which applies directly to all federal judges.

It takes effect immediately and applies requirements even more restrictive than those required of many state judges who are elected rather than appointed.

The Judicial Conference action followed an extensive review by a special committee which since last August has been studying how the ABA Code could best be applied to the federal judiciary.

The Conference resolution did not include ABA judicial canons which do not apply to the federal judiciary such as those relating to outside employment which are directed at part-time judges of state courts.

The Conference resolution rejected also that portion of the ABA canons captioned "Effective Time of Compliance" which permits a person who holds judicial office on the date this code becomes effective "to continue to act as an officer, director or non-legal adviser of a family business or which permits him to continue to act as an executor, administrator, trustee or other fiduciary for the estate of a person who is not a member of his family."

The Conference substituted the following provision:

"A person to whom this code becomes applicable should arrange his affairs as soon as reasonably possible to comply with them.

"A person who at the time of the adoption of this code shall be serving as an executor, administrator, trustee, guardian or other fiduciary for the estate or trust of anyone other than a member of his family as described in Canon 5D should terminate such relationship as soon as he may be able to do so without unnecessarily jeopardizing any real interest of the persons for whom he is acting.

"Such time for terminating the fiduciary relationship shall in no event exceed the period of one year."

The Judicial Conference noted the problems facing part-time federal magistrates, part-time referees in bankruptcy and special masters and provided that the canons will not restrict any functions or privileges accorded by statute or resolution to these officials.

The Conference directed its Joint Committee on Standards of Judicial Ethics to give further study to Canon 7 as it relates to federal judges running for elective office.

(See **CONFERENCE**, p.2, col. 3)

JUDGE GRIFFIN BELL IS ELECTED TO FJC BOARD

Judge Griffin B. Bell

The Judicial Conference of the United States this month elected Judge Griffin B. Bell, of the U.S. Court of Appeals for the Fifth Circuit, to the Board of the Federal Judicial Center.

He succeeds Judge Wade H. McCree, Jr., of the Sixth Circuit, whose four year term has expired. Judge Bell is a native of Georgia and graduated cum laude, and as a member of the Order of Coif, from Mercer University Law School.

During World War II he was a Major in the Army Transportation Corps. Following the war he was in private practice in Savannah, Atlanta and Rome, Georgia. He was appointed to the Fifth Circuit Court of Appeals in 1961.

Judge Bell brings to the Board an extensive background of judicial experience and his off-bench activities with judge-oriented organizations indicates a keen interest in the problems of the judiciary.

(See **JUDGE BELL**, p.2, col. 3)

A MESSAGE FROM

THE CHIEF JUSTICE

Congress has postponed, pending further action, the effective date of the Rules of Evidence promulgated by the Supreme Court last fall. These Rules were developed by an Advisory Committee, appointed by Chief Justice Warren in 1965 and acting under the rulemaking power Congress delegated to the judiciary. Some lawyers and District Judges have expressed concern over this action by Congress. There is no occastion for concern on this score for the rulemaking process is working as it should.

It is important to recall the history of rulemaking. In 1934, Congress vested civil rulemaking power in the Supreme Court, and subsequently Congress granted broader authority including rulemaking for criminal procedure. This process of rulemaking includes, as a first step, the appointment of a Judicial Conference Advisory Committee. That Committee conducts studies and develops rules; circulation of drafts to bench and bar follows. When the rules have been developed the Advisory Committee submits them to the Standing Committee on Rules of Practice and Procedure. If approved by the Standing Committee, the rules then go to the Judicial Conference of the United States. If the Conference approves them, they are submitted to the Supreme Court. If the Court in turn approves them, they are then transmitted to the Congress. Absent negative action by that body, the rules become law 90 days later, although a later date for their taking effect may be set by the Court or by the Congress to permit more time for Congressional scrutiny. It will readily be seen that this four-stage "screening" is as thorough and comprehensive as any legislative process could be.

This is the mechanism the Congress devised nearly 40 years ago with the cooperation of the courts and the bar. It is a most effective one and certainly is as careful a technical screening as could be provided, especially given the multitudinous responsibilities with which Congress is burdened and the specialized nature of procedure in federal litigation.

After this extremely careful process of formulating rules, however, comes the time for review by the elected representatives of the people.

Thus, rulemaking is a partnership, a joint enterprise, between Congress and the Judicial Branch. It was first carried to successful conclusion in 1938, with the adoption of the Federal Rules of Civil Procedure; then came the Federal Rules of Criminal Procedure. Later on Appellate Rules were adopted. All of these rules are under constant scrutiny of Judicial Conference Advisory Committees.

The rulemaking enterprise has been one of the most successful and fruitful of any joint effort between branches of government in history. But, we must always remember that it is a joint enterprise, and while Congress has rendered us the compliment of general approval in the past, it does not mean that the Congress should accept blindly or on faith whatever we submit. Nor does the action of Congress in extending the time for consideration of the rules now submitted indicate more than an appropriate desire to give careful study to an important development in the law.

The current Rules of Evidence have been under study for a total of eight years. They were completed more than two years ago by the Advisory Committee, approved by the Standing Committee on Rules of Practice and Procedure and the Judicial Conference, and then submitted to the Supreme Court. After initial consideration, the Supreme Court "remanded" them to the Rules Committee for further consideration and consultation with the bar. After this additional screening, certain of the rules were revised and resubmitted to the Supreme Court. The Court approved them in late

(See **THE CHIEF JUSTICE**, p. 7.)

(**CONFERENCE**, from p. 1)

In related actions, the Judicial Conference also elected Judge Griffin B. Bell of the Court of Appeals for the 5th Circuit to the Federal Judicial Center Board of Directors, and Chief Judge Howard T. Markey of the U.S. Court of Customs and Patent Appeals to the Board of Certification for Circuit Executives (see related stories on pages 1 and 6.)

The Judicial Conference reaffirmed its approval of legislation to:

- Provide for the merger of the Judicial Annuity Fund with the Civil Service Retirement Fund;
- Place the fixing of fees in all U.S. Court proceedings under the control of the Judicial Conference;
- Establish the position of Crier-Clerk within the judicial branch;
- Provide for the appointment of transcribers of court proceedings;
- Provide for the appointment of legal assistants in the Courts of Appeals;
- Provide for the retirement of justices and judges on a graduated scale from age 70 with 10 years of service to age 65 with 15 years of service;
- Provide for a jury of 6 persons in civil cases and to permit 2 preemtory challenges.

The Judicial Conference also approved standards for the maintenance of minimal statistical records of grand jury proceedings, the continuance of 15 positions for Referees in Bankruptcy whose terms are soon to expire, changes in the number, location and salaries of certain full-time and part-time Magistrates and sustaining grants for community defender organizations in Chicago, Detroit, Minneapolis, New York and Philadelphia which represent indigent criminal defendants in federal proceedings.

(**JUDGE BELL**, from p. 1)

He has been an active participant in the Appellate Judges' Conference and has written numerous articles on the federal system at the appellate level.

He is a member of the ABA's blue ribbon Commission on Standards of Judicial Administration, and is a member of both the American Bar Association and the American Law Institute.

STATE-FEDERAL news

HAWAII

Chief Justice William A. Richardson recently announced that a State-Federal Committee for Hawaii has now been formalized by court order. The order stipulates that in addition to the Chief Justice and Chief Judge Martin Pence of the U.S. District Court, the committee shall have as its members the state's Administrative Director of the Courts, their Court Clerk and U.S. District Judge Samuel P. King.

PENNSYLVANIA

The Administrative Office of Pennsylvania Courts hosted a dinner meeting of the state and federal judges of Pennsylvania this month. For the first time a federal Circuit Executive, William A. (Pat) Doyle, was in attendance by special invitation. As in the past, subjects of mutual concern were discussed.

WEST VIRGINIA

Judge Thornton G. Berry, Jr., President of the Supreme Court of Appeals of West Virginia, recently appointed the members of West Virginia's State-Federal Conference. Representing the federal courts: Chief Judges Robert E. Maxwell and Sidney L. Christie.

NEW YORK

The New York State-Federal Council is giving consideration to having regional state-federal council meetings as a complement to broader-based meetings of the full council. Other states, because of size, or because distance is a problem, may want to consider this.

ADMIRALTY PRIMER AVAILABLE

Judge Alvin B. Rubin (Eastern District of Louisiana) has compiled an Admiralty Primer which contains seminar presentations, specimen jury charges, sample verdict forms and a bibliography. Judges, clerks and other interested members of the judiciary can obtain copies from the Center.

CIRCUIT EXECUTIVES HOLD SECOND F.J.C. MEETING

From left to right:
Circuit Executives
William A. (Pat) Doyle, 3rd Circuit, Thomas H. Reese, 5th Circuit, Emory G. Hatcher, 10th Circuit, Samuel W. Phillips, 4th Circuit meet with Joseph L. Ebersole (Right, F.J.C., Director of Innovation and Systems Development.)

The eight Circuit Executives who have been appointed since Congress created the position last year held their second meeting at the Center last month to discuss ways in which they can help their judges administer their courts more efficiently.

Attending the two day meeting were: Charles E. Nelson (D.C. Circuit), William A. (Pat) Doyle (3rd Circuit), Thomas H. Reese (5th Circuit), William B. Luck (9th Circuit), Robert D. Lipscher (7th Circuit), Samuel W. Phillips (4th Circuit), Robert J. Martineau (8th Circuit) and Emory G. Hatcher (10th Circuit.

Among the topics which the Circuit Executives discussed during their meeting were the recently completed comparative study of the internal operating procedures of the U.S. Courts of Appeals, techniques of reducing transcript delay, relations with the press and the public, procedures for preparing the 1975 budget, ways to implement the recent F.J.C. study of juror utilization and tentative plans for the installation of a Department of Justice legal research and retrieval system in some U.S. Courts of Appeals.

Reviewing Seminar materials are (from left to right) Circuit Executives Robert J. Martineau, 8th Circuit, Charles E. Nelson, D. C. Circuit, and Robert D. Lipscher, 2nd Circuit.

SENATE CONFIRMS FOUR DISTRICT JUDGES

On April 10th, the Senate confirmed Vincent P. Biunno (D.N.J.), J. Foy Guin, Jr. (N.D., Ala.), James H. Hancock (N.D., Ala.) and Daniel J. Snyder, Jr. (W.D., Pa.) as U.S. District Judges.

HOW TO MAKE PAROLE BOARD DECISIONS MORE RESPONSIVE

An interview with U.S. Parole Board Chairman, Maurice H. Sigler

On July 2, 1972, Maurice Sigler was named Chairman of the U.S. Board of Parole. Mr. Sigler has been in the corrections field since 1939, beginning as a correctional officer at the Federal Penitentiary at Leavenworth, Kansas. He later served as warden in state penitentiaries in both Louisiana and Nebraska.

In October the Parole Board launched a one-year pilot program to regionalize Parole Board functions allowing members to decide cases at the institution. After six months, how is this program working?

'..... we had no guidelines to go by before .... we made decisions on "gut level" feelings .....'

When you took over your job as chairman last July, what was the biggest problem that you faced?

When I took over as Chairman of the Board of Parole we knew we had to make recommendations to reorganize the Board. Of great concern were the fact that we were not able to give good reasons for our actions, and the feeling by many people along with our own judges that we should have advocates in these cases.

We understand that a one-year pilot program is now under way. Exactly what is this program?

To help us reorganize, we developed our one-year pilot program with permission and funding through the Department of Justice. The Board received a grant from LEAA through NCCD to study 5,000 cases, and establish guidelines for the member who will hear the request for parole at the institutions. We felt that we should go to the institution and see the people. We find so far by giving written reasons for denials the inmates at least feel we're being fair. A percentage of inmates are using advocates now.

What motivated you to put this program into effect?

The thing that bothered me was the way we were arriving at our decisions. We had no guidelines to go by. We have an expression -- a "gut-level feeling" -- and we made decisions on gut-level feelings. Now that may be alright if you're trying to decide whether or not you should catch a fish in one pond or another, but in my judgment, in making a decision on a person's life, that's not a very good criterion to use.

How does this promote fairness in deciding cases?

Now our research people have come up with guidelines for us to use. They consider salient factors to determine what kind of a risk you might be on parole. We also consider the severity of the crime in making this categorization.

Are these guidelines rigid?

We don't want the guidelines to be so rigid that you can't go outside them, but as you go outside the guidelines on either side, you have to give written reasons in summary as to why.

When the hearings are held at individual prisons, are lawyers for the inmates present?

At the institutional hearing stage, the lawyer is excluded. Non-attorney counsel is permitted at this stage. Judges in their wisdom have ruled in the past that if I have something I can pay for, and you can't pay for it, it's a discriminatory practice. So they rule that if you can have an attorney, the state or Federal Government must pay for it for indigents. We don't believe it would be good - for economic reasons - for every prisoner to be provided with counsel at government expense to represent him at a parole hearing.

There's another reason. Lawyers, being lawyers, are not in a hurry if they feel they have a weak case. Then you have continuances, continuances ...

Do you think you will ultimately be required to provide attorneys for inmates during these hearings?

The courts may tell us to use lawyers anyway.

Maurice H. Sigler, Chairman, U.S. Board of Parole.

Is an attorney allowed if the case is appealed to the full Board?

If the case comes to the full Board on appeal, an attorney is then *allowed*, but not provided for.

How do you feel about the increased participation of the courts in reviewing parole board decisions?

If a Parole Board in its stupidity is violating some person's constitutional rights, then it's time for the courts to come in and straighten us out.

What do you feel the relationship should be between the Board and the courts?

My vote should be what, in my judgment, is right and proper. I don't think I should vacillate on what I think the court might do because I'm not going to learn that way. If I'm trying to outguess the court, then I don't believe I'm being a good Parole Board member.

What do you feel are some of the factors that contribute to the tensions in prisons today?

In the first place, people today are better educated so they read the law and mis-interpret it, and they think they know what's going on. That's one problem. Most prisons are heavily overcrowded. You just can't pile people on top of each other and expect them to get along. And that creates tension because there's always fear in prison. Always fear. You never know what some psychopath might do. The guy could walk right up behind you, and stick a knife in your back.

Do you believe in taking what is known as a "hard line"---

(Continued, Page 5, Col. I)

I happen to believe that you have to run a prison. By that I mean you can't be too permissive. I would handle any problems that I have rather quickly before they get bigger.

That doesn't make you the most popular warden in America but the people who want to get along in prisons love that kind of operation because they know that somebody is interested in keeping down gang fights which can develop into something else.

What are frequent prisoner complaints?

Poor food - of course, they get to the point where they write that down automatically. More visiting privileges.

'..... you don't have to tell a man anything else when you say, "You're paroled" .....'

What are the complaints most frequently heard as far as the Parole Board is concerned?

Lack of understanding by parole boards. I believe men are entitled to be told what you're doing to them -- unless you're giving them a release. You don't have to tell a man anything else when you say, "You're paroled!" That's all he wants to hear.

What do you feel about criticism of the prisons by people who have been former inmates?

Certain people now come out of prison and are experts on reforms. Nobody could do a sentence in a prison and come back out with an objective attitude.

Do you feel that in all cases prison is the answer?

I am not a soft touch but there are many people in prison today who could go out, and everybody would be better off - the man - the authorities - and the taxpayer. Now it's the responsibility of the judges and the parole boards to do something about that. And I think the courts are doing a consistently better job all the time where probation is concerned. And this is where the judges are doing their best, I think, in selecting people, sometimes in the face of criticism, to go back into the community after they have been convicted or have confessed to a crime rather than send them to prison.

'..... the courts are doing a better job all the time where probation is concerned .....'

What do you feel about law students working with inmates in the prisons?

Now as far as law students are concerned, I think it's appropriate that they come into institutions and work with the people. I've seen some good work done. It should be under the supervision of an attorney. As far as the student acting as the advocate at the institutional hearing, I am against this.

Who do you think should be present at this institutional hearing if it is not the inmate's attorney?

At these hearings I want a man's wife, his friend, his prospective employer - someone with an abiding personal interest in the man. That is the person I'm going to listen to because the hearing is not a legal matter.

'..... an enlightened citizenry always welcomes and is always ready to face up to its responsibilities .....'

Do you think a person who has served time in prison could be a worthwhile member of a parole board?

My own judgment is this. A man should not be precluded from eligibility on a Parole Board because he has been in prison - but because he has been in prison, it will not make him a good parole board member.

Should judges take the time to visit prisons?

I have invited - not asked - but invited judges to come and look at our places. - and talking about inter-action between judges and wardens in my past experience at state institutions, I've had judges call me and say, "This is what I think this man needs. Tell me about the program at your institution."

Do you think there should be more cooperation between the various parts of the Federal correctional system?

One of the criticisms I have of our Federal operation is that we are all working autonomously. It happens at this point - and I wish to make it quite clear - that the Probation Department, Bureau of Prisons and Board of Parole have a really close working relationship. But there's nothing in the law that says we have to. I think it should be mandatory by statute.

There is a move today to put convicted men immediately on supervised probation. What do you think of this?

If it isn't necessary to send a man to prison, in my judgment, he should never go.

What do you see as the pluses and minuses of the prison experience?

There is no such thing as a perfect institution anywhere. There is something in every institution that every first offender can learn that is poor. There is also, though, something in all institutions where people can be helped who need help.

In order to carry out real prison reform you need public support. How do you think you can get it?

An enlightened citizenry always welcomes and is always ready to face up to its responsibilities. I believe most people would agree to that. And so it's our responsibility to let people know, and I think maybe we've been deficient in the corrections area.

What is your immediate goal today?

My big hope, of course, is that this Parole Board becomes regionalized, and that the people who are hearing the cases will make the decision on the people they see because I think that is the best way we can do our job.

THE SOURCE

The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers.

- **The application of operations research to court delay.** John H. Reed. New York: Praeger, 1973.
- **Contracting for computer services: a checklist.** Lewis L. Laska. 2 Rutgers J of Computers and the Law 152, 1972.
- **Creation of new National Court of Appeals is proposed by blue-ribbon study group.** 59 ABA J 139, Feb. 1973.
- **Criminal sentences/law without order.** Marvin Frankel. New York: Hill and Wang, 1973.
- **Evidence: admissibility of spectrographic voice identification.** 56 Minn. L Rev 1235, June 1972.
- **Federal jurisdiction; a general view.** Henry J. Friendly. Colum. U. Press, 1973.
- **Index to proceedings of first five seminars for referees in bankruptcy.** Henry D. Evans (avail. from Bankruptcy Div., A.O.)
- **Instant replay for appellate courts.** W.D. Houston [and others] 59 ABA J 153, Feb. 1973.
- **Judicial administration: the Williamsburg consensus--some errors and omissions.** J.G. France. 14 W & M L Rev 1, Fall 1972.
- **The "legal explosion" has left business shell-shocked.** Eleanore Carruth. Fortune, April 1973.
- **The National Court of Appeals: a dissent.** Eugene Gressman. 59 ABA J 253, March 1973.
- **National institute for trial advocacy.** M.J. Seidman. 8 Trial 34, Nov-Dec 1972.
- **Prison: the judge's dilemma.** Irving Kaufman. NY L J, Nov. 21, 22, 24, 1972.
- **Prisoner petition processing in the federal courts by use of pattern forms, parajudicial personnel, and computers.** W.H. Becker. 20 Kan. L. Rev. 579, Summer 1972.
- **Screening of criminal cases in the federal courts of appeals: practice and proposals.** 73 Colum. L Rev 77, Jan. 1973.
- **Speedy trial: a constitutional right in search of definition [note]** 61 Geo. LJ 657, Feb. 1973.
- **Symposium on federal-state relations.** 21 DePaul L Rev 625, Spring 1972.
- **Television in courtroom and classroom.** Guy O. Kornblum and Paul E. Rush. 59 ABA J 273, March 1973.
- **Urban Institute papers: collection of studies regarding various urban problems.** 1972.
- **Videotape in civil cases.** Guy O. Kornblum. 24 Hastings LJ 9, Nov. 1972.
- **Why we need the National Court of Appeals.** Paul A. Freund. 59 ABA J 247, March 1973.

ON LEADERSHIP ...

An important thing to understand about any institution or social system is that it doesn't move unless it's pushed. And what is generally needed is not a mild push but a solid jolt. If the push is not administered by vigorous and purposeful leaders, it will be administered eventually by an aroused citizenry or by a crisis.

Systemic inertia is characteristic of every human institution, but over-whelmingly true of this nation as a whole. Our system of checks and balances dilutes the thrust of positive action. The competition of interests inherent in our pluralism acts as a brake on concerted action. The system grinds to a halt between crises.

Madison designed it in such a way that it simply won't move without vigorous leadership. I've often wondered why he didn't say so. Perhaps, having in mind his brilliant contemporaries, it just never occurred to him that the day might come when leadership would be lacking.

—John W. Gardner in "The Recovery of Confidence"

CHIEF JUDGE MARKEY ELECTED TO BOARD OF CERTIFICATION

Chief Judge Howard T. Markey

Chief Judge Howard T. Markey, of the U.S. Court of Customs and Patent Appeals, was elected by the Judicial Conference of the United States, to serve on the Board of Certification for Circuit Executives, succeeding Judge Roger Robb of the U.S. Court of Appeals for the District of Columbia, whose term has expired.

The Certification Board was created by Congress in 1971 to screen and, where appropriate, certify applicants found qualified to serve as Circuit Executives. Eight of these positions have been filled in the eleven federal circuits to date.

Judge Markey, a native of Illinois, earned his J.D., cum laude, from Loyola University in Chicago, and a Masters in Patent Law from John Marshall Law School of that city.

He has a distinguished record with the United States Air Force and was one of their first jet plane test pilots. He served in both World War II and the Korean War. At the age of 38 he was promoted to Brigidier General, one of the youngest ever to have held this rank.

Judge Markey was in private practice in Chicago for 23 years. During this period he also found time to serve as an adjunct professor at Loyola Law School and to frequently contribute articles to legal periodicals.

In June, 1972 he was appointed Chief Judge of the United States Court of Customs and Patent Appeals.

JUDGE TJOFLAT DEMONSTRATES OMNIBUS HEARING TECHNIQUE

Judge Gerald B. Tjoflat (M.D. Fla.), one of the strongest proponents of the omnibus hearing technique, recently demonstrated to federal judges in New England how he has developed the procedure in his court.

Judge Tjoflat, on assignment by the Committee on Intercircuit Assignment to assist with a heavy caseload in the District of Massachusetts, used the opportunity to participate in seminars called by Chief Judge Andrew A. Caffrey to explore discovery techniques adopted in other districts.

Four evening seminars were arranged for the demonstration. The first session was devoted to a group discussion by federal judges in Massachusetts, New Hampshire and Rhode Island; the second was held for Magistrates of these states; and the third was held for members of United States Attorney's Offices in Massachusetts, New Hampshire, Rhode Island and Maine. The fourth and last session was conducted for twenty-five highly experienced defense counsel.

The omnibus hearing is a pretrial procedure adopted by judges who seek comprehensive disclosure in criminal cases to: (1) bring about an orderly trial of the case, and (2) bring about a speedy trial.

It is strictly voluntary for all parties to the case. Disclosures by the defendant generally relate to matters of evidence, witnesses to be called, etc., which he plans to use during trial. The government discloses at least that information it ultimately must under the Jencks Act and sometimes more.

The technique, first developed by Judge James Carter of the Ninth Circuit, then Chief Judge at San Diego, California, was quickly adopted by other federal judges. Chief Judge Adrian Spears (W.D. Tex.) has used it with a high degree of success since 1967. The procedure has been endorsed by the American Bar Association's Committee on Standards for Criminal Justice and is a part of the Standard on Discovery and Pretrial Procedure before trial.

Though the technique was criticized by many when first proposed, experience at the federal trial level shows that the great majority of those who have tried it have become converts.

Says Chief Judge Spears, "Use of the omnibus [hearing] has virtually eliminated the written motion practices; saved counsel and court time and effort; exposed latent procedural and constitutional problems; provided discovery for an informed plea; and substantially reduced the congestion of the trial calendar."

The assistance Judge Tjoflat rendered in the District of Massachusetts is an excellent example of how intercircuit assisgnments can be used to cross-pollinate innovative techniques.

PRESIDENT, CHIEF JUSTICE ANNOUNCE APPOINTEES TO COMMISSION ON FEDERAL CIRCUITS

The President and the Chief Justice have announced they are designating the following persons to serve on the Commission on Revision of the Federal Court Appellate System of the United States:

By the President: Roger C. Cramton, Dean-Elect of Cornell Law School; Francis Kirkham, a partner in the San Francisco law firm of Pillsbury, Madison and Sutro; Judge Alfred T. Sulmonetti, of the Circuit Court of Oregon at Portland, Oregon; and Emanuel Celler, former member of Congress and now with the New York law firm of Weisman, Celler, Spett, Modlin and Wortheimer.

By the Chief Justice: Judge Roger Robb, of the U.S. Court of Appeals for the District of Columbia Circuit; Judge Edward Lumbard, Senior Judge of the U.S. Court of Appeals for the Second Circuit; Bernard G. Segal, a Philadelphia lawyer and former President of the American Bar Association; and Professor Charles Alan Wright of the University of Texas Law School.

Eight members were appointed previously, four by the President Pro Tempore of the Senate, and four by House Speaker Carl Albert.

Though the Commission is not as yet officially constituted, the Commissioner-designates met informally April 19th to make some immediate decisions. They have agreed on a Chairman, Senator Roman Hruska; a Vice Chairman, Judge Edward Lumbard; and a Corresponding Secretary, Roger C. Cramton.

(THE CHIEF JUSTICE, from p. 2)

1972 and submitted them to the Congress in early 1973.

It is well known that District Judges have been applying many of the proposed rules, very often as persuasive authority, while they were in the draft stage. This is not surprising since these rules are largely a codification of long-established and tested rules of evidence that state and federal judges have been using and developing for generations.

I return to my basic point: the rule-making process is functioning as its designers intended. The Congress is, as always, overwhelmed by many problems of an urgent nature, and is entitled to adequate time to study carefully any proposed rules submitted. The House Judiciary Committee is proceeding with this review in a sub-committee chaired by Congressman William L. Hungate of Missouri. The system is working and will do so as long as each component performs it assigned role.

CLASS ACTIONS

The General Counsel of the Administrative Office maintains a list of radio and TV stations which volunteer broadcast time on either a public service or news release basis to disseminate information on class actions. The list of stations is available from the General Counsel's office.

AO FJC Calendar

Apr. 25-28 Nat'l Council of Fed. Magistrates Annual Conference, San Francisco

Apr. 26-27 Subcommittee on Judicial Statistics (of the Jud'l Conf.) Washington, D.C.

Apr. 23-May 1 Seminar for Newly Appointed District Court Judges, F.J.C. Washington, D.C.

May 7-10 Conference for District Court Judges, F.J.C., Washington, D.C.

May 14-16 7th Circuit Conference, Chicago, Illinois

May 14-18 Probation Officers Orientation Seminar, F.J.C., Washington, D.C.

May 15-18 American Law Institute, Washington, D.C.

May 19-20 Seminar for Official Court Reporters, Atlanta, Ga.

May 22-24 1st Circuit Conference, Portsmouth, New Hampshire

May 21-25 Probation Officers Orientation Seminar, Los Angeles, Cal.

May 30-June 2 6th Circuit Conference, Galt House, Louisville, Ky.

June 11-14 Seminar for District Court Clerks, Norfolk, Va.

June 27-30 8th and 10th Joint Circuit Conference, Broadmoor Hotel, Colorado Springs, Colo.

June 28-30 Fourth Circuit Conference, The Homestead, Hot Springs, Va.

July 5-7 Subcommittee on Judicial Improvements (of the Jud'l. Conf.), Colorado Springs, Colo.

July 6-7 Jury Committee (of the Jud'l Conf.), Los Angeles.

July 9-11 Criminal Law Committee (of the Jud'l. Conf.), Colorado Springs, Colo.

July 10 Committee on Bankruptcy Administration (of the Jud'l. Conf.), Washington, D.C.

July 12-14 Seminar for Chief Clerks of Bankruptcy Offices, Colorado Springs, Colo.

July 13 Criminal Justice Act Committee, (of the Jud'l. Conf.), Denver, Colo.

July 18-21 Bankruptcy Rules Committee, Washington, D.C.

July 24-26 Ninth Circuit Conference, Saint Francis Hotel, San Francisco, Cal.

July 30-31 Probation Committee (of the Jud'l. Conf.) Williamsburg, Va.

July 30-31 Committee on Court Administration, Salt Lake City.

Sept. 7-8 Second Circuit Conference, Buckhill Falls, Pa.

The Third Branch

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Co-editors:

Alice L. O'Donnell, Coordinator, Inter-Judicial Affairs Federal Judicial Center

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JUDICIAL FELLOWS PROGRAM ANNOUNCED

The Chief Justice, acting in his capacity as Chairman of the Board of the Federal Judicial Center, and the National Academy for Public Administration jointly announced a new Judicial Fellowship Program for the Federal Court System, patterned along the lines of the Congressional and White House Fellows programs, which will begin operation on an experimental basis this fall.

At least three and possibly four Fellows under 35 years of age are expected to serve for a year as assistants to top officials in federal judicial administration.

The program will be administered by the National Academy for Public Administration using private funding.

The Ford Foundation contributed a grant of $50,000 to get the program started. Other grants are expected to be made to the National Academy but none are sought by or made to the Federal Judiciary itself. The Congressional and White House Fellows programs were also initiated through private grants, although the latter was later funded through Congressional appropriations.

The program has received the encouragement of officials of the American Bar Association.

The new program will offer highly talented young professionals trained in such areas as business management and public administration an opportunity to do creative work and gain broad, first-hand experience in the swiftly developing field of judicial administration.

Applications will be reviewed by a six-member Judicial Fellows Commission appointed by the Chief Justice. From the list of candidates, a group of finalists will be invited to Washington this summer for personal interviews. Final selection of the first Judicial Fellows will be made shortly thereafter by the Chief Justice upon the recommendations of the Commission.

The Commission includes: Retired Supreme Court Justice Tom C. Clark, Chairman; Mark W. Cannon, Administrative Assistant to the Chief Justice, who will serve as Executive Director; George A. Graham, Senior Social Scientist of the National Academy for Public Administration; Erwin N. Griswold, retiring Solicitor General of the United States; Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts; and Judge Alfred P. Murrah, Director of the Federal Judicial Center.

"The Program is directed toward attracting young talent who will not only make a contribution during their year as Judicial Fellows, but who will continue to make a contribution to judicial modernization in future years," the Chief Justice said.

"Some may do this through careers in judicial planning and management, while those who pursue careers outside the Judiciary can help the general public to understand the nature and needs of the judicial system."

(See FELLOWSHIP, p. 3, col. 1)

SPOTLIGHT: THE FEDERAL PRISON SYSTEM TODAY

An interview with Norman A. Carlson, Director, Federal Bureau of Prisons

Norman A. Carlson has been Director of one of the largest and most sophisticated prison systems in the world since March 25, 1970.

A native of Sioux City, Iowa, he graduated from Gustavus Adolphus College with an AB in Sociology and holds a Master's Degree in Criminology from the University of Iowa.

He began an extensive career in corrections as a Correctional Officer at the Iowa State Penitentiary and later joined the federal prison system as a Parole Officer at the Leavenworth Penitentiary in 1957.

Today the nation's federal prison system is faced with the twin problems of massive over-crowding coupled with a dramatic change in the kind of offender being sent to prison.

How is Director Carlson meeting the challenge posed by these problems?

(See INTERVIEW, p. 4)

JUDICIAL CONFERENCE UNIT PROPOSES SENTENCE REVIEW

The Judicial Conference of the United States Committee on Rules of Practice and Procedure has proposed that Rule 35 of the Criminal Rules of Procedure be amended to allow review of sentencing.

The proposed amendment along with those relating to other rules of criminal

(See SENTENCE REVIEW, p. 7, col. 2)

CONFERENCES HELD FOR DISTRICT JUDGES

Newly Appointed. Over 30 District Judges have recently been appointed to the federal bench, and consistent with past practice Director Murrah issued invitations to the new judges to attend a seminar at the Center.

Last month most of these new judges, representing 14 districts, met for seven days to hear from their brethern how they might expeditiously process their cases with efficiency and a saving of time.

