The Third Branch

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CHIEF JUSTICE BURGER PRESENTS YEAR-END REPORT ON FEDERAL JUDICIARY

In his year-end report on the condition of the federal judiciary, The Chief Justice called for an increase in the number of federal judges, a reduction in the jurisdiction of federal courts and an increase in judicial salaries.

The Chief Justice reported that "The judicial system by and large, however, is working well, and this is reflected in the relatively high popular esteem of the courts. The faults and frailties of our judicial branch are, for the most part, recognized and correctable—and there is much activity toward improvement."

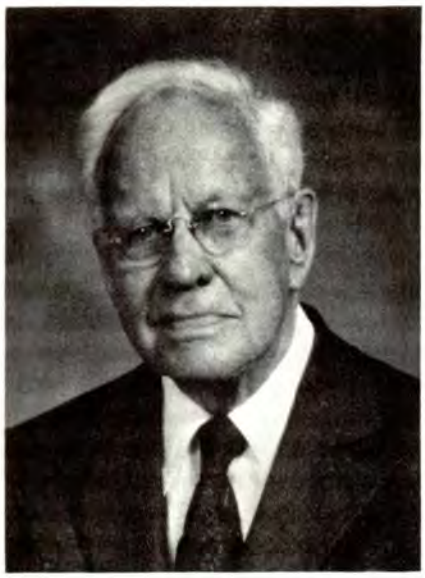
He made these points to illustrate the increasing burden on the federal courts:

- In fiscal year 1975, 160,602 new cases were filed in the United States District Courts, making an average of 402 cases per judgeship, an unrealistic number for one judge while in 1970,

(See REPORT page 2)

JUDGE FRIENDLY LECTURES ON CONSTITUTION

(For story on Judge Friendly's lecture, see page 3.)



HENRY P. CHANDLER, FIRST A.O. DIRECTOR, DIES AT 95

The first Director of the Administrative Office of U.S. Courts, Henry P. Chandler, 95, died December 12 in Bethesda, Maryland.

An honors graduate of Harvard in 1901, he joined the faculty of the University of Chicago where he taught English and also served as Secretary to the President of the University. After graduating from the University's law School in 1906, he entered private practice in Chicago and remained with the same firm until the late Chief Justice Charles Evans Hughes selected him to become the first Director of the A.O. He served under four Chief Justices until his 1956 retirement.

The current Director of the A.O., Rowland F. Kirks, said, "Henry P. Chandler was one of the finest men to serve the federal judicial system. As the first Director of the Administrative Office, he served as a model for his successors."

While in Chicago, Mr. Chandler was President of the Chicago Bar Association, 1938-1939, and participated in a host of community projects. He took a special interest

(See CHANDLER page 2)

(REPORT from page 1)
the comparable figure was only 317 cases per judgeship.

- Based on preliminary data, 180,000 filings in the district courts are projected for the 12 months ending next June, and this will constitute about 450 cases per judgeship, an increase of 42% since 1970. (No additional judgeships have been provided since 1970.)
- The average disposition per judgeship in 1975 was 371 cases, up 27% from 292 in 1970. Nevertheless, the rising tide of new filings outdistanced the increased output, so that 355 cases per judgeship awaited disposition in 1975, compared to 285 in 1970.
- Congress last increased appellate judgeships in 1968, when about 282 appeals per judgeship were filed; in 1975, the figure was 515. Projections suggest about 19,400 appellate filings this year, or 600 per judgeship, a phenomenal 113% increase since 1968.
- In 1972, in compliance with an act of Congress, the federal courts presented detailed statistics elaborating on the figures recited above along with projections for 1972-1976 anticipated filings. Those figures showed a need for 52 additional judgeships and 13 additional courts of appeals judgeships to meet the swiftly growing burdens.
- However, no judgeships have been created. The same act of Congress that required submission of these figures four years ago on needs of the courts now requires that we submit, in 1976, the figures to measure the needs for 1976-1980.
- Some areas of litigation present an especially dramatic picture: bankruptcies rose 34.3% in fiscal 1975, leaving 262,283 such cases awaiting decision as the year ended.
- *Supreme Court.* Month after month the Justices of the Court face a caseload almost four times as much as that which confronted the Court in the 1920's and 1930's.
- *Diversity Jurisdiction.* Nearly one-fifth of the District Court cases are in these courts because the litigants happen to be residents of different states. Congress should act to eliminate this access to the federal courts.

The Chief Justice then pointed out some encouraging factors:

- *Computerization.* Experiments being conducted by the Federal Judicial Center demonstrate that an appropriate use of computers may be helpful to the courts in meeting the requirements of the 1974 Speedy Trial Act and perhaps in many other ways, including the transcribing of court reports, the monitoring of dockets, and avoiding conflicts in the schedules of attorneys.
- *United States Magistrates.* In fiscal 1975 the magistrates disposed of 255,061 matters that otherwise would have rested with federal judges. This was a one-year rise of 5%.
- *Three-Judge District Courts.* The previous Congress has modified the statutes relating to these courts, reducing their availability and the consequent right of direct appeal to the Supreme Court. However, the law still permits use of three-judge District Courts for cases that could better be tried by a single judge, subject to review by the courts of appeals. The Senate has passed remedial legislation and the bill now awaits House action.
- *Prisoner Petitions.* Fully a sixth of the 117,000 cases of the civil docket of federal courts (19,000) are petitions from prisoners, most of which could be handled effectively and fairly within the prison systems. Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges. Possibly due to internal Bureau of Prisons procedures developed by Director Norman Carlson, federal prison petitions have decreased 1.2% in the federal prisons. Prisoner petitions from state prisons, however, increased 6.2%
- *State Courts.* The state courts, which have been without a strong, central spokesman and supporter, now have the National Center for State Courts to study their common problems and chart improvements. In its fifth year, it is still supported primarily by private and federal funding, and soon the states must assume this as their proper obligation.

Turning to the problem of judicial salaries, he said, "The gross inequity toward salaries of federal judges, in common with 12,000 other high-level federal officials, continues, relieved only by the 5% increase late in 1975. . . . As we try to look forward into what another century will bring, we can be optimistic about the prospects of justice in this country provided we relate the burdens placed on the courts to their capacity to perform and provide the necessary tools and personnel."
(The full text of the Report is available from the FJC Information Service.)

(CHANDLER from page 1)
in juvenile delinquency and probation and was appointed Chairman of the Illinois Committee on Child Welfare Legislation and served in that position for four years working to codify Illinois' laws affecting children.

As the first A.O. Director, Mr. Chandler helped to organize many facets of the growing federal court system to make them more responsive to the needs of the nation but, conversely, to make the Adminis-

trative Office more responsive to the needs of the courts. He was instrumental in transferring the federal probation system from the Department of Justice to the Administrative Office in 1940.

In his capacity as Director of the A.O., Mr. Chandler earned the affection and respect of judges throughout the nation. In 1959, Senior Judge Learned Hand (CA-2) wrote him:

"In many years of official life I have never met anyone who prevented his personal interests so completely from entering into what he did. Not only that, but you were always alert to see that what was needed was at hand, and there was a pervasive feeling of intelligent compromise without the least show of pedantry that in my personal experience has been unique."

Following his 1956 retirement, Mr. Chandler was invited to Hawaii to study its court system; in 1959 he helped to organize the administrative court system in Illinois and, in 1963, he published his definitive 210-page work on the federal courts: "Some Major Advances in the Federal Judiciary System (1922-1947)."

JUDGE FRIENDLY LECTURES ON CONSTITUTION

In remarks prepared for delivery January 29, Judge Henry J. Friendly (CA-2) presented a Bicentennial Address on the Constitution. The address is the first of a series being presented by prominent judges, legal scholars and government officials under the auspices of the Department of Justice.

Here are the highlights of Judge Friendly's address. (A full text is available from the FJC Information Service.)

- If it had not been for the Constitution there is little doubt that the nation would have broken up shortly into two or three small groups of states. Moreover, even under the Constitution, major efforts were required to prevent the country from quickly becoming fatally embroiled in the wars of the French Revolution.
- The Constitution has acquired a mystique that no other instrument in all history has possessed—". . . the heaviest shell that can be fired in debate is a claim that a proposed action runs counter to the spirit of the Constitution."
- Despite disclaimers during the debates on ratification, the framers of the Constitution believed it came as close to perfection as any political document could. The success resulted from five factors. Three were a sense of urgency on the part of the framers; the relatively small number of delegates and the fact that they knew each other well; and, lastly, the remarkable ability of the men of the Convention.
- The "translation of these three favorable factors into a triumph" was due to two interacting factors: the willingness of the framers to compromise and the ability of the delegates to meet privately and work out the necessary compromises without the glare of publicity.
- The Constitution has been successful because the framers used general language which could be equally applied to a tiny new nation of only 4 million people as well as to a diverse, complex nation of over 200 million.
- The abilities of the framers are evidenced in the fact that despite the growth of the nation, the Constitution has only been amended sixteen times since the initial addition of the first ten amendments. However, primarily through the Fourteenth Amendment, the states lost a considerable portion of their original sovereignty. "The men who insisted that a national government emerge from the deliberations at Philadelphia might be surprised to find how national in this respect it has become. It is ironical that their one great though excusable failure should have led to an increase in the power of the national government beyond anything most of them would have wished."

Judge Friendly pointed out that the Constitution was "the creature of statesmanlike compromise" and asked, "Have we lost this art within the Legislative Branch? Have we lost it in the relations among the Branches? There are some danger signs."

As one of these signs, he singled out the failure of the Congress to agree upon a national energy policy. Another danger sign, he said, was the confrontation between the President and the Congress over the right of the President to involve the nation in foreign wars without the knowledge or consent of Congress. "Perhaps the most dramatic illustration how excessive assertion engenders excessive response has been with respect to what has come to be called executive privilege."

Another instance of this inability of the Congress and the President to work out their differences in statesmanlike compromise concerns the powers to spend or not to spend.

However, Judge Friendly did not spare The Third Branch, the federal judiciary. Many believe this branch has become "very dangerous indeed—dangerous because it has forgotten the perception of Mr. Justice Stone that 'Courts are not the only agency of government that must be assumed to have the capacity to govern.' "

As an example, Judge Friendly pointed to the extended dicta in the opinion of the Supreme Court in *Miranda v. Arizona* which precipated a storm in Congress and seemed to carry the most serious threat to the Court's position since the attempt by President Roosevelt to pack the Supreme Court in 1937.

Judge Friendly concluded his remarks by saying, "The demands the Constitution makes on us are modest but insistent. It asks only that we treat it in the spirit in which the framers created it—a spirit of moderation, of compromise, and of placing the public good above private ends. This Bicentennial year calls on us to rededicate ourselves to that spirit."

JUSTICE CLARK TO LECTURE AT WILLIAM AND MARY

Justice Tom C. Clark (Supreme Court of the U.S., ret.) plans to lecture during the coming semester at the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Virginia.

FJC STARTS LIBRARY STUDY

Raymond M. Taylor

At the direction of the Judicial Conference of the United States, the Center has commenced a study of the library services for the federal courts, central and in-chambers libraries, both Circuit and District.

The study will address itself to the growing needs of the federal judges, the magistrates, the bankruptcy judges and federal public defenders in a system that has grown far beyond established procedures set up years ago. The vast geographical areas covered by some of the libraries in the system have rendered impractical one central library and many of the district judges, traveling out of their headquarters to hold court, often must take part of their library with them.

Additional facets of the study call for an examination of tried and proven methods and materials for law research adopted in the past, with a view to determining whether better methods and materials are now available and whether it would be feasible to change. This means an examination of all modern technology such as computerized research, various types of microform, and transmittal of law information quickly and efficiently. The study necessarily will take into consideration space available in existing courthouses as well as what would ideally be available in the courthouses of the future.

Raymond M. Taylor, who has for the past ten years been the Librarian of the Supreme Court of North Carolina, is taking leave from his position for a year to devote full time to this study. Mr. Taylor has broad experience in the legal profession, both as a practitioner, a librarian, and a lecturer. In the field of library science, he has written extensively on such subjects as standard library procedures and guidelines for law book publishers. In 1970 he personally conducted the North Carolina Law Research Facilities study, a project which surveyed all court libraries in the state. The 37-volume report on this study is a definitive analysis of all research facilities on hand, as well as recommendations for improved facilities and materials.

While Mr. Taylor will work on the study as Project Director, the Center staff will be assisting his endeavors. FJC Director Hoffman has constituted an Advisory Committee to follow the progress of the project and to render advice on the study as the work progresses. Appointed to the committee are federal judges, a federal librarian, a Circuit Executive, and a select few who represent private practice and law school libraries.

The final report and recommendations are expected to be submitted to Director Hoffman by the end of 1976 or early 1977.

STATE-FEDERAL

The Federal Judicial Center endeavors to keep abreast of all activities of the State-Federal Judicial Councils. It would assist Center personnel in responding to requests for information on Council work if reports could be received on meetings, subjects discussed and how the Councils function.

The following is a report on some Council activities received since the last column was published in *The Third Branch*.

Alabama. A council meeting was held in conjunction with the annual meeting of the Alabama Bar Association last July with Chief Justice Howell T. Heflin and Judge Walter P. Gewin (CA-5) presiding as Co-chairmen. Subjects on the agenda were: report of accomplishments of a local state-federal judicial council in Birmingham; new Alabama Rules of Appellate Procedure which provide for federal courts to certify questions to the Supreme Court of Alabama; mutual exchange of presentence and probation reports, and a statement from Judge Gewin on the merits of state-federal cooperation.

Pennsylvania. This Council, one of the first to organize after they were suggested by Chief Justice Burger in 1970, has functioned effectively since that date. The members make contact each month, either at a stipulated meeting place or by telephone to discuss matters of mutual interest and concern. A "Dutch treat" dinner is held once a month in the Western District of Pennsylvania, Judge Ruggero Aldisert (CA-3) reports, during which they concentrate on one area of concern or one subject.

These have included collateral review of sentences, prisoner civil rights petitions and conflict of counsel. The conflict of counsel matter became such an acute problem for both the state and federal courts, particularly in the metropolitan cities, that a special committee was constituted to discuss and resolve the matter. Later, at a Federal Judicial Center conference for judges of the U.S. Courts of Appeals, Judge Aldisert, Conference Chairman, included discussion on this subject in one of the main presentations.

Though not a Council activity, a beneficial offshoot from the Pennsylvania discussions has been a course in state-federal relations at the conferences for state and federal appellate judges held each summer at New York University. Both Mr. Justice Blackmun (Sup. Ct. of U.S.) and Judge Aldisert participate in these presentations.

Virginia. A meeting of this Council was called last June, with ten regular members in attendance as well as eight visitors, including Mr. Justice Powell. Among other things discussed were juror service calls from both state and federal courts exchange of information on attorney disciplinary actions, court security, and aspects of the state-federal child support program. Another meeting of the Council was held at Williamsburg on January 17.

Kentucky. Judge Pierce Lively (CA-6) has offered the use of any federal courtrooms available to the judges of Kentucky's new Court of Appeals until permanent facilities can be acquired by Chief Justice Scott Reed.

Chief Probation Officer James R. Pace, above right, congratulating Deputy Chief Probation Officer Herbert Vogt following the ceremony during which Mr. Vogt received the Richard F. Doyle Award.

D.C. PROBATION OFFICER RECEIVES NATIONAL RECOGNITION

In an impressive ceremony last month, Deputy Chief Probation Officer Herbert Vogt (Dist. D.C.) received the Richard F. Doyle Award for 1975, the only award of its kind given yearly since 1963 by the Federal Probation Officers Association.

The presentation, which was made during a ceremony presided over by Chief Judge William B. Jones (Dist. D.C.), honored Probation Officer Vogt as the nation's federal probation officer who, through his own initiative, made an outstanding and significant contribution to the field of corrections.

Chief Probation Officer James R. Pace (Dist. D.C.) said the award stemmed "directly from Herb's early planning which, in turn, led directly to our probation office's broad-based group counseling program and, more recently, our court volunteer program for working with probation and parole cases."

BILLS INTRODUCED TO CREATE NATIONAL COURT AND REVISE FEDERAL APPELLATE COURT PROCEDURES

At the close of the first session of the 94th Congress last month, companion bills were introduced in both the House and Senate which would create a National Court of Appeals and provide for changes in the internal operating procedures of the federal courts of appeals.

The bill to create a National Court of Appeals (S.2762, H.R.11218) and the bill calling for internal revision of the federal courts of appeals (S.2763, H.R. 11219) introduced by Senator Roman L. Hruska and Representative Charles E. Wiggins respectively, are legislative extensions of some of the recommendations of the Commission on Revision of the Federal Court Appellate System which issued its final report last June. (See *The Third Branch*, June 1975, p. 1.)

The National Court of Appeals bill calls for a seven-member court with its seat in Washington, D.C. The Court would receive its cases either by reference from the Supreme Court or by transfer from any U.S. Court of Appeals, the Court of Claims and the Court of Customs and Patent Appeals. In both instances the decision to review would be within the discretion of the new Court, unless directed by the Supreme Court to decide the case. Though the Supreme Court would still have the right to review opinions of the National Court, there would be no appeal or review of an order granting or denying a transfer to the new Court.

Members of the new court would be appointed by the President with the advice and consent of the Senate.

The second bill has five major provisions:

- *Chief Judge; Precedence of Judges.* A Circuit judge shall not be eligible to serve as the chief judge of the circuit for more than seven years.
- *En Banc Hearings.* Cases shall be heard by not more than three

(See BILLS page 6)

STAFF POSITION OPEN AT CA-4

The United States Court of Appeals for the Fourth Circuit is seeking applicants for the newly created position of Senior Staff Counsel. The position calls for the counsel to direct the activities of the Court's six staff law clerks and to perform a principal role in the ongoing analysis and management of the Court's cases. The starting salary is up to $31,500 with usual federal benefits.

Applicants should submit written inquiries and resumes by March 1, 1976 to: Senior Staff Counsel Committee, U.S. Court of Appeals for the Fourth Circuit, Federal Courts Building, Richmond, Virginia 23219.

CONGRESS CONSIDERING BILLS REVISING THE BANKRUPTCY ACT

Two bills are now pending in the 94th Congress which, if enacted, would extensively revise both the substantive law of bankruptcy and the structure of the system.

The present Bankruptcy Act, enacted in 1898, has undergone over one hundred piecemeal revisions. The last major revisions were made in 1938 with passage of the Chandler Act, which established relief Chapters as alternatives to bankruptcy for both business and private individuals, and the Referees' Salary Act of 1946, which changed referees in bankruptcy from a fee system of compensation to a salary system.

The first bill, the so-called "Commission Bill," H.R. 31, S. 236, stems from a study made by a nine-member Congressional commission.

The second bill, H.R. 32, S. 235, was drafted by the National Conference of Bankruptcy Judges. It is popularly called the "Judges Bill." The Senate Subcommittee on Improvements in Judicial Machinery has completed hearings on both bills. The House Subcommittee on Civil and Constitutional Rights has held hearings which will continue

(See BANKRUPTCY page 7)

(BILLS from page 5)
judges unless a hearing or rehearing before the court en banc is ordered by a majority of the active circuit judges of the circuit. However, a court en banc shall consist of the chief judge of the circuit and not more than eight additional active circuit judges.

• *Retirement of Judges.* This provision allows any justice or judge to retire at age sixty if he has served for ten years or if the number of his years of service when added to his age equals eighty, but retirement is not compulsory.

• *Central Staff For Courts.* This allows a court of appeals to appoint necessary legal assistants to positions authorized by the Judicial Conference of the United States. Among the duties which they may be assigned are those involving the preliminary processing of matters filed with the court, research, preparation of memorandums, and the management and monitoring of appeals to assist in their expeditious disposition.

• *Availability of Courts of Appeals Documents.* One copy of the decision, briefs, and related documents filed in connection with each case in the Courts of Appeals the Court of Claims, and the Court of Customs and Patent Appeals shall be deposited in the Library of Congress and the Librarian of Congress shall make copies of such materials available to the public at cost.

[Note: This article is only a summary of the two bills. For complete copies contact the FJC Information Service.]

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LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

NEW PUBLIC LAWS

Farm Credit Associations. H.R. 7862, to amend the Farm Credit Act of 1971 relating to credit eligibility for cooperatives serving agricultural producers, and to enlarge the access of production credit associations to Federal district courts, was signed by the President on December 31, 1975 (PL 94-184).

Energy Policy and Conservation Act. S. 622, which is devised to provide a national energy policy and provide procedures for implementing that policy was signed by the President on December 22, 1975 (PL 94-163). *Inter alia* it extends and expands the jurisdiction of the Temporary Emergency Court of Appeals.

Civil Service Retirement. H.R. 4573, to amend Chapter 83 of Title 5 U.S.C., to establish time limitations in applying for civil service retirement benefits, was signed by the President on December 31, 1975. (PL 94-183).

Technical Amendments to the Federal Rules of Evidence and the Federal Rules of Criminal Procedure. H.R. 9915 was signed by the President on December 12, 1975 (PL 94-149).

New York City Financial Problems. H.R. 10481, to establish a Federal Board to authorize emergency guarantees for the city of New York was signed December 9, 1975 (PL 94-143).

Older Americans Act. H.R. 3922, which renews funding authority for the programs for the elderly was sent to the President and signed on November 28, 1975 (PL 94-135). The new legislation will also bar unreasonable discrimination on the basis of age in federally funded programs. The Commission on Civil Rights will conduct an 18-month study to identify such unreasonable discrimination, and following the report of the study, the Secretary of HEW would promulgate regulations to implement the ban. Under the procedures prescribed, the regulations could not take effect until at least January 1, 1979. The Congress cited as one of the advantages of this system consistent federal regulations on the matter, instead of case-by-case court decisions, to implement the ban on age discrimination.

CONGRESSIONAL ACTION

Bankruptcy. The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights continued hearings on H.R. 31 and H.R. 32 to revise the Bankruptcy Act.

Bilingual Courts. S. 565, to provide more effectively for bilingual proceedings in the district courts of the U.S. was the subject of hearings on December 3 and 4, 1974, before the House Judiciary Committee's subcommittee on Civil and Constitutional Rights.

Attorney's Fees. The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee held a hearing on H.R. 8219, authorizing the awarding of attorneys' fees in actions for injunctive relief under the Clayton Act. Congressman Crane introduced H.R. 10894, and H.R. 11054 to provide that in civil actions where the U.S. is a plaintiff, the prevailing defendant may recover a reasonable attorney's fee and other reasonable litigation costs.

Fifth Circuit Revision. On December 5, 1975, the Senate Judiciary Committee filed its report (S. Rep. No. 94-513) on S. 2752, reorganizing the Fifth Judicial Circuit by creating additional judgeships and dividing the circuit into eastern and western divisions.

BILLS INTRODUCED

H.R. 11299, to amend Ch. 83 of Title 5 U.S.C., to bar civil service annuity payments during periods annuitant is entitled to receive salary as a justice or judge of the U.S. was introduced on December 19, 1975, by Congressman Hender-

son and referred to the Committee on Post Office and Civil Service.

H.R. 11315, to define; The jurisdiction of the U.S. courts in suits against foreign states; the circumstances in which foreign states are immune from suit and when execution may not be levied on their property. This bill incorporates a proposal of the Department of Justice and was introduced on December 19, 1975; pending in the House Judiciary Committee.

H.R. 11320, to amend Section 376 of Title 28 U.S.C., in order to reform and update the existing program for annuities to survivors of federal justices and judges. The bill which is similar to the Committee print version of S. 12, was introduced on December 19, 1975 by Congressman Thornton and is pending in the House Judiciary Committee.

H.R. 11162, to amend Section 1821 of Title 28 U.S.C., to provide for the payment of certain witnesses on the basis of the earned income lost by reason of their appearance as witnesses, was introduced on December 15, 1975 by Congressman Nelstoski and referred to the House Judiciary Committee.

S. 2762, to establish a National Court of Appeals, was introduced on December 10, 1975 by Senator Hruska, together with S. 2763, which would improve the appellate court system. Both bills are now pending in the Senate Judiciary Committee. Companion bills, H.R. 11218 and H.R. 11219 were introduced on December 17, 1975 by Congressman Wiggins and were referred to the House Judiciary Committee.

(BANKRUPTCY from page 5)

through next March with action expected to be completed by May.

The views of the Judicial Conference of the United States are not expected until the alternative proposals have been reduced to a single bill.

The two bills agree on one fundamental change: that the bankruptcy court should be established as a separate court completely independent of a U.S. district court. This separation was necessary to remove any appearance of impropriety resulting from the appointment of the referee in bankruptcy by the district court, which also hears appeals from the referee's orders. The bankruptcy judge would serve for fifteen years.

The Commission Bill provides for appointment of a bankruptcy judge by the President with the advice and consent of the Senate and for appeals to be heard by the U.S. district judge as is now done. To avoid delay, the Judges Bill proposes appointment by the circuit councils.

Appeals under the Judges Bill would go to the Courts of Appeals. The Judges Bill also provides for a "Fold-in" provision for incumbent referees for six years. During this time the number and location of positions would be determined by the Administrative Office and the positions would be authorized by the Judicial Conference under the Commission Bill and by Congress under the Judges Bill.

A major substantive change would give the bankruptcy court jurisdiction over all controversies relating to the bankrupt or his estate. Under present law, trustees must bring plenary suits to recover assets of the estate in state or federal courts, which may take years to come to trial. These actions would be brought before the bankruptcy judge, and the distinction between plenary and summary jurisdiction of the court would be eliminated.

Both bills in different ways and to different degrees modify existing law as to what constitutes preferential payment by a bankrupt to a creditor which may be recovered by the estate.

The Commission Bill would, in general, leave the bankruptcy judge with only the contested legal issues arising in a case; all other necessary operations would be performed by an Administrator whose office would be an independent agency within the Executive Branch of the government. The Administrator, who would operate offices throughout the United States, would accept petitions, assist consumer debtors in preparing the necessary documents for filing, counsel debtors as to forms of relief available, and process the case using a salaried government employee as trustee. All disputes would be filed with the bankruptcy court. The Administrator's representative would collect all assets and payments and deposit funds in a central account. The headquarters office would be charged with investing funds in the account and collecting and publicizing statistical information.

The Judges Bill would establish the Administrator in the Administrative Office of the U.S. Courts as Chief of the Bankruptcy Branch. The Chief would be appointed by the Supreme Court with the status of a Deputy Director of the A.O. A consumer debtor would receive assistance in completing the necessary forms and would then be given the opportunity to consult with a private attorney under a controlled fee system as to whether bankruptcy was the best answer to his financial problems. The petition itself would be filed with the bankruptcy court rather than with the Administrator. The estate would be liquidated by a private trustee chosen from a panel established by the Administrator.

A controversial change proposed by the Commission Bill would consolidate the present Chapter X (the corporation reorganization provisions) with Chapter XI arrangements. The Judges Bill would retain these as separate chapters on the premise that the relief now provided under Chapter XI for the smaller business entity commonly coming under Chapter XI must be separate and apart from the extensive and necessarily slow procedures required to completely reorganize large corporations. Both bills modify existing law in each of these chapters.

Each bill emphasizes the consumer-type case and tends to enhance the debtor's position. Such emphasis is necessary to provide the consumer debtor a fresh start.

(See BANKRUPTCY page 8)

PERSONNEL

Appointments

John F. Grady, U.S. District Court, N.D. Ill., Jan. 5

Charles H. Haden II, U.S. District Judge, N.&S.D.W.Va., Dec. 19

Patrick E. Higginbotham, U.S. District Judge, N.D.Texas, Dec. 12

Eugene E. Siler, U.S. District Judge, E.&W.D.Ky., Dec. 8

John Paul Stevens, Associate Justice, Supreme Court of the United States, Dec. 18

Gerald B. Tjoflat, U.S. Circuit Judge, 5th Cir., Dec. 12

Elevations

Damon J. Keith, Chief Judge, U.S. District Court, E.D.Mich., Dec. 14

Walter T. McGovern, Chief Judge, U.S. District Court, W.D.Wash., Dec. 31

Nomination

George N. Leighton, U.S. District Judge, N.D.Ill., Dec. 19

Deaths

William N. Goodwin, Chief Judge, U.S. District Court, E.&W.D. Wash., Dec. 31

Reynier J. Wortendyke, Jr., U.S. Senior District Judge, D.N.J., Dec. 26

AO FJC calendar

Feb. 2-3 Judicial Conference Court Administration Committee, Tucson, AZ

Feb. 2-6 Seminar for Asst. Federal Public Defenders, San Diego, CA

Feb. 5-7 Judicial Conference Criminal Law Committee, Phoenix, AZ

Feb. 6-7 Judicial Conference Advisory Committee on Appellate Rules, Tucson, AZ

Feb. 12-13 Workshop for District Judges (3rd, 4th & D.C. Circuits), Philadelphia, PA

Feb. 26 Judicial Conference Bankruptcy Committee, Washington, D.C.

Mar. 4-5 Judicial Conference Budget Committee, Washington, D.C.

Apr. 7 Judicial Conference of the United States, St. Paul, MN

(BANKRUPTCY from page 7)

Discharge will totally extinguish the debt.

Neither bill would permit discriminatory treatment against any person because he had been discharged in bankruptcy. Both bills also permit a consumer debtor to redeem secured property that would not otherwise be part of the estate by paying the secured creditor the amount of the debt or the fair value of the security, whichever is the lesser of the two. Both bills provide government assistance to debtors in filling out the necessary documents for filing the case.

A major change is made in the treatment of exemptions. The Act now provides that the debtors may retain those assets declared by the law of each state to be exempt from execution. These vary greatly from state to state, resulting in non-uniform application of the law. The Commission Bill establishes specific exemptions to be applied in all bankruptcy cases, while the Judges Bill establishes a minimum or floor exemption and state law is followed above the minimum.

Both bills separate the administrative functions necessary to the liquidation and processing of estates from the judicial functions of bankruptcy judges to avoid a appearance of favoritism when th referee must decide an issue between appointed trustees and a party in interest. This also would prevent bankruptcy judges from obtaining information about the bankrupt in non-litigation aspects of the case which could prejudice his decision at a subsequent trial of a controversy arising in the case.

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POUND REVISITED CONFERENCE TO LOOK AT YEAR 2000

A national conference marking the 70th anniversary of the landmark speech of Dean Roscoe Pound on "The Causes of Popular Dissatisfaction with the Administration of Justice" will be held in Saint Paul, Minnesota, April 7-9.

ABA President Lawrence E. Walsh, Chief Justice House of Connecticut, Chairman of the Conference of Chief Justices, and Chief Justice Burger have carried on extensive discussions for months to design a program that will study and seek answers to questions about our judicial process. Among the questions facing the legal community are:

Whether there are better ways to bring about the delivery of justice; whether the results of litigation are coming about in the most expeditious manner possible; whether the most equitable results are achieved; and whether we are keeping abreast of procedural changes, while at the same time looking at social trends which may generate a different type of litigation, and a concommitant change in judicial procedures—in the year 2000 and beyond.

Chief Justice Burger, in remarks prepared for delivery at the midyear meeting of the ABA this month (but delivered by President Walsh because The Chief Justice was confined with "flu") explained that the conference will not be the traditional type of conference planned to consider and remedy specific problems; rather it will be designed to look well into the future, "to see where we ought to go, and to develop a road map to show us how to get there."

Attending the conference will be more than 250 national figures who have long been associated with leadership in the areas of judicial improvements. In addition to the 50 State Chief Justices, all members of the Judicial Conference of the U.S. and the Board of Governors of the ABA, such organizations as the National Center for State Courts, the Institute of Judicial Administration and the Institute for Court Management will hold companion meetings to afford observation and participation.

Chief Justice Burger, in concluding his reference to the conference, added: "It would be a mistake to create great expectations about this conference that cannot be fulfilled in the short term. But we are determined that the monumental dimensions of the task and the improbability of immediate results should not keep us from undertaking the inquiry."

SENTENCING LEGISLATION INTRODUCED

Two bills of major significance introduced by Senator Kennedy would materially affect the sentencing duties and responsibilities of federal judges.

S. 2698 is a bill to impose mandatory minimum terms with respect to certain crimes. This bill, introduced with the co-sponsorship of Senators Fong and McClellan, would among other features, require the imposition of a mandatory minimum sentence of two years for certain offenses (burglary at night, aggravated assault, second degree murder, use of dangerous weapons, rape, certain robbery offenses, and certain heroin trafficking offenses) and a mandatory minimum sentence of four years for repeat offenders of the above-stated crimes. It goes on to provide that before imposition of the mandatory sentence the court shall grant the defendant a full hearing with right of counsel, compulsory process and cross-examination of witnesses to determine if:

- The offender was less than 18 years of age at the time of the offense;
- The offender's mental capacity was significantly impaired;
- The offender was acting under unusual and substantial duress;
- The offender was an accomplice.
- With respect to robbery offenses, bodily injury was inflicted on the victim.

And if any of the foregoing

(See SENTENCING page 2)

(SENTENCING from page 1)
factors are found to exist the bill provides that "no mandatory minimum shall be imposed." Otherwise the mandatory minimum sentence shall be imposed. Additionally, the court must submit its findings in writing, including an identification of the facts relied upon in making its determination. The imposition or execution of any mandatory minimum sentence could not be suspended, probation could not be granted nor would the usual provisions for "good time allowances," parole, or the Youth Corrections Act be applicable.

S. 2699 would create in the Judicial Branch a United States Commission on Sentencing (five members appointed by the United States Judicial Conference) which would within a three-year period establish specific guidelines for sentencing to which the district judge would conform their sentences.

It would also establish a mechanism for appellate review of sentences on the motion either of the defendant or prosecution. Sentence review would determine whether the sentence is within the guidelines, whether it is reasonable, giving effect to certain enumerated factors. A court of appeals may lower the sentence where the defendant is the petitioner for review, or increase the sentence when the Government petitions for review.

A counterpart bill was introduced in the House by Chairman Rodino on February 3rd as H.R. 11655. At that time the Congressman explained that the bill, introduced earlier by Senator Kennedy "was developed initially under the auspices of the Yale University Law School's Guggenheim program in criminal justice."

Apropos the same subject, in a February 2nd speech to the Governor's Conference in Milwaukee, Attorney General Edward H. Levi noted that,

"The President has proposed a system of mandatory minimum sentences for various sorts of particularly serious crime. Mandatory minimums would apply to extraordinarily heinous crimes such as aircraft hijacking, to all offenses committed with a dangerous weapon, and to offenses involving the risk of personal injury to others when those offenses are committed by repeat offenders. The President's mandatory minimum sentence proposal also includes provisions to ensure fairness by allowing a judge to find, in certain narrow categories of circumstances, that an offender need not go to prison even though he has been convicted of a crime normally carrying a mandatory minimum sentence. A mandatory minimum sentence must not be imposed if the offender was less than 18 years old when the offense was committed, or was acting under substantial duress, or was implicated in a crime actually committed by others and participated in the crime only in a very minor way. Under proposals now before Congress, the trial judge's sentencing decision would be reviewable by appellate courts."

He further added,

"It may be time to consider an even more sweeping restructuring of the sentencing system, which United States District Court Judge Marvin E. Frankel calls the most critical part of the criminal justice system. There have been proposals to abolish the federal parole system as it now exists and to allow trial judges to determine the precise sentence an offender would be required to serve. The trial judge would operate within a set of sentencing guidelines fashioned by a permanent Federal Sentencing Commission."

FEDERAL CRIMINAL CODE MAY MOVE IN SENATE

In the Senate, the bill is pending in the full Senate Judiciary Committee. Senator Mansfield has just written to Senators McClellan, Hruska, Hart and Kennedy requesting that they report the bill out without the controversial provision. Specifically, he suggested neutralizing 13 specific areas of the bill. Their memorandum, printed in the February 16th *Congressional Record*, includes the following observations:

"The controversial sections of S. 1 would not be included in the new bill to revise and reform the criminal laws. They would be deleted, thereby retaining present law in status quo. In sum, the *new* bill would contain most of what is now contained in S. 1 except the following features:

Sec. 521 (Mistake of Fact).
Sec. 522 (Insanity).
Sec. 541 (Exercise of Public Authority).
Sec. 542 (Protection of Persons).
Sec. 543 (Protection of Property).
Sec. 551 (Unlawful Entrapment).
Sec. 552 (Official Misstatement of Law).
Sec. 1101 (Treason)
Sec. 1121-1128 (Espionage and Related Offenses; Official Secrets).
Sec. 1842 (Obscene material).
Sec. 2001-2403 (These provisions on Sentencing should be shaped up).
Sec. 3101-3109 (Wiretapping).
Sec. 2401-2403 (Death Sentence)."

At the moment, there is no information available as to the effect of Mansfield's proposal on the future of the bill. However, the staff has been working and is continuing to work on just this kind of solution.

In the House of Representatives, the Subcommittee on Criminal Justice of the House Judiciary Committee does not anticipate hearings on S. 1 or its counterpart bills (H.R. 333 and H.R. 10850) until the Senate has acted.

S. 1 as presently drafted continues to make provision for appellate review of sentencing in Section

3725 which was previously opposed by Judicial Conference spokesmen in hearings on the bill. Certain recommendations for allowing sentence review on less than a full record where only portions of the record are designated, were adopted. The present version of S. 1 omits from inclusion such features of the present criminal code as the Youth Offender Act, the Young Adult Offender Act, the Narcotics Addicts Rehabilitation Act, and indeterminate sentencing and other features of present 18 U.S.C. §4208.

Of critical importance should the present version of S. 1 be passed, is the fact that the present version of S. 1 would, under Section 1204, become effective a year after its enactment. Obviously, patterned jury instructions necessary for the implementation of this major recodification of all criminal law might take a period far longer than would be provided under the terms of the Act. Noting this feature, as well as other portions of the legislation, the Judicial Conference, at its September 1975 session made the following recommendations:

Federal Criminal Code

The views expressed on S.1, as previously reported, reflected opposition to this legislation on the ground that it contemplates unnecessarily sweeping redefinition of all federal crimes and will require among other things, (a) that every district judge will be required to restructure and formulate new jury instructions to replace those which have evolved on a literal "trial and error" basis for well over 100 years; (b) that new instructions for newly defined crimes must then literally "run the gauntlet" of courts of appeals; and (c) that ultimately the Supreme Court will be obliged to review numerous cases to pass finally on the adequacy of the instructions required by the new code. In the present state of overcrowded dockets at every level, the new and complex burdens that S. 1 will impose on the federal courts are incalculable. The Conference nevertheless continues to comply with congressional requests for comments on specific parts on S. 1.

The committee report to the Conference stated that culpability is central to the entire legislative scheme of the proposed new code. The committee reported on the position that the Judicial Conference took at its April 1973 meeting on this subject (Conf. Rept. p. 15) but suggested a minor modification of the definition of "knowingly." The committee recommended and the Conference approved that the following definitions of "culpability" to be proposed to the Congress:

A person engages in conduct:

(1) "knowlingly" if, when he engages in the conduct, he does so voluntarily and not by mistake, accident or other innocent reason, and with knowledge of existing circumstances to the extent that such knowledge is an element of the offense;

(2) "intentionally" if, when he engages in the conduct, he does so knowingly and with the purpose of doing that which the law prohibits or failing to do that which the law requires;

(3) "recklessly" if, when he engages in conduct with respect to a material element of an offense, he disregards a risk of which he is aware that the material element exists or will result from his conduct. His disregard of that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation; except that awareness of the risk is not required where its absence is due to voluntary intoxication;

(4) "negligently" if, when he engages in conduct with respect to a material element of an offense, he fails to be aware of a risk that the material element exists or will result from his conduct. His failure to perceive that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation.

In considering the provisions of S. 1 the Conference agreed that Judge Zirpoli, as chairman of the Committee on the Administration of the Criminal Law, should coordinate all of the activities of the several committees of the Judicial Conference relating to the proposed new criminal code and should appear before the Congress whenever requested in connection with the view of the Conference relating to S. 1.

The Committee on the Administration of the Criminal Law held a further meeting on February 4-7, 1976, at Phoenix, Arizona, to further consider S. 1 as well as the Speedy Trial Act. In addition to the regular membership of the Committee, spokesmen for the Committee on the Administration of the Probation System and the Federal Magistrates System and of the Advisory Committee on Criminal Rules of Procedure attended the meeting to give the Committee the benefits of their views on those aspects of S. 1 which are relevant to the work of the other committees. A further report will be forthcoming from the Committee on the Administration of the Criminal Law to reflect such views as well as additional views of the Committee.

ABA HOUSE OF DELEGATES TAKES STAND ON FEDERAL ISSUES

A number of recommendations affecting the federal judiciary were acted upon by the ABA House of Delegates when it held its Midyear Meeting in Philadelphia this month. Some of them were:

• **Bankruptcy** Approved a recommendation of the Section of Corporation, Banking and Business Law to endorse proposed legislation which would change the federal bankruptcy system. Amendments were made on the floor to the original submission and certain aspects of tax issues were deferred.

•**Multidistrict Litigation** Tabled a recommendation from the Antitrust Law Section to amend 1407 U.S.C. 28, to permit the Patent Law Section to study the recommendations. The matter will be resubmitted at 1976 Annual Meeting. The recommendation as now drafted would apply Section 1407 to trial procedures as well as pretrial procedures; would give the Multidistrict Panel greater

(See ABA page 4)

(ABA from page 4)
supervisory powers over transferee judges; would give Multidistrict Panel greater powers to deal with questions involving changes of venue at the conclusion of pretrial proceedings.

•Patent, Trademark and Copyright Law Approved "in principle" recommendation for legislation providing for the re-examination by the United States Patent and Trademark Office of any United States Patent at any time during its term when requested by any member of the public, under certain conditions. Also approved a resolution that the ABA opposes modification of the principles of national treatment and the right of priority presently contained in the Paris Convention for the Protection of Industrial Property.

•Guides for Lawbook Publishers Approved a recommendation encouraging voluntary compliance with Guides for the Law Book Industry promulgated by the Federal Trade Commission last August.

•Lawyers in Federal Government Approved a resolution permitting government lawyers, who are nonresident members of bar associations which require continuing legal education, to meet such requirements through accredited courses acceptable to an independent accrediting body.

•Fees for Attorneys Representing Claimants Before Federal Agencies Approved a recommendation that Congress enact a statute governing attorneys' compensation for each federal agency when contingent fees are not already provided for by statute.

•Task Force on Advanced Judicial and Legal Education Tabled a recommendation on programs for judicial and legal education. It will be resubmitted and considered at the Annual Meeting next August.

•Internal Revenue Code Approved a resolution to amend the Internal Revenue Code of 1954 to permit asset-by-asset elective amortization of the cost of certain intangible assets used in the trade or business or for the production of income with respect to which depreciation or amoritization is not otherwise allowable.

• Federal Law Enforcement Agencies Approved a resolution supporting "in principle" recommendations contained in a report which followed a study of all federal law enforcement agencies. Offices involved: The Department of Justice including the Office of the Attorney General, the United States Attorneys, the Federal Bureau of Investigation, the White House and the Internal Revenue Service. The report takes up the issue of the appointment of a Special Prosecutor and recommends against a permanent office. The report favors authorizing, through legislation, the appointment of a temporary special prosecutor by the Attorney General or by a special Court of Appointment.

• Fair Trial—Free Press Deferred to next August consideration of a recommendation on court procedures to accommodate rights of fair trial and free press including guidelines and procedures for adoption of special orders.

• Professional Discipline Approved a resolution opposing passage of S.2723 which would amend 28 U.S.C. to provide for the censure, suspension and disbarment of attorneys in United States district courts by legislative action rather than by judicial rule; also would authorize U.S. attorneys to prosecute disciplinary proceedings.

• LEAA Approved a resolution from the Judicial Administration Division presented by Judge Griffin Bell (CA-5) which would assure through legislation a reasonable and adequate percentage of LEAA funds to state courts.

• National Court of Appeals Approved a resolution presented by Judge Shirley Hufstedler (CA-9) supporting S.2762, a Bill for the establishment of a National Court of Appeals, but restricted to the referral powers of the Supreme Court. The Judicial Administration Division delegate endorsed the resolution on behalf of the Division Council.

LIMITATIONS PLACED ON RECEIPT OF HONORARIUMS

According to the Federal Election Commission, the criminal provisions of the Federal Election Campaign Act Amendments of 1974 (18 U.S.C. §616) apply to all federal judges. Section 616 of Title 18 provides that:

"Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—

(1) accepts any honorarium of more than 1,000 dollars (excluding amounts accepted for actual travel and subsistence expenses) for any appearance speech, or article; or

(2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than $15,000 in any calendar year; shall be fined not less than $1,000 nor more than $5,000."

The Commission issued an "opinion of counsel", dated January 9, 1976, which advised that federal judges are covered by the Act, and which discussed the effect of the Act's coverage of various activities by judges.

Several activities of judges are assumed by the Commission to be outside the perimeters of section 616. The Commission carved an important exception from the seemingly all inclusive language i.e., if money is accepted in the form of a fixed or regular compensation intended as consideration for the rendering of services, rather than payment for a one-shot transaction, then the payment is deemed a "stipend", not an honorarium.

A speech, appearance, or article prepared in connection with teaching a course at a law school is considered a stipend. Royalties from books or plays are exempt. Also while a speech before a civic group, at a Bar association dinner, or at a seminar is, according to the opinion, covered by the limitations of §616, nevertheless the opinion adds, "However, if a bona fide award is made to an officer or employee, the payment will not be treated as an honorarium for purposes of this section".

The Commission viewed most other activities of judges involving

an appearance, speech, or article as honorariums subject to the Act's restrictions. Speeches given as a single event, regardless of subject or audience, were deemed to be covered by the limitations of §616. According to the opinion, Section 616 also embraces newspaper or magazine articles, reviews of books or plays, and sale of official papers.

The Commission's counsel chose to defer ruling on whether a retainer for periodic lectures on behalf of a group, organization, or foundation would be a stipend. Noting that such a practice could be used to circumvent the strictures of §616, the Commission leaned toward calling such retainers honorariums, yet felt compelled to reserve its opinion until it was faced with a specific factual situation.

The recent Supreme Court decision concerning the Federal Election Campaign Act, *Buckley* v. *Valeo, Secretary of the United States Senate*, 474 U.S. 1 (No. 75-436, January 30, 1976) did not discuss Section 616, but addressed other provisions affecting elected officials.

ABA TO HOLD CONFERENCE ON FEDERAL JUDGE SELECTION

On March 12-13 ABA President Lawrence E. Walsh will meet with 70 or more national figures to discuss whether the process of selecting federal judges, including Supreme Court Justices, can be improved.

President Walsh, in announcing the conference, pointed out that during the twenty-year period that the ABA has been involved in the process it has become increasingly apparent that a continuous re-examination must be made to determine, among other things, whether appropriate standards and procedures are being followed.

Invited to Vanderbilt University, the site of the conference, will be representatives from industry, labor, the federal judiciary, members of the U.S. Senate and Department of Justice. The list of conferees reflects a feeling that there should be participation in the process by individuals outside the legal profession itself. In the past, the selection of federal judges has meant involvement of national, local, and state bar associations as well as federal government officials, but harsh criticism of some courts and judges recently would appear to dictate participation from representatives of other disciplines.

Among other things on the conference agenda will be a critical look at the role of the ABA in the selection process, a role often highly controversial.

Ernest C. Friesen of Littleton, Colorado, former Director of the Administrative Office of the United States Courts as well as first Director of the Institute for Court Management, is Conference Director. Mr. Friesen has also served as an Assistant Attorney General at the Department of Justice and in this capacity took an active role in processing nominations of federal judges.

