The Third Branch

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Bulletin of the Federal Courts

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JUDICIAL CONFERENCE ASKS CONGRESS FOR 122 NEW JUDGESHIPS

Following the quadrennial survey of judgeship needs in the district courts throughout the nation which was conducted in 1976, the Judicial Conference asked Congress to create 122 additional United States judgeships including 16 Courts of Appeals judgeships.

The quadrennial survey was conducted by the Subcommittee on Judicial Statistics of the Judicial Conference with assistance and support of the staff of the Administrative Office.

In conducting this survey, the Subcommittee considered the recommendations of the district courts and the judicial councils of the circuits, as well as the statistical information available in the Administrative Office.

Here are the specific recommendations which the Judicial Conference approved:

COURTS	NUMBER OF JUDGESHIPS Dist.	Cir.
First Circuit:		1
Massachusetts	4	
New Hampshire	1	
Puerto Rico	4	
Second Circuit:		
Connecticut	1	
New York:		
Northern	1	
Eastern	1	
Third Circuit:		1
New Jersey	1	
Pennsylvania:		
Middle	2	
Fourth Circuit:		2
Maryland	2	
North Carolina:		
Eastern	1	
Middle	1	
South Carolina	3	
Virginia:		
Eastern	2	
Western	2	
West Virginia:		
Southern	1	
Fifth Circuit:		
Alabama:		
Northern	2	
Middle	1	
Florida:		
Northern	1	
Middle	3	
Southern	6	
Georgia:		
Northern	5	
Southern	1	
Louisiana:		
Eastern	4	
Middle	1	
Western	1	
Texas:		
Northern	3	
Eastern	1	
Southern	5	
Western	1	

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Judge Edward J. Lumbard (CA-2) makes a point during a recent meeting of the Study Commission on Records and Documents of Federal Officials held at the Federal Judicial Center.

(See DOCUMENTS, page 8)

SPEEDY TRIAL ACT GENERATES CIRCUIT CONFLICT

A conflict of circuits has developed on an important issue in the interpretation of the Speedy Trial Act of 1974.

The Court of Appeals for the District of Columbia Circuit, in a ruling issued December 28, held that the interim time limits of 18 U. S. C. 3164 are subject to the "excludable time" provisions of section 3161 (h). *United States v. Corley*, No. 76-2096. The District

(See CONFLICT, page 3)

(JUDGESHIPS from page 1)

	Dist.	Cir.
Sixth Circuit:		1
Kentucky:		
Eastern	2	
Michigan:		
Eastern	3	
Western	2	
Ohio:		
Northern	1	
Southern	1	
Tennessee:		
Middle	1	
Seventh Circuit:		1
Illinois:		
Northern	2	
Eastern	1	
Indiana:		
Northern	1	
Southern	1	
Wisconsin:		
Western	1	
Eighth Circuit:		1
Arkansas:		
Eastern	2	
Iowa:		
Southern	1	
Minnesota	1	
Missouri:		
Eastern	1	
Western	2	
South Dakota	1	
Ninth Circuit:		5
Arizona	3	
California:		
Eastern	3	
Central	1	
Southern	2	
Nevada	1	
Oregon	2	
Washington:		
Eastern	1/2	
Western	1-1/2	
Tenth Circuit:		1
Colorado	2	
Kansas	1	
New Mexico	1	
Oklahoma:		
Eastern*	2	
D.C. Circuit		3

*Realignment: See Report

Other Action

In addition, the Judicial Conference approved as an emergency measure, the recommendation that the Congress create three additional circuit judgeships in the District of Columbia Circuit. The Conference noted the sharp rise in the number of appeals filed per judgeship in the first six months of fiscal 1976, with the largest increase occurring in the number of appeals from administrative agencies which rose by more than 100 percent.

The Judicial Conference also reaffirmed its support of legislation which would raise the daily jury attendance fee from $20 to $30 and which would equate the allowable travel and subsistence expenses of jurors to the rates established by the Director of the Administrative Office for supporting court personnel in travel status.

Additionally, the Director of the A. O. was authorized to transmit several bills relating to jury administration which had not been acted upon by the 94th Congress to the 95th Congress in the form of an omnibus bill encompassing the following proposals:

- A bill 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 (transmitted in draft form on May 21, 1976);
- A bill to provide in civil cases for juries of six persons and to reduce the allowable peremptory challenges from three to two (pending as H. R. 6039 and S. 237);
- A bill to amend the Federal Employers' Compensation Act by adding a new section providing for work injury coverage of federal petit and grand jurors in the performance of their duties (transmitted in draft form on March 24, 1975);
- A bill to clarify the qualification section of the Jury Selection and Service Act, 28 U. S. C. § 1865 (b) (5), with regard to service by persons whose civil rights have been restored, by deleting the phr "by pardon or amnest (pending as H.R. 6050);
- A bill to add to the Jury Selection and Service Act further definitions relating to jury selection by electronic data processing (pending as H. R. 6051).

The Conference reaffirmed its support of S. 2923, a bill to amend the statutory ceiling on the salaries of magistrates, and authorize, subject to the enactment of S. 2923, an increase in the salaries of those full time magistrate positions from $31,500 to $37,800.

The Judicial Conference received a report that during fiscal 1976 approximately 48,000 persons were represented by assigned counsel or by special defender organizations established pursuant to the Criminal Justice Act. T sum of $19,046,000 was appropriated for implementation of the Act in fiscal 1976. The cost of operating the 22 federal defender offices during fiscal 1976 was approximately 4.8 million dollars. During that period, the federal public defenders were assigned to 11,751 cases at an overall average cost of $407 per case.

The Conference was advised that an advisory committee of experienced public defenders had completed a basic federal criminal practice manual for use by all who represent defendants under the Criminal Justice Act.

The A. O. will assume the responsibility for printing and distributing the manual and it is intended that it will be provided free to each federal judge and to all attorneys, including federal defenders who are subject appointment under the Crimi Justice Act. Copies will also be made available to others at a cost not to exceed $5.00.

(CONFLICT from page 1)

of Columbia Court explicitly declined to follow a case decided by the Ninth Circuit last March, in which it was held that "excludable time" does not apply to the interim time limits. *United States v. Tirasso*, 532 F. 2d 1298.

The interim time limits provide that a defendant in pretrial detention must be brought to trial within 90 days of the beginning of continuous detention. Failure to meet this deadline, through no fault of the accused or his counsel, requires that the accused be released from pretrial custody. The interim limits also include a 90-day limit for released defendants who are designated as high risk by the attorney for the Government. When the permanent provisions f the Speedy Trial Act take full effect on July 1, 1979, the interim limits will expire.

Under the permanent provisions of the Act, there will be a 30-day time limit for indicting an accused after he has been arrested, a 10-day limit tc arraignment after the later to occur—indictment or initial appearance—and a 60-day limit to trial after arraignment. Section 3161 (h) provides that, in computing these time limits, certain periods "shall be excluded." Specified events, such as interlocutory appeals, will thus have the effect of extending the time limits. It has been considered an open question whether the exclusion provisions also apply to the interim time limits. That is the question on which the District of Columbia Circuit and the Ninth Circuit are now in disagreement.

Pictured above immediately prior to meeting of the Library Study Advisory Committee are (l. to r.) Judges Joseph H. Young (D.Md.), FJC Director Walter E. Hoffman, John D. Butzner, Jr. (CA-4), and Joseph T. Sneed (CA-9).

LIBRARY STUDY ADVISORY COMMITTEE MEETS AT FJC

With draft of a preliminary report in hand, the Advisory Committee to the study of the federal court libraries met at the Center this month to review the report and make suggestions.

The preliminary draft submitted by Project Director Raymond M. Taylor follows a year's study of all federal court libraries—how they are operated, how books for the libraries are ordered and used, and what personnel staff the libraries. The Advisory Committee members, who are a group of federal judges, librarians (public and private) and a Circuit Executive had several suggestions which will now be considered for inclusion in a final report.

An additional product of the library study is a comprehensive inventory of all law books in the federal court system.

Bulletin

ATTENTION: ALL BANKRUPTCY JUDGES, COURT CLERKS AND BANKRUPTCY CHIEF CLERKS

Berkeley Wright, Chief of the Division of Bankruptcy of the Administrative Office, advises that with the passage of P. L. 94-550, it is no longer necessary that a false statement be made under oath in order to constitute a crime under § 152 of Title 18.

Accordingly, the affidavit forms which now appear on the reverse side of bankruptcy official forms 10, 26, 27 and 27A should be modified to comply substantially with the illustrative certification of service forms which were mailed to you in December.

When the current stock of these forms is depleted, the appropriate certification of service will be printed on the new forms, but until this is done, bankruptcy officials and court clerks should immediately modify the bankruptcy official forms as specified.

It is the view of the A. O. that P. L. 94-550 is equally applicable to any bankruptcy forms which may require verifications.

BANKRUPTCY FILINGS DROP

According to figures provided by the A. O. Bankruptcy Division, during the five-month period from July 1976 through November 1976, 90,795 bankruptcy petitions of all types were filed in United States District Courts.

This represents a 15.2 per cent decrease from the 107,125 cases filed during the same period a year ago.

The drop in filings comes in the Consumer Bankruptcy and Chapter XIII area. There was an increase in the small but growing number of Real Property Arrangements under Chapter XII of the Act. It is estimated that approximately 220,000 bankruptcy filings will be filed in the twelve-month period ending June 30, 1977, according to Bankruptcy Division Chief Berkeley Wright.

THE SOURCE
The Information Service of the Federal Judicial Center

Publications are listed for information only. Those in **boldface** may be ordered from the FJC Information Services.

- Alternatives in Dispute Processing: Litigation in a Small Claims Court. Austin Sarat. 10 Law & Society Rev. 339-375 (Spring 1976).
- **Federal Judicial Center Annual Report 1976.**
- Independence under International Law. Edward Dumbauld. LXX Am. J. of Int'l. L. 425-431 (July 1976).
- Justice on Appeal. Paul D. Carrington, Daniel J. Meador, Maurice Rosenberg. West, 1976.
- Law and Technology Symposium: Coping with Computer-Generated Evidence in Litigation. 52 Chi.-Kent L. Rev. 545-620 (1976).
- Legal system, a Social Science Perspective. Lawrence M. Friedman. Sage, 1975.
- The Myth of the Unwilling Juror. William R. Pabst, Jr., G. Thomas Munsterman, Chester H. Mount. 60 Judicature 164-171 (Nov. 1976).
- On the Pursuit of Competence. Paul D. Carrington. 12 Trial 36-38 (Dec. 1976).
- Speedy Trial Act of 1974. Richard S. Frase. 43 U. of Chi. L. Rev. 667-723 (Summer 1976).
- Standards of Attorney Competency in the Fifth Circuit. Reagan W. Simpson. 54 Tex. L. Rev. 1081-1114 (June 1976).
- A Technique of Settling Cases. Stanley N. Ohlbaum. 15 Judges' J. 60-62 (Spring-Summer 1976).
- A Viable Alternative to Plea Bargaining. Gerald J. Levie. 52 Los Angeles B. J. 158-161 (Oct. 1976).
- Videotape: Prerecorded Trials—a Procedure for Judicial Expediency. 3 Ohio N. L. Rev. 849-902 (1976).

COMMITTEE OF THE JUDICIAL CONFERENCE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS

On September 22 the Committee of the Judicial Conference to Consider Standards for Admission to Practice in the Federal Courts held its first meeting at the Supreme Court building in Washington.

Chief Justice Burger appointed this committee of twelve federal judges, ten of whom are district court judges, six legal educators, and six trial practitioners, pursuant to a September 1975 resolution of the Judicial Conference calling for a study of the national applicability of the recommendations made by a committee of the Second Circuit on minimum bar admission qualifications.

Chief Judge Edward J. Devitt (D. Minn.) is the chairman of this committee. Professor John E. Kennedy of Southern Methodist University Law School is the reporter to the committee. Staff assistance to the committee is being provided by the Office of General Counsel, Administrative Office of the U. S. Courts and the FJC.

The committee is concerned with determining what attributes qualify a person to litigate cases in federal courts and whether there is a present need for improving the level of advocacy of the federal trial bar. The committee will consider possible methods for obtaining improvements if it ascertains that substantial need for such exists.

At the September meeting a diversity of viewpoints were expressed but the committee generally agreed that the first mission of the committee would be to develop a research predicate for any recommendations it may ultimately make. Accordingly a subcommittee on procedures and methods was appointed to suggest a program of research and study for the full committee.

Such subcommittee prepared, in conjunction with the staff of the Federal Judicial Center and the Administrative Office of the United States Courts, a program outline for the work of the full committee.

A primary segment of that program is a research effort to be undertaken by the Federal Judicial Center. This research will include questionnaires sent to district and appellate court judges, a sampling of trial lawyers, case reports by judges, and videotape experiments to examine whether there is a need for substantial improvement in advocacy performances and, if so, in what area such needs are most acute.

Simultaneously, the subcommittee recommended that a notice of the committee's existence and concerns be widely circulated with an invitation for all interested parties to make written comment to the committee about its work. Additionally, regional public hearings were recommended to enable persons who so desire to engage in dialogue with the committee.

At the December 9-10 meeting of the full committee in San Antonio, Texas, the committee adopted in principle the recommendations of the subcommittee, subject to refinement by that subcommittee. In addition, several speakers addressed the committee at the San Antonio meeting with respect to how the committee might engage in its work and what its ultimate recommendations might be.

At the San Antonio meeting three law student consultants recently appointed to the committee by the Chief Justice were introduced. Judge Devitt also created subcommittees to study rules for law student practice in the federal courts and to determine what other professions are doing with respect to maintaining their professional standards.

The next scheduled meeting of the committee will be in Carmel, California on April 18-19. This

meeting purposefully coincides with the spring meeting of the Conference of Metropolitan Chief Judges so that an exchange of ideas between the two groups can be facilitated.

At the present time the committee welcomes input from all interested parties on the nature of the level of advocacy in the federal courts and what, if anything, the committee can or should recommend about the adequacy of the trial bar.

Correspondence with the Committee should be addressed to the Chairman of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Attention Carl H. Imlay, General Counsel, Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C. 20544.

CHIEF JUSTICE ISSUES YEAR-END REPORT ON THE FEDERAL JUDICIARY

Early this month Chief Justice Burger issued a year-end Report on the Federal Judiciary which, among other things, called for the creation of the long delayed additional judgeships to handle the steadily growing caseload and for some limited form of review procedure to eliminate sentencing disparity.

Here are the high points of the Chief Justice's year-end report. [A full text of the Report is available from the FJC Information Service.]

- The "Pound Revisited Conference" was important because it launched a probing assessment of the forms and procedures we use to administer justice. As an immediate result of the conference, the ABA has created a Special Committee on Resolution Minor Disputes which is examining alternatives to litigation such as wider use of arbitration, mediation, ombudsmen and informal neighborhood justice centers. A national conference on minor dispute resolution will be convened in New York City in May by the ABA.
- Continuing legal education programs are developing and four states, Iowa, Minnesota, Wisconsin, and Washington make attendance at these programs mandatory.
- There has been a sharp increase in trial advocacy programs for lawyers and law students, developed by professional associations and law schools.
- We are moving toward the development of higher standards for admission to practice before the federal courts. A committee of the United States Judicial Conference is presently studying ways to determine standards for admission to try cases in the federal courts.
- The bar is increasingly recognizing its obligation to discipline those lawyers who betray professional trust.
- With the new codes of legal responsibility and judicial ethics and enforcement staff, more law schools and state bars are requiring students to study legal ethics.
- The leaders of the Judiciary Committees of the Senate and House merit commendation for recent developments: Magistrates are now given additional duties, enabling district judges to spend more time on trials and less on pretrial procedures and routine matters.

The use of special three-judge district courts has been substantially abolished, which will give some relief to federal courts.

With the adoption or expansion of merit selection systems for judges in Florida, Maryland, Nevada and North Dakota, in 1976, a majority of states now use merit selection. The federal system has also evolved in this direction. Upon the request of recent Presidents, nominees have been screened by the ABA Committee on the Federal Judiciary.

The need for new judgeships continues to grow. After careful analysis, the Judicial Conference recently recommended creation of 106 district judgeships and 16 new judgeships in the Courts of Appeals; about one-half of these have been identified as needed four years earlier. Case filings in the Courts of Appeals will have increased more than 140 percent between creation of the last new circuit judgeships of 1968 and the authorization and filling of any new judgeships.

Federal judges, with the aid of new techniques and research of the Federal Judicial Center, have continued to improve their procedures and they have been willing to work longer days. As a result, the average federal judge completed work on 36 percent more cases this past year than eight years ago.

- Court filings were up 11.3 percent in fiscal 1976 to 130,597. Dispositions increased 5 percent.

District Courts are complying with time limits imposed for trial of criminal cases, but some overloaded courts have not been able to try a civil case in many months, other than emergency matters.

- Some form of review procedure of sentences is needed to deal with the problems of disparity but it must be fashioned so as to avoid further overburdening of the Courts of Appeals, which already have impossible caseloads.
- This year-end is a good time to pay tribute to the great service rendered by the Senior Federal Judges—notably Mr. Justice Tom Clark, who accepts assignments to sit in every corner of the country. Presently, there are 163 Senior Federal Judges, virtually all of whom, literally, "work for nothing"—and "keep the ship afloat."

(Above) Judicial Fellows Program finalists and their spouses attend luncheon briefing held for them this month at the Federal Judicial Center. Judge Walter E. Hoffman, Center Director, is at the far right (standing).

LEAA DEVELOPS MODEL SENTENCING GUIDELINES FOR STATE COURTS

The Law Enforcement Assistance Administration has developed model sentencing guidelines which are being implemented in Denver, Colorado, and courts in Chicago, New York and Philadelphia are currently developing their own model guidelines.

The guidelines which are aimed at minimizing disparity in sentencing were developed as the result of a recently completed two-year study administered by the Criminal Justice Research Center, Inc. of Albany, New York. The guidelines will be implemented in several cities during 1977.

Using the Denver sentencing guidelines, persons sentenced in the future by judges in that city's six criminal courts, will be sentenced under the model guidelines. A judge may sentence outside the guidelines but he must provide explicit written reasons for doing so.

Judge James C. Flannigan, the Presiding Judge of the Court's Criminal Section, and a member of the steering and policy committee that formulated the guidelines, candidly admitted he had considerable reservations in the early stages of the program:

"At first I was very skeptical with a rather negative attitude. But when I learned what was to be done and as we met from time to time, my negativism receded and I became more enthusiastic. Sentencing remains a big problem for a judge—something that gives him great concern. He realizes he is dealing with the life not only of the man appearing before him, but of all others related to him—his wife, children, parents, and others."

[Copies of the 175-page final report are available from the LEAA, Washington, D. C. 20530.]

CA-2 LAWYER DELAYS TRIAL: $1,500 COSTS ASSESSED

The Second Circuit Court Appeals recently upheld the decision of the Eastern District of New York which ruled that an attorney who had recklessly delayed the beginning of a criminal trial should be forced to pay $1,500—$500 for each day of delay.

The opinion of the Court of Appeals, authored by Judge Thomas J. Meskill, said that the attorney who was scheduled to appear before Judge Thomas C. Platt, Jr. (E. D.—N. Y.) failed to inform Judge Platt that he had another trial which would conflict with the trial scheduled to begin before Judge Platt.

The Court of Appeals upheld the local rule of the Eastern District of New York, Rule 8(b), which authorizes district judges to assess reasonable costs directly against counsel whose actic impedes the effecti administration of the court s business.

Judge Meskill said that "we are hopeful that our decision will have a positive effect by deterring recklessness by trial lawyers of the federal courts."

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COURTRAN II UNDERWAY IN NORTHERN DISTRICT OF ILLINOIS

The Courtran II Criminal Case System, which includes docketing and speedy trial reporting via on-line terminals, has started into operation in the U. S. District Court for the Northern District of Illinois.

Chief Deputy Clerk, Charles Vagner, and Deputy Clerks Carole Cuculich and Perry Moses,

Judicial Fellow Jack Buchanan illustrates a statistical report which can be produced at a terminal. This is one type of terminal used to enter docketing information into the Courtran system.

spent a week at the Computer Center at the U. S. District Court for the District of Columbia testing the system and learning how to use it effectively before returning to their Court to start operations. They are now training other members of the Illinois Northern Clerk's Office in entering criminal case data via the terminals into the central computer. When the Chicago team has completed their testing, operations will start in five other pilot District Courts—C. D. Cal., N. D. Cal., E. D. Mich., D. C. and S. D. N. Y.

Initial training for individuals from the additional five courts will be conducted in Chicago by personnel from the Illinois Northern Clerk's Office and the Federal Judicial Center. Center staff members will subsequently spend one week conducting additional training in each of the five courts.

Carole Cuculich, Deputy Clerk of the U. S. District Court for the Northern District of Illinois, enters information from Illinois Northern criminal dockets as Center staff members Richard Fennell and John Allen, and Center Director Judge Hoffman, observe.

When the system is fully operational, Docket Clerks will enter information on criminal cases directly into the computer rather than entering the information on a number of separate forms as is the present practice.

Perry Moses, Deputy Clerk in the U. S. District Court for the Northern District of Illinois, asks Michael Marean of the Center staff to check a Speedy Trial data report to be sure the system is operating correctly.

This information will be entered into the Courtran system using terminals located in each court.

The Federal Judicial Center has established a nationwide telecommunications system for the transmission of case information from courts to the Courtran computers.

The network provides Judges, Deputy Clerks and other interest-

Chief Deputy Clerk of the U. S. District Court for the Northern District of Illinois, Charles Vagner, one of the key persons responsible for the design of the system, studies a calendar report as Center Deputy Director Joseph L. Ebersole, looks on.

ed personnel with immediate access to all relevant data via electronic display. When desired, hard copies of display information can be immediately produced.

Courtran is designed to support the entire range of Clerk's

Jack Pickett, one of the Center's computer operators, starts a disc file into operation. These discs are the "file cabinets" for all computerized information. Docket information on thousands of cases from many districts can be stored on the two discs shown here.

Office functions including case scheduling, caseflow management, Speedy Trial monitoring and reporting, and statistical reporting to the Administrative Office of the U. S. Courts.

ao fjc calendar

Jan. 31—Feb. 3, 1977 Seminar for Federal Public Defenders, Ft. Lauderdale, Fla.

Jan. 31—Feb. 4 Videotape Equipment Workshop, Washington, D. C.

Jan. 31 Judicial Conference Magistrates Committee, New Orleans, La.

Jan. 31—Feb. 1 Judicial Conference Committee on Court Administration, Key Biscayne, Fla.

Feb. 1-3 Advanced Management Workshop for Supervising U. S. Probation Officers, Charleston, So. Carolina

Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, Fla.

Feb. 3-4 Judicial Conference Committee on the Criminal Justice Act, Ft. Lauderdale, Fla.

Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, Fla.

Feb. 3-4 Meeting of FJC Board, Key Biscayne, Fla.

Feb. 4 Judicial Conference Committee on Bankruptcy, Miami, Fla.

Feb. 4 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, Fla.

Feb. 7-9 Workshop for District Judges, Seattle, Wash.

Feb. 11-12 Judicial Conference Appellate Rules Committee, Williamsburg, Va.

Feb. 14-18 Advanced Seminar for U.S. Probation Officers, San Diego, Calif.

Feb. 14-18 COURTRAN Training Workshop, Chicago, Ill.

Feb. 22-23 In-Court Management Training Institute, San Diego, Calif.

Feb. 24-25 In-Court Management Training Institute, San Francisco, Calif.

Feb. 28 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, D. C.

Feb. 28—Mar. 3 In-Court Management Training Institute, Honolulu, Hawaii

FEDERAL RECORDS COMMISSION DISCUSSES DISPOSITION OF JUDICIAL RECORDS

The Study Commission on Records and Documents of Federal Officials met for two days at the Federal Judicial Center last month to discuss the disposition of judicial records.

Representing the Judiciary at the meeting was Judge J. Edward Lumbard (CA-2), the only member of the Commission representing the Judicial Branch. However, at this meeting two additional federal judges served as panelists, Judges Carl McGowan (CA-DC) and Gerhard A. Gesell (Dist.-D.C.).

The discussion focused on the disposition of three categories of judicial documents: the administrative files of the courts which are usually in the custody of the clerk; the private papers of judges including letters and diaries; the confidential public documents such as working papers, draft opinions and documents relating to the confidential judicial deliberations of the judges.

The panelists and Commission members agree that the administrative files of the courts should be open to the public but that the private papers of judges are the private property of the judges; that he should be encouraged to make them available to historians because they often reflect the character of the judge and the character of the judge is often reflected in the judicial process. As far as the third category was concerned—the confidential public documents—it was generally agreed that these are written extensions of confidential deliberations and should remain confidential. Reference was made to the discussions held the Supreme Court during confidential conferences and the fact that "What is said there, stays there".

Some Commission members suggested that it might be wise for the Judiciary to establish its own system of archives in order to maintain control over the documents of judges. The final report of the Commission will be submitted to the President and the Congress on March 31.

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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JUDICIAL PAY INCREASES TAKE EFFECT

On February 20, the first substantial salary increases for Supreme Court Justices, judges of both the Circuit Courts of Appeals and the District Courts as well as some senior members of the judiciary went into effect automatically.

The salary increases were proposed by former President Ford when he submitted his budget to Congress on January 17. President Ford submitted his proposals after receiving the Recommendations of the Commission on Executive, Legislative and Judicial Salaries December 2.

Under Section 225 of P.L. 90-206, the salary recommendations of the President automatically go into effect "...at the beginning of the first pay period which begins after the thirtieth day following the transmittal of such recommendations in the budget ..." unless neither the House of Representatives nor the Senate enacts legislation specifically disapproving all or part of the recommendations.

In this instance, however, the leaders of both Houses of the Congress supported the President's pay proposals and efforts to disapprove them, in whole or in part, were unsuccessful.

These are the first substantial salary increases for federal justices and judges since March 1, 1969. The salary commission said in its report to the President, "For the last eight years, the highest officials of all three branches of the federal government have received only one increase in salary, a nominal 5% cost of living increase. During this time, average private wages increased by 70% and the consumer price index went up more than 60% and general civil service pay increased by 65%." The Commission added that testimony presented before it "indicated that it is even becoming increasingly difficult to recruit and retain highly skilled and able attorneys to take positions in the Federal judiciary."

Here are the present pay levels, those submitted by the salary commission, and the President's proposals submitted to Congress in January which will go into effect for the Judiciary on March 1:

	Present Salary	Recommendation of Salary Commission	New Salary
Chief Justice	$64,600	$80,000	$75,000
Associate Justices	$63,000	$77,500	$72,000
Circuit Judges	$44,600	$65,000	$57,500
District Judges	$42,000	$62,000	$54,500

CHIEF JUSTICE PRESENTS REPORT ON THE JUDICIARY

Chief Justice Warren E. Burger in his address to the American Bar Association during its midyear meeting in Seattle this month called for, among other things, the elimination of diversity jurisdiction, the division of the Ninth and the Fifth Circuits into three administrative units each, the creation of 132 new judgeships and the establishment of a National Institute of Justice.

Here is a summary of the Chief Justice's Report on the State of the Judiciary. (The full text is available from the FJC Information Service.)

The Chief Justice commended the American Bar Association for taking the leadership in crucial areas which weighed heavily in bringing about the establishment of the Institute for Court Management, the National Center for State Courts and Circuit Executives positions, with all groups working together to eliminate the problems of delay, congestion, and excessive expense in the resolution of disputes.

The very complexity of the Government today seriously impedes communications among its parts and branches. The Judicial Branch lacks facilities generally available to the departments of the Executive in pressing its positions to the Congress and as a result, needed legislative action is

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often delayed and some actions are taken without awareness of the consequences on the work of the courts.

The Chief Justice also:

• Cited three examples which illustrate the tendency of Congress constantly to add to the jurisdiction and functions of the federal courts without simultaneously providing the people necessary to do the work. [The examples he used were Speedy Trial Act of 1974, the Regional Bail Reorganization Act of 1973, and the Temporary Emergency Court of Appeals.] The critical factor is that Congress should act with an awareness of the consequences on the courts when it legislates and should provide adequate tools. The Chief Justice again urged, as he has since 1972, that Congress establish, by rule or resolution, a procedure requiring each committee, upon reporting a bill affecting the federal courts, to submit with the legislation an impact statement.

• Reported that it is now imperative that we have not 65 new judgeships but approximately 132—107 district judgeships and 25 circuit judgeships.

• Urged that Congress totally eliminate federal jurisdiction in diversity of citizenship cases which comprise nearly 20 percent of the district court filings.

• Urged, since both the Ninth and Fifth Circuits are so large, that Congress should now proceed promptly to divide the circuits into three administrative units.

• Suggested, also, that Congress authorize the Judicial Conference to divide the Circuits into administrative units, subject to a veto by the Congress.

• Endorsed the concept of establishing a Presidential judicial nominating commission in each circuit to evaluate appointments for the Court of Appeals and said he hoped that this concept will be used on a state basis to evaluate lawyers considered for district court appointments, and that this would, in fact, increase the percentage of judges rated "exceptionally well qualified" by the American Bar Association.

• Called for the creation of a permanent Commission on the Judiciary that would carry on a continuing study of the problems and the needs of the Judicial Branch, and make periodic reports directly to the Judiciary Committee of the House and Senate, the President and the Judicial Conference of the United States. One of the key functions of this Commission would be to improve communication between the Judicial, Legislative, and Executive Branches of the Government.

• Recommended the creation of the National Institute of Justice which should be essentially a grant organization, a highly specialized extension of the concept of revenue sharing. This organization would act as a mechanism to give to state courts the financial aid which realistically, they are unable to secure from their own hard-pressed state legislatures.

A. O. DIRECTOR OUTLINES LEGISLATIVE PROGRAM

Rowland F. Kirks, Director of the A.O., testified this month before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice and outlined for the Committee the new legislation which the A.O., on the recommendation of the Judicial Conference, intends to send to the Congress this year.

He said that approximately thirty requests for new legislation will be sent to the House Subcommittee in addition to legislation which will go to other committees which deal with the creation of new judgeships.

He testified that the time has come for Congress to reexamine the jurisdiction of district courts and mentioned that during the previous Congress legislation was transmitted which would have amended the jurisdictional statute on diversity of citizenship to prevent a plaintiff from filing a diversity action in a district court located in a state in which he is a citizen.

In addition, he said the Judicial Conference also commended favorably on legislation introduced in the Senate to increase the amount in controversy required in diversity cases from $10,000 to $25,000.

"At its session next month, the Judicial Conference will consider a strong recommendation from one of its committees that the diversity of citizenship jurisdiction of the federal courts be abolished. The action of the Conference will be reported to the Congress before the first of April."

On the subject of jury administration, he told the Subcommittee that the Judicial Conference has recommended the repeal of 28 U.S.C. 1863(b)(7) permitting the automatic exclusion of prospective jurors who must travel a great distance to attend court. Increases in attendance fees from $20 to $30 per day and certain juror expenses such as travel a will be recommended as well legislation to protect the employee rights of persons who are called for jury service.

"We are also preparing an omnibus bill which would create a presumption that the use of voter registration lists is consistent with the cross-sectional selection of juries; provide for a jury of six persons in civil cases with a reduction in allowable peremptory challenges from three to two; provide Federal Employee Compensation Act coverage for jurors who are injured in the performance of their duties; permit persons whose civil rights have been restored to serve on juries; and make administrative changes in the Act to facilitate the use of electronic data processing in jury selection."

He said that the Judicial Conference has asked that the entire subject of filing fees be reviewed and is suggesting that the Conference be given the authority to fix all fees.

Turning to the subject of Magis-

(See KIRKS, page 3)

JUDICIAL IMPACT STATEMENTS

THERE WAS SNICKERING five years ago when Chief Justice Warren E. Burger suggested that Congress create something he called a judicial impact statement. But nobody ought to be snickering now. The federal court system is buried in cases and many of them are the result of legislation that Congress has passed in recent years without paying much attention to what the new laws would do to the courts.

The Chief Justice renewed his plea over the weekend in Seattle and documented his argument unusually well. He noted that earlier this month Congress directed that all cases arising under the emergency natural gas bill be handled by the Emergency Court of Appeals. That sounded fine when it was proposed, especially since that court was set up in 1973 to handle such cases. But guess what? Congress never provided any judges for it. Its members are drawn from other federal courts and 13 different judges have sat on it in the last four years in order to spread the work around. And Congress, of course, never provided the other courts with new judges to replace those who were being used on this new one.

The same thing happened with the railroad reorganization act. Congress created a special three-judge court to handle the bankruptcies of the eastern railroads, but provided no judges for it and no replacements for the three judges who were pulled from other courts to sit on it.

The lesson is obvious. Congress ought to do what the Chief Justice wants. It created environmental impact statements to help all of us understand better the effect on the world around us of various federal projects. It has created its own internal budget impact statements so its members can have an idea of how much a particular proposal will cost in future years. It ought to do the same kind of thing for the courts so it can provide enough judges to handle efficiently and expeditiously the cases it wants decided.

The present situation is absurd. The Chief Justice says the federal courts now need 132 new judges just to keep up with their present work. If he is right—and the evidence suggests his number is in the ball park—the judiciary is falling farther and farther behind every day.

(KIRKS from page 2)

trates, he said that the Conference has proposed amendment to the Federal Magistrate's Act intended to enlarge the trial jurisdiction of magistrates in certain misdemeanor cases. Magistrates, probation officers and pretrial service officers are not now included in the statute making it a crime to kill or injure certain officers or employees in the performance of their duties. The Conference believes that this added protection should be provided to all officers and employees of the Judicial Branch whose duties involve a degree of personal danger.

Here are other matters which Director Kirks said may come before the Subcommittee this session:

- A bill to provide for legal assistants in the U.S. Courts of Appeals.
- Legislation relating to the

(See KIRKS, page 8)

SPOTLIGHT INTERVIEW

Sherman R. Day

What is the National Institute of Corrections and what is the group currently doing? In the following interview, the Institute's Director, Sherman R. Day, answers in detail these questions and explains how the new organization may contribute to key correctional changes in what many observers believe have been the most neglected correctional units in the Nation: the thousands of local jails where federal as well as state inmates often spend months prior to and after trial.

Director Day is the former Administrator for Staff Development for the Bureau of Prisons and has been Associate Dean, Academic Programs, and Professor of Urban Life at Georgia State University. He holds a Doctorate in Education from the University of Georgia and has written extensively on such topics as *Innovations in Group Counseling* and *Interpersonal Communications.*

Would you describe the purpose of the National Institute of Corrections?

The National Institute of Corrections was created to be a leadership resource for state and local corrections. We hope to accomplish this mission through a variety of activities including staff development, research and evaluation, information sources, standards development and technical assistance.

What staff do you have?

We are a very small agency. We are authorized 26 staff and a total budget of approximately $5,000,000.

What lessons, if any, can we learn or gain from your experience with state prisons?

We ourselves are still learning. However, we have become very aware of what a disparity there is both at the state and local level. Operations and programs range greatly in quality and quantity. We have also learned first hand how fragmented our correctional system or "non system" is in this country.

Could you give us an example of what you are either doing or have done with regard to improving the conditions in the jails?

The improvement of our Nation's jails is a major priority and program thrust for NIC. One example of our activity is our plan to establish a stable training, information and technical assistance center on jails.

What will that do?

The Center will serve three functions. It will serve as a training center for people who manage jails such as a sheriff or correctional administrator. It will serve as a base for technical assistance activities to state and local jails which seek help in jail management, operations or programs. The Center will also be an information center for jailers, elected officials or citizens.

We consider jails as the most overlooked and neglected area of the whole correctional system.

A few federal judges, as you may be aware, have been critical of the Federal Prison System. Do you see the same thing at the local level — federal judges and state judges becoming more critical of the jail system?

There is no question the federal judiciary has been one of the prime movers for reform at all levels of corrections. While correctional administrators are not always happy with the decisions that the federal judiciary renders, by and large these decisions have resulted in progressive and constructive change. I think that you will find a great deal of judicial activity at the state and local levels.

Do you think that the states accept that as progressive?

I think that the state officials see these decisions in a mixed way. State and federal administrators have for the most part been responsive to the courts and in many cases have appreciated court intervention. The courts have called to the attention of legislators, community leaders and the public the problems of state, local and federal corrections. Many of the decisions rendered by the federal courts cite conditions that have been apparent to correctional officials for years. In some cases these same officials have asked their elected leaders for assistance without success.

I do not want to imply that states always agree. However on balance, court intervention has produced improved correctional practice.

Do legislatures and administrators see the real problems?

Most legislatures have been informed of the problems in corrections. However, corrections still receives low priority in comparison with other state and local activities. My experience is that staff correctional administrators are concerned.

The legislators have a tough situation. I think many are concerned. Corrections must compete for the dollar — corrections is down the ladder, way down the ladder. However, very recently, the media has called attention to the tremendous overcrowding problem in our Nation's prisons.

What's the reason for the overcrowding?

Certainly increased number of people in the age range 20 to 30 has had an effect. Second, I think the public has influenced the attitude of releasing authorities; and third, judicial sentencing has been affected. When more people go to prison for longer periods and fewer are released, the prisons suffer.

Both judges and lawyers are in disagreement on the role of the trial judge in inspecting premises where defendants are being held both prior to and after sentencing. Do you think this is an area in which the judge should be intervening?

Ideally, I don't. I would like to see corrections receive the kind of support at state and local levels that would make it unnecessary for the judge to intervene. I hope the National Institute of Corrections as well as other agencies can be a resource to assist states and localities to take the necessary action that makes judicial intervention unnecessary. Reform should come from the profession itself. However, we have far to go before we achieve the maturity implied in my hopes.

Are you receiving acceptance?

Yes. We have tried to work very closely with the profession. We have some advantages over other agencies. One, we are very small and hopefully more responsive. We are a very simple agency with a minimum of red tape. Chances are if you call the National Institute of Corrections, I will answer the phone.

Do some of the states with growing problems come to you and say, "We have a problem. What can you do to help us"?

Yes, particularly in the jail area. The requests we have received affirm my belief that most correctional administrators want to improve their prisons and jails.

Could you describe the jail problem?

The jail problem is a multifaceted one. One problem is inadequate staff, staff selection and training. In many places the officers are untrained in corrections. Another problem is the lack of systematic classification and screening of inmates to keep violent criminals separate from non-violent offenders, to identify mentally ill offenders, and to determine the level of supervision needed for pre-trial and sentenced

(See DAY page 7)

ATTORNEY GENERAL BELL ADDRESSES ABA

Attorney General Griffin B. Bell addressed the ABA House of Delegates when it held its Mid-year Meeting in Seattle this month and outlined immediate plans which call for a close working relationship with the legal profession.

Though Judge Bell has addressed the House on other occasions as Chairman of the Association's Judicial Administration Division, it was his first appearance before this policy-making body as a member of the President's Cabinet.

Some of the Attorney General's plans call for:

• A unit within the Office of Legal Affairs of the Department of Justice to study and report on the impact of federal legislation affecting the federal courts. The Chief Justice as long ago as 1970, and as recently as February 13, when he addressed the ABA this month, said passage of all legislation affecting the federal courts should be accompanied by impact statements.

• Creation of a commission on merit selection of nominees for the U.S. Court of Appeals. (See related story page 10.)

• As for nominations for district judgeships, a separate merit selection committee will be constituted in cooperation with the Senators involved. Ultimately, they hope to develop a model plan which would, either totally or with modifications, be adopted in all the states.

• Merit selection procedures for the nominations of U.S. Attorneys. At least five names would be submitted to President Carter, together with ratings, from which he would designate his choice for Senate approval.

• Creation of a new unit within the Department of Justice to be called the Office for Improvements in the Administration of Justice. Daniel J. Meador, now a Professor of law at the University of Virginia, will head the new division.

The Attorney General invited close cooperation with the legal community in developing improved judicial administration, especially those matters affecting the federal courts. He expressed a special concern for civil rights.

JUDICIAL ADMINISTRATION SEMINAR HELD

Twenty-two law professors, representing 17 law schools, and 22 judges representing 17 states, attended a three-day innovative program in Reno, Nevada, last month, which was jointly sponsored by the ABA's Committee on Education in Judicial Administration and the National College of the State Judiciary.

The goal of the seminar was to look at the ideal systems and procedures as presented in textbooks and classrooms and in turn discuss the realities of the court systems as they exist.

"The interaction seminar sought to bring about a better understanding of practical court administration and procedures and how best to inject this into the criminal and civil procedure courses in the law schools of this Nation," Judge Ernst J. Watts, Dean of the National College of the State Judiciary, said.

Among the key personnel who participated in this seminar were Dorothy W. Nelson, Dean of the University of Southern California School of Law and Chairman of the ABA Committee on Education in Judicial Administration; Professor Edward L. Barrett, Jr., of the University of California School of Law at Davis; Professor Maurice Rosenberg of the Columbia University School of Law; Professor Franklin E. Zimring of the University of Chicago Law School; and Harry O. Lawson, Colorado State Court Administrator.

During the seminar Dean Nelson said, "Law and court reform is the task of every judge, every member of the bar; every legislator, every court officer, every law student and every person who comes in contact with our far reaching system of justice at every point. If all law students are to be sensitized to the problems and the realities, it is important first to sensitize the law professors by examining the ideal vs. reality."

The group agreed law professors must take the responsibility of learning enough about the system so that they can communicate this reality in their teaching and scholarship. Legal doctrines need to be evaluated in terms of the real world in which they are applied.

This seminar had its origins in an initial series of meetings held at the Federal Judicial Center in 1973.

The work of the resulting committee was co-sponsored by the ABA and the FJC. At that time, many law students were complaining that their third year in law school was ill-structured while most judges believed that many new members of the bar were inadequately prepared to represent their clients in court and, as a result, were slowing down the judicial process.

One of the first decisions of the committee then was to bring together at the FJC a group of state and federal judges as well as selected law professors. The professors asked the judges to candidly explain what they were doing wrong and the judges candidly did.

As a direct result of this constructive confrontation, several judicial administration courses were shortly thereafter added to law school curricula, and at least six of the participating judges began teaching judicial administration-oriented courses.

CHIEF JUDGE SEITZ SPEAKS ABOUT THE FUTURE OF THE FEDERAL JUDICIARY

Chief Judge Collins J. Seitz (CA-3), last month delivered an address entitled "Some Thoughts on the Future of the Federal Judiciary", in which he discussed judicial selection, the recent increase in the caseloads, and the need for additional judges.

He said that the calibre of the federal judges is at the heart of the judicial system. He outlined the present selection process in which politics often plays a major part and said that this is not particularly objectionable so long as an impartial grouping representing an appropriate cross-section of knowledgeable individuals can have an opportunity to express their views on whether the individual to be nominated is reasonably qualified.

However, he said what is lacking is some device which would bring to the attention of the President and the appropriate Senator, the names of qualified individuals who do not have political backing and that local bar associations should be more militant about asking their Senators to consult them routinely as to potential appointees.

Turning to the effect of the Speedy Trial Act on the federal caseload, Chief Judge Seitz said it has required district judges to give priority to criminal matters almost to the exclusion of civil litigation in many areas of the country.

Congress must grant relief by adding more personnel and reducing federal jurisdiction if the caseload problem is to be solved. In addition, he endorsed the proposal of Chief Justice Burger calling for a judicial impact statement for every piece of legislation which would affect the jurisdiction of the federal court system.

Looking into the future, he predicted that the Judiciary would become much larger and that the number of supporting personnel will increase accordingly.

In addition, he said that most circuits have adopted various techniques to deal with the mounting caseload such as limiting oral argument and full opinions in many cases.

"I confess that I find the situation depressing. But, we of the Judiciary are dedicated to the objective that, within human limits, we will process all the cases we can while remaining faithful to our oath. . . After all — Justice under law — the ultimate objective of the Bench and the Bar, is indivisible."

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Bills Introduced

H.R. 1899, to authorize an additional seven judgeships for the United States Courts of Appeals, introduced by Mr. Rodino and pending in the House Judiciary Committee.

S. 181, to amend Title 18 U.S.C. so as to establish certain guidelines for sentencing, establish a United States Commission on Sentencing, and for other purposes, introduced by Senator Kennedy and eight other Senators, which is now pending in the Senate Committee on the Judiciary. In the House H.R. 470, H.R. 2312, H.R. 1182 are all comparable bills. In addition, S. 204, to establish the Federal Sentencing Commission has been introduced by Senators Hart and Javits.

S. 260, introduced by Senators Kennedy and McClellan would amend Title 18 U.S.C. so as to impose mandatory minimum terms with respect to certain offenses and for other purposes.

S. 11, to provide for the appointment of additional district court judges was introduced by Senator McClellan and eight other Senators. This bill is in the same form as the legislation which passed the Senate last year. The House counterpart is H.R. 1181, which was introduced by Mr. Rodino and is now pending in the House Committee on the Judiciary.