The seminar was planned by a group of experienced judges in cooperation with the Director. For the first time nearly all "faculty" members were selected from the list of those who attended seminars at the Center themselves not long ago. The newer judges brought to the sessions innovative techniques, in management of their courts as well as such things as how to conduct an omnibus hearing, how to work with the Magistrates, and how to use supporting personnel.

Tenured Judges. Responding to requests of the judges who have been on the bench five years or more, the Director brought to the Center the following week 32 district judges from 30 districts. Twenty-five of those in attendance were Chief Judges.

Of special concern to these judges were class actions, speedy trials, Section 1983 cases, and management of their courts.

Two law school deans, Dean Robert B. Yegge of the University of Denver, and Dean Gordon A. Christiansen of American University, and one professor of law, Kenneth R. Redden of the University of Virginia, joined the "faculty" as reporters for the group and made valuable contributions through summaries of the judges' conclusions and consensus statements.

Chief Judge Bailey Brown (W.D. Tenn.) in a letter to Judge Murrah commending the Conference, said that he had circulated the judges of his court to recommend that they consider adopting several procedures discussed at the sessions, including "allowing the magistrates to receive not guilty pleas, having the U.S. Attorney open his file in criminal cases, ... and requiring the defendant in Section 1983 cases by inmates to explore the facts through discovery procedures."

DO NEW LAWS = NEW LAW SUITS?

Increasingly, the cause and effect relationship between new federal laws and federal litigation is becoming more pronounced.

This statistical correlation was highlighted by C. Frank Reifsnyder, Chairman of the American Bar Association's Special Committee on Coordination of Judicial Improvements, at a recent Federal Judicial Center Seminar for Circuit Judges.

Escape Cases. Increased almost 500 percent in a ten-year period as a result of the Bail Reform Act of 1964.

1970 Gun Legislation. Weapon and Firearms Act cases increased from 494 in 1969 to 2,377 in 1972.

New Control Substances Act (Drugs). Became effective in May of 1971 and produced a filing increase of 44.4 percent in one year.

Narcotics Addicts Rehabilitation Act of 1966. Civil commitment cases increased from 387 in 1968 to 3,268 in 1970 (although there has been some leveling off since that date).

Civil Rights Cases. Increased from 3,985 in 1970 to 6,133 in 1972 (53.9%).

Labor-Management Relations Cases. Increased from 1,475 in 1970 to 2,455 in 1972 (66.4%).

Social Security Act Revisions. Increased from 1,735 cases in 1970 to 2,288 cases in 1972 (31.9%).

Equal Employment Act of 1972. 14,644 charges were filed with the EEOC in the first seven and one-half months of fiscal 1972, more than the entire number of charges received in fiscal 1971. If these filings continue at the same rate for the remainder of this fiscal year, the total may reach 23,335.

An estimated 95% of the labor-management relations cases are disposed of by the NLRB and do not reach the courts. If this is a guide, and such a conservative figure is not predicted, at least 5% of these 23,335 charges will reach the federal courts.

OBSERVING QUESTION AND ANSWER SESSION AT SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES ARE FACULTY MEMBERS: Judge Robert J. Kelleher (C.D. Cal.) (left) and Judge Warren J. Ferguson (C.D. Cal.) (right)

JUDICIAL CONFERENCE AND ADMINISTRATIVE OFFICE REPORTS RELEASED

• The proceedings of the Judicial Conference of the United States were this month released in a report on the April 5-6, 1973 sessions.

Title 28 of Sec. 331 of the United States Code requires the Chief Justice to summon annually the members of the Conference and, by practice, meetings are held each fall and spring.

The Code mandates the Conference to "make a comprehensive survey of the condition of business in the courts of the United States" and following each meeting a report on Conference action is printed and released to the public.

• Also released this month was the Semi-annual statistical report by the Director of the Administrative Office.

In releasing the report, Director Kirks said, "We invite our readers to weigh the analyses, to observe the comparisons set forth both in table and chart form, and to determine the rate at which the federal judiciary is responding to the increasing docket."

The report, dedicated to those working in the federal judicial system at all levels, carries statistical data on both the criminal and civil operations of the federal courts.

Copies of the report are available by writing the Administrative Office, Operations Branch, Division of Information Systems, Washington, D.C., 20544.

(FELLOWSHIP, from p. 1)

Candidates for a Judicial Fellowship must have demonstrated interpersonal and problem-solving skills. They should be under 35 and possess at least one post-graduate degree, preferably with interdisciplinary training and experience. Compensation will be negotiated on the basis of the Fellow's qualifications and current salary, generally ranging from $12,000 to a maximum of $24,000 for the fellowship year.

Formal announcements and literature on the program are being distributed to universities and professional sources across the country, and are available upon request from the Federal Judicial Center.

Applicants are asked to submit by June 22 the following materials to Mark W. Cannon, c/o U.S. Supreme Court, Washington, D.C. 20543: educational standing and accomplishments, samples of past work, a photograph, an essay of not more than 700 words on the applicant's qualifications and why he is interested in the position, and the names and addresses of five character references, three of whom should send letters on the applicant's behalf.

The finalists selected will be reimbursed for necessary expenses incurred for personal interviews in Washington.

Those selected as Judicial Fellows will work with the Federal Judicial Center, the Administrative Office of the United States Courts, the Administrative Assistant to the Chief Justice, and the Circuit Executives of the nation's judicial circuits. In addition, the Fellows will take part in special meetings, seminars, conferences, and lectures.

Examples of projects in which Fellows could work include: computerized court management information systems; methodology for analyzing and predicting the impact of proposed legislation on the courts and predicting needs for the future; evaluation of institutional innovations in the Judiciary; long-range planning and training programs for judicial personnel; procedures to expedite case disposition in trial and appellate courts; and exploration of alternatives in areas such as sentencing, penology, probation and parole.

D.C. & FIFTH CIRCUITS HOLD CONFERENCES

Thomas H. Reese, Circuit Executive for the Fifth Circuit, reports that its conference held April 10-15 at El Paso was "an impressive success due in large measure to the work of Chief Judge John R. Brown."

The Conference was dedicated to Senior District Judge Robert Ewing Thomason (W.D. of Texas) whose "warmth, courtesy and uprightness in private and professional life" was recognized in a formal resolution.

Highlighting the Conference was an address by U.S. Supreme Court Justice Lewis F. Powell.

Scheduled discussions examined New Proposed Rules of Evidence, State Prisoner Civil Rights, Problems of the Criminal Justice Act, Privileges of the Press and Lawyer - Court Relations.

The District of Columbia's Circuit Conference was held April 9-10 at The Homestead in Hot Springs, Virginia. Circuit Executive Charles E. Nelson reports that the conference was held in conjunction with the Convention of the Bar Association of the District of Columbia.

Highlights of the program were the remarks by the Chief Justice of the United States and by Senator Charles Mathias of Maryland, a member of the Senate Judiciary Committee.

Program topics included Actions and Appeals Against Federal Agencies, and Proposed Rules of Evidence for U.S. District Courts. Discussion periods following the formal presentations were lively and informative.

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THE SOURCE

The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers:

- Adversary process in psychiatry. David L. Bazelon (address), April 21, 1973.
- Appellate review of sentences: a survey. 17 St. Louis U L J 221, Winter, 1972.
- Criminal law explosion - can it be controlled? Panel. 9 Colum J L & Soc Prob 88, Fall 1972.
- Dialogue on class actions; questions and answers. Panel. 28 Bus Law. 109, March 1973.
- Differentiated case management in appellate courts. William L. Whittaker. 56 Judicature 324, March 1973.
- Law and justice report/exploding caseload sets off debate over how Supreme Court handles its work. Douglas P. Woodlock. 17 National Journal 595, April 28, 1973.
- Legal problems of electronic information storage. F.M. Auburn. 4 Tasmania U L Rev 86, 1971/72.
- One Supreme Court; it doesn't need its cases screened. A.J. Goldberg. 168 New Republic 14, Feb. 10, 1973. Reply. A.M. Bickel, Feb. 17, 1973. Discussion, March 3, 1973.
- Proposals for an administrative appellate court. N.L. Nathanson. 25 Admin L Rev 85, Winter 1973.
- A "quick-and-dirty" approach to computers and court activity. Judith Thomas. 13 Jurimetrics J 153, Spring 1973.
- Reducing crime and assuring justice: address. R. M. Klutznick. 39 Vital Speeches 279, Feb. 15, 1973.
- Statistical studies of the costs of six-man juries. W.R. Patst, Jr. 14 W & M L Rev 326, Winter 1972.
- Victimless crimes - the case for continued enforcement. Edward M. Davis. 1 J of Police Sci Admin 11, March 1973.
- Introduction to correctional rehabilitation. Richard E. Hardy and John G. Cull. Springfield, Charles C. Thomas, 1973.
- Of Learned Hand and courts' crisis. Edward Weinfeld. New York L J, May 8, 1973.

AN INTERVIEW WITH NORMAN A. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS

Why are prisons such a protest target today?

It's a visible target. When you say the prisons have failed so has the rest of society. I'm not trying to defend the prison system because I'd agree with many of the charges. But who is to say what the purpose of an institution is; you know it's a schizophrenic business we're in because there's a large segment of the population that think a prison is a place to lock people up and punish them and another group say treatment, so you've got kind of a polarization here and you have to walk a fairly tight line between the two.

What are the biggest problems facing the federal prison system today?

You can have all the psychiatrists, psychologists, chaplains you want, but it's the line officer who's going to make or break the program.

Overcrowding would be number one, two and three--by far overshadowing any other problem we have. Right now, say, out of 22,600 inmates we're 3,000 over capacity, that is an excess of 3,000 over what it should be today.

Why is the federal prison system facing a population problem?

The reason we're getting more people is what's happening in the entire federal criminal justice system. Four years ago they added a thousand FBI agents and expanded drastically the Bureau of Narcotics and Dangerous Drugs and put on more U.S. Attorneys and they used more judges. And obviously when you add more people onto the system it's going to produce more results and we are now seeing the results. It takes generally a two year time lag in the criminal justice system---in other words it takes about two years to get these cases processed and into the correctional system. As you know, more and more laws have been passed which have expanded the federal criminal justice system.

Do you see this trend continuing?

We may see a trend entirely contrary to what we're seeing today in four or five years. We can't predict what's going to happen. During the previous administration there was a different attitude, you know, as far as the Department of Justice was concerned. Now there's a get-tough attitude with a heavy emphasis on prosecution, and convictions -- and there could be for some time.

Most of the federal judges really are interested in those they sentence.

Is the average sentence changing also?

No, that's interesting--the average sentence--the average time served--has remained fairly constant. The average sentence imposed is about eighty-four months which is a little over five years. That includes an awful lot of very lengthy sentences as well as some very short sentences. Averages, of course are very confusing. You have someone who comes in for a life sentence on a skyjacking and that will be counterbalanced by a six-month sentence, so you see all sorts of variances.

Congugal visiting won't solve the problem of homosexuality.

Are more convicted felons going to prison today than in the past?

No, the probation percentage has been going up rather steadily. Now fifty percent of all the cases disposed of by a federal court are handled in a non-institutional setting, primarily because of probation. The inmate we see now is the type that actually should be confined to an institution. I think the system is much more effective now than it was five or ten years ago because probation is weeding out the people that don't need to go to an institution.

The bulk of our inmates could be given periodic freedom.

NORMAN A. CARLSON

Is there a change in the kind of inmate you are receiving?

Yes, very definitely. The best example I can give you is armed bank robbery.

Would you be more specific?

Ten years ago armed bank robbery constituted about 8% of the total committments. Today it's about 20%. Interstate motor vehicle theft used to be about a fourth--the largest offense--about 25%. It's now about 12%, so there's been a shift as I think there should be. We're getting more of the serious offenders and far fewer youngsters that steal a car and go across a state line. The policy of the department, of course, is to shift a lot of the routine-type car thieves to the state and local courts.

Does this mean that the property offender is not going to prison as frequently as in the past?

Yes, roughly 40% of the total inmates would be considered offenders primarily against the person. This is a sharp upswing from the last two or three years.

Would you be more specific about the change in the kind of offender going to prison today?

Well, a different type of offender. The type of offender you see today is no longer the docile inmate who comes

(Continued, p. 5)

(Continued, from p. 4)

and is willing to serve his time and, you know, who is kind of a professional prison inmate who has found a home. We used to have a lot of inmates in that category, for example--alcoholics who found a home in prison. These people just don't come into the system anymore. The type you see now are the armed bank robbers, major narcotic offenders, and things of that type. They present a real challenge to us. They're not just going to sit back and do their time. They're going to make some demands on us in terms of activities and programs. Also escape attempts are up because of this type of inmate.

How does this change in the kind of offender change the job of managing the system?

It makes it much more complex. We have a different type of inmate--more demanding, requiring greater supervision and control in some instances. At the same time the challenges and the opportunities are greater. A lot of the people who have committed offenses against the person tend to be the type of people you can work with in a correctional setting far easier than you can with, say, the guy who writes a bad check. They offer real opportunities as far as institutional programs are concerned.

Is prison violence increasing?

No, it's somewhat surprising that the number of assaults and homicides in our institutions has held fairly constant in the last six years, despite the fact that we're seeing the more violent-type of offender being committed.

Are most of the assaults and homicides directly related to the homosexual triangle?

Yes, although we haven't had many homicides that would fit into that category. We've had more, frankly, resulting from outside activity than the homosexual triangle.

Are federal judges really interested in what happens to offenders after they have sentenced them?

Most federal judges really are interested in those they sentence. It's their worst problem and I think it's a real education for them to find out what does happen.

Do most federal judges and probation officers understand the problems facing your institutions?

They share the basic philosophy that if an offender is a good candidate for rehabilitation he ought to be on probation--he never ought to see an institution.

What is the basic justification for prisons today?

The institution is basically here to protect society. We protect society in two ways. One, we confine those who are unsuitable to live in society. Second, we try to do something with them because 99% will be released some day. We have to work with this person. But as far as the prisons being a total failure, that's a rather riduculous charge.

When you say the prisons have failed: So has the rest of society.

Do you feel judges and probation officers should be more familiar with your institutions?

Absolutely. I have very strong feelings on that. Particularly in connection with sentencing institutes.

Could you give us an example?

At Crotonsville, New York, we talked to federal judges in the first and second circuit who went through Danbury and they came out with very positive feelings. First of all, we had inmates that took them around. These were not hand-picked inmates. No staff officials were present. The judges ate in the main dining room with inmates. The basic interaction was between the judges and the inmates and not with the judges and the staff. To me this is what should take place. I really think they came away with a very objective appraisal of the institution. Far more objective than just, you know, walking through.

There's got to be finality in the criminal justice system somewhere.

You think this is very important then?

I think it's absolutely essential that federal judges get out and see our institutions and find out what our strengths are and what our limitations are.

It's absolutely essential that federal judges get out and see our institutions.

What do you think of conjugal visiting programs such as that carried out by the California prison system?

I am firmly opposed to conjugal visiting programs. It's not a solution to anything. I prefer the furlough law for inmates who have stable family ties and are not a threat to society. They can spend time in the community with their families rather than bring them into the institution. Conjugal visiting has really been ballyhooed by some people who don't know what they're talking about.

Are many inmates eligible for this furlough program?

Right now it's a fairly small percentage because the federal law speaks in terms of 6 months prior to release. We have legislation now pending which would give us the authority to expand furlough and use it for all inmates that we feel are suitable.

I would like to see virtually all inmates who are not considered a threat to society given periodic furloughs to spend time in the community. Obviously, the violent inmate who's going to go out and rob another bank or hijack another plane would not be in this category. But I think that the bulk of our inmates---about 60%--could be given periodic freedom.

99% will be released some day.

What do you think has been a key accomplishment in recent years?

A major accomplishment, I suspect relates to the capability of the line staff---you can have all the psychiatrists, psychologists, chaplains you want, but

(See INTERVIEW, p. 7, col. 1)

INDIVIDUAL CALENDAR WORKS IN DC COURT

In a recent communication to The Chief Justice, Judge George L. Hart, Jr., U.S. District Judge for the District of Columbia, reported his early skepticism on the use of the individual calendar system. He wrote that, "After working with it just short of three years, I must admit that it has accomplished miracles in reducing our pending cases, the average cases pending per Judge and cases pending individually."

In response to a request from The Third Branch for permission to quote from this letter and for a report Judge Hart has submitted the following:

INDIVIDUAL CALENDAR SYSTEM IN THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

The Annual Report of the Director of the Administrative Office of the United States Courts for 1969 revealed some rather alarming statistics with respect to delay and backlog in the criminal calendar of the United States District Court for the District of Columbia. In fiscal year 1965, 1295 cases were filed and the median time from indictment to termination was 4.2 months with 610 cases pending at year's end. By fiscal year 1969, filings had risen 70 percent to 2197 cases, the backlog had increased 181 percent to 1714 cases, and the time from indictment to termination had increased to 6.4 months. In addition, the crime index continued to rise, street crime was of major concern to the public, and public confidence in traditional methods of coping with these problems was on the wane.

During and prior to this period, this court was operating under the master calendar system.

Faced with this situation and realizing some effective steps must be taken to alleviate it, the Court acted upon a recommendation of the Ellison Committee's Court Management Study that the individual calendar system be adopted. The first phase of implementation was undertaken in February, 1969 by instituting an accelerated calendar for certain categories of more serious criminal offenses. After evaluation of this pilot program, the individual calendar system was adopted in toto on May 1, 1970. The result has been an enormous success in the reduction of case backlog.

Since the starting date of the individual calendar system nearly three years ago, the pending civil caseload for cases assigned to individual Judges has been halved from 3996 cases pending to 2088, from an average civil caseload of 307 to 149. With respect to the criminal caseload, the figures are even more gratifying, having been reduced two-thirds from a backlog of 1190 cases to 468 cases, or from an average of 101 to 33.

Average times from indictment to termination have been substantially reduced except in unusual cases. All Judges are meeting prescribed time limits in accordance with this Court's Rule 50(b) plan.

Finally, although some of the Judges were initially skeptical in their support of this change, they are now in unanimous agreement that it is a significant improvement over the old master calendar system. In short, it is achieving the objective it was designed to achieve: more effective and efficient administration of justice.

NEWLY APPOINTED FEDERAL DISTRICT JUDGES ATTENDING MAY SEMINAR ARE: left to right, Thomas P. Griesa (S.D.N.Y.), Herbert A. Fogel (E.D. Pa.), Hernan G. Pesquera (Dist. of P.R.), Robert J. Ward (S.D.N.Y.), Kevin T. Duffy (S.D.N.Y.), William B. Enright (S.D. Cal.), Damon J. Keith (Faculty) (E.D. Mich.) **(SEE STORY P. 2)**

J. A. G. SCHOOL UNDER CONSTRUCTION

On the Campus of the University of Virginia in Charlottesville ground was broken in April for the Army's new 4.3 million dollar Judge Advocate General's School.

With completion expected in early 1975, the facility leased on long term to the Army by the University, will house offices, living quarters, VIP suites, four classrooms, twelve conference rooms, two moot courtrooms, an auditorium and a 50,000 volume library.

Graduate legal instruction will be provided in areas such as government contracts, federal employment law, international law, civil affairs law, military justice and claims.

Students will include active duty officers from all the armed services, members of reserve and national guard components and civilian attorneys from government agencies.

The ABA has accredited the School and has deemed its advance course equivalent to the LL.M. Degree.

Judge Alfred P. Murrah, F.J.C. Director and Kenneth C. Crawford who heads the Center's education and training program attended the ground breaking ceremony.

(INTERVIEW, from p. 5)
it's the line officer who's going to make or break the program. He's the guy who has day-to-day contact with the offender.

What are you doing to meet this problem?

I think we've done more to train our line staff to become truly effective correctional officers than we have ever done in the past. We found that by making our correctional staff into paraprofessionals and giving them skills to deal with inmates on a one to one basis, not as guards or overseers, they can understand and appreciate inmate problems and cope with them, so we can dramatically reduce the problems in institutions.

What is the racial breakdown of total inmate population?

Roughly 30% black, 70% white.

How did you answer the protest by some that all prisons are racist institutions?

There is racism in any institution just the same as there is in any community institution. It's really a microcosm of society-at-large, and there's as much racism as you find in society---no more no less.

What steps have you taken to hire more minority employees?

We set a goal for our system about two years ago, right after Attica, that about a third of all new employees would come from minority groups. Since that time, we've doubled the number of minority employees---now about 11% of our total staff are minority employees. When we started the program two years ago, this was 5%, so we are making progress. Ultimately, of course, we'll have an equal ratio.

What results have you had?

Well right now, 11% of our staff are minority and 30% of our inmates are minority, so we're still out of balance, but we have made substantial progress.

Do you agree that there is a need to limit collateral attack on convictions?

There's got to be finality in the criminal justice system somewhere. I think one of the problems now is that there seems to be absolutely no finality.

(SENTENCE REVIEW, from p. 1)
procedure have been submitted to both the bench and bar for consideration and suggestions.

However, neither the Judicial Conference nor the Supreme Court have acted on the proposals.

Specifically, Rule 35 of the Criminal Rules of Procedure relating to Correction or Reduction of Sentences would be amended to provide for the review of criminal sentencing by a Sentencing Review Panel.

The Proposal states:

> There shall be in each district court a sentence review panel. The panel shall be composed of three district judges of the circuit who shall be designated and, if not already members of the court, assigned to the district court for that service by the chief judge of the circuit pursuant to 28 U.S.C. §292(b) or §294(c).
>
> The members of the panel shall serve for such periods of time as the chief judge of the circuit may designate. The same district judge may be designated and assigned to the sentence review panels of two or more district courts of the circuit at the same time.
>
> A district judge of the circuit may be designated and, if necessary, assigned by the chief judge of the circuit as an alternate member of the panel to sit in place of a regularly designated member whenever the latter was the sentencing judge in a case under review or is otherwise unable to sit. The district judge who is first in precedence shall preside over the panel.
>
> When a motion is filed for the review of a sentence, the clerk shall forthwith notify the presiding judge of the sentence review panel. The presiding judge shall promptly cause the panel either individually or in joint session to review the sentence. The panel shall consider the papers on file in the case in the district court, including the presentence report, a report of a diagnostic facility, and any other documents which were before the sentencing judge.
>
> The panel may direct the preparation of a transcript of all or part of the testimony and other proceedings in the case if required for its consideration. The panel may, in its discretion, permit the attorney for the government and the defendant or his counsel or both to appear before it and present oral argument or file written briefs or do both.
>
> If the panel deems that a sentence under review is excessive, it shall modify or reduce it; otherwise it shall confirm the sentence. The order of the panel modifying or reducing the sentence and amending the judgment of the court accordingly or confirming the sentence, as the case may be, shall be filed in the office of the clerk of the district court and entered in his docket. The order of the panel shall be final and not subject to further review or appeal.

LUCIAN D. DRAKE TO RETIRE

June 29th, Lucian D. Drake, Chief of the Procurement and Property Management Section of the A.O. retires. Mr. Drake has served the government for 39 years, 33 of those years in a series of positions of expanding responsibility within the Judicial Branch.

Mr. Drake was born in Philadelphia and graduated with an AB degree from Colgate University in 1931. He joined the A.O. in 1940 as Clerk in the Section of Court Quarters and Services. His career rose steadily through exemplary performance which was recognized in a resolution by the Judicial Conference of the United States.

Friends are planning a testimonial dinner for Mr. Drake in late June. Further information can be obtained by contacting Robert H. Hartzell, Central Station P.O. Box 28306, Washington, D.C. 20005.

The Third Branch is *your* publication.

Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

ao aofjc calendar

May 30-June 2nd **6th Circuit Conference, Galt House, Louisville, Ky.**

June 11-14 Seminar for District Court Clerks, Norfolk, Va.

June 18-22 Orientation Seminar for Federal Probation Officers, Federal Judicial Center, Wash., D.C.

June 27-30 **8th and 10th Joint Circuit Conference, Broadmoor Hotel, Colorado Springs, Colo.**

June 28-30 **4th Circuit Conference, the Homestead, Hot Springs, Va.**

July 5-7 Judicial Conference Subcommittee on Judicial Improvements, Colorado Springs, Colo.

July 6-7 Judicial Conference Jury Committee, Los Angeles, Calif.

July 9-11 Judicial Conference Criminal Law Committee, Colorado Springs, Colo.

July 10 Judicial Conference Committee on Bankruptcy Administration, Wash., D.C.

July 12-14 Seminar for Chief Clerks of Bankruptcy Offices, Colorado Springs, Colo.

July 13 Judicial Conference Criminal Justice Act Committee, Denver, Colo.

July 16-17 Judicial Conference Subcommittee on Federal Jurisdiction, Buck Hill Falls, Pa.

July 18-21 Judicial Conference Bankruptcy Rules Committee, Washington, D.C.

July 24-26 **9th Circuit Conference, Saint Francis Hotel, San Francisco, Calif.**

July 30-31 Judicial Conference Probation Committee, Williamsburg, Va.

July 30-31 Judicial Conference Committee on Court Administration, Salt Lake City.

August 2-3 Judicial Conference Criminal Rules Committee, Wash., D.C.

August 2-3 Judicial Conference Magistrates Committee, Wash., D.C.

August 6-9 American Bar Association Meeting, Wash., D.C.

August 20-21 Judicial Conference Standing Committee on Rules of Practice and Procedure, Wash., D. C.

Sept. 7-8 **2nd Circuit Conference, Buckhill Falls, Pa.**

Sept. 13-14 Seminar for Referees in Bankruptcy, Salt Lake City, Utah.

Sept. 13-14 Judicial Conference of the United States, Wash., D.C.

THE THIRD BRANCH
VOL. 5, NO. 5 MAY, 1973

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Bulletin of the Federal Courts

VOL. 5, NO. 6 | Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center | JUNE, 1973

JUDICIAL CONFERENCE PUBLISHES PROCEEDINGS OF SPRING MEETING

The Judicial Conference of the United States, which met at the Supreme Court on April 5-6, published its proceedings May 18.

Among the highlights were reports of: The Director of Administrative Office, The Director of The Federal Judicial Center, The Court Administration Committee, The Committee on the Operation of The Jury System, and The Committee on Administration of Criminal Law.

Administrative Office Director Rowland Kirks told the Conference that during the first half of fiscal year 1973, total civil and criminal litigation in federal district courts has dropped from the level during the same period in the previous year. For example, 67,535 actions were filed in the six-month period ending 1972 compared with 70,067 at the mid-point of fiscal 1972.

Director Kirks said this drop in criminal business partially reflects the impact magistrates are making on the work of the judiciary.

However, the probation system workload continues to increase. At the end of January, 1973, there were 51,528 persons under supervision, representing an increase of 2,500 offenders in less than 7 months.

The chairman of the Committee on Court Administration, Judge Robert Ainsworth, Jr., recommended and the Conference approved changing the name of the subcommittee on Judicial Salaries, Annuities and Tenure to the Subcommittee on Judicial Improvements in order to more adequately describe the duties and responsibilities of the Subcommittee.

The Conference also approved legislation which would amend Section 142 of Title 28, U.S. Code, to permit the Administrator of General Services, on the request of the Director of The Administrative Office, to provide accommodations for judges of the Courts of Appeals at places other than those where regular terms are authorized by law to be held, providing that the circuit judicial conference has given its approval and space is available without additional government cost.

Judge Walter E. Hoffman, Chairman of the Committee on Habeas Corpus, submitted a written report on legislation which, if passed, would reduce the number of habeas corpus petitions. After considerable discussion, the conference decided that Congress should have the benefit of judicial experience in the field of habeas corpus and, accordingly, agreed that if the views of the Conference are requested on this legislation the committee should study the problem in depth and avail itself, if necessary, of the resources of the Federal Judicial Center in order to submit a meaningful report based on judicial experience to the Congress.

The Chairman of the Committee on the Operation of the Jury System, Judge Irving R. Kaufman, reported that the Administrative Office does not have adequate statistical records to determine whether grand juries are utilized efficiently.

(See PROCEEDINGS, Page 7, Col. I.)

SPOTLIGHT: REVISING THE FEDERAL COURT APPELLATE SYSTEM

An interview with Professor A. Leo Levin.

Professor A. Leo Levin, Director, Commission on the Revision of the Federal Court Appellate System.

The 92nd Congress created a commission with a two-fold purpose: To study the present division of the U.S. into the several judicial circuits and recommend changes in the geographical boundaries of the circuits; and study the structure and internal procedures of the Federal Courts of Appeals System.

The 16-member commission was constituted this month and elected University of Pennsylvania Law Professor A. Leo Levin as its Director.

Professor Levin is the immediate past Director of the National Institute for Trial Advocacy and has written and lectured extensively on judicial administration, civil procedure and trial advocacy.

He has also served as Chairman of the Pennsylvania Legislative Reapportion-

(See SPOTLIGHT, Page 4, Col. 2.)

A MESSAGE FROM

THE CHIEF JUSTICE

It is now almost four years since we began to create State-Federal Judicial Councils to promote continuing communication between State and Federal judges on all common problems and especially to ameliorate the friction between the two systems.

It is heartening that today forty-six such Councils are functioning not only to resolve problems but to prevent them. Perhaps now with three years of experience the time has come for us to venture a realistic appraisal of the work of these Councils and to identify new areas for cooperation.

The Councils have been constituted in a variety of ways. A few have expanded their membership to include, in addition to the judiciary, prosecutors, United States Attorneys, The Attorney General of the State, Deans of law schools, court administrators, and Circuit Executives. Sophisticated plans have evolved from these Councils: mutual use of data banks, exchange of information on habeas corpus filings, cooperation on calls for jury duty, mutual use of juror lists, and plans which avoid calendar conflicts.

Commendable progress has been made through joint conferences of state and federal judges which have been held throughout the country, planned by hard working, dedicated judges who have contributed countless hours to plan them. At the Federal Judicial Center state and federal appellate judges have sponsored two conferences, both highly successful, in an effort to improve the processing of their cases. Not surprising is the discovery that many of the problems of the state judges are common to the federal courts: overloaded dockets, too few judges and understaffed supporting personnel, a need for more probation officers, lack of adequate funds -- and all of these courts faced with demands for speedy trials.

In one State it was learned that for lack of elementary procedures of administration the judges on their Supreme Court were not receiving opinions of the U.S. Court of Appeals which was headquartered within blocks of them. The Federal Judge on the council immediately set up the machinery to make them available promptly upon release; a seemingly small matter, but symptomatic.

In still another jurisdiction, on a larger scale, state and federal judges are cooperating on cases likely to be protracted, to involve multiple jurisdictions and large claims. These cases have been filed in both state and federal courts. With complete cooperation from all counsel and the judges, a state judge and a federal judge will sit jointly to hear pretrial motions and as much of the litigation beyond this stage as is feasible. This is state-federal cooperation in the finest sense.

These are but two of many examples which have been reported. One is amost of such minutiae that it is but a courtesy, while the other is of large magnitude; both deserve commendation.

The point is that good judicial administration is the business of all of us in the legal profession. We sometimes hear it said that efficiency is not the business of courts, as though justice and efficiency are incompatible. The reality is that true justice on the massive scale courts must now contend with cannot be achieved with inefficient methods.

The relationship between the bar and both state and federal judges illustrates how the judiciary need not confine their cooperation strictly to the judicial process itself. The regulation and disciplinary function of the bar and the courts, for example, will profit by close coordination between state and federal courts.

In common with most federal judges, I have tried to support such programs by continuing to pay my "dues" or "license fees" of my native State of

(See CHIEF JUSTICE, Page 3, Col. 2.)

JUDICIAL ADMINISTRATION COMMISSION RELEASES COURT ORGANIZATION STANDARDS

The American Bar Association Commission on Standards of Judicial Administration published this month the first in a series of reports on judicial administration. The initial report is entitled *Standards Relating to Court Organization.*

The Commission was appointed in 1970 but the death of its first chairman, Judge Abraham Freedman (CA-3),

(See STANDARDS, Page 7, Col. 2.)

FEDERAL JUDGES RETIREMENT PAY NO BAR TO SOCIAL SECURITY

Since many inquiries have been received following the recent story in *The Third Branch* regarding eligibility of federal judges to receive both retirement pay and Social Security payments, there is quoted below the relevant section in the Social Security Claims Manual:

Sec. 5127.2 (b) Status of Payments Under the Retirement Test.

The Director of the Administrative Office of the United States Courts has held that the payments made to such retired judges for services performed after retirement do not constitute wages since they are not a consideration for services performed, but are the consideration for the voluntary relinquishment of the status of active judge. Whether the retired judge actually chooses to perform services does not affect the retirement agreement.

