The Third Branch

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Bulletin of the Federal Courts

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CHIEF JUSTICE REVIEWS 1973 PROGRESS IN THE FEDERAL COURTS

Chief Justice Warren E. Burger said this month that despite "excessive and mounting" pressure on all federal courts, including the Supreme Court, federal judges are managing now to keep up with their flood of cases and, in some cases, are digging into backlogs.

He said a series of innovations plus the fact that federal judges are now "working harder than ever before" have helped judges break even on the flood of cases coming into the court and receiving disposition. He added that further important reforms at all levels of the more than 100 federal courts, including the 183-year-old Supreme Court, would be needed unless the federal courts are to be engulfed by a continuing explosion of litigation.

HERE ARE EXTRACTS FROM THE CHIEF JUSTICE'S REVIEW OF THE YEAR. THE FULL TEXT IS AVAILABLE FROM THE F.J.C. INFORMATION SERVICE.

In the Supreme Court's case, he said, unless some way is found to cut back an avalanche of new cases the nine justices by the end of this decade are likely to be confronted with as many as 6,000 to 7,000 cases a year, "nearly one new case every hour of the day and night, weekdays and weekends included.

"The past year has brought progress and improvements in the federal courts. Long overdue modernization is taking shape. Cases are being tried with less delay and dispositions are coming into balance with new filings. Additional needed changes are under way.

"This does not mean that all our problems have been solved for there is still excessive pressure on all the federal courts from the District Courts to the Supreme Court and additional measures of relief are gravely needed. But a start has been made.

"The main problem at all levels of the federal court system is the mammoth continuing litigation in many fields: Civil liberties, criminal cases with special emphasis on the rights of prisoners, environmental cases, consumer protection, questions involving employment opportunities. To cope

[See REVIEW, Pg. 2, Col. 1]

Senator Roman L. Hruska, Chairman of the Commission.

SPOTLIGHT: REALIGNING THE NATION'S FEDERAL JUDICIAL CIRCUITS

The final report of the Commission on Revision of The Federal Court Appellate System.

The 92nd Congress created a commission with two purposes: study the present division of the nation into the several judicial circuits and recommend changes in the geographical boundries of the circuits; and study the structure and internal procedures of the Federal Courts of Appeals System.

Late last month, the Commission published its final report which called for the creation of two new judicial circuits by splitting both the Fifth or so-called "deep south" Circuit and the Ninth or "far west" Circuit into two new circuits each.

[See SPOTLIGHT, pg. 4]

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with such an expansion we have needed more federal judges and Congress has met some of those needs. Where 100 federal judges coped with the federal judicial business of 75 million Americans in 1900 we worked this year with only 504 active and 163 senior judges but it is clear now that more must be provided. Unless jurisdiction is curtailed continued escalation of litigation could require 900 federal judges by the end of this decade.

"Adding judges is not in itself the answer as the federal court system has recognized. The past year has seen long strides toward a more efficient, more modern use of judges' time and staffs, and also has seen progress toward reorganizations that must come lest courts grope helplessly in a flood of unmanaged cases. Several relatively new institutions deserve much of the credit for the quicker and less costly dispensing of justice that federal courts across the country have been accomplishing. I will cite a few:

(1) The six-year old **Federal Judicial Center** in Washington. During the past year the Center has given training to more than 1,600 persons associated with the administration of federal justice, from judges themselves on down to their deputy clerks and staffs, sharing with all of them the latest advances in the most efficient use of time and skills, and allowing those who have experimented successfully to share their innovations with others. One hundred twenty-nine federal judges, more than a fifth of the national total, took part in the Center's programs. In one sense this is a mere application of principles proved out years ago in the experience of private businesses. But in tradition-laden courtrooms it has been a breakthrough and a very practical one.

"(2) The **Institute for Court Management** in Colorado. This privately-financed group, now beginning its fifth year, is making important judicial history. It is the first educational institution of its kind designed to train professionals to assist judges in the multiple details of court operation. Some 300 persons have completed the school's course. Most graduates already are at work in state and federal courts across the country.

"(3) The **Circuit Executives Act of 1971.** This was a natural complement to the work of the Institute for Court Management. It enabled the circuit courts to hire administrators to take much of the burden of court management from the shoulders of hard-pressed chief judges. So far nine of the eleven circuits have taken advantage of the opportunity, employing certified professional administrators whose contribution is visible in accelerated handling of court cases.

"(4) The **Conference of Metropolitan Chief Judges** of the federal court system. Semi-annual conferences, begun just over two years ago, now bring together the main judicial officials of the twenty-two largest federal court districts, few of whom saw one another in the past, although almost all of them grappled with similar problems. Thanks to this conference and other efforts of the Federal Judicial Center we have widespread use now of the individual calendar system, which keeps cases in the hands of the same randomly-selected judge from start to disposition, thus fixing responsibility for the swift handling of cases, ending judge-shopping, discouraging dilatory tactics on the part of contending lawyers, and avoiding the time loss that is involved in the master calendar system where as many as a dozen judges may handle parts of the same case.

"This conference also is responsible for expanding the use of the omnibus or single pre-trial hearings at which lawyers are required to make all their motions at once in criminal cases rather than stringing them out over a long period in a deliberate delaying tactic as often happened in the past. The advantage to speedier justice and to other cases waiting their turn in line is clear.

"Better use of jurors. A pooling system is cutting down on the number of jurors needed, sparing their time and saving the taxpayer millions of dollars annually in fees.

"(5) The **National Center for State Courts.** Now in its fourth year, the Center has four regional offices with a total staff of sixty-five and is a significant contribution to judicial modernization.

"(6) **State-Federal Judicial Councils.** These are functioning now in most of the states, reducing duplication of petitions by state prisoners, eliminating in some areas the nuisance to jurors of being called more than once in a year, and reducing the vexation of conflicting trial assignments for lawyers.

"(7) **United States Magistrates.** This para-judicial office, created by Congress in 1968, is occupied now by eighty-eight persons full time and 400 part-time officials, and replaces the former United States Commissioner's office. The magistrates are taking a quarter of a million matters a year from the shoulders of overburdened District Court judges. A study group of two judges and three magistrates, organized by the Federal Judicial Center and the Administrative Office of the federal courts, will visit England and Canada soon to study their use

[See REVIEW, pg. 3, Col. 1]

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of Masters, a counterpart of our new magistrates. Though new to us this system already has a 100-year tradition behind it in common law nations.

"(8) In addition to the development of these innovative instruments for better justice, the past year saw progress in another area, the redrafting of federal circuit and district boundaries.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation pending or passed as of the opening of the Second Session of the 93rd Congress.

The First Session of the Ninety-third Congress adjourned on December 22, 1973, with a considerable amount of business still remaining to be considered in the Second Session. The Second Session will convene on January 21, 1974.

During the last month of the First Session, the energy crisis occupied most of the attention of both Houses.

In addition, the questions of appointment of a new Attorney General, and impeachment occupied much of the time of the two Judiciary Committees.

The Legal Services Corporation Act, S. 2686, was reported to the Senate on November 9, 1973. This bill would transfer the Legal Services Program now under the Office of Economic Opportunity to a new Corporation, provide for its funding, and define with considerable specificity the kinds of cases which could be undertaken by offices funded by the Corporation.

Political activity on the part of lawyers would be completely restricted. In addition, the bill would consideraby restrict, if not eliminate, class actions by legal aid agencies on behalf of the poor, and other group activities. The House has previously passed a very similar bill, H.R. 7824, on June 21, 1973, which is now pending also in the Senate. The Senate was unable to complete its consideration of S. 2686 before adjournment (a number of motions to cut off debate were defeated), and has scheduled further consideration for January 28, 1974.

The District Courts will have jurisdiction over suits brought by the Senate Select Committee on Presidential Campaign Activities under Public Law 93-190, signed into law on December 18, 1973.

The Endangered Species Act, Public Law 93-205, signed on December 28, 1973, also contains provisions relating to the jurisdiction of the District Courts. Under this law, criminal violations will incur penalties of up to $20,000 and/or one year imprisonment. Citizen suits may also be commenced in the District Courts, without regard to citizenship or amount in controversy, to enjoin violations of the Act or to compel the Secretary of the Interior to take action required of him under the Act.

Both Houses of Congress have passed H.R. 9256, to increase the contribution of the Federal Government to the cost of employees' health benefits insurance. As finally passed, it provides for an increase from the present 40% to 50% beginning in 1974 and from 50% to 60% beginning in 1975. This represented a considerably smaller increase than originally proposed by the House of Representatives. The bill has not yet been sent to the White House where its chances of veto are considered likely.

Representative Broyhill of Virginia has introduced H.R. 10539, which would increase the maximum per diem allowance for government employees traveling on official business (including judges) from the present $25 and $40 per day to $35 and $55. The bill is pending before the Subcommittee on Government Operations, chaired by Representative Jack Brooks of Texas. Hearings have not yet been scheduled.

COURT OFFICIALS ASKED TO SAVE FUEL

All officials and employees of the Federal Courts: please use privately-owned automobiles only when it is necessary, and to government advantage, in order to conserve fuel during the present energy crisis.

Common carrier transportation should be utilized whenever possible. Due to cutbacks in airline flights, reservations should be made well in advance of a scheduled trip and rail service should be used when such accommodations meet travel requirements.

The Administrative Office is keeping in close contact with senior officials of the Federal Energy Administration to make sure that the travel requirements of judges (who by law are often required to hold court in various cities) and citizens summoned for jury duty receive adequate gasoline in the event of government rationing.

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.

REVISION COMMISSION RECOMMENDS T

The Commission on Revision of the Federal Court Appellate System has called for the first changes in the geographical boundaries of the federal judicial circuits in half a century. At least 15 states would be affected.

The 16-member Commission, headed by Senator Roman L. Hruska (R. Nebr.), recommended that the two circuits with the heaviest workloads should each be divided in two. These are the Fifth Circuit, encompassing six southern states, and the Ninth Circuit, which now includes nine states in the west. Creation of two new circuits would bring the total number of circuits to 13.

In announcing the release of the Commission's final report, Senator Hruska said that realignment is "imperative at this time to give relief to litigants" in the two affected circuits.

He emphasized that creation of the new courts "must be accompanied by Congressional authorization of new judgeships so that the courts can deal effectively with the volume of judicial business which litigants bring before them." The Commission recommended the creation of new judgeships to serve each of the new courts.

The Commission emphasized that additional judgepower is vital if circuit realignment is to have its optimal effect. It did not, however, attempt to recommend a specific number of additional judges because it was of the view that the question is a prerogative of the Congress. It was also observed that the Congress, working through various committees and subcommittees, has been addressing itself to the question of standards of general applicability to serve as guidelines in determining specific judgepower needs.

Fifth Circuit Proposals

The Commission recommended that the Fifth Circuit, which now includes six states, should be divided into two three-state circuits. A new Eleventh Circuit would be created, consisting of Texas, Louisiana and Mississippi, together with the Canal Zone. The realigned Fifth Circuit would then include Florida, Georgia and Alabama. This plan would divide the workload of the present Fifth Circuit almost evenly between the two new circuits.

The proposed alignment, the Commission noted, would create no one-state or two-state circuits, nor would any circuit other than the Fifth be affected.

If Congress "should deem this proposal unacceptable," the Commission said, either of two other plans "would represent a significant improvement over the current situation." Both of the alternative plans would leave Mississippi in the Fifth Circuit with Florida, Alabama, and Georgia, rather than put it with Texas and Lousiana. Under one of the alternate proposals, the new Eleventh Circuit would consist only of Texas, Louisiana, and the Canal Zone; under the other plan the Eleventh would also include Arkansas, which is now in the Eighth Circuit. The Commission expressed no preference between the two alternative plans.

Ninth Circuit Proposals

For the West, the Commission proposed that the present Ninth Circuit, which extends from Alaska to the Mexican border and includes Hawaii as well, be divided into a northern and southern circuit. A new Twelfth Circuit would be made up of the southern and central judicial districts of California (including Los Angeles and San Diego), together with Arizona and Nevada. The realigned Ninth Circuit would then include Hawaii, Guam, the northern and eastern districts of California (San Francisco and Sacramento), and five northwestern states: Alaska, Washington, Oregon, Idaho and Montana.

Shifting Arizona into the Tenth Circuit, the Commission said, "would involve moving a state into a different, existing circuit in the face of vigorous, reasoned objections" to such a move from both California and Arizona.

In rejecting proposals for a separate circuit for the five northwestern states, the commission noted that the five states have a smaller volume of business than the First Circuit, which is now the smallest in the country. "To create another small circuit would be undesirable," the Commission said. The report added, however, that if projections of rapid growth are borne out, a separate circuit for the five northwestern states may become appropriate.

Explaining its decision to divide California, the Commission emphasized that the state already provides two-thirds of the judicial business of the present Ninth Circuit. If California alone were to constitute a circuit, the report noted, only two senators would be consulted in the appointment process, and a single senator of long tenure might be in a position "to mold the court for an entire generation." A one-state circuit, the Commission added, "would lack the diversity of background and attitude brought to a court by judges who have lived and practiced in different states."

On the other hand, the Commission said, to keep California intact, and to join it in a circuit

VO NEW FEDERAL APPELLATE CIRCUITS

with other states, would produce a caseload so large as to make it impossible to provide adequate relief for the problems of the circuit.

Need for Relief 'Urgent'

In announcing release of the final report, Senator Hruska noted that the American Bar Association had recently called for realignment of the Fifth and Ninth Circuits, recognizing the "urgent need" for relief in those areas.

He called attention to the importance of the Courts of Appeals in the federal judicial system. "For all but a handful of cases, these are in fact the courts of last resort for litigants in the federal system."

In recent years, the Courts of Appeals have experienced an increase in caseloads which the report terms "unprecedented in magnitude." From 1960 to the current year cases filed in these courts increased over 300%, compared to an increase of only 58% in district court cases during the same period.

Stressing the importance of the Courts of Appeals to citizens who desire to vindicate federal rights, Professor A. Leo Levin, Executive Director of the Commission, stressed the significance of assuring the smooth operation of these appellate courts and noted the broad range of problems with which they deal, "from prisoner rights to protection of the environment and from civil rights to commercial disputes."

The Courts of Appeals for the Fifth and Ninth Circuits are the largest federal appellate courts in the country, both in the number of appeals filed and in the number of judges. The Fifth Circuit has 15 judges; the Ninth has 13.

The Commission said that the problems of the circuits could not be cured simply by adding more judges. "There is a limit to the number of judgeships which a court can accommodate and still function effectively," Senator Hruska said.

The Ninth Circuit has been experiencing delays of two years on the appellate level alone in many civil cases. Attorneys testifying at the West Coast hearings of the Commission emphasized the cost to litigants of these delays.

'Jumboism' Condemned

The Commission noted that a majority of the active judges of the Fifth Circuit Court of Appeals had joined in a statement calling for prompt realignment. Noting both the size of their court and the geographical sweep of their territory, these judges concluded that "jumboism has no place in the Federal Court Appellate System."

In this connection, the report noted that the Fifth Circuit had managed to keep current in its work, "to the credit of its judges and its leadership." They have "been innovative and imaginative, avoiding what might have been a failure in judicial administration of disastrous proportions." It added, however, that present conditions do not make it possible to continue without change.

The Commission emphasized that the "flood-tide of litigation" in the Courts of Appeals has given rise to many controversial changes in the procedures of the courts. Denial of oral argument is the practice in close to 60% of the cases in the Fifth Circuit. In addition, the court has been obliged to decide an increasing proportion of its cases without written opinions.

The Commission's report was filed with the President, the Congress and the Chief Justice as required by statute.

In the second phase of its work, the Commission will study the structure and internal procedures of the federal appellate courts and report its recommendations. The Commission emphasized, however, that "whatever may emerge from that effort . . . litigants in the Fifth and Ninth Circuits are entitled to that immediate and significant relief which present proposals would provide."

The membership of the Commission includes four Senators, four members of the House of Representatives, four members appointed by the President, and four appointed by the Chief Justice. In addition to Senator Hruska, the Commission's Executive Committee includes Judge J. Edward Lumbard (CA-2), Vice Chairman; Congressman Jack Brooks (D. Tex.); and Dean Roger C. Cramton of Cornell Law School. The Executive Director is Professor A. Leo Levin of the University of Pennsylvania Law School. Professor Arthur D. Hellman is Deputy Director.

Other members of the Commission include Senator Quentin N. Burdick (D., N.D.); former Congressman Emanuel Celler of New York, Congressman Walter Flowers (D., Ala); Senator Edward J. Gurney (R. Fla.); Francis R. Kirkham, Esq. of the San Francisco Bar; Senator John L. McClellan (D. Ark.); Judge Roger Robb (CA. D. C.); Bernard G. Segal, Esq., of the Philadelphia Bar; Judge Alfred T. Sulmonetti, of the Circuit Court of Oregon; Professor Herbert Wechsler of the Columbia Law School; and Congressman Charles E. Wiggins (R. Calif.).

COURTS URGED TO EXAMINE NEED FOR CODE-A-PHONES

The use of Code-A-Phone devices in metropolitan areas is proving an effective method for reducing the number of prospective jurors who appear only to be sent home. The device is mainly feasible where the clerk's office cannot place individual calls to jurors telling them not to appear when trials are cancelled or postponed.

Basically, the installation of Code-A-Phone units allows the courts to order prospective jurors to call the Code-A-Phone number prior to appearing for jury duty. On reaching the dialed number, they will receive a recorded announcement up to the last minute prior to departure as to whether or not they should appear on a particular trial day and the voice recording may also give an alternative order to report at a different time. The recorded messages can easily be amended to accommodate last minute changes (settlements, change of plea, illness, snow storms, etc.).

If a panel is called for a particular trial, the message can be addressed to that panel. If a general venire is called for multiple jury parts, the venire can be divided for such purpose into groups (Group A, Group B, etc.) and a different message can be given to each group to reduce the general venire to an appropriate size to avoid a last minute overcall. The court order specifying that the prospective jurors make such a call prior to appearing can provide that an unnecessary appearance by a juror failing to call will not be compensated through fee or travel allowance.

Long distance calls can be handled in large districts by WATS-line facilities. In districts where long distance calls are less frequent the recorded message can be tailored to begin with the statement, "Operator, this number will accept long distance calls from federal jurors."

The utility of having a method of communicating with jurors prior to trial is important in view of the frequency of last minute settlements of civil cases and changes of pleas in criminal cases. Also needless juror calls have continued despite a continued overall improvement in utilization in each of the last three years. In fiscal 1973, 162,592 jurors appeared in and left court without either being used or challenged. This represents 28.41% of jurors who appeared in federal courts (the figure was 30% in fiscal 1972). Much of this waste may have been averted by a prompt communication system such as the Code-A-Phone technique.

The pilot districts which have established Code-A-Phone systems report a desirable result. For example, the district clerk's office in San Francisco reports that since April, 1973, "1,492 jurors were saved the inconvenience and sense of frustration and are immediately dismissed because a trial has been cancelled."

For additional information concerning Code-A-Phone installation contact Carroll Hefner, Chief, Facilities and Space Management, Administrative Office.

LAW DAY—'74

"Young America, Lead the Way," is this year's Law Day Theme. The May 1st program is sponsored by the American Bar Association and calls upon all members of the legal community to encourage America's 93 million youths to preserve good laws, change bad laws and enact better laws.

RATING THE JUDICIARY: A SPREADING TREND

An increasing number of bar associations are rating judges in their jurisdiction, and the results are being watched closely by judges, lawyers and the public.

One of the first surveys was conducted by the Chicago Council of Lawyers, with questionnaires tabulated on queries directed to judicial temperament, understanding of the case, organization of the trial, fairness, etc.

The Houston Bar Association recently designed their questionnaire to evalute state and federal judges and Referees in Bankruptcy. Among the questions asked lawyers were: Does the judge render prompt decisions with appropriate findings? Does he exhibit a judicial temperament? Is he courteous toward counsel, litigants and witnesses? Is he punctual and efficient in use of time? Is he attentive to the testimony of witnesses and the arguments of counsel? Does he know and apply the rules of procedure? Is he susceptible to his own bias or to other pressure which would affect his judicial discretion? Is he partial to any individual or group of lawyers or litigants?

Participants were asked for a judge's overall rating: outstanding, well qualified, qualified, below average, or not qualified.

In some cities the results are made public, while in others the results are made known only to the judges. The practice is still new and its value is arguable. However, it is known that in some instances where severe criticism has been leveled at a judge the court has benefited.

In other instances where judges have been shown the results, they have encouraged resignations.

[See JUDICIARY, pg. 7, Col. 1]

(JUDICIARY, From pg. 6)

Critics of this developing practice often say it frequently becomes a popularity contest, with lawyers campaigning for favorable appraisals for some judges. But as the trend continues it appears the positive results may outweigh some of the disadvantages.

NEW EXECUTIVE NAMED FOR SIXTH CIRCUIT

James A. Higgins

James A. Higgins, former Clerk of Court for the Sixth Circuit, assumed his duties as Circuit Executive for that circuit last month. He becomes the ninth person to hold such a post in the federal court system.

Mr. Higgins, a native of Cincinnati, received his B.A. and J.D. degrees from that city's university. He has served as the Sixth Circuit's Court of Appeals Clerk since June 1971. He clerked for Circuit Judge John W. Peck.

Under Title 28, U.S.C. § 332, a Circuit Executive shall "exercise such administrative powers and perform such duties as may be delegated to him by the Circuit Council." At present, Circuit Executives are assisting in budget preparation, personnel management and reporting, scheduling and liaison activities, and such other tasks as the Judges find helpful.

THE SOURCE

The Information Service of the Federal Judicial Center

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- Function of law in society (legal education). 3 Golden Gate L Rev, Winter 1973 (entire issue)

- The grand jury: powers, procedures and problems. 9 Colum. J of Law and Social Prob. 681, Summer 1973.

- New federal criminal code. A landmark plan for criminal law. 9 Trial 11, Oct. 1973.

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- Instead of prison; a report on the community treatment project for repeat offenders. National Council on Crime and Delinquency. [1973]

- Progress in the Federal Courts, 1973. Chief Justice Warren E. Burger. Avail. from F.J.C. Information Services.

ORGANIZED CRIME EXPERT SPEAKS

Mr. Aaron Kohn, Managing Director of the Metropolitan Crime Commission of New Orleans has just completed a series of 2 seminars at Joint Refresher Courses for U.S. Probation Officers in Dallas and Atlanta. Mr. Kohn has long been associated with the problem of organized crime and was instrumental in enacting the Organized Crime Control Act of 1969.

Probation Officers from cities concerned with organized crime were invited to these two seminars. Mr. Kohn stressed that organized crime convicts are different and therefore need different post conviction handling. This includes presentence reports, sentencing, and supervision while on probation, parole, or in an institution.

PERSONNEL

Elevations

James L. Latchum, Chief Judge, U.S. District Court, D.Del., Oct. 9
Paul X. Williams, Chief Judge, U.S. District Court, W.D.Ark., Dec. 20

Confirmations

William C. Conner, U.S. District Judge, S.D.N.Y., Dec. 13
Albert J. Engel, U.S. Circuit Judge, 6th Cir., Dec. 13
Russell James Harvey, U.S. District Judge, E.D.Mich., Dec. 13
Richard Owen, U.S. District Judge, S.D.N.Y., Dec. 13
Walter Jay Skinner, U.S. District Judge, D.Mass., Dec. 14
Herbert J. Stern, U.S. District Judge, D.N.J., Dec. 19

Resignation

Thomas A. Masterson, U.S. District Judge, E.D.Pa., Nov. 16

AO and FJC Calendar

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, New Orleans, La.

January 28-29 Judicial Conference Magistrates Committee, Phoenix, Ariz.

February 2-3 Judicial Conference Advisory Committee on Judicial Activities, Houston, Texas.

February 4-6 Judicial 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.

March 4-5 Judicial Conference Advisory Committee on Civil Rules, Washington, D.C.

March 6 Judicial Conference Budget Committee, Washington, D.C.

March 7-8 Judicial Conference of the United States, Washington, D.C.

March 14-15 Judicial Conference Advisory Committee on Criminal Rules, Washington, D.C.

March 14-15 Regional Seminar for U.S. Bankruptcy Judges, Orlando, Fla.

April 18-20 Fourth Seminar for Chief Clerks in U.S. Bankruptcy Judges' Offices, Dallas, Texas.

April 26-27 National Bankruptcy Conference, Chicago, Ill.

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PRESIDENT PROPOSES JUDICIAL SALARY INCREASES

President Nixon, in his Budget submitted to Congress this month, recommended the first salary increases in five years for federal judges and senior officials of the Federal system.

The salary increases, if neither the House of Representatives nor the Senate vote to disapprove the proposal prior to March 6th, could ultimately affect 1,239 judicial officials, allowing most to receive pay increases of about 7.5% in early March.

However, even if Congress does not vote to disapprove the salary increases, many officials will not receive additional pay hikes until the Judicial Conference of the United States has an opportunity to act on the proposals at its Spring meeting, March 7-8.

In his Budget, President Nixon said, "It has been five years since any adjustment has been made in the salaries of Congressmen, Federal judges and other high-level officials in the Federal Government. Pursuant to Public Law 90-206, the Commission on Executive, Legislative, and Judicial Salaries has recommended increases of 25%. The President's proposal for a 7.5% annual increase for each of the next three years, while smaller than the Commission's recommendation, will help to ease the inequities in the federal pay structure which the current system has brought about."

In the Budget appendix, the Office of Management and Budget said, "It has been 5 years since any adjustment has been made in the salaries of these positions. During that period, salaries in the private sector surveyed by the Commission, as well as in other categories of Federal government, have increased by more than 30%.

"Because of this long period without salary adjustment, and the statutory provision limiting salaries of employees in other pay systems to the lowest level in the Executive Schedule, the maximum salary in the top four grades of the General Schedule and the lowest executive level are all the same.

"This has serious adverse effects on recruitment, retention, and incentive for advancement throughout the federal service," the OMB said.

In testimony presented before the House and Senate Post Office and Civil Service Committees last year, the Director of the Administrative Office of U.S. Courts, Rowland F. Kirks, voiced similar views and added, "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. . .".

(See SALARY, Pg. 2)

In the appendix to the President's Budget, the Office of Management and Budget recommended the following salary increases for federal justices and judges:

	1974	1975	1976
Chief Justice	62,500	67,200	67,200
Associate Justices	60,000	64,500	64,500
Circuit Judges	45,700	49,100	52,800
District Judges	43,000	46,200	49,700

(SALARY, from Pg. 1)

However, some Congressmen and Senators voiced immediate opposition to the salary increases and introduced resolutions in both the House and the Senate which, if passed, could block any salary increases this year.

Under the statute, the President's recommendations become effective 30 days following transmittal of the budget, unless in the meantime other rates have been enacted by law **or at least one House of Congress has enacted legislation which specifically disapproves all or part of the recommendations.**

CCPA ADOPTS NEW RULES

The U.S. Court of Customs and Patent Appeals has recently issued new court rules, the first complete revision in twenty years. According to Chief Judge Howard T. Markey, the rules were adopted unanimously after hundreds of recommendations of the Bar, and became effective January 1, 1974.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation pending in the Second Session of the 93rd Congress.

Senator Burdick on February 7, introduced four bills to carry out the recommendations of the Commission on Revision of the Federal Court Appellate System. S. 2988, S. 2989 and S. 2990 will implement the alternative recommendations of the Commission.

Each bill would split the existing Fifth Circuit into two new circuits designated as the Fifth and the Eleventh.

Under the first bill, the Fifth Circuit would consist of Alabama, Florida and Georgia with the Eleventh consisting of Louisiana, Mississippi, Texas and the Canal Zone.

Under the second bill which incorporates the Commission's first alternative recommendation, the Fifth Circuit would include Florida, Georgia, Alabama and Mississippi, with the Eleventh Circuit including Texas, Louisiana, Arkansas and the Canal Zone.

The third bill (the Commission's second alternative recommendation) would create a Fifth Circuit consisting of Florida, Georgia, Alabama and Mississippi.

The new Eleventh Circuit would include Texas, Louisiana and the Canal Zone. None of the bills call for a specific number of new additional judgeships at this time. The exact numbers will be considered during hearings on the bills. All of the bills would create a new Twelfth Circuit consisting of Arizona, the Central and Southern Districts of California, and Nevada. The new Ninth Circuit would consist of the remainder of the existing Ninth Circuit.

Also introduced was S. 2991 which incorporates the existing recommendations concerning additional circuit judgeships of the Judicial Conference as follows: First—1, Second—2, Third—1, Fourth—2, Sixth—1, Seventh—1, and Tenth—1.

Energy Legislation

S. 2589, the Energy Emergency Act, which was sent back to Conference by the Senate has been again brought to the floor of both Houses. The bill is of particular interest to the judiciary because of three provisions which are likely to remain in the final bill.

First — the rationing program itself. The sections which authorize end-use rationing are amendments to the Petroleum Allocation Act, itself an amendment to the Economic Stabilization Act Amendments of 1973. Under this legislation, a proceeding involving the rationing program would be brought in district court, with appeals being heard by the Temporary Emergency Court of Appeals.

Other authority contained in the bill designed for conservation (other than rationing) would be enforced by civil or criminal penalties in Federal Courts. District Courts are given original jurisdiction over actions brought under the Energy Emergency Act, but it appears that much of this jurisdiction would be concurrent with that of state courts.

The 55 mile per hour speed limit would probably be enforced in many instances in the Federal Courts, since the penalty exceeds magistrates' jurisdiction.

Six member juries — Three-Judge Courts. Opposition to enactment of six-member jury legislation was voiced at hearings January 23 before the Subcommittee on Courts, Civil Liberties & the Administration of Justice of the House Judiciary Committee. The NAACP voiced strong concern that this legislation would give legitimacy to the reduction in size of juries, and thus decrease minority representation on juries. The American Civil Liberties Union and Professor Hans Zeisel also

(See REVIEW, Pg. 3)

(REVIEW, from Pg. 2)

testified in opposition to these measures.

At this time, the future of the legislation is in doubt. The Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery is expected to hold hearings on the two Senate bills later this session.

Three-judge courts also drew opposition from the NAACP. Historically, many significant civil rights cases were won before three-judge courts, and the NAACP is concerned that the change in procedure will work to the detriment of civil rights. The Commission on Civil Rights agrees. It is probable that the bill would be recommended with amendments to protect the civil rights litigation.

Pretrial Diversion

It appears Congress may soon enact legislation providing for a program of pretrial diversion in the district courts, with provisions for funding the program. February 6, the House Judiciary Committee, Subcommittee on Courts, Civil Liberties & the Administration of Justice, held hearings on H.R. 9007, and S. 798. The Senate has already passed S. 798.

Evidence

The House has passed the Rules of Evidence bill. A number of amendments were made on the floor to the committee substitute bill. These include an amendment which allows testimony in the form of opinion regarding character evidence; an amendment limiting the rule expanding hearsay exceptions by allowing reports of observances made by public officials only on matters as to which there is a duty to report; an amendment that excludes (as hearsay evidence admissible in criminal cases) matter observed by police or other law enforcement officials, and an amendment that modifies the section on amending the rules by requiring that any proposed rule affecting privileges must be approved by both Houses of Congress.

Health Insurance

The President has signed into law legislation increasing the government's share of the health benefits charges from the present 40% to 50% in 1974 and 60% in 1975. The bill, H.R. 9256 is now Public Law 93-246, signed on January 31, 1974.

Judge Luther M. Swygert

SEVENTH CIRCUIT CITES MAJOR PROGRESS

Using a combination of additional judgepower furnished by senior judges, and an accelerating briefing schedule, the Seventh Circuit Court of Appeals during 1973 managed to significantly cut its backlog of pending cases.

Chief Judge Luther M. Swygert, in a major news story in the Chicago Tribune, was lauded for his efforts in reducing the court's backlog.

Judge Swygert said that the concentrated effort to accelerate case disposition allowed the court to "turn the corner" in relieving the court backlog.

During 1973, Judge Swygert said that a total of 1,163 appeals were filed in the Seventh Circuit while 1,192 were terminated.

At the end of the year there were 854 cases pending compared to 874 cases pending at the end of 1972.

Judge Swygert said that he had called upon several senior judges as well as U.S. Supreme Court Justice Tom C. Clark (Ret.), to assist the Seventh Circuit in expeditiously disposing of its 1973 caseload.

He said that he plans to continue this practice and has asked five senior judges to assist the court during the current session. They include: Judge Julius J. Hoffman, Judge William J. Campbell, Judge Joseph S. Perry, all from the Northern District of Illinois, and Judges Robert A. Grant and Jesse E. Eschbach of the Northern District of Indiana.

Judge Swygert said he also has accelerated the disposition of cases by setting up individual briefing schedules for each case filed. Usually, briefs are filed over a period of several months but under Judge Swygert's system he analyzes each case individually and then often decides upon an accelerated briefing schedule for cases he considers relatively uncomplicated.

As a result of this technique, he said he has managed to reduce the period from the time of filing an appeal to oral argument in these cases from 8.9 to 5.6 months.

The Third Branch

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

Judge Shirley M. Hufstedler

C. Frank Reifsnyder

Judge Carl McGowan

COURT ORGANIZATION REPORT ADOPTED; NATIONAL COURT OF APPEALS PROPOSED

The midyear meeting of the American Bar Association covered proposals ranging from six-member juries to newsmen's shield laws, but the two subjects which attracted most attention were the result of work by the Commission on Standards of Judicial Administration and the Committee on Coordination of Judicial Improvements.

The Commission's work led by U.S. Court of Appeals Judge Carl McGowan recently released one of many reports they will write updating the so-called Vanderbilt-Parker Standards now over 30 years old. Though drafted primarily for adoption by state courts, many basic principles evolving from the Commission's work are equally applicable to federal courts.

The initial report, **Court Organization,** sets forth standards of the Commission recommending a unified court system, selection and tenure of judges, rule-making and administrative authority, court administrative services, court budgeting and court records systems. The most controversial standards relate to selection and tenure of judges and the adoption of a unified court system.

Opponents of the unified court system contended that it would, in doing away with a two-tier trial court, force general jurisdiction trial judges to handle cases which should more appropriately be handled by judges specifically assigned to these matters, such as traffic and probate cases. Judge Carl McGowan replied that such service would be for brief periods if the rotation system were also adopted, and that the burden could be considerably lightened by adopting the Commission's further recommendation that judicial officers assist with this work (as Magistrates do in the federal system).

As for the selection and tenure of judges, opposition came from proponents of what is generally known as the "Missouri Plan" — long advocated by the ABA and the American Judicature Society. The Commission's new standard calls for judicial appointment by the state governor from a list of at least three qualified candidates nominated by a judicial nomination commission. The House of Delegates rejected an alternate proposal of the Commission recommending that states have a confirmation commission which could confirm or reject the appointment of a judge made by the governor.

Other standards of interest to the judiciary were: Compulsory retirement at age 70, establishment of judicial inquiry boards, and discipline and removal of judges by the supreme (or highest) court in the state.

Of primary interest to the federal judiciary was the proposal of the Committee on Judicial Improvements, whose chairman is C. Frank Reifsnyder of Washington, D.C.

The House of Delegates overwhelmingly endorsed a plan whereby Congress would create a "national division" of the United States Court of Appeals. The 15 judges assigned to this division would be selected from among federal circuit judges. Decisions made by this new court would be final if the Supreme Court took no action on the case within a 90 day period following action by the national panel.

Judge Shirley M. Hufstedler, of the U. S. Court of Appeals for the Ninth Circuit, also a member of the Advisory Council for Appellate Justice, is the main architect of this new proposal.

Opposition to the plan was not focused primarily on the substantive proposals, but rather on the

(See ABA, Pg. 5)

(ABA, from Pg. 4)

accelerated pace at which the report moved. Those objecting believed that the wide scope of the proposal deserved long and careful consideration.

However, general endorsement was urged at this time so that the report could be transmitted to the Commission on Revision of the Federal Court Appellate System.

Under the Congressional mandate, the first phase of this Commission's work, which was to study and recommend changes in the geographical boundaries of the circuits, had to be completed December 18, 1973, and the second phase of its task – to study and recommend changes in the structure and internal procedures of the U. S. Court of Appeals–must be completed by September 21, 1974.

The Council of the Judicial Administration Division of the ABA – preponderantly judge-controlled – and representing over 8,000 judges, lawyers and other judicial officials, endorsed both reports.

CHIEF JUDGE URBOM ADOPTS REVISED GUILTY PLEA FORM

Chief Judge Warren K. Urbom (D.Nebr.) has alerted **THE THIRD BRANCH** to the use in his court of a modified form for the taking of guilty pleas. The judge credits Judge Gus J. Solomon (D. Ore.) with the original idea (See **THE THIRD BRANCH,** Vol. 4, No. 9, page 6), but feels the revisions which his court made in Judge Solomon's form might be of interest and assistance to other federal judges. Anyone desiring a copy of Judge Urbom's revised form for taking guilty pleas contact the Information Service of the Federal Judicial Center.

TECA's RULES EXPEDITE CASE FLOW

The Temporary Emergency Court of Appeals (TECA) has now been operating since February, 1972. The Court was created in response to the Economic Stabilization Act Amendments of 1971. It exercises exclusive jurisdiction over cases arising under the Act or regulations or orders issued pursuant to the Act which are appealed from the District Courts.

With a caseload which parallels that of the First Circuit, it has managed to process its cases (from filing notice of appeal to the issuance of opinion) within 100 days. The average time required to process litigation in the U.S. Circuits in general is approximately eight months. The nine member TECA Court led by Chief Judge Edward Allen Tamm collectively represents 182 years of judicial experience. On January 1, 1974, this Court promulgated its first Table of General Rules.

Largely a result of the efforts of William Whittaker, the Court's first Clerk, the rules provide a procedural flexibility which greatly expedites the case flow. Examples of this flexibility are:

- Notice of appeal is filed with the TECA Clerk's Office. On the same day it is docketed and the briefing schedule commences.
- Attorneys are urged to file a stipulation record, with no appendix.
- The briefing schedule is one half of that required by the Federal Rules of Appellate Procedure.
- Procedural motions are handled by the Clerk.
- Briefs are restricted to 25 pages and seven copies.

These are a few of the factors which contribute to the 100 day average time for case disposition.