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Antitrust. H.R. 8532, the *Antitrust Parens Patriae Act* was favorably reported by the House Judiciary Committee on September 22, 1975, and a rule was granted on February 10, 1976. The bill is awaiting floor action.

As reported, the bill permits State Attorneys General to recover in federal court, monetary damages on behalf of state residents injured by violations of the antitrust laws. These suits can be converted into class actions under certain circumstances, notification of the members of the class is required and court approval must be obtained for settlements.

In addition (and *inter alia*) the bill amends the Clayton Act to require that plaintiffs who prevail in antitrust injunction cases by awarded reasonable attorney's fees.

Retirement Pay — Territorial Judges. The Senate on February 4 passed S. 14, amended, which will provide for cost-of-living increases in the retirement pay of territorial judges under §373 of Title 28. The cost-of-living adjustment will be computed in the same manner as the cost-of-living adjustments under the Civil Service Retirement System, but the amount paid may not exceed 95% of the salary of an active district court judge. Provisions which would have granted the same increases to judges who resign under §371(a) of Title 28, were deleted on recommendation of the Committee.

Judicial Tenure. S. 1110, introduced by Senator Nunn, has been the subject of hearings before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. The bill would establish a Council on Judicial Tenure, composed of active judges elected by the Judicial Conference of each circuit or by the court in the case of the representatives of the Court of Claims, Court of Customs and Patent Appeals, and the Customs Court. The function of the Council will be to investigate, including the holding of hearings, and make recommendations to the Judicial Conference, which would sit as a court on the question of a judge's fitness. The Supreme Court would hear appeals in these cases. The American Bar Association and the National Association of Attorneys General have testified.

Court Leave. H.R. 11438 passed the House on February 17, 1976. The bill will authorize court leave for a federal employee summoned to appear as a witness in any proceeding to which the United States is a party, rather than only when he is summoned by the United States.

FTC Amendments of 1975. The Senate passed (on December 17, 1975) S. 642, which will make the FTC more independent of the executive branch, allow State Attorneys General and aggrieved persons to maintain civil actions in state courts to enforce FTC rules

(See LEGISLATION page 6)

(LEGISLATION from page 5)
and regulations, and increase the penalties for failure to comply with FTC subpoenas and orders. The bill also provides for citizen petitions to act on rules. If the petition were ignored or denied, the person could obtain court review. Appeals from FTC cease and desist orders could be taken only in the Court of Appeals for the circuit where the person lives or the company maintains its principal place of business. The bill is now pending before the House Commerce and Judiciary Committees.

S. 2923, to provide that full-time magistrates receive the same compensation as referees in bankruptcy, passed the Senate on February 5 and is pending in the House Judiciary Committee.

S. 1283, to further define the jurisdiction of U.S. magistrates passed the Senate on February 5 and is pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice.

H.R. 6184, amending the Bankruptcy Act to fix the salaries of referees in bankruptcy, passed the Senate on February 5. The bill was signed into law (P.L. 94-217) on February 27 and takes effect March 1. It sets salaries for full-time referees at $37,800, provides for a cost-of-living adjustment and review by the President's salary review commission. Significantly, referees' salaries will now be set administratively rather than by the Judicial Conference of the U.S.

SPEEDY TRIAL ACT REPORTERS MEET

Reporters for Speedy Trial Act planning groups in the First and Second Circuits met in New York on January 15 to exchange views about the planning process and about possible solutions to common problems in complying with the statute. A second meeting of this group was held on February 26.

Reporters from the Sixth and Seventh Circuits held a similar meeting in Cleveland on January 29 and 30.

CHIEF JUSTICE PRESENTS ANNUAL REPORT ON STATE OF THE JUDICIARY

In his seventh annual report on the judiciary, The Chief Justice called for additional judgeships, adjustment of judicial salaries, and a reduction in the jurisdiction of federal courts.

The Chief Justice lauded the ABA for supporting several important measures which have served to improve the administration of justice.

In addition, The Chief Justice also made these points:

- The statutes relating to three-judge district courts, with direct appeal as a matter of right to the Supreme Court—by-passing the courts of appeals—have been amended slightly, but the basic problem of allowing certain classes of cases the special privilege of direct appeal to the Supreme Court still remains.
- The Congress has not yet acted on the matter of federal court jurisdiction in diversity of citizenship cases . . . . diversity cases have no more place in the federal courts in the second half of the 20th century, and surely not in the final quarter of this century, than overtime parking tickets or speeding on the highways simply because the street or highway is federally financed. One-fourth of the civil cases in the federal district courts are diversity cases. "To shift these cases from 400 federal district judges to more than 4,000 judges in the state courts of general jurisdiction will impose no undue burden on the states."
- The ABA is making encouraging progress on the recommendations of the ABA Committee on Disciplinary Enforcement chaired by Justice Tom Clark .... [M]uch more must be done with those few in our profession who appear to have forgotten that they are indeed members of a profession. "It is vitally important that the Association's Standing Committee on Professional Discipline pursue its work vigorously and that state supreme courts and bar associations implement the 1971 recommendations and continue to work to develop uniform rules of disciplinary enforcement."
- As the workload increases in both state and federal courts, the capacity of the legal profession to provide qualified courtroom advocates increases accordingly. "The Judicial Conference of the United States has now authorized the appointment of a special committee to develop standards that lawyers must meet to practice in federal courts, as some federal courts already require. That committee will soon begin its important work."
- Congress has failed to not only create new judgeships but fill existing vacancies. In 1972, the Judicial Conference requested 65 additional judgeships. After approximately three years the Judiciary Committee of the Senate recommended 59 new judgeships. The Senate has now approved 7 appellate judgeships and this modest action is awaiting House action. "The remaining much-needed judgeships now await action of both Houses. In the near crisis situation that confronts us, I put it to you whether any political considerations related to the impending Presidential election are tolerable."

The ABA's House of Delegates would perform a significant public service by urging the Congressional leaders and the President to work out an acceptable solution that will get these judges on the bench without more delay. There should also be no delay in promptly filling the 26 vacancies that now exist.

- The delay in providing additional judgepower has not prevented Congress from enacting legislation that brings new litigation into the courts. Judicial decisions at every level-including the Supreme Court—have also created new areas of litigation. "[T]he point is that when the courts have more work, they must have more judges, more supporting personnel, more equip-

ment. It is the lag in providing for these needs that provides a valid cause for public dissatisfaction . . . ."

- The National Center for State Courts will soon begin construction of its national headquarters in Williamsburg, Virginia. "The next crucial step is for each state bar president to see to it that his state legislature contributes its fair share toward the permanent funding of the Center."

The Chief Justice then turned to the National Conference of judicial, legal and other leaders scheduled for April in St. Paul, Minnesota which is discussed in a separate story in this issue. See page one. Note: These are only excerpts from the Chief Justice's address. The full text is available from the FJC Information Service.

UPDATE: COMPUTER ASSISTED LEGAL RESEARCH

The Center's evaluation of Computer Assisted Legal Research systems begun last summer is moving toward completion of the first phase. LEXIS, a full text system, was installed on an experimental basis in the Sixth and Tenth Circuits. Both WEST/LAW, a headnote retrieval system, and LEXIS were installed in the D.C. Circuit.

The purpose of the project is to determine whether and in what ways systems may help lighten the growing federal judicial burden. While the information collected so far indicates that such systems save some time and produce some information not available through manual research, the results also show that the need for such systems in the courts (as distinguished from use by the Bar) is considerably below what was expected by interested judges, the Center and the A.O. at the beginning of the study. Thus, one major objective of the evaluation is to determine the minimum amount which should justifiably be spent on this type of service so that funds which might otherwise be spent for additional terminals could become available for additional law clerks or other supporting staff.

Under the participation agreements with the pilot courts three kinds of data are being collected. The crux of the evaluation is the collection of comparative memoranda prepared by pairs of law clerks. One law clerk researches an actual problem using traditional manual methods and the other uses one of the computer assisted systems. This is the first field test using this evaluation method. Time records on memoranda preparation and judges' ratings of the memoranda for information content are maintained in order to compare the systems on time required and quality of results. A second kind of data covers usage at each terminal. Such data includes both number and uses of the terminals and length of each use as well as reports indicating whether the user found relevant cases using the terminals which were not found through manual research. Users also report on the purpose of the research as well as their impressions as to the timesavings from such use. A third, and critical set of data being collected is the impressions and opinions about the systems from judges.

Terminals at the three present evaluation sites will be turned over to the A.O. as operational sites in the near future and the project will move on to evaluating the needs of additional sites.

A major focus of the next phase of the evaluation will be how best to provide access to courts whose terminal usage would not justify an onsite terminal. Another focus will be how to raise user proficiency so federal court users (primarily law clerks) can more quickly and efficiently access all of the relevant information available in the systems' electronic libraries.

CA-2 ANNUAL REPORT RELEASED

Circuit Executive Robert Lipscher's Annual Report on the Second Circuit was released by Chief Judge Irving R. Kaufman last month.

Chief Judge Kaufman cites major reasons for this detailed accounting of his Circuit. One is the belief that the business of the federal courts is fundamentally the business of the public; and, following this premise, the conviction that the public has a right and obligation to know more about their courts.

On the appellate level, and finally functioning with a full complement of nine judges, the Circuit terminated more appeals than were commenced, a record established four times in the last five years. At the end of fiscal 1975 only 842 appeals remained pending. Eight senior judges assisted these endeavors.

There were 471 criminal appeals disposed of and 1,337 civil and other appeals terminated during the year. This represents less than 1% decrease from last year's statistics.

In the District Courts of the Second Circuit, with 47 authorized judgeships, 43 judges terminated 13,821 cases.

Also receiving attention in the report are the Circuit's plans to comply with the Speedy Trial Act, the installation of their computer software system designed by the FJC (COURTRAN), and the adoption of the civil appeals management plan (CAMP). The CAMP program has been in operation 15 months and is based on the assumption that settlement procedures, conducted by staff counsel, can play an important role; that early pre-argument conferences in many cases can result in settlements and thus save the litigants money and the judges valuable time.

Commenting on the report, Chief Judge Kaufman commended the work of Mr. Lipscher and said he is "deserving of the highest commendation for his ingenuity, enthusiasm and devotion to the business of this circuit."

Commended also were the federal judges of the Second Circuit, who, faced with heavy caseloads, met the challenge and have been "forward-looking, dynamic, diligent and concerned individuals."

SUPREME COURT UPHOLDS MAGISTRATES REVIEW POWERS

The Supreme Court on January 14, in the case of *Mathews* v. *Weber*,* unanimously ruled that a U.S. District Court may refer an appeal from a denial of Social Security benefits to a United States magistrate for preliminary review and recommended disposition.

The opinion affirmed a Ninth Circuit holding that the Federal Magistrates Act permits the delegation of this function to a magistrate as an "additional duty" under 28 U.S.C. Sec. 636(b). The Supreme Court opinion stressed that the authority to make the final determination rests with the district judge handling the case, but also emphasized that when Congress created the magistrate position they not only gave them new authority but also specified procedures by which the district courts may assign duties to the magistrates. In the *Weber* case, the U.S. District Court for the Central District of California adopted a local rule which, among other things, authorized the magistrates to make a preliminary review of a closed administrative record. Under existing law a District Court may review and pass upon a decision of the Secretary of HEW, but neither party to the litigation may introduce additional evidence at this stage.

The Court rejected the argument of the government that the reference in this instance did in fact constitute the magistrate a "special master" thereby violating the requirement of Federal Rule of Civil Procedure 53. The Court made it clear that its holding in the *Weber* case was limited to the context of the case before it.

It was also pointed out that the decision in this case did not bear in any manner with the Court's decision in *Wingo* v. *Wedding* handed down in 1974, since in that case it was their "reading of the habeas corpus statute . . . that formed the basis for the holding."

*423 U.S. ____ (1976); 503 F2d 1049 (1974)

AO/FJC calendar

Mar. 15-17 Seminar for Fiscal Clerks, Phoenix, Arizona

Mar. 22-26 Seminar for Pretrial Services Officers, Washington, D.C.

Mar. 29-Apr. 2 Advanced Seminar for Probation Officers, St. Louis, Missouri

Apr. 2-3 Workshop for District Judges (1st & 2nd Circuits) New York, New York

Apr. 5-9 Orientation Course for Probation Officers, Washington, D.C.

Apr. 6-9 Seminar for District Cou Clerks, Phoenix, Arizona

Apr. 7 Judicial Conference of the United States, St. Paul, Minnesota

Apr. 7-9 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota

PERSONNEL

Elevation

Rhodes Bratcher, Chief Judge, U.S. District Court, W.D.Ky., Jan. 1

Confirmation

George N. Leighton, U.S. District Judge, N.D. Ill., Feb. 2.

Deaths

Charles F. McLaughlin, Senior U.S District Judge, Dist. D.C., Feb. 5

Richard W. McLaren, U.S. District Judge, (N.D. Ill.), Feb. 24, 1976.

Wilbur K. Miller, Senior U.S. Circuit Judge, D.C.Cir., Jan. 24

Resignation

Griffin B. Bell, U.S. Circuit Judge, Fifth Cir., Mar. 1

THE THIRD BRANCH

VOL. 8, NO. 2 FEBRUARY 1976

THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

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PRETRIAL DISTRICTS CHOSEN

The passage of The Speedy Trial Act (Title II, P.L. 93-619) required the implementation of 10 demonstration Pretrial Services Agencies. The selection criteria for the 10 demonstration districts are specified in 18 U.S.C. 3152.

This section provides for the selection of 10 districts based on the following considerations: (1) the number of cases prosecuted annually in the district; (2) the percentage of defendants in the district presently detained prior to trial; (3) the incidence of crime charged against persons released pending trial under this chapter; and (4) the availability of community resources to implement the conditions of release which may be imposed by the court.

The Probation Division of the Administrative Office identified districts which would meet the selection criteria outlined in the Act. The division initially identified the largest districts based on the number of criminal filings and cases pending in fiscal 1974. This rank-ordering procedure produced a natural break of 23 districts, with the most criminal filings. An additional 7 districts were added to the list for a total of 30 based on subjective reasoning and numerical considerations.

A questionnaire was sent to each of the 30 districts along with a listing of criminal cases disposed of by sentence in each district for

(See PRETRIAL page 2)

The Institute For Court Management Graduation Ceremony was held at the Federal Judicial Center on March 10. Pictured from left to right are Judge Edward Allen Tamm, (CA-D.C.), who awarded the certificates, Earl F. Morris, Chairman of the Institute's Board of Trustees, Harvey E. Solomon, Executive Director of the Institute, and Sandra J. Knapp of Sacramento, California, who was one of 29 graduates.

FEDERAL JUDGE SELECTION PROCEDURES STUDIED BY ABA

ABA President Lawrence E. Walsh invited over 70 national figures to Vanderbilt University this month to analyze and discuss current procedures which operate to put a federal judge on the bench, including Justices of the U.S. Supreme Court.

President Walsh, a former federal judge himself, started planning for the conference shortly after assuming the ABA Presidency convinced

(See SELECTION page 3)

COURT OF CLAIMS SCHEDULES JUDICIAL CONFERENCE

The U.S. Court of Claims has scheduled its Judicial Conference for May 21 in Washington, D.C.

The one-day conference's theme is "Practice Before the U.S. Court of Claims: Active Dialogue on Current Issues Confronting Bar and Court".

Following opening remarks by Chief Judge Wilson Cowen, the morning session will be devoted to contract litigation, decision making

(See CONFERENCE page 3)

(PRETRIAL from page 1)
fiscal 1974. The districts were instructed to draw a systematic sample from the listing based on every tenth case. The sample would produce data on: (1) number of persons released on bond; (2) number of persons detained; (3) type of bond; (4) recidivism rate for releasees; (5) type of rearrest while on bail; (6) attitude of court family in regards to implementation of a demonstration Pretrial Services Agency; (7) community resources available in the district; (8) type of Pretrial Services Agency preferred by the chief U.S. probation officer (Board or Probation); (9) general comments from the chief U.S. probation officers as to their willingness to cooperate with a Board of Trustees program and general comments on the demonstration project.

Each of the 30 districts responded with the following results: (1) 22 of the districts were responsive to the demonstration effort, 3 districts chose not to participate in the project, while the remaining 5 were undecided; and (2) 27 of the districts indicated they would favor a Probation Division operated model while only one selected a Board of Trustees with the remaining district indicating an unwillingness to participate. In addition to using hard data produced by the survey, each regional probation administrator was asked to review the survey forms and to provide subjective information on each district as to its ability and willingness to participate in the project.

Following the collection of data based on both objective and subjective information, the original list was reduced to 17 districts from which the final 10 demonstration sites would be chosen. Since the overwhelming majority of the districts preferred a Probation Division operating model, some difficulties were encountered in obtaining districts which would be receptive to a Board of Trustees-operated Pretrial Services Agency. Numerous contacts were made with various districts to determine if they would be responsive to a Board of Trustees model.

After the list of 17 was reviewed by the A.O., the Probation Division was asked to give priority to 10 of the 17 included on the list and to indicate a preference as to which districts would be more suitable for a probation-operated agency or a Board of Trustees-operated agency.

When the A.O. agreed on the 10 districts they were submitted to the Justice Department for their review, comment, and approval. The Justice Department placed the list before an advisory council of the U.S. Attorneys who approved the selections. All of the U.S. Attorneys in the districts to be affected were contacted by the Department and given an opportunity to express their views regarding the program.

The Attorney General then submitted a letter of concurrence with the selections to the Chief Justice. The A.O. contacted the Chief Judge of each potential district and asked if he would cooperate if his district were designated by the Chief Justice. All Chief Judges agreed to participate although in some districts where the question was put before the full panel of judges several judges voted against the project coming into their districts. In each instance the majority agreed to serve as a demonstration district. The Chief Justice then designated the following districts:

Board Agencies

Central California—Los Angeles
Northern Georgia—Atlanta
Northern Illinois—Chicago
Maryland—Baltimore
Eastern Michigan—Detroit

Probation Agencies

Western Missouri—Kansas City
Eastern New York—Brooklyn
Southern New York—New York City
Eastern Pennsylvania—Philadelphia
Northern Texas—Dallas

Certain districts were eliminated from consideration because of attributes unique to the district, such as a large number of illegal aliens or an exceptionally high number of drug cases. The 10 districts selected could accommodate a Pretrial Services Agency. The benefits derived from Pretrial Services Agencies in those districts would impact on a greater number of persons coming through the federal system than would have occurred if a different mix of districts had been selected.

The Pretrial Services Branch visited all 10 districts and held meetings with the chief judge, chief probation officer, U.S. magistrate, public defenders, U.S. attorneys, and U.S. marshals.

As expected the degree of acceptance of the program varied by district and individuals within the districts. The degree of resistance has not appreciably affected the rate with which the projects are being developed.

The greatest causative factor relating to the rate of development in the Boards of Trustees Agencies as opposed to the Probation Agencies generally is the length of time required to get a Board of Trustees Agency operating which is approximately 90 days.

The first priority was to get the Boards formed. Their first task was to meet, accept, and screen applications and select a chief pretrial service officer.

The Northern District of Illinois, a probation operated agency, was the first to begin interviewing clients. Northern Georgia (Atlanta) and Northern Texas (Dallas) followed and Central California (Los Angeles) began interviewing the last week in December 1975.

From October 6, 1975, through December 31, 1975, Chicago interviewed 125 defendants, approximately 35% of the total filings in the district for that period of time. From this group they received 40 cases or 35% for supervision.

In cooperation with the Federal Judicial Center a seminar for pretrial services administrators and supervisors was held during the first week of December 1975.

The seminar lasted 3-1/2 days and the topics discussed ranged from legislative history and philosophy to operation and procedure. Based on the positive response from this training program, a week long seminar for pretrial service officers is planned for this month.

(SELECTION from page 1)

that the importance of the subject dictated top priority for the meeting.

For two days the conferees, all highly knowledgeable on selection procedures, scrutinized each step of the process. The main thrust of the analysis, of course, was on the role of the ABA. With all twelve members of the Association's Standing Committee on the Federal Judiciary present, full disclosure on exactly how the Committee functions was possible.

It was obvious from the start that many of those present, even though they had long tenure in the legal profession, were not intimately acquainted with just how this important Committee works. What was quickly learned was that it operates thoroughly, expeditiously and carefully, and that each member gives first priority to his task as soon as a name is submitted. The Committee receives names of candiates from the President and rates the nominees prior to the time they are made public.

Some hard questions were asked and severe criticism was leveled at the composition of the Committee which is a group of all-white, all-male "elitists". Also questioned was how much value should be placed on trial experience, judicial service on another court, experience as an academician, and professional evaluations made by state and local bar associations.

David Cohen, President of Common Cause, strongly urged that in those instances where a highly controversial name is being considered that the ABA vigorously lobby for their stand. The conferees were far from agreement on this.

Other issues pressed were: Should representatives of other disciplines take part in the process including groups such as consumer advocates, civil rights, and women's rights; also, should more attention be given to qualities other than legal experience, such as temperament, diligence, work habits, and potential for procrastination.

The conference was not designed to draft consensus statements or recommendations but some scholarly papers were prepared and distributed which will assist in evaluating an old process and possibly developing new procedures.

BICENTENNIAL PLANS PROGRESS

The Bicentennial Committee of the Judicial Conference of the United States distributed biographical questionnaires to all members of the federal judiciary, as the first step in the production of a biographical directory of all judges who have served on the federal bench since the birth of our nation. Similar questionnaires are presently being completed about each deceased federal judge by the circuit Bicentennial subcommittees. When the questionnaires have been completed, a biographical directory will be printed and distributed to all federal judges, libraries, law schools, and other interested groups.

As earlier reported, the Committee is also at work on several other Bicentennial projects. It has contracted with Metropolitan Pittsburgh Public Broadcasting, Inc. to prepare five films about early federal court decisions that were significant in the development of our federal system. Scripts are presently being prepared, and filming is expected to begin in April. Showing of the movies on public broadcast stations is anticipated during the fall of 1976.

Professor Sidney Hyman of the University of Illinois at Chicago has been engaged to prepare a book for the lay reader, especially high school and college students, about the role of the courts in our federal system. Professor Hyman is making excellent progress, and the Committee hopes to have the book available for distribution by the beginning of the next school year.

On the local level, several circuits have indicated a desire to prepare a history of their court. If any other circuits wish to submit proposals for preparation of circuit histories, the Committee will be happy to consider their proposals.

JUDGE GRIFFIN B. BELL RESIGNS

The federal judiciary suffered a great loss this month with the resignation of Judge Griffin B. Bell of the Fifth Circuit.

Judge Bell, who took his oath as a Circuit Judge October 6, 1961, returned to the Atlanta law firm he left for the bench 15 years ago.

In his letter of resignation sent to President Ford in January, the Judge said: "I have an abiding faith in our federal courts and particular pride in the Court on which I have been privileged to serve. I leave with the satisfaction and reward which one gains from being able to render needful public service."

(CONFERENCE from page 1)

procedures of the court, and, third-party practice and class actions. The afternoon session will be devoted to the topics of Discovery in Tax Litigation and Simplification of the Court's Rules.

The newly-completed "Manual for Practice in the U.S. Court of Claims," prepared by a Subcommittee of the Court of Claims Committee of the Bar Association of the District of Columbia will be available for purchase during the conference.

Judge Marion T. Bennett, Chairman of the 1976 Judicial Conference, said that the one-day program "has been planned to qualify as continuing legal education, now required in some states as a condition for retention of bar membership. It is the opinion of the Joint Committee of Government Attorneys on Recertification Requirements that time spent at a conference such as this should be accredited toward recertification."

SENIOR JUDGES GIVE VALUABLE AID TO FJC

The Center has been fortunate in receiving valuable assistance throughout the years from Mr. Justice Clark, the late Judge Alfred P. Murrah, and Judge William J. Campbell.

Joining this corps of experienced judges are several who have recently taken senior status, including Judges Albert C. Wollenberg (N.D. Ca.), A. Sherman Christensen (Dist. Utah), and Edwin A. Robson (N.D. Ill.).

In addition to making presentations at the Federal Judicial Center, the judges will actively participate in meetings of supporting personnel, many of which are held in the regions.

Judge Hoffman, in commending this service said, "This contribution from outstanding members of the judiciary, each of whom has earned national recognition on the federal bench, is of enormous assistance to the Center. It will permit a continuation of our policy which calls for the presence of a federal judge at every FJC meeting. They bring talent and experience we could never recruit from the outside."

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Parole Bill. The House and Senate conferees have agreed on the report of the conference committee with respect to H.R. 5727 to establish an independent and regionalized U.S. Parole Commission and to provide fair and equitable parole procedures. **The bill has now been signed into law by the President.** The bill would establish an independent nine member Parole Commission within the United States Department of Justice, that would serve terms of six years under Presidential appointment by and with the advice and consent of the Senate.

The Commission would have authority to set its own guidelines and procedural rules. The Administrative Procedure Act will apply to the adoption of rules by the full Commission and guidelines for parole are rules and regulations within the meaning of that definition. The budget recommendations shall be separate from other agencies of the Department of Justice, but presumably would be handled in the same manner as budget requests from other executive agencies under the bill. Supervision of the parolees may be accomplished as presently through the United States Probation service. Under the bill a prisoner shall be eligible for release on parole after serving one third of such term but this is applicable only to prisoners confined and serving a definite term or terms of more than one year. A prisoner, if he chooses, may be represented at the parole determination proceeding by a representative who qualifies under rules promulgated by the Commission. The rules shall not exclude attorneys.

Revocation of parole provided for under the bill would require a preliminary hearing at or reasonably near the place of the violation or arrest to determine if there is probable cause to believe he has violated a condition of his parole. Upon a finding of probable cause a revocation hearing takes place at or reasonably near the place of parole violation or arrest within 60 days. The parolee is entitled to be represented by an attorney and such counsel can be compensated in accordance with the Criminal Justice Act. The parolee can appear and present witnesses and relevant evidence on his own behalf. The Commission may subpoena witnesses and evidence and pay witness fees. If a person refuses to obey such a subpoena, the Commission may petition the court for an order requiring that individual's appearance. An abbreviated revocation proceeding is provided for in cases in which the parolee has a new criminal conviction.

Patents. The Senate passed on March 1, S. 2255, for the general revision of the patent laws, Title 35, United States Code, and for other purposes.

Section 135A of this bill relating to reexamination would allow direct appeals not only to be referred directly to the United States District Court for the District of Columbia, but would also require that that court hold a de novo proceeding at which any party could introduce into the record any information not previously made part of the record and would allow such party to seek reversal of the decision below on the basis of new information.

Sections 141 through 144 of the bill would allow a diversion of certain other categories of appeals pending before the Court of Customs and Patent Appeals to the United States District Court for the District of Columbia to be handled under the provisions of Section 145 in that court. Apparently the Patent Office itself could seek diversion of such appeals from the Court of Customs and Patent Appeals to the United States District Court since Section 3(d)(3) of the bill provides that the Solicitor of the Patent Office shall become a party to proceedings before the Patent Office, and as a party can exercise the power under Section 141 to move patent appeals out of the Court of Customs and Patent Appeals and into the United States District Court. According to the testimony reflected in the Congressional Record of February 26, 1976, this bill is being opposed by the organized Patent Bar.

Copyright. S. 22, a major bill to revise the obsolete copyright law of 1909, passed the Senate, 97-0, on February 23. In the House, Rep. Kastenmeier's Subcommittee on Courts, Civil Liberties and the Administration of Justice is marking up H.R. 2233, similar House legislation.

Bankruptcy — Salaries of Referees. H.R. 6184 amending §40 c the Bankruptcy Act to vest i Congress the authority to set salaries of referees in bankruptcy was signed by the President on February 27, 1976 (P.L. 94-217). Under

the new Act referees' salaries have been increased to $37,800.

Bankruptcy Act — Bankruptcy of Major Municipality. H.R. 10624, which has been passed in differing versions by both Houses of Congress has been reviewed by the conference committee, however no agreement has been reached.

Judicial Disability and Tenure. S. 1110, introduced by Senator Nunn, which would establish a procedure in addition to impeachment for the removal of justices and judges, has been the subject of several hearings before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. Senator Nunn, Judge Ainsworth, an ABA representative and Judge Bell have been among those testifying.

Civil Service Annuity Benefits—Judges. The Subcommittee on Retirement and Employee Benefits of the House Committee on Post Office and Civil Service has held hearings on H.R. 11738 which would bar Civil Service annuity payments when an annuitant is entitled to a salary as a justice or judge of the United States. The hearings began on March 3 when testimony was received from Judge Homer Thornberry CA-5, Judge Marion Bennett, Ct. Claims, and Judge Oren Harris, U.S. District Judge E.&W.D. Ark. On March 4 testimony was received from Thomas A. Tinsley, Director of the Bureau of Retirement, Insurance and Occupational Health of the Civil Service Commission. The hearings will be continuing later in March.

Black Lung Benefits Act Amendments. The House on March 2 passed H.R. 10760 amending the Federal Coal Mine Health and Safety Act. The bill has been forwarded to the Senate.

This legislation provides that the district court of the state in which a claimant resides will have jurisdiction to review, by civil action, any decision by the Secretary of Labor.

Potentially, H.R. 10760 has ramifications for the magistrate workload as the Supreme Court recently ruled that a district court judge may refer cases involving review of administrative record, hence, black lung cases, to magistrates for recommended disposition. Stipulated also in the bill is a Black Lung Disability Insurance Fund, to be set up in the Treasury Department for payment of premiums. Trustees of that fund could petition for review of any denied claim (if filed after December 31, 1975) in the U.S. Courts of Appeals.

Truth in Leasing Act. Both the Senate and House have passed H.R. 8835, a bill which would apply to consumers' leases of cars, furniture, appliances, and other durable goods. The conference report has been filed and action is expected in the near future.

The bill provides for class action, civil liability of such amount as the court may allow, except that as to each member of the class no minimum recovery is to be applicable, and the total recovery is not to be more than $500,000 or 1% of the lessor's net worth, whichever is less.

Equal Credit Opportunity. The conferees have filed a report on H.R. 6516 which amends the Equal Credit Opportunity Act. There are a number of strengthening provisions in the bill and it should be noted that this legislation also continues to provide for class actions. Of course, individual actions may also be brought by aggrieved applicants for credit without regard to the amount in controversy. In addition, the Attorney General may bring enforcement actions under the law.

Antitrust. The Senate Judiciary Committee has continued hearings and mark up sessions on S. 1284 to improve and facilitate the expeditious and effective enforcement of the antitrust laws. The last title of the bill provides for parens patriae actions. In the House, similar legislation (H.R. 8532) has been granted a rule for consideration.

Criminal Justice Information. Companion bills, S. 2008 (Tunney) and H.R. 8227 (Edwards) remain pending at Subcommittee level. The legislation merits notice as it would govern the use and dissemination of all criminal records, including presentence reports, and pretrial release, probation and parole records.

Federal Trade Commission Bill. S. 642, of interest due to its possible effect on appellate jurisdiction, has been reported by the Senate last session. The bill would require individuals and companies appealing Federal Trade Commission cease and desist orders to file in that circuit where the person lives or the company maintains its principal place of business. Presently appeals may be brought in any circuit where a person or company does business.

Speedy Trial Amendments Bill. Congressman Jones has introduced H.R. 12288 to amend the Speedy Trial Act to prevent the counting of Saturdays, Sundays and Federal holidays in the application of time limits established by that Act. The bill has been referred to Rep. Kastenmeier's House Subcommittee, and no immediate action is expected.

Prisoner Suits. H.R. 12008 was introduced by Congressman Railsback on February 19 to reduce the burden on the Federal courts of prisoner suits brought under §1983 of Title 42, United States Code and to improve the administration of state institutions holding confined persons. The bill would permit actions under §1983 only in those instances where the individual first exhausted state administrative remedies. The bill is pending in the Subcommittee on Courts, Civil Liberties and the Administration of Justice.

Financing Public Participation. Hearings are being held on S. 2715, a bill to provide for reimbursement, by Federal agencies and departments, of citizens who contribute to agency decisions and for fee awards to those bringing suits for review of agency decisions when the court deems the action served the public's interest.

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THE SOURCE
The Information Service of the Federal Judicial Center

(The following publications are listed for information only. However, those in **boldface** are available from the FJC Information Service.)

- Crime and Justice in America: 1776-1976. 423 Annals 1-161 (Jan. 1976)
- Criminal Justice Newsletters [bibliography]. Anne Newton. 7 Crime & Delinq. Lit. 367-390 (Sept. 1975).
- **District Court Caseload Forecasting; an Executive Summary. Federal Judicial Center Research Division, Oct. 1975.**
- English Court System Workshop by Ernest Friesen (Feb. 19-20, 1976). Videotape and audio cassettes available for loan on request. Contact Charles Harrell, FJC.
- **Federal Judicial Center Annual Report 1975.**
- Judicial Administration: Education and Training Programs. Lexington, KY, Council of State Govts., 1975 ($3.50).
- Law Briefs for Laymen. A. Sherman Christensen. Salt Lake City, Utah Off. Ct. Admin., 1975.
- The Modernization of Court Functions: a Review of Court Management and Computer Technology. 5 Rutgers J. Comp. & L. 97-119 (1975).
- Myths and Misconceptions About the Supreme Court. Lewis F. Powell, Jr. 48 N.Y.S.B. J.6-10 (Jan. 1976).
- Negotiation and Judicial Scrutiny of Settlements in Civil and Criminal Antitrust Cases. Charles B. Renfrew. 57 Chicago B. Rec. 130-143 (Nov.-Dec. 1975).
- The Probation Officer, Sentencing and the Winds of Change. Carl H. Imlay and Elsie L. Reid. XXXIX Fed. Proba. 9-17 (Dec. 1975).
- **Recommended Procedures for Handling Prisoner Civil Rights Cases in Federal Courts; Tentative Report. Federal Judicial Center, 1975. (Limited copies available).**
- Statistical analysis of Sentencing in Federal Courts: Defendants Convicted After Trial, 1967-68. Lawrence P. Tiffany, et al. IV(2) J. Legal Studies 369-390 (June 1975).

SPECIALIZED TRAINING PROGRAMS AVAILABLE

Since the establishment of its Specialized Training Program in 1971, the Federal Judicial Center has funded 1,263 educational short courses for various members of the Federal Judicial Branch.

The Education and Training Division presently conducts a Specialized Training Program under which employees of the Judicial Branch may apply for funds to defray tuition costs for short educational courses offered by the U.S. Civil Service Commission and other agencies.

Courses must be related to the applicant's principal job assignment. Applications must be submitted to the Education & Training Division, Federal Judicial Center, 1520 H Street, N.W., Washington, D.C. 20005, not less than two weeks in advance of the registration date, and approval must be received by the applicant prior to enrollment in a course.

SENIOR STAFF ATTORNEY VACANCY AT CA-3

The U.S. Court of Appeals for the Third Circuit invites applications for the recently authorized position of SENIOR STAFF ATTORNEY located in Philadelphia. The Staff Attorney will provide legal support to the Court, participate in the analysis and management of business of the courts and supervise other staff attorneys. Qualifications desired include those of a GS-12 law clerk to a federal judge plus five years legal and administrative experience. Salary range is $21,000 to $31,500 depending on qualifications.

Applicants should submit written inquiries and resumes to: William A. (Pat) Doyle, Third Circuit Executive, 20617 U.S. Courthouse, Philadelphia, Pennsylvania 19106.

CA-2 HOLDS ITS FIRST MERIT AWARDS CEREMONY

A woman who has become an expert in admiralty law during her 50 years working in the office of the Clerk of the Court in the U.S. Courthouse in Brooklyn, the man who created programs and policies which made possible the implementation of the unique organization of the court reporters in the Southern District, and the secretary to the Chief Judge of the Northern District of New York were among those presented with awards at a ceremony held recently honoring the first recipients of merit awards in the Second Circuit Merit Awards Program.

Judge Thomas Meskill (CA-2) presided at the ceremony, held in the Courthouse, and Judge Henry Bramwell (E.D. N.Y.) assisted in the presentation of awards.

Judge Harold R. Medina (CA-2), who has been a federal judge since 1947, addressed the awards recipients, singing in Latin, and telling them that work was good for them.

Circuit Executive Robert D. Lipscher read remarks from Chief Judge Irving R. Kaufman congratulating the award recipients. Judge James Oakes (CA-2) presented career awards to those with 10 or more years of service in the federal judiciary.

Marie Baretti, a Deputy Clerk in the office of Lewis Orgel (E.D. N.Y.) started work there as a clerical assistant under Percy G.B. Gilkes in 1924. Ms. Baretti was cited as "an inspiration to all." Simon A. Lubow, as chief court reporter in the Southern District, oversaw the implementation of programs and policies which enabled the reporters' pool to become one of the most efficient court reporters' organizations in the federal system. Mr. Lubow was nominated by his fellow reporters for, among other things, eliminating destructive competition for assignments among reporter "which has resulted in a rare *esprit de corps*."

Gemma DeVirgilio, secretary to Chief Judge James Foley (N.D.

N.Y.) was cited for her initiative and creativity in taking on a range of administrative responsibilities in addition to her regular secretarial duties.

Others recognized for their contributions to the Second Circuit were the Case Processing Unit in the Court of Appeals; the Closed Records Unit in the Southern District; Anthony Viceroy, Chief of the Naturalization Office for the Southern District Clerk of Court; Morris Kuznesof, Deputy Chief Probation Officer in the Southern District; and Edith Minkoff, Administrative Assistant for the Bankruptcy Office in the Southern District.

Receiving awards for their contributions in the district courts of the circuit were Irving Gold of the Eastern District Probation Department, Daniel Simon, Chief Court Reporter in the Eastern District, Keith Sylvester, Courtroom Deputy in the District of Vermont, and Edward Aponte, Orders and Appeals Clerk in the Southern District.

In addition to the district and circuit awards, pins were given to over 100 people who completed 10 or more years of service to the courts of the Second Circuit. Ms. Baretti, with more than 50 years of service, headed the list. Others honored included A. Daniel Fusaro, Clerk of the Court of Appeals, who has worked for that court since 1934, two years before the Foley Square courthouse was opened, and Jack Cotter, now working in the Southern District Magistrate's office, who has worked for the federal judiciary for 45 years.

The Merit Awards Program was established by the Second Circuit to give recognition to employees of the courts who have excelled in the performance of their duties, as well as to those who have given many years of service to the courts.

The Merit Awards Planning Committee consisted of Judges Meskill and Bramwell. Circuit Executive Robert Lipscher, who conceived the idea of a merit program for the Second Circuit, also served on the Planning Committee.

Judge Thomas Meskill (CA-2) and Henry Bramwell (E.D. N.Y.) congratulate Court Merit Award winners, left to right, Morris Kuznesof, Edward Aponte, Judge Meskill, Judge Bramwell, Edith Minkoff and Anthony Viceroy.

LACK OF FUNDS MAY HAMPER PRISONER REPRESENTATION

Inadequate federal funding of the newly-created legal Services Corporation may seriously hamper the legal representation of prisoners petitioning for federal remedies.

This situation represents a serious setback for the federal judiciary since at the present time there is no other source of funding available, according to the General Counsel of the Administrative Office of the U.S. Courts.

The question of whether the Legal Services Corporation would be able to furnish counsel in 1983 prisoner cases has concerned many leading members of the federal judiciary.

However, in a recent letter to the General Counsel of the Administrative Office, Carl H. Imlay, the Executive Vice President of the Legal Services Corporation, E. Clinton Bamberger, Jr., said, in part, "As you would expect, the Corporation is receiving many inquiries about the availability of funds for new efforts to provide legal assistance in civil matters for persons who are unable to afford adequate counsel.

"We are guided by the Congressional declaration that 'there is a need . . . to continue the present vital legal services program.' The appropriation we have now is not even sufficient to support adequately the efforts funded by our predecessors, the Community Services Administration and the Office of Economic Opportunity. We do not have funds in the current fiscal year to support additional efforts. We hope that the Congress will appropriate additional funds in future years."

BILL INTRODUCED TO REDUCE §1983 PRISONERS' SUITS

Congressman Thomas F. Railsback Febrary 19 introduced a bill designed "to reduce the burden on the federal courts of prisoner suits brought under Section 1983 of Title 42, U.S.C. to improve the administration of state institutions holding confined persons and for other purposes."

The bill gives the state Attorney General authorization to institute a civil action in federal court in instances in which he has reasonable cause to believe that the states or its agents are subjecting inmates to an unconstitutional deprivation of their rights.

Before instituting such a suit, the Attorney General certifies that he has notified the appropriate officials of the institution of the alleged deprivation of rights and that he is satisfied that the officials have had a

(See §1983 page 8)

(§1983 from page 7)
reasonable time to correct the problem.

When an action has been commenced in any federal court seeking relief from such conditions, the Attorney General may intervene by certifying that the case is of general public importance.

Significantly, the bill does not allow prisoners to seek relief in federal district courts unless it appears that they have exhausted all state administrative remedies which are available. The Bill, H.R. 12008, has been referred to the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice.

LAW DAY: MAY 1

The American Bar Association has requested that all members of the federal judiciary schedule appropriate, formal observations of Law Day on May 1.

This year the theme is *"Two-hundred Years of Liberty and Law"* so that those celebrating Law Day may choose themes coupling the growth of the Nation's judicial system with the Bicentennial of the Nation's Revolution.

AO FJC Calendar

Apr. 5-9 Orientation Course for Probation Officers, Washington, DC

Apr. 6-9 Seminar for District Court Clerks, Phoenix, Ariz.

Apr. 7 Judicial Conference of the United States, St. Paul, Minn.

Apr. 7-9 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minn.

Apr. 14-16 Seminar for Fiscal Clerks, St. Louis, Mo.

Apr. 21-23 Management Program for Probation Supervisors, Atlanta, Ga.

Apr. 22-24 Regional Seminar for Bankruptcy Judges, New Haven, Conn.

Apr. 23-24 Conference for Metropolitan Chief Judges, Santa Fe, New Mexico

Apr. 26-28 Management Program for Probation Supervisors, Indianapolis, Ind.

Apr. 28-30 Regional Seminar for Bankruptcy Chief Clerks, Denver, Colo.

May 2-5 Seminar for Bankruptcy Judges, Monterey, Calif.

May 4-7 Instructional Technology Workshop for Probation Training Officers, Memphis, Tenn.

May 10-12 Seventh Circuit Judicial Conference, French Lick, Ind.

May 11 Workshop for District Judges (Sixth Circuit), Columbus, Ohio

May 12-14 Management Program for Probation Supervisors, Hartford, Conn.

May 12-15 Sixth Circuit Judicial Conference, Columbus, Ohio

May 17 Judicial Conference Advisory Committee on Civil Rules, Washington, DC

PERSONNEL

Appointment

George N. Leighton, U.S. District Judge, N.D. Ill., Feb. 27.

Elevation

Nauman S. Scott, Chief Judge, U.S. District Court, W.D.La., Feb. 19.

Nominations

Gerald L. Goettel, U.S. District Judge, S.D.N.Y., March 2.

Charles S. Haight, Jr., U.S. District Judge, S.D.N.Y., March 2.

Deaths

Marvin Jones, Senior Judge, U.S. Court of Claims, March 4.

Charles H. Carr, U.S. District Judge, C.D. Calif., March 14.

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

VOL. 8, NO. 4 Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center APRIL 1976

IN REVIEW: POUND REVISITED CONFERENCE

The Judicial Conference of the United States, the Conference of Chief Justices, and the American Bar Association unified their efforts and held a significant meeting in St. Paul, Minnesota this month. The Conference which called together over 250 leaders in the legal profession was planned, The Chief Justice said in his keynote address at the State Capitol, "to take a hard look at how our system of justice is working, to consider whether it can cope with the demands of the future, and to begin a process of inquiry into needed change."

Quite appropriately the meeting was planned for the year 1976, just 70 years after Dean Roscoe Pound made his famous speech in the same setting on "The Causes of Popular Dissatisfaction With the Administration of Justice."

In 1906 Dean Pound received instant reactions of shock when he criticized the judicial system in this country as it was then operating. He pointed an accusative finger at unnecessary and interminable delays; at archaic procedures in the courts; at appalling lack of efficiency and at "contentious lawyers" whose cavils clogged up the courts and cost clients unnecessary money. Members of the bar immediately denied, defended and refuted the Dean's accusations. But time has served to show that then, as now, there was basis for criticism, and as ABA President Walsh said at one session which ended with a sharp indictment of lawyers generally, "Well, I guess we asked for it."

The array of participants read like a "Who's Who in the Legal Profession" and included members of the U.S. Supreme Court, law professors, state and federal judges, the Attorney General, the Solicitor General, and individuals in and out of the legal profession who have been vocal in their demands for change. The format of the conference did not call for consensus statements, but here are some of the ideas pressed by proponents through formal papers or discussions:

- The courts, state and federal, are deluged with heavy caseloads; we are a litigious nation.
- We should be looking not for ways to keep cases *out* of the courts but ways to encourage cases

(See CONFERENCE page 2)

DIVERSITY BILL REQUESTED

On April 22 the A.O. sent Congress, on behalf of the Judicial Conference, a draft bill to amend Section 1332(a)(1) of Title 28 U.S. Code. The draft bill calls for a modification of the jurisdiction of the district courts by prohibiting the filing of a civil action by a plaintiff in a diversity suit in a district court located in a state of which he is a citizen.

SPOTLIGHT: INTERVIEW WITH CONGRESSMAN RODINO

CONGRESSMAN PETER W. RODINO, JR.

Congressman Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, is not only one of the most influencial members of the Congress but heads the House Committee which handles legislation of prime interest to the Judiciary. In the following wide-ranging interview, he discusses such current issues as the problem of sentencing disparity, the possibility that S.1 (the bill codifying the federal criminal law) will be enacted and the need for higher judicial salaries.

Does the recent increased interest in sentencing manifest a discontent by the general public and the Congress with the present system?

It's not so much a discontent with the structure of the system, but more a frustration that the system

(See INTERVIEW page 4)

(CONFERENCE from page 1)
which should be pressed for judicial resolution, especially those which are related to the rights of the poor, the aged, and minority groups.

• The right to jury trial and how such trials are conducted should be re-examined but that is not to say juries should be cut back or eliminated.

• Lawyers should carefully consider any proposal to eliminate jury trials in civil cases. Litigants can always waive juries in civil cases and since most do not, there is reason to believe Americans generally prefer to preserve this right.

• Equitable procedures for handling minor disputes should be developed, to save the time of the judge, to bring speedier resolutions to disputes, and to make it less expensive. To this end, small claims courts should be studied to determine, among other things, whether another forum might be better, possibly through the use of paralegal personnel with power to make a final determination.

• The establishment of a new level of tribunals should be considered. This would attenuate the growth of court caseloads and would handle such matters as factual disputes over environmental issues, air and water pollution, workmen's safety issues, and Social Security.

• The problems of the courts cannot be solved by merely adding more judges; indeed, the greater the number, the less the prestige. "The less the prestige, the less the public respect, an essential ingredient of a satisfactory judicial system."

All papers delivered at the conference are to be printed and bound in one volume by the American Bar Association, and will be available later.

JUDGE HASTIE (CA-3) DIES APRIL 14

Judge William H. Hastie (CA-3), the first black judge appointed to the federal judiciary, died suddenly this month. He was 71 and had taken senior status in 1971 following an outstanding career as a member of the faculty of Howard University Law School, Dean of that School, Governor of the Virgin Islands and a leading member of the Third Circuit's bench from his appointment in 1949 until he took senior status. From 1967 until 1971 he was Chief Judge of that Court.