Under section 205(p) of the Act, determinations as to employment, wages, etc., are to made by the "head" of the Federal agency or his designated agent; therefore, payments made to retired Federal judges and justices are not wages and thus do not count as earnings under the retirement test.

NOTE: This section does not apply to state and local judges. For state and local judges the rules for state and local employees apply.

FJC MEETING HELD ON COURT INTERPRETER SERVICES

Louis F. Marquez, Official Court Interpreter, Western District of Texas, demonstrates to Interpreting Services Seminar participants his portable microphone-amplifier equipment which he developed for use in his court.

Participants in FJC Interpreting Services Seminar are, from left to right, Stephanie Wolkin, Office of California Senator John V. Tunney; Joseph D. Vitale, Administrative Officer, U.S. Attorney's Office, Southern District of New York; Rufugio Cuco Rodriguez, Consultant, Institute for Court Management; Robert D. Lipscher, Circuit Executive, Second Circuit; Julian Garza, Deputy Clerk, U.S. Supreme Court.

The Federal Judicial Center held a two-day meeting early this month to explore the entire subject of courtroom interpreting services.

The meeting stemmed, in part, from a congressional bill which, if enacted into law, would require federal courts to provide courtroom interpreters in districts where large numbers of citizens do not speak English. (See *Third Branch*, Volume 5 No. 3.) Among those attending the meeting were staff members from: the Administrative Office, the office of Senator John Tunney of California (author of the proposed legislation), the House Judiciary Committee, the Supreme Court, the National Center for State Courts, the Department of Justice and the State Department.

The meeting, which was chaired by David Gould of the Federal Judicial Center, touched on many problem areas regarding courtroom interpreting -- such as, at what stages in the criminal and civil process should interpreting services be made available, who should provide them, what qualifications should interpreters have, and how should interpreting services be managed.

The meeting revealed that there may be a need for a comprehensive study of whether or not adequate interpreting services are currently being provided in federal courts.

(CHIEF JUSTICE, from page 2)

Minnesota and thus maintain my status as a member of the Bar of the Supreme Court of Minnesota. The receipts of this official charge are devoted to regulation of the Bar. I have been asked whether such a payment by me to a State Supreme Court fund is not incompatible with my role as a federal judge. I think not, any more than it is incompatible for a state judge to be a member of one of the Circuit Judicial Conference. Every point of contact between the state and federal systems services a good purpose. Justice is indivisible even though we administer it in separate "pockets."

The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U.S. Courts

PERSONNEL

Federal Judges

Elevation

Irving R. Kaufman, Chief Judge U.S. Circuit Court, Second Circuit, May 28

Appointment

Daniel J. Snyder, Jr., U.S. District Judge, W.D. Pa., April 26

Confirmation

Albert G. Schatz, U.S. District Judge, D. Nebr., May 10

Nomination

Harlington Wood, Jr., U.S. District Judge, S.D. Ill., May 14

Thomas G. Gee, U.S. Circuit Judge, Fifth Circuit, June 11

John F. Nangle, U.S. District Judge, E.D. Mo., June 13

William H. Webster, U.S. Circuit Judge, Eighth Circuit

Deaths

Ralph C. Body, U.S. Senior District Judge, E.D. Pa., June 2

W. Wallace Kent, U.S. Circuit Judge, Sixth Circuit, May 28

Gilbert J. Jertberg, Senior Judge, U.S. Court of Appeals, Ninth Circuit, June 8

CHIEF JUSTICE ADDRESSES A.L.I.

The Chief Justice May 15 addressed the American Law Institute's annual meeting and used the occasion to call attention to some specific problems of the Supreme Court.

The Chief Justice then addressed his remarks mainly to the business of the Supreme Court, and reviewed the origin and work of the committee of the Federal Judicial Center, constituted over a year ago, to study the caseload of the Supreme Court.

Woven into his remarks and his call for additional study and debate, were references to the history of the Supreme Court--the organization of the circuits in 1891 and legislation in 1925 establishing the writ of certiorari separating filings which go to the Court by right of appeal from those which are heard if certiorari is granted. History shows, he pointed out, that continuous attention and study must be made as circumstances change and problems arise.

Outlining the rapid increase in filings over past years, the Chief Justice said this alone was not the problem, and cited additional contributing factors as "population growth, increasing complexity of modern business and government, vast expansion of legislation for protection of consumers for the regulation of business and the natural process of judicial construction of a wide range of new legislation." And he went on to say that it was incongruous to think that though there was an increase in filings of over 300% over the past several years that no significant changes were made in the internal operating methods of the Court or in its jurisdiction.

It is not something that can be absorbed by "simply working longer hours or getting one extra law clerk, or by reducing oral argument to 30 minutes..." he pointed out.

The Chief Justice commended the members of the Study Group for their dedicated service, and for contributing valuable time for over a year to review and recommend on the problems related to the Supreme Court work. He urged that further study and debate be conducted on all phases of the report and challenged its critics to come up with alternative recommendations. This way, he pointed out -- by bringing forth a synergy of the best thinking of everyone knowledgeable on the subject -- could the best proposals surface.

He called attention to recommendations in the report which have received little or no attention, the discussions or papers up to now having been focused almost exclusively on the recommendation of the committee that there be created an intermediate court which would serve as a screening body for cases which would otherwise go directly to the Supreme Court.

One recommendation of the committee was the abolition of the three-judge District Court, which is in effect an endorsement of the ALI recommendation.

An additional recommendation of the committee was that there be established a non-judicial body to investigate and report on complaints of prisoners both as to collateral attacks and as to complaints of maltreatments in the prisons. Here the Chief Justice suggested an experimental program could be started possibly as a state-federal project.

(SPOTLIGHT, Cont'd. from Page 1.)

ment Commission which successfully reapportioned that state. Professor Levin has also been Vice Provost of the University of Pennsylvania and Vice President for Academic Affairs. He has taught at Stanford University Law School, New York University Law School and University of Colorado Law School, Northwestern University Law School, University of Iowa Law School and the UCLA Law School. He also presented the White Lectures at the University of Louisiana in 1970.

In the following interview, Mr. Levin outlines in detail the work of the commission.

Under the act which created the Commission, what are its functions?

The task the Congress has given us in the statute is two jobs really. The first is redistrict the circuits, or as some people like to put it, recircuit the districts. It's supposed to be done, according to the statute, first, although that in itself is quite difficult. The second task is to study the structure and procedures of the Federal court of appeal system.

How much time will you have?

Congress has said that we are to have two reports -- one in 180 days from the time the ninth member of the 16-member Commission is appointed and the second report nine months thereafter, which gives you 15 months and we then have two months to sort of wind up the activities.

Could you be more specific about some of the problems facing the Commission?

Yes, there are a number of problems that really have been felt for some time, the Fifth Circuit and the Ninth Circuit particularly. For some years now the Fifth has been a pressure point involving a lot of difficulties. They have 15 judgeships on the Court of Appeals level.

What will be done once the Commission has finished its job?

Once our work is finished, we'll report to Congress, to the President and to the Chief Justice. If we're fortunate, it will result in some changes in the law.

What are some of the problems that a very large circuit Court of Appeals faces?

Problems of intra-circuit conflict, the problems of 15 judges -- you have a variety of panels that can be developed out of 15 judges. How do they resolve their differences? And the same can be true even when you have fewer than 15 judges. And you have intercircuit conflicts. And all of these involve some kind of payment in judicial energy, in judicial time. To sit *en banc* takes a lot of people and takes a lot of their time. These are factors that we want to study to see whether we have the best possible structure that we can have.

Why are you going to consider geographic alignment first?

There were some very good reasons. The need for redistricting is so great and so urgent -- that we ought to move rapidly on that and improve whatever we can in this period and move forward on this. There are a variety of ways to do it. One is by projecting various

(See SPOTLIGHT, page 5, col. 1)

(SPOTLIGHT, from page 4)
alternatives that might happen and redistricting with the possibilities in mind. One way to operate is to ask what plan would affect the district differently from another because if you come in with a proposal that will affect them all equally, then you see you will not be redistricting.

One of the things we'll have to decide is the best way of going about these two tasks. There are a variety of alternatives. The Commission members have discussed this and we will try to come up with results which will prove helpful but still do as thorough a job as we can.

There is a lot of opposition, isn't there, toward creating an additional tier of appellate review?

That's right, and others have raised their hands in horror or quasi-horror at that prospect. Some people have raised the question as to whether review of state decisions -- state supreme court decisions -- always has to be by way of direct route to the United States Supreme Court as opposed to alternative routing through the federal system. But obviously that might raise a lot of eyebrows and possibly a lot of hands might go up in horror.

This Commission could make recommendations which would dramatically alter the structure of the nation's appellate court system, couldn't it?

The members of the commission are an exceedingly able, interested and committed group. Certainly they appear to be willing to grapple with fundamentals. I make no predictions about what will emerge, but it is possible that changes with tremendous significance will emerge. The history of the federal judicial system has been that about every generation -- or a little more than that -- there is a significant change -- the creation of the whole device of a certiorari allowing the court to screen its own docket, its own input, is an important one like that. The problems certainly call for careful study. It is possible the commission can have a real impact.

The legislation creating the Commission restricts your operation substantially, doesn't it?

I suppose that which constrains us the most at this junction is the mandate of Congress that we deal first with the recircuiting, the redistricting, and then with these fundamental problems of structure. At first it might have appeared that it might be a little easier to do it the other way.

Do you have any idea of how you might realign the circuits geographically?

Oh, I wouldn't attempt to guess. I can't conceive of less circuits at the moment. There's been talk of a single national court operating in the regions, but I have some doubts that we're ready for that at the moment.

In dividing the circuits, do you think it is necessary to keep each state within an individual circuit?

No. The notion would be that some states warrant it. Montana would not need a separate circuit, but on any kind of numbers game New York conceivably could and California could. There's talk of splitting a state -- part of it would be in one circuit, part of it would be in another -- which involves other kinds of difficulties but other kinds of advantages. These are some of the factors which the commission may have to consider.

Do you think that it is necessary to increase the number of circuits; and if so, what problems would this create?

There are a number of problems in that, and various kinds of suggestions have been made and have to be very carefully assessed and evaluated. We tend to go slowly about increasing the number of circuits. The more circuits you have, the more you increase intercircuit conflicts. People are concerned about a national law. You reduce to some extent the significance, prestige and importance of each circuit's pronouncement. Increasing the number of judges per circuit involves a lot of difficulties. This involves problems of collegiality -- the extent to which one man gets to know another -- each gets to know the others and work together and understand their thinking while maintaining a respect for differences and at the same time resolving what ought to be resolved. Someone quipped not long ago that by the time you have increased the number of judges on the circuit to the point that at least one of them has now, you're not dealing with a judicial process, you're dealing with a legislative process. And so these are some of the factors. Now you look at the variables -- some people have talked of having one state constitute a circuit. This involves some problems with respect to the power of the Senators, with respect to the composition of such a circuit.

Could the end result be only to split one or two circuits?

That is a possibility. The extent to which you just deal with one circuit and break it up is one problem. Some people have argued for a total realignment of the circuits over the country. There's been a lot of opposition to that. If we're thinking ahead 30 or 40 years we ought not to feel constrained by the present geographical limits and there may be advantages -- not of upsetting the entire applecart -- but of feeling a little freer than just splitting a present circuit or two.

What will you take into consideration when you evaluate the geography of the circuits?

Well, obviously you want to be concerned first with getting a circuit which, with an optimal number of judges, can handle its business. So you're concerned with the input. You're concerned with the workload. The number of cases, the kinds of cases, is relevant to the workload. This is an important factor. Also, to some people the notion of contiguity may be important.

Is the legislation so restrictive from a time standpoint that it may be impossible for you to finish the work in only 15 months?

An advantage that we have is that there have been groups who have been thinking, who have been writing, who have been publishing papers, so there is a lot of literature on the subject. For example, there is an important recent book by Judge Henry Friendly in this area. We have the advantage of having a number of the issues already placed rather sharply in focus. I wouldn't presume to say that all of them have been. But we're not starting from zero with an amorphous notion of a malaise about a problem. And given these two

(See SPOTLIGHT, page 6, col. 1)

(SPOTLIGHT, from page 5)
assets which we have, we'll simply roll up our sleeves and try to accomplish our assigned tasks within the assigned period.

On the other hand, when you come to the basic question of whether Congress has constrained us too much, let me only say that the members of the Commission are really eager to roll up their sleeves and to get to work rapidly, energetically and effectively. We have two things going for us. The first is that some of the members of the Commission are people who have been thinking and in some cases writing about these problems for many years. They're not coming to it with no ideas at all, totally fresh and innocent.

What assistance will you have in fulfilling your tasks?

We have the advantage of having the Federal Judicial Center designated in the legislation as an agency which can provide us with research assistance. They have been doing work in this area -- important work. Mr. Eldridge [F.J.C. Director of Research, William B. Eldridge] and his staff, particularly, have produced a number of important things and we will have, in addition, our own staff people.

Many ideas have been discussed such as specialized courts of appeals and creating a fourtn tier of appellate review. Will the Commission consider these proposals?

A number of these ideas could conceivably come in. There have been suggestions in the past of specialized panels in each circuit. There have been suggestions of specialized courts. You see, the notion of the specialized panels is very different than specialized courts. You have a certain number of people who could sit *en banc* in certain kinds of cases. In a court which had, let's say, 15 judges in a circuit, you might have five who are the *en banc* board for tax cases or for labor cases. This has been criticized as well. I'm not espousing any particular idea. But some of these alternatives, alone or in combination, might well emerge.

There have been other proposals as well, and some people even talk of a fourth tier. There are practices going on with respect to screening cases as they go on -- so you might have a proposal in that regard. There are a variety of things like that. I would not presume to take away from the commission's discretion or agenda any one of these proposals or any modification of them.

As far as the second task of the Commission is concerned, will you be looking at the caseload problem of the Supreme Court?

It would be impossible to propose changes in the intermediate appellate courts without asking what these would do to the workload of the Supreme Court. Suppose, to take an extreme example, we were to recommend 20 circuits. We could not fail to examine the question of increased inter-circuit conflicts and the resultant increase in demands on the Supreme Court.

Will you consider some or all of the problems of the Freund Committee?

Well, the controversy concerning that Committee's proposal for a National Court has been so well publicized that a number of their other recommendations have been almost ignored, certainly in the press. It will be for the Commissioners to consider such proposals as they deem appropriate, but I think that some of the problems which concerned the Freund committee are relevant to our assigned task and will require consideration.

How long do you think it will be before the recommendations of the Commission could affect the federal Courts of Appeals?

Let me give you sort of a spectrum of the possibilities. Supposing we came up with a realignment within 180 days that suggested changes which were fairly well recognized as desirable without creating waves which would just crystalize opposition. If that were to happen, it is possible that could be put into legislation which could be enacted within a year from today. On the other hand, if we do a little bit more than that, and we take one horn of a potential dilemma and meet some opposition, then you're dealing with the whole political process. Now if, for example, we want to focus on the second job, or Congress were to give us permission to do the first job with the second, the schedule perhaps would change. The report is due in 15 months but I've heard of commissions which have asked for and received extra time. It might take even a little longer than the period that you've envisioned.

THE SOURCE

The Information Service of the Federal Judicial Center

The following are selected publications which may be of interest to readers.

- Associate Justice Tom C. Clark; Advocate of Judicial Reform (thesis) Alvin T. Warnock. 1972.
- Court services package. National Center for State Courts. April 1973. Pub. No. W0002.
- Judicial activism: the courts and social policy. L.M. Friedman. 216 Nation 467, April 9, 1973.
- Judicial panel on multi-distirct litigation. J.T. McDermott. 57 F.R.D. 215, Fall 1973.
- National conference approves criminal justice standards and goals; a special society report. 56 Judicature 384, April 1973.
- 1972 Sentencing study for the Southern District of New York. 45 NYS BJ 163, April 1973.
- 1973 Semi-annual report of the Director. Administrative Office of the U.S. Courts.
- One of those softheaded judges. Marvin E. Frankel. N.Y. Times Sunday Magazine, May 13, 1973.
- Prisoners in America [background reading for the 42d American Assembly] Prentice-Hall, 1973.
- Reflections on experimental techniques in the law. H. Zeisel. 2 J Legal Studies 107, Jan. 1973.
- The role of the chief judge in a modern system of justice. Jack B. Weinstein. 28 Record 291, April 1973.
- State courts and the death penalty. National Center for State Courts. April 1973. Pub. No. NCSC R0004.
- Verbatim reporting comes of age. Oswald M. Ratteray. 56 Judicature 368, April 1973.
- 1972 Directory of automated criminal justice information systems. LEAA. Dec. 1972

(PROCEEDINGS, From Page 1.)

The federal court system spends over $3 million yearly for grand juries. Accordingly, the Conference adopted a policy requiring each court clerk to maintain minimal statistical records regarding grand jury utilization and to schedule sessions in such a way as to achieve maximum utilization of grand jury services.

The chairman of the Committee on the Administration of the Criminal Law, Judge Alfonso J. Zirpoli, presented a report on the proposed new Federal Criminal Code.

The Conference:

(1) Approved in principle the proposal for a new or amended Federal Criminal Code consisting of three parts, the first of which would outline the bases of federal jurisdiction and prescribe certain principles of general application, the second of which would define specific crimes and their jurisdictional bases, and the third of which would deal with sentences; and

(2) Accepted the report of the Committee on the Administration of the Criminal Law which deals with the first part of the proposed measures, directed that the report be forwarded to the Congress without prejudice to reconsideration of specific items by the committee and by the Conference as may seem wise in the light of future developments, and instructed the committee to continue its work on other parts of the proposed measures and to submit further reports to the conference or, if developments should require, directly to the Congress, as soon as practicable.

The Judicial Conference also resolved that the Federal Judicial Center, in cooperation with the Committee on the Administration of the Probation System and the Attorney General, shall assist in the formulation and preparation of all future sentencing institutes held in accordance with 334 of Title 28, U.S. Code.

The Judicial Conference, as previously reported in the April issue of the Third Branch, also adopted a stringent code of judicial ethics. (See Volume 5, Number 4.)

(STANDARDS, From Page 2.)

delayed its work until 1971. Judge Carl McGowan (CA-D.C.) is present chairman.

The project, which will take at least three to four years to complete, is designed to update the Vanderbilt-Parker standards adopted by the ABA House of Delegates over 35 years ago. These standards were later refined and elaborated upon by Chief Justice Arthur T. Vanderbilt in his 1949 publication, *Minimum Standards of Judicial Administration.* Since that time the ABA's Division of Judicial Administration has supplemented the standards through recommendations and studies, and as recently as 1971, through its handbook *The Improvement of the Administration of Justice.* However, until the work of the McGowan Commission commenced, no comprehensive survey has been made in this area.

The standards on the organization of a court, though primarily beamed to state court systems, contain basic principles which are also applicable to the federal courts.

Topics covered in the court organization report include: A Unified Court System, Selection and Tenure of Judges, Rule-Making and Administrative Authority, Court Administrative Services, Court Budgeting and Court Records Systems.

Judge McGowan, in releasing the report, said the Commission's next two reports will be on management of trial and appellate courts.

Copies of the report may be obtained by writing the ABA in Chicago or the Federal Judicial Center in Washington. The Commission invites comment and criticism, which should be directed to Commission Reporter, Geoffrey C. Hazard, Jr., Yale Law School, New Haven, Connecticut, 06520.

The Third Branch is *your* publication. Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

Bulletin

A.O. Director Testifies

BILL TO SPEED UP JUDICIAL SALARY INCREASE

The Director of the Administrative Office, Rowland F. Kirks, testified before the Senate Post Office and Civil Service Committee June 26th on a bill which, if enacted, would allow judicial salaries to be increased as early as this October.

The Bill, introduced by the Committee Chairman Senator Gale W. McGee, would allow the Salary Commission recommendations to go into effect some six months earlier than possible under existing law.

In addition, the bill would require the appointment of a Salary Commission biennially instead of quadrennially as now provided by law.

Director Kirks told the committee that the bill has been considered by the Executive Committee of the Judicial Conference of the United States and has been approved unanimously by that committee.

He said that while salaries of other workers, both in and out of government, have increased 25-30% in the last four years, judicial salaries have stood still.

He said that the bill would eliminate the problem of increasing judicial salaries every four years which creates "a traumatic one-lump adjustment which cannot help but invite criticism, unjustified though it may be."

He said, in closing, "If there is merit to the concept of comparability, equality, parity, or fair play, then substantial salary increases for government officials covered by the Federal Salary Act of 1967, is long overdue and should not be delayed as long again . . . The Federal Judiciary heartily supports this bill and hopes that it will be speedily enacted."

AO FJC Calendar

July 5-7	Judicial Conference Subcommittee on Judicial Improvements, Colorado Springs, Colo.
July 6-7	Judicial Conference Jury Committee, Los Angeles, Calif.
July 9-11	Judicial Conference Criminal Law Committee, Colorado Springs, Colo.
July 10	Judicial Conference Committee on Bankruptcy Administration, Wash., D.C.
July 12-14	Seminar for Chief Clerks of Bankruptcy Offices, Colorado Springs, Colo.
July 13	Judicial Conference Criminal Justice Act Committee, Denver, Colo.
July 16	Judicial Conference Committee on Habeas Corpus, San Francisco.
July 16-17	Judicial Conference Subcommittee on Federal Jurisdiction, Buck Hill Falls, Pa.
July 18-21	Judicial Conference Bankruptcy Rules Committee, Washington, D.C.
July 24-26	**9th Circuit Conference, Saint Francis Hotel, San Francisco, Calif.**
July 30-31	Judicial Conference Probation Committee, Williamsburg, Va.
July 30-31	Judicial Conference Committee on Court Administration, Salt Lake City.
August 2-3	Judicial Conference Criminal Rules Committee, Wash., D.C.
August 2-3	Judicial Conference Magistrates Committee, Wash., D.C.
August 6-9	American Bar Association Meeting, Wash., D.C.
August 13-15	Judicial Conference Review Committee, Boston, Mass.
August 20-21	Judicial Conference Standing Committee on Rules of Practice and Procedure, Wash., D.C.
Sept. 6-8	Seminar for U.S. Court Librarians, Federal Judicial Center, Wash., D.C.
Sept. 7-8	**2nd Circuit Conference, Buck Hill Falls, Pa.**
Sept. 11-12	Judicial Conference Joint Committee on Code of Judicial Conduct
Sept. 13-14	Seminar for Referees in Bankruptcy, Salt Lake City, Utah.
Sept. 13-14	Judicial Conference of the United States, Wash., D.C.
Sept. 20-21	Seminar for U.S. Referees in Bankruptcy, Ann Arbor, Mich.

THE THIRD BRANCH
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Bulletin of the Federal Courts

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SUPREME COURT ENDS SIGNIFICANT TERM

The range of issues resolved by the U.S. Supreme Court during its just-finished term was awesome: obscenity, abortion, financing of education were just a few of the major decisions of a highly significant court term.

Here is a capsule summary of some of the more significant decisions.

The Supreme Court handed down 140 signed opinions. The following extracts from some of those opinions illustrate the diversity of subject matters covered.

Roe v. **Wade** (January 22) In striking down a state abortion law, the Supreme Court held that for the period up to approximately the end of the first trimester, the question of abortion must be left to the medical judgment of the pregnant woman's attending physician. For the stage subsequent to approximately the end of the first trimester, the state, in promoting its interest in the health of the mother may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability the state, if it chooses, may regulate and even proscribe an abortion, except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Otter Tail Power Company v. **U.S.** (February 22) In a Sherman Act suit brought by the Government against a power company, the power company is not insulated from antitrust regulations by reason of the Federal Power Act whose legislative history manifests no purpose to make antitrust laws inapplicable to power companies.

Tillman v. **Wheaton-Haven Recreation Association, Inc.** (February 27) A community swimming pool could not exclude from use of the pool a Negro couple who bought a home in the neighborhood area from which the pool membership was drawn and whose white population was otherwise eligible.

Hortado v. **U.S.** (March 5) Held that material witnesses who were incarcerated pending trial because they were unable to give bail were entitled to the full witness fee of $20.00 available to witnesses "in attendance" during the trial.

Rosario, et al. v. **Rockefeller, Governor of N.Y., et. al.** (March 21) Upheld the constitutionality of the New York election law which requires a voter to enroll in the party of his choice at least 30 days before the general election in order to vote in the next party primary.

San Antonio Independent School Districts, et al. v. **Rodriguez, et al.** (March 21) The Court upheld the Texas school finance system based upon local property taxes. In refusing to invoke the "strict scrutiny" standard of review, the majority stated that it could find neither a clearly delineated suspect class nor an absolute deprivation of a fundamental right; the local financing

[See SUPREME COURT, pg. 4, col. 1]

CIRCUIT REVISION COMMISSION SCHEDULES HEARINGS

The Commission on Revision of the Federal Court Appellate System plans to hold hearings in Washington, D.C., four cities in the 5th Circuit and four cities in the 9th Circuit during August.

Director A. Leo Levin said the first hearings will be held August 2 and 3 in the U.S. Courthouse in Washington, D.C. Among the witnesses scheduled to appear are former Solicitor General Erwin N. Griswold, Judge William B. Jones, Chairman of the ABA's Division of Judicial Administration; Orison Marden, former President of ABA, and Chairman of a Committee of the American College of Trial Lawyers which is currently studying the right to oral argument in Federal Courts of Appeals; Columbia Law School Professor Maurice Rosenberg, Chairman of the Advisory Council for Appellate Justice and Professor Paul Carrington of the University of Michigan Law School who is also a member of the Advisory Council for Appellate Justice and Chief Judge Collins J. Seitz of the U.S. Court of Appeals for the Third Circuit.

The Commission has tentatively scheduled hearings in Houston, August 21, New Orleans, August 22, Jackson, Mississippi, August 23 and in Jacksonville, Florida, September 5.

The Commission has also tentatively decided to hold hearings in Seattle, August 28, Portland, August 29, San Francisco, August 30 and

[See HEARINGS, pg. 8, col. 2]

Bulletin

There has been a recent proliferation of civil penalty cases brought under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801 et seq. Pending court cases have been estimated as high as 500 but there are several times that number working their way through the administrative process. A case presently pending before the United States Court of Appeals for the District of Columbia Circuit involves the question whether the procedures adopted by the Bureau of Mines for assessing civil penalties for violations of the health and safety standards under that Act, are consistent with its various provisions. **National Independent Coal Operators Association, et al** v. **Rogers C.B. Morton,** Civil Appeal 73 -- 1678. This appeal by the government could have wide implications in the administration of that Act.

CCPA: A PROGRESS REPORT

The U.S. Court of Customs and Patent Appeals is moving quietly but steadily forward to become a more effective Court and reduce costs.

Here is a progress report:

Although the most widely disseminated statistical summaries do not include those applicable to the United States Court of Customs and Patent Appeals, we have noted the quiet progress made by that Court over the fiscal year just completed.

The Court had a full staff for the first time in many years. It prepared and circulated to the Bar an entire set of new Rules, its first in 20 years. The new Rules will become effective October 1. Three new duplicating machines have replaced two outmoded copiers. All chambers have acquired dictating equipment, new typewriters and additional sets of legal volumes. A modern adjustable lecturn has been installed in the Courtroom. At the same time, by eliminating an unnecessary item, the Court was able to return to the Treasury a portion of its 1973 budget and to limit its fiscal 1974 budget request to less than that appropriated for the prior year.

On the production side, and although its cases are highly technical, the Court's 208 opinions constituted an increase of 51% over those rendered in fiscal 1972. Although filings increased 13% over the prior year, the Court achieved an overall reduction of 23% in its pending caseload.

Chief Judge Howard T. Markey said, "The cooperation and extra effort of the Judges and the entire staff of the Court have been edifying indeed. It will take the same cooperation and effort, and perhaps additional help, to continue the present rate of progress toward our goals. We are concerned about the existing 2-1/2 year interval between filing and disposition.

"Our 308 cases carried into fiscal 1974, plus an expected 200 new filings, would preclude any substantial reduction in that interval under present practices. Further, a substantial increase in customs appeals is expected in fiscal 1975 because of Public Law 91-271 which requires that appeals from the U.S. customs court go directly to the CCPA. Hence we are considering a number of new internal procedures designed to speed the movement of cases through the Court without diminishing the careful consideration which each case deserves. Operating under our new Rules, with new internal procedures and increased effort, we should be almost current by this time next year."

The Third Branch

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William E. Foley, Deputy Director, Administrative Office. U.S. Courts

NEW PROBATION OFFICERS HANDBOOK ISSUED

The Federal Judicial Center has published a book designed primarily to answer questions often posed by newly appointed federal probation officers entitled, **As a Matter of Fact.** It is a compilation of pertinent information about the probation service, orienting new officers before they attend a formal seminar conducted by the Federal Judicial Center.

The book stems from an idea of Albert Lee Stephens, Jr., Chief Judge of the Central District of California, who has long been interested in the probation service and its vital advisory relationship with the judge in sentencing matters, believing that well-trained probation officers would facilitate the administration of justice. Merrill A. Smith, formerly Chief of the Federal Probation System researched and edited the manual.

Copies of **As a Matter of Fact** have been sent all probation officers and additional copies are being placed in every court library. In addition, individual copies may be obtained by writing Richard M. Mischke, at the Federal Judicial Center.

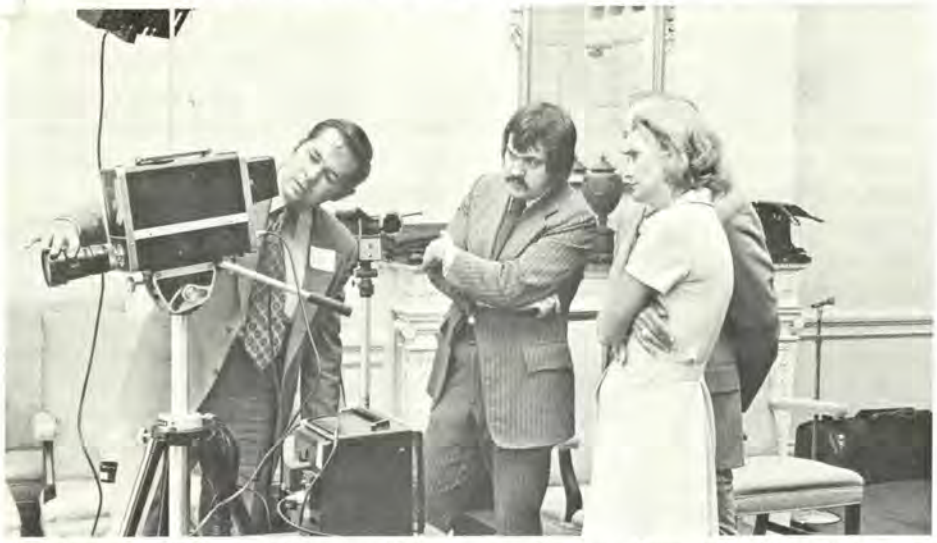
INFORMATION SERVICE: GROWTH REPORT

"Would you send us information on the better utilization of jurors?" "We would like materials on arbitration in automobile accident cases." Over two hundred such requests have been received by the Information Service during its first year in operation.

Telephone and written inquiries have ranged from general requests for materials on the administration of justice to a request for information on Hong Kong. In answering the requests, we have had occasion to make bibliographies and reading lists on many subjects, while at the

[See INFORMATION, pg. 5, col. 3]

CENTER HOLDS FIRST VIDEO WORKSHOPS



Participants in FJC workshop on videotape recording are, from left, Welby Smith, Jr., Smith-Mattingly Productions, Ltd, James Drach, Deputy Clerk, Western District of Pennsylvania, Mary Ann Goldsberry, Deputy Clerk, Eastern District of Michigan, and (hidden) Henry Hanssen, Clerk, Eastern District of Michigan.

The Federal Judicial Center recently held its first training courses on the use of video technology in the courts, emphasizing primarily the use of this technology in videotaping depositions.

FJC Director of Innovations and Systems Development, Joseph L. Ebersole, told the participants that the workshops were designed to provide them with a solid basis for recording and presenting testimony and for other applications which will improve the administration of justice. Participants in the workshop included clerks from U.S. District Courts in both the Western and Eastern Districts of Pennsylvania, the Eastern District of Michigan and representatives from the National Center for State Courts.