STORY CLOCK DONATED TO SUPREME COURT

The Chief Justice has accepted an addition to the Supreme Court's growing collection of Court Americana–an early American clock which had been the property of Joseph Story, one of the youngest and longest serving Justices in the Court's history.

The clock was made by Lemuel Curtis, a clock designer best known for the ornate giranodle clocks which he crafted from 1811 to 1818 in the Concord, Massachusetts area. The gift was presented by Walter Welsh, a retired warehouseman and transportation official, whose hobby is clock collecting. He found the clock in 1962 in Ansonia, Connecticut, and bought it when his son, then a law student, told him of Justice Story's important role in judicial history.

The clock is of banjo design. Its plaque records that it was presented to Story by the Merchants Bank of Salem, Massachusetts, in appreciation of his services as the bank's second Vice-President. Massachusetts law requires savings banks to retain the minutes of their Board meetings and so the record of the gift is still in the bank's files.

With Mr. Justice William Johnson, Justice Story shares the distinction of being the youngest justice appointed to the Court; both were 32. Justice Story died in 1845 after serving 33 years, 7 months and 7 days on the Court. Only Justices William O. Douglas, John Marsh, Hugo L. Black, and John M. Harlan have served longer.

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 SOURCE
The Information Service of the Federal Judicial Center

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Circuit Executive Thomas H. Reese

CIRCUIT EXECUTIVE REESE DISCUSSES JUDICIAL COMMUNITY RELATIONS PROBLEMS

In remarks presented earlier last month during a meeting of the ABA's Judicial Administration Division's Committee on Courts and the Community, Circuit Executive Thomas H. Reese, of the Fifth Circuit, discussed the "Influence of the Appellate Court on Community Relations Problems of the Trial Bench."

Mr. Reese said, "It is my opinion that, appellate court judges collectively see trial courts from a different point of view. They are somewhat objective of the lower court decisions as they see records on appeal, briefs on appeal, and they also receive a great deal of information from a variety of sources that notes with particularity some specific community relations problems faced generally by trial court judges.

"These items probably do not come to the attention of the trial court bench and unless trial judges are convening regularly once or twice a year in their jurisdictions to discuss these very things as an item on their agenda then, I believe, that they are not conscious of the things that appellate court judges find important.

"For example, one or two judges in a jurisdiction may be 'hungup' on certain types of cases. They have a slant on criminal cases.

"They are either too strict or too lenient or they are habitually off base. As a result the public, the bar, and litigants generally in that community are going to have a distrust, a dislike for that judge, and the way he handles things in his court. In time the press may attack him, keep him under constant surveillance, and this challenges the judge who gets his back up and thinks he is right, and then he is not inclined to change his ways. Of course, the appellate court should be able to work with trial judges through techniques other than opinions and decisions.

"We see in the federal system many situations that should have caused trial judges to recuse themselves, but they did not. Then on appeal the appellate court finds it necessary to send a case back for retrial or reconsid-

(See COMMUNITY, Pg. 7)

(COMMUNITY, from Pg. 6)

eration by another judge for this failure to recuse and this, the appellate court, I can assure you, hates to do.

"Well, this suggests to me that an appellate court in its supervisory capacity should continue to alert all trial judges whose cases come up for review to the practical community relations problems which they see, statewide or circuitwide. The appellate court should circularize the district judges from time to time, with opinions, literature on the subject, resolutions, and, yes, even learned papers by the judges acting as the Circuit Council, or as a State Supreme Court Council.

"Moreover, I would think that in fairness to the trial court bench the appellate courts and the judges thereof ought to pass on such helpful suggestions as they can in a cooperative, friendly, and helpful atmosphere rather than remain aloof and dispose of cases only as they come to them.

"The idea of a liaison group has some merit. The Ninth Circuit Court of Appeals has a liaison committee of two circuit judges and three district court judges. This group, which has been in operation about a year, meets several times a year to discuss common problems, including those that I have just mentioned. I am sure that this committee has helped to clear the air in many instances so that the two levels of court now have a better understanding of each other's problems.

"In like manner, the Fifth Circuit Court of Appeals has recently restructured its committees and created a subcommittee entitled "District Court Committee". This subcommittee is charged with the responsibility of carrying out the Judicial Council's responsibility in the administration of justice in the district courts of the circuit. It maintains through the Circuit Executive, and the Chief Judges of the district courts, and the District Judges Association, such liaison with the district courts as will best promote the expeditious handling and resolution of mutual problems of the Fifth Circuit and the district courts within the circuit.

"The Committee keeps the Judicial Council informed on all appropriate matters pertaining to the administration of justice in the district courts of the circuit. Liaison, of course, is not tailored specifically to handling public or community relations, but the subcommittee is in a great position to act in that area.

"I think the appellate courts ought to pay attention to what the press and other news media are saying about the courts within their jurisdiction. For example, it has been suggested in a state court system that the appellate court judges ought to have access to a clipping service, so they can see what the daily and weekly press are saying throughout the state about judges and courts. If this is done, appellate judges might possibly detect a common denominator that the press is more often than not critical of the dispositions in criminal cases—generally accusing the judges of too much leniency.

"If this supposition is true, appellate courts could rise to the defense of the trial judges, if indicated, or they may suggest that they by some sort of communication or liaison meet with the trial judges and narrow in on the problem. Thereafter there could then be organized some sort of joint session to include representatives of the news media and here I include radio and television.

"It seems to me that the longer you let these things stagnate, the worse they get, and somebody has to take some leadership and the judges down below at the trial level are often not in a position because of a heavy caseload to do so. I would suggest that they would respond to leadership from the appellate courts that do sit in review of their decisions and need to have an understanding of the problems of the trial bench.

"While some of us may not be as conscious of it as others, Chief Justice Warren E. Burger sets the stage by his public utterances, oral and written. He speaks to the American Bar. He speaks to other groups. He writes articles and in this way, he is the judicial leader type. I suggest to each of you—why shouldn't all appellate court judges consider themselves as judicial leader types, not in a critical way, but in an effort to help offer something to the trial court bench."

JUDGE KAUFMAN FORMS GROUP TO RAISE ADVOCATES' STANDARDS

Chief Judge Irving R. Kaufman (CA-2) has formed an eighteen-member Advisory Committee on Qualifications to Practice Before the United States Courts in the Second Circuit.

In announcing the creation of the new advisory committee, Judge Kaufman said its purpose, in part, would be to examine the quality of advocacy in the circuit's federal courts and recommend improvements, if necessary. In addition, the advisory committee will have the responsibility of proposing law school programs designed to teach trial advocacy and recommend amendments to the rules of admitting lawyers to practice in federal courts of the Circuit.

PERSONNEL

Appointments

William C. Conner, U.S. District Judge, S.D.N.Y., January 4.
Richard Owen, U.S. District Judge, S.D.N.Y., Jan. 21.
Walter Jay Skinner, U.S. District Judge, D.Mass., Jan. 7.
Herbert J. Stern, U.S. District Judge, D.N.J., Jan. 18.

Elevations

Newell Endenfield, Chief Judge, U.S. District Court, N.D.Ga., Jan 1.
Jose V. Toledo, Chief Judge, U.S. District Court, D.P.R., Feb. 1.

Resignation

Hiram R. Cancio, Chief Judge, U.S. District Court, D.P.R., Jan. 31.

Nominations

Richard P. Matsch, U.S. District Judge, D.Colo., Jan. 31.
Joseph L. McGlynn, Jr., U.S. District Judge, E.D.Pa., Jan. 31.
Thomas C. Platt, Jr., U.S. District Judge, E.D.N.Y., Jan. 31.

Deaths

T. Whitfield Davidson, U.S. Senior District Judge, N.D. Texas, Jan. 26.
Oliver D. Hamlin, Jr., U.S. Senior Circuit Judge, 9th Cir., Dec. 28.
George W. Whitehurst, U.S. Senior District Judge, N.,M.,&S.D.Fla., Jan. 13.

THE THIRD BRANCH
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WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

AO FJC calendar

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.
March 4-5 Judicial Conference Advisory Committee on Civil Rules, Washington, D.C.
March 6 Judicial Conference Budget Committee, Washington, D.C.
March 7-8 Judicial Conference of the United States, Washington, D.C.
March 14-15 Judicial Conference Advisory Committee on Criminal Rules, Washington, D.C.
March 14-15 Regional Seminar for U.S. Bankruptcy Judges, Orlando, Fla.
March 18 D.C. Circuit Conference, Washington, D.C.
April 18-20 Fourth Seminar for Chief Clerks in U.S. Bankruptcy Judges' Offices, Dallas, Texas.
April 26-27 National Bankruptcy Conference, Chicago, Ill.

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Bulletin of the Federal Courts

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REVISION COMMISSION OPENS HEARINGS ON PROPOSED NATIONAL COURT

The Commission on Revision of the Federal Court Appellate System opened hearings in Washington, D.C. on April 1 to consider various proposals for the creation of a national division of the U.S. Court of Appeals.

Under the law creating the Commission, it has the responsibility "to study the structure and internal procedures of the federal courts of appeal system and report to the President, the Congress, and the Chief Justice its recommendations" for such change as it deems appropriate.

The American Bar Association's House of Delegates at its recent mid-year meeting, described the need for such a tribunal as "urgent" and provided for the Association's position to be presented to the Commission. Similar proposals are contained in the "Recommendation for Improving The Federal Intermediate Appellate System," recently approved by the Advisory Council for Appellate Justice.

Professor A. Leo Levin, Executive Director of the Commission, said that the hearings are expected to allow the sixteen-member panel to hear the fullest articulation of all points of view regarding the various proposals for a national tribunal and thus enable the commission to form a reasoned judgment on the threshold question of whether to recommend a new national court and, if so, on how best to choose among the welter of available alternatives in defining the role, structure, procedure and personnel of such a court.

"Thus, the forthcoming hearings are intended: (1) to elucidate the specific provisions of the various proposals and especially to clarify how new mechanisms are intended to operate; (2) to demonstrate how, and to what extent, these proposals would meet perceived needs; (3) to extend the individual view of each witness on the range of alternatives presented to us, from scope of jurisdiction to selection of personnel; (4) to provide some appreciation of the implication of the recommendations, especially on their likely impact on the federal judicial system; and finally (5) to provide the commission with the opinion of each of the witnesses on the overall feasibility and desirability of the

(See HEARING, Pg. 2)

SENATE DISAPPROVES JUDICIAL SALARY INCREASES

After almost three days of debate, the Senate, March 6th voted 71 to 26 to disapprove all of the salary increases proposed by President Nixon in his budget submitted to Congress January 4th.

Significantly, however, Senator Gale McGee, Chairman of the Senate Post Office and Civil Service Committee, told the Senate that his committee intends to begin immediately to draft legislation to alleviate the salary inequities which have barred federal judges and senior executives of the legislative and executive branches from receiving any salary increases in five years.

Senator McGee said, "We are asking for help in time to resolve this kind of counterproductive direction of the forces at work, first comparability and second, now, the consequences of four years or almost five, of inflationary erosion of what was once equity within the system. We have to re-establish the equities, even as we account for the erosions of inflation.

"Whether we do that through separate legislation, whether we do it with an automatic formula that goes into effect no matter what happens, as it does with all other segments, or whether we tie it into the pay structure, those are the questions we are going to have to resolve."

(See SALARY, Pg. 2)

(From SALARY, Pg. 1)

The ranking minority member of the Senate and Post Office and Civil Service Committee, Senator Hiram L. Fong, pointed out that even though the President's recommendation was disapproved, he felt that the three days of debate held on the question would help materially in continuing efforts to secure a pay raise for judicial, executive and legislative employees, possibly this year.

STUDY TEAM HEADS FOR ENGLAND TO INSPECT BRITISH MAGISTRATE SYSTEM

A six-member study team consisting of three magistrates and two district judges as well as the team coordinator, Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, left March 29th for a five day working visit to inspect the operation of the English Magistrate System.

Judge Charles M. Metzner, Chairman of the Committee on the Administration of the Federal Magistrates System, (Southern District of New York) and Judge James Lawrence King (Southern District of Florida), and Magistrates Joseph W. Hatchett (Middle District of Florida), Sol Schreiber (Southern District of New York) and Ila J. Sensenich (Western District of Pennsylvania) are travelling to London, in order to meet with British Magistrates and conduct an in-depth analysis of how they dispose of judicial matters in English courtrooms.

On their return, the group will report their findings and possibly recommend the adaptation of some of the techniques used by the British Magistrates to our federal judicial system.

(From HEARING, Pg. 1)

basic proposals which are before us."

Among the initial witnesses will be former Supreme Court Justice Arthur Goldberg, Chesterfield Smith, President of the American Bar Association; Chief Judge Clement Haynesworth (CA-4); Chief Judge Henry J. Friendly (CA-2); Judge Floyd R. Gibson (CA-8); Judge Shirly M. Hufstedler (CA-9); Justice Samuel J. Roberts of the Pennsylvania Supreme Court; Erwin N. Griswold, former Solicitor General of the United States; Dean Bernard Wolfman, of the University of Pennsylvania Law School; Professors Paul A. Freund, Philip B. Kurland, Maurice Rosenberg, Paul D. Carrington; Messrs. C. Frank Reifsnyder, Lipman Redman, Robert J. Kutak, John B. Jones and Eugene Gressman.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation pending or passed as of the opening of the Second Session of the 93rd Congress

The President vetoed the Energy Emergency Act (S. 2589) which was finally cleared for him on February 27, 1974. As sent to the President, it included provisions which would have provided for roll-back of crude oil prices, and it was primarily for this reason that the bill was vetoed. The Senate is now considering legislation, H.R. 11793, which would establish under statutory authority a Federal Energy Administration and provide for its funding. The existing Federal Energy Office was established solely by Executive Order, and is functioning with staff borrowed from other agencies. The House has included a roll-back of crude oil prices in this bill also, but it is expected that the Senate will not do so and that its action will prevail in conference.

Judicial Survivors Annuity Act

S. 2014, which was introduced on June 18, 1973 is still pending in the Subcommittee on Improvements in Judicial Machinery. This bill will merge the JSAS with the Civil Service Retirement System. Subcommittee work has been almost completed, and only the Sixth Annual Actuarial Report is still needed. Shortly after that is received, probably in April, action by the Subcommittee can be expected.

Privacy

Senator Ervin, Chairman of the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, has begun hearings on S. 2963 and S. 2964, both bills to regulate computerized criminal justice information. S. 2963 is Senator Ervin's bill, which would preclude the inclusion in such systems of criminal intelligence information. However, in his statements on the bill, he has indicated that he is hoping that the hearings will show the way to a compromise position which would allow use of such data without severely jeopardizing the right of privacy. S. 2964 is the Department of Justice bill which does include provisions for use of criminal intelligence information under certain circumstances, for law enforcement purposes including national security, and to non-criminal-justice components of a criminal justice agency in the performance of a statutory function.

One of the major areas of concern with these bills is the effect upon the press. Senator Ervin is pursuaded that there is no necessary conflict between the two

(See LEGISLATION, Pg. 3)

(From LEGISLATION, Pg. 2)

objectives of personal privacy and freedom of the press. However, it is clear that very careful balancing of the factors involved will be required. Therefore, it may well be some time before any action is taken by the Congress.

Pay Raises

On March 6, the Senate voted 71 to 26 to disapprove the pay raises for judges, members of Congress, Cabinet members, and top level Federal officials.

The Third Branch

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FEDERAL PRISONS BEGIN INMATE COMPLAINT PROCEDURE

The Director of the U.S. Bureau of Prisons, Norman A. Carlson, announced early this month that the Federal prison system is establishing procedures through which inmates may seek formal review of complaints which relate to their imprisonment if informal procedures have not resolved the matter. Director Carlson said in a policy statement that, "a viable Administrative Remedy Procedure should reduce the volume of suits filed in court and will develop an undisputed record of facts which will enable the courts to make more speedy dispositions."

The Chief Justice has pointed to the growing number of prisoners' petitions filed in federal courts and, in his address to the American Bar Association during its annual meeting last August, suggested that the Bureau of Prisons initiate a grievance procedure which would tend to alleviate the problem.

Under the plan initiated by the U.S. Bureau of Prisons, after an inmate files a formal complaint the institution's staff will then have up to 15 days from the receipt of the complaint to act upon the matter and provide a written response to the inmate.

If the inmate is dissatisfied with the response of the institution, he may file an appeal directly with the Director of the Bureau of Prisons, and the Director has up to thirty days from the date of the receipt of the appeal to reply.

The new grievance procedure follows pilot projects at federal prisons in Danbury, Connecticut, Tallahasee, Florida and Atlanta, Georgia which showed that some 35% of inmate complaints were resolved in favor of the inmate.

Bar, Bench & Educators attend

FJC HOSTS MEETING TO DISCUSS TEACHING JUDICIAL ADMINISTRATION

Over thirty distinguished state and federal judges, leaders of the bar, and members of law school faculties met this month at the Center to discuss how judicial administration should be taught.

Dean Dorothy Nelson, USC Law School, as chairman of the ABA committee studying this matter and in cooperation with the Federal Judicial Center, invited several leading jurists to tell law school teachers whether they are effectively preparing students to assume their roles as a part of the judicial process.

Prior to the meeting, Los Angeles lawyer, Richard Chernick, visited 12 law schools to determine to what extent judicial administration is currently taught. Mr. Chernick interviewed 65 professors and presented his report at the meeting. He reported that only a few law schools teach the subject as a separate course, but many integrate aspects of the subject into basic or "core" courses. Some law schools feel they have no positive role in this area of law.

Some provocative issues discussed were:

- The delivery of justice incorporates the entire process; therefore lawyers should be knowledgeable as to the role of all individuals who participate in the process – the clerk, the probation officer, etc. (Chief Justice Roger Traynor, Sup.Ct. Calif., Ret.)

- Law students should be advised as to the real object of the entire judicial process. (Judge Ruggero Aldisert, CA-3.)

- Judges and lawyers are not the only ones who should be considered as an integral part of the judicial process; somehow other disciplines should be involved – sociologists, system analysts, business managers, etc. (Judge Charles Joiner, E.D. Mich.)

- When planning how judicial administration should be taught in the law schools, the faculty should be mindful that there are three constituencies: The judiciary, lawyers, and litigants. Each has a vested interest in how justice is delivered and often their interests clash. (Judge William B. Lawless, former Dean, Notre Dame Law School.)

- A determination should be made as to whether judicial administration is taught in the law schools to sharpen student skills or to improve

(See MEETING, Pg. 4)

(From MEETING, Pg. 3)

the overall judicial process. (Judge Ernst J. Watts, Dean, National College of the State Judiciary.)

- Law students most certainly should be exposed to all aspects of judicial administration, whether by separate courses or clinical seminars. (Prof. Delmar Karlen, N.Y. Univ., Inst. of Judicial Administration.)
- The subject must be made more interesting and thus attract more students; they must be sensitized to the problems of the courts in some manner so that lawyers will be acutely aware of their role as officers of the court. (Judge Griffin B. Bell, CA-5; Prof. Dan Meador, Univ. of Va.)
- The schools should question their real responsibility, i.e., whether a student should ever graduate without some knowledge of the problems of the courts. (Richard A. Green, Dep. Dir., FJC.)

The meeting produced many suggestions which will be helpful to the committee. Inevitably there will be differences, but the group agreed that there is need for improvement; that judges often have before them lawyers who have little or no understanding of the operation of the court; and that cooperative efforts by the law school professors and the judges would bring about significant changes.

A summary of the discussion will be prepared at the Center and presented to the committee as the basis for future planning and to implement the valuable suggestions which evolved from the meeting.

THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION HAS MOVED ITS OFFICES. PLEASE ADDRESS ALL FUTURE CORRESPONDENCE TO:

1030 15th Street, N.W.
320 Executive Building
Washington, D.C. 20005

JUDICIAL CONFERENCE HOLDS SPRING MEETING

The Judicial Conference of the United States met for two days in Washington last month, and following its meeting, asked the Congress to create one judgeship in Puerto Rico and two additional judgeships in the Ninth Circuit.

In addition, the Judicial Conference asked Congress:

- To increase the daily fee for grand and petit jurors from $20.00 to $30.00 daily.
- Revise laws of habeas corpus to guarantee that all possible relief be obtained, first in state courts, before such requests are made in federal courts.
- To consider the effect on the federal courts if two bills currently before the Senate are enacted - one, S. 2427, would expand the Federal Tort Claims Act to include loss or miscarriage of mail, while the other, S. 2767, would require full disclosure of business franchises.

The Judicial Conference also noted that federal judges are using innovative techniques to reduce the number of published opinions and authorized continued study.

The request for two additional judges for the Ninth Circuit U.S. Court of Appeals was made by the Judicial Conference after they had considered a report that the Ninth Circuit is facing a crisis condition because of mushrooming litigation. The report by the Committee said that the caseload of the Circuit Courts had risen from 1,585 in 1969 - 1970 to 2,316 in 1973 - 1974, a rise of 46.1%.

The request for an additional judgeship in Puerto Rico came after the Judicial Conference was told that each of the three judges presently serving there are attempting to cope with 484 cases yearly, compared with the national average caseload for federal district judges of only 352.

The report on the publication of opinions said that in the first 11 months of 1973, 2,708 cases had been decided in federal courts without written opinion. In another 1,477 cases, opinions were written but not published.

The Judicial Conference has previously urged that written opinions be reduced in instances in which no important legal precedent was being set.

The Chief Justice told the Judicial Conference, "The startling increase in cases flooding into the Federal Appeals Courts shows no sign of abating. Rather, the increase goes on. As [the Director of the Administrative Office of the U.S. Courts] Rowland F. Kirks has reported to us . . . Filings in Federal Appeals Courts have risen another 11.4% during the first six months of the fiscal year. This is imposing immense burdens on the federal judges as they attempt to keep abreast of the demands of justice.

"The rise during the second half of 1973 was especially severe in the Ninth Circuit taking in Alaska, Hawaii and the Western States. There it rose a phenomenal thirty-four percent.

"Also striking were the increases in the Eighth Circuit, thirty-one percent, in the Second Circuit, twenty-six percent, and the Tenth Circuit, sixteen percent.

"In the ninety-four District Courts civil case filings continued to mount also, 2.9 percent during the first six months of this fiscal year, although a decline in criminal case filings brought a very slight drop in the overall number of cases filed: 67,406, a decline of 129 compared with the first six months of 1972.

(See CONFERENCE, Pg. 5)

(From CONFERENCE, Pg. 4)

"We are faced once again with striking evidence that we must get on with needed modernizations of our judicial system including a changed way of handling prisoner cases (many of which should be resolved inside the prisons themselves), the establishment of new circuit boundaries to help overburdened court areas, and the appointment of additional federal judges.

"Appeals filed in the Courts of Appeals were running at about 4,000 a year in 1960. They are near the 16,000 level now, a quadrupling in merely thirteen years. Civil cases entering the District Courts were just under the 60,000 mark in 1960. They number about 100,000 a year now. State and federal prisoners filed about 1,000 petitions each year at the start of the Sixties. Their cases take up 17.5 percent of the District Court civil case dockets now and number more than 9,000 a year—nearly a tenfold expansion. These prison inmates merit a compassionate hearing but a reorganization of procedures could well provide for it in many cases inside the penitentiaries themselves without imposing the present immense burden on the federal courts."

RONALD H. BEATTIE, FORMER AO STATISTICS CHIEF, DIES

Ronald H. Beattie, chief of California's Bureau of Criminal Statistics, died March 18. He had served the Administrative Office on two occasions—as chief statistician from 1940 to 1945 and as chief of the Division of Procedural Studies and Statistics (now Division of Information Systems) from 1961 to 1965. He helped set up the Bureau of Criminal Statistics for the State of California in 1945 and was its chief until he returned to the Administrative Office in 1961.

A MESSAGE FROM

THE CHIEF JUSTICE

At the recent Judicial Conference, not surprisingly, a major subject of discussion was the adverse action taken the preceding day in the Congress on the "Pay Bill." The action of Congress means that only some special legislation enacted between now and December can give relief before the next Congress convenes. The prospects for such legislation, according to our best information is uncertain, considering the debates in Congress.

There is little point in dwelling on the inequity of the Congress' failure to make up at least the one-third lag in judicial salaries since 1969, such as civil service employees have received under cost-of-living legislation since that time. I am well aware of the personal hardship many judges are subject to despite the efforts of Senator Gale McGee, Senator Hugh Scott, Senator Hiram Fong, Senator Robert Griffin, Senator Ted Stevens and others.

Inequity coupled with hardship compound the problem for many Judges and yet I urge all Judges to stand by while friends of the judiciary try to remedy this situation. I believe that when the public is made aware of the true situation it will make its will known and Congress will respond. The first step ought to be to enact a full make-up increase to achieve parity with the civil service increases granted under the cost-of-living standard since 1969. This will call for a flat increase of not less than one-third for all Judges, apart from cost-of-living increases made between now and the time Congress acts. The second step will be to urge enactment of some effective self-executing cost-of-living adjustment, placing the Judicial Branch on the same footing as the civil service. Judges, like the civil service, are true career personnel. A Judge once appointed dedicates his or her entire active life to the bench. In so doing, ties are severed, "bridges are burned," sacrifices are made.

On the bright side, I can report that within days of the adverse action by Congress many leaders of the Bar took the initiative in advising of their determination to take steps at once to make the case for equity to the Judiciary. The strong speech of Chesterfield Smith, President of the American Bar Association, is a good reflection of the attitude of the 175,000 lawyers the American Bar Association represents. In addition, Senator McGee has stated that he will proceed with hearings in the Post Office and Civil Service Committee to develop a record in support of early legislative action.

I am confident that affirmative steps will proceed and that they will ultimately be effective.

JUDICIAL CONFERENCE RE–ELECTS JUDGE FRANKEL TO FJC BOARD

The Judicial Conference of the United States last month re-elected Judge Marvin E. Frankel to the seven member Board of Directors of the Federal Judicial Center. Judge Frankel was appointed to the U.S. District Court for the Southern District of New York in 1965. He has been on the FJC Board since 1972. The conference also re-elected John W. Macy, former Chairman of the Civil Service Commission, to a second four-year term on the five-member Board of Certification for Circuit Executives.

Mr. Justice Tom C. Clark (U.S. Supreme Ct., Ret.), former Director of the F.J.C., returned to the Center in February to lead a Conference of 20 experienced District Court Judges.

Seated beside the Justice are (l to r): Chief Judge Walter E. Craig (Dist. of Ariz.); Donald Channell, ABA Washington office; Chief Judge Robert E. Maxwell (Dist. W.Va.); Rowland F. Kirks, Dir. A.O.; William E. Foley, Deputy Dir. A.O.; Gilbert L. Bates, Ass't to Dir., Business & Personnel.

TOTAL JUDICIARY BUDGET UP NEARLY ONE HUNDRED MILLION

The total budget of the Federal Judiciary for fiscal 1975 is $313,238,000 - an increase of $99,875,000 over the previous year.

Among the major factors contributing to this increase were $78,500,000 which, beginning with fiscal 1975, the Judiciary must pay the General Services Administration as rent for its working facilities throughout the nation. In addition, the request for an additional 320 new Probation Officers as well as other personnel were major financial factors for the next fiscal year.

There are 9,181 employees of the Federal Judicial System.

FEDERAL JUDICIAL CENTER AND ADMINISTRATIVE OFFICE PRESENT 1975 APPROPRIATIONS REQUESTS

Federal Judicial Center

District Judge William J. Campbell (ND-Ill.) testified before the Subcommittee on the Federal Judicial Center's appropriations since Director Alfred P. Murrah was unable to attend the hearings.

Judge Campbell said the Center is seeking an increase in its appropriations for 1975 of $626,000 (from $2,073,000 to $2,699,000), the largest annual increase it has requested in its six-year life but also one of the easiest to justify.

"The principal justifications are: (1) Increased probation training needs resulting from substantial increases in the size of the probation service; (2) the need to respond quickly and effectively to the growing interest of all Federal Judicial Center personnel in the improvement of their operations."

Judge Campbell pointed out that the probation service increased by 168 officers in fiscal 1973, by 340 officers in fiscal 1974 and "if the same criteria which have been used these past two years are applied to the projections for fiscal year 1975, the service will be increased again by another 325 officers. . . . In short, in a three-year period, the service will have increased by almost two-and-one-half times."

As examples of the kind of activity generated in response to requests from the judiciary, Judge Campbell pointed to studies conducted under the auspices of the Center in the Southern and Eastern Districts of New York designed to improve juror utilization.

In the same vein, he said that the Center had responded immediately to calls for assistance in structuring and arranging a localized seminar for part-time magistrates in the First Circuit.

In addition, he said the Center has responded to allegations of sentencing disparity made by judges of two circuits by launching a circuit-wide, continuing program on sentencing.

In concluding, Judge Campbell said, "We are thus seeking maintenance of our ongoing programs and, in addition, sufficient funding to permit us the flexibility to maintain an effective response — to hold and increase the momentum which is now very evident — to requests for assistance from the judges and other members of the judicial system."

Administrative Office

Appearing for the A.O., Director Rowland F. Kirks told the Subcommittee that the A.O. is requesting a total budget authority of $6,850,000 for 1975, an increase of $1,437,000 over the adjusted appropriation of 1974.

(See BUDGET, Pg. 7)

(From BUDGET, Pg. 6)

Director Kirks said that $495,000 would be used to create a new Division within the A.O. "which will assume responsibility for the examination of court offices, a function which heretofore has been performed by the Department of Justice".

Turning to the increase in the workload of the federal courts, Director Kirks testified that there has been a general increase resulting from and directly related to the increase in caseload and personnel in the courts. "In the last ten years, the volume of appeals has increased 200 percent, from 5,437 to 15,629. . . . Filings of the first half of fiscal year 1974 are up 11.4 percent in the Courts of Appeals (and) civil filings in the District Courts are up 2.9 percent, but criminal filings are down 7.6 percent."

Director Kirks told the Subcommittee that the Probation Division has acquired new responsibilities as a result of the enactment of new legislation, for example, that authorizing the use of community treatment facilities for probationers, parolees, and mandatory releasees. These laws necessitate new lines of communication, new procedures, and new areas of cooperation for probation officers and place upon the Probation Division an additional burden in their introduction and implementation, he said.

CUSTOMS COURT REPORTS SIGNIFICANT PROGRESS

The United States Customs Court in New York City has undergone a complete reorganization of virtually all of its practice and procedures following the enactment of the Customs Court Act of 1970.

The court has adopted entirely new rules to implement the new law and also put into effect a Personnel Management System which includes a complete reorganization of the court's administrative and clerical activities.

The pending caseload of the court has, in the past three years, been reduced from 450,000 cases to approximately 225,000 cases, or a reduction of about 50%. It is anticipated that during the next year further extensive reductions in the court's case backlog will be realized.

At the same time, the court has been able to reduce by 14 the number of budgeted personnel positions from the former total of 136 to the present compliment of 122, a 10% reduction in personnel. Furthermore, except for amounts required by mandated pay increases, the court has not requested any increased appropriations since the 1971 fiscal year. In fact, the court appropriation request for the fiscal year 1975 was $20,000 less than the amount appropriated for the present fiscal year.

CCPA TO HOLD INITIAL CONFERENCE

For the first time in its 64 year history, the United States Court of Customs and Patent Appeals will hold a judicial conference.

The Conference will take place in Washington, D.C. on April 30th and will be keyed to the "Improvement of Justice in the CCPA."

The Conference will be attended by all the judges of the CCPA and judges of the U.S. Customs Court. Also attending will be representatives of the Customs section of the Department of Justice, the Solicitor and Appellate Boards of the United States Patent Office and members of the Customs and Patent Bars.

Senator Roman L. Hruska, Ranking Minority Member of the Senate Committee on the Judiciary and Chairman of the Commission on Revision of the Federal Court Appellate System will be the featured luncheon speaker.

Conference discussion will center on the many new procedures adopted by the court in the last 18 months and the CCPA's new Rules which became effective January 1, 1974.

COURT COMES TO CAMPUS

The Law School at St. Louis University opened its moot court facility on February 14 to a panel of three Judges of the Eighth Circuit for an actual court session.

The program, arranged by Chief Judge Pat Mehaffy (CA-8) and Dean Edward F. Foote, provided a unique educational experience for both the law students and the university community.

Judge William H. Webster, who handled the advanced planning, joined presiding Judge Floyd R. Gibson and Judge Roy L. Stephenson on the bench to hear the arguments of counsel.

Over four hundred persons attended the session during which four different cases were argued; an environmental law case involving the boundary waters canoe area of nothern Minnesota, a prisoner civil rights case involving free exercise of a religious organization, a malpractice action and a criminal appeal.

All attorneys were advised of the program in advance and readily agreed. Most attendees stayed for the entire session and the general enthusiasm gave promise for similar programs.

Judge Webster said, "We would encourage the federal and state appellate courts to cooperate fully with nearby law schools in this aspect of their growing interest in clinical experience."

PERSONNEL

Appointment

James Harvey, U.S. District Judge, E.D. Mich., Feb. 1

Elevations

John T. Curtin, Chief Judge, U.S. District Court, W.D.N.Y., Feb. 19
Albert J. Engel, U.S. Circuit Judge, 6th Cir., Jan. 4

Confirmations

Robert Firth, U.S. District Judge, C.D.Calif., March 1
Richard P. Matsch, U.S. District Judge, D.Colo., March 1
Joseph L. McGlynn, Jr., U.S. District Judge, E.D.Pa., March 1
Thomas C. Platt, Jr., U.S. District Judge, E.D.N.Y., March 1
Thomas E. Stagg, Jr., U.S. District Judge, W.D.La., March 7

Deaths

William M. Byrne, U.S. District Judge, C.D.Calif. March 9
Sidney L. Christie, U.S. District Judge, N.&S.D.W.Va., Feb. 15
John O. Henderson, Chief Judge, U.S. District Court, W.D.N.Y., Feb. 19
Philip Nevill, U.S. District Judge, D. Minn., Feb. 13

AO FJC calendar

April 6 Meeting of the Board of the F.J.C., Wash, D.C.
April 18-20 Fourth Seminar for Chief Clerks in U.S. Bankruptcy Judges' Offices, Dallas, Texas.
April 23-24 Mid-Year Meeting, National Conference of U.S. Bankruptcy Judges, Chicago, Ill.
April 26-27 National Bankruptcy Conference, Chicago Ill.
May 2-5 National Council of Federal Magistrates, Williamsburg, Va.
May 3 First Circuit Conference, Lynnfield, Mass.
May 6-11 Ninth National Seminar for Newly Appointed U.S. Bankruptcy Judges, Washington, D.C.
May 13-14 Judicial Conference Subcommittee on Judicial Statistics, San Diego, Calif.
May 13-15 Seventh Circuit Conference, Milwaukee, Wis.
May 15-18 Sixth Circuit Conference, Gatlinburg, Tenn.
May 20 Judicial Conference Committee on Civil Rules, Washington, D.C.

THE THIRD BRANCH
VOL. 6, NO. 3 MARCH 1974

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Bulletin of the Federal Courts

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HEARINGS OPEN ON NEW CIRCUIT JUDGESHIPS

Hearings began March 27th before the Senate Subcommittee on Improvements in Judicial Machinery on the Omnibus Circuit Judgeship Bill, S. 2991.

This proposed legislation embodies the recommendation of the Judicial Conference of the United States that Congress authorize nine additional Circuit judgeships. These additional judgeships would be placed in seven of the present eleven circuits.

The *First*, *Third*, *Sixth*, *Seventh*, and *Tenth* Circuits would each receive on additional judgeship while the *Second* and *Fourth* Circuits would each receive two additional judgeships.

According to the Subcommittee Chairman, Senator Quentin N. Burdick, "The *Fifth* and *Ninth* Circuits are excluded from immediate consideration in the first phase of these hearings because the Commission on Revision of the Federal Court Appellate System has recommended that those two circuits be divided."

Congress last considered authorization of additional circuit judgeships seven years ago.

The Subcommittee first received the statement of Senator Roman L. Hruska, Chairman of the Commission on Revision of the Federal Court Appellate System, who briefly reviewed the recommendations of that Commission for Circuit realignment.

A. Leo Levin, Executive Director of the Commission, followed with his testimony, citing the extensive correspondence between the Commission and judges and lawyers in every state which preceded the final proposal for realignment. That proposal was contained in the report of the Commission filed last December. Since that time, the Commission has been working vigorously on phase two of its statutory mandate, that is, a study of the structure and internal procedures of the Federal Appellate Court System.

He stated, "Many proposals for change have been received and are under study. I am entirely satisfied that what was true in December remains true today: there is no proposal before us, or likely to come before us which would eliminate the need for Circuit realignment."

The Subcommittee heard testimony from a number of Circuit

(See HEARINGS, Pg. 2)

THIRD CIRCUIT PUBLISHES INTERNAL OPERATING PROCEDURES

Chief Judge Collins J. Seitz has disclosed that the United States Court of Appeals for the Third Circuit has published a complete description of its *Internal Operating Procedures* to inform both the Bar and public of the procedures followed by the Court in processing appeals.

The *Internal Operating Procedures* are distinct from the Court's Rules which were recently revised and published, effective May 1.

The Third Circuit's Judges believe this compilation will be a valuable and practical aid to the Bar because it illustrates how cases move from panel assignment to final disposition, including time schedules and voting procedures on matters such as oral argument and rehearing.

The section outlining the criteria for oral argument was felt to be of such importance that it was also included as an appendix to the recently revised Rules. It is believed that publication of the *Internal Operating Procedures* will reassure the Bar and the public that the Court's work is being handled expeditiously and with full concern for litigants' rights. Copies may be obtained by writing Circuit Executive William A. (Pat) Doyle, Room 6022, U.S. Courthouse, Philadelphia, PA. 19107.

(From HEARINGS, Pg. 2)

ted a system of screening cases and placing them into categories to promote efficiency in handling. Judge Lewis stated this method was employed ". . . so that each case would receive the attention it merited and no more . . ."

He added that the Tenth Circuit should not continue borrowing its overworked district judges to assist with the appellate workload. Also, the Tenth Circuit expects a population increase soon.

He strongly supported preserving oral argument and written opinions and concluded, "We must not lower the profile of justice in the United States for the sake of the economic impact of a few federal judges."

