The Third Branch

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Bulletin of the Federal Courts

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CHIEF JUSTICE REVIEWS 1974 FEDERAL COURT PROGRESS

"The year 1974 saw the contribution of several thoughtful and overdue proposals for court modernization, but 1974 did not see action on these and earlier proposals . . . action is essential. . . .

"In fiscal 1974, 143,284 cases were filed in Federal district courts, an increase of 1.6 percent over 1973. Although there has been no increase in district judgeships since 1970, Federal district judges disposed of 139,159 cases, almost 22,000 more than in 1970. . . . I hope the new Congress will move rapidly on an omnibus judgeship bill . . . for 52 new district judgeships and 13 new circuit judgeships.

[HERE ARE EXCERPTS FROM THE CHIEF JUSTICE'S YEAR-END STATEMENT; THE FULL TEXT IS AVAILABLE FROM THE FJC INFORMATION SERVICE]

"Appellate courts have continued to face an oppressive workload. In fiscal 1974, the courts of appeals experienced a five percent increase in new cases filed; total filings reached an all-time high of 16,436 cases. Yet, authorized circuit judgeships (97) have remained constant since 1968, resulting in an 80 percent increase in appellate cases per judgeship.

"The inequity of failure to provide any increase in pay for federal judges for almost six years is perhaps felt most extensively in the district courts, where six judges have resigned in the last 13 months to return to private or corporate practice. That was as many resignations for such reasons in little more than one year as in the previous 34 years.

"The Federal Judicial Center, the respected research, development and training arm of the federal courts, is directing an increasing part of its effort to the problems of the district courts. . . .

"The Center's District Court Survey promises to provide the first major exploration of the unresolved problems of caseload processing in the district courts. The successful pilot projects of a computerized docketing system, developed by the Center, will be expanded. The Center is also proceeding to experiment with computerized stenographic transcription of court proceedings. The Center's study of sentencing disparities is perhaps the most sophisticated exploration of that tremendously important subject to come from a government or private

(See REVIEW pg. 4)

SPEEDY TRIAL ACT PASSED

The Speedy Trial Act of 1974 signed into law by the President January 3, 1975 will have a major impact on the operation of the Federal Judicial System, both in the coming year and the many years to follow.

Its primary purpose is to expedite the flow of criminal cases through the system, from the time of arrest to the beginning of trial. As conceived by the Congress, the program to expedite criminal cases will begin with a major study and planning effort on the part of all elements in the criminal justice system.

Because of the magnitude of this task, at the very last moment, the House added to the bill provisions that allow until July 1, 1975 to begin the actual planning process in the district courts themselves, which will be performed primarily through a criminal justice planning group.

(See TRIAL pg. 2)

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(REVIEW, from pg. 1)

agency.

"Over $5 million to the taxpayer and 270,000 hours of jurors' time have been saved due to juror utilization studies of the Center and the Administrative Office of the U.S. Courts, as well as by cooperation fostered by the State-Federal Judicial Councils.

"Contributing to the progress of recent years are improvements developed by the courts and auxiliary agencies. The so-called 'omnibus pretrial hearing' sets all pretrial motions for one hearing, rather than having them scattered over an indefinite period, which often causes unconscionable delay. The 'individual calendar' has helped to reduce the time from filing to disposition by focusing responsibility for cases' progress on individual judges.

"After a successful pilot program, the Bureau of Prisons has instituted system-wide an internal 'Administrative Remedy Procedure' which has eased to some extent the growing workload of the federal courts and, more important, has provided a just procedure for hearing inmates' complaints about prison conditions.

"The district courts by themselves, however, cannot master the complex problems that society demands they resolve. I hope the new Congress will move rapidly on an omnibus judgeship bill . . . for 52 new district judgeships and 13 new circuit judgeships. . . .

"Legislation is urgently needed to define and to broaden the responsibilities of United States magistrates, who can, with proper authorization, relieve district judges of numerous minor tasks. . . .

"Court administrators are being trained in increasing numbers at institutions such as the Institute for Court Management. While circuit executives have provided much needed assistance . . . full-time district court executives are also needed to assist large metropolitan district courts in 22 federal districts.

"In the Supreme Court, the story is much the same. During the past unusually long term . . . , the cases on the docket exceeded 5,000 for the first time in history. Despite great efforts to keep up, judges still await a solution to the dilemma of an ever-increasing workload."

Thoughtful studies have illuminated the problems of the appellate courts: . . .

- The Study Group on the Caseload of the Supreme Court recommended the creation of a National Court of Appeals . . . .
- The ABA's House of Delegates endorsed, in principle, a proposal calling for a National Court of Appeals.
- The Advisory Council for Appellate Justice has recommended a nationwide or multi-circuit division of the courts of appeals.
- The Commission on Revision of the Federal Court Appellate System is also considering a National Court of Appeals.

"Another means of reducing the burden of the Supreme Court is by reduction or elimination of three-judge courts. . . . It is hoped that the new Congress will follow the lead of the current Senate in taking action. . . . It is clear that the time has come to move from research and study to pertinent discussion and decision. . . ."

The Third Branch

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(TRIAL, from pg. 1)

Establishment of these groups will require considerable lead time in order for the judiciary to obtain appropriations authorized in the bill. In addition, the evaluation of present resources to determine requirements is necessary. Since the district court plans must be submitted before July 1, 1976, much of the preliminary work must be initiated immediately. Title II of the legislation which provides for pretrial services programs takes effect immediately and appropriations will be requested for this aspect of the law as soon as possible.

The substantive provisions of Title I of the bill—the time limits—will first take effect on July 1, 1976, on which date the time period from arrest to indictment may not exceed 60 days, and the time period from arraignment to trial may not exceed 180 days. The time limit of ten days between indictment or information, and arraignment, will take effect on that date also, but this time limit does not thereafter change. The other time limits are gradually reduced until on July 1, 1979, the time limit from arrest to indictment is 30 days and arraignment to trial is 60 days.

The planning groups, which must consist at a minimum of the Chief Judge, a U.S. magistrate, if any, the U.S. Attorney, the Clerk of the district court, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief U.S. Probation Officer, and a person skilled in criminal justice research who shall act as reporter for the group, are to be convened by August 30, 1975. The function of this group is to develop the district plan—a voluminous document which must, by the terms of the Act, include not only the procedures, systems and methods by which the deadlines are to be met, but also an analysis of the existing state of the docket, and information as to proposed innovations,

needed rule or statutory changes, and needed appropriations, personnel, and the etc. The Federal Judicial Center has the responsibility to advise and consult with local planning groups.

During the interim period beginning September 29, 1975 each district must have in effect an interim plan to assure priority for trial or other disposition for persons detained awaiting trial and released persons designated by the U. S. attorney as being a high risk. Trials of such persons must commence within 90 days. A pretrial detainee whose trial has not commenced within this period is entitled to be released from detention if the delay is not his fault.

Title II of the Act provides for the establishment of programs of pretrial supervision and supportive services in 10 demonstration districts. These districts will be selected by the Chief Justice after consultation with the Attorney General.

In keeping with the experimental nature of this program, in five of these districts, the program will be vested in the Probation Office, under a probation officer designated by the Chief of the Division of Probation of the Administrative Office of the United States Courts, and in the remaining five districts, the program will be under the direction of a Board of Trustees, appointed by the Chief Judge for the district.

The Boards are to be composed of one district court judge, the United States Attorney, two members of the bar—one of whom will be the Federal Public Defender, if any—experienced in the defense of criminal cases, the Chief U.S. probation officer and two representatives of community organizations. The Chief Pretrial Services Officer will be appointed by the Board of Trustees, and will be compensated at not more than the rate of GS-15. The designated probation officer in the other five districts will receive compensation at not more than the rate for GS-16.

The pretrial services agencies would not only collect information and provide supervision of releasees, but would also operate or contract for operation of facilities for releasees, coordinate other agencies to serve as custodians, and assist persons in securing needed social and medical services.

Although appropriations are authorized in the Act for both Title I and Title II, actual funding must be provided by appropriations bills passed by the Congress. Accordingly, action by the Judiciary to initiate the programs must await the provision of funds.

ICM GRADUATES SIXTH CLASS

The Institute for Court Management on December 14 graduated twenty-one more court administrators and thereby qualified them as capable to hold administrative positions in the state and federal courts.

Four of the graduates were lawyers. Also graduating were two women executives. Harvey Solomon in his remarks commented on the fact that the number of women students at the ICM organization was increasing each year.

Addressing the class after they had received their certificates, The Chief Justice said, "The contribution the Institute for Court Management has already made to the federal and state court systems is truly remarkable and we have only scratched the surface."

The Chief Justice added in his comments referring to the lawyer graduates, "Not long ago the idea was prevelant that a non-lawyer public servant could not serve in the capacity of a court administrator as effectively as a lawyer could. But that image is no longer in existence and the absence of an LL.B. is not a barrier." In this way The Chief Justice emphasized that the business of the courts calls for managerial skills and, while it may be helpful in certain instances to have a legal background, it was certainly not a prerequisite.

Referring to the history of ICM, The Chief Justice said, that were he to name some of the most important developments in the last fifty years within the judicial systems of this country, he would place high on the list the Institute for Court Management, the National Center for State Courts, and the National

(See ICM pg. 4)

The Chief Justice congratulated each I.C.M. graduate and distributed the certificates of completion. Pictured below are: Earl Morris, former ABA President and current I.C.M. Board Member, the Chief Justice, William Garretson of the I.C.M. graduating class, and Harvey Solomon, I.C.M. Director.

(ICM, from pg. 4)
College of the State Judiciary. He also commended highly the seminars for appellate judges held at the Institute of Judicial Administration.

Following The Chief Justice's comments and those of ICM Board member Earl Morris, Jay M. Newberger spoke on behalf of the graduating class. In thanking Mr. Solomon for guiding them through their studies he said, "We recognize our responsibility for the continued growth and development of our managerial skills. We feel as a class we must pledge our continued support to achieve our stated goals to bring about good management for the courts of our country."

The Institute for Court Management located at Denver, Colorado was started in 1970, at the suggestion of Chief Justice Burger. At that time the Chief Justice pointed out that there were very few qualified individuals in this country who had the background and capabilities to serve the courts in a managerial capacity and he estimated there were but "a handful" of truly capable, outstanding court administrators currently serving the courts. Since then the ICM has graduated 181 individuals all of whom are today serving in responsible positions in or related to the courts. Six of the circuit executives serving the federal courts are graduates of ICM.

LEGISLATION

During the last few days of the 93rd Congress, a number of actions were taken which are of considerable interest to the Judiciary.

The Congress passed and the President signed into law the Speedy Trial Bill, S.754, which is reported on page 1 of this issue of **The Third Branch.**

TRAVEL & PER DIEM

S. 3341, which would increase travel allowances to a minimum of $.15 per mile and per diem to $35 per day was vetoed by the President on December 31. As it went to the President it included a rider affecting transportation of veterans to Veterans' Hospitals. We anticipate that it will be reintroduced and acted upon early in the new Congress since the reason for the veto was the rider.

JUDICIAL PANEL—SEC

S. 2904, which would amend present law to exempt actions brought by the SEC from the procedure for consolidating discovery under the Judicial Panel, which passed the Senate in October, was never reported out of the House Judiciary Committee and therefore died as far as the 93rd Congress is concerned.

ANTITRUST —EXPEDITING ACT

S. 782, which revises the Expediting Act as it pertains to appellate review was signed into law on December 21, 1974 (Public Law 93-528). In addition, it requires proposals for consent judgments submitted by the United States to be filed with the district court and published in the Federal Register and public comment on the proposal.

Penalties for violations of the Sherman Antitrust Act are increased to felonies carrying a penalty of three years, and fines are raised to $1,000,000, if a corporation, or if any other person, $100,000.

The Expediting Act also provides for a direct appeal to the Supreme Court if, upon application of a party, the district judge who heard the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. The Supreme Court may either dispose of the direct appeal or deny it and remand it to the Court of Appeals.

JUDICIAL DISQUALIFICATION

S. 1064, which enacts into law the ABA's Code of Judicial Conduct as it relates to disqualification of judges and justices was signed into law on December 5, 1974 (Public Law. 93-512).

THREE-JUDGE COURTS

S. 663, which deletes the requirement for three-judge courts in ICC cases has passed the Congress and was signed into law on January 2, 1975 (Public Law 93-584).

The general requirement for three-judge courts, which was to be eliminated by S. 271, remains in the law. This bill passed the Senate in June of 1973, but died in the House Judiciary Committee following hearings which were held on October 9 and 10, 1974.

CRIMINAL CODE REVISION

A Committee Print of a revised version of S.1, a bill to revise the new Federal Criminal Code, has been prepared by the Senate Judiciary Committee. It is expected that this will be introduced in bill form early in the 94th Congress and that the Senate Judiciary Committee will report the bill out very shortly.

RULES OF EVIDENCE

H.R. 5463, which will establish Rules of Evidence for the federal courts passed both Houses and was signed by the President on January 2, 1975. The effective date of the rules is 180 days following the date of enactment. (See story pg. 5)

TRAVEL—PER DIEM BILL WILL BE REINTRODUCED

Although President Ford vetoed, December 31, legislation which would have substantially increased both per diem and travel allowances for all federal employees, all indications point to reintroduction, and early enactment of a similar bill soon after Congress convenes this month. (See TRAVEL pg. 6)

CONGRESS ENACTS FEDERAL EVIDENCE RULES

In the final days prior to adjournment December 20, the 93d Congress enacted the Federal Rules of Evidence Bill.

The President January 2 signed the bill into law thus making the new rules applicable to all federal court proceedings commencing July 1, 1975.

The final version of the rules, which will become effective July 1, 1975, is the culmination of thirteen years of study and drafting by a distinguished advisory committee appointed by the Chief Justice, the Judicial Conference of the United States, the Supreme Court and Congress. The rules as now enacted into law, substantially amend those submitted to Congress by the Supreme Court February 5, 1973.

The Administrative Office of the U. S. Courts plans to make a wide distribution of the new rules in the near future.

FJC PUBLISHES VIDEOTAPING GUIDELINES

Guidelines for Prerecording Testimony on Videotape Prior to Trial, the first document of its kind, was recently published by the Center.

The Guidelines were first devised for pilot district courts and have gone through several revisions. The present edition focuses on prerecording testimony rather than the more narrow concept of videotaped depositions because the Center's projects involve recording on videotape for the sole purpose of use at trial.

The emphasis of the Guidelines is on careful, step-by-step planning, and execution of all the procedures involved in: preparing for recording, recording testimony, preparing for playback, and operating the equipment for playback to a jury.

Because the use of videotape and the technology itself are continually changing, and because additional knowledge from research projects about the impact of videotape will be forthcoming, the Center's Innovations and Systems Development Division expects further revisions of the Guidelines during 1975.

Copies are available from the Federal Judicial Center Information Service.

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.

- Appellate Judicial Opinions. Robert A. Leflar. West, 1974.
- Benchbooks and Manuals of Procedure: Practical Guides for Bench and Bar. Robert A. Wenke. 53 Neb. L Rev 521 (1974).
- Introduction to the Administration of Justice; an Overview of the Justice System and its Components. Thomas Francis Adams. Prentice-Hall, 1974.
- John Marshall: a Life in Law. Leonard Baker. Macmillan, 1974.
- The Selective Presentence Investigation Report. Publication No. 104. 1974. (Available from Probation Division, Admin. Off. of U.S. Courts)
- Seminars for Circuit Judges [FJC], Nov. 28, 1972, March 19, 1973. 63 FRD 453, Oct. 1974.

A.O. PUBLICATIONS AVAILABLE

Here is a list of selected publications currently available from the Administrative Office of U.S. Courts:

- Reports of the Proceedings of the Judicial Conference of the United States (March 1969-March 1974)
- Annual Reports of the Director of the Administrative Office of the U.S. Courts (Recent years)
- U. S. Courts, Their Jurisdiction and Work (1971)
- Manual on the Code of Judicial Conduct (1974)
- Federal Probation Quarterly (Recent years)
- The U. S. Courts Pictorial Summary (1974)
- Persons Under the Supervision of the Federal Probation System (1968)
- Juror Utilization in the U. S. District Courts (1974)
- Court Management Statistics (1974)

JUSTICE DEPARTMENT DEFENDING JUDGES SUED IN ALABAMA SUIT

The most recent in a series of lawsuits directed against numerous federal judges by the American Constitutional Rights Protective Association was filed in the U. S. District Court for the Southern District of Alabama, October 10, 1974.

The suit *Carden* v. *Hand,* charges the federal judiciary, together with the American Bar Association and various state judges and bar associations, with a conspiracy "to set up and effectuate a monopoly in the so-called Law Business or Practice of Law", and challenges the power of State and Federal Courts to set standards of conduct and prescribe codes of ethics for attorneys admitted to practice before them.

Because all of the active and senior district judges in the Southern District of Alabama are named in the complaint as parties to the suit, and following the decision of Chief Judge John R. Brown of the Court of Appeals for the Fifth Circuit, who is also named as a party, to disqualify himself as the designator, the Chief Justice December 18, 1974, designated Chief Judge Reynaldo G. Garza of the Southern District of Texas to serve in this case.

(See DEFENSE pg. 6)

(DEFENSE, from pg. 5)

Judge Garza has also been assigned four other lawsuits filed in different districts by members of the Association and having common issues of law and fact.

It has been arranged for the Department of Justice to provide representation for all Federal judges who have been or may be served with a complaint and summons in this matter. The Department assigned Charles S. White-Spunner, Jr., United States Attorney for the Southern District of Alabama, to enter an appearance for each of the judges and to represent them in the ensuing proceedings.

Mr. White-Spunner has filed a motion to extend the time for federal defendants to respond until January 27, 1975. This motion was submitted in order to avoid confusion caused by the twenty-day return date on the summonses, although Rule 12(a), Federal Rules of Civil Procedure, clearly permits federal officers 60 days to respond to a complaint following service on the U. S. Attorney.

The Department of Justice has also informed the Administrative Office that it is preparing a motion to dismiss this suit on behalf of all federal defendants. The motion will be based, *inter alia,* upon the following grounds: (1) Failure to state a claim upon which relief may be granted; (2) A lack of *in personam* jurisdiction in the United States District Court for the Southern District of Alabama over the out-of-state defendants named; and (3) judicial immunity.

The Office of the General Counsel of the Administrative Office will be pleased to respond to inquiries from judges regarding continuing developments in the course of this litigation.

(TRAVEL, pg. 4)

The President in his veto message said that he endorsed the section of the bill relating to government employees' travel expenses, but that he could not accept an amendment to the bill which granted similar expense allowances to disabled veterans. He said that the administration would support a new bill without the disabled veterans aspect. Travel expences for disabled veterans will be handled separately.

Both Senator Lee Metcalf and Congressman Jack Brooks have stated they intend to introduce a new bill immediately after Congress convenes.

Since hearings will not be held on the measure, the bill should be cleared for the President's approval very early in the 94th session. (For details on the bill see **The Third Branch,** December 1974, p. 6.)

A.O. CREATING NEW DIVISIONS

In one of its most significant reorganizations in recent years, the Administrative Office of the U.S. Courts is in the process of creating two entirely new Divisions as well as a new unit which may become a third.

The A.O. is creating a Clerk's Division to deal directly with the needs of this growing and key segment of the federal judicial system. A new Division of Judicial Examinations has also been created to assume a role which historically has been carried out by the Department of Justice: Conduct periodic audits of federal courts.

The third unit is being formed specifically to respond to the responsibilities imposed upon the A.O. under the Criminal Justice Act and, as a result, will service the needs of such personnel as Federal Public Defenders and will supervise the administration of the assigned counsel system.

The A.O. has not yet appointed the division chiefs who will head the two new divisions or the official who will be in charge of the new Criminal Justice Act unit.

STATE-FEDERAL

Arkansas. At its October State-Federal Judicial Council meeting, a resolution was adopted and presented to Judge Pat Mehaffy (CA-8) who stepped down as Chief Judge last August. The resolution, signed by Chief Justice Carleton Harris of the Supreme Court of Arkansas, memorializes the Council's "appreciation to Judge Mehaffy for his splendid leadership and unselfish dedication during his years of service as Vice-Chairman and its wish that he enjoy many more years of fruitful activity during his retirement." It concludes with an invitation to the Judge to attend all future meetings of the Council "as its guest with the heartfelt appreciation and sincere friendship of each member."

Missouri. At a recent meeting of this State's Council, it was agreed: (1) To meet every six months, or upon special call if warranted; (2) To develop, at the Missouri Penitentiary, administrative machinery which would afford prisoners a forum to air their grievances with a view of cutting down on frivolous filings in both state and federal courts, the final proposal to be submitted at the next Council meeting; (3) Where the validity of a state statute is challenged in declaratory action the Missouri Attorney General agreed, upon notice by the U.S. District Judge, to either intervene or file an *amicus curiae* brief. [This action was taken in reply to an agenda query: "Should we consider the problem presented when it is asserted that a state statute is unconstitutional and there is no litigant in the case to defend the statute in behalf of the State of Missouri?] (4) To develop a cooperative plan for jury utilization in both state and federal courts for consideration at the Council's next

(See STATE FED pg. 7)

meeting. (5) To refer to a law school professor for study the problem of attempting to reach a consensus as to standards when ineffectiveness of council is alleged.

New Jersey. To meet a severe shortage in courtroom facilities in Camden County, New Jersey, Chief Justice Richard J. Hughes of the New Jersey Supreme Court, requested and obtained permission from Chief Judge Collins J. Seitz (CA-3) to use the federal facilities. In a letter of appreciation to the [then] Chief Judge Mitchell H. Cohen, Chief Justice Hughes said, "It is an excellent example of Federal-State cooperation on the judicial level, which is very much in the public interest."

Oregon. State Circuit Judge Mitchell Karaman has a new courthouse now, but during a portion of the construction period when the Judge needed a courtroom to hear arguments the facilities of the federal court in Medford were made available to him.

Virginia. This state's State-Federal Judicial Council held a meeting at the time of the Fourth Circuit Conference last summer. Special guests at the meeting were the Chief Justice, and the directors of both the Federal Judicial Center and the Administrative Office of U.S. Courts.

DIAL-A-REGULATION

A new program which the General Services Administration has recently put into effect offers callers an advance look at what the *Federal Register* will publish the following day.

A spokesman for the GSA said that the move was being taken to promote both publication use as well as usefulness of the *Federal Register*.

Interested persons may dial (202) 523-5022 at any time and hear a tape-recorded summary of selected documents scheduled to be proposed in the next day's issue. The *Register* is published weekdays and carries Presidential proclamations, executive orders and government agency regulations which have general applicability and legal affect.

In addition to the telephone service, GSA also is making the documents available for an in-person inspection. Documents filed for publication may be seen the day before publication in room 8401, 1100 - 11th Street, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m.

A spokesman for the GSA said that members of the Judiciary may be especially interested in advance information concerning Justice Department regulations as well as proposed actions.

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

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

AMENDED FREEDOM OF INFORMATION ENACTED

Congress voted late in November to override President Ford's veto of the Amended Freedom of Information Act which, its sponsors contend, will give the public greater access to information from government agencies.

The amended Act gives an executive department agency forty working days to review requested documents.

However, the agency may ask for, and federal courts are authorized to grant, additional time for the agency to complete its review.

The thrust of the amended Act is to speed up the review by the agency which has been asked to provide the information and remove any unreasonable cost to the person requesting the information.

The legislation calls for a judicial determination of the question of whether the requested documents are properly classified.

Senator Edward Kennedy said on the Senate floor prior to action by the Senate overriding the Presidential veto, "The bill passed by Congress recognizes that special weight should be given agency judgments where highly sensitive material is concerned. But that bill also expresses confidence in the federal judiciary to decide whether the greater public interest rests with public disclosure or continued protection."

PERSONNEL

Appointments

J. Calvitt Clarke, Jr., U.S. District Judge, E.D.Va., Jan. 2
William S. Sessions, U.S. District Judge, W.D.Texas, Dec. 19
William J. Bauer, U.S. Circuit Judge, 7th Cir., Jan. 3
James P. Churchill, U.S. District Judge, E.D.Mich., Dec. 30

H. Dale Cook, U.S. District Judge, N.E.&W.D.Okla., Dec. 31

Nomination

J. Smith Henley, U.S. District Judge, N.D.Ill., Dec. 11

Confirmations

Donald D. Alsop, U.S. District Judge, D.Minn., Dec. 18
Henry Bramwell, U.S. District Judge, E.D.N.Y., Dec. 20
Edward N. Cahn, U.S. District Judge, E.D.Pa., Dec. 18
John T. Elfvin, U.S. District Judge, W.D.N.Y., Dec. 20
James M. Fitzgerald, U.S. District Judge, D.Alaska, Dec. 18
Joel M. Flaum, U.S. District Judge, N.D.Ill., Dec. 18
John F. Gerry, U.S. District Judge, D.N.J., Dec. 18
Alfred Y. Kirkland, U.S. District Judge, N.D.Ill., Dec. 19
Juan R. Torruella del Valle, U.S. District Judge, D.P.R., Dec. 18
Ellsworth A. VanGraafeiland, U.S. Circuit Judge, 2nd Cir., Dec. 20

Elevation

Reynaldo G. Garza, Chief Judge, U.S. District Court, S.D.Texas, Dec. 28

Deaths

Roy M. Shelbourne, U.S. Senior District Judge, W.D.Ky., Dec. 29
Eugene Worley, Senior Judge, Court of Customs and Patent Appeals, Dec. 17

AO FJC Calendar

January 30-31 Judicial Conference Criminal Justice Act Committee, New Orleans, Louisiana

February 3-4 Judicial Conference Committee on Court Administration, Marco Island, Florida

February 7 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.

February 19-21 Regional Seminar for U.S. Bankruptcy Judges, San Diego, California

March 6-7 Judicial Conference of the United States, Washington, D.C.

March 16 Metropolitan Judges Conference, San Antonio, Texas

March 19-21 Regional Seminar for U.S. Bankruptcy Judges, Lexington, Kentucky

March 24-28 Orientation Seminar for Probation Officers, Washinton, D.C.

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NATIONAL CONFERENCE ON APPELLATE JUSTICE HELD

Over 250 judges, lawyers and law professors gathered at Coronado, California, last month to discuss for three and one-half days growing problems in the appellate courts.

The conference was the culmination of three years of study by the Advisory Council for Appellate Justice. Among the group were twenty-five federal judges.

The Advisory Council, organized jointly by the National Center for State Courts and the Federal Judicial Center, is made up of thirty of the most knowledgeable and concerned individuals in the country, all dedicated to improving the quality of justice on the appellate level.

Several volumes of preparatory material were distributed in advance of the meeting as well as two recent publications on appellate court procedures and appellate judicial opinions.

Groups of thirty gathered each day, during which time intensive discussions took place with all participants expressing their ideas as to how appellate court problems can best be resolved.

Evening sessions included outstanding speakers advancing their views as to how appellate justice can be improved upon and overwhelming caseloads can be met.

Senator Roman L. Hruska, Chairman of the Commission on Revision of the Federal Court Appellate System, directed his remarks mainly to the concept of establishing a new National Court. He told his audience: (1) Many inter-circuit conflicts are not being resolved by the Supreme Court because of the press of more urgent business;

(see Conference pg. 2)

". . .our central problem is the reconciliation of tradition with reality." Judge Carl McGowan (D.C.—CA) summarizes Conference proceedings.

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REVISION COMMISSION ENDORSES NATIONAL COURT

The Commission on Revision of the Federal Court Appellate System following two days of hearings on January 17-18 gave preliminary approval to the creation of a seven-member National Court of Appeals.

The new court:

- Would receive its caseload either by reference from the Supreme Court or by transfer from any of the present Circuit Courts of Appeals.
- Would consist of a seven-member permanent court of Article III judges.
- Would not limit the right of a litigant to appeal directly to the Supreme Court and all decisions made by the new court could be appealed to the Supreme Court. (See story above)

(from Conference pg. 1)
(2) futile, repetitive litigation in the circuit courts in the hope of finding a forum which will be favorable exacts a high price in waste; (3) there is need for an alternative forum which would resolve questions of national law rapidly and efficiently subject to ultimate Supreme Court review; (4) there is strong argument for the creation of a new court with judicial capacity and authority to resolve inter-circuit conflicts.

The Senator went on to outline the Commission's proposal for a new National Court to be included in their forthcoming report. The court would have seven Article III judges. They would only sit en banc. Cases could be brought to the new tribunal either by (1) transfer to the court by one of the Circuit Courts of Appeals, the Court of Claims, or the Court of Customs and Patent Appeals; or (2) by reference, whereby the Supreme Court could refer to the newly established tribunal any case within the jurisdiction of the Supreme Court.

In answer to inquiries about final recourse to the Supreme Court, the Senator said any case decided by the new National Court, by whatever means, could be reviewed by the Supreme Court upon petition for writ of certiorari. If this final appeal was made no new briefs would be required, but short statements could be added if there were new considerations not present at the time of the initial application.

Professor Leo Levin, Director of the Circuit Revision Commission, explained some of the circuit problems he observed and noted that a recent survey of three thousand lawyers concerning oral argument and opinion writing showed that only 16 percent of the respondents thought argument time should be afforded in all cases. Where appeals border on the frivolous, as determined by the court, denial of oral argument was found acceptable by 89 percent of the lawyers in the Fifth Circuit and 72 percent in the Second. Similarly, where the issues are clear and can be decided by reference to precedent, denial of oral argument was acceptable to 56 percent of the attorneys in the Second and 72 percent of those in the Fifth.

Professor Levin mentioned some recommendations the Commission was prepared to make: (1) that each circuit be required to establish an appropriate mechanism for rule-making by the circuit, with broad participation by members of the bench and bar; (2) that each circuit be required to publish its internal operating procedures "reflecting both a philosophy of accountability and a pragmatic recognition of the value of criticism and comment"; (3) the desirability of national minimum standards, including some reason for a decision rendered in every case, even if no more than a citation.

Judge Carl McGowan (CA-DC) addressing the final gathering commented that "some of the questions asked at this Conference have been, if not quite unthinkable, at least jarring to sensibilities and assumptions rooted in long-established traditions . . . Professions with any pretense to reliance upon the reasoning faculties do not shrink from inward inquiry—and they act at their peril when they fail to do so imaginatively, persistently and ruthlessly."

To each of the eight groups reporters were assigned who will make summaries of the group discussions for later circulation.

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

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.

- Class Actions: A Symposium. 12 San Diego L. Rev. 243 p. (Dec. 1974).
- Criminal Justice in 2000 A.D. 13 Ct. Rev. 34 (1974).
- Federal Trial Handbook. Robert S. Hunter. Lawyers Co-op, 1974 ($40).
- **Guidelines for Pre-Recording Testimony on Videotape Prior to Trial; A Manual prepared by Federal Judicial Center. (FJC No. 74-9). Nov. 1974.**
- **Guide for Training Newly Appointed Federal Probation Officers. Federal Judicial Center (FJC No. 74-8). 1974.**
- Grand Juries, Grand Jurors and the Constitution. P. W. Sperlich and M. Jaspovice. 1 Hastings Const. L.Q. 63 (Spr. 1974).
- Legal Problems of Dividing a State Between Judicial Circuits. Arthur D. Hellman. 122 U. Pa L. Rev. 1188 (May 1974).
- **The Pre-Argument Conference: An Appellate Procedural Reform. Irving R. Kaufman. 74 Colum. L. Rev. 1094 (Oct. 1974).**
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- The San Francisco Master Calendar System for Criminal Cases. Walter F. Calcagno. 1 Brief/Case 11 (Dec. 1974).
- **Screening Practices and the Use of Para-Judicial Personnel in the U.S. Courts of Appeals; a Study in the Fourth Circuit. (FJC No. 74-7). 1974.**
- Speeding Criminal Appeals in the Second Circuit. Marianne Stecich. 58 Judicature 286 (Jan. 1975).

(See pg. 5, col. 1)

THE JUDGES' PAY

Decisions of the federal courts make big news almost weekly, but the federal judiciary as an institution receives remarkably little public attention. This neglect is understandable, since judicial organization is rarely as dramatic a topic as congressional reform or as pervasive an influence as the structure of the Executive Branch. But, as Chief Justice Warren Burger emphasized in his year-end review of the courts, the judiciary has nuts and bolts problems which have as much constitutional importance as those of the other two branches.

Two among Chief Justice Burger's suggestions strike us as particularly important–an increase in the number of district and circuit judgeships and a raise in federal judges' pay. The Chief Justice asked Congress to hurry up and pass the omnibus judgeship bill prompted by a judiciary request two years ago. This bill would create 52 new district judgeships (for a total of 454) and 13 new circuit judgeships (for a total of 110). Justice Burger argues that federal judges disposed of nearly 140,000 cases in 1974, almost 22,000 more than in 1970, with no increase in personnel, and appellate cases per circuit judgeship have increased 80% since 1968, when Courts of Appeals were last expanded.

Along with the increased case load, warns the Chief Justice, inflation has been weakening the federal courts. Judges' salaries have been frozen for the past six years, during which the average civil servant's pay has increased more than 50% and the cost of living has gone up 42%. These pay raises are supposed to be decided by a presidential commission which also sets the salaries for Congressmen and Cabinet officers. But the latest commission recommendation, which would have raised judges' pay by 22.5%, foundered in the Senate early in 1974 when election-wary Senators refused to support any measure which would have increased their own salaries as well.

The financial pinch, says Chief Justice Burger, has caused as many federal district judges to resign in the past 13 months to return to practicing law as have done so in the preceding 34 years. The number is small, six in all, but it does point to a problem of morale in the third coequal branch of the national government.

Adequate pay is so important for a corruption-free and independent judiciary that the framers of the Constitution included a prohibition against diminishing a federal judge's salary during his continuance in office. At the same time, as Federalist Paper 79 observes, they left out the prohibition against a pay raise which applies to the President, realizing that "it may well happen . . . that a stipend which would be very sufficient at (the judges') first appointment would become too small in the progress of their service."

We favor a cut, rather than further increase, in total government spending. But one of the dangers in the government's trying to use its budget to reform society is that truly essential government services may be starved. The Judicial Branch, dependent on the other two branches for its budgets, is particularly vulnerable and particularly deserving of protection.

If the judicial system becomes afflicted with overwork and incompetence because of lack of federal support, that decline will soon be reflected in the quality of the judicial decisions that have such a far-reaching impact on the nation's respect for justice and the principle of orderly legal processes. Any diminution of its effectiveness would seriously harm our constitutional structure.

ADMINISTRATIVE OFFICE PUBLISHING COMPLETE CATALOG

The Administrative Office of the U.S. Courts is publishing a complete catalog of all of its reports including those published by the Government Printing Office. The list totals more than seventy titles including the *Bankruptcy Cost Studies, Operations Manual–Probation Officers, Book for Jurors,* and the *Manual on the Code of Judicial Conduct.*

The catalog will be available shortly and can be obtained by contacting the Administrative Office of the U.S. Courts, Washington, D.C. 20544.

FEDERAL PUBLIC DEFENDERS HONOR WILLIAM E. FOLEY

Deputy Director William E. Foley of the Administrative Office of the U. S. Courts was awarded the *Federal Defender Recognition Award of Merit* at a recent seminar for Federal Public Defenders in New Orleans.

The award of merit read, in part: "Many dream of equal justice; some are privileged to work for it. But a select few have fathered its implementation and realization. From those of us privileged to work for equal justice, we, the Criminal Justice Act Federal and Community Defenders, appreciatively and gratefully acknowledge **William E. Foley** as the one most responsible for the success of our offices and the resulting institutionalization of equal justice in our Nation."

NEW JUDGESHIP BILLS INTRODUCED

Acting at the request of the Judicial Conference of the U.S., Senators Quentin Burdick and Roman L. Hruska introduced two bills to provide for additional district and appeals court judgeships January 21. S.287 would authorize 29 additional district judgeships while S.286 would provide ten additional judgeships for the U.S. Courts of Appeals.

TRAVEL–PER DIEM BILLS REINTRODUCED

Senator Lee Metcalf, Chairman of the Senate Subcommittee on Reports, Accounting, and Management and Representative Jack Brooks who heads the House Committee on Government Operations reintroduced bills calling for substantial increases in both travel and per diem for all government employees including members of the judiciary.

Both bills were reported out of committee early this month and are expected to be approved by Congress shortly.

President Ford vetoed a similar bill December 31 because he objected to provisions dealing with disabled veterans. The new bills do not carry the provisions which the President objected to, and thus spokesmen for both House and Senate Committees said they expected the President to sign the bill. The bills provide for per diem for judges up to $50, and up to $35 other personnel and mileage up to 18 cents per mile.

The exact allowance limits would be determined by each federal agency; in the case of the judiciary the Director of the Administrative Office of the U. S. Courts would determine the mileage and per diem allowance.

Pictured above are Revision Commission Chairman Senator Roman L. Hruska, Executive Director A. Leo Levin and Senator Hiram L. Fong as the Commission met to discuss the proposed new National Court of Appeals last month.

BILL SPLITTING 5TH AND 9TH CIRCUITS WILL BE INTRODUCED

The Senate Judiciary Committee plans to introduce a committee bill which would reorganize both the Fifth and Ninth Judicial Circuits by splitting each circuit into two divisions.

In its report on the bill, the committee recommended the creation of fifteen new judgeships, eight for the Fifth Circuit and seven for the Ninth Circuit.

The bill is an outgrowth of the work of the Commission on Revision of the Federal Court Appellate System which recommended December 18, 1973 that the two Circuits be divided creating two new Judicial Circuits. (See **The Third Branch, January, 1974.**)

The Senate committee report accompaying the bill, S. 2990, said that "the fundamental and the basic solution to increased caseload continues to be increased (judgeships). At the district court level we have increased the number of judges to correspond to increased workload.

"In many instances where the caseload of a federal judicial district within one state becomes too large or where conservation of the time and energies of judges and litigants have become a factor, the solution has been to create more than one judicial district within that state . . . It seems to the Committee that, within limits, a similar remedy can be applied to the courts of appeals for the several circuits."

The Committee recommended that the Fifth Circuit be divided into an Eastern and Western Division. The Eastern Division would consist of Alabama, Florida, Geogia, Mississippi, and the Canal Zone while the Western Division would include only Louisiana and Texas.

The Eastern Division would consist of twelve U.S. Court of Appeals judges and the Western, eleven.

The bill would create a Northern and Southern Division of the Ninth Circuit consisting of Alaska, California Northern, California Eastern, Idaho, Montana, Washington, Oregon, Hawaii, and Guam with a total of nine judges and a Southern Division comprising Arizona, California Southern, California Central, and Nevada with eleven judges.

The Committee said, "Of paramount consideration is the fact that the Committee believes that if circuits with overwhelming caseloads are restructured into divisions rather than separate circuits, a base will be laid for a relatively flexible structure for courts of appeals which can accommodate any increase in caseload reasonably forseeable within the next twenty-five years."

Each division would have its own Chief Judge, Circuit Executive and Judicial Council and control both the designation and assignment of circuit and district judges within its division.

The bill also sets up machinery through which judges in California may resolve "conflicts between the Southern and Northern Division with reference to the interpretation of California law or the Construction or application of federal law or regulations with reference to activities of or within the State of California."

(From The Source pg. 2)

- Standards Relating to Court Organization [Approved Draft, Feb. 1974] ABA Commission on Standards of Judicial Administration.
- Tennessee and the U.S. Court of Appeals for the Sixth Circuit. Harry Phillips. 10 Tenn. B.J. 6 (Nov. 1974).
- The U.S. Magistrates: How Their Services Have Assisted Administration of Several District Courts; More Improvement Needed. U.S. Comptroller General. (B-133322) General Accounting Office, Sept. 1974.

EDUCATION & TRAINING HOLDS PROBATION OFFICER SEMINARS

In order to improve the training of all court personnel, the Federal Judicial Center's Education and Training Division has begun some new and innovative training programs.

A refresher training program was held in Brownsville, Texas, February 3-7. This seminar covered narcotic and alcoholic problems and treatment. In addition to probation officers and Federal Bureau of Prison personnel, other agencies participating included the Drug Enforcement Administration, Bureau of Customs, and U. S. Border Patrol.

The Center's staff was invited to participate in a meeting of Chief Probation Officers for the southeast region held in Dallas, Texas, February 12, 13, and 14.

Richard Mischke, Deputy Director, discussed new training programs and communication skills. The Center's staff has offered to provide short management training sessions for these annual meetings.

A seminar to improve supervisory skills was conducted in New York City, February 19-21. Participants included probation and clerical supervisors from the District of New Jersey and the Southern and Eastern Districts of New York. The program was especially planned for this group and builds on the in-court management program which has been successfully developed and presented in several courts during the past year.

Since all supervisory personnel can not be trained in formal class programs, a correspondence course in supervision has been developed. Open to all supervisors and potential supervisors in the courts, the three-lesson course contains about four hundred pages of written material. Lesson One deals with supervisory duties and responsibilities; Lesson Two, with communications; and Lesson Three with human relations. Students are able to work at their own rate, with their work monitored by use of an exam with each lesson. Upon successful completion of the course, a certificate will be awarded. Also, a letter will be placed in the student's personnel file as an indication of his or her extra effort toward self-improvement.

JUSTICE CLARK CITES "ASTONISHING PACE" OF VIDEO INNOVATION

In an address January 31 to the Workshop on Legal Communications at Hastings Law School, Mr. Justice Tom C. Clark said that in both federal and state courts the use of television is being rapidly accepted.

Justice Clark said that "even in this era of accelerating change, the progress in the application of video technology to the law has set an astonishing pace. Justice Clark pointed out that "at least five states and the federal courts now have adopted rules permitting the videotaping of depositions but Ohio remains the only state authorizing videotape trials."

"One percent supervision is patently inadequate." . . . .Judge Shirley M. Hufstedler (CA-9), addressing the National Conference on Appellate Justice.

(See Conference page 1.)

That despite some reluctance on the part of judges and lawyers to use this technology, he indicated "change is nonetheless coming, at an ever increasing pace, to legal processes and institutions. And we can expect this pace to continue as the courts' new research and training institutions help them adapt to modern computer, recording, and video technology, and to modern management procedures including sophisticated data gathering, processing and statistical analysis."

He told the workshop participants that "both the Federal Judicial Center and the National Center for State Courts have done pioneering research in videotaping and we can expect that their continuing involvement will provide and indispensible ingredient if this new technology is to receive widespread acceptance by the courts."

LEGISLATION

DRAFT LEGISLATION

Following the opening of the 94th Congress, the Judicial Conference of the United States submitted a number of draft proposals for legislation, some of which have already been introduced:

OMNIBUS JUDGESHIPS

The Judicial Conference's request for 52 additional district judgeships has been submitted to both Houses of Congress. Senator Burdick has introduced S. 287, which provides for only 29 judgeships. The Conference's request for 13 additional circuit judgeships has also been submitted, but has not been introduced in that form. Senator Burdick has introduced S. 286, which provides for 10 additional circuit judgeships.

THREE-JUDGE COURTS

S. 537, to eliminate the three-judge court in most instances, has been introduced by Senator Burdick.

JUROR FEES & PROTECTION OF JUROR'S EMPLOYMENT

The Judicial Conference proposals have been introduced, with some changes, as S. 539.

SIX-MEMBER JURIES

The Judicial Conference proposal has been introduced as S. 237. Another bill, which would provide also for six-member juries except capital offenses, has been introduced by Senator Scott as S. 430.

TRAVEL & PER DIEM

Bills have been introduced in both Houses to increase the maximum amount of per diem and subsistence and mileage allowance payable to federal officers and employees traveling on official business.

JUDICIAL SURVIVORS ANNUITIES

Senator McClellan has introduced S. 12, which will provide benefits to survivors of Federal judges comparable to benefits received by survivors of Members of Congress.

INCREASED ANNUITIES –SECRETARIES OF JUSTICES & JUDGES

This measure has been reintroduced in the House by Representative Matsunaga as H.R. 1908.