Center Director, Judge Alfred P. Murrah, told the participants, "For the last two years, the Center, in conjunction with the United States District Court for the Western District of Pennsylvania, has operated a pilot videotape project in that district. The results to date have been extremely encouraging, so much so that our Board has asked us to take the lead in introducing this technology in additional federal courts.

"We are now expanding our pilot project into Pennsylvania Eastern, Michigan Eastern, and Ohio Northern. We must be certain that when we introduce innovations in the courts, we lay the proper ground work and provide you with all the skills you need to successfully operate and use videotape equipment. The purpose of this workshop is to provide you with the information and skills necessary for effectively recording and presenting testimony via this medium."

Education and Training Review

Court Reporters

May 19-20, fifty-two Official Court Reporters met in Atlanta for the third and final Seminar in the program series for the current fiscal year.

The Reporters, representing 26 Districts primarily from southeastern states, convened to consider both the effective techniques of trial court reporting and the efficient management of existing reporting services. The faculty of experienced Reporters led by Jack Greenberg (S.D.N.Y.) devoted considerable discussion time to such areas as: constructing the record and notereading; eliminating the recurrent transcript backlog problem; the advantages of a pool system; computer transcription; and credit policies.

Samuel Phillips, Circuit Executive for the Fourth Circuit, presented ideas and suggestions which resulted following his Circuit's Conference for Court Reporters held earlier in May, and also offered the perspective of a Circuit Executive on the overall question of efficacious management systems for reporting services. The Center plans to continue this series of seminars during the coming fiscal year with three additional regional seminars scheduled.

District Court Clerks

June 11-14, the second of two Seminars for District Court Clerks was held in Norfolk, Va. with 38 Clerks in attendance, representing courts in the east.

The format of the sessions was similar to the Phoenix course, with discussions by Administrative Office personnel and experienced Clerks, focusing on such matters as: delays in criminal cases; office organization and management; statistics and information services; local rules; juror utilization; the role of the Circuit Executive; COURTRAN; docketing procedures; personnel management; the U.S. Magistrate; and the appropriations - budgeting process. In addition, a representative of the General Services Administration discussed space, furnishings, and construction, and a session was devoted to a consideration of personnel management with a professional management expert leading discussions.

Chief Clerks For Bankruptcy Offices

At the start of the fiscal year, the Center's program of continuing education was broadened in scope because Referees In Bankruptcy training is being transferred from the Administrative Office to the Center.

As the initial facet of an expanded process of information exchange, a Seminar for Chief Clerks of Bankruptcy Offices was held in Colorado, July 12-14. The central theme was efficient case management techniques and processing procedures studied within the specific context and responsibilities of the Referee Judges' supporting personnel.

[SUPREME Court, from page 1]
system is rationally related to a legitimate state purpose, and education is not a fundamental right "explicitly or implicitly guaranteed by the Constitution." The Court rejected the "nexus" theory, that education is necessary for the exercise of other fundamental rights, insofar as there is no absolute deprivation of education under the Texas system.

McClanahan v. **Arizona State Tax Commission; Mescalero Apache Tribe** v. **Jones** (March 27) The Court held that, in a state which has no general jurisdiction over Indian reservations, and where income is derived wholly from the reservation, income taxes may not be imposed upon Indians because jurisdiction is lacking. Off-reservation Indians, however, have little or no exemption from state law, and the income from off-reservation business can be taxed even when conducted on federally-owned land.

Davis v. **U.S.** (April 17) The District Court (N.D. Miss.) did not abuse its discretion in denying a petition for habeas corpus challenging the composition of the grand jury that indicted him, brought three years after petitioner's conviction for a Federal crime.

Palmore v. **U.S.** (April 24) The local courts of the District of Columbia--Superior Court and the D.C. Court of Appeals--were validly created under Article 1 to determine criminal cases arising within the District of Columbia. The power of Congress to create such a court under its plenary power to legislate for the District of Columbia does not contravene Article III of the Constitution.

Gagnon v.**Scarpelli** (May 14) Held that revocation of probation without hearing and without counsel was a denial of due process. Also held that probationer is entitled both to a preliminary and to a final revocation hearing under the same conditions as were specified for parolees in **Morrissey** v. **Brewer**, 408 U.S. 471. The Court specified also the procedural requirements for such hearings.

Chaffin v. **Stynchcombe, Sheriff** (May 21) On reversal of a state court conviction, petitioner was again found guilty and sentenced by the jury to a greater term than had been imposed by the first jury. The Court held that this procedure does not violate the Double Jeopardy Clause and does not offend the Due Process Clause as long as the jury is unaware of the prior sentence (**North Carolina** v. **Pearce**, 395 U.S. 711 distinguished).

C.B.S. Inc. v. **Democratic National Committee** (May 29) Neither the Communications Act nor the First Amendment require broadcasters to accept paid editorial advertisements. The case originated when the Democratic National Committee requested a declaratory ruling on this subject from the F.C.C.

Cupp, Penitentiary Superintendent v. **Murphy** (May 29) Respondent came to a police station voluntarily and, though he had not been arrested and otherwise protested the procedure, police in connection with a murder investigation took samples from his fingernails and discovered evidence used to convict him. It was held that in view of the station house detention upon probable cause, the very limited intrusion undertaken to preserve highly evanescent evidence was not violative of the Fourth and Fourteenth Amendments.

U.S. v. **State Tax Commission of Mississippi** (June 4) Twenty-first Amendment does not empower a state to tax or otherwise regulate the importation of distilled spirits into a territory over which the U.S. exercises exclusive jurisdiction.

Goldstein, et al. v. **California** (June 8) The Court upheld a California statute proscribing acts of "record" or "tape piracy" against a challenge that Federal preemption left no room for independent and varying state legislation. The Constitution grants to Congress the power to issue copyrights, but does not provide that such power shall vest exclusively in the Federal Government, and there is nothing denying such power to the states. The majority found no national interest so unyielding as to require an inference that state power to grant copyrights had been relinquished to exclusive federal control, and the legislative history of the Copyright Act of 1909 failed to show any Congressional intent to preempt the field.

United States, et al. v. **Students Challenging Regulatory Agency Procedures [SCRAP], et al.** (June 18) Where appellees alleged that their members "suffered economic, recreational and aesthetic harm directly as a result of the adverse environmental impact of the railroad freight structure" authorized by the I.C.C., appelles' pleadings sufficiently alleged that they were "adversely affected" or "aggrieved" within the meaning of §10 of the Administrative Procedure Act to withstand a motion to dismiss for lack of standing. **Sierra Club** v. **Morton**, 405 U.S. 727, distinguished. Allegations that illegal action by the I.C.C. would directly harm them in their use of the natural resources of the Washington area would, if proved, place appellees squarely among those persons injured in fact by the I.C.C.'s action and entitled to review under **Sierra Club**, supra. Standing is not to be denied because many people suffer the same injury.

White, Secretary of State of Texas v. **Weiser, et al.** (June 18) The Court declared unconstitutional a redistricting plan enacted by the Texas legislature having an average deviation from the ideal district of .745%, and a maximum deviation of 2.43% above and 1.7% below the ideal, and adopted an alternative plan which followed generally the same district lines but had a total maximum deviation of only .159%. The deviations, while smaller than those in earlier cases, were not "unavoidable". The Court rejected the argument that variances are justified if they result from the state's attempt to avoid fragmenting political subdivisions by drawing district lines along existing political subdivisions.

Almeida-Sanchez v. **U.S.** (June 21)
[See SUPREME COURT, pg. 5, col. 1]

[SUPREME COURT, from page 4]
warrantless search of petitioner's automobile made without probable cause or consent violated the Fourth Amendment rights of a citizen and holder of a valid work permit. The court held that although the search of the automobile was 25 air miles north of the Mexican border, it cannot be justified as a border search.

Colgrove v. **Battin** (June 21) Upheld local six-member civil jury rule of District Court of Montana as comporting with the Seventh Amendment, with 28 U.S.C. 2072 and with Federal Rules of Civil Procedure 48. There are 58 other districts with similar rules.

Kaplan v. **California** (June 21) Petitioner, a proprietor of an "adult" bookstore, was convicted of violating a California obscenity statute by selling a plain-covered unillustrated book containing repetitively descriptive material of an explicitly sexual nature. The Court held that obscene material is not entitled to First Amendment protection merely because it is unillustrated and that a state may control commerce in such a book, even distribution to consenting adults, to avoid the deleterious consequences it could reasonably conclude result from the continuing circulation of obscene literature. Expert testimony is not required, and whether a book is obscene should be judged by "the contempory community standards of the State of California."

Paris Adult Theater I, et al. v. **Slaton, District Attorney, et al.** (June 21) Respondents were sued under a Georgia civil law to enjoin the exhibiting of two allegedly obscene films. In upholding the Georgia civil procedure used here, the Court stated that states have a legitimate interst in regulating commerce in obscene material and its exhibition in places of public accommodation, including "adult" theaters, though conclusive proof of a nexus between obscene material and antisocial behavior is lacking. And, while states may adopt a laissez faire policy toward commercialized obscenity, they are not constitutionally required to do so. Nor is exhibition of obscene material in places of public accommodation protected by the constitutional zone of privacy attached to the home. Not all conduct limited to consenting adults is constitutionally protected.

Pittsburgh Press Co. v. **Pittsburgh Commission on Human Relations** (June 21) Upheld a city ordinance proscribing advertisements in a daily newspaper whereby employment opportunities are published under headings designating job preferences by sex. The Court held that since the law pertained to "purely commercial advertising", it was not protected by the First Amendment, nor was it a prior restraint.

United States v. **12 200-ft. Reels of Super 8mm Film, et al. [Paladini, Claimant]** (June 21) Congress, which has broad powers under the Commerce Clause to prohibit importation into this country of contraband, may constitutionally proscribe the importation of obscene matter, notwithstanding that the material is for the importer's private, personal use and possession. The Court found the zone of privacy of **Stanley** v. **Georgia**, 394 U.S. 557, inapplicable to this case.

U.S. v. **Ash** (June 21) Held that the Sixth Amendment does not grant an accused the right to have counsel present when the Government conducts a post-indictment photograhic display, containing a picture of the accused, for the purpose of identification by a witness.

United States v. **Orito** (June 21) Where appellee was charged with knowingly transporting obscene material by common carrier in interstate commerce, in violation of 18 U.S.C. §1462, the Court held that Congress has the power to prevent obscene material, which is not protected by the First Amendment, from entering the stream of commerce, and that the protected zone of privacy does not extend beyond the home.

In re Griffiths (June 25) Held that Connecticut's exclusion of all aliens from the practice of law in that state was unconstitutional under the Equal Protection Clause.

Sugarman v. **Dougall** (June 25) Sustained an equal protection challenge to a New York civil service law which provided that only U.S. citizens could hold permanent positions in the competitive class of that state's civil service.

U.S. Civil Service Commission v. **Letter Carriers** (June 25) Upheld the Hatch Act against a charge that it was impermissibly vague.

[INFORMATION, from page 2]
same time building an extensive store-house of information in special subject areas. In addition, we have answered hundreds of requests for Center publications. In an effort to assist the Commission on Revision of the Federal Court Appellate System, a bibliography on court reform was compiled, with assistance from the Division of Research staff.

The basic book collection has now grown to over 2500 volumes and monographs relating to all aspects of judicial administration, as well as reference sources. Periodical and bibliography collections are being expanded. The Information Service also performs regular library services for staff members and seminar participants.

As a result of the monthly *Third Branch* column, *The Source,* an article file has been established. It has been helpful to many in finding up-to-date reading matter on various topics.

The information service is available to anyone with questions in the judicial administration area, and any inquiries are welcome. If we don't have the answer, we will try to find it. The Information Service staff is looking forward to an even more successful future in the information business.

In some cities old courthouses are like old post offices -- deteriorating eyesores that serve a functional need but add little to the architectural beauty of the city.

Recently, the *PIONEER COURTHOUSE* in Portland, Oregon was transformed into a handsome, modern Hall of Justice following extensive restoration by the General Services Administration. The one million dollar restoration job was completed this Spring and now members of the 9th U.S. Circuit Court of Appeals who sit in Portland have an opportunity to work in the second oldest public building on the West Coast which is now one of the most beautiful. Pictured above in the newly restored *PIONEER COURTHOUSE* Courtroom are (from left to right) Judges Walter Ely, John F. Kilkenny, James R. Browning, Chief Judge Richard H. Chambers, Ben C. Duniway, Alfred T. Goodwin and Eugene A. Wright.

FJC RESEARCH
WHY DO SOME CASES MOVE FASTER THAN OTHERS?

At a meeting of chief judges of the metropolitan district courts held at the Center March 15-16 the Center research staff presented the first report on its analysis of more than 12,000 civil cases terminated in those courts during fiscal year 1971.

Nineteen courts were covered by the study which involve analysis of an extensive list of case characteristics to help courts plan more effectively for the use of judge time and supporting personnel resources.

The first report dealt with four characteristics: (1) age of cases at termination; (2) nature of suit; (3) basis of jurisdiction; and (4) method of disposition.

An initial objective was to determine whether age at termination is strongly associated with one or more of the other characteristics as to suggest the proper course for any program aimed at accelerating the civil calendar.

If, for example, certain types of cases tend always to be slow-moving in all districts, it might be appropriate to develop specialized techniques for those classes of cases.

On the other hand, if given types of cases move rapidly in some courts and slowly in others, we would infer that slowness is less dependent upon type of case than upon variation in processes of courts and practices of litigants.

The results presented to the metropolitan judges suggested that the answers may be complex. The report examined the four characteristics for all 19 courts.

The behavior of cases in the combined terminations of all courts provided the first basis of comparative analysis. Here the data indicated the following:

JURISDICTION: Fastest are U.S. Plaintiff cases;
Slowest are diversity cases

NATURE OF SUIT: Fastest are contract cases;
Slowest are personal injury tort

DISPOSITION: Fastest are dismissials;
Slowest are trials

To examine how these characteristics operated in the various courts, the Center examined the data for three groups of four courts each -- the four fastest overall, the four slowest overall and the four most nearly like the national picture.

The objective was to determine whether fast courts are fast because judges of those courts dispose of cases rapidly, or because the bulk of their cases are intrinsically capable of being moved more rapidly.

The answer appears to the affirmative to both parts of the question. Fast courts tend to process all types of cases faster than slower courts. But, it was immediately apparent that the slower courts do have a higher proportion of slow type cases than faster courts.

Thus, fast courts have twice the proportion of the United States plaintiff cases that slow courts have. Conversely, the slow courts have a fifty percent greater share of diversity cases. The pattern is even stronger in nature of suit: the slow courts have three times as many personal injury tort cases than the faster courts have.

The report concluded, then, that the fast courts would not perform quite so fast if they had the same filings that the slow courts have, but the fast courts would, under those conditions, perform faster than the slow courts are now performing.

The report also raised a perplexing question for which answers are being sought: why should some courts, specifically the slower courts, have such markedly higher filings of diversity cases and even more significant, such a large number of personal injury tort cases, and why do fast courts not receive such filings?

NEW PUBLICATIONS

- An antitrust primer; a guide to antitrust and trade regulation laws for businessmen. 2d ed. Earl W. Kintner. Macmillan, 1973.
- As a matter of fact ... an introduction to federal probation. Merrill A. Smith. Jan. 1973. (available from Information Service)
- Code of judicial ethics. 1972 Utah L Rev, Fall 1972 (entire issue)
- Community alternatives to prison. Nora Klapmuts. 5 Crime and Delinquency Literature 305, June 1973.
- Computers and courts. S. Allen Friedman. 41 Hennepin (Co., Minn.) Lawyer 28, May-June 1973.
- Crime at the bargaining table (six articles on plea bargaining). Trial, June 1973.
- Discussion of the new federal rules of evidence. C.L. Powell. 8 Gonzaga L Rev 1, Fall 1972.
- Hart & Wechsler's The federal courts and the federal system. Foundation Press, 1973. (2d ed.)
- The high cost of victimless crimes. Sol Wachtler. 28 Record 357, May 1973.
- Justice, jurors and judge's instructions. Robert F. Forston. 12 Judges' Journal 68, July 1973.
- Nationwide crime control proposals issued; report of the National Advisory Commission on Criminal Justice Standards and Goals. 88 Am City 122, March 1973.
- A new court: an improvement in the administration of justice; a proposal (address) Clement F. Haynsworth, Jr. May 1973.
- Pretrial disclosure of federal grand jury testimony. W.J. Knudsen, Jr. 48 Wash L Rev 423, Feb. 1973.
- Videotape trials: relief for our gested courts. James L. McCrystal. 49 Denver L Journal 463, 1973.
- What the right to speedy trial means today. James D. Santini. 12 Judges' Journal 72, July 1973.

BILL LIMITING APPEALS FROM THREE-JUDGE COURTS MOVES FORWARD

Legislation limiting direct appeal to the Supreme Court from a three-judge District Court, in certain cases passed the Senate June 14 and is expected to be considered shortly by the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice.

The Bill S.271, introduced by Senator Quentin N. Burdick, Chairman of the Senate Subcommittee on Improvements in Judicial Machinery, is a direct legislative response to one of the key recommendations of the Freund Committee.

The Freund Committee, in its *Report of the Study Group on the Caseload of the Supreme Court* last December, recommended: "the elimination by statute of three-judge district courts and direct review of their decisions in the Supreme Court; the elimination also of direct appeals in ICC and antitrust cases; and the substitution of certiorari for appeal in all cases where appeal is now the prescribed procedure for review in the Supreme Court."

The Study Group said, "direct Appeals are unduly burdensome to the Supreme Court, particularly in cases where a three-judge court has been convened to consider the constitutionality of a state or federal statute."

The group said that while only about 2.7% of the cases on the appellate docket during the 1971 Supreme Court term were from three-judge courts, the figure was misleading. These cases "consume a disproportionate amount of the limited time for oral argument available to the Court. Over the last three terms 22% of the cases argued orally were from three-judge courts and the figure is quite stable from term to term."

The bill now being considered by the House Subcommittee would repeal Section 2281 of Title 28 U.S. Code, Section 2 of 2282 of Title 28 and amend Section 2284 to allow three-judge district courts to be convened "when otherwise required by act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body."

MINI-JURY UPHELD

June 21, the Supreme Court handed down its decision in *Colgrove V. Battin* establishing the right of Federal District Courts to provide juries of less than twelve members in civil cases under their local rule-making power. Specifically, the court held that these local rules properly comport with the provision of the Seventh Amendment and with the coextensive statutory requirements of 28 U.S.C. 2072.

Although 58 districts have adopted a similar local rule to utilize smaller juries in civil cases, it was a local rule of the District of Montana that was challenged and pursued to final decision by the high Court.

The Court's 5-4 decision found Montana's local rule not inconsistent with Federal Rule of Civil Procedure 48 which deals with the use of smaller juries only by stipulation of the parties.

Chief Judge Edward J. Devitt of the District of Minnesota first employed the mini-jury in January 1971. Since that time, many other Districts have adopted similar rules.

Mr. Justice Brennan writing for the majority stated: "We can only conclude, therefore, that by referring to the 'Common Law', the framers of the Seventh Amendment were concerned with preserving the **right** of trial by jury in civil cases where it existed at 'Common Law', rather than the various incidents of trial by jury."

Justices Douglas and Powell joined in dissent observing that the local rule and Rule 48 of the Federal Rules of Civil Procedure "do not mesh, they collide."

Dissenting Justices Marshall and Stewart warned, "Now, however, my Brethren mount a frontal assault on the very nature of the civil jury as that concept has been understood for some seven hundred years."

AO FJC Calendar

August 6-9 American Bar Association Meeting, Wash., D.C.

August 13-15 Judicial Conference Review Committee, Boston, Mass.

August 20-21 Judicial Conference Standing Committee on Rules of Practice and Procedure, Wash., D.C.

Sept. 7 Probation Ad Hoc Committee on Short Form Presentence Report, Wash., D.C.

Sept. 6-8 Seminar for U.S. Court Librarians, Federal Judicial Center, Wash., D.C.

Sept. 7-8 2nd Circuit Conference, Buck Hill Falls, Pa.

Sept. 11-12 Judicial Conference Joint Committee on Code of Judicial Conduct, Wash., D.C.

Sept. 13-14 Seminar for Referees in Bankruptcy, Salt Lake City, Utah.

Sept. 13-14 Judicial Conference of the United States, Wash., D.C.

Sept. 20-21 Seminar for U.S. Referees in Bankruptcy, Ann Arbor, Mich.

Oct. 11-12 Regional Seminar for U.S. Referees in Bankruptcy, Harvard University, Cambridge, Mass.

Oct. 15-17 3rd Circuit Conference, Pittsburgh, Pa.

Oct. 19-20 National Bankruptcy Conference, Wash., D.C.

Nov. 1-3 National Conference of U.S. Referees in Bankruptcy, Atlanta, Ga.

The Third Branch is *your* publication. Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

[HEARINGS, from page 1]

Los Angeles, August 31.

The Commission is charged with making recommendations concerning redistricting the judicial circuits. In addition, the Commission will study the internal procedures and structure of the Federal courts of appeals system, making such recommendations as are appropriate. Because the Commission's first report has a congressionally mandated deadline of mid-December, priority will be given to testimony relevant to redistricting, Director Levin said.

THE THIRD BRANCH

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Bulletin of the Federal Courts

VOL. 5, NO. 8 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center AUGUST, 1973

REPORT ON THE FEDERAL JUDICIARY: 1973

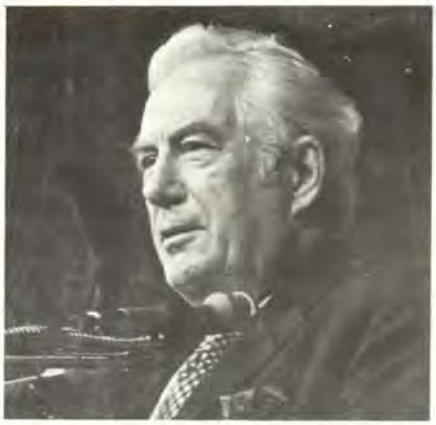
Chief Justice Burger on August 6 made his fifth annual report on the federal judiciary.

Speaking at the opening assembly of the American Bar Association's annual meeting in Washington, D.C., the Chief Justice outlined the positive progress that has been made over the past few years. But, he quickly followed with exhortations that called upon the legal profession to continue the drive for improvements and to "put its collective energy and brains to the task."

Listed as positive accomplishments were:

- The enactment of the Circuit Executives Act which placed in all but three circuits a Circuit Executive to handle administrative and managerial tasks, thus giving the judges more time for the judicial process itself.
- The establishment of the Institute for Court Management which has trained almost 300 court administrators for the state and federal courts.
- The creation of the National Center for State Courts which now functions for the good of the state courts, with headquarters, four regional offices and a staff which cooperates closely with the staff of the Federal Judicial Center.
- The organization of the Conference of Metropolitan Chief Judges which brings together the Chief Judges of the 22 largest Federal District Courts to discuss and perfect such things as: expanded use of the individual calendar, omnibus or single pretrial hearing, better jury utilization, and speedy trials.
- The passage of a bill which set up a Commission on Revision of the Federal Court Appellate System. The Commission is currently holding hearings and moving into all pertinent areas to bring about recommendations on the restructuring of the circuits as well as improved procedures to process cases filed in the Courts of Appeals.
- Pending legislation to abolish three-judge District Courts.
- Creation of the office of United States Magistrate to replace the United States Commissioner. Presently 88 full-time and 400 part-time magistrates are serving in the federal system to relieve the judges of unnecessary tasks and thus release them for purely judicial work.
- Adoption by the Judicial Conference of the United States of the ABA Code of Judicial Conduct with added stringent provisions made applicable to all federal judges.
- Increased disposition of cases in the District Courts. For the first time in 12 years, the District Courts this past fiscal year disposed of more

[See REPORT, pg. 6, col. 1]



The Chief Justice addresses the ABA annual meeting.

JUROR COSTS ASSESSED FOR LATE SETTLEMENTS

In a determined effort to curb last-minute settlements, many federal judges are assessing juror costs on litigants and counsel who settle cases after jurors are called, sometimes even after they are impaneled.

The amount of money involved is not small; indeed it mounts into thousands of dollars in some districts. The average daily cost per petit juror, which includes the $20 attendance payment, travel and subsistence, is $24.50 per day and the cost is as high as $36.48 in one district.

The needless waste of time and money has encouraged district judges to take remedial action. The waste is needless in many instances, they say because it is apparent at pretrial and during the ensuing

[See SETTLEMENTS, pg. 3, col. 2]

Stretching Sound

NEW SPEECH COMPRESSION DEVICE SPEEDS UP LISTENING

A tape recorder prototype with the capability to compress speech was demonstrated recently at the Center.

Electronic speech compression allows listeners to hear a tape recording in one-half to one-third the time usually required. Today, one of the many obstacles to using tape recordings rather than written transcripts of the record on appeal is the time required by appellate judges to listen to a recording of the entire record.

However, the speech compression device can replay a hearing or an entire trial at two to three times the speed of the actual occurrence by reducing the length--in time--of both consonants and vowels without changing the pitch.

Center staff members who observed the demonstration found it was relatively easy to understand word meaning when the recording was replayed at twice the normal speed but difficult to understand at three times normal speed.

Joseph L. Ebersole, Center Director of Innovations and Systems Development, said "Perhaps in the future, judges and managers will take speed listening courses just as many now take speed reading courses. People who have used this equipment for several months find they are able to understand a playback at three times normal speed. A possible initial application in federal courts might be by appellate judges when they want to review oral argument which was previously recorded."

The speech compression device also has the capability to replay a videotape recording at two or three times the normal speed. Although this may not be appropriate for viewing of prerecorded testimony by a jury, it could be very helpful for attorneys who have videotaped a deposition and wish to review it while preparing for trial.

Such a device might also be useful in those jurisdictions which do not have court reporters available and presently use audio recordings as the official record of the trial.

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NEW PROCEDURE TO SAVE COURT TIME AND MONEY

By Byron C. Wells

One of Indianapolis' four Federal judges has put into effect in his court a new procedure under which criminal cases may be disposed of with the defendant appearing only once in court.

The judge, Cale J. Holder, said the system, applicable only in his court, will save thousands of tax dollars as well as save defendants and their attorneys time and embarrassment.

Under Holder's plan, pleas of not guilty are entered automatically by court order whenever an indictment is returned.

Thus defendants do not have to appear in court for preliminary hearings.

The procedure will do away with the need for holding arraignments, during which defendants are read their constitutional rights and asked to plead guilty or not guilty.

Judge Holder's new procedure calls for trials to be held within 80 days after indictment. He explained that the figure was reached by adding the number of days allowed for pre-trial motions and objections, plus five weeks when he holds court at other cities.

Under his system not-guilty pleas are automatically entered. The defense and prosecution confer and work out a deal, then the defendants must ask the court in a written motion to change the plea to guilty.

When the motion is made, Holder said, defense attorneys then may ask that pre-sentence investigations be made. They are made for most

[See PROCEDURE, pg. 3, col. 3]

PERSONNEL

Federal Judges

Elevation

Pat Mehaffy, Chief Judge, U.S. Court of Appeals, Eighth Circuit, July 14.

Confirmations

Thomas G. Gee, U.S. Circuit Judge, 5th Cir., July 13

Prentice H. Marshall, U.S. District Judge, N.D.Ill., July 13.

John F. Nangle, U.S. District Judge, E.D.Mo., July 13.

William H. Webster, U.S. Circuit Judge, 8th Cir., July 13.

Harlington Wood, Jr., U.S. District Judge, S.D.Ill., July 13.

Nominations

Leonard I. Garth, U.S. Circuit Judge, 3rd Cir., July 19.

John A. Reed, Jr., U.S. District Judge, M.D.Fla., July 9.

Joseph T. Sneed, U.S. Circuit Judge, 9th Cir., July 25.

Death

Simon E. Sobeloff, U.S. Senior Circuit Judge, 4th Cir., July 11.

Appointments

Herbert A. Fogel, U.S. District Judge, E.D.Pa., June 29.

Jack R. Miller, Associate Judge, U.S. Court of Customs and Patent Appeals, July 6.

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JUDGE PETER FAY ADDRESSES CONFERENCE OF CHIEF JUSTICES

Judge Peter T. Fay

At the invitation of the Conference of Chief Justices, Judge Peter T. Fay (S.D. Fla.) participated in a presentation on state-federal matters when the Conference held its annual meeting in Columbus, Ohio this month. Preceding the Judge's talk, Alice O'Donnell, who heads the FJC's Division on Inter-Judicial Affairs & Information Services, reported on activities of the state-federal councils.

Judge Fay expanded particularly on unique and innovative procedures he and a state judge are developing in an airplane disaster case which has brought numerous filings in both the Florida state court and the federal court for the Southern District of Florida. With the agreement of what the Judge calls "lead counsel" he and Judge Harvey S. DuVal of the 11th Judicial Circuit, Miami, have jointly considered and ruled on pretrial motions, evidentiary material and other matters.

At a workshop following Judge Fay's talk, several Chief Justices expressed a keen interest in keeping abreast of developments in the case and some had helpful suggestions.

Asked whether the two judges might actually try the case together, Judge Fay said this has not been agreed upon but has been informally discussed. Questioned carefully on this point the Judge said he saw no obstacles which could not be overcome if a state and federal judge in Florida were determined to do this. The jurors, for example, could be sworn in by clerks of both courts, or two juries could sit simultaneously. (Six-member juries are used in civil cases by both the state court and the U.S. District Court in the Southern District of Florida.)

"The savings in time, money and judicial energies," Judge Fay said, "certainly commends this for consideration."

[REPORT, from page 1]

period up to the trial date, that agreement is highly probable.

Counsel admittedly delay until the day of trial and often after the jurors are impaneled, in the hope of obtaining a larger settlement for their clients. Federal judges are convinced the strategy can neither be condoned nor tolerated.

Judge Robert B. Krupansky (N.D. Ohio) recently disposed of the problem in two cases by assessing the cost of impaneling the jury between both parties to the suit. In one case the cost of almost $500 was divided equally between the two parties and in a second case $440 was split between the contending counsel, the Judge citing 28 U.S.C., 1927.

Here it appeared settlement could have been reached almost a month before trial, though the case was settled the morning of the trial date. In one case, the Judge's order was rescinded after counsel revealed there were extenuating circumstances, but this was an unusual situation and Judge Krupansky plans to adhere to his present policy of discouraging late settlements.

In another district, the Eastern District of Virginia, Judge Walter E. Hoffman reports their local Rule 36 has been effective in reducing juror costs. It reads:

"Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including Marshal's fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, unless the clerk's office is notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend."

[PROCEDURE, from page 2]

defendants by the U.S. Probation Service, and include such things as prior criminal records and family and health history.

When the investigations are completed, the defendant is notified to appear for a final hearing.

Holder said the court then must insure that there is sufficient evidence to sustain a guilty plea, and the defendant wants to plead guilty, and he has been advised of his rights and understands the charges against him.

The plan would stop a current problem in Federal court during arraignment days. All defendants and attorneys are required to report to the court at 9:30 a.m., and they must remain until their case is called.

It is not unusual for attorneys to wait several hours before their case is called before the bench.

Attorneys appointed under the Criminal Justice Act are paid $30 an hour while in court, and $20 an hour for office work, all with tax money.

Elimination of two of the appearances may amount to a substantial amount of money, officials admit.

One special problem area develops when prisoners serving jail terms are indicted, Holder admitted. Detainers are placed against them by the U.S. Marshal, and they do not appear before a magistrate.

Holder hopes to solve this problem by mailing copies of the indictment and his court plan to each prisoner the same day the indictment is filed.

HEARINGS BEGIN ON CIRCUIT REVISION

The 16 member Commission on the Revision of the Federal Court Appellate System began hearing testimony at the Federal District Court House in Washington, D.C., August 2 and 3.

The Commission, operating under P.L. 92-489 must make an initial report to Congress in December. It has planned for this fall a series of approximately a dozen hearings in cities predominantly in the West, Southwest, and South. To insure informational input through both testimony and submitted memoranda, Commission Director, Professor A. Leo Levin is seeking the widest possible advance public notice of the hearings.

Professor Levin advises that maps drawn from various suggestions on redistricting the circuits are available at Commission headquarters for distribution, comment and criticism.

