The Third Branch

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Bulletin of the Federal Courts

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LIBRARIANS SEMINAR SCHEDULED FOR MARCH

Librarians from federal courts across the nation will convene in Washington, D. C., March 19-21, 1979, for the second Center-sponsored seminar for federal court librarians. The last seminar was held in 1973.

About 40 participants, librarians who perform full-time professional services and who are nominated by the chief judges of the circuit and district courts are expected to attend. The program is being planned by Center staff in the Education and Training and Inter-Judicial Affairs and Information Services Divisions in cooperation with the Library Services Branch at the Administrative Office.

Technological advances of interest to court librarians will

See LIBRARIANS p. 5

COURT MANAGEMENT STATISTICS RELEASED BY ADMINISTRATIVE OFFICE

The Administrative Office of the United States Courts has released the 1978 edition of *Management Statistics for United States Courts.* The report presents key workload and performance statistics for each court of appeals and each district court for the statistical years ending June 30, 1973 through 1978.

Statistical profiles for the United States courts of appeals show overall workload statistics in terms of appeals filed, terminated and pending. Figures are also shown in per panel terms, obtained by dividing the total caseload figures by the number of authorized three-judge panels.

In addition, opinions per

See STATISTICS p. 4

IMPLEMENTATION OF REVISED BANKRUPTCY ACT COMMENCED

When the revised Bankruptcy Act became law last November The Chief Justice, the Director of the Administrative Office and the Director of the Federal Judicial Center started work on their involvement in the implementation process. Some major announcements in connection with these implementation plans have now been made.

Provisions of the Act call for The Chief Justice to appoint an Advisory Committee on Bankruptcy Rules. These appointments have been made and the members are:

Ruggero J. Aldisert, Chairman
U.S. Circuit Judge
United States Court of Appeals
Pittsburgh, Pennsylvania

See BANKRUPTCY p. 4

WARREN OLNEY, III

WARREN OLNEY, III, SECOND DIRECTOR ADMINISTRATIVE OFFICE, EULOGIZED

Warren Olney, III, Director of the Administrative Office from January 1958 to October 1967, died in Berkeley, California, on December 20 after a long illness.

Mr. Olney's death marked the end of a long and illustrious career which included a number of high positions in both public service and private practice.

Mr. Olney, a native Californian, was the son of Associate Justice Warren Olney, Jr., who served on the Supreme Court of California; his mother, the former Mary McLean, was Dean of Women at both Pomona College and Stanford University.

After attending public schools in California, Warren Olney went on to earn his A.B. and J.D. degrees at the University of California and was admitted to the California Bar in 1927. Immediately following this he served for two years as Deputy District Attorney of Contra Costa County in California, beginning a career of public service which

SEE OLNEY p. 2

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occupied most of the following four decades. Three years of private practice from 1932 to 1935 were interrupted for service as Deputy District Attorney of Alameda County. And though he went back to private practice in San Francisco from 1936 to 1939, he was again drafted to public service, by then Attorney General of California Earl Warren, to be Assistant Attorney General of California in charge of the Criminal Division. From 1942 to 1945 he served in the Fourth Marine Air Wing, with most of his service being in the Pacific Theater. He served until 1945, rising later to the rank of Lieutenant Colonel in the United States Marine Reserves.

In 1945 Mr. Olney returned to private practice but again his reputation for excellence in performance brought him to more public service; from 1945 to 1951 he contemporaneously served as Chief Counsel to the Special Crime Study Commission on Organized Crime in the State of California.

Herbert Brownell, Attorney General in the Eisenhower Administration, enlisted as his assistants men who were to later become nationally known—Warren Olney became head of the Criminal Division; Warren Burger (now The Chief Justice); William P. Rogers (Attorney General and later Secretary of State); and J. Lee Rankin, who subsequently became Solicitor General.

The California Warren Olney loved always had a magnetic attraction for him but Earl Warren prevailed on him to return to Washington to succeed Henry Chandler, the first Director of the Administrative Office of the United States Courts. In announcing the appointment, Chief Justice Warren said, "I know Mr. Olney to be peculiarly fitted for the important office, both by virtue of his character and experience. He has a zeal for improving the administration of justice, and comes to the position with a background of meritorious service in this field. I am confident that he will make a real contribution to the federal court system."

Chief Justice Burger had high praise for Mr. Olney upon learning of the death of his former colleague. He said:

"Drawing on his broad experience in the law, Warren Olney served as Director of the Administrative Office of the United States Courts in its modern period of expansion and was responsible for new concepts in judicial administration. As much as any single individual, he was responsible for the creation of the Federal Judicial Center, working closely with Chief Justice Warren and Justice Tom Clark. He helped develop the legislation which ultimately emerged from Congress to authorize a research, development, and continuing education organization for the courts. His life was a career dedicated to public service of the highest order. Integrity and excellence are two words that sum up his life."

Herbert Brownell had the following comments to make about his former associate:

"Warren Olney had a most distinguished career as a lawyer, as a public official in the federal and California governments, as a law teacher as administrator of the federal court system and in important civic endeavors. Throughout, he symbolized the highest standard of professional integrity and competence and gained the admiration and respect of a host of friends and associates over the years of his very fruitful life."

When William P. Rogers, former Attorney General and Secretary of State, learned of Mr. Olney's death, he said: "No word more accurately describes Warren Olney, III and his life than the word 'integrity.'

"His personal life, his legal career and his outstanding public career are all built on a bedrock of trustworthiness and unswerving dedication to honesty and decency.

"In the United States Department of Justice [where we served together] Warren Olney was universally recognized as an inspiring leader of great legal ability and inexhaustible energy in the fight against organized crime and in the quest for honest government. On several occasions I was present when President Eisenhower expressed great pride in Warren Olney's outstanding achievements as a member of his Administration.

"I will always remember Warren with great pride and affection, as a good friend and companion, and one of the most honorable men I have ever known."

See OLNEY p. 6

CIRCUIT JUDICIAL CONFERENCES FOR 1979

First	**May 23-25**	**Nantucket, MA**
Second	**May 26-29**	**Buck Hill Falls, PA**
Third	**Sept. 10-12**	**Hershey, PA**
Fourth	**June 28-30**	**Hot Springs, VA**
Fifth	**May 6-9**	**Atlanta, GA**
Sixth	**May 9-12**	**Detroit, MI**
Seventh	**May 7-9**	**Chicago, IL**
Eighth	**Aug. 22-25**	**Rapid City, SD**
Ninth	**July 26-27**	**Sun Valley, ID**
Tenth	**July 27-30**	**Jackson Hole, WY**
District of Columbia	**May 20-22**	**Williamsburg, VA**

Administrative Conference of U.S.

PROPOSAL TO REVIEW VETERANS BENEFITS TABLED

At its eighteenth plenary session December 15, 1978, the Administrative Conference of the United States voted to table a recommendation on judicial review of benefits decisions by the Veterans Administration. It was the only major issue before the Conference which directly related to the work of the federal courts.

The matter before the Conference recommended legislation which would:

- Amend Section 2II (a) of Title 38 of the United States Code to allow for judicial review.
- Allow those seeking judicial review to do so by beginning a civil action in the United States District Court in which they reside, or in the District Court for the District of Columbia, within 120 days after notice of the Veterans Administration benefits decision.
- Provide that the administrative record subject to review would be made up of any finding of fact and conclusions of law on which the decision was based and an index of all materials the Veterans Administration considered in making its decision, or otherwise contained in the files on the veteran whose service gave rise to the claim.

The plaintiff would be allowed to make reasonable requests for production of indexed items relevant to the prosecution of his or her case.

At its March 9-10, 1978 meeting the Judicial Conference of the United States noted that the Board of Veterans Appeals annually processes 32,000 separate cases and that the Department of Justice estimates that allowing review of veterans benefits decisions would result in approximately

See VETERANS p.5

(Above) Judicial Fellows finalists met at the Federal Judicial Center on January 4 with FJC Director A. Leo Levin and senior staff for a briefing on the operation of the Center.

A reception in honor of past and present Judicial Fellows and the 1979 finalists was held at the U.S. Supreme Court January 4. (Left) Photographed with The Chief Justice and his Administrative Assistant, Mark W. Cannon, at the reception were William J. Daniels (far left) and James A. Robbins (far right), incumbent Judicial Fellows. Mr. Daniels was named this year's Tom C. Clark Judicial Fellow, a designation made possible by a program established by former law clerks to Mr. Justice Clark.

EDWIN L. COVEY DIES AT 83

Edwin L. Covey, the first Chief of the Bankruptcy Division of the Administrative Office of the United States Courts died on December 1, 1978 in Silver Spring, Maryland.

Mr. Covey served as a Referee in Bankruptcy in Peoria, Illinois until his appointment in March, 1942 as the head of the new Bankruptcy Division of the Administrative Office, which was established by Resolution of the Judicial Conference in January 1941.

Mr. Covey was largely responsible for the successful installation of the Referees' Salary System in 1947 and will be remembered for his educational programs on the use of Chapter XIII of the Bankruptcy Act as an alternative to straight bankruptcy by wage earners. Mr. Covey retired from the Administrative Office on December 31, 1962.

TRANSCRIPT ON FEDERAL RULES AND RULEMAKING AVAILABLE

The Conference of Metropolitan District Chief Judges which meets twice a year under the sponsorship of the Federal Judicial Center, asked that its April 1978 program include a focused discussion of the processes by which courts make procedural rules. The subject has received considerable attention recently and a significant amount of literature has been written; also, proposals for changes have been made, both for federal and state rulemaking procedures.

At the request of the Conference and the Center, Judge Charles Joiner (E.D. Mich.) designed a program on federal rules and rulemaking. A transcript including comments and discussion by members of the Conference, has been published in 79 Federal Rules Decisions 471. Reprints are available through the Center's Information Services Office.

BANKRUPTCY from p. 1

Clive W. Bare
Bankruptcy Judge
Knoxville, Tennessee

John T. Copenhaver, Jr.
U.S. District Judge
Charleston, West Virginia

Robert Watson Foster
Dean, University of South Carolina
School of Law
Columbia, South Carolina

Asa S. Herzog
Bankruptcy Judge (retired)
Fort Lauderdale, Florida

Charles A. Horsky
Covington & Burling
Washington, D.C.

Beryl E. McGuire
Bankruptcy Judge (retired)
Buffalo, New York

Norman H. Nachman
Nachman, Munitz & Sweig
Chicago, Illinois

Alexander L. Paskay
Bankruptcy Judge
Tampa, Florida

Joseph Patchan
Baker, Hostetler & Patterson
Cleveland, Ohio

Morey L. Sear
U.S. District Judge
New Orleans, Louisiana

Morell E. Sharp
U.S. District Judge
Seattle, Washington

Section 407(a) of the Act requires the Director of the Administrative Office to appoint a committee of not fewer than seven bankruptcy judges who are to "advise the Director with respect to matters that arise during the transition period or that are relevant to the purposes of the transition period."

William E. Foley, Director of the Administrative Office, has announced that his appointments are:

Bankruptcy Judge John R. Blinn
Houston, Texas

Bankruptcy Judge Gene E. Brooks
Evansville, Indiana

Bankruptcy Judge Patricia A. Clark
Denver, Colorado

Bankruptcy Judge Richard W. Hill
Trenton, New Jersey

Bankruptcy Judge Robert L. Hughes
Oakland, California

Bankruptcy Judge Herbert Katz
San Diego, California

Bankruptcy Judge C. Albert Parente
Westbury, Long Island, New York

At the Federal Judicial Center, prior to passage of the Act, contingency plans were developed to facilitate compliance at the appropriate time, especially training programs that would be needed for bankruptcy personnel during and after the transition period. These plans now call for two three-day seminars, each for half of the bankruptcy judges in the system. The first will be held in Atlanta, March 7-9, 1979; and the second will be held in Salt Lake City, April 4-6, 1979.

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judgeship, percentage of appeals reversed or denied, median time from filing of complete record to disposition and case participation by active, senior and visiting judges appear in the profile of each circuit. The percentage of change in total filings for the current year over the last year and earlier years is also included.

Profiles of the district courts set forth overall workload statistics for the total number of cases which were filed, terminated or pending exclusive of minor and petty offense criminal cases. Actions per judgeship are shown and were obtained by dividing the total statistics for the court by the number of authorized judgeships. Additional information such as median time from filing to disposition in criminal and civil trials is included in each profile. Civil and criminal filings for 1978 by nature of case and offense appear for each district court.

The report was prepared by the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts.

BOARD OF EDITORS FOR COMPLEX LITIGATION MANUAL ANNOUNCE PLANS FOR NEW EDITION

The Board of Editors of the Manual for Complex Litigation has announced plans to revise the Manual, and criticism and suggestions from members of the bench and bar are invited. The current edition includes amendments and additions to the Manual to June 3, 1977, with a Cumulative Supplement to August 21, 1978.

To assure timely consideration, all responses to this invitation should be received in writing no later than March 1, 1979, and should be in duplicates of thirteen. They should be directed to Robert A. Cahn whose address is listed below.

The plan of the editors at this time is to publish a tentative draft after all comments have been received and considered, following which national hearings would be held. Therefore, anyone interested in receiving a copy of the tentative draft of the proposed revision, and an opportunity to comment thereon, should direct communications to this effect to: Robert A. Cahn, Executive Editor, Manual for Complex Litigation; 1030 15th Street, N.W.; 320 Executive Building; Washington, D.C. 20005.

NEW CENTER STAFF ANNOUNCED

WYATT

THURMOND

COUDON

ZIMMER

The appointment of Mary Bunting Wyatt January 2 as Chief, Bankruptcy, Magistrate, and Federal Public Defenders Training Branch is the latest of four professional positions recently filled at the Federal Judicial Center.

Mrs. Wyatt received a degree of Juris Doctor from Howard University School of Law, Washington, D.C., where she taught for seven years. She also earned a Master of Laws from New York University Law School. In addition, she has served in numerous educational and governmental positions, including that of staff counsel for the Committee on the District of Columbia, U.S. House of Representatives; hearing examiner for the District of Columbia Public School System; and research psychologist for the United States Public Health Service.

Jeffery C. Thurmond has been named Assistant to the Deputy Director. Mr. Thurmond has completed work for a Masters Degree in Business Administration and Journalism at the University of Utah. He came to the Center from the American Bar Association where he was Assistant Director of Legal Services. In addition, he has worked for the Law Enforcement Assistance Administration, National District Attorneys Association and The National Center for Prosecution Management.

Joseph Coudon is the new Assistant to the Director, Division of Inter-Judicial Affairs and Information Services. Mr. Coudon is a graduate of the University of Florida School of Law. He served for four years as a Legal Officer and Public Affairs Officer in the United States Navy. Immediately prior to joining the Center staff he was Assistant to the Dean at Catholic University School of Law.

Markus B. Zimmer has joined the staff of the Continuing Education and Training Division as Assistant to the Chief, Curriculum Development and Evaluation. Mr. Zimmer, who has an extensive background in philosophy, received his Masters of Education from Harvard, where he is a doctoral candidate concentrating in law and education, philosophy of education, and program evaluation.

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be highlighted, with presentations on word processors, memory typewriters, minicomputers and micrographic hardware. In addition, current developments in various computerized systems and data bases, both legal and non-legal, will be presented. Speakers from the Personnel Division at the Administrative Office will discuss procedures, practices and policies affecting salaries, recruitment, retirement and health benefits. The establishment of the new Library Services Branch and its current and projected activities for services to court libraries, as well as procedures for procurement of library materials and supplies, will also be discussed.

A panel discussion about Washington, D. C. as a center for legal materials will include speakers from the Federal Register, Government Printing Office, and the National Criminal Justice Reference Service. Panelists will present techniques for compiling legislative histories and will discuss new reference materials of interest to court librarians.

Circuit court librarians will report on the operation of libraries which serve varying types and sizes of courts, including the Third Circuit satellite libraries, chambers libraries, and central libraries. There will also be an exchange about experiences with the kinds of services they provide to court personnel and other users. All participants will have an opportunity to share suggestions for the cooperation and coordination of federal court libraries.

VETERANS from p. 3

4,600 more appeals to the district courts each year.

Reaffirming a resolution adopted in 1963, the Conference took the position, "that the question whether judicial review of the denial of veterans' claims should be accorded is a matter of public policy which is solely within the province of Congress to decide and that the judiciary should take no position thereon. If Congress should decide to grant such review, the Conference believed that review by a Court of Veterans Appeals, with local hearings by commissioners of the court, would provide a more suitable form of review than by the district courts, the courts of appeals or the Court of Claims."

AO and FJC Calendar

Jan. 22-23 Procurement Seminar for Ninth Circuit Clerks, U.S. Courthouse; Los Angeles, CA

Jan. 23-26 Effective Productivity for Court Personnel; Albuquerque, NM

Jan 25-26 Judicial Conference Committee on Implementation of the Criminal Justice Act; New Orleans, LA

Jan. 29-30 Judicial Conference Committee on Court Administration, Singer Island, FL

Feb. 1-2 Judicial Conference Committee on the Administration of the Criminal Law; San Juan, PR

Feb. 2 Judicial Conference Committee on the Budget; Ft. Worth, TX

Feb. 9 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC

Feb. 12-16 Advanced Seminar for U.S. Probation Officers; Reno, NV

Feb. 20-23 Effective Productivity for Court Personnel; Sacramento, CA

Mar. 2-3 Workshop for District Judges (Second Circuit); Liberty, NY

Mar. 7-8 Judicial Conference of the United States; Washington, DC

Mar. 7-9 Seminar for Bankruptcy Judges; Atlanta, GA

Mar. 12-16 Orientation Seminar for Newly Appointed U.S. Probation Officers; Washington, DC

Mar. 19-21 Seminar for Federal Court Librarians; Washington, DC

Mar. 19-23 Advanced Seminar for U.S. Probation Officers; Tulsa/Dallas (location tentative)

Mar. 27-30 Effective Productivity for Court Personnel; Miami, FL

Mar. 28-30 Conference for Federal Appellate Judges; Atlanta, GA

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Professor A. Leo Levin, FJC Director, in advising his staff of Mr. Olney's death said that "Warren Olney had a broad view of the potential inherent in a Federal Judicial Center and of the principles vital to its success."

In an interview with Russell Wheeler of the FJC last year about the creation of the Center, Mr. Olney recalled that he was motivated by the conviction that it is almost impossible "to have research and development function effectively if it is either under or a part of the regular ongoing, day-to-day operations.... When that happens, the research and development is always absorbed...."

After retiring as Director of the Administrative Office, he maintained close contacts with Chief Justice Warren and his former colleagues Herbert Brownell, Chief Justice Burger and William P. Rogers.

The Administrative Office, the Federal Judicial Center and the entire federal court system will always bear the stamp of Warren Olney's contributions and leadership. He was indeed their mentor.

PERSONNEL

APPOINTMENTS

Mariana R. Pfaelzer, U.S. District Judge, C.D. CA, Nov 7

B. Avant Edenfield, U.S. District Judge, S.D. GA, Nov. 9

DEATH

Leo F. Rayfiel, U.S. Senior District Judge, E.D. NY, Nov. 18

PAPER ON SENTENCING AVAILABLE

Policies of the Parole Commission and the Bureau of Prisons as They Affect the Judge's Sentencing Options is now available from the Center's Information Services Office.

This paper was prepared by Research Division staff to introduce newly appointed judges to the relationship between a judge's sentence of imprisonment and the actions of those agencies that have responsibility for an offender after sentencing. It may have value for experienced judges as a vehicle for bringing them up to date. It deals principally with policies affecting the duration of an offender's incarceration, but it also includes some discussion of policies affecting the offender's experience while incarcerated as well as material on the use of observation and study procedures.

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NEW PANEL WILL NAME SPECIAL PROSECUTORS

Chief Justice Burger has appointed three circuit court judges as a special Division of the United States Court of Appeals for the District of Columbia Circuit pursuant to the Ethics in Government Act of 1978, P.L. 95-521. The new Division will designate special prosecutors called for under the Act in any case involving the President, Vice President or other high government official.

The three are: Roger Robb, United States Circuit Judge, District of Columbia Circuit; J. Edward Lumbard, Senior Judge, Second Circuit; Lewis Render Morgan, Senior Judge, Fifth Circuit. Judge Robb was designated Presiding Judge.

The Ethics in Government Act of 1978 specified that The Chief Justice should appoint three circuit judges or Supreme Court justice to a new Division of the Court, one of whom must be a judge of the District of Columbia Circuit. The Act specifies that in making the appointments priority is to be given to senior circuit judges and retired justices. Not more than one judge or justice or senior or retired judge or justice may be named to the Division from a particular court. Appointment is for a period of two years.

Application for appointment of a special prosecutor is made by the Attorney General to the special Division of the Court of

See PANEL P. 7

COURTRAN II TESTED IN LOS ANGELES

A test was recently conducted in Los Angeles to determine the capability of the Courtran II Criminal Caseflow Management system to function as the primary source of criminal case information for the court. Edward M. Kritzman, Clerk for the Central District of California, authorized a ninety-day live test of the Courtran II system in the day-to-day operations of the clerk's office.

This pilot program was commenced on October 1, 1978, and continued through December 31, 1978. Under the direction of Mike Kennedy, the Court's Courtran Coordinator, all requests from the public for criminal case information which were received by mail, telephone or in person were processed by court personnel using the Courtran II system. The test was conducted to determine Courtran II's ability to provide fast, accurate and current information concerning the status of pending cases or individual defendants.

During the test the average time required to process a request for case information using the Courtran II system was sixteen seconds.

The reliability of the Courtran II system improved during each month of the test. During October, 1978, ninety-one percent of all requests for criminal case information were successfully processed using the Courtran II system. In November, this figure increased to ninety-nine and six tenths percent and in December, 1978, one hundred percent of the requests for information were successfully and rapidly processed using the Courtran II system.

The overall results of this test

See COURTRAN p. 3

U.S. Magistrate Kent Sinclair, Jr. (S.D. N.Y.) photographed addressing an orientation seminar for newly appointed United States Magistrates last month. (See story p. 3.)

UPDATE ON JUDICIAL SELECTIONS

On January 15 the members of the U. S. Senate and the U. S. House of Representatives met for the opening session of the 96th Congress.

Ten days later names were submitted to the Senate as the first nominees to fill four of the 152 new judgeships created by the 1978 Omnibus Judgeship Act. All were for the U. S. District Court for the District of Massachusetts.

See UPDATE p. 2

UPDATE from p. 1

The judicial selection machinery was set in motion even before Congress met last month and it appears all those involved in the process will move with "all deliberate speed."

Attorney General Bell has on more than one occasion said he and the President are prepared to carry out their tasks as quickly as possible. Indeed, the Attorney General, on January 19, speaking before the Utah State Bar, said: "I am publicly committed to trying to have 80 percent of the [152] new judges confirmed by April 1."

The work of the Circuit Commissions is going forward with hearings already held or scheduled to be held in February and March.

The American Bar Association continues to evaluate the candidates through its Standing Committee on the Federal Judiciary, presently chaired by Robert D. Raven of San Francisco. The Committee is composed of 14 members, one from each of the 11 judicial circuits except that there are two members from the Fifth and Ninth Circuits, plus one member at large. They play no part in the selection process and only investigate and evaluate those names received from the Attorney General. A lengthy questionnaire, designed by the Committee, is sent to the prospective nominee by the Department of Justice and returns are made to the Attorney General, the Commitee Chairman and the Committee member in the circuit where the vacancy exists.

At the conclusion of the Committee's work on a given individual a rating is submitted to the Attorney General, coming from one of the five categories: "Exceptionally Well Qualified," "Well Qualified," "Qualified," "Not Qualified," or "Not Qualified by Reason of Age."

Attorney General Bell has added an additional phase to the ABA's procedure when the Committee has concluded that the candidate is not qualified. This calls for a meeting with the Attorney General, the Associate Attorney General, the circuit member of the Committee responsible for the investigation, and the Chairman of the Committee. The meeting is to explain why the Committee has come to its conclusion, and to explain in as much detail as possible the reasons, while at the same time protecting the confidentiality of the interviewees.

While many factors enter into the Committee's work, they generally limit their investigation and evaluation to professional qualifications — competence, temperament and integrity. The rating of "Not Qualified by Reason of Age," is based on an arbitrary age of 60 or older, unless there are reasons to come to another conclusion, mainly excellent health and a rating which would otherwise be classified as "Well Qualified" or "Exceptionally Well Qualified." Their reasoning is that statistics show that any individual 60 years of age or over taking an initial lifetime appointment to the federal bench does not have the prospects for the tenure on the bench a younger one would; and, that the position and the investment which comes with the appointment requires that it go to a younger individual. In no instances are persons over 64 recommended for an initial appointment.

As for the "advice and consent" of the Senate, activity is very evident in the Legislative Branch. Senator Edward M. Kennedy (D. Mass.), the new Chairman of the Judiciary Committee, made a statement to the committee members when they met January 25th. Much in the statement may be considered announcements.

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NOTEWORTHY

CA-9. The Ninth U.S. Court of Appeals now holds sessions in Pasadena, California once a month. Until they acquire their own facilities they are using a state courthouse.

N.D. Illinois. Following a tradition established some time ago the Federal Bar Association's Chicago Chapter recently hosted the federal judges who sit in the U. S. District Court for the Northern District of Illinois. Chief Judge James B. Parsons delivered what has for the last three years been titled "The State of the Court" address.

The Judge asked the patience of the bar while the district struggles with heavy caseloads. Added to the caseload problem is the space and facilities problem this district faces; "facility development [is] wound down to an almost complete standstill," the Judge said.

Judge Parsons became Chief Judge for the Northern District of Illinois April 16, 1975.

Antitrust. The National Commission For The Review of Antitrust Laws And Procedures printed their final report January 22, 1979. Copies are expected to be available at the Government Printing Office the last week in February. Stock number to request the report is: 040-000-00401-7.

Advocacy. The District of Columbia Bar, at its midyear meeting last month, had a panel discussion on "Courts, Lawyers and Administration of Justice."

See NOTEWORTHY p. 7

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Co-editors:

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

A group of Magistrates photographed at the Dolley Madison House as they heard a presentation by Judge Morey L. Sear (E.D. La.) on "Settlement of Civil Cases."

NEWLY APPOINTED MAGISTRATES MEET AT FJC

Twenty-three newly appointed full and part-time United States Magistrates met at the Federal Judicial Center for an orientation seminar January 15-19. The annual program was chaired this year by Chief Judge Otto R. Skopil, Jr. (D. Ore).

The objectives of the seminar were to increase the participants' operational knowledge of pretrial procedures and managerial effectiveness and to supplement their legal and judicial expertise in handling procedural duties. Subjects covered included:

- Arrest and search warrants
- Initial appearance and pretrial release
- Removal hearings and preliminary examination
- Criminal pretrial and discovery
- Civil pretrial conference and discovery
- Control and disposition of civil cases
- Relations with and use of support services personnel
- Documents and personnel administration
- Professional conduct and problems in conflict of interest
- Techniques and issues for equitable sentencing
- Dispositive motions and opinion writing
- Rules and issues in evidence
- Prisoner litigation: Habeas Corpus and Section 2255 cases

See MAGISTRATES P. 5

Chief Judge Otto R. Skopil, Jr. addressing the Magistrates on the subject of "Special Master Reference."

COURTRAN from p. 1

have convinced the Central District of California that the use of the Courtran II system as the primary criminal case information system should be continued indefinitely. The system not only demonstrated its capability to function in the day-to-day operations of the clerk's office, but has increased the ability of the clerk's office to meet the information needs of the public and other related agencies.

With the final phase of the implementation of the Speedy Trial Act scheduled for this summer, California Central feels confident that Courtran II will provide the answers and information they need to monitor their compliance with the Act.

Special to New Federal Judges

LIBRARY OF CONGRESS CONTINUES ASSISTANCE TO FEDERAL JUDGES

In the summer of 1977 the Federal Judicial Center, after consulting with staff at the Library of Congress, notified a group of federal judges that, as an experimental project, special services at the Library would be made available to them to determine the feasibility of expanding the research and reference services of the Law Library.

After a few months it became apparent that most judges were interested and found these services helpful. The project was then offered to all federal judges.

Through the cooperation of the personnel at the Library of Congress the Center monitored and evaluated the program as a part of its overall study of the federal court libraries. The results showed that many of the judges made good use of the Library's services, and a review of the requests revealed not only the needs of the judiciary but how long it took to get a response. For example, the greatest number of requests were for legislative histories, and the average amount of time to send out a response was 12 days. In many instances, however, where the requesting judge indicated an immediate need the time was cut down considerably.

A side benefit has been that the type of requests and the jurisdictions from which they emanate, has afforded the new Chief of the Library Services Branch at the A.O., Ms. Pat Thomas, an opportunity to pinpoint what and where the problems are.

The judges who have already availed themselves of this service are reminded, and the new judges are advised that:

- The Law Library of the

See LIBRARY p. 5

OBSERVATION AND STUDY GUIDELINES ISSUED

Working with the Federal Bureau of Prisons and the United States Parole Commission, the Probation Division of the Administrative Office has developed recommended guidelines to improve the quality of observation and study reports provided to courts on convicted defendants. The guidelines implement recommendations made in the Federal Judicial Center research report, *Observation and Study: Critique and Recommendations on Federal Procedures.*

The report is a comprehensive review of current practices for court ordered local studies and observation and study commitments made under 18 USC 4205 (c) and 5010 (e). Section 4205 (c) provides that federal judges who want more information on adult offenders before passing sentence can commit them to the custody of the Attorney General for ninety days of observation and study. Section 5010 (e) is a similar provision allowing sixty days of observation and study when judges want to know whether youth offenders will benefit from the Youth Corrections Act.

Observation and study procedures were established with the hope they would prove to be an effective method of obtaining professional evaluation to support sentencing decisions. The Center's report, however, showed that observation and study is a cumbersome and periodically misused procedure. In response to these findings, the report proposed a new model for these studies.

Recommendations included in the guidelines:

- Expand the probation officer's role to include preparation of a study referral letter including a statement of the court's purpose in ordering a study, a brief statement of relevant background information and a list of specific questions for the study examiners.
- Encourage studies to be conducted using local resources arranged for by the Probation Office. The local evaluator is to be provided with the objectives and questions as well as the presentence investigation report.
- Provide that the Bureau of Prisons determine which study reports can be conducted at community treatment centers, metropolitan correctional centers or contract half-way house facilities when a local study is not feasible.
- Require that the Bureau of Prisons insure that referral questions are solicited in each case when not included in the information provided by the U.S. probation officer.
- Allow the Bureau of Prisons only the time necessary to complete the requested reports, unless the full period of 60 days for 5010 (e) or 90 days for 4205 (c) studies is requested by the court.
- Provide for review of the study report by the regional U.S. Parole Commissioner in studies prepared on persons committed under 18 USC 5010 (e).

New procedures making possible an annual authorization to cover the expenses of locally conducted psychiatric and psychological evaluations were recently distributed to chief probation officers by the Administrative Office of the U.S. Courts. The annual authorization will eliminate the need for communicating with the AO on a case by case basis when a study is ordered by the court, thereby eliminating considerable delay.

LEGISLATIVE OUTLOOK

Magistrates. Legislation has been introduced in each House (S. 237 and H.R. 1046) substantially identical to that passed in the 95th Congress. Early action, agreement and final passage is anticipated during the first session.

Diversity. A successor bill to H.R. 9622, 95th Congress, is to be sponsored in the House and Senate by Congressman Kastenmeier (D. Wisc.) and Senator Kennedy (D. Mass.). The Justice Department and Judicial Conference will also formally transmit legislative proposals on diversity. Prospects for final passage are uncertain at present.

Rule of 80. Legislation enabling federal judges to retire on salary when their years of service as a judge and age total 80 will be introduced as a part of a Judicial Improvement Act to be introduced by Congressman Kastenmeier and Senator Kennedy. Prospects for final passage are uncertain at this time.

Criminal Code Reform. Proposals for major revision of the federal criminal code will be an important issue in the 96th Congress. The House demonstrated last year that it did not favor an omnibus reform bill, and opposition to this approach remains strong. Compromise in the Congress may result in piecemeal reform.

Supreme Court Jurisdiction. Proposed legislation will abolish manditory review by the Supreme Court of the United States of appeals (as distinguished from discretionary review by certiorari) of all matters now reviewable by appeal, except appeals o decisions by three-judge courts.

Affected by this new legislation would be:

See LEGISLATIVE p. 8

MAGISTRATES from p. 3

Judge Frederick B. Lacey (D. N.J.) had some advice on the Federal Rules of Evidence.

- Issues in civil rights cases

Sessions were presented by a faculty of district court judges, magistrates and senior staff of the Administrative Office and the Federal Judicial Center.

DISTRICT JUDGES ATTEND CLERKS OF COURT SEMINARS

Another "first": District court chief judges, or their representatives, attended and participated in seminars held by the Center for clerks of district courts. The programs were conducted in Reno, Nevada and Charleston, South Carolina. Both seminars were chaired by chief judges. Chairman of the Reno seminar was Chief Judge Albert Lee Stephens, Jr., (C.D. Calif.) and, at the Charleston seminar Chief Judge James B. Parsons (N.D. Ill.) presided.

In sessions at the seminar senior staff of the Administrative Office and Federal Judicial Center reviewed and discussed a wide range of topics including:

- New legislation and Judicial Conference actions
- Omnibus Judgeship Bill
- General Services Administration
- Law books and libraries
- Utilization of technological advances
- Procurement of property, equipment and furniture

NEW FEDERAL JUDICIAL CENTER COURSE BEGINS

"Effective Productivity for Court Personnel," a new type of course offered for clerical and support staff by the Federal Judicial Center, had its initial presentation January 16–19 in Richmond, Virginia. Fifty participants from the Eastern District of Virginia representing the U.S. Marshal's Office, Probation Office, District Court Clerk's Office and Magistrates Office as well as the Circuit Executive's Office and Fourth Circuit Clerk's Office attended the four-day program.

Although the course in Richmond was taught by FJC staff, eight other faculty from probation and clerk's offices around the country have been trained to be faculty as well. An individual from this group will be one of the two-person team teaching future offerings. Sessions scheduled for this year will be held in Sacramento, Miami, Atlanta, New Orleans, Brooklyn, Savannah, Augusta and Seattle.

Training objectives of the course are:

- *Self-Management*
- *Change and Its Impact*
- *Systematic Assertiveness Training*
- *Effective Time Management*
- *Effective Communication*

The course, which is designed for large courts, was developed by the Management Training Branch of the Center's Division of Continuing Education and Training.

LIBRARY from p. 3

Library of Congress can compile indexes to federal legislative histories not readily available in some jurisdictions.

- Photocopying service as well as computerized data bases of current legislative materials, including the *Congressional Record* are provided.
- Rare treatises and extensive collections of American and foreign law periodicals and primary sources in the United States are accessible.
- The Library can perform bibliographic searches on specific subjects and need not limit its searches strictly to the legal field.
- Many self-initiated reports and bibliographies have already been prepared and are available.
- Among the staff of 90 serving in the Law Library are a number of specialists who have developed an expertise in foreign law who may be available to give expert testimony.
- The librarians can either advise as to the location of special collections or furnish copies of materials, including briefs filed in the U.S. Supreme Court, bills and resolutions introduced in Congress, reports and opinions of federal and state attorneys general, and administrative regulations of states and territories.

The primary responsibility of all personnel in the Library of Congress is to the Congress, of course, but experience has shown that this has not been a significant problem in the past.

In all instances, initial attempts should be made through local sources or the Circuit Librarian. When making the requests there should be disclosure as to the extent of the judge's own preliminary research to avoid duplicative efforts.

Judges interested in using these services (or their staff) should contact Marlene C. McGuirl, Chief of the American-British Law Division, Law Library, Library of Congress, Washington, D.C. 20540. Mrs. McGuirl's telephone number is (202) 426-5081.

UPDATE from p. 2

After reminding the membership of the serious nature of the selection process and of his personal hope to work closely with the Administration, especially in honoring commitments to put on the bench more women and qualified members of minority groups, the Senator outlined these plans:

- An extensive questionnaire has been developed to be filled out by all nominees, to assist the Committee in carrying out its responsibilities to "advise and consent." To determine the fitness of the nominees they will, through the questionnaire, receive information on such matters as background, training, experience, writings, medical history, finances, and possible conflicts of interest. The questionnaire is approximately 15 pages in length.
- The Committee has already appointed a special investigative staff to carefully study and analyze the qualifications.
- The Committee will review material compiled by the Federal Bureau of Investigation in its investigations of the nominees. Access to the FBI reports has already been offered.
- The Committee hopes to open up the confirmation process so that interested groups will be afforded a greater opportunity to observe and, if requested, to participate. Hearing notices will be given to the press and will be printed in the Congressional Record.
- Efforts will be made to work out solutions to problems previously created by the one-member veto (or the "blue slip process") which currently permits a senator from the home state of the nominee to veto that nominee without holding any public discussion on the matter. The Senator's statement contained the following: "If the blue slip is not returned within a reasonable time [by one of the Senators], rather than letting the nomination die, I will place before the Committee a motion to determine whether it wishes to proceed to a hearing on the nomination notwithstanding the absence of the blue slip. The Committee, and ultimately the Senate, can work its will."

A new organization came into the picture in 1977 — the Judical Selection Project. The Project is a coalition of individuals and representatives of organizations committed to assuring that some of the appointments go to qualified minorities, women and others they feel are deserving of representation on the federal bench. Representatives come from groups such as labor, civil rights, womens' organizations and public interest. To assist the Project, the National Legal Aid and Defender Association will provide office space and other assistance in their Washington headquarters.

The Judical Selection Project has announced as its three major purposes:

- To act as a clearinghouse for information and organization;
- To provide the nominating commissions for both district and circuit appointments (as well as senators who do not use commissions) suggested procedures and guidelines for contacting groups identified with minorities, women and public interest lawyers;
- To protest and publicize any acts of omission by the commissions or senators which are inconsistent with the Executive Order or suggested guidelines.



THE SOURCE

The Information Service of the Federal Judicial Center

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

Appellate Advocacy in the Federal Courts. Irving R. Kaufman. 79 F.R.D. 165-72 (1978).

Current Developments in Judicial Administration: Papers Presented at the Plenary Session of the AALS, Dec. 1977. 80 F.R.D. 147-201 (Dec. 1978).

Disqualification of Judges — Canon 3C of the Code of Judicial Conduct. John C. Godbold. 3 J. of Legal Prof. I-9 (1978).

Federal Criminal Sentencing: Perspectives of Analysis and a Design for Research. L. Paul Sutton. GPO, 1978.

Federal Sentencing Patterns: A Study of Geographical Variations. L. Paul Sutton. GPO, 1978.

Internal Operating Practices. California Court of Appeal, First Appellate Division. 1978.

Our Judicial System Needs Help: A Few Inside Thoughts. J. Clifford Wallace. 12 U. San Francisco L. Rev. 3-14 (1977)

Predicting Sentences in Federal Courts: The Feasibility of a National Sentencing Policy. L. Paul Sutton. GPO, 1978.

Publications of the National Institute of Law Enforcement and Criminal Justice: A Comprehensive Bibliography. John Ferry. GPO, 1978.

Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States. Sept. 21, 22, 1978. 79 F.R.D. 187-201 (Oct. 1978).

The Relative Impact o Diversity Cases on State Trial Courts. Victor E. Flango & Nora F. Blair. 2 State Ct. J. 20-6 (Summer 1978).

See SOURCE p. 8

PANEL from p. 1

Appeals which is authorized to appoint a special prosecutor and define prosecutorial jurisdiction.

Judge Robb, who was a member of the tripartite Commission on the Revision of the Federal Court Appellate System, has been a judge of the United States Court of Appeals for the District of Columbia Circuit since 1969. On several occasions he served as special counsel for the Senate Judiciary Committee.

Judge Lumbard was appointed to the United States Court of Appeals for the Second Circuit in 1955 and was Chief Judge from 1959 to 1971, when he took senior status. He was United States Attorney for the Southern District of New York from 1953 to 1955.

Judge Morgan was appointed to the United States Court of Appeals for the Fifth Circuit in 1968, taking senior status in 1978. From 1961 to 1968 he was a District Judge for the Northern District of Georgia, and for the final three years was Chief Judge.

HENRY HANSSEN TO HEAD MANAGEMENT REVIEW

The Administrative Office of the United States Courts has announced the appointment of Henry R. Hanssen as Chief of the Division of Management Review.

Mr. Hanssen, who is a native of Napoleon, Missouri, graduated from the United States Naval Academy in 1943 and received a Masters in Business Administration from George Washington University in 1966. He served for 30 years as a submarine officer in the United States Navy and at the time of his release held the rank of Captain. In 1972 he became Clerk of the United States District Court for the Eastern District of Michigan. Mr. Hanssen held that position until his transfer to Washington December 18th.

The Division of Management Review is responsible for the internal audit program for evaluating the efficiency and effectiveness of the operation of the federal courts. This program

was a function of the Office of Judicial Examinations in the Department of Justice until 1975 when it was transferred to the Administrative Office.

As Chief, Mr. Hanssen will supervise a staff of 30. Twenty-five of these are attorneys, accountants or management analysts who are sent in teams of three or more to study each district and circuit court, the Court of Customs and Patent Appeals and the Court of Claims.

DATES FOR NINTH AND TENTH CIRCUIT JUDICIAL CONFERENCES

Last month incorrect dates were listed for the Ninth and Tenth Circuit Judicial Conferences. The correct dates are:

Ninth Circuit July 22-25
Sun Valley, Idaho

Tenth Circuit June 27-30
Jackson Hole, Wyoming

NOTEWORTHY from p. 2

Five members of the D. C. Bar reported on their conclusions based on different facets of the Devitt Report and the FJC report on advocacy. Plans for the future: Further study by this group with final conclusions to come later which will be the report of the D. C. Bar as a whole.

Judge Carl McGowan (C.A. Dist. Col.) spoke on this subject at a luncheon meeting of the Association of American Law Schools last month. A former law professor himself, the Judge has some definite ideas on law school education and advocacy and how it should be taught. (Copies of the Judge's speech are available in the FJC Information Services Office.)

U.S.-PANAMA SIGN TREATY ON PRISONER TRANSFERS

A treaty on prisoner transfers was signed January 11 between the United States and Panama. When ratified, the treaty will make it possible for Americans arrested and convicted under Panamanian legal jurisdiction to request that their sentences be served in penal institutions in the United States.