NOTE: GARNISHMENTS

The Social Services Amendments of 1974 (P.L. 93-647, Jan. 4, 1975) contains a provision which permits the garnishment of compensation of federal employees for enforcement of child support and alimony obligations. [There will be an A.O. bulletin issued on this proviso of the new law soon, which will include an analysis of other sections of the law which do not become effective until next July.]

BANKRUPTCY FILINGS HIT HISTORICAL HIGHS

The compound effect of inflation and recession coupled with widespread business failures has forced thousands of companies and individuals to file bankruptcy petitions with bankruptcy judges.

Figures compiled by the Bankruptcy Division of the Administrative Office of the U.S. Courts indicate that if the present trend continues for the balance of fiscal year 1975 between 240,000 and 250,000 bankruptcy petitions will be filed.

This compares with a high of 208,329 petitions which were filed during fiscal 1967. During fiscal 1974 a total of 189,513 petitions were filed.

The figures indicate an increase in the percentage of business filings as compared with individual filings. In the first three months of fiscal 1975, 11.2% of all cases filed were filed by businesses.

Berkeley Wright, Chief of the Bankruptcy Division of the A.O., said that filings for this current year will undoubtedly break every prior record. As a result of the major increase in bankruptcy filings, the A.O. has asked Congress for supplemental funds to hire additional clerical personnel to assist in handling the record bankruptcy caseload.

CASSETTE LIBRARY

New Holdings

The Division of Education and Training maintains a cassette library containing various presentations that are delivered at Center seminars, institutes and conferences.

Early in 1974 a complete catalog of these cassettes, which are available to members of the Federal Judicial System on a two week loan basis, was published.

Since that publication new presentations have been added to the library's holdings and The Third Branch will continue to list these additions to keep readers current:

JUDGES

J-77 PLENARY SESSION–THE FEDERAL BUREAU OF PRISONS AND THE U.S. BOARD OF PAROLE

Judge Oren R. Lewis,
U.S. Dist. Ct. (E.D. VA.)

Wayne P. Jackson
Chief of Probation, A.O.

Norman Carlson, Director
Federal Bureau of Prisons

Eugene N. Barkin,
General Counsel
Federal Bureau of Prisons

George Reed, Member
United States Board of Parole

MAGISTRATES ARE HOLDING MORE IMMIGRATION HEARINGS

U.S. Magistrates are disposing of a greater percentage of immigration offenses prosecuted in U.S. District Courts, thus relieving judges of this time consuming work.

The following table shows the trend in recent years as Magistrates have continued to dispose of these cases.

IMMIGRATION CASES
Disposed of by Magistrates

	F.Y. 1972	F.Y. 1973	F.Y. 1974
TOTAL	9,798	13,986	15,824
S.Texas	3,003	4,985	6,710
W. Texas	2,011	2,672	2,783
S. California	3,529	4,787	4,703
Arizona	609	663	1,101

Commenced in District Courts

	F.Y. 1970	F.Y. 1971	F.Y. 1972	F.Y. 1973	F.Y. 1974
TOTAL	4,614	5,027	5,904	2,208	1,921
S.Texas	1,451	2,240	2,223	298	127
W.Texas	1,386	1,192	2,332	431	443
S. California	1,054	679	498	617	543
Arizona	211	152	52	86	59

J-78 RULE 35

Judge William H. Webster,
U.S. Ct. of Appeals, (8th Cir.)

J-79 JUDICIAL RESPONSIBILITY FOR THE DISPOSITION OF LITIGATION

Judge Frank J. McGarr,
U.S. Dist. Ct. (N.D. Ill.)

J-80 A MODERN, EFFICIENT USE OF SUPPORTING PERSONNEL AND THE BAR

Judge Philip W. Tone,
U.S. Dist. Ct., (N.D. Ill.)

J-81 THE ADMINISTRATIVE OFFICE—HOW IT CAN HELP YOU

Rowland F. Kirks, Director
Administrative Office of the
U.S. Courts

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

Carl H. Imlay, General Counsel
Administrative Office of the U.S.
Courts

Gilbert L. Bates, Assistant to the
Director, Administrative Office
of the U.S. Courts

J-82 JUDICIAL ACTIVITIES AND ETHICS

Judge Edward A. Tamm,
U.S. Ct. of Appeals, (C.A.-D.C.)

J-83 ANATOMY OF A CRIMINAL CASE IN FEDERAL COURT

Judge Gerald B. Tjoflat,
U.S. Dist. Ct. (M.D. Fla.)

J-84 TRIAL AND POST-TRIAL PROBLEMS

Judge Damon J. Keith,
U.S. Dist. Ct., (E.D. Mich.)

J-85 THE UNITED STATES BOARD OF PAROLE

Maurice H. Sigler, Chairman
United States Board of Parole

J-86 STATE PRISONER CIVIL RIGHTS ACTIONS

Judge Ruggero J. Aldisert,
U.S. Ct. of Appeals, (3rd Cir.)

J-87 MANAGEMENT OF CIVIL CASE FLOW FROM FILING TO DISPOSITION

Judge Charles B. Renfrew,
U.S. Dist. Ct. (N.D. Calif.)

J-88 JUDICIAL RELATIONSHIPS

Chief Judge Joseph S. Lord, III
U.S. Dist. Ct. (E.D. PA.)

J-89 THE JUDGE AND THE CLERK OF THE COURT

Angelo Locascio, Clerk
U.S. Dist. Ct. (Dist. N.J.)

J-90 MANAGEMENT OF MISCONDUCT AT THE TRIAL

Judge Louis C. Bechtle,
U.S. Dist. Ct., (E.D. PA.)

J-91 SPECIAL CASES: A PANEL DISCUSSION

Moderator:
Judge Alfred P. Murrah, Former
Director, Federal Judicial Center

Panelists:
Chief Judge William H. Becker,
U.S. Dist. Ct., (W.D. Wash.)

Judge George H. Boldt,
U.S. Dist. Ct., (W.D. Wash.)

J-92 SENTENCING and PLEA DISCUSSION IN THE SENTENCING PROCESS

Moderator:
Judge William J. Campbell,
U.S. Dist. Ct., (N.D. Ill.)

Panelists:
Judge Harold R. Tyler
U.S. Dist. Ct., (S.D. N.Y.)

Ben S. Meeker
Center for Studies in Criminal
Justice, University of Chicago

J-93 CALENDAR CONTROL AND PRE-TRIAL CONFERENCES

Judge Carl B. Rubin,
U.S. Dist. Ct., (S.D. OH.)

PERSONNEL

Appointments

Donald D. Alsop, U.S. District Judge, D.Minn., Jan. 17
Henry Bramwell, U.S. District Judge, E.D.N.Y., Jan. 30
John T. Elfvin, U.S. District Judge, W.D.N.Y., Jan. 10
Joel M. Flaum, U.S. District Judge, N.D.Ill., Jan. 21
John F. Gerry, U.S. District Judge, D.N.J., Jan. 9
Alfred Y. Kirkland, U.S. District Judge, N.D.Ill., Jan. 31
Juan R. Torruella, U.S. District Judge, D.P.R., Jan. 7
Ellsworth A. Van Graafeiland, U.S. Circuit Judge, 2nd Cir., Jan. 14

Nominations

Stanley S. Brotman, U.S. District Judge, D.N.J., Jan. 27
J. Smith Henley, U.S. Circuit Judge, 8th Cir., Jan. 28

Deaths

Mac Swinford, U.S. District Judge, E. & W.D.Ky., Feb. 3

AO and FJC calendar

Mar. 6-7 Judicial Conference of the United States, Washington, D.C.

Mar. 16 Met. Chief Judges Conference, San Antonio, Tx.

Mar. 19-21 Regional Seminar for Bankruptcy Judges, Lexington, Ky.

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

April 27-30 5th Circuit Conference, Orlando, Fla.

July 21 9th Circuit Conference, San Francisco, Calif.

Sept. 18-19 Judicial Conference of the United States, Washington, D.C.

THE THIRD BRANCH
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CHIEF JUSTICE REPORTS ON THE STATE OF THE JUDICIARY

The Chief Justice told the American Bar Association at its mid-year meeting in Chicago February 23 that federal courts, especially those in metropolitan areas, may soon face a crisis unless Congress creates additional judgeships and provides other resources—and stops the exodus of judges by swift action to increase salaries of judges.

[This is a summary of the Chief Justice's annual State of the Judiciary address. The full text is available from the Federal Judicial Center Information Service.]

In his Sixth annual State of the Judiciary report, the Chief Justice pointed out that the Speedy Trial Act of 1974 "is a matter of the *highest* priority since it will go into effect July 1 in its first phase. . . . The best estimates we can make are that they will call for a large amount of computer equipment and personnel in the Administrative Office and the Office of clerks of court in the 94 federal districts of not less than 100 additional employees . . . .

"The Administrative Office now estimates that substantially more than the previously requested 52 district judgeships will be required. Since the Congress undertook no 'impact study' as to the effects of this Act on the district courts, the Administrative Office has undertaken to do so and the tentative estimate is that the total additional cost for personnel and computer equipment will be upwards of $10 million."

The Chief Justice called upon the American Bar Association to take immediate action to urge Congress to provide increased funds for personnel and equipment for the nation's federal courts in order to implement the Speedy Trial Act. In addition, he called upon the American Bar Association to assist in correcting "the very inequitable treatment of federal judges' salaries through an immediate 20 percent increase in salaries and prompt establishment of a procedure to maintain them on an automatic annual cost of living basis, such as now applies to the career civil service."

The Chief Justice also recommended that the federal judicial system:

- Eliminate mandatory appeals to the Supreme Court, allowing emergency cases to be expedited;

UPI PHOTO

The Chief Justice addressing the ABA's mid-year meeting

- Sharply restrict the 'diversity jurisdiction' of federal courts;
- Expand the authority of federal magistrates, thereby relieving pressures on federal judges;

(See ADDRESS pg 2)

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(ADDRESS from pg 1)

- Create a pool of federal judges for emergency assignment to various district courts.

Chief Justice Burger added that Bar Association aid was needed on other matters, including:

- Better training for public defenders and lawyers on the staff of United States Attorneys;
- Strengthening disciplinary procedures for lawyers' courtroom conduct and private dealings with clients;

The Chief Justice applauded a 1970 Report of the ABA Special Committee on Evaluation of Disciplinary Enforcement chaired by Justice Tom C. Clark and the establishment of the Center for Professional Discipline, and he urged representatives of state and local bar associations to implement the Committee's recommendations.

GAO CALLS FOR COMPLETE CHANGE IN JUDICIAL PAY PROCESS

In a report to Congress February 25, the Comptroller General of the United States, Elmer B. Staats called for immediate and fundamental changes in the pay setting processes for officials in the Executive, Legislative, and Judicial branches of government.

The Comptroller General told Congress that "We believe early action should be taken to enact legislation to modify the procedure for adjusting top executive, legislative, and judicial salaries to keep these adjustments more nearly in line with the comparability adjustments provided for career employees.

Here are key excerpts from the Comptroller General's report. **(The full text of the report is available from the Federal Judicial Center Information Service.)**

"Effective Government does not just happen. It has to have good people run it. The Government must obtain and retain the most capable professional and managerial people to effectively manage Federal programs. . . . It is crucial that reasonable and equitable pay levels be achieved and maintained for top officials running the Government's huge, complex operations."

" . . . The situation is becoming untenable . . . Fundamental changes are needed in the pay setting process for officials in the Executive, Legislative, and Judicial branches."

" . . . A mechanism to adjust top officials' salaries more frequently and to maintain equitable pay relationships should provide for (1) an orderly, automatic annual adjustment, when warranted, and (2) appointment of an independent commission to periodically examine appropriate pay relationships in depth and report its findings and recommendations to the President and the Congress."

" . . . We strongly recommend that the Congress enact immediate legislation to reform the salary adjustment process for top officials. The new process should provide that:

- The salaries be adjusted annually, beginning this year, on the basis of either the annual change in the cost-of-living index or the average percentage increase in GS salaries.
- An independent commission periodically review and evaluate the relationships between top officials' pay levels and between such levels and GS pay levels based on the relative responsibilities between and among such positions. The commission should report its findings and recommendations to the President and the Congress.

" . . . Though Federal judicial salaries have remained unchanged since March 1969, salaries of State chief judges have increased 44.2 percent. In 1969 only New York State paid a chief judge more than a Federal district judge. In 1974, 20 States compensated judges at rates equal to or greater than the Federal salary."

Bulletin

Top officials of the three branches of government met in the White House March 10 to explore the problems of judicial salaries, which have been frozen since March 1969.

The meeting was called pursuant to a letter from the Chief Justice, who set out in his letter the problems which have been created by the six-year freeze on judicial salaries and the failure of Congress to act on the need for 65 additional judges recommended in a 1972 study.

Attending the meeting were the President; The Chief Justice; Senator Mansfield, Majority Leader of the Senate; Senator Hugh Scott, Minority Leader of the Senate; Carl Albert, Speaker of the House; John J. Rhodes, Minority Leader of the House; Edward H. Levi, Attorney General of the United States; James T. Lynn, Director of the Office of Management and Budget; William T. Coleman, Secretary of Transportation; John O. Marsh, Director of Congressional Liaison; and Phillip W. Buchen, Counsel to the President.

The Chief Justice outlined in detail the threat to the preservation of a strong and independent judiciary if prompt remedial action is not taken. The President directed the Director of the Office of Management and Budget to meet with the leadership of the House and Senate Post Office and Civil Service and Judiciary Committees to explore feasible alternatives.

The meeting lasted for approximately one hour, after which House Speaker Carl Albert was quoted by the press as saying that the Chief Justice "made a convincing case" and that Congressional leaders viewed it sympathetically.

APPELLATE CONFERENCE MARKED BY INNOVATION

U.S. News Service

Gathered during break at Appellate Conference in March are l. to r. FJC Director Judge Walter E. Hoffman, (E.D.Va.), Conference Chairman Judge Ruggero J. Aldisert (CA-3); Planning Committee member Judge J. Braxton Craven, Jr. (CA-4); panelist, Professor Herbert Weschler, Columbia University Law School; Planning Committee member Judge Wade H. McCree, Jr., (CA-6); and Planning Committee member Chief Justice Roger Traynor, Supreme Court of California (Retired)

A new concept in continuing judicial education was introduced March 11-14 at the Federal Judicial Center's conference, "The Nature of the Judicial Process: Federal Appellate Judges."

Whereas past programs have been geared to alerting both district and appellate judges to procedural and managerial aspects of the courts, this conference, more substantive in nature, was an attempt to expose the conferees, 23 U.S. Circuit Judges and one Court of Customs and Patent Appeals Judge, to a programmed examination of judicial decision making at the appellate level.

In the words of Judge Ruggero J. Aldisert (CA-3), Conference Chairman and FJC Board member, this program addressed itself to the "nuts and bolts of judging."

For over a year the planning committee worked to assemble an outstanding "faculty" to insure the program's superior content.

The four-day conference provided written and oral presentations by outstanding state and federal jurists and legal scholars including the revered Chief Justice Roger Traynor, (Sup. Ct. Calif., Ret.).

All members of the faculty shared a quality of background marked by a wealth of experience in the evaluation of the appellate decision making process, as well as an active relationship to the legal profession.

To assure maximum discussion of the provocative and divergent views of the speakers, a format was utilized whereby formal presentations of varying themes and theories were followed by free-wheeling question and answer periods.

Highlights of the conference included panel discussions on:

- The "Nature of Judge-Made Law" where moderator Judge Alfred P. Murrah (CA-10) was joined by panelists Justice Robert Braucher of the Supreme Judicial Court of Massachusetts, Erwin B. Griswold, former Solicitor General of the U.S., and Justice Albert Tate, of the Supreme Court of Louisiana.
- "Precedent and Policy", where moderator Judge Aldisert was joined by Chief Justice Roger Traynor, and Professor Robert E. Keeton, Harvard University Law School.
- "Consumers of Justice" led by Professor Daniel J. Meador of the University of Virginia Law School.
- "Procedures to Reach Decisions," moderated by Judge J. Braxton Craven, Jr., (CA-4) who was joined by panelists Justice Tate, Professor Herbert Weschler, Columbia University School of Law and Director of the American Law Institute and Professor Maurice Rosenberg of Columbia University School of Law.
- "The Review Function" was moderated by Judge Edward D. Re, U.S. Customs Court, who was joined by panelists Professor Kenneth Davis, University of Chicago School of Law, Chief Justice Traynor and Professor Rosenberg.
- "The Concept of Federalism—1975" with moderator Professor Charles A. Wright, University of Texas School of Law sharing the platform with Professor Paul J. Mishkin of the University of California, Professor Paul Bator, Harvard Law School and Professor Bernard Ward, University of Texas.
- ''The View from the State Courts" moderated by Judge Griffin B. Bell, (CA-5) followed. His panelists were Justice Samuel J. Roberts, Supreme Court of Pennsylvania, Chief Justice Joseph Weintraub, Supreme Court of New Jersey (Retired), Justice Braucher and Professor Robert A. Leflar, University of Arkansas School of Law.
- "Federal-State Abrasions; federal injunctions directed to state judges", moderated by Judge Craven with panelists Judge James B. McMillan (W.D. N.C.) and Judge Frank W. Snepp of the Superior Court of North Carolina.
- "The October 1973 U.S. Supreme Court Term—Its Impact on Jurisdiction and Practice" with Professor Wright as the moderator and panelists Professor Ward, Professor Bator and Professor David W. Louisell of the University of California.
- "Appellate Judicial Opinions", led by Professor Leflar.

Judge Walter E. Hoffman, FJC Director, challenged the conferees to debate as fully as possible the issues raised and critically evaluate the program overall, so that similar conferences might benefit from their insightful suggestions.

The judges questioned whether the swelling of their dockets, often with new kinds of cases, has resulted in some part from an abdication of constitutional responsibilities by the legislative and executive branches. (See APPELLATE pg 4)

(CONFERENCE pg 3)

Many other questions arose prompting lively exchanges such as: "Do appellate courts in effect legislate and to what degree? How far should courts go to determine and carry out legislative intent? Do judges decide for the litigants alone or to establish precedent also? Do judges find or create law? Should a court apply a judgment prospectively or retroactively and how does it arrive at the decision? What is the role of panelization in decision making? What is the societal role of the federal courts and how do they relate to state court functions?"

Examined also were the problems encountered in opinion writing and the impact on the appellate courts of the U.S. Supreme Court decisions from the 1973 term, with special consideration given to the future of class actions.

ure that this conference had stressed substantive law.

A special visit was made by Chief Justice Burger who stressed the importance of the conference as a new threshold in continuing judicial education. He had high praise for Judge Aldisert and the members of his committee for their thoughtful and innovative approach in planning the program. He noted that the judiciary had reached the "collective maturity" to realize judges must continue to learn.

He recommended the practice of interchange between members of the trial and appellate bench so each could view the particular problems facing the other. To this end he commended for the consideration of the circuit judges setting aside time to sit in the district courts.

The Chief Justice spoke also of

Participating appellate judges applaud following one of the panel discussions at the March Conference.

In remarks concluding the conference, Mr. Justice Harry S. Blackmun, United States Supreme Court, stated his awareness of the importance of the position of the appellate courts. This is where the "transformation from legal theory to legal principle takes place," he said.

The Justice noted the constant changes in the law, and praised the flexibility of the U.S. Constitution. He briefed the conferees on the highlights of the 1974 Supreme Court term and expressed his pleasthe relentless efforts from many quarters to bring salaries of judges in line with the hard realities of a fluctuating economy. This is necessary, he said, to preserve the essential high quality of the bench.

In response to Judge Hoffman's request, the detailed critiques of the participants will be used to strengthen the second conference in this series which begins May 13.

Initial reactions were positive and enthusiastic and most judges felt the discussions were handled with scholarship, insight and wit.

CENTER IMPLEMENTS COMPUTER-AIDED TRANSCRIPTION PROJECT

The Center recently implemented the first phase of a computer-aided transcription project. Under the project reporters are provided training and the use of an electronic transcriber for approximately three months.

During the three month period, reporters will be "tuned" to a computer-aided transcription system. The Center will pay for transcription of the first 200 pages using the computer and will subsidize the cost of the next 800 pages. Thereafter, reporters will provide their own equipment and will pay the complete computer transcription fee. Every three months, a new class of reporters will be trained and will be provided equipment and transcript subsidies.

The purpose of the project is to stimulate the use of computer-aided transcription; to determine what percentage of existing reporters can use it effectively; to determine the effect it will have on transcript delays and to determine its economic feasibility for reporters. The project also includes experimentation with several types of transcription services in order to determine what steps can be taken to reduce the costs of computer-aided transcription.

The Center is now working with two companies who provide this service and plans to include two more companies in the project during the coming year. Twelve reporters are now active in the project. It is expected double that number will be involved by May. **(More details on the project will be published in a later issue of** *The Third Branch.***)**

JUDGE MacKINNON REELECTED

Judge George E. MacKinnon (CA-DC) has been reelected by the Judicial Conference to a 3-year term on the Board of Certification. Judge MacKinnon was originally named to fill the Board vacancy after Chief Judge Frank M. Johnson (M.D.Ala.) stepped down at the end of his term.

EBERSOLE APPOINTED FJC DEPUTY DIRECTOR

Judge Walter E. Hoffman announced Board approval of the appointment of Joseph L. Ebersole as Deputy Director of the Center to replace Richard A. Green who recently resigned to return to private practice.

Mr. Ebersole has been a senior staff member of the FJC since 1969 when he was appointed Director of the Division of Innovations and Systems Development. He is a member of the State Bar of California and holds a J.D. from the University of Southern California where he pursued graduate work in psychology prior to law school.

Before joining the Center he spent 14 years in managing research and development organizations. His experience includes positions in quality control, electronic research and development, educational research information systems and judicial administration. Mr. Ebersole was with Rockwell International immediately prior to becoming a member of the Center staff.

Deputy Director Joseph L. Ebersole

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

I am pleased to present to you herewith a brief report on the status of the judicial business of the United States courts of appeals and the United States district courts during the six month period ending on December 31, 1974.

In comparison with the 1st half of 1974, the incoming caseloads in the courts of appeals declined about one percent, but the combined civil and criminal caseloads of the district courts increased thirteen percent and bankruptcy case filings increased one-third.

If current trends in new case filings continue for all of fiscal year 1975, the courts can expect total filings for the full year to be approximately those shown in the following table.

Cases	F. Y. 1974		F. Y. 1975	
Filed	First Half	Full Year	First Half	Full Year
Appeals	8,044	16,436	7,959	16,580
Criminal	18,713	39,754	20,354	43,380
Civil	49,043	103,530	55,952	116,800
Bankruptcy	87,576	189,513	116,644	250,800

The total filings of civil and criminal cases per judgeship in the district courts was 358 in 1974 and 352 in 1973. If the projections shown in the preceeding table prove to be accurate, the 1975 filings per judgeship ratio will reach 400, an increase of nearly 12% over 1974.

U.S. Courts of Appeals

The number of appeals filed during the first six months of the fiscal year 1975 numbered 7,959 compared to the 8,044 filed during the comparable period for 1974. This represented a decline of slightly more than 1%.

Appeals terminated rose by approximately 7% during the first half of the fiscal year as 7,651 appeals were disposed of compared to 7,136 terminated during the first six months of 1974.

Even with the rise in the termination rate the appeals backlog rose to 11,778 as of December 31, 1974 or 3.6% above the 11,364 appeals pending on December 31, 1973.

U.S. District Courts

Civil Cases

During the first six months of the fiscal year 1975 the civil workload continued its upward trend as nearly 56,000 civil actions were filed. This represented an increase of 14% over the 49,043 civil cases filed during the first half of the fiscal year 1974.

The district courts were not able to keep pace with the increased workload. Only 49,750 cases were terminated. This rate of terminations, however, was 7.5% above the rate established during the comparable period from last year. But the backlog of civil cases grew to 113, 432, 6% higher than the pending caseload on June 30, 1974, and 9% above the 104,101 cases pending on December 31, 1973.

The number of civil cases pending three years or more (excluding land condemnation) rose by more than 10% during the first half of the fiscal year 1975. As of December 31, 1974, the backlog of three year old cases was 8,112—representing 7.3% of all pending civil cases. This was an improvement over a year ago when the percentage of civil cases three years or older was 7.6%.

Criminal Cases

The downward trend of the last two years in criminal case filings in the district courts appears to be reversing. During the first six months of 1975, criminal case filings numbered 20,354, nearly 9% higher than the 18,713 cases filed during the first half of 1974. The 20,354 criminal cases included 27,027 separate defendants.

In the criminal case area the district courts were able to keep pace with the increased filing rate. There were 20,546 cases terminated, or 192 more than were filed. Thus the pending caseload dropped nearly 1% during the first half of the year and was down more than 4% below the backlog one year ago. **(Full text available from A.O.)**

Judge Robert H. Schnacke

Judge Ruggero J. Aldisert

JUDGES ALDISERT, SCHNACKE ELECTED TO FJC BOARD

The Judicial Conference of the United States March 7 elected Judges Robert H. Schnacke (N.D. Ca.) and Ruggero J. Aldisert (CA-3) to the Board of the Federal Judicial Center.

Judge Aldisert was originally elected to the Board in 1972 to fill the unexpired term of Chief Judge Frank M. Coffin when he was elevated to the Chief Judgeship of the First Circuit and was therefore ineligible to serve on the Board. Judge Schnacke is replacing Chief Judge Adrian A. Spears of the U.S. District Court of the Western District of Texas whose term has expired.

Judge Schnacke was appointed United States District Judge for the Northern District of California on October 15, 1970 and entered on duty October 28, 1970. He attended the University of California, Berkeley, and received a J.D. degree from the Hastings College of Law in 1938. He formerly served in the United States Army, 1942-1946; as Deputy Commissioner of Corporations, San Francisco, 1947-1950; as United States Attorney, Northern District of California, 1958-1959; and as a California Superior Court Judge, 1968-1970.

He is a member of the American Bar Association, the Federal Bar Association, the American Judicature Society, the American Arbitration Association and the San Francisco Bar Association.

AMERICAN BAR ASSOCIATION HOUSE ACTIONS AFFECT FEDERAL JUDICIARY

The 343-member House of Delegates of the American Bar Association held its midyear meeting in Chicago last month, and took formal action on several matters related to federal judges and their courts.

A formal release summarizing all House actions will be published later, but the following is a resume of some pertinent issues acted upon by this body:

- Passed unanimously a Resolution of the Division of Judicial Administration calling on the American Bar Association to "dedicate the efforts of its officers, staff and members on a crisis basis, to obtain affirmative immediate action to increase the compensation of members of the judiciary, state and federal."
- At the request of the Committee on Judicial Selection, Tenure and Compensation, withheld action on the bill introduced by Senator Sam Nunn of Georgia, which would establish a Council on Judicial Tenure with power to investigate claims of misconduct or disability of any judge or justice. The bill was endorsed by the Conference of Federal Trial Judges. Since the subject is being reconsidered by the 94th Congress and since the House endorsed the concept as late as 1972, no further action was deemed necessary until another bill is introduced.
- Withheld action on a resolution requesting ABA approval of the draft of Uniform Rules of Evidence of the National Conference of Commissioners on Uniform State Laws.
- Failed to endorse a resolution of the Special Committee on Federal Practice and Procedure to bar a federal judge from presiding in a non-jury trial of a case when he has presided at a settlement conference in the same case, "except where all parties request in writing that the original judge preside at the trial." Speaking vehemently against the resolution were Lawrence Walsh, incoming ABA President, Albert E. Jenner, Esq., of Chicago, and the Judicial Administration Division Delegate. The Board of Governors recommended against the Resolution.
- After considerable debate passed a resolution supporting the concept of *voir dire* by counsel as a matter of right in federal, civil and criminal cases. Both the Council of the Judicial Administration Division and the Board of Governors recommended against the Resolution.

JUDICIARY TESTIFIES ON BUDGET PROPOSALS

The House Appropriations Subcommittee recently held hearings on the Judiciary budget for fiscal year 1976 and supplemental appropriations for fiscal 1975.

Judge Carl A. Weinman, (S.D. Oh.) Chairman of the Judicial Conference Budget Committee, his colleague, Chief Judge Robert E. Maxwell (N.D. W.Va.); and Rowland F. Kirks, A.O. Director, testified concerning requests for circuit and district courts and the appropriation requests for the A.O. Judge Walter E. Hoffman testified for the FJC.

The proposed increase in budget authority for the circuit and district courts is $21,260,000. Judge Weinmann testified that approximately 50% of the increase was for "pay costs" and other mandatory expenses. The largest budget item is a request for 271 new probation service positions: 155 officers and 116 clerk-stenographers. With the addition of these officers, the average supervision caseload could be reduced to a ratio of 50 to 1.

The budget included a request for 109 additional deputy clerks, 24 for the circuit courts and 85 for the district courts. This was based on the ratio of 1 deputy clerk per 75 filings for the courts of appeals and 1 deputy clerk per 100 civil and criminal filings for the district courts, including filings equivalents for other activities. Twenty deputy clerks were requested to establish central traffic violations bureaus in districts which do not have them.

For the courts of appeals, provisions were made for 9 deputy circuit executives, 9 senior staff law clerks and 18 additional positions for the special legal staff in the Ninth Circuit and various other positions approved by the Judicial Conference. Fifty-four new positions were included for the magistrates system (18 magistrates and 36 clerks) and 41 bankruptcy clerks were included for the bankruptcy system.

Judge Weinman said that during the first half of fiscal 1975, compared with 1974, civil filings rose 14 percent and that if this trend continued, it would present a very serious problem especially since the courts are diverting much of their attention to criminal case backlogs. He pointed out that criminal case filings during the same period were up 9 percent; bankruptcy filings were up 33 percent.

Provisions also have been made for automated legal research services for the courts of appeals and to institute a program for computerized transcription.

The supplemental appropriation requests for fiscal 1975 included $2.5 million to be allocated to district courts to develop and implement plans for speedy trial. Ten million dollars has been requested for pretrial services agencies in ten judicial districts to be utilized until September 30, 1976.

Supplemental funds were requested by the FJC to develop and install computer systems (COURTRAN II) in 25 district courts to allow them to comply with the requirements of the Speedy Trial Act.

The A.O. requested a supplemental appropriation to provide computer capability for receiving statistical data from courts via teleprocessing. Additional personnel have also been requested by the A.O. to establish pretrial services agencies, operate district court planning groups, analyze speedy trial plans, compile statistical data, provide logistic support, and also provide supporting personnel for bankruptcy judges.

The Third Branch

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

R. HANSON LAWTON SELECTED EIGHTH CIRCUIT EXECUTIVE

Chief Judge Floyd R. Gibson of the United States Court of Appeals for the Eighth Circuit has announced the appointment of R. Hanson Lawton to be the new Circuit Executive for the Eighth Circuit.

Mr. Lawton will assume his duties at the Court's St. Louis, Missouri headquarters March 15.

He comes to the federal judicial system from his position as acting director of the North Central Regional Office of the National Center for State Courts. The regional office, headquartered in St. Paul, Minnesota, serves 12 states.

A native of Ft. Madison, Iowa, he received his B.A. in 1963 from the University of Iowa and his J.D. from the University of Iowa College of Law three years later.

In the past he has served as Court Administrator for the Iowa Supreme Court and as international finance counsel for a general aviation corporation.

Mr. Lawton replaces former Circuit Executive Robert J. Martineau who resigned recently to accept a position as a state court administrator in Wisconsin.

FEDERAL ENFORCEMENT OF SUPPORT ORDERS ENACTED

The Social Services Amendments of 1974, P.L. 93-647, which was signed into law on January 4, 1975, contains a provision for limited federal court enforcement of support orders and provision for garnishment of the salaries of federal employees to enforce their legal obligations to provide child support or make alimony payments.

The provision for enforcement of support orders was added in the Senate, and despite the disapproval on numerous occasions by the Judicial Conference, survived the congressional conference and appeared in the final version.

As enacted, the legislation provides for two means by which support orders may be effectively enforced. Neither really becomes operative until all other state avenues of relief have proven unfruitful.

The Secretary of Health, Education, and Welfare will establish a separate organizational unit in the Department, which will have responsibility for establishment of standards for state programs for locating absent parents, establishing paternity, and obtaining child support. *It will receive applications from states for permission to use the Federal courts to enforce court orders for support against absent parents.*

The application may be granted if the finding is made that another state has not undertaken to enforce the court order of the originating state against the absent parent within a reasonable time, and that utilization of the federal courts is the only reasonable method of enforcing such order.

Section 460 of the Act provides that "The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of HEW under section 452(a)(8) of this Act. [Sec. 452(a)(8) relates to the granting of applications from states to utilize the federal courts.] A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides." While the normal jurisdictional limit does not apply to these actions, the usual requirement of diversity continues to apply.

It must be particularly noted that the act does **NOT** authorize individuals to utilize the federal courts—it authorizes the states to utilize them. This places a very different impact on the legislation.

In order to comprehend this legislation, it is necessary to view it in the context of prior law, which required the states to undertake enforcement of support orders (including cooperation with other states and access to Social Security and Internal Revenue records) against absent parents of children receiving welfare (AFDC). This mechanism was found to be ineffective. State plans appeared to exist only on paper.

The new law will require states to have plans which will be reviewed and audited by the new organizational unit in the Department of HEW. If a state does not have an acceptable program, the Department will be required to impose a penalty of the loss of 5% of the federal matching funds for AFDC payments to that state.

The Senate report points out explicitly that if states must ask for access to federal courts because of failure of a particular state to cooperate or to effectively enforce the Uniform Reciprocal Enforcement of Support Act, "this should also lead the Secretary to question the effectiveness of that State's child support program." These provisions do not take effect until July 1, 1975.

The law also provides for another collection mechanism—through the income tax law. Although this is designed primarily for AFDC cases, where the present parent assigns family support rights to the State as a condition of eligibility for welfare, it will also be available to non-welfare cases, at a fee if the state wishes.

The collection of these sums is to be handled in the same manner as a tax deficiency. Before a state may use the IRS mechanism, it must establish to the satisfaction of HEW that the other process has been diligently pursued, but without success. The above provisions also do not take effect until July 1, 1975.

The new law also provides for garnishment of Federal employees' salaries to enforce legal obligations to provide child support or to make alimony payments. This provision of the law is effective as of January 4, 1975, and the administrative mechanisms are being worked out. The Judiciary payroll is, of course, centralized in Washington, D.C.

Therefore, service of writs of attachment will be made at the Washington office of the Administrative Office, and not upon the individual court offices. Additional information will be provided shortly to all Judiciary personnel regarding procedures under this provision.

ADMINISTRATIVE OFFICE OPPOSES CITY TAXATION OF SENIOR JUDGES

In a formal comment on proposed city taxation regulations, Administrative Office Director Rowland F. Kirks told the Treasury Department that "It is highly questionable whether the pay of a retired federal judge constitutes income "earned" in any municipality since such emolument is payable regardless of any labors performed after retirement, and any such labors performed are voluntary and not the subject of compensation over and above retired pay.

In any event it is my position that the retired pay of a federal judge and of a bankruptcy judge should be exempted from the federal withholding requirements." He also said that the proposed regulations . . . "facially appear to us not to require our withholding of city

34 experienced District Judges returned to the Center in February to sharpen their case processing skills

income taxes for most senior, retired, federal judges, the early clarification and slight broadening of the regulations to provide an exception as to all senior (retired) judges seems necessary."

In addition, Mr. Kirks said that, " . . . regarding the retirement characteristics and voluntary work status of all senior United States judges, about which city revenue agents may not be cognizant. I suggest language . . . which would make clear to city revenue agents that all senior United States judges would not have city taxes withheld on a regular basis by our Office, and I also suggest language . . . which would exempt the Administrative Office of the United States Courts from withholding city taxes on retired bankruptcy judges."

Mr. Kirks also stated that, "There are presently about 126 retired Federal judges who are performing some substantial voluntary services, from which any one of them could withdraw at any time without affecting his full retirement income.

"In summary", Mr. Kirks said, "a senior judge who volunteers to perform services in the same state for no additional salary should be considered as a retired person for purposes of the withholding agreements. Also, a senior judge who has an "official station" within a municipal taxing jurisdiction should receive the same withholding treatment as a judge who has an "official station" outside a taxing jurisdiction.

(Full text available from A.O.)

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.

- Advocacy as Craft—There is More to Law School Than a "Paper Chase". Irving R. Kaufman. 28 Sw. L. J. 495 (Summer 1974).
- American Implications of Sentencing by Computer. Roberta L. Jacobs. 4 Rutgers J. Computers & Law 302 (1975).
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- Justice in Sentencing: Papers and Proceedings of the Sentencing Institute for the 1st and 2d U.S. Judicial Circuits. Leonard Orland. Foundation Press, 1974.
- The Purpose of Due Process: Fair Hearing or Vehicle for Judicial Review? Wayne McCormack. 52 Texas L. Rev. 1257 (Nov. 1974).
- The Role of the Jury in Choice of Law. Willis L.M. Reese, Hans Smit, George B. Reese. 25 Case W. Res. L. Rev. 82 (Fall 1974).

U.S. JUDICIAL CONFERENCE HOLDS MARCH MEETING

For two full days the Judicial Conference of the United States met at the Supreme Court to discuss a myriad of issues and problems facing the federal courts. A comprehensive report will be issued by the Administrative Office later.

Some pertinent actions taken by the Conference were:

- Discussed at length the implications of the Speedy Trial Act.
- Assigned to the Conference's Criminal Law Committee, consideration of the implementation of Title I of the Speedy Trial Act and to the Probation Committee Title II.
- Discussed S.1, the bill to revise the federal criminal code now pending in Congress.
- Endorsed the concept of subjecting active federal judges to review by a disciplinary council of federal judges as a response to complaints from outside sources. A bill to this effect was introduced in the 93rd Congress (2d Sess.) by Senator Sam Nunn of Georgia but was not acted upon before adjournment.
- Made two four-year appointments to the Board of the Federal Judicial Center: Judge Ruggero J. Aldisert (CA-3), and Judge Robert H. Schnacke (N.D. Ca.)

(see story pg 6)

- Reappointed Judge George E. MacKinnon (CA-D.C.) to a three-year term on the Board of Certification.

AO and FJC Calendar

April 8-10 In Court Management Training Institute, Washington, D.C.

April 17-18 In Court Management Training Institute, New York, New York

April 21-22 In Court Management Training Institute, New York, New York

April 21-22 Judicial Conference Civil Rules Committee, Washington, D.C.

April 24-25 In Court Management Training Institute, New York, New York

April 27-30 Fifth Circuit Conference, Orlando, Florida

May 12-14 First Circuit Conference, Newport, Rhode Island

May 12-14 Seventh Circuit Conference, Chicago, Illinois

May 13-16 Conference for Circuit Judges, Washington, D.C.

May 15-17 National Council of U.S. Magistrates, Colorado Springs, Colorado

May 19-20 Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.

July 21 Ninth Circuit Conference, San Francisco, California

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pa.

September 18-19 Judicial Conference of the United States, Washington, D.C.

PERSONNEL

Appointment

Edward N. Cahn, U.S. District Judge, E.D. Pa., January 31

J. Smith Henley, of Arkansas, U.S. Circuit Judge for the Eight Circuit, March 13

Stanley S. Brotman, of New Jersey, U.S. District Judge for the District of New Jersey, March 13

Elevation

Thomas E. Fairchild, Chief Judge, U.S. Court of Appeals, 7th Circuit February 7

Nomination

Anthony M. Kennedy, U.S. Circuit Judge, 9th Circuit, March 3

Dick Yin Wong, of Hawaii, U.S. District Judge for the District of Hawaii, March 17

Robert O'Conor, Jr. of Texas, U.S. District Judge for the Southern District of Texas, March 17

Deaths

Charles D. Lawrence, Judge, U.S. Customs Court, February 12

Leon R. Yankwich, U.S. District Judge, C.D. Ca., February 9

THE THIRD BRANCH

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BILL INTRODUCED TO RAISE JUDICIAL SALARIES

Congressman Thomas F. Railsback, a ranking member of the House Judiciary Committee, April 17 introduced legislation which would raise judicial salaries by 20 percent.

Under Congressman Railsback's bill, salaries of judges of the U. S. Courts of Appeals would be increased to $51,000 per year, those of district court judges to $48,000 per year, and Justices of the Supreme Court to $72,000 per year.

Earlier, Representative Joshua Eilberg introduced H.R. 2191 which provides for a 15 percent increase in judicial salaries.

Full-time Bankruptcy Judges would go to a maximum of $41,000 yearly and part-time Bankruptcy Judges to $21,000 per year.

Salaries of full-time magistrates would also go to $41,000 yearly, and those of part-time magistrates to $21,000 yearly. Trial judges (Commissioners) of the Court of Claims would receive $41,000 per year while judges of both the Court of Customs and Patent Appeals and the Court of Claims would receive $51,000 yearly.

(Note: Salaries of Bankruptcy Judges and Magistrates are subject to administrative determination of the Judicial Conference of the U.S.)

Judges of the Customs Court would receive $48,000 per year.

The Railsback bill, H.R.6150, would also eliminate direct appeal to the Supreme Court from three-judge courts in all cases other than those involving civil rights and reapportionment.

In addition, the bill would also expand the jurisdiction of federal magistrates to allow them to conduct evidentiary hearings and make recommendations for the disposition of applications for post-trial relief made by individuals convicted of criminal offenses and prisoner petitions challenging conditions of confinement.

Finally, the Railsback bill would protect jurors from loss of employment as a result of their service as federal jurors.

Specifically, the bill states that "no employer shall discharge or threaten to discharge, intimidate, or coerce any employee by reason of such employee's jury service, attendance, or scheduled attendance in connection with such service, in any court of the United States."

Here are the salary increases called for by Representative Railsback's Bill:

The Chief Justice	74,500
Associate Justices	72,000
Circuit Judges	51,000
District Judges	48,000

NEW TAX WITHHOLDING RATES EFFECTIVE MAY 1

The Internal Revenue Service has issued new percentage method withholding tables reflecting the reduced amounts of income tax to be withheld from employees' wages as required by the Tax Reduction Act of 1975 which was enacted March 29th. The tables are effective for wages paid on and after May 1, 1975.

Income tax withholding will be reduced for the remaining eight months of 1975 as a result of the reductions in income tax provided by the new law. The reductions in tax withholding result primarily from:

- An increase in the low income allowance from $1,300 to $1,600 for a single person (or head-of-household), and $1,900 for a married couple filing a joint return.

- An increase in the standard deduction from 15 percent to 16 percent, with the maximum increase from $2,000 to $2,300 for a single person (or head-of-household), and to $2,600 for a married couple filing a joint return.

(See NEW TAX pg. 2)

JUDICIAL CONFERENCE APPROVES LEGISLATION CREATING JUDICIAL TENURE COUNCIL

The Judicial Conference of the U.S. at its March meeting approved "in principle" legislation which would create a council of judicial tenure to deal with allegations of mental or physical disability or serious misconduct involving federal judges.

This concept was proposed by Senator Sam Nunn of Georgia in a Bill, S.1110, which he introduced on March 7.

JUDICIAL CONFERENCE RESOLUTION

"With respect to S.4153, 93rd Congress, which would establish a Council on Judicial Tenure in the Judicial Branch of the Government:

"(a) Subject to the suggestions expressed in subdivisions (b) through (f) (it is resolved) that the Conference endorse in principle the legislation proposed by S.4153 but not the specific provisions of the bill;

"(b) That any reference to Justices of the Supreme Court be eliminated inasmuch as sufficient means exist through the impeachment process and further that it would be inappropriate for judges of the inferior courts to pass judgment on the action of a Justice of the Supreme Court; moreover the Judicial Conference has no jurisdiction over the Supreme Court;

"(c) That neither a judge nor a Justice of the United States may be removed from office except by the impeachment process;

"(d) That following a hearing before a commission of the type proposed in S.4153, following review by the Judicial Conference of the United States and further review by the Supreme Court of the United States, mandatory or involuntary retirement of a judge for physical or mental disability (including habitual intemperance) may be ordered, with the judge so charged relieved of his judicial duties:

"(e) That a judge similarly may be mandatorily (or involuntarily) retired for serious misconduct and he may be relieved of any further judicial duties; and

"(f) That the censure of a judge following a hearing before such a commission with review and appeal may be imposed as a less severe sentence than mandatory or involuntary retirement."