The Washington hearings opened with a statement by Chairman Roman L. Hruska (U.S. Senator, Neb.), after which U.S. District Judge William B. Jones (D.C.) offered to the Commission the assistance of the ABA's Division of Judicial Administration in keeping members of the bench and bar aware of the Commission's progress.

Principal witness for the first morning of testimony was Erwin Griswold, former Solicitor General.

Drawing on wide experience, he testified to the existence of conflicts, both intra and inter, at the Circuit level and the need for some finality and certainty in areas of national law where the Supreme Court has not spoken.

He then proposed a national panel at the appellate level. This would not be an additional or fourth tier in the federal system, rather a forum to handle cases which would not be decided by the Supreme Court. In the afternoon session, Chief Judge Collins J. Seitz and Judge John L. Gibbons of the Third Circuit reported on the Time Study of their circuit completed in 1972 as well as their present docket. Also discussed were the circuit's efforts to reduce opinion writing and the effect on court efficiency limiting of oral argument.

The last witness on Thursday was Thomas E. Byrne of the Federal Courts Subcommittee of the Philadelphia Bar. He spoke to the Commission in favor of oral argument being retained whenever possible.

The first witness on Friday was Orison Marden, Chairman of the American College of Trial Lawyers' committee on preserving oral argument in the state and federal courts. He cautioned against over-zealous curtailment of oral argument for efficiency's sake, noting that the client and public in general often regard this as the true hearing or day in court. He proposed that judges speak to bar groups to foster better advocacy which would serve the client without wasting court time. He cited the Clerk's Annual Report of July, 1973, of the Fifth Circuit which showed that 57% of the cases were decided without oral argument.

Appearing next from the D.C. Circuit were Judges J. Skelly Wright and Carl McGowan accompanied by Circuit Executive Charles Nelson. They discussed the increasing workload due to new legislation, the screening of cases for oral argument, and the benefits derived from the services of senior and visiting judges.

Four members of the Advisory Council for Appellate Justice: Judge Shirley Hufstedler (CA-9), Professor Paul Carrington, Jr., Judge Harold Leventhal (CA-DC), and Professor Maurice Rosenberg, the council's chairman, were last to testify before the Commission at this set of hearings.

They mentioned several areas which should concern the Commission: 1. Structural changes possibly necessary at the intermediate appellate level; a National Court of Appeals with regional divisions was discussed as an alternative to the present circuit structure.

2. Internal operating procedures of the appellate courts, for example foregoing full opinions in favor of memoranda, the need for additional judges and supporting staff, and the possibility of rejecting or curtailing some of the business of the federal courts.

The Commission has scheduled the following hearings:

August 21, Houston, Texas, Federal bldg, U.S. Courthouse
August 22, New Orleans, La. U.S. Court of Appeals
August 23, Jackson, Miss. U.S. Courthouse
August 28, Seattle, Wash. U.S. Courthouse
August 29, Portland, Oregon, Pioneer Courthouse
August 30, San Francisco, Calif. U.S. Court of Appeals
August 31, Los Angeles, Calif. U.S. Courthouse
Sept. 5, Jacksonville, Fla., U.S. Courthouse and P.O. Bldg.
Oct. 1, New York City, U.S. Courthouse, Foley Square.

CONTINUING EDUCATION & TRAINING FACES FULL YEAR

FJC's Continuing Education & Training Division has scheduled 58 programs for Fiscal Year 1974. Judges and supporting personnel at all levels will be invited to these programs.

In addition, the Center will, to the extent appropriations permit, fund job-related courses designed to improve the skills and proficiency of employees in the judicial branch. During Fiscal Year 1973, the Center provided such financial support to 158 employees. Employee applications for these funds should be directed to the FJC Director of Education and Training.

Recent announcements by Kenneth Crawford, Director of this Division, include:

Cassettes.

A vastly expanded cassette library of nearly one thousand cassettes on 217 subjects. They will continue to [See TRAINING, pg. 5, col. 1]

[TRAINING, from page 4]
be available on a two week loan basis. A catalog listing the cassettes will be published soon. Meanwhile, see recent back issues of *The Third Branch* for listings.

New Publications.

Orientation manual for law clerks; orientation manual for secretaries to federal judges; reports of presentations at the District Judges' conferences; and a compilation of papers presented at the Spring, 1973 seminar for Newly Appointed District Judges will be available soon for distribution.

New District Court Program

Under development is a short program of about one and one-half day duration on modern management techniques, to be presented at various district courts. The first will be offered within the next few weeks and all interested court personnel will be invited to attend.

Chief Judge Charles B. Fulton [S.D. Fla.] emphasizes a point during a recent F.J.C. Steering Committee Meeting for the Metropolitan Court Judges. At the left is the Honorable Russell M. Fox, Senior Judge of the Supreme Court of the Australian Capital Territory, Canberra, Australia, who has been studying U.S. Court Operations while in Washington. Also attending the meeting were: Chief Judge Albert L. Stephens, Jr. [C.D. Ca.], Judge William J. Campbell [N.D. Ill.], Judge Alfred L. Luongo [E.D. Penna], Chief Judge Edward S. Northrup [D. of Maryland], and from the F.J.C., Judge Alfred P. Murrah [Dir.], Richard Green [Dep. Dir.], William Eldridge [Research], and Joseph Ebersole [Innovations and Systems Development].

SENATE SUBCOMMITTEE APPROVES 27 JUDGESHIPS

Senator Quentin N. Burdick, Chairman of the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, announced July 27 that the subcommittee will report to the full Judiciary Committee a proposed bill to create 27 new district court judgeships together with the conversion of one existing temporary judgeship to a permanent position.

The judicial districts contained in the bill, which still must be acted upon by the full Judiciary Committee, are: Alabama (Northern), Arizona, Arkansas (Eastern), California (Eastern and Southern), Florida (Middle and Southern), Georgia (Northern), Louisiana (Eastern--2 judges), Kansas, Missouri (Western), New Hampshire, New Jersey, New York (Eastern and Northern), Oregon, South Carolina, Tennessee (Eastern), Texas (Northern), Texas (Southern--2 judges), Texas (Western-- 2 judges), Virginia (Eastern), Washington (Western) and Wisconsin (Western).

The temporary position which would be made permanent is in the middle District of Pennsylvania.

The Judicial Conference of the U.S. requested 51 additional district judgeships and 11 Circuit Judgeships. The subcommittee held hearings only on the question of whether additional district judgeships were necessary.

STATE COURT CENTER CHOOSES WILLIAMSBURG

The Board of Directors of the National Center for State Courts on August 6 announced through its President, Justice Louis H. Burke of the Supreme Court of California, that they had voted to headquarter in Williamsburg, Virginia. Until recently, the organization had maintained temporary offices at the Federal Judicial Center in Washington.

The site on which the Center will erect a new building is presently owned by the State of Virginia and is near the College of William and Mary.

The Center was created after a resolution was adopted at the National Conference on the Judiciary calling for such an organization. Both President Nixon and Chief Justice Burger spoke at this Conference and endorsed the concept.

Temporary headquarters for the State Center are presently in Denver, Colorado, and an office in Washington, D.C., maintains close liaison with the Federal Judicial Center. Four regional offices are now established in Boston, Atlanta, St. Paul, and San Francisco.

In July of this year, eight grants were made to the Center, totaling $2,342,019, seven from LEAA and one from the National Science Foundation. Among other things the grants will make it possible for work to continue on: A central legal screening and staffing experiment beamed to aid appellate judges; a computer-aided transcription service for court reporters; a national conference for judicial educators; a court clerks improvement program; and automated equipment used in the courts.

[REPORT, from page 1]

cases than were filed.

• Concerted studies by the Advisory Council on Appellate Justice, jointly sponsored by the National Center for State Courts and the Federal Judicial Center to define and recommend improved appellate court procedures in state and federal courts.

• The continuing work of the Commission on Standards of Judicial Administration which will release a series of reports to update the Vanderbilt standards set out in 1938.

Critical areas which call for constant attention and experimentation were set out by the Chief Justice with the admonition that "...thinking must be imaginative and dynamic, and we must experiment and search constantly for better ways, always remembering that our objective is fairness and justice, not efficiency for its own sake." Further, he said he preferred to "risk some false starts rather than make no starts at all."

Critical areas specifically mentioned were:

Prisoner petitions. The Chief Justice pointed to an increased number of complaints filed by state prisoners in the federal courts (over 16,000 in fiscal year 1972), as well as Civil Rights Act actions (over 4,000 in fiscal year 1972). Suggested for consideration: Procedures which call for hearings at the federal prison, with the requirement that all established procedures be exhausted there before any filing may be accepted in the federal courts; grievance procedures to hear prisoner complaints at the prisons; and use of Magistrates sitting as Special Masters to consider and report to the court on habeas corpus and civil rights cases brought by prisoners.

Screening on the appellate level. The Chief Justice cautioned that screening of cases in some circuits, done because of necessity, left the possibility that some cases with merit were being denied oral argument while others of a frivolous nature were being heard. He called on the members of the Circuit Revision Commission, the ABA Commission on Standards of Judicial Administration, and the Advisory Council on Appellate Justice to develop alternative procedures.

Salaries of Federal Judges. Federal judges have received no salary increase in the past five year period whereas salaries of employees in industry and in the classified federal service have been increased as much as one-third, in addition to increases based on tenure or promotion. The Chief Justice declared this to be grossly unfair and that it made it increasingly difficult to attract good candidates for the federal bench.

More judges. The Judicial Conference requested Congress to create 51 additional District Court judgeships and 11 Circuit judgeships. Heavy caseloads in both the District and Circuit courts call for more judges to handle this business, the Chief Justice said. He reported a backlog in the District Courts of 126,000 cases and pointed out that, though hard-working judges have arrested the increase and have stepped up their disposition rate by nearly 20 percent, on the Circuit level the workload has over the past few years increased 318 percent. The Chief Justice called on Congress to furnish help through these additional judgeships stating these judges simply cannot be called on to do more.

Delay in filling judgeship vacancies. Vacancies that persist for years are unwarranted, the Chief Justice asserted; the bar and the public have a right to demand that the Senate and the exeuctive branch fill judgeship vacancies promptly.

Diversity Jurisdiction. Needed immediately: Legislation which will take out of the federal courts cases which presently have no valid reason for the federal process, especially automobile accident cases.

The Supreme Court. Reporting increased filings in the Supreme Court of 300 percent over the past twenty years, the Chief Justice called on Congress and the legal profession to implement the accepted recommendations of the committee sponsored by the Federal Judicial Center to study the workload of the Supreme Court (the Freund Report). Referring to the proposal about which there has been debate--the creation of an intermediate reviewing court between the U.S. Courts of Appeals and the Supreme Court--the Chief Justice asked for alternative proposals and said the legal profession has an obvious duty "to explore all possible avenues for solutions."

In concluding, Chief Justice Burger reminded his audience that the American Bar Association will increasingly be called on to be the voice of progressive development, and that its membership will be expected to "translate ideas and ideals into reality". The Association, he said, "must continue to be representative of the views and the needs of all segments of our society as the traditions of our profession have always commanded."

(Copies of the Chief Justice's address may be obtained by writing the Editor, **The Third Branch,** 1520 H N.W., Washington, D.C. 20005.)

U.S. PRISON POPULATION HIGHEST IN 11 YEARS

The U.S. Bureau of Prisons, in its general population analysis published August 1, reported that the total number of inmates serving sentences in its 49 institutions as of June 30 was 22,535--the largest permanent federal prison population in 11 years.

As of June 30, 1962, 24,248 inmates were in the federal prison system, Bureau of Prisons officials said. However, neither population total included prisoners being held temporarily in the institutions.

Copies of the complete report showing breakdown by states, race, age, length of sentence and type of offense may be had by writing: Department of Justice, Bureau of Prisons, Washington, D.C. 20534

COMMISSION PROPOSES BANKRUPTCY LAW CHANGES

On July 30, after two years of work, the nine-member Commission on the Bankruptcy Laws of the United States transmitted to the President, the Chief Justice, and the Congress its final report.

The report was accompanied by a proposed new Bankruptcy Act.

The report calls for the division of the administrative and judicial functions of the bankruptcy system. The former would be assigned to a new federal agency called the United States Bankruptcy Administration.

The latter or judicial function would be handled by new federal Bankruptcy Courts separate from the U.S. District Courts. Federal Bankruptcy Judges would replace the current and more numerous bankruptcy referees. These judges would decide all controversies arising from bankruptcy cases and would exercise judicial review over actions of the new Bankruptcy Administration which would handle those non-judicial responsibilities now performed by the bankruptcy referees. The new judges would be appointed by the President with Senate approval for 15-year terms. The Bankruptcy Courts, supported by general revenues, would have the full powers of a U.S. District Court, able to conduct jury and non-jury trials, issue restraining orders and injunctions and punish for contempt.

Appeals from these Bankruptcy Courts would go first to the nearest U.S. District Court and thereafter move through existing procedures.

The report also recommends a comprehensive revision of the current national bankruptcy statute.

The revision would reflect the upsurge in consumer cases over the past 25 years as well as the evolution of the commercial credit economy.

The last substantial changes in the present law were the 1938 Chandler Amendments. In proposing the changes, the Commission is seeking more economy, effectiveness, fairness, and uniformity in the operation of the bankruptcy system.

Commission Chairman Harold Marsh, Jr., reports that all recommendations were unanimous with the exception of a dissent by Judge Edward Weinfeld (D.C., S.D., N.Y.) from the proposal for separate Bankruptcy Courts.

A key substantive proposal deals with consumer cases which make up about 90% of bankruptcy court business and which generally yield no assets for distribution to creditors. The Commission's proposal would encourage--but not coerce--debtors with regular incomes to undertake full or partial repayments through workable plans that protect against creditor harassment and permit retention of property essential in a debtor's household or employment.

The Commission calls on those in the bankruptcy field to weigh and comment on its recommendations as the report undergoes legislative scrutiny.

HOUSE REJECTS BILL TO SPEED UP SALARY HIKE

By a vote of 237 to 156, the House of Representatives July 30 rejected a bill which, if enacted, would have allowed judicial salaries to be increased as early as this October.

The bill, S-1989, introduced by Wyoming Senator Gale W. McGee, Chairman of the Senate Post Office and Civil Service Committee, passed the Senate on a voice vote July 9 and House sponsors believed it would receive quick, favorable action after the House Post Office and Civil Service Committee approved it.

The Director of the Administrative Office, Rowland F. Kirks, testified before both the Senate and House Committees and pointed out that the measure had been approved unanimously by the Executive Committee of the Judicial Conference of the United States.

[See HOUSE, pg. 8, col. 2]

Bulletin

VIDEOTAPE TV PROGRAM AND ACTION HANDBOOK AVAILABLE

A short, practical handbook designed to show community groups how to modernize their local criminal justice system and a TV program in which top officials of the Bar and Bench point out why action is necessary are now available.

A handbook, **Modernizing Criminal Justice Through Citizen Power**, is one of a series dealing with specific crime-justice topics which the Chamber of Commerce of the U.S. has prepared for local civic and business groups.

The 29-minute videotape discussion is based on the same theme and includes appearances by Robert Meserve and Chesterfield Smith (immediate past President and President of the American Bar Association respectively), Justice Tom C. Clark, U.S. Supreme Court (ret.), Keith Mossman, Past Chairman of the ABA's Criminal Justice Section and Arch N. Booth, Executive Officer of the Chamber of Commerce of the U.S.

The Chief Justice, in concluding remarks following the TV discussion, expressed the hope that "this great monumental work will receive current and ongoing attention" by civic, business and professional leaders throughout the nation.

Copies of the handbook are available from the ABA's Circulation Department, 1155 East 60th St., Chicago, Ill., 60637. The videotaped program is available on a loan basis from Association-Sterling Films, 600 Grant Ave., Ridgefield, N.J. 07607.

ao aofjc calendar

Sept. 6-8 Seminar for U.S. Court Librarians, Federal Judicial Center, Wash., D.C.

Sept. 7 Probation Ad Hoc Committee on Short Form Presentence Report, Wash., D.C.

Sept. 7-8 2nd Circuit Conference, Buck Hill Falls, Pa.

Sept. 10-14 Orientation Seminar for Probation Officers, Wash., D.C.

Sept. 11-12 Judicial Conference Joint Committee on Code of Judicial Conduct, Wash., D.C.

Sept. 13-14 Seminar for Referees in Bankruptcy, Salt Lake City, Utah.

Sept. 13-14 Judicial Conference of the United States, Wash., D.C.

Sept. 13-15 Conference for Circuit Executives, Wash., D.C.

Sept. 17-19 Northeast Regional Institute for Probation Officers, Newport, Rhode Island.

Sept. 20-21 Seminar for U.S. Referees in Bankruptcy, Ann Arbor, Mich.

Oct. 1-4 Conference for Experienced District Court Judges, Wash., D.C.

Oct. 10-12 Refresher Seminar for Magistrates, Denver, Colo.

Oct. 11-12 Regional Seminar for U.S. Referees in Bankruptcy, Harvard University, Cambridge, Mass.

Oct. 15-17 3rd Circuit Conference, Pittsburgh, Pa.

Oct. 15-19 Refresher Seminar for Probation Officers, Dallas, Texas.

Oct. 19-20 National Bankruptcy Conference, Wash., D.C.

Oct. 29-Nov. 1 Management Institute for Probation Officers, Wash., D.C.

[HOUSE, from page 7]

Director Kirks said that while salaries for many other workers, both in and out of government, had risen as much as 30% in the last four years, judicial salaries have stood still.

The bill formally titled the Federal Salary Act, had two objectives: to allow the recommendations of the Salary Commission to go into effect some six months earlier than possible under existing law and to require the appointment of a Salary Commission every other year rather than every four years as provided by existing law.

THE THIRD BRANCH

VOL. 5, NO. 8 AUGUST, 1973

THE FEDERAL JUDICIAL CENTER
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Bulletin of the Federal Courts

VOL. 5, NO. 9 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center SEPTEMBER, 1973

Judicial Conference Holds Fall Meeting

The Judicial Conference of the United States held its fall meeting this month at the Supreme Court.

The Conference is required by statute to meet annually and by practice their sessions are held in the fall with an additional midyear meeting in the spring. It is attended by the Chief Judge of each of the eleven circuits, and one District Judge from each circuit as well as the Chief Judges of the Court of Customs and Patent Appeals and the Court of Claims.

The Conference endorsed legislation to empower a federal court to call upon the Attorney General of the United States to assist in investigation of unethical conduct or conduct unbecoming a member of the bar of a court of the United States.

The legislation, which has been under study for several years would further authorize the Attorney General at the request of a federal court, to prosecute formal disciplinary proceedings against such a lawyer. The federal courts are empowered under the proposed legislation to appoint a special prosecutor to conduct proceedings against such attorneys.

In other action, the Conference adopted, with modifications, Canon 7 of the American Bar Association's Code of Judicial Conduct which prohibits political activities by federal judges. Also recommended were proposed changes in legislation now pending in Congress revising the present Federal Criminal Code.

The Conference cleared for transmission to the Supreme Court a new comprehensive set of rules governing procedures for extending debts or other arrangements under Chapter XI of the Bankruptcy Act. The new rules, under development for more than ten years, would be the first set of such rules to be promulgated in arrangement cases. If approved by the Supreme Court, the rules would then be sent to Congress, pursuant to a 1964 law, and become effective 90 days after transmission, unless Congress decides otherwise.

The Judicial Conference also voted to request congressional authorization for 320 additional Federal Probation Officers; an increase in the trial jurisdiction of federal magistrates which would enable them to try and sentence persons accused of minor crimes in which the punishment does not exceed one year imprisonment and a fine of not more than $5,000, or both; and legislation to protect jurors serving in federal courts from loss of employment because of such service.

The Conference also recommended that Congress enact legislation, similar to the Criminal Justice Act of 1966, which would permit the payment of counsel appointed to represent indigent persons accused of crimes in the local courts of the District of Columbia.

Mr. Justice Clark, Chairman, Judicial Fellowship Commission.

FIRST JUDICIAL FELLOWS APPOINTED

Russell R. Wheeler and Howard R. Whitcomb have been awarded the first Judicial Fellowships, according to retired Supreme Court Justice Tom C. Clark, Chairman of the Judicial Fellows Commission.

The Fellows will spend a year observing and contributing to projects to study and improve judicial administration. The program is patterned somewhat after the programs of the White House and Congressional Fellows.

A total of 52 persons applied for the Judicial Fellows Program. Fellows were selected from an outstanding field by a six-member Judicial Fellows Commission appointed by the Chief Justice. The Commission includes: Justice Tom C. Clark (U.S. Supreme Court, ret.), Chairman; Mark W. Cannon, Admin-

[See JUDICIAL FELLOWS, pg. 7]

PER JUDGESHIP CASE DISPOSITIONS UP 30%

Chief Justice Warren E. Burger reported this month that cases are now being handled in federal courts at a thirty percent higher rate than five years ago. He said that modernized court procedures and increased efforts by judges were the cause. Following is the Chief Justice's statement:

The delay of justice is its denial so it is a matter of great satisfaction to me to be able to report that federal judges are now disposing of cases at a rate almost a third higher than five years ago. This increase is due to the adoption of modern techniques, as well as to judges working harder than ever before. This phenomenal achievement has saved the federal courts from being overwhelmed by the virtual avalanche of cases.

During the past Term (1972-1973), the Federal District Courts and the United States Courts of Appeals disposed of 148,074 cases, an average of 309.8 for each of the 478 judgeships. By comparison, in 1968, when there were 420 federal judgeships, the number of cases brought to completion was only 100,432. The average number of cases disposed of was 239.1. Excluded from these figures are the courts of the District of Columbia, the U.S., the Virgin Islands, the Canal Zone and Guam since they handle changing mixtures of local and federal cases.

Why are we concerned about productivity? A more productive judicial system is essential for justice by giving litigants their relief promptly, rather than forcing them to wait endlessly while memories grow dim and witnesses move or die. Furthermore, the more efficiently we operate the courts, the faster we terminate cases and the less we tie up lawyers and witnesses in litigation. By making the judicial system more productive, we are making the federal courts accessible to all Americans at less personal financial expense and less emotional expense –all in addition to saving citizens' taxes.

Supporting personnel, like the number of judges, has lagged well behind the pressure of new cases and the courts' achievements in dispensing justice. From 1968 to 1973, the number of support personnel in federal courts increased only nineteen percent, from 6,600 to the present 7,831. The number of cases filed has risen at twice that rate– thirty-eight percent. Where 113,136 cases were filed in the federal courts in 1968, the past Term saw 156,623 introduced.

What the courts are doing is even more remarkable when one considers the way in which the number of different cases has risen. By this we mean the type which generally requires at least twice as much time as average to decide. There were 10,768 of these in the federal courts during the past year, a rise of 277 percent over the 3,891 of 1968. Civil rights and personal injury cases are notable among these difficult ones.

The combination of modernization and greater efforts by judges and their staffs had reduced markedly the time a case needs to move from the original docketing in the district court to final disposition in the court of appeals. In 1968, criminal cases were taking a year and 7.8 months to go this route, and civil cases two years and two weeks. During the past year, the median time for disposing of a criminal case has been a year and 3.8 months, and for a civil case a year and seven months. In the one, the improvement is twenty percent and in the other twenty-two.

Many factors have gone into this remarkable improvement in speeding justice inside the federal court system. Seminars and conferences for the judges on how to improve court practices have been part of it. A transfer of many matters to magistrates has been another element. During the past year, magistrates handled a total of 251,218 matters, many of which would have taken up district court time in earlier years. Consolidated pre-trial hearings, increased advance disclosure of evidence and the individual calendar assignment system of putting responsibility on the individual district court judges for progress and completion of specific cases are among the helpful innovations of recent years and account for part of the accomplishment. A more efficient and effective use of the limited court personnel also helped greatly.

In reporting on the salutory increase in productivity in the federal courts, I should not omit once again reminding the public and the Members of Congress that efficiency, good will and effort on the part of the overburdened courts is not alone enough. There is still a backlog of about 126,000 cases in the district court, built up over the years although currently stationary. To cut into that backlog and to meet the demands of litigants, we must have more judges. The Judicial Conference has called for 51 additional trial judges and 11 new circuit judges.

What I have said about the district courts and the courts of appeals applies also to the Supreme Court. These are some of the indicators:

During the past Term, the nine Justices of the Court have averaged more than five hundred pages of opinions, almost double the number of a decade ago. The actual number of pages of opinions and orders handed down during the past Term was 4,671 compared with 2,515 in 1964.

In the past five years, the number of cases of which the Supreme Court has disposed has risen by nineteen percent. In the past Term, we disposed of 3,748 cases. In 1968, the figure was 3,151. Steadily through the years, the number of cases reaching the Supreme Court for action has mounted, and there is no end of the curve in sight. Cases coming to the Court are well over triple what they were a generation ago. During the past year, the Supreme Court managed to dispose of slightly more cases than were

[See **CASE DISPOSITION, pg. 3**]

Ninth and Fifth Circuits

CIRCUIT REVISION COMMISSION HOLDS REGIONAL HEARINGS

A wide range of solutions to the problems of the Courts of Appeals in the Fifth and Ninth Circuits were suggested to the Commission on Revision of the Federal Court Appellate System at hearings held in those circuits during latter August and early September.

Between August 21 and September 5 the Commission heard testimony in Houston, New Orleans, Jackson and Jacksonville in the Fifth Circuit and in Seattle, Portland, San Francisco and Los Angeles in the Ninth.

A majority of the active circuit court judges in the Fifth, including Chief Judge John R. Brown, recognized that some circuit realignment would be necessary within a relatively short space of time. The Court already has 15 active judges and voted unanimously not to increase that number.

Much of the testimony during the Fifth Circuit hearings focused on the screening program under which oral argument is not allowed in about 60% of the cases. Coupled with that court's practice of rendering full, signed opinions in only about one-third of the cases, this practice has made it possible for the Fifth Circuit to keep its docket current even though it has the largest number of filings of any circuit in the country.

Members of the Bar testified in favor of a return to oral argument as of right, at least in most cases. However, some witnesses suggested that although the basic system was good, the flood-tide of appellate litigation had created great pressure and, as a result, oral argument has been extended to too many cases.

In the Ninth Circuit the Commission was urged by some of the judges to create one or more new circuits as soon as possible. Others argued for revision of the Circuit, but creation of at least two divisions, each to operate with relative independence, albeit under the same Chief Judge. Conflicts in the law between the two divisions would be resolved by an en banc procedure involving less than all of the active judges of the circuit. Creation of divisions was viewed by these witnesses as preferable to creation of new circuits while affording the possibility to ameliorating the difficulties of the Ninth Circuit. Chief Judge Richard H. Chambers called for more judges, but opposed the other changes.

In the Ninth Circuit, some civil appeals often take over two years from completion of the record until resolution of the appeal. Understandably, the Bar expressed strong dissatisfaction with this situation. Dissatisfaction was also expressed with the pattern of widespread assignment of District Court judges to sit on appellate panels.

Statistics released for fiscal 1973, show that less than two thirds of the judges assigned to panels are active circuit judges of that circuit. Defining a sitting as one judge sitting on a case, with three "sittings" for each panel, the report shows that 22% of the sittings in the Ninth Circuit that year were by District Judges and Senior District Judges. If no more than one such judge sat on a given panel, this would mean that two-thirds of the cases were decided with the aid of a district judge. Senior Circuit judges and visiting judges together accounted for 15% of the sittings.

APPELLATE COURT STUDY RELEASED BY FJC

The Center's Division of Innovations & Systems Development has released a 90-page *Comparative Report on Internal Operating Procedures of the United States Courts of Appeals.*

The two-phase project was initiated at the request of the Chief Judges of the U.S. Circuit Courts.

Under phase one, William Whittaker, former Clerk of the Temporary Emergency Court of Appeals, under an FJC contract, visited the Second, Third and Fifth Circuits to prepare summary descriptions of the operating procedures of these courts, and a checklist for use in surveying the other Courts of Appeal.

Using the prepared checklist, Center Staff member James E. Langner visited the remaining Circuits, and with Steven Flanders, also of the Staff, summarized the operations of each, reviewing the findings to insure accuracy.

The report makes comparisons at various stages of the appellate process and extensive use is made of tables in presenting the comparative data.

The report is descriptive and thus does not evaluate whether one procedure is superior to another. The report suggests, however, that further improvement in the operations of the Courts of Appeals may result from in-depth studies of the compiled data.

Copies of the report are available from the Federal Judicial Center Information Service.

[CASE DISPOSITION, from page 2]

filed, thus arresting, at least for the present, the tendency of the backlog of about 800 cases to increase. During the Term, 3,749 new cases were filed, and 3,823 were acted upon.

Just as in the case of the district courts and the courts of appeals, we have managed this with very limited personnel. The support staff, at the Supreme Court, of legal, clerical and maintenance personnel of just over 200 has grown at only half the rate of the caseload increase.

In spite of this progress, new problems are arising and many unsolved problems linger, requiring major continuing efforts for court modernization.

[See CASE DISPOSITION, pg. 5]

PERSONNEL

ELEVATIONS

William H. Webster, U.S. Circuit Court, Eighth Circuit, Aug. 10.

Leonard I. Garth, U.S. Circuit Court, Third Circuit, August 6.

Frederick A. Daugherty, Chief Judge, ED/Okla., Sept. 12.

APPOINTMENTS

Thomas G. Gee, U.S. Circuit Judge, Fifth Circuit, July 18.

John F. Nangle, U.S. District Judge, ED/Mo., July 18.

Prentice H. Marshall, U.S. District Judge, ND/Ill., July 18.

John A. Reed, Jr., U.S. District Judge, MD/Fla., Aug. 6.

Joseph T. Sneed, U.S. Circuit Court, Ninth Circuit, Aug. 24.

Harlington Wood, Jr., U.S. District Judge, SD/Ill., July 18.

DEATHS

Chief Judge Edwin Langley, U.S. District Court, ED/Okla., Sept. 12.

Judge John J. Kitchen, Dist. N.J., Sept. 12.

JUDICIAL CONFERENCE COMMENTS ON PENDING CRIMINAL CODE CHANGES

The Judicial Conference this month sent to Congress the second of a series of recommendations relating to three comprehensive bills revising the Federal Criminal Code: The code proposed by the National Commission on Reform of Federal Criminal Laws, recently introduced in the House, S.1 and S.1400, introduced in the Senate.

The Conference made its recommendations without prejudice to reconsideration of specific items as it may deem wise in light of future development and further study.

The Conference's comprehensive report related to sentencing provisions of the three bills. It included a detailed comparison in table form of existing sentencing provisions under present federal law with those proposed under the three bills.

Additionally, the report contained an in-depth analysis of probation and parole provisions reflecting the views of the Conference's Committees on the Administration of the Probation System and the Administration of the Criminal Law.

Although the Conference has not yet taken a position on the advisability of sentence review, whether it be by a panel of district judges or by an appellate court, it nevertheless made positive recommendations as to the procedures to be followed in any form of review of sentences.

It was recommended that any reviewing court have the power to increase as well as decrease sentences, that only one application for review could be made but that no appeal from a judgment of conviction would be allowed until that judgment was final. It was also recommended that three-year confinement be the minimum appealable sentence and that the appeal would not be by right but would be discretionary with the reviewing court.

Last May the Judicial Conference Committee on Rules of Practice and Procedure proposed that Rule 35 of the Criminal Rules of Procedure be amended to allow review of sentencing.

The proposed amendment along with those relating to other rules of criminal procedure have been submitted to both the bench and bar for consideration and suggestions.

Judges' Political Activity Barred

JUDICIAL CONFERENCE ADOPTS ABA'S ETHICS CANON SEVEN

The Judicial Conference of the U.S. on September 14th adopted Canon 7 of the American Bar Assoication's Code of Judicial Conduct, thus prohibiting all political activities by Federal Judges. In addition to a general prohibition, the Canon requires that a Federal Judge should "resign his office when he becomes a candidate either in a primary or in a general election for any office."

The conference now has completed its study of the ABA Code, and, in general, has adopted the entire code, modifying the Canons only to the extent necessary to cover special problems of the federal judiciary.

Here is Canon 7 of the ABA's Code of Judicial Conduct as modified by the Judicial Conference:

A Judge Should Refrain from Political Activity.