On the occasion of his death, Chief Justice Warren E. Burger issued the following statement:

"The death of Senior Judge William H. Hastie, former Chief Judge of the United States Court of Appeals for the Third Circuit, is a great loss to the judiciary and to the country. For me it is also a personal loss since we have been friends for more than two decades and often sat together on the courts of appeals and worked closely together in the Judicial Conference of the United States. (At the time of his death he was Chairman of the important Judicial Conference Advisory Committee on Appellate Rules.)

"Judge Hastie was one of the ablest judges ever to sit on our courts and he would have graced any court with his superb abilities and his finely attuned judicial temperament. His remarkable career as a lawyer, as an educator and in public office can serve as a model for all lawyers and judges."

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Prior to its adjournment on April 14, 1976 for the Easter Recess, the Congress cleared a number of measures of importance to the judiciary, and took action on numerous items.

Enactments.

H.R. 200, the two-hundred mile "Fisheries Management Zone" was signed by the President on April 13 (PL 94-264). The new law may increase the number of cases involving violation of fisheries laws, at least in those districts bordering coastal waters.

The Consumer Credit Protection Act has been amended (H.R. 6515, Signed March 23, 1967, PL 94-239) to include discrimination on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract).

H.R. 8835, to assure meaningful disclosure of lease terms to limit liability when leasing property primarily for personal, family, or household purposes, was signed March 23, (PL 94-240). The act provides for federal jurisdiction in suits for violations.

H.R. 10624, to revise Chapter IX of the Bankruptcy Act was signed into law on April 8, 1976 (PL 94-260). It provides by voluntary reorganization procedures for the adjustment of debts of municipalities.

S.3197, to amend Title 18 USC, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, was introduced by Senator Kennedy and referred to the Senate Judiciary Committee.

H.R. 12750, introduced by Congressman Rodino and referred to the House Judiciary Committee would also amend Title 18 USC, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information. Both bills have been the subject of hearings in the respective judiciary committees.

The House Judiciary Committee has reported H.R. 12048, amending Title 5 USC to improve agency rulemaking by expanding the opportunities for public participation, by creating procedures for Congressional review of agency rules, and by expanding judicial review. In the Senate, Senator Kennedy has introduced a similar bill, S. 3297.

Bills Introduced.

H.R. 13219, to abolish diversity of citizenship as a basis of jurisdiction of federal district courts was introduced by Congressman Bennett and referred to the House Judiciary Committee.

Congressional Action.

The House Judiciary Committee has ordered favorably reported H.R.

11193, amended, the Federal Firearms Act of 1975 but the report has not yet been filed.

The Consumer Product Safety Commission Improvements Act of 1976 has passed both Houses of Congress, and the House of Representatives has concurred in the Conference Report. Action by the Senate is expected following the Easter recess. The bill, *inter alia,* will make provision for the recovery of attorney's and expert witnesses' fees, and broadens the authority of the Commission to represent itself in civil and criminal actions.

The Senate Judiciary Committee has approved S. 1284, to improve and facilitate the expeditious and effective enforcement of the antitrust laws. The bill will allow state attorneys general to bring actions to recover damages for antitrust violations.

The Senate has passed S. 2923, an original bill to amend the statutory ceiling on salaries payable to U.S. Magistrates. The bill would adopt the Judicial Conference recommendation concerning parity with referees in bankruptcy. The existing reference to 75 percent of a district judge's salary is deleted, and part-time magistrates would be permitted up to one-half the salary of a full-time magistrate. The bill is now pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice.

Federal Election Campaign Act Amendments of 1976. The Senate has passed S. 3065, which includes a provision requiring federal employees earning more than $25,000 per year to make annual financial reports to the Comptroller General, which would be open to public inspection. The House version of the bill, which passed on April 1, does not contain a similar provision. The conferees have completed their work, but the report has not been issued.

S. 287, the Omnibus District Judgeship bill has passed the Senate and is now pending in the House Judiciary Committee. As passed, it provides for 44 new district judgeships and makes permanent one temporary judgeship.

A clean bill to bar civil service annuity payments when the annuitant is entitled to salary as a justice or judge of the United States has been ordered favorably reported by the House Committee on Post Office and Civil Service. H.R. 12882 would apply only to justices or judges appointed after the enactment of the bill, would bar annuity payments during active service on the bench, and would provide for redeposit by those present or former judges who voided their rights to annuities by accepting lump sum payments upon their appointments to the bench.

Senator Eastland has introduced S. 3153, to raise the amount in controversy required to establish federal jurisdiction from $10,000 to $25,000. The bill is now pending in the Senate Judiciary Committee.

H.R. 12601, to amend Section 376 of 28 USC in order to reform and update the existing program for annuities to survivors of federal justices and judges was introduced by Congressman Thornton and referred to the House Judiciary Committee.

The House of Representatives has passed, and sent to the Senate, H.R. 8532, the Antitrust *Parens Patriae* Act, which was discussed in the last issue of *The Third Branch.*

The Subcommittee on Labor of the Senate Labor & Public Welfare Committee has conducted hearings on H.R. 10760 and S. 3183, the Black Lung Disability Benefits Program.

H.R. 12762, to amend Chapters 5 and 7 of Title 5 USC to provide for the award of reasonable attorney fees, expert witness expenses, and other costs reasonably incurred in proceedings before federal agencies was introduced March 3 by Congressman Drinan, and referred to the Judiciary Committee.

H.R. 12963, to increase the salaries of justices, judges, and certain other personnel in the judicial branch, was introduced by Congressman Treen on April 1, and referred to the House Judiciary Committee.

H.R. 12968, to amend the Federal Rules of Evidence to permit fair and effective prosecution for rape by providing that evidence of an individual's prior sexual conduct is not admissable in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to rape, introduced by Congresswoman Holtzman and referred to the Judiciary Committee.

H.R. 12976, to amend the Immigration and Nationality Act to authorize certain courts which have naturalization jurisdiction to retain up to $20,000 of the fees collected in naturalization proceedings held in such courts in any fiscal year was introduced by Congressman Rinaldo and referred to the House Judiciary Committee.

CCPA SETS THIRD ANNUAL JUDICIAL CONFERENCE

The Third Judicial Conference of the U.S. Court of Customs and Patent Appeals will be held in Washington, D.C. May 10.

The Conference will be composed of the Chief Judge and the Associate Judges of the CCPA and of the U.S. Customs Court, members of the International Trade Commission, officials of the Treasury and Justice Department, U.S. Customs Service, and invited members of the Bar. Lawrence E. Walsh, American Bar Association President, will address the Conference.

The program is devoted to coming events and their effect on practice in the fields of law involved. Specific topics include the CCPA annual report, proposed Rule changes, additional law work involving the International Trade Commission, how to win an appeal, and improvements in the jurisdiction of the Customs Court. This year an extended opportunity will be provided for questioning of panel members.

(INTERVIEW from page 1)
doesn't seem to be working fairly; it seems inequitable.

Are you talking about disparity?

Yes, and that, of course, does arouse many people. It creates the appearance of unfairness. The whole problem was clearly revealed when the Federal Judicial Center itself conducted a study which found that in some instances where the same test case was given to different judges, a great disparity in sentencing was evident.

This is something that has to be addressed. People wonder, first of all, whether or not it may be just because the judge is simply unfair. They wonder whether or not there may be corruption or whether there's been influence. People begin to clamor that we have a system of justice that just isn't working, and they naturally lose confidence in that system. I think something must be done about it. I've been studying the problem over a period of time—hearing it especially from people out in the street, getting it generally from the public, and seeing the studies that have been conducted.

How would your Bill creating a sentencing commission help to correct this?

This concept, as you may know, was originally introduced by Senator Kennedy. I reviewed his Bill, and I felt that it was a good vehicle with which the Congress could study the issue. I introduced it in the House. I think a commission of the sort proposed by the Bill is desirable. We have to promulgate guidelines that will be predictable and fair. We want to rely on the expertise of this Commission after it studies the problem. Similar crimes, in situations where other factors are equal, should carry the same or similar sentences. If not, that is, when a sentence falls outside the guidelines established by the Commission, then we want a right of appellate review.

Do you believe that appellate review of sentencing would be better than having sentencing by a panel of three district judges? Do you think the appellate judges are in a better position to do it than district judges?

Well, there is at least a further opportunity to be able to do this from a point of view other than that of district judges.

Perhaps it would be a more objective system?

I would hope so.

Possibly because the defendant himself would be more assured knowing his sentence had been reviewed at a higher judicial level?

Yes, at that point he has been at the district court level, and he may feel he was not sentenced fairly, and wants the review of a higher court.

Do you anticipate the Bill will move rapidly in this session?

Well, I have instructed the appropriate Subcommittee to do all the necessary staff work and to move on it, giving it priority status. I think it's tremendously important. If it is one of the things that somehow or other causes people to look upon our system of justice as unfair, then I think that we need to act. One of the main concerns I have generally is about the breakdown of confidence in all institutions of our government. If the administration of justice in particular breaks down I think we are in for a very rough period. I think we have got to give this Bill top priority.

The Attorney General, as you know, favors the Bill.

I know that the Attorney General has not only talked about it, but I think, in general, he has endorsed the concept.

What opposition do you foresee?

Well, I frankly don't know except perhaps if one were to make the argument that this would somehow make sentences lighter.

You know, there is a school of thought that believes that all we've got to do is be tough in order to be able to deal with the problem of crime. I think there may be an effort to try to generate this kind of opposition which in my judgment is not warranted. It is not well founded, because I think that in the end if we simply eliminate the disparity and we deal justly, we will be making some real advances in the war against crime.

There appears to be, at least in the Senate, a strong move by the leadership to arrive at some compromise on S.1, at least on some of the more controversial parts of the Bill. Is it possible there will be a similar move in the House?

Well the situation regarding S.1 is very interesting. A while ago, Senator Hruska and Senator McClellan sought a meeting with me and Congressman Hungate, Mr. Hutchinson, the ranking Republican member of the full Judiciary Committee, and Mr. Wiggins, the ranking Republican member of the Committee on Criminal Justice which Bill Hungate chairs. We discussed whether or not we would be acting on S.1, and at that time, (perhaps seven or eight months ago), we raised the possibility of considering it when and if the Senate approved it. At that time Senator McClellan told me that he thought the Senate was moving rather rapidly. After that meeting, I remember examining some of the great controversies that had already arisen regarding some of the provisions of S.1. Knowing that some members of the Judiciary Committee, Congressman Kastenmeier and Congressman Edwards, had served on the Brown Commission, I talked with them at some length. I envisioned that unless we were able to do something which was realistic as to procedure, I didn't think that we'd get anywhere. So, at that time, I advanced a notion that perhaps it might be well to separate at least the non- controversial issues to see if this would indeed be helpful in doing something at least about re-codification.

Federal judges are concerned about the timing. As you know, in the Bill as it is now drafted, they have one year to conform and they are wondering whether or not they will even be able to do something as basic as revise all the jury instructions.

I must say that having talked with some individuals who I think are very perceptive about what would be necessary in order to make the transition—if indeed it were to take

place— that the one-year period is probably short of anything that is realistic. Here is a code, as we know it, that has been developed over a period of many years, and to expect a change—to expect that juries and judges and everyone involved would be tuned in within that period of time may just not be realistic.

Our judges will be glad to know that you are sympathetic to their problems.

Well, I feel that my sympathies are pretty well grounded because judges are the people who would want to make the transition most carefully.

Are the controversial aspects really a small part of the total Bill?

I don't think I can cite a percentage. But I suggested that we try to set up some kind of a liaison between the two committees, with our staff people meeting, so that there might be an opportunity from time to time to just review this as a possible procedure. I think that this was done for some time, but, of course, we've been involved in so many other areas.

What progress is being made?

At the present time, a very great deal of staff work is being done on our side—a lot of staff work. We have been waiting on the Senate to take whatever action the Senate has said it might take. We are aware of the fact that Senator Mansfield and Senator Scott have moved on this, and that there has been some talk about trying to do this, but whether or not it actually comes about, I don't know. I understand the Bill has been reported out by the subcommittee without recommendation. What they are actually going to come up with in full committee is far from clear. It seems to me, though, that realistically speaking, those areas that are in controversy have really generated a tremendous degree of opposition. No matter where I've gone to address groups I immediately have been asked, "What about that S.1?" And people are not opposed just for the sake of being opposed, but because they look upon it as something that is going to infringe upon some of their basic rights. People are strongly aroused.

Outside the legal profession too?

Yes, oh yes. I gave a lecture at Tulane, and I had a number of conversations regarding S.1, and most of them with people outside the legal profession. This happened also when I addressed a group at American University in Washington.

Is this another indication that people are interested in their courts?

Oh yes, absolutely. The one thing about S.1, of course, is that people seem to be aware generally of some of the very, very tough provisions that seem to intrude on the rights of individuals. And people see this intrusion as a potential infringement of basic liberties. Frankly, this is what we hear which, of course, impels us to act even more diligently. We must exercise this diligence for one thing because of the very length of the Bill, as well as the many provisions which are the basis for disagreement. There is much in S.1 that diverses from sound recommendations and from present law.

By "present law" you mean what is in the Code now?

What's in the Code, and what we find the Brown Commission actually reported.

Aren't there some crimes now defined in the Code in five different sections in five different ways?

Yes, yes there are. This is pretty well addressed though by the Bill that has now been introduced, H.R. 333, by Mr. Kastenmeier and Mr. Edwards and Mr. Mikva which is now I believe also H.R. 10850. I think it has been substantially revised in the new Bill.

Do you have a special feeling about secrecy in Government and which papers should be public records and which should not?

Yes, of course, I think secrecy in government generally is something that gives me great pause.

One of the big concerns that I have about how we operate in Government is whether or not the people have confidence that they are able to participate in the system and that Government is being open, frank, and honest. I don't think that people **want** to know everything. And I don't think that people are just prying, but I do think that people want to be sure that what is being done isn't being done covertly or in a way that intrudes on their basic rights.

There is some feeling within the judiciary that some removal procedures for judges should be set up short of impeachment. The Nunn Bill addresses this issue. What are you views?

These problems develop whenever we have the question of additional judgeships coming up. We have been very aware of the problems that arise. I don't think I'm prepared to say just what we should or should not do, because while the problem of impropriety may be there, I don't know whether or not we could say that it is very widespread—that it requires that kind of attention. I think that we can always make the necessary changes or corrections. Probably when we consider some of our judgeship bills, we ought to address some of these questions.

We're talking about removing a judge from actively handling cases when he is clearly not able to function.

Well, I think that is a subject that ought to be addressed, but again I don't know how widespread the problem is. I consider the problem—the question or the subject of impeachment—as something that we have to address in a manner that causes us to look upon it as only a very extraordinary procedure. I would hope that we would find in cases like this some other kind of mechanism. I am sure the question will come up, when we consider the matter of additional judgeships.

Judge Lawrence Walsh, President of the American Bar Association, met with about 70 people on the selection of federal judges recently. Do you have any ideas as to how to improve the process?

Well, I really do believe that our people place a special importance on the judiciary as an institution, and appropriately look upon it as a

(See INTERVIEW page 6)

(INTERVIEW from page 5)
safeguard. It would appear to me that when you consider appointing judges, therefore, we really do have to find men and women not only of competence but who also have a special kind of basic character, proven from experience and based on their whole life style. I think that we can never be too careful in the selection process, and I think that this whole question of appointing judges, just out of political obligation is something very offensive because we are dealing with a very sensitive area of our democratic process.

Do you think federal judicial salaries are too low?

I think that's always a very legitimate grievance. I think that we've got to recognize that when you call upon good people you just cannot expect them to make extraordinary financial sacrifices. I think the mere fact that they dedicate themselves, give a lot of time, remove themselves from society almost, in order to do a proper job, then this had to be taken into account. The other side of the coin is, I think, that when the judges do find themselves in this kind of dilemma that it's less than becoming to make it appear that money is the end-all. I guess that also bothers me because it then becomes a question as to whether or not this is the end-all. But we ought to provide federal judges with the necessary kind of financial security so they can do their job without deep anxieties and concerns about whether their families are suffering—and there are many that are.

Have you or your colleagues in the Senate run into any situations where good candidates for judgeships have declined an offer of a judgeship because of the low salary?

Oh yes. I do know that some are serving now with great sacrifice. But I also know that there are others who would have, under other circumstances, welcomed consideration—who might have considered such an opportunity but did not because of the low salary.

They can't afford it?

Yes. First of all, their life style must be considered. Their families have been accustomed to a certain mode of living and all of a sudden you ask them to give this up. Unless he or she has made it financially, prior to their service on the bench, it becomes a problem.

Education of their children seems to bother them.

Oh, absolutely. And I guess you can make this case out for people in Government generally, which was one of the reasons I wish my own colleagues had the courage many years ago to simply say "Look. We are dedicating ourselves. We want to do a good job. We don't want to have any undue anxieties, any hardship concerns, we want to be adequately compensated, not just because we want to be adequately compensated, but in order to do the job." But we haven't done that either, and, as a result of that, unfortunately, even we in Congress have suffered. As a consequence of that when you get requests for increases in judicial salaries, it is inevitably tied with Congressional salaries, and you get a serious legislative problem.

CHIEF JUSTICE CALLS FOR MAJOR CHANGES IN "DELIVERY" OF JUSTICE

In his Keynote Address, April 7, to the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, delivered in the House Chamber of the Minnesota State Capitol where Roscoe Pound made his famous speech to the ABA in 1906, Chief Justice Burger said that fundamental changes in judicial procedures must be considered to meet the needs of coming decades.

[Here are excerpts from the Chief Justice's address. The full text is available from the FJC Information Service.]

We have been making both minor and major improvements from time to time—all of them valuable in their setting—but we have not really faced up to whether there are other mechanisms and procedures to meet the needs of society and of individuals.

And, even if what we now have is presently tolerable, we must ask whether it will be adequate to cope with what will come in the next 25 or 50 years, given the dynamic expansion of litigation in the past ten years, the growth of the country, and the increasing complexity of both. . . .

Whatever risks may be involved in our probing and talking, we must be prepared to take them. There is nothing dangerous about studying and considering basic change, if the alterations will preserve old values and "deliver" justice at the lowest possible cost in the shortest feasible time. I do not, for example, think it subversive to ask why England, the fountainhead of all our legal institutions, found it prudent and helpful 40 years ago to abandon jury trials for most civil cases. If, as some American lawyers ardently advocate, it is sound to consider adopting British concepts of pretrial disclosure of all prosecution evidence in criminal cases, I hardly think we endanger the Republic if we also make thoughtful inquiries into England's civil and appellate procedures and their ideas of finality of judgments, short of three or four appeals and retrials. . . .

[Also] anyone who has observed both the American and British courts at close range knows that there is no more vigorous advocacy or fairer justice than in British courts, and at the same time they maintain strict regulation of lawyers' professional conduct, as we do not.

When juries are used, England's courts manage to do without spending days and weeks selecting a jury. Even the most ardent opponents of stricter regulation of lawyers are beginning to have some doubts, for example, about whether the jury selection process, which is provided as a means to insure fair, impartial jurors, should be used as a means to select jurors favorable to one side or the other. . . .

The topics selected for this conference may raise in some minds the question that our objective is to reduce access to the courts. Of course, that is not the objective, for

what we seek is the most satisfactory, the speediest, and the least expensive means of meeting the legitimate needs of the people in resolving disputes. We must therefore open our minds to consideration of means and forums that have not been tried before. Even if what we have now has been tolerable for the first three-quarters of this century, there are grave questions whether it will do for the final quarter or for the next century.

To illustrate, but by no means to limit, let me suggest some areas of concern to all Americans, whatever place they occupy in our society. . . .

Ways must be found to resolve minor disputes fairly and more swiftly than any present judicial mechanisms make possible. This has at least two important consequences for our purposes: it means that there are few truly effective remedies for usury, for shoddy merchandise, shoddy services on a TV, a washing machine, a refrigerator, or a poor roofing job on a home; this means lawyers must reexamine what constitutes practice of law, because if lawyers refuse minor cases on economic grounds they ought not insist that [only] lawyers may deal with such cases.

It is time to consider a new concept that has been approached from time to time and has a background in other countries. To illustrate rather than propose, we could consider the value of a tribunal consisting of three representative citizens, or two nonlawyer citizens and one specially trained lawyer or para-legal. . . . Flexibility and informality should be the keynote in such tribunals and they should be available at a neighborhood or community level and during some evening hours.

As the work of the courts increases, delays and costs will rise and the well-developed forms of arbitration should have wider use. A reexamination of the processes of arbitration is in order.

Ways must be found to simplify and reduce the cost of land title searches and related expenses of home purchasing and financing, in order to help offset the great rise in land and construction costs that have created barriers to home ownership. . . . few things are more likely "candidates" for use of modern computer technology than maintenance of land records and the process of examining land titles. . . .

Pictured at the Opening Session of the "Pound Revisited" Conference at the Minnesota State Capitol are, from left to right: The Chief Justice; Governor of Minnesota, Wendell R. Anderson; Chief Justice of Minnesota, Robert J. Sheran; Charles S. House, Chief Justice of Connecticut and Chairman of the Conference of Chief Justices. (See accompanying story beginning on page 1: Pound Revisited Conference)

Ways must be found to simplify and reduce the cost of transmitting property at death. Probate procedures can be simplified without diminishing certainty of title.

Ways must be found to give appropriate weight to ecological and environmental factors without foreclosing development of needed public works and industrial expansion by inordinate delays in litigation. To accommodate the conflicting values it is imperative to achieve swift resolution of these questions, so as to avoid the waste involved in suspending execution of large projects to which vast public or private resources are committed. . . .

Ways must be found to provide reasonable compensation for injuries resulting from negligence of hospitals and doctors, without the distortion in the cost of medical and hospital care witnessed in the past few years. This is a high priority.

Ways must be found to compensate people for injuries from negligence of others without having the process take years to complete and consume up to half the damages awarded. The workmen's compensation statutes may be a useful guide in developing new processes and essential standards.

It is time to explore new ways to deal with such family problems as marriage, child custody and adoptions. We must see whether it is feasible to have relationships of such intimacy and sensitivity dealt with outside the formality and potential traumatic atmosphere of courts.

One of the innovations of the past half century was the development of modernized and simplified rules of civil procedure. Increasingly in the past 20 years, however, responsible lawyers have pointed to abuses of the pretrial processes in civil cases. The complaint is that misuse of pretrial procedures means that "the case must be tried twice.". . .

Ever since Magna Carta, common law lawyers have recognized that the law is a generative mechanism sharing with Nature the capacity for growth and adaptation. . . . change is a fundamental law of life and even our dedication to stability and continuity must yield to that immutable law.

CORRECTION

In the March issue of *The Third Branch* we incorrectly listed the Board Agencies and the Probation Agencies which have been chosen to serve as demonstration districts for pretrial services specified by the Speedy Trial Act. Here is a correct list of the districts:

Board Agencies
Maryland-Baltimore
Eastern Michigan-Detroit
Western Missouri-Kansas City
Eastern New York-Brooklyn
Eastern PA—Philadelphia

Probation Agencies
Central Calif.-Los Angeles
Northern Georgia-Atlanta
Northern Illinois-Chicago
Southern New York-NYC
Northern Texas-Dallas

PERSONNEL

Elevation

Robert F. Peckham, Chief Judge, District Court, N.D. Calif., Apr. 7

Confirmations

Gerald L. Geottel, U.S. District Judge, S.D. N.Y., Mar. 26

Charles S. Haight, Jr., U.S. District Judge, S.D. N.Y., Mar. 26

John M. Manos, U.S. District Judge, N.D. Ohio, Mar. 26

Nominations

Charles Schwartz, Jr., U.S. District Judge, E.D. La., Mar. 23

Morey L. Sear, U..S. District Judge, E.D.La., Mar. 23

William B. Poff, U.S. District Judge, W.D.Va., Apr. 1

George C. Pratt, U.S. District Judge, E.D.New York, Apr. 13

Ross N. Sterling, U.S. District Judge, S.D. Texas, Apr. 13

Harlington Wood, Jr., U.S. Circuit Judge, Sixth Circuit, Apr. 14

Robert M. Takasugi, U.S. District Judge, Central District of California, Apr. 14

Deaths

Frank Le Blond Kloeb, U.S. Senior District Judge, N.D. Ohio, Mar. 11

Thomas M. Madden, U.S. Senior District Judge, D.N.J., Mar. 29

William E. Miller, U. S. Circuit Judge, Sixth Circuit, Apr. 12

William H. Hastie, U.S. Circuit Judge, Third Circuit, Apr. 14

AO FJC calendar

May 4-7 Instructional Technology Workshop for Probation Training Officers, Memphis, Tenn.

May 10-12 Seventh Circuit Judicial Conference, French Lick Ind.

May 11 Workshop for District Judges (Sixth Circuit), Columbus, Ohio

May 12-14 Management Program for Probation Supervisors, Hartford, Conn.

May 12-15 Sixth Circuit Judicial Conference, Columbus, Ohio

May 17 Judicial Conference Advisory Committee on Civil Rules, Washington, D.C.

May 17-20 Orientation Seminar for Magistrates, Washington, D.C.

May 19-21 Seminar for Fiscal Clerks, Atlanta, Georgia

May 24-27 Fifth Circuit Judicial Conference, Houston, Texas

May 24-28 Orientation Seminar for Probation Officers, Dallas, Texas

May 27-29 District of Columbia Circuit Conference, Hershey, Pennsylvania

May 28-29 Judicial Conference Subcommittee on Judicial Statistics, San Francisco, Calif.

June 2-4 Seminar for Bankruptcy Chief Clerks, Pittsburgh, Pa.

June 7-10 Crisis Intervention Workshop for Probation Officers, San Francisco, Calif.

June 14-19 Newly-appointed Bankruptcy Judges, Washington, D.C.

June 30-July 1 Workshop for District Judges (8th and 10th Circuits), Hot Springs. Ark.

SENATE APPROVES FORTY-FIVE DISTRICT JUDGESHIPS

By a vote of 87 to 1 the Senate, April 1, approved the creation of 44 permanent district judgeships and the change of one judgeship from temporary to permanent in the Middle District of Pennsylvania.

Districts in which the new judgeships will be located if the House approves are listed in the Sept. 1975 *Third Branch*. Prior to the vote, the Senate defeated several amendments which, in effect, would have removed local school districts from the jurisdiction of federal district courts.

EQUAL ACCESS TO COURTS RECEIVES STRONG SUPPORT

The Equal Access To Courts Act, S.2871, received additional support in the Senate on March 29 when Senator Barry Goldwater voiced his strong support for the Bill which was introduced by Senator Buckley earlier this session.

Senator Goldwater said the Bill is designed to allow private parties and businesses who prevail in civil litigation against the U.S. to receive their full legal costs, including reasonable attorney's fees.

THE THIRD BRANCH

VOL. 8, NO. 4 APRIL 1976

THE FEDERAL JUDICIAL CENTER

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The Third Branch

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Bulletin of the Federal Courts

VOL. 8 NO. 5 | Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center | MAY 1976

The Criminal Justice Act—Ten Years Later

On August 20, 1975, the federal courts of the nation completed ten years of operation under the terms of the Criminal Justice Act of 1964, as amended. During that period of time counsel was provided for 390,858 defendants in the federal courts at a cost of 84 million dollars to the nation.

A defendant for whom counsel is appointed by a federal magistrate or judge is represented at every stage of the proceedings from his initial appearance to the final disposition of the case.

The test to be applied in appointing counsel for a defendant is not indigency but rather financial inability to obtain an adequate defense.

In addition to counsel, the Act provides for investigative, expert and other services and the furnishing of transcripts, which has now become the single most expensive item furnished under the Act.

A bill enacted on October 14, 1970 empowered federal courts to establish defender organizations. These could be either a federal public defender, organizationally modeled in the broadest sense on the United States attorneys' offices, or community defender organizations operated by a nonprofit group recognized by the court and financed through grants approved by the Judicial Conference of the United States.

From the effective date of the amended Act in February 1971 until the present, twenty-two federal public defender offices have been established. The Act requires that all district plans, including those which provide for a defender organization, shall include provision for private attorneys in a substantial proportion of cases. The Judicial Conference by regulation has thus required that in those districts having defender organizations, private counsel shall be assigned in at least 25 percent of the cases yearly.

(See CJA page 2)

Special Notice:

MEETINGS FOR DISTRICT AND CIRCUIT JUDGES SCHEDULED

FJC Director, Walter E. Hoffman, this month announced significant dates of special interest to the federal judges:

- The next Seminar for Newly Appointed District Judges will be held in Washington, D.C., September 13-18.
- The next Conference for Judges of the United States Courts of Appeals will be held in Phoenix, Arizona, October 27-30.

JUDICIAL FELLOWS SELECTED

The Commission on Judicial Fellows whose Chairman is Mr. Justice Clark (U.S. Supreme Court, retired), has selected three Judicial Fellows for the 1976-77 year.

They are Thomas E. Baynes, Jr. of Fort Lauderdale, Florida, Associate Professor of Law and Public Administration at Nova University; Larry C. Farmer, Research Associate and Instructor at Brigham Young University School of Law; and Jeffrey B. Morris, Special Assistant to the Executive Vice President for Academic Affairs and Provost of Columbia University.

Mr. Baynes received his undergraduate degree from the University of Georgia in Economics and three degrees in law from Emory and Yale universities.

Before accepting his position at the Nova University Law Center, he was the Acting Regional Director of the National Center for State Courts in Atlanta, Georgia, where he supervised and participated in state court systems evaluations and technical assistance projects. He

Prior to this, he was Assistant Dean of the School of Business at Georgia State University's School of Business and also served on its Faculty of Urban Life. He has published monographs and articles on state court operations and other legal matters.

Mr. Farmer received his Bachelor of Science Degree in Psychology

(See FELLOWS page 3)

(CJA from page 1)

To establish a defender organization, the Act requires that at least two hundred persons in the district annually require assignment of counsel. Although the statute permits two adjacent districts or parts of districts to aggregate the number of persons represented, no district or portion thereof has as yet used this proviso.

Each federal public defender's budget, monthly statistical reports and annual report are submitted to the Administrative Office. Upon approval by the Judicial Conference, the Administrative Office in turn submits a budget for each federal public defender office to the Congress.

Community defender organizations are private, non-profit defense counsel services. The statute permits both an initial grant and a sustaining grant to these organizations. To date, eight such organizations have operated under grants approved by the Judicial Conference of the United States on recommendation of its Committee to Implement the Criminal Justice Act. These organizations also file monthly statistical reports and an annual report, as well as an auditor's report, with the Administrative Office.

Four of the defender organizations developed from existing units which had been operating on private grants. The defender offices vary in size, depending on the caseload. For appropriations purposes it is estimated that an assistant defender handles between 100 and 125 cases a year. The head of the office, depending on the size of his staff and his administrative responsibilities, will handle no more and probably substantially less than half of a caseload. The largest single office is at Los Angeles which has sixteen authorized assistant federal public defenders. The average cost of representation per case by federal public defenders in 1975, including appeals, was $360 compared to approximately $350 per case for services rendered by assigned counsel and $374 per case for community defenders. During 1975 the federal public defenders were assigned 10,337, and the community defenders were assigned 4,963.

The Judicial Conference has issued a series of guidelines, recommended by its Committee to Implement the Criminal Justice Act, to assist the courts, assigned counsel and federal defenders. They remain under continuous review in committee. They expand on the Act and regulate such matters as the determination of eligibility, contents of the district or circuit court plans, use forms of appointment of more than one attorney for a single defendant, proration of claims, travel and other reimbursable expenses. The guidelines also specify which expenses are not reimbursable and situations to which the Act does not apply, as for example, corporate defendants and petty offense cases when the judge or magistrate does not believe there is a likelihood of loss of liberty if convicted.

Counsel furnishing representation under the Criminal Justice Act implementation plan adopted in each district shall, by statute, be selected from a panel of attorneys designated or approved by the court or from a bar association, legal aid agency or defender organization. The districts have not followed a uniform pattern in the selection of the panel. Some panels are composed of a large cross-section of the trial bar, others are composed of a small, carefully selected group of attorneys versed in the criminal and appellate practice. The Judicial Conference has urged frequent examination of the composition of the panel and has urged some rotation of the membership of the panel from time to time. This is designed to assure greater opportunity to the bar for service as well as to prevent concentration on a few attorneys, as has happened in at least one district, contrary to the spirit and intent of the Act.

The task of maintaining the panel has devolved largely on the clerks of court. Some courts, however, have called on the federal defender for assistance. In the Northern District of Illinois, for example, the federal defender maintains the panel, at the request of the court, assures rotation in membership, and receives and screens, preliminary for the court, the vouche submitted by assigned counsel.

This has resulted in relieving both the court and the Clerk's office of many of the added burdens imposed by the operation of the Criminal Justice Act.

The Criminal Justice Act places upon the Administrative Office of the United States Courts the supervision of payments made from the appropriations to implement the Act.

In October 1975, the Administrative Office established the Criminal Justice Act Division naming James E. Macklin, Jr. as its chief. The new CJA Division is concerned entirely with the administration of the Act, including coordinating, within the Administrative Office, all activities relating to the implementation of the Act, evaluating existing and proposed legislation relating to the Act, responding to requests for the study of existing defender and panel organizatio and the need for new defend offices (and, where appropriate, assisting in the establishment of such new offices), and providing staff support for and liaison with the Judicial Conference Committee to Implement the Criminal Justice Act.

The Federal Judicial Center has assisted the federal defender offices by sponsoring an annual seminar for the heads of defender offices. In the fiscal year 1976 the program was expanded to provide workshops for assistant defenders designed to assist them in their daily work. These seminars and workshops have had a fortunate by-product in bringing defender office personnel together in discussions of mutual problems and in the interchange of ideas and methods. From a long range standpoint, they have achieved a working relationship among the offices in the investigative process. Thus they have contributed both to the work the offices and to achieving sense of purpose and dedication which has characterized the federal defender offices.

(FELLOWS from page 1)

from the University of Washington in Seattle and his Doctorate in Clinical Psychology from Brigham Young University. He is one of the few clinical psychologists teaching at a law school. In a pioneering project, funded by the National Science Foundation, he examined negotiating techniques used by attorneys in resolving civil disputes.

Among his publications are "Juror Perceptions of Trial Testimony as a Function of the Method of Presentation" and "Jurors' Verdicts and Evaluations as a Function of Videotape and Transcript Methods of Presenting Trial Testimony."

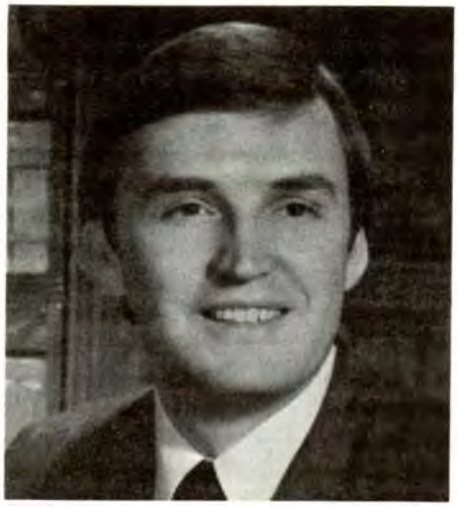
Mr. Morris is a 1962 graduate of Princeton University where he majored in International Relations at the Woodrow Wilson School of Public and International Affairs. He received his law degree in 1965 from Columbia University Law School and his Ph.D. in 1972 from Columbia University where he concentrated on American Government and Public Law. His dissertation subject was *The Second Most Important Court, The United States Court of Appeals for the District of Columbia Circuit.*

Professor Morris was Associate Editor of the revised Encyclopedia of the American History (Harper & Row, 1975) and has published numerous articles.

Before his current appointment as a Special Assistant to the Executive Vice President of Columbia University, he was an Assistant Professor in the Political Science Department of the City College of City University of New York.

This is the fourth group of Judicial Fellows to be selected since the program began in 1971. The program continues to have appeal to a wide-ranging group of distinguished applicants with varied disciplinary backgrounds relevant to the work of the courts.

Thomas E. Baynes, Jr.



Larry C. Farmer

Jeffrey B. Morris

FEDERAL, STATE JUDGES DISCUSS LAW IN THE THIRD CENTURY

State and federal judges joined law professors at New York University this month to discuss what trends our system of law will follow during the next century. The conference was a part of a Bicentennial program sponsored by the University's Law School.

Here are some of the comments of the federal judges:

- The civil liberties trend will be to require that government not only specify what cannot be done to its citizens but, even more important, what government *must* do for its citizens to guarantee that their civil liberties are protected. [Chief Judge David L. Bazelon (CA-DC)]
- The courts can, and have, ordered racial integration in this country but the future will show that the courts cannot through blanket orders erase fear and urban blight, and abolish unemployment, inadequate medical care and poverty. [Judge A. Leon Higginbotham, Jr. (CA-3)]
- When 90% of civil cases and almost 90% of criminal cases in the federal courts are terminated short of trial, it gives cause to ponder whether some civil litigants and some criminal defendants are really sacrificing their legal rights because they are coerced into settlements by an awareness of excessive costs and unreasonable delays. Rather than see this trend continue, steps should be taken to assure that in the future disputes will be resolved faster and at less cost by increasing the courts' efficiency, streamlining the entire process and by diverting certain classes of disputes from the courts. [Chief Judge Irving R. Kaufman (CA-2)]
- In looking to the relationship of the courts to our society in the third century consideration should be given to restructuring our legal system to avoid the imposition of inordinate expense and delay. Methods should be developed more easily to resolve matters such as probate, home financing, and family law. [Warren E. Burger, Chief Justice of the United States.]

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

The Senate has passed, without amendments, and sent to the House, two bills—S. 2412, to provide for the holding of terms of court for the Northern District of Mississippi, Eastern Division, at Aberdeen, Ackerman, and Corinth; and S. 2887, to include Bottineau, McHenry, Pierce, Sheridan, and Wells Counties in the Northwesten Division of the District of North Dakota.

The Senate Committee on Post Office and Civil Service has favorably reported H.R. 11438, which grants court leave to federal employees when called as witnesses in certain judicial proceedings.

S. 12. The Judicial Survivors Annuity Program Amendments bill is pending before the Senate.

S. 2715. This bill would permit awards of reasonable attorney's fees and other expenses for participating in proceedings before federal agencies (and in subsequent litigation) has been favorably reported by the Senate Judiciary Committee. The bill would authorize appropriations to the Administrative Office of the U.S. Courts to pay such fees and expenses ordered by the courts.

The Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee has opened hearings on S. 2762, the bill to establish a National Court of Appeals.

On May 6 the Senate Judiciary Committee reported favorably, with amendments, S. 1284, the Antitrust Improvements Act of 1976. It would authorize, *inter alia*, state attorneys general to bring private treble damage actions to secure redress for damage done to their citizens.

The House Judiciary Committee has favorably reported H.R. 11193, the Gun Control amendments.

JUDICIAL CONFERENCE RULES ON PART-TIME MAGISTRATES' ACTIVITIES

At its April 7th session the Judicial Conference adopted the following statement of policy concerning special master references to part-time magistrates:

> That a part-time magistrate is precluded from accepting fees, in addition to the salary set for his position by the Conference, for services performed as a special master, whether or not such service is rendered in the magistrate's official capacity, and further, that no fees should be taxed against the litigants for such service.

It should be noted that the prohibition against the taxing of fees against the litigants applies only to payment for the services performed by the part-time magistrate, and not to other necessary costs incident to the reference.

CA-6 HAS OPENING FOR SENIOR STAFF ATTORNEY

The United States Court of Appeals for the Sixth Circuit announces the creation of the position of Senior Staff Attorney at the Court headquarters in Cincinnati. The Senior Staff Attorney will provide legal assistance to the Court, participate in the analysis of the cases and motions before the Court and supervise the other staff attorneys. Desired qualifications include six years legal and administrative experience. Salary is up to $31,500, depending on qualifications. Inquiries and resumes may be submitted to James A. Higgins, Circuit Executive, 303 USPO & Courthouse, Cincinnati, Ohio 45202.

CA-3 SEEKS PROGRAM ANALYST

The U.S. Court of Appeals for the Third Circuit is seeking applications for the position of Circuit Program Analyst. This individual will perform under the administrative supervision of the Clerk of Court but also will report directly to the Chief Judge and/or the Circuit Executive for selected analyses and studies.

Compensation will be based on qualifications and will range fro $8,925 to $13,482. The position ha the potential for future advancement to higher grades. Resumes and all requests for application forms should be directed to William A. Doyle, Circuit Executive, 20716 United States Courthouse, Independence Mall West, Philadelphia, Pa. 19106. Closing date for applications is June 30, 1976.

CHIEF JUDGE SEITZ APPOINTS CA-3 LAWYER ADVISORY COMMITTEE

Fifteen lawyers who practice in the Third Circuit have been appointed by Chief Judge Collins Seitz to a Lawyers Advisory Committee. The function of the committee is twofold:

- To study and make recommendations to the Court on matters transmitted to the committee by the U.S. Court of Appeals for the Third Circuit.
- To send the Court *ab initio* recommendations on any matte touching on judicial administratio which the committee deems it appropriate for the Court to consider.

In a letter appointing counsel to the committee, Chief Judge Seitz advised them that the Court was hopeful that the committee would serve as a vehicle to explore the reaction of a cross section of the legal profession and "to constitute a voice to communicate concerns to the Court."

A. O. INSTALLS MINI-COMPUTER FILE MANAGEMENT SYSTEM

On March 2, the Administrative Office began operation of a System 5000 File Management System leased from INFOREX, Inc. This mini-computer system, which requires no programming, enabled the Administrative Office to have a new computer system operatino approximately two months from t time that the initial speedy tri reporting requirements were defined in detail.

The System 5000 will be used

primarily to collect data required under Titles I and II of the Speedy Trial Act of 1974. All criminal and probation records are on-line available to the data analysts for inquiry, updating, and processing.

Through daily transaction tapes, selected data is passed from the System 5000 to the A.O.'s IBM 370 for extensive speedy trial reporting preparation and analysis. The Criminal/Probation master file on the new mini-computer is expected to grow to nearly 200,000 records by the end of the current fiscal year.

The INFOREX equipment will also be utilized for capturing and updating Pretrial Services Interview Data. An important advantage of the system is its flexibility. The INFOREX 5000 will be able to easily accommodate data element changes and output report changes for both the Speedy Trial and Pretrial Services systems. In addition, records will be accessible for constant, real time inquiry.

STATE-FEDERAL

The Federal Judicial Center endeavors to keep abreast of all activities of the State-Federal Judicial Councils. It would assist Center personnel in responding to requests for information on Council work if reports could be received on meetings, subjects discussed and how the Councils function.

The following is a report on some Council activities received since the last column was published in *The Third Branch*.

Indiana. At the St. Paul Conference on the "Causes of Popular Dissatisfaction With The Administration Of Justice" last month, Chief Justice Richard M. Givan of Indiana reported that his state has a Commission on Competency of the Bar. Serving on the Commission are three lawyers and three appellate court judges, one judge from the Supreme Court of Indiana and three from the federal courts. Conferees later commented this was appropriate for consideration at meetings of State-Federal Judicial Councils.

Virginia. At the last meeting of the Virginia State-Federal Judicial Council, the members discussed the federal Speedy Trial Act of 1974. They concluded it was too early to distinguish state and federal problem areas but that it would be on the agenda for future meetings in the event problems surface. Circuit Executive Samuel Phillips reported that state court personnel had attended a federally-sponsored seminar on management and cited it as a splendid example of state-federal cooperation. Other subjects discussed were a certification system for federal questions to state courts and the possibility of swearing in new Virginia lawyers at naturalization ceremonies to be held in Charlottesville next July.

Michigan. Chief Justice Thomas G. Kavanagh, in his "State of the Judiciary" report to the joint session of the Michigan Legislature in March pointed with pride to significant improvements. But the Chief Justice also pointed out problem areas, one of which was: "Federal funds to law enforcement agencies and the increased effectiveness of those agencies have resulted in greater numbers of people being brought into the courts. The effect on the courts is severe."

New Jersey. Chief Justice Richard J. Hughes of the New Jersey Supreme Court and Chief Judge Lawrence A. Whipple of the U.S. District Court met recently to avert a controversy over attorney disciplinary procedures in the state and federal courts in New Jersey. Justice Worrall Mountain, who also attended the meeting, later said, "I do think . . . that the public interest would be better served if . . . the state and federal courts [would] impose the same discipline. I find no affront to either sovereignty by this approach." Chief Judge Collins Seitz (CA-3) addressed the New Jersey Bar Association in March on this subject and a copy of his speech is available from the FJC Information Service.

South Carolina. Deputy Attorney General Harold R. Tyler, Jr., former federal judge and member of the FJC Board, presented a Law Day address at the annual South Carolina Bar Association. Also featured at the Association's meeting was a dinner honoring state and federal judges.

COURTRAN II STARTS PILOT OPERATION

The Center has installed 38 COURTRAN terminals in six district courts and one court of appeals. These terminals are linked through telecommunication lines to a COURTRAN computer located in the U.S. District Court for the District of Columbia and give each pilot court all the capability of a large computer without the accompanying headaches. The pilot courts are now creating initial files—called *data bases* in computer jargon—which will be the basis for providing full docket information within several months for criminal cases, and in the Fall for civil cases. Work is also proceeding on development of a system for appellate courts.

Additional terminals are on order, but installation will not be made in other courts until sufficient experience and program "debugging" is achieved via pilot court operation. It is anticipated that terminals will be provided for approximately thirty districts during calendar year 1977. The six pilot districts are Central District of California, Northern District of California, District of Columbia, Northern District of Illinois, Eastern District of Michigan and Southern District of New York.

The Third Branch

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

ADMINISTRATIVE OFFICE RELEASES ANNUAL WIRETAPPING REPORT

Earlier this month the Administrative Office issued its annual report on applications for orders authorizing or approving the interception of wire or oral communications for the period January 1 to December 31, 1975.

According to the report, 704 applications for orders were made to state and federal judges and three of these applications were denied by state judges, one each in Connecticut, Maryland and New York. Of the 701 applications granted, 108 were granted by federal judges and 593 by state judges.

There were 192 orders authorized by state judges in New York in 1975 compared to 305 in 1974, a decline of 37%. In New Jersey, state judges signed 196 orders which account for 33% of all state orders signed. Interceptions authorized and approved in the states of Florida, Maryland, New Jersey and New York represented 84% of all wiretap authorizations during 1975.

There was a 4% decrease in the total number of wiretap orders authorized, 728 in 1974 compared to 701 in 1975. Federal orders declined by 11% from 121 in 1974 to 108 in 1975 while state authorizations decreased by 2% from 607 in 1974 to 593 in 1975.

There were 408 authorizations, comprising 58% of the total, where gambling was the most serious offense. In 178 authorizations, drug offenses were under investigation while 16 applications specified homicide or assault as the major offenses.

The highest reported cost for a federal wiretap was $66,879 for a telephone wiretap in the Northern District of California while the highest cost for a state wiretap was $89,285 for an investigation conducted in New York City. The average cost for the 671 intercept orders for which a cost figure was reported was $6,970.

During 1975 there were 1,915 arrests and 2,129 convictions reported as a result of authorized wiretaps completed in prior years.

ADMINISTRATION SUPPORTS FEDERAL SENTENCING COMMISSION; ELIMINATING OF FEDERAL PAROLE SYSTEM

In an address to the Creighton University Law School recently, Deputy Attorney General Harold R. Tyler clearly outlined the position of the Administration regarding the creation of a Federal Sentencing Commission and the abolition of the Federal Parole System.