S. 1110 (NUNN BILL)

"A Justice or judge of the United States may be removed from office or censured in accordance with the procedures established under this chapter upon a finding by the Judicial Conference of the United States that the conduct of such Justice or judge is or has been inconsistent with the good behavior required by Article III Section 1 of the Constitution."

"Whenever any Justice or judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a majority of the Judicial Conference of the United States finds, subject to the requirements of Section 379 of this Title, that such Justice or judge is unable to discharge efficiently one or more of the critical duties of his office by reason of a permanent mental or physical disability, the Conference shall certify the disability of such Justice or judge and issue an order removing such Justice or judge from active service. Habitual intemperance that seriously interferes with the performance of any one of the critical duties of a Justice or judge shall be deemed to be a permanent disability for the purposes of this subsection. Such Justice or judge shall then be involuntarily retired from regular active service and the Conference shall send notice of its action to the President.

"(c) The President shall, by and with the advice and consent of the Senate, appoint a successor to any Justice or judge retired involuntarily under the provisions of subsection (b) of this section. Whenever such successor shall have been appointed, the vacancy subsequently caused by the death or resignation of the Justice or judge involuntarily retired shall not be filled."

CA-10 ISSUES NEW RULES ON UNPUBLISHED OPINIONS

Chief Judge David T. Lewis (CA-10) has advised *The Third Branch* of his Circuit's new Local Rule which permits citing unpublished opinions.

Rule 17(c) states in part, " . . . unpublished opinions, although unreported and not uniformly available to all of the parties, can nevertheless be cited, if relevant, in proceedings before this or any other court. Counsel citing same shall serve a copy of the unpublished opinion upon opposing counsel."

Rule 17(f) states: "When an opinion has been previously published by a District Court, any administrative agency or the Tax Court, this Court's opinions, memorandum, or order disposing of the appeal or petition shall be designated for publication. If a majority of a panel has written a disposition in such a case which would not ordinarily be published, a separate page shall be added to the disposition designating for publication only the dispositive judgment or order of the court."

(NEW TAX from pg. 1)

- A new tax credit of $30 for the taxpayer, his or her spouse, and each dependent.
- A new earned income tax credit with a maximum credit of $400, which phases out completely when income reaches $8,000.

The Internal Revenue Service said three categories of employees, in particular, should check their withholding under the new tables. If necessary, a new Form W-4, "Employees Withholding Allowance Certificate," should be filed with your payroll certifying officer.

The first category includes a great majority of taxpayers who have been overwithheld in the past. This occurs most frequently in situations in which there is one wage earner and the taxpayer is not claiming all the withholding allowances to which he or she is entitled, or has four or more exemptions.

Pictured above are, left to right, Commission member Emanuel Celler, Chairman Roman L. Hruska and Judge Roger Robb (CA-DC). The Commission on Revision of the Federal Court Appellate System held hearings this month on its proposals to create a new National Court of Appeals and limiting some appellate procedures such as oral argument and opinion writing.

These taxpayers will continue to be overwithheld under the new tables, and should consider filing a new Form W-4, claiming additional withholding allowances.

The second category is married couples, when both spouses are employed. The withholding tables give each spouse the greater of the low income allowance or the percentage standard deduction. This may cause them to be underwithheld because, on a joint tax return, the couple is entitled to only one low income allowance or percentage standard deduction.

The third group which should review its withholding includes employees who now claim additional withholding allowances due to large itemized deductions. Under the new withholding rules, some of these employees may no longer be entitled to as many withholding allowances for large itemized deductions as they are now claiming.

A new table will appear on the new Form W-4 to enable employees to determine the number of withholding allowances for large itemized deductions to which they are now entitled. New Forms W-4 should be available from your payroll certifying officer the last week of April.

To compute the amount of income tax to be withheld, multiply the sum of $62.50 (if paid monthly) or $28.80 (if paid biweekly) by the number of allowances claimed on Form W-4, subtract that sum from the gross wages and determine the amount to be withheld from the appropriate payroll period table.

The Third Branch

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LAWYER PAYS COSTS FOR FAILURE TO APPEAR

U.S. District Judge Herbert H. Stern, concerned about what he considered a brazen transgression against his Court, issued an Order to Show Cause why a New Jersey lawyer should not be held in contempt of court when he failed to appear for trial in a million dollar personal injury case he had filed on behalf of a client. The same lawyer had previously failed to appear in the same case at a pretrial conference before a U.S. Magistrate.

At the hearing on the Show Cause Order the Judge agreed to dismiss the charge when counsel agreed to pay the costs incurred to call 21 prospective jurors, their transportation to the court at ten cents a mile, and $150 incurred by opposing counsel. Counsel for the plaintiff explained later it was the result of a mixup in his office.

Also criticized by Judge Stern was the ultimate appearance of an associate of the lawyer who was woefully unprepared. Another New Jersey attorney, appointed by the Court as a special prosecutor to investigate the case, asked to be relieved of the appointment.

JUDGE MURRAH HONORED BY CIRCUIT EXECUTIVES

The Circuit Executives paid former Federal Judicial Center Director Alfred P. Murrah a unique honor recently by passing a resolution expressing "their greatest admiration and deepest appreciation for his wise and understanding guidance in making the Office of the Circuit Executive, in the United States Courts of Appeals, a functioning reality and a fulfilling and rewarding experience for all of us."

The Circuit Executives' resolution said that "as the Director of the Federal Judicial Center, Judge Murrah was a moving force behind the enactment of the Circuit Executive Act, and in his Chairmanship of the Circuit Executive Certification Board was an important influence in the certification of each Circuit Executive".

NATION'S PRESS SUPPORTS FED

In the past year, the plight of the federal judiciary has received attention in the nation's press. There has been extraordinary editorial support for an immediate and substantial increase in the salaries of all federal judges. This is especially significant in light of the present economic situation. The newspapers object to protracted inequity and are concerned about preserving a strong judiciary. The 42 per cent inflation since the previous salary increase in 1969 has precipitated an unprecedented number of resignations for salary reasons. The newspapers think that higher pay for federal judges is a small price to pay to insure the continued excellence of the federal bench.

Editorials supporting a pay increase have come from an impressive array of newspapers, as varied in political outlook as they are in geographic location. Fifty-one (51) newspapers in twenty-six (26) states and the District of Columbia have published favorable editorials, including many with major national circulation and readership such as the *New York Times*, the *Washington Post*, the *Chicago Tribune*, the *Wall Street Journal*, and the *Los Angeles Times*, as well as regional papers with intermediate circulations from diverse states such as Alabama, Arizona, Colorado, Indiana, Nebraska, New Mexico, Tennessee and Texas. The total circulation of all fifty-one (51) newspapers is nearly 15 million with an estimated readership of about 50 million.

Nationally syndicated articles, including ones by Evans and Novak, Linda Mathews, Richard Spong and Robert S. Allen, focusing on the pressing need for congressional approval of higher salary levels, have also appeared in other newspapers throughout the nation. The Evans and Novak article, for instance, was published in about 250 newspapers. Further discussion of the salary question has appeared recently in the national news magazines, *Time, U.S. News and World Report* and *Newsweek*.

Recent favorable editorials from many other newspapers in response to the recent Report on the State of the Judiciary by the Chief Justice have not yet been gathered and incorporated in this compilation. Nevertheless, the assembled brigade of editorial copies and excerpts indicates that a pay raise for federal judges is strongly supported by a wide spectrum of the nation's press.

JUDICIAL SALARIES: EDITORIAL COMMENT

"Congress . . . must give top priority to the salary question. Its refusal to increase the salaries of high-level government officials since 1969 is now beginning to cripple the judiciary. . . . A continuation of the present situation is going to force more judges, particularly younger ones, off the bench and make it increasingly difficult to find first rate replacements."

WASHINGTON POST (Jan. 1, 1975)

"We favor a cut, rather than further increase, in total government spending. But one of the dangers in the government's trying to use its budget to reform society is that truly essential government services may be starved. The Judicial Branch, dependent on the other two branches for its budget, is particularly vulnerable and particularly deserving of protection."

WALL STREET JOURNAL (Jan. 31, 1975)

"The Constitution specifically prohibits Congress from lowering the salaries of judges while they are in office; inaction, however, accomplishes precisely that result and in so doing violates the spirit if not the letter of the Constitution."

ALABAMA JOURNAL (Dec. 24, 1974)

"The raise was justified. It should be reconsidered and acted upon favorably. The nation cannot expect to attract and hold the best qualified men for the federal judiciary if they are not adequately compensated."

ST. LOUIS GLOBE-DEMOCRAT (Dec. 25, 1974)

"The federal judiciary certainly stands in need of more adequate compensation if competent judges are to be retained."

MIAMI HERALD (Feb. 13, 1974)

"The country wants its best lawyers on the bench, not those who would be willing to work for a substandard salary. Congress should realize this and act as soon as possible to raise the judicial pay scale."

OMAHA WORLD-HERALD (Mar. 20, 1974)

" . . . without sufficient financial incentive to keep good judges and attract qualified people to the federal bench, the quality of justice will ultimately suffer."

HOUSTON POST (Jan. 8, 1975)

"If the average salaried American in private enterprise had not received a raise through these five years of high inflation he would be screaming bloody murder."

SAN FRANCISCO EXAMINER (Dec. 16, 1974)

" . . . the federal judges' pay lag obviously has become a serious concern. In the nation's interest, as well as the judges, the inequity ought to be eliminated—and without undue delay."

NORFOLK LEDGER-STAR (Jan. 13, 1975)

"Lawyers of high ability have traditionally made substantial financial sacrifices to serve on the Federal bench. But the combination of soaring inflation and Congressional inaction—even to take care of increases in the cost of living—has imposed a double sacrifice on those upon whom the country depends so heavily for the quality of justice. . . . The need for Congressional action is urgent."

(June 15, 1974)

"The injustice of Federal judicial pay scales is obvious when measured against the salaries of other Federal employes. . . . Federal judgeships are for life; fairness, as well as maintenance of quality, demands that they receive equitable compensation."

NEW YORK TIMES (Dec. 31, 1974)

RAL JUDGES' SALARY INCREASE

"Congress has held back increases for the judges with unconscionable shortsightedness—unfairly and improperly linking proposed raises for Congressional and judicial salaries. Each should be decided on its merits; and the judges should come first."

NEW YORK TIMES (Feb. 6, 1975)

"Letting experienced jurists get away and failing to attract outstanding lawyers to the bench (due to low salaries) is extremely short-sighted public policy. Eventually it will have a detrimental impact on the quality of the justice in this country."

KANSAS CITY STAR (Dec. 9, 1974)

" . . . Chief Justice Burger has called attention to a problem which Congress can continue to ignore only at great peril to the quality of justice in the federal courts—judicial salaries. . . . how many more resignations will it take before Congress moves to save the federal bench from wholesale depletion of first-rate judges?"

PHILADELPHIA INQUIRER (Jan. 2, 1975)

"If the federal judicial system is to be saved from severe and lasting damage, Congress must act quickly to raise the pay of federal judges."

PHOENIX GAZETTE (Jan. 15, 1975)

"In these times we would like to see the government hold the line on expenses but there are exceptions and one is the case of the federal judges. . . . We need good judges as seldom before and we're not going to be able to recruit them for the federal bench under the present pay scale."

ATLANTA JOURNAL/CONSTITUTION (Jan. 19, 1975)

"By rights, federal judges should receive salary hikes of about 50 percent."

EL PASO TIMES (Dec. 23, 1973)

"More money for judges is clearly in order. The alternative—a federal bench of gradually declining competence—would be infinitely more costly."

(June 11, 1974)

"Congress will not find it politically popular to raise judicial salaries in the midst of recession and rising unemployment. But the alternative is a certain decline in the quality of justice in the federal courts. In the end . . . that could prove to be far more costly."

LOS ANGELES TIMES (Jan. 1, 1975)

"Clearly, Senate refusal to permit any judicial salary increases since 1969 is out of step, and jeopardizes the quality of justice being demanded by the people. . . . Various pay proposals have been advanced. But one which seems fair is a $10,000 increase which would promptly overcome the ravages of inflation for the past five years, and make federal judgeships more inviting for qualified appointees."

ARIZONA REPUBLIC (Jan. 12, 1975)

"The Congressional parsimony is as unrealistic as it is unfair, particularly in light of the sharp rise in the cost of living in recent years; and not all judges have been able to grin and bear it."

PHILADELPHIA EVENING BULLETIN (Jan. 15, 1975)

" . . . a case can be made for the increases, especially those for judges and civil service officials. If the raises are rejected, there will not be another chance for them until 1977, meaning that all those concerned would be without a raise for eight years. Few wage earners can claim to have suffered that indignity. . . . it would be a shame if the legitimate needs of the judiciary and the executive were sacrificed because of the lawmakers' political fears."

CHICAGO TRIBUNE (Feb. 11, 1974)

"Federal judges are seeking a pay increase, and the Chronicle believes an adjustment is in order. . . . We should economize on government at every level; at the same time, we need to be realistic. When the pay a judge receives is not enough to attract highly qualified individuals, it is the public that will be the loser."

HOUSTON CHRONICLE (Jan. 12, 1975)

"All persons interested in the federal courts and the quality of justice they dispense should be aware of the urgent need for public support for federal judicial salary increases."

JUDICATURE (Dec., 1973)

"Burger makes a valid point about judicial pay, which has been frozen at $40,000 for nearly six years—despite the soaring cost of living and six salary increases for other federal employees."

MILWAUKEE JOURNAL (Jan. 6, 1975)

"We think that opponents of pay hikes for U.S. judges are wrong. . . . Federal judges have not had a pay raise in five years, a period when other federal employees have received pay raises averaging 38 percent, and the cost of living has risen 42 percent."

CLEVELAND PRESS (Jan. 8, 1975)

"Judges, like other top officeholders in the federal government, have not received salary increases since 1969. That is simply not fair, and it is beginning to take a toll in the quality of the federal judiciary."

WASHINGTON POST (Feb. 27, 1975)

"Congress . . . ought to consider swiftly the Chief Justice's modest requests for the wherewithal to run a competent federal court system."

CHRISTIAN SCIENCE MONITOR (Feb. 26, 1975)

"However, the question of quality of the Federal judiciary itself must be addressed immediately by the Congress. The problem is twofold. There are not enough Federal judges and those already on the bench are underpaid."

NEW YORK TIMES (Mar. 3, 1975)

"Our attitude toward increasing government spending and expanding public payrolls is a matter of record. We favor cuts, rather than increases, in government spending and hiring. But it is quite clear from the record that the federal judiciary has been left under-manned and under-paid."

BOSTON HERALD/AMERICAN (Feb. 14, 1975)

"Congress ought to set legislation in motion without delay to increase both the salary and the number of federal judges."

WASHINGTON STAR (Feb. 28, 1975)

"A nation of laws is going to find itself with some bad law if the situation that exists today becomes more acute."

MIAMI HERALD (Feb. 26, 1975)

"The federal judiciary is past due for a sizeable pay raise, and the 94th Congress should grant the raise as a priority."

SAN ANTONIO LIGHT (Jan. 6, 1975)

PLAN TO BAR INCOMPETENT LAWYERS FOUND TO GAIN SUPPORT

By WARREN WEAVER Jr.
Special to The New York Times

ACAPULCO, Mexico, March 10—Chief Justice Warren E. Burger's campaign to bar incompetent lawyers from practicing in Federal courts appeared today to be winning growing, if not overwhelming, support from some of the most experienced and successful trial lawyers in the nation.

The goal would be achieved in part through the adoption by the Federal courts of a set of minimum requirements for education and experience that any lawyer must meet before he can represent a client there. Officials of the American College of Trial Lawyers reported today that the idea was making slow but steady progress.

Spearheading a parallel local movement to improve the quality of courtroom representation is Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit, who told the spring meeting of the trial lawyers' group today that the bar was not doing enough to weed out its incompetent members.

A survey of the Southern District of New York made at Judge Kaufman's direction revealed that 20 to 25 per cent of the lawyers appearing in court were regarded as incompetent by the Federal judges before whom they appeared, another speaker reported.

'Minimal' Rules Sought

Robert L. Clare Jr., a New York City lawyer who conducted the survey, said that his committee was recommending that "extremely minimal" rules be adopted for qualifying trial lawyers in the Second Circuit, which is made up of New York Connecticut and Vermont.

Marcus Mattson of Los Angeles, who is heading the national study of the same problem for the College of Trial Lawyers, said that he expected a model set of rules, subject to separate adoption by each Federal district court and appeals court in the country to be ready in less than a year. He indicated they would be similar, if not identical to the Second Circuit code.

Generally, lawyers tend to resist any criticism of judges regarding their courtroom competency, but the American College is a relatively small (2,500) selective organization of experienced practitioners (no less than 15 years), who would presumably have little to fear from the imposition of such standards.

The rules proposed for the Second Circuit by Mr. Clare and his committee would require any lawyer appearing in Federal court on his own to have done the following:

¶Passed courses in procedure, evidence, professional responsibility, ethics, criminal law and trial advocacy, either in law school or afterward.

¶Participated as an associate trial counsel in four cases or been an observer of six.

Mr. Clare told the trial lawyers' meeting, held in the Acapulco Princess Hotel here, of a senior New York trial lawyer who spent a week observing a court in session before he was scheduled to try his case there.

"That's the kind of responsibility we need," he declared. "If we can't instill it, we should enforce it."

Origin in Fordham Speech

In November, 1973, Chief Justice Burger touched off this controversy with a speech at the Fordham Law School, criticizing the capability of some trial lawyers and suggesting that all of them be required to meet a separate set of standards beyond those for general practitioners.

Justice Burger was to have participated in today's discussion of "The Quality of Advocacy," but he sent [word that he] could not leave Washington because "his workload simply caught up with him."

Both Judge Kaufman and Mr. Clare described the heated opposition of law schools to the proposed qualification system. The judge acknowledged that it would raise their costs somewhat, but he noted that Yale Law School spent $2.2-million a year on 600 students while Yale Medical School spent $2.3-million on 400 students.

The rules prepared by the Clare committee for the Second Circuit are being circulated among judges, lawyers, and bar associations for comment. Judge Kaufman said after his speech that his court might adopt them before the district courts within the circuit did.

At the opening session of its three-day meeting, the trial lawyers' group paid tribute to Emil Gumpert of Los Angeles, who founded the organization 25 years ago. The college announced the establishment of an annual $5,000 award in his name to the law school or other institution offering the best course in advocacy.

CORRESPONDENCE COURSES GAIN WIDE ACCEPTANCE

The FJC has launched a low-cost, wide-coverage approach to educating supporting personnel in supervisory positions. It is a correspondence course entitled *Supervision* and is directed to supervising personnel who have either been unable to attend formal resident courses sponsored by the Federal Judicial Center or who have attended these seminars in the past and desire further training in this area.

The course consists of three lessons: I-Supervisor Duties and Responsibilities; II-Communications; and III-Human Relations.

The participant can proceed at his own pace and, at the completion of three lessons, a certificate is awarded. Appropriate records will be maintained in the Personnel Branch of the Administrative Office of the U.S. Courts.

The Division is preparing correspondence courses covering other subjects. To enroll write the Director of Continuing Education and Training at the Center.

BIRMINGHAM EXEMPTS SENIOR JUDGES FROM CITY TAXES

The Administrative Office of the United States Courts has received a copy of a letter from the City Attorney, Birn ingham, concerning the taxability of a federal judge's pay received after taking senior status. The relevant portion of the letter, which may be of interest to other retired judges, and may be of precedential value, reads as follows:

"It is apparent to me that the word *salary*...is in fact synonymous with the word *pension* in the sense in which it is used in Title 28 USC Section 371(b). The remuneration is due to be paid whether a judge renders services to the United States or does *not* render such services. His remuneration is not increased by the rendition of services and therefore it must be said that the remuneration is for retirement benefits and not taxable under the Birmingham Occupational License (Payroll) Tax." ■

COMMUNITY RELATIONS HANDBOOK PUBLISHED

The Division of Continuing Education and Training has published a *Guide to Community Relations for United States Probation Officers.* This reference manual describes the techniques of public relations involving such problems as participating in radio and television programs, conducting press conferences, giving talks on probation and parole, and fielding information requests from reporters.

Although this guide was produced primarily to aid the Probation Officer in improving his skills in community relations, it contains many helpful ideas and suggestions that could be employed by anyone who needs to deal with the press in their professional endeavors.

The basic material in this manual was prepared by the Federal Probation Officers Association. Anyone who is interested in obtaining a copy of this guide should write directly to the Federal Judicial Center Information Service. ■

ADVISORY COUNCIL ON APPELLATE JUSTICE HOLDS WIND-UP SESSION

Over three years ago a group of concerned judges, lawyers, and law professors, aware of growing problems in the appellate courts, met to seek solutions to these problems.

With the cooperation of the National Center for State Courts and the Federal Judicial Center, this group expanded and formed the Advisory Council on Appellate Justice. Over thirty knowledgeable judges, lawyers and law professors were invited to join the Council and for the next three years every facet of the work of processing appellate cases was considered. The Council, according to schedule, concluded their deliberations with a 250-member conference last January during which the conferees reviewed the work of the Council. The Council will publish summaries of the workshop discussions later.

A final meeting of the Council was held at the Federal Judicial Center this month to decide on specific recommendations which will be published later.

The Chief Justice commended their efforts, "often done at a great personal sacrifice" and said their work would undoubtedly inure to the good of the appellate courts, "perhaps even sooner than they might believe." ■

LEGISLATION

S. 237, to provide in civil cases for six-member juries, has been introduced by Senator Burdick. Hearings are currently planned for the Fall of 1975.

S. 539, to increase jury fees and provide for protection of jurors' employment has also been introduced by Senator Burdick. This bill does not follow completely the Judicial Conference proposal but will constitute a vehicle for discussion by the Senate.

S. 286 and S. 287, introduced by Senator Burdick, would provide for 29 additional District and 10 additional Circuit Judgeships. The Judicial Conference had requested 52 district judgeships and 11 Circuit judgeships.

H.R. 4421 and H.R. 4422, introduced by Congressman Hutchinson in the House, incorporates all of the judgeships requested by the Judicial Conference.

S. 1130, relating to service of a chief judge has been introduced by Senator Garn of Utah.

S. 1, the bill to codify all federal criminal laws was the subject of hearings April 17 and 18.

Revision of Circuits: Hearings have been held on S. 729, the bill introduced by Senator Burdick which would provide for two divisions in both the 5th and 9th Circuits.

Parole Legislation: A brief hearing was held early in April on S. 1109, and it is expected that the bill will be reported out in the very near future. In the House, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, has held a number of mark-up sessions on the parole bill, H.R. 5727, pending there and has approved it for full Committee action.

Environmental Legislation: S.776, which would allow the Environmental Protection Agency to regulate chemical substances contains authority to allow the courts to grant relief from health risks whether or not demonstratable harm to health has been established. This bill was introduced by Senator Tunney and has been the subject of hearings. Early action is expected on this legislation.

H.R. 5951, to amend the Civil Service Retirement law to increase the retirement benefits of referees in bankruptcy introduced by Cong. Henderson; referred to the Committee on Post Office and Civil Service.

(See LEGISLATION pg. 8)

AO/FJC calendar

May 9-10 Advisory Committee on Appellate Rules, Washington, D.C.

May 12-14 Seventh Circuit Conference, Chicago, Illinois

May 12-14 First Circuit Conference, Newport, Rhode Island

May 13-16 Conference for Circuit Judges, Washington, D.C.

May 15-17 National Council of U. S. Magistrates, Colorado Springs, Colorado

May 19 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, D.C.

May 19-20 Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.

May 22-24 Judicial Conference Committee on Criminal Law, Denver, Colorado

June 1-3 D. C. Circuit Conference, Williamsburg, Virginia

June 20 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 25-28 Fourth Circuit Conference, Hot Springs, Virginia

June 25-28 Eighth Circuit Conference, Fargo, North Dakota

June 30- July 1 Judicial Conference Subcommittee on Judicial Improvements, Jackson Lake, Wyoming

July 22-24 Ninth Circuit Judicial Conference, San Francisco, California

September 9 Third Circuit Judicial Conference, Philadelphia, Pennsylvania

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pennsylvania

September 18-19 Judicial Conference of the United States, Washington, D.C.

PERSONNEL

Appointments

James M. Fitzgerald, U.S. District Judge, D.Alaska, March 3

J. Smith Henley, U. S. Circuit Judge, 8th Cir., March 24

Elevations

Garnett Thomas Eisele, Chief Judge, U.S. District Court, E.D.Ark., March 24

James B. Parsons, Chief Judge, U.S. District Court, N.D. Ill., April 16

Confirmations

Anthony M. Kennedy, U.S. Circuit Judge, 9th Cir., March 20

Thomas J. Meskill, U.S. Circuit Judge 2nd. Cir., April 22

Dick Yim Wong, U.S. District Judge, D.Hawaii, April 24

Robert O'Conor, Jr., U.S. District Judge, S.D. Texas, April 24

Nomination

William H. Stafford, Jr., U.S. District Judge N.D. Fla., April 18

Death

Walter M. Bastian, U.S. Senior Circuit Judge, D.C.Cir., March 12

LEGISLATION from pg.6

Federal Rules of Criminal Procedure: The Criminal Justice Subcommittee of the House Judiciary Committee has held hearings and mark-up sessions on the proposed amendments to the Federal Rules of Criminal Procedure. No bill has yet been introduced incorporating any of the revisions but this is anticipated in the near future.

Consumer Legislation: S. 200, to establish an individual agency to represent the interests of consumers in federal agency and court proceedings was introduced by Senator Ribicoff. The bill has been reported out and it is anticipated that it will clear both Houses in this session.

Per Diem: H.R. 4834 is the latest bill which has been reported out by the Subcommittee on Legislation and National Security of the House Government Operations Committee. It is expected to go to the floor shortly. This bill, as reported, contains a provision that would limit any federal officer or employee to reimbursement for mileage at the rate established by GSA for operating a government vehicle, whenever he chooses to use a private vehicle. In the Senate, S. 172 introduced by Senator Metcalf, passed March 24th. Again a problem area is the inclusion of Senate staff members under the per diem expense provisions.

THE THIRD BRANCH

VOL. 7, NO. 4 APRIL 1975

THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE
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The Third Branch

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Bulletin of the Federal Courts

VOL. 7, NO. 5 Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center MAY 1975

SUPREME COURT HISTORICAL SOCIETY FORMED

The Supreme Court Historical Society, complementing similar groups for the White House and the United States Capitol, has been formed after one and a half years of planning by a committee established by Chief Justice Warren E. Burger. The organization was formally incorporated as a non-profit educational entity under District of Columbia law in November, 1974. (See SOCIETY pg. 2)

Pictured above: Judge Ruggero J. Aldisert (left) and former Secretary of State Dean Rusk prior to Mr. Rusk's presentation at Circuit Judges' Conference. Professor Rusk is currently teaching international law at the University of Georgia.

(Left to right) Mrs. Warren E. Burger, William T. Gossett, The Chief Justice, and Mrs. William T. Gossett pictured at the Supreme Court reception which was held immediately prior to the first meeting of the Board of Directors and Advisory Council of the Supreme Court Historical Society.

FJC PUBLISHES EVIDENCE GUIDEBOOK

The Federal Judicial Center has compiled a guidebook to assist judges and other federal officials in implementing the new federal evidence rules.

The compilation was prepared at the request of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

Professor Edward W. Cleary, who was the Reporter to the Advisory Committee on Rules of Evidence, prepared the compilation, and it has been reviewed by Judge Albert B. Maris, the former Chairman of the Standing Committee, Judge Roszel C. Thomsen, the present Chairman of the Standing Committee, Judge Charles W. Joiner, who was a member of the Advisory Committee and is now a member of the Standing Committee, and Richard M. Mischke, a staff member.

Presently, the guidebook has been submitted to over a dozen legal publishers who have indicated interest in printing.

The rules stem from action of the late Chief Justice Earl Warren who in March 1965 appointed an Advisory Committee to formulate rules of evidence for the federal courts. On November 20, 1972, the Supreme Court prescribed Federal Rules of Evidence to be effective on July 1, 1973 and Chief Justice Warren E. Burger transmitted the Rules to the Congress on February 5, 1973. The Rules will become effective July 1, 1975.

(See GUIDE pg. 3)

(SOCIETY from pg. 1)

The Honorable Tom C. Clark, Associate Justice of the Supreme Court (ret.), is serving as interim chairman of the Board of Trustees of the new Society. The chairman of the Advisory Board is Professor William F. Swindler, who served as chairman of the Chief Justice's committee which prepared the way for the formation of the Society. Professor Swindler is John Marshall Professor of Law at the College of William and Mary and author of a number of studies on the Court. Membership of the Advisory Board will be announced in the near future.

The Incorporators of the Society, Alice O'Donnell of the Federal Judicial Center; Rowland F. Kirks, Director of the Administrative Office of the United States Courts; and Earl W. Kintner, District of Columbia attorney and former Chairman of the Federal Trade Commission, have chosen William H. Press as the Executive Director.

Mr. Press, a native Washingtonian, has been widely identified with D.C. governmental and legislative affairs for many years, and is actively involved in business, educational and historical circles. Since being selected to direct the Society's development and operations, he has been completing its organization, perfecting its by-laws and operating objectives, and outlining the formation and mission of committees for work on historical research, acquisitions, publications and membership (which will be open to lawyers, students, academicians and the general public).

The Supreme Court Historical Society will:

1. Disseminate knowledge of and provide opportunity for research into such historic, scientific, literary and other documents, records, objects, memorabilia of or relating to the Supreme Court of the United States and the Justices thereof and any other miscellaneous data as are pertinent to increased public knowledge of the Supreme Court and its place in American history;

2. Acquire knowledge concerning the history of the entire Judicial Branch of the United States Government;

3. Make the knowledge and materials acquired available to scholars, historians, and the public under conditions prescribed from time to time by the Board of Trustees;

4. Acquire through gift or loan, or on occasion through purchase, when and as funds for such purpose become available, documents, objects of historical significance, or articles of personal property or other memorabilia which may be related to the Society's purposes, or incorporated into continuing displays within the United States Supreme Court building or elsewhere, in order to portray to visitors to the premises the persons and events associated with the Supreme Court of the United States in the course of history;

5. Assist in effectuating the national policy for preserving all documents, records, objects and memorabilia which are of national significance for the inspiration and benefit of the people of the United States, more especially as those materials affect the development, functions, personnel, buildings and history of the Supreme Court and of the federal judiciary in general and as such preservation may be accomplished through specified activities such as the installation and presentation of educational exhibits, documentation, registration, storage and when necessary through acceptance of gifts of services and materials for the preservation, conservation, maintenance and security of any articles or data acquired for such exhibits;

6. Acquire by purchase and accept gifts, royalties or bequests of money, securities and other property, personal or real; purchase or otherwise acquire, own, use, improve, hold and operate for investment or develop, mortgage, sell, convey, lease, donate or otherwise dispose of, or deal in, improved or unimproved real estate wherever situated.

Miss Catherine C. Hetos, an employee of the Supreme Court with a curatorial background, has been organizing exhibits on the Court's history and developing a systematic plan for receiving and cataloging materials already in the possession of the Court or offered to it by persons learning of the project. Her displays have featured a pictorial description of the construction of the present court building, and an exhibition on the Court under Chief Justice John Marshall. A display on the late Chief Justice Earl Warren is timed to coincide with the Court's traditional commemorative service May 22. There are plans for an exhibit on the pre-history of the federal judiciary, in the quasi-judicial activities of the Continental Congress either later in the year or to open the bicentennial year 1976.

A program of publication, supplementing the acquisitions and exhibits in the Court itself, is scheduled for early inauguration.

Chief Justice Warren E. Burger has observed that the new Historical Society has made a timely appearance, on the eve of the national bicentennial. Much of its work will be coordinated with the anniversary activities being developed by other historical agencies and with the judiciary's own program for bicentennial observance.

The first membership mailing will go to some 35,000 addressees about June 1 inviting them to submit applications for membership

(See SOCIETY pg. 3)

The Third Branch

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Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

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

(GUIDE from pg. 1)

As finally enacted, they are the joint product of the Rule-Making process as evolved by the Supreme Court and the legislative process conducted by both the House and the Senate.

The purpose of the evidence guidebook is to present the rules together with interpretive material in a convenient and readily accessible form. Accordingly, each rule is followed by the Advisory Committee's Note, to the extent still pertinent, and by any relevant provisions of the Report of the House Committee on the Judiciary, the Report of the Senate Committee on the Judiciary, and the Conference Report. Extracts from the Congressional Record are included where explanatory of amendments made on the floor.

(SOCIETY from pg. 2)

in any of the following categories at the dues rate shown:

Individual	$25 per year
Associate	$50 per year
Founder (During 1975)	$100 per year
Academic (available to students only)	$5 per year

Firms, foundations and the like wishing to provide generous support for the Society may become Patron Members and elect to pay annual dues of between $100 and $4999. Such firms may designate a partner or employee as a Society member for each multiple of $25 annual dues, but not to exceed 10 such members.

Life Memberships are available to those who have paid dues of $5000 or more over a period of not exceeding 10 years. Contributors of $50,000 or more shall be known as Benefactors and those contributing $5000 to $49,999 shall be known as Sustaining Patrons.

Offices of the Supreme Court Historical Society are at 1629 K Street, N.W., Suite 400, Washington, D.C. 20006.

Circuit Judges pictured at luncheon break during second of two conferences for Judges of the U.S. Courts of Appeals held at the F.J.C. this year: (left to right) Ozell M. Trask (CA-9), Francis L. Van Dusen (CA-3), Thomas J. Meskill (CA-2), Wade H. McCree, Jr. (CA-6), Ruggero J. Aldisert (CA-3), Harold Leventhal (CA-DC), Spottswood W. Robinson, III (CA-DC), Professor Maurice Rosenberg (Columbia University), Joseph F. Weis, Jr. (CA-3), Edward D. Re (Customs Court), James E. Barrett (CA-10), Anthony M. Kennedy (CA-9).

This month's conference was structured much the same as the first, held last February, with some refinements which Judge Ruggero Aldisert, Conference Chairman, said were made to assure the best possible use of the high level of talent brought to the conference by the members of the planning committee and the lecturers.

REVISION COMMISSION COMPLETES HEARINGS

The Commission on Revision of the Federal Court Appellate System recently completed final hearings on its preliminary report, "Structure and Internal Procedures: Recommendations for Change."

These were the last of a series of hearings, during which the Commission heard from judges of all the Courts of Appeals, as well as from judges of the Court of Claims and the Court of Customs and Patent Appeals. At these most recent hearings, the Commission heard from the chief judges of nine of the federal appellate courts, as well as from other judges of the circuit and district courts.

Both at the hearings and in written submissions to the Commission, attention focused on the Commission's proposal to recommend a National Court of Appeals. The comments span the whole spectrum of possible reactions.

Many judges affirmed the need for a new national appellate tribunal and spoke in favor of the desirability and workability of the Commission's proposal. Chief Judge Clement F. Haynsworth, Jr. (CA-4), for example, told the Commission that its proposal was "the simplest, most practical, most effective and least objectional of all of the proposals advanced to meet the great shortage of national appellate capacity which has developed over the last few decades with all of its unfortunate consequences for the administration of justice and for the public in general."

Chief Judge David T. Lewis (CA-10) testified that "the proposed establishment of a National Court of Appeals is the most desirable yet advanced." Judge Edward A. Tamm (CA-DC) was "convinced that a new National Court of Appeals is essential if the business of the federal courts is to be conducted with dispatch, efficiency and inherent justice."

Other witnesses, although recognizing the need for a new national appellate tribunal, differed with the Commission on details of

(See COMMISSION pg. 4)

(COMMISSION from pg. 3)

the proposed court's structure and creation. Judge Harold Leventhal (CA-DC) preferred judicial assignments to Presidential appointment of the judges of the court. His statement, which has been echoed by other judges who have written to the Commission, including Judge Carl McGowan (CA-DC) and Chief Judge Wilson Cowen of the U.S. Court of Claims, suggests that the judges of the Courts of Appeals be assigned to the National Court, for several years.

Others, such as Judge Byron G. Skelton of the U.S. Court of Claims, would limit the Presidential power of appointment by requiring him to chose his appointees from active circuit judges. Finally, there are those who would rotate the membership of the court more frequently, again relying upon the concept of assignment of circuit judges to the National Court.

Several judges proposed more experimental solutions to the perceived need. Judge Shirley Hufstedler (CA-9) would create the National Court for a period of seven years with a reexamination of the court's effectiveness and jurisdiction during this period. A similar proposal was put forth by Judge Arlin M. Adams (CA-3) who suggested a reassessment after five years.

Finally, the Commission heard from judges who reject both the need for a National Court of Appeals, as well as the Commission's proposed solution. Judge Ruggero Aldisert (CA-3) explained the position of seven of the judges of the Third Circuit who felt that the Supreme Court would have greater opportunity to provide nationally authoritative decisions if the Justices could be relieved of the burden of reviewing decisions of the highest state courts. These judges recommended Article III court review of all state court decisions before a party could appeal to the Supreme Court. Chief Judge Irving Kaufman (CA-2) speaking for all the active judges of the Second Circuit, felt that "what in fact is needed is not a National Court of Appeal, but specialized appellate courts."

Chief Judge Kaufman expressed a concern that was echoed throughout the Commission's hearings both by supporters and opponents of the Commission's plan: "The diminution of authority and prestige of the courts of appeals" which would result from the imposition of another court between them and the Supreme Court.

The Commission is presently considering all of these views, as well as the opinions which have been offered by practicing members of the bar and academicians, and will file its final report on June 21, 1975.

Pictured above are two of the Regional Vice Presidents of the Federal Probation Officers Association who are among the group who met with Judge Hoffman last month. (Left to right) Thomas L. Barnes from Cincinnati, Ohio and Charles B. Mandsager from Sioux Falls, South Dakota.

PROBATION ASSOCIATION OFFICIALS MEET WITH FEDERAL JUDICIAL CENTER'S DIRECTOR HOFFMAN

On April 23, twelve members of the Federal Probation Officers Association Executive Board met with Judge Walter E. Hoffman, Director of the Federal Judicial Center, and Mr. Dick Mischke, Deputy Director of the Continuing Education and Training Division, to discuss future probation training to be provided by the Center.

Judge Hoffman furnished the Executive Board with policy guidance concerning his views on the future of probation training. He felt that well-trained, currently informed Probation Officers were a definite must to keep up the desired professional image of the U.S. Probation Officers.

However, he said that if the fiscal 1976 budget is approved by Congress, adequate refresher training would be continued. Henceforth, the more descriptive term "Advanced Seminar" will be used in lieu of "Refresher Seminar." The only modification is that Advanced Seminars would be conducted on a regional basis rather than attempting to meet centrally. This regional approach was necessitated because of increased travel costs.

Other new training methods were discussed such as small in-court seminars entitled "Improving Supervisory Skills" and also correspondence courses. In addition, Judge Hoffman emphasized that, in view of increased costs for formal training, the local Chief Probation Officer should provide more extensive training in his district. A training Guide has recently been published by the Federal Judicial Center to aid local Chiefs and their training officers in planning.

SENATORS PROPOSE THAT CHIEF JUSTICE ADDRESS CONGRESS

Senators Birch Bayh (D.-Ind.) and Edward M. Kennedy (D.-Mass.), both senior members of the Senate Judiciary Committee, have introduced a resolution that Congress invites the Chief Justice to appear before a joint session of Congress to report on the State of the Judiciary.

Senator Bayh, in introducing the resolution, stated that such a Judiciary message "would initiate" a constructive dialogue between two co-equal branches of goverment. . . Recommendations could be made for improvement and priorities for future action."

Senator Kennedy, echoing Senator Bayh's remarks, said, "The time is overdue for Congress to become better informed of the problems and aspirations of the Judiciary . . .

(See ADDRESS pg. 5)

JUDICIAL FELLOWS SELECTED

The Judicial Fellows Commission, headed by Justice Tom C. Clark, has selected the third group of Judicial Fellows who will work on key projects both at the Supreme Court as well as the Administrative Office of the U.S. Courts and the Federal Judicial Center.

The two selected for the 1975/76 year are Paul R. Baier of Cincinnati, Ohio, and Jack R. Buchanan of Bethel Park, Pa.

Paul R. Baier

Paul R. Baier is an Associate Professor of Law at Louisiana State University. He received his J.D. from Harvard Law School in 1969 and subsequently clerked for Judge John H. Gillis of the Michigan Court of Appeals. Since 1970, he has served as a consultant on appellate court administration to Chief Judge T. John Lesinski of the Michigan Court of Appeals. Mr. Baier has published widely on law clerks and the work of state appellate courts, particularly in Louisiana. His teaching interests include Administrative Law, Constitutional Law, and Criminal Procedure.

Jack R. Buchanan received his Ph.D. in computer science from Stanford University in 1972, writing his dissertation on automatic programming. From 1972 to 1975, Mr. Buchanan was Assistant Professor at the Graduate School of Industrial Administration and Computer Science Department at Carnegie-Mellon University.

Mr. Buchanan has completed numerous consulting assignments concerning computer information systems, many for private law firms. He recently assisted the

Jack R. Buchanan

Federal Judicial Center in the design and implementation of management information systems to support judicial administration. His teaching interests include business information systems, program management and computational aspects of law and legal processes, mathematical theory of computation and artificial intelligence.

PRESIDENT SIGNS TRAVEL-PER DIEM BILL

President Ford signed S. 172, the Travel Expense Amendments Act of 1974, which substantially increases both per diem and mileage allowances for all federal employees including members of the Judicial Branch.

Under the provisions of the bill, per diem can be increased from the current $25 up to a maximum of $35 but the actual increase will be determined administratively by the Director of the Administrative Office of U.S. Courts. A directive has been prepared by the A.O. and is being circulated immediately to all key judicial officials.

The bill also allows up to $50 per day for actual expenses but this is also subject to administrative determination by the A.O.

Mileage for use of privately owned automobiles may also be increased to a maximum of 20 cents per mile but the exact amount will be determined by the General Services Administration and the A.O. will promulgate guidelines concerning persons who are eligible for the increased mileage expense allowance set by the G.S.A.

(ADDRESS from pg. 4)

by bringing the prestige of the high office of the Chief Justice to the task, I believe that Congress can make a better start toward finding satisfactory answers to the difficult problems of judicial administration and court reform."

Senator Kennedy released a list of 61 persons other than Presidents who have addressed joint sessions of Congress since 1824. The list ranges from former Secretaries of State Cordell Hull and Dean Acheson to British Prime Minister Winston S. Churchill to Italian President Antonio Segni to other American citizens such as astronauts Lt. Col. John Glenn and Major Gordon L. Cooper, Jr., to poet Carl Sandburg.

The Chief Justice on several occasions has stated that there is a need for more effective communication between the Congress and the Judicial Branch. The Chief Justice has said that if such an appearance before Congress is arranged, it should be followed by a "working" session with a joint meeting of the Judiciary Committee of both Houses where details and programs could be explored in depth.

HEARINGS SET ON JUDICIAL PAY INCREASE LEGISLATION

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice has scheduled hearings June 20 and 23 on legislation which would raise judicial salaries by 20 percent.