Attorneys' Fees. Numerous bills have been introduced in this session which would authorize the court to award attorneys' fees to prevailing plaintiffs in a number of varying types of proceedings. In addition, some of the bills provide for attorneys' fees to be awarded during agency proceedings as well. S. 270, introduced by Senator Kennedy and 14 other Senators, has been referred to both the Committee on Government Operations and the Judiciary Committee. The bill has been the subject of a hearing, at which the Federal Trade Commission and public witnesses testified. The bill would amend the Administrative Procedure Act to permit awards of reasonable attorneys' fees and other expenses for public participation in federal agency proceedings and for other purposes. The bill would require an annual report of the Administrative Office on awards of attorneys' fees and litigation expenses against the United States.

New Federal Criminal Code. H.R. 2311, to codify, revise and reform Title 18 of the U.S.C. to make appropriate amendments to the Federal Rules of Criminal Procedure, to make conforming amendments to the criminal provisions of other titles of the U.S.C. and for other purposes, has been introduced in the House of Representatives. A Senate version is expected to be introduced shortly

(DAY continued)

offenders. Basically, we need more research in many areas to determine what works and what is bad. Jails are very, very complicated operations. Jails need a guard force, a program staff, medical services, mental health services, and food services.

Even if you have enough help, are they adequately trained?

No, training is very limited. This is true from the line level to top management.

Are there any good jails?

There are some excellent jails. I hesitate to name them because I will leave somebody out, but there are some excellent jails. However, there are 4,000 American jails and most are substandard.

Do you believe that adequate facilities exist in the states today to take care of specialized problems related to psychotics, narcotic offenders, and problems of youth offenders?

No. And I can state that unequivocally. At the present time the majority of our states are hard pressed to provide adequate facilities — period. Many states have attempted to deal with specialized needs of the offenders you named. However, overcrowding has forced administrators to direct resources from these areas to merely funding beds.

Do you advocate pretrial diversion?

Yes, but quite frankly, we have not really "diverted" in most programs which are called diversion. We have merely cast a larger net and used diversion to supervise people previously released or placed on probation. I advocate diversion whenever possible. I advocate the least restrictive means of supervision necessary to insure protection of the public.

Would you limit diversion to the first offender or youths?

Certainly that would be the largest group, but the real answer depends on what people are diverted to.

Did these problems precipitate the creation of the NIC?

No. The National Institute of Corrections grew out of frustration with lack of coordination and fragmentation in corrections and a need for a center of correctional knowledge. We are the only organization whose unique mission is improving corrections.

I suspect your institution has long been on the horizon without many of us knowing it.

The idea, proposed as a National Academy for Corrections, has been around for many years. The concept gained momentum at the First Conference on Corrections in Williamsburg in 1971. Both the Attorney General and The Chief Justice called for the creation of a National Academy of Corrections to be the center of correctional learning. This was the beginning of NIC as we know it today. An ad hoc advisory board changed the name to the "National Institute of Corrections" to broaden the concept beyond training. The Institute received legislative sanction as part of the Juvenile Justice and Delinquency Prevention Act of 1974.

Some judges feel that imprisonment is for punishment — not rehabilitation. Do you agree with this concept?

I agree with this concept completely. I think that the function of the courts is to determine the punishment. I feel very strongly that once an individual is in prison, corrections people should provide every opportunity for programs commonly termed rehabilitation programs. If the goal of the court in sentencing is to rehabilitate the person, I can think of many other places that are more effective than prison. Rehabilitation does take place in prison as inmates are motivated to take advantage of the opportunities for self betterment. It is incumbent upon corrections to have quality education, vocational training, counseling, drug abuse programs and other opportunities available to the offender. It is up to the offender to take advantage of these opportunities.

Do you think sentencing disparity is still a major problem in state and federal systems?

I think it is and I know inmates feel strongly about disparity. Judges have so much latitude today that I don't see how we can avoid sentence disparity. We are currently holding state sentencing seminars for judges and correctional administrators in the Southeastern part of the United States and other regional seminars may be held later.

Should parole boards continue to exercise discretionary power?

I personally think we need to test some of the recently adopted models before determining the fate of parole boards. I am happy to see some new models developing.

Some judges, state and federal, feel that parole programs really serve to substitute their sentence for that judicially imposed. Do you think this is a valid criticism?

From the point of view of inmates, many Parole Boards merely retry the case on the same information. Many boards don't take into consideration adjustment to the institution or program participation. Parole boards vary greatly in their criteria for release. I would hate to make a blanket statement.

Is there any way that you can differentiate the problems of youth in jail?

I'm for diverting most juveniles out of jails. If you mean young adults, they present different problems. There is no question that the youthful offender in prison is tougher to handle. They are usually more angry at society and the establishment. From the operational point of view, many of our youth prisons are among the toughest to operate. Youth tend to be more impulsive, less responsive and require greater supervision.

Hasn't the profile of the prisoners changed?

There have been major changes in the type of person that goes to prison. There is a greater proportion of hard core, physically aggressive, repetitive inmates in federal and state prisons. There are still inmates in institutions who could be placed in community programs or on probation without harm to the community. I do not believe this group is diminishing.

This, of course, eliminates if it not reduces the opportunity for programs?

Well, I hope not. Security and supervision is always going to play an important role in programs. However, we can be and many people have been creative in providing program opportunities even in maximum security institutions.

What is the general attitude of state and local people toward decisions of the federal judiciary?

I don't think it's nearly as bad as people think. Some administrators are in a bind. On one hand, they know what the federal judge is saying is right because they've been saying it for some time. On the other hand, their elected officials don't like the federal court meddling in their business. The reaction is very mixed.

Should state and federal judges visit prisons?

Yes — as often as possible. I know of no correctional administrator who isn't anxious for judges to visit their facilities. Visits sensitize judges to conditions both positive and negative and lead to a better understanding of conditions generally.

Should they also look at jails?

Oh, yes! When I say "institutions," I'm talking about jails and prisons.

But, it's rare, isn't it, that a federal judge will visit a jail?

Much rarer than we would like.

Sweaters, thermal underwear

de regueur

CA-6 MAINTAINS MOMENTUM DESPITE RECORD COURTROOM COLD

When the natural gas shortage struck the East this month, the Sixth Circuit Court of Appeals and the Federal District Court at Cincinnati took extraordinary measures to keep warm and simultaneously keep on top of their caseloads.

"We have not cancelled any court sessions because of the cold, but a couple of jury trials have been cancelled even though electric heaters have been placed in the jury boxes," Chief Judge Harry Phillips said.

Circuit Executive James A. Higgins reported that the natural gas supply at the courthouse was cut back at the end of January to the point that they would have just enough heat to keep the pipes from freezing. At first they were informed it would be just for three days. Later, however, they were advised that they would have to operate without sufficient heat until sometime in March.

The week of February 7 was the coldest period when temperatures in many parts of the courthouse ranged from 41 to 45 degrees. Most of the judges brought in electric heaters, wore long underwear, two sweaters and two pairs of socks in addition to their robes in an attempt to keep warm during court sessions.

Chief Judge Phillips and the six other members of the Court have managed to keep working during the lengthy cold spell by taking these extreme measures. As a result, the Court's docket, while still overwhelmingly high, is not mounting even higher, the Chief Judge said.

Judge Wade H. McCree, Jr., is no longer participating in the work of the court since his designation as Solicitor General. However, District Judges Robert L. Taylor (E.D. Tenn.), John Feikens (E.D. Mich.), and Eugene E. Siler, Jr. (E.D. Ky.) participated for one week each in the work of the Circuit Court during the natural gas shortage.

Chief Judge Phillips said, "We had a choice whether to try these cases or adjourn and go home. I am really proud of our court for deciding to stay on the job and keep working under these conditions."

At the district court level, Chief Judge Timothy S. Hogan reported that the U.S. District Court at Cincinnati is also managing to stay in operation despite the frigid conditions in the court rooms as well as jury deliberation rooms.

In addition to Chief Judge Hogan, Judges David S. Porter and Carl B. Rubin have been working under the extremely cold conditions.

Both Chief Judges Phillips and Hogan pointed out that the supporting personnel were often suffering more than many of the judges because they had to stay in one place and attempt to perform their duties. Court reporters managed to keep operating their equipment by focusing strong electric lamps on their hands while they were taking down trial testimony.

(KIRKS from page 3)

retirement of both the Director of the A.O. and the Federal Judicial Center.

- Legislation to provide for the legal defense of judges and judicial officials sued in their official capacity.
- A bill to eliminate abuses prevalent under the habeas corpus statute.

The Third Branch

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ATTORNEY GENERAL CREATES JUDICIAL ADMINISTRATION OFFICE

Attorney General Bell has created a new unit within the Department of Justice to be called the Office for Improvements in the Administration of Justice. Daniel J. Meador, currently a University of Virginia Law Professor and former Dean of the University of Alabama Law School, has been nominated as an Assistant Attorney General in charge of the new office.

The restructuring of the work in the Department of Justice abolishes the Office of Planning and Policy, which worked only in the criminal law area, and expands and broadens the responsibilities to embrace all areas of judicial administration.

In announcing the nomination of Professor Meador, Attorney General Bell explained that the new unit would develop suggestions for improved procedures in criminal and civil litigation, the organization and jurisdiction of federal courts and effective and fair procedures in crime control and criminal justice administration.

Professor Meador hopes that he can work closely with all organizations functioning in the judicial administration area with special emphasis on cooperation with committees of the Judicial Conference of the United States. He has a keen interest in working with the rules committees of the Judicial Conference. The new unit will offer assistance in drafting legislation proposed by the Judicial Conference.

Professor Meador brings a wide range of experience and expertise to the Office. He has authored several books on judicial administration and has lectured at the Federal Judicial Center and elsewhere on subjects related to the federal courts. He was one of the leaders in the three-year project on appellate justice co-sponsored by the Federal Judicial Center and the National Center for State Courts.

U. S. ADMINISTRATIVE CONFERENCE ADOPTS TWO COURT-RELATED RECOMMENDATIONS

The Administrative Conference of the United States at its Fifteenth Plenary Session, held December 9-10, 1976, adopted two Recommendations of interest to the Federal Judiciary. [The full text of the Recommendations are published at 41 Federal Register 56767 (December 30, 1976).]

Recommendation 76-4 (Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act) is intended to facilitate Congressional and judicial attention to a variety of problems which arise in the interpretation and application of the judicial review provisions in the two principal pollution statutes.

More specifically, the Recommendation urges that Congress amend the FWPCA to provide for centralized review of national standards in the District of Columbia Circuit as is now the case under the Clean Air Act. However, review of state implementation plans under the Clean Air Act, and review of regulations, standards or determinations affecting single states or facilities under the FWPCA should be decentralized in the circuit containing that state or facility.

In addition, **one section in this part of the Recommendation is addressed specifically to the Judicial Conference:**

A.4) Courts of appeals, when reviewing cases arising under the Clean Air Act or FWPCA, should utilize existing transfer powers to avoid undue duplication of proceedings, and Congress should amend the Acts or the transfer statute [28 U. S. C. §2112 (a)] to remove doubts about the authority of any court of appeals to transfer such cases to any other court of appeals to avoid undue duplication and in the interest of the administration of justice.

The Recommendation also urges that the time limits in both Acts for the filing of petitions to review regulations in the courts of appeals should be changed to 60 days, but that these time limits should be made inapplicable where the petitioner can show reasonable grounds for failure to file a timely petition. Furthermore, it is recommended that Congress amend both Acts to permit the validity of a regulation to be challenged in defense to an enforcement proceeding.

The Conference's Recommendation also urges that Congress take action to:

- Clarify the citizen-suit provisions in both Acts so that they cannot be read to furnish an alternative or premature review of questions that can be raised by petitions for review in the courts of appeals.
- Give courts of appeals exclusive jurisdiction over actions to compel or to postpone the issuance or revision of regulations, with remand to the EPA or district court where necessary, and enact a provision for transfers between courts of appeals and district courts.
- Make the notice requirements contained in the citizen-suit provisions applicable to those non-statutory review actions which allege grounds appropriate for the filing of a citizen suit.
- Make certain EPA actions reviewable in the courts of appeals which currently are not.
- Adopt a single test of standing under the two Acts.

Recommendation 76-5 (Interpretative Rules of General Applicability and Statements of General Policy) urges Federal agencies normally to employ pre-adoption or post-adoption comment procedures when promulgating an interpretive rule of general applicability or statement of general policy.

AO FJC calendar

Feb. 28-Mar. 3, In-Court Management Training Institute, Honolulu, Hawaii

Feb. 28-Mar. 4, Videotape Equipment Workshop, Brooklyn, New York

Mar. 4, Judicial Conference Intercircuit Assignment Committee, Washington, D.C.

Mar. 7-10, In-Court Management Training Institute, Los Angeles, Calif.

Mar. 10-11, Judicial Conference of the United States, Washington, D.C.

Apr. 18-19, Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Carmel, Calif.

May 17 Judicial Conference of the Court of Customs and Patent Appeals, Washington, D.C.

PERSONNEL

Elevation

Gerald J. Weber, Chief Judge, U.S. District Court, W.D.Pa., Dec. 20.

Deaths

Richard B. Austin, U.S. Senior Judge, N.D.Ill., Feb. 7.

John S. Hastings, U.S. Senior Judge, 7th Cir., Feb. 7.

THE SOURCE

The Information Service of the Federal Judicial Center

Publications are listed for information only. Those in **boldface** may be ordered from the FJC Information Services.

•Judicial Reform in the Next Century. Irving R. Kaufman. 29 Stan. L. Rev. 1-26 (Nov. 1976).

•Supreme Court of the United States: The Staff That Keeps It Operating. Richard L. Williams. 7 Smithsonian 39-49 (Jan. 1977).

•Justices Run 'Nine Little Law Firms' at Supreme Court. Richard L. Williams. 7 Smithsonian 84-93 (Feb. 1977).

•Narrowing the Discretion of Criminal Justice Officials. James Vorenberg. 1976 Duke L.J. 651-697.

•Plea Bargaining and the Transformation of the Criminal Process. 90 Harv. L. Rev. 564-595 (Jan. 1977).

•Symposium on Current Trends in Legal Education and the Legal Profession. 50 St. John's L. Rev. 434-573 (Spring 1976).

•Guidelines for Pre-recording Testimony on Videotape Prior to Trial. 2d ed. Federal Judicial Center, 1976.

•Procedural Aspects of Chapter X [Integrating the Chapter X Rules (Bankruptcy)]. Federal Judicial Center, 1976.

May 30-June 4 Seminar for Newly Appointed District Judges, Washington, D.C.

PRESIDENT ESTABLISHES CIRCUIT JUDGE NOMINATING COMMISSION

President Carter issued Executive Order on February 14 establishing the United States Circuit Nominating Commission.

"The Commission shall be composed of 13 panels, each of which shall, upon request of the President, recommend for nomination as circuit judges persons whose character, experience, ability and commitment to equal justice under law fully qualify them to serve in the Federal Judiciary."

The Executive Order established panels for nine of the judicial circuits. Four additional panels were established, one for each of the following areas: CA-5 Eastern, CA-5 Western, CA-9 Northern and CA-9 Southern.

Each panel shall include members of both sexes, minority groups and equal numbers of lawyers and non-lawyers.

Each panel will consist of members including the Chairman, and all will be appointed by the President.

The full text of the Executive Order (No. 11972) was published in the Federal Register on February 17, beginning on page 9659.

THE THIRD BRANCH

VOL. 9, NO. 2 FEBRUARY 1977

THE FEDERAL JUDICIAL CENTER

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The Third Branch

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Bulletin of the Federal Courts

VOL. 9, NO. 3 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center MARCH 1977

PROFESSOR A. LEO LEVIN NAMED NEXT F.J.C. DIRECTOR

The Board of the Federal Judicial Center has elected Professor A. Leo Levin of the University of Pennsylvania Law School as the fourth Director of the Center.

Professor Levin will be replacing Judge Walter E. Hoffman, who will return to the United States District Court for the Eastern District of Virginia as an active Senior Judge. By statute the Director of the Center cannot serve beyond the age of 70.

Professor Levin received his B.A. degree in 1939 from Yeshiva College in New York and his J.D. from the University of Pennsylvania in 1942. He served in the United States Army from 1942 to 1946.

Professor Levin will be coming to the Center with a distinguished record based on years of experience in the legal profession and through service in a number of demanding posts outside the academic community. He has also written and lectured extensively on judicial administration and evidence and has been a Director of the National Institute for Trial Advocacy.

In addition to his teaching responsibilities at the University of Pennsylvania Law School, Professor Levin has taught at several other law schools throughout the country. He held the post of National President, Order of the Coif, and served as Fellow at the Center for Advanced Study of Behavorial Sciences at Stanford.

For two years, 1971-1973, Professor Levin served as Chairman of the Pennsylvania Legislative Reapportionment Commission.

The incoming Director is no stranger to the federal judiciary since he has taken on a number of tasks which have required close contact with the federal judges and the Congressional judiciary committees. He is currently a member of the Judicial Conference's Standing Committee on Practice and Procedure, and he was Executive Director of the "Hruska" Commission on Revision of the Federal Court Appellate System, a two-year project which called for hearings, studies and legislative recommendations.

Last April Professor Levin served as Conference Coordinator for the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, the so-called "Pound Revisited" Conference, which was jointly sponsored by the Judicial Conference of the United States, the American Bar Association

(See LEVIN, page 2)

A. Leo Levin

JUDICIAL CONFERENCE HOLDS SPRING MEETING

The Judicial Conference of the United States held its spring meeting this month and agreed to ask Congress to enact legislation which would eliminate civil diversity jurisdiction filings in the federal courts (except in Territorial Courts) in those cases where the United States Constitution and federal law are not involved.

If Congress did enact such legislation, it would abrogate a law which, since 1789 permits citizens of different states to file in the federal courts, if the amount in controversy exceeds $10,000. It is estimated this

(See CONFERENCE, page 2)

(LEVIN from page 1)

and the Conference of Chief Justices. He later served as a consultant to the Task Force which drew up recommendations based on the Conference discussions and papers.

The Chief Justice, in announcing the appointment as Chairman of the Center's Board, expressed his personal enthusiasm and endorsement for the selection. "We are extremely fortunate," he said, "to acquire the talents of Professor Levin, a distinguished law professor, legal scholar and recognized leader in bar circles who has long worked with judges and lawyers on the practical aspects of the law. Since he is already well acquainted with the important work at the Center, as well as its staff, it will be an easy transition, and he will, I am confident, carry on in the high traditions set by his three predecessors in this office."

At the same time, Judge Hoffman, the incumbent Director, applauded the appointment and commented:

"The Board announcement that Professor A. Leo Levin will succeed me as Director of the Federal Judicial Center should give the federal judicial family complete assurance that the affairs of the Center will be competently administered in the years ahead. The legislative history of the Federal Judicial Center Act pointedly suggests that, while the services of a federal judge might be advisable during the first few years of operation, the services of a non-judge were anticipated in the permanent organization of the Center. Professor Levin will do well in the post and will, I am sure, have the support of the federal judiciary he will serve. I shall personally do whatever I can to assist him and the Center staff consistent with my other commitments."

The Chief Justice had high praise for Judge Hoffman, saying "Walter Hoffman has given superb leadership to the Center as a worthy successor to Mr. Justice Clark and Judge Murrah. Under Judge Hoffman's guidance the programs of the Center have continued a steady expansion with great emphasis on utilizing modern technology to help our work. I look forward to his continued wise counsel on Center affairs."

(CONFERENCE from page 1)

would reduce the caseload in the federal courts by 32,000 cases annually or 19 percent.

The Chief Justice, as Chairman, issued a statement at the conclusion of the conference emphasizing the diversity jurisdiction recommendation, and noted that this concept has had the endorsement of legal scholars for many years.

The American Law Institute as far back as 1969 recommended in an eleven volume report—based on almost a decade of study—that diversity jurisdiction cases be substantially curtailed. As recently as last January the Department of Justice issued a Report on the Revision of the Federal Judicial System which noted that the burden which diversity jurisdiction imposes on the federal courts can no longer be justified.

The Conference also:

- Recommended that Congress amend the Bail Reform Act so that judicial officers would be authorized to consider, in addition to existing considerations, the "safety of any other person or the community."
- Reaffirmed unanimously a prior position that voir dire examination of prospective jurors be left to the district judges rather than the attorneys for litigants, noting that voir dire in the state courts, conducted by attorneys, often takes an undue amount of time.
- Voted to extend the financial reporting and disclosure requirements (heretofore in effect since 1969 for federal judges, Referees in Bankruptcy and U.S. Magistrates) to include supporting personnel in the Federal Judiciary, such as clerks of court, chief probation officers, circuit executives and officers of the Administrative Office and the Federal Judicial Center.

BILL ESTABLISHING BANKRUPTCY COURTS INTRODUCED

Following 35 days of hearings in 1975 and 1976, Congressman Don Edwards (Dem. Calif.) has introduced major legislation which, if enacted, would eliminate the positions of Referees in Bankruptcy in the federal system and create an entire system of Article III courts for the sole purpose of handling bankruptcy cases.

The Chief Justice, responding to a request of the Judicial Conference of the United States, has appointed a special committee to study the proposed legislation and report back promptly to the Conference.

The Third Branch

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Co-editors:

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

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

JUDGES SPEND THREE WEEKS IN ECONOMICS "CRASH COURSE"

A group of 19 federal judges spent three weeks studying modern economic theory at the Law and Economics Center of the University of Miami School of Law recently in order to learn the most modern economic concepts from such nationally renowned economists as Professors Paul Samuelson and Milton Friedman, both Nobel laureates.

The judges studied from 9 a.m. until late evening six days a week for the three-week period. University officials said this was the first such institute for federal judges.

Chief Judge John W. Reynolds (E.D. Wis.) reported, "It was a very enriching experience. We were here not to become economists, but to understand the language of economics. Courts are only as good as judges and the lawyers who appear before them. By and large, our training in economics is not really satisfactory, and yet we are being increasingly called upon to decide economic issues."

The program focused primarily on economic theory and the Professors attempted to relate the theories to cases which until recently were atypical in federal courts.

The goal has been to give them the most recent thinking in economic theory and enable them to better understand the testimony of expert witnesses and lawyers.

Chief Judge David N. Edelstein (S.D. N.Y.) who is currently trying the IBM antitrust case, told the attorneys trying the case that he intended to attend the Institute. "All the lawyers were very cordial and replied that they saw no grounds for any conflict of interest in my coming here," he said.

The Institute plans a second three-week economics course for federal judges in November and, to date, over 70 judges have indicated a strong interest in attending, a spokesman for the Institute said.

The costs of both the course and per diem for the participating judges are paid by the University of Miami.

U.S. PAROLE COMMISSION PROPOSES MAJOR REGULATION CHANGES

The U.S. Parole Commission has proposed the adoption of new regulations governing parole, release, supervision and recommitment of prisoners, youth offenders and juvenile delinquents.

(Note: The full text of the proposed changes is published in the March 10, 1977 Federal Register beginning at page 13305.)

In general, the Commission has asked for comments on two major changes in its rules: First, the proposal that some offenders be allowed parole before they have completed more than one-third of their sentences and, secondly, a major revision of the Commission's classification of offenses by their severity. The offenses are "property offenses," large scale hard drug offenses, large scale marijuana offenses, "bribery", non-violent escape, and "burglary". Also, the establishment of a method for rating conspiracy offenses according to whether the conspiracy actually involves the commission of the substantive offense or not is under consideration.

Members of the Federal Judiciary who are interested in commenting on the Commission's proposals should read the full text of the changes and then contact the U.S. Parole Commission. The Parole Commission is located in the Federal Home Loan Bank Building, 320 First Street, N.W., Washington, D.C. 20537. Comments should be marked: Attention: Rule Making Committee. [All comments and suggestions must be received by May 16, 1977.]

SPOTLIGHT INTERVIEW

SPOTLIGHT: INTERVIEW WITH ROBERT B. McKAY OF THE ASPEN INSTITUTE

Robert B. McKay

Robert B. McKay is the Director of the Justice, Society and the Individual Program of the Aspen Institute for Humanistic Studies. He is the former Dean of the New York University School of Law and former Chairman of the New York State Special Commission on Attica. He is Chairman of the ABA Commission on Correctional Facilities and Services, and President of the Legal Aid Society of New York.

The first task of Mr. McKay after the Justice program was formally established in June, 1975 was to construct a statement of goals. This was facilitated by a meeting at Aspen, Colorado, in July, 1975 of federal Justices and Judges led by The Chief Justice.

Would you tell us something about the Aspen Institute and what it accomplishes through studies and conferences?

The Aspen Institute for Humanistic Studies was established in 1949 in Aspen, Colorado. For about 20 years the main thrust of the activities was in Aspen, mostly in the summer, although some activities extended into other parts of the year. The so-called executive seminars were the original centerpiece of the Institute. Designed for men and women in business, with some resource people such as academics and government

officials, the seminars brought participants together for two weeks to discuss the great ideas of Western and, more recently, Eastern Man. There was a discussion leader for each seminar of about 20 individuals. The seminars remain an important part of the program even now. But since Joe Slater became President of the Institute in 1969, a number of substantive programs have been added. There are seven: Communications; Science; Environment; International Affairs; Education; Pluralism; and Justice.

The Justice Program, the most recent, was established in June of 1975. In July of the same year we brought to Aspen a group of federal judges, including The Chief Justice, several Chief Judges and others to help in planning the Program and in setting parameters within which it might operate.

Both state and federal judges?

On that occasion they were all federal judges except for a few academics.

What was the purpose behind establishing the program for justice?

The momentum came from a series of meetings, beginning in 1973, held in New York and in Aspen, although I was not involved until later. Judges and other leaders, including lawyers, said that the Aspen Institute would be incomplete without a justice component. The idea is that justice has an intersection with the humanities. The Justice Program is not only about law, although law is an important part; and it permeates all other programs to some extent. One of the strengths of the program, in my judgment, is that there is a very strong interaction among all the programs. For instance, I recently spent some time with Harlan Cleveland, who directs the International Affairs Program, in planning what we call a consultative workshop on human rights, which happens to be a very timely subject right now. Following a planning session in New York, he and I will probably jointly conduct a seminar on the subject at Aspen in the summer of 1977.

Another example: I am in touch quite regularly with Frank Keppel, former Commissioner of Education, now the Director of the Education Program. He and I are interested in the school discipline cases decided by the Supreme Court in 1975. Our thesis is that the courts would be glad to get out of the business of deciding the due process rights of individuals in matters of school discipline. It would accordingly be useful to devise a model substantive code of discipline and of procedures for adaptation to the needs of individual schools. Then the courts could back away from something they never wanted to get into.

I have also worked with Frank Keppel in developing some strategies and procedures on school desegregation. He is interested in school finance, and I am too. We have now been approached by a major foundation to discuss the possibility of setting up a program to seek better interaction between educators and judges.

If you could encapsulate it, what would be the objective of this program for a federal judge or for a senior supporting officer in the federal judiciary or the state judiciary?

Let me back into the question by telling you what I think the Aspen Institute can do and the things it cannot do. In the first place, it is not an educational institution. We're not trying to train people. In the second place, we do not do empirical research of any substantial character. What I think we *are* good at is identifying problems within our several substantive areas and the humanities. Typically, we bring together a group of experts, working from one or more background papers, to mak recommendations for action. T result might be publication of a article, a book, or an "op-ed" piece. It might be a statement for public release or it might be something that would be given to appropriate federal or state officials who control the levers of power. Thus we try to bring together people who are knowledgeable, not to teach them something, but in the belief that they will sharpen the issues in the process of talking things out.

Is the Santa Barbara center a workable analogy?

To some extent, and the Aspen Institute has sometimes been called a "think tank"; but I prefer to avoid that rather self-complacent label. The Center for the Study of Democratic Institutions has been a little mo self-contained, relying somewh less on outside talent, whereas the Aspen Institute has only a small permanent staff. Relying more upon outside experts, we serve as a kind of secretariat to bring people together to develop new ideas.

At the present time about two-thirds of the Institute's activities are not in Aspen. We all convene in Aspen in the summer for two months or so. But the rest of the year the program officers operate out of their individual program offices in various locations. The Justice Program office is in New York but physically separate from the main office. The only other program office in New York is Pluralism, directed by Waldemar Nielsen. Frank Keppel has moved the Education Program to Cambridge, located with the Harvard School of Educatio Harlan Cleveland is housed wi the Educational Testing Service in Princeton. The Science Program directed by Walter Orr Roberts, is on the University of

Colorado campus in Boulder. Communications (Roland Homet) in Washington, as is the Environmental Program. There's also an Aspen Institute in Berlin, beautifully located in the Grunewald; and that is available to all of us. It began in 1973 or 1974.

Is it for Americans or Europeans?

Both. Obviously, it's a kind of European outpost, so a lot of programs that have some special relationship to Europe, even though there may also be an American component, are conducted there. The one program I have had there was on Comparative Criminal Sanctions, which had been suggested by Chief Justice Burger. We brought together a dozen Americans and fourteen West Europeans from seven different countries. Working papers were drawn from the United Nations and individual papers that summarized the sanctions system for six or seven of the countries. We talked it out for a week.

Could you give us your impressions of what came out of the Conference on Comparative Criminal Sanctions?

What we were trying to do was to identify common problems, and we came up with seven issues believed worthy of future study. The summary report was circulated to the participants, and I am now ready to pick up some of those for further development, perhaps in conjunction with other American foundations or individual scholars, or perhaps in cooperation with West Europeans.

Were there any surprises in connection with Corrections, that came out of the Conference?

Yes, I think the thing that was most interesting to me was the more flexible range of sanctions in many of the European countries.

For example?

We all know that their penalties are less in terms of time and their prisons are differently structured. One significant difference is in the more creative use of fines. For example, a day fine is a monetary fine which is scaled in relation to the income of the individual. Instead of being five hundred dollars, for example, which is nothing for one person but heavy for someone else, it is imposed roughly in proportion to each individual's income. For instance, if a person earns $100 a day, that would be his fine multiplied by the number of days. So if somebody earns $500 a day or $50 a day, it's in proportion. It's so sensible. We have much to learn.

Are many European countries making progress in their programs to provide restitution to victims of crimes?

That's another thing. I think they are more imaginative on restitution than we have been. Various forms of restitution have been devised.

What is your overview of the American correctional system today?

The criminal justice system in the United States is in desperate trouble. Consider the statistics. The prison population is increasing very fast, as you know. At the beginning of 1976 it was 500,000, divided about equally between those sentenced and those awaiting trial. That gives the United States the highest rate of incarceration per 100,000 population. Moreover, the rate is increasing rapidly. In New York State, for example, the confined population is now something over 18,000. It went up almost 50 percent in a matter of a year and a half. And no real end is in sight. Yet we still have not decided the purpose of imprisonment. Deterrence and rehabilitation have not been notably successful. Incapacitation operates only during the time of confinement. Is punishment the only viable purpose? If so, we must find ways of making the sentence more nearly proportionate to the offense.

A bill has been introduced again in this Session to set up a sentencing commission with the idea of eliminating some sentencing disparity. Do you think this is the right approach?

I think so. I've seen at least one version of the Hart-Kennedy Bill, and it seems to me very sensible. It leads cautiously into the notion of determinate sentencing by a thoughtful way of fixing the standards for determining what the sentences should presumptively be, and then at some later point actually determining the sentences. That is the kind of thing I would like New York State to be doing now.

You mean the sentencing commission idea then?

That's one sensible approach to it. The important thing is that there is opportunity for debate and thoughtful criticism.

Some judges feel they have a responsibility to oversee jail and prison conditions where defendants are held while they are awaiting trial and oftentimes after they are sentenced. But some judges feel the judiciary should stay out of the picture and leave this work to the Corrections people.

I agree that there's a responsibility, but I think I would approach it the way it's commonly done by statute and require that all judges who are doing the sentencing visit, at least once a year, all the institutions to which they have power to sentence. There's such a statute in New York but it's honored largely in the breach.

In the light of the goals of the Devitt Committee, and in light of your background in legal

education, do you see the need for higher standards for admission to practice in the federal courts?

I have no objection to reasonable requirements for admission to practice in the federal courts. I am accordingly a heretic in the legal education world where you are supposed to object violently, which is the official position of the Association of American Law Schools, as you probably know. But it seems to me that it is not unreasonable to require that a lawyer who is going into the federal courts must have some competence, in civil and criminal procedure, professional responsibility, evidence and advocacy, however defined. It is not an extraordinary or outrageous requirement. And I really don't fancy it as a burden on the law schools; those subjects are taught in all the law schools. They are perfectly standard for all law students except maybe advocacy.

Do you see a need for compulsory programs for recertification or compulsory programs for continuing legal education and will such programs force a trend towards specialization?

I take the view of the recently published report of an ABA committee especially constituted to study specialization. The question is not whether we go to specialization, but *when* and *how*. This is Rod Petrey's report. That seems to me exactly right. We're partly there already, but haven't acknowledged it. Therefore, it seems to me it's very important that we think carefully about how to regulate specialization because it is coming, in one fashion or another. That suggests the answer to the question on competency. It seems to me there is an obligation to assure competency within the area of specialization. That suggests in turn, some need for continuing legal education.

Do you think law schools are the vehicles to take us from where we are to where we should be on these questions?

Whether it should be done by the bar, or by the law schools or by cooperation, is a question that requires more study. I personally would like to see the law schools play a heavier role in the future. Law schools have tended to stay away from continuing legal education as not quite respectable. I disagree. It is a very important function. The business of law schools is teaching and use of materials; and I think they should play a part in continuing legal education.

LEGISLATIVE OUTLOOK

ENACTMENTS

The Emergency Natural Gas Act of 1977, P.L. 95-2, was signed February 2, 1977. It provides authority for the President to order emergency delivery and transportation of natural gas to deal with existing or immiment shortages in the U.S. or any of its regions by providing assistance in meeting requirements for high priority uses and authorizes short-term emergency purchases of natural gas. The provision of most significance to the Judiciary is Section 10 of the Act which provides that the Temporary Emergency Court of Appeals will have exclusive original jurisdiction to review civil cases and controversies under the Act and exclusive jurisdiction of all appeals from the District Courts of the U.S. in cases and controversies arising under Section 4(e) which is the Section providing for issuances of subpoenas and requests for answers for interrogatories and requests for reports and other information.

Congressional Action

Judiciary appropriations h. been the subject of hearings before the Subcommittee on State, Justice, Commerce, and the Judiciary of the House Appropriations Committee.

Attorneys' Fees. The Senate Judiciary Committee, Subcommittee on Administrative Practice and Procedure has continued hearings on S. 270 which would provide for attorneys' fees in proceedings before federal agencies and court actions involving the review of those agency proceedings.

On February 21, 1977 the Senate Judiciary Committee began hearings on S. 11 and printed amendment number 40 with respect to additional district court judgeships. Amendment number 40 incorporates the most recent recommendations of the Judicial Conference of the U.S.

Federal Rules of Criminal Procedure. The House Subcommittee on Criminal Justice of the Judiciary Committee held hearings on proposed amendments to the Federal Rules of Criminal Procedure which were proposed last year by the Supreme Court and whose effective dates were postponed until August, 1977.

Other Actions. Hearings before the House Judiciary Committee, Subcommittee on Monopolies and Commercial Law are scheduled on H.R. 1181, 1899, and 3685 to authorize additional federal judgeships.

The Subcommittee on Manpower of the Committee on Post Office and Civil Service has scheduled hearings on H.R. 3829 to establish a Commission on Ethics and Financial Disclosure for Federal Employees.

BILLS INTRODUCED

Tax Reform—Sick Pay Exclusions. Senator Dole has introduced S. 4 which would post-

pone the effective date of the amendments made by the Tax Reform Act to the provisions of the code relating to the exclusion of sick pay through taxable years beginning after December 31, 1976. In the House, a bill introduced by Congressman Daniel, H.R. 318, together with related bills will be the subject of hearings in March before the Committee on Ways and Means.

Interpreters for the Hearing Impaired Act. Senator Mathias has introduced S. 819, a bill which will require the appointment of interpreters for hearing-impaired individuals in certain judicial proceedings. The statement of Senator Mathias at the introduction of the bill indicated that the federal rules currently provide for translators of foreign languages but not sign language used by the deaf. The bill would impose uniform national standards for such appointments and authorizes the Administrative Office to prescribe, determine, and certify the qualifications of a person who may serve as certified interpreter in proceedings involving the hearing-impaired.

Rules Enabling Act. H.R. 3413 was introduced by Congresswoman Holtzman to amend the provisions of Titles 18 and 28 U.S.C. to provide a uniform method for the proposal and adoption of certain rules of court by the Judicial Conference of the United States. The bill is currently pending before the House Judiciary Committee.

Grand Jury Reforms. Congressman Conyers together with 13 other Congressmen has introduced H.R. 3736 to establish certain rules with respect to the appearance of witnesses before grand juries in order to protect the Constitutional rights and liberties of such witnesses under the Fourth, Fifth and Sixth Amendments to the Constitution, to provide for independent inquiries by grand juries and for other purposes. The bill is pending before the House Committee on the Judiciary.

National Court of Appeals. H.R. 3969 has been introduced by Rep. Wiggins to establish a National Court of Appeals and for other purposes.

SICK PAY EXCLUSIONS— TAX REFORM ACT

Some senior judges have in the past claimed the sick pay exclusion provided by former section 105(d) of the Internal Revenue Code which had provided that payments received by an employee pursuant to the provisions of a wage continuation plan for a period during which the employee is absent from work on account of sickness are excludable from gross income. Section 505 of the Tax Reform Act of 1976 (P.L. 94-455) would change the old sick pay exclusion and make it a disability exclusion applicable only to taxpayers less than 65 years of age who are retired because of total and permanent disability. The recent law was made effective by section 508 to taxable years *beginning after December 31, 1975.*

There are several bills which would change the effective date of the new provisions of the Tax Reform Act relating to sick pay. S. 4 was introduced by Senators Dole, Brooke, Eagleton, McClure, Nunn, Randolph, Ribicoff, Scott and Williams on January 10. The bill would postpone the effective date of the changes to taxable years beginning after December 31, 1976. The Senate Finance Committee has added this provision to the bill H.R. 3477, a bill to provide for refunds of 1976 individual income taxes and other payments, to reduce individual and business income taxes and to provide tax simplification and reform, which is currently undergoing markup in the Committee.

First in Nation

UNIVERSITY OF MISSISSIPPI ESTABLISHES COURT REPORTERS INSTITUTE

The University of Mississippi became the first university in the country to establish a four-year program for court reporters when the school opened its Court Reporter Institute recently.

The program is designed to provide students with a liberal interdisciplinary education in addition to teaching the skills of court reporting, according to Dr. Alton V. Finch, Chairman of the Department of Business Education and Office Administration. There are numerous schools which teach court reporting, but the University of Mississippi is the first to offer this training as a integral part of its four-year academic program.

Court reporting students must satisfy University degree requirements and also complete 40 hours of specialized course work. Graduates will be awarded a B.S. degree in Business.

Twenty-two students who comprise the first class are currently studying academic subjects as well as practicing shorthand and learning machine reporting techniques. Students are being taught computer compatible reporting. The program also includes a six-week internship with an experienced court reporter in Mississippi which is conducted under the supervision of the University of Mississippi Law School.

[Temple University in Philadelphia has a two-year program leading to a certificate in court reporting. This program offers courses in such subjects as English and Medical Terminology.]

AO FJC Calendar

Apr. 4-7 Advanced Seminar for U.S. Magistrates, Atlanta, GA
Apr. 7-8 In-Court Management Training Institute, Columbia, SC
Apr. 11-13 Seminar for Jury Clerks, Washington, DC
Apr. 15-16 Workshop for District Judges (Second Circuit), New York, NY
Apr. 18-19 Meeting of Metropolitan Chief Judges, Carmel, CA
Apr. 18-19 Judicial Confernece Committee to Consider Standards for Admission to Practice in the Federal Courts, Carmel, CA
Apr. 18-20 Seminar for Bankruptcy Judges, Washington, DC
Apr. 18-20 GSA Seminar for Clerks, Alexandria, VA
Apr. 18-22 Advanced Seminar for U.S. Probation Officers, New Orleans, LA
Apr. 21-23 Seminar for Bankruptcy Clerks, Washington, DC
Apr. 25-29 Orientation Seminar for U.S. Probation Officers, Washington, DC
Apr. 30-May 1 Seminar for Federal Court Reporters, Albequerque, NM
May 2-4 Instructional Technology Workshop for U.S. Probation Officers, Birmingham, Ala.
May 9-11 Seventh Circuit Conference, Chicago, IL
May 10 Workshop for District Judges (Sixth Circuit), Louisville, KY
May 11-14 Sixth Circuit Conference, Louisville, KY
May 10-12 Advanced Management Workshop for Supervising U.S. Probation Officers, Pittsburgh, PA
May 16-20 Workshop for U.S. Probation Officers, Portland, OR
May 17 Judicial Conference of the Court of Customs and Patent Appeals, Washington, DC
May 19-21 Meeting of Executive Committee, National Conference of Federal Trial Judges, Brownsville, TX
May 22-24 District of Columbia Circuit Conference, Hershey, PA
May 23-25 Seminar for District Court Clerks, Denver, CO
May 23-27 Advanced Management Seminar for Chief U.S. Probation Officers, Washington, DC
May 23-24 Judicial Conference Advisory Committee on Civil Rules, Washington, DC
May 25 First Circuit Conference, Washington, DC
May 26-27 Workshop for District Judges, Washington, DC

Bulletin

The Judicial Conference approved the following Recommendation this month regarding the reporting of outside income by members of the Federal Judiciary other than judges:

It is recommended that Executives of the Administrative Office of the U.S. Courts, Executives of the Federal Judicial Center, including Committee Chairmen and Division Chiefs of both groups, all Circuit Executives, Clerks of Court, Clerks in charge of Divisional Offices, Chief Probation Officers and Supervising Probation Officers and other employees in or above grade JSP-15 be required to file a semi-annual report of non-governmental income.

Those affected will receive reporting forms and instructions by June 1, 1977 for reporting income received during the six-month period ending June 30. A copy w[illegible] be filed with the Review Committ[illegible] of the Judicial Conference.

PERSONNEL

ELEVATION

William B. Bryant, Chief Judge, District, D.C.; Vice William B. Jones, March 20.

Edward D. Re, Chief Judge U.S. Customs Court, N.Y.C., Vice Nils A. Boe, March 21.

DEATHS

Harry E. Kalodner, U.S. Senior Circuit Judge, CA-3, March 15.

Mary D. Alger, Judge, U.S. Customs Court, Tuscon, AZ, March 5.

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THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

VOL. 9, NO. 4 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center APRIL 1977

SENATE JUDICIARY COMMITTEE APPROVES 146 NEW JUDGESHIPS

The Senate Judiciary Committee April 21 approved a total of 146 new judgeships——35 for the circuit courts and 111 for the districts.

In general, the Committee approved the request of the Judicial Conference for 107 new district judgeships but added four: one for the District of Utah, another for the Western District of North Carolina and two temporary positions in the Eastern District of Kentucky (1) and the Southern District of West Virginia (1). These two temporary positions were recommended because of the backlog of black lung cases in those districts.

The judgeship bill, S.11, if enacted also would split the Fifth Circuit creating a new Eleventh Circuit consisting of Texas and Louisiana. Six circuit judgeships would be created for this new circuit and six would be assigned from the Fifth Circuit. Five new circuit judgeships would be added to the Fifth Circuit.

The Committee approved an additional 10 circuit judgeships for the Ninth Circuit and asked the Judicial Council of the Ninth Circuit to recommend within one year after the appointment of the last judge, whether or not the circuit should be split.

A new circuit judgeship was also approved for the First, Third, Seventh, Eighth and Tenth Circuits; two for the Second, Sixth and District of Columbia Circuits and three for the Fourth Circuit.

Senate floor action on the measure is not expected until after the report on the bill is printed in early May.

[Note: The specific recommendations of the Judicial Conference for new district judgeships are printed on page one of the January 1977 *Third Branch*.]

HEARINGS SET ON FEDERAL BAR ADMISSION STANDARDS

The Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts has announced that it will hold public hearings in four cities during the month of May.

Hearings will be held in Chicago on May 11, with Judge Hubert L. Will as moderator; in Washington, D.C. on May 20, with Judge Malcolm R. Wilkey as moderator; in Los Angeles on May 24, with moderator, Dean Dorothy W. Nelson of the U.S.C. Law School; and in Boston on May 27, with moderator, Robert W. Meserve, former President of the American Bar Association. The purpose of the hearings is to obtain views on the quality of advocacy in the federal courts and on suggestions that have been made for improving that quality. Requests for opportunities to appear should be addressed to Carl H. Imlay,

(See STANDARDS, page 2)

Among the participants at the April meeting of the Committee to Consider Standards for Admission to Practice in the Federal Courts are (L. to R.), front row: Judges J. Lawrence King (S.D. Fla.); Robert L. Taylor (E.D. Tenn.); James R. Miller, Jr. (D. Md.); second row: Judges Sherman G. Finesilver (D. Colo.); Morris E. Lasker (S.D. N.Y.); third row: Judge Malcolm R. Wilkey (CA-D.C.); fourth row: Judges Hubert L. Will (N.D. Ill.); Adrian A. Spears (W.D. Tex.); Edward J. Devitt (D. Minn.); fifth row: Judges W. Leon Higginbotham, Jr. (E.D. Pa.); J. Clifford Wallace (CA-9).