Sen. Kennedy and Rep. Rodino have introduced legislation which would create a Federal Sentencing Commission and thus the remarks of the Deputy Attorney General are especially significant since they indicate that the Administration supports not only the creation of the Sentencing Commission but the complete abolition of the Federal Parole System.

Deputy Attorney General Tyler said that the sentencing guidelines would satisfy two goals:

> "The guidelines would increase the certainty of punishment for categories of offenders and public offenses. Two, the guidelines would eliminate the irrational disparity which many, including myself, believe exists in the present federal criminal justice system."

If a federal district judge imposed a sentence above the so-called guideline sentence the defendant would be able to appeal to a U.S. Court of Appeals while, if the sentence imposed was lower than the guideline sentence the government would have the right to appeal. Former Judge Tyler said judges, among others, may be at least initially opposed to the sentencing idea and said that when he was on the bench he would not have been particularly anxious to have outsiders tell him how to impose sentences.

However, he said, "The interests of candor and fairness in our criminal system, as well as improved deterrence to criminal behavior from more predictable sentencing outweighs any of these concerns that those of us used to the old way of doing things might at first despair."

Bulletin

A bill delaying the effective date of the proposed amendments to the Federal Rules of Criminal Procedure and the rules relating to Habeas Corpus and §2255 proceedings, H.R. 13899, has been introduced by Congressman Hungate following action by the Subcommittee on Criminal Justice of the House Judiciary Committee. If enacted, this bill would postpone the effective date until August 1, 1977.

CA-2 HOLDS COURTROOM-CLASSROOM PROGRAM

Five New York City Metropolitan area high schools participated in a one week educational experience recently designed to give the students insight into the judicial process by allowing them access to the same raw materials available to the judges and asking them to prepare a reasoned judicial opinion in the case. They then could compare their "decision" with the actual decision handed down by the court.

Each class was sent copies of the briefs prepared by the attorneys as well as the record of the lower court proceedings. In addition, they received copies of relevant statutes and decisions in the two key cases cited in the briefs. An official of the Court of Appeals Clerk's Office helped prepare two memoranda explaining how the case came to the Court of Appeals and defining the legal issues and terms which might have been difficult to understand.

Following the oral arguments, the students had an opportunity to question at length the attorneys representing both sides. Three weeks later they returned to the Court of Appeals courtroom and discussed their opinions and compared them with the opinion of the Court. The discussion was led by Circuit Executive Robert D. Lipscher with the assistance of the attorneys who had argued the case.

THE SOURCE

The Information Service of the Federal Judicial Center

(The following publications are listed for information only. However, those in **boldface** are available from the FJC Information Service.)

- **An Introduction to the Federal Probation System, Federal Judicial Center, 1976.**
- The Judicial Process; Readings, Materials and Cases. Ruggero J. Aldisert. West, 1976.
- A Part-Time Clerkship Program in Federal Courts for Law Students. Jack B. Weinstein and William B. Bonvillian. 68 F.R.D. 265-80 (1976).
- A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons in Relation to the State's Justice System. Phase I Report: Analysis of language Needs and Problems. Arthur Young & Co., January 1976.
- Sentencing Councils: a Study of Sentence Disparity and its Reduction. Shari Seidman Diamond and Hans Zeisel. 43 U. Chi. L. Rev. 109-49 (Fall 1975).
- Views from the Lower Court: A Trial Judge Swings at Appellate Problems. Alvin B. Rubin. XXIII La. B.J. 247-61 (March 1976).
- White-Collar Justice; a BNA Special Report on White-Collar Crime. 44 #40 U.S.L.W. (April 13, 1976).

EDUCATION IN JUDICIAL ADMINISTRATION COMMITTEE MEETS AT FJC

Dorothy Nelson, Dean of the University of Southern California Law School, and Chairman of the ABA Committee on Education in Judicial Administration, called a meeting recently to continue discussions on how the law schools can best meet their responsibilities to the legal profession. Invited, in addition to committee members, were law professors who were in Washington attending the annual meeting of the Association of American Law Schools.

Formed in 1973 and cosponsored by the FJC and the American Bar Association, the committee has studied and discussed teaching methods and materials to determine which are the most effective. The AALS, sharing an interest and concern in this area, is represented on the committee by Professors Maurice Rosenberg of Columbia University Law School and Edward Barrett, Jr. of the University of California Law School.

Opening remarks were made by Mr. Justice Clark (Supreme Court, retired) who identified some of the problems of the courts, and how the professors and ultimately their students might assist the judiciary through a better knowledge of how the courts function. The Justice concluded his remarks with the admonition that the professors should be aware of their responsibilities since, "The law schools are the genius of our society."

Professor Maurice Rosenberg addressed the gathering and put forth some provocative thoughts. He questioned the adversary process itself, the best procedure for getting the truth and fair judicial process. The system can work better, he pointed out, if law school graduates understand how the jury system works, how the appellate process operates, and how related tribunals function outside the arena of the courts.

The concluding speaker was Professor Edward Barrett, Jr. He saw as one of the deficiencies of the present legal education system a lack of information on the courts, particularly statistics on the administration of justice. Much of the statistical data, he pointed out, is prepared for primarily budgetary reasons. Law schools, he continued, tend to focus only on the part the judge plays in deciding the case; there is seldom, for example, discussion about legislation—how and why the law being interpreted became a statute. Professor Barrett feels there is insufficient textural information being used in the law schools on how cases move through the system. He concluded his remarks by saying that students need to be "sensitized" to the issues and problems in judicial administration, incuding the cost of litigation and the impact a case has on the system when a lawyer files it. A general discussion followed during which these thoughts emerged:

- Law students should have more information on how the judicial system functions from the time the case is discussed with a client until it is finally disposed of.
- Law professors should be more aware of gaps in the education of law students; the end product—the graduate—should be the result of synergistic efforts by all related individuals and institutions.
- Whether a law school is meeting its responsibilities depends on whether the professors combine their teaching to bring about not only a knowledge of law, but a perspective on the whole system, and they should encourage an inquisitive approach to the law which will prompt such questions as: Are present procedures for disposing of cases the best available? Often procedures are followed blindly when better methods could easily be adopted. Should our methods of selecting judges in this country be changed?
- The practice of law is not all syllogistic reasoning; the practical mechanics are a vital part of the process.
- If a question arises as to whether certain types of cases should be handled outside the courts arena, a question should be asked: will this only cause delay and subsequently create a "boomerang" reaction, bringing the issue back to the court?

Query: Are you getting your copy of **The Third Branch** regularly? If you have changed your address, please advise the editor promptly.

PERSONNEL

Appointments

Gerard L. Goettel, U.S. District Judge, S.D.N.Y., April 7

Charles S. Haight, Jr., U.S. District Judge, S.D.N.Y., May 3

John M. Manos, U.S. District Judge, N.D. Ohio, April 9

Confirmations

Harlington Wood, Jr. U.S. Circuit Judge, 7th Cir., May 6

Phil M. McNagny, Jr., U.S. District Judge, N.D. Ind., May 6

Charles Schwartz, Jr., U. S. District Judge, E.D. La., May 6

Morey L. Sear, U.S. District Judge, E.D. La., May 6

George C. Pratt, U.S. District Judge, E.D.N.Y., May 6

Ross N. Sterling, U.S. District Judge, S.D. Tex., May 6

Robert M. Takasugi, U.S. District Judge, C.D. Ca., May 6

Ralph B. Guy, Jr., U.S. District Judge, E.D. Mich., May 11

Laughlin E. Waters, U.S. District Judge, C.D. Ca., May 11

Maurice B. Cohill, Jr., U.S. District Judge, W.D. Pa., May 18

Nominations

John P. Crowley, U.S. District Judge, N.D. Ill., May 18

James C. Hill, U.S. Circuit Judge, 5th Cir., May 4

Richard A. Revell, U.S. District Judge, W.D. Ky., April 26

Resignations

Richard H. Levet, U.S. Senior District Judge, S.D.N.Y., May 3

Ralph F. Scalera, U.S. District Judge, W.D. Pa., May 1

Deaths

Walter A. Gordon, Judge, (resigned) District Court of the Virgin Islands, April 2

David John Wilson, Senior Judge, U.S. Customs Court, April 23

AO FJC Calendar

June 11-12 Judicial Conference Appellate Rules Committee, Boulder, Colo.

June 11-12 Judicial Conference Subcommittees on Federal Jurisdiction and Judicial Improvements, Bar Harbor, Me.

June 14-19 Seminar for Newly Appointed Bankruptcy Judges Washington, D.C.

June 23-25 Judicial Conference Criminal Justice Act Committee, Jackson Hole, Wyo.

June 26 Judicial Conference Subcommittee on Supporting Personnel, Hot Springs, Ark.

June 27-30 Fourth Circuit Judicial Conference, White Sulphur Springs, W. Va.

June 27-30 Joint Judicial Conference of the Eighth and Tenth Judicial Circuits, Hot Springs, Ark.

June 30-July 1 Workshop for District Judges (8th & 10th Circuits), Hot Springs, Ark.

July 12 Judicial Conference Bankruptcy Committee, Denv[illegible] Colo.

July 12-13 Judicial Conference Probation Committee, Martha's Vineyard, Mass.

July 13-16 Instructional Technology Workshop for Probation Officers, Denver, Colo.

July 15-17 Judicial Conference Committee on Administration of the Criminal Law, San Francisco, Ca.

July 19-20 Judicial Conference Jury Committee, Sun Valley, Ida.

July 25-27 Ninth Circuit Judicial Conference, Spokane, Wash.

July 27-29 Judicial Conference Review Committee, Jackson Hole, Wyo.

July 28-29 Judicial Conference Judicial Activities Committee, Jackson Hole, Wyo.

July 30 Judicial Conference Joint Committee on Code of Judicial Conduct, Jackson Hole, Wyo.

Sept. 13-18 Seminar for New Appointed District Judges, Washington, D.C.

Sept. 26-28 Conference of Metropolitan Chief Judges, New Orleans, La.

Oct. 27-30 Conference for Federal Appellate Judges, Phoenix, Ariz.

THE THIRD BRANCH

VOL. 8 NO. 5 MAY 1976

THE FEDERAL JUDICIAL CENTER

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FIRST REPORT ON DISTRICT COURT STUDIES PROJECT ISSUED

An interim report on the Federal Judicial Center's District Court Studies Project was issued this month.

Although several reports on individual courts have been published, this is the first report which summarizes overall findings from the five metropolitan courts studied to date.

The project is designed to obtain perspective on the factors which determine exactly why some courts are more productive than others.

The following factors primarily distinguished the fast and/or highly productive courts from the others:

1. They have an **automatic** procedure that assures in every civil case that discovery begins quickly, is completed within a reasonable time, and is followed by a prompt trial if necessary. These procedures are automatic because they are invoked at the start of every case, subject only to a small number of exceptions.

   Although all of the courts visited have procedures which are designed to accomplish these goals, most do not achieve early and effective control. In slow courts, much of the time during which a typical case is pending, either is unused or is in violation of the time limits set by the Federal Rules of Civil Procedure.
2. They utilized procedures which either minimize or eliminate judge time during the early stages of the case until discovery is completed. Docket control, contact with attorneys, and most conferences are delegated, generally to the courtroom deputy clerk or a magistrate. The time of the judge is used only when he is absolutely indispensable in resolving preliminary matters, handling dispositive motions, or planning the preparation of an exceptionally complex case.
3. The role of the courts in settlement is minimized. Judges are highly selective in initiating settlement negotiations and normally do so only when a case is ready for trial or almost ready.
4. A minimum of written opinions are prepared and published.
5. All proceedings that do not specifically require that they be held in chambers are held in open court.

During the course of the visits to the five district courts, several judges expressed their concern that efforts to improve the speed and efficiency of the federal district

(See REPORT page 3)

FJC RESEARCH DIVISION PREPARES REPORT ON LITIGATION PRIORITIES

In response to the request of Judge William C. O'Kelley (N.D. Ga.) who asked the Center for a list of priorities for handling litigation in the trial courts, the Federal Judicial Center's Research Division assembled a compilation of priority directives contained in a wide range of federal laws.

This research was aided by a computerized legal research service which is currently being evaluated by the Federal Judicial Center in several federal courts.

The U.S. Code was searched for sections where the expediting of matters was called for, these citations were examined, and the listing for priorities was developed.

This list was then circulated to the General Counsel of the Administrative Office, the Legal Counsel of the Justice Department and others for comments and additions.

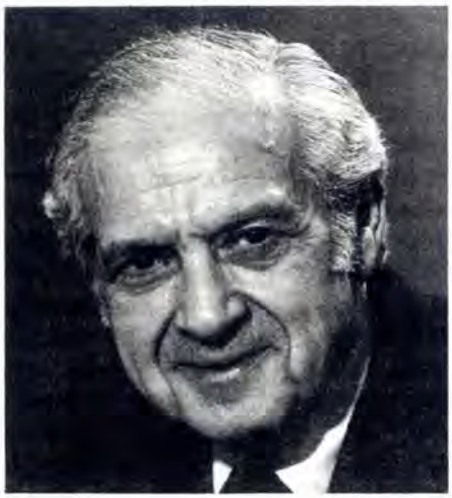
The report, entitled "Priorities for the Handling of Litigation in the United States District Courts", contains 29 Acts and U.S. Code Sections that call for special handling of certain types of cases. A brief discussion of each is included along with the expediting language.

The U.S. Code contains no general rule for the ordering of priority litigation; there are no priorities among the priorities established in the Code.

However, the language of the various provisions appears to in-

(See PRIORITIES page 3)

Chief Judges Bazelon, Fairchild and Brown Present State of the Circuit Messages



Chief Judge David L. Bazelon (CA-DC)

In his opening remarks to the Judicial Conference for the District of Columbia, Chief Judge David L. Bazelon said that when he joined the court in 1949 there were 390 cases pending and 9 judges on the District of Columbia Court of Appeals. However, at the end of last year there were still only 9 judges on the court, but there were now 1,323 pending cases. In his first year on the court, 434 appeals were docketed while last year there were 1,113 cases docketed.

Chief Judge Bazelon said the judges of the Court of Appeals had hoped that the court reorganization act would provide some relief and perhaps reduce the tremendous caseload on the District Court as well as the Court of Appeals. This has not happened. He recently sent a letter to the Judicial Conference Subcommittee on Judicial Statistics requesting three additional judgeships for his Court.

From 1972-1975 the number of criminal and private civil cases filed in the Court of Appeals has been more than halved. But, during the same period of time, the number of agency cases and civil actions involving the U.S. has almost doubled, so that the total drop in filings was almost negligible.

(See BAZELON page 7)

Chief Judge Thomas E. Fairchild (CA-7)

In his address to the Annual Judicial Conference of the Seventh Circuit, Chief Judge Thomas E. Fairchild emphasized that the District Courts and the Circuit Courts must have additional judges if they are to maintain the quality of justice expected by the public.

The Chief Judge said that while criminal cases have decreased from the previous year, bankruptcies were up by about 5,500 and civil filings by 773, representing a 10 percent increase.

"In view of the requirements of the Speedy Trial Act in criminal cases, it is hard to see where civil cases are going to be disposed of, let alone at a larger number. There are many things which can be done to improve judicial efficiency, but there is a limit to the number of increased case terminations which can be obtained by changes in judicial procedures without appointing new judges to handle the increased filings."

He said that although filings have increased the Seventh Circuit Court of Appeals has not departed from its emphasis on oral argument in almost all cases.

He pointed out that while the Senate has approved the ninth judgeship for the Seventh Circuit

(See FAIRCHILD page 7)

Chief Judge John R. Brown (CA-5)

Chief Judge John R. Brown (CA-5) in his report on the state of the federal judiciary, delivered recently described the tremendous growth in litigation in this large Circuit and outlined ways in which the problem can be attacked. Here are a few of the highlights of his remarks:

- The Judges of the Fifth Circu have the most work, turn out the most production and have the problems [characteristic] of the whole federal judiciary.
- This workload, disproportionate to the relative population percentages in the nation, includes many types of cases of a demanding time-consuming nature likewise disproportionate on a national basis.
- Despite this ever-increasing almost exponential increase in incoming business, the output of these dedicated hard-working judges has continued to increase even more spectacularly. Were it not so, we would be in a much worse position than we now are.
- The increase in new business, especially in some of the large metropolitan district courts, is now at and will soon exceed the physical capabilities of the judges, no matter how conscientious or vigorous th may be.

(See BROWN page 7)

(REPORT from page 1)
courts might lead to diminution of the quality of justice rendered.

Since this possibility is a matter of great concern to the Federal Judicial Center, the Project's researchers attempted to determine as precisely as possible the dangers which the judges envisioned as well as the degree to which undesirable procedures were characteristic of the courts using approaches noted above.

Since it would be almost impossible, if not presumptuous, to evaluate comprehensively the quality of justice in these courts, the researchers addressed this issue narrowly.

(See REPORT page 6)

(PRIORITIES from page 1)

dicate various degrees of urgencies from which categories can be developed. In addition, the subject matter or type of case may be grouped into useful categories.

For civil cases, the Research Division subdivided the cases into classifications:

1. Cases that are simply to be expedited.

2. Cases that are to be made a preferred cause on the docket or to take precedence over other pending matters.

3. In certain actions, the Attorney general may file a certificate with the court stating that the subject case is of general public importance; such cases are to be handled expeditiously.

This category contains proceedings instituted under the Three Judge Court Act and cases brought under certain civil rights statutes.

For criminal cases, the Research Division listed four items within this category, ranging from the general mandate of Rule 50 to give preference to criminal matters to the specific time requirements called for under the Speedy Trial Act.

While these categorizations are useful for the purposes of the Federal Judicial Center's research, it is not offered as a definitive statement of the ordering of priorities.

The Federal Judicial Center's Research Division in attempting to establish priorities for the handling of litigation in federal district courts found that there are a number of statutes, many of them recently passed by Congress, which call for priority handling of litigation which may arise as a result of the statute. However, Congress did not set any specific priorities among the priority cases and, as a result, it is quite possible that a judge may be faced with a situation in which he has several cases on his docket with identical priority language requiring that they be tried as soon as possible.

It may be that Congress is not completely aware of the numerous laws which it has enacted calling for priority handling of any litigation which should arise as a result of the enactment of a specific law.

(The Federal Judicial Center has exhausted its supply of copies of this research report and, at the present time, comments and suggestions are being solicited from members of the judiciary to whom the report was distributed. A second edition of the report will then be prepared after all of the comments have been received.)

NEW LIMITATIONS PLACED ON RECEIPT OF HONORARIUMS

The provisions of the Federal Election Campaign Act of 1974, which restrict federal employees, including federal judges, from receiving what Congress deems excessive honorariums have been significantly altered by the recent amendments to that Act (P.L. 94-283). The prior provision, 18 U.S.C. §616, has been repealed. The new provision, 2 U.S.C. §441i, provides for higher dollar limitations.

The act now bars the receipt of an individual honorarium of more than $2,000, rather than $1,000, and bars the receipt of a year's aggregate of honorariums over $25,000, as opposed to $15,000. As before, those figures are exclusive of amounts accepted for actual travel and subsistence expenses, but those exclusions include expenses of not only the person, but also his spouse or aide, excluding amounts paid for agent's fees or commission.

Unlike §616, which provides criminal penalties for violations of the honorarium section, the new honorarium section contains only civil sanctions. There is some doubt as to the application of the Act's civil sanctions to honorariums. It is the informal opinion of David Anderson, an attorney with the Federal Election Commission, that an acceptance of an excessive honorarium is subject to a civil fine of $5,000, $10,000 if the violation is knowing and willful.

As previously noted in *The Third Branch* (Vol. 8 No. 2 February 1976), there are some exceptions to the coverage of the restrictions on honorariums. For example, certain royalties, awards, and gifts are outside the coverage of the section, as are stipends, that is payments for services on a continuing basis. The Federal Election Commission's Regulations contain an enumeration of the intended meaning and scope of the section's terms.

FJC SUBSTITUTES COMPUTER FOR MAIL DELIVERY

In an unusual application of the Federal Judicial Center's COURTRAN system, the initial manuals which explain how to use the computer terminals and build the necessary data bases are now being delivered to the six-pilot district courts directly through the computer system.

By putting the entire text of the user manuals into the system, operators in the six-pilot district courts can receive a complete manual through the computer.

Since these manuals have only recently been developed, they are subject to frequent change. However, now that they are stored in the computer, the Center can make changes to the manuals by merely editing the text on the computer and then notifying the pilot district courts, via a message to their computer terminal that a change

(See DELIVERY page 4)

(DELIVERY from page 3)

has been made. The pilot districts may then have the new version printed at a local terminal and reproduce as many copies as necessary.

By having the manuals in the computer system, the Center will be able to speed the transmission of manual changes and keep the pilot districts current without using mail delivery.

This experimental use of technology to, in effect, substitute a computer network for mail delivery, has significant future potential. For example, information which is now printed and mailed to various members of the federal judiciary could, in the future, be put into the computer and received by the appropriate recipient immediately or whenever he desired. However, recipients who do not wish to receive the information merely need not push the button.

HOUSE JUDICIARY SUBCOMMITTEE HOLDS HEARING ON NEW JUDGESHIPS

The House Judiciary Subcommittee on Monopolies and Commercial Law continued hearings June 10 on bills which would create at least 45 additional district judgeships.

The Judgeship Bill, S. 286, passed the Senate last month. (See *The Third Branch*, October 1975.)

The sole witness was American Bar Association President Lawrence E. Walsh who was questioned at length by Congressmen Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, John F. Seiberling, Robert McClory, and Edward Hutchinson for over two hours. Former District Court Judge Walsh submitted his formal remarks for the record and then responded to a wide range of questions from the Congressmen.

"I wonder if we aren't going to reach the point where the answer is not just adding new judges?" Chairman Rodino asked.

President Walsh replied that "the need for these judges is crystal clear" and asked the committee to put aside political considerations even though it is an election year.

Chairman Rodino said that it might be possible to enact the legislation during the current session following subsequent hearings later this session but make the effective date next January 21. This would allow a great deal of the preliminary judicial selection to be accomplished during the remainder of the summer and fall and give the new Administration [Republican or Democrat] a pool of already preselected candidates from which new judges could be nominated.

In his off-the-cuff remarks to the Subcommittee, President Walsh said that federal litigation is expanding considerably and that between 1966 and 1975 there had been a 146% increase in the number of appeals while there had only been a 24% increase in the number of judges on the courts of appeals. District courts had experienced a similar growth in their caseload from 100,000 to 160,000, or a 60% increase, while the number of district judges has only increased 33%.

He said, "The time has gone when there is any question of the quality and diligence of our federal judges."

The growing caseload he attributed, in part, to the problems of increasing population and the trend toward urbanization. In addition, he said the Speedy Trial Act of 1974 has greatly aggravated the need for additional judges. "We have a hard working judiciary [which is now] confronted with an ever-rising workload at a time when judges are grossly underpaid," President Walsh said.

He told the Subcommittee that it was vitally important that the judiciary be staffed by experienced trial lawyers who are between the ages of 40 and 55 because this is the time when they are the most productive and the only way to attract such lawyers to the federal courts is to increase their present compensation.

Three factors now characterize the federal judiciary, he said. These are mounting caseloads coupled with the disinclination of Congress to increase the number of judges and finally, a loss or morale among judges who are presently in the federal court system.

There are four possible immediate results which may occur if Congress does not act on the Bill to create additional judgeships:

1. Diversity jurisdiction may be reduced.

2. Oral argument which President Walsh said "affects the skills of the profession" may be reduced or eliminated.

3. A serious limitation on the scope and length of discovery by requiring proof of merit may occur.

4. In criminal cases, elimination, or at least an erosion of the exclusionary rule.

He pointed out that, in the future, the bar sees a continuation of not only the proliferation of litigation but a continuous trend toward more complex cases due, in part, to the great expansion of scientific thought and technological advance.

As examples of future cases which involve advanced scientific knowledge, he cited cases involving prenatal injuries and those which may arise from genetic manipulation and artificial weather creation.

He asked the Subcommittee to "deal generously with the statistics because they understate" the problem.

Significantly, however, he said that he recognizes the problems of an election year and asked the Committee to explore the possibility of either some type of bipartisan action on the part of the Senate or, in the alternative, to enact the legislation now and not make it effective until January 20.

"If nothing is done now, it will be a year from now before the first judge comes before the Senate Judiciary Committee," President Walsh said.

Chairman Rodino responded that "We are caught up in an election year, which unfortunately, do have a way of getting in the way. He asked President Walsh whether the increased use of magistrates,

and enlarging their jurisdiction, would help to remedy the problem: "Should their authority be widened?"

In response, President Walsh said that he hoped their powers could be widened and they could then handle some of the so-called minor disputes as well as continuing to be useful in discovery proceedings.

Chairman Rodino questioned him about the additional cost of the new judgeships which President Walsh estimated at over $100,000 each but added, "I don't think this is a critical concern. The expenditure per capita of the judiciary in the United States is less than that of most European countries. Other [countries] spend more on their judicial system — we probably spend more on lawyers."

At the conclusion of the hearing Chairman Rodino announced that additional hearings will be held this session and that the full committee will seriously consider the proposal of President Walsh that Congress enact the Judgeship Bill this session but postpone the effective date until January 21, 1977.

SUPREME COURT DENIES FREE INDIGENT TRANSCRIPTS

The Supreme Court has rejected the claim that indigent federal prisoners have an automatic right to a free transcript of their criminal trial for possible use in preparing a petition for post conviction relief. In *United States* v. *MacCollom*, No. 74-1487, decided June 10, 1976, the Supreme Court reversed a decision by the Court of Appeals for the Ninth Circuit granting a transcript at government expense to a prisoner who had not appealed his conviction but subsequently moved for a court order granting him a free transcript.

In announcing the judgment of the Supreme Court, Mr. Justice Rehnquist stated that the statutory requirement of 28 U.S.C. §753(f)—for a judicial certification that the proceedings under 28 U.S.C. §2255 are not frivolous and that a transcript is needed to decide the issue presented—which must be complied with before appropriated funds may be used to pay transcript costs for indigent petitioners in such cases, does not suspend the writ of habeas corpus and is not violative of due process or a denial of equal protection of the laws. He was joined in his opinion by the Chief Justice and Justices Stewart and Powell. Mr. Justice Blackmun in a separate opinion concurred in the judgment.

A petition for certiorari to the Supreme Court in this case had been filed by the Solicitor General at the recommendation of the Administrative Office of the United States Courts [see *The Third Branch*, July 1975 and October 1975]. The Administrative Office took the position that the decision of the Court of Appeals would have caused excessive and unnecessary outlays of Judiciary appropriated funds for transcript expenses and would also have strained the resources of the official court reporters in the United States district courts to cope with increased demands for transcription.

Respondent MacCollom, while serving a federal prison sentence, had originally made his demand for a free transcript to the District Court for the Western District of Washington without first filing any section 2255 petition. Following denial of his motion, he filed a complaint for declaratory and injunctive relief, which the District Court treated as a petition under section 2255 and denied on the merits. The Court of Appeals reversed, holding that he was entitled to a free transcript to assist him.

Mr. Justice Rehnquist said in his plurality opinion that 28 U.S.C. §753 (f) provides the exclusive authority for furnishing a free transcript to a section 2255 petitioner and that no such expenditure of appropriated funds is authorized in the absence of the required certification by a judge of nonfrivolity and need. He also stated that this statutory condition placed upon the availability of free transcripts does not suspend the writ of habeas corpus because a transcript at Government expense is not a necessary concomitant of the writ. His opinion further said that the limitations of section 753(f) raise no due process issues because the due process clause does not establish any right to appeal or to collaterally attack a conviction. It was noted that respondent had voluntarily foregone his right of appeal, at which time he would have been entitled to a free transcript for that purpose. The opinion concluded that the conditions of nonfrivolity and need imposed by Congress through section 753(f) on the availability of free transcripts to collaterally attack a conviction are not arbitrary or unreasonable and comport with fair procedure so as to satisfy requirements of due process.

With respect to the equal protection issue, Mr. Justice Rehnquist wrote that, while the statutory requirements for a free transcript place indigents "in a somewhat less advantageous position than a person of means," the equal protection requirements of the Fifth and Fourteenth Amendments require not absolute equality in treatment but only adequate access for an indigent person to procedures for review. The opinion concludes that, since respondent had waived his right to appeal, "Equal protection does not require the Government to furnish to the indigent a delayed duplicate of a right of appeal with attendant free transcript which it offered in the first instance, even though a criminal defendant of means might well decide to purchase such a transcript . . .".

"We conclude that the fact that a transcript was available had respondent chosen to appeal from his conviction, and remained available on the conditions set forth in §753 to an indigent proceeding under §2255, afforded respondent an adequate opportunity to attack his conviction. To hold otherwise would be to place the indigent defendant in a more favorable position that a similarly situated prisoner of some, but not unlimited,

(See TRANSCRIPT page 7)

(REPORT from page 3)

Lengthy meetings were held with the judges who seemed most concerned about the conflict implied in Rule 1 of the Federal Rules of Civil Procedure which calls for a "just, speedy and inexpensive determination of every action."

The concerns expressed had to do primarily with the latter stages of the case, especially with excessive pressure on the part of judges to rush a case to trial.

The factors listed previously, by contrast, lead to both speed and efficiency in preparing cases for trial and are compatible with last-minute adjustments in calendaring for good cause.

Significantly, the researchers found many of the accepted ideas about what causes the productivity and time differences which exist from court to court and from judge to judge were either wrong or doubtful. Among these were:

- **Isn't the key difference strong case management?** All of the courts visited are characterized by so-called "strong case management" in one form or another. However, the differences lie in the relative effectiveness of alternative forms of case management.
- **Isn't the determinative factor the personality of the individual judges?** Two strong indications to the contrary are the discovery that individual judges' rates of terminations per year correspond more with their own court than with the average for the federal judicial system and the observation that judges who appear to be personally efficient are just as likely to be found sitting on one court as on another. While the personality, skill and attitude of a judge affects his own work greatly, it does not appear that personal differences between judges on a single court are sufficient to explain the variance between the efficiency of one court and that of another.
- **Aren't the so called "fundamental" differences in the local bar a controlling factor?** Of course, the practices of the lawyers who appeared before the courts of the five cities are clearly distinct from each other and these differences have an effect on the efficiency of the court. However, the differences are often not accidental since many courts have changed the practices of their local bar by changing their policies over the years. Other courts could probably do so as well.
- **Isn't the backlog of cases a controlling factor?** If this term is defined as cases in which the litigants are awaiting court action of some kind such as a pre-trial conference, trial or ruling, then none of these five courts was characterized by a heavy backlog at the time the researchers visited them.
- **Isn't it a matter of diligence on the part of the judges?** On the whole, judges in all the courts visited work extremely hard, as do most of the supporting personnel. The researchers observed relatively little variance from one court to another in this respect, and work weeks greatly in excess of 40 hours on the part of judges were routine. While long hours were especially common in certain courts, the differences were not great enough to explain the wide differences in termination rates among the courts.
- **Isn't a comprehensive pre-trial order essential?** In routine cases none of the five courts enforced this requirement.
- **Isn't it best to get the parties in early and often?** The researchers observed that frequent conferences are often a poor use of time.
- **Isn't the time wasted on oral argument an important factor?** The researchers found that oral proceedings are normal in some courts with excellent records.

The study group is using indepth visits to district courts which have been chosen because of the maximum contrast in their statistical performance. The report is based primarily on visits to metropolitan courts in Maryland, Eastern Pennsylania, Eastern Louisiana, Central California and Southern Florida.

Extensive discussions with judges and supporting personnel and the observation of a wide variety of proceedings were an integral part of the Project.

The project is one of the first systematic attempts to relate alternative procedures to their statistical results. Like the practice of law generally, the federal court system is highly localized and few lawyers or judges regularly work on matters of daily procedure with their counterparts in other districts.

As a result, many courts assume that presently used procedures are the best way of conducting their routine business.

Although individual judges frequently visit other districts, they rarely have an opportunity to examine the approaches used in these districts in a comprehensive way, or to examine systematically the facts that may lead to statistical differences between their own districts and others.

Indeed, in some courts there are few opportunities for judges to learn in detail the approaches used by other judges of the same court.

The report is designed to identify the practices that appear to be most effective in assuring the speedy disposition of cases (both civil and criminal) as well as a high rate of case termination per judge, without any apparent diminution in the quality of justice rendered.

In summary, the Federal Judicial Center's District Court Studies Project has answered some questions about the relative operation of district courts and raised some new questions.

Hopefully, the findings of the researchers will assist judges and their supporting personnel in the search for the best techniques possible.

(The Report is available from the FJC Information Service. Ask for Report FJC-76-6.)

(BAZELON from page 2)

"Indeed, in 1976 we anticipate a record number of total filings. What's much worse, the cases that now make up almost 70 percent of our workload—the U.S. civil and agency cases—tend to be the most difficult, whether measured by size of the records and briefs, intricacy of the legal issues, or length of time required to dispose of them."

Turning to the District Court for the District of Columbia, Judge Bazelon said the picture is less grim but nevertheless not encouraging. While the total number of cases filed in the District Court has declined markedly since 1972—from 5,654 to under 3,000, but just as the court of appeals is experiencing, the district court is also finding it is confronted with cases of increasing complexity.

(FAIRCHILD from page 6)

Court of Appeals, the House has not yet acted on the bill.

Additionally, he told the Conference that the Rule Review Committee is nearing completion of a final draft which should take effect soon.

"The *Report of the Committee to Study Federal Judicial Districts in Illinois* has just been completed and merits particular attention from the Bar. The majority report calls for redistricting of the State of Illinois into four districts, a metropolitan district in the northeast, and three others with district lines running east and west across the state."

He pointed out that Circuit Judge John S. Hastings in a recent law review article had outlined the Seventh Circuit's plan for the publication of opinions which is a continuing experiment.

"Under the publication plan, about half of our decisions last year were by unreported orders, which are not citable as a precedent in the Seventh Circuit. It is the non-citation element of the rule which is the most controversial. The Subcommittee on Federal Jurisdiction of the Committee on Court Administration of the Judicial Conference of the United States just requested that the publication plans of each circuit be discussed by the Bar."

In conclusion, he said that he wished to emphasize that the federal court system desparately needed a significant increase in the number of judges.

"There can be a degree of improvement in efficiency, of course, but it is unreal to pretend that the same number of judges can materially increase output without sacrifice of quality. If the federal courts are to maintain the quality standard people expect of them, there simply have to be more judges."

(BROWN from page 2)

- Civil rights (and prisoner) cases with class action aspects present almost unmanageable challenges.
- The preemptive timetable demands of the Speedy Trial Act are disruptive.
- The day is soon at hand when no, or few, traditional civil cases will ever be heard.
- In the Court of Appeals a serious, continuing backlog has developed; priority cases will shortly crowd out or postpone for years nonpreference cases to be orally argued.

Help is needed. The help has to come in a number of ways; from judges through imaginative innovations in judicial actions; by improved relationships with Congress, the media, the bar and by Congressional action to provide additional judgeships as well as the creation and funding for additional supporting personnel, magistrates, clerks, paralegals and court executives.

- By the Bar, by increased participation in the problems of the courts and increased competence on the part of the Bar in improving lawyers' capacity in the indispensable role of advocates for litigants.

"Important as we might think the Court of Appeals is, an analysis of where we have been, what we are doing, and where we are going—indeed, if we are going—has to start with the District Courts which are the origin of all of our mutual problems."

(TRANSCRIPT from page 5)

means, who presumably would make an evaluation much like that prescribed in §753(f) before he spent his own funds for a transcript."

Mr. Justice Stevens, in a dissenting opinion joined by three other justices, urged that a free transcript should have been provided in these circumstances because the criteria of section 753(f) contain no standards for fair administration by district judges and because a rational decision on the questions of frivolity and need in the post conviction proceeding is impossible without first seeing a transcript of the original trial. Mr. Justice Brennan in a separate dissent wrote that the denial of a free transcript to an indigent petitioner under section 2255 is a denial of equal protection because such a transcript would be available for purchase by a petitioner with sufficient funds.

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Federal Rules of Criminal Procedure—Amendments H.R. 13899, a clean bill which will delay the effective date of the proposed amendments to the Federal Rules of Criminal Procedure and rules dealing with habeas corpus and §2255 until August 1, 1977, passed the House on June 7, 1976.

Court Leave The President has signed H.R. 11438, which will amend Title 5 U.S.C. to grant court leave to federal employees called as witnesses by any party in proceedings where the United States, District of Columbia, or any state is a party.

National Court of Appeals The Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary has

(See LEGISLATION page 8)

PERSONNEL

Appointments

Phil M. McNagny, Jr., U.S. District Judge, N.D. Ind., May 29

George C. Pratt, U.S. District Judge, E.D.N.Y., May 24

Morey L. Sear, U.S. District Judge, E.D.La., May 12

Ross N. Sterling, U.S. District Judge, S.D. Texas, May 18

Harlington Wood, Jr., U.S. Circuit Judge, 7th Cir., May 28

Confirmation

James C. Hill, U.S. Circuit Judge, 5th Cir., May 19

John P. Crowley, U.S. District Judge, N.D. Ill., June 16

Mary Anne Richey, U.S. District Judge, D.Ariz., June 16

Nominations

William A. Ingram, U.S. District Judge, N.D. Calif., June 2

William W. Schwarzer, U.S. District Judge, N.D. Calif., June 2

Elizabeth A. Kovachevich, U.S. District Judge, M.D. Fla., June 11

Peter T. Fay, U.S. Circuit Judge (CA-5), June 14

Edwin R. Bethune, Jr., U.S. District Judge, E & W Dist. Ark., June 15

Cecil F. Poole, U.S. District Judge, N.D. Calif., June 18.

Withdrawal of Nomination

William B. Poff, U.S. District Judge, W.D. Va., June 7

Death

Oliver J. Carter, U.S. District Judge, N.D. Calif., June 14

AO & FJC calendar

July 12 Judicial Conference Bankruptcy Committee, Denver, Colo.

July 12-13 Judicial Conference Probation Committee, Martha's Vineyard, Mass.

July 13-16 Instructional Technology Workshop for Probation Officers, Denver, Colo.

July 15-17 Judicial Conference Committee on Administration of the Criminal Law, San Francisco, Calif.

July 19-20 Judicial Conference Jury Committee, San Valley, Idaho

July 25-27 Ninth Circuit Judicial Conference, Spokane, Wash.

July 26-27 Criminal Justice Records Seminar, Atlanta, Ga.

July 26-30 Orientation Seminar for Probation Officers, Cincinnati, Ohio

July 27-29 Judicial Conference Review Committee, Jackson Hole, Wyo.

July 28-29 Judicial Conference Judicial Activities Committee, Jackson Hole, Wyo.

July 29-30 Criminal Justice Records Seminar, Atlanta, Ga.

July 30 Judicial Conference Joint Committee on Code of Judicial Conduct, Jackson Hole, Wyo.

Sept. 9-11 Second Cir. Judicial Conference, Buck Hill Falls, Pa.

(LEGISLATION from page 7)

held a series of hearings on S.2762 which would establish a National Court of Appeals.

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings on S. 1130 to prohibit services as a chief judge of any U.S. district court judge over 70 years of age.

S. 12, the Judicial Survivors' Annuity Act Amendments remains pending on the Senate calendar. However, the House Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Judiciary Committee has held a hearing on H.R. 11320, as well as S. 12. Judge Oren Harris testified at the hearing. That same subcommittee has also held hearings on H.R. 8472 and S. 14, which concern cost of living adjustments for territorial judges and hearings on H.R. 10574 regarding providing of accommodations for judges of the courts of appeals.

S. 495, the Watergate Reorganization and Reform Act of 1976, would require financial disclosure by all justices and judges of the United States and federal employees at grade 16 and above. The bill has been reported to the Senate.

The Antitrust Improvements Act of 1976, S. 1284, is currently being debated on the floor of the Senate.

THE THIRD BRANCH

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JUDGES GODBOLD, McGARR NAMED TO FJC BOARD

The Judicial Conference of the United States has selected Judges John C. Godbold (CA-5) and Frank J. McGarr (N.D. Ill.) to fill two vacancies on the Federal Judicial Center's Board.

Judge Godbold is replacing Judge Griffin B. Bell who recently resigned from the Fifth Circuit Court of Appeals to enter private practice and Judge McGarr is filling the vacancy created by Chief Judge Alfred A. Arraj (Dist. Colo.) who has taken Senior status.

Judge Godbold is a native of Alabama and received his Bachelor of Science Degree in 1940 from Auburn University. After wavering between law and journalism, he decided to become a lawyer and entered Harvard Law School in 1940, but was called into service as a Reserve Officer in 1941.

During duty in Europe as an Artillery and Infantry Officer, he rose to the rank of Major before the end of the war. After World War II, he taught mathematics for a year at Auburn and then returned to Harvard Law School to obtain his J.D. Degree in 1948.

Following graduation, he entered private practice in Montgomery, Alabama. He was appointed to the Fifth Circuit Court of Appeals in July 1966.

Judge McGarr is a native of Chicago and he obtained his Bachelor of Arts in Philosophy from Loyola University in 1942 and his J.D. from Loyola University Law School in 1950.

(See FJC page 2)

Judge John C. Godbold

Judge Frank J. McGarr

SPEEDY TRIAL ACT TIME LIMITS TAKE EFFECT

Transitional time limits under the Speedy Trial Act became effective July 1, 1976. The time limits govern the period within which an indictment or information must be obtained after arrest or service of summons, the period within which arraignment must be held, and the period within which trial must commence. They apply to all criminal cases in the federal courts except those involving petty offenses.

"Interim" time limits, applicable only to defendants in custody and those designated as "high risk," became effective last September 29.

For the year beginning July 1, 1976, the maximum time limits under the statute are 60 days to indictment or information, 10 days to arraignment, and 180 days to trial. These times will be reduced annually until they become 30, 10, and 60 days on July 1, 1979. In the plans adopted by district courts to implement the Act, however, many districts have made the 1979 time limits applicable to the current year. A preliminary count indicates that this has been done by approximately a fifth of the districts.

The dismissal remedy for failure to meet the time limits does not become effective until July 1, 1979.

(FJC from page 1)

During World War II he served as an Executive Officer on a destroyer with the Pacific Fleet. Following World War II he returned to Loyola University for two years and was an instructor in English and Public Speaking as well as Administrative Assistant to the President of the University.

After two years of private practice he was appointed Assistant United States Attorney and was first Assistant United States Attorney from 1955 to 1958. From 1958 to 1969 he was a member of a Chicago law firm and from 1969 to 1970, he served as First Assistant Attorney General of the State of Illinois.

He was appointed to the United States District Court for the Northern District of Illinois in 1970.

PROPOSED CRIMINAL RULES DELAYED

President Ford on July 8, signed into law H.R. 13899 which is designed to delay the effective date of some proposed amendments of the Federal Rules of Criminal Procedure which were promulgated by the Supreme Court on April 26, 1976 and would have taken effect on August 1 of this year.

However, some of the amendments to the rules will go into effect August 1.

The rules which will **not** go into effect until August 1, 1977, are 6(e), 23, 24, 40.1 and 41(c)(2). During hearings on the bill, key members of the Senate Judiciary Committee said they wanted to delay the effective date of some of the rule amendments which they believed were controversial in order to give Congress additional time to study them and, if necessary, hold hearings.

In addition, the Senate Judiciary Committee also amended the bill to allow the rules and forms governing Section 2254 cases and 2255 proceedings to take effect 30 days after the adjournment of the present Congress. The Speaker of the House of Representatives and the Senate Majority Leader announced that they intend to adjourn the current session October 2.

Pictured receiving the posthumous tribute to Judge Murrah are (l. to r.): Alfred P. Murrah, Jr.; David Murrah, his son; Mrs. Murrah; and Mr. Justice Clark.

JUDGE MURRAH HONORED

At the joint Eighth and Tenth Circuit Conference held at Hot Springs, Arkansas this month, Mr. Justice Clark presented, on behalf of the Center's Board, a posthumous tribute to Judge Alfred P. Murrah who died last October.

Since Judge Murrah was Chief Judge of the Tenth Circuit for 11 years, it was especially appropriate that the presentation was made at this meeting.

In his introductory remarks Justice Clark likened Judge Murrah's philosophy to that of Oliver Wendell Holmes, Sr., who believed that life's greatest accomplishment is not so much where one stands but in what direction one is moving. The Justice concluded his remarks by saying, "To reach Heaven's port one must sail sometimes with the wind, sometimes against. But the important thing is that one must sail, not drift, nor lie at anchor . . . Al Murrah never drifted; never anchored; he sailed on one polar star: The law, which he gave of his life to impro its quality."

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Congressional Action

The Committee on Post Office and Civil Service has favorably reported H.R. 13297 which will provide for withholding of city income taxes from the salaries of federal officers and employees who are residents of such city.

The Subcommittee on Criminal Justice of the House Judiciary Committee held hearings on two bills, H.R. 11106 and H.R. 11217, both of which provide for the use of unsworn declarations under penalty of perjury in any federal proceeding except a deposition, oath of office or an oath required to be taken before a specified official other than a notary public.

The Senate Judiciary Committee has favorably reported S. 2278 the "Civil Rights Attorneys Fees Awards Act of 1975" (Senate Report 94-1011). The bill would allow a prevailing party other than the United States, in the discretion of the court, a reasonable attorney's fee as part of the costs in proceedings to enforce Sections 1977, 1978, 1979, 1980 and 1981 of the revised statutes or Title VI of the Civil Rights Act of 1964.

S. 3197 which would establish procedures for electronic surveillance in the area of foreign intelligence has been the subject o hearings, both open and close by the Senate Subcommittee on the Rights of Americans of the Select Committee on Intelligence Activities.

S. 800 to eliminate three of the technical barriers to consideration on the merits of a judicial action against the federal government, was passed the Senate. The legislation would eliminate the defense of sovereign immunity in federal court actions for specific relief claiming unlawful action by a federal agency or officer or employee.

Secondly, it would eliminate the $10,000 jurisdictional amount in controversy in cases where the jurisdiction of the district court is invoked on the ground that the matter arises under federal law and the suit is against the United States, an agency thereof, or any officer or employee thereof in his official capacity. Finally, S. 800 would remedy certain technical problems concerning the naming of the United States, its agencies or employees as parties defendant and amend the section concerning venue of actions against federal officers and agencies.

S. 729 which will divide the Ninth Circuit has been ordered reported by the Senate Judiciary Committee and has been placed on the Senate calendar.

S. 12, the Judicial Survivor's Annuity Act amendments, passed the Senate on June 22. Among the major changes are automatic adjustments in present and future annuities as judicial salaries are increased, increase of the dollar amount payable to surviving children, a reduction in years of service requirements for vesting of an annuity, an increase of the deduction rate to 4½% of gross earnings, elimination of the 50 years of age requirement for the widow and provision of coverage for widowers, a change in the annuity computation of the average pay from the last five years of service to the highest three years, and a provision for a lump-sum payment by the Congress to the fund to make it actuarially sound. House action is not anticipated until fall.

S. 3553 to define the jurisdiction of the United States courts in suits against foreign states has been ordered reported by the Senate Judiciary Committee.

The House Judiciary Committee favorably reported H.R. 12882 which would bar Civil Service annuity payments to judges and justices of the United States during active service. The rule has been granted for consideration of the bill and it is pending on the House calendar.