A spokesman for the Subcommittee whose Chairman is Representative Robert W. Kastenmeier said the Subcommittee's hearings will focus both on the bill introduced by Congressman Thomas F. Railsback, H.R. 6150, April 17 calling for a 20 percent increase as well as an earlier bill calling for a 15 percent increase, H.R. 2191, introduced by Congressman Joshua Eilberg. (See *The Third Branch,* April, 1975.)

WHAT DO FEDERAL JUDGES THINK ABOUT LIMITING ORAL ARGUMENT AND OPINION-WRITING?

The Research Division of the Federal Judicial Center, acting at the direction of the Center's Board, surveyed the federal judiciary recently to determine their attitudes toward a variety of appellate practices.

These practices were either in operation in some U.S. Courts of Appeals, under review by other federal appellate courts or being studied by the Commission on Revision of the Federal Court Appellate System.

The report is designed to complement a similar study of attorney attitudes, conducted in three circuits toward appellate procedures, prepared for the Revision Commission by the Bureau of Social Science Research in conjunction with FJC's Research Division. (The accompanying table describes in detail the responses of the judges to some of the survey questions.)

The survey provided a valuable perspective on issues now confronting the federal judiciary as well as the Revision Commission.

In general, judges are more satisfied with current practices truncating court procedures than appellate attorneys. But although judges may find these practices more acceptable than the bar, that acceptance varies according to circumstance.

Not every case is a candidate for truncated procedures nor should the procedural device be the same in every case, the Federal Judicial Center research report concluded.

In summary, while there is agreement, it is qualified by the facts of a case, by the extent of delay (if any), and by the advantages to be gained through the use of procedural shortcuts.

A majority of both judges and lawyers agree on many matters relating to the proper use of practices limiting oral argument or curtailing written opinions. Ideally, both judges and lawyers would generally agree to retain such practices without limitations, but when faced with the reality of swelling appellate dockets, judges and lawyers disagree as to the proposed cure.

Judges are more responsive than lawyers to the prospect of delay. While they list their reasons in the same order as lawyers, with the avoidance of delay at the bottom of the list, the need to avoid delay still is viewed by the federal bench as a stronger reason for curtailing procedures than it is by the bar.

Substantial majorities of both appellate and district judges view the current criteria for limiting oral agrument and opinion-writing as acceptable while only about a third of the attorneys concur.

The lawyers' survey when viewed against the results of the judges' survey, may suggest a remedy for the differential support for new appellate practices from bench and bar. Lawyers more frequently accept appellate procedures—including their truncation—in circuits where these procedures are in use.

As a rule, however, proportionately more judges than lawyers are accepting the new appellate procedures.

This may be because judges are more familiar than attorneys with the problems that have led to departures from tradtional appellate practices. Judges may also be more familiar with the application of known procedures.

(See RESEARCH pg. 7)

ACCEPTABILITY TO UNITED STATES JUDGES OF PRACTICES LIMITING ORAL ARGUMENT AND OPINION WRITING

(Data shown are the proportion of judges who consider each practice listed ever acceptable)

Practice	Circuit Judges	District Judges	All Judges*
Limitation of oral argument to 15-20 minutes for each side	100%	99%	99%
Denial of oral argument.	88	94	92
Affirmance in a two-page memorandum of decision not to be cited or published	96	92	93
Affirmance from the bench at the close of oral argument without further written explanation, but with a recorded oral statement of reasons given by the panel.	78	83	81
Reversal in a two-page memorandum of decision not to be cited or published	85	76	78
Affirmance in a one-line judgment order.	85	78	79
Affirmance from the bench at the close of oral argument without further written explanation.	63	64	64
Reversal in a one-line judgment order.	53	42	45
Reversal from the bench at the close of oral argument without further written explanation.	34	29	30

*Includes judges of the Customs Court, the Court of Claims, and the Court of Customs and Patent Appeals.

LEGISLATION

Federal Rules of Criminal Procedure. The proposed amendments to the Federal Rules of Criminal Procedure which have been under the consideration of the Subcommittee on Criminal Justice of the House Judiciary Committee were favorably reported to the full Committee as H.R. 6799, which was introduced on May 7, 1975. The full Judiciary Committee has held one meeting on May 13, 1975 but did not complete action on the bill and a further meeting will be held on May 20, 1975.

Parole Reorganization Act of 1975. The House Judiciary Committee has favorably reported H.R. 5727, the Parole Reorganization Act of 1975. The bill should be brought to the floor in the near future.

Federal Employees Group Life & Health Benefits. The Subcommittee on Retirement and Employee Benefits of the House Committee on Post Office & Civil Service is conducting hearings on H.R. 73 which would increase the government's contribution to the costs of federal employees' group life insurance and health benefits insurance. Under the proposal, the government would pay 50% of the cost of the life insurance rather than the present 33-1/3%, and the government's share of the health benefits insurance would increase to 65% for 1976, 70% for 1977, and 75% for 1978.

Copyright Law. H.R. 2223, for the general revision of the Copyright Law, has been the subject of hearings before the Subcommittee on Courts, Civil Liberties & the Administration of Justice of the House Judiciary Committee.

Consumer Protection. S. 200, the Consumer Protection Act of 1975 is currently being debated in the Senate. Its purpose is to establish an independent consumer agency to protect and serve the interest of consumers. The Administrator would be authorized to intervene in agency proceedings, and to appear before the courts as a party.

Bankruptcy. The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, held a hearing on H.R. 6184, to fix the salaries of referees in bankruptcy, receiving testimony from several bankruptcy judges. The Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee held hearings on S. 582, concerning the same subject. The House Judiciary Committee's Subcommittee on Civil and Constitutional Rights continued to hold hearings on H.R. 31 and H.R. 32, to establish a uniform law on the subject of bankruptcies.

Additional Judgeships. S. 287, a bill to provide for additional district judgeships, has been favorably reported to the full Senate Judiciary Committee with certain amendments. As recommended by the Subcommittee, the bill would authorize 30 additional district judgeships. The changes in the bill as originally introduced include an increase from one to two the number of additional district judges for the northern district of Georgia; one additional judge for the eastern district of Michigan; and elimination of an additional district judge for the district of New Jersey.

Bills Introduced. H.R. 6533, to authorize the payment of increased annuities to secretaries of justices and judges of the United States, was introduced April 30, by Congressman Matsunaga and referred to the Committee on Post Office and Civil Service.

S. 1549, to amend the Federal Rules of Evidence, was introduced by Senator Hart April 29 and referred to the Senate Judiciary Committee.

S. 1534, relating to voting rights of former offenders, was introduced on April 24, by Senator Percy.

H. 6318, to make possible the use of Spanish in the U.S. District Court for the District of Puerto Rico was introduced April 23, by Congressman Rodino.

H.R. 6183, to amend the Bankruptcy Act and the Civil Service Retirement law with respect to the tenure and retirement of referees in bankruptcy was introduced April 21, by Congressman Edwards.

H.R. 6207, to amend Title 18 and Title 28 of the U.S. Code to remove the possibility of abuse from the grand jury system without removing the effectiveness of the grand jury as a tool for investigating and returning indictments, was introduced on April 21 by Congressman Rangel.

COMPUTER-AIDED TRANSCRIPTION PROJECT MOVES FORWARD

The number of reporters participating in the Center's C.A.T. project increased to fifteen during May. Several more are scheduled to enter the program in June.

To date, all participating reporters are working with Stentran Systems, Inc. of Vienna, Virginia. The Center is negotiating with other companies who will start working with reporters in June or July. The first fifteen reporters were from the districts of D.C., Md., E.D. Va., E.D. Pa., W.D. Pa., E.D. Michigan and N.D. Ohio. Reporters from other districts will become part of the project as arrangements are made with additional companies.

(RESEARCH from pg. 6)

In short, familiarity with both the problems faced by the federal appellate courts and the possible cures may engender more acceptance. Hence, if more attorneys become familiar with new procedures *and* the problems they address, their support for these procedures may also increase.

(A copy of the report entitled, *Attitudes of U.S. Judges Toward Limitation of Oral Argument and Opinion-Writing in the U.S. Courts of Appeals* may be obtained from the Federal Judicial Center Information Service. A copy of the lawyers' survey report is also available upon request.)

ao aojfjc calendar

May 29 Judicial Conference, Court of Customs and Patent Appeals, Washington, D.C.

June 1-3 D. C. Circuit Conference, Williamsburg, Virginia

June 20 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 25-28 Fourth Circuit Conference, Hot Springs, Virginia

June 25-28 Eighth Circuit Conference, Fargo, North Dakota

June 30-July 1 Judicial Conference Subcommittee on Judicial Improvements, Jackson Lake, Wyoming

July 7 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.

July 10-13 Sixth Circuit Conference, Mackinac Island, Michigan

July 18 Judicial Conference Magistrates Committee, Washington, D.C.

BILL EXPANDING MAGISTRATES' JURISDICTION IS INTRODUCED

Senator Quentin Burdick March 21 introduced S.1283 which, if enacted, will expand the jurisdiction of U. S. Magistrates.

The bill would amend Section 636(b) of Title 28, U. S. Code to read as follows; "(b) (1) Notwithstanding any provision of law to the contrary, a judge may designate a magistrate to hear and determine, subject to review as hereinafter provided, any pretrial matter pending before the court except motions which are dispositive of the litigation, the disposition of which the magistrate may recommend, but not order. A judge may also designate a magistrate to conduct evidentiary hearings and make recommendations for the disposition of applications for post-trial relief made by individuals convicted of criminal offenses and prisoner petitions challenging conditions of confinement. Upon timely request, as fixed by local rule of court, by any party who has appeared before the magistrate, either personally or by submission of affidavits or brief, the court shall hear *de novo* those portions of the report or specific proposed findings of fact or conclusions of law to which objection is made.

PERSONNEL

Appointments

Stanley S. Brotman, U.S. District Judge, D.N.J., April 23

Thomas J. Meskill, U.S. Circuit Judge, 2nd Cir., April 24

Robert O'Conor, Jr., U.S. District Judge, S.D.Texas, April 28

Elevations

Joseph W. Morris, Chief Judge, U.S. District Court, E.D.Okla., April 19

James B. Parsons, Chief Judge, U.S. District Court, N.D.Ill., April 16

Herbert P. Sorg, Chief Judge, U.S. District Court, W.D.Pa., April 26

Confirmation

Dick Yin Wong, U.S. District Judge, D.Hawaii, April 24

Nomination

William H. Stafford, Jr., U.S. District Judge, N.D. Fla., April 18

Resignation

Harold R. Tyler, Jr., U.S. District Judge, S.D.N.Y., April 6

Death

Frederick G. Hamley, U.S. Senior Circuit Judge, 9th Cir., May 5

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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UNLESS CONGRESS MODIFIES SUPREME COURT JURISDICTION—CHIEF JUSTICE SAYS NATIONAL COURT INEVITABLE

The Chief Justice, in a letter May 29 to Senator Roman L. Hruska, Chairman of the Commission on Revision of the Federal Court Appellate System, said that unless Congress acts to relieve the Supreme Court of some of its mandatory jurisdiction, the creation of an intermediate court is inevitable.

He wrote Senator Hruska, "As to the proposal for an intermediate court, I have no doubt that if the Congress does not curtail the jurisdiction of the Supreme Court, in some way generally comparable to the 1925 Judiciary Act, then surely a solution must be found by creating such a court."

One jurisdictional revision, The Chief Justice said, which would give some relief to the Supreme Court is the elimination of mandatory jurisdiction by statute. He pointed out that in 1942 the proportion of cases decided by the Supreme Court on the merits under its mandatory jurisdiction was only 29 percent; by 1972, it had reached 60 percent.

However the creation of a new national court is such a significant step, The Chief Justice suggested that it might be put into effect on an experimental basis for five years using judges from the ranks of present federal judges on a rotating basis.

The Chief Justice pointed out that some of his suggestions in some respects may be beyond the

(See CHIEF JUSTICE pg. 2)

SENATOR JAVITS CALLS FOR JUDICIARY PAY HIKE

In remarks delivered on the Senate floor June 6, Senator Jacob K. Javits said Congress "must face up to this problem and not sacrifice the quality of the judiciary" by refusing to increase judicial salaries.

He told the Senate that "since 1969, in spite of drastic increases in the cost of living, Federal judicial salaries have been frozen. This has resulted in hardships for many judges in high cost areas of the country and has resulted in resignations in the southern district of New York and elsewhere.

"Traditionally Federal district judges salaries have been related to congressional salaries. . .[but they] . . .need not be tied in law to Federal judges salaries."

(See JAVITS pg. 2)

NATIONAL APPEALS COURT URGED

REVISION COMMISSION SUBMITS FINAL REPORT

At a formal cermony at the White House June 20, the Commission on Revision of the Federal Court Appellate System presented its final report to the President, The Chief Justice and leaders of both the House and Senate.

The 16-member Commission headed by Senator Roman L. Hruska called for the creation of a National Court of Appeals, a permanent seven-member Article III Court which would sit en banc in Washington, D.C.

Its decisions would constitute precedents binding upon all other federal courts and, upon state courts in cases involving federal issues, unless modified or overruled by the Supreme Court.

(See COMMISSION pg. 2)

(CHIEF JUSTICE from pg. 1)
scope of the problems which the Revision Commission was authorized to study but, he added, "The problems of the Judicial Branch must be viewed not court-by-court but on a system and nationwide basis."

"In the long run," he continued, "we will not have accomplished very much if we solve problems at one end of the spectrum, but do not solve them at the other end on a basis consistent with our Constitution and with national tradition and experience. I would, therefore, summarize the observations I have made so far by suggesting that the objections of those who are opposed to an intermediate federal court would be met if other possible alternatives were first exhausted."

He recommended two key remedies which could relieve the caseload burden of not only the Supreme Court but courts of appeal and district courts:

- "The elimination of three-judge courts and the elimination of all direct appeals to the Supreme Court, leaving it to statutory provisions for expediting appeals to deal with emergency cases." He noted that this may add to the burden of the courts of appeals but said this would be offset significantly by relieving circuit judges from serving on these three-judge district courts.

- Secondly, The Chief Justice called for the elimination of diversity jurisdiction in all federal courts: "Continuance of diversity jurisdiction is a classic example of continuing a rule of law when the reasons for it have largely disappeared."

This move would not relieve the Supreme Court of any of its burden and would only moderately help the courts of appeals but, he said, ". . .it is a change which is called for to carry out the fair distribution of the total litigation of this country between the states and the federal system."

Turning to the first recommendation of the Hruska Commission, the creation of two new judicial divisions by dividing both the Fifth and Ninth Circuits into two new divisions each, he endorsed the concept in principle: "To continue large circuits such as the Fifth and the Ninth under one administrative direction is totally unrealistic . . . no circuit should be geographically structured in a way that requires more than nine circuit judges."

However, The Chief Justice said he had reservations about placing the responsibility of choosing the chief judges of these new divisions on the shoulders of the Supreme Court: ". . . it would be both an unwise burden to place on the Supreme Court and would involve the risks of having the Supreme Court drawn into controversial matters in its relations with the several circuits."

The Chief Justice told Senator Hruska that "It is my hope that the Commission's study will stimulate Congressional action leading promptly to reducing the jurisdiction of the federal courts, including the Supreme Court."

(JAVITS from pg. 1)

Senator Javits then inserted into the Congressional Record the study prepared for the Judicial Conference Committee on Judicial Compensation making a case for a judicial pay increase, pertinent sections of which were published in the April, 1975 issue of *The Third Branch* on pp. 4-5 (for complete text see the June 6, 1975 Congressional Record p. S.10013).

PERSONNEL

Appointment
William H. Stafford, Jr., U.S. District Judge, N.D. Fla., May 30

Death
Francis J.W. Ford., U.S. Senior District Judge, D. Mass., May 26

(COMMISSION from pg. 1)

The jurisdiction of this new court would be twofold: First by reference from the Supreme Court and, secondly, by transfer from the Circuit Courts of Appeals, the Court of Claims and the Court of Customs and Patent Appeals. Any case decided by this court, either by reference or transfer, would be subject to review by the Supreme Court upon petition for certiorari.

Turning to the Commission's recommendations concerning the internal operating procedures of the circuit courts, the Commission recommended that each court establish a mechanism for formulating, implementing, monitoring and revising circuit procedures. This mechanism would require: (a) publication of the court's internal operating procedures; (b) notice-and-comment rule-making as the normal instrument of procedural change; and (c) an advisory committee, representative of both the bench and bar.

Minimum national standards pertaining to the granting or denial of oral argument should be instituted, the Commission recommended. Oral argument should be granted as a matter of right unless the appeal is frivolous; the dispositive issue or set of issues has recently been decided; or the facts are simple and the determination of the appeal rests on the application of settled rules of law, and no useful purpose could be served by oral argument.

The Commission recommended that oral argument be appropriately shortened in cases in which the dispositive points can be adequately presented in less than the usual time allowable.

Turning to another key aspect of the Commission's recommendations, opinion writing and publication, the Commission recommended that in every case there be some record, however brief and whatever the form, of the reasoning underlying the decision.

On the use of central staff, the Commission recommended that Congress provide funds for the optimal utilization of such staff and

that they be given such duties as research, preparation of memoranda and the mangement and monitoring of appeals to assure that cases move toward disposition with minimum delay.

The Commission called upon Congress to create new appellate judgeships "wherever caseloads require them."

As to the problem of assuring judges of superior quality in adequate numbers, the Commission said the President and Congress should act quickly to fill all vacancies, that "Federal judicial salaries should be raised to a level that will make it possible for outstanding individuals to accept appointment to the bench and adequately compensate those now serving."

The Commission also recommended that the requirements for taking senior status be eased: ". . .a judge should be eligible for retirement when the number of years he has served on the bench, added to his age equal eighty, as long as the judge has served a minimum of ten years and has attained the age of sixty."

The Chairman of the Commission, Senator Roman L. Hruska, said he plans to introduce legislation later this session to implement the Commission's recommendations. Legislation implementing the Commission's initial proposals, those dealing with the division of both the Fifth and Ninth Circuits into two new divisions each, has already been introduced and hearings are being held on this circuit-splitting proposal.

(Note: This is a condensed summary of the Revision Commission's 409 page report entitled *Structure and Internal Procedures: Recommendations for Change.* A copy of the full report is available from the Commission on Revision of the Federal Court Appellate System, 209 Courts Building, 717 Madison Place, N.W., Washington, D. C. 20005.)

Left to Right: Chief Judge Howard T. Markey, The Chief Justice and ABA President James D. Fellers who spoke at the C.C.P.A. Conference luncheon last month.

C.C.P.A. BENCH AND BAR MEET

Soon after Chief Judge Howard T. Markey assumed office at the Court of Customs and Patent Appeals he turned his attention to a review of his court, its procedures and its history.

One of his first observations was what he later referred to as an "iron curtain" which hung between the C.C.P.A. judges, its supporting personnel and the members of the bar who handle cases in this specialized area of the law. Chief Judge Markey considered this both undesirable and unnecessary.

Among his first steps was to plan a bench-bar conference to discuss customs and patent cases, how they are filed and disposed of, and what might be done to improve upon the process.

The conference was held in April 1974, in Washington, D.C., marking a first in the history of this court.

At the conclusion of this successful conference plans immediately went forward for a second which was held May 29, 1975. Over 800 attended, some 200 more than last year.

Present plans are to hold the conference annually, probably in the spring.

FOUR NATIONS SIGN LETTERS ROGATORY

The Department of State has advised the Administrative Office that Czechoslovakia, Italy, Portugal and Sweden have signed the Convention on the Taking of Evidence Abroad in Civil or Commerical Matters (opened for signature on March 18, 1970). The Convention deals with the procedures to be utilized in obtaining evidence from abroad, as well as the procedures to be followed in the United States when a request is received from a foreign court.

PRESIDENT FORD PRESENTS "STRONG" CRIME MESSAGE TO CONGRESS

President Ford June 19 sent Congress what Attorney General Edward H. Levi described as a "strong" but not "vindictive" anti-crime message designed, the President said, to "put the highest priority on the victims and potential victims."

The President asked Congress to enact legislation that would:

- Tighten existing gun control laws and outlaw the manufacture of so-called "Saturday night specials," the cheap handguns used in numerous inner-city crimes. He said he has ordered the Treasury Department to tighten its enforcement efforts in the nation's 10 largest areas and directed the Department to hire an additional 500 agents specifically to enforce the gun control laws in these areas.
- Require Federal judges to sentence certain offenders such as repeat offenders to a minimum prison term. "There should be no doubt in the minds of those who commit violent crimes – especially crimes involving harm to others – that they will be sent to prison if convicted under legal processes that are fair, prompt and certain," he told Congress.
- Require compensation for physical injuries to victims of crime. This compensation would come from federal fines and Federal Prison Industry profits which currently go directly to the U.S. Treasury.
- Create 51 new federal judgeships in 33 judicial districts – the current proposal now before congress in the Omnibus Judgeship Bill.
- Allow federal appellate courts to review district court sentences and either lower or increase them as the appellate judges deemed appropiate.

The President also asked Congress to enact S.1, the voluminous bill now before the Senate Judiciary Committee which would codify the present federal criminal code but also add additional sections such as those dealing with the appellate review of sentences.

He also asked Congress to renew LEAA's authorization for five years and increase its annual funding from $1.25 billion to $1.3 billion with the added $50 million earmarked for LEAA programs aimed to reducing crime in the larger cities.

(Copies of the full text of the President's Message are available from the Federal Judicial Center's Information Service.)

A.O. DIRECTOR TELLS CONGRESS JUDGES NEED "STOP-GAP" PAY HIKE

In testimony presented June 20 before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, Administrative Office Director Rowland F. Kirks said the Judicial Conference of the U.S. urges that all federal judges, justices and other senior members of the judiciary receive an immediate 20% pay increase as a "stop-gap" measure to help halt the exodus of good judges from the nation's federal courts.

Director Kirks said the bill, H.R. 6150, the so-called Railsback bill introduced April 17 (see the April, 1975 issue of *The Third Branch*, pg. 1), amounts to a partial catch-up in judicial salaries. The six year freeze on judicial salaries, coupled with the escalating inflationary spiral has reduced judicial purchasing power by 32% as of March 1975 – projected to increase to 37% by March 1976.

He told the Subcommittee that an amendment is needed which will allow all members of the federal judiciary to receive periodic comparability pay adjustments.

In addition, the Director also said the salary freeze has hurt and is continuing to hurt the federal judicial system and, in turn, the national welfare since nine able and experienced judges have resigned for salary reasons and it is becoming increasingly difficult to find able lawyers to replace these vacancies. Moreover, he said, U.S. Magistrates and Bankruptcy judges also are resigning for salary reasons.

"In the intervening six years the income of general schedule employees in the federal service has increased over 50% while judicial salaries have been frozen at the 1969 figure. This disparity of treatment should be rectified without further delay," he testified.

Turning to the other three key sections of the bill; elimination of three-judge district courts (except in civil rights, racial discrimination and reapportionment cases), expansion of the jurisdiction of U.S. Magistrates and protection of the employment rights of federal jurors, Director Kirks made these points:

- Three judge courts severely drain judicial manpower and direct appeals from these courts have become burdensome to the Supreme Court. The Railsback bill "preserves the three-judge district court in reapportionment cases, in injunctive cases founded on allegations of racial discriminations, and in other civil rights and voting rights cases otherwise governed by separate and special three-judge court provisions."
- Magistrates should have an opportunity to go directly to a federal prison and take testimony from inmates and other witnesses with respect to their claims and file a report with the judge along with his recommendations. Additionally, magistrates would have an opportunity to hear pre-trial matters and conduct pre-trial conferences both in civil and criminal cases but only a district judge could enter a final order in a pre-trial

matter which finally disposed of the litigation.

As a result, by changing the jurisdictional provisions of the Federal Magistrates Act, Congress would enable the district courts to fully utilize magistrates today as both civil and criminal caseloads continue to dramatically increase.

• Turning to the employment rights of federal jurors, Director Kirks said, "A juror should not be made to suffer serious economic consequences for performing this civic duty. . .[and should be able to perform his duties] objectively without the oppressive fear that he may have no job when he completes his jury service."

ANTIOCH LAW SCHOOL SEEKING GRADUATE CLINICAL FELLOWS

The Antioch School of Law in Washington, D.C. is seeking candidates for the school's new Graduate Clinical Fellowship Program. Six fellowships will be awarded in July of this year and will each be for an eighteen-month program beginning in September. In addition to a stipend of $12,000 fellows will receive a tuition grant.

The school will offer the fellows a broad range of experiences such as training in the design and conduct of clinically-based seminars for J.D. candidates as well as participation in the design and implementation of a prepaid legal services program. Candidates should be out of law school for at least one and preferably two years and have already been admitted to the bar of a state or will be prior to next September. Interested applicants should contact the Graduate Fellows Committee, Antioch School of Law, 1624 Crescent Place N.W., Washington, D.C. 20009.

PRESIDENT APPROVES JUDICIARY SUPPLEMENTAL FUNDS REQUEST

President Ford has approved the Second Supplemental Appropriation Bill for fiscal year 1975 (H.R. 5899). It includes the full amount requested for Speedy Trial Planning, $2.5 million, and for Pretrial Services Agencies, $10 million.

$1,020,000 is included for the FJC to accelerate the development and implementation of a computerized information system, COURTRAN II, and $112,000 for the A.O. to cover additional salaries and expenses to be incurred in implementing the Speedy Trial Act of 1974.

$52,000 has been provided to employ 34 additional bankruptcy clerks. Provision in the legislation was made to transfer $1.2 million from the appropriation for space and facilities to cover a deficiency in the appropriation for furniture and furnishings.

In Title II of the bill, $3,069,800 was included to cover increased pay costs resulting from general pay increases granted supporting personnel in October 1974. Savings in appropriations for juror fees and space facilities will be transferred to offset these pay increases.

Over one million was saved in the juror appropriation, primarily from improvements in jury management and using six-member juries in civil trials. The savings in the space and facilities appropriation represents reductions in G.S.A. billings because of changes in space classifications and rental charges.

As for the $2.5 million earmarked for Speedy Trial Planning purposes, the A.O. is completing plans regarding the allocation of funds for this purpose to the respective district courts.

EIGHTY-ONE DISTRICTS NOW USE SIX-MEMBER JURIES

Eighty-one Districts have now adopted some type of local rule which permits the use of six-member juries in civil cases.

In 1970 Mr. Justice White in an opinion of the Supreme Court in the case of *Williams v. Florida,* rejected a long-standing contention that the Sixth Amendment requirement of trial by jury also meant that all jury panels must be constituted with no less than 12. Up to this time civil cases in federal courts had been tried before juries of less than 12 in some districts, by stipulation, but this was the exception rather than the rule.

Chief Judge Edward J. Devitt in 1971 announced through a court order dated January 1 that in the District of Minnesota civil cases would be tried before juries of six in approximately 80 percent of the cases. The following March the Judicial Conference of the United States adopted a resoltuion proposed by the Committee on the Operation of the Jury System which ". . . approved in principle a reduction in size of juries in civil trials in United States district courts, and upon such reduction that there be a diminution in the peremptory challenges normally allowed. It is also resolved that the means to effectuate the objectives set forth in this resolution, i.e., by rulemaking or statute, be referred to the Committees on Civil Rules and on the Operation of the Jury System."

The trend to switch from twelve to six continued and gained momentum with the affirmance by the Ninth Circuit Court of Appeals in the case of *Colgrove v. Battin.* Petitioner in that case had challenged a local rule in the District of Montana and an order of U.S. District Judge James F. Battin

(See JURY pg. 6)

(JURY from pg. 5)
that a civil trial be heard by a jury of six. The Supreme Court upheld the action of the Ninth Circuit on June 21, 1973.

Two recent developments reinforce the concept of truncated juries in civil cases. One is the recent publication of the second volume of a series of reports to be issued by the ABA Commission on Standards of Judicial Administration called *Trial Courts.* The report proposes standards which would permit six-member juries in federal and state civil trials and in some criminal trials. Commenting on the report Mr. Justice Louis H. Burke, (Sup. Ct. Calif. Ret.), Chairman of the Commission, said that "Practice and views on the appropriate size of civil juries [in the state courts] differ throughout the country. If the question could be considered without regard to historical precedent, the optimum size of the jury might well be regarded as 8 or 9, a number affording greater representativeness than 6 while involving lower cost than 12."

The second development is the introduction Jan. 17 of Senate Bill S.237 by Senator Quentin N. Burdick which provides for the use of six-member juries in civil cases in all U.S. District Courts. Hearings on the bill are planned for the Fall of 1975.

LOS ANGELES MAGISTRATE ELECTED TO HEAD NATIONAL MAGISTRATES COUNCIL

U.S. Magistrate Ralph J. Geffen (C.D.Ca.) was elected 1975-76 President of the 300-member National Council of U.S. Magistrates during the group's Annual Conference last month in Colorado Springs, Colorado. He succeeds Magistrate William L. Garrett (E.D. Ca).

Magistrate Geffen was appointed in January, 1971. He graduated from UCLA in 1948 and received his law degree in 1951 from the University of Wisconsin Law School. After teaching at Stanford Law School, he entered private practice in Los Angeles in 1952.

LEGISLATION

CRIMINAL RULES: H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act, was reported with amendments by the House Judiciary Committee on May 29, 1975, and general debate has been completed. Final action on the bill is expected in the very near future. (A comprehensive analysis will be published when the bill passes.)

CONSUMER LEGISLATION: S. 200 passed the Senate on May 15, 1975, and is now pending in the House Committee on Government Operations. The bill establishes an independent consumer agency which may intervene in agency or court proceedings that substantially affect an interest of consumers. Under certain limited circumstances, the agency may initiate court proceedings.

BANKRUPTCY LEGISLATION: H.R. 6184, which would increase the salaries of bankruptcy judges to $36,000, has been approved by the Subcommittee on Civil and Constitutional Rights for full House Judiciary Committee action.

H.R. 31 and H.R. 32, bills which would revise the bankruptcy system, were the subject of hearings before the Subcommittee on Civil Rights and Constitutional Rights of the House Judiciary Committee.

COPYRIGHT LAW: The Subcommittee on Courts, Civil Liberties and the Administration of Justice has held hearings on H.R. 2223, for the general revision of the Copyright Law. Further Hearings are scheduled in July.

JUDGES SALARIES: Hearings on H.R. 6150, and related bills, on judicial salaries are scheduled for June 20 and 23 before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee.

ANTI-TRUST: The Senate Judiciary Committee, Subcommittee on Antitrust and Monopoly has conducted extensive hearings on S. 1284, to improve and facilitate the expeditious and effective enforcement of the antitrust laws, and S. 1637, to increase the effectiveness of discovery in civil antitrust investigations.

ENERGY LEGISLATION: The Subcommittee on Separation of Powers of the Senate Judiciary Committee has held a hearing to assess administrative procedure and judicial review provisions incorporated in current and proposed energy legislation. Testimony was received from representatives of the FEA, Consumers Union, the ABA and others.

BOARD OF SUPREME COURT HISTORICAL SOCIETY ANNOUNCED

The Board members of the Supreme Court Historical Society, who will play a prominent role in guiding the Society during its nascent years, were announced last month.

This list includes persons well known nationally and many who will be recognized as being closely related to Supreme Court history. But these factors alone did not prompt their nominations, for they all have above average interest in the purposes of this new organization. Their zeal is already apparent and because of this, plans projected well into the future are far ahead of schedule.

Trustees named to date who will serve for staggered terms are:

BOARD OF TRUSTEES

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The By-Laws provide that the work of the Board will be supported by an Advisory Council. This list includes individuals whose professional and private lives are related closely to the work of museums, archives, literature and the arts. Those names to date are:

ADVISORY COMMITTEE

William F. Swindler, Chairman
Clement E. Conger
Richard H. Howland
Carlisle Humelsine
T. Perry Lippitt
Merlo J. Pusey
Chalres E. Van Ravenswaay
Dr. James B. Rhoads
S. Dillon Ripley
Erwin C. Surrency
Arthur E. Sutherland
George M. White

Persons interested in fostering an informed understanding of the Supreme Court and the Federal judiciary are eligible for membership in the Society. The initial invitations to membership will be mailed in June. State membership chairmen will be announced soon. Inquiries about membership and Society plans should be directed to The Supreme Court Historical Society, 1629 K Street, N.W., Washington, D.C. 20006, telephone 202-785-0298.

PAROLE REORGANIZATION ACT PASSES HOUSE: HEARINGS SET FOR JULY IN SENATE

The Parole Reorganization Act of 1975 was passed by the House of Representatives May 21 and hearings have been set to begin in early July before the Senate Judiciary Subcommittee on National Penitentiaries.

The bill would reconstitute the U.S. Parole Board as the U.S. Parole Commission, an independent agency within the Justice Department, which would be organized into five geographic regions.

The House Judiciary Committee's report on the bill states that the purpose of the bill is to provide, ". . . an infusion of procedural protections into the federal parole system at the initial determination stage as well as the appellate and revocation levels [with] . . . the purpose. . . to insure a fair and equitable parole process."

Specifically, the bill:

- Provides definite time periods at which the prisoner shall be eligible for parole and eliminates uncertainty while allowing the inmate time to prepare for his hearing.
- Shifts the burden to the Commission to make a positive finding if an inmate is not ready for release—providing his prison record indiciates he has observed the rules of the institution.
- Spells out the factors to be taken into account when considering parole and allows the inmate to have access to this material.
- Requires that proper notice be given to the inmate of the time and date of his hearing.
- Requires that the inmate be permitted an advocate at his hearing to speak for him and assist him in preparing his case. Provision is made for the payment of reasonable expenses incurred by the advocate.
- Requires that once the inmate is released, that the time he spends as a law abiding citizen on the street be counted against the remainder of his sentence.
- Permits appeal on the merits to the regional commissioner and the National Appellate Commission.
- Establishes a hearing process with complete Sixth Amendment protections for the revocation or modification of parole.

The House Judiciary Committee, in its report on the bill, commended the Parole Board for "establishing a working relationship" with the House Committee and actually putting many of the bill's provisions into effect as the hearings progressed in the House.

ADMINISTRATIVE OFFICE ISSUES WIRETAPPING REPORT

The Administrative Office of the United States Courts issued its seventh report to the Congress on applications for orders authorizing or approving the interception of wire or oral communications.

The report summarizes the period January 1, 1974 to December 31, 1974 and includes reports from both state and federal judges who are required under the Omnibus Crime Control and Safe Streets Act of 1968 to file written reports with the Director of the Administrative Office on each application made to them for an order authorizing interception of a wire or oral communication.

During calendar 1974, 730 applications were made and two were denied (by Connecticut state judges). Of the 728 granted, 121 were signed by federal judges while 607 were granted by state judges. The overwhelming majority of state orders were concentrated in New York and New Jersey with 305 and 138 respectively or 23 percent of all state orders signed.

There was a 16 percent decrease from the preceding year in the total number of orders authorized, 728 in 1973 to 607 in 1974. (The complete report is available from the Administrative Office of the United States Courts.)

ao aopfjc calendar

July 7 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.

July 10-13 Sixth Circuit Conference, Mackinac Is., Mich.

July 18 Judicial Conference Magistrates Committee, Washington, D.C.

July 18-20 Advisory Committee on Bankruptcy Rules, Washington, D.C.

July 21-24 Ninth Circuit Conference, San Francisco, Ca.

July 21 Judicial Conference Standing Committee on Rules, Washington, D.C.

July 23-26 Tenth Circuit Conference, Santa Fe, N.M.

July 28-29 Judicial Conference Committee on Court Administration, San Francisco, Ca.

Sept. 25-26 Judicial Conference of the United States, Washington, D.C. (Note date changed)

CORRESPONDENCE COURSE ENROLLMENT MAY TOP 1,000

The Correspondence Course on Supervision which is being sponsored by the Education and Training Division has experienced an enthusiatic reception. Since its inception in February, 650 members of the federal courts have enrolled. 70% are members of Clerk's Offices or on the staff of Judges, Bankruptcy Judges, and Magistrates. Approximately 30% of the participants are Probation Officers or Chief Clerks in Probation Offices. The Education and Training Division expects the enrollment to reach 1,000 within the next several months.

The basic purpose of this course is to assist new and experienced supervisors, in addition to those who aspire to supervisory positions, in learning or relearning 3 basic skills. These are: basic supervisory principles and skills; the use of communications, both verbal and written; human relations and its importance in supervising people. Anyone who is interested in receiving more information or enrolling in the course is encouraged to contact the Federal Judicial Center Division of Continuing Education and Training.

NEWLY APPOINTED JUDGES

CENTER HOLDS DISTRICT JUDGES SEMINAR

During the week of June 9-14, the Federal Judicial Center held a Seminar for Newly Appointed District Court Judges.

This is the first step taken by the Center in its process of providing continuing legal education to the federal judiciary. In addition the Center's resources are made available, including use of a Cassette Library and the assistance of the Center's Information Service. Normally, a federal judge can expect to return for a second seminar after having served on the bench for two years.

The co-chairmen of the conference were Judge William J. Campbell, (ND-Ill.), an Assistant Director of the Center, and Judge Alfred P. Murrah, (CA-10), Assistant Director and Director Emeritus of the Center. Both have been, for many years prime advocates for programs of continuing legal education for all members of the judiciary.

THE THIRD BRANCH
VOL. 7, NO. 6 JUNE 1975

THE FEDERAL JUDICIAL CENTER

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Notice: The volume number on the original is incorrect; this is Vol. 7, No. 7.

Bulletin of the Federal Courts

VOL. 8, NO. 7 Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center JULY 1975

PRESIDENT ADDRESSES SIXTH CIRCUIT

CITES "NEED" FOR JUDICIAL PAY INCREASE

MACKINAC IS., MICH., July 13— President Ford told the Sixth Circuit,

"Now, despite the importance of the Judiciary, I think we on the outside do recognize that many of the problems that you face and that you tackle go unnoticed and unreported. Too often we pay attention only when federal court decisions are controversial, or the problems of court management become overwhelming.

"You know better than even those of us who look at the statistics, that the caseloads in federal courts have expanded tremendously in the past decade.

"Those of you on the federal bench know personally about the 25 percent increase in criminal cases, and the 55 percent increase in civil cases between 1964 and 1974. And I think, with mixed blessings, we recognize that the Sixth Circuit is one of the busiest and most productive and has one of the finest records, according to the statisticians in the country. And I compliment you and congratulate all of you, those on the Circuit Court as well as those in the district courts, for that very enviable record.

[This is an excerpted text of the President's remarks. A complete text is available from the Federal Judicial Center Information Service.]

"You have this impressive record of accomplishment in keeping up with the explosive development of cases in or under Federal jurisdiction, and by all of the experts that I have read you have handled these tremendous responsibilities extremely well.

"But I think it is self-evident there is a very serious question how long the federal Judiciary will be able to function smoothly without additional manpower.

"And I can say with emphasis that this Administration strongly supports the recommendations for additional district and circuit court judgeships.

"Your judicial conferences have said on more than one occasion, the

(SEE PRESIDENT pg 6)

Pictured above are, left to right, Mr. Justice Potter Stewart, Circuit Justice for the Sixth Circuit, Chief Judge Harry Phillips and President Ford prior to the President's address to the annual Sixth Circuit Judicial Conference.

MAGISTRATE APPOINTED TO FLORIDA SUPREME COURT

In a signal honor, U.S. Magistrate Joseph W. Hatchett (M.D. Fla.) was appointed by Governor Reubin Askew on July 8 to the Florida Supreme Court.

Governor Askew said that Magistrate Hatchett was selected from a list of seven attorneys and judges recommended by the Florida Supreme Court Nominating Commission and added that "he is eminently qualified". Hatchett was named a U.S. Magistrate in January 1971 and participated as a member of the task force that studied the role of masters in the Judicial System of England.

Speed vs. Quality

THE FJC'S DISTRICT COURT STUDIES PROJECT: AN UPDATE REPORT

The Federal Judicial Center's District Court Project researchers will begin publishing some of their preliminary findings this fall following extensive interviews with judges and key court officials in numerous district courts.

Primarily, these findings will concern the relative efficiency of different procedures observed in five metropolitan courts which were visited during the previous 18 months. During these visits, however, several judges mentioned their concern that emphasis on speed in the federal judiciary may be compromising the quality of proceedings.

In response to this concern, the Center is making a series of return visits to several courts to identify as specifically as possible why some judges fear quality may be compromised. These discussions have been invaluable in guiding the Center as recommendations are drawn from the information gained in the initial visits to district courts.

The most striking as well as gratifying finding is that the recommendations which the FJC staff researchers are in the process of developing are generally compatible with the concerns judges have expressed.

It appears at this point that speed, efficiency, and justice are not only compatible but mutually supportive as far as the specific conclusions of this project are concerned. Most recommendations that are emerging to speed a court's handling of its docket will concern expeditious treatment during the pleadings and discovery stages of all cases, but especially of comparatively routine cases.

On the other hand, the perceptions of some judges regarding likely threats to the quality of justice involve trial scheduling. Some judges feel some litigants are being rushed to trial after their case has been on the docket for some time, despite new problems which would justify a delay.

Such problems would include, for example, a subsequent state proceeding on the same issues that would not be forestalled by the federal trial, a finding after extensive discovery proceedings that another party should be added, and the inability to find a key witness.

According to the Project Director, Steven Flanders, preliminary data indicates that the FJC's recommendations will focus primarily on procedures to set up relatively short, but tailor-made schedules for discovery in each case. The courts in the study with the fastest disposition times have procedures that assure receipt of the answer promptly and establish a time period for discovery that is roughly in proportion with the minimum required under the Federal Rules.

A simple case would require all discovery within sixty to ninety days; a complex case more. Present procedures, even in courts that set what they regard as rather tight schedules, often result in a great deal of unused discovery time. Possibly the most interesting preliminary finding is that relatively simple cases are taking substantially longer than relatively complex cases.

It appears that procedures can be established to expedite the processing of the whole docket which do not imply any undue pressure on the complex cases. Procedures along these lines seem to show great promise to advance the shared desire for speedy and efficient justice. (For an earlier report on this project see *The Third Branch,* December, 1974, p.1.)

NATIONAL CENTER FOR STATE COURTS RELOCATES

The National Center for State Courts has relocated its Washington Liaison Office. The new address is:

Washington Liaison Office
National Center for State Courts
1150–17th St., N.W., Suite 701
Washington, D.C. 20036

(202) 833-3270

COMMITTEE ACTS TO IMPLEMENT SPEEDY TRIAL REQUIREMENTS

To assist the District Courts in conforming their rule 50 (b) plans to certain provisions of the Speedy Trial Act of 1974, the Committee on the Administration of the Criminal Law has approved amendments to its Model Plan for the United States District Courts for Achieving Prompt Disposition of Criminal Cases. The amended model plan was circulated throughout the judiciary June 19, 1975.

The Committee also met on July 17 and 18 and approved interpretive guidelines for the administration of the Act. These will be distributed in the near future.

The amendments to the model plan under rule 50 (b) are principally designed to take account of the interim time limits provided by 18 U.S.C. § 3164. This provision requires that defendants in pretrial custody be brought to trial within 90 days of the beginning of continuous custody, and that released persons designated by the attorney for the Government as being of high risk be brought to trial within 90 days of the designation. The amendments also take account of the time limits applicable to retrials, which are contained in 18 U.S.C. § 3161 (e), and of time limits contained in the Federal Juvenile Delinquency Act.

The amended model plan is designed to cover the period from September 29, 1975, to June 30, 1976. On July 1, 1976, additional provisions of the Speedy Trial Act will become effective. These provisions are not reflected in the recent amendments.

Under the Speedy Trial Act, each district court is required to file a plan for compliance with the Act by June 30, 1976. It is anticipated that the district plans formulated pursuant to this requirement will be drafted in a manner that complies with both rule 50 (b) and the Speedy Trial Act, and will therefore supersede existing plans under rule 50 (b).

C A – 2 ADVOCACY COMMITTEE RELEASES ITS REPORT

In January 1974 Chief Judge Irving R. Kaufman, on behalf of the Judicial Council of the Second Circuit, appointed a prestigious committee to study and evaluate the quality of advocacy in the federal courts of the Second Circuit.