The testimony of Chief Judge Harry Phillips (CA-6) and Judge Gerald Heaney (CA-8) will finish the first phase of the subcommittee's hearings.

REVISION COMMISSION SETS ADDITIONAL HEARINGS

The Commission on Revision of the Federal Court Appellate System will hold hearings May 20 and 21 in Washington, D.C.

These hearings are the second in a series dealing with the structure and internal procedures of the Federal courts of appeals. On April 1 and 2 the Commission conducted hearings on proposals for creation of a National Division of the United States Court of Appeals.

Further hearings are also scheduled for Chicago on June 10 and June 11. Prospective witnesses who desire to testify are invited to write or telephone the Executive Director of the Commission, 209 Court of Claims Building, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 382-2943.

Bulletin

FEDERAL EMPLOYEES WILL RECEIVE BACK PAY

President Nixon, following an order of the U.S. Court of Appeals for the District of Columbia, issued an Executive Order April 12th ordering retroactive pay raises for most federal employees.

The court ordered that employees were entitled to back pay for a wage increase that was delayed for three months in 1972.

President Nixon delayed until January, 1973 a 5.14% federal pay increase which was due in October, 1972 on the ground that paying employees in October would be inflationary. However, the Court of Appeals ordered the pay restored after the National Treasury Employee's Union filed suit.

The effect of this will mean that most court employees who were in a pay status during the period October 2, 1972, to January 7, 1973, will receive back pay in an amount approximating 5.14% of the salary actually received during that period.

Because of the lapse of time involved, there will be some delay while the Administrative Office sets up machinery to disburse back salary. A request for supplemental funds must also be made to Congress.

Insofar as resources and capabilities will permit, payments will be automatic and there is no need to contact the Administrative Office.

TWO STATES EXEMPT SENIOR JUDGES FROM STATE TAXES

Both Hawaii and Pennsylvania have recently ruled that the income which federal senior judges receive as income from their service as judges is exempt from state personal income tax.

The Pennsylvania Department of Revenue interpreted the key provisions of the Pennsylvania Personal Income Tax Act, Section 301(d), Subsection (iii) which provides that, "Compensation means and shall include salaries, wages, commissions, bonuses and incentive payments, whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property," and held that another section of the state's tax code excluding retirement benefits would take precedence.

The Chief Counsel of the Personal Income Tax Bureau, Donald J. Murphy, in a letter to Administrative Office Director Rowland F. Kirks, said that a judge who has "retired" under Section 371(b) of Title 28, USC, "is not taxable on the monies he receives by virtue of the fact that he is a senior U.S. Judge."

The Department of Revenue of the State of Hawaii has recently rendered a similar decision. However, neither the Pennsylvania nor the Hawaii decisions exempt income received from sources other than that which a senior judge receives from service as a judge.

MAY DAY MARKS LAW DAY

By Joint Resolution, the 87th Congress designated May Day as Law Day. The resolution's goal was to:

". . . set aside as a special day of celebration by the American people in appreciation of their liberties and the reaffirmation of their loyalty to the United States of America; of their rededication to the ideals of equality and justice under law . . ." This year, as in years past, Law Day will generate many programs throughout the country by the courts and bar associations to instill a sense of awareness and respect for our system of laws.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Regional Rail Reorganization

This recently enacted legislation, PL 93-236, contemplates considerable Federal involvement in the restructuring of the rail transportation system in the northeastern and midwestern regions of the United States. The presently pending rail bankruptcy cases will be considered for transfer to a special three judge court designated by the Judicial Panel on Multi-District Litigation. (See story p. 6.)

Revision of the Circuits

Senator Burdick, Chairman of the Senate Judiciary's Subcommittee on Improvements in Judicial Machinery, has introduced a series of 4 bills which would carry out the recommendations of the Commission on Revision of the Federal Court Appellate System, which were reported on in the last issue of *The Third Branch*. One bill, S. 2991, proposing nine additional circuit judgeships for seven of the circuits has been the subject of hearings before that Subcommittee. On March 27, Senator Hruska and A. Leo Levin, Executive Director of the Commission on Revision of the Federal Court Appellate System, presented testimony. Subsequently, on March 28, April 4, April 10, and 11, other key judges presented their testimony. (See story p. 1.)

The Subcommittee has been particularly interested in the ways in which the courts of appeals have tried to meet the problems of mounting caseload. At this time, the Subcommittee does not expect to examine the problems of the fifth and ninth circuits, but will go into that matter in connection with the revision of the circuit boundaries.

Omnibus District Judgeships

S. 597 is still pending before the full Senate Judiciary Committee. The Subcommittee on Improvements in Judicial Machinery has recommended the creation of only 27 of the requested 52 district judgeships. In view of the other matters which are now occupying the attention of the Senate Judiciary Committee, and the difficulties inherent in the creation of a limited number of judgeships by the Congress, early action is not expected at this time.

Consumer Protection Agency

Both the Senate and House committees concerned with bills to create a Consumer Protection Agency have taken recent action. The Senate Commerce Committee has approved, in substantially modified form, S. 707, but the report is not yet available. The Senate Government Operations Committee, to which the bill was also referred, has not reported.

In the House of Representatives, H.R. 13163 passed on April 3. The bill establishes a Consumer Protection Agency, with authority to obtain judicial review of agency action having an impact on consumers, and to appear as amicus curiae. An amendment added on the floor limits the agency to a three-year authorization.

If the Senate bill, as reported, is reasonably similar, establishment of the Consumer Protection Agency can be expected.

No-Fault Insurance

On April 11 S. 354, to establish a system of no-fault insurance, was brought to the floor of the Senate. Two Senate Committees—Commerce & the Judiciary, have recommended passage. Debate on the bill began on April 22.

Civil Service Retirement

On April 9 the President signed into law S. 2174, providing definitions for "widow" and "widower" within the Civil Service Retirement System. (PL 93-260) The new act reduces from 2 years to 1 year the marriage requirement for a widow or widower to be entitled to a survivor annuity under the civil service retirement laws.

Per Diem Increases

A new bill which would increase per diem allowances for government employees on official travel was introduced on April 4 by Congressman Waldie. H.R. 14000 will raise the present $25 per day allowance to $35, and the present $40 per day actual expenses to $50. In addition, the bill authorizes the Comptroller General to conduct a study, beginning on July 1 of each year of actual costs by private vehicle for government travel and would provide that such findings would be included in regulations to be promulgated by the President.

Federal Tort Claims Act Amendment

On March 16 the President signed H.R. 8245, a bill "to amend Reorganization Plan Numbered 2 of 1973, and for other purposes." (P.L. 93-253). The Law amends the Federal Tort Claims Act providing that its provisions will be applicable to claims arising out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution by investigative or law enforcement officers of the United States. Such officers are defined as those who are empowered by law to execute searches, seize evidence or to make arrests for violations of Federal law.

(See LEGISLATION, Pg. 6)

(From COMMISSION, Pg. 6)

the federal courts of that state.

The work of the five-member ommission will be implemented by a complete staff, including Hearing Examiners, and will function under the State's Department of Social Rehabilitation and Control.

Under the provisions of the bill any person confined to a facility or otherwise in the custody of the Commissioner of Correction, who has a complaint against any employee of the Department of Correction, may submit a complaint to the Commission. If the Department has complaint procedures which apply they must be followed before taking the matter to the Commission. If no established procedures exist, the complaint may be filed and reviewed by the Commission. If a determination is made that there is no merit to the case it may be dismissed. If a determination is made that the complaint is not acking in merit, the Commission will hold a hearing as promptly as feasible with at least three Commissioners present.

The Commission's decisions will be issued in the form of an order, which it is specified must include findings of fact, the Commission's conclusions and its disposition of the complaint.

The statute specifies the conditions and procedures which are to be followed in processing the complaints, and which action is, for judicial review purposes, considered final.

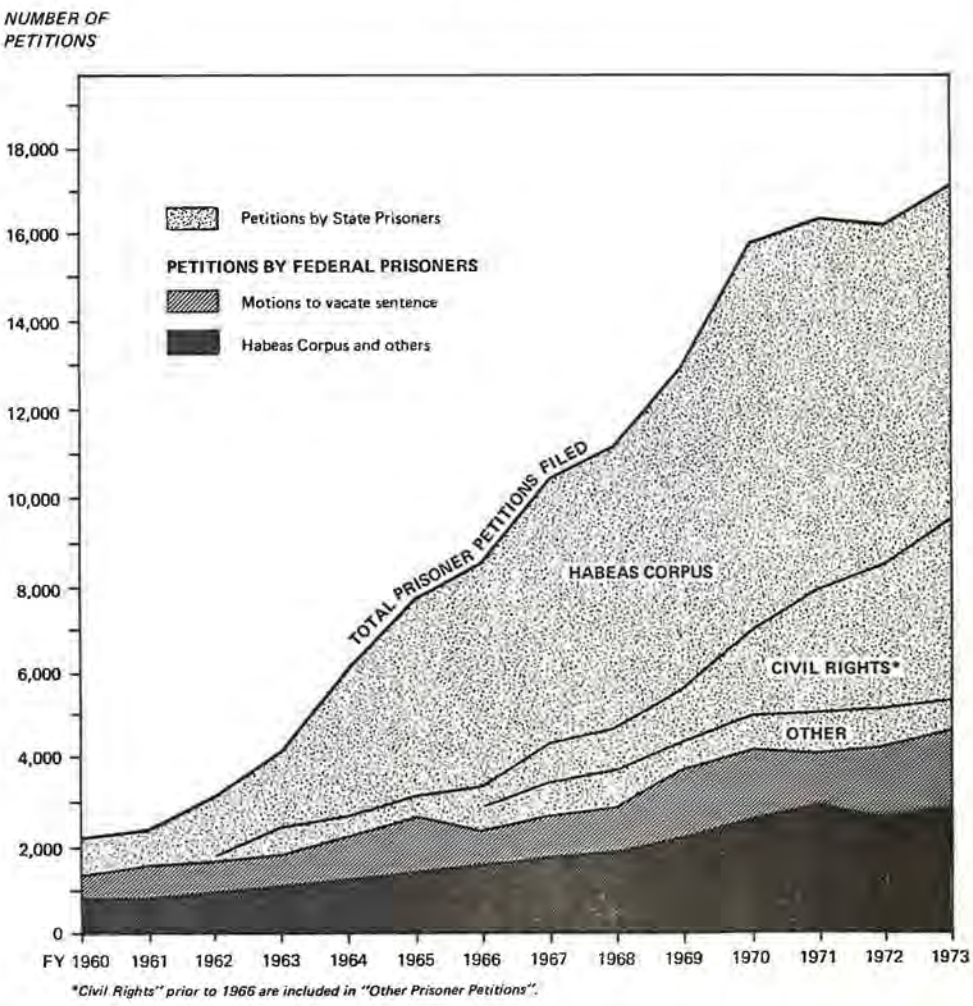
Since all state prisoners must now exhaust their state remedies it will materially affect the workload of the federal courts in that jurisdiction.

This legislation is an excellent example of results which can be had from cooperative state-federal relations. In this instance, the suggestion emanated from U.S. Magistrate Herman A. Smith (M.D. N.C.) who worked closely with the staff of the State Attorney General. Magistrate Smith based many of his recommendations on his study of the procedures followed in Maryland, where similar legislation was adopted, reducing prisoner filings some 66%.

(For previous story on the F.J.C. 1983 Section Committee see the October, 1973 issue of *The Third Branch*.)

PETITIONS FILED BY STATE AND FEDERAL PRISONERS

FISCAL YEARS 1960–1973



*"Civil Rights" prior to 1966 are included in "Other Prisoner Petitions".

This is one of a series of pictorial representations describing trends in the nation's federal courts which were prepared by the Administrative Office for the Spring Meeting of the Judicial Conference of the United States.

The Third Branch

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Videotape Research Results Announced

Preliminary results of a research project which is analyzing the effect of videotaped testimony on the judicial process were announced recently by the Michigan State University Department of Communication.

In comparing a live trial with a trial where testimony was presented via videotape, the researchers found that jurors who view a videotaped trial arrive at similar judgments, have similar perceptions of the trial participants, retain as much trial-related information, and experience similar (in some instances higher) levels of interest and motivation. The research project involved a civil negligence case. The researchers also found that the type of presentation did not influence the amount of the award.

Preliminary results of another study provide additional data on the effects of testimony presented via videotape. The Battelle Memorial Institute in Seattle is evaluating questionnaires sent to jurors who participated in trials in which all testimony was on videotape, in the court of Judge James L. McCrystal of the Erie County, Ohio, Court of Common Pleas. Of the 83 questionnaires sent out, 76 were returned completed.

(See RESEARCH, Pg. 2)

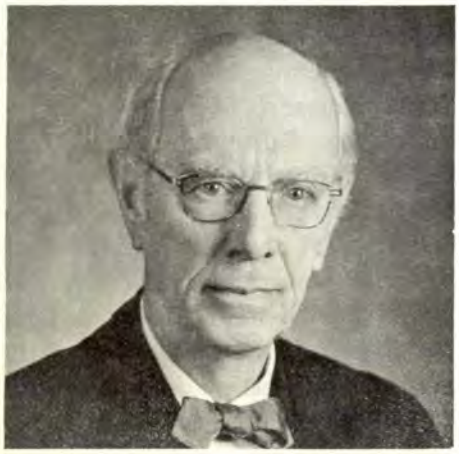
SPOTLIGHT: CCPA PROGRESS REPORT

An interview with Chief Judge Howard T. Markey.

Chief Judge Markey

For the first time in many years, the U.S. Court of Customs and Patent Appeals has a current docket, and this, as Chief Judge

(See SPOTLIGHT, Pg. 4)



Judge Albert B. Maris

COLLEAGUES HONOR JUDGE ALBERT B. MARIS

Judge Albert Branson Maris, who recently retired after fifteen years of service as chairman of the Committee on the Rules of Practice and Procedure of the Judicial Conference, was guest of honor at an appreciation dinner attended by his former associates on the Conference committees at the Supreme Court Building on May 20. Chief Justice Burger, who presided, and Chief Justice Earl Warren, retired, were the honorary co-chairmen and Judges J. Edward Lumbard and J. Skelly Wright were co-chairmen.

In addition to serving as Rules chairman, Judge Maris also served the Conference for many years as chairman of the Committee on the Revision of the Laws. The Conference at its September 1973 session also

(See MARIS, Pg. 2)

(From RESEARCH, Pg. 1)

Between 63 and 70% of the jurors believed it was easier to concentrate on videotape than it would have been were the trial live. Sixty-seven percent claimed there were significant differences between videotaped and live trials. When these differences were perceived to be advantages, it was because videotaped trials were considered to be less confusing, less emotionally involving, and legally sounder (*i.e.*, with respect to inadmissible evidence). Forty percent indicated that they would choose videotape for a civil trial in which they were litigants. When asked why, they responded with several reasons, of which increased relaxation and decreased confusion were the most frequent responses. By contrast, 43% indicated they would choose videotape in a criminal trial in which they were defendants.

Meanwhile new developments are taking place in federal district courts. Videotaping of testimony for the first two pre-recorded videotape trials in the federal system is now taking place as part of a Federal Judicial Center pilot project in two cases before Judge Thomas D. Lambros in the Northern District of Ohio. In a non-jury anti-trust case counsel estimated the trial time would be four weeks with 25 witnesses for the plaintiff, most of whom were out of town witnesses. Judge Lambros was concerned with scheduling the protracted trial in a way which would least disrupt the trial docket and which would not delay criminal cases. For their part, counsel were concerned with the expense of making numerous out-of-town witnesses available with the necessary uncertainties of trial scheduling. Court personnel trained by the Center are presently videotaping all the testimony on equipment provided as part of a pilot project. When this is completed Judge Lambros will hear live opening statements from counsel and then will listen to the testimony on tape as his schedule permits.

The second suit where all testimony will be presented via videotape involves a petition for a writ of habeas corpus in which the constitutionality of state laws at the time of a state conviction is being challenged. The evidence in this case will consist entirely of testimony from experts who reside out of state. The parties have obtained personnel and equipment in each city to videotape the expert testimony using the guidelines provided by the Center to federal district courts.

It is Judge Lambros' opinion that at this stage the court should carefully select cases for which prerecording of all testimony is appropriate and should closely supervise every aspect of the case. These first two cases involve non-jury matters, agreement of the parties on the videotaping, and experienced counsel—factors which should contribute to the success of the experiment.

Judge Gerald J. Weber recently made the first use of a new editing technique developed by the Center in the playback of a videotaped deposition during a nine-week criminal trial. The testimony was that of a critical government witness who was seriously ill. The deposition had been taken under the provisions of Title 18 USC 3503. Because of the many problems involved, Judge Weber was present at the deposition which resulted in 3½ hours of testimony on videotape. Shortly before the time for the production of this testimony the court and the counsel reviewed portions of the videotape for the purpose of ruling on objections and editing the transcript.

Using this transcript and editing equipment developed by the Center, Judge Weber found it easy to precisely edit out inadmissible testimony during playback at the trial. Judge Weber reported that the presentation of testimony via videotape produced a greatly different impression than the reading of the same material in cold print.

After two years of the videotape pilot project, all active judges and two senior judges in the Western District of Pennsylvania have ordered videotaping in at least one case. During the past year testimony has been videotaped at a rate of three or four witnesses per month while videotape use at trial has been at a rate of about one trial per month.

In the Eastern District of Michigan a recently initiated pilot project is being increasingly used. In addition to prerecording testimony, that court has also recently videotaped a sentencing council session to be used for sentencing institutes and FJC seminars. Training of clerk's office personnel in the Eastern District of Pennsylvania will be completed by the end of April and videotaping of dispositions in appropriate cases in that district will start in May.

(From MARIS, Pg. 1)

cited Judge Maris for his work in the formulation of Codes of the Virgin Islands and as an advisor to the governments of Guam, American Samoa and the Trust Territory of the Pacific Islands in the reorganization of the judiciary. He was also a member of the United States Advisory Committee on International Rules of Judicial Procedure, 1959-1963, and a member of the Advisory Committee to the Secretary of State on Private International Law, 1964-1967. He has served the Supreme Court as Special Master to determine a dispute between Illinois and other Lake States as to the diversion of water by Chicago from Lake Michigan.

(See MARIS, Pg. 3)

(From MARIS, Pg. 2)

He is now serving the Court as Special Master to determine whether the federal government or the States have proprietary right to exploit the seabed and the subsoil of the continental shelf beyond the three-mile limit on the Atlantic Coast. Although he took senior judge status as soon as eligible, Judge Maris still participates in the work of the Court of Appeals for the Third Circuit.

In presenting an award to Judge Maris at the dinner, Chief Justice Burger presented the following citation:

"For his dedicated service to the work of the Conference and the Judiciary for more than three decades, for his skillful leadership in the development of the rules of practice and procedure in the United States Courts and for his unique contributions to the development of the law."

Judge Roszel C. Thompsen (Dist. Md.) is replacing Judge Maris as Chairman of the Rules Committee. With 20 years of experience on the District bench, Judge Thompsen will be able to render valuable leadership to the important work of this committee.

PROGRAM FOR PROBATION CLERKS

The Chief Clerks of Probation Offices have recently been included in the Federal Judicial Center's seminar programs. Highlights of the three day seminars include extensive training in policies and procedures of the Administrative Office, Bureau of Prisons, and Board of Parole; personnel management; and inter-office relationships. The first course was held in Washington, D.C. in March. The second will be held in Chicago in July and invitations will be tendered to all Chief Clerks who did not attend the March meeting.

Judicial Fellows Appointed

Donald W. Jackson

Alan M. Sager

Two lawyer-political scientists, Donald W. Jackson and Alan M. Sager, have been awarded Judicial Fellowships for 1974-75, according to retired Supreme Court Justice Tom C. Clark, Chairman of the Judicial Fellows Commission.

Judicial Fellows study and conduct research in judicial administration and involve themselves in a wide range of participant-observer activities concerning the administration of the federal court system. The Judicial Fellows Program, which is patterned somewhat after the Congressional and White House Fellows Programs, is administered by the National Academy of Public Administration Foundation. Grants from the American Bar Endowment, the Ford Foundation, and the Edna McConnell Clark Foundation finance the program.

It is designed to attract young professionals, with interdisciplinary backgrounds who will not only make a contribution during their year as Judicial Fellows but continue contributing understanding and support of the judiciary and its effective operation in the future.

Donald W. Jackson received his J.D. degree from Southern Methodist University in 1962 and was a partner in a Dallas law firm. Recently, he received a Ph.D. in political science from the University of Wisconsin, writing his dissertation on state trial judges. He has been an Assistant Professor of Government at Idaho State University and will join the faculty of Texas Christian University after his year as a Judicial Fellow.

He has authored case notes and delivered papers to several political science association conventions. His teaching and research interests are in the area of constitutional law and the judicial process.

Alan M. Sager is an Assistant Professor of Government at the University of Texas. He received his J.D. degree from the University of Michigan Law School and his Ph.D. from Northwestern University. His dissertation synthesized the judicial behavior literature of the past decade and executed a computer simulation of decision-making in the U.S. Supreme Court. His publications include, "The Impact of Supreme Court Loyalty Oath Decisions." in the *American University Law Review*. Mr. Sager's teaching and research interests are primarily in law and society, judicial behavior, and simulation and computer applications in politics.

The Fellows work exclusively in judicial administration and not case decision-making. This year's Fellows, Russell R. Wheeler and

(See FELLOWS, Pg. 6)

(From SPOTLIGHT, Pg. 1)
Howard T. Markey makes plain in the following interview, is a direct consequence of a joint effort on the part of the judges and the entire court working as a team.

The interview brings out what the court has done recently to solve its backlog problem and an outline of some of the future objectives of the CCPA.

Judge Markey was appointed Chief Judge of the U.S. Court of Customs and Patent Appeals on June 22, 1972 and entered on duty June 26, 1972.

Is the progress that this court has made administratively a good example for other appellate courts?

That would be for other appellate courts, who know their problems better than I would, to determine. You have to keep in mind that the jurisdiction of this court is somewhat unique because of the technology involved. Among the 308 appeals we plan to dispose of this fiscal year are cases in laser technology, nuclear energy, space satellites, computers, microorganisms and new phases of chemistry and electronics.

The subject matter is highly technical?

Most of it is extremely technical, and that is why we don't have law clerks, per se. Each judge has one assistant, who serves as law clerk and engineer. Titled a "technical advisor," his job description calls for two degrees, one legal and one scientific, and some technical experience before he or she ever comes here. In some cases the law is not difficult, but accurate, in-depth technical research, to dig out the technology, takes a good deal of time. In other cases, the technology is not at all as difficult as the big words make it sound, but the applicable law requires a great amount of research and conference discussion.

What were some of your most pressing tasks since you became Chief Judge?

There were three—learning, learning and learning! And, I hope, I'm still learning. So far as the court's tasks were concerned, its most pressing task was to reduce the interval from appeal to decision. In June 1972 that interval was 35 months. Almost three years. Had we continued without change, the interval could not have been reduced. It could only have extended further and further, four years, four and half years, five years and so on.

So the court established a goal—to reach the point at which we had no carry-over cases, i.e., to dispose of all cases pending on 1 July 1972 before 30 June 1974.

The first step was to reorganize and direct our manpower to the main job at hand. For example, the court had some manpower devoted to putting out its own volume of patent opinions, which were already published in Federal Reporter and in Patent Quarterly. A survey of the recipients of our volume indicated that its discontinuance would create no problems for anyone. Our customs opinion volume had to be continued, but the Customs Bureau was most cooperative in agreeing to retain the plates from which it was printing our opinions in its Weekly Bulletin and to re-run them to make up the annual volume. The manpower thus freed was devoted to work on our opinions. Part of the substantial moneys saved were returned to the Treasury. Part was used for equipment to facilitate our work. For the second year, we were able to reduce our budget request to a total less than that appropriated for FY 1972, even after absorbing pay raises and the effect of inflation.

Working together, the judges and our excellent staff promulgated our first new Rules in 20 years, initiated a multi-track case processing system, case screening and a full annual schedule of hearings and conferences, provided each chambers with the first dictation equipment the court had ever had, put all oral arguments on individual cassettes, provided each attorney a Notice to Counsel which governs our hearings, provided service pins and certificates to members of the staff, provided each judge a full set of reports at home to facilitate his work in the evenings and on weekends, planned our first Judicial Conference, arranged for our first session outside of Washington and for the first sitting of all five judges with a Court of Appeals of a Circuit, and, of course, we adopted a policy regarding publication of opinions, taking the view that we have two jobs—one is to decide and one is to write opinions.

How would you define the two jobs?

The decision is the key job. The opinion is talking about it. The decision is the egg and the opinion is the crowing. We're paid to make decisions. That's the main thing, particularly when the public we serve is waiting years to get a decision. Of course we have a second obligation, we have a duty to the bar, to the public and to the country. That is to explain those decisions which affect, or revise or pioneer in the law. In other words to provide a published opinion whenever it would truly add something useful to the body of the law.

It's a matter of performing and informing?

Exactly. Performing includes informing, but only when we truly inform. We do need to help make the law grow, and to provide guidance for our lower tribunals and the bar. But that goal is frustrated when decisions are delayed while full, detailed opinions, many of which are redundant, are written and published in every single case.

FJC CASSETTE CATALOG
MAY 1, 1974

Here is a partial catalog of cassettes available on request from the Federal Judicial Center Information Service. These recordings are available to members of the Federal Judicial System on a two-week loan basis. A detailed, comprehensive catalog which lists the key speakers who discussed the topics indicated is available on request from the FJC Information Service, Dolley Madison House, 1520 H Street N.W., Washington, D.C. 20005. [Figures in parentheses, i.e.: (J-37), are catalog identification numbers which should be used when ordering.]

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What was the first thing that was recognized as a problem the court could immediately solve?

Misunderstanding and miscommunication as to how things were to be done and who was to do what. We established Standard Operating Procedures. Each "SOP", as we call them, is discussed, reviewed, and revised by the judges and staff before its adoption. Each member of the court team has a loose-leaf binder on his or her desk, which contains all approved SOPs. Once adopted, a SOP governs everyone's action in the area it covers. SOPs are always subject to change, and if someone comes up with a better way to do it, then we follow the same conference and adoption procedure in producing the new version.

At the outset, also, we adopted the leave system and began work on a set of job descriptions by asking each staff member to draw up a description of his or her job as each one saw their job.

Why is a job description important in administering a court?

Job descriptions are important in administering any organization. Every organization has, or should have a mission. To accomplish that mission it has only two assets. People and tools. The people are the all-important element. Fairness requires that each person know and understand the important part he or she is to play in accomplishing the mission. Everyone needs a clear cut understanding of what the goal of the court is and what his mission is in relation to that goal. The next in importance is tools. You really shouldn't ask somebody to do a job and then not give them all the tools they can use. In these two years, while reducing the budget as indicated a moment ago, the court replaced two outmoded copy machines with three new ones, located near the users, and provided each secretary with new Selectric typewriters.

How do these tools help judges like yourself?

As you know, a judge works twenty-four hours a day. Each of us now has a portable tape recorder, which can be carried everywhere. Many times I have thought of material for portions of an opinion and have immediately recorded it before memory fails. It happens while driving to and from chambers, riding a plane or at home. Both administrative and judicial matters go into the recorder as soon as the thought occurs. Each morning my secretary types out my mental ramblings and I get busy trying to make sense of them. One of the great things about judges is that each works in his own way to accomplish his judicial function. What works well for one may not for another, but tape recorders and copy machines have helped in the word processing segment of my work.

What other changes were made?

As indicated, administration is the same everywhere. Minor modifications are based on specific kinds of problems faced by the particular type of organization and mission. One general change was a revision of most of the forms used in our work. Another was to provide each member of the court with an identification card bearing his or her photo in color.

Was eliminating the backlog the prime objective?

Yes, that was the goal—to get current. That means 308 cases, most of them involving complex technology, to dispose of this year. There is a further objective too. As a public service institution, the court feels it has the duty to develop its capacities to the maximum and to make its capacity to accept increased burdens known to the decision-makers struggling with the public service problem of crowded court dockets. If, for example, we develop such increased capacity to handle our own workload, our judges can be assigned, upon approval of the chief judges of the circuits and The Chief Justice, to assist the circuits. So long as the court was struggling with a three-year interval at home, such assistance was impossible.

Would you be more specific as far as describing the impact of eliminating the backlog?

First in our thinking is the impact on the litigants. A current docket reduces that horrendous interval between appeal and decision. When you are current, justice is no longer denied by delay.

In patent cases, for example, an applicant for a patent, or his assignee, may be holding back an investment of a million dollars. He may say, "Look, I'm not going to put all that money out, unless my investment is going to be protected by a patent." For him, a fast and fair decision is vital if his investment plan is to remain viable. If he has to wait three years, he may drop the whole matter and our economy suffers to that extent. Similar considerations apply to customs cases, where decisions to import or not to import are directly affected by our decision. In trademark cases an entire advertising budget may be waiting the court's decision regarding registration. I know that interests are affected by every court's decisions, but these examples illustrate the importance of prompt decisions within our area of jurisdiction.

So too, the government, which is a party in 90% of our cases, has a vital interest in prompt decisions from us, so that it can move ahead with the decisions it must make and actions it plans to take.

(See SPOTLIGHT, Pg. 7)

(From FELLOWS, Pg. 3)

Howard R. Whitcomb, have surveyed and analyzed training needs of Federal District Judges for the Federal Judicial Center; assisted the Commission on Revision of the Federal Court Appellate System; studied the function of U.S. Magistrates and Circuit Executives; monitored developments in trial advocacy and clinical legal education; surveyed literature on judicial administration; and maintained ongoing liaison with numerous organizations with interests in the field of judicial administration. A spin-off of the activities of the first Judicial Fellows is their authorship of an undergraduate text in court administration to be published in 1975.

E. Gordon Gee

Mr. Justice Clark also announced that E. Gordon Gee is filling a short-term Judicial Fellowship. Mr. Gee received his J.D. and a Doctorate in Educational Administration specializing in personnel from Columbia University. He was employed by a New York law firm, participated in a Ford Foundation study of the Economics of Legal Education, clerked for Chief Judge David T. Lewis of the U.S. Court of Appeals for the Tenth Circuit and served as a consultant to several institutions. His position prior to appointment was Assistant Dean of the University of Utah College of Law. Justice Clark explained that the Judicial Fellows Program also provides for short-term Fellows with specialized interests.

A lawyer and two social scientists were named as Alternate Judicial Fellows. Hugh M. Wade received the J.D. and L.L.M. degrees from DePaul and Columbia Universities, respectively, and is an Executive Assistant to the Commissioner, New York State Division of Criminal Justice Services. Stephen C. Halpern received his Ph.D. from Johns Hopkins University and is an Assistant Professor of Political Science at the State University of New York at Buffalo. Sheldon R. Olson is an Assistant Professor of Sociology at the University of Texas at Austin and received his Ph.D. from the University of Washington.

The Fellows were selected by the six-member Judicial Fellows Commission appointed by the Chief Justice. The Commission's members are Justice Tom C. Clark (U.S. Supreme Court, ret.), Chairman; Mark W. Cannon, Administrative Assistant to the Chief Justice, Executive Director; George A. Graham, former Executive Director of the National Academy of 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 Third Branch

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Co-editors:

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

FJC BOARD COMMENDS JUDGE WILLIAM CAMPBELL

In the tradition which has marked his entire judicial career, Judge William Campbell (E.D. Ill.), though in senior status, continues to work 12 to 15 hours a day.

With over 50 seminars and conferences slated during the current fiscal year, the FJC's Division of Continuing Education and Training has been hard pressed to keep on schedule.

Judge Campbell has not limited his participation to meetings of federal judges. Rather, he has been on hand for seminars for probation officers, bankruptcy judges, magistrates, and clerks. Since many regional seminars have been held outside Washington, Judge Campbell has of necessity traveled many miles and has spent countless hours to preside over these meetings and to serve as an advisor. The value of this advice is many times compounded since it is based on 34 years of judicial experience.

Aware of this, and the fact that the Judge continues to sit in the Seventh Circuit to assist with their workload, the Center's seven-member Board unanimously adopted a Resolution at its April meeting commending Judge Campbell for his "dedicated service" and expressing the "gratitude of the Board for his valuable contributions to the federal courts."

Rent Exclusion Bill Status

S. 2079, a bill designed to exclude the Judiciary, all U.S. Courts and the federal Tax Court from paying rent on their facilities (by amending the Federal Property and Administrative Services Act) is pending before the House Committee on Public Works which has ordered the bill reported. It was passed by the Senate last June.

(From SPOTLIGHT, Pg. 5)

It has an implicit disciplinary effect on administration below?

That's the second impact. A long interval here means that the Customs Court or the Patent Office Tribunals would have employed in their decisions that guidance which this court issued years ago. When the three-year-old case reaches decision stage here we may have to reverse, simply because the decision below was based, as the statute requires, on a view of the law we had held erroneous two years ago! Effective guidance must be current guidance.

How does eliminating your backlog effect the quality of current and future decisions?

That is the third impact of being current, an in-house impact. There is no secret that men work better when the pressures on them are manageable. We all know that people work well under a certain level of pressure. But like everything else, we'd overdone it. When you have that backlog staring at you, are you really able to do the best possible job on the case on your desk right now?

Being current frees the court to devote extra attention to those cases which require a great deal of time. Being current doesn't mean that you have nothing to do; it does mean that what you have to do can be done better. The all-important quality of your decision-making can be further improved.

There's another aspect to it: nobody joins a losing team. You work better when you are part of a growing, successful operation; when you are proud of your organization; proud of what you're doing and how well you're doing.

Has this been a team effort?

If there is any credit here for what has been done in these two years, it goes entirely to the judges and staff as a group. Without their cooperation, their willingness to try change, to experiment, to increase their efforts, the court would still be at least three years behind the power curve.

For the first time the court will sit outside Washington. Why?

Because we are a National Court; we are a long way from California. To bring both parties from California or adjacent states to Washington, D.C. is a real hardship on the litigants.

Because we are conducting our own session for two days, we made ourselves available—all five judges—to sit the other three days with the Ninth Circuit, providing 15 judge-days to be employed as Chief Judge Chambers sees fit. When we were not current, we could not have taken three days to sit with another circuit. Moreover, we welcome the opportunity to participate in a cross-fertilization process with some of the judges in the Courts of Appeals of the Circuits and hope that they will also.

In other words, being current has advantages to the court as well as the litigants?

Being current, we think, is extremely important to the parties, to the economy, to the lower tribunals, to our mission and to the total judicial system.

SECRETARIES MANUAL

Recently the FJC mailed to all active and senior federal judges a copy of the new Center publication, "Orientation Manual for Secretaries to Federal Trial Court Judges." Reports have been received that some of the manuals did not reach the addressees. The Information Service Office has copies available for any judge who did not receive a copy.

A MESSAGE FROM

THE CHIEF JUSTICE

Congressional failure last March to approve the "Pay Bill" by no means signaled the end of efforts to correct the inequity of judicial salaries that have failed for five years to reflect the increases in the cost of living. ABA President Chesterfield Smith spoke out vigorously on the need for a fair adjustment in judicial salaries. Senator Gale McGee, Chairman of the Senate Post Office and Civil Service Committee, plans to proceed with hearings to develop a record in support of prompt legislative treatment of the problem. Others are taking steps toward the common goal of achieving equity for Federal Judges, whose pay level now lags 5 years behind that of the career service.

Because of the importance of adequate judicial compensation, the Executive Committee of the Judicial Conference authorized the appointment of an ad hoc committee that will maintain a central repository of information on judicial salaries and serve as a clearinghouse to provide the information to Congress and other decision-makers. Mr. Justice Tom Clark and Judge William B. Campbell are co-Chairmen of the Committee.

The outstanding performance of Federal Judges is documented by statistics on case dispositions, and I have pointed out this hard work, along with the supporting data, whenever possible, to as many groups as possible. But to ensure that this hard work is not met by indifference in the matter of compensation, we also need to organize the factual record, including the data on such matters as compara-

(See MESSAGE, Pg. 8)

(From MESSAGE, Pg. 7)

tive salary levels for Judges and non-Judges, and information on the effect of salary inequities on securing and keeping able lawyers on the Federal Courts.

Perhaps one reason for the apathy toward the problem of judicial salaries is the dearth of information about Judges' monetary compensation and how this matter affects the court system. I restate my confidence that when the public and the legal profession understand the dimensions of the problem and make their will known, Congress will respond.

My view is that, beyond the legislation needed to achieve parity for Judges with the civil service increases since 1969, there should be some provision for an on-going cost-of-living adjustment to protect Judges in the same way that adjustments for the civil service protect other career personnel in government. In this respect the judiciary more resembles the civil career service than it does the Congress or the Cabinet. I am confident that under the leadership of Justice Clark and Judge Campbell, this ad hoc committee will help to achieve the goal of equitable treatment of the Federal Judiciary.

THE THIRD BRANCH
VOL. 6, NO. 5 MAY, 1974

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

OFFICIAL BUSINESS

AO, CSOfJC Calendar

June 10-14 Orientation Seminar for Probation Officers, Washington, D.C.

June 20 Judicial Conference Committee on the Administration of the Federal Magistrates System, Washington, D.C.

June 20-22 Fifth Seminar for Chief Clerks in U.S. Bankruptcy Judges' Offices, Atlanta, Ga.

June 21-22 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, D.C.

June 24-28 Orientation Seminar for Probation Officers, Washington, D.C.

June 26-28 Eighth Circuit Conference, Lake Okoboji, Iowa

June 27-29 Fourth Circuit Conference, White Sulphur Springs, W. Va.

June 28 Judicial Conference Committee on Supporting Personnel, Washington, D.C.

July 1-2 Judicial Conference Subcommittee on Judicial Improvements, Washington, D.C.

July 2 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.

July 3-6 Tenth Circuit Conference, Grand Teton National Park, Wyoming

FIRST CLASS MAIL

PERSONNEL

Appointments

Joseph L. McGlynn, Jr., U.S. District Judge E.D. Pennsylvania, April 19th

Joseph W. Morris, U.S. District Judge E.D. Oklahoma, April 19th

Tom Stagg, U.S. District Judge W.D. Louisiana, April 26th

D. Dortch Warriner, U.S. District Judge E.D. Virginia, May 16th

Nominations

Robert M. Duncan, U.S. District Judge S.D. Ohio, May 1st

H. Curtis Meanor, U.S. District Judge D. New Jersey, May 8th

Robert W. Porter, U.S. District Judge N.D. Texas, April 22nd

TECA'S NEW ADDRESS

Effective May 14, 1974, the new address of the Temporary Emergency Court of Appeals of the United States will be Suite 1430, United States Courthouse, Washington, D.C. 20001. Phone: (202) 426-7666.