H.R. 14521, to clarify the terms of the Speedy Trial Act of 1974, was introduced by Congressman Hutchinson on June 23 and referred to the House Judiciary Committee. The bill would make the exclusions contained in Section 3161(h) applicable to the time limits on defendants in custody under Section 3164.

COMPUTER-AIDED TRANSCRIPTION PROJECT NEARS COMPLETION OF FIRST PHASES

As the first two phases of the Center's project to evaluate computer-aided transcription (C.A.T.) draw to a close, some tentative conclusions have emerged. Technical feasibility has been established, but the type of computer-aided transcription services evaluated by the Center are not economically feasible for federal court reporters under present conditions.

An indication of the economic problem is that none of the reporters who participated in the project continued using computer transcription after Center financial support was stopped. The reason for this is that reporters can obtain transcription services from individuals at less than the computer-aided transcription company's rates per page.

At the beginning of the project, the Center planned to try existing services before studying alternative methods for providing less expensive services. Plans are now proceeding for this latter phase of the project because of the importance of exhaustively exploring every avenue which can lead to the elimination of avoidable transcript delays.

Since the first phase of the project began in January 1975, 107 reporters have submitted sample stenotype notes for computer compatibility analysis. The purpose of this was to determine what percentage of existing federal court reporters could be expected to be able to use computer-aided transcription. Early in the project it was concluded that 50-60% would have a stenotype writing style which would lend itself to computer transcription. However, experience to date has led the Center's Project Director to conclude 30% is a more realistic estimate.

Forty-three reporters were trained to produce transcript via computer. Initially each participant was to be provided an Electronic Shorthand Transcriber for three months. During this period the Center pays the full cost of the first 200 pages of transcript and half the cost of the next 800 pages. When a reporter reaches 1,000 pages, financial support is ended. When the Center discovered reporters were not producing enough transcript during the three months, the Electronic Shorthand Transcribers were left with them for a longer period of time.

The original project consisted of three phases.

In phase A the reporter records notes on a cassette via the Electronic Shorthand Transcriber and mails the cassette to a computer transcription service company. The firm translates the tape, produces a first run transcript, edits the transcript, prints a final copy and returns it to the reporter.

In phase B video display terminals were installed in several reporter's offices. During this phase the reporter edits via the terminal.

Plans are now proceeding for phase C which will test several alternative methods of providing potentially less expensive computer-aided transcription services.

The reader should be cautioned not to infer from these interim findings that all computer-aided transcription services are economically infeasible since the Center has not yet tested every type of service and costs may be substantially reduced by technological changes during the next few years.

SUPREME COURT COMPLETES ONE OF ITS LONGEST TERMS

The Supreme Court on July 6 completed one of its busiest terms in history with 138 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.

Michigan v. Mosley (Dec. 9, 1975)

This case involves a further interpretation of the requirements of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The defendant had been arrested in connection with several robberies. After being advised of his rights in accordance with the *Miranda* warnings, he declined to discuss the robberies and his interrogation ceased. Several hours later, another police officer, again giving the defendant his *Miranda* warnings, questioned the defendant concerning an unrelated homicide. At this time, the defendant made several statements implicating himself in the homicide which were later used as evidence in his trial for the murder. In response to the defendant's petition that this evidence be suppressed, the Court held that the defendant's incriminating statements had been properly admitted. According to the Court, the defendant's right to cut off questioning had been fully respected by his interrogators who had immediately ceased questioning him concerning the robberies when so requested by the defendant, and had undertaken additional and unrelated questioning only after a period of time had elapsed and after fresh *Miranda* warnings had been given.

Mathews (Secretary, HEW) v. Weber (Jan. 14, 1976)

The United States District Court has authority under the Federal Magistrates Act of 1968, 28 U.S.C. §636 (1970), to refer to United States Magistrates cases concerning Social Security benefits. The magistrates are authorized to make an initial review of the closed administrative record, to hear oral argument, and to prepare a recommended decision for the district court on the issue of whether the record contains sufficient evidence to support the prior administrative result under circumstances in which the district court has complete discretion to accept or reject the magistrate's findings and recommendation and to hear the matter *de novo*. The Court rejected the argument that the magistrate in this situation was acting as a special master, and, therefore, Fed. R. Civ. P. 53 is not applicable.

Thermtron Products, Inc. v. Hermansdorfer (Jan. 20, 1976)

The Court held that a United States District Judge exceeded his authority by remanding on grounds not authorized by the controlling statute, 28 U.S.C. §1447(c)(1970), a case which had been properly removed to a federal district court from the state court. The district judge had remanded the case because the court's docket was full and the judge had concluded that the delay in going to trial on the merits would unjustly harm the plaintiff. While 28 U.S.C. §1447(d)(1970) generally bars any appeal from orders of remand, the Court held that subsection 1447(d) must be construed together with subsection 1447(c) and that only orders of remand on the grounds specified in subsection 1447(c) i.e., that removal was improvident and without jurisdiction, are immune from review. The Court further held that mandamus was a proper remedy to compel the district court to hear and adjudicate this action.

Rizzo v. Goode (Jan. 21, 1976)

In a class action brought by citizens against the mayor and police officials of Philadelphia under 42 U.S.C. §1983 (1970) because of "an allegedly pervasive pattern of illegal and unconstitutional mistreatment by police officers" directed against all citizens, and particularly against minority citizens, the District Court required the police department to establish guidelines for the handling of citizen complaints. The Court of Appeals affirmed the district court's choice of equitable relief. The Supreme Court reversed. According to the Court, the District Court's action exceeded the court's authority under section 1983 and was an unwarranted intrusion by the federal judiciary into the discretionary authority of the police department under state and local law to perform its official duties since the court had found no actual violation of any individual's constitutional rights.

United States v. Watson (Jan. 26, 1976)

The Court reaffirmed its position that a warrant is not required by the Fourth Amendment in order to make a valid arrest for a felony, when that arrest is accomplished in accordance with otherwise applicable law and is based upon probable cause.

Buckley v. Valeo (Jan. 30, 1976)

In ruling on the constitutionality of the Federal Election Campaign Act of 1971, as amended in 1974, the Court made the following determinations: (1) that the limitations on campaign contributions by individuals and groups to individual candidates are constitutionally valid because they serve the governmental interest of protecting the integrity of the election process without directly restricting the rights of individual citizens to participate in political discussion; (2) that the ceiling on expenditures by and in behalf of individual candidates is unconstitutional because it directly impinges on the rights of individuals and groups to engage in political debate protected under the First Amendment; (3) that provisions requiring disclosure of contributors and expenditures by candidates are constitutionally valid because they serve the substantial governmental interests of informing the public and protecting the electoral process from corruption; (4) that the dollar checkoff provision of 26 U.S.C. §6096 (Supp. IV 1974) authorizing taxpayers voluntarily to contribute to the Presidential Election Campaign Fund by so indicating on their Federal income tax return is constitutional; (5) that the Act's provisions giving to the Federal Election Commission a number of powers in large part violate the Appointments Clause of the Constitution.

Mathews (Secretary, HEW) v. Eldridge (Feb. 24, 1976)

In a 6-2 decision, the Court held that an evidentiary hearing is not required prior to the termination of Social Security disability benefits, and that the present administrative procedures which provide for a hearing and subsequent judicial review before the termination becomes final fulfill the due process requirements of the Constitution.

Time, Inc. v. Firestone (March 2, 1976)

The rule established in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), which bars media liability for defamation of a public figure without a showing of "actual malice," was held not to apply to a situation where a respondent is defamed by the media with respect to events arising out of a divorce proceeding. The Court held that in that context the respondent was not a "public figure" because she did not occupy a role of special prominence in public affairs nor had events thru her into the forefront of public controversies. I First and Fourteenth Amendment purposes, a pu lic figure is one who occupies a position "of especial prominence in the affairs of society" or is "thrust ... to the forefront of particular public controversies. ..." *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974).

The New York Times rule does not automatically extend to all reports of judicial proceedings, regardless of whether the party plaintiff is a public figure who might be assumed voluntarily to have exposed himself to increased risk of injury from defamatory falsehood. The Court reasoned that simply being involved in litigation did not provide substantial reason for a person to forfeit significantly the degree of protection afforded by the law of defamation.

Imbler v. Pachtman (March 2, 1976)

A state prosecuting attorney who acts within the scope of his duties in initiating and pursuing a criminal prosecution is absolutely immune from a civil suit for damages under 42 U.S.C. §1983 for alleged malicious prosecution. The Court declined to extend the qualified immunity doctrine of *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974) to a prosecuting attorney as a quasi-judicial officer.

Ristaino v. Ross (March 3, 1976)

A black respondent was convicted in a state court of violent crimes against a white security guard. At his trial the judge questioned the veniremen during *voir dire* about general bias bu declined to question them specifically about rac prejudice. The respondent brought a feder habeas corpus action alleging that he was entitled to have the prospective jurors questioned specifically about racial prejudice. The Court held that he was not constitutionally entitled to have question concerning racial bias asked of the prospective jurors in this case.

According to the Court, the circumstances of this case differ significantly from those in *Ham* v. *South Carolina*, 409 U.S. 524 (1973) where the Court held that the respondent had a constitutional right to require the asking of questions directed specifically to racial prejudice when the circumstances strongly suggested the need for specific questioning about racial bias. In *Ham* the defendant was a well-known civil rights activist and his defense was that he had been framed because of his civil rights activities. Unlike the situation in *Ham*, the Court found that this case did not present a significant likelihood that racial prejudice might infect the defendant's trial. Since the mere facts that the defendant was black and his victim was white and that the victim was a security officer were not aggravating racial factors, the *Ham* requirement did not apply here.

Hudgens v. NLRB (March 3, 1976)

Labor union members, while engaged in peaceful picketing in front of their employer's leased store on the premises of a privately owned shopping center, were forced to leave when threatened by an agent of the owner with arrest for criminal trespass.

The Court, citing *Lloyd Corp.* v. *Tanner*, 407 U.S 551 (1972) held that the constitutional guarantee o free expression had no part to play in a case such as this. The pickets here did not have a First Amendment right to enter the private shopping center for the purpose of advertising their strike against their employer. In reaching this conclusion, the opinion of the Court, over strong objection,

expressly overruled the reasoning of the Court in *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968).

Furthermore, the Court found that the rights and liabilities of the parties are dependent exclusively on the National Labor Relations Act, (NLRA) under which it is the National Labor Relations Board's task, subject to judicial review, to resolve conflicts between NLRA §7 rights and private property rights. Thus, the case was remanded so that the NLRB could reconsider the case under the statutory criteria of the NLRA alone.

United States v. Dinitz (March 8, 1976)

Here the Court was faced with a question of whether the Double Jeopardy Clause of the Fifth Amendment barred a retrial of the defendant because his original trial ended in a mistrial granted at his request. Even though the defendant made such a mistrial request only after he had been left "no choice" but to seek a mistrial in light of the judge's expulsion of his attorney, the Court stated that, absent a contention or a showing on record of "bad faith" conduct by the judge or prosecutor, the "manifest necessity standard" of *United States* v. *Perez*, 22 U.S. (9 Wheat.) 579 (1824) (applicable where a mistrial is declared without the defendant's consent) should not be applied to a mistrial motion made by the defendant. The Double Jeopardy Clause did not, according to the Court, bar a retrial in this instance.

McKinney v. Alabama (March 23, 1976)

Petitioner, a book stall operator, was convicted of selling matter which had been judicially found to be obscene. The judicial determination of the obscenity of the material arose from an *in rem* equity proceeding; petitioner had not been made a party to the proceeding nor had he been given notice about the action. At his trial, the petitioner was not allowed to raise the issue of the material's obscenity.

The Court found the Alabama procedures, which precluded the petitioner from litigating the obscenity of the magazine as a defense to his criminal prosecution, to be violative of the First and Fourteenth Amendment.

Paul v. Davis (March 23, 1976)

Respondent brought an action under 42 U.S.C. §1983 against police chiefs who had included his name and photograph on a list of "active shoplifters" which was distributed among local merchants. Respondent had on one occasion been arrested and arraigned for the offense of shoplifting; he had entered a plea of not guilty and the charge had been filed subject to future action at the time the list of shoplifters was circulated by the police department. Shortly after circulation of the list, the action against the respondent was dismissed. In bringing his action against the police departments, respondent alleged that he had been deprived of his due process rights secured under the Fourteenth Amendment and his right to privacy guaranteed by the Constitution.

The Court rejected the respondent's argument that he had been deprived of his "liberty" or "property" guaranteed against state deprivation without due process of law because of the petitioners' defamatory declarations which allegedly had tainted his reputation. The Court distinguished its past decisions, including *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971), (a statute authorizing "posting" of persons to whom alcoholic beverages could not be sold because of their history of excessive drinking held unconstitutional for failure to provide procedural safeguards prior to "posting" of individual's name), as cases involving a clear change in or elimination by state law of an individual's right or status which had been previously recognized by the state. In this case, however, any harm to the respondent's reputation did not deprive him of any "liberty" or "property" recognized under state law nor was his status as previously recognized by state law altered in a significant manner. Thus, regardless of how seriously the petitioners' defamatory statement may have injured respondent's reputation, he was not deprived of any "liberty" or "property" interests protected by the Due Process Clause.

In addition, the Court rejected respondent's contention that his right to privacy had been infringed by the petitioners' publication.

Garner v. United States (March 23, 1976)

The Fifth Amendment privilege against compulsory self-incrimination is not violated when incriminating disclosures on tax returns are introduced in evidence in a criminal prosecution of the taxpayer. At the time of filing, the taxpayer has the right to claim the privilege against specific disclosures sought on the return; therefore, any such disclosures are not compelled incriminations.

Greer v. Spock (March 24, 1976)

Respondents had sought to enter upon the Fort Dix, New Jersey military reservation to campaign for President and Vice President, to distribute literature, and hold a political meeting. They were barred from the post because of regulations banning political demonstrations. Suit was brought claiming denial of First and Fifth Amendment rights. The Supreme Court held that since it was the basic function of a military installation to train soldiers and not to provide a public forum, respondents had no basic right to engage in political activity thereon. Federal military installations are not designed to serve as a place for free public assembly and communication of thoughts by private citizens. Moreover, since the regulations banning speeches did not discriminate among candidates, there was no constitutional violation. Finally however, while a regulation banning all political literature could be applied overbroadly, there was no evidence that such a regulation had been applied improperly here. The Court, over strong dissent, distinguished *Flower* v. *United States*, 407 U.S. 197 (1972), in which it had held that a peaceful leafleteer could not be excluded from the main street of a military installation to which the civilian public had been permitted virtually unrestricted access.

Franks v. Bowman Transportation Co., Inc. (March 24, 1976)

Applicants who are denied employment because of race, after the effective date, and in violation of, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq.*, may be awarded seniority status retroactive to the dates of their denial. The Court stated that an award of retroactive seniority was essential in "making whole" the victims of job discrimination. In a concurring opinion by Justice Powell, in which Justice Rehnquist joined, it was noted that this award of seniority status which determines pension rights, length of vacations, and unemployment benefits, is analogous to backpay, which is specifically authorized by Title VII, in that its retroactive grant "works complete equity by penalizing the wrongdoer economically at the same time that it tends to make whole the one who was wronged."

Geders v. United States (March 30, 1976)

A trial court's order directing a criminal defendant in a federal prosecution not to consult with his attorney during an overnight recess, called while the defendant was on the stand as a witness and shortly before cross-examination was to begin, deprives him of the assistance of counsel in violation of the Sixth Amendment.

Goldberg v. United States (March 30, 1976)

A writing prepared by a government lawyer relating to the subject matter of the testimony of a government witness and which has been signed or otherwise approved by the witness is required by the Jencks Act, 18 U.S.C. §3500, to be produced by the United States in a criminal prosecution. Such writing is not exempt from disclosure on the ground that it is an attorney's work product. The scope of the Jencks Act is not confined to statements given to investigative or law enforcement agents but extends as well to statements by witnesses to government lawyers.

Kelley (Commissioner, Suffolk County Police Dept.) v. Johnson (April 5, 1976)

A county regulation limiting the length of county policemen's hair is not violative of any right guaranteed to policemen by the Fourteenth Amendment. The county had demonstrated a sufficiently rational justification for its regulation as applied to policemen so as to defeat any claim that their "liberty" interest under the Fourteenth Amendment had been violated. The constitutional claims of public employees, who serve in a uniformed police force, based upon an alleged deprivation of liberty need not be treated in the same manner as a similar claim by a member of the general public.

Baxter v. Palmigiano (April 20, 1976)

Reaffirming its decision in *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Court held that prison inmates do not have the right to retained or appointed counsel in disciplinary hearings, and that prison officials have the discretionary power to deny or to allow cross-examination and confrontation of witnesses by the inmate. Further, the Court held that drawing an adverse inference from an inmate's failure to testify at such a hearing was a permissible practice because a disciplinary hearing is not a criminal proceeding to which the Fifth Amendment privilege against self-incrimination applies.

Hills (Secretary, HUD) v. Gautreaux (April 20, 1976)

In a unanimous opinion, the Court held that a court-ordered metropolitan area program to remedy discriminatory public housing practices was not impermissible as a matter of law. The court distinguished its holding in *Milliken v. Bradley*, 418 U.S. 717 (1974) that a court-ordered metropolitan area remedy for school desegregation was unconstitutional, because the order in the housing discrimination case would not consolidate or in any way restructure local governmental units.

Beckwith v. United States (April 21, 1976)

The Court here held that statements made by the petitioner to Internal Revenue agents during a noncustodial interview concerning a criminal investigation were admissible even though the petitioner had not been given the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966) prior to being questioned. The Court stated that while the petitioner's activities were the focus of the agents' investigation, no *Miranda* warnings were required since the petitioner had not been taken into custody or deprived of his freedom in a significant manner.

(See OPINIONS page 6)

(OPINIONS from page 5)

United States v. Miller (April 21, 1976)

Reversing the Fifth Circuit Court of Appeals, the Court upheld the denial of respondent's motion to suppress evidence collected by serving a subpoena *duces tecum* on respondent's bank for deposit slips and copies of checks. The Court stated that such papers were the business records of the bank and not the personal papers of the respondent, and that since they were negotiable instruments and not confidential communications, their disclosure to the governmental authorities by the bank was not prohibited by the Fourth Amendment.

Fisher v. United States (April 21, 1976)

Taxpayers, who were under investigation for possible violation of the income tax laws, turned over to their attorneys certain documents prepared by their accountants. The attorneys then received summonses to produce these records for an Internal Revenue Service investigation. Upon their refusal to comply, enforcement actions were initiated. The Court held that these documents were not privileged in the hands of the attorneys or their clients and ordered them turned over. An attorney's production, pursuant to a lawful summons, of his client's tax records, which had been prepared by the client's accountant, does not violate the Fifth Amendment privilege of the taxpayer against self-incrimination, because the taxpayer, as the person asserting the privilege, has not been compelled to be a witness against himself. Since these taxpayers had transferred the documents to their attorneys for the purpose of obtaining legal assistance in the tax investigation, the documents, if unobtainable by summons from the client, are also unobtainable by summons from the attorney because of the attorney-client privilege. In this case, however, the documents requested in the summons were prepared by the taxpayers' accountants and contained no testimonial declarations by the clients. Since the taxpayer would be compelled to turn over such documents pursuant to a summons, the attorney is obliged to comply with a similar summons.

Hampton v. United States (April 27, 1976)

Relying on its decision in *United States v. Russell*, 411 U.S. 423 (1973), the Court held that a defendant may be convicted for the sale to a government agent of an illegal substance provided to him by a government informant. Here, the defendant acted in concert with Goverment agents in committing the crime, and he admittedly was predisposed to commit the offense. While admitting that he is not entitled to the defense of entrapment because of his predisposition to commit the offense, the defendant urged that his conviction be reversed because the Government's outrageous conduct in supplying him with the contraband denied him due process. The Court, in its plurality opinion supported by three Justices, rejected the defendant's argument, asserting that when the defendant's rights have been violated he will be protected by the defense of entrapment but when the police engage in illegal activity in concert with a defendant beyond the scope of their duties the remedy lies, not in freeing the culpable defendant, but in prosecuting the police for their misconduct.

Estelle v. Williams (May 3, 1976)

The respondent in this case, who was held in custody awaiting trial, requested that the jailer return his civilian clothes for him to wear at his trial. The jailer did not comply with this request and respondent wore jail clothes during his trial. His counsel, while mentioning the clothing during *voir dire*, did not specifically raise the issue with the trial judge. Respondent was convicted and sentenced. He later filed a habeas corpus petition in federal district court which was denied; the Court of Appeals reversed. The Supreme Court over dissent held that although the state could not require the respondent to stand trial wearing prison clothes, since the issue of his clothing was never raised before the trial judge by respondent's counsel, the element of compulsion which would constitute a violation of petitioner's constitutional rights was not present.

Francis v. Henderson (May 3, 1976)

The rule established in *Davis v. United States*, 411 U.S. 233 (1973), that a federal prisoner who had failed to challenge within an appropriate time as provided in Fed. R. Crim. P. 12 the allegedly unconstitutional composition of the grand jury which had indicted him in an action for collateral relief under 28 U.S.C. §2255, applies with equal force to the case where a federal court is asked in a habeas corpus proceeding to overturn a state court conviction for an allegedly unconstitutional grand jury indictment. Hence, the Court chose to require compliance with state procedures as a prerequisite to obtaining federal habeas corpus relief unless the petitioner can show good cause for non-compliance and actual prejudice from the alleged constitutional error.

United States v. Mandujano (May 19, 1976)

A grand jury witness who is called to answer questions concerning criminal activities in which he may have been involved need not be given the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966). Further, when a *Miranda* warning has not been given and the witness makes false statements to the grand jury, these false statements are admissible in subsequent prosecution of the witness for perjury based on the false statements.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. (May 24, 1976)

A Virginia statute prohibiting the advertisement by licensed pharmacists of prescription drug prices was held unconstitutional by the Court as a violation of the First Amendment. The Court allowed the action to be brought by consumers as would-be recipients of the information. In its 7 to 1 opinion, the Court stated that some forms of commercial speech, such as the advertisements involved here, are protected under the First Amendment.

Chandler v. Roudebush (Administrator of Veterans Affairs) (June 1, 1976)

Under Section 717(c) of Title VII of the amended Civil Rights Act of 1964, a federal employee may file a civil action against his employing agency for allegedly discriminatory practices following the utilization of all administrative remedial procedures. Looking at both the statutory language and at the statute's legislative history, the Court unanimously held that a federal employee has the same right to a trial *de novo* as is enjoyed by employees in the private sector and in state and local government service.

Simon (Secretary of the Treasury) v. Eastern Kentucky Welfare Rights Organization (June 1, 1976)

Here, the Court reaffirmed its decisions in *Warth v. Seldin*, 422 U.S. 490 (1975) and *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) on the issue of standing. In this case, several indigents and organizations composed of and designed to represent the interests of indigents brought a class action on behalf of all persons unable to afford hospital services against the Secretary of the Treasury and the Commissioner of Internal Revenue. They alleged that an Internal Revenue policy provided tax incentives to hospitals which did not serve indigents to the extent of their financial ability, and therefore, encouraged hospitals not to serve indigents. The Court held that while the individual indigents had suffered some injury, the respondents had failed to establish that the asserted injury was a consequence of the defendants' actions or that the prospective relief would remove the harm to the respondents. The respondents' action, therefore, should have been dismissed for lack of standing.

Hampton (Chairman, United States Civil Service Commission) v. Mow Sun Wong (June 1, 1976)

In a 5 - 4 decision, the Court held that a Civil Service Commission regulation which barred noncitizens, including lawfully admitted resident aliens, from federal competitive civil service was an unconstitutional violation of due process under the Fifth Amendment.

Mathews (Secretary, HEW) v. Diaz (June 1, 1976)

In a unanimous opinion, the Court held that the regulation which provided that aliens must have been admitted for permanent residence in the United States and have resided in the United States for at least five years in order to qualify for enrollment in the Medicare supplemental insurance program does not deprive appellees of liberty or property in violation of the due process clause of the Fifth Amendment. According to the Court, the issue was not whether discrimination between citizens and aliens is permissible, but whether discrimination within the class of aliens permissible. In holding that such discrimination is permissible, the Court stated that because Congress has broad power in the area of immigration and naturalization and since the Congressional policy at issue here is not unreasonable, it is reluctant to question such a policy decision.

Washington, (Mayor of Washington, D.C.,) v. Davis (June 7, 1976)

The Due Process Clause of the Fifth Amendment, which guarantees equal protection and thus prohibits invidious discrimination by the Government, does not however establish the principle that a law or some other official act is unconstitutional solely because it has a racially disproportionate impact regardless of whether it reflects a racially discriminatory purpose. In this case, the Supreme Court found that the disproportionate impact of a test, utilized as a screening tool in recruiting police officers, did not by itself establish that the test was a discriminatory device forbidden by the Fifth Amendment. Moreover, the Court held that the strict standards applicable in cases alleging discrimination under Title VII of the Civil Rights Act of 1964 are inappropriate in cases arising under the Fifth Amendment.

Nader v. Allegheny Airlines (June 7, 1976)

Immediately prior to his scheduled departure on defendant's airline, the petitioner who had a reserved seat on this particular flight was "bumped," that is, he was informed that he could not be accommodated because the flight had been overbooked and all the seats were filled. The petitoner brought a common law tort action based on the alleged fraudulent misrepresentation by respondent air carrier that he had a confirmed flight reservation. The Supreme Court was faced

with the question of whether the tort action should be stayed pending a reference to the Civil Aeronautics Board for a determination of whether the practice of overbooking was deceptive within the meaning of the Federal Aviation Act, 49 U.S.C. 1301 (1970). Since the common law remedy sought by petitioner was not in irreconcilable conflict with the statutory procedures of the Federal Aviation Act, as the Act was not intended to immunize the carrier from suits, and because the doctrine of "primary jurisdiction" was inapplicable in that no technical question was involved, the Court determined that the tort action should not be stayed.

Radzanower v. Touche Ross and Co. (June 7, 1976)

The Court held that venue in a suit against a national banking association charged with violating the Securities Exchange Act of 1934 is to be governed by the National Bank Act, which provides that an action against a national banking association may be brought only in the federal district court within the district in which such association is established. In construing the conflicting venue provisions of these two laws, the Court held that the National Bank Act, as the earlier enactment but the more specific with respect to banking associations, was not superseded by the Securities Exchange Act which, although subsequently enacted, covers a more generalized subject matter and is not irreconcilably contradictory as to venue.

United States v. MacCollom (June 10, 1976)

In a 5-4 decision the Court reversed the decision of the United States Court of Appeals for the Ninth Circuit which held that indigent federal prisoners had an absolute right to a free trial transcript to aid them in preparing a motion for collateral relief pursuant to 28 U.S.C. §2255. The Court held that 28 U.S.C. §753(f), which authorizes free transcripts upon a judicial certification that the §2255 claim is nonfrivolous and the transcript is necessary to decide the issue, does not constitute a suspension of the writ of habeas corpus. The right to a free transcript is not a necessary concomitant of the writ, which operated until 1944 with no provision at all for free transcripts for indigents. If Congress thus could have limited the writ directly without "suspending" it, Congress may do so indirectly. Further, the Court held that §753(f) does not violate the Due Process Clause of the Fifth Amendment nor infringe upon an indigent prisoner's right to Equal Protection in that indigent prisoners were given means of adequate access to review of their convictions.

Hortonville Joint School District No. 1 v. Hortonville Education Association (June 17, 1976)

The Court upheld the power of school boards to fire illegally striking teachers. The Due Process Clause of the Fourteenth Amendment does not guarantee teachers that the decision to terminate their employment will be made or reviewed by a body other than the school board, that is by an allegedly more impartial decisionmaker. Mere familiarity with the facts of a case gained by an agency, here the school board, in the performance of its statutory role does not by itself disqualify it as a decisionmaker. Moreover, because the school board was the public body accountable to the voters for their employment of teachers, it was the appropriate body to discharge teachers.

Henderson v. Morgan (June 17, 1976)

The Court ruled 7-2 that when a defendant does not receive adequate notice of the elements of the offense to which he pleaded guilty, his plea is involuntary and the judgment of conviction violates due process. Here, respondent pleaded guilty to second degree murder without being apprised that intent to cause death was an element of the crime. To be voluntary a plea must constitute an intelligent admission that he committed the offense, and respondent must receive notice of the true nature of the charge against him.

Doyle v. Ohio (June 17, 1976)

The use for impeachment purposes of a defendant's silence at the time of his arrest and after he has received the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966), violates the Due Process Clause of the Fourteenth Amendment. The Court noted the ambiguous nature of such silence and ruled that it would be fundamentally unfair to allow an arrested person's silence to be used to impeach an explanation that he subsequently gives at trial since he had been impliedly assured by the *Miranda* warnings that his silence would carry no penalty.

Roemer v. Board of Public Works of Maryland (June 21, 1976)

The Supreme Court, applying the standard of *Lemon v. Kurtzman*, 403 U.S. 602, that state aid to religious schools in order to be constitutional must have a secular purpose, a primary effect other than the advancement of religion, and no tendency to entangle the State excessively in church affairs, upheld a Maryland statute allowing aid to colleges formally affiliated with the Roman Catholic Church. The aid was deemed constitutional as the colleges were not "pervasively sectarian" and the aid was in fact extended to the non-secular side, that is only to non-sectarian programs of the institution.

City of Eastlake v. Forest City Enterprises, Inc. (June 21, 1976)

Referendums, which are a means for direct political participation by the people, allowing them, in effect, a veto power over legislative enactments, cannot be characterized as a delegation of power by the legislative body. The people, therefore, may themselves deal with certain matters which might otherwise be assigned to the legislative body. Here, a referendum process when applied to a rezoning ordinance, which allowed the people to approve land use changes passed by the city council, was held not to violate the Due Process Clause of the Fourteenth Amendment.

Serbian Eastern Orthodox Diocese for the U.S.A. and Canada v. Milivojevich (June 21, 1976)

A church leader who was removed from his ecclesiastical position filed suit in state court to reclaim, among other things, his church position. The state court found his removal to have been arbitrary and not in compliance with church law. On a writ of certiorari the Supreme Court reversed this holding. The Court ruled that the state court decision constituted improper judicial interference with the decisions of a hierarchial church and thus interposed its judgment into matters of ecclesiastical cognizance and polity, contravening the First and Fourteenth Amendments. Religious freedom encompasses the "power of [religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

Young v. American Mini Theaters, Inc. (June 24, 1976)

The Supreme Court upheld the City of Detroit's "Anti-Skid Row" zoning ordinance that prohibited the establishment of any of ten kinds of "regulated uses" within 1,000 feet of any two already existing uses. One such use was "adult" theaters, which were defined as being those theaters "characterized by the emphasis on matter depicting specified sexual activities." The Court held that the definition of "adult" theaters, as applied here to two theater operations, was not unduly vague in violation of the Due Process Clause of the Fourteenth Amendment. Moreover, the Court held that the ordinances did not constitute prior restraints in violation of the First Amendment but were valid licensing and zoning requirements.

United States v. Santana (June 24, 1976)

Here the court approved the warrantless arrest of an individual who was standing at the doorway of her home when approached by police. *United States v. Watson*, 423 U.S. 411 (1976). Furthermore, the Court extended the doctrine of "hot pursuit" by additionally holding that when the suspect retreated into her own home, the police had the right to make a warrantless entry to prevent destruction of evidence, and thus to effectuate a proper arrest begun in a public place.

McDonald v. Santa Fe Trail Transportation Co. (June 25, 1976)

The petitioners, both white, were fired for stealing cargo from their employer while a black employee, charged with the same offense, was not. After the District Court dismissed the complaint of the petitioner on the basis that 42 U.S.C. §1981 is inapplicable to claims of racial discrimination against whites, and that the petitioners failed to state a claim under Title VII of the Civil Rights Act of 1964, the Supreme Court granted certiorari. The Court reversed the holding of the lower court. First, the Court held that Title VII is not limited to discrimination against members of any particular race, and hence prohibits racial discrimination in private employment against white persons under the same standards as it proscribes racial discrimination against non-whites. Second, the Court ruled that 42 U.S.C. §1981 prohibits racial discrimination in private employment against white persons as well as against non-whites.

Runyon v. McCrary (June 25, 1976)

Private segregated schools in Virginia had rejected applications of black children on the basis of race. The parents of the children challenged this action as illegal discrimination in violation of 42 U.S.C. §1981 91970). In reviewing the practices of the schools, the Court held that Section 1981 proscribes denial of admission to students on the basis of race by private, commercially operated non-sectarian schools. Section 1981 provides that all persons within the jurisdiction of the United States shall have equal rights to make and enforce contracts, thus outlawing discrimination in these transactions inasmuch as they involve the making and enforcing of private contracts. While individuals are free under the First Amendment to advocate segregation, it does not follow that this principle protects the otherwise unlawful *practice* of racial discrimination. As applied here, section 1981 constitutes no more than a reasonable governmental exercise of regulatory authority in respect of a parent's constitutional right to send his or her children to a private school.

(See OPINIONS page 8)

(OPINIONS from page 7)

Massachusetts Board of Retirement v. Murgia (June 25, 1976)

The Court held that a Massachusetts mandatory retirement statute which provided "that a uniformed state police officer shall be retired . . . upon his attaining age fifty," did not violate the equal protection clause of the Fourteenth Amendment. The law was found to be rationally based on a legitimate classification. While noting the substantial economic and psychological effects of premature and compulsory retirement, the Court found that the statutory provision had as its rational basis the desire to promote a physically fit police force. The Court did not apply the "strict scrutiny" test applicable in some equal protection cases because it found that there is no fundamental right to government employment per se and that the class of policeman over fifty years old was not a suspect class in need of special protection from discriminatory legislation.

Meachum v. Fano (June 25, 1976)

The Fourteenth Amendment Due Process Clause does not entitle a duly convicted state prisoner to a fact-finding hearing when he is transferred from one prison institution to another, the conditions of which are substantially less favorable to him, absent a state law or practice that requires that such transfers be made only on proof of serious misconduct or the commission of specified acts.

Elrod v. Burns (June 28, 1976)

In this case the Supreme Court struck down the system of political patronage as a violation of public employees' rights under the First and Fourteenth Amendments because such a system restricts their political associations and beliefs. Hence, a non-policymaking, non-confidential government employee may not be discharged from a job that he is satisfactorily performing, upon the sole ground of his political beliefs. In other words, wholesale turnover of public employees following a change of administration for political reasons is unconstitutional.

United States v. Agurs (June 24, 1976)

In *Brady* v. *Maryland*, 373 U.S. 83, (1963) the Supreme Court held that a prosecutor must disclose to the defense evidence in his possession that would be "material" to the defense. In this case the Court held, however, that unless a prosecutor's failure to disclose is sufficiently significant so as to result in the denial of the defendant's right to a fair trial, the prosecutor does not violate the constitutional duty of disclosure. The mere possibility that an item of undisclosed information might have aided the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. Here, the undisclosed evidence would not have created "a reasonable doubt of guilt that did not otherwise exist," which the court pronounces as the proper standard of "materiality."

North v. Russell (June 28, 1976)

A defendant who is charged with a misdemeanor for which he is subject to possible imprisonment, is not denied due process when tried before a non-lawyer police court judge when a later trial *de novo* is available as a matter of right in a second court in which the judges are lawyers. Moreover, the state does not abridge equal protection of the laws by providing law-trained judges for some police courts and lay judges for others, depending upon the state constitution's classification of cities according to population, because as long as all within each classified area are treated equally the classification on the basis of area and population is reasonable.

Pasadena City Board of Education v. Spangler (June 28, 1976)

The Supreme Court overruled the decision of a federal district court which had been upheld on appeal to the circuit court, and held that a federal district court had exceeded its authority when it sought to enforce its 1970 school desegregation order by requiring annual readjustment of attendance zones to ensure that there would not be a majority of any minority students enrolled in an public school. Since changes in the racial makeup of the schools after 1970 resulted from natural population shifts and not segregative action on the part of school officials, there was no constitutional duty to make yearly adjustments of attendance zones.

Ludwig v. Massachusetts (June 30, 1976)

The Court held in a 5-4 decision that the two-tier court system which Massachusetts employs for the trial of persons accused of certain crimes was not violative of an accused's Fourteenth Amendment right to a jury trial. This system, according to the Court absolutely guarantees a trial by jury to persons accused of serious crimes, and the manner specified for exercising this right, by seeking a trial *de novo* in the second tier, is fair and not unduly burdensome. Under the Massachusetts two-tier system, a person charged with certain crimes is tried in the first instance in the lower tier without a jury. If convicted, he may appeal to the second tier, and, if convicted after the proceeding on a non-guilty plea, or by admitting sufficient findings of fact, he is entitled to a trial *de novo* by a jury in the second tier.

Nebraska Press Association v. Stuart (June 30, 1976)

The Court unanimously held that a state court's order which severely limited press publication of information about preliminary criminal proceedings in a murder case was an unconstitutional restriction of the First Amendment right to freedom of the press. While agreeing with the trial judge's conclusion that pretrial publicity might impair the defendant's Sixth Amendment right to a fair trial, the Court stated that prior restraints on speech and publication are the "most serious and the least tolerable infringement on First Amendment rights." Further, nothing in the record showed that other measures less drastic than the order in question had been considered for the purpose of ensuring a fair trial. The opinion emphasized that, since the framers of the Constitution, aware of the potential conflict between the First Amendment guarantee of a free press and the Sixth Amendment right to a fair trial, had not determined that one right had priority over the other, the Court declines to "rewrite the Constitution" to give either of these guarantees superiority over the other in situations where they conflict.

Planned Parenthood of Central Missouri v. Danforth (July 1, 1976)

In this case, the Court considered the constitutionality of Missouri's abortion statute which was enacted after the Court's decisions in *Roe* v. *Wade*, 410 U.S. 113 (1973) and *Doe* v. *Bolton*, 410 U.S. 179 (1973). The Court held: (1) the requirement that the woman give her written consent prior to undergoing an abortion is not a restriction of the woman's decision concerning the abortion in violation of the dictates of *Roe* and *Doe*; (2) the requirement of spousal consent prior to an abortion is unconstitutional since if the state cannot regulate abortion during the first trimester when the patient and her doctor make the decision (*Roe* and *Doe*), the state cannot authorize a third party, even if he is the spouse, to prevent an abortion during that period; (3) the blanket requirement that an unmarried minor's parent or guardian must consent to the minor's abortion during the first trimester is unconstitutional for the same reason as that given above, since it allows a third party to interfere with the decision of the physician and the patient to abort, and does so without sufficient justification in violation of the dictates of *Roe* and *Doe*; (4) the prohibition after the first trimester of the most commonly used abortion technique in the country, which is safer for the maternal well-being than even the continuation of pregnancy to normal childbirth, fails as a reasonable regulation for the protection of maternal health and is, therefore, unconstitutional as an arbitrary regulation designed to inhibit the use of abortion after the first trimester.

Gregg v. Georgia (July 2, 1976)

In a plurality opinion supported by three Justices, the Court held that the imposition of a death sentence as the penalty for a murder conviction under Georgia law does not violate the Cruel and Unusual Punishment Clause of the Eighth Amendment since it does not "involve the unnecessary and wanton infliction of pain." The Court deferred to the evaluation by the legislature that capital punishment is a necessary sanction and deterrent in some cases and that its use as a penalty for murder is not grossly disproportionate to the severity of the crime. The Court emphasized that the present Georgia statutes outlined procedures to be followed by the judge or jury imposing the death sentence which focused the judge's or the jury's attention objectively on the particularized nature of the crime and the characteristics of the individual defendant so as to eliminate the arbitrary and capricious nature of the sentencing found unconstitutional by the Court in *Furman* v. *Georgia*, 408 U.S. 238 (1972). Applying its reasoning in *Gregg* to other cases, the Court found that the Florida and Texas death penalty statutes are constitutional and that the North Carolina and Louisiana statutes are unconstitutional violations of the Eighth and Fourteenth Amendments.

Stone v. Powell (July 6, 1976)

In a 6-3 decision, the Court held that where the state has provided a full and fair hearing on the merits of the petitioner's Fourth Amendment claim, the federal court may not grant habeas corpus relief to a state prisoner on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. In weighing the utility of the exclusionary rule with the costs of extending it to collateral review of Fourth Amendment claims, the Court concluded that since the effectiveness of the rule in deterring improper police procedures at this stage of a criminal proceeding was minimal, the societal interests in the conviction and punishment of guilty offenders required that the rule should not be extended to federal habeas corpus petitions from state prisoners.

United States v. Martinez-Fuerte (July 6, 1976)

In a 7-2 decision, the Court held that brief routine stops of automobiles at permanent checkpoints near the United States border are permissible under the Fourth Amendment. Neither probable cause to believe that the vehicle is transporting illegal aliens

nor a warrant authorizing stops within a defined area is required. The Court, in balancing the interests at stake, concluded that the governmental need to operate border checkpoints to control the entrance of illegal aliens into the country outweighed the minor intrusion on travellers who were required only to stop briefly and answer several routine questions.

United States v. Janis (July 6, 1976)

In another decision concerning the exclusionary rule, the Court held that evidence seized by a state criminal law enforcement officer in good faith, but nevertheless unconstitutionally, is admissible in a civil proceeding by or against the federal government. Following reasoning similar to that in *Stone* v. *Powell*, (decided the same day) the Court stated that it was not justified in extending the exclusionary rule to cover this situation because there had been no showing that there was a sufficient likelihood that the rule would deter improper conduct by state police so as to outweigh the societal costs of the failure to prosecute civil offenders imposed by the exclusion.

South Dakota v. Opperman (July 6, 1976)

Police officers had impounded respondent's automobile for multiple violations of parking ordinances. In conducting a routine inventory of the automobile's contents, they discovered contraband material which was later used as evidence to convict the respondent for possession of an illegal substance. The Court, in reversing a lower court order suppressing this evidence, held that the officers' search was not unreasonable and therefore did not violate the Fourth Amendment. The Court reasoned that the police had a legitimate interest in searching the vehicle to protect themselves and to insure the safety of any valuables in the car at the time it was impounded. Coupled with its view that the reasonable expectation of privacy in one's automobile is significantly less than that in one's home or office, the Court determined that the search in this case was reasonable within the strictures of the Fourth Amendment.

CA-7 RULE ON OPINION PUBLISHING CHALLENGED

A motion to test the constitutionality of a rule of the United States Court of Appeals for the Seventh Circuit, limiting the publication of dispositive decisions of the court and prohibiting the citation of unpublished decisions, has been filed in the Supreme Court. It is expected that the Supreme Court will reach the case early next fall.

The issue has been presented to the Court in the form of a motion for leave to file a petition for writs of mandamus and prohibition, which was filed on April 5, 1976, in the case of *Do-Right Auto Sales, et al. v. United States Court of Appeals for the Seventh Circuit*, No. 75-1404. The petitioner asks the Supreme Court to invalidate Rule 28 of the Seventh Circuit rules, which implements the Circuit's policy to "reduce the proliferation of published opinions." This rule is similar in form and objective to those adopted by other circuits at the urging of the Judicial Conference.

Rule 28 of the Seventh Circuit provides that the Court of Appeals may dispose of cases by published opinion or unpublished order at the discretion of a majority of each three-judge panel. It is further provided that a printed and publishable opinion shall be issued only when (1) a new rule of law is established or an existing one altered, (2) an issue of continuing public interest is involved, (3) existing law is questioned or criticized, or (4) a contribution to legal literature can be made through an historical review of the law, analysis of legislative history, or the resolution of a conflict in law.

This rule further provides for cases which do not meet any of the above criteria to be decided by written or oral orders. Such orders are reproduced only in typewritten form and are not permitted to be published. They are prohibited from being cited as precedent either to the courts of the Seventh Circuit in any written or oral submission or by such courts except to support a claim of res judicata, collateral estoppel, or law of the case.

The plaintiff, Do-Right Auto Sales, claims in its motion to the Supreme Court, that this rule's prohibition against the citation of unpublished orders acts as a prior restraint on First Amendment rights of petition and denies due process to parties making submissions to the Court of Appeals. It is also contended that the failure to publish whatever written legal reasoning may be incorporated into such orders, and their unavailability to lawyers and the public except for being filed in the court records of the particular case involved, "undermine[s] the case system by which American lawyers traditionally advocate their clients' causes and by which American jurists, legal scholars and practicing lawyers gauge and develop American law."

Groundbreaking ceremonies for the State Center's headquarters building were held at Williamsburg, Va., May 8, 1976. Pictured above are (l. to r.): Justice Paul C. Reardon (Sup. Jud'l Ct. of Mass.), Chief Justice Lawrence W. I'Anson (Sup. Ct. Va.), Justice James A. Finch, Jr. (Sup. Ct. Mo.) and The Chief Justice of the United States.

The petitioner in this case was an automobile dealer and had originally filed suit in the Northern District of Illinois challenging the constitutionality of the state's action in revoking its dealer's license without a hearing. Following the denial of its motion to convene a three-judge district court to consider the constitutionality of the state statute in question, the petitioner sought mandamus in the Court of Appeals to require the convening of such a court, and cited a prior unpublished order in support of its mandamus petition. The Court of Appeals granted the state's motion to strike this citation and denied the petition. The plaintiff's motion to the Supreme Court followed.

The Advisory Council for Appellate Justice in its 1973 report on "Standards for Publication of Judicial Opinions" recommended a reduction in the writing of appellate opinions, as a means to reduce appellate delay. It also stated that those decisions designated as not for publication should be prohibited from use as citations and precedents because the unpublished opinion should state only the reasons for decision and should omit the factual background and detail which would be essential for the opinion to have value as precedential law.

(See PUBLISHING page 10)

AO FJC Calendar

Aug. 2-3 Judicial Conference Court Administration Committee, Jackson Lake, Wyo.
Aug. 2-6 Workshop for Judges (D.C., 4th & 5th (E) Circuits), Atlanta, Ga.
Aug. 9 Judicial Conference Magistrates Committee, San Francisco, Ca.
Aug. 12-13 In Court Management Training Institute, San Francisco, Ca.
Aug. 14-15 F.J.C. Board Meeting
Aug. 16-20 Orientation Seminar for Probation Officers, Albuquerque, N.M.
Aug. 16-17 Criminal Justice Records Seminar, Denver, Colo.
Aug. 26 Judicial Conference Criminal Rules Committee (with Standing Committee on Rules of Practice and Procedure), Washington, D.C.
Sep. 1-3 In Court Management Training Institute, Toledo, Ohio
Sep. 2-3 Judicial Conference Budget Committee, Washington, D.C.
Sep. 13-17 Management Seminar for Chief Probation Officers, Washington, D.C.
Sep. 13-18 Seminar for Newly Appointed District Judges, Washington, D.C.
Sep. 17-18 Judicial Conference Appellate Rules Committee, Boulder, Colo.
Sep. 19-22 Third Circuit Judicial Conference, Philadelphia, Pa.
Sep. 20-23 Orientation Seminar for Magistrates, San Antonio, Texas
Sep. 23-24 Judicial Conference of the United States, Washington, D.C.

THE THIRD BRANCH

VOL. 8, NO. 7 JULY 1976

THE FEDERAL JUDICIAL CENTER

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

OFFICIAL BUSINESS

PERSONNEL

Nomination

Marion J. Callister, U.S. District Judge, D. Idaho, July 19

Confirmations

J. Waldo Ackerman, U.S. District Judge, S.D. Ill., July 2.
J. Blaine Anderson, U.S. Circuit Judge, 9th Cir., July 2.

Appointments

Maurice B. Cohill, Jr., U.S. District Judge, W.D. Pa., June 1.
Ralph B. Guy, Jr., U.S. District Judge, E.D. Mich., June 7.
James C. Hill, U.S. Circuit Judge, 5th Cir., May 26.
Charles Schwartz, Jr., U.S. District Judge, E.D.La., June 21.