The committee included experienced trial lawyers practicing in the Second Circuit, the U.S. Attorney for the Southern District of New York, a law school dean, a federal District Judge, and two law professors. Committee Chairman was Robert L. Clare, Jr., a New York City attorney.

The committee was not only charged with the task of studying but was also mandated to come up with recommendations for innovative programs to teach the art of advocacy in the law schools, for amendments to the rules of admission to practice in the federal courts, for post-admission educational projects and a definitive analysis of standards and procedures for professional discipline.

The committee members moved quickly to complete their task and on June 23, 1975, formally released their report. Their conclusions are responsive to their assignment, and they reflect careful analysis and meaningful recommendations.

Their recommendations were arrived at after analyzing returns of a comprehensive questionnaire sent all federal judges in the Second Circuit as well as personal interviews with judges, lawyers, and law professors. In addition, the views of bar associations were solicited and a survey was made of twelve law schools operating with national enrollments.

Conclusions in the report include:

- There currently exists a glaring lack of competency in trial advocacy in the federal courts in the Second Circuit, directly attributable to inadequate legal training.
- The heavy increase in litigation during the last decade is due to a trend which has found people in this country looking to government and especially the courts for solutions to their social and economic problems. This syndrome is buttressed by an expanding concept of constitutional rights and broad social and environmental legislation which leaves implementation to the courts.
- The public is deceived when unqualified attorneys are admitted to practice.
- Law school curricula should be restructured to assure that students receive at least the basic elements of trial advocacy; further, thirteen courses were listed as either essential or highly desirable and five were listed as important but nonessential.
- If law schools do not offer essential courses then continuing education should be pursued at educational organizations offering special training; or, in the alternative, that a Committee on Admissions be appointed by the District Chief Judge to determine whether an applicant to practice in the U.S. District Court without this special training, has by experience or otherwise gained equivalent knowledge of the required subject matter. Failing recourse to the federal bar by either of these routes, the Admissions Committee may in its discretion require an examination. This action of the committee would be subject to review by the District Court.

Three related developments are:

(1) Chief Judge Kaufman's announcement that the Second Circuit Judicial Council has adopted a new rule which would permit third-year law students (under specified conditions) to appear and argue cases before the U.S. Court of Appeals for the Second Circuit. [Several other Circuits, Third, Fourth, and D.C. have similar Local Rules.] It is part of this Circuit's continuing effort to raise advocacy standards. (2) the appointment by New Hampshire Supreme Court Justice William A. Grimes, Chairman of the Appellate Judges' Conference, of a special committee to develop ways to improve advocacy in the appellate courts. The committee will study the need for guidelines which would bring about successful advocacy, special training courses for practicing attorneys and possibly the establishment of a national college of appellate advocacy. (3) Chief Judge William B. Jones, (Dist. D.C.) said his additional responsibilities would restrict outside activities, but because of his concern for assuring good representation in the trial courts he will continue to support the National Institute for Trial Advocacy, an organization he helped establish.

NATIONAL INSTITUTE OF CORRECTIONS DIRECTOR NAMED

Attorney General Edward H. Levi has announced that Dr. Sherman R. Day has been appointed as the first Director of the National Institute of Corrections.

Dr. Day, a psychologist, corrections administrator and educator has been serving as the Administrator for Staff Development of the Federal Bureau of Prisons.

Dr. Day's appointment was recommended by the National Institute of Corrections' Advisory Board, a sixteen-member panel of government officials and private citizens who set policy for the newly-created Institute.

The N.I.C. was created as an agency of the Justice Department within the Bureau of Prisons by the Juvenile Justice and Delinquency Prevention Act which was enacted last September.

The Institute's purpose is to assist federal, state and local corrections agencies by providing management training, research and evaluation, information services and technical assistance.

STATISTICS REVEAL FEDERAL COURTS' CASELOADS CONTINUING TO MOUNT

The following statistics compiled by the Administrative Office of U.S. Courts' Information Systems Division reveal that the caseloads of the U.S. Courts are continuing to rise— with bankruptcy filings reaching a historic high — increasing 34.6 percent over the last eleven months.

These statistics graphically illustrate the business of the Judiciary today.

	1st 11 mo. FY 1974	1st 11 mo. FY1975 (est.)	Percent change
Appeals			
Filings	14,957	15,142	1.2
Terminations	13,871	14,585	5.1
Civil			
Filings	94,300	106,138	12.6
Terminations	88,713	94,829	6.9
Criminal			
Cases filed	36,398	39,325	8.0
Defendants filed	49,490	52,871	6.8
Defendants terminated	52,315	52,927	1.2
Bankruptcy			
Filings	173,485	233,551	34.6
Terminations	158,839	170,906	7.6
Probation			
Persons received	38,261	41,516	8.5
Persons removed	33,360	37,090	11.2

CALIFORNIA'S JUDGES WILL RECEIVE MAJOR PAY INCREASE IN SEPTEMBER

On September 1 California's 861 trial judges will receive a 12.34 percent cost of living increase which will make them among the highest paid judges of any in the nation. As of September 1, California's Municipal Judges will earn $41,677 yearly and Superior Court Judges, $45,299 yearly.

Only New York and Pennsylvania which pay trial judges $48,998 and $41,000 respectively pay their judges more than U.S. District Judges at the present time.

Since 1968 California Judges' salaries have been tied to a cost of living formula. The California legislature provided that judges would receive an across-the-board increase equal to the previous year's increase in the California consumer price index, as determined by the state's Department of Industrial Relations.

PAUL BENDER OF ADMINISTRATIVE OFFICE HONORED

Assistant Director Paul C. Bender of the A.O. Office of Plans and Analysis received the Distinguished Service Award on June 25th in recognition of his "outstanding contributions" as Secretary of the Atomic Energy Commission. Mr. Bender held that postion for two and one half years, having previously headed the Division of Information Systems of the Administrative Office. The award was presented by Miss Dixy Lee Ray, former Chairman of the Commission.

The citation commended Mr. Bender for "facilitating the decision-making process of the Commission and for his assistance in performing many highly sensitive and essential missions for the Commissioners."

LEGISLATION

Civil Service Retirement. H.R. 5397, to provide for retirement after 30 years of service, has been favorably reported by the House Committee on Post Office & Civil Service. As reported, it would allow for retirement after 30 years regardless of age, but the amount of annuity would be reduced by 1/6th of 1% for each month that the annuitant is under the age of 55.

Judicial Salaries. Senator Abouresk, a member of the Senate Judiciary Committee, has introduced S. 2040, which would provide a single 20% across-the-board increase in the salaries of judges and justices. The bill will also take the Federal Judiciary out of the quadrennial review of executive, legislative, and judicial salaries. S. 2040 is pending before the Senate Committee on Post Office and Civil Service.

H.R. **7779** was introduced on June 10 by Congressman Whalen. This bill would provide a salary of $41,000 for district judges and Court of Claims Commissioners, and $38,000 for full-time referees and $19,000 for part time referees.

Bilingual Courts. The Senate has passed S. 565, to provide more effectively for bilingual proceedings in all courts. In the House of Representatives, H.R. 8314 was introduced by Congressman Badillo and referred to the House Judiciary Committee.

Evidence Rules. S. 1549, to amend the evidence rules, passed the Senate on June 19. The bill represents a recommendation of the Judicial Conference and would make it clear that non-suggestive lineup, photographic and other identifications made in compliance with the Constitution are admissible evidence.

Judicial Survivors Annuities Program. On June 16, Senator McClellan submitted a series of amendments to S. 12, which would amend the Judicial Survivors Annuity Act. Hearings on the bill, including the amendments, are set for July 17.

Three-Judge Courts. S. 537, a bill to eliminate the use of three-judge courts in all but reapportionment and civil rights cases passed the Senate on June 23.

Madison County, Florida. S.723, which would transfer Madison County, Florida from the Middle to the Northern District of Florida, has passed the Senate.

SENATOR ABOUREZK INTRODUCES BILL TO RAISE JUDICIAL SALARIES

On June 26, South Dakota Senator James Abourezk introduced legislation which would raise judicial salaries 20 percent and tie all future increases to the cost of living.

The Abourezk bill, S. 2040, is the first judicial salary increase bill introduced in the Senate this session. A spokesman for Senator Abourezk said Montana Senator Lee Metcalf has agreed to co-sponsor the bill and Wyoming Senator Gale McGee, Chairman of the Senate Post Office and Civil Service Committee, has agreed to hold hearings on this bill as well as proposals to untie judicial salaries from those of Congressmen.

In a Senate floor speech following introduction of the bill, Senator Abourezk said the bill is designed to bring the level of judicial salary more into line with the rising cost of living.

In a letter sent to federal judges July 14, Senator Abourezk said, "I agree completely with The Chief Justice that federal judicial salaries, frozen since 1969, are wholly inadequate." The Senator pointed out, that even with his proposed twenty percent salary increase it would not totally reflect the buying power lost due to inflation over the last six years. An additional provision in the bill would allow an annual cost of living increase.

Senator Abourezk's bill for an increase in judicial salaries echoed the statement of Senator Jacob Javits of New York who called for a judicial salary increase in a Senate speech last month. (See *The Third Branch,* June, 1975,p.1)

HOUSE PASSES CRIMINAL RULES AMENDMENTS

On June 23, the House of Representatives passed, by a vote of 372 to 1, the bill H.R. 6799, the Federal Criminal Rules Amendments Act.

Although a number of amendments were proposed on the floor of the House, only a very few were received favorably, with the exception of the amendments proposed by the House Judiciary Committee. All of the amendments proposed by the committee were adopted.

An amendment proposed by Congressman Drinan and adopted by the House amends rule 32 relating to presentence reports. Under the amended language, it is made clear that the defendant is entitled to see everything in the file, including information based upon a promise of confidentiality, but not the source of that information. Of course, where the mere inclusion of the information would reveal the source, the judge could deny access to that information.

The most controversial of the committee amendments — one which would require the court to either accept or reject the plea agreement of the parties, without discretion to modify the recommended sentence — was adopted by the House.

By a close vote of 216 to 201, the proposed revision of the rules to provide for the issuance of a summons instead of a warrant in the usual case was defeated, and the existing procedure of issuing warrants unless the U.S. Attorney requests that a summons be issued will continue to be followed.

An amendment by Mr. Hyde would have returned the pre-trial discovery procedures to those which now exist. Again by a very close vote, the position of the House Judiciary Committee, which provides for the notification as to names of witnesses only 3 days before trial, was upheld.

Other revisions of the rules proposed by the Supreme Court were adopted by the House Judiciary Committee and incorporated in the bill as passed.

Rule 11, dealing with pleas was amended to permit a plea agreement to be disclosed to the court, or rejected by it, in camera upon a showing of good cause. Evidence of a plea of guilty later withdrawn, or of a plea of nolo contendere or offers thereof could be used later against a defendant in a trial for perjury or false statement prosecution. The advice given to the defendant prior to acceptance of his plea would include the advice required by *Boykin v. Alabama,* and the fact that his statements might later be used against him in a perjury trial if made under oath, on the record, and in the presence of counsel.

Rule 12.1 dealing with the alibi defense was recast by the Committee to provide that it will be triggered by the prosecution, rather than the defense, but also requires that the government turn over to the defendant the names of those witnesses that it would use to rebut the defendant's alibi witnesses.

Rule 15 was modified in several respects. The House Judiciary Committee, not wanting to encourage the use of depositions in contrast to having a live witness on the stand, restricted the proposed definitions of "unavailable." A witness unavailable due to his exemption from testifying on the ground of privilege, will not be considered unavailable within the meaning of the proposal permitting the use of depositions at trial. A further amendment makes provision for payment by the government for the cost of taking and transcribing a deposition for an indigent defendant.

As noted above, the provisions of Rule 16 relating to discovery of witness lists were amended to provide for notice only 3 days before trial.

The Senate Judiciary Committee has already held hearings on H.R. 6799 and early action is expected.

(FROM **PRESIDENT** pg 1) need is there, and legislation has been introduced in both the House and the Senate to provide I think it is 51 or 53 additional federal judges.

"I can assure you personally that I will do all I can to convince the Congress that action is required. I think all of us in this room recognize that you may have to make some division between one group and another in order to get it approved, but I think the overriding interest is in the need for judges.

"So, as far as we are concerned, we will work out with those that feel there should be some equal division-and I understand it-so that we can meet the needs of our fedcourt system.

"I think we also have to recognize there is a need for an increase in federal judicial salaries.

"Let me assure you that in the most discreet way the Chief Justice, without violating any Constitutional limitations, has talked to me on several occasions—has talked to a number of Members of the Congress and at his specific request, I got a group of the Democratic and Republican leaders to the White House along with people from the Executive Branch to again mention with emphasis the problems in the field of compensation for federal judges.

"So, you have a good advocate. We just have to find some way to get some action.

"Let me say this: In my crime message, which was submitted to the Congress several weeks ago, I strongly supported, as I think it is absolutely essential, legislation to expand the jurisdiction of federal magistrates.

"You know better than I that the expansion of that responsibility can be very helpful in alleviating some of the caseload problems in the federal judicial system.

"In addition, in this crime message, I did propose action on the scope and the process of Federal jurisdiction, including the range of diversity jurisdiction, the advisability of three-judge courts, possible avenues of Federal-State cooperation and related proposals, all of which could be materially beneficial in reducing the caseload.

"Accordingly, in this process, I have requested a comprehensive review of Administration efforts on judicial improvements and an examination of the full spectrum of problems facing the Judiciary.

"Because the State courts are being equally, if not greater, taxed by special problems, I have recommended an extension of Law Enforcement Assistance Administration programs calling attention specifically to the financial and the technical assistance requirements of our State courts.

"The Administration is also aware of the need to consider the judicial impact of any new legislation, and I can assure you that we will examine the potential for litigation arising from any of our proposals.

"It has been my observation that too often Federal Laws have been passed without adequate consideration of their impact on the effect on our Federal court system.

"From its founding, the Nation has expected its courts to perform vitally important functions, and in recent years the Federal bench has wrestled with many of these controversial issues in our society.

"In fact, we are turning too often to the Federal courts for solutions to confilicts that should have been tackled by other agencies of the Federal Government, or even the private sector.

"We cannot expect the Judiciary to resolve and to balance all of our opposing views in our society. Neither can we rely on the courts as sole protector of our individual liberties.

"I think other agencies, or partners in the Federal Government, have an equal responsibility. We can't, in all honesty, put the full burden and total load on the Judicial system.

"The Judiciary is the Nation's standing army in defense of individual freedom, but all segments or our society—Government, business, labor, education—must work to see that the individual is not stifled."

GOVERNMENT APPEALS FREE TRIAL TRANSCRIPT DECISION

The Solicitor General, acting on the recommendation of the Administrative Office, has filed a certiorari petition in the Supreme Court to review a decision giving indigent federal prisoners the right to a free trial transcript for possible use in preparing petitions for post conviction relief.

The decision of the Court of Appeals for the Ninth Circuit in *MacCollom* v. *United States* (decided August 2, 1974), held that an indigent federal prisoner, who had been permitted to proceed *in forma pauperis* for the purposes of his criminal trial, was entitled to obtain a transcript of his trial in order to assist him in preparing a post conviction motion under 28 U.S.C. §2255, although no such motion had yet been filed with the district court.

By a two to one vote, the Court of Appeals departed from the precedent requiring a particularized showing of need for the specific portion of the transcript requested. The Court noted that 28 U.S.C. 753(f) authorizes the payment by the U.S. from appropriated funds of the fees for transcripts furnished in proceedings brought under section 2255 only if the trial judge or a circuit judge certifies that "the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." It did not hold this section unconstitutional but stated that its decision in this case "would simply fill a constitutional deficit not addressed by the statute."

In its recommendation to the Department of Justice that certiorari be sought, the Administrative Office said this decision may result in a substantial drain on the appropriated funds of the Judiciary used to pay transcript expenditures for indigent persons and would also greatly increase the demands on the official court reporters of the federal district courts for the preparation of transcripts.

THE SOURCE

The Information Service of the Federal Judicial Center

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- The Case Against the Jury (a Brief Without Citations). Aron Steuer. 47 N.Y.S. B.J. 101 (Feb. 1975).
- Computer Transcription is on the Brink of Revolutionizing Court Reporting. Sandra W. McFate. 36 Nat'l. Shorthand Rep. 16 (March 1975).
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- LEXIS: A Progress Report. Jerome S. Rubin and Robin L. Woodward. 15 Jurimetrics J. 86 (Winter 1974).
- Masters and Magistrates in the Federal Courts. 88 Harv. L. Rev. 779 (Feb. 1975).
- The New Federal Rules of Evidence. Joe E. Estes. 65 F.R.D. 267 (March 1975).
- The Open Door Policy on Trial: Should Special Credentials be Demanded of Those Who Practice in Federal Courts? Learning & the Law 46 (Winter 1975).
- Recommendations for the Improvement of the Administration of *pro se* Civil Rights Litigation in the Federal District Courts in the Southern and Eastern Districts of New York. Committee on the Federal Courts, Ass'n of the Bar of the City of New York. 30 Record 107 (Jan./Feb. 1975).
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- Video Tapes in the Courtroom. John R. Martzell. 22 Fed. B. News 35 (Feb. 1975).
- Justices and Presidents; a Political History of Appointments to the Supreme Court. Henry J. Abraham, Oxford University Press, 1974.
- A Guide to Juror Usage. U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, Dec., 1974. Government Printing Office, Stock Number 4000-00328.

BILL PROVIDING DEFENSE ATTORNEYS FOR JUDGES IS SUBMITTED

Acting upon the request of the Judicial Conference of the U.S., the Director of the Administrative Office of U.S. Courts has submitted legislation to Congress providing for the defense of judges and judicial officers sued in their official capacities. The litigation expenses would be paid to private attorneys who acted as defense counsel, by the Director of the Administrative Office.

In a letter to the House Speaker and the President of the Senate accompanying the proposed bill, the Director of the A.O., Rowland F. Kirks, said that "judges and other judicial officers are generally represented by the Department of Justice. . .However, there are circumstances in which it is inappropriate for the Department of Justice to provide such representation."

As an example, he mentioned a mandamus suit filed by the Department of Justice against a judge.

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 attorneys' fees and litigation costs in appropriate situations.

HOUSE APPROVES JUDICIARY APPROPRIATIONS

The House of Representatives June 27 approved H.R. 8121, the bill authorizing judiciary appropriations for Fiscal Year 1976 ending next June 30 and for the transition period from July 1 through September 30, 1976.

Senate action on the bill is expected shortly since hearings were held in the Senate late last month.

The House approved the full amount requested for judicial salaries, court-appointed counsel, juror fees, and salaries and expenses for both magistrates and bankruptcy referees.

In addition, the House approved 259 new positions including 16 deputy clerks for U.S. District Courts, nine special legal staff positions for the Ninth Circuit, nine senior staff law clerks for the U.S. Courts of Appeals but declined to approve a request for nine Deputy Circuit Executives.

With respect to the Administrative Office, the House approved 29 new positions and also provided that funds would be available on an annual basis for 42 positions approved in the second supplemental appropriation for 1975 to implement the Speedy Trial Act.

The Federal Judicial Center was granted budget authority for $6.4 million of which $2.4 million has been earmarked for COURTRAN II operations.

The House bill also includes $64 million for space and facilities and $4,570,000 for furniture and furnishings.

The Third Branch

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Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

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

PERSONNEL

Appointments
Anthony M. Kennedy, U.S. Circuit Judge, CA-9, May 30
Dick Yin Wong, U.S. District Judge, D.Hawaii, May 30

Nomination
Phil M. McNagy, Jr., U.S. District Judge, N.D. Indiana, June 24

Elevation
William B. Jones, Chief Judge, U.S. District Court,District of Columbia, July 14

Nomination
Richard D. Rogers, U.S. District Judge, District of Kansas, July 11

Resignation
James A. Comiskey, U.S. District Judge, E.D. Louisiana, June 15

Death
Thomas W. Swan, U.S. Circuit Judge, CA-2, July 13
Walter H. Hodge, U.S. District Judge, District of Alaska, July 12

AO & FJC calendar

Aug. 4-5 Judicial Conference Jury Committee, Lake Placid, N.Y.

Aug. 12-14 Judicial Conference Review Committee, Hilton Head, S.C.

Aug. 13-14 Judicial Conference Advisory Committee on Judicial Activities, Hilton Head, S.C.

Aug. 14-15 Judicial Conference Budget Committee, Washington, D.C.

Aug. 15 Judicial Conference Joint Committee on Judicial Code, Hilton Head, S.C.

September 9 Third Circuit Judicial Conference, Philadelphia, Pennsylvania

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pennsylvania

Sept. 25-26 Judicial Conference of The United States, Washington, D.C.(Note date changed)

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NINTH CIRCUIT CONSIDERS REORGANIZING ITS CIRCUIT CONFERENCE

In 1974 Chief Judge Richard H. Chambers appointed a Committee on Reorganization of the Circuit Conference and Conference Committees and directed the members to study the Circuit's Annual Conference and suggest possible methods to improve its purposes, content and operation.

The Committee held hearings in Seattle, Los Angeles, Phoenix, and San Francisco to hear the views of judges, private and government lawyers and law school deans. In addition, a questionnaire was sent to former participants and over one hundred returned them with detailed responses.

At the Ninth Circuit Conference held last month the Committee released its preliminary report and solicited comments from attendees. After reviewing the history of the Circuit Conference concept, the Committee found that there were three broad and interdependent purposes: administration, education, and social exchange. However, the Committee found that most questions of judicial administration as well as important areas of judicial education are relegated to the brief edges of the Conference while the social purpose, at the present time, appeared to be dominant.

The Committee said that the Conference "has fulfilled its statutory purpose only partially and sporadically. The reason for this failure is that the part the Circuit Conference is to play in the continuing effort to improve the administration of justice in the federal courts of the Circuit has not been kept clearly in mind in the organization of the Conference, in the representation and participation of the Bar, and in the determination of program content."

In addition, the Committee found that the Circuit Conference has been deficient in: (1) the rela-

(SEE **NINTH CIRCUIT** pg. 2)

PROJECTS AND PLANNING UNDER WAY FOR THE JUDICIARY'S PARTICIPATION IN THE BICENTENNIAL CELEBRATION

Several twenty-six minute films dramatizing the role of the federal courts in the formative years of American life, and books and brochures outlining the history and functioning of all branches of the national judicial system, will be part of the Judiciary's celebration of the Bicentennial.

Co-Chairmen of the Bicentennial Committee are Chief Judge Clement F. Haynsworth, Jr., (CA-4) and Chief Judge Edward J. Devitt

(SEE **BICENTENNIAL** pg. 8)

★This issue contains a summary of significant opinions decided by the Supreme Court of the United States during the October Term, 1974. (See pg. 3)

PRESIDENT FORD SIGNS PAY BILL

On August 9, President Ford signed legislation which will increase the salaries of all federal judges, senior executives of all three branches of government, and all other employees covered by the federal pay comparability act.

The amount of the increase has not yet been set but is expected to range from a low of 5% to a high of 8.66%. The increase is effective October 1.

The Director of the Administrative Office of U.S. Courts will inform judges and other members of the federal judiciary of the exact amount of the pay increase when the information is available.

On August 29, President Ford asked Congress to restrict the amount of the pay increase to 5%. He told Congress, "The size of the proposed pay raise must be temporarily restrained for the economic well-being of the nation."

tionship of the Circuit Conference to the Circuit Council and the Judicial Conference of the United States; (2) the role of the District Court Judges in the Conference; and (3) the role of the Bar in the Conference.

The report pointed out that the Circuit Conference should play a "deliberative and advisory role" with respect to the Circuit Council. However, the Committee found that the functions of the Circuit Conference in relation to the Circuit Council have been almost totally ignored.

Turning to the role of the District Court Judges in the Conference, the Committee said that the Circuit Conference presents a unique opportunity for useful exchange among District Judges, and between them and the other elements of the administrative machinery of the courts (the Judicial Conference of the United States and the Circuit Council), as well as the Federal Judicial Center and the Administrative Office.

The Committee found that there was little recognition of the role that should be played in the Judicial Conference by the Bar of the Circuit and that the lawyer-delegates have not served as a conduit of information from the Bar to the Conference on the state of the judiciary in their districts.

The Committee recommended that steps be taken to make sure that the lawyer-delegates perform their intended function of informing the judges of deficiencies of the operations of the courts of the Circuit.

Composition of the Conference

The Committee closely analyzed the composition of the Ninth Circuit's 1974 Conference and found that Rule 16 of the Rules of the Ninth Circuit, which establishes the categories of invitees to the Circuit Conference, "does not necessarily produce lawyer-delegates who either actively participate or represent the Bar of the Circuit . . . . . [T]oo frequently, a Judge's choice of a lawyer-delegate has resulted from social and personal considerations unconnected with whether the invitee had contributions to make or interests relevant to the purpose of the Conference."

The Committee recommended that the size of the Conference be reduced and that the present 3 to 1 ratio should be limited to one non-judicial invitee to each Judge in the hope that this would produce a more conducive environment in which exchanges between lawyers and judges could take place. The Committee also recommends severely limiting the number of special guests who are invited primarily as a matter of courtesy and completely eliminating representatives from State Bar Associations since their role has been purely ceremonial. In addition, the number of representatives from accredited law schools should be cut. In deciding who should attend the Conference, the Committee recommended "three indispensable requirements:

(1) that the prospective delegate be involved in federal practice to some degree; (2) that the delegate be interested in the purposes and work of the Conference; (3) and that the delegate be willing and able actively to contribute to that end." The Committee recommended a selection mechanism for choosing lawyer-delegates. This mechanism would utilize local Bar Associations within each district which would nominate candidates from which a Committee of local judges could then select the lawyer-delegates. The Committee thought it might also prove productive to consider inviting members of non-legal professions to attend the Conference as non-voting participants. "Such attendance should help avoid certain forms of intellectual inbreeding as well as add a more worldly flavor to the conference. Accountants, psychiatrists, psychologists, criminologists, social workers, rehabilitation specialists and members of the working press could add a refreshing dimension to discussions of various subjects."

Program Agenda

After reviewing what the other Judicial Circuits follow as their Conference agendas, the Committee recommended that a joint executive session of Circuit and District Judges be held on the first day of the Conference since it provides a "forum where the judges can engage in a frank and open exchange of ideas and experience in an informal atmosphere."

The Committee also recommended that the organization of the Conference be streamlined by eliminating the District Judges' seminar and by integrating the topics which would normally appear on the District Judges seminar agenda into the general program of the Conference.

Beginning on the second day of the Conference a two-day general session would start and this session would include subject matter somewhat broader than that covered during the executive session. The Committee recommended that subject matter "should be chosen for its topicality, liveliness, and relevance to daily federal practice."

Of special value to the participants might be an annual presentation of the following: (a) A comprehensive review of United States Supreme Court decisions; (b) a comprehensive review and critique of Ninth Circuit decisions; (c) the most currently litigated appellate issue facing the Circuit Court; (d) the most currently litigated trial issue . . . facing the District Courts. After reviewing the various alternative suggestions concerning the duration of the Conference the Committee said that the most attractive alternative is a three-day Conference consisting of both morning and afternoon sessions.

Leadership Organizations

The Committee recommended: (1) a single Executive Committee should be in charge of all phases of the Conference; (2) each of the

(SEE NINTH CIRCUIT pg. 9)

SUPREME COURT COMPLETES SIGNIFICANT TERM

The Supreme Court on June 30, completed one of its busiest terms in history with 123 signed opinions. Here are capsule summaries of the Court's decisions which are of major interest to members of the judiciary. They were prepared by the General Counsel's Office of the Administrative Office of U.S. Courts.

Gonzalez v. Automatic Employees Credit Union, 419 U.S. 90 (December 1974)

Rejecting a literal reading of 28 U.S.C. §1253 which provides a right of appeal to the Supreme Court from the grant or denial of an injunction in any civil action by a three-judge district court, the Supreme Court held that "when a three-judge court denies a plaintiff injunctive relief on grounds which, if sound, would have justified dissolution of the court as to that plaintiff, or a refusal to request the convention of a three-judge court *ab initio*, review of the denial is available only in the court of appeals." In this case where the District Court had dismissed an injunctive suit claiming the unconstitutionality of certain Illinois car repossession laws, for lack of the plaintiff's standing to sue, appeal properly was to the court of appeals rather than the Supreme Court. In dicta the Court praised the virtues of a rule which would require that any resolution of a suit by a three-judge District Court on grounds other than the constitutional merits of the case be appealed first to the courts of appeals and not directly to the Supreme Court. This rule was later adopted by the Court in a per curiam opinion, MTM, Inc. v. Bexley, (1975).

Cantrell v. Forest City Publishing Co. 419 U.S. 245 (December 1974)

In a diversity suit against a newspaper publisher and reporter for invasion of privacy under a "false-light" theory, the Supreme Court distinguished between the standard of "actual malice," which focuses on the truth or falsity of the material published and which must be established before a state may constitutionally permit public officials to recover for libel, and that of "common law malice," which focuses on the attitude or ill-will of the defendant to the plaintiff and his rights and which is generally required under state tort law to support an award of punitive damages for invasion of privacy. Thus, the Court in this case upheld recovery by a family about which a misleading and false article had been written where there was proof of "actual malice" yet affirmed the trial court's denial of punitive damages because of the lack of proof of "common law malice."

Schick v. Reed, Chairman, U.S. Board of Parole, 419 U.S. 256 (December 1974)

Petitioner who had been sentenced to death by a court-martial for murder brought suit to challenge the Presidential commutation of his sentence to life imprisonment without opportunity of parole, under which he had already served twenty years. The Supreme Court found that the presidential pardoning power encompasses the power to commute sentences on conditions which do not in themselves offend the Constitution, but which are not specifically provided for by statute. Furthermore the Court held over dissent that the plenary pardoning power is not limited by the Court's subsequent decision in **Furman v. Georgia**, 408 U.S. 238 (1972), invalidating the death penalty.

Jackson v. Metropolitan Edison Co. 419 U.S. 435 (December 1974)

A heavily regulated public utility with a partial monopoly of electrical service which terminates service to a consumer, allegedly without notice or a hearing, is not involved in state action sufficient to entitle the plaintiff to a federal cause of action under 42 U.S.C. §1983, the Civil Rights Act of 1871, for a claimed deprivation of property without due process of law under the Fourteenth Amendment.

Maness v. Meyers 419 U.S. 449 (January 1975)

A lawyer is not subject to the penalty of contempt for advising his client, during the trial of a civil case, to refuse on Fifth Amendment grounds to produce material demanded by a subpoena *duces tecum*, when the lawyer believes in good faith that the material may tend to incriminate his client. The Court noted that pre-compliance review is appropriate where the privilege against self-incrimination is involved, and where no other remedy may be adequate once such possibly incriminating evidence is released.

Schlesinger v. Ballard 419 U.S. 498 (January 1975)

The Supreme Court, applying a rational state interest test, held that military mandatory discharge provisions, which provide that women officers may serve 13 years without promotion before discharge whereas men are limited to nine years service without promotion, are not a denial of equal protection or due process. The legislative classification is rationally based on the fact that male and female line officers in the Navy are not similarly situated in that women have less opportunity than men for promotion because of little exposure to combat or sea duty.

Taylor v. Louisiana 419 U.S. 522 (January 1975)

The Supreme Court, recognizing the standing of a male defendant to challenge a state conviction on the basis that women were systematically excluded from state jury panels, struck down Louisiana's constitutional and statutory requirements that a woman automatically be excluded from jury service unless she has filed previously a written declaration of her willingness to serve. The Sixth Amendment right to trial by jury includes the right to have the pool of people from which petit jurors are selected reasonably representative of the community and not exclusive of distinctive groups in such community. In a subsequent case, **Daniel v. Louisiana**, 420 U.S. 31 (January 1975) this opinion was denied retroactivity.

Cousins v. Wigoda 419 U.S. 477 (January 1975)

The Supreme Court here held that the convention of a national political party is the proper forum for determining intra-party disputes as to which state delegates should be seated and that it was thus improper for a state court to compel a national party association to seat certain delegates.

Goss v. Lopez 419 U.S. 465 (January 1975)

Students facing temporary suspension of at least 10 days for misconduct from a public school have property and liberty interests that qualify for protection under the Fourteenth Amendment's Due Process Clause. The Court found that a student has a legitimate entitlement to a public education which cannot be arbitrarily deprived him without minimum procedures, which include notice to the student of the charges made and, if he denies them, an explanation of the evidence against him as well as an opportunity to present his version. These procedures should, unless the student's presence endangers persons or property or disrupts the academic process, precede the student's removal. The elaborateness or formality of the hearing provided should be tailored to the circumstances and interests involved in each situation.

North Georgia Finishing Inc., v. Di-Chem, Inc. 419 U.S. 601 (January 1975)

The Georgia statutory procedure of permitting writs of garnishment to be issued in pending suits upon conclusory allegations made by the plaintiff or his attorney of anticipated loss, thereby depriving the defendant of the use of his property pending trial unless he files a bond, where no provision for an early hearing is made, violates the Due Process Clause of the Fourteenth Amendment. Indeed this violation exists whether the defendant be a consumer or a corporate party of bargaining power equal to that of the garnishee.

Chapman v. Meier 420 U.S. 1 (January 1975)

In this case the Supreme Court in vacating a court-approved districting plan reiterated the view that multimember districts should not be imposed upon a state in a legislative apportionment case unless there exists persuasive reasons, such as traditional state policy, to justify such districts. In addition the Court found that a population variance of 20% between the largest and smallest districts under the challenged District Court plan violated the one-man one-vote doctrine and was not justified by historically

significant state policy or unique features. Noteworthy in this case is the Court's clarification of the responsibility of a District Court when it undertakes to reapportion. The Court stated "it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with a minimal population variance cannot be adopted."

Train, Administrator, EPA v. City of New York, 420 U.S. 35 (February 1975)

The presidential impoundment of federal funds to be allotted for municipal sewers and sewage treatment works under Title II of the Federal Water Pollution Control Act Amendments of 1972 was held to be unauthorized and contrary to congressional intent in providing in §205(a) of Title II that the sums authorized to be appropriate *shall* be allotted by EPA.

Emporium Capwell Co. v. Western Addition Community Org. 420 U.S. 50 (February 1975)

Although national labor policy greatly accords the highest priority to nondiscriminatory employment practices, the National Labor Relations Act was held not to protect concerted activity by minority employees, who picketed their employer's store, to bargain with their employer over issues of employment discrimination, thereby bypassing their union which had initiated its contract grievance procedure with the employer over the employee's complaints.

Gerstein v. Pugh 420 U.S. 103 (February 1975)

A person arrested and held for trial under a prosecutor's information is constitutionally entitled to a judicial determination of probable cause before or promptly after arrest in order to be subjected to any significant pretrial restraint of liberty. Accordingly, the Court determined that Florida procedures by which a person could be arrested without a warrant, charged by information and then jailed without a judicial determination of probable cause were unconstitutional. The judicial probable cause determination, however, need not be a formalized adversary proceeding and need not require that appointed counsel be provided the accused.

The Court additionally noted that, while a detained person may challenge the existence of probable cause for his confinement, a conviction thereafter obtained will not be vacated for that reason.

Drope v. Missouri 420 U.S. 163 (February 1975)

A unanimous Supreme Court found that the failure of a trial court to order a psychiatric evaluation or make further inquiry on the question of a defendant's competence to stand trial, where there was some evidence of incompetence revealed in a pretrial psychiatrist's report and in the irrational conduct of the defendant during the trial, violated the defendant's right to a fair trial.

NLRB v. Weingarten, Inc. 420 U.S. 251 (February 1975)

An employer's denial of an employee's request to have her union representative present at an investigative interview regarding thefts from the employer which might result in disciplinary action constitutes an unfair labor practice prohibited under the National Labor Relations Act.

Lefkowitz v. Newsome 420 U.S. 293 (February 1975)

A state prisoner's right to federal habeas corpus relief is not precluded even though he pleaded guilty at the trial of the charges against him, if the state itself permits a defendant to raise certain constitutional challenges on appeal from a conviction based on a guilty plea.

United States v. Biceglia 420 U.S. 141 (February 1975)

The Internal Revenue Service has authority, says the Supreme Court, to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting possible liability for unpaid taxes.

United States v. Wilson 420 U.S. 332 (February 1975)

The double jeopardy clause does not prevent the Government from appealing a trial court's disposition of a post-verdict motion favorable to the defendant but which does not subject the defendant to a new trial. In this case after a jury verdict of guilty the District Court granted dismissal of the indictment for inordinate delay between the time of the offense and the indictment. The Supreme Court here held that the Government had a right to have such dismissal reviewed by the courts of appeals because in any event no new trial of the defendant would be necessitated.

United States v. Jenkins 420 U.S. 358 (February 1975)

The double jeopardy clause precludes the Government from appealing a District Court "dismissal" of an indictment and "discharge" of a defendant following a bench trial even where it is unclear whether the District Court resolved the issues of fact in favor of the defendant. If the Government were to prevail on appeal, further evidentiary proceedings going to the elements of the offense charged would be required.

Serfass v. United States 420 U.S. 377 (March 1975)

A government appeal is proper from a pretrial order dismissing an indictment where no trial, in the sense of adducing evidence, had begun and thus no jeopardy had attached.

Wood v. Strickland 420 U.S. 308 (February 1975)

In this case the Supreme Court found that public school officials are entitled to a qualified good-faith immunity from liability for damages for violating a student's constitutional rights. They are liable, however, if they take actions within the scope of their responsibilities which they know or should know violate a student's constitutional rights, or they act with a malicious intention to deprive a student of his rights. Good faith on the part of the school official will preclude the recovery of compensatory damages against him.

Cox Broadcasting Corp. v. Cohn 420 U.S. 469 (March 1975)

A newscaster's publication of a deceased rape victim's name, found among official court records related to the ensuing trial, violated a Georgia statute making it a misdemeanor to reveal the victim's name. In a suit for invasion of privacy brought by the victim's father the Georgia Courts held that a rape victim's name was not a matter of public concern and that the statute was a legitimate limitation on the First Amendment's right of free speech.

The Supreme Court reversed. A state cannot, consistent with the right of freedom of expression, impose sanctions on the publication of information obtained from judicial records open to public inspection. The commission of a crime, prosecutions thereby resulting, and related judicial proceedings are matters of public concern which the press has the responsibility to report. Thus, the right of privacy is limited by the public's right to know and the press's right to publish matters of public record and of public concern.

Burns, Commissioner v. Alcala 420 U.S. 575 (March 1975)

The term "dependent child" under the federally sponsored program of Aid to Families with Dependent Children (AFDC) does not include unborn children so that states receiving Federal funds are not required to offer welfare benefits to pregnant women for their unborn children.

Southeastern Promotions Ltd., v. Conrad 420 U.S. 546 (March 1975)

A municipality's denial of the use of a public theatre for a musical production based on its content constitutes prior restraint tolerable only where the censor has the burden of initiating judicial proceedings and of showing that the material is unprotected speech. Furthermore, any restraint imposed before judicial review must be brief and done only to preserve the *status quo*. Judicial determination must be assured. Here the refusal of the use of a public theatre for a showing of "Hair" was not safeguarded by the requisite procedures, and the producer's First Amendment rights of expression through drama were violated.

(SEE **OPINIONS** pg. 7)

RESTRAINING THE LAWYERS

BY JOSEPH KRAFT

A becoming modesty characterizes the spirit of the Supreme Court as it reaches the end of another term. Special arrangements have apparently been made to remove public doubts that the uncertain health of Justice William Douglas may be playing a decisive role in the work of the court.

The major decisions have been dominated by a sense that the legal process is an exceedingly imperfect instrument for settling acute social problems. It is entirely fitting that the last day of this term saw a decision to uphold the right of defendants not to have a lawyer.

The arrangements made with respect to Justice Douglas are a matter of surmise. It is known that he suffered a stroke and has been receiving therapy in New York. It is also known that he has participated in many decisions since his illness.

But there has been no 5 to 4 decision in which Justice Douglas voted with the majority. An unusually large number of cases, including one testing the death penalty, have been held over for reargument next term. It seems clear that the Justices have an understanding whereby they will postpone any decisions in which Justice Douglas would be the swing vote.

The philosophical tone of the court is in keeping with that commonsensical, collegial decision. In the term now ending significant decisions were rendered in two areas of acute social conflict—the environment and civil rights.

The environmental issue came to the surface in the Alyeska case. The wilderness Society and some other environmental groups won an injunction against the consortium known as the Alyeska Service Co., which is building the Alaska Pipeline. The Consortium was required to get an environmental permit before proceeding with construction.

The environmental groups then sought, and were granted in the lower courts, a ruling which obliged Alyeska to pay their legal fees. The basis for that claim, which goes against a general rule that does not accord legal fees to winning parties, was that the environmentalists were acting as lawyers for the public interest.

The Supreme Court rejected that argument in a 5-2 decision. The majority felt that the claim of the environmentalists to represent the public interest had to be validated by the Congress, not the courts. "It appears to us that the rule suggested here," Justice Bryon White wrote in the majority opinion, "would make major inroads on a policy matter that Congress has reserved for itself."

The civil rights issue came to the surface in the Richmond annexation case. In 1970, the city of Richmond, Va., annexed the adjacent town of Chesterfield. As one result, the proportion of blacks in Richmond was reduced 52 percent to 42 per cent.

The annexation was questioned by civil rights groups on the grounds that it was designed to dilute the black majority in Richmond and was therefore an infringement of the right to vote. The Supreme Court sent that case back to the lower courts for further hearings on the facts.

But the majority strongly questioned the plaintiff's arguments that denial of majority status in the city was denial of the right to vote. The 5-3 decision against, written by Justice White, stipulated that "a reduction of a racial group's relative political strength in the community does not always deny or abridge the right to vote."

The upshot of the decisions is to apply a gentle braking action against a development which has been accelerating for the past few years. Reform groups egged on by activist lawyers have been using the courts to enforce social actions which they could not push past duly elected bodies.

But the fact is that the court system does not offer a good way to settle basic social issues. Judges and lawyers are poorly equipped to draw school districts and figure out the right trade-off between the interest in cheap power and the interest in clean air.

Not only because they lack the technical knowledge. The true disqualification is that lawyers are highly mobile individuals who tend to work in very small groups, if not in isolation. They are the last people to try to figure out arrangements whereby large groups bound together in collegial relations live together. So it is fine to have the Supreme Court applying some restraints, and it would be better still if the lawyers restrained themselves.

SUPREME COURT HISTORICAL SOCIETY TRUSTEES NAME BOARD OF DIRECTORS

The newly formed Supreme Court Historical Society announced August 4 that donors thus far have contributed $142,000 toward the group's varied objectives.

To date the largest contribution has come from Mrs. Gwendolyn D. Cafritz who made the grant in behalf of the Morris and Gwendolyn Cafritz Foundation.

Following is a statement by Mrs. Elizabeth Hughes Gossett, daughter of the late Chief Justice Charles Evans Hughes, and recently elected as the first President of the Society.

"I am happy to report that our initial invitation of support for the Supreme Court Historical Society has brought in $142,000 in life and annual memberships from friends in the judicial, legal, academic and other walks of our national life.

"I am especially pleased to announce the contribution from the Morris and Gwendolyn Cafritz Foundation of $125,000 making Mrs. Cafritz first of the Benefactors of the Society, and a life member. Mrs. Cafritz's generous donation has made possible the establishment of an office for our Society in suite 400 at 1629 K Street, N.W., Washington, D.C. 20006, and will provide funding for other projects of the Society.

"Other very notable contributors have been Samuel C. Johnson, President of the Johnson's Wax Fund, Inc., and Robert T. Stevens for the Fanwood Foundation, both for $5,000 each and Sponsors of the Society. In addition new members of the Sustaining, Contributing, Associate, Individual and Academic Categories have added a further $7,000.