U.S.MAIL

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The Third Branch

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Bulletin of the Federal Courts

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Supreme Court Limits Magistrates' Power

On June 26, the Supreme Court ruled in the case of *Wingo* v. *Wedding* that full-time and part-time Federal Magistrates are not authorized by the Magistrates Act to conduct evidentiary hearings in federal habeas corpus cases.

Mr. Justice Brennan announced the opinion for the 7-man majority; Chief Justice Burger, joined by Mr. Justice White, delivered a dissent.

The majority and the dissent differed sharply in their interpretation of both the Magistrates Act of 1968 and 28 U.S.C. §2243, a provision governing procedures in federal habeas corpus cases.

The Magistrates Act provides in part that, with the concurrence of a majority of its judges, any U.S. District Court may establish rules under which Magistrates may be assigned "such additional duties as are not inconsistent with the Constitution and laws of the United States." Pursuant to this provision, a rule in the Western District of Kentucky was amended directing full-time Magistrates to hear such evidentiary matters as they deemed necessary to the proper disposition of habeas corpus petitions from state prisoners.

Under the local rule, a full-time Magistrate conducted an evidentiary hearing upon the habeas corpus petition of respondent Wedding, a prisoner in the Kentucky State Penitentiary. The Magistrate then submitted written findings of fact and conclusions of law to the District Judge, recommending Wedding's petition be dismissed. The judge entered an order of dismissal without himself conducting an evidentiary hearing. On appeal, the Court of Appeals for the Sixth Circuit vacated the judgment of dismissal and remanded the case, holding that the District Court itself was required to conduct the evidentiary hearing. The Supreme Court affirmed this holding.

The majority of the Justices first agreed that the local rule permitting the Magistrate to conduct the hearing was "inconsistent with the . . . laws of the United States." The law in question, 28 U.S.C. §2243, provides that in habeas corpus evidentiary hearings, "the court" shall hear and determine the facts. An earlier version of this statute, which provided that "the court, justice or judge" should perform that function, was interpreted by the Supreme Court in *Holiday* v. *Johnson* to require that the judge alone conduct the hearing. Despite the change in statutory language, which

(See MAGISTRATES, Pg. 2)

Professor of Management, William E. Halal, discussing modern management principles at the Metropolitan District Clerks Conference. (See story, Pg. 6)

First in nation

DISTRICT COURT ESTABLISHES INFORMATION OFFICER

Faced with almost continuous telephone inquiries for information on Watergate-related matters, the U.S. District Court for the District of Columbia has assigned the responsibilities of a Public Information Officer to an existing Deputy Clerk of Court on a temporary basis. This is the first time such duties have been created in any Federal Trial Court.

The idea for the position came from Judge Gerhard A. Gesell earlier this year when he was preparing to try one of the prominent Watergate defendants and wanted to reduce inquiries to his chambers to a minimum. In addition, he believed it would be beneficial to have an officer within the Court-

(See P.I.O., Pg. 3)

(From MAGISTRATES, Pg. 1)
was made after the decision in *Holiday*, the majority, citing two subsequent Supreme Court cases, held the limitations of that case still applied. Since there was no explanation for the language change in the legislative history of the 1948 revision of the Judicial Code, the Court was of the view that a mere change in phraseology was not intended to work a change in meaning.

The Chief Justice and Justice White disagreed, finding the language change to be significant, and distinguishing the two cases relied upon by the majority. First, 28 U.S.C. §2243 did carry forward from an earlier statute the provision that "the court, justice or judge" shall issue the writ of habeas corpus. If Congress intended not to change what official might conduct evidentiary hearings, it would similarly have left that authority vested. Second, when the Supreme Court has definitively interpreted statutory language, a subsequent change in that language by the Congress should not be declared to be without meaning.

The second ground for the majority's holding rested in its interpretation of the Magistrates Act of 1968. In the provision which enables district courts to establish rules assigning additional duties to Magistrates, the Act sets forth three such illustrative duties. One of the three is the duty of preliminary "review" of habeas corpus petitions to facilitate the district judge's decision as to "whether there should be a hearing."

In the drafting history of this illustrative duty, the Court found not only an absence of any suggestion that Congress meant to change the requirement of 28 U.S.C. § 2243 as it was seen by the majority to remain limited by *Holiday* v. *Johnson*, but also a positive expression of a Congressional intent to preclude district courts from assigning Magistrates the duty of holding evidentiary hearings.

That intent was said to arise from two alterations in the statutory language: a change from "consideration" to "review," and the addition of the phrase "whether there should be a hearing."

Both changes were stated by the majority to have been made to satisfy objections by a committee of the Judicial Conference of the United States, which sought to insure that District Judges, not Magistrates, were responsible for making the ultimate decisions and holding hearings on habeas corpus petitions.

The dissent agreed that the Act required a judge to make the ultimate decision, but argued that the history and purposes of the Act revealed that Congress intended to enable district courts to permit Magistrates to conduct evidentiary hearings on applications for habeas corpus writs, so long as district judges retained final decision-making authority.

The Chief Justice took issue with the majority's description of the objections of the Judicial Conference, and by numerous references to Congressional testimony and reports on the Act, argued that Congress aimed to permit Magistrates to hold hearings but did not do so explicitly because of apprehension that such a provision might be read as authorizing Magistrates to exercise the power of final decision reserved exclusively to Article III judges.

The dissent further urged that its position, unlike that of the majority, served the purposes of the Act to upgrade the status of Magistrates from that of the predecessor office of United States Commissioner, and to relieve District Courts of matters more desirably performed by the newly created tier of judicial officers.

Since the Chief Justice would have interpreted the Act to permit Magistrates to hold preliminary habeas corpus hearings, he proceeded to consider the constitutionality of such a delegation of power, a question the majority expressly reserved. Stressing always that the District Judge would retain the ultimate power of decision, the Chief Justice argued that since the Act already permitted Magistrates to make the final decision on certain matters other than habeas corpus petitions, and that since the Supreme Court had ruled in *Palmore* v. *United States* that non-Article III judges could finally decide other matters, Magistrates could be permitted the lesser power consistent with constitutional requirements.

The Court has thus limited the role Federal Magistrates may play in federal habeas corpus cases, while continuing to permit Magistrates to receive the state court record and all affidavits, stipulations and other documents submitted by the parties. In so doing it has declared that the local rules of numerous District Courts across the country, which had previously permitted Magistrates to hold evidentiary hearings in such cases, are invalid. If, as the Chief Justice argues, Congress would wish otherwise, it is for that Branch "to act to restate its intentions if its declared objectives are to be carried out."

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DEPUTY DIRECTOR GREEN RETURNS TO PRIVATE PRACTICE

FJC's Deputy Director Richard A. Green has announced he will be leaving both the Center and Government service in early July to return to the private practice of law which was interrupted several years ago for what he then thought would be a brief stint of *pro bono publico* work.

Because of his background of trial practice and several years' experience in the office of the United States Attorney for the Southern District of New York, Mr. Green was tapped in 1964 by the American Bar Association Committee established to formulate Standards for Criminal Justice to direct the project, which he has done on a full and part-time basis throughout its nine-year life.

When the full-time demands of that position ended in 1967, he turned his eyes back towards private practice, but was again sought to work in a major project in the criminal law area – this time as Deputy Director of the National Commission on Reform of Federal Criminal Laws, which was drafting a new Federal Criminal Code. That work having been completed in 1971, he packed his files and made plans to return to private practice in New York City.

But the Federal Judicial Center, then in its nascent years, was being led by a new Director who was looking for a knowledgeable Deputy to direct the important work devoted to supporting the federal judiciary. Mr. Green was a natural for the job and again he answered the call to public service.

With the return of Judge Alfred P. Murrah to the Center, after a period of illness, Mr. Green has asked for his release and the opportunity to resume his career as a trial lawyer. "Reluctantly," said Center Director Murrah, "we send Dick back to the trial arena with which he has been identified so long. We will sorely miss him but we are happy about his new life in the knowledge that he will be able to continue with his plans set out some years ago and, hopefully, to spend more time with his family."

(From P.I.O., Pg. 1)

house to which all inquiries could be directed regarding the approximately twenty-five Watergate-related criminal cases and twenty-two Watergate-related civil cases pending before twelve judges of the court. The Court took the following steps to implement the concept:

- All Judges and Department Heads were informed that the court was establishing a Public Information Officer for Watergate matters and were urged to keep the officer informed of all developments in any Watergate-related case. The new position was established in the Office of the Clerk and the Public Information Officer reports directly to the Clerk.
- A special Watergate telephone number was established, and all news media representatives were advised to direct inquiries regarding Watergate-related cases to this number.
- All employees in the Clerk's Office were advised that the Court was establishing the position and urged to keep the officer advised of significant developments in Watergate-related cases.
- Many of the Court's Judges advised representatives of the news media that any news developments such as opinions, orders, and scheduled matters would be made public through the Public Information Officer rather than directly through their chambers.
- Each Monday morning the Public Information Officer provides the Chief Judge and the Clerk with a one-page summary of all Watergate-related matters scheduled to come before the court that week.

The Clerk of the Court, James F. Davey, said several judges have told him that establishing a temporary Public Information officer has reduced the number of inquiries previously received on Watergate-related matters. In addition, Mr. Davey said news media representatives now contact the Public Information Officer rather than attempting to call him directly for information and conversely he must only consult one person, the Public Information Officer, for status reports on these matters.

Several news media representatives commented very favorably on the work currently being done by the Public Information Officer and indicated they would like to see a similar position established in other federal courts.

For example, the court recently received a letter from Mr. Grant Dillman, Vice President and Washington Manager for United Press International, who said, in part: "Mrs. Clara Harris, the Public Information Officer at the Courthouse, has been extremely helpful, cooperative and diligent in assisting members of the UPI staff in covering and keeping track of Watergate and related developments. She has that rare quality of anticipating our queries and has the information already at hand when asked. There are very few public information aides able to match her performance."

TRIAL SWITCHES TO VIDEO IN MID-STREAM

What does a judge do if he has a trial which is only half completed the day before the annual Circuit Judicial Conference and he has a criminal trial scheduled to start (under Rule 50(b)) the first day after the Circuit Conference?

In the Northern District of Ohio, Judge Thomas D. Lambros solved this problem by having the Clerk's Office videotape the remaining witnesses while he attended the Judicial Conference. The remainder of the testimony will now be heard via videotape early in July.

Chief Deputy Clerk Joseph Benik is in charge of videotaping for the court both in this case and other cases in which testimony is being pre-recorded under a Federal Judicial Center pilot project.

• • •

An article on videotape research in the May 1974 issue of *THE THIRD BRANCH* was in error in reporting the percentage of jurors who indicated they would choose videotape for civil trials in which they were litigants. Seventy-six percent of the jurors said they would prefer videotape instead of the 40% reported in last month's article.

• • •

Meanwhile, the National Center for State Courts recently published a report on their LEAA-funded project to experiment with the use of video technology in criminal cases. The project involved two trials where all testimony was videotaped, three trials where the testimony of one witness was videotaped, sixteen trials where videotape was used as a trial record, and nine cases in which videotape was used to record lineups or statements by an accused. A copy of the Executive Summary of the report may be obtained from the National Center for State Courts, Suite 200, 1660 Lincoln Street, Denver, Colorado 80203.

SENATE OPENS PAY HEARINGS

The Senate Post Office and Civil Service Committee opened hearings June 19 to search for a legislative solution to increase the pay of top federal officials including federal judges.

March 6th the Senate voted 71 to 26 to disapprove all of the salary increases proposed by President Nixon in his budget submitted to Congress January 4th.

However, Senator Gale McGee, Chairman of the Senate Post Office and Civil Service Committee, told the Senate after the pay proposals were rejected that his Committee was already drafting legislation to alleviate the salary inequities which have barred federal judges and senior executives from any salary increase in more than five years.

Currently pending before the committee are three bills: S.3049 which would amend section 5301 of Title 5 U.S.C. to provide a basis and standard of the fixing of salaries for the highest civil offices and positions in the government including judges and officials in the judicial branch. The bill also establishes a permanent Federal Pay Commission instead of the presently authorized Advisory Committee on Federal Pay.

The second bill before the Committee is S.3550 which would amend subchapter II of Chapter 53 of Title 5 U.S.C. with respect to rates of pay for levels III, IV, and V of the Executive Schedule. Under this bill the salary of officials in level III of the Executive Schedule would be increased to $43,000 yearly, those in level IV to $41,500 per year and those in level V to $41,000 yearly.

The third bill, S.3551, would also amend the same subchapter of the U.S.C. and grant the same salary increases to officers in levels III, IV, and V of the Executive Schedule as provided by S.3550. However, this bill would create an imbalance between the salary of officers paid under the Executive Schedule and the salary of certain judges and other officers in the Judicial Branch of Government.

In testimony before the committee, the Director of the Administrative Office of the United States Courts, Rowland F. Kirks, said that although the bills had not been considered by the Judicial Conference of the United States, he believed that he could adequately present the general sentiment of the officers and employees of the Judicial Branch with respect to the proposals contained in the bills.

Director Kirks endorsed the proposal which would establish a permanent federal pay commission since it "would provide a procedure for annually reviewing the salaries of all civil officers and employees of the Government in the light of changed conditions."

The Director told the committee that he felt S.3550 was the most preferable of the three bills because it would not only increase the salaries of executives at levels III,

(See HEARINGS, Pg. 5)

(From HEARINGS, Pg. 4)

IV and V of the Executive Schedule but "would also bring about an increase in the salaries of employees in the Judicial Branch of Government who are classified in grades 16 through 18 of the General Pay Schedule, which are now frozen."

He told the committee the "salary increases for executives are long overdue. The salaries of some officers have been frozen for the last five years, during a time when other employees in the Judicial Branch of Government have been receiving periodic pay increases. I know that any relief by way of a salary increase is well-deserved and would be greatly appreciated. The present salaries are not commensurate with the duties and responsibilities of those occupying these positions, nor do they compare with the higher executive salaries outside the Government."

Director Kirks submitted data to the committee illustrating that the salaries of 1,171 judges and officials are frozen at present levels.

Spokesmen for the committee said additional hearings are scheduled for July.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Rules of Evidence

Since its passage by the House of Representatives on February 6, 1974, H.R.5463, to establish rules of evidence for certain courts and proceedings, has been pending before the Senate Judiciary Committee.

The Committee expects that work on the bill will be accomplished in the near future and it is hoped that the bill, with amendments, can be brought to the floor by the end of July. Almost certainly the bill will go to a conference with the House.

Federal Rules of Criminal Procedure

The proposed amendments to the Criminal Rules which would take effect on August 1, 1974, have been the subject of considerable attention by members of both Houses. On Tuesday, June 18, 1974, the Subcommittee on Criminal Justice of the House Judiciary Committee unanimously voted to report to the full committee legislation which would have the effect of postponing the effective date of the amendments to August 1, 1974 (H.R.15461). The bill will be taken up by the full committee at its next executive session. On June 20, Senators Ervin, Hruska, and McClellan co-sponsored identical Senate legislation: S.3684. The members of the House Judiciary Subcommittee, and others, are of the opinion that 90 days is insufficient time in which to consider such amendments.

• • •

H.R.8660, which would provide for the withholding of city taxes from federal employees in certain cities having more than 500 federal employees was reported on June 19, 1974, by the Senate Committee on Post Office and Civil Service. The bill has previously passed the House of Representatives.

The Hazardous Duty Retirement bill, H.R.9281, has been favorably reported by the Senate Committee on Post Office and Civil Service. The report, filed on June 19, recommends a change in the effective date of the bill from December 31, 1973 to December 31, 1974. Section 4 which relates to mandatory retirement would not take effect until 1978.

Two bills which will affect the federal government's approach to the problems of juvenile delinquency have been the subject of recent action in the House and Senate. In the House, on June 6, a subcommittee of the Education and Labor committee approved for full committee action a clean bill, H.R.15276, in lieu of H.R.6265, and on June 12, the full committee ordered it favorably reported. This bill is primarily a means for administering the funding of the federal and state efforts to prevent juvenile delinquency, and incorporates provisions providing for a National Institute for Continuing Studies of the Prevention of Juvenile Delinquency and a program of grants for facilities for runaway youth.

S.821 has been ordered favorably reported by the Senate Judiciary Committee. This bill contains amendments to the Federal Juvenile Delinquency Act to modernize procedures for handling juveniles and to grant juveniles substantially the same rights as adults.

Consumer Protection Agency Act

H.R.13163, which will establish a Consumer Protection Agency which would represent the interests of consumers before federal agencies and the courts, passed the House on April 3, 1974. The bill has been reported by the Senate Commerce Committee on June 12, but is still pending in the Senate Government Operations Committee. S.707, a similar bill was reported on April 25 by Senate Commerce and on May 28, by the Senate Government Operations Committee. Considerable opposition to the bills has been expressed on the Senate floor.

(See LEGISLATION, Pg. 6)

Chief Judge Albert Lee Stephens, Jr. of the Central District of California emphasizes the judiciary's need for effective supporting operations during the Metropolitan District Clerks Conference.

METROPOLITAN CLERKS WORK ON NEW ORGANIZATION CONCEPTS

Does the organization and management of a clerk's office affect the delivery of justice? Does a well functioning clerk's office lighten the load of judges and allow them to discharge their responsibilities more effectively?

An emphatic "yes" was given to both questions in a paper Chief Judge Albert Lee Stephens, Jr. of the Central District of California presented to the last meeting of the Conference of Metropolitan District Chief Judges. Chief Judge Stephens pointed out that "next to the judges, the support groups have the greatest effect upon the effective administration of justice." He then described eight elements of an effective organization.

With a view to enhancing effectiveness of clerks' offices, the Metropolitan Chief Judges asked the Conference of Metropolitan District Court Clerks to begin work on a project aimed at developing guidelines and concepts for improved management of large district court clerks offices. At a conference held May 30-31, the clerks completed the first draft of a statement of the missions of a clerk's office and completed the development of an initial draft of guidelines for effective organizational structures for clerks' offices. Several committees of metropolitan clerks are now preparing a refined statement of the missions and a set of guidelines for organizing clerks' offices in both single and multiple division districts.

These will be presented to the Conference of Metropolitan District Chief Judges at their next meeting in October for their review. Although the emphasis is initially on the larger courts, all of the guidelines developed out of this project will be distributed to all district court clerks for their review and comments later this year.

(From LEGISLATION, Pg. 5)

Travel & Per Diem

The Senate Committee on Government Operations, Subcommittee on Budgeting, Management & Expenditures held a hearing on June 6, 1974 on S.3341, to increase travel and per diem of Federal employees traveling on official business. The General Accounting Office, General Services Administration, and representatives of several employee organizations testified.

REVISION COMMISSION CONTINUES HEARINGS

The Commission on Revision of the Federal Court Appellate System has embarked on a program of extensive correspondence with members of the bench and bar, supplementing its formal hearings on the structure and internal procedures of the federal Courts of Appeals.

The Commission invites further submissions, either through formal statements or in less formal correspondence.

A substantial number of the letters already received have been concerned with proposed changes in appellate review of patent litigation and with proposals for creation of a national division of the United States Courts of Appeals.

The Commission has held six days of hearings covering a wide variety of proposals for change in the Courts of Appeals. Four days of hearings were held in Washington, D. C., and two in Chicago.

The Chicago hearings focused on patent appeals, appeals from administrative agency decisions, and the Seventh Circuit's Rule 28, under which most of the court's cases are disposed of by unpublished opinions. Judges and members of the bar expressed a wide variety of views concerning the desirability of a rule forbidding the citation of unpublished opinions. A similarly wide range of views came from witnesses who testified in Chicago and Washington on suggestions for changes in the handling of patent appeals.

Letters commenting upon these or any other aspects of the structure and procedures of the Courts of Appeals may be addressed to the Commission's Executive Director, Professor A. Leo Levin, Room 209, 717 Madison Place, Washington, D. C. 20005.

THE SOURCE
The Information Service of the Federal Judicial Center

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

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- Brief writing and oral argument, 4th ed. Edward D. Re. Oceana, 1974.
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- Symposium: empirical approaches to judicial behavior. 42 U Cin L Rev 589, 1973.
- Understanding computer contracts. Phillip J. Scaletta, Jr. Parkridge, Ill., Data Processing Management Association, 1974.
- The United States Court of Appeals for the First Circuit 1972-73 term. VIII Suffolk U L Rev, Winter 1974 (entire issue).

Senator Roman L. Hruska (R-Nebr) addressing the first Judicial Conference of the Court of Customs and Patent Appeals. The Conference attracted over 600 members of the bench and bar. Senator Hruska discussed the proposal to route all patent appeals to a single court.

PROBATION OFFICERS TRAINED IN RECORD TIME

The Federal Judicial Center has conducted eight Orientation Seminars for newly appointed Probation Officers during the last six months. This represents 81% of the allocation of 340 new officers for the entire calendar year. These seminars have been planned so that as soon as an officer is sworn in, he is immediately invited to the next scheduled orientation class.

In this series of training seminars, the Judicial Center is reacting and responding more quickly to training newly appointed court personnel than has ever been done for any group of court personnel in the past. Under this program, probation officers who come to Washington for the seminar have been in Federal service usually about two months—some in their first month.

The latest educational techniques are being used to facilitate the learning process with these probation officers. One method is the use of the Center's video-tape capability and role playing. In using this technique to teach interviewing skills, the attending probation officers are placed in a workshop in which they are randomly selected to play the part of a probation officer and/or a probationer.

The mock interview is filmed on TV tape, all ad lib; then after a short skit, the tape is re-played to the participants and the audience for self-critique. This has been a very popular and very informative method of teaching the appropriate interviewing arts and skills.

FOREIGN CORRECTIONS OFFICIAL VISITS FJC

Jon Thors, Chief of Division of Corrections, Ministry of Justice, Reykjavik, Iceland, visited the Judicial Center recently in conjunction with his tour of correctional facilities in the U.S. Mr. Thors was here under the auspices of an Eisenhower Fellowship. Aside from observing parts of an Orientation Seminar for Probation Officers, he also visited the Bureau of Prisons, The Board of Parole and the Probation Division of the Administrative Office.

PERSONNEL

Confirmations

Robert W. Porter, U.S. District Judge, N.D. Texas, June 14
Robert N. Duncan, U.S. District Judge, S.D. Ohio, June 14
H. Curtis Meanor, U.S. District Judge, New Jersey, June 14
Donald Voorhees, U.S. District Judge, W.D. Washington, June 14
William H. Orrick, Jr., U.S. District Judge, N.D. California, June 21
Henry F. Werker, U.S. District Judge, S.D. New York, June 21

Elevations

Phillip W. Tone, Seventh Circuit, May 17

Deaths

Jacob Weinberger, U.S. District Judge, S.D. California, June 9
Ernest Guinn, U.S. District Judge, W.D. Texas, June 9

Resignation

Sidney O. Smith Jr., U.S. District Judge, N.D. Georgia, June 1

AO FJC calendar

July 8-9 Judicial Conference Jury Committee, Jackson Hole, Wyoming
July 18-19 Judicial Conference Committee on the Administration of the Probation System, Jackson Hole, Wyoming
July 24-25 Judicial Conference Advisory Committee on Judicial Activities, San Francisco, California
July 25-26 Judicial Conference Committee on the Criminal Justice Act, San Francisco, Ca.
July 26 Judicial Conference Joint Committee on Code of Judicial Conduct, San Francisco, California
July 29-30 Judicial Conference Court Administration Committee, San Francisco, California
July 31, August. 1 & 2 Ninth Circuit Conference, Reno, Nevada
August 23 Judicial Conference Committee on the Budget, Washington, D.C.
September 6 & 7 Second Circuit Conference, Buck Hill Falls, Pa.
September 29 & 30 Third Circuit Conference, Hershey, Pa.

THE THIRD BRANCH
VOL. 6, NO. 6 JUNE 1974

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Bulletin of the Federal Courts

VOL. 6, NO. 7 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center JULY, 1974

FJC Research Report

HOW SHOULD CHIEF JUDGES BE SELECTED AND HOW LONG SHOULD THEY SERVE?

At the request of Chief Judge Ben C. Connally, Chairman of the Subcommittee on Judicial Improvements of the Judicial Conference of the United States, the Research Division of the Federal Judicial Center conducted a comprehensive survey of all federal judges.

The survey, which was conducted by questionnaire, disclosed the following information.

COURTS OF APPEALS

Approximately two-thirds of the responding judges preferred selection of chief judges of Courts of Appeals by seniority. Over 90% of the responding judges favored a fixed age for retirement from the chief judgeship of the Courts of Appeals, while more than 50% fa-

(See RESEARCH, Pg. 2)

Addresses 10th Circuit Conference

SENATOR McGEE PREDICTS NO PAY INCREASE BEFORE ELECTIONS

Senator Gale McGee (D-Wyo.) Chairman of the Senate Post Office and Civil Service Committee which is currently considering pay increases for federal judges and other senior officials said this month there is little hope a pay increase will be enacted by Congress until after the November elections.

In an address to the 10th Circuit Judicial Conference meeting at Jackson Hole, Wyoming, the Senator said: "From the political point of view, I can only conclude that there is little hope for relief until after the elections this year. At that time, I believe the prospects of affirmative action are very good."

He pointed out that "Neither of us has had a pay raise since March of 1969. By some peculiar legisla-

(See McGEE, Pg. 2)

Juror Reactions Studied

UTAH GROUP HOLDS VIDEOTAPE TRIAL RESEARCH PROJECT

With the cooperation of the Fourth Judicial District Court of Utah, a team of law teachers and psychologists at Brigham Young University Law School recently conducted a research project comparing juror reactions to a live presentation of trial testimony with the presentation of the same testimony using four alternative media—color video tape, black and white video tape, audio tape, and testimony read from a transcript as with depositions on oral interrogatories.

Preliminary results of this research indicate that although some of the perceptions and judgments of the jurors remained unchanged between the live and the media presentations of the trial, several important differences occurred.

(See VIDEO, Pg 3)

Chief Justice Earl Warren

FORMER CHIEF JUSTICE WARREN DIES AT 83

Former Chief Justice of the United States Earl Warren died on the evening of July 9 in a Washington, D. C. hospital of cardiac arrest. The Chief Justice's death came suddenly following a short illness.

During his 16 years as Chief Justice, the Court rendered decisions affecting many areas of American life. Earl Warren wrote the Court's unanimous decision in *Brown vs Board of Education*, which held that public school segregation is unconstitutional. In what he considered the most important decision during his tenure, the Court ruled that State Legislative districts must be drawn to give all residents equal voting representation. The Court under Chief Justice Warren also handed down numerous decisions in the area of criminal procedure and the rights of criminal suspects.

(See WARREN, Pg. 3)

(From RESEARCH, Pg. 1)

vored retirement at age 70, with nearly all of the remainder preferring some earlier age—four or five years earlier.

On the question of eligibility for chief judgeship being limited to those who could serve a fixed minimum term of years, nearly three-quarters of the responding judges favored requiring that a judge be available for a specified term of years, in order to assume chief judgeship of a Court of Appeals.

The survey revealed that nearly tw-thirds of those who prefer such a limitation would set the period of availability at three years or more. As a fraction of all responses, however, the three year requirement falls slightly short of the majority. Two years or more would be approved by more than two-thirds of the responding judges.

On the question of a maximum term of years, a slight majority of circuit judges favored setting a maximum term for service as a chief judge of a court of appeals; a smaller number of district judges in favor resulted in overall approval by slightly less than one-half of the responding judges. Among those who favor establishing a maximum term, more than 80% believed the term should be five years or longer.

More than two thirds of the judges responded that the features on tenure should be the same whether selection is by seniority or election. Nearly 90% of the responding judges favored a compensatory allowance in the caseloads of chief judges of courts of appeals.

DISTRICT COURTS

Two thirds of the responding judges preferred selection of chief judges of district courts by seniority.

Over 90% of the responding judges favored a fixed age for retirement from chief judgeship of district courts. More than 50% favored retirement at age 70; most of the remainder preferred retirement at 65 or 66.

Three quarters of the responding judges prefer a requirement that a judge be available for a specified minimum term of years, in order to assume chief judgeship of a district court.

Of those who favored such a requirement, about two thirds would set the period of availability at three years or more. As a fraction of all responses, however, the three year requirement falls slightly short of the majority. Two years or more would be approved by more than two thirds of all responding judges.

A slight majority of responding judges favored a maximum term for service as chief judge of a district court. This majority depends upon the preference of circuit judges, since slightly less than a majority of district judges prefer this feature for their courts. Among those who favored a maximum term, nearly 85% believed the term should be five years or longer.

More than three quarters of the responding judges believed that the features of tenure should be the same whether selection is by seniority or election. Over 85% of the responding judges favored a compensatory allowance in the caseloads of chief judges.

[A copy of the complete report on the *Selection and Tenure of Chief Judges of Federal Courts* is available from the Information Service of the Federal Judicial Center.]

(From McGEE, Pg. 1)

tive alchemy, Congressional and Judicial salaries are linked, and when Congress lacks the will to allow itself a pay raise, Federal judges are among those who must suffer."

After outlining the various attempts by the Committee to enact legislation to relieve the salary problem only to have it defeated by the Senate last March, he said his committee is trying again. "We are conducting a series of hearings in depth to try and arrive at a course of action which will solve the pay problem . . . When we had hearings on this question last year, the situation was revealed as bad; now it is worse. During the five-year drought since 1969, the cost of living has risen more than 30 percent.

"The Civil Service Commission reports that pay scales in the top levels of the General Schedule are so far behind those in private enterprise that we increasingly see cases where agencies cannot fill the jobs because the $36,000 salary is not adequate," he said.

After revealing the problems of pay compression in the Executive and Legislative Branches of Government, Senator McGee turned to the special problems of the federal judiciary. A federal judge is "the central figure in the administration of justice in this country. And nowhere, I think, within the Federal government are we more in need of men of your caliber than within the Federal judiciary. Your efforts cannot be averaged out. It is you who make decisions affecting people's lives and millions of dollars.

"Further, during the past few years, there have been significant changes in the Federal judiciary which make your jobs tougher. Cases have become more complex and more numerous. Through the use of individual calendars, computerization and new management procedures, you are disposing of cases more rapidly than ever before. Last year, I am told, District Courts disposed of more cases than were filed, and the disposition of cases per judge improved by 30 percent."

Senator McGee said that during recent consideration of the various pay proposals by his committee he asked Chief Justice Warren E. Burger for his views on the problem

(See McGEE, Pg. 3)

(From McGEE, Pg. 2)

as it related to the Federal Judiciary and the Chief Justice said, in part:

> "We have had more resignations in the past year, based on economic grounds, than at any time in the past 100 years. I am also reliably informed that many qualified lawyers have declined appointment because the pay of a District Judge is now only double the starting salary of law graduates hired by large law offices. It is surely not in the public interest to have some of the best qualified lawyers resigning or declining appointments because of inequitable and inadequate compensations."

Senator McGee said the current series of pay hearings being held by his Committee are designed to "form a reliable body of fact and opinion upon which to base new legislation which will avoid in the future the kind of compression logjam from which we are currently suffering and to lay the groundwork for a substantial pay increase for all those who have been denied them for the past five years."

(From WARREN, Pg. 1)

Chief Justice Warren E. Burger said that "Earl Warren's life epitomized the American dream. His unique half-century career of public service as a Prosecutor, Attorney General, Governor and Chief Justice spanned one of the most dynamic eras in our history, and his contribution was large indeed."

Mr. Justice William O. Douglas said "Earl Warren stood high above the crowd, a man of great integrity, a fearless man who stood up and was counted on the great issues of his era."

President Nixon said that he was "deeply saddened" by the former Chief Justice's death and predicted that his service to the nation "will continue to shape the course of American life for generations to come and will reflect the highest purposes of America forever."

Mr. Justice William J. Brennan said: "History will rightly accord Chief Justice Warren a first place in the pantheon of our greatest judges. None has more greatly contributed to the preservation and furtherance of our constitutional ideals. My deep pride in our association is exceeded only by my great affection for him both as friend and colleague."

In a unique tribute to the late Chief Justice, the present members of the Supreme Court decided to have his body lie in repose in the Supreme Court Building prior to services in the National Cathedral and military honors in Arlington National Cemetery July 12.

(From VIDEO, Pg. 1)

The research was initiated by conducting the trial of a land condemnation dispute that had been settled before trial. The landowner testified as a witness in his own behalf. A real estate expert testified for the condemning municipality, and both parties were represented by experienced trial counsel. A separate panel of 26 to 28 jurors for each trial presentation was obtained from lists of recent jury panels of the Utah County District Court.

During the live trial, the opening statements of the attorneys, the testimony of the witnesses, and the jury instructions were recorded on color video tape. In connection with each subsequent presentation of the trial, the voir dire examination and the swearing of the jurors was conducted live, while the remainder of the trial was presented using the recording obtained during the live trial. The black and white video tape, the audio tape, and the transcript were all taken from the original color video recording. At the conclusion of each presentation of the trial, jurors in attendance were asked to complete a questionnaire calling for their detailed reactions to and evaluations of the witnesses and the attorneys as well as a dollar award.

Comparison of the juror ratings of the participants after the live trial with the juror ratings after the video tape and the audio tape trials, indicates that the jurors' perceptions of the participants were basically similar in all four trials with respect to matters of competency, credibility, and personal bias but differences occurred with respect to the attitudes (warmth, friendliness, pleasantness, manner and cooperativeness) and appearance of the witnesses.

There was no difference in the attitude ratings between the live, color video tape, and audio tape trials, but the juror ratings after the black and white video tape trial were significantly less positive than the same ratings after the live trial. In addition, in the black and white trial the attitude ratings toward one witness fell significantly more than the attitude ratings of the other witness, indicating that not all of the trial participants were equally affected. Based upon the fact that the amounts awarded by the jurors varied on the basis of which of the participants they would have chosen for a friend, this effect of black and white video tape testimony on the perception of attitudes appears to be potentially biasing.

The results indicate, then, that color video tape had some advantages over black and white video tape, perhaps in conveying information about the warmth, friendliness, manner, cooperativeness, and appearance of the participants in the trial. Audio tape conveyed accu-

(See VIDEO, Pg. 4)

(From VIDEO, Pg. 3)

rately most of the important dimensions of the live trial, except, of course, for the physical appearance dimensions.

Compared to the live trial, and even to the other media trials, the presentation of testimony read from the transcript gave rise to a number of significant differences in the ratings of the jurors. The transcript testimony was found to be more fatiguing and difficult to understand. The ratings from the transcript presentation also differed significantly from the live presentation with regard to the relative competency and credibility of the witnesses. Jurors were understandably unsure about the physical appearance of the witnesses, and perceived the attitudes of the attorneys differently.

Analysis of the amounts awarded by the jurors indicates that the relative influence of the witnesses on those verdicts may have changed when the method of presenting the testimony shifted from the live condition to the media conditions.

For example, in the comparatively simple trial used here, the jurors were more influenced by the positive qualities of the expert witness in the live trial, and they were more influenced by the negative characteristics of the landowner in the media trials. Further study is needed to investigate this potentially serious and important difference, but present results provide tentative support for this finding.

In summary, the study raises concerns about the adequacy of any media to reproduce the relative impact of a witness' testimony on the final judgment of the jurors. Given this limitation, however, when the effects of the various presentations were compared, color video tape was the medium most free of biasing effects. Black and white video tape was relatively more biasing in that it significantly distorted juror perceptions of at least one important dimension—jurors' perceptions of the witness' attitude. Color and black and white video tape, and audio tape, were all found to be superior to transcript testimony in their ability to reproduce accurately the perceptions of the jurors formed in the live trial.

William R. Sweeney

WILLIAM R. SWEENEY DIES

William R. Sweeney, 63, who retired last December as Assistant Director for Management Affairs of the Administrative Office of the United States Courts, died at his home July 12 of a heart attack. He had held his A.O. position since September 1964.

A native of Quaker Hill, Conn., and a graduate of Harvard College, Mr. Sweeney had a long and distinguished career in private industry as well as Government. Between 1957 and 1964 he served as vice president of two electronic engineering firms and, before that, was an account executive for J. Walter Thompson Co.

He was Deputy Assistant Secretary, Management, of the U.S. Air Force, and after leaving that position, was a special consultant for the Secretary of the Air Force and assistant to the dean of George Washington University during the mid-1950's. From 1942 to 1946 he was on active duty in the U.S. Air Force and attained the rank of colonel.

Mr. Sweeney is survived by his wife, the former Doris Jo Steffens; a son, George W.; a sister, Mrs. Carl B. Wheeler; and a brother, Dr. James R. Sweeney. A memorial service for Mr. Sweeney was held Tuesday, July 16, at the Westmoreland Congregational Church, Bethesda, Md.

A MESSAGE FOR THE COMPETENT BUT ARROGANT OFFICIAL REPORTER

During the past several years, court reporter professional organizations have initiated a number of programs to improve the quality and efficiency of court reporting services throughout the nation. The theme of increasing professionalism and being more responsive to the needs of the judicial system has been constantly expounded by leading reporters. An example of this professional attitude was given in the message of National Shorthand Reporters Association President Richard Smith in the June 1974 issue of *The National Shorthand Reporter* where he commented on a question about what to do with the qualified reporter who remains aloof, arrogant and uncooperative. President Smith stated "You cannot, as an official reporter with the duties and responsibilities imposed upon you to produce adequate and timely transcripts, maintain the same degree of independence that a freelance reporter maintains, for your status as an official reporter gains you a franchise for all transcripts from that court, whereas the freelance reporter is in a competitive situation. Think it over. . . ."

Bulletin

1975-76 JUDICIAL FELLOWS PROGRAM

The application deadline for the 1975-76 Judicial Fellows Program is December 1, 1974. Application forms and literature are available on request from Mark W. Cannon, Executive Director, Judicial Fellows Commission, Supreme Court, Washington, D. C. 20543.