Panamanians convicted of crimes in the United States will have the same right to petition for transfer to Panamianian institutions to serve their sentences.

fjc calendar

Mar. 2-3 Workshop for District Judges (Second Circuit); Liberty, NY

Mar. 5-6 Procurement, Purchasing, and Contracting Deputy Clerks; Salt Lake City, UT

Mar. 6-8 In-Court Management Seminar, Huntington; W VA

Mar. 7-8 Judicial Conference of the United States; Washington, DC

Mar. 7-9 Seminar for Bankruptcy Judges; Atlanta, GA

Mar. 12-13 Procurement, Purchasing, and Contracting Deputy Clerks; Baltimore, MD

Mar. 12-16 Orientation Seminar for Newly Appointed U.S. Probation Officers; Washington, DC

Mar. 19-21 Seminar for Federal Court Librarians; Washington, DC

Mar. 19-23 Advanced Seminar for U.S. Probation Officers; Austin, TX

Mar. 26-27 Procurement, Purchasing, and Contracting Deputy Clerks; St. Louis, MO

Mar. 27-30 Effective Productivity for Court Personnel; Miami, FL

Mar. 28-30 Conference for Federal Appellate Judges; Atlanta, GA

Apr. 2-4 Seminar for Juror Clerks; Little Rock, AR

Apr. 2-6 Advanced Seminar for U.S. Probation Officers; Charlotte, NC (location tentative)

Apr. 4-6 Seminar for Bankruptcy Judges; Salt Lake City, UT

Apr. 18-21 Sentencing Institute (First, Fourth and D.C. Circuits); Research Triangle Park, NC

Apr. 23-27 Advanced Seminar for Pretrial Services Officers; Chicago, IL (location tentative)

LEGISLATION from p. 4

- District or circuit court decision that an act of Congress is unconstitutional;
- Circuit court decision that a state statute is contrary to federal law;
- Final judgement of the highest court of a state where a federal treaty or statute is drawn into question, or where the validity of a state statute is upheld against the assertion that it contravenes a federal law.

This legislation appears to be noncontroversial.

Rules Enabling Acts. H.R. 480, 481 have been introduced to provide a uniform method for the proposal and adoption of certain rules of court by the U.S. Supreme Court and by the Judicial Conference. The bills would take the rule making power away from the Supreme Court and give the responsibility to the Judicial Conference. In addition, the process by which the Judicial Conference adopts rules would be opened up to widespread comment from the bar and the public. Rules promulgated by the Judicial Conference would not go into effect until approved by the Congress.

PERSONNEL

NOMINATIONS

John G. Penn, U.S. District Judge, DC, Jan. 23

Phyllis A. Kravitch, U.S. Circuit Judge (CA-5), Jan. 23

Abraham D. Sofaer, U.S. District Judge, S.D. NY, Jan. 23

Robert E. Keeton, U.S. District Judge, D. MA, Jan. 25

John J. McNaught, U.S. District Judge, D. MA, Jan. 25

David S. Nelson, U.S. District Judge, D. MA, Jan. 25

Rya W. Zobel, U.S. District Judge, D. MA, Jan. 25

Robert M. Parker, U.S.District Judge, E.D. TX, Feb 6

Harold Barefoot Sanders, Jr., U.S. District Judge, N.D. TX, Feb. 6

DEATHS

Dick Y. Wong, U.S. District Judge, D. HI, Dec. 26

Martin D. Van Oosterhout, U.S. Senior Circuit Judge (CA-8), Jan. 28

SOURCE from p. 6

Thomas Jefferson and the Law. Edward Dumbauld. Univ. of Oklahoma Press, 1978.

Variations in Federal Criminal Sentences: A Statistical Assessment at the National Level. L. Paul Sutton. GPO, 1978.

Year-End Report. Warren E. Burger. 1978.

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The Third Branch

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VOL. 11 No. 3 MARCH, 1979

REPORT ON JUDICIAL CONFERENCE PROCEEDINGS

At its semiannual meeting this month the Judicial Conference of the United States passed resolutions dealing with judicial discipline, recommending district judge representation on circuit councils and creating a judicial ethics advisory committee to advise judges on the new ethics law. Of special interest are the following:

Conduct of Federal Judges. The Judicial Conference approved principles to be reflected in any legislation dealing with conduct of federal judges. The resolution provided that:

(a) "Removal of an Article III judge from office by any method other than impeachment as provided in Article I of the Constitution would raise grave constitutional questions which should be avoided.

(b) "The primary responsibility for dealing with a complaint against a United States judge should rest initially with the chief judge of the circuit as presiding judge of the judicial council, who may dismiss the complaint if it is frivolous or relates to the merits of a decision or procedural ruling, or may close the complaint after assuring himself that appropriate corrective action has been taken.

(c) "Any complaint not dismissed or closed by the presiding judge should be referred to a committee appointed by the presiding judge, consisting of an equal number of circuit and district judges and the presiding judge.

See Conference p. 5

ADVICE AVAILABLE ON FINANCIAL DISCLOSURE REPORTS

A special Advisory Panel of Judges has been appointed to counsel members and employees of the Judicial Branch on questions relating to the financial disclosure forms due May 15 under the Ethics in Government Act. See *The Third Branch,* Nov., 1978, p. 6.

ADVISORY PANEL

Inquiries should be addressed to Judge Howard Markey, Chairman of the Advisory Panel, at 707 Madison Place, N.W., Washington, D.C. 20439.

Other members of the Advisory Panel are:

Judges Peter T. Fay, Miami, Florida; Damon J. Keith, Detroit, Michigan; Anthony M. Kennedy, Sacramento, California; Philip W. Tone, Chicago, Illinois; Frederick A. Daugherty, Oklahoma City, Oklahoma; John P. Fullam, Philadelphia, Pennsylvania; William J. Jameson, Billings, Montana; William B. Jones, Washington, D.C.; Cornelia G. Kennedy, Detroit, Michigan; Jacob Mishler, Brooklyn, New York; Charles E. Simons, Jr., Aiken, South Carolina.

* * * * *

The Advisory Panel should be distinguished from the *statutory* Ethics Committee mandated by the Act and chaired by Judge Edward A. Tamm; the latter Committee will receive and review the statutory reports.

Under the statute, "reasonable" extensions may be granted for not to exceed 90 days from May, 15, 1979. Requests for extensions should be addressed to the Ethics Committee with a copy to the Advisory Panel.

SPEEDY TRIAL HEARINGS PLANNED

The Subcommittee on the Constitution of the Senate Judiciary Committee has tentatively scheduled April hearings to consider amendments to Title I of the Speedy Trial Act. The subcommittee is chaired by Senator Birch Bayh (D. Ind.).

The Judicial Conference of the United States has proposed amendments to the act, and the Department of Justice contemplates proposing amendments of its own. The subcommittee also expects to consider recommendations from the General Accounting

See Speedy Trial p. 4

DATES ARE SET FOR SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES

Kenneth C. Crawford, the Director of the FJC's Continuing Education and Training Division, has announced that the dates for the next seminar for Newly Appointed District Judges are firm for June 18-23. The seminar will be held at the Dolley Madison House in Washington.

Formal invitations to attend will be in the mail in the near future.

COURT REFORM PLAN PROPOSED BY PRESIDENT CARTER

On February 27, President Carter sent Congress his program to reform the federal civil justice system. The proposals are intended to increase the efficiency, cut the cost, and maintain the integrity of the federal courts.

When announcing the legislative package he said, "I am committed to improving access to justice by insuring that every person involved in a legal controversy has a readily available forum in which that controversy can be resolved speedily, fairly, and at reasonable cost. To achieve this goal, we must do two things. First, we must develop new means for handling disputes that do not necessarily require full court resolution. Second, we must provide the courts with sufficient resources and improved procedures so that they can function fairly and effectively in those cases that must be brought before them."

The President's program includes five measures considered in the 95th Congress but not passed. These are:

Court-annexed Arbitration. The bill would allow federal district courts to adopt a procedure requiring that tort and contract cases involving less than $100,000 be submitted to arbitration. Litigants would be permitted to appeal the arbitration award.

Enlarged Jurisdiction of Magistrates. Under this bill Federal Magistrates, with the consent of the parties, would be authorized to hear any civil cases as well as misdemeanor cases.

Abolishing Diversity Jurisdiction. Under this bill diversity jurisdiction would be abolished, except to the extent that "alienage jurisdiction" would be preserved and statutory interpleader clarified. The bill would also completely abolish all amount in controversy requirements for federal question cases.

Supreme Court Jurisdiction. The Supreme Court's control over its docket would be strengthened under a proposal abolishing statutes which now mandate the Court to accept certain appeals for review (as distinguished from discretionary review by certiorari). The proposal would do away with this mandatory jurisdiction, except for appeals from decisions of three-judge courts.

Minor Dispute Resolution. This bill would provide federal assistance to states, localities, and private agencies to improve institutions that deal with minor disputes such as those with neighbors, customers, tenants and family members. Improvements in small claims courts and more widespread use of Neighborhood Justice Centers would be promoted.

President Carter also announced new proposals to deal with problems relating to the administration of the federal judiciary and federal practice and procedures. These include:

New Appellate Court. Under this proposal, the existing Court of Claims and Court of Customs and Patent Appeals would be combined into a United States Court of Appeals for the Federal Circuit. The new court would retain jurisdiction of the two existing courts and be given jurisdiction over all patent and trademark appeals to promote uniformity and stability of law in these areas, encourage technological innovation and end "forum shopping."

Rulemaking and Administration. This bill would require each Court of Appeals to appoint an advisory committee composed of persons outside the court to make recommendations on the practices and operating procedures of that court. A second proposal restructures the memberships

See Reform p. 8

CHIEF JUSTICE PRESENTS STATE OF THE JUDICIARY ADDRESS

Following a practice of recent years, Chief Justice Burger delivered his Tenth Annual Report on the State of the Judiciary at the midyear meeting of the American Bar Association last month. The following are excerpts from the address. (A full text is available from the Federal Judicial Center Information Services Office.)

Trial Advocacy Training. The Task Force on Lawyer Competency, which was announced at the Association's 100th annual meeting in New York last August will best perform its mission if it does not try to solve all problems of legal education in one stroke. It should give first priority to the fundamentals relating to trial advocacy. . . . Practitioners, when hiring law graduates, can advance the cause [by stressing] that practical skills will be considered along with law school grades. . . .

Lawyer Discipline Recently I requested the chief judges of all federal courts to participate in The American Bar Association National Discipline Data Bank and all but 9 out of 107 federal courts have agreed to cooperate; and I am confident those not yet reporting will soon do so. In the future, every federal court will be kept current on disciplinary procedures and adopt new rules to strengthen enforcement of the standards of professional conduct. Progress is slow in this area but there is progress.

New Method for Determining Judgeship Needs. For 15 years, at the request of Congress, The Judicial Conference has maintained statistics on a four-year basis, and has reported to the Congress regularly as to where additional judges were required. . . . We now see the four-year survey has not

See Judiciary p. 4

ABA RESOLUTIONS OF INTEREST TO THE FEDERAL JUDICIARY

Several Resolutions considered by the ABA's House of Delegates when it met in Atlanta last month were of interest to the federal judiciary. Some of these were:

Media Coverage of Courtroom Proceedings. This resolution to permit cameras and electronic recording equipment in the courtroom was defeated by a two-to-one margin, even after an amendment was offered which would have required prior consent of witnesses, jurors, and the parties to the litigation. Opponents warned that if adopted and implemented there would be a "circus-like atmosphere in the courtroom which would show the public a distorted version of the trial." Federal Judge Alfred T. Goodwin (CA-9), Chairman of the ABA's Adjunct Committee on Fair Trial-Free Press, argued that television coverage would, in fact, improve courtroom coverage by the press and the image of the legal profession generally.

National Sentencing Commission. A resolution to create a national sentencing commission was adopted. A large majority in the House agreed, however, that the commission's proposed sentencing guidelines should be only advisory until such time as there is some national experience with the proposals.

Federal Rules of Evidence. Six of seven amendments passed. These relate to plea bargaining, production of statements of witnesses, revocation or modification of probation, commitment to another district, search warrants for seizure of a person, and joint representation. [The amendment for time for appeal was eliminated.]

Federal Rules of Criminal

See ABA p. 6

JUDICIAL CONFERENCE NAMES TWO NEW FJC BOARD MEMBERS

Under the Act creating the Federal Judicial Center, elections to the Board are made by the Judicial Conference of the United States for four-year terms.

The seven-member Board is made up of The Chief Justice, who is the permanent Chairman, two circuit court judges, three district court judges and the Director of the Administrative Office of the United States Courts.

Judge William Hughes Mulligan, of the Second Circuit, was elected to one of the two positions reserved for circuit judges. He succeeds Judge Ruggero J. Aldisert of the Third Circuit whose term expires this month.

Judge Mulligan has been a federal judge in the Second Circuit for over seven years, having taken his seat on this bench in July of 1971.

The Judge graduated from Fordham University Law School, where he was awarded a J.D. degree in 1942. After service in the United States Army (1942-1946) he was in public service -- as a member of the New York State Law Revision Commission; Chairman of the New York State Citizens' Committee on Reapportionment; and as a member of the State Commission on the Constitutional Convention. His affiliation with Fordham was continued until 1971 through his membership on the faculty at Fordham and he had the high degree of satisfaction few lawyers realize when in 1956 he became Dean of his Alma Mater.

The work of the federal courts has had Judge Mulligan's interest and concern for many years and as a member of the Judicial Conference's Subcommittee on Federal Jurisdiction he has made valuable contributions to the work of the Conference.

Upon learning of his election to the Board Judge Mulligan said: "I am honored to be elected to the Board of the Federal Judicial Center. It provides me the opportunity to become familiar with the important work of this group and I hope to be able to make some contribution."

The Conference elected Chief Judge Otto R. Skopil, Jr. (D. Ore.) to be a member of the Board to fill the district court position left vacant by Judge Robert H. Schnacke (N.D. Calif.)

See Board p. 7

Judge William H. Mulligan

Chief Judge Otto R. Skopil, Jr.

JUDICIARY from p. 2

worked simply because little attention is given to the needs as they arise. The Judicial Conference has authorized a change in our studies so that from now on, at least every two years, we will report to the Congress as to the particular districts and circuits in which the number of judges is inadequate. The Association and the Foundation [should] contribute their thinking and suggestions on how this problem can be resolved.

Monitoring Judicial Conduct. The Judicial Councils of each circuit are the logical bodies to receive complaints concerning judicial conduct and to conduct any needed inquiry. Most problems will be satisfactorily resolved at that stage. What is important is that such inquiries be dealt with fully, fairly and expeditiously, provided that there is no intrusion into the decisional function.

Rulemaking. Perhaps the time has now come to take another look at the entire rulemaking process. There is much to be said, pro and con, concerning the present involvement of the Supreme Court as a court.

The Federal Judicial Center and The Judicial Conference [will be requested] to study this problem in light of 40 years of experience under the present system.

Sentencing Problems. I am persuaded, after nearly a quarter of a century of close observation, that alternatives to the present system should at least be considered. . . . Possibly a review of sentences by a special panel of two trial judges and one appellate judge would be feasible. Another alternative which has been effective is to permit the initial sentence to be determined by a panel of three judges, including the trial judge who has observed the defendant on trial.

Bail Release. Law-abiding citizens must be forgiven when they ask whether release pending trial of an accused who is waiting trial on other charges poses an undue threat to the community. . . . Surely the protection of the public must always be a major factor in the decision to grant bail release. Here we cannot be sure of solutions because we do not know all the facts. The relevant facts can be determined only by careful study which probes, case by case, and name by name, to determine how many persons were released pending trial at a time when previous charges were pending against them.

Federal Judiciary Council. Some years ago, a recommendation was made to Congress to consider creating a body representing the three branches of Government, to study and report periodically on the problems and needs of the Judicial Branch. . . . This body could receive suggestions from each of the branches but it would also be free to generate recommendations on its own initiative. It would also serve the very important need of developing better communication between the Judicial Branch and the other two branches on the administration of justice.

Circuit Councils. When the circuit councils were established in 1939, Congress provided that the membership should be made up of all of the circuit judges then in active service. Many significant changes have occurred and the federal judicial establishment has multiplied in personnel since that time. We should now consider providing some representation of the district judges on the judicial council of each circuit. Some circuits have regularly invited a district court representative to attend meetings of the council when

See Judiciary p. 8

SPEEDY TRIAL from p. 1

Office, which has been conducting a two-year study of the implementation of the act.

The amendments proposed by the Judicial Conference were initially developed in 1977 by an *ad hoc* subcommittee of the Committee on Court Administration. This subcommittee was chaired by Judge Carl B. Rubin of the Southern District of Ohio. The district courts were invited to comment on the Rubin Subcommittee amendments in the speedy trial plans that were prepared in the spring of 1978. After reviewing the comments received, the Committee on the Administration of the Criminal Law recommended a number of modifications to the Rubin Subcommittee proposals.

As finally approved by the Judicial Conference, the proposed amendments would:

- Change the time limit from arrest to indictment from 30 days to 60 days;
- Establish a single time limit from indictment to trial of 120 days, replacing the present statute's limits of 10 days from indictment to arraignment and 60 days from arraignment to trial;
- Prohibit commencement of trial within 30 days of indictment unless the defendant consents;
- Eliminate the automatic exclusions of time in 18 U.S.C. § 3161 (h) (1)-(7), and replace them with a limited discretion in the court to extend the time limits if delay is necessitated by specified events; and
- Revise the "judicial emergency" provision to give the circuit councils authority to suspend the time limits and give the chief judges of the district courts authority to do so for brief periods.

In its *Third Report on the Implementation of the Speedy Trial Act of 1974,* issued last September, the Administrative Office of the United States

See Speedy Trial p. 7

CONFERENCE from p. 1

(d) "The joint committee should report its findings and recommendations to the judicial council, which should take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(e) "The judicial council may, in its discretion, refer a complaint and the council's recommended action to the Judicial Conference of the United States.

(f) "If the judicial council concludes that grounds for impeachment may exist, it should transmit the record upon which its conclusion is based to the Judicial Conference of the United States; the Judicial Conference shall then determine whether, in all the circumstances, the matter should be referred to the House of Representatives.

"The Judicial Conference recommends that the Judicial Councils of the several circuits, at their earliest opportunity, consider the formulation and promulgation of rules of procedure for the receipt and processing of complaints against judges in accordance with the principles expressed in [paragraphs (a) through (f) above]; such rules and regulations should be announced in such manner as to assure that the public and bar will be informed.

"The Chairman of the Court Administration Committee and the members of the Executive Committee of the Conference are directed (1) to review and revise, in accordance with the principles stated in [paragraphs (a) through (f) above], the Court Administration Committee's proposed amendments to 28 U.S.C. §332, and (2) to transmit the revised proposed amendments to all members of the Conference for their approval. Following approval by the Conference, the Chairman of the Court Administration Committee, if called upon by the Congress to testify upon pending legislation, is authorized to inform the Congress that, if legislative action is to be taken, the Conference recommends amendments to 28 U.S.C. § 332 as approved by the Conference in accordance with this paragraph.

"All previous Judicial Conference resolutions or comments upon legislation dealing with the conduct of federal judges are superseded by this resolution."

Membership of Circuit Judicial Councils. The Judicial Conference approved principles to be reflected in any legislation dealing with the membership of Circuit Judicial Councils. The Conference resolved that:

- "Any judicial council having less than six circuit judges as members shall have, as members, not less than two district judges in regular active service.
- "Any circuit council having six or more circuit judges as members shall have, as members, not less than three district judges in regular active service.
- "The number of district judge members of a judicial council, fixed in accordance with the above principles, shall be fixed by majority vote of the active circuit judges of the council.
- "District judges shall serve as members of a judicial council in the order of their seniority, for terms of three years.
- "No more than one district judge from any one district shall serve simultaneously on the circuit council, unless there is already a representative on the council from each district in the circuit."

Ethics in Government Act. The Conference authorized The Chief Justice to form an advisory committee to respond to inquiries from senior employees and members of the federal judiciary who are required to file financial information under the Ethics in Government Act of 1978.

Cameras in the Courtroom. Canon 3 of the Code of Judicial Conduct for United States Judges was amended by the Conference to allow broadcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings in federal courts.

CATALOG OF FJC PUBLICATIONS

The first Federal Judicial Center *Catalog of Publications* is now available from the Center's Information Services Office. Publications in the Catalog report the results of research and analysis done by or for the Center, as well as the products of seminars and workshops conducted for personnel in the federal judiciary.

The publications are arranged by subject and include reports of research projects, staff papers (which normally involve less exhaustive research), presentations at seminars, manuals and handbooks. handbooks.

Wide distribution has already been made to the federal judiciary and their supporting personnel, as well as all names on a waiting list which has been developed for several months.

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 F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

ABA from p. 3

Procedure. This was also a controversial subject. The House of Delegates turned down one proposal which urged shortening the current appeal period in habeas corpus proceedings from 60 to 10 days. Rejected also: A proposed amendment which required production of defense witness statements at trial in essentially the same manner as is now provided for with respect to government witness statements.

Standards for Juvenile Justice. Seventeen volumes of standards relating to juvenile justice were approved after four controversial volumes were withdrawn. These standards are the result of an eight-year effort by a joint American Bar Association-Institute of Judicial Administration Committee chaired by federal Chief Judge Irving R. Kaufman (CA-2).

Criminal Code Reform. A compromise resolution was adopted after considerable negotiating by representatives of the three sections concerned with this subject. The House affirmed its support for the principle of codification but they were far from unanimous when the vote came.

Members of the House took issue with proposed new penalties for economic offenses--the so-called "white collar crimes". Some sections of the resolution would allow up to four- or six-fold restitution to private parties by criminal antitrust and securities violations. They voted down a proposal to integrate these sanctions with existing civil remedies that private parties can obtain on their own. Voted down: A program that would permit judges to order convicted corporate or individual defendants to notify by mail every person injured by violations of the consumer fraud, securities, or antitrust laws.

Standards for Criminal Justice. The six volumes which were not acted on at the annual meeting last August were all passed with minor changes in two standards--Pleas of Guilty and The Defense Function. The other four standards are: Providing Defense Services, Pretrial Release, Urban Police Function, and Prosecution Function.

Appeals to Supreme Court. A resolution was adopted supporting legislation which would virtually abolish obligatory Supreme Court review by appeal.

Internal Revenue Code. The House approved recommendations relative to amendments to the Internal Revenue Code. One recommendation would eliminate the marital tax penalty and another would support the so-called "indexing," or automatic cost of living adjustments to income tax rate brackets and personal exemptions. Also, the House voted to ask Congress to modify or repeal certain provisions of the 1976 Tax Reform Act, specifically that provision relating to the so-called "carryover basis" that would eliminate the present "step up basis" which occurs at time of death. Heirs who sell inherited property would, with proposed changes, be required to pay capital gains tax based on the value of the property at the time it was acquired by the benefactor, rather than on any increase in value from the time they inherited the property. Problems Treasury Department officials admit--it is not just difficult, in some cases it is impossible, to establish the basis of assets which have been held for years or even generations.

SUBCOMMITTEES OF THE SENATE AND HOUSE JUDICIARY COMMITTEES

SUBCOMMITTEE CHAIRPERSONS DESIGNATED

SENATE

Administrative Practice and Procedure
John C. Culver (D-Iowa),

Antitrust, Monopoly and Business Rights
Howard M. Metzenbaum (D-Ohio),

Constitution
Birch Bayh (D-Ind.),

Criminal Justice
Joseph R. Biden Jr., (D-Del.),

Improvements in Judicial Machinery
Dennis DeConcini (D-Ariz.),

Jurisprudence and Governmental Relations
Howell Heflin (D-Ala.),

Limitations of Contracted and Delegated Authority
Max Baucus (D-Mont.),

HOUSE

Immigration, Refugees, and International Law
Elizabeth Holtzman (D-N.Y.),

Administrative Law and Governmental Relations
George E. Danielson (D-Calif.),

Courts, Civil Liberties, and the Administration of Justice
Robert W. Kastenmeier (D-Wisc.),

Civil and Constitutional Rights
Don Edwards (D-Calif.),

Monopolies and Commercial Law
Peter W. Rodino, Jr. (D-N.J.),

Crime
John Conyers, Jr. (D-Mich.),

Criminal Justice
Robert F. Drinan (D-Mass.),

NEW STAFF PAPER

The Federal Judicial Center: A Nontraditional Organization in the Federal Judiciary of the United States, has been released by the Federal Judicial Center. It was presented by FJC Deputy Director Joseph Ebersole at the Seminar on Reform of Justice Administration, held at Mar Del Plata, Argentina. The new staff paper explains the context within which the Center operates, the history leading to its creation, describes the function of each division and gives examples of Center programs.

Copies of the paper may be obtained from the Information Services Office.

SPEEDY TRIAL from p. 4

Courts presented detailed data about compliance with the Speedy Trial Act time limits in the two years ended June 30, 1977, and June 30, 1978. While this report presented a generally favorable picture of compliance with the statutory time limits that were in effect in those two years, it indicated that substantial progress remained before the permanent time limits of the act can be met. For example, for cases subject to a 120-day arraignment-to-trial time limit, 96.6 percent compliance was reported. However, only 81.4 percent of these cases were brought to trial (or otherwise disposed of) within the 60-day limit that becomes effective July 1, 1979. In some districts, the percentage was substantially lower. In addition, it was noted that several of the district plans commented that the effects of the act could not be fully known until the dismissal sanction becomes effective, providing an incentive for defense lawyers to litigate about time computations.

S.D. CALIFORNIA HAS CLARIFIED HANDLING OF REGISTRY FUNDS

The Judges of the U. S. District Court for the Southern District of California have recently entered a general order which is intended to ensure that court orders for the deposit of registry funds in interest-bearing bank accounts will be observed and implemented. General Order No. 238, adopted by the Southern District of California on January 2, 1979, requires that all court orders for the deposit of registry funds in interest-bearing accounts shall contain the following provision:

"It is ordered that counsel presenting this order serve a copy thereof on the clerk of this court or his chief deputy personally. Absent the aforesaid service the clerk is hereby relieved of any personal liability relative to compliance with this order."

The Court's order is intended to avoid the increasingly frequent failure to implement court orders which require the deposit of certain money from the registry fund into an interest-bearing bank account. Interest so accruing is meant for distribution to the parties upon the conclusion of the case; however, in those instances where the orders have not been properly brought to the attention of the clerk of the court or the financial deputy clerk, the orders are not implemented.

In several recent instances the parties seeking to be paid interest upon funds distributed by the court have brought administrative claims against the United States under the Federal Tort Claims Act or have sued the clerk for personal damages in the amount of the interest which should have accrued in conformity with the court orders.

The general order adopted in the Southern District of California explicitly places upon the attorneys for parties seeking the accrual of interest on funds deposited in court the obligation to personally serve upon the clerk or his financial personnel any court order which may be entered to this effect.

BOARD from p. 3

whose term has expired.

Judge Skopil was appointed to the U. S. District Court in 1972 and since 1976 he has been Chief Judge of this District. The Judge is a graduate of Willamette University where he earned his B.A. degree in 1941, and Willamette University College of Law, receiving his LL.B. in 1946. He has also attended the Harvard University Graduate School of Business.

Judge Skopil is no stranger at the Federal Judicial Center. He has made great contributions to Center-sponsored seminars, very recently as a lecturer at a seminar for U. S. Magistrates. In addition, the Judge has served on the Judicial Conference Committee on the Administration of the Federal Magistrates System.

Judge Skopil commented, when he was advised of his election, that he felt "very privileged to have an opportunity to be of service to the public generally, and to the Judicial Branch in particular." And the Judge had prophetic words to add: "From the short time I have been on the bench I know we must look for other ways [to handle our cases] if we are to effectively meet our responsibilities."

PERSONNEL

CONFIRMATIONS

Phyllis A. Kravitch, U.S. Circuit Judge, (CA-5), Mar. 21
John G. Penn, U.S. District Judge, DC, Mar. 21
Abraham D. Sofaer, U.S. District Judge, S.D. NY, Mar. 21
Robert E. Keeton, U.S. District Judge, D. MA, Mar. 21
John Joseph McNaught, U.S. District Judge, MA, Mar. 21
David Sutherland Nelson, U.S. District Judge, D. MA, Mar. 21
Rya W. Zobel, U.S. District Judge, D. MA, Mar. 21

NOMINATIONS

Robert M. Parker, U.S. District Judge, E.D. TX, Feb. 6
Harold Barefoot Sanders, Jr., U.S. District Judge, N.D. TX, Feb. 6
David O. Belew, Jr., U.S. District Judge, N.D. TX, Feb. 9
Martin F. Loughlin, U.S. District Judge, D. NH, Feb. 9
George E. Cire, U.S. District Judge, S.D. TX, Feb. 19
James DeAnda, U.S. District Judge, S.D. TX, Feb. 19
Mary Lou Robinson, U.S. District Judge, N.D. TX, Feb. 26
Norman W. Black, U.S. District Judge, S.D. TX, Feb. 26
Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, Mar. 1
Joyce Hens Green, U.S. District Judge, DC, Mar. 5
George P. Kazen, U.S. District Judge, S.D. TX, Mar. 8
William Ray Overton, U.S. District Judge, E.D. AR, Mar. 8
Bailey Brown, U.S. Circuit Judge (CA-6), Mar. 15
Harold Duane Vietor, U.S. District Judge, S.D. IA, Mar. 15
Paul G. Hatfield, U.S. District Judge, D. MT, Mar. 15
Donald James Porter, U.S. District Judge, D. SD, Mar. 15

DEATHS

Carl A. Weinman, U.S. Senior Judge, S.D. OH, Feb. 5
William C. Frey, U.S. District Judge, D. AZ, Feb. 18
George H. Barlow, U.S. District Judge, D. NJ, Mar. 4
Herbert P. Sorg, U.S. Senior Judge, W.D. PA, Mar. 11

REFORM from p. 2

of the circuit judicial councils, the governing administrative bodies in the eleven judicial circuits, making the councils smaller and including district judges in their membership for the first time.

Interest on Claims and Judgments. Ambiguity in federal law dealing with the payment of interest on claims prior to a court judgment would be clarified by this proposal. Where a defendant knew of his potential liability, interest would be awarded for a pre-judgment period where necessary to compensate the plaintiff for his losses or to avoid unjust enrichment of the defendant. Post-judgment interest rates would no longer be subject to varying state laws, but would be based on a nationally uniform rate.

ao ooftjc calendar

Mar. 23 Multidistrict Litigation Panel Hearing, San Francisco, CA
Apr. 18-21 Sentencing Institute (First, Fourth and D.C. Circuits); Research Triangle Park, NC
Apr. 23-25 Workshop for FPD Investigators; Wichita, KS
Apr. 23-27 Advanced Seminar for Pretrial Services Officers; Louisville, KY
Apr. 24-27 Effective Productivity for Court Personnel; Atlanta, GA
Apr. 26-27 Public Hearing on the Report and Tentative Recommendations of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. U.S. Courthouse, Washington, D.C. Anyone interested in testifying should contact Carl H. Imlay, General Counsel, Administrative Office of U.S. Courts. Telephone: (202) 633-6127.
Apr. 30-May 2 Seminar for Fisc... Clerks; Pittsburgh, PA
May 7-11 Advanced Seminar for Probation Officers; Wilmington, DE

JUDICIARY from p. 4

considering broad problems affecting the district courts. It is appropriate now to formalize these practical working arrangements by restructuring the judicial councils to include some representatives of the district courts.

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Bulletin of the Federal Courts

VOL. 11, No. 4 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center APRIL, 1979

SENATOR KENNEDY INTRODUCES JUDICIAL REFORM LEGISLATION

On March 15 Senator Edward M. Kennedy (D. Mass.) introduced comprehensive legislation to reform and restructure the federal courts. Known as the "Federal Courts Improvement Act of 1979," and cosponsored by Senator Dennis DeConcini (D. Ariz.), the proposals include the measures sent to Congress by President Carter on February 27 as well as a series of important additional reforms. (See *The Third Branch*, February 1979, p. 2).

In his Senate statement introducing the legislation, Senator Kennedy said he was "introducing the most comprehensive federal judicial reform legislation in recent history. This package of reforms—developed in close cooperation with the Department of Justice and the House of Representatives—would make long overdue changes in the structure and administration of our federal judicial system. The legislation is the culmination of many decades of debate over the nature and structure of the federal courts. . . . When read in conjunction with other legislation about to be processed in the Senate. . . this bill should be viewed as an important step in the direction of broadening access to the federal courts while improving the quality of our federal court system."

See REFORM p. 2

A FORMER FEDERAL JUDGE TALKS ABOUT HIS NEW POSITION:

AN INTERVIEW WITH FBI DIRECTOR WILLIAM H. WEBSTER

FBI Director Webster, a former Judge of the United States Court of Appeals for the Eighth Circuit, recently agreed to an interview for *The Third Branch*, one of the first he has consented to since assuming his new position. Members of the Judicial Branch will be particularly interested in reading what the Director has to say about how he views the Bureau's work, some of which affects the work of the federal courts.

* * * *

William H. Webster

You have in the past mentioned you want to adopt an entirely new charter for the Bureau. Has this "charter" been finally adopted?

The charter is my number one priority this year. Historically, Attorney General Charles J. Bonaparte ordered the creation of a Bureau of Investigation in 1908 to serve as an investigative arm of the Department of Justice. This order, coupled with occasional mention of the FBI in certain federal statutes, is all the FBI has ever had to guide its activities. Today, the Bureau is responsibile for the investigation of violations of some 200 federal laws, but there is no charter. I believe that many of the problems that the FBI encountered during the past decade were attributable to the absence of a clearly defined mission. We operated on the assumption that whatever the President said [to do] we should do, because it was assumed that the president had inherent power to protect the national security.

Some people talk about the charter as being a way to prevent abuses. I think that would be an indirect consequence of a good charter, but that is not the purpose of a charter. The real purpose of a charter is to tell us what the American people want us to do and how they want us to do it. So the Bureau has taken an active role in the evolution of a preliminary draft. This bill is very close to being introduced into the legislative process.

See INTERVIEW p. 6

REFORM from p. 1

In addition to those proposals announced by the President, the bill contains provisions that would: Create a special U.S. Court of Tax Appeals; establish new procedures for disciplining federal judges; revise the present composition of circuit councils; make retirement rules for federal judges more flexible; allow the temporary assignment of justices or judges to other offices within the judicial branch; and permit certain federal appeals prior to the completion of a case in the district court. Details of these proposals are:

• **U.S. Court of Tax Appeals.** This proposal would create a new court with exclusive jurisdiction over all federal civil tax appeals. The court would consist of twelve existing federal circuit court judges to be chosen by The Chief Justice of the United States. No new judgeships would be created. The judges would sit in panels of not less than 3 and would serve on a rotating basis. A related proposal eliminates the trial jurisdiction of the Court of Claims over federal tax cases.

• **Judicial Discipline.** Title 28 U.S.C. §372 would be amended so that circuit judicial councils have the primary responsibility for regulating the conduct of the federal judges in that circuit. A broad range of sanctions would be available to the council, from private reprimand to a recommendation to the Judicial Conference of the United States that it advise the House of Representatives that impeachment proceedings are warranted. (See *The Third Branch*, March 1979, p. 1).

• **Circuit Councils.** This provision amends Title 28 U.S.C. §332 to provide that membership of each council consist of not more than seven circuit judges in regular active service, including the chief judge, unless there are fewer than seven circuit judges in regular active service, in which case every circuit judge in regular service will serve as a member of the council. In addition to the circuit judges, not more than four district judges in regular active service are to be members. If there are fewer than seven circuit judges in regular active service on the council, the number of district judges is reduced accordingly, but at least two district judges must be on the council. Judges of the district courts will be represented by the chief judges of the districts.

• **Judicial Retirement.** This provision amends Title 28 U.S.C. §371(b) to implement the "Rule of 80," allowing retirement or senior status to be effectuated in any case where the age of the judge, when added to his years of continuous service, adds up to 80 or more. Current law requires that in order for a federal judge to retire or assume senior status, he or she must be at least 70 years of age and have served a minimum of ten years as a federal judge. The service requirement is retained in the proposal.

• **Temporary Assignment of Justices and Judges to Other Offices Within the Judicial Branch.** Title 28 U.S.C. would be amended by adding a new chapter—Chapter 14—to allow any retired justice of the United States, or any judge of the United States in active, senior, or retired status to be temporarily assigned to the position of Administrative Assistant to The Chief Justice, Director of the Administrative Office of the United States Courts or Director of the Federal Judicial Center. Vacancies created by the appointment of a judge in active status are to be filled by the President with the advice and consent of the Senate. The provision further provides that the official station of the three offices is the District of Columbia.

When a judge in active service at the time of assignment vacates the office, he or she may resume former active service, or assume active service as a judge in the circuit of the District of Columbia. For the purposes of seniority and precedence a judge who resumes active service will be considered to have been in continuous active service.

• **Appeal of Interlocutory Issues.** This provision will allow a new exception to the general rule that individual issues raised in the course of a federal district court proceeding cannot be appealed until a final judgment of the district court is rendered. This proposal would amend Title 28 U.S.C. §1292(b) to allow a court of appeals to permit an immediate appeal if it determines that an appeal is required in the interest of justice and because of the extraordinary importance of the case.

DELAWARE STATE BAR SETS UP SPECIAL COMMITTEE ON COURTS

Chief Judge Collins Seitz (CA-3) has circulated to all circuit judges and all chief judges of the district courts in the Third Circuit, a release from the Delaware State Bar Association announcing the creation of a Special Committee on Complaints Concerning the Courts.

This special committee was constituted to meet objections from members of the Delaware bar that they do not have appropriate channels through which to communicate their views on matters involving both the bench and bar.

Chief Justice Daniel L. Herrmann of the Delaware Supreme Court and Chief Judge James L. Latchum of the U.S. District Court for the District of Delaware have had a common concern that members of the bar

See DELAWARE p. 4

SYMPOSIUM ON CIVIL CASE MANAGEMENT

The Winter, 1978 issue of *The Justice System Journal,* just released by the Institute for Court Management, is devoted entirely to articles on judicial management of the civil docket. The issue assembles for the first time materials on the history, theory, and practice of case management in both federal and state courts.

The volume opens with a "keynote" article by Judge Alvin B. Rubin of the United States Court of Appeals for the Fifth Circuit, which lays out the rationale for judicial case management. Judge Rubin draws on such varied materials as the *The New Union Prayer Book* and Franz Kafka's *The Trial,* in addition to his own extensive experience as both a trial and appellate court judge.

Judge Rubin argues in support of judicial activism and discusses procedural tools which the judges have available to them to see that the judicial process moves efficiently and expeditiously. Other aspects of the case management process are taken up by H. Stuart Cunningham, Clerk of the U.S. District Court for the Northern District of Illinois. Mr. Cunningham's paper focuses on the general organizational tools available, including calendar management, and effective use of supporting personnel.

A paper by Professor Arthur R. Miller, based on a series of talks

See CIVIL p. 5

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Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

FEDERAL COURT LIBRARIANS MEET

Thirty-seven participants and three observers, representing each of the eleven circuits as well as district courts from as far away as Alaska, Hawaii and the Canal Zone, convened at the Federal Judicial Center March 19-21 for the second seminar for federal court librarians. The first such seminar was held in 1973.

The objectives of the seminar were to:

- Detail the functions, purposes, methodology of organization, and proposed activities of the Library Services Branch in the Administrative Office of the United States Courts;
- Furnish an in-depth analysis of the Administrative Office personnel policies and procedures involving federal court librarians;
- Provide an opportunity for the librarians to meet with officials and staff of the Administrative Office with whom they deal in performing their responsibilities and functions;
- Furnish detailed knowledge on developments in software and hardware on microforms, data bases, and systems;
- Furnish a forum for the exchange of new concepts, ideas, techniques, and the use of new technology by federal court librarians;
- Provide an understanding of the information resources available from the Library of Congress, Government Printing Office, Executive Branch Libraries and libraries of the federal courts.

Patricia A. Thomas

Planning for the seminar did not begin until the release last year of the Federal Judicial Center's study, *Improving the Federal Court Library System* (See *The Third Branch* September 1978, p. 4) and the appointment of Patricia Thomas last September to be Chief of the

See LIBRARIANS p. 5

Librarians from the United States District and Circuit Courts photographed at the Dolley Madison House as they met with R. Glenn Johnson, Chief, Personnel Division, Administrative Office of the United States Courts.

ANNUAL COURT OF CUSTOMS AND PATENT APPEALS CONFERENCE: MAY 9

Chief Judge Howard T. Markey has announced that the Sixth Judicial Conference of the United States Court of Customs and Patent Appeals will be held May 9, at the Sheraton Park Hotel in Washington.

The conference will bring together judges of the Court of Customs and Patent Appeals and the Customs Court, members of the Patent and Trademark Office boards, the International Trade Commission, officials of Treasury, Justice and the Customs Service, and invited members of the bar.

A Judicial Talk Show—a panel discussion with three U.S. district judges and three lawyers participating—will be featured during the Patent and Trademark Session; Multi-National Trade Negotiation is to be highlighted during the

See CCPA p. 5

NATIONAL JUDICIAL CONFERENCE SET FOR U.S. COURT OF CLAIMS

Traditionally the U.S. Court of Claims holds a one-day judicial conference of judges and lawyers every other year. This year their conference of judges and members of the bar will be held on May 17 at the Capital Hilton Hotel in Washington.

Formal programs are now being structured to include many areas affecting practice before the Court of Claims. Highlighted will be discussions of the Contract Disputes Act of 1978, the Civil Service Reform Act of 1978, and declaratory judgments in tax cases.

An afternoon symposium will be held on the proposal to combine the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals to be called a "United States Court of Appeals for the Federal Circuit." Also, under the proposal there would be

See COURT OF CLAIMS p. 10

DELAWARE from p. 2

who encounter problems have not had, until now, any organized avenues to pursue when they feel they must complain. Cited by the Delaware Bar as an example: procedural matters which they feel will bring about "efficient and effective administration of justice."