(STANDARDS from page 1)
General Counsel, Administrative Office, Washington, D.C. 20544.

The Committee previously solicited written comments in a notice dated February 4. That notice was distributed to all federal judges and to many organizations with potential interest in the subject.

The announcement of hearing dates followed a meeting of the committee in Carmel, California, on April 18 and 19. At that meeting, the committee heard presentations on the regulation of practice in the medical and accounting professions, on the continuing work of the Committee in the Second Circuit, on various types of courses in advocacy that are available, and on limited admission to practice for law students. The committee also discussed the program of research being conducted by the Federal Judicial Center to aid it in determining the extent and nature of possible deficiencies in advocacy in the federal courts.

In a joint session with the Conference of Metropolitan Chief Judges, which was also meeting in Carmel, Committee Chairman Edward J. Devitt, Chief Judge of the United States District Court for the District of Minnesota, explained the work of the Committee and asked for cooperation in its efforts. He emphasized that the Committee is approaching the task with open minds, and is committed to acting on the basis of the best information it can obtain about the present state of both trial and appellate advocacy. In addition to providing opportunities for judges and others to express their views on the subject of the Committee's work, the effort to obtain an adequate information base includes a substantial program of survey research. This program began on April 15, when the Federal Judicial Center mailed questionnaires to all active district and circuit judges. The questionnaires will be followed by a program in which judges will be asked to rate the performances of lawyers who appear before them in a series of cases; Judge Devitt emphasized that there would be no requirement that the rated lawyers be identified, and that the information will be used only for purposes of statistical analysis.

Judge Devitt called for the fullest cooperation in these and related research efforts so that the Committee will have reliable information on which to base its recommendations.

BILLS TO CREATE SENTENCING COMMISSION ARE REINTRODUCED

Legislation to create a U.S. Commission on Sentencing has been reintroduced in both the House and Senate.

The House bill, H.R. 1182, introduced by Congressman Rodino and an identical version, S. 181, introduced by Senator Kennedy, have strong support in both the House and Senate and would require district court judges prior to sentencing an offender to consider:

- The nature and circumstances of the offense and the history and characteristics of the defendant;
- The need for the sentence imposed;
- Whether less restrictive sanctions have been applied to the defendant frequently or recently;
- Whether the sentence falls within the guidelines of the U.S. Commission on Sentencing.

The Court must explain why the particular sentence is being imposed at the time of sentencing.

The bill allows the defendant to appeal to the Court of Appeals if the sentence is harsher than that specified by the U.S. Sentencing Commission; conversely, the Government may appeal if the sentence is less than the guideline.

The bill also establishes the Sentencing Commission, a five-member group appointed by the U.S. Judicial Conference, who will be paid at the same rate as district judges.

Among the key functions of the Commission is the development of guideline sentences and their promulgation to all sentencing judges in the Federal Judicial System. The Commission shall collect information on sentencing, conduct research into the subject and conduct sentencing workshops in various parts of the country.

NEW DISTRICT JUDGE SEMINAR SET

A seminar for newly appointed District Judges will be held at the Federal Judicial Center in Washington from September 26 to October 1.

It is anticipated that by September at least 20 to 30 new district judges will have been appointed either by filling existing vacancies or through new judgeships.

As in the past, the seminar is being structured by a committee of federal judges, this year Judge Alvin B. Rubin (E.D. La.), Judge Hubert L. Will (N.D. Ill.), Senior Judge William J. Campbell (N.D. Ill.) and Federal Judicial Center Director, Judge Walter E. Hoffman. "Faculty" members have been notified and are already working on presentations. It is expected a final program will be in the mail by June.

The seminar will start with a reception at the Dolley Madison House on Sunday, September 25, and members of the judges' families are included in this activity. There will also be the usual "black tie" dinner at the Supreme Court on Thursday, September 29. The seminar will conclude at mid-day Saturday, October 1.

PAROLE COMMISSION RELEASES SALIENT FACTOR SCORING MANUAL

The United States Parole Commission has released a revised salient factor scoring manual and the new factors took effect on April 1.

The factors are used to determine if an inmate is eligible for parole.

The new factors are: no prior convictions, no prior incarceration, age at first commitment, current offense does not involve auto theft or checks, parole has never been revoked or new offense has not been committed on parole, no history of heroin or opiate dependence, and verified employment for a total of at least six months during the last two years in the community.

The Parole Commission dropped two items from their previous salient factor list: "Living Arrangements" which it said has proven difficult to score reliably in operational usage and is subject to easy falsification by the prisoner, and "Education" which they said was the weakest of the predictive factors. The Commission substituted for these two items "prior convictions" and "age at first commitment."

The new salient factor score changes will apply only to prisoners receiving their initial hearings after April 1, this year.

ADMINISTRATIVE OFFICE RELEASES REPORT ON FEDERAL COURT ACTIVITY

During the Spring meeting of the Judicial Conference of the United States, the Director of the Administrative Office, Rowland F. Kirks, presented a short report on the status of judicial business of the U.S. Courts of Appeals and District Courts for the six-month period ending December 31, 1976.

Here is a short summary of that report. **[The full text is available from the Federal Judicial Center Information Service.]**

The Courts of Appeals filings rose by more than 4% and while these courts were able to increase their terminations by 6%, they were unable to prevent the rise in their current backlog of 15,391 cases which were pending at the end of the calendar year. This backlog was 14% higher than the backlog of six months earlier.

The Administrative Office estimates by the end of June 1977 the Courts of Appeals will have received an additional 10,031 appeals for a total of 19,400 for the twelve-month period.

This represents a filing workload per authorized panel of approximately 600 appeals compared to a workload figure of only 361 filings per panel for fiscal year 1970.

Turning to the District Courts, however, filings fell 4.1 percent compared to the same period last year, while terminations increased by approximately 6%. However, the pending backlog at the end of the year was still at a record high of 148,369 civil cases representing an increase of 11% over the previous year.

Significantly, prisoner petitions from federal prison inmates dropped by 17% and those from state inmates dropped by 4%. Apparently the grievance procedure established by the Bureau of Prisons and the Parole Commission Act are working together to reduce these prisoner cases.

Criminal case fillings continued to drop during the period by 3%, and case terminations were lower than last year by more than 10%. This resulted in a backlog of 20,483 criminal cases which was 5% below the previous year.

Bankruptcy cases continued to drop by more than 15% but the

(See A. O. REPORT, page 4)

SENATOR DENNIS DeCONCINI

DeCONCINI IS NEW CHAIRMAN OF KEY JUDICIARY SUBCOMMITTEE

Senator Dennis DeConcini (D.-Ariz.) has been selected to head the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, the Senate panel which in previous years has played a key role in legislation affecting the federal judiciary.

Senator DeConcini was appointed by the Judiciary Committee to head the Subcommittee after Senator Quentin Burdick (D.—N.D.) resigned to accept a position on the Senate Appropriations Committee.

He is a newly-elected member of the Senate, has been in private practice, and served as Special Counsel to Arizona Governor Sam Goddard.

He was elected to a four-year term as Pima County Attorney. This county, which includes the city of Tucson, is the second largest in the state of Arizona. During his tenure as Pima County Attorney, Senator DeConcini's programs to assist consumers, first-time offenders, to protect the environment and to wipe out the flow of hard drugs, brought national recognition to his office.

The National District Attorneys Association named his the model office of its size in the country for the implementation of standards and goals.

(A. O. REPORT from page 3)

pending caseload is still very large. The Administrative Office expects a decrease of nearly 10% in the filings for the current year despite the economic hardships caused by the winter energy crisis.

Magistrates experienced a 41% increase in additional duties in civil proceedings and this was accompanied by a 10% increase in trial jurisdiction cases and in additional duties connected with criminal cases. Altogether magistrates handled 6% more matters than during the same period a year ago.

The Federal Probation Service has experienced a drop in persons received for supervision resulting primarily in the drop in criminal prosecutions. The 64,432 prisoners under supervision represented an average caseload of 39 persons per officer for the 1,669 probation officers.

Juror utilization continued to improve with the percentage of jurors selected or serving up from 59.6% compared to 60.4% during the comparable period last year.

PERSONNEL

CONFIRMATIONS

William M. Hoeveler, U.S. District Judge, S.D.Fla., April 25.
Howell W. Melton, U.S. District Judge, M.D.Fla., April 25.

RESIGNATION

Wade H. McCree, Jr., U.S. Circuit Judge, 6th Circuit, March 28—to become Solicitor General of the United States.

DEATH

Kenneth Philip Grubb, U.S. Senior District Judge, E.D.Wis., March 11.

SENTENCE REVIEW, DIVERSITY JURISDICTION BILLS SUBMITTED

Acting on behalf of the Judicial Conference, the Administrative Office has submitted bills calling for the appellate review of sentences and the modification of district court diversity jurisdiction.

A.O. Director Rowland F. Kirks, in his transmittal letter accompanying the draft bill which would amend the Federal Rules of Criminal Procedure to provide for appellate review of sentences, said the Judicial Conference has considered and circulated the proposal among the bench and bar of the nation and has held public hearings on appellate review of sentences.

"As a result, the Conference has concluded that there should be an opportunity for review of criminal sentences of a year or longer in the Courts of Appeals and that there should be a right to seek leave of appeal by both the defendant and the Government."

The bill would amend Rule 35 of the Federal Rules of Criminal Procedure to allow the appeal of a sentence other than a death sentence within ten days after a judgement is entered.

The Government may petition for leave to appeal if the sentence imposed is less than a maximum permissible term of imprisonment.

In general, neither the defendants nor the Government can appeal the sentence if it was part of a plea agreement accepted by the judge.

In a related action, Director Kirks submitted legislation which would amend Section 1332 (a)(1) of Title 28 of the U.S. Code.

In his letter of transmittal, Director Kirks said that the draft bill would modify the jurisdiction of the district courts by prohibiting the filing of a civil action by a plaintiff in a diversity suit in the district court in the state of which he is a citizen.

He noted that this proposed legislation was first approved by the Judicial Conference at its session in March 1976. At its recent session on March 10, 1977, the Conference reaffirmed its approval of the draft bill but at the same time indicated its preference for "legislation to bring about a complete elimination of diversity of citizenship as a basis of jurisdiction for the district courts except in territorial district courts." The Conference has also endorsed legislation to increase the amount in controversy requirement for diversity cases from $10,000 to $25,000 and to eliminate the amount in controversy requirement in federal question cases.

Preliminary estimates indicate that the enactment of this legislation will reduce the number of diversity cases filed annually in district courts by approximately 45% and would not impose a significant burden on any state court because the cases transferred would be spread over a number of state courts.

ICM COMPLETES SEVENTH YEAR

In a graduation ceremony held March 19 at the Federal Judicial Center, 36 new Fellows of the Institute for Court Management were awarded certificates by Judge Edward A. Tamm (CA-D.C.), a member of the ICM Board of Trustees.

The ceremony marked the seventh year of the ICM Court Executive Development Program, which was commenced in 1970 to train professional court managers. Chief Justice Warren E. Burger called for such a program in a 1969 address to the American Bar Association which

(See ICM, page 5)

(ICM from page 4)

read in part:

"The courts of this country need management which busy and overworked judges, with vastly increasing caseloads, cannot give. We need a corps of trained court administrators... to manage and direct the machinery so that judges can concentrate on their primary professional duty of judging."

Since the inception of the Institute, 272 individuals have completed the Court Executive Development Program, and 22 are currently with the federal courts.

The ICM Program which is divided into two phases, was recently revised by replacing the Phase I five-week residential seminar in Colorado with five six-day workshops scheduled throughout the year in various geographic locations. The Phase I agenda for 1977 began in Philadelphia on February 6 with a program entitled "Records, Systems and Procedures." March 27 was the beginning of a Denver workshop on "Information Processing Systems". Keystone, Colorado will be the location for the workshop beginning June 5 on "Caseflow Management and Juror Utilization". October 2 will be the start of the workshop on "Personnel Administration" in San Diego. "Budget, Planning and Financial Controls," scheduled to begin on December 4 in Denver, will complete the Phase I program for 1977. Although completion of all five Phase I workshops is a prerequisite for consideration for selection as a Phase II, student, each workshop is completely independent of the other four and may be taken by persons not planning to apply for the total Court Executive Development Program.

Phase II sessions begin on August 1, 1977 with a four-week residential seminar in Colorado, covering "The Application of Modern Management Concepts in the Courts". Thereafter, each participant undertakes an internship of approximately 65 days to engage in an intensive study of specific administrative problems. A written report on the study is required before the final residential seminar which lasts eight days.

In addition to the Court Executive Development Program, ICM conducts an Advanced and Continuing Education Program for ICM graduates and other experienced professionals. For example, a conference on "Appellate Court Administration is scheduled for October 23-28 and a seminar entitled "Developing and Evaluating Court Information Systems," a workshop focusing on new issues for data processing and court personnel, is slated for November 13-16, 1977.

ICM also publishes *The Justice System Journal,* a management journal designed to bring theory and empirical research to practitioners in the profession. Personnel from the Institute are involved in other activities as well, such as research and development, studies of court procedures and structures, and consultant services to courts and related agencies.

Persons interested in the Institute for Court Management may contact Harvey E. Solomon, Executive Director, 1405 Curtis St., Denver, Colorado 80202.

Federal court employees may apply to the Federal Judicial Center for scholarship funds both for tuition and for travel and per diem. Applications should be received well in advance of the workshop or seminar, and not later than 60 days before the start of the Court Executive Development Program. Because funds are limited, priority will be given to supervisory personnel such as clerks, chief deputies and middle managers. All requests for funds must be considered by the FJC Board of Directors.

Most of the ICM classes have included persons now with the federal courts.

The 1971 graduation produced the largest number of ICM Fellows who are associated with the federal judiciary, namely, William A. (Pat) Doyle, Circuit Executive for the Third Circuit; William B. Luck, Circuit Executive for the Ninth Circuit; James A. Higgins, Circuit Executive for the Sixth Circuit; R. Hanson Lawton, Circuit Executive for the Eighth Circuit; Raymond F. Burghardt, Clerk of Court for the Southern District of New York; Edward M. Kritzman, Clerk of Court for the Central District of California; Robert F. Connor, Clerk of Court for the Western District of Missouri; Jack L. Wagner, Clerk of Court for the Western District of Pennsylvania; Robert C. Tucker, Clerk of the Eighth Circuit Court of Appeals; Charles Vagner, Chief Deputy Clerk for the Northern District of Illinois; and James B. Ueberhorst, Chief of the Management Review Division of the Administrative Office.

In 1975, Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, became an ICM Fellow, and in 1976 three others completed the Program: Thomas Strubbe, Clerk of the Court of Appeals for the Seventh Circuit; Robert L. Bingham, Management Analyst for the Second Circuit Court of Appeals; and Michael Kunz, Chief Deputy Clerk of Court in the Eastern District of Pennsylvania.

(See ICM, page 6)

(ICM from page 5)

The two federal employees graduated in March of 1977 were John P. Hehman, Clerk of the Sixth Circuit Court of Appeals, and Robert L. Hoecker, Chief Deputy of the Tenth Circuit Court of Appeals.

ASSISTANT ATTORNEY GENERAL MEADOR OUTLINES GOALS OF NEW OFFICE

In an address presented to a national symposium on Progress in Criminal Justice, Assistant Attorney General Daniel J. Meador who was recently selected to head the new Office for Improvements in the Administration of Justice in the Justice Department, outlined the mission of the new unit.

Here are selected excepts from his address. **[The full text of the address is available from the Federal Judicial Center Information Service.]**

"The Executive Branch of the government has never had a permanent, systematic means of dealing continually with court problems, especially as they affect the public and in furnishing continual support for the courts with Congress and the public.

"We are charged with developing proposals dealing with the structure and organization of the entire federal judicial system, and with its processes in both civil and criminal cases. Moreover, we will seek to develop alternatives to the courts, to devise a variety of means of improving the quality of justice in American life. While we will continue to give major attention to improving the criminal justice system, we will, in addition, give substantial attention to problems with civil cases and with court organization generally.

"First, we will work hard to develop alternatives to the courts, that is, means of handling certain kinds of problems that are more convenient, less expensive, and more effective than a judicial remedy would be. This Office is at work now to develop a model of a Neighborhood Justice Center.

"There is a growing feeling that the structural design of our courts, which comes out of another era, may not be suitable for the volume and type of litigation we are getting today. The time may be right for some basic rearrangements within the Judicial Branch."

Here are some of the problems that he cited:

- Pre-trial procedures in civil cases.
- Class actions.
- Providing effective and efficient representation of the Federal Government in court is of special concern to the Department of Justice. The ways in which U.S. Attorneys function and are coordinated might be improved. The Federal Government's litigation in the U.S. Courts of Appeals is not well managed. We need to devise better techniques for that, something like the kind of management the Solicitor General provides at the Supreme Court level.
- We have already developed a bill, which will probably be transmitted to Congress soon, dealing with jurors and witnesses. A new schedule of fees is being proposed.
- Reemployment rights for jurors and means of enforcing those rights.
- Compensation for victims of crimes.

Of major significance to the Federal Judiciary were Assistant Attorney General Meador's plans for enlarging the power of federal magistrates in both criminal and civil matters. He mentioned that the Justice Department is currently drafting a bill enlarging the powers of magistrates.

"In substance the proposed bill enlarges the criminal jurisdiction of U.S. magistrates by authorizing them to try all federal misdemeanors, that is, offenses carrying up to one year imprisonment, but without limit on the amount of fine which may be imposed. Under the bill, magistrates would have authority to try all petty offenses, and the defendants would no longer have an option to elect [to have a trial before a U.S. District Judge.]"

"Our bill would vest the magistrates with a substantial amount of case dispositive civil jurisdiction. Tentatively included within these would be Social Security cases and certain actions for penalties and forfeitures. If this bill is enacted the magistrates would acquire something on the order of 5 to 10% of present U.S. District Court jurisdiction.

"This new Office has another significant responsibility, and that is in connection with research. It is anticipated that this year for the first time, Congress will appropriate a new Federal Justice Research Fund, in the amount of two million dollars annually, to be administered by this Office."

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Black Lung Benefits. The House Committee on Education and Labor has reported H.R. 4544, amending the Coal Mine Health and Safety Act with respect to the black lung benefits program. The bill as reported is identical in most respects to H.R. 10760, which passed the

(See OUTLOOK, page 7)

(OUTLOOK from page 6)
House last year on March 2.

Pay Increase Legislation. The President has signed into law P.L. 95-19, dealing with extension of unemployment benefits which carries with it a rider which was added by the Senate, which deals with the method of determining pay increases for federal judges, members of Congress and other high level federal officials. The rider, as enacted, has three highly significant features. First of all, a recorded vote must be taken in each House of Congress before the pay increases recommended by the President can be implemented. Second, such recorded votes must be taken within 60 days within the date of the recommendations of the President. Third, a separate recorded vote will be taken with respect to each separate category of officials; there will be a separate recorded vote on any recommendation made in the future by the Quadrennial Pay Commission with respect to federal judges.

Sick Pay Exclusion. Congress recessed for Easter without taking final action on legislation which would enable individuals having sick pay to exclude such pay from their income received during 1976. The bill was originally passed by the House, along with other amendments to the tax law (Tax Reform and Simplification Act of 1977). The Senate accepted the sick pay bill, but added amendments relating to other matters. Congress then adjourned for the Easter recess. Chairman Ullman of the House Ways and Means Committee and Senator Ribicoff indicated that the matter would be taken up after the recess.

As the law now stands, taxpayers could file their return on time, and file an amendment later if the law is changed to permit the exclusion of sick pay for 1976, or the taxpayer could file for an extension to June 15.

The number of the bill is H.R. 1828, and persons who have requested the extension of time to file their income tax return should check carefully to ascertain whether it has been passed prior to completing their final return. [The House bill status number is (202) 225-1772.]

Reform of Federal Criminal Laws. The House Judiciary Subcommittee on Criminal Justice held two informal briefing sessions during March on the proposal to reform and recodify the federal criminal code.

Judicial Conference Proposals

1. To amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's federal jury service.

2. To provide for the defense of judges and judicial officers sued in their official capacities.

3. To amend Title 28, United States Code, to provide in civil cases for juries of six persons, to amend the Jury Selection and Service Act of 1968, as amended, with respect to the selection and qualification of jurors, and to extend the coverage of the Federal Employees Compensation Act to all jurors in U.S. District Courts.

4. To amend Section 1332(a)(1) of Title 28, United States Code, relating to the jurisdiction of the United States District Courts in suits between citizens of different states.

5. To amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from federal jury service on the grounds of distance from the place of holding court, contingent upon a showing of hardship.

Bankruptcy Legislation. The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, is still continuing mark-up of H.R. 6, revision of the bankruptcy laws.

Clean Air Act Amendments. The House Committee on Interstate and Foreign Commerce, Subcommittee on Health and the Environment, is continuing its mark-up of the amendments to the Clean Air Act, particularly H.R. 4758, which contains judicial review provisions.

Attorneys' Fees. The House Judiciary Committee, Subcommittee on Administrative Law and Governmental Relations, has continued hearings on H.R. 3361 and related bills, which concern awards of attorneys' fees.

Federal Rules of Criminal Procedure. The House Judiciary Committee has completed mark-up with respect to the amendments of the Federal Rules of Criminal Procedure and has ordered favorably reported to the House, H.R. 5864, which incorporates these amendments.

Northern District of Mississippi. S. 662, providing for holding terms of court of the United States District Court for the Northern District of Mississippi, Eastern Division in Corinth, has been favorably reported by the Senate Judiciary Committee.

Ethics and Financial Disclosure. The Subcommittee on Employee Ethics and Utilization of the House Committee on Post Office and Civil Service has held hearings on several bills, among them H.R. 3829. It is anticipated that a clean bill will be introduced some time this Spring.

ao aofjc calendar

May 10, Workshop for District Judges (Sixth Circuit), Louisville, Kentucky

May 10-12, Advanced Management Workshop for Supervising U.S. Probation Officers, Pittsburgh, Pennsylvania

May 16, Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.

May 16, Judicial Conference Subcommittee on Federal Jurisdiction, Washington, D.C.

May 16-20, Rational Behavior Training Workshop for U.S. Probation Officers, Newport, Oregon

May 16-20, Workshop for U.S. Probation Officers, Portland, Oregon

May 17, Judicial Conference of the Court of Customs and Patent Appeals, Washington, D.C.

May 18-20, Workshop for Probation Clerks, St. Louis, Missouri

May 23-25, Seminar for District Court Clerks, Denver, Colorado

May 23-27, Advanced Management Seminar for Chief U.S. Probation Officers, Washington, D.C.

May 23-24, Judicial Conference Advisory Committee on Civil Rules, Washington, D.C.

May 26-27, Workshop for District Judges (First Circuit), Washington, D.C.

May 31-June 2, Seminar for Chief Probation Office Clerks, Washington, D.C.

June 1, Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 6-8, Seminar for Jury Clerks, Denver, Colorado

CIRCUIT JUDICIAL CONFERENCES—1977

Dist. of Columbia	May 22-24	Hershey, Pa.
First	May 25	Washington, D.C.
Second	September 8-10	Buck Hill Falls, Pa.
Third	September 18-21	Tantiment, Pa.
Fourth	June 23-25	Hot Springs, Va.
Fifth	May 1-5	Birmingham, Ala.
Sixth	May 11-14	Louisville, Ky.
Seventh	May 9-11	Chicago, Ill.
Eighth	June 29-July 2	Kansas City, Mo.
Ninth	June 11-16	Lihue, Kauai, Hawaii
Tenth	July 13-17	Salt Lake City, Utah

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THE THIRD BRANCH

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Bulletin of the Federal Courts

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CRIMINAL CODE ACT INTRODUCED

Senators John L. McClellan and Edward M. Kennedy together with Representatives Peter W. Rodino and James R. Mann have introduced major legislation which would revise and modernize the federal criminal code. The bill, S.1437 and its House counterpart, H.R. 6869 are the result of ten years of work which began with the Commission on Revision of the Federal Criminal Law.

Significantly, the measure reflects major compromises by both the eral and conservative members of Congress and eliminates most of the ntroversial sections of the prior bill introduced in the last Congress.

Senator McClellan said that 13 controversial provisions in the bill were either deleted or returned to current law and 16 of the 22 major issues involved were resolved using the approach suggested by the leadership last Congress of adopting a policy of retaining current law.

Among the major provisions of the 300-page bill are:

- New mandatory minimum prison sentences for heroin traffickers.
- The elimination of simple possession of small amounts of marijuana as a federal crime.
- A sentencing guideline system designed to attack the problem of unwarranted sentencing disparity between judges.
- Creation of a sentencing authority for the trial judge to bar parole for 9/10th of the term of imprisonment imposed.
- Better coverage for white collar crimes.
- Improved provisions to fight organized crime and a new offense of operating a racketeers syndicate.
- A program to compensate the victims of violent crimes with funds derived from criminal fines.
- A major expansion of the civil and criminal jurisdiction of U. S. Magistrates.

Attorney General Griffin B. Bell at a press conference held when the bills were introduced, said that the "identical bills would achieve the reforms necessary to bring the federal criminal code into the Twentieth Century. Reaching this point of introducing legislation has not been easy. There were literally thousands of issues to be resolved. The Congressional sponsors and their staffs devoted a tremendous amount of time and energy to the task, and within the past three months the Department of Justice has spent many hours working with the

(See CODE, page 2)

Senator John L. McClellan

BILL INTRODUCED CALLING FOR LEGAL DEFENSE OF JUDICIAL OFFICERS

Acting at the direction of the Judicial Conference, the Administrative Office has transmitted to Congress a draft bill which would provide funds for the defense of justices, judges, and other court officers and employees who are named as defendants in civil suits arising from performance of their official duties.

The legislation would provide for the payment of litigation expenses in instances in which the Department of Justice is unable to undertake the representation of such persons.

Director Rowland F. Kirks of the Administrative Office said the legislation was originally recom-

(See DEFENSE, page 2)

(CODE from page 1)

Congress on the proposed code. The result is as fair and workable a code as has yet been devised, and it has the strong support of the Department of Justice." (A complete outline of the significant provisions of the proposed criminal code can be found in the Congressional Record of May 2, beginning on page S.6836.)

(DEFENSE from page 1)

mended by the Judicial Conference in 1974 and transmitted to Congress on two previous occasions but neither House took action on the measure.

He pointed out in his letter of transmittal accompanying the draft bill that when judges or other judicial officers are sued in their official capacity they are normally defended by the Department of Justice or by the U.S. Attorney. The draft bill would not alter this normal procedure for the defense of judges by the Justice Department in circumstances where it makes its services available to do so. However, he said that "we are now being presented more frequently with situations in which the Justice Department declines to defend a judge, or to authorize the United States Attorney to do so, because it believes that the undertaking of such representation would place it in a position of upholding conflicting interests or of defending positions or policies with which it is not in agreement."

He cited an obvious example in which the Justice Department is seeking a writ of mandamus against a judge, and there is no alternative except to authorize the defendant judge or official to retain private counsel.

Enactment of the legislation "will be helpful in establishing rulemaking authority in the Conference to arrange standard procedures for the defense of judges in instances where service of the Department of Justice is unavailable" and to guide the Director of the Administrative Office in compensating private attorneys for such services.

Bulletin

PRESIDENT SIGNS SICK PAY EXCLUSION BILL

President Carter has signed the sick pay exclusion bill, H.R. 1828, which enables individuals having sick pay to exclude such pay from their income received during 1976.

Congressional action on the measure was not completed prior to the Easter recess and taxpayers who wish to claim the sick pay exclusion may now file an amendment to permit the exclusion of sick pay for 1976.

FEDERAL DEATH PENALTY BILL INTRODUCED

Senator John L. McClellan, a member of the Senate Judiciary Committee, has introduced a federal death penalty bill which calls for bifurcated trials for federal defendants accused of capital crimes.

Once the defendant is found guilty either by a jury or a judge of any of the federal crimes where the death penalty may be imposed, a second hearing is held to determine whether the death penalty will be imposed.

The bill, S.1382, calls for the death penalty in these cases:

- Death or injury resulting when a prisoner in custody attempts to flee from a federal institution or officer.

(See PENALTY, page 7)

WIRETAP REPORT SUBMITTED TO CONGRESS

The Administrative Office has submitted its ninth Annual Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications to Congress.

The summary of the report indicates that during calendar year 1976, 688 applications were made to state and federal judges and only 2 were denied—one by a federal judge of the District of Arizona and the other by a state judge in New Jersey.

Of the 686 applications granted, 137 or 20 percent were granted by federal judges and the remainder by state judges. There were 187 authorized by state judges in New York in 1976 compared to 192 in 1975 and 305 in 1974. In New Jersey, state judges signed 167 orders in 1976 compared to 196 in 1975. Intercepts authorized and approved in the States of Florida, Maryland, New Jersey, and New York accounted for 70 percent of all wiretap authorizations during 1976.

In 1976, there was a 2 percent decrease in the total number of wiretap orders authorized and approved—701 in 1975 compared to 686 in 1976.

There were 378 authorizations, comprising 55 percent of the total, where gambling was the most serious offense involved. In 190 authorizations, drug offenses were under investigation. Ten applications specified homicide or assault as the major offense.

During 1976, there were 659 arrests and 1,347 convictions reported as a result of authorized intercepts completed in prior years.

(A full copy of the report is available from the Administrative Office of the U.S. Courts, Washington, D.C. 20544.)

CHIEF JUSTICE BURGER ADDRESSES AMERICAN LAW INSTITUTE

This month for the eighth consecutive year, The Chief Justice addressed the opening session of the American Law Institute's annual meeting.

The Chief Justice used this eight-year period – 1969-1977 – to measure the increasing volume of work coming to the United States District and Circuit Courts as well as the Supreme Court. For example, during this period District Court civil filings went up from 77,000 to 130,000 and criminal filings from 35,000 to 41,000. The Courts of Appeals caseload rose from 10,000 to 18,000. Pointed out was the fact that though the federal judiciary has coped with these heavy calendars without additional judgeships, it is unrealistic to believe this stepped-up pace can continue. Overworked federal judges are gratified, however, that 146 more judgeships may soon be created by Congress.

The Chief Justice took the occasion to reiterate the importance of realigning all of the federal Circuits, emphasising probblems which exist in the Fifth and Ninth Circuits. He proposed that each of these Circuits be divided, for administrative purposes, into three divisions, much as the District Courts are now divided. The Fifth Circuit he would divide into Eastern, Central and Western divisions; the Ninth into Southern, Central and Northwest divisions. For more efficient judicial administration and improved administrative purposes, there should be no more than nine judges in any one of the Circuits which would come about from this proposed realignment. He said he was not disheartened by delays in judicial improvements which in the past have often taken many years to accomplish. The delay in realigning the Circuits, for example, is illustrative of "one of the difficulties in the management of the federal system that the sound and sensible solutions occur–with good luck–15 to 20 or more years after reasonable and objective analysis demonstrates the need." On a poignant note, he compared that Chief Justice Marshall as early as 1810 started urging the creation of the U. S. Courts of Appeals, yet this new tier in the federal system did not come about until 1891, well over half a century after Marshall's death.

The Chief Justice recited some interesting statistics–statistics which reflect changes in our society. And he pointed out that the work of the Supreme Court does in fact reflect in volume and character the work of other courts. Compared were cases heard by the Court in the late 1950's and 1960's when many filings there involved school segregation issues and cases involving equal access to the political process. Today these filings are surpassed by litigation which reflects societal trends. An informal count of cases decided by the Supreme Court since 1969 when Chief Justice Burger took office, not including all such cases decided during the current Term of Court, shows that full signed opinions were written on the following subjects:

	Number of Opinions
Rights of racial minorities (including 24 cases on Indian claims)	99
Rights on prisoners, probationers, and parolees	41
Right to counsel	15
Students' rights	10
Rights of mental patients and mental institutions	5
Rights to welfare recipients	27
Women's rights	21
Rights of non-tenured employees	6
Rights of illegitimate children	11
Media rights under the First Amendment and statutes	25

The Chief Justice suggested that scholars might find it interesting to compare these figures with other comparable periods.

CHIEF JUDGE PHILLIPS ADDRESSES SIXTH CIRCUIT JUDICIAL CONFERENCE

Chief Judge Harry Phillips of the Sixth Circuit Court of Appeals presented his report on the judicial business of the circuit to the Circuit Judicial Conference on May 13.

He told the conferees that the litigation explosion in the circuit continues unabated. "The Court of Appeals for the Sixth Circuit is nearly 86 years old, but more than 40 percent of all appeals filed since its creation were docketed in the last 10 years." He pointed out that the docket has doubled since 1969 and quadrupled since 1963 and, significantly, filings in the district courts throughout the circuit likewise have multiplied.

Chief Judge Harry Phillips

From 1968 through 1975 the Court of Appeals heard by the end of its June session every case that was ready for oral argument. In 1976 the court found it necessary to carry over to the next term 180 non-criminal cases that were fully briefed.

This year the Clerk estimates that 736 cases ready to be argued will be carried over to the next session. He pointed out that each judge regularly is assigned to hear

(See CONFERENCE, page 4)

(CONFERENCE from page 3)

oral arguments in 225 cases per year.

Chief Judge Phillips noted that legislation is pending in Congress to create two new circuit judgeships and 11 new district judgeships but additional judgeships will not solve all of the problems, especially at the Court of Appeals level.

"The addition of two circuit judges for our Court will only increase the number of cases which can be heard on oral argument from 675 to 825. We anticipate that over 1,800 cases will require oral argument.

"What has caused such an avalanche in the caseloads of the federal courts? Obviously the growth and increasing complexity of our society and evolving notions of the role of federal courts in mediating problems traditionally handled on state and local levels have played a part, but a recent study shows that there have been no less than 41 laws passed by Congress since 1969 conferring new jurisdiction on the federal judiciary. . . [I] t is of utmost importance that Congress not swamp the federal courts with new and ever-expanding jurisdiction without providing a sufficient number of judges to do the job."

Chief Judge Phillips cited a recent article in the Stanford Law Review, *Behind the Legal Explosion*, in which Professor John Barton pointed out that if federal appellate cases continue to grow for the next 40 years at the same rate at which they have grown during the past decade, then by the year 2010 we can expect to have well over 1,000,000 federal appellate cases each year, requiring 5,000 federal appellate judges to decide them.

He told the Conference that he was happy to report that Congress had passed the three judge courts act last August. "This new law eliminates the inefficient requirement for the convocation of the three-judge district court whenever an injunction is sought restraining the enforcement of a state or federal statute on the grounds of unconstitutionality except in congressional redistricting and legislative reapportionment cases."

He pointed out that one of the acute problems confronting the Circuit today is the avalanche of black lung cases. As of March 31, 1977, there were 1,720 black lung cases pending in the U.S District Court for the Eastern District of Kentucky alone.

Prior to the 1972 amendments to the Coal Mine Health Safety Act of 1969 these cases were processed administratively similar to Social Security disability cases with the district court acting as the first step in the process of judicial review.

Today, however, the first step in judicial review for such claims is a petition for review in the Court of Appeals and, as a result, these cases come directly to the Court of Appeals bypassing the district court.

As far as black lung cases are concerned, he endorsed the recommendation of the Department of Justice committee that final disposition of issues of fact should be made by a non-Article III tribunal.

He endorsed recommendations for the elimination of diversity jurisdiction and pointed out that often its use in the Sixth Circuit was to delay the trial of lawsuits.

CHIEF JUDGE FAIRCHILD DELIVERS STATE OF THE CIRCUIT ADDRESS

Chief Judge Thomas E. Fairchild on May 10 delivered his annual State of the Judiciary address to the Judicial Conference of the Seventh Circuit held in Chicago.

He pointed out that 138 more appeals were filed during 1976 than in 1975 which represents an 11.4 percent increase. While the number of terminations slightly increased, the pending caseload increased substantially.

"Over the last 16 years the number of filings and the number of terminations have almost

Chief Judge Thomas E. Fairchild

quadrupled. If we look at these figures we can understand the pressure on the Court of Appeals to institute new procedures to increase the number of terminations.

"The new ninth judgeship, when approved, will not solve the problem. We will still require help from senior judges from outside the circuit as well as from senior and active district judges within the circuit."

Chief Judge Fairchild told the Conference that the Court recently conducted a survey of t appeals argued in the Court and that each judge stated his reaction concerning each appeal.

"Out of 53 civil appeals there are 10 in which every judge on the panel answered that the appeal should not have been brought. Obviously the appellant's counsel in those cases could have lightened our load without any disservice to his client. I call upon attorneys to review their cases with care before filing an appeal, and at least to consider more objectively whether the appeal should be filed at all."

Turning to the work of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Chief Judge Fairchild said that the failure of attorneys to police their cases in this regar may be one of the reasons f the call for higher standards o admission to practice in the federal courts.

(See CONFERENCE, page 7)

PBS AIRS SUPREME COURT FILM

Public Broadcasting System has ıfirmed that there was a national airing of the film *Supreme Court* over PBS member stations on May 26 from 11:00 a.m. to 11:30 a.m. The time was selected to permit secondary schools to incorporate the film into their curricula.

The film should be very helpful in telling the Court's story to students throughout the country.

The film is available to schools through the Great Plains National Instructional Television Library, Box 80669, Lincoln, Nebraska 68501.

Bar associations can obtain the film through the Young Lawyers Section of the American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

DISTRICT OF COLUMBIA DISTRICT COURT REFORMS JURY SYSTEM

The United States District Court for the District of Columbia since 1971 has taken a series of key steps in juror management which have resulted in a savings of nearly $350,000.

Judge George L. Hart, Jr. in a memorandum to prospective jurors said, "I want you to know that this Court has a continuing concern for the welfare of the jurors who serve here. It is important to us that jurors be efficiently utilized so as not to waste either juror time or taxpayer's money."

Among the steps which Judge Hart listed were:

- Decreasing the size of the jury pool for more efficient utilization (1971).
- Reducing the size of criminal jury panels (1972).
- Sending reports on jury ıization to individual judges ,,973).
- Installation of a Code-a-Phone for jury scheduling (1974).
- Improving jury panel usage by 20 percent (1975).
- Supplementing the voter registration list with the drivers license list for jury selection which increased the pool of potential jurors from 309,000 to 476,000 (1976).
- Extending the period between terms of jury service from two to four years to decrease the burden on individual jurors and enable more jurors to serve (1977).

BAIL REFORM ACT AMENDMENTS INTRODUCED

Acting at the request of the Judicial Conference, the Administrative Office has submitted legislation to amend the Bail Reform Act which will authorize a judicial officer to consider the safety of any other person or the community in setting conditions of release of a person charged with an offense against the federal laws.

In his transmittal letter to the Congress, Director Rowland F. Kirks said the legislation was proposed by the Judicial Conference Committee on the Administration of the Criminal Law and was approved by the Judicial Conference at its meeting last March.

He pointed out that the legislation is needed because there is a conflict between decisions in the Sixth Circuit and the District of Columbia Circuit as to the criteria to be applied in fixing conditions of release for non-capital offenses. The Sixth Circuit held that a judicial officer may consider evidence that the defendant has threatened witnesses and is a danger to the community in determining whether the defendant should be released on bail while the District of Columbia Circuit held that the Act provides only for consideration of those minimal conditions which will reasonably assure the appearance of the person for trial.

LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

Judicial Disclosure. The House Committee on Governmental Affairs has conducted hearings on S. 555 and other bills. The bill would require high-level officials in all three branches of government to publicly disclose their financial interests (S. 113, 290, 383 and 673). Testimony was presented by Judge Edward A. Tamm, representing the Judicial Conference of the United States. Other bills have been pending and have been the subject of hearings in the House Committee on Post Office and Civil Service as reported in the previous issue of *The Third Branch.*

Consumer Protection. H.R. 6805 is currently in mark up by the Committee on Government Operations of the House of Representatives. The bill would establish a Consumer Protection Agency . In the Senate, S. 1262, a similar bill, is being marked up by the Senate Committee on Governmental Affairs.

Grand Jury Legislation. The House Judiciary Committee, Subcommittee on Constitutional Rights, has held hearings on H.R. 94, to reform the grand jury system. Testimony was presented by Judge Frederick B. Lacey on behalf of the Judicial Conference and by Carl H. Imlay, General Counsel of the Administrative Office.

Garnishment. During the Senate debate on the Tax Reduction and Simplification Act of 1977 (H.R. 3417) the Senate added an amendment which amends the Social Security Act, section 459. The amendments proscribe in more detail the procedures for garnishment of a federal employee's wages in order to

(See LEGISLATION, page 6)

(LEGISLATION from page 5)
pay an obligation relating to child support or alimony. The authority to promulgate regulations with respect to the Judicial Branch of the government would be vested in The Chief Justice of the United States or his designee. The conferees on the differing versions passed by the two Houses, accepted this amendment.

Additional Judgeships. On May 11 the Rules Committee of the Senate filed a report waiving the Congressional Budget Act, Section 402(a), with respect to Senate consideration of S. 11, providing for the appointment of additional circuit and district court judges. Acceptance of the report and resolution (Senate Resolution 163) will clear the way for floor consideration of the bill.

Judicial Tenure. Senator Nunn and 11 other senators has introduced S. 1423, to establish a Council on Judicial Tenure in the Judicial Branch of the government, to establish a procedure in addition to impeachment for the retirement of disabled justices and judges of the United States, and the removal of justices and judges whose conduct is or has been inconsistent with the good behavior required by Article III, Section 1 of the Constitution. The bill has been referred to the Senate Judiciary Committee.

State of the Judiciary Resolution. Senators Kennedy, McClellan, Bayh and DeConcini have introduced Senate Concurrent Resolution 22 inviting The Chief Justice to address a joint session of the Congress on the state of the Judiciary. The resolution has been referred jointly to the Committee on Governmental Affairs and the Committee on the Judiciary.

New Introductions. S. 1430, a bill to improve the judicial machinery in customs courts by amending the statutory provisions relating to judicial actions and administrative proceedings in customs matters and for other purposes. The bill would permit the Customs Court to exercise equity jurisdiction and would eliminate the present requirement that a prescribed balance of members of the court be of differing political parties.

S. 1393, introduced by Senator Bayh, to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

S. 1382, a bill to establish rational criteria for imposition of the sentence of death and for other purposes, introduced by Senator McClellan.

S. 1437, to codify, revise and reform Title 18 of the United States Code, has been introduced by Senators Kennedy and McClellan and is reported on elsewhere in this issue of *The Third Branch.* In addition, Congressman Rodino has introduced an identical bill, H.R. 6869, which has been referred to the Committee on the Judiciary.

Attorneys' Fees. S. 270, to permit awards of reasonable attorneys' fees and other expenses for public participation in federal proceedings has continued to be the subject of hearings in the House Judiciary Committee, Subcommittee on Administrative Practice and Procedure.

The Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee has approved a bill to permit awards of reasonable attorneys' fees and other expenses for public participation in federal agency proceedings. However, the full House Judiciary Committee is marking up H.R. 3361, a bill similar to S. 270.

Rape Evidence Senator Bentsen has introduced S. 1422, which would exclude certain information in rape cases relating to the victim's sexual behavior. The bill has been referred jointly to the Committee on Governmental affairs and the Committee on the Judiciary.

REPORT RELEASED ON CALIFORNIA UNPUBLISHED OPINIONS

The National Center for State Courts has released its report on unpublished opinions of the California Courts of Appeal.

The report analyzed the results of the adoption by the California Supreme Court of Rule 976 in 1964. The rule, as amended January 1, 1972, reads as follows:

No opinion of a Court of Appeal or of an appellate department of the Superior Court shall be published in the Official Reports unless such opinion (1) establishes a new rule of law or alters or modifies an existing rule, (2) involves a legal issue of continuing public interest, or (3) criticizes existing law.

The report concluded that the Courts of Appeal are following the criteria set forth in Rule 9[illegible] in the vast majority of cases a[illegible] there is no reason to believe that large numbers of significant decisions are being buried in unpublished opinions.

In addition, the report concluded that mandatory publication of all opinions is neither warranted nor wise. However, the fact remains that opinions which should have been in some cases published are unpublished and the researchers recommended that the problem could be significantly reduced if the Justices of the Courts of Appeal actively participate in reaching a collegial decision respecting publication in every appeal.