"These generous donations provide a most encouraging start for the work of the Society in providing for the Supreme Court and the Federal judiciary the same sort of support which the historical societies of the White House and Capitol have so long and so well given to the two other branches of the government. With these gifts we are able to move forward promptly now on the many types of work which lie ahead for us. We will be contacting descendants of all 100 Justices in the Supreme Court's history to invite them to provide papers, records and other appropriate memorabilia for display in the halls of the Supreme Court and also as an invaluable resource for scholars.

"We will stand ready to provide assistance to present Justices in the permanent preservation of their own documents and effects. We will be actively at the service of all aspects of the federal judiciary in the determination that unique memorabilia of an important aspect of our national life shall not be lost to future generations because of neglect on our part.

"The initial response to the announcement of our Society's formation has been most heartening. In our mailings thus far we have introduced ourselves to 40,000 members of the Supreme Court Bar, the federal bar, the legal and academic professions and other members of the general public. In coming weeks we will contact thousands of other persons. Everyone is welcome to help. Even at this early moment in our young Society's life, I am satisfied that a long-neglected part of our national work—the systematic preservation of Supreme Court and federal judicial memorabilia—will be undertaken properly now."

Four vice-presidents working with Mrs. Gossett are William P. Rogers, Robert T. Stevens, Sol M. Linowitz, and Earl W. Kintner.

Mr. Justice Tom C. Clark, Supreme Court of the United States (Ret.), is Chairman of the Society's Board of Trustees. Mrs. Hugo L. Black, widow of the Justice, is Secretary. Vincent C. Burke is Treasurer.

THE SOURCE

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Huffman v. Pursue, Ltd.
420 U.S. 592 (March 1975)

The federalism and comity principles expressed in **Younger v. Harris**, 401 U.S. 37, which require that a federal court not intervene, absent exceptional circumstances, in pending state criminal proceedings, were held to be equally applicable to a state civil proceeding, not yet final, in the nature of a nuisance action to order the closure of a public theatre and the forfeiture of personal property therein used. Because the District Court had not applied the **Younger** rule but rather considered the federal suit on its merits, the Supreme Court remanded the case for a determination of whether the state proceedings had been conducted with an intent to harass the accused or in bad faith, or of whether the challenged nuisance statute was flagrantly and patently unconstitutional. Absent these factors the federal suit should not have been entertained.

Oregon v. Hass
420 U.S. 714 (March 1975)

The Supreme Court held in this case that inculpatory information provided by a suspect, in police custody on route to the police station, who has requested the services of a lawyer can be used solely for impeachment purposes once he takes the stand at trial and testifies contrary to such information.

Weinberger, Secretary of HEW v. Wiesenfeld
420 U.S. 636 (March 1975)

Under the Social Security Act survivors' benefits based on a covered man's earnings are granted to both his widow and his dependent children whereas survivors' benefits based on the earnings of a deceased wife and mother are provided only to her minor children and not the widower. Because this gender-based distinction discriminates against covered women wage earners by providing them less protection for their survivors than is provided for men, it violates the equal protection of the laws guaranteed by the Fourteenth Amendment.

Austin v. New Hampshire
420 U.S. 656 (March 1975)

New Hampshire which does not tax its residents' domestic-earned income imposed a tax on non-residents' income earned in New Hampshire. This commuters' tax further exempted from tax the income of New Hampshire residents earned outside the State. Since this tax fell exclusively on nonresidents' incomes and was not offset by taxes imposed upon residents alone, the Supreme Court held it to be an unconstitutional infringement of the Privileges and Immunities Clause requiring substantial equality of treatment between citizens of the taxing state and non-resident taxpayers.

Schlesinger v. Councilman
420 U.S. 738 (March 1975)

A federal court has subject matter jurisdiction, assuming other jurisdictional prerequisites are met, to determine whether a court-martial is acting within its scope of responsibility notwithstanding Article 76 of the Uniform Code of Military Justice which provides that all acts of court-martials are final and binding on all courts. Yet, when court-martial charges have been made against a serviceman, the federal courts should refrain from intervention by injunction or otherwise in the military court system unless the serviceman can show the possibility of irreparable harm.

Hill, Attorney General of Texas v. Stone
421 U.S. 289 (May 1975)

In this case the Supreme Court found that a Texas procedure, which disenfranchised persons otherwise qualified to vote from participation in a general obligation bond issue election, a matter of general interest, because they had listed no property, real or personal, for tax purposes, served no compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment.

Alyeska Pipeline Service Co. v.
Wilderness Society et al.
421 U.S. 240 (May 1975)

In a 5-2 decision the Supreme Court held that associations, which had instituted suit to enjoin the issuance of Government permits for the trans-Alaska oil pipeline, could not recover attorneys' fees not provided by statute on a "private attorney general" theory. Under the "American Rule" only Congress through statutory authorization, and not the courts, can authorize recovery by a prevailing litigant of attorneys' fees in federal litigation.

Breed, Director v. Jones
421 U.S. 519 (May 1975)

A unanimous Supreme Court found that the state prosecution of a 17 year old as an adult, after an adjudicatory hearing and finding in the Juvenile Court that he had violated a criminal statute but was not fit for treatment as a juvenile, violated the Double Jeopardy Clause. Once testimony had been taken at the juvenile court hearing jeopardy attached. Even though the accused faced the possibility of only one punishment, he was compelled to defend at two trials. This decision thus requires that transfer hearings to ascertain if a juvenile should be tried as an adult be conducted before an adjudicatory hearing in the juvenile court.

Eastland v. United States Servicemen's Fund
421 U.S. 491 (May 1975)

In this case the Supreme Court decided that a federal court could not enjoin the issuance by Congress of a subpoena *duces tecum* directing a bank to produce the bank records of an organization claiming a First Amendment privilege status for the records on the grounds that they were the equivalent of confidential membership lists. Because the subpoena was found to be within the legitimate legislative sphere of investigation, the Speech and Debate Clause provided absolute immunity to members of the Congress and their staff for the issuance of the subpoena. Such subpoena was not subject to question "in any place," including private civil suits alleging abuse of congressional powers and a violation of First Amendment rights.

Goldfarb v. Virginia State Bar
421 U.S. ____. (June 1975)

In an 8-0 opinion the Supreme Court struck down minimum fee schedules prepared by bar associations for enumerated types of legal services as constituting illegal price-fixing, violative of §1 of the Sherman Act. The Court found no exception to the Sherman Act for the "learned professions" and concluded that the performance of legal services in exchange for money was "commerce."

United States v. Hale
422 U.S. ____. (June 1975)

The federal defendant in this case was, following his arrest, taken to the police station where, advised of his right to remain silent, he made no response to an officer's query about money found on his person. At trial he took the stand and gave alibi testimony. The prosecution attempted to impeach his alibi by having him admit that he did not offer this exculpatory information when arrested. At trial the judge struck this admission but did not declare a mistrial. Under these circumstances the Supreme Court held it was improper to use the defendant's silence as an impeachment device for it had no significant probative value. Because of intolerable prejudice to the defendant, the Court exercised its supervisory power over the lower federal courts and ordered a new trial.

Hicks v. Miranda
422 U.S. ____. (June 1975)

Where state criminal proceedings are begun against federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have occurred in the federal court, the federal court should dismiss the complaint absent extraordinary circumstances of irreparable harm to the federal plaintiffs. In this case the Supreme Court clarified that cases coming before it under its obligatory appellate jurisdiction, but which are nonetheless treated summarily such as by dismissal for lack of a substantial federal question, are decisions on the merits and as such are binding on lower courts.

Warth v. Seldin
422 U.S. ____. (June 1975)

In an action challenging allegedly exclusive zoning practices designed to prevent low and moderate income persons from residing within a town, the Supreme Court held that in order to establish standing a plaintiff must allege specific, concrete facts demonstrating that the exclusionary zoning practices harm him and that he would be benefitted tangibly by the courts's intervention.

Bigelow v. Virginia
421 U.S. ____. (June 1975)

The appellant had published in his Virginia weekly newspaper a New York City advertisement announcing low-costs services in arranging placements in accredited hospitals and clinics for women with unwanted pregnancies. He was convicted of circulating a publication promoting abortion. The Supreme Court found that advertising as speech does have First Amendment protection even though it is a paid commercial medium. Because this ad contained information of potential interest to various members of the public, its publication could not be criminalized and Virginia could not regulate what its citizens read about perfectly legal activities in another state. The conviction was reversed.

United States Citizens v. Southern National Bank
422 U.S. ____, (June 1975)

In a 6-3 decision the Supreme Court found no violation of §7 of the Clayton Act, which prohibits acquisitions that lessen competition, in the practice of a major bank to acquire formerly operated *de facto* branch banks as official branches, since these banks were all begun initially through sponsorship of the major bank.

Erznoznik v. City of Jacksonville
422 U.S. ____. (June 1975)

A majority of the Supreme Court, three judges dissenting, found that a municipal ordinance making it a public nuisance and a punishable offense for a drive-in theatre to exhibit films containing nudity on a screen visible in a public street or place was facially invalid. The ordinance's overbroad censorship, purely on the basis of content without reference to context or purpose, was unjustified either as a measure to protect juveniles, as a traffic regulation, or as a guarantee of the privacy interest of passersby.

Meek v. Pittenger, Secretary of Education
421 U.S. 349 (May 1975)

Pennsylvania's provision of auxiliary services, such as counseling, testing, remedial learning services, and speech and hearing therapy, to children enrolled in non-public elementary and secondary schools, which were primarily religious in nature, were held to violate the Establishment Clause of the First Amendment. The loan of instructional materials, other than textbooks approved for use in the public schools, also was found unconstitutional because it substantially advanced religious activity.

United States v. Nobles
422 U.S. ____. (June 1975)

Defense counsel in a criminal trial sought to impeach the credibility of key prosecution witnesses by testimony of a defense investigator regarding statements he previously had obtained from those witnesses. The Supreme Court held that it was properly within the District Court's discretion to compel the defense to reveal relevant portions of the investigator's report for the prosecution's use in cross-examining him even though the report itself was not introduced as evidence and notwithstanding claims, found to be meritless, of compelled self-incrimination and infringement of the defense attorney's work product.

Albemarle Paper Co. v. Moody
422 U.S. ____. (June 1975)

Here the Supreme Court held that under Title VII of the 1964 Civil Rights Act as later amended back pay should under most circumstances be awarded employees unlawfully discriminated against by their employer regardless of a lack of bad faith on the part of the employer. The Court further struck down employment tests which the employer failed to show were manifestly related to job-performance ability, given the initial finding that such tests selected applicants of a racial pattern significantly different from that of the original pool of applicants.

United States v. Peltier
422 U.S. ____. (June 1975)

In this case the Court rejected retroactive application of an earlier decision, **Almeida-Sanchez v. United States**, 413 U.S. 266, invalidating warrantless "border" searches twenty-five miles from the Mexican border where no probable cause existed. The Court, over a dissent forecasting the complete demise of the exclusionary rule, concluded that there was no violation of the principles of the exclusionary rule because the agents involved in this case, acting prior to the **Almeida-Sanchez** case, had no knowledge or reason to know at the time of the challenged arrest that their acts were unconstitutional. They were acting in reliance on long standing legislative and administrative practice and judicial approval.

O'Connor v. Donaldson
422 U.S. ____. (June 1975)

In a unanimous opinion the Supreme Court ruled that a State may no longer confine, against their will, mentally ill but harmless persons who receive only custodial care and who could survive safely in freedom, living by themselves or with others. Officials who violate this rule may be liable for damages. The respondent in this case had been civilly committed and confined almost 15 years without treatment as a mental patient although non-dangerous and capable of self-sufficiency with the aid of his willing family. His confinement was held to violate his civil right to liberty. The case was remanded for a determination as to whether the hospital administrator knew or should have known that he was violating the patient's rights or if he acted maliciously to deprive the patient of his freedom, which facts, if true, would make him liable for damages.

Twentieth Century Music Corp. v. Aiken
422 U.S. ____. (June 1975)

Broadcasting a licensed radio station's programs over public speakers in a fast-food restaurant is not an infringement of the copyright holder's exclusive right to *perform* the work publicly.

Faretta v. California
422 U.S. ____. (June 1975)

A 6-3 majority of the Supreme Court here found that the Sixth Amendment guarantees to a criminal defendant the right to represent himself if he so desires. This right of self-representation permits a defendant to stand trial without an attorney if he voluntarily and knowingly waives his right to such counsel.

Brown v. Illinois
422 U.S. ____. (June 1975)

A criminal defendant who had been arrested without probable cause and without a warrant made two inculpatory statements while in custody but after having been given the warnings required by **Miranda v. Arizona**, 384 U.S. 436. The Supreme Court found that the mere giving of the **Miranda** warnings did not dissipate the taint of the defendant's illegal arrest and render admissible statements given after the arrest.

(**BICENTENNIAL** from pg. 1)

(Dist.-Minn.). Chief Judge Howard T. Markey (CCPA) is Projects Coordinator.

Chief Justice Warren E. Burger served as acting chairman until August 1 when permanent nominations were made.

The Judiciary's part in the national observation began March 7-8 at the semi-annual meeting of the Judicial Conference of the United States. The Chief Justic was authorized to name a committee for the celebration and did so after the House of Representatives approved funds June 26. Action is needed by the Senate before a specific appropriation is made but meanwhile extensive preparations have begun. These were decided upon July 7-8 at the first meeting of the Judiciary Bicentennial Committee. Another meeting of the committee will draw further plans early in September in time to report to the next session of the Judicial Conference that month at the Supreme Court.

These are some of the projects which are underway:

1. **Films** suitable for use on television, in schoolrooms, and at meetings of interested groups. Present plans call for five films re-enacting early cases of the Supreme Court and of the district court system

(SEE **BICENTENNIAL** pg. 9)

during the John Marshall era which illustrate fundamental American judicial principles. Professor William F. Swindler, an historian of the Supreme Court, and Dr. Mathias von Brauschitsch, executive producer of WQED-TV in Pittsburgh, who has done a dozen similar films for the National Geographic Society's celebration of the Bicentennial, are working on scripts and hope to begin filming by the end of this year. The production schedule calls for films to be available by mid-1976. The instructions to those at work on the project are to produce films which will be of enduring value and thus of use long after the national commemoration ends.

One possibility is that a ninety-minute television show, suitable for use on educational TV, will be drawn from the separate episodes.

2. **Histories of each of the federal courts**. Each Circuit has been asked to draw up a history of its courts. Still to be determined is whether there will be one volume for all the federal courts or a separate one for each circuit.

3. **A single popularly written volume** describing the role of the federal judiciary, past and present. A writer will be commissioned to write a book for use by secondary schools and civic groups and bar associations.

4. **Brochures**. The Bicentennial Committee will also consider publishing a series of booklets describing such facets of the federal judiciary as the jury system, United States magistrates, bankruptcy judges, probation officers, district courts, circuit courts of appeals and the Supreme Court.

5. An additional possibility is the publication of a *Biographical Directory* of the federal judiciary from the time of its inception. Congress has something similar and there is a great amount of information about judges up to the 1890's but the Administrative Office of the United States Courts has only sparse data on judges of this century.

Among the cases which may be chosen for dramatic reenactment on film are these:

- **The Aaron Burr Trial (1807)** in two parts. Such a pair of films would show John Marshall as Chief Justice sitting in the district court with Judge Cyrus Griffin. The films could make two points: the right of the courts to demand evidence needed by a defendant even when the President himself held the evidence (Thomas Jefferson in this case); and the role of the courts in protecting individual rights and insisting on due process (the courts insisted here that two witnesses to an overt act be produced by the government if Burr were to be found guilty of treason).
- **Marbury v. Madison (1803)**. The film would make the point that the co-equal and independent judicial branch has the power to review legislative enactments challenged as inconsistent with the Constitution.
- **Gibbons v. Ogden (1824)**. This case shows the importance of the Commerce Clause giving the States a "common market" nearly two centuries before Europe achieved something similar.
- **McCulloch v. Maryland (1819)** or **U.S. v. Peters (1809)**. These cases demonstrate that when the national sovereignty discharges a Constitutional power no state action may interfere.

Justices and judges who have been invited to serve on the Bicentennial Committee include:

The Chief Justice, Associate Justices William J. Brennan, Jr., Byron R. White and Harry A. Blackmun of the Supreme Court of the United States, and Roger Robb (CA-DC), Bailey Aldrich (CA-1), Henry J. Friendly (CA-2), Edward Dumbauld (W.D.-Pa.), Clement F. Haynsworth, Jr., (CA-4), Alexander A. Lawrence (S.D.-Ga.), Wade H. McCree, Jr., (CA-6), John S. Hastings (CA-7), Chief Judge Edward J. Devitt (Dist.-Minn.), James M. Carter (CA-9), Arthur J. Stanley, Jr., (Dist.-Kan.) and Chief Judge Howard T. Markey (CCPA).

The aim of the Judiciary Bicentennial Committee, as adopted at the Aspen meeting, "is to portray the history and significance of the Judicial Branch of the United States Government, and its unique Constitutional role as one of the coordinate branches . . [and] the mission shall be carried out through communication media, educational films, the preparation of an authoritative written portrayal of the federal court system and descriptive booklets on particular facets of the operation of the judicial system."

(**NINTH CIRCUIT** from pg. 2)

three major classes of members (Circuit Judges, District Judges, lawyer-delegates) should be represented; (3) the Committee should change annually, yet maintain continuity.

"The Executive Committee should consist of eleven members: three Circuit Judges, three District Court Judges, and three lawyer-delegates, serving staggered three-year terms with the Chief Judge of the Circuit and the Circuit Executive as permanent members," the Committee recommended.

Circuit Conference Committees

The Committee said there were thirteen Committees which may be considered part of the Ninth Circuit Conference but that the Committee's system should be restructured. The Committee recommended that the standing committee system be discontinued and that all other committees with the exception of the Executive Committee should be created on an *ad hoc* basis and given a specific task to perform. In addition, a Committee on Comittees should be organized to oversee the creation and operation of these *ad hoc* committees.

Financing

After reviewing the various techniques which the other Circuit Conferences used to finance their Conferences, the Committee recom-

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ao aofjc calendar

Aug. 27-28 Judicial Conference Criminal Rules Committee, Washington, D.C.

Sept. 3 Judicial Conference Budget Subcommittee, Washington, D.C.

Sept. 4-5 Judicial Conference Budget Committee, Washington, D.C.

Sept. 5-6 Workshop for District Judges of CA-10, (Juror Utilization/Federal Rules of Evidence), Co-Sponsored by the Federal Judicial Center and National Conference of Federal Trial Judges, Salt Lake City, Utah

Sept. 9 Third Circuit Judicial Conference, Philadelphia, Pa.

Sept. 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pa.

Sept. 15-19 Orientation Seminar for Probation Officers, Los Angeles, Calif.

Sept. 22-27 Seminar for Newly Appointed Bankruptcy Judges, Washington, D.C.

Sept. 22-26 Tenth National Seminar for Newly Appointed Bankruptcy Judges, Washington, D.C.

Sept. 25-26 Judicial Conference of the United States, Washington, D.C.

Sept. 25-27 Conference for Circuit Executives, Washington, D.C.

Sept. 27 Meeting of the Circuit Chief Judges, Washington, D.C.

Sept. 29-Oct. 3 Advanced Seminar for Probation Officers, Philadelphia, Pa.

PERSONNEL

Elevation

John D. Larkins, Jr., Chief Judge, U.S. District Court, E.D.N.C., Aug. 2

Confirmation

Richard D. Rogers, U.S. District Judge, D.Kan., July 31

Nominations

Clarence A. Brimmer, Jr., U.S. District Judge, D.Wyo., July 23

Terry L. Shell, U.S. District Judge, E.&W.D.Ark., July 25

(NINTH CIRCUIT from pg. 9)

mended that Conference funds should be obtained from three sources: (a) Administrative Office contributions; (b) registration fees; (c) surcharges on ticket sales for social events.

Social Activities

The Committee recommended that the annual banquet should be the primary social event of the Conference and that it should be held on the last evening preceded by a first-class reception.

Location of the Conference

The Committee said that the weight of opinion seemed to be that they hold the Conference in an isolated place to foster greater interplay among those attending. They believe that a retreat-like atmosphere is preferable.

Date of the Conference

The Committee said that most of the other Circuit Conferences were usually held in the spring with three each held in May, June, and July. The Committee recommended that consideration be given to holding the Ninth Circuit Conference in spring or early fall.

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Bulletin of the Federal Courts

VOL. 7, NO. 9 Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center SEPTEMBER 1975

Chief Justice Warren E. Burger presenting his Bicentennial Address in Salt Lake City, Utah.

SENATE FAILS TO OVERRIDE PRESIDENT'S PAY PROPOSAL

By a vote of 53 to 39, the Senate September 18 failed to pass the resolution of Senator Metcalf of Montana which, in effect, asked the Senate to reject the alternative pay proposal submitted August 29 to Congress by President Ford.

The President had asked Congress to limit salary increases to 5% on inflationary grounds despite the fact that both the Office of Management and Budget and the Civil Service Commission had recommended that Congress increase salaries of most white-collar federal officials—including judges and senior executives—by 8.66%.

As a result, if the House of Representatives fails to act by the end of September—a move Congressional leaders say is likely—the

(See PAY page 4)

Chief Justice Presents Bicentennial Address

Chief Justice Warren E. Burger, in a national address at the opening of the Utah Bicentennial Celebration, outlined the "Independence of our Freedoms" and emphasized the tremendous importance which the Constitution has had, and is continuing to have, on American life.

The Chief Justice said that the Declaration of Independence is "One of the most momentous political documents in our history" because it not only enabled us to sever our political ties with England but served as a guide for the men who framed the Constitution.

(Following are excerpts from the Chief Justice's Bicentennial Address. A full text is available from the Federal Judicial Center Information Service).

"The Constitution that implemented the Declaration made our country the first nation in history to establish a system of government under a written document by which the people voluntarily delegated powers to a central government, oranized with an ingenious system of three divided and separated departments. This mechanism provided checks and balances on governmental power which, in turn, released the creative powers of a whole people and encouraged diversity and enterprise so they could shape their future in ways that seemed best to them. . . .

"Three factors aided the American Experiment in a new kind of government: first, our geographical isolation in a rich, undeveloped continent far removed from the quarrels of Europe; second, the uniqueness of the institutions we created; and third, the personal qualities of the people and their leaders. There is no parallel in history of three million people producing such a galaxy of remarkable leaders as those who drafted the Declaration and the Constitution. . . .

"What was it that we had, then, that enabled us in less than 200 years to surpass those two countries [Russia and China] in universal education, in national unity and in the standard of living?

"It was not simply independence from the mother country and the new status as a sovereign nation. Far more important than the independence itself was the freedom of each person to shape an individual future and in doing that to shape the course of the nation itself. That kind of freedom, unique in human history, unleashed the latent talents, the energies, and the creative abilities of three million

(See ADDRESS page 2)

(ADDRESS from page 1)

hardy people while at the same time the equally intelligent, equally industrious, equally talented people in these two other countries remained in the bonds of the past....

"As you begin your observance of the Bicentennial, it may be appropriate to examine, briefly, six areas of freedom that flowed from independence—new kinds of freedom for each integral part that makes up America.

"**FIRST**. The three branches of our national government must each remain strong, co-equal, and independent of the others, but we should always remember that, even though independent, they were intended to be coordinate as well as co-equal. The idea of coordinate clearly implies that the separate powers must be harmonized into a workable whole.

"**SECOND**. The 50 states cannot exercise leadership in a national sense, but this does not mean they should not be allowed the independence and freedom that was plainly contemplated by the concept of federalism.

"A complex of economic, social and political problems in the modern world calls for close cooperation between the national and state governments, based on the reality that those who are elected to state office derive their authority from precisely the same voters—and usually on the same ballot—as those sent to Washington to formulate national policy. The infinitely complicated national programs ordained by Congress are administered by great departments, usually under regulations drafted by those departments, with hundreds of thousands of staff members in whose hands lies much of the real power of day-to-day decision and policy-making.

"As we begin the third century of independence, then, one task in our federal-state relationships is to re-examine the practices of our federalism and governmental machinery, which should be reviewed from time to time.

"**THIRD**. The great institutions of America, the churches, colleges, universities, museums and hospitals that grew under state and private control, have no parallel anywhere in the world. Their contribution to research, invention, culture, enlightenment and health is beyond measure. Over the past 40 years or more, economic pressures have led to a growing dependence by many of them on nationally administered, federally financed programs. The genius of these diverse organizations, however, arose from their independence and individuality for we know that creative development has never flowered under rigid uniformity. Together these independent institutions opened floodgates of knowledge and awareness of our world, and stimulated invention and technology released by this new kind of freedom of the mind and spirit. They made possible the most productive farms and ranches in the world and the most innovative and efficient factories whose products went into the world markets on a scale unknown before that time. . . .

"Every institution of government must always be open to examination and none deserves to be continued without change, unless it can withstand periodic examination.

"**FOURTH**. Freedom of speech and press has been a major factor in our development. In the formative years from at least 1770 onward, free speech from pulpits, platforms, and open air meetings flourished. At the same time there was a vigorous exercise of freedom of the press both by regular newspapers, and by the great output of pamphlets, many of them authored by those who signed the Declaration and later the Constitution.

"Without free speech and a free press, it is doubtful whether the people would have been ready to support the separation from England or whether the Constitution would have been ratified. Even those editors who opposed ratification of the Constitution generally tended to cover the delegates so that the people understood the issues. At every major turning point for 200 years, the power of free speech and a free press has made itself felt on the great issues, and the independence of each element of our social and political order has been preserved by open debate. The independence of our vital institutions, public or private, could not have survived without the protections of the First Amendment.

"**FIFTH**. Nowhere in the Declaration or in the Constitution do we find any reference to the crucial part that an independent legal profession plays in the very ideal of freedom, because it was taken for granted. The fundamental principle had been established in England, and was accepted in America. The model for independence of lawyers and judges had been established in England by such courageous spirits as Sir Edward Coke, who forfeited his office as Lord Chancellor rather than submit to the dictation of the King, and the noble "Man for All Seasons", Sir Thomas More, who calmly forfeited both his office and his head rather than his convictions as a lawyer and judge.

"We need not forego legitimate criticism of our legal institutions and of the legal profession to acknowledge that , as with the guarantees of free speech and press, the freedom and independence of lawyers have been key factors in our development before and since 1776. A majority of those who drafted the Declaration and later the Constitution were lawyers, and they knew that, along with Sir Thomas More, they were literally placing their heads on the block, or in a noose, by their acts, which were treasonous—if the Revolution failed. . . .

"There are countless modern examples of the independence and courage of our lawyers, none more notable than that of my distinguished colleague Justice Thurgood Marshall, who as a lawyer devoted much of his life advocating the constitutional rights of one of America's largest minority groups. He succeeded in the face of personal risks and threats that have receded

in memory since the events. In the vo centuries between John Adams ıd Thurgood Marshall, thousands of lawyers have performed in the same way.

"**SIXTH**. Finally, we come to the independence of a group in whose hands, under our system, ultimately rests the protections of all our independence—the judges who construe the Constitution and interpret the laws. Here we should remember that state judges, simply by reason of their broader jurisdiction and far greater number, are often the first line of defense of constitutional rights. . . .

"This independence, that began in 1776, and the new freedoms it brought have served to release the creative energies of our people for 200 years. We, as trustees of those freedoms, have a duty to pass them on, unimpaired, to those who follow, so they will be able to apply to the new and complex problems of the future that same kind of reativity, ingenuity, and responsiıility that was released on July 4, 1776.

FEDERAL COURT CLERKS' ASSOCIATION HOLDS ANNUAL CONFERENCE

The Federal Court Clerks' Association held its 47th Annual Conference in Jackson Hole, Wyoming, August 10 through the 14th. FCCA President Cletus J. Schmidt, (D-N.D.), host of the conference, and A. Marvin Helart, (D-Wyo), jointly arranged the program which included an address by Wyoming Governor Ed Herscherler, Judge James E. Barrett (CA-10), Chief Judge Albert Lee Stephens, Jr., (C.D.-Ca), and Wyoming Congressman Teno Roncalio.

The group elected James F. Davey, (D-D.C.), as its new president and Edgar Scofield, (W.D.-Wn), as its vice-president.

During the conference, the bylaws of the association were amended to provide for an elected Board of Directors consisting of one representative from each circuit.

CENTER HOLDS SPEEDY TRIAL PLANNING GROUP CONFERENCES

The Federal Judicial Center is sponsoring six orientation conferences for members of the planning groups established under the Speedy Trial Act. The purpose of these conferences is to provide planning group members an opportunity to become more familiar with the requirements of the statute, discuss the data which will be needed for planning purposes, discuss various problems regarding complying with the statute and suggest possible solutions to these problems.

The conferences will be designed to facilitate the exchange of ideas among members of the planning groups from different districts as well as to communicate information and experience which the Federal Judicial Center and the Administrative Office of United States Courts have to offer regarding the statute. Each district has been invited to send four delegates. Here is the schedule of the Speedy Trial Orientation Conferences: September 18-19 in Chicago (Circuits invited are the Sixth and Seventh); September 29-30 in New Orleans (Fifth Circuit invited); October 2-3 in Denver (the Eighth and Tenth Circuits invited); October 6-7 in San Francisco (Ninth Circuit invited); October 9-10 in Washington, D.C. (the Third, Fourth, and D.C. Circuits invited); and October 16-17 in New York City (the First and Second Circuits invited).

In general, the conferences are designed to help the members of the planning groups understand what the Speedy Trial Act requires with respect to both the time limits for criminal cases and the required planning.

In addition, FJC and A.O. staff members are expected to suggest how the planning groups should undertake their responsibilities. Finally, the conferences will provide a forum in which people from different districts can discuss their views about common problems arising from the enactment of the Speedy Trial Act.

WORKSHOP FOR DISTRICT JUDGES HELD

The Federal Judicial Center, in conjunction with the National Conference of Federal Trial Judges, conducted a Workshop for Federal District Judges of the Tenth Circuit, September 5 and 6, in Salt Lake City, Utah. Over 25 judges were in attendance. The seminar was created and conducted in order to provide a forum for questions and answers concerning new Federal Rules of Evidence as well as the recent amendments to the Federal Rules of Criminal Procedure. Judge C. Clyde Atkins, (S.D.-Fla.), Chairman of the National Conference of Federal Trial Judges presided over the two-day workshop. In addition to the group discussing the Federal Rules of Evidence and the Rules of Criminal Procedure, Chief Judge Reynaldo G. Garza, (S.D.-Tex.), discussed the use of multiple voir dire.

Judge Atkins discussed juror utilization in multi-judge courts and techniques of using jury pools, staggered starts, accepting pleas, status calls, and advance calendar calls.

Mr. James A. McCafferty and Judith A. Mather were present to answer questions from the judges concerning juror utilization statistics. An open discussion was held concerning JS-11 Reporting, with special emphasis on reporting of sequestered juries; and multiple voir dire reporting.

Audiotapes of these topics are available in cassette form from the Division of Continuing Education and Training, Federal Judicial Center. Anyone interested in receiving any of these cassette tapes should write or call the Education Division. Eight more of these workshops will be conducted nationally during the current fiscal year.

James B. Ueberhorst

UEBERHORST NAMED TO HEAD A.O. DIVISION OF MANAGEMENT REVIEW

James B. Ueberhorst has been appointed Chief of the new Division of Management Review in the Administrative Office of the U.S. Courts.

Mr. Ueberhorst comes to the Administrative Office from the State of Florida where he was its first State Courts Administrator. In this position, he served as both planner and administrator for the reorganization and consolidation of the entire state judicial system.

Among the projects developed and implemented during Mr. Ueberhorst's three years service in Florida are: A paper flow management study for streamlining the paper process in state clerks' offices; an accurate and auditable case disposition reporting system; training programs for judges; a task-oriented personnel study and studies to expedite the appellate process.

Mr. Ueberhorst is a graduate of the University of Michigan where he received the LLB and LLM degrees; he also has a Masters in International Affairs from Columbia University. In 1971 he was selected to attend a special program at the Institute for Court Management in Denver, designed to train senior management officials in the business of the courts with a view toward the federal circuit court executive program. In March 1972, he was certified as qualified to be

(See UEBERHORST page 5)

Robert J. Pellicoro

PELLICORO NAMED TO HEAD A.O.'S CLERKS DIVISION

The Director of the Administrative Office announced the appointment of Robert J. Pellicoro as Chief of the newly created Clerks Division in the Administrative Office.

For the past year Mr. Pellicoro has served as Assistant Chief of the Financial Management Division of the Administrative Office. His exposure to the fiscal side of judiciary operations provided him insight into those significant problems, both short term and long range, that obviate the overall effectiveness of a Clerk's operations.

An early meeting last June with a representative group of clerks greatly enhanced the effectiveness of this new Division.

Mr. Pellicoro said "By getting a running start in the early stages of development of the Clerks Division, we will be better equipped to provide a meaningful, responsive channel of communication between the various elements of the Administrative Office and Clerks of Court, and thereby hopefully avert unnecessary delays in obtaining the necessary resources required to effectively discharge responsibilities of Clerks of Court."

Among major services to be provided by the Clerks Division are the dissemination of timely information and data to Clerks to keep them abreast of technological and procedural improvements, technical assistance in budget preparation, status of legislation affecting the

(See PELLICORO page 5)

NIHAN NAMED HEAD OF FEDERAL JUDICIAL CENTER'S INNOVATIONS AND SYSTEMS DEVELOPMENT DIVISION

The Board of the Federal Judicial Center, acting upon the recommendation of Center Director Walter E. Hoffman, approved the appointment of Charles W. Nihan as Director of the Division of Innovations and Systems Development. Mr. Nihan holds an A.B. in history from the University of Massachusetts, a Masters degree in Soviet Studies from Harvard, a Masters degree in Computer Science from American University, and a J.D. from Georgetown University.

Prior to his appointment as Director of the Division, he was Assistant Director for Technology.

His background combines legal studies and those involving the application of computer technology to management problems. Among the Division's programs which Mr. Nihan is now directly responsible for implementing, are the District Court study, Computer-Aided Transcription, and COURTAN II, a program involving the installation of computer system linking many of the larger courts.

Prior to joining the Federal Judicial Center, Mr. Nihan headed the Data Integration Branch of the Naval Communications Command and served as a Naval Officer for four years on active duty in the Pacific.

He is a member of the American Bar Association, the Federal Bar Association, and the Association for Computer Machinery.

(PAY from page 1)

amount of the pay increase will be limited to the 5% recommended by the President and will take effect October 1.

The Administrative Office of U.S. Courts will issue specific instructions to the employees affected by the pay increase, shortly.

(UEBERHORST from page 4)

appointed a Circuit Executive. Prior to serving in the federal govenment, Mr. Ueberhorst practiced law in the State of Michigan.

The Division of Management Review, which is committed to working positively with the Chief Judges to develop and implement better management techniques, was organized by the Director of the Administrative Office based on policy considerations of the Judicial Conference. The Conference recommended that the judicial examination function be transferred from the Department of Justice to the Administrative Office, after concluding that inspections and examinations would be more accurately attuned to the day-to-day problems and requirements of the federal judiciary and implementation of recommendations could be more closely coordinated and achieved if made by the Administrative Office.

With the approval of an initial ten positions for Fiscal Year 1975, recruitment and staffing has commenced. The first examinations, which presently are in progress, were initiated in August 1975, in the United States District Courts for the Eastern District of Virginia and the Middle District of North Carolina.

FJC HOSTS CONFERENCE FOR CIRCUIT EXECUTIVES

The Federal Judicial Center hosted a three-day conference for Circuit Executives this month giving them an opportunity to meet with Center officials and senior staff members of the Administrative Office for discussions ranging from planning for the Bicentennial to the role of the Circuit Executive in implementing the Speedy Trial Act.

In addition, the Circuit Executives discussed techniques for evaluating remote oral argument (see story page 7); current problems of dealing with the news media; the role of the A.O.'s new Divisions.

(PELLICORO from page 4)

operation of the Clerk's office, types of training available, and the applicability of work-study programs.

Mr. Pellicoro graduated from City College of New York in 1956 with a B.A. in Business Administration. The next nine years he spent in New York as an Auditor with the Civil Aeronautics Board, and in 1965 came to Washington, D.C. with the C.A.B. He is experienced in administrative and financial planning, particularly in the budgeting and management of information systems.

Mr. Kirks in announcing Mr. Pellicoro's appointment stated, "It is our expectation that by the establishment of this new division in the Administrative Office, under the able leadership of Mr. Pellicoro, we will be able to render a higher degree of service to the entire system."

JUDGE GRIFFIN BELL HEADS JUDICIAL ADMINISTRATION DIVISION

In August Federal Judicial Center Board member, Judge Griffin B. Bell (CA-5), assumed the office of Chairman of the ABA's Judicial Administration Division. As head of this Division, he leads a membership of almost 8,000 lawyers and judges for a term of one year.

Presiding at his first Council meeting last month, Judge Bell announced ambitious plans which will include programs for trial and appellate judges, state and federal, as well as administrative law judges.

Judge Bell, in taking on this ABA Chairmanship is following a consistent pattern of leadership in judicial administration endeavors aimed at bringing to the courts of our country a high quality of justice. He is a member of the Commission on Standards of Judicial Administration, a member of the Board of the Federal Judicial Center and serves on the Center's special committee studying Section 1983 (civil rights) cases.

FORTY-FIVE NEW DISTRICT JUDGESHIPS APPROVED

S. 287, an Omnibus District Court Judgeship Bill creating 45 new judgeships affecting 43 judicial districts, was favorably reported out by the Senate Judiciary Committee September 11.

In 1973 the Judicial Conference of the U.S. requested 52 new positions after the quadrennial survey of 1972. In the same year the Chief Judges of approximately 43 courts testified before the Subcommittee on Improvements in Judicial Machinery.

As first introduced this session by Senator Quentin Burdick January 21, the bill provided for 29 judgeships. That number was later raised to 30 in Subcommittee and reported to the parent Committee in April. According to a statement by Senator Burdick at that time, the Subcommitte recommendation was based "on a statistical standard which evolved after extensive hearings." As cited in the report, the Subcommittee based the determination that more judges were needed upon the following considerations:

> "(1) Either raw or weighted case filings are 400 or more per judge; and
>
> "(2) Terminations are in excess of the national average of 358 per judge; and
>
> "(3) The bench time averages 110 or more days per judge; and
>
> "(4) The district has made efficient use of existing judges, supporting personnel and procedural devices in order to cope with its existing workload."

1975 statistics, supplied by the Division of Information Systems of the Administrative Office, were used by the Judiciary Committee, and the number of additional judgeships raised to 45.

(See JUDGESHIPS page 6)

(JUDGESHIPS from page 6)

The following is a list of the new proposed judgeship distribution:

Alabama, Middle	1
Alabama, Northern	1
Arizona	1
Arkansas, Eastern	1
California, Eastern	2
California, Southern	2
California, Central	1
Colorado	1
Connecticut	1
Florida, Middle	1
Florida, Southern	1
Georgia, Northern	2
Georgia, Southern	1
Indiana, Northern	1
Kentucky, Eastern	1
Louisiana, Eastern	2
Massachusetts	1
Michigan, Eastern	1
Michigan, Western	1
Minnesota	1
Missouri, Western	1
New Hampshire	1
New York, Eastern	1
North Carolina, Eastern	1
North Carolina, Middle & Eastern	1
Oklahoma, Western & Eastern	1
Oregon	1
Pennsylvania, Middle	1
Puerto Rico	1
South Carolina	1
Tennessee, Eastern & Middle	1
Texas, Northern	1
Texas, Western	1
Texas, Southern	2
Texas, Eastern	1
Virginia, Eastern	1
Virginia, Western	1
Washington, Western	1
West Virginia, Southern	1
Wisconsin, Western	1
Total	45

Eighteen new judgeships were added to the Subcommittee bill in these districts: Alabama (M), Colorado, Connecticut, Georgia (S), Georgia (N), Indiana (N), Massachusetts, Michigan (W), Minnesota, North Carolina (E), North Carolina (M & E), Oklahoma (W & E), Texas (E), Virginia (W), and West Virginia (S). Three more positions were awarded the 9th Circuit; one each to the Eastern, Southern, and Central Districts of California.

Three judgeships included in the Subcommittee's recommendations were deleted by the full Committee. They are Kansas, the Northern District of New York, and the Western District of Texas.

The Subcommittee report had originally provided that the Northern District of Oklahoma would receive an additional judgeship and that the Northern, Eastern, and Western Districts would lose a judgeship. As finally reported by the full Judiciary Committee, the Eastern and Western Districts of Oklahoma will receive an additional judgeship.

The judgeship for the Eastern District of Tennessee will be a judgeship also for the Middle District.

The allocation of 45 judgeships is seven positions short of the Judicial Conference request of 1973.

New Jersey, because of a concurrent increase in multiple defendant criminal cases, with a civil case filing record, had pressed for the additional judgeship recommended by the Conference. The addition was denied in S. 287 as now drafted. The extra position would, in fact, have returned this district to the 10 judgeship status quo of 1970. Upon Judge Augelli's attainment of senior status in 1972, a vacancy wa created in this district which, by law, could not be filled.

In Massachusetts four more judgeships were recommended by the Judicial Conference but only one was stipulated in S. 287. In the Texas districts, statewide, the Conference requested 10 judgeships; 5 were granted in the bill.

The following table shows the number of judgeships requested by the Judicial Conference of the U.S. in other districts in which recommendations were not met, and those allocated by S. 287:

District	Judicial Conference	S.287
California (N)	2	0
Florida (M)	2	1
Florida (S)	2	1
Albama (S)	1	0
New York (N)	1	0
California (C)	2	1
Virginia (E)	2	1

Chief Judge Irving R. Kaufman

CHIEF JUDGE KAUFMAN REVIEWS SECOND CIRCUIT PROGRESS

Chief Judge Irving R. Kaufman (CA-2), in an address at the opening session of the Circuit's Judicial Conference, September 11, detailed the progress which this court has made during the last year.

Chief Judge Kaufman pointed out in his address that:

- The circuit, for the fourth time in the last five years, has managed to terminate more cases than were filed.
- The successful progress to expedite criminal appeals was a major

(See KAUFMAN page 7)

Chief Judge Collins J. Seitz

CHIEF JUDGE SEITZ REPORTS ON THE STATE OF THE THIRD CIRCUIT

Chief Judge Collins J. Seitz (CA-3) in his remarks September 9 to the Third Circuit Judicial Conference said that for the first time in recent memory there is not a judgeship vacancy in the Third Circuit and this is especially important because of the heavy caseload which this Circuit has at the present time.

Here are the other key points which Chief Judge Seitz made in his remarks:

- Bankruptcies have reached an

(See SEITZ page 7)

(KAUFMAN from page 6)

factor in reducing the median time for disposition to 4.5 months for these cases, the best record in the Nation.

- The impact during its first full year of operation of the Circuit's innovative plan for handling civil appeals. The Civil Appeals Management Plan (CAMP) has streamlined appeals and encouraged settlements.
- At the trial court level there are 7.6% fewer criminal docketings than five years ago. However, civil terminations, circuitwide, have increased 23.4%, more than double the growth in civil filings. The individual assignment program in the Southern District of New York has significantly reduced the backlog of that court and brought it nearly to currency.
- The work of the Committee on Sentencing has culminated in model sentencing procedures coupled with the drafting of benchmark sentences which will serve to reduce sentencing disparities.
- Finally, and perhaps most significantly, Judge Kaufman discussed the twin themes of the Second Circuit Judicial Conference: The continuing efforts to improve the quality of advocacy both for attorneys being admitted to practice before the courts of the circuit, as well as for "the incumbent incompetent" and recognizing as well as solving problems in professional responsibility.

(SEITZ from page 6)

awesome height and the burden is extremely heavy on bankruptcy judges in the Circuit.