Roundup

CIRCUIT JUDICIAL CONFERENCES

The circuit conferences being held this year have been marked with excellence in planning reflecting an awareness of current problems of the courts and a keen insight to what may be in the future for the federal judiciary.

Because of the energy crisis, the judges of the District of Columbia Circuit canceled original plans to meet elsewhere and confined their conference to one day at the Mayflower Hotel in Washington. Featured was a panel discussion on Judicial Inquiry on Claims of Abuse of Administrative Discretion, and an open discussion on court-appointed counsel for indigent cases in the District of Columbia. The conference also heard speeches by the Chief Justice and Attorney General William B. Saxbe. The date of the meeting fell on Judge John Sirica's birthday, and after addressing the conferees at the luncheon session, he turned over the Chief Judgeship to the Honorable George L. Hart, Jr.

The Fourth Circuit gathering was addressed by the Chief Justice, Mr. Justice Lewis Powell, and A.O. and F.J.C. Directors Rowland Kirks and Alfred P. Murrah. Featured this year was a guest speaker from England—Sir Bernard Caulfield of the High Court of Justice. A state judge and a federal judge joined a presentation on how they jointly heard pretrial motions in cases arising out of an airline crash in the Fourth Circuit. Judge Woodrow W. Jones explained participation as a Judge of the United States District Court for the Western District of North Carolina, and Judge M. Harry Martin for the General Court of Justice of North Carolina. "Should the Diversity Jurisdiction be Substantially Abolished" was debated by two experts on this subject, Judge Henry J. Friendly (C.A. 2) and Professor Bernard J. Ward of the University of Texas Law School.

In the Fifth Circuit Conference, held last May, Judge James King (S.D. Fla.) and Magistrate Joseph Hatchett made a dual presentation on their visit to England to study the master and magistrate system in England. Congressman Jack Brooks spoke on the work of the Commission on Revision of the Federal Court Appellate System, and Judge Walter Gewin (C.A. 5) and Chief Judge Haynsworth (C.A. 5) addressed the Conference on Plea Bargaining and Rule 11.

The Ninth Circuit this year is meeting in Reno, Nevada, and Judge Robert Kelleher (C.D. Ca.), Program Chairman, has organized a series of panel discussions on lie detectors, prisoner petitions and Section 1983 cases, the use of magistrates, the role of the federal judge in the settlement of cases, and the techniques of shortening trials.

The Second Circuit will meet in September, and a feature of their program this year will be a special report on sentencing.

For the first time, the Third Circuit will have their conference followed by a Sentencing Institute, a subject which claims the attention of many of the circuits this year. [For story on Tenth Circuit Conference, see p. 1.]

THE SOURCE

The Information Service of the Federal Judicial Center

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

- Business Can Make Ex-Convicts Productive. Gopal C. Pati. 52 Harv. Bus. Rev. 69, May-June 1974.
- Clinical Legal Education And The Law Library. George S. Grossman. 67 Law Lib. J 60, Feb. 1974.
- A Constitution For The Courts; The Standards In Summary. Geoffrey C. Hazard, Jr. 58 Judicature 34, June 1974.
- Court Reporting: Lessons From Alaska And Australia, by Delmar Karlen For National Center For State Courts. Feb. 1974.
- The Courts And The Rule-Making Process: The Limits Of Judicial Review. J. Skelly Wright. 59 Cornell L. Rev. 375, March 1974.
- Courtroom Of The Future; Balancing Security And Justice. Gordon D. Schaber. 43 FBI Law Enforce. Bull. 16, May 1974.
- Dimensions Of Verbatim Reporting. Oswald M. T. Ratteray. Arlington, Va., Ratteray Pub. Enter., 1974. $3.25.
- The Federal Circuit Executives: An Initial Report. Robert J. Martineau. 57 Judicature 438, May 1974.
- How Not To Get A Fair Trial. Stanley Sue and Ronald E. Smith. Psychology Today, May 1974.
- **Jury Duty—The Inalienable Right. Carl H. Imlay, General Counsel, Administrative Office. May 1974.**

(See THE SOURCE, Pg. 6)

(From THE SOURCE, Pg. 5)

- A Proposal For Limiting The Duty Of The Trial Judge To Instruct The Jury Sua Sponte. National Center For State Courts, June 1974.
- National Center For State Courts. Annual Report 1973.
- Psychiatrists And The Adversary Process. David L. Bazelon. Scientific American, June 1974.
- Six Member Juries In Criminal Cases: Legal and Psychological Considerations. Albert M. and Julia C. Rosenblatt. 46 NYS BJ 259, June 1974.
- Survey Of Federal Court Libraries. Rachel Hecht. 67 L Lib. J 259, May 1974.
- Use Of Jurors. Frank W. Wilson. 62 F.R.D. 205, May 1974.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Enactments

Hazardous Duty Retirement. H.R. 9281 has cleared both Houses of Congress and been signed by the President. The bill will provide for increased retirement benefits for both law enforcement officers (including probation officers) and firefighters. The legislation also contains provisions, effective in January of 1978, which will provide for mandatory retirement.

Congressional Action

Simplified Procurement Procedures. S. 3311, which will amend the provisions of Section 3709 of the revised statutes to eliminate the advertised bidding requirement when the amount involved does not exceed $10,000 (versus the present $2,500) has passed the Senate and House of Representatives and is awaiting action by the President.

No-Knock. During the debate in the Senate on a bill to extend the existence of the Drug Enforcement Administration for another three years, the Senate added an amendment which repeals the no-knock provision of the Controlled Substances Act.

Legal Services Corporation. The bill establishing the new Legal Services Corporation has been cleared for the White House. In its final version, the bill prohibits the Corporation from making grants or contracts for backup centers, but the Corporation retains the authority to perform these functions in-house.

Deputy Marshals. The Senate Post Office and Civil Service Committee has favorably reported with an amendment H.R. 5094, which will provide for the reclassification of deputy U.S. marshals.

Speedy Trial. The Senate Judiciary Committee has favorably reported, with amendments, S. 754, Senator Ervin's speedy trial bill. As amended, the bill provides for dismissal, without prejudice, for cases exceeding the time limits, and provides a four-year period for the limits to be phased into operation. It is doubtful whether the House will have an opportunity to complete action on it in this Congress.

Amendments to the Criminal Rules. H.R. 15461, which postpones the effective date of the amendments to the Criminal Rules until August 1, 1975; has been ordered favorably reported by the Senate Judiciary Committee. Early action on the bill is expected.

Copyright Laws. The Senate Judiciary Committee has reported favorably, with amendments, S. 1361, for the general revision of the copyright laws, Title 17 of the United States Code, and for other purposes. Although H.R. 8186, originally an identical bill, has been pending in the House Judiciary Committee, action there will follow completion of Senate action.

Consumer Protection Agency. The Senate is presently debating the bill, S. 707, which would establish a Consumer Protection Agency authorized to represent the interests of consumers before both the agencies and the courts. Considerable opposition has developed and substantial amendments are being made. A similar bill, H.R. 1363, has passed the House.

No-Fault Insurance.-S. 354 to establish a system of no-fault insurance, has passed the Senate and is currently the subject of hearings before the Commerce & Finance Subcommittee of the Committee on Interstate and Foreign Commerce.

U.S. MARSHALS QUIETLY BUT EFFECTIVELY INCREASE COURT SECURITY

While the topic of court security has moved into the headlines in recent months the intensive efforts of the U.S. Marshals Service to protect personnel and property of federal courts continues.

The Marshals Service working in conjunction with the G.S.A. Guards and Federal Protective Officers have employed new methods and equipment to combat the threat of violence in the country's federal courthouses.

In a recent interview, Inspector Herbert W. Spiller of the U.S. Marshals Service enumerated many of these recent improvements. "Depending upon the physical layout and flow of business we have installed items such as closed circuit T.V. monitors, heavy screening of ground floor windows, contact alarms, emergency lighting and

(See MARSHALS, Pg. 7)

(From MARSHALS, Pg. 6)

armour plating inside the benches," said Inspector Spiller.

In addition to these permanent improvements the Service provides mobile equipment when a "sensitive trial" warrants additional protection.

The responsibility for court security rests with 87 district coordinators serving the 94 district courts in the federal system. Seven of the districts are small enough to be covered by a neighboring district for security purposes.

Each of the 11 Circuits is served by a Security Coordinator also. The Security Coordinators are trained in the use of all equipment and learn to conduct in depth security surveys to detect potential danger points. The Coordinator in turn sees that the appropriate personnel within his district or circuit become familiarized with the equipment and procedures.

In March of 1971 in the wake of a wave of courtroom violence and disruption an intensive program was launched to "beef up" protection in the federal courts. Since that time almost 4 million dollars has been allocated for this purpose.

Included in this expenditure was the cost of surveying 125 courthouses, the completed installation of necessary equipment in 72 of these buildings, and the ongoing improvement of 22 additional buildings. Work on 27 more buildings awaits further funding.

The Marshal Service has been involved in law enforcement and court protection since its creation under the Judiciary Act of 1789.

The Service received full Bureau status within the Department of Justice on May 13, 1974, and continues service to the nation through a number of diverse activities which have included: taking the census, acting as undercover agents, hunting "moonshiners", executing

A U.S. Marshal on duty in a federal courthouse using TV monitoring equipment to maintain constant surveillance of key areas.

courts martial and performing other specialized duties.

Though there has been no reduction in the overall strength of the Service, there have been recent realocations of manpower which shift deputy marshals to districts needing extra help from those less active districts.

Inspector Spiller, noted that women are now being appointed full-fledged deputy marshals. They undergo the same rigorous training and will perform the same duties as their male counterparts.

The Marshals Service works closely with state and local law enforcement agencies and often upon request will survey non-federal courthouses and offer suggestions to better security.

Several guidelines were suggested by Mr. Spiller by which judges and supporting personnel can assist in promoting court security. Some suggestions were:

- Report promptly to local marshal or court security officer any suspicious or unusual activity; such as loiterers, threats, abusive letters, or calls.
- Notify building guards if anyone in your office will be working after hours (to insure their safety).
- Familiarize the staff with all security equipment on hand, such as the signal device that is triggered from underneath desks and alerts the marshal's office.
- Any planned activity which will involve a group of people visiting the court should be coordinated with the security office to insure

(See MARSHALS, Pg. 8)

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extra help if necessary and to eliminate the possibility of a guest wandering into areas where prisoners are held or where another session may be in progress. This will also insure that guests are properly received without harrassment or embarrassment.

- Judges who become involved in a highly publicized or controversial case might consider temporarily using an unlisted phone number. The unlisted number would of course be given to the marshal's office and other essential personnel to keep inconvenience to a minimum.
- Some Courts have adopted the practice of reserved parking for judges by random number to prevent ready identification of a particular judge's vehicle by someone intending personal harm or property destruction.

The Marshal Service feels that the heightened awareness by court personnel of the necessity for security measures and the adoption of new equipment and procedures have accounted for the recent reduction of incidents of courtroom violence and disruption.

PERSONNEL

Nominations

Murray I. Gurfein, U.S. Circuit Judge, Second Circuit, July 11

James C. Hill, U.S. District Judge, N.D.Ga., July 9

AO FJC calendar

July 31, August. 1 & 2 Ninth Circuit Conference, Reno, Nevada

August 19-20 In Court Management Training Institute, Los Angeles, California

August 23 Judicial Conference Committee on the Budget, Washington, D.C.

September 5-6 In Court Management Training Institute, Detroit, Mich.

September 6 & 7 Second Circuit Conference, Buck Hill Falls, Pa.

September 19-20 Judicial Conference of the United States, Washington, D.C.

September 20 Advisory Committee on Appellate Rules, Washington, D.C.

September 23-27 Refresher Course for Probation Officers

September 29 & 30 Third Circuit Conference, Hershey, Pa.

October 8-11 Management Institute for Probation Officers, College Park, Md.

October 29 & 30 Sentencing Institute, Fourth, Fifth & District of Columbia Circuits, Atlanta, Georgia

Fees = Salary

BILL INTRODUCED TO BOOST JUROR FEES

Senator Gaylord Nelson (D.-Wis.) has introduced a bill which he says will "virtually eliminate financial obstacles" to citizens serving on federal juries by gearing the fee which a juror receives to the pay which he would lose if he serves on the jury.

Under Senator Nelson's proposal, every juror would be entitled to a daily fee of $25. However, if a juror earns more than $25 a day, his fee would be adjusted upward to equal his daily salary.

Senator Nelson said that the bill, if enacted, would raise the current $18.5 million federal jury cost by less than $10 million.

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JUDGE HOFFMAN NEW FJC DIRECTOR

The Board of the Federal Judicial Center elected U.S. District Court Judge Walter E. Hoffman this month as the third Director of the Center.

Judge Hoffman will take office this October after Director Alfred P. Murrah returns to duty as a U.S. Circuit Judge for the Tenth Circuit after four and one-half years as Center Director. By law Judge Murrah must step down as Director October 27 when he reaches 70.

Judge Walter E. Hoffman

The Chief Justice said, "Judge Alfred P. Murrah has performed magnificently in carrying forward the work of the Federal Judicial Center started with such great promise by Mr. Justice Tom Clark.

"I look forward to Judge Walter E. Hoffman carrying on this work with comparable distinction."

Judge Hoffman was appointed United States District Judge for the Eastern District of Virginia on July 15, 1954 and entered on duty September 3, 1954. He became the Chief Judge of the Eastern District of Virginia July 15, 1961.

He received a B.S. degree in Economics from the University of Pennsylvania in 1928, attended Marshall-Wythe School of Law at the College of William & Mary and received an LL.B. degree from Washington and Lee University School of Law in 1931. He also received an Honorary LL.D. degree from Washington and Lee University.

Judge Hoffman was a member of the Judicial Conference of the United States, serving as the elected representative of the judges from the Fourth Circuit, 1964-70. He was a member and chairman of the Judicial Conference Committee on the Administration of the Probation System, 1963-71; a member of

(See HOFFMAN, Pg. 5)

IN THIS ISSUE . . .

Judge Alfred E. Murrah
". . . passes the mantle of office."

Legacy of dedication and challenge

JUDGE MURRAH COMPLETES TERM AS FJC DIRECTOR

On October 27th I shall reach mandatory retirement age. On that date the mantle of office will pass to my good friend Judge Walter E. Hoffman.

It is particularly propitious that a distinguished trial judge like Judge Hoffman is available by virtue of age and tenure to assume the duties of the Director. For the major thrust of the activities here at the Center are focused upon procedural problems of the trial courts and the role of their supporting personnel. This is where the action is.

(See MURRAH, Pg. 7)

140 Signed Opinions

SUPREME COURT COMPLETES SIGNIFICANT TERM

The Supreme Court, July 25, ended its October 1973 Term, one which had been extended into the summer recess period by the Court's decision to hear the expedited appeal of the Special Prosecutor in the **U.S. v. Nixon** case.

Here are a series of short synopses of the Court's decisions last term which are of particular interest to the federal judiciary. They were prepared by the General Counsel's Office of the Administrative Office of U.S. Courts.

Zahn et al. v. International Paper Company (December 1973)

A class action, based on diversity of citizenship, cannot be brought on behalf of members of the class whose claims are for less than the requisite $10,000 amount in controversy. The rule against aggregating claims of multiple plaintiffs "requires dismissal of those litigants whose claims do not satisfy the jurisdictional amount, even though other litigants assert claims sufficient to invoke the jurisdiction of the Federal Court."

Cleveland Board of Education et al. v. La Fleur et al. (January 1974)

Public school teachers challenged the constitutionality of mandatory maternity leave rules of Cleveland, Ohio and Chesterfield County, Virginia. The Court held that such mandatory maternity termination regulations containing arbitrary cutoff dates violate the Due Process Clause of the Fourteenth Amendment.

Memorial Hospital et al. v. Maricopa County et al. (February 1974)

The Court struck down an Arizona statute requiring a one-year residence in a county as a condition to an indigent's receiving nonemergency hospitalization or medical care at the county's expense. The durational residence requirement the Court ruled violates the Equal Protection Clause since it creates an "invidious classification" which infringes on the right of interstate travel by denying indigent newcomers the "basic necessities of life."

U.S. v. Matlock (February 1974)

The prosecution may seek to justify a warrantless search by proof of a voluntary consent obtained from a third party. The consent was held to be valid if the third party possessed common authority over the premises or had other sufficient relationship to the premises or the property to be inspected.

Alexander v. Gardner-Denver Co. (February 1974)

A unanimous Court ruled that an employee's statutory right to trial *de novo* under Title VII of the Civil Rights Act of 1964 is not foreclosed by the prior submission of his claim to final arbitration under the nondiscrimination clause of a collective bargaining agreement. The Court held that Title VII was designed to supplement, not supplant existing laws and institutions pertaining to employment discrimination.

Curtis v. Loether et al. (February 1974)

The Seventh Amendment, the Court held, entitles either party to demand a jury trial in an action for damages under §812 of the Civil Rights Act of 1968, which authorizes private plaintiffs to bring civil actions to redress violations of the Act's fair housing provisions. Actions of this nature to enforce statutory rights were determined to be within the Seventh Amendment if they create legal, as opposed to equitable, rights enforceable by an action for damages in law.

Smith, Sheriff v. Goguen (March 1974)

In this case the Court struck down a Massachusetts flag statute that subjects anyone who "publicly . . . treats contemptuously the flag of the United States . . ." to criminal liability. It was held that the statutory language at issue failed to define with substantial specificity what constitutes forbidden treatment of United States flags, and was, therefore, void for vagueness.

Lubin v. Panish, Registrar-Recorder of County of Los Angeles (March 1974)

A state may not, consistent with constitutional standards, require filing fees that an indigent candidate would be unable to pay, unless a reasonable alternative means of ballot access is provided for such individuals.

U.S. v. Edwards et al. (March 1974)

The Court held 5-4 that the warrantless search and seizure of Edwards' clothing "after the administrative process and mechanics of arrest (had) come to a halt" did not violate the Fourth Amendment.

Village of Belle Terre et al. v. Boraas et al. (April 1974)

The challenged New York village ordinance restricted land use to one-family dwellings and defined "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons. The Court, noting that the ordinance was not aimed at transients and involved no procedural disparity inflicted on some but not others and, therefore, not creating a deprivation of any "fundamental" right, upheld the ordinance as valid land-use legislation.

California Bankers Assn. v. Schultz, Secretary of the Treasury et al. (April 1974)

Upheld the constitutionality of the Bank Secrecy Act of 1970, which authorizes the Secretary of the Treasury to prescribe by regulation certain bank record keeping and reporting requirements. The Court determined that the contested provision of the Act was a proper exercise of Congress' power to deal with the problem of crime in interstate and foreign commerce.

Defunis et al. v. Odegaard (April 1974)

Defunis challenged a law school's minority preference admissions program under which he was initially denied admission to the law school. The Supreme Court did not reach the issue of reverse discrimination but rather held the challenge was moot since the complaining student was subsequently admitted under a court order and would graduate regardless of the Court's decision.

Pernell v. Southhall Realty (April 1974)

The Court held that actions by landlords to evict tenants are within the Seventh Amendment and triable by a jury on either party's demand.

Procunier, Corrections Director et al. v. Martinez et al. (April 1974)

The Court affirmed a district court ruling which invalidated and enjoined further enforcement of prison mail censorship regulations of the Calfornia Department of Corrections as unconstitutional under the First Amendment, void for vagueness, and violative of the Fourteenth Amendment's guarantee of procedural due process. The Court also held that the State's ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates constituted an unjustifiable restriction on the inmate's right of access to the courts.

U.S. v. Giordano et al (May 1974)

The Court held that Congress did not intend the power to authorize wiretap applications to be exercised by any individuals other than the Attorney General or an Assistant Attorney General specifically designated by him. Thus, an application for a wiretap order initially authorized by the Attorney General's Executive Assistant was held to be invalid.

Eisen v. Carlisle and Jacquelin, et al. (May 1974)

Eisen brought a class action suit against the named N.Y. Stock Exchange odd-lot brokers seeking money damages for violations of the antitrust laws. The class of odd-lot purchasers consist of some 2,250,000 members. The district court found that notice to each identifiable class member was unnecessary since the cost of such notice would be $225,000, and held that individual notice to selected members and notice by publication to all other members was sufficient. Also, the defendants were ordered by the District Court to pay 90% of the total cost of notice because it determined that the plaintiffs were "more than likely" to prevail on the merits. The court of appeals reversed and the Supreme Court affirmed. The Court

(See OPINIONS, Pg. 3)

(From OPINIONS, Pg. 2)

ruled that Rule 23(c)(2) which requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort" is "unambiguous." The Court also held that "In the absence of any support under Rule 23, the district court's effort to impose the cost of notice on the defendants must fail."

Geduldig, Director, Department of Human Resources Development v. Aiello, et al (June 1974)

The Court held that the exclusion of pregnancy related expenses from a state disability insurance program does not violate the Equal Protection Clause. The State is not required by the Constitution to sacrifice the self-supporting nature of the program, to reduce the benefits payable for otherwise covered disabilities, or to increase the maximum employee contribution rate solely to provide protection against another risk of disability, in this case a normal pregnancy.

Gilmore et al. v. City of Montgomery, Alabama, et al. (June 1974)

Petitioners, Negro citizens of Montgomery, Alabama, brought this class action in 1958 to desegregate the city's public parks. The present phase of the litigation charges that the city was permitting racially segregated schools and other segregated private groups and clubs to use city parks and recreational facilities. The district court enjoined the city from continuing such policies. The court of appeals sustained the injunction only insofar as the use of the city facilities by segregated private groups was "exclusive" and not in common with other citizens. The Supreme Court affirmed, ruling that on the record it was not possible to determine whether non-exclusive use of the city's recreational facilities by segregated private groups involved the city so directly in the actions of those users as to warrant court intervention on constitutional grounds.

Parker, Warden, et al. v. Levy (June 1974)

An Army physician was convicted by a General Court martial of disobeying the hospital commandant's order to establish a training program for Special Forces aide men and for making public statements urging Negro enlisted men to refuse to obey orders to go to Vietnam in violation of the Uniform Code Military Justice (UCMJ).

The Court upheld the convictions under the UCMJ, finding that Article 90(2), which provides for punishment of any person who willfully disobeys a lawful command of his superior commissioned officer;" Article 133, which punishes "conduct unbecoming an officer and gentleman;" and Article 134 (the "General Article"), which prohibits "all disorders and neglects to the prejudice of good order and discipline in the armed forces" not otherwise dealt with in the Code, were not unconstitutionally vague under the Due Process Clause of the Fifth Amendment. It was noted that the fundamental necessity for obedience and discipline within the military may render permissible that which would be otherwise constitutionally impermissible.

Gertz v. Robert Welch, Inc. (June 1974)

An article appeared in respondent's magazine falsely stating that petitioner, a reputable attorney, arranged someone's "frame-up" for a murder conviction, that petitioner had a criminal record and was a "communist-fronter." The Court held in a 5 - 4 decision, that the *New York Times* Company v. Sullivan, 376 U.S. 254 (1964), protection against liability for defamation on the ground that the defamatory statements concern an issue of public or general interest, may not be claimed by a publisher or broadcaster of defamatory falsehoods about a person who is neither a public official nor a public figure. Extending the *New York Times* standard to media defamation of private persons whenever an issue of general or public interest is involved, would abridge the legitimate state interest in compensating private individuals for injury to reputation and would also force courts to decide on an *ad hoc* basis which publications and broadcasts address issues of general or public interest and which do not.

Codispoti et al. v. Pennsylvania (June 1974)

The Sixth Amendment requires a jury trial for cases of post-verdict adjudications of various acts of contempt committed during trial where the sentences imposed aggregate more than six months, even though the sentence for any one count is less than six months.

Dorzynski v. U.S. (June 1974)

The Court construed the provision of the Youth Corrections Act (18 U.S.C. 5005 et seq.) which defines the circumstances under which a youth may be sentenced as an adult, to require an explicit finding by the judge that an otherwise eligible offender would not benefit from treatment under the Act. However, the Court rejected the argument that such a finding should be accompanied by supporting reasons.

Wingo, Warden v. Wedding (June 1974)

Upheld the Sixth Circuit Court of Appeals ruling that the habeas corpus statute 28 U.S.C. 2243 accorded a prisoner seeking such relief the right to an evidentiary hearing before a judge, rather than a U.S. magistrate.

Miami Herald Publishing Co., Division of Knight Newspapers, Inc. v. Tornillo (June 1974)

Florida's "right of reply" statute, which grants a political candidate a right to equal space to answer criticism and attacks on his record by a newspaper and makes it a misdemeanor for the newspaper to fail to comply, was held to violate the First Amendment's guarantee of a free press. A unanimous Court found that the "Florida statute failed to clear the First Amendment's barriers because of its intrusion into the function of editors."

Richardson, County Clerk and Registrar of Voters of Mendocino County v. Ramirez, et al. (June 1974)

The Supreme Court held that the application of the provisions of the California Constitution and implementing statutes which disenfranchised persons convicted of an "infamous crime" did not deny such persons equal protection under the Constitution. The Court commented that respondents may be correct that it is more enlightened and sensible to return an ex-felon to society as a fully participating citizen when he has completed the serving of his term, but noted that such arguments should be addressed to the legislature.

Jenkins v. Georgia (June 1974)

Appellant was convicted of violating Georgia's obscenity statute for showing the film "Carnal Knowledge" in a public motion picture theater. The Court found that the film was not obscene under the constitutional standards set out in *Miller* v. *California* 413 U.S. 15 (1973) and therefore appellant's conviction violated the First and Fourteenth Amendments. The Court cautioned that juries do not have an "unbridled discretion in determining what is 'patently offensive' ", noting that the *Miller* standard of "hard core" sexual conduct and the plain examples given in that case were "intended to fix substantive constitutional limitations on the type of material subject to such a determination."

Milliken et al. v. Bradley, et al. (July 1974)

A Federal Court cannot order a multi-school district remedy to cure racial segregation existing in only one district. The court determined that inter-district busing would not be appropriate absent a finding that the racially discriminatory acts of the state, or one or more of the local school districts, have been the substantial cause of inter-district segregation.

Michigan v. Tucker (June 1974)

The Court restricted the holding in *Miranda* v. *Arizona* 384 U.S. 436 (1966) ruling that lack of a full *Miranda* warning (respondent was not advised of his right to the appointment of counsel) did not deprive respondent of his 5th Amendment privilege against self-incrimination, where the record clearly shows that respondent's statements during the police interrogation were not involuntary or the result of potential legal sanctions.

U.S. v. Nixon (July 1974)

The Supreme Court ordered President Nixon to turn over the tapes and documents subpoenaed by the Special Prosecutor for an *in camera* examination of the material by the district court. In reaching this decision, the unanimous Court held that neither the use of the doctrine of separation of powers nor the need for confidentiality of high-level communications, without more, can sustain an absolute presidential privilege of immunity from judicial process under all circumstances.

A MESSAGE FROM

THE CHIEF JUSTICE

[Editors' note: In lieu of a message this month, we are reprinting, in part, pertinent portions of the Chief Justice's letter of August 8 to ABA President Chesterfield Smith. The letter and accompanying five-year summary of Developments in Judicial Administration were submitted to the ABA as an alternative to the Chief Justice's annual State of the Judiciary Report.]

In the five years I have been in my present office, some solid progress in improving the administration of justice in this country has been made. A very large part of the leadership for this progress came from you, your predecessors in office, and other leaders of the American Bar Association. What are the signs of this progress?

- The Institute for Court Management, proposed in 1969, became a reality within months and it has now trained more than 280 court administrators for state and federal courts.
- The Act of Congress, creating the position of Circuit Executive for the eleven Circuits, was passed by the Congress largely due to the active support of the Association.
- The ABA Commission on Correctional Facilities and Services has been a notable success with its pilot programs. Under the chairmanship of Chief Justice Richard J. Hughes, it has contributed to a long neglected area of justice. More will be heard from this important Commission as it proceeds under its new chairman, Dean Robert B. McKay.
- The simple but important matter of developing a "grievance procedure" to deal administratively with minor prisoner complaints is now in force in all federal correctional institutions, and that too came from the 1973 meeting of the Association.

One prisoner's complaint over seven packages of cigarettes will no longer engage the time of ten federal judges in order to get the simple justice that common sense and decency demand. The value of this Association, as a forum to ventilate some of the flaws of our system, was never better demonstrated, nor the force of the Association's prestige so quickly felt. The Association and Norman A. Carlson, Director of the Bureau of Prisons, performed a most useful public service that has brought speedier justice to the solution of prisoner complaints and has relieved the courts of matters with which others are better able to deal.

- An increase in authorized probation officers serving federal courts from 640 to 1148 was traceable to a strong resolution by the Association at the San Francisco meeting.
- The Commission on Standards of Judicial Administration, chaired by Judge Carl McGowan, has performed a notable service to both state and federal courts with its splendid reports on court administration and court organization.
- The Commission on Revision of the Federal Court Appellate System, created by Congress with the support of the Association and chaired by Senator Roman L. Hruska, has among its membership some of the outstanding leaders of the Association. Its work will meet other long overdue needs of the federal judicial system.
- Perhaps one of the most significant contributions of the Association was its sponsorship of the National Center for State Courts, which in less than four years has developed an able staff with regional offices in five states and the District of Columbia to serve long neglected needs of the state courts. Soon it will have a national headquarters on the campus of the College of William and Mary in historic Williamsburg, where the idea of the National Center was born.
- Two veterans of many Association projects have headed the National Center, and the profession owes a great debt to Justice Paul C. Reardon of the Supreme Judicial Court of Massachusetts and Justice Louis H. Burke of the Supreme Court of California. The National Center and the National College of the State Judiciary are two of the most important developments for the improvement of state courts in our time, and their impact will reach ultimately every county in the country.

I had hoped this year in my report to speak to the Association of the obligations of the profession to improve the means of making the system of justice more responsive to the needs of people of small means and of the problems which have seemed too modest to engage the attention of lawyers. Few things rankle in the human breast so deeply as a sense of injustice. The concern of our profession must not be measured in the dollar dimension of an individual's legal problem. A claim concerning a defective washing machine, gas stove, dishwasher, or a factor of excessive interest or financing charges in those transactions may well be the most important legal matter in the life of many families. The increased costs attending the complexities of real estate and home financing have resulted from our delay in developing simpler methods to transfer title and to create lenders' liens. It is the lawyers who can and must simplify those procedures so as to reduce the costs attending the process of fulfilling every American family's dream of owning a home. It is for lawyers also, I must add, to see to it that no artificial barriers of race, class or creed are permitted to stand in the way of fulfilling that dream. I have full confidence that

(See MESSAGE, Pg. 5)

COMPUTER TRANSCRIPTION COMES OF AGE

For years judges, court administrators and court reporters have sought ways to reduce delays in the appellate process caused by the time required to prepare trial transcripts. Several years ago the Center joined with LEAA in funding a study of the possibilities of computer-aided transcription as a means of eliminating transcript delays.

The study, conducted in 1971, concluded that "The feasibility of computer-aided transcript preparation has been demonstrated," but that the currently available system was "subject to a number of deficiencies which must be corrected before its potential can be realized."

Since that time a great deal of development has occurred. Joseph Ebersole of the Federal Judicial Center recently said, "The research and development phase is ending and computer transcription services are now beginning to enter the market. By late 1975, we should have a better understanding of those areas in which computer transcription will be economically viable for trial transcripts, whether it will be sufficiently accurate for court use, and whether there are enough existing court reporters who are 'computer compatible' so that computer transcription can really make a difference in the courts. It's a time for cautious optimism."

Russian Translation: The Spark

Basic research in the field grew out of an attempt to have a computer translate Russian into English. Later, research efforts were focused on developing the capability to translate stenotype symbols. The result has been the development of what can be termed a mechanical note reader. (A note reader normally refers to someone who can read and type from stenotype notes.)

Five companies are very active today in the field. Some consider their computer transcription system to be in an experimental stage; others are beginning to actively market their service to court reporters.

The court reporter who is interested in using a computer transcription service must be a machine shorthand reporter. A computer cannot translate manual shorthand.

The percentage of existing machine shorthand reporters who will be able to use computer transcription systems is unknown. Estimates from the five firms range from 50% to 80% of existing reporters. Many reporters agree with these figures. Estimates from several skeptical court reporters range from 1% to 25%.

Implementation Steps

The first step for the reporter is to purchase a modified stenotype machine to which has been added an electronics package connected to a magnetic tape recorder which records stenotype imprints in digital code. There are several machine models to choose from and the type which is used, usually depends on the computer transcription company, since some of them have developed their own equipment.

After purchasing a new stenotype machine, each reporter has to be tuned to the system. This involves an analysis of the reporter's writing style. Some idiosyncratic elements of style can be programmed into a special personal dictionary. In other cases, reporters have to change their techniques. In effect, some retraining may be required.

Tuning and Training

Each firm has recognized the importance of this tuning and training. In fact, one firm has gone so far as to develop a new method of training so that anyone who goes to a stenotype school which uses this method will be trained for computer transcription right from the beginning. The need to conduct extremely complex analyses of stenotype writing styles has resulted in what appears to be better training methods. At one school, a substantial reduction in the amount of time required to train a stenotype reporter has been realized. Thus, the advent of computer transcription may result in benefits to the courts – even if computer transcription itself is not broadly used in the future.

First Run Transcript

A human note reader or a court reporter who is dictating from his or her own stenotype notes is able to determine many words because of context. Although this can be done to some extent by some of the systems, none of the five companies claim to be able to offer a completely perfect translation as a result of the first pass through the computer. Because of this, some of the companies have concentrated recent development effort on methods for editing what they refer to as a "first-run" transcript.

(over)

However, at least one company is planning to produce an acceptable first-run transcript which will be their final product. In cases where ambiguity exists, the alternative translations will be noted and the reader can cross out the words which do not make sense in context. An example would be "to/too/two." An attorney or judge reading a transcript will usually have no problem in knowing which of these homonyms is correct. In contrast, most companies believe that some editing is mandatory in order to produce transcripts acceptable to the Bar and Bench.

Service Options

A variety of service options will eventually be available to reporters. The major difference in these options is the degree to which the court reporter becomes involved in the translation and editing processes, and the extent to which he has computers and related equipment in his own office.

At one extreme, all equipment and software necessary for translation and editing would be operated by the court reporter in his office (presumably he or his firm would lease or purchase this equipment). At the other extreme, reporters would have no equipment other than their special stenotype machines and all translating and editing would be performed by the company offering the transcription service.

To illustrate the former, the concept of one company involves building and selling a translator which would be self-contained and would handle both translation and editing. A service option somewhat similar to this is the lease or purchase of the translation software by a court reporter firm or by a court system. Under this option both translation and editing would be done by a computer owned by the court reporter firm or the court.

Almost every other service option will involve translation at a computer center geographically separated from the court reporter.

Under one of these service options, a court reporter would have a video-type terminal in his or her office. After mailing or otherwise delivering the tape to the computer transcription company, the reporter could use the terminal to review and correct the first-run transcript. After editing was completed the final transcript would be printed and delivered to the reporter.

If the court reporter wanted slightly better service, a printer could also be leased so that as soon as editing was finished, a final transcript could be printed in the reporter's office.

Telephone to Computer

A further increase in service could be realized if a reporting firm were to install a special purpose minicomputer system including terminals, a printer, and disk file storage. Under this option, the minicomputer system would be used to transmit (over regular telephone lines) the contents of the magnetic tape to a larger computer which would perform the translation and send the first-run English draft back to the minicomputer disk files.

At any time thereafter, the court reporter could look at the first-run transcript on the terminal or have it printed so editing could be done at home. All corrections would be made via the minicomputer system and when editing was completed, the final transcript would be prepared on the high speed printer. This approach, which was recently demonstrated at the National Shorthand Reporters Association Convention, is now being used by two free lance reporting firms.

Over 50 Reporters Involved

Of the five companies, some provide (or plan to provide) only one type of service, some two, and one company plans to offer a spectrum of four service options.

Over 50 reporters throughout the nation are working with the five firms on either an experimental or operational basis. There are many questions yet to be answered, but the possibilities look bright. (For additional information, contact the Federal Judicial Center, 1520 H Street, N. W., Washington, D. C. 20005.)

(From MESSAGE, Pg. 4)

the profession will meet its high obligations on all these matters.

There is yet another unfinished task of the profession, by which I mean to include specifically judges and law teachers. This task was manifested in the 1970 Report of the ABA Special Committee on the Evaluation of Disciplinary Enforcement. The Committee was chaired by Mr. Justice Tom C. Clark, and its report presented a melancholy picture of the failure of our profession to enforce elementary standards of ethics in the relations between lawyers and their clients and between lawyers and the courts. That important report must not be allowed to gather dust in the archives. It should be made a priority measure on the agenda of the Association. The legal profession is a generation behind the need to place its own house in order.

The Association's efforts to examine the need for a National Institute of Justice are an important step intimately related to all the other splendid improvements the Association has sponsored or supported. It is a large enterprise, and the Report of the Commission on a National Institute of Justice (chaired by Charles S. Rhyne) will deserve close study by the profession, the Congress, and the courts. The Association's continuing analysis of the appellate problems of the federal courts and of the Supreme Court in particular likewise merits the study of the profession as a whole. It is this process of proposal, counterproposal, criticism, and debate that will help us find the right answers.

In speaking of the splendid cooperation of the Association, I am bound to pay tribute to the contributions of the American Judicature Society, the American Law Institute, the Federal Bar Association, the Institute of Judicial Administration, the American College of Trial Lawyers, and other professional groups which have given such generous support since I assumed office in June 1969. The inspiration and leadership of Mr. Justice Clark and Judge Alfred P. Murrah, Directors of the Federal Judicial Center and leaders in judicial improvement for many decades, have been a major factor in every area of progress, and we owe them a debt of gratitude. The enclosed report of Judge Murrah, as Director of the Center, may be of interest to you and to your colleagues in the House of Delegates. **[Editors' note: This report is available from the FJC Information Service.]**

VIDEOTAPE PREVENTS TRIAL DELAY

When a key defense witness in a criminal jury trial suddenly was hospitalized the day prior to her scheduled appearance, a substantial trial delay appeared inevitable. No such delay occurred however, when, at the suggestion of Judge Thomas D. Lambros of the Northern District of Ohio, the witness' testimony was videotaped and then presented to the jury at the scheduled time.