The decision whether or not to publish the opinion should be one actively reviewed by all of the Justices and the decisions should not be delegated.

Additionally, the report [illegible]ommended that each Justice de[illegible]cide independently whether the opinion should be published and the decisions should be recorded

(See OPINIONS, page 8)

(CONFERENCE from page 4)

He commended the substantial p which senior judges have ven the Seventh Circuit and said their contribution has made it possible to move appeals to oral argument without developing an unwieldy backlog of unargued cases.

He described in detail how the Court of Appeals makes assignments for hearing oral argument. "I should add that once an appeal is scheduled for oral argument, the court is loath to grant an adjournment. Once the argument has been set, convenience of counsel is not recognized as a good cause."

Turning to the caseload of the district courts, he noted that criminal case filings decreased last year by 222, while civil cases increased by 540. "A decrease in criminal filings is especially welcome because of the Speedy Trial Act."

The increase in the civil case- d is significant because until ew judgeships are created the burden falls upon the present judges of the district courts. Again, Chief Judge Fairchild said he was very grateful for the significant help of senior district judges who have helped to ease this burden.

He reminded the conferees that the revised Circuit Rules went into effect last July 1 and that Rule 29 provides for an advisory committee to serve as a communications link between members of the bar and the court regarding suggestions for change.

The first suggestion would require the clerk of the district court to transmit the record within 14 days after the notice of appeal while the second most important suggested change is Circuit Rule 4(a) which requires nsel whose appeal requires nsideration of an exhibit to designate the exhibit within 5 days after filing the notice of appeal and make sure that the exhibit is in the clerk's possession.

Chief Judge Fairchild said "A very significant project to which I would like to call your attention is the new Seventh Circuit Index. The Index was started as an in-house publication for the benefit of the district and circuit judges in order that they might have a synopsis and an index of Seventh Circuit opinions not yet reported nor digested. It has been a great success."

The Index is in two parts: a brief synopsis of each opinion listed by docket number and a topical index with reference to the cases.

(PENALTY from page 2)

- Gathering or delivering defense information to aid foreign governments.
- Transportation of explosives in interstate commerce for certain purposes.
- Destruction of government property by explosives.
- Destruction of property in interstate commerce by explosives.
- Kidnapping.
- Treason.
- Aircraft piracy.
- The murder of the President and other senior federal officials including federal law enforcement officers or employees of federal prisons.

After the death sentence is imposed, it is subject to review by the Court of Appeals upon appeal by the defendant and such review shall have priority over all other cases.

Senator McClellan pointed out that "the death penalty must be restored if our criminal justice system is to combat the ever increasing tide of violent crimes—crimes of terror—that threaten to engulf our nation, and if the confidence of the American people in our system of justice is to be restored."

The Attorney General in a letter to Senator McClellan said that the Department of Justice believes that the proposed bill would be found by the Supreme Court to meet constitutional requisites.

REPORT EXAMINES APPELLATE PRIORITIES

The Research Division of the Federal Judicial Center has released a report which enumerates and groups categories of litigation at the federal circuit level which require "priority" handling under statute or rule.

The report notes the 33 Acts and U.S. Code citations which designate certain types of cases for expeditious processing.

A similar report was prepared last year which annotated cases requiring priority handling at the trial court level.

The research staff utilized computer assisted legal research services in the preparation of both reports. The present report contains no general rule for the ordering of priority litigation and states in fact, "There are no priorities among the priorities established within the Code." The report contains a series of summaries of relevant Code sections which are not intended to provide detailed analysis but merely serve to identify conditions under which expediting provisions are operative.

The report examines the language of various expediting provisions to discern different degrees of urgency and establish categories of like cases. Four such categories of cases are set out:

Criminal and Related Matters; Civil Cases to be Expedited; Civil Cases made preferred or Given Precedence; Civil Cases Advanced or Given Precedence on the Docket.

Copies of the report will be mailed to all judges, circuit executives, and clerks of court. The Center will continue to update this listing. Comments and suggestions for its improvement are solicited.

PERSONNEL

NOMINATIONS

Francis J. Boyle, U.S. District Judge, D.R.I., May 2

Finis E. Cowan, U.S. District Judge, S.D. Tex., May 19

ELEVATION

Halbert O. Woodward, Chief Judge, U.S. District Court, N.D.Tex., May 2

DEATH

J. Braxton Craven, Jr., U.S. Circuit Judge, 4th Cir., May 3

AO and FJC calendar

May 31-June 2, Seminar for Chief Probation Office Clerks, Washington, D.C.

June 1, Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 1–2, Judicial Conference Ad Hoc Committee on Bankruptcy Legislation, Denver, CO

June 6–8, Seminar for Bankruptcy Referees, Seattle, WA

June 6–10, Orientation Seminar for U.S. Probation Officers, Washington, D.C.

June 9-11, Seminar for Bankruptcy Clerks, Seattle, WA

June 11-16, Ninth Circuit Judicial Conference, Lihue, Kauai, Hawaii

June 13-15, Instructional Technology Workshop for U.S. Probation Officers, Nashville, TN

June 16–17, Civil Criminal and Appeals Docketing Clerks Workshop, Denver, CO

June 18–19, Seminar for Federal Court Reporters, Kansas City, MO

June 21–23, Workshop for District Judges (Third Circuit), Cherry Hill, NJ

June 23–25, Fourth Circuit Judicial Conference, Hot Springs, VA

June 27–29, Seminar for Courts of Appeals Clerks, Chicago, IL

June 27–July 1, Rational Behavior Training Workshop for U.S. Probation Officers, San Diego, CA

(OPINIONS from page 6)

on a cover sheet circulated to all participating Justices.

The report emphasized that although it does not appear that numerous opinions worthy of publication are not being published, there is concern among members of the bar that Rule 976 is being applied inconsistently. The lack of uniform procedures for making publication decisions, as well as the disparate percentages of published opinions among the districts and divisions support this critical view and are ample justification for the modification of the publication decision-making process.

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Bulletin of the Federal Courts

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MAGISTRATES BILL INTRODUCED

Late last month legislation was introduced in Congress that would broaden the civil and criminal jurisdiction of U.S. magistrates.

Attorney General Griffin B. Bell said that the legislation which was introduced simultaneously in both houses of Congress would make the handling of minor cases less expensive and allow them to be settled more quickly. In addition he said that the bills would "be a step to build greater access to the courts for Middle Americans and the poor." Senator Dennis DeConcini, Chairman of the Senate Judiciary Committee on Improvements in Judicial Machinery, introduced the measure in the Senate while House Judiciary Chairman Representative Peter Rodino introduced the bill in the House.

Senator DiConcini said, "We are all too familiar with the overwhelming case burden and backlog the federal court system faces. This bill would be a step in clearing that burden and in increasing access to all federal courts."

Under the bill, S. 1613 and its counterpart H.R. 7463 magistrates would be able to try all federal misdemeanors and defendants charged with petty offenses would no longer be able to elect a trial in a federal district court.

(See BILL, page 3)

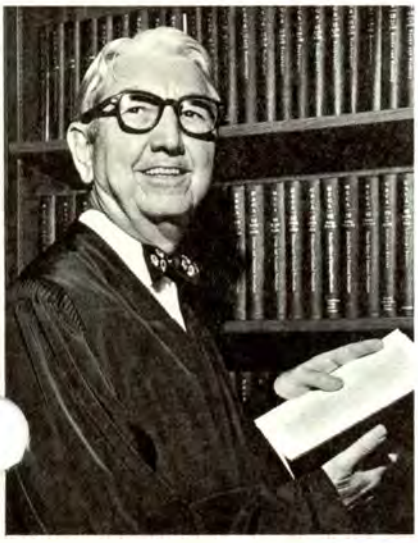
METROPOLITAN DISTRICT CHIEF JUDGES MEET

The Metropolitan Chief Judges met this spring in Carmel, California to discuss common problems of these courts which handle over 56 percent of the cases filed in the Federal District Courts.

Here are some of the highlights of that meeting:

- The staff of the Federal Judicial Center demonstrated the completed COURTRAN II project by using a video tape which describes the project. This video tape is available for loan to any court which wishes to view it

(See JUDGES, page 2)



Mr. Justice Clark

MR. JUSTICE CLARK, FIRST FJC DIRECTOR, EULOGIZED

On June 13th, Justice Tom C. Clark died in his sleep, just hours before he was to hear cases in the United States Court of Appeals for the Second Circuit. Though he had been failing in health during the last few months, and his energies were waning, he continued to assist his brethren in the federal courts. It was the way he wanted it.

Justice Clark was appointed Attorney General of the United States in 1945, culminating a distinguished career of Government service, one of the few attorneys general to come up through the ranks. In 1949 President Truman appointed him Associate Justice of the Supreme Court of the United States, where he served until 1967. Retirement in that year was anything but that. He immediately took on herculean tasks – turning out articles for law reviews, lecturing at law schools, addressing bar associations and generally challenging everyone in the legal profession to take up the torch and dedicate their efforts to modernizing our system of justice. The Justice's new role gave him more time to further study activities he had already started.

(See CLARK, page 2)

(CLARK from page 1)

Among other things he led an ABA Committee to study and recommend improved procedures for the enforcement of disciplinary procedures in the legal profession and he leveled some harsh criticism that brought long overdue results.

One of the Justice's main concerns was the problem of handling swelling caseloads in the federal courts and he had long done whatever he could to promote and support the concept of a supportive agency to serve as a research arm and to be a forum for the continuing education and training for the Federal Judiciary. To his great delight and satisfaction, the Federal Judicial Center was created by Public Law December 20, 1967. The Chief Justice and other members of the Judicial Conference asked the Justice to serve as its first Director. Chief Justice Warren, when announcing the appointment, commented that "no person of our nation is better qualified to form such a Center. It is almost as though his entire career had been preparing him for the mission of the Center." How true.

He was not discouraged by a meager budget and a small staff and immediately started organizing. He performed wonders, determined to convince the judiciary that the Center could serve a need; to convince the staff that they needed to double their efforts; and to convince an impecunious and perhaps skeptical Congress that their faith was not misplaced. In a speech on May 23, 1968, Justice Clark talked about his work at the Federal Judicial Center and said he found his duties "neither weary, stale, flat or unprofitable. . . . [T]hey afford me a staff of honor for my retirement."

When he sat as a United States District Judge to try a protracted antitrust case in the Northern District of California, he was reported to be the first Supreme Court Justice who, in retirment, went to the trial bench. It came as a surprise to his friends that Justice Clark asked for service on the district courts for he had never been a judge before ascending the Supreme Court bench.

Following that he sat in the Courts of Appeals, and again set a record by being the first retired Supreme Court Justice to sit in all eleven Circuits.

It was apparent he loved being a judge—the oral argument and colloquy with counsel; reading the briefs (many times criticizing them as being inadequate and poorly written); the opinion writing; the "shop talk" with his brethren; and, not the least important, the fraternization with judges throughout the country.

Now, almost a decade later, the Center carries out its Congressional mandate with a budget which permits activities on a national scale far beyond the Justice's dream. He often pointed to this part of his professional career as one of the most important tasks he undertook.

At memorial services at the National Presbyterian Church in Washington on June 22, members of the Supreme Court and a host of friends and relatives from throughout the country eulogized Justice Clark and thereby marked the end of an era.

(JUDGES from page 1)

or to have it viewed by supporting staff.

• Rowland F. Kirks, Director of the Administrative Office, reported on A.O. activities of interest to the judges. There was extensive discussion concerning obtaining adequate security from the General Services Administration and problems of inefficiency caused by heating or air conditioning.

• The Conference had previously requested the Federal Judicial Center to conduct a survey of voir dire practices in the Federal District Courts and the results of that survey were presented. It revealed that approximately 70-75 percent of the district judges conduct the examination without oral participation by lawyers, but with written questions from th[illegible] indicating a gradually increas[illegible] trend in the extent to which the examination is conducted by the judge in federal courts.

• The Conference went on record as fully supporting the work of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts.

• A wide ranging panel discussion was held on problems related to discovery and possible solutions. Judge Charles B. Renfrew (N.D. Cal.), who was appointed last September to head a committee to study discovery, opened the discussion by reporting that the Committee had been asked by the Director of the Federal Judicial Center to examine such questions as: "Are there problems with discovery? [illegible] discovery being abused? If so [illegible] what areas? What types [illegible] alternative remedies or solutions should be studied?" Paul R. Connolly, Chairman of the American Bar Association Litigation Section's Committee on Discovery reported on the draft version of his Committee's recommendations which included revisions in the rules which would limit discovery to the issues, and provisions for discovery conferences early in the case, to define issues and arrange a discovery schedule.

They had considered a rule which would limit parties to five depositions, fifty interrogatories, and ten hours of document discovery without a showing of good cause. However, the Committee decided not to make such a recommendation but did urge that a metropolitan dis[illegible] court consider putting such a [illegible]

(See JUDGES, page 3)

(JUDGES from page 2)

o effect for a year on an experimental basis and the Federal Judicial Center would assist in evaluating its effect.

Federal Judicial Center Director, Judge Walter E. Hoffman, expressed concern that pretrial procedure must be distinguished from abuses of discovery. Although there are clearly discovery abuses they should not be remedied by attempting to abolish pretrial procedure, he said.

Judge Hoffman announced that the next meeting of the Conference would be held on October 6-7 in Brownsville, Texas.

(BILL from page 1)

Full-time magistrates specifically designated by the district courts would be authorized to conduct civil jury and non-jury trials without limitation on the amount of damages.

In addition, the bill also requires the Judicial Conference to formulate standards and procedures to insure the highest quality of justice in magistrate courts.

Hearings began early this month and the Attorney General testified that, "The genius of the magistrate system is that it can handle cases in an expeditious manner which might be subject to judicial overkill and a long wait in the district court."

In a letter of transmittal accompanying the draft of a similar bill, A.O. Director Rowland F. Kirks said that, "It is the view of the Judicial Conference that the proposals in this draft bill would enable the U.S. District Courts to make more efficient use of the U.S. magistrates and will significantly improve the administration of the trial jurisdiction of U.S. magistrates."

The proposed bill could lead to as many as 16,000 cases a year being shifted from judges to magistrates.

CENTER RELEASES NEW PUBLICATIONS

Judge Walter E. Hoffman, Director of the Federal Judicial Center, announced that over twenty publications on a wide range of topics are being released this summer. The Center recently initiated a new publications program with the objective of wider dissemination of the results of studies and educational programs. Under the new program four categories have been established. Publications being issued by category are:

Reports

- Priorities for Handling Litigation in United States Courts of Appeals (Publication Number FJC-R-77-1). A compilation of statutes and rules directing the Courts of Appeals to accord preferential scheduling to various types of filings.

- *An Evaluation of Computer Assisted Legal Research Systems for Federal Court Applications* (FJC-R-77-2). A field evaluation of alternative computer assisted legal research systems for federal court use.

- *An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts* (FJC-R-77-3). Legislative proposals to establish minimum mandatory sentences were examined to determine the impact on sentences such legislation would have had if in effect in Fiscal Year 1976.

- *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration* (FJC-R-77-4). A report on the controlled experiment conducted in cooperation with the Second Circuit to assess the effect of pre-argument conferences on mode of disposition, lawyer preparation, and judicial burden in federal appeals.

- *Recommended Procedures for Handling Prisoner Civil Rights Cases in Federal Courts* (FJC-R-77-5). This report, prepared by a committee of federal judges, offers both short-term and long-term recommendations for meeting the problems arising out of actions brought by prisoners under 42 U.S.C. § 1983.

- *The Conduct of Voir Dire Examination: Practices and Opinions of Federal District Judges* (FJC-R-77-7). A survey of current practice and opinion among federal judges as to conduct of the voir dire examination and an analysis of relevant policy issues.

- *Evaluation of Computer Aided Transcription* (FJC-R-77-8). A report on the results of a pilot project which included experimental use of computer-aided transcription, an evaluation of the number of reporters who could be expected to economically use this technique, an evaluation of impact, and an assessment of technical and policy variables affecting use of the technique in federal courts.

- *The Impact of Video Use on Court Function: A Summary of Current Research and Practice* (FJC-R-77-9). A review of research findings and applications of various forms of video technology in court settings.

- *Observation and Study Commitments: An Evaluation of Currect Practice* (FJC-R-77-13). A clinical psychologist looks at the entire process associated with observation and study commitments

(See PUBLICATIONS, page 4)

(PUBLICATIONS from page 3)
and makes recommendations for the improvement of current practices.

• **The District Court Studies Project.** The District Court Studies Project, designed primarily to determine which procedures produce the best results in terms of speed and productivity consistent with the highest standards of justice, will culminate with a final report entitled *Case Management and Court Management in United States District Courts* (FJC-R-77-6-1). In addition, six other reports from the Project are scheduled to be published in 1977, starting with *Judicial Controls and the Civil Litigative Process: Discovery* (FJC-R-77-6-3), an examination of discovery practices in six metropolitan district courts.

• **Federal Court Library Study.** The study of federal court libraries is producing a number of reports. Although the major publication *Federal Court Library Study: Report and Recommendations* (FJC-R-77-10-1) will not be available until late summer, subsidiary reports are now being printed. These include:

- *Books that Judges and Other Court Officials Have and Do Not Need (FJC-R-77-10-2)*
- *Inventory of Periodicals in Federal Court Libraries* (FJC-R-77-10-3)
- *Lawbook and Law Research Problems As Stated by Judges and Other Officials of the Federal Courts* (FJC-R-77-10-4)
- *Locations of Federal Court Facilities* (FJC-R-77-10-5)
- *Lawbook Collections at Unoccupied Federal Court Locations (FJC-R-77-10-6)*
- *Procurement of Law Library Materials for the United States Courts (FJC-R-77-10-7)*
- *Progress Report on Study of Facsimile Transceivers (FJC-R-77-10-8)*
- *Procurement of Law Library Materials for the United States Courts (FJC-R-77-10-7)*
- *Data on Individual Case Citations by the United States Courts, 1971-1976 (FJC-R-77-10-9)*
- *Architectural Design Standards for Federal Court Libraries: A Working Paper* (FJC-R-77-10-10)
- *Library Personnel: Jobs, Qualifications, Recruitment, Salaries, and Training* (FJC-R-77-10-1)

Staff Papers

(A Staff Paper is the product of a short-term research effort by Center staff. Generally undertaken in response to queries from a Judicial Conference Committee, members of the judiciary, or from the Center Board or Director, a Staff Paper normally involves less exhaustive research methods than a Center Report. Together, Staff Papers and Reports are intended to give an overall view of Center research activities.)

• *Survey of Local Civil Discovery Procedures* (FJC-SP-77-1). Summary of the results of a questionnaire survey of individual judge standing orders and local rules relating to discovery practices in federal district courts.

• *Appellate Court Caseweights Project* (FJC-SP-77-3). A study of a technique for measuring relative burdens caused by caseloads of U.S. appellate courts based upon judges' estimates of 23 casetypes.

• *Air Disaster Litigation: The Need for Legislative Reform* (FJC-SP-77-6). Study of suggestions for handling litigation resulting from aircraft accidents.

Education and Training Series

• *Educational Media Catalog: A Catalog of Audio Cassettes, Films and Video Cassettes* (FJC-ETS-77-2). A listing of materials available through the lending program of the Center's Education and Training Division.

• *Appellate Review of Trial Court Discretion* (FJC-ETS-77-3). A presentation at a seminar for appellate judges by Professor Maurice Rosenberg.

• *Appellate Opinion Writing* (FJC-ETS-77-4) and *Stare Decisis* (FJC-ETS-77-5). Presentations at a seminar for appellate judges by the Honorable Edward D. Re, Chief Judge of the United States Customs Court.

• *Consumers of Justice* (FJC-ETS-77-6). A presentation at a seminar for appellate judges by Professor Daniel J. Meador.

• *The Role of the Judge in the Settlement Process* (FJC-ETS-77-13). District Judge seminar presentations by the Honorable Hubert L. Will, U.S. District Judge, Northern District of Illinois; the Honorable Robert R. Merhige, Jr., U.S. District Judge, Eastern District of Virginia; and the Honorable Alvin B. Rubin, U.S. District Judge, Eastern District of Louisiana.

Handbooks and Manuals

• *Law Clerk Handbook* (FJC-M-77-1). A basic procedural guide for use by federal district and appellate court law clerks. Its use is intended to complement local practices. Copies will be distributed to all law clerks in September.

JUDICIAL FELLOWS SELECTED

Three Judicial Fellows have been chosen for the 1977-78 Program.

Judith Chirlin

Judith C. Chirlin is an attorney who specializes in litigation. She comes from Los Angeles and has taught in the Judicial Administration Program at the University of Southern California. Miss Chirlin graduated from U.S.C. Law School where she served as the Note and Article Editor as well as the Book Review Editor of the *Southern California Law Review.* As an undergraduate at George Washington University, Miss Chirlin majored in Political Science and has received a Masters in that same field at Rutgers University. Her varied work experiences include four years as staff assistant to a Congressman. She has studied the use of confidentiality stipulation in trade secret litigation, has been a member of a committee charged with recommending a system for standardization of local rules for the Ninth Circuit, and has been concerned with the establishment of an Institute on Computers and the Law, sponsored by U.S.C.

C. Edward Good

C. Edward Good is a member of the faculty of the University of Virginia School of Law. Mr. Good has played a vital role in the development of a legal research service for practicing attorneys which utilizes both full-time attorneys and law students. He has been a recipient of the Corning Glass Works Traveling Fellowship which premitted worldwide travel and study. Mr. Good received his J.D. from the University of Virginia and his A.B. in Economics from the University of North Carolina. He is co-author of the *Legal Malpractice Reporter.*

George E. Feldmiller, a partner in a prominent Kansas City Law firm, is a short-term Judicial Fellow. He brings the perspective of a practicing attorney who is interested in timely and inexpensive delivery of quality legal services. Mr. Feldmiller received a B.S. in Public Administration from the University of Missouri. Since graduation from the University of Michigan Law School, where he was Associate Editor of the law review he has been exclusively engaged with general civil litigation in both state and federal courts with particular emphasis upon corporate litigation in the federal courts.

FIRST CIRCUIT HOLDS WORKSHOP

The First Circuit Judicial Conference was held in Washington, D.C. this month, thus permitting the judges in this Circuit to participate in a two-day workshop held at the Center. Judge William J. Campbell (N.D.Ill.) was Chairman.

The workshops, co-sponsored by the ABA's National Conference of Federal Trial Judges and the F.J.C., have been highly successful endeavors. They have concentrated on specific subjects of concern to the federal trial judges, through single presentations on a given subject, followed by small group discussions. The workshops in this manner permit a free exchange of ideas and a sharing of mutually helpful information.

Above, a photograph of the First Circuit Workshop during the presentation on class actions. This session was videotaped in color and will later be available to members of the Federal Judiciary.

This month's workshop started out with a discussion on class actions, with Judge William H. Becker (W.D. Mo.) and Professor Arthur R. Miller, of the Harvard Law School, making presentations. Judge Sam C. Pointer, Jr. (N.D. Ala.) outlined problems which could arise from the new Federal Rules of Evidence, with emphasis on hearsay problems, exceptions to the hearsay rule and

(See WORKSHOP, page 9)

LEGISLATIVE OUTLOOK

CONGRESSIONAL ACTION

S. 1437, the new Federal Criminal Code Reform Act, introduced by Senators McClellan and Kennedy was the subject of hearings on June 7, 8, and 9 before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee. Testimony was directed in this series of hearings specifically and principally toward the provisions relating to sentencing and the new

(See LEGISLATION, page 6)

(LEGISLATION from page 5)

Sentencing Commission. Witnesses appearing included Attorney General Griffin B. Bell, Norman Carlson of the Bureau of Prisons, former Deputy Attorney General Harold Tyler, Judge Gerald Tjoflat and Judge William H. Webster representing the Probation Committee and the Advisory Committee on Rules of Practice and Procedure of the Judicial Conference. In addition, Judge Marvin E. Frankel and Judge Morris E. Lasker, both of the Southern District of New York, presented their views. Two additional days of hearings were held June 20 and 21.

The House Judiciary Committee has continued to hold mark-up sessions on H.R. 6, the bill to revise the bankruptcy laws.

The Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery held a series of hearings on S.1612 and S.1613, bills which would expand the jurisdiction of U.S. magistrates. S.1612 incorporates the Judicial Conference proposal while S.1613 embodies the suggestions of the Department of Justice. (See story page 1).

The Senate has passed S.195, which would include Bottineau, McHenry, Pierce, Sheridan and Wells Counties in the Northwestern Division of the District of North Dakota.

The Senate has also passed S.11, which provides an additional 109 permanent federal district judgeships and four temporary judgeships. It would add 35 courts of appeals judgeships and create an Eleventh Circuit Court of Appeals consisting of Louisiana and Texas.

The Fifth Circuit would consist of Alabama, Florida, Georgia, Mississippi, and the Canal Zone. The proposed effective date of the creation of the division of the Fifth Circuit into the Fifth and Eleventh Circuits would be October 1, 1977.

BILLS INTRODUCED

H.R. 7239, to amend Chapter 313 of Title 18 of the United States Code, by Mr. Rodino (Judicial Conference proposal) is a Federal Act for the commitment of incompetent persons.

H.R. 7240, a bill to amend § 1963 of Title 28, United States Code, to provide for the registration of criminal judgements of fine or penalty (Judicial Conference proposal).

H.R. 7241, a bill to provide for the defense of judges and judicial officers sued in their official capacities (Judicial Conference proposal).

H.R. 7242, a bill to amend § 3146 (relating to release of defendants in non-capital cases prior to trial) of Title 18 of the United States Code, to provide for the consideration of the safety of other persons or the community in the decision as to whether and on what terms to permit such release (Judicial Conference proposal).

H.R. 7243, to amend § 1332(a)(1) of Title 28, United States Code, to reduce the jurisdiction of the United States district courts in actions between citizens of different states (Judicial Conference proposal).

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H.R. 7244, to amend the Canal Zone Code with respect to the appointment and service of probation officers and for other purposes (Judicial Conference proposal).

H.R. 7245, a bill to amend the Federal Rules of Criminal Procedure to provide for appellate review of sentences (Judicial Conference proposal).

The Senate Judiciary Committee, Subcommittee on Criminal Laws and Procedures, held hearings on S.1382 to establish rational criteria for the imposition of the death penalty. Witnesses appearing represented the Department of Justice, the American Civil Liberties Union, and the National District Attorneys Association.

CRIMINAL RULES

H.R. 5864, which will approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure and disapprove other proposed amendments, passed the House April 19. The bill is pending in the Senate Judiciary Committee. Two of the rules which were disapproved have been reintroduced so that the Congress may decide these matters through legislation.

H.R. 5865 would provide a procedure for obtaining search warrants on the basis of oral testimony. H.R. 5866 would change the procedure for the removal of certain state criminal cases to the federal courts. Both of these bills are pending in the House Judiciary Committee.

In accordance with Public Law 94-349, if the Senate does not act on the amendments in House bill 5864, these rules would take effect on August 1, 1977 in the form proposed by the Supreme Court.

In the House of Representatives, the Judiciary Committee has engaged in mark up of H.R. 3685 providing for additional circuit and district court judgeships. On June 9th, the Subcommittee approved for full Committee action a clean bill in lieu of H.R. 3685. The bill has not yet been introduced.

The House Committee on the Judiciary, Subcommittee on Criminal Justice has scheduled mark up of H.R. 5865, to provide a procedure for obtaining search warrants on the basis of oral testimony.

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.*

OREGON

The State-Federal Judicial Council for Oregon met on April 18. In the absence of Council Chairman, Chief Justice Arno Denecke, the meeting was called to order by U.S. District Judge Robert Belloni.

Judge Belloni reported on the conduct of a recent one-day trial in Portland where State Tax Court Judge Carlisle Roberts and U.S. District Judge Gus Solomon jointly presided. At issue was a citizen's claim regarding similar federal and state travel expense deductions on his income tax returns. All participants agreed the combined procedure produced significant savings in time.

There was general discussion on judicial problems relative to handling prisoner petitions. Federal judges have offered their knowledge and experience in these types of cases to any state judges who would find it useful, since prisoners often resort to state courts after failing in federal court.

Other areas of discussion were movement of judges to various locations of holding court to stem the growth of backlog, the effect of plea bargaining on caseloads, the potential effect which might take place on state courts should federal diversity jurisdiction be abolished, legislative attempts to remedy problems in the area of sentencing, and the value of sentencing panels.

It was reported that the Federal Court's practice of dismissing on its own motion cases filed against state court judges which are shown clearly on their face to be groundless or lacking federal jurisdiction has been working well.

U.S. Circuit Judge Alfred T. Goodwin described the use of automated legal research and retrieval by members of the federal bench and stated that experience to date had been extremely helpful. State court judges anticipated similar resources at some future date.

Discussion was held on the recent speech of Oregon Supreme Court Justice Hans Linde, "Fair Trial and Press Freedom—Two Rights Against the State!"

VIRGINIA

On June 25 the State-Federal Judicial Council for Virginia convened for a one-day meeting at Hot Springs.

Among the agenda items were the following: the elimination of diversity jurisdiction cases in federal courts, the establishment of a certification system for federal questions to state supreme courts, a report on the construction progress for the headquarters of the National Center for State Courts at Williamsburg, Virginia, and the feasibility of a one-day/one-trial jury system.

Chief Judge Clement F. Haynsworth

CHIEF JUDGE HAYNSWORTH ADDRESSES ANNUAL JUDICIAL CONFERENCE

In his remarks to the Annual Judicial Conference of the Fourth Circuit, Chief Judge Clement F. Haynsworth, Jr. pointed out that the basic purpose of a circuit conference is "to consider the administration of justice in the federal courts and what might be done to improve it. We are in such a state of crisis that I cannot refrain from inviting your attention to it."

He said that if current projections continue for the 12 months ending June 30, filings in the Court of Appeals will reach 1,669 which represents an increase of 201 regular docket cases or 14%.

When he came to the court in 1957 and for some years thereafter, annual filings were about 225 or 75 cases for each of the three judges. Today, the filings represent about 238 cases for each of the seven judges, "a burden which I submit is impossible to bear."

After describing the various techniques which the Court has used to deal with the ever in-

(See HAYNSWORTH, page 8)

(HAYNSWORTH from page 7)

creasing caseload, he said, "Thus by every reasonable means we have sought to avoid the growth of a great backlog with long delay in reaching cases for disposition."

However, he emphasized that the growth in pending cases has reached the point where the court has exhausted its internal capacity to substantially increase productivity.

He said that one of the key reasons for this large increase in filings has been the increasing volume of legislation which Congress has passed over the last 10 to 15 years.

"I submit to you that this trend must be checked. This is not to suggest that Congress abandon the protection it has provided, but if the federal judicial system is to be preserved in anything resembling its present form, alternative means of administering those protections must be provided."

As an example he suggested the elimination in most instances of judicial review in social security and black lung cases.

Turning to the District Courts of the Fourth Circuit, Judge Haynsworth said they have been suffering comparable burdens and the additional help which will be given them if Congress provides additional judges "will enable them to grapple with their current workloads, but it hardly will equip them to handle substantial increases in the years to come."

He pointed out that the proposed new judgeships will be of tremendous assistance to the Court of Appeals and the District Courts of the Fourth Circuit but "unless many other things are done, the volume of cases in the District Courts and the volume of cases in the Court of Appeals will continue to increase at alarming rates, and the courts, as reinforced by the pending legislation after it is enacted, will be unable to cope with the still higher case levels."

He concluded his remarks by saying "If runaway increases continue into the next few years, we will need still more judges with the consequence that our collegiality may be lost, our character will certainly be greatly altered, and we may face the necessity of dividing the Circuit into two or more circuits."

PRESIDENT ESTABLISHES COMMITTEE TO SELECT FEDERAL JUDICIAL OFFICERS

In an Executive Order 11992 issued May 24, President Carter established a seven-member Committee on Selection of Federal Judicial Officers.

According to the Executive Order, which was published in the May 26th Federal Register at page 27195, the function of the Committee is: "When requested by the President, the Committee shall conduct inquiries to identify persons who may be qualified to serve as Federal Judicial Officers, other than United States Circuit Judges or District Judges, and shall conduct investigations of those persons to determine their qualifications."

The purpose of the Committee is to select candidates for the Court of Customs and Patent Appeals, the Customs Court, the Court of Claims and possibly for the Tax Court.

The Executive Order was drafted broadly to allow the President to use the Committee to select not only judges of special courts but, if he so desired, candidates for nomination to vacancies on the Supreme Court of the United States.

Chief Judge John R. Brown

CHIEF JUDGE BROWN PRESENTS FIFTH CIRCUIT STATE OF THE JUDIDICARY ADDRESS

Chief Judge John R. Brown (CA-5) in his report on the State of the Federal Judiciary delivered to the 1977 Circuit Judicial Conference, pointed to the problems as well as the progress which has been made over the past year in his Circuit, one of the largest and busiest in th nation.

Among the problems he pointed to were:

- A disproportionate workload to the relative population percentage in the nation.
- An almost exponential increase in incoming business.
- The increase in new business, especially in some of the large metropolitan district courts that now exceeds the physical capabilities of the authorized judges.
- Civil rights and prisoner cases with class action aspects which present almost unmanageable challenges.
- The preemptive time table demands of the Speedy Trial Act which continue to be disruptive.
- Concern that the day soon at hand when few tradition al civil cases will be heard.
- In the Court of Appeals a serious backlog that continues to develop.

• Fear that priority cases will shortly crowd out or postpone or years non-preference cases scheduled for oral argument.

However, he said help has come or will be forthcoming in a number of ways:

• By adding adequately compensated supporting personnel in the form of clerks, magistrates, law clerks, and paralegals.

• By judges' continuing imaginative innovations in judicial actions.

• By improved relationships with Congress, the media and the bar.

• By the Congress through passage of the Omnibus Judgeship Bill at an early date in this, the 95th Congress.

• By the bar with increased participation in facing the problems of the court and increased competency of the bar in improving lawyers' capacity in the indispensable role of advocates.

Turning to the work of the nineteen district courts of the Fifth Circuit, Chief Judge Brown pointed out that civil cases have risen by 12.7 percent to 30,542 which exceeds the national average growth. He said the cause of this increase was a continuous litigious society and cited four examples:

• A 98.5 percent increase in the rise of social security cases.

• More product liability cases.

• A significant increase in cases under the Civil Rights Act of 1964.

• A tremendous increase in land condemnation cases filed in our district courts.

However, he said he had some good news and bad news as far as prisoner cases were concerned. The good news is that habeas corpus petitions are down by 263. The bad news is that prisoners' civil rights suits are up by 573 cases.

He said that the performance on terminations by the district judges of his Circuit was spectacular and only two of nineteen district courts in the Circuit did not equal or exceed significantly the national average and this was simply because they did not have enough cases to terminate.

As far as criminal cases in the district courts were concerned, there was a decrease of 5.2 percent in the total number of criminal cases filed nationwide. Despite this there was an overall increase in the Southern District of Georgia which experienced an increase of 181.2 percent in criminal case filings and in the Western District of Louisiana where the filings rose by 146.5 percent to 996 cases.

When both civil and criminal cases are combined, the true picture reveals that for 1976 over 1975 there was a 12.7 percent increase of 4,591 cases in the Fifth Circuit District Courts.

He told the conference that the action of the Senate Judiciary Committee which approved over 100 additional judgeships was very good news since the Fifth Circuit would receive thirty-five additional judgeships.

He pointed to the magistrates' bill passed last session which extended their jurisdiction and said: "The total effect is that while magistrates' duties have increased, hopefully their work will lessen the burden now being borne by the judges."

Turning to the work of the Court of Appeals, he noted that compared with filings in 1961 of 630 cases the business of the Fifth Circuit has grown 467 percent by a total of 3,629 filings. "Terminations by judicial action after briefing, hearing, or submission are 146 for the Fifth Circuit, again the highest in the nation in F.Y. 1976, against a national average of 96." To respond to this crisis in litigation, he pointed to the screening system which the Court of Appeals now uses to dispose of a substantial number of cases without oral argument.

A new complication he said, "is the impact of priority preference on calendaring non-preference cases for oral hearing. For the past several years preference cases constitute 47 percent of all cases determined by a judge to require oral argument."

On the subject of splitting the Fifth Circuit, Chief Judge Brown reported that the Judicial Council voted to split the Circuit and that they also agreed they would need twelve new Circuit judgeships if the Circuit was split.

In conclusion, he told the Conference, "Today, the picture I have painted for you of the situation in the courts of this Circuit is, in the main, one of accomplishments, continued aggressiveness, and hope for the future."

(WORKSHOP from page 5)

an update of the rules. Judge C. Clyde Atkins (S.D. Fla.) and Professor Kenneth R. Redden, of the University of Virginia School of Law, concluded the meeting with a review of common problem areas and a report on some typical criminal cases involving the rules.

The last in this second series of workshops was held at Cherry Hill, New Jersey June 22-23.

The third workshop series for the Sixth, Seventh and Eighth Circuit judges will be held August 3-4 in Chicago.

Judges attending the First Circuit Workshop, pictured above, are (l. to r.): Chief Judge Frank M. Coffin; Judge Levin H. Campbell (CA-1) and Judge William H. Becker (W.D. Mo.).

ao fjc calendar

June 27 Federal Judicial Center Board Meeting, Washington, D.C.

June 27-July 1 Rational Behavior Training Workshop for U.S. Probation Officers, San Diego, CA

June 28-July 1 Advanced Seminar for U.S. Magistrates, San Francisco, CA

June 29-July 2 Eighth Circuit Judicial Conference, Kansas City, MO

July 6-8 Seminar for U.S. Probation Officer Assistants, Washington, DC

July 7-8, Judicial Conference Subcommittee on Judicial Improvements, Colorado Springs, CO

July 11-13, Instructional Technology Workshop for U.S. Probation Officers, Milwaukee, WI

July 13-16, Tenth Circuit Judicial Conference, Salt Lake City, UT

July 13-15, Seminar for the Staff of U.S. Magistrates, Seattle, WA

July 18-19, Management for Supervisors, Baltimore, MD

July 18-22, Orientation Seminar for U.S. Probation Officers, Washington, DC

July 22, Judicial Conference Bankruptcy Committee, New York City

July 25-26, Management for Supervisors, Richmond, VA

July 25-26, Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, DC

July 26-28, Judicial Conference Review Committee, Mackinac Island, MI

July 26-28, Judicial Conference Advisory Committee on Judicial Activities, Williamsburg, VA

July 29, Judicial Conference Joint Committee on Code of Judicial Conduct, Williamsburg, VA

July 28-29, Judicial Conference Criminal Law Committee, Bar Harbor, ME

Aug. 1-2, Judicial Conference Court Administration Committee, Williamsburg, VA

Aug. 1-2, Judicial Conference Advisory Committee on Civil Rules, Washington, DC

Aug. 2-4, Workshop for Chief Probation Office Clerks, Salt Lake City, UT

Aug. 3-4, Workshop for District Judges, Chicago, IL

Aug. 8-9, Management for Supervisors, Philadelphia, PA

Aug. 11-12, Management for Supervisors, Burlington, VT

Aug. 16-19, Advanced Seminar for U.S. Magistrates, Denver, CO

Aug. 22-26, Rational Behavior Training Workshop for U.S. Probation Officers, Louisville, KY

PERSONNEL

APPOINTMENT

Howell W. Melton, U.S. District Judge, M.D. Fla., May 12.

William M. Hoeveler, U.S. District Judge, S.D. Fla. May 26.

NOMINATION

Russell G. Clark, U.S. District Judge, W.D. Missouri, June 13

Edward L. Filippine, U.S. District Judge, E.D. MO, June 22.

CONFIRMATION

Finis E. Cowan, U.S. District Judge, E.D. MO, June 22.

ELEVATION

C. Clyde Atkins, Chief Judge, S.D. Fla., June 13.

THE THIRD BRANCH

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THE FEDERAL JUDICIAL CENTER

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The Third Branch

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Bulletin of the Federal Courts

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RECORDS REPORT RELEASED

Judge J. Edward Lumbard (CA-2) who served as the Federal Judiciary's representative to the National Study Commission on Records and Documents of Federal Officials has summarized the portions of the 148-page report which deal specifically with documents of members of the federal court system.

Here is his summary.

On April 28, 1977 the National Study Commission on Records and Documents of Federal Officials (Public Documents Commission) submitted its Final Report to President Carter and both houses of Congress. The Report calls for public ownership of all of the job-related documentary materials of Presidents, Members of Congress, Supreme Court Justices, and Federal Judges.

The Commission was established by statute in December 1974 against the background of the August 9, 1974 resignation of former President Richard M. Nixon and the subsequent controversy surrounding his Presidential papers and tape recordings. Mr. Nixon's claim to the 42,000,000 pages and the tape recordings accumulated during his Presidency was predicated on the historical tradition that the records and documents of the highest federal officials may be removed upon leaving office, and treated as if they were personal property.

The Public Documents Commission concluded that this practice must bow to the public interest and that materials generated by federal officials in the course of doing the business of the public should be public property.

To maximize public access to governmental records, the Commission has recommended that the institutional records of Congress, the Federal Judiciary, and certain units of the Executive Office should be brought within the scope of existing records-management legislation and subject to the access provisions of the Freedom of Information Act. Presently the Act provides a mechanism to request access to records of executive branch agencies, and a right to judicial review if the agency denies access under one of the specified exemptions.

The extension of the Freedom of Information Act to all of the institutional records of the federal government will substantially increase the citizen's capacity to find out about the official acts of the government.

At present, an agency head can keep agency records closed, subject to the Freedom of Information Act, for a period of 50 years from the date of creation. The Commission has recommended that that period be reduced to 30

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Judge Walter E. Hoffman

JUDGE HOFFMAN LEAVES JUDICIAL CENTER

Judge Walter E. Hoffman, the third Director of the Federal Judicial Center, officially left that position on July 18 to return to Norfolk, Virginia as a senior – but far from inactive – federal district judge for the Eastern District of Virginia.

His departure, which was required because he reached the statutory age limit, followed nearly 3 years of major progress during which the Center began, among other projects, computerizing the nation's federal courts and conducted a major study of the operations of federal district courts.

On July 8, members of the Center staff, officials of the Administrative Office and the Supreme Court gathered for a

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reception and dinner in his honor. Following this dinner, Chief Justice Warren Burger praised him for his outstanding service as Center Director and presented him with a Certificate of Appreciation from the Judicial Conference of the United States.

Judge Hoffman intends to lead a very busy life. He told the gathering that he has accepted the Chairmanship of both the Judicial Fellows Commission and the Conference of Metropolitan Chief Judges. In addition, the Supreme Court on June 29 appointed him Special Master in the case of *U.S. v. Maine.* This fall, he will teach at the Marshall-Wythe School of Law, College of William and Mary as the school's Tazewell Taylor visiting professor. He will continue his affiliation with the Federal Judicial Center as Director Emeritus.

In a message to Federal Judicial Center staff on the eve of his departure, Judge Hoffman said, "As I leave the Center as Director, I want each of you to know how much I have appreciated your loyalty and cooperation over the past two years and nine months. I have complete confidence that this spirit on the part of all employees will continue with my successor in office, Professor A. Leo Levin."

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years, after which there would be general access without the need to resort to a Freedom of Information Act request.

For those materials that are not a part of the institutional records of government, but are generated by or for the use of individual officials, the Commission has recommended the creation of a new category of publicly owned property, which it calls "Public Papers." Examples of this material are confidential communications between the official and his staff; working papers integral to the decision-making process; conference notes of Justices or Judges; or confidential advisory memoranda.

The Commission decided to suggest special procedures for access to the so-called "Public Papers" of federal officials for two reasons. The first of these was the desire to avoid subjecting an incumbent President, sitting Justice or Judge, or Member of Congress to the possibility of constant litigation over denials of immediate access which would arise from immediate application of the Freedom of Information Act.

The second involved the strong public interest in preserving the integrity of the decision-making process within all branches of government. An official must be assured full and candid advice if he is to perform his duties properly. The Commission believes that unless some protections against premature public disclosure are provided for these sensitive materials, officials and their advisors may commit less to writing, and be less than candid in that which is written. This would impair the responsible and effective discharge of official duties, and result in a less than full and accurate record.

To accommodate these considerations, the Commission has recommended that the federal official who accumulates "Public Papers" be permitted to impose access restrictions upon them for a period not to exceed fifteen years after he leaves federal service. It believes that this formula balances the very real needs for assurances of some degree of confidentiality in the give and take of official decision-making against the right of the public to have reasonable access to the documentary materials produced by public servants. On the basis of past experience, it is likely that federal

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Chief Judge James R. Browning

CHIEF JUDGE BROWNING REPORTS TO CA-9

Chief Judge James R. Browning reported on the State of the Circuit when the Ninth Circuit's Judicial Conference opened on June 13 at Kauai, Hawaii.

This year the Conference met for the first time with a completely reorganized format which has been two years in the making.