A. Political conduct in general

(1) A judge should not:

(a) Act as a leader or hold any office in a political organization;

(b) Make speeches for a political organization or candidate, or publicly endorse a candidate for public office;

(c) Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings or purchase tickets for political party dinners or other functions;

(2) A judge should resign his office when he becomes a candidate either in a primary or in a general election for any office;

(3) A judge should not engage in any other political activity; provided, however, this should not prevent a judge from engaging in the activities described in Canon 4. (Canon 4, in general, allows judges to engage in activities to improve the law, legal system and the administration of Justice.)

ADMINISTRATIVE OFFICE RELEASES 1973 ANNUAL REPORT

In its Annual Report for fiscal, 1973 ending June 30th, the Administrative Office reported that case filings in the Federal Court of Appeals reached an all-time high for the period.

Director Rowland F. Kirks reported that appeals which had been docketed rose to 15,629 which is an 8% increase over 1972.

During the same period, Director Kirks said terminated cases rose by 9% to 15,112, but were still less than the number of new appeals commenced. As a result, appeals pending in the courts of appeals climbed to a record 10,456 at the end of the fiscal year.

The Administrative Office reported that case filings in the federal district courts declined from 145,227 in 1972 to 140,994 during the year ended June 30th.

This decline, the A.O. Report said, was primarily because criminal case filings fell 6,600 compared with the previous year.

The Administrative Office said that this decrease in criminal filings stemmed, in part, from the fact that prosecutions for violations of the Selective Service Act dropped and that illegal entry cases and other minor offenses were transferred to the magistrates for disposition and finally, criminal cases which had previously been under the jurisdiction of the Federal District Court of the District of Columbia were transferred to the new District of Columbia Superior Court during the year.

The Administrative Office reported also that the district courts terminated more cases than were filed during the fiscal year resulting in a reduction in pending cases--the first in many years. Federal trial courts disposed of 141,715 civil and criminal cases, 721 cases more than the number filed, and pending cases were reduced to 125,749 on June 30th.

The A.O. also reported the bankruptcy cases declined by 5% during the period. Bankruptcy filings during Fiscal 1973 were 173,197, compared with the record high of 208,329 in 1967.

Federal magistrates handled and disposed of 251,218 separate items of business--a new record. Probation officers conducted 71,260 investigations during the year, and at the end of the fiscal year, 54,346 persons were being supervised by Federal Probation Officers.

The Administrative Office presented its Annual Report to the Judicial Conference of the United States during its Annual Meeting in Washington, D.C. this month.

[CASE DISPOSITION, from page 3]

The Chief Justice also released the following data.

Net productivity increase 1968-73 by all district and circuit judges:

District Court terminations (civil and criminal) per judgeship:

Year	Terminations per Judgeship	% Increase over 1968
1968	285.4	--
1969	304.3	7%
1970	285.8	--
1971	309.7	9%
1972	352.8	24%
1973	349.0	22%

Court of Appeals terminations per judgeship:

Year	Terminations per Judgeship	% Increase over 1968
1968	85.2	--
1969	92.9	9%
1970	110.3	29%
1971	127.5	50%
1972	142.6	67%
1973	155.8	83%

LEGISLATION

The Fiscal Year 1974 Appropriations Act has passed the House of Representatives and has been reported by the Senate Appropriations Committee. Senate action is scheduled September 17.

Three bills which will eliminate most of the provisions for three-judge courts have been the subject of action by both Houses of Congress. S. 782, which would eliminate the three-judge court requirements of the Expediting Act passed the Senate on July 18. Hearings will be held this month on the bill in the House Judiciary Committee.

S. 271 which would eliminate most requirements for three-judge courts, except in reapportionment cases, passed the Senate in June. S.663 which affects judicial review of ICC decisions is pending in the Senate Judiciary Committee and hearings have been held.

S. 356, to provide disclosure standards for written consumer product warranties against defect or malfunction, etc., passed the Senate September 12 and is pending in the House of Representatives.

Hearings have been held by a Subcommittee of the House Judiciary Committee on H.R. 7723, to provide for a within-grade salary increase plan for secretaries to circuit and district judges; H.R. 8150, to provide for the appointment of transcribers of official court reporters' transcripts in the district courts; and H.R. 8151, providing for the appointment of legal assistants in the courts of appeals.

H.R. 10047, introduced on September 5 by Representatives Kastenmeier and Edwards of California, will revise Title 18 of the United States Code. This bill incorporates the provisions of the final report of the Commission on Reform of Federal Criminal Laws.

FJC Holds First Conference For Court Librarians

Panelist Nijole Cepulkauskas, Librarian, U.S. Circuit Court, Seventh Circuit, presents ideas for library improvements at the recent F.J.C. Seminar. Other panelists pictured are l. to r. Program Moderator Honorable William J. Campbell [N.D. Ill.], Mr. Paul Tuell of the A.O. Staff, and William A. Doyle, U.S. Circuit Executive, Third Circuit.

The Federal Judicial Center sponsored its first Seminar for Court Librarians in early September at which circuit and district courts as well as other federal courts from all areas of the U.S. were represented.

Speakers from various sectors of court life presented their views on the court library and made suggestions for improvement. Maxwell G. Dodson, librarian of the Fifth Circuit Court of Appeals related his experiences operating a court library and William A. Doyle, Circuit Executive for the Third Circuit, spoke about libraries from a Circuit Executive's point of view.

A judge's view of libraries was presented by Judge William J. Campbell, (N.D. Ill.). Eugene Wypyski, Law Librarian and Professor of Law at Hofstra University, presented an example of an ideal court library system. In addition, representatives from the Administrative Office of the U.S. Courts were present, and there were demonstrations of microforms and automated legal research.

Workshop discussions provided a forum for librarians to share experiences and offer suggestions for solving common problems. Tours of the Law Library of Congress and the Supreme Court concluded the Seminar.

During the final workshop, the participants made recommendations which they thought would be a beginning in improving court libraries. These recommendations have been compiled and sent to judges, court clerks, circuit executives and Administrative Office staff members. It is hoped that the suggestions can be implemented by those involved and that this will lead the way to a more unified court library system.

THE SOURCE
The Information Service of the Federal Judicial Center

- COURTRAN: a modular management information and research system for the judicial process. J.L. Ebersole and J.A. Hall, Jr. 3 Rutgers J of Computers and the Law 83, 1973.
- Crime and criminal justice at the turn of the century. Leslie T. Wilkins. 408 Annals 13, July 1973.
- Eliminate the grand jury. William J. Campbell. 64 J of Criminal Law and Criminology 174, June 1973.
- Evaluation report; pilot project on communicating automatic typewriters. Federal Judicial Center. June 27, 1973.
- Federal civil jury trials should be abolished. Edward J. Devitt. (address at Second Circuit Judicial conference, Sept. 1973)
- Federal jury reformation: saving a democratic institution. Carl H. Imlay. 6 Loyola of Los Angeles L Rev 247, July 1973.
- Increasing the efficiency of our courts--a decade of progress. Orison S. Marden (address) 5 #4 IJA Newsletter, July 1973.
- Introducing the single camera VTR system; a layman's guide to videotape recording. Grayson Mattingly and Welby Smith. New York, Schribner, 1973
- Journal for Justice Management (new publication of Institute of Court Management. $7.50 (3 issues) Contact: Dwayne L. Oglesby, c/o Inst. of Ct. Mgmt., 1612 Tremont Pl., Suite 210, Denver, CO 80202.
- Nebraska faces videotape: the new videotechnology in perspective. 6 Creighton L Rev 214, 1972-73.
- Proposed standards for appellate court statistics. National Center for State Courts. July 1973.

CHIEF JUDGES, CIRCUIT EXECUTIVES MEET AT FJC

Following past practice, the Circuit Chief Judges met at the Center on September 15th to take up matters of common interest to the eleven circuits.

Chief Judge Collins J. Seitz (CA-3) presided as Chairman. By invitation, the Chief Justice, Director Rowland Kirks (A.O.), and Judge Alfred P. Murrah (F.J.C. Director) also were in attendance.

To formalize their sessions, By-Laws have been adopted which, among other things, call for: The election of a chairman for a one-year term; the election of four members to serve on an executive committee for one-year terms; and stated meetings to be held the day following the meetings of the Judicial Conference of the United States. The Secretary of the group

[See Meeting, pg. 8, col. 2]

[**JUDICIAL FELLOWS, from page 1**]

strative Assistant to the Chief Justice, Executive Director; George A. Graham, Senior Social Scientist of the National Academy for Public Administration; Erwin N. Griswold, former Solicitor General of the United States; Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts; and Judge Alfred P. Murrah, Director of the Federal Judicial Center.

The program is administered by the National Academy for Public Administration using private funding from initial grants from the Ford Foundation, the American Bar Endowment and the Edna McConnell Clark Foundation.

The Program is directed to attract young talent who will not only make a contribution during their year as Judicial Fellows, but who may continue to contribute to understanding and support of the judiciary and its effective operation in the future.

Russell R. Wheeler is Assistant Professor of Political Science at Texas Tech University. He wrote his Ph.D. dissertation at the University of Chicago on "Extrajudicial Activities of U.S. Supreme Court Justices: The Constitutional Period - - 1790-1809." Professor Wheeler has done research and written for publication articles concerning the way in which Federal judges learn their craft once they are appointed (**Journal of Public Law**), the role of courts in the political system (**Judicature**), and the history of off-bench activities of Supreme Court Justices (**Supreme Court Review**).

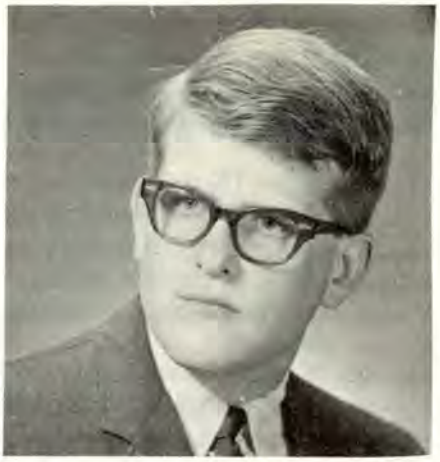
Howard R. Whitcomb heads the pre-law program and is Assistant Professor of Government at Lehigh University in Bethlehem, Pennsylvania. He wrote his Ph.D. dissertation on "The Rule of Law in the Administrative State: Judicial Review of Administrative Determinations in New York State" at State University of New York at Albany. He has published an article on the impact of the Constitutional revolution in criminal procedure on police, and has participated in a workshop on problems relating to access to public documents. He, as well as Mr. Wheeler, teaches courses in public law and judicial process.

The Fellows will work exclusively in judicial administration and not case decision-making. Rather, they will observe the courts and participate in a variety of projects, such as assisting in planning administrative surveys of district courts; studying compulsory arbitration scope and organization of the prospective U.S. Supreme Court Historical Association; evaluating the impact of the individual calendar; reviewing the feasibility of a Historic Directory of Federal Judges; assisting the Commission on Revision of the Federal Court Appellate System; studying parajudicial assistance; and studying the functioning of magistrates, probation officers, circuit executives and other parajudicial assistants.

HOWARD R. WHITCOMB

Ms. N. Darlene Walker has been chosen as an Alternate Judicial Fellow. She is a graduate of Stetson University and received her Ph.D. from the University of North Carolina and has published on public perceptions of criminal justice in that state. She is presently with the Political Science Department at the University of Houston.

Other outstanding candidates were offered and have accepted key positions with the federal judiciary. For example, Mr. Arthur D. Hellman, Mr. Kent D. Bloom, and Mr. Jerry Goldman.



RUSSELL R. WHEELER

Mr. Hellman received his L.L.B. from Yale University and his B.A. from Harvard. He was the business manager of the Yale Law Journal, President of the Law School Film Society and Advisor to the Moot Court and Barrister Union. He is presently with the Commission on Revision of the Federal Court Appellate System.

Mr. Bloom received his J.D. from the University of Iowa where he alsc received his M.A. in computer sciences. He is presently a systems analyst with Administrator, Inc. Mr. Bloom will be assisting with the experimental computerization of the U.S. Supreme Court Clerk's Office.

Mr. Goldman is presently completing his Ph.D. dissertation at Johns Hopkins University concerning the variables for success or failure in changing jurisdiction in the Federal Courts, and has co-authored publications in the area of campaign financing. He is on leave from the University of California at Davis and is presently with the Federal Judicial Center working on the district court Forecasting Study and on research matters related to the work of the Commission on Revision of the Federal Court Appellate System.

The Third Branch is *your* publication.

Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

AO and FJC calendar

Oct. 1-4 1973 - Third Conference for experienced District Court Judges, Washington, DC.

Oct. 11-12 1973 - Seminar for Bankruptcy Judges, Cambridge, Mass.

Oct. 15-19 1973 - Refresher Seminar for Probation Officers, Dallas, Texas.

Oct. 29-Nov. 1, 1973 - Management Institute for Probation Officers, Washington, DC.

Nov. 14-16 1973 - Orientation Seminar for Probation Officers, Washington, DC.

Nov. 14-16 1973 - Refresher Seminar for Magistrates, Denver, Colo.

November 15-17 1973 - Seminar for Chief Clerks of Bankruptcy Offices, Washington, DC.

Nov. 26-29 1973 - Fourth Conference for District Court Judges, Washington, DC.

Nov. 26-30 1973 - Refresher Seminar for Probation Officers, Atlanta, Ga.

Dec. 6-7 1973 - Seminar for Bankruptcy Judges, San Francisco, Calif.

Dec. 10-12 1973 - Refresher Seminar for Magistrates, Atlanta, Ga.

Dec. 15-16 1973 - Institution for Federal Court Reporters, Dallas, Texas.

Dec. 17-21 1973 - Refresher Seminar for Probation Officers, Dallas, Texas.

Jan. 7-10 1974 - Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.

Jan. 14-16 1974 - Seminar for Chief Deputy District Court Clerks Phoenix, Ariz.

Jan. 14-17 1974 - Orientation Seminar for Magistrates, Washington, DC.

Jan. 17-19 1974 - Seminar for Chief Clerks of Bankruptcy Offices, Phoenix, Ariz.

[MEETING, from page 6]

each year will be the Circuit Executive of the Chairman of the Executive Committee.

Agenda items for this half-day meeting included court assigned counsel under the Criminal Justice Act, sentencing institutes, and the role of the Circuit Executives.

The Circuit Executives joined a portion of the session, and a report on their activities was presented by Pat Doyle, Circuit Executive for the Third Circuit.

The By-Laws state that the chairmanship shall rotate each year at the spring meeting of the Judicial Conference.

THE THIRD BRANCH
VOL. 5, NO. 9 SEPTEMBER, 1973

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Bulletin of the Federal Courts

VOL. 5, NO. 10 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center **OCTOBER, 1973**

Top British Judges Visit United States

Some of the most senior and influential members of the British bench and bar spent two weeks recently visiting New York, Washington, D.C. and Williamsburg, Virginia to gain a working knowledge of the U.S. judicial system.

The Anglo-American interchange visit followed a similar visit to England by the Chief Justice and senior members of the American bench and bar last summer. The program is sponsored by the Institute of Judicial Administration.

Among key members of the English team were the Right Honorable Lord Diplock, Lord of Appeal in Ordinary, the Honorable Mr. Justice May, Judge of the High Court of Justice (Queen's Bench Division), Judge J.C. Llewellyn, Circuit Judge (Bloomsbury and Marylebone County Court) and Master I.H. Jacob, Master of the Queen's Bench Division (Central Office of the Supreme Court).

In addition, Registrar Michael Birks of West London County Court, Andrew Leggatt, Q.C. Barrister, Mr. W.M.H. Williams, Solicitor, and Professor of English Law G.J. Borrie, of the University of Birmingham, who is a Director of the Institute of Judicial Administration (Eng.), also accompanied the English team.

Among the members of the American team were The Chief Justice, Justice Paul C. Reardon of the Supreme Judicial Court of Massachusetts who is the former President of the National Center for State Courts; Judge Walter R. Mansfield of the 2nd Circuit Court of Appeals; and Assistant Presiding Judge Robert A. Wenke of the Los Angeles Superior Court. In addition, New York University Law Professor Delmar Karlen, Director of the Institute of Judicial Administration, participated as the coordinator of the U.S. team.

In New York, the English team visited a large law firm to observe how litigation is handled and also met with Chief Judge David Edelstein and other federal judges and magistrates to observe how a large metropolitan court works. They also observed motions being argued before judges, magistrates at work, and saw jury and non-jury trials conducted.

In Washington, the team visited the Federal Judicial Center where they had an opportunity to learn how the Center and the A.O. work together to improve the efficiency of the federal judicial system.

They also visited the U.S. District Court and met with Chief Judge John Sirica before lunching with Attorney General Elliot Richardson. They met some of the members of the Supreme Court during a reception at the Court before they departed for Williamsburg, Virginia, where both the British

[See BRITISH JUDGES, pg. 2, col. 1]

Mr. Justice William O. Douglas

JUSTICE DOUGLAS BREAKS LONGEVITY RECORD

Justice William O. Douglas on October 29 established a new longevity record for service on the Supreme Court of the United States of 34 years, 196 days.

The former record was set by Justice Stephen J. Field, who took his oath on May 20, 1863, and remained on the Court until December 1, 1897.

Justice Douglas, a native of Maine, Minnesota, and a graduate of Whitman College in Walla Walla, Washington, earned his law degree from Columbia University Law School in 1925. After practicing law in both New York and Washington, D.C., and teaching law, he was appointed to the Securities and Exchange Commission in 1936 and on March 20, 1939, was nominated Associate Justice of the Supreme Court by President Roosevelt. He took his

[See DOUGLAS, pg. 5, col. 3]

British and U.S. Judges met during a reception at the Supreme Court. Pictured above are, from left to right, Lord Diplock, Lord of Appeal in Ordinary; Supreme Court Justice Tom C. Clark [ret.]; and Justice Paul C. Reardon, Supreme Judicial Court of Massachusetts.

Leading members of the British Court System listen as FJC and Administrative Office senior staff members outline problems facing U.S. courts. From left to right, Sir Dennis Dobson, Permanent Secretary to the Lord Chancellor, Right Honorable Lord Diplock [Lord of Appeal in Ordinary] and Honorable Mr. Justice John May [Judge of the High Court of Justice, Queen's Bench Division].

[BRITISH JUDGES, from page 1]

and American teams convened for a comprehensive discussion of the judicial systems of both nations.

The team members of both groups during their respective visits to both England and the United States examined in detail the question of whether there is a relationship between the cost of litigation and the number of law suits filed, how parajudicial personnel and magistrates can be effectively utilized, whether a new branch of the profession--the legal executive--is being used in both countries and compared the two jury systems.

In addition, other questions examined included whether the English technique of primarily oral presentation with generally immediate decision is within the capability of U.S. judges and lawyers, why summary judgment is so common in England and so rare in the United States and whether there is a middle ground between extensive oral deposition used in the U.S. and limited discovery allowed in England. The teams also examined the problems of calendaring and delay and the virtues of individual calendars vis-a-vis master calendars.

ENFORCEMENT AGENCIES MEET AT CENTER

Under the auspices of the Department of Justice, the Administrative Office and the FJC, representatives of 10 federal law enforcement agencies met at the Center September 26th and agreed to cooperate in eliminating disparities in certain petty offense regulations.

The participants will review their respective regulations and work towards uniformity in such areas as land and building management, traffic violations, and hunting, fishing, camping and boating offenses. It is anticipated, too, that greater consistency can be achieved among the forfeiture of collateral schedules of the U.S. District Courts.

James R. Robinson of the General Crimes Section of the Department of Justice was authorized to appoint inter-agency committees to review specific agency regulations and statutory enforcement provisions. It is anticipated that following this survey, a further meeting of the group will be held to agree on changes in existing procedures. The Magistrates Division of the Administrative Office agreed to provide technical assistance and act as a clearinghouse for the exchange of information among the agencies.

Mark W. Cannon

Oregon Bar Address

SUPREME COURT AIDE CITES NEED TO MANAGE CHANGE

Pointing to the unprecedented rise in the Supreme Court's caseload in recent years, the Administrative Assistant to the Chief Justice said that the Supreme Court must continue to innovate administrative changes in order to remain a viable institution.

"If we observe contemporary human institutions, they are not static. . . But those which survive and grow in utility and strength are those which intelligently plan to manage change, rather than permit themselves to be unwitting victims of sometimes drastic externally produced change," he said.

Mark W. Cannon, the Chief Justice's Administrative Assistant, described the high court's managerial challenge in an address to the Oregon Bar Association on October 12. Mr. Cannon, the first individual to hold the post of Administrative Assistant to the Chief Justice, is in his second year in this post.

The Chief Justice's Administrative Assistant said that one of the reasons the high court has become an important institution in our system of government has been its ability to adapt administratively when faced with seemingly insurmountable problems.

From its inception, he said, the Supreme Court has been wrestling with administrative problems. For example, the first Chief Justice, John Jay, resigned to become Governor of New York and declined to return to the post five years later because he was "convinced that under a system so defective (the High Court) would not obtain the energy, weight, dignity. . . (and) public confidence and respect which as the last resort of the justice of the nation, it should possess."

Mr. Cannon said, it is "important to realize that Jay was not talking about legal issues here. He was talking about an administrative problem," basically the diversion of the Justices' time and energy into circuit riding.

He traced the major innovations which the Supreme Court has used in the past to resolve its most pressing administrative problems and said such changes as the creation of the Circuit Courts of Appeals in 1891, the 1925 act which expanded certiorari, and even the construction of the Supreme Court Building in 1935 were, initially vigorously attacked.

He said, "Again today, the Court is undergoing major changes. American judicial history records nothing comparable to the recent case growth of the Supreme Court."

For example, Mr. Cannon continued, "The number of cases the Court was asked to review last Term is almost three times more than it was 20 years ago and almost two-thirds more than it was 10 years ago. "The Court's written output was 357 opinions, including concurrences and dissents, amounting to 5,000 pages last year--more than 50 percent more opinions and twice as many pages as ten years ago."

Moreover, he said, the caseload problem facing the high court was more than mere numbers of cases--the issues raised by many of the cases now being docketed are increasingly constitutional in nature. "For example," He continued, "the number of constitutional cases handled by the Court during the last two Terms, 68 and 57, are more than twice as many as two decades ago."

To attempt to cope with the management problems facing the Supreme Court today, Mr. Cannon cited these recent administrative innovations, some in effect today, others recently proposed:

- the creation of the position of legal officer last year, providing, for the first time, a career legal staff officer for the Court.
- a third law clerk for the Justices.
- replacement of a law clerk by a career legal assistant by some Justices.
- a move toward computerization of case-processing and statistical compilation.
- the call by a Federal Judicial Center study group for serious consideration of a new intermediate court and the endorsement in principle by the Advisory Council on Appellate Justice that Congress allow the Supreme Court to refer various kinds of cases to a central division of the U.S. Court of Appeals for screening and, in some cases, disposition.
- recommendations to eliminate three-judge district courts and the corresponding direct appeal to the Supreme Court, and to eliminate statutory right of appeal to the Supreme Court.

In conclusion, the Chief Justice's Administrative Assistant said, in effect, the Supreme Court has reached a key administrative crossroad in its history: either to ignore the growing changes in the Court's workload -- and risk weakening the Court -- or "We may try to deal with the increase in the Court's workload." In essence, he said, the Supreme Court -- just as the entire federal court system today -- is searching for constructive, innovative ways "To manage change rather that be managed by it . . . ."

THE SOURCE
The Information Service of the Federal Judicial Center

- Case for creating a special environmental court system. S.C. Whitney. 14 Wm & Mary L Rev 473, Spring 1973.
- Courts. Report of the National Advisory Commission on Criminal Justice Standards and Goals. 1973.
- The defective assistance of counsel. David L. Bazelon. 42 U. Cin L. Rev 1, 1973.
- Edward S. Corwin's The Constitution and what it means today. Harold W. Chase and Craig R. Ducat. Prentice-Hall, 1973. $20.
- Expediting review of felony convictions after trial; a report of the Committee on Criminal Appeals of Advisory Council on Appellate Justice. FJC Research Series 73-1. August 1973.
- Indicators of managerial conciousness in an urban judicial bureaucracy. J.A. Gazell. 49 Denver L J 489, 1973.
- A national strategy to reduce crime. Summary report of National Advisory Commission on Criminal Justice Standards and Goals. LEAA. 1973.
- A new map for federal courts. Business Week, Aug. 11, 1973, p. 43.
- The politics of federal judicial administration. Peter Graham Fish. Prentice-Hall, 1973. $20, $9.75 (paperback).
- Practitioner's handbook for appeals to the U.S. Court of Appeals for the Sixth Circuit. 1973 (4th printing) $1 from Clerk, U.S. Ct. of Appeals, Sixth Circuit, Cincinnati, OH 45202.
- Reducing court delay. National Institute of Law Enforcement and Criminal Justice. LEAA. June 1973.
- Reintegration of the offender into the community. National Inst. of Law Enforcement & Criminal Justice. LEAA. June 1973.
- Report on sentencing practices in the federal courts in the New York City. Assoc. of the Bar of the City of NY. 1973.
- Sixth Circuit Review; weekly summary of decisions of U.S. Court of Appeals-6th Circuit. $100/yr. 1 Riverfront Plaza, Louisville, KY 40202.
- Space management and the courts; design handbook. Michael F. Wong. LEAA. Jan. 1973.
- Standards for Publication of Judicial Opinions. A report of the Committee on Use of Appellate Court Energies of Advisory Council on Appellate Justice. FJC Research Series 73-2, Aug. 1973.
- State trial courts of general jurisdiction; personal injury cases. Institute of Judicial Administration. Aug. 1, 1973.
- Videotape trials: legal and practical applications. 9 Colum J of Law and Social Prob. 363, Spring 1973.
- When should the judge state a minimum sentence? S.G. Young. 44 Penn BA Q 551, June 1973.
- Women's prisons: laboratories for penal reform. 1973 Wisc. L Rev 210, 1973.

20 YEARS OF COURT SERVICE: FORMER CHIEF JUSTICE WARREN

Chief Justice Warren E. Burger conferred the Supreme Court's 20-year-service pin on former Chief Justice Earl Warren this month.

Chief Justice Warren took the judicial oath October 5, 1953, as an appointee of President Eisenhower, and took his seat on the Supreme Court just twenty years ago this month. He retired June 23, 1969.

The Court's 20-year service pin is sterling silver. It bears a replica of the Court seal which includes the American eagle and is in many respects identical with the Great Seal of the United States. However, there is a single star, just below the eagle, symbolizing the creation of "one Supreme Court" by the Constitution. A special pin with a small diamond replacing the star in the seal was created for this occasion. The pin was a gift from the members of the Supreme Court.

The Chief Justice presents the Supreme Court's 20-year service pin to Chief Justice Warren during a ceremony at the Court this month.

Pictured at the recent seminar in Salt Lake City are, from left to right, Bankruptcy Judges: Bruce S. Jenkins, Salt Lake City; Saul Seidman, Hartford, Conn.; and Asa S. Herzog, New York City.

BANKRUPTCY RULES TAKE EFFECT

On October 1, the new rules of Bankruptcy Procedure as well as Official Forms covering general bankruptcy cases went into effect.

The rules are a result of a study of over a decade by a Judicial Conference of the U.S. Advisory Committee headed by Circuit Judge Phillip Forman (CA-3).

The rules apply to cases filed on or after October 1 and to proceedings pending on that date. However, if the court believes that it would not be feasible or fair to apply them to a pending proceeding then the previous procedures may be applied. Under Title 28, U.S. Code 2075, laws which conflict with these rules shall be of no further force or effect.

The rules are designed to simplify and clearify existing procedures. They supercede Chapters I-VII of the Bankruptcy Act and forms prescribed pursuant to 28 U.S. Code 2075.

Under the auspices of the FJC, five regional seminars for Bankruptcy Judges have either been held or are being planned by the Center to acquaint these judges with the new rules. A desk reference book covering the new rules will be prepared and distributed to Bankruptcy Judges in December.

DISTRICT COURT JUDGES CONFERENCE HELD

From October 1 through 4th the Federal Judicial Center held a conference for District Court judges who have been on the bench for five years or more.

Unlike previous conferences this one was held with open discussions scheduled for each afternoon where the participants were encouraged to go over the material from the morning session and add their comments and suggestions as well as questions.

There were a total of six seminars; topics included Class Actions, Effective Use of Supporting Personnel, 1983 Cases, Sentencing the Offender, Managing the Flow of Criminal Cases and Managing the Flow of Civil Cases. Following each of these seminars there were discussions held in three groups chaired by Judges James F. Gordon, Oren R. Lewis and Joseph P. Kinneary.

SUPREME COURT OPENS WITH RECORD CASELOAD

The Supreme Court opened its October Term early this month with its largest caseload in modern history.

If this trend continues, the Court may have the greatest number of cases docketed during a single term.

The caseload trend of the Supreme Court is sparking increased attention by such groups as the Advisory Council on Appellate Justice and the Commission on the Revision of the Federal Court Appellate System.

This month, in an address to the Oregon Bar Association, Mark W. Cannon, Administrative Assistant to the Chief Justice, analyzed the trends in Supreme Court work over the past 30 years (see story page 3).

[DOUGLAS, from page 1]

seat on the Bench April 17, 1939, and since then has written 28 books, numerous articles, and hundreds of Supreme Court opinions.

When the Court is not in session, he often spends his time at his mountain retreat near Goose Prairie, Washington, fishing, hunting, and hiking in the mountains of the Northwest. However, this past summer he traveled with his wife Cathleen in the People's Republic of China.

On November 3rd, a convocation will be held in honor of Justice Douglas in Washington, D.C., sponsored by former members of the Court, Law clerks, and other friends of the Justice. The convocation will start in the afternoon with panel discussions and conclude with a dinner that evening. Both Chief Justice Burger and Chief Justice Warren will speak at the dinner.

Chief Judge Devitt Asks:

ARE CIVIL JURIES NECESSARY?

In an address to the Second Circuit Judicial Conference in September, Chief Judge Edward J. Devitt (Dist. Minn.) proposed abolishing federal civil jury trials. Judge Devitt was the first to employ six-member juries in civil trials by local rule. The practice has been widely followed throughout the federal system with 63 districts now using juries of less than 12 members in civil cases.

Last June, the Supreme Court in **Colgrove v. Battin** (413 U.S. 149) upheld the local rule power of districts to employ civil juries of less than 12. Having witnessed a marked saving of time and money where the small jury was employed, Judge Devitt has now suggested a more sweeping proposal: abolish or substantially curtail the use of juries in federal civil cases.

"I think it is fair to say that the backlog of cases in federal courts, particularly in metropolitan centers, is due in large measure to the number of civil jury trials required by the Seventh Amendment to the United States Constitution. Very few trials are held in federal courts other than those based on diversity of citizenship. Most of these cases are negligence cases and most concern automobile accidents. Is jury trial of such cases really essential in order to secure a fair and equitable determination of the issues?"

The judge cited such areas as admiralty and maritime, naturalization and immigration, bankruptcy and habeas corpus, where judges alone handle the matter. In addition, no juries are used in the Tax Court, the Customs Court or Court of Claims. Patent matters, likewise, are tried by the court. In England, the civil jury trial has all but vanished.

Judge Devitt acknowledges that a constitutional amendment would be necessary to eliminate federal civil juries but advocates it, and calls for the bench and bar to promote public understanding of the need for the change.

While working for that change he offered preliminary steps which could help eliminate civil backlogs:

- Encourage parties and counsel to waive jury trial.
- Charge a reasonable tax as costs to a party demanding a jury.
- Increase use of arbitration and mediation methods.

Judge Devitt urged that federal trial judges, through innovations and experimentation, seek new and practicable procedures to reduce the number of civil jury trials and suggest that United States Magistrates may be of substantial help in doing so.

Jury Round-Up

- Two bills are under Congressional consideration which would require six-member juries in all federal civil trials. S. 288 introduced by Senator Scott of Virginia is pending in the Senate Judiciary Committee while hearings began (October 10) before a House Judiciary Sub-Committee on H.R. 8285 introduced by Representative Rodino of New Jersey.
- A recent court-sponsored study on juror utilization in the state and municipal courts in New York City shows that two-thirds of an average juror's time during his two-week jury service is spent waiting to be called.

The questionnaire-based report titled **"The Juror in New York City: A Survey of Attitudes and Experience"** shows $5 million being spent annually to operate the existing juror system. One-third of those called to duty never serve while women and young people are proportionately under-represented.

PERSONNEL

NOMINATION
Walter J. Skinner, U.S. District Court Judge, District of Mass., October 10.