The case involved an indictment for unlawful possession of a firearm by a person previously convicted of a felony. As the trial progressed, it developed that the defense intended to show that the defendant had purchased the gun for his wife, who was often alone at their home.

Her testimony thus was crucial, but before the wife could appear, she suffered symptoms of a heart attack and was hospitalized. Counsel agreed with the Court that proceeding to videotape her testimony, if medically feasible, was appropriate and desirable.

Upon securing the doctor's approval, defense counsel made arrangements to prerecord her testimony in the hospital the morning of her scheduled appearance.

That afternoon, the testimony was presented to the jury. Since the Northern District of Ohio is a pilot court in the Federal Judicial Center's video pilot project, the testimony was played back on the court's own equipment, which was operated by trained court personnel. The procedure was judged completely successful by the Court and by both the prosecution and defense attorneys. The defendant was later acquitted by the jury.

(From HOFFMAN, Pg. 1)

the State-Federal Relations Committee of the Federal Judicial Center, 1968-70; and has been a member of the Judicial Conference Advisory Committee on Criminal Rules since 1960 and a member of the Committee on Habeas Corpus since 1971. From 1942 to 1944 he was the Referee in Bankruptcy in Norfolk, Virginia

Judge Hoffman is married to the former Helen Caulfield and has two children: Mrs. I.L. Hancock, III and Walter E., Jr. He is a member of the Norfolk and Portsmouth Bar Association, the Virginia Bar Association, the American Bar Association and the Order of the Coif.

SOLOMON APPOINTED NEW ICM DIRECTOR

Mr. Harvey Solomon has been appointed Director of the Institute for Court Management (ICM) replacing Ernest C. Friesen, Jr. who recently resigned. Mr. Solomon was a member of the first class at ICM and accepted an appointment as the Institute's Assistant Director for Court Studies after his graduation. Before going to ICM he was a member of the staff of the Federal Judicial Center's Innovations and Systems Development Division.

COMPUTERIZED CITATION SYSTEM BEING TESTED

Government and private industry have known for years of the computer's almost infinite versatility. Yet, only recently has computer technology advanced sufficiently so that the computer has practical value to the judiciary.

One such advancement, introduced by the Lawyers Cooperative Publishing Company, is a computerized system for validating case citations and discovering their later writ histories.

The system, known as the Automated Citation Testing Service or "ACT," provides access to over three million case citations through typewriter terminals connected to the computer by telephone.

A properly formulated inquiry to the computer will produce a response of the case's title, date of decision and official and parallel references.

Though not a citator, the system will also explain whether the case on appeal was affirmed, reversed, modified or dismissed as well as noting conflicts with cases in other jurisdictions. ACT is easy to use and gives immediate response to inquiries about cases from any American jurisdiction.

ACT has its greatest and most immediate potential in an appellate court, although it can be easily adapted to district court needs.

For example, uses of ACT include verification of authorities listed in briefs and pre-argument memoranda and verification of authorities relied on in an opinion once the case has been decided but prior to filing.

In addition to speed and accuracy, use of ACT means that the entire cite-checking operation can be performed by non-judicial personnel who are authorized and trained to use the computer terminal, thereby eliminating the judge or law clerk time traditionally allocated to this task.

The Federal Judicial Center has initiated a pilot project to experiment with the system to measure its usefulness in the federal courts. The Center has been working with judges, administrators and law clerks in the Temporary Emergency Court of Appeals, the Court of Appeals for the District of Columbia and the D.C. District Court in the development of an evaluation methodology that will allow practical use of the service while information to determine its usefulness and effectiveness is being collected.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Deputy U. S. Marshals

President Ford, on August 12, 1974, vetoed H.R. 5094 which provides for the reclassification and upgrading of deputy U.S. marshals.

Legal Services Corporation

Legislation establishing a Legal Services Corporation to which will be transferred the legal services programs of the Office of Economic Opportunity was signed on July 25, 1974 (P.L. 93-355).

While the law precludes use of legal services funds for the defense of criminal cases or for suits challenging the validity of a criminal conviction, it would not appear to preclude prisoner civil rights actions.

Drug Enforcement Administration, No-Knock and Parole

S. 3355, which will extend the Drug Enforcement Administration for another three years passed the Senate on July 11, 1974, amended to repeal the no-knock laws. On August 5, the House also passed S. 3355, amended to include the repeal of the no-knock law and also to provide parole eligibility for persons who were sentenced under the narcotics laws which precluded parole.

Speedy Trial

The Senate has passed (July 23, 1974) S. 754, the so-called Speedy Trial bill, with the amendments recommended by the Judiciary Committee.

The time limits specified in the legislation will be phased in over a seven-year period. At the end of the sixth year, the sanction for exceeding the time limits would be dismissal without prejudice, but the government, upon reprosecution, would need to show "exceptional circumstances".

(See LEGISLATION, Pg. 7)

MEMORANDUM TO ALL FEDERAL JUDGES, CIRCUIT EXECUTIVES, FEDERAL PUBLIC DEFENDERS AND COMMUNITY DEFENDER ORGANIZATIONS

The bill, H.R. 15461, extending the effective date of the proposed amendments to the Federal Rules of Criminal Procedure, has now been enacted into law by the signature of the President after passage by Congress. Therefore, those amendments previously scheduled to go into effect on August 1, 1974, are postponed to August 1, 1975.

This action is designed to give the Congress reasonable opportunity to study the proposed rule changes.

It is requested that you inform all officers of your court who will be affected, including U.S. magistrates, probation officers, clerks and others.

(From LEGISLATION, Pg. 6)

Permissible reasons for extending the time limits are listed in the bill. Title II will also establish separate Pre-Trial Services Agencies in ten pilot districts, other than the District of Columbia, similar to the District of Columbia Bail Agency.

The bill is now pending before the House Judiciary Committee, Subcommittee on Crimes.

Aircraft Piracy

S. 39, which will provide a more effective program to prevent aircraft piracy, has passed both Houses and was signed into law on August 5, 1974. The legislation

(See LEGISLATION, Pg. 8)

THE SOURCE

The Information Service of the Federal Judicial Center

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

- **Developments In Judicial Administration; A Five-Year Summary. Prepared by the Federal Judicial Center, August 1974.**
- Guilty Pleas: Weak Links In The "Broken Chain." N.H. Cogan. 10 Crim. L. Bull. 149, March 1974.
- Judicial System Improvement. H. Heflin. 13 Washburn LJ 1, Winter 1974.
- Law And The Courts; A Layman's Handbook Of Court Procedures, With A Glossary Of Legal Terminology. American Bar Association. 1974.
- A Lawman's Perspective Of Sentencing. Clarence M. Kelley (before 8th and 10th Circuit Sentencing Institute, April 1974) 43 Law Enforce. Bull. 16, July 1974.
- A Report On The Grand Jury's Criminal Law Function [in California] Eugene Kaster. Judicial Council of California Annual Report 1974.
- The Supreme Court, Congress, and Rules of Evidence. Arthur J. Goldberg. 5 Seton Hall L Rev 667, Spring 1974.

(From MURRAH, Pg. 1)

Judge Hoffman is no stranger to the Center and all of its activities. He is a member of the Board and has actively participated in its program since its inception. Even before the advent of the Center, he was actively participating in all the Judicial Conference programs designed to effectuate the aims and purposes for which the Center was created.

It was my privilege to be one of the judicial midwives who helped to bring the Center into life. The fledgling institution, embodying so much of our hope for improved judicial administration, was delivered to the tender wardship of Mr. Justice Clark. Under his careful guidance, hope began to become a reality. Despite the fact that he had less than two years as Director, Justice Clark built it into an organization capable of assuming a substantial role in the quest for better quality of justice through improved procedures.

By the time I was called to be Director, the Center had passed its infancy. The question was no longer what it was and what it would do. Very quickly the question had become how to choose among a myriad of needs of the federal courts.

Justice Clark had engendered such a strong measure of respect for the Center and confidence in its work that my task was made much easier. Because of that solid beginning, these four and a half years have been among the most satisfying and fruitful of my judicial career. The annual reports for those years chronicle our accomplishments in terms of projects, seminars and new developments. The judiciary can be justly proud of the Center's achievements, for they are not simply the work of the Center. They are the work of the whole judicial family. What the reports do not show is the growth of a healthy and happy institution within The Third Branch that is just beginning to realize its full potentialities.

The declared purposes of the Center are: to conduct research and studies of the operation of the courts; to make recommendations for the improvement of their administration and management; to conduct programs for the education and training of court personnel.

We train and educate supporting personnel to use these techniques and procedures. But our most difficult problem is to persuade the judiciary to fully utilize these new skills of all their supporting personnel. We can no longer afford to waste precious judicial time and talent on the non-decision making processes.

We are on the threshold of the day of automation and computerization of the non-decision making function of the judiciary; we are training and educating court personnel to perform these functions. In short, we here at the Center are devoutly dedicated to the task of doing the very best we can with what we've got while searching for new and better methodologies. We have a long way to go, but we've taken the first steps toward the efficient administration of justice which the public has a right to expect of us.

To that end I could not hope to leave to my successor a better legacy than the potential of The Federal Judicial Center with its three major assets – a hard working staff driven by a spirit of dedication, a concerned and supportive Board, and an involved and cooperative judiciary.

As I leave the Directorship, I, like all other judges, shall hold myself in readiness to respond to the call.

PERSONNEL

Appointments

Robert M. Duncan, U.S. District Judge, S.D.Ohio, July 12
Robert W. Porter, U.S. District Judge, N.D.Texas, July 18
Donald S. Voorhees, U.S. District Judge, W.D.Wash., July 15

Resignation

Otto Kerner, U.S. Circuit Judge, Seventh Circuit, July 22

Nominations

Donald D. Alsop, U.S. District Judge, D. Minn., Aug. 8
Thomas J. Meskill, U.S. Circuit Judge, 2nd Cir., Aug. 8
Robert W. Warren, U.S. District Judge, E.D.Wis., Aug. 8

Deaths

Emett C. Choate, U. S. District Judge, S.D.Fla., Aug. 15
Stephen J. Roth, U. S. District Judge, E.D. Mich., July 11

AO and FJC calendar

Sept. 5-6 — In Court Management Training Institute, Detroit, Michigan
Sept. 6-7 — Second Circuit Conference, Buck Hill Falls, Pennsylvania
Sept. 19-20 — Judicial Conference of the United States, Washington, D.C.
Sept. 20 — Judicial Conference Advisory Committee on Appellate Rules, Washington, D.C.
Sept. 23-27 — Refresher Course for Probation Officers
Sept. 30 - Oct. 2 — Third Circuit Conference, Hershey, Pennsylvania
Oct. 2-5 — National Conference of Bankruptcy Judges, San Francisco, California
Oct. 8-11 — Management Institute for Probation Officers, College Park, Maryland
Oct. 24-27 — National Bankruptcy Conference, Washington, D.C.
Oct. 29-30 — Sentencing Institute, Fourth, Fifth, and District of Columbia Circuits, Atlanta, Georgia

(From LEGISLATION, Pg. 7)

contains a provision for imposition of the death penalty which is to be decided upon in a separate proceeding following a trial as to the matter of guilt. The legislation also specifies those factors which are to be considered as mitigating, and if one of these exist, the death penalty is not to be imposed. The law also contains a list of aggravating factors which are to be considered in determining whether or not the death penalty is appropriate.

Simplified Procurement

H.R. 14494 which increases to $10,000 the maximum amount eligible for use of simplified procedures in procurement of property and services, was signed on July 25, 1974 (P.L. 93-356).

Campaign Reform

S. 3044, which would impose limitations on campaign expenditures and political contributions and make other provisions with respect to the conduct of campaigns for federal office, passed the Senate and has now passed the House of Representatives on August 8, 1974, with amendments. The Senate has requested a conference on the bill.

THE THIRD BRANCH
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Bulletin of the Federal Courts

VOL. 6, NO. 9 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center SEPTEMBER 1974

Judicial Conference Holds Fall Meeting

Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, reported to the Judicial Conference of the United States at its opening session September 19 that case filings of all types, except criminal cases, had risen during the fiscal year ending June 30, 1974.

Cases in the Courts of Appeals rose by five percent. New filings in civil cases in the district courts were up by 5.8 percent and bankruptcy cases increased by 9.4 percent. Criminal filings, on the other hand, were down by 7.2 percent.

In the Courts of Appeals, Mr. Kirks stated that since June 30, 1968, the pending caseload has risen more than 73 percent whereas the number of authorized judgeships has remained at 97 throughout this period.

Considered on a per judgeship basis, the increases reflect an average additional workload of 79.8 percent in terms of filings, 87.1 percent in terms of terminations and 73.5 percent in terms of pending cases.

Of the total appeals in all circuits, approximately 70 percent were in civil cases, due in large measure to an increase in cases involving real property actions, civil rights and prisoner petitions.

The report shows that the overall civil and criminal dockets in the district courts moved upward in 1974 by 3.3 percent, due entirely to the increase in civil filings. Terminations in civil cases dropped by 0.6 percent and the median time interval for civil cases closed (excepting land condemnation cases) was down by one month, reflecting an overall median of nine months.

The decline in criminal cases, Mr. Kirks stated, can be attributed in large measure to the continuing reduction in Selective Service cases and a drop in filings in immigration and liquor law cases, as well as drug law violations, many of which are now handled by the states or by United States magistrates.

Magistrates in fiscal year 1974 disposed of 82,705 minor offense cases and handled initial proceedings in criminal felony cases in 100,152 proceedings.

The report states that every judicial district registered increases in total filings in bankruptcy. In the past fiscal year 20,746 business

(See CONFERENCE Pg. 2)

Chief Judge Alfred A. Arraj

ARRAJ ELECTED TO FJC BOARD

The Judicial Conference of the United States elected Chief Judge Alfred A. Arraj (D. Colo.) to the Board of the Federal Judicial Center to replace Judge Walter E. Hoffman who left the Board before expiration of his term to become the Center's Director.

(See ARRAJ Pg. 2)

IN THIS ISSUE . . .

(From CONFERENCE Pg. 1)

bankruptcies were filed, setting an all-time record since comparable statistical data were maintained beginning in 1940. The highest percentage of these was in the Northeastern section of the country and was filed in the second half of the fiscal year.

Mr. Kirks' report also pointed to the continued improvement in the utilization of jurors in the entire federal system. For the past three years there has been a decrease of 18 percent in the juror usage index and the percentage of prospective jurors selected for, or who have served on jury trials, has continued to increase.

Mr. Kirks estimated that a total of 270,574 juror days have been saved since 1971, resulting in an estimated savings in juror attendance fees of more than five million dollars.

In other action the Judicial Conference approved for transmittal to the Supreme Court two sets of rules governing the procedure to be followed in corporate reorganization cases under Chapter X of the Bankruptcy Act and in real estate arrangement cases under Chapter XII of the Bankruptcy Act.

These rules have been under development by a committee of the Conference over a period of several years. If approved by the Supreme Court, the new rules will be sent to Congress and become effective ninety days later, unless there is an objection to them.

The Judicial Conference also:

- Approved budget estimates for the court system for the fiscal year ending June 30, 1976, totaling over three hundred million dollars;
- Approved draft legislation to protect the employment rights of jurors called to serve in U.S. district courts;
- Increased the rates which may be charged by court reporters for official transcripts of court proceedings from $1.00 to $1.25 per page for ordinary copy and from $2.00 to $2.50 per page for expedited copy;
- Approved legislation to make it a federal crime to harm a United States probation officer acting in the line of duty.

(From ARRAJ Pg. 1)

Judge Arraj was appointed United States District Judge for the District of Colorado on August 6, 1957 and entered on duty August 30, 1957. He became Chief Judge on December 12, 1959. He attended the University of Colorado, receiving an LL.B. degree in 1928.

Prior to his appointment to the federal bench, Judge Arraj served as a District Judge for the 15th Judicial District, 1949-1957; Deputy District Attorney for the 15th Judicial District, 1946-1949; and County Attorney for Baca County, 1936-1942 and 1946-1948. During World War II, he served in the United States Army Air Force, advancing from First Lieutenant to Major during the period 1942-1946.

In 1964 Judge Arraj was elected District Judge representative from the Tenth Circuit to the Judicial Conference of the United States and served from 1964-1967. He also served on the Judicial Conference Committee on Committees in 1968, and the Advisory Committee on Intercircuit Assignments, 1969-1971. He has been a member of the Review Committee since 1969.

Judge Arraj is married to the former Madge Louise Connors and has one daughter, Sally Marie. He is a member of the Denver Bar Association, Colorado Bar Association, American Bar Association, Federal Bar Asssociation, American Judicature Society and the Order of the Coif.

ICM SCHOLARSHIPS AVAILABLE

The Federal Judicial Center has announced the continuation of the scholarship program initiated last year which is designed to provide assistance to selected federal judicial personnel for in-service training at the Institute for Court Administration.

The Institute is an independent, non-profit organization which for the past four years has been offering intensive courses in judicial administration. Last year, five court employees were selected for participation by the Center's Board. As financial resources allow, the Center hopes to be able to provide a similar number of scholarships in the coming year.

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 Spring of 1975.

Applicants for the Center scholarships will be judged on the basis of individual qualifications, recommendations of court superiors, and potential benefit to the federal court system.

To be considered, applicants must, on their own, obtain acceptance to the ICM Program. Interested personnel are advised to contact the Institute 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 1975 ICM Programs should be made by letter to the Center's Director at the earliest convenient time. Selections will be made by the Center's Board after the Institute has announced its acceptances.

JUSTICE CLARK, JUDGE MURRAH HONORED BY JUDICIAL CONFERENCE

The Judicial Conference of the United States at its meeting in September honored Justice Tom C. Clark, U.S. Supreme Court (Ret.), presenting him with a bronze plaque that will hang in the Federal Judicial Center designating the main conference room as *THE TOM C. CLARK CONFERENCE ROOM*. Justice Clark was the Center's first Director. (Above left, The Chief Justice presents the plaque to Justice Clark.)

The Conference also honored Judge Alfred P. Murrah by passing a resolution saluting him as he completes his term as Director of the Center October 27. The Conference expressed its sincere appreciation to Judge Murrah ". . . for his unselfish and dedicated service . . . unfailing warmth, companionship, and his innovative achievements in the field of improving the administration of justice."

Judge Murrah was elected second Director of the Center in 1970; he was appointed District Judge in 1937 and elevated to Circuit Judge in 1940. (Above right, The Chief Justice presents the resolution to Judge Murrah.)

FJC Study

SCREENING PROCEDURES IN FOURTH CIRCUIT ANALYZED

A study of screening practices and the use of para-judicial personnel has recently been concluded by two research associates from the Federal Judicial Center.

FJC Research Associates Steven Flanders and Jerry Goldman examined screening practices in the U.S. Court of Appeals for the Fourth Circuit in order to update the Center's *Comparative Report on Internal Operating Procedures of United States Courts of Appeals*. The Fourth Circuit was selected for this study because it uses a central pool of staff law clerks responsible to the entire court. These clerks initially screen over 95% of the Circuit's business.

Screening — differentiation in the processing of appeals — is now being used in one form or another in all U.S. Courts of Appeals. The practice of case screening has increased a court's capacity to handle ever-mounting dockets without increased judicial manpower.

Fourth Circuit

Staff law clerks initially recommend whether or not a case will be set for full briefing and oral argument. In the event that a case can be decided without oral argument or full briefing, the staff law clerk analyzes the issues in the case, recommends a disposition and drafts a proposed opinion (either *per curiam* or memorandum decision) which is sent to the three-judge panel for its approval along with all the materials related to the case.

In the event that any judge on the panel thinks the case should be argued orally or fully briefed, the case is automatically set for briefing and argument. Staff law clerks have substantial additional responsibilities in *pro se* and prisoner cases, for which they assemble the record and prepare materials sorting the claims into a justiciable form.

Some observers have voiced fears that the increased use of staff in these screening processes may diminish the decision-making authority of the judge. However, the study disclosed that there has been no erosion of this decision-making authority of the judges as a consequence of staff screening.

Evidence to support this conclusion was gleaned from interviews with judges and staff. Although the judges vary in the way in which they use the product of the central staff, it is clear that the court supervises staff work very closely. The court communicates changes in staff recommendations both within panels of judges and to appropriate staff members, thus providing staff law clerks precise guidance concerning the court's needs and wishes. The communication of approval or disapproval of staff decisions by the judges to the staff law clerks operates to reinforce correct staff decisions and to correct erroneous ones.

The study was made possible only through the full cooperation of both the judges and staff of the Fourth Circuit.

A final report, to be issued shortly, will examine a number of issues resulting from using the central staff structure. Preliminary copies of the report will be made available from the FJC Information Service.

SECOND CIRCUIT SENTE

In a unique experiment designed to determine the extent of disparity in the sentencing of criminal defendants, fifty federal district judges rendered hypothetical sentences last spring in a series of thirty criminal cases.

An analysis of the sentences rendered in the experiment has recently been published by the Federal Judicial Center.

The experiment was conducted by the Second Circuit Committee on Sentencing Practices with the assistance of the Judicial Center. Over a period of six weeks, a series of thirty identical presentence reports was mailed to the district judges of the circuit. The judges rendered sentences on the basis of the reports and sent them to the Judicial Center for tabulation. All forty-three of the active district judges and seven of the senior judges in the circuit participated.

According to the Judicial Center's report, the opportunity to observe a large number of judges rendering sentences in identical cases sets this experiment apart from all previous studies of disparity. "Earlier studies have all been based on the observation of sentences rendered by different judges in different cases," the report asserts.

"The current study, by contrast, deals directly with differences in judges' sentencing behavior, without the complications introduced by differences in the underlying cases. For the first time, we are able to observe the extent of agreement among many judges on a case-by-case basis."

Substantial Disagreement

The sentences rendered in the experiment indicated that there is substantial disagreement among the judges about the appropriate sentences for the same defendants.

Chief Judge Irving R. Kaufman

In four cases in which all of the sentences were prison sentences, for example, the terms of imprisonment ranged from 3 years to 20 years in one case, from 5 years to 18 years in another, from 1 year to 10 years in the third, and from 3 months to 3 years in the fourth.

In cases in which some judges gave only probation, other judges gave prison terms as long as 7½ years in one case, 5 years in another, and 3 years in still another.

The analysis also indicated that very few judges are either consistently severe or consistently lenient relative to their colleagues. The overwhelming majority of the participating judges were severe in some cases and lenient in others.

This pattern was so prevalent that the report concluded that the disparity observed "would not be substantially reduced by excluding from consideration the sentences of judges who are consistently severe or consistently lenient."

In the cases studied, the judges of the Eastern District of New York appeared, on the whole, to impose somewhat more severe sentences than their colleagues elsewhere in the Circuit, and the judges in the four smaller districts tended to impose somewhat less severe sentences.

Differences among districts, however, were not as important as differences among judges sitting in the same district.

No evidence was found that experience on the federal bench tends to moderate disparity. The disagreements among the more experienced judges appeared to be about as great as the differences within the entire group of fifty judges.

Actual Presentence Reports Used

The presentence reports used in the experiment were actual presentence reports drawn from the files of district courts in the Second Circuit. They were edited to disguise the identities of the defendants.

Although the sentences rendered in the experiment were hypothetical, the report concluded that the disparity exhibited "is a reasonably good approximation of what really happens in the courtrooms of the circuit."

The most obvious difference between sentencing in the experiment and actual sentencing was the absence of any opportunity for the sentencing judge in the experiment personally to observe the defendant. The sentences analyzed were based entirely on the presentence reports.

Conceding that the sentences of individual judges might have been different if a personal assessment of the defendant had been possible, the report found no reason to believe that the physical presence of a defendant would have a systematic tendency to narrow the range of sentences in a particular case.

"Thus," the report concluded, "even though the experiment omits part of the information that is available to the judge at the time of sentencing, this omission is not likely to have had much impact on the extent of disparity observed."

CING STUDY RELEASED

The report also considered other ways in which the experimental sentences might differ from sentences rendered in the courtroom, and concluded that none of them cast serious doubt on the validity of the experiment.

Committee on Sentencing Practices

The Second Circuit Committee on Sentencing Practices, which sponsored the sentencing experiment, was appointed in June 1973 by Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit.

It is chaired by former Chief Judge J. Edward Lumbard of that court, and its membership includes judges, lawyers, and probation officers. The sentencing experiment was carried out under the supervision of a subcommittee chaired by Judge Marvin E. Frankel of the Southern District of New York.

Mr. William B. Eldridge and Mr. Anthony Partridge of the Federal Judicial Center prepared the report and presented the results at the September meeting of the Annual Judicial Conference of the Second Circuit.

In his remarks to the Judicial Conference, Mr. Eldridge said that the success of the experiment was heavily dependent upon the willingness of the district judges to participate. He reported that all forty-three of the active judges and seven senior judges did so, returning 1,442 of the 1,465 presentence reports mailed to them. "I have never seen any study with such wholehearted and unstinting participation," Eldridge said. "So far as I know it is without precedent or parallel."

Policy Implications

Mr. Eldridge also noted that the report has several implications for various proposals that have been advanced to reduce sentencing disparity.

First, he said, the data suggest that discussion of sentencing problems among judges, although it may help them refine their individual approaches to sentencing, does not have any strong tendencies to create consensus.

The more experienced judges, who have generally had an opportunity to participate in extensive sentencing discussion through sentencing institutes, Judicial Center seminars, and other forums, appear to be just as far apart in their sentences as the less experienced.

In addition, the sentences rendered in the experiment by judges from the Eastern District of New York, where the sentencing council has been used for many years, do not appear to reflect more consensus in that district than is found in districts where there is no regular forum for discussing sentencing problems.

The sentences rendered by the Eastern District judges in the experiment were rendered without the benefit of the sentencing council, with the result that the experiment provides no evidence about the efficacy of discussion of a particular case before sentence is rendered in that case.

It only suggests, Mr. Eldridge said, that a series of discussions about particular cases does not have any discernible tendency to create a common philosophy or approach.

Three-Judge Panels

Mr. Eldridge also pointed out some limitations that the study suggests about three-judge panels, whether used as sentencing councils or as reviewing bodies. If some judges were consistently severe and others consistently lenient, it would be possible to establish panels with the purpose of having a moderate panel or a balanced panel.

If, as the study indicates, most judges are sometimes severe and sometimes lenient relative to their colleagues, it is not possible to establish a panel which will remain moderate or balanced with respect to all the cases that come before it.

A certain number of cases will come up in which all the panel members will be severe relative to their colleagues, and a certain number will come up in which they will be lenient.

If the panel members were selected at random from among the judges on a 10-judge court, for example, there would be one chance in twelve, with respect to any particular case, that the panel would consist entirely of judges drawn from the more severe half of the court. There would also be one chance in twelve that the panel would come entirely from the more lenient half, so the chance would be one in six that it would come entirely from one end of the spectrum or the other.

It is unclear how much these results could be improved upon by an effort to select a balanced panel. But the experiment indicates that even a panel selected for balance would turn out to be somewhat extreme in its reactions to a number of the cases that came before it.

Appellate Review

Evidence from the experiment also indicates that disparity is not principally a product of disagreement about clearly defined policy issues such as whether a concession should be given for a guilty plea. The study does show that judges disagree about such issues, but it strongly suggests that resolution of

(See SENTENCING Pg. 6)

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Juvenile Delinquency Act

S.821, the Juvenile Justice and Delinquency Prevention Act of 1974, was signed by the President on September 7, 1974. While most of the bill concerns funding and administrating programs for the prevention of juvenile delinquency and the rehabilitation of delinquents, Title V makes substantial changes in the Federal Juvenile Delinquency Act (18 U.S.C. Chapter 403), ranging from changes in the definitions of "juvenile" and "juvenile delinquency" to a mandate for speedy trial of juveniles.

The duties of magistrates are set forth in detail, including the duty to appoint a guardian ad litem in necessary instances. The law also specifies how the records of a juvenile proceeding are to be handled in the court, requiring their sealing and release only under very narrowly specified circumstances.

Commission on Revision of the Federal Court Appellate System

S. 3052, which will extend the final date of the Commission's report to June, 1975 and to increase the appropriation authorization to $606,000 is pending.

Pay Increase

On September 19, the Senate disapproved the alternative pay plan submitted by the President. Therefore, the pay increase will take effect the first pay period beginning after October 1, rather than in January as recommended in the alternative plan.

Copyright Law Revision

On September 9, 1974, the Senate passed S. 1361, a general revision of the Copyright Law, Title 17, of the United States Code. The bill is now pending in the House of Representatives, Subcommittee on Courts, Civil Liberties & the Administration of Justice of the House Judiciary Committee.

Travel & Per Diem

S. 3341 to increase the travel & per diem allowances of government employees traveling on official business has passed the Senate. The House bill, H.R. 15903 has been reported out by the Committee on Government Operations and is awaiting action by the House.

While the bills do differ, per diem will be increased under both bills from $25 to $35 and actual expenses up to a maximum of $50 per day. The mileage allowance under the Senate bill would be 16¢ per mile for an automobile while under the House bill it would be set up to a maximum of 18¢ per mile.

Speedy Trial

S. 754, which passed the Senate in July was the subject of three days of hearings in the House Judiciary Committee, Subcommittee on Crime. Testimony was received from Senator Ervin, Judge John Feikens, ED Mich., Judge Alfonso Zirpoli, ND Calif., Director Rowland F. Kirks of the Administrative Office of U.S. Courts, the Department of Justice, Professor Daniel J. Freed of Yale University, and others. It is expected that the subcommittee will report the bill out in the near future.

Jury Legislation

H.R. 13871, which amends the Federal Employees Compensation Act with respect to work injuries has been favorably reported by the Senate Committee on Labor and Public Welfare to include a provision that federal employees serving as jurors will be eligible for Federal Employees Compensation Act coverage for injuries received while on jury duty.

(From SENTENCING Pg. 5)

these disagreements would not greatly affect the magnitude of sentencing disparity.

For law-making by appellate courts to have a substantial impact on disparity, according to Eldridge, it would have to go well beyond the resolution of such issues.

Mr. Eldridge emphasizes that he is not opposed to sentencing institutes, three-judge panels, or appellate review. Each of these may serve valuable purposes other than disparity-reduction, and some of them may contribute to the reduction of disparity. But, Eldridge argues, the Second Circuit Sentencing Study indicates that none of them is likely to provide a satisfactory solution to the disparity problem.

Some Warnings

"Studies of the kind that have been conducted by the judges of the Second Circuit don't answer the serious questions confronting sentencing judges," Eldridge said. "But these studies do sharpen the outlines and clarify the dimensions of the dilemma. And the studies give us some warnings that certain paths are not likely to lead to solution. Careful evaluation of those warnings may mean that years of pain and frustration may be avoided in the search for solution." **[Note: Available from the U.S. Government Printing Office, $3.60. A limited number of copies are available from the FJC Information Service to fill requests from federal judges and other federal officials at no charge.]**

THE SOURCE
The Information Service of the Federal Judicial Center

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

- Allocating Power Between Agencies And Courts: The Legacy of Justice Brandeis. G. Edward White. 1974 Duke L J 195.
- The California Courts Of Appeal (Executive Summary). National Center for State Courts. Aug. 1974.
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- The Omnibus Hearing In State And Federal Courts. Tom C. Clark. 59 Cornell L Rev 761, June 1974.
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- Reports Of The [FJC] Conference For District Court Judges, Oct. 1-4, 1973. 63 F.R.D. 157, Aug. 1974.
- **The Second Circuit Sentencing Study; A Report To The Judges Of The Second Circuit. Federal Judicial Center. Aug. 1974.**
- A Survey Of The Writing And Publication Of Opinions In Federal And State Appellate Courts. Leah F. Chanin. 67 L Lib J 362, Aug. 1974.
- Symposium: Federal Jurisdiction And Procedure 1974. 8 Val U L Rev 189, Winter 1974.
- Validity Of U.S. Magistrates' Criminal Jurisdiction. 60 Va L Rev 697, April 1974.
- Videotape In Criminal Proceedings. 25 Hastings L J 1017, March 1974.
- Standards Relating To The Administration Of Criminal Justice; Compilation With Index. American Bar Association, 1974. ($3.25)

FEDERAL JUDGES ACTIVE AT ABA ANNUAL MEETING

This year's annual meeting of the American Bar Association was held last month in Hawaii, with several from the federal judiciary taking leading roles.

In the Division of Judicial Administration, Judge Griffin B. Bell, (CA-5) was named Chairman for the year starting in August of 1975. U.S. Magistrate Sol Schreiber (S.D.N.Y.) was reelected as Assistant Secretary. District Judge Aubrey E. Robinson (DC) completed his term as Chairman of the National Conference of Federal Trial Judges and was succeeded by Chief Judge George N. Beamer (N.D. Ind.). Other federal judges serving on the Council are Eugene A. Wright (CA-9) and Edward A. Tamm (CA-DC).

Judge Carl McGowan (CA-DC), who has served as Chairman of the Commission on Standards of Judicial Administration, the group updating the Vanderbilt-Parker standards, has been succeeded by Mr. Justice Louis H. Burke of the Supreme Court of California. Judge McGowan, having been assigned extra responsibilities by the Chief Justice, including service on the special court handling railroad litigation, asked to be relieved of the Chairmanship but will continue as a member of the Commission.

Actions by the House of Delegates of particular interest to the federal judiciary include:

- *Delaying* till the midyear meeting consideration of a proposal that would have endorsed six-member federal civil juries;
- *Adopting* a resolution approving opposition to the concept of less-than-unanimous verdicts in federal criminal trials;
- *Approving* a resolution recommending to Congress enactment of a bill to create a National Institute of Justice;
- *Approving* a resolution on consumer class actions opposing restrictive changes in Rule 23 of the Federal Rules of Civil Procedure (the rule governing class actions in the federal courts); and
- *Approving* a resolution opposing local rules of certain United States Courts of Appeals which curtail or eliminate oral arguments in non-frivolous cases, and also opposing disposition of cases prior to the filing of briefs.

EDUCATION AND TRAINING DIVISION OPENS FALL WITH FULL SCHEDULE

The Education and Training Division began a full schedule of seminars and conferences for Fiscal Year 1975 in September, with the addition of several new training ideas.

Among the innovations are Seminars on Improving Supervisory Skills; two have already taken place and three more are planned before the end of the calendar year. These are in-court management training institutes for middle management supervisors. Also new on the agenda are two Seminars for Jury Clerks, in St. Paul and Atlanta.

With the recent Congressional authorization for increases in the number of probation personnel, training for Probation Officers, especially on the management level, will continue on a large scale. The first Management Course for Chief and Deputy Chief Probation Officers from the largest district offices was held in October.

The long range plan is to train all of the experienced supervisory personnel and the 85 Supervisors and 9 Deputy Chiefs who are relatively new to management.

A Regional Seminar for U.S. Magistrates of the 9th Circuit will be held in Monterey, California in November.

PERSONNEL

Appointment

James C. Hill, U.S. District Judge, N.D. Georgia, August 16

Confirmations

Murray I. Gurfein, U.S. Circuit Judge, 2nd Cir., August 22
Robert W. Warren, U.S. District Judge, E.D.Wisc., August 22

Resignations

David L. Middlebrooks, Jr., U.S. District Judge, N.D.Fla., Aug. 1

Arnold Bauman, U.S. District Judge, S.D.N.Y., August 15
Anthony T. Augelli, U.S. District Judge, D.N.J., August 31

Deaths

Richard M. Duncan, U.S. District Judge, E.&W.Mo., August 1
Sidney Sugarman, U.S. District Judge, S.D.N.Y., August 9

AO FJC calendar

Oct. 8-11 — Management Institute for Probation Officers, College Park, Maryland

Oct. 24-25 — Judicial Conference of the U.S. Subcommittee on Jurisdiction of U.S. Magistrates, Washington, D.C.

Oct. 24-27 — National Bankruptcy Conference, Washington, D.C.

Oct. 29-30 — Sentencing Institute, Fourth, Fifth, and District of Columbia Circuits, Atlanta, Georgia

Nov. 25-26 — Judicial Conference of the U.S. Subcommittee on Judicial Statistics, New Orleans, La.

The Third Branch

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House Subcommittee Approves Speedy Trial Bill

On October 10, the Subcommittee on Crime of the House Judiciary Committee approved for the full Committee the Speedy Trial Bill (S. 754), with a number of amendments.

The bill will provide for trial of defendants within 60 days of arraignment. In addition, an information or indictment must be filed within 30 days from the date on which the individual was arrested, but an exception is provided for situations in which no grand jury has been in session during the 30-day period.

Arraignments must be held within 10 days from the filing of the indictment or information. In all criminal cases, the Judge or Magistrate must set the case for trial at the earliest practicable time, either on a day certain or on a weekly or other short-term trial calendar.

These time limits, under the Subcommittee's amendment, would be phased in over a five year period. Exceptions and bases for continuances are provided for, but the bill explicitly excludes continuances granted because of general congestion of the court's calendar, lack of diligent preparation, or failure to obtain witnesses.

If the time limits are not met the charges must be dismissed, and later prosecution for that offense is forever barred. Sanctions are also available against defense counsel and attorneys for the government.

(See BILL, Pg. 2)

THIRD CIRCUIT HOLDS SENTENCING INSTITUTE

A sentencing institute for judges of the Third Circuit was held in Hershey, Pennsylvania September 27-28.

The first day of the two-day institute was devoted to a discussion of various matters related to sentencing. The second day was

(See SENTENCING, Pg. 2)

IN THIS ISSUE . . .

Circuit Executives Meet at FJC

Circuit Executives met at the FJC last month for a three-day conference beginning September 17. Pictured, l. to r., Mark W. Cannon, Administrative Assistant to the Chief Justice discusses his responsibilities as James V. Higgins (CA-6), William Doyle (CA-3) and Emory G. Hatcher (CA-10) listen.

(From BILL, Pg. 1)

The first time limitations shall take effect for all individuals arrested or served with a summons on or after the expiration of the first year following the date of enactment of the bill.

However, beginning 90 days after enactment, each district must put into operation an interim plan to assure priority in the trial or other disposition of cases involving detained persons or released persons awaiting trial who have been designated by the attorney for the government as "high risk."