In his State of the Circuit message, Chief Judge Browning emphasized that the Circu needed more judges to kee abreast of its huge caseload. He said he was optimistic that the Omnibus Judgeship Bill would be enacted by the present Congress, bringing some relief.

He pointed out that within a decade the number of appeals had increased by 231 percent from 877 in 1966 to 2,907 in 1976. During this period the authorized Circuit judgeships only increased from nine to thirteen. Moreover, some of the district courts in the Circuit experienced almost equally startling caseload increases.

Since he anticipated the early enactment of the Omnibus Judgeship Bill, the Chief Judge urged the lawyers attending the Conference to establish search committees in their districts in order to find the best qualified lawyers and judges and to encourage them to subm applications to the Circuit Judge Nominating Commission. A Planning Committee of the Circuit Council recently has been appointed and is working to

prepare for the arrival of the new judges, he added.

Chief Judge Browning described recent changes in the administrative organization of the Circuit. Under the new structure of the Circuit Conference, lawyers will participate more actively and more independently; they are selected by the lawyers themselves to represent the practicing lawyers' viewpoint.

The lawyers have an "obligation to speak up about the administration of justice in our courts . . . clearly and honestly."

On the final day of the Conference, Carl J. Schuck, a Los Angeles attorney, was elected by the Executive Committee of the Conference to be Chairman of the 1978 Ninth Circuit Judicial Conference.

In addition, the Chief Judge discussed some new developments during the past year including the formation of the Conference of Chief Judges of the District Courts of the Ninth Circuit which will meet twice a year to consider such matters as intercircuit judicial assignments, improvements in Speedy Trial Act procedures, the review of attorney claims under the Criminal Justice Act and standardization of local rules of court.

He also cited some administrative developments in the Court of Appeals. One of the most significant, he said, was the creation of the caseload management committee. The committee has established a system for maintaining a continuous inventory of pending appeals and is working with the Federal Judicial Center to develop a computer program for systematic control of the processing of appeals in the court.

Chief Judge Browning said that this spring the Court of Appeals began a new system of opinions publication. Under this procedure headnotes for all published opinions with a cumulative digest of cases is furnished to the judges regularly.

In closing, the Chief Judge discussed the Court's new practice of appointing the district judges to serve with the circuit judges on council committees. One of the most successful of these joint committees is the Legislative Liaison Committee which is chaired by Judge Charles B. Renfrew (N.D. Cal.). Among its other activities, this committee has worked effectively to obtain Congressional approval of additional Circuit and District judgeships for the Circuit.

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officials will choose to make a large portion of these "Public Papers" available well within the fifteen years.

The Commission feels that the special merit of this plan is that, after the relatively short period during which a former President, Member of Congress, Supreme Court Justice, or Federal Judge is permitted to limit access, the "Public Papers" will be fully open, subject only to restrictions necessary in the interest of national security, or to prevent a clearly unwarranted invasion of privacy. There will be no need for a request and review procedure such as that provided for by the Freedom of Information Act. This will mean greater public access, swifter public access, and a far less costly administration of such papers.

As applied to the Judiciary, institutional records would include case files, dockets, minutes, administrative and other materials.

The Commission has recommended that the definition of a "federal agency" in 40 USC §472 be clarified so that laws and regulations relating to archival administration and records disposition would apply to the records of the Supreme Court and the records of committees or other agencies within the Federal Judiciary that serve in an advisory capacity with respect to the exercise of the constitutional authority of the judicial branch.

The district courts and courts of appeals are presently considered federal agencies within 40 USC §472.

The "Public Papers" of the Justices and Judges would consist of those documentary materials, exclusive of court records, generated or received by members of the Judiciary in connection with their official duties and retained in their files after final judgment has been entered in a case. These papers would include such materials as conference notes and bench memoranda prepared by law clerks.

Justices or Judges would be permitted to place restrictions on public access to such papers for a period of time not to exceed fifteen years from the time they leave federal office. At the expiration of the fifteen year closure period all public papers, except those the disclosure of which would constitute an unwarranted invasion of personal privacy, would be open to general access.

Under the recommendations the "Personal Papers" of the Judiciary, which would include those materials of a purely private or non-official character (such as diaries or personal correspondence), would remain the Justice or Judge's private proper-

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ty. The Commission has recommended, however, that members of the Judiciary be encouraged to arrange for the preservation and eventual availability of their personal papers.

The Commission has recommended that any legislation enacted pursuant to its report should have prospective application only. The Commission believed that this would minimize any disruption of existing records-management practices, provide notice to federal officials, and avoid any legal problems that might arise if such legislation were given retroactive effect.

Fifteen of the seventeen Commissioners endorsed the final report. A separate minority report was filed by the Commission Chairman and one other member. It recommends placing all materials accumulated by federal officials in connection with their official duties into the single category of "Public Records." The access provisions of the Freedom of Information Act would apply to "Public Records" as of their creation or receipt, subject to existing exemptions and whatever additional exemptions or privileges that would be necessary to protect sensitive materials.

The Commission plans to make a copy of the majority report available to each member of the Federal Judiciary. Until a sufficient number of copies are printed, a copy will be sent to the Chief Judges of all federal appellate courts.

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1978–79 JUDICIAL FELLOWS PROGRAM SEEKS CANDIDATES FOR SIXTH YEAR

Highly talented young professionals are invited to apply for the 1978-79 Judicial Fellows Program. The Program, similar to the White House and Congressional Fellowships, attracts outstanding talent from multi-disciplinary backgrounds. Two fellows will be chosen to spend 1978-79 observing and contributing to projects designed to improve judicial administration. An additional purpose of the Program is to promote those individuals who will not only make a contribution during their year as Judicial Fellows, but who will continue to make a contribution to judicial administration in the future.

Now entering its sixth year, the Program is administered by the National Academy of Public Administration. It was instituted through grants from the American Bar Endowment, the Ford Foundation, and the Edna McConnell Clark Foundation.

Candidates should have at least one post graduate degree, at least two years of professional experience, and, preferably, familiarity with the judiciary. Salary is negotiable based upon the salary structure of the Federal Judicial Center and the salary history of the candidate. The Fellowships begin in September 1978, and have a duration of one year. The application deadline is November 4, 1977.

Application information and literature on the Program are available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543.

BUREAU OF PRISONS SUMMARIZES NEW RULES

The Bureau of Prisons ha compiled a summary of recent changes in their rules which they believe would be of interest to federal judges and parole officers.

J. Michael Quinlan, Executive Assistant to the Director of the Bureau of Prisons, has prepared the following summary for the guidance of the Federal Judiciary.

Until recently, the only rules pertaining to the Federal Prison System which were published in the Code of Federal Regulations dealt with the general authority of the Director, prohibition against traffic in contraband and inmate accident compensation. The working guidelines for the Bureau of Prisons were spelled out in policy statements.

In compliance with a decision by the U.S. Court of Appeals for the District of Columbia in *Ramer v. Saxbe,* a wide range of prison rules are now being published in proposed form in the Federal Register. These rules will eventually be published in Chapter V of the Code of Federal Regulations.

The first group of rules published under this new and broader publication schedule appeared in the May 23, 1977 issue of the Federal Register, at pages 26,333 to 26,346. This publication includes general definitions, and rules on extra good time, contact with persons in the community, inmate correspondence, inmate visiting, contact with the news media, inmate discipline and special housing units, and legal matters.

All institutions have a policy of open general correspondence, which permits a quick flow of outgoing mail. Inmates may correspond with whomever they wish. General correspondence opened, checked for contraband and may be spot-checked as to contents. Inmates may send sealed correspondence to the courts, to the Congress, to certain

other governmental officials, and o attorneys. Incoming mail from these sources may not be read or copied by staff, and must be opened for contraband inspection only in the inmate's presence.

Inmate visiting is encouraged, and takes place in open visiting areas with the fewest possible constraints.

Representatives of the news media are encouraged to visit federal institutions and can interview individual inmates if the offender agrees.

Rules governing the administration of inmate discipline comply with the procedural safeguards established by the Supreme Court in *Wolff v. McDonnell,* 418 U.S. 528 (1974). At commitment, inmates are given a booklet which provides general information about the institution, and lists prohibited acts in the institution. When a prohibited act is committed, line staff are encouraged to informally resolve less serious charges. For more serious misconduct, the inmate is given a written copy of the charges, and disciplinary action is administered with a two-level process: a unit disciplinary committee to hear and review all misconduct charges, and an institution discipline committee for the most serious offenses. Only this latter committee has authority to impose the sanctions of forfeiting good time, segregated confinement, disciplinary transfers, and recommendations for rescinding a parole grant.

CHIEF JUSTICE PROPOSES ELIMINATION OF DIVERSITY JURISDICTION

In an address to the Minnesota State Bar Association recently, Chief Justice Robert J. Sheran (Sup. Ct. Minn.) told the members of the bar that long standing lines of demarcation between jurisdictions of federal and state courts should be changed.

Chief Justice Sheran called the theory which put diversity litigation in the federal courts a myth. He pointed to "long-arm statutes" which bring a significant number of diversity cases to state courts, and said there was no basis for any claims that the litigants are not being treated fairly.

This proposal has long had support from prominent leaders of the bench and bar, but Congressional moves to do away with diversity jurisdiction still meet with opposition. Chief Justice Sheran met one of the arguments – that the state courts would be inundated with heavy caseloads they could not handle – by citing some statistics. In Minnesota, where there are four United States District Judges, nearly one-fifth of their cases would be handled by approximately 200 state judges.

Chief Justice Sheran reported that the trial courts of Minnesota are adequately prepared to accept responsibility for this litigation and further endorsed the change because it would preserve the identity and independence of their state court system.

The importance attached to the subject by many of the Chief Justices is apparent for it will be high on their agenda list when the Conference of Chief Justices meets in Minneapolis in July.

CENTER PUBLISHES REVISED EDITION OF PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES

In January, 1976, the Center published a tentative report on procedures for handling prisoner civil rights cases, cases arising under 42 U.S.C. § 1983. That report, prepared by a committee of judges chaired by Judge Ruggero Aldisert, contained standards for processing prisoner condition-of-confinement cases through the courts, model forms to expedite the processing, and commentary on the current state of the law in this expanding and changing field.

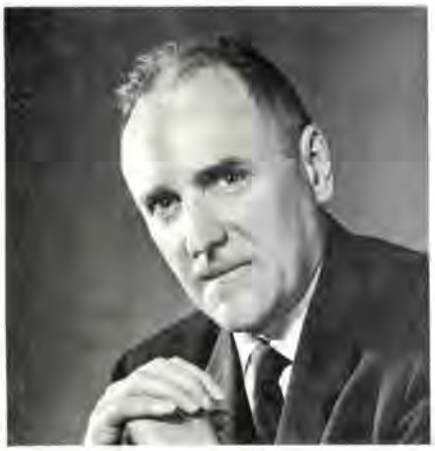
The committee recently completed work on a revised, expanded report. Increased jurisdiction of magistrates, changes in the case and statutory law, and responses to the first report were incorporated in this edition. Both reports have been labeled "tentative" evidencing the committee's commitment to continue to study the procedures and to monitor the impact of its recommendations. The report will be forwarded to all judges, magistrates, and clerks.

Other members of the committee include Judge Robert C. Belloni (Dist. Ore.), Judge Robert Kelleher (C.D. Calif.), Judge Frank McGarr (N.D. Ill.), Judge John Wood (W.D. Tex.) and Magistrate Ila Jeanne Sensenich (W.D. Pa.). Professor Frank Remington served as reporter to the committee.

YALE STUDY RECOMMENDS SENTENCING REFORM

On June 8, the authors of a five-year Yale Law School study on sentencing and parole appeared before the Senate Judiciary Subcommittee on Criminal Laws and Procedure and released their study entitled *Toward a Just and Effective Sentencing System: Agenda for Legislative Reform.*

(See STUDY, page 6)



Chief Judge Floyd R. Gibson

CHIEF JUDGE GIBSON ADDRESSES EIGHTH CIRCUIT JUDICIAL CONFERENCE

In his opening remarks to the Eighth Circuit Judicial Conference last month in Kansas City, Chief Judge Floyd R. Gibson pointed out that at last year's Conference he had discussed the alarming increase in case filings, caseloads, and backlogs at both the District and Circuit levels. He said that "this disquieting trend continues unabated ... and more cases are being docketed than ever before. The caseload of individual judges has risen to a point where, if relief is not forthcoming, the effectiveness of the federal judiciary may be compromised."

Chief Judge Gibson reported to the Conference that Congress has finally realized that there is a "caseload crisis" in the federal courts and is moving to ameliorate the situation. He pointed to the expansion of magistrate jurisdiction which has proved to be of immeasurable assistance to district court judges and has allowed for more expeditious disposition of many cases. In addition, Congress is considering legislation which would create much needed additional federal judgeships but that "regardless of the possible increase in judicial positions, steps should be taken to decrease the flow of cases into the federal courts."

Turning to the debate over whether diversity jurisdiction should or should not be removed from federal courts, the Chief Judge said that the most compelling argument in favor of abolishing it is that state judges, possessing expertise in the interpretation and application of state law, should resolve cases presenting purely non-federal issues.

The question, he said, should be resolved by Congress. "It is imperative that Congress impose some restrictions on diversity jurisdiction."

He pointed out that in 1976 over 24 percent of all civil cases filed in federal courts were jurisdictionally based on diversity of citizenship. These cases comprised 65 percent of all civil jury trials and over 11 percent of filings in the Courts of Appeals.

He acknowledged the valuable assistance which the Eighth Circuit has received from its senior judges and singled out the work of Senior Judge Marion C. Matthes who is working on a program of pre-hearing conferences on appealed cases which may result in the settlement of a substantial number of these cases, or at least would qualify and limit the issues presented for review.

He pointed to the criticism which individuals and consumer groups have made on the American system of justice and said that "in some respects, the legal system does ill-serve the public. It is often too expensive, too slow, and too unresponsive to serve as an effective arbiter for all disputes, however minor."

The Chief Judge felt that the deficiencies in this system could be rectified and commended bar associations for working with the state judiciaries to ferret out unethical lawyers.

In closing, the Chief Judge noted that modern streamlined court procedures should be implemented to avoid unnecessary expense and technical delay in the litigatio process. "Efforts should be mad to forestall the filing of repetitive and frivolous actions by prisioners. Extended and complex civil litigation, moving tortoise-like through the system, should not be allowed to consume many years of judicial time. We need alternative procedures, and possibly specialized forms for the handling of these cases. Also, non-judicial forums may be established to resolve many minor disputes without burdensome expense or delay."

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The authors, Pierce O'Donnell, a Washington attorney, Michael J. Churgin, Assistant Professor c Law at the University of Texa at Austin, and Dennis Curtis, Director of Criminal Studies at Yale Law School, contended that unbridled discretion has long been the hallmark of sentencing and parole decision-making.

The study is the product of an extensive investigation of the entire federal sentencing, probation and correctional systems. Among the participants were Judge Marvin E. Frankel (S.D.N.Y.), Maurice H. Sigler, former Chairman of the Parole Commission and representatives from the Bureau of Prisons, Department of Justice and Yale Law School faculty and students.

(For information on how to obtain copies of this report, contact the FJC Information Service.)

JUDICIAL CONFERENCE COMMITTEE ON ADMISSION TANDARDS CONTINUES HEARINGS

Recently, the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts held its third meeting to continue its deliberations as to whether there should be established model standards for admission of attorneys to practice in the federal courts.

The Committee also heard a report from one of its Subcommittees, chaired by Judge Malcolm Wilkey, which is investigating the rules in various federal courts that permit law students, on a limited basis, to practice before those courts. This Subcommittee is considering the prospect of recommending to the Committee a model rule for imited admission of law students .o practice in the federal courts as a device by which students can learn the technical skills of advocacy.

The Standards Committee also received a presentation by another of its Subcommittees, chaired by Judge Sherman Finesilver, regarding the licensing and recertification practices of other professions. This comparative study of developments in other professions to ensure competence should provide the Standards Committee with a better perspective from which to decide what the legal profession can or may do in attempting to ensure the adequacy of persons licensed to practice in the federal courts.

At the Carmel meeting the Committee heard a report from the Federal Judicial Center regarding the research project

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Chief Justice Calls for New Methods

CONFERENCE ON MINOR DISPUTE RESOLUTION HELD

May 27 marked the beginning of a three-day American Bar Association, ''National Conference on Minor Dispute Resolution" which focused on improved methods to settle minor personal and monetary conflicts.

Prior to the beginning of the Conference ABA President Justin A. Stanley noted that when disputes of this type involve competing lawyers and a judge the cost bears no reasonable relationship to the matters in controversy.

Recognizing that the disputes are not without significance in the eyes of the parties, Stanley pointed out that they often breed a frustration and cynicism which undermines public confidence in our system of justice.

Most of the sessions were held at Columbia University Law School. Among the items receiving program attention were small claims courts as reflected by a major study of the National Center for State Courts and dispute resolution methods as alternatives to formal court action.

Highlighting the three-day conference was a major address by Chief Justice Burger.

The Chief Justice noted that this Conference was an important follow-up to the 1976 Pound Conference which addressed the problem of popular dissatisfaction with the administration of justice. He recognized that "minor dispute" was a term of art in that such conflicts can create ''festering social sores and undermine confidence in society.'' He praised the Conference as a selected group of thoughtful professionals gathered to propose new remedies for "people problems". He noted that many of them had no doubt had their preconceptions shaken as a result of the deliberations.

Taking note of the increased demands on our system of justice by our changing society and noting also the varying levels of complexity of the kinds of cases now coming to the courts, he observed that, "What is beginning to emerge, through the fog is that we lawyers and judges—aided and abetted by the inherently litigious nature of Americans — have created many of these problems.

"It may be that even if we disciples of the law do not invent new problems, we have done far too little to solve them or channel them into simpler mechanisms that will produce tolerable results."

He urged a broader view which would avoid casting all disputes into a legal framework where only legally trained professionals can effect resolution. Rejecting the notion that traditional litigation can be a cure-all for all the problems that beset citizens in our highly complex social and economic system, he called for experimentation with different types of conflict resolution mechanisms noting, among others, arbitration, local or neighborhood tribunals utilizing non-lawyers and non-judges, and increased participation by other types of professionals and paralegals.

In conclusion, he commended the American Bar Association and the Conference for being venturesome and imaginative in seeking new ways to reduce social irritations and tensions with minimum expense to those who can least afford it. He said, "I hope we will see concrete experiments and accomplishments as your work proceeds."

PERSONNEL

APPOINTMENT

Finis E. Cowan, for the District Court for the Southern District of Texas, June 14

[In the June issue, Judge Cowan's District was incorrectly listed. It should have read S.D. Texas.]

ELEVATIONS

Frank G. Theis, Chief Judge, U.S. District Court for the District of Kansas, June 22

L. Clure Morton, Chief Judge, U.S. District Court for the Middle District of Tennessee, July 15

NOMINATIONS:

T.F. Gilroy Daly, U.S. District Judge for the District of Connecticut, June 29

Harold L. Murphy, U.S. District Judge for the Northern District of Georgia, July 7

Nicholas J. Bua, U.S. District Judge for the Northern District of Illinois, July 19

Earl E. Veron, U.S. District Judge for the Western District of Louisiana, July 19

Stanley J. Roszkowski, U.S. District Judge for the Northern District of Illinois, July 19

CONFIRMATION:

Russell G. Clark, U.S. District Judge for the Western District of Missouri, July 1

DEATH:

Chief Judge Rhodes Bratcher, U.S. District Judge for the Western District of Kentucky, July 25

AO and FJC calendar

Aug. 1-2 Judicial Conference Court Administration Committee, Williamsburg, VA

Aug. 2-4 Workshop for Chief Probation Office Clerks, Salt Lake City, UT

Aug. 3-4 Workshop for District Judges (Sixth, Seventh and Eighth Circuits), Chicago, IL.

Aug. 8-9 Management Training for Supervisors, Philadelphia, PA

Aug. 8-10 Workshop for Financial Deputy Clerks, Salt Lake City, UT

Aug. 11-12 Management Training for Supervisors, Burlington, VT

Aug. 16-19 Advanced Seminar for U.S. Magistrates, Denver, CO

Aug. 22-26 Rational Behavior Training Workshop for U.S. Probation Officers, Louisville, KY

Aug. 22-26 Orientation Seminar for U.S. Pretrial Services Officers, Washington, DC

Aug. 24-25 Judicial Conference Budget Committee, Sea Island, GA

Aug. 29-30 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Hilton Head, SC

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which is expected to provide the Committee with knowledge of what federal judges and lawyers think about the current performance of advocates in the federal courts, both trial and appellate.

This research project includes the mailing of questionnaires to all federal judges and participation of judges in a case evaluation, on an anonymous basis, of the performance of attorneys appearing before them in actual cases over a short time period. The results of this research will be made available to the Committee by February of 1978.

Following the Carmel meeting the Committee began holding public hearings across the United States in order to permit any persons or organizations, including representatives within the Federal Judiciary, to make their views known to the Committee.

Information about these hearings may be obtained from Carl H. Imlay, General Counsel, Administrative Office of the U.S. Courts.

Sept. 26-Oct. 1 – Seminar for Newly Appointed District Judges, Washington, DC

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AMENDMENTS TO THE CRIMINAL RULES ENACTED

President Carter has signed into law an Act effectuating with modifications certain of the amendments to the Federal Rules of Criminal Procedure which were originally proposed by the Supreme Court in April, 1976.

Among the changes made by the amendments are the provision for telephonic issuance of search warrants, the redefinition of procedures for the disclosure of grand jury proceedings and the removal of state criminal prosecutions to federal court. These amendments as modified take effect October 1, 1977, by Public Law No. 95-78, 91 Stat. 319, approved July 30, 1977.

The Congress in this Act disapproved the amendment which had been proposed to Rule 24, Fed.R.Crim.P., to reduce the number of peremptory challenges of jurors available to each side in criminal cases.

The report of the Senate Judiciary Committee (S.Rep. No. 95-354) states that this proposed amendment "drew the most vigorous criticism" from persons commenting and testifying with respect to the proposals to amend the Rules. The report concluded that this Amendment should be restudied by the Judicial Conference, which should have the benefit of the comments that have been made on this rule for future

(See RULES, page 2)

CODE MOVES FORWARD

On May 2, 1977, Senators McClellan and Kennedy introduced S. 1437, the Federal Criminal Code Reform Act bill (known as S. 1 in the past Congresses) and additional hearings were held on the new bill as previously reported in *The Third Branch.* S. 1437 was reported out from subcommittee to the full Senate Judiciary Committee on August 5, 1977. An identical bill, H.R. 6869, was introduced by Chairman Rodino and is pending in the House Judiciary Committee.

JUDGESHIP BILL DELAYED UNTIL FALL

The Omnibus Judgeship Bill which was passed by the Senate May 24 and referred to the House Judiciary Subcommittee on Monopolies and Commercial Law has been delayed until at least the week of September 12.

There are three pending bills in the House Judiciary Subcommittee which would create a varying number of circuit and district judgeships. Subcommittee Chairman Peter W. Rodino decided to wait until after the August recess to report the legislation to the full Judiciary Committee.

The provisions of S. 1437 may be summarized as follows:

Title I: Codification, Revision and Reform of Title 18

Defines the criminal jurisdiction of the United States. Declares a general rule that the existence of federal jurisdiction is not preemptive. Enumerates offenses which are exceptions to the rule. Lists culpable states of mind; defines them; and requires that, unless otherwise specified, a culpable state of mind must be shown with respect to each element of every offense in this Act. Specifies the particular state of mind which must be shown if an offense is described without designating the required state of mind.

Details standards relative to the liability of an accomplice, of an organization for the conduct of an organization.

Sets forth criminal offenses against the United States. Designates a category for each offense for purposes of punishment rather than prescribing a penalty for each crime separately.

Organizes offenses by type rather than alphabetically. Specifies the types of offenses as follows: (1) offenses of general applicability, including criminal attempt, criminal conspiracy, and criminal solicitation; (2) offenses involving national defense, including treason and related offenses,

(See CODE, page 2)

(RULES, from page 1)

guidance if the rule is considered in the future.

The amendments which had been proposed to Rules 6(e) and 41(c) (2), Fed. R. Crim. P., have been allowed to take effect only in modified form as enacted by Public Law No. 95-78. The changes made by the Congress in the proposed amendment to Rule 6(e) limit the additional government personnel, aside from the attorney for the government, to whom disclosure of matters occurring before the grand jury may be made.

The rule as approved permits this sort of disclosure to "such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law" and whose names are required to be disclosed to the district court. It also expressly provides that a knowing violation of the secrecy requirement may be punished as a contempt of court.

Rule 41(c)(2) as amended provides for a telephone search warrant procedure in circumstances where it is reasonable to dispense with the requirement of a written affidavit presented in person to a magistrate. The alternative telephonic procedure had been recommended by the Supreme Court in its April, 1976, submission of proposed amendments to the Congress.

The Senate Judiciary Committee report on the Act amending the Rules states, "The committee agrees with the Supreme Court that it is desirable to encourage Federal law enforcement officers to seek search warrants in situations where they might otherwise conduct warrantless searches by providing for a telephone search warrant procedure...." It is provided that the finding of probable cause for a warrant upon oral testimony and the contents of such a warrant shall be the same as in the case of a warrant upon affidavit.

The Congress has permitted to take effect the amendments proposed by the Supreme Court to Rule 23(b) and (c) as described by the Advisory Committee note (House Document No. 94-464).

These amendments were intended to clarify that the parties may stipulate before trial to the return of a valid verdict by less than twelve jurors as the need develops to excuse jurors after the trial commences.

Such a stipulation would make unnecessary the use of alternate jurors during trial and would preclude a mistrial in the event of disability to a juror after the deliberations have begun. The amendments further clarify in a nonjury case that a request for findings of fact must be made before the general finding and that such findings of fact may be oral.

The Congress in Public Law No. 95-78 accepted the Supreme Court's proposal to further define the procedures for removal of criminal cases from state to federal courts. In lieu of effecting this change through a new criminal rule, however, the Congress amended section 1446 of Title 28, United States Code, to accomplish this result. This section as amended requires a petition for removal of a criminal prosecution to be filed not later than 30 days after the arraignment in state court unless good cause is shown to extend the time for filing.

It further requires such petition to include all grounds for removal and provides that the failure to state existing grounds shall constitute a waiver thereof unless good cause is shown. The filing of a removal petition does not prevent the state court from proceeding with the prosecution except that a judgment of conviction shall not be entered unless the removal has been first denied by the federal court.

Section 1446 as amended further requires the federal district courts to examine removal petitions "promptly" and to hold evidentiary hearings there unless "it clearly appears on face of the petition and exhibits annexed thereto that the petition for removal should not be granted," in which case its summary dismissal shall be ordered.

The proposed amendments on which the Congress has acted had been submitted by the Supreme Court in accordance with 18 U.S.C. §3771. The effective date of such proposals, normally 90 days following their submission to the Congress, was postponed by Public Law No. 94-349, 90 Stat. 822, in order to allow additional time for the Congress to pass a law modifying the proposed amendments, which has now occurred through the enactment of Public Law No. 95-78.

(CODE, from page 1)

sabotage and related offen espionage and related offens and atomic energy offenses; (3) offenses involving international affairs, including foreign relations crimes, and immigration, naturalization, and passport crimes; (4) offenses involving government processes, including general obstructions of government functions, obstructions of law enforcement, obstructions of justice, contempt offenses, perjury and related offenses, and commercial bribery and related offenses; (5) offenses involving taxation including internal revenue offenses and customs offenses; (6) offenses involving individual rights, including civil rights crimes, privacy crimes, and political rights crimes; (7) offenses involving the person, including homicide offenses, assault offenses, kidnapping and related offenses, highjacking offenses, a sex offenses; (8) offenses involv property, including arson and other property destruction

(CODE, from page 2)

fenses, burglary and other minal intrusion offenses, unterfeiting and related offenses, commercial bribery and related offenses, and investment, monetary, and antitrust offenses; and (9) offenses involving public order, safety, health, and welfare, including organized crime offenses, drug offenses, explosives and firearms offenses, riot offenses, public health offenses, gambling offenses, obscenity offenses, prostitution, failure to obey an officer, and violating state or local law in a federal enclave.

Includes among new federal offenses (1) a series of crimes dealing with obstruction of an election and misuse of power for political purposes, (2) consumer fraud, (3) possession of eavesdropping devices, (4) possession of burglar's tools, and (5) conspiracy in the United States to assassinate a foreign official outside the ited States.

Revises other offenses, among them (1) contempt (adds invalidity of court orders as a defense), (2) unlawful discrimination (includes sex as unlawful basis), (3) rape (includes all sexual assaults, modifies evidentiary requirements and redefines statutory rape), (4) failure to appear or testify (adds new defenses), (5) riot (narrows applicability), and (6) marijuana possession (decriminalizes possession of small amounts and reduces penalties for possessing larger quantities).

Repeals provisions defining certain crimes including those relative to registration of Communists and communicating with a foreign country for the purpose of influencing policy.

Directs that, except as otherwise specifically provided, a fendant who has been found ty of an offense described in any federal statute be sentenced in accordance with this Act.

Authorizes a sentencing court to (1) order a presentence study of a defendant, either before or after receipt of the presentence report and commit the defendant to the custody of the Bureau of Prisons pending receipt of such a study or (2) order a presentence psychiatric examination of a defendant.

Specifies factors to be considered by a sentencing court, including: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to deter similar conduct, protect the public, or provide the defendant needed training; and (3) the applicable sentencing range set forth in guidelines promulgated by the United States Sentencing Commission (established in Title II of this Act).

Authorizes a court to order a person found guilty of deceptive practices to notify interested persons of the conviction. Empowers a court to order a guilty defendant to make restitution to a victim of the offense.

Authorizes imposition of a term of probation, unless such sentence is specifically prohibited, with respect to all but the most serious class of felonies. Lists permissible terms of probation for each category of offenses. Requires as a mandatory condition of probation that a defendant not commit another crime.

Enumerates discretionary conditions of probation. Sets forth provisions relative to the running of a term of probation and revocation of probation.

Authorizes imposition of a fine upon any person found guilty of an offense. Sets limits on the amount of a fine for each category of offenses. Prescribes higher maximums for organization than for individual defendants. Permits as an alternative maximum fine twice the gain derived or twice the loss caused by an offense.

Directs the court, in determining the amount of a fine and the method and time for its payment to consider the defendant's financial status. Prohibits the court from imposing a term of imprisonment as an alternative to payment of a fine. Details procedures for the modification or remission of a fine.

Authorizes the imposition of a term of imprisonment upon an individual found guilty of an offense. Specifies maximum terms for each category of offense. Empowers a court to designate a term of parole ineligibility up to nine-tenths of the sentence imposed. Lists factors to be considered in setting or modifying a term of imprisonment or parole ineligibility. Prescribes guidelines relative to concurrent and consecutive terms.

Designates which federal agency is to have primary responsibility for detecting and investigating the commission of each criminal violation under this Act.

(See CODE, page 4)

The Chief Justice swears in Professor A. Leo Levin as the new FJC Director at the installation ceremony on August 3 at the Supreme Court. Mrs. Levin participated in the ceremony.

(CODE, from page 3)

Defines the law enforcement authority, including authority to arrest and execute process, of certain officials and employees of the following departments and agencies: (1) Federal Bureau of Investigation, (2) Drug Enforcement Administration, (3) Department of the Treasury, (4) United States Postal Service, (5) United States Marshal Service, (6) United States Probation Service, (7) Bureau of Prisons, (8) Immigration and Naturalization Service, and (9) Department of the Interior.

Revises provisions relative to interception of communications for law enforcement purposes. Permits interception of communications with respect to certain crimes not presently covered, such as criminal solicitation of specified offenses and aircraft hijacking. Restricts interception of communications without a court order in emergency situations to offenses involving treason, sabotage, espionage, or a risk of death, rather than to conspiracies involving national security or organized crime.

Amends provisions regarding extradition. Repeals provisions relating to extradition of persons fleeing the United States to countries under the control of the United States and to extradition of persons fleeing to the United States from such countries. Prohibits extradition of a person convicted in absentia unless assurances are made that proceedings will be reopened or unless the person fled after having been present when his trial commenced.

Details new procedures for the arrest and detention of persons who have committed extraditable offenses.

States that extraditability shall be found in an appropriate hearing only upon proof of certain facts, including (1) an applicable treaty covering the offense involved is in effect, (2) the pending criminal charge against the person sought, or the prosecution for the offense of which he was convicted, was brought within any applicable statute of limitations, and (3) probable cause that the person sought and the person arrested are identical and that the person sought has committed or has been convicted of the alleged offense. Permits hearsay to be admitted in extradition hearings. Prescribes standards and procedures for waiver of extradition hearings and for appeal of a judgment issued in such a hearing.

Expands the criminal jurisdiction of United States magistrates to authorize trial by such officers of all misdemeanors. Restricts the election of a defendant to be tried by a district court rather than by a magistrate to misdemeanors punishable by more than six months imprisonment.

Permits federal prosecution of a juvenile charged with a federal felony if such prosecution is in the interest of justice, even though state jurisdiction exists and the appropriate state has adequate juvenile services. Specifies guidelines for (1) surrender to state authorities of persons age 18-21 who are arrested and charged with a federal offense and (2) pretrial release of juveniles. Increases the time which a juvenile may be detained prior to trial.

Authorizes, where it is in the interest of justice, prosecution as an adult of a juvenile under 16 years of age who is charged with murder.

Allows a victim of juvenile delinquency to obtain information regarding final disposition of any action taken as a result of the incident.

Revises procedures for determining mental competency to stand trial. Sets limits on the time a person deemed incompetent may be confined. Requires that a person deemed incompetent be released if, after appropriate time limits he still is incompetent to stand trial, has no prospect of becoming competent, but does not, by clear and convincing evidence, pose a substantial risk to others of serious bodily or property damage.

Sets the same standard hospitalization of perso acquitted by reason of insanity and of mentally ill prisoners due for release as that for persons incompetent to stand trial who have no prospect to attain capacity to do so in the foreseeable future.

Directs that psychiatric examinations required under this Act be conducted by at least two psychiatrists or clinical psychologists. Lists guidelines for psychiatric and hospital reports.

Permits, unless contrary to a plea agreement or consistent with United States Sentencing Commission policy statements, a defendant to appeal a sentence greater than the maximum allowed under applicable Sentencing Commission guidelines and the Government to appeal a sentence less than the applicable minimum. Sets forth standards and procedures for appellate court revie Details special probation and punction procedures for fir offense drug possessors.

Designates as eligible for parole any prisoner (1) who is sentenced to a term of six months or longer and (2) who has served the term of parole eligibility imposed by the sentencing court or six months, whichever occurs later.

Directs the United States Parole Commission to grant parole to an eligible prisoner if, having regard for guidelines and pertinent policy statements of the United States Sentencing Commission concerning parole, it determines (1) release at that time is consistent with the factors that led to imposition of the particular sentence, (2) there is no undue risk of failure to conform to the conditions of parole warranted under the circumstances, and (3) release, in light of the prisoner's conduct during incarceration, would have a substantially adverse eff on institutional discipline.

(See CODE, page 5)

(CODE, from page 4)

Directs the Bureau of Prisons to conduct a complete study of every prisoner who is due to become eligible for parole. Entitles a prisoner who is eligible for parole to an interview in accordance with specified procedures.

Sets forth ranges for terms of parole according to categories of offense. Directs the Parole Commission to set conditions of parole, taking into consideration any guidelines or statements of the Sentencing Commission, the circumstances of the offense, the history of the parolee, the need to protect the public from further crimes of the parolee, and the need of the parolee for educational, medical, and other services. Requires as a mandatory condition that the parolee not commit another crime. Details procedures for revocation of parole and appeal of Parole Commission decisions.

Increases the number of crimes with respect to which proceeds, instrumentalities, and other property may be forfeited. Prescribes forfeiture procedures.

Empowers the Attorney General to bring civil actions to prevent and restrain racketeering offenses and to enjoin a practice that constitutes or could constitute a fraudulent scheme or consumer fraud.

Establishes in the Treasury Department a Victim Compensation Fund from which victims of federal crimes against the person or their surviving dependents may be compensated upon filing a claim with the United States Victim Compensation Board.

Title II: Miscellaneous Amendments

Reenacts specified sections of the Organized Crime Control Act of 1970 and of the Gun Control Act of 1968 which are not included in Title 18 of the United States Code as recodified by this Act as parts of those respective Acts. Provides for punishment of persons violating those sections through the sentencing provisions of Title 18.

Adds a new rule on burdens of proof to the Federal Rules of Criminal Procedure which sets forth standards relative to (1) proof of offenses, defenses, affirmative defenses, and jurisdiction and (2) presumptions and prima facie evidence.

Establishes a United States Sentencing Commission as an independent Commission in the Judicial Branch. Designates as the primary duty of the Commission promulgation of (1) guidelines setting forth ranges of sentences to be used by sentencing courts in accordance with the provisions of this Act and (2) general policy statements regarding application of the guidelines and other aspects on sentencing. Directs the Commission to develop, taking into consideration enumerated factors, categories of offenses and defendants for use in creating its sentencing guidelines.

Reenacts certain provisions deleted from Title 18 by this Act regarding gathering and disclosing national defense or classified information as parts of the Subversive Activities Control Act of 1950 and the Espionage and Sabotage Act of 1954. Retains the criminal penalties specified in those sections and stipulates that sections of Title I on culpable states of mind shall not apply to such provisions.

Title III: General Provisions

States that any holding that a provision or application of a provision of this Act is invalid shall not affect the validity of other provisions or applications of a provision.

Sets as the effective date of this Act the first day of the calendar month first beginning 24 months after enactment, with the exception of sections establishing the United States Sentencing Commission which are to take effect upon enactment.

CONFERENCE OF CHIEF JUSTICES HELD IN MINNEAPOLIS

From July 31 through August 3, the Conference of Chief Justices held its annual meeting in Minneapolis.

Chief Justice Robert J. Sheran, the conference host, and Attorney General Warren Robert Spannaus welcomed the conferees. Chairman of the conference this year was Chief Justice C. William O'Neill of Ohio.

Chief Justice James Duke Cameron, (Arizona), moderated a panel which first heard a discussion on discipline of judges and attorneys. After reviewing historical methods of discipline and removal from the bench, Chief Justice Cameron described the California procedures for removal, which are less cumbersome than impeachment, and recommended the California system as worthy of emulation.

It was Chief Justice Cameron's view that the establishment of a body to receive citizen complaints concerning intemperate judicial activities is essential. It provides unencumbered machinery to handle grievances while at the same time assuring the subject of the complaint an opportunity to make a substantive appeal.

The second agenda item was judicial-legislative relationships. Chief Justice Frank R. Kenison of New Hampshire moderated a four-member panel discussion. It was the consensus of the panel that the judiciary must be willing to

provide all the data the legislative branch feels it needs in order to effect positive changes in the judicial system. Chief Justice Joe W. Sanders (Louisiana) warned against the practice of issuing annual reports ladened with incomprehensible statistics that do not narrowly define the problems of the judiciary. Chief Justice Bruce F. Beilfuss, Sr. (Wisconsin) noted that the judicial branch of government has often been "asleep at the switch" when legislation crucial to court operation is being generated.

The third major area of discussion was on state-federal relationships. Chief Justice Edward E. Pringle (Colorado), moderator, observed that state court systems must receive federal help but that state courts should receive federal money directly and independently decide how to spend it. Daniel J. Meador, Assistant Attorney General of the United States, spoke on the allocation of judicial business between state and federal courts. Mr. Meador's new office has recently begun a two-year program to examine judicial efficiency in both the state and federal courts. He called for removal of diversity jurisdiction in the federal courts in certain cases and said that the state courts are a far better forum for these cases.

Former Alabama Chief Justice Howell T. Heflin advocated establishing orientation programs for new state legislators on the subject of separation of powers among the three branches of government. He stated that the programs are necessary because today there are fewer lawyers serving as state legislators than in the past. Kenneth R. Feinberg, Staff Counsel, U.S. Senate Committee on the Judiciary, spoke on the future of federal efforts to aid state courts. He told of the restructuring of LEAA in recent months, and alerted the conferees to a forthcoming bill to be introduced by Senator Edward Kennedy to further reorganize LEAA and to provide considerably more incentive to states to apply federal funds to state court problems.

Professor Maurice Rosenberg of Columbia University School of Law spoke on the implementation of the Pound Conference Task Force recommendations. Twenty-six recommendations resulted from the Pound Conference, and Professor Rosenberg singled out for discussion those he felt the conferees were best able to implement.

Highlighting the conference was an address by U.S. Attorney General Griffin B. Bell. One of the prime objectives when he took office was a careful examination of the processes of justice in this country. A number of innovations will be attempted in the years ahead, including the commencement of three neighborhood justice centers this fall—one each in St. Louis, Los Angeles, and Kansas City.

The conference adopted a resolution in which they expressed their willingness to provide relief to the federal court system by adequately reviewing state court criminal proceedings to assure that federally defined constitutional rights have been protected, increasing their participation in federal question cases and assuming all or part of the diversity jurisdiction of the federal courts.

FJC PUBLISHES CAMP REPORT

The Center has concluded its three-year study of the Second Circuit's innovative appellate case processing procedures with the publication of *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration.*

The management plan, now operating in the circuit, has two unique features. The first is t use of scheduling orders that th court issues in all civil appeals to notify counsel about the deadlines for critical events in the course of an appeal. The appeal may be dismissed for failure to comply with this order.

The second feature of the plan is the use of preargument conferences supervised by a senior staff attorney in a selected number of circuit cases. These conferences are authorized under the Federal Rules of Appellate Procedure, but this is the first time that the conference procedure has been implemented systematically.

CAMP began in 1974 with initial financial support from the Center to defray personnel expenses and research support to develop the rigorous evaluation of the process. The evaluation was conducted as a controlled exper ment in which appeals deeme eligible for CAMP procedures were randomly assigned, over a period of one year, to an experimental group or a control group.

Cases in the experimental group received the procedures designated by the staff attorney, while cases in the control group proceeded from notice of filing through disposition with none of the CAMP procedures. This research approach provided the best assurance that the two groups were alike in all respects save one: the CAMP procedures. A set of goals was established and measures of them were taken in each group.

A total of 302 cases filed in the appeals court from October 1974 to October 1975 were processed as part of the evaluation. The last of these cases was terminated the court in March 1977.

(See CAMP, pg. 7)

ABA RESOLUTIONS AFFECTING FEDERAL JUDICIARY

During the ABA Annual Meeting held in Chicago this month the House of Delegates approved several resolutions relating to the Federal Judiciary. These resolutions are available in the Information Services Office at the Center. Subjects covered were:

Judges: Approved a resolution supporting merit selection of federal judges and commending President Carter for the establishment of the United States Circuit Judge Nominating Commission; also resolved to commend United States Senators for applying this concept in their nominations of United States district judges.

Magistrates: Approved a resolution "to improve access to the federal courts by enlarging the civil and criminal jurisdiction of the United States magistrates."

Diversity Jurisdiction: Postponed to midyear meeting resolution supporting the adoption by Congress of legislation which would withdraw diversity jurisdiction of federal courts for litigation in which a plaintiff is a citizen of the state in which the action is brought; also approves legislation to raise the jurisdictional minimum amount in diversity cases to $25,000.

Grand Jury Legislation: Approved the endorsement of legislation which would revise federal grand jury procedures.

Class Actions: Disapproved a resolution submitted by the National Conference of Commissioners on Uniform State Laws. The resolution asked that the House of Delegates approve their Uniform Class Actions Act.

Customs Court: Approved a resolution calling for an amendment to 28 USC 2635 which relates to the burden of proof in Customs Court cases.

(CAMP, from page 6)

The evaluation of the plan is based on case information and judge and attorney surveys. The report concludes that, while CAMP may have improved the quality of appellate litigation and may have helped expedite the appellate process, the magnitude of these effects was modest. The evidence in each of the established measures of success pointed favorably to the plan, but the differences in the two groups was not strong enough to attribute cause to the CAMP procedures.

SENATE PASSES FINANCIAL DISCLOSURE BILL

The Senate July 28th passed S. 555, a proposed Public Officials Integrity Act of 1977, that provides for appointment of an independent temporary special prosecutor, and would establish an Office of Congressional Legal Counsel, and an Office of Government Ethics in the Civil Service Commission.

Title III of this bill imposes financial disclosure requirements *inter alia* on each justice, judge, or other adjudicatory official of the judicial branch, as well as other employees at or above the minimum rate for GS-16's.