Elevation

James R. Browning, Chief Judge, U.S. Court of Appeals, 9th Cir., June 30.

Death

Orrin G. Judd, U.S. District Judge, E.D. N.Y., July 7

(PUBLISHING from page 9)

The report stated in support of a prohibition on the citing of unpublished decisions:

"A court has power to determ what material can be cited to it well as what material it will cite to support a proposition. The noncitation rule does not preclude the use of reasoning and ideas taken from an unpublished opinion that may happen to be in the possession of counsel. The rule says simply that the opinions in certain cases do not have the status of precedents to influence future determination."

The report concluded therefore that the availability of such a decision as precedent might be misleading because of the absence of such qualifying content and would also tend to frustrate the purpose of non-publication by encouraging judges to include additional material in such decisions.

The American Bar Association's Commission on Standards of Judicial Administration in its tentativ draft of Standards Relating Appellate Courts, sets out two alternatives as regards unpublished opinions. The Commission's Chairman, Justice Louis H. Burke, reports that the Commission has not taken a position on this as yet and in his report he invites comments from the bench and bar. A final draft will be presented to the ABA House of Delegates in February 1977.

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The Third Branch

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Bulletin of the Federal Courts

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PRESIDENT SIGNS THREE-JUDGE COURT BILL

President Ford on August 12 signed S. 537, the bill which would eliminate requirements for special three-judge courts in cases seeking to enjoin enforcement of state or federal laws on the grounds that they are unconstitutional.

However, the measure would insure that three-judge courts would be retained when specifically required by an Act of Congress or in any case involving Congressional reappointment or the reappointment of any statewide legislative body.

In addition, the three-judge court bill insures the right of states to intervene in cases that seek to enjoin state laws on the grounds that they are unconstitutional, thus paralleling the option which the United States has to intervene in cases involving federal statutes.

A key section of the bill states that: "A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specific irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment."

Congressman Robert W. Kastenmeier told the House of Representatives that "The bill in no way affects the right to a three-judge court where otherwise specifically mandated by statute such as in the Civil Rights Act of 1964 or the Voting Rights Act of 1976 . . . ."

He pointed out that since the enactment of the Three-Judge Court Act of 1910 the requirement of a three-judge court has placed an administrative burden on the federal court system. "The scarce judicial manpower of the Nation is inefficiently used by requiring three judges to convene for work that could be performed by one; and very importantly, of course, the limited resources of the Supreme Court are strained by the direct appeal which circumvents the

(See BILL page 2)

Professor Paul A. Freund

PROFESSOR FREUND PRESENTS MAJOR CONSTITUTIONAL ADDRESS

Harvard Law School Professor Paul A. Freund presented a major address entitled "The Constitution: Newtonian or Darwinian?" at the University of Chicago Law School recently as part of the Department of Justice's series of Bicentennial lectures.

Here are key excerpts from Professor Freund's address. **[The full text is available from the Federal Judicial Center Information Service.]**

Every constitution is Newtonian in the sense that it confers power and imposes limitations on power . . . The American Constitution is particularly rich in forces and available counter-forces and leverages, to the end, as Justice Brandeis put it in his great dissent in the *Myers* case, that liberty may be

(See FREUND page 2)

(BILL from page 1)
certiorari process. In response, the Judicial Conference requested this legislation to ease the administrative burden on our courts." Congressman Thomas Railsback in a speech on the floor of the House said that "The actual number of cases heard under sections 2281 and 2282 are not that many in number, 140 in 1975. The number of cases, however, does not indicate the actual extent of the burden caused by these cases resulting in a loss of valuable judge-hours.

"In addition to the drain on judicial resources at the district and circuit levels caused by the three-judge district courts, the drain on the Supreme Court's limited resources is even greater because the appeals in these cases go directly to the Supreme Court rather than to the courts of appeals. These cases are particularly difficult for the Supreme Court because they do not reach the Court by application for writ of certiorari. They reach the Supreme Court by direct appeal."

(FREUND from page 1)
preserved by friction. . . .

The great virtue of the Newtonian model is that correctives are self-generated, not interposed from without. . . .

The nicely poised arrangements, which we may as well call the Madisonian-Newtonian system, rested on the historical premise that political parties did not and would not exist. . . .

It is time to take an overview of the Newtonian aspect of the system, the Constitution seen as a set of forces and available counterforces. . . .

I would draw three lessons from the system, or at least make three general observations about it.

First, it assumes that each branch has a **capacity** to act that is commensurate with its **authority** to act. On the Congressional side, this means a rationalizing of the legislative process to improve its capability to formulate and carry through a legislative program that is coherent in policies and technically proficient. . . . The capacity of the executive branch is threatened by overload. . . . The executive branch, it seems, carries the burdens of a Prime Minister in the parliamentary system without his compensating prerogatives. . . .

Above all, the problem of making capacity commensurate with authority requires a President eager to be educated and possessing the will and imagination to be in turn an educator. . . .

The second lesson or generalization is that the Newtonian constitution can produce too much equilibrium, a state resembling stagnation.

The third lesson is that extraordinary force in one direction is likely to produce extraordinary, and sometimes excessive, force in another. In the early years of the New Deal the Supreme Court, generally over the dissent of its most respected members, engaged in a series of judicial vetoes that reflected an un-judicial approach to the function of judging. The President, on his part, countered with the Court reorganization plan, whose threat to the independence of the judiciary can best be understood as a response in kind to excessive force.

The Newtonian system demands constitutional morality. It would be possible, by excessive use of legal power, to bring the system to a standstill. . . . Without constitutional morality, a nice sense of the fitness of things, the system breaks down.

When we turn to the Darwinian constitution the question is not so much constitutional morality (though that sense can never be irrelevant). The question is rather constitutional vision. . . . The constitutional direction, in political, economic, and humane terms, is toward greater inclusiveness. . . .

The Darwinian constitution stresses process and adaptation. . . . Where, it should be asked, is the responsibility for the Darwinian constitutional evolution? We have too readily assigned it primarily to the Supreme Court. Actually Congress has too often either neglected its opportunities and responsibilities or has acted tentatively, lacking confidence without a judgment of the Court. . . .

When Congress does legislate, it is apt to regard its own constitutional judgment as only provisional, to await as a matter of course a submission to the Supreme Court. . . . [The] recent campaign finance law . . . [is an example].

Given the role of the Court in the Darwinian constitution, how should it be exercised? Justice Holmes used to say that first of all he tried to remember that he was not God. The Fourteenth Amendment, he wrote, does not enact Mr. Herbert Spencer's Social Statics. Neither does it enact, shall we say today, Professor John Rawls' social ecstatics. . . .

The test of fairness, it is argued, is whether any measure involving inequality of treatment does or does not leave the most disadvantaged in society better off than before. . . .

Beyond procedure and participation there is a third dimension of the organic constitution that is in the process of being drawn. To continue the alliteration, it can be described as personhood—that set of interests that we have come to regard as central to our selfhood. . . . The proper scope of autonomy in respect to interests of "personhood" or "selfhood" is perhaps the most vital issue to be faced in the vitalism of the Darwinian constitution.

That constitution, I have said, requires vision, which is to say philosophic awareness. If judges are to continue to lead in this development they require time, and stimulus, and inner resources of mind and spirit. Time—for reflection and self-criticism; and stimulus from reading and discussion. . . .

If I were asked to name the most disappointing decision in recent years I would make what is no doubt a surprising selection: *Oregon v. Mitchell*, the 18-year-old-vote case. . . . My disappointment turns rather on the larger implications of the decision with respect to Congressional authority to carry out the guarantees of the Fourteenth Amendment. . . .

Above all, judges like the rest of us need the inner resources to recognize and entertain this set of basic questions. If we are to apprehend the controlled change and growth implicit in the Constitution as an organism, we must have prepared minds. . . .

QUADRENNIAL SALARY COMMISSION APPOINTED

The Commission on Executive, Legislative and Judicial Salaries has now been constituted following appointments by the President, Vice-President, Speaker of the House and The Chief Justice.

The White House, in a statement issued recently, said that the President has asked the nine members of the Commission, which is charged with recommending salary increases for upper level positions in the three branches of government, to report no later than November of this year so that he may incorporate their recommendations into his budget which he will present to Congress early in the next session.

The Commission will formally come into existence on October 1 of this year. It is authorized by Public Law 90-206 enacted December 16, 1967.

Mr. Peter G. Peterson of New York City, who is chairman of the Board of Lehman Brothers, has been designated Chairman of the Commission.

Here are the other members.

Appointed by the President:

J. Lane Kirkland, of Washington, D.C., Secretary-Treasurer, AFL-CIO.
Norma Pace, of New York, New York, Senior Vice President and Chief Economist, American Paper Institute.

Appointed by the Vice-President:

Joseph F. Meglen, Esquire, of Billings, Montana.
Bernard G. Segal, Esquire, of Philadelphia, Pennsylvania.

Appointed by the Speaker of the House:

Edward H. Foley, Esquire, of Washington, D.C.
Sherman Hazeltine, of Phoenix, Arizona, Chairman, First National Bank of Arizona.

Appointed by The Chief Justice:

Charles T. Duncan, of Washington, D.C., Dean of the School of Law of Howard University.
Chesterfield Smith, Esquire, of Lakeland, Florida.

Chief Judge Clement F. Haynsworth

CHIEF JUDGE HAYNSWORTH ADDRESSES FOURTH CIRCUIT

Chief Judge Haynsworth in his opening remarks to the Fourth Circuit Judicial Conference recently, traced the continuing growth in the Fourth Circuit's caseload and said that Congress should be urged to provide additional judgeships if this circuit is to deal with future workloads.

"The volume of the cases continues to swell. Congress is continually enacting new legislation, some of which imposes substantial additional burdens upon the courts. The courts sometimes add to their own burdens, and people seem more and more inclined to turn to the courts for resolution of problems that once would have been left to other solutions.

"There has been no enlargement of the number of Circuit Judges since 1968. In that year, with 97 circuit judgeships throughout the country, the caseload per judge was 68. In fiscal year 1975, the caseload per judgeship throughout the country had risen from that 68 to 172. In fiscal year 1975, the caseload for the Court of Appeals for the Fourth Circuit was 188 per judgeship. The final figures for fiscal year 1976 are not yet in, but the indicated figure for the Fourth Circuit is 212 cases per judgeship. Clearly, our new filings in fiscal 1976 are more than three times as great per judge as the national average in 1968.

"Some additional district judgeships were created in 1970. In that year, with 401 such judgeships, the average civil and criminal caseload per judgeship throughout the country was 317 cases. In fiscal year 1975, that figure had risen to 402 cases per judgeship, while in the Fourth Circuit it was 509 cases per judgeship. Moreover, the number of protracted trials has grown substantially, and there are some classes of cases, such as the black lung cases, in which there are few, if any, settlements. It is a matter of all or nothing, and each of those cases must be tried."

REPORT: FJC LIBRARY STUDY

The Federal Judicial Center's year-long study of Federal Court Library Facilities has passed the half-way mark, and a great deal of significant data has been amassed.

One of the primary goals of the Study is a comprehensive inventory of all government-owned books in the Judicial Branch. The inventory will attempt to gain for the first time an accurate picture as to numbers and locations of these books.

To complete the inventory, the cooperation of circuit and district judges, U.S. magistrates, bankruptcy judges, and federal public defenders has been solicited. Approximately 50% of those surveyed have already responded and returns continue steadily.

Based on the returns received to date, a total figure for holdings of approximately 2,700,000 volumes has been projected.

The project aims toward recommendations that will produce better legal research capabilities for the federal courts. Among the specific areas of the study are:

- An examination of unnecessary duplication of library holdings.
- Standards for federal court libraries both as to holdings and personnel staffing.
- The role of technology and computerization in the future of legal research.

(See LIBRARY page 4)

• Physical improvements in the library environment, i.e., moveable shelving, adequate lighting and temperature control, and easy accessibility of materials.

FJC Director, Judge Walter Hoffman, anticipates release of a preliminary report in the fall which will be reviewed by members of the Federal Judicial Center staff and the Advisory Committee established to oversee the project. The final report is due by January 1977.

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Public Law 94-284, the "Consumer Product Safety Commission Improvements Act of 1976" contains in Section 10 provisions pertaining to attorneys' and expert witnesses' fees. Under this authority the court, in certain actions brought under the Consumer Product Safety Act, may award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees, including awards of such fees against the United States.

In addition, the Commission has been given authority to initiate, prosecute, defend, and appeal, except to the Supreme Court, through its own legal representatives, unless the Attorney General notifies the Commission that he will represent the Commission. It may also handle its own criminal actions with the concurrence of the Attorney General or through the Attorney General.

Habeas Corpus

On August 5th the Subcommittee on Criminal Justice of the House Committee on the Judiciary held a hearing on the proposed Habeas Corpus and 2255 Rules of Procedure promulgated by the Supreme Court on April 26th, 1976.

Bills Introduced

S.3752, amending the provisions of Title 18, United States Code, relating to the sentencing of defendants convicted of certain offenses.

H.R. 15169, to eliminate the appellate jurisdiction of the Supreme Court with respect to certain abortion cases.

H.R. 15173 and 15174 to amend Chapter 5 of Title 5, United States Code (commonly known as the Administrative Procedure Act), to permit awards of reasonable attorneys' fees and other expenses of public participation in proceedings before federal agencies.

H.R. 14896, to amend Title 18, United States Code, so as to establish certain guidelines for sentencing and to establish a United States Commission on Sentencing was introduced by Congressman Tsongas.

Pending Legislation

On August 6, the Senate passed in amended form the tax reform bill of 1976, H.R. 10612.

Civil Service Annuities and Reemployment Pay Amendments of 1976. H.R. 3650 which will clarify the situation with respect to reemployed annuitants and provide for certain additional transfers of funds to the Civil Service annuity fund passed the Senate on August 9th with an amendment which would make it applicable only to Fiscal Year 1977. The bill will be returned to the House for its concurrence.

Copyright Law. The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee has unanimously approved for full Committee Action, S. 22 for the general revision of the copyright law.

National Court of Appeals. Hearings are now scheduled to be held on S. 2762 a bill to establish the National Court of Appeals. The hearings will be held by the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee.

Electronic Surveillance. The Senate Select Committee on Intelligence Activities has ordered favorably reported with amendments S. 3197 authorizing applications for court orders approving th use of electronic surveillance obtain foreign intelligence information.

The Subcommittee on Juvenile Deliquency of the Senate Judiciary Committee has held hearings on S. 3411 and S. 3654 which would strengthen the federal effort to curb traffic in dangerous drugs.

Antitrust Parens Patriae Act. H.R. 8532, the Antitrust Parens Patriae Act, has passed the Senate with an amendment and been returned to the House. The House Rules Committee has granted a rule providing for agreement to that Senate amendment. This bill has not yet been acted on by the House.

City Withholding Taxes. H.R. 13297 has passed the House and is now pending in the Senate. The bill will provide for the application of city withholding taxes to federal employees who are residents of such city, provided the number of federal employees within the c meets the requirements of the A

Antitrust Civil Process Act. H.R. 13489 to amend the Antitrust Civil Process Act to increase the effectiveness of discovery in civil antitrust investigations has passed the House and is now pending in the Senate.

Financial Disclosure. The Senate has passed and sent to the House S. 49 which will establish a special prosecutor within the Department of Justice and will provide for an Office of Congressional Legal Counsel. In addition it requires financial disclosure on the part of judges and justices and federal employees receiving pay at the GS-16 or higher rate of pay. Such financial reports would be made to the Comptroller General. In the case of Judiciary employees a copy would have to be provided to the Director of the Administrative Office. All of these reports would b public documents and there wc have to be procedures establish for their review to determine the possible existence of conflict of interest or other problems.

The Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee has held several hearings on H.R. 3249 which would require candidates for federal office, Members of Congress and officers and employees of the United States, including judges and justices, to file statements with the Comptroller General with respect to their income and financial transactions. The Subcommittee received testimony from the General Counsel of the Administrative Office of the United States Courts on behalf of the Judiciary as well as from numerous other Government agencies and private citizens. Other bills which are pending covering these same subjects are H.R. 15067 and H.R. 14795. H.R. 14795 provides that the reports of justices and judges and employees in the Judicial Branch would be filed with the Director of the Administrative Office. The Comptroller General would have access to the reports.

Grand Jury Reform. The House Judiciary Committee, Subcommittee on Immigration, Citizenship and International Law has held hearings on H.R. 1277, H.J. Res. 46 and several other related bills concerning reform of the grand jury system.

QUALIFIED APPLICANTS: APPLY NOW FOR JUDICIAL FELLOWSHIPS

The Judicial Fellows Program, now in its fourth year of operation, is already underway with preparations for its fifth year. The program is designed to allow highly talented young professionals the opportunity for creative work and broad first-hand experience in the field of judicial administration.

Interested candidates should seek information from and submit applications to Mark W. Cannon, Administrative Assistant to the Chief Justice, Supreme Court of the United States, Washington, D.C. 20543. Applications should be submitted by November 8, 1976 in order to assure consideration.

CLERKS DIVISION: AN UPDATE REPORT

In May 1975, the Clerks Division was established within the Administrative Office for the primary purpose of enabling the A.O. to address in a disciplined, system-wide manner those common problems restraining the administrative and management effectiveness of the federal courts, thus assuring the optimum use of Judiciary resources.

The mission of the Division is to assist in and coordinate efforts to provide the necessary training, standardization, organizational and procedural innovations and developments, and to act as a liaison to aid the Clerk in all phases of his operation.

With increasing frequency, judges are recognizing the advantage of separating the judicial function from the administration of clerical effort. With the delay in the appropriation of additional judgeships, it is imperative that existing judges be freed from administrative distractions so they can concentrate on the disposition of their assigned caseload.

Gaining the trust and respect of the courts continues to be a paramount goal of the Division. One way to gain this respect is to assist in the development of a meaningful, comprehensive program and problem-solving environment, thereby enabling Clerks to be as knowledgeable as possible regarding court administration. Another goal of the Clerks Division is to inventory skills of clerks and deputy clerks so that their substantive problem areas can be intelligently addressed.

The Division also has begun to help ease the inequities that exist with respect to the allocation of judicial resources to individual courts, as well as to evaluate the adequacy of existing salary scales for members of clerks' offices when compared to the level of their work responsibilities. The Division must gain adequate exposure to procedures in clerks' offices to document effective procedures that exist for dissemination and adoption by other courts while suggesting alternatives to existing, inefficient, procedures.

To date major accomplishments are:

- Acquisition of a competent, objective staff with the necessary attributes to make this Division effective.

- Assisting the Federal Judicial Center's Division of Education and Training in establishing a formal training program, including problem-solving seminars for clerks and deputy clerks.

- Assisting the Federal Judicial Center's Division of Education and Training in conducting two comprehensive, problem-solving oriented training seminars highlighted by group sessions wherein a full, mutual exchange of ideas took place. The major results of the clerks' seminars were the creation of a Central Violations Bureau Advisory Committee, initiation of an updated Clerks Manual, and advocation of small purchase authority for clerks.

- Developing guidelines assessing the advantages and disadvantages of consolidating bankruptcy and magistrate clerical functions under the Clerk of Court.

- Reducing the effort and costs for handling naturalization certificates in the Clerk's office through the use of the "Electraseal" (a modern device for placing seals on official documents) and self-correcting typewriters.

- With the assistance of the Federal Judicial Center, developed the required methodology and data base for a caseload forecasting model which improves the ability of the Administrative Office to assess individual court workload estimates and related manpower requests.

During fiscal year 1976, 22 district courts and three circuit courts were visited. In each instance specific problems were addressed and in most instances procedural improvements resulted.

Judge Constance Baker Motley

FJC HOLDS SEMINAR ON WOMEN IN CRIMINAL JUSTICE

The Federal Judicial Center convened a group of women probation officers in Washington, D.C. on July 21-22 to discuss the impact of the increasing role of the woman offender in the Criminal Justice System.

Sixteen women probation officers selected from courts representing geographical locations throughout the U.S. attended the seminar and discussed two major topics: (1) the woman offender in criminal cases, and (2) the role of the woman probation officer in the Criminal Justice System. James F. Haran, Chief Probation Officer (E.D. N.Y.) and Probation Training Program Coordinator, together with the Center staff, developed the curriculum.

Judge Constance Baker Motley (S.D. N.Y.) addressed the group on the topic, "The Court and the Female Offender." Critical areas such as the following were discussed: Does the court see differences in offenders—male and female? Does female attractiveness result in special consideration by court personnel? Do females get lighter sentences for the same crimes committed by males? Is the court reluctant or unable to deal dispassionately with the female offender? And is the female better off with "biased" justice?

Dr. Dorothea Hubin, Professor of Sociology at Fairleigh Dickinson University, discussed "The Female Offender." These concepts were discussed by Dr. Hubin and the group: Are females different from men in their needs and aspirations? Are their needs more culturally conditioned than psychologically founded? Is the role of the female offender changing? How does a probation officer respond to the many moods of the female offender? Are females more manipulative than dangerous? Should women be jailed or diverted out of the system? And is the female's motivation for crime different from the male's?

The topic, "The Prosecutor and the Female Offender," was discussed by Mary Ellen Abrecht, Assistant U.S. Attorney (Dist. D.C.) and "The Female Offender in Custodial Settings" was discussed and described by Virginia W. McLaughlin, former Warden, Federal Reformatory for Women, Alderson, West Virginia, and Margaret C. Hambrick, Supervisor of Education at Alderson.

Michele A. Smollar, Executive Director of the Women's Prison, New York City, shared her experiences in the "Post-Release Problems of the Female."

NATIONAL GAMBLING COMMISSION REPORT ISSUED

The Commission on the Review of the National Policy toward gambling issued its interim report late last month containing the Commission's preliminary findings and conclusions concerning gambling in America.

The final report will be issued this fall after the Commission has received comments regarding its recommendations and conclusions.

Here are some of the Commission's conclusions:

"More than 60 percent of all adult Americans gamble—both legally and illegally. In 1974, at least $24 billion was wagered—and, at a minimum, $5 billion of that amount was bet with illegal operators. Today, 33 states have some form of legal gambling, and others are considering legalization.

As legal forms of gambling increase, the States are faced with a number of problems: How can State treasuries obtain the largest profits possible from the legalized games? How can the crime and corruption often associated with gambling be controlled? What federal laws now interfere with State gambling policy? Should these laws be changed? How does legalized gambling affect society? What is the impact of legal gambling markets on the illegal games?

To date, most decisions about instituting legal gambling, allocating law enforcement resources for gambling, and establishing revenue priorities have been based on guesswork and emotion rather than fact. No comprehensive, systematic study has ever before been conducted to obtain the kind of information needed to formulate sound gambling policy.

At the same time, however, the Congress realized that while federal antigambling authority had been strengthened, a number of States were considering legalization of some gambling activities, thu creating the potential for conflict between federal and state law. It also recognized the necessity of a thorough survey of federal and state gambling statutes: some laws may be outdated, and others—especially federal and state laws—may conflict.

The act required the Commission to undertake a "comprehensive legal and factual study" of the country's gambling policy as it is manifested in laws and regulations at every level of government. The act mandated, further, that the Commission review the effectiveness of the entire criminal justice system—law enforcement, the courts, and corrections agencies—in implementing these laws. It also gave the Commission the task of studying the experience of foreign governments in dealing with gambling and assessing their relative success or failure in doing so.

Finally, the Commission was asked to propose—as a result of its research and the conclusions drawn from it—appropriate modifi-

cation of federal and state laws and practices. As a federal agency, the Commission paid particular attention to the utilization of federal gambling statutes.

Some recommendations:

• Congress should consider taking action to protect the States' continued authority to determine their own gambling policies.

• Legislation prohibiting interstate gambling or gambling-related activities should be retained.

• Section 18 U.S.C. 1511 should be expanded to cover bribery arising out of other illegal activities as well as gambling.

• To encourage gamblers to use legal betting facilities when faced with the choice of legal and illegal facilities the Commission recommended that Congress consider adopting a policy, employed by many other countries, of exempting gambling winnings from income tax when such winnings are derived from illegal entities. In the alternative, a different rate of taxation could be applied from winnings derived from illegal gambling entities.

• Lottery tickets and advertisements should not be barred from interstate commerce when they are legal both in the state of origin and in the state of destination. Broadcasts of information about legal lotteries should be permitted by licenses in any state where the purchase of the tickets that are the subject of the broadcast is authorized by law.

• The primary authority for gambling enforcement should be transferred to state law enforcement agencies.

• Electronic surveillance in gambling cases should be continued.

• Where it can be shown that the offender is a major gambling figure or is involved in organized crime, a sentence of at least one year in prison together with a fine of $1,000 or more should be given.

BOARD OF INQUIRY REPORTS ON LEWISBURG PROBLEMS

Following eight murders in the United States Penitentiary at Lewisburg, Pennsylvania and a number of serious assaults on inmates, two federal judges expressed their concern about the conditions at this major federal prison.

As a result of the concern of these federal judges, members of the Congress and the Director of the Bureau of Prisons, a six-member Board of Inquiry conducted an in-depth evaluation of the conditions at Lewisburg during the period June 8-15, 1976.

Concerning the killings, the Board of Inquiry found that all but two of them occurred in housing units and that several of them were related to some type of homosexual involvement.

The Board found that the institution has been operating consistently under overcrowded conditions for several years. However, they noted that "The one factor that stands out above all others as a viable explanation for the recent homicides and assaults at the Lewisburg Penitentiary is the number of young, aggressive, immature and criminalistic inmates."

They reported that the problems of the institution center around four common themes: Communication, visibility and availability of top staff, accountability and control, and staff attitudes and morale. The investigation also revealed that the lack of control of contraband in the housing units at the institution is "almost overwhelming."

The Third Branch

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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

SUPREME COURT HISTORICAL SOCIETY MARKS FIRST YEAR

The Supreme Court Historical Society has accomplished a great deal since last May when it was created. The first step was the establishment of an active publications program. *Yearbook 1976* was launched this year to give the general and professional reader, in attractive pictures and text, articles on the history and personalities of the Court since 1789.

The Society has joined with the American Revolution Bicentennial Administration and the U.S. Capitol Historical Society in developing and publishing a colorfully illustrated book on the Magna Carta and its relationship to the Declaration of Independence.

The Supreme Court Historical Society made its appearance on the eve of the Bicentennial and was able to participate in some of the Bicentennial activities of the Supreme Court. The Society is assisting the Court in completing its display of marble busts of the Chief Justices and its collection of oil portraits of former Justices.

The organization is also the co-sponsor of the Court's Bicentennial exhibit, "The Supreme Court and the American People," a colorful and interesting interpretation of the nation's relationship with its highest tribunal as depicted over the years through art, literature and the news media. This exhibit can be viewed on the ground floor of the Supreme Court Building. The Society plans to open an exhibit commemorating the late Justice Hugo L. Black this fall.

As of this report, the Society has over 1,200 members. During the next year the Membership Committee plans to expand their activities to include more personal contact through state and regional membership representatives throughout the country. The Chairman of the Membership Committee is Fred M. Vinson, Jr.

Major objectives now are:

• To acquire and disseminate knowledge to the public about the

(See SOCIETY page 8)

AO FJC Calendar

Sept. 1-3 In Court Management Training Institute, Toledo, Ohio
Sept. 2-3 Judicial Conference Budget Committee, Washington, D.C.
Sept. 13-17 Management Seminar for Chief Probation Officers, Washington, D.C.
Sept. 13-18 Seminar for Newly Appointed District Judges, Washington, D.C.
Sept. 17-18 Judicial Conference Appellate Rules Committee, Boulder, Colo.
Sept. 19-22 Third Circuit Judicial Conference, Philadelphia, Pa.
Sept. 20-23 Orientation Seminar for Magistrates, San Antonio, Texas
Sept. 23-24 Judicial Conference of the United States, Washington, D.C.
Sept. 26-28 Conference of Metropolitan Chief Judges, New Orleans, La.
Sept. 27-29 Seminar for Circuit Court Clerks, Atlanta, Ga.
Sept. 27-Oct. 1 Rational Behavior Therapy Workshop for Probation Officers, Savannah, Ga.
Oct. 13-15 Seminar for Bankruptcy Chief Clerks, St. Louis, Mo.

PERSONNEL

Nominations

Donald G. Brotzman, U.S. District Judge, D.Colo., July 22
Marion J. Callister, U.S. District Judge, D.Idaho, July 19
Richard M. Bilby, U.S. Circuit Judge, 9th Cir., August 3
James A. Anderson, U.S. District Judge, E.&W.D.Wash., August 6
John H. Moore, II, U.S. District Judge, S.D.Fla., August 4
Sidney M. Aronovitz, U.S. District Judge, S.D.Fla., August 4
Harry W. Wellford, U.S. Circuit Judge, 6th Cir., August 4
W. Eugene Davis, U.S. District Judge, W.D.La., August 5
Donald E. Walter, U.S. District Judge, W.D.La., August 5
Herbert F. DeSimone, U.S. District Judge D.R.I., August 5
Vincent L. Broderick, District Judge, S.D. N.Y., Aug. 26

Confirmation

Cecil F. Poole, U.S. District Judge, N.D.Calif., July 23

Appointments

J. Waldo Ackerman, U.S. District Judge, S.D.Ill., July 26
John Powers Crowley, U.S. District Judge, N.D.Ill, July 20
William A. Ingram, U.S. District Judge, N.D.Calif., August 4
Mary Anne Richey, U.S. District Judge, D.Ariz., July 9
William W. Schwarzer, U.S. District Judge, N.D.Calif., August 4
Robert M. Takasugi, U.S. Distr. Judge, C.D.Calif., July 6
Laughlin E. Waters, U.S. District Judge, C.D.Calif., July 7

Elevation

J. Blaine Anderson, U.S. Circuit Judge, 9th Cir., July 23

Death

William J. Lynch, U.S. District Judge, N.D.Ill., August 9
Michael H. Sheridan, U.S. District Judge, M.D. Pa., August 23

(SOCIETY from page 7)

Supreme Court and the entire Judicial Branch of the United States Government;

- To acquire documents, objects of historical significance, objects of personal property and other memorabilia related to the Society's purposes;
- To make the knowledge a materials acquired available to scholars and historians;
- To incorporate these items in continuing displays within the Supreme Court Building or elsewhere.

THE THIRD BRANCH

VOL. 8, NO. 8 AUGUST 1976

THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

VOL. 8, NO. 9 Published by the Administrative Office of the U.S.Courts and the Federal Judicial Center SEPTEMBER 1976

ADMINISTRATIVE OFFICE, FEDERAL JUDICIAL CENTER RELEASE ANNUAL REPORTS

Two reports of national significance were released in late August: The annual reports of the Administrative Office and the Federal Judicial Center, as required by law. Copies of both reports will be available from the FJC Information Service later.

The Administrative Office

The Administrative Office report points out, among other things:

Courts of Appeals. During the 12 months ending June 30, 1976 the appellate courts continued to show the burden of filings, which rose by almost 11 percent over a year ago. Terminations in the courts of appeals surpassed last year's figure but were short 2,000 of the 18,408 cases filed. This resulted in another record year-end pending increase of 16.3 percent, for a total of 14,110 pending appeals cases.

District Courts—Civil Cases. Civil cases filed in the 94 district courts increased by 11.3 percent. While the number of civil cases terminated rose by approximately 5,400 over a year ago, the 140,189 pending cases represented another record increase of 17.1 percent. As of June 30, 1976, there were 351 civil cases pending per judgeship, 52 more than a year ago.

District Courts—Criminal Cases. Criminal cases filed in the district courts declined more than 5 percent during the year. The decrease in criminal case filings resulted in part from a change in case reporting procedures required by the enactment last year of the Speedy

(See A.O. page 5)

The Federal Judicial Center

FJC Director Walter E. Hoffman, in releasing the Center's annual report commented that "The past year has been one of expanded activity . . . which reflects both our attempt to provide greater service to the federal judiciary and an increase in the resources generously provided by the Congress." In expressing appreciation for cooperation from the federal judges and their supporting personnel, the Director added special words of gratitude for the dedicated service of Judge William J. Campbell, who "has continued to contribute so significantly to [the Center's] educational programs."

Reports on some ongoing projects were: a pilot project to determine the value of having a senior staff attorney assist the court in the preliminary stages of civil appeals—a project which also facilitated assessing the effects of the Civil Appeals Management Project in the Second Circuit; an evaluation of computer assisted legal research systems; a project which evaluated a computerized citation verification system (Autocite); and a project to evaluate and stimulate the use of computer-aided transcription by

(See F.J.C. page 6)

Judge Shirley M. Hufstedler

JUDGE HUFSTEDLER LECTURES ON WOMEN AND THE LAW

In a Bicentennial lecture sponsored by the Department of Justice, Judge Shirley M. Hufstedler (CA-9) traced the historical struggle of women to achieve equal rights.

Her address, which was delivered at Hastings Law School in San Francisco, is part of a series sponsored by the Department.

Here are key excerpts from her address. (The full text is available from the Federal Judicial Center Information Service.)

A Bicentennial celebration of women's consent to their government is 144 years premature. A Bicentennial celebration of women's equality in law and in fact cannot be scheduled because the inaugural date has not arrived.

The revolution continues, but hope abides that women's "patient sufferance" need not endure an-

PRESIDENT ORDERS PAY INCREASE FOR MOST FEDERAL WORKERS (See page 7).

other hundred years before they too may proclaim equality as their inalienable right.

The history of this social revolution does not begin with a shot heard 'round the world. The beginning is too inconspicuous to identify, but it is appropriate for this occasion to say that the women's rights movement started in May, 1787, when some of our founding fathers attending the Constitutional Convention, audaciously proposed that the convention adopt a clause permitting women to vote. The proposal was resoundingly defeated.

Until 1830 women's rights pronouncements, other than those heard from a few, were fairly static. But in 1848 Lucretia Mott and Elizabeth Stanton formally initiated the women's rights movement at the Seneca Falls Convention. The women's declaration indicted the tyranny of the laws imposed by American men on American women.

The portrait was accurate. The doors to opportunity were firmly closed against all women. [In education, employment, politics, and in covenants of marriage women's rights were rigidly restricted.]

It would be wrong, however, to assume that this bleak picture was primarily a by-product of enacted law . . . . The family was the basic production unit, and women were the essential producers. Women were required to bear bountiful crops of children, for the surviving children became both the labor force and the armies.

The law did not create these conditions. The conditions created the law. Women were a very powerful force in the cause of abolition. In turn, abolition provided women with their opportunity to learn the elements of politics: . . . [the right of females to pursue any lawful occupation for a livelihood].

If one believes that a human being is inferior, and, acting on that belief, tells the child early enough and often enough about his or her inferiority, the belief will be fulfilled, regardless of the treasures with which he or she was born. If a society implements the same belief by closing off all resources from which he or she could obtain intellectual nourishment, the person's intellectual yield will be as barren as society expected.

It is not surprising that the vast majority of women surrendered to the dominant social dictates.

The inventions of the telephone and the typewriter, for example, had much more to do with women's entry into the white collar labor market than all of the picketing, pamphleteering, and marching combined. Like the Civil War, the First World War pulled women out of their homes and into the labor force.

The suffragettes had hoped that women would vote as a bloc, and that the old walls of sexual discrimination would tumble down as women trumpeted their new power. The anti-suffrage forces were terrified that the suffragettes were right. Both were wrong. [Women voted then as now, according to personal conviction.]

That fact, however, should not blind us to the reality that suffrage was a real achievement, not only for the women, but also for the whole country.

With the outbreak of World War II married women became half of the female work force, and women made up 32 percent of the labor force. With the end of World War II, the social and economic forces were abruptly reversed.

At least by 1955, it should have been evident that these changes [in science and technology] and others over the prior 50 years that had drastically transformed the nation had also profoundly affected the roles that society had earlier assigned to women, to men, and to the family.

Like their long-forgotten predecessors, the abolitionists and suffragettes, these young women with a cause learned how to organize, petition, demonstrate, fight, and go to jail.

An early by-product of the renewed interest in the plight o women was the creation in 1961 of a Presidential Commission on the Status of Women, chaired by Eleanor Roosevelt.

The combination of all of these forces gave further impetus to the women's movement. One response was reactivation of the Equal Rights Amendment to the Federal Constitution, which had languished for more than 50 years. The heart of the Amendment is one simple sentence: "Equality of rights under the law shall not be denied or abridged by the United States or by a state on account of sex."

The fate of the Amendment is still in doubt. What is not in doubt is that the path to adoption is very steep and bristling with nettles.

What happened on the way to women's equality? The enemy is fear, and many of the fears are not irrational.

At least some of the opposition to the Equal Rights Amendment stems from fear of directly confronting the implications of role equality. . . .

Another attack on the Equal Rights Amendment is that it is entirely unnecessary because the Fourteenth Amendment is roomy enough to combat sex discrimination.

The Equal Rights Amendment would not invalidate alimony and child support statutes, except to the extent that those laws invidiously favor one sex over the other.

In the context of the Equal Rights Amendment, equality means that women cannot be treated more or less advantageously than men solely because of their sex.

Marriage, children and home will not disappear with or without the Equal Rights Amendment.

After 200 years of sound and fury accommodation and acrimon about the place of women in our society, only one reason emerges requiring the adoption of the Equal Rights Amendment: The reason is that it is just.

CENTER BEGINS PROJECT TO GENERATE DATA ON IMPACT OF PROPOSED MANDATORY MINIMUM SENTENCING LEGISLATION

In the continuing debate over the relationship between levels of crime and measures of punishment, mandatory minimum sentencing has often been suggested as a viable and needed alternative to current sentencing practices. Several of the states, among them Massachusetts, Connecticut and Missouri, have recently enacted statutes requiring mandatory prison sentences upon conviction of certain offenses. During the Ninety-fourth Congress alone, more than thirty separate bills or resolutions were introduced, all calling for mandatory minimum sentences. The minimum terms proposed vary from that of six months to a mandatory term of life imprisonment. In addition, the proposals would apply to a wide range of offenses and the majority of them would remove the judge's discretion, in certain instances, to sentence a defendant to a suspended or probationary term.

The Research Division of the Judicial Center, with the cooperation of the Probation Division of the Administrative Office, is currently conducting a project that is aimed at generating data on the possible impact of several of the major mandatory minimum sentencing proposals which were pending before this Congress. The project is directed at determining how federal judges are currently sentencing in those cases that would be covered by the proposals. More specifically, it will be concerned with determining the frequency with which judges imposed sentences in fiscal 1976, that would conflict with the mandatory minimum proposals. Fiscal 1976 criminal terminations data of the Administrative Office for all district courts is being used.

The project is being conducted in four stages. The first, which has been completed, involved the identification and analysis of various bills and resolutions which would impose mandatory minimum sentences. As part of the process of identifying and analyzing the various proposals, discussions were held with congressional and Justice Department staff members. Based on those discussions, several of the proposals were identified as having enough support to warrant their being included in the study.

The second state of the project, which has been completed involved the identification of the specific cases in which shorter sentences than those proposed by the mandatory minimums were imposed in fiscal 1976.

The third stage of the project will consist of collection and analysis of the presentence reports of all cases, identified in the second stage of the project, in order to determine whether any of the proposed exceptions to the mandatory minimums would have applied.

Most of the proposals have provisions which would permit the sentencing judge to avoid imposing the mandatory minimum term if the defendant meets certain criteria. Some of the exceptions, for example, relate to the defendant's age or state of mind at the time of the commission of the offense. A determination of whether a particular defendant meets any of the exceptions would be made in a separate sentencing hearing conducted before the court sitting without a jury.

The fourth stage of the project, expected to be completed in the near future, will consist of the final data analysis along with the dissemination of the results of the project.

There are a number of potential consequences which could result from the enactment of mandatory minimum sentencing legislation, not only on federal sentencing practices, but on other aspects of the federal criminal justice system as well. It is expected that the results of this project will provide some empirical insights into the need, desirability and possible impact of such legislation.

Chief Judge Collins J. Seitz

CHIEF JUDGE SEITZ ADDRESSES THIRD CIRCUIT JUDICIAL CONFERENCE

In his remarks on the State of the Judiciary of the Third Circuit, Chief Judge Collins J. Seitz said that the mounting backlog coupled with the impact of the Speedy Trial Act have made it imperative that Congress act immediately to provide additional judges for the Third Circuit.

Here are excerpts from Chief Judge Seitz's address. [The full text is available from the FJC Information Service.]

The annual reports of the six districts within the Third Circuit indicate not only a mounting backlog but a dramatic increase in bankruptcy filings. The increase in requests to review administrative action is equally foreboding.

"Despite the predictably growing backlog, the District Courts have not been given the judge manpower which would permit them to stay current. The situation cries out for help in the District of New Jersey and even more desperately in the Middle District of Pennsylvania . . ."

In that district three judges now are coping with an average caseload of 635 cases each. "The situation in the Middle District is so desparate that a fifth judgeship is needed . . . but Congress apparently considers the prompt judicial processing of our citizens' controversies a low priority."

Turning to the Appellate Court, Judge Seitz stated that, "Within two

(See SEITZ page 4)

(SEITZ from page 3)
years, by conservative estimates, we will reach a filing rate in excess of 2,000 appeals a year." "Thus," he concluded, "the rate of appeals will have doubled within eight years."

He recognized the valuable contribution which the work of the Magistrates, the Bankruptcy Judges, the Clerks of Court and other supporting personnel have made to the total operation of the Courts of the Circuit, and commended the magnificent manner in which the district courts have met the challenge of the Speedy Trial Act.

However, the Chief Judge noted that, "a high price is being paid for the Congressionally imposed emphasis on fixed time periods for the disposition of criminal cases. That price is an ominous delay in trying and deciding civil cases. This can only get worse unless substantial additional judicial and supporting personnel are provided by Congress."

He said that the impact of the Speedy Trial Act will have serious implications in several areas. "By turning the district courts into criminal courts we will be making a stepchild of civil litigation. By limiting the types of cases being processed we will reduce the attractiveness of a district court judgeship to many qualified attorneys because of the narrowing of the subject matters handled."

The Chief Judge pointed out that there was a serious problem because of the insufficient number of court reporters. "The shortage of reporters not only interferes with the productivity of the active judges but also prevents full utilization of the considerable talents of senior district judges and federal magistrates."

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Chief Judge Irving R. Kaufman

CHIEF JUDGE KAUFMAN ADDRESSES CA-2

Chief Judge Irving R. Kaufman this month presented his State of the Circuit Address to the Second Circuit Judicial Conference meeting in Buck Hill Falls, Pennsylvania.

Chief Judge Kaufman identified four areas of public dissatisfaction with the performance of the courts: growing backlogs of unresolved cases or appeals; undue delay in the administration of justice; perceived failures of the criminal justice system; and inadequate legal representation.

The Chief Judge then expanded on just why there is public dissatisfaction in these areas, and outlined how the judiciary of the Second Circuit is responding, stating that, "The courts can demonstrate a solid record of achievement and sensitivity to these criticisms, and point to initiation of new programs or techniques to deal with these troubling problems."

Backlog—Appellate Cases. The Second Circuit has no backlog of appeals. Terminations totaled 1,947 appeals, though the number of appeals docketed increased more than 9%. Pending cases fell to the lowest number since 1972, despite a 44% increase in filings since that year. The productivity per judge is 50% greater than in 1970; the judges are outpacing the growing rate of filings.

Backlog—District Cases. There is a steady trend toward increased per judge productivity. Productivity per district judgeship is 25% above the level of the Circuit a decade ago. More pending cases than can be disposed of in one year has caused some backlog; but the backlog has been reduced by almost 15% from the high point reached in 1972. Regarding the criminal docket, more cases were terminated than were filed in fiscal year 1976; the total of pending criminal cases is 5% lower than the corresponding figure five years ago. On the civil docket, although there has been a growth in filings, terminations have increased 14%, 10,614 cases during fiscal year 1976.

Delay. The median time from notice of appeal to termination, 4.4 months, is the best in the nation and is shorter than the 5-months goal set by the ABA Standards for Appellate Courts. In the District Courts, the judges are extending special efforts to insure that their Speedy Trial Plan is implemented.

The Criminal Justice System. The Circuit's answers to public criticism in this area has been a concerted effort to eliminate disparities in sentencing meted out to similar defendants. The Circuit's Sentencing Committee has made excellent suggestions for sentencing procedures.

Legal Representation. The Circuit's answer to public criticism of the bar and the contention that, "the quality of justice is linked almost inextricably to the size of the fee", is a continuation of the study of the Advisory Committee on admissions to practice. The Court of Appeals has adopted its own rule of admission aimed at improving advocacy on the appellate level, and some of the District Courts have adopted local rules proposed by this Committee. Judge Kaufman called on the members of the legal profession to give as much of their time and talent as possible for public interest legal services, to assist those unable to pay high fees and to improve judicial administration generally by joining efforts of bar associations and local committees. [A full text of the speech is available through the FJC Information Service.]

NATIONAL DOCUMENT COMMISSION FORMED

Congress has created the National Study Commission on Records and Documents of Federal Officials with the objective of studying the problems and questions "with respect to the control, disposition, and preservation of records and documents produced by or on behalf of federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation."

The Commission is composed of 17 members including representatives of Congress, the Executive Office of the President, the Departments of State, Justice and Defense, the Administrator of GSA and the Librarian of Congress.

The Judiciary is represented by Judge J. Edward Lumbard, Jr. (CA-2). The Commission's Chairman is former Attorney General Herbert Brownell.

The Commission recently developed its research plan for the various government officials including members of the Supreme Court and all federal judges, clerks of federal courts and other federal court personnel. Three questions concerning the ownership and control of judges' papers were posed by the Commission:

- Should a member of the judiciary be required to deposit his/her papers in a federal depository or should he/she be given the option of placing them in a non-federal institution, such as a university library or state historical society?
- Would papers of a member of the judiciary be accessioned on an ongoing basis, at set periods, or would this be done only when a judge left the court?
- Would the papers be appraised for permanent preservation in a manner similar to the appraisal of executive agency records?

Judge Lumbard has recently circulated a questionnaire to all federal judges, and other officials in the Judicial Branch to get their views on certain matters. Information from the questionnaire should be of assistance to the Commission in determining what plans the judges may have for the disposition of their papers, the kinds of papers they have on hand, and restrictions they may want to impose on the use of certain records.

SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES HELD AT FJC

The largest seminar yet sponsored for newly appointed district judges was held at the Center during September.

Thirty-five judges gathered in the Tom C. Clark Conference Room on September 13th for five and a half days of concentrated programs.

As in the past, the presentations were made by the federal judges who have significant experience on the bench. These tenured judges outlined not only recommended procedures for disposing of heavy caseloads, but also gave the new judges some advice on how to avoid problems which could arise in their courts.

In addition, special presentations were made by the Director and other officials of the Administrative Office and the Federal Judicial Center, members of the Board of Parole and the Director of the Bureau of Prisons.

One of the highlights of the seminar was the formal dinner at the Supreme Court on Thursday evening. In the absence of The Chief Justice, who was out of the country, Mr. Justice Stevens and Mrs. Stevens hosted the dinner and addressed the group. The Justice expressed an understanding based on personal experience of the problems facing the federal courts these days, but he also had encouraging words for the judges that bespoke the enormous satisfaction to be had from serving in the Judicial Branch.