CONFIRMATION
Allen Sharp, U.S. District Judge, N.D., Indiana, October 4.

CLAIMS COURT TO HOLD NATIONAL CONFERENCE

The U.S. Court of Claims will hold the fifth in a series of biennial judicial conferences in Washington, D.C. on November 16th. The conference will be chaired by Judge Robert L. Kunzig.

The conference's theme is "An Analysis of Jurisdiction of the Procedures of the U.S. Court of Claims---Suggestions for Improvement." Highlighting the conference will be an address by Deputy Attorney General William D. Ruckelshaus.

At this conference members of the bar will be asked for any suggestions they might have for improvement of the Court. There will also be an informal session where those attending will be able to discuss matters brought up at either the morning or afternoon session.

By tradition, members of the bench and bar of the Court of Claims have been meeting every other year. The cost of the meeting is defrayed by registration fees paid by those attending.

Further information concerning the conference can be obtained by contacting Frank T. Peartree, Clerk, U..S. Court of Claims, Washington, D.C. 20005.

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William E. Foley, Deputy Director, Administrative Office, U.S. Courts

Research Director Address:

BARRIERS AND INCENTIVES TO TECHNOLOGY TRANSFER INTO THE U.S. COURTS

In a paper presented at an international conference recently on technology transfer, Federal Judicial Center Director of Research, William B. Eldridge, analyzed the problems of transferring new technology into the field of court administration.

Director Eldridge said, "There is no area in the American social fabric that has greater incentive to seek technology transfer than the area of law, and particularly the area of court administration."

He said that both the federal and state courts today, "are faced with tremendously increased caseloads. These caseloads already outstrip the capability of court processes as now constituted.

"It is a virtual truism to point out the three possible alternatives:

- We can increase the resources for handling the caseload.
- We can reduce the number of cases permitted to enter the system, and
- We can do something different to the case once it enters the system.

"The first alternative," he continued, "ultimately would involve substantial increase in the number of judges in the court systems," but this might reduce the "honorific quality of the position, making it more difficult to draw to the bench the very best lawyers. Further, increasing the size of the court would seriously interfere with those aspects of court functioning that have a collegial quality."

The second alternative, reducing the number of cases entering the system, means either "(1) redefining certain disputes as no longer cognizable by the courts, or (2) presenting enough obstacles to involving court procedure that courts will be less often resorted to. Either approach means that the part courts play in conflict resolution would be changed, possibly drastically so."

The third alternative, altering how cases are processed after they have entered the system, "offers the most promising, most practical, least disruptive alternative. By no means do I suggest that all the problems can be met by resort to improved processing. Only that it is the first approach to be employed and that it should be fully explored and exploited so that other alternatives will be turned to only as absolutely needed and that other alternatives will be aimed directly at the problems to which they are most responsive.

"To utilize the power that might be realized from the transfer of established technology into the courts, we must have far better information systems than we now have. While a number of significant advances have been made in information systems for legal institutions in recent years, they can only be characterized as surface scratches compared to what courts have done and to what we must do.

"Forecasting provides another good example," he said. "The present lag between recognizing the need for additional resources in the federal judicial system and acquiring those resources approaches six years."

Director Eldridge said, "There is every reason to believe that the technology of forecasting that has been developed by everybody from economists to agronomists could be transferred to the court systems. The incentive here is one of immense pressure. Legal institutions simply cannot continue to respond only after the fact."

In conclusion, he said, "the greatest barrier of all is the absence of clearly articulated goals. The goal of the legal community is to achieve justice. On that point we have not a dissident voice, but when we try to move beyond that consensus, we make no progress at all. There are no agreed upon elements of justice. Consequently, we have no measures of predicting the impact of technicological innovations on our work product to guide us in selecting the best approaches."

MAGISTRATES CITE REMOVAL PROBLEMS

Several magistrates have raised three problems which they say are preventing speedy removal of defendants awaiting sentence, probation violators and defendants awaiting trial.

On October 1, 1972, attempts were made to alleviate some of these probelms by amending F.R. Cr. P. 40 to include 40 (b) (5) which now empowers district judges to authorize magistrates to issue removal warrants.

Unfortunately, as some magistrates point out, this amendment is not being fully utilized by some district judges and many magistrates are not being authorized to sign removal warrants even when defendants before them consent to removal.

Presently, if a removal warrant must await the signature of the judge, a delay of a week to ten days often results even though a defendant may be anxious to be removed and has signed a waiver.

A second removal problem cited by many magistrates involves a change in procedure after the removal warrant is issued. Although the warrant requires the Marshal to remove the defendant "forthwith", the Department of Justice, which exercises exclusive control over removal, often does not differentiate between defendants already convicted and sentenced and those awaiting trial. As a result, two to four weeks sometimes elapse between the date the warrant is issued and the actual removal date.

The third problem which some magistrates have raised is that judges and magistrates often will wait, unnecessarily, for a certified copy of the complaint, information or indictment from the demanding district before signing the removal warrant. If the defendant has also waived this requirement, the removal warrant can be issued immediately. F.R. Cr. P. 40 (b) (3).

JUDICIAL PERSONNEL SCHOLARSHIPS OFFERED

The Federal Judicial Center has announced the availability of three scholarships to selected federal judicial personnel for in-service training at the Institute for Court Management, an independent, non-profit organization which, for the past three years, has been offering extended courses in judicial administration.

The courses for which the Center will provide support, including tuition, per diem and travel costs, are ICM's Court Executive Development Programs, offered for four- and five-week periods beginning in the late spring of 1974.

Applicants for the Center scholarships will be judged on the basis of individual qualifications and potential benefit to the federal court system.

To be considered for Center scholarships, federal judicial personnel must, on their own, obtain acceptance to the ICM Program. Interested personnel are advised to contact ICM immediately (1612 Tremont Place, Suite 210, Denver, Colorado 80202; tel. 303/534-3063) for details as to the Program and requirements for admission.

All applications for Judicial Center scholarships to the 1974 ICM Programs must be received by the Center no later than April 15, 1974.

AO FJC calendar

Oct. 19-20 National Bankruptcy Conference at Washington, D.C.

Oct. 31-Nov. 3 National Conference of U.S. Bankruptcy Judges at Atlanta, GA.

Nov. 15-17 Second Seminar for Chief Clerks in U.S. Bankruptcy Judges offices held in Washington, D.C.

Nov. 16 U.S. Court of Claims National Conference, Washington, D.C.

Dec. 3-4-5 Advisory Committee on Bankruptcy Rules of the Judicial Conference at Washington, D.C.

Dec. 6-7 Regional Seminar for U.S. Bankruptcy Judges at San Francisco, CA.

Jan. 17-19 Third Seminar for Chief Clerks in U.S. Bankruptcy Judges' offices held at Phoenix, AZ.

F.J.C. BOARD APPOINTS HABEAS CORPUS, SEC. 1983 COMMITTEE

Aware of growing problems in the federal courts because of increased numbers of habeas corpus and Sec. 1983 (civil rights) filings, the F.J.C. Board resolved at its last meeting to appoint a special committee to study and recommend solutions.

Under the Chairmanship of Judge Ruggero Aldisert (CA-3), a five-member committee of federal judges will make a thorough study of all facets of these cases to develop and recommend specific techniques and procedures that might be considered by federal judges.

F.J.C. staff wil support the work of the committee, and Professor Frank Remington of the University of Wisconsin Law School has been employed as a consultant to assist on the project.

Other members of the committee are Judges Bell (CA-5), Belloni (Dist. Ore.), Kelleher (C.D. Ca.), and McGarr (N.D. Ill.).

The Third Branch is *your* publication. Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

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The Third Branch

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Bulletin of the Federal Courts

VOL. 5 NO. 11 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center NOVEMBER, 1973

Judicial Conference Report Released

The Judicial Conference of the United States has published the report of its proceedings of September 13 and 14.

Under the provisions of 28 U.S.C. 331, the Chief Justice will submit the report with its recommendations on legislation to the Congress for consideration.

Below are some highlights of the report:

The Report of the Director of the A.O. was presented to the Conference citing statistics which showed a continuing trend upward in filings at the appellate level.

There was, however, a drop in the total of civil and criminal filings in the district courts. This has not occurred since 1960.

A 2.5 percent increase occurred in civil filings, but the rate of criminal filings decreased overall, especially in the areas of immigration cases and Selective Service Act violations.

- U.S. Magistrates disposed of more than 250,000 separate matters of judicial business during the second full year of operation under the new system.
- Bankruptcy cases declined while the caseload of the Probation Service increased.
- Since the adoption of Federal Rule of Criminal Procedure 50 (b), twenty-eight of the ninety-four districts have adopted speedy trial plans consistent with the time limits suggested in the Conference's model plan. The other districts have plans with considerable variations in time lag limits.

The Committee on the Budget reported that Fiscal Year 1973 saw $183,152,000 ($2,858,000 less than had been appropriated) spent to operate federal courts, the Administrative Office and the Federal Judicial Center. Budget estimates submitted to Congress for Fiscal '74 (exclusive of the Supreme Court and supplementary appropriations) totaled $199,243,000.

The Budget Committee received Conference approval of a Fiscal '75 estimate of $213,031,000.

- Of interest was the fact that no increase was requested for Fiscal '75 in the area of juror costs. This was attributed to the widespread use and attendant savings of six member juries in civil cases and overall improvements in juror utilization.

The Committee on Court Administration recommended against promulgation of any plan for a uniform rule of admission to the bar of the courts of the U.S. With respect to attorney discipline, however, the Conference on recommendation of the committee, approved for transmittal to the Congress a draft bill which would "result in regularizing disciplinary procedures in all federal courts by permitting a court to request the Federal Bureau of

[See REPORT, pg. 2, col. 1]

Mr. William R. Sweeney

WILLIAM R. SWEENEY RETIRES

Mr. William R. Sweeney, Assistant Director for Management Affairs of the Administrative Office of the United States Courts since September 1964, will retire on December 28, 1973. His distinguished career includes twenty years in private industry, four years in active military service, and sixteen years in other government service.

In private industry, Mr. Sweeney was an executive with the J. Walter Thompson Company, and Vice President for two different electronic engineering corporations. For three years he owned and operated his own business.

He was on active military duty for approximately four years, achieving the rank of Colonel in the U.S. Air Force. He was Deputy Assistant Secretary, Management, of the U.S. Air Force; and, after leaving that position, was a special consultant for

[See SWEENEY, pg. 3, col. 3]

THE SOURCE
The Information Service of the Federal Judicial Center

- Edward S. Corwin's The Constitution and what it means today. Harold W. Chase and Craig R. Ducat. Princeton Univ. Press, 1973. $20.
- The politics of federal judicial administration. Peter Graham Fish. Princeton Univ. Press, 1973. $20, $9.75 paperback.
- Computers in legal research: more than pushing buttons. M. David Henke. 14 Jurimetrics Journal 10, Fall 1973.
- Evaluation of affadavits and issuance of search warrants: a practical guide for federal magistrates. Arthur L. Burnett. 64 J of Crim Law and Criminology 270, Sept. 1973.
- Executive officer in a unified court system. A.M. Malech. 17 Howard LJ 800, 1973.
- Post-conviction remedies in the 1970's. H.B. Eisenberg. 56 Marquette L Rev 69, Winter 1973.
- Probation officer case aide project; final report: Phase I, Phase II Center for Studies in Criminal Justice, Univ. of Chicago Law School. 1973. (Supported in part by Federal Judicial Center)
- Reports of the (Federal Judicial Center) conference for district court judges. Feb 1973: 59 F.R.D. 203, Sept. 1973; May 1973: 59 F.R.D. 415, Oct. 1973.
- Time for reviewing; measure of merit for federal district courts. 98 Commonweal 299, June 1, 1973.
- Why justice fails. Whitney North Seymour Jr. Morrow, 1973. $6.95.

[REPORT, from page 1]

Investigation to investigate charges that a member of the bar of a court of the United States has been guilty of unethical conduct or other conduct unbecoming a member of the bar..."

Under the draft bill the Attorney General could undertake the prosecution in these proceedings at the request of the specific court, or the court could opt to appoint a special prosecutor when this is more appropriate.

The Conference disapproved a proposal of the American Arbitration Association under which "some 30 persons would be trained periodically by the National Center for Dispute Settlements hopefully thereafter to serve, by district judges appointment as masters in E.E.O.C. discrimination cases.

- The Conference has exercised it authority to fix filings fees in federal courts and a detail listing of schedules is included in the report.
- A proposal (S.1629) to set up a Division of State Court Assistance within the Federal Judicial Center was disapproved by the Conference.
- The Conference approved of a proposal, and its transmission to the Congress, for legislation to amend Section 46 (c) of Title 28 U.S.C. The amendment would make it clear that a majority of the judges in regular service who are entitled to vote should be sufficient to **en banc** a case. Presently the statute is not clear as to whether the "majority" takes into consideration judgeship vacancies or disqualifications.
- As a result of Conference action, the A.O. will assume the duties previously performed by the Office of Judicial Examinations which has operated within the Justice Department.
- The Conference approved a motion to provide an assistant for each of the Circuit Executives. The Budget Committee was asked to request funds for these positions with a salary of approximately $30,000 a year.

The Review Committee advised that financial statements had been received from all but 17 judges, 4 bankruptcy referees and one magistrate for the six month period ending June 30, 1973.

On recommendation of the **Joint Committee on Standards of Judicial Conduct** the Conference voted disapproval of four bills introduced in Congress dealing with standards of judicial conduct for federal judges.

The Conference approved the adoption of Canon 7 of the A.B.A Code insofar as it relates to federal judges. The Director of the A.O. was requested to prepare and issue to all judges, referees in bankruptcy and magistrates a looseleaf binder on the "Code of Judicial Conduct for U.S. Judges" complete with index and reference material.

The Committee on the Operation of the Jury System reported that the total number of districts using automated systems for juror selection will soon reach 28.

At the recommendation of the Conference H.R. 10689 has been introduced providing for a criminal penalty for discharging an employee by reason of jury service.

The Judicial Conference authorized 9 new full time Magistrate positions and the report lists other salary and location changes. Salaries for the new positions now require Congressional approval.

It was reported by the **Committee to Implement the Criminal Justice Act** that during Fiscal Year 1973 $3,893,000 had been paid to court assigned counsel for legal assistance to over 56,000 defendants.

For the first time it cost less per case when handled by a Federal Public Defender ($274.00) than by assigned private counsel ($300.00) or a community defender organization ($323.00).

Three additional public defender offices were opened during the year, bringing the total to 11.

The Habeas Corpus Committee was requested by the Conference to consider alternate methods to reduce present abuse in habeas corpus filings.

The request came after the Conference had voted disapproval of the several bills regarding habeas corpus now before the Congress.

The Third Branch is *your* publication. Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

Participants at initial meeting of the ABA Committee on Education in Judicial Administration. L. to R.: Dean Dorothy Nelson, Chairman, [U. So. Cal.], Bernard S. Meyer [N.Y.C.], Alice L. O'Donnell [F.J.C., and Chrm'n ABA Judl. Admn. Div.], Prof. Josephine King [Hofstra U.], Dean Gordon Christenson [American U.], Prof. Leonard Emmerglick [U. Miami], and Richard A. Green, [FJC Dep. Dir.].

PROGRAM ON EDUCATION IN JUDICIAL ADMINISTRATION LAUNCHED

A new committee on Education in Judicial Administration, established by the American Bar Association's Division of Judicial Administration and assisted by the Federal Judicial Center, met last month to assess what might be done to improve the teaching of judicial administration in law schools.

The committee was started because of an awareness of a growing dissatisfaction among law school students, law school deans, professors, and others with law school curricular. Brought out at the meeting was the belief that many young lawyers entering the legal profession today are completely unaware of how a judge views his role in processing cases, the needs of effective court management, and how parajudicial personnel can assist the judges and the lawyers.

Committee members felt that most law school professors today are not meeting their obligation to instill in the students a deep sense of responsibility to see that the system works properly; that as officers of the court they should not abuse the system, but should see that the machinery available to them is used effectively and efficiently.

Dean Dorothy Nelson, (University of Southern California Law School) committee chairman has announced the launching of a sample survey which will be conducted by personal interviews at several law schools to determine just what is being taught about judicial administration, how, and in what courses. Though three universities now offer degree programs in this area, only a few law schools give even moderate treatment to the subject.

Present plans call for a small spring conference of judges and lawyers to produce recommendations on how improved teaching methods and teaching materials might be developed. Also under consideration is a project to make these improved methods and moddules available through seminars for professors teaching established courses, such as procedure, into which the subject can profitably be introduced.

Professors and deans interested in participating in the program are invited to write Dean Dorothy Nelson, University of Southern California, University Park, Los Angeles, California, 90007.

PETER McCABE APPOINTED CHIEF OF MAGISTRATES DIVISION

Director Rowland F. Kirks has named Peter G. McCabe Chief of the Division of Magistrates in the Administrative Office, effective September 17. Mr. McCabe received his A.B. degree from Columbia College in 1961 and his J.D. from the Harvard Law School in 1964.

A native of New Jersey, he joined the staff of the Administrative Office as an attorney in 1969, having previously served with the Office of the General Counsel of the Civil Service Commission and as law clerk to the Honorable Wilson Cowen, Chief Judge of the United States Court of Claims. He is admitted to practice in New Jersey and the District of Columbia and is a member of the American and Federal Bar Associations.

[SWEENEY, from page 1]

the Secretary of the Air Force and Assistant to the Dean of George Washington University.

After graduating from the Choate School in Connecticut, Mr. Sweeney received his B.A. degree in economics and Government from Harvard College in Cambridge, Massachusetts. In the early 1940's he attended the Harvard Business School for a special management training program. His other graduate work included various courses in law and electronics. In addition, he completed military courses in communications, atomic energy, guided missiles, and government contracting.

A farewell party for Bill is planned the evening of January 11, 1974. Mr. Gilbert L. Bates is accepting reservations for the event and asks that information requests be directed to him or Mr. Paul R. Tuell at the A.O.

James A. McCafferty, Administrative Office; William B. Eldridge, Director of Research, FJC and Richard A. Green, Deputy Director, FJC, converse with members of the Advisory Committee on Forecasting, Judge Alvin B. Rubin [E.D.La.] [center], and John P. Frank, Esq., Phoenix, [right] following a meeting on November 1 and 2 to identify factors influencing case filings in Federal District Courts. Other Committee members in attendance were H. Stuart Cunningham, Clerk, U.S. District Court [N.D.Ill.]; Irving Jaffe, Acting Assistant Attorney General, Civil Division; Nathaniel Kossack, National Center for Prosecution Management; Silvio J. Mollo, Chief Assistant U.S. Attorney [S.D.N.Y.] and Paul G. Ulrich, Esq., Phoenix. Present from Battelle Institute which is preparing the Forecasting Model under contract with FJC were Herbert Edelhertz and R.L. Hooper.

CA-5 JUROR UTILIZATION WORKSHOP PROJECT

The District Courts of the Fifth Circuit are now in the midst of a major program aimed at improving juror utilization throughout the circuit.

Under the sponsorship of the District Judges Association, workshops have been held for districts in Florida, Alabama and Mississippi. The three district courts of Georgia will hold their workshop on December 21 and the Louisiana and Texas Districts will hold a combined workshop on January 11, 1974.

Each of the workshops--which last one day--is being coordinated by Judge C. Clyde Atkins of the Southern District of Florida, President of the Fifth Circuit District Judges Association.

Several weeks prior to a workshop, the Federal Judicial Center conducts a study of juror utilization procedures in each court and results of this study are presented at the workshop. Center and A.O. representatives participate in each workshop to discuss statistical reporting, and general principles and procedures for improving juror utilization.

Each workshop to date has included a presentation on the effect of omnibus hearings on improving juror utilization and a discussion of the use of multiple voir dires for small districts.

In describing the workshops, Joseph L. Ebersole of the Center said "the primary ingredients of good juror utilization were best expressed by Judge Seybourn H. Lynne at the Alabama workshop. If I may paraphrase him, his message was that 'First, interest is primary. If judges are not interested, no innovation will work. Second, you must have constant communication among the judges and between the judges and the clerk's office. After studying the problem for a year we came up with the same conclusion, but Judge Lynne expresses it much more eloquently'.

Workshops alone are insufficient; follow-up is necessary to determine whether changes have been made and whether these changes are helpful. The follow-up plans include an inquiry two to three months after the workshop by the District Judges Association to discover what new procedures or changes have been adopted and monitoring of the JS-11 forms by the Administrative Office to determine what changes have occurred.

Judge Alfred P. Murrah, Director of The F.J.C., has assured each district court that if improvements do not occur as a result of a workshop, the Center will provide any additional assistance deemed necessary to develop effective procedures.

PROBATION OFFICER ORIENTATION EXPANDING

The last of five Orientation Seminars for Federal Probation Officers appointed during Calendar Year 1973 was held in Washington, D.C. in November. These seminars trained a total of 157 new officers. The program regularly consists of a five day meeting, involving group lectures given by a variety of speakers representing different segments of the legal and judicial system. The program has been expanded by the use of small discussion groups, workshops, and film presentations. Cameras, TV and video tapes are also used where probation officers act out interviews between probationers and probation officers.

In Fiscal Year, 1974, Congress appropriated funds for 340 additional officers. This increase brings the total number of probation officers serving the federal system to 1148.

Beginning in January the Education and Training Division will double the efforts of the previous year by conducting approximately eleven Orientation Seminars so that all of the new probation officers will have the benefit of the training experience.

LEGISLATION

Evidence Rules. The House Committee on the Judiciary has favorably reported a bill to establish rules of evidence in the United States Courts. The bill is H.R. 5463 and it was ordered favorably reported on November 6.

Three-Judge Court. S. 271 which will improve judicial machinery by amending requirements for a three judge court in certain cases and for other purposes was the subject of a hearing in the House Judiciary Committee on October 9 and 10, 1973.

Fiscal Year 1974 Appropriations have passed both the House and the Senate. The Senate has requested a conference with the House, but no further action has been taken.

Judicial Disqualification. On October 4 the Senate passed S. 1064, to broaden and clarify the grounds for judicial disqualification.

Pretrial Diversion. S. 798, to provide for rehabilitation of certain criminals through voluntary, community - oriented correctional programs, passed the Senate with the Judiciary Committee's amendments on October 4.

Bilingual Courts. On October 10 the Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery held hearings on S. 1724, the proposed Bilingual Courts Act. Testimony was received from Judge Manual Real, U.S. District Court, Central District California, Louis Marquez, official court interpreter, Western District of Texas, San Antonio, and others.

Federal Prisoners and Compensation for Victims of Crime

H.R. 7352, to amend Section 4082 (c) of title 18, United States Code, to extend the limits of confinement for federal prisoners, which has previously passed the House, was passed by the Senate on October 8 with an amendment adding a new section to provide compensation for victims of violent crime.

Other Congressional Action:

H.R. 3490 which will amend the Bankruptcy Act to remove the present restrictions on changes of salary of full-time referees passed the House on November 6.

The Watergate grand Jury extention bill, H.R. 10937 passed the House also on November 6. This bill will extend the life of the June 5, 1972 grand jury of the U.S. District Court for the District of Columbia. These bills are now pending in the Senate Judiciary Committee.

Bills Introduced:

H.R. 10896, to provide for amendment of the Jury Selection and Service Act of 1968, as amended, adding further definitions relating to jury selection by electronic data processing. H.R. 10897, to provide for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee for the reason of such employee's federal jury service. S. 2565, to revise and reform Title II, United States Code.

S. 2570, to amend title 28, United States Code, to establish a Labor Court. H..R. 10476, to permit payment of transcript costs for indigent litigants in certain civil proceedings before United States Magistrates.

PRELIMINARY REPORT RELEASED ON CIRCUIT REVISION

The Commission on Revision of the Federal Court Appellate System, created by an Act of Congress October, 1972 has released a preliminary report expressing it's "views concerning realignment of the judicial circuits." Under consideration is a recommendation that two new federal judicial circuits be added to the present 11.

Under this proposal, set forth in the Commission's preliminary report, the Ninth and Fifth Circuits would each be divided into two new circuits.

In the case of the Ninth Circuit the present northern and eastern districts of California would be included in one new circuit and the southern and central would be in another. In total nine western states now compose the Ninth Circuit.

The Fifth, or "Deep South" Circuit, is presently composed of six states and the Commission has three alternative plans under active consideration for its realignment.

One of the proposed Fifth Circuit plans would place Arkansas, now in the Eighth Circuit, in a new circuit with Texas and Louisiana. With that exception, the Commission recommended no other changes in circuit boundaries.

Advice and comment has been sought through a massive mailing of the preliminary report to all federal judges, senators, congressmen, county and state bar association presidents, law school deans and others. The commissioners request that any suggestions be sent to them no later than December 5, 1973, since their final report must be submitted by December 18, 1973.

In announcing the release of the preliminary report, Senator Roman L. Hruska, Commission Chairman, noted that the A.B.A. had recently called for realignment in the Fifth and Ninth Circuits recognizing the "urgent relief" needed in these areas.

Copies of the Commission's preliminary report and the accompanying press release can be obtained by contacting the Commission on Revision of the Federal Court Appellate System, 209 Court of Claims Building 717 Madison Place N.W., Washington, D.C. 20005.

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Co-editors:

Alice L. O'Donnell, Coordinator, Inter-Judicial Affairs Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U.S. Courts

CONSUMER JUSTICE INSTITUTE CALLS FOR CLASS ACTION STUDY

The National Institute for Consumer Justice which was established by President Nixon in 1971 after he called upon "interested private citizens to undertake a thorough study of the adequacy of existing procedures for the resolution of disputes arising out of consumer transactions", issued its first report this month.

The Institute which is chaired by Associate Justice Robert Braucher of the Supreme Court of Massachusetts said it had decided to focus on problems that faced consumers who suffered economic loss by paying for defective or misrepresented goods or services, recommended that arbitration be considered as one means of settling consumer grievances that cannot be settled by negotiation or mediation, that small claims courts should be available and accessible to every person and, significantly, that the use of class actions should be examined closely to determine "whether the benefits to be derived from the class action will exceed the costs, and whether a system can be devised to discourage frivolous cases and otherwise reduce the costs of effective class actions."

The Institute's report pointed out that there is a great dearth of reliable data currently available on class actions. Accordingly, the institute said, "To make an intelligent decision about the future of the class action, Congress and the state legislatures will need additional data. . . it will be necessary to know for example, what kind of monetary reward is needed to bring a plaintiff's lawyer into the market; and it will be necessary to know how, why, and for what dollar amount various kinds of law suits are settled."

The Institute recommended that the class action be subjected to continuing experimentation for five years in order to obtain sufficient data for a reliable evaluation of the effectiveness of this remedy as a technique of redressing consumer grievances.

FJC & STATE COURT CENTER ISSUE JOINT REPORTS

The Federal Judicial Center and the National Center for State Courts have jointly published two reports which were prepared by committees of the Advisory Council on Appellate Justice.

The first report, "Standards for Publication of Judicial Opinions", was prepared by the Council's Committee on Use of Appellate Court Energies. It was started because judges are generally agreed that opinion writing is a major factor in causing serious delays at the appellate level. Opinion writing, the report concludes, takes more of the judges' total working time than any other judicial task save research.

In the belief that many cases could be disposed of by a simple order or memorandum, the report is limited to that issue. It does not deal with a separate question of whether, once written, the opinion should be published.

Specific recommendations accompany the report, including the adoption of principles or guidelines which determine which opinions have or do not have "general significance to the public, the legal profession, or to advancing the functions of the law."

The second report, "Expediting Review of Felony Convictions After Trial," prepared by the Council's Committee on Criminal Appeals, states that "There is a strong public interest in expeditious review in criminal cases. It is widely believed that the deterent impact on criminal law is blunted by protracted adjudication.

"The guilty defendant should promptly be placed under supervision and, when appropriate, taken off the streets and incarcerated. The innocent defendent should be cleared without delay."

To achieve a fair and expeditious review, to be completed within 90 days from imposition of sentence, the committee recommended monitoring of criminal appeals by the appellate court, instituting a central staff of lawyers similar to that used in England and expediting the complete transcript of the trial court within 30 days after the sentence is imposed.

Both reports are available from the Information Service of the Federal Judicial Center.

F.J.C. RECEIVES "MADISON COLLECTION"

Mr. and Mrs. Albert E. Jenner, Jr. of Chicago, have donated to the Federal Judicial Center a collection of books dealing with the life and time of Dolley Madison. The "Madison Collection" which is housed in the Information Service of the Center, includes volumes about James and Dolley Madison, other presidents and their families, and historical books about early Washington. Several books in the collection were printed before the turn of the century, the oldest showing a publication date of 1837.

Friends of the Federal Judicial Center will find the volumes of special interest since the Center is located in the house which Mrs. Madison occupied for the last 12 years of her life. She died in the Madison House in 1849. Mrs. Jenner has carefully read each book and marked the references to Mrs. Madison. The Information Service is grateful to have this collection as a welcome addition to its history section.

The Jenners, longtime friends of Alice L. O'Donnell, Federal Judicial Center Director of Inter-Judicial Affairs and Information Services, made the contribution in her name.

High Chief and Mrs. Napoleone Tuiteleleapaga

SAMOAN HIGH CHIEF VISITS CENTER

Early in November the Federal Judicial Center was privileged to host the High Chief of American Samoa and his wife, Mr. and Mrs. Napoleone Tuiteleleapaga who attended Management Course for Chief and Deputy Chief Probation Officers held at the Adult Education Center in College Park, Maryland and an Orientation Course at the Dolley Madison House.

Chief Tuiteleleapaga delighted the other attendees as he explained the differences in customs and cultures between Samoa and the United States. He also provided them with useful information on the workings of the probation System in his country.

COUNCIL OF STATE COURT REPRESENTATIVES MEET

The Board of the National Center for State Courts called into session for the second time its Council of State Court Representatives. The Council is made up of one representative for each state as well as the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

The function of the representatives, who are designated by their states, is to maintain close liaison ween the state judicial systems, Board and officers of the Center Advisory Council. In addition, the Council participates in the election of members of the Board.

This month's meeting was held in Williamsburg, Virginia, the site selected for the Center's headquarters. The Council members discussed in group sessions and in their plenary sessions such matters as federal funding assistance to state courts, pending legislation affecting the state courts, how they might support the work of the State Center, and endeavored to identify major state court problems.

At one session Chief Justice Charles R. Donaldson (Idaho) said he felt the State Center could fill a great void by providing a forum for individuals concerned about the state courts, and acting as a vehicle to make known enunciations brought forth at their meetings. The Chief Justice pointed out that until the creation of the State Center no organization existed for this sole purpose--to serve the judiciary of all the states and to work cooperatively with them in developing improved judicial administration.

Governor Linwood Holton of Virginia addressed the Council and expressed again his continuing support, not only while governor but on return to private life in his state.

Chief Justice Edward Pringle of Colorado addressed a luncheon session and reminded those present of their serious responsibilities to their courts. He concluded with: "The ultimate purpose of the judicial system is, to provide, even handedly and with dispatch, true justice for its citizens in controversies among themselves or with their governments"

Justice Louis H. Burke, President of the Board, referring to the work of the Center's staff, and in particular to the report of the Director, Edward B. McConnell, commented that it was "phenomenal to hear of the many accomplishments of the staff, and how quickly they had come about."

PERSONNEL

ELEVATIONS

James C. Turk, Chief Judge, U.S. District Court, W.D., Va., October 24, 1973.

William M. Taylor, Jr., Chief Judge, U.S. District Court, N.D. Texas, October 16, 1973.

Marshal A. Neill, Chief Judge, District Court, E.D. Washington, November 17th.

NOMINATIONS

William C. Conner, U.S. District Judge, S.D.N.Y., November 9.

Richard Owen, U.S. Dist. Judge, S.D. of New York, November 15th

APPOINTMENTS

Allen Sharp, U.S. District Judge, N.D. of Indiana, November 1

DEATHS

Robert Ewing Thomason, U.S. District Judge, W.D. of Texas, November 11th.

James C. Connell, U.S. District Judge, N.D. of Ohio, October 30th.

F.J.C. Sees The Need

CENTRAL FILE FOR LOCAL RULES STARTED

The Information Service of the Federal Judicial Center soon hopes to have assembled in its offices copies of all local rules for U.S. District Courts and Courts of Appeals.