Such reports are due within 30 days of assuming the position and on or before May 15th of each succeeding year, and shall report earned income (exclusive of honoraria) received during such calendar year which exceeds $100 in amount or value; identity and amount of honoraria; the identity of each source of income (other than earned income) which exceeds $100 in amount or value and an indication of amount category (e.g. "not more than $1,000"; "greater than $1,000, but not more than $2,500," etc.), it falls into; the identity, description and value of gifts of transportation, lodging, food, or entertainment aggregating $250 or more provided by any one source other than a relative as well as other data concerning gifts; data by value category concerning real and personal property owned above $1,000; data concerning positions held and contracts or agreements relating to employment; the source but not the amount of earned income (over $1,000) and gifts (over $100) received by a spouse or minor dependent, and with respect to adult dependents only gifts of over $500; and with respect to other items relating to spouses and dependents the requirements are also more limited.

Income from trusts must be included, except that qualified blind trusts are permitted for persons other than a judge or justice. Such reports are filed by each justice, judge, adjudicatory official, officer, or employee of the judicial branch with a "supervisory ethics office" which is defined for the Judiciary (and Presidential nominees for judicial appointment) as "a committee designated by the Judicial Conference of the United States."

In addition, each justice or judge or other adjudicatory official of the judicial branch shall file a copy of such report as a public document with the clerk of the court on which he sits. The

Committee of the Judicial Conference pursuant to Section 305(a) of the bill and each clerk of court shall make such report available to the public within 15 days after receipt of such report and provide a copy of such report to any person upon a written request, except that it is unlawful for a person to inspect or obtain a report for any unlawful purpose, for any commercial purpose, for credit rating purposes, and for use for solicitation of money under pain of a penalty not to exceed $5,000.

The Judicial Conference Committee will conduct on a random basis a sufficient number of audits to monitor the accuracy and completeness of such reports, and otherwise supervise the program, reporting at least annually to the Congress on the activities of the Judicial Conference including information on the effectiveness of the Judicial Branch system for the prevention of conflicts of interest, and recommendations for any changes in the law.

The bill also provides for an independent advisory commission, the National Advisory Commission on Ethics in Government, to be composed of nine members, two of whom would be appointed by the Chief Justice of the United States, who would conduct a review of the effectiveness of the Act in controlling conflicts of interest in all branches of government.

DISTRICT COURT REPORTS IN FINAL PREPARATION

The Federal Judicial Center is concluding its district court studies project by publishing several reports to appear in the coming months.

The project has been an effort over several years to determine the practices and procedures of district courts that lead to particularly speedy, effective, and efficient disposition of cases. Reports will appear summarizing all aspects of the project, focusing especially on several specific topics on the civil side.

A comprehensive report will appear about September 25. Entitled *Case Management and Court Management in U.S. District Courts,* this report is based on the *Interim Report* published in June 1976. It contains a great deal of new information gathered in recent work. Preliminary findings of the *Interim Report* have been tested using extensive data gathered from civil dockets of ten courts.

Several major findings of earlier work have been confirmed. These include:

- The fastest courts have an automatic procedure that assures for every civil case that each stage is strictly monitored, the case is always "on track," and a prompt trial is provided if needed.
- Court procedures are designed to minimize the burden each case places on the judge through the early stages. Supporting personnel are used extensively for docket control and preliminary proceedings.
- Judges of the most efficient courts visited do not devote a great deal of time to settlement. They may raise the settlement issue briefly at an early stage (or have a magistrate do so), and they may conduct extensive settlement negotiations in a few selected cases at later stages. Otherwise they have little role.
- Relatively few written opinions are prepared for publication.
- All proceedings that do not specifically require a confidential atmosphere are held in open court.

Study of the civil dockets indicated that a great deal of time a typical civil case is pending is unused, suggesting that judicial case management could be tightened considerably in most places. For example, even in the fastest court the original complaint was answered after thirty-eight days although the Federal Rules of Civil Procedure permit only twenty days after service.

In one court the typical period was sixty-six days, despite monitoring by the court. A related finding is that service delays are a small part of the problem of delayed answers, though large service delays appear in a few cases in some courts: in one court 10% of pleadings were not served until fifty-seven days or more after they were filed.

In the discovery area the project determined that discovery often begins late and proceeds only sporadically over a long period of time. In several courts the first discovery did not begin typically until three or four months after filing.

Often, once discovery begins, little or nothing happens over a very long period of time. The courts with the tightest control showed much faster discovery responses, much tighter discovery activity generally, and yet had at least as large a volume of discovery activity as the courts with less strict controls.

Several interesting findings emerged in other areas as well. Several courts have been visited recently that hold court in several places. Some of these, however, have centralized their operations much more than others have: judges and supporting personnel live in only one or two cities, and serve other locations by making brief trips to visit them. This approach appears to be especially effective.

The courts varied widely in the ways they used their supporting personnel. Some districts have successfully delegated many time-consuming tasks from the judges to magistrates. Others suffer because magistrates' duties are very limited. In more than one instance, courts employ magistrates in whom they have little

(See STUDY, page 10)

LEGISLATIVE OUTLOOK

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

Congressional Action

Bankruptcy. H.R. 8200, to establish a uniform law on the subject of bankruptcies was ordered reported July 19 by the House Committee on the Judiciary.

Committee Actions. The Senate Judiciary Committee filed a report on S. 1613, to improve access to the federal courts by enlarging the civil and criminal jurisdiction of United States magistrates (July 14, Senate Report 95-344). The bill passed the Senate on July 22.

The House Committee on Interstate and Foreign Commerce has reported out (H. Rep. 95-339) for floor action the Federal Trade Commission Amendments bill (H.R. 3816) which provides for the bringing of civil actions by consumers, partnerships, and corporations injured by certain unfair or deceptive acts or practices in state courts and in federal court where the amount in controversy exceeds $25,000 in the aggregate. It requires the court, in class actions filed under this Act, to order notice to be given to the members of the class by (1) publication by any communications medium, (2) posting at a location frequented by class members, or (3) individual notice to each class member who can be identified through reasonable effort.

It authorizes the Commission to institute a civil action against any person, partnership or corporation that violates a cease and desist order applicable to such person, partnership or corporation.

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice continued oversight hearings on the state of the judiciary and access to justice on July 20 and 21.

Additional hearings were held on the Federal Criminal Diversion Act, S. 1819, on July 11 and 15.

Bills Introduced

H.R. 8360, 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 for public participation in federal agency proceedings. This bill was introduced by Congressman Peter W. Rodino and referred to the Committee on the Judiciary.

S. 1487, to restore effective enforcement of the antitrust laws, has been introduced by Senator Edward Kennedy and referred to the Committee on the Judiciary. Congressman Peter W. Rodino has introduced a companion bill, H.R. 8359, pending in the House Judiciary Committee. The Senate Subcommittee on Antitrust and Monopolies began hearings on S. 1847 on July 21 and 22. The legislation would overturn the Supreme Court decision in *Illinois Brick Co. v. Illinois,* which held that only those parties that dealt directly with the antitrust violator could recover damages. The bill would authorize consumers and others further down the chain to recover the damages they have sustained.

H.R. 8263, to amend Section 541 of Title 28 of the United States Code, to change the term of office and the manner of appointment and removal of U.S. attorneys and to repeal Section 546 (relating to temporary appointments to vacancies by the courts) of such title introduced by Congressman Robert F. Drinan and pending in the House Judiciary Committee.

H.R. 8220, by Congressman George E. Danielson, to amend Section 1821 of Title 28, United States Code, relating to per diem and mileage expenses for witnesses in the United States courts.

H.R. 8253, to amend Title 28 of the United States Code to change the procedure for the removal of certain state criminal cases in the federal courts, introduced by Congressman James R. Mann.

All of the above bills are pending in the Committee on the Judiciary.

Enactments

Public Law 95-66 (signed July 11, 1977) relates to the denial of 1977 comparability pay adjustment in the case of certain positions. The public law precludes the October comparability adjustment which would otherwise take effect with respect to justices, judges, commissioners and bankruptcy referees. The Act applies only to the October 1977 comparability adjustment and does not affect future adjustments. The rationale is to prevent the occurrence of two pay raises in the calendar year.

Black Lung Benefits. S. 1538, proposing reform in the administration of the black lung benefits program, has been reported with amendments by the Committee on Finance (Senate Report 95-336) on July 12, 1977. S. 1538 was debated on the Senate floor on July 21. However, due to a tax provision in the bill, a Senate vote will be delayed pending House action.

The Third Branch

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AO FJC Calendar

Sept. 7-9 Advanced Management Workshop for Supervising U.S. Probation Officers, San Antonio, TX

Sept. 8-10 Second Circuit Judicial Conference, Buck Hill Falls, PA

Sept. 12 Ad Hoc Committee on Bankruptcy Legislation, Washington, DC

Sept. 12-16 Orientation Seminar for U.S. Probation Officers, Washington, DC

Sept. 15-16 Judicial Conference of the United States, Washington, DC

Sept. 15-16 Management Training for Supervisors, Detroit, MI

Sept. 18-21 Third Circuit Judicial Conference, Tantiment, PA

PERSONNEL

ELEVATION:

Charles M. Allen, Chief Judge, U.S. District Court, W.D. Kentucky, July 25

NOMINATION:

Harry H. MacLaughlin, U.S. District Judge, D. Minn. Aug. 4

CONFIRMATIONS:

Harold L. Murphy, U.S. District Judge, N.D. Georgia, July 28

T.F. Gilroy Daly, U.S. District Judge, D. Connecticut, Aug. 5

Earl E. Veron, U.S. District Judge, W.D. Louisiana, Aug. 4

APPOINTMENT:

Russell G. Clark, U.S. District Judge, W.D. Missouri, July 22

(STUDY from pg. 8)

confidence, although the overall quality of magistrates is generally recognized to be outstanding.

The tasks of the clerks' offices vary widely also. Clerks of court who act in a comprehensive role as court administrators seem able to strengthen almost every aspect of the court operation. Especially valuable also is the effective system observed in several courts to train and supervise courtroom deputy clerks in case management.

Overall, the sum of observation and data in the project indicates that the benefits from effective case management are great. A district whose docket is intelligently supervised and in which the judges do their work promptly can control many of the ills widely thought to be characteristic of litigation in general, even endemic to it. Activist judges, using the discretion at their command, are able to be highly effective in controlling delay, litigation cost, abuse, and the administrative slips sometimes said to be characteristic of court systems.

Detailed reports are now in preparation concerning aspects of the civil litigative process. Two of these, *Judicial Controls and t' Civil Litigative Process: Disco ery,* and *Judicial Controls and th Civil Litigative Process: Motions,* will appear in the early fall. Subsequent reports will treat pleadings, disposition types, and other topics.

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Bulletin of the Federal Courts

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DEFENDER OFFICES EXPANDING

July 4, 1977, saw the entrance on duty of two new Federal Public Defenders, R. Jackson Smith, Southern District of Georgia, and Pierre Vivoni, District of Puerto Rico, bringing the total number of Federal Public Defender Offices to 26. Attorneys from these offices, along with the 8 Community Defender Offices, now provide representation under the Criminal Justice Act in 35 of the 94 Federal district courts. Beginning with the first Federal Defender Office in Arizona on February 11, 1971, followed closely by the Northern District of California, the Federal Defenders have established themselves as professional and respected advocates, providing invaluable services, not only to their clients, but also to the courts and the bar. In fiscal year 1976, Federal Defenders represented 18,324 persons, approximately 39% of all persons provided counsel under the Act. Eight percent of the criminal cases which they terminated in that year went to trial, and of these 22.5% resulted in a finding of not guilty or a judgment of acquittal.

In addition to providing a high quality of representation, many Defenders have taken an active and leading part in the development and presentation of continuing legal education programs for both their own staffs and CJA attorneys within their districts and circuits. Federal Public and

(See DEFENDERS, page 2)

USE OF MAGISTRATES IN CIVIL PRETRIAL PROCEEDINGS INCREASING

Nearly half the district courts now delegate a substantial and regular volume of civil pretrial work to their magistrates, while one-fourth of the courts assign pretrial duties and motions practice on an occasional basis.

For the year ending June 30, 1977 magistrates conducted 22,787 pretrial conferences in civil cases, up 30 percent from the 17,559 conducted during the preceding year.

Under the 1976 jurisdictional amendments to the Magistrates Act, magistrates may hear and determine nondispositive pretrial motions and hear and make recommendations to a judge on dispositive motions.

During the year just ended magistrates nationally ruled or reported on 17,687 civil motions in 64 district courts, up from 9,583 motions in 57 courts during the preceding year.

While the use of magistrates to handle the initial and pretrial stages of civil litigation has indeed been expanding nationally in furtherance of the legislative intent, local practices and individual preferences have produced a variety of approaches to the use of magistrates.

In some courts all pretrial conferences and motions are automatically referred to the magistrates by the clerk of court under provision of local rule or order.

In other districts assignments are made by individual judges to magistrates on a case-by-case basis. In some districts the use of magistrates is determined largely by the nature of the cases filed.

All civil rights cases and Social Security appeals, for example, may be referred to a magistrate by the clerk at the outset of the litigation for all purposes, including pretrial conferences, motions, and evidentiary hearings, while other types of litigation may be referred selectively by minute order.

It has been observed generally that pretrial procedures, techniques, and approaches of district judges vary according to the particular needs of each court, each judge, and each type of case, although the ultimate objectives of case control, complete discovery, exploration of settlement, trial preparation, and education of the court remain constant.

Likewise, the attitude of judges towards the effective utilization of magistrates presently varies from court to court and within a given court.

Such differences give rise to variations in the manner in which magistrates are called upon to conduct pretrial proceedings for their courts. Nevertheless, three identifiable types of approaches to using magistrates in civil cases have

(See MAGISTRATES, page 2)

(MAGISTRATES, from page 1)

emerged: individual case assignment; complete delegation of all duties; and complete delegation of some, but not all duties.

In some courts all civil cases are simultaneously assigned to a judge and to a magistrate as soon as they are filed. The magistrate conducts all pretrial proceedings and rules on all, or most, motions. He then files the pretrial order with the judge, who calendars the case and hears any outstanding motions and reviews on assignment of error any rulings of the magistrate. Under this procedure a judge would not normally see a civil case until after all pretrial proceedings are complete and the case is ready for trial.

Some courts have opted for another approach, an extensive, but selective use of the magistrates. Generally all cases, or at least all cases from certain judges, will be referred to a magistrate for a preliminary or initial conference a specified number of days after joinder of issue.

At the initial conference the magistrate: (1) takes control of the case for the judge; (2) conducts a general case discussion with the attorneys, including exploration of settlement possibilities; (3) resolves problems relating to jurisdiction, pleadings, and procedural motions; and (4) sets schedules and arrangements for the exchange of discovery and for further pretrial proceedings. The magistrate will thereafter conduct such status conferences, follow-up conferences, or settlement conferences as may be appropriate in the case.

If the case does not settle before the magistrate, the final pretrial conference is scheduled for those cases which are to be tried. Some judges also assign the final conference to the magistrate, but many judges choose to conduct this proceeding personally, since it serves to familiarize them with the case they are about to try. This is a matter of personal preference and appears to vary even among judges within the same court.

In one district, by local rule, all civil cases are referred automatically to a magistrate for an initial pretrial conference only, while FELA and diversity cases are referred for all pretrial proceedings including final pretrial.

Last March the Judicial Conference's Committee on the Administration of the Federal Magistrates System urged each district court to review its existing rules to ensure that they comply fully with the 1976 jurisdictional amendments to the Magistrates Act. The Committee suggested consideration of the following model local rule of court:

"All civil cases [or specified categories of civil cases only] shall be assigned by the clerk of court when filed to a magistrate, who shall conduct an initial pretrial conference [or such pretrial conferences as are necessary] and shall hear and determine all p trial procedural and discove motions, in accordance with rule 2, *supra*. Where designated by a judge of the court, the magistrate may conduct additional pretrial conferences and hear the motions and perform the duties set forth in rules 3 and 4, *supra*. In conducting such proceedings the magistrate shall conform to the general procedural rules of this court and the instructions of the judge to whom a case is assigned."

Copies of the full set of model rules and supporting documents are available from the Information Service of the Federal Judicial Center or the Magistrates Division of the Administrative Office.

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Community Defender personnel also benefit from seminars and continuing educational programs offered by the Federal Judicial Center. During fiscal year 1977, programs were conducted for Federal Public Defenders, Community Defenders, Assistant Defenders and investigative personnel. Training is tailored to the experience level of the particular group. A proposal on the part of a Community Defender to establish minimum training standards is currently under consideration by the Federal Judicial Center.

At the request of the district courts, some Defenders have also taken on the task of administering the private attorney panel, to include, among other things, locating attorneys available for appointment in particular cases, assuring rotation in membership, and assisting with the preparation and accuracy of attorneys' vouchers prior to their submission to the court. This support relieves both the court and the clerk's office of many of the added burdens imposed by the operation of the Criminal Justice Act.

Defenders, having acquired a national reputation for their expertise in the criminal law, are often invited to testify at Congressional hearings, take part in national programs, serve on various criminal law committees and otherwise provide advice a guidance on improvements in t criminal law field.

There remain only 17 districts which presently have no Federal Defender Program but meet the 200 appointments per year statutory requirement for the establishment of a single-district office. Three of these districts are currently in various stages of forming offices which should be in operation by January 1978. And, for the first time, two adjacent districts have decided to merge their number of appointments in order to qualify under the Act and are in the early stages of establishing a Defender office. The need to appoint counsel with minimal delay in order to comply with the time provisions of the Speedy Trial Act and the courts' desire to reduce the administrative burden involved in the processing of panel attorney vouchers have undoubtedly provided some of the impe for the creation of the new Defender offices. More important, however, is the desire of the

(See DEFENDERS, page 3)

Chief Judge Seitz

CHIEF JUDGE SEITZ PRESENTS STATE OF CIRCUIT ADDRESS

During the past year the Third Circuit was able to terminate almost all of its record number of pending cases through assistance of senior judges, visiting judges, by district judges sitting on circuit panels, and in the district courts by increased use of magistrates.

These were some of the major themes which Chief Judge Collins J. Seitz touched upon in his State of the Circuit Address as the Third Circuit's Annual Judicial Conference opened this month.

Here is a summary of some of the other major topics the Chief Judge focused upon.

In the District of the Virgin Islands, the Legislature has created a Territorial Court which will be able to handle many matters previously referred to the Federal Court such as all probate cases. As a result, this Court will have more time to handle federal matters.

Most of the District Courts of the Circuit are complying with the time requirements of the Speedy Trial Act and expect to be ahead of schedule in meeting the final

(DEFENDERS, from page 2)

courts to improve and ensure the experience and competence of the federal bar, with a resultant high quality of representation. The widespread reputation of the Federal Defenders as skilled advocates, combined with their availability, dependability, and service, have been responsible for the continuing interest and growth in the Federal Defender Program.

time requirements of the Act. However, in some instances criminal cases are being processed to the detriment of civil dispositions.

In some districts bankruptcy filings are down after a long upward trend. The officials of these courts deserve special praise for their excellent service in processing the heavy bankruptcy caseload in recent years.

The court reporter problem is still with us but the District of New Jersey has provided regulations for the reporters stationed there. In addition, the Circuit has been working to regularize the situation when a reporter is needed on an emergency basis.

In the Eastern District of Pennsylvania they have experienced difficulties in making timely service of process because of delays in the Marshal's Office. The District has resorted to alternative ways of service and monitoring the service given by the Marshal's Office which, the Chief Judge noted, stems from inadequate staffing in the Marshal's Office. The problem is national in scope.

While the district judges deserve congratulations for dealing with a demanding caseload, there is increasing concern over the length of time certain judges are holding cases under advisement. This problem can be worked out at the district court level under the leadership of the chief judges of each court.

The Court of Appeals during the past year experienced record filings of 1,737—the largest in the history of the Court. Terminations were 1,606 or 131 less than the filings. As a result, the Court will increase its weekly sittings to thirty weeks and each active judge will be expected to hear about 260 appeals during the coming year—a staggering load.

Chief Judge Seitz said he was especially proud of the Satellite Library Program with Satellite Libraries in Pittsburgh, Newark and Wilmington and "Mini-Satellites" in Wilkes-Barre and Camden. These libraries serve both district and circuit court judges.

Chief Judge Kaufman

CHIEF JUDGE KAUFMAN ADDRESSES SECOND CIRCUIT CONFERENCE

In his opening remarks to the Judicial Conference, Chief Judge Irving R. Kaufman recommended the creation of a "Voluntary Masters' Project" consisting of a panel of lawyers who are capable of supervising pretrial proceedings.

This group of lawyers could relieve overworked district judges and magistrates who cannot keep abreast of these proceedings. The primary objective of the Master would be to mediate and settle the controversy but if unsuccessful, he would prepare a written statement of the issues to be litigated.

Here is a summary of some of the key issues which the Chief Judge discussed.

Our judicial system cannot long endure such a continued onslaught of cases without either reforming or facing disaster. One positive legislative action that has taken place recently is the preparation of judicial impact statements.

Merit selection of circuit judges and the decision of the Administration to retain the able U.S. Attorneys until the end of their terms are moves for which the Carter Administration should be commended.

The recommendations of the Second Circuit's Sentencing Committee calling for sentencing benchmarks and limited review of sentences have been embodied in legislation supported by the Administration and introduced by

(See KAUFMAN, page 4)

(KAUFMAN, from page 3)

Senators Edward Kennedy and John McClellan.

The Advisory Committee on Qualifications has now turned its attention to the problem of incompetence among mature lawyers and has suggested a limited peer review system.

For the fourth year in succession the Court of Appeals has terminated more cases than were filed during the fiscal year.

The District Courts cleared their criminal calendars terminating more criminal cases than were filed.

Moreover, these Courts have already implemented the time limits set by the Speedy Trial Act, fully two years before the statutory mandate becomes effective. However, adherence to the requirements of the Speedy Trial Act by these Courts has seriously undermined the efforts of these Courts to cope with their massive civil dockets.

The Circuit must work to formulate a reform program that will help to open the Courts to the serious litigant. For example, ways must be found to limit seemingly endless discovery and we will take a hard look at document discovery; it is critical that our discovery procedures be restudied and redesigned, if necessary.

Cost and delay can be minimized if lawsuits are shaped at an early stage. Streamlining litigation is vital if we are to deal with the trend towards large, complex cases. It may be true, as the Attorney General has suggested, that some controversies are simply too massive for any judicial resolution.

The Circuit will consider how to make the presentation of difficult scientific and technical issues more satisfactory and less expensive. One possible alternative to consider is the creation of judicial resource services which would be responsible for developing and maintaining technical expertise on commonly litigated questions.

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HEARINGS HELD ON GRAND JURY BILL

Recently, further hearings were held before the Subcommittee on Immigration, Citizenship and International Law of the House Judiciary Committee on H.R. 94, the Grand Jury Reform Act of 1977, previously opposed in part by Judicial Conference witnesses. The testimony of Assistant Attorney General Civiletti of the Criminal Division, Department of Justice, may be summarized as follows:

Recalcitrant Witnesses. While the Department agrees that the period of confinement could be reduced from up to eighteen months to twelve months, it does not believe that the reduction to six months as provided by the bill is sufficient. The Department opposes the restriction on the contempt power that would exempt subsequent refusals to testify involving the same transaction.

Witness Immunity. The Department opposes the substitution of "transactional immunity" for "use immunity." It also opposes the bill's proposal to require that a court be involved in addition to the Department of Justice in the decision that a grant of immunity would be in the public interest.

Unauthorized Disclosure of Grand Jury Information. The Department supports the concept of enacting legislation specifically to punish the unauthorized disclosure of grand jury information, but does not favor the fragmentation of the offense into various separate gradations depending upon intent.

Excusing Witnesses Who Plan to Invoke the Fifth Amendment. The Department opposes excusing a witness in advance who would invoke the Fifth Amendment on the basis that the witness would not know precise questions to be asked in advance, nor would the availability of the privilege be certain in advance of questioning.

Successive Grand Jury Investigations. The Department disfavors Section 6 of the bill which would preclude subsequent grand jury investigations if a grand jury "has failed to return an indictment" on the basis that a busy grand jury may not have reached the subject matter. The Department would not oppose a similar ban following a "no bill" vote.

Duty of Prosecutor to Present Exculpatory Evidence. The Department opposes a requirement that the prosecutor present all exculpatory material at the grand jury stage as contrary to the probable cause determination the grand jury is charged to make.

Notifying Potential Targets of Investigations. The Department believes unwise and unnecessary a requirement that all potential targets of grand jury investigations be notified a reasonable time before seeking indictment to afford them opportunity to appear and testify. Reasons for the opposition include assertions that the practice would induce

suspects to flee, and encourage destruction of evidence, preparation of false alibis, or intimidation of witnesses. The Department would not oppose selective notification under rules established by the Department and is presently working on an alternate proposal to allow for notification and appearance in the exceptional case.

Special Attorney for the Grand Jury. The Department opposes the proposal for a non-executive branch prosecutor as unconstitutional, and because it would subject persons "to a myriad of disparate prosecutive standards without control."

Counsel for Witnesses in the Grand Jury Room. The Department opposes witnesses taking counsel into the grand jury room, as a severe impairment of the grand jury's fact-finding function, as creating delay, as giving opportunity for breaches of secrecy, as well as for other reasons.

Notice of Rights in Grand Jury Subpoenas. The Department does not oppose inclusion of notice in the subpoena of various rights such as right to counsel, privilege against self-incrimination and the subject matter of the investigation, but does oppose notifying the witness that his own conduct is under investigation, or the statutes violated.

Rights of Grand Jury Witnesses. The Department opposes transferring a grand jury proceeding or quashing a subpoena because of the hardship created by the location of the proceeding to the witness (as opposed to others).

Grand Jury Recording. The Department favors mandatory recordation of all testimony in grand jury proceedings, but believes the bill goes too far in requiring all interchanges when no witness is present. The Department is studying the concept of developing patterned jury instructions to control grand jury proceedings, and has submitted proposed changes in Rule 6(e) providing for recordation.

Further, the Department opposes those aspects of the bill that would repeal the Jencks Act, 18 U.S.C. §3550, by allowing the defendant access to grand jury testimony. For a witness to get a copy of his own testimony, the Department would require the Government first be given a chance to show that such practice might impede the investigation or result in injury or death to any person or property.

Preliminary Examination After Indictment. The Department disfavors preliminary examinations after indictment is returned as a duplicative effort to test probable cause.

PRETRIAL DIVERSION PROGRAM: A NATIONAL MODEL

Pretrial Diversion has been used in the Western District of Kentucky for at least two decades. However, the program was expanded and accelerated in June, 1971.

The judges of the district authorized the chief probation officer to participate with the United States Attorney in a program to divert selected offenders to probation supervision and community resources without formal court appearances.

In November, 1976, the United States Probation Office in the Western District of Kentucky became a Pretrial Services Agency under the provisions of Title II of the Speedy Trial Act of 1974. This district became one of five additional Pretrial Services Agencies which will collect data along with the ten original Pretrial Services Demonstration Districts.

The philosophy of the Pretrial Diversion Program is that both the community and the individual would benefit from his diversion from the formal criminal process at an early stage.

The United States Attorney begins the diversion process by referring potential pretrial diversion candidates to the probation officer. The referral to the probation officer is in letter form and includes the following:

(1) Name, address, and birth date of offender;
(2) Alleged violation;
(3) Background of the offender (family, employment, etc.);
(4) The law enforcement agency and name of agent assigned to the case;
(5) Name of codefendants, if any;
(6) Recommended length of supervision, usually 12 months.

The United States Attorney also sends a letter to the offender advising the following:

- That an alleged violation has been brought to the attention of the United States Attorney;
- That rather than being indicted, the offender is being considered for Pretrial Diversion;
- That he has been referred to the probation office to determine whether or not he is a suitable candidate for pretrial diversion;
- That he should report to the probation office within one week from receipt of the letter if he is interested in having his case diverted;
- The definition of Pretrial Diversion.

Within approximately two weeks the probation officer completes an investigation report and advises the United States Attorney whether or not the offender is suitable for pretrial diversion. Criteria for selecting the persons to be investigated for pretrial diversion would include the following:

- Any age group of offenders;
- Minor type offenses (postal

(See DIVERSION, page 6)

(DIVERSION, from page 5)

theft, minor marijuana cases, etc.);

- Isolated offenses (not a series of offenses, even if each in itself is small);
- No prior felony convictions, nor an extensive prior record;
- Prospects of rehabilitation are favorable.

The selection criteria are flexible and have worked well since pretrial diversion is an informal process. However, if pretrial diversion becomes a part of the formal court process, explicit selection criteria will be necessary.

When the report is favorable, the United States Attorney will notify the offender to appear to execute a pretrial diversion agreement.

The agreement allows the offender a 12 month period of probation supervision. The offender may be represented by counsel at all times.

Upon signing the agreement, the offender becomes a pretrial diversion probationer and is supervised by a probation officer using the same guidelines as for parolees and probationers. The funding of the Pretrial Diversion Program is done through the regular budget of the Probation Office, with no outside contributions.

However, community resources are utilized when possible. In the Louisville area, diverse community resources are made available through a clearinghouse for ex-offenders which was established prior to the acceleration of the Pretrial Diversion Program in 1971.

Seven federal, state, county, and municipal agencies merged their employment programs into one agency. The clearinghouse now facilitates the delivery of such services as vocational counseling, job placement, training, bonding, emergency funding, medical treatment, and provisional work clothes.

At the termination of supervision, the probation officer completes a form certifying completion of the Pretrial Diversion Program, presenting it to the United States Attorney.

The cooperation among court-related agencies has allowed many cases to be diverted even prior to arrest. Diverting prosecution prior to arrest has posed some legal problems since the office of the Attorney General had requested that all pretrial diversion participants be fingerprinted. Diverting cases prior to arrest and avoiding fingerprinting are two important beneficial aspects of the Pretrial Diversion Program.

The Pretrial Diversion Program is flexible and attempts to serve offenders who can benefit from such a program. The program has had a remarkable rate of success with approximately 98% of all participants successfully completing it.

Many cases were resolved with counseling by the United States Attorney and the probation officer after the investigating United States probation officer had recommended such a procedure.

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FJC FOCUSING ON LOCAL TRAINING

In the past, most of the Fede Judicial Center's training effo has been in formalized training programs conducted in Washington, D.C. and throughout the nation in seminars and workshops. These efforts have been successful in meeting the mandate of the law to train judicial branch employees. However, the method itself has been insufficient to meet the growing demand for training.

One of the answers to meeting this demand is in the development of local training programs. Under this plan, the Center's staff provides materials, equipment, guidance, and expertise to assist the court, or any division of the court, in developing and conducting their own training program. Local training is only one way to enhance the efficiency and effectiveness of the court's operation.

The Center has long recognized the value and need for local training to complement and augme education and training program Ever since our inception, funds have been designated for tuition aid programs. In addition, the Center has maintained a film library which provides films on request. However, in the past, the Center did not have a concentrated staff effort to combine the activities of local training and make them easily accessible.

On March 1, 1977, a Local Training Branch was established within the Continuing Education and Training Division. This branch is under the supervision of John W. Sisson, Jr., who serves as Chief. Assisting Mr. Sisson are Elizabeth C. Brennan, Educational Assistant, and Doris J. Marlett, Educational Assistant.

To accomplish their task of assisting in the efforts of local training, several areas have been identified. These include: trai ing coordinators, short te courses, technical assistance, specialized training programs, and audio-visual programs.

The training coordinator will provide a local resource in each court. This person has been designated by his supervisor to develop and encourage training for others. The Center cannot train everyone to assess training needs, coordinate training programs, and develop formal or personal programs, but it can provide the expertise to the training coordinator in each court. At the present time, one person has been designated in each probation office to serve in this capacity. Very shortly, 39 persons will be trained to represent the clerk's office of the 39 largest courts in the U.S. With the probation officer and clerk's office personnel trained as training coordinators, it will be easier to implement court training programs.

The second area is the Short Term In-Court Courses. These courses will be conducted in a court on request. They cover such topics as time management, work simplification, planning, decision-making and communication skills. Specialized courses will be developed where needed and provided to court personnel as a means of enhancing the work proficiency. The instructors for these courses can be provided through contract sources, or through court personnel who have been designated to serve as instructors for the topic presented. Two courses have been presented in the past. One is entitled, "Improving Supervisory Skills," and the other, "Management for Supervisors." A third course is presently being developed entitled "Court Personnel Development."

A third area is Technical Assistance. Representatives of the Education and Training Division can on request visit local courts to assess training needs, develop a training calendar, or conduct specific training programs. In addition, teams of persons who are knowledgeable in a given area will be developed to present informal training programs in areas where expertise is needed. This program was initiated in the bankruptcy staff training area but will eventually be expanded to any area of the court.

Another area which will eventually find full implementation in the Local Training Branch is the area of self study programs. Not all training will be accomplished in group situations. The Local Training Branch will encourage tuition aid where this form of training would be most helpful. In addition, the correspondence study and other methods of self training will be made available from the Center.

A final area being developed relates to audio-visual programs. The Center will provide a wide variety of services to assist the local training efforts through the loan of films, video cassettes, audio-cassettes, and the purchase of training equipment for court use.

Recently, the Center purchased five video cameras, recorders, and tape players to enhance the training effort of five courts. When the equipment was placed in the court, a one-week training program was conducted to assist court personnel in learning how to operate video cassettes. There are now over 3,000 cassettes available to help persons in their self-development study. An *Educational Media Catalogue* has been prepared by the Center to list all films, video cassettes, and audio-cassettes which are available for loan. Copies of this catalogue will soon be available.

NEW PATENT OFFICE RULES MAY AID PATENT LITIGATION

INTERVIEW WITH CHIEF JUDGE HOWARD T. MARKEY, COURT OF CUSTOMS AND PATENT APPEALS

There are new Rules in the Patent Office. Might they aid the courts in patent litigation?

The particular rule of interest is amended Rule 175 (37 C.F.R. § 1.175) (see 42 Fed. Reg. 5588 (1977), which enables a patent owner to submit his patent for reexamination in the light of prior art which has come to light, or whose relevance has come to light, after his patent was issued. Upon reexamination, the patent may be rendered useless, affirmed with the same claims, or reissued with amended claims.

To what court problems does that new Rule relate?

First, in many patent suits, the alleged infringer cites a number of prior art patents, publications, or publicly used devices, which had apparently not been considered by the Patent and Trademark Office (PTO) before it issued the patent sued upon. That forces the court, as some judges have said, to become "super examiners" with respect to the newly cited material. Courts have been forced to consider that material "de novo," without the benefit of prior consideration by expert examiners in the PTO. Now it will be possible to insure that all prior art presented to the court has been first considered by the PTO.

Second, in some cases the inventor had made a patentable invention, which deserved some protection, but courts were forced to narrowly interpret his claims or declare them invalid because they were broad enough to encompass the newly cited art. Now his claims can be amended in the PTO and it will be necessary less often for courts to apply the judicial doctrines of "equivalents" and "reverse equivalents" to hold or release an infringer whose device did or did not in fact appropriate the invention.

Third, many patent cases involve an inordinate amount of pre-trial skirmishing, with many demands for rulings on discovery questions. The skirmishes relating to prior art can be conducted in the PTO.

(See PATENT, page 8)

(PATENT, from page 7)

What will be the mechanics in court?

When the alleged infringer has cited new art, I suppose the patent owner will move for a stay, announcing his filing for reexamination in the PTO. The alleged infringer might object. In any case, the court may grant a stay. I will be surprised if some courts don't eventually order reexamination, *sua sponte*. When reexamination is complete, and if the patent owner still has an effective patent, with claims he thinks infringed, he will move to lift the stay.

What do you see as the main advantages in this?

Primarily, a reduction in number of patent suits prosecuted. In those cases in which reexamination results in effective invalidity, the suit will no doubt be dismissed. When new or amended claims are substituted, the accused product may clearly not infringe those claims, and again there should be a dismissal. Where reexamination was thorough and the resulting claims are clearly infringed, the alleged infringer may look more favorably toward settlement possibilities, though he is of course entitled to his day in court if he still thinks the examiners were wrong, or if he has equitable defenses or counterclaims (which are not involved in reexamination). Certainly reexamination will not bind the courts, though some will give weight to its result on the issues resolved in reexamination.

Next, a reduction in complexity and length of trial. The presumably thorough record on reexamination, involving novelty, utility and obviousness in view of all the art, will doubtless be entered in evidence. The opportunity to challenge that record must remain open, but such challenges, when they do occur, can be sharply focused. Limitation of issues, defenses and evidence should be more easily achieved in pre-trial conferences occurring after reexamination.

Last, but not least, costs will be reduced for all concerned. It is much cheaper and normally quicker, for both parties to let the examiner reexamine than to force the court to examine. It will obviously save judicial time and effort in patent cases.

Is this procedure mandatory upon the court or the parties?

No. It is only a Rule in the PTO. Either party may feel "safer" in submitting the patent as is to the court, and may refrain from or resist a stay for reexamination. The main value in this interview is to alert the district judges to the availability of the mechanism. I can visualize a court asking the patent owner if he intends to obtain reexamination, and asking if not, why not? I foresee very few of our overloaded courts denying the motion to stay. Not many patent owners will undergo the expense of litigation when they could either end it or improve their position by a relatively inexpensive PTO procedure. Similarly, few alleged infringers will insist on the more expensive lawsuit, though some may fear improvement in the patent owner's case and try to hold back on citing new art. Doubtless there will be maneuvering on both sides, but I'm certain the courts will act appropriately in the circumstances of each case.

What, if any, is the effect of the Speedy Trial Act on this procedure?

Where the Speedy Trial Act has severely limited, or virtually precluded, civil actions, the use of this procedure will be encouraged. An excuse for avoiding reexamination may dissolve in the face of a four year wait for trial. In such cases, it seems even more advisable to say, "Let's see what the PTO has to say about this new art and these claims."

Could the trial and reexamination be run concurrently?

Yes, but that would defeat the purpose of the procedure and deny its benefits to all concerned. A motion for preliminary injunction alleging irreparable harm, may have to be heard. I cannot foresee a court proceeding with trial on the merits of the patent as originally issued, only to be confronted in mid-trial with the reexamined patent and possibly new claims.

How long might the reexamination take?

Hard to guess. The application, like all reissue applications, will have priority in the PTO. The patent owner can appeal, with priority, to the Board of Appeals in the PTO. From there he can appeal to this court or to the District Court here. Under our Rules, we can and would give priority to such an appeal. We currently average eight months from appeal to decision, with many cases of lesser technological complexity requiring a much shorter interval. Overall, I'd estimate an average of about a year, with vigorous prosecution by the patent owner. In view of crowded court dockets, particularly in industrial areas where most patent suits originate, and in view of extended pre-trial time in patent suits, I don't believe the delay for reexamination will be of much influence, except in a long-pending case ready for trial after voluminous discovery. Presumably, the time consumed by the stay will not count against the court's statistical picture.

Anything else to report on the reexamination Rule?

Well I should have said at the outset that the Rule was created to improve the quality of patents, by getting all prior art before the PTO. In this sense, it responds to proposals for legislative imposition of reexamination. The important thing for us is its potential for easing some of the burden on the courts. It will not remove the burden, certainly. Courts will still have to determine whether the PTO was wrong twice, when suit continues after reexamination, and will have to consider the usual

equitable matters. But the Rule should help precisely in the obviousness and technological areas which have increased the burden and generated complaints of judges.

I should also have said the procedure is brand new. Few reexamination requests have been filed. Hence what I've said is prognostication, but if it serves to alert the district courts to a possible time saver, even prognostication may be justified.

PLEA BARGAINING STUDY RELEASED

A major study of "Plea Bargaining in the United States" commissioned by the Department of Justice was recently released.

The 311-page study was conducted by the Institute of Criminal Law and Procedure of the Georgetown University Law Center.

The study said that the issue of plea bargaining occupies a central position among those concerned with the operation of the criminal justice system. In addition, there appears to be some uncertainty and confusion both inside the criminal justice system and with the public as to the nature, scope, purpose, and value of plea bargaining as a form of case resolution in our system. Moreover, existing attitudes toward plea bargaining range from total endorsement to complete rejection.

Over the last decade the controversy over plea bargaining has become intensive and there has been a great proliferation of literature on the subject.

The report states that the primary rationale for plea bargaining is administrative efficiency to control the calendar and that many judges as well as prosecutors believe that a substantial decrease in pleas would create chaos in the system of justice.

Proponents of plea bargaining believe in the legitimization of plea bargaining through existing structures and judicial oversight. They assume that under no circumstance can there be a rigid prohibition of plea bargaining in the real world.

Those opposed believe it to be undesirable, illegal, and unreasonable; that its existence and accompanying pressures will cause laxness in observing Constitutional requirements.

Here are some of the major points which the study made:

- Data available from 20 states indicate that rural prosecutors use plea bargaining more readily than prosecutors in larger jurisdictions.
- Two types of plea bargaining were discovered: explicit and implicit. However, at the felony level most bargaining is explicit.
- Few jurisdictions were found where a systematic and rigorous procedure had been established to control the discretion exercised by assistant prosecutors.
- Most prosecutors consider the strength of a case an important factor prior to making a decision. However, two other factors—the offense and the prior record of the offender—are taken into consideration.
- Some prosecutors and defense attorneys believe the plea negotiation process is superior to a trial in determining the factual truth of a case.
- A factually guilty defendant may be legally innocent because a weak case may be difficult to prove at trial. Bargaining permits "half a loaf" where trial outcome is in doubt. Historically, plea bargaining was referred to as "compromising" or "settling" criminal cases. Scholars have criticized the "half a loaf" philosophy as contradicting the prosecutor's duty to see that justice is done.
- It is clear that the strength of certain evidence may be colored by prosecutorial knowledge or perception of the defendant or victim's character.

Despite these limitations, the evidence suggests that strong policy can have a profound impact on the system. Certain functions, primarily charging, are controlled solely by the prosecutor. Strong screening procedures, in conjunction with the charging powers, can reduce the possibility of factually and legally innocent defendants being convicted through plea bargaining. Strong screening can eliminate weak cases and increase the number of trials as well as change sentencing patterns which may involve primarily strong and serious cases.

The study urged an end to secrecy in plea bargaining: "The game is played in secret", a factor encouraging the informal relationships endemic throughout the system. We must ask whether this so distorts the adversary system as to render counsel ineffective.

Concerning the participation of the judge in the plea bargaining process, the study reported, "those advocating a direct judicial role suggest that only through active judicial participation can a sufficient amount of predictability in the sentence be insured. Some believe that such participation may expedite the process. Contrary to those objecting, some believe that only through involvement can a judge effectively oversee plea bargaining.

However, the role of the judge in plea bargaining varies substantially depending on whether the proceeding is held in a state or a federal court. In Dade County, Florida the Center for Studies in Criminal Justice of the University of Chicago Law School is testing a pretrial process that calls for a state judge to preside over a formal conference that includes the prosecutor, defense counsel and, on a voluntary basis, the defendant, the victim and the arresting officer. (See *Letting Light Into Plea Bargaining* by Wayne A. Kerstetter in the Summer 1977 issue of the *Judges' Journal.*)

This judicial participation is expressly rejected by the ABA's Minimum Standards for Criminal Justice Relating to Pleas of Guilty which were adopted in 1968 by the ABA House of Delegates.

In federal court, Rule 11(e)(1) specifically forbids federal judges

(see STUDY, page 10)

(STUDY, from page 9)

from participating in any discussion of either a nolo contendere or guilty plea. Writing in The Practical Lawyer (Vol. 22, number 6), Judge Walter E. Hoffman (E.D. Va.) outlined in detail the effects of the Amendments to Rule 11 of the Federal Rules of Criminal Procedure which were adopted by Congress in 1975.

Judge Hoffman wrote, "Attorneys and judges are confronted with a 'new ball game' in the federal system. While plea bargaining has been a common practice in most state courts, it is now being brought into the open in the federal courts, where it will be carefully scrutinized by the media and the public in general."