Of special concern are those matters which sometimes involve the judges themselves, understandable a very delicate matter for the attorneys who must practice before them. Because they recognize this as a sensitive area of their work, the committee has assured that the confidentiality of the author of the complaint will be preserved to the best of their ability. In those instances where Chief Justice Herrmann or Chief Judge Latchum have determined that the matter cannot be dealt with on an anonymous basis, the Committee will notify the author of this determination and the attorney involved will then be consulted and his choices as to how to proceed further will be explained. In instances where the Committee has decided that there is *prima facie* validity to a complaint, they will refer the matter, without revealing the complainant's identity, to the Chief Justice or the Chief Judge for disposition. The author of the complaint will have the option of revealing his name if the Chief Justice or the Chief Judge determines that the problem cannot otherwise be properly investigated and adjudicated. If the complainant decides not to reveal his identity, the matter will be dropped.

THE SOURCE

The Information Service of the Federal Judicial Center

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

The adversary character of civil discovery: a critique and proposals for change. Wayne D. Brazil. 31 Vand. L. Rev. 1295-1362 (Nov. 1978).

Chilling Judicial Independence, Irving R. Kaufman. 88 Yale L. J. (March 1979). A limited supply of reprints is available.

Future of the CCPA. Jack R. Miller. 60 J. Pat. Off. Soc'y 676-684 (Nov. 1978).

Juror Utilization in the United States 1978. AO, 1979.

The negotiated guilty plea: a framework for analysis. Richard P. Adelstein. 53 N.Y.U.L. Rev. 783-834 (Oct. 1978).

A Proposal for a New Federal Intermediate Appellate Court. Daniel J. Meador. 60 J. Pat. Off. Soc'y. 665-675 (Nov. 1978).

Report to the President and the Attorney General. Vol. I & II. U.S. National Commission for the Review of Antitrust Laws and Procedures. GPO, 1979.

Judicial Management and the Civil Docket [Symposium], 4 Just. Sys. J. 131-26 (winter 1978).

LAW DAY, U.S.A.—1979

"Our Changing Rights" is the theme selected for the twenty-second annual nationwide observance of Law Day, U.S.A., traditionally held each May 1st.

The program was started as an activity of the American Bar Association, with state and local bar associations participating throughout the country.

LIBRARIANS from p. 3

newly established Library Services Branch.

Ms. Thomas has now visited in all the circuits to familiarize herself with any problems which may exist in the federal court libraries. Having completed this survey she has now made her first recommendations to the Director of the Administrative Office. They deal with structural and procedural matters and the personnel involved with the work of the libraries. The March seminar afforded Ms. Thomas a forum to explain some of these recommendations. Her presentation gave a positive tone to the seminar, especially that part dealing with improved procedures such as book procurement, closer ties to her own office, and greater participation and interest by the federal judges in all aspects of the library services.

Over 100 candidates were nominated to attend by chief judges of the circuit and district courts. Attendance at this seminar, however, was limited to full-time professional librarians. The response to the announcement of the seminar and subsequent discussions led to the formation of a committee of librarians which will plan a training course and seminar for nonprofessional librarians.

CCPA from p. 4

Customs session.

Attorneys attending may be admitted to the Bar of the CCPA at 9:45 a.m. on May 9th. Those interested in applying for admission should contact George E. Hutchinson, the Clerk of the Court.

The Conference is accredited for continuing legal education requirements in the states of Florida, Iowa, Minnesota, North Dakota, Washington and Wisconsin.

JUDGES GURFEIN, WEINER APPOINTED TO MULTI-DISTRICT LITIGATION PANEL

Two new appointments have been made to the Judicial Panel on Multidistrict Litigation.

Consistent with his policy of rotating the Chairmanship of the Panel, The Chief Justice has named Judge Murray I. Gurfein of the Second Circuit to this position. He succeeds Judge William H. Becker of the U.S. District Court, Kansas City, Missouri.

Also named as a new member of the Panel is Judge Charles R. Weiner, of the U.S. District Court, Philadelphia.

The Judicial Panel on Multidistrict Litigation is composed of seven circuit and district judges from throughout the country. The Panel basically considers whether to transfer related multidistrict civil actions to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

SUPREME COURT HISTORICAL SOCIETY HAS NEW EXECUTIVE DIRECTOR

Mrs. Elizabeth Hughes Gossett, the President of the Supreme Court Historical Society, has announced the appointment of Mrs. Betty Crites Dillon as Executive Director. She succeeds William H. Press, who resigned last month.

Mrs. Dillon brings to the Society a wealth of experience which has well prepared her for the important work of the organization during its nascent years. The past seven years she served in the Department of State and was head of many United States delegations to international conferences. Mrs. Dillon has also held the title of United States Minister-Representative to the International Civil Aviation Organization.

The Supreme Court Historical Society was founded in 1974 to stimulate research, gather historic artifacts and encourage public understanding of the Supreme Court. The Chief Justice is Honorary Chairman of the Society, which now has a membership of over 3000.

Currently the Society is sponsoring the preparation of a Documentary History of the first decade of the Court, 1789-1800. The organization has co-sponsored a publication entitled *Magna Carta and the Tradition of Liberty;* and recently the Society collaborated with the Supreme Court in arranging the John Jay exhibit at the Court, already viewed by hundreds who have visited the building. The Society also publishes a Yearbook containing articles by historians and legal scholars.

CIVIL from p. 3

at Federal Judicial Center workshops, details the unavoidable management responsibilities of the trial judge in class actions. Miller argues that while a judge may have the option to remain passive in most types of litigation, the class action judge must serve throughout as an active systems director, and has affirmative obligations to intervene.

Additional articles included in this publication are: *Civil Case Delay in State Trial Courts,* by Thomas W. Church, Jr.; *Judicial Role and Case Management,* by David Neubauer; and *Case Management in Federal Courts: Some Controversies and Some Results,* by Steve Flanders. Mr. Flanders, who is on the research staff of the Federal Judicial Center, was editor for this special issue.

This symposium will be distributed to newly appointed federal judges by the Federal Judicial Center. A limited number of copies is available from the Information Services Office.

AN INTERVIEW WITH FBI DIRECTOR WILLIAM H. WEBSTER

from p. 1

Inspector John Hotis of my staff has been the principal architect of the charter. He also is chief negotiator with the Department of Justice concerning matters relating to the charter. Inspector Hotis holds a law degree from Duke University Law School, a Master's and Doctorate from Yale, and a Fellowship from Harvard. He possesses a fine intellect, has a sensitivity to First Amendment problems, and has had a great deal of experience in the Bureau's intelligence field. He knows the problems of the past and with his help, and the help of a good many others, we have produced a draft charter of which I am very proud.

In my view, the proposed charter addresses every major question that has been raised and does so with sufficient specificity. It also provides for investigative guidelines with respect to the more detailed problems—the types of things that might change from time to time. These guidelines will be promulgated by the Attorney General in order to insure oversight of the Bureau. Investigative (operational) procedures will be left to the Director of the FBI, as far as possible, so that the Bureau's investigations, which are evolutionary in nature, will not be locked into an inflexible system. Technological capabilities are so much different now than they were five or ten years ago. We haven't any way of forecasting what kind of work we will be doing in the future, and so operational aspects ought to be my responsibility and I ought to be accountable for them.

The charter will address basic First Amendment principles, particularly those involving investigations of groups engaged in First Amendment activities. Normally, investigations should be governed by guidelines rather than by statute. I don't think we need a charter to tell us how to conduct a surveillance.

With a limited number of agents and the vast jurisdiction now encompassed by the Bureau, do you find you must adopt a policy establishing priorities? Do you have plans to put special emphasis on certain types of crimes?

Yes, priorities have been established and they are operational at this point. Our three principal priorities are foreign counterintelligence, white-collar crime, and organized crime. Antitrust and civil rights matters, along with personal and general property crimes, make up our second tier of priorities. And at a lowest priority we have placed the fugitive, domestic security-international terrorism, and general government crimes programs. With respect to the domestic security program, I would like to point out that it has been assigned a low priority because it occupies only three percent of our total resources. The international terrorism program is part of the domestic security program and when we have any terrorist activity in the country it becomes just as important as anything else that we do in the FBI.

With respect to the white-collar and organized crime programs, we have attempted to determine the scope of a particular criminal enterprise or activity. We then target our efforts toward top level criminals rather than those who are involved in street level crime. We have committed over a third of our resources to these two important areas.

In order to monitor our efforts in all of our programs, we have a computer system which measures the application of our resources to specific programs. This system also measures our inventory of work in each program area and records our accomplishments. These accomplishments are now more realistically presented as felonies, misdemeanors, actual recoveries and potential recoveries. In the past, statistics were compiled for the purpose of justifying appropriations. This method came under sharp criticism because it lumped together such items as recoveries and losses prevented so that these items could not be assessed properly. In the design of our computer program, we made certain that our statistics were properly broken out so that they could be clearly assessed. This information is shared with all of the Bureau's field commanders. They are provided with statistical information relating to their own offices, as well as information concerning overall field performance. In this manner we are able to see just how effective we are in moving into priority work.

With the establishment of work priorities we have been able to achieve our next goal of upgrading our work in each priority program through what we call the quality over quantity case approach. Taking white-collar crime as an example, we are not as interested in investigating a $1,500 bank embezzlement as we are in a bank embezzlement of over $250,000.

Another example can be drawn from the area of public corruption, which is not a specific program in itself but does involve white-collar type crime committed by a public official. In February of last year we had 574 cases under investigation; last Fall this number rose to 890, and at the present time there are over 1,000 such investigations pending. These cases involve a variety of public officials

including police chiefs, legislators and governors. It is an area that we take very seriously and move into with the utmost of care because reputations are very fragile. We believe that most public servants are honest and want us to clean house of those persons who break the public trust and adversely reflect upon their honest colleagues.

Another example of the impact of setting investigative priorities concerns our responsibilities toward the banking community. We found that historically three times as much money goes out the back door of a bank each year as is taken out the front door in bank robberies. Thus, it makes more sense for the Bureau to develop its capabilities in the direction of bank fraud and embezzlement investigations through the use of agents knowledgeable in the field of computer fraud. We have found that banks throughout the nation have been victimized through computer manipulation, sophisticated accounting techniques, embezzlement, schemes involving the setting up of phony loan sources, and the like. These techniques used by white-collar criminals are wide ranging and we are striving to keep current in this area. Fraud against the government is considered to be a major white-collar crime and the General Services Administration frauds have required the investment of a significant portion of our white-collar crime investigative resources.

I don't want to make any extravagant claims, but I believe we are making headway in our efforts against organized crime. In the case involving the Longshoremen's investigation on the East Coast we have had over 80 indictments to date. These include shippers, warehousemen, and labor leaders. The charges stem from systematic programs of extortion and bribery which have been going on for years all up and down the East Coast. And the consumer has been paying the bill.

This major effort to clean house has required the use of over 150 Special Agents, many of whom acted in undercover roles for over a full year. It has been highly coordinated and has involved over 20 FBI field divisions, as well as a number of United States Attorneys and Strike Force Attorneys. We believe this type of crime (organized and white-collar) is on the increase, and the FBI has committed two-thirds of our top priority programs to it because the work is there. Further, it is important work and meets my test. It is work that the FBI should be doing because we are well equipped to handle the long-term type of investigations of intensive criminal activity required in many of these cases.

Investigation of bank robbery matters continues to be an area on which reasonable minds differ. My answer has been an ad hoc approach in each community. I have instructed our Special Agents to confer with local police departments to determine what kind of capability exists in each department so that a joint system of response can be worked out for each local area. We will not desert bank robberies; however, our budget in this area mandates that we reduce our overall effort.

The FBI also continues to meet its responsibilities in the area of bank robberies and other matters in which we have concurrent jurisdiction with local authorities through a variety of programs. Each year we train approximately 4,300 hand-picked local lawmen in a variety of programs at our training facility located at Quantico, Virginia. We also provide a highly sophisticated program called the National Executive Institute for major city chiefs of police. Through these courses and through our police training instructors who are assigned in each of our field offices, we will be able to assist in upgrading the capability of local law officers to conduct bank robbery investigations. In many cities this capability is first-class and police agencies are eager to take on the full responsibility for these cases. One interesting aspect of this area is the difference in prosecutive attitudes from jurisdiction to jurisdiction. For example, the U.S. Attorney in San Francisco does not want to prosecute bank robberies while the U.S. Attorney in Los Angeles wants to prosecute all of them. Thus, the Bureau cannot be inflexible in handling these cases and we have to accommodate local considerations in order to make this program viable.

It appears that you are putting a lot of your resources into investigations of white-collar crimes. Is this because this type of crime is on the increase or is there more concern for this today?

In today's society, with its high level of education, we have persons who are able to apply acquired skills to contrive illegal manipulative schemes from which they net large sums of money. These clever techniques are increasingly being applied in criminal enterprises. One of the major enforcement tools we now have, and which the courts are seeing used more frequently in criminal enterprise cases, is the Racketeer Influenced and Corrupt Organization Statute. This law carries a 20-year prison sentence, a $25,000 fine, and a portion of it allows for the forfeiture of the enterprise. So when we find an instance in which organized crime infiltrates a legitimate business we are able to go after the whole business and seize the fruits of the crime. This law has been used effectively in a number of cases including one involving arson for profit.

See INTERVIEW p. 8

INTERVIEW from p. 7

One interesting aspect of this legislation is that the enterprise doesn't have to be a traditional business enterprise such as a corporation. For instance, it also can be a prosecuting attorney's office if, in fact, it is being operated corruptly in violation of state or federal laws. This is an important tool which we will utilize more and more.

What trends do you see as a result of your shift in priorities?

On a recent visit to San Francisco I was invited to lunch by my former colleagues in the federal judicial system and this was one of their questions. They wanted to know what types of cases they could expect to see in their courtrooms as a result of the Bureau's realigned priorities.

I told them that I think there will be fewer of the more traditional cases such as Dyer Act cases. I assured them we would continue to pursue commercial auto theft rings, and I also stated that they will see fewer bank robbery cases in many of their jurisdictions.

What I believe they will see with increasing frequency are criminal enterprise or multiple party cases. These matters can involve white-collar and/or organized crime. We are more effective in our investigative efforts against criminal enterprise or multiple party cases. These matters can involve white-collar and/or organized crime. We are more effective in our investigative efforts against criminal enterprise crimes, thus these are the types of cases which will be coming to the forefront. Federal judges should be prepared to expect problems in the areas of discovery, trial severance and related matters.

Additionally, one of the things that I am concerned about, and I know the judges are concerned about also, is the current and vitally important problem of gray mail. In a gray mail situation a government employee who is on trial requests to see highly classified information which he states is essential to his defense effort. Here the government is placed in the position of either dismissing the case against the employee or disclosing national secrets.

Another aspect of this problem relates to the FBI's utilization of undercover agents and/or informants in long-term undercover assignments. I am deeply concerned that when these types of cases (undercover/informant) reach the point of adjudication the defense will demand to know the names of our informants and other related information. Their claims that such data are essential to the defense of the person on trial could place the Government in the position of revealing sensitive or classified information. This is part of the problem the FBI is now experiencing with respect to the Socialist Workers Party. With increasing frequency, judges across the country are becoming more concerned with motions such as the ones I have described. The Government continues to resist disclosure of informants' identities, as well as classified material, and there should be some sort of solution to this problem, short of dismissal of a case, that would be consistent with our public trial system.

Aren't there instances where the judge can look at it *in camera?*

There are some instances of this sort; however, they are being questioned by both defense counsel and members of the press who feel that *in camera* examination detracts from the public character of a trial. I hope that The Federal Judicial Center will take an active role in studying this problem.

Aren't there areas where three acts in particular overlap in applicability: the Jencks Act, the Privacy Act, and the Freedom of Information Act?

The Jencks Act, considered separately from the Jencks decision, says that witness statements must be made available only after the witness has testified. My only comment in this regard is that the courts like to press for early disclosures of this kind in order to keep the trial moving. When I was on the Criminal Rules Committee I resisted any attempt to modify the rules in this area because Congress had spoken on them. Congress in effect amended the Jencks opinion to say that statements do not have to be disclosed until after the testimony of a witness unless the Government wishes to yield in the interest of keeping the trial moving along.

I have some firm opinions on the Freedom of Information Act. In principle, this is a fine law and has been used effectively in many instances. However, there are effects which Congress did not contemplate when enacting this legislation. Today, we have developed sufficient data to say with certainty that the Act has had an adverse impact upon law enforcement, particularly in the area of informant development. People who supplied vital information to law enforcement in the past can no longer be persuaded to do so as they believe their identities can no longer be kept confidential. Even in the area of federal judgeships, federal judges no longer want to discuss potential candidates for the bench because they do not believe that the information they would supply can be kept confidential. I have spoken publicly and testified before Congress in an effort to get Congress to face up to the fact that the benefits of this Act are now far outweighed by the detriments. Congress should amend the Freedom of Information Act. Some type of reasonable solution should be developed which would limit

access to confidential information and informant identity information. There should also be some kind of moratorium on access to closed law enforcement files. Information contained therein could be disclosed at a later time when it is no longer critical and the likelihood of damaging an informant by revealing his or her identity is thereby reduced.

The FBI currently receives about 18,000 Freedom of Information Act requests each year. Sixteen percent of all such requests come from prisoners, and the total cost of our operation to the taxpayer is between eight and nine million dollars per year.

The prisoners are asking for information on their files?

Yes, and most of them are clearly seeking to identify the person(s) who put them in jail. They also share information they have obtained with other prisoners who might have been involved in the same crime.We have analyzed a number of these requests and found that it is possible to identify an informant without too much trouble.

The pressure on the Bureau for disclosure has been so intense, and the latitude for not disclosing information has been so limited, that we find ourselves excising some words in a sentence and not others. This means, for example, that the recipient of documents can look at excised words and can accurately develop information which should not be disclosed by merely guessing the number of letters in excised words. Further, it is not at all difficult to identify someone who has provided derogatory information concerning another when the requester and the individual providing the information are among a handful of persons who have knowledge of the information. FBI employees who are charged with the duty of excising documents cannot know what other information is available to the person making the request. Therefore, we want broader authority to excise any information that has anything to do with informants. In this manner, we can rebuild the confidence that informants once had in the ability of the FBI to protect their confidentiality.

Do you anticipate the Administration will recommend some changes to Congress?

I believe that we are very close to having changes recommended. There is a joint task force working on it now, and there are members of Congress who are receptive to reviewing new proposals. Of course, any recommendations will have to be reviewed by the Administration, and I believe changes can be made without damaging the underlying principle which prompted Congress to pass the Freedom of Information Act. I don't want to be labeled as one who opposes freedom of information; I simply say that we have had enough time to see how well this law is working, and now we can fine tune the Act to protect interests that are just as important as the interests underlying the Freedom of Information Act. The large volume of requests we get comes from a relatively small number of persons; and although the Act serves a useful purpose, there are other ways of assuring the public that their agencies are not lying to them and are doing the work expected of them. Congressional oversight and accountability are ways in which agency operations can be monitored and controlled.

Last October Congress passd Public Law 95-511 which established a special federal court to consider and then grant or deny applications for electronic surveillance within the United States. These applications would be first filed with one of the senior U.S. district judges; and, when review is sought from a denial, appeal could be made to a special review court of three federal judges, with a final review possible on writ of certiorari to the U.S. Supreme Court. Will this delay cause you any problems?

I certainly hope not. The use of electronic surveillance in foreign counterintelligence (FCI) cases demands a different standard of probable cause than that which is necessary in criminal type investigations. The procedures are clear in FCI matters and it is the judge's responsibility to decide on whether a person is an agent of a foreign power. The judge does not have to decide whether or not probable cause exists in these cases. This fact is certified by the Attorney General and the Director of the FBI. I do not anticipate that there would be any cases of this nature that will give us trouble in obtaining the necessary authorization to employ electronic surveillance techniques. In domestic security cases we use the regular court-ordered system (Title III) when it is deemed necessary to utilize electronic surveillance. There are no domestic security wiretaps currently in operation by the FBI

TAPES ON CIRCUIT JUDGES CONFERENCE TO BE AVAILABLE

Sessions of the two conferences for federal appellate court judges — one in Los Angeles last January and one in Atlanta in March — were recorded on audio/video tapes. After editing and reproduction these tapes will be available on loan to federal judges through the FJC Continuing Education and Training Division.

FJC calendar

Apr. 26 Board of Editors Meeting, Manual for Complex Litigation; St. Louis, MO

Apr. 27 Multidistrict Litigation Panel Hearing; San Francisco, CA

Apr. 27 Judicial Conference Advisory Committee on Bankruptcy; Washington, DC

Apr. 30-May 2 Seminar for Fiscal Clerks; Pittsburgh, PA

May 3-4 Metropolitan Chief Judges Conference; San Diego, CA

May 6-9 Fifth Circuit Judicial Conference; Atlanta, GA

May 7-9 Seventh Circuit Judicial Conference; Chicago, IL

May 7-11 Advanced Seminar for Probation Officers; Wilmington, DE

May 8-9 Workshop for District Judges (Seventh Circuit); Chicago, IL

Mar 7, 10, 11 Management Program for Executives; Chicago, IL

May 9 Judicial Conference, U.S. Court of Customs and Patent Appeals; Washington, DC

May 9 Workshop for District Judges Sixth Circuit; Detroit, MI

May 9-12 Sixth Circuit Judicial Conference; Detroit, MI

May 14 Judicial Conference Subcommittee on Federal Jurisdiction; Washington, DC

May 15-18 Effective Productivity for Court Personnel; Philadelphia, PA

May 17 Judicial Conference, U.S. Court of Claims; Washington, DC

May 20-22 District of Columbia Circuit Judicial Conference; Williamsburg, VA

May 21-23 Seminar for Fiscal Clerks; Chattanooga, TN

May 21-25 Advanced Seminar for Pretrial Services Officers; St. Louis, MO

May 22-23 First Circuit Judicial Conference; Nantucket, MA

May 22-25 Effective Productivity for Court Personnel; New Orleans, LA

May 24-25 Workshop for District Judges (Eighth and Tenth Circuits); Santa Fe, NM

May 25-28 Annual Conference of Federal Judicial Secretaries Association; Hotel Warwick, New York, NY

May 26-28 Second Circuit Judicial Conference; Buck Hill Falls, PA

PERSONNEL

NOMINATIONS

Charles B. Winberry, Jr., U.S. District Judge, E.D. NC, Mar. 29

Frank M. Johnson, Jr., U.S. Circuit Judge for the Fifth Circuit Court of Appeals, Apr. 2

Dolores Korman Sloviter, U.S. Circuit Judge for the Third Circuit Court of Appeals, Apr. 4

Cornelia G. Kennedy, U.S. Circuit Judge for the Sixth Circuit Court of Appeals Apr. 9

Richard L. Williams, U.S. District Judge, E.D. VA, Apr. 9

DEATH

John Biggs, Jr., U.S. Senior Circuit Judge (CA-3), April 15

COURT OF CLAIMS from p. 4

established a new Article I trial court to be called the "United States Claims Court."

Those interested in attending should contact Frank T. Peartree, Clerk of the U.S. Court of Claims, 717 Madison Place, N.W., Washington, D.C. 20005. Mr. Peartree's telephone number is 633-7257.

This conference has been planned to qualify as "continuing legal education" which is now required in some states as a condition for retention of bar membership.

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Bulletin of the Federal Courts

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New Release:

REPORT ON WORD PROCESSING AND ELECTRONIC MAIL

In the Fall of 1977, at the request of the U.S. Court of Appeals for the Third Circuit, the Federal Judicial Center undertook a study to evaluate the impact of word processing and electronic mail on the appellate process. The major research questions were:

- Does federal appellate workload justify the use of word processing or electronic mail equipment?
- How would the impact of these technologies improve the efficiency in expediting the processing of appeals?
- How would the impact of these technologies improve the efficiency in the drafting and productivity of opinions?
- What impact might these technologies have on secretarial performance and productivity and on judges' and law clerks' performance and work styles?
- What impact would the technologies have on reducing time to distribute and review draft opinions among court members?

The Impact of Word Processing and Electronic Mail on United States Courts of Appeals, a report which describes this evaluation and presents the results, is now available from the Center's Information Services Office.

See REPORT p. 2.

AN INTERVIEW WITH SENATOR HOWELL T. HEFLIN OF ALABAMA

Senator Heflin, a former Chief Justice in the State of Alabama, has been a leader in court reform movements, in his state and nationally, for the past several years. As a director on the board of the National Center for State Courts the Senator played a prominent role in guiding this organization through its nascent years.

He has spoken firmly and he has spoken often in defense of the state courts and urged better support for them, financially and otherwise, but especially through LEAA funding.

The background and personality of Senator Heflin bring new dimensions to the work of the Senate Judiciary Committee and as the Chairman of the newly constituted Subcommittee on Jurisprudence and Governmental Relations, he will undoubtedly be making many proposals directly related to the federal courts. Set forth below are some of his initial thoughts as he takes on this important work.

You were recently appointed Chairman of a new subcommittee—the Subcommittee on Jurisprudence and Governmental Relations. Do you have some immediate plans for this subcommittee?

Yes, as its name indicates, this subcommittee would have a broad range of activity. Our plans call for the subcommittee to make an examination of the relationship of the federal judicial branch with other units of government.

In such examination we plan to study the entrance into and the exit from the judicial system. While we will make every effort not to conflict with the jurisdiction of other subcommittees, relationships between courts and administrative agencies and correctional units of government will be studied. The relationship of courts with juvenile justice systems may be one of the subcommittee's inquiries. A study of federal and state judicial relations may be undertaken. The possibility of a federal assistance program to state courts looms on the horizon. An inquiry into the relationships between the Administrative Office of the United States

Howell T. Heflin

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REPORT from p. 1

Ten judges and several administrators located in six cities in the Third Circuit were each provided a word processing system containing a telecommunications capability. The Federal Judicial Center developed a special computer software program to give each Third Circuit user access to a centralized "electronic mail post office" system on the Courtran II computer.

Several research instruments, including typing surveys, opinion circulation surveys, and appellate case tracking surveys were completed during a 1977-78 demonstration project to evaluate the impact of these technologies upon the Court of Appeals for the Third Circuit.

Among the general findings from the study—strongly supporting permanent installation of word processing equipment, but providing inconclusive evidence for the permanent installation of electronic mail—are:

- Word processing technology is cost beneficial for the Court of Appeals. The equipment decreases the cost of preparing court opinions; allows better utilization of support personnel; increases judges productivity; and speeds the production and dissemination of draft and final opinions.
- Word processing equipment increases secretarial productivity by 200-300% and decreases the number of typing hours by half.
- Word processing decreases the time required to prepare written opinions. The report documents a 52% reduction in the time required by the court to prepare and issue per curiam opinions and a 25% reduction in the time to prepare signed opinions.
- Electronic mail reduces by 75% the time for the court to exchange draft opinions, but does not reduce the time a court takes to review an opinion. In addition, electronic mail is substantially more expensive than the regular U.S. Postal Service, but substantially cheaper than either facsimile transmission or private express delivery services.

SPEEDY TRIAL ADVISORY SENT TO DISTRICT CHIEF JUDGES

Speedy Trial Advisory Number 27, *Inability to Comply with the 60-day Limit because of Congested Calendars; Procedures for Establishing Judicial Emergencies,* has been distributed to chief judges of the district courts by the Administrative Office. The advisory was issued because the Speedy Trial Act becomes fully effective July 1, 1979. On that date the sanction for failure to meet the time limits — dismissal of charges — then becomes effective.

18 U.S.C. § 3174 authorizes suspension of the 60-day limit from arraignment to trial if a district court is "unable to comply...due to the status of its court calendars." The procedural steps involved in obtaining suspension are set out in the statute as follows:

- The chief judge must seek the recommendations of the planning group before applying for a suspension.
- The chief judge may then apply to the judicial council of the circuit for a suspension.
- The judicial council must evaluate the capabilities of the district and the availability of visiting judges from within and outside the circuit, and make any recommendations it deems appropriate to alleviate congestion.
- If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, it may apply to the Judicial Conference of the United States for a suspension. The advisory suggests that such judicial council applications be made not later than June 12.
- If the Judicial Conference of the United States finds that the calendar congestion cannot be reasonably alleviated, it may grant the suspension. This authority has been delegated by the Judicial Conference to its Executive Committee. Applications should be addressed to William E. Foley in his capacity as Secretary to the Conference.

Although the contents and forms of applications have not been prescribed the advisory states that the following matters should be covered at a minimum:

- The effective date of the requested suspension.
- The time limit that would apply during the period of suspension. Section 3174(b) provides that this may not exceed 180 days.
- The requested duration of the suspension. The duration may not exceed one year.
- A statement of the reasons for concluding that a suspension is warranted and that the particular time limit requested is appropriate. If the suspension is granted by the Judicial Conference, a report setting forth the "detailed reasons" for the suspension must be filed by the Administrative Office with Congress.
- A statement of the resources that would be required for the district to comply fully with the Speedy Trial Act, with the reasons for the conclusions reached.
- The text of the amendments to the district court's speedy trial plan that would be required to effectuate the suspension.

The advisory notes that §3174 does not apply to the 30-day time limit from arrest to indictment and that there is ambiguity

See SPEEDY TRIAL p. 6

IN-COURT ORIENTATION PROGRAM DESIGNED FOR NEWLY APPOINTED DISTRICT JUDGES

An in-court orientation program has been designed to assist new district judges in becoming familiar with the broad range of responsibilities they assume as they enter the federal court system. It will be carried out in cooperation with their chief judges.

The program was developed by the Board of the Center and was the direct responsibility of an "In-Court Orientation Committee" consisting of the three district judges who serve on the Board.

The purpose of this new program is not planned as a substitute for orientation programs already in place in the various districts; rather, the Committee's hope is that this new Center program can serve as an auxilliary tool in helping each district structure its program to assist new judges through assistance by experienced judges. The program is subject to adaptations because of the varied backgrounds and prior experience of the new judges. For example, a state trial judge changing to a federal trial court may want to supplement his particular needs with orientation different from that of a judge coming into the federal system directly from private practice. A suggested checklist has been made up to asist the

See IN-COURT p. 9

The Third Branch

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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.

JUDICIAL FELLOWS CHOSEN FOR 1979-80

Gary J. Aichele, Philip L. Dubois and Donald P. Ubell have been selected as Judicial Fellows for the 1979-80 fellowship year by the Judicial Fellows Commission. The three will serve at the Supreme Court, the Federal Judicial Center, and the Administrative Office of the U.S. Courts, respectively.

Gary J. Aichele

Mr. Aichele is a graduate of the law school and a Ph.D. candidate in Government at the University of Virginia. His dissertation, *Consensus to Crisis: Realism and American Jurisprudence in the Twentieth Century,* will be completed by the Fall of 1979. The Society of Fellows at Virginia selected him to be a Junior Fellow in Government for 1977-78 and a 1978-79 Forstmann Fellow.

While at the University of Virginia, Mr. Aichele has been an instructor and teaching assistant in Government and senior research assistant to the University legal advişor. In addition to his work as a doctoral candidate, he is currently Director, Virginia Status of Students.

As an Assistant Professor of Political Science at the University of California, Davis, Mr. Dubois teaches a wide variety of subjects in the field of public law. In 1978 he was the recipient of the American Political Science Association's Edward S. Corwin Award for the best dissertation in the country in the field of Public Law. His dissertation was titled, *Judicial Elections in the States: Patterns and Consequences.* One of his research projects currently in progress is an analysis of the selection of trial court judges in California for the Institute of Governmental Affairs at the University of California. An additional study is an analysis of the impact of the creation of an intermediate court system in Wisconsin at the University of Wisconsin Law School. Mr. Dubois received a Ph.D. in Political Science in 1978 from the University of Wisconsin.

Philip L. Dubois

Donald P. Ubell

See JUDICIAL FELLOWS p. 8

AN INTERVIEW WITH SENATOR HOWELL HEFLIN OF ALABAMA

from p. 1

Courts and the General Services Administration, including planning for new courtrooms and physical facilities when new judgeships are created, is on the agenda.

Several years ago Chief Justice Warren Burger recommended that a judicial impact note accompany new legislation giving new rights and causes of action to individuals. His suggestion concerning a judicial impact note was broad enough to include any impact on the workload of the federal courts. I think his suggestion was a great one and I would like for this subcommittee to start working on a mechanism by which the impact of proposed legislation on the federal judicial system could be measured. It seems to me that some formula or measurement standards should be created to calculate the impact of proposed legislation on the judicial system. For example, some type of measuring device on additional judgepower should be formulated whenever proposed legislation would create new causes of action or give new rights to individuals.

Another example is the Speedy Trial Act which had a tremendous impact on the federal court system.

Yes, I am of the opinion that if an impact study of the proposal which created this act had been undertaken at the time the legislation was pending before Congress, then the act could have been written in a manner to prevent many of the ills that have resulted from such legislation.

What progress have you made in organizing your subcommittee?

The funding for the subcommittee has just been recently approved. We are now in the process of acquiring staff. Studies are now under way with regard to a mechanism to calculate the judicial impact of legislation which creates new rights and causes of action. Preliminary work is being done in the field of federal-state judicial relations and a program of federal assistance to state and local courts.

You were very instrumental in keeping the State-Federal Judicial Council in Alabama functioning. Do you think these councils are working effectively?

The State-Federal Judicial Council was the brainchild of Chief Justice Burger and in my opinion it has been very effective. In my home state of Alabama, the Council has been most productive in eliminating areas of abrasion between the two court systems. In Birmingham, the Council has produced a written policy of understanding on many areas of previous conflict.

I think the work of the councils would be further improved by the delegation of staff from both the federal and state levels to work part-time on these problems and more frequent meetings of the councils.

Have you had a chance to formulate any conclusions about the proposal to abolish diversity jurisdiction?

I have been studying this issue very carefully. I think the concept of diversity abolition is basically sound because state courts should try cases arising under state laws. However, there may be a constitutional issue since the U.S. Constitution does provide that the judicial power of the United States is extended to controversies between citizens of different states. Complete abolition may be a problem.

There is also the problem of local bias against nonresidents. In my judgment, local bias against nonresidents exists in every state of the nation. If diversity jurisdiction is abolished or substantially reduced, I would like to see a system worked out where nonresidents would have the right to a change of venue in the state courts. It would be desirable if diversity jurisdiction were abolished that a uniform liberal change of venue statute be adopted by each state so that a nonresident would have the right to change the venue in the state court to another location, but within geographic limitations. However, from a pragmatic viewpoint, to get 50 states to adopt such legislation at the same time is undoubtedly an impossible task. Considerable discussion is being undertaken in informal conversations with members of the Judiciary Committee and other interested parties as to alternatives of how a nonresident would have the right of a change of venue in state courts.

There is another area of concern about diversity abolishment, and that is multiple district litigation arising out of mass disaster accidents such as airplane crashes. Where the jurisdiction of the federal courts for such cases is based on diversity, it would seem to be highly desirable to keep these types of cases in the federal system.

While I have not made up my mind completely on the diversity abolition issue, I want to explore fully the possibilities of reducing diversity jurisdiction as opposed to its abolition, of granting rights to nonresidents to obtain a change of venue in state courts and of adding provisions dealing with mass disaster multidistrict litigation.

There is pending legislation which would expand the jurisdiction of magistrates within the federal system. Do you favor this legislation?

I voted for the bill after substantial changes were made and after language was inserted in the bill calling for a study of the magistrate system by the Judicial Conference of the United States.

Let's look at what has happened with magistrates. Over approximately the past eleven years the federal district court has been transformed from a one-tier trial court to a two-tier trial court which many judicial architects believe is inferior from a structural standpoint. This patch-on approach has all of the sins of duplicative and overlapping duties with district court judges, but its greatest malaise is its complete lack of any degree of uniformity. An understanding of how state courts got into a position of needing reform would be helpful. One of the major reasons state court systems had to be reformed was because of the complete lack of uniformity. When the movement for state court reforms was instituted, the evils that were generally pointed out were varying and different local rules, practices, procedures, varying jurisdictions and irrational, duplicating and overlapping courts of various kinds. An analysis of how the state courts got into this horrible condition will reveal that the key arguments used to justify the lack of uniformity were "experimentation," felxibility," "adaptability to local needs," and "expediency." The proponents of the so-called reform movement for federal courts are now using the same key words to justify the varying, different overlapping use of magistrates in the federal courts. Uniformity is considered to be the polestar of court reform. The evangalism for the states to adopt the Federal Rules of Civil Procedure centered around the need for and benefits of uniformity.

Testimony before the Judiciary Committee of the U. S. Senate revealed that before the passage of the Omnibus Judgeship Act there were 196 full time magistrates as compared to 399 district court judges or a nationwide ratio of one magistrate to every two district court judges. With an increase of 117 district court judges and the expansion of the powers of magistrates, it is reasonable to assume that the number of full time magistrates will substantially increase. Magistrates are now a vital segment of the federal judicial system. There can be little doubt but that the magistrate system should be structured from an architectural basis.

Hopefully, the study to be conducted by the Judicial Conference will involve an architectural approach towards structuring the magistrate system rather than the present patch-on, crazy-quilt-of-duties approach. At least magistrates should be given a decent title. The word "magistrate" is in itself demeaning. In the minds of most Americans it is associated with the evils of the Justice of the Peace system.

The Nunn/DeConcini bills which have been introduced would set up procedures to discipline, or censure, or suspend federal judges other than through the impeachment process. Do you favor any of these proposals?

Almost every state that has gone through a judicial modernization effort or judicial reform movement concluded that this had to be done by way of a constitutional amendment. All of the proposals pending in Congress are on a legislative basis. The language of the federal Constitution dealing with "good behavior" is enough, in my judgment, to raise a serious constitutional issue as to whether or not *any* type of disciplinary commission can be created without a constitutional amendment. That's a big concern to me. My feeling is that there is a need for the disciplinary commission approach. I think the cumbersome and ineffective method of removal by impeachment should be changed.

You have recently expressed opposition to any move toward setting up compulsory arbitration procedures in the federal system. Would you expand on that?

Of course. I'm utterly opposed to compulsory arbitration and the Court Annexed Arbitration Bill. My opposition can be broken down to three areas.

First, on the constitutional level, it's my judgment that the bill as presented to the Judiciary Committee was unconstitutional for several reasons. The bill, which allows cases involving personal injury, property damage, contracts, and negotiable instrument cases having an amount in controversy of $100,000 or less, to be automatically and mandatorily referred to arbitration is an unconstitutional impediment to a litigant's right to a trial by jury. While the right to demand a de novo trial by jury has been held to be the cure of such an impediment within a court system, I must point out that mandatory arbitration is not a part of a court system. One is required to leave a court and the only way you get back in court is to demand a de novo trial. Moreover, the bill provides that if the court subsequently determines that a person demanded a trial de novo without good cause, the court can tax the entire cost of the arbitration proceeding against the appealing party. Thus, in

See INTERVIEW p. 6

INTERVIEW from p. 5

addition to having the impediment of mandatory arbitration, an appealing litigant must gamble with a price impediment of having substantial costs taxed against him even though he might win the case before a jury on a de novo trial. For example, if the arbitration award were $35,000 and the jury verdict were $35,000, conceivably the court could find that good cause did not exist for the de novo demand. I also have difficulties with the bill from an equal protection standpoint as well as from the access to justice concept under due process.

My second level of objection is from a policy standpoint. I consider a compulsory arbitration forum to be less than first-class. It has been called "second-class justice." I can't rank it that high. In fact, I can't place it in any class of justice. Fundamentally a system of justice, be it classified as first-class, second-class or third-class, must have at least the following elements: (1) a court, (2) a judge, (3) a requirement that the judge take an oath of office, and (4) a requirement that the trier of facts take an oath. The compulsory Court Annexed Arbitration Bill contains none of these essential elements of a justice system.

There looms on the horizon a real possibility that the door to federal courts will be substantially closed to the average American citizen and that federal district court judges will only participate in trials involving special interests where the damages exceed $100,000 or cases of special federal questions such as antitrust violations. There can be little doubt that many doors will be closed if compulsory arbitration is adopted along with the expansion of the powers of a magistrate to try civil cases and with the abolition of diversity jurisdiction.

On a third level, there are a number of technical problems with the Act which I won't take time to enumerate, but I will mention a few. For example, the Act provides no real rules of procedure or practice for the conduct of the arbitration hearing. The use of the Federal Rules of Civil Procedure is unclear. Most contracts which contain a provision calling for arbitration at least incorporate a practice system, such as the rules of the American Arbitration Association, but this major piece of federal legislation contains no rules of practice or procedure. Apparently, each district court would be free to more or less fashion its own rules of procedure as it sees fit. The original bill didn't require the use of rules of evidence. It has now been amended so that the Federal Rules of Evidence are at least a guide. The bill is destructive of the concept of the rule of law.

In addition, there is no mechanism for the selection of an arbitrator or of a board of arbitrators. In fact, there's nothing that says how many arbitrators would be selected, whether one or a panel of three or whatever. One might walk into an arbitration proceeding and find his case being handled by a man he trounced in court only the day before, or by a person who is regularly engaged in litigation against the attorney in some specialized field. Certainly the way the bill is drafted the potential for conflicts are almost unlimited. There are other points, but as I said, I will not go into them in detail. I just wanted to mention some examples of technical problems I see with the Act.

In my judgement, the proponents of the arbitration legislation are using the same key words in the name of reform of the federal courts that led to such disastrous effects in the state court systems. These words are "experimentation," "flexibility," "adaptability to local needs," "expediency," and the like. It was experimentation, flexibility, adaptability to local needs, and expediency which caused many state court systems to be an unmanageable morass of local rules, local procedures, and practices. Again let me point out that uniformity is the polestar of court reform, yet the so-called reforms that are being offered, especially in the Arbitration Bill, tend to move the federal courts towards a system of let every district court do its own thing and let each arbitrator run his own show any way he desires.

While I am strongly opposed to compulsory arbitration, I do not share similar views about consent arbitration.

NOTICE

The telephone number of the American-British Law Division of the Law Library of the Library of Congress has been changed. Federal judges (or their staff) who are interested in using the research and reference service of the American-British Law Library should call the Chief of that Division, Marlene McGuirl at (202) 287-5081.

The services available from this Division of the Library of Congress appeared in *The Third Branch*, February 1979, p. 7.

SPEEDY TRIAL from p. 2

about its application to the time limit from indictment or initial appearance to arraignment.