(A.O. from page 1)

Trial Act which sets overall time limits for the trial and disposition of criminal cases. The overall workload of United States magistrates continued to increase in most areas. The more time-consuming "additional duties" performed by magistrates under authority of Title 28, United States Code, section 636(b) increased by nearly 13 percent, from 67,230 to 75,894. The volume of such proceedings, moreover, was 26 percent above the 60,072 conducted during the fiscal year 1974 and 47 percent above the 51,517 conducted during the fiscal year 1973, the first year of nationwide operation of the magistrates system.

Bankruptcy Administration. In the 12 months ending June 30, 1976, 246,549 persons or businesses filed petitions for relief under the various sections of the Bankruptcy Act. This is the second largest number of filings under the Act, the largest coming in fiscal year 1975 when 254,484 cases were filed. The current year's filings represent a decrease of 7,935 cases or 3.1 percent.

The number of business bankruptcies in 1975 reached an all-time high. The 35,201 business cases represent an increase of 16.8 percent, or 5,071 cases over 1975. It is significant that in the past six years the percent of business cases to total filed has continued to increase. The 14.3 percentage is the greatest proportion of business cases to total filings since 1958. The business cases shown for 1976 include 1,045 involuntary petitions. While the number of non-business cases filed in 1976 declined by 13,006 cases, it still represents the second largest number of cases in this category ever filed.

Federal Probation Service. There was a minor decrease of 1.5 percent in the number of persons received for supervision by the Federal Probation Service during 1976, as criminal filings declined and criminal dispositions remained at the previous year's level. There was a decline of 1.6 percent in new court probationers, and a decline in both parolees (down 20.3 percent) and

mandatory releases (down 19.6 percent) received from federal correctional institutions. Increases of 9.7 percent in persons placed on probation by the United States magistrates and of 49.7 percent in the number of persons placed on deferred prosecution helped to offset the decline in court probation and institutional releases to supervision.

Criminal Justice Act. During the year ending June 30, 1976, operating with a budget of $19,046,000, an estimated 48,000 defendants received appointed counsel under the Criminal Justice Act. Of this total, 28,532 were represented by private panel attorneys and 19,468 by defender organizations.

As in previous years, the rise in cases handled by defender organizations is partially due to the increase in the number of such organizations, a fact which makes comparisons difficult. By the end of June 1976, there were 22 federal public defender offices. Community defender organizations numbered eight in 1976.

Juror Usage. The district courts, while maintaining a good record for the utilization of petit jurors, recorded a slight increase in the national Juror Usage Index (JUI) from a JUI of 19.32 in fiscal year 1975 to the JUI of 19.73 recorded this past year. This means that in the year ending June 30, 1976, approximately 20 jurors were required for conducting each jury trial day. In the same period, 592,594 jurors were called and available for jury service, an increase of 8.4 percent over the 546,627 jurors called in fiscal year 1975. Correspondingly, the number of jury trial days increased by 6.1 percent, from 28,293 jury trial days in fiscal year 1975 to 30,032 days in the 12 months ending June 30, 1976.

(F.J.C. from page 1)

reporters in the federal courts.

Three reports released during the period covered by the report were:

(1) The District Court Studies Report, issued in June, the first such report summarizing overall findings from the five metropolitan courts studied;

(2) A tentative report of the special Section 1983 Committee, which outlines the views of the committee and contains recommended procedures for handling prisoner civil rights cases in the federal courts. [The report is called "tentative" because the Committee will study the procedures and continue to monitor the impact of its recommendations.] and

(3) A report listing and annotating Priorities for the Handling of Litigation in the United States District Courts.

Some other major activities of the Center were:

- Participation in the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, a conference co-sponsored by the Judicial Conference of the United States, the Conference of Chief Justices, and the American Bar Association.
- A continuation of the Conferences of Metropolitan Chief Judges which are meetings of the twenty-four largest federal district courts.
- A continuation of the past practice of hosting the Conference of Circuit Chief Judges after each session of the Judicial Conference of the United States.
- Cosponsoring, with the American Bar Association's Conference of Federal Trial Judges, workshops for the federal district judges. This year's emphasis was on class actions and the new Federal Rules of Civil Procedure.
- In conjunction with the Administrative Office, sponsoring regional conferences for members of district planning groups to assist with the implementation of the Speedy Trial Act. Also, in cooperation with the Administrative Office reports were made for the district courts to assist the judges and the reporters for the courts to identify and evaluate problems the courts might have in meeting standards set out in the Act.
- Working in conjunction with the Judicial Conference Commission on the Operation of the Jury System and the Administrative Office, the Center developed a new system for data gathering which will facilitate the courts' responsibility to assure that federal juries are representative of the communities in which the courts sit. In addition, the Federal Judicial Center has contracted for the development of a computerized jury selection, utilization and payment system which is adaptable to all United States District Courts.
- Planning and sponsoring a Sentencing Institute for the judges of the Sixth and Ninth Circuits. The Center also continued its work with the judges of the Second Circuit to explore ways in which variations in sentencing practices might be reduced.

During the 1976 Fiscal Year the COURTRAN network was established, the first COURTRAN timesharing computer system being established in the United States Courthouse in the District of Columbia. The software for the criminal case application was developed and pilot operation commenced in six district courts. Two additional computer systems to support the expansion of the COURTRAN system were selected and are scheduled to be installed in February 1977.

The Federal Courts Library Study, started in January, will produce recommendations for a model library system for the federal courts, elimination of unnecessary duplication of holdings in circuit, district and in-chambers libraries, and standards for personnel to staff the libraries.

The Division of Continuing Education and Training reached a new high in the number of seminars, conferences, and workshops held for circuit and district judges, bankruptcy judges, magistrates, probation officers and federal public defenders. Also continued were meetings for supporting personnel such as pretrial services officers, clerks and deputy clerks of court, and circuit executives.

Judge Hoffman, in transmitting the report to the Chief Justice and the members of the Judicial Conference, pledged his continuing efforts to support the work of the Judicial Conference and the entire federal judiciary.

BILL INTRODUCED TO ESTABLISH VOTING LISTS AS KEY JUROR SOURCE

The Administrative Office, acting at the direction of the Judicial Conference, has transmitted a draft Bill which would amend the Jury Selection and Service Act of 1968 to establish a presumption that the use of voter registration lists as a source of names to be selected for jury service is consistent with the policies of the Act.

At the present time, §1863 (b)(2) of Title 28 U.S.C. specifies that both grand and petit jurors will be selected at random from voter registration lists or lists of actual voters and that:

> "The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this Title."

The bill which the Administrative Office submitted to Congress would amend this provision to (1) establish the presumption that those jurors selected from voters registration lists or lists of actual voters to affirmatively represent a "fair cross-section of the community" in the district or division and (2) require the district court to find that voter lists do not represent such a fair cross section before it may prescribe any other source or sources of juror names. Here is the text of the Bill:

A BILL

To amend the Jury Selection and Service Act of 1968, as amended, to establish a presumption that the use of voter registration lists as the source of juror names is consistent with the policies of community cross-sectionality and nondiscrimination in the selection of Federal juries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1863(b)(2) of title 28, United States Code, is amended to read as follows:

"(b) Among other things, such plan shall—

(2) specify that the names of prospective jurors shall be selected from the voter registration lists or lists of actual voters of the political subdivisions within the district or division. There is a presumption that jurors so selected represent a fair cross section of the community in the district or division wherein the court convenes. The plan may prescribe some other sources of names in addition to voter lists where the court finds that voter lists do not represent a fair cross section of the community."

MANAGEMENT REVIEW COMPLETES FIRST YEAR

The Division of Management Review of the Administrative Office, established by the Director in May 1975, has completed its first full year of operation. It is now staffed by an experienced nucleus of attorneys, auditor-accountants and clerical employees. The new Division plans to accelerate reviewing court offices beginning in the fall.

Although the Division has devoted most of its time during the first year to organizational activities and recruiting and training personnel, it has completed reviewing operations in the nine district courts located in five circuits. Formal reports on five district courts have been submitted to the judges of the courts examined and to the Judicial Councils of the respective circuits.

Some of the principal matters reviewed by the Division are these:

- Audit of all financial records.
- Compliance with statutory requirements, rules and Judicial Conference resolutions in the operation of court offices.
- Adequacy of internal management controls.
- Adequacy of supporting services provided to the courts by the various divisions in the Administrative Office.

The recommendations of the Division are designed to improve the efficiency of operations and identify changes needed to bring about greater effectiveness. Upon the request of the court, special attention is given to particular phases of court operations that present unusual problems.

MORE FEDERAL COURTS USING SIX MEMBER JURIES

According to the General Counsel of the Administrative Office of the United States Courts, 82 out of the 94 federal district courts have now changed their local rules to allow the use of six member juries in civil cases.

The increase is attributed, in part, to the decision of the Supreme Court upholding the use of six member juries in civil cases as constitutional. [*Colgrove v. Battin*, 413 U.S. 149 (1973).]

COMMITTEE ON ADMISSION STANDARDS MEETS

The Chief Justice this month announced the formation of a 24-member committee to study and report on proposed standards for admission to practice in the federal courts.

The committee held its initial meeting September 22nd at the call of the Chairman, Chief Judge Edward J. Devitt (Dist. Minn.). This meeting was devoted to general discussions relating to methodology to be adopted in the study, and the appointment of subcommittees to carry out specific responsibilities. It was agreed that the views of organizations such as the American Bar Association, the Federal Bar Association and the National Bar Association would be invited.

Chief Judge Devitt, in his opening statement to the committee, said that the mission of the committee is to "get the facts, weigh the evidence and make a judgment as to the best practical way to improve the level of advocacy," in the federal courts.

The next meeting of the committee will be held December 9th and 10th in San Antonio, Texas.

LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

JUDICIAL SALARIES

On September 29th the President ordered cost-of-living salary increases for most federal workers. The increases average 4.83 percent and will be effective as of October 1 (or the first pay period thereafter).

The increase will not apply to the salaries of federal judges, however, since Congress acted to freeze federal judicial as well as congressional and executive salaries for those political appointees now earning $37,800 or more.

FUTURE SUMMARY

Because of the extremely large number of actions which have been taken, both in the Senate and the House of Representatives, we have not attempted to describe in detail any of the bills in this issue. In the next issue of *The Third Branch*, we will be able to provide a wrap-up of all the Congressional action which has been completed in the Second Session of the 94th Congress.

AO and FJC Calendar

Sept. 22 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, Washington, D.C.
Sept. 27-Oct. 1 Rational Behavior Therapy Workshop for Probation Officers, Savannah, Ga.
Oct. 13-15 Seminar for Bankruptcy Chief Clerks, St. Louis, Mo.
Oct. 18-20 Advanced Seminar for Assistant Public Defenders, San Antonio, Texas
Oct. 22-23 Workshop for District Court Judges, Phoenix, Ariz.
Oct. 27-29 Seminar for Federal Public Defenders' Investigators, Washington, D.C.
Oct. 28-29 In Court Management Training Institute, Portland, Ore.
Oct. 28-30 Conference for Federal Appellate Judges, Phoenix, Ariz.
Nov. 3-5 In Court Management Training Institute, Memphis, Tenn.
Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.
Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.
Nov. 15-19 Advanced Seminar for Probation Officers, Louisville, Ky.
Nov. 17-19 Seminar for Bankruptcy Judges, San Antonio, Texas
Nov. 29-Dec. 1 Seminar for Circuit Staff Attorneys, Washington, D.C.

PERSONNEL

Nominations

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Aug. 26
Howard G. Munson, U.S. District Judge, N.D.N.Y., Aug. 26

Confirmations

John T. Copenhaver, Jr., U.S. District Judge, S.D.W.Va., Sept. 1
Glen M. Williams, U.S. District Judge, W.D.Va., Sept. 17
Sydney M. Aronovitz, U.S. District Judge, S.D.Fla., Sept. 17
W. Eugene Davis, U.S. District Judge, W.D.La., Sept. 2

Appointments

Marion J. Callister, U.S. District Judge, D.Ida., Sept. 2

Elevations

William J. Nealon, Jr., Chief Judge, U.S. District Court, M.D.Pa., Aug. 23
Fred M. Winner, Chief Judge, U.S. District Court, D.Colo., Sept. 1
Kenneth K. Hall, U.S. Circuit Judge, 4th Cir., Sept. 1
Peter T. Fay, U.S. Circuit Judge, 5th Cir., Sept. 17

Deaths

Omer Poos, U.S. District Judge, S.D.Ill., Aug. 11
C. Nils Tavares, U.S. District Judge, D.Hawaii, Aug. 3
Wallace S. Gourley, U.S. District Judge, W.D. Penn., Sept. 23

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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PRESIDENT SIGNS JUDICIAL SURVIVORS ANNUITIES BILL

On October 19 President Ford signed the Judicial Survivors Annuity bill which, in effect, completely overhauls the present system.

The provisions of the bill apply to all judges and justices in the federal judicial system.

Here are the key benefits included in the bill:

- The existing program is fully incorporated into a completely restructured statute conferring improved benefits and clarifying existing benefits. All improvements are retroactively conferred upon existing annuitants and all "vested" rights now held by participating judges are preserved.
- The existing program's "fund deficiency"—estimated to be $8.5 million in September of 1975—will be eliminated by a single deposit of an appropriate amount from the general treasury.
- All "matching funds" for the new program are expressly authorized by a subsection of the statute.
- All annuities payable to dependent children are extended beyond age 18 to age 22 if the children are full-time students.
- All widowers are as eligible for annuities as widows, thus opening the program to women judges.
- The period of marriage required as a condition precedent to eligibility for an annuity is reduced from two years to one year.
- All widows and widowers are eligible for an annuity without regard to their ages or the existence of dependent children.
- The minimum required period of contribution is reduced from five years to eighteen months.
- Requirements governing deposits for prior service are changed enabling a judge to qualify his dependents for immediate coverage by the payment of one installment covering his last eighteen months of prior service.
- Annuity amounts for dependent children are increased fourfold, to the level now paid to dependent children under the Civil Service Retirement program.
- All annuities to widows and widowers are based upon a new "average annual salary" factor—the "high three years" of earnings rather than the "last five years" of earnings.
- The number of years of service which would qualify as "creditable" and thus be used to compute benefits—is increased from 30 to 32, the same number of years permitted for credit under the Civil Service program.
- Retroactive "cost-of-living" increases will be paid to all existing widows to compensate for decreases in purchasing power since the commencement of their annuities.
- Prospective "cost-of-living"

(See ANNUITIES page 2)

POUND CONFERENCE TASK FORCE RELEASES RECOMMENDATIONS

The seven-member Task Force appointed to distill suggestions made at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice recently submitted to the ABA Board of Governors a comprehensive report on the Conference.

The meeting, held last April, was jointly sponsored by the American Bar Association, the Conference of Chief Justices and the Judicial Conference of the United States.

The conferees were asked to make suggestions for long-range planning in the judicial administration area, not only to better the delivery of justice in this country, but also to assure that the courts are able to cope with the problems which might surface in the future, especially those problems exacerbated by consistently growing caseloads.

The report was written to memorialize the discussions and to assure that those concepts considered meritorious would be referred to the organizations best able to further evaluate and, if deemed appropriate, implement them. At the outset it is made clear that specific proposals included in the report are meant to cover both civil and criminal cases and state and federal courts.

Some proposals which are included in the report are:

(See CONFERENCE page 2)

(ANNUITIES from page 1)
increases will also be conferred upon those same existing widows until their deaths.

• Prospective "cost-of-living" increases will also be conferred upon all widows and widowers whose annuities would commence after the date of enactment.

The provisions of the bill will become effective on January 1, 1977.

(CONFERENCE from page 1)

• That the ABA stimulate research and experimentation designed to develop criteria to identify disputes most likely to profit from fact-finding and other alternative mechanisms of dispute processing.

• That the Conference of Chief Justices consider whether decriminalization of victimless crimes should be referred to state agencies for study.

• That a common effort be made to provide solutions to the problems of abuses in the use of pretrial

(See CONFERENCE page 7)

CA-3 NAMES SENIOR STAFF ATTORNEY

Chief Judge Collins J. Seitz announced the appointment of Louise D. Jacobs as the Senior Staff Attorney for the Third Circuit. In this new career position, she will supervise a group of staff attorneys handling some aspects of pro se litigation as well as developing programs to provide additional legal assistance to the courts.

Mrs. Jacobs has been the Court Administrator for a New Jersey Superior Court in which she assisted the judge in that court in administering a thirty-judge trial court with 70 municipal courts of lesser jurisdiction. She is a graduate of the Institute for Court Management and holds a J.D. from Seton Hall Law School.

JUDICIAL TRAVEL ALLOWANCES INCREASED

The Director of the A.O. authorized, effective October 4, 1976, an increase of mileage allowances for privately-owned automobile travel from 15¢ to 15½¢ per mile.

Such travel by Circuit and District Judges within the boundaries of their respective circuit or district was authorized generally and shall not be subject to any restrictions. Reimbursement of travel by privately-owned automobile outside a judge's Circuit or District shall be limited to the constructive cost of first-class air travel including the per diem or subsistence expenses that would have been allowable and the usual transportation service to and from airline terminals.

Payments on a mileage basis would not be restricted if common mileage standards are inadequate or if travel by common mileage would seriously interfere with the performance of official business.

For all officers and employees of the Judiciary except justices and judges an increase in their per diem allowances from $33 to $35 per day was authorized with the option of claiming actual expenses of subsistence within specific dollar limitations at certain designated high-rate geographic areas. (There were no changes in subsistence allowances for judges since they are currently being reimbursed at the maximum rate authorized by law.)

The maximum actual daily expense allowance for official travel in Alaska, Hawaii, Puerto Rico, the Canal Zone, and U.S. possessions shall be the per diem rate prescribed for the location plus $21.

For travel of 24 hours or less when a night's lodging is not required, the per diem allowance would be $16. No claims for subsistence will be allowed when the travel period is ten hours or less during the same calendar day except when the travel period is 6 hours or more and begins before 6:00 a.m. or terminates after 8:00 p.m.

Officers and employees traveling on official business to a locality designated below as a high-rate geographic area have the option of claiming actual and necessary expenses of subsistence not to exceed the maximum daily allowance authorized for each area in lieu of the per diem allowance of $35. Here are the high-rate localities: Boston ($49), Chicago ($43), Los Angeles ($40), Newark ($42), New York ($50), Philadelphia ($46), San Francisco and Oakland ($41), and Washington, D.C. ($50).

With respect to travel by probation officers, the Director of the A.O. determined that the use of their privately-owned automobiles in the performance of official duties is advantageous to the Government and, therefore, their claims on a mileage basis shall not be restricted.

LIBRARY STUDY NEARING COMPLETION

Raymond M. Taylor, Project Director for the Federal Judicial Center Library Study, reports that several aspects of the project are now completed. The balance of the work will be finished soon and a comprehensive report will be submitted by next January.

In making his annual report to the Judicial Conference, Judge Walter E. Hoffman, Federal Judicial Center Director, made specific reference to the study and expressed particular appreciation for the cooperation of the judges and their supporting personnel in completing book inventory forms. Almost 80% of the inventories have now been received.

The reports on the inventories are being computerized with numbers of holdings to be reported on the basis of district-by-district, circuit-by-circuit, building-by-building and judge-by-judge.

It is estimated approximately three million books are in the federal courts' libraries.

SPEEDY TRIAL REPORT RELEASED

District Plans Adopted

Nineteen federal district courts have adopted plans that will place into effect immediately the final time limitations which are required under the Speedy Trial Act to be reached by July 1, 1979, according to a September 30 report of the Director of the Administrative Office to Congress on the implementation of Title I and Title II of the Speedy Trial Act of 1974.

Of the 19 courts opting for the most stringent time limits at this time, six have large caseloads.

An additional 25 districts have adopted plans which provide for either shorter time limits during the transitional period than those required by the Act, or for acceleration of the date on which the required 1979 time limits become effective.

The remaining 50 districts have adopted plans allowing for the full time intervals permitted by the Act for the transitional period.

The Act required that each district submit a Speedy Trial plan to its Circuit Council for approval and all district plans became effective as of July 1, 1976.

Time Limits

The final time limits required to be in effect by July 1, 1979 would assure that a criminal defendant be indicted within 30 days of arrest, arraigned within 10 days of indictment, and tried within 60 days following arraignment.

The computation of these time intervals is subject to certain periods of delay that may be excluded. These exclusions are set out in the Act. [See Title 18, U.S.C. 3161(h)].

To achieve this final objective, the Act provides for a three-year phasing-in period during which less demanding time intervals are permitted.

During the first year, beginning July 1, 1976, each court must provide for the disposition of criminal cases on a schedule which will not exceed 60 days from arrest to indictment, 10 days from indictment to arraignment, and 180 days from arraignment to trial.

During the second year, beginning July 1, 1977, the time limits tighten to 45 days from arrest to indictment and 120 days from arraignment to trial.

Beginning July 1, 1978, the third year of the phasing-in period will require that the defendant be indicted within 35 days of arrest and tried within 80 days of arraignment.

The narrow 10-day period from indictment to arraignment which remains constant during the transitional period and in the final time limits has been the source of logistical problems for a number of districts.

Other immediate effects noted in the report are an increase in grand jury sessions and a greater reliance upon the U.S. Magistrates to handle particular responsibilities in criminal cases.

Though the report points out that it is too early to make firm recommendations, the Director of the Administrative Office has indicated urgent matters requiring prompt congressional action. Among these are:

- The authorization of the additional judgeship positions for the U.S. District Courts recommended by the Judicial Conference of the United States;
- Passage of the bill which would make the excludable time provisions in Section 3161(h) of the Speedy Trial Act applicable to the special "interim" time limits for defendants in custody;
- The enactment into law of the amendments contained in S.539 relative to the Jury Selection and Service Act.

Congress has acted to expand and clarify the duties of U.S. Magistrates through passage of S.1283 which was signed October 21 by the President.

In summarizing Part One of the report, the Director of the Administrative Office points out that, "Since the statutorily imposed procedural time limits did not become effective until July 1, 1976, it is not possible to report on their impact on the operations of the District Courts. However, the judiciary is taking, and will continue to take, all steps necessary to assure a speedy trial for every defendant charged with crime in a United States district court."

SCIENCE COURT DISCUSSION HELD

More than 250 scientists, engineers, government officials, businessmen and lawyers gathered for a two-day colloquium on the proposed "Science Court" September 20-21 in Leesburg, Va.

According to proponents, the Science Court would be an impartial quasi-judicial body which could, at the request of policy-makers at various levels, be called upon to weigh all the scientific facts available regarding a prominent controversy.

Examples of the type of issues that might be placed before the Science Court for a sifting of conflicting data and opinions would be the controversies surrounding nuclear reaction safety, the dangers of pesticides and food additives, and the impact of fluorocarbons on the earth's ozone layer.

Opponents of the proposed "Court" see it as just another governmental advisory body with potentials for additional delay and a stifling of creative research.

Among the notable figures in attendance were Secretary of Commerce Elliot L. Richardson, Dr. H. Guyford Stever, Science Advisor to President Ford, and Dr. Margaret Mead, noted anthropologist and past president of the American Association for the Advancement of Science.

The program was led by Dr. Arthur Kantrowitz, Chairman of Avco Everett Research Laboratory, who has been a strong advocate of the Science Court.

(See related story on page 7)

HABEAS CORPUS RULES CHANGED

On April 26, 1976 the Supreme Court transmitted to Congress rules and forms governing proceedings under §§2254 and 2255 of Title 28.

By P.L. 94-349, enacted on July 8, 1976, the Congress provided that these rules governing proceedings under §§2254 and 2255 should not take effect until 30 days after the adjournment sine die of the 94th Congress, or until and to the extent approved by act of Congress, whichever date was earlier.

In August and September of this year, the House Judiciary Committee held hearings on the merits of the proposed rules for §§2254 and 2255 proceedings. As a result of these hearings the Congress made several amendments in the proposed rules.

These amendments were enacted into law by P.L. 94-426, which was signed by President Ford on September 28, 1976. This act amending the habeas corpus rules provides that the rules are to take effect as amended with respect to petitions under §2254 and motions under §2255 of Title 28 that are filed on or after February 1, 1977.

As amended, the rules promulgated to govern the procedure in United States district courts on application under 28 U.S.C. §2254 apply to petitions filed by a person in custody pursuant to a judgment of a state court for a determination that such custody is in violation of the Constitution, laws, or treaties of the United States.

A person in custody pursuant to a judgment of either a state or federal court, who makes application for a determination that custody to which he may be subject in the future under the judgment of a state court will be in violation of the Constitution, laws, or treaties of the United States, is also entitled to petition for relief.

The rules governing §2255 proceedings apply to motions filed by a person in custody pursuant to a judgment of a federal district court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or was otherwise subject to collateral attack.

In addition, a person in custody pursuant to a judgment of a state or other federal court and subject to future custody under a judgment of the district court may file a motion in that district court for determination that such future custody will be in violation of the Constitution and laws of the United States, or otherwise is illegal.

Both the rules governing §2254 and §2255 proceedings detail the procedures by which such petitions or motions shall be filed with the clerks of the federal district courts and how these petitions or motions will be processed.

In the near future these rules as amended will be distributed to the bench and bar as requested by the House Judiciary Committee. At the same time that these rules are distributed to the field the forms to be used in conjunction therewith will also be distributed.

In addition to the amendments made to the so-called habeas corpus rules by P.L. 94-426, other amendments were made to these rules as part of a piece of legislation that was passed at the end of the 94th Congress dealing with the jurisdiction of federal magistrates.

Senate bill 1283 amends rule 8(b) of both the §2254 and §2255 rules by providing that the court is authorized to delegate responsibility to federal magistrates to conduct evidentiary hearings in §2254 and §2255 proceedings.

The court may also require the magistrate to make proposed findings of fact and recommendations as to the disposition of the §2254 petitions and §2255 motions. Senate bill 1283 makes no change in the effective date of the §2254 and §2255 rules which remains February 1, 1977.

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LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Judicial Survivors Annuities Amendments Pass. The Judicial Survivor's Annuity Bill, S. 12, achieved final passage on October 1st, with a House amendment providing that a judge may revoke his or her election to participate in that program within 180 days after the effective date of the law, upon the receipt of a writing filed with the Director of the Administrative Office. S. 12 will become effective on the first day of the third month following the month in which it was enacted; therefore the effective date will be January 1, 1977.
(See story pg. 1.)

Territorial Judges. S. 14, a bill which would provide for a cost-of-living adjustment factor for the salaries of retired territorial judges, also passed and was signed into law on October 11 (P.L. 94-470).

Judicial Review of Agency Action. S. 800, with respect to procedure for judicial review of certain administrative agency actions has passed both houses of the Congress and is awaiting Presidential action. As passed, the bill would eliminate the defense of sovereign immunity in federal court actions for a specific relief in which unlawful action by a federal agency or officer is unlawful. Secondly, it would abolish the $10,000 jurisdictional amount where the jurisdiction is invoked on the ground that the matter arises under federal law and the suit is against the United States, an agency thereof, or any officer or employee acting in his official capacity. Thirdly, the bill would remedy certain technical problems concerning the naming of the United States and its agencies or employees as parties defendant and amend the section concerning venue of actions against federal officers and agencies. The bill was referred to the Judicial Conference for comment and it concluded that it would have no substantial impact on the caseload in the federal courts.

Use of Unsworn Declarations. H.R. 15531 amends the various statutes providing for oaths and affirmations to permit the use of unsworn declarations as evidence in federal proceedings under penalty of perjury. The various perjury statutes are also amended to provide for the imposition of the penalty.

Jurisdiction of United States Magistrates. The bill which incorporates in large part the proposals of the Judicial Conference relating to clarification and extension of the jurisdiction of the United States Magistrates was passed in the closing days of the 94th Congress and is awaiting Presidential action. Among the additional duties which can be assigned to a magistrate are (1) any pretrial matter may be assigned to a magistrate to be heard and determined by him. In addition, the magistrate shall have authority not only to hear the pretrial matter, but also to enter an order determining the issue raised by the motion or proceedings.

The magistrate's determination is intended to be final unless a judge of the court exercises his authority to reconsider the determination. Furthermore, it is made clear that the judge of the court has the ultimate prerogative to review and reconsider any motion or matter where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(2) Dispositive motions are excepted from the magistrate's power under subparagraph (1) to hear and determine pretrial matters. These would be a motion for injunctive relief, a motion for judgment on the pleadings, summary judgment, dismissal or quashing of an indictment by the defendant, motion to suppress evidence in a criminal case, motion to dismiss for failure to state a claim upon which relief can be granted, and a motion to involuntarily dismiss an action.

However, the magistrate would be able to hear such motions and submit proposed findings and recommendations to a judge for ultimate disposition. Matters relating to habeas corpus and 2255 proceedings may also be referred to a magistrate and the proposed findings and his recommendations would be presented to the judge for disposition. Copies of proposed findings and recommendations must be mailed to all parties who would have time to make their objections. These would be reviewed and acted upon by the district judge.

(3) The magistrate may be appointed as a special master under rule 53 with respect to the matters of dispositive motions in which the magistrate would make the findings and recommendations. The judge of the court does make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made. This does not, according to the Committees and the managers on the House floor, require that the judge actually conduct a new hearing on contested issues. The district court might well listen to a tape recording of the evidence and proceedings and might call for and receive additional evidence if it is needed.

Civil Rights Attorneys' Fees Awards Act. Both Houses have passed and the President has signed S. 2278, which authorizes the court in civil rights proceedings and in certain proceedings under the Internal Revenue Code to order the award of attorneys' fees to the prevailing party except for the United States.

Grand Jury System. The Senate Judiciary Committee Subcommittee on Constitutional Rights has initiated hearings on the subject of the operation of the grand jury system, including S. 3274, which would establish certain rules with respect to the appearance of witnesses before grand juries. Testimony was received from the representatives of the Office of the District Attorney of Los Angeles, the American Bar Association's

(See LEGISLATION page 6)

(LEGISLATION from page 5)
Committee on the Grand Jury, and the National Association of Criminal Defense Lawyers. Each of the witnesses dealt with deficiencies in the present grand jury system. It is anticipated that in the next Congress a new bill will be introduced and further hearings will be held.

National Court of Appeals. Senator Burdick has announced that hearings will be held by the Judiciary Subcommittee on Improvements in Judicial Machinery on November 9 and 10 on the bills to establish a National Court of Appeals.

Suits Against Foreign States. H.R. 11315 has been passed by both Houses of Congress and is awaiting Presidential action. The legislation defines the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit, and in which execution may not be levied on their property.

Magistrates Compensation. S. 2923, which provides that full-time magistrates will receive the same compensation as referees in bankruptcy passed both Houses and was signed by the President on October 17, 1976.

Copyright Revision. S. 22 for the general revision of the copyright law, Title 17 of the United States Code, and for other purposes was passed by both Houses; the Conference report was received and approved and the bill was cleared for the President on September 30, 1976.

Financial Disclosure. H.R. 15, the Public Disclosure Lobbying Act of 1976, failed of passage due to the raising of certain parliamentary objections during the last days of the session. It is anticipated that a similar bill will be brought up in the 95th Congress.

Antitrust. H.R. 8532 to improve and facilitate the expeditious and effective enforcement of the antitrust laws was signed on September 30, 1976 (P.L. 94-435). Among other things it provides for the bringing of suits by states attorneys general.

One of its most significant provisions is an amendment to 28 U.S.C. §1407, adding a new subsection (h) which authorizes the Judicial Panel on Multidistrict Litigation to consolidate and transfer these cases under §4C of the Clayton Act for both pretrial and trial.

Also of significance is a provision of the LEAA authorizing legislation, S. 2212, which provides for grants to states attorneys general for the purpose of improving the antitrust enforcement capability of the state.

Tax Reform. The President signed the Tax Reform Act of 1976 on October 4 (P.L. 94-455). Two provisions which will substantially affect the caseload of the district courts are (1) providing for a taxpayer to intervene in or to preclude enforcement of an administrative summons directed to a third party recordkeeper and (2) a second provision which will provide for jurisdiction in the district courts over challenges to the reasonableness of jeopardy or termination assessments.

NEW DRAFT RELEASED ON COMPLEX LITIGATION MANUAL

A tentative draft of the fourth revision of the Manual for Complex Litigation has now been circulated to all federal judges and various bar associations inviting comment.

The Manual is the product of a Board of Editors consisting of seven federal judges. Prior to releasing previous revisions, hearings were held to obtain the views of members of the bench and bar in addition to screening all written commentaries.

While the mailing was necessarily limited because of the number of copies available, comments and suggestions are invited from any member of the bar. All such material should be submitted by November 1, 1976 to: Robert Cahn, Executive Editor, Multidistrict Litigation Office, 1030 Executive Building, Washington, D.C. 20005.

Complete Revision

COPYRIGHT BILL ENACTED

An act effecting a gene revision of the federal copyright law has been signed by the President [Act of October 19, 1976, P.L. No. 94-553, 90 Stat. 2541.] Originally introduced as S. 22, the majority of the provisions are effective January 1, 1978.

Those provision of the Act, to be codified at Title 17, United States Code, Chapter 8, establishing an independent Copyright Royalty Tribunal in the legislative branch, took effect upon enactment.

The basic function of the Tribunal is to determine the reasonableness of copyright royalty rates in those situations in which licensing by a copyright owner will be compulsory. No court shall have jurisdiction to review a final decision of the Tribunal except as provided in Section 810.

The Act also will give statuto sanction to the "fair use" doctrine as developed in *Williams and Wilkins Co. v. United States*, 487 F.2d 1345 (Ct. Cl. 1973), affirmed by an equally divided Court, 420 U.S. 376 (1975). Further, requirements will be placed upon any library which engages in reproduction of copyrighted materials. Guidance will be furnished to all librarians regarding restrictions and procedural requirements prior to the effective date of the Act by the General Counsel of the Administrative Office.

Finally, the Act defines a "work of the United States Government" as "a work prepared by an officer or employee of the United States Government as part of that person's official duties," and provides that no copyright may subsist in any such work. When such a work incorporated in a publicati entitled to copyright protection, a special statement must accompany the copyright notice.

(CONFERENCE from page 2)
procedures with a view to appro- ıte action by state and federal ɹrts.

• That procedural rules provide for sanctions for the willful filing of baseless or otherwise improper pleadings which contribute to delay and to increased expense of litigation. (Recommended for consideration is the so-called Michigan plan which calls for a panel to set a monetary evaluation when liability is not realistically in issue. The panel's findings are not binding but if a litigant fails to achieve a substantially more favorable result at trial, the litigant is subject to imposition of the costs of litigation, a mechanism which applies equally to all parties to the lawsuit.)

• That further study of class actions be made. The report states there is reason to believe that committees of the Judicial Conference of the United States will consider whether changes in the federal rules are desirable. A specific recommendation is includ- that the ABA give high priority to studies of class actions with emphasis on the possibility that there should be an added measure of judicial control over attorney fees as well as the substitution of provisions which call for a litigant to "opt-in" on the litigation rather than "opt-out". (The recommendation on the "opt-in" concept was not unanimously adopted by the Task Force.)

• That the American Bar Foundation, the Institute of Judicial Administration and the Federal Judicial Center be invited to undertake a thorough study and make recommendations on the proper scope of the right to jury trial in civil cases.

• That the Judicial Conference of the United States, the Judicial Administration Division of ABA and the Conference of Chief Justices consider whether it would be desirable to develop a mechanism ıigned to assure periodic legisla- consideration of the need for new judgeships. The mechanism should call for a submission to the legislature of data on workloads, population trends, including past experience and future projections, and a formula to be applied to such data to determine the number of judgeships warranted for each court; further, that there be a self-imposed legislative requirement that the legislature vote on new judgeships within a specified time after submission of such data.

• That the Conference of Chief Justices and state and local bar associations consider the endorsement of legislation which would eliminate diversity jurisdiction in the federal courts.

• That there be created a federal office for the collection of data relevant to judicial administration. Such an office would collect data, both state and federal, civil and criminal, and would be authorized to undertake special studies relevant to the administration of justice; that such an office work closely with the National Center for State Courts, the Federal Judicial Center, and other groups.

A.O. DIRECTOR REPORTS INCREASED CASELOAD

The Director of the A.O. of the U.S. Courts, Rowland F. Kirks, told the Judicial Conference late last month that there has been a substantial increase in the caseload of the federal courts during the year ending June 30, 1976.

Case filings in the courts of appeals rose almost 11 percent to a new all-time high of 18,408. Civil cases filed in district courts also increased by 11 percent to a record 140,189. However, criminal cases filed in the district courts declined by more than 5 percent.

Bankruptcy cases filed were 246,549 which represents a decrease of almost 8,000 cases from the record number of filings last year.

The decrease in criminal case filings during the year resulted partly from a change in case reporting procedures required under the Speedy Trial Act.

The increase in civil filings in both the courts of appeals as well as the district courts mean that individual caseloads of federal judges are now at an all-time high. Legislation which would increase the number of district judges has been pending in the Congress since

Chief Judge Markey

FJC SCIENCE LIAISON COMMITTEE FORMED

The FJC Board has appointed a Science Liaison Committee to advise the scientific community, when requested, in relation to fact finding processes and to learn whatever lessons of the scientist's world might be employed by the federal judiciary to improve the administration of justice.

The committee consists of Judge William C. Conner, of the Southern District of New York, Trial Judge Jospeh V. Colaianni, of the Court of Claims, and Chief Judge Howard T. Markey, of the Court of Customs and Patent Appeals, (Chairman).

The first activity of the committee has been to inform itself regarding the "Science Court" proposed by a group of scientists. In general, the proposal is for a board of scientists employing an adversary process to arrive at more definitive scientific, non-value laden advice to government agencies. The conduct of one such process as an experiment was discussed during a Colloquium on September 19-21, 1976 at which the Liaison Committee and the Federal Judicial Center were represented.

AO/FJC calendar

Nov. 3-5 Meeting of Executive Committee National Conference of Federal Trial Judges, San Antonio, Texas

Nov. 3-5 In-Court Management Training Institute, Memphis, Tenn.

Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.

Nov. 15-17 Workshop for Procurement and Property Management, Salt Lake City, Utah

Nov. 15-19 Advanced Seminar for Probation Officers, Louisville, Kentucky

Nov. 17-19 Seminar for Bankruptcy Judges, San Antonio, Texas

Nov. 29-Dec. 1 Seminar for Staff Attorneys, Washington, D.C.

Dec. 7-10 Seminar for Crisis Intervention for U.S. Probation Officers, Washington, D.C.

Dec. 9-10 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, San Antonio, Texas

Dec. 15-17 Seminar for Bankruptcy Judges, Ft. Lauderdale, Fla.

PERSONNEL

Appointments

John T. Copenhaver, Jr., U.S. District Judge, S.D.W.Va., Sept. 26.

Cecil F. Poole, U.S. District Judge, N.D.Calif., October 5.

Elevation

Otto R. Skopil, Jr., Chief Judge, U.S. District Court, D.Oreg., Oct. 1.

Confirmations

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Sept. 23.

Howard G. Munson, U.S. District Judge, N.D.N.Y., Sept. 23.

Death

Walter Bruchhausen, U.S. District Judge, E.D.N.Y., Oct. 11.

The Third Branch

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Bulletin of the Federal Courts

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Magistrates Powers Increased

On October 21st, when President Ford signed into law the Federal Magistrates Act, the U.S. magistrates were given a wide range of additional duties which may be delegated to them by the District Court to which they are assigned.

Generally, the new law will enable district judges to devote their time to the actual trial of cases rather than to various pretrial procedural duties.

The Magistrates Division of the Administrative Office has prepared a jurisdictional checklist of the duties which may be assigned to magistrates under the new law.

Here is a summary of some of the duties which may be delegated to a magistrate to hear and determine, subject to a subsequent right of appeal to a judge.

[A complete copy of the checklist is available from the Magistrates Division.]

Criminal Proceedings

- General supervision of the criminal calendar, including calendar calls and motions to expedite or postpone the trial of cases.
- Hearing and deciding procedural and discovery motions.
- Hearing and deciding motions by the Government to dismiss an indictment or information without prejudice to further proceedings and any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).

(See MAGISTRATES, page 2)

TAX REFORM ACT OF 1976 MAY AFFECT CASELOAD

A provision of significance to the caseload of the federal courts is Section 7609 recently added to the Tax Code by the Tax Reform Act of 1976, P.L. 94-455, approved October 4, 1976.

Section 7609 adds new procedural requirements wherein an administrative summons is served on a "third-party recordkeeper," a term which includes a bank or savings institution, a consumer reporting agency, a credit card system, a broker, an attorney, or an accountant.

If a recordkeeper is served with a summons under 26 U.S.C. § 7602 requiring the production of (or testimony with respect to) any portion of records made or kept of the business transactions or affairs

(See TAX, page 5)

Members of the Advisory Committee for the newly-instituted Graduate Training Program for U.S. Probation Officers who met recently with the Director of the F.J.C. are from left to right: Mr. William C. Hall, Probation Programs Specialist, Div. of Probation, The A.O. of the U.S. Courts; Mr. Donald L. Chamlee, Ass't Chief, Division of Probation, The A.O. of the U.S. Courts; Mr. James F. Haran, Coordinator of Probation Training Programs and Chief U.S. Probation Officer, E.D.N.Y.; Dr. John M. Martin, Prof. and Univ. Director, Criminal Justice Program, Fordham Univ.; Judge Walter E. Hoffman; Mr. Richard M. Mischke, Dep. Dir. of Continuing Education and Training, the F.J.C.; Dr. Peter L. Sissons, Associate Prof. and Dir., Graduate Training Program for U.S. Probation Officers, Fordham Univ.; Rev. Harry J. Sievers, S.J. (seated), Dean, Graduate School of Arts and Sciences, Fordham Univ.

FJC INAUGURATES GRADUATE TRAINING PROGRAM FOR PROBATION OFFICERS

The Federal Judicial Center with the cooperation of Fordham University's Department of Arts and Sciences has developed a graduate training program specifically designed to meet the professional needs of probation officers.

The program will be partially funded through payment of travel and per diem by the Federal Judicial Center. Upon successful completion of the curriculum

(See TRAINING, page 4)

(MAGISTRATES from page 1)

- Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.
- Conduct of pretrial conferences, omnibus hearings, and related proceedings.
- Conduct of post-indictment arraignments, acceptance of not-guilty pleas, and the ordering of a presentence report on a defendant who signifies the desire to plead guilty. A magistrate should not accept pleas of guilty or nolo contendere in cases outside the jurisdiction specified in 18 U.S.C. §3401. See the 1971 Report of Proceedings of the Judicial Conference, p. 54; *Carter* v. *United States,* 388 F. Supp. 1334 (W.D. Pa., aff'd. 517 F.2d 1397 (3rd Cir. 1975).

Civil Proceedings

- General supervision of the civil calendar, including the handling of calendar calls and motions to expedite or postpone the trial of cases.
- Hearing and determining pretrial procedural and discovery motions and other motions or pretrial matters which are not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).
- Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.
- Conduct of preliminary and final pretrial conferences, status calls and settlement conferences, and the preparation of a pretrial order following the conclusion of the final pretrial conference.

Procedure for Review of the Magistrate's Determination

In all matters delegated under authority of 28 U.S.C. § 636(b)(1)(A), the magistrate has the statutory power to "hear and determine." His decision is final and binding, and is subject only to a right of appeal to the district judge to whom the pertinent case has been assigned.

While subsection 636(b)(1)(A) does not specify the procedures to be followed by a litigant in seeking reconsideration of a magistrate's order, it would normally be by motion duly served, filed, and noticed.

No fixed time is specified in the statute within which a party must seek review of a magistrate's order, because the timeliness of a request will depend to a large extent on: (1) the nature of nondispositive pretrial matter determined by the magistrate; and (2) the pretrial posture of the litigation. These issues as to the method and the procedures for seeking review of a magistrate's determination would appear to be left by the statute to resolution in local rules of court.

The statute, however, does provide a specific standard of review for a judge—the traditional "clearly erroneous" appellate test. The express Congressional intent is that a matter which has been heard and determined by a magistrate need not in every instance be reviewed by a judge. If, however, a party specifically requests reconsideration—based on a showing that the magistrate's order is clearly erroneous or contrary to law—the judge must reconsider the matter.

The judge, of course, has the inherent power to rehear or reconsider any matter *sua sponte.* Preliminary rulings during the pretrial state of a case, moreover, are often subject to review and change in the interest of justice as the case develops. Accordingly, the judge may issue rulings at a later stage which supersede those of the magistrate if conditions warrant.

28 U.S.C. §636(b)(1)(B) Dispositive Matters and Prisoner Cases

The following duties may be assigned to a magistrate for review, to conduct necessary evidentiary and other hearings or oral argument, and submit a report and recommendations to a district judge.

Criminal Proceedings

- Motions to dismiss or quash an indictment or information made by the defendant.
- Motions to suppress evidence.
- Applications to revoke probation (including the conduct of the "final" probation revocation hearing).

Civil Proceedings

- Motions for injunctive relief (temporary restraining orders and preliminary injunctions).
- Motions to dismiss for failure to state a claim upon which relief may be granted.
- Motions to involuntarily dismiss an action (and the review of default judgments).
- Motions to dismiss or to permit the maintenance of a class action.
- Motions for judgment on the pleadings or for summary judgment.

Judicial Review of Administrative Proceedings

A magistrate may be delegated to review the administrative record and the pleadings, conduct any pretrial proceedings that may be called for, hear any oral argument that may be necessary, and submit a report and recommended disposition of the case to the district judge in the following types of cases:

- Decisions regarding the granting of benefits to claimants under the Social Security Act, the "Black Lung" benefits laws, and related statutes. [(This duty was expressly approved by the Supreme Court under the old statute in *Mathews* v. *Secretary of H.E.W.,* 423 U.S. 261 (1976).]
- The administrative award or denial of licenses or similar privileges.
- The adjudication by the Civil Service Commission of adverse employee actions, retirement eligibility and benefits questions, and the rights of employees in such situations as reductions in force.

Prisoner Petitions

Conduct of evidentiary and other hearings on habeas corpus, 2255, civil rights, and other prisoner

petitions may be handled by magistrates.

In a prisoner case a magistrate may be assigned by the court to perform the following functions:

- Review of habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254, the issuance of orders to show cause and other necessary orders or writs to obtain a complete record, and the preparation of a report and recommendation as to the appropriate disposition of the petition. [The issuance of pretrial procedural orders would fall within the magistrate's authority to "hear and determine" matters under section 636(b)(1)(A) above].
- Review of habeas corpus petitions filed by federal prisoners for the correction or reduction of sentences under 28 U.S.C. § 2255, and the preparation of a report and recommendation to the district judge as to the disposition of the case. [A petition of a federal prisoner under Rule 34, Fed.R.Crim.P., should not normally be referred to a magistrate, however, if resolution of the issues requires knowledge of the original trial proceedings or might result in overruling a prior determination of a district judge.]
- Review of prisoner suits for the deprivation of civil rights under 42 U.S.C. § 1983, hearing of motions, and the preparation of a report and recommendations to the district judge.
- Taking on-site depositions, gathering evidence, conducting pretrial conferences, or serving as a mediator at the holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under 42 U.S.C. § 1983.
- Conduct of periodic reviews of proceedings to insure compliance with previous orders of the court regarding conditions of confinement.
- Review of prisoner correspondence.
- Conduct of an evidentiary hearing, or any other hearing, in a prisoner case in which the petitioner seeks post-trial relief or challenges conditions of confinement.