- He commended the district judges of the Circuit for their ever-increasing use of federal magistrates and also praised the work of the Clerks' offices in both the district courts and the Court of Appeals and hoped that the Administrative Office will recognize that there is a need for increased personnel to assist these offices in handling what he termed a "staggering" workload.
- He said that the satellite libraries in Newark, Pittsburgh and Wilmington are now staffed as a result of the satellite library project authorized by the Judicial Conference of the United States and that the central library in Philadelphia will have an even larger collection. Thus, this library will be able to offer its services to the library network which is now in operation throughout the Third Circuit.
- In the fiscal year ending June 30, 1975, he said that appeals were up 14% over the previous year and that except for the First Circuit, this was by far the largest percentage increase in all of the circuits. However, despite this workload he said that the "Court of Appeals is current, thanks to the efforts of both the active and senior judges."
- He said that despite strong recommendations in some legal circles that the Circuit change its practice and grant oral argument in nearly all appeals as well as give reasons for its decisions in all cases, the judges of the Circuit feel they should continue their current practice. "Given the workload and available judicial manpower, our judges feel that we must adhere to the present system if we are to process the cases with reasonable expedition." He also added "We will, of course, continue to write opinions in those cases where an exposition or elaboration appears to be dictated by the subject matter or the state of the law."

FJC & ABA JOIN TO CONDUCT INTERSTATE ORAL ARGUMENT USING VIDEO PICTUREPHONE

In what will be the first long-range oral argument in federal courts using video techniques, the Federal Judicial Center and the American Bar Association's Appellate Judges' Conference will conduct a joint experiment October 16 in Washington, D.C. and New York City.

The experiment will involve the oral argument of an actual case on the docket of the U.S. Court of Claims. Attorneys representing both litigants will argue before a podium in New York. As the attorney addresses the panel of three Court of Claims judges sitting in a specially designed mock courtroom in Washington, D.C., he will be able to watch all three judges on a large television screen.

Simultaneously, the panel of judges in Washington, D.C. will each be able to observe the attorney presenting his argument on individual screens. This experiment is being conducted through the joint efforts of Judge Robert Kunzig of the U.S. Court of Claims and Mr. Tom Patrykus of the American Telephone and Telegraph Company.

The project is being evaluated by Judge Joseph F. Weis, Jr. (CA-3) and major credit for the entire program must be given to the efforts of Justice Albert Tate of the Supreme Court of Louisiana.

The results of the project will be published in the October issue of *The Third Branch*.

JUDICIAL CONFERENCE REPORT IS RELEASED

The report of the Spring 1975 meeting of the Judicial Conference of the United States has now been formally printed and released by the Administrative Office.

Included in this publication are over forty pages summarizing Judicial Conference resolutions, committee recommendations, and references to oral and written reports of the Directors of the Federal Judicial Center and the Administrative Office as well as the Panel on Multidistrict Litigation.

While many managerial and personnel matters were considered, the following actions of the Conference had special significance:

- Approved, in principle, legislation

(See REPORT page 8)

AO FJC calendar

Oct. 2-3 Workshop for District Judges, Jacksonville, Fla.

Oct. 3-4 Judicial Conference Advisory Committee on Appellate Rules, Washington, D.C.

Oct. 20-24 Orientation Seminar for Probation Officers

Oct. 20-24 Seminar for Asst. Federal Public Defenders, Chicago, Illinois

Oct. 28-31 In Court Management Training Institute, San Juan Puerto Rico

Oct. 31-Nov. 2 National Conference of Bankruptcy Judges, Houston, Texas and Mexico City, Mexico

Nov. 3-6 Seminar for Non-Metropolitan Clerks, Atlanta, Ga.

Nov. 3-7 Advanced Seminar for Probation Officers, Ashville, N.C.

Nov. 19-21 Regional Seminar for Bankruptcy Judges, New Orleans, La.

Nov. 24-25 Federal Judicial Center Board Meeting, Williamsburg, Va.

PERSONNEL

Nomination

Eugene E. Siler, Jr., U.S. District Judge, E. & W. D. Ky., Sept. 19

Appointment

Richard Dean Rogers, U.S. District Judge, D.Kan., Aug. 7

Death

Harvey M. Johnsen, U.S. Senior Circuit, Judge, (CA-8), Sept. 18

Charles L. Powell, U.S. Senior District Judge, E.D. Wash., Aug. 17

Confirmation

Clarence A. Brimmer, Jr., U.S. District Judge, Dist. of Wyoming, Sept. 15

Terry L. Shell, U.S. District Judge, E. and W. Dist. of Arkansas, Sept. 15

(REPORT from page 7)

which calls for the establishment of a Council on Judicial Tenure (but adding suggestions from the Conference).

- Approved a pilot project for satellite libraries in the Third Circuit, in those cities other than where the Circuit's central library is located.
- Asked the Federal Judicial Center to conduct a library study designed to eliminate the artificial distinction between libraries of courts of appeals and district courts, and to avoid duplication of holdings.
- Approved certain amendments to the Code of Judicial Conduct.
- Voted authority to the Committee on Administration of the Criminal Law, in conjunction with the Advisory Committee on Criminal Rules, to amend plans adopted under Rule 50(b) of the Federal Rules of Criminal Procedure; take certain steps to implement the first phase of the Speedy Trial Act, as well as implementation procedures beyond the first phase.
- Assigned to the Committee on the Administration of the Probation System oversight of the implementation of Title II of the Speedy Trial Act.
- Considered certain Sections of S. 1, the proposed legislation to revise the Federal Criminal Code. Conference members again expressed the view that a traditional recodification of the existing statutes "would serve all the purposes of a completely new code redefining federal crimes." Also reported, however, were views of some members that "if such a comprehensive code is to replace all present federal criminal statutes, the present time was most inappropriate. . . ." Copies of the report are available through the FJC Information Service.

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

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Senate Acts on Circuit and District Judgeships

The Senate this month passed and sent to the House S.286 authorizing seven additional judgeships for the U.S. Courts of Appeals. One each will go to the First, Third, Fourth, Sixth, Seventh, Eighth and Tenth Circuits.

The Judicial Conference had recommended fifteen new posts but the Judiciary Committee amended the bill to delete two positions for the Second Circuit and one of two recommended for the Fourth Circuit. Action on five new judgeships for the Ninth Circuit was postponed pending final Congressional action on S.729, a bill to divide the Fifth and Ninth Circuits.

In a detailed report (S. Rept. 94-404) the Judiciary Committee praised the Courts of Appeals for increased efficiency but expressed "some concern as to whether this increase has been achieved at the expense of a reduction in the amount of mature consideration which each case is given in the appellate process."

The report cites a 200 percent increase in cases terminated over the past eight years with only a 24 percent increase in the number of judges. However, the report adds, the number of signed opinions increased from only 30 to 33 per judge while the number of per

(See JUDGESHIPS page 7)

JUDGE MURRAH MOURNED

Judge Alfred P. Murrah, Director of the Federal Judicial Center for four and one-half years before his retirement in October, 1974 died October 30 in Oklahoma City. He was 71.

Judge Murrah, one of the youngest men ever appointed a federal district judge, served the judiciary for nearly 40 years.

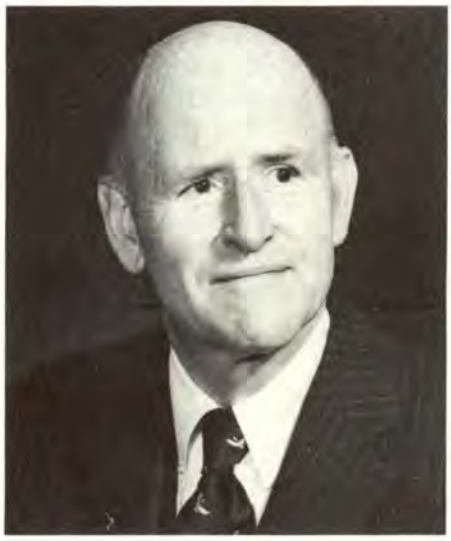
In a statement praising Judge Murrah, The Chief Justice said "Few men will equal his contributions to the improvement of justice."

A.O. DIRECTOR KIRKS HOSPITALIZED

Rowland F. Kirks, Director, Administrative Office, had surgery October 17 and is responding well.

Since he has not yet been able to make personal responses, he wishes to express through *The Third Branch* his appreciation to his many friends who have written and called with get-well messages.

PROBLEMS OF THE FEDERAL COURTS TODAY
An Interview with Deputy Attorney General Tyler



Harold R. Tyler, Jr. was a U.S. District Judge (S.D. N.Y.) for 12 years before he was sworn in April 7, 1975 as the 35th Deputy Attorney General of the United States.

Q: *As a former district judge and member of the Federal Judicial Center board, you are in a unique position to observe the problems of the federal courts. What, in your opinion, are the major problems today?*

A: Well, I feel that despite the many advances in recent years, particularly since the legislation creating the Center, the courts

(See TYLER page 5)

MONTHLY GRAND JURIES RECOMMENDED FOR SPEEDY TRIAL

The Judicial Conference Committee on the Operation of the Jury System has concluded that all district courts should schedule monthly grand jury sessions to ensure compliance with the Speedy Trial Act provisions on indictment, 18 U.S.C. §3161(b).

The section provides that, when the permanent time limitations of the Act have become fully effective, an information or indictment shall be filed within 30 days from the date of arrest or service with summons, or within sixty days if a felony is charged and no grand jury has been in session in the district during the thirty-day period. Less stringent, graduated time limitations for the first three years following the implementation of the Act are set forth in 18 U.S.C. §3161(f).

The Jury Committee's report, which the Judicial Conference authorized at its September, 1975 session for distribution to all district courts, was prepared by Judge William K. Thomas of the Northern District of Ohio, acting as a subcommittee. Judge Thomas recommended that an essential adjunct of the proposed monthly grand jury meeting schedule should be the installation and use in each court of a "code-a-phone", or similar device to permit the recording and continuous playback of telephone messages. Use of the device will permit grand jurors to receive a recorded message from the clerk of court confirming that they must report or informing them that the session of the grand jury has been cancelled.

The "code-a-phone" device, which is already employed by many district courts to inform petit jurors of a continuance or settlement of their cases will permit the scheduling of regular monthly grand jury sessions without detriment to the courts' jury utilization index.

The Committee's report cites the related question of whether an indictment can validly be returned by a grand jury selected from one division of a judicial district charging an offense alleged to have been committed in a different division or place of holding court.

Because this practice would simplify the implementation of the Speedy Trial Act time limits, and because the case law on this question is contradictory, the Jury Committee has appointed a subcommittee, chaired by Judge Myron Gordon of the Eastern District of Wisconsin, to study this matter and report to the Committee and the Conference.

Judge Gordon's subcommittee will also consider the related question of whether a criminal defendant can be tried by a petit jury which sits in and is selected from a division different from that in which the offense is alleged to have been committed, consistent with the federal jury laws.

FJC SEEKS DATA ON BENCH MATERIALS

Judge Robert J. Kelleher (C.D. Ca.), in a communication to F.J.C. Director Hoffman, has listed several books and manuals he finds useful and queries whether other judges might have additional listings.

Judge Kelleher's list includes, in addition to the Bench Book, such publications as the Manual of Federal Practice, the Handbook on Proving Federal Crimes, and the Handbook on Criminal Procedure in the United States District Courts.

The Director solicits your cooperation in compiling a comprehensive list. Please send to Judge Hoffman at the Center information on any material you recommend for quick reference on the bench. It may be that some judges have prepared their own material, or know of local publications which are not in national circulation. If so, this also would be of interest.

When all information is in hand FJC staff will compile a total list and make it available to all federal judges.

SUPREME COURT TAKES HEADSTART ON 1975 TERM

Complying with custom and statute, the Supreme Court of the United States officially opened its October Term, 1975 on October 6.

However, faced with a heavy caseload of appeals, petitions for certiorari and cases awaiting argument, the nine Justices met in closed sessions a week earlier to review and pass upon the accumulation of filings since they adjourned last June.

The earlier meetings permitted the Court to immediately start hearing arguments in pending cases.

This Term's first Conference list included a total of 867 cases. Seven hundred and thirty-two of these were petitions for writs of certiorari and 61 were appeals. There is every reason to expect the increase in filings will continue as it has over past years, with an average of over 4000 cases each Term.

The Court has begun its ne Term on the first Monday of October since 1917.

NEW CHICAGO CORRECTIONAL CENTER HONORS JUDGE CAMPBELL

Chicago's impressive new Federal Metropolitan Correctional Center was dedicated this month in honor of William J. Campbell, Senior U.S. District Judge and former Chief Judge of the Northern District of Illinois. The 26-story, $10.2 million center is one of three high-rise correctional facilities completed in recent months by the Federal Bureau of Prisons. The others are in San Diego and New York City.

A special plaque inside the Chicago center dedicates it to Judge Campbell for his "leadership, vision and untiring effort" in making th facility a reality. Judge Campbel served as U.S. Attorney in Chicago from 1938-40 and has been on the federal bench there for the past thirty-five years.

LEGISLATIVE OUTLOOK

Jurors' Fees. S.539, which would raise jurors' fees to $25.00 per day and provide juror employment protection, passed the Senate on September 30.

Securities Act Amendments. The recently enacted Securities Act Amendments of 1975, P.L. 94-29 contain a provision which may be of considerable interest to the judiciary. Section 25 of the Act authorizes any person aggrieved by a final order of the Commission to obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit. When the same order or rule is the subject of one or more petitions for review and an action for enforcement has also been filed in a district court of the United States under Section 21, the court in which the petition or the action is first filed will have jurisdiction with respect to the order or rule to the exclusion of any other court and all such proceedings are transferred to that court. For the convenience of the parties in the interest of justice, that court can thereafter transfer all the proceedings to any other court of appeals or district court whether or not a petition or action was originally filed in the transferee court. The scope of review by the district court in such a situation would be the same as review by a court of appeals.

Child Support Program. The House of Representatives has passed H.R. 8598 which would remove the enforcement of the child support program from the federal courts. However, the bill does not affect the law relating to garnishment of federal employees' salaries. H.R. 8598 is now pending in the Senate Committee on Finance.

FJC PLANS CASSETTES ON SPEEDY TRIAL ISSUES

The Federal Judicial Center is preparing audio cassettes with selected presentations from the recently concluded regional conferences on implementation of the Speedy Trial Act.

It is contemplated that the cassettes may be helpful to members of the speedy trial planning groups who were not able to attend the conferences. Requests for the cassettes should be directed to the Continuing Education & Training Division of the Federal Judicial Center.

S. 2018—National Worker's Compensation Act of 1975. This bill would require the states to maintain or provide a prompt and comprehensive system of compensation for work-related injuries, diseases or deaths. Section 9 of the bill provides that any employee or survivor of a deceased employee aggrieved by a determination of the state worker compensation agency may bring suit in either the appropriate district court or in the state court with appropriate jurisdiction. Cases filed in a federal court by a private individual must meet the $10,000 jurisdictional limit. In addition, the Secretary of Health, Education and Welfare may bring an action in federal court to require a state to provide the necessary required benefits and may do so without regard to the amount in controversy. The Secretary may also intervene in an action filed by a private party. Attorney's fees would be included as a part of the award.

Three-Judge Courts. H.R. 6150 which would require three-judge courts only in cases involving state or congressional reapportionment or when specifically required by Act of Congress has been reported out of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and is now pending in the full House Judiciary Committee.

BILL EXPANDING MAGISTRATES' JURISDICTION MOVES FORWARD

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery has approved S.1283, a bill to expand the jurisdiction of U.S. Magistrates.

The full committee is expected to act momentarily on the bill and report it favorably to the Senate.

According to the report prepared by the subcommittee on the bill, its purpose is to amend section 636(b), Title 28 U.S. Code, "in order to clarify and further define the additional duties which may be assigned to a U.S. Magistrate at the discretion of a judge of the district court.

"These additional duties generally relate to the hearing of motions in both criminal and civil cases, including both preliminary procedural motions and certain dispositive motions. The bill provides for different procedures depending upon whether the proceeding involves a matter preliminary to trial or a motion which is dispositive of the action. In either case the order or the recommendation of the magistrate is subject to final review by a judge of the court."

The committee added these three key amendments to the original bill:

"(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgement, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action for failure to comply with an order of the court. A judge of the court may reconsider any pretrial matter under this subparagraph (A)

(See JURISDICTION page 4)

MAGISTRATE NAMED TO KANSAS SUPREME COURT

For the second time in recent months a U.S. Magistrate has been honored by appointment to a State Supreme Court. He is Robert H. Miller, (D. Ks.), named to the Supreme Court of Kansas. Justice Miller was a state district judge from 1961 to June 1, 1969 when he received one of the first appointments as a U.S. Magistrate.

In July of this year U.S. Magistrate Joseph W. Hatchett, (M.D. Fla.), was appointed to the Florida Supreme Court.

(JURISDICTION from page 3)

where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

"(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

"(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

JUDICIAL CONFERENCE ACTIONS

At its semi-annual meeting here the Judicial Conference of the United States voted to disapprove, insofar as they might apply to the judiciary, two pending bills (H.R. 110 and H.R. 3249) which would require the filing of reports on outside income with the Comptroller General.

The Judicial Conference has taken the position that legislation is not needed for the Judiciary since the Conference already has adopted a resolution calling for semi-annual filing of public reports on extra-judicial income.

In other actions the Conference:

- Announced that it had approved for transmission to the Supreme Court comprehensive rules governing procedures in railroad reorganization cases and in cases involving the composition of indebtedness of certain taxing authorities under the Bankruptcy Act. This action completes a ten-year effort by the Conference to promulgate rules governing all proceedings in bankruptcy. If approved by the Supreme Court, the new rules will be sent to Congress and will become effective in ninety days unless Congress decides otherwise.

- Voted to take no action on various no-fault auto insurance bills pending in Congress.

- Disapproved in their present form two bills (S.670 and S.673) which would authorize consumer actions in federal courts without regard to the citizenship of the parties and the amount in controversy.

- Recommended that Congress reconsider the culpability provisions contained in S.1, a bill to revise and codify all federal criminal law. The Conference is submitting to Congress its formulation and definitions of the degrees of culpability in lieu of those proposed in the bill.

FLORIDA OPINION LIMITS ROLE OF U.S. COURTS IN GARNISHMENTS

A United States district court has interpreted a recent amendment to the Social Security Act as not conferring jurisdiction on the federal courts to enforce child support obligations through the garnishment of salaries of federal employees. The recent ruling by Chief Judge Winston Arnow of the Northern District of Florida construed section 459 of the Social Security Act, which was added to that law by the Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337, as not jurisdictional.

Judge Arnow's order in the case of *Carroll* v. *Carroll* (No. P-Misc. 75-63), dated July 29, 1975, directed the Clerk of his court not to file an action for a writ of garnishment to enforce certain child support orders entered by a state court in connection with a final judgment of dissolution of marriage. Judge Arnow held that the Congress, in enacting the provision making subject to garnishment the moneys payable by the federal government, did not contemplate or allow the writ of garnishment to be issued by a federal court to a federal agency for the salary of its employee. The order added, "Any such writ must be issued in the state court; the Act of Congress deals only with the enforcement of the garnishment through its service on the United States to the same extent as though the United States were a private person."

- Adopted a resolution making it clear that under the Code of Judicial Conduct, bankruptcy judges may not act in any uncontested matter pending before them in which they may have financial interest.

  This action was made necessary by the new judicial disqualification statute, 28 USC 455.

(TYLER from page 1)

do have a number of great problems. I believe, as I think others do for example, that too many of the nation's problems which surface in the executive and legislative branches, and which I believe would be better and more fairly handled by those two branches, are coming out of the legislative process and being dumped upon the courts. I think this is terribly difficult for the courts. It not only adds burdens of time, that is, by expanding jurisdiction, but it diminishes the federal court system in the eyes of some thoughtful people because many of these matters are really quite trivial, and probably unnecessary. I refer here to such matters as the food stamp cases, as I call them, in which a person or firm denied eligibility to handle stamps can get a hearing before an administrative judge, and if he doesn't like the result, relitigate the same thing in a federal district court. Now, these cases often involve small sums of money with no particular legal issues at all, and we have the peculiar situation in which a federal court is asked to do absolutely the same task that an administrative court has done simply because someone in Congress thought that this was the right thing to do. I find this kind of thing debilitating to the moral of the judges. In addition, it creates a special class that gets the right of two trials simply because it does not like the result of the first trial. Now, I regard that type of thing as extraordinarily unnecessary, time consuming, and costly. It is even worse if the public grasps what is going on for I don't see how they can avoid the impression that the federal courts are rather trivial in some of their work.

Also, I think there are areas where the courts involve themselves unnecessarily. This controversy surfaces and resurfaces over the years. But I think in recent times judge-made law, which has nothing to do with the Executive or Congress as such, has gotten the federal courts in particular into areas where they really don't have as much expertise as say, the Legislature or the Executive. I think that has brought the federal court system into some disrepute. It's a troublesome thing, particularly to one like me who loves the federal courts and feels that they on the whole have been one of the strongest, if not the strongest, institution we have in modern times. If that is anywhere close to being true, then there is all the more reasons to be concerned that a good and strong institution is being eroded and depreciated.

Q: *In response to a question about abuse of power, at a recent press conference, Attorney General Levi was quoted as saying he thinks "there is a great danger of judicial power, too." "In fact," he added, "if one wished to see where power has corrupted most, one might even find it there." What is your response to that?*

A: What the Attorney General is talking about is corruption in the institutional sense where an institution either takes unto itself, or without even asking for it, is given more powers or jurisdictions, as we say in our profession, than it really ought to have. I think that we may, as a people and as a country, be asking the judiciary to do too much; not only from the judiciary's point of view in doing the best job possible, but in the terms of overall public good. I also admit, as a former judge, that we as judges from time to time are guilty of usurping or reaching out and taking control of an issue when it might have been wiser to use "judicial restraint". I would be the first to say, and perhaps I am somewhat subjective as a former judge, that when that has happened, I don't really think there is much question but that the judges did this with what they regarded as the best of motives at the time. I understand that. They were trying to resolve what they saw as an important controversy. In other words, what I think the Attorney General and others in our profession have been worried about is that the federal courts, partly for reasons beyond their control and to some extent for reasons within their control, have been getting into too many issues and areas for their own good and for that of the public.

For whatever reason, judicial restraint does not seem to be favored particularly much by a number of judges and lawyers. Lawyers, incidentally, perhaps in a very real sense, might be blamed here because the federal courts have been victimized by their own popularity among lawyers. Judge Friendly of my old circuit has written eloquently and I believe correctly on this point. As he puts it, "It's nice to be loved, but on the other hand it's dangerous to be loved to the point where we are encouraged to do more as judges than we ought to be doing."

(See TYLER page 6)

SUPREME COURT TO HEAR FREE TRANSCRIPT CASE

The Supreme Court October 6 announced it will review a 9th Circuit decision (U.S. v. MacCollom) that would grant indigent federal prisoners an unconditional right to free trial transcripts if they seek post-conviction relief under 28 U.S.C. 2255.

(TYLER from page 5)

Q: *If we view the federal courts as one of our strongest institutions, it will be only as strong as the men on the federal bench. Do you feel the quality of our judges is improving or do you find anything faulty in our selection process?*

A: My own view, which is reinforced by people in an even better position to know, is that in recent years the quality of our judges has improved. Since the middle 50's, I would guess, there has been a steady upward trend in terms of the caliber of the federal judicial appointments in spite of the relatively low pay. During the last several years judges have been beset by two pressures: the fact that they didn't get a raise for a long time plus the serious inflation. I am convinced, for example, that when I started as a judge at $22,500 I was better paid than when, in the last few years, I was receiving $40,000.

Q: *Do you think the American Bar Association Committee on the Federal Judiciary has played a helpful role in the selection process?*

A: The role of the American Bar Association has been criticized recently and particularly in regard to an appointment in my old circuit. I would assume that from time to time the American Bar Association like anybody else, could make mistakes in judgment. But I still feel that their role in the process has been and continues to be of the utmost benefit to the courts and to the communities in which the federal courts sit.

Q: *What about the role of Congress?*

A: There have been arguments, quite understandably, that the process could be improved if the historical blue slip practice in the United States Senate were somehow stopped. I can frankly say that though I understand that argument, I am not yet totally convinced that removing judicial appointments from regular politics would necessarily be the panacea that many high-minded and sincere people believe. I have been astonished in my new role as Deputy Attorney General in the last five months, and pleasantly astonished, to find that most Senators really take their obligations very seriously. In fact, some Senators are amazingly conscientious and knowledgeable in their search for candidates. And I must say that is extremely encouraging. Now, of course there are exceptions to that, to be sure. But when you think about the whole process, it really works tolerably well. At best, it works very very well.

Q: *What effect do you think the Speedy Trial Act will have on the Federal Courts?*

A: In those courts which are reasonably up-to-date now, and there are many of those, it will have no particular impact, barring some unforeseen local shifts of criminal business. But in those courts which now are a little bit behind, or moreso, there will be difficulties; I think rather extreme difficulties, not just for the court personnel themselves, but perhaps even for the defense bar and the United States Attorneys. I might say in that regard that Justice Clark and I have had a number of conversations together, and then with the Chief Justice separately, about the possibility of the Department's engaging in a pilot project involving not only our own lawyers, but judges. We hope this project will cause the Judicial Branch no expense and provide an opportunity to see, in those districts where there are potential difficulties, what the real impact of the Speedy Trial Act will be. This would help us to measure that impact in advance for the benefit of the courts and put us in a better position to report on that impact to Congress. I think the Congres if not immediately, must soon begin to realize and become concerned with the cost of the additional court personnel, perhaps additional prosecutors, equipment, courtrooms and the like.

Q: *Will this program also study the effects on civil calendars?*

A: That's right. That's a point that certainly interests me personally because I know what happened in the Southern District of New York when we first went on the individual calendar. We also had a circuit local rule which had goals much the same as those of the Speedy Trial Act, and one result was that a great many of the judges weren't trying civil cases at all for several years. I think this is very unfair to litigants and lawyers who have cases in the civil area.

Q: *Do you favor the pending proposal to establish a National Court of Appeals?*

A: Well, I have to say that I do not favor that concept. I say that with great pain because a number of the members of the Commission on Revision of the Federal Court Appellate System are great friends of mine, not the least of whom are the chairman and the vice-chairman. I feel myself that it would be in the long run and probably even in the short run, an unintended but nevertheless actual disservice to the High Court, and indeed it might do really a great disservice to the Courts of Appeals.

Q: *Would you be bothered by the American public's lack of faith in access to the Supreme Court?*

A: Well, I think so a little bit, although that is not one of my major reasons for personally feeling that a National Court of Appeals would be a bad idea. Conversely, I think one of my

(See TYLER page 7)

(TYLER from page 6)

major concerns is that at best this would be a "band aid" approach. I think the proper approach is to look at the problems of the federal courts as a whole. I might say in that regard that the Department of Justice is thinking of ways to assist the courts because I happen to believe, and the Attorney General agrees, that it's historically been the high and proud purpose of the Department to assist the courts in every way that it can. In fact, we have constituted a small committee of which the Attorney General and I are both members, to consider the ways in which we can help the courts with their burdens and make proposals to the courts for their consideration. The Solicitor General, as Chairman, has already had one meeting of this committee.

Q: *Would you comment on operations of the Law Enforcement Assistance Administration and complaints by state Chief Justices about inadequate Federal funding of the Courts?*

A: LEAA has always had problems because its constituency is made up of so many diverse elements in the criminal justice system, and they are always jockeying for more favors in terms of grants and support. My feeling is, and I think it is shared by the top management of LEAA, that we've got to do more in every way we can for the courts as opposed to say, the police, prosecutors, and so on. There has been, although sometimes the press says otherwise, a shift in LEAA away from emphasis on police and prosecutorial matters. That shift has shown up most dramatically so far in favor of the correctional parts of the system. Perhaps because of my background, I have been very concerned about seeing that the courts get better attention. Soon, I hope, some realistic financial support will come for some of the difficult problems of the state courts. I have spent a great deal of time with LEAA in the last few months for a variety of reasons including important interests in such things as this. LEAA, without any particular crowding or pushing from me, is, I think, genuinely interested and concerned in shifting the focus to the courts a good deal more. There are some real things that LEAA can do, and its personnel are sensitive to this situation.

Q: *What view do you think Congress now takes of LEAA?*

A: There is a great deal of dispute inside Congress and out as to how to approach LEAA funding or grants. There is a school of thought that thinks this should be done by block grants, discretionary grants and the like. There is another school of thought in Congress, and it's getting stronger I think, which suggest that either Congress or the Attorney General or somebody should earmark LEAA funds. In fact, this summer the Congress in the 1976 fiscal year budget made efforts along the latter line. They earmarked funds for two areas: juvenile delinquency and law enforcement education, the so-called LEEP program of LEAA. Well, this creates problems. If Congress earmarks spending in those two directions, for example, we all have to recognize that that somewhat diminishes the possibility of block grant or discretionary funding which would benefit the courts, other than say, the juvenile courts. But even with all that, I still think that LEAA would like to give more priority to the courts, recognizing quite frankly that the courts, and whatever they do, have a major impact on what the police do, what the prosecutors do, and what the correctional people do.

(JUDGESHIPS from page 1)

curiam opinions increased from 14 to 36 per judge. A large number of cases, the report adds, were terminated without use of either signed or per curiam opinions. "Undue expansion of summary dispositions," the committee said in another expression of concern, "poses a potential threat to public acceptance of adjudications."

The committee said a caseload of 87 to 104 filings per judge was considered evidence of the need for a new judgeship in 1967 and noted that fiscal 1975 filings ranged from 126 to 193 in the seven Circuits for which new judgeships were recommended.

District Judgeships. S.287, to create 45 additional district judgeships in 40 districts, has been favorably reported by the Senate Judiciary Committee.

In its report (S. Rept. 94-387) the Committee said it had rejected the idea of basing its recommendations on projected needs since it has not found a reliable method of forecasting future caseloads. Instead, the Committee said it concluded that an additional judgeship was justified if the district met the following criteria, using 1975 statistics:

- Either raw or weighted case filings of 400 or more per judge;
- Terminations in excess of the national average of 358 per judge;
- Bench time averaging 110 or more days per judge; and
- Efficient use of existing judges, supporting personnel and procedural devices to cope with the existing caseload.

However, the Committee said it relied on separate evaluations, and not the general criteria, in recommending new judgeships for six large metropolitan districts because most such districts are "less able to achieve a rate of terminations equal, or even near, to the national average." The Committee said it "was unable to pinpoint an explanation for this phenomenon."

AO FJC Calendar

Oct. 27-29 Conference of Metropolitan Chief Judges, Lake Buena Vista, FL

Nov. 3-6 Seminar for Non-Metropolitan Clerks, Atlanta, GA

Nov. 3-7 Advanced Seminar for Probation Officers, Asheville, NC

Nov. 11-14 Orientation Seminar for Magistrates, Washington, DC

Nov. 17-21 Advanced Seminar for Probation Officers, Monterey, CA

Nov. 19-21 Regional Seminar for Bankruptcy Judges, New Orleans, LA

Nov. 24-25 Federal Judicial Center Board Meeting, Williamsburg, VA

Dec. 17-19 Seminar for Bankruptcy Chief Clerks, Ft. Lauderdale, FL

Jan. 27-30, 1976 Seminar for Federal Public Defenders, San Diego, CA

THE SOURCE

The Information Service of the Federal Judicial Center

- Equal Justice Under Law; The Supreme Court in American Life. Mary Ann Harrell. The Foundation of the Federal Bar Association with the cooperation of National Geographic Society, 1975.
- Federal Judicial Invalidation as a Remedy for Irregularities in State Elections. Kenneth W. Starr, 49 N.Y.U.L. Rev. 1092-1129 (Dec. 1974).
- Federal Rule-Making Process: a Time for Re-Examination. H. Lesnick. 61 A.B.A.J. 579-84 (May 1975).
- Prerecorded videotape trial: a Status Report. J.L. McCrystal, G.O. Kornblum. 25 Fed. Ins. Council Q. 121-37 (Winter 1975).
- Recent Reforms in the Federal Judicial Structure—Three-Judge District Courts and Appellate Review. Bennett Boskey, Eugene Gressman. 67 F.R.D. 135-57 (Aug. 1975).
- Search for Truth: an Umpireal View. M.E. Frankel; Judge Frankel's Search for Truth. M.H. Freedman; The Advocate, the Truth and Judicial Hackles: a Reaction to Judge Frankel's Idea. H.R. Uviller. 123 U. Pa. L. Rev. 1031-82 (May 1975).

PERSONNEL

Appointments

Clarence A. Brimmer, Jr., U.S. District Judge, (D.Wyo.), Sept. 26
Terry L. Shell, U.S. District Judge, (E.&W. D. Ark.), Sept. 26

Confirmation

Ralph G. Thompson, U.S. District Judge, (W. D. Okla.), Oct. 9

Nomination

Charles H. Haden, II, U.S. District Judge, (N.&S. D.W.Va.), Oct. 1
Eugene E. Siler, Jr., U.S. District Judge, (E.&W. D. Ky.)
John F. Grady, U.S. District Judge, (N. D. Ill.), Oct. 20

Deaths

Herbert W. Christenberry, U.S. District Judge, (E. D. La.), Oct. 5
Richard Hartshorne, U.S. Senior District Judge, (D. N.J.), Sept. 15
Clifford O'Sullivan, U.S. Senic Circuit Judge, (6th Cir.), Oct. 7
Alfred P. Murrah, U.S. Senior Circuit Judge (10th Cir.), Oct. 30

- U.S. District Court Current Filings Alert. Monthly Nation-wide Listing of Recently-Filed Civil Actions on Fed. Stats., WANT Pub. Co., WN D.C.

THE THIRD BRANCH

VOL. 7, NO. 10 OCTOBER 1975

THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

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REPORT ON CASELOAD FORECASTING RELEASED

The Research Division of the Federal Judicial Center—after a major two-year effort—has completed the first stage of a project designed to develop reliable procedures for forecasting future caseloads of the federal district courts.

These procedures, based on sophisticated new methodology, are outlined in detail in a preliminary report published this month under the title: "District Court Caseload Forecasting: An Executive Summary."

Judge Walter E. Hoffman, Director of the Federal Judicial Center, said the new forecasting techniques, when fully perfected, should meet current objections to allocating judicial manpower and other resources to the federal courts on the basis of projected needs. He said the immediacy of the problems is illustrated by the Senate Judiciary Committee's recent refusal to base its recommendations for new district judgeships on caseloads projected by existing techniques (see *The Third Branch*, October, 1975, p. 7). The committee said the major

(See FORECASTING page 2)

BILL WOULD EXTEND LEAA RESEARCH TO FEDERAL CRIMINAL LAW

Administration proposals for extending authority of the Law Enforcement Assistance Administration contain several little noticed amendments that would give the Department of Justice a major research potential in federal criminal justice. It also would extend the Attorney General's authority over federal funding of research into civil and criminal justice at the state and local levels.

The bill, S. 2212, is undergoing hearings in the Senate Judiciary Subcommittee on Criminal Laws and Procedures headed by John L.

(See RESEARCH page 3)

Judge Alfred P. Murrah

JUDGE MURRAH EULOGIZED

Judge Alfred P. Murrah, Director of the Federal Judicial Center for four and one-half years until he was required by law to step down last year, died October 30 in an Oklahoma City hospital. Judge Murrah's death followed a long illness. Despite his failing health he continued to participate in Center programs and to hear cases in the Courts of Appeals. Out of the nearly 50 cases in which he participated as a panelist after leaving the Center, he wrote 15 of the opinions, some dictated from the hospital where he was confined for the last three months.

He was one of the youngest men ever appointed to a federal judgeship when President Roosevelt nominated him at 32 to the U.S. District Court for Oklahoma in 1937. Three years later he was appointed to the U.S. Court of Appeals for the Tenth Circuit and in 1959 he became Chief Judge. He remained in that position, carving out a national reputation as a scholarly jurist, until he was selected to be the second Director of the Federal Judicial Center in 1970.

(See EULOGY page 2)

(EULOGY from page 1)

In a statement issued from the Supreme Court, Chief Justice Warren E. Burger said, "I speak for all the members of the Supreme Court and all federal judges in expressing sadness at the death of Judge Alfred Murrah. For nearly forty years he has been one of the foremost figures in the American judiciary. He was a dynamic leader for judicial improvement. Few men will equal his contributions to the improvement of justice."

State and federal judges, former law clerks, law professors, and friends from throughout the country gathered in Oklahoma City November 3rd to pay their last respects.

A group of 26 federal judges led by Mr. Justice Tom C. Clark (U.S. Supreme Court, Ret.) and including Federal Judicial Center Director Judge Walter E. Hoffman served as honorary pallbearers.

During the funeral Judge Murrah was eulogized by Rev. De L. Hinckley, Jr. Pastor of the Crown Heights Methodist Church, as "a man who was with God and with man. He was a man who walked with any man. He walked the depths of humanity."

The Judicial Panel on Multidistrict Litigation which Judge Murrah chaired from the time of its creation, announced a Resolution of "loving tribute to the memory of Alfred P. Murrah . . . [an] outstanding leader of the federal judiciary of the United States of America, just and learned judge extraordinary, and great human being."

REVIEW DENIED IN EMPLOYEE TAX CASE

The Supreme Court has declined to review a class action, brought by the National Treasury Employees' Union, that challenged the government's right to tax the seven percent of salary federal workers contribute to their retirement fund.

From the Director . . .

Judge Murrah's death marks the end of a judicial career which has no parallel. As an innovator in the field of sentencing institutes, pretrial proceedings, and complex or protracted litigation; and as the founder of educational seminars for judges, magistrates, bankruptcy judges, probation officers, clerks and members of other branches of the judicial family, Judge Murrah devoted his life to the improvement of the judicial system.

When the Federal Judicial Center was organized in 1968, Mr. Justice Tom C. Clark was appointed as its first Director and, under his leadership the Center was launched. When Justice Clark reached the mandatory age of retirement in 1970 Judge Murrah was his logical successor. It was under Judge Murrah's guiding hand that the Center continued to grow and serve the judiciary. His service as Director for a period of four and one-half years was the culmination of his great career as a public servant. But, despite his retirement as Director, he continued to chair seminar programs as long as his health permitted, acting as Assistant Director at my personal request.

No man had greater love for his fellow man, and no person was more beloved by those who were privileged to know him.

Judge Walter E. Hoffman
Director,
Federal Judicial Center

(FORECASTING from page 1)

weakness in current forecasts is their inability to adequately incor porate the impact of future events

The new report cautions that while test results to date indicate important advances over past prediction efforts, "nothing but experience will confirm that these forecasts are accurate". In the meantime, researchers are continuing their evaluations by using their new techniques to "predict the past", i.e., to "predict" the caseload for a given year in the past and compare the prediction to the actual data. Key innovations in the new procedures include:

(1) Use of an "indicator based" mathematical model that relates changes in caseloads to changes in demographic, business and social measures; and

(2) The identification and evaluation of 33 "surprise events", i.e., future developments that also can be expected, if they occur, to impact on federal court caseloads The "surprise events" include such possible developments as adoption of no-fault auto insurance, increased decriminalization of drug use, and limitations on availability of federal habeas corpus.

Forecasts have been made for 1979, 1984, and 1995 for filings in 42 categories of civil and criminal cases that account for 80 percent of district court caseloads. They have been developed individually for 88 district courts, the circuits, and the nation as a whole. Basic data is drawn from actual filings in the period 1950-1970.

Director of Research, William B. Eldridge, commenting on the report, gave the project's Advisory Committee a "large measure" of the credit for the success of the project to date. The committee has served two major functions: (1) developing a list of 158 "indicators" for individual case categories and estimating their utility as signals of caseload change for each category, (2) assisting in the fina selection of the "surprise events" and estimating their impact on each case category.

JUSTICE DOUGLAS RETIRES

Supreme Court Justice William O. Douglas who has served on the Court longer than any other Justice in history, 36½ years, retired November 12 because of ill health.

In a statement released from the Supreme Court, The Chief Justice said, "Justice Douglas' retirement brings to a close a career unique in the annals of this Court. His service spans the tenure of five Chief Justices and sets a record that may never be equaled.

"Since January, 1975 he has stuggled valiantly to overcome the limitations imposed by illness and his courage and willpower have earned him the admiration of his colleagues on the Court. We devoutly hope that once relieved of the taxing work of the Court his health will improve and he will again be able to pursue the wide

(See DOUGLAS page 7)

Attorney General Edward H. Levi (left) was among dignitaries applauding as a mosaic portrait of Senior U.S. District Judge William J. Campbell (right) was unveiled at recent ceremonies dedicating Chicago's 26 story Federal Metropolitan Correctional Center. Mrs. Campbell joined in the applause. A plaque also unveiled cites Judge Campbell for "leadership, vision, and untiring effort" in making the facility a reality.

(RESEARCH from page 1)

McClellan (D-Ark). It would extend LEAA's authority through 1981 and increase annual funding authority to $1.3 billion. But it also contains key amendments that would:

- Authorize LEAA's research arm, the National Institute of Law Enforcement and Criminal Justice, "to conduct such research, demonstrations or special projects pertaining to new or improved approaches, techniques, systems, equipment and devices to improve and strengthen such federal law enforcement and criminal justice activities as the Attorney General may direct."
- Change the Institute's name to the National Institute of Law and Justice and extend its authority to fund research into state civil as well as criminal justice;
- Specifically put LEAA under the "policy direction" of the Attorney General;
- Give the Attorney General, instead of the LEAA administrator, authority to appoint the Director of the Institute;
- Further strengthen the Attorney General's control over LEAA and the Institute by giving him authority to appoint a National Advisory Board to advise him on LEAA's national discretionary grant programs and Institute projects.

LEAA presently has authority to fund research only in the field of criminal justice at the state and local levels.

Both the Department of Justice, through its Office of Policy and Planning, and LEAA through its Institute, have taken preliminary steps to implement the anticipated new authority by establishing new desks for that purpose.

CIRCUIT JUDICIAL CONFERENCES 1976

Circuit	Date	Place
D.C.	May 27-29	Hershey, PA
First	*May 14-15	*Boston, MA
Second	Sept. 9-12	Buck Hill Falls, PA
Third	Sept. 19-20	Philadelphia, PA
Fourth	*June 27-30	*White Sulphur Springs, WV
Fifth	May 24-27	Houston, TX
Sixth	May 12-15	Columbus, OH
Seventh	May 10-12	French Lick, IN
Eighth	June 27-30	Hot Springs, AR (To be held jointly with the Tenth Circuit)
Ninth	July 25-27	Spokane, WA
Tenth	June 27-30	Hot Springs, AR

*Tentative

JUDICIARY APPROPRIATIONS ARE APPROVED

President Ford signed into law last month H.R. 8121, authorizing appropriations for the judiciary for Fiscal Year 1976 ending June 30 and for the transition period from July 1 through September 30, 1976.

Under the provisions of the bill, the full amount requested for judicial salaries was approved as well as amounts requested for court-appointed personnel, juror fees, and salaries for both magistrates and bankruptcy referees.

In addition, 518 new positions, including 301 deputy clerks for the district courts, 14 special legal staff positions for the Ninth Circuit, nine senior staff law clerks for the U.S. Courts of Appeals and 16 deputy clerks for the U.S. Courts of Appeals, were approved. However, the request for nine Deputy Circuit Executives was denied by both the House and Senate.

The Administrative Office of the U.S. Courts received approval for 29 new positions and also included funds for the annualization of 42 new positions approved in the Second Supplemental Appropriation Act of 1975 for implementation of the Speedy Trial Act.

The appropriations bill also included $64 million for space and facilities and $4,570,000 for furniture and furnishings.

The Federal Judicial Center received $6.6 million of which $2.4 million has been earmarked for COURTRAN II operations.