REPORTS ON CIRCUIT EXECUTIVES AND JUDICIAL COUNCIL OPERATIONS PUBLISHED

Following a two-year nationwide survey, the Judicial Center has recently published studies of the work of the judicial councils and the circuit executives. The survey involved extended visits to each circuit, conferences with many judges and supporting personnel, and examination of correspondence, reports, minutes, and other documents relevant to the project mission.

The judicial councils are, by statute, the regional governing bodies of the eleven circuits. There is a council in each circuit composed of the active court of appeals judges of the circuit. Legislation providing for district court representation on the councils is pending. Most of the previous writing on judicial councils has critized them for inactivity; one writer called them the "rusty hinges of federal judicial administration." The Judicial Center report, *Operation of the Federal Judicial Councils,* finds a more encouraging picture. It analyzes the councils' exercise of their various statutory responsibilities with special attention to the major duties of supervising docket management and handling complaints about any judge's behavior.

The councils have often acted in a subtle and effective fashion, the report concludes, in the delicate matters that have been brought to them involving misbehavior or nonfeasance by a federal judge. The researchers made a vigorous effort to find problems that had been "swept under the rug," as critics of the councils apparently believe is common. They found none, and conclude that the councils have done an effective job of acting upon serious complaints concerning the work of the judiciary. However, the report suggests two kinds of steps to improve awareness of council powers: discussion of council activity at circuit judicial conferences, and creation of regular bodies that can receive and screen complaints.

The report suggests that judicial council docket supervision could be improved through more rigorous and timely use of available information. Several specific steps are suggested to use existing statistical reports more effectively. In particular, the circuit executives should do more thorough staff work on available information provided by the Administrative Office, pinpointing problem areas and suggesting council actions that could lead to solutions.

The second report, *The Impact of the Circuit Executive Act,* examines the work and accomplishments of the circuit executives in light of the purposes and hopes embodied in the 1971 Act that established their positions. The picture is extremly diverse. Reflecting the different tasks, assignments, and resources available to them, the circuit executives developed their positions in ways distinctive to the needs and circumstances of their particular circuits.

Some have made major contributions to administrative policy in their circuit, and have strengthened the operations not only of the courts of appeals but also the other courts throughout their circuits. Others have made more limited contributions, stressing, for example, assisting the chief judge of the circuit. Also, because the position was not precisely defined, sometimes there have been significant conflicts with other officials with overlapping re-

See CIRCUIT EXECUTIVES p. 9

Appointments Announced

FOREIGN INTELLIGENCE SURVEILLANCE COURTS

Chief Justice Warren Burger announced May 18 the appointment of seven United States District Court Judges as members of The Foreign Intelligence Surveillance Court. Three United States Circuit Judges empowered to review denials of surveillance applications were designated as members of The Foreign Intelligence Surveillance Court of Review. The two courts were created by the Foreign Intelligence Surveillance Act of 1978 (P.L. 95-511).

United States District Judges appointed to the Foreign Intelligence Surveillance Court and their terms are:

Albert V. Bryan, Jr., Eastern District of Virginia, seven years.

Frederick B. Lacey, District of New Jersey, six years.

Lawrence Warren Pierce, Southern District of New York, five years.

Frank J. McGarr, Northern District of Illinois, four years.

George L. Hart, Jr., District of Columbia, three years.

James H. Meredith, Eastern District of Missouri, two years.

Thomas Jamison MacBride, Eastern District of California one year.

United States Circuit Judges appointed to the Foreign Intelligence Surveillance Court of Review and their terms are:

A. Leon Higginbotham, Jr., Third Circuit, seven years.

James E. Barrett, Tenth Circuit, five years.

George Edward MacKinnon, District of Columbia Circuit, three years.

NEW PER DIEM DESIGNATIONS

Effective April 22, 70 new cities have been designated high rate areas for claims of actual expenses while traveling on official business. In addition, 21 previously designated high rate areas have increased maximum allowances, and some have redefined boundaries.

This listing of new high rate areas and increased maximum allowances was distributed to all officers and employees of the judiciary by the Director of the Administrative Office of the United States Courts on April 19.

NOTEWORTHY

Twenty-two bankruptcy clerks in the Bankruptcy Court at Denver, Colorado have voluntarily used their free time to learn sign language for the deaf. This special training — a cooperative venture between the Federal Judicial Center's Education and Training Division and the U.S. District Court — made it possible for this Court to hire its first deaf deputy clerk.

Deputy Clerks attended a series of 16 classes in sign language given at the Court by the Center on Deafness. Attendance was funded by the Federal Judicial Center.

* * * * *

George W. Shirley, chief of the Analysis and Reports Branch, Statistical Analysis and Reports Division, at the A.O. died in March. To quote A.O. Director Foley: "His keen mind and concise way of analyzing problems proved of great value to all of us. His contribution to the Speedy Trial Reports sent to Congress represent a high mark for this agency."

See NOTEWORTHY p. 9

PERSONNEL from p. 10

CONFIRMATIONS

Robert M. Parker, U.S. District Judge, E.D. TX, Apr. 24
Barefoot Sanders, U.S. District Judge, N.D. TX, Apr. 24
David O. Belew, Jr., U.S. District Judge, N.D. TX Apr. 24
Martin F. Loughlin, U.S. District Judge, D. NH, Apr. 24
Mary Lou Robinson, U.S. District Judge, N.D. TX, Apr. 24
Paul G. Hatfield, U.S. District Judge, D. MT, May 9
George E. Cire, U.S. District Judge, S.D. TX, May 10
James DeAnda, U.S. District Judge, S.D. TX, May 10
Norman W. Black, U.S. District Judge, S.D. TX, May 10
Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, May 10
Joyce Hens Green, U.S. District Judge, D.C., May 10
George P. Kazen, U.S. District Judge, S.D. TX, May 10
William Ray Overton, U.S. District Judge, E.D. AR, May 10
Harold Duane Vietor, U.S. District Judge, S.D. IA, May 10
Donald James Porter, U.S. District Judge, D. SD, May 10

APPOINTMENTS

Robert E. Keeton, U.S. District Judge, D. MA, Apr. 2
John J. McNaught, U.S. District Judge, D. MA, Apr. 2
David S. Nelson, U.S. District Judge, D. MA, Apr. 2
Rya W. Zobel, U.S. District Judge, D. MA, Apr. 2
Phyllis A. Kravitch, U.S. Circuit Judge (CA-5), Apr. 10
Abraham D. Sofaer, U.S. District Judge, S.D. NY, Apr. 23
Mary Lou Robinson, U.S. District Judge, N.D. TX, May 1
David O. Belew, Jr., U.S. District Judge, N.D. TX, May 4
Martin F. Loughlin, U.S. District Judge, D. NH, May 4
Barefoot Sanders, U.S. District Judge, N.D. TX, May 4
Robert M. Parker, U.S. District Judge, E.D. TX, Apr. 26
George E. Cire, U.S. District Judge, S.D. TX, May 11
Norman W. Black, U.S. District Judge, S.D. TX, May 11
Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, May 11
Joyce Hens Green, U.S. District Judge, D.C., May 11
George P. Kazen, U.S. District Judge, S.D. TX, May 11
William Ray Overton, U.S. District Judge, E.D. AR, May 11
James DeAnda, U.S. District Judge, S.D. TX, May 11
Harold Duane Vietor, U.S. District Judge, S.D. IA, May 11
Paul G. Hatfield, U.S. District, D. MT, May 11
Donald James Porter, U.S. District Judge, D. SD, May 11

DEATH

Frederick Kaess, U.S. District Judge, E.D. MI, Mar. 30

JUDICIAL FELLOWS from p. 3

Mr. Ubell is currently Chief Commissioner of the MIchigan Supreme Court, a position he has held since 1977. After graduating from the University of Michigan Law School in 1969, he began his career in the Michigan court system as a research attorney for the Court of Appeals. He later became Assistant Clerk of the Court of Appeals and Director of the Prosecuting Attorneys Appellate Service. The Supreme Court of Michigan has granted him a leave of absence to serve as a Judicial Fellow.

Mr. Ubell is also Chairman of the Young Lawyers Section of the State Bar of Michigan and a member of the State Bar Board of Commissioners.

CIRCUIT EXECUTIVES from p. 7

sponsibilities, especially the clerks of the courts of appeals.

Based on numerous interviews with circuit judges and others, the report suggests that circuit executives should move increasingly into broader and more substantial matters of administrative policy. Also, they should reduce the time they devote to routine matters, delegating them to others when possible.

Although the two reports draw upon the same field work, their origins are different. The circuit executive report has been prepared to help in meeting assurance given in 1971 that the judiciary would report to Congress on the operation of the Circuit Executive Act, after sufficient time had passed to appraise the results.

After work was begun, the Judicial Center was requested by the Judicial Conference Subcommittee on Jurisdiction to include also an evaluation of the operation of the judicial councils, in light of the guidelines on their operation promulgated by the Judicial Conference of the United States in March 1974. The Subcommittee, which had drafted the guidelines, wished to determine the need for modification or amendment of the guidelines. The report has been submitted also to the Subcommittee on Judicial Improvements, which now has responsibility for judicial council matters.

The reports are available from the Center's Information Services Office.

A Correction:

THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Last month *The Third Branch,* in an article announcing two appointments to the Multidistrict Litigation Panel, incorrectly stated that Judge Murray I. Gurfein (CA-2), the new Chairman of the Panel, succeeds Judge William H. Becker (W.D. Mo.).

Judge Gurfein succeeds Judge John Minor Wisdom (CA-5).

IN-COURT from p. 3

judges in determining what areas they will want to cover to supplement their prior experience. Some of the topics listed will be covered in the Federal Judicial Center's seminars for newly appointed judges, but the one-week seminars cannot address all the needs of every judge. Moreover, the Committee's view is that it is very essential that the new judges have the benefit of early and locally based orientation before assuming their judicial functions.

Although the checklist is intended to cover the full range of subjects a judge will early encounter, some obvious things are not included, such as local rules, the case assignment system and procedures for reassignment. The Committee urges all new judges, working with their chief judges, to become familiar with all of these topics before induction.

The judges who designed the program are suggesting that all newly appointed judges spend at least one week, before assuming their full share of their judicial responsibilities, in close association with experienced judges. A further suggestion is that a few days of this period should be spent sitting with or observing a fellow judge on the bench.

NOTEWORTHY from p. 8

Recently released in the Ninth Circuit: A booklet entitled *Information for Lawyer Representatives of the Judicial Conference of the Ninth Circuit.* The publication contains such information as the standards established for selection of the lawyer representatives, the role of the representatives at the Conference, when and how they meet during the Conference, and how the representatives' coordinating committee should function.

Law clerks from The Supreme Court of Canada annually make a visit to the Federal Judicial Center as a part of their Washington Program. This year the group viewed a video tape on the Appellate Information Management System (AIMS) and heard presentations on the work of the Center made by senior staff including Gordon Bermant (pictured above), a Senior Research Psychologist who exchanged views with the clerks on the role of research in the justice system.

AO/FJC calendar

May 30-June 1 Judicial Conference Advisory Committee on Civil Rules; Washington, DC

May 31 COURTRAN II STARS and INDEX Overview; Washington, DC

Jun 4-6 Seminar for Jury Clerks; Reno, NV

Jun 4-7 COURTRAN II Coordinators Advanced Course; Washington, DC

Jun 4-8 Advanced Seminar for U.S. Magistrates; Atlanta, GA

Jun 5-8 Effective Productivity for Court Personnel; Columbia, SC

Jun 11-15 Advanced Seminar for U.S. Probation Officers; Kansas City, MO

Jun 14-15 Workshop for District Judges (Third Circuit); Cherry Hill, NJ

Jun 18-21 COURTRAN II STARS and INDEX Review; Washington, DC

Jun 18-22 Drug Abuse Aftercare Seminar; St. Louis, MO

Jun 18-23 Seminar for Newly Appointed District Judges; Washington, DC

Jun 19 Judicial Conference Subcommittee on Supportive Personnel; Washington, DC

Jun 19-22 Effective Productivity for Court Personnel; Detroit, MI

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

Jun 25-26 Judicial Conference Subcommittee on Judicial Improvements; San Francisco, CA

Jun 25-27 Seminar for Fiscal Clerks; Salt Lake City, UT

Jun 25-29 Advanced Seminar for U.S. Probation Officers; Birmingham, AL

Jun 28-30 Fourth Circuit Judicial Conference, Hot Springs, VA

PERSONNEL

NOMINATIONS

Edward C. Reed, Jr., U.S. District Judge, D. NV, Apr. 23

Albert J. Henderson, U.S. Circuit Judge (CA-5), Apr. 23

Robert L. Anderson, III, U.S. Circuit Judge (CA-5), Apr. 23

Reynaldo G. Garza, U.S. Circuit Judge (CA-5), Apr. 30

Jon O. Newman, U.S. Circuit Judge (CA-2), Apr. 30

Carolyn D. Randall, U.S. Circuit Judge (CA-5), Apr. 30

Patricia M. Wald, U.S. Circuit Judge (CA-DC), Apr. 30

Marvin E. Aspen, U.S. District Judge, N.D. IL, Apr. 30

Valdemar A. Cordova, U.S. District Judge, D. AZ, Apr. 30

Amalya L. Kearse, U.S. Circuit Judge (CA-2), May 3

Mary Schroeder, U.S. Circuit Judge (CA-9), May 3

Henry A. Politz, U.S. Circuit Judge (CA-5), May 3

Francis D. Murnaghan, Jr., U.S Circuit Judge (CA-4), May 8

James P. Jones, U.S. District Judge, W.D. VA, May 16

Avern Cohn, U.S. District Judge E.D. MI, May 17

Stewart A. Newblatt, U.S. District Judge, E.D. MI, May 17

Anna Diggs-Taylor, U.S. District Judge, E.D. MI, May 17

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Bulletin of the Federal Courts

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SENATE APPROVES SPEEDY TRIAL AMENDMENTS

The Senate has approved amendments to the Speedy Trial Act that would postpone the effective date of the dismissal sanction to July 1, 1981.

The Senate bill, passed on June 19, was proposed by Senators Biden, Bayh and Kennedy as an alternative to bills submitted by the Judicial Conference of the United States and the Department of Justice. The House of Representatives is not expected to complete consideration of the bill before the sanctions take effect on July 1.

In addition to postponing the effective date of the sanctions, the Senate bill would:

- Merge the 10-day period to arraignment and the 60-day period to trial into a single 70-day time limit from indictment to trial.

- Provide that trial may not commence without the consent of the defendant, sooner than 30 days from the date of the defendant's first appearance through counsel.

- Expand the exclusion for "other proceedings concerning the defendant," partly by specifying that it covers the period from the filing date of a pretrial motion through the conclusion of hearings on it.

See SPEEDY TRIAL p. 2

CONGRESSMAN ROBERT W. KASTENMEIER AND THE FEDERAL JUDICIARY

The following is another in a series of interviews with individuals whose official activities directly affect the work of the federal courts.

Congressman Kastenmeier has represented his native State of Wisconsin in Congress since 1958.

The Congressman is a member of the House Judiciary Committee and is Chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. He has played a prominent role in promoting human rights causes; he has been a strong advocate of "open government" (and was one of the first to open his Subcommittee meetings to the public); and he has a keen and continuing interest in the federal courts.

* * * * *

As Chairman of the House Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice, with oversight and legislative authority over the federal judiciary, you play a special role in the relationship of the legislative branch to the federal courts. From that perspective, do you have a special methodology to guide the work of your Subcommittee in approaching issues relating to court reform and access to justice?

ROBERT W. KASTENMEIER

I guess it could be said that I have a special methodology. Basically my Subcommittee deals with global issues. In addition to courts, we have jurisdiction over prisons, legal services, privacy, and intellectual property. Several years back we took up the overall issue of corrections. In a somewhat similar way two years ago we seriously considered the role of and the strains on the federal judicial branch of government. While it would be unfair to imply that past Congresses and Judiciary Committees of the Senate and the House have not dealt with federal courts in a comprehensive way, for the first time in a long while a Subcommittee inquired into the broad issue of the state of the judiciary and

See KASTENMEIER p. 4

WIRETAP REPORT RELEASED

The eleventh annual report on applications for orders authorizing or approving the interception of wire or oral communications has been submitted to Congress by the Director of the Administrative Office of the U. S. Courts. This report covers the period January 1 to December 31, 1978.

As required by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, the Administrative Office in April of each year must report to Congress the numbers of applications, orders and extensions granted or denied. The report summarizes the data required to be filed with the Administrative Office by federal and state judges and prosecuting officials.

Section 2518 of Title 18 U.S.C. requires each state and federal judge to file a written report with the Director of the Administrative Office on each application made to him for an order authorizing the interception of a wire or oral communication.

These reports contain detailed information including the nature of the offense specified in the application, the duration of the authorized interception and the name of the applicant. Prosecuting officials who have applied for intercept orders are required to report annually on the results of the intercepts in terms of costs, and the numbers of trials, convictions and motions to suppress evidence obtained through the use of the intercepts. None of the information submitted by either judges or prosecuting officials reveals the names, addresses or telephone numbers of the persons under investigation.

Virtually all applications for wiretap orders were granted. During calendar year 1978, 572 applications were received and 570 were granted. Fourteen percent of these orders were issued by federal judges. For the second consecutive year there was a 9% decrease in the overall number of wiretap orders authorized and approved. While federal orders increased from 77 in 1977 to 81 in 1978, state authorizations decreased from 549 in 1977 to 489 in 1978.

The report summarizes the number of intercept orders authorized by each reporting jurisdiction, the number of intercept orders which were reported as amended, the number of extensions granted, and the average length of the original authorization and extensions. It also reflects the total number of days during which intercepts were reported in actual use and the type of location where the interception of communications occurred.

The report showed that:

- Authorized length of time for the 570 applications granted varied from one day to 150 days. The average length of the original authorizations was 24 days compared to 25 days in 1977.
- A wide range of offenses were specified in the applications and many specified more than one crime. In 42% of the state and federal authorizations, gambling was the most common offense under investigation; drug offenses and racketeering were the next most common.
- Locations of interceptions included 249 single family dwellings, 112 apartments, and 125 business locations. In 23 authorizations the place of interception was another type of location such as a public pay telephone, an automobile, or a social club.
- The average number of interceptions for a single authorization varied in frequency from less than one per day to 221 per day. The average number of persons whose conversations were intercepted was 68 per installed interception. The average number of communications overheard was 738 per order, while the average number of communications intercepted which produced incriminating evidence was 205 per order. Of the installed interceptions reported, 510 were telephone wiretaps and 27 were microphone eavesdrops. Twenty-one reports specified that more than one type of surveillance was used.
- The average cost for the orders for which a cost figure was reported was $11,275, an

See WIRETAP p. 8

SPEEDY TRIAL from p. 1

- Make clear that an "ends of justice" continuance may be granted to give a defendant reasonable time to obtain counsel, or to preserve continuity of counsel, or to ensure adequate preparation time.
- Continue the activities of the district planning groups, and require submission of a third round of speedy trial plans by June 30, 1980.
- Change the "judicial emergency" provision to give the circuit councils final approval authority and to permit the chief judge of a district court to order brief suspension of the time limits while the circuit council is considering the application.

Both the Judicial Conference and the Justice Department have proposed legislation that would expand the statutory time limits. Although the Senate bill does not expand the time limits, liberalization of the exclusion for "other proceedings" and clarification of the "ends of justice" continuance are efforts to respond to concerns that the statutory time limits may be too restrictive.

CHIEF JUSTICE ADDRESSES FIFTH CIRCUIT ON CORRECTIONS

In an address to the Fifth Circuit Judicial Conference last month The Chief Justice recommended the creation of a National Corrections Academy and a concentrated program to teach every prisoner to read and write and to give him a marketable skill. The Chief Justice said:

"Some years ago I made a proposal that I would like to renew today. The federal government should create a National Corrections Academy patterned along the lines of the F.B.I. Academy. The F B.I. has done an extraordinary service to this country for more than 40 years in providing training for local and state law enforcement officers, which has vastly improved law enforcement practices throughout the country. This was especially important in an era when judicial decisions were raising the constitutional standards that law enforcement officers were required to meet. The National Corrections Academy should devote itself to training security officers, prison counselors, and probation officers of the states. Some of the states have excellent programs. But what little we know about corrections should be pooled and shared in a central, national facility. Such an institution could develop uniform, minimum standards to guide those states that desire help.

"In many of the institutions in this country today, a majority of the inmates cannot read or write; they are functional illiterates. If they remain that way, the prospects of their returning to prison are greatly increased. During the period of incarceration a concentrated program must be available on two levels: First, to see to it that every prisoner learns to read and write; and, second, to see that each prisoner is trained in a marketable skill. This should begin at once with experiments in a limited number of institutions in several states.

"We need do no more than look at our recidivist rate and speculate on what kind of business could survive under the private enterprise system if it turned out products with as high a 'recall' rate as we experience in American prisons.

"To put a man behind bars to protect society without trying to change him is to win a battle and lose a war."

Urging that the Attorney General begin these programs, he said:

"We have at the moment in this country as the Attorney General of the United States a man who has shared with all of us the experience of the judicial branch. He has brought new insights, and new vision into the office of Attorney General, and he has concerned himself with the problems I have been discussing. Before he leaves that office, I hope he will take the first steps to develop a program of this kind."

Senator Edward M. Kennedy, Chairman of the Senate Judiciary Committee, was a featured speaker at the banquet concluding the Second Circuit Judicial Conference held at Buck Hill Falls, Pennsylvania just last month. Pictured above (top) are: Mrs. Irving R. Kaufman, Senator Kennedy, and Chief Judge Irving R. Kaufman. Two other speakers at the Second Circuit's banquet were: Attorney General Griffin B. Bell (pictured immediately above), and Henry A. Grunwald, Editor of Time, Inc. Mrs. Grunwald is to the Attorney General's right.

CONGRESSMAN ROBERT W. KASTENMEIER AND THE FEDERAL JUDICIARY from p. 1

access to justice. During these oversight hearings we attempted to examine the broad range of issues by receiving testimony from leading jurists and scholars in the legal field. This gave us a philosophical underpinning as to the basic questions relating to such things as access to the courts and the costs and delays of litigation. It also gave us a look at the status of the judiciary afresh —that is to say from a perspective of 1977. Of course in the past many, many of the questions had been well noted, and solutions offered to remedy problems related to the appellate structure, the number of judgeships, and other things that have long been with us. We received testimony from individuals who played important roles in the Hruska Commission, the Pound Conference, and the Justice Department Report on the Needs of the Federal Courts. Nonetheless, to try to approach the pertinent questions we needed some sort of overview in terms of the general questions affecting the courts, in which particular statutory and sometimes other solutions would be proposed to play a major role in alleviating these problems and to explain why we approached them in that fashion. I would think in a sense that through the "state of the judiciary" and "access to justice" hearings we tried to expose the Committee to all major or relevant questions affecting the judiciary. Frankly, access to justice is a somewhat more difficult question. We added this to our inquiry because court related problems are really people problems, not merely judge or lawyer problems. Some aspects of the access to justice issue—such as questions relating to standing and class actions—are very controversial. This leads to a critical interpretation of certain supreme Court decisions. So, while we recognize these questions, certain of them are not so easily resolved; indeed, questions relating ultimately to the Supreme Court are perhaps the most difficult to solve.

Nonetheless, with that as a starting point we were able during our general hearings to delve into specific statutory proposals for change in the existing system. To a very large degree, these proposals have not yet been enacted, but today —in 1979—they have reached a point of high visibility, in terms of general recognition of both the issues and the solutions proposed. The range of issues simply goes from, at the very bottom, access to justice for resolution of minor disputes, right through the entire court structure to changing the mandatory jurisdiction of the Supreme Court. Some of the matters are being treated by my Subcommittee and some are treated by other congressional components. Examples of these issues are diversity of citizenship jurisdiction, magistrates reform, arbitration, habeas corpus, and appellate court improvements, which are all in my Subcommittee; bankruptcy reform, which is not; and creation of new federal judgeships, both district and circuit, which is not in my Subcommittee although we are interested in it. Many others, what I would call conservational, possibly housekeeping changes are proposed modifications in district and division dividing lines, in places of holding court and in judicial machinery affecting judges, juries, witnesses, marshals, and probation officers; indeed all the areas that go into administering the federal judicial system are of great interest to me. Many times relatively unimportant legislative measures, taken collectively, can keep the existing system in tune. These have in part been treated or are in the process of being treated.

During the next several years, we will be in the process, as I see it, of assessing also the impact of the great number of new judges and to what extent this has a ripple effect upward in the system as far as the Supreme Court is concerned. These, as well as other more subtle questions, such as judicial tenure and many others, are in the process of being dealt with by my Subcommittee and by our Senate counterparts. I have very high hopes for at least the expeditious resolution of most of these questions as well as others that will surface in the general context of what I would call the "state of the judiciary" and "access to justice."

You mentioned prisons and corrections and in the Chief Justice's recent comments to the Fifth Circuit he suggested that there should be an academy for training of the people in the corrections system, very similar to the FBI Academy. Would you care to comment on that?

I would think that is a useful idea. We do have a sort of submerged National Institute of Corrections. I say "submerged" in the sense that its independence and its comprehensive ability to deal with the system and to be innovative is somewhat restricted. I noticed The Chief Justice's statement and some other comments he recently made with respect to teaching inmates reading and writing skills. The Chief Justice has always had an abiding interest in corrections and usually his suggestions have very great merit. We need to work together to the extent we

can. The use of the Executive Branch instrumentalities such as the Law Enforcement Assistance Administration is somewhat overworked. We have need in the next several years, I think, to reorder how the national government, probably under the aegis of the Attorney General, is able to respond to a number of problems in the area of the judicial and the criminal justice systems.

That we have major problems in the area of the judicial and the criminal justice systems is unquestioned. In addition to law enforcement problems, we have problems of how to aid the state courts. We have problems of how to aid corrections, notwithstanding the fact that they be state and local prisons and jails. We think there is a federal role, although we think it ought to be in conjunction with state and local entities who are in the field whether we are talking about courts or corrections. To this extent I would think that some sort of National Institute of Justice which either replaces or in time supercedes the Law Enforcement Assistance Administration with changes of emphasis would be very useful in giving voice to some of the suggestions made by Chief Justice Burger and many other similar concerns that we must confront in an effort to aid courts or corrections personnel in other areas.

You were a member of the Judiciary Committee when the act creating the Federal Judicial Center was enacted in 1967. Do you feel the Center has met its mandate from Congress? Also, do you have some suggestions for special projects that should be undertaken by Center staff?

I think the Federal Judicial Center, to the extent that I am familiar with its activities, has certainly lived up to its mandate. Although I was not a member of the Subcommittee that actually created it, I think it was an essential outgrowth and an early recognition of the fact that we needed an entity devoted to judicial administration in the country. In this regard, it has provided very great assistance. Its in-depth research on court-related problems is of very high quality. It even sometimes functions by having its prominent people participate in the work of other commissions and matters not directly related to the judiciary. So I think it really has done a great deal. I suspect if there is a problem it is whether or not it has high enough visibility and whether the Center is asked to participate and contribute as much and as often as it should; at least I am speaking for Congress. I think it is somewhat neglected by Congress and it could be a very useful arm which the Congress could use, especially when considering improvements in the administration of justice. We—the Senate and House Judiciary Committees—probably do not rely as much on the Center as we should.

I must say I have nothing but encouraging and good reports in terms of it serving the mandate it was created to serve. It possibly could even be expanded, but I am afraid that I really have not given it enough thought to precisely give an informed view about that.

A look at the history of the federal court system shows that the answer to court congestion has been to increase the number of judgeships. Do you have some personal ideas about alternative solutions to meeting increasingly heavy caseloads? In other words, the total answer to meeting heavy caseloads is not additional judgeships.

I agree. As a matter of fact, a lasting impression left on me and perhaps other members of my Subcommittee from our hearings was that we cannot continue to increase the number of judges in the federal judiciary and maintain high quality. Really, I think high quality has been maintained in the past and we still hope to maintain this high standard with the recent very large increase of 152 judges to the system. However, we cannot in the future hope to inexorably add large numbers of judges and hope to keep the system in good order. Similarly, the creation of large numbers of judgeships breeds new problems, especially at the appellate levels of the system. More cases ultimately enter and flow through the judicial system, impacting more heavily upon the Supreme Court which remains the same. Moreover, the expansion of the number of judges is only a short term solution to the difficult problems needing attention.

Rather, we should seek other devices to be sure that this particular number of judges ought to be able to handle matters. There are a number of things that have taken place which I think will already aid in that regard. What we have done in the past and presently propose to do with respect to magistrates will clearly aid. Giving courts the flexibility of using magistrates in a broader range of cases in court situations, I think, will be beneficial in terms of disposing of matters before the federal district courts. It is felt that the upgrading of the bankruptcy judges in the most recent Bankruptcy Reform Act should be of some assistance as well. Every part of that bill may not be agreed on by one and all; I know there was some controversy about the status of the bankruptcy judge. Nonetheless, clearly it was designed to rely more on the autonomous

See KASTENMEIER p. 6

KASTENMEIER from p. 5

bankruptcy judge and less on subsequent action by the federal district courts further up the judicial ladder.

One of the things we are particularly interested in is rationalizing the federal/state justice systems through change in the present diversity jurisdiction of federal courts. That is to say, essentially, state cases ought to remain in state systems for resolution and that federal question cases ought to have access to the federal courts, with more or less rare exceptions, at least compared to the very great number of essentially state questions and state actions that presently find their way into the federal courts based on the fortuitous circumstance of diversity of citizenship. This would be a very great relief to the federal system and in terms of our federalism would also be a far more rational way to proceed. There also are grounds to believe that in the long run, the state courts could benefit from this more principled role in the total justice system. While the abolition of diversity jurisdiction is resisted among many practitioners who prefer the old way of doing things, nonetheless, I think that it would be very beneficial. In a related area, improving mechanisms for the resolution of minor disputes would only marginally help the federal judicial system in terms of caseload; however, I think it would significantly help the state systems by providing for alternative forums for the resolution of questions that would otherwise be litigated in state systems. I do think there would be a ripple effect. While we would divert more diversity cases back into the state system, at the same time we would help both the federal and state systems by providing alternative forums for resolution of conflicts. I think that providing substitute devices for resolving conflicts is an essential ingredient for reordering the jurisdictions of the two court systems in this country. Hopefully, caseloads would become more manageable and delays and costs of litigation would be lessened, and a higher quality justice would result.

We are, of course, obviously looking at other things in the process, such as arbitration. There are many other devices as well which we have in legislative form in terms of proposals, which also hopefully will reduce caseloads and ultimately reduce litigation and trials.

There are other things taking place. I suppose when you discuss this, one has to talk about the Congress in terms of the volume of legislation which tends to give new rights or give new opportunities for persons to vindicate rights and, therefore, candidly does become burdensome in terms of the federal judiciary. Yet, of course, no one says that those cases should not be there; indeed they should be. But, I think the Congress should understand what the judicial impact is of new legislation. We at least ought to be aware of it at the time that we are passing new legislation that may result additional burdens for the courts. Perhaps we can more carefully impose those burdens. We have the Speedy Trial Act which places a certain burden on the federal judicial system and a similar load on the United States Attorneys as far as prosecutions go. Similarly, federal rulemaking, whether this is done by the Justice Department or others, can have an important others, can have an important impact on state and federal courts. Criminal prosecutions in which there is companion jurisdiction can be diverted to the state systems. We would thereby permit the state systems to prosecute individuals for bank robbery, for auto theft, and so forth, thus shifting the burden from the federal system somewhat in terms of federal criminal prosecution. There are other ways of impacting on caseloads in the federal system and we should be aware of them. When and if the revision of the federal criminal code is enacted, it, too, will have a very powerful impact on the federal judicial system and probably some spillover that will impact on the states as well. It would be hard to predict the effect. I know there has been apprehension expressed by the most highly placed members of the federal judiciary as to what this impact might be. I would hope it would not be a burdensome one. The law itself should be a simplification and again a much more rational and consistent law, a much more comprehensible integrated law in Title 18 than is presently constituted. It should eventually be of help; at least that's what the hope would be. So all of these things will impact, it seems to me, on the burdens and caseloads of the federal judiciary and indeed on the entire national judicial system as far as that is concerned.

This is a rather long response to a short question. Clearly expansion of judgeships is not a miracle cure to the complex pressures and burdens placed on the federal judiciary in a rapidly changing society.

You have a reputation as someone interested in ethics and accountability in government. What are your thoughts about legislation relating to judicial tenure or discipline?

Well, I have not in the past delved deeply into that question but I do recognize that it is one that must be confronted by the House Judiciary Committee. The Senate has looked at the subject and it is a current issue. Indeed, I am not sure that it ever has been any more current, any

more compelling an issue than it presently is. We clearly need to reach some method, presumably through a judicial tenure statute, to resolve existing problems. It remains to be seen whether there are satisfactory alternatives to statutory reform. I know the Senate devoted a great deal of time to judicial tenure legislation and I commend the Senate Judiciary Committee for the time it has expended in this endeavor. The House has not, I concede. On the other hand, the House did go through a very elaborate impeachment inquiry and proceeding not many years ago with respect to a former President. The dreadful burden that that inquiry imposed upon the committee suggests that impeachment in present times can not readily be relied upon. Probably neither the Senate nor the House would wish to devote the time and resources to a normal impeachment of a judge, or any other federal officer, except where no other alternative exists. I do not believe that the Senate would be willing to constitute itself into a trial court for impeachment and conviction of a federal judge. The Senators would not have the time and would not have the disposition to do that. Therefore, while that even now would only rarely be considered, it becomes even less likely as the years pass. Therefore, it is appropriate, it seems to me, to find an alternative mechanism which has public credibility.

In the near future we will explore in House Judiciary Committee hearings what our present obligations are in such matters. At the same time we will examine statutory alternatives or legislative proposals with respect to judicial tenure and discipline. In my opinion, there is a likelihood that we will produce some sort of bill even though up to the present time there are rare cases indeed in which the good behavior of judges is called into question. Nonetheless, I sense that there is an increasing interest in what constitutes appropriate behavior for public officials in the Congress, the Executive Branch, and the Judiciary as well. In other words, the judicial branch is not exempt from the same sort of general criticism being raised nationally about the official conduct and activities for other public servants. For that reason I suspect that the issue may have surfaced equilaterally of our own inquiries and so it may appear to make resolution of this very difficult question more necessary.

I am quite aware that many judges feel that the Constitution is meant to afford them protection against some attacks, whether they be official or otherwise. This makes the solution more difficult to arrive at. In this regard, I do not presently have a personal preference or to put it another way, I am not committed to a particular approach. I would like again to go into this question with an open mind to see what would be best achieved.

After proposals were made by the Attorney General, three pilot programs were started in three federal districts relating to mandatory arbitration, with the right to a trial de novo if the litigants asked for it, and I understand that Congressman Rodino has introduced legislation on arbitration. Do you favor what the Attorney General is proposing?

Yes, I am aware of the Attorney General's proposals. I also am aware that there has not been unanimity about arbitration. I have not crossed that bridge in terms of the constitutional objections raised by Senator Heflin, [see May 1979 issue of *The Third Branch*] but I think that we will want to explore this in more depth as relates to the actual implementation of the arbitration technique. My own disposition is to regard arbitration affirmatively. The Attorney General must have carefully considered the constitutional objections and he must have found them to lack substance.

I would think that some time during this Congress we would want to look at the question of arbitration. At present it is not high on the agenda and perhaps we will have the benefit of further studies on the matter including your own. I do clearly believe that we must examine each of the Attorney General's initiatives. The problems of court congestion and costs we referred to earlier are sufficently grave so that we cannot afford to disregard alternatives. It may be that Senator Heflin's reservations or objections are compelling enough to cause some delay in finally enacting such a proposal. That I do not know; but notwithstanding reservations, we will want to fully look at these. My view is that if alternatives to litigation can be appropriately employed it will make our system a little more flexible, and give us a few more options. Therefore, I generally start from the premise that I would like to see arbitration used in the federal courts rather than taking an opposing viewpoint.

Often there are legislative proposals for minor changes in the existing judicial structure, which sometimes fall between the legislative cracks. Although these appear to be minor, from a housekeeping viewpoint they can be very important to the overall judicial structure. Do you have any observations on this?

Yes, I agree with the proposition. I don't think that the House and Senate Subcommittees with responsibility over the

See KASTENMEIER p. 8

KASTENMEIER from p. 7

federal judicial system have overlooked the minor aspects. As a matter of fact we now consider many recommendations, some of which are in fact quite minor but which are nonetheless valid and ultimately ought to be enacted. We have, as a matter of fact, spent as much time with minor matters as is entitled to be spent on these questions. This certainly was true last Congress, with passage of juror, witness and judicial organization bills. And also this Congress, we have a series of other proposals, essentially minor in character, which we will probably treat relatively early. I quite agree that minor matters ought not to be disregarded and if either the House or Senate Judiciary Committees tends to them, it is likely the other Committee will respond. I don't have much apprehension about that. We have worked well with the Senate in this connection and we have worked well with other organizations with a direct interest in the courts—the Administrative Office of the United States Courts, and all the other organizations that can give us assistance. I think that will be one of the areas where we will probably get the least criticism.

One of the important things, as I see it, is to perfect the federal judicial system in terms of general efficiency and access to justice. The system must be kept in tune. This is an ongoing and continuing proposition. In addition, this can have a very great beneficial effect on state systems either by example or by just some sort of residual effect and to the extent that we can achieve this, it reflects well on the confidence the American citizen has in his government and his judicial system. I regard this whole area as a very important obligation of my Subcommittee.

THIRD CIRCUIT POSITIONS AVAILABLE

Clerk, United States Court of Appeals for the Third Circit, Philadelphia, Pennsylvania.

Salary: $38,160—$44,756 (JSP 15 or 16) commensurate with qualifications.

Responsibilities: Under the direction of the Court and pertinent statutes and rules for planning, the Clerk manages and supervises the business of the Court, including personnel, case management, relationship with district courts and the practicing bar, statistics, interpretation of rules and disposition of delegated motion business.

Qualifications: Law degree with ten years active practice or experience in law-related fields; proven management and administrative skills. Education may be substituted for some experience. Send five copies of detailed application and resume to Chief Judge Collins J. Seitz, Lock Box 32, Federal Building, 844 King Street, Wilmington, Delaware 19801 prior to September 1, 1979.

Assistant to the Third Circuit Executive and Judicial Council, United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania.

Salary: $19,263-$27,453 (JSP 11-13) commensurate with qualifications.

Responsibility: Under the Circuit Executive and Judicial Council, work in a broad range of tasks in all phases of court administration [See 28 USC 332 (e)].

Qualifications: Law degree and minimum of two years progressively responsible experience required: undergraduate degree in management or related field, and experience and/or specialized training in court administration desirable. Send five copies of detailed application and resume to Wm. A. (Pat) Doyle, Third Circuit Executive, 20716 U.S. Courthouse, Philadelphia, Pennsylvania, 19106 prior to September 1, 1979.

THE SOURCE

The Information Service of the Federal Judicial Center

The American Jury System: Final Report. Chief Justice Earl Warren Conference on Advocacy in the United States. American Trial Lawyers Foundation, 1977.

Federal Judicial Selection: The Problems and Achievements of Carter's Merit Plan [Symposium]. 62 Judicature 465-510 (May 1979).

The Fifth Annual Judicial Conference of the United States Court of Customs and Patent Appeals, May 18, 1978. 81 FRD 125-262 (Apr. 1979).

WIRETAP from p. 2

increase of 16% over the average cost reported in 1977. This included costs for orders where intercepts were installed but not used. The highest cost for a single federal wiretap authorization was $141,695. The highest cost for a single state wiretap was $332,770.

• There were 1,825 arrests and 337 convictions as of December 31 which resulted from interceptions during calendar year 1978. Many of the criminal cases for which electronic surveillance was authorized in 1978 are still under active investigation, however, and supplemental reports on the results of 1978 wiretaps will be filed later.

The report was prepared by the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts. Copies of the report are available on request to this office.

PERSONNEL from p. 10

Marvin H. Shoob, U.S. District Judge, N.D. GA, June 5
G. Ernest Tidwell, U.S. District Judge, N.D. GA, June 5
Veronica D. Wicker, U.S. District Judge, E.D. LA, June 5
John M. Shaw, U.S. District Judge, W.D. LA, June 5
Falcon B. Hawkins, U.S. District Judge, D. SC, June 5
C. Weston Houck, U.S. District Judge, D. SC, June 5
Jim R. Carrigan, U.S. District Judge, D. CO, June 5
Zita L. Weinshienk, U.S. District Judge, D. CO, June 5
Otto R. Skopil, Jr., U.S. Circuit Judge (CA-9), June 14
Lynn C. Higby, U.S. District Judge, N.D. FL, June 14
Robert L. Vining, Jr., U.S. District Judge, N.D. GA, June 14
Patrick E. Carr, U.S. District Judge E.D. LA, June 14
Robert J. Staker, U.S. District Judge, S.D. W.VA, June 14

CONFIRMATIONS

Frank M. Johnson, Jr., U.S. Circuit Judge (CA-5), June 19
Dolores K. Sloviter, U.S. Circuit Judge (CA-3), June 19
Jon O. Newman, U.S. Circuit Judge (CA-2), June 19
Valdemar A. Cordova, U.S. District Judge, D. AZ, June 19
Amalya L. Kearse, U.S. Circuit Judge (CA-2), June 19

APPOINTMENT

John G. Penn, U.S. District Judge, DC, May 15

ELEVATIONS

Shane Devine, Chief Judge, D. NH, May 4
C.A. Muecke, Chief Judge, D.AZ, May 26
John A. MacKenzie, Chief Judge, E.D. VA, May 30
Irving Hill, Chief Judge, C.D. CA, June 1
Franklin T. Dupree, Jr., Chief Judge, E.D. NC, June 8

DEATH

John H. Wood, Jr., U.S. District Judge, W.D. TX, May 29

The Third Branch

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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

CENTER ANNOUNCES PUBLICATON OF REPORT ON LOCAL DISCOVERY RULES AND PRACTICES

A report from the FJC Research Division on continuing efforts in the civil rules area is now available on request.