AO and FJC calendar

Sept. 26-Oct. 1 Seminar for Newly Appointed District Judges, Washington, DC

Sept. 27-30 Advanced Seminar for U.S. Magistrates, Chicago, IL

Sept. 28 Report Writing Workshop, Newark, NJ

Oct. 3-8 Seminar for Newly Appointed Bankruptcy Referees, Washington, DC

Oct. 6-7 Conference of Metropolitan Chief Judges, Brownsville, TX

Oct. 6-7 Employee Management Workshop, Portland, OR

Oct. 11-13 Workshop for Probation Clerks, Sacramento, CA

Oct. 14 Time Management Workshop, San Diego, CA

Oct. 17-20 Management Training for Supervisors, Albuquerque, NM

Oct. 17-21 Advanced Seminar for Probation Officers, Tucson, AZ

Oct. 25-28 Management Training for Supervisors, Las Vegas, NV

Oct. 26 Report Writing Workshop, Newark, NJ

Oct 31-Nov. 4 4 Orientation Seminar for Magistrates, Washington, DC

PERSONNEL

APPOINTMENTS:

Earl Ernest Veron, U.S. District Judge for the Western District of Louisiana, Aug. 12

Edward L. Filippine, U.S. District Judge for the Eastern District of Missouri, Aug. 26

Proctor R. Hug, Jr., U.S. Circuit Judge for the Ninth Circuit Court of Appeals, Sept. 16

ELEVATION:

William C. Stuart, Chief Judge for the U.S. District Court for the Southern District of Iowa, Aug. 15

NOMINATIONS:

Eugene H. Nickerson, U.S. District Judge for the Eastern District of New York, Aug. 15

Alvin B. Rubin, U.S. Circuit Judge for the Fifth Circuit Court of Appeals, Aug. 15

Charles P. Sifton, U.S. District Judge for the Eastern District of New York, Aug. 15

Edward H. Johnstone, U.S. District Judge for the Western District of Kentucky, Aug. 22

Gilbert S. Merritt, U.S. Circuit Judge for the Sixth Circuit Court of Appeals, Aug. 22

Thomas Tang, U.S. Circuit Judge for the Ninth Circuit Court of Appeals, Aug. 29

DEATH:

Thomas J. Clary, U.S. District Judge for the Eastern District of Pennsylvania, Aug. 1

THE THIRD BRANCH
VOL. 9, NO. 9 SEPTEMBER 1977

THE FEDERAL JUDICIAL CENTER

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Bulletin of the Federal Courts

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JUDICIAL CONFERENCE HOLDS FALL MEETING

The Judicial Conference of the U.S. held its fall meeting last month at the Supreme Court and following the meeting announced that it had again urged the Congress to complete action on the bill to create additional judgeships for the federal judicial system.

The Conference also reaffirmed its support for legislation which would either abolish or limit diversity jurisdiction since state courts are fully capable of handling these cases.

Here is a summary of some of the other actions taken by the Judicial Conference:

- Approved, in principle, legislation to authorize and regularize use of interpreters in federal district courts including provisions for qualifying court interpreters;
- Recommended amendments to the Speedy Trial Act of 1974 to increase the time limits;
- Directed that qualification standards to be followed by federal courts in selecting and appointing federal magistrates be put in final form for action by the Judicial Conference at its next session. Among the requirements which the Conference is considering are ten years experience as a member of the bar, strong evidence of good moral character, physical fitness and evidence of competency to perform the duties of a federal magistrate;
- Received a report from the Director of the Administrative

See CONFERENCE page 3

ANGLO-AMERICAN TEAM VISITS FEDERAL JUDICIAL CENTER

For the fifth year an exchange visit was made to this country by a group of high ranking British jurists, solicitors, and barristers.

Judicial members in the group were the Rt. Honorable Lord Diplock, Lord of Appeal in Ordinary; the Rt. Honorable Lord Justice Scarman, Lord Justice of Appeal; Honorable Mr. Justice Eveleigh, Judge of the High Court of Justice, Queen's Bench Division; and Honorable Mr. Justice Griffiths, Judge of the High Court of Justice, Queen's Bench Division. Also included in the team were the Permanent Secretary of the Lord Chancellor's Office, the Registrar in the Master of the Crown Office, and the Chairman of the Senate of the Inns of Court and the Bar.

See VISIT page 2

THE TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Public Law 95-30, signed into law on May 23, 1977, contains numerous features other than changes in the standard deduction already explained in Administrative Office circulars.

One feature [Sec. 301(a)] extends through the tax year of 1976, the former sick pay exclusion, thus allowing those eligible to make such claim through amendment to their 1976 returns.

Title V of the same Act amends §459 of the Social Security Act as amended by P.L. 93-647 (42 U.S.C. §659) to spell out in some detail, procedures for the service on government agencies of legal process (state garnishment) brought for the enforcement

See TAX page 2

FJC Deputy Director Joseph L. Ebersole (center) visiting with Honorable Mr. Justice Eveleigh (left) and the Rt. Honorable Lord Diplock, Lord of Appeal in Ordinary.

JUDICIAL CONFERENCE HONORS JUDGE HOFFMAN

Judge Walter E. Hoffman, former FJC Director, receiving Judicial Conference Resolution and handshake from The Chief Justice.

A framed resolution of appreciation was presented to Judge Walter E. Hoffman (E.D.Va.) by the Chief Justice, on behalf of the Judicial Conference, at the Supreme Court on September 29th.

Judge Hoffman was the third Director of the Federal Judicial Center and resigned from this position last July after having reached the statutory retirement age. Previous Directors were Mr. Justice Tom C. Clark and Judge Alfred P. Murrah of the Tenth Circuit.

The resolution reads in part: "Judge Hoffman brought to the Center a wealth of experience as a federal trial judge and a knowledge of the work of the Center through many years of participation in its efforts to improve judicial administration. At the time of his selection as Director, he had served more than 20 years as a judge of the Eastern District of Virginia and for almost twelve years as its Chief Judge."

TAX from page 1

against a Government employee of such individual's obligation to provide child support or make alimony payments. Such legal process will be sent by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations to be promulgated under §461. Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the monies "involved."

Regulations promulgated by each branch of government (in the case of the Judicial Branch, by the Chief Justice of the United States or his designee) relating to such state garnishment proceedings will identify the name, position, address and telephone number of the agent or agents who have been designated for service of process, and an indication of the data reasonably required in order for such entity to identify promptly the individual concerned. Such regulations shall also provide that the agents designated for service shall respond to relevant interrogatories if authorized by the law of the state in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

VISIT from page 1

Accompanying the visitors were a team of American judges—state and federal—and six lawyers. In past years American judges and lawyers have visited England to exchange information and to discuss techniques and procedures involved in trial and appellate courts. The exchange visits are sponsored by the Institute of Judicial Administration.

After meetings in Boston and New York the team traveled to Washington. At the invitation of the Chief Justice, the group met with the Judicial Conference of the United States and with Federal Judicial Center Director, A. Leo Levin, and top staff of the Administrative Office and the Center.

FJC Director A. Leo Levin addresses luncheon meeting attended by FJC staff and the Anglo-American team.

UNIQUE PANEL CREATED BY FEDERAL JUDGE TO SETTLE INMATE CASES

Chief Judge Raymond J. Pettine (D.R.I.) has developed a unique and effective technique for disposing of numerous inmate complaints filed by Rhode Island state inmates against state officials.

Rather than hold full court hearings in each instance, a temporary grievance committee composed of the chief legal counsel for the State Department of Corrections, the Chief Inspector for the State Department of Corrections, two correctional officers, an attorney for the Inmate Legal Assistance Program and two inmates hear the complaints.

Chief Judge Pettine said the group serves under the direction of U.S. Magistrate Jacob Hagopian.

He said he resorted to this technique "in the hope that through discussions in a structured setting many of these complaints may be resolved short of trial, or if not resolved, at least factually refined."

See PANEL pag

PANEL from page 2

The panel, he said, will help oduce policy changes where the ;rievance indicates such changes are warranted and also weed out what he termed "frivolous claims."

The panel worked six days on thirty-three cases picked at random from the more than 130 cases filed by inmates and settled twenty-nine of those cases, an 88 percent success rate.

However, Chief Judge Pettine cautioned the panel and, through the news media, the public, against being "over-optimistic at this time. It is critical to the true success of this program that the remedial measures agreed upon" in the twenty-nine settlements be put into effect immediately by the prison authorities.

Among the settlements reached during the first session of the panel were:

- An agreement to make law books available to inmates in maximum security;
- A promise by prison authorities to make clothes drying quipment available as soon as ney have the funds to do so;
- Development of a plan for immediate evacuation of buildings in answer to a complaint that some inmates feared being trapped by fires started by other inmates.

Chief Judge Pettine said that the panel members had agreed to continue working on all the pending prisoner cases and that those few that cannot be resolved will be heard by the Court.

CONFERENCE from page 1

Office, Rowland F. Kirks, concerning the work of the federal judiciary for the year ending June 30, 1977. Mr. Kirks reported that the workload of the Courts of Appeals was increasing while the number of new civil and criminal cases filed in the district courts appeared to be levelling. The number of new appeals filed in the Courts of Appeals had increased during the period by four percent to record high of 19,118 while the otal number of cases, both civil as well as criminal, filed in the district courts was 172,000 compared with 171,700 filed during a comparable period in 1976.

Judge William J. Campbell photographed just after receiving framed tribute from the Board of the Center. Left to right: Judge Campbell, Mrs. Campbell, The Chief Justice and the Campbells' youngest son, Thomas J. Campbell.

TRIBUTE TO JUDGE WILLIAM J. CAMPBELL

The Supreme Court Conference Room was the setting on September 29 for a well-deserved tribute to Judge William J. Campbell. The occasion was the formal dinner traditionally given for newly-appointed United States District Judges.

At its last meeting the Board of the Federal Judicial Center adopted a Resolution of appreciation for Judge Campbell's outstanding contributions to the work of the Center. During the past seven years, the Judge has presided over 150 conferences and seminars, travelling to all parts of the country. Besides assuring excellence in the presentations on given subjects, his participation has meant a lighter workload for the Center's Director and a continuation of the Center's policy of always having a tenured Judge present at all conferences for the judiciary.

Judge Campbell requested several months ago to be relieved of his responsibilities at the Center so that he might apply his talents and vast experience to judicial activities in the Seventh Circuit Court of Appeals.

In making the presentation on behalf of the Board, the Chief Justice expressed his personal appreciation and the gratitude of the entire federal judiciary for "the countless tasks willingly assumed and the exceptional and exemplary measure of vigor, dedication, and accomplishment in the improvement of the Federal Judicial System."

PAROLE COMMISSION ADOPTS NEW RULES

The U.S. Parole Commission last month adopted new rules under which federal prisoners at the commencement of their terms will be given their "presumptive release date."

A complete copy of the new rules has been sent to all district judges, federal magistrates, federal defenders and probation officers by the Administrative Office.

In general, all federal prisoners sentenced on or after September 6, 1977 to sentences of less than seven years will receive initial hearings within 120 days after their arrival at the prison and will then be notified of their "presumptive release date" from the institution either by parole or mandatory release. However, no release date will be set that is less than the minimum term.

The purpose of this new policy is to reduce the uncertainty which most federal prisoners have had in the past regarding their release date. It is expected that the policy will improve inmate morale and facilitate release planning.

However, the presumptive release date will be periodically reviewed to determine if the requisite conditions have been met and if any intervening factors should be considered such as age or illness.

FIRST JUDICIAL IMPACT STATEMENT PRESENTED

The Department of Justice has presented the first "judicial impact" statement which outlines in detail the specific effects which a proposed bill would have on the federal court system.

The statement, presented before the Senate Committee on Veterans' Affairs by Deputy Assistant Attorney General Paul Nejelski, analyzed the impact which enactment of S. 364, the Veterans Administration Administrative Procedure and Judicial Review Act would have on federal courts if enacted. The bill, under Section 2, would allow veterans to appeal adverse decisions of the Veterans Administration, usually acting through the Board of Veterans Appeals, to federal district courts.

Deputy Attorney General Nejelski outlined the history of "black lung" cases which suddenly deluged the federal court system after legislation was enacted, and said a similiar impact would strike the federal court system if S. 364 were enacted.

He pointed out that during fiscal year 1976, the Board of Veterans Appeals decided 28,482 cases, of which it denied approximately 70 percent or 19,927. Significantly, only fifty cases were filed in federal court that year involving the Board or its decisions.

He told the Committee, "On the basis of experience with social security cases, approximately 20 percent, or some 4,600, of these denials would be appealed to the district courts" if the bill were enacted.

These 4,600 new cases would increase the total number of civil filings in the district courts by 3.4 percent. The increase in caseload would take the equivalent of up to 13 additional federal judges' time to handle veterans' claims alone and, within the Department of Justice, an additional twenty attorneys would be needed in the Civil Division to handle the additional cases.

The bill, Senate Committee observers said, is still pending in the Senate Committee on Veterans' Affairs and is not expected to be acted upon until the next session of the Congress.

PRETRIAL DIVERSION ACT RECEIVES STRONG SUPPORT

Senators Dennis DeConcini, James Abourezk, Edward Kennedy and Strom Thurmond have introduced the Federal Criminal Diversion Act, S. 1819, and staff members of the Senate Judiciary Committee say there appears to be strong support for the bill.

Hearings were held during the summer and have resumed this fall. The bill is designed to cut the cost of the federal criminal justice system, reduce the criminal caseload of the federal courts and establish alternatives to criminal prosecution for some persons charged with non-violent crimes and, in selected instances, violent offenses.

The bill allows an eligible individual to be diverted out of the criminal justice system. For a one year period, however, he is under the supervision of an administrator designated by the Attorney General. During this period, the charges against him are continued.

In testimony on the bill before the Senate Judiciary Subcommittee on Improvement in Judicial Machinery, Deputy Associate Attorney General Doris Meissner described an experimental diversion plan which has been operating in five judicial districts for two years.

The basic outlines of the program are:

- The decision of the U.S. Attorney to divert is made at the precharge or preindictment stage;
- Defendants must be represented by counsel at each step in the diversion decision and enter the program voluntarily;
- Only individuals against whom there is a prosecutable case may be diverted but persons accused of offenses which would otherwise be referred for state prosecution, twice-convicted felons, addicts, current or former public officials accused of violating the public trust and individuals accused of national security, civil rights and tax offenses are not eligible for diversion under the Justice Department's experimental plan;
- The U.S. Attorney requests a recommendation from the probation officer regarding the suitability of a defendant for diversion and a program of supervision and services;
- The defendant, counsel, t prosecutor and the probation officer institute diversion by jointly signing an agreement outlining conditions of the diversion period;
- The period of supervision is not to exceed one year except in special cases. Defendants who fail to meet the conditions of the agreement are returned for prosecution.

The typical person diverted under the program is characteristic of the federal prison population with the exception that one-third of those diverted have been female while less then one percent of federal prisoners are women.

Diversion, the experiment has revealed, does not result in great savings for the prosecutor since the amount of time expended on a diversion case is roughly equivalent to that involved in obtaining a guilty plea.

Significantly, where it may save time is in the courtroom since arraignment, motions, hearings trial and sentencing are avoide leaving time for more serio criminal cases.

In summary, the Justice Department discovered that diversion may allow for certain savings in the criminal justice system, primarily in reducing the criminal caseload of the federal courts. In addition, diversion does not have a significant impact on the prison system since individuals most likely to be diverted usually would be sentenced to probation if prosecuted.

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LEGISLATIVE OUTLOOK

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

Enactments

The Clean Air Act Amendments (P.L. 95-95), which extend previously set deadlines for implementing emission standards, were signed into law on August 7. The Amendments expand the enforcement jurisdiction of the federal courts with respect to stationary and mobile sources, citizen suits, and employee protection.

The Fair Debt Collection Practices Act (P.L. 95-109) is a law amending the Consumer Credit Protection Act (15 U.S.C. §1601, *et seq.*) to prohibit abusive practices by debt collectors. The law, which was enacted on September 20, discusses the nature and extent of civil liability of any debt collector who fails to comply with its provisions and authorizes liability enforcement actions to be brought in any appropriate United States district court without regard to the amount in controversy.

Congressional Action

S. 2149, a bill to create a District Court for the Northern Mariana Islands, was favorably reported by the Senate Judiciary Committee on October 5.

On October 5, the Senate Judiciary Committee favorably reported S. 1566, a bill to amend Title 18 United States Code, to authorize applications for a court order to obtain foreign intelligence information by means of electronic surveillance.

A compromise version of H.R. 4544, a bill which liberalizes aspects of the black lung benefits program passed the House on September 19. A companion bill, S. 1538, was passed by the Senate on September 20. The House and Senate versions differ in their provisions for court review of government findings of coal company liability. A conference has been slated to settle this and other details of the legislation.

The House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings on September 21, 28 and 29 on pending proposals to revise diversity jurisdiction. The four diversity bills under consideration by Chairman Kastenmeier's Subcommittee were H.R. 761, a bill to abolish diversity of citizenship as a basis of jurisdiction in United States courts which was approved by the Judicial Conference in March, H.R. 7243, which would amend 28 U.S.C. §1332(a)(1) to prohibit a plaintiff from filing a diversity case in a United States district court situated in the state of which he was a citizen and which was also approved by the Judicial Conference in March; H.R. 5546 a bill incorporating the long-standing ALI proposals; and H.R. 9123, a bill recommended by the Department of Justice which duplicates the Conference bill, H.R. 7243.

Testifying at the hearings were Federal Judges Henry Friendly, Charles M. Metzner, and Edward T. Gignoux, Chairman of the Conference's Subcommittee on Federal Jurisdiction. In statements made by Judge Gignoux on behalf of H.R. 761, attention was brought to the burden which diversity actions impose on the federal courts and the problems involved in federal applications of state law in the decision of diversity cases.

Also discussed at the September hearings before Mr. Kastenmeier's Subcommittee was legislation to enlarge the civil and criminal jurisdiction of United States magistrates. The bills under consideration were S. 1613, which was passed by the Senate on July 22; H.R. 7493, a Department of Justice proposal; and H.R. 7811 and H.R. 7812, bills representing Judicial Conference proposals. S. 1613 would expand magistrates' trial jurisdiction in criminal cases to include any misdemeanor which may be prosecuted in a federal court. It would also permit magistrates to try and make final determinations in both jury and non-jury cases where the parties to a civil case have so consented.

Hearings were held October 4-6 in the Senate Judiciary Committee on S. 1437, the legislation to codify, revise and reform the federal criminal laws. The Committee did not complete action and will resume consideration of the bill later in October. An identical bill, H.R. 6869, is still pending in the House Judiciary Subcommittee on Criminal Justice where hearings were held September 15.

H.R. 5383, a bill to amend the Age Discrimination Act of 1967 by eliminating mandatory retirement on account of age for most federal workers, was passed by the House on September 23. The bill would apply to tax court judges, District of Columbia judges, the United States Comptroller General, and the Director of the Federal Judicial Center, among others. It is now pending in the Senate Committee on Human Resources.

Introductions

The Judicial Conference has sponsored H.R. 7239, a proposal to revise Chapter 313 of Title 18, United States Code. The bill, which would provide for the civil commitment of individuals acquitted in a criminal prosecution after having raised the defense of insanity, poses an alternative of §3613 of the proposed Criminal Code, S. 1437. It is currently pending in the House Judiciary Subcommittee on Criminal Justice.

On September 20 and 21, parallel bills (H.R. 9219 and S. 2117) were introduced in both the House and Senate dealing with the tort liability of the Government for acts of its employees. The bill would amend Title 28 of the United States Code to provide for an exclusive remedy against the United States in tort claims based on the wrongful acts or omissions of United States employees acting within the scope of their employment or in claims which arise from violations of the Constitution by government employees. The bills are currently pending in House and Senate Judiciary Committees.

S. 1315 would provide for the estabilshment of the Director of the Administrative Office of the United States Courts of a program to facilitate the use of interpreters in federal courts. The bill would mandate that in any criminal or civil action initiated by the United States where the presiding judicial officer has determined that a defendant or any other party does not speak the English language or suffers from a hearing or speech impairment, the services of a certified or otherwise

See LEGISLATION page 6

A.O. NEW PUBLICATION FACILITY ONE OF MOST MODERN IN GOVERNMENT

In 1940, the Administrative Office had a small printing unit on the ground floor of the Supreme Court building. Today, in the Maryland suburbs, it has opened one of the most modern and sophisticated printing, publishing and distributing plants in the U.S. Government.

The Forestville, Maryland facility is equipped with the most modern equipment—machines which can print, package and mail in hours books and lengthy reports which in the past took days.

Until the recent opening of this new facility, various functions were carried out in locations scattered throughout the Washington area. Now all publishing-related activities are consolidated in one plant which allows the Administrative Office to make the most efficient use of both its personnel and new equipment.

Twelve employees are currently producing approximately twenty-five million printed pages annually.

The work of the Forestville facility is monitored by the Congressional Joint Committee on Printing which recently asked the Government Printing Office to evaluate the Forestville plant. The evaluation revealed that approximatlely 85 percent of the work produced by the new plant during a two month period could not have been produced by private printing plants within the time required.

Here is some of the new equipment which has been installed at the Forestville plant:

- Automated film processing equipment for developing and preparing negatives;
- Two presses which can produce 5,000 sheets per hour and which are printed simultaneously on both sides;
- A high capacity collator which assembles 16 separate sheets and can stitch pamphlets together in one operation;
- An addressing and labeling system which can process 7,000 envelopes an hour;
- A plastic film wrapping machine which can complete two packages a minute.

Generally, the new facility's range of functions includes lithophotography, copying (using a Xerox 9200); printing, binding and distribution. Soon, the facility plans to begin mailing the Federal Probation magazine which has been done in the past by the Department of Justice. As a result, the A.O. will receive a substantial cost savings.

In addition, with the installation of a high-speed inserter-sealer machine, the Forestville plant will be able to offer the Administrative Office, the Federal Judicial Center and the Supreme Court a fast mailing service.

FJC PROGRAM FOR NEWLY APPOINTED JUDGES HELD

District Judges confer prior to making presentations at the recent seminar for Newly Appointed District Judges. They are (l. to r.) Judges Cornelia G. Kennedy (E.D. Mich.), Hubert L. Will (N.D. Ill.) and Charles B. Renfrew (N.D. Calif.).

Pictured above are judges attending last month's Seminar for Newly Appointed U.S. District Judges held at the Dolley Madison House. This seminar marked a decade of such meetings and the occasion brought to the Center many "Faculty Judges" who were themselves newly appointed District Judges when the FJC began its program for Continuing Education and Training.

LEGISLATION from page 5

competent interpreter shall be utilized. The bill also provides for a program of simultaneous interpretation services in multi-defendant criminal and civil actions. Authorization is given for payment of the expenses incurred in providing the required services by the Director from fund appropriated to the federa judiciary. The bill is currently pending in the Senate Judiciary Subcommittee on Improvement in Judicial Machinery.

DIVISION OF MANAGEMENT REVIEW COMPLETES SECOND YEAR

The Division of Management Review in the Administrative Office, which has completed its second full year of operation, has now conducted on-site reviews of the management and operations of twenty-six district courts and one circuit court.

The major purposes of these reviews are to identify areas where the efficiency and effectiveness of the operations of each office under the direction of the court can be improved, and recommend to the court specific actions and procedures by which those improvements can be effected.

The reviews include an audit of the financial records of the court, desk-audits of court personnel, examination of records maintained, and observation of office procedure. Particular emphasis is placed upon compliance with statutory and regulatory requirements and utilization of sound management practices.

A standard report format has been developed and is used for all reports prepared by the Division. This format is designed to enable the data collected in court studies to be compiled and synthesized for analysis of emerging trends, for comparison of similar operations, and for development of recommendations of general application.

Each report describes in detail the operations of the court, with particular attention given to management techniques which might be useful to other federal courts. The reports also include information which will assist the Administrative Office in providing early response to the day-to-day problems and requirements of the judiciary.

In addition to discussing the management and operations of the Clerk's Office, Probation Office, Offices of the U.S. Magistrates, Offices of the Referees-in-Bankruptcy, and Offices of the Court Reporters, the reports also discuss calendar management practices, frequently sharing management techniques utilized in other courts.

Various types of pretrial practices utilized to expedite the disposition of civil cases, different methods for setting trials to ensure that calendar breakdowns occur infrequently, and ways in which magistrates can be better utilized have been of special interest to the courts reviewed to date.

In the financial area, the Division reviews and makes recommendations on how internal control systems can be improved and examines all official accounts for accuracy and completeness. Personnel and leave administration are also reviewed.

The Division is expanding its efforts to provide follow-up assistance to courts in implementing recommendations contained in the reports. Preliminary findings and recommendations are discussed with the Chief Judge of each court upon completion of a review of his court, and, where requested, follow-up visits to the court are made to review the findings and recommendations in detail with the entire bench.

New FTS telephone numbers of key Supreme Court and Administrative Office personnel. (Note: Non-FTS callers dial 202 and these numbers to reach the person indicated.)

Supreme Court

The Administrative Assistant to the Chief Justice, Mark W. Cannon 252-3274/5
The Clerk, Michael Rodak 252-3012
The Reporter of Decisions, Henry Putzel, Jr. 252-3191/2
The Marshal, Alfred Wong 252-3294
The Librarian (Acting), Mrs. Betty J. Clowers 252-3184/3
Legal Officers, Mrs. Susan A. Goltz 252-3283
Marc P. Richman 252-3288
Personnel Officer, James R. Powers 252-3271
Public Information Officer, Barrett McGurn 252-3211/2

Administrative Office of the U.S. Courts

Director, Rowland F. Kirks 633-6021
Deputy Director, William E. Foley 633-6097
Special Assistant to Deputy Director, (Speedy Trial Matters), Norbert A. Halloran 633-6100
Assistant Director, Legal, Legislative and Special Projects, Joseph F. Spaniol, Jr. 633-6135
General Counsel, Carl H. Imlay 633-6127
Acting Assistant Director, Plans & Analysis, Richard Deane 633-6027
Assistant Director, Business and Personnel, Gilbert L. Bates 633-6101
Chief, Division of Administrative Services, Robert H. Hartzell 633-6117
Chief, Division of Bankruptcy, Berkeley Wright 633-6231
Chief, Clerks Division, Robert J. Pellicoro 633-6236
Chief, Division of Financial Management, Edward V. Garabedian 633-6122
Chief, Division of Information Systems, William E. Davis 633-6106
Chief, Legislative Analysis Division, William J. Weller 633-6040
Chief, Division of Magistrates, Peter G. McCabe 633-6251
Chief, Division of Management Review, James B. Ueberhorst 633-6200
Chief, Division of Personnel, R. Glenn Johnson 633-6115
Chief, Probation Division, Wayne Jackson 633-6226
Chief (Acting) Statistical Analysis and Reports Division, James A. McCafferty 633-6094

PERSONNEL

NOMINATION

Pierre N. Leval, U.S. District Judge, S.D. New York, October 17

CONFIRMATION

Thomas A. Ballantine, Jr., U.S. District Judge, W.D. Kentucky, October 12

Louis Oberdorfer, U.S. District Judge, District of Columbia, September 16

Thomas Tang, U.S. Circuit Judge, (CA-9), October 7

Nicholas J. Bua, U.S. District Judge, N.D. Illinois, October 7

Stanley J. Roszkowski, U.S. District Judge, N.D. Illinois, October 7

Edward H. Johnstone, U.S. District Judge, W.D. Kentucky, October 7

Charles P. Sifton, U.S. District Judge, E.D. New York, October 12

Harry H. MacLaughlin, U.S. District Judge, D. Minn., September 16

Eugene H. Nickerson, U.S. District Judge, E.D. New York, October 20

ELEVATION

Alvin B. Rubin, U.S. Circuit Judge, (CA-5), September 16

A. Leon Higginbotham, Jr., U.S. Circuit Judge, (CA-3), October 7

Hugh H. Bownes, U.S. Circuit Judge, (CA-1), October 7

Damon J. Keith, U.S. Circuit Judge (CA-6), October 20

FJC calendar

Oct. 31-Nov. 4—Orientation Seminar for U.S. Magistrates, Washington, DC

Nov. 3-4 Management Training for Supervisors, Atlanta, GA

Nov. 3-4 Workshop for District Judges (Fourth and Fifth Circuits), Hilton Head Island, SC

Nov. 9-10 Management Training for Supervisors, Raleigh, NC

Nov. 10 Report Writing Workshop, Newark, NJ

Nov. 14-16 Trial Advocacy Seminar, Chicago, IL

Nov. 14-16 Workshop for Probation Clerks, Oklahoma City, OK

Nov. 14-16 Seminar for the Staff of U.S. Magistrates, Washington, DC

Nov. 23 Report Writing Workshop, Newark, NJ

Nov. 28-Dec. 2 Advanced Seminar for U.S. Probation Officers, Atlanta, GA

Dec. 1-2 Workshop for District Judges (Ninth Circuit), San Diego, CA

THE THIRD BRANCH
VOL. 9, NO. 10 OCTOBER 1977

THE FEDERAL JUDICIAL CENTER

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The Third Branch

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Bulletin of the Federal Courts

VOL. 9, No. 11 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center NOVEMBER, 1977

JUDGE ELMO HUNTER NAMED CHAIRMAN COURT ADMINISTRATION COMMITTEE

The Chief Justice this month announced the appointment of Judge Elmo B. Hunter (W.D. Mo.) to the chairmanship of the Judicial Conference Committee on Court Administration. The Judge has been a member of the committee since 1969.

Judge Hunter replaces Judge Robert A. Ainsworth, Jr. (CA–5) who will remain on the committee.

In making the announcement, the Chief Justice noted that the change would effectuate a policy of periodically rotating the chairmanship of this and other Judicial Conference committees. This rotation system will

(See HUNTER, page 2)

BANKRUPTCY BILL HEARINGS SET

The Bankruptcy Bill, H.R. 8200, introduced by Representative Don Edwards (Dem. Cal.) which calls for the creation of a system of Article III Bankruptcy Courts as well as a Justice Department U.S. Trustee system is still pending on the House calendar and may be called up at any time for final consideration.

An amendment to the bill offered by Representative George Danielson (Dem. Cal.) with the support of Representative Thomas Railsback (Rep. Ill.) which eliminates the concept of a separate Article III court and

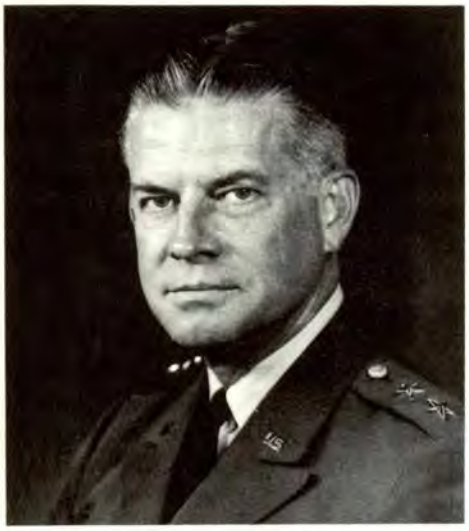
(See BANKRUPTCY, page 3)

INTERVIEW WITH SEN. DENNIS DeCONCINI

Senator Dennis DeConcini (Dem.-Ariz.) was selected to head the key Senate Judiciary Committee on Improvements in Judicial Machinery early last March. The Senator who is a former Tucson, Arizona prosecutor is serving his first term as a senator. This interview highlights some of the most important issues facing the federal judiciary today.

Now that you have been the Chairman of the Subcommittee on Improvements in Judicial Machinery for several months, do you have some

(See INTERVIEW, page 3)



Rowland F. Kirks

ROWLAND F. KIRKS DIES AT 62

Rowland Falconer Kirks, Director of the Administrative Office of the United States Courts, died November 2. He was 62 years old.

Chief Justice Warren E. Burger made the following statement:

Rowland F. Kirks was the fourth Director of the Administrative Office of the U.S. Courts since that body was created in 1939 and his untimely death is a great loss to the judicial system. After outstanding careers as a lawyer, as a legal educator, and in the military, he was appointed by the Supreme Court as Director in 1970.

His tenure in that office coincided with a period of unparelleled stress on the federal courts and his innovative leadership enabled the system to function in the face of great handicaps.

He introduced broad programs of computer controls, new methods of statistical analysis and a new method of jury utilization; the latter alone has saved more than 2 million dollars annually. His

(See KIRKS, page 2)

(HUNTER, from page 1)

afford an opportunity for a greater number of judges to exercise their leadership in the consideration of vital matters affecting the federal judiciary. This will undoubtedly inure to the benefit of the judges and the courts they serve.

The Court Administration Committee, with 15 members, is the largest standing committee of the Conference and functions through four subcommittees. There are a total of ten standing committees and eight subcommittees of the Conference. In announcing Judge Hunter's appointment the Chief Justice commended the outstanding leadership of Judge Ainsworth and added, "Judge Ainsworth is a distinguished judge with many years experience on the federal bench. He has given leadership and direction to one of the most important committees of the Conference, and during his term as chairman many highly significant issues have been studied. His dedication to solving the problems of the federal courts has been enormously valuable to the Judicial Conference."

The Third Branch

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

Joseph F. Spaniol, Jr., Deputy Director Administrative Office, U.S. Courts

(KIRKS, from page 1)

tenure as Director saw the creation of the new profession of court administrators and his work was a major factor in this development.

A native of Washington, D.C., Mr. Kirks was a graduate of t Virginia Military Institute (A.B. 1935), and of the National Univeris Law School from which he received a bachelor of laws degree, a master's degree, and a doctorate in juridical science. He was an assistant professor of law at National University from 1940 to 1941, professor of law in 1948, dean of the law school in 1949 and president of National University in 1953. The university is now part of George Washington University in the District of Columbia. At 34 Mr. Kirks was the country's second youngest law dean, and at 39 one of the youngest university presidents.

During World War II Mr. Kirks served in the Army rising from first lieutenant to lieutenant colonel. He was on the staff of General Lucius Clay in charge of foreign trade for Occupied Germany. Returning to the Army reserves he rose to the rank of major general, commanding the reserves in the District of Columbia, Maryland, Virginia, Delaware and the Eastern section of West Virginia. On appointment to the Administrative Office of the United States Courts he resigned his commission, completing 35 years of military service, concerned about conflict between his Judicial and Executive Branch duties. On retirement from the military Mr. Kirks received the Distinguished Service Medal, the highest non-combat decoration.

President Truman appointed Mr. Kirks a member of his "Little Cabinet" in 1952 as Assistant Attorney General and as Director of the Office of Alien Property. From 1953 to 1960 Mr. Kirks was legislative counsel for the National Automobile Deale Association, and from 1960 to 1970 general counsel and director government relations for the American Textile Manufacturers Institute. He was textile adviser to the United States mission negotiating trade and tariff agreements in Geneva, 1961-1962.

From 1953 to 1962 Mr. Kirks was a member of the District of Columbia Board of Education. He was chairman of the legislative committee of the Board and a member of a three-member committee to draft the integration of the schools' two-track system following the Supreme Court verdict in *Brown v. Board of Education*.

As Director of the Administrative Office of the United States Courts, Mr. Kirks had an immediate staff of 400 while overseeing aspects of the work of 3,500 others in the offices of federal court clerks, probation offices, offices of the United States Magistrates and offices of Referees in Bankruptcy. Support was provided to more than 600 federal judges as caseloads in United States District Courts rose sixty-three percent and in Courts of Appeals seventy-five percent. Many modernizations were put into effect. Use of computer technology and data processing are still in the developmental and expansion stage with regard to personnel supervision, payrolls and legal archives in the Government's Judicial Branch. In the summer of 1971 Mr. Kirks put into effect the Congressionally-created Federal Public Defender system to aid the indigent. There are now thirty Public Defenders with staffs numbering 200.

Mr. Kirks was buried with full military honors in Arlington National Cemetery. The Supreme Court attended as a body. The family asked that any contributions be made to the Rowland Kirk Memorial Fund at VMI.

(BANKRUPTCY, from page 1)

transfers the U.S. Trustee system from the Department of Justice to the Judiciary, was adopted in the Committee of the Whole House on October 28th after a two-hour debate by vote of 183 to 158. This amendment will be voted on again when the bill is reported from the Committee of the Whole to the full House of Representatives, which will not occur until next year.

Congressman Edwards plans to hold additional hearings on the bill beginning December 12, and these hearings are expected to focus on the two aspects of the bill mentioned earlier.

Members of the Special Ad Hoc Committee of the Judicial Conference of the U.S. have been considering amendments to the House bill and members of the Judicial Conference have been asked to testify on the measure.

In a related development, Senator Dennis DeConcini (Dem. Ariz.) on October 31 introduced S. 2266, a bankruptcy bill which, in general, does not contain the controversial features of the House bill. The bill gives bankruptcy referees additional jurisdiction. Hearings on the Senate bill have been set for November 28.

Bulletin

A.O. DIRECTOR AND DEPUTY DIRECTOR SELECTED

The Supreme Court has selected William E. Foley as Director of the Administrative Office of the United States Courts and Joseph F. Spaniol, Jr. as Deputy Director. The appointments became effective on November 21, 1977. A comprehensive story will be published in the December issue.

(INTERVIEW from page 1)

specific ideas as to what the major problems of the federal courts are?

My perception of the causes for the stresses and strains now occurring in our judicial system that I observed as practitioner in Arizona have only been reinforced. The enormous caseload that has hit every judicial district in the country is the core of the problem. For all its many excellences the Federal Judiciary is not now providing the full and adequate justice promised by the Constitution. I have made a commitment to do everything I can to help the system help itself.

Adequate judgepower is essential as are innovative new methods to deal with the litigation explosion of the seventies. I am extremely fortunate to have as an ally in this task the Attorney General, Judge Griffin Bell. He has created a special office within the Department of Justice that is a counterpart to the Judicial Improvements Subcommittee. The working alliance that is evolving holds great promise.

What court-related legislation that has been or is about to be introduced do you consider to be top priority?

The number-one priority is the creation of sufficient judgeships throughout the country to assure access and speedy justice. The Senate acted swiftly this year in passing S.11, the Omnibus Judgeship Bill, that creates 148 new federal judgeships—113 district court judges and 35 circuit court judges. I felt legislation of this sort was long overdue. I was not the prime force behind this bill, but I did work long and hard to get it adopted in the manner I thought best, not only for my state but for the country as a whole. No new federal judgeships have been created in seven years and the burden on judges and litigants has reached the breaking point.

Senator Dennis DeConcini

But additional judgeships alone are not the answer and my second priority will be to create new methods to assist judges and the system. This was the thought behind the Magistrates Bill, S.1613, which increased the jurisdiction of United States Magistrates and will make them even more useful in the future.

Magistrates in many districts today are the only thing that makes it possible for a civil calendar to be considered since so many district court judges are tied up with their criminal dockets. Magistrates can relieve district judges of many tasks that simply don't have to be performed by Article III judges.

A host of other bills also fall into this category of relieving the federal system of part of the caseload. Among these are the diversity jurisdiction bill, the pretrial diversion bill, and an arbitration bill.

Another high-priority bill which has been the subject of debate for many years is the Judicial Tenure Act, S. 1423, which was substantially modified from the original bill, and I believe it represents a significant step toward restoring respect for our judicial system.

I am concerned and sensitive to the fact that some federal judges perceive this legislation as being in some way anti-federal judge. Far from it. I

(See INTERVIEW, page 4)

(INTERVIEW from page 3)

hope to convince these judges that the creation of a system in addition to impeachment for the removal of unfit or disabled federal judges is really in their best interest and will go a long way toward restoring the perception of a healthy judiciary.

Another major item is the Bankruptcy Reform Bill, S. 2266, which I have just introduced. This represents the first overhaul of the bankruptcy law in nearly 40 years. I am hopeful that some measure will be passed next year.

I understand that you are talking about an omnibus court administration bill which will cover many so-called housekeeping matters for the federal courts. Would you care to comment on that?

There are a host of other bills of a housekeeping nature that are very important to this judiciary subcommittee. These bills are not the type that get a lot of attention from the press, and as individual bills are not of major importance. But in fact, the proper and efficient administration of the judicial system is critical to our operation of that branch of government and the delivery of justice.

Our staff is attempting to gather from the various areas of the judiciary, administrative and other minor items that need to be changed, or at least considered. Assuming they come up with a significant amount of suggestions for change, we will probably hold hearings next year to lay the groundwork for introducing a bill. We may also hold some oversight hearings on the state of the judiciary in the near future.

The Omnibus Court Administration bill sounds interesting. I doubt it's ever been done before.

No, it hasn't, but as a matter of fact, we have already held some hearings on a number of items that could have been included in the omnibus bill—like jury fee increases, marshal fee increases in serving civil process, witness fees, etc., but we didn't want to wait because we felt there was merit to moving ahead now on those particular bills.

Do you think the Court Interpreter's Act will have a significant impact on the federal court system?

I wouldn't say it is going to have any major impact on the court, but it is important to those people to avail themselves of it. I think it's important to the courts to keep access open to those who can't speak the English language or have other language related disabilities.

Have you taken a position on the recent proposal to cut back on federal diversity jurisdiction, possibly by transferring some cases back out to state courts?

No. I haven't taken an official position on it. The Administration has had a diversity bill introduced by Senator Eastland, and it has been assigned to our subcommittee.

We will address it some time next year. The House Judiciary Committee is holding hearings currently on diversity and, quite frankly, I am going to see what their hearings produce and review their reports before we take action in the Senate.

At the so-called "Pound Revisited" Conference which was held a year ago last April, there were suggestions that minor disputes be resolved in the community or neighborhood centers. Do you see any problems using that method to settle cases that would otherwise come to the courts?

Well, that sounds good, and I am not adverse to considering it, but I remain skeptical. My first approach would be making courts more available to the public—more accessible. The expansion of magistrates' jurisdiction may lead to their resolving minor disputes.

As to ideas for neighborhood councils to resolve landlord-tenant or tenant-tenant problems, or what have you—I have not seen evidence th they work. I wouldn't mi implementing several pilot projects and then evaluating their success. I will keep an open mind on the subject until the evaluation is complete.

You feel most people want their "day in court"?

Yes. I have a bit of a problem about the potential for the success of these proposals. For example, if the three of us are neighbors and you and I are having a problem and the third is going to be the arbitrator, well it sounds good—that we are going to abide by the decision. But, if in fact the decision is for you, I'm going to be mad at two people, and I'm not sure that I'm going to abide by the decision; whereas, if the decisionmaker is a judge, I am more apt to say that the authority of the court has ruled.

The important thing is to mak courts as accessible possible—so that you and I ca get before a judge rather than a neighborhood arbitrator. That's my philosophical approach to it.

Senator, there's been a growing use of six-member civil juries in the federal courts. Eighty-one districts now use them. Do you favor this trend?

Well, I have not made up my mind. I think it's proper for the local rules to consider it and implement it. We held hearings recently and this was the subject of the bill we were requested to introduce and we did. Some of the testimony was very influential against the proposal. The best way to involve people in the judicial process is through the jury system. It ocurs to me that there are areas where you could use a smaller jury. Whether or not you would want to mandate it in all civil cases, as in the bill w introduced, is the real questi I am not leaning in that direct at all right now.

Turning to another subject, Senator, what are your views

on mandatory minimum sentences?

I have a long standing feeling based on my years both as a prosecutor and defense lawyer, and being involved with prisons through service on parole boards, that the present sentencing policy in this country is antiquated. If anything, it is a deterrent to any constructive rehabilitation. I lean toward some proposals I have heard of for mandatory minimum sentences. There are many who argue against that and some of them make good sense.

My experience has been that the sentencing process, particularly the probation and parole process, really encourages a defendant to simply play the game. In fact, we have not achieved rehabilitation, we have really only reached out to force the defendant to say what we want to hear—"we" being the parole board and society.

For a very short time prisoners indicate that they are rehabilitated when, in fact, they are not and never were. The recidivism rate certainly bears that out. Part of the population in prison have the desire to correct their ways while incarcerated, so we need to have programs available.

I believe very strongly in the therapeutic community approach which is based on, "Do you want to help yourself?" and not the traditional, "You be good and you get out early". It helps the person adjust to his life and understand his life, and if he's going to be in there for ten years, non-parole time, he's got to be more satisfied with his life. I've had some experience with this type approach in both the federal prison system and in Arizona. I feel the mandatory minimum can work in conjunction with a therapeutic community approach.

Are today's sentences too severe?

While I do find some merit to the idea that punitiveness is good for the sake of deterrence, generally our sentences are too long and ineffective. Our penal system must give those inmates who want to solve their problems an opportunity to do so.

You and I, on the outside, can't give advice to legislative committees on how to deal with the inmates so that they will act non-criminally. We've got to talk to the inmates, listen to them, and try to understand them. Only then, with the good and bad, the "con" and "non-con" information that comes forward, can you build a program that goes to the heart of their individual problems.

What about appellate review of sentences?

I think there is some merit to having procedural review of sentences, particularly sentences that have been imposed many years ago under very emotional, difficult circumstances for the community, for the court, and for the law enforcement agency at the time. These things do change, and they should be subject to some review. If you had a real therapeutic rehabilitation program that would be an even greater reason to have review, in my opinion.

What do you see as the long-term and short-term impact of the codification of the federal criminal code?

I think any recodification will initially be difficult on the judiciary, law enforcement personnel, lawyers, and everybody in the criminal justice system. The disparities in our criminal law that I am familiar with, demonstrate to me a need to move in the direction of recodification. The unfortunate problem is that there is less willingness to compromise in the area of criminal code justice than almost any place else because people have strong feelings about criminal law. How long a sentence should this crime carry? What should be considered as the proper classification of that crime?

(See INTERVIEW, page 6)

WHITE HOUSE SEEKING VIEWS ON CREATION OF NATIONAL INSTITUTE OF JUSTICE

The Justice System Improvement Study of President Carter's Reorganization Project is conducting some preliminary work concerning the possible creation of a National Institute of Justice (NIJ).