Of considerable significance is the fact that within 60 days of enactment each district court must convene a planning group, consisting at a minimum of the chief judge; a U.S. magistrate, if any; the clerk of the Court; the U.S. attorney; the federal public defender, if any; a private attorney experienced in the defense of criminal cases; the chief U.S. probation officer; and a person skilled in criminal justice research and planning, to act as the reporter for the group.

Each district is authorized up to $25,000 for the purposes of the planning group. These groups are responsible for the initial formulation of all district plans and must address themselves to needs for reform in the criminal justice system, and must submit recommendations to the district court for each plan that the court must adopt.

District plans are to be submitted to a reviewing panel consisting of the members of the Judicial Council of the Circuit and the chief judge of the district whose plan is being reviewed, or his designee.

The Federal Judicial Center is to advise and consult with these groups and the district court and the plans can be formulated only after consulting with, and reviewing the recommendations of the Judicial Center.

The Subcommittee has added a section dealing with the extraordinary emergency situation in which case the Judicial Conference may suspend the time limits contained in the bill. Suspensions must be reported to Congress.

The pretrial services agencies established under Title II of the bill will be of two types: five of the ten pilot districts will have the pretrial services provided through the probation office and, in the remaining five, a board of trustees will establish and operate a separate pretrial services agency.

Action by the full committee on the Bill is expected shortly after Congress reconvenes following the election recess.

Judge Alfonso J. Zirpoli (N.D. California), chairman of the Committee on the Administration of Criminal Law of the Judicial Conference, testified against enactment of the speedy trial bill.

He told the subcommittee that, "The Sixth Amendment right of a defendant to a speedy trial in federal criminal cases has been for many years and continues to be a subject of concern of and study by the Judicial Conference of the United States.

"In that study the Conference gave careful consideration to S.754 at its September, 1973 meeting and after receiving the report of its Committee on the Administration of the Criminal Law recommended against the enactment of the bill because it was convinced that the bill, if enacted, would serve no significantly constructive purpose that is not being achieved under present operative court procedures and in particular the plans adopted by the district court pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure for the prompt disposition of Criminal Cases."

(From SENTENCING, Pg. 1)

spent visiting Lewisburg Penitentiary and the Allenwood Prison Camp.

In the morning session on the first day, Professors David Rothman of Columbia University and Norval Morris of the University of Chicago Law School discussed the history and utility of imprisonment.

Judge Marvin E. Frankel, of the Southern District of New York, discussed appellate review of criminal sentences.

In the afternoon session, Judge Harold Tyler of the Southern District of New York discussed the recently completed disparity study in the Second Circuit and multiple-count sentencing problems. Eugene N. Barkin, General Counsel of the Bureau of Prisons, spoke about illegal sentences. Maurice H. Sigler, Chairman of the U.S. Board of Parole, outlined present Parole Board policies. Norman Carlson, Director of the Bureau of Prisons, spoke briefly about the federal prison system.

The Committee for the Institute was chaired by Judge Joseph F. Weis, Jr., of the Court of Appeals for the Third Circuit.

IRS RULES ON JUDGES' SICK PAY TAXABILITY

The IRS, pursuant to a request for ruling from a senior judge who retired under the disability provisions of 28 U.S.C. § 372, rendered an opinion recently that will be of interest to judges.

The question presented was whether a judge who retires because of disability under 28 U.S.C. § 372(a), may take advantage of the sick pay exclusion as provided by § 105(d) of the Internal Revenue Code [26 U.S.C. § 105(d)]. The IRS indicated that the "sick pay"

(See IRS, Pg. 3)

(From IRS, Pg. 2)

exclusion could be taken in that the retirement was caused by declining health which rendered the judge permanently disabled and that the statute under which he retired (28 U.S.C. § 372) is a wage continuation plan within the purview of § 105(d).

On the basis of information submitted in this case the IRS concluded that retirement salary was not subject to a total exclusion under § 104(a)(1) of the Internal Revenue Code because the judge's retirement "was not due to an occupational injury or illness arising out of and in the course of his work." The IRS left open the question of when "mandatory retirement age" occurs in the case of a federal judge under § 105(d) and the exclusion is no longer available to the taxpayer. Copies of the opinion may be obtained from the Office of the General Counsel, Administrative Office of the U.S. Courts.

INTERROGATORIES AND THE SMILING TIGER DISCOVERY REFORM ACT

Ed Lascher, Editor and Chairman of the California State Bar Journal, took a humorous swipe at the misuse of interrogatories by attorneys in the May-June 1974 issue. He listed five functions served by interrogatories:

"1. Supplying gainful employment to paralegals, law clerks, in-house investigators, and other high-class ancillary personnel;

"2. Serving as an indicator of frantic activity on the case to claims managers and/or clients (primarily the former) without really requiring any expenditure of expertise;

"3. Furnishing introductory and perhaps even profitably billable courtroom experience to fledgling lawyers in the process of moving for further answers, or opposing same;

"4. Padding out an otherwise slimlooking statement of services rendered on a billing, and

"5. [Rare.] Supplying information relevant to trial preparation which could not more advantageously be obtained by deposition or other method (such as matters of the net worth, details of prior litigation, lists of witnesses, etc.).

"In virtually all cases meriting more-than-trivial discovery, depositions serve the legitimate purposes of trial preparation vastly better than interrogs, and they're conspicuously cheaper, too, in the long run — at least when one considers the additional benefit of observing the witness and the fact that a deposition probably would be taken eventually anyway. Plus which, the cost of a depo can be recovered if you win, unlike interrogs.

"To put it bluntly, the practice of sending out 47 pages of written questions about where it hurts, how far you were from the intersection when you first saw the other vehicle (one used primarily in fire damage cases), whether you have ever been convicted of a felony, how many degrees your knee will bend, etc., is a pain in the base of the interrogatory issuer. It irritates everyone, inflates court files with stuff the court shouldn't see, and generally characterizes the kind of waste motion which has been the most vulnerable spot in our professional anatomy since long before Pickwick."

Lascher did not stop at the criticism stage. He proposed a solution in the form of what he calls the Smiling Tiger Discovery Reform Act. The act would have three major provisions:

"1. Any lawyer who, within any three-year period, is found to have issued boilerplate interrogatories on four occasions would be subject to summary (a) disbarment or (b) execution, at the discretion of the court last offended;

"2. (And now we turn from the visionary) it could be required that, except by leave of court for good cause, interrogatories would not be allowed until after the taking of the answering party's deposition, which would allow the use of written questions to come back and pick things up that weren't susceptible to deposition treatment;

"3. The prevailing party should be allowed to recover, at costs of suit, a hefty sum per page of answers to the other side's interrogatories which he filed, including objections which were sustained or unchallenged by the proponent's motion."

CIVIL APPEALS EVALUATION PROJECT LAUNCHED

The Second Circuit Court of Appeals under the leadership of Chief Judge Irving R. Kaufman is experimenting with the use of Federal Rule of Appellate Procedure 33. The Civil Appeals Management Plan (CAMP) has been in operation since April. It provides for a pre-argument conference designed to explore settlement possibilities and improve the quality of non-prisoner civil appeals at an early stage in the appellate process.

The purpose of the experiment is to determine the value of a senior attorney, designated as Staff Counsel to the Circuit, to assist the court during the preliminary stage of civil appeals. Through conferences with the attorneys in selected non-prisoner civil cases, the staff counsel explores settlement possibilities, helps focus issues on appeal, expedites the designation and preparation of the record and transcript, and performs other functions which the court may suggest.

An evaluation of the project has been developed by the Federal

(See CAMP, Pg. 4)

(From CAMP, Pg. 3)

Judicial Center in cooperation with the Second Circuit. This evaluation utilizes an experimental research technique in which cases are randomly assigned to treatment and control groups to determine the effect of CAMP procedures on the quality, efficiency, and character of appellate case processing. This is one of the first instances in which a federal court has used a scientifically controlled evaluation of a new procedure in order to obtain reliable evidence of the effectiveness of the procedure in relation to project goals.

The Center is funding the one-year project. Professor Nathaniel Fensterstock has been retained by the Circuit as Staff Counsel for the project. Mr. Jerry Goldman of the Federal Judicial Center research staff is monitoring the evaluation of the project. Preliminary results are expected in April 1975.

BILL TO PAY JUDGES' DEFENSE COSTS INTRODUCED

Increasingly, judges and other members of the judicial branch are being sued and, in many instances, forced to pay their own defense costs. To correct this problem, the Judicial Conference requested the Administrative Office to introduce legislation to allow the government to pay the expenses of litigation.

In transmitting the bill to Congress, Administrative Office Deputy Director William E. Foley said, in part:

"At the present time, judges and other judicial officers are generally represented by the Department of Justice when they are sued for actions taken in their official capacities. However, there are circumstances in which it is inappropriate for the Department of Justice to provide such representation.

"The clearest example of such a situation would be a mandamus suit filed by the Department of Justice against a judge, a court, or another one of its officers. In other instances the Department of Justice has taken a position adverse to the interest of the judge or court being sued.

"A considerable number of cases have been brought in the recent past against individual judges, district courts, judicial councils, bankruptcy judges, clerks, United States magistrates, public defenders, court executives, officers of the Administrative Office of the United States Courts and, in one recent case, against a foreman of a grand jury.

"It would be unconscionable to expect judges and court personnel sued in their official capacities to support the defense by their own private contributions. Without an official source to defray the expenses of counsel for the judges and judicial officers, representation becomes difficult. It is also difficult to obtain the voluntary assistance of private counsel and such practice might create ethical problems in some situations.

"The proposed bill would enable the Judicial Conference to establish criteria and an administrative process to determine when representation should be furnished by private counsel vis-a-vis the Department of Justice, and to establish standards for payment of the attorneys' fees and litigation costs in appropriate situations.

"The Judicial Conference believes that the proposed bill would achieve the objective of resolving these problems concerning the defense of judges and other judicial officers sued in their official capacities."

Here is a partial text of the Bill:

"To provide for the defense of judges and judicial officers sued in their official capacities.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, chapter 21 of title 28, United States Code, is amended by the addition of the following new section 461:

"§461. Expenses of litigation.

"When a justice or judge, or other judicial officer or employee is sued in his official capacity or is otherwise required to defend his alleged official acts or omissions, and the services of an attorney for the government are not reasonably available for his representation pursuant to sections 516 and 547 of this title, the Director of the Administrative Office of the United States Courts is authorized to pay the costs of his defense in such amounts, and under such regulations, as may be approved by the Judicial Conference of the United States."

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Travel & Per Diem

The Senate has disagreed to the House amendments to the Travel and Per Diem Increases Bill (S. 3341) and has asked for a conference. This means that no action can be taken on the bill until after Congress reconvenes following the election.

S. 3265, to Revise the Fees of Jurors

This passed the Senate on October 2. Senator Schweiker's proposal to protect jurors' employment was included as a rider. The bill is now in the House Judiciary Committee.

(See LEGISLATION, Pg. 5)

(From LEGISLATION, Pg. 4)

Bilingual Courts – S. 1724

The Bilingual Courts Act passed the Senate on October 1 and has been referred to the House where it is pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Judicial Disqualification – S. 1064

This Act, passed by the Senate a year ago, has been favorably reported by the House Judiciary Committee. The only amendment would add bankruptcy judges to those covered by the legislation.

Product Warranties and Federal Trade Commission – S. 356

This will provide disclosure standards for written consumer product warranties and amend the Federal Trade Commission Act in order to improve its consumer protection activities. Now it has passed both the House and the Senate. However, the Senate has disagreed to the House amendments and has requested a conference.

Bankruptcy Laws – H.R. 16643

This was introduced on September 12 by Mr. Edwards of California for himself and Mr. Wiggins. This is the bill originated by the National Conference of Bankruptcy Judges and is now pending together with the Commission's bill in the House Judiciary Committee.

Canal Zone Marriage Licenses

The Senate has agreed to the amendments of the House to S. 2348 to transfer the functions of issuing and recording marriage licenses from the Clerk of the District Court for the District of the Canal Zone to the Civil Affairs Director of the Canal Zone's Government. The bill is awaiting approval by the President.

(See LEGISLATION, Pg. 6)

[The following article is being reprinted, with permission, from the Oct. 14 edition of the New York Times.]

BURGER SEES 'URGENT NEED' TO EASE COURT WORKLOAD

By Warren Weaver, Jr.

WASHINGTON, Oct. 13 – Faced with the heaviest accumulation of unresolved cases in Supreme Court history, Chief Justice Warren E. Burger called on Congress and the legal profession to find some way to keep the Courts continually expanding workload under control.

With the Court's first decisions of the 1974-75 term due on Tuesday, the Chief Justice said in a statement that there was "urgent need for some means to keep the Court's work from the constant and drastic expansion experienced in the past decade."

During closed conferences last week, Chief Justice Burger disclosed, the Justices passed on 1,011 appeals, motions and requests that they accept cases, the first time this figure has topped 1,000 and an increase of 45 percent in the last five years.

As he has in the past, the Chief Justice avoided endorsing any specific Court reform proposal, but he said that the workload statistics demonstrated "the serious need for new solutions."

Two years ago, a study group headed by Prof. Paul A. Freund of the Harvard Law School recommended a national court of appeals, just below the Supreme Court, that would screen out all but a few hundred of the most important cases and decide them without any higher appeal available.

An alternate plan, developed by a committee of judges and law professors and approved in outline by the American Bar Association, would give such screening authority in limited subject matter areas to a similar new court, but its decisions would be forwarded to the Supreme Court for possible review.

Although the Bar Association's proposal appeared to develop more support in the legal profession, Congressional interest in court reform has been less than intense. A commission of senators, representatives, judges and attorneys has held hearings, but no draft legislation has emerged yet.

One central objection to restructuring the Federal Court System is the fear by some lawyers that the traditional right of any litigant to carry his case to the Supreme Court would be ended. Reformers argue that the mounting caseload makes that right more apparent than real.

More Time-Consuming

At present, the Supreme Court does its own screening, accepting for oral argument and decision only about 175 cases of the 3,800 or so it is able to process during an eight-month term. But the rejection procedure grows more and more time-consuming as the caseload mounts.

Three years ago, the high court finished its term having disposed of 3,645 cases but with 888 still pending. Two years ago, it disposed of 3,748 cases and left 892. Last year, the Justices handled 3,876 cases, but the number left on the docket rose to 1,203.

The newer members of the Court – Chief Justice Burger and the three other Nixon appointees – have generally been most vocal in urging Congressional action to ease their workload. Some of the court veterans, notably Associate Justices William O. Douglas and William J. Brennan Jr., have maintained that they are not overworked.

Chief Justice Burger noted in his statement that court records showed an annual caseload of 1,000 40 years ago, 2,000 25 years ago and more than 5,000 today.

(From LEGISLATION, Pg. 5)

Antitrust Laws and Three-Judge Courts — S. 782

This will amend the antitrust laws and eliminate the requirement for a 3-judge court in cases under the Expediting Act. It passed the Senate in July of 1973, has been ordered favorably reported with amendments to the House of Representatives by the House Judiciary Committee.

Survivorship Annuities

The Senate has now agreed to the conference report on the Bill, S. 628, which will amend the retirement provisions of Title 5, United States Code, to eliminate during periods when the annuitant is not married, the annuity reduction made in order to provide a surviving spouse with an annuity.

Drug Abuse and No-Knock

The conference report on S. 3355 to extend the Drug Enforcement Administration was filed on October 8. The conference report recommends agreement on the repeal of no-knock and the return of the law to its position prior to the enactment of the Controlled Substances Act and the D.C. Court Reform and Criminal Procedure Act of 1970. In addition, agreement is recommended with respect to the House provision that will make persons convicted under the old narcotics laws eligible for parole.

FOURTH CIRCUIT MAKES FIRST USE OF COMPUTER TRANSCRIPTION

At the instance of Circuit Executive Samuel W. Phillips, the Fourth Circuit was the first to record the proceedings of its Judicial Conference via a new computer-aided transcription system.

The conference was reported by Gilbert Halasz, Reporter for Judge Merhige of the Eastern District of Virginia, using a system developed by Stentran Systems of Vienna, Virginia. Mr. Halsz had been participating in field testing with Stentran and the circuit conference was the first occasion to make a formal test of the system.

During the Executive Session, Mr. Halasz gave a short explanation of computerized writing and transcription. Of special interest to the Judges of the Fourth Circuit was the computer's ability to adapt itself to the individual reporter, read, translate, and print out the reporters' notes at very high speed, thus reducing the time for preparation of a transcript to a few days, even in a long trial.

Both Mr. Phillips and Mr. Halasz feel the completed transcript is highly acceptable. The full 200 pages was accurate and especially easy to read.

Mr. Halasz has concluded as a result of this and other field testing that "The use of computer-compatible writing and transcription should virtually eliminate transcript delay problems for the Federal Courts."

TECA EXPERIMENTS WITH COMPUTER-PRINTED OPINIONS

The Temporary Emergency Court of Appeals Clerk's Office recently completed an experiment for the Federal Judicial Center involving a new method of printing using a computerized photocomposition system and automatic word processing equipment.

The test was designed to determine whether a court employee working in an office several hundred miles from, but linked by telephone lines to, a computer printing center could compose text and insert the information necessary to print a slip opinion, equivalent in quality to that produced by traditional linotype "hot lead" methods of printing.

The test demonstrated the technical and economic viability of the computerized process which can provide the court with a better product at a lesser cost than is presently being incurred.

A system developed by the Lawyers Co-operative Publishing Company was used. They estimate this method of printing can reduce costs by over 70 percent and turnaround time by over 50 percent compared with traditional printing methods.

Although computerized photocomposition publishing methods have been used for several years, the technology has not been adapted to printing slip opinions until recently. For example, West Publishing Company uses a photocomposition technique in printing slip opinions of the Fifth Circuit.

The traditional linotype publishing process involves at least nine different steps of galley-printing, editing and printing which can take up to six days before the slip opinions are printed and distributed.

The computerized photocomposition facility, on the other hand, uses but one step to print a slip opinion and, correspondingly, can reduce the time to three days to complete the entire process.

The key to the time and cost savings illustrated by the TECA/FJC experiment lies in the use of an automatic word processing device, specifically the IBM magnetic card selectric typewriter, to code final drafts of opinions in "Machine readable form."

Instead of sending a manuscript to the printer for type-setting, the manuscript is typed onto a tape or magnetic card at the place or origin

(See TECA, Pg. 7)

(From TECA, Pg. 6)

in a prescribed manner with certain codes for unique items of the text that require special typography such as boldfaced or indented type or quoted paragraphs.

Once the manuscript has been edited into final form, the material is transmitted directly to the publisher's computer over a conventional telephone line. In effect, court personnel perform the same function as a linotype operator.

Use of the computerized photocomposition method permits other alternatives for publication of slip opinions. Under the first alternative, ordinary typewritten manuscript is provided to the publisher who then photo-composes the material and returns printed pages. The method is similar to conventional processes and is more costly and involves more turn-around time.

Under a second alternative, the material is directly key-boarded at the place of origin on a device similar to a typewriter and the material sent to the publisher who then codes it before printing. This alternative is still more expensive and time-consuming than if the material is coded by court personnel before it is sent to the computer.

The operational portions of the experiment were carried out by Mrs. Ruth Jacobson, Deputy Clerk of the Temporary Emergency Court of Appeals. Mrs. Jacobson performed the coding operations on two opinions from the D.C. Circuit, which became the subject of the experiment.

Mrs. Jacobson stated the most difficult portion of the operation was in assigning the codes to the manuscript, but "even this is a relatively easy process which can be learned quickly by court personnel."

Photo-composition offers other advantages in addition to time and cost savings. For example, once material is stored in the computer for publication purposes it can be searched for particular matters utilizing the words appearing in the text, as specified by the search. At the present time, several private companies and government agencies are involved in computer-based information retrieval systems which researches the law electronically.

[More information about the experiment is available from the Center on request.]

THE SOURCE

The Information Service of the Federal Judicial Center

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

- American Heritage History of the Law in America. Bernard Schwartz. Marion, Ohio, American Heritage Press, 1974.
- The Appearance of Justice. John P. MacKenzie. Totowa, N.J., Scribner, 1974.
- Appellate Courts: Staff and Process in the Crisis of Volume. Daniel J. Meador. Denver, National Center for State Courts, 1974.
- Crime in the Nation's Five Largest Cities; Advance Report. Law Enforce. Assist. Admin. GPO, 1974.
- The Expanding Jurisdiction of the Federal Courts. Orrin G. Judd. 60 ABA J 938, Aug. 1974.
- Federal Judicial Center Annual Report 1974. Available to Government Agencies; $.75 from Gov't Printing Off. Stock No. 2807-00001
- Let the Sunshine In: the Case for an Open Judicial System. Talbot D'Alemberte. 58 Judicature 61, Aug. 1974.

AN UPDATE REPORT ON THE CASELOAD FORECASTING PROJECT

The Federal Judicial Center is now engaged in a caseload forecasting project which will attempt to improve the judiciary's ability to anticipate district court caseload burdens in the future.

The project — under the direction of the Center's Research Division — is motivated by the commonsense theory first articulated by Felix Frankfurter and James M. Landis that litigation is a reflection of social, political, economic and traditional factors. If knowledge of these factors can help explain caseloads, then we should be able to construct mathematical models of caseloads based on the empirical measures of a multitude of social, political, economic and other indicators.

The project is organized around three main goals:

First. An attempt to relate indicator data to caseloads should be tested against the experience of the past. Caseload and indicator data have been assembled for each district court for the period FY 1950 - FY 1970. Mathematical models relating the indicator data to the caseload data are now being generated.

Second. Given the ability to explain caseload variation in the past based on indicator data does not assure the ability to predict caseloads in the future. The models based on 1950-1970 data should incorporate events that have not yet occurred.

In order to develop a list of candidate events that are likely to occur, the Federal Judicial Center Research Division polled attorneys, judges, and academics with some experience in litigation. A candidate list of events was developed

(See FORECASTING, Pg. 8)

(From FORECASTING, Pg. 7)

for three time periods: 1979, 1984, and 1994.

The Center established an Advisory Committee on Forecasting composed of: Dean Roger Cramton (Cornell Law School), H. Stuart Cunningham (Clerk, N.D. Ill.), Herbert Edelhertz, Esq. (Battelle), John P. Frank, Esq. (Phoenix, Ariz.), Dr. Richard L. Hooper (Battelle), Irving Jaffe, Esq. (Department of Justice), Nathaniel E. Kossack (National Center for Prosecution Management), Mr. James McCafferty (Administrative Office), Silvio Mollo, Esq. (Chief Ass't U.S. Attorney, S.D.N.Y.), Judge Alvin B. Rubin (E.D. La.), Paul G. Ulrich, Esq. (Phoenix, Ariz.)

The advisory committee evaluated the likelihood of each candidate event occurring, the impact of the occurrence of one candidate event on each other event, and the impact of each candidate event on the case and defendant categories.

Third. The mathematical models based on the 1950-1970 data will be modified to reflect the estimated probability of future events and their impact on caseload categories. Two models will result: one model will reflect a surprise-free forecast without considering any future events, the other model will reflect the occurrence of surprise events including their impact on federal district courts. The work for the forecasting study is being conducted by Battelle Human Research Laboratories. The Project Director is Dr. Richard L. Hooper.

In order to determine whether it was worthwhile to conduct the massive data collection effort, a pre-test was conducted in five study states for each of the categories of suit or offense in the forecast design. The initial results of the five study states were extremely favorable, and the data collection effort now covers all district courts for 42 categories of suit and offense and over 145 indicators.

A preliminary report is expected in early 1975.

PERSONNEL

Appointments

William H. Orrick, Jr., U.S. District Judge, N.D.Calif., Aug. 28

Henry F. Werker, U.S. District Judge, S.D.N.Y., Sept. 3

Deaths

Dennis F. Donovan, U.S. Senior District Judge, D.Minn., Sept. 16

Roger J. Kiley, U.S. Senior Circuit Judge, 7th Cir., Sept. 6

Deaths (Cont'd)

George N. Beamer, U.S. District Judge, N.D. Ind., Oct. 21

AO/FJC Calendar

Oct. 29-30 – Sentencing Institute, Fourth, Fifth, and District of Columbia Circuits, Atlanta, Georgia

Nov. 7-8 – In Court Management Training Institute, Cedar Rapids, Iowa

Nov. 7-9 – Refresher Seminar for Magistrates, Monterey, Calif.

Nov. 18-22 – Refresher Seminar for Probation Officers, Louisville, Ky.

Dec. 3-5 – Orientation Seminar for Magistrates, Washington, D.C.

Dec. 9-12 – Conference for District Judges, Washington, D.C.

Dec. 16-17 – In Court Management Training Institute, Atlanta, Ga.

Dec. 19-20 – In Court Management Training Institute, New Orleans, La.

Jan. 6-9, 1975 – Orientation Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.

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

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Bulletin of the Federal Courts

VOL. 6, NO. 11 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center NOVEMBER 1974

Record Number of Judges Attend Sentencing Institute

A Sentencing Institute was held in Atlanta last month which brought together the largest gathering of federal judges in history. One hundred and two federal judges (District and Circuit) from the Fifth, Fourth and the District of Columbia Circuits participated with wardens, prison personnel, law school professors, members of the Parole Board, probation officers, and Bureau of Prisons officials to ventilate with lively discussions all problems of sentencing and its related areas.

Included in the three-day program was a visit to the Atlanta Federal Penitentiary to permit the conferees to observe first-hand the subjects and surroundings they were discussing.

In his address to the Institute, Federal Bureau of Prisons Director, Norman A. Carlson, explained: How designations of institutions are made, the transporting of sentenced offenders, temporary use of local jails, the classification systems in use, sentencing alternatives and their frequently misunderstood consequences, and prison programs available to offenders.

Of special interest to the gathering was Mr. Carlson's expansion on a recently developed voluntary surrender program. The program is designed to establish procedures which allow selected prisoners to surrender themselves directly to designated institutions upon conviction. Under the program, he reminded the judges, the marshal must be contacted with the request for special designation and the information that the court has recommended voluntary surrender. With this information in hand, the Bureau of Prisons makes the necessary arrangements for the offender to be received at the institution unescorted by a federal marshal. The adoption of these procedures will greatly expedite prisoner movement and bring substantial savings to the government. As for its success so far, Mr. Carlson reported on a pilot program, which involved 27 Selective Service Act violators designated to report to one of four institutions. All 27 reported to the proper institution at the time specified.

Maurice Sigler, Chairman of the U.S. Board of Parole, explained recent changes in procedures designed to meet criticism of Board of

(See SENTENCING Pg. 7)

THE STATE OF ADVOCACY
An Interview With Professor Robert E. Keeton

Professor Robert E. Keeton is a distinguished Professor of law at Harvard Law School. For the past two summers he has been Director of the National Institute for Trial Advocacy. He has also served on a Committee on Education in Judicial Administration, jointly sponsored by the ABA and the Federal Judicial Center.

Robert E. Keeton

(See INTERVIEW Pg. 4)

IN THIS ISSUE . . .

SECOND SERIES OF CONFERENCES FOR DISTRICT JUDGES INITIATED

The Federal Judicial Center, through its Division of Continuing Education and Training, began a second series of refresher conferences with a program during the week of October 14th for district court judges with between two to five years' bench experience.

Participating were 26 judges – all of whom were returning to the Dolley Madison House for the second time – representing 22 district courts, along with three trial judges from the Court of Claims. Twelve judges, including two circuit court of appeals representatives and the Chief Judge of the Court of Customs and Patent Appeals, were among the 21 faculty members.

The Conference format was based upon a distillation and refinement of experiences gleaned from the initial seven conference series for seasoned district judges completed last spring. A Planning Committee chaired by Judge William J. Campbell (N.D. Illinois) and consisting of Judge Murrah (the Center's Director), Judges Fay (S.D. Fla.), Real (C.D. Cal.), Rubin (E.D. La.), Turrentine (S.D. Cal.), Will (N.D. Ill.), and Wilson (E.D. Tenn.), formulated topical discussions in both small-group and plenary sessions.

A particular change over previous conferences was to select participating judges and have them serve as group reporters along with the judicial-faculty discussion leaders.

The subjects covered all of the areas developed in previous conferences – the management of criminal and civil cases with the roles of all of the various supporting personnel defined and related; sentencing philosophies, procedures and problems; the handling of special cases including class actions, complex litigation, and §1983 actions; assistance provided by the Administrative Office; and technological systems developments and their applications to the courts.

In the discussions on case management and parajudicial personnel litigation, Judge Will described their full disclosure rule in criminal cases (Local Rule 2.04) which requires the mutual exchange of all files prior to trial except where there exists a possibility of harm to a potential witness.

The procedure has worked successfully through the use of judicial persuasion. The necessity of a well organized trial based upon complete discovery in criminal cases was noted, particulary with reference to jury cases.

Judge Will also related the experience in the Northern District of Illinois where both pretrial diversion and deferred prosecution procedures are used. He cited the Department of Justice's recent pretrial diversion pilot projects in several districts. However, the Judge stressed that where a pretrial diversion program is adopted, it should not be considered a substitute for those instances where the U.S. Attorney would normally decline to fill an indictment or information.

Judge Turrentine addressed several areas of court case processing, noting that, in general, there has been a tendency to "over try" the run-of-the-mill civil case. He suggested that discovery be limited by the judge and pointed to his own recent policy of limiting the number of written interrogatories to 20 questions and voiced the hope that through these and other techniques, judges might keep the cost of litigation within reason.

Judge Fay focused on the use of supporting personnel and mentioned his practice of keeping the original court files of all assigned active cases in chambers, under the custody of the courtroom deputy clerk. He also noted the necessity of judges working with the court clerks in assuring efficient juror utilization.

Further suggestions in the area of case management included:

- Reduction of motion time by the elimination of most oral argument;
- Setting of sentencing date on the day plea is taken to encourage the probation office to file a timely (average four weeks) presentence report;
- Setting of meaningful and firm deadlines to keep cases moving along;
- In non-jury cases, the judge should not know which party is responsible for a settlement impasse;
- Recognition that the attorneys are among the system's most important supporting personnel groups,

U.S. District Judges photographed at F.J.C. during October Conference. Left to Right: Judges Otto R. Skopil (D. Ore.), William C. O'Kelley (N.D. Ga.), Hubert L. Will (N.D. Ill.) and Hiram H. Ward, (M.D. N.C.).

and they should be encouraged to perform their responsibilities;

- Consideration of increasing the number of full-time magistrates to a one-to-one ratio with judges, at least in metropolitan courts;
- Utilization of *pro se* clerks to handle all prisoner matters in a court;
- Utilization of extern programs in conjunction with local law schools, and giving these quasi-law clerks in-depth research assignments to minimize necessity of judge supervision;
- Minimize duplicate docket sheets or entries;
- Recognition that the present form of diversity jurisdiction no longer serves its original purpose, at least in most metropolitan areas.

Much of the discussion concerning sentencing was stimulated by Judge Lumbard's (CA-2) opening remarks on the proposed amendments to Rule 35 of the Federal Rules of Criminal Procedure. Opinions as to the necessity for review of sentences and the appropriate body for such review were voiced. Judge Lumbard encouraged judges to write his Rules Committee with comment and suggestions, since several changes to the amendments, as proposed, are contemplated.

Judge Lambros (N.D. Ohio) suggested that Bureau of Prisons personnel prepare a report on an inmate's progress in confinement. This report, detailing the various aspects of prison adjustment, would be submitted to the sentencing judge six months after imposition, allowing the judge an additional input for a review of his original decision.

This initial reconsideration could be used in lieu of or as the first step in sentence review. (It was noted that prison officials provide a final report on each parolee released to the probation office, and judges were encouraged to request such reports from their officers as an indicator of the sentence impact.

Other areas of discussion concerned pretrial diversion, use of sentencing councils, sentencing philosophy, the need for sentencing standards, and the desirability of detailed feedback on the success/failure of various types of sentences for the various classes of offenders and offenses. In this regard, it was suggested that a study be considered which would tabulate the national average sentences for each criminal offense category.

The balance of the special case discussions centered on class actions with a number of individual judge experiences developed for group comment and suggestion. Various problems surfaced, among them the utility of deferring a decision on the viability of a class until discovery is underway; assessing costs in abuse of class cases, judicial discretion in situations where plaintiffs' attorneys are subsidizing the case; disposition of excess funds remaining after settlement; and whether the question of proper attorneys' fees should be subject to expert testimony.

Representatives of the Administrative Office of the U.S. Courts highlighted many of their current activities. The judiciary's Fiscal Year 1976 budget request, as approved by the Judicial Conference, will be up $22 million over the current year to $313 million. The AO will be submitting a detailed exposition of supporting personnel allocations for the present fiscal year, which will include a filings ratio broadened to encompass factors beyond size and numbers of cases.

Deputy Director William E. Foley reported on the status of legislation of interest to the judiciary, and noted that the Rules of Evidence may be passed during the post-election Congressional session. He also suggested that Congress may soon be taking a new look at the entire rule-making process. The newly authorized Judicial Examinations Unit, which will give the judiciary the role formerly served by the Department of Justice, was described and suggestions as to approach and checklist areas were solicited.

The session on technology and systems featured discussion on the use of video tape in the district and circuit courts, with Judges Weis (CA-3) and Lambros (N.D. Ohio) offering suggestions and recounting

(See CONFERENCE, Pg. 7)

NEW POSITIONS AVAILABLE

The Administrative Office is accepting applications for the following positions:

Division of Judicial Examinations

One position at GS-15 level. Attorney required.

Six to seven positions at GS-11 through GS-13 levels. Attorney or accounting background required.

Extensive travel at least 50 percent of total time; on travel status over weekends.

Criminal Justice Act Unit

One position at GS-14. Attorney required. Frequent travel, especially initially, but not generally over weekends.

The above positions will be filled in accordance with competitive U.S. Civil Service Commission procedures, as is required of the Administrative Office by 28 U.S.C. 602 and 603. For copies of the announcements containing the qualifications required and a brief description of the duties involved write to:

Miss Marian Henneberry
Room 733
Administrative Office of the U.S. Courts
Supreme Court Building
Washington, D. C. 20544

(From INTERVIEW, Pg. 1)

What is trial advocacy today and what should it be in the future?

Well there is a serious problem about the quality of trial advocacy in courts throughout the country today. I'm quite sure that the problem exists because we have the testimony of so many trial judges from so many different areas across the country. There are differences about the degree of the deficiencies they see, but there is one common theme that runs through it all: a high percentage of people appearing in court to try cases are not fully competent advocates.

Why is this, is it a matter of training and experience?

I think both training and experience figure heavily. A person can become a "compleat advocate" only through a combination of these and a certain flair. But some people with less native ability can nevertheless become thoroughly competent advocates. I believe that even the most thoroughly talented person is not able to do an adequate job without training and experience.

In your view, is this problem becoming more serious as time goes by or not?

I doubt that it is getting worse right now. But it may seem worse right now because of the great need for advocates in the trial courts in the last decade.

For example?

Well, the increase in the need comes about partly from the requirement for representation of defendants in criminal cases as a result of the Supreme Court decisions in the last decade; partly as a result of the natural growth of the population, economy and the civil caseload. What they called the law explosion in the early 60's referred to a crisis in judicial administration. Actually the caseload in the courts is probably in a good many jurisdictions twice as high now and we have not had a corresponding increase in the number of competent trial advocates.

Is the problem a lack of financial incentives?

It's partly money, I think, because of the enormous amount of time it takes for preparation and handling of a trial through to conclusion. It is very much more demanding than corporate practice ordinarily. That means that although there are some advocates whose earnings are quite comparable to those in corporate practice in its finest manifestations, as a general proposition trial work is not as rewarding as other types of practice in monetary terms.

Should the law schools teach trial advocacy?

I think it is not an uncommon reaction in the trial bar that the problem really is the failure of the law schools to do the training they should do. I think this is a mistaken diagnosis, although I do think the law schools can do more in the preparation for advocacy than they generally have done. The law schools should not attempt to, nor be expected to, graduate fully competent advocates.

What percentage of the bar today are fully competent trial advocates?

A group of trial judges initiated a special task force within the ABA Judicial Administration Section in 1970 and out of their work came the National Institute for Trial Advocacy. It was commonly reported by the judges in that section – and from all over the country – that a high majority – some were putting it as high as 75 and 80% – of the counsel appearing in cases of the major trial court of their jurisdiction were not competent, in the full sense, for the cases they were presenting. Their clients were not being adequately represented.

Part of the objective of the National Institute for Trial Advocacy is to develop teaching methods and materials that will be useful in other programs both inside and outside law schools and, of course, also to train law teachers to teach advocacy either in their own law schools or in other advocacy programs.

Could you describe just what are the needs of the person who takes this kind of training?

I think it can be broken down in a variety of ways. There is a need for better understanding of the role of the advocate; secondly there is a need for the development of the day-to-day skills that have to be exercised, and third the need for development of actual trial experience.

Some understanding is needed of the role of the advocate in the judicial system; responsibilities to the client and to the court, as an officer of the court. The student needs to understand the system of justice and the particular function the advocate is performing in that system in representing a client adequately.

A dual responsibility – he is supposed to perform for both the court and his client?

There was a joint committee of the ABA and the Association of American Law Schools back in the fifties to examine problems of this kind. One of the things the committee reported was that the single most difficult concept for the public to understand about the Bar was the role of the advocate in the administration of justice. When law students come to law schools they are in the same position as the public in that sense. As a result, many of them, when they come into a third year course in trial advocacy, have not given thoughtful consideration to the role of the advocate in the administration of justice.

That means that we pretty well have to start from ground zero and

build a philosophical understanding of the objectives and theories of the adversary system and the advocate's role in that system.

Once you get that message through, the training can become more specific, more easily tested, more easily observed, and, perhaps more easily understood by the students. There is a gap though, between understanding well enough to appreciate good advocacy and being able to stand and do it yourself.

Could you give me an example?

Well, one way of approaching it is this: there are three major ways you can teach trial skills; one is to lecture, give illustrations, tell about a problem in trial advocacy and how it was solved; the second is to demonstrate, to take a particular problem and put professionally competent trial advocates before the student group and let them see how professionally competent people do it. I believe that although both of those are useful, they leave a wide gap because the student is not able to translate what he has seen into performance of his own without taking a third step; put the student into the role with simulated or real exercises.