Titled *Federal Discovery: A Survey of Local Rules and Practices in View of Proposed Changes to the Federal Rules,* the report examines the attempts by federal district courts and individual judges to limit the consumption of judicial resources, to expedite the discovery process, to curb abuses in the use of discovery methods and to provide for more effective sanctions. Further, a comparison is made between these local practices and the reforms that have been proposed by the Advisory Committee on Civil Rules, the ABA Special Committee for the Study of Discovery Abuse, and the Second Circuit Commission on the Reduction of Burdens and Costs in Civil Litigation.

The report was prepared for the Center by Professor Sherman L. Cohn of the Georgetown University Law Center. It is based on an examination of the local rules of the district courts and a survey of district court judges conducted by the Center in 1977.

Copies of the report, which also appears in a recent issue of the *Minnesota Law Review* (Volume 63, page 253), may be obtained from the Information Services Office of the Federal Judicial Center.

USE OF MASTERS IN INSTITUTIONAL REFORM CASES RELEASED

A report from the FJC Research Division on implementation of court orders in institutional reform cases is now available on request.

Titled *The Use of Masters In Institutional Reform Litigation,* the report analyzes the sources of authority for the appointment of a master, considers the advantages and disadvantages of the appointment in the implementation of major court ordered reform of correctional and mental health institutions, and evaluates the background and skills a potential master should bring the task of monitoring the facilitating compliance with the court's remedial decree.

The report was prepared for the Center by Professor Vincent M. Nathan of the University of Toledo Law School. As the master in two major correctional reform cases in Ohio, Professor Nathan brought practical experience to the task of writing the report. On the basis of his analyses and experiences Professor Nathan concludes that the appointment of a master in these complex cases, while not "an implementational panacea," can nevertheless be a useful device in the effort to secure compliance with court orders.

Copies of the report, which also appears in the Winter, 1979, issue of the *University of Toledo Law Review* (Volume 10, page 419), may be obtained from the Information Services Office of the Federal Judicial Center.

AO/FJC calendar

June 26-29 Effective Productivity for Court Personnel; Seattle, WA

June 27-29 Judicial Conference Committee to Implement the Criminal Justice Act; San Francisco, CA

June 27-29 Management Program for Executives; Burlington, VT

June 27-30 Tenth Circuit Judicial Conference, Jackson Hole, WY

June 28-30 Fourth Circuit Judicial Conference; Hot Springs, VA

July 9-13 Advanced Seminar for U.S. Probation Officers; San Diego, CA

July 16-20 Seminar for Judges' Secretaries; Washington, DC

July. 20-21 Judicial Conference Committee on Operation of the Jury System; Mackinac Island, MI

July 22-26 Ninth Circuit Judicial Conference; Sun Valley, ID

July 23-25 Seminar for Jury Clerks; Cleveland, OH

July 24-27 Effective Productivity for Court Personnel; Houston, TX

July 25-27 Seminar for Bankruptcy Judges; Denver, CO

July 27-28 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts; Sun Valley, ID

July 27-28 Judicial Conference Committee on Criminal Law; Nantucket, MA

July 29 Judicial Conference Committee on Intercircuit Assignments; Nantucket, MA

July 30-31 Judicial Conference Committee on Court Administration; Nantucket, MA

July 31-Aug 1 Judicial Conference Committee on the Administration of the Federal Magistrates System; Bar Harbour, ME

July 31-Aug 1 Judicial Conference Committee on the Administration of the Probation System; Jackson Hole, WY

PERSONNEL

NOMINATIONS

Joseph W. Hatchett, U.S. Circuit Judge (CA-5), May 21

William Hungate, U.S. District Judge, E.D. MO, May 21

Thomas M. Reavley, U.S. Circuit Judge (CA-5), May 21

Howard F. Sachs, U.S. District Judge, W.D. MO, May 21

Richard D. Cudahy, U.S. Circuit Judge (CA-7), May 22

Susan H. Black, U.S. District Judge, M.D. FL, May 22

Joseph C. Howard, Sr., U.S. District Judge, D. MD, May 22

Shirley B. Jones, U.S. District Judge, D. MD, May 22

James B. Moran, U.S. District Judge, N.D. IL, May 22

John V. Parker, U.S. District Judge, M.D. LA, May 24

Scott O. Wright, U.S. District Judge, W.D. MO, May 24

Abner J. Mikva, U.S. Circuit Judge (DC), June 4

Richard P. Conaboy, U.S. District Judge, M.D. PA, June 4

Sylvia H. Rambo, U.S. District Judge, M.D. PA, June 4

Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), June 5

Richard M. Bilby, U.S. District Judge, D. AZ, June 5

Lawrence K. Karlton, U.S. District Judge, E.D. CA, June 5

Warren W. Eginton, U.S. District Judge, D. CT, June 5

William J. Castagna, U.S. District Judge, M.D. FL, June 5

Orinda D. Evans, U.S. District Judge, N.D. GA, June 5

See PERSONNEL p. 2

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The Third Branch

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Bulletin of the Federal Courts

VOL. 11, No. 7 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center July, 1979

PROBATION INFORMATION SYSTEM APPROVED BY CENTER BOARD

At its June 25th meeting, the Board of the Federal Judicial Center approved the development of a computerized information management system for the Federal Probation System—Probation Information Management System (PIMS). Judge Gerald B. Tjoflat (CA-5), Chairman of the Judicial Conference Committee on the Administration of the Probation System, and Center staff, briefed the Board on the project which will require a major Center contribution to the development of a system that could be as large as the existing Courtran system.

For several years the Probation Committee has studied the possibility of developing a computerized information management system to improve the accessibility of accurate information for field probation officers, as well as to provide a national data base for budget, research and planning for all probation activities. At its September 1977 meeting the Judicial Conference endorsed the concept of such an information system and adopted four goals:

- Establish a modern information system for field managers;
- Provide up-to-date information to guide district judges in selecting sentences for convicted defendants;

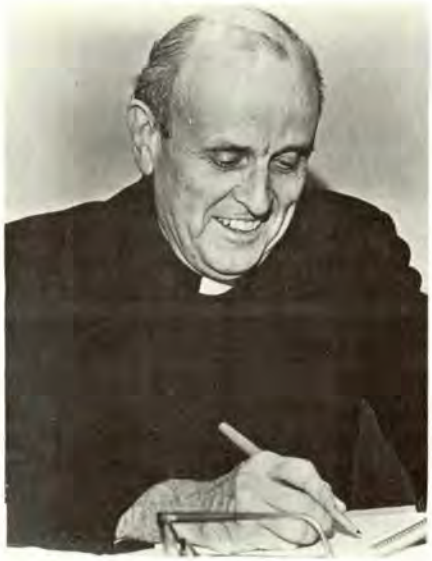
See PIMS p. 2

An Interview with Congressman Robert F. Drinan

A MEMBER OF THE HOUSE JUDICIARY COMMITTEE PROJECTS VIEWS ON THE FEDERAL COURTS

Congressman Robert F. Drinan of Massachusetts was elected to the U.S. House of Representatives in 1970 and has served continuously since. A Jesuit priest, he received his Doctor of Theology at the Gregorian University in Rome, and he earned his LL. B. at Georgetown University Law School in Washington, D.C. He was Dean of Boston College Law School from 1956 to 1970 and was a visiting professor for the academic year 1966–1967 at the University of Texas Law School.

In addition to leadership assignments in the House, Congressman Drinan serves on three major House Committees. He is Chairman of the House Subcommittee on Criminal Justice and as such he will play a prominent role in drafting and guiding through the House legislation to revise and codify federal criminal laws. It was especially because of the latter that he was sought out to learn in more detail his views on pending legislation which, if passed, will directly affect the federal courts.



ROBERT F. DRINAN

Congressman Drinan, it was reported that you were skeptical of the legislation that created the magistrates' positions in the federal court system; that, in lieu of this legislation, you would have preferred a bill which would have created more Article III judgeships?

I dissented on the bill that would expand the jurisdiction of federal magistrates. I think that this bill is unwise at this time for these two reasons. We recently put through a bill creating 152 new judgeships. This is the largest infusion of judicial manpower in the history of the Republic. Secondly, I have the hope that a bill abolishing diversity will, in fact, go through this Congress. When these two bills are operational, it seems to me that then, and only then, should we examine the question of whether we need more magistrates or whether we should extend the jurisdiction of magistrates.

See INTERVIEW p. 4

HOUSE APPROPRIATIONS COMMITTEE IMPOSES DRASTIC CUTS IN TRAVEL AND OTHER EXPENSES

In the appropriation for "Travel and Miscellaneous Expenses," the House Appropriations Committee denied a requested increase for expenses of travel and expressed the view that the travel of new circuit and district judges should be absorbed through the adoption of various economy measures and a reduction in the number of conferences or meetings being attended by judges, clerks of courts, probation officers, and other judicial officers and employees.

Also denied was a requested increase for the printing of opinions and the Committee asked that the Administrative Office of the United States Courts conduct a survey to determine if such printing can be done more economically.

The Committee approved an increase in the appropriation for the "Salaries and Expenses of Magistrates" to provide for the establishment of eight new full-time magistrates and the conversion of 12 part-time magistrates to a full-time status, as authorized by the Judicial Conference of the United States in September 1978 and March 1979.

The House Appropriations Committee, in the Judiciary Appropriation Bill for fiscal year 1980, included funds for the appointment of an additional secretary and law clerk by circuit judges. The Committee also authorized a second law clerk for district judges in lieu of a crier or crier-law clerk and included funds for the implementation of the qualification standards recently adopted by the Judicial Conference for a grade JSP-13 law clerk. The Committee denied increases in the central legal staffs of the courts of appeals and requested that study be made to determine the need for such central staffs.

With respect to the bankruptcy courts, the Committee approved $57 million, an increase of $21.7 million over the amount appropriated for 1979, but $10.8 million less than the amount requested. Provision has been made for the appointment of a law clerk by each full-time bankruptcy judge and the appointment of mid-level management personnel for the bankruptcy clerks' offices. Funds also have been provided for the reclassification of secretaries and other personnel in the bankruptcy courts as contemplated by the Bankruptcy Reform Act. The Committee denied a request for full-time salaried court reporters and, in lieu thereof, included funds for contractual reporting services. The Administrative Office of the United States Courts has addressed a letter to the Chairman of the Senate Appropriations Subcommittee requesting the restoration of $3 million to be used primarily for the procurement of additional legal research material and upgrading the libraries of bankruptcy judges.

The Committee approved a request in the amount of $3.5 million to enable the Federal Probation System to provide special supervision and services to drug dependent offenders. The responsibility for such services is being transferred from the Bureau of Prisons to the Federal Judiciary in fiscal year 1980 pursuant to the Drug Dependent Federal Offenders Act.

With regard to "Space and Facilities," the Committee

See APPROPRIATIONS p. 3

PIMS from p. 1

- Generate national statistics for budget, planning and management control purposes; and
- Create a data base for research.

The first step in the development of PIMS will be to produce a functional description of the project, translating these general goals and objectives into a precise definition of exactly how the system will operate and how users will interact with the system. This phase will take place over the next 18 months, and will be accomplished by a task force composed of representatives from various probation offices, the Probation Division of the Administrative Office, and one person from the Center's Division of Innovations and Systems Development.

Until the functional description is complete, it will not be possible to define accurately the resources that will be required to implement PIMS on a nationwide basis or to estimate accurately the length of the development period.

To move PIMS from the functional description to a working system, the Center will assume the responsibility for the technical system design, software development and all required documentation and training actions required to pilot test PIMS in a selected number of probation offices. Since the Administrative Office will ultimately assume the responsibility for the maintenance and implementation of PIMS, representatives from the Information Systems Division of the Administrative Office will participate in the software development process.

Parallel with Center development and pilot testing action, the Administrative Office will develop plans and acquire all the necessary computer hardware and personnel required to implement PIMS on a nationwide basis.

APPROPRIATIONS from p. 2

expressed concern over the substantial growth in the space inventory of the Judiciary and stated that it "does not believe that existing facilities are being fully utilized." The Committee also "does not believe that bankruptcy judges and magistrates require facilities comparable to those being provided circuit and district judges." The Judicial Conference of the United States has been asked to reconsider the standards and guidelines relating to courtrooms, hearing rooms, chambers, and general office space of these judicial officers. The Committee reduced the appropriation by $7 million with the understanding that the United States Marshals Service in fiscal year 1980 would assume responsibility for court security, thus obviating the need for the Judiciary to augment the level of protective services being provided by GSA on a reimbursable basis. Additional funds and personnel are being provided to the Department of Justice for this purpose.

The bill is expected to be approved by the House in the very near future.

Senate action on the bill is expected within the next several weeks. If there are any differences between the House and Senate approved bills, normal procedures would be to attempt a resolution of these differences in conference. Any funds included for additional personnel or other purposes would not be available until next October.

Photographs by D.P. Bergen, Jackson Lake Lodge, Jackson Hole, Wyoming.

Mr. Justice White, Circuit Justice for the Tenth Circuit, received a standing ovation following his annual address to the Circuit. Pictured with him are (top left to right) Judge William J. Holloway, Jr.; Dean E. Gordon Gee, from J. Reuben Clark Law School, Brigham Young University; Judge Sherman G. Finesilver (Dist. Colo.); and Dean Daniel S. Hoffman of the University of Denver College of Law. The two deans joined Judge Finesilver for a panel discussion of the tentative report of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. Associate Attorney General Michael J. Egan (pictured immediately above) addressed the Tenth Circuit last month on "Legal Representation of the Federal Government." Judge James K. Logan (left) introduced General Egan.

COMPUTER-AIDED EXERCISE TESTED BY JUDGES

The Division of Continuing Education and Training of the Federal Judicial Center currently is engaged in a series of pilot projects, the purpose of which is to explore and test alternative educational resources for use by federal court personnel. The first phase of one project dealing with computer-aided exercises was completed during the week of the Seminar for Newly Appointed District Judges, June 18–23. Of the new judges invited to the seminar, approximately 70% volunteered to proceed through a one and one-half hour computer-generated exercise based on the federal rules governing character evidence.

See COMPUTER p. 7

The Third Branch

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AN INTERVIEW WITH CONGRESSMAN ROBERT F. DRINAN

from p. 1

My fundamental objection to the magistrates comes to this. A magistrate, after all, is not appointed by the President of the United States; he is not confirmed by the Senate, he does not have life tenure. He is the creature of a federal judge or several judges. It seems to me, therefore, that we should not encourage the proliferation of magistrates nor should we expand their jurisdiction when the great glory of the federal judiciary is the fact that under the Constitution we give them life tenure with a commitment of nondiminution of compensation. We should therefore have tenured judges, Article III judges, whenever possible.

It appears that the abolition of diversity jurisdiction concept is getting more attention in Congress recently and that legislation to bring this about may pass during this session. Do you believe this legislation will be enacted during this Congress?

It passed the House of Representatives 2 to 1 in the last Congress and I think it's an idea whose time has come. I think that the only people who will object to this bill will really be those attorneys involved in personal injury litigation on either side. Some years ago we did increase the *ad damnum*. We could increase that to $50,000 but I don't think that's going to cure the problem. The fact of the matter is that there are 32,000 diversity cases now in federal courts. We now have about 6,000 general jurisdiction state judges that really should be handling these 32,000 diversity cases.

No one knows precisely why the founding fathers gave that power in the Constitution to try cases in federal courts based on diversity, but I think that now there is no suggestion that there is bias at the state level. The state chief justices have come out for the abolition of diversity. I think this would be a tremendous relief to the federal courts. It would remove cases that really shouldn't be there. It was back in 1955 that Justice Jackson called for the abolition of diversity and all of the best informed voices in the legal world since that time have followed Justice Jackson's recommendation. [Mr. Justice Jackson died October 9, 1954, but his lectures which included the proposal to eliminate diversity jurisdiction were published in 1955.] I have the hope that the abolition of diversity will become law in the 96th Congress.

One member of the Senate Judiciary Committee recently said he would favor the abolition of diversity jurisdiction, but that he would prefer to except multidistrict litigation cases such as those filed as a result of a mass disaster, where many cases are filed in multiple districts. Would you insist on this exception being added to any diversity legislation?

It may well be a very reasonable suggestion. I would hope that the federal courts could by the exercise of their rule-making power bring about this same result. In any event, I don't think that this issue should in any way interfere with the abolition of diversity jurisdiction.

A new Foreign Intelligence Surveillance Court has been established in the Judicial Branch. Would you like to comment on its significance?

I was opposed to the enactment of the Foreign Intelligence Surveillance Act last year. It seems to me that we should not permit an intelligence agency to go into a federal court and, absent any probable cause of crime, obtain in that federal court a warrant to do surveillance by way of eavesdropping or wiretapping. This is a total departure from the whole history of American law.

We have always said that if there can be some exception to the Fourth Amendment, which forbids unreasonable searches and seizures, that exception can only be in the instance where law enforcement people have probable cause to believe that a crime has been committed or a crime is about to be committed. We have violated that fundamental principle in the Foreign Intelligence Surveillance Act. We have allowed the intelligence agencies to go to a federal court and, without any suggestion that crime is about to be committed, or has been committed, obtain a warrant to do surveillance only to get information which they will allege is necessary for the conduct of the foreign policy of this country. I have the most serious misgivings about this. It will be tested I assume for its consitutionality in the courts.

Furthermore, this measure introduces secrecy in the federal courts, a totally unknown concept up to now. No one will ever see who gives the surveillance order or for what purposes. All of that will be impounded forever. In addition, there is a new principle that The Chief Justice has to appoint the judges to this particular surveillance court on a rotating basis. It seems to me, that's a new and undesirable quality to bring into the federal judiciary. In essence, I think that this was done in the name of cleaning up the intelligence agencies and I am afraid that it's a very significant departure from fundamental law and constitutional principles in this country.

Senator Heflin, in a recent

***Third Branch* interview, said he was very opposed to mandatory arbitration even though a trial de novo is provided for.**

I think the Senator is right. It seems to me that we should have all types of mediation and conciliation. We should have informal arrangements by which judgments are arrived at or claims are settled, but I am opposed to mandatory arbitration. I think that is the denial of justice and I hope that nothing like that is ever adopted in the federal system.

The greatest undertaking in the House Judiciary Committee and your Subcommittee on Criminal Justice will probably be to draft a bill to codify, revise and reform Title 18 of the United States Code and to revise sentencing procedures. Are you optimistic for passage of such legislation during this Congress?

I am relatively optimistic. This bill passed the Senate last year. It seems to me that its enactment would be a magnificent contribution to the administration of criminal justice. This goes back some ten years to the recommendations of the Brown Commission set up by the Congress itself. It became S.1 [S.1437,95th Congress] and then features were added to it which were unacceptable to civil libertarians. But the fact of the matter is there is a desperate need to bring about some consistency in the sentences that are given by all of the federal judges in this country. I have hopes that the reform of Title 18 can go forward in the Congress this year and that a relatively reform minded bill can, in fact, become law.

Do you believe it will be possible to enact a comprehensive revision of the federal criminal code, or will it be necessary to enact piecemeal legislation?

Right now we have a comprehensive revision coming out of my subcommittee. I don't think really that you can enact piecemeal reform, because if you revise the whole sentencing procedure and if you clarify the crimes and bring them together it seems to me that you can't separate out any of the parts. I would hope, therefore, that comprehensive revision of the federal criminal code will be possible and obtainable.

Are you working closely with the Senate?

Every day, almost, we are in touch with Senator Kennedy and his staff. We hope that very soon, certainly by September, we can file a joint bill so that the matter will move forward and differences can be resolved. Obviously reasonable people feel very sharply about some of these issues, but I have the hope that the essence of the Brown Commission, the essence of the model penal code, can in fact become federal law. This is not as new as some people would suggest. Thirty-five states have, in fact enacted criminal codes and I think that the time to do this at the federal level has now come.

What do you believe now will be the most controversial subjects as you start drafting legislation?

Obviously sentencing is going to divide people. Should we phase out the Parole Commission or should we give them more power? Also, the severity of the sentences. Some people feel that we should increase the sentences. Many people feel that we should decrease them. Those are issues which polarize people. I hope that we can come out with a compromise formula which will be acceptable.

At the last meeting of the ABA House of Delegates they approved a Resolution, a part of which reads: "rules relating to culpability, complicity, criminal responsibility of organizations and of agents acting in their behalf, attempt, solicitation, and conspiracy should be clearly and carefully drawn . . ."

It would appear from this that the members of the Section of Antitrust Law and the Section of Corporation, Banking and Business Law are concerned that proposed legislation relating to this aspect of criminal law might be construed too narrowly; that corporate officers would then be made personally accountable for actions directly related to their business. Would you care to comment on this?

Well, I agree totally with the ABA that if we are going to have any new crimes, particularly on groups, we should be very, very careful about the definition of complicity and attempt and culpability in criminal responsibility. The ABA endorses this codification of criminal law at the federal level. We hope to retain their cooperation on a continuing basis. We will add some severe fines for corporate activity that is illegal and I would hope that the ABA and the House and Senate Judiciary Committees will come to a consensus on how we

See INTERVIEW p. 6

OPENING FOR COURT REPORTER, VIRGIN ISLANDS

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CHIEF JUSTICE REPORTS ON EFFORTS TO IMPROVE QUALITY OF ADVOCACY

In remarks before the Fourth Circuit Judicial Conference June 29, Chief Justice Warren E. Burger reported on efforts of the bench, bar and law schools to improve the quality of advocacy in the federal courts. The Chief Justice said:

"It is now nearly three years since the Judicial Conference of the United States took note of what it believed to be widespread dissatisfaction with the quality of the professional performance of a good many of the lawyers coming into the federal courts. . . . That committee has now been studying the problem and it has undertaken to sound out the views of a great many people throughout the country in hearings on five different occasions throughout the United States.

"Judge Edward Devitt, Chairman of the Judicial Conference Committee, sums up more than two years intensive study: 'The controversy is not over whether we need to improve the quality of advocacy in federal courts. Rather, the focus of the debate is how we can best do this.' Implicit in his summary is also 'Who will do it?'

"Meanwhile, following the meeting of the American Bar Association in New York last August, the task force on lawyer competency and the role of the law schools was directed to study the question.

"That task force has now filed a report which reflects what seems to me a significant change in attitudes concerning legal education. Chaired by Dean Roger Cramton of Cornell Law School, they urge that: 'Law schools should provide all students with instruction in such fundamental skills as oral communication, interviewing, counselling and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.'

"The ABA task force report tells us that *all* students who want this training should receive it, and yet the testimony of law school deans before the Judicial Conference Committee was that only one-third of the students who want such training can secure it at present.

"The law schools have done well in preparing students in legal analysis and legal thinking, but where the law schools have not performed as well is in training in the elements of advocacy. Courtroom advocacy must be taught by experienced trial lawyers backed up by trial judges who preside over trials. Those of us who have pressed this point for years have emphasized at all times that it is a joint enterprise. The law schools must lay the foundation and the trial judges and the legal profession, through the bar associations, must take up where the law schools leave off.

"But in this very process there must be a new relationship between the three branches of our profession. Trial lawyers and trial judges must work directly with the law schools. Whatever barriers exist to having practicing lawyers integrated into this aspect of law teaching must be broken down, and there are encouraging signs that some of the old attitudes on this score are changing. The American College of Trial Lawyers, with over three thousand members who specialize in litigation, has

See ADVOCACY p. 7

INTERVIEW from p. 5

should punish the white collar crime and how we should, in a word, "crack down" on such crime.

Senators, congressmen, and federal officials, including federal judges, are now required by public law to file financial disclosure forms. Some of the judiciary have objected to the filing based on, among other things, a separation of powers concept. Do you care to comment on that?

Yes, I would and I think that the judges' point is well taken. I think that the Congress should reexamine that law by which we impose on members of the judiciary disclosure requirements as regards their income. It seems to me that it is legitimate on the Executive Branch for cabinet members in certain categories, but I have a most serious question as to whether this is permissible or appropriate for the federal judiciary.

"Advocacy is not my responsibility, it's his."

ADVOCACY from p. 6

pledged to support these efforts in cooperation with the law schools. That means that some of the best trial advocates in the United States are prepared to perform these services.

"We are told by some legal educators that on their present budgets they cannot do much more than they are now doing in advocacy training. Other educators tell us it is not the function of a law school to provide such training. Still others suggest all specialty training is a graduate school function. Some leaders of the bar tell us that all this is the responsibility of the law schools, not the bar. To complete this vicious circle, some judges now tell the Judicial Conference Committee it is not the responsibility of the courts to assure that the advocates who appear before them are adequate.

"But this is a responsibility shared by all three. Each must contribute what it can do best. Law teachers are skilled at organizing teaching; trial lawyers are skilled in the art of advocacy. Trial judges know what skills are needed and they are painfully aware that lack of skills makes a three day case run six, eight or ten days. There is one area which is the particular responsibility of the organized bar, and that is to see that law schools are provided with the necessary financial support. They must go to the legislatures in support of what the law schools need.

"There is one direct solution: The American Bar Association established its standards for accrediting law schools more than a half century ago. Those standards represent one of many great contributions of that Association to our profession and to the administration of justice. In that accrediting process, it prescribes standards that law schools are required to

See ADVOCACY p. 8

Last month 32 newly appointed U.S. District Judges assembled at the Federal Judicial Center for a week-long seminar. Photographed above are part of the group who gathered at the Supreme Court for the dinner held in conjunction with the seminar.

CALENDAR from p. 8

Aug 27–29 Instructional Technology Workshop; Orlando, FL
Aug 27–30 Workshop for Chief Deputy Clerks; Salt Lake City, UT
Aug 28 Judicial Conference Committee on the Budget; Morgantown, W VA
Aug 29–31 Seminar for Bankruptcy Judges; San Francisco, CA
Sept 10–12 Third Circuit Judicial Conference; Hershey, PA
Sept 10–14 Advanced Seminar for U.S. Probation Officers; Hartford, CT
Sept 12–14 Seminar for Bankruptcy Judges; Chicago, IL
Sept 12–15 Workshop for Clerks of Bankruptcy Courts; St. Louis, MO
Sept 17–20 Workshop for Clerks of Bankruptcy Courts; Reno, NV
Sept 17–21 COURTRAN II STARS and INDEX Training; Washington, DC (Date tentative)
Sept 18–21 Effective Productivity For Court Personnel; Phoenix, AZ
Sept 19–20 Judicial Conference of the U.S.; Washington, DC
Sept 21 Circuit Chief Judges Meeting; Washington, DC
Sept 24–28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN
Sept 25–28 Effective Productivity for Court Personnel; Cleveland, OH
Sept 26–28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ
Sept 27–28 Advisory Committee on Criminal Rules; Washington, DC

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Seated at computer terminals, the judges worked their way through four cases, hypothetical as well as actual, dealing with problems related to the introduction of character evidence.

Because the Center is interested in the possible use judges might make of such exercises as an independent study aid, each judge proceeded through the program at his or her own rate of speed. After completing the exercise, each judge was given an evaluation form on which to register attitudes, recommendations, and overall appraisal.

The tabulated and collated results of these evaluations will be used in determining whether the Center ought to fund the development of a series of exercises dealing with various procedural and problematic areas of the law.

FJC calendar

Aug 1-3 Seminar for Bankruptcy Judges; St. Petersburg, FL
Aug 6-9 Workshop for Chief Deputy Clerks; Atlanta, GA
Aug 6-10 Orientation Seminar for U.S. Probation Officers; Washington, DC
Aug 7-10 Effective Productivity for Court Personnel; San Francisco, CA
Aug 13-16 Orientation Seminar for Part-Time Magistrates; San Francisco, CA
Aug 13-17 Advanced Seminar for U.S. Probation Officers; St. Louis, MO
Aug 20-23 Workshop for Clerks of Bankruptcy Courts; Wilmington, DE
Aug 20-23 COURTRAN II STARS and INDEX Review; Washington, DC
Aug 22-24 Seminar for Bankruptcy Judges; Cherry Hill, NJ
Aug 22-24 Advanced Rational Behavior Workshop; Orlando, FL
Aug 22-25 Eighth Circuit Judicial Conference; Rapid City, SD

See CALENDAR p. 7

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ADVOCACY from p. 7

meet. If other solutions are not developed the Association can solve this problem by establishing what law schools must do in the field of enlarged training in the basic elements of advocacy for those who want it. Probably law schools have the right, for example, to prescribe some means to identify the aptitude of such applicants for trial advocacy.

"The ultimate authority therefore rests with the American Bar Association and ultimate responsibility accompanies authority. But this by no means should be treated as an excuse for any segment of the profession to evade our collective responsibility of the profession as a whole.

"We spend approximately twelve times as much to train a doctor to care for patients as we do to train lawyers. We must spend more to prepare lawyers to care for the vital rights dealt with in the courtrooms."

PERSONNEL

NOMINATIONS

George Arceneaux, Jr., U.S. District Judge, E.D. LA, June 12
James M. Sprouse, U.S. Circuit Judge (CA-4), July 9
Matthew J. Perry, Jr., U.S. District Judge, D. SC, July 9

CONFIRMATIONS:

J. Jerome Farris, U.S. Circuit Judge, (CA-9), July 12
Betty Binns Fletcher, U.S. Circuit Judge (CA-9), July 12
James C. Paine, U.S. District Judge, S.D. FL, July 12
Benjamin F. Gibson, U.S. District Judge, W.D. MI, July 12
Douglas W. Hillman, U.S. District Judge, W.D. MI, July 12
R. Lanier Anderson III, U.S. Circuit Judge (CA-5), July 12
Albert J. Henderson, U.S. Circuit Judge (CA-5), July 12
Reynaldo G. Garza, U.S. Circuit Judge (CA-5), July 12
Carolyn D. Randall, U.S. Circuit Judge (CA-5), July 12
Henry A. Politz, U.S. Circuit Judge (CA-5), July 12
Francis D. Murnaghan, Jr., U.S. Circuit Judge (CA-4), July 12
Joseph W. Hatchett, U.S. Circuit Judge (CA-5), July 12
Thomas M. Reavley, U.S. Circuit Judge (CA-5), July 12

RESIGNATION

Finis E. Cowan, U.S. District Judge, S.D. TX, June 30

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Bulletin of the Federal Courts

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PRESIDENT SIGNS SPEEDY TRIAL ACT AMENDMENTS

The Speedy Trial Act of 1974 has been amended by Public Law 96-43, signed by President Carter August 2, 1979. The law, which passed the Senate on June 19, passed the House with amendments on July 31. The Senate accepted the House amendments on the same day, sending the measure to the President.

The new law provides for a one-year postponement of the dismissal sanction, which will now "become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed on or after July 1, 1980." No effective date was provided for in the amending legislation itself, and it therefore became effective when signed. Because the dismissal sanction was in effect from July 1 through August 1, 1979, some question remains about its applicability to cases pending before the amendments became law.

The Senate bill had provided for a two-year postponement of the dismissal sanction. The House cut the postponement to one year. With that exception, the major features of the legislation are unchanged from those of the Senate bill, reported in the June issue of *The Third Branch*.

REPORT ON NEW JUDGESHIPS

The Department of Justice reports that, as of the beginning of the recent congressional recess, 40 nominations for new judgeships—28 district and 12 circuit—under the Omnibus Judgeship Act have been confirmed by the Senate.

Forty-six presidential nominations—10 circuit and 36 district positions—have been made and are awaiting Senate confirmation.

Approximately 40 potential nominees—about 10 circuit and 30 or more district positions—are presently under active investigation in the Executive Branch, and it is hoped that half of these investigations will lead to nominations before Congress returns on September 5.

Of the 152 federal judgeships created by the Act, only fifteen or so have had no action taken thus far.

Regarding judgeships existing prior to passage of the Omnibus Judgeship Act, there are currently 31 vacancies—3 circuit, 27 district and one on the Court of Customs and Patent Appeals.

AMENDMENTS TO SOME FEDERAL RULES DELAYED: OTHER AMENDMENTS APPROVED

The effective date of certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence has been delayed conditionally as a result of the passage of a new law, PL 96-42, signed by the President on July 31, 1979. The affected amendments were a small part of a package of proposed amendments to various sets of rules submitted to Congress by The Chief Justice on behalf of the Supreme Court on April 30, 1979. Those proposed amendments not within the ambit of PL 96-42 took effect as originally scheduled on August 1, 1979.

Delayed by the new statute are amendments to the following Rules of Criminal Procedure: 11 (e)(6), relating to the admissibility of pleas, plea discussions, and related statements; 17 (h) and new Rule 26.2, relating to the production of statements of witnesses; 32 (f) and new Rule 32.1 relating to revocation or modification of probation; and 44 (c), relating to joint representation of two or more defendants by the same retained or assigned counsel. The effective date of these amendments has been postponed until December 1, 1980, or until an Act of Congress, whichever occurs earlier. Additionally, the amendments to Federal Rules of Criminal Procedure

See AMENDMENTS page 3

NATIONAL INSTITUTE OF JUSTICE AND LEAA

With legislation pending to extend the funding of the Law Enforcement Assistance Administration beyond the expiration date of September 30, 1979, the concept of establishing a National Institute of Justice has recently received added attention. Obviously, whatever legislation is passed will affect the future of both LEAA and, if it is ultimately established, the proposed Institute. The National Institute of Justice received the endorsement of the American Bar Association's House of Delegates in 1971 and varying drafts of legislation have periodically been introduced since that time.

In a recent interview with Congressman Robert W. Kastenmeier of Wisconsin, the Congressman was asked about his views on this subject. As Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, the Congressman's statements will have special interest for all those working in the courts, state and federal. The questions and his replies follow.

Do you favor the National Institute of Justice concept, Mr. Kastenmeier?

Ultimately as a replacement for the Law Enforcement Assistance Administration, yes. This is because law enforcement assistance rises out of a somewhat narrow notion of the federal system aiding state and local governments with respect to fighting crime through traditional law enforcement entities. Recently, we have discovered that over time we have loaded into LEAA things that are really scarcely related or tangential to the original mandate. Aiding correctional facilities and the courts are examples. Many other things truly do not belong there. It would have been better as we learned of these other problems to redescribe nationally an agency which could more rationally treat these areas, rather than to address whether or not the peripheral area aids in apprehension of the lawbreaker. This is the present system which stretches LEAA too far.

Do you favor having it in the Department of Justice?

I would not necessarily insist that it be in the Department of Justice; that is merely one notion. It might well be outside of the Department of Justice. I do think the Department of Justice, acting through the Attorney General, could and should play a prominent role in any such entity. I really have no fixed view on how it should be formed or where it should be situated organizationally. I am very open-minded on that question.

Do you recall the objection to locating a National Institute of Justice in the Department of Justice when it was first suggested?

Yes, and perhaps in due course it would be called something else and treated quite differently. What I am saying is that there is room for a national umbrella to encompass some of the activities we have just discussed. The Law Enforcement Assistance Administration does not appear to be the best long term vehicle for that purpose.

* * * * *

As recently as August 13, Senator Howell Heflin, who is a member of the Senate Judiciary Committee, in a speech at the annual meeting of the American Bar Association recommended that further study be made of the Conference of Chief Justices' proposal to establish a State Justice Institute. The Senator said such an institute could fund programs for the state courts, whether or not LEAA is continued.

Shown above are participants in a workshop at the seminar for recently appointed probation officers (see related picture page 3). Workshop topics included the presentence report and an exercise in sentencing problems.

The Third Branch

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Co-editors:

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

Recently appointed probation officers from across the United States met at the Federal Judicial Center for an orientation seminar, August 6-10. Robert N. Altman (at lecturn) from the Probation Division, Administrative Office of the United States Courts, spoke on the probation officer and the community. Subjects presented by others included the role of the probation officer in supervising probationers, ethics of the probation officer and pretrial services.

COMMUNITY RELATIONS SERVICE

The Community Relations Service (CRS) of the Department of Justice offers federal courts an alternative to litigation in cases relating to civil rights. Generally, CRS can mediate any racial or ethnic dispute. These have included suits alleging civil rights violations, a suit brought by a predominately black subdivision against public utility companies, and alleged discrimination in stores, restaurants and other public places. CRS was created by the Civil Rights Act of 1964 to help racially troubled communities solve their problems.

Federal courts have referred

See CRS, page 5

AMENDMENTS from page 1

40 took effect as planned on August 1 of this year, but references in subparagraphs (d)(1) and (d)(2) to the proposed new Rule 32.1 (a) have been deleted.

The other consequence of PL 96-42 is to postpone, pursuant to the above schedule, those amendments to Federal Rule of Evidence 410 relating [in a manner consistent with the now-postponed amendments to Federal Rules of Criminal Procedure 11 (e)(6)] to the admissibility of pleas, plea discussions and related statements.

Unaffected by PL 96-42 were the amendments proposed to the following rules: Federal Rules of Criminal Procedure 6(e), 7 (c)(2), 9 (a), 11 (e)(2), 18, 32 (c)(3)(E), 35 and 41 (a), (b) and (c)(1); Federal Rules of Appellate Procedure 1 (a), 3 (c), (d) and (e), 4 (a), 5 (d), 6 (d), 7, 10 (b), 11 (a), (b), (c) and (d), 12, 13 (a), 24 (b), 27 (b), 28 (g) and (j), 34 (a) and (b), 35 (b) and (c), 39 (c) and (d) and 40; Rule 10 of the Rules Governing Proceedings in the United States District Courts on application under Section 2254 of Title 28, United States Code; and Rules 10 and 11 of the Rules Governing Proceedings in the United States District Courts on a motion under Section 2255 of Title 28, United States Code. All of the above amendments became effective as originally scheduled on August 1, 1979.

THE SOURCE

The Information Service of the Federal Judicial Center

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

Law of Sentencing. Arthur W. Campbell, Lawyers Co-operative Publishing Co., 1978.

New Settlement Techniques for the Trial Judge. Julius M. Title. 18 Judges' J. 42-49 (Winter 1979).

The Non-Precedential Precedent - Limited Publication and No-Citation Rules in the United States Courts of Appeals. William L. Reynolds & William M. Richman. 78 Colum. L. Rev. 1167-1208 (Oct. 1978).

Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the "Class Action Problem". Arthur R. Miller. 92 Harv. L. Rev. 664-694 (Jan. 1979).

Proceedings of the Thirty-Ninth Annual Conference of the District of Columbia Circuit. 81 FRD 263-360 (May 1979).

Report to the President and the Attorney General. National Commission for the Review of Antitrust Laws and Procedures. 80 FRD 509-623 (Mar. 1979).

Speedy Trial Act — Its Impact on the Judicial System Still Unknown. U.S. Comptroller General GAO, May 5, 1979.

Ten Commandments for the New Judge. Edward J. Devitt, 65 ABA J. 574-576 (April 1979).

When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts. William Bennett Turner. 92 Harv. L. Rev. 610-663 (Jan. 1977).

TEXT ON PRISONER CIVIL RIGHTS LAW PUBLISHED

A comprehensive resource volume on the complex case law in the area of prisoner litigation is now available on request.

Titled *Compendium of the Law on Prisoners' Rights*, the text begins with a detailed comparison of habeas corpus and prisoner civil rights petitions and proceeds to examine in depth the various aspects of the latter causes of action. It discusses the opinions on *forma pauperis* petitions and the frivolous and malicious test; it reports on the requirements for causes of action under 42 U.S.C. § 1983 and presents the cases brought under the various sections of and amendments to the Constitution; it analyzes defenses to these petitions as well as descriptive motions under the federal rules; and it covers the various aspects of the relief stage of these cases.

The compendium has been made available to the federal judiciary, through the Judicial Center, by the Prisoner Civil Rights Committee of the Center. It was originally compiled by U.S. Magistrate Ila Jeanne Sensenich of the Western District of Pennsylvania as part of her own research in the area, and expanded by her at the Committee's request as part of its ongoing study of the problems confronting federal courts in prisoner cases.

Although the work is an individual effort and does not purport to reflect the views of either the Committee or the Center, it will serve as an effective research tool for judges, magistrates and other members of the federal judiciary. It has been prepared in a loose-leaf format to accommodate insertions and necessary updates that would be performed by the users of the document. For example, the Supreme Court decision in *Bell v. Wolfish* was handed down just as the compendium was going to press.

Copies of the compendium may be obtained from the Information Services Office of the Federal Judicial Center.

POSITION AVAILABLE IN WESTERN DISTRICT OF WASHINGTON

Clerk, United States Bankruptcy Court for the Western District of Washington at Seattle.

Salary: $38,160–$44,756 (JSP 15–16). Starting salary and grade commensurate with applicant's qualifications.

General Description: The Clerk of the Bankruptcy Court must have the ability to organize and manage the Court system as set out in the Bankruptcy Reform Act of 1978, effective October 1, 1979. The Clerk will not only serve the Court as its principal executive officer, but will also be involved in the selection of bankruptcy trustees and the monitoring and auditing of bankruptcy cases.

Qualifications: Graduate degree, Business or Public Administration preferred; at least five years administrative or professional experience in public service or business; and knowledge of modern personnel management principles and methods. A knowledge of the legal system and court procedures is valuable, and formal education, training and experience in court management is particularly relevant.

To apply: Submit a detailed resume by September 1, 1979, to: Honorable Sidney C. Volinn, Chief Bankruptcy Judge, 220 U.S. Courthouse, Seattle, WA 98104.

AO/FJC Calendar

Aug 29–31 Seminar for Bankruptcy Judges; San Mateo, CA

Sept 10–12 Third Circuit Judicial Conference; Hershey, PA

Sept 10–14 Advanced Seminar for U.S. Probation Officers; Hartford, CT

Sept 11-13, In-Court Management Workshop for U.S. Probation Officers; Canadian, OK

Sept 17–20 COURTRAN II STARS Training; Washington, DC

Sept 18–19 Appellate Deputy Clerks Seminar (CA-10); Denver, CO

Sept 18–21 Effective Productivity for Court Personnel; Phoenix, AZ

Sept 19–20 Judicial Conference of the United States; Washington, DC

Sept 21 Meeting of Circuit Chief Judges; Washington, DC

Sept 21 Meeting of District Judge Delegates to Judicial Conference; Washington, DC

Sept 24–28 COURTRAN II STARS and INDEX Training; Washington, DC

Sept 24–28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN

Sept 25-27 In-Court Management Workshop for U.S. Probation Officers; Brainerd, MN

Sept 25–28 Effective Productivity for Court Personnel; Cleveland, OH

Sept 26–28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ

Sept 27–28 Advisory Committee on Criminal Rules; Washington, DC

Oct. 2–5 Sentencing Institute (CA-5); Dallas, TX

Oct 15–16 Workshop for District Judges (CA-7); Chicago, IL

Oct. 17–19 Conference of Metropolitan Chief Judges; Williamsburg, VA

FEDERAL JUDICIARY GEARS UP TO CONSERVE ENERGY

In cooperation with the President's energy program, Chief Justice Warren E. Burger announced last month that the following steps will be taken at the Supreme Court:

- With the exception of small areas where there are technical problems such as the library and the computer room, building cooling is now limited to 78 degrees in warm months and heating is limited to 65 degrees during colder periods. Monitors are being appointed in all departments to assure compliance.
- "Turn Out That Light" signs throughout the building will remind employees to conserve lighting in the building. Two daily patrols will monitor unneeded lighting.
- Energy conservation efforts begun many months ago—at the onset of the energy shortage—will be continued. For example, alternate ceiling lights in the Justices' corridor have been extinguished.