In a recent revision to the Manual for U.S. District Court Clerks (Section 213.3), each court is directed:

"Whenever local rules are adopted or amended, copies of the new or amended rules should be distributed as follows: 2 copies to the library of the Supreme Court of the United States ..., 1 copy to the Comptroller

[See RULES, pg. 8, col. 2]

AO FJC Calendar

December 1 Seminar for Personnel of the First Judicial Cirucit, Boston, Mass.

December 3-4 Advisory Committee on Civil Rules (of the Jud. Conf.), Washington, D.C.

December 3, 4, 5 Advisory Committee on Bankruptcy Rules of the Judicial Conference at Washington, D.C.

December 3-7 Refresher Seminar for U.S. Bankruptcy Judges at San Francisco, Ca.

December 10-12 Refresher Seminar for Magistrates, Atlanta, Ga.

December 15-16 Meeting of the Board of F.J.C.

December 15-16 Institute for Court Reporters, Dallas, Texas

December 17-21 Refresher Seminar for Probation Officers

January 7-8 Ad Hoc Committee on Habeas Corpus (of the Jud. Conf.) San Francisco, Ca.

January 7-10 Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.

January 9-11 Committee on Administration of Criminal Law (of the Jud. Conf.), San Francisco, Ca.

January 10-11 Subcommittee on Judicial Improvements (of the Jud. Conf.) Laredo, Tx.

January 21-24 Federal Public Defenders Seminar, Phoenix, Ariz.

January 24-25 Committee To Implement the Criminal Justice Act (of the Jud. Conf.), Phoenix, Ariz

January 25 Probation Committee (of the Jud. Conf.), Washington, D.C.

January 28-29 Committee on the Operation of the Jury System (of the Jud. Conf.), San Antonio, Tx.

January 28 Magistrates Committee (of the Jud. Conf.), Phoenix, Ariz.

[**RULES, from page 7**]

General of the G.A.O., 4 copies to the Administrative Office of the U.S. Courts, 2 copies to the Director of Libraries, Dept. of Justice, and 2 copies to the Library of the Federal Judicial Center."

To hasten the collection of the rules at the Center, letters were sent on Oct. 26 to all Clerks of Court, District and Circuit, requesting two copies of their local rules.

Mrs. Sue Welsh, Information Specialist at the Center, reports that all the Circuits have responded and approximately 80% of the districts have co-operated to date.

THE THIRD BRANCH

VOL. 5 NO. 11 NOVEMBER, 1973

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
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Bulletin of the Federal Courts

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LAWYERS ON TRIAL

Thanks to the Louis Nizers in real life and the Perry Masons in fiction, the American trial lawyer enjoys a certain mystique. The art of the surprise witness, the withering cross-examination, the sudden objection phrased in arcane formulas—all seem to bespeak a profession based on elaborate training and requiring consummate skill. And, in fact, the best American trial lawyers are very good indeed. But the blunt truth is, as Chief Justice Warren E. Burger maintained last week, that out of the 375,000 lawyers in the U.S., as many as half may be incompetent to try a case in court.

The problem of the competence of American trial lawyers has long been recognized, but the legal profession has rarely discussed it in public. Burger's attack delivered a resounding blow to that gentlemen's agreement. "We are more casual about qualifying the people we allow to act as advocates in the courtroom than we are about licensing electricians," declared the Chief Justice in a scathing lecture at New York's Fordham Law School. "No other profession is as casual or heedless of reality as ours."

THIS ARTICLE HAS BEEN REPRINTED, WITH PERMISSION, FROM THE FROM THE DECEMBER 10 ISSUE OF NEWSWEEK.

Cuckoo: Burger's denunciation of the state of trial practice evoked instant and near-total agreement from top lawyers and judges. "I used to go into the courtroom in the morning with an empty feeling in my stomach that here comes a couple more cuckoo lawyers," says retired New York Judge Samuel Leibowitz, himself a prominent advocate before moving to the bench. Adds Houston's blunt-spoken Percy Foreman, "There aren't two lawyers out of a hundred who can hold their own in court."

Every trial lawyer or judge has a catalog of horror stories about courtroom blunders. Burger recalled that he once walked into court and observed a half-empty whiskey bottle, which was to be used in evidence, on the counsel table. "The young prosecutor did not know," said Burger, "the simple rule that an 'inflammatory' exhibit, such as a weapon, or a bloody shirt, or even a whisky bottle, is to be kept out of sight until it is ready to be introduced." And it is usually the client who suffers at the hands of a lazy or incompetent lawyer. Houston attorney Joseph Jamail, who has won four negligence-suit verdicts of more than a million dollars each, recently was called for advice by a Florida man who had lost a leg in an accident; because the victim's lawyer had not bothered to check an elementary theory of proof, the man collected nothing. "The way the lawyer tried the case was just less

[See LAWYERS, pg. 3, col. 1]

ERWIN N. GRISWOLD

PROPOSAL: THE CREATION OF A NATIONAL PANEL OF THE U.S. COURT OF APPEALS

An Interview with former Solicitor General of the United States, Erwin N. Griswold

There are few members of the bar who are more well known than former Solicitor General Erwin N. Griswold. A former Dean of the Harvard Law School and until recently, the Solicitor General of the United States, Mr. Griswold is in a key position to analyze the nation's judiciary and more specifically, the problems of the Supreme Court's mounting caseload.

As a member of the Advisory Council for Appellate Justice, he recently proposed that a National Panel of the U.S. Court of Appeals be created not only to relieve the Supreme Court of some of its caseload problems but provide a forum for establishing additional

[See GRISWOLD, pg. 2, col. 1]

[GRISWOLD, from page 1] nationally accepted law which would be binding on all other federal courts, and on state courts as to federal questions, subject only to review by, or later decision of, the Supreme Court.

In the following interview, Mr. Griswold discusses this proposal and also comments on other problems facing the federal judiciary today.

What is the major problem facing the federal judiciary today?

There is one massive problem which is overcrowding--too big a caseload to be handled by the present manpower and facilities.

What is generating this caseload especially at the federal Court of Appeals level?

Well, the Supreme Court is generating a great deal of it--much of this, I think, is highly desirable--but the Supreme Court, through its decisions has let down all the old barriers with respect to standing and mootness. As a result of decisions by the Court, the whole frame of mind and atmosphere of the public and many lawyers is that whenever there is anything they don't like about the government, go to court, go to court, go to court, let the courts decide everything, and that, I think, is a great mistake. That doesn't mean that the court can't change its approaches, but if these changes are desirable, they are a considerable part of the reason why we have an increased caseload. Two thirds of the cases decided on the merits by the Supreme Court last year were civil liberties cases. I don't say that was bad. It's a major trend, but it also means that the ordinary commercial case has little prospect of being heard by the Supreme Court, where in 1890, 80% of the cases were commercial cases or interstate commerce controversies, or things of that kind.

What solution do you suggest to alleviate this problem?

I have proposed one which I call a National Panel of a single United States Court of Appeals. There would be many regional panels which would hear the run-of-the-mill cases, but they might also hear cases which are surely going to go to the Supreme Court anyhow. However, it seems to me that if we had a National Panel with authority to speak for the whole country, its decisions would be binding on all Courts of Appeals just as the Supreme Court's are; that it could decide a great many cases which are not worthy of the time and attention of the Supreme Court. For example, the **Cartwright** case was decided by the Supreme Court last year which involved the world-shaking question whether mutual fund shares in the estate of a decedent should be valued at the higher price or the lower price. It was simply a question that had to be decided. It comes up ten, if not hundreds of thousands of times a year, and lawyers and revenue agents just ought to know what they should do. As long as it's uncertain, they have to squabble about it, have to litigate, settle or negotiate, and this takes a great deal of time. In fact, I would say that one of my criticisms of the Supreme Court over a long period of years is that it seems to have no feel for and no sensitivity to, the administrative problems which its decisions create.

For example, last spring we filed a petition for certiorari in cases involving the question whether an intern in a hospital is an employee and taxable, or whether he is receiving a scholarship, a large part of which is not taxable. The Court denied certiorari, making it plain that it regards that as a jury question. Well, the result is that nobody can advise any intern; nobody can ever know what the rule applied is; no revenue agent can administer the law; no lawyer can tell the intern that you are or are not taxable until this has been taken and tried before some trier of the facts. Well, it seems to me that this simply ought to be a rule one way or another about interns who are doing the work of the hospital. My view would be that they are employees and are taxable, but I don't much care.

Then this National Panel could conceivably handle this kind of dispute?

The National Panel could handle this kind of thing which is not worthy of the time and attention of the Supreme Court.

Would this idea of a National Panel be politically feasible? There was major criticism of one of the major proposals of the Freund Committee. Would your proposal have more political feasibility?

I don't see why there should be any political opposition to this. Incidentally, in my view, this should not be done by simply assigning judges from the Courts of Appeals to come in and have a pleasant three months in Washington. There should be a permanent National Panel, permanent in the sense that the Supreme Court is permanent, that is, that people should be appointed to either the regional panels or to the National Panel.

Similar to the Court of Claims?

Like the Court of Claims, yes. I would like to see 5 judges, not 3. Some people have said there should be 15, and they should sit in panels of 5, but I don't think so because I want to get some certainty from the National Panel on relatively unimportant questions that ought to be decided on a nationwide basis as you get from the Supreme Court. Everybody knows that over a period of a generation the Supreme Court moves various ways, but from year to year, you can rely pretty well on recent decisions of the Supreme Court.

Do you see any other possibilities of alleviating this problem? For example, what other proposals did you consider before coming up with this proposal for the National Panel? Did you have any alternatives?

No, I didn't. The National Panel will not help with the informa pauperis question. A great deal of the opposition to the Freund Report came because the intermediate court could stop all access to the

[See GRISWOLD, pg. 4, col. 1]

[LAWYERS, from page 1]

strenuous for him," says Jamail in disgust.

Any lawyer is presumed to be as qualified to try a case in court as to undertake any other professional task, such as drafting a will or negotiating a contract. But the special skills of courtroom practice are largely ignored by many law schools, and no apprenticeship program after graduation is required.

"The difference between an office lawyer and a trial lawyer is as great as between an internist and a surgeon," says New York attorney Nizer. "Both require high talents, but the specialized skills and tools are so different that they may as well be in different professions." Any doctor can, in fact, perform surgery; but fewer than 12 per cent of the nation's 350,000 physicians have been certified by the surgical specialty boards. No equivalent certification exists for trial lawyers.

One reason for the low quality of some trial lawyers is that, with rare exceptions, money and prestige in the legal profession seldom come from trying cases. The richest lawyers are the ones who save millions of dollars in taxes for corporations or manipulate intricate real-estate developments.

In Great Britain, which Chief Justice Burger pointed to as a possible model for reform of the American system, a sharp distinction is drawn between trial lawyers and other attorneys. There, a "solicitor" handles all forms of legal affairs except trials; only a robed, bewigged "barrister" can argue a major case in court. A barrister does not even meet his client until he is called in by the solicitor on the eve of trial.

Medicine: A British law graduate must be apprenticed to a barrister for a year before being called to the bar. Burger believes that aspiring U.S. trial lawyers should spend much of their third year of law school and a period after graduation studying with expert advocates before being approved for trial work. Foreman recommends that the legal profession should follow medicine's lead by requiring a residency and internship process before admission to the bar.

Many American lawyers would disagree; they have long prided themselves as generalists, able to perform any legal task. But change may be under way. "The problems are there, and we ought to attack them any way we can," says American Bar Association president Chesterfield Smith. He plans a national conference on trial practice next year.

NOTE

Many readers of The Third Branch are probably aware of the talk the Chief Justice delivered on November 26 at Fordham University Law Center. The article reprinted above is typical of the extensive press coverage the Chief Justice's remarks received.

Because a printed copy of the Chief Justice's lecture was not immediately available, there were some inevitable inaccuracies in the coverage. Most notable is the misconception that the Chief Justice suggested using the British "Barrister-Solicitor" system as a "Model" for the American legal profession. In fact the Chief Justice merely urged the American legal profession to recognize some assumptions of the English system that "are sound and sensible whether applied to the English system or to our own." Noting in the printed version of his talk that "we cannot have, and most emphatically do not want a small elite, barrister-like class of lawyers" in this country, the Chief Justice called instead for apprentice programs for aspiring advocates, and the establishment of minimum standards that a lawyer would have to meet before being certified as an advocate in trials of serious consequence.

$550,000 SAVED

JUROR UTILIZATION FIGURES RELEASED

Federal Judges and Clerks of Court are soon to receive the **1973 Juror Utilization in the United States Courts** report which is prepared by Operations Branch, Division of Information Systems of the A.O.

In the preface, A.O. Director Rowland Kirks states, "Besides providing these reports on juror utilization, the federal judiciary is taking a hard look at ways to continue the improvement of jury service."

The report provides a ten-step checklist of factors which can effect a high or low juror usage index.

Drawing on statistics furnished by the various Court Clerks, the report, in each of its four parts, shows the efficiency of the courts in using jurors and the progress that has been made in juror utilization over the past three years.

The pull-out back cover allows a district to compare itself with pertinent national averages. Through better juror utilization methods, the courts were able to save taxpayers an estimated $550,000. The national average juror cost per day for jury trials has fallen from $514 in 1972 to $498 this year.

A significant factor in this saving was a continued drop in "unused jurors" from 32.8% in 1971 to 28.4% this year.

The report anticipates that, "Further reduction should continue with the implementation of Multidistrict Juror Utilization Seminars sponsored by the Federal Judicial Center, together with the availability of Staff from the Administrative Office to provide guidance in the use of jury pool formulas and jury trial scheduling."

The Third Branch is *your* publication. Please send articles or story ideas to the editor for publication consideration. Also, editorials from local newspapers are requested.

Bulletin

THE JUDICIAL FELLOWS PROGRAM, 1974-75

The Judicial Fellows Program, entering its second year, invites applications from highly talented young professionals with multi-disciplinary skills and at least two years of professional activity who wish to spend a year gaining broad first-hand experience in Federal judicial administration. Application materials should be mailed by February 15, 1974. Further information can be obtained from Mark W. Cannon, Executive Director, Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543.

ATTENTION CHIEF PROBATION OFFICERS:

There will be an Orientation Course for Newly Appointed Probation Officers the last week in January. Please alert your officers who entered on duty in January to attend on short notice. Invitations are being sent.

[GRISWOLD, from page 2]

Supreme Court. So you will find in this proposal that I favor allowing people to file in the Supreme Court, but building up their staff there, headed by people with judicial status, either retired judges, or assigned judges, or judges appointed for that purpose who would examine these, review them, report to the Supreme Court, subject to the direction and control of the Supreme Court in all respects, but with the hope that the individual justices might not have to look at more than a hundred of them rather than over 2,000 which are now filed.

Turning to another subject, what are your views on the proposal put forth by the Chief Justice and echoed by Judge Irving Kaufman to increase the courtroom abilities of a great portion of the bar which both the Chief Justice and Judge Kaufman believe is a major problem today. First, do you believe there is a major problem?

Yes, I think there is a substantial problem. I think a great many people who undertake to appear in court do not do it very well. I'm not sure that it is a question of training or if they would do it any better if they had more training. I think it very well may be in part that they are not very well qualified for it and ought not to undertake court work. I think that the development of some kind of an appellate bar in the country would be desirable.

However, I would disagree that this should be done at the expense of basic education. I am strongly opposed to cutting down legal education from three years to two years or to diverting the whole third year to so-called clinical work. I have the quaint view that a lawyer's work is never done. Of course, there are a lot of practical things he must learn after he leaves law school, and I'm entirely willing to organize and regularize that.

If we could take steps to develop a tradition that court work is rather specialized, and not everybody should undertake it, I would think that was highly desirable. But I'm particularly opposed to focusing the whole third year on so-called clinical legal education because my best guess is 80% of all lawyers never appear in court at all, and the elaborate courtroom training is not only wasted, but most of them aren't very well qualified to take it.

You had a unique opportunity as Solicitor General to observe the Supreme Court. What other changes did you observe other than the dramatic shift, you might say, in the kind of cases the court has been accepting?

Well, there are some things that I don't like--the multiplication of law clerks making it a bureaucratic job rather than an individual job. As a result, there is a great increase in the length of opinions which I think is undesirable, and I feel that it is a consequence because I think there are more people around to do more research. I'm not suggesting that the law clerks are writing opinions. I don't think that at all. But more material is coming to the justice, and this may be, in part, a consequence of what the court feels to be the failure of counsel, and more and more justices are relying more on their law clerks to dig out information that counsel might well have provided. I happen to feel that because of the pressure of cases, the reduction of argument time to a half an hour for each side is unfortunate, at least when applied as sweepingly as it is now.

Did you feel that was greatly inhibiting?

Yes. I found that it was very difficult to make an adequate presentation of a complicated case. Most of the cases I had--not all, but most of them--had either numerous points in them or were complicated in one way or another. Now, it is true that the court will quite freely give ten or fifteen extra minutes if you ask for them; nevertheless, you hate to ask.

Did you find the job running the solicitor general's office constantly changing while you were in that position?

No. Except that I do think that the existing pressures are such that a good many cases are not taken to the court that might well be; cases that fully merit the attention of a court like the Supreme Court if the Supreme Court had more time.

For example?

The Alaska pipe line case. I think that was a case of national importance that a Supreme Court ought to have decided. They probably ought to have affirmed it. But it ought to have been decided, it seems to me, on a national basis.

One other problem of the Solicitor General is that he is constantly saying no to agencies of the government--not so much the Justice Department--but the National Labor

Relations Board, and the Federal Trade Commission and Securities and Exchange Commission because he feels that the agency's petition will probably be denied. If he gets the reputation among the court of filing petitions that aren't absolutely clear grants, that will impair his standing when he has a clear case. I think that in twenty percent of the cases where I said no, I think that the system should have enabled me to say yes. Incidentally, this is leading to repercussions. There is great pressure in Congress to give all agencies authority to file their own petitions. I testified against this during my last Congressional appearance. They put a rider on the Alaskan Pipe Line Act which, in effect, allows the Federal Trade Commission to go before the Supreme Court. I wouldn't be surprised that as a result of this, the Supreme Court is going to get forty or fifty more petitions a year from these agencies because the Solicitor General won't be able to control them.

The Solicitor General then won't be able to act, in effect, as a traffic policeman?

They, in effect, have forced him to be too strict so that his position is becoming untenable and is subject to criticism and complaint. I don't want to put it in the past tense because I hope that in the long run the Solicitor General's office may be able to hold its basic control over these things, but it's not easy because the Court has such a strict standard that the Solicitor General's position is very difficult.

Part of the backlog in the Federal system has been attributed to the great number of diversity cases. Do you think it might be wise to cut back on some of this federal jurisdiction?

We ought to eliminate diversity jurisdiction. I'm not sure how important that actually is. Of course, another way to deal with it is to promote the whole no-fault concept which ought to reduce the amount of litigation generally and, therefore, the amount of diversity litigation.

Take most of the automobile litigation out of the courts?

Yes. Well, suppose we handled the workmen's compensation cases in the courts. There must be a hundred thousand cases a year of one kind or another which are now handled administratively. I don't know any reason in the world why we can't get most of the automobile cases out of court.

Do you think there is enough support among the judiciary and the bar for a major overhaul of the federal appellate system?

I think there's very little support. The bar generally opposes any change of any kind no matter how good it is, and it's usually only because of special circumstances of some kind or another that it is finally put across and more often because some person, sometimes a Congressman, just decides this is what he wants to do, and he sticks with it until he gets it through.

Do you feel it's necessary to revise the federal circuits geographically which is now being done by the Commission on Revision of the Federal Court Appellate System?

Well, I think that fifteen judges in the Fifth Circuit doesn't make any particular sense, and I don't know how many there are in the Ninth but I also know that the Ninth seems to have no feeling for intra-circuit harmony. Now, if you end up with twenty-seven circuits and don't have some kind of a National Panel you just multiply the conflicts and the chaos. I don't think that dividing the circuits is a panacea, by any means, and I'm sure that it may help in some respects. But it will bring in new problems particularly for the Supreme Court.

Would the National Panel that you propose actually be another tier in the appellate system?

No. The case would not go from a regional panel to a National Panel. There would have to be some kind of selection under rules made by the Supreme Court or made by the national panel under which a case when it came from the District Court would either go to a regional panel or would go to the National Panel and, in either event, review would only be by the Supreme Court.

You've eliminated the criticism of cutting off access to the Supreme Court?

Yes, everybody would have access to the Supreme Court just as much as ever except that I would venture the thought that the Supreme Court would almost never grant a petition from the National Panel.

[See GRISWOLD, pg. 7, col. 1]

PERSONNEL

Nominations

Albert J. Engel, U.S. Circuit Judge, 6th Cir., Dec. 5
Russell James Harvey, U.S. District Judge, E.D. Mich., Dec. 5
Herbert J. Stern, U.S. District Judge, D.N.J., Dec. 7

LOW CONVICTION RATE NOTED IN DRAFT LAW CASES

Recent figures released by the Administrative Office of the U.S. Courts for fiscal 1973 show a marked decrease in the conviction rate of defendants charged with Selective Service Act violations.

Of 3,496 defendants charged only 977 were convicted and sentenced. The various District Courts dismissed 2,338 of the cases brought and another 180 defendants were acquitted by either judge or jury.

Of the 977 defendants convicted and sentenced, 631 had entered pleas of guilty or nolo contendere, leaving 253 convicted by the Court and 93 convicted by jury. 707 of those defendants convicted were placed on probation and 7 received only a fine.

The average sentence for those 260 defendants who were imprisoned was 17.5 months.

THE SOURCE
The Information Service of the Federal Judicial Center

- ABA minimum standards for criminal justice - a student symposium. 33 La L Rev 541, Summer 1973.
- The anarchy of sentencing in the federal courts. William James Zumwalt. 57 Judicature 96, Oct. 1973.
- Changing times. T.C. Clark. 1 Hofstra L Rev 1, Spring 1973.
- Computerized legal research: one law firm's user experience. Richard M. McGonigal. 46 Ohio Bar 1615, Nov. 26, 1973.
- Computers and the legal profession. J.L. Garland. 1 Hofstra L Rev 43, Spring 1973.
- The education of judges. Hugh Jones. 4 ALI-ABA CLE Rev., Nov. 2., 1973.
- Eighth Circuit: 1971-1972. 57 Minn L Rev 1105, June 1973. (Collection of Comments on 8th Circuit Decisions)
- Federal magistrates - relief for the federal courts. Lawrence S. Margolis. 12 Judges' J 85, Oct. 1973.
- Judicial reform: solid progress but a long road ahead. 31 Cong. Q 3025, Nov. 17, 1973.
- The nondangerous offender should not be imprisoned; a policy statement. Board of Directors, Nat'l Council on Crime and Delinquency. 19 Crime & Delinq. 449, Oct. 1973.
- Pretrial disclosure of federal grand jury testimony. William J. Knudsen, Jr. 60 FRD 237, 1973.
- "The problem child" – whose problem? David L. Bazelon. (Address before American Academy of Child Psychiatry, Oct. 20, 1973)
- The special skills of advocacy; are specialized training and certification of advocates essential to our system of justice? Warren E. Burger. (Fourth John F. Sonnett Memorial Lecture, Fordham U. School of Law, Nov. 26, 1973).
- Technology and the court. Thomas J. Moran. 12 Judges' J 98, Oct. 1973.
- Toward better court organization. Carl McGowan. 59 ABA J 1267, Nov. 1973.
- Tribute to Chief Justice (N.J.) Arthur T. Vanderbilt. VI IJA Report 6, Oct. 1973.

EDUCATION AND TRAINING DIVISION ROUNDUP

In an effort to improve the interviewing techniques of newly appointed probation officers, the Education and Training Division has devised a new method of training. Using the Center's videotape and playback equipment, the new approach is what educators call role playing. In a workshop setting two men are selected, one to play the part of the probationer and the other, the probation officer. A general scenario is described by the instructor but the main portion of the skit is improvised by the officers themselves. After a period of about five minutes the skit, which had been videotaped, is played back for the group. With the use of stop action on the recorder, the instructor and group critique the methods of the officers. This effective teaching technique illustrates good and bad interviewing methods. It is also useful to show how psychological ruses and expressions can have a profound effect on the interview.

BEN MEEKER JOINS CRIMINAL JUSTICE CENTER

Ben Meeker, who retired last June from his position as head of the Federal Probation Office of the U.S. District Court, Chicago, Illinois, has accepted a part-time position as Research Associate and Administrator of the Center for Studies in Criminal Justice at the University of Chicago Law School. The Center was founded in 1965. It is funded by the Ford Foundation and other grants and is co-directed by Law School professors Norval Morris and Frank Zimring. Research projects sponsored by the Center have included a survey of capital punishment; an analysis of the Illinois jail system; half-way houses for adults and juveniles; juror aid services; the relation between guns, knives and homicide in Chicago and more recently, a comprehensive research and demonstration project on the use of Probation Officer Aides, including some ex-offenders employed by the Federal Probation Office of the Northern District of Illinois.

A MESSAGE FROM

THE CHIEF JUSTICE

It is a pleasure to extend Holiday greetings to everyone in the Federal judiciary.

The Holiday season is traditionally one of thanksgiving, of introspection, and of resolution. We can fairly look with satisfaction and pride on significant progress during the past year in handling the many new and enlarged challenges and responsibilities.

In 1972 and 1973, the Federal courts disposed of more cases than at any other time in history. We extend our thanks to the judges and courts staffs whose dedication and effort produced these results, often at the expense of longer hours and reduced vacations.

I hope we can continue to build on the efforts of this past year and continue to provide equal justice for all, to the end that all Americans will accept the rule of law as the indispensable basis for a civilized social order. This will assure open opportunity for each person to develop his or her native talents by individual work and a sense of personal responsibility.

Mrs. Burger joins me in wishing each of you a Merry Christmas and all the best for the New Year.

[GRISWOLD, from page 5]

We should still have three tiers of federal courts. But the intermediate tier should be a single United States Court of Appeals. This court will have many panels, and most of the panels would be regional panels, essentially indistinguishable from the present United States Courts of Appeals. Presumably, there would be more than ten such panels, in accordance with the proposals which may be made by the presently existing Commission on the Organization of the Appellate Courts. Judges would be appointed to the United States Court of Appeals, but most of them would be designated, on appointment, to the regional panel where they reside, and they would not sit on any other panel, except on special designation by the Chief Justice to meet emergency situations. It is important, I think, to have reasonably well established panels, so as to develop some stability and continuity of decision in the various regional panels.

Most cases would go to the regional panels, with three judges sitting, as now. This would include nearly all criminal cases on direct review, nearly all diversity cases, and other types of cases turning largely on their facts, or without any general or national significance.

In addition, however, there would be a National Panel of the United States Court of Appeals. This would not be a fourth tier, as it would be wholly correlative with the regional panels, and cases would be assigned either to the regional panel, or to the National Panel, according to the nature of the case. The method of assignment presents some difficulty. My suggestion would be that the assignment should be made by the Chief Judge of the United States Court of Appeals, pursuant to rules established by the National Panel, or perhaps by the Supreme Court. The objective would be to assign to the National Panel--which might consist of five judges, sitting together--cases where a nationally applicable decision is desirable. The decision of the National Panel would be subject to review by the Supreme Court on certiorari, just as would be the decisions of any other panel of the United States Court of Appeals. But, unless so reviewed, the decision of the National Panel **would be binding throughout the United States**, and would establish the law of the United States, binding on all other federal courts, and on state courts as to federal questions, subject only to review by, or later decisions of, the Supreme Court.

LEGISLATION

On November 27, the President signed the fiscal 1974 Appropriations Act for the Judiciary, Public Law 93-162.

The bill which extends for an additional six months, the life of the June 5, 1972 grand jury of the United States District Court for the District of Columbia (the so-called Watergate grand jury) was signed on November 30, 1973, Public Law 93-172.

CONGRESSIONAL ACTION

The Senate has passed with amendments, H.R. 9256, which will increase the government's contribution to the cost of health benefits for federal employees. The present contribution is 40 percent which would be increased to 55% under the Senate version and 75% under the House version. The bill is now in conference.

THREE-JUDGE COURT BILLS: S. 271, "to improve judicial machinery by amending the requirement for a three-judge court in certain cases, and for other purposes" has passed the Senate and is pending before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee. Hearings were held October 10.

S. 663, "to improve judicial machinery by amending title 28 U.S.C., with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes" passed the Senate November 16 and has been referred to the House Judiciary Committee.

STATUS OF PENDING LEGISLATION:

H.R. 10539 will increase from $25 to $35 the maximum per diem allowance for government employees travelling on official business and will increase from $40 to $50 the amount necessary in unusual circumstances. The bill was introduced September 26 and is pending before the Committee on Government Operations.

S. 597, "to provide for the appointment of additional district judges, and for other purposes," is pending before the full Senate Judiciary Committee.

H.R. 2055, to amend Title 5, U.S.C., to authorize the payment of increased annuities to secretaries of justices and judges of the United States is pending before the House Post Office and Civil Service Committee, Subcommittee on Retirement and Employee Benefits. The bill would place secretaries to justices and judges on the same basis as congressional secretaries.

Six-Member Jury Legislation:

S. 288, which would reduce both criminal and civil juries to six members, and S. 2057, to reduce jury to six in **civil** cases only and (1) reduce peremptories from three or two; (2) give judge discretion in multi-party cases in respect to the number of peremptories; and (3) affirmatively require unanimity of verdicts. These bills are pending in the Senate Judiciary Committee Subcommittee on Improvements in Judicial Machinery.

H.R. 8285 which would reduce the jury to six in **civil** cases only and would reduce peremptories from three to two, was the subject of a hearing in the House Judiciary Committee on October 10.

H.R. 7723, to provide for a within-grade salary increase plan for secretaries to circuit and district judges of the courts of the U.S. and for other purposes. Hearings were completed September 14 before the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee.

S. 2455, to amend Title 28, U.S.C., to change the age and service requirements with respect to the retirement of justices and judges of the United States. This bill provides for retirement eligibility at 70 with 10 years service, 69 with 11 years, age 68 with 12, age 67 with 13, age 66 with 14, and age 65 with 15 years service. It is pending before the Senate Judiciary Committee, Subcommittee on Judicial Machinery.

H.R. 3324, the companion bill in the House is pending before the House Judiciary Committee, Subcommittee on Monopolies and Commercial Law.

S. 2014, to improve judicial machinery by providing improved benefits to survivors of federal judges comparable to benefits received by survivors of Members of Congress, and for other purposes, is pending before the Senate Judiciary Committee. The Judicial Conference has recommended certain technical changes in the text. This is the bill which will merge the Judicial Survivors' Annuity System into the Civil Service Retirement System and would bring judges under the same annuity program as is now available to Senators and Representatives.

AO FJC calendar

January 7-8 Judicial Conference Ad Hoc Committee on Habeas Corpus, San Francisco, Ca.

January 7-10 Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.

January 10-11 Judicial Conference Subcommittee of Judicial Improvements, Laredo, Tex.

January 9-11 Judicial Conference Committee on Administration of Criminal Law, San Francisco, Ca.

January 14-16 Seminar for Chief Deputy District Court Clerks Phoenix, Ariz.

January 17-19 Third Seminar for Chief Clerks in U.S. Bankruptcy Judges' offices, Phoenix, Ariz.

January 21-24 Seminar for Federal Public Defenders, Phoenix, Ariz.

January 25 Judicial Conference Probation Committee, Washington, D.C.

January 21-25 Orientation Seminar; Probation Officers, Washington, D.C.

January 24-25 Judicial Conference Committee to Implement the Criminal Justice Act Phoenix, Ariz.

January 28-29 Judicial Conference Committee on Court Administration, Scottsdale, Ariz.

January 28-29 Committee on the Operation of the Jury System, San Antonio, Texas.

January 28-30 Seminar for Circuit Court Clerks.

January 28-29 Judicial Conference Magistrates Committee, Phoenix, Ariz.

February 2-3 Judicial Conference Advisory Committee on Judicial Activities, Houston, Texas.

February 4-6 Judical Conference Review Committee, Houston, Texas.

February 11-14 Conference for District Judges, Washington, D.C.

February 11-15 Refresher Seminar for Probation Officers, Dallas, Texas.

February 15 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.

February 20-23 Judicial Conference Advisory Committee on Bankruptcy Rules, Washington, D.C.

February 25-Mar. 1 Orientation Seminar for Probation Officers, Washington, D.C.

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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