Like swimming, you can have lectures on swimming but you have to get in and do it?

That's right. The students perform, observe demonstrations on the same problem, and hear a critique by the teaching team and fellow students. The differences in these performances are thus brought to the surface and explained and analyzed.

There is a value in sometimes just letting the student work his way out of trouble. One of the skills of the trial lawyer is knowing how to correct a mistake he has made and how to protect his client's interest when he realizes that the matter has not been handled properly at some point.

Do you use problem materials?

Yes. There is a need for problem materials that give the student a realistic file comparable to a file he might have in a law office handling a case (or in a prosecutor's office, or a defender's office). He needs to have documents that look like actual documents; that have the same qualities of detail.

Also those file materials need to cover problems that can be handled in a fairly short period of time without being unrealistic. That means that some of the most interesting cases in practice are simply not useful for training purposes.

Do you think you can use videotape presentations?

Yes, there are several ways videotape can be used. First, the simplest form of videotape technology can be used to tape the student performing, to let the student see himself. This serves as a critique of mannerisms. One of the most common mannerisms, for example, is echoing the answer of the witness.

I might mention another way that videotapes can be used. A videotape can be edited in such a way that it includes delay points of a few seconds each; everyone in the class viewing the tape will have a few seconds to write down what he or she would do or say at that point. After the tape has been seen for 45 minutes or an hour then you can have a discussion about the different responses suggested by different people. Or the instructor can stop the tape at a certain point and have a discussion there before moving on.

There has been some thought about adopting the British system. Do you think this is appropriate to have two kinds of lawyers?

No, I do not. I would not recommend that. There are some collateral aspects, some subsidiary aspects, of the British system I admire. But it probably does not produce as effective presentation of cases as can be accomplished when the functions are not separated. One of the effects of the British system is that the Barrister comes into the case really after the case is far developed in terms of investigation, preparation, and discovery of witnesses. The resulting problems are handled in their system by cooperation between the Barrister and the Solicitor. But I don't see any special advantage in that situation nor do I see any special advantage in the limitation of the practice of the Barrister just to the segment of the handling of the trial. Although we can learn some things from the British system I don't think we should set about to reproduce that divided system.

Is there any opposition to this idea that we need more training for advocates?

I don't think there is any opposition to the point that we need better trial advocacy in the courts. There are differences about the degree of the need. I don't think there is any substantial difference over the proposition that either the law schools or the bar or the courts or somebody or maybe all of them together ought to be doing something to develop total arrangements for the training of advocates. I think when you move beyond that to the question of whether we should be aiming for some kind of system of certification — then we do find great divisions in the bar.

There are some attorneys who feel that they have a license to practice law and they shouldn't have to have a license to go before a court.

I think it goes beyond that. There are real concerns about how you can be assured that the standards of certification will be correct and sound and that their administration, over a long period of time,

can be monitored in such a way that we're certain that it's being accomplished in a fair and appropriate way. I think most concern about the question of certification goes to standards for certification and our ability to develop techniques for monitoring the procedures for certification.

Should law schools teach judicial administration?

I definitely think the teaching of judicial administration in the broad sense, or the administration of justice, is an appropriate thing to be in the law school curriculum.

LEGISLATIVE OUTLOOK

Congress was in recess for the elections and reconvened on the 18th of November. Therefore, we are taking this opportunity to review briefly the status of the proposals for legislation submitted to the Congress by the Judicial Conference.

H.R. 10476

A bill to permit payment of transcript costs for indigent litigants in certain civil proceedings before United States magistrates. To the Speaker of the House and President of the Senate – September 11, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice, which has requested a report from the Department of Justice. No Senate bill.

H.R. 10804

A bill to amend Title 28 of the United States Code to provide for the investigation and prosecution of disciplinary proceedings against members of the bar of the United States. To the Speaker of the House and President of the Senate – September 19, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice, which has requested comments from the Department of Justice. The Department is inclined to oppose the bill. No Senate bill.

H.R. 15835

A bill to authorize to the Judicial Conference of the United States to fix fees and costs in the United States district courts. To the Speaker of the House and President of the Senate – September 11, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

S. 3703

A bill to authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia. (This is a variation of the proposal of the Judicial Conference sent to the Speaker of the House and President of the Senate – September 19, 1973.) Public Law 93-412, signed September 3, 1974.

H.R. 10615

A bill to amend the Act of August 6, 1958, 72 Stat. 497, relating to service as chief judge of a United States district court. To the Speaker of the House and President of the Senate – September 21, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

H.R. 10616

A bill to provide to the United States magistrates alternative means of disposition of certain offenders in minor offense cases, prior to trial. To the Speaker of the House and President of the Senate – September 21, 1973. Referred to the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. A report was requested from the Department of Justice. However, since magistrates proceedings would be also included in the pretrial diversion bill, H.R. 9007, S. 798, and others, no further action on this bill is expected. S. 798 passed the Senate in October of 1973 and hearings were held on it and H.R. 9007, etc. in the House subcommittee during February of 1974.

H.R. 10805

A bill to amend Title 28, Judiciary and Judicial Procedure, of the United States Code to provide for the membership of courts of appeals sitting en banc. To the Speaker of the House and President of the Senate – September 25, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

H.R. 10896

A bill 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. To the Speaker of the House and President of the Senate – October 2, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

H.R. 10897

A bill to provide for 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. To the Speaker of the House and President of the Senate – October 2, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. A similar bill, S. 3776, introduced by Senator Schweiker was added as an amendment to S. 3265 (juror fees) which passed the Senate on October 3, 1974, and is now pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

H.R. 11844

A bill to enlarge the trial jurisdiction of United States magistrates to encompass additional misdemeanors. To the Speaker of the House and President of the Senate – November 15, 1973. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The Department of Justice is making its report to the Subcommittee on the bill. No Senate bill.

H.R. 14027

A bill to amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors. To the Speaker of the House and President of the Senate – March 13, 1974. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, which has requested comments by the Department of Justice. In addition, S. 3265, a bill introduced by Senator Nelson, has been the subject of hearings in the Senate Judiciary Committee, Subcommittee on Improvements in the Judicial Machinery, together with the Judicial Conference draft proposal. This bill, amended to conform in large part to the Judicial Conference proposal, passed the Senate on October 3, 1974, and is now pending in the House subcommittee.

H.R. 14024

A bill to authorize two additional judgeships for the Court of Appeals for the Ninth Circuit. To the Speaker of the House and President of the Senate – March 14, 1974. Pending in the House Judiciary Committee, Subcommittee on Monopolies and Commercial Law. No Senate bill.

H.R. 14025

A bill to provide an additional permanent district judgeship in Puerto Rico. To the Speaker of the House and President of the Senate – March 14, 1974. Pending in the House Judiciary Committee, Subcommittee on Monopolies and Commercial Law. No Senate bill.

H.R. 14534

A bill to amend Section 2254, Title 28, United States Code. To the Speaker of the House and President of the Senate – April 15,

1974. Pending in the House Judiciary Committee, Subcommittee on Civil Rights and Constitutional Rights. No Senate bill.

H.R. 14535

A bill to enlarge the trial jurisdiction of United States magistrates in misdemeanor cases, to make technical and administrative amendments in the Federal Magistrates Act. To the Speaker of the House and President of the Senate — April 15, 1974. Pending in the House Judiciary Committee, Subcommittee on Civil Rights and Constitutional Rights. No Senate bill.

H.R. 17201

To provide for the defense of judges and judicial officers sued in their official capacities — October 2, 1974. Introduced by Congressman Kastenmeier on October 9, 1974. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

H.R. 17202

To provide a penalty for failure of a convicted person to surrender himself to the Attorney General — October 3, 1974. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

H.R. 17373

To amend the Jury Selection and Service Act of 1968, as amended, to clarify the qualification section of that Act with regard to service by persons whose civil rights have been restored — October 6, 1974. Introduced by Congressman Kastenmeier on October 15, 1974. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

S. 4097

To provide for the protection of United States probation officers — September 27, 1974. Introduced by Senator Eastland. Pending in the Senate Judiciary Committee. No House bill.

H.R. 17203

To provide for the retirement of the Director and Deputy Director of the Administrative Office of the U.S. Courts, and the Director of the Federal Judicial Center — October 4, 1974. Introduced by Congressman Kastenmeier on October 9, 1974. Pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. No Senate bill.

(From CONFERENCE Pg. 3)

their personal experiences in utilizing this media. Judge Lambros is currently experimenting with two totally videotaped non-jury trials — a civil rights action and a criminal anti-trust cases. The attorneys in both matters are proceeding at their own pace, without judge supervision, taping testimony which Judge Lambros views in chambers as time allows. Mr. Joseph L. Ebersole (of the Center staff) described the latest research study results in the area of juror perceptions and possible bias in cases actually tried using both live and videotaped testimony.

At the close of the three and one-half day Conference, Director Murrah summarized much of the previous discussion by noting the necessity for the judiciary to involve the community in its activities, and by so doing, attempt to give the public a better understanding of the problems and what can be done to meet them.

Additional conferences are planned for the months ahead — the next scheduled for December.

THE SOURCE

The Information Service of the Federal Judicial Center

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

- Criminal Sentencing: An Overview of Procedures and Alternatives. 45 Miss. LJ 782, June 1974.
- Federal Prison System Facilities 1974. (Limited copies available from U.S. Bureau of Prisons, Public Information Office, 320 1st St., N.W., Washington, D.C. 20534)
- For Structured, Digestible, Streamlined Judicial Opinions. Paul H. Buchanan, Jr. 60 ABA J 1249, Oct. 1974.
- **The Geographical Division of the Eighth Circuit Court of Appeals: An Historical Analysis. An FJC Research Report by Denise Bonn. Sept. 1974.**
- Management: Tasks, Responsibilities, Practices. Peter Drucker. Harper & Row, 1974.
- Master-Individual Calendar Study. Report to the Judicial Council of California. John G. Fall & Associates, July 1974.
- The Omnibus Proceeding: Clarification of Discovery in the Federal Courts and Other Benefits. J. Michael Myers. 6 St. Mary's LJ 386, 1974.
- Reports of the [FJC] Conference for District Court Judges, Nov. 26-29, 1973. 63 FRD 231, Sept. 1974.
- Review of the Law of the U.S. Court of Appeals for the Seventh Circuit. 50 Chicago-Kent L Rev., Fall-Winter 1973 (entire issue)

LIBRARY SHARES RESOURCES

The William J. Campbell Library of the United States Courts has made its resources available to all other federal courts and federal libraries, according to Librarian Frank Di Canio.

The library is preparing a catalogue of its holdings that will be distributed to other libraries and courts in the federal system.

For further information call: (312) 435-5660, 5661, 5662.

(From SENTENCING Pg. 1)

Parole operations. One newly completed feature of the system is the program of regionalization, with a goal of timely and well reasoned decisions rendered by professionally-trained hearing panels after personal interviews with inmates. The new program has also formulated and implemented guidelines for use in decision making.

At the conclusion of the Institute, Federal Judicial Center Director, Judge Walter E. Hoffman, commended the efforts of the participants and invited them to send comments on the program to the Center so that they might serve as guidelines for future planning.

AO and FJC Calendar

Dec. 3-5 — Orientation Seminar for Magistrates, Washington, D.C.
Dec. 9-12 — Conference for District Judges, Washington, D.C.
Dec. 16-17 — In-Court Management Training Institute, Atlanta, Ga.
Dec. 19 — Subcommittee on Jurisdiction of the Judicial Conference Magistrates Committee, Washington, D.C.
Dec. 20 — Subcommittee of the Judicial Conference Committee on Supporting Personnel, Washington, D.C.
Dec. 19-20 — In-Court Management Training Institute, New Orleans, La.
Jan. 6, 1975 — Orientation Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.
Jan. 12-14 — Judicial Conference Subcommittee on Judicial Improvements, Tucson, Ariz.
Jan. 15-16 — Seminar for Non-Metropolitan District Court Clerks, Phoenix, Ariz.
Jan. 15-17 — Conference of Metropolitan District Court Clerks, New Orleans, La.
Jan. 20-23 — Seminar for Circuit Court Clerks, Phoenix, Ariz.
Jan. 23-26 — Advisory Council for Appellate Justice, San Diego, Calif.
Jan. 25 — Judicial Conference Magistrates Committee, Washington, D.C.
Jan. 27-30 — Seminar for Federal Public Defenders, New Orleans, La.

PERSONNEL

Elevations

Murray I. Gurfein, U.S. Court of Appeals (CA-2) Sept. 11.
Floyd R. Gibson, Chief Judge U.S. Court of Appeals (CA-8), Aug. 31.
Lawrence A. Whipple, Chief Judge U.S. District Court (D. of N.J.), Sept. 11.

Appointment

H. Curtis Meanor, U.S. District Court Judge (D. of N.J.), Sept. 3.

Death

Allen Cox, U.S. District Court Judge (N.D. of Miss.), Aug. 28.

THE THIRD BRANCH
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DISTRICT COURT STUDIES PROJECT: A PROGRESS REPORT

The Judicial Center is now well into a substantial study of the district courts. This project, which will continue over a period of years, hopefully will shed new light on the actual benefits and drawbacks, in practice, of different case-management techniques. It also should yield improved understanding of the actual significance of court statistics, which many judges and others feel are often misused.

Origins, Purposes and Method

The idea for a district court study grew out of several Center projects (for example, the comparative study of appellate courts and the speedy trial studies), and from a number of problems presented to the Center by district judges, in the seminars and otherwise. Three groups of questions are the central focus of the research:

- What district court procedures are working best?
- What outside factors (local bar, tradition, state courts, etc.) affect court work? How? To what extent? How can they or their effects best be managed by the courts?
- What do judicial statistics actually measure? In what ways are they misleading or misunderstood?

(See STUDY, Pg. 2)

SOCIAL SECURITY LITIGATION: AN INUNDATION

[Note: The following article was condensed from a more extensive treatment of the subject by HEW General Counsel John B. Rhinelander.]

The growth of social security has affected nearly all Americans. As the original retirement insurance program expanded to include disability insurance, Medicare, programs like Black Lung and Supplemental Security Income, management implications mounted. This growth has also had a staggering impact on the administrative and judicial review process.

Administrative Hearings: The Volume

Requests for administrative hearings have tripled during the last five years. In fiscal year 1970, 38,480 requests were received; in 1974 the number skyrocketed to 122,793.

The growth of the administrative appellate process is also illustrated by the enormous increase in the number of hearings conducted recently. In fiscal year 1970, 38,480 hearings were processed; in 1974 80,779 hearings were conducted. The pending workload has continued to rise. On June 30 the Administration had 77,501 hearing requests pending; on November 9 there were 99,524 cases awaiting hearing.

(See SOCIAL SECURITY, Pg. 3)

Spotlight:

AN INTERVIEW WITH FJC DIRECTOR HOFFMAN

The Prospective of the New Director as the Center Enters its Eighth Year

FJC Director Walter E. Hoffman

What do you think are the greatest problems confronting the Federal Judicial Center today?

I think the two greatest problems that confront the Center today relate to improvements on the district court level. One would include

(See INTERVIEW, Pg. 4)

IN THIS ISSUE . . .

(From STUDY, Pg. 1)

The first stage of the project — currently about 50% complete — involves intensive study of a small number of large district courts. Originally the Center identified six courts to visit for this purpose, chosen because they offered the maximum contrast in the fiscal 1972 statistics found most useful: median time from filing to disposition of criminal defendants, median time from filing to disposition of civil cases, filings per deputy clerk position and terminations per judgeship.

The list has changed as two additional years' data became available, and it may not be necessary to visit more than four or five courts for the purposes of the first stage.

The purposes are:

1. To gather preliminary answers to the questions identified above. Results at this stage will be preliminary only, because so many aspects of each court's work are examined at once that there is little opportunity to isolate one variable from others. Also, in one respect the procedure is somewhat circular: the project evaluates procedures as measured by statistics and the statistics system as measured by observation of the courts' procedures and the conditions under which they work. However preliminary and subjective these results may be, they should be an advance over the present state of knowledge and an indispensable first step to more systematic results in the future.

2. To refine the preliminary findings into more precise and better defined questions for the second stage (described below).

3. To provide interim observations to each court visited. Despite the lack of certainty concerning results at this stage, the Center feels that a useful purpose is served by making available early impressions, with appropriate qualifications.

4. To cautiously make preliminary answers available to other courts through seminars, the Conference of Metropolitan Chief Judges, *The Third Branch*, and perhaps published reports.

Techniques Utilized

The method employed is to talk with each judge and with most supporting personnel about everything that seems to bear on case-management. Center staff also observe a wide variety of representative proceedings in court and chambers.

These meetings are open-ended. Since this first stage of the study is exploratory, the staff tries not to set unnecessary limits on what they are able to explore. While the statistics used in designing the study are primarily measures of speed and efficiency, the Center considers it essential to explore any subjects raised by judges and supporting staff.

Stage Two

The second stage will consist of a large number of projects designed to examine precisely questions raised in the first stage. Some projects will convert preliminary findings into hypotheses to be tested more rigorously. Others will examine particular problems in detail to obtain more precise answers to questions about why certain things happen.

Still others will experiment with new statistical measures, and evaluate their possible value.

Work Completed to Date

The first task of the project was analysis of available information on the operation of the district courts. In addition to perusal of seminar materials, Judicial Conference proceedings, and studies of the courts, this task focused especially on Administrative Office statistics. It was hoped that this could achieve two ends: to plan the study, and to limit its scope by discovering from the available data the answers to some questions thereby eliminating the need to explore those questions in discussions and observation in the courts.

Because the statistical analysis was relatively fruitless, Center staff have looked into many different questions in the first visits to courts. However, the various dry holes that were drilled during the planning period will have some value when findings from the first research stage are written.

With the planning accomplished, the Center conducted a pilot study early this year in the District of Maryland. Maryland was chosen first because Chief Judge Edward S. Northrop invited the Center to study his court. Fortunately, his concerns were nearly identical to those of the study: he wanted to know how the court could be as burdened as it is and yet appear to make little headway, as measured by the statistics on caseload and median times.

Following several months in Baltimore, an interim report was submitted in June 1974 containing over a dozen specific, though preliminary, observations concerning possible changes. At a later stage a revised supplementary report will be prepared to give the court the benefit of knowledge gained in subsequent research.

Most effort last summer went into a similar study in the Eastern District of Pennsylvania. The discussions with judges and staff are now complete. The resulting report will be much shorter than the one concerning the Maryland court; a more extended version will follow late in 1975. This procedure is necessary because it will take longer to assemble and organize what has been learned in Philadelphia. Not only is Philadelphia a much larger court (19 judgeships, as opposed to seven in Maryland), the Center also

(See STUDY, Pg. 3)

(From STUDY, Pg. 2)

has considerable data from docket sheets (not collected in Baltimore) that the staff must analyze.

Field work is complete for a study in the Eastern District of Louisiana. A report summarizing interim findings there will be prepared early in 1975. Early in 1975 also, field work will begin in the Central District of California.

Work Projected

Most important, of course, is to finish what is already begun. This includes not only completion of field work and reports presently underway but also initiation and completion of at least one more court visit, and possibly two or three.

The bulk of the work that remains will be planning and carrying out the second phase: a large number of specific studies of precisely defined topics or hypotheses drawn from the preliminary work now underway. A detailed agenda will have to wait until December after the findings from visits to Baltimore, Philadelphia, and New Orleans have been digested. The Project Director is FJC Research Associate Steven Flanders.

(From SOCIAL SECURITY, Pg. 1)

Impact on the Courts: A Deluge

Growth also occurred at the judicial level. As the social security programs expand so do the number of resulting court cases. For example, at the end of fiscal year 1957, eighty-two social security cases were pending in district courts. Today, the number of pending cases exceeds 5,700.

The number of new filings has also continued to grow. In 1960 there were 500 new social security cases filed in district courts. By the middle of November 1974 nearly 3,500 new social security cases had been filed in district courts. HEW estimates that the number of new social security cases filed in fiscal year 1976 could easily approach 11,000. The impact of such a caseload on the judiciary and the Departments of Justice, and Health, Education and Welfare is obviously immense.

The Caseload and Its Problems

This administrative hearings workload and litigation caseload pose major management and administrative problems. Within HEW, which works very closely with the Department of Justice in the defense of these cases, the difficulties range from the operational problems presented by the statutory requirement that a certified copy of the administrative record be filed with the Government's answer to the substantial pressures encountered in providing the courts with an appellate position within the prescribed time frame. On occasion, inequities result from a combination of a high volume caseload and the increasingly restrictive briefing schedules being established by some courts. Numerous management steps are being taken within the Department of Justice and HEW to enable the Government to handle such a caseload in the most expedient manner possible.

Management Steps

In the face of evidence suggesting that the number of new social security court cases (2,532) filed in 1973 may very well quadruple in 1976, numerous management steps have been taken within HEW and the Department of Justice to enable the Government to handle such a workload effectively and timely. Early this year the Office of the General Counsel in HEW was given authority to hire additional staff which has enabled that office to handle a greater number of cases. In addition, teletype communications will allow preparation of the court transcript to begin much earlier in the sixty day period provided for filing an answer. Other steps recently taken by the Government in an effort to cope with the burgeoning social security workload include the hiring of a consultant to review the entire administrative and judicial review process for social security cases.

No doubt there are many other administrative steps that would further the capacity of HEW and the Department of Justice to manage an already staggering social security litigation workload, a workload that will shortly become even more onerous. Both agencies have such measures under close study for it is essential that such a caseload be managed in the most expedient and efficient manner possible; its dimensions and significance demand nothing less.

JUDICIAL DISQUALIFICATION BILL IS ENACTED

President Ford December 5 signed the Judicial Disqualification Bill which, in effect, basically codifies the rules regarding the disqualification of federal judges promulgated by the Judicial Conference of the U.S. last March. The law bars judges and justices from participating in cases involving corporations in which they own any stock whatsoever.

In addition, the bill requires judges and justices to disqualify themselves in instances in which their "impartiality might reasonably be questioned" thus substantially vitiating the doctrine that judges have a duty to sit unless specifically disqualified.

The bill is based, in part, on the American Bar Association's Code of Judicial Conduct but the federal code of judicial conduct, as adopted by the Judicial Conference, is stricter in some instances than the ABA code.

(From INTERVIEW, Pg. 1)

the computer transcription program. There are delays right now for district court judges who have to wait for transcripts in civil cases. There are very few in criminal cases, but in civil cases they will frequently wait for a transcript before determination of the case and that takes months. Now if this computer transcription goes into effect, not only would there be elimination of the delay in the appellate process but there would also be a considerable elimination of delay on the district court level.

I think we will reach the time when we will routinely have daily copies of the transcript. We will even have what they call "rush copy" – after a witness testifies the transcript could be available immediately. We are years away from that because we would have to have a computer in each court. I would hazard the prediction, based on the way the system is working now, that we could have computer transcription generally in the federal courts within ten years, probably five if Congress provides the necessary funds to install the computers.

You intend to give top priority to this project?

Well, I think the district court project has to have top priority. Obviously Congress is going to pass some form of Speedy Trial Bill. The important thing is that Congress may force district court judges to comply with very strict requirements of the Speedy Trial Bill without any system to handle civil cases. As a result, civil dockets would be completely overloaded with a terrific backlog even in districts which are run very efficiently.

You mentioned a second problem area?

Our district courts need the administrative tools to move cases as expeditiously as possible; a systematic approach to their dockets.

They need some guidance, and I am hopeful that our district court study will provide various alternatives for suggested systems they can at least try out and put into effect if they find it helpful. Then let them modify them after that. No standard would be applicable to all ninety-four districts, of course, but we could develop some guidelines that they could at least try out.

We could then work with the individual district that has problems after they have looked over alternative systems that might be employed for handling cases, both criminal and civil.

How is the Federal Judicial Center going to respond to the probable enactment of the Speedy Trial Bill?

Well, Congress has already been put on notice by the Judicial Center that if they pass the Speedy Trial Bill, the goals cannot be accomplished without a computer system throughout the nation. The cost would be about 5.45 million and the annual recurring cost would be about 2.29 million, of which a million dollars would be for communication services.

What changes, if any, do you foresee to the Center's approach to education?

One is the extension program. I just came back from a meeting in the probation office in the Eastern District of Virginia. I think with the large number of probation officers we now have – 1,895 as of October 31 – we are reaching a point where it is going to be an impossible task to educate and train these probation officers other than through an orientation program when they enter service. From that time on we will have to have localized, packaged training progams similar to the one I participated in today.

Just present an initial orientation program and follow that with local extension programs?

Yes, the Center could handle the orientation program for new Probation Officers as we do for judges. But from that time on I think retraining programs are going to have to be limited.

Regionally through their Chief Probation Officers?

Yes, through their Chief Probation Officers or other supervising probation officers.

In other words they will have their own training officers?

They will have their own training officers and they have plenty of material.

What do you feel is the future of the use of video tape in the federal courts and how will the Center play a role in its further development?

I definitely think that very rapidly we are going to be using video tape as a substitute for written depositions. The big item is the expense to the litigants, to the bar and to the courts. I've heard varying figures of what the cost may be, but once the cost is reduced to a reasonable figure it ought to be very helpful. Video tape will eliminate last minute requests for continuances where in just an ordinary tort action you have the plaintiff's lawyer summon a doctor and the doctor says, "Well, I have to go to a medical convention." You can't disrupt the docket. We used to tell counsel to take his deposition right away before he leaves town. Lawyers don't like to do that; they like the personal appearance. The video tape is a great substitute for the personal appearance of the witness. The Center cannot, of course, provide video tapes to every court in the country. I would assume that as soon as it achieves wide acceptance, that local bar associations, or maybe the state courts through LEAA or some other funding agencies may be able to provide the means of taping. But, I don't think we are going to get to the point of using video tape as a substitution for the actual court trial.

In the near future, do you see any problems with the travel restrictions proposed by several bills in Congress?

Education and Training is more vitally affected than any other division here at the Center. But I don't know what the precise effect will be. I would think that at least six seminars may have to be cancelled for the balance of this fiscal year.

There seems to be quite a bit of interest in sentencing, especially after the Center's study of sentencing practices in the Second Circuit. Do you see any need for more research in this field?

It may be worthwhile to try out another Circuit for geographical reasons which might reveal some different attitudes regarding different crimes. There is no reason why we couldn't use cases similar to those we used in the Second Circuit because that would give us something to compare. We should request circuit judges to also participate. They may get into appellate review of sentencing, and this would give them an opportunity to see how it's done.

Let both the trial judge and the circuit judge render sentences in identical cases?

Yes, there is a strong feeling, of course, that appellate review of sentencing should be adopted. A study of appellate review could reveal that the disparity situation which now exists at the district court level may also exist at the circuit level. I believe you are never going to eliminate disparity. It may also show that there may be only minor differences between sentences at the district and appellate levels.

This proposed study, then, may show that legislation calling for the appellate review of sentencing may only transfer the problem?

If that's all it's going to do, the district judges will be glad to have circuit judges take over sentencing. I am sure of that.

The Chief Justice has said that he considers the meetings of metropolitan chief judges, sponsored by the Federal Judicial Center, of great importance. Do you share this feeling and therefore plan to continue these meetings in spite of a limited budget?

Certainly we plan to continue these meetings; one is going to be conducted in San Antonio in mid-March. I am going to continue them as long as there is a feeling that they are valuable.

These 24 courts handle 57% of the total workload of the federal district courts. As long as that volume of federal litigation is pending in metropolitan courts, we should concentrate on cooperating with them to solve their problems. Because if we can ever establish — not a uniform system — but some degree of systematization in these courts, we will have made rapid strides toward expediting dockets.

Do you favor the use of six-member juries in civil cases?

Well, I have been using six-member juries for more than two years. I find no distinction at all except that I do believe juror deliberation time has been considerably reduced. It obviously shows that it is easier for six people to agree than twelve, but that's all I see.

Do you see the number of jurors remaining at twelve in federal criminal cases?

I believe it will be a long time before we get to the point of reducing below 12. I would be in favor of it, very frankly. There is no magic in the number 12.

What about unanimous as opposed to the majority verdicts?

I think there is a better chance that you would have a hung jury with 12 than you would have with 6, but I don't know if there is any violence to the system by reason of that.

Do you favor the continuation of our grand jury system?

Well, there are those who say that grand juries, other than an investigative grand jury, is purely a rubber stamp for the prosecution. And I suppose that in the long run that is probably true. There are very few true bills that are not returned; relatively few. But if the government doesn't have these investigative grand juries, there is going to be a lot of crime passed by the board without ever being prosecuted. It is successful in prodding a great deal of background information which makes it possible for them to carry out their investigation and bring in prosecutions when they believe it is in order. I would be in favor of reducing the size of the grand jury. I don't think there is any magic in the figure of 16 to 23 either.

Should the proposed Federal Rules of Evidence go into effect, would the Center undertake a program of a substantive nature for the federal judiciary on the rules?

We are going to follow the suggestion of the majority of judges who say they would like some type of federal evidence manual. It is now being prepared. However, if a majority of the judges request seminars on the new rules, we would, of course, respond.

Are there any new projects you are considering?

Well of course there is great interest in computerized legal research. The Center has been monitoring developments in this field closely.

You were a member of the Virginia State-Federal Judicial Council and also chairman of the Judicial Conference Committee on Habeas Corpus. How do you view current state-federal relations in the area of habeas corpus and elsewhere?

The Committee on Habeas Corpus has submitted a draft bill to

(See INTERVIEW, Pg. 6)

(From INTERVIEW, Pg. 5)

Congress which was introduced by Chairman Rodino. There have been no hearings because the House Judiciary Committee has had other matters to take care of during the year, and I assume it will be reintroduced. That bill, if it passes, will sharply curtail the filing of the frivolous habeas corpus petitions we have had.

Answering your question more specifically, I think state-federal councils have aided greatly in mending the relations that have been rather strained these past years between state and federal judges because of the necessity of federal judges having to upset state court convictions.

Where the councils have been established, they have gone a long way toward smoothing out the frictions that have existed. Such little things caused friction; it developed that several jurors in Virginia had been called for service by both state and federal courts during the same year. We discussed that and agreed that should a juror be called to serve in one court system, he would be excused from serving in the other court system for the balance of the year.

Pictured above from left to right: Norman A. Carlson, Director, Federal Bureau of Prisons, Maurice H. Sigler, Chairman, U.S. Board of Parole and Wayne P. Jackson, Chief, Administrative Office Probation Division. All three were key participants at the Sentencing Institute for the 4th, 5th, and District of Columbia Circuits which was held in late October in Atlanta, Ga.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Congress has returned for the windup of the Second Session of the 93rd Congress and is still expected to adjourn immediately before Christmas. Several items of legislation which are of particular interest to the Judiciary have been cleared.

Judicial Disqualification. S. 1064 which enacts into law provisions of the ABA's Code of Judicial Conduct was signed by the President December 5 (P.L. 93-512).

Rules of Evidence. H.R. 5463 which will establish rules of evidence for certain courts and proceedings has now passed both Houses of Congress and is awaiting a conference between the two Houses with respect to the differences between the two versions.

Speedy Trial. The Report of the House Judiciary Committee favorably reporting H.R. 17409 (the House version of S. 754) was filed November 27. The Committee has requested a rule to provide for consideration of the Bill by the full House and action is expected on that request by December 13.

Three-Judge Courts. S. 782 which would amend the Expediting Act to eliminate the requirement of three-judge courts in antitrust cases passed the House, amended, November 19. It has previously passed the Senate. Conferees have met but have not reached agreement. Bills which would eliminate the requirement for a three-judge court in ICC cases are receiving consideration in the House Judiciary Committee. H.R. 785 is scheduled for a hearing December 10. A similar bill passed the Senate last year.

Travel and Per Diem. S. 3341 has passed both Houses of Congress. Conferees have met and reached agreement. The Conference Report has been filed but the two Houses have not had an opportunity to act on the Conference Report. The final version provides for a per diem of up to $35 per day, or actual expenses of up to $50 per day. The mileage rates set under the legislation would be between $.15 and $.18 per mile for a private automobile. The Senate provision that agencies must absorb the cost of these increased travel allowances remains in the final version of the bill.

Supplemental Appropriations. The Supplemental Appropriations Bill, H.R. 16900, is awaiting action by the Senate on several amendments made by the House. Among these amendments is the provision requiring agencies to reduce by ten percent their expenditures for travel during fiscal year 1974.

A HOLIDAY MESSAGE FROM

THE CHIEF JUSTICE

The past year's calendar offers several occasions to recount the developments of the preceding months, but they are all well known to you. It was a memorable year with "new highs" in work for all Federal Judges.

The Holiday Season is an especially appropriate time for reflection on the splendid cooperation within the judicial system to improve the service to the people of this country. It is a time of fellowship among people when bonds of friendship are bolstered and new commitments resolved.

We often speak of the Federal Judiciary as somewhat of a close group, a family if you will. It surely is to the degree that a common purpose brings us together. At this Holiday Season, let me express my appreciation for the dedication and industry shown by all in the federal courts and my hope that we can build on the solid progress of recent years. The year has not been easy, and we are not unaware of the sacrifices many of you have made to carry on under increasing pressure.

Mrs. Burger joins me in the hope that each of you have an enjoyable Holiday Season and all the best for the New Year.

Courtesy Monterey Peninsula Herald

A unique seminar was conducted for United States Magistrates on November 7-9 in Monterey, California. Sixty magistrates in the Ninth Circuit attended a combined orientation seminar for part-time magistrates and refresher seminar for full-time magistrates. This was the largest gathering of magistrates for educational purposes sponsored by the Continuing Education and Training Division of the Federal Judicial Center. Also, it was the first combined seminar for full-time and part-time United States Magistrates. Pictured from left to right are: Peter G. McCabe, Chief, A.O. Division of Magistrates, Judge Charles B. Renfrew, and Host Magistrate Francis J. Carr (both N.D.CA)

FIRST NATIONAL CONFERENCE ON APPELLATE JUSTICE

Two hundred and fifty judges, lawyers and law professors will meet in San Diego January 23-26 to consider all aspects of appellate court problems in this country, to discuss possible remedies, and to set up machinery to implement these remedies.

The conference is the first of this nature and is the culmination of a series of meetings of the Advisory Council for Appellate Justice held over the past three years. The participants of this conference represent a high-level group within the legal profession who are both knowledgeable and concerned about increasing workloads of the appellate courts throughout the country. The Advisory Council, as well as many other organizations, have over the past several years made various proposals to meet these problems coming to the appellate courts. Understandably, differences have emerged from these proposals.

The San Diego conference will devote one full day to each of two questions: How to maintain quality in the appellate process and how to handle the problems of efficacy, fairness, sentencing review and finality in criminal appeals. Background materials will be published in advance of the conference to permit all participants to discuss the issues before them and to endeavor to agree upon remedial procedures which will answer the problems of overworked judges, frustrated litigants and long delays in processing the cases.

The conference, under the supervision of Professor Maurice Rosenberg, Chairman of the Advisory Council, is being sponsored jointly by the National Center for State Courts and the Federal Judicial Center. The implementation phase, which will consume a period of five months, will be funded by a grant to the State Center from LEAA.

Bulletin

As the current Congress draws to a close this month, it is apparent that all government agencies may be forced to substantially reduce official travel.

The bill outlined on page 6 explains in detail these measures which are likely to become law before Congress adjourns.

If so, the A.O. of the U.S. Courts will prepare detailed instructions concerning the required travel restrictions.

PERSONNEL

Nominations

Donald D. Alsop, U.S. District Judge, Minn., Nov. 19.

Edward N. Cahn, U.S. District Judge, E.D.Pa., Nov. 18.

James P. Churchill, U.S. District Judge, E.D.Mich., Dec. 2.

H. Dale Cook, U.S. District Judge, N., E., & W.D. Okla., Dec. 2.

James M. Fitzgerald, U.S. District Judge, D.Alaska, Dec. 2.

Joel M. Flaum, U.S. District Judge, N.D.Ill., Nov. 18.

John F. Gerry, U.S. District Judge, D.N.J., Nov. 18.

Thomas J. Meskill, U.S. Circuit Judge, 2nd Cir., Nov. 18.

Juan R. Torruella del Valle, U.S. District Judge, D.P.R., Nov. 18.

Appointment

Robert W. Warren, U.S. District Judge, E.D.Wis., Oct. 8

Elevations

Jesse E. Eschbach, Chief Judge, U.S. District Court, N.D.Ind., Oct. 9.

Samuel P. King, Chief Judge, U.S. District Court, D.Hawaii, Nov. 18.

Resignation

Anthony J. Travia, U.S. District Judge, E.D.N.Y., Nov. 30.

Deaths

Roger T. Foley, U.S. District Judge, D.Nev., Oct. 9.

Orie L. Phillips, U.S. Circuit Judge, 10th Cir., Nov. 14.

AO and FJC calendar

Jan. 6, 1975 — Orientation Seminar for Courtroom Deputy Clerks, Phoenix, Ariz.

Jan. 12-14 — Judicial Conference Subcommittee on Judicial Improvements, Tucson, Ariz.

Jan. 15-16 — Seminar for Non-Metropolitan District Court Clerks, Phoenix, Ariz.

Jan. 15-17 — Conference of Metropolitan District Court Clerks, New Orleans, La.

Jan. 16-17 — Judicial Conference Criminal Law Committee, New Orleans, La.

Jan. 17 — Judicial Conference Subcommittee on Federal Jurisdiction, New Orleans, La.

Jan. 20-23 — Seminar for Circuit Court Clerks, Phoenix, Ariz.

Jan. 23-26 — Advisory Council for Appellate Justice, San Diego, Calif.

Jan. 25 — Judicial Conference Magistrates Committee, Washington, D.C.

Jan. 27-28 — Judicial Conference Jury Committee, Charleston, S.C.

Jan. 27-30 — Seminar for Federal Public Defenders, New Orleans, La.

Jan. 28-30 — Judicial Conference Review Committee, Marco Island, Fla.

Jan. 30-31 — Judicial Conference Criminal Justice Act Committee, New Orleans, La.

Jan. 29-30 — Judicial Conference Advisory Committee on Judicial Activities, Marco Island, Fla.

Jan. 31 — Judicial Conference Joint Committee on Code of Judicial Conduct, Marco Island, Fla.

Jan. 31-Feb. 1 — Board Meeting of the Federal Judicial Center

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