As part of this project, the White House Office of Management and Budget has sent a wide-ranging questionnaire to members of the judiciary and other officials who have indicated an interest in judicial administration.

Here are some of the major questions surrounding the creation of the Institute which are included in the questionnaire:

- Should a NIJ be created;
- What are the functions and activities that it could and should perform;
- Should it create and develop new programs or consolidate existing programs;
- What kind of structure should it have and how should the membership be appointed;
- What personnel system should be adopted by the NIJ;
- What types of research should the NIJ undertake, how can those activities be evaluated and their findings and results communicated to the justice community.

The questionnaire also asks a series of questions on the scope and functions of a NIJ, its organization and stucture, and justice-related research should it become one of NIJ's major functions.

The Director of the Project, F.T. Davis Jr., points out that the Justice Department has proceeded with its examination of possible improvements in the areas of policy and planning, information and statistical services, and state and local financial assistance.

(INTERVIEW, from page 5)

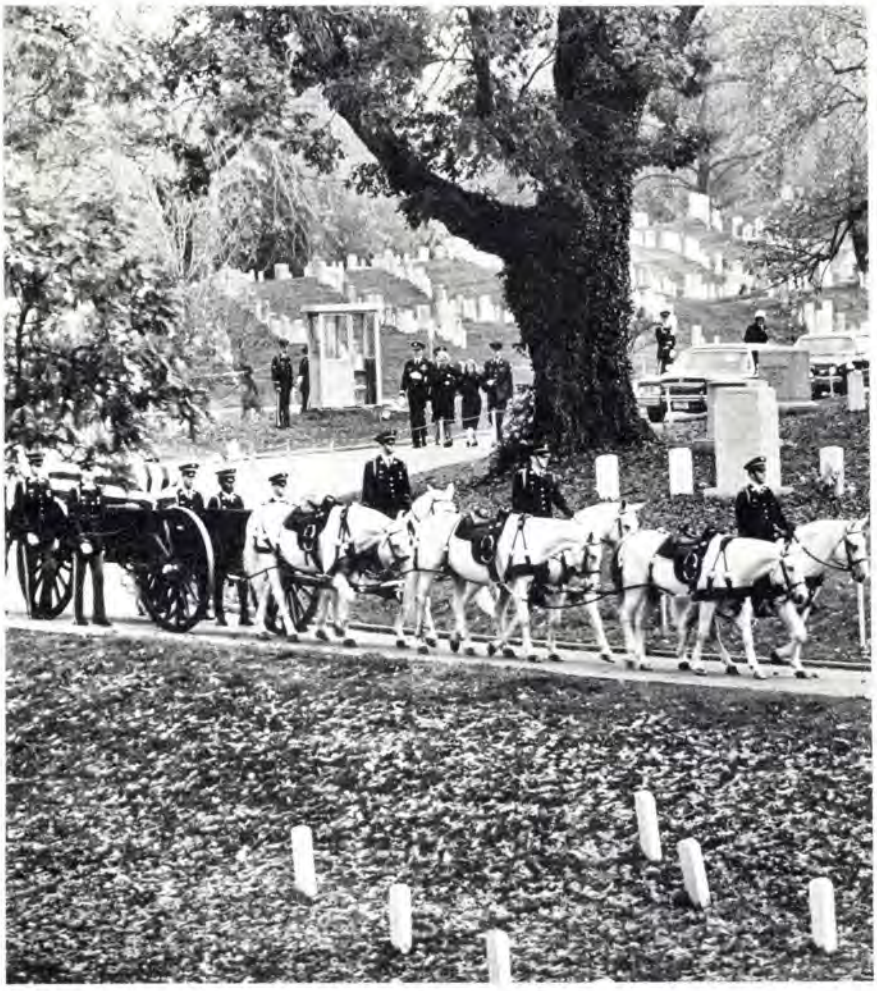
It is going to be difficult on the criminal justice system for a while and certainly on the courts to adjust to it. But I think that is a part of the evolutionary process of a good governmental system. It's been done before; it's been done in many states. My state just did it, and it is causing all kinds of problems. Prosecutors don't like it; defense lawyers don't like it. But, in fact, as they work with it longer it becomes more of a fact of life. They ultimately realize it is not too bad.

I think that is what will happen with the federal criminal law recodification. It is the product of years of work and I believe will be a significant improvement in our federal law.

SECOND CIRCUIT PANEL FORMED TO FIND SOLUTIONS TO LITIGATION COSTS

As a result of sharply rising costs of prosecuting and defending civil litigation, access to the courts is being restricted to the relative few who can afford it, Chief Judge Irving R. Kaufman (CA-2) said in announcing the appointment of a commission of jurists, lawyers and scholars to study the problem and formulate solutions.

The panel which will be known as the Second Circuit Commission on the Reduction of Burdens and Costs in Civil Litigation, will be co-chaired by Michael Sovern, Dean of Columbia University Law School and Alan Hruska, a New York Lawyer.



This is the scene at Arlington National Cemetry as Administrative Office Director Rowland F. Kirks was buried with full military honors.

LEGISLATIVE OUTLOOK

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

ENACTMENTS

P.L. 95-157, an Act creating a District Court for the northern Mariana Islands, was signed by the President on November 7. (See story page 8).

On October 28, a bill (S. 1682, P.L. 95-144) was enacted which carries out provisions of the U.S. prisoner repatriation treaties with Mexico and Canada. The Act sets up a commission to handle applications for repatriation.

CONGRESSIONAL ACTION

Bankruptcy. (See story page

Criminal Code. On November 2, the Senate Judiciary Committee approved S. 1437, the proposal to revise and codify the federal criminal laws.

Among the most significant provisions of the bill are the sections creating a federal sentencing commission, decriminalizing, in part, the possession of small amounts of marijuana by making it a misdeameanor punishable by fine and providing for expunging the criminal records of persons convicted for the first three infractions.

The controversial legislation was reported after many weeks of markup sessions. Further hearings before the House Judiciary Committee on the companion bill, H.R. 6869, are planned for the recess period. Some of the major new features of the bill as reported relate the Sentencing Commissi which would consist of seven members, a majority of whom, including the chairman, would be appointed by the President

with confirmation by the Senate, and a minority of whom would be appointed by the Judicial Conference.

Consumer Protection. H.R. 9718, the compromise legislation to establish a federal office for consumers, was removed from the House calendar on November 1 by Speaker Thomas O'Neill, Jr. (Dem. Mass.). It is expected that the bill, in some form, will be back in Congress in the Second Session.

Customs Clearance. On October 17, the House passed as reported, H.R. 8149, a bill designed to reform the customs clearance of merchandise and passengers. Among the major changes in existing customs law which the bill makes are revised penalties, and provisions for full judicial review of alleged violations. The bill is currently pending in the Senate Finance Committee.

FTC Enforcement. On October 18, the Senate passed legislation (H.R. 3816) to strengthen Federal Trade Commission enforcement procedures. The approved version does not include a provision contained in the bill as reported by the Senate Commerce Committee to permit consumers to file class action suits based on FTC rulings.

A similar bill was passed by the House on October 13, Differences in the House and Senate versions must be resolved by a joint conference before the legislation can be sent to the President.

Court Interpreters. S. 1315, the legislation which would establish an interpretation service in the federal courts to serve non-English speaking people and individuals with hearing and speech impairments, was passed by the Senate on November 4.

Court Accommodations. On November 1, a bill (H.R. 2770) was passed by the House which would amend Title 28 U.S.C. to provide accommodations for judges of the United States Courts of Appeals at places other than those where regular terms of courts are authorized by law to be held, if such accommodations have been approved as necessary by the judicial council for the appropriate circuit and if space is available without cost to the Government. The bill, which was also passed by the Senate on November 4, is currently awaiting signature by the President.

Jurors. Hearings were held on September 26 before the Senate Judiciary Subcommittee on Improvements in Judicial Machinery on Judicial Conference-sponsored legislation to increase the compensation and expenses payable to federal jurors and to provide them statutory protection against termination of employment because of jury duty. The bill, S. 2075, is pending in the Subcommittee and is expected to be favorably reported early in the next session of Congress.

Also considered at the hearing was legislation (S. 2072 and S. 2074) urged by the Judicial Conference to make further improvements in the federal jury administration. Among the proposals which would be implemented would be the coverage of all federal jurors under the Federal Employees Compensation Act in case of injuries in the course of their service, the abolition of the automatic mileage excuse from jury service, the redefinition of certain terms with respect to jury selection by automated data processing methods, and clarification of the eligibility for jury service of one who has been convicted of a criminal offense but had his civil rights restored These measures are also pending in the House Judiciary Committee as H.R. 7809, 7810, and 7813. The witness on behalf of the Judicial Conference at the Senate hearing was Carl H. Imlay, General Counsel of the Administrative Office of the U.S. Courts.

BILLS INTRODUCED

Audio-Visual. On October 19, H.R. 9657, a bill to establish uniform procedures for the procurement, production, and distribution of audio-visual materials by federal agencies, was introduced by Representative Edward R. Roybal (Dem. Calif.) The legislation would create a Federal Audio-Visual Commission which would supervise and isssue regulations relating to the acquisition of audio-visual materials from private sector producers for use by federal agencies.

Veterans Appeals. Legislation to establish a Court of Veterans' Appeals was introduced in the Senate on October 28 by Senator Strom Thurmond (Rep. S.C.).. The bill, S. 2263, is one of several recent attempts to provide final judicial review for decisions issued by the Board of Veterans' Appeals. Under the proposed bill, cases would be heard by the new court on briefs and oral argument when the matter in issue is a question of law. In all other cases, the case would be referred to a commissioner for a hearing. The assistance of federal district courts within the jurisdiction of a particular inquiry could be invoked to enforce subpoenas issued by the Appeals Court in conjunction with any proceeding.

Arbitration. H.R. 9778, a bill to amend Title 28 U.S.C. to encourage the use of arbitration in U.S. district courts, was introduced on October 27 by Representative Peter W. Rodino, Jr. (Dem. N.J.) Under the legislation, the chief judge of a federal district court in which arbitration is authorized would certify arbitrators to serve within the judicial district. Cases could be referred to arbitration where the parties had consented, the relief sought

(See LEGISLATION, page 8)

PERSONNEL

APPOINTMENTS

Edward H. Johnstone, U.S. District Judge, W.D. Ky., Oct. 13

Harry W. MacLaughlin, U.S. District Judge, D. Minn., Sept 29

Alvin B. Rubin, U.S. Circuit Judge, 5th Cir., Oct. 8

Procter Hug, Jr., U.S. Circuit Judge, 9th Cir., Sept. 16

Louis F. Oberdorfer, U.S. District Judge, District of Columbia, Nov. 1

Hugh H. Bownes, U.S. Circuit Judge, 1st Cir., Oct. 31

ELEVATION

David S. Porter, Chief Judge, U.S. District Court, S.D. Ohio, Sept. 19

CONFIRMATION

Elsijane Trimble Roy, U.S. District Judge, E.&W.D. Ark., Nov. 1

NOMINATIONS

Robert F. Collins, U.S. district Judge, E.D. La., Nov. 2

John L. Kane, Jr., U.S. District Judge, D. Colo., Nov. 2

James K. Logan, U.S. Circuit Judge, 10th Cir., Nov. 4

Monroe G. McKay, U.S. Circuit Judge, 10th Cir., Nov. 2

Robert S. Vance, U.S. Circuit Judge, 5th Cir., Nov. 4

AO COA FJC calendar

Dec. 1-2 Workshop for District Judges (Ninth Circuit), San Diego, CA

Dec. 5-6 Judicial Conference Advisory Committee on Appellate Rules, Washington, DC

Dec. 12-13 Judicial Conference Advisory Committee on Civil Rules, Washington, DC

Dec. 12-14 Seminar for Bankruptcy Clerks, Atlanta, GA

Dec. 12-14 Seminar for Staff Attorneys, New Orleans, LA

Dec. 13-16 Seminar on Crisis Intervention for U.S. Probation Officers, Dallas, TX

Dec. 15-17 Seminar for Bankruptcy Referees, Atlanta, GA

Dec. 19-21 Advanced Management Seminar for Probation Clerks, Ft. Lauderdale, FL

DEATHS

Joseph W. Woodrough, U.S. Senior Circuit Judge, 8th Cir., Oct. 2

James H. Gorbey, U.S. District Judge, E.D. Pa., Oct. 24

Gunnar H. Nordbye, U.S. District Judge, D.MN, Nov. 5

(LEGISLATION, from page 7)

was not in excess of $50,000 damages, or where the United States was a party and it was a type of action authorized by the bill.

Diversity. On November 4, Representative Robert W. Kastenmeier (Dem. Wi) introduced H.R. 10050, another bill proposing to abolish diversity of citizenship as a basis of jurisdiction of federal district courts. This version would also abolish the amount in controversy requirement in federal question cases. The bill has been referred to the House Judiciary Committee.

NEW TERRITORIAL COURT WILL BE ESTABLISHED IN MARIANAS

The first new territorial court to be established in over thirty-five years will be opened on Saipan in the northern Marianas Islands on January 9.

Currently, there are territorial courts in the Virgin Islands, Canal Zone and Guam and Marianas court will be fourth in the federal judicial system.

In order to assist the new judge and court clerk to make an efficient beginning, Chief Judge Russell E. Smith (D. Mont.) and the Clerk of Court for the District of Arizona, Wallace J. Furstenau, will travel to Saipan and remain throughout most of January.

THE THIRD BRANCH

VOL. 9, NO. 11 NOVEMBER, 1977

THE FEDERAL JUDICIAL CENTER

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The Third Branch

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Bulletin of the Federal Courts

VOL. 9, No. 12 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center DECEMBER, 1977

Administrative Office Director, Deputy Director Named

The Supreme Court November 21 selected William E. Foley as Director of the Administrative Office of the United States Courts and Joseph F. Spaniol, Jr. as Deputy Director.
Mr. Foley replaces Rowland F. Kirks who died November 2.

The new Director is a native of Danbury, Connecticut and is married to the former Marguerite M. Pratt. They have seven children. He holds four Harvard degrees; A.B., LL. B., A.M. and Ph.D. . During World War II he served in the Navy as a Lieutenant Commander and later joined the Department of Justice where he served for twenty-three years as Chief, Internal Security and Foreign Agents Registration Section, Criminal Division; Executive Assistant to the Assistant Attorney General, Internal Security Division; and Deputy Assistant Attorney General, Criminal Division.

Mr. Foley is no stranger to the federal judiciary since he joined the Administrative Office in 1964 as Deputy Director and has served in that post until his present appointment.

In addition to his duties as Director of the Administrative Office, Mr. Foley also assumes a seat on both the Board of the Federal Judicial Center and the Board of Certification.

Joseph F. Spaniol, Jr. is a native of Columbus, Ohio. He received his A.B. from John Carroll University in Cleveland, Ohio; his LL. B. from Western Reserve University, also in Cleveland; and his LL. M. from Georgetown University in Washington, D.C.

In selecting Mr. Spaniol as Deputy Director, the Supreme Court chose a career employee of the Administrative Office. Mr. Spaniol joined the A.O. as an attorney almost immediately following graduation from law school and later served as General Counsel, Chief of the Division of Procedural Studies and Statistics and for the last seven years he served as Assistant Director for Legal Affairs.

He is married to the former Viola Montz and has eight children. During World War II, he served in the Army.

William E. Foley
Director, Administrative Office
of the United States Courts

Joseph F. Spaniol, Jr.
Deputy Director, Administrative Office
of the United States Courts

HOUSE JUDICIARY COMMITTEE APPROVES 145 NEW JUDGESHIPS

On November 30, the House Judiciary Committee approved the creation of 145 new district and appellate judgeships. This was one more than previously approved by the Senate Judiciary Committee earlier this year.

Of the total, 110 are district judgeships and 35 are courts of appeals judgeships.

Final action on the Omnibus Judgeship Bill will not be taken until early next session.

PROBATION OFFICERS MANDATORY RETIREMENT ACT TAKES EFFECT JANUARY 1

On January 1, P.L. 93-350, enacted July 12, 1974, will go into effect forcing Probation Officers who have reached age 55 or completed twenty years of service, if they are older than 55, to retire.

The legislation made three important changes to the law then in effect regarding Probation Officer retirement:

- The annuity computation rate was increased from two percent per year of service to two and one-half percent for the first twenty years plus two percent for each year over twenty years.
- The employee's deduction rate and the matching agency (the Administrative Office) contribution was increased from seven to seven and one-half percent and the head of the agency was authorized to establish minimum and maximum age limits within which an original appointment may be made to a covered position.
- Effective January 1, 1978, the mandatory separation of an employee eligible for immediate retirement on the last day of the month in which the employee becomes 55 years of age or completes 20 years of service, if then over that age, is required by law. However, the head of the Administrative Office, when in his judgment the public interest so requires, may exempt such an employee from automatic separation until that employee becomes 60 years of age.

At its March, 1975 meeting, the Judicial Conference of the U.S. adopted a resolution that, for the purposes of implementing this Act, "the Director of the Administrative Office, when in his judgment and after receiving the findings and recommendation of the chief judge of the district finds that the public interest so requires, may exempt a probation officer from separation until the probation officer reaches 60 years of age."

To assist the Director of the Administrative Office in exercising his authority to exempt a probation officer from mandatory separation, the Judicial Conference of the U.S. at its September 1977 meeting approved these guidelines:

- It is the policy of the Judicial Conference that probation officers shall be exempted from mandatory separation when, in the judgment of the Director and the chief judge of the district, the public interest requires such exemption, the following factors are to be considered:

a. The benefits which will inure to the Government upon exemption.

b. The degree of difficulty in replacing the employee.

c. The need for the employee to perform essential service in the time of emergency.

d. Any exemption shall be limited to one year at a time.

The request for exemption and any subsequent request for extension of exemption should be sent to the Director and should specifically detail why the exemption/extension is in the public interest and should also detail the alternatives to exemption which the court has considered and the reasons they have been determined unsuitable.

TWO DISTRICT JUDGES OFFER SUBSTITUTE JURY SELECTION TECHNIQUE

Instead of specifically designating alternate jurors at the outset of the trial at least two District Judges have, with the consent of counsel, been deferring the designation of alternate jurors until the completion of the judge's charge to the jury.

Chief Judge Jacob Mishler and Judge George C. Pratt (E.D. N.Y.) have both drawn up forms of stipulation which counsel may sign which offer substitute procedures in lieu of t statutory requirements in FR 46(b) and FRCrP 24(c). The stipulation sets out four points of agreement by the trial judge and counsel for the parties. These are:

1. Upon selection of the jury, two additional jurors shall be chosen, with plaintiff and defendant[s] each entitled to one additonal peremptory challenge.
2. No juror shall be designated as "alternate" until after the court's charge.
3. If the entire panel remains to the end of the charge then plaintiff and defendant[s] shall each have one additional peremptory challenge, with plaintiff challenging first. The persons thus challenged shall be deemed "alternate" jurors and dismissed at that time. The members of the panel shall not be informed that it is the parti who have designated t "alternate" jurors.
4. If one member of the panel is unable to continue to the end of the charge then one other "alternate" juror shall be selected by lot.

The judges using this procedure report that both prosecution and defense have said they are satisfied with this procedure especially since it allows them, at no extra cost or delay, to make a judgment after they have had an opportunity to observe the jury during trial. Also reported by the judges is the fact that this device tends to keep all of the jurors, including those ultimately designated as alternates, interested and alert throughout the trial.

As innovative techniques or procedures come to our attention, we will report them in The Third Branch. For details or the development and use these procedures, readers a invited to communicate directly with the judicial officers involved or the Federal Judicial Center.

MAJOR SENTENCING INSTITUTE HELD AT MORGANTOWN, W. VA.

A major Sentencing Institute was held this fall at Morgantown, West Virginia in which 43 federal judges from both the Second and Seventh Circuits participated.

During the first day the attendees had an opportunity to tour the Bureau of Prisons facility for youthful offenders at Morgantown. The second day was devoted to a panel discussion on sentencing in which Morris Abrams presented a paper on "Social Risk Sentencing: A New Approach." Joining Mr. Abrams on the panel were Harold Tyler, former Deputy Attorney General and federal judge, and Franklin Zimring, Director of the Center for Studies in Criminal Justice at the University of Chicago Law School.

Carl Imlay, General Counsel of the Administrative Office, described the sentencing section of the new federal criminal code which may be enacted next year. He mentioned that the law requires the creation of a sentencing commission designed to set sentencing guidelines. This commission, he told the attendees, will be composed of seven members—four appointed by the President and three by the Judicial Conference.

The Third Branch

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Co-editors:

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

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts

MAGISTRATES HOLDING HEARINGS IN MEXICO ON PRISONER CASES

On November 7, a special meeting was held in San Antonio, Texas to allow representatives of the Administrative Office's Magistrates Division, Administrative Office's Magistrates Division, the Bureau of Prisons, Administrative Office's Criminal Justice Act Division, and the Department of Justice to discuss the problems associated with holding magistrate court hearings throughout Mexico to verify whether American prisoners now in Mexican jails or prisons desire to return to the U.S. to serve the remainder of their terms.

Federal public defenders and U.S. magistrates also attended.

There are from four hundred to six hundred U.S. inmates in Mexican institutions. The magistrates will hold their first hearing in early December in Mexico City and then hold other hearings in several other locations in Mexico.

This is believed to be the first time in the history of the federal judiciary that a significant number of court officers have held court hearings in a foreign nation.

DISTRICT COURT MICROFILMING ALL OF ITS RECORDS

The U.S. District Court for the Western District of Louisiana began microfilming all of its official case records on January 1 of this year in order to fill the need for simultaneous access to the records at the headquarters office as well as at several divisional offices.

This is necessary because the geography of the District, which is a 250-mile by 150-mile rectangle, divided into six divisions with the headquarters division at the extreme northwest section of the District.

Prior to the institution of simultaneous microfilming of the records, it was necessary to mail records as needed to the various District divisions. As a result, many case records made several round trips from headquarters to the various divisions which drained manpower and money from the District and caused delays.

Today, immediately prior to docketing, the case file is microfilmed and a master copy is kept in the headquarters division. The full record is then sent immediately to the judge who is assigned the case.

The Clerk of the Court, Robert H. Shemwell, said the microfilm is kept at the headquarters office enabling that office to docket the case, prepare statistical reports and set calendar dates. Moreover, once the case is completed, plans are to substitute a copy of the microfilm for the official record which will be destroyed.

While microfilming was not initially intended to be used to save space in the Clerk's Office, a tremendous space saving has been realized: Filings for 1977 occupy only 365 square inches while the files themselves would fill eight filing cabinets. A full docket book occupies only 13 microfiche.

In addition to saving space, security has also become an important factor. In the past, when a case record was lost in the mails or when the document was removed from the case file, an insurmountable problem arose. Today, the microfilm section at headquarters need only print a copy of the microfilm.

"It is my feeling that microfilm definitely has application in the courts," Mr. Shemwell said; but he added the total "extent of its usefulness as yet remains undefined."

A VISITATION PROGRAM FOR

Judge William J. Campbell

By Judge William J. Campbell,
(N.D. Ill.) Seminar Chairman
Emeritus, Federal Judicial Center

The federal courts can take pride in the leadership they have given to judicial education, an area that is enjoying increasing support from judges — state and federal — across the country. At its June meeting, the Judicial Center's Board, inspired by its Chairman, the Chief Justice, and Judge Walter E. Hoffman, then its Director, considered the growing interest among the federal judiciary for individually structured orientation programs for new judges and recommended the creation within the Center of a visitation program for newly appointed district judges. The Chief Justice then requested that I prepare this article on the subject.

We all recognize that federal judges come to their new positions with a wide variety of backgrounds. A new judge coming from a corporate law practice may wish special orientation on processing criminal cases. A new judge, quite familiar with litigation in state courts, may wish to concentrate a few days' attention on the federal civil non-jury trial. This diversity argues for specially tailored programs, designed to be of maximum benefit to each new judge.

Furthermore, a carefully constructed, individually tailored, orientation program at the outset of a judicial career can not only fill particular needs. It can also influence a judge's growth pattern remarkably. The Chief Justice has pointed out that if a new judge, though long awaited by his new colleagues, spends his initial weeks in orientation rather than judging, it will reap a district concrete benefits of improved case processing in the weeks and months after orientation. The Judge's heightened skill and understanding, in the short range as well as the long range, will more than compensate for the two-week postponement of the time he begins to try cases.

I have been especially aware of this need from my vantage point as Chairman of Seminars and Workshops for the judiciary and from my good fortune of being in frequent contact with almost every federal trial judge. Of course, the various districts, and their chief judges especially, recognize the need for specially tailored orientation programs and particular districts have developed excellent programs that can help guide our efforts to develop a program for all federal judges who wish it.

I am proud that the program of instructor judges in the Northern District of Illinois is one of these; it is a program that I knew was needed if for no other reason than my ow[n] experience. My "post-induction orientation" took place when, after an impressive induction ceremony, the Senior Judge (that's what the Chief was called in 1940) took me into his chambers and flippantly tossed me a sheaf of papers listing over seven hundred cases as my calendar. He casually observed that I now find myself a courtroom where I could and begin a call of the calendar since several cases thereon had not been called in over ten years! Now, as I devote myself in my "retirement" to judicial education, I often think back on that day and consider how far we have progressed in orientation and training and how much further we must go to meet the challenge.

A Proposal

In this spirit, I respectfully offer for the consideration of the Board and of the entire judiciary a proposal that can build on existing programs of new-judge orientation. Specifically, I suggest that all newly appointed judges have the opportunity for an individually designed orientation program with experienced "instructor" judges. A new judge needs an orientation to home district practices from an experienced judge in the home district, but he or she could also benefit from spending some few days with instructor judges for out-of-district orientation. These out-of district instructor judges could come from a diverse group of 20 to 30 of the practiced masters in the particular and discrete areas where new judges most need help in "filling out" their preappointm[ent] experiences and the instruc[tion] provided in their home district.

There should be an emphasis on the routine of the new job

NEWLY APPOINTED JUDGES

and acquiring the basic techniques to manage it. Simple procedures, a matter of habit to experienced judges, will often be foreign to new appointees.

Two weeks of intensive instruction would appear necessary. Of course, the details of this proposal can be modified as various chief judges, new judges, and the judiciary put it throught the necessary period of preliminary "trial and error."

My proposal is based on several assumptions: (I) new judges' orientation needs are personal and unique; (2) new judges learn new practices quickly but, once established, have difficulty changing them; (3) new judges can best master the mechanics of their new office in a short and intensive learning session; and (4) experienced judges, as masters of various aspects of judicial proceedings, should be the teachers of those techniques.

The administrative burdens of designing a program for each judge are crushing and complex and will grow even more demanding with next year's anticipated influx of new judges. Only because we can turn to the Federal Judicial Center for the necessary coordination and logistical support, are we to consider seriously any proposal for augmented individualized instruction.

In short, although the Judicial Conference of the United States and the Conference of Metropolitan Chief Judges should sponsor and encourage the project, the Federal Judicial Center is the appropriate organization to work closely with the chief judges and new judges in helping them develop the program. It has ready access to information about all federal judges and manages other extant programs for the federal judiciary.

Particular Steps

An individualized program could proceed as follows:

Planning the program

1. The particular needs of the new judge and particular ways to meet them should be explored carefully with the new judge and his chief judge. The Center, through the Director and senior staff, in coordination with the respective chief judge, could explore with the new judge those areas in which he would be subjected at a particular time. Achieving the right combination is a delicate task that the Federal Judicial Center, with its overview of the entire system, is especially well-equipped to coordinate.

A diversity of judicial styles and procedural techniques must be represented in the group of instructor judges. No single mold can be appropriate for all. To expose new judges to only one judicial style could well limit their development in one direction and be unhealthy for the entire judicial system. Both extreme eccentricity and extreme orthodoxy in the courtroom manner of our federal judges are to be avoided in an orientation program. The instructor judges, from within and without the district, should complement each other. Diversity, in turn, will help the judge and enable him to extract the best elements from various styles and perhaps even bring back some constructive criticism to established practices in the home district or circuit.

Thus the "out-of-district" instructor judges should be selected from across the country, with each circuit and each of the larger districts represented. Obviously, the size and membership of this group can and will change as new needs are pinpointed and new perspectives developed.

2. **Two—week schedule of observation and instruction.**

Once the judge enters into duty, the first full week could be spent with the instructor judge within his own district. Establishing a sound relationship here is very important, since the in-district instructor judge can be a continuous source of assistance and support for the new judges for some time after they assume the bench. Numerous questions will come to the mind of a new judge once he starts processing cases, and he will benefit from having someone to whom to turn for assistance without embarrassment. Our experience in Chicago is that an in-district instructor judge can perform a valuable service in this regard.

For the first three days of the second week, new judges could be assigned to the instructor judge outside their district.

For the last two days of the second week, the new judges will return to their own district and their original instructor judge.

Conclusion

Finally, on the last day, new judges and their instructor judge would meet with the chief judge of their district for an introduction and briefing, as well as a welcome to the district to overcome some of the natural shyness that sometimes attends the initial relationship between chief judge and new judge.

The division of time into five, three and two-day sessions will allow exposure to numerous aspects of the new role. Appropriately, the first and longest session will expose new judges to a normal judicial week's proceedings. Spending the next

(See JUDGES, page 6)

(JUDGES, from page 5)
three days with another out-of-district instructor judge will provide a second point of view and a basis for comparison, as well as assistance on particular points of need. Exposure to the second judge's technique can be followed with discussion of differences and new ideas. New judges will then have a full day to again observe in-district courtroom procedure. Obviously, the details of the program are not set in concrete. This allocation does, however, appear a reasonable basis on which to begin the programs.

Orientation Subjects

The exchange between the new judges and the instructor judges should focus on the common procedures and practices of a federal district court judge, including court calendar, motion call, discovery procedures, preliminary hearings, pretrial conferences, voir dire examination, judgment and sentencing, probation and even how to get the jury into and out of the courtroom. New judges should sit on the bench with their instructor judges during at least one trial. Oral and written court forms, benchbooks and other "how to do it" materials should be explained to the new judges. The in-district instructor judge should also arrange for the new judge to visit the institutions in the new judge's district in which criminal defendants are housed before and during trial and to which they will likely be sentenced upon conviction.

This program can provide new federal judges with a personalized orientation to the federal judiciary. The visitation program offers clinical experience during an intensive time period, providing immediate benefit that the periodic group seminars cannot be expected to provide. The new judges will assume the bench with greater confidence in their own ability to perform their duties.

The Center might develop guidelines and a "new judges' checklist" for the orientation program, reflecting the views of chief judges and of other experienced judges concerning the topics to be discussed by the new judges and their instructor judge and the procedures that the new judge should follow in various court actions. The Center could also compile a library of materials and tapes of particular court proceedings, such as model suppression hearings, to be loaned out to newly appointed judges upon request.

Other Suggestions

The new judges' secretaries and such support staff as their minute clerks might spend two or three days with the new judges during their visits with the instructor judges, particularly if they are visiting judges situated near their new offices. The staff counterparts in the instructor judges' offices could demonstrate many routine tasks, such as record keeping, the filing of forms as well as other administrative duties. A trained staff is a tremendous help to a new judge.

Finally, perhaps within their first three months on the bench, the new judge should sit as an observer or panel member by designation on the respective court of appeals. This need be only for a few days but should include studying briefs, hearing oral argument and participating in conferences. This recommendation stems from my belief that federal district judges can better understand the appellate process by observing it firsthand. The understanding gleaned from appellate observation might soften the blow of the first reversal and even result in fewer reversals for new judges. In any event, visiting the court of appeals would be informative and provide a nice introduction between the new judges and the circuit court judges.

Within the first year, all federal district judges should attend the Center's one-wee seminar for newly appointe judges. The enthusiastic approval expressed by all who have had this course commands its continuance. However, it could be modified to reflect the new judges' individual orientation experiences. Moreover, the seminar may in some situations provide a special opportunity for the new judge to confront as his professor the judge whom he visited. This will produce a more beneficial exchange of ideas based upon the new judge's experiences on the bench after the visitation program and prior to the seminar. Indeed, the recording of these seminar sessions and study thereof by planning groups should result in continuing improvement of the seminars.

The foregoing is my proposal. I respectfully invite th comments, criticism and advic of the entire federal judiciary. Effective training of new judges is primarily and historically the obligation of the entire judiciary. The Judicial Center can succeed in its statutory duty of judicial training and continuing education only by and with the help of the judges. May we please have yours to the end that together we produce the highest quality of justice at the best possible speed with the lowest possible cost?

The Chief Justice

HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

Before us again is a Christmas Holiday Season, a time when contemplation is in order to remember how we are blessed even if many problems remain. As we conclude a year, we need also to ready ourselves for what lies ahead. All in all it is an excellent time to reflect upon the events of the year closing.

The Judiciary effectively fulfilled its mission, despite increasing burdens imposed by complex cases and constantly mounting caseloads. What we lacked in judgepower, its members and supporting staffs made up for through hard work, dedication and more new and better methods.

This year saw a new President assume office, and with him came the first Attorney General and Solicitor General in modern times who had long served as federal judges and thus have intimate knowledge of the needs of justice. This is bound to help in developing yet more ways to improve justice.

We can join with our judicial colleagues of the state courts that the dream of the National Center for State Courts will become, literally, a concrete reality as the major instrument for better and swifter justice in the states. The first quarter of the new year will see the dedication of its splendid national headquarters at Williamsburg, Virginia where the seed was planted only six short years ago. We wish them well on this significant milestone and pledge our support for their work.

Our country is at peace and the prospects for a continuation of this peace are good. Nations which have known war in the recent past, far more than Americans, are contemplating peace with a renewed seriousness. Particularly, we should give thanks to our own President's pursuit of peace and those farsighted statesmen of the Middle East who have shown courage, vision and concern to preserve peace in that area of the world so dear for all to whom the Christmas Season has very special meaning. The prayers of all must accompany those who are peacemakers.

Looking back, we see ample cause for satisfaction, and as we look ahead, we can do so with confidence as well as for continuing concern that prompt justice be within reach of all.

Mrs. Burger joins me in wishing you and yours a pleasant Holiday Season and the best during the coming year.

Warren E. Burger

SENTENCING STUDY CONCLUDED

The Federal Judicial Center has released an 83-page report entitled: "An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts," (F.J.C. R-77-3).

The report presents the findings of research undertaken by the Center's Research Division in cooperation with the Probation Division of the Administrative Office of the U.S. Courts.

The study was aimed at generating data on the probable impact of various proposals, introduced in the Ninety-fourth and Ninety-fifth Congresses, for imposing mandatory minimum sentences in the federal courts. Fiscal 1976 data on sentences imposed for selected offenses covered by six major bills were examined to determine the frequency with which federal judges imposed sentences that would have conflicted with the bills' provisions.

The report concludes that in most areas studied, the bills proposing minimum sentences would have had little or no effect on sentences imposed in federal courts, if the bills had been in effect in fiscal 1976. In some areas, however, such as transactions in opiates, bank robbery, and aggravated assaults, certain of the bills would have considerably narrowed the discretionary range actually utilized by sentencing judges in that year.

To assure the certainty of punishment sought by advocates of legislative reform of the sentencing process, the study concludes that parallel limitations on prosecutorial discretion should accompany limitations on judicial sentencing discretion.

FJC RELEASES REPORT ON VOIR DIRE

The Research Division of the Federal Judicial Center has completed a study which examines the practice of the various federal district courts relating to the examination of prospective jurors.

A 32-page report, "Conduct of the Voir Dire Examination: Practices and Opinions of Federal District Judges," (FJC-R-77-7), resulting from that study recommends that Rule 47(a) of the Federal Rules of Civil Procedure not be changed to permit oral participation by lawyers as a matter of right.

"The current form of the rule," the report points out, "is best adapted to meeting the diversity of opinions and practices in the ninety-four federal districts."

At present Rule 47(a) and the virtually identical Rule 24(a) of the Federal Rules of Criminal Procedure, afford the trial judge discretion to forbid or allow direct oral participation by lawyers in jury selection.

The issue of whether these rules should be amended came into sharp focus when the American Bar Association in 1976 recommended that attorneys be allowed, as a matter of right, to question jurors directly.

At the request of the Conference of Metropolitan Chief Judges, the Center conducted a thorough examination of current voir dire practices in federal courts and analyzed the issues involved in such a proposed rule change.

A survey of all district judges in January 1977 produced an 87 percent overall rate of return and pointed out that about three-fourths of the judges conduct voir dire without direct participation by counsel. It also showed that judges vary in their perception of the appropriate roles of the judge and counsel in the voir dire process. The judges generally agreed that their role is to insure selection of an impartial jury. Thirty percent saw the attorney's primary role as that of protector of the client's interest.

While recommending retention of the judicial discretion currently provided by Rule 47(a), the report adds that conducting the voir dire examination in a perfunctory fashion forfeits the opportunity now given by the rule to impanel an impartial jury.

STATE-FEDERAL

Kentucky. As a result of a disaster in Kentucky over 75 damage cases have been filed, 40 in the U.S. District Court and at least 35 in a state court. To avoid duplication of paper work and save the time of counsel and the courts U.S. District Judge Carl B Rubin (S.D. Ohio) and State Circuit Judge John A. Diskin jointly heard motions in these cases.

Since the question of whether the jurisdiction of the state judge could extend beyond the geographical boundaries of his circuit, Judge Rubin agreed to sit in Newport, Kentucky, which is in Judge Diskin's county.

At issue in the motions was the doctrine of sovereign immunity. Argument took approximately two hours.

Oregon. At a recent State-Federal Judicial Council meeting the council went on record as favoring elimination or reduction of diversity jurisdiction cases filed in federal courts. The Council has taken similar action on at least two previous occasions. Diversity cases now represent over nine percent of the federal court caseload in the state. Were these cases to be transferred to the state courts they would not make a significant impact on those courts, considering the large number of state judges who are available to try them. With rare exceptions these cases actually involve state law, rather than federal, and therefore are "fully within the competence of st judges."

New Jersey. The U.S. District Court in conjunction with the Association of the Federal Bar of the State of New Jersey, held their third conference last month. New Jersey is the only state which convenes such a conference, which is open to all members of the bar. Discussed were proposals for grand jury reform, recent developments in the Federal Rules of Evidence, and alternatives to mounting litigation. The highlight of the meeting was a luncheon program which featured Chief Judge Lawrence A. Whipple and Chief Justice Richard J. Hughes discussing the state of the federal and state judiciaries.

CLERKS ASSUME RESPONSIBILITY FOR DISBURSING FUNDS

Effective October 1, all clerks of federal courts assumed the responsibility for disbursing appropriated funds for the operation and maintenance of the courts. The U.S. Marshals had this responsibility in the past.

The Clerks Division of the Administrative Office took this anticipated new responsibility into account in preparing its forecast of personnel needed during fiscal 1978.

Regulations and procedures for the disbursing of funds were sent to all Clerks prior to the changeover which took place with the close of business on September 30. The A.O. Division of Financial Management prepared a chart of accounts for all the financi activities of the Clerks' Offic including registry funds, the deposit fund account, general and special fund receipts, and appropriated funds.

SENATE JUDICIARY COMMITTEE APPROVES NEW CRIMINAL CODE

On November 2, the Senate Judiciary Committee approved S. 1437, the long-awaited and much-debated new Federal Criminal Code. A companion measure is awaiting action in the House Judiciary Committee.

Among the most significant provisions of the bill are the sections creating a federal sentencing commission which would consist of seven members, a majority of whom, including the chairman, would be appointed by the President with confirmation by the Senate, and a minority of whom would be appointed by the Judicial Conference.

The Commission would be composed of both full-time judicial and non-judicial members, the latter being paid at the salary rate of circuit judges. Members who would serve six-year terms could be removed by the appointing or designating authority only for malfeasance in office. The Commission would issue sentencing guidelines and "general policy statements" relating to sentencing, for the sentencing judge to follow in prescribing the sentence and for the Parole Commission to follow with respect to early release and parole. Promulgation of such guidelines are made subject to Administrative Procedure Act rulemaking requirements of 5 U.S.C. §553. The Commission must report its guidelines to Congress and they take effect 180 days after the Commission reports them.

The defendant may file a notice of appeal for review of a final sentence if it includes a greater sentence than provided the guidelines or has a more severe provision for early release than is provided in the guidelines. Conversely, the government may appeal if the sentence is less, or the early release provision too lenient (early release eligibility will, under this bill, be specified in the felony sentence; "parole" as redefined will be a period of supervision in addition to the sentence). Sentences reached through plea bargaining are excepted from review.

Where the Parole Commission denies early release for which the prisoner was otherwise eligible in accordance with the sentence, the prisoner may appeal in writing to a National Appeals Board; if early release is granted inconsistent with the guidelines, the Attorney General may appeal.

Parole may be granted whether or not a prisoner has been released early or has served his full term. Both the prisoner and the Attorney General may take a written appeal to the National Appeals Board if the terms or conditions of parole are inconsistent with the Sentencing Commission's guidelines.

Another change would be to allow either a defendant or the government to petition for leave to appeal an order of a district court granting or denying a motion to correct a sentence pursuant to Rule 35(b)(2). Rule 35(b)(2), as amended by the Code, would allow a judge to correct a sentence imposed as a result of an incorrect application of the Sentencing Commission's "sentencing guidelines or policy statements" within 120 days after the sentence is imposed.

Rule 35 is also amended to allow a judge to correct a sentence imposed in an illegal manner within 120 days after sentence is imposed or to correct a sentence on remand when it is determined on appeal that the sentence is "clearly unreasonable" with regard to the Commission's guidelines. However, the present power merely to "reduce" a sentence is deleted.

In reviewing sentences the court of appeals will consider the record, as it is designated, the presentence report and the information submitted during the sentencing proceeding. In reviewing the record the court shall determine whether the sentence is "clearly unreasonable," having regard for various factors set forth in Part III of the Code and for the reasons set forth in §2003(b) for the particular sentence. If the court determines that the sentence is "clearly unreasonable," it shall state specific reasons for its conclusions, and remand for a lesser sentence (on defendant's appeal) or a greater (on the Government's appeal), for further sentencing proceedings, or impose a different sentence. If it determines that the sentence is not unreasonable, it shall affirm.

The bill would allow parole only in exceptional circumstances and, as a result, the present parole system would be significantly changed.

The 400-page bill has been the product of dispute between liberals and conservatives in the Congress for over 11 years but this year a liberal-conservative coalition formed by Senators Edward Kennedy and John McClellan reduced friction. Floor action is expected early in the next Session of the Congress.

The bill is seeking to rationalize more than 3,000 federal laws. Representative James R. Mann, Chairman of the House Judiciary Subcommittee on Criminal Justice, said he was "optimistic in the belief that the recodification of the Federal Criminal Laws could be enacted next year." His Subcommittee will meet before the next Session to study the bill in order to be ready to hold hearings when the Session opens.

AO FJC calendar

Jan. 5-6 Judicial Conference Subcommittee on Federal Jurisdiction, Savannah, Ga.

Jan. 11-13 Judicial Conference Subcommittee on Judicial Improvements, New York City.

Jan. 16 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, D.C.

Jan. 19-20 Judicial Conference Criminal Justice Act Committee, San Francisco, Calif.

Jan. 23 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

Jan 23-24 Judicial Conference Probation Committee, Carmel, Calif.

Jan. 23-24 Judicial Conference Jury Committee, Coronado, Calif.

Jan. 26-28 Judicial Conference Review Committee, Key Biscayne, Fla.

Jan. 30 Judicial Conference Magistrates Committee, Key West, Fla.

Jan. 30-31 Judicial Conference Advisory Committee on Judicial Conduct, Key Biscayne, Fla.

Feb. 1 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, Fla.

PERSONNEL

APPOINTMENTS

Thomas A. Ballantine, Jr., U.S. District Judge, W.D.Ky., Nov. 7

Nicholas J. Bua, U.S. District Judge, N.D. Ill., Nov. 4

Eugene H. Nickerson, U.S. District Judge, E.D. N.Y., Oct. 26

Charles P. Sifton, U.S. District Judge, E.D.N.Y., Oct. 26

NOMINATIONS

George C. Carr, U.S. District Judge, M.D.Fla., Nov. 21

A. David Mazzone, U.S. District Judge, D.Mass., Nov. 21

Paul A. Simmons, U.S. District Judge, W.D.Pa., Nov. 22

CONFIRMATION

Monroe G. McKay, U.S. Circuit Judge, 10th Cir., Nov. 29

DEATHS

James R. Durfee, Senior Judge, U.S. Court of Claims, Oct. 29

Gerald McLaughlin, U.S. Senior Judge, CA-3, Dec. 6,

ELEVATIONS

Damon J. Keith, Chief Judge, U.S. District Court, E.D. Mich. to U.S. Circuit Judge, 6th Cir., Nov. 22

Cornelia G. Kennedy, Chief Judge, E.D. Mich., Nov. 22

THE THIRD BRANCH

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