SUPPLEMENTAL FUNDS REQUESTED FOR FISCAL 1975 AND 1976

The Director of the Administrative Office of the U.S. Courts on September 17 submitted a request for supplemental appropriations for "Salaries and Expenses of Referees" and for "Representation by Court-appointed Counsel and Operation of Defender Organizations."

The appropriation for "Salaries and Expenses of Referees" would provide an additional $1,711,000 for fiscal 1976 to employ 280 additional clerical employees for bankruptcy judges to cope with present and projected increases in bankruptcy filings.

The request contemplates that these clerks will be employed for an average of six months in 1976. In fiscal year 1975 there were 254,484 bankruptcy filings compared with 189,513 in 1974, an increase of 34 percent. The Administrative Office estimates 300,000 bankruptcy case filings for fiscal year 1976, an increase of almost 60 percent over 1974.

The need for additional funds for court-appointed counsel and defender organizations is due primarily to an increase in the number of persons being represented under the Criminal Justice Act. There has also been an increase in the cost of representation, particularly with respect to Federal Public Defenders and community defender organizations due to general pay increases and increases in the cost of communications, supplies, and other office expenses of an uncontrollable nature. Increases in the fees for transcripts and in the cost of investigative, expert, and other services are contributing factors. A supplemental appropriation of $4,500,000 was requested for fiscal 1976, of which $1,800,000 is for the liquidation of obligations incurred in fiscal year 1975.

Hearings before the House Appropriations Committee on the proposed supplemental appropriations were held on October 29. Judge Carl A. Weinman, Chairman of the Judicial Conference Budget Committee, and Deputy Director William E. Foley and his staff members, testified in support of the requests.

The House Committee on Appropriations November 7 reported out a Supplemental Appropriations bill which includes funds for 240 additional bankruptcy clerks on a six-month basis. The bill also includes $4,100,000 for representation by court-apppointed counsel and operation of defender organizations, $400,000 less than the amount requested.

Additional funds were also provided for the transition period, July 1, through September 30, 1976. The Administrative Office is currently determining how these additional positions will be allocated to the respective courts in both consolidated and non-consolidated offices, based on the established ratio of one clerk for 240 non-business bankruptcies and one clerk per 120 business bankruptcies. Bankruptcy judges will be informed soon of any new positions authorized.

SUMMARY OF BANKRUPTCY STATISTICS

Bankruptcy Cases	FY 1974	FY 1975	% Change
Filed	189,513	254,484	34.3
Terminated	178,177	192,792	8.2
Pending	200,591	262,283	30.8

SUMMARY OF JUROR UTILIZATION STATISTICS

	FY 1973	FY 1974	FY 1975
*Juror Usage Index	20.16	19.11	19.32
Percent Selected or Serving	56.5	58.4	60.1
Percent Challenged	15.1	15.2	16.1
Percent not Selected, Serving or Challenged	28.4	26.5	23.8

* (This figure is calculated by dividing the total number of persons available by the total number of juries in trial, giving an average number of persons required for each jury trial day.)

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Antitrust. The House Committee on the Judiciary has favorably reported (H.R. 8532), the Antitrust Parens Patrie Act which contains a number of provisions which will affect the district courts. Its primary effect will be to authorize state attorneys general to bring civil actions in the district courts of the United States under Section IV of the Clayton Act on behalf of natural persons residing in that state injured by any violation of the antitrust laws. The district court will have discretion to order that the state attorney general proceed as a representative of any class or classes of injured persons notwithstanding the fact that the state attorney general may not be a member of such class or classes. The purpose of the bill as stated by the Judiciary Committee is to compensate the victims of antitrust offenses, to prevent antitrust violators from being unjustly enriched and to deter antitrust violations.

Garnishments. The Department of Justice has sent Congress a draft bill which would resolve many of the questions and problems relating to garnishment of the pay of federal employees for alimony and child support. Under the draft bill, the district courts would have jurisdiction only if an agency of the government were subjected to two orders for garnishment from different jurisdictions with respect to the pay of one employee.

Federal Criminal Code. S. 1, introduced by Senator McClellan in January, and under study for the last four years, was reported by the Judiciary Subcommittee on Criminal Laws and Procedures to the full Senate Judiciary Committee October 23. As presently written, the bill is 799 pages long. The report will be approximately 1300 pages. A companion bill, H.R. 3907, is pending in the House Judiciary Committee, but action is not expected until after S. 1 is passed by the Senate.

Bankruptcy. H.R. 6184, to place the salaries of bankruptcy judges under the control of Congress rather than the Judicial Conference passed the House on October 23.

Employees' Life Insurance. H.R. 7222, to increase the contribution by the Federal Government to the cost of employees' group life insurance was defeated on October 22 in the House.

Speedy Trial Act. H.R. 10598, which would amend the Speedy Trial Act to clarify the status of reporters on the District Planning Groups, was introduced on November 6 by Congressman Rodino. This bill embodies the proposal of the Judicial Conference.

Rules of Evidence and Criminal Procedure. H.R. 9915, to make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedures and to related provisions of Titles 18 and 28 of the United States Code, passed the House on November 3. The legislation makes technical corrections, including corrections of spelling and grammatical errors. Rule 410 of the Rules of Evidence will be changed to conform to the wording of Federal Rules of Criminal Procedure 11(e)(6). The bill would also strike two paragraphs of Rule 16 of the Federal Rules of Criminal Procedure which were made unnecessary by enactment of the Criminal Procedure Amendments Act.

Bills Introduced. H.R. 10439, to provide for the review of the behavior of individual justices and judges by three-judge panels, was introduced October 30, by Congressman Findley and referred to the House Judiciary Committee.

Numerous bills to amend the Bankruptcy Act with respect to the bankruptcy of large municipalities recently have been introduced.

H.R. 10574, to amend Section 142 of Title 28, USC, relating to the furnishing of accommodations to judges of the Courts of Appeals, was introduced by Congressman Carter and referred to the House Judiciary Committee.

F.J.C. PUBLISHES FIRST ADDENDUM TO CASSETTE CATALOG

Following the enthusiastic response to the May, 1974 publication of the initial cassette catalog, FJC Director Judge Walter E. Hoffman decided to publish an *Addendum to the Catalog of Cassettes*. The 101-page booklet contains more than 250 edited recordings of Federal Judicial Center seminars. Seventy-nine of the new cassettes cover topics of primary interest to judges while 72 are aimed primarily at probation officers.

Judge Hoffman, in a foreword to the new *Addendum* said, "We are pleased with the number of responses in the form of requests received in the Education and Training Division for cassette recordings of our various subjects. This interest, together with the many new presentations of our very able speakers, has prompted the expansion of our library and necessitated the publication of our first *Addendum*."

Judge Hoffman pointed out that, "This *Addendum* does not repeat anything published in the original catalog but continues where that publication left off and, together, they constitute a current listing of all recorded seminar presentations now available on loan for two weeks from our Education and Training Division."

He added that the Center welcomes the requests from all interested members of the Federal Judicial System.

The Third Branch

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

APPELLATE JUSTICE COUNCIL RELEASES FINAL REPORT

The report and recommendations of the Advisory Council on Appellate Justice are included in the final volume of materials published in conjunction with the National Conference on Appellate Justice. The Conference, held last January, was the culmination of a three-year study of all aspects of the judicial process on the appellate level. (See *The Third Branch,* Vol. 7, Feb., 1975.) The study and the closing conference were co-sponsored by the National Center for State Courts and the Federal Judicial Center.

By design, no consensus statements were issued; however, some group discussions on given topics resulted in strong agreements. In those instances the group reporters submitted consensus statements to the Advisory Council so they might be incorporated in the summary of the Conference's deliberations.

Recommendations

Concluding that appellate procedures must be changed to meet current demands on state and federal courts, the Council has made recommendations in seven areas. Some of the recommendations are:

- **Oral Argument.** Oral argument should be allowed in most cases. It may be curtailed or eliminated in certain instances. Alternatives to oral argument through personal audience should be considered by appellate courts.
- **Briefing.** In an effort to reduce litigation costs and speed up the processing of cases, the courts should consider devices to reduce or eliminate costs and time elements.
- **Opinions.** When appropriate, opinions may be very brief (as short as a mere citation of a controlling statute, rule or precedent). In addition, opinions should not be published unless they meet certain standards; they may be delivered orally if a record is made; and they need not be required for orders on motions, special writs or interlocutory matters.

  A model rule on publication of opinions has been drafted by the Council and is concluded in the statement of recommendations. Included in the model rule is a prohibition against citation as precedent of an unpublished opinion by any court or in any paper presented to a court.

- **Central Staff.** Courts burdened with heavy caseloads need adequate staff assistance to assist the judges but such employees should never perform strictly judicial functions. Areas where supporting personnel can be of great assistance to the judges are: Screening, preparing memoranda on given points, and monitoring cases (e.g., handling stipulations, conducting settlement conferences, and contacting counsel for further briefing on certain issues).

- **Transcripts.** Appellate courts, acting through their managerial officer, should foster a system that assures timely delivery of transcripts. To this end, available technology should be used. In felony cases, where appeal is likely, transcripts should be made immediately after sentence. In civil cases, devices should be developed to condense or eliminate transcripts.

- **Review in Criminal Cases.** Appellate courts should be assisted in expediting felony appeals by an able court administrator supported by adequate staff who would: supervise preparation of the appellate record; promptly handle procedures for court appointed counsel; monitor briefing deadlines to prevent undue delay. Continuity of counsel (or his office) should be maintained from trial to appeal until dismissed by the appellate court.

  The sentencing process should be improved. Some form of review of sentencing is needed.

- **Advisory Committees; Bar Involvement.** Three mechanisms should be adopted to formulate, implement, monitor and review each appellate court's procedures: Publication of the court's internal operating procedures; establishment of rule making procedures which will permit comment from the bar before rules are adopted or changed; and creation of an advisory committee to counsel the court on all matters relating to the processing of cases.

STAFF POSITIONS OPEN AT D.C. CIRCUIT COURT

The United States Court of Appeals for the District of Columbia is seeking applicants to fill two staff positions. One is the Clerk of the Court. The present Clerk, Hugh Kline, will leave in December. The other position is Chief Staff Counsel, a newly-created position to supervise the work of the Court's law clerks and to perform a principal role in ongoing analysis and management of the Court's cases.

Salary in each instance is up to $31,500, at present, with usual federal benefits.

Applicants should contact Charles E. Nelson, Circuit Executive, 4826 United States Courthouse, Washington, D.C. 20001

PRISONERS HAVE SAY IN NEW PAROLE BOARD RULES

The U.S. Board of Parole has published revised rules (40 FR 41328, September 5, 1975) on parole, release, supervision and recommitment of prisoners, youth offenders, and juvenile delinquents.

For the first time, the Board's rules reflect statements and comments, including those from individual prisoners and prisoner committees, filed in compliance with the Administrative Procedure Act, 5 U.S.C. Par. 553 (b) (3).

(DOUGLAS from page 3)
range of interests that have commanded his interest all his life and for the [almost] 37 years on the Court. Even if he now leaves physical mountain climbing to others, there are mountains in the world of ideas that many Americans wish to hear Justice Douglas address.

"A year ago he expressed his faith in our country and his own basic belief when he said, 'I think the heart of America is sound. I think the conscience of America is bright. I think the future of America is great.'

"This shows Justice Douglas as a believer in our country and in the values that have made it great.

"I know I speak for all the Justices when I express our heartfelt wish for improved health and long life to our friend and colleague."

FEDERAL PRISON POPULATION HITS TEN YEAR HIGH

The total number of inmates in the Federal Prison System is 24,176, the highest it has been in 10 years, according to the Federal Bureau of Prisons.

Director Norman A. Carlson said last month that the nation's prison system as a whole, state and federal, is ". . . on the threshold of a population explosion."

His estimates are based on studies by LEAA which indicate that the combined inmate population of state and federal prisons grew by 4.2 percent from the end of 1972 until the end of 1973 and on other recent studies.

The Director made these points:

- "The most important reason why the number of inmates is rising is that crime itself is on the increase. This growth in crime rates will affect prison population in two ways. First, more crime generally means more arrests, more convictions and more people sentenced by the courts to serve a period of time in an institution. Secondly, the tremendous increase in crime rates may very well foster a change in attitude on the part of Congress and the state legislatures.
- "Unless the situation improves, unless crime rates go down, the public may demand that their elected representatives take steps to crack down on serious offenders.
- "We may be able to lighten the burden on jail and prison facilities to some extent by an increased use of community-based corrections, such as probation, parole, halfway houses and other programs designed to keep some offenders under supervision without incarcerating them in traditional correctional institutions."
- Three types of offenders should definitely be sent to prison: the white-collar criminal, career criminals and persons who pose a danger to society.

HEARINGS HELD ON BILINGUAL COURTS BILL

The House Judiciary Subcommittee on Civil and Constitutional Rights held hearings recently on bills which would provide court-appointed interpreters for non-English speaking parties in both criminal and civil trials held in federal courts.

S. 565, calling for simultaneous translation of all testimony in either civil or criminal trials, was passed by the Senate earlier this session.

This bill, as passed by the Senate, would specify the circumstances when an interpreter must be provided to translate all or part of the court proceedings for the benefit of a non-English speaking party or when a witness does not speak English.

The bill also imposes administrative duties on the Administrative Office of U.S. Courts in relation to certification and use of interpreters. The Senate Judiciary Committee, in its report on S. 565, said that, "Simultaneous translation of all courtroom proceedings is mandatory if the non-English speaking party is to be accorded his Sixth Amendment guarantees of the right to counsel and the right of confrontation."

On October 23, Assistant Attorney General J. Stanley Pottinger testified on behalf of the Department of Justice and explained why the Department opposes any bilingual courts bill presently before the Congress.

He said, in summary, that the bills suffer from drafting problems and ". . . the failure of the legislative record to date to demonstrate that existing protections are inadequate. . .".

Moreover, he said the problem of Puerto Rico where less than half the population can adequately understand English is being remedied by the Administration which has sent to Congress legislation calling for the use of Spanish in that court. This bill was introduced by Judiciary Committee Chairman Rodino (H.R. 6318).

Credit Groups Affected

HOUSE BILL WOULD INCREASE FEDERAL JURISDICTION

The House Committee on Agriculture November 1 reported out H.R. 7862 which would amend the Farm Credit Act of 1971 by increasing credit eligibility for farm cooperatives and ". . . enlarge the access of production credit associations to Federal district courts."

Under present law, federal district courts do not have jurisdiction (except in certain limited situations) over any suit by or against a production credit association.

The report states that the amendment will permit production credit associations "the same access to the Federal district courts as is enjoyed by private citizens, corporations, and other legal entities."

The views of the Administrative Office of U.S. Courts were not solicited. The Department of Agriculture submitted a statement supporting the bill.

PERSONNEL

Appointment

Ralph G. Thompson, U.S. District Judge, (W.D. Okla.), Oct. 20

Nominations

John F. Grady, U.S. District Judge, (N.D. Ill.), Oct. 20

Gerald B. Tjoflat, U.S. Circuit Judge, (5th Cir.), Nov. 3

Confirmation

Eugene E. Siler, Jr., U.S. District Judge, (E.&W. D.Ky.), Nov. 11

Retirement

Justice William O. Douglas, Supreme Court of the U.S., Nov. 12

AO and FJC calendar

Nov. 25 Federal Judicial Center Board Meeting, Washington, DC

Dec. 1-4 Seminar for Chief Pretrial Service Officers, Washington, DC

Dec. 4-5 Judicial Conference Subcommittee on Judicial Statistics, Washington, DC

Dec. 5-6 Workshop for Eighth Circuit District Judges, St. Louis, MO

Dec. 11-12 In Court Management Training Institute, Norfolk, VA

Dec. 17-19 Seminar for Bankruptcy Chief Clerks, Ft. Lauderdale, FL

1976

Jan. 5-6 Judicial Conference Subcommittee on Judicial Improvements, Houston, TX

Jan. 5-6 In Court Management Training Institute, Miami, FL

Jan. 6 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC

Jan. 8-9 Workshop for District Judges (5th Circuit-East), Sea Island, GA

Jan. 12-13 Workshop for District Judges (5th Circuit-West), Brownsville, TX

Jan. 15-16 In Court Management Training, Institute, Brownsville, TX

Jan. 16 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, DC

Jan. 19-20 In Court Management Training Institute, Houston, TX

Jan. 26-27 Judicial Conference Jury Committee, Scottsdale, AZ

THE THIRD BRANCH

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CENTER MOVES INTO FULL PILOT OPERATION WITH COURT COMPUTER SYSTEMS

The Federal Judicial Center is in the midst of developing and implenenting computerized local court management information systems for both district and appellate courts.

During the current calendar year, the project was substantially expanded as a direct result of the additional funds granted by Congress for the express purpose of accelerating the installation of computer systems to assist district courts in meeting the requirements of the Speedy Trial Act of 1974.

During the past year, the FJC took a major step forward in its computer development program following an extended period of experimentation. This experimentation period was a deliberate attempt to avoid using computer technology merely because it existed and to make sure that software would be designed to meet the actual needs of the courts.

The primary goal of the project was to determine how automatic data processing could help judges implement the principles of effective civil and criminal case management which are taught at seminars for district judges and other key judicial personnel.

Priority was also given to incorporating into a computer system the best practices and procedures which are currently used by parajudicial personnel whose work supports judges when they apply these management principles. The secondary priority was aimed at more traditional techniques such as better record keeping and collecting more accurate statistics.

The computerization project has gone through several phases each representing both an evolutionary step forward and a conceptual change. The original version of the system, COURTRAN I, was operated in several courts using rented computer time.

Last year, the development of COURTRAN II, an advanced system to be operated in minicomputers with general purpose processing capabilities, was initiated. Development of the civil case version was completed and is now in operation. The criminal case system has now

(See COMPUTER pg. 2)

JUDGE JOHN PAUL STEVENS (CA-7) NOMINATED FOR U.S. SUPREME COURT

President Ford November 28 nominated Judge John Paul Stevens (CA-7) to the Supreme Court to replace Justice William O. Douglas who retired November 12 because of ill health.

Judge Stevens, 55, was appointed to the Seventh Circuit Bench in 1970 after a distinguished career in the legal profession which included private practice, teaching, and a stint of public service. The President said he believes Judge Stevens is the person "best qualified to serve as an Associate Justice of the Supreme Court. [He] is held in the highest esteem by his colleagues in the legal profession and the judiciary, and has had an outstanding career in the practice of law as well as on the federal bench. I am confident," the President continued, "that he will bring both

(See STEVENS pg. 2)

(COMPUTER from pg. 1)

been completely designed and software development is nearing completion.

The design of each system contains several software innovations which make it unique in the field. Among these are: the information engram concept, a transition matrix for court events, specially created system dictionaries, a syntax and grammar for court processes, a special modular software structure, a technique for monitoring speedy trial plans, a status distinguishing technique which identifies situations requiring court action, and a free-floating data entry technique which allows non-technical personnel to use the system. The efficacy and effectiveness of these innovations in combination were proven in experimental operation in three courts in the COURTRAN I phase.

Although priority has been given to the criminal and civil case systems these are only two of the applications planned for COURTRAN. Other applications include (1) jury selection and utilization, (2) appellate case processing, (3) financial accounting, (4) attorney conflicts of engagement management, (5) computer-aided transcription editing, and (6) bankruptcy petition management. The first version of a financial system for use initially by the Administrative Office and later by court clerks' offices is nearing completion.

The design process for both jury selection and appellate case applications has been initiated but neither system will be ready for testing for approximately a year. All of these applications are designed to have the dual effect of reducing clerical effort while enhancing administrative effectiveness in the federal courts.

Equipment used during fiscal year 1975 consisted of two minicomputer systems. The center had planned to add a third minicomputer system and conduct pilot operations in six courts by having terminal stations in three courts connected to the three computers. These plans were revised when it became clear that the passage of the Speedy Trial Act imposed data collection and monitoring requirements on all districts which would require broader scale installation of COURTRAN II. Because it takes several years for an effort of this magnitude it was necessary to start immediately. The FJC thereupon asked the Congress for funds to install computers capable of supporting a minimum of 65 COURTRAN installations.

An initial amount of $1,020,000 was requested as a supplement to the fiscal year 1975 budget. The remainder of the money felt essential for the completion of the project was included as "no-year" money in the 1976 budget request.

In the hearing before the House Appropriations Subcommittee on the FY 1975 Supplemental it was stated that the first task to be undertaken would be a communications network survey. The purpose of this survey was to determine the optimum geographic location of computing equipment and the optimum mix of computer sizes for the COURTRAN II applications under consideration.

This study indicated that serious thought should be given to a different allocation of computing power than originally planned. After a thorough analysis the advantages of a combination of three larger regional computers tied into much smaller computers in some courts, and terminal stations in every court, represented a more economical approach than the original plans.

During the first half of fiscal year 1976 there will be one larger computer installed in the District of Columbia District Court with terminal stations in five other districts. Further expansion will be made during the latter half of fiscal 1976. Although this is a change in equipment allocation, there has been no change in the project objectives. Instead this new evolutionary step represents a better method for achieving the objectives for which the Congress has provided funds.

(STEVENS from pg. 1)

professional and personal qualities of the highest order to the Supreme Court."

Warren Christopher, a Los Angeles attorney and Chairman of the ABA's Standing Committee on the Federal Judiciary which investigates and rates all Supreme Court nominees, said Judge Stevens met "high standards of professional competence, judicial temperament and integrity" and that he therefore merited the Association's highest rating. He added: "To the Committee, this means that ... Judge Stevens is one of the best persons available for appointment to the Supreme Court."

Judge Stevens, was born and reared in Chicago. He received his B.A. degree from the University of Chicago in 1941. After graduation, he served in the U.S. Navy from 1942-45 and was awarded the Bronze Star.

Following his military service, he entered Northwestern University School of Law and was graduated in 1947 first in his class. He then entered private practice in Chicago and also taught at Northwestern University and the University of Chicago Law Schools.

In 1951, he served as an Association Counsel to the House Judiciary Subcommittee on Monopoly and from 1953-55 was a member of the Attorney General's Committee on Antitrust Laws. As a former law clerk at the Supreme Court, he is not a stranger to the building. He clerked for Mr. Justice Rutledge during the October 1947 term. Two other appointees can claim this background, Mr. Justice White who clerked for Chief Justice Vinson

during the 1946 term and Mr. Justice Rehnquist who clerked for Mr. Justice Jackson during the 1952 term.

The President sent the nomination to the Senate December 1 and Senator James O. Eastland, Chairman of the Senate Judiciary Committee, opened public hearings on the nomination December 8.

James E. Macklin, Jr. Named Chief

A.O. CREATES CRIMINAL JUSTICE ACT DIVISION

The Deputy Director of the Administrative Office of U.S. Courts, William E. Foley, has announced the establishment of a new Criminal Justice Act Division. The Division will have the responsibility of coordinating all activities regarding the implementation of the Criminal Justice Act, including defender organizations.

The new Division's Director is James E. Macklin, Jr., a 1948 graduate of West Point who received his law degree from Columbia Law School in 1955. He retired in 1975 after serving over 27 years in the U.S. Army, primarily with the Judge Advocate General's Corps. At the time of his retirement, he was Chief of the Criminal Law Division of the Judge Advocate General's office in Washington, D.C. In this position, he supervised military justice throughout the U.S. Army. In addition, he was Chairman of the Joint Services Committee on Military Justice and responsible for drafting proposed legislation designed to improve the military's criminal justice system.

The enactment of the Criminal Justice Act in 1964 established a system designed to be operated in accordance with plans drawn up by each district for the appointment of counsel for persons accused of federal crimes, other than petty offenses, who are "financially unable to obtain adequate representation." The Act also provides for the compensation of appointed counsel and the provision of defense services other than counsel. In 1970, the Act was amended to permit qualified districts to establish defender organizations to furnish representation with the proviso that private attorneys would be appointed in a substantial proportion of the district's cases.

Prior to passage of the 1964 Act, attorneys representing indigent defendants in federal courts did so, in most instances, on a *pro bono* basis. Following passage of the Act, a schedule of fees was established which allowed private attorneys to be paid by the government. For example, for work done out of court, attorneys were paid $10 per hour and for courtroom representation, $15 per hour.

The 1970 Act increased the scale of payments from $10 to $20 and $15 to $30 respectively, broadened the coverage by expanding the services provided for defendants, and created Public Defender Organizations. Two types of defender organizations are now in existance: the Federal Public Defenders who are federal employees paid by the A.O. and Community Defender Organizations which provide similar services but are paid through the Administrative Office in amounts authorized by the Judicial Conference of the U.S.

Since the Act was amended, 22 Federal Public Defender and 8 Community Defender Organizations have been established. These have proved so effective, the Deputy Director said, that other districts are presently considering establishing such organizations.

A.O. ASKS CONGRESS FOR ADDITIONAL MAGISTRATES

The Administrative Office of U.S. Courts has asked Congress for an additional $404,000 to increase the number of full-time and part-time magistrates.

In its request for supplemental funds for Fiscal 1976, the A.O. said the Judicial Conference last September authorized the appointment of five new full-time magistrates, the conversion of four part-time and one combination position to full-time status, one new combination position, and four new part-time positions.

The A.O. said the recurring annual cost of providing these additional magistrate positions is estimated at $604,000 which includes supporting personnel required to staff the new full-time magistrates. A request for funds for this purpose is included in the budget for Fiscal 1977 but, by providing the requested supplemental funds now, the A.O. will be able to make the necessary appointments and changes in the coming months rather than delaying action until October 1, 1976, the beginning of the 1977 Fiscal Year.

In its justification for the magistrates' supplemental funds, the A.O. told Congress that, "The courts, on the whole, are responding very positively to the expressed desire of the Congress by progressively delegating 'additional duties' in civil and criminal cases to magistrates."

In light of increased filings of both civil and criminal cases in district courts, the failure of the Congress to provide additional judgeships and the requirements imposed on the district courts by the Speedy Trial Act of 1974 the A.O. concluded, ". . . we believe it is imperative that the [changes affecting] new magistrates, and other changes in arrangements which have been approved by the Judicial Conference, be implemented at the earliest possible date."

PROPOSED NEW CRIMINAL CODE STIRS CONTROVERSY

For three years S. 1, the bill to codify all federal criminal law, has been considered and discussed at great length by key committees of Congress.

The Senate

Almost 800 pages in length, the bill obviously has embraced a great deal. But the problem is not only that it is a very complex piece of legislation, but also that it contains some highly controversial provisions. For example, the prior federal death penalty in the present version of S. 1, is changed, making a death penalty mandatory (under certain conditions) after conviction for treason, sabotage or espionage. Some feel such a penalty should be codified by a separate bill dealing with death penalty crimes only. Another controversial section adopts the proposal of the Commission on Revision of the Federal Criminal Code which would reenact the 1968 law on wiretapping. But recent cases limiting Presidential powers in this area will now require changes in S. 1 to comport with these cases. The list goes on and on—gun control, obscenity, drug offenses, national security, insanity defense.

The House

Meanwhile Congressmen Robert W. Kastenmeier, Don Edwards and Abner J. Mikva, all members of the code revision commission, have introduced an alternate bill in the House. Their announced purpose is to accomplish what the Senate wants—a simplification of existing complexities in federal laws—without endangering civil liberties. Objections from many civil libertarians have been one of the time-consuming aspects the drafters have had to contend with.

Present plans appear to call for continued hearings in the Senate Judiciary Committee during December, with consideration by the Senate early in the year. If a Senate bill is passed, the House is expected to begin its hearings on the Kastenmeier—Edwards—Mikva bill or possibly other House legislation in competition with others in both the House and the Senate.

Conference of Metropolitan Chief Judges

In October the Conference of Metropolitan Chief Judges held a meeting to consider several matters, including S. 1. This group of federal district judges represents courts which handle 56 percent of all civil cases in the federal system and more than 75 percent of all criminal cases. Out of this meeting came a resolution which was sent by Judge William J. Campbell, on behalf of the Conference, to the Chairmen of both the Senate and House Judiciary Committees. The Resolution reads:

> **"RESOLVED: We, the Conference of Metropolitan Chief Judges handling in excess of 75 percent of all federal criminal cases throughout the United States, express grave concern as to the proposed revision of the criminal code now pending before Congress, by reason of the many changes in existing laws and procedures as well as the approaches to the language of the specific crimes. We recommend that S. 1 not be approved by Congress."**

Six Regional Conferences

PROGRAMS STAGED ON SPEEDY TRIAL

Six regional orientation conferences on implementation of the Speedy Trial Act were staged during the Fall.

The programs, designed to aid district planning groups in assessing and managing their planning responsibilities, were the product of a coordinated effort by the Federal Judicial Center, the Administrative Office of the U.S. Courts, and the Department of Justice.

Among the attendees representing the various districts were: Federal Judges, Magistrates, Clerks of Court, and U.S. Attorneys. In addition, several districts had Federal Public Defenders and private attorneys in attendance. Under the Act, districts also appoint a reporter to coordinate the activities of the planning group and many of the reporters who have been appointed attended one of the conferences.

The initial conference was held in Chicago where members of the planning groups of the districts within the Sixth and Seventh Circuits assembled for two days to discuss potential problems of compliance with specific provisions of the new law, the use of new docket forms, the expanded statistical record keeping required by the law, and functions of the districts' planning groups.

In addition to hearing the formal presentations, the participants divided according to their functions and met in workshop sessions to pinpoint foreseeable difficulties and share applicable techniques.

Principal presentations were made by Anthony Partridge, Speedy Trial Act Coordinator, Federal Judicial Center; Norbert A. Halloran, Speedy Trial Act Coordinator, Administrative Office; Ralph B. Guy, Jr., U.S. Attorney for the Eastern District of Michigan; James A. McCafferty, Chief, Statistical Analysis and Reports Branch, Division of Information Systems, Administrative Office; and Steven Flanders, Director, District Court Studies Project, Federal Judicial Center.

Following the Chicago conference, the program underwent minor revisions and five conferences subsequently were held nationally.

Many districts expressed confidence that they were already in complaince with the final time limits of the Act which become effective July 1, 1979. Others voiced concern over the additional burdens of record keeping, the need to revise grand jury procedures, the definition and notation of "excludable time", and the potentially detrimental effect of the Act's imple-

mentation on the civil calendar.

In some instances the conferences provided the initial opportunity for members of particular planning groups to meet and discuss their problems.

Under the Act, the district courts are required to submit a transitional plan by June 30, 1976 and a final plan by June 30, 1978.

The Judicial Conference's Committee on the Administration of the Criminal Law is completing an outline to assist the district planning groups in carrying out their functions.

PRESIDENT HONORS JUDICIARY WITH WHITE HOUSE DINNER

President and Mrs. Ford, reviving a common practice during earlier years, honored the federal judiciary at a White House dinner on November 24.

In addition to the Justices of the Supreme Court and all Circuit Chief Judges, there were included the three top officers in the Department of Justice, ranking members of both the House and Senate Judiciary Committees, the Directors of the Federal Judicial Center and the Administrative Office, the President of the American Bar Association and members of the White House staff who deal with legal matters. Representing the Conference of Chief Justices was its Chairman, Chief Justice Charles S. House of Connecticut.

In a toast to the Judiciary, the President commended the judges and expressed gratitude for an independent Judiciary. Some of the President's remarks follow:

"With a clear understanding of history, the framers knew that an independent Judiciary, the guardian of a written Constitution, is essential to the preservation of individual liberties under a Government of limited powers. Our strong judicial system offers the world an example of how an independent Judiciary can restrain the other branches of Government when they over-reach and, on occasion, force them to meet their responsibilities under our Constitution.

"The American legal system, we all know, has produced many giants of law, both of the bench and of the bar. They symbolize the genius and wisdom of two centuries of jurisprudence which has produced from men and women of differing political philosophies a great historicial precedent.

"It seems to me, Mr. Chief Justice, that our great pride is not only in a few outstanding individuals, it is in the many able and honest jurists whose daily performance gives our entire Judiciary a well-deserved reputation for competence and total integrity . . . You and your associates in the Judicial branch of the Government have kept the Constitution alive and I should say vigorous for 186 years. And it remains today our strongest guarantee of freedom for the future."

The Chief Justice, in his response to the President's toast, said, in part, " . . . You have not only revived a splendid and ancient custom by inviting the federal judges to your house, . . . you have honored our colleagues of the state courts . . .

(See DINNER pg. 6)

William T. Barnes Retiring

NEW A.O. PERSONNEL DIVISION CHIEF NAMED

William T. Barnes

R. Glenn Johnson

Deputy Director William E. Foley has announced that R. Glenn Johnson will take over as Chief of the A.O.'s Personnel Division on January 5. He will succeed William T. Barnes who is retiring.

The new Personnel Division Chief has held a variety of positions in the personnel field prior to his selection including work with the Navy Department, the Office of Economic Opportunity, the Department of Health, Education and Welfare and the Community Services Administration.

He holds a B.A. from the University of Maryland and has done graduate work at both George Washington and American Universities.

At the end of the year, William T. Barnes who has been heading personnel administration operations for the federal court system for many years, is retiring after 30 years of service. Mr. Barnes began working for the Adminstrative Office of U.S. Courts in 1945 after World War II service. Prior to his military service, he served with the F.B.I. and later worked for Congress.

Deputy Director Foley said, "Bill has asked me to convey to you his appreciation for your cooperation with him over the years in carrying out the duties of his important office, and also to say that he feels greatly honored to have served with the Judicial Branch."

(DINNER from pg. 5)

who, in the time of George Washington and for many years thereafter, were regarded not as equals, but much superior to Justices of the Supreme Court of the United States.

"I don't think we would want to give that up, with all deference to our brothers and sisters of the state courts, but we would like to maintain parity and you have, of course, in inviting us tonight. . . . I will presume to speak with leave, Sir, for both the federal and the state judges and say that we are all very grateful to you for your hospitality and for the honor you do us by inviting us to your house."

A.O. WORKING TO EXPEDITE PAYCHECK DELIVERIES

The Administrative Office, in response to numerous complaints regarding delayed paychecks, is exploring the possibility of entering into a contract with the U.S. Postal Service which guarantees 24-hour delivery to 100 major cities in the U.S. including those in Alaska and Hawaii.

In the interim, the A.O. has made arrangements with the Treasury Department to have the Judiciary's payroll processed on Monday nights and placed in the mail on Tuesday rather than Wednesday. However, this will shorten an already tight schedule by advancing the cutoff date for processing appointments and other payroll changes.

It is therefore very important that the A.O.'s Personnel Division be informed as soon as possible of any appointments or separations. With respect to appointments, the A.O. requests that the Oath of Office and Personal History Statement (A.O. Form 79), the Notice of Entry on Duty (Form 195) and the Tax Exemption Certificates be executed and transmitted for all employees on or before the actual entrance on duty.

A HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

There is little new to report at the year's end except to observe that the output of the courts reflects the continued dedication and hard work of all judges and court personnel. All this is in the face of problems and disappointments that would discourage most people. The incidence of complex and new types of litigation continues to add burdens, but somehow we seem to manage.

There is no way that the public generally can fully know of the sacrifices and burdens you are carrying to maintain the high level of dispositions necessary to keep from being inundated. Therefore, I will constitute myself "surrogate-for-the-public" and express my great admiration and appreciation for your performance as well as my confidence that it will continue in the face of all odds. I renew my assurance that we will continue to improve on all fronts.

Mrs. Burger joins me in wishing each of you a happy Holiday Season.

Merry Christmas

Warren E. Burger

BICENTENNIAL PLANS PROGRESS

The Bicentennial Committee of the Judicial Conference met at the Supreme Court November 24 to consider the projects which the judiciary will undertake on a national basis in celebration of the nation's Bicentennial.

The Committee discussed its planned movie series, as well as a book on the federal judiciary for lay readers. Both of these projects, which were described in greater detail in the August issue, are intended to make the citizenry aware of the role of the courts in our federal system.

The movies are being produced by Metropolitan Pittsburgh Public Broadcasting and the book is being drafted for the Committee by Professor Sidney Hyman of the University of Illinois. Both projects are being closely supervised by the members of the Bicentennial Committee.

The Committee also decided to publish a biographical directory of federal judges. The directory will contain not only a demographic biography of every federal judge, living and dead, of the circuit, district, territorial, and national courts, but will also include sections describing changes in the geographic jurisdiction of the courts.

The Committee also plans to encourage projects on the local level. For example, the U.S. Courts of Appeals are being invited to submit plans for a history of the federal courts in the geographic area within their circuit. The Committee will provide modest funding upon submission of an acceptable proposal.

Funding may also be provided for other local projects. The Committee has adopted the firm policy that funds shall not be spent merely because they have been appropriated by the Congress for the judiciary's celebration of the Bicentennial. The Committee will consider the intrinsic merit of each suggested project and make its funding decisions on a case-by-case basis. Another policy decision of the Committee is that the major projects funded by the Bicentennial budget shall be of lasting interest and usefulness to the public for many years and long after the Bicentennial year is over.

The Third Branch

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LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

New Federal Criminal Code. Representative Kastenmeier has introduced H.R. 10850, his version of S. 1, entitled the "Federal Criminal Law Revision and Constitutional Rights Preservation Act of 1975". It varies from the Senate version, particularly in respect to the insanity defense, sentencing, and the substantive offenses relating to classified information, and obstruction of governmental functions.

Bankruptcies of Major Municipalities. The Senate Judiciary Committee has reported S. 2597, Senator Burdick's bill which will amend the bankruptcy law to permit a city to file for bankruptcy without the approval of a majority of its creditors as is now required. A grace period during which creditors could not bring suit would be provided to enable the city to devise a payment plan with the aid of the court. In addition, the city would be authorized to borrow limited funds, with the approval of the court, to continue essential operations.

The House version, H.R. 10624, was reported by the Judiciary Committee on December 1. It amends Chapter IX of the Bankruptcy Act to provide a workable procedure for the adjustment of debts of political subdivisions or agencies. The major change from current law is elimination of the consent of 51% of the creditors to the adjustment.

Circuit Revision. The Senate Judiciary Committee has ordered favorably reported a clean bill, not yet available, which will revise only the Fifth Circuit. It apparently will contain provisions similar to those in S. 729 dealing with that circuit.

Consumer Protection Act of 1975. S. 200 passed the House of Representatives on November 6. A conference will be held on the bill. The Judicial Conference, at its last meeting, disapproved the legislation which would authorize federal courts to try consumer fraud cases, thus greatly increasing the workload of the courts.

Consumer Product Safety Commission. S. 644 has now been passed by both Houses, but in greatly differing versions. The House version deletes Senate language which would greatly expand the authority of the Commission to conduct civil litigation.

Rules of Evidence and Criminal Procedure. H.R. 9915, which makes technical and conforming amendments to these rules, to take into account the recent enactment of Criminal Rules Amendments Act, was sent to the President on December 1.

Mandatory Minimum Sentences and Sentencing Commission. Senator Kennedy has introduced two new bills. S. 2698, would provide mandatory minimum sentences for cases involving burglary or aggravated assault, murder in the second degree, crimes in which a handgun or other dangerous weapon is used, robbery where the victim was seriously injured, rape, trafficking in heroin, or the convicted defendant is a repeat offender. Certain limited exceptions are provided, but a post-trial hearing is required to resolve such situations.

The Second bill, S. 2699 would amend Title 18, U.S.C. to establish certain guidelines for sentencing and establish a United States Commission on Sentencing. The bill establishes certain uniform general criteria which federal courts must consider in formulating a sentence: the nature of the offense, the characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, the need for just punishment, and the requirement that the sentence act as a deterrent, and whether other less restrictive sanctions have been previously applied to the same defendant. Judges would also have to give reasons in writing for the sentence imposed thus enabling it to be reviewed by the appellate courts.

The bill will establish an independent U.S. Commission on Sentencing in the Judicial Branch which will promulgate specific guidelines, publish data concerning the sentencing process, devise and conduct seminars, workshops and training programs for judicial personnel and others concerned with sentencing. It would also make recommendations to Congress for legislation.

COMPUTER TRANSCRIPTION TRAINING CONTINUES

The Federal Judicial Center has trained 22 court reporters in the use of computer aided transcription. This is not as many as had been anticipated, but it is hoped the number of reporters who can be involved will increase after the first of the year.

Of the 22 reporters trained, 17 are still in the pilot program. Of these, four are involved in Phase "B", meaning that they are doing their own editing on video display terminals installed in their offices. This is being done in Pittsburgh and Baltimore.

Within the next month or two it is anticipated that terminals will be installed in three more courts. This will involve 10 more reporters doing their own editing, two already in the pilot program and eight new reporters. This will also expand the project from seven to nine U.S. District Courts.

In addition, the Center is considering the involvement of a number of reporters from other districts who have expressed an interest. If the present proposals go ahead as designed it is anticipated that there will be 25 more reporters involved in the pilot project at one stage or another by June 30, 1976.

AO FJC Calendar

Jan. 5-6 Judicial Conference Subcommittee on Judicial Improvements, Houston, TX

Jan. 5-6 In Court Management Training Institute, Miami, FL

Jan. 6 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC

Jan. 8-9 Workshop for District Judges (5th Circuit-East), Sea Island, GA

Jan. 12-13 Workshop for District Judges (5th Circuit-West), Brownsville, TX

Jan. 15-16 In Court Management Training, Institute, Brownsville, TX

Jan. 15-16 Judicial Conference Probation Committee, Ponte Vedra Beach, FL

Jan. 16 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, DC

Jan. 19-20 In Court Management Training Institute, Houston, TX

Jan. 26-27 Judicial Conference Jury Committee, Scottsdale, AZ

Jan. 26-29 Seminar for Federal Public Defenders, San Diego, CA

Jan. 26-30 Seminar for Pre-Trial Officers, Washington, DC

Jan. 26-30 Seminar for Pre-Trial Service Officers, Washington, DC

Jan. 26 Judicial Conference Magistrates Committee, Orlando, FL

Jan. 27-29 Judicial Conference Review Committee, Tucson, AZ

Jan. 28-29 Judicial Conference Advisory Committee on Judicial Activities, Tucson, AZ

Jan. 27-29 Judicial Conference Review Committee, Tuscon, AZ

Jan. 28-29 Judicial Conference Judicial Activities Committee, Tuscon, AZ

Jan. 30 Joint Committee on Judicial Code, Tuscon, AZ

Jan. 29-30 Judicial Conference Criminal Justice Act Committee, Coronado, CA

Feb. 2-3 Judicial Conference Court Administration Committee, Tucson, AZ

Feb. 2-6 Seminar for Asst. Federal Public Defenders, San Diego, CA

Feb. 6-7 Judicial Conference Advisory Committee on Appellate Rules, Tucson, AZ

Feb. 12-13 Workshop for District Judges (3rd, 4th & DC Circuits), Philadelphia, PA

PERSONNEL

Confirmations

John F. Grady, U.S. District Judge, (N.D. Ill.), Nov. 20

Charles H. Haden, II, U.S. District Judge, (N. & S. D. W. Va.), Nov. 20

Gerald B. Tjoflat, U.S. Circuit Judge, (5th Cir.), Nov. 20

Nominations

Patrick E. Higginbotham, U.S. District Judge, (N.D. Texas), Dec. 2

John Paul Stevens, Associate Justice, Supreme Court of the United States, Dec. 1

Deaths

Ben C. Connally, U.S. Senior District Judge, (S.D. Texas), Dec. 3

Joseph Charles McGarraghy, U.S. Senior District Judge, (Dis.-D.C.), Nov. 29

Robert E. Tehan, U.S. Senior District Judge, (E.D.Wis.), Nov. 27

NEW COURTHOUSE FOR CA-3

Effective December 15 the U.S. Court of Appeals for the Third Circuit moved to new quarters in the top five floors of the 22-story U.S. Courthouse at 601 Market Street, Philadelphia, Pennsylvania 19106, overlooking historic Independence Mall. The U.S. District Court of the Eastern District of Pennsylvania completed its move to the new quarters last August. The phone listing for the Clerk's Office, (CA-3) is: (215) 597-2995.

THE THIRD BRANCH

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