In addition to these efforts at the Supreme Court, The Chief Justice has written to all chief judges of the district and circuit courts as chairman of the Judicial Conference of the United States:

"I am fully aware of the problems of trying to conduct trials and other proceedings in excessively high temperatures. I am also aware that virtually all modern court buildings, that is those built within the last thirty years, are likely to have sealed windows. As a result the admonition to open the windows is unrealistic.

"We have a national crisis in the use of energy, and for the past two months we have been making adjustments in the Supreme Court Building to cooperate with the national effort in this respect.

"Air conditioning and heating are not the only factors in the consumption of energy. Modern office lighting consumes a great deal of energy, and in the Supreme Court Building, every office, without exception, has a prominently displayed sign, 'Turn Off That Light.' Obviously this does not mean turn off the lights at all times, but to turn them off when they are not needed, as when the occupant of that office goes to lunch or leaves for any significant period of time.

"I urge you to designate an 'energy monitor' for every office under the control of your court and to make every effort to reduce energy consumption."

NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE

The National Criminal Justice Reference Service (NCJRS) is an information clearinghouse and reference service available to the federal judiciary. Because this service is relatively unknown, there are set forth below the types of services offered the federal judges and their supporting personnel. LEAA funded and functioning under the aegis of the National Institute of Law Enforcement and Criminal Justice, NCJRS has:

- A professional staff of reference specialists, knowledgeable in specific subject areas such as courts, corrections and sentencing, who respond to inquiries using a 37,000 document data base.
- Free microfiche copies of many documents in the NCJRS collection available upon request, as well as paper copies of selected documents.
- A document loan program making the entire NCJRS collection available to other libraries when public or organizational libraries submit an interlibrary loan form.
- A reading room and reference library maintained in downtown Washington, D.C, at 1015 20th Street, N.W., that provides access to the NCJRS collection and many basic sources of information.
- A selective notification of information service through which NCJRS mails a monthly journal announcing publications and meetings to those who register for it. Registratin forms and additional information may be obtained by writing to: NCJRS, Box 6000, Rockville, MD 20850.

CRS from page 3

cases to CRS through several means. In the District of Massachusetts the Court postponed action in two suits alleging harrassment of black families in Boston public housing while attempts were made by CRS to resolve some of the issues involved. In the Western District of Michigan, the Court issued an order requiring all parties in desegration efforts to cooperate with CRS. The Court in the Northern District of Ohio asked CRS to help Cleveland desegregrate its public schools.

CRS activities, tailored to meet specific local needs, fall into eight categories:

- Public safety and school security.
- Citizen involvement
- Curbing problems in schools through improved discipline codes
- On-the-spot conciliation of disputes
- Identifying outside sources of assistance
- Providing liaison among affected parties, agencies, and institutions
- Training for school and police personnel
- Improving communications.

CRS offices are located in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City (MO), New York, Philadelphia, San Francisco, Seattle, and Washington.

PERSONNEL

The following nominations were erroneously listed in The July Third Branch as confirmations:

J. Jerome Farris, U.S. Circuit Judge, (CA-9), July 12
Betty Binns Fletcher, U.S. Circuit Judge (CA-9), July 12
James C. Paine, U.S. District Judge, S.D. FL, July 12
Benjamin F. Gibson, U.S. District Judge, W.D. MI, July 12
Douglas W. Hillman, U.S. District Judge, W.D. MI, July 12

NOMINATIONS

James W. Kehoe, U.S. District Judge, S.D. FL, July 18
Dudley H. Bowen, Jr., U.S. District Judge, S.D. GA, July 19
Juan G. Burciaga, U.S. District Judge, D. NM, July 19
Barbara B. Crabb, U.S. District Judge, W.D. WI, July 21
Terence T. Evans, U.S. District Judge, E.D. WI, July 21
Eugene P. Spellman, U.S. District Judge, S.D. FL, July 21
Gene E. Brooks, U.S. District Judge, S.D. IN, July 27
Albert Tate, Jr., U.S. Circuit Judge (CA-5), July 31
William L. Beatty, U.S. District Judge, S.D. IL, July 31
Hugh Gibson, Jr., U.S. District Judge, S.D. TX, July 31
George J. Mitchell, U.S. District Judge, D, ME, July 31
Jerry L. Buchmeyer, U.S. District Judge, N.D. TX, Aug. 3
Alan N. Bloch, U.S. District Judge, W.D. PA, Aug 3

CONFIRMATIONS

Marvin E. Aspen, U.S. District Judge, N.D. IL, July 23
Susan H. Black, U.S. District Judge, M.D. FL, July 23
James B. Moran, U.S. District Judge, N.D. IL, July 23
Richard P. Conaboy, U.S. District Judge, M.D. PA, July 23
Sylvia H. Rambo, U.S. District Judge, M.D. PA, July 23
Lawrence K. Karlton, U.S. District Judge, E.D. CA, July 23
Warren W. Eginton, U.S. District Judge,, D. CT, July 23
William J. Castagna, U.S. District Judge, M.D. FL, July 23
Orinda D. Evans, U.S. District Judge, N.D. GA, July 23
Marvin H. Shoob, U.S. District Judge, N.D. GA, July 23
G. Ernest Tidwell, U.S. District Judge, N.D. GA, July 23
Robert L. Vining, Jr., U.S. District Judge, N.D. GA, July 23
Patricia M. Wald, U.S. Circuit Judge (CA-DC), July 24

APPOINTMENTS

Jon O. Newman, U.S. Circuit Judge (CA-2), June 25
Amalya L. Kearse, U.S. Circuit Judge (CA-2), June 27
Valdemar A. Cordova, U.S. District Judge, D. AZ, July 3
Dolores K. Sloviter, U.S. Circuit Judge (CA-3, August 21

ELEVATIONS

Robert E. Varner, Chief Judge, M.D. AL, July 12
John V. Singleton, Chief Judge, S.D. TX, Aug. 1

RESIGNATION

Robert H. McFarland, U.S. District Judge, Canal Zone, July 15

DEATH

William B. Jones, U.S. District Judge, D.DC July 31.

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INTERVIEW WITH SENATOR EDWARD M. KENNEDY

Senator Edward M. Kennedy, who has continuously represented Massachusetts in the Senate since 1962, became Chairman of the Senate Judiciary Committee at the beginning of this session of Congress. In the following interview conducted earlier this summer, he comments on the work of the Committee and other matters affecting the federal judiciary.

There has been reference in the press and in your speeches to your plans for the Senate Judiciary Committee during this session of Congress. After over a half year of experience as Chairman of the Committee, are you satisfied that the Committee is making good progress?

I think we have made important progress in the first six months of this year, although at least a part of that time was spent in reorganizing our Committee structure and in welcoming to the Judiciary Committee a number of new members, both Democrats and Republicans, who I think have been a great addition to the Committee.

We have, first of all, reorganized the responsibility for oversight of the Justice Department. We have had the first comprehensive set of hearings on the work of the Justice Department; the clear intention of the hearings was to review Justice Department activities -- establish

EDWARD M. KENNEDY

benchmarks -- so that in future years we could better measure the performance of the Department. The goal is to focus more attention to and bring about a greater sense of priorities within the Department itself.

Secondly, we've completed the redrafting and reauthorization of the Law Enforcement Assistance Act, the principal instrument by which the federal government works with local communities and states in an area of high priority to the American people: crime. It was a major restructuring which was reported out unanimously from the Committee; we received very strong bipartisan support from the Senate itself when the bill pased 67 to 8. I think it's much better legislation than that which currently exists and I'm

See INTERVIEW p. 4

TRUSTEES NAMED UNDER NEW BANKRUPTCY ACT

Pursuant to the terms of the Bankruptcy Reform Act of 1978, effective October 1, 1979, ten individuals have been appointed by the Department of Justice to serve as United States trustees in ten statutorily designated pilot areas. Under the new Act, the most comprehensive change in the bankruptcy laws since the Bankruptcy Act of 1898, these trustees will have general supervisory responsibilities over the administration of debtors' estates.

Named as pilot trustees were: William H. Tucker for the Districts of Maine, Massachusetts, Rhode Island and New Hampshire; Irving H. Picard for the Southern District of New York; Hugh M. Leonard for the Districts of Delaware and New Jersey; Francis Dicello for the District of Columbia and the Eastern District of Virginia; Billy Jack Rivers for the Northern District of Alabama; Arnaldo N. Cavazos, Jr. for the Northern District of Texas; David H. Coar for the Northern District of Illinois; William P. Westphal, Sr. for the Districts of Minnesota, North Dakota and South Dakota; James T. Eichstaedt for the Central District of California; and Dolores B. Kopel for the Districts of Colorado and Kansas.

In conformity with the new Act's simplification of existing law and the expansion of the jurisdiction of the bankruptcy

See TRUSTEES p. 2

CHIEF JUSTICE CALLS FOR FEDERAL/STATE STUDY OF ALTERNATIVES TO JURIES IN PROTRACTED CIVIL CASES

In a speech last month before the annual meeting of state chief justices, Chief Justice Burger called upon the state judges to join with the federal judiciary in studying alternatives to the use of lay juries in protracted civil trials, defined as cases requiring a month or more to try.

In his call for cooperation, The Chief Justice pointed out several shortcomings in the present system: professional persons or others qualified to cope with complex economic or scientific questions rarely survive challenges in the jury selection process; protracted trials typically raise factual issues of enormous complexity; a judge's explanation of legal issues may take not hours, but days; there is a limit to the ability of anyone, including a judge, to remember complicated transactions described in a long trial; and an enormous burden, bordering on cruelty, is imposed upon jurors drafted to sit in a totally strange environment for long periods of time trying to cope with issues largely beyond their grasp.

The Chief Justice noted that the framers of our Constitution had no experience to guide them in framing standards for the kind of complex cases which are the daily fare of courts today. Although the framers did an extraordinary job in anticipating problems of the future, it would be asking too much, The Chief Justice said, to ask them to have anticipated the problems of using juries in modern civil litigation. "Even Jefferson would be appalled at the prospect of a dozen of his yeomen and artisans trying to cope with some of today's complex litigation in a trial lasting many weeks or months."

To exemplify the problem, The Chief Justice cited at length a colloquy between a trial judge and an exhausted jury foreman on the morning of the seventh day of deliberations following a five-month trial of a criminal antitrust prosecution. The foreman reported that many jurors were taking tranquilizer pills by a doctor's order, and that, in the face of exhaustion and personality conflicts, no unanimous verdict beyond a reasonable doubt appeared possible. The frustrated judge could only ask the jury to deliberate a while longer.

Chief Justice Burger commented that our history of these kinds of experiences, years of critical analyses by the commentators, and England's 42 year abolition of civil juries all constitute sufficient justification for a careful and necessarily long-term study of a more selective use of juries in certain categories of civil cases.

In the interim, before such a study could be completed, The Chief Justice called upon innovative lawyers to waive juries in complicated civil cases. Anticipating concerns over the submission to a single judge in economic, business or environmental matters, he stated that he could see no reason why complicated cases could not be tried by stipulation before a three judge panel. Lest the past be a disincentive to

See CHIEF JUSTICE p. 7

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judges, the goal of the trustee system is to free the bankruptcy court from responsibilities of administration and to avoid the appearance of bias inherent in a judge's appointing a trustee or in hearing evidence (at meetings of creditors or other non-judicial settings) relevant to administration but inadmissible in litigation. In the pilot districts, panels of private trustees, creditors' committees, and examiners will all be selected by the U.S. trustees, thus enhancing the appearance of neutrality of all parties appearing before a bankruptcy judge. For the districts in the country which were not designated participants in the program, bankruptcy judges will retain some administrative responsibilities but will not have direct supervisory responsibility over private trustees. The new Act has alleviated the bankruptcy judges' administrative responsibilities somewhat through the creation of the office of the clerk of the bankruptcy court and by providing for the Director of the Administrative Office to establish and maintain panels of private trustees for liquidation cases.

Training for the U.S. trustees began with a seminar held early in August generally reviewing the provisions of the new statute. More detailed training took place in a workshop held early in September attended by the trustees, a bankruptcy judge from each pilot district, and a representative of the Administrative Office. This workshop, originally proposed by New Jersey Bankruptcy Judge Richard Warren Hill and implemented by the Department of Justice (which is to supervise the trustee program), typifies the excellent cooperation received by the Department from the judicial branch in implementing the trustee program.

The trustee program is to terminate automatically in April 1984 unless Congress acts to expand its application throughout the nation. The Attorney General is to file annual reports on the project, and in January 1984 to submit to the Congress, the President and the Judicial Conference his analysis of the feasibility, cost and effectiveness of the trustee program.

REPORT ON ABA HOUSE OF DELEGATES ACTIONS

The American Bar Association House of Delegates took action on several resolutions of interest to the federal judiciary at the Association's annual meeting last month. Some actions taken by the House were:

• Approval of a resolution favoring amendments to the Administrative Procedure Act which would (1) require *de novo* review by federal courts of questions of law decided by administrative agencies and (2) eliminate the presumption of validity of an agency rule or regulation. Legislation authorizing this kind of expansion of judicial review and requiring that, when a rule or regulation is challenged, it will not be upheld unless its validity is demonstrated by a preponderance of the evidence, was recently and unexpectedly passed by a voice vote of the Senate. The bill will next be reviewed by the House Judiciary Committee.

• Disapproval of proposed endorsement of legislation establishing standards for implementing the death penalty in federal cases. The standards would have called for a separate hearing on the question of sentence following a conviction of a capital offense, and would have required the sentencing judge to consider certain mitigating and aggravating factors before imposing sentence.

• Disapproval of proposed endorsement of legislation aimed at overturning the

See ABA p. 7

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts

Eighteen members of the *Consiglio Superiore della Magistratura,* the Italian Superior Council of Judges, visited the Federal Judicial Center this month on their tour of the United States to study the functioning and administration of justice in this country. The delegation, led by Solicitor General Dr. Mario Berri, was briefed on the criminal rule-making process in federal courts by Center Director, A. Leo Levin. A presentation on the work of the Center was made by FJC staff. The meeting was arranged at the request of Attorney General Benjamin Civiletti.

SECURITY ROLE OF U.S. MARSHALS EXPANDED

Effective October 1, the United States Marshals Service will assume the responsibility for the security of federal courts that previously was borne by the Administrative Office of the United States Courts. Currently the A.O. reimburses the General Services Administration and the Postal Service (where courts are located in Post Offices) for the provision of security systems and Federal Protective Officers and other hired guards. Under the new program, which was established at the direction of Congress, the Marshals Service will undertake maintenance of security systems and will provide guards through its own personnel, who will serve in the newly created position of Judicial Security Officers.

When all changes are fully implemented, a three tiered security system will exist. During regular working hours security of courtroom areas will be the responsibility of the non-uniformed Judicial Security Officers; the A.O. will provide courthouse security during non-working hours by reimbursing GSA. Responsibility for prisoner movement and the guarding of individual courtrooms during trials will continue to be under

See SECURITY p. 7

INTERVIEW WITH SENATOR EDWARD M. KENNEDY

from p. 1

glad that we were able to gain the kind of support that we did, both in the Committee and on the floor, as well as from interested groups around the country. We worked closely with the states, the governors, the counties and the mayors, and I think we have a strong legislative proposal.

Thirdly, we have continued to work on other important legislative initiatives: a joint package with the House of Representatives to revamp the criminal laws of this country currrently found in Title 18 of the United States Code. We will be working with the House members on that legislation. This package, which will constitute a complete, comprehensive reform of the existing criminal code, will be announced shortly. [S. 1722, 1723 introduced September 7.] After more than 12 years of study by the Committee, I am very hopeful that this Congress will pass a comprehensive criminal code recodification.

Beyond that, we have made strong progress with the Administration, the Justice Department, and the Federal Bureau of Investigation in developing a charter for the FBI. The bill has been introduced in both Houses and hearings are scheduled soon. There is strong bipartisan support for the Charter.

Federal judges faced with heavy caseloads are expressing great concern that the judgeships created by the Omnibus Judgeship Act are not being filled as quickly as they hoped they would be. Can you be optimistic for faster action in processing the nominations?

We have taken very seriously our responsibility to insure the meritorious selection of federal judges. Working with the Justice Department, the Executive, and state bar associations, as well as with consumer groups, legal defenders and others who are impacted by our judicial system, we have established a procedure to assure the selection of the very best for service on the federal judiciary. Recognizing the importance of the judiciary as an independent branch of government, it should be reflective of our society through the selection of men and women who possess the highest degree of judicial competence, personal integrity and judicial temperament and sensitivity. I think we have made impressive progress to date and I am very hopeful that this progress can continue as the year moves on. That certainly has the highest order of priority.

Breaking down the numbers of nominations that have been processed at this time, I believe that 48 have been completed so far. We have approximately 51 nominations which have been submitted and we are prepared to deal with them promptly. [Figures as of August 1979.]

We have taken seriously our own responsibility to review these nominations and we have developed for the first time our own questionnaire. We hope to gain information ourselves and through our own committee staff to conduct a very thorough review of the information concerning each nominee. I believe this to be an extremely important responsibility. As the one who actually offered the amendment increasing the total number of new federal judgeships, I am mindful of how important it is to fill these vacancies. I am also mindful that there will be no more important action taken in this Congress than insuring that these new vacancies be filled in a thoughtful and comprehensive way.

So I am confident that we are off to a good start. The legislative process moves slowly, but I would hope that the Judiciary Committee would be judged, as Congress should be judged, on the results of our entire congressional session. I am satisfied that we are off to a constructive start.

Attorney General Bell said long ago that he would have all of the new judgeships filled by April 15th. This appeared unrealistic at the time in view of all the investigative and other procedures which must be completed, but can you make some predictions as to just when these judgeships can be filled? In short, are there bottlenecks which are causing unnecessary delays?

Not in the Committee. In Massachusetts, for example, knowing that vacancies were going to be created, we established a Merit Selection Committee. We were probably the second or third state to establish such a Committee. We submitted all four names to the Justice Department within several days after Judge Bell was sworn in. We were able to follow general Committee procedures by treating the nominees as a group so that local bar associations and the Judiciary Committee could observe the four nominees together. There are some instances where Senators have not established their commissions or have not submitted names to the Justice Department, so there is little that we can do here but wait.

We will act expeditiously on those names received from the Justice Department. We will also act in a comprehensive way in terms of fulfilling our responsibilities to the Senate in reviewing those recommendations. I would certainly hope that in other states the members of the bar and other interested groups would assure that their own Representatives or Senators expedite the process.

JUDICIAL NOMINATIONS SENT TO SENATE

In recent action, the Senate Judiciary Committee approved 30 of President Carter's nominations for federal judgeships. Approved were 10 circuit and 20 district court positions. These nominations, some of which had been pending for a month, will now be sent to the full Senate for confirmation. Reports of Senate action will appear in the *The Third Branch*.

Does your Committee hold up on confirmation hearings until you have at least half a dozen or so before setting dates for confirmation hearings?

What we have attempted to do is to group them by district, region, or circuit. We had, for example, in Massachusetts, four judges heard together. We treated them in a block.

Earlier this year, and shortly after you became Chairman of the Judiciary Committee, you said you would urge that the longstanding "blue slip" procedure no longer be used to table or defeat a nomination for a federal judgeship for lack of approval by a Senator from the nominee's state. Has the problem come up during this session?

I feel very strongly that the Chairman of the Judiciary Committee should not be the final repository for effectively eliminating from consideration a distinguished member of the bar who has been recommended by the President of the United States. The traditional "blue slip" process -- the historical basis of which is extremely vague -- is antiquated and, I think, undesirable. If a member of the Senate has good cause for believing that the President's nominee is not equipped for whatever reason to serve on the federal judiciary, then a decision not to hold hearings should be made by the full Judiciary Committee and should not rest solely on a decision of the Chairman or any one member. That is my position and the procedure which I will follow.

It has not come up, this session?

No, it hasn't come up this session. In fairness to the nominee's reputation and professional standing, in terms of the nominee's family, and in terms of the judicial selection process, the procedure which I have outlined is more desirable and fairer. The entire Judiciary Committee should make the decision.

Senator, you have spoken out more than once on the need for "access to the courts" and you have said that this is a basic right all Americans must have; that they must know they will always have recourse to the courts. With enormous amounts of money being spent on legal services and public defender offices, do you feel some American citizens are in fact cut off from the judicial process?

Well, whether it is true explicitly or implicitly, the delay that takes place -- the cost of litigation in the federal courts -- has in many instances discouraged middle and low income citizens from pursuing cases they otherwise could pursue. The cost of litigation is increasing at a dramatic rate and the individual American's perception of swift and equal justice is clouded by delay and cost. Our citizens believe in the concept of a judicial system which is fair, equitable and prompt. I find that the perception -- and the reality -- is something quite different.

I don't believe that there is any quick solution to this problem. It is an issue that is going to be with us as we move into the 1980s. There have been a number of recommendations made to deal with the problem. The most obvious has been the creation of new judgeships which can help speed up the process. We have already passed this year the nonjudicial resolution of disputes bill to help states experiment with the resolution of matters of importance to the citizen but better resolved elsewhere. And then there is the magistrates and arbitration legislation. Finally,we recently reported out S. 1477, a comprehensive bill making major changes in the governance, administration and jurisdiction of our federal courts. We must insure both accessibility and prompt decision-making by our judicial system and do it in a way which guarantees first class justice. I think there is a concern by some that extra-judicial proceedings like arbitration create second class justice; that would obviously be unwise. Any alteration or changes in our system would have to be watched very closely.

The Nunn/DeConcini bill which has been reintroduced during this Congress to set up procedures to discipline, suspend and/or censure federal judges, has been the subject of considerable discussion lately. In sponsoring alternative legislation, what factors most influenced you?

Well, essentially what we are interested in is establishing a procedure in our judicial system to deal with the problem of improper behavior. The Constitution wisely provides for a process of impeachment. Senator Nunn's original proposal, I believe, raised serious constitutional questions and posed an unnecessary threat to the independence of the judiciary. I

See INTERVIEW p. 6

INTERVIEW from p. 5

prefer the process endorsed by the Judicial Conference of the United States, an administrative procedure which would not provide for removal. It would provide for disciplinary procedures effectuated by the circuit councils themselves. I would add an appeal to the Judicial Conference and would allow a recommendation for impeachment to be made by the Judicial Conference itself. This provides a mechanism to deal with what are very unique and extraordinary circumstances; my approach establishes a mechanism which would be best suited to deal with these very special circumstances; and it seems to me to be much the wiser way to proceed -- if we must proceed at all.

Several groups have held meetings to discuss all these legislative proposals for discipline, censure and removal of federal judges. In the academic community some acknowledged scholars of constitutional law have differed on whether these proposals are constitutional or not. Do you think your bill will stand the constitutionality test?

Yes. Mine is a very different approach; you don't get into the constitutional question of removal. It is much more limited and achieves the desired end of providing a procedure which has the support of the Conference itself. Judicial discipline is quite unique and extraordinary; I am not convinced that formal statutory procedures are necessary. But, I don't think this minimizes the importance of addressing the issue.

Congressman Drinan and others have expressed the hope and belief that a new criminal code will come out of this Congress; further, that it will not end up in piecemeal legislation, but will be a comprehensive code including much of what has been thought to be highly controversial. Do you feel confident legislation will be passed during this Congress?

I am very hopeful that we can get the Senate and House together. I think it's necessary. Of course, I think Congressmen Drinan and Kindness have done yeoman work. I think they deserve enormous credit as do the other House members.

The proposed code would include not only a recodification but also new sentencing proposals. There are still a few controversial sections. In such areas of controversy we ought to retain existing law. In other areas, we can make progress in consolidating sections and eliminating antiquated sections -- the whole range of different definitions of culpability, for example. We must find common ground and I think we can.

In a recent address to the National Governors' Conference you expressed concern about the bail system in this country, and you made it clear that you believe preventive detention laws are not only ineffective but unconstitutional. Statistics show a high percentage of individuals out on bail do commit still another crime and therefore pose a threat to the community. What do you propose as an alternative plan?

First of all, I think preventive detention is constitutionally flawed. Secondly, I think preventive detention is impractical and ineffective. In the District of Columbia, for example, it is rarely invoked. So even when it is on the statute books, for all practical purposes, it is not effective. A recent INSLAW study [Institute for Law and Social Research] done here in the District of Columbia confirmed the inefficiencies, inequities and impracticalities of preventive detention.

On the other hand, the judiciary -- especially our local judiciary -- must be able to consider not only the issue of flight, but also the issue of danger to the community in establishing conditions of bail. Those limitations basically relate to the performance of the individual while on bail, whether he commits other crimes, interferes with certain witnesses, remains in certain areas, or checks in with the Marshal periodically. There may be, in particularly dangerous cases, reasons for imposing even stricter requirements. If the defendant were to violate these conditions, he should be subject to summary contempt procedures and his bail should be revoked. I also favor consecutive sentencing for the bailed offender who commits another crime. I'm hopeful that we can hear from members of the judiciary on this subject and from other interested groups, and that it will be part of the criminal code recodification.

CALENDAR from p. 8

Sept. 26-28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ

Oct. 3-5 Sentencing Institute (CA-5); Dallas, TX

Oct. 15-16 Workshop for District Judges (CA-7); Chicago, IL

Oct. 16-19 Effective Productivity for Court Personnel; New York, NY

Oct. 17-19 Conference of Metropolitan Chief Judges; Williamsburg, VA

Oct 18-19 Judicial Conference Advisory Committee on Civil Rules; Washington, DC

Oct. 22-23 Judicial Conference Committee on Rules of Practice and Procedure; Washington, DC

Oct 23-26 Effective Productivity for Court Personnel; Washington, DC

Nov. 6-9 Effective Productivity for Court Personnel; Houston, TX (date tentative)

Nov. 11-17 Seminar for Newly Appointed District Judges; Washington, DC

ABA from p. 3

Zurcher v. Stanford Daily decision. The resolution, applicable to federal jurisdictions only, proposed protection of all innocent third parties, not just the media, from the issuance of search warrants.

• Approval of the revised draft of Standards Relating to Sentencing Alternatives and Procedures. These standards constitute a consolidation and an updating of two previously published Association standards relating to probation and sentencing alternatives. They are designed to conform the standards with decisions of the U.S. Supreme Court, changes in policy and recent developments in the law.

• Approval as expressions of additional ABA policy on the proposed new Federal Criminal Code, that sentencing judges be required to consider alternatives to imprisonment and that a section establishing penalties for consumer fraud be deleted because it is repetitious of the section relating to the execution of fraudulent schemes. The Association does support the imposition of criminal penalties for consumer fraud but thought that this section of the proposed code was unnecessary to effectuate that aim.

• Approval, in related developments on the proposed criminal code, of circumstances which would justify the application of federal criminal sanctions to conduct occurring outside the borders of the United States. Additionally, a resolution opposing appellate review of sentences in cases where such review is requested by the Government was sent to the Standing Committee on Association Standards for Criminal Justice for consultation with other ABA committees. The Standing Committee is to report to the Association at the February 1980 mid-year meeting.

• Approval of an endorsement of legislation authorizing the transfer of improperly filed cases to the appropriate court of the United States. This matter is part of the Federal Courts Improvements Bill of 1979.

• Approval of an endorsement in principle of legislation, such as S.237, calling for merit selection of U.S. Magistrates.

STAFF PAPER ON JUDICIAL DISCIPLINE AVAILABLE

Judicial Discipline and Removal in the United States is a new FJC staff paper available from the Information Services Office. The paper (the manuscript of an article prepared by Russell Wheeler and A. Leo Levin for publication in an international symposium on comparative judicial administration) reviews the background of the several state and federal mechanisms for dealing with charges of judicial unfitness and analyzes their performance in light of such criteria as effectiveness and fairness to the accused judge, giving special attention to the current debate over a new disciplinary mechanism for the federal judiciary.

SECURITY from p. 3

the U.S. Marshal. Federal Protective Officers or other guards provided by GSA will continue to secure the perimeter and other public areas of buildings housing federal courts pursuant to GSA's obligations as lessor of government buildings.

One aim of the program is to eliminate the A.O.'s "middleman" function and reduce the overall cost of providing security. It is also hoped that the Judicial Security Officers, under the direct control and training of the Marshals Service, and working exclusively for the courts, will provide better and more consistent service.

For the immediate future, however, court personnel will perceive no change in security procedures. The Marshals Service has not yet had its budget ceiling raised by the Office of Management and Budget so that the recruitment and training of the approximately 400 Judicial Security Officers may begin. Accordingly, the Marshals Service will initially meet its new responsibilities by providing security through contracts with GSA on the same basis as is presently employed by the A.O. The deployment of the Judicial Security Officers is estimated to be completed in one to two years, and it is hoped that the new personnel will be gradually phased into the court system as they become available.

The A.O. has transferred to the Marshals Service approximately $7 million of the $8.2 million budgeted for security for the judicial branch. The Marshals Service will use these funds to reimburse GSA over the next year, and, in the future, a similar amount will be allocated for the payment of the salaries of the Judicial Security Officers and for the costs of maintaining and purchasing security equipment. The A.O. will use the retained $1.2 million to continue to reimburse GSA for court security during non-business hours and to provide security for judicial buildings not containing courts, such as the Federal Judicial Center.

CHIEF JUSTICE from p.2

reform, The Chief Justice also made reference to our nation's successful 200 year experience in resolving admiralty and equity cases, often involving rights of great magnitude, without juries.

The Chief Justice concluded with a call to the federal and state courts to join forces "to explore alternatives to a system that we may have outgrown."

PERSONNEL

NOMINATIONS

Samuel D. Johnson, Jr., U.S. Circuit Judge (CA-5), August 10
Edward B. Davis, U.S. District Judge, S.D. FL, August 10
Thomas A. Clark, U.S. Circuit Judge (CA-5), August 28
Nathaniel R. Jones, U.S. Circuit Judge (CA-6), August 28
Arthur L. Alarcon, U.S. Circuit Judge (CA-9), August 28
Harry Pregerson, U.S. Circuit Judge (CA-9), August 28
Stephanie K. Seymour, U.S. Circuit Judge, (CA-10), August 28
Alcee L. Hastings, U.S. District Judge, S.D. FL, August 28
Scott E. Reed, U.S. District Judge, E.D. KY, August 28

APPOINTMENTS

Joseph W. Hatchett, U.S. Circuit Judge (CA-5), July 18
Thomas M. Reavley, U.S. Circuit Judge (CA-5), July 19
Albert J. Henderson, Jr., U.S. Circuit Judge (CA-5), July 27
Francis D. Murnaghan, Jr., U.S. Circuit Judge (CA-4), July 27
Patricia M. Wald, U.S. Circuit Judge (CA-DC), July 31
Reynaldo G. Garza, U.S. Circuit Judge (CA-5), Aug. 1
Lawrence K. Karlton, U.S. District Judge, E.D. CA, Aug. 1
Richard P. Conaboy, U.S. District Judge, M.D. PA, Aug. 6

ELEVATIONS

Newell Edenfield, Chief Judge, N.D. GA, July 27
H. Kenneth Wangelin, Chief Judge, E.D. MO, August 31

DEATH

Alexander A. Lawrence, U.S. Senior District Judge, S.D. GA, August 20

ao ocofjc calendar

Sept. 17-19 Advanced Employment Placement Seminar for Probation Officers; Covington, KY
Sept. 17-19 Advanced Evidence Seminar for Federal Defenders; Chicago, IL
Sept. 17-20 Workshop for Clerks of Bankruptcy Courts; Reno, NV
Sept. 17-20 COURTRAN II STARS and INDEX Training; Washington, DC
Sept. 18-19 Appellate Deputies Seminar (CA-10); Denver, CO
Sept. 18-21 Effective Productivity for Court Personnel; Phoenix, AZ
Sept. 19-20 Judicial Conference of the United States; Washington, DC
Sept. 21 Meeting of Circuit Chief Judges; Washington, DC
Sept. 21 Meeting of District Judge Delegates to Judicial Conference; Washington, DC
Sept. 24-28 COURTRAN II STARS and INDEX Training; Washington, DC
Sept. 24-28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN
Sept. 25-27 In-Court Management Workshop; Brainerd, MN
Sept 25-28 Effective Productivity for Court Personnel; Cleveland, OH

See CALENDAR p. 6

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Bulletin of the Federal Courts

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NEW LEGISLATION EXPANDS MAGISTRATES' JURISDICTION

The Federal Magistrate Act of 1979, expanding the civil and criminal jurisdiction of United States magistrates, was signed into law by the President on October 10 as P.L. 96-82. The final version of the legislation incorporates changes proposed by a congressional conference committee following amendment by the House of the original Senate bill, S. 237. All the provisions of the Act, with the exception of those calling for the promulgation of new standards for the selection of magistrates, go into effect immediately.

The new Act makes three important changes in the current civil jurisdiction of magistrates.

First, it codifies existing practice by permitting all full-time

See MAGISTRATES p. 6

DEVITT COMMITTEE RECOMMENDATIONS ACCEPTED BY JUDICIAL CONFERENCE

At its meeting last month, the Judicial Conference of the United States adopted by formal resolution all recommendations contained in the final report of the Committee to Consider Standards for Admission to Practice in the Federal Courts. The report was the culmination of three years of effort during which the committee conferred with members of the bench and bar, made an exhaustive investigation, and held public hearings nationally.

The committee, chaired by Chief Judge Edward J. Devitt of Minnesota, consisted of federal judges, private practitioners, law school deans and four law student consultants.

The recommendations in the committee's report lie in two major areas: the first is aimed at curing deficiencies the task force found in the type and degree of trial practice training offered in law schools; the second makes proposals for action to be taken directly by the district courts.

The Judicial Conference will implement the committee's recommendations by undertaking two actions.

- First, the Conference will recommend to the American Bar Association that it consider amending its law school accreditation standards to require that all schools offer quality courses in trial advocacy with student participation in actual or simulated trials under the supervision of instructors having trial experience.

- Second, a new committee will be created to oversee an experimental program which will be conducted on a pilot basis in courts that wish to participate. The program calls for:

(1) An examination on federal practice subjects as a prerequisite to admission to the bar of a federal district court. This examination would not be required of present members.

(2) Four supervised trial experiences, two of which involve participation in actual trials, prior to a lawyer's unsupervised conduct of a trial in federal court. Present members must meet this

See DEVITT p. 2

NEW FJC BOARD MEMBERS ELECTED

Lloyd D. George

Donald S. Voorhees

See NEW BOARD p. 2

DEVITT from p. 1

requirement prior to conducting an unsupervised trial, but previous trial experiences used to meet the requirement need not have been supervised.

(3) Establishment of nondisciplinary peer review committees to advise and counsel present members of the bar.

Additionally called for were support for student practice in federal district courts and encouragement of continuing legal education in trial advocacy and federal practice subjects.

The examination and experience requirements were not favored by some members of the committee, including the chairman.

The committee said in introductory comments that their survey of the entire situation "established that there is a significant problem with the quality of trial advocacy in the federal courts." For example, the committee pointed out that data compiled from a survey conducted by the Federal Judicial Center showed that 41% of the district court judges reponding felt that there was a "serious problem" of inadequate trial advocacy, and 25% of actual attorney performances were rated by these judges as less than "good." On the other hand, the committee found that law schools were "doing a good job in preparing lawyers for appellate work," and its report therefore did not call for remedies directed specifically at appellate practice.

To address the problems in trial advocacy, the committee advocated increased emphasis on learning the art of advocacy in law schools. Estimating that only about one out of three law students who desire to take a trial advocacy course are able to do so, the committee proposed a change in accreditation standards and called for the bench and bar to assist law schools in attaining the goal of providing such courses to all students who want them.

As recommended by a majority of the committee, the examination, experience and peer review proposals will be implemented on an experimental, pilot basis, and this experiment will be overseen by the new and as yet unappointed committee of the Conference. The Conference resolution called for flexibility in conducting the experimental program, and advised that combinations and permutations of the different remedies be adopted in different localities. It also emphasized that sufficient time, money and expertise must be made available for studying the program.

NEW BOARD from p. 1

United States District Judge Donald S. Voorhees (W.D. WA) and Bankruptcy Judge Lloyd D. George (D. NV) were elected to the Board of the Federal Judicial Center by the Judicial Conference of the United States last month. The eight-member Board consists of The Chief Justice of the United States, who is permanent Chairman, two circuit court judges, three district court judges, one bankruptcy court judge, and the Director of the Administrative Office of the United States Courts.

Judge Voorhees, who is a graduate of the University of Kansas (A.B. 1938) and Harvard Law School (J.D. 1946), was appointed district court judge on June 20, 1974. He fills the district court position on the Board which became vacant when Judge Otto R. Skopil, Jr. of Oregon took a seat on the Ninth Circuit on October 20.

Judge George, who was appointed bankruptcy judge on March 4, 1974, was elected to fill the new position on the Board created as of October 1, 1979 by the Bankruptcy Reform Act. He is a graduate of Brigham Young (B.S. 1955) and the University of California (J.D. 1961).

LAW CLERK, SECRETARIAL POSITIONS OUTLINED BY BANKRUPTCY DIVISION

Funds became available October 1 for law clerks for full-time bankruptcy judges. Public Law 95-598, the Bankruptcy Reform Act of 1978, amended Chapter 50 of Title 28 of the United States Code to provide for the appointment of law clerks and secretaries by bankruptcy judges. Procedures for selection and appointment for the two positions were set forth in a memorandum of August 6, 1979 from the Bankruptcy Division of the Administrative Office to all bankruptcy judges.

Law clerks may be authorized on a full- or part-time basis, and bankruptcy judges have been asked to assure themselves that full-time positions are justified. Part-time clerks will not be allowed to practice law. It is possible to establish a position of part-time law clerk and part-time courtroom deputy; or a courtroom deputy with law clerk responsibilities. In the latter instance the position would be under the clerk of court. To obtain authorization for any law clerk position, full-time bankruptcy judges should write to the Bankruptcy Division indicating whether full-time service is justified.

Within the limits of the congressional authorization, attempts will be made to satisfy requests from part-time bankruptcy judges for law clerks.

A secretary may be appointed for each bankruptcy judge, but the position must come from the current complement of clerk's office positions as no new positions were authorized by Congress for secretarial service. If a current bankruptcy office employee is appointed as secretary, the action will be handled as a reclassification of the current position. Appointment from outside the bankruptcy office must be made to a vacant position in

See BANKRUPTCY p. 3

Chairman L.N. Smirnov of the Supreme Court of the Soviet Union visited the Federal Judicial Center on a recent tour of the United States that reciprocated Chief Justice Burger's earlier visit to the Soviet Union. Center Director A. Leo Levin gave a presentation which included a videotape demonstration of the Courtran computer system, and presented Chairman Smirnov with a copy of a book distributed by the Supreme Court Historical Society entitled "Magna Carta and the Tradition of Liberty."

BANKRUPTCY from p.2

the clerk's office, which would be reclassified as a secretarial position.

Qualification requirements for the law clerk and secretarial positions are the same as those for law clerks and secretaries to U.S. district judges, and may be found in the Judiciary Salary Plan (1976 Edition).

Questions concerning authority to appoint law clerks and secretaries should be addressed to Kent Presson of the Bankruptcy Division, FTS 633-6232. Questions concerning qualifications of law clerks and secretaries should be directed to the Personnel Division, FTS 633-6063.

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CIRCUIT ROUNDUP: THE 1979 CIRCUIT JUDICIAL CONFERENCES

By statute, the chief judge of each of the eleven circuits is required to annually summon all the active circuit and district judges within the circuit to a conference "for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit." 28 U.S.C. § 333.

September brought to a close this year's conferences, some highlights of which are reported below.

First. Chief Judge Frank M. Coffin reports that this year's meeting, though "mainly inhouse," featured two speakers: one was Professor Stephen Breyer of Harvard who is now Chief Counsel for the Senate Judiciary Committee. Professor Breyer stressed how the Committee can act as a catalytic agent and how it has stimulated interest groups to come forward with views on legislation. The other speaker was Anthony Lewis, New York Times columnist and author of several books related to the legal profession, who addressed the judges on issues involved in recent Supreme Court cases.

Two subjects which received special attention: the new Bankruptcy Reform Act (discussed by Berkeley Wright) and the Devitt Committee report (discussed by Judge Robert E. Keeton, a member of the committee).

Second. This year's theme was on the courts and the free press. With the media well represented, Irving R. Kaufman, Chief Judge of the Circuit, referred to free expression as the "indispensable liberty without which no other can be secure." The judge noted that "the independent press and the independent judiciary stand in a symbiotic relationship," and he went on to say that protection of the free press is really a function

See ROUNDUP p. 7

JUDICIAL CONFERENCE EULOGIZES JUDGES BIGGS AND JONES

The Judicial Conference last month adopted resolutions eulogizing two revered members of the Conference who died recently. The text of these resolutions follows.

* * * * *

RESOLUTION

The Judicial Conference notes with sorrow the death of Judge John Biggs, Jr. on April 15, 1979. Judge Biggs joined the Conference in April 1939 when he became Senior Circuit Judge of the Third Circuit, later denominated Chief Judge, and served on the Conference for more than 26 years until October 1965. Throughout this period Judge Biggs was a stalwart leader in the work of the Conference, serving as the chairman or member of numerous Conference committees. In 1955 he organized the Committee on Court Administration and served as its chairman for 14 years. He was chairman of the Committee on Supporting Personnel from 1940 to 1969, chairman of the Subcommittee on Judicial Salaries, Annuities and Tenure of the Committee on Court Administration from 1969 to 1970, and a member of the Committee on Judicial Statistics from 1957 to 1969. During his service on the Judicial Conference he also served on numerous ad hoc Conference committees.