The statute supersedes the decision of the Supreme Court in *Wingo* v. *Wedding*, 418 U.S. 461 (1974). The authority of the magistrate under subparagraph (b)(1)(B) is by Congressional design more than the mere authority to make a "preliminary review." It is the power to conduct hearings and to receive evidence relevant to the issues involved in these cases. [The new Rule governing 2254 and 2255 cases track the language of the revised section 636(b).]

28 U.S.C. § 636(b)(2)—Special Master References and Trials By Consent

The third category of a magistrate's "additional duties" is set forth in subsection 636(b)(2), which authorizes appointment as a special master under Rule 53 of the Federal Rules of Civil Procedure. If the parties consent to the reference, the requirement of a showing of "exceptional" conditions under Rule 53 of the Federal Rules of Civil Procedure becomes inapplicable. Under Rule 53(e)(4), moreover, the parties may stipulate that the magistrate's findings of fact shall be final and that only questions of law may thereafter be considered.

28 U.S.C. § 636(b)(3)—Miscellaneous Additional Rules

Under subsection 636(b)(3) the district courts may "continue innovative experiments" in the assignment of duties to magistrates which may not necessarily be included in the broad category of "pretrial matters" under subsection 636(b)(1).

CIRCUIT JUDGES HOLD CONFERENCE

A conference for judges of the United States Courts of Appeals was held last month, one of the most successful of several which have been conducted by the Federal Judicial Center. All but one of the Circuit Chief Judges was in attendance, as were 26 other Circuit Judges.

A capable Planning Committee, which worked under the Chairmanship of Judge Ruggero J. Aldisert (CA-3) deserves credit for the high quality of the program and the overall approval of the conferees. In addition to Federal Judicial Center Director Walter E. Hoffman, other members of the committee were: Judge Griffin B. Bell (CA-5, now resigned), Judge Edward D. Re (U.S. Customs Court), and Professor Maurice Rosenberg (Columbia Law School).

An equal amount of credit is due to a distinguished faculty, nearly all of whom attended at a personal sacrifice of time. Professors who interrupted their teaching schedules to participate were: Paul M. Bator (Harvard), Kenneth Culp Davis (San Diego), Robert E. Keeton (Harvard), James C. Kirby, (N.Y.U.), Paul J. Mishkin (University of California), Charles Alan Wright (Texas), Bernard J. Ward (Texas), and E. Donald Shapiro (New York Law School).

The programs for the Circuit Conferences differ somewhat from those for the district judges in that their discussions include more substantive law.

In commenting on the program, Judge Aldisert said that they generally emphasized the "nuts and bolts of judging" and beamed the discussions to the role of the judge as a lawmaker. Specific questions addressed were: What is precedent? What is "doctrinaire"? In approaching the review function, how does a judge determine what is reversible trial error, and what is harmless error?

To deal with the subject of opinion writing, a panel discussion was held which took up the matter of selecting, interpreting and applying the federal precept, and including sociological jurisprudence.

(TRAINING from page 1)

tailored specifically to their professional needs, probation officers will receive a Master of Arts degree.

The courses offered are interdisciplinary in nature and include such areas as sociology, law, social work, psychology and management.

Course content will be devoted to issues regarding probation and parole theory and practice, the legal aspects of corrections, the analysis of the Federal Criminal Justice System, social theory, personality development and deviant behavior, caseload management and supervision, rural-urban and minority group aspects of crime, the special problems of organized and white collar crime, problems of sentencing and the law of evidence.

The program leads to a 36-credit degree in sociology. Twelve credits will be given per year in two semesters, with two three-credit courses given in each semester. An intensive 14 week semester format will precede a one-week classroom instruction period.

Anyone holding a Bachelor's Degree from a recognized institution is eligible to apply and will be considered for the program.

The program is basically one combining corresondence courses followed by a one-week period during which students will meet with Fordham professors at a regional training center for intensive study followed by an examination in the subject which they have been studying.

It is important to note that students must pay their own tuition, which is estimated at approximately $1,000 per year and that the Federal Judicial Center will pay the per diem and travel expenses for the intensive one-week sessions with the professor.

For additional information contact Fordham University at (212) 933-2233, Ext. 510 or write the Graduate Training Program for United States Probation Officers, Department of Sociology and Anthropology, Fordham University, Bronx, N.Y. 10458.

Probation officers wishing to discuss the program in detail contact James F. Haran, Chief United States Probation Officer, Eastern District of New York, 304 United States Court House, Brooklyn, New York 11201. Tel. (212) 875-8044.

SENATE COMMITTEE RELEASES SURVEILLANCE TECHNOLOGY REPORT

The Senate Judiciary Subcommittee on Constitutional Rights recently released its 1,000-page report on surveillance technology.

In releasing the report, Senator John V. Tunney, Chairman of the Subcommittee, said that the report's documentation of the existence of a surveillance technology industry will force both the Congress and the Executive Branch to establish, as soon as possible, the institutions necessary to monitor and patrol the proliferation of surveillance technology.

[Copies will not be available until early December.]

Here are some of the key findings of the report:

- There is indeed a surveillance technology industry.
- The industry is largely unregulated and unscrutinized and, as a result, poses a serious threat to the privacy, liberty and security of every American.

PROVING FEDERAL CRIMES

The Department of Justice handbook, "Proving Federal Crimes," revised in April 1976, can now be made available to those judges and officers of the federal judiciary desiring to have a copy. The document, however, continues to be restricted to official use.

A reprinting will be ordered in January based upon requests received. A requisition should be submitted to the Administrative Office by December 31, 1976 by any judge or officer desiring a copy of this publication.

SUPREME COURT DECLINES REVIEW OF UNPUBLISHED OPINIONS ISSUE

The Supreme Court on November 1 declined to review a case which had at issue the question of whether unpublished opinions may be cited by counsel in the Seventh Circuit.

The issue arose in the case of *Do-Right Auto Sales, et al.* v. *U.S. Court of Appeals for the Seventh Circuit*, and involved the Seventh Circuit's Local Rule 28 which prohibits the citation of unpublished opinions. Rule 28 was an attempt by the Seventh Circuit to cut down increasingly heavy caseloads. Several other Circuits throughout the country have similar Rules. The Rule helps speed the disposition of cases and is used mainly when a formalized, published opinion would not have precedential value, or when publication would serve no useful purpose generally—to the legal profession or the litigants.

Counsel throughout the legal community have been in disagreement on this matter, and member of study groups, including the Advisory Council for Appellate Justice and the ABA Commission on Standards for Judicial Administration, have not been totally unified on the citability issue.

[For previous story on this subject see *The Third Branch*, vol. 8 No. 7, July, 1976, p. 9]

DATE EXTENDED ON COMPLEX LITIGATION MANUAL DRAFT

The date for the submission of comments on the tentative draft of the fourth revision of the Manual for Complex Litigation has been extended to December 15 [See article in the October issue *The Third Branch*, pg. 6]. National hearings on the revisions to the manual will be held at times and places to be announced later. Testimony will be received from all counsel who have timely filed written suggestions concerning the revision of the manual. For further information contact Multidistrict Litigation Panel, 1030 Executive Building, Washington, DC 20005.

Collins T. Fitzpatrick

SEVENTH CIRCUIT APPOINTS CIRCUIT EXECUTIVE

Collins T. Fitzpatrick was appointed Circuit Executive for the Seventh Circuit September 16. Until this date the Seventh Circuit Judges had not had a Circuit Executive.

Just thirty-three years of age, he is the youngest of the ten Circuit Executives who serve in the Federal Judicial System.

Mr. Fitzpatrick is no stranger to the Seventh Circuit. He clerked for the late Circuit Judge Roger J. Kiley, was Administrative Assistant to Judge Luther M. Swygert when the Judge was Chief of the Seventh, was appointed a supervisory clerk in 1975, and just prior to his appointment as a Circuit Executive, he was serving as a Senior Law Clerk.

Mr. Fitzpatrick is a graduate of Marquette University, receiving his A.B. degree there in 1966. He received his J.D. degree from Harvard in 1969 and earned a Masters in Political Science at the University of Illinois in 1971.

(TAX from page 1)

of any individual (generally the taxpayer under investigation) identified in such summons, notice shall be given to the taxpayer in most situations.

At that point the taxpayer has the right to intervene in any enforcement proceeding and also the right to stay compliance with the summons by the "third-party recordkeeper" by giving a written notice to him not to comply, sending a copy by registered or certified mail to such person and to such office as the Treasury Secretary may direct. On the giving of such notice the Government may not examine the records required to be produced pursuant to that subject prior to obtaining an order of authorization from the district court.

There is, however, an additional requirement in the case of a "John Doe" summons. Such summons which does not identify the liable taxpayer may be served only after an ex parte court proceeding in which IRS establishes that:

"(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

"(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

"(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources."

All these proceedings "take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date."

The Internal Revenue Service estimates that yearly, approximately 38,400 summonses are potentially subject to the requirements of the new 26 U.S.C. § 7609.

AN ANALYSIS OF THE CIVIL RIGHTS ATTORNEYS' FEES AWARDS ACT OF 1976

A major innovation in the judicial process is Public Law 94-499 which allows the award of attorneys' fees to be paid to the prevailing party, by the losing party, at the discretion of the judicial officer, in civil rights cases and in tax cases brought by the IRS where the existence of a tax liability on the part of the defendant is found to be without merit.

With respect to civil rights cases the Act simply extends to other civil rights cases the discretionary award already in effect with respect to Titles II and VII of the 1964 Civil Rights Act and Section 402 of the 1975 Voting Rights Act Amendments.

The purpose of the law as explained in the Senate Report (94-1011) is to remedy anomalous gaps in the law as discussed in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), extending the law, in addition, to prevailing parties in suits under 42 U.S.C. §§1981-1985; 20 U.S.C. § 1681; and 42 U.S.C. §2000d, and to successful tax defendants.

In awarding attorneys' fees as "costs" in civil rights cases, the prevailing party can be either the plaintiff or defendant. As explained in *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968), the emphasis will be on reimbursement to private parties bringing the suit.

The Senate Report, however, notes that costs could also be assessed against the petitioners in "bad faith" situations or when the suit is "frivolous, vexatious, or brought for harassment purposes."

The Senate Report also points out that counsel fees under the Act may be awarded *pendente lite*, citing Bradley v. *School Board of the City of Richmond*, 416 U.S. 696 (1974), and that such an award is particularly appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not previal on all issues.

The report further points out that a party may be considered to have prevailed for award of counsel fees even when he vindicates rights through a consent judgment or without formally obtaining relief.

The Senate Report explains that the attorneys' fees, like other items of cost, will be collected either directly from the official, in his

(See FEES page 6)

(FEES from page 6)

official capacity, from funds of his agency or under his control, or from the state or local government (whether or not the agency or government is a named party).

The amount of fees, it explains, should not be reduced because the rights involved are nonpecuniary in nature. The fees should be adequate to attract competent counsel, but not to produce "windfalls" to attorneys.

The Report continues, "In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, 'for all time reasonably expended on a matter" citing among other cases *Stanford Daily* v. *Zurchar*, 64 F.R.D. 680, 684 (N.D. Cal. 1974).

Senator John V. Tunney, the author of the bill, told the Senate that the 12 factors to be considered in computing fees should be those set forth in *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

JUSTICE DEPARTMENT PUBLISHES PUBLIC DEFENDER MANUALS

The Law Enforcement Assistance Administration has published two manuals designed to help criminal justice experts evaluate the effectiveness of public defender systems, either by an independent team or through in-house evaluations.

The two manuals, "Evaluation Design of the Offices of the Public Defender" and "The Self Evaluation Manual for the Offices of the Public Defender" were developed by the National Legal Aid and Defender Association under an LEAA grant.

Copies of the manuals can be obtained by contacting the National Legal Aid and Defender Association, American Bar Center, 1155 East 60th Street, Chicago, Illinois 60637.

Bulletin

CREDIT FOR FOREIGN CUSTODY

The General Counsel of the Administrative Office of the United States Courts has received the following communication from Acting Chief, William S. Lynch, Narcotic and Dangerous Drug Section, Criminal Division, Department of Justice:

"The Bureau of Prisons has informed us that it has a policy of granting sentence credits under 18 U.S.C. 3568 for time spent by federal offenders in foreign custody while awaiting extradition to the United States for trial on federal criminal charges. This policy applies, *inter alia*, to major narcotic traffickers who are detained in foreign countries pending extradition to the United States.

"The policy can have a significant impact on the actual amount of time convicted felons serve in prison under sentences imposed on them. To illustrate, several months ago a narcotic trafficker who was extradited from Switzerland and subsequently given a nine-year prison term was allowed three years credit toward that term by the Bureau of Prisons as a result of his having spent three years in a Swiss jail awaiting extradition.

"In determining when an offender has come within the custody of foreign officials, the Bureau of Prisons applies the same standards used in domestic cases. In other words, the Bureau allows sentence credits in the same manner as it allows credits to federal offenders who are detained in local (state and county) jails awaiting trial on federal charges. Thus, 'custody' begins as of the moment the offender is arrested and physically incarcerated. Custody continues as long as the offender remains in jail. Any part of a day spent in jail is equivalent to a full day for credit purposes.

"The Bureau of Prisons advised that it is not certain whether federal judges are aware of its policy of allowing foreign jail credits. Fearing that many judges may not be aware of that policy, we decided to bring the matter to your attention. If federal judges are not familiar with the policy, we would appreciate your taking the necessary action to bring it to their attention. We ourselves are bringing the policy to the attention of United States Attorneys."

THE SOURCE

The Information Service of the Federal Judicial Center

- The Class Action as an Antitrust Enforcement Device: the Chicago Experience (I). Benjamin S. DuVal, Jr. 1976 A.B.F. Research J. 1021-1106.
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- Organizations, Decisions and Courts. Lawrence B. Mohr. 10 Law & Society Rev. 621-42 (Summer 1976).
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- State Court Administrators: Qualifications and Responsibilities. Rachel N. Doan and Robert A. Shapiro. American Judicature Society, 1976.
- What I Expect of a Trial Judge. Seth M. Hufstedler/What I Expect of a Trial Lawyer. Shirley Hufstedler. 3 Barrister 36-9+ (Fall 1976).

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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

INISTRATIVE OFFICE RELEASES MANAGEMENT STATISTICS FOR FEDERAL COURTS

The Administrative Office of the United States Courts published this month the key workload and performance statistics for each United States Court of Appeals and each District Court for Fiscal years 1971 through 1976.

[The report will be available shortly from the Administrative Office.]

Here are the key statistics for the years 1971, 1975 and 1976 for both the Courts of Appeals and the District Courts.

District Courts

		1976	1975	1971
Overall Workload Statistics	Filings	171,617	160,602	136,553
	Terminations	153,850	148,298	126,145
	Pending	159,945	142,178	124,525
	Percent Change in Total Filings Current Year	over last year	6.9	25.7
	Number of Judgeships	399	400	401
Actions Per Judgeship	Total (Filings)	430	402	341
	Civil (Filings)	327	294	233
	Criminal (Filings)	103	108	108
	Pending Cases	401	355	311
	Weighted Filings	432	400	307
	Terminations	386	371	315
	Trials Completed	49	48	44
Median Times (Months)	Criminal	3.1	3.6	3.0
	Civil	9	9	9
	From Issue to Trial (civil only)	11	11	11
	Number (and %) of Civil Cases Over 3 Years Old	9,414 (6.9)	7,563 (6.4)	9,022 (9.2)
	Triable Defendants in Pending Criminal Cases	8,028	2,083	2,769
	Number (and %)	(28.9)	(18.5)	(31.9)
Other	Vacant Judgeship Mos.	240.6	190.2	604.8
	Juror Usage Index	19.73	19.32	23.31
	% of Jurors Not Serving	39.7	39.9	45.8

Courts of Appeals

		1976	1975	1971
Overall Workload Statistics	Filings	18,408	16,658	12,788
	Terminations	16,426	16,000	12,368
	Pending	14,110	12,128	9,232
	Percent Change in Total Filings Current Year		10.5	43.9
	Number of Judgeships	97	97	97
Actions Per Judgeship	Total (appeals filed)	190	172	132
	Prisoner	25	25	26
	All Other Civil	91	80	52
	Criminal	48	43	33
	Administrative	26	24	14
	Pending Appeals	145	125	95
	Total (Appeals Terminated)	169	165	128
	Consolidations & Cross Appeals	19	20	14
	Without Hearing or Submission	54	51	35
	After Hearing or Submission	96	94	78
	Per Curiam (opinions)	29	24	32
	Signed (opinions)	39	37	34
	% Reversed or Denied	17.9	17.8	18.1
	Median Time (Mos.) from Filing Complete Record to Disposition	7.1	7.4	7.6
	Total case participations	26,342	25,945	17,653
	Participation % by Active Judges	79.6	77.4	79.9
	Participation % by Senior Judges	10.0	10.8	9.5

PERSONNEL

Appointments

Sidney M. Aronovitz, U.S. District Judge, S.D.Fla., Oct. 8
W. Eugene Davis, U.S. District Judge, W.D.La., Oct. 25
Peter T. Fay, U.S. Circuit Judge, 5th Cir., Oct. 8
Glen M. Williams, U.S. District Judge, W.D.Va., Oct. 12

Elevation

Anthony A. Alaimo, Chief Judge, U.S. District Court, S.D. Ga., Nov. 1

AO & FJC calendar

Nov. 29-Dec. 1 Seminar for Staff Attorneys, Washington, D.C.
Dec. 7-10 Seminar for Crisis Intervention for U.S. Probation Officers, Washington, D.C.
Dec. 9-10 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, San Antonio, TX
Dec. 15-17 Seminar for Bankruptcy Judges, Ft. Lauderdale, FL
Jan. 6 Judicial Conference Committee on Supporting Personnel, Washington, D.C.
Jan. 24-25 Judicial Conference Jury Committee, Sea Island, GA
Jan. 31-Feb. 1 Judicial Conference Committee on Court Administration, Key Biscayne, FL
Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, FL
Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, FL
Feb. 5 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, FL
Feb. 7-9 Workshop for District Court Judges (CA-10), Seattle, WN
Feb. 14-18 Advanced Seminar for Probation Officers, San Diego, CA

CIRCUIT CONFERENCES—1977

Circuit	Date	Location
D.C.	May 22-24	Hershey, Pennsylvania
First	Not yet set	Not yet set
Second	Not yet set	Not yet set
Third	September 18-21	Tamiment, Pennsylvania
Fourth	June 23-25	Hot Springs, Virginia
Fifth	May 1-5	Birmingham, Alabama
Sixth	May 11-14	Louisville, Kentucky
Seventh	May 9-11	Chicago, Illinois
Eighth	June 29-July 2	Kansas City, Missouri
Ninth	June 11-16	Kauai, Hawaii
Tenth	July 13-17	Salt Lake City, Utah

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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1520 H STREET, N.W.
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CIRCUIT COURT RULES ON EXHIBIT ACCESS

On October 26th the U.S. Court of Appeals for the District of Columbia Circuit handed down an opinion in the Watergate Tapes case, finding a common law right in television and radio systems and a phonograph record company to inspect and copy the Watergate tapes admitted as exhibits in the underlying criminal case against the Watergate principals.

The Court based its opinion on the common law right to inspect public records, bypassed various constitutional arguments raised in the matter, and rejected arguments of ex-President Nixon that disclosure would violate the privilege of confidentiality for presidential communications and would invade his and others right of privacy.

The Court distinguished between "judicial records" and "private property temporarily in the custody of the clerk until the case in which the exhibits are introduced is concluded," noting that these tapes are exhibits in the case and thus part of the record on appeal, citing as authority F.R. App. P. 10(a) (which makes exhibits part of the record on appeal) and the Manual for the Clerks of the United States District Courts (which at §§201.1 and 201.2 classifies exhibits as "auxiliary case records").

The Court noted that while exhibits in special cases (e.g. pornographic movies and tapes of wiretapped conversations) could arguably be removed from public inspection, such possible exceptions would not justify a total ban on inspection in other situations.

The Court also noted that while courts have always asserted the power to seal their records when deemed necessary, subject to appellate review for abuse, that discretion does not give a court an unbridled right to do so simply as a policy determination; and, in any event, the Court questioned whether that power extends to transcripts or exhibits already displayed in open court. ("It suffices to note that once an exhibit is publicly displayed, the interests in subsequently denying access to it necessarily will be diminished.")

Rejected by the Court was the argument that the chance of prejudice to a retrial of the case justifies restriction against duplication, noting that risk of possible prejudice to a "hypothetical" second trial is always present in any case and there would always be a *possibility* that by appeal or by successful collateral attack a new trial could result. In any event the risk is not sufficiently grave in this case, according to the opinion, especially since the transcripts have already been widely circulated.

In remanding the case the Court did not spell out how the sound qualities of the tapes (as opposed to a transcription) could be

(See EXHIBITS, page 2)

ADMINISTRATIVE OFFICE PUBLISHES JUROR UTILIZATION STATISTICS

The Administrative Office of the United States Courts this month issued its sixth report on Juror Utilization in the United States District Courts.

Director Rowland F. Kirks said in the foreword to the report that, "It is hoped that the presentation of information on the entire jury program will prove useful to the federal judiciary and all those taking an interest in the improvement of juror service and the utilization of those citizens reporting for jury duty."

Grand Jury

Two full years of data collection have provided the Administrative Office with a substantial overview of the activities of Federal Grand Juries as well as information regarding the utilization of Grand Juries in the system.

During the Fiscal Years 1975 and 1976 the total number of Grand Juries in existence increased by 6 percent from 570 to 604. The number of sessions convened by Grand Juries rose 7.1 percent—8,404 sessions convened in 1976 compared to 7,846 in 1975.

The number of jurors involved in these convened sessions increased by 11,018 or 7.1 percent while the number of hours in session increased by 8.1 percent from 41,421 hours in Fiscal Year 1975 to 44,765 hours in 1976.

These increases are partially

(See JUROR, page 6)

(EXHIBITS from page 1)
released but noted that the principles of such procedure had been set forth in Judge Gesell's initial opinions in the Court below, i.e., distribution should be prompt and on an equal basis to all persons desiring copies; the Court cannot be expected to assume the cost of distribution, nor should the Court's time or personnel be unduly imposed upon, and neither the Court, nor any agent it appoints, should profit from the public's exercise of its common law right.

Circuit Judge MacKinnon, dissenting, believed that reproduction of tape exhibits should await appeal disposition. He found a difference between access to physical exhibits and the transcript of oral testimony, noting that physical exhibits such as the tapes are the personal property of the owner and the usual practice is to return them to their owners when the case is finished. He also noted as a further reason for restricting access pending final judgment that tapes are subject to alteration and erasure which would prejudice any retrial.

FJC SEMINAR HELD FOR STAFF ATTORNEYS

The Federal Judicial Center this month held its first seminar for staff attorneys which emphasized review and analysis of circuit staff attorney offices; observations of a circuit judge regarding staff attorneys; uses and potential uses of staff attorneys in appellate courts; effective utilization of resources; and advanced research, reporting and writing techniques.

In addition to the Chairman of the Seminar, Judge William J. Campbell, Center Director Walter E. Hoffman, Judge Anthony Kennedy (CA-9) and Circuit Executive Emory G. Hatcher participated.

Professor Daniel J. Meador of the University of Virginia Law School addressed the Staff Attorneys on uses and potential uses of Staff Attorneys in appellate courts; relationship of Staff Attorneys to abbreviated processes; screening before and after briefing; research

Professor Daniel J. Meador of the University of Virginia School of Law, right, responds to questions from Circuit Staff Attorneys at recent seminar. Attorneys are from left to right: Henry Hoppe, III, Senior Staff Counsel (CA-5), Richard J. Banta (partially hidden) Senior Staff Attorney (CA-10), Gerald Greiman, Staff Attorney (CA-4), Judge Anthony M. Kennedy (center background) (CA-9), and Kenneth A. Howe, Senior Staff Attorney (CA-6)

assistance; memorandum writing; conference participation; and the delegation of problems.

Professor Paul R. Baier of Louisiana State University Law School discussed advanced research, reporting and writing techniques; computerized research; staff work product; input to judgments; and writing.

JUDGES ALDRICH, JONES APPOINTED TO JUDICIAL CONFERENCE COMMITTEES

The Chief Justice has announced the appointment of Judge Bailey Aldrich (CA-1) as Chairman of the Advisory Committee on Appellate Rules. The Advisory Committee studies federal appellate court rules and makes reports to the Judicial Conference Committee on Rules of Practice and Procedure.

Judge Aldrich, the former Chief Judge of the First Circuit, has been a member of the Advisory Committee since November 6, 1973.

Judge Aldrich fills a vacancy created by the death of Judge William Hastie who was appointed Chairman of this Committee on October 1, 1973.

The Chief Justice announced also the designation of Chief Judge William B. Jones (Dist. D.C.) as Chairman of the Judicial Conference Advisory Committee on Judicial Activities. Judge Jones succeeded Judge Elbert P. Tuttle (CA-5) who has served in that capacity for the last seven years. Judge Tuttle will continue as a member of the Committee.

STATE-FEDERAL

MISSOURI, OREGON HOLD STATE-FEDERAL JUDICIAL COUNCIL MEETINGS

Oregon. The chambers of Chief Judge Robert C. Belloni was the site for the most recent meeting of the Oregon State-Federal Judicial Council meeting. Council membership consists of four state and four federal judges. Chief Justice Arno H. Denecke of the Supreme Court of Oregon is Chairman.

Because all judges of this state have a concern for growing caseloads in their courts, much time was devoted to an exchange of ideas on how to dispose of cases expeditiously and efficiently. The discussion included the topic of the effective use of settlement conferences.

Other matters discussed at the meeting were: Summary judgments, an exchange of available courthouse facilities when emergencies arise; courtroom security procedures; and an exchange of presentence reports on criminal defendants who have charges pending against them in both state and federal courts.

Missouri. Another meeting of the Missouri State-Federal Judicial Council was held November 11 in Jefferson City. Chief Justice Robert E. Seiler of the Supreme Court of Missouri and Chief Judge Floyd R. Gibson (CA-8), the two ranking judges in the state, were both in attendance.

An agenda encompassing a number of matters of mutual concern to the judges included such subjects as: Whether common standards should be adopted to assure that litigants will be represented by effective counsel; juror utilization; and state habeas corpus cases.

Of primary concern was the growing number of habeas corpus

and civil rights cases being filed in the federal courts by prisoners in the state penitentiary. Chief Justice Seiler has expressed a hope that the state judges can in some way alleviate the caseloads of the federal judges, possibly through state administrative procedures.

It is expected that another meeting will be called by the Chief Justice next spring.

"PARTNERS IN JUSTICE": LAW DAY THEME

The American Bar Association has announced that the 1977 Law Day observance will have as its theme "Partners in Justice."

This theme was selected in the belief that the public does not have a clear understanding as to the role of the courts in this country. State and local bar associations will be urged to emphasize how the courts function—how the judicial process works, what problems face the courts today, and how citizens and institutions can help support, strengthen and improve the system.

Several organizations have been invited to assist bar associations and other civic groups in presenting Law Day programs including the Conference of Chief Justices and the Judicial Conference of the United States.

May 1, 1977 will mark the twentieth year that the ABA has sponsored Law Day. The program was started by ABA President Charles S. Rhyne in 1957 and has each year been supported by a Presidential Proclamation announcing "Law Day—U.S.A."

The Third Branch

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CENTER HOLDS WORKSHOP FOR CLERKS AND DEPUTY CLERKS

The Federal Judicial Center held a three-day workshop for clerks and deputy clerks which emphasized the General Services Administration, Standard Level User Charges, Procurement, and Property Management and Records Storage.

The workshop, which was held in Salt Lake City, focused on these objectives:

- To provide clerks and deputy clerks with review, discussion, and analysis of policies and information concerning the functions, responsibilities, methodology of operations, and constraints governing the work of those sections, branches, and divisions of the Administrative Office dealing with the General Services Administration.

- To furnish clerks and deputy clerks with specific, detailed information on the procedures, standards, methodology, forms or reports, and both the policies and recommended solutions available when problems arise in connection with space, buildings, furniture, equipment, typewriters, copying equipment, cash registers, calculators, filing cabinets, motorized file equipment, records storage, law books, publications, journals, consumable supplies, and physical security.

- To give clerks and deputy clerks a forum for sharing information on, and learning about, procedures, techniques, practices, problems, and solutions of their colleagues in other courts.

The Chairman of the workshop was Judge William J. Campbell and the specific details of the workshop program were developed by Earl J. Ross, Chief, Curriculum Development and Evaluation of the Federal Judicial Center's Division of Continuing Education and Training.

A HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

Chief Justice Burger

The advent of the Holiday Season, with its great traditions and warm personal memories, gives us reason to reflect on events in the Judicial Branch in the past year. The "Pound Revisited" Conference in St. Paul on the 70th anniversary of Dean Pound's speech to the ABA was the first cooperative effort between the state and federal judiciary and the bar to face up to a host of accumulated problems in the American system of justice. We hope the stimulation and new sense of direction from that conference will be a continued source of guidance as we work to provide simpler, fairer and speedier justice in an increasingly complex world.

For those of us familiar with the rigors of the federal courts, another year of increased productivity by all judges and court staffs was a remarkable accomplishment.

Mrs. Burger joins me in extending to you and your family our best wishes for a restful and Happy Holiday, and renewed vigor for the New Year.

Warren E. Burger

STATUS OF MAJOR COURT-RELATED LE

(Prepared by the General Counsel's c

Subject	House Bill And Sponsor	Senate Bill And Sponsor	Final Status At Close of Congress	Remarks
Judicial Survivors Annuities Reform Act	*S. 12	*S. 12 (McClellan)	Pub. L. 94-554 Signed Oct. 19, 1976 90 Stat. 2603	Effective January 1, 1977
Magistrates Salaries	*S.2923	*S. 2923 (Burdick)	Pub. L. 94-520 Signed October, 1976 90 Stat. 2458	Effective December 1, 1976
Magistrate Jurisdiction	*S. 1283	*S. 1283 (Burdick)	Pub. L. 94-577 Signed Oct. 21, 1976 90 Stat. 2458	Effective Oct. 21, 1976, excluding amendment to habeas corpus and Sec. 2255 rules, effective Feb. 1, 1977
Legislative Appropriation Act, 1977	H.R. 14238 (Shipley)	H.R. 14238	Pub. L. 94-440 Signed Oct. 1, 1976 90 Stat. 1439	Effective Oct. 1, 1976 (Cost-of-living raise foreclosure amendment)
Habeas Corpus, Sec. 2255 Rules	H.R. 15319 (Hungate)	H.R. 15319	Pub. L. 94-426 Signed Sept. 28, 1976 90 Stat. 1334	Effective February 1, 1977
Hart-Scott-Rodino Antitrust Improvements Act of 1976	H.R. 8532 (Rodino)	H.R. 8532	Pub. L. 94-435 Signed Sept. 30, 1976 90 Stat. 1383	Provisions effective on varying dates: Clayton Act (parens patriae) provisions effective Sept. 30, 1976 (will not apply to any injury sustained prior to such date.)
The Civil Rights Attorney's Fees Awards Act of 1976	S. 2278	S. 2278 (Tunney)	Pub. L. 94-559 Signed Oct. 19, 1976 90 Stat. 2641	Effective October 19, 1976
Revision of Copyright Law	S. 22	S. 22 (McClellan)	Pub. L. 94-553 Signed Oct. 19, 1976	Effective Jan. 1, 1978 (Exception: Judicial Review Sec. 810 effective October 19, 1976)
Tax Reform Act of 1976	H.R. 10612 (Ullman)	H.R. 10612	Pub. L. 94-455 Signed Oct. 4, 1976 90 Stat. 1520	Independent effective dates for substantive provisions. Generally applies to all taxable years beginning after December 31, 1975.
Unsworn Declaration As Evidence	H.R. 15531 (Danielson)	H.R. 15531	Pub. L. 94-550 Signed Oct. 18, 1976 90 Stat. 2534	Effective October 18, 1976
Judicial Review Administrative Agency Action	S. 800	S. 800 (Kennedy and Mathias)	Pub. L. 94-574 Signed Oct. 21, 1976 90 Stat. 2721	Effective October 21, 1976
Law Enforcement Assistance Administration Extension Act. Note: Provided funds to state attorneys general for implementation of antitrust violation actions.	S. 2212	S. 2212 (Hruska)	Pub. L. 94-503 Signed oct. 15, 1976 90 Stat. 2407	Effective October 15, 1976
Foreign Sovereign Immunities Act of 1976	H.R. 11315 (Rodino)	S. 3553 (Hruska)	Pub. L. 94-583 Signed Oct. 21, 1976 90 Stat. 2889	Effective 90 days after enactment date.
Judgeships, Appellate	*H.R. 4422 (Rodino) 13 Judgeships	S. 286 (Burdick) 7 Judgeships	Senate bill passed Oct. 2, 1975. House bill tabled in Subcommittee	Likely to be reconsidered early in next session.
Judgeships, District	*H.R. 4421 (Rodino) 52 Judgeships	S. 287 (Burdick) 45 Judgeships	Senate bill passed April 1, 1976. House bill pending on Calendar.	Likely to be reconsidered early in next session.

SLATION END OF THE 94TH CONGRESS

Administrative Office of U.S. Courts.)

Subject	House Bill And Sponsor	Senate Bill And Sponsor	Final Status At Close of Congress	Remarks
Financial Disclosure	H.R. 3249 (Kastenmeier)	S. 495 (Ribicoff)	Senate bill passed August, 1976. House bill pending in Judiciary Comm.	Likely to be reconsidered by 95th Congress.
Foreclosure Judges' Civil Service Annuities	H.R. 12882 (Henderson)		Pending House Rules Committee	
Ninth Circuit Revision		S. 739 (Burdick)	Pending on Senate Calendar	Likely to be reconsidered by 95th Congress.
Fifth Circuit Revision		S. 2752 (Burdick)	Pending on Senate Calendar	Likely to be reconsidered by 95th Congress.
Bilingual Courts	H.R. 8314 (Badillo)	S. 565 (Tunney)	Senate bill passed July 15, 1975. House bill pending in Subcommittee.	Likely to be reconsidered by 95th Congress.
Jury Fees and Juror Employment Protection	*H.R. 6048 (fees) *H.R. 6043 (protection) (both by Rodino)	S. 539 (Burdick)	Senate bill passed Sept. 30, 1975. House bills pending in Subcommittee.	To be resubmitted by Judicial Conference next year.
Jury selection; rehabilitated persons	*H.R. 6050 (Rodino)		Pending House Subcommittee	These six proposals pertaining to jurors will be transmitted by the Judicial Conference next year as an omnibus bill.
Jury selection by data Processing	*H.R. 6051 (Rodino)		Pending House Subcommittee	
Federal Employee Compensation Act coverage for jurors			Transmitted but not introduced	
ırors' Transportation .xpenses			Transmitted but not introduced	
Juror selection; voter registration lists	H.R. 11552 (related bill by Hays)	S. 1177 (related bill by McGee)	Passed House. Pending in Senate Subcommittee	
Six person civil juries	*H.R. 6039 (Rodino)		Pending House Subcommittee	
Patent Law revision, Title 35 U.S.C.	S. 2255	S. 2255 (McClellan)	Senate bill passed Feb. 26, 1976. Remained pending House Judiciary Committee	Likely to be reconsidered next year.
National Court of Appeals	H.R. 11218 (Wiggins)	S. 3423 S. 2762 (Hruska)	Pending in Subcommittee	Likely to be reconsidered next year.
Speedy Trial Act Amendment in re excludable time limits	*H.R. 10598 (Rodino)		Pending in Subcommittee	Likely to be reconsidered next year.
Speedy Trial Act Amendment in re excludable time limits	H.R. 14521 (Hutchinson)		Pending in Subcommittee	Likely to be reconsidered. This is a Justice Department proposal approved by Conference.
Attorney Discipline	*H.R. 6044		Pending in Subcommittee	
Fees and Costs in District Courts	*H.R. 13707 (Rodino)		Pending in Subcommittee	
Trial Jurisdiction of magistrates in misdemeanor cases	H.R. 6042 (Rodino)		Pending in Subcommittee	
To increase jurisdictional ıount required in diversity .ses [Amendment to 28 U.S.C. §1332(a)(1)]			Transmitted but not introduced	Note: Pub. L. 94-574 amended this section to exclude $10,000 requirement in suits against U.S., or agency or employee thereof.

***Denotes Judicial Conference proposals that were submitted to the 94th Congress.**

(JUROR from page 1)
attributable to the efforts by the courts to reduce the time between the defendant's arrest and subsequent indictment under Rule 50(b) interim plans adopted by each district. Nationally, 303 juries were in existence on July 1, 1975. During the 1976 Fiscal Year the number of Grand Juries impanelled (301) exceeded the number discharged (258) by 43, resulting in 346 Grand Juries on June 30, 1976, a 14.2 percent increase over the 303 juries at the close of Fiscal Year 1975.

Petit Juror

The utilization of Petit Jurors in the 12-month period ending June 30, 1976 improved in many district courts. However, the *National Juror Usage Index* (obtained by dividing total juror days by the total number of juror trial days) increased slightly from 19.32 in Fiscal Year 1975 to 19.73 this past year.

Since the institution of the Petit Juror Usage reporting program in Fiscal Year 1971, there has been a decrease of 15.4 percent in the J.U.I. from 23.31 in that first year to 19.73 in 1976. Thus, in the six-year period, the efforts of judges and court personnel have resulted in approximately three and one half fewer persons being needed for every jury trial day.

Of the 592,594 total available jurors in 1976, 356,951 or 60.2 percent were jurors selected for or serving on jury trials. This is a steady improvement from the 55.5 percent serving jurors reported in 1972 and indicates 60 of every 100 persons reporting to the courthouse for jury duty were selected for or served on a trial jury. (The *Juror Usage Index* for 1976 ranged from a low of 12.8 in Wyoming to a high of 34.50 in Guam.) While 34 districts reported improved use of their jurors as indicated by a reduction of the J.U.I.'s, 61 of the districts recorded indexes under 20 for the 12-month period.

When Fiscal Year 1975 is compared with 1976, the Middle District of Louisiana and the Eastern District of Illinois have recorded the most improvement in their J.U.I.'s reducing them by 5.83 and 4.55 index points, respectively.

The percentage of jurors selected for or serving on jury trials ranged from a high of 85.0 percent in the Southern District of Alabama to a low of 32.8 percent in Guam. Thirty-seven of the 94 districts recorded 65 percent or more of the prospective jurors in this category. Further, 51 districts recorded increases in the percentage of the prospective jurors who were selected or serving.

National Petit Juror Usage—United States District Courts
Fiscal Years 1972-1976

Petit Jurors	1972	1973	1974	1975	1976	1976 over 1975 Increase (Decrease)	1976 over 1975 Percent Change
Total Available	547,821	573,150	540,628	546,627	592,594	45,967	8.4
Selected or Serving	304,178	324,038	315,419	328,445	356,951	28,506	8.7
Percent	55.5	56.5	58.3	60.1	60.2	—	—
Challenged	79,501	86,520	82,152	88,228	92,727	4,499	5.1
Percent	14.5	15.1	15.2	16.1	15.6	—	—
Not Selected, Serving or Challenged	164,142	162,592	143,057	129,954	142,916	12,962	10.0
Percent	30.0	28.4	26.5	23.8	24.1	—	—
Jury Trial Days	26,176	28,425	28,274	28,293	30,032	1,739	6.1
Criminal	14,615	16,791	16,426	15,818	17,818	2,000	12.6
Percent	55.8	59.1	58.1	55.9	59.3	—	—
Civil	11,561	11,634	11,848	12,475	12,214	(261)	-2.1
Percent	44.2	40.9	41.9	44.1	40.7	—	—

HOLIDAY GREETINGS FROM AO DIRECTOR KIRKS AND FJC DIRECTOR HOFFMAN

The past year has been one evidencing the tremendous dedication of all members of the Judiciary and especially the federal judges who have continued to work to overcome the massive growth in cases at both the district and appellate levels.

We wish not only to express our admiration and appreciation for the work of these dedicated judges and their supporting personnel, but to extend our sincere holiday greetings to all of you and your families.

In addition, we wish to thank all of you for the cooperation which you have continued to give the Administrative Office of the United States Courts and the Federal Judicial Center throughout the year—cooperation which has been vital to the accomplishment of our joint objective: the efficient administration of justice throughou the federal court system.

Lowell F. Kirks

Walter E. Hoffman

FJC Director Judge Walter E. Hoffman, le confers with Judge Anthony M. Kenne (CA-9) during break at Center's first semin for staff attorneys. In the background is Louise Jacobs, Senior Staff Attorney (CA-3). **(See story page 2.)**

SENATE HOLDS HEARINGS ON NATIONAL COURT

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held two days of hearings last month on the proposal to create a National Court of Appeals.

Among those testifying were Chief Judges J. Collins Seitz (CA-3), Thomas E. Fairchild (CA-7), Frank M. Coffin (CA-1), Professor Maurice Rosenberg of Columbia Law School, Deputy Attorney General Harold R. Tyler, Jr., Barnabas F. Sears, past President of the Illinois State Bar Association, Judge Henry J. Friendly (CA-2), Chesterfield Smith, former President of the American Bar Association, Harvard Professor Paul E. Freund and Judge Donald P. Lay (CA-8).

Deputy Attorney General Tyler, Judge Friendly and Mr. Sears disagreed with the conclusion of the final report of the Commission on the Revision of the Federal Court Appellate System which called for creation of a seven-member, Article III Court which would handle cases referred to it by the Supreme Court as well as those transferred to it by the courts of appeals, the Court of Claims or the Court of Customs and Patent Appeals.

Deputy Attorney General Tyler said "The Department of Justice opposes creation of a National Court for several reasons. First, a National Court would aggravate some of the problems it is intended to relieve. Second, it would diminish the prestige of other federal courts. Third, it fails to address the root problem of reducing the caseloads of federal courts at all levels. Fourth, the National Court's transfer jurisdiction would restrict the Supreme Court's authority to determine what legal issues should be left unresolved at the national level."

Judge Friendly generally agreed with the position of the Department of Justice and told the Subcommittee that the proposed court would do almost nothing to ease the pressures on most district courts and the courts of appeals; it would increase rather than diminish the burden on the Supreme Court and risk its prestige. Finally, he said it would cause added delay and expense to litigants in an amount and to a degree that cannot be measured until we know how references by the Supreme Court would be handled.

Chief Judge Seitz, emphasizing that he was speaking only for himself and not for all the judges of his Court, favored the creation of the National Court because it would "provide greater uniformity in the law which is essential to the evenhanded administration of justice." He continued, "the Supreme Court cannot, in my view, handle all of the cases which should be resolved by it on the merits in the interest of providing more certainty and uniformity in the law."

Chief Judge Fairchild and Professor Rosenberg clearly supported the creation of the proposed National Court. Both told the Subcommittee that they were speaking for themselves.

Judge Fairchild said that the need for a National Court is evident. "I look at our present federal court system as a pyramid. . . . What has happened to the pyramid is that the base and middle have greatly expanded, whereas the capacity at the top has remained the same. By inserting another court as an additional tier, reviewing state court decisions on federal questions as well as lower federal court decisions, the pyramid's original symmetry can be restored."

Professor Rosenberg agreed with Judge Seitz and said "there is a great need to enlarge the capacity of the federal court system to settle the national law and this need goes beyond the ability of the Supreme Court alone to do so." He pointed out that the "need for authoritative decisions that settle the national law is a need that exists independent of whether or not there is a conflict among circuits as to the meaning of the particular statute."

Professor Rosenberg said that the argument that the plan for the National Court would burden the Supreme Court with the task of making rules for the operation of a new court was valid but that "it might be answered by encouraging some group—for example, one under the aegis of the Federal Judicial Center—to draft rules for the National Court of Appeals."

Chief Judge Coffin testified that "such a basic change in the structure of the judiciary should be made only after the clearest showing that a new institution is needed now. . . . We do not know how much help the Supreme Court needs now that three-judge courts had been largely eliminated and other national reforms have been proposed [and] we do not know what the National Court will do. It may resolve a handful of conflicts each year; it may evolve into a National Court of errors; it may come to specialize in business cases; or it may do none of these.

"The National Court of Appeals has been called a solution looking for a problem." He proposed that a temporary court be established by utilizing panels of circuit judges rather than choosing a solution "cast in institutional concrete."

Mr. Sears testified in opposition to the proposal and said that the need had not been demonstrated for such a major change in the historic structure of our Federal Judicial System and, moreover, the new court would not relieve any of the burden of the Supreme Court. In fact, he told the Subcommittee that the new court could possibly add to the Supreme Court's burden by forcing the Supreme Court to review cases decided by the proposed new court.

Professor Paul A. Freund told the Subcommittee that a National Court of Appeals proposal embodied in S. 3423 avoids the major objections to the proposal of the Study Group on the Caseload of the Supreme Court.

However, he said there were some questionable aspects to the current National Court proposal:

(See COURT, page 8)

PERSONNEL

Appointments

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Nov. 30

Howard G. Munson, U.S. District Judge, N.D.N.Y., Nov. 5

Death

Thomas F. McAllister, U.S. Senior Circuit Judge, 6th Cir., Nov. 10

Elevation

Albert J. Henderson, Chief Judge, U.S. District Court, N.D.Ga., Nov. 8

AO and FJC calendar

Jan. 6 Judicial Conference Committee on Supporting Personnel, Washington, D.C.

Jan. 6-7 Judicial Conference Committee on Judicial Improvements, Coronado, CA

Jan. 7 Judicial Conference Committee on Federal Jurisdiction, Washington, D.C.

Jan. 20-21 Judicial Conference Committee on Criminal Law, Phoenix, AZ

Jan. 24-25 Judicial Conference Jury Committee, Sea Island, GA

Jan. 27-28 Judicial Conference Committee on Probation, San Diego, CA

Jan. 27-28 Judicial Conference Committee on Criminal Rules, Washington, D.C.

Jan. 31-Feb. 1 Judicial Conference on Court Administration, Key Biscayne, FL

Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, FL

Feb. 3-4 Judicial Conference Committee on the Criminal Justice Act, Ft. Lauderdale, FL

Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, FL

Feb. 4 Judicial Conference Committee on Bankruptcy, Miami, FL

Feb. 5 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, FL

Feb. 7-9 Workshop for District Court Judges (CA-10), Seattle, WN

Feb. 14-18 Advanced Seminar for Probation Officers, San Diego, CA

Feb. 28-March 2 In Court Management Training Institute, Honolulu, HI

THE LAW ENFORCEMENT ADMINISTRATION WILL SPONSOR A NATIONAL CONFERENCE ON CRIMINAL JUSTICE EVALUATION IN WASHINGTON, D.C., FEBRUARY 22-24.

(COURT, from page 7)

- The screening and switchboard functions of the Supreme Court become of greater relative importance calling for several decisions in that court on whether to grant review and whether to send the case to the National Court.
- The appellate process becomes over elaborate.
- The proposal may be too modest in that it does not afford direct referral to the present Court of Appeals.

Professor Freund cited as the merits of the proposal the following:

- It provides for a greater decisional capacity for the appellate system.
- The greater decisional capacity would have a relative effect on the caseload of the Courts of Appeals by settling more surely or more promptly issues that beed multiple litigation in the circuits.
- Flexibility is provided by leaving a large measure of discretion to the Supreme Court both in the number of cases remanded and in their subject matter.

Judge Donald P. Lay (CA-8) told the Subcommittee that he has continuously opposed the creation of a National Court of Appeals and that the emphasis for congressional reform is being directed to an area where no accute problem exists.

THE THIRD BRANCH

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