His dedication to the work of the Conference brought him to Washington frequently to meet with representatives of the Judiciary Committees of the Congress and to testify before Congress on behalf of the Conference on legislative matters affecting the Judiciary, including the annual Judiciary budget. His voice before the Congress and in the Conference was strong and influential. Few judges in the history of the Federal Judiciary have contributed as much to the development of the federal judiciary as did Judge John Biggs, Jr.

The members of the Conference mourn the passing of this distinguished and dedicated jurist and colleague.

* * * * *

RESOLUTION

The Judicial Conference of the United States takes note with deep sorrow of the death of Judge William Blakely Jones on July 31, 1979, in Washington, D.C.

Born in Cedar Rapids, Iowa on March 20, 1907, Judge Jones spent his boyhood in Denison and Sioux City, Iowa; then attended the University of Notre Dame for both his undergraduate and legal training. Judge Jones starred as a football player under the fabled Knute Rockne, served as coach of the freshman football team under Rockne while attending Notre Dame Law School, and was a highly successful football coach at Carroll College in Helena, Montana.

After a successful period in private practice in Montana, Judge Jones became a Washington lawyer in the Lands Division of the Justice Department, served in the Office of Price Administration, and was Secretary of the Joint British American Patent Interchange Committee during World War II.

Entering private practice in Washington in 1946, he quickly established a brilliant reputation as a lawyer of exceptional ability.

Judge Jones gave up an outstanding law practice to begin his service as a United States District Judge on May 14, 1962, and quickly became recognized as one of the nation's most distinguished jurists because of his ability, zeal, and hard work. Judge Jones served as Chief Judge of the United States District Court for the District of Columbia from July 14, 1975, until March 20, 1977, when he accepted senior status.

Despite the great burdens which Judge Jones carried as a judge and chief judge in the District of Columbia, he was active and vigorous in a substantial number of legal associations and organizations. Judge Jones served as Chairman of the Board of the National Institute of Trial Advocacy and as Chairman of the Judicial Conference Advisory Committee on Judicial Activities. He also served as Chairman of the Judicial Administration Division of the American Bar Association, and was a Judicial Fellow in the American College of Trial Lawyers and a member of the American Bar Foundation.

Judge Jones' life was one of challenge, hard work, and the successful pursuit of excellence in all that he did. In every role he won the respect and affection of everyone with whom he worked and was revered as a leader, counselor, and friend. The Judicial Conference of the United States adopts this resolution in memory and appreciation of his life and service. The sympathy of all Conference members is extended to Mrs. Alice Jones and his daughter Barbara.

CENTER ANNOUNCES PUBLICATION OF REPORT ON PROSECUTORIAL DISCRETION AND SENTENCING REFORM

The Federal Judicial Center has published a report analyzing prosecutorial power over criminal sentences under S. 1437, the Criminal Code Reform Act considered last year by the 95th Congress. Although this legislation was passed by the Senate, it died in House committee. New criminal code reform legislation—including sentencing restructuring—is presently before the 96th

See PUBLICATION p. 7

ADMINISTRATIVE OFFICE REPORT REFLECTS WORK OF FEDERAL COURTS

The fortieth *Annual Report of the Director of the Administrative Office of the United States Courts,* covering the 12-month period ending June 30, 1979, was released last month. In addition to reporting on the entire range of activity in the federal courts—from judicial business in the circuit and district courts to implementation of the Court Interpreters Act (P.L. 95-539)—it provides a summary statement of the change in the workload of the federal judiciary since 1940.

Statistics for the 12-month period covered by the report show:

- There was an increase of 1,301 cases filed in the courts of appeals to a total of 20,219, a 6.9 percent increase over 1978. Dispositions rose to a record 18,928, also 6.9 percent greater than in 1978, but the increase in filings resulted in 17,939 cases pending — another record. This is 7.8 percent more cases pending than in 1978. Although the increase in filings was primarily the result of cases arising from the decisions of the district courts, there was a 22.7 percent increase in appeals from administrative agency decisions, from 2,382 appeals in 1978 to 2,922 in 1979.

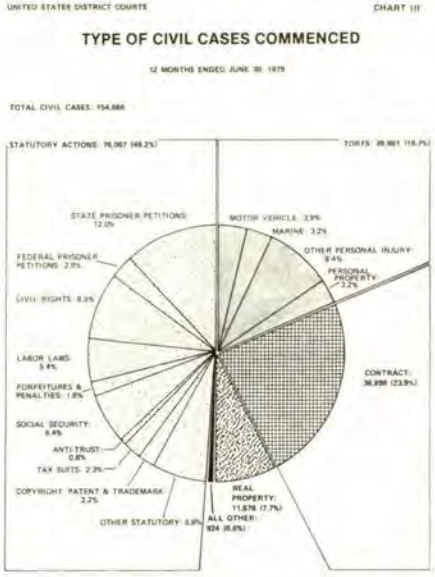
- Civil filings in the district courts increased 15,896 to a record 154,666 or 11.5 percent more than in 1978. Although 143,323 cases were closed during the year, the increase in filings resulted in a record pending civil caseload in the district courts of 177,805 cases.

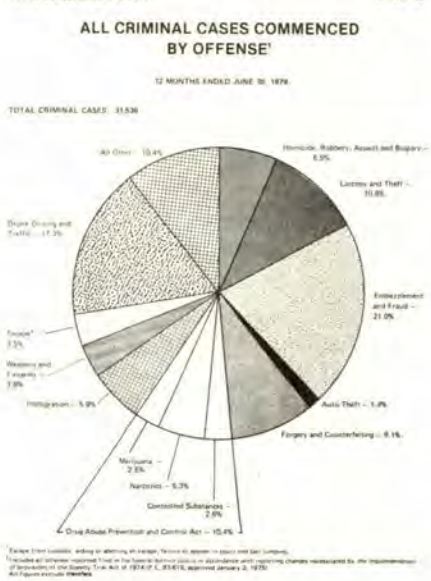
- District courts experienced a continued decline in the number of criminal filings, down 9.2 percent from 35,983 last year to 32,688. According to the report, the decline may be attributed in part to the diversion of prosecution of bank robberies and juvenile cases to state authorities. Implementation of the Speedy Trial Act of 1974 resulted in an increased rate of dispositions: pending criminal cases dropped to 15,124, or 4.6 percent less than in 1978.

- Bankruptcy cases filed (all types) rose 23,525 to a total of 226,476. This increase—11.6 percent over 1978—is the fourth largest increase in bankruptcy filings in a single year. Although business bankruptcies declined in 1979, non-business bankruptcies increased substantially.

A separate section of the report presents an analysis of the workload of the federal courts based on over one million case filings and disposition reports received in criminal and civil cases, appeals, bankruptcy pro-

See A.O. REPORT p. 8





Charts from *The United States Courts, A Pictorial Summary.*

NOTICE OF APPEAL FILED IN JUDGES' SALARY CASE

On February 7, 1978, thirteen federal district court judges filed a complaint in the District Court for the Northern District of Illinois to recover compensation they allege was earned but not paid for their services during the period October 1, 1976 to March 1, 1977 and, in a separate count, for services rendered beginning October 1, 1977. *Will* v. *United States of America,* 78C 420 (N.D. IL). The case was filed on behalf of the named plaintiffs and members of a class comprised of more than 600 other judges. Jurisdiction was invoked pursuant to Title 28 U.S.C. § 1346 (a) (2).

On August 29, 1979, U.S. District Judge Stanley J. Roszkowski granted plaintiffs' motion for summary judgment in a 17-page order. 48 L.W. 2193.

Title 28 U.S.C. § 1252 authorizes a direct appeal to the Supreme Court when an act of Congress has been declared unconstitutional and the Government is a party to the suit. Based on this statute the Government, on September 26, 1979, filed with the District Court for the Northern District of Illinois a notice of appeal. Under rule 13 of the Supreme Court Rules, the Government has 60 days from that date to file a Jurisdictional Statement with the Supreme Court of the United States.

A second case was filed October 19, 1979, *Will* v. *United States,* No. 79C 4368, on behalf of the class, for the pay increases for October 1, 1978 and October 1, 1979.

MAGISTRATES from p. 1

and some part-time magistrates to hear and confer judgment in any jury or non-jury civil case as long as all the parties to the litigation consent. A magistrate hearing such a case will, however, have to be designated by the district court to exercise such jurisdiction. Part-time magistrates may try civil cases with the parties consent if they have been a member of the bar for at least five years and if the chief judge of the district court certifies that a full-time magistrate is not reasonably available. The statute does provide the district court with a limited power to vacate the reference of a civil case to a magistrate.

Second, the Act for the first time will allow an appeal from a judgment of a magistrate in a civil case to be taken directly to the court of appeals. The conference report noted that this procedure was controversial, but concluded that parties consenting to trial by a magistrate were entitled to the same route of appeal as litigants having their cases heard by a district court judge. However, parties will be permitted to follow existing practice by agreeing at the time of reference to the magistrate to take any appeals to the district court.

Third, to insure the voluntariness of the parties' consent to the referral of a case to a magistrate, the Act provides that the filing of a referral be done through the clerk's office without the involvement of a district judge or magistrate at that stage. Additionally, the Act specifically forbids a judge or magistrate from attempting to persuade or induce any party to consent to a referral, and it requires that the rules of court regarding such referral include procedures to protect the voluntariness of the parties' consent.

The Act also sets forth detailed requirements for the merit selection of magistrates. It requires that a nominee to the position be a member of the bar for at least five years, and that the selection be made pursuant to standards and procedures to be promulgated by the Judicial Conference of the United States at its next meeting (March 1980). The Act also requires that public notice of vacancies in magistrate positions be given and that district courts establish merit selection panels to assist in the selection process. In recognition of the underrepresentation of women, blacks, Hispanics and other minorities in the federal judiciary, the congresssional conference directed the merit selection panels to give due consideration to all qualified candidates, especially women and minorities.

With regard to magistrates who are currently sitting, the Act provides that they may exercise the civil trial jurisdiction authorized in the legislation only after having been reappointed under the standards and procedures of the Judicial Conference or after having been certified as qualified to exercise such jurisdiction by the judicial council of the circuit in which the magistrate serves.

The Act also makes several changes in the magistrates' jurisdiction in criminal cases.

Magistrates will, upon designation by the district court, be able to hear and to impose sentences in all jury or non-jury misdemeanor cases, although defendants must explicitly waive their right to trial by a district judge. Presently, the magistrates may not conduct jury trials or hear misdemeanors with a potential fine greater than $1,000.

In cases involving a youth offender (under age 22 at time of conviction) tried by a magistrate, the Act limits the magistrate's sentencing powers so that no sentence greater than one year for a misdemeanor or six months for a petty offense may be imposed. The Youth Corrections Act's "core concept" of rehabilitation rather than retribution is retained by requiring conditional release and unconditional discharge of such offenders.

In a compromise regarding the magistrates' jurisdiction over cases involving juveniles (under 18 at time crime was committed) accused of misdemeanors or petty offenses, the conference revision grants magistrates authority to try juveniles only with their consent and only in petty cases. In such cases, a magistrate may not impose a term of imprisonment.

Finally, the Senate bill had proposed an amendment of the Federal Rules of Criminal Procedure to allow a magistrate to accept guilty pleas in felony cases with the consent of the defendant. This provision was rejected by the congressional conference, and a letter was sent to The Chief Justice requesting study of this issue by the proper committees of the Judicial Conference.

1980 - 1981 JUDICIAL FELLOWS PROGRAM

Each year the Judicial Fellows Program enables a small number of young professionals to observe and contribute to projects involved in improving judicial administration. The one-year fellowships begin in September and include a stipend based on comparable government salaries.

Application information and literature on the 1980-1981 program is available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543. The deadline for making application is November 5.

ROUNDUP from p. 3

of all three branches of our Government.

The Circuit Justice for the Second, Thurgood Marshall, attended the conference and discussed Second Circuit cases reviewed by the Supreme Court during the past Term of Court.

Third. Chief Judge Collins J. Seitz continued his practice of giving a "State of the Circuit" address. Of considerable interest was a panel discussion on trial issues facing the district courts, in which six district judges participated. Covered during this half-day session were matters related to civil rights litigation, current problems in determining awards of attorney fees and costs, and representation of multiple defendants in criminal cases by a single lawyer.

Fourth. The Chief Justice, Circuit Justice for the Fourth, was in attendance and this year stressed in his remarks the importance of assuring that there be a high quality of professional performance by members of the federal bar. Repeated again was The Chief Justice's admonition that "we owe to our profession and to the public a duty to look at ourselves objectively, take note of our strong points and our weak points, and then by constructive efforts try to improve the service of our profession to the public."

Fifth. Chief Judge John R. Brown presented his annual report on the Fifth Circuit and announced at the beginning of his speech that it would probably be his last appearance at the judicial conference as the Chief Judge. Judge Brown will be succeeded as Chief Judge by Judge James P. Coleman of Mississippi, in December 1979.

Judge Brown's speech contained references to the congressional stipulation that "any court of appeals having more than 15 active judges may constitute itself into administrative units." The Judge reported that once the sixteenth judge has taken his position on the court, a circuit Judicial Council meeting will be held to consider all aspects of necessary changes, including recommendations of a four-judge committee which has been studying all possible alternative methods and devices.

The Chief Justice also addressed the circuit, and recommended new federal government programs for correctional institutions. See *The Third Branch,* Vol. 11, No. 6, June, 1979.

Sixth. This Circuit also included a program on media and the law, with a discussion group led by representatives of the media as well as the judges and practicing lawyers. They also heard a report from the Devitt Committee and a discussion of the impact of decisions of the Supreme Court during the past Term of Court.

Seventh. Released at the time of this Circuit's conference were two significant publications. One was a report of the special committee appointed by Chief Judge Thomas E. Fairchild to evaluate the Seventh Circuit's judicial conferences. A major recommendation of the committee was that programs for the conference, other than the executive sessions of the judges, be planned by a committee of six, three judges and three lawyers. The second report released was one drafted by a special committee appointed to study the high cost of litigation. Also distributed at the meeting was the latest edition of the practitioners' handbook for the Circuit.

Eighth. Chief Judge Floyd R. Gibson delivered his annual "State of the Judiciary" speech and announced he would be taking senior status next March; also, that the Circuit Executive, Hans Lawton, would be leaving to enter private practice after five years of service to the Circuit, his initial commitment to the position. Though reporting heavy caseloads, Chief Judge Gibson expressed optimism for disposing of cases expeditiously since there would be an infusion of new judges into the Circuit.

Ninth. The judges of the conference heard Chief Judge James R. Browning's annual report; conferred with Chief Justice Burger on the business of the Circuit; and voted upon sixteen resolutions. The resolu-

See ROUNDUP p. 8

PUBLICATION from p. 4

Congress as a House draft and as S. 1722 and S. 1723.

The report, by Professor Stephen J. Schulhofer of the University of Pennsylvania Law School, is the product of work done under contract with the FJC Research Division. It is entitled *Prosecutorial Discretion and Federal Sentencing Reform.*

A number of commentators had expressed concern that adoption of the sentencing provisions of S. 1437 would not reduce sentencing disparity, but would merely shift the locus of sentencing discretion from judges and parole authorities to prosecutors. Professor Schulhofer analyzes specific ways in which prosecutorial influence over sentences might be enhanced by the system of guidelines contemplated in the bill, and suggests ways in which such a system could be implemented to bring prosecutorial discretion under control. Amendments to S. 1437 are recommended.

The report has been published in two volumes. The first contains the body of the report with analysis and conclusions; the second is a technical supplement that explores some aspects of the problem in greater depth.

Copies of the report may be obtained from the Information Services Office of the Federal Judicial Center. Requesters should indicate which volumes of the report are desired.

ROUNDUP from p. 7

tions covered a broad spectrum of issues related to the processing of cases within the Circuit.

Tenth. Featured at this Circuit's meeting was a speech by then Associate Attorney General Michael J. Egan who addressed the conference on legal representation of the federal government. Mr. Justice White, Circuit Justice, reviewed recent Supreme Court decisions, with emphasis on those coming from the Tenth Circuit.

District of Columbia. This year members of the conference discussed an important issue receiving considerable attention recently: the matter of the options available in redistributing litigating authority between the Department of Justice and other departments and agencies in the Executive Branch.

Reported on and discussed was the first year's experience with the Circuit's court of appeals management plan.

The Chief Justice, Circuit Justice for the D.C. Circuit, spoke on his visit to Russia in 1977 and reported some comparative observations.

THE SOURCE

The Information Service of the Federal Judicial Center

Publications are primarily listed for the reader's information. **Only those titles listed at the beginning of the column and in boldface are available from the FJC Information Services Office.**

Discovery Sanctions: A Judicial Perspective. Charles B. Renfrew. 67 Calif. L. Rev. 264-282 (March 1979).

The Lower Federal Courts as Constitution-Makers: The Case of Prison Conditions. Daryl R. Fair. 7 Am. J. Crim. L. 119-140 (July 1979).

1978 Annual Report. Institute for Court Management. ICM. 1979.

Public Criticism of the Judiciary—Is it Caused by a Defaulting Executive or Legislature? Chesterfield Smith. 10 Column [Trial Court Admin.] 4 (July/Aug. 1979).

Trends in Administration of Justice in the Federal Courts. Max Rosenn. 39 Ohio St. L. J. 791-804 (1978).

The Crisis of Conscience; Federal Judges in Segregated Clubs. Steve Suitts. Atlanta, Southern Regional Council, 1979.

A.O. REPORT from p. 5

ceedings and probation received in the 12-month period. In addition, this section includes an analysis of statistics obtained from petit and grand jury reports; reports of the caseloads of federal public and community defenders; information received from clerks of court on three-judge hearings; the status of three year old civil cases and the status of criminal defendants; an inventory of passport applications; the number of petitions for naturalization and the number of aliens naturalized.

An appendix of tables presents statistics on the work for each of the circuit, district and bankruptcy courts, the federal probation system, grand and petit jurors, federal public defenders and U.S. magistrates.

A companion report, *The United States Courts, A Pictorial Summary,* presents a concise summarization of the statistics reported in the annual report in the form of graphs and charts.

Federal judges and staff may obtain a copy of the annual report or the pictorial summary without charge from the Statistical Analysis and Reports Division, Administrative Office, of the United States Courts. Others may purchase the reports from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock numbers for the publications are: *Annual Report,* 028-004-00028-1; *Pictorial Summary,* 028-004-00027-3.

TWO CAREER A.O. OFFICIALS DEAD:

VICTOR H. EVJEN, VIVIAN CLEMENTS

Victor H. Evjen, former Assistant Chief of the Probation Division in the Administrative Office, died last month of a heart attack while in his doctor's office. He was 73.

Mr. Evjen was first a probation officer with the juvenile court in Chicago, and a short time later became a probation-parole officer with the U.S. District Court for the Northern District of Illinois. This service with the District Court and his work in the Administrative Office represent a 35-year career with the federal courts.

As managing editor and later as editor of the publication *Federal Probation,* Mr. Evjen established a national reputation as one of the country's top criminologists.

Another former Administrative Office official, Vivian Clements, died last month of an aneurysm at the age of 80.

Mr. Clements joined the Administrative Office in 1940 after service with the Navy Department and the Department of Justice. At the time of his retirement he held the position of Chief Auditor for the Administrative Office.

PERSONNEL from p. 10

NOMINATIONS (Con't)

Lucius D. Bunton, III, U.S. District Judge, W.D. TX, Oct. 11

Harry L. Hudspeth, U.S. District Judge, W.D. TX, Oct. 11

CONFIRMATIONS

Robert J. Staker, U.S. District Judge, S.D. W VA, Sept 11

James M. Sprouse, U.S. Circuit Judge (CA-4), Sept 11

Matthew J. Perry, Jr., U.S. District Judge, D. SC, Sept 19

Bailey Brown, U.S. Circuit Judge (CA-6), Sept. 25

Cornelia G. Kennedy, U.S. Circuit Judge (CA-6), Sept 25

Edward C. Reed, Jr., U.S. District Judge, D. NV, Sept 25

Mary M. Schroeder, U.S. Circuit Judge (CA-9), Sept 25

Avern Cohn, U.S. District Judge, E.D. MI, Sept 25

Stewart A. Newblatt, U.S. District Judge, E.D. MI, Sept 25

William Hungate, U.S. District Judge, E.D. MO, Sept 25

Howard F. Sachs, U.S. District Judge, W.D. MO, Sept 25

Richard D. Cudahy, U.S. Circuit Judge (CA-7), Sept 25

John V. Parker, U.S. District Judge, M.D. LA, Sept 25

Scott O. Wright, U.S. District Judge, W.D. MO, Sept 25

Abner J. Mikva, U.S. Circuit Judge (CA-DC), Sept 25

Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), Sept 25

Richard M. Bilby, U.S. District Judge, D. AZ, Sept 25

Veronica D. Wicker, U.S. District Judge, E.D. LA, Sept 25

John M. Shaw, U.S. District Judge, W.D. LA, Sept 25

Falcon B. Hawkins, U.S. District Judge, D. SC, Sept 25

C. Weston Houck, U.S. District Judge, D. SC, Sept 25

Jim R. Carrigan, U.S. District Judge, D. CO, Sept 25

Zita L. Weinshienk, U.S. District Judge, D. CO, Sept 25

George Arceneaux, Jr., U.S. District Judge, E.D. LA, Sept 25

Otto R. Skopil, Jr., U.S. Circuit Judge (CA-9), Sept 25

Patrick E. Carr, U.S. District Judge, E.D. LA, Sept 25

Benjamin F. Gibson, U.S. District Judge, W.D. MI, Sept 25

Douglas W. Hillman, U.S. District Judge, W.D. MI, Sept 25

J. Jerome Farris, U.S. Circuit Judge (CA-9), Sept 26

Betty B. Fletcher, U.S. Circuit Judge (CA-9), Sept 26

Albert Tate, Jr., U.S. Circuit Judge (CA-5), Oct. 4

Samuel D. Johnson, Jr., U.S. Circuit Judge (CA-5), Oct 4

Nathaniel R. Jones, U.S. Circuit Judge (CA-6), Oct 4

Joseph C. Howard, Sr., U.S. District Judge, D. MD, Oct 4

Shirley B. Jones, U.S. District Judge, D. MD, Oct 4

Lynn C. Higby, U.S. District Judge, N.D. FL, Oct 4

James C. Paine, U.S. District Judge, S.D. FL, Oct 4

James W. Kehoe, U.S. District Judge, S.D. FL, Oct 4

Eugene P. Spellman, U.S. District Judge, S.D. FL, Oct 4

Gene E. Brooks, U.S. District Judge, S.D. IN, Oct 4

William L. Beatty, U.S. District Judge, S.D. IL, Oct 4

Hugh Gibson, Jr., U.S. District Judge, S.D. TX, Oct 4

George J. Mitchell, U.S. District Judge, D. ME, Oct 4

Jerry L. Buchmeyer, U.S. District Judge, N.D. TX, Oct 4

Edward B. Davis, U.S. District Judge, S.D. FL, Oct 4

APPOINTMENTS

Warren W. Eginton, U.S. District Judge, D. CT, Aug 1

Robert L. Anderson, III, U.S. Circuit Judge (CA-5), Aug 6

Carolyn D. Randall, U.S. Circuit Judge (CA-5), Aug 8

Henry A. Politz, U.S. Circuit Judge (CA-5), Aug 10

Susan H. Black, U.S. District Judge, M.D. FL, Aug 17

Orinda D. Evans, U.S. District Judge, N.D. GA, Aug 17

Marvin H. Shoob, U.S. District Judge, N.D. GA, Aug 17

G. Ernest Tidwell, U.S. District Judge, N.D. GA, Aug 17

Robert L. Vining, Jr., U.S. District Judge, N.D. GA, Aug 17

Marvin E. Aspen, U.S. District Judge, N.D. IL, Sept 4

James B. Moran, U.S. District Judge, N.D. IL, Sept 10

William J. Castagna, U.S. District Judge, M.D. FL, Sept 14

James M. Sprouse, U.S. Circuit Judge (CA-4), Sept 22

Robert J. Staker, U.S. District Judge, S.D. W VA, Sept 22

Bailey Brown, U.S. Circuit Judge (CA-6), Sept 27

John V. Parker, U.S. District Judge, M.D. LA, Sept 27

Douglas M. Hillman, U.S. District Judge, W.D. MI, Sept 28

Falcon B. Hawkins, U.S. District Judge, D. SC, Sept 28

Stewart A. Newblatt, U.S. District Judge, E.D. MI, Sept 28

George Arceneaux, Jr., U.S. District Judge, E.D. LA, Sept 28

John M. Shaw, U.S. District Judge, W.D. LA, Sept 28

C. Weston Houck, U.S. District Judge, D. SC, Sept 29

Samuel D. Johnson, Jr., U.S. District Judge (CA-5), Oct 17

Otto R. Skopil, Jr., U.S. Circuit Judge, (CA-9), Oct 20

ELEVATIONS

Charles A. Moye, Jr., Chief Judge, N.D. GA, July 27

Carl B. Rubin, Chief Judge, S.D. OH, Sept 23

Robert M. McRae, Jr., Chief Judge, W.D. TN, Sept 27

DEATHS

F. Ryan Duffy, U.S. Senior Circuit Judge (CA-7), Aug 16

Charles Fahy, U.S. Senior Circuit Judge (CA-DC), Sept 17

Marshall A. Neill, U.S. District Judge, E.D. WA, Oct 6

PERSONNEL

NOMINATIONS

Warren J. Ferguson, U.S. Circuit Judge (CA-9), Sept 28
Dorothy W. Nelson, U.S. Circuit Judge (CA-9), Sept 28
Terry J. Hatter, Jr., U.S. District Judge, C.D. CA, Sept 28
Milton L. Schwartz, U.S. District Judge, E.D. CA, Sept 28
Robert H. Hall, U.S. District Judge, N.D. GA, Sept 28
Dale E. Saffels, U.S. District Judge, D. KS, Sept 28
Harold A. Ackerman, U.S. District Judge, D. NJ, Sept 28
Dickinson R. Debevoise, U.S. District Judge, D. NJ, Sept 28
H. Lee Sarokin, U.S. District Judge, D. NJ, Sept 28
Anne E. Thompson, U.S. District Judge, D. NJ, Sept 28
Neal P. McCurn, U.S. District Judge, N.D. NY, Sept 28
Frank H. Seay, U.S. District Judge, E.D. OK, Sept 28
Lee R. West, U.S. District Judge, W.D. OK, Sept 28
Thomas R. Brett, U.S. District Judge, N.D. OK, Sept 28
James O. Ellison, U.S. District Judge, N.D. OK, Sept 28
Andrew L. Jefferson, Jr., U.S. Circuit Judge (CA-5), Oct. 11
Cecil F. Poole, U.S. Circuit Judge (CA-9), Oct. 11
William O. Bertelsman, U.S. District Judge, E.D. KY, Oct. 11
Peter H. Beer, U.S. District Judge, E.D. LA, Oct. 11
L.T. Senter, Jr., U.S. District Judge, N.D. MS, Oct. 11
James T. Giles, U.S. District Judge, E.D. PA, Oct. 11

See PERSONNEL, p. 9

AO & FJC calendar

Oct. 25 Hearings before Judicial Panel on Multidistrict Litigation, New York, NY
Nov. 6-9 Effective Productivity for Court Personnel; Los Angeles, CA
Nov. 9 Judicial Conference Subcommittee on Appellate Courts; Washington, DC
Nov. 11-17 Seminar for Newly Appointed District Judges; Washington, DC
Nov. 19-20 Judicial Conference Subcommittee on Judicial Statistics; Marco Island, FL
Nov. 26-28 Workshop for District Judges (Ninth Circuit); Palm Springs, CA
Nov. 28-29 Judicial Conference Subcommittee on Bankruptcy Rules; Orlando, FL
Dec. 4-7 Effective Productivity for Court Personnel, Nashville TN
Dec. 10-14 In-Court Management - Defensive Tactics; Brooklyn, NY
Dec. 11-14 Effective Productivity for Court Personnel; San Juan, PR
Dec. 18-21 Effective Productivity for Court Personnel; St. Thomas, VI
Jan. 15-18 Effective Productivity for Court Personnel; Pittsburgh, PA
Jan. 21-23 Seminar for Federal Defenders; San Antonio, TX

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Bulletin of the Federal Courts

Vol. 11 No. 11 Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center **NOVEMBER, 1979**

CRIMINAL CODE MOVES FORWARD

Over the last few months both houses of Congress have been conducting hearings on legislation which would for the first time completely codify, revise and reform federal criminal law. The Senate Judiciary Committee and the House Subcommittee on Criminal Justice have received substantial testimony on two separate legislative proposals, and markup is in progress in both chambers. The Senate committee hopes that its bill, S. 1722, will be reported to the full Senate before the end of the year, and the House subcommittee, considering a draft bill, has set a target date of shortly after Thanksgiving for the presentation of a bill to the full Judiciary Committee.

Background. Study of the entire area of federal criminal laws began with the congressionally-created Brown Commission in 1960. The Commission's recommendations were submitted to the President in 1971, but the enactment of legislation has continually proved elusive. The current Senate bill evolved from last year's S.1437, which passed the Senate but died in the House. S. 1437, in turn, evolved from S.1, which died without action by the Senate Judiciary Committee in 1975. The House had in past years disagreed with the Senate on the need for extensive criminal code reform, but the House

See CODE p. 2

The Department of Justice and the Federal Courts: Policies and Priorities

AN INTERVIEW WITH BENJAMIN R. CIVILETTI

Benjamin R. Civiletti became this country's 73rd Attorney General on August 16th, succeeding Griffin B. Bell of Georgia, who resigned August 15th to return to private practice.

The new Attorney General brings a wealth of experience to his new position: He was a law clerk to a federal district judge in Baltimore, he was an Assistant United States Attorney for two years; and from 1964 until last March he was engaged in private practice.

Attorney General Civiletti also has experience in other Department of Justice posts; he was Assistant Attorney General in charge of the Criminal Division from March, 1977 to May 1978, when he became Deputy Attorney General.

The following interview was conducted October 10.

Mr. Attorney General, you have been in office since mid-August. Have you had ample time to formulate some policies on the priorities for cases you believe the Department of Justice should file in the federal courts?

see INTERVIEW p. 4

CHIEF JUSTICE MEETS WITH MET CHIEFS AT SEMI-ANNUAL MEETING

The Conference of Metropolitan District Chief Judges, representing the thirty district courts with six or more authorized judgeships, held its semi-annual meeting from Wednesday October 17 through Friday October 19, in Williamsburg, Virginia.

Chief Justice Warren E. Burger met with the Conference on Friday morning for an open discussion of a wide range of topics. Among other things, the Chief Justice:

- Elaborated on the Judicial Conference's September 1979 resolution proposed by the Court Administration Committee, to authorize designation of a panel of senior judges, available on request of Chief Judges, for assignment to handle protracted cases. The Chief Justice stressed that the panel would not duplicate the functions of the Judicial Panel on Multidistrict Litigation. Its purpose instead is to make an experienced senior judge

see MET CHIEFS p. 8

CODE from p. 1

Criminal Justice Subcommittee this year spent seven months preparing a new draft.

Although differences between the Senate and House proposals are not insignificant, the chairmen of the respective committee and subcommittee, Senator Edward M. Kennedy and Congressman Robert F. Drinan, have stated that they are in substantial agreement on the basic ingredients of a new criminal code. (See interviews in *The Third Branch,* July and September 1979.)

The two bills are similarly organized and share much in the way of content. Both reduce the number of possible criminal states of mind from the current 60 to 4—intentional, knowing, reckless, and negligent. Both drafts also consolidate the listing of federal felonies and misdemeanors and, in a highly controversial area, create new sentencing procedures.

Sentencing Proposals. In an effort to reduce unfair sentencing disparities, the bills create five classes of felonies, four grades of misdemeanors, and an infraction. A maximum penalty is then assigned to each class of crime, although the bills differ somewhat in the actual penalty assigned to each class. Both versions provide that punishment can be in the form of probation, fine, or imprisonment, and the House draft also authorizes a "conditional discharge," a form of unsupervised release that imposes fewer restrictions than probation.

For the judge formulating a sentence, both bills require consideration of certain factors such as the history and characteristics of the defendant and the nature and circumstances of the offense. The House draft additionally mandates a consideration of "effective alternatives" to incarceration. Under both bills, the sentencing judge must state the reasons for the imposition of a particular sentence.

Both House and Senate versions also call for the promulgation of sentencing guidelines to assist judges in the selection of penalties in individual cases. While the guidelines are not completely binding, under the House draft a sentencing judge must explain any departure from them; the imposition of a sentence greater than that suggested by the guidelines authorizes an appeal by the defendant. A sentence within the guidelines may be appealed only with leave of the Court of Appeals. The Senate bill incorporates similar provisions and additionally permits the Government to appeal if the sentence imposed is less than that recommended by the guidelines.

There are major differences between the bills in the composition of the committees that would promulgate these guidelines. The House version, which is favored by the Judicial Conference, vests guideline-drafting authority in a committee of the Conference, four of whose seven members are to be United States judges and three of whom are to be individuals who have never served on a federal or state bench. The committee's draft guidelines would be subject to the approval of the Judicial Conference and Congress. The Senate bill, on the other hand, calls for the executive branch to play the lead role in creating the committee. Three members of the seven member committee, including the chairman, are to be appointed by the President with the advice and consent of the Senate. The remaining four members are to be selected by the President from a list of at least seven United States judges submitted by the Judicial Conference.

Because the goal of the legislation is that the defendant actually serve the full term of the penalty imposed, the House draft calls for the abolition of parole and the Senate bill phases out parole over a five year period. The House draft also eliminates the possibility of "good time" reduction in sentences.

Testimony Received. Although much of the testimony before the committees has endorsed the concept of omnibus criminal code reform, the sentencing provisions have sparked considerable disagreement among witnesses testifying before the legislators. The American Bar Association, for example, presented to the House its objections to the abolition of parole, and it advocated retention of "good time." The National Legal Aid and Defender Association similarly opposed the elimination of parole and good time, and called for greater flexibility in judicial discretion in sentencing. The American Civil Liberties Union, believing that both bills place undue emphasis on incarceration, told the Senate committee it favors the development of a range of alternatives to incarceration and the retention of parole for a transitional period of five years. In House testimony, Federal Bureau of Prisons Director Norman A. Carlson supported the promulgation of sentencing guidelines which, he said, would make parole "duplicative and unnecessary," although he did call for retention of parole to deal with offenders sentenced under existing laws.

Andrew Von Hirsch, Professor at the Graduate School of Criminal Justice at Rutgers University and a noted writer in the field of criminal sentencing, endorsed sentencing guidelines as bringing about a fairer system of punishment, but he also advocated retention of parole until it can be determined that the guideline system is functioning as intended. Taking the opposing position was former district court judge and deputy attorney general Harold

see Code p. 3

CODE from p. 2

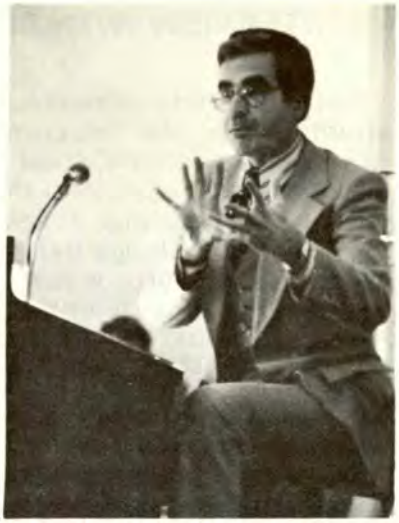
R. Tyler, Jr., who criticized any plans for the retention of parole as bringing confusion and unfairness to both the sentenced offender and the public. He did endorse, however, creation of a "safety valve procedure" for the review of the occasionally unjust sentence.

[Recently, the House Subcommittee responded to this criticism and voted to retain parole. It is contemplated that additional provisions will be drafted to require a study of the continued need for parole after the new code has gone into effect.]

Speaking for the Judicial Conference of the United States, Judge Alexander Harvey II (D. Md.) told the subcommittee that the Conference "generally approved" of the House draft but has specific objections to, among other things, the definitions of culpable states of mind and defenses, the provisions for preventive detention, the elimination of the Youth Corrections Act, and the earliness of the legislation's proposed effective date of January 1, 1983. Judge Gerald B. Tjoflat (CA-5), Chairman of the Conference Committee on the Administration of the Probation System, offered several criticisms of the legislation as it affects probation, and he called for the creation of a program of voluntary pretrial community supervision in lieu of prosecution, which, if successfully completed by the offender, would result in dismissal of charges. He generally praised the proposed establishment of sentencing guidelines. Speaking for the Conference Committee on the Administration of the Federal Magistrate System, Judge Charles M. Metzner (S.D.N.Y.), identified several inconsistencies between the House draft, current law and the Federal Magistrate Act (signed into law

see CODE p. 8

1.



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From November 12-17, the Federal Judicial Center conducted a seminar for newly appointed district court judges. The above photographs were taken at the Dolley Madison House during the week. 1. Judges C. Weston Houck (D. SC), Shirley B. Jones (D. MD) and Martin F. Loughlin (D. NH) pay close attention to one of the many presentations. 2. Prof. Arthur R. Miller of Harvard makes a point during a discussion of federal class actions—past, present and future. 3. Judge Susan H. Black (M.D. FL) takes notes. 4. Judge Sylvia H. Rambo (M.D. PA) participates in a computer assisted exercise on the rules (and exceptions) of hearsay. 5. Seminar lecturers Judge Damon J. Keith (CA-6) and Judge Hubert L. Will (N.D. IL) are greeted by Mr. Justice Byron S. White. 6. Judge Benjamin F. Gibson (W.D. MI) strikes a studious pose.

AN INTERVIEW WITH BENJAMIN R. CIVILETTI

from p. 1.

Not new priorities really. The priorities that the Department has followed generally over the last two and one-half to three years are ones that I helped formulate with Judge Bell, and as an overall proposition we will continue those priorities: for example, in the criminal area the emphasis on public corruption, white collar crime, drug abuse and organized crime; in the antitrust area, price fixing. We will continue to complete the monitoring and evaluation of shared monopolies with a view toward bringing at least a half a dozen or perhaps more cases in that area. New emphasis will be placed in the civil rights area. In addition to the gamut of school cases and employment cases which are so important, we will look closely at police brutality allegations, sex discrimination and voting rights and annexation question cases. I think the overall concept which the Department is pursuing is to look to the simplest, the most effective case which would bring the greatest remedy, avoiding past problems such as those experienced in institutional and antitrust litigation.

Complex and protracted cases are increasingly a problem in the federal courts in that they take an inordinate amount of judicial time and are enormously expensive. Do you have any solutions to suggest for those cases where the Department of Justice is a party to the litigation?

I have no dramatic solution. I think that we will always have a small number of complex and protracted cases. I think their cost in terms of judicial time, in terms of private and governmental investment of manpower, and jurors' time are such that, when the Department is a party, we have to be extremely careful in the original determinations to bring the case, to exhaust every possible means of disposition short of actual litigation. And in fashioning the suit, instead of relying on a half a dozen theories, we have to attempt to evaluate and choose the soundest theory with the strongest case and attempt to rifle-shoot instead of shotgun our approach. Once the litigation is begun in a complex and protracted case, then, in partnership with the court, I think we must do everything possible to expedite reasonable discovery, have milestones with regard to isolation of the issues and follow a constant and consistent pattern in pretrial proceedings to narrow the actual trial litigation of the case to its simplest elements.

There have been reports in the press that there has been a substantial decline in the number of antitrust cases filed by the Department of Justice during this administration. Does this reflect a change in policies followed by previous administrations?

I think the answer is generally no, except perhaps a little greater care. We have had a review of the decline to see if we could isolate the causes. There does not seem to be any outstanding reasons of policy for the 20 percent decline in the cases, and it does not seem to be segregated in one area or another. I think it may be just a slight pendulum swing depending more coincidentally on investigations and the type of cases than any gaps or different directions in the administration of the antitrust law.

A number of complaints have been reported of police brutality, particularly in large cities throughout the United States. In at least one instance, this has resulted in a suit against the city and its officials. Do you view this kind of litigation as an effective remedy to address the problem of police brutality? Another related question: Do you believe that police brutality is on the increase?

The answer to the first question is: I hope so. The answer to the second question is: No. Generally, police departments today are better educated, better trained and have a greater respect for individual rights than in the past. Remedial devices or systems are in place in most jurisdictions which provide for transfers or reassignments and early identification of the dispostion of an officer to panic or to fail to

observe departmental rules in emergency circumstances.

There are pockets of brutality which are troublesome and serious to the particular community in which they exist, and troublesome and serious to the Department. They arise from a number of circumstances: sometimes from the attitude of the community; sometimes from the attitude of the hierarchy in a community; sometimes because of negligence or incompetence in the department; and sometimes because of either developed or sudden abrasion or conflict within the community itself because of changes in the environment, such as population, or other such circumstances which overload normal police-community relations. In such instances we try to assist in a multitude of ways, last of which, of course, are individual suits against officers for violations of criminal civil rights statutes. In this particular instance we sued the city and its officials—a circumstance wherein we attempted to obtain or will attempt to obtain systemic relief to a very serious and widespread problem.

Several bills currently pending in Congress could have a great impact on the workload of the federal courts, which could also mean additional workloads for the United States Attorneys. Does the Department of Justice cooperate with the judiciary committees of the Senate and House to assess this impact on the courts and to make recommendations?

We try, in as sound a way as we can, to evaluate the effect of statutes on the workload of the Department, the United States Attorneys, on litigation, and, as a consequence, on the federal courts. Our statistical tools for doing this are not great, and the predictability of such evaluations is sometimes difficult to achieve. But, within the knowledge and experience of the Department, and with the statistical tools available to us, we frequently render our general views—informally and formally—on the consequence of legislation which deals with the workload of the courts and as a consequence the workload of the Department in representing the Government in the federal courts.

Several proposals have been made in Congress related to judicial tenure and discipline (see related story p. 7), particularly legislation introduced by Senators Nunn, DeConcini and Kennedy. The Judicial Conference of the United States has also taken a stand on this issue. Is the administration going to support any of the existing proposals or propose alternatives of its own on this subject?

The answer to the last part of the question I believe is, no. The answer to the first part is, I don't know whether the administration is going to take a position or not. It has not taken an absolute position as yet. The Department is still studying the alternatives that have been presented by the different bills introduced by Senators Nunn, DeConcini and Kennedy. As to the principle involved, I believe the Department generally thinks that the present system, which in a simple description is dependent upon either impeachment—which is totally impractical—or an informal remedy within the judicial council of each circuit, is not adequate and that some form of procedure different from either of those two alternatives is appropriate. I have not come to a conclusion or opinion myself as to whether that can be done within the framework of the Judicial Conference or the circuit councils or whether it needs a greater independence as reflected by the legislative proposals which have been introduced. I am extremely sensitive to and appreciative of the necessity to preserve the integrity and independence of the judiciary and I would not want to see any legislative proposal, although intended in good faith for remedial purposes, inadvertently impose or intrude on that independence and integrity which is so essential to the strength of the third branch of government.

The Department of Justice opposed the Speedy Trial Act concept when it was first proposed in 1974. When the recent amendments to the Act were under consideration, one of the Assistant Attorneys General testified that the Department now supports the Speedy Trial Act concept. What events precipitated the Department's change in position?

Experience. We've had five years of experience with the Speedy Trial Act concept. We have learned that it is beneficial to the expedition of government criminal business in the courts and that as a general proposition it does not have serious effects on the fair conduct of that business. The Department viewed the proposed amendments to the Speedy Trial Act in exactly the same manner as the Judicial Conference. Neither of us succeeded exactly in our proposal to simplify the Act and to extend the general time period to 180 days, but collectively we were able to succeed in postponing for one year what would have been a very adverse consequence—the imposition of final sanctions as of July 1st of this year. I intend during the course of this year to have prepared a full analysis and report to the Congress, so that the Congress may consider the needed remedial changes in the Speedy Trial Act while preserving the principal benefits of the Act, which include a very short time frame for incarcerated defendants.

In at least two of the circuit judicial conferences held this past summer, discussion took place on the subject of representation by the Government in the federal courts. Does this administration plan on studying this subject with a view toward making changes or to spell out with more specificity which cases the Department of Justice will delegate to lawyers in other departments or agencies in the Executive Branch?

I might answer this question in a general way. I am of the firm belief that the Department of Justice ought to be the litigating authority for all departments,

agencies, bureaus and entities within the Federal Government. I think that the fractionalization of representation is bad for the courts, bad for the parties and bad for the public. I think it is tragic when the Government speaks with three voices on the same subject or issue. This sometimes happens because of independent litigating authority delegated by the Congress to

see INTERVIEW p. 6

INTERVIEW from p. 5

agencies or new departments, such as the Department of Energy. So, to the extent that we have studied and are continuing to study the subject, it will be under the guiding principle of opposing any further delegation of authority to entities outside the Department of Justice in an attempt to demonstrate the wisdom of consolidating litigating authority in the Department of Justice where all the interests of the various departments can be considered and can be evaluated and accommodated. Our goal is that when the Government goes to court it speaks with one voice so that the court is not confronted with divergent views from the Federal Government.

An important piece of legislation before the 96th Congress is the proposed recodification of federal criminal laws. (See related story p.1.) A Department of Justice official has criticized one section of this legislation, saying it would seriously hamper the prosecution of white collar crimes. Others fear that the sentencing provisions will result in a transfer of discretion over sentencing from the Judicial to the Executive Branch during plea bargaining negotiations. What are your views on these problems and others raised by this legislation?

The amount of work that has been devoted to the Code, both by the Department and by congressional committees in the Senate and House is so substantial, and the value of the Code is so great, that we—all of us interested in criminal code reform—are more optimistic that we are in the best position for success or ultimate passage of the Code than we have been in the last ten years. The Department of Justice prefers the framework and substantive provisions that were passed by the Senate in the last term of the Congress in Senate Bill 1437. The Code, as it now stands in Congressman Drinan's subcommittee of the House Judiciary Committee, has some provisions in it, perhaps as many as 20 items, which the Department has serious objection to and which would pose, we think, disadvantages to strong enforcement of federal law in the area of white collar crime. The Senate has introduced a modified form of the bill that they passed in the last session, this time under the heading of Senate Bill 1722. We hope that becomes the vehicle for consideration in the congressional conference if the full House passes the House version. We are also hopeful that most of the objections which the Department now has to a preliminary version of the Code can, through discussion, be modified and be adjusted so that the Department can be more positive than it is at the present time. We haven't given up at all on the Code despite the fact that Phil Heymann—who is the Department of Justice official who criticized those sections—did give very strong and detailed testimony before Congressman Drinan's subcommittee.

I don't have the same fear that some have expressed with regard to the sentencing provision of the Code, either that it will transfer discretion from the Judicial Branch to the Executive Branch or that it will, by recommending stronger determinant sentencing, remove the good work of the Parole Commission. I think that the principles embodied in the sentencing reform, which can be described euphemistically as "truth in sentencing," provide for the removal of disparity and will permit judges, within the range of substantial discretion, to sentence like defendants committing like crimes under like circumstances to similar sentences. Further, it will to a greater extent than is now achievable, allow the judge to know not only the sentence that he imposes but the probable service of that sentence, which is not always the case at the present time.

What is the Department of Justice doing to insure that its lawyers are not within that category of lawyers who have been described in the Devitt Committee Report, which studied advocacy, as "less than qualified" for litigating in the federal system?

From the beginning of Judge Bell's term as Attorney General and accelerating from there, including my time, we have devoted an enormous amount of energy to revising and updating and broadening the Attorney General's Advocacy Institute. We are now training as many as 600 Government lawyers in basic litigation skills in a three-week course and we are providing another 40 courses in advanced specialized litigation. We have the Institute now in the main Justice Department building with new mock courtroom facilities. We have the benefit of the advice and expertise of four or five outside consultants who are constantly reviewing and critiquing all of our programs. I might add that we are benefited substantially by the fact that both district court and circuit court judges in the federal system volunteer to come at the end of each of these three-week sessions on criminal and civil cases to hear the actual conduct of one- and two-day mock trials. This is of enormous benefit to the Department, to the Judicial Branch and, of course, to the young men and women who are undertaking to represent the Government in the highest and best traditions of trial practice.

The Third Branch

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MAJOR LEGISLATION OF INTEREST TO *THE THIRD BRANCH* READERS 96th CONGRESS, FIRST SESSION		
Bill	**House Status**	**Senate Status**
Federal Court Improvements Act of 1979—S. 1477		Passed, 10/30/79. Title 4 [the tax court of appeals provisions] have been referred for further consideration to the Committee on Finance
Judicial Conduct and Disability Act of 1979—S. 1873	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Incorporated into S.1477, which was passed on 10/30/79
Abolition of Diversity Jurisdiction—S.679 and H.R. 2202	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Hearings in the Committee on Judiciary concluded
Recodification of federal criminal laws—S.1722, S.1723 and House draft	In markup in Subcommittee on Criminal Justice	In markup in Committee on Judiciary
Law Enforcement Assistance Reform Act of 1979—S.241 and H.R. 2061	Passed, amended, 10/12/79	Passed, 5/21/79
	In Conference	
FBI Charter—S.1612 and H.R. 5030	Hearings being conducted in Subcommittee on Civil and Constitutional Rights	Hearings being conducted in Committee on Judiciary
Supreme Court Jurisdiction Act—S.450 and H.R. 2700	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Passed, 4/9/79
Dispute Resolutions Act—S.423	Placed on Union Calendar, 10/23/79	Passed, 4/5/79
Citizens' Right to Standing in the Federal Courts Act—S.680		Hearings being conducted in Committee on Judiciary

SENATE APPROVES JUDICIAL DISCIPLINE BILL

On October 30 the Senate approved S. 1873, the "Judicial Conduct and Disability Act of 1979," by a roll-call vote of 56 to 33. S. 1873 was approved, after almost five hours of debate, in substantially the same form in which it had been reported from the Senate Judiciary Committee by a vote of 11 to 4 on October 2. Before passing S. 1873, the Senate rejected by a 30 to 60 vote Senator Nunn's substitute proposal which would have authorized removal of a federal judge from office by a method other than impeachment under Article I of the Constitution. Immediately following passage, the text was incorporated into S.1477, the "Federal Courts Improvements Act of 1979," previously approved by the Senate on September 7. Both bills were sent to the House of Representatives and are now pending before subcommittees of the House Judiciary Committee.

Reflecting approximately three months of Senate Judiciary Committee consideration, in which representatives of the Judicial Conference participated, S. 1873 provides that:

- Any person may file a complaint in writing with the Judicial Council of a circuit alleging that a judge is incapable of performing his or her duties due to mental or physical disability or has engaged in conduct inconsistent with the effective and expeditious administration of the business of the courts.
- A Circuit Council, following an investigation of the complaint, may dismiss it: (1) either because it is frivolous or beyond the Council's jurisdic-

see DISCIPLINE p. 9

CODE from p. 3

as P.L. 96-82 on October 10). He also suggested areas where the bill could make a clearer explanation of a magistrate's role under the new code.

Other Provisions. Aside from sentencing and parole, the bills contain several other provisions that would amend federal criminal law significantly.

- Both bills create a new crime of operating a racketeering syndicate. Similarly, the existing laws against loansharking are strengthened. Despite this, however, the Department of Justice testified before the House subcommittee that the new code would severely interfere with the prosecution of white collar crime. Among other shortcomings, a Department spokesman stated that the maximum fines for felony convictions are too low; that certain statute of limitations should not be reduced; that stiffer penalties should attach to violations of health, safety or environmental regulations, that a commercial bribery provision should be included, and that the Department's authority to prosecute fraud against the government should be expanded.
- The Senate bill codifies the Pinkerton doctrine, making a coconspirator guilty of every offense committed in furtherance of the conspiracy if the offense was "reasonably foreseeable." The House draft does not contain this provision, and it imposes vicarious liability only where one intentionally and knowingly aids or induces another to commit a crime.
- Existing laws on obscenity are substantially curtailed. The Senate bill makes it a crime to disseminate commercially obscene material for a profit or to disseminate such material to minors or those unable to avoid seeing it. The House draft contains no general obscenity provisions.
- Both bills add discrimination by sex to the definition of the crime of unlawful discrimination.

MET CHIEFS from p. 1

available to handle a lengthy trial that could otherwise seriously drain the judicial resources in any particular district and disrupt the court's calendar.

- Took note of the growing problems created by the inadequate per diem allowance, especially for those judges who must spend extended periods of time on assignment away from their homes. He reviewed various solutions short of legislation that had been explored, and reported that remedial legislation would presently be introduced.
- Reviewed the recommendations proposed by the Devitt Committee and approved by the Judicial Conference (see *The Third Branch,* October, 1979, page 1). Judge James R. Miller (D. Md.), a member of the Committee, also spoke on the implementation of the Committee recommendations. The Chief Justice took note, however, of recent developments in the law schools to increase the availability of clinical education and said these steps would likely, over the next few years, help alleviate some of the problems that the Devitt proposals are designed to meet. He pointed specifically to the law schools' receptivity to the ABA's Task Force on Lawyer Competency, which was created after the ABA's 1978 annual meeting and chaired by Cornell Law Dean, Roger C. Cramton.
- Discussed with the Conference the benefits that could be derived from designating District Court Administrators, an office analogous to that of Circuit Executive. He indicated that although such officers might technically be designated as "deputies" to the Circuit Executive, the Judicial Conference would make clear that District Court Administrators would be under the control and direction of the district courts rather than adjuncts to the Circuit Executive and Circuit Council. The Chief Judges unanimously adopted a resolution endorsing this arrangement.

The Conference agenda also included a presentation by Judge Murray Gurfein (CA-2) on the operation of the Judicial Panel on Multidistrict Litigation, and reports on Federal Judicial Center research on discovery and discovery control, as well as on current and potential practices in the district courts to adjust Chief Judges' caseloads to compensate for their special administrative workload.

FJC RESIDENT VISITING SCHOLAR PROGRAM

The Federal Judicial Center has announced a Visiting Scholar Program to allow one or more individuals with research interests that coincide with those of the Center to spend a year in residence at the Center.

The aim of the Visiting Scholar Program is to enhance the Center's work by obtaining special expertise in areas of particular need to the Center and by providing Visiting Scholars the opportunity to learn first-hand of the operations and special environment of federal judicial administration. Visiting Scholars may apply for assignment to any one of the Center's four divisions.

Applicants should have well developed interests, evidenced in relevant publications or experience, in areas that coincide with the needs and interests of the Federal Judicial Center.

Interested persons may obtain more information concerning the Visiting Scholar Program by writing to the Director of the Center.

PERSONNEL from p. 10

Harold A. Ackerman, U.S. District Judge, D. NJ, Oct. 31
Dickinson R. Debevoise, U.S. District Judge, D. NJ, Oct. 31
H. Lee Sarokin, U.S. District Judge, D. NJ, Oct. 31
Anne E. Thompson, U.S. District Judge, D. NJ, Oct. 31
Neal P. McCurn, U.S. District Judge, N.D. NY, Oct. 31
Frank H. Seay, U.S. District Judge, E.D. OK, Oct. 31
Lee R. West, U.S. District Judge, W.D. OK, Oct. 31
Thomas R. Brett, U.S. District Judge, N.D. OK, Oct. 31
James O. Ellison, U.S. District Judge, N.D. OK, Oct. 31

APPOINTMENTS

Matthew J. Perry, Jr., U.S. District Judge, D. SC, Sept. 23
Abner J. Mikva, U.S. Circuit Judge (CA-DC), Sept. 27
Veronica D. Wicker, U.S. District Judge, E.D. LA, Sept. 28
Patrick E. Carr, U.S. District Judge, E.D. LA, Oct. 1
Edward C. Reed, Jr., U.S. District Judge, D. NV, Oct. 1
William L. Hungate, U.S. District Judge, E.D. MO, Oct. 1
Benjamin F. Gibson, U.S. District Judge, W.D. MI, Oct. 3
Cornelia G. Kennedy, U.S. Circuit Judge (CA-6), Oct. 4
Howard F. Sachs, U.S. District Judge, W.D. MO, Oct. 5
Scott O. Wright, U.S. District Judge, W.D. MO, Oct. 5
Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), Oct. 5
Richard M. Bilby, U.S. District Judge, D. AZ, Oct. 5
Eugene P. Spellman, U.S. District Judge, S.D. FL, Oct. 9
Edward B. Davis, U.S. District Judge, S.D. FL, Oct. 9
Avern Cohn, U.S. District Judge, E.D. MI, Oct. 9
Richard D. Cudahy, U.S. Circuit Judge, CA-7, Oct. 10
Jim R. Carrigan, U.S. District Judge, D. CO, Oct. 10
Zita L. Weinshienk, U.S. District Judge, D. CO, Oct. 10
Lynn C. Higby, U.S. District Judge, N.D. FL, Oct. 10
Betty B. Fletcher, U.S. Circuit Judge (CA-9), Oct. 15
Nathaniel R. Jones, U.S. Circuit Judge (CA-6), Oct. 15
J. Jerome Farris, U.S. Circuit Judge (CA-9), Oct. 16
James W. Kehoe, U.S. District Judge, S.D. FL, Oct. 16

CALENDAR from p. 10

Jan. 31 - Feb. 1 Procurement and Contracting Workshop for Bankruptcy Clerks; Montgomery, AL

Jan. 31-Feb. 1 Workshop for District Judges (CA-8 and CA 10); Phoenix, AZ

Feb. 4-8 Introduction to COURTRAN II STARS Training; Washington, DC

Feb. 11-13 Fiscal Workshop for Bankruptcy Clerks; Reno, NV

Feb. 12-13 Introduction to COURTRAN II INDEX Training; Washington, DC (Date tentative)

Feb. 14-15 Procurement and Contracting Workshop for Bankruptcy Clerks; Reno, NV

Feb. 19-22 Effective Productivity for Court Personnel; San Diego, CA

NOTICE TO OUR READERS

The Third Branch is updating its mailing list.

All non-federal subscribers should have received a post card asking if continuation of their subscription is desired. This card should be returned within 30 days of receipt. If the subscription is not actively renewed future mailings of *The Third Branch* will be discontinued.

Feb. 25-27 Fiscal Workshop for Bankruptcy Clerks; Amarillo, TX

Feb. 28-29 Procurement and Contracting Workshop for Bankruptcy Clerks; Amarillo, TX

DISCIPLINE from p. 7

tion; (2) because it is related to the merits of a decisional or procedural ruling; or (3) because it raised a question reviewable under another provision of law. If the Council does not dismiss the complaint, it may: (1) request that the judge voluntarily retire; (2) temporarily suspend assignment of new cases to the judge; (3) either privately or publicly reprimand the judge; or (4) take other "appropriate" action short of removal from office.

• Upon final action by a Circuit Council either the complainant or the judge may petition a newly established Court of Judicial Conduct and Disability for review of the action. That Court, consisting of five active Article III judges appointed by the Chief Justice of the United States, can either review the record established by the Council or conduct a *de novo* investigation of its own. The Court's range of actions, if it does conduct its own investigation, is identical to the range of actions available to the Council. In addition, however, the Court is required to refer to the House of Representatives any case involving conduct which the Court believes "would constitute an impeachable offense."

House hearings may commence in early December and will continue into the second session of the 96th Congress.

Both Senator Mathias and Senator Heflin, who had filed dissenting views to the Senate Judiciary Committee's Report accompanying S.1873, opposed final approval of the bill during Senate floor debate on October 30.

Gene E. Brooks, U.S. District Judge, S.D. IN, Oct. 17
William L. Beatty, U.S. District Judge, S.D. IL, Oct. 19
Hugh Gibson, Jr., U.S. District Judge, S.D. TX, Oct. 23
Joseph C. Howard, Sr., U.S. District Judge, D. MD, Oct. 23
Shirley B. Jones, U.S. District Judge, D. MD, Oct. 23

ELEVATIONS

John Feikens, Chief Judge, E.D. MI, Oct. 4
Jack Roberts, Chief Judge, W.D. TX, Oct 10

DEATH

Harold Leventhal, U.S. Circuit Judge (CA DC), November 20

aoaosfjc calendar

Nov. 26-28 Workshop for District Judges (CA-9); Palm Springs, CA

Nov. 28-29 Judicial Conference Subcommittee on Bankruptcy Rules; Orlando, FL

Dec. 4-7 Effective Productivity for Court Personnel; Nashville, TN

Dec. 10-11 Judicial Conference Subcommittee on Civil Rules; Washington, D.C.

Dec. 10-14 Orientation Seminar for U.S. Probation Officers; Washington, D.C.

Dec. 10-14 In-Court Management Seminar; Brooklyn, NY

Dec. 10-11 Effective Productivity for Court Personnel; San Juan, PR

Dec. 14 Judicial Conference Subcommittee on Appellate Rules; Washington, D.C.

Dec. 18-21 Effective Productivity for Court Personnel; St. Croix, VI

Jan. 7-9, Fiscal Workshop for Bankruptcy Clerks; Wilmington, DE

Jan. 10-11 Procurement and Contracting Workshop for Bankruptcy Clerks; Wilmington, DE

Jan. 13-19 Seminar for Newly Appointed District Judges; Washington, DC

Jan. 15-18 Effective Productivity for Court Personnel; Pittsburgh, PA

Jan. 21-23 Seminar for Federal Public Defenders; San Antonio, TX

Jan. 21-25 Introduction to COURTRAN II STARS and INDEX Training; Washington, DC

Jan. 22-25 Effective Productivity for Court Personnel; Oxford, MS

Jan. 28-30 Fiscal Workshop for Bankruptcy Clerks; Montgomery, AL

see CALENDAR p. 9

PERSONNEL

NOMINATIONS

Juan M. Perez-Gimenez, U.S. District Judge, D. PR, Oct. 23

Edward D. Price, U.S. District Judge, E.D. CA, Nov. 1

Horace T. Wood, U.S. District Judge, N.D. GA, Nov. 1

David K. Winder, U.S. District Judge, D. UT, Nov. 1

Jose A. Cabranes, U.S. District Judge, D. CT, Nov. 6

Robert J. McNichols, U.S. District Judge, E.D. WA, Nov. 6

CONFIRMATIONS

Anna Diggs-Taylor, U.S. District Judge, E.D. MI, Oct. 31

Juan G. Burciaga, U.S. District Judge, D. NM, Oct. 31

Barbara B. Crabb, U.S. District Judge, W.D. WI, Oct. 31

Terence T. Evans, U.S. District Judge, E.D. WI, Oct. 31

Alan N. Bloch, U.S. District Judge, W.D. PA, Oct. 31

Thomas A. Clark, U.S. Circuit Judge (CA-5), Oct. 31

Arthur L. Alarcon, U.S. Circuit Judge (CA-9), Oct. 31

Harry Pregerson, U.S. Circuit Judge (CA-9), Oct. 31

Stephanie K. Seymour, U.S. Circuit Judge (CA-10), Oct. 31

Alcee L. Hastings, U.S. District Judge, S.D. FL, Oct. 31

Scott E. Reed, U.S. District Judge, E.D. KY, Oct. 31

Robert H. Hall, U.S. District Judge, N.D. GA, Oct. 31

Dale E. Saffels, U.S. District Judge, D. KS, Oct. 31

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THE THIRD BRANCH
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FINANCIAL DISCLOSURE LAW FOR JUDGES UPHELD

The Court of Appeals for the Fifth Circuit upheld the constitutionality of the requirement in the Ethics in Government Act of 1978 that federal judges annually provide personal financial statements available for public inspection. *Duplantier v. United States,* No. 79-2351 (48 U.S.L.W. 2375, 5th Cir. Nov. 19, 1979).

The action was filed last May by six United States district court judges as a class action on their behalf and on behalf of all others similarly situated. In an opinion denying plaintiffs' motion for a preliminary injunction, Judge Robert F. Collins (E.D. La.) said the Court was precluded from addressing the merits because of lack of jurisdiction over certain of the defendants (the Judicial Ethics Committee of the Judicial Conference, the

see DISCLOSURE p. 3

ADMINISTRATIVE OFFICE OF THE U.S. COURTS MARKS 40TH ANNIVERSARY

The Administrative Office of the United States Courts recently marked the fortieth anniversary of its service to the federal judiciary. Since beginning operations under its first director, Henry Chandler, in November 1939, the Administrative Office has played a prominent role in a period of unparalleled growth in the federal court system.

The act establishing the Administrative Office (28 U.S.C. §§601-611) was hailed by Chief Justice Vinson in 1949 as "something of a Declaration of Independence for the federal courts." This act removed the control of funding, budget accounting and other details of judicial administration from the Department of Justice—the chief litigator before the courts—and vested it within the judicial branch. The creation of the Administrative Office was just one part of the establishment of a system of judicial self-government which is still in operation today. Under this system, policy is made by the Judicial Conference of the United States and is implemented within each of the eleven circuits under the supervision of the circuit judicial councils. The facts and information upon which these bodies rely to make their decisions, as well as myriad support services, are provided by the Administrative Office.

The Administrative Office originally consisted of two divisions, one to handle financial matters and the other to handle statistics on the workload of the courts. Additionally, a small staff exercised general supervision over the federal probation system. Today, the Administrative Office functions through eleven divisions, five of which manage programs—Bankruptcy, Clerks, Magistrates, Criminal Justice Act and Probation—and six of which provide support services — Administrative Services, Financial Management, Information Systems, Management Review, Personnel, and Statistical Analysis and Reports. Additional services are provided through the office of the General Counsel and the office on Legislative Affairs.

In 1940, Administrative Office statisticians received approxi-

see ANNIVERSARY p. 2

UPDATE ON JUDGESHIPS

As of December 5, nominees for 102 of the 152 judgeships created by the Omnibus Judgeship Act of 1978—29 circuit and 73 district—had been confirmed by the Senate. Seventeen other nominees—three circuit and 14 district—await Senate confirmation. According to the Department of Justice, all but six of the remaining judgeships have potential nominees under active consideration.

During 1979, 22 other judgeship nominees—four circuit and 18 district—have been confirmed by the Senate. Three district court nominees currently are awaiting confirmation. These positions have become vacant because of retirements, deaths, resignations and the elevation of district court judges to circuit courts. Justice Department figures show 40 remaining vacancies, ten of which have potential nominees under active consideration.

ANNIVERSARY from p. 1

mately 240,000 records to compile. Today, they handle more than a million such documents each year. Processing of these forms has progressed from simple hand-tallying to key-punching of computer cards to today's direct entry of data into the main computer. The number of judges whom the Administrative Office serves has likewise increased, from 247 authorized district and appellate positions in 1940 to 648 in 1979. The federal probation system employed 233 probation officers to supervise 35,000 probationers and parolees in 1940; currently 1,697 such officers have responsibility over 66,000 persons under supervision. In 1948, the first year of the Referee's Salary Act, 18,500 bankruptcy cases of all types were filed, while 226,000 such cases were filed last year. Similar increases in the number of magistrates (successors to the former U.S. commissioners), clerks and other judicial personnel have also been experienced.

Despite this record of growth, administrative costs for the courts have been consistently low. Operating the Administrative Office in 1958 required only 2.2% of the judicial budget. Warren Olney, III, the second Director of the Administrative Office, commented that this figure for administrative costs would be considered "exceptionally low" in private industry. In 1979, administrative expenses took 2.6% of the judiciary's budget (exclusive of appropriations for the Supreme Court).

The Administrative Office has, since its inception, been involved in legislative affairs affecting the federal courts. In 1939, the Administrative Office prepared a report which formed the basis for Judicial Conference-sponsored legislation establishing the system of official court reporters. During this same period, the Administrative Office provided information to a committee formed by the Attorney General to review the system of referees in bankruptcy. This committee's report led to the creation of the bankruptcy division in 1942, and was an important first step in the ultimate passage of legislation which changed the referees' compensation system from fees to salaries.

Some of the areas of past legislative concern continue to be at issue today. In comments made 20 years ago, former Director Olney predicted that the change in jurisdicational amount for diversity cases from $3,000 to $10,000 and other reforms would reduce by perhaps one-third the workload of the district courts. Whatever the short-term gains from those reforms, the number of civil case filings in district courts has increased 345% since 1940 (161%) since 1960), yet calls by the Judicial Conference, the Attorney General and others for the abolition of diversity jurisdiction have not produced legislative change.

In 1958, Director Olney called for an omnibus judgeship bill to reduce what he considered a very serious shortage in judgeship positions. Although new positions were created by Congress in 1961, 1966, and 1968, the need for more judges has grown unabated, resulting in 1978 in the largest single increase in the number of judges in the nation's history.

In the face of continued growth and continued improvement in the judiciary, it must be concluded that the Administrative Office has successfully fulfilled the mandate set for it forty years ago. As Judge Harold R. Medina (CA-2) said of the Administrative Office ten years after its founding, "It is difficult for those of us connected with the system to understand how the federal courts could ever have [functioned] without it."

JUDICIAL CONFERENCE APPROVES NATIONAL FEDERAL COURT LIBRARY SYSTEM

At its September 197_ meeting, the Judicial Conference of the United States approved a proposal to set up a national court library system based on existing circuit court central libraries "which would provide library and information services to the entire judiciary wherever located within the circuit." Satellite or branch libraries, professionally staffed, would be established at cities within the circuit where there is a demonstrated need for this service and where a circuit judge is also in residence. These libraries will also have responsibilities to the entire federal judiciary. Their librarians will arrange for the exchange of materials with other circuits as well as sources outside the judicial system.

The unified circuit-wid_ system will eventually be expanded by establishing satellite libraries with professional staff in courts where there is no circuit judge. Currently there is statutory authority only for circuit courts to appoint librarians, but it is expected that legislation removing this limitation will be introduced in the next session of Congress.

The central circuit and satellite concept is already functioning in the Third Circuit, where satellite libraries are located in Newark, Wilmington, and Pittsburgh.

In October chief librarians of the circuit courts met in Chicago to discuss implementation of this concept. At the conclusion of the conference, it was agreed that each would analyze the system currently in operation within their circuit to determine the need for satellite libraries. Other actions contemplated

see LIBRARY p. 5

HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

A decade ago, when I first extended personal holiday greetings to all in the "Federal Judicial Family," there were 416 authorized federal judgeships; today there are 648. With Senior Judges, the total is now 830. A special thanks is due them, for they have made an enormous difference in those years the Judiciary was gravely understaffed.

As we enter 1980, it seems especially appropriate that we contemplate what is happening to our federal court system; that we reflect a bit on our history.

That the system is in an era of growth as our society becomes more complex is obvious. Whether we like it or not the future will see more expansion. Decisions in the past quarter century or more have brought new problems to the Federal Judiciary, some that could never have been anticipated by our predecessors. We can take pride in a performance which shows that with each decade the federal judges have responded admirably with courage, determination and industry.

As we welcome 152 new judges coming into the system — along with a half hundred "replacements" — we can be proud of this record. We can take pride in saying to our new colleagues: you are entering a court system that has never failed this country. The federal courts have, over the years, faced enormously heavy caseloads brought to them by new legislation and by new social, political and economic problems. All of these changes have been met by imaginative and dedicated judges. New procedures and techniques for speeding up the process have evolved. Our mission — to deliver justice effectively and economically — is being performed.

And as we approach the Holiday Season, Mrs. Burger and I extend to all of you, and your loved ones, our best wishes for peace, health, and happiness.

Warren E. Burger

BENCH BOOK FOR U.S. DISTRICT COURT JUDGES PUBLISHED

The Federal Judicial Center this month distributed the first installment of a new *Bench Book for United States District Court Judges.*

The book, which replaces a 1969 edition, is being mailed to all United States District Court judges. Included in this first distribution are six of the thirty-eight chapters which Volume I of the *Bench Book* will contain upon completion. Additional chapters will be distributed as they become available.

The Book is published in a three-ring loose leaf binder to facilitate the insertion of new material as well as any papers a judge may wish to add.

The compilation of the Book is under the direction of a committee of three district court judges who have served on the Board of the Center. Chairman of the committee is Judge Frank J. McGarr (N.D. Ill.).

DISCLOSURE from p. 1.

Committee's Chairman, and the Clerks of all Article III courts). To avoid the possibility of irreparable injury, however, the Court issued a stay against enforcement of the Act until the jurisdictional question could be resolved.

On appeal, the Fifth Circuit held that jurisdiction was lacking over the above named defendants, but that the substantive issues could nonetheless be addressed as against those defendants over which jurisdiction was present (the United States and the Attorney General). In its 23-page opinion, authored by Circuit Judge Robert A. Ainsworth, the Court rejected all of plaintiffs' constitutional objections to the statute; affirmed the denial of the preliminary injunction; and vacated the district court's stay.

MEDIA LIBRARY TO BE HIGHLIGHTED

Beginning in this issue, the Federal Judicial Center's Media Library will regularly be featured in a column listing recent acquisitions and topics of current interest which are available on loan.

In 1972, the Center established the Media Library as a source of educational resource material for federal court personnel. Initially a collection of audio cassettes recorded at Center-sponsored workshops and seminars, it has expanded today to include a growing selection of films and video cassettes. An *Educational Media Catalog,* listing the approximately 450 audio cassettes, 85 films and 50 video cassettes currently available, is being disturbed only to personnel in the federal courts.

The library's acquisitions include presentations by some of the finest legal scholars and practitioners in the country. A broad range of subjects is included—from civil and criminal case management to the ultilization of technological advances, from professional responsibility and proper ethical conduct to effective time management and techniques of supervision. The collection is updated regularly to maintain its topical relevance.

Each film and audio or video cassette in the collection is available to any person employed by the judicial branch of the United States Government. Requests should be written on appropriate letterhead and sent to: Federal Judicial Center Media Library, 1520 H Street, N.W., Washington, D.C. 20005. Emergency telephone requests may be made by calling FTS 633-6024, or, for non-FTS users, 202-633-6024.

Loan period and circulation restrictions are in effect as follows:

- Audio cassettes—up to six different topics may be included in a single request and retained for two weeks after the day of arrival.
- Video cassettes—up to four topics may be included in a single request and retained for one week after the day of arrival.
- Films—up to two topics may be included in a single request and retained for one week after the day of arrival.

All requests must include the call number assigned to the film or the audio or video cassette.

Audio cassettes can be played on any standard cassette player or recording unit. Video cassettes are either 3/4 inch U-Matic or 1/2 inch VHS format and must be played by a trained operator on a video cassette player or recording unit designed for 3/4 or 1/2 inch cassettes. Films are all 16mm for projection on standard 16 mm equipment. More detailed information about equipment guidelines may be obtained from the Media Library.

Audio cassettes recorded at the Seminar for Bankruptcy Judges held August 1-3 in St. Petersburg, Florida are now available on request and are listed below:

B-24
The Federal Judge
Judge William J. Campbell
Senior Chairman—Center Seminar Programs

B-25
Judicial Responsibility for Case Management
Judge Charles B. Renfrew (N.D. CA)

B-26
The Judge and Settlement
Judge J.. Waldo Ackerman (C.D. IL)

B-28
The Non-Jury Trial
Judge Alvin B. Rubin (CA-5)

B-30
Effective Jury Utilization
Chief Judge Warren K. Urbom (D. NB)

B-31
Effective Use of Personnel
Judge Charles R. Weiner (E.D. PA)

B-32
Federal Rules of Evidence
Judge Clarence A. Brimmer (D. WY)
Judge Charles R. Weiner (E.D. PA)

B-33
Bankruptcy Administration
Donald R. Burkhalter
Attorney Advisor
Task Force on United States Trustees
United States Department of Justice

Berkeley Wright
Chief, Bankruptcy Division
Administrative Office of the United States Courts

Lawrence P. King
Associate Dean
New York University School of Law

B-34
The Jury Trial
Chief Judge Warren K. Urbom (D. NB)
Judge Thomas D. Lambros (N.D. OH)

PERSONNEL from p. 6

APPOINTMENTS

Mary M. Schroeder, U.S. Circuit Judge (CA-9), Oct. 12
James C. Paine, U.S. District Judge, S.D. FL, Nov. 2
Albert Tate, Jr., U.S. Circuit Judge (CA-5), Nov. 2
Thomas R. Brett, U.S. District Judge, N.D. OK, Nov. 5
James O. Ellison, U.S. District Judge, N.D. OK, Nov. 5
Frank H. Seay, U.S. District Judge, E.D. OK, Nov. 5
Anna Diggs Taylor, U.S. District Judge, E.D. MI, Nov. 5
Alcee L. Hastings, U.S. District Judge, S.D. FL, Nov. 13
Dale E. Saffels, U.S. District Judge, D. KS, Nov. 16

DEATHS

James M. Carter, Senior Circuit Judge (CA-9), Nov. 18
Leo Brewster, Senior U.S. District Judge, N.D. TX, Nov. 27.

APPLICATIONS BEING RECEIVED FOR CIRCUIT EXECUTIVE POSITION IN EIGHTH CIRCUIT

Position: Circuit Executive for the Eighth Circuit. Approximate salary range: $45,000 to $50,000, commensurate with education and experience. Appointment subject to certification by Board of Certification for Circuit Executives.

Responsibilities: Under direction of the Court and pertinent statutes and rules, the Circuit Executive performs a broad range of tasks related to the business of the circuit including relationships with the circuit and district courts and the judicial council of the circuit.

Qualifications: Proven management and administrative skills. Undergraduate degree in management or related field and experience or specialized training in court administration desirable but not mandatory.

To apply: Send application and resume to: R. Hanson Lawton, 853 U.S. Courthouse, Kansas City, Missouri 64106.

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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

TWO FEDERAL JUDGES MOVE TO EXECUTIVE BRANCH

Two federal judges in California have been named by President Jimmy Carter to fill high positions in the Executive Branch.

U.S. Circuit Judge Shirley M. Hufstedler, who has been on the Ninth Circuit for 11 years, was confirmed as Secretary of the newly created United States Department of Education. On December 6 Judge Hufstedler took her oath of office.

Judge Charles B. Renfrew, who has been on the U.S. District Court for the Northern District of California since 1971, has been named to be the Deputy Attorney General. This office was vacated last August when Benjamin R. Civiletti became Attorney General. Judge Renfrew would be the second federal judge in recent history to resign a federal judgeship to take this position in the Department of Justice. One of his predecessors in this office was Judge Harold R. Tyler, Jr., who left the District Court for the Southern District of New York in 1975 to assume this post. Judge Tyler is now in private practice in New York City.

LIBRARY from p. 2

include proposing changes in the JSP level of the chief circuit librarians and submitting budget proposals which, if approved by Congress, would create new positions in federal court libraries and change the classification of existing temporary positions.

The proposal to adopt the central circuit and satellite concept nationwide was presented to Administrative Office Director William E. Foley last spring by Patricia Thomas, Chief of the Library Services Branch in the A.O. After approval by Mr. Foley, the plan was submitted to the ad hoc Committee on Libraries, which recommended favorable consideration by the Court Administration Committee. This Committee in turn presented it to the Judicial Conference.

This development in the area of the federal court library system evolved as a consequence of 19 recommendations—approved by the Judicial Conference—contained in the report of the Federal Judicial Center Board, *Improving the Federal Court Library System* (see *The Third Branch*, September 1978, page 4).

CALENDAR from p. 6

Jan. 22-24 Judicial Conference Committee on Ethics; Palm Beach Shores, FL

Jan. 22-25 Effective Productivity for Court Personnel; Oxford, MS

Jan. 24 Judicial Conference Review Committee; Palm Beach Shores, FL

Jan. 24 Judicial Conference Committee on the Administration of the Probation System; Singer Island, FL

Jan. 25 Judicial Conference Joint Meeting of Ethics and Review Committee; Palm Beach Shores, FL

Jan. 25 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC

Jan. 28-29 Judicial Conference Committee on Court Administration; Singer Island, FL

Jan. 28-29 Judicial Conference Committee on Intercircuit Assignments; Singer Island, FL

Jan. 28-30 Fiscal Workshop for Bankruptcy Clerks; Montgomery, AL

Jan. 30 Judicial Conference Committee on the Budget; Singer Island, FL

Jan. 31-Feb. 1 Workshop for District Judges (CA-8 & CA-10); Phoenix, AZ

Mar. 9-12 Seminar for Newly Appointed Federal Appellate Judges; Washington, DC

PERSONNEL

NOMINATIONS

Richard A. Enslen, U.S. District Judge, W.D. MI, Nov. 30
Diana F. Murphy, U.S. District Judge, D. MN, Nov. 30
Robert G. Renner, U.S. District Judge, D. MN, Nov. 30
Gilberto Gierbolini-Ortiz, U.S. District Judge, D. PR, Nov. 30
William M. Kidd, U.S. District Judge, S.D. W. VA, Nov. 30
Stephen R. Reinhardt, U.S. Circuit Judge (CA-9), Nov. 30
Helen J. Frye, U.S. District Judge, D. OR, Dec. 3
James A. Redden, Jr., U.S. District Judge, D. OR, Dec. 3
Owen M. Panner, U.S. District Judge, D. OR, Dec. 3
Barbara J. Rothstein, U.S. District Judge, W.D. WA, Dec. 3

CONFIRMATIONS

Cecil F. Poole, U.S. Circuit Judge (CA-9), Nov. 26
William O. Bertelsman, U.S. District Judge, E.D. KY, Nov. 26
Peter H. Beer, U.S. District Judge, E.D. LA, Nov. 26
James T. Giles, U.S. District Judge, E.D. PA, Nov. 26
Lucius D. Bunton, III, U.S. District Judge, W.D. TX, Nov. 26
Harry L. Hudspeth, U.S. District Judge, W.D. TX, Nov. 26
Warren J. Ferguson, U.S. Circuit Judge (CA-9), Nov. 26
Milton L. Schwartz, U.S. District Judge, E.D. CA, Nov. 26
Dudley H. Bowen, Jr., U.S. District Judge, S.D. GA, Nov. 26
David K. Winder, U.S. District Judge, D. UT, Dec. 4
Juan M. Perez-Gimenez, U.S. District, Judge, D. PR, Dec. 5
Horace T. Ward, U.S. District Judge, N.D. GA, Dec. 5
Jose A. Cabranes, U.S. District Judge, D. CT, Dec. 5
Robert J. McNichols, U.S. District Judge, E.D. WA, Dec. 5

see PERSONNEL p. 4

COMMITTEE ON THE JUDICIAL BRANCH APPOINTED

Under an authorizing resolution of the Judicial Conference at its September 1979 meeting, the Chief Justice has appointed a Committee on the Judicial Branch. This committee will examine the constitutional and historic basis of judicial tenure, judicial independence and other related matters.

Chief Judge Irving R. Kaufman (CA-2) has been named Chairman of the committee. Also named as members of the committee are Judge Arlin M. Adams (CA-3), Judge Robert A. Ainsworth, Jr., (CA-5), Senior Judge Oren Harris (E.D. AR), Judge James Harvey (E.D. MI) and Chief Judge Irving Hill (C.D. CA).

AO and FJC calendar

Jan. 7-8 Judicial Conference Subcommittee on Judicial Improvements; San Diego, CA
Jan. 7-8 Judicial Conference Subcommittee on Federal Jurisdiction; Charleston, SC
Jan. 7-9 Fiscal Workshop for Bankruptcy Clerks: Wilmington, DE
Jan. 10-11 Judicial Conference Advisory Committee on Criminal Rules; Washington, DC
Jan. 10-11 Judicial Conference Subcommittee on Supporting Personnel; Washington, DC
Jan. 10-11 Procurement and Contracting Workshop for Bankruptcy Clerks; Wilmington, DE
Jan. 13-19 Seminar for Newly Appointed District Judges; Washington, DC
Jan. 14-15 Judicial Conference Committee on the Administration of the Criminal Law: Coronado, CA
Jan. 15-18 Effective Productivi for Court Personnel; Pittsburgh, PA
Jan. 21-22 Judicial Conference Committee on the Administration of the Jury System; San Juan, PR
Jan. 21-23 Seminar for Federal Public Defenders; San Antonio, TX
Jan. 21-25 Introduction to COURTRAN II STARS & INDEX Training; Washington, DC

see CALENDAR p